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Government procurement

There are **three** areas of work in the WTO on government procurement:

- [Transparency](#) in government procurement, addressed by a working group of all WTO members
- Government procurement in [services](#) – handled by the Working Party on GATS Rules
- The [Government Procurement Agreement](#) – a “plurilateral” agreement signed by some WTO members, administered by a plurilateral committee

Starting point: no commitments on market access in basic instruments

[Extracts from GATT \(goods\) and GATS \(services\)](#) exempting government procurement regulations from governments’ market access commitments.

The three areas: [back to top](#)

[Transparency: the Working Group on Transparency in Government Procurement Practices \(WGTGP\)](#)

A multilateral working group set up to study transparency in government procurement practices and to develop elements for inclusion in a future agreement. **Material includes:** introduction, mandate, and work of the Working Group

[Services: the Working Party on GATS Rules \(WPGR\)](#)

Established, among other purposes, for negotiations on government procurement of services as required under the General Agreement on Trade in Services (GATS). **Material includes:** mandate, work of the Working Party

[Plurilateral: Government Procurement Agreement](#)

An agreement signed by a limited number of WTO members. **Material includes:** explanations, legal text, countries’ commitments and notifications, work of the Committee.

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- > [Coverage of government procurement under regional initiatives and bilateral agreements.](#)
- > [Details of national procurement systems.](#)
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- **14-17 January 2003: joint WTO-World Bank workshop on public procurement**
A joint WTO-World Bank regional workshop on procurement reforms and transparency in public procurement for English speaking African countries was held in Dar es Salaam, Tanzania.
 - > [Programme and background materials](#)

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Government procurement: transparency

A multilateral working group i.e. all WTO members participate, set up by the 1996 Ministerial Conference in Singapore. Its mandate is to study transparency in members' government procurement practices, and to develop elements which could be included in a future agreement on transparency.

See also:

> [Government procurement in services](#)
> [Plurilateral Government Procurement Agreement](#)

> [The starting point: How government procurement is exempt from the usual rules](#)

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In "Understanding the WTO", the guide to the WTO.

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Mandate: The Singapore Ministerial Declaration, 1996.

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Documents of the working group on transparency in government procurement use the code WT/WGTGP/* (where * takes additional values)

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- Geneva, 9-10 October 2002: [Symposium on transparency in government procurement](#)

The WTO Symposium on transparency in government procurement was organized pursuant to the commitment in [paragraph 26 of the Doha Ministerial Declaration](#) to ensure adequate technical assistance and support for capacity building to developing countries.

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UNDERSTANDING THE WTO: CROSS-CUTTING AND NEW ISSUES

Investment, competition, procurement, simpler procedures

Ministers from WTO member-countries decided at the 1996 Singapore Ministerial Conference to set up three new working groups: on trade and investment, on competition policy, and on transparency in government procurement. They also instructed the WTO Goods Council to look at possible ways of simplifying trade procedures, an issue sometimes known as “trade facilitation”. Because the Singapore conference kicked off work in these four subjects, they are sometimes called the “Singapore issues”.

Click the + to open an item.

Understanding the WTO

-  Basics
-  Agreements
-  Settling disputes
-  Cross-cutting and new issues
-  The Doha agenda
-  Developing countries
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-  Abbreviations



These four subjects were originally included on the Doha Development Agenda. The carefully-negotiated mandate was for negotiations to start after the 2003 Cancún Ministerial Conference, “on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations”. There was no consensus, and the members agreed on 1 August 2004 to proceed with negotiations in only one subject, trade facilitation. The other three were dropped from the Doha agenda.

> See also [Doha Development Agenda](#)

More introductory information

> [The WTO in Brief](#)

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> [10 misunderstandings](#)

Investment and competition: what role for the WTO? [back to top](#)

Work in the WTO on investment and competition policy issues originally took the form of specific responses to specific trade policy issues, rather than a look at the broad picture.

Decisions reached at the 1996 Ministerial Conference in Singapore changed the perspective. The ministers decided to set up **two working groups** to look more generally at how trade relates to investment and competition policies.

The working groups’ tasks were analytical and exploratory. They would not negotiate new rules or commitments without a clear consensus

decision.

The ministers also recognized the work underway in the [UN Conference on Trade and Development \(UNCTAD\)](#) and other international organizations. The working groups were to cooperate with these organizations so as to make best use of available resources and to ensure that development issues are fully taken into account.

An indication of how closely trade is linked with investment is the fact that about one third of the \$6.1 trillion total for world trade in goods and services in 1995 was trade within companies – for example between subsidiaries in different countries or between a subsidiary and its headquarters.

The close relationships between trade and investment and competition policy have long been recognized. One of the intentions, when [GATT was drafted in the late 1940s](#), was for rules on investment and competition policy to exist alongside those for trade in goods. (The other two agreements were not completed because the attempt to create an [International Trade Organization](#) failed.)

Over the years, GATT and the WTO have increasingly dealt with specific aspects of the relationships. For example, one type of trade covered by the [General Agreement on Trade in Services \(GATS\)](#) is the supply of services by a foreign company setting up operations in a host country – i.e. through foreign investment. The [Trade-Related Investment Measures Agreement](#) says investors' right to use imported goods as inputs should not depend on their export performance.

The same goes for competition policy. GATT and GATS contain rules on monopolies and exclusive service suppliers. The principles have been elaborated considerably in the rules and commitments on telecommunications. The agreements on [intellectual property](#) and services both recognize governments' rights to act against anti-competitive practices, and their rights to work together to limit these practices.

Transparency in government purchases: towards multilateral rules

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The WTO already has an [Agreement on Government Procurement](#). It is plurilateral – only some WTO members have signed it so far. The

agreement covers such issues as transparency and non-discrimination.

The decision by WTO ministers at the 1996 Singapore conference did two things. It set up a working group that was multilateral – it included all WTO members. And it focused the group’s work on transparency in government procurement practices. The group did not look at preferential treatment for local suppliers, so long as the preferences were not hidden.

The first phase of the group’s work was to study transparency in government procurement practices, taking into account national policies. The second phase was to develop elements for inclusion in an agreement.

Trade facilitation: a new high profile

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Once formal trade barriers come down, other issues become more important. For example, companies need to be able to acquire information on other countries’ importing and exporting regulations and how customs procedures are handled. Cutting red-tape at the point where goods enter a country and providing easier access to this kind of information are two ways of “facilitating” trade.

The 1996 Singapore ministerial conference instructed the WTO [Goods Council](#) to start exploratory and analytical work “on the simplification of trade procedures in order to assess the scope for WTO rules in this area”. Negotiations began after the General Council decision of 1 August 2004.



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GOVERNMENT PROCUREMENT: TRANSPARENCY WORKING GROUP

Mandate: the Singapore Ministerial Declaration

The Working Group on Transparency in Government Procurement Practices was set up by the First WTO Ministerial Conference in Singapore, December 1996.

The mandate:

Document WT/MIN(96)/DEC, 18 December 1996, issued at the first WTO Ministerial Conference, Singapore, 9-13 December 1996

SINGAPORE MINISTERIAL DECLARATION

Adopted on 13 December 1996

1. We, the Ministers, have met in Singapore from 9 to 13 December 1996 for the first regular biennial meeting of the WTO at Ministerial level, as called for in Article IV of the Agreement Establishing the World Trade Organization, to further strengthen the WTO as a forum for negotiation, the continuing liberalization of trade within a rule-based system, and the multilateral review and assessment of trade policies, and in particular to:

Purpose

- assess the implementation of our commitments under the WTO Agreements and decisions;
- review the ongoing negotiations and Work Programme;
- examine developments in world trade; and
- address the challenges of an evolving world economy.

...

21. We further agree to:

- establish a working group to conduct a study on transparency in government procurement practices, taking into account national

Transparency in
Government
Procurement

policies, and, based on this study, to develop elements for inclusion in an appropriate agreement; and

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**REPORT (2003) OF THE WORKING GROUP ON TRANSPARENCY IN
GOVERNMENT PROCUREMENT TO THE GENERAL COUNCIL**

I. INTRODUCTION

1. In the year 2002, the Working Group continued its work under the Chairmanship of Ambassador Ronald Saborío Soto (Costa Rica) pursuant to the mandate provided in the Singapore Ministerial Declaration and paragraph 26 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1). Paragraph 26 reads as follows:

26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants' development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.

2. As agreed at an informal meeting of the Working Group which took place on 29 January 2003, in addition to the work mandated by paragraph 26, the Working Group had a focus, at each of its meetings in 2003, on the matters of: (a) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; and (b) technical assistance and capacity-building.

3. At the Working Group's meeting held on 7 February 2003, the Working Group discussed transparency-related provisions in existing international instruments on government procurement and national procedures and practices. In particular, comments were made on items I (definition and scope of government procurement), VIII (domestic review procedures) and XI (WTO dispute settlement procedures)¹ in the informal note by the Chairman entitled "List of Issues Raised and Points Made" contained in JOB(99)6782 of November 1999. Further, the Working Group discussed technical assistance and capacity building as called for by paragraph 26 of the Doha Ministerial Declaration.

4. At the meeting held on 18 June 2003, the Working Group continued its discussion of transparency-related provisions in existing international instruments on government procurement and national procedures and practices, and technical assistance and capacity building.

¹ M/17, para. 4.

II. ISSUES DISCUSSED IN THE WORKING GROUP

5. This section of the Report provides an overview of the substantive work done in the Working Group in 2003, pursuant to the mandate given in paragraph 26 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1). By its very nature, such an overview cannot reflect everything that was said and capture all nuances of the discussion such as can be found in the detailed records of the Working Group's meetings during the year (WT/WGTCP/M/17 and WT/WGTGP/M/18) and in the written contributions of Members.

A. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

6. This matter was discussed by the Working Group at its meetings of 7 February and 18 June 2003. Written submissions on this item were provided by the representatives of the United States (entitled "Considerations related to Enforcement of an Agreement on Transparency in Government Procurement"); the European Communities (entitled "Domestic Review Mechanisms Related to Transparency in Government Procurement"); Korea (entitled "Work Ahead up to the Cancun Ministerial"); and the European Communities (entitled "Positive Effects of Transparency in Government Procurement and Its Implementation"). They were circulated in documents WT/WGTGP/W/38, 39, 40 and 41 respectively.² The representatives of Australia; Brazil; Canada; Chile; China; Chinese Taipei; Colombia; Cuba; Dominican Republic; Egypt; European Communities; Hong Kong, China; Hungary; India; Japan; Korea; Malaysia; Morocco; Pakistan; Peru; Philippines; Poland; Nigeria; Sri Lanka; Switzerland; Thailand; United States; and Venezuela made oral statements or posed questions.

7. At both meetings, the Working Group took up the items on the Chairman's "List of Issues Raised and Points Made" (JOB(99)6782 of November 1999). Discussions focused on Items I (Definition and Scope of Government Procurement), VIII (Domestic Review Procedures), XI (WTO Dispute Settlement Procedures) and XII (Technical Cooperation and Special and Differential Treatment for Developing Countries). Set out below is a summary of the Working Groups' discussions on these matters.

8. In addition to the above-mentioned issues, the Working Group touched on a number of more general issues. With respect to the issue of the *importance of transparency in government procurement for international trade*, it was noted that all Member governments purchased goods and services both domestically and abroad. The view was expressed that, consequently, there was a significant amount of international trade generated by public entities when, in the exercise of their sovereign powers, they decided to purchase internationally. Given the impact on international trade, rules ensuring transparency should be negotiated in the WTO.³

9. Some of the benefits considered to be associated with a future multilateral agreement on transparency in government procurement that would accrue to procuring entities as well as to participating bidders were identified. First, it was suggested that transparency would result in enhanced efficiency and increased innovation. Specifically, public procurement applied in a transparent environment with a clear set of rules defined in advance and respected by all parties might allow tendering companies from both developed and developing countries to foster enhanced competition, which would, in turn, stimulate innovation amongst bidders. Second, a multilateral agreement would result in better value-for-money. In particular, transparent tendering should lead to effective competition between bidders (in some cases from foreign bidders), reduce the level of bids, and this would reduce the amount of public expenditure. Third, transparency rules would encourage domestic and foreign investment and partnerships between local and foreign suppliers. This benefit

² Hereinafter in the Report, documents issued in the series WT/WGTGP/W/- series are referred to as "W/..."; documents issued in the WT/WGTGP/M/- series are referred to as "M/...".

³ M/18, para. 5.

was considered to be of particular importance for developing countries that were trying to develop their markets. Fourth, a transparency agreement would have the effect of reducing corruption. It was suggested that this was a welcome side-effect for all countries.⁴ Fifth, ensuring transparency in government procurement was a core element of good governance and that this, in turn, was essential to economic development.⁵ Finally, an agreement on transparency in government procurement would result in the establishment of a minimum set of rules applicable world-wide that would have the effect of introducing legal certainty to existing procurement procedures.⁶ Reference was also made to a number of Members' experience with transparent procurement regimes. In this regard, it was noted that the enhancement of transparency in government procurement attracted more international bidders and foreign investment.⁷ The view was expressed that transparency in government procurement should not be perceived as politically controversial given the numerous benefits that flowed from transparency in government procurement and given that the issue of market access did not arise.⁸

10. The view was expressed that, despite the theoretical and actual benefits associated with transparency in government procurement, this was not necessarily a sufficient basis upon which to create multilateral rules in the area.⁹ Reservations regarding binding obligations in the area were expressed, particularly because the issue at stake was only one of transparency.¹⁰ The point was made that, while the benefits of transparency could not be denied by any Member, it was necessary to demonstrate and understand how an agreement on transparency in government procurement would enhance relations among WTO Members and how one Member applying enhanced transparency in government procurement affected and benefited its trading partners in the WTO.¹¹

11. With regard to the *nature of a multilateral agreement on transparency in government procurement*, the suggestion was made that a multilateral agreement on transparency in government procurement did not need to be a complex undertaking. It was noted that the Doha Ministerial Declaration had narrowed the scope of a possible agreement on transparency in government procurement by limiting the parameters to transparency aspects and by providing explicitly that such an agreement should neither restrict domestic preferences nor require market access commitments.¹² Recognizing difficulties for developing countries to implement a future agreement on transparency in government procurement, it was suggested that such an agreement be simple, focusing on core principles such as transparency in procurement opportunities and other elements as illustrated in the items in the Chairman's "List of Issues Raised and Points Made" (JOB(99)6782 of November 1999).¹³ An agreement should encompass a robust principles-based approach both with respect to transparency and due process aspects but which, at the same time, was not prescriptive and which did not confer a right to challenge tender outcomes. Such an agreement could be the first step towards a genuine multilateral instrument designed to facilitate companies' access to information about procurement opportunities, processes and practices and, at the same time, could provide the benefit of a more competitive procurement market.¹⁴

12. It was questioned whether the elements that were the subject of discussion within the context of the Working Group related exclusively to issue of transparency. The point was made that even with respect to those elements that were purely related to issues of transparency, clarification was needed as to whether they pertained to procurement procedures or, rather, to procurement activity in

⁴ M/18, paras. 6 and 23.

⁵ M/18, para. 41.

⁶ M/18, para. 17.

⁷ M/18, para. 19.

⁸ M/18, para. 5. See also M/18, paras. 24, 30 and 31.

⁹ M/18, paras. 20 and 22.

¹⁰ M/18, para. 21.

¹¹ M/18, para. 10.

¹² M/17, para. 3.

¹³ M/18, para. 16.

¹⁴ M/18, paras. 17 and 21.

general.¹⁵ A related point was made that a transparency agreement should not interfere with substantive decisions made by procuring entities, such as the evaluation of offers, decision-making processes, provision of relief to unsuccessful tenderers, and review of procuring entities' decisions, etc.¹⁶

13. It was noted that, while foreign access might be granted to procurement markets in some cases, the Working Group's mandate did not entail a market access component. Clarification was sought as to whether progression from a transparency agreement to one aimed at securing market access in the future would be sought. Clarification was also sought about whether it was proposed that a future agreement on transparency would be applied without distinction between tenders open to international bids and those that were not.¹⁷ In response, it was noted that, while the future agreement on transparency in government procurement should be applicable without distinction between bids open to foreigners and those that were not, this would not impinge upon the right of governments to decide what ultimately would remain exclusively reserved for national bidders.¹⁸

14. With regard to the issue of the relationship between transparency in government and the reduction of corruption, the view was expressed that corruption existed in all countries, even notwithstanding the application of transparency rules. Nevertheless, transparency rules enhanced the ability of countries to combat this problem.¹⁹ In response, the point was made that, while reducing corruption was a laudable objective for all national governments, it should not be a principal objective, nor should it be built into any possible agreement on transparency in government procurement. This was a moral issue, and that moral, social and similar kinds of issues were not the domain of the WTO. Rather, such issues should be addressed by each Member in accordance with its own respective legislation. It was also questioned how a multilateral agreement could assist Members in combating such practices.²⁰ In response, it was noted that the rationale underlying a future agreement on transparency in government procurement would not be to reduce corruption. Nor would a future multilateral agreement contain specific provisions on corruption. Rather, the reduction of corruption would be a side-effect of the agreement.²¹

Definition and Scope of an Agreement on Transparency in Government Procurement

15. In taking up the items in the informal note by the Chairman "List of Issues Raised and Points Made" contained in JOB(99)6782 of November 1999, comments were made in relation to item I, being the *definition and scope of government procurement*. On the one hand, the point was made that the substance of the Working Group's discussion was transparency in the procurement process, irrespective of whether this related to contracts for goods, services or a combination of both. The view was expressed that, accordingly, since a future agreement would not have a market access component, it should have a broad coverage extending to goods, services and construction services. Additionally, given the difficulty associated with distinguishing between procurement that should or should not be subject to transparency rules and that procurement regimes in most countries applied the same rules to procurement of both goods and services, it was important that the whole system, including goods and services, be transparent.²²

16. Another view was that any eventual agreement on transparency in government procurement should be limited in scope to procurement of goods only and should not include procurement of services or any combination of goods and services. In this regard, transparency in procurement of services went beyond the Working Group's mandate. Re-opening the issue of transparency in

¹⁵ M/17, para. 9.

¹⁶ M/18, para. 48.

¹⁷ M/18, para. 25.

¹⁸ M/18, paras. 7, 26 and 30.

¹⁹ M/18, para. 38.

²⁰ M/18, para. 39.

²¹ M/18, paras. 38 and 40.

²² M/17, para. 10.

procurement of services might be counter-productive and that the Group should instead seek to build on the progress made in discussions relating to transparency in relation to goods procurement.²³ However, it was recognized that procurement of goods often entailed procurement of services and there was a need to take account of this possibility.²⁴ It was further suggested that there might be a need to provide flexibility for developing countries with respect to the procurement of services²⁵ given that smaller developing countries did not procure significant quantities of services.²⁶

17. With respect to the issue of the application of *thresholds* in the context of a possible agreement on transparency in government procurement, the view was expressed that thresholds should be included in an agreement on transparency in government procurement. The point was made that a transparency agreement would become too onerous without the inclusion of thresholds, particularly for developing countries. In the absence of thresholds, the agreement would apply even to the smallest of procurements.²⁷ Higher thresholds might apply for developing countries or, at least, for the least-developed countries, if that was considered the way to accommodate such countries' concerns in the future.²⁸ However, there was also a view questioning the relevance of thresholds in the context of transparency in government procurement. There should be a commitment to transparency and openness even for small tenders.²⁹ In response, the view was expressed that while it might theoretically be the case that transparency should be applied irrespective of the magnitude of the procurement in question, thresholds might be a way to provide flexibility to accommodate developing countries' needs.³⁰

18. As regards the *level of government* that might be covered by a transparency agreement, in response to a statement that a transparency agreement should be applicable at the federal level as well as the sub-federal and municipal levels, the view was expressed that a multilateral agreement on transparency in government procurement should be limited to procurement by federal entities and should not extend to procurement by entities at the sub-federal level because, *inter alia*, local entities encountered capacity problems.³¹

Domestic Review Procedures and WTO Dispute Settlement Procedures

19. Comments were also made on items VIII and XI of the Chairman's "List of Issues Raised and Points Made"³², concerning domestic review procedures and WTO dispute settlement procedures respectively. Some general comments were made in relation to both domestic review procedures and the application of WTO dispute settlement procedures. In addition, separate and specific comments were made in relation to the two compliance mechanisms. In relation to domestic review procedures, discussions touched, *inter alia*, on the pros and cons associated with domestic review procedures; the degree of precision of provisions on domestic review procedures, if any, in a WTO transparency agreement; and the scope of application of domestic review procedures under a WTO transparency agreement. In relation to WTO disputes settlement procedures, the issues discussed included the question of whether such procedures should apply to a transparency agreement and the circumstances in which the DSU might apply. Comments were also made about the interaction between domestic review procedures and the application of the WTO Dispute Settlement Understanding.

²³ M/17, paras. 8, 9 and 11.

²⁴ M/17, paras. 6 and 7.

²⁵ M/17, para. 6.

²⁶ M/17, para. 6.

²⁷ M/18, para. 11.

²⁸ M/17, paras. 5 and 6; M/18, para. 8.

²⁹ M/18, para. 28.

³⁰ M/18, para. 29.

³¹ M/18, para. 27.

³² JOB(99)6782, November 1999.

20. *Some general comments were made covering both domestic review procedures and the application of WTO dispute settlement procedures.* Referring to submissions that had been made in relation to this item³³, the view was expressed that a strong case had been made for ensuring adequate enforcement mechanisms.³⁴ The existence of provisions on domestic review in other WTO agreements clearly highlighted the widespread applicability of that concept to trade matters. Procurement involved domestic implementation of trade-related matters and, in that sense, procurement rules were similar to the rules contained in other WTO agreements.³⁵ Accordingly, domestic review procedures and the DSU should be among the core elements of a future transparency agreement in government procurement.³⁶

21. Another view was that domestic review procedures and the application of the DSU had nothing to do with transparency. They were outside the scope of an agreement that dealt with transparency. As long as those two elements were on the negotiating table, there would be no consensus at the Cancun Ministerial Conference to negotiate an agreement in this area. It was stressed that any eventual agreement on transparency in government procurement should be limited in scope, should not be prescriptive, and should not contain provisions on domestic procurement review that could be used to question the decisions of Members' governments, administrations and procuring entities.³⁷

22. In response, the point was made that the provisions on domestic review procedures and dispute settlement would be determined by the rules that might emerge from the negotiations. It was acknowledged that such rules had to be consistent with Members' governance objectives. It was difficult to delve into domestic review and dispute settlement issues except in a rather general way until Members knew the content, coverage and elements of a transparency agreement.³⁸

23. It was noted that there was perhaps an unnecessary fear that the Working Group would try to develop a one-size-fits-all model in relation to enforcement mechanisms.³⁹ Members should work towards identifying the models of enforcement mechanisms that could be appropriately applied to a transparency agreement⁴⁰ and that worked best for them based on their legal traditions, experiences and background.⁴¹ Many countries had used the UNCITRAL Model Law as a guide for development of their respective procurement systems. Others had used the World Bank Guidelines while others had developed their laws in other ways.⁴²

24. With respect to *the pros and cons associated with domestic review procedures*, the view was expressed that such procedures were important for the proper functioning of a procurement system, not only for foreign suppliers but also for domestic constituencies.⁴³ The establishment and maintenance of a transparent procurement system provided confidence to potential suppliers that they would be treated fairly in the procurement process. When procurement processes became clouded and decisions were perceived not to follow a logical outcome, suppliers could lose confidence in the system.⁴⁴ Based on the experience of countries that already had domestic review procedures, it was suggested that such procedures provided credibility. They also assured suppliers that, if they had a complaint against a decision of a procuring entity, they would have the means for having that decision reviewed by an impartial body. Most Members already had domestic review procedures in place, not

³³ WT/WGTGP/W/38 and 39.

³⁴ M/17, para. 26.

³⁵ M/17, para. 17.

³⁶ M/17, paras. 18 and 19.

³⁷ M/17, para. 23.

³⁸ M/17, paras. 18 and 35.

³⁹ M/17, para. 65.

⁴⁰ M/17, para. 17.

⁴¹ M/17, para. 65.

⁴² M/17, para. 65.

⁴³ M/17, para. 18.

⁴⁴ M/17, para. 20.

because the WTO had imposed an obligation requiring them but, rather because such Members had determined that it was in their best interest. On the basis of the foregoing, it was suggested that domestic review procedures should be part of a transparency agreement.⁴⁵

25. Another view was that domestic review procedures had nothing to do with transparency. Therefore, they were outside the scope of an agreement that dealt with transparency.⁴⁶ Further, domestic review procedures might be susceptible to abusive challenges that were aimed at delaying the procurement process and could result in the re-commencement of the procurement process if, as a result of such a challenge, the original process was declared null and void. With this perspective, the view was expressed that suppliers' rights had to be balanced against the interest of governments to conduct efficient procurement processes and the need to guarantee an efficient allocation of public resources.⁴⁷ Another view was that suppliers did not normally use domestic review procedures very often – possibly because they wished to avoid problems arising with procuring entities in future tenders. In response, the view was expressed that suppliers were perfectly aware of their legislative rights and they exercised them to the extent possible without fear of being sidelined in future procurements.⁴⁸

26. In relation to the *degree of specificity that provisions, if any, on domestic review procedures should have in a WTO transparency agreement*, the view was expressed that domestic review obligations should be strong but non-prescriptive.⁴⁹ An agreement on transparency in government procurement could include simple and flexible provisions on domestic review procedures that took into account and accommodated independent administrative or judicial tribunals and review procedures that currently existed in various Member countries.⁵⁰ Adequate domestic administrative, audit and judicial mechanisms were already in place in many countries to ensure that all participants in the procurement process acted in conformity with the applicable rules and procedures. It was suggested that the need for the establishment of a domestic review mechanism would arise only if a Member's pre-existing system did not guarantee the overall transparency of government procurement.⁵¹

27. In response, the question was raised as to whether an agreement on transparency in government procurement should impose common obligations with respect to domestic review procedures or whether Members should be left to establish their own procedures. Opposition was voiced to common obligations, common procedures and common mechanisms with respect to domestic review commitments. It was noted in this regard that domestic review provisions contained in existing WTO Agreements did not require that all Members have or apply common rules but, rather that the rules were consistent with their commitments in the WTO.⁵²

28. In counter-response, it was stressed that the agreement should set out general obligations or principles and each Member would then have to implement them in the way that worked best within its domestic system.⁵³ This approach would be an effective way of ensuring that the general principles were applied while simultaneously accommodating disciplines contained in pre-existing domestic procedures.⁵⁴ Responding to this view, it was noted that most WTO Members had reasonable and adequate administrative, arbitral and/or judicial mechanisms to suit their domestic needs and level of development, which ensured that all players in the procurement process acted in conformity with the relevant rules and procedures. Accordingly, the stipulation of any mandatory

⁴⁵ M/17, paras. 20, 21, 25 and 36.

⁴⁶ M/17, para. 23.

⁴⁷ M/17, para. 36.

⁴⁸ M/17, para. 37.

⁴⁹ M/17, para. 33.

⁵⁰ M/17, paras. 33, 56 and 64.

⁵¹ M/17, para. 34.

⁵² M/17, paras. 59 and 61.

⁵³ M/17, paras. 57 and 64.

⁵⁴ M/17, para. 57.

rules or prescriptive guidelines in a transparency agreement would not be acceptable. The primacy of domestic laws and procedures had to be preserved and there should be no requirement to change them.⁵⁵

29. As to *what would be the scope of application of domestic review procedures under a WTO transparency agreement*, the view was expressed that such procedures should ensure that all suppliers participating in a procurement had the legal right to challenge that process, independently of whether that procurement was covered by the agreement. For example, even if a procurement was subject to a national preference and even if only a Member's national suppliers had the right to have recourse to domestic review, the limitation of the scope of the agreement to transparency should not affect the ability of a national supplier to challenge procurement decisions in such cases.⁵⁶

30. In response, the view was expressed that Members should be allowed to limit the implementation of transparency rules, including the domestic review procedures. It was questioned why all suppliers should be provided with the opportunity to challenge procurement processes given that the work of the Working Group had nothing to do with market access.⁵⁷ Consistent with the Doha mandate, which explicitly excluded domestic preference schemes, enforcement mechanisms in a transparency agreement could not be used to challenge such schemes.⁵⁸ More specifically, if a national procurement system allowed governments to maintain domestic preferences, the right to challenge a procurement procedure should be limited to national suppliers.⁵⁹ Even if the domestic rules provided that suppliers had a right to challenge a procurement decision, a foreigner should not be able to invoke a WTO transparency agreement in cases where the tender did not fall under the scope of the agreement.⁶⁰

31. In counter-response, the point was made that, although the transparency agreement would exclude market access, government authorities in WTO Members did not meet their procurement needs only through domestic suppliers but also through foreign suppliers. Therefore, foreign suppliers' interests should also be protected. It was suggested that the transparency agreement should require Members to make available domestic review procedures for both domestic and foreign suppliers who were concerned that a particular procurement had not been in compliance with the transparency provisions of the agreement.⁶¹

32. The view was expressed that in the absence of reassurance that domestic review procedures would not question the decisions of domestic authorities, the inclusion of such procedures in a transparency agreement could not be accepted.⁶² Further, while domestic review provisions existed in a number of WTO agreements, those agreements were not related to transparency. A transparency agreement would essentially require making available certain information on Members' relevant rules, regulations and procedures. Accordingly, domestic challenge procedures did not have their place in a transparency agreement.⁶³

33. The point was made that the establishment of domestic review mechanisms was an area where developing countries might be able to seek *technical assistance for capacity building*.⁶⁴

⁵⁵ M/17, para. 58.

⁵⁶ M/17, para. 74.

⁵⁷ M/17, para. 54.

⁵⁸ M/17, para. 49.

⁵⁹ M/17, para. 51.

⁶⁰ M/17, para. 75.

⁶¹ M/17, para. 52.

⁶² M/17, para. 23.

⁶³ M/17, para. 27.

⁶⁴ M/17, para. 48.

34. In relation to the *application of WTO dispute settlement procedures* in the area of transparency in government procurement, the view was expressed that an agreement on transparency in government procurement would be an important addition to the rules-based international trading system and its obligations should be subject to the same types of enforcement procedures as existing commitments in other WTO agreements.⁶⁵ Without a link to the DSU, a transparency agreement would not be effective. Members would simply ignore the requirements of the agreement knowing that they would suffer no detriment for having done so.⁶⁶

35. Another view was that the dispute settlement mechanism in whole or in part should not apply to a transparency agreement.⁶⁷ Members had to abide by the mandate given to the Working Group, namely to clarify and define transparency rather than identifying what would transpire in cases where Members did not abide by transparency rules.⁶⁸ Further, the nature of an agreement on transparency in government procurement would be inherently different from any existing WTO agreement. Unlike other WTO agreements, an agreement on transparency in government procurement, which – in terms of the Doha mandate – would allow Members to continue to discriminate in favour of national suppliers, would not seek to address trade relations among Members. The WTO dispute settlement mechanism was based on the presumption that a violation of an obligation would have an effect on the trade of Members whereas, in the context of an agreement on transparency in government procurement, there could be no such presumption. In addition, under the DSU, the way to correct non-compliance was through compensation or retaliation. It would be difficult to base any dispute settlement mechanism applying to transparency in government procurement on that premise because there would be no violation of trade rights.⁶⁹ Similarly, existing enforcement mechanisms had been devised to ensure fair trade and to avoid the creation of unnecessary obstacles to trade, which were market access issues. Without obligations on market access, an agreement on transparency in government procurement should not be treated like other WTO agreements.⁷⁰

36. In response, the view was expressed that, similar to other WTO agreements, a transparency agreement would contain obligations and requirements and an enforcement mechanism was needed in order to make those obligations and requirements meaningful.⁷¹ Further, it was suggested that as well as having market access as their principal focus, many WTO agreements included transparency elements. The agreement on transparency in government procurement would be similar to other WTO agreements in this respect. The WTO agreements that had transparency elements did not carve out the transparency elements to provide that such elements were not subject to WTO dispute settlement procedures. Any Member could challenge another Member's implementation of such transparency provisions. Further, while accepting that the agreement was about transparency, and not about market access, the point was made that if a Member did not implement any of the provisions of the transparency agreement, Members would not be seeking concessions or retaliation, but compliance.⁷²

37. It was suggested that while there was a need for enforcement measures, that did not mean that they had to be identical to the existing rules in the DSU. There could be specific provisions on implementation of the DSU tailored to the scope of the transparency agreement.⁷³ There were already a number of WTO agreements with specific provisions relating to the application of the DSU, for instance, Article XXII:4 of the plurilateral Agreement on Government Procurement dealing with consultations and dispute settlement with regard to cross-retaliation.⁷⁴ It was suggested that the

⁶⁵ M/17, paras. 14 and 19.

⁶⁶ M/17, para. 66.

⁶⁷ M/17, paras. 30 and 31; M/18, para. 43.

⁶⁸ M/17, para. 30.

⁶⁹ M/17, para. 16.

⁷⁰ M/17, para. 25.

⁷¹ M/17, para. 26.

⁷² M/17, para. 32.

⁷³ M/17, paras. 66, 71 and 74.

⁷⁴ M/17, para. 71.

Working Group consider the flexibilities provided in the provisions of the DSU and in other agreements, for instance Article 17 of the Anti-dumping Agreement.⁷⁵ It was also suggested that there may not be a need for sanctions or suspension of concessions or cross-retaliation to ensure that the agreement was enforced.⁷⁶ Members should identify provisions that might be more difficult for Members to implement and, perhaps, such provisions could be subject to transition periods.⁷⁷

38. It was suggested that certain provisions of a transparency agreement could be phased in for developing countries and that, consequently, the application of the DSU for such countries would also be phased-in.⁷⁸ It was suggested that the Working Group should assess which provisions could be problematic to implement for some countries and that a flexible approach should be adopted to phasing-in those provisions.⁷⁹

39. As to the *circumstances in which the DSU might apply under a transparency agreement*, the view was expressed that the DSU would be available for systemic failures to comply with or a high level of disregard to the agreement, for instance, if there were refusals to ever publish a notice, or refusals to ever make information available about procurement methods.⁸⁰ Nevertheless, based on Members' experience with transparency provisions in other WTO Agreements, it was suggested that the likelihood of a transparency provision being challenged in the DSU was very low.⁸¹

40. In response, while it was acknowledged that in all probability a case under the agreement on transparency in government procurement would not be raised under the DSU, if Members included any provisions relating to application of the DSU in the agreement, they had to be absolutely clear as to what could potentially happen in the event that non-compliance was established. For example, a Member could be found by a panel and the Appellate Body to be in systematic violation of a commitment in the transparency agreement. However, it might not be in a position to comply with the recommendation of the DSB to bring its legislation into conformity with the agreement because of the refusal of its congress to adopt the relevant legislation.⁸² Responding to this scenario, it was suggested that if there were a case where a Member reported to the WTO that it could not change its laws, other Members would not rush to take that Member to dispute settlement as that was not going to be in any Member's interest. Members would be more likely to determine how they could work together in an attempt to address the problem at issue. The overall goal was not to retaliate and penalise Members; it was to develop a common set of transparency obligations that would apply across the membership of the WTO.⁸³

41. As regards the *interaction between the domestic review procedures and the application of the WTO Dispute Settlement Understanding*, the view was expressed that the respective roles of the two mechanisms that served different purposes should be made explicit in the future agreement.⁸⁴ Domestic review procedures and the application of the DSU were two distinct phases in a dispute resolution process and there was not much scope for their interaction.⁸⁵ Further, domestic review procedures and WTO dispute settlement procedures served different purposes, and there could be no overlap between the two.⁸⁶ The transparency agreement should contain provisions allowing a supplier to challenge, through domestic procedures, a procurement in breach of the provisions related to transparency of the procurement process. At the WTO level, the DSU would only apply to the

⁷⁵ M/17, para. 72.

⁷⁶ M/17, para. 71.

⁷⁷ M/17, paras. 32 and 71.

⁷⁸ M/17, para. 45.

⁷⁹ M/17, paras. 32, 45 and 71.

⁸⁰ M/17, paras. 29 and 66.

⁸¹ M/17, para. 66.

⁸² M/17, para. 67.

⁸³ M/17, para. 68.

⁸⁴ M/17, para. 38.

⁸⁵ M/17, para. 39.

⁸⁶ M/17, para. 41.

implementation of the transparency provisions in the agreement.⁸⁷ It was also suggested that the transparency agreement could explicitly provide that resort to the DSU would not be available to challenge how a procurement authority had handled a specific procurement or to overturn a contract decision.⁸⁸ The DSU would not be available to WTO Members to question national authorities' procurement decisions. Members could invoke WTO dispute settlement procedures only for repeated failures to comply with the rules in the agreement or to implement its basic obligations. If there was a question about how a procurement was being conducted, it would be up to the relevant supplier to take that issue up under the domestic review mechanism.⁸⁹

42. Clarification was sought as to whether a transparency agreement would require the exhaustion of domestic review procedures before any recourse could be made to WTO dispute settlement procedures.⁹⁰ The point was made that, until the full contours of an agreement had been determined, the issue of the link between domestic review procedures and application of the DSU could not be fully examined.⁹¹

Special and Differential Treatment, Technical Assistance and Capacity Building

43. With respect to the issue of *special and differential treatment*, the view was expressed that exceptions from transparency obligations should apply in certain circumstances and longer implementation periods should be provided.⁹² However, it was pointed out that transitional periods or other types of flexibilities contained in the Uruguay Round agreements had proven to be inadequate for effectively addressing complex and multi-dimensional issues facing developing countries.⁹³ Traditional ways of ensuring special and differential treatment that had been proposed in this area were inadequate as they did not allow developing countries the needed policy flexibility.⁹⁴ There were still a number of Uruguay Round agreements that Members had not been able to implement due to lack of technical assistance, and, in fact, some Members had still not understood the commitments which they had signed up to. Therefore, the Working Group had to give serious attention to the issue of technical assistance, developing new ways of addressing the concerns of developing countries as well increasing efforts to try to make the process move forward beyond Cancun.⁹⁵ It was suggested that a more holistic approach to the issue of special and differential treatment for developing countries was needed.⁹⁶

44. The need for technical assistance during and after the negotiations – as was agreed in the Doha Declaration – was emphasized. It was an important element in ensuring that such countries would be in a position to implement a multilateral agreement of transparency in government procurement.⁹⁷ Commitment was also expressed to providing support through the WTO and other institutions.⁹⁸

45. While the commitment to provide technical assistance and capacity building was welcomed⁹⁹, it was suggested that the provision of technical assistance by some proponents might be tied to an eventual agreement on transparency in government procurement or to the demonstration of a readiness to negotiate. The point was made that, if donors of technical assistance were genuine about

⁸⁷ M/17, paras. 47 and 74.

⁸⁸ M/17, para. 41.

⁸⁹ M/17, para. 43.

⁹⁰ M/17, para. 40.

⁹¹ M/17, para. 44.

⁹² M/18, para. 43.

⁹³ M/17, paras. 79 and 82.

⁹⁴ M/17, para. 80.

⁹⁵ M/17, paras. 79 and 83.

⁹⁶ M/17, para. 81.

⁹⁷ M/18, para. 9.

⁹⁸ M/18, paras. 32 and 33.

⁹⁹ M/18, para. 35.

helping the developing countries, transition economies and LDCs to improve their government procurement regimes through making them more transparent and more efficient, then technical assistance should be provided even in the absence of an agreement or in the absence of an agreement to negotiate. In this regard, technical assistance should not be aimed at helping countries to understand the elements of a transparency agreement, what it would mean and its implications. Rather, it should be aimed at assisting with the establishment of a more efficient government procurement regime through the adoption of procurement rules that would enhance transparency.¹⁰⁰ In response, the point was made that technical assistance was already being provided through multilateral and bilateral channels when genuine requests for technical assistance were made. Technical assistance had been provided to various developing countries to help them develop and modernise their procurement systems for a long period of time independently of the work undertaken in the Working Group to develop a transparency agreement.¹⁰¹

Status of the Working Group's Work and the Way Forward

46. Reflecting on the work undertaken by the Working Group during the past six years and on the way forward, the view was expressed that the study phase had been valuable and fruitful. In particular, it had enabled Members to identify advantages of a transparency agreement as well as some difficulties, which confronted members in the lead-up to negotiations.¹⁰² The study phase had been completed because the elements were clear and the differences of positions were clear. What remained was for work to commence on negotiations. It was necessary in this respect to make "bridges" during the negotiation phase.¹⁰³

47. In response, the point was made that the identification of elements by the Working Group as reflected in the informal note by the Chairman's "List of Issues Made and Points Raised" (JOB(99)6782 of November 1999) did not imply any form of agreement, or tacit understanding, or consensus to include those elements in a future agreement.¹⁰⁴ While some level of consensus had emerged in relation to several of the elements in the informal note by the Chairman containing the "List of Issues Raised and Points Made"¹⁰⁵, the work of clarifying the issues had not yet been completed.¹⁰⁶ The Working Group was not in a pre-negotiation stage but still in an educational and clarification stage.¹⁰⁷ In order to have a mandate in Cancun to negotiate, there needed to be agreement in the Working Group on the elements of a future transparency agreement and, pursuant to paragraph 26 of the Doha Ministerial Declaration, there had to be an explicit consensus to move on to negotiations.¹⁰⁸

48. However, the point was also made that divergence of views existed in relation to most issues. It was suggested that these issues, which were systemic in nature, could have serious implications in terms of the costs associated with implementation, the effect on national policy, and flexibility. Such issues included the scope and coverage of an agreement on transparency in government procurement (that is, *inter alia* whether the agreement should be limited to goods or include services and concessions), the meaning of "transparency", the relationship between transparency and particular procurement methods, the application of domestic review procedures and the DSU mechanism and the form that special and differential treatment would take. It was suggested that some elements were not concerned with transparency and should not be a part of an agreement on transparency in government procurement.¹⁰⁹ Before entering into a negotiating phase, there needed to be a clear

¹⁰⁰ M/18, para. 36.

¹⁰¹ M/18, para. 37.

¹⁰² M/18, para. 3.

¹⁰³ M/18, paras. 15, 16, 18 and 46.

¹⁰⁴ M/17, para. 94.

¹⁰⁵ JOB(99)6782 of November 1999.

¹⁰⁶ M/18, paras. 12, 19, 48 and 49.

¹⁰⁷ M/17, paras. 3, 77, 78, 86, 90 and 92.

¹⁰⁸ M/17, paras. 77, 78 and 85.

¹⁰⁹ M/18, paras. 12, 19, 48 and 49.

conception of what would be involved if there was to be any discussion to launch negotiations on a future agreement on transparency.¹¹⁰

49. The view was expressed that it was not necessarily the case that negotiations could not proceed before convergence on all elements had been achieved. It was suggested that achieving such convergence was the purpose of negotiations and not of the study phase.¹¹¹ The view was also expressed that the existence of divergence of views on some issues should not be, in itself, an impediment to moving forward. Rather, a certain consistency in approach was required.¹¹² A similar view was that all that was necessary before Members moved to negotiations was the identification of the core issues at stake. Agreement could then be reached through negotiations.¹¹³

50. The view was expressed that the Doha Declaration clearly stated that negotiations on transparency in government procurement would take place after the Cancun Ministerial Conference on the basis of Ministers' decisions on modalities of negotiations, and that the negotiation would be treated as part of the single undertaking.¹¹⁴ It was suggested that this view was supported by the Doha Ministerial Declaration, the relevant section of which read "...a decision on modalities of negotiations..."¹¹⁵ rather than "...a decision on negotiations...". Further, the view was expressed that the Doha Ministerial Declaration clearly stated that a decision on modalities would be taken at the Fifth Ministerial Conference and not after that.¹¹⁶

51. In order to ensure that a multilateral agreement on transparency in government that was acceptable to all could be negotiated, it was suggested that it was crucial to adjust the level of ambition and to address the interests of developing countries in an effective and balanced manner.¹¹⁷ In order to take full account of the concerns, burdens and obligations of developing and LDCs, S&D, TA and support for capacity building should be fully reflected in the negotiations process.¹¹⁸

52. It was suggested that the following steps were necessary in the context of the Working Group in the lead-up to the Cancun Ministerial Conference. First, it was necessary to reiterate that an agreement on transparency in government procurement would only be limited to transparency; it would exclude market access commitments and would have no impact on Members' rights to use government procurement to support domestic enterprises and purchasing national goods. Secondly, the elements of the agreement needed to be identified. Thirdly, the Working Group should establish a timetable for an agreement on transparency in government procurement, which did not specify a deadline for the conclusion of the agreement. Finally, S&D treatment should be ensured for developing countries, given that the respective levels of development of government administrations amongst Members differed. In particular, exceptions from transparency obligations should apply in certain circumstances and longer implementation periods should be provided.¹¹⁹

53. The point was made that developing countries wanted to be able to properly participate in the negotiation process. However, they lacked sufficient skills to negotiate at the current point in time. Before an agreement on transparency in government procurement was considered, such countries wanted to be clear about what would be entailed. The agreement had to be a win-win agreement that was beneficial to all and was truly balanced.¹²⁰

¹¹⁰ M/18, para. 13.

¹¹¹ M/18, para. 18.

¹¹² M/18, para. 50.

¹¹³ M/17, paras. 84 and 94.

¹¹⁴ M/17, para. 91; M/18, paras. 41 and 46.

¹¹⁵ (WT/MIN(01)/DEC/1), para. 26.

¹¹⁶ M/17, para. 91.

¹¹⁷ M/18, para. 41.

¹¹⁸ M/18, para. 41.

¹¹⁹ M/18, paras. 43 and 45.

¹²⁰ M/18, para. 47.

54. With respect to the future implementation of a transparency agreement, it was noted that many countries, including developing countries, already had transparency rules in place. It was suggested that, accordingly, the implementation of any future multilateral agreement should not be a major difficulty for those countries. It was further suggested that for those countries that did not have a procurement system in place, the costs that might be associated with the introduction of such a system would be far outweighed by the resulting benefits.¹²¹ Another view was that the cost of implementation of any agreement on transparency in government procurement might be extremely high. The point was made that as long as Members did not know exactly how the future agreement would look like and, in particular, what the scope and coverage would be, it was difficult to have a precise idea of the costs involved in the setting up of transparency system.¹²²

55. The view has been expressed, on the one hand, that the four Singapore issues, including transparency in government procurement, were part of the Single Undertaking.¹²³ The contrary view has also been expressed that the Singapore issues were not part of the Single Undertaking and, therefore, required a negotiating mandate.¹²⁴ Yet another view expressed was that the debate as to whether the Singapore issues were part of the Single Undertaking was not productive for the work of the Working Group¹²⁵ and was beside the point. In this regard, the point was made that Ministers had agreed to a work programme that included these issues which had given rise to expectations amongst delegations that their concerns would be addressed irrespective of whether or not they were part of the Single Undertaking.¹²⁶

B. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

56. The WTO Secretariat informed the Working Group at each of its meetings of the technical assistance and capacity building activities undertaken by it as well as those activities foreseen in the period leading up to the Cancun Ministerial Conference. The main focus of the Secretariat's activities was on regional events organized in cooperation with the multilateral development banks. In addition, a number of broader technical co-operation activities organised by the Secretariat had a government procurement component, and a limited number of national seminars had been held. An Information Session was held in Geneva on the morning of 19 June 2003 on technical co-operation and capacity building activities of inter-governmental organisations in the area of government procurement at which a number of inter-governmental organisations shared information on activities undertaken by them. That Information Session was followed on the afternoon of 19 June 2003 by a workshop on capacity-building in government procurement at which a number of developing countries shared information on their respective experiences and needs.¹²⁷ Further information on the Secretariat's technical assistance activities can be found in Section B of the minutes of the Working Groups Meetings (WT/WGTCP/M/17 and WT/WGTGP/M/18).

57. The point was made that a number of countries lacked capacity in this area. Some did not even have procurement laws. The view was expressed that, accordingly, the provision of technical assistance through seminars and conferences was insufficient. A concerted effort was needed to provide technical assistance on a case-by-case basis rather than making it general or adopting a one-size-fit-all approach. Such an approach would ensure that such assistance would really build capacity, it would help countries to participate in the current and possibly future process at the WTO on this issue.¹²⁸

¹²¹ M/18, paras. 5, 7 and 32.

¹²² M/18, para. 33.

¹²³ M/17, para. 91.

¹²⁴ M/17, para. 87.

¹²⁵ M/17, para. 89.

¹²⁶ M/17, para. 88.

¹²⁷ M/17, paras. 96 and 98; M/18, para. 51.

¹²⁸ M/18, para. 52.

C. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

58. The Working Group considered requests for observer status from three international intergovernmental organizations (OECD, SELA and the Organization of the Islamic Conference) and agreed to revert to these requests in the light of the ongoing consultations in the framework of the General Council.¹²⁹

¹²⁹ M/17, para. 100.

**REPORT (2002) OF THE WORKING GROUP ON TRANSPARENCY IN
GOVERNMENT PROCUREMENT TO THE GENERAL COUNCIL**

1. The period covered in this report is October 2001 to November 2002. During the review period, the Working Group has continued its work pursuant to the mandate given to it by the Singapore and Doha Ministerial Declarations. The Group held three formal meetings, respectively on 29 May, 10-11 October and 29 November 2002, under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica) and an informal meeting on 12 March 2002. The meeting on 29 November 2002 was primarily to discuss the adoption of this report to the General Council. The reports of these meetings have been circulated in documents WT/WGTGP/M/14, 15 and 16.

2. At the May meeting, the Working Group reverted to the discussion of the issues under the agenda item "transparency-related provisions of the existing international instruments on government procurement and national procedures and practices". As agreed at the informal meeting of 12 March 2002, the principal focus of discussion under this agenda item were sub-items I to V which correspond to these headings of the Chairman's note "List of the Issues Raised and Points Made" of November 1999 (JOB(99)/6782), namely definition and scope of government procurement; publication of information on national legislation and procedures; information on procurement opportunities, tendering and qualification procedures; time-periods. To facilitate the discussion, the Group had before it a summary note on these matters prepared at its request by the Secretariat. This aimed to provide a more concise description of the work done than the note by the Chairman as well as to take into account subsequent discussion in the Group and papers relating to these sub-items (WT/WGTGP/W/32). A submission was made by Australia on procurement methods (WT/WGTGP/W/31). The Working Group heard views of a number of Members regarding items I to V. It also heard an exchange of views on the mandate of the Group and the experience of a number of Members in relation to transparency in government procurement.

3. At the October meeting, the Working Group resumed the discussion of the issues under the agenda item "transparency-related provisions of the existing international instruments on government procurement and national procedures and practices", the principal focus of discussion being sub-items VI to XII, namely transparency of decisions on qualification; transparency of decisions on contract awards; domestic review procedures; other matters related to transparency; information to be provided to other governments (notification); WTO dispute settlement procedures; and technical cooperation and special and differential treatment for developing countries. In addition to the note by the Secretariat summarizing the work of the Working Group on these items (WT/WGTGP/W/33), the Group had before it a communication by Canada on transparency of contract awards (WT/WGTGP/W/36). The Working Group heard views of a number of Members regarding sub-items VI to XII. At this meeting, the Group also addressed two communications submitted by the United States which contained, respectively, a proposal for a work plan to build on the progress of work in the Working Group (WT/WGTGP/W/35) and a note on capacity-building considerations relating to transparency in government procurement (WT/WGTGP/W/34); and a communication by Japan on its views on transparency in government procurement (WT/WGTGP/W/37). In addition, Australia presented a non-paper on the transparency of decisions on qualifications (JOB(02)/142).

4. The other substantive agenda item at the May and October meetings related to technical assistance and capacity-building pursuant to paragraph 26 of the Doha Declaration under which the Group heard oral reports by the Secretariat on the status of work in this respect and comments were made and questions put by delegations.

5. A Symposium on Transparency in Government Procurement was held in Geneva on 9 and 10 (a.m.) October 2002 which many capital-based experts including experts from the majority of least-developed countries attended.

6. The IMF, the World Bank, the United Nations represented by the United Nations Commission for International Trade Law (UNCITRAL) and UNCTAD have observer status in the Working Group. The ITC also attends the Working Group meetings. During the period covered in this report, the Working Group considered requests for observer status from OECD, SELA and OIC (the Organization for Islamic Conference) and agreed to revert to these requests in light of the consultations on this matter by the Chairman of the General Council.

**REPORT (2001) OF THE WORKING GROUP ON TRANSPARENCY IN
GOVERNMENT PROCUREMENT TO THE GENERAL COUNCIL**

1. The Working Group on Transparency in Government Procurement was established by a decision at the WTO Ministerial Conference held in December 1996 "to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement".
2. The period covered in this report is October 2000 - September 2001. The work of the Working Group up to October 2000 is described in the reports of the Working Group for 1997, 1998, 1999 and 2000 to the General Council (WT/WGTGP/1-4). The Working Group held two meetings, respectively on 4 May and 17 September 2001 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica). The reports of these meetings have been circulated in document WT/WGTGP/M/12 and 13¹.
3. At the May meeting, the Working Group reverted to the issues before it on the basis of the note by the Chair "List of the Issues Raised and Points Made" (JOB(99)/6782), last revised in November 1999. The Chairman also made available, on his own responsibility, an annotated draft agenda which aimed to facilitate discussion by suggesting issues under each of the substantive agenda items that, in his view, could be the subject of further discussion (JOB(00)/3231). As an auxiliary informal paper for the use of Members wanting to draw on it, delegates had available to them a revision of the informal note by the Secretariat, "List of Proposals on Items III-VII of the Checklist" (JOB(00)/3276), reflecting the proposals made on items III-VII in a succinct form, which identified the source of the different proposals and summarized the written and oral comments made on these proposals. The Working Group heard views of a number of Members regarding the items in the note by the Chair, "List of the Issues Raised and Points Made", and, in particular on the "definition and scope of government procurement" and on "other matters related to transparency". The Working Group also heard an exchange of views on the experience of a number of Parties regarding the application of information technology to government procurement in their countries. Also, information was provided on the establishment and operation of electronic procurement system in Chile. At this meeting, under a new agenda item "Transparency-related Provisions in Regional Agreements on Government Procurement and National Experiences, Parties to some regional agreements reported on the recent developments in the work of regional fora on government procurement, in particular in the context of the FTAA (Free Trade Area of the Americas) negotiations and the APEC GPEG (Government Procurement Experts Group). Moreover, information was provided on the treatment of government procurement in some regional trade agreements.
4. At the September meeting the Working Group adopted its report to the General Council.
5. The IMF, the World Bank, the United Nations represented by the United Nations Commission for International Trade Law (UNCITRAL), UNCTAD and the ITC have observer status in the Working Group. During the period covered in this report, the Working Group considered requests for observer status from OECD, SELA and OIC (the Organization for Islamic Conference) and agreed to revert to these requests in light of the consultations on this matter by the Chairman of the General Council.

¹ To be issued shortly.

**REPORT (2000) OF THE WORKING GROUP ON TRANSPARENCY IN
GOVERNMENT PROCUREMENT TO THE GENERAL COUNCIL**

1. The Working Group on Transparency in Government Procurement was established by a decision at the WTO Ministerial Conference held in December 1996 "to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement".

2. The period covered in this report is November 1999 - September 2000. The work of the Working Group up to November 1999 is described in the reports of the Working Group for 1997, 1998 and 1999 to the General Council (WT/WGTGP/1, 2 and 3). The Working Group held formal meetings on 7 June 2000 and 25 September 2000 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica). In addition, two informal meetings were held on 15 November 1999 and 17 April 2000, respectively. Reports on the formal meetings have been circulated in documents WT/WGTGP/M/10-11.¹

3. At its June and September meetings, the Working Group reverted to the issues before it on the basis of the note by the Chair "List of the Issues Raised and Points Made" (Job(99)/6782). The Chairman also made available, on his own responsibility, an annotated draft agenda which aimed to facilitate discussion by suggesting issues under each of the substantive agenda items that, in his view, could be the subject of further discussion (Job(00)/3231). As an auxiliary informal paper for the use of Members wanting to draw on it, delegates had available to them a revision of the informal note by the Secretariat, "List of Proposals on Items III-VII of the Checklist" (Job(00)/3276), reflecting the proposals made on items III-VII in a succinct form, which identified the source of the different proposals and summarized the written and oral comments on these proposals. The Working Group heard views on each of the items in the note by the Chair, "List of the Issues Raised and Points Made", namely: (i) definition and scope of government procurement; (ii) procurement methods; (iii) publication of information on national legislation and procedures; (iv) information on procurement opportunities, tendering and qualification procedures; (v) time-periods; (vi) transparency of decisions on qualification; (vii) transparency of decisions on contract awards; (viii) domestic review procedures; (ix) other matters related to transparency; (x) information to be provided to other governments (notification); (xi) WTO dispute settlement procedures; and (xii) technical cooperation and special and differential treatment for developing countries.

4. At these meetings, the Working Group also had before it: a proposal by the United States for a work programme for coordinating international technical assistance with implementation of a potential agreement on transparency in government procurement (WT/WGTGP/W/28); a note by the Secretariat summarizing the information that had been made available to the Group on the technical cooperation activities of intergovernmental organizations in the area of government procurement (WT/WGTGP/W/29); a non-paper by Switzerland entitled "Why the Scope of a Future Agreement on Transparency in Government Procurement Should Cover Goods and Services" (Job(00)/5645); and a note by the Secretariat identifying the various issues involved in concessions and BOT (build-operate

¹ WT/WGTGP/M/11 to be circulated shortly.

and transfer) contracts from the perspective of their treatment or not as a form of government procurement (Job(00)/5657).

5. The IMF, the World Bank, the United Nations represented by the United Nations Commission for International Trade Law (UNCITRAL), UNCTAD and the ITC have observer status in the Working Group. During the period covered in this report, the Working Group considered requests for observer status from OECD, SELA and OIC (the Organization for Islamic Conference) and agreed to revert to these requests in light of the consultations on this matter by the Chairman of the General Council.

REPORT (1999) TO THE GENERAL COUNCIL

1. The Working Group on Transparency in Government Procurement was established by a decision at the WTO Ministerial Conference held in December 1996 "to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement".
2. The period covered in this report is November 1998-October 1999. The work of the Working Group up to November 1998 is described in the reports of the Working Group for 1997 and 1998 to the General Council (WT/WGTGP/1 and 2). The Working Group held formal meetings on 24-25 February, 28 June and 6 October 1999 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica). Reports on these meetings have been circulated in documents WT/WGTGP/M/7-9.¹
3. At its meeting of 24-25 February 1999, the Working Group had a detailed discussion of transparency-related provisions in existing international instruments on government procurement and national procedures and practices. For its discussion of this item, the Working Group had before it the informal note by the Chair, entitled "List of Issues Raised and Points Made", listing the issues that had been raised, together with the points made on these issues, under each of the items that were discussed by the Group at its meetings held since November 1997. Under the relevant sections of the note, written contributions were presented by the delegations of the European Community on methods of procurement (Job No. 699), Norway on publication of information on national legislation and procedures (Job No. 1067), the United States on evaluation criteria and technical specifications (Job No. 1027) and Australia on rights and responsibilities of government as a buyer, value for money in government procurement, accountability and due process (Job No. 1043). As an auxiliary informal paper for the use of Members wanting to draw on it, delegations also had available to them a revision of the informal note by the Secretariat, "List of Proposals on Items III-VII of the Checklist" reflecting the proposals made on items III-VII in a succinct form, which identified the source of the different proposals and summarized the written and oral comments on these proposals. Also under this item the representative of Venezuela introduced a non-paper on transparency in government procurement and the fight against bribery (Job No. 481). In response to the requests by some delegations, it was agreed that the Secretariat would make available to delegations, upon request, the texts of the OAS Inter-American Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. During the meeting, the Group also heard general statements made by a number of delegations expressing their views regarding the discussion in the General Council intersessional meetings of January and February 1999 on the subject of government procurement, the Singapore mandate and the relationship between the substance of the Group's work on transparency and the rules of the plurilateral Agreement on Government Procurement.

¹ WT/WGTGP/M/9 to be circulated shortly

4. At its meeting of 28 June 1999, the Working Group reverted to its discussion of transparency-related provisions in existing international instruments on government procurement and national procedures and practices on the basis of a further revision of the informal note "List of the Issues Raised and Points Made" which had been updated in the light of the discussion at the previous meeting and the new papers submitted. Under the relevant sections in the note, written contributions were presented by the delegations of Poland on time-limits (Job No. 3777), Australia on transparency of decisions on qualification (Job No. 1781), Canada on contract award information (Job No. 3131) and the United States on domestic review mechanisms (WT/WGTGP/W/23). Points made were reflected in a revision of this document and also in a revised version of the "List of Proposals on Items III-VII of the Checklist". A communication from the Chairperson of the APEC Government Procurement Experts Group containing APEC non-binding principles of accountability and due process was also made available to the Group (WT/WGTGP/W/22). In the context of the discussion under the item on "definition and scope of government procurement", it was agreed that the documentation of the Working Party on GATS Rules relating to the subject of concessions would be made available to the Group (WT/WGTGP/W/25). Moreover, interested Members were invited to make submissions providing information on their national legislation and practices in regard to concessions from the perspective of government procurement.

5. At its meeting on 6 October 1999, the Working Group reverted to the issues before it on the basis of a further revision of the Chairman's informal note, "List of the Issues Raised and Points Made" (the latest version of which is attached to this report, Job (99)/5534). The Group also had before it non-papers submitted by the delegations of the European Community (Job No. 4519); Hungary, Korea and the United States (Job No. 4510); Japan (Job (99)/5239); and Australia (Job (99)/5803), containing draft texts of an agreement on transparency in government procurement. The Group received a communication from the Chairperson of the APEC Government Procurement Experts Group, forwarding the APEC non-binding principles on government procurement recently developed by the Experts Group (WT/WGTGP/W/24).

6. The IMF, the World Bank, the United Nations represented by the United Nations Commission for International Trade Law (UNCITRAL), UNCTAD and the ITC have observer status in the Working Group. During the period covered in this report, the Working Group considered requests for observer status from OECD, SELA and OIC (the Organization for Islamic Conference) and agreed to revert to these requests in light of the consultations that are being held on this matter by the Chairman of the General Council.

ATTACHMENT

**JOB(99)/5534
Working Group on Transparency
in Government Procurement**

24 September 1999

LIST OF THE ISSUES RAISED AND POINTS MADE

Informal Note by the Chair

Fifth Revision

1. This note attempts to set out the issues that have been raised, together with the points made on these issues, under each of the items that were discussed by the Working Group at its meetings of 3-4 November 1997, 19-20 February 1998, 22 June 1998, 8-9 October 1998 and 24-25 February and 28 June 1999. This non-paper is without prejudice to the position of any delegation and, in particular, to whether the Working Group would decide to include or exclude any particular aspect addressed in it from the elements that it will develop for inclusion in an appropriate agreement.

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I. DEFINITION AND SCOPE OF GOVERNMENT PROCUREMENT

2. It has been recalled that the mandate of the Group is confined to issues of transparency in government procurement practices. The view has been expressed that a distinction should be made between obligations on transparency and market access commitments in the area of government procurement. As regards national practices limiting market access, their transparency but not their substance should be covered. The view has also been held that rules on transparency in government procurement should only apply on a non-discriminatory basis and obligations on transparency should only be applicable to the extent that market access for foreign supplies and suppliers was permitted by domestic law. For example, procurement from local markets, to be paid in local currency, might be distinguished from procurement from international markets, for which foreign exchange was available. The question has been asked whether transparency of procurement processes would be of any interest to foreign suppliers when access was reserved to domestic suppliers. It has also been said that the application of the rules of a transparency agreement to procurements, open only to domestic suppliers, would be unduly burdensome.

3. Another view expressed in this connection has been that transparency disciplines should apply to government procurement practices as broadly as possible. One of the purposes of developing rules on transparency was to create national procurement systems that were not only transparent but also perceived to be transparent; if the scope of requirements on transparency would be limited to open procurement markets, procurement systems would not be seen to be transparent. It was in the interest of all concerned, domestic as well as foreign suppliers and entities, that information on what procurement was open to international competition and what was not should be readily available to all. The view has also been expressed that the distinction that had been suggested would give rise to an imbalance in rights and obligations since transparency obligations would apply more widely in those Members whose procurement markets were more open to international competition; the distinction would also narrow the scope of a transparency agreement. Moreover, the point has also been made that, given the variety of ways by which market access was limited in national practices, for example in the form of absolute exclusions of foreign suppliers and supplies, price preferences or the awarding of contracts to foreign suppliers only in the absence of competitive bidding from domestic suppliers, it would be technically difficult to identify those government practices that should be exempted from transparency obligations. It has also been said that, if the underlying reason for the suggestion to limit the application of transparency disciplines to open procurement markets was

concerns about excessive burdens, these concerns should be addressed in their own right in the course of the Group's work.

4. As regards the issue of the definition and scope of government procurement, a distinction has been made between the definition and scope that should be used by the Working Group for working purposes and those which might be used to govern the scope of application of the elements to be developed for inclusion in an appropriate agreement. In regard to the former aspect, a view has been expressed that a broad approach, without preconceived limitations, should be employed, sufficiently wide to accommodate the differing meanings and levels of detail given to the term "government procurement" in national legislation and practices in individual Members and compatible with innovative procurement procedures and new types of government structures. This would enable the Group to study the full range of issues relating to an eventual agreement on transparency in government procurement and, as regards the latter aspect referred to above, to develop a more exact definition for the purposes of the scope of an eventual agreement on transparency. Another view expressed has been that there would be an interrelationship between the scope of a transparency agreement and the level of detail that its elements would contain. A transparency agreement, incorporating simple and straightforward core principles, could have a very broad coverage. It has also been said that the work of the Group on this issue would need to reflect the realities of procurement practices in individual countries in order to guarantee an effective implementation of an eventual agreement. In this connection, a range of issues that would need to be taken into account has been identified. These are summarized below.

5. It has been suggested that a useful way of approaching these issues was to draw a distinction between the following questions:

- Who is doing the procuring?
- What is being procured?
- What types of transactions are covered?

A. WHO IS DOING THE PROCURING?

6. In regard to the first of these questions, who is doing the procuring, the following views have been put forward:

- entities at all levels of government, including at sub-central levels of government and enterprises owned or influenced by government, might be covered by a transparency agreement;
- the rules of a transparency agreement should extend to procurement by entities at the central and sub-central levels of government;
- the degree of coverage of sub-federal entities should take account of differences in government structures;
- the rules of a transparency agreement should only extend to procurement by entities at the central or federal government level. It would be difficult to frame international rules that would ensure transparency at sub-central levels in countries with complex government structures. In countries with federative administrative systems, the authority of federal governments to undertake obligations on transparency in respect of entities at the state or local levels of government equivalent to those of the central government level might be limited by the constitution. Another view expressed has

been that a limitation of the obligations of a transparency agreement only to central government level would give rise to an issue of equity among countries with different government structures. A further point made has been that a number of provisions in various WTO agreements, for instance GATS Article I:3(a)(i), addressed the issue of obligations undertaken with respect to sub-central levels of government;

- the coverage of state enterprises should depend on how they were operated. One view that has been expressed is that public enterprises required to run on the basis of the same economic considerations as private enterprises should not be subject to requirements on transparency, at least where they did not fall within the ambit of GATT Article XVII. Another view has been that a distinction should be drawn between state enterprises that operated in a competitive environment and others, even if run on the basis of commercial considerations;
- in the light of experience, consideration might be given to extending the coverage further, for instance to public enterprises.

7. It has also been suggested that, in defining the scope of a transparency agreement, the Group would need to define criteria for determining when an entity should be considered as one engaged in government procurement for the purposes of a transparency agreement. For example, it has been suggested that government ownership of less than 50 per cent should mean that it was excluded. It has also been suggested that account should also be taken of national legislation which conferred on entities the legal right to conduct government procurement activities or gave governments the power to exercise control over the procurement decisions of entities and enterprises.

8. Another suggestion has been that the substance of a relevant provision should determine the scope of the application of the specific requirements in a transparency agreement. For example, requirements on publication of laws and procedures might be applied across the board to entities at all levels of government.

B. WHAT IS BEING PROCURED?

9. In regard to the question of what is being procured, the suggestion has been made that the scope of a transparency agreement might extend to all goods and services and any combination of goods and services. It has been said that Article I of the plurilateral Agreement on Government Procurement might be a useful reference in the discussion regarding this aspect of coverage. The view has also been expressed that the scope of a transparency agreement should extend only to the goods sector.

10. With respect to the use of threshold values in determining the coverage of a transparency agreement, the view has been expressed that, in principle, the coverage of a transparency agreement should not be limited to contracts above a certain threshold level, but that certain provisions might be more flexibly applied for smaller contracts. Also, it would not be appropriate to exclude low-value procurement from the requirements relating to the provision of information on national legislation or to procedures for the qualification of suppliers on the basis of threshold values. On the other hand, requirements on the publication of tender notices, particularly in a foreign language, might be relatively less strict for low-value procurement. Suggestions have also been made that transparency obligations should only apply to procurement above certain threshold levels in order to avoid burdensome procedures and costs related to publication of all procurement opportunities and that the work of the Group should take account of national practices in this respect. Minimum threshold values could vary according to the level of government and be used for defining the scope of application of the rules to entities at sub-central levels of government. The suggestion has also been made that thresholds might differ according to the level of development of Members.

C. WHAT TYPES OF TRANSACTIONS ARE COVERED?

11. As regards the issues relating to what types of transactions should be covered, it has been suggested that acquisition by any contractual means, including, for example, through lease or rental, might be covered. Questions have been raised as to whether, and, if so, to what extent, concessions and build-operate-transfer (BOT) contracts should be covered. The point has also been made that privatization should not be covered.

12. Concerning concessions - in the sense of the grant of certain exclusive rights by a government to a private party for a set period of time in order to produce a product or offer a service to the public on its behalf (for example for building and operating motorways or airports) - one view expressed has been that government consumption of certain services (for instance, contracts awarded to private companies for the provision of cafeteria services or cleaning services in public buildings), although sometimes referred to as concessions, should more appropriately be considered as government procurement and should, therefore, be addressed in the discussion of definitions and scope of a transparency agreement. A further view has been that, even if not considered as government procurement transactions *per se*, concessions should be addressed under the scope of a transparency agreement to the extent that principles of transparency should apply to the procedures used for the award of concessions.

13. The question has been asked whether concessions were more properly treated as a matter of investment or the supply of services on behalf of the government and, therefore, should be covered under the scope of other relevant agreements or initiatives. Those concessions that fell within the definition of GATS mode three supply of services might be subject to the disciplines of GATS Article III. In this connection, it has also been said that GATS Article III would not apply to concessions that were not within the scope of GATS Article I.

14. The view has been expressed that concessions should not be included in the coverage of a transparency agreement. Rules which governed concessions and government procurement were separate sets of legislation in national practice. National legislation on government procurement did not apply to procurement by private companies that operated concessions granted by a government. In this regard, the following comparisons between government procurement on the one hand and concession-granting, awarding of BOT (build-operate-transfer) contracts and privatization on the other have been made:

- with regard to definitions, government procurement was a procedure intended to regulate the selection of contractors for the supply of goods, the execution of works and the provision of services. The granting of a concession took the form of a unilateral act of the State giving a private party the right to manage, on its behalf, facilities, properties, public works or resources that were under government ownership or to offer a public service that was within the exclusive competence of a government, for example for mining or exploitation of natural gas. In the area of public procurement, no such authorization was given to a private party supplying the service. Privatization involved a sale of a state-owned company or assets;
- with regard to legal form, government procurement was made effective through an administrative act of the procuring entity. Concessions and privatization were made effective through a decree of the executive power at the level of the head of government or State, and, in some cases, subject to authorization by the legislature;
- with regard to subject-matter, government procurement covered goods, public works and services; concessions covered public works or services; and privatization covered state corporations, property and assets;

- in the case of concessions, the State regulated the operation of the services under concessions, set and controlled the prices that were paid by the public for those services, defined the rights of users and ensured the effectiveness and continuity of the services provided. In government procurement, suppliers offered bid prices based on their own calculation of estimated costs and profits;
- concessionaires were considered as owners of the goods affected to the exploitation of the services during the period of concessions, whereas procurement contractors did not have ownership of the procured goods, services or works carried out;
- with regard to the methods, open, restrictive or limited tendering methods were used in the area of government procurement. Open, restrictive or limited tendering or auctioning were used in the granting of concessions. Public sale or auctioning and liquidation of debt in return for a share of the company were the methods used in privatization;
- as regards the application of the GPA, procurement by concessionaires listed in Appendix I was covered but the granting of a concession was not. The act of privatization was not covered but enterprises in which government control or influence had been withdrawn through privatization could be excluded from the coverage of the GPA;
- as regards spending of funds, concessionaires were responsible for providing the economic resources necessary for the expenses related to the operation and exploitation of concessions, whereas the governmental authorities disbursed the state funds related to government procurement transactions or the execution of public works contracts. Whether a service provided was a government procurement or a concession was related to the question of who had the financial liability;
- governments did not necessarily enter into contracts with private parties in the process of granting concessions;
- a BOT contract could be considered as a form of concession. The distinction between these two types of government action should be clarified;
- in general, concessions took the form of monopolies. However, more than one concession could be granted for the operation of a public service, for example for different end-users, regions or types of exploitations. Contracts for the procurement of goods, services and works were awarded to one supplier who might use sub-contractors to carry out parts of the contract;
- a distinction should be made between the granting of a concession or concluding a BOT contract and transactions entered into by the concessionaires or BOT contractors subsequent to the granting of concessions or awarding of BOT contracts;
- in some countries, only national companies were allowed to operate concessions;

15. It has been suggested that Members should provide information on national legislation and practice as regards concessions in their countries. A view has been expressed that the issue of concessions raised complex questions to which the answers were not clear as yet. It has been said that some concessions could be outside the scope of a government procurement. Nevertheless, the Group should maintain a broad approach to their coverage at this stage, pending further study of the issue. In

this connection, reference has been made to the information-gathering activities in the GATS Rules Group.

D. OTHER MATTERS RELATING TO DEFINITION AND SCOPE

16. The issue of the exceptions that might be allowed to the basic coverage of a transparency agreement has been raised. One suggestion has been that there may be reason to allow the exclusion of those areas that track general exceptions in GATT 1994, such as national security exceptions. It has also been suggested that exceptions on development grounds might be envisaged. The view has been expressed that the question of permissible exemptions was better left for discussion at a stage when a better idea of the general definition that might be employed would be available.

17. In regard to developmental aspects, in addition to the points reflected above, the general point has been made that the function of national laws in taking into account social and developmental needs, for instance promotion of small and medium-sized enterprises, balanced regional development or technological development, should be considered in the definition of government procurement to be employed in a transparency agreement. In this connection, it has been said that a transparency agreement should not include provisions setting out the objectives that should be sought through government procurement policies. Rather, the purpose of a transparency agreement should be to ensure that Members provided transparency of the domestic objectives sought through the use of their various government procurement policies. On the other hand, it has been said that a Member should not be required to provide transparency of the objectives sought in procurement which was open only to domestic suppliers. A transparency agreement should not have provisions that could limit the scope of procurement policy objectives or decisions.

II. PROCUREMENT METHODS

18. The point has been made that, from a transparency perspective, the method of procurement employed was less important than ensuring that it conformed with basic principles on transparency and maximized the level of competition feasible under the particular circumstances. The point has also been made that the method of procurement used should not undermine the principles and objectives of a transparency agreement to encourage open and competitive regimes. Other views expressed have been that an eventual transparency agreement should aim at transparency with regard to the methods employed in different countries rather than seek to limit or modify those methods. According to these views, specific circumstances governing a given procurement dictated the choice of a particular method among alternative methods. Rather than prescribing which method should be the preferred method, a transparency agreement should allow procurement authorities to choose the best method for meeting the objectives of the procuring entity as well as in the interests of efficiency, competition and transparency. General principles of transparency should be developed with respect to the choice and application of procurement methods. Further disciplines might need to be developed to cater for the particular circumstances of individual methods. Whilst the methods used by WTO Members - at least for larger value contracts - mostly seemed to be based on the principle of tendering (open, selective, limited), they were not necessarily limited to this (e.g. purchase cards, electronic catalogues). In this connection, it has been said that setting forth provisions specifying the differences inherent between various procurement methods as regards transparency would allow more flexibility in the use of those methods.

19. The view has been expressed that the Group should consider the issue of procurement methods from the perspective of transparency. The Group's examination of the transparency aspects of procurement methods could focus on the following three categories: where information on the procurement opportunity and selection criteria was made publicly available to all interested suppliers; where a pre-selection of qualified suppliers was made and information was transmitted only to those suppliers; and where no information was made publicly available but the procuring entity negotiated with an individual supplier. Such a categorization, focused on transparency aspects, would avoid getting into the details of procurement methods. It has also been said that the method to be used in a procurement process should be specified in advance, for instance by giving a reference to the relevant provisions of the UNCITRAL Model Law. On this point, it has also been said that such a requirement might be too prescriptive since only a few countries had adopted the Model Law.

20. With respect to the main procurement methods used, the view has been expressed that open or international bidding in which there was no limit to the number of potential bidders was the most transparent method; selective procedures were justifiable where it would not be feasible or efficient to consider and evaluate a large number of potential bids, as long as all potential interested suppliers were given the same opportunity to seek access to information on a procurement and seek to be invited to bid. Another view has been that open and selective tendering should be regarded as equally transparent, provided selective tendering was conducted in accordance with the appropriate principles. One view has been that, while open tendering was the most transparent method, it might not be the most cost-effective, in particular in the case of complex procurements. As regards the third main procurement method, limited tendering (e.g. individual, sole-source, single-source or direct tendering), it has been suggested that, since information opportunities and selection criteria were not made publicly available, this method should only be used in justified and exceptional circumstances. International instruments and national practice commonly accepted a range of circumstances and conditions under which the use of limited tendering would be warranted. A further point has been that it might not be possible to provide information on procurement opportunities under each type of tendering method. It has been suggested that general principles of transparency regarding the choice and application of procurement methods should be developed. Should those procedures be deemed inadequate, further elements on transparency could be developed to cater for the particular circumstances of individual procurement methods.

21. Based on the written and oral proposals, the following options and alternative approaches for addressing the issue of procurement methods have been identified. These various options and the comments made on them are as follows:

- Option 1. There should be sufficient flexibility to accommodate the differing procurement methods used in national practice, and the possibility of using methods which are not based on tendering should also be provided for. As such there should be no limitation on the choice of procurement method except limitations that exist in domestic legislation.

It has been said that the scope of option 1 was too wide and would not contribute to the objective of improved transparency in government procurement.

- Option 2 – first alternative. Whilst wishing to ensure flexibility and providing for the use of methods which are not based on tendering, there should be a requirement that the method of procurement used should not undermine the principles and objectives of a transparent procurement regime.
- Option 2 – second alternative. Whilst wishing to ensure flexibility and providing for the use of methods which are not based on tendering, there should be a requirement: (i) that the procurement method used conforms with basic transparency principles [to

be defined]; and/or (ii) that transparency is maximized at each stage of the procurement process for the particular method used.

Views have been expressed supporting this option. It has also been said that the aim of the provisions of a transparency agreement should not be to determine the validity of the procurement methods chosen by entities but rather to guarantee that, when inherently less transparent methods were used, circumstances justifying their use should be made known to all interested parties. One view has been that this option would also take into account national practices that determined the choice of procurement methods based on threshold values.

- Option 3 – first alternative. As for option 2, first or second alternative. In addition, there would be a further requirement that methods which are considered to be inherently less transparent (e.g. single-source procurement or limited tendering) should only be used in exceptional and justifiable cases.

Views have been expressed supporting this alternative.

- Option 3 – second alternative. As for option 3, first alternative, but the additional requirement would be further developed through the use of an illustrative list (examples which could be included in such a list are given in paragraph 24 below) of such exceptional cases.

It has been said that this approach in this alternative was flexible enough to take account of the existing and any future procurement practices. It also provided safeguards against loopholes in transparency by the choice of the method used. From this perspective, this option should be the preferred way of dealing with the issue of procurement methods. The use of methods, other than tendering, should be allowed only in narrowly defined circumstances because of their potential for circumventing transparency. Other views have been expressed supporting this option.

Questions have been asked regarding the treatment of those circumstances that might be envisaged in national legislation but not included in the illustrative list; whether the illustrative list would set some guidelines for justifying the use of limited tendering or would consist of an exhaustive list of all possible exceptional circumstances; and the difference in practice between the first and second alternatives of option 3.

- Option 4. There should be greater prescription as to the type of procurement method which can be used. For example, there could be a requirement that methods based on the so-called open and selective tendering procedures are used and that limited tendering is only used in exceptional and justifiable cases (with or without the use of an illustrative list as suggested in option 3, second alternative).

It has been said that this approach was far too prescriptive regarding the types of procurement methods that could be used and did not sufficiently take into account diversity in the existing national practices.

22. Views have also been expressed stating that it would be premature to support any of the options above before the principles and objectives of a transparency agreement were clearly defined.

23. The following approaches to how limited tendering should be dealt with in a transparency agreement have been suggested:

- since the use of the method permitted procurement authorities to dispense with many of the procedural guarantees associated with transparency, a transparency agreement should set forth an illustrative list of the specific circumstances and conditions justifying the use of this method;
- provisions of a transparency agreement should not impinge upon the right of procuring entities to use this method in circumstances that dictated its use. Spelling out the exact circumstances and conditions justifying the use of this type of method might go beyond the scope of a transparency agreement. It had to be taken into account that governments had other policy objectives apart from transparency;
- while not limiting the circumstances under which limited tendering might be allowed, the Group should develop disciplines to be included in a transparency agreement to ensure that, when used in appropriate circumstances, limited tendering procedures should be employed in a way which maximized transparency at each stage of the procurement process;
- rather than describing in detail the circumstances justifying the use of limited tendering, disciplines should be developed ensuring transparency in the use of this method;
- a distinction might be made between a situation in which the purpose of using this method was precisely to avoid transparency, e.g. for national security reasons, and other cases where the purpose of using limited tendering was to meet needs that might arise from special circumstances of the procurement;
- a transparency agreement should not cover procurement not open to tendering.

24. A range of circumstances which might figure in an illustrative list or define the general circumstances under which limited tendering would be justified has been referred to. These are:

- for reasons of extreme urgency brought about by circumstances unforeseeable by the procurement authority (e.g. natural disasters); such circumstances should not be caused by the procuring entity itself, for instance as a result of its negligence;
- in the absence of responsive tenders, under tendering procedures which do not restrict competition;
- when tenders already submitted have been collusive;
- when it is clear at the outset of a procurement that only one supplier or a limited group of suppliers has the proprietary rights to goods or services being procured, for example procurements involving the protection of patents, copyrights or other exclusive rights, or for other technical or artistic considerations;
- in commodity markets where there may be no individual suppliers since the market is the supplier;
- in so-called "fire sales" where the procurement authority can realize exceptional savings at a one-time event (e.g. liquidation sales);
- when a product or a service is supplied by a supplier with a monopolistic position in the market;

- when a product or a service can only be procured in a specific geographical location or place of production;
- when a procurement is for research or experimental purposes and not for commercial use;
- for national security reasons;
- for other reasons which should be published in law or regulations.

25. Reference has also been made to the circumstances justifying the use of the limited tendering method contained in Article XV:1(a)-(j) of the plurilateral Agreement on Government Procurement.

26. With regard to ensuring that limited tendering, when employed, is used in a way which maximizes transparency, the following suggestions have been made:

- a procuring entity should generally seek more than one bid if circumstances permitted;
- a procuring entity should be required to document the specific circumstances giving rise to the need for such limited tendering;
- public notices of contract awards should disclose the specific circumstances and reasons for contacting a particular supplier.

III. PUBLICATION OF INFORMATION ON NATIONAL LEGISLATION AND PROCEDURES

27. The point has been made that transparency meant ensuring that information on procurement rules, practices and opportunities was made widely available in an easily usable form to all interested parties (and particularly potential suppliers), as well as ensuring the right of access to that information. Publication of information regarding the general environment in which public procurement took place and interested parties were expected to operate was an essential component of transparency. Publication of national legislation not only provided a clear roadmap for potential suppliers but also a check against arbitrary practices within the procurement regime. The resulting procedural certainty also reduced costs in the procurement cycle.

28. The point has also been made that there were two questions regarding this matter: the scope of the information that should be made available and in what way.

29. On the first issue, it has been said that there appeared to be two approaches to establishing the scope of the information that should be made available: a formal approach that would require, for example, that all laws, ministerial ordinances, administrative guides or internal rules and procedures should be published; and an approach that would consist of determining the substance of the information that should be made available, irrespective of the legal form. This second approach might be preferable since what was of importance was the substance of the information to be made available. The key substantive information that should be made available was that which defined what rules of general application had to be followed in determining participation in the tender and making the decision on the award of the tender and what remained at the discretion of the procuring entity. The second approach would have merit in that the objective of transparency would not be achieved if the publications that contained the relevant laws and regulations did not cover important aspects of national procurement practices and procedures.

30. It has also been suggested that all laws, regulations, judicial decisions, policy guidance, and administrative and other procedures on government procurement should be published promptly or be readily and easily accessible in a usable form to all interested parties, including potential foreign suppliers and other Members. Any changes to such laws and regulations should also be published promptly or generally made available through an accessible source. Concerning publication of administrative guidelines, it has been said that it might not be appropriate to publish information relating to internal procedures of government agencies since their disclosure might prejudice the position of a purchasing agency for instance in its negotiations with suppliers; rather, the relevant obligation should be limited to publication of administrative guides to the operation of the procurement systems. It has also been said that publication of regulations of each individual procuring entity would incur burdensome administrative costs.

31. In regard to the second issue, how the information should be made available, the following points have been made:

- the important point was that information should be made publicly available, not how it should be made available;
- a distinction should be made between publication of information and accessibility of information. It has been suggested that laws, regulations and measures having the force and effect of law should be published. Regarding judicial decisions, it has been stated that publication requirements in an agreement had to take into account the different ways of developing national legislation and procedures. For instance, in judicial systems where laws were developed on the basis of case law, judicial decisions could play a central role in defining national legislation and procedures;
- publishing information on judicial decisions, policy guidance and administrative guides could be onerous. But any judicial decisions that would have a bearing on procurement practices and that were not customarily published should be made accessible within the country;
- publication requirements could be met through publication in printed or electronic media. The choice should be left to the discretion of Members. There should be no mandatory provisions requiring the use of electronic media. It has also been suggested the two forms of publication should not be mutually exclusive.

32. The view has been expressed that publication obligations, including in the area of government procurement, already existed in the goods area under Article X of GATT 1994 and in the services area under Article III of the GATS. The provisions of these two Agreements which exempted government procurement from the scope of certain GATT 1994 and GATS obligations (Articles III:8(a) and XVII:2 of GATT 1994 and Article XIII of the GATS) did not apply to these transparency provisions.

33. The suggestion has also been made that information on national legislation and procedures should be provided at no more than cost. It has been said that the matter of fees charged was not within the ambit of a transparency exercise. Government entities should have the discretion to charge fees above cost price. However, any fees for provision of information on national legislation and procedures should be charged on a non-discriminatory basis.

34. The point has also been made in connection with the publication of laws and regulations that the obligation to publish should be limited to publication in a national language and should not involve burdensome and costly translation obligations. It has been stated that some domestic public agencies provided information on legislation in a foreign language or a summary of specific legislation in a WTO language.

35. The suggestion has been made that interested parties should know either where to go to locate this information, or who to ask. A transparency agreement might provide for Members to notify either the source of this information and/or to establish and notify contact or enquiry points (which could take the form of an Internet website), from which other Members and maybe interested suppliers could obtain explanations about national legislation and procedures, including information on the practical steps involved in tendering, any preferential treatment of national suppliers and domestic review mechanisms. In this connection, reference was made to the provision of Article III:4 of the GATS, and also to that of Article IV:2 of that Agreement which requires developed country Members, and to the extent possible other Members, to establish contact points to facilitate the access of developing countries suppliers to information. It has been stated that the feasibility of providing contact or enquiry points in respect of decentralized procurement systems, especially in federal States, would have to be studied carefully. Any obligations should be without prejudice to decentralized procurement systems. In this connection, the suggestion has been made that in decentralized national procurement systems a central office should be designated for keeping a list of the contact points at sub-central levels. One view in this respect has been that the establishment of enquiry points at sub-central levels might incur burdensome administrative costs.

36. In the discussion of this item, the relevance of the overall coverage of a transparency agreement has been recalled. In this regard, it has been suggested that the publication obligation should only relate to situations where access was open to foreign supplies and suppliers. The opposite view has also been expressed, with the argument that it would be essential to have information on any policies including preferences in favour of national suppliers in order to determine whether procurement markets were open to foreign suppliers. In respect of the term "foreign suppliers", the point has been made that in some national practices government procurement was used as an instrument for the promotion of domestic supplies and suppliers and national treatment would not be granted to those suppliers who did not have a commercial presence in the country of the procuring entity.

37. The link between this item and that in Section X, concerning the provisions on notification of information to other governments under an appropriate transparency agreement, has been referred to.

38. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist".

39. A non-paper synthesizing the alternative approaches that have been suggested in the Working Group has been circulated as Job No. 1067.

IV. INFORMATION ON PROCUREMENT OPPORTUNITIES, TENDERING AND QUALIFICATION PROCEDURES

40. The point has been made that advance information on government procurement opportunities enhanced the participation of potential bidders in a procurement procedure. Broad participation of bidders in the procuring process contributed to improved efficiency in government procurement. In order for the best level of participation from the market to be achieved, information about procurement opportunities must be available in notices of invitation to tender and in tender documents.

41. The point has also been made that information on procurement opportunities in notices of invitation to tender should be sufficient to allow potential suppliers to assess their interests in participating in the proposed procurement procedure and to seek tender documents; and that information in tender documents should be sufficiently specific to enable suppliers to prepare responsive bids if they participated in the procurement process. The application of these core

principles would save efforts and resources of suppliers in preparing bids for procurements in which they did not have sufficient interest and of procuring entities in considering unresponsive bids.

42. It has been recognized that national practices concerning the amount of detail included, respectively, in initial tender notices and in the subsequent tender documentation, varied considerably and that it might not be necessary to have precise minimum requirements concerning their specific contents or to seek harmonization on this point. It would be sufficient for a transparency agreement to develop elements in the form of general principles.

43. In this connection, views have been expressed suggesting that the level of detail of information to be supplied might also vary among the different stages of tendering and procurement methods used. Whereas detailed information should be given under open procurement procedures, the requirements to publish tendering information in a widely available medium under selective tendering procedures should be flexible to enable tender documents to be sent directly to registered suppliers. Information provided to prequalified suppliers could be more specific than information in public notices available to all suppliers. It has also been said that, notwithstanding the flexibility regarding the amount of detail that should be provided in tender notices, certain basic types of information should be provided under all methods for the purpose of achieving maximum transparency whatever the method used. Certain minimum standard requirements, reflecting the core principles of transparency, should apply horizontally to all procurement methods.

44. In regard to tender documentation, it has been said that their contents should provide all information relevant to submitting responsive bids that was not provided in the tender notices. They should set forth the parameters for evaluating bids and awarding the contract, including requirements in respect of technical specifications and any preferences granted to national suppliers and suppliers and on any other assessment criteria based on socio-economic considerations. It has also been said that the information contained in tender documents should be comprehensive enough to lead to the submission of bids that would enable procuring entities to compare them and to allocate their resources efficiently.

45. The view has been expressed that rules on information on tendering opportunities in a transparency agreement should apply on a non-discriminatory basis but only in cases where national markets were open to foreign suppliers; otherwise domestic procedures would be applicable.

46. Another view expressed was that provision of information on procurement opportunities was an essential element of transparency in procurement irrespective of the entitlement of foreign suppliers to participate and that such prior information had benefits both from domestic and from foreign suppliers' perspectives. Points made regarding this view have been:

- the obligations of a transparency agreement should apply to all procurement within its scope, whether or not suppliers had access to procurement opportunities. The principle of non-discriminatory access to information would need to be observed regardless of any policies excluding foreign suppliers from access to procurement opportunities or the existence of preferences for domestic suppliers. The establishment of the conditions of competition and transparency in domestic markets was essential to achieving transparency at the international level;
- access to information on any policies, including preferences in favour of domestic suppliers, would allow suppliers to determine whether the procurement markets were in fact open to foreign suppliers. From the government's perspective, transparency in the extent to which markets were open would prevent further requests for information from foreign suppliers on market access matters. Such information would also

benefit suppliers who would know in advance whether it would be worthwhile for them to prepare tenders;

- if the obligations on transparency applied only to the extent that foreign bidders were provided access to procurement markets, this would give rise to inequity among Members to a transparency agreement. The end result would be an agreement which would require those countries that had their markets fully open to foreign suppliers and had no rules in place regarding national preference to undertake a much greater level of obligations as regards transparency. On the other hand, other countries that had relatively closed markets and excluded foreign suppliers in a large number of sectors would take on lesser obligations;
- since a transparency agreement would not prevent government procurement from being limited to domestic suppliers, the rights of other Members would not be breached by a Member limiting transparency obligations to government procurement open to international competition because foreign suppliers would not have any interest in obtaining information on a procurement that was not open to them;
- a requirement for transparency in procurement, irrespective of the openness of markets, would result in a transposition of obligations on market access into a transparency agreement. The arguments in favour of transparency in all procurement would imply that all Members should be required equally to provide access to their markets since, by keeping their markets closed, they would assume lesser obligations on transparency. Any country was free to undertake greater obligations on transparency by opening its markets if it chose to do so;
- a decision to open a country's market was independent of the requirements of an agreement on transparency. The balance in a transparency agreement was to be found in obligations with respect to transparency and not in those with respect to market access. In undertaking obligations on transparency, countries had to take into account their individual national practices;
- this matter was better dealt with in regard to the overall scope of an agreement (c.f. Section I);
- participants in the Working Group should be encouraged to provide information on their national practices in regard to the provision of information in respect of procurement not open to international competition.

47. The question has been raised as to whether openness would depend only on general criteria prescribed by law or whether it could depend on a case-by-case decision of the procuring authority. In this regard, the following views have been expressed:

- to the extent that procurement contracts would be decided on a case-by-case basis, it would be the prerogative of a government authority not to open a specific procurement contract to foreign suppliers;
- it would defeat the objective of a transparency agreement if the question of whether a given procurement would be open to foreign suppliers were to be decided on a case-by-case basis;
- in those countries where decisions to open procurement to foreign suppliers were made on a case-by-case basis, such decisions could be taken, either at the onset of a

tendering process or at the time of the award of a contract. With the latter type of case-by-case decision, it would be significantly non-transparent should a governmental authority decide to award contracts only to domestic suppliers. Disciplines should be developed in order to provide maximum transparency in those situations in which the decisions were taken on a case-by-case basis.

A. PUBLICATION

48. On advance information on tender opportunities, it has been suggested that there are two key issues: where the information can be found (publication) and content. With regard to where the information can be found (publication) by potential suppliers, the following points have been made:

- procurement opportunities and procedural requirements relating to those opportunities should be made known and be generally available to interested parties, including the general public and other Members, through an easily accessible source;
- the source used to make information on procurement opportunities generally available should be left to the discretion of WTO Members, but its level of availability should be proportionate to the likely level of interest in the procurement. In other words, where a procurement opportunity was likely to attract international interest, procurement opportunities should be published through a source which potential foreign suppliers and service providers had access to, as opposed, for example, to posting a notice in a town hall. It has also been stated that it would not seem necessary to have a requirement to publish tender notices in an international publication; rather, interested suppliers should be expected to keep track of national publications;
- publication of tender opportunities should be made available in printed and/or in electronic media. Printed media could be an official gazette or a national newspaper of wide circulation;
- electronic publication should be used where feasible and taking into account the level of development of individual WTO Members. The internet address of electronic publications could be made available. It has also been stated that electronic publication offered significant benefits in terms of both time and costs, and based on current trends would be used increasingly in the coming years (see also Section IX B);
- the choice should be available to each WTO Member to publish in the appropriate media and electronic publication should be an option rather than an obligation. This would permit account to be taken of the divergences in the capability to make use of electronic means of publication between WTO Members and between regions within a WTO Member and between suppliers;
- allowances should be made for systems by which information was furnished by private sector service providers acting on behalf of procuring entities;
- under limited tendering procedures where a procuring entity contacted the prequalified suppliers directly, advance publication of tender notices did not seem to be necessary;
- some Members' notices of invitation to tender and to prequalify were published also under selective procedures;

- requirements for publication of tender notices might be less strict for low-value procurements in order to avoid burdensome administrative costs;
- publication of tender opportunities should not be limited to contracts above a certain threshold level (see also Section I).

49. The view has been expressed that exceptions to the obligation to publish procurement opportunities (e.g. to take account of limited tendering in the case of some national practices) should only be permitted in exceptional and justified cases. These circumstances should be the same as those set out for the use of procurement methods which severely restrict competition. Some suggestions have been made concerning situations where publication should not be required. This could be the case for purchases below threshold levels and for purchases not made through open tendering procedures for instance for limited tendering. The point has been made that, in the latter instance, it would be important that information on how to qualify for selective tendering procedures be adequately available, and that post-contract award notices should be published. Another view has been that, for transparency reasons, publication of procurement opportunities should in principle not be limited to contracts above a certain threshold level.

B. CONTENTS OF INFORMATION

50. With regard to minimum requirements for the information to be published on procurement opportunities, the point has been made that, while national practices with regard to the amount of information to be included might differ, information on procurement opportunities in notices of invitation to tender and tender documents notices should be sufficient to allow potential suppliers to assess their interests in participating in the proposed procurement or in a qualification system and enable them to prepare responsive bids or proposals for qualification. Members should be able to decide whether the provision of information on procurement opportunities or its availability to interested parties through an accessible source should be done just through the use of tender notices, or whether the bulk of information should be contained in the tender documentation or be made available by other means.

51. The suggestion has been made that an illustrative list of the types of information that such documents should contain should be developed to provide at least:

regarding the procuring entity:

- full contact details (the name and the address) of the procuring entity (the buying department or agency, the location of the responsible office and the division or branch of the department or agency);
- coordinates of a contact point or document centre from which additional information including on technical and commercial requirements and any other relevant information or documents may be requested and obtained, the final date for making such requests and, if applicable, the cost of such information; unique reference number identifying the request in the department or agency's records;

regarding suppliers:

- any requirements relating to the supplier or service provider, for example economic or qualification requirements;

regarding the intended procurement:

- an identifiable description (nature) of the goods and/or services to be provided, together with their quantity or an indication of their extent;
- the place of delivery, site or place of performance of the service and, if applicable, the time-limit for delivery, completion or duration of the contract;

regarding evaluation of tenders:

- the procurement procedure envisaged to be used (open, selective, whether negotiations are involved, etc.);
- the criteria for the award of the contract including factors other than the price that are to be considered in the evaluation of tenders (economically most advantageous bid) in the evaluation of tenders;
- information on the existence of any conditions in favour of national suppliers in awarding contracts, such as price preferences, local content requirements or any other policies of discriminatory nature. In this connection, it has also been said that provision of such information would not be necessary if a description of national preferences or discriminatory policies was already published in the Official Gazette;
- any technical specifications required;
- where applicable, the location, date and time of any public briefing on the requirements;

regarding submission, receipt and opening of tenders:

- the final date for the submission/receipt of tenders or requests to be invited to participate in a qualification system;
- the address to which submission of tenders or requests to be invited to participate in a qualification system must be sent;
- details of any language requirements in respect of submission of tenders;
- date and place of opening of tenders.

52. The view has been expressed that such a list might be excessively burdensome and costly, in particular in those countries in which the number of tenders issued by government entities was high.

53. In addition, it has been suggested that entities might publish, on a voluntary basis, a summary of information on their intended procurements at regular intervals. The point has been made that only those entities which could sufficiently plan their procurement activities ahead could have such procedures.

C. EVALUATION CRITERIA

54. With regard to the specification of criteria for the evaluation of tenders and awarding of contracts in public notices and/or tender documents, it has been said that all relevant evaluation criteria should be accessible to interested suppliers, whether through publication of procurement

opportunities, specifications laid down in tender documentation, or by giving references to applicable laws and regulations. It has been recalled that the question of whether national preferences, or other policies underlying practices of a discriminatory nature should be part of such criteria, was not within the scope of the work of the Group. However, emphasis has been put on the importance of information on such national preferences and other measures in favour of domestic supplies or suppliers, for instance offsets, being made known in advance in the tender documents and/or tender notices. The point has been made that transparency in regard to the existence of preferences or other discriminatory requirements would enable potential foreign tenderers to determine whether they had an interest in entering a specific procurement process in spite of discriminatory national policies. Interested suppliers would only be able to distinguish between procurement opportunities that were reserved for domestic suppliers and those that were open to international competition if information on any discriminatory policies were made available to them in advance. Provision of information upfront on price preferences or qualification requirements favouring domestic suppliers would enable suppliers to gauge their interest and assess the real opportunity to win a contract. Such information would also allow interested suppliers to make the appropriate decisions in preparing bids that would be responsive to the conditions set out in this respect in tender documentation. By avoiding participation in procurement processes in which their bids would be ultimately dismissed, suppliers would save not only their own resources but also those of procuring entities. Moreover, the clear specification of requirements based on socio-economic considerations in the tender documentation would facilitate the implementation of such policies by providing transparency in respect of the nature of the socio-economic needs applicable to specific procurements.

55. One view has been that information on preferences to national supplies and suppliers need only be included in tender notices and/or tender documents when it was not adequately provided through laws or regulations of general application, either through setting out the relevant information or through an explicit reference to the applicable legislation. It has also been said that, according to national practice in one country, information on national preferences or other discriminatory policies were supplied in response to requests by individual suppliers. Another view has been that clear references to any national policies, including any preferences applied, should always be included in tender notices and/or tender documents. In this regard, the point has been made that the establishment of links between electronically published tender documents and relevant laws and regulations would enable suppliers to search easily for further information on any applicable discriminatory policies.

56. In regard to offsets, for instance domestic content, technology transfer, export earnings or similar requirements, the view has been expressed that, although procurement policies in many countries incorporated such requirements, they had the effect of distorting procurement decisions. It was important to ensure that such requirements were applied in a transparent manner. If used at all, they should form part of the qualification criteria rather than the criteria for evaluating tenders. Suppliers should be informed of the offset requirements laid out by the procurement entity at the outset, which should define how such requirements could be met, for example certain percentage of domestic content in total procurement or certain value of export earnings, before they participated in the bidding. Offset requirements that were used as part of evaluation criteria were inherently non-transparent because this would not give suppliers a clear indication at the outset of what requirements they would be expected to meet so that they could prepare responsive bids.

57. Another view has been that a requirement regarding offsets might go beyond transparency matters and appeared not to be a main element of transparency. The comment has also been made that, rather than an element of a transparency agreement, the provisions relating to offsets should be seen as measures against circumventing the non-discrimination principle. However, since a transparency agreement would confer on Members an explicit right to use discriminatory measures, including conditions such as local content requirements, any such anti-circumvention provisions would not be warranted. A paradoxical result of more stringent obligations in a transparency

agreement might be to encourage Member countries to make their procurement markets less accessible rather than be obliged to comply with obligations that might be too strict.

58. The point has been made that technical specifications were an important element of evaluation criteria. Only those bids that met the technical specifications included in the tender documentation were considered as responsive bids. The role of technical specifications in procurement processes would become even more significant in future with increasingly complex procurements. Technical specifications should avoid specifying one technology over others and should not be developed in such a way as to require the use of technology only available to a limited number of suppliers. Another view in this connection has been that in certain circumstances, for example advanced medical technology used in hospitals, entities should be allowed to specify their preferred type of technology in order to fulfil the objectives of a given procurement, provided that this was done in advance in notices of invitation to tender. Further views have been expressed that a transparency agreement should have provisions encouraging the use of performance-based specifications over those that were design-based; and wherever possible, basing technical specifications on existing internationally agreed or other relevant standards. Comments have been made questioning the relevance of the requirements to use performance-based specifications to transparency. It has also been said that any changes in technical specifications should be made known to all interested suppliers.

59. It has also been said that any changes in evaluation criteria during the course of the procurement should be communicated to all interested suppliers, or in the case of selective or limited tendering, to all suppliers participating in the procurement process.

D. CLARIFICATION AND MODIFICATIONS

60. With respect to clarifications of tender documents given by procuring entities to potential suppliers, it has been stated that any questions raised by interested suppliers should be responded to in good faith by the procuring entity. Any information provided in response to requests for clarification from one supplier should be transmitted simultaneously to all other suppliers participating in the procurement process. Another view has been that it would be impracticable to provide the responses to requests for information from suppliers that were received at different contact points disseminated around the country to all other suppliers participating in the procurement process. This might only be feasible in the case of high value procurements, for example in the context of projects financed under the World Bank loans, in which the number of participants were usually limited.

61. It has also been said that all potential suppliers or all participants in selective tendering should be informed of any changes to information contained in tender notices and tender documents, including those regarding evaluation criteria and technical specifications. Another view has been that such information should be made available to interested parties through an accessible source. In this connection, it has also been said that a transparency agreement should clearly specify that all those suppliers who had originally ordered tender documents or had indicated an interest in the procurement opportunity should have any additional information transmitted to them through the same means as the one used for providing the original information.

E. LANGUAGE

62. The suggestion has been made that requirements concerning publication of notices of invitation to tender should be limited to publication in an official national language. The translation of the whole publication into a WTO language could become too burdensome. Another suggestion has been that, where possible, tender notices should be published in a WTO language. It has also been suggested that procuring authorities should have the discretion to decide whether translation of

tender notices should be limited to those tendering opportunities that might be of interest to international suppliers.

63. It has been suggested that, in addition to the publication of the whole information in the official national language of the WTO Member concerned, consideration might be given to whether a summary of the main elements of the information in an invitation to tender might also be published in one of the official WTO languages. Such a summary might contain the following elements:

- the name and address of the procuring entity;
- the nature (subject-matter) of the contract;
- the time-limits for submission of tender or application to be invited to tender;
- the address from where further information can be obtained.

64. It has also been suggested that there could be a limited requirement for giving a summary of tender notices in one of the WTO official languages allowing, for example, the exemption of tender notices for small-value procurements which might be of limited interest to international suppliers. One view has been that providing a summary of every tender notice would incur undue administrative costs (see also Section IX C).

65. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist".

V. TIME-PERIODS

66. In regard to minimum time-periods to be available to potential suppliers to fulfil the requirements of the different stages of the procurement process, the point has been made that time-periods in existing international instruments and national practice varied significantly. A transparency agreement should not be overly prescriptive in this respect. Any provisions on time-limits should be accepted only as recommendations. A Member government or procuring entity should retain the discretion for the establishment of appropriate time-limits on a case-by-case basis and in the light of the responses from the market. On the other hand, it has been said that time-limits should be specified in national legislation in order to avoid any subjective actions by entities in this respect. National legislation could set out a number of criteria relating to time-limits that would define the parameters of discretion that entities could have in this respect. This would provide procuring entities with the flexibility for using shorter time-limits under certain circumstances, for instance during the actual tendering procedures, if a prior tender notice with all the relevant information had been issued. The suggestion has been made that, rather than establishing specific minimum time-periods in a transparency agreement, the Group might agree on a general principle, as in the UNCITRAL Model Law or in Article XI:1 of the GPA.¹

67. It has been said that sufficient time should be allowed for the preparation, submission and receipt of responsive bids to individual procurement opportunities. Any time-limits which are set should not undermine the principles and objectives of a transparency agreement. They should be

¹ Article XI.1(a) of the GPA reads as follows:

"Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points."

determined with due consideration to the particular circumstances of the procurement (including the likely level of interest), type of procurement method used and the capacity of the market to act on the information in tender notices, as well as the complexity of the procurement. In this connection it has also been said that a balance should be found in setting any requirements on time-limits; with longer time-periods, procuring entities might resort to limited tendering procedures more frequently. The point in this connection has been that Members should not be required to set time-periods to suit foreign suppliers, who should be treated on a national treatment and MFN basis. A further point has been made that time-periods should be sufficiently long to give both foreign and domestic suppliers a meaningful opportunity to avail themselves of the relevant information and to submit responsive bids. It has further been said that a proposed requirement to provide adequate time-limits might be biased towards allowing suppliers including foreign suppliers to prepare and submit bids. The term "reasonable" should be used to provide, for instance, for emergency situations in which it might not be possible to provide for adequate or sufficient time-limits. Moreover, it has been said that there should be non-discrimination between potential suppliers with respect to the application of time-limits. Another view has been that the time-periods allowed for the preparation and submission of tenders should be the same for all qualified suppliers provided they had access to procurement opportunity. It has further been said that any changes in the time-periods should be made known to all suppliers or the relevant information be made generally accessible from an available source.

68. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist".

VI. TRANSPARENCY OF DECISIONS ON QUALIFICATION

69. The point has been made that registration and qualification systems had a useful role in the procurement process provided that they were run in a fully transparent manner. The qualification procedures enabled purchasing entities to assess potential suppliers' capacities for meeting their requirements and also expedited the tender review process by reducing costs to purchasers and suppliers. It has also been said that qualification procedures facilitated the achievement of the overall government policy objectives of the community or the industry. The transparency of criteria for qualification should reinforce the objective of an open, transparent, efficient and equitable selection process; ensure uniform provision of information to potential suppliers; and encourage the receipt of sufficient information from suppliers. The key principle of transparency as regards this issue was that decisions on registration and qualification of suppliers should be taken only on the basis of criteria that had been identified early in the process and predisclosed to suppliers sufficiently in advance. Any changes in qualification requirements should be made known to all interested suppliers. Qualification decisions should be taken in a manner that would build a two-way confidence between the procuring entity and the market including potential suppliers.

70. The point has been made that prequalification systems should not be exclusive: new suppliers meeting the qualification criteria in time to participate in a tender should be given the same (or, in one view, at least a reasonable) opportunity to be included on a qualification list as had been enjoyed by those already qualified.

71. Moreover, a distinction has been made between qualification systems which potentially could cover a number of different procurements and qualification on a procurement-by-procurement basis. It has also been noted that the issue of qualification of suppliers could play a greater role in the procurement of services than in the procurement of goods.

72. It has been said that the qualification of suppliers should be undertaken well in advance of the tendering process involved in order to ensure the efficiency and fairness of the government procurement process. It has further been said that the criteria for qualification could include such factors as: technical capability; client satisfaction; financial capacity; contracting and partnering

issues; quality control; performance requirements relating to occupational health and safety; compliance with an associated code of practice for potential suppliers; human resource management (including skill formation); compliance with domestic legislative requirements; and commitment to continuous improvement. On the other hand, views have been expressed stating that there should be sufficient flexibility to allow for the development of appropriate qualification criteria for different types of procurement and sectors. The point has been made that the establishment of any harmonized qualification criteria at the multilateral level would not be feasible and was outside the ambit of the Group's work. The prescription of any binding criteria or an illustrative listing of criteria for qualification in an agreement did not have any bearing on the work on transparency.

73. It has further been said that qualification decisions should be made by expert bodies constituted for that purpose within procuring entities. The basis for selecting members for such bodies and the way in which the decision-making process was conducted should be publicly available to all potential suppliers. On the other hand, it has been said that the setting up of an expert body on qualifications was a matter within the purview of national authorities. Another issue with respect to transparency to which attention has been drawn is the situation in which a supplier who had applied under the predisclosed qualification criteria had received no decision on its application. All applicants should be informed of the qualification decision in advance of the call for tenders.

74. The point has been made that, once the qualification criteria were set out in invitations to prequalify or tender documents, they should be applied in a non-discriminatory way as regards transparency. Prequalification criteria should be made known to all potential suppliers in a non-discriminatory way. This would not prevent preferential elements in favour of domestic supplies or suppliers from other countries being built into the criteria themselves.

75. The point has also been made that transparency in qualification procedures involved matters of due process. Suppliers should have the right to challenge qualification decisions if the rules of the system had not been followed. The view has also been expressed that application of the principles of objectivity and non-discrimination to prequalification criteria extended beyond the concept of transparency. There could be non-discrimination as regards transparency notwithstanding discrimination in favour of national suppliers pursuant to preferences or other domestic sourcing requirements. It has been said that all decisions relating to qualification should be notified to all interested parties. It has also been said that, under certain tendering methods, it was not possible to overturn decisions on qualification even if certain other suppliers could be considered to be qualified in terms of the published criteria.

76. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist".

VII. TRANSPARENCY OF DECISIONS ON CONTRACT AWARDS

77. The point has been made that an essential feature of transparency in decision-making on the award of procurement contracts was that such decisions be taken strictly on the basis of the evaluation criteria (including in relation to technical specifications) which had been set forth in advance in the tender documents and in accordance with the information provided on how those criteria would be applied. Furthermore, in order to ensure that decisions were seen to be taken in this way, criteria should be set out in such a way as to ensure as objective an application as possible. The view has also been expressed that a transparency agreement would not, as a general rule, set out what those criteria should be. The point has been made that allowance would need to be made for cases where, for reasons of *force majeure*, for example in the case of the lifting or imposition of an embargo, the criteria set out in tender documents could not be strictly adhered to.

78. Concerning the receipt and opening of tenders, the view has been expressed that, while it may not be necessary to require public opening of tenders to ensure transparency, procuring entities should have procedures in place to ensure the regularity and impartiality of the procurement process and that there was no opportunity to manipulate the specific elements of tenders or to provide a particular tenderer with information on other tenders. In this respect, the view has been expressed that the details of the procedures on how tenders received by procuring entities should be handled were not within the ambit of the Group's work. Another view has been that further consideration should be given to whether it would be sufficient to embody these concepts in general principles or whether more specific requirements should be envisaged.

79. With respect to *ex post* information on contract awards, the point has been made that the right to such information was a crucial element of transparency in the area of government procurement. The procurement procedures might provide for some form of public announcement of the contract awards and also give tenderers the opportunity to be debriefed, for example on written request from an unsuccessful tenderer. A public announcement on contracts awarded was also of interest to industry generally (as potential future bidders) and to other governments which would want to see the transparency agreement working in practice. One approach suggested to this matter has been that the provision of *ex post* information was particularly important in cases where certain information had not been provided *ex ante*. It has also been said that decisions on contract awards need not include the types of information that had been included in the relevant notices of invitation to tender, provided that a reference was made linking the *ex post* information to the earlier information.

80. As to the purpose of *ex post* information, it has been said that contract award information provided unsuccessful tenderers and other Members with the opportunity to ensure that they had been treated equitably according to the specific requirements and the assurance that criteria set forth in the tender documentation and the applicable national rules and procedures had indeed been properly followed in the procurement proceedings; this type of information also provided unsuccessful bidders with the opportunity to improve their future bids.

81. Based on the written and oral proposals, a number of options and alternative approaches for addressing the issue of the provision of information on contract awards have been identified. These various options and the comments made on them are as follows:

- Option 1. As provided in national legislation. There would be no requirement to make contract award information available, except that which existed in domestic legislation.

It has been said that national practices would determine whether *ex post* information on contract awards should be given through prompt publication of contract award notices or directly by writing to individual tenderers; unsuccessful bidders should be informed but it would be burdensome and costly to publish this information or otherwise make it publicly available.

It has also been said that the existing practice in some countries was to send a standard regret letter to unsuccessful bidders and to give the reasons for rejecting their offers only where possible.

Other views have been expressed questioning whether this option would meet adequately the objectives sought by a transparency agreement. An obligation to provide *ex post* information should be considered as a powerful incentive to awarding authorities to abide by the rules and procedures in national legislation.

- Option 2. There would be an option for individual Members to determine whether to provide debriefs to unsuccessful tenderers or to publish contract award information. The mechanism chosen should be made known to interested parties. A provision should be included safeguarding the confidentiality of information on contract awards or debriefings, the release of which would prejudice the legitimate commercial interests (whether general public or private).

A view expressed has been that debriefing should be a complementary measure rather than a substitute for public availability of the contract award information. Another view expressed has been that it would be time-consuming and burdensome to inform unsuccessful bidders individually of the outcome of their bids.

It has also been said that, with a view to striking a balance between the need for rules on transparency and the administrative burden of providing *ex post* information, the information to be provided in contract award notices should be less detailed than that provided through briefings.

With regard to protecting the confidentiality of tenders, it has been said that the obligation to provide new information related to tenders, such as the name of the winning supplier, the value of the contract and any technical details, need not undermine the confidentiality of information. Entities could brief unsuccessful tenderers without necessarily releasing confidential information supplied by successful bidders. Another view has been that requirements on debriefing of unsuccessful tenderers would not be useful since most tender information was commercially sensitive and could not be disclosed without the consent of the tenderer concerned. Another point made has been that a starting point for consideration of the confidentiality of information could be the provisions of other WTO agreements on the matter.

Other views have been expressed stating that debriefing of all unsuccessful tenderers on the reasons why they had not obtained an award was unnecessary.

- Option 2(a). Information provided would be in line with the principles and objectives of a transparent procurement regime and provided within a fixed time-frame (which may be different between countries).

Views have been expressed supporting this sub-option.

- Option 2(b). Information would be based on an illustrative list² and provided within a fixed time-frame.

² The following specific elements for contract award notices have been suggested: the procuring entity, the location of the responsible office, division or branch of the department or agency and its address; description of the supplies including the department or agency for which they are required, if different from the above, and in enough detail to identify their nature, quantity and any period that may be applicable; a unique reference number identifying the contract, purchase or agreement in the department or agency's records and the date of the purchase or agreement; the value of the winning bid or the total liability of the contract at the date of entering into the contract; or where it is not possible to predict accurately the total liability with precision because of the basis of the contract, for example cost escalation, labour and materials, or schedule of rates, the total estimated value or liability; the value of the lowest and the highest bid, the type of procurement method used, the name of the winning supplier(s), their postal address and the date of the award should be published. Where a panel contract has been made, details of all suppliers should be notified. However, if this is impractical, a contact address within the agency should be published for persons seeking further information; and relevant product and service code.

- Option 2(c). Unsuccessful bidders should be informed of the outcome of their bids and debriefed, when they themselves requested it, as to why their bid had been rejected and/or the winning bid had been chosen. Information given to unsuccessful tenderers on where their bids were deficient and why they were not selected would provide them with the assurance that they had been treated fairly and equitably in accordance with the requirements and criteria of the tender documentation and that proper procedures and rules had been followed and would indicate where a bid was deficient and why it had not been selected. This was an important guarantee of transparency, particularly in circumstances where limited information on the contract awarded was provided. Moreover, it has been said that debriefings had an educational role. Debriefings allowed unsuccessful tenderers to assess their bids against the winning bid and to be informed about the shortcomings of their bids.

- Option 3. Publish contract award information. There would be a requirement to publish contract award information within a fixed time-frame, with the provisions for making the mechanism known and confidentiality included in Option 2.

Views have been expressed supporting this option.

- Option 3(a). Information included in a list (see footnote 2) would be provided.

A view has been expressed supporting this sub-option.

Another view has been expressed questioning the need for a prescriptive listing of the type of information that contract award notices should contain. The provision of this type of information would be outside the scope of a transparency agreement. The point has also been made that any illustrative list to be annexed to a transparency agreement should be non-binding. The Group would need to consider whether laying down general principles would be sufficient in this respect or whether the minimum types of information that should be given on contract award notices should be set out in a transparency agreement.

- Option 3(b). There would be a requirement to provide the information based on the list (see footnote 2) and, where the contract was awarded using a method considered to be inherently less transparent (e.g. single-source procurement or limited tendering), to explain why this method was used and, where applicable, to explain why the information was not given at the start of the procurement process.

A view has been expressed supporting this sub-option.

Another comment has been that *ex post* information on contract awards should be given regardless of the procurement method used.

On the other hand, it has been said that the provisions suggested in this sub-option were not within the ambit of a transparency agreement.

82. A comment with respect to the operation of *ex post* information has been that *ex post* information on contract awards should be given regardless of the procurement method used.

83. It has been noted that a number of other WTO agreements, for example the Agreement on Customs Valuation and the Agreement on Preshipment Inspection, included requirements on the provision of *ex post* information to economic agents. The link between the provision of *ex post* information and item VII on review and item VIII(a) on maintenance of records of procurement proceedings has been referred to.

84. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist".

VIII. DOMESTIC REVIEW PROCEDURES

85. The view has been expressed that it was not sufficient for rules to be introduced to ensure transparency in government procurement practices; there must also be a domestic review mechanism to introduce accountability into the process and to ensure that the rules were respected by everyone involved in a procurement process. The availability of an avenue for review of procurement processes was a key element of transparency. The mechanism for review of complaints by suppliers or a bid challenge system guaranteed due process and public accountability throughout a procurement process and enabled the process to be seen as transparent. The existence of a review mechanism might make public procurement authorities more aware of the need to ensure the consistency of the procedures used in a particular procurement with the applicable laws and regulations. The view has also been expressed that a well-defined and transparent bid challenge mechanism added to the transparency of any decision-making process, ensured that procurement decisions were reviewed openly and increased confidence in the effective functioning of the overall procurement system. It has also been said that a bid challenge system would be a last resort that occurred when, despite good and transparent processes and best endeavours, a potential supplier alleged that the procedures had not been applied correctly and a breach had occurred.

86. It has been suggested that precedents for review or appeal mechanisms could be found in a number of WTO agreements, for example the Agreements on Countervailing Measures and Anti-Dumping Practices, Customs Valuation, Import Licensing, Rules of Origin, Preshipment Inspection and TRIPS. Additionally, paragraph 3(b) of Article X of the GATT 1994 on publication and administration of trade regulations provided for "judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters" to ensure that complaints or appeals could be resolved under the jurisdiction of individual WTO Members pursuant to national laws. Other views expressed in this connection have been that issues involved in procurement practices could not be compared with the issues that might constitute the grounds for the review provisions in other WTO agreements. It might not be feasible to transpose the provisions regarding review mechanisms in other WTO agreements into a transparency agreement since the scope of the rules under those agreements went beyond simple transparency obligations.

87. Reference has also been made to the element of due process in the APEC non-binding principles on transparency in government procurement.³ It has been said that, in the APEC context, the existence of a domestic bid challenge mechanism was viewed as an important element of a transparent procurement system. On the other hand, it has also been said that the substance of the APEC non-binding principles went beyond transparency matters.

³ Circulated in document WT/WGTGP/W/11

88. Moreover, the view has been expressed that governments should ensure that scrutiny mechanisms were independent, appropriate to their circumstances, scope, topic and objectives, including "internal" scrutiny of actions or decisions of a procurement official or area within a government organization by another official or area of that organization, for instance, an organization investigating a complaint by an aggrieved supplier; scrutiny by other "external" government organizations, which may or may not be independent of government influence, such as an ombudsman, government audit organization; or representatives of an elected assembly; or scrutiny by judiciary, non-government bodies or bodies independent of government influence.

89. It has also been suggested that elements of a future transparency agreement should include the establishment of domestic legal mechanisms, whether administrative or judicial, available to any national or foreign person in order to challenge government procurement procedures flawed by bribery.

90. It has been stated that any obligation to provide for review procedures in a transparency agreement should only concern actions within the scope of that agreement, not the substance of preferential measures relating to market access in government procurement. While it might often be difficult to dissociate transparency aspects of government procurement from other aspects, the mandate of the Group should guide its work on this matter as on others.

91. The point has been made that a domestic review mechanism could be achieved through a variety of means. It has been noted that administrative or judicial review procedures in the interest of assuring due process and public accountability were common to most national regimes, which in consequence already contained the main features that might be applicable to domestic review procedures in a transparency agreement. The view has been expressed that any obligation to provide for domestic review procedures in a transparency agreement should take into account such national practices and procedures; no attempts should be made to develop special review mechanisms where appropriate domestic administrative or judicial procedures already existed. The view has also been expressed that a transparency agreement should not have provisions requesting Members to adapt their domestic systems to certain prescribed criteria and the existing national systems should be fully respected. The Group should guard against developing overly prescriptive provisions on the specific characteristics that national systems must have. Any provisions should be flexible enough to allow Members to design their domestic review mechanisms in accordance with their national legislation and to rely on administrative or judicial review mechanisms that were appropriate to their national legal systems. They could be in the form of an exhortation to Members of a transparency agreement or a best endeavours obligation to provide for domestic review mechanisms. The choice of review procedure should be left to individual Members provided the review mechanism itself was transparent and provided a guarantee of independence. In this connection, the suggestion has been made that, as a first step, Members should provide information on whether their domestic administrative or judicial review systems addressed government procurement-related matters and, if so, under what conditions.

92. The point has also been made that domestic review procedures could be used to review either the consistency of the procurement practices or an individual procurement process with the domestic laws or regulations in force or the consistency of the procurement practices with the rules of a transparency agreement. Review of complaints or other dispute settlement mechanisms were often initiated after the contract had been awarded, making it impossible to overturn a procurement decision, cancel a contract and start the procurement process all over again. A mechanism established under the terms of a transparency agreement might be limited to reviewing the consistency of the laws and whether they should be amended or removed. While WTO dispute settlement was available to resolve differences between WTO Members relating to the implementation of WTO obligations, domestic review mechanisms were established with the purpose of addressing complaints by suppliers under the domestic jurisdiction of a particular country. Under a WTO enforcement system, complaints should only relate to the compliance of Members with their obligations under a

transparency agreement whereas domestic reviews mostly concerned specific award decisions. The WTO review procedures should not give rise to situations in which the procurement decisions of government authorities could be overturned.

93. The view has been expressed that the issue of review went beyond that of transparency and therefore the mandate of the Working Group. It has been said that domestic administrative or judicial review mechanisms were in place in national systems for the purpose of public accountability at the domestic level, a matter not within the ambit of a transparency agreement. Concerns have been expressed that review provisions in a transparency agreement might be used as a means by certain vocal private parties to create complications in the domestic political arena; and additional review procedures might increase the number of challenges and give rise to unnecessary costs. Since the purpose of domestic procedures in many countries was to review whether procurement had been made in accordance with domestic law and procedures, the scope of which went further than the obligations that might be agreed in a transparency agreement, it might not be feasible to limit the application of review procedures to specific transparency obligations in a WTO agreement on transparency. It has been suggested that transparency requirements in respect of review procedures, under the scope of a transparency agreement, should be limited to the provision of information to suppliers in regard to the domestic national review mechanisms and procedures.

94. The view has also been expressed that a review should be available to all potential suppliers including suppliers from other WTO Members. Another view has been that a review should be available to all suppliers who were involved in the procurement process. In this connection, the question has been asked whether foreign interested parties could file complaints against domestic governmental authorities under existing national administrative and judicial mechanisms or whether there would be need for special procedures under a transparency agreement to guarantee the receivability of complaints by foreign suppliers.

95. While some delegations have indicated that they had not yet formulated their views on the specifics of a review mechanism, attention has been drawn to the following features of review mechanisms that might be studied by the Working Group:

- encouraging suppliers, in the first instance, to take up the matter directly with the procuring entity for an early resolution. Agencies might have procedures in place to handle complaints directly;
- in some cases, the mediation or good offices of an independent authority might be sought;
- if the matter was not resolved mutually, provisions enabling suppliers to bring an action against the procuring entity before a judicial or administrative authority or other independent body; the point has been made that review provisions should allow flexibility to Member governments to choose whether to designate judicial or administrative bodies or both;
- review provisions should require that review bodies be impartial and independent of the procurement process itself. The point has also been made that Article X:3(b) of GATT 1994 provided some guidance in this regard;
- account should be taken of such principles as objective legality, ex officio action and material delegation in the review procedures;

- in addition to procedures based on formal complaints, initiation of review procedures by competent public authorities on an ex officio basis or national mechanisms for monitoring procurement proceedings;
- the review procedure should result in a published and reasoned conclusion that should be notified to interested suppliers in writing;
- review procedures should be published in a medium that is publicly available.

96. As regards the approach to be taken on the matter of domestic review in a transparency agreement, it has been said that an agreement should include a simple and flexible provision that could accommodate different Members' existing independent administrative or judicial tribunals and review procedures. Such a provision should ensure that there were transparent, timely and independent decisions on complaints or appeals relating to the transparency of procuring entities' actions and procedures. The scope of review of this provision under WTO procedures should be limited to actions relating to the implementation, through domestic laws and procedures, of the requirements of the transparency agreement.

97. The view has been expressed that procurement decisions were different from many other administrative decisions, in that review or dispute settlement mechanisms often had to function after the contract had been awarded. A review provision should ensure that claims from interested suppliers could be heard and decided upon in a manner that did not prejudice their interests in the procurements in question. Such guarantees could be available through rapid decisions on challenges or through suspension of the procurement process while claims were pending. In this regard, the point has been made that suspension of a procurement process upon a challenge by a supplier could hold up the whole procurement process until a decision had been reached concerning the challenge. Since this could be detrimental to the public interest and create difficulties in cases of urgent procurements, most national review procedures and the provisions of the GPA provided for exceptions enabling, in circumstances so warranting, public interest considerations to override the interest in suspending a procurement process. In cases in which the procurement process might be suspended, there could therefore be provisions in a transparency agreement for continuing nonetheless with the award of procurement in the public interest.

98. In connection with remedies that might be provided under review provisions, the following views have been expressed:

- most national review systems already provided remedies for suppliers whose rights had been denied under the applicable laws and regulations;
- review provisions should provide for adequate remedies that would protect the interests of suppliers and would deter procurement entities from engaging in future actions that would be inconsistent with the provisions of an eventual agreement on transparency;
- remedies should include the possibility of corrections including altering the inconsistent procurement process, re-tendering for the procurement or awarding damages to cover legitimate claims;
- an independent review should review complaints about tendering procedures in order to determine possible damages or administrative responsibility;
- account should be taken of the fact that review systems might provide for remedies which could include compensation only after administrative or judicial procedures

had determined that an injury or an economic loss had flowed from the inconsistency of a procurement process with the applicable legislation.

99. Another view expressed on remedies has been that a transparency agreement should not specify them for the following reasons:

- provisions requiring adequate remedies would fall outside the scope of the work on transparency. It would be sufficient to have provisions requiring the establishment of a review procedure without specifying the remedies that should be available;
- obligations on remedies might have counter-productive repercussions on the procurement practices of governmental authorities; to the extent that procuring authorities would be liable to remedies, they might have a tendency to restrict access to foreign suppliers in order to minimize any such risks.

100. It has also been suggested that a transparency agreement should require procurement entities to maintain written records of the procurement process in order to ensure that review bodies had an adequate factual basis for review (see Section IX A). As another possible means of review mechanism, provision of *ex post* information to unsuccessful suppliers and debriefing by procuring authorities have also been mentioned (see also Section VII).

101. As regards the content of a domestic review provision in a transparency agreement, the following text has been suggested: "Members shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and correction of procurement actions that may be inconsistent with the requirements of this Agreement, as implemented in Members' laws. Such tribunals or procedures shall be independent of the agencies responsible for procurements covered under this Agreement and shall provide for rapid decisions that, as appropriate, can affect the modification or reversal of any inconsistent actions." The following comments have been made concerning this text:

- other types of remedial actions such as imposition of fines or banning suppliers from participating in future procurements for a given period of time, could be envisaged;
- the word "correction" should be deleted in the first sentence. Existing administrative procedures were used for dealing with requests for the revision of formal or material errors;
- the phrase "as implemented in Members' laws" at the end of the first sentence required clarification;
- the last phrase in the second sentence after the words "as appropriate" should be replaced by the phrase "can provide appropriate relief in accordance with national law or practice";
- the text suggested above was more complicated than the approach taken to this issue in other WTO agreements.

102. The question has been asked how a review, modification or reversal of inconsistent procurement actions could be envisaged in the context of an agreement on transparency in government procurement. In this connection, it has been said that, while sometimes impractical or inappropriate, for example when contracts had already been awarded or the public interest dictated otherwise, corrective actions were often feasible. For instance, upon a complaint lodged by a supplier, a procuring entity that had not published a notice of procurement opportunity at the outset of

a procurement process could be asked to do so, or a procuring entity that had provided certain tender information to one supplier could be asked to provide the same information to all interested suppliers.

IX. OTHER MATTERS RELATED TO TRANSPARENCY

A. MAINTENANCE OF RECORD OF PROCEEDINGS

103. The view has been expressed that openness and transparency, through appropriate public access to information for external scrutiny, are essential elements of accountability. Government procurement records and information and mechanisms for collecting, assessing and scrutinizing those records and that information, should enable effective external scrutiny. Information recorded on authorizations, procurement systems, actions and decisions should be sufficient to justify decisions taken in the procurement process and to demonstrate that procurement activity was consistent with government requirements.

104. The view has also been expressed that procuring authorities should maintain a proper record of decisions and actions taken during the procurement process and the reasons for them. The maintenance of a record of procurement proceedings and the availability of non-confidential information contained in it to interested parties was one of the principal mechanisms for ensuring adherence to agreed rules and was of particular importance in the functioning of an administrative or judicial review process. Such records provided the basis for an audit trail and supported any evaluation of the procurement⁴ and thus introduced an element of accountability into the process. It has also been said that maintenance of records for a pre-established minimum length of time was also essential in order to enable bribery to be proved in legal proceedings. With regard to the length of time that records of proceedings should be maintained, it has been said that the requirements in this respect could be linked to the time provided to domestic suppliers in domestic legislation to challenge a procurement decision and to seek a review of a procurement process. It might not be necessary to keep a record of proceedings beyond that period. Another view in this connection has been that a transparency agreement should not have provisions stating explicitly in what form and for how long records should be maintained by entities. It has also been suggested that information should be provided on the national practices of those Members in which procuring entities were required to maintain records of procurement proceedings.

105. The question has been asked whether record maintenance should be treated as a separate element providing an additional guarantee of transparency or whether this item would be sufficiently addressed under other elements.

106. By way of general comments under this Section, a view has been expressed that prescription of stringent rules on transparency and review could be counter-productive to market access. Having no obligations on market access in the area of government procurement, national governments would have the tendency to close their procurement markets to foreign suppliers in order not to run the risk of breaching these rules on transparency.

⁴ The following details of the matters that should be documented have been suggested: approval to make the procurement; the selection criteria upon which evaluation and selection decisions will be based; discussions with potential bidders before bids close; details of clarification of bids during evaluations; reasons for variations to a tender; steps to provide all bidders with an equal opportunity to revise their bids; agreements reached during negotiations; authorization and signing of a contract; details of debriefings; reasons for varying a contract; and records of contractor performance.

B. INFORMATION TECHNOLOGY

107. It has been suggested that the work of the Group in developing a transparency agreement should take full account of innovative government procurement practices. Information technology was already being rapidly adopted by procurement communities and offered tremendous opportunities to level the playing field by increasing access to information at low cost to all suppliers. To the greatest extent possible, a transparency agreement should encourage the use of information technology tools to disseminate information on procurement opportunities and contracts awarded as an alternative to more traditional methods of communication (see also Section IV above). The view has also been expressed that, for the time being, procuring entities should be able to continue to maintain paper-based tendering procedures.

108. On the other hand, it has been suggested that, because of the lack of uniformity among countries' stages of development in this area, any requirements for the use of information technology in government procurement should be optional and that the use of information technology tools should not undermine the basic transparency principle of guaranteeing access to information for all, including small and medium-sized suppliers and suppliers from countries less advanced in the use of information technology. A balance should be found whereby a transparency agreement would not constitute an unnecessary barrier to progress in the area of information technology and would accommodate the increasing use of information technology in government procurement in Members, while ensuring that the use of information technology would not result in discrimination against countries which did not have a competitive edge in this area. Electronic tendering using Internet-based systems facilitated access of suppliers worldwide with a minimum requirement of equipment and technological know-how and was the most efficient way of ensuring non-discriminatory access to tender information.

109. It has been said that one of the issues that had to be dealt with in electronic procurement concerned procedures for opening tenders when they were submitted electronically. It has been noted that there was scope for international cooperation in the area of information technology, for example in developing electronic databases or maintaining lists of qualified suppliers.⁵ The point has also been made that procuring entities should be allowed to charge for electronic access to information and tender documentation and other tendering procedures, in particular if the information was supplied by a private service provider. It has also been said that the Group would need to consider at a later stage whether it would be appropriate to cover such specific matters as information technology in a transparency agreement. In this connection, it has been noted that information technology was an area where there was scope for technical cooperation (see Section XII).

C. LANGUAGE

110. It has been said that information on national practices showed that documents and other information relating to tendering proceedings were generally provided in the official language(s) of the country of the procuring entity. As a rule, documents and other information relating to procurement procedures and individual procurements should be allowed to be provided to potential suppliers and service providers in an official language of the country of the procuring entity. In general, potential suppliers wishing to do business in another country would have the necessary language facilities available to them; there should not be a specific requirement to provide such information in a WTO language. Nevertheless, procuring entities could be encouraged to provide information, where possible, in a WTO language where a particular procurement opportunity was likely to attract international interest (see also Section IV).

⁵ It has been mentioned that the APEC Group of Experts in Government Procurement has established a Home Page with linkages to existing databases on government procurement in member economies (www.apecsec.org.sg/govtproc/gphome.html).

D. FIGHT AGAINST BRIBERY AND CORRUPTION

111. It has been said that all governments were committed to combatting corruption and were engaged in efforts towards diminishing and, ultimately, eliminating bribery. Bribery in government procurement processes was currently a source of serious concern to the international community. It involved, not only political considerations such as legal insecurity, good governance and ethical problems, but also considerations of an economic nature such as efficiency of resource management, the negative impact of bribery on investment and the ensuing distortions of national competitive conditions.

112. The view has been held that there was an important relationship between transparency in government procurement and reducing the incidence of bribery and corruption in government procurement practices. Because governments had recognized the importance of this matter, the Working Group had been given the mandate by Members to develop elements relating to transparency in this area. Attention has been drawn to international instruments aimed at fighting corruption and bribery established by a number of international fora, including the OAS and the OECD. The point has been made that, while such initiatives had been useful in attacking the problem from various angles, so far there had not been any studies, negotiations or agreements on the relationship between the fight against bribery and transparency in government procurement in a specific and systematic manner. The view has also been expressed that transparency, by itself, was not enough and therefore needed to be supplemented by specific appropriate action and measures related, among others, to bribery of public officials, transnational bribery, tax deductibility of bribes paid to foreign officials, retention of records of procurement proceedings, establishment of bid challenge systems, lifting of banking secrecy, mutual legal assistance and technical and financial cooperation.

113. Views have been expressed that an agreement on transparency in government procurement would be an important and effective contribution to reducing the incidence of bribery and corruption in procurement practices as well as to the broader efforts to fight bribery. There was a real need to address bribery in all its forms provided that any possible measures genuinely fell within the scope of the WTO activities. It has also been said that the outcome of the work in other international fora as well as in the Working Group could bring about systemic changes that would reduce opportunities for corruption. The task of the Working Group was to improve transparency by creating a rules-based environment and the procedures that were necessary for that purpose. As a secondary goal, the fight against bribery and corruption could be achieved through increased transparency in government procurement procedures. The work in several WTO bodies that was aimed at achieving systemic improvements and a rules-based environment in trade matters had already made a meaningful contribution to advancing the fight against corruption. It has been suggested that, with the aim of creating the necessary safeguards against corruption in this area, the Group should focus on those aspects which most easily lent themselves to abuse in the area of government procurement. For instance, consideration should be given to requirements in regard to the retention of government procurement records for a pre-established minimum period and establishment of domestic administrative or judicial actions available to any national or foreign person in order to challenge government procurement procedures flawed by bribery. Such measures were common elements of international instruments on government procurement as well as of national legislation (see Sections IX A and VIII, respectively, above). A future agreement on transparency in government procurement should include such measures.

114. Views have been expressed questioning the appropriateness of expanding the scope of the work of the Working Group to the matters of bribery and corruption. Although its effects were often very severe in government procurement, corruption was far from being strictly confined to this area of economic activity. While transparency in government procurement would contribute to the fight against corruption and bribery, the issue itself was not within the mandate of the Group and was also outside the ambit of the WTO. The objective of the fight against corruption and bribery should not be

stated explicitly in an agreement on transparency in government procurement. Members should deal with such issues through their own national legislation concerning this area.

115. Other views in this connection have been that the work of the Working Group should not be overloaded with too many issues that, while important, might be dealt with more appropriately in other fora. Establishing a link between the issues of trade and corruption in the WTO might give Members the possibility of justifying trade measures or sanctions on grounds of alleged corrupt practices in other Member countries.

X. INFORMATION TO BE PROVIDED TO OTHER GOVERNMENTS (NOTIFICATION)

116. The view has been expressed that it was somewhat premature to discuss in detail this aspect, which might be better taken up once a clearer notion of the nature of a transparency agreement had been generated. Nonetheless, a number of issues have been raised relating to the possible notification arrangements under a transparency agreement and other mechanisms by which information can be exchanged between Member governments.

117. While some views expressed have put emphasis on the importance of adequate information on relevant national legislation and any amendments thereof being notified to other Members of a transparency agreement, other views have drawn attention to difficulties that would have to be addressed in this connection. It has been suggested that the notification of all national laws, regulations and administrative guidelines, including those of sub-central and other levels of government covered, might prove to be unduly burdensome. This would particularly be the case if they all had to be notified in a WTO language. An additional concern that has been expressed was that it was doubtful that Members would be ready to share confidential information. A number of possible ways of overcoming these difficulties have been put forward:

- Members might be expected to notify their basic law on government procurement, but not each and every law and regulation;
- an approach of employing a checklist of points, or questionnaire, to elicit basic information on how the national laws and regulations of each Member responded to the requirements of a transparency agreement might be employed;
- each Member might be required to respond to requests from any other Member for specific information on its laws, regulations, procedures and practices regarding transparency in government procurement. Contact points might be established by each Member for this purpose. In this connection, reference has been made to the discussion on this point reflected in item III of this note;
- greater use of electronic databases might be made for providing information on procurement procedures at sub-central levels;
- the government of an unsuccessful tenderer might be entitled to seek information on the contract award in question from the government whose entity conducted the procurement. This could be a vehicle for forestalling disputes. The view has also been expressed that the information sought should relate to how the commitments on transparency had been complied with in the contract award process. Another view was that the provision of such post-contract award information might not be necessary in an agreement on transparency, since it would not extend to matters of market access;

- enhanced use could be made of existing WTO transparency mechanisms, including the Trade Policy Review Mechanism;
- the question has been raised as to whether the existing provisions of Article X of GATT 1994 and Article III of the GATS were sufficient for the purposes of a transparency agreement on government procurement or whether additional rules should be provided for. Should there be, for example, a requirement to specify where the relevant laws were published? In this regard, the view has been expressed that the provisions of the GATT 1994 and GATS that had been referred to would not be adequate for the purposes of notification in an eventual transparency agreement.

118. It has also been suggested that Members might provide information identifying government departments, agencies and enterprises subject to the rules in a transparency agreement. The point has been made that this could be done through notification of a positive list of such entities or through notification of a negative list of those entities not subject to the agreement. It has been suggested that the latter approach might have the advantage of avoiding the problem of frequent changes in lists resulting from changes of a formal nature, such as the renaming or restructuring of departments. The issue of the most appropriate technique for the presentation of the coverage of entities would depend on the outcome of discussions on the scope of the agreement, in particular which type of entities were covered. It has also been said that it was premature to consider the form in which the coverage of entities should be presented.

119. On statistical reporting, the following points have been made:

- such provisions should not be included in a transparency agreement;
- there should not be an obligation, but governments might be invited to provide what information they have available, for example on the size of their procurement market;
- the issue should be put aside for the time being.

120. The view has been expressed that any requirements relating to the provision to other Members of information on and explanation of national procurement rules and procedures should apply only to the extent that such rules and procedures were within the scope of a transparency agreement. Requirements on the provision of information and explanations should be limited to those relating to transparency matters, and not otherwise relate to market access questions.

XI. WTO DISPUTE SETTLEMENT PROCEDURES

121. With regard to dispute settlement between governments, the general view has been that it would be premature to consider the applicability of provisions on dispute settlement before the elements of a transparency agreement had been more clearly identified. However, the view has also been expressed that any commitments on transparency should be subject to the DSU in the same way as the existing clauses on transparency in any other WTO agreement. Another view has been that it was questionable that the dispute settlement system could apply, with significant results, to obligations on transparency in the absence of commitments with respect to market access. For example, it has been asked whether any decision resulting from a dispute regarding the provision of transparency in a government procurement process could apply retroactively. A view has also been expressed in this connection that the Group's mandate was to discuss the elements of an appropriate agreement on transparency which could be in the form of guidelines or a code; only an agreement with binding obligations should be subject to WTO dispute settlement procedures. It would be sufficient to invoke Article X of GATT 1994 in dispute cases involving a violation of obligations on

transparency. The creation of a linkage between a transparency agreement and the WTO dispute settlement procedures was not warranted.

122. Regarding the relationship between domestic review procedures and the WTO dispute settlement mechanism, it was said that a distinction should be made between domestic review mechanisms which involved responding to complaints by suppliers against procuring authorities under the law of a country and dispute settlement procedures between governments under the law and procedures of the WTO. The legal criteria for domestic reviews and WTO dispute settlement were different. In the case of domestic procedures, a review related to the consistency of a procurement process with the domestic laws and regulations, whereas in the case of WTO dispute settlement the grounds for a dispute were an alleged breach of the commitments under a WTO agreement. The view has been expressed that the possibility for foreign suppliers to have recourse to effective and independent domestic review procedures, as a first avenue for resolving complaints, would minimize the likelihood that such complaints might eventually rise to the level of a government-to-government dispute.

123. In regard to the way in which national review procedures and the WTO dispute settlement procedures might interact, it has been suggested that the Group might wish to examine the approach to this matter adopted in the Agreement on Implementation of Article VI of GATT 1994. Another view expressed was that there should be no particular relationship between a domestic review process and government-to-government dispute settlement. WTO dispute settlement procedures should apply to issues relating to the consistency of laws of general application with the rules of a transparency agreement and should not be invoked with regard to decisions resulting from national review procedures concerning a particular procurement. The view has also been expressed that national practices would not allow the WTO dispute settlement process to override a specific procurement decision taken by a national judicial body. In this connection, a further view has been that a transparency agreement could have provisions setting minimum standards regarding the legal framework for domestic review procedures. The objective of WTO dispute settlement procedures would be to enforce the effective implementation of such provisions. WTO dispute settlement procedures should only apply in respect of obligations of governments in their capacity as regulators. Any procurement decision taken by them, including contract award decisions, in their capacity as purchasing entities should not be subject to WTO dispute settlement procedures. Any complaint in this respect should be addressed under domestic review procedures. The question has been asked whether there had ever been a case in the history of GATT/WTO where dispute settlement procedures had been invoked based on allegations of breach of the rules on transparency. A comment has been made stating that challenges of individual award decisions under the provisions of a transparency agreement were unlikely. However, Members should be able to invoke dispute settlement procedures with the objective of achieving improved transparency, if a purchasing entity had breached the rules of a transparency agreement, for instance if it had persisted in not publishing notices of procurement opportunities. It has also been said that provisions should reflect the principle of exhaustion of domestic judicial review mechanisms before recourse to WTO dispute settlement procedures. Moreover, the point has been made that recourse to WTO dispute settlement procedures, being a prerogative of governments, could not be initiated by suppliers who might challenge procurement procedures of government entities.

XII. TECHNICAL COOPERATION AND SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

124. The point has been made that technical cooperation was important for ensuring the successful implementation of a future transparency agreement. It could also play an important role in helping Members to develop domestic procurement regimes and in taking practical steps to enhance transparency of procurement policies and practices. The view has been expressed that, in discussing a framework for technical cooperation, inspiration might be drawn from the language of Article 67 of

the Agreement on TRIPS. This required developed country Members to make available technical and financial cooperation, on mutually agreed terms, in response to requests from developing country Members. It also listed specific areas where such cooperation should be provided, including assistance in the preparation of laws and regulations and support regarding the establishment of domestic offices and agencies, including the training of personnel. Technical cooperation plans could be drawn up identifying the needs of individual developing and least-developed countries in meeting their obligations under a transparency agreement and targeting technical cooperation activities to specific purposes, for instance for the establishment of contact points. The view has been expressed that the provisions on technical cooperation should match the specific requirements in a transparency agreement; compliance with the rules of a transparency agreement might require changes in national legislation and procedures and the building up of new institutions in individual countries. The following types of areas in which technical cooperation would be beneficial have been suggested:

regarding development of national legislation and procedures:

- legal advice and assistance in drawing up national legislation;
- administrative and policy option analysis and guidance;
- drawing up procedures on publication;
- establishment and implementation of bid challenge systems;
- taking practical steps to make procurement more user-friendly by developing standard forms for tender notices and fill-in-the-blank bid forms, as well as developing a common procurement vocabulary;

regarding training:

- training for those who have to implement, use or enforce new legislation, procedures and/or practices, training the judiciary, and training local trainers who would continue training programmes in, for example, business schools or colleges of public administration in the beneficiary country;
- exchange of officers;
- training of purchasers and suppliers;

regarding institution building:

- administrative cooperation to enhance institution building and the exchange of information;

regarding access to information by suppliers:

- workshops, seminars and the production of user guides, including the development of Internet websites, search engines and databases, to help provide information about opportunities to do business with governments at home and abroad, and to facilitate access to that information; in particular, such assistance could benefit small and medium-sized enterprises, by increasing their confidence and effectiveness in successfully entering procurement markets at home and abroad;

regarding use of information technology:

- the development of information technology tools which could be used to disseminate information about procurement opportunities and practices, and/or to establish full electronic tendering, as well as to facilitate the collection of relevant economic data and statistics;
- the provision of office, information technology and/or other equipment necessary for the implementation and enforcement of legislation, procedures and/or practices.

125. The view has been expressed that the practices under the TRIPS Agreement might also be useful in assessing and monitoring assistance on an ongoing basis, while avoiding the creation of additional bureaucratic structures and red tape. The point has also been made that the issue of technical cooperation should be discussed not only in terms of ensuring compliance of developing countries with the requirements of a future agreement, but also in terms of the practical steps that could be taken to enhance transparency in developed as well as developing countries.

126. It has also been suggested that requirements similar to the provisions of Article 66.2 of the Agreement on TRIPS might be included in an agreement on transparency. Developed country Members might be required to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to developing country suppliers in order to enable them to participate in bidding for public contracts in developed countries. In comparison with Article 67 of that Agreement, under which technical cooperation depended on the mutually agreed terms and conditions between developed and developing country Members, technical cooperation under Article 66.2 was provided unilaterally and at the initiative of developed countries. Technical cooperation could be useful in achieving the objective of economic efficiency in government procurement. For instance, providing information to developing countries as to what governments usually procure and information as to worldwide sources would be relevant in this regard.

127. The point has been made that the technical cooperation activities of international intergovernmental organizations and fora, including international financial institutions and regional development banks, in the field of government procurement could contribute to transparency and the implementation of a transparency agreement. It has been suggested that consideration should be given to developing a framework under a transparency agreement for rationalizing the various activities in this area at the bilateral, regional and multilateral levels. In this respect, it has been suggested that the Secretariat would prepare a background paper containing information on technical cooperation programmes of international and regional intergovernmental organizations related to government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical cooperation in this area.⁶

128. It has been suggested that potential recipient and donor countries should be encouraged to share their views on particular needs and the available forms of technical cooperation in the area of government procurement. It has also been suggested that special attention should be paid to the problems of institution building, in particular in least developed countries. The Chair invited Members to provide information in writing to the Working Group on their needs and on the technical cooperation already available.

⁶ The information communicated from UNCITRAL, OECD, the World Bank, the Asian Development Bank, the African Development Bank, IMF, the APEC Government Procurement Experts Group, the European Bank for Reconstruction and Development, ITC and UNDP on their respective technical cooperation activities in the area of government procurement has been circulated in documents WT/WGTGP/W/20 and Addenda 1-8.

129. With regard to special and differential treatment for developing countries, the view has been expressed that this issue might be addressed once the elements of an eventual agreement were more clearly defined. In this connection, it has been said that the substantive provisions of a transparency agreement should reflect in particular the special circumstances in developing country Members. The formulation of the provisions of a transparency agreement should not be too ambitious in order to enable all Members to adhere to an eventual agreement without the need for lengthy transitional periods.

130. The suggestion has also been made that transitional periods in respect of developing countries might be provided. On the other hand, it has been said that provisions on transitional periods would not be sufficient for special and differential treatment of developing countries. In the light of the divergence among individual Members' practices in this area, any meaningful special and differential provisions should require developing countries to comply with the provisions in a transparency agreement, only to the extent that they were capable of undertaking the relevant obligations. Certain objective criteria should be developed for this purpose.

**Working Group on Transparency
in Government Procurement**

REPORT (1998) TO THE GENERAL COUNCIL

1. The Working Group on Transparency in Government Procurement was established by a decision at the WTO Ministerial Conference held in December 1996 "to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement".

2. The period covered in this report is November 1997-October 1998. The work of the Working Group up to November 1997 is described in the Working Group's Report (1997) to the General Council (WT/WGTGP/W1). The Working Group held formal meetings on 19-20 February 1998, 22 June 1998 and 8-9 October 1998. Reports on these meetings have been circulated in documents WT/WGTGP/M/4-6.

3. At its meeting of 19-20 February 1998, the Working Group had a detailed discussion of transparency-related provisions in existing international instruments on government procurement and national procedures and practices on the basis of an informal note by the Chair listing the issues that had been raised, and points made on these issues at the Group's November 1997 meeting ("List of the Issues Raised and Points Made" - Job No. 73). The Working Group took up in turn each of the headings to this note, which correspond to those used in the earlier Secretariat note "Synthesis of the Information Available on Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures and National Practices" (WT/WGTGP/W/6), with the addition of headings on technical cooperation and special and differential treatment. The list of headings of the Chairman's note, the latest version of which is annexed, has formed the structure of the Working Group's substantive work. Written submissions were presented by Hong Kong, China; the Czech Republic; Uruguay; and Australia containing factual information on their national procedures and practices (WT/WGTGP/W/10, 12, 13 and 14 respectively). Other written contributions were submitted by Australia relating to the principles of government procurement (Job No. 136) and by the United States on review mechanisms and transparency in procurement methods (WT/WGTGP/15 and 16). The Group was also presented with a communication from the Chair of the APEC Government Procurement Expert Group (WT/WGTGP/W/11).

4. At its meeting of 22 June 1998, the Working Group reverted to its discussion of transparency-related provisions in existing international instruments on government procurement and national procedures and practices on the basis of the informal note "List of the Issues Raised and Points Made" (Job No. 1860) which had been revised in light of the discussion at the February 1998 meeting. Written submissions were presented by Morocco and Slovenia, containing factual information on their national procedures and practices (WT/WGTGP/W/19 and Job No. 3387 respectively). Other written contributions were submitted by the European Community and Norway, addressing the issue of how one might ensure that transparency in procurement policies and practices is achieved (WT/WGTGP/W/17 and Job No. 3245), by Switzerland on minimum requirements for relevant information to be published in tender notices (Job No. 3436), by Venezuela on particular characteristics of government procurement, privatization and concession-granting systems (Job No. 3295), and by the European Community on technical assistance (WT/WGTGP/W/18).

5. At its meeting on 8-9 October 1998, the Working Group reverted to the issues before it on the basis of the Chairman's informal note, "List of the Issues Raised and Points Made" (Job No. 4281). It also had before it an informal factual note by the Secretariat, prepared in response to a request at the Group's June meeting, reflecting the written and oral proposals made under items III-VII of the topics before the Working Group (Job No. 4695). A written submission was presented by Turkey, containing factual information on its national procedures and practices (WT/WGTGP/W/21). In response to a request by the Group to the Secretariat to provide information on the availability of technical cooperation programmes in the area of government procurement, communications received from UNCITRAL, OECD, the Asian Development Bank, the African Development Bank, IMF, APEC Government Procurement Experts Group, the European Bank for Reconstruction and Development, ITC and UNDP were circulated in documents WT/WGTGP/W/20 and Addenda 1 to 7.

6. At its next meeting, the Working Group will revert to the issues contained in the annexed revised version of the Chairman's informal note, "List of Issues Raised and Points Made", using this note as the basis for its discussions. As an auxiliary informal paper for the use of Members wanting to draw on it, delegates will also have available to them a revision of the Secretariat informal note reflecting the proposals made on items III-VII in a succinct form, which will identify the source of the different proposals and summarize the comments made at the October meeting on those proposals.

7. The IMF, the World Bank, the United Nations represented by the United Nations Commission for International Trade Law (UNCITRAL) and UNCTAD have observer status in the Working Group. During the period covered in this report, the Working Group considered requests for observer status from OECD, SELA and OIC (the Organization for Islamic Conference) and agreed to revert to these requests in light of the consultations that are being held on this matter by the Chairman of the General Council.

8. There will be three meetings of the Working Group in 1999, the first two of which will be held on 24-25 February and 28-29 June 1999.

ANNEX

LIST OF THE ISSUES RAISED AND POINTS MADE

Informal Note by the Chair

Third Revision

1. This note attempts to set out the issues that have been raised, together with the points made on these issues, under each of the items that were discussed by the Working Group at its meetings of 3-4 November 1997, 19-20 February 1998, 22 June 1998 and 8-9 October 1998. This non-paper is without prejudice to the position of any delegation and, in particular, to whether the Working Group would decide to include or exclude any particular aspect addressed in it from the elements that it will develop for inclusion in an appropriate agreement.

I. DEFINITION AND SCOPE OF GOVERNMENT PROCUREMENT

2. It has been recalled that the mandate of the Group is confined to issues of transparency in government procurement practices. The view has been expressed that, as regards national practices limiting market access, their transparency but not their substance should be covered; rules on transparency in government procurement should only apply on a non-discriminatory basis and obligations on transparency should only be applicable to the extent that market access for foreign supplies and suppliers was permitted. For example, procurement from local markets, to be paid in local currency, might be distinguished from procurement from international markets, for which foreign exchange was available. The question has been asked whether transparency of procurement processes would be of any interest to foreign suppliers when access was reserved to domestic suppliers.

3. Another view expressed in this connection has been that transparency disciplines should apply to government procurement practices as broadly as possible. One of the purposes of developing rules on transparency was to create national procurement systems that were not only transparent but also perceived to be transparent; if the scope of requirements on transparency would be limited to open procurement markets, procurement systems would not be seen to be transparent. It was in the interest of all concerned, domestic as well as foreign suppliers and entities, that information on what procurement was open to international competition and what was not should be readily available to all. The view has also been expressed that the distinction that had been suggested would give rise to an imbalance in rights and obligations since transparency obligations would apply more widely in those Members whose procurement markets were more open to international competition; the distinction would also narrow the scope of a transparency agreement. Moreover, the point has also been made that, given the variety of ways by which market access was limited in national practices, for example in the form of absolute exclusions of foreign suppliers and supplies, price preferences or the awarding of contracts to foreign suppliers only in the absence of competitive bidding from domestic suppliers, it would be technically difficult to identify those government practices that should be exempted from transparency obligations. It has also been said that, if the underlying reason for the suggestion to limit the application of transparency disciplines to open procurement markets was concerns about excessive burdens, these concerns should be addressed in their own right in the course of the Group's work.

4. As regards the issue of the definition and scope of government procurement, a distinction has been made between the definition and scope that should be used by the Working Group for working purposes and those which might be used to govern the scope of application of the elements to be developed for inclusion in an appropriate agreement. In regard to the former aspect, a view has been expressed that a broad approach, without preconceived limitations, should be employed, sufficiently wide to accommodate the differing meanings and levels of detail given to the term "government procurement" in national legislation and practices in individual Members and compatible with innovative procurement procedures and new types of government structures. This would enable the Group to study the full range of issues relating to an eventual agreement on transparency in government procurement and, as regards the latter aspect referred to above, to develop a more exact definition for the purposes of the scope of an eventual agreement on transparency. Another view expressed has been that there would be an interrelationship between the scope of a transparency agreement and the level of detail that its elements would contain. A transparency agreement, incorporating simple and straightforward core principles, could have a very broad coverage. It has also been said that the work of the Group on this issue would need to reflect the realities of procurement practices in individual countries in order to guarantee an effective implementation of an eventual agreement. In this connection, a range of issues that would need to be taken into account has been identified. These are summarized below.

5. It has been suggested that a useful way of approaching these issues was to draw a distinction between the following questions:

- Who is doing the procuring?
- What is being procured?
- What types of transactions are covered?

A. WHO IS DOING THE PROCURING?

6. In regard to the first of these questions, who is doing the procuring, the following views have been put forward:

- entities at all levels of government, including at sub-central levels of government and enterprises owned or influenced by government, might be covered by a transparency agreement;
- the rules of a transparency agreement should extend to procurement by entities at the central and sub-central levels of government;
- the degree of coverage of sub-federal entities should take account of differences in government structures;
- the rules of a transparency agreement should only extend to procurement by entities at the central or federal government level. It would be difficult to frame international rules that would ensure transparency at sub-central levels in countries with complex government structures. In countries with federative administrative systems, the authority of federal governments to undertake obligations on transparency in respect of entities at the state or local levels of government equivalent to those of the central government level might be limited by the constitution. Another view expressed has been that the limitation of the obligations of a transparency agreement only to central government level would give rise to an issue of equity among countries with different government structures. A further point made has been that a number of provisions in

various WTO agreements, for instance GATS Article I:3(a)(i), addressed the issue of obligations undertaken with respect to sub-central levels of government;

- the coverage of state enterprises should depend on how they were operated. One view that has been expressed is that public enterprises required to run on the basis of the same economic considerations as private enterprises should not be subject to requirements on transparency, at least where they did not fall within the ambit of GATT Article XVII. Another view has been that a distinction should be drawn between state enterprises that operated in a competitive environment and others, even if run on the basis of commercial considerations;
- in the light of experience, consideration might be given to extending the coverage further.

7. It has also been suggested that, in defining the scope of a transparency agreement, the Group would need to define criteria for determining when an entity should be considered as one engaged in government procurement for the purposes of a transparency agreement. For example, it has been suggested that government ownership of less than 50 per cent should mean that it was excluded. It has also been suggested that account should also be taken of national legislation which conferred on entities the legal right to conduct government procurement activities or gave governments the power to exercise control over the procurement decisions of entities and enterprises.

8. Another suggestion has been that the substance of a relevant provision should determine the scope of the application of the specific requirements in a transparency agreement. For example, requirements on publication of laws and procedures might be applied across the board to entities at all levels of government.

B. WHAT IS BEING PROCURED?

9. In regard to the question of what is being procured, the suggestion has been made that the scope of a transparency agreement might extend to all goods and services and any combination of goods and services.

10. With respect to the use of threshold values in determining the coverage of a transparency agreement, the view has been expressed that, in principle, the coverage of a transparency agreement should not be limited to contracts above a certain threshold level, but that certain provisions might be more flexibly applied for smaller contracts. Also, it would not be appropriate to exclude low-value procurement from the requirements relating to the provision of information on national legislation or to procedures for the qualification of suppliers on the basis of threshold values. On the other hand, requirements on the publication of tender notices, particularly in a foreign language, might be relatively less strict for low-value procurement. Suggestions have also been made that, transparency obligations should only apply to procurement above certain threshold levels in order to avoid burdensome procedures and costs related to publication of all procurement opportunities and that the work of the Group should take account of national practices in this respect. Minimum threshold values could vary according to the level of government and be used for defining the scope of application of the rules to entities at sub-central levels of government. The suggestion has also been made that thresholds might differ according to the level of development of Members.

C. WHAT TYPES OF TRANSACTIONS ARE COVERED?

11. As regards the issues relating to what types of transactions should be covered, it has been suggested that acquisition by any contractual means, including, for example, through lease or rental, might be covered. Questions have been raised as to whether, and, if so, to what extent, concessions and build-operate-transfer (BOT) contracts should be covered. The point has also been made that privatization should not be covered.

12. Concerning concessions - in the sense of the grant of certain exclusive rights by a government to a private party for a set period of time in order to produce a product or offer a service to the public on its behalf (for example for building and operating motorways or airports) - one view expressed has been that, even if not considered as government procurement transactions *per se*, concessions should be addressed under the scope of a transparency agreement to the extent that principles of transparency should apply to the procedures used for the award of concessions.

13. The question has been asked whether concessions were more properly treated as a matter of investment or the supply of services on behalf of the government and, therefore, should be covered under the scope of other relevant agreements or initiatives. Those concessions that fell within the definition of GATS mode three supply of services might be subject to the disciplines of GATS Article III. It has been said that GATS Article III would not apply to concessions that were not within the scope of GATS Article I.

14. The view has been expressed that concessions should not be included in the coverage of a transparency agreement. Rules which governed concessions and government procurement were separate sets of legislation in national practice. National legislation on government procurement did not apply to procurement by private companies that operated concessions granted by a government. In this regard, the following comparisons between government procurement on the one hand and concession-granting and privatization on the other have been made:

- with regard to definitions, government procurement was a procedure intended to regulate the selection of contractors for the supply of goods, the execution of works and the provision of services. The granting of a concession took the form of a unilateral act of the State giving a private party the right to manage public works or offer a public service that is within the exclusive competence of a government, for example for mining or exploitation of natural gas. Privatization involved a sale of a state-owned company or assets. A question has been asked seeking further clarification of this distinction;
- with regard to form, government procurement was made effective through an administrative act of the procuring entity. Concessions and privatization were made effective through a decree of the executive power at the level of the head of government or State, and, in some cases, subject to authorization by the legislature;
- with regard to subject-matter, government procurement covered goods, public works and services; concessions covered public works or services; and privatization covered state corporations, property and assets;
- with regard to the methods, open, restrictive or limited tendering methods were used in the area of government procurement. Open, restrictive or limited tendering or auctioning were used in the granting of concessions. Public sale or auctioning and liquidation of debt in return for a share of the company were the methods used in privatization;

- as regards the application of the GPA, procurement by concessionaires listed in Appendix I was covered but the granting of a concession was not. The act of privatization was not covered but enterprises in which government control or influence had been withdrawn through privatization could be excluded from the coverage of the GPA;
- moreover, it has been said that government procurement transactions were reflected in government expenditure. Governments did not necessarily enter into contracts with private parties in the process of granting concessions.

15. It has been suggested that Members should provide information on national legislation and practice as regards concessions in their countries. A view has been expressed that the issue of concessions raised complex questions to which the answers were not clear as yet. It has been said that some concessions could be outside the scope of a government procurement. Nevertheless, the Group should maintain a broad approach to their coverage at this stage, pending further study of the issue. In this connection, reference has been made to the information-gathering activities in the GATS Rules Group.

D. OTHER MATTERS RELATING TO DEFINITION AND SCOPE

16. The issue of the exceptions that might be allowed to the basic coverage of a transparency agreement has been raised. One suggestion has been that there may be reason to allow the exclusion of those areas that track general exceptions in GATT 1994, such as national security exceptions. It has also been suggested that exceptions on development grounds might be envisaged. The view has been expressed that the question of permissible exemptions was better left for discussion at a stage when a better idea of the general definition that might be employed would be available.

17. In regard to developmental aspects, in addition to the points reflected above, the general point has been made that the function of national laws in taking into account social and developmental needs should be considered in the definition of government procurement to be employed in a transparency agreement.

II. PROCUREMENT METHODS

18. The point has been made that, from a transparency perspective, the method of procurement employed was less important than ensuring that it conformed with basic principles on transparency and maximized the level of competition feasible under the particular circumstances. The point has also been made that the method of procurement used should not undermine the principles and objectives of a transparency agreement to encourage open and competitive regimes. Other views expressed have been that an eventual transparency agreement should aim at transparency with regard to the methods employed in different countries rather than seek to limit or modify those methods. According to these views, specific circumstances governing a given procurement dictated the choice of a particular method among alternative methods and procurement authorities should retain the flexibility to use the best method in the interests of efficiency and competition as well as of transparency. Any provisions in a transparency agreement should be sufficiently flexible to accommodate the differing procurement methods used in national practices, and should allow for the possibility of using methods which were not based on tendering. Whilst the methods used by WTO Members - at least for larger value contracts - mostly seemed to be based on the principle of tendering (open, selective, limited), they were not necessarily limited to this (e.g. purchase cards, electronic catalogues).

19. The view has been expressed that the Group should consider the issue of procurement methods from the perspective of transparency. The Group's examination of the transparency aspects of procurement methods could focus on the following three categories: where information on the procurement opportunity and selection criteria was made publicly available to all interested suppliers; where a pre-selection of qualified suppliers was made and information was transmitted only to those suppliers; and where no information was made publicly available but the procuring entity negotiated with an individual supplier. Such a categorization, focused on transparency aspects, would avoid getting into the details of procurement methods.

20. With respect to the main procurement methods used, the view has been expressed that open or international bidding in which there was no limit to the number of potential bidders was the most transparent method; selective procedures were justifiable where it would not be feasible or efficient to consider and evaluate a large number of potential bids, as long as all potential interested suppliers were given the same opportunity to seek access to information on a procurement and seek to be invited to bid. Another view has been that open and selective tendering should be regarded as equally transparent, provided selective tendering was conducted in accordance with the appropriate principles. One view has been that, while open tendering was the most transparent method, it might not be the most cost-effective, in particular in the case of complex procurements. As regards the third main procurement method, limited tendering (e.g. individual, sole-source, single-source or direct tendering), it has been suggested that, since information opportunities and selection criteria were not made publicly available, this method should only be used in justified and exceptional circumstances. International instruments and national practice commonly accepted a range of circumstances and conditions under which the use of limited tendering would be warranted.

21. The following approaches to how limited tendering should be dealt with in a transparency agreement have been suggested:

- since the use of the method permitted procurement authorities to dispense with many of the procedural guarantees associated with transparency, a transparency agreement should set forth an illustrative list of the specific circumstances and conditions justifying the use of this method;
- provisions of a transparency agreement should not impinge upon the right of procuring entities to use this method. Spelling out the exact circumstances and conditions justifying the use of this type of method might go beyond the scope of a transparency agreement. It had to be taken into account that governments had other policy objectives apart from transparency;
- while not limiting the circumstances under which limited tendering might be allowed, the Group should develop disciplines to be included in a transparency agreement to ensure that, when used, limited tendering procedures should be employed in a way which maximized transparency at each stage of the procurement process;
- a distinction might be made between a situation in which the purpose of using this method was precisely to avoid transparency, e.g. for national security reasons, and other cases where the purpose of using limited tendering was to meet needs that might arise from special circumstances of the procurement;
- a transparency agreement should not cover procurement not open to tendering.

22. A range of circumstances which might figure in an illustrative list or define the general circumstances under which limited tendering would be justified has been referred to. These are:

- for reasons of extreme urgency brought about by circumstances unforeseeable by the procurement authority (e.g. natural disasters); such circumstances should not be caused by the procuring entity itself, for instance as a result of its negligence;
- in the absence of responsive tenders, under tendering procedures which do not restrict competition;
- when tenders already submitted have been collusive;
- when it is clear at the outset of a procurement that only one supplier or a limited group of suppliers has the proprietary rights to goods or services being procured, for example procurements involving the protection of patents, copyrights or other exclusive rights, or for other technical or artistic considerations;
- in commodity markets where there may be no individual suppliers since the market is the supplier;
- in so-called "fire sales" where the procurement authority can realize exceptional savings at a one-time event (e.g. liquidation sales);
- when a product or a service is supplied by a supplier with a monopolistic position in the market;
- when a product or a service can only be procured in a specific geographical location or place of production;
- when a procurement is for research or experimental purposes and not for commercial use;
- for national security reasons.

23. Reference has also been made to the circumstances justifying the use of the limited tendering method contained in Article XV:1(a)-(j) of the plurilateral Agreement on Government Procurement.

24. With regard to ensuring that limited tendering, when employed, is used in a way which maximizes transparency, the following suggestions have been made:

- a procuring entity should generally seek more than one bid if circumstances permitted;
- a procuring entity should be required to document the specific circumstances giving rise to the need for such limited tendering;
- public notices of contract awards should disclose the specific circumstances and reasons for contacting a particular supplier.

III. PUBLICATION OF INFORMATION ON NATIONAL LEGISLATION AND PROCEDURES

25. The point has been made that transparency meant ensuring that information on procurement rules, practices and opportunities was made widely available in an easily usable form to all interested parties (and particularly potential suppliers), as well as ensuring the right of access to that information. Publication of information regarding the general environment in which public procurement took place and interested parties were expected to operate was an essential component of transparency. Publication of national legislation not only provided a clear roadmap for potential suppliers but also a check against arbitrary practices within the procurement regime. The resulting procedural certainty also reduced costs in the procurement cycle.

26. The point has also been made that there were two questions regarding this matter: the scope of the information that should be made available and in what way.

27. On the first issue, it has been said that there appeared to be two approaches to establishing the scope of the information that should be made available: a formal approach that would require, for example, that all laws, ministerial ordinances, administrative guides or internal rules and procedures should be published; and an approach that would consist of determining the substance of the information that should be made available, irrespective of the legal form. This second approach might be preferable since what was of importance was the substance of the information to be made available. The key substantive information that should be made available was that which defined what rules of general application had to be followed in determining participation in the tender and making the decision on the award of the tender and what remained at the discretion of the procuring entity. The second approach would have merit in that the objective of transparency would not be achieved if the publications that contained the relevant laws and regulations did not cover important aspects of national procurement practices and procedures.

28. It has also been suggested that all laws, regulations, judicial decisions, policy guidance, and administrative and other procedures on government procurement should be published promptly or be readily and easily accessible in a usable form to all interested parties, including potential foreign suppliers and other Members. Any changes to such laws and regulations should also be published promptly. Concerning publication of administrative guidelines, it has been said that it might not be appropriate to publish information relating to internal procedures of government agencies since their disclosure might prejudice the position of a purchasing agency for instance in its negotiations with suppliers; rather, the relevant obligation should be limited to publication of administrative guides to the operation of the procurement systems. It has also been said that publication of regulations of each individual procuring entity would incur burdensome administrative costs.

29. In regard to the second issue, how the information should be made available, the following points have been made:

- the important point was that information should be made publicly available, not how it should be made available;
- a distinction should be made between publication of information and accessibility of information. It has been suggested that laws, regulations and measures having the force and effect of law should be published. Regarding judicial decisions, it has been stated that publication requirements in an agreement had to take into account the different ways of developing national legislation and procedures. For instance, in judicial systems where laws were developed on the basis of case law, judicial decisions could play a central role in defining national legislation and procedures;

- publishing information on judicial decisions, policy guidance and administrative guides could be onerous. But any judicial decisions that would have a bearing on procurement practices and that were not customarily published should be made accessible within the country;
- publication requirements could be met through publication in printed or electronic media. The choice should be left to the discretion of Members. There should be no mandatory provisions requiring the use of electronic media. It has also been suggested the two forms of publication should not be mutually exclusive.

30. The view has been expressed that publication obligations, including in the area of government procurement, already existed in the goods area under Article X of GATT 1994 and in the services area under Article III of the GATS. The provisions of these two Agreements which exempted government procurement from the scope of certain GATT 1994 and GATS obligations (Articles III:8(a) and XVII:2 of GATT 1994 and Article XIII of the GATS) did not apply to these transparency provisions.

31. The suggestion has also been made that information on national legislation and procedures should be provided at no more than cost. It has been said that the matter of fees charged was not within the ambit of a transparency exercise. Government entities should have the discretion to charge fees above cost price. However, any fees for provision of information on national legislation and procedures should be charged on a non-discriminatory basis.

32. The point has also been made in connection with the publication of laws and regulations that the obligation to publish should be limited to publication in a national language and should not involve burdensome and costly translation obligations. It has been stated that some domestic public agencies provided information on legislation in a foreign language or a summary of specific legislation in a WTO language.

33. The suggestion has been made that interested parties should know either where to go to locate this information, or who to ask. A transparency agreement might provide for Members to notify either the source of this information and/or to establish and notify contact or enquiry points (which could take the form of an Internet Website), from which other Members and maybe interested suppliers could obtain explanations about national legislation and procedures, including information on the practical steps involved in tendering, any preferential treatment of national suppliers and domestic review mechanisms. In this connection, reference was made to the provision of Article III:4 of the GATS, and also to that of Article IV:2 of that Agreement which requires developed country Members, and to the extent possible other Members, to establish contact points to facilitate the access of developing countries suppliers to information. It has been stated that the feasibility of providing contact or enquiry points in respect of decentralized procurement systems, especially in federal States, would have to be studied carefully. Any obligations should be without prejudice to decentralized procurement systems. In this connection, the suggestion has been made that in decentralized national procurement systems a central office should be designated for keeping a list of the contact points at sub-central levels. One view in this respect has been that the establishment of enquiry points at sub-central levels might incur burdensome administrative costs.

34. In the discussion of this item, the relevance of the overall coverage of a transparency agreement has been recalled. In this regard, it has been suggested that the publication obligation should only relate to situations where access was open to foreign supplies and suppliers. The opposite view has also been expressed, with the argument that it would be essential to have information on any policies including preferences in favour of national suppliers in order to determine whether procurement markets were open to foreign suppliers. In respect of the term "foreign suppliers", the point has been made that in some national practices government procurement was used as an instrument for the promotion of domestic supplies and suppliers and national treatment would not be

granted to those suppliers who did not have a commercial presence in the country of the procuring entity.

35. The link between this item and that in Section X, concerning the provisions on notification of information to other governments under an appropriate transparency agreement, has been referred to.

36. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist". These comments will be incorporated in the revision of this note under preparation.

IV. INFORMATION ON PROCUREMENT OPPORTUNITIES, TENDERING AND QUALIFICATION PROCEDURES

37. The point has been made that advance information on government procurement opportunities enhanced the participation of potential bidders in a procurement procedure. Broad participation of bidders in the procuring process contributed to improved efficiency in government procurement. In order for such participation to be achieved, information about procurement opportunities must be available in notices of invitation to tender and in tender documents.

38. The point has also been made that information on procurement opportunities in notices of invitation to tender should be sufficient to allow potential suppliers to assess their interests in participating in the proposed procurement procedure and to seek tender documents; and that information in tender documents should be sufficiently specific to enable suppliers to prepare responsive bids. It has been recognized that national practices concerning the amount of detail included, respectively, in initial tender notices and in the subsequent tender documentation, varied considerably and that it might not be necessary to have precise minimum requirements concerning their specific contents or to seek harmonization on this point. It would be sufficient for a transparency agreement to develop elements in the form of general principles.

39. In this connection, views have been expressed suggesting that the level of detail of information to be supplied might also vary among the different stages of tendering and procurement methods used. Whereas detailed information should be given under open procurement procedures, the requirements to publish tendering information in a widely available medium under selective tendering procedures should be flexible to enable tender documents to be sent directly to registered suppliers. Information provided to prequalified suppliers could be more specific than information in public notices available to all suppliers.

40. In regard to tender documentation, it has been said that their contents should provide all information relevant to submitting responsive bids that was not provided in the tender notices. They should set forth the parameters for evaluating bids and awarding the contract, including requirements in respect of technical specifications and any preferences granted to national suppliers and suppliers and on any other assessment criteria based on socio-economic considerations. It has also been said that the information contained in tender documents should be comprehensive enough to lead to the submission of bids that would enable procuring entities to compare them and to allocate their resources efficiently.

41. The view has been expressed that rules on information on tendering opportunities in a transparency agreement should apply on a non-discriminatory basis but only in cases where national markets were open to foreign suppliers; otherwise domestic procedures would be applicable.

42. Another view expressed was that provision of information on procurement opportunities was an essential element of transparency in procurement irrespective of the entitlement of foreign suppliers to participate and that such prior information had benefits both from domestic and from foreign suppliers' perspectives. Points made regarding this view have been:

- the obligations of a transparency agreement should apply to all procurement within its scope, whether or not suppliers had access to procurement opportunities. The principle of non-discriminatory access to information would need to be observed regardless of any policies excluding foreign suppliers from access to procurement opportunities or the existence of preferences for domestic suppliers. The establishment of the conditions of competition and transparency in domestic markets was essential to achieving transparency at the international level;
- access to information on any policies, including preferences in favour of domestic suppliers would allow suppliers to determine whether the procurement markets were in fact open to foreign suppliers. From the government's perspective, transparency in the extent to which markets were open would prevent further requests for information from foreign suppliers on market access matters. Such information would also benefit suppliers who would know in advance whether it would be worthwhile for them to prepare tenders;
- if the obligations on transparency applied only to the extent that foreign bidders were provided access to procurement markets, this would give rise to inequity among Members to a transparency agreement. The end result would be an agreement which would require those countries that had their markets fully open to foreign suppliers and had no rules in place regarding national preference to undertake a much greater level of obligations as regards transparency. On the other hand, other countries that had relatively closed markets and excluded foreign suppliers in a large number of sectors would take on lesser obligations;
- since a transparency agreement would not prevent government procurement from being limited to domestic suppliers, the rights of other Members would not be breached by a Member limiting transparency obligations to government procurement open to international competition because foreign suppliers would not have any interest in obtaining information on a procurement that was not open to them;
- a requirement for transparency in procurement, irrespective of the openness of markets, would result in a transposition of obligations on market access into a transparency agreement. The arguments in favour of transparency in all procurement would imply that all Members should be required equally to provide access to their markets since, by keeping their markets closed, they would assume lesser obligations on transparency. Any country was free to undertake greater obligations on transparency by opening its markets if it chose to do so;
- a decision to open a country's market was independent of the requirements of an agreement on transparency. The balance in a transparency agreement was to be found in obligations with respect to transparency and not in those with respect to market access. In undertaking obligations on transparency, countries had to take into account their individual national practices;
- this matter was better dealt with in regard to the overall scope of an agreement (c.f. Section I);

- participants in the Working Group should be encouraged to provide information on their national practices in regard to the provision of information in respect of procurement not open to international competition.

43. The question has been raised as to whether openness would depend only on general criteria prescribed by law or whether it could depend on a case-by-case decision of the procuring authority. In this regard, the following views have been expressed:

- to the extent that procurement contracts would be decided on a case-by-case basis, it would be the prerogative of a government authority not to open a specific procurement contract to foreign suppliers;
- it would defeat the objective of a transparency agreement if the question of whether a given procurement would be open to foreign suppliers were to be decided on a case-by-case basis;
- in those countries where decisions to open procurement to foreign suppliers were made on a case-by-case basis, such decisions could be taken, either at the onset of a tendering process or at the time of the award of a contract. With the latter type of case-by case decision, it would be significantly non-transparent should a governmental authority decide to award contracts only to domestic suppliers. Disciplines should be developed in order to provide maximum transparency in those situations in which the decisions were taken on a case-by-case basis.

A. PUBLICATION

44. On advance information on tender opportunities, it has been suggested that there are two key issues: where the information can be found (publication) and content. With regard to where the information can be found (publication) by potential suppliers, the following points have been made:

- procurement opportunities and procedural requirements relating to those opportunities should be made known and be generally available to interested parties through an accessible source;
- the source used to make information on procurement opportunities generally available should be left to the discretion of WTO Members, but its level of availability should be proportionate to the likely level of interest in the procurement. In other words, where a procurement opportunity was likely to attract international interest, procurement opportunities should be published through a source which potential foreign suppliers and service providers had access to, as opposed, for example, to posting a notice in a town hall. It has also been stated that it would not seem necessary to have a requirement to publish tender notices in an international publication; rather, interested suppliers should be expected to keep track of national publications;
- publication of tender opportunities should be made available in printed and/or in electronic media. Printed media could be an official gazette or a national newspaper of wide circulation;
- electronic publication should be used where feasible and taking into account the level of development of individual WTO Members. The internet address of electronic publications could be made available. It has also been stated that electronic publication offered significant benefits in terms of both time and costs, and based on current trends would be used increasingly in the coming years (see also Section IX B);

- the choice should be available to each WTO Member to publish in the appropriate media and electronic publication should be an option rather than an obligation. This would permit account to be taken of the divergences in the capability to make use of electronic means of publication between WTO Members and between regions within a WTO Member and between suppliers;
- allowances should be made for systems by which information was furnished by private sector service providers acting on behalf of procuring entities;
- under limited tendering procedures where a procuring entity contacted the prequalified suppliers directly, advance publication of tender notices did not seem to be necessary;
- some Members' notices of invitation to tender and to prequalify were published also under selective procedures;
- requirements for publication of tender notices might be less strict for low-value procurements in order to avoid burdensome administrative costs;
- publication of tender opportunities should not be limited to contracts above a certain threshold level (see also Section I).

45. The view has been expressed that exceptions to the obligation to publish procurement opportunities (e.g. to take account of limited tendering in the case of some national practices) should only be permitted in exceptional and justified cases. These circumstances should be the same as those set out for the use of procurement methods which severely restrict competition. Some suggestions have been made concerning situations where publication should not be required. This could be the case for purchases below threshold levels and for purchases not made through open tendering procedures for instance for limited tendering. The point has been made that, in the latter instance, it would be important that information on how to qualify for selective tendering procedures be adequately available, and that post-contract award notices should be published. Another view has been that, for transparency reasons, publication of procurement opportunities should in principle not be limited to contracts above a certain threshold level.

B. CONTENTS OF INFORMATION

46. With regard to minimum requirements for the information to be published on procurement opportunities, the point has been made that, while national practices with regard to the amount of information to be included might differ, information on procurement opportunities in notices of invitation to tender and tender documents notices should be sufficient to allow potential suppliers to assess their interests in participating in the proposed procurement or in a qualification system and enable them to prepare responsive bids or proposals for qualification. Members should be able to decide whether the provision of information on procurement opportunities should be done just through the use of tender notices, or whether the bulk of information should be contained in the tender documentation or be made available by other means.

47. The suggestion has been made that an illustrative list of the types of information that such documents should contain should be developed to provide at least:

regarding the procuring entity:

- full contact details (the name and the address) of the procuring entity (the buying department or agency, the location of the responsible office and the division or branch of the department or agency);
- coordinates of a contact point or document centre from which additional information including on technical and commercial requirements and any other relevant information or documents may be requested and obtained, the final date for making such requests and, if applicable, the cost of such information; unique reference number identifying the request in the department or agency's records;

regarding suppliers:

- any requirements relating to the supplier or service provider, for example economic or qualification requirements;

regarding the intended procurement:

- an identifiable description (nature) of the goods and/or services to be provided, together with their quantity or an indication of their extent;
- the place of delivery, site or place of performance of the service and, if applicable, the time-limit for delivery, completion or duration of the contract;

regarding evaluation of tenders:

- the procurement procedure envisaged to be used (open, selective, whether negotiations are involved, etc.);
- the criteria for the award of the contract including factors other than the price that are to be considered in the evaluation of tenders (economically most advantageous bid) in the evaluation of tenders;
- information on the existence of any conditions in favour of national suppliers in awarding contracts, such as price preferences, local content requirements or any other policies of discriminatory nature. In this connection, it has also been said that provision of such information would not be necessary if a description of national preferences or discriminatory policies was already published in the Official Gazette;
- any technical specifications required;
- where applicable, the location, date and time of any public briefing on the requirements;

regarding submission, receipt and opening of tenders:

- the final date for the submission/receipt of tenders or requests to be invited to participate in a qualification system;

- the address to which submission of tenders or requests to be invited to participate in a qualification system must be sent;
- details of any language requirements in respect of submission of tenders;
- date and place of opening of tenders.

48. The view has been expressed that such a list might be excessively burdensome and costly, in particular in those countries in which the number of tenders issued by government entities was high.

49. In addition, it has been suggested that entities might publish, on a voluntary basis, a summary of information on their intended procurements at regular intervals. The point has been made that only those entities which could sufficiently plan their procurement activities ahead could have such procedures.

C. EVALUATION CRITERIA

50. With regard to the specification of criteria for the evaluation of tenders and awarding of contracts in public notices and/or tender documents, it has been recalled that the question of whether national preferences, or other policies underlying practices of a discriminatory nature should be part of such criteria, was not within the scope of the work of the Group. However, emphasis has been put on the importance of information on such national preferences and other measures in favour of domestic supplies or suppliers being made known in advance in the tender documents and/or tender notices. The point has been made that transparency in regard to the existence of preferences or other discriminatory requirements would enable potential foreign tenderers to determine whether they had an interest in entering a specific procurement process in spite of discriminatory national policies. Interested suppliers would only be able to distinguish between procurement opportunities that were reserved for domestic suppliers and those that were open to international competition if information on any discriminatory policies were made available to them in advance. Provision of information upfront on price preferences or qualification requirements favouring domestic suppliers would enable suppliers to gauge their interest and assess the real opportunity to win a contract. Such information would also allow interested suppliers to make the appropriate decisions in preparing bids that would be responsive to the conditions set out in this respect in tender documentation. By avoiding participation in procurement processes in which their bids would be ultimately dismissed, suppliers would save not only their own resources but also those of procuring entities. Moreover, the clear specification of requirements based on socio-economic considerations in the tender documentation would facilitate the implementation of such policies by providing transparency in respect of the nature of the socio-economic needs applicable to specific procurements. One view has been that information on preferences to national supplies and suppliers need only be included in tender notices and/or tender documents when it was not adequately provided through laws or regulations of general application, either through setting out the relevant information or through an explicit reference to the applicable legislation. Another view has been that clear references to any national policies, including any preferences applied, should always be included in tender notices and/or tender documents. In this regard, the point has been made that the establishment of links between electronically published tender documents and relevant laws and regulations would enable suppliers to search easily for further information on any applicable discriminatory policies. In regard to offsets, the view has been expressed that, if used at all, they should form part of the qualification criteria rather than the criteria for evaluating bids.

51. The point has been made that technical specifications were an important element of evaluation criteria and their role in procurements would become even more significant in future with increasingly complex procurements. Another point made has been that technical specifications should not be developed in such a way as to require the use of technology only available to a limited number of suppliers. Views have been expressed that a transparency agreement should have provisions

encouraging the use of performance-based specifications in preference to design-based specifications; and wherever possible, basing technical specifications on existing internationally agreed or other relevant standards. It has also been said that any changes in technical specifications should be made known to all interested suppliers.

D. CLARIFICATION AND MODIFICATIONS

52. With respect to clarifications of tender documents given by procuring entities to potential suppliers, it has been stated that any questions raised by interested suppliers should be responded to in good faith by the procuring entity. Any information provided in response to requests for clarification from one supplier should be transmitted simultaneously to all other suppliers participating in the procurement process.

53. It has also been said that all potential suppliers should be informed of any changes to information contained in tender notices and tender documents. In this connection, it has also been said that a transparency agreement should clearly specify that all those suppliers who had originally ordered tender documents or had indicated an interest in the procurement opportunity should have any additional information transmitted to them through the same means as the one used for providing the original information.

E. LANGUAGE

54. The suggestion has been made that requirements concerning publication of notices of invitation to tender should be limited to publication in an official national language. The translation of the whole publication into a WTO language could become too burdensome. Another suggestion has been that, where possible, tender notices should be published in a WTO language. It has also been suggested that procuring authorities should have the discretion to decide whether translation of tender notices should be limited to those tendering opportunities that might be of interest to international suppliers.

55. It has been suggested that, in addition to the publication of the whole information in the official national language of the WTO Member concerned, consideration might be given to whether a summary of the main elements of the information in an invitation to tender might also be published in one of the official WTO languages. Such a summary might contain the following elements:

- the name and address of the procuring entity;
- the nature (subject-matter) of the contract;
- the time-limits for submission of tender or application to be invited to tender;
- the address from where further information can be obtained.

56. It has also been suggested that there could be a limited requirement for giving a summary of tender notices in one of the WTO official languages allowing, for example, the exemption of tender notices for small-value procurements which might be of limited interest to international suppliers. One view has been that providing a summary of every tender notice would incur undue administrative costs (see also Section IX C).

57. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist". These comments will be incorporated in the revision of this note under preparation.

V. TIME-PERIODS

58. In regard to minimum time-periods to be available to potential suppliers to fulfil the requirements of the different stages of the procurement process, the point has been made that time-periods in existing international instruments and national practice varied significantly. The suggestion has been made that, rather than establishing specific minimum time-periods in a transparency agreement, the Group might agree on a general principle, as in the UNCITRAL Model Law or in Article XI:1 of the GPA.¹ A transparency agreement should not be overly prescriptive in this respect. Any provisions on time-limits should be accepted only as recommendations. Time-periods should be sufficiently long to give both foreign and domestic suppliers a meaningful opportunity to avail themselves of the relevant information and to submit responsive bids. It has also been said that a balance should be found in setting any requirements on time-limits; with longer time-periods, procuring entities might resort to limited tendering procedures more frequently. A further point in this connection has been that Members should not be required to set time-periods to suit foreign suppliers, who should be treated on a national treatment and MFN basis.

59. Sufficient time should be allowed for the preparation, submission and receipt of responsive bids to individual procurement opportunities. Any time-limits which are set should not undermine the principles and objectives of a transparency agreement. They should be determined with due consideration to the particular circumstances of the procurement (including the likely level of interest) as well as the complexity of the procurement. Any changes in the time-periods should be made known to all suppliers.

60. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist". These comments will be incorporated in the revision of this note under preparation.

VI. TRANSPARENCY OF DECISIONS ON QUALIFICATION

61. The point has been made that registration and qualification systems had a useful role in the procurement process provided that they were run in a fully transparent manner. The key principle of transparency as regards this issue was that decisions on registration and qualification of suppliers should be taken only on the basis of criteria that had been identified early in the process and prediscovered to suppliers sufficiently in advance. Any changes in qualification requirements should be made known to all interested suppliers. Another point has been made that prequalification systems should not be exclusive: new suppliers should be given the same (or, in one view, at least a reasonable) opportunity to be included on a qualification list as had been enjoyed by those already qualified. A distinction has been made between qualification systems which potentially could cover a number of different procurements and qualification on a procurement-by-procurement basis. It has also been noted that the issue of qualification of suppliers could play a greater role in the procurement of services than in the procurement of goods.

62. The point has been made that, once the qualification criteria were set out in invitations to prequalify or tender documents, they should be applied in a non-discriminatory way as regards transparency. Prequalification criteria should be made known to all suppliers in a non-discriminatory way. This would not prevent preferential elements in favour of domestic supplies or suppliers from being built into the criteria themselves. The point has also been made that transparency in

¹ Article XI.1(a) of the GPA reads as follows:

"Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points."

qualification procedures involved matters of due process. Suppliers should have the right to challenge qualification decisions if the rules of the system had not been followed. The view has also been expressed that application of the principles of objectivity and non-discrimination to prequalification criteria extended beyond the concept of transparency. There could be non-discrimination as regards transparency notwithstanding discrimination in favour of national suppliers pursuant to preferences or other domestic sourcing requirements. It has also been said that under certain tendering methods it was not possible to overturn decisions on qualification even if certain other suppliers could be considered to be qualified in terms of the published criteria. Another issue with respect to transparency to which attention has been drawn is the situation in which a supplier who had applied under the predisclosed qualification criteria had received no decision on its application.

63. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist". These comments will be incorporated in the revision of this note under preparation.

VII. TRANSPARENCY OF DECISIONS ON CONTRACT AWARDS

64. The point has been made that an essential feature of transparency in decision-making on the award of procurement contracts was that such decisions be taken strictly on the basis of the evaluation criteria (including in relation to technical specifications) which had been set forth in advance in the tender documents and in accordance with the information provided on how those criteria would be applied. Furthermore, in order to ensure that decisions were seen to be taken in this way, criteria should be set out in such a way as to ensure as objective an application as possible. The view has also been expressed that a transparency agreement would not, as a general rule, set out what those criteria should be. The point has been made that allowance would need to be made for cases where, for reasons of *force majeure*, for example in the case of the lifting or imposition of an embargo, the criteria set out in tender documents could not be strictly adhered to.

65. Concerning the receipt and opening of tenders, the view has been expressed that, while it may not be necessary to require public opening of tenders to ensure transparency, procuring entities should have procedures in place to ensure the regularity and impartiality of the procurement process and that there was no opportunity to manipulate the specific elements of tenders or to provide a particular tenderer with information on other tenders. In this respect, the view has been expressed that the details of the procedures on how tenders received by procuring entities should be handled were not within the ambit of the Group's work. Another view has been that further consideration should be given to whether it would be sufficient to embody these concepts in general principles or whether more specific requirements should be envisaged.

66. With respect to *ex post* information on contract awards, the point has been made that procurement procedures might provide for some form of public announcement of the contract awards and also give tenderers the opportunity to be debriefed, for example on written request from an unsuccessful tenderer. A public announcement on contracts awarded was also of interest to industry generally (as potential future bidders) and to other governments which would want to see the transparency agreement working in practice. The Group would need to consider whether laying down general principles would be sufficient in this respect or whether the minimum types of information that should be given on contract award notices should be set out.² It has also been said that decisions

² The following specific elements for contract award notices have been suggested: the buying department or agency, the location of the arranging office and the division or branch of the department or agency; description of the supplies including the department or agency for which they are required, if different from the above, and in enough detail to identify their nature, quantity and any period that may be applicable; the unique reference number identifying the purchase or agreement in the department or agency's records and the date of the purchase or agreement; the total liability of the contract at the date of entering into the contract. Where it is not possible to predict accurately the total liability with precision because of the basis of the contract, for example cost escalation, labour and materials, or schedule of rates, the total estimated liability

on contract awards need not include the types of information that had been included in the relevant notices of invitation to tender, provided that a reference was made linking the *ex post* information to the earlier information.

67. As to the purpose and operation of *ex post* information, the following points have also been made:

- this type of information provided losing tenderers with the opportunity to ensure that they had been treated equitably according to the specific requirements and to assess that criteria set forth in the tender documentation and that the applicable rules and practices had indeed been properly followed in the procurement proceedings;
- the means by which such information was given should be a matter of choice for individual Members, but it should be known to interested parties. In this connection, the view has been expressed that it would be time-consuming and burdensome to inform unsuccessful bidders individually of the outcome of their bids. Another view expressed has been that unsuccessful bidders should be informed but it would be burdensome and costly to make this information publicly available;
- unsuccessful bidders should be informed of the outcome of their bids and debriefed, when they themselves requested it, as to why their bid had been rejected and/or the winning bid had been chosen. This was an important guarantee of transparency, particularly in circumstances where limited information on the contract awarded was provided;
- *ex post* information on contract awards should be given regardless of the procurement method used;
- under limited tendering, the information should explain the reasons why that method had been used. In this connection, another view expressed has been that the provision of this type of information would be outside the scope of a transparency agreement. Another approach suggested to this matter has been that the provision of *ex post* information was particularly important in cases where certain information had not been provided *ex ante*. This would include an explanation of the reasons why such information had not been given at the start of the procurement process;
- national practices would determine whether *ex post* information on contract awards should be given through prompt publication of contract award notices or directly by writing to individual tenderers;
- *ex post* information should be provided within a fixed time-frame. The comment has been made that this should not preclude the fixed time-frame differing between countries.

68. In the debriefing process, purchasing authorities should follow the evaluation criteria and indicate where each bid had been deficient and why it had not been selected. On the other hand, it has also been stated that debriefing of all unsuccessful tenderers on the reasons why they had not obtained an award would be time-consuming.

should be published; the name of the suppliers, location and postcode. Where a panel contract has been made, details of all suppliers should be notified. However, if this is impractical, a contact address within the agency should be published for persons seeking further information; and relevant product and service code.

69. It has been noted that a number of other WTO agreements, for example the Agreement on Customs Valuation and the Agreement on Preshipment Inspection, included requirements on the provision of *ex post* information to economic agents. The link between the provision of *ex post* information and item VII on review and item VIII(a) on maintenance of records of procurement proceedings has been referred to.

70. In connection with *ex post* information, it has been suggested that it might be necessary to include a provision safeguarding the confidentiality of information on contract awards in order to protect the legitimate commercial interests of parties concerned (whether public or private) or for public interest reasons. In this connection, a starting point for consideration of this matter could be the provisions of other WTO agreements on confidential information. Procuring entities should not be obliged to provide confidential information which would prejudice the legitimate commercial interests of particular enterprises (whether public or private).

71. A number of comments have been made on specific proposals put forward by Members as reflected in the note by the Secretariat entitled "List of Proposals on Items III-VII of the Checklist". These comments will be incorporated in the revision of this note under preparation.

VIII. DOMESTIC REVIEW PROCEDURES

72. The view has been expressed that it was not sufficient for rules to be introduced to ensure transparency in government procurement practices; there must also be a domestic review mechanism to introduce accountability into the process and to ensure that the rules were respected by everyone involved in a procurement process. The availability of an avenue for review of procurement processes was a key element of transparency. The mechanism for review of complaints by suppliers or a bid challenge system guaranteed due process and public accountability throughout a procurement process and enabled the process to be seen as transparent. The existence of a review mechanism might make public procurement authorities more aware of the need to ensure the consistency of the procedures used in a particular procurement with the applicable laws and regulations.

73. It has been suggested that precedents for review or appeal mechanisms could be found in a number of WTO agreements, for example the Agreements on Anti-Dumping, Customs Valuation, Preshipment Inspection and TRIPS. Additionally, Article X of the GATT 1994 on publication and administration of trade regulations contained a general provision requiring independent review of administrative action relating to customs matters. Reference has also been made to the element of due process in the APEC non-binding principles on transparency in government procurement.³

74. It has been stated that any obligation to provide for review procedures in a transparency agreement should only concern actions within the scope of that agreement, not the substance of preferential measures relating to market access in government procurement. While it might often be difficult to dissociate transparency aspects of government procurement from other aspects, the mandate of the Group should guide its work on this matter as on others.

75. The suggestion has also been made that a domestic review mechanism could be achieved through a variety of means. It has been noted that administrative or judicial review procedures in the interest of assuring due process and public accountability were common to most national regimes, which in consequence already contained the main features that might be applicable to domestic review procedures in a transparency agreement. The view has been expressed that any obligation to provide for domestic review procedures in a transparency agreement should take into account such national practices and procedures; no attempts should be made to develop special review mechanisms where appropriate domestic administrative or judicial procedures already existed. The view has also been expressed that a transparency agreement should not have provisions requesting Members to

³ Circulated in document WT/WGTGP/W/11

adapt their domestic systems to certain prescribed criteria and the existing national systems should be fully respected. The Group should guard against developing overly prescriptive provisions on the specific characteristics that national systems must have. Any provisions should be flexible enough to allow Members to design their domestic review mechanisms in accordance with their national legislation and to rely on administrative or judicial review mechanisms that were appropriate to their national legal systems. They could be in the form of an exhortation to Members of a transparency agreement to provide for domestic review mechanisms. The choice of review procedure should be left to individual Members provided the review mechanism itself was transparent and provided a guarantee of independence. In this connection, the suggestion has been made that, as a first step, Members should provide information on whether their domestic administrative or judicial review systems addressed government procurement-related matters and, if so, under what conditions.

76. The view has been expressed that the issue of review went beyond that of transparency and therefore the mandate of the Working Group and that it was premature to take up this question. It has been said that domestic administrative or judicial review mechanisms were in place in national systems for the purpose of public accountability at the domestic level, a matter not within the ambit of a transparency agreement. Concerns have been expressed that review provisions in a transparency agreement might be used as a means by certain vocal private parties to create complications in the domestic political arena; and additional review procedures might increase the number of challenges and give rise to unnecessary costs. Since the purpose of domestic procedures in many countries was to review whether procurement had been made in accordance with domestic law and procedures, the scope of which went further than the obligations that might be agreed in a transparency agreement, it might not be feasible to limit the application of review procedures to specific transparency obligations in a WTO agreement on transparency. It has been suggested that transparency requirements in respect of review procedures should be limited to the provision of information on the possibilities available under national review procedures.

77. The view has been expressed that a review should be available to all potential suppliers including suppliers from other WTO Members. In this connection, the question has been asked whether foreign interested parties could file complaints against domestic governmental authorities under existing national administrative and judicial mechanisms or whether there would be need for special procedures under a transparency agreement to guarantee the receivability of complaints by foreign suppliers.

78. While some delegations have indicated that they had not yet formulated their views on the specifics of a review mechanism, attention has been drawn to the following features of review mechanisms that might be studied by the Working Group:

- encouraging suppliers, in the first instance, to take up the matter directly with the procuring entity for an early resolution. Agencies might have procedures in place to handle complaints directly;
- in some cases, the mediation or good offices of an independent authority might be sought;
- if the matter was not resolved mutually, provisions enabling suppliers to bring an action against the procuring entity before a judicial authority or other independent body; the point has been made that review provisions should allow flexibility to Member governments to choose whether to designate judicial or administrative bodies or both;
- review provisions should require that review bodies be impartial and independent of the procurement process itself. The point has also been made that Article X:3(b) of GATT 1994 provided some guidance in this regard;

- account should be taken of such principles as objective legality, ex officio action and material delegation in the review procedures;
- in addition to procedures based on formal complaints, initiation of review procedures by competent public authorities on an ex officio basis or national mechanisms for monitoring procurement proceedings;
- the review procedure should result in a published and reasoned conclusion.

79. The view has been expressed that procurement decisions were different from many other administrative decisions, in that review mechanisms often had to function after the contract had been awarded. A review provision should ensure that claims from interested suppliers could be heard and decided upon in a manner that did not prejudice their interests in the procurements in question. Such guarantees could be available through rapid decisions on challenges or through suspension of the procurement process while claims were pending. In this regard, the point has been made that suspension of a procurement process upon a challenge by a supplier could hold up the whole procurement process until a decision had been reached concerning the challenge. Since this could be detrimental to the public interest and create difficulties in cases of urgent procurements, most national review procedures and the provisions of the GPA provided for exceptions enabling, in circumstances so warranting, public interest considerations to override the interest in suspending a procurement process. In cases in which the procurement process might be suspended, there could therefore be provisions in a transparency agreement for continuing nonetheless with the award of procurement in the public interest.

80. In connection with remedies that might be provided under review provisions, the following views have been expressed:

- most national review systems already provided remedies for suppliers whose rights had been denied under the applicable laws and regulations;
- review provisions should provide for adequate remedies that would protect the interests of suppliers and would deter procurement entities from engaging in future actions that would be inconsistent with the provisions of an eventual agreement on transparency;
- remedies should include the possibility of corrections including altering the procurement process, re-tendering for the procurement or awarding damages to cover legitimate claims;
- an independent review should review complaints about tendering procedures in order to determine possible damages or administrative responsibility;
- account should be taken of the fact that review systems might provide for remedies which could include compensation only after administrative or judicial procedures had determined that an injury or an economic loss had flowed from the inconsistency of a procurement process with the applicable legislation.

81. Another view expressed on remedies has been that a transparency agreement should not specify them for the following reasons:

- provisions requiring adequate remedies would fall outside the scope of the work on transparency. It would be sufficient to have provisions requiring the establishment of a review procedure without specifying the remedies that should be available;
- obligations on remedies might have counter-productive repercussions on the procurement practices of governmental authorities; to the extent that procuring authorities would be liable to remedies, they might have a tendency to restrict access to foreign suppliers in order to minimize any such risks.

82. It has also been suggested that a transparency agreement should require procurement entities to maintain written records of the procurement process in order to ensure that review bodies had an adequate factual basis for review (see Section IX A). As another possible means of review mechanism provision of *ex post* information to unsuccessful suppliers and debriefing by procuring authorities have also been mentioned (see also Section VII).

IX. OTHER MATTERS RELATED TO TRANSPARENCY

A. MAINTENANCE OF RECORD OF PROCEEDINGS

83. The view has been expressed that procuring authorities should maintain a proper record of decisions and actions taken during the procurement process and the reasons for them. The maintenance of a record of procurement proceedings and the availability of non-confidential information contained in it to interested parties was one of the principal mechanisms for ensuring adherence to agreed rules and was of particular importance in the functioning of an administrative or judicial review process. Such records provided the basis for an audit trail and supported any evaluation of the procurement⁴ and thus introduced an element of accountability into the process. With regard to the length of time that records of proceedings should be maintained, it has been said that the requirements in this respect could be linked to the time provided to domestic suppliers in domestic legislation to challenge a procurement decision and to seek a review of a procurement process. It might not be necessary to keep a record of proceedings beyond that period. It has also been suggested that information should be provided on the national practices of those Members in which procuring entities were required to maintain records of procurement proceedings.

84. The question has been asked whether record maintenance should be treated as a separate element providing an additional guarantee of transparency or whether this item would be sufficiently addressed under other elements.

85. By way of general comments under this Section, a view has been expressed that prescription of stringent rules on transparency and review could be counter-productive to market access. Having no obligations on market access in the area of government procurement, national governments would have the tendency to close their procurement markets to foreign suppliers in order not to run the risk of breaching these rules on transparency.

⁴ The following details of the matters that should be documented have been suggested: approval to make the procurement; the selection criteria upon which evaluation and selection decisions will be based; discussions with potential bidders before bids close; details of clarification of bids during evaluations; reasons for variations to a tender; steps to provide all bidders with an equal opportunity to revise their bids; agreements reached during negotiations; authorization and signing of a contract; details of debriefings; reasons for varying a contract; and records of contractor performance.

B. INFORMATION TECHNOLOGY

86. It has been suggested that the work of the Group in developing a transparency agreement should take full account of innovative government procurement practices. Information technology was already being rapidly adopted by procurement communities and offered tremendous opportunities to level the playing field by increasing access to information at low cost to all suppliers. A transparency agreement should provide for the possibility of using information technology tools to disseminate information on procurement opportunities and contracts awarded as an alternative to more traditional methods of communication (see also Section IV above). The view has also been expressed that, for the time being, procuring entities should be able to continue to maintain paper-based tendering procedures.

87. On the other hand, it has been suggested that, because of the lack of uniformity among countries' stages of development in this area, any requirements for the use of information technology in government procurement should be optional and that the use of information technology tools should not undermine the basic transparency principle of guaranteeing access to information for all, including small and medium-sized suppliers and suppliers from countries less advanced in the use of information technology. A balance should be found whereby a transparency agreement would not constitute an unnecessary barrier to progress in the area of information technology and would accommodate the increasing use of information technology in government procurement in Members, while ensuring that the use of information technology would not result in discrimination against countries which did not have a competitive edge in this area. Electronic tendering using Internet-based systems facilitated access of suppliers worldwide with a minimum requirement of equipment and technological know-how and was the most efficient way of ensuring non-discriminatory access to tender information.

88. It has been said that one of the issues that had to be dealt with in electronic procurement concerned procedures for opening tenders when they were submitted electronically. It has been noted that there was scope for international cooperation in the area of information technology, for example in developing electronic databases or maintaining lists of qualified suppliers.⁵ The point has also been made that procuring entities should be allowed to charge for electronic access to information and tender documentation and other tendering procedures, in particular if the information was supplied by a private service provider. It has also been said that the Group would need to consider at a later stage whether it would be appropriate to cover such specific matters as information technology in a transparency agreement. In this connection, it has been noted that information technology was an area where there was scope for technical cooperation (see Section XII).

C. LANGUAGE

89. It has been said that information on national practices showed that documents and other information relating to tendering proceedings were generally provided in the official language(s) of the country of the procuring entity. As a rule, documents and other information relating to procurement procedures and individual procurements should be allowed to be provided to potential suppliers and service providers in an official language of the country of the procuring entity. In general, potential suppliers wishing to do business in another country would have the necessary language facilities available to them; there should not be a specific requirement to provide such information in a WTO language. Nevertheless, procuring entities could be encouraged to provide information, where possible, in a WTO language where a particular procurement opportunity was likely to attract international interest (see also Section IV).

⁵ It has been mentioned that the APEC Group of Experts in Government Procurement has established a Home Page with linkages to existing databases on government procurement in member economies (www.apecsec.org.sg/govtproc/gphome.html).

X. INFORMATION TO BE PROVIDED TO OTHER GOVERNMENTS (NOTIFICATION)

90. The view has been expressed that it was somewhat premature to discuss in detail this aspect, which might be better taken up once a clearer notion of the nature of a transparency agreement had been generated. Nonetheless, a number of issues have been raised relating to the possible notification arrangements under a transparency agreement and other mechanisms by which information can be exchanged between Member governments.

91. While some views expressed have put emphasis on the importance of adequate information on relevant national legislation and any amendments thereof being notified to other Members of a transparency agreement, other views have drawn attention to difficulties that would have to be addressed in this connection. It has been suggested that the notification of all national laws, regulations and administrative guidelines, including those of sub-central and other levels of government covered, might prove to be unduly burdensome. This would particularly be the case if they all had to be notified in a WTO language. An additional concern that has been expressed was that it was doubtful that Members would be ready to share confidential information. A number of possible ways of overcoming these difficulties have been put forward:

- Members might be expected to notify their basic law on government procurement, but not each and every law and regulation;
- an approach of employing a checklist of points, or questionnaire, to elicit basic information on how the national laws and regulations of each member responded to the requirements of a transparency agreement might be employed;
- each Member might be required to respond to requests from any other Member for specific information on its laws, regulations, procedures and practices regarding transparency in government procurement. Contact points might be established by each member for this purpose. In this connection, reference has been made to the discussion on this point reflected in item III of this note;
- greater use of electronic databases might be made for providing information on procurement procedures at sub-central levels;
- the government of an unsuccessful tenderer might be entitled to seek information on the contract award in question from the government whose entity conducted the procurement. This could be a vehicle for forestalling disputes. The view has also been expressed that the information sought should relate to how the commitments on transparency had been complied with in the contract award process. Another view was that the provision of such post-contract award information might not be necessary in an agreement on transparency, since it would not extend to matters of market access;
- enhanced use could be made of existing WTO transparency mechanisms, including the Trade Policy Review Mechanism;
- the question has been raised as to whether the existing provisions of Article X of GATT 1994 and Article III of the GATS were sufficient for the purposes of a transparency agreement on government procurement or whether additional rules should be provided for. Should there be, for example, a requirement to specify where the relevant laws were published? In this regard, the view has been expressed that the provisions of the GATT 1994 and GATS that had been referred to would not be adequate for the purposes of notification in an eventual transparency agreement.

92. It has also been suggested that Members might provide information identifying government departments, agencies and enterprises subject to the rules in a transparency agreement. The point has been made that this could be done through notification of a positive list of such entities or through notification of a negative list of those entities not subject to the agreement. It has been suggested that the latter approach might have the advantage of avoiding the problem of frequent changes in lists resulting from changes of a formal nature, such as the renaming or restructuring of departments. The issue of the most appropriate technique for the presentation of the coverage of entities would depend on the outcome of discussions on the scope of the agreement, in particular which type of entities were covered. It has also been said that it was premature to consider the form in which the coverage of entities should be presented.

93. On statistical reporting, the following points have been made:

- such provisions should not be included in a transparency agreement;
- there should not be an obligation, but governments might be invited to provide what information they have available, for example on the size of their procurement market;
- the issue should be put aside for the time being.

94. The view has been expressed that any requirements relating to the provision to other Members of information on and explanation of national procurement rules and procedures should apply only to the extent that such rules and procedures were within the scope of a transparency agreement. Requirements on the provision of information and explanations should be limited to those relating to transparency matters, and not otherwise relate to market access questions.

XI. WTO DISPUTE SETTLEMENT PROCEDURES

95. With regard to dispute settlement between governments, the general view has been that it would be premature to consider the applicability of provisions on dispute settlement before the elements of a transparency agreement had been more clearly identified. However, the view has also been expressed that any commitments on transparency should be subject to the DSU in the same way as the existing clauses on transparency in any other WTO agreement. Another view has been that it was questionable that the dispute settlement system should apply to obligations on transparency in the absence of commitments with respect to market access. For example, it has been asked whether any decision resulting from a dispute regarding the provision of transparency in a government procurement process could apply retroactively. A further view expressed in this connection has been that the Group's mandate was to discuss the elements of an appropriate agreement on transparency which could be in the form of guidelines or a code; only an agreement with binding obligations should be subject to WTO dispute settlement procedures.

96. Regarding the relationship between domestic review procedures and the WTO dispute settlement mechanism, it was said that a distinction should be made between domestic review mechanisms which involved responding to complaints by suppliers against procuring authorities under the law of a country and dispute settlement procedures between governments under the law and procedures of the WTO. The legal criteria for domestic reviews and WTO dispute settlement were different. In the case of domestic procedures, a review related to the consistency of a procurement process with the domestic laws and regulations, whereas in the case of WTO dispute settlement the grounds for a dispute were an alleged breach of a WTO agreement. The view has been expressed that the possibility for foreign suppliers to have recourse to effective and independent domestic review procedures, as a first avenue for resolving complaints, would minimize the likelihood that such complaints might eventually rise to the level of a government-to-government dispute.

97. In regard to the way in which national review procedures and the WTO dispute settlement procedures might interact, it has been suggested that the Group might wish to examine the approach to this matter adopted in the Agreement on Implementation of Article VI of GATT 1994. Another view expressed was that there should be no particular relationship between a domestic review process and government-to-government dispute settlement. WTO dispute settlement procedures should apply to issues relating to the consistency of laws of general application and should not be invoked with regard to decisions resulting from national review procedures concerning a particular procurement. In this connection, the view has been expressed that national practices would not allow the WTO dispute settlement process to override a specific procurement decision taken by a national judicial body. WTO dispute settlement procedures should only apply in respect of obligations of governments in their capacity as regulators. Any procurement decision taken by them in their capacity as purchasing entities should not be subject to dispute settlement procedures. It has also been said that provisions should reflect the principle of exhaustion of domestic judicial review mechanisms before recourse to WTO dispute settlement procedures. Moreover, the point has been made that recourse to WTO dispute settlement procedures, being a prerogative of governments, could not be initiated by suppliers who might challenge procurement procedures of government entities.

XII. TECHNICAL COOPERATION AND SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

98. The point has been made that technical cooperation was important for ensuring the successful implementation of a future transparency agreement. It could also play an important role in helping Members to develop domestic procurement regimes and in taking practical steps to enhance transparency of procurement policies and practices. The view has been expressed that, in discussing a framework for technical cooperation, inspiration might be drawn from the language of Article 67 of the Agreement on TRIPS. This required developed country Members to make available technical and financial cooperation, on mutually agreed terms, in response to requests from developing country Members. It also listed specific areas where such cooperation should be provided, including assistance in the preparation of laws and regulations and support regarding the establishment of domestic offices and agencies, including the training of personnel. Technical cooperation plans could be drawn up identifying the needs of individual developing and least-developed countries in meeting their obligations under a transparency agreement and targeting technical cooperation activities to specific purposes, for instance for the establishment of contact points. The view has been expressed that the provisions on technical cooperation should match the specific requirements in a transparency agreement; compliance with the rules of a transparency agreement might require changes in national legislation and procedures and the building up of new institutions in individual countries. The following types of areas in which technical cooperation would be beneficial have been suggested:

regarding development of national legislation and procedures:

- legal advice and assistance in drawing up national legislation;
- administrative and policy option analysis and guidance;
- drawing up procedures on publication;
- establishment and implementation of bid challenge systems;
- taking practical steps to make procurement more user-friendly by developing standard forms for tender notices and fill-in-the-blank bid forms, as well as developing a common procurement vocabulary;

regarding training:

- training for those who have to implement, use or enforce new legislation, procedures and/or practices, training the judiciary, and training local trainers who would continue training programmes in, for example, business schools or colleges of public administration in the beneficiary country;
- exchange of officers;
- training of purchasers and suppliers;

regarding institution building:

- administrative cooperation to enhance institution building and the exchange of information;

regarding access to information by suppliers:

- workshops, seminars and the production of user guides, including the development of Internet Websites, search engines and databases, to help provide information about opportunities to do business with governments at home and abroad, and to facilitate access to that information; in particular, such assistance could benefit small- and medium-sized enterprises, by increasing their confidence and effectiveness in successfully entering procurement markets at home and abroad;

regarding use of information technology:

- the development of information technology tools which could be used to disseminate information about procurement opportunities and practices, and/or to establish full electronic tendering, as well as to facilitate the collection of relevant economic data and statistics;
- the provision of office, information technology and/or other equipment necessary for the implementation and enforcement of legislation, procedures and/or practices.

99. The view has been expressed that the practices under the TRIPS Agreement might also be useful in assessing and monitoring assistance on an ongoing basis, while avoiding the creation of additional bureaucratic structures and red tape. The point has also been made that the issue of technical cooperation should be discussed not only in terms of ensuring compliance of developing countries with the requirements of a future agreement, but also in terms of the practical steps that could be taken to enhance transparency in developed as well as developing countries.

100. It has also been suggested that requirements similar to the provisions of Article 66.2 of the Agreement on TRIPS might be included in an agreement on transparency. Developed country Members might be required to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to developing country suppliers in order to enable them to participate in bidding for public contracts in developed countries. In comparison with Article 67 of that Agreement, under which technical cooperation depended on the mutually agreed terms and conditions between developed and developing country Members, technical cooperation under Article 66.2 was provided unilaterally and at the initiative of developed countries. Technical cooperation could be useful in achieving the objective of economic efficiency in government procurement. For instance, providing information to developing countries as to what governments usually procure and information as to worldwide sources would be relevant in this regard.

101. The point has been made that the technical cooperation activities of international intergovernmental organizations and fora, including international financial institutions and regional development banks, in the field of government procurement could contribute to transparency and the implementation of a transparency agreement. It has been suggested that consideration should be given to developing a framework under a transparency agreement for rationalizing the various activities in this area at the bilateral, regional and multilateral levels. In this respect it has been suggested that the Secretariat would prepare a background paper containing information on technical cooperation programmes of international and regional intergovernmental organizations related to government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical cooperation in this area.⁶

102. It has been suggested that potential recipient and donor countries should be encouraged to share their views on particular needs and the available forms of technical cooperation in the area of government procurement. It has also been suggested that special attention should be paid to the problems of institution-building, in particular in least developed countries. The Chair invited Members to provide information in writing to the Working Group on their needs and on the technical cooperation already available.

103. With regard to special and differential treatment for developing countries, the view has been expressed that this issue might be addressed once the elements of an eventual agreement were more clearly defined. In this connection the suggestion has been made that transitional periods in respect of developing countries might be provided.

⁶ The information communicated from UNCITRAL, OECD, the Asian Development Bank, the African Development Bank, IMF, the APEC Government Procurement Experts Group, European Bank for Reconstruction and Development, ITC and UNDP on their respective technical cooperation activities in the area of government procurement has been circulated in documents WT/WGTGP/W/20 and Addenda 1-7.

WORLD TRADE
ORGANIZATION

WT|WGTGP|1
19 November 1997

(97-5099)

**Working Group on Transparency
in Government Procurement**

REPORT (1997) TO THE GENERAL COUNCIL

1) *The Working Group on Transparency in Government Procurement was established by a decision at the WTO Ministerial Conference held in December 1996, to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement.*

2) *Following the agreement by the General Council at its meeting of 24 April 1997 to the appointment of Ambassador Werner Corrales Leal (Venezuela) as Chairman of the Working Group on Transparency in Government Procurement¹, the Working Group held formal meetings on 23 May 1997, 21 July 1997 and 3 and 4 November 1997. Reports on these meetings have been circulated in documents WT|WGTGP|M|1-3.²*

3) *At the meeting of 23 May, presentations were made by the representatives of the UNCITRAL (the United Nations Commission on International Trade Law) and the World Bank on the relevant instruments and activities relating to government procurement in their organizations (WT|WGTGP|W|1 and 2), followed by comments and questions and answers with regard to these presentations (WT|WGTGP|M|1, Annex). Members made general remarks on how the Working Group could proceed in the study phase of its mandate. Japan made a written submission on elements of transparency in government procurement (Job No. 2860). The Working Group requested the Secretariat to prepare a paper presenting factual information on the provisions related to transparency in international instruments on government procurement procedures (the UNCITRAL Model Law on Procurement of Goods, Construction and Services; the World Bank Procurement Guidelines; the Plurilateral WTO Agreement on Government Procurement) and in WTO agreements. With regard to the information already collected on national practices by other bodies, the Working Group asked the Secretariat to make contact with APEC and the FTAA*

¹See document WT|L|215

²WT|WGTGP|M|3 to be distributed

to invite them to make available what information they could share with the Group regarding the surveys they had undertaken. With regard to the relationship between the mandate of the Working Group and that of the Working Party on GATS Rules, the Working Group agreed that, while the Working Group's independence should be maintained vis-à-vis the Working Party on GATS Rules, the Chairman would seek to maintain contact with the Chair of that Working Party so as to facilitate any necessary coordination on practical matters. The Working Group noted that the IMF and the World Bank had observer status in this Working Group pursuant to the cooperation agreements concluded between the WTO and these organizations and agreed to invite UNCITRAL to attend its next meeting.

4) *At the meeting of 21 July, Members made general statements regarding the definition of the concept of transparency in government procurement in the study phase of the Working Group's mandate; ways of achieving the objective of transparency in the light of the diversity of procurement regimes of Members; and the aspects of transparency that the Working Group should cover in its study. The delegations of Canada and the United States made written submissions on elements relating to transparency in government procurement and on guiding principles respectively (Job Nos. 4099 and 4133). With regard to national procedures and practices, the Working Group had available to it information received from the APEC Government Procurement Experts Group (WT|WGTGP|W|4 and S|WPGR|W|21) and a note by the Secretariat •Synthesis of the Responses to the Questionnaire on Government Procurement of Services•, which had been prepared at the request of the Working Party on GATS Rules (S|WPGR|W|20). The Working Group was presented factual contributions by the delegations of the European Community and New Zealand, describing their national procedures and practices relating to transparency in government procurement, (WT|WGTGP|W|5 and Job No. 5616) and invited other Members to provide similar information. The Working Group considered a note by the Secretariat on •Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures and in WTO Agreements• (WT|WGTGP|W|3) and agreed that the Secretariat would prepare a paper synthesizing the factual information on national procedures and practices available to the Working Group together with the information on the transparency-related provisions in existing international instruments. The Working Group agreed to invite the OECD and SELA to attend its next meeting on an ad hoc basis.*

5) *At its meeting of 3 and 4 November, the Working Group had before it a Secretariat note synthesizing the information on national procedures and practices relating to transparency available in the responses to the questionnaire on government procurement of services in the Working Party on GATS Rules, the surveys of government procurement systems of APEC economies, the sections on government procurement in the various Trade Policy Review Reports and the contributions submitted by delegations together with the information in the earlier note by the Secretariat on the transparency-related provisions in existing international instruments (WT|WGTGP|W|6). It discussed the issues before it by taking up in turn the subjects of sections II-X of the note, together with topic of special and differential treatment for developing countries and technical assistance. Written submissions were presented by Korea, Tunisia and Hungary containing factual information on their national procedures and practices*

(WT|WGTGP|W|7-9 respectively) and other written submissions were submitted by Norway, Switzerland and Japan (Job Nos. 5220, 6328 and 6329 respectively). The Working Group agreed that the Chairman would draw up, with the assistance of the Secretariat, a list of the issues that had been raised and the points that had been made on these issues, under each of the items that it had discussed. In response to a request by UNCITRAL, the Working Group agreed to grant observer status to the United Nations represented by UNCITRAL.

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**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 18 JUNE 2003

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its eighteenth meeting on 18 June 2003 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for the meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) technical assistance and capacity building as called for by paragraph 26 of the Doha Ministerial Declaration; and (iii) other business, in particular the preparation of the Group's Report to the General Council before the Cancun Ministerial Conference. The Working Group agreed to adopt the agenda as proposed.

A. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

3. The representative of the European Communities introduced a written contribution relevant to this item (entitled "Positive Effects of Transparency in Government Procurement and Its Implementation") contained in document WT/WGTGP/W/41. In so doing, he reminded Members of the Working Group that the Group had been undertaking work since 1997 "to develop elements for inclusion in an appropriate Agreement"¹ on the basis of a mandate which had been agreed upon at the Singapore Ministerial Meeting. He considered that this meeting would be the last step of the Working Group's study phase and that, on the next occasion, following the Cancun Ministerial Conference, Members would have a negotiating mandate. Reflecting on the work undertaken during the past six years, he considered that the study phase had been valuable and fruitful. He noted that written and oral contributions made by Members on many areas related to transparency in government procurement, including descriptions of national procurement systems, had enabled Members to identify advantages of a transparency agreement as well as some difficulties, which confronted Members in the lead-up to negotiations. He suggested that Members discuss what the advantages and disadvantages of a transparency agreement were, and identify the difficulties associated with the implementation of a multilateral agreement covering this subject-matter. He noted that the work of the Working Group concentrated on 12 issues identified by Members set out in the Chairman's "List of Issues Raised and Points Made" (JOB(99)6782 of November 1999), and that those issues would be of paramount value during the negotiating phase.

4. For his delegation, transparency meant ensuring that information about a government's procurement regime and individual procurement opportunities were made available to all interested parties, particularly potential suppliers and service providers. Further, it meant that such parties were provided the right to access that information. It also meant ensuring that procurement policies and practices were transparent and that information provided was respected by all in order to provide confidence and legal certainty. In international trade, suppliers needed legal certainty and

¹ Singapore Ministerial Declaration, WT/MIN(96)/DEC, para. 21.

predictability, regardless of whether they were participating in tendering procedures in their own country or abroad.

5. While transparency in government procurement was not *per se* a difficult issue, at least not technically, it was perceived as politically controversial by some Members. However, he considered that it should not be so perceived given the numerous benefits associated with transparency in government procurement and given that the issue of market access did not arise. Rather than the focus being on market-access commitments, it was on a rules-based agreement that would render more transparent a part of international trade currently outside the scope of the WTO. He stated that transparency was one of the key governing principles of the WTO and the GATT, and it was embedded in all WTO agreements. Noting that all Member governments purchased goods and services both domestically and abroad, he stated that there was a significant amount of international trade generated by public entities when, in the exercise of their sovereign powers, they decided to purchase internationally. Given the volume of international trade generated by such activity, transparency in public procurement was fully justified and, accordingly, rules ensuring transparency should be negotiated in the WTO. He stressed that his delegation would not seek negotiation of market access; nor would his delegation seek to limit countries' ability to decide which procurement opportunities would be open to foreign bidding. In this regard, he noted that paragraph 26 of the Doha Declaration was clear on these issues and they were, therefore, not contestable. However, while the scope of negotiations would be limited to transparency issues and would not extend to market access issues, in his delegation's view, the outcome of future negotiations would have an impact on Members' trade relations. Some of the benefits in trade relations that transparency in government procurement would yield were contained in his delegation's communication. He suggested that the price to be paid for a transparency agreement was relatively low compared to the potential benefits deriving from the optimisation of public expenditure.

6. His delegation's communication highlighted some of the major benefits associated with a future multilateral agreement on transparency in government procurement that would accrue not only to procuring entities, but also to participating bidders. First, transparency would result in enhanced efficiency and increased innovation. Specifically, public procurement applied in a transparent environment with a clear set of rules defined in advance and respected by all parties might allow tendering companies from both developed and developing countries to foster enhanced competition, which would, in turn, stimulate innovation amongst bidders. Secondly, a multilateral agreement would result in better value-for-money. In particular, transparent tendering should lead to effective competition between bidders (in some cases from foreign bidders). The differences in terms of value and quality offered in the various bids would often reduce the level of bids. This, in turn, would reduce the amount of public expenditure. Thirdly, transparency rules would encourage investment and partnership. He stated that this was of particular importance for developing countries that were trying to develop their markets. Fourthly, a transparency agreement would have the effect of reducing corruption. While his delegation did not consider that this would be the objective of the future multilateral agreement on transparency in procurement, it was, nevertheless, considered as a welcome side-effect for all countries.

7. Turning to the future implementation of a transparency agreement, he stated that his delegation had examined the legislation and regulations of many Members of the WTO. On the basis of the information available, his delegation had established that many countries, including developing countries, already had transparency rules in place. Accordingly, the implementation of any future multilateral agreement would not be a major difficulty for those countries. For countries that did not have a procurement system in place, the costs that might be associated with the introduction of such a system would be far outweighed by the resulting benefits. He also emphasized that a future multilateral agreement on transparency in government procurement would not in any way affect or reduce countries' ability to give preference to domestic supplies – in other words, to limit the scope of tendering procedures to national bidders. Nevertheless, the rules contained in a transparency agreement should apply without distinction between national or international bidders. In other words,

transparency should be ensured even when a tender was not open to foreign bidders. More particularly, foreign bidders should have information regarding tendering opportunities that were not open to foreign participation.

8. He noted that his delegation's contribution suggested that the Working Group focus on thresholds above which the rules would apply and below which such rules would not apply. He stated that different thresholds might apply for developing countries or, at least, for least-developed countries, if that was considered the way to accommodate such countries' concerns.

9. Finally, he emphasized the need for technical assistance during and after the negotiations – as was agreed in the Doha Declaration. His delegation was committed to providing technical assistance to developing countries, acknowledging that it was an important element in ensuring that such countries were in a position to implement a multilateral agreement of transparency in government procurement.

10. The representative of Brazil, responding to the paper submitted by the European Communities, stated that while the paper contained a convincing argument for transparency in government procurement, it failed to make a strong case for an agreement on transparency and government procurement. He stated that the general concepts and proposals were, on the whole, not controversial. No delegation had put forward the view in the Working Group that transparency in the procurement process was not a good thing; nor had they denied the benefits for Members associated with transparency in government procurement. His delegation had been firmly committed to open and transparent rules in the public sector for many years. It was also conscious of the many benefits that had accrued to the government and to entities through the application of such open and transparent rules. It was necessary to demonstrate and understand how an agreement on transparency in government procurement would enhance relations among Members and how one Member applying enhanced transparency in government procurement affected and benefited its trading partners.

11. The representative of Malaysia, also responding to the contribution made by the European Communities, stated that that contribution had been useful insofar as it expounded the position of the European Communities on certain issues and their level of ambition and aspirations in this area. At the very least, the European Communities had reiterated that the mandate given by Ministers in the Doha Declaration was limited to transparency and did not extend to market access. He also expressed appreciation for the reference in that contribution to the concept of thresholds. It was his delegation together with a few other developing countries that had emphasized the need for thresholds since the inception of the work of the Working Group. A transparency agreement would become too onerous without the inclusion of thresholds, particularly for developing countries given that otherwise the agreement would apply even to the smallest procurements. Given the reference to the notion of thresholds in the European Communities' contribution, it had gained acceptance at least by the European Communities and perhaps by other major proponents, as well.

12. Nevertheless, his delegation did not agree with the statement in the paper that Members were "on the verge of a decision on modalities".² This was not true given the continuing disagreement in the Working Group. He acknowledged that a larger degree of consensus existed in the Working Group as compared with Working Groups on other Singapore issues or, at least, those concerned with investment and competition policy. He also acknowledged that some level of consensus had emerged in relation to several of the elements in the informal note by the Chairman containing the "List of Issues Raised and Points Made".³ However, convergence had not yet been achieved in relation to a large number of those elements. In particular, convergence had not been achieved in relation to the definition of transparency and the issue of whether the scope of the agreement should be limited to goods or include services and concessions. In addition, there were two elements that his delegation –

² WT/WGTGP/W/41, p. 1.

³ JOB(99)6782 of November 1999.

together with those of other developing countries – had repeatedly emphasised, namely domestic review procedures as well as linkage to the WTO's DSU. In his view, these elements were not concerned with transparency and should never be a part of an agreement on transparency in government procurement.

13. Continuing, he emphasized that while Members were not on the "verge of a decision on modalities"⁴, they were on the verge of a discussion on modalities, a process which would be undertaken by the Chairman of the Working Group as a "friend" of the Chairman of the General Council in an informal setting and not as part of the Working Group. He emphasized that precision was necessary given that developing countries would be seriously disadvantaged if they were required to enter into negotiations without understanding what they were negotiating about. Having emphasized the need for precision as regards the parameters of negotiations, he conceded that pre-negotiation of every element was not necessary. For example, once it had been accepted that the concept of a threshold should be incorporated into the scope of the agreement, the actual value of the threshold could be left to the negotiations. Similarly, the representative of India stated that her delegation could not share the view expressed by the European Communities that Members were "on the verge of a decision on modalities".⁵ Despite the fact that the Working Group had had a long study phase, a number of crucial issues remained for which clarification was still necessary. These issues could not be clarified during the negotiating phase. Before entering into a negotiating phase, there needed to be a clear conception of what would be involved if there was to be any agreement on transparency. Her delegation did not even know precisely what transparency would entail, nor what the scope or coverage of an agreement would be. The representative of the Philippines noted that the European Communities had made it clear that it was not seeking market access. Indeed, it had provided assurances about national preferences and the issue of thresholds, although the devil lay in the detail. Despite confirmation that the European Communities was not seeking market access, the paper contained a plethora of reassurances regarding national sovereignty, the use of national preferences, thresholds, proportionality, technical assistance and capacity building, which had the effect, if anything, of raising doubts on the issue. Further, while the European Communities concluded in its paper that Members were on the verge of a decision on modalities for the negotiations, for his delegation, a few fundamental considerations precluded such a conclusion. He stated that leaving such considerations to be addressed during the negotiating stage would be highly imprudent if not irresponsible. In particular, the paper submitted by the European Communities did not address the issue of domestic review and dispute settlement, although it was acknowledged that the nature of the subject-matter of that paper did not call for such elaboration. Nevertheless, these issues were of fundamental concern to his delegation. Moreover, the European Communities already benefited from positive moves towards institutionalised and greater transparency in many developing countries, whose procurement markets were presumed to be of considerable importance. The question, therefore, arose as to why the European Communities and other proponents required payment for something developing countries had already determined for themselves that they required. In response, the representative of the European Communities stated that while the comment that "Members are on the verge of a decision on modalities"⁶ might sound optimistic, that was the way his delegation viewed the current situation.

14. The representative of Egypt, also responding to the contribution by the European Communities, noted that the paper appeared to be based on the premise of a future agreement on transparency in government procurement. The mandate from the Singapore Ministerial Conference as affirmed at the Doha Ministerial Conference was to conduct a study, on the basis of which the Working Group would develop elements for inclusion in an appropriate agreement on transparency in government procurement. Therefore, it was of utmost importance to recognise that any future agreement would depend on the outcome of the study exercise rather than simply on the expiration of

⁴ WT/WGTGP/W/41, p. 1.

⁵ WT/WGTGP/W/41, p. 1.

⁶ WT/WGTGP/W/41, p. 1.

time. Furthermore, the Doha Declaration imposed another condition, being to develop and agree by explicit consensus on the modalities of negotiations. This could only be achieved following the conclusion of the study process.

15. The representative of Switzerland stated that his delegation considered that the contribution submitted by the European Communities was extremely useful and timely insofar as it allowed Members to refresh their memories on the various elements that had been studied by the Working Group. His delegation agreed that the issues of scope and coverage and enforcement mechanisms were perhaps the most sensitive and difficult to tackle in future negotiations. His delegation agreed with the European Communities that the study phase was over because the elements and the differences of positions were clear. What remained was to make "bridges" during the negotiations phase. The representative of Poland, expressing support for the paper submitted by the European Communities, stated that his delegation was in favour of establishing a multilateral framework for transparency in government procurement. Many important benefits would flow from such an approach. His delegation also shared the view that the study phase should be concluded and that the Working Group should commence work on the modalities of negotiations for a future agreement. The representative of Hungary stated that her delegation supported the aim and content of the European Communities' contribution. After a seven-year study phase, it was a good time to underline the general aims to be achieved by establishing an agreement on transparency in government procurement while recognizing difficulties that could be caused by the absence of transparency in government procurement. Her delegation was convinced that an agreement on transparency in government procurement would be an important addition to the rules-based international trading system in that it would set out basic transparency obligations that suppliers throughout the world could expect to find in the government procurement systems of all Members.

16. The representative of Japan stated that her delegation generally shared the views reflected in the European Communities' contribution. The Working Group had completed a study of transparency in government procurement practices and had made progress to develop elements for inclusion in an appropriate agreement during the last six years. Her delegation was also aware of difficulties for developing countries to implement a future agreement. Therefore, the framework of such an agreement should be simple, focussing on core principles such as transparency in procurement opportunities and other elements as illustrated in the items in the Chairman's "List of Issues Raised and Points Made" (JOB(99)6782 of November 1999). The details of tendering procedures should be dealt with in each Member's domestic laws and a transparency agreement should ensure that such procedures were transparent. The representative of Morocco stated that his delegation welcomed the work done so far in the Working Group, whatever the decision adopted in Cancun as to negotiations on a future agreement. The agreement could contain the principles referred to by Japan, which would help contracting entities to transpose transparency rules into national regimes in a manner that took account of national conditions. His delegation agreed that the agreement should be simple and flexible, placing emphasis on transparency. Such an approach would greatly facilitate the negotiation of the future agreement.

17. The representative of Australia stated that his delegation viewed the contribution by the European Communities as a good basis that supporters of a transparency in government procurement agreement could endorse. The contribution clearly explained the benefits deriving from a transparency agreement. It emphasized the point that implementing transparency rules should not be viewed as onerous; it underlined that the freedom of Members to provide preferences to domestic suppliers was not being challenged; and it recognized the need for technical assistance to ensure that developing countries were in a position to abide by obligations that would flow from such an agreement. His delegation strongly endorsed the conclusion reached by the European Communities that the real benefit of an agreement would derive from the construction of a minimum set of rules applicable world-wide that would have the effect of introducing legal certainty to existing procurement procedures. More generally, his delegation considered that the discussion to date in the Working Group had been extremely valuable in fleshing out the objectives and expectations of

Members. Australia continued to support the development of an agreement in transparency in government procurement and saw value for all Members in its development. An agreement should encompass a robust principles-based approach both with respect to transparency and due process aspects, but which at the same time was not prescriptive and which did not confer a right to challenge tender outcomes. Such an agreement could be the first step towards a genuine multilateral instrument designed to facilitate companies' access to information about procurement opportunities, processes and practices and, at the same time, could provide the benefit of a more competitive procurement market.

18. The representative of the United States believed that an agreement on transparency in government procurement would yield important benefits for suppliers in Members' countries. Such an agreement would establish core transparency elements that suppliers throughout the world could be assured of finding in the procurement systems of every WTO Member. Such an agreement would also be an important addition to the rules-based international trading system, building upon the transparency elements found in other agreements within the WTO. Her delegation also considered that predictability and certainty provided by a transparent, rules-based government procurement system would build on other efforts within the WTO to ensure full integration of all Members into the global trading system. She noted that some Members considered that convergence existed in respect of many of the elements in the Chairman's "List of Issues Raised and Points Made" (JOB(99)6782 of November 1999) but that a divergence of views existed in relation to particular elements, and that some Members had suggested that Members should not move forward until convergence on all elements had been achieved. However, that was the purpose of negotiations and not of the study phase. Her delegation considered that Members had exhausted the study phase and that it was now time to move to the development of an agreement, taking on those issues for which convergence had not yet been achieved with the objective of working through differences.

19. Reflecting on the specific benefits associated with transparency in government that had been identified by the European Communities' paper, the representative of Thailand stated that government procurement not only involved the government but also investors, bidders and other local people. It was for that reason that Members tended to be more protective and conservative in approaching the issue of transparency in government procurement. Nonetheless, his delegation advocated that transparency, being one of the cornerstones of the WTO, was something it was mindful of. The enhancement of transparency in government procurement attracted more international bidders and foreign investment. In Thailand, all government agencies including local and national government entities alike were required to observe the same rules and regulations governing government procurement. He acknowledged that local government agencies still found it more difficult to implement transparency principles as compared to national government agencies. He also stated that there was a need to restrict international bids in favour of domestic bids in some cases. However, he suggested that procurement for very large projects should be open to all bidders on a non-discriminatory basis. Procurement of services could be the subject of further study. He also stressed that Members could not pre-empt what Ministers would decide on modalities at Cancun.

20. The representative of Colombia stated that, over the last few years, Colombia had undertaken substantial reforms in the area of government procurement that were primarily aimed at enhancing transparency. By way of example, he noted recent action by the government to implement concrete measures to fight administrative corruption, particularly in the area of government procurement. Additionally, the public had been involved in the development of procurement processes through "citizen watch" organizations. The use of information technology had been promoted to, *inter alia*, optimise the management of this process, to reduce costs of transactions and to eliminate corrupt practices through an integrated electronic system for government procurement. On the basis of Colombia's experience, his delegation considered that governments could, through a general scheme for transparent procurement, ensure more efficient public expenditure. Despite the foregoing, he acknowledged that this was not necessarily a sufficient basis upon which to create multilateral rules in the area.

21. The representative of India stated that her delegation considered transparent, rules-based procurement procedures to be extremely important. India constantly sought improvements in the procurement systems and the relevant procedures. Such improvements included the adoption of the latest technologies, taking into consideration capacity and funding constraints, for the purposes of disseminating information. India had significantly decentralized its procurement regime and the major procuring entities had been provided with flexibility to carry out the procurement procedure within the guiding financial rules and on the basis of standardized documents and procedures. Decentralization had, in her delegation's view, made procurement more efficient in that it provided better value-for-money to citizens. Such experience had made her delegation sceptical of any effort to be prescriptive in terms of procurement procedures and systems given that there was no way that the diverse nature of the WTO membership could lend itself to such a process. Nevertheless, sharing experiences regarding procurement systems used by various Members would, no doubt, be very useful given that some of the practices described could be adopted by others with suitable modifications reflecting domestic particularities. Additionally, her delegation fully agreed that the provision of timely information was crucial and that all Members had to endeavour to provide such information in an easily accessible format and place. However, it was a moot question as to whether a comprehensive binding agreement was needed to achieve this purpose. In this regard, she noted that her delegation had repeatedly expressed its reservations regarding any binding obligations, particularly because the issue at stake was only one of transparency.

22. The representative of Peru stated that while the reduction of corruption, better administration, and more efficient allocation of public budgets were important objectives, his delegation was not necessarily convinced of the usefulness, particularly for developing countries, of a multilateral agreement on transparency in government procurement. His delegation had encountered serious problems in other areas of negotiations and considered that the inclusion of a new area of negotiations, particularly transparency in government procurement, would further complicate those difficulties. Similarly, the representative of Cuba stated that his delegation attached great importance to transparency in government procurement since this constituted one of the basic principles of the WTO. While recognizing efforts made by the European Communities in identifying in their contribution the benefits that might accrue from a possible multilateral agreement, his delegation considered that this was not sufficient to demonstrate the need of a multilateral agreement at this stage. The representative of Brazil also stated that value-for-money was not always the most important factor in public procurement. In some cases, technical aspects and/or strategic considerations were more significant than the cost of the procurement. The representative of the Philippines stated that his delegation did not deny that there were valuable benefits associated with a system of transparency in government procurement, even in the area of corruption, although, as many delegations had said, this was beyond the WTO's competence and mandate. Undoubtedly, many developing countries had already applied rules on transparency in government procurement. In fact, the Philippines, was increasingly relying on electronic means for procurement purposes, and the experience thus far had been quite positive.

23. The representative of Canada stated that her delegation shared the views expressed by the European Communities on the positive effects associated with a multilateral agreement on transparency in government procurement. In her delegation's view, an agreement on transparency in government procurement would improve the efficiency of the international trading system; improve economic efficiency, including improved competition and best value-for-money; and improve confidence in the procurement system, including through the reduction of the possibility of corruption. In noting that his delegation supported the adoption of a multilateral agreement on transparency in government procurement, the representative of Chinese Taipei stated that, in an effort to ensure greater economic efficiency in government expenditure and in order to reduce corruption, the threshold for open tendering had been reduced from US\$140,000 to US\$3,000 in May 1999. Opinion polls revealed that 80 per cent of people surveyed considered that this measure had had a considerable positive effect on government expenditure and also on the reduction of corruption. Further, it was discovered that the average percentage cost reduction of open tenders as compared

with non-open tenders was more than 15 per cent. The representative of Switzerland expressed appreciation for the fact that the European Communities' contribution put forward compelling arguments in favour of an agreement on transparency in government procurement. His delegation agreed that transparency would ensure better value-for-money. While the use of transparency to increase investment and partnership through joint ventures and transparency rules in the government procurement area was a market access issue, it was possible to find new investment possibilities. Switzerland, as a major investment country, was interested in access to government procurement through joint ventures. In his delegation's view, an agreement on transparency in government procurement would increase investment and partnership, including for countries that maintained domestic preferences and/or would not allow direct competition with domestic companies.

24. As to the limitation of a multilateral agreement to transparency issues, the representative of Thailand stated that his delegation was satisfied with the confirmation by the European Communities in its contribution that transparency in government procurement would not lead to market access issues being taken up. His delegation was also comforted with the confirmation that government entities might apply restrictions on bidding procedures, provided that such restrictions were made known to foreign bidders prior to their entry into the bidding process. The representative of Peru supported the statement made by the European Communities in its paper that the coverage of a possible multilateral agreement in the area of transparency in government procurement would be clearly limited to transparency and would not reduce the ability of countries to grant preferences to domestic suppliers or to impose market access conditions. The representative of Colombia reiterated the sentiment emphasized in the European Communities' contribution that a future multilateral agreement would be limited to issues of transparency and would not seek to open up new markets nor to increase existing ones. This was fully consistent with basis of the Doha Declaration as it concerned transparency in government procurement. In principle, his delegation supported the view that a future agreement on transparency in government procurement should apply to all procurement without distinction between nationals and foreigners. However, the issue of coverage required further analysis if consensus was to be reached in Cancun.

25. The representative of Brazil noted that the European Communities' paper referred to procurement for which foreign bids were allowed. However, while foreign access might be granted to procurement markets in some cases, the Working Group's mandate did not entail a market access component. The representative of Egypt referred to what he considered a contradiction in the European Communities' contribution. The paper suggested application of an agreement on transparency in government procurement to all procurement without drawing a distinction between cases where bids were restricted to national bidders and those where international bids were accepted. Simultaneously, the paper recalled the Doha mandate according to which the scope of the Working Group's work was clearly limited to transparency – without limiting the ability of countries to provide preferences to domestic supplies and suppliers. The representative of Nigeria sought clarification as to whether the European Communities would seek progression from a transparency agreement to one aimed at securing market access in the future. The representative of India also sought clarification as to whether the European Communities intended a future agreement on transparency to be applied without distinction between tenders open to international bids and those that were not.

26. In response to requests for more clarification regarding the scope for transparency, the representative of the European Communities expressed his scepticism about the likelihood of an agreement defining such parameters. Further, he stated that his delegation would fully respect preferences to domestic suppliers because that had already been made clear in the Doha Declaration. It was for that reason that his delegation's contribution did not contain much detail in this regard. He also noted that it had been stated in his delegation's paper that the future agreement on transparency in government procurement should be applicable without making a distinction between the national and the international level because his delegation believed that the rules should apply, but without impinging upon the right of governments to decide what ultimately would remain exclusively reserved for national bidders.

27. As regards the level of government that might be covered by a transparency agreement, the representative of Malaysia stated that his delegation disagreed with the suggestion in the European Communities' contribution that an agreement on transparency in government procurement would be extended to the sub-federal level. He noted that while his delegation's views had evolved on this issue, the current position was that a multilateral agreement on transparency in government procurement should be limited to procurement by federal entities and should not extend to procurement by entities at the sub-federal level. Similarly, the representative of Morocco stated the future agreement on transparency in government procurement should be limited to central authorities, particularly in countries where local entities encountered capacity problems. The representative of India sought clarification as to whether the European Communities sought coverage of provinces municipalities, and the like at the sub-federal level. In response, the representative of the European Communities stated that the transparency agreement would be applicable at the federal level as well as the sub-federal and municipal levels.

28. In relation to the issue of thresholds, the representative of Brazil questioned the concept of thresholds in the context of transparency in government procurement. He noted that transparency should yield benefits for each and every procurement conducted by Members. Accordingly, he questioned whether an appropriate message was being sent to Members by suggesting that transparency was good only above a certain limit and that below that limit Members were free to act in a non-transparent manner. In his view, Members needed to be flexible to adopt the most appropriate procurement method. However, there should be a commitment to transparency and openness even for small tenders. He noted that the concept of thresholds in the European Communities' contribution appeared to be inconsistent with the opinion in that contribution that the future agreement on transparency in government procurement should apply to all procurement.

29. The representative of Switzerland stated that while theoretically thresholds had nothing to do with transparency, for reasons of flexibility, it might be useful to have thresholds. In addition, he indicated that his delegation could also support flexibility in a future agreement that ensured that undue burden was not placed on countries implementing such an agreement. He emphasized the importance of taking practical measures to help developing countries to live up to possible future obligations. The representative of Morocco agreed that transparency was relevant for all procurement, whatever the threshold. Nevertheless, thresholds would allow rules to be avoided in cases in which they were not essential.

30. The representative of Malaysia expressed disagreement with the point made in the European Communities' contribution that all procurement above the prescribed threshold should be subjected to a multilateral agreement. In Malaysia's view, only procurement open for foreign bidding and above the prescribed threshold would be subject to the disciplines of a multilateral agreement on transparency. The decision of whether a particular procurement should be open to foreign bidders or should only be limited to its nationals or local suppliers was one that should be left to the discretion of the procuring entity. If such discretion was not respected, market access issues would arise. Nevertheless, he stated that if the intention of the European Communities in its contribution was to ensure that in cases when a tender was closed to foreign competition and only limited to domestic suppliers, information to that effect should be provided *a priori*, his delegation certainly agreed. The representative of Nigeria sought clarification as to whether the European Communities had any views on the value of thresholds that would apply to developed and developing countries.

31. In response, the representative of the European Communities stated that on the basis of years of experience in the European Communities, his delegation had discovered that thresholds could be practical and useful. Questions remained as to what the specific levels of those thresholds should be? Should a distinction be drawn between threshold levels for developed countries on the one hand and for developing or the least-developed countries on the other? Should different thresholds apply to different sectors and to entities at different levels of a governmental hierarchy? He noted that more

detail regarding the European Communities' position on these issues were contained in previous papers by his delegation.

32. With respect to the implementation of a transparency agreement, the representative of Switzerland noted that the contribution by the European Communities stated that most countries already had transparency rules. Therefore, given that many or most Members already applied certain kinds of transparency rules, it would not be particularly difficult to establish a multilateral agreement in the area. His delegation considered this to be an important issue because a future agreement on transparency should be made on the basis of a cost-benefit analysis. If transparency rules already existed in many countries, this cost-benefit analysis would obviously yield more benefits than incurring costs. The representative of Canada stated that her delegation believed that the implementation of an agreement on transparency in government procurement could produce benefits that outweighed the potential administrative costs. Her delegation agreed that thresholds could contribute to achieving this result. Canada was committed to providing support through the WTO and other institutions to enable Members to develop the capacity to implement their obligations. Her delegation was of the view that the scope and elements of an agreement would be refined through negotiations.

33. The representative of Egypt referred to what he considered to be another contradiction in the European Communities' contribution. On the one hand, the European Communities' paper contained the statement that the cost of applying new and additional WTO rules on government procurement would be "minimal, if any"⁷, while in another paragraph the paper recognized that "a minimum of infrastructure will be needed to respond to these future obligations in an efficient manner: publications, notifications, etc".⁸ The representative of Cuba sought clarification on the cost of implementing an agreement on transparency in government procurement. He suggested that this cost might be extremely high and well beyond his country's national budget. Further, the content of an agreement would affect human resource and equipment requirements. The publication of rules and regulations applying to each of the procuring entities might also prove to be burdensome. He suggested that further clarification was required on this issue. The representative of Nigeria sought clarification as to whether the European Communities was amenable to providing assistance to developing countries that might need support in implementing an agreement on government procurement. The representative of the European Communities stated that the issue of cost was a legitimate concern. However, as long as Members did not know exactly how the future agreement would look like and, in particular, what its scope and coverage would be, it was difficult to have a precise idea of the costs involved in setting up a transparency system. His delegation was ready to do what was necessary to make implementation of the rules the least cumbersome and costly as possible through technical assistance and capacity building.

34. The representative of Thailand noted that, in its paper, the European Communities stated that the procurement process used in a particular case should be proportionate to the value of the goods or services to be purchased. Clarification was sought as to how the proportionality principle would work in practice in this context. It was his delegation's understanding that certain principles should apply as a minimum regardless of the magnitude of the project in question. In response to the question posed by the representative of Thailand, the representative of the European Communities stated that tenders for major works often required complex rules in order to ensure an effective and efficient tendering procedure. It was for that reason that the concept of proportionality had been introduced.

35. In relation to technical assistance and capacity building, the representative of Thailand expressed appreciation for the commitment expressed by the European Communities regarding the provision of assistance on capacity building. His delegation considered that such assistance would be meaningful if it was designed according to the requirements prescribed by recipient countries. As a

⁷ WT/WGTGP/W/41, p. 2.

⁸ WT/WGTGP/W/41, p. 3.

related point, the representative of Colombia sought the views of the European Communities and other Members on the development priorities mentioned in the Doha Declaration. It was necessary to further explore that part of the mandate, particularly for the sake of creating incentives for developing countries such as his own. The representative of Morocco noted that his country had never ceased making efforts to improve transparency in government procurement; however, authorities had encountered difficulties in this regard. Hence his countries' interest in technical assistance. His delegation welcomed the mention of technical assistance in the paper submitted by the European Communities.

36. The representative of Malaysia stated that the European Communities tied the provision of technical assistance to an eventual agreement on transparency in government procurement or to the demonstration of a readiness to negotiate. He stated that if the European Communities was genuine about helping the developing countries, transition economies and LDCs to improve their government procurement regimes through making them more transparent and more efficient, they should provide technical assistance even in the absence of an agreement or in the absence of an agreement to negotiate. He was not referring to technical assistance to help countries understand the elements of a transparency agreement, what they would mean and their implications. Rather, he was talking about assisting developing countries generally, particularly those that needed assistance in the establishment of a more efficient government procurement regime through the adoption of procurement rules that would enhance transparency. He encouraged the European Communities to de-link the provision of technical assistance from the multilateral agreement process.

37. In response, the representative of the European Communities noted that his delegation was the biggest contributor of technical assistance in many areas, be it through multilateral or bilateral channels. His delegation tended to respond positively when genuine requests for technical assistance were made, which outlined the relevant country's needs. In counter-response, the representative of Malaysia stated that his delegation did not require assistance given that laws and regime were in place and government procurement processes were transparent in Malaysia. In any event, his statement was more general, seeking technical assistance in the absence of an agreement or in the absence of an agreement to negotiate. The representative of the United States noted that his delegation had been engaged in the provision of technical assistance to various developing countries to help them develop and modernize their procurement systems for a long time. That assistance had been provided independently of the work undertaken in the Working Group to develop a transparency agreement. Rather, the assistance had been provided because his delegation believed that all countries benefited from having predictable and rule-based procurement systems.

38. With regard to the reference to the reduction of corruption in the European Communities' paper, the representative of Switzerland stated that corruption was something that existed in all countries, even following the application of transparency rules. Nevertheless, rules on transparency had allowed his delegation to better tackle that problem. In his delegation's view, the rationale underlying a future agreement on transparency in government procurement was not to reduce corruption. Rather, the reduction of corruption would be a side-effect of the agreement.

39. The representative of Brazil stated that reduction of corruption was not a principal objective, nor something that would be built into any possible agreement on transparency in government procurement. Similarly, the representative of Thailand stated that his delegation saw the benefit of reducing corruption but bearing in mind that the reduction or elimination of corruption was not part of the objectives of the WTO, his delegation firmly believed that corruption could not be properly addressed without the full cooperation of those who offered and received bribes. The representative of Morocco stated that the fact that a transparency agreement had the consequence of combating corruption could only be seen as a positive consequence of transparency under the future agreement. However, it could not be considered as an element of that agreement. The representative of China stated that the issue of corruption raised a variety of complicated issues. In addition, there was no assurance that an agreement on transparency in government procurement would reduce corruption.

The representative of Egypt expressed regret at the fact that the European Communities' contribution dealt with corruption. His delegation did not consider that the inclusion of this element in the Working Group's discussion would be conducive to Members' work, particularly at this stage. Likewise, the representative of Malaysia stated that his delegation considered that this was not an issue that the WTO should deal with. Rather, it was a moral issue. His delegation had always maintained that moral, social and similar kinds of issues were not the domain of the WTO. The representative of India noted that while reducing corruption is a laudable objective for all national governments, the WTO was not necessarily the appropriate forum to pursue that objective. While recognising that Members should have efficient and effective national legislation to fight corruption, the representative of Cuba stated that this issue was outside the domain of the WTO and should be addressed by each Member in accordance with its own respective legislation. The representative of Peru expressed support for the statement made by the representative of Thailand to the effect that the reduction of corruption, being an objective shared by all, necessitated a cooperation agreement covering both those who offered and those who received bribes. Nevertheless, he could not see how a multilateral agreement as described in the European Communities' contribution could assist Members in combating such practices.

40. In response, the representative of the European Communities stated that that a future multilateral agreement would not contain specific provisions on corruption, nor would it be an objective of the future negotiations. However, he emphasized that reduction of corruption was one of the side-effects of such an agreement.

41. As for the way forward to Cancun, the representative of Korea stated that after almost seven years since Ministers in Singapore agreed to establish a Working Group to conduct a study on transparency in government procurement practices, the preparatory work of the Working Group on transparency in government procurement was nearing completion. In full accordance with the instructions given by the Ministers in Singapore and Doha, Members had made meaningful progress in developing the core elements of a multilateral agreement on transparency in government procurement in this Working Group. Korea believed that it was time to proceed to the next phase of work as agreed by the Ministers in Doha. It was clearly stated in the Doha Declaration that negotiations on transparency in government procurement would take place after the Cancun Ministerial Conference on the basis of Ministers' decisions on modalities of negotiations and that negotiations would be treated as part of the single undertaking. Korea's aim was to establish a multilateral agreement on transparency in government procurement that was acceptable to all. To this end, it was crucial to adjust the level of ambition and to address the interests of developing countries in an effective and balanced manner. In this context, he emphasized the following points. First, his delegation was aware that a number of Members had reservations on the establishment of a multilateral agreement on transparency in government procurement. However, considering the positive contribution of the GATT and WTO to the world economy in the past, the outcome of the negotiations on transparency in government procurement would also yield benefits to developing countries and LDCs alike. As noted in the European Communities' contribution, a number of benefits would result from a multilateral agreement on transparency in government procurement, benefits that were produced not just for domestic and foreign suppliers. In addition, ensuring transparency in government procurement was a core element of good governance, which was essential to economic development. Second, the Doha mandate clearly stated that the future multilateral agreement on transparency in government procurement would be limited to transparency without hindering national preferences to domestic suppliers and suppliers. He noted that the European Communities indicated in its contribution that the aim in an agreement on transparency in government procurement would be to establish a minimum set of rules that would have the effect of introducing legal certainty in the existing procedural process, an aim fully shared by all WTO Members. Third, Ministers also instructed that negotiations should take into account Members' development priorities, especially those of LDC participants. Korea believed that in order to take full account of the concerns, burdens and obligations of developing and LDCs, S&D, TA and support for capacity building should be fully reflected in the negotiations process.

42. The representative of China stated that his delegation attached great importance to transparency in government procurement. The Chinese law on government procurement had been implemented since 1 January 2003. Detailed regulations were currently being drafted so as to enhance publicity of procurement processes. In addition, his delegation recognised the importance of a multilateral agreement on transparency in government procurement in the WTO. Although Members had not achieved consensus on many issues, the results of discussions in the Working Group had been valuable and could form the basis for future work.

43. Continuing, he noted that in his delegation's view the following steps were necessary in the context of the Working Group in the lead-up to the Cancun Ministerial Conference. First, it was necessary to reiterate that an agreement on transparency in government procurement would only be limited to transparency, it would exclude market access commitments and would have no impact on Members' rights to use government procurement to support domestic enterprises and purchasing national goods. Second, the elements of the agreement needed to be identified. His delegation considered that transparency in government procurement required Members to publicize information on laws, regulations and procedures on government procurement through appropriate media. The requirements on publication of procurement information, such as procurement opportunities and contract awards, should be flexible and limited in scope. Review mechanisms should be consistent with domestic legal regulations. Further, given the close relationship with market access, the application of the DSU should be excluded from an agreement on transparency in government procurement. Third, the Working Group should establish a timetable for an agreement on transparency in government procurement, which did not specify a deadline for the conclusion of the agreement. Nevertheless, the Working Group should fully consider the complexities and difficulties of the negotiations when setting the timetable. Finally, S&D treatment should be ensured for developing countries, given the different levels of development of Members' government administrations. In particular, exceptions from transparency obligations should apply in certain circumstances and longer implementation periods should be provided.

44. The representative of the Dominican Republic reiterated that his delegation was in favour of negotiations being launched in Cancun for a multilateral agreement on transparency in government procurement. In line with the Doha Declaration, his delegation expected that such negotiations would take into account Members' development priorities and would be limited to transparency aspects only. He indicated his delegation's readiness to cooperate with Members to move forward during the period until Cancun by agreeing on the modalities of negotiations.

45. The representative of Australia stated that in the lead-up to and following Cancun, it would be important for Members to focus on ways to assist developing countries and least-developed country Members to identify technical assistance needs aimed at capacity building. The representative of Nigeria stated that his delegation was of the view that it would not be helpful to rush the process. Rather, a "step-by-step" approach was preferable, although clarification of the European Communities' interpretation of a "step-by-step" approach was sought.

46. The representative of the European Communities stated that it was his delegation's view that the study phase of the Working Group's work was completed. It was necessary for Members to move to a negotiating phase with the objective of establishing a multilateral agreement. His delegation was convinced that it was appropriate to work towards a multilateral agreement. He also stated that, for his delegation, this issue would be part of the single undertaking.

47. The representative of Cuba noted that the Doha mandate indicated that it was necessary to achieve consensus before negotiations could be launched. A number of developing countries wanted to be able to properly participate in the process. However, they still lacked sufficient skills to negotiate. Before an agreement was considered, such countries wanted to be clear about what would be entailed. The agreement had to be a win-win agreement, which was beneficial to all and was truly balanced.

48. The representative of Nigeria stated that the discussions that had taken place in the context of the Working Group had reinforced his delegation's view that the issues were complex and that the work of clarifying the issues had not yet been completed. Divergence of views existed in relation to most issues. These issues, which were systemic in nature, would have serious implications in terms of the costs associated with implementation, the effect on national policy, and flexibility. Such issues included the meaning of "transparency" and the application of the DSU mechanism. Views on these issues could not be dismissed easily and needed to be properly addressed. His delegation valued greatly the opportunity to take part more actively in the discussion. However, more time was needed to build capacity. One of the key issues of concern for his delegation was market access. Paragraph 26 of the Doha mandate clearly stated that negotiations would be limited to transparency. His delegation was opposed to any attempts to expand that mandate. His delegation was also concerned about the cost of implementing any potential transparency agreement. On the scope and definition of transparency, his delegation was concerned by any attempt to go beyond the provision of information on laws, regulations and tenders. It should not extend to other areas entailing substantive decisions rather than pure transparency matters, such as the evaluation of offers, decision-making processes, provision of relief to unsuccessful tenderers, and review of procuring entities' decisions, etc. His delegation was also of the view that the process should result in a win-win situation for all Members and not just to some.

49. The representative of Cuba stated that the debate in the Working Group demonstrated that many aspects of the Chairman's "List of Issues Raised and Points Made" still required more in-depth work and study. The central aspect of a future agreement, namely scope and coverage, had not yet been clarified, and significant divergence existed between Members' views in this regard. In addition, differences existed in relation to domestic review procedures and the application of the DSU to a possible agreement on transparency. With respect to account being taken of the special situation of developing countries, it was not obvious that a transition period would suffice. Also, further work was required to show the relationship between transparency and the use of particular methods of procurement; the prescriptions relating to time-limits; contract award procedures; and bids in cases where there was no consensus. It was necessary to recognise that Members were far from having concluded the study that they had been asked to undertake. Developing countries wanted more clarification on each of those aspects during the study phase, which should not be concluded until adequate clarification had been provided.

50. The representative of Brazil stated that he was encouraged by the fact that a number of delegations, including the European Communities, had expressed the view that the existence of a divergence of views on some issues should not be, in itself, an impediment to moving forward. His delegation fully shared that approach. His delegation considered that all that was required was a certain consistency in approach with regard to the various issues.

B. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

51. The representative of the Secretariat stated that technical co-operation activities had been undertaken by the Secretariat to fulfil the requirements of the Doha Declaration. The emphasis had been on regional activities organised, wherever possible, in conjunction with the multilateral development banks and the regional development banks. As regards Africa, a workshop for the English-speaking African countries had been held in Dar-es-Salaam, Tanzania in January 2003. A workshop for French-speaking African countries would be held in Dakar, Senegal on 8-11 July 2003. The latter was being organized in cooperation with the World Bank and the African Development Bank as well as the Government of Senegal. As regards Latin America and the Caribbean, information had previously been provided to Members about sub-regional events held for the Central American countries and the Caribbean countries in 2002. In addition, a workshop would be conducted in Buenos Aires, Argentina on 28-30 July in cooperation with the IADB for the Latin American countries that had not already been covered by the sub-regional events that had taken place in 2002. As regards Asia factors beyond the Secretariat's control had had some effect on the planning

and carrying out of technical co-operation activities in recent months. Accordingly, it had not been possible to proceed with a regional government procurement workshop in cooperation with the Asian Development Bank that had been planned for May 2003. The Secretariat was seeking to reschedule that activity as soon as practical. In addition, a number of other broader technical cooperation activities had been organized by the Secretariat, which had not been exclusively dedicated to government procurement, but included components on government procurement. In particular, a regional Doha Development Agenda Advanced Training Course had been held in Johannesburg, South Africa on 24 June. This course had been for senior government officials from the African countries. A similar type of activity would take place in the first half of July in Tbilisi, Georgia for government officials from the Caucasian and Central Asian countries. Further, trade policy courses conducted in Geneva in March and June 2003 had also included a government procurement component. Similarly, the 2nd Regional Trade Policy Course for English-speaking African countries had been held in Nairobi, Kenya. It was also foreseen that a regional trade policy course for OIC member countries in Jeddah, Saudi Arabia in early July would also contain a government procurement component. The representative of the Secretariat also recalled that on 19 June two other events were being organized in Geneva that fell within the overall ambit of technical cooperation and capacity building. An Information Session was planned on technical co-operation and capacity building activities of intergovernmental organizations in the area of government procurement at which a number of intergovernmental organizations would be sharing information on activities undertaken by them. Further, a workshop on capacity building in government procurement at which a number of developing countries would be sharing information on their respective experiences and needs would take place. In conclusion, the representative of the Secretariat noted that general feedback from the activities that had been undertaken by the WTO Secretariat had been positive. That feedback was being used to improve activities in the area.

52. The representative of Nigeria noted that a number of countries lacked capacity in the area of government procurement. Some did not even have procurement laws. Accordingly, his delegation believed that the provision of technical assistance through seminars and conferences was insufficient. A concerted effort was needed to provide technical assistance on a case-by-case basis rather than making it general or adopting a one-size-fits-all approach. Such an approach would ensure that assistance would really build capacity, and it would help Members to participate in the current and possibly future process at the WTO on this issue.

C. OTHER BUSINESS

53. Regarding the nature and process for preparation of the Working Group's report to the General Council on its activities in 2003, the Working Group agreed that the Secretariat be asked to prepare a draft report of the type that had been prepared for the Working Groups on competition policy, and investment. The draft report would be circulated to Members during the first week of July. The report would then be approved by written procedure. The Chairman requested that Members submit any necessary corrections to the document to the Secretariat within seven days of the circulation of the draft. The report would then be forwarded to the General Council by 14 July. If the changes proposed by Members made it necessary, a short meeting would be convened to discuss and approve the report.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 7 FEBRUARY 2003

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its seventeenth meeting on 7 February 2003 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for the meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) technical assistance and capacity building; (iii) observer status of international intergovernmental organizations; and (iv) date of the next meeting. The Working Group agreed to adopt the agenda as proposed.

A. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

3. By way of a general statement under this agenda item, the representative of Sri Lanka said that his Government attached great importance to transparency in government procurement, which it considered as being critical to good governance, and building confidence in the management of government affairs. A transparent government procurement system helped governments to achieve greater value for money, ensure efficient use of public resources, and purchase better quality goods and services. Commenting on the work done in the Working Group, he said that his Government had carefully examined many aspects of transparency in government procurement. As reflected by the documentation before the Working Group, since its establishment in 1996, considerable progress had been made in examining the issues related to transparency in government procurement; a large number of submissions on relevant specific issues had been made; Members had exchanged information on national procedures and practices; and information had been provided on transparency-related provisions in international instruments. Considering that the procurement systems of many countries were based on the UNCITRAL Model Law on Procurement of Goods, Construction and Services, and that many countries followed the World Bank Guidelines when undertaking certain types of procurements, those instruments could be drawn upon by the Working Group to advance its work. A multilateral agreement on transparency in government procurement did not need to be a complex undertaking and the Doha Ministerial Declaration had narrowed its scope by limiting the parameters to transparency aspects and by providing explicitly that an agreement neither restrict domestic preference nor require market access commitments. Further, publication of information on national legislation and procedures was a necessary element of a transparent procurement system. While its views were flexible with regard to the issues pertaining to information on procurement opportunities, tendering and qualification procedures, time-periods, transparency of qualification procedures and transparency of decisions on contract awards, his delegation believed that there was a need for more focused discussions on the elements relating to definition and scope, procurement methods and domestic review procedures and its relationship to the WTO Dispute Settlement Understanding so as to allow further clarity to emerge on these four issues. Finally, his

delegation recognized the importance of a multilateral agreement on transparency in government procurement, and believed that the elements contained in the submissions made so far and the work in the Working Group would contribute to positive decisions at the Cancun Ministerial Conference on this important subject.

4. The Working Group took up the items in the informal note by the Chairman "List of Issues Raised and Points Made" contained in JOB(99)6782 of November 1999. Comments were made on items I, VIII and XI.

5. In relation to item I, namely definition and scope of government procurement, the representative of Sri Lanka said that higher threshold values should be applied in respect of requirements for developing countries on account of their limited administrative and technical capacity to apply the future requirements.

6. Addressing the issue of whether both goods and services should be covered by a possible future multilateral agreement, the representative of Sri Lanka said that there might be a need to provide flexibility for developing countries in the procurement of services, as small-sized developing countries did not procure services of a significant nature. However, his delegation also recognized that procurement of goods was often associated with procurement of services and, therefore, there was a need to find a way to accommodate this aspect.

7. The representative of Switzerland said that the Working Group might need to explore further the possibility of applying different threshold values and including flexibility for developing countries in the area of services in a future agreement.

8. The representative of Malaysia, joined by the representatives of Venezuela, India, Pakistan, and Egypt, reiterated their delegations' position that any eventual agreement should be limited in scope to goods only and should not include services. Supported by the representative of Pakistan, the representative of India said that bringing the issue of transparency in procurement of services within the ambit of the discussion of the Working Group went beyond its mandate. The representatives of Pakistan and Egypt said that the Group should seek to build on the progress made in the discussions pertaining to transparency in relation to goods procurement. Reopening the issue of transparency in procurement of services might be counter-productive.

9. The representative of India asked whether all the elements identified in the Group related to transparency in their entirety. Even on those elements where such a relationship had been established, the purely transparency-related aspects of procurement procedures as against application of transparency in the larger context of the procurement activity needed further clarification. India continued to remain unconvinced about considering any future obligations on transparency in procurement of services or a combination of goods and services.

10. The representative of the European Communities, joined by the representatives of Chinese Taipei and the United States, said that the substance of the Working Group's discussion was transparency in the procurement process, irrespective of whether this related to contracts for goods, services or a combination of both. The representative of Chinese Taipei said that, since a future agreement would not have a market access component, it should have a broad coverage extending to goods, services and construction services. The representative of the United States said that, given the difficulty of distinguishing between procurement that should be subject to transparency rules and others that should not and that procurement regimes in most countries applied the same rules to procurement of both goods and services, it was important that the whole system, including goods and services, be transparent. The United States therefore considered it important that the coverage of a future agreement be extended to both goods and services.

11. The representative of Brazil said that the divergence of views on the issue of scope and coverage was a problem that was likely to recur throughout most of the other provisions, the more prescriptive a future agreement tended to be. The Group should reflect upon whether there was a need for a future agreement to specify whether it covered goods and services. In Brazil there was one legislation which covered goods, works and services. Commitment to transparency in a procurement legislation implied agreeing to transparency in all sectors.

12. Continuing with the discussion of the items in the informal note by the Chairman, the Group took up items VIII and XI, namely domestic review procedures and application of WTO Dispute Settlement Procedures. For the discussion of these items, the Group had before it a communication by the United States entitled "Considerations related to Enforcement of an Agreement on Transparency in Government Procurement" and a communication from the European Communities entitled "Domestic Review Mechanisms Related to Transparency in Government Procurement" contained in documents WT/WGTGP/W/38 and 39, respectively.

13. The representatives of the United States and the European Communities introduced their delegations' respective communications.

14. The Working Group heard comments related to the suggestion by the United States that the obligations of a transparency agreement should be subject to the same types of enforcement as existing commitments in other WTO agreements.

15. The representative of Sri Lanka considered that the approach presented in the communication by the United States in document WT/WGTGP/W/38, which sought to draw on the provisions on domestic review mechanisms currently available in a number of WTO agreements was helpful.

16. The representative of Brazil, noting that the nature of an agreement on transparency in government procurement would be inherently different from any existing WTO agreement, wondered why the United States had made this presumption from the outset. Unlike other WTO agreements, an agreement on transparency in government procurement which, in terms of the Doha mandate, would allow Members to continue to discriminate in favour of national suppliers, would not seek to address trade relations among Members. The WTO dispute settlement mechanism was based on the presumption that a violation of an obligation would have an effect on the trade of Members, whereas in the context of an agreement on transparency in government procurement, there could be no such presumption. Further, under the DSU, the way to correct non-compliance was through compensation or retaliation. It would be difficult to base any dispute settlement system on that premise because there would be no violation of trade rights in the case of a transparency agreement.

17. The representative of Canada said that the listing of the provisions on domestic review in other WTO agreements in the communications by the United States and the European Community had clearly highlighted the widespread applicability of that concept to trade matters. Procurement involved domestic implementation of trade-related matters and, in that sense, procurement rules were similar to the rules in other WTO agreements. Members should work towards identifying the models of enforcement mechanisms that could be appropriately applied to a transparency agreement.

18. The representative of Korea said that domestic review procedures and the DSU should be among the core elements of the future transparency agreement. The appropriate content of the appropriate provisions could be discussed in future negotiations. Members had fully recognized the importance of the domestic review process as stipulated in other WTO agreements. In the context of transparency, domestic review procedures were important not only for foreign suppliers, but also for domestic constituencies.

19. The representative of Japan said that her delegation agreed with the United States that an agreement on transparency in government procurement would be an important addition to the rules-based international trading system, and its obligations should be subject to the same types of enforcement procedures as existing commitments in other WTO agreements. Joined by the representatives of Hungary and Jordan, she said that Japan attached great importance to enforcement mechanisms and, as underlined in its submission (document WT/WGTGP/W/37), her delegation regarded domestic review procedures and application of WTO dispute settlement procedures as important elements of a future transparency agreement.

20. The representative of Australia said that the establishment and maintenance of a transparent procurement system provided confidence to potential suppliers that they would be treated fairly in a procurement process. When procurement processes became clouded and decisions were perceived not to follow a logical outcome, suppliers could lose confidence in the system. Therefore, availability of domestic review procedures was an important requirement in a transparency agreement.

21. The representative of the United States noted that most Members already had domestic review procedures, not because WTO had imposed them but because such Members had determined within their own system that that was in their best interest, and that their suppliers required a means to challenge procurement decisions. The United States had had a domestic review mechanism for many years, which had preceded the requirements in the plurilateral Agreement on Government Procurement, and existed because suppliers wanted to have an opportunity to challenge, when necessary, how procuring entities had handled procurements. That mechanism was available for foreign suppliers as well as domestic suppliers. In the experience of countries that had domestic review procedures, those kinds of procedures provided credibility and gave assurance to suppliers that, if they had a complaint against a decision of a procuring entity, they would have the means for having that decision reviewed by an impartial body. Domestic review procedures should therefore be part of a transparency agreement.

22. The representative of Malaysia, joined by the representative of Pakistan, said that the WTO agreements providing for domestic review procedures that were mentioned in the communications by the European Communities and the United States were related to market access in contrast to the mandate of the Working Group which was limited to transparency.

23. The representative of Malaysia reiterated his delegation's view that the issues of domestic review procedures and application of the DSU had nothing to do with transparency and were therefore outside the scope of a transparency agreement. As long as those two elements were on the table, there would be no consensus at the Cancun Ministerial Conference to negotiate an agreement in this area. Any eventual agreement on transparency in government procurement should be limited in scope, should not be prescriptive, and should not have provisions on domestic procurement review that could be used to question the decisions of Members' governments, administrations and procuring entities. The idea of domestic review procedures was fundamentally flawed in the context of a transparency agreement, the provisions of which would basically allow the provision of information on what Members did and how they did it, under what procedures, what time-periods, and what requirements for potential bidders. Without a reassurance that domestic review procedures would not question the decision of domestic authorities, his delegation could not agree to including such procedures in a transparency agreement.

24. Noting the statement by the representative of Malaysia that an agreement on transparency in government procurement should not make it possible for a procurement decision to be revoked or called into question, the representative of Chile said that this raised the question of what sort of measures would go into a future agreement focusing on transparency. In particular, what sort of measures could make it possible for a procurement-related decision to be renounced, or stopped by a review authority at the national level.

25. The representative of Egypt asked why the proponents believed that the obligations of a transparency agreement should be subject to the same type of enforcement as existing commitments in other WTO agreements. Existing enforcement mechanisms had been devised to ensure fair trade, and to avoid the creation of unnecessary obstacles to trade which were market access issues. Without obligations on market access, an agreement on transparency in government procurement should not be treated like other WTO agreements. There should be requirements to put in place domestic enforcement mechanisms.

26. The representative of Switzerland noted that the communications by the United States and the European Communities made a strong case for ensuring adequate enforcement mechanisms, in particular by demonstrating that availability of domestic review mechanisms were current requirements in existing WTO agreements. Concerning the argument that enforcement mechanisms in existing WTO agreements related more to market access, he opined that, similar to other WTO agreements, a transparency agreement would stipulate obligations and requirements, and an enforcement mechanism was needed in order to make them meaningful. Therefore, while accepting the distinction between market access and transparency, which had been made in the Doha mandate, he disagreed with Malaysia's point that enforcement mechanisms were unnecessary for the transparency obligations in a future agreement.

27. The representative of India said that, while various domestic review provisions existed in a number of WTO agreements, those agreements were not related to transparency. A transparency agreement would basically require making available certain information on Members' relevant rules, regulations and procedures. Accordingly, domestic challenge procedures did not have their place in a transparency agreement. The Working Group had run through the list of issues in the informal note by the Chairman, without having a focused discussion on what Members meant by transparency. The issues raised by the two communications did not figure on her delegation's list of priorities. Joined by the representatives of Pakistan and Egypt, she went on to say that the Working Group was still in the study phase and was trying to define what transparency would entail, and until the contours of transparency were clarified, there was not much point in discussing whether domestic review procedures should or should not be available.

28. The representative of Pakistan said that the proponents should elaborate more on what was meant by "challenge" and "enforcement" in the context of transparency disciplines.

29. The representative of the European Communities said that, in an agreement without market access, in practical terms, the only possibility for disputes was when a Member would omit to publish a tender notice or would be late in publishing some procurement rules. He agreed that there was very little to implement and the costs were quite reduced. However, the Working Group was discussing principles, and Members had to agree on the principles even if the implementation of the future rules would not be problematic.

30. Commenting on application of WTO dispute settlement procedures to a transparency agreement, the representative of Egypt reiterated his delegation's position that the dispute settlement mechanism in whole or in part should not apply to a transparency agreement. Members had to abide by the mandate given to the Working Group, namely to clarify and define transparency, and not what would apply in case Members did not abide by transparency rules. Urging Members to focus on the issue of transparency, he said that it was inappropriate to discuss the questions of application of DSU and market access in the Working Group.

31. The representative of India said that her delegation maintained its position that application of WTO dispute settlement procedures had no place in the Working Group's discussion.

32. The representative of the United States said that, as well as having market access as their principal focus, many WTO agreements included transparency elements. The agreement on transparency in government procurement would be unique in the sense that it would not cover market access; at the same time, it was similar to other WTO agreements in that it would cover transparency. The agreements that had transparency elements did not carve out the transparency elements to provide that such elements were not subject to WTO dispute settlement procedures. Any Member could challenge another Member's implementation of such transparency provisions. Her delegation was seeking the same kind of enforcement with regard to an agreement on transparency in government procurement as in transparency provisions in other WTO agreements. Agreeing that the agreement was about transparency, and not about market access, she said that if a Member did not implement any of the provisions of the transparency agreement, Members would not be seeking concessions or retaliation, but compliance. Further, as opposed to just arguing for a carve-out from the application of dispute settlement procedures, Members should be thinking about ways of increasing the capacity of Members to comply with the requirements in a transparency agreement. Also, the Working Group should try to identify provisions that might be more difficult for Members to implement, and perhaps such provisions should be subject to transition periods.

33. The representatives of Australia, Canada, Switzerland and Pakistan endorsed the suggestion by the United States that a transparency agreement could include simple and flexible provisions on domestic review procedures that accommodated different Members' existing independent administrative or judicial tribunals and review procedures. The representative of Australia expressed his delegation's preference for strong but non-prescriptive domestic review obligations.

34. The representative of Sri Lanka said that, in many countries, in particular in parliamentary democracies, adequate domestic administrative, audit and judicial mechanisms were already in place to ensure that all participants in the procurement process acted in conformity with the applicable rules and procedures. Such a mechanism would need to be in place in a country to ensure the enforcement of the underlying rules. The need for the establishment of a domestic review mechanism in a Member would arise only if that Member's currently available system did not guarantee the overall transparency of government procurement.

35. The representative of Australia said that his delegation recognized the relevance of domestic review procedures and application of WTO dispute settlement procedures to a future agreement on transparency in government procurement. At the same time, he acknowledged that the scope of application of such provisions would need to be addressed in future negotiations. The final outcome on dispute settlement would be determined by the rules that might emerge from the negotiations and had to be consistent with the governance objectives of Members. Noting that the United States had not chosen to identify in its communication which levels of government might be covered by domestic review procedures, he said that this underscored the difficulty of delving into domestic review and dispute settlement issues except in a rather general way until Members knew the content, coverage and elements of a transparency agreement. In response, the representative of the United States said that her delegation was not suggesting having domestic review at the local level. Whether or not obligations in this respect would apply at the sub-central level, related to the scope of the overall agreement.

36. The representative of Brazil said that, while his delegation regarded domestic review procedures as an essential element in any viable government procurement regime at the domestic level, his authorities' experience had been that suppliers who lost a procurement would use each and every possible recourse, administratively and judicially, to delay the procurement, perhaps even feel that if they could protract a process long enough the whole bidding process could be declared null and void and they could get a second chance. Domestic procurement systems would become too complicated if they were allowed to be bogged down by too many and abusive challenge procedures. Joined by the representative of Pakistan, he continued by saying that the various submissions before the Working Group emphasized the issue of suppliers' rights, and that the Working Group had to

balance those rights with the interests of governments in conducting efficient procurement processes. Not only the rights of suppliers and the rights of governments would need to be balanced but the purpose of having a transparent and open procurement system, a more efficient allocation of public resources, should also be guaranteed.

37. The representative of Switzerland said that Switzerland had had the same concerns expressed by the representative of Brazil but, subsequently, its experience had been that bidders normally did not use domestic review procedures very often, possibly because they wished to avoid problems in future tenders. Therefore, he was not convinced that the availability of an avenue for recourse to domestic review procedures would result in significant administrative burden. In response to the comment by the representative of Switzerland, the representative of Brazil noted that suppliers were perfectly aware of their rights under legislation and they used them to the extent they could without any fear of being sidelined in future procurements because the government authority might be upset.

38. Turning to the issue of the interaction between domestic review procedures and the application of the WTO Dispute Settlement Understanding, the representative of Sri Lanka said that the respective roles of the two mechanisms should be made explicit in the future agreement. Noting the statement in the communication by the United States that the provisions of domestic review procedures and application of the DSU should serve different purposes and that their different roles should be reflected in a possible agreement, he said that this suggestion might provide an answer to the question of whether there was a need to apply the WTO dispute settlement procedures to a transparency agreement when there was adequate existing domestic review mechanisms.

39. The representative of Brazil said that domestic review procedures and application of the DSU were two distinct phases in a dispute resolution process and there was not much scope for their interaction. Domestic review procedures had the purpose of ensuring that the interests of individual suppliers were protected at the domestic level. This went above and beyond the minimum standards for domestic review procedures that could be agreed to in the context of a WTO agreement. The communication by the United States made it clear that the DSU would not be used to address problems of individual suppliers, since resort to the DSU would not be available to challenge individual procurement decisions. Taking a case against a Member under the DSU for a violation of its obligations in the agreement was an entirely different matter than taking a case against a government entity under domestic review procedures for not respecting its obligations *vis-à-vis* a supplier under national legislation.

40. The representative of Korea asked whether there would be two separate enforcement mechanisms for different types of disputes, or whether the rules would require the exhaustion of domestic review procedures before any recourse to WTO dispute settlement procedures.

41. The representative of the United States emphasized that domestic review and WTO dispute settlement procedures should serve different purposes, and that there could be no overlap between the two. The transparency agreement could provide, explicitly, that resort to the DSU would not be available to challenge how a procurement authority had handled a specific procurement or to overturn a contract decision. The representatives of Sri Lanka, Korea, Japan and Switzerland supported the suggestion by the United States. The representative of Sri Lanka added that the WTO Dispute Settlement Body could not overturn the decisions of the domestic review mechanisms. The representative of Switzerland said that bidders would not have the possibility of having award decisions reversed under the DSU, and recourse to the DSU would be open only to WTO Members.

42. The representative of Pakistan asked whether WTO dispute settlement procedures would review the applicable laws and domestic review procedures would review specific procurements, or would a particular procurement dispute be subjected to two parallel mechanisms.

43. In response, the representative of the United States stressed that the United States did not intend to have two bites of the same apple. Rather, her delegation suggested that, if there was a question about how a procurement was being conducted, it would be up to the supplier to take that issue up with the domestic review mechanism. Such procedures would be available only for suppliers participating in a procurement, and DSU could not be used by WTO Members to question national authorities' procurement decisions. Members could invoke WTO dispute settlement procedures only for repeated failures to comply with the rules in the agreement or to implement its basic obligations.

44. Agreeing with the representatives of the United States and Australia that the Group would not need to decide the particulars of an enforcement mechanism until the full contours of an agreement had been determined, the representative of Switzerland said that this consideration also applied to the issue of the link between domestic review procedures and application of the DSU.

45. The representatives of Japan, Korea and Switzerland supported the suggestion by the United States for phasing-in application of certain provisions of a transparency agreement and thus application of the DSU for developing countries. The representative of Korea asked whether phasing-in applications of the DSU would entail the phasing-in application of certain provisions of the future agreement and, if so, what type of provisions. In response, the representative of the United States said that Members could not foresee which provisions would lend themselves to phasing-in application until the Working Group had discussed the exact content of those provisions. In the context of a transparency agreement, some provisions would be easy to implement as most Members already had transparent procurement systems. At the same time, the Working Group should assess which provisions could be problematic for some countries. She urged Members to approach this whole discussion by focusing on what they considered they needed as elements of an agreement, and then looking at which Members would have problems, how much time such Members would need to bring their systems into compliance, and to develop a flexible approach to phasing-in those provisions.

46. The representative of Canada, joined by the representative of Switzerland, said that the communication by the European Communities made a useful distinction between obligations aimed at ensuring transparency in domestic review procedures maintained by Members and ensuring suppliers' rights to challenge a procurement in breach of transparency provisions. Transparency of domestic review procedures should include making information available on the decisions of review bodies which should be independent.

47. The representative of Switzerland agreed with the suggestion by the European Communities that the agreement should contain provisions allowing a supplier to challenge a procurement in breach of the provisions related to transparency of the procurement process. At the WTO level, the DSU would only apply to the implementation of the transparency provisions in the agreement.

48. The representative of Korea noted that establishment of domestic review mechanisms was an area where developing countries might be able to seek technical assistance for capacity building.

49. The representatives of Sri Lanka, Canada and Japan said that, consistent with the Doha mandate, which explicitly excluded domestic preference schemes, enforcement mechanisms in a transparency agreement could not be used to challenge them.

50. The representative of Chile asked for clarification on the kind of situations in which a decision by a national authority could be called into question or revoked, bearing in mind that the agreement would not in any way limit the power of national authorities to accord preference to domestic suppliers.

51. With regard to access to domestic review procedures, the representative of Brazil said that he had no objection to the basic principle that suppliers' rights to challenge a procurement procedure must be ensured. Nevertheless, it had to be made clear that only those suppliers who were eligible for that particular procurement had such rights. If a national procurement system allowed governments to maintain domestic preferences, the right to challenge a procurement procedure should be limited to national suppliers.

52. The representative of Chinese Taipei pointed out that, although the transparency agreement would exclude market access, government authorities in WTO Members did not only meet their procurement needs from domestic suppliers or domestic sources but also from foreign suppliers. Therefore, foreign suppliers' interests should also be protected. The representative of Japan said that the transparency agreement should require Members to make available domestic review procedures for both domestic and foreign suppliers who had concerns that a particular procurement was not in compliance with the transparency provisions of the agreement. The representative of Switzerland said that domestic enforcement mechanisms should be open to all bidders who have an interest and the possibility to bid in a particular tender.

53. Asking for clarification on the suggestion by the European Communities on access to review procedures rules, more particularly of the phrase "suppliers affected by a measure" (point 2.1 in document WT/WGTGP/W/39), the representative of Hong Kong, China asked whether the intention was to cover suppliers whom the procuring entity had intended to award, or had awarded a contract, or those who were affected by a decision of the review body. For example, if a review body had found that a procuring entity had failed to publish an invitation to apply for pre-qualification in the appropriate newspaper, whether the bidders who had not had notice of the invitation due to the procuring entity's breach of publication obligation be regarded as bidders who were affected by the measure. In response, the representative of the European Communities said that, if a contract award decision by a procuring entity was challenged by another supplier, and the domestic review mechanism found that the procurement process was void and should be repeated, that decision was, in principle, in response to the complainant; however, it should also be transmitted to other interested suppliers because the measure also affected other suppliers and they would be interested to know that the process had been cancelled and would be repeated.

54. The representative of Egypt asked why it was important that the possibility to challenge be available to all suppliers given that the Working Group's work had nothing to do with market access.

55. The representative of Australia asked the representative of the European Communities whether a supplier affected by a measure would have the right to bring a challenge during the procurement process prior to any decision, or he also would have that right after the conclusion of the process. In response, the representative of the European Communities said that each Member should be left to have its own meaning of the term "procurement process". He noted that, for some Members, the procurement process ended at the stage of a contract award decision while, for other Members, it ended at the signature of the contract. It was not for the agreement to decide on the duration and scope of a procurement process; that should be left to each national regime.

56. The representative of Switzerland endorsed the suggestion by the European Communities that it was important to secure sufficient independence of the domestic review bodies whether they be administrative, judicial or arbitral.

57. The representative of Switzerland endorsed the suggestion by the European Communities that the choice of domestic review procedures should be left to individual countries; however, the procedures chosen should be governed by certain common principles stipulated in the agreement. This would be an effective way of ensuring application of those principles while accommodating the disciplines in existing domestic procedures.

58. The representative of India said that most WTO Members had fairly reasonable and adequate administrative, arbitral and/or judicial mechanisms to suit their domestic needs, and to ensure that all players in the procurement process acted in conformity with the relevant rules and procedures. Since each WTO Member had domestic review procedures suited to its own specific situation, level of development and requirements, the stipulation of any mandatory rules or prescriptive guidelines in a transparency agreement would not be feasible. The primacy of domestic laws and procedures had to be preserved, and there should be no requirement to change them. Considering that the Working Group's work was to study the transparency aspects of procurement, as long as Members had a review mechanism that should satisfy any transparency requirements.

59. The representative of Egypt asked whether there would be common obligations on domestic review procedures or whether it would be left to each Member to establish its own procedures. The provisions of existing WTO agreements on domestic review provisions did not require that all Members have or apply common rules but that rules were consistent with their commitments in the WTO. His delegation was not in a position to accept the stipulation of common obligations, common procedures and common mechanisms in the agreement.

60. The representative of Australia, noting that the statement in the communication by the European Communities that government procurement regimes contained legislative and regulatory provisions to review decisions of procuring entities, suggested that the Secretariat review the existing submissions that had been made to the Working Group to determine whether there was a broadly representative body of information available on Members' domestic review processes. If such was not the case, he urged Members to provide, briefly, information on their national experience with domestic review procedures.

61. The representative of Venezuela pointed out that, whereas his Government attached great importance to the issue of transparency, the WTO should not impose on Members a uniform system. Venezuela had enacted a new procurement legislation and had been implementing it over the past few years. Before the adoption of the new procurement laws, an intense internal debate had taken place with all the sectors involved and it had received mixed reactions from various sectors, which was quite normal in a democracy. It would be unacceptable to Venezuela if the WTO, as some sort of supranational body, would tell his Government to disregard the domestic discussions over past years by prescribing how Venezuela should deal with the issue of transparency. Venezuela had its own legislation, procedures and its own concept of transparency, which had been recently reviewed by the WTO in the context of Trade Policy Review.

62. Commenting on the procedural points made by the representative of Venezuela, the Chairman noted that, in the Working Group, Members were working on the basis of a Ministerial mandate, and that work would be submitted to Ministers for their decision. The WTO operated on the basis of decisions taken by Members, and it would be a serious misunderstanding to see it as a supranational body. Many Members had been working on their legislation, and it was the Members that took decisions whether or not to ratify agreements. From a procedural point of view, the WTO did not impose any positions; it was Members themselves that took any decisions emanating from the WTO. It was clear that, independently of the type of system a government had, all decisions in the WTO were made by its Members. Finally, he recalled that the mandate of the Working Group clearly required the explicit consensus of Members for any kind of agreement.

63. The representative of Venezuela said that, as a matter of principle, the Constitution of Venezuela provided full support to the work of supranational bodies and intergovernmental organizations. Further, having supported the Doha Declaration, his delegation had to take into account everything that was being discussed in the Working Group as if it was an internal discussion in Venezuela. The decisions taken in the Working Group at the supranational level could have an effect on the debate on government procurement at the national level. Whether at the Cancun Ministerial Conference or in any other forum, his delegation would not support any decision that

would require abrupt changes in its national legislation, which had been discussed in a transparent way.

64. The representative of the United States said that her delegation was open to the question of how detailed the provisions on domestic review procedures should be. As the communication by her delegation indicated, the mechanism should be flexible and simple. The level of detail that should be provided in the provisions on domestic review in an agreement could be discussed later in the negotiations. In any event, other parts of the agreement would not prescribe how the agreement should be implemented. Rather, it should set out general obligations, and each Member would then have to implement it in the way that worked best within its domestic system.

65. Reverting to the relationship between a transparency agreement and domestic laws, she noted that there was perhaps an unnecessary fear that the Working Group would come up with one model that would fit all. Many countries had used the UNCITRAL Model Law as their guide for developing their procurement systems. Others had used the World Bank Guidelines, while others had developed their laws in other ways. All Members had developed procurement systems that worked best for them based on their legal traditions, experiences and background. For instance, the United States had an incredibly complex system, which it was trying to simplify, and her delegation was not suggesting that that was the best model.

66. Continuing, she said that the DSU would be available for systemic failures to comply with, or a high level of disregard to, the agreement, for instance if there were refusals to ever publish a notice, or refusals to ever make information available about procurement methods. She went on to say that the likelihood of a transparency provision being challenged in the DSU was very low. Referring to transparency provisions in other WTO agreements, she said that there had been very few cases of dispute settlement, if any, relating strictly to transparency obligations. So, that was probably not likely to happen under the transparency agreement either. Without a link to the DSU, an agreement could not be effective. Members would simply ignore the requirements of the agreement knowing that they would face no detriment to doing so. Even if the DSU might not be ideally suited to a transparency agreement, that did not mean that Members should not be looking at how they could make the agreement effective. Her delegation's overall concern was that there should be some means of ensuring enforceability, and was looking forward to suggestions from other delegations as to how this issue could be best approached.

67. The representative of Brazil agreed with the representative of the United States that, in all probability, a case under the agreement on transparency in government procurement would not be raised under the DSU. Referring to a note prepared by the Secretariat on Article X of GATT in the context of the discussions on trade facilitation, he said that, according to that note, transparency-related cases had been raised in a couple of instances but had never moved beyond the consultation phase. Therefore, he agreed with the representative of the United States that it was very unlikely that a transparency issue would go to a panel. However, if Members included any provisions relating to application of the DSU in the agreement, they had to be absolutely clear as to what could potentially happen. Joined by the representative of Egypt, he said that Members had to be aware of certain types of situations before moving forward on the issue of application of the DSU to a future agreement. For instance, a Member who was found, by a panel and the Appellate Body, to be in systematic violation of a commitment in the agreement, might not be in a position to comply with the recommendation of the DSB to bring its legislation into conformity with the agreement because of the refusal of its Congress to adopt the relevant legislation. Such a situation in which there was no nullification or impairment of trade rights could create an impasse in the DSB.

68. The representative of the United States said that, over the long course of discussions in the Working Group on these issues, she had never heard any Member saying that its procurement system was completely non-transparent or that it would prefer to have a non-transparent procurement system. The basic understanding and general acceptance that transparency was a good thing was common to

all Members, albeit perhaps to varying degrees with some Members. Turning more specifically to the scenario outlined by the representative of Brazil, she opined that such a scenario was not very likely. If there was a case where a Member reported to the WTO that it could not change its laws, other Members would not rush to take that Member to dispute settlement as that was not going to be in any Member's interest. She believed that Members would be more likely to ask how they could work together to try to address those issues. The overall goal was not to try to retaliate and penalize Members; it was to develop a common set of transparency obligations that would go across the whole membership of the WTO. Instead of looking at this as a confrontational issue, Members could look at it as an issue where they would try to reach the common goal of raising procurement procedures to the same level of transparency in all Members.

69. In response, the representative of Brazil said that his delegation was as committed to transparency as any other Member. This was evident from the presentation his delegation had made at the WTO Symposium on Transparency in Government Procurement in October 2002. He had been trying to get the Working Group to consider whether the DSU was the best way to ensure enforcement. He agreed that his scenario was hypothetical and very unlikely, but it highlighted the fact that perhaps application of the DSU could not ensure enforceability of an agreement on transparency.

70. The representative of Venezuela noted that the DSU did not include a mechanism to ensure enforceability of a transparency agreement. His delegation considered the DSU as the cornerstone of the WTO. There should be some sort of dispute settlement mechanism to ensure the enforcement of the agreement. Perhaps it would be more interesting to have this discussion within the framework of the ongoing negotiations on the DSU.

71. The representative of the European Communities said that the Working Group was confronted with a unique case. Indeed, there was no government procurement regime in the world with transparency provisions isolated from the rest of the procurement rules. Members were trying to develop rules on transparency without having rules on procurement, and this was extremely complicated. They had difficulty in understanding how transparency provisions isolated from the rest of the procurement process could be implemented in practice and how they could be enforced, in the absence of market access obligations, through domestic review procedures and application of the DSU. There was no precedent for the exercise that the Working Group had been engaging in for six years. This was also unique in the WTO, for instance the DSU had been conceived in the WTO to be applied to agreements related to market access, and, in principle, the DSU did not apply to agreements with no market access or clear economic impact. Further, it was difficult to develop rules on enforcement without having an idea on the scope of the underlying rules or the contours of the agreement itself. Most of the questions that had been raised by Members had been related to the difficulty of not having sufficient basis for discussion. Members were thinking that this would affect the link to market access because there were economic and trade issues in the background. Members could not imagine transparency rules alone because there was a procurement process in the background with economic and trade impact. He maintained that the transparency agreement should include dispute settlement procedures. This was primarily a matter of principle because the agreement would be part of the WTO system of rules. Nevertheless, the fact that there was a need for enforcement measures did not mean that they had to be identical to the existing rules in the DSU. There could be specific provisions on implementation of the DSU tailored to the scope of the transparency agreement. There were already a number of WTO agreements with specific provisions relating to application of the DSU, for instance, Article XXII:4 of the plurilateral Agreement on Government Procurement on Consultations and Dispute Settlement with regard to cross-retaliation. His delegation's aim was to secure the existence of domestic procedures allowing bidders to challenge a procurement decision. Finally, he said that enforcement was a difficult issue, but he believed it was the core of the future agreement because, without enforcement provisions, the agreement would be merely a general list of requirements. The WTO would not impose any decisions on domestic review bodies because domestic review bodies would review on the basis of the domestic rules on

transparency which, in principle, would be in line with the rules in a transparency agreement. Provisions on application of the DSU should be included in the agreement like in any other WTO agreement, although he recognized the difficulty with finding appropriate sanctions for a breach of transparency rules. He was not convinced that Members needed sanctions or suspension of concessions or cross-retaliation to ensure that the agreement was enforced. When negotiating the agreement, Members could engage in an imaginative exercise to find an appropriate way to apply the DSU to the transparency agreement.

72. The representative of Korea said that the Working Group might consider the flexibilities provided in the provisions of the DSU and in other agreements, for instance Article 17 of the Anti-dumping Agreement.

73. Commenting on the linkage between application of domestic review procedures and the scope of the agreement, the representative of the European Communities said that the agreement might include some provisions that would apply to procurement in general. For instance, he had difficulty in imagining that only the rules applying to the scope of the agreement should be transparent and the others should not. In principle, all the rules of all WTO Members were publicly available, sometimes even notified. Thus, some provisions of the agreement would be applicable to all government procurement independently of thresholds, whether the agreement covered goods only or also services and whether it applied also at sub-central levels. At the same time, some provisions, including those relating to domestic review procedures, would apply only to procurement within the scope of the agreement to be defined.

74. The representative of Brazil said the debate had made it evident that application of the DSU might not be an efficient way to ensure enforceability, and that Members would have to be creative in finding other ways. One possible way was to develop specific provisions in the agreement relating to how dispute settlement should be conducted within the context of the transparency agreement. The general thrust of having a provision on domestic review in a transparency agreement would be to ensure that each Member's domestic legislation incorporated provisions that ensured that all suppliers participating in a procurement had the legal right to challenge, independently of whether that issue was covered or not by the agreement. He believed that that was independent of the scope of the agreement. For example, even if a procurement was subject to a national preference, and even if only a Member's national suppliers had the right to have recourse to domestic review, the limitation of the scope of the agreement to transparency should not affect the ability of a national supplier to challenge procurement decisions. There should be non-prescriptive provisions stating that domestic mechanisms existed to ensure the right of suppliers to challenge bids. If it was a case for national suppliers only, then those suppliers were the eligible suppliers; if it was an open or international tender, then all suppliers should have recourse to those instruments. He noted that the last indent under point 3.2 of the communication by the European Communities stating "challenge procedures provid[ing] for adequate measures to correct proven infringements of the agreement" was mixing up Member's rights in the WTO with supplier's rights at the domestic level. The infringements of the agreement had to be dealt with at the WTO by whatever mechanisms Members agreed on, whereas supplier's interests had to be assured through domestic review procedures. Thus, the discussion on the two concepts had to be kept separate so that the Working Group could move forward on both.

75. In response, the representative of the European Communities said that he could not imagine that a Member would set up rules on transparency consistent with the agreement only for goods, only above a certain threshold and only for the federal level. He believed that, to be logical, consistent and simple, most Members would apply a general framework of rules applying to all kinds of procurements at all levels and for all thresholds without making a distinction between services and goods. He noted that, in most cases, transparency rules would apply to all goods and services without distinction. He was wondering why the Working Group had spent so much time discussing the scope of the agreement while it recognized that, in practice, most Members applied transparency rules horizontally. His delegation took into consideration the concerns of those Members that wished to

have a reduced scope by agreeing that Members could limit the implementation of the transparency rules, including the domestic review procedures, to that scope. For instance, even if the domestic rules provided that a supplier had a right to challenge a procurement decision, a foreigner could not invoke the agreement in the case of a tender that did not fall under the scope of the agreement. It would be up to the domestic judicial system to decide whether the agreement had been breached, but since the particular tender did not fall under the scope of the agreement, the domestic review mechanism would not take into consideration the WTO agreement.

76. After the conclusion of the discussion of items I, VIII and XI in the informal note by the Chairman, the Working Group took up the communication from Korea entitled "Work Ahead up to the Cancun Ministerial", circulated in document WT/WGTGP/W/40. The representative of Korea introduced the communication.

77. The representative of Malaysia expressed regret that Korea had tabled its communication because of its timing as well as its content. The paper was not helpful to the process and could add to the confusion in the Working Group, given that there appeared to be confusion which related to many elements as evidenced by the discussions on domestic review procedures and application of the WTO DSU even though there seemed to be emerging consensus on some elements. The Working Group was not in a pre-negotiation stage, but still in an educational and clarification stage. In order to have a mandate at Cancun to move on to the negotiations, there had to be agreement in the Working Group on the elements of a future transparency agreement. There had to be an explicit consensus to move on to the negotiations. Referring to the interlinkages between the work of the Working Group and other WTO activities, he remarked that Korea seemed to be enthusiastic about making progress in the area of government procurement, where there was not yet an explicit consensus for negotiations, but apparently not so enthusiastic in the area of agriculture where there was a clear mandate.

78. The representative of Brazil said that the whole concept of a round of multilateral trade negotiations was to facilitate interlinkages and trade-offs and the Working Group had to be very attuned to developments in the rest of the WTO in order to move the process forward beyond Cancun. While welcoming Korea's suggestion to discuss what the Working Group should do in the period leading up to Cancun, Brazil nevertheless fully agreed with the representative of Malaysia that the current phase of the Working Group's work was educational. The discussion at the present meeting showed that there was still some lack of clarity on the issues of domestic review and application of the WTO dispute settlement procedures and further debate was necessary to have a clearer view on the concepts related to those issues. Recalling that paragraph 26 of the Doha Ministerial Declaration required explicit consensus before a decision could be taken on negotiations, he said that it should be highlighted to Ministers that the Working Group had reached a higher level of consensus on some issues than on some others.

79. As regards Korea's proposals to address developing country concerns, the representative of Brazil said that his country's experience from the Uruguay Round was that transitional periods or other types of flexibilities had proven to be inadequate for addressing effectively those concerns. There were still a number of Uruguay Round agreements that Members had not been able to implement due to lack of technical assistance, and, in fact, some Members had still not understood the commitments to which they had signed up to then. He said that the Working Group therefore had to give serious attention to the issue of technical assistance as well increasing efforts to try to make the process move forward beyond Cancun.

80. The representative of the Philippines said that the Korean communication proposed traditional ways of addressing the issue which were inadequate as they did not allow developing countries the needed policy space.

81. The representative of Morocco said that transitional periods had proved ineffective in the past in solving problems of substance and his delegation favoured a more holistic approach to the issue of special and differential treatment for developing countries.

82. The representative of Pakistan said that temporary suspension of obligations or transitional periods were not adequate in addressing what were complex and multi-dimensional issues of development.

83. The representative of Switzerland supported the views in the communication from Korea regarding new ways of addressing the concerns of developing countries.

84. The representative of Switzerland said that the communication from Korea was timely and shared the views expressed therein. As regards the current phase of the Group's work, the period before Doha represented an educational phase, the period between Doha and Cancun a pre-negotiation phase, and in the period after Cancun the work would move into a negotiating phase. On some issues where the positions had been clear, there was no need for further educational work. It was not necessary to have convergence on all issues before moving on to the negotiations, but rather to identify the core issues and reach an agreement through negotiations. Only future negotiations would show how to make the elements acceptable to Members.

85. The representatives of the Philippines, India, Morocco and Pakistan said that they shared the views expressed by the representative of Malaysia.

86. Expressing her delegation's perception of what was mandated at Doha in relation to transparency in government procurement, the representative of India said that the work being undertaken by the Working Group was on the basis of the Singapore Ministerial Declaration. The Doha Ministerial Declaration mandated the continuation of the work. As evidenced in the discussions at the present meeting, there was still a considerable divergence of views among Members on elements such as domestic review procedures and application of the WTO DSU. India was therefore of the view that the Group was still in an educational phase and greater clarity was required on a number of issues.

87. The representative of the Philippines, supported by the representative of Malaysia, said that the Singapore issues were not part of the Single Undertaking and thus still required a negotiating mandate.

88. The representative of Brazil said that, as it had been the case with the issues put forward by developing countries such as implementation and special and differential treatment, the debate as to whether the Singapore issues were part of the Single Undertaking was beside the point. Ministers had agreed to a work programme that included these issues which had given rise to expectations amongst delegations that their concerns would be addressed; that they were not being addressed, irrespective of whether or not they were part of the Single Undertaking, created a less positive environment for discussions or negotiations in other areas.

89. The representative of the United States said that the debate as to what was or was not part of the Single Undertaking was not productive for the work of the Working Group.

90. The representative of Pakistan said that, while the questions raised in the communication from Korea were relevant, his delegation was not in total agreement with the answers it provided. He said that the Doha Ministerial Declaration did not provide a clear indication as to what needed to take place at Cancun. Noting that there were gaps amongst Members on various issues, he said that much further thought and reflection needed to go into some of the items identified as core elements in Korea's communication including definition and scope, domestic review, application of the DSU and special and differential treatment for developing countries. Pakistan would hesitate to commit itself to

any agreement without fully understanding the contours of the elements. While Korea considered that multilateral rules on transparency in government procurement should be legally binding and subject to the WTO DSU, the present discussion was clear evidence of divergences of views among delegations regarding application of the DSU.

91. The representative of the European Communities welcomed the communication from Korea suggesting ways of moving forward with the process, an issue which had also been addressed in the earlier proposals by Japan and the United States (WT/WGTGP/W/37 and 35, respectively). Korea's communication presented ways of looking not only at the technical issues before the Group but also to the overall context of the Working Group's work and how the negotiations should be shaped in the future. Korea's suggestion to developing countries to outline their concerns would enable the Group to further address the outstanding issues and clarify them before the Cancun Ministerial Conference. With regard to the comments concerning the negotiating mandate, his delegation's view was that there was an agreement on negotiations and that this was supported by the Doha Ministerial Declaration, the relevant section of which would have read "...a decision on modalities of negotiations..." and not "...a decision on negotiations..." if the case had been otherwise. The Decision clearly stated that a decision on modalities would be taken at the Fifth Ministerial Conference and not after that. All four Singapore issues were part of the Single Undertaking and transparency in government procurement was one of the key elements of the Doha Development Agenda. The suggestion by Korea to examine the core elements to be included in the negotiations by no means pre-empted the outcome of the negotiations. There would be sufficient flexibility in the process of negotiations to consider what is acceptable to all Members regarding a specific element.

92. The representative of Malaysia said that Members could not move into the phase of negotiations without having reached an agreement on the basic elements to be incorporated in a future agreement, for instance on its scope, domestic review procedures and application of the WTO dispute settlement procedures.

93. The representative of Chinese Taipei said that the fact that the APEC principles on government procurement were non-binding enabled the members of the APEC Group of Experts on Government Procurement to share their experience on transparency in a useful way. With respect to Korea's communication, he suggested that other elements, such as valuation methods for threshold levels and a common website for providing information on national practices, could also be considered.

94. The representative of the United States said that the elements identified by the Working Group had been included in the informal note by the Chairman "List of Issues Made and Points Raised". The Working Group was not yet in a negotiating phase and Members could continue to have divergent views. In response, the representative of Malaysia said that the identification of possible elements in the Chairman's note did not imply any form of agreement, or tacit understanding, or consensus to include those elements in a future agreement. For instance, the inclusion of domestic review procedures and the WTO DSU in the List of Issues did not mean that there was any convergence of views on them.

95. Referring to the comments on the current status of the Working Group's work, the representative of Korea said that the important point was that Members exchanged views on the core elements to be included in a multilateral framework in preparation for negotiations. Suggestions on new and more effective ways of addressing developing country concerns were welcome. Finally, the list of elements suggested in Korea's communication was not final and the Group should be open to discuss other possible elements.

B. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

96. The representative of the Secretariat provided information on the technical cooperation and capacity building activities that the Secretariat had undertaken since the October 2002 meeting, as well as on the activities foreseen in the period leading up to the Cancun Ministerial Conference. Since the October 2002 meeting, the main focus of the Secretariat's technical cooperation activities had been on regional events organized in cooperation with the multilateral development banks. On 12-14 November 2002, a sub-regional workshop for participants from 14 Caribbean countries had been organized in Kingston, Jamaica with funding provided by the Inter-American Development Bank through its affiliate INTAL and with the cooperation of the Government of Jamaica. On 14-17 January 2003, a workshop had been held in Dar es Salaam, Tanzania for participants from 20 English-speaking African countries. It had been organized jointly with the World Bank in cooperation with the African Development Bank and the Government of Tanzania. Officials participating in both of these workshops represented both the trade and procurement communities. Turning to the plans for 2003, she said that the Secretariat would continue with the regional workshops, where possible, in order to ensure that, before Cancun, there would have been one regional workshop held in each of the developing country regions. In the coming months, similar to the events organized for the Central American and Caribbean countries, a workshop was expected to be held in Buenos Aires, Argentina for the Latin-American countries that had not yet been covered by the sub-regional events in 2002, using IADB/INTAL funds; another workshop for the Asia-Pacific region, in cooperation with the Asian Development Bank was foreseen in May in Manila, the Philippines; and a further workshop was being planned jointly with the World Bank in early July for French-speaking African countries. There were a number of general Secretariat training activities of a regional and national kind for high-level officials, for instance, one recently held in Cairo for Arab countries, and upcoming ones in Tbilisi, Georgia for the Caucasian and Central Asian countries and for Chinese officials in Beijing.¹ These activities covered WTO issues as a whole, and the Secretariat was contributing to them with regard to government procurement matters. Thirdly, there were also requests from a number of countries for national events contained in the Secretariat's Coordinated Programme for 2003. The Secretariat was in the process of contacting the delegations concerned about these activities. Finally, the Secretariat was planning to hold a further Geneva event on 19 June 2003 which would be held back-to-back with the meeting of the Working Group on 20 June, so as to facilitate the participation of as many interested delegations as possible. The Secretariat's intention was to allocate the first half of the day to an Information Session on the activities of the IGOs involved in government procurement work, which would be held in response to a suggestion made by some delegations at the October 2002 meeting. Presentations had been made by representatives from the World Bank and the UNCITRAL Secretariat at the first meeting of the Working Group in 1997 and by the representatives from the World Bank and the African Development Bank as well as the Chairman of the FTAA Negotiating Group on Government Procurement at the October 2002 Symposium. The second half of that day would be devoted to issues related to capacity building, with the participation of government experts from developing countries.

97. The representative of India asked about the benefits which had accrued to the beneficiary countries as a result of the technical cooperation activities, for instance, in what way the technical assistance had been of use in their national systems or had helped countries to identify gaps, if any, a matter which might be taken up at the June workshop.

98. The representative of Switzerland provided information on a pilot project that had been developed in Ghana. Switzerland had provided external support to the project, the main objective of which was to set up a mechanism for monitoring the progress of implementation of the new procurement legislation in a manner that was transparent to all actors including the private sector, civil society, and the international community including the donors. Switzerland considered this to be

¹ The latter two events were subsequently postponed.

an important way of raising confidence in the public procurement system, presenting benefits at both the national and international levels.

C. OTHER BUSINESS

99. Taking the floor under this item, the representative of Turkey gave a brief account of the recent procurement reform in his country which had been undertaken as a component of public sector reforms carried out since 1999. The first aspect of the reform involved changing the role and function of the Government in the public procurement market to ensure the effectiveness of the system. This had been done by putting into place mechanisms, rules and procedures that followed the principles of transparency, accountability and predictability. The second aspect related to opening up the procurement market to international competition. The new public procurement law was adopted by the Turkish Parliament in January 2002 and had entered into force on 1 January 2003. The law aimed at enhancing transparency and curbing corruption and provided for equality of treatment, impartiality, accountability, competition and predictability, while, at the same time, ensuring a more effective and efficient utilization of public resources. The principal functions of the Public Procurement Authority that had been established under the Law were the preparation and development of, and provision of guidance on, implementing legislation and the preparation of standard tender documents. As of January 2003, the PPA had completed the secondary legislation, and had begun its work on settling procurement disputes. The adoption of the new public procurement law was a big step forward for Turkey, bringing its legislation in line with contemporary international standards and the EU "*acquis*".

D. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

100. The Chairman said that, at its past meetings, the Working Group had considered requests for observer status from three international intergovernmental organizations (OECD, SELA and the Organization of the Islamic Conference) and agreed to revert to these requests in the light of the ongoing consultations in the framework of the General Council. Given the overall status in the WTO regarding this matter, he suggested that the Working Group revert to this matter at its next meeting in the light of developments in those consultations.

E. DATE OF THE NEXT MEETING

101. The Chairman said that the second meeting of the Working Group would be held on 20 June 2003.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 10-11 OCTOBER 2002

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its fifteenth meeting on 10-11 October 2002 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).
2. The agenda for the meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) technical assistance and capacity building; (iii) observer status of international intergovernmental organizations; and (iv) date of the next meeting. The Working Group agreed to adopt the agenda as proposed.
 - A. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES
3. By way of general comments under this agenda item, the representative of China said that transparent procurement procedures enabled governments to obtain the greatest value for expenditure, contributed to a predictable and stable investment environment and to reducing and eliminating corruption. As part of its WTO accession process, China had made commitments to ensure transparency in its government procurement system. Since its accession to the WTO, China had promulgated the National Procurement Law on 29 June 2002 which would enter into effect on 1 January 2003. The Law stipulated the transparency principle both in the general chapters and under specific chapters relating to qualification of suppliers, contract awards, bid challenge and supervision. China believed that the new Law and the detailed implementing regulations had ensured the establishment of a fully open and predictable procurement environment. All laws and regulations relating to government procurement procedures had been published in the Gazette and on the Internet. Turning to the work of the Working Group, he said that the discussions should be limited to the transparency aspects of government procurement as per the Doha Ministerial Declaration. Considering that transparency was a complicated issue and that the obligations on transparency in other WTO areas entailed a heavy burden on developing countries, the Working Group should be cautious in defining the scope and coverage of future transparency obligations. The Group's current work should focus on agreeing on general principles of transparency rather than on developing detailed provisions.
4. The representative of Japan introduced the communication from her delegation stating Japan's position with respect to an agreement on transparency in government procurement contained in document WT/WGTGP/W/37.
5. The representative of Malaysia disagreed with the view expressed in the communication by Japan that the Working Group had largely accomplished the study mandated by the Singapore Ministerial Conference which implied that the Group's work could move into the next phase without a consensus. The Group should continue its study of elements based on the "List of Issues Raised and

Points Made". The representative of the Philippines said that it would be premature to discuss a framework agreement at the present stage.

6. The representatives of the European Community, Switzerland and Australia said that their delegations supported the thrust of the views expressed by Japan in its communication.

7. The representative of the European Community said that the Group had exhausted the discussion of the items in the List of Issues. The work should now focus on identifying the elements to be included in a transparency agreement even though the matter of how those issues could be reflected in a future agreement should be left aside for the time being. Developing countries should be provided flexibility in the application of the future obligations but how this should be done was a matter that should be addressed in the negotiations.

8. With regard to the six elements suggested by Japan, the representative of Switzerland said that some additional elements could be considered. The representative of Pakistan asked how the elements proposed by Japan fitted in with the twelve elements under discussion in the Group. The representative of Korea supported the elements listed by Japan.

9. Referring to the non-discrimination principle listed by Japan as being an important element of a future agreement, the representative of Malaysia asked how Japan saw the relationship of this principle to transparency. The representative of Egypt asked how the non-discrimination principle could be made compatible with the future provisions on special and differential treatment. In response, the representative of Japan said that foreign suppliers should be granted non-discriminatory treatment in the application of transparency rules and procedures. However, this should not preclude the right of countries to give preferences to domestic suppliers.

10. The representative of the United States introduced the communication by her delegation setting forth its ideas regarding the organization of the work of the Group over the period leading up to the Cancún Ministerial Conference contained in document WT/WGTGP/W/35. She said that the proposed organization of the discussion under four categories of elements would help to refine the debate on the outstanding issues and could provide a basis for the identification of the elements that could be included in a future agreement.

11. The representatives of Korea; Brazil; Hungary; the European Community; Israel; Canada; Switzerland; Australia; and Hong Kong, China supported the suggestion of the United States as a basis for moving the Group's work forward.

12. The representative of Brazil said that the work should focus on the Group's mandate to identify the elements of an agreement although it might be difficult to agree on the appropriateness of including certain elements.

13. The representative of Malaysia said that, while a convergence of views seemed to be emerging in some areas, it was premature to begin the categorization of issues at this stage. The Group had yet to conclude its work on the clarification of certain issues before it could reach consensus on any of the elements pursuant to the Doha Ministerial mandate. Developing countries had difficulties essentially with two elements, namely domestic review procedures and the application of WTO dispute settlement procedures. Although the details of some of the other elements might also cause some difficulties, by and large, they were acceptable. The categorization of elements could only be feasible if there were an explicit consensus to proceed with the negotiations at the Cancún Ministerial meeting built on the progress achieved by that time.

14. The representative of the Philippines said that the submissions by the United States and Japan sought to introduce a qualitative change in the discussion of the twelve elements.

15. The representative of Singapore said that a transparency agreement would benefit all countries including developing countries. The application of transparency principles to procurement helped to achieve the objective of better value for money in government procurement and improved procurement decisions. However, the Group would need to take into account developing country concerns on certain issues. For instance, the application of the WTO Dispute Settlement Understanding (DSU) to a transparency agreement needed to be carefully considered. Supported by the representative of Egypt, she added that any reference to the issue of corruption in public procurement might not be helpful to the process under way.

16. The representative of the European Community said that the time had come to build consensus in the Group around the basic principles that should be included in a future transparency agreement and to identify the elements to be negotiated. The work plan proposed by the United States was in line with the reference to the modalities for negotiations in the Doha mandate. It was crucial to use the time-period until the Cancún Ministerial Conference to address the issues before the Group. If the discussion in the Group were left open-ended, the Ministers would not be able to reach a decision on modalities of negotiations, such as the content of the future discussions and the time-frame for the negotiations. Basic transparency principles included, among others, subjecting national rules and practices to domestic review procedures.

17. The representative of Canada said that the United States suggestion to pursue the discussion of the elements under four categories would help to reach a better understanding of the progress made in the Group on the study of these elements. The final form and the contents of an agreement could only be refined through negotiations.

18. The representative of Switzerland said that the approach suggested by the United States would enable the Group to have a more in-depth examination of any outstanding issues. The Group should consider the modalities of future negotiations, which could include a time-frame for negotiations and the possible elements.

19. The representative of Australia said that the Group's work should be speeded up. The suggested categorization of the elements would enable a more substantive discussion of the items in the List of Issues.

20. The representative of Hong Kong, China said that transparency in government procurement fostered competition. Her delegation supported the early conclusion of a multilateral agreement.

21. The representative of Egypt said that the Group's mandate excluded any commitments on market access. Supported by the representatives of Pakistan and the Philippines, he said that, although the issues before the Group had been discussed several times, there was no convergence of views among delegations on certain issues, for instance relating to definition and scope, procurement methods, time-periods, domestic review procedures and the application of WTO dispute settlement procedures.

22. The representative of India said that the categorization of elements was premature. The Group's main task was to achieve a better understanding of what transparency in government procurement meant. Matters relating to administration of domestic laws and regulations did not fall within the purview of transparency. The Working Group should address any burden that future requirements might incur on developing countries. One question with respect to the benefits of transparency was whether the additional cost of a transparent procurement system could be justified by its incremental benefits. Transparency could not be the overriding priority in all procurement cases. It might have to be balanced against certain other objectives, for example providing local manufacturers with certain advantages under employment-generating programmes or better utilising locally available factors of production. The Group's work should focus on the type of information that should be provided to suppliers on a Member's government procurement system. On the other

hand, the need for transparency in specific procurements would depend on the purpose of the procurement and the policy objectives sought. While the information provided in tender notices would have to be adequate for the preparation of responsive bids and should be uniformly provided to all suppliers, the provision of information on who should be eligible to respond to a particular tender should take into account policies targeting certain suppliers. As to the ramifications of transparency beyond government procurement, the fight against corruption required better policing, a matter which went beyond the concern of the WTO. Finally, Members generally agreed to the benefits of transparency but several elements discussed in the Group did not pertain to transparency at all and some only to the extent that the future requirements would be limited to provision of information. Whether a future agreement would be a binding agreement or a principle-based one could be decided once Members had a clearer view of what transparency meant. Her delegation was not convinced of the need for any linkage to the WTO Dispute Settlement Understanding given that only transparency in government procurement was under consideration.

23. The representative of Cuba said that, in order to comply with the Doha mandate which referred to development priorities, the Group should carry out its work on the basis of the List of Issues. If the discussions were to be speeded up, the Group would find itself with the same problems that it had faced with the proposals that had been tabled prior to the Seattle Ministerial Conference. At that time, a number of developing country Members had not been in a position to go along with the proposals that had gone beyond the Singapore mandate.

24. The representative of the United States said that, under the mandates of both the Singapore and the Doha Ministerial Declarations, the Group was not required to decide on how the specific details of the elements under discussion would be reflected in a future agreement. The Group was still carrying out its work under the Singapore Ministerial mandate. Members would only be able to build on the progress made in the Working Group as per the Doha Ministerial mandate if the Group could examine in more detail those issues that were of particular concern to developing countries, for instance the linkage to the WTO Dispute Settlement Understanding. Her delegation believed that any agreement had to be a legally binding one in order to fit into the overall WTO system. However, a special mechanism could be envisaged to address any developing country issues before invoking WTO dispute settlement procedures. The Group's work should be geared to developing a constructive approach aimed at accommodating the concerns of developing countries in the negotiations.

25. The Working Group took up items VI-XII in the informal note by the Chairman "List of Issues Raised and Points Made" contained in JOB(99)6782 of November 1999, commenting on each item in turn and using the summary note by the Secretariat "Work of the Working Group on Matters Related to Items VI-XII of the List of Issues Raised and Points Made" contained in document WT/WGTGP/W/33. The Group also had before it a communication by Canada on contract awards contained in document WT/WGTGP/W/36 and a note by the United States on capacity-building considerations relating to transparency in government procurement contained in document WT/WGTGP/W/34. In addition, a non-paper was presented by Australia on the transparency of decisions on qualification contained in JOB(02)/142.

Transparency of Decisions on Qualification

26. The representative of Canada introduced the communication by her delegation on transparency of contract award decisions which also addressed the issue of transparency of qualification decisions contained in document WT/WGTGP/W/36. She said that a transparency agreement should allow for flexibility in respect of the establishment of the criteria for qualification and registration processes.

27. The representative of the European Community, joined by the representatives of Switzerland and Brazil, said that, notwithstanding entities' rights to define the evaluation criteria, a future agreement should ensure that decisions on qualification and contract awards were taken based on

clear and objective criteria that were pre-disclosed and made known to all interested suppliers well in advance.

28. The representative of the European Community said that time-limits were an important aspect of transparency and they should be taken into account in the qualification process, for instance in relation to transmission and receipt of certificates related to qualification and other relevant documents.

29. The representative of Japan said that transparency in qualification and in contract award decisions was among the core transparency principles in the area of government procurement.

30. The representative of the United States, joined by the representatives of Canada, Switzerland, Australia, Japan and Brazil, supported the views expressed in Canada's submission. The representative of Switzerland said that transparency in decisions at the qualification stage was important. Procuring entities should be required to declare any limitations to participation on the basis of nationality and any new information should be made available in a non-discriminatory manner. The procedures for qualification and the basis for selecting suppliers in the lists of qualification systems should be made available to all interested parties. Participation in qualification lists should not be exclusive and should be regularly updated with new suppliers meeting the qualification criteria.

31. The representative of Australia introduced the non-paper recently submitted by his delegation on qualification decisions contained in JOB(02)/142.

32. The representative of Brazil said that the provisions on qualification in a transparency agreement should be limited to setting out general principles and criteria and should not be overly prescriptive. While it should be up to national legislation to define the general criteria for the qualification of potential suppliers, such criteria should not have the effect of restricting access of any supplier who demonstrated capability to fulfil the requirements of the tender. The main objective of qualification procedures was to facilitate the work of procuring entities in identifying suitable suppliers for their needs. Maintenance of qualification systems was not incompatible with the general concept of transparency as long as related decisions were not used as barriers to access by interested suppliers. While it may be desirable to have a common national system for qualification, this should not exclude the possibility of setting forth specific criteria in individual tenders. There was no need to address the issue of time-periods that applied to the different stages of administrative procedures. Under the draft procurement Bill that was before the Brazilian Congress, tendering procedures could occur before the stage of qualification procedures as a way of speeding up the tendering process and making it less burdensome for the procuring entities.

33. The representative of Thailand said that his delegation had questions regarding the extent to which information on qualification criteria could be made available since confidential information would not be disclosed under a transparency agreement, and also on how confidential information related to government policies would be treated.

Transparency of Contract Award Decisions

34. Referring to her delegation's communication contained in document WT/WGTGP/W/36, the representative of Canada said that the transparency of contract award decisions was one of the main elements of a future agreement. The award criteria expressed the government's needs and priorities as they were to be carried out in a procurement process. Members therefore needed the flexibility to establish the appropriate criteria, such as price, the preferred characteristics of the product and other preferences. The Doha Ministerial mandate made it clear that Members had flexibility to establish criteria for the award of a contract. The transparency agreement would not restrict the scope of Members to give preferences to domestic supplies and suppliers as per the Doha Declaration. The

Working Group should address the means by which such flexibility could be implemented while ensuring transparency of decisions. There should be provisions assuring that transparency of award decisions be achieved by specifying the award criteria and other requirements in the tender documents; taking award decisions solely on the basis of the criteria provided; and making award decision information available to suppliers and other parties. There was general agreement that governments should not have to disclose confidential information. Turning to the question of benefits, she said that transparency of award decisions was consistent with the rules-based trading environment embodied in the international trading system. The importance of transparency, predictability and consistency in the application of measures relating to international trade had been recognized since the inception of the GATT 1947. The benefits of the transparency of award decisions included economic efficiency for procuring entities, taxpayers and suppliers as well as predictability and confidence in the procurement system.

35. The representative of Switzerland said that Members should have flexibility in choosing the criteria but full transparency should be provided of the chosen criteria. The possibility of changing the criteria during an ongoing procurement process should be allowed only under limited conditions and in clearly defined circumstances. The criteria should be made available to all involved in the procurement process. Any new information, for instance any negotiations foreseen or clarification given during the process, should be made known to all interested parties.

36. With respect to *ex post* information, the representative of Switzerland said that decisions of procurement entities should be made public or, at least, made known to interested parties. The representative of the European Community, joined by the representative of the United States, said that a future transparency agreement should have a provision requiring that unsuccessful bidders be informed of the rejection of their bid, and, on request, be given information as to the reasons why their bid had been rejected and the winning bid had been chosen.

37. The representative of Malaysia said his country responded to requests for information from unsuccessful bidders. However, a mandatory requirement in a multilateral agreement in this respect should be should be drafted in such a way as to avoid burden on developing countries.

38. The representative of Canada said the Working Group seemed close to reaching a consensus on the value of making information on award decisions available to suppliers and other interested parties. Future requirements in this respect should cover both successful and unsuccessful suppliers, as the information provided was helpful to both.

39. The representative of Brazil said that, in order to allow flexibility in the application of the agreement, the provisions in respect of contract award decisions should be limited to general principles and criteria, leaving more detailed regulation to national legislation.

40. Referring to the issue of negotiations in the procurement process, the representative of Brazil said that a transparency agreement should not preclude the use of negotiations in accordance with national legislation subject to conditions of transparency. This method was used to great effect in his country as a means of achieving enhanced conditions, in both technical and financial terms, in tenders. The representative of the United States said that it was important that suppliers were made aware of the possibility of negotiations in advance, for instance by stating this in tender documents.

Domestic Review Procedures

41. The representative of the European Community said that a transparency agreement should have provisions to ensure the existence of an independent domestic review body which could either be a judicial or an administrative body. Members should have flexibility regarding the way in which they would implement domestic review procedures. The purpose of the provisions would not be to address the substance of the decisions made by a procurement entity but to set out certain principles for access to reviews by bidders. Since many Members appeared to have domestic review systems in place, complying with a requirement to ensure the independence of the review bodies should not entail any additional burden on them.

42. The representative of Singapore considered that a bid challenge mechanism was an integral part of national procurement systems.

43. The representative of Brazil said the Group should avoid adopting an overly prescriptive approach to domestic review procedures. Since the agreement would be limited to transparency, there should not be any presumption or indication that it was creating commitments between Members in this respect. There was no need for provisions prescribing a common system of review for Members. However, it was essential to have a provision requiring the existence of review mechanisms and setting forth some general principles that should be respected, such as transparency, legality and equality of treatment. It was important to ensure that national legislation established appropriate mechanisms for reviews of complaints by suppliers. Further, recourse to an administrative review body should not preclude suppliers who felt that their complaint had not been adequately addressed from having recourse to judicial review. Foreign suppliers should have the same access to national administrative and judicial reviews as national suppliers. In the case of tenders limited to national suppliers, only those national suppliers that were entitled to take part in the tender should be eligible for an administrative or judicial review.

44. The representative of India said that most WTO Members had reasonably adequate domestic administrative audit and judicial mechanisms to ensure that actions of all parties involved in a procurement process complied with the relevant rules and procedures. The primacy of domestic laws and procedures should be preserved, and there should be no requirements to change such laws and procedures. Given that the Group's work was on the transparency aspects of procurement, the existence of domestic mechanisms should be adequate to satisfy any transparency requirements. The development of a uniform review mechanism would involve an administrative burden for developing countries. The cost of challenge procedures and obtaining remedies would outweigh the benefits of the *ex post* information that this mechanism provided to suppliers. In addition to the availability of recourse to national courts or independent surveillance bodies, entities had in place audit teams for large procurements. The establishment of separate review bodies may be far too expensive and impractical.

45. The representative of China said that many Members had review mechanisms in place under their domestic laws or regulations. The creation of a uniform mechanism under the agreement would go beyond transparency.

46. The representative of Cuba said that transparency in this respect should mean providing information to suppliers on the existence and operation of Members' domestic review procedures. The type of review mechanisms and procedures to be used should be left up to each Member on the understanding that the mechanism itself was transparent.

47. The representative of Malaysia said that the issue of domestic review procedures delved into the realm of market access. Questioning the procurement decisions of a procurement authority went beyond transparency.

48. The representative of Pakistan said that Members had their own domestic legislation and administrative arrangements to guarantee that aggrieved parties had the possibility of seeking redress. It would be counterproductive to go beyond transparency-related issues into the realm of sovereign decisions by governments.

49. The representative of the United States said that domestic review procedures could be an important means of ensuring compliance with the basic obligations of an agreement. However, there should be flexibility to implement the procedures in accordance with Members' own domestic systems provided that they met certain basic standards which should be negotiated as part of the transparency agreement. Meanwhile, all Members needed to agree that a domestic review procedure was an important element of the future agreement.

Other Matters Related to Transparency

(i) Maintenance of records

50. The representative of Brazil, joined by the representatives of China, Morocco and India, said that, while it was important to maintain records of procurement proceedings, any provisions in a future agreement should allow domestic legislation to determine the periods and the means of maintaining the records.

51. The representative of the European Community said maintenance of records by procuring entities and domestic review bodies was essential to facilitating access to information by unsuccessful suppliers about how the procurement had been carried out.

52. The representative of the United States, joined by the representative of Japan, noted that, though an important requirement, at this stage the maintenance of records needed only to be recognized as one of the elements of an agreement, leaving details such as time-periods to be addressed in the negotiations.

(ii) Information technology

53. The representative of Switzerland said his delegation had been impressed by the presentations made by the speakers from Singapore and Brazil in the Symposium held the previous day on the benefits of information technology in promoting transparency. Supported by the representative of China, he suggested that a future agreement should incorporate, at least, a best-efforts clause in relation to the use of information technology. The representative of Brazil said that his country considered information technology to be very useful for increasing transparency, reducing costs, and for the speeding up of procurement processes. However, since Members were at different levels of development, rather than setting forth any prescriptive provisions in this area, the future agreement could encourage the application of information technology. Brazil would be willing to extend technical cooperation in this area, within its means, to interested parties.

54. The representative of India said that procuring agencies in a great number of Members provided information electronically through websites. This improved efficiency of the system, added value to its users and also helped in controlling bribery. However any international rules in this respect should take into account local conditions in developing countries.

55. The representatives of the European Community, the United States, Rwanda, China and Morocco supported a best-efforts type obligation in respect of application of information technology to government procurement.

56. The representatives of Rwanda, Mali and China said that, although the application of information technology to government procurement was cost effective and enabled the dissemination of information widely, developing countries lacked capacity, both in terms of human resources and technology, to apply the new systems. To be on the same footing with the systems in developed countries would require technical assistance.

(iii) *Language*

57. The representative of Brazil, joined by the representatives of the United States and China, said that the national language should prevail in procurement-related matters. Any requirements to provide information in one of the WTO official languages would impose overly burdensome obligations on those Members whose national language was not a WTO language. This would not preclude any Member that had an interest in attracting foreign suppliers from issuing tenders in foreign languages. The representative of the United States said that suppliers wishing to operate in foreign markets needed to have language capability.

58. The representative of the European Community said that, although it may be burdensome, Members should be encouraged to use at least one of the WTO languages in order to make those tenders that might be of interest to foreign bidders widely accessible.

59. The representatives of Japan, Korea and Morocco said that, notwithstanding the need for flexibility in this regard, certain types of information, such as the notification of enquiry points, and matters to do with dispute settlement or consultations, should be made available in a WTO official language.

60. The representative of Korea, joined by the representative of the European Community, said that at least a list of national laws and regulations should be notified and made public in a WTO official language.

(iv) *Fight against bribery and corruption*

61. The representative of the European Community, joined by the representative of the United States, said that the issue of bribery and corruption did not need to be dealt with in a transparency agreement, notwithstanding the fact that a meaningful transparency agreement would indirectly contribute to the fight against bribery and corruption.

62. The representative of Mali said that the President of his country had urged the entire administration to fight financial corruption and financial offences, factors that were directly related to transparency in government procurement.

Information to be Provided to Other Governments (Notification)

63. The representative of the European Community said that, as was the case with other WTO agreements, Members should promptly notify laws and regulations relating to transparency to the WTO Secretariat in one of the original languages and, if available, in other languages. Joined by the representative of the United States, he said that, since the submission of legislation in a WTO language might be too burdensome, at least a list of the relevant laws and regulations should be made available in a WTO language. The representative of the United States, supported by the representative of Pakistan, said that a balance should be found between the need for improved understanding of the procurement systems of Members and the burden of providing the necessary information. The representative of Pakistan said that there was a need to balance future obligations with Members' capacity to meet them.

64. The representative of Brazil noted that the principle of ensuring transparency of legislation applicable to procurement was broadly accepted. Though notification was useful, providing translations of legislation could be unduly burdensome. Supported by the representatives of the United States and Switzerland, he suggested that an alternative approach could be envisaged such as the use of a questionnaire or a checklist of points to allow Members to broadly describe their systems. A similar approach was applied in the Trade Policy Review process and in the FTAA context.

65. The representative of Switzerland said that notification of national legislation remained one of the cornerstones of a future transparency agreement. The representative of Japan said that notification should be an element in a future agreement but the discussion of the details of the relevant provisions should be left to a later stage.

66. The representative of India said that the requirement to provide information on national legislation was widely accepted as a transparency issue. However, any requirements to provide full and complete information should be tempered with practicality, and should take into account the capacity of Members to provide such information. Any examination of the national rules and laws in view of prescribing amendments to laws would go beyond the mandate of the Working Group.

67. The representative of Pakistan said the Working Group could base its work on this matter on the provisions of GATT 1994 Article X, noting that any provisions which went beyond those provisions would be burdensome to developing countries.

68. The representative of the European Community said that Members should provide explanations of laws, regulations, procedures and practices on request by other Members. With regard to requirements on the establishment of enquiry points, the representative of Switzerland said that his delegation considered enquiry points an important element of transparency especially for small countries. The representative of Korea said that there should be a single access point in each country for obtaining information. The difficulties associated with obtaining appropriate information in advance could become a barrier to suppliers' access to the international government procurement market.

69. The representative of Brazil said that the practice of accessing information through enquiry points was not new to the Parties to the Agreement on Government Procurement or to APEC Members and should be encouraged. The representative of the United States supported the establishment of enquiry points in individual Members. The representative of Japan said that the requirements on the establishment of enquiry points could be similar to the obligations under the Agreement on Technical Barriers to Trade and, therefore, would not be too burdensome. The representative of Pakistan said that, in the case of Pakistan, and possibly other countries, the involvement of various government departments in the tendering process imposed practical difficulties that made it virtually impossible to set up enquiry points. In response to the representative of Pakistan, the representative of Switzerland said that an enquiry point should not have to answer all technical questions, but should be the gateway to ensuring questions went to the right place and answers came back within a suitable time-period. The representative of Korea said that the use of electronic media could be one way of overcoming the difficulties of coordination between agencies and departments, in particular in Members with decentralized systems.

70. On notification of procurement statistics, the representatives of Brazil, Cuba and Malaysia said that any requirement for notification of statistical data on individual procurement processes would be burdensome and would go beyond the mandate of the Working Group. The representative of the United States said that statistical reporting had not been particularly effective under the Agreement on Government Procurement. Her delegation did not anticipate that a transparency agreement would include requirements in this respect. The representative of Switzerland said that, although it might be burdensome, statistical reporting was an important tool to show the effectiveness

of a procurement system and therefore, if the information was available, it would be useful to share it with WTO Members on a voluntary basis.

WTO Dispute Settlement Procedures

71. The representatives of the European Community, Switzerland and the United States said that the WTO DSU should apply to a future agreement in order to ensure the consistency of the overall WTO system.

72. The representative of Brazil said that, notwithstanding the systemic importance of a transparency agreement, his delegation had doubts about the efficiency of the linkage between a transparency agreement and the DSU. Any disputes would have to be limited to issues of compliance with the requirements of a transparency agreement. However, he did not see how subjecting an agreement to the DSU would ensure the enforceability of the rules, for instance through recourse to compensation or retaliation, in the absence of market trade interests.

73. The representative of the European Community said that the DSU should only apply to ensure compliance with basic transparency principles. While his delegation recognized that the absence of market access obligations made it more difficult to conceive application of dispute settlement, the existence of the dispute settlement mechanism in itself had some value-added in a transparency agreement. The DSU should apply in order to respect the integrity of the WTO system. The fact that the DSU could apply to the agreement could contribute towards establishing confidence in its application and operability. It would also help to ensure uniform interpretation of the obligations under the Agreement.

74. The representative of Switzerland said that the possibility of being taken before the DSB was a sufficient deterrent against any breach of transparency obligations.

75. The representative of Hungary said that her delegation considered that the application of dispute settlement procedures was an important component of a future agreement on transparency in government procurement.

76. The representative of the United States said that application of the DSU was an issue that required special consideration within the Working Group. For instance, the types of disputes that would arise under a transparency agreement, appropriate remedies and the possibility for cross-retaliation needed further discussion. Her delegation suggested that this issue be the subject of focused discussions at the next meeting of the Working Group based on submissions by Members.

77. The representative of Japan said that a future transparency agreement should contain provisions on dispute settlement including provisions on consultations and the application of additional and specific procedures. However, the application of those procedures could not be discussed in detail before the framework of the future transparency agreement and its specific obligations were known.

78. The representative of India, joined by the representatives of Egypt, Malaysia, China and Pakistan, said that transparency-related provisions would not call for a linkage to the DSU and there was no need for further work in the Working Group on this issue.

79. Commenting on the implications of the application of the DSU to a transparency agreement, the representative of Egypt said that the absence of market access commitments in itself was not a safeguard against a threat of cross-retaliation. His delegation had reservations on leaving the details of this issue to negotiations, and was convinced that the proper way would be to reach consensus beforehand.

80. The representative of Canada said that the issue of how the application of the DSU could work in the context of a transparency agreement should be explored further.

81. The representative of Pakistan said that Members should rethink the usefulness of applying dispute settlement to a future agreement, as the issue, being contentious, could prove to be a deal-breaker.

82. The representative of Nigeria said that his delegation remained unconvinced about the relevance of dispute settlement to transparency-related issues. Members should look at the possibility of developing generally acceptable principles and guidelines that could facilitate transparency.

83. The representative of Malaysia said that his delegation remained unconvinced of the need to have a linkage to the DSU since it would not apply to individual procurement decisions but to transparency practices. Whether or not an element on enforcement would be necessary would depend on the nature of the future agreement. The future provisions could be in the form of a declaration, an understanding among Members or an agreement with no linkage to the DSU. In his delegation's view, there was no need to have a binding agreement in the WTO on this subject.

84. The representative of the European Community said that the Singapore Ministerial Conference mandated the development of elements to be included in an appropriate agreement and not in an understanding. The transparency agreement would be an agreement that would fit within the WTO system. There was no reason to treat this agreement differently from all other WTO agreements which were subject to the DSU. How would compliance with the future agreement be assured without the possibility of recourse to the DSU?

Technical Cooperation and Special and Differential Treatment

85. On special and differential treatment, the representative of Brazil, joined by the representatives of the United States and Japan, said that the concept was important but the detailed examination of specific provisions should take place at an appropriate stage. The representative of the United States said that transitional periods rather than exclusions from obligations should be considered.

86. The representatives of Jordan, Morocco and China supported special and differential treatment for developing countries including transitional periods for the implementation of the obligations.

87. The representative of Malaysia said that the structure of a future agreement on transparency should reflect the developmental needs of developing countries, noting that transitional provisions for compliance with the obligations were no longer sufficient.

88. The representative of Rwanda, referring to economic, human resource and technical capacity constraints in some developing countries, underscored the need for capacity building to assist such countries to attain a good standard of transparency in their procurement systems. He called on donor agencies and other countries which had developed systems to help build capacity to ensure transparency.

89. The representative of Brazil said that his country had put considerable effort into improving its government procurement system. In addition to the achievements in the application of information technology, other key areas of progress had included legislative reform, capacity and institution building and human resource development. Brazil would be available to provide technical cooperation and capacity building within its limited resources. Interested Members could contact his authorities to determine the areas of cooperation.

90. The representative of China said that technical assistance should be provided to enhance the competitiveness of suppliers from developing countries in procurement markets of developed countries. Furthermore, cooperation among international agencies should be enhanced.

91. The representative of the European Community identified two key areas where technical cooperation was required: first, to address any potential conflict between a future agreement and domestic legislation of Members; and second, to build institutional capacity to comply with the provisions of a future agreement. The guiding principles of technical cooperation in these two areas should be, concerning the first area, the promotion of good governance and the rule of law, and, concerning the second, the development and strengthening of a modern and effective public administration. The European Community was open to specific requests for advice and assistance in this area.

B. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

92. The representative of the United States introduced her delegation's communication entitled "Capacity Building Considerations relating to Transparency in Government Procurement" contained in document WT/WGTGP/W/34.

93. The representative of Brazil said that the United States communication underscored the important role technical cooperation could play in the process embarked upon in the Working Group. In Brazil's experience, developing capacity in government procurement, including legislation, development and information technology aspects, required time and considerable effort. Brazil therefore considered the issue of technical assistance and capacity building to be both a vital and urgent requirement, noting that the sooner that this could be embarked upon, the greater would be the ease in working in the Working Group. The work that the WTO was doing was very important but it was limited to the aspect of building awareness. It should also have a complement of getting technical cooperation working on the ground. Joined by the representative of India, he suggested that the stakeholders in this area, including the multilateral agencies, donors and recipients should be brought together. It could be a useful contribution to the work of this Group if the Secretariat could build in a component on technical cooperation in the Symposium planned for next year to allow discussion on possible ways and solutions to enhance cooperation among the bilateral and multilateral donors and interested recipients.

94. The representative of Canada said that her delegation encouraged all Members to consider the answers to the practical questions raised in the United States paper related to implementation within their own economies. Many of these questions had also been identified in the communication by Canada on transparency of contract awards contained in document WT/WGTGP/W/36.

95. The representative of the Secretariat provided information on the technical assistance activities that it had been engaged in since the May 2002 meeting. A sub-regional workshop for the Central American countries had been organized jointly with the Inter-American Development Bank in San José, Costa Rica on 5-6 September 2002. Twenty-five participants from the seven countries in the region, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic, and representatives from Ecuador and Colombia had participated in the Workshop. The Secretariat would hold a similar workshop for the Caribbean countries in Kingston, Jamaica on 12-14 November 2002 with the funding provided by the Inter-American Development Bank through its affiliate INTAL. Furthermore, the Secretariat had organized a Symposium in Geneva for Geneva-based delegations on 9-10 October 2002. A considerable number of capital-based delegates had also taken advantage of this activity, and to facilitate the participation of such delegates from least-developed countries the Secretariat had been able to draw upon the Global Trust Fund for Technical Cooperation. The Secretariat was exploring the possibility of organizing a couple of national workshops before the end of 2002 for the countries which were on the list of the Secretariat's Coordinated Plan for 2002. Turning to the plans for 2003, he said that the Secretariat had four types

of activities in mind. Probably the most important were regional workshops. The Secretariat's intention was that before Cancún there would have been one regional workshop in each of the developing country regions. The Secretariat would do this, wherever possible, in cooperation with other intergovernmental organizations, in particular with the World Bank and the regional development banks who had the expertise in this area. In the first quarter of 2003, the Secretariat would have two regional events in Africa, one in mid-January for the English-speaking African countries, and another one in April for French-speaking African countries. In the second quarter of 2003, the Secretariat would have a regional event in the Asia-Pacific region, and a regional seminar for the Latin American countries that had not already been covered by the sub-regional events in 2002. The Secretariat would also like to have a regional event for the Central and Eastern European countries and the Central Asian countries, which had expressed their interest. This event would probably have to be held after the Cancún Meeting. The second line of activity of the Secretariat would be national events. The Secretariat had a number of countries inscribed in the plan for 2003. Thirdly, the Secretariat was planning to hold a further Geneva symposium in July 2003 which would be held back-to-back with a meeting of the Working Group, so as to facilitate the participation of as many interested people as possible. Fourthly, there were a large and quite rapidly increasing number of general Secretariat training activities of a national or regional kind, both in Geneva and in developing countries. These covered either WTO issues as a whole or Singapore issues, and the Secretariat would be contributing to these activities with regard to government procurement matters. Finally, in response to the point that had been raised by Brazil, he recalled that, precisely for the reasons identified by the representative of Brazil, in March 2002 the Secretariat had had an inter-agency meeting in Washington in order to try to maximize coordination and cooperation, and to seek the assistance of other intergovernmental organizations who were active in this area to help in responding to the terms of the Doha Declaration. That had been an inter-Secretariat event, which was not in itself a replacement for the broader concept referred to by the representative of Brazil. If there were an interest in organizing an event of that sort, the Secretariat would be ready to help in organizing it.

96. The representative of Korea said that more efforts should be devoted to strengthening developing countries' capacity through symposia and regional seminars. In parallel with this effort, a more systematic way to help build transparency into their procurement systems should also be considered. In this vein, efforts were also needed by developing countries to identify their specific needs because a demand-driven approach for capacity building was more effective.

97. The representative of Morocco said that capacity building and technical assistance would be crucial to enable governments to benefit from transparency. Technical assistance could focus on certain specific issues, such as the application of information technology to government procurement, the training of procurement professionals, the preparation of handbooks and management guides.

98. The representative of Lesotho said that the Symposium had come at a time when Lesotho was actively engaged in a rigorous and comprehensive programme to reform government procurement. He requested further assistance for Lesotho in terms of pursuing that reform initiative which his government was deeply committed to.

99. The representative of Malawi said that his country had recently embarked on procurement reforms with the assistance of the World Bank. Capacity building was an important element of that reform. He therefore called on the WTO and developed country Members to provide the necessary assistance, for instance to train procurement officials to carry out procurement transparently. Malawi viewed capacity building as an important tool not only for promoting transparency in government procurement, but also for the successful implementation of an eventual transparency agreement. Not all developing countries were at the same level of development and those developing countries that were advanced in their government procurement reforms could assist Malawi in this area.

100. The representative of Australia said that his delegation was encouraged by the positive reports on the range of technical assistance activities undertaken by the WTO. Australia acknowledged the important role of technical assistance and capacity building but also believed that developing and least-developed countries were best placed to assess their own technical assistance and capacity-building needs. Therefore, he encouraged those countries to articulate and communicate their specific needs and priorities to both the Secretariat and to the Working Group. Technical assistance should stay focused on WTO-specific issues, particularly enhancing Members' understanding of the implications of a multilateral agreement on transparency in government procurement. The Working Group should focus on issues directly related to decisions that would be taken at the Fifth Ministerial Conference.

101. The representative of Canada expressed his delegation's satisfaction with the collaborative efforts of the WTO with the Inter-American Development Bank. She encouraged the Secretariat's plans for further inter-agency collaboration to ensure that human and financial resources dedicated to technical assistance and capacity building be fully and effectively utilised. Further, she agreed that developing and least-developed countries were best placed to identify their technical assistance and capacity-building needs. Canada remained ready to contribute to the collective effort to address those needs as they were identified by developing and least-developed countries.

102. The representative of Mali said that human resources development was important to ensure sufficient capacity for seeking as well as awarding government contracts. Therefore, it was desirable to strengthen companies' capacity. In Mali there was a gap between the information available for awarding contracts and the ability of enterprises and companies to use that information. Appropriate ways should be developed to bridge that gap for the small and medium enterprises and local communities.

103. The representative of the European Community said that the United States submission was a useful contribution to the debate on technical assistance and capacity building. The organization of the Symposium back to back with the meeting of the Working Group was welcome because the discussions in the Working Group also had a pedagogic component, which was very useful for many countries that often did not have the opportunity to attend the meetings of the Group. He hoped that capital-based participants would be able to continue attending the meetings of the Working Group.

104. The representative of Nigeria said that the communication by the United States had raised thought-provoking issues and showed that the United States was really taking time to look at technical assistance and capacity building. Notwithstanding the question raised by the representative of India about measuring the benefits of transparency, his delegation believed that the benefits were tangible and enormous. The problem lay with the transparency of the procurement rules and procedures, and obtaining information on specific procurements. Referring to the issues raised in the session on technical cooperation and capacity building at the Symposium the previous day, he said that there was a mismatch between the commitments to be undertaken and the capabilities that were available. Furthermore, resource shortage, limited expertise, weak public administrations and the lack of supporting institutions were all critical issues that went beyond the kind of technical assistance that the WTO could provide. The issues related to infrastructures in place in capitals were crucial and should be addressed in cooperation with multilateral development banks.

105. The representative of Brazil said that, although he agreed with the view that enhancing awareness of the benefits of an agreement on transparency in government procurement was a fundamental aspect of technical assistance, he could not agree that technical assistance should be limited to that, for the following reasons. First, in light of the experience of the Uruguay Round, there were still several developing and least-developed countries requesting assistance to understand the agreements they had signed up to and to implement the commitments they had undertaken. Whatever measure one took, seven-and-a-half years to get things working could only be described as a failure of the negotiating process, and Members should avoid repeating the same mistake in the forthcoming

Round. Second, Members needed to be more ambitious in technical cooperation because awareness gave Members a theoretical, abstract knowledge of the issues. In contrast, technical cooperation would give them a hands-on experience of the issues being dealt with. There was nothing that contributed to hesitation more than lack of knowledge. Therefore, the best service to the work of the Group would be to get concrete and practical knowledge into all developing and least-developed countries as to the mechanics of transparency in government procurement.

C. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

106. The Chairman said that, at its past meetings, the Working Group had considered requests for observer status from three international intergovernmental organizations (OECD, SELA and the Organization of the Islamic Conference) and agreed to revert to these requests in the light of the ongoing consultations in the framework of the General Council. Given the overall status in the WTO regarding this matter, he suggested that the Working Group revert to this matter at its next meeting in the light of developments in those consultations.

D. DATE OF THE NEXT MEETING

107. The Chairman said that, as agreed at the informal meeting held in March, the third meeting of the Working Group would be held on 29 November 2002. The meeting would be primarily for the purpose of approving the Group's Report to the General Council on its activities in 2002.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 29 NOVEMBER 2002

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its sixteenth meeting on 29 November 2002 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).
2. The agenda for the meeting consisted of: (i) review and approval of the draft report (2002); and (ii) other business.
 - A. ANNUAL REPORT
 3. The Working Group adopted its Annual Report for 2002 to the General Council on the basis of a draft prepared by the Secretariat. The report was subsequently circulated as document WT/WGTGP/6.
 - B. OTHER BUSINESS
 - (i) *Statement by the Dominican Republic*
 4. The representative of the Dominican Republic confirmed her Government's commitment to paragraph 26 of the Doha Ministerial Declaration that negotiations be held on a multilateral agreement on transparency in government procurement, on the basis of a decision to be taken, by explicit consensus, at the 5th Ministerial Conference with regard to modalities of holding such negotiations. The Dominican Republic undertook to participate in the work of the Working Group identifying the elements that the agreement should include, on the basis of the precepts of the Doha Ministerial Declaration that negotiations should take account of the priorities of developing country Members and that negotiations should be confined to transparency. She recognized that the work of the Working Group on Transparency in Government Procurement had made significant progress over the last six years in identifying and developing the elements of an agreement on transparency in government procurement and she reiterated her Government's undertaking to cooperate in furthering that progress.
 - (ii) *Scheduling of meetings in 2003*
 5. The Working Group agreed to hold two substantive meetings before the Cancun Ministerial Conference. The first substantive meeting would be held on 7 February and the second in June 2003. There would be a third meeting in late Autumn which would be primarily for the purpose of approving the Annual Report for 2003 to the General Council.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 29 MAY 2002

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its fourteenth meeting on 29 May 2002 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for the meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) technical assistance and capacity building; (iii) observer status of international intergovernmental organizations; and (iv) date of the next meeting. In response to a suggestion by the representative of India, the Chairman said that those delegations who wished to make general comments could do so at the beginning of the meeting. The Working Group agreed to adopt the agenda as proposed.

A. GENERAL COMMENTS

3. Recalling the mandate in paragraph 26 of the Doha Ministerial Declaration, the representative of Honduras said that negotiations on transparency in government procurement after the Fifth Ministerial Conference shall be held on the basis of a decision to be adopted by explicit consensus concerning the modalities of those negotiations, take into account developmental priorities, and be limited to transparency aspects of government procurement. Honduras considered that the Group had made significant progress in identifying and developing elements for inclusion in an agreement on transparency in government procurement, and therefore its delegation reiterated its commitment to participating in the negotiations after the Fifth Ministerial Conference.

4. The representative of India said that the mandate in the Doha Ministerial Declaration had to be read in conjunction with the statement by the Chairman of the Ministerial Conference prior to the adoption of the Declaration expressing his understanding in relation to Singapore issues. Since the Chairman's Understanding had been arrived at on the basis of consultations with Members and had not been opposed by any delegation, his delegation believed that it was binding on all Members even though it had not been included in the text of the Ministerial Declaration. His delegation therefore believed that there should be no attempt at consensus building on the various issues before the Working Group. Any Member would have the right to take a position that would prevent a decision on launching negotiations in this area at the Fifth Ministerial Conference. The study phase was solely aimed at furthering the understanding of Members on various issues. The representative of Malaysia said the Group was still at the study phase. The Ministers would have to agree on the modalities for negotiations by explicit consensus at the next Ministerial meeting before moving on to the negotiating phase.

5. The representative of India said that the mandate of the Working Group did not extend to market access issues, such as the grant of preferences to domestic suppliers and supplies. Therefore the main issue before the Group was to gain a greater understanding of the meaning of transparency in the context of government procurement. All the elements identified in the informal note by the Chair "List of Issues Raised and Points Made", were in fact elements common to procurement systems in place in any of the Members, but there had been differences among Members in identifying the transparency-related aspects of these elements. Elements such as procurement methods, time-periods, decisions relating to evaluation of offers and awarding of contracts, domestic

review mechanism, and application of the WTO Dispute Settlement Understanding were not directly related to the issue of transparency, and hence should not form part of the work of the Group. In the context of the WTO, transparency involved the obligation to make information on related laws and regulations available and the obligation to provide notifications to WTO Members of these laws and regulations, including any changes thereto, without questioning the fairness and reasonableness of the laws themselves. The issue of the administration of laws and regulations related to government procurement did not fall within the purview of transparency. The representative of Malaysia said that there were elements in the Note by the Chairman "List of Issues Raised and Points Made" that were not related to transparency *per se*, and delved into the area of market access. In addition to the elements relating to domestic review procedures and making a transparency agreement subject to the WTO Dispute Settlement Understanding, his delegation was prepared to consider other elements that may need to be deleted from the "List of Issues Raised and Points Made" for the purposes of the transparency agreement.

6. The representative of the United States said that his delegation recognized that that discussion on transparency aspects could to an extent creep into market access questions and consideration could be given to how this could be limited. It had to be recognized also that even issues that may delve into market access also had transparency components. In the course of its examination of individual elements, the Group should try to identify the specific characteristics which related to transparency. The delegation of Switzerland recognized that, although transparency and market access questions were not sometimes easy to separate, given the quantity of work accomplished on the basis of the "List of Issues Raised and Points Made", Switzerland believed that the Group should continue discussion on the basis of the issues listed in that document.

7. Joined by the representative of Malaysia, the representative said that government procurement played an important role in nation building. It was an important policy tool in relation to social and economic development in developing countries in particular for promoting the development of small and medium enterprises and disadvantaged regions. Given this aspect of government procurement, caution was required in moving forward in this area, albeit the work was limited to transparency. A transparency agreement should impose no obligation on Members to change their domestic laws and regulations given the near unanimous view in the Working Group that the primacy of the domestic rules and regulations should be fully preserved. In this regard, the representative of Malaysia added that the mandates on transparency in the Singapore and Doha Declarations recognized that any eventual agreement shall be based on national practices. The representative of India said that, in spite of the generally shared view that transparency was important in all fields including in government procurement, differences remained among Members with regard to consideration of future obligations in this area. The issue was complex for India since numerous government departments were involved in government procurement. The complexity would remain even if future obligations were to be limited to central or federal government departments. The representative of the United States said that his delegation agreed with the delegation of India that government procurement was an important policy tool for realizing socio-economic and other benefits associated with nation building; however it remained unclear whether a lack of transparency in pursuing such a policy tool provided any benefits. He recognized that, although transparency was critical to nation building, the issue was more a question of the orientation of government procurement as a policy tool. In responding to the representative of the United States, the representative of India considered that the available policy options should be preserved in the context of government procurement. The domestic procurement process in India was as transparent as similar systems in other countries, including those existing in the United States.

8. Regarding the Group's ongoing work, the representative of India said that some developing country Members would be interested in continuing the study process in all Singapore issues with a view to achieving a better understanding of the complex issues involved. In his view, developing countries did not have capacity to take on additional obligations and the provision of technical assistance would not be sufficient to implement future obligations. Moreover it was difficult to

estimate the technical assistance needs of developing countries in this area during the study phase. Developing countries faced problems regarding the implementation of the existing WTO agreements and the ongoing work programme under the Doha Development Agenda increased the burden on smaller Members. Many of the existing special and differential treatment provisions in WTO agreements were not mandatory and developing countries therefore did not reap the benefits anticipated at the conclusion of the Uruguay Round. In response, the representative of the United States, joined by the representatives of the European Community and Canada, said that the issues before the Working Group had been covered in considerable detail in the Group. Discussions had been ongoing for five years, numerous documents had been produced both by developed and developing countries, and the "List of Issues Raised and Points Made" had been revised six times. There had been active engagement by many delegations from both developing and developed countries, and there had been extensive repetition in recent meetings of positions associated with the elements in the "List of Issues Raised and Points Made". His delegation therefore considered that most countries had gained a sufficient understanding of the issues. Divergences could only be resolved through negotiation. The representative of the European Community considered that the work programme in the informal note by the Chairman had been agreed by all Members so as to ensure further discussion of the key issues, and that the extra time available to discuss the issues before the Group should lead to a better understanding of the fundamental principles on which an agreement could be based, and should provide the Group with a springboard to move on to the next stage. Technical assistance had an important role in view of the differing levels of development of Members. The delegation of Canada considered that at present the Group should work towards achieving a clearer understanding of what a future transparency agreement would look like. The delegation of Switzerland said that decisions should be made and negotiations initiated shortly, and encouraged Members believing that the study process was continuing to make contributions on the issues in question in order to undertake further discussions. His delegation encouraged the setting out of explicit problems that would be faced by developing country Members concluding a multilateral agreement so that no time was lost in tackling these issues.

9. The representative of India expressed concern that the main agenda for the European Community was to use an eventual agreement on transparency to address market access issues. He noted that the representative of the European Community had referred to a 'springboard to move on to the next stage' and stated that the threat contained therein, to move further on market access issues on completion of the work of the Group on Transparency, diminished the support from developing countries for the development of rules on transparency. He said that India, as well as other delegations sharing similar concerns, were opposed to any such movement. In that connection, he reiterated that the Doha Ministerial mandate had excluded any discussion which went beyond transparency. In response, the representative of the European Community said that the statement made by his delegation had been misunderstood, since the reference to using the discussions which would take place in the Working Group during the first and second meetings of 2002 as a 'springboard for the next stage' referred to the work which would be ongoing in 2003 and onwards towards the fifth Ministerial Conference. He reiterated that the European Community supported the mandate as it stood, including the reference to any agreement being limited to transparency issues.

10. The representative of Chile said that there appeared to be a certain agreement within the Group that the mandate did not extend to market access issues. Chile accepted the mandate as it stood. The representative of Venezuela stated that the Group should concentrate strictly on what was said in the mandate, that is to say merely transparency. Joined by Switzerland, the representative of the European Community recalled the importance of the commitment made at Doha on the need to provide technical assistance and capacity building. The representative of Canada said that her delegation supported, had supported and continued to support both the Singapore and Doha mandates, and was supportive of the work programme developed at the March informal meeting. Transparency could be pursued in government procurement in a way which did not restrict, using the words from the mandate, "the scope for countries to give preference to domestic supplies and suppliers".

11. Joined by the representative of Malaysia, the representative of India suggested that, at the next meeting of the Working Group, a separate agenda item be listed for a discussion aimed at reaching a consensus on those elements that could be categorized as directly related to transparency and were appropriate to include in a transparency agreement. In response, the United States joined by the representative of Switzerland, said that further reflection was warranted on the necessity of such an agenda item.

12. The Chairman noted that the discussion on the 12 issues should give all delegations an opportunity to voice their opinions about the inclusion of these elements within a possible outcome of the work of the Group.

13. In response to the suggestion by the representative of India that the Doha Ministerial mandate in relation to the work of the Working Group be discussed, the representative of the European Community, supported by the representative of Switzerland, said that neither the mandate itself nor the part related to modalities for negotiations formed part of the work programme agreed to by the Group at the March informal meeting. The European Community remained committed to achieving a transparency agreement in government procurement. The ground had already been covered in considerable detail. A work programme covering all the issues in the informal note by the Chairman of November 1999 had been agreed by the Group. His delegation considered, given the differences among Members' systems, that a non-prescriptive, principles-oriented approach allowing for some flexibility would best take into account the special needs of developing countries and help to create a rules-based environment characterized by transparency and access to all relevant information. He added that in the long run an agreement on transparency would strengthen domestic industry by encouraging competition, an effect that had already been witnessed in the European Community. Public expenditure would be reduced, purchasers would obtain better value for money, and undesirable practices would be discouraged.

14. The representative of Morocco said that since the recently introduced Moroccan legislation on government procurement was largely in conformity with international standards and rules, Morocco's support of a multilateral agreement would not appear to pose any problem. Morocco had notified its national legislation in the area of government procurement in document WT/WGTGP/W/19 dated 20 July 1998. He said that an agreement should be limited to stipulating transparency and there should be no attempt at developing prescriptive rules in regard to different situations. It would be important to recognize the utility and productivity of rules on transparency agreed to between countries. Given the different stages of development of transparency and competition systems among countries, an agreement should not impinge on national specificities in that the mechanism of national preferences should be confirmed, and a time-frame should be put into place for the application of the different measures. Taking into account 'Special and Differential' provisions was an integral part of the full exercise of the Group. Such an approach would be in line with the concept of flexibility and progressivity. Morocco believed that the application of paragraph 26 of the Doha Declaration was essential in order to implement technical assistance and to enhance capacity building so as to permit Members to achieve explicit consensus on a multilateral agreement.

15. Reporting on developments in relation to national procurement systems, the representative of Venezuela emphasized the importance of government procurement and transparency to Venezuela, stating that in 2000, expenditure on government procurement had amounted to U.S. \$9.0 billion. National legislation of Venezuela had been enacted at the end of 2001.

B. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

16. For the discussion of this agenda item, the Working Group had before it a discussion paper from Australia on Procurement Methods (WT/WGTGP/W/31) and the note by the Secretariat "Work

of the Working Group on Matters Related to Items I-V of the List of Issues Raised and Points Made" (WT/WGTGP/W/32). The note by the Secretariat had been prepared in response to the request made by the Group at its informal meeting held in March. It aimed to facilitate discussion in the Working Group by providing a more concise note than the Informal Note by the Chairman "List of Issues Raised and Points Made", as well as taking into account subsequent discussions in the Group and submissions made by Members. Being a summary, the note did not contain all the details of the points made and explanations given. For more detailed information, delegations should consult additional documents such as the informal note by the Chairman and other documentation such as the minutes of meetings. The note also contained an Annex listing the documents, categorized under a number of headings, that had been presented to the Working Group so far.

17. The representative of the European Community, joined by the representatives of the United States, Switzerland, Canada, Venezuela, Indonesia, Chile and Australia, thanked the Secretariat for its summary note. The representatives of the United States, the European Community, and Chile said that the note would help to provide a more concise focus for future discussions, as well as clearly identifying the issues discussed in the past. The representative of India commented that the note was useful to the extent of assisting delegations that had not been able to actively participate in the discussions so far. Joined by the representatives of the United States and Chile, he said that the basic working document should remain the "List of Issues Raised and Points Made" (JOB(99)6782) of November 1999, supplemented by the minutes of the meetings. The representative of Indonesia said that the note did not contain all the points made by his delegation previously.

18. The representative of the United States commented that with respect to the items covered by the summary there appeared to be few areas where there were significant variations in practice, and that the information on international instruments and practices suggested the existence of a common minimum level of procedures and practices associated with transparency. Additionally, many details of each element had been identified which had been discussed at length in the Group. The United States believed that there would be greater convergence on these elements through negotiation, as exemplified by the item relating to Definition and Scope.

19. The delegation of Venezuela said that, in the study phase, Members could review national legislation relating to government procurement. Venezuela was willing to submit information on its legislation to other Members. The Chairman pointed out that only ten delegations had so far shared information on their national procurement systems and practice and encouraged delegations to continue providing information to the Group on their national practice. The representative of the United States commented that the exchange of information in national legislation should be a continuous process in the Working Group. Surveys had been carried out regarding national legislation, and the relevant documents had been identified in the summary note by the Secretariat. The representatives of Malaysia and India encouraged greater participation of Members in the discussions of the Working Group, given the Group's engagement in the study phase.

20. The Working Group took up the items I-IV in the informal note by the Chairman "List of Issues Raised and Points Made" (JOB(99)6782) of November 1999, commenting on each item in turn and using the summary in the note by the Secretariat "Work of the Working Group on Matters Related to Items I-V of the List of Issues Raised and Points Made" (WT/WGTGP/W/32).

Definition and Scope of Government Procurement

21. The representative of the European Community, joined by the representative of the United States, said that, in the absence of lists of covered entities which provided certainty about the scope and coverage of rules, a definition of government procurement was especially important in a transparency agreement. His delegation considered that, although the contours of a definition remained a matter for further discussion, any definition which was eventually arrived at should be as broad as most Members could agree to. The representative of India, joined by the representative of

Malaysia, said that a wide divergence remained in the Group on the question of definition. The study phase should be used for a better understanding of the various issues related to definition. This issue should be resolved through discussions in the Working Group rather than through negotiations.

22. The representative of India, joined by the representative of Indonesia, disagreed with the statement in paragraph 10 of the summary note, that there appeared to have been a general acceptance that a broad conception could be employed for the purposes of the study phase. No distinction should be made in the Group between definition and scope of government procurement for the study phase and for the purpose of rules that may be negotiated. By way of clarification, the Chairman said that the reference in paragraph 10 of the summary note to a broad conception was concerned with and related to the study phase of the Working Group. The representative of the European Community added that the wording used in the 'List of Issues Raised and Points Made' was very similar to that used in the summary note.

23. The representative of Indonesia said that, in regard to the definition and scope of government procurement, many delegations, especially those from developing countries, had yet to fully understand the implications of an eventual transparency agreement. Further, the Group must be convinced that the implementation of an agreement would not be unbalanced as between developing and developed countries.

24. The representative of the United States commented that guidance was lacking in relation to a definition in the context of an agreement which did not contain lists of covered entities, but noted that GATT Article III:8 and GATS Article XIII could potentially provide such guidance.

25. Commenting on the coverage of a transparency agreement, the representative of India said that coverage should reflect the common minimum standards of national procurement systems, and that commitments undertaken should not be onerous or self-defeating in reference to the ultimate goal of improving the transparency of Members' procurement systems. The representative of Switzerland said that, since the agreement was concerned with transparency, he considered that it was logical that coverage should be as extensive as possible, although flexibility was required in order to manage the implementation of any future agreement.

26. Observations were made on the question of whether the rules of a transparency agreement should extend to procurement by entities at all levels of government or at the central level of government only. The representative of India, joined by the representative of Indonesia, said that the scope of a transparency agreement should be limited to central/federal government entities. The representative of India said that, in India, multiple governmental departments at different levels procured according to rules and procedures tailored to suit individual operational ability, and that therefore procurement practice was not uniform nationally. Decentralized procurement was encouraged as reflective of the local conditions and enhanced efficiency, and state governments had enacted procurement-related laws according to their needs. Nationally, general financial rules provided the outline within which procurement was undertaken by federal Ministries and departments. Most public procurement contracts were checked through a post-audit system, and main procuring departments had dedicated audit teams permanently monitoring procurement activities. There was considerable difficulty in listing out all procuring entities, or providing details of the quantum of procurement taking place due to the vast numbers involved, and hence universal coverage of procuring entities at India's various levels of government was not feasible. Despite the difficulties outlined above, independent assessment of the system in India had shown the existing system to be delivering efficiently and in a cost-effective manner. The applicability of procurement rules and regulations to public utilities and public sector entities was currently in a state of flux in India, due to privatization currently under way; therefore there was little or no governmental control over the purchasing decisions of such entities. Even where the government was the majority stakeholder, almost all sectors in which such entities operated had been opened to private sector participation, which had caused public entities to lose their monopoly character and operate on commercial terms.

Under these circumstances, the application of transparency requirements solely to public entities without private-sector competitors being subject to the same requirements would result in unfairness. In India, even if obligations were limited to central government entities only, coordination between the numerous departments would involve difficulty.

27. The representative of the United States said that sub-central entities should be covered under a transparency agreement. The comments by the delegation of India on the challenges faced by state-owned enterprises were very useful, and noted that information of this kind could inform the positions eventually taken in the negotiations. The representative of Venezuela said that the coverage of legislation introduced in Venezuela in 2002 extended to both central and sub-central entities.

28. On the question of threshold levels, the representative of India, joined by the representatives of Malaysia, Indonesia and the European Community, supported the use of threshold levels for the purposes of the application of requirements in a transparency agreement. The representative of Indonesia added that the inclusion of minor procurements within the scope of a transparency agreement could impose an undue burden on entities in developing countries. The representative of India, supported by the representative of Malaysia, suggested having a higher threshold for contracts subject to any future obligations as a 'Special and Differential Treatment' provision for developing countries.

29. The representative of the European Community said that his delegation believed that there was scope in the area of thresholds for differential treatment. Agreeing with the representative of India, he said that there was merit in having higher thresholds for those developing countries with reasons, such as insufficient administrative capacity, which would prevent them from complying with the provisions that would apply to developed countries. The representative of Switzerland said that the flexibility required in order to manage the implementation of any future agreement could be achieved through the use of thresholds or exceptions. The formulation of these possibilities should be carried out in the Working Group through negotiations and should depend on the level of commitments undertaken by Members requesting flexibility.

30. With regard to exceptions from coverage, the representative of India said that the possibility of exempting procurements related to social, economic and developmental policies from the ambit of the exercise of the Working Group be recognized, and a 'Special and Differential Treatment' provision for developing countries considered in this context. He said that many Members of the Working Group recognized that the exceptions to the GATT 1994 and the GATS on grounds of security or other grounds should be similarly built into any future multilateral transparency provisions on government procurement. The Working Group could consider exceptions for regional and social development, in the light of the role of government procurement as a policy tool.

31. With regard to the question of whether the scope of an agreement should include both goods and services, the representatives of India, Malaysia and Indonesia stated that procurement of services should be excluded from the scope of the work of the Working Group. The representative of India said a combination of goods and services should also be excluded given that the relationship between elements identified as related to the transparency aspect of procurement and their application in the larger context of procurement required further examination and clarification. The representative of India added that the services sectors in developing countries were not as advanced as those in developed countries. The representative of Indonesia said that, although his delegation recognized that in practice it could be difficult to distinguish between services and goods, and that often mixed contracts involved both goods and services, procurement in the services sector in developing countries was less systematized than that in the goods sector. There should be differentiation with regard to the procurement of services, given that the scope and coverage was different to that of goods. The United States, joined by the representative of Switzerland, stated that scope should include services. The representative of Switzerland recalled the submission made by his delegation in 2000 to the Working Group (JOB(00)/5645) on this subject.

32. The representatives of India and Malaysia stated that the issue of services procurement was currently being discussed in the Working Party on GATS Rules. The representative of Switzerland said that the overlap which existed to some extent between the work of the respective forums should not exclude the possibility of the issue of services being addressed in the Working Group, due to the close link between services and goods. He added that it would be more complicated, especially for developing country Members, to separate, in many cases artificially, services from goods procurement.

33. The representative of India, joined by the representative of Malaysia, said that procurement not open to foreign suppliers should not form part of the discussions of the Working Group. In this regard, India had suggested the possibility of having different rules for procurement open to foreign suppliers and procurement reserved for domestic suppliers. In relation to the grant of preferences to domestic suppliers and supplies, and also in regard to pursuing policies of economic, social and regional development, there should be no restriction concerning procurement policy *per se*. The representative of the United States asked how a procurement that was not open to foreign suppliers would be defined. Would preferences to national suppliers qualify a procurement as open to foreign suppliers? Would a procurement restricted to domestic suppliers, goods or services, except where there was no domestic supplier, good or service, qualify that procurement as closed to foreign participation? In response, the representative of Malaysia said that, in its national practice, price preferences were clearly set out in the tender documents. If there was a price preference, the tender must necessarily be open to foreign suppliers. Transparency was in this way achieved, since foreign suppliers were not deceived into believing that they could make a successful bid without meeting these conditions. This national practice would continue to be followed as long as it remained to the developmental benefit of Malaysia. Supporting the view expressed by the representative of Malaysia, the representative of India added that procuring entities were free to determine whether individual tenders should be open to foreign suppliers. Where tenders were restricted to domestic suppliers, foreign suppliers would not submit their tenders. His delegation could not understand why any other WTO Member should be interested in these specific procurements. Entities should also be entitled to provide preferences, where procurements were open to foreign suppliers.

34. The representative of the United States said that his delegation had noted some concerns in regard to the perceived principle that under no circumstances should a transparency agreement alter domestic law or regulation. He asked whether, in an extreme situation in which there was no existing legislation on transparency, a transparency agreement would not lead to the development of national laws or regulations.

35. The representative of Chile said that the Indian delegation should define what would be included in the scope and definition of government procurement and what would be the percentage of government procurement in India that would be subjected to a transparency agreement according to the definition suggested by India. In response, the representative of India said that its position was designed to address its national concerns, and that the exercise of the Group was not simply a matter of assuming negotiations on transparency.

36. The representative of the United States questioned the suggestion by the delegation of India that there should be convergence of views in all respects through the current process, because this would suggest that all questions of scope were to be negotiated at the present stage. His delegation hoped that progress could be made in understanding positions more during the study phase before proceeding with negotiations after the next Ministerial Conference. In that regard he said that the comments by the delegation of India on the challenges faced by state-owned enterprises were useful, and noted that this was the kind of information that could inform the positions eventually taken into negotiations.

37. The representative of Malaysia said that his delegation recognized the importance of transparency. Joined by the representative of India, he emphasized the accountability of Members to

their citizens and the existence of audit systems designed to ensure transparency. The representative of India said that the divergences on the specific elements were not a question of developing countries versus developed; rather, it was a question of the implementation of any future obligations.

Procurement Methods

38. In introducing her delegation's submission on procurement methods (WT/WGTGP/W/31), the representative of Australia said her delegation supported a principles-based approach and had encouraged such an approach since pre-Seattle as the best way to achieve an agreement, given the differing systems of Members. Its submission on procurement methods focused on the benefits of a flexible, non-prescriptive approach to the selection of method of procurement. Governments should have the flexibility to choose from among a range of recognized procurement methods according to the circumstances of each individual procurement, and to this end prescribed conditions or monetary thresholds should not be attached to a specific method in a multilateral agreement. A non-prescriptive approach enabled governments to fully consider the particular requirements and market conditions relating to each procurement. A transparent and robust accountability and probity framework within which the process of selection could occur was required in order to ensure objective, fair and consistent treatment of tenderers, regardless of the procurement method selected. The provision of appropriate documentation of key decisions in the procurement process, including details of the methods selected, was an important element of such a transparent framework. Procurement as a policy tool was an important component of the overall performance of a government. Joined by the representatives of Malaysia and India, she said that a flexible non-prescriptive approach within a transparent process allowed governments to ensure the efficient and effective delivery of procurement objectives. The representatives of Malaysia and India said that any multilateral agreement should not question the right of a government to employ whatever method chosen by it, be prescriptive to the extent that the right to employ a particular method was questioned, or require that the reasons for having employed a particular method be divulged.

39. The representative of the United States, joined by the representatives of Canada, European Community and Switzerland, said that, in general terms and in the context of an agreement on transparency, their delegations shared the view of Australia with regard to the principle that governments should have flexibility to select the method best suited to their objectives and the situation of the procurement in question. The representative of the United States, joined by the representatives of Switzerland and the European Community said that procurement methods should be applied in a transparent and predictable manner. The representative of the European Community, supported by the representatives of the United States, Canada and Switzerland supported an approach covering any kind of procurement under transparency rules independently of the method used. They emphasized that the method of procurement chosen should not undermine the principles and objectives of any future agreement on transparency. The representatives of Switzerland and Canada said that open procurement should be the principal method used, as was pointed out in the international instruments referred to in the summary note. The delegation of Switzerland said that the UNCITRAL Model Law referred to exceptional and well-defined circumstances in which open procurement was not considered appropriate and alternative methods were offered. The use of the most transparent method, as well as encouraging open competition, would result in obtaining the best possible price from the supplier. The representative of India said that open tendering was the preferred method of procurement in most cases in India. However, factors which could influence the choice of method, such as the time available, the nature of the goods, and value of the procurement were also taken into consideration. In this regard, the emphasis in an agreement should be exclusively to provide information on the procurement method employed.

40. The representative of Switzerland, joined by the delegations of the European Community and Malaysia, said that their delegations supported the emphasis put by Australia in its communication on the need to embed the procurement process within a robust accountability and probity framework. The representative of Malaysia said that his delegation was opposed to any requirements in a

multilateral framework relating to accountability through judicial procedures or audit requirements giving WTO Members the right to question why a certain method had been selected. He said that such requirements were outside the ambit of a multilateral agreement, and reiterated in that regard the existence of domestic mechanisms and procedures designed to ensure accountability and transparency.

41. The representative of Malaysia, supported by the representative of India, asked whether, as per the approach suggested by Australia, there was agreement within the Group that the choice of the procurement method was a sovereign decision to be taken by the government of the procuring authority. If there were no interventions to the contrary, Malaysia would assume that agreement existed as to the appropriateness of the flexible approach advocated by Australia. The representative of India said that there seemed to be unanimity in the Group that governments should have the flexibility to choose from among a range of procurement methods according to the circumstances of each individual procurement. His delegation requested that this item be deleted from the "List of Issues Raised and Points Made", on the grounds that the item was not *per se* directly related to transparency, that a common understanding existed among Members of the Group that procurement entities should have the flexibility to choose from among a range of procurement methods according to the circumstances of each individual procurement and that there was no value in prescription, even in relation to guidelines. The representative of the United States said that his delegation disagreed with the suggestion that the item on procurement methods be removed from the "List of Issues Raised and Points Made", given that there was an interest that the choice of procurement method should be carried out on a transparent, predictable and non-arbitrary basis. The question should be discussed further within the Working Group.

Publication of Information on National Legislation and Procedures

42. The representative of India said that providing information on any aspect of the procurement process, whether information on national legislation and procedures or on procurement opportunities, was a transparency-related element, since complete disclosure of information aided efficient and fair procurement. Several countries had detailed web sites providing information on their procurement systems. Any efforts to expand the scope of information-related elements by proposing examination of the rules and laws, prescribing amendments to the laws, or listing out the content of the information would go beyond the mandate of the Working Group. The representative of Malaysia said that publication of information on national legislation and procedures was a key element in any transparency agreement. The representative of the European Community said that there appeared to be agreement in the Working Group that the availability of information on national legislation and procedures to all interested parties aided the efficiency of procurement and that common ground within the Group on this issue should be relatively easy to achieve.

43. On the question of the type of information to be made available, the representative of India said that requirements relating to the provision of complete information should take into account the administrative capacity of the procuring entity. The representative of the European Community considered that, at a minimum, all rules of general application should be published so as to increase procurement efficiency. The representative of Brazil said that this approach appeared to be similar to that in the provisions of Article X of GATT. The representative of Malaysia said that while it could be feasible to provide selected information on a particular procedure, providing complete information regarding national regulations and procedures, especially in one of the WTO languages, would be too onerous. He considered that it would be sufficient to state that the relevant information was available and to list the salient or most important features of the particular regulation or law. The representative of the European Community said that, while his delegation recognized the concerns of some Members with regard to the capacity of certain entities to provide information where information requirements were burdensome, he nonetheless emphasized that an essential element of transparency was the facilitation of access to laws, regulations and rules applicable to procurement.

44. With regard to the media to be used for the provision of information, the representatives of India, the European Community and the United States said that a non-prescriptive approach should be pursued in this respect. The representative of Australia said that, in Australia, each jurisdiction had a web site from which information about procurement policy and procedures, including complaints processes, could be accessed by potential suppliers.

45. The representative of the United States said that the summary note by the Secretariat did not fully reflect the national practices with respect to the way in which information on which laws, regulations and guidelines was published. The relevant information which was available in submissions and in the replies to the questionnaire of the GATS Working Group of 1997 could be provided in the course of a meeting. The representative of the Secretariat pointed out that the summary note was designed to provide an overview of the types of legal instruments that had been indicated in the information available to the Secretariat as relevant to the national procurement regimes. The question of publication had not been specifically dealt with in the note.

46. The representative of the European Community said that many Members had already put electronic procurement systems into practice. The European Community considered that each country should adopt the approach according best with its capacities. The representative of the United States joined by the representative of Brazil, said that the use of electronic media could ease administrative burdens and lower costs. The representative of Brazil said that there should be obligation to publish in some form of media, accompanied by a degree of flexibility as to how each Member shall implement such a provision. In Brazil legislation was published both in the official gazette and on the Internet.. The representative of Korea suggested that the requirement to publish could be met through publication in printed or electronic media, and considered that it was desirable to encourage the use of electronic means of publication to the greatest extent possible. The delegation of India stated that Members should be entitled to decide whether or not to publish the information electronically, and that the emphasis should be on making information available.

47. With regard to the use of electronic media, the representative of the European Community said that, in the light of the difficulties that could be encountered by developing countries with regard to capacity in this area, it was possible that developed countries could be required to apply a higher standard of information dissemination than would be required from developing countries, in particular with regard to use of electronic means of communication. In response to a question by the representative of Korea, the representative of the European Community said that a detailed proposal had not yet been prepared regarding the possible distinction referred to between developed and developing countries on the general application of electronic procurement, but that there were a number of ways of achieving the objective of allowing developing countries less stringent obligations in this area.

48. On the question of cost of accessing information, the representative of the United States said that prohibitive costs associated with obtaining information may reduce opportunities for interested suppliers to obtain information, which would in turn affect transparency. The representative of Malaysia, joined by the representative of India, stated that the issue of costs was more a matter of observance of the principles of non-discrimination and national treatment rather than of whether fees were charged and their level if they were. Governments should not be denied the possibility of charging appropriate fees provided these were charged in a non-discriminatory manner.

49. On the question of translation of information on national legislation and procedures, the representative of Venezuela said that, while his delegation was opposed to a general requirement of translation into a WTO language, translation could be considered in the case of an international tendering opportunity for the provision of goods not available domestically, although the onus for translation should remain on the private sector. The representative of Australia said that, in the first instance, information should be made available in the national language and that it should be at the discretion of Members whether to publish information in other languages. By way of clarification, the

representative of the European Community said that its proposal on the use of a WTO language had been intended only as one of the possibilities that could be examined. He recognized that a requirement of publication in all WTO languages would be unreasonable for many developing countries because of specific difficulties in terms of capacity that could be faced by them in this respect.

50. On the question of whether there should be a requirement for the establishment of an enquiry point from which information on national legislation or procedures could be obtained by interested parties, the representative of Australia, joined by the delegation of India, said that the establishment of enquiry points would be impractical, in the light of the decentralized nature of the national procurement systems. The representative of India added that an obligation to set up an enquiry point would be burdensome for developing countries. The representative of Korea said that an enquiry point was necessary to obtain information on national legislation or procedures. He highlighted the need for an enquiry point in decentralized procurement systems, where information was more difficult to obtain, and considered that an enquiry point could be a simple matter of having a designated agency set up a web site.

Information on Procurement Opportunities, Tendering and Qualification Requirements

51. The representative of the European Community, joined by the representatives of Thailand and Brazil, considered that any requirement for a list of essential procurement information should attempt to meet a minimum set of information requirements without being overly prescriptive. The representative of the United States emphasized that the principle contained in paragraph 41 of the summary note, that information should be sufficient to enable suppliers to assess their interest in the procurement and to submit responsive bids, was a basic principle associated with the provision of information on specific procurement opportunities. The representative of Brazil considered that the overriding principle in this area should be that the level of information required for a particular procurement be compatible with the procurement method chosen.

52. The representative of the United States said that further examination was required of issues such as how information should be provided, the type of information to be provided, whether there should be a distinction between open and selective procurement procedures, information associated with preferences to national supplies and suppliers, what could be considered as a criterion in the award of a contract, and information to be provided on small-value procurements.

53. The representative of India stated that the information content of tender opportunities should be left to that prescribed in the applicable national laws or in the procedures of the entities themselves. He said that any prescription regarding information on individual procurement opportunities had to be examined carefully, and that the requirement for providing information should take into account that limitations on providing information may exist due to low value of the procurement, the technology available to the procuring agency to disseminate the information, the cost of making such information available, and the tender being addressed to a small group of locally based contractors. He considered that several countries had detailed web sites providing information, including on individual procurement opportunities. The representative of the European Community said his delegation appreciated the difficulties that could be encountered by developing countries with regard to capacity in this area. His delegation recognized the possibility that developed countries could be required to apply a higher standard of information disclosure than that required from developing countries.

54. The representative of Thailand said that since government agencies in Thailand issued notices of invitation to tender throughout the year, translation requirements should be limited to big projects; otherwise, the requirement could become burdensome. The representative of Brazil, joined by the representative of Thailand, said that translation of all requests for tenders into an official WTO

language would be problematic. In this regard, the representative of Brazil noted the existence of 2,500 entities at the federal level authorized to conduct government procurement in Brazil.

55. With regard to how information on procurement opportunities should be made available, the representative of Brazil said that there should be publication in some form of media, accompanied by a degree of flexibility as to how each Member should implement such a provision. He said that in Brazil every notice of invitation was published in the official gazette and on the internet. Electronic publication of tenders resulted in cost savings, because entities could access past records of procurements of similar items, in order to find the lowest cost. The representative of Venezuela said that Venezuela had also introduced an electronic procurement system aimed at achieving greater transparency.

Time-periods

56. The representatives of India and Jamaica said that prescription of time-periods was not a matter of transparency. The representative of India said that time-periods should be set in a non-discriminatory manner and that entities should be able to decide time-periods on a case-by-case basis. The representative of Jamaica, joined by the representative of the United States, said that making known the specific time-periods applicable to a particular procurement was a transparency matter. The representative of India, joined by the European Community, said that information on time-periods, including any changes thereto, should be made available to suppliers. The representative of the United States said that time-periods should be sufficient to allow for responsive bidding, but that the period itself should be determined by national authorities or procurement entities as appropriate. The representative of Malaysia said that his delegation shared the view of the United States that the issue of time-limits was related to transparency to the extent that, if sufficient time was not provided or if sufficient time was provided to one party and not to others, transparency would be affected. Joined by the representative of Malaysia, the representative of India said that harmonization on this issue would not be advisable, on the basis of the wide divergence existing among national practices in this regard, as reflected in the "List of Issues Raised and Points Made". The representatives of Jamaica and Malaysia said that a transparency agreement should not have provisions setting out specific time-periods for each procurement method. The representative of the United States said that the United States was not seeking a specific regulatory framework on this issue, and had not advocated positions that suggested a harmonization or standardization of procurement practices.

57. The representative of India said that, since time-periods *per se* were not an element of transparency for the purposes of the work of the Group, they should be deleted from the "List of Issues Raised and Points Made". The representative of the United States, joined by the representative of Malaysia, said that the issue of time-periods required further debate. The representative of the European Community said that the question of time-periods had to be discussed in light of the use of electronic means of communication which allowed quicker responses to tenders than in the past.

Other Items in the List of Issues Raised and Points Made

58. The representative of India made comments relating to two other items in the "List of Issues Raised and Points Made", namely domestic review procedures and application of WTO dispute settlement procedures. On the question of whether there should be a requirement that a domestic review procedure be maintained, the representative of India reiterated that all WTO Members had adequate domestic administrative, audit and judicial mechanisms aimed at ensuring that all participants in the procurement process acted in conformity with the relevant rules and procedures. The primacy of domestic laws and procedures regarding this matter should be preserved and there should be no requirement to change them. India believed that developing countries within the Group were unanimously opposed to the prescription of minimum standards relating to domestic review mechanisms, and on that basis requested that the element be deleted from the Chairman's Checklist.

59. Regarding application of WTO dispute settlement procedures, the representative of India said that his delegation remained unconvinced of the need for any linkage between an agreement and the WTO Dispute Settlement Understanding, given the focus of the Group on transparency. The proponents of such a linkage were themselves not clear about how it would work, and there was no assurance that making the agreement subject to the Dispute Settlement Understanding would not lead to the overturning of procurement contracts already awarded. India's view was that the present system of redressal of complaints concerning procurement contracts through domestic mechanisms should continue. India believed that developing countries were concerned about a linkage with the WTO Dispute Settlement Understanding. In view of this, he suggested that the element be eliminated from the Chairman's Checklist.

60. The Chairman said that, as agreed at the March informal meeting, sub-items VI to XII of the Chairman's List of Issues Raised and Points made would be the principal focus of discussion at the next substantive meeting. These items were related to transparency of decisions on qualification (VI); transparency of decisions on contract awards (transparency of criteria, receipt and opening of tenders, *ex post* information on contract awards) (VII); domestic review procedures (VIII); other matters related to transparency (IX); information to be provided to other governments (information on national legislation, notification of national legislation, information on contract awards, statistical information) (X); WTO Dispute settlement procedures (XI); 'Special and Differential Treatment' and technical assistance (XII). He emphasized that the designation of the items VI to XIII as being the focus of the discussion for the next meeting did not exclude the possibility of the Group's discussing any of the other sub-items, which would remain part of the formal agenda for the next meeting. As agreed at the informal meeting, the Secretariat would prepare a short background note summarizing the work that had already taken place in the Working Group on the matters related to the sub-items VI to XII, drawing on and listing the documentation of the Group. He added that, given that the quality of discussions in the Group depended on written submissions to the Group, Members should make all possible efforts to prepare written contributions in advance of the meeting, and that these should be circulated through the Secretariat as soon as possible.

C. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

61. Reporting on the activities in relation to technical assistance and capacity building in the area of government procurement pursuant to paragraph 26 of the Doha Ministerial Declaration, the representative of the Secretariat said that an informal note had been circulated at the Working Group's informal meeting on 12 March 2002 setting out the activities and plans in the area of transparency in government procurement. The note reflected the relevant information that had been made available to Members in the Coordinated WTO Secretariat Annual Technical Assistance Plan for 2002 (WT/COMTD/W/95/Rev.3). The financial constraint mentioned at the March informal meeting relating to the availability of adequate finance in order to execute the technical cooperation plan in the area of transparency in government procurement, had since been removed pursuant to the WTO pledging conference. Furthermore, the Secretariat was currently engaged, through recruitment, in reinforcing its human resource capacity for providing technical cooperation and capacity building in this area. With regard to cooperation with other intergovernmental organizations, the WTO Secretariat had hosted a meeting with the representatives of intergovernmental agencies on the subject of inter-agency cooperation on technical cooperation and capacity-building in the area of government procurement. The meeting had been held in Washington D.C. on 27-28 March 2002, back to back with a meeting of heads of procurement of the World Bank and Regional Development Banks, and had been attended by representatives of the World Bank, the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, UNCTAD, UNCITRAL, ITC, OECD, and UNDP. The meeting had served as an opportunity to inform the procurement officials in other intergovernmental organizations of the WTO activities taking place in the area of government procurement. With a view to identifying areas of possible cooperation and coordination, information

relating to the plans and activities concerning government procurement of the organizations present had been exchanged. One of the possibilities of particular interest to the Secretariat was that of holding joint regional activities in cooperation with the regional development banks and the World Bank. The response on these proposed initiatives had been generally positive and the Secretariat was currently in the process of fleshing out the programme including the following events: joint projects planned with the IADB included a regional workshop for Central American countries in early September 2002 in Costa Rica, a regional workshop for Caribbean countries in mid-November 2002 and a regional workshop for the remaining countries in Latin America in early 2003. As regards Africa, a regional workshop had been foreseen for COMESA countries in cooperation with the African Development Bank, the World Bank and the COMESA secretariat in late 2002 or early 2003. It was hoped that there would be other joint projects with the African Development Bank and the World Bank for the countries in other sub-regions in Africa. As regards the Asian countries, joint activity with the Asian Development Bank was still under consideration. Furthermore, a Symposium was planned for October 2002 in Geneva back to back with the next meeting of the Working Group, intended for capital-based delegations as well as Geneva-based delegations. The Secretariat was also in contact with a number of the countries requesting national workshops and seminars, and it was hoped that as many as possible of these could be held before the end of 2002. The Secretariat had attended a meeting of the OECD Development Assistance Committee (OECD/DAC) on 14 March 2002. The meeting had discussed the organization of a workshop amongst OECD member countries and invited developing countries on the subject of capacity building and technical cooperation in the area of government procurement. The interest of the OECD/DAC was a follow-up to the OECD Recommendation for the Untying of Development Aid to Least-Developed Countries, which had increased interest in the reform of national procurement systems. The representative of Kenya, joined by the representatives of India, Colombia, the European Community and Thailand thanked the Secretariat for its report on planned technical assistance and capacity-building activities.

62. The Chairman said that developing countries were encouraged to clearly state their needs so that the technical assistance and capacity building process could take them into account. He invited comments from both developing and developed countries regarding initiatives and programmes.

63. The European Community said that the efforts made by the Secretariat in the area of training and technical assistance were complementary to the work carried out in the Working Group. His delegation reiterated the importance of technical assistance and capacity building, independently of the commitment undertaken pursuant to the Doha Ministerial Declaration. The representative of Canada said that Canada recognized that, in order to make progress towards a multilateral agreement and to ensure effective implementation of obligations and exercise of rights, full participation of the participants in the negotiation of the framework of such an agreement was required.

64. The representative of Venezuela said that technical assistance and capacity-building programmes should focus on issues of substantive nature including such issues as supporting domestic employment and development of small and medium enterprises as well as identifying ways in which suppliers in developing countries could participate in procurement by government entities in developed countries. While Venezuela supported the importance of curbing corruption and had to this end presented a submission to the Working Group. His delegation was concerned that the focus of the intergovernmental organizations participating in and funding regional workshops would be limited to concentrating on the avoidance of corruption in tendering procedures. Technical assistance and capacity-building programmes related to regional workshops should go beyond addressing concerns related to corruption. The sub-regional seminars in Latin America could serve as a means of divulging information and informing civil servants as to how government procurement could influence employment and development in general. He added that including considerations such as these would not constitute a diversion from the goals of the work of the Working Group.

65. The representative of Kenya supported by the representatives of the United States and India, said that the planned workshops and seminars aimed at providing technical assistance and capacity

building would enable his authorities to better understand the subject of government procurement and to assess its relevance in the WTO context. The delegation of India said his delegation was unsure as to what were the technical assistance needs, given that the Group was in the study phase, and that there were divergent views among Members on issues. The representative of Malaysia said that the provision of technical assistance should enable developing countries to achieve a better understanding of the implications of a transparency agreement on their developmental aspirations, which would allow them to assess whether to proceed towards a multilateral agreement. In the area of government procurement, as well as in the areas of trade and investment and trade and competition policy, technical assistance should not be related to the need for explicit consensus at the next Ministerial meeting on negotiations. In response to the reference by the representative of Malaysia to other Singapore issues, the representative of the United States said that each of the Singapore issues should be considered in terms of their individual merits, and in this regard added that technical assistance and capacity building could provide an opportunity for individual delegations to consider the issue of government procurement on its particular merits. The representative of Kenya, joined by the delegation of India, said that technical assistance should not lead the recipients to adopt a certain line of thought; rather, it should place them in a position to make an independent decision about whether the subject-matter merits further consideration. The representative of Malaysia shared the concerns expressed by the delegation of Kenya, particularly with regard to any notion that, once technical assistance was provided, as mandated in the Doha Ministerial Declaration, there would be a degree of automaticity with regard to entering negotiations. In response, the European Community stated that technical assistance should help the recipients arrive at independent judgements, and that constructive debate in full knowledge of the facts was the crux of the technical assistance programme.

66. The delegation of Kenya, joined by the representatives of Malaysia, the United States, Japan, Colombia, Canada, Jamaica and Turkey, said that consideration should be given to facilitating the participation of capital-based officials in the discussions ongoing in Geneva. Making progress and enhancing understanding in the area of transparency in government procurement depended to a large extent on substantial capital-based participation. The representative of Kenya added that this was the only way to build capacity. For instance, capital-based as well as Geneva-based participants should participate in the Symposium in October. The Chairman said there had been interest in gaining the participation of both Geneva- and capital-based representatives, which however depended on financial limitations. In response to a question on the participation of capital-based experts in the Symposium in October, the representative of the Secretariat said that any delegates from capitals intending to participate in the next meeting were entitled to attend the Symposium provided they covered their own expenses. On the question of whether the Secretariat could assist in financing the participation of a number of capital-based delegates at both the Symposium and the meeting of the Working Group, he said that some officials from least-developed countries might be included in this way, but he was not in a position to make a commitment as to such a possibility. He added that remarks on the importance of the presence of capital-based officials had been noted, and should be of some assistance in securing funding.

67. As regards the content of the technical assistance programmes, the Secretariat said that the WTO contribution in this phase should be linked to helping developing countries make informed decisions about their interest in and the implications of a possible multilateral framework in the area of government procurement. In this regard, the comparative advantage of the WTO Secretariat lay in assisting capital-based officials to fully understand the discussions going on in the Working Group, to assess the implications thereof, and to advise decision-makers in their countries. He recognized that governments might, when considering their interests in future work in the WTO, need also to examine a wider set of issues regarding institution building and possible reform in the area of government procurement. Therefore, the Secretariat emphasized the importance of cooperation with other intergovernmental organizations in order to organize events providing a broader perspective than that offered solely by the WTO, a point also raised at the recent inter-agency meeting hosted by the Secretariat. On the need to tailor the content of the planned events to the specific needs of recipient countries, suggestions had been received that it would be useful, for countries in Latin America and

the Caribbean, to have events addressing also activities at the regional and bilateral levels as well as WTO-related activity on transparency in government procurement. A broad perspective for the discussion of issues was important, given that policy-makers often considered the same questions at various levels, and the usefulness of bringing together trade officials and government procurement experts so that interaction and reciprocal learning could take place. On the basis of another point raised at the inter-agency meeting, regarding the diversity of the positions of developing countries according to their different stages of development and different needs, the IADB had advised the Secretariat that it would be preferable to hold, instead of one regional event for Latin America and the Caribbean, three separate events which could be focused directly on the specific needs of the different groups of these countries.

68. The representative of Japan said that the Ministry of Foreign Affairs had initiated contacts with the national development agency, as a result of which Japan was able to contribute to funding one Geneva-based seminar for each Singapore issue. Japan shared the view expressed by the representatives of Kenya and the United States that it was important to have capital-based experts from developing countries at the October meeting as well as the Symposium. Her delegation requested that its offer for funding the travel cost of approximately 20 experts from capitals in developing countries as contribution to the work of the Working Group be considered. The delegation of India, joined by the representative of Colombia, thanked the delegation of Japan for the generous offer of its government to fund the participation of officials from developing countries. The representative of Colombia added that the Symposium in October would be an excellent opportunity for officials from developing countries to get to know the advances made in the Working Group and become involved in the discussions. Regarding Japan's offer of funding, he said that this would to an extent help to respond to the views expressed on the importance of having capital-based participation at the October Symposium. The representative of the Secretariat welcomed Japan's generous offer which would help to cover the cost of participation of capital-based delegations in the Symposium.

69. The representative of Canada said that developing and least-developed countries were best placed to identify their capacity-building and technical assistance needs. Canada's approach to technical assistance and capacity building in the Working Group would continue to be guided by the needs expressed by these countries. Over the past decade, based on expressed needs, Canada had committed to working with developing countries to remove obstacles to trade and development through participating in over 200 trade-related technical assistance and capacity-building projects. The Secretariat was encouraged to continue to work together with other groups and organizations such as the World Bank, Regional Development Banks, UNCTAD and others, so as to ensure that the human and financial resources dedicated to capacity building and technical assistance were fully and effectively utilized. While recognizing that capacity-building and technical assistance needs were linked to broader issues of development, Canada was confident that a focused discussion on capacity-building and technical assistance needs related to transparency in government procurement had the potential to contribute to attainable achievements in the area of government procurement prior to and beyond the next Ministerial Conference.

70. The representative of Jamaica said that her authorities were interested in understanding the extent and scope of assistance that could be provided in relation to provision of information on national legislation and procedures and asked whether there was the possibility of assistance to address the need for hardware, software and the expertise necessary to develop the electronic publication of procurement information.

71. The representative of Turkey said that, as well as technical advice and financial contributions, other experience-sharing types of experiences such as 'twinning' practiced by the European Community or study tours and assistance with application of information technology could be useful.

72. With reference to the issue of technical cooperation relating to the application of information technology raised by the representatives of Jamaica and Turkey, the representative of the Secretariat

said that the Secretariat had in the past organized two events in Geneva on the use of information technology in government procurement and noted that, although the events had been open to other interested delegations, interest at the time had primarily been from Parties to the plurilateral Agreement on Government Procurement. Participants had learnt about the different techniques in use and become aware of the varying degrees of advancement among countries in the introduction and use of electronic procurement systems. Should there be sufficient interest, the possibility of organizing another such event could be considered. More detailed assistance in designing and introducing information technology systems was out of the reach of the WTO Secretariat, and would be a matter of approaching regional development banks, the World Bank, or seeking bilateral assistance.

73. The representative of the European Community said that his authorities were preparing a seminar for negotiators from developing countries. It would last three or four weeks and would include a module on transparency in government procurement. The seminar was designed for officials from Ministries in developing countries, and was scheduled to take place towards the end of the year. The transparency in government procurement component of the seminar was aimed at improving understanding of the impact of transparency in the public administration tendering process; identifying administrative costs and potential obstacles to future implementation of multilateral rules on transparency; helping officials from developing countries to identify the strengths and weaknesses of their legal frameworks; and assessing the extent to which common ground existed between them. On conclusion of the module on transparency, participants should have reached an understanding of all elements related to transparency in government procurement, should be in a position to assess the impact of the relevant proposals on their national legal regimes, and should be able to prepare their own contributions on the debates ongoing in Geneva and elsewhere. Training in negotiation techniques and skills would also be included in the seminar. The European Community considered that this was a substantial contribution towards the commitment undertaken pursuant to the Doha Ministerial Declaration, and hoped for a significant participation from developing countries. In response to a question put by the delegation of Malaysia, the delegation of the said that the event would include other issues apart from government procurement, possibly other Singapore issues, or a mix between Singapore issues and other issues under discussion post-Doha. At the present time, their exact nature could not be confirmed. However, relevant information would be released as soon as funding had been secured.

74. The representative of Thailand welcomed the initiative by the European Community to hold seminars for negotiators. With regard to the planned workshops or seminars on technical assistance and capacity building to be held on a regional basis, Thailand requested that these be open not only to government officials but also to the private sector, given the latter's important role in regard to government procurement. The Chairman noted that this issue seemed to depend on the policy of the countries themselves regarding the involvement of the private sector. The representative of Malaysia said that his delegation was opposed to Thailand's suggestion of inclusion of private-sector participation. On the question of inviting private-sector participants, the representative of the Secretariat said that events of this kind were designed primarily for government officials. Should the government of a country in which a regional event was taking place wish to include such additional participants, these would be accommodated to the extent that the interactivity of the event was not upset. In regard to national seminars and workshops, he considered that often governments sought to include participation from the private sector, non-governmental community, and academic community, and that some sessions were more public in nature than others, which were limited to government officials

D. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

75. The Chairman said that, at its past meetings, the Working Group had considered requests for observer status from three international intergovernmental organizations (OECD, SELA and the Organization of the Islamic Conference) and agreed to revert to these requests in the light of the ongoing consultations in the framework of the General Council. Given the overall status in the WTO

regarding this matter, he suggested that the Working Group revert to this matter at its next meeting in the light of developments in those consultations.

E. DATE OF THE NEXT MEETING

76. The Chairman said that, as agreed at the informal meeting held in March, the second substantive meeting of the Working Group would be held on 10 October (in the afternoon) and 11 October 2002. The meeting would be preceded by a Symposium to be held in Geneva on 9 October and the morning of 10 October. Also, as agreed at the March informal meeting, there would be a third meeting in November which would be primarily for the purpose of approving the Annual Report to the General Council.

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/M/13

11 October 2001

(01-4948)

Working Group on Transparency in Government Procurement

REPORT ON THE MEETING OF 17 SEPTEMBER 2001

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its thirteenth meeting on 17 September 2001 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).
 2. The Working Group agreed to the arrangements for the adoption of its Annual Report for 2001 to the General Council on the basis of a draft prepared by the Secretariat. A number of amendments were made to the draft. The report was subsequently circulated as document WT/WGTGP/5.
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**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 4 MAY 2001

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its twelfth meeting on 4 May 2001 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for this meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) transparency-related provisions in regional agreements on government procurement and national experiences; (iii) observer status of international intergovernmental organizations; and (iv) date of the next meeting.

I. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

3. For its discussion of this agenda item, the Working Group had before it the report of the meeting held on 25 September 2001 (WT/WGTGP/M/11); the informal note by the Chair "List of the Issues Raised and Points Made" (JOB(99)/6782), last revised in November 1999; the informal note by the Secretariat "List of Proposals on Items II-VII of the Checklist" (JOB(00)/3276), last revised in June 2000; and a note by the Secretariat on Concessions and BOT Contracts (JOB(00)/5657), circulated in September 2000. The Group also had available to it a submission by the delegation of Tunisia, which described its government procurement regime (WT/WGTGP/W/30).

4. By way of general comments under this agenda item, the representative of India stated that the problems faced by developing countries regarding the implementation of the existing WTO agreements showed the necessity for WTO Members, especially developing country Members, to be fully aware of the issues involved in new areas under discussion in the WTO, including the issue of transparency in government procurement, in order to enable them to take decisions on new obligations with full knowledge of what they were being required to undertake. India considered that the Working Group had not reached an advanced stage in its examination of the issues, especially from the perspective of developing countries. Hence, the Working Group should continue with the study process for a longer period, before it could reach conclusions, based upon which, elements, if considered necessary, could be drawn up as per the Singapore Ministerial mandate. Unlike other issues covered by the existing WTO agreements, the issue of transparency in government procurement was not the sole responsibility of one or two central government departments, even if obligations fell on central or federal government entities. There were numerous government departments, both big and small, which dealt with technical and non-technical issues when making purchases on behalf of governments. They were all accountable to the public at large in the country concerned since their purchases were subject to overall audit. However, in terms of the practical application of any WTO rules, it would be too tall an order for developing countries to ensure proper and efficient coordination among procuring entities. Reiterating India's position that had been stated in the previous meetings of the Working Group, he said that the scope of the exercise should be limited only to procurement of goods by central or federal government departments to the exclusion of other governmental entities involved in the procurement process. There was no need to include

services procurement in the study process and such procurement was best left to be discussed in the Working Party on GATS Rules. The transparency exercise should only deal with procurement that was open to foreign suppliers and the domestic price/purchase preference should continue to be available. Procurement methods were not part of the transparency exercise and the choice of method should be left to the discretion of procuring entities. Developing countries should also have the flexibility to continue with social and other development programmes through the procurement process. Domestic review procedures and linkage to the WTO Dispute Settlement Understanding were outside the scope of the Working Group's exercise and, hence, should be removed from the List of Issues. Finally, the current exercise should deal only with the issue of transparency and its extension to market access issues was unacceptable to India.

5. The representatives of Malaysia, Pakistan and Egypt supported the statement made by the representative of India. The representative of Egypt said that the discussion that had taken place so far on the basis of the Chairman's "List of Issues" had disclosed a divergence of views among Members on the subject and did not lay any basis for negotiations on a multilateral agreement on transparency in government procurement.

6. Commenting on the question of scope and coverage, the representative of Malaysia stated that any future agreement should cover procurement undertaken at the sub-federal levels of government, with the exception of state-owned enterprises, as well as at the federal government level.

7. The representative of the Philippines stated that there was a need for further understanding in relation to certain issues, for example the application of the DSU to a possible agreement. While the Working Group had discussed the various technical issues, the underlying issue as to why an agreement on transparency in government procurement would be beneficial to all Members had not been discussed. The proponents should help to sell the idea of transparency in government procurement to Members' domestic constituencies. They needed to identify what benefits developing countries would derive from such an agreement. The relevance of an agreement on transparency in government procurement in the context of a trade organization would also need to be explained. The Philippines would continue to participate constructively in the Working Group. The proponents of an agreement on transparency in government procurement were now aware of the areas in relation to which the Philippines remained unconvinced.

8. The representative of Morocco said that Morocco's legislation of 1976 was, to a great extent, compliant with standards contained in existing international instruments. Therefore, in principle, Morocco's adherence to a multilateral agreement would not give rise to any difficulties. However, such an agreement should be limited to principles on transparency and competition. The agreement should not get bogged down in details and should not attempt to cover every situation that might arise. What was important was the recognition of the usefulness of the principles of transparency that could be applied between Members. Finally, such a transparency agreement should take into account existing domestic practices, for instance national preferences. It should also include a time-frame for application of measures in light of the fact that Members were at different levels in terms of the implementation of rules on transparency and competition.

9. The representative of Tunisia noted that Tunisia had compared Tunisian legislation with possible elements that could be included in an agreement on transparency in government procurement. The conclusion drawn from that comparison was that the main principles and procedures contained in the present WTO Agreement on Government Procurement or in a future possible agreement on transparency would not give rise to any difficulties as far as Tunisia was concerned. However, it was necessary to specify that all countries used government procurement as a special economic and social development tool. Like all other developing countries, Tunisian regulations included a whole series of measures that supported the domestic economy. Therefore, in order to maintain such practices, it was necessary to include a reference to special and differential treatment for developing countries in the negotiation of an agreement on government procurement.

Developing countries would then be able to accept such an agreement without having to ensure that all of their regulations were in conformity with the agreement at the very outset. For instance, measures could be included in the agreement which would encourage the development of local production by allowing sub-contracting between foreign and local companies, thus providing the opportunity for developing country suppliers to bid together with developed country suppliers.

10. Taking up the sub-item "Other Matters Related to Transparency", the representative of Chile gave information on the electronic government procurement system in Chile and the government procurement system in general. He said that, historically, the public procurement system had been administered in Chile in such a way that no answers had been found to the following questions: Who buys? Who is responsible for making procurement decisions in the different sectors? From whom does the government procure? Who are the suppliers? Which goods and services are being procured by the government? What is the value and volume of government procurement? When did the government procure? Where did the government procure? In terms of efficient allocation of resources, the main concern of the government had been the control of and the justification for government expenditure. Today in Chile, information was available on where government resources had been allocated but information on how those resources had been distributed as between physical goods and services was not yet sufficiently detailed to ensure that the procurement system was adequately administered. Describing the current procurement system in Chile, he said that there were three modes of procurement: (i) open tendering; (ii) private purchasing, where calls for tenders were limited to a given number of potential suppliers; and (iii) direct purchasing, which was limited to specific situations or cases. Bids could be received through public calls for tenders or price-quotation procedures. From the government's perspective, information on both public tendering and the price quotation procedures had to be available at one single enquiry point. That was achieved through the creation of entities, which acted as intermediaries between suppliers and buyers. This structure facilitated the collection, gathering and dissemination of information relating to the various processes. The solution that Chile had adopted was available to the public free of charge on the Internet at the website www.g2b.cl. That website aimed to ensure the maximum amount of transparency possible in all procurement processes and that non-discriminatory access was available to all potential suppliers. The system respected the existing practice in Chile of decentralized government purchasing. The website www.g2b.cl also contained a link to the www.chilecompra.cl website¹, which was the main website for public procurement in Chile. Regarding obligations imposed on entities with respect to the site, it was obligatory to supply certain information in cases of public tendering. In cases of private tendering or price quotation, the information to be provided included quantity, price and the selected supplier. Information also had to be provided on all contract awards, including the various suppliers that had taken part in the tendering process, details of their bids and the reason why the contract was awarded to the selected supplier. In all cases, it was necessary to clearly state whether or not, upon completion of a contract, the contract terms had been complied with fully, the time-period for completion and the costs involved. The site itself contained information on tenders including a description of the procuring entity's requirements, the identity of the procuring entity, the date of publication of the call for tenders, the closure date for tenders, the date of award of the contract if that had already occurred and a description of the winning bid. The government was exploring ways in which it could centralize information regarding expert services and certain public services in order to optimize the use of services in terms of negotiation, advisory services and training of public officials. The site also sought to consolidate demand since that would result in savings on overall costs and expenditure. In addition to listing procuring public entities, the site identified suppliers by providing access to their home pages. This facilitated the exchange of information and the transaction process between potential suppliers in the private sector and the public sector. In order to be registered on the system, suppliers were required to provide certification that they had complied with certain legal requirements. Such a certificate was then made available automatically to interested procuring entities. Registration was free of charge. When registering, the supplier was required to declare in which sector he wished to participate. He then automatically received information every time the

¹ Link available on the government procurement page on the WTO website.

relevant public service called for a tender. This was an important transparency element. Altogether, there were four market-place sites where private operators could publish prices and receive price offers from public sector procuring entities. It was believed that an incentive was needed to encourage use of the site given that cultural barriers, rather than technological or financial ones, were likely to be the main limitation in relation to usage. If the pattern of usage was not given adequate attention, the system would not be successful in the long run. In designing the technical operation of the system, the first consideration was that the system had to be as simple as possible. That ensured certain advantages in terms of training operators and in terms of the overall operating costs. The system also performed a supervisory role for the public entity using it, for those responsible for the system as a whole and also for the central monitoring or control system of Chile, that is, the general auditing system.

11. In response to a question by the representative of the United States as to Chile's evaluation of the costs and benefits associated with its electronic procurement as compared with the more traditional systems involving, for example, paper publication, the representative of Chile stated that the initial development of the system (including study and preparation) cost \$300,000. Thereafter, \$200,000 had been invested in actually building the system which included the hardware and licence of the software. The system had been developed by the private sector on the basis of an invitation to tender by the Chilean Government. The Government did not incur costs in relation to the operation of the system given that the basic statistical information was free of charge for all public entities as well as for private suppliers. On the other hand, the private operator of the system had the possibility of obtaining income through the provision of more sophisticated statistical information. Regarding operating costs, savings of the order of 10-15 per cent were possible through the establishment and use of databases. Such databases enabled potential suppliers throughout the world to have access to invitations to tender.

12. The representative of Brazil noted that Brazil had adopted a similar system to the one that had been adopted by Chile. From Brazil's point of view, the gains from the system did not derive principally from operational savings since, in Brazil, there was still an obligation to publish tenders in paper form. Therefore, effectively, there was a "double cost". The concurrent existence of the electronic and paper systems responded to the fact that not every supplier was, as yet, capable of using the electronic alternative. However, the greatest cost savings appeared to come from the centralized way in which the system operated. This enhanced transparency and generated savings both for the government and for suppliers. In relation to suppliers, the main savings came from the fact that once they had registered on the system, they were issued yearly with a certificate stating that they were up-to-date with their tax payments and social security payments etc. and that, therefore, they were eligible for government contracts. They accrued savings from not having to prepare that documentation for every tender in which they wished to participate. From the government's point of view, savings accrued from information available from the system such as the minimum prices paid by each government entity for specific products. Specifically, when an entity planned to make a purchase, it could see what had been the lowest price paid for the good in question. The use of electronic system had undeniable benefits both in terms of transparency and in terms of efficiency of allocation of government resources.

13. The representative of Malaysia stated that many aspects of government procurement in Malaysia were increasingly electronically based. However, there was a large number of developing countries and least-developed countries that were not in a position to implement electronic procurement methods.

14. The representative of Mexico said that, an electronic government procurement system, called Compranet, had existed for some years in Mexico. Not only was it one of the pillars for ensuring transparency in Mexico, it had also been very useful in making the entire procurement process more efficient and agile. The system allowed broad dissemination of information on procurement procedures, which enabled both purchasers and suppliers to participate adequately. The site also set

out the legal framework that applied in respect of procurements and contained information regarding the award of contracts, the results of any bid challenge that might have taken place with regard to specific contracts and also information on the various regional agreements that Mexico had signed in the area of government procurement.

15. The representative of the United States commented that the benefits of using electronic systems were being increasingly recognized and utilised in a wide range of countries. In addition, it was important to recognize that the use of electronic communications may not be the only way to achieve transparency and that there were alternative means of achieving transparency that were more appropriate in certain circumstances. In fact, in the United States, there were still government jurisdictions that used either both electronic and paper communications or just paper communications and still achieved a high level of transparency in that way. The United States agreed that it would be advantageous to use electronic systems but it should not be obligatory nor was it necessary to use those types of systems to achieve a high level of transparency.

II. TRANSPARENCY-RELATED PROVISIONS IN REGIONAL AGREEMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL EXPERIENCES

16. The representative of the United States commented that, in light of the progress that had been made in the Working Group so far, it would also be useful to take stock of the progress that had been made elsewhere in the world recently on the issue of government procurement. Reporting on the developments in the FTAA (Free Trade Area of the Americas) negotiations, he said that at a summit of leaders of 34 countries in South, Central, and North America held in December 1994, it had been agreed to establish a free trade area in which barriers to trade would progressively be eliminated. The FTAA represented a major contribution to the strengthening and expansion of the international rules-based trading system. In 1998, leaders approved the structure and the general principles and objectives for the FTAA process and formally launched negotiations which would include the progressive removal of barriers to trade in government procurement markets in the free trade area. At the end of 1999, trade ministers instructed negotiating groups to begin the drafting of negotiating texts for each chapter of the FTAA. Those texts, including a draft chapter on government procurement, had been submitted to Ministers in April 2001. The United States believed that negotiations on government procurement were particularly significant in the FTAA process. First, a large number of countries had agreed to move forward in this area. Secondly, the free trade area involved a diverse group of countries, both in terms of the size and structure of their respective economies. It had become clear that transparency was considered a key element amongst all countries that had made submissions for the inclusion of government procurement in the FTAA process. At the same time, the United States had been participating in some fruitful work within the APEC (Asia-Pacific Economic Cooperation) Forum. The APEC GPEG (Government Procurement Experts Group) had previously submitted to the WTO Working Group the APEC non-binding principles that reflected consensus within that region on the elements of transparency that all APEC economies had agreed were important to the government procurement process. Recently, APEC member economies had exchanged reports on how the non-binding principles were being addressed and implemented in each of their individual systems. The United States was encouraged by its experiences in those regional fora which it believed represented and reflected the progress made in the area of government procurement around the world. The work in those fora also reflected the widespread recognition and interest in achieving transparency in procurement and had also greatly contributed to many countries' familiarity with substantive issues. In that context, the United States believed that the time was ripe for the WTO to move forward in this area, given the great deal of constructive work that had been done within the Working Group. The United States would be interested in moving forward on the issue as it continued its preparations for developing a future agenda for the WTO.

17. Sharing Switzerland's experience on how transparency was being dealt outside the WTO in the context of regional efforts involving different Members, the representative of Switzerland stated that an agreement on government procurement was part of the bilateral agreements that had been

concluded with the European Community in December 1998. The agreement had been approved by the Swiss Parliament in October 1999 and was expected to come into effect in 2002 after its ratification by the European Union Member States. The government procurement agreement was quite ambitious in terms of market access since, for example, it expanded the application of the rules of the WTO Agreement on Government Procurement to purchases by communes. It was also ambitious in terms of transparency, because besides commitments to inform parties about all future modifications to legislation, the agreement provided for the creation of national, regional and local contact points from which all relevant legislative information was to be provided. Another interesting feature of the agreement was the establishment of cooperation mechanism that allowed for access to all relevant government databases by taking advantage of new information technologies. Switzerland had played an active role in the development of the SIMAP (Système d'Information pour les Marchés Publics) project with the European Community. Turning to the recent regional trade agreements between the EFTA members and other countries, he said that the EFTA-Mexico Free Trade Agreement, which had been concluded in November 2000, included a chapter on government procurement. In addition to providing detailed rules concerning procurement methods and procedures, the EFTA Members and Mexico had reciprocally agreed to open up procurement in goods, services and construction at the national level and in certain specific sectors. Other mandatory provisions related to the availability of domestic review procedures for unsuccessful tenderers; the provision of information on national legislation and procedures; the establishment of enquiry points; and the annual exchange of statistical information on procurement. The experience showed that creative solutions could be found between partners that had agreed to make their procurement regimes more transparent, despite the fact that there could be some sizeable differences among national systems. The few mentioned examples of provisions of regional trade agreements suggested the importance of transparency in the context of trade and, particularly, in the context of government procurement. Finally, he reiterated Switzerland's support for the negotiation of a WTO agreement on transparency in the area of government procurement based on the principle of non-discrimination. Switzerland also believed that the time was ripe for constructively engaging in discussions in the lead up to the Qatar Ministerial Conference.

18. Commenting on Chile's experience of its participation in the FTAA negotiations, the representative of Chile said that three key elements of discussion had been identified by the FTAA Negotiating Group on Government Procurement. The first was development of electronic procurement, which Chile considered would assist in producing a text that contained fewer procedural details. The second was statistical reporting. The standardization of procedures in collecting information would facilitate development of electronic procurement within countries in the regional grouping. The third was the principle of special and differential treatment which was a cross-cutting issue throughout the FTAA negotiations given the difference in the levels and phases of development amongst participating countries as well as in the size and the importance of their trade. In the area of government procurement, the principle of special and differential treatment could be reflected in the negotiating text by means of exception clauses or a gradual phasing in period for certain obligations as well as through technical cooperation. A chapter on government procurement had also been negotiated as part of the free trade agreement that Chile had recently signed with five Central American countries, namely, Guatemala, Nicaragua, Honduras, El Salvador and Costa Rica. This was the first binding international agreement that Chile had entered into on the subject of government procurement and it contained provisions on market access as well on transparency. Parties to the agreement had undertaken commitments to ensure that their entities would provide information to the private sector and to all interested parties relating to the characteristics of the respective government procurement systems, business opportunities and the outcome of procurement processes. Parties also agreed to ensure that the award procedures would faithfully comply with and take into account the criteria that had previously been set out in the texts. Other obligations related to the exchange of relevant legislation, the provision of information on any modification to that legislation and the promotion of the use of information technology, particularly in relation to dissemination of information regarding business opportunities. In view of the fact that the contracting parties to the agreement were all developing countries, an interesting innovation in the area was that the parties to

the agreement had agreed to implement an electronic system that would provide information on the procurement markets in their countries. Chile was also in the process of negotiating chapters on government procurement in proposed free trade agreements with the United States, the European Union and Korea. Negotiations with EFTA would be initiated in the near future. In the furtherance of the free trade agreement between Chile and Mexico, negotiations had commenced on a chapter on government procurement. Article 20 of the Economic Cooperation Agreement with Peru also established an obligation to initiate negotiations in the area of government procurement. Finally, Chile was participating in the APEC GPEG which had recently discussed the principle of transparency in accordance with its work programme.

19. The representative of Australia said that Australia was also a participant in the APEC GPEG. Moreover, Australia had a government procurement agreement with New Zealand, which dealt with government procurement issues between New Zealand, Australia and each of the States in Australia. Australia was currently cooperating with Thailand with a view to developing Thailand's government procurement system. Finally, negotiations were under way between Australia and Singapore on the development of a free trade agreement which would include a chapter on government procurement.

20. The representative of India said that the regional initiatives such as APEC and FTAA were separate from the WTO process. The rules on procurement in the regional agreements went beyond transparency issues. In the context of the Working Group, it was important for all the developing countries, including least-developed countries, to come to grips with all the issues relevant to the WTO context. India did not share the view expressed by the United States that the time was ripe for the WTO to move forward in the current process. India strongly opposed any suggestion for moving ahead simply because preparations for the fourth Ministerial Conference had commenced. The study process had to be completed. It was necessary to analyse all the problems and implications for all developing country Members before drawing up the elements of transparency. Regional initiatives were limited to a few countries and could not be imposed upon the entire membership. Not many developing Members were able to speak up in the WTO and their silence could not be taken as acceptance of the interest expressed by some delegations to abandon the study process. Any process for negotiations should be taken up by the full membership only after a consensus between Members existed upon completion of a study and only after the problems and needs of developing countries had been fully taken into account. For India, the effective and comprehensive resolution of implementation problems with regard to the existing WTO agreements was of utmost priority.

21. The representative of Mexico said that Mexico participated in the FTAA and APEC negotiating processes as well as in a number of regional agreements in this area. Both involved provisions on government procurement, including provisions related to transparency. For the most part, the provisions on transparency required the publication of rules, regulations and laws relating to government procurement, exchange of statistical information between the parties involved as well as the establishment of contact points for exchange of procurement information obtained from suppliers or procuring entities. Mexico attached great importance to disciplines relating to transparency since it believed that it was an appropriate way of guaranteeing integrity and efficiency in the conduct of government procurement, not only at the international level but also at the domestic level. This was one of the reasons why Mexico had decided to take part in those types of regional agreements and initiatives. Conducting government procurement according to clear standards ensured the accountability of the process and ensured that the procurement procedures were as efficient as possible in the distribution of the countries' resources. This was beneficial for all parties concerned – the suppliers who participated, the procuring authorities, as well as society as a whole. Mexico merely wanted to share its experience in this area which had been very positive but did not claim that its regional initiatives or arrangements could be easily transposed to other countries.

22. The representative of Malaysia stated that it was possible to be transparent and accountable to one's own government and people and not necessarily to the world community. The priority was to be

accountable to one's own people. It was possible to be accountable also to the world community without being a party to an agreement on transparency in government procurement.

23. The representative of Canada stated that Canada was also a participant in the FTAA Negotiating Group on Government Procurement and in the APEC GPEG. One of the objectives of the FTAA Negotiating Group was to achieve a framework that would ensure transparency of government procurement processes. Canada had made proposals to the FTAA Negotiating Group relating to certain elements of transparency and fully supported the full range of transparency measures in that context. Canada was pleased to note the wide and extensive use of transparency measures in APEC countries. Canada continued to support the work in the Working Group towards the achievement of a WTO agreement on transparency in government procurement.

24. The representative of the European Communities noted that the Community also participated in a number of regional and bilateral agreements. The Community had a government procurement regime, which had been adopted centrally at the Community level and which had been implemented by the member States. As a result of a number of years of experience, the European Community was currently in the process of reviewing directives in the area of government procurement. The existing Community regime had three separate sets of legislation for procurement relating, respectively, to the procurement of goods, services and construction services (or "works"). In evaluating the directives, it had been noted that the procurement rules, in particular the rules that related to transparency, were virtually identical for all three types of procurement. Therefore, the European Community was currently consolidating the three sets of legislation into one single piece of legislation. This would make it a much easier instrument both for procuring entities and for businesses to use. The other two main elements of the revision exercise were, firstly, to simplify and clarify the directives with the aim of making them more transparent and more user-friendly and, secondly, to adapt the European Community's procurement regime that had, to date, been a paper-based regime, to take account of modern administrative needs and in recognition of the fact that, in the European Community and elsewhere, more and more people had access to the Internet and were conducting their business using electronic means. As regards simplification, as well as consolidating the three legislative texts, the EC was also setting out the new text in a manner that reflected the normal order of an award procedure, so that it covered first the publication of the tender, then the submission of the bids, and then the award of the contract. This made the text much easier to understand for procuring entities and business users. With regard to the work of the Working Group, she said that it was important to continue the process that had been embarked upon following the Singapore Ministerial Conference. There was a huge body of work that was available to the Working Group as a result of that process. The European Community would be looking at continuing and building on that work in the coming months. Referring to the view that the Working Group should continue the study phase, she noted that during the past eighteen months, although nominally the Group had been in a study phase, there had been no new elements brought to the Group's work, particularly by those delegations who had advocated continuation of the study phase. It was difficult to know how to carry on a study phase when there was no contribution as to how that should be done.

25. The representative of Malaysia noted that Malaysia also participated in the APEC GPEG. The experiences that had been referred to were regional and had nothing to do with the mandate of the Working Group per se. In any event, the APEC principles on government procurement were non-binding. As regards the preparatory process for Qatar Ministerial Conference, Malaysia was unable to agree to anything on government procurement in the Qatar negotiating agenda. The need to address the implementation-related issues was of importance to Malaysia. There needed to be consensus on any additional work programme in the WTO. If there was no consensus emerging on transparency in government procurement, that issue should be put aside. Malaysia had not heard any additional new arguments, on the part of the proponents of such an agreement, that could assuage Malaysia's fears regarding an agreement on transparency in government procurement. The elements that posed problems for Malaysia and for large number of developing countries were scope, definition, coverage, domestic review process and linkage to WTO dispute settlement procedures.

26. The representative of Indonesia said that Indonesia was also a participant in the APEC GPEG. However, the work programme of that forum should not be imposed upon the Working Group. It was preferable to focus on the mandate of the WTO Working Group which was to study transparency in government procurement practices. Indonesia did not share the view that the time was ripe for the Working Group to move forward on this issue. It was necessary to further study the elements of transparency in government procurement.

27. The representative of Morocco stated that Morocco shared the concerns expressed by developing countries. Regional initiatives in government procurement did not have any direct connection with the work in the Working Group. Morocco was not a *demandeur* of a possible multilateral agreement on transparency in government procurement.

III. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

28. The Working Group agreed to revert to the requests from intergovernmental organizations for observer status (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

IV. DATE OF THE NEXT MEETING

29. The Chairman noted that the work programme in the WTO generally was uncertain due to the various negotiations that were currently being held and also due to the preparations for the Qatar Ministerial Conference. He would hold consultations before the summer break about the possibility of a meeting to be held following the summer break.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 25 SEPTEMBER 2000

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its eleventh meeting on 25 September 2000 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for this meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) observer status of international intergovernmental organizations; (iii) annual report to the General Council; and (iv) date of the next meeting.

A. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

3. For its discussion of this agenda item, the Working Group had before it the informal note by the Chair, entitled "List of Issues Raised and Points Made" (Job(99)6782) and an annotated draft agenda which had been made available by the Chairman, on his own responsibility, at the previous meeting and which aimed to facilitate discussion in the Working Group by suggesting issues under each of the substantive agenda items that, in his view, could be the subject of further discussion. As an auxiliary informal paper for the use of Members wanting to draw on it, delegates had available to them a revision of the informal note by the Secretariat, "List of Proposals on Items III-VII of the Checklist" (Job(00)/3276). The Group also had available to it a non-paper by Switzerland entitled "Why the Scope of a Future Agreement on Transparency in Government Procurement Should Cover Goods and Services" (Job(00)/5645); a note by the Secretariat identifying the various issues involved in concessions and BOT (build-operate and transfer) (Job(00)/5657); a proposal by the United States for a work programme for coordinating international technical assistance with implementation of a potential agreement on transparency in government procurement (WT/WGTGP/W/28); and a note by the Secretariat summarizing the information that had been made available to the Group on the technical cooperation activities of intergovernmental organizations in the area of government procurement (WT/WGTGP/W/29).

4. Under this agenda item, the Working Group took up the sub-items in the List of Issues Raised and Points Made. Comments were made on those relating to definition and scope of government procurement, procurement methods, time-periods, domestic review procedures, WTO dispute settlement procedures and special and differential treatment.

Definition and scope of government procurement

5. The representative of Switzerland introduced the non-paper submitted by his delegation entitled "Why the Scope of a Future Agreement on Transparency in Government Procurement Should Cover Goods and Services" (Job(00)/5645). The representatives of New Zealand; Hong Kong, China; the United States; the European Community; Australia; Chile; Canada; Mexico; Japan;

and Korea said that their delegations endorsed the basic thrust of the various arguments set forth in the non-paper in favour of a broad approach to the coverage of a future transparency agreement including both goods and services within its scope.

6. The representatives of the United States, Switzerland, Chile and Australia said that, in the context of current procurement practices, it was often difficult and impractical to draw a distinction between goods and services procurement. In many cases, procurement contracts involved both goods and services and, in particular, many services contracts had a significant goods component. This would increasingly be so with the use of new technologies, for instance with the procurement of computer systems. A corollary to that fact was that an agreement on transparency which excluded services could potentially also exclude a large goods component of services contracts. The representative of Switzerland said that the UNCITRAL Model Law and the Procurement Guidelines of the World Bank and the Regional Development Banks did not foresee the possibility of excluding services from their coverage. The representatives of Australia and Switzerland stated that an agreement on transparency in government procurement that would cover only goods could not be envisaged, since to have a WTO agreement that was half-way in scope compared to that of other international agreements in this area would be a step backwards. The representative of the United States, joined by the representative of Canada, said that the governing factor regarding the coverage of services was that the overall transparency principles should apply to the procurement of services as well as of goods. There was no intrinsic reason for providing less transparency in services procurement than in goods procurement. The representative of Malaysia said that his delegation recognized that there would be difficulties in the consideration of grey areas such as computer maintenance and repairs where the question could be asked whether the transaction was a service procurement or whether it was a service linked to the purchase of a good. The representative of Argentina recognized that the difficulty would arise not so much in distinguishing between the goods and services components of a procurement but the fact that the supply of goods and services could be within the same package and by the same supplier. For instance, a state could conclude a goods contract for the purchase of a computer. However, a program in the computer or the provision of after-sales service under the same contract would constitute a service. The representative of Hong Kong, China said that the exact scope of services coverage would need to be determined in the negotiation of a future agreement.

7. The representatives of India and Egypt stated that, for developing countries, it was difficult to consider a transparency agreement with a broad scope of obligations including services. The representative of Indonesia, joined by the representative of Pakistan, said that the Group should pursue further the study process that it had been engaged in to enhance Members' understanding on the issues of transparency in government procurement related to goods. The representative of Malaysia said that there were many complexities regarding services and Malaysia preferred that the emphasis be on reaching a consensus as to what constituted goods. Joined by the representative of Indonesia, he said that expanding the scope of the agreement to services would make it harder for developing country Members who still faced difficulties in grasping the issues related to transparency in the goods area. Accordingly, the discussion should be limited to goods and the issue of services could be tackled perhaps much later when the issues became clearer in the area of goods.

8. The representative of the Philippines stated that his delegation had an open approach to the question of inclusion of services in a transparency agreement. While there had been a technical debate in the Group, for instance regarding the distinction between goods procurement and services procurement, enough time had not been spent on the underlying debate of why it was to Members' benefit to have a WTO agreement on transparency in government procurement in the first place, covering either goods or services or both. As long as Members had not been convinced on this matter, the technical debate would need to continue. He also stated that the discussions as to whether goods or services should be covered would be influenced to a large extent by another aspect of the scope of coverage, that is whether the obligations on transparency would be applicable to procurement which, under national law, was only open to nationals.

9. The representative of the United States said that he objected to the arguments that seemed to imply that supporting the coverage of services in a transparency agreement constituted the addition of services to the Group's discussion. Since the inception of the Working Group, his delegation had considered services as well as goods to be part of the coverage of a transparency agreement.

10. The representative of Chile stated that governments often procured services, including data processing, travel and professional services. There was no reason for services not to be included within the mandate of the Group or in a WTO agreement on transparency. The representative of Switzerland said that, since the mandate was focused on transparency, it was obvious that both goods and services should be included within its scope. Moreover, given the way the mandate was formulated it could be assumed that there were no a priori exclusions. Switzerland's non-paper was an attempt to further the study process before the elements of an agreement could be discussed. Joined by the representatives of Japan and Korea, he also said that it was necessary for those Members who maintained that services should not be included within the scope of an agreement to explain the substance of their position, especially to illustrate how in relation to the grey area between goods and services procurement the two components could be separated.

11. The representative of Pakistan said that taking up the issue of services in the Working Group would be over-stretching the mandate given to it in Singapore. The representative of Indonesia said that there was no need to overburden the Working Group with additional issues. The representative of Malaysia stated that, despite some minor differences, the national procurement system in Malaysia for services and goods was basically the same. However, his delegation's position on accepting disciplines at the international level was completely different. The Singapore Ministerial mandate merely referred to studying the elements of an appropriate agreement and did not refer to its scope in relation to services. At the Singapore Conference, Ministers had before them the provision of GATS Article XIII that mandated multilateral negotiations on government procurement in services within two years from the date of entry into force of the WTO Agreement. It has been the clear understanding of Ministers in Singapore that the work on transparency should be in the area of goods while rules should be developed in the area of services.

12. The representatives of India, Malaysia, Indonesia and Pakistan said that the issue of services procurement was currently being discussed in the Working Party on GATS Rules. The representative of India said that his delegation preferred to await the outcome of those discussions as it might enable developing country Members to be better informed regarding services procurement. The representative of Pakistan said that the Working Party on GATS Rules regarding government procurement as mandated under Article XIII of the GATS was still grappling with very basic conceptual issues. Hence it was premature to address the services in the Working Group. The representative of Malaysia said that the work in the Working Party on GATS Rules should be pursued prior to the work on the inclusion of services in the scope of a possible agreement on transparency, unless Members agreed by consensus to disband the Working Party on GATS Rules and to focus the discussions on procurement in the Working Group on Transparency in Government Procurement.

13. The representative of the European Community said his delegation had made it sufficiently clear in the context of the Working Party on GATS Rules that it believed that the basic principle of transparency that was already contained in Article III and Article VI:2 of GATS constituted a starting point for transparency in government procurement of services. GATT Article X, which was essentially the same as GATS Article III, was also relevant. The Working Group had a unique chance to agree on a comprehensive agreement including both goods and services. It would be artificial to split up the work by referring to the mandate in GATS Article XIII which was by no means clear. In the view of the European Community, the wording of the Singapore mandate was sufficiently open to cover both goods and services and the plain and open-ended language could not justify the position of some Members that the mandate covered nothing but goods. The Group had always worked on the basis that services were part of the discussion. His delegation was surprised that some Members were now questioning this issue. Also, there was an inconsistency between the statements made by some

Members in different fora. For instance a Member who had opposed the coverage of services in the context of the Working Group on Transparency in Government Procurement had, however, stated in the Working Party on GATS Rules context that the Working Group on Transparency was a far better place to address transparency in relation to services.

14. Supporting the views expressed by the representative of the European Community, the representatives of the United States and Switzerland stated that, to date, there had not been much discussion in the GATS Working Party about potential disciplines, including with respect to transparency. However, quite a lot of discussion had taken place in the Working Group and the Group had reached a point where there was quite a good understanding throughout the membership regarding what the potential elements of an agreement on transparency were, what their meaning was and what the various implications of agreeing on those elements would be. Having discussed the issue at length in this Group, it was impractical and redundant to suggest that the discussion of the issue should be moved to another forum. The representative of Argentina said that it was important to maintain the coherence between the mandate of this Group and those of others which involved negotiations on government procurement disciplines. It was not advisable to end up with two negotiating exercises having two distinct sets of disciplines covering the same activity.

15. Regarding the section of the non-paper by Switzerland suggesting flexibility to address Members' concerns in relation to administrative and technical burdens in the application of a future transparency agreement, the representatives of Hong Kong, China; the European Community; and Japan said that the matter of flexibility would need to be addressed in the broader context of the agreement once its basic outline had become apparent. The representatives of Australia, Chile, and the European Community asked for clarification of the circumstances in which flexibility might be applied to transparency principles, for instance for national security reasons or for safeguarding confidential information.

16. In the context of the discussion on definitions and scope, the Group also addressed the issue of concessions and BOT contracts on the basis of a note by the Secretariat entitled "Concessions and BOT Contracts" (Job(00)/5657). The representatives of New Zealand, the European Community, India, Canada, Malaysia, Mexico, Indonesia, Egypt, Pakistan, Japan, Korea and Argentina said that their delegations were still in the process of reviewing the note.

17. The representative of the United States stated that his delegation considered that it would be useful to include in a future agreement on transparency in procurement a definition of procurement such as the ones contained in GATT Article III:8 or in GATS Article XIII. Joined by the representative of Australia, he also said that further clarification of some of the existing definitions would be useful, specifically the reference in GATT Article III:8 and GATS Article XIII to the term "for governmental purposes". The Secretariat note had pointed out that, in some cases, contracts that were referred to as concessions frequently related to the procurement of services. In the view of the United States, a purchase made for governmental purposes, in principle, was a purchase made pursuant to a specific public policy mandate of the government and, therefore, in principle, should be considered to be government procurement. The existing definitions of government procurement that referred to purchases for commercial resale sought to exclude, for example, purely commercial activities of state-owned enterprises. The United States considered that that was the only exception to the basic principle that purchases that were made for governmental purposes should be considered to be government procurement. One example of government procurement was when a governmental entity purchased medicines to distribute to needy citizens. A similar example was referred to in the Secretariat note regarding garbage collection services, where the government procured the services although the services were supplied to the general public rather than to the government. That kind of activity would not normally be considered to be a commercial activity but, rather, government procurement or procurement for governmental services. The representative of Hong Kong, China said that there could be interpretative difficulties in respect of the term "governmental purposes" in the existing language of GATT and GATS. Further discussion and a common understanding in relation

to that term was essential to avoid any unnecessary disputes during the implementation of a future agreement. The representative of Australia stated that Members could try to determine exactly what types of procurements would be considered to be for governmental purposes and those that would be for commercial resale. Joined by the representative of Hong Kong, China, she said that the preparation of an illustrative list containing examples of what was meant by procurement for "governmental purposes" and for "commercial resale" could be useful.

18. The representative of the European Community stated that the European Communities' Public Works Directive contained specific provisions on concessions, whereas in the other Directives, there was no specific legislation that addressed the issue of concessions. That had led to a mixed situation where the basic treaty principles applied to concessions. However, the question of whether the issue should be dealt with under procurement rules or separately has been left open. A communication by the European Commission had made it clear that within the Community there was no clear regime for concessions. The European Community believed that, if concessions were considered not to be part of government procurement, they were covered by the basic GATT and GATS rules. His delegation had a preference to first address the issue of definition and, if necessary, to discuss the broader framework of a transparency agreement and to leave the issue of concessions to a stage where Members had a clear idea of what the definition of government procurement would be.

19. The representative of Chile stated that concessions should be included in an agreement on government procurement for the purposes of achieving greater transparency. With reductions in government budgets and increased social requirements, the level of transparency had to be higher, for instance in relation to public works concessions. In Chile, solutions were being sought for private sector financing of the treatment of water, building of telephone networks, etc. The objectives of good public governance in this respect and greater transparency for the use of public resources would require clear and uniform rules. Hence, it was also necessary to define certain criteria to determine whether those procedures fitted within the subject of government procurement. The representative of Switzerland commented that outsourcing of government activities to the private sector was becoming increasingly common. It would, therefore, be interesting to take up these issues under scope and definition. The representative of Japan stated that Japan had recently introduced a private finance initiative scheme with the objective of obtaining value for money in relation to procurement. However, Japan had encountered some difficulty in interpreting whether those types of transactions should be covered by a future WTO agreement given that some of the procurements undertaken according to the private finance initiative scheme seemed to amount to government procurement whereas others were more like concessions.

20. The representative of Mexico stated that Mexico considered that the Secretariat note enabled the Group to pinpoint some of the types of contracts that could be considered as concessions within the different legal systems and to identify the criteria that might be helpful in defining government procurement. There were important differences between the various possibilities that fell within the term "concessions" and its relationship with various factors that had to be taken into consideration in the definition of government procurement.

21. The representative of the United States stated that, while as the representative of the European Community had suggested, the Group should focus on the definition of procurement, at the same time, the United States considered that some discussion regarding the relationship of concessions to procurement could help to respond to Members that had asked for greater clarity about the definition of procurement. The United States agreed with the statement made in paragraph 3 of the Secretariat note that the term "concessions" was perhaps not very useful as a guide to whether the contract in question was to be considered a form of government procurement. It was clear to the United States from discussions in the GATS Working Party and other groups that there were many different views throughout the membership on what the term "concessions" meant. Therefore, it was not meaningful to say whether or not concessions were covered by the definition of government procurement because many Members were referring to different concepts when that term was being used. The question

was, whether, having a clearer understanding of the issue could shed more light on what Members collectively meant by "government procurement". The representative of Switzerland said that the notion of concessions also depended upon the background of each country, which could lead to a different understanding of what was a concession and what was a procurement of services.

22. With respect to the issue of BOT contracts, the representative of the United States said that his delegation questioned the appropriateness of the categorization of BOT contracts as a sub-set of concessions in paragraph 5 of the Secretariat note. The United States believed that there were BOT contracts that constituted procurement and that were, according to any Member's definition, not concessions. The representative of Korea stated that the inclusion of concessions and BOT contracts within the coverage of the Agreement should be considered in light of the definition of government procurement. If a definition of government procurement turned out to include concessions and BOT contracts, then they should be included in the coverage of the agreement.

23. Commenting on the note by the Secretariat, the representative of Switzerland said that Switzerland would appropriately identify as a concession Case 2 referred to in the note. The legal form would normally be a lease, as referred to in paragraph 5 of the note, and it could occur at the level of the national government entity, sub-national or even at the communal level. Further, Switzerland fully agreed with some of the criteria referred to in paragraph 7 to determine whether or not government procurement had occurred, namely the involvement of a government entity and payment for the supply of goods and/or services for governmental purposes. However, the criteria referred to in paragraph 8 might be more relevant to determine whether or not a concession had taken place and not whether government procurement had occurred.

24. The representatives of India, Malaysia and Egypt stated that concessions should not be part of a transparency agreement on government procurement. The representative of India stated that India's preliminary view was that BOT contracts should also be excluded from the purview of a possible agreement on transparency in government procurement.

Procurement methods

25. The representative of India reiterated India's position that there was no need for rules on procurement methods in a transparency agreement. The work on transparency within the mandate of the Working Group was with regard to the availability of information on domestic legislation to foreign bidders. Joined by the representative of Egypt, he said that Members had full rights and freedom to choose procurement methods best suited to the objectives of a particular procurement, provided that the methods as specified in domestic legislation were followed in a transparent manner.

26. The representative of the United States said that his delegation considered that there clearly was a relationship between the use of non-transparent procurement methods and a basic commitment to transparency since some procurement methods were, by definition, non-transparent. For instance, if a particular government office used limited tendering for 80 per cent of its procurement, there was normally no transparency in the process related to those purchases. He agreed with the view that entities should be allowed within the context of domestic law to use the procurement methods that were appropriate to individual circumstances. In some rare cases, that could involve procurement that was not made in a transparent way because of the necessities of the particular circumstances. For that reason, the United States believed that it was appropriate to have clarity of rules as to, at least, when non-transparent procurement methods were permitted within a given Members' domestic system.

Time-periods

27. The representative of India reiterated that India was opposed to the issue of time-periods to be included in the list of issues. Joined by the representative of Egypt, he said that, given the wide

divergence of national practices, procuring entities should have flexibility to decide time-periods on a case-by-case basis according to the circumstances of a particular procurement.

28. The representative of the United States said that there should be no explicit definition of time-periods or prescriptive rules on what time-periods should be in a future agreement because the varying circumstances in each procurement might require flexibility. However, for the United States there was a relationship between this issue and transparency because a time-period that was too short could defeat the purposes of transparency.

Transparency of decisions on qualification

29. The representative of India stated that decisions on registration and qualification of suppliers should be taken only on the basis of criteria that had been made known to suppliers in advance. India felt that the registration of suppliers could be opened at specified intervals to allow new suppliers to be pre-qualified on a non-discriminatory basis. However, in many cases, ex post provision of information on qualification might be impracticable in developing countries, especially when a large number of suppliers was involved. However, a supplier who had been aggrieved because of not having been short-listed could have recourse to the domestic review mechanism under national legislation.

Domestic review procedures

30. The representative of India said that the primacy of national legislation should be maintained with regard to domestic review procedures. The Group should not attempt to develop any special domestic review mechanisms. From the discussions that had taken place so far in the Working Group, it had become apparent that most Members had their own domestic administrative and judicial review mechanisms to ensure domestic rules and regulations governing procurement were observed by those involved in the procurement process. Joined by the representatives of Pakistan and Egypt, the representative of India said that he was concerned about the inclusion of this element in the Chairman's list of issues since the matter was fully within the purview of domestic legislation.

31. By way of clarification of the view that domestic review procedures should not be an element of a possible agreement, the representative of Malaysia stated that the discussions within the Group related to a transparency agreement that would impose obligations on Members to ensure that the procurement process was undertaken in a transparent manner and did not involve reviewing the decisions on individual awards. Hence, Malaysia did not consider that it was necessary to have domestic review procedures that conferred rights on individuals suppliers to challenge awards that they perceived to be the outcome of a non-transparent process. The office of an ombudsman or auditor-general might be sufficient to deal with that kind of domestic review. Furthermore, the following questions could be raised with respect to domestic review procedures: whether they should be accessible to all suppliers, including foreign suppliers that did not have a juridical presence in the country in question; whether the mechanism would be limited to reviewing the consistency of laws; and whether the use of domestic review procedures that would result in overturning an award decision or granting an injunction to the plaintiff would not be too costly and time-consuming, thus delaying the entire process and seriously disrupting development projects. Finally, it had to be borne in mind that not all WTO agreements contained requirements on domestic review procedures. The representative of the United States requested that the points raised by Malaysia should be provided to Members in writing. He also stressed that the domestic review process was integral to ensuring the overall transparency of a procurement system.

32. The representative of the United States commented that, within the context of APEC, Ministers had endorsed the principles which made it clear that domestic review was an important element of transparency (WT/WGTGP/W/24). The representative of the European Community asked how those APEC members that considered that domestic review was not an element of transparency

in procurement in the present Working Group had implemented the APEC non-binding principles on domestic review in their economies. That type of information could be a good basis for future work on the domestic review provision in the Working Group. In response, the representative of Malaysia stated that countries tended to have a more relaxed attitude towards the APEC principles since they were non-binding and best-endeavour in nature. Hence, the true meaning of the principles and the implications of the inclusion of certain words or phrases in those principles would not necessarily be scrutinized in the APEC context as thoroughly as in the WTO, which was a completely different playing field in which all the major developed countries were present.

WTO dispute settlement procedures

33. The representative of India stated that his delegation was opposed to making any linkage between the WTO Dispute Settlement Understanding and a possible agreement on transparency. Furthermore, the proponents of such a linkage were themselves not clear as to what they aimed to achieve by it. Joined by the representatives of Pakistan, Egypt and Malaysia, he said that the item should be deleted from the Chairman's list of issues. Domestic review mechanisms that existed in most Member countries would be sufficient to deal with procurement-related disputes under the transparency exercise. The representative of Malaysia, joined by the representatives of Pakistan, Egypt and Indonesia said that, given that there were so many difficulties and complexities faced by many developing countries in this area, the agreement should be a best-endeavours agreement. Hence, the inclusion of provisions on dispute settlement procedures under an agreement on transparency was not necessary. There was no need for any discussion on the DSU in the Working Group for the reason that it would be impossible to implement any decision reached by the DSU. However, Malaysia was willing to consider the examination of the possible application of DSU to GATT Article X in cases that involved violation of obligations on transparency.

34. The representative of the European Community said that, without a clear provision on dispute settlement, an agreement would essentially lose its merits. Therefore, the issue should remain on the list of issues for further study. Article 13 of the draft agreement that had been proposed by the European Community attempted to make clear that a dispute settlement provision should not apply to individual cases but only address issues that related to the interpretation of the transparency agreement itself (WT/WGTGP/W/26).

35. The representative of Australia, joined by the representative of Switzerland, said that it would be useful to have an in-depth discussion of how and in what circumstances the WTO dispute settlement procedures could apply to any obligations under an eventual transparency agreement.

36. The representative of the Philippines noted that his delegation looked forward to a debate on how WTO dispute settlement procedures could apply to an agreement on transparency, in particular, how the obligation of transparency could be fully enforced, consistent and integrated into the concepts contained in the WTO Dispute Settlement Understanding, such as suspension of concessions.

37. The representative of the United States, joined by the representative of Switzerland, commented that it was critical for a WTO agreement on transparency to be subject to the DSU. This was necessary not only for the transparency agreement but also for the system as a whole. Like the provisions on domestic review procedures, the provisions on WTO dispute settlement procedures were intended to guarantee the integrity and consistency of the system and to create confidence in the system. Having a mechanism for resolving differences was necessary in order to ensure that all Members had a consistent understanding of what they were committed to under an agreement. Many WTO agreements dealt with situations where individual transactions were subject to procedural disciplines. The United States expected that the DSU would apply to a transparency agreement in the same way as it did to the other WTO agreements. He also commented that Malaysia's reference to Article X of the GATT could provide an interesting point of comparison. The WTO dispute settlement procedures already applied to Article X and to other similar types of provisions within the

system that not only addressed transparency but other procedural aspects of the trading system. The expectation was that the Dispute Settlement Understanding would apply to a transparency agreement in the same way that it applied to Article X.

38. In response to the comments made by the representative of the Philippines, the representative of the United States said that the issue of potential sanctions, for instance in the form of suspension of concessions, was perhaps not necessarily the most important issue that needed to be considered in relation to the relationship between the DSU and transparency. The United States found it difficult to envisage a situation where this would be likely to occur under a transparency agreement. He recalled that, in accordance with Article 3 of the DSU, any decisions under the DSU would not alter the rights and obligations of Members. Furthermore, this Article emphasized that the aim of a dispute settlement mechanism was to secure a positive outcome to a dispute.

39. The representative of the Philippines noted that the WTO agreements were one single undertaking and the DSU was part of that. If Members wanted the WTO dispute settlement disciplines to fully apply to a transparency agreement, it was necessary to ensure that its obligations could be fully integrated into the whole concept. Otherwise, the conclusion could be reached that the agreement had no place in the WTO in the first place.

40. The representative of Argentina stated that Argentina was concerned whether and how dispute settlement would apply to many of the questions that had been raised, for example methods of procurement, definitions and scope and time-periods. Moreover, Argentina wanted to know how the dispute settlement mechanism would be applied when there were no commitments with regard to access to markets. Argentina was not convinced that there was any need for having a provision on dispute settlement until its scope of application would be clear. That scope would depend upon the final contents of a possible agreement.

Technical cooperation and special and differential treatment for developing countries

41. The representative of India stated that specific proposals on technical cooperation would be necessary to ensure that the relevant provisions did not remain a best-efforts clause and were operational. The provisions on special and differential treatment could allow developing countries to have a transitional period of 10-15 years, a higher threshold level, and exemptions for coverage of sub-central entities and services.

42. The representative of the European Community, joined by the representatives of Japan and the United States, said that it was essential that technical cooperation process be demand-driven. He encouraged Members that felt the need for technical cooperation or provisions on special and differential treatment to come up with specific proposals on what should be covered in that context. While the European Community would be willing to examine the implications of setting higher thresholds for developing countries, the likely effect of different threshold levels would be to create more obligations for industrialized countries and to diminish obligations for developing countries in which the average amount of government procurement was located at a lower level than in industrialized countries.

43. Commenting on the proposal by the United States (WT/WGTGP/W/28), the representative of Switzerland, joined by the representative of Australia, considered that the proposal was timely given that it tackled concerns that had been raised by a number of delegations during discussions in the Working Group. The proposal that the work programme proceed simultaneously with the ongoing work in the Working Group would neither be premature nor would it prejudice the outcome of an agreement. On the contrary, it would mean that a gradual and parallel approach would be introduced, making it possible to be mutually beneficial. Technical assistance would be a possible attempt to respond to some of the administrative and technical challenges in fulfilling the obligation on transparency. Switzerland found that the proposed method of proceeding by starting with assessing

the needs and then identifying potential resources for addressing those needs made sense. In order to make this a successful approach, countries that faced the challenges mentioned earlier in relation to the various areas under discussion should come up with proposals, identifying concerns that should be addressed through technical assistance. He also stated that the note by the Secretariat providing an overview of the existing technical cooperation activities could be used as a basis for the first phase described by the United States proposal. The representative of Australia stated that the key interest of the Australian suppliers was to see greater transparency in government procurement, whether or not there was an agreement. Accordingly, Australia was very supportive of capacity building with a view to producing a practical outcome of the work of the Working Group. The representative of Japan stated that Japan generally supported the approach in the United States proposal to advance the issue of technical cooperation in parallel with the discussion in the Working Group. More specific proposals would be essential to ensure that special and differential treatment in the field of government procurement would be operationalized.

44. The representative of Malaysia stated that it was premature to discuss technical assistance at this point until Members had negotiated a consensus on the elements of an agreement. He acknowledged that the United States proposal for a concurrent approach regarding technical assistance was an attractive one. However, even if the Group wanted to adopt a concurrent approach, it should only occur when the Group had a Ministerial mandate to shift into the mode of negotiating the elements. Perhaps, then, a concurrent approach would allow Members to see what problems the developing countries were faced with.

45. The representative of Canada agreed with the substance of the proposal by the United States that there were steps that could be taken in the area before the content of the agreement was known. By working concurrently, progress could be achieved that could help to advance the discussions that were continuing in the Group. In terms of the work programme, Canada agreed that the work should be based on real needs for capacity building and development of government infrastructure.

46. The representative of the United States said that the majority of Members had recognized that, irrespective of the particular elements that might be decided upon for an agreement, progress in the area of transparency in general was beneficial. Addressing the issue of capacity building on a needs, demand-driven basis, was an opportunity for all the Members to make progress on the overall issue. If that were done concurrently, the United States did not consider that that would prejudice any particular Member's position with respect to the particular items or elements of an agreement.

B. OBSERVER STATUS OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

47. The Working Group agreed to revert to the requests from intergovernmental organizations for observer status (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

C. ANNUAL REPORT

48. The Working Group agreed to the arrangements for the adoption of its Annual Report for 2000 to the General Council on the basis of a draft prepared by the Secretariat. The report was subsequently adopted and circulated as document WT/WGTGP/4.

D. DATE OF THE NEXT MEETING

49. The Working Group agreed to hold its next meeting in early 2001.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 7 JUNE 2000

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its tenth meeting on 7 June 2000 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for this meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) observer status of international intergovernmental organizations; and (iii) other business.

A. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

3. The Chairman said that he had made available, on his own responsibility, an annotated draft agenda which aimed to facilitate discussion in the Working Group by suggesting issues under each of the substantive agenda items that, in his view, could be the subject of further discussion. The list of issues in the annotated agenda did not purport to be exhaustive and delegations should feel free to raise other issues which they considered important. The note by the Chair "List of the Issues Raised and Points Made" (Job(99)/6782) continued to be the basis of the discussion of the Working Group. As an auxiliary informal paper for the use of Members wanting to draw on it, delegates also had available to them a revision of the informal note by the Secretariat "List of Proposals on Items II-VII of the Checklist" (Job(00)/3276).

(a) Proposal for a work programme on technical assistance

4. Before the Working Group took up the discussion of the substantive agenda items, the representative of the United States introduced a proposal for a work programme for coordinating international technical assistance with implementation of a potential agreement on transparency in government procurement (WT/WGTGP/W/28). The work programme would proceed simultaneously with ongoing work of the Group in developing the elements of an appropriate agreement. The United States believed that working concurrently in both those areas would help the Group to move forward and would help to ensure that all Members could fully benefit from the results of the work undertaken by the Group. The need for capacity building in this area had already been raised by some delegations during the past discussions of the Working Group. Capacity-building issues had already been factored into many of the proposals that had been made with respect to specific elements of transparency. Those proposals were intended to be flexible enough to be effectively implemented in a wide range of circumstances in different Members' domestic procurement systems. Nevertheless, it was understood that there were concerns about the capacity of some national systems to consistently apply the elements that had been discussed throughout their procurement systems. To address that issue, the United States envisaged a work programme that would be designed, first, to identify specific capacity-building needs relating directly to the transparency elements that had been discussed

and, second, to identify available international sources of technical assistance which were best suited to addressing such needs. This phase of work could draw on the previous submissions made to the Working Group on this issue in 1997 and 1998 (listed in document Job No. 3414). In order to make the best practical use of the information that would be gathered, the information could be organized into categories, such as issues relating to the development of legal and administrative rules and procedures, human resources development, and physical infrastructure and other technical needs. Once that work had been completed, a second phase of the work programme could focus on finding ways to operationalize the information as efficiently as possible. He suggested that the Chairman might hold informal consultations on this issue prior to the next meeting so as to enable the Working Group to agree on a concrete plan of action for addressing the issue of capacity building at the next meeting.

5. The representative of Pakistan, joined by the representatives of Malaysia, India and Egypt, said that the proposal by the United States to provide technical assistance in relation to the elements of an appropriate agreement made the assumption that there was already such an agreement and, hence, was premature. The representative of Brazil stated that the proposed work programme should not prejudice the final establishment of an agreement.

6. The representatives of the European Communities, Switzerland, Venezuela, Norway, Canada, Australia, Iceland, New Zealand, Hungary, the Czech Republic, Iceland, Israel, Korea and Hong Kong, China said that their delegations supported the broad thrust of the United States proposal. It was an attempt to address some of the administrative and technical challenges in applying the principles of transparency in government procurement that had been raised in the Working Group and were reflected in the Chair's note "List of the Issues Raised and Points Made". The representative of New Zealand said the work programme could help to point out the elements that should be addressed in the Group and thus could be seen as working in parallel with the Group's discussions. The representative of Australia stated that Members' capacity to implement a future agreement was an issue that needed to be examined seriously in the context of drawing up any potential agreement. The representative of Korea said that there was a need to address the work programme as soon as possible.

7. The representatives of the European Communities, New Zealand and Australia said that Members would need to have a better understanding of a number of issues in relation to the United States proposal, for instance how the technical cooperation would work in practice and how it would be financed. The representative of Norway said that the question of financing in the long run should be borne in mind in developing a work programme.

8. The representative of Switzerland suggested that the work programme should be demand-driven. Those countries that faced challenges in relation to the various areas under discussion in the Working Group should come up with proposals identifying their concerns that could be addressed through technical assistance.

9. The representative of Indonesia stated that technical assistance and capacity building were not issues exclusive to the area of government procurement. They should be considered in a comprehensive manner since the same problems existed in many areas covered by WTO agreements.

10. The representatives of Canada, Argentina and the Czech Republic said that there would be value in the Chair conducting informal consultations in advance of the next meeting to explore the most efficient way the work programme might be structured. The representatives of Malaysia, Pakistan and Egypt said that they were not in a position to join any consensus to request the Chair to hold informal consultations on this issue prior to the next meeting.

11. The representative of Pakistan said that basic information on the technical assistance activities of international intergovernmental organizations had been made available to the Group (WT/WGTGP/W/20 and Addenda 1-8). Supported by the representatives of Hong Kong, China and Korea, he suggested that the Secretariat might be requested to prepare a note compiling this information in a succinct form in order to enable delegations to consider how this issue could be developed further. The representative of Argentina said that the Group should also consider the survey recently initiated by the Secretariat, through the Director-General, in which all Members and intergovernmental organizations were invited to identify sources of technical assistance relating to WTO agreements.

12. The representative of the United States stated that its proposal was intended to be a positive response to the concerns that some delegations had raised in the past. The United States supported the view that a demand-driven work programme would enable delegations that had specific problems related to capacity building to contribute to the establishment of a framework for proceeding with the work in this area. He stressed that his delegation had deliberately left open a number of questions, including how this type of work programme might be developed, because the United States wanted to hear the views of other delegations as to how a process, that the Group would be comfortable with, could be developed by consensus. His delegation saw benefit in addressing these issues proactively during the process leading up to a potential agreement and to mitigate future problems rather than waiting until the Working Group finalized its work. This process would be without prejudice to what might be included in a future agreement.

13. In concluding the discussion on the proposal by the United States, the Chairman said that the Group should revert to the proposal by the United States at its next meeting. The Secretariat would prepare a note summarizing the information that had been made available to the Group or elsewhere to the WTO on technical cooperation activities of intergovernmental organizations in the area of government procurement.

(b) General comments

14. By way of general comments under this agenda item, the representative of India reiterated the views that his delegation had expressed at the earlier meetings of the Working Group. He said that the Working Group should confine itself to the Singapore mandate. The Group's work was still in the study phase which Members, especially developing country Members, would use to fully understand the issues involved and to appreciate their rights and obligations. As indicated by the note by the Chair "List of the Issues Raised and Points Made", there were serious differences of view among Members on basic issues. Not all Members were at the same level of development and, therefore, it should be appreciated that Members at lower levels of development would find it difficult to agree on some of the elements that might appear to be very basic to other Members. It was important for the developed country Members to appreciate the concerns and problems of developing country Members before reaching a common understanding regarding the various elements of transparency in government procurement. He also stressed the following points as important to his delegation. First, government procurement was an important tool available to governments to pursue their social and developmental objectives. Governments should be able to retain flexibility in this regard as they were fully obliged to pursue these objectives to deal with problems such as poverty, illiteracy, social backwardness and to provide food security. Secondly, the transparency exercise should not include procurement that was open only to domestic bidders. Members, especially developing country Members, should retain the flexibility of providing price preferences to domestic bidders. Thirdly, India was opposed to introducing market access issues into the work of the Working Group. Fourthly, the right of governments to make domestic public procurement rules and regulations and to modify them should be maintained. He added that India was committed to transparency in government procurement and that, in fact, that principle was being broadly followed in India's domestic policy.

15. The representative of Egypt stated that Egypt agreed with the main thrust of India's statement, in particular the reference to the need to pursue social and developmental objectives in developing countries.

16. The representative of Malaysia said that the agreement should not be prescriptive in nature; it should merely serve to ensure the provision of information on the procurement practices of governments.

17. The representative of Canada stated that Canada supported continuing work on the elements of an agreement in transparency as outlined in the Singapore mandate. In relation to transparency, a simple and realistic approach with regard to what could be achieved was preferable from Canada's point of view.

18. The representative of Indonesia stated that the Working Group needed to continue exploring the issues that were being discussed with the intention of increasing awareness as well as creating a certain level of confidence for delegations. Thus the study, as mandated by the Singapore Ministerial Declaration, should be carried out before the Group could embark upon any negotiations on an agreement. Discussions should be limited to transparency issues. A transparency agreement should not be seen as a building block for an agreement on market access. There should be no review provisions in the agreement allowing the possibility of further negotiations on market access. The discussion on transparency should be based on national policies and objectives and should respect Members' domestic legislation and their right to regulate in this area.

(c) Issues raised

(i) Definition and scope of government procurement

19. A number of observations were made on the question of whether, in order to determine the scope of any commitments, a general definition of government procurement was necessary and, if so, whether this could be achieved by reference to the definitions in GATT Article III:8 and GATS Article XIII:2 or whether it would be sufficient to rely on the definition used by each Member as it was established in its national legislation. The representative of the United States, joined by the representatives of Canada, the European Communities, Egypt, Brazil and Mexico said that the Group could draw on the existing definitions of government procurement in GATT Article III:8 and GATS Article XIII:2 as a basis for its work to develop an appropriate definition in a transparency agreement. The representative of Korea, joined by the representatives of Brazil, Argentina and New Zealand, said that, while it would be useful to draw on the existing language in GATT and GATS, a mere reference to GATT Article III:8 and GATS Article XIII:2 would not be sufficient for the purposes of a future agreement. The representatives of Korea and Hong Kong, China said that, for example, the interpretation of the term "governmental purposes" in the relevant GATT and GATS Articles might cause problems. The representative of Brazil, joined by the representative of Indonesia, said that the Group should also consider the feasibility of relying on the definitions stipulated in the respective national legislation of Members. The representative of Mexico said that the definition of government procurement would depend on what was agreed in respect of other elements of the agreement as well as its scope.

20. Observations were made on the question of whether the rules of a transparency agreement should extend to procurement by entities at all levels of government or at the central level of government only. The representatives of Malaysia, Switzerland, Hong Kong, China, the European Communities and Norway stated that an agreement should cover entities at all levels of government including at sub-central levels. The representative of Switzerland said that, otherwise, a large part of government procurement would be left outside the scope of the transparency agreement. The representatives of Australia, Korea and Japan said an agreement should be applied to procurement by

central government entities and to entities at the highest level of sub-central governments. The representative of Argentina said that, even in the case of an agreement that focused on transparency, it would be difficult to ensure compliance at all levels of government. Developing countries with federal government structures should be accorded special and differential treatment with regard to obligations of entities at sub-central levels. The representatives of India, Egypt, Canada, Mexico, Indonesia and Brazil said that the scope of the agreement should be limited to procurement by central/federal government entities. The representative of Brazil stated that it would not be feasible to negotiate an international agreement on behalf of sub-central entities in his country without a mandate from them.

21. With regard to the question of whether purchases by state enterprises should be covered, and, if so, which, the representatives of the European Communities, Norway, Mexico and Switzerland stated that coverage should also include procurement by such enterprises. The representative of Switzerland said that state enterprises often had monopoly positions and, therefore, did not always pursue commercial interests. The representative of the United States stated that his delegation's preference would be to provide for coverage of state enterprises through an agreed definition of procurement. For instance, a state-owned enterprise that purchased for governmental purposes would presumably be covered under a definition of procurement which would refer to "procurement for governmental purposes". The representative of Argentina stated that, since in other WTO fora transparency was seen as a key to dealing with monopolies, the issue of coverage of state enterprises in an agreement focused on transparency might be further explored. The representatives of India and Egypt said that procurement by state enterprises should be excluded from the coverage of a transparency agreement. The representative of Korea stated that including state enterprises in the coverage of a transparency agreement might be burdensome for some Members. The representative of Indonesia stated that state enterprises should not be covered under a transparency agreement as GATT Article XVII already dealt with the issue.

22. With regard to the question of what the scope of an agreement should be in terms of coverage of goods and services, the representatives of Malaysia, India, Indonesia and Egypt stated that the scope should be limited to goods. The representative of Egypt said that the Group should consider, however, how to deal with cases where it was difficult to de-link goods procurements from services procurements. The representative of India said that public procurement in the services sector in the case of most developing countries was less systematized than that in the goods sector. He also said that the issue of procurement of services was already being handled by the Working Party on GATS Rules. The representatives of the United States, Australia, Switzerland, Brazil, Hong Kong, China, Canada, Norway, Argentina and New Zealand stated that the agreement should encompass both goods and services. There was no good reason not to apply transparency rules to services as well as to goods. Moreover, there were often mixed contracts that involved both goods and related services or services and related goods. In practice, it might be difficult in many situations to distinguish between a goods procurement and a services procurement. The representative of the United States said that any commitments that Members might make with respect to transparency would be without prejudice to other aspects of the trade regime including, for example, GATS commitments or border measures.

23. Observations were made on the question of whether the coverage of an agreement should be limited to procurements above a certain threshold level and, if so, what should that level be and should it differ according to the level of government, the level of development of the Member in question and/or the nature of the obligation in question? The representatives of Malaysia, India, Egypt, Korea, Japan, the European Communities, Brazil, Hong Kong, China and Canada stated that there should be a minimum threshold level below which transparency obligations would not apply. The representatives of India, Egypt, Malaysia and Indonesia said that threshold levels should be higher for developing countries. Including minor procurements within the scope of a transparency agreement might impose an undue burden on entities in developing countries. The representative of Mexico said that the objective of setting thresholds below which the rules would not apply was

important from the point of view of efficiency. Different threshold levels might apply according to the purchasing entity, whether a federal or central entity or a state enterprise, on the basis of the objective of the procurement or depending upon whether the procurement was for goods, services or construction services. Compliance with transparency obligations should not result in a situation that would be too onerous for the procuring entity, nor should the rules be a hindrance to the proper functioning of government procurement systems. The representative of Norway stated that, while, in principle, an agreement should not be limited to procurement contracts above a certain threshold level, certain provisions could be included to provide flexibility in the application of rules to small-value contracts.

24. The representatives of the United States, Australia and Switzerland stated that their delegations had an open mind on the issue of thresholds. The representative of the United States said that, for the purposes of transparency, particularly for open tendering procedures, the costs of transparency were generally very low and the benefits were very high. For that reason, it did not make sense to apply a high level of threshold for procurement under open tendering procedures. The representatives of Argentina and New Zealand stated that there should be transparency in all public procurement transactions whatever the size of procurement contracts. It was unclear why different levels of thresholds would be necessary in an agreement which would not set obligations on market access.

25. In response to the question of the extent to which concessions and BOT (build-operate-transfer) contracts should be covered and, if covered, how they should be defined, the representatives of Brazil, Malaysia, India and Mexico stated that the scope of the agreement should not extend to concessions. The representative of Mexico stated that, in Mexico's system, concessions were not regarded as falling within the scope of government procurement given that there were a number of juridical and legal differences between the two. The representative of Brazil said that the difficulty associated with extending the scope of an agreement to concessions was not simply a legal problem stemming from the fact that concessions and government procurement were regulated under different legislation. The philosophy and objectives underlying concessions were completely distinct from the philosophy and objectives of government procurement. In some cases involving concessions, what occurred was exactly the opposite of what occurred in the case of procurements. The representative of Argentina said that there might be services that were contracted by a government for its own purposes that were not concessions. The representative of the United States stated that the definition of a "concession" varied from system to system. In some systems, what was considered to be a concession was a fairly narrow range of government activities and, in other systems, it could be almost synonymous with the term "services". He also said that his delegation would be very concerned by suggestions that all services that were called "concessions" in some jurisdictions would not be subject to basic transparency requirements. It would be useful to consider this issue in more detail.

26. The representatives of Egypt, India and Argentina stated that BOT contracts should not be covered under a future agreement. The representative of the United States said that, in his delegation's view, arrangements relating to BOT contracts were simply a different arrangement of payment for a procurement of facilities. To the extent that that was the case, the United States could not see why these arrangements would be treated differently from a general procurement involving a simple transfer of funds. BOT arrangements might simply be a way of compensation other than a direct transfer of funds. If that were the case, the United States considered that such arrangements should be subject to general transparency requirements.

27. Following a suggestion by the representative of Pakistan, supported by the representative of New Zealand, the Working Group agreed to request the Secretariat to prepare a note identifying the various issues that were involved in concessions and BOT contracts from the perspective their treatment or not as a form of government procurement.

28. With regard to the question of whether there should be a general exception clause along the lines of GATT 1994 Articles XX and XXI, the representatives of Argentina, Canada, Egypt and Indonesia stated that an agreement should have a general exception clause along the lines of GATT Articles XX and XXI. The representative of Switzerland, supported by the representative of New Zealand, stated that whether or not exceptions were necessary would depend upon the specific commitments to be undertaken by Members. In an agreement with obligations limited to transparency, it might be unnecessary to include a general exception clause along the lines of GATT Articles XX and XXI. The representative of India stated that, in addition to the general exceptions provisions contained in GATT relating to security and other matters, Members should have the freedom to indicate additional exceptions such as procurement for public distribution systems, procurement for achieving social and development objectives and procurement for domestic price stabilization of essential commodities. With regard to procurement involving social policy and other objectives, the representative of the United States noted that a number of jurisdictions in the United States imposed, for example, recycled content requirements or energy efficiency requirements, which were aimed at meeting social and public policy goals in undertaking procurement. Nevertheless, the United States questioned why the use of those types of procurement objectives would in any way diminish a government's interest or capacity to achieve transparency. The United States believed that the interest to achieve transparency would be the same whether or not those types of objectives were incorporated into a procurement procedure.

29. Comments were made on the question of whether transparency obligations should be applicable only to the extent that procurement was open to suppliers from other Members. The representatives of Japan, Mexico, Canada and Switzerland stated that a transparency agreement should apply to all procurement irrespective of whether or not a procurement was open to foreign suppliers. The representative of Argentina, joined by the representative of Canada, stated that the agreement should not call into question the preferences that a Member granted to domestic suppliers and should not require Members to modify their legislation in this regard. However, that did not mean that other Members could not have information made available to them on the relevant national legislation and procedures in other Members. The representatives of Malaysia, India and Egypt stated that an agreement on transparency should exclude procurement limited to domestic bidders. The representative of the European Communities asked for clarification as to how a transparency agreement which only applied to procurements that were open to foreign participation would work. Would there be two different legal systems relating to transparency in public procurement, one system that applied in cases where only domestic participants could participate in the procurement and a second system in cases where procurement was open to other countries? In response, the representative of India stated that India considered that there was no transparency issue involved in relation to procurement that was not open to foreign competition. The representative of Pakistan stated that Pakistan would have a separate system of rules for the two types of procurement. The representative of Malaysia stated that in his country transparency principles were applicable whether or not procurements were open to foreign participation. However, that did not mean that it should be agreed that contracts that were open for domestic bidding only should be subjected to the same rigorous obligations that would have to be adhered to under a WTO transparency agreement for procurement that involved foreign participation.

30. The representative of New Zealand said that a number of questions raised under definition and scope were intrinsically linked with some of the other elements under consideration in the Group. Accordingly, some of his delegation's views on the scope of an agreement might be affected by the outcome of the discussion on those other issues.

(ii) Procurement methods

31. Comments were made on the question of whether an approach should be adopted which called upon Member governments to be transparent about their actual use of limited tendering. The

representatives of the United States and Venezuela said that procuring entities in different Members used different criteria for determining which type of method would be appropriately used in the circumstances of a given procurement. National legislation set out such criteria based on national conditions and procurement policy objectives. The representative of the United States, joined by the representative of the European Communities, said that the most important consideration for ensuring transparency in the use of procurement methods was that, notwithstanding the difference in the selection criteria used by procurement entities in different Members, the decisions regarding the choice of a particular procurement method should be taken on the basis of the criteria that were established in national legislation and which were made known to suppliers in advance. The representative of India, joined by the representatives of Mexico, Egypt and the European Communities, said that a transparency agreement should not have provisions prescribing the particular method that should be used in a particular circumstance. The provisions should allow procuring entities to retain flexibility in applying the procurement method that was best suited to their objectives in a particular procurement in the interests of efficiency, competition and transparency. Procuring entities should decide which method to choose provided that they followed the criteria established in national legislation. The representative of New Zealand stated that transparency disciplines in a future agreement should not affect a Member's practice regarding the application of various procurement methods. The representative of the United States said that the draft text for an agreement of November 1999, submitted by the delegations of Hungary, Korea, Singapore and the United States, contained a provision requiring Members to have rules in their national legislation describing the conditions under which it was appropriate to use different procurement methods (WT/WGTGP/W/27, paragraph V.2). No provisions were suggested on what those conditions should be. On the question of whether an effort should be made to define the circumstances in which limited tendering could be employed, the representatives of India, Indonesia, Mexico and Egypt said that drawing up an illustrative list of such circumstances would not allow any flexibility to procuring entities in the use of this method. The representatives of Mexico, the United States, Venezuela and Egypt said that a transparency agreement should have a provision requiring Members to indicate in their national legislation the exceptional circumstances warranting the use of limited tendering.

32. With regard to procurement methods, the representative of Pakistan asked how the use of "Requests for Proposals" method where there could be direct negotiations between suppliers and the procuring entities after the receipt of initial proposals could be accommodated within a transparency agreement. In response, the representative of the United States stated that procedures or any requirements decided upon by the Group must be flexible enough to incorporate procurement procedures that may involve negotiations given that such procedures could be an extremely effective way for entities to achieve the value for money that taxpayers expected. There were at least three ways in which transparency was particularly important when those types of procedures were used: the first being at the initial announcement of a particular procurement opportunity or the announcement that a procedure was under way, as in the case of other procurement procedures; the second being that participating suppliers should have access on a non-discriminatory basis to information. Thirdly, there should be information on the contract award so that interested parties had information on the results of the procurement procedure and also were given an opportunity for receiving an explanation of the reason for the contract award.

(iii) Publication of information on national legislation and procedures

33. On the question of whether there should be a requirement for the establishment of an enquiry point from which information on national legislation or procedures could be obtained by interested parties, the representative of India said that the establishment of enquiry points would require coordination among numerous government departments, hence the need for a careful study of its feasibility. The representative of Bolivia said that there was no need for the establishment of an enquiry point in his country since the relevant information was available in official publications.

34. Comments were made on a number of issues on points of detail such as the scope of the information on national legislation and procedures that should be made available, the mode through which this should be done and the treatment, if any, of costs. The representative of the United States said that the draft text for an agreement of November 1999, submitted by the delegations of Hungary, Korea, Singapore and the United States (WT/WGTGP/W/27, paragraph V.1), suggested that all national laws, regulations, and requirements of general application should be published. Joined by the representative of Bolivia, he said that this did not call for the publication of the details of the procurement procedures of individual procurement entities, but covered legislation and administration guidelines that applied to a broad range of procurement decisions. The representative of India said that the publication of information relating to judicial decisions, policy guidance and administrative guidelines would be onerous. The representative of Hong Kong, China said that there should be no requirement to publish or make available to the public in any other form administrative rules and regulations internal to the government. The representative of India said that Members should have flexibility in respect of the mode through which information should be made available. On the treatment of costs, he said that government entities should have the flexibility to impose appropriate fees for the provision of information on national legislation, provided that such fees were charged on a non-discriminatory basis. The representative of Hong Kong, China said that there should be a general exceptions provision with regard to the obligations on publication of information on national legislation and procedures along the lines of the provisions in Article XX and GATS Article XIV.

(iv) *Information on procurement opportunities, tendering and qualification procedures*

35. Comments were made on the question of the minimum information that should be made available on procurement opportunities during the procurement process. The representatives of the European Communities, Australia and Canada said an agreement should set out certain guiding principles regarding the minimum information content of the documentation on procurement opportunities. The representative of Argentina said that, rather than specifying in a transparency agreement what the minimum information content should be, there should be a provision requiring Members to set out the minimum information that should be made available in national legislation. The representative of India, joined by the representatives of Hong Kong, China and Indonesia, said that any provisions establishing a uniform set of rules in the agreement in respect of provision of information on procuring opportunities would be too prescriptive. The representative of India further said that the level of detail of information varied considerably in national practices depending on the particular procurement contract or the procurement methods used.

36. Comments were made on the question of whether national preferences or other measures favouring certain supplies or suppliers should be made known in advance in the tender notices and/or tender documents and, if so, whether such information should be set out in full; or whether it would be sufficient to make an explicit reference to the applicable legislation in those documents; or whether such information should only be required when it had not already been adequately provided through laws or regulations of general application. The representatives of Canada, the European Communities, Switzerland and Australia said that provision of advance information on national preferences allowing suppliers to make decisions on whether or not to bid for a procurement opportunity was critical. The representative of the European Communities said that a reference to the applicable legislation in the tender documentation would not be sufficient. Procedures relating to the application of national preferences should be clearly stated in tender documents. The representative of Switzerland said that an explicit reference to the applicable legislation could be considered adequate, although detailed information on the preferences would be preferable.

37. In regard to the question of what guidance should be included as regards the media used for the provision of information on procurement opportunities, tendering and qualification procedures, the representatives of India, Canada, the European Communities and Switzerland said that procuring entities should have the flexibility to choose the medium for providing information on procurement

opportunities. The representative of Canada said that it was important to specify the source through which the relevant information was made available.

38. On the issue of transparency on lists of qualified suppliers, the representative of Australia said that Members should be encouraged to provide information periodically on the timing and the frequency of the opening of qualification lists so as to enable the inclusion of new suppliers.

39. With regard to technical specifications, the representatives of Argentina and Indonesia said that, since in their view, they were not within the scope of a transparency agreement, any transparency agreement should thus not have any provisions relating to this matter.

40. In addressing the question of whether there should be a requirement to provide summary information on procurement opportunities in a WTO language, the representative of Switzerland said that this would enhance transparency. The representatives of Brazil, Australia, Argentina and Indonesia said that a mandatory requirement to publish tender notices in a language other than in a Member's national language would entail Members incurring burdensome translation costs.

41. The representative of India said that the obligation on provision of information on procurement opportunities should be limited to procurement open to foreign suppliers. The representative of Argentina said that procuring entities should provide such information regardless of whether the procurement opportunity was open or not to foreign suppliers and even under direct procurement procedures. The representative of Hong Kong, China said that there should be a general exception provision regarding the obligations on provision of information on procurement opportunities along the lines of GATT Article XX and GATS Article XIV.

(v) Time-periods

42. Comments were made on the question of whether it was accepted that a transparency agreement should have a provision on time-periods couched in terms of the considerations that should be taken into account in setting those periods rather than in terms of prescribing minimum periods and, if so, what those considerations should be. The representatives of Argentina, Australia, the United States, Egypt, the European Communities and Mexico said that an agreement should not have provisions prescribing minimum time-periods. The representatives of Australia, the European Communities and Mexico said that a principles-based approach would be preferable. Joined by the representatives of the United States, Egypt and Cuba, the representative of Mexico said that procuring entities should retain flexibility to set appropriate time-frames according to the nature and the specific circumstances of a particular procurement. The representative of Indonesia said that provisions on time-periods should make reference to national legislation. The representative of India said that the issue of time-periods was not related to transparency. Given the divergences in national legislation in this respect, procuring entities should be able to decide time-periods on a case-by-case basis. The representative of the European Communities said that allowing procuring entities to take decisions on time-periods on a case-by-case basis would create uncertainty. The representative of Mexico said that, under national legislation, procuring entities might not be able to set time-periods in a discretionary manner and on a case-by-case basis.

43. With regard to the question of what consideration should be taken into account in setting time-periods, the representatives of Australia and Mexico said that suppliers should be allowed sufficient time for the preparation and submission of bids and the same time-periods should be applied to all bidders. The representative of the European Communities said that time-periods should be commensurate with the particular circumstances of the procurement and the complexity of the intended procurement. The representative of Mexico said that there should be provisions foreseeing the application of reduced time-periods in emergency situations.

(vi) Transparency of decisions on qualification

44. With respect to the transparency of decisions on registration and qualification of suppliers, the representative of the United States said that, whatever the qualification criteria procuring entities may use, the key principle was that the decisions be taken only on the basis of criteria that had been made known to suppliers in advance.

(vii) Transparency of decisions on contract awards

45. In addressing the question of whether the minimum information that contract award notices should contain should be specified and, if so, what should be included, the representative of the United States said that most national legislation contained a requirement to provide certain basic information in the notices of contract awards. The representative of India said that the type of information that contract award notices should contain should be left to the discretion of procuring entities.

46. In regard to the method for the provision of *ex post* information on contract awards, the representatives of the European Communities and the United States said that unsuccessful bidders should have the possibility to obtain information on the reasons for the rejection of their bids. Interested parties should have the ability to request explanations or additional information on contract award decisions. The representative of India said that decisions on contract awards should be conveyed to the bidders in accordance with national practices.

(viii) Domestic review procedures

47. On the question of whether there should be a requirement that a domestic review procedure be maintained, the representative of India said that the specification of minimum characteristics of domestic review mechanisms would go beyond the scope of a transparency agreement. Members should retain the right to design their own domestic administrative and judicial review mechanisms for ensuring that applicable domestic rules and regulations had been followed by all involved in a procurement process. The representative of Egypt said that there should be no provisions on domestic review mechanisms in a transparency agreement.

(ix) Other matters related to transparency

48. With regard to the question of whether there should be provisions stating in what form and for how long records of decisions and actions taken during the procurement process should be maintained by entities, the representative of Mexico said that the maintenance of records of procurement proceedings was an important guarantee of transparency. Record keeping was particularly useful in the review process of procurement decisions. The representatives of Brazil and Indonesia said that an agreement should not specify in what form and for how long records should be maintained by procuring entities.

49. On the question of how a transparency agreement might promote the use of information technology in government procurement, the representatives of the European Communities, Korea, Pakistan, Brazil, India, Egypt, Mexico, Indonesia and Cuba said that an agreement should have a best-efforts clause in this respect encouraging the use of information technology. The representatives of Pakistan, Australia and Cuba said that information technology was an area where technical cooperation might be relevant. The representative of Mexico said that Mexico had carried out technical cooperation in this area sharing its recent experience in the establishment of systems with other countries.

50. As regards the question of whether the link between transparency in government procurement and the fight against corruption and bribery should be explicitly recognized in a transparency agreement, the representatives of Hong Kong, China, Cuba, Pakistan, India and Indonesia said that the issue was not within the ambit of a WTO working group and was not within the scope of a transparency agreement. The representatives of Egypt and Indonesia said that the matters related to the fight against corruption might be best handled by Members at the domestic level. The representative of Brazil said that transparency in government procurement and the fight against corruption were separate matters. There should be no explicit recognition of the linkage that might exist between the two in a transparency agreement. The representative of Mexico said that, while her delegation considered that the WTO was not the appropriate forum for dealing with the subject, the establishment of an agreement on transparency in government procurement would be one of the best ways to fight corruption. The representative of Australia said that greater transparency was the key to removing corruption. The representative of Venezuela said that improving transparency in government procurement and the fight against corruption were complementary. Believing that all countries would benefit from transparency in the fight against corruption, he recalled that his delegation had submitted a non-paper that identified the elements of transparency that could contribute to the fight against corruption.

(x) *Information to be provided to other governments*

51. With regard to a requirement on the establishment of enquiry point(s) by each Member, the representative of Korea said that there should be a single access point for obtaining information free of charge. The representative of India said that the establishment of enquiry points would involve coordination with different government departments and agencies. The issue might need to be reconsidered once Members had a clearer idea of the scope and coverage of an agreement. The representative of Brazil said that, notwithstanding the difficulties of coordination among national authorities, the establishment of enquiry points would be useful.

52. Addressing the question of how adequate notification of laws and regulations should be secured, while ensuring that such requirements were not unduly burdensome, especially in regard to translation into a WTO language, the representative of Brazil said that an agreement should require Members to notify only the lists of basic laws and regulations in a WTO language. The representative of the European Communities said that according to the proposal submitted by his delegation in November 1999 concerning the notification of laws and regulations, Members should only be required to provide a list in one of the WTO languages of the relevant generally applicable instruments (WT/WGTGP/W/26, Article 11 on notification requirements).

53. On any statistical reporting requirements, the representatives of Brazil and Canada said that a transparency agreement should not have provisions in this respect.

54. In responding to the question of whether the government of an unsuccessful tenderer should be entitled to seek information on a contract award from the government whose entity had conducted the procurement in question, the representatives of Brazil and the European Communities said that this matter was linked to the issues under the item on the WTO dispute settlement procedures.

(xi) *WTO dispute settlement procedures*

55. The representatives of India, Egypt, Indonesia and Pakistan said that their delegations were opposed to the creation of a link between the rules on transparency and the WTO dispute settlement procedures. Members had domestic review mechanisms to address procurement disputes adequately.

56. The representatives of the United States, Switzerland and Japan said that disputes under a future transparency agreement should be governed by the DSU. Government-to-government dispute settlement procedures applied to the Agreement Establishing the WTO and other WTO agreements which incorporated procedural rules. The representative of the United States further said that any concern about the perceived implication that dispute settlement procedures might be used to pursue objectives that went beyond transparency had no basis in light of paragraphs 3.2 and 19.2 of the DSU. Under these paragraphs, the recommendations and rulings of the DSB or panel and appellate body recommendations could not add to or diminish the rights and obligations provided in the covered agreements.

57. The representative of Brazil, joined by the representatives of Japan, Bolivia and Argentina said the Working Group should discuss how and in what circumstances the WTO dispute settlement procedures could apply to the obligations under a transparency agreement.

(xii) *Technical cooperation and special and differential treatment for developing countries*

58. Addressing the question of whether transitional periods should be provided for developing countries, the representative of India said that provisions on special and differential treatment were necessary in light of the differences in capacity of WTO Members in the area of government procurement. The representatives of Indonesia and Egypt said developing countries should be provided long transitional periods. The representatives of Egypt, Malaysia and India said that transitional periods alone were not adequate for a meaningful special and differential treatment of developing countries.

59. On the question of what other forms of special and differential treatment might be provided, the representatives of Indonesia and Malaysia said that the issue of higher threshold values for developing countries and the extent to which sub-central governments should be covered for developing countries should be addressed. The representative of Bolivia said that any provisions on special and differential treatment should be formulated on a contractual basis and not as a statement of intent.

60. On the issue of technical cooperation, the representative of the European Communities said that all technical assistance should be based on requests formulated by recipient Members. This formulation of the needs by the recipient countries would minimize the cost involved as well as giving a certain focus in addressing such needs. The representative of Indonesia said that the provisions on technical cooperation should specify the areas in which technical cooperation might be provided, the form it might take and the resources available. There should be provisions for multilateral procedures aimed at monitoring the provisions of technical assistance on an ongoing basis under a WTO body.

B. OBSERVER STATUS OF INTERGOVERNMENTAL ORGANIZATIONS

61. The Working Group agreed to revert to the requests from intergovernmental organizations for observer status (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

C. DATE OF THE NEXT MEETING

62. The Working Group agreed to hold its next meeting in late September 2000.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 6 OCTOBER 1999

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its ninth meeting on 6 October 1999 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for this meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; (ii) requests for observer status by international intergovernmental organizations; and (iii) report of the Working Group for 1999 to the General Council. In addition, at the outset of the meeting there was an exchange of views with regard to the draft texts for an agreement on transparency in government procurement submitted respectively by a number of delegations.

A. DRAFT TEXTS FOR AN AGREEMENT ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

3. The representative of the United States introduced the draft text for an agreement submitted jointly by Hungary, Korea and the United States (Job No. 4510). He said that discussions in the Working Group during the past few years had indicated that there was broad agreement within the Group in respect of both the nature of transparency in procurement and the elements that were important in ensuring transparency. The draft proposed text reflected the work undertaken by the Group and sought to summarize in concrete terms the common views that had been formed among Members on the core elements of transparency. One of the key objectives of the draft proposal was to provide adequate flexibility to accommodate the diversity of conditions prevailing in Member countries. The Group had been successful in identifying the key elements of transparency in procurement and it was presently in a position to move forward. Concluding an agreement around the core elements of transparency could make an important contribution towards the Members' broader efforts to restore confidence and stability in global markets. Such an agreement would have immediate and concrete benefits for all including taxpayers, citizens who relied on public goods and services as well as suppliers. It would also respond to the call by Ministers for greater coherence between the WTO and the work of the main international financial institutions which, for some time, had recognized the need to establish consistent standards of good practice in the area of government procurement. There was growing support for moving forward in this area as had been evidenced by the APEC Ministers' endorsement in Auckland on 9-10 September 1999 of the efforts to reach an agreement on transparency in government procurement at Seattle. The WTO should take advantage of the work accomplished in the Working Group and the opportunity that was currently available to make an important contribution in this area. He added that, in response to requests by some delegations, the United States had put together, in a tabular form, the draft texts for an agreement on transparency submitted so far (Job No. 5898). The purpose of the paper was to assist delegations in their comparison of the ways in which the draft texts addressed the core elements.

4. The representative of the European Community, in introducing his delegation's submission of a draft text for an agreement on transparency in government procurement (Job No. 4519), said that the

paper was based on the proposals that the European Community had previously submitted to the Working Group and which had also been incorporated in the List of the Issues Raised and Points Made. Simplicity was the starting point of the Community's proposal. A transparency agreement should set out a number of core principles that were to be reflected in Members' legal systems and should not prescribe in detail the way in which each principle should be applied. Transparency should be guaranteed throughout the government procurement process on a non-discriminatory basis. The work of the Working Group had revealed that transparency requirements could not be considered in isolation but were part of a broader context. This suggested that there would be need for work in future towards multilateral rules on government procurement. The European Community considered that government procurement disputes should be addressed under domestic systems and WTO dispute settlement procedures should apply in cases of blatant violations of the transparency agreement. His delegation also favoured the application of information technology in government procurement which was a key element in ensuring transparency.

5. The representative of Australia introduced her delegation's submission of a draft agreement on transparency in government procurement which reflected the procurement system in Australia and the importance attached to the existence of transparency throughout every stage of the procurement process at the level of federal and state governments (Job No. 5803). The main aim of the proposed text was to focus on transparency *per se* given that suppliers around the world believed that transparency in government procurement was the most important issue in the context of international project work. The principles reflected, to a great extent, the commonalities that had been evident in the List of the Issues Raised. These principles were set out in as flexible and concise a manner as possible so as to avoid over-prescriptiveness while incorporating enough detail in the agreement to facilitate its understanding and implementation.

6. In introducing the submission by his delegation of a draft text for an agreement on transparency in government procurement (Job No. 5239), the representative of Japan said that a simple, flexible and non-prescriptive agreement focusing on core principles would reduce the cost of implementation, minimize the burden of translating the principles into Members' respective national systems and ensure wide application of the agreement. This approach would also facilitate any necessary amendments to the agreement, for instance with a view to accommodating new developments in procurement methods. Japan believed that a multilateral agreement could be concluded at an early stage. However, to be effective and meaningful, the agreement should be legally binding and should contain monitoring and enforcement mechanisms, including provisions on domestic challenge procedures and intergovernmental dispute settlement. The proposal by Japan also contained transitional arrangements to address the problems of implementation that might arise in developing countries.

7. The representative of Venezuela said that, as part of the educational process, the Group should proceed with its work of developing the possible elements of a transparency agreement by taking up each of the proposed texts in turn as well by using the List of the Issues Raised which summarized the discussions in the Group so far.

8. The representative of India, joined by the representatives of Brazil, Egypt, Cuba, Honduras, Indonesia, Malaysia, Pakistan, Thailand and Turkey, said that the Venezuelan approach of discussing the proposed texts would go beyond the mandate of the Working Group. The study phase of the Singapore mandate had not yet been concluded. There was still a wide divergence of views among Members in respect of several concepts and principles, including definitions and scope, procurement methods, application of dispute settlement and the question of whether all the issues under discussion related to transparency. Rather than reflecting a common view, the proposed texts reflected the transparency elements as they were understood by the delegations that had advanced those proposals. In the absence of consensus among Members regarding the basic elements that should be part of an agreement on transparency, it would be premature to move on to the discussion of the proposed texts

for an agreement. The representative of the Philippines, supported by the representative of Thailand, said that the Group should not disregard the fact that a significant number of Members did not fully appreciate the implications of the issues involved and were not sufficiently satisfied that the educational phase had allowed them to make sound and concrete decisions with respect to elements of a transparency agreement.

9. The representative of India, joined by the representatives of Egypt, Indonesia and Pakistan, further said that since procurement was an important tool used by governmental authorities in developing countries to pursue their social and development objectives, developing countries had a need to retain flexibility in this area. While the principle of transparency, in itself, was good, the Group would need to have a more focused discussion on the implications for developing countries of the various obligations regarding transparency in a future WTO agreement. The representative of Pakistan, joined by the representatives of Egypt, India, Indonesia and Thailand, said that the submission of draft proposals implied that the Working Group was ready and willing to negotiate texts in specific terms, notwithstanding the fact that the time was not ripe for moving on to the discussion of negotiating proposals at this stage. The mandate of the Working Group was to conduct a study and not to conduct negotiations. The Working Group should continue with its study based on the List of the Issues Raised with a view to reaching a common understanding on the various elements of transparency. The representative of India said that there should be no discussions on any proposals concerning a draft agreement on transparency in government procurement even outside the Working Group, until the Working Group had completed its study and had reached a common understanding on the elements of transparency. Neither should the Seattle Ministerial Conference mandate the Working Group to negotiate an agreement given that Members of the Working Group held differing views.

10. The representative of Hungary, joined by the representatives of Canada and Chile, said that it was evident from the relatively stable state of the List of the Issues Raised during the recent Working Group meetings that the educational process including the identification of core elements of a transparency agreement had come close to a conclusion. While, as yet, no consensus had been reached in respect of all the issues relevant to transparency, this was not the objective underlying the educational process. The time had come to move on to the next phase of the mandate and to begin considering concrete proposals for the development of elements of an appropriate agreement. The representative of Hong Kong, China said that transparency in government procurement helped to create and maintain an open and predictable market environment and to foster open and effective competition. Accordingly, Hong Kong, China supported the conclusion of a multilateral agreement on transparency in government procurement by the third WTO Ministerial Conference. The representative of Mexico said that Mexico favoured early conclusion of an agreement on procurement. A future agreement should be confined to transparency in accordance with the Singapore mandate. The discussion of the elements of an agreement was clearly part of the Working Group's mandate. The List of the Issues Raised could also be used to help the process move forward. The core elements of an agreement had been identified in the List of the Issues Raised and were reflected in the proposals submitted by various delegations. This did not necessarily mean that there was consensus on all of the relevant issues. While it was important to continue the analysis of these issues, discussions should become more focused in order to expedite the Group's work. Joined by the representative of Japan, she said that her delegation was ready to enter into a more detailed discussion of the negotiating proposals. The discussion of the elements of an agreement was clearly part of the mandate of the Group. The representative of Japan stated that his authorities were committed to concluding a transparency agreement at the Seattle Ministerial Conference. However, consensus in respect of all the elements should be achieved and the Working Group should take the time necessary to ensure that this occurred. Transparency was in everyone's interests and not just in the interests of developed countries.

11. The representative of Argentina said that the consensus on the Singapore Ministerial mandate for the establishment of the Working Group had been achieved on the basis of two basic guarantees. First, the Working Group would only deal with the issue of transparency and not with the broader topic of due process. Second, Members would not be compelled to amend their national legislation pursuant to a future agreement. However, at least two of the draft proposals implied changes in legislation for certain Members. Further, there was a suggestion that discussions might move from transparency to market access. The representative of Pakistan, joined by the representatives of Egypt, India, Indonesia and Malaysia, said that the European Community's proposition that an agreement on transparency in government procurement was merely a building block towards the establishment of a multilateral framework for government procurement went well beyond the mandate of the Working Group. An all-encompassing government procurement agreement containing rules on market access would be another way of forcing the plurilateral Agreement on Government Procurement on developing countries. Joined by the representative of the United States, the representative of Hungary emphasized that the exercise engaged in by the Working Group was confined to transparency and was not linked in any way to market access. The joint proposal submitted by his delegation was focused on achieving transparency in government procurement and was not intended to be a stepping stone towards a future market access agreement. The representative of the European Community stated that clearly the current task of the Working Group was to discuss transparency. However, while the European Community did not expect that any substantive rules on procurement could be agreed at this point, the option of investigating multilateral rules on public procurement in future should be kept open.

12. The representative of Hong Kong, China said that, through a communication submitted by his delegation, the Chairperson of the APEC Government Procurement Experts Group (GPEG) had forwarded to the Working Group for reference the set of non-binding principles which had been completed in August 1999 (WT/WGTGP/W/24). Those elements and illustrative practices were non-binding and should not be used to prejudge the position of individual APEC Members in the discussions regarding a transparency agreement in the WTO. The representative of the United States said the APEC non-binding principles on procurement reflected a strong sense of commonality of view within the WTO membership on the nature of the elements of transparency in procurement.

13. In response to a clarification sought by the representative of the European Community regarding the respective positions taken by some delegations within the Working Group and in the APEC context, the representative of Malaysia said that APEC operated on a voluntary basis and that the agreed principles were non-binding. Furthermore, the APEC Ministerial Declaration had clearly stated that Ministers had merely supported efforts to reach an agreement on transparency. The representative of India said that the Chair's summary at the G15 Ministerial meeting in Bangalore, India in August 1999 had categorically stated that the work of the Working Group on Transparency in Government Procurement should continue in an analytical mode.

B. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

14. The Group took up, in turn, each of the sections in the informal note by the Chairman "List of the Issues Raised and Points Made" (Job (99)/5534). In the discussion under the relevant headings of this document reference was also made to the proposed texts submitted by Australia (Job (99)/5803); the European Community (Job No. 4519); Hungary, Korea and the United States (Job No. 4510); and Japan (Job (99)/5239). The points made will be reflected in the sixth revision of the note by the Chairman.¹

¹ To be issued shortly

C. OBSERVER STATUS OF INTERGOVERNMENTAL ORGANIZATIONS

15. The Working Group agreed to revert to the requests from intergovernmental organizations for observer status (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

D. REPORT TO THE GENERAL COUNCIL

16. Before taking up the discussion of the draft text of the Report for 1999, the Chairman said that, regarding the situation in the work on transparency in government procurement, it was clear that some delegations were interested in actively pursuing work on the elaboration of a transparency agreement for submission to Ministers at Seattle in the coming days and weeks, while some other delegations had indicated that they considered this to be premature. Given this situation, the extent to which it would be possible for those delegations who wished to complete that work in time for Seattle to engage in a viable process to that end would have to be seen. If that did not appear to be the case, then that was that. However, if there was evidence of a process taking place that might lead to significant developments, it might prove necessary to take steps to ensure the transparency of that process so that adequate opportunities were provided for all delegations to be informed about the work that was being undertaken and to have their views taken into account, and some further meetings of the Working Group might need to be held.

17. The representatives of Pakistan, India, Indonesia and Egypt said that discussion of a proposal for a decision at the Seattle Ministerial Conference fell under the ambit of the General Council. It was up to the General Council to decide whether the Working Group should be mandated to conduct negotiations with a view to concluding an agreement at the Seattle Ministerial Conference. The representative of Pakistan said that, even though some Members might wish to proceed with efforts to conclude an agreement by Seattle, the mandate of the Group did not prescribe a specific time-frame within which the Group was required to conclude its work. Further meetings should be held only in connection with a demand driven within the context of the General Council.

18. By way of clarification, the Chairman said that, given that a number of delegations had indicated that they were willing to present elements that could be included in a possible agreement, and to the extent that this was within the mandate of the Working Group, it was appropriate to consider the possibility of having informal meetings to allow this to happen. The mandate of the Working Group was broader than the mandates for the other Working Groups established at the Singapore Ministerial Conference. Accordingly, he considered it his duty to make it possible for the mandate to be pursued and to leave the door open for delegations wishing to put forward certain elements to be able to do so in the Working Group. Any process that involved the identification of elements that might go into a possible agreement should be conducted in as transparent a manner as possible. There was no contradiction or overlap between the work done by the General Council and by the Working Group. Any future activity in the Working Group framework did not preclude delegations from raising issues of transparency in government procurement in the General Council.

19. The representative of Japan stated that the momentum that had been built up thus far in the Group should be maintained and further meetings should be held before the Seattle Ministerial Conference. The representative from Guatemala said that her delegation supported the view that the decisions within the WTO should be made in a transparent manner. The Working Group might need to hold informal meetings as referred to by the Chairman with a view to informing the General Council appropriately of developments relating to the Group's work. The representative of the European Community said that the possibility of continuing discussions in the context of the Working Group should be retained. The mandate of the Singapore Ministerial Conference to develop elements of a future transparency agreement was separate from the work done by the General Council. The representative of the United States said that both the General Council and the Working Group had

their roles to play within their respective mandates. The Singapore mandate did not require that the Group's work should or should not be completed by any particular point in time. An opportunity should be provided for all Members to be aware of the work that was under way within the mandate of the Group. The possibility of continuing the work at any time in future should be left open.

20. After a brief discussion of a draft prepared by the Secretariat, the Working Group adopted its Report for 1999 to the General Council which was subsequently circulated in document WT/WGTGP/3.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 28 JUNE 1999

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its eighth meeting on 28 June 1999 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).
2. The agenda for this meeting consisted of: (i) transparency-related provisions of the existing international instruments on government procurement and national procedures and practices; and (ii) observer status of international intergovernmental organizations.
 - A. **TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES**
3. For its discussion of this item, the Working Group had before it the informal note by the Chair, entitled "List of Issues Raised and Points Made", listing the issues that had been raised, together with the points made on these issues, under each of the items that were discussed by the Group at its meetings in November 1997, February, June and October 1998 and February 1999 (circulated as Job No. 2934). As an auxiliary informal paper for the use of Members wanting to draw on it, delegations also had available to them a revision of the informal note by the Secretariat, "List of Proposals on Items III-VII of the Checklist" reflecting the proposals made on items III-VII in a succinct form, which identified the source of the different proposals and summarized the written and oral comments on these proposals (circulated as Job No. 2950). The Group also had available to it a communication from the Chairperson of the APEC Government Procurement Experts Group containing APEC non-binding principles of accountability and due process (WT/WGTGP/W/22).
4. The Group took up, in turn, each of the sections in the note "List of the Issues Raised and Points Made". Under the relevant sections, the following representatives introduced their written contributions: the representative of Poland on time-limits (Job No. 3777), the representative of Australia on transparency of decisions on qualification (Job No. 1781), the representative of Canada on contract award information (Job No. 3131) and the representative of the United States on domestic review mechanisms (WT/WGTGP/W/23). Points made will be reflected in a revision of this document and also in a revised version of the "List of Proposals on Items III-VII of the Checklist".
5. In the context of the discussion of the subject of concessions under the item on "definition and scope of government procurement", the Working Group agreed that the Secretariat would make available to the Working Group the documentation of the Working Party on GATS Rules relating to this subject. Moreover, interested Members were invited to make submissions providing information on their national legislation and practices in regard to concessions from the perspective of government procurement (WTO/AIR/1132).
6. The Working Group agreed that, at the next meeting, it would pursue its work under this agenda item in the following way: (i) it would revert to the issues contained in the "List of Issues Raised and Points Made", on the basis of a further version of this note updated in the light of the

discussion at the present meeting and the new papers submitted; and (ii) delegations would also have available to them a revised version of the informal note reflecting the proposals made on items III-VII.

B. OBSERVER STATUS OF INTERGOVERNMENTAL ORGANIZATIONS

7. The Working Group agreed to revert to the requests from intergovernmental organizations for observer status (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

C. DATE OF THE NEXT MEETING

8. The Working Group agreed to hold its next meeting on 6-7 October 1999, without prejudice to any informal consultations that the Chair may call prior to this date.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 24-25 FEBRUARY 1999

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its seventh meeting on 24-25 February 1999 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for this meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; and (ii) requests for observer status by international intergovernmental organizations. In addition, a number of delegations made general statements at the outset of the meeting.

A. GENERAL STATEMENTS

3. The representative of the United States said that, at the discussion in the General Council intersessional meetings of 27 January and 2 February 1999 on issues pertaining to paragraph 9(b) of the 1998 Ministerial Declaration, there had appeared to be broad support, both among developed and developing country Members, for pursuing an agreement on transparency in government procurement. It had been understood by all Members that the Singapore mandate was strictly limited to transparency and did not extend to market access in the area of government procurement. The requirements in an eventual agreement should not call into question national policies, including those that were deemed necessary to achieve certain socio-economic and development objectives, such as domestic preferences, provided that they were administered in a transparent manner. Without prejudging the views of Members with regard to the plurilateral Agreement on Government Procurement, his delegation considered that the detailed procedural requirements of that Agreement should not be replicated in an agreement on transparency. Instead, a future agreement should set forth a flexible framework of procedural rules that would be focused on the core principles of transparency without sacrificing the basic disciplines in this respect. Having successfully completed its task of analysis, at least with regard to certain elements, the Group was well placed to begin focused work on the development of a number of elements, for example those raised in Sections III to VIII of the List of Issues. It would need to continue its analytical work on some of the more complicated issues raised which would need more in-depth study.

4. The representative of the European Community said that her delegation supported the views expressed by the representative of the United States. The work of the Working Group on Transparency in Government Procurement was separate from the work related to the Agreement on Government Procurement. The rules of a future transparency agreement might be more flexible than those prescribed in the plurilateral Agreement. While the European Community was a Party to the plurilateral Agreement, its approach in the work of the Working Group had always been to look at the basic principles of transparency in government procurement. If those principles turned out to be the same as those of the plurilateral Agreement, this would simply mean the Agreement on Government Procurement reflected them adequately and should not be taken to imply that the rules of the

Agreement on Government Procurement had been imposed on Members that were not Parties to that Agreement.

B. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

5. For its discussion of this item, the Working Group had before it the informal note by the Chair, entitled "List of Issues Raised and Points Made", listing the issues that had been raised, together with the points made on these issues, under each of the items that were discussed by the Group at its meetings in November 1997, February, June and October 1998 (Annex to the Report of the Working Group to the General Council for 1998, circulated in document WT/WGTGP/2). As an auxiliary informal paper for the use of Members wanting to draw on it, delegations also had available to them a revision of the informal note by the Secretariat, "List of Proposals on Items III-VII of the Checklist" reflecting the proposals made on items III-VII in a succinct form, which identified the source of the different proposals and summarized the written and oral comments on these proposals (Job No. 690).

6. The Group took up, in turn, each of the sections in the note "List of the Issues Raised and Points Made". Under the relevant sections, the following representatives introduced their written contributions: the representative of the European Community on methods of procurement (Job No. 699), the representative of Norway on publication of information on national legislation and procedures (Job No. 1067), the representative of the United States on evaluation criteria and technical specifications (Job No. 1027), the representative of Australia, respectively, on rights and responsibilities of government as a buyer, value for money in government procurement, accountability and due process (Job No. 1043). Points made are reflected in a revision of this document and also in a revised version of the "List of Proposals on Items III-VII of the Checklist" (Job Nos. 2934 and 2950, respectively).

7. After discussion of the sections of the note "List of the Issues Raised and Points Made", the representative of Venezuela introduced a non-paper on transparency in government procurement and the fight against bribery (Job No. 481). He said that the purpose of the non-paper was to provide a basis for a discussion in the Working Group of the relation of the phenomenon of bribery to its work. His delegation was aware that the fight against bribery and corruption was a difficult matter as well as a politically delicate one. However, his delegation sought the cooperation of Members in finding solutions to problems that were common to all countries.

8. In response to the requests by some delegations, the Working Group agreed that the Secretariat would make available to delegations, upon request, the texts of the OAS Inter-American Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.¹

9. The Working Group agreed that at the next meeting it would pursue its work under this agenda item in the following way: (i) it would revert to the issues contained in the "List of Issues Raised and Points Made", on the basis of a further version of this note updated in the light of the discussion at the present meeting and the new papers submitted; and (ii) delegations would also have available to them a revised version of the informal note reflecting the proposals made on items III-VII.

¹ Available, on request, from Office No. 3014 (tel. 739 51 87).

C. OBSERVER STATUS OF INTERGOVERNMENTAL ORGANIZATIONS

10. The Working Group agreed to revert to the requests from intergovernmental organizations for observer status (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

D. DATE OF THE NEXT MEETING

11. The Working Group agreed to hold its next meeting on 28-29 June 1999, without prejudice to any informal consultations that may prove to be necessary in the interval.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 24-25 FEBRUARY 1999

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its seventh meeting on 24-25 February 1999 under the chairmanship of Ambassador Ronald Saborío Soto (Costa Rica).

2. The agenda for this meeting consisted of: (i) transparency-related provisions in existing international instruments on government procurement and national procedures and practices; and (ii) requests for observer status by international intergovernmental organizations. In addition, a number of delegations made general statements at the outset of the meeting.

A. GENERAL STATEMENTS

3. The representative of the United States said that, at the discussion in the General Council intersessional meetings of 27 January and 2 February 1999 on issues pertaining to paragraph 9(b) of the 1998 Ministerial Declaration, there had appeared to be broad support, both among developed and developing country Members, for pursuing an agreement on transparency in government procurement. It had been understood by all Members that the Singapore mandate was strictly limited to transparency and did not extend to market access in the area of government procurement. The requirements in an eventual agreement should not call into question national policies, including those that were deemed necessary to achieve certain socio-economic and development objectives, such as domestic preferences, provided that they were administered in a transparent manner. Without prejudging the views of Members with regard to the plurilateral Agreement on Government Procurement, his delegation considered that the detailed procedural requirements of that Agreement should not be replicated in an agreement on transparency. Instead, a future agreement should set forth a flexible framework of procedural rules that would be focused on the core principles of transparency without sacrificing the basic disciplines in this respect. Having successfully completed its task of analysis, at least with regard to certain elements, the Group was well placed to begin focused work on the development of a number of elements, for example those raised in Sections III to VIII of the List of Issues. It would need to continue its analytical work on some of the more complicated issues raised which would need more in-depth study.

4. The representative of the European Community said that her delegation supported the views expressed by the representative of the United States. The work of the Working Group on Transparency in Government Procurement was separate from the work related to the Agreement on Government Procurement. The rules of a future transparency agreement might be more flexible than those prescribed in the plurilateral Agreement. While the European Community was a Party to the plurilateral Agreement, its approach in the work of the Working Group had always been to look at the basic principles of transparency in government procurement. If those principles turned out to be the same as those of the plurilateral Agreement, this would simply mean the Agreement on Government Procurement reflected them adequately and should not be taken to imply that the rules of the

Agreement on Government Procurement had been imposed on Members that were not Parties to that Agreement.

B. TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES

5. For its discussion of this item, the Working Group had before it the informal note by the Chair, entitled "List of Issues Raised and Points Made", listing the issues that had been raised, together with the points made on these issues, under each of the items that were discussed by the Group at its meetings in November 1997, February, June and October 1998 (Annex to the Report of the Working Group to the General Council for 1998, circulated in document WT/WGTGP/2). As an auxiliary informal paper for the use of Members wanting to draw on it, delegations also had available to them a revision of the informal note by the Secretariat, "List of Proposals on Items III-VII of the Checklist" reflecting the proposals made on items III-VII in a succinct form, which identified the source of the different proposals and summarized the written and oral comments on these proposals (Job No. 690).

6. The Group took up, in turn, each of the sections in the note "List of the Issues Raised and Points Made". Under the relevant sections, the following representatives introduced their written contributions: the representative of the European Community on methods of procurement (Job No. 699), the representative of Norway on publication of information on national legislation and procedures (Job No. 1067), the representative of the United States on evaluation criteria and technical specifications (Job No. 1027), the representative of Australia, respectively, on rights and responsibilities of government as a buyer, value for money in government procurement, accountability and due process (Job No. 1043). Points made are reflected in a revision of this document and also in a revised version of the "List of Proposals on Items III-VII of the Checklist" (Job Nos. 2934 and 2950, respectively).

7. After discussion of the sections of the note "List of the Issues Raised and Points Made", the representative of Venezuela introduced a non-paper on transparency in government procurement and the fight against bribery (Job No. 481). He said that the purpose of the non-paper was to provide a basis for a discussion in the Working Group of the relation of the phenomenon of bribery to its work. His delegation was aware that the fight against bribery and corruption was a difficult matter as well as a politically delicate one. However, his delegation sought the cooperation of Members in finding solutions to problems that were common to all countries.

8. In response to the requests by some delegations, the Working Group agreed that the Secretariat would make available to delegations, upon request, the texts of the OAS Inter-American Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.¹

9. The Working Group agreed that at the next meeting it would pursue its work under this agenda item in the following way: (i) it would revert to the issues contained in the "List of Issues Raised and Points Made", on the basis of a further version of this note updated in the light of the discussion at the present meeting and the new papers submitted; and (ii) delegations would also have available to them a revised version of the informal note reflecting the proposals made on items III-VII.

¹ Available, on request, from Office No. 3014 (tel. 739 51 87).

C. OBSERVER STATUS OF INTERGOVERNMENTAL ORGANIZATIONS

10. The Working Group agreed to revert to the requests from intergovernmental organizations for observer status (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

D. DATE OF THE NEXT MEETING

11. The Working Group agreed to hold its next meeting on 28-29 June 1999, without prejudice to any informal consultations that may prove to be necessary in the interval.

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 8-9 OCTOBER 1998

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its sixth meeting on 8-9 October 1998 under the chairmanship of Ambassador Werner Corrales Leal (Venezuela).
- A. **TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES**
2. For its discussion of this item, the Working Group had before it the informal note by the Chair, entitled "List of Issues Raised and Points Made", listing the issues that had been raised, together with the points made on these issues, under each of the items that were discussed by the Group at its meetings of 3-4 November 1997, 19-20 February and 22 June 1998 (Job No. 4281) and an informal factual note by the Secretariat, prepared in response to a request at the Group's June meeting, reflecting the written and oral proposals made under these sections (Job No. 4695). On the latter document, some delegations expressed a concern that the use of square brackets in the document made it have an appearance similar to that of a negotiating document. It was also said that it would have been preferable if the sources of the proposals presented had been indicated in detail. Some other delegations were of the view that the note by the Secretariat was a mere distillation of the proposals made and consistent with the mandate given to it. After discussion, the Working Group agreed that it would take up the issues before it on the basis of the "List of Issues Raised and Points Made" and that, in the discussion of Sections III-VIII of that note, delegations so wishing would be free to refer to the "List of Proposals on Items III-VII of the Checklist".
3. The Group took up, in turn, each of the sections in the note "List of the Issues Raised and Points Made". Points made will be reflected in a revision of this document and also in a revised version of the "List of Proposals on Items III-VII of the Checklist".
4. With regard to Section XII on Technical Cooperation and Special and Differential Treatment of Developing Countries, the Group had before it the communications received from UNCITRAL, OECD, the Asian Development Bank, the African Development Bank, IMF, APEC Government Procurement Experts Group, the European Bank for Reconstruction and Development, ITC and UNDP, circulated in documents WT/WGTGP/W/20 and Addenda 1 to 7, which had been circulated in response to a request by the Group to the Secretariat to provide information on the availability of technical cooperation programmes in the area of government procurement.
5. The representative of Turkey introduced a written contribution on his country's national procedures and practices (document WT/WGTGP/W/21).

6. Following an exchange of views regarding the work at the next meeting under this agenda item, the Group agreed that: (i) it would revert to the issues contained in the "List of Issues Raised and Points Made", using this note as the basis for its discussions; and (ii) as an auxiliary informal paper for the use of Members wanting to draw on it, delegations would also have available to them a revision of the informal note reflecting the proposals made on items III-VII in a succinct form, which would identify the source of the different proposals and summarize the comments at the present meeting on these proposals.

B. OBSERVER STATUS OF INTERGOVERNMENTAL ORGANIZATIONS

7. The Working Group agreed to revert to the requests from other intergovernmental organizations (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

C. REPORT TO THE GENERAL COUNCIL

8. The Working Group adopted its report for 1998 to the General Council which was subsequently circulated in document WT/WGTGP/2.

D. MEETINGS IN 1999

9. The Working Group agreed to hold three meetings in 1999 and that the first two of these would be held on 24-25 February and 28-29 June 1999. Informal meetings would also be held as necessary.

Working Group on Transparency in Government Procurement

REPORT ON THE MEETING OF 22 JUNE 1998

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its fifth meeting on 22 June 1998 under the Chairmanship of Ambassador Werner Corrales Leal (Venezuela).
- A. **TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES**
2. For its consideration of this agenda item, the Working Group had before it an informal note by the Chair, entitled "List of Issues Raised and Points Made", listing the issues that had been raised, together with the points made on these issues, under each of the items that were discussed by the Group at its meetings of 3-4 November 1997 and 19-20 February 1998 (Job No. 1860).
3. The representatives of Morocco and Slovenia summarized the main points of new submissions containing factual information on their national procedures and practices (WT/WGTGP/W/19 and Job. No 3387).
4. The following representatives introduced written contributions: the European Community and Norway addressing the issue of ensuring that transparency in procurement policies and practices is achieved (WT/WGTGP/W/17 and Job No. 3245); the representative of Switzerland on minimal requirements for relevant information to be published in tender notices (Job No. 3436); the representative of Venezuela on particular characteristics of government procurement, privatization and concession-granting systems (Job No. 3295); and the representative of the European Community on technical assistance (WT/WGTGP/ W/18).
5. The Working Group pursued its detailed discussion, taking up in turn the subject of each section of the informal note "List of Issues Raised and Points Made".
6. During the discussion, the representative of Mexico suggested that delegations might provide contributions showing their experience in respect of the treatment of concessions and the maintenance of record of procurement proceedings.
7. With regard to the item on technical cooperation, the Working Group agreed to request the Secretariat to prepare a background paper containing information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.
8. Following informal consultations, the Group agreed that the work at the next meeting under this agenda item would be carried forward in the following way: (i) the informal note on the list of issues raised and points made would be revised to reflect the discussion at the present meeting and the

written submissions made by various delegations on these issues¹; (ii) delegations would submit written contributions on specific issues as a basis for more focused discussion of the items under consideration in the Group by early September; (iii) the Secretariat would prepare an informal factual note reflecting the written and oral proposals made under items III to VI of the "List of Issues Raised and Points Made"², indicating where both common ground and differences existed.³

B. REQUESTS FOR OBSERVER STATUS FROM INTERGOVERNMENTAL ORGANIZATIONS

9. In response to a request by UNCTAD, the Working Group agreed to grant observer status to UNCTAD, on the basis of reciprocity with respect to access to proceedings, documents and other aspects of observership. It agreed to revert to the requests from other intergovernmental organizations (OECD, SELA and OIC) in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

C. NEXT MEETING

10. The Working Group agreed to hold its third meeting in 1998 on 8 and 9 October.

¹ To be circulated shortly.

² Items III to VII following the insertion of item V on "time periods" in the latest version of the "List of Issues Raised and Points Made"

³ This decision, initially accepted on an ad referendum basis, was subsequently adopted since no objections were communicated to the Secretariat by delegations within the deadline of one week agreed by the Working Group for any such objections.

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/M/4

8 April 1998

(98-1361)

Working Group on Transparency in Government Procurement

REPORT ON THE MEETING OF 19-20 FEBRUARY 1998

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its fourth meeting on 19 and 20 February 1998 under the Chairmanship of Ambassador Werner Corrales Leal.
2. The substantive agenda for this meeting comprised transparency-related provisions in existing international instruments on government procurement and national procedures and practices. In addition, the Working Group considered requests for observer status by international intergovernmental organizations. Under "other business", the Working Group considered a proposal for a demonstration session on the use of information technology, a communication from Japan, reporting by the Group to the 1998 Ministerial Conference and the dates of future meetings.
 - A. **TRANSPARENCY-RELATED PROVISIONS IN EXISTING INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES**
3. For its consideration of this agenda item, the Working Group had before it an informal note by the Chair, entitled "List of Issues Raised and Points Made", listing the issues that had been raised, together with the points made on these issues, under each of the items discussed at the Group's meeting of 3-4 November 1997 (Job No. 73). Also before the Working Group was the note by the Secretariat, "Synthesis of the Information Available on Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures and National Practices" (WT/WGTGP/W/6).
4. The representatives of Hong Kong, China, the Czech Republic, Uruguay and Australia summarized the main points of new submissions containing factual information on their national procedures and practices (WT/WGTGP/W/10, 12, 13 and 14 respectively).
5. The representative of Australia introduced a written contribution relating to principles of transparency in government procurement (Job No. 136), and the representative of the United States two contributions respectively on review mechanisms and transparency in procurement methods (WT/WGTGP/W/15 and 16). The Group was also presented with a communication from the Chair of the APEC Government Procurement Expert Group (WT/WGTGP/W/11).
6. The Working Group pursued its detailed discussion, taking up in turn the subject of each section of the informal note by the Chair, "List of Issues Raised and Points Made". The points made will be reflected in a revision of the informal note in the light of the discussion at the meeting and the written submissions made by various delegations on these issues. The revised note¹ would be without prejudice to whether the position of any delegation and, in particular, to whether the Working Group would decide to include or exclude any particular aspect addressed in it from the elements that it

¹ To be circulated with Job No. 1860.

might eventually develop for inclusion in an appropriate agreement. The Chairman urged delegations, wherever possible, to make written contributions on the issues before the Group prior to its next meeting.

B. REQUESTS FOR OBSERVER STATUS FROM INTERGOVERNMENTAL ORGANIZATIONS

7. The Working Group considered requests for observer status received from the UNCTAD, the OECD, the SELA and the OIC (Organization for Islamic Conference). It agreed to take up the question of observer status for UNCTAD at its next meeting and to revert to the requests by other international intergovernmental organizations in the light of the consultations that were currently being held by the Chairman of the General Council on this matter.

C. OTHER BUSINESS

(i) *Demonstration on the use of information technology*

8. Following a suggestion by the representative of Canada, the Group noted that the Secretariat would organize, in conjunction with interested delegations, a demonstration session on the application of information technology in the area of transparency in government procurement, to be held the day after the next meeting of the Group. Members interested in making presentations on the operation of the systems in their countries were invited to contact the Secretariat.

(ii) *Japan: transparency-related proposal by Japanese Central Council on Construction Contracting Business to the Government of Japan*

9. The representative of Japan informed the Working Group of a transparency-related proposal submitted by the Central Council on Construction Contracting Business of Japan to the Government of Japan (Job No. 939). In response to a request by the delegation of Mexico, the Secretariat was requested by the Chair to provide the Group with any information on work relating to transparency in the area of procurement of construction services in the context of the Working Party on GATS Rules.

(iii) *Report to the 1998 Ministerial Conference*

10. The Working Group noted that, at its meeting of 10 December 1997, the General Council had agreed that its report to the 1998 Ministerial Conference would consist of the 1997 Annual Reports of the General Council and its subsidiary bodies together with a brief update report of the General Council concerning developments in the first months of 1998, and that Chairpersons of subsidiary bodies would be invited to report orally on work done since 1997 at its final meeting before the Ministerial Conference to the General Council (WT/GC/M/25). The Working Group noted that, while the oral presentation would be made on the Chair's own responsibility, it would be circulated in advance to Members for comments.

(iv) *Dates of meetings*

11. The Working Group agreed that its next meeting would be held on 22-23 June and its autumn meeting on 8-9 October 1998. The demonstration session on information technology would be held on 24 June 1998.

RESTRICTED

WORLD TRADE
ORGANIZATION

WT/WGTGP/M/3

9 January 1998

(98-0056)

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 3-4 NOVEMBER 1997

Note by the Secretariat

1) *The Working Group on Transparency in Government Procurement held its third meeting on 3 and 4 November 1997 under the Chairmanship of Ambassador Werner Corrales Leal.*

2) *The substantive agenda for this meeting comprised general statements on the work of the Working Group and transparency-related provisions in existing international instruments on government procurement and national procedures and practices. In addition, the Working Group considered requests for observer status by international intergovernmental organizations. Under other business, the Working Group considered a draft of the report by the Working Group to the General Council and the organization of its work during 1998.*

A. GENERAL STATEMENTS

3) *The representatives of Norway and Switzerland introduced non-papers relating to elements of transparency in government procurement (Job Nos. 5220 and 6328 respectively). By way of clarification of her delegation's non-paper (Job No. 5220), the representative of Norway stated that her delegation had received preliminary comments on this non-paper which seemed to indicate that some of the objectives sought therein were judged as going too far, while others were seen as not going far enough. Norway's initiative was meant to be a constructive contribution to the Group's discussion and was not intended to go beyond its mandate. The aim of Part I of the non-paper had been to share Norway's positive experience as a party to the WTO Agreement on Government Procurement and the European Economic Area Agreement. Norway's participation in these international agreements had contributed to more efficient procurement through cheaper and more competitive bids, as well as through professional procuring entities and suppliers. This win-win situation to the benefit of all parties concerned, not least the consumers and taxpayers, was to a considerable degree the result of increased transparency in government procurement. Thus, the points*

made regarding possible objectives and effects of a transparency agreement in Part II of the non-paper had to be seen in the light of the positive experience gained through Norway's participation in international agreements in the field of government procurement. In the long term, similar benefits might reasonably be expected from a WTO agreement on transparency in government procurement. The third tiret in Part II should be understood more as a potential effect than as a primary goal. Norway did not wish to pre-empt the discussion on this point. A transparency agreement should confine itself to transparency questions in government procurement. Suggestions to this end were to be found in Part III of the non-paper, which contained a list of elements that might be included in a transparency agreement. In Norway's view, such an agreement should also contain provisions on enforcement. Regarding the scope of the transparency agreement in Part IV, Norway's thinking was tentative and her delegation did not want to prejudge any specific limitations at this stage.

*B. TRANSPARENCY-RELATED PROVISIONS IN EXISTING
INTERNATIONAL INSTRUMENTS ON GOVERNMENT
PROCUREMENT AND NATIONAL PROCEDURES AND PRACTICES*

4) The representatives of Korea, Tunisia, Hungary, Japan and Poland summarized the main points of their submissions containing factual information on their national procedures and practices (WT/WGTGP/W/7-9 and Job Nos. 6329 and 6691 respectively).

5) For its consideration of this agenda item, the Working Group had before it a Secretariat note, •Synthesis of the Information Available on Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures and National Practices• (WT/WGTGP/W/6). The Working Group had a detailed discussion taking up in turn the subjects of Sections II-X of the Secretariat note, together with the topics of special and differential treatment for developing countries and technical cooperation. In order to facilitate further discussion of these items at its next meeting, the Working Group noted that the Chairman would draw up, with the assistance of the Secretariat, a list of the issues that had been raised, together with the points made on these issues, under each of the items that it had discussed.¹ The list would be without prejudice to whether the Group would decide to include or exclude any particular aspect from the elements that it might eventually develop. The Chairman urged delegations, wherever possible, to make written contributions on the issues before the Group prior to its next meeting.

¹To be circulated in Job No. 73

C. REQUESTS FOR OBSERVER STATUS FROM INTERGOVERNMENTAL ORGANIZATIONS

6) *In response to a request by UNCITRAL, the Working Group agreed to grant observer status to the United Nations, represented by UNCITRAL, on the basis of reciprocity with respect to access to proceedings, documents and other aspects of observership. The Working Group agreed to invite on an ad hoc basis the OECD and SELA to attend its next meeting as observers.*

D. OTHER BUSINESS

(i) Report to the General Council

7) *The Working Group considered a draft of its report to the General Council which was subsequently circulated to and adopted by Members.²*

(ii) Organization of work during 1998

8) *The Working Group agreed to hold three substantive meetings in 1998, it being understood that the third meeting would have a focus on the adoption of the report to the General Council but with flexibility to take up other matters. Informal meetings would be held as necessary but their number would be kept to a minimum. The first two meetings of the Group in 1998 will be held on 19-20 February and on 11-12 June.*

²*Subsequently circulated in WT/WGTGP/1*

RESTRICTED

*WORLD TRADE
ORGANIZATION*

WT/WGTGP/M/2

28 August 1997

(97-3501)

***Working Group on Transparency
in Government Procurement***

REPORT ON THE MEETING OF 21 JULY 1997

Note by the Secretariat

- 1) *The Working Group on Transparency in Government Procurement held its second meeting on 21 July 1997 under the Chairmanship of Ambassador Werner Corrales Leal.*
- 2) *The agenda for this meeting consisted of the following items: (i) general statements; (ii) information on national procedures and practices; (iii) transparency-related provisions in existing international instruments on government procurement procedures and in WTO Agreements; (iv) requests for observer status from intergovernmental organizations; and (v) organization of work.*

General statements

- 3) *Some delegations said that, in the study phase of its work, the Group should adopt a wide approach to the definition of the term •transparency•, leaving any narrowing of its scope to the negotiations phase. Some delegations, emphasizing the educational nature of the first phase of the Group's mandate, said that in the study phase the Working Group should lay the path towards a common understanding of the concept of transparency in government procurement. It was also suggested that the Group's work should be guided by the meaning of transparency that was implicit in the relevant provisions of international instruments on government procurement procedures. The point was made that an over-ambitious interpretation of the term •transparency• would imply a change in the scope of the mandate of the Working Group.*
- 4) *Some delegations stated that governments had developed a variety of procurement regimes in order to meet their various social and economic policy goals. Given that the objective of transparency was achieved through a diversity of ways, the Working Group should not seek to be over-prescriptive about how to ensure transparency. One delegation said that an agreement on transparency*

should allow sufficient flexibility so that those countries which had successfully combined decentralization with openness and non-discrimination would not be required to re-regulate procurement in a way that would have the effect of compromising public sector management policy reforms and incurring unnecessary costs.

5) *Delegations also identified a number of aspects of transparency that they believed the Working Group should cover in its study. These included access to procurement laws, regulations and procedures, public notices of procurement opportunities, information on qualification of suppliers, information on award decisions and criteria including national preferences, adequate time-limits for submission of bids, entities and threshold values to be subjected to the requirements of transparency, mechanisms for domestic review and procedures for the settlement of disputes between governments. The need to address the way in which national policy objectives were taken into account, for example through exceptions to the principle of national treatment and technical assistance to less developed countries was also mentioned.*

6) *With regard to the relationship of the work of the Working Group to that of other WTO bodies, one delegation said that the Working Group was set up to develop elements on transparency in government procurement at the multilateral level given that the plurilateral Agreement on Government Procurement with its limited membership had failed to adequately ensure transparency in all WTO Members and that the mandate of the Working Party on GATS Rules was limited to government procurement in the services sector.*

7) *The delegations of Canada and the United States introduced non-papers setting out a number of guiding principles that they considered important for developing elements on transparency in government procurement (Job Nos. 4099 and 4133).*

Information on national procedures and practices

8) *The Chairman informed the Working Group that, following its request at its previous meeting, the Secretariat had invited the APEC and the FTAA to make available information regarding the surveys they had undertaken of national government procurement regimes. The information that had been received from the Chairman of the APEC Government Procurement Experts Group had been made available to the Group (WT/WGTGP/W/4 and S/SPGR/W/21). The Secretariat had been informed that similar information from the FTAA would be available in the autumn. A note by the Secretariat •Synthesis of the Responses to the Questionnaire on Government Procurement of Services• had been prepared at the request of the Working Party on GATS Rules (S/SPGR/W/20). The Working Group expressed its appreciation for the information provided by the APEC Government Procurement Experts Group.*

9) *The representative of the European Community introduced a note setting out the procedures and practices relating to transparency in the European*

Community (WT/WGTGP/W/6). Another delegation made an oral statement describing its •best practice guidelines• approach that constituted the basis of its decentralized and deregulated procurement regime.

10) *The Chairman encouraged Members to make written contributions providing information on their national procedures and practices on transparency in government procurement.*

11) *A number of delegations suggested that the Secretariat prepare a synthesis document based on the factual information on national procedures and practices relating to transparency available in the various sources mentioned under this item together with the information in the note by the Secretariat on transparency-related provisions of the existing international instruments (WT/WGTGP/W/3).*

Transparency-related provisions in existing international instruments on government procurement procedures and in WTO Agreements

12) *The Group had before it a note prepared by the Secretariat •Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures and in WTO Agreements• (WT/WGTGP/W/3). It was stated that the note was instructive in demonstrating the large degree of commonality in the transparency provisions in existing international instruments on government procurement. With regard to information in the note on the importance transparency could have for the objective of giving all suppliers equal opportunity to compete regardless of nationality and thereby promoting liberalization of trade, a Member commented that the two issues were not linked. In this respect some other Members said that the Group should recognize that transparency was essential in terms of market access even when national preferences were applied. Access to information on preferences or other conditions favouring national suppliers would enable potential bidders to assess whether to bid for a contract in full knowledge of the conditions applying to a bid and thus enhance the predictability and certainty of the overall procurement process.*

13) *Some delegations said that the note could have been amplified on the provisions of the existing international instruments that gave leeway to adoption of policies aimed at achieving legitimate social and economic goals, for example offsets or other measures providing special treatment for developing countries. The existing international instruments were designed taking into account the diversity of national procurement systems and regimes. One delegation said that the note could have more detailed information on minimum threshold values for procurement. Another delegation emphasized the importance of the topics in the note relating to maintenance of records and information technology. One other delegation also mentioned that, transparency was important to purchasers, as well as to the other interested parties mentioned in paragraph 4 of WT/WGTGP/W/3, since it facilitated comparing the price paid as a result of procurement policies with the market price of a procurement.*

Request for observer status from intergovernmental organizations

14) *The Working Group considered requests for observer status received from the OECD and the SELA and agreed to invite these organizations to attend its next meeting in an observer capacity. At that meeting the Group would revert to the issue of granting these organizations a more permanent observer status in accordance with the normal guidelines for observer status for intergovernmental organizations in the WTO which call for case-by-case consideration of requests for observership by each WTO body to which a request has been addressed (WT/L/161, Annex 3).*

Organization of work

15) *On the basis of the discussion under the above items, the Chairman suggested the following regarding the organization of the work of the Group. Delegations would provide information on their national procedures and practices relating to transparency in government procurement. The Group would request the Secretariat to prepare a paper synthesizing the factual information on national procedures and practices relating to transparency available in the responses to the questionnaire on government procurement of services in the Working Party on GATS Rules, the surveys of national legislation of APEC economies and contributions to be submitted by delegations together with the information in the note by the Secretariat on the transparency-related provisions in existing international instruments. Further, in response to a suggestion by one delegation, the Secretariat would make contact with the International Trade Centre in order to obtain information on its technical assistance activities in the area of government procurement for circulation to delegations. The Group would hold its next meeting on 3-4 November 1997. Prior to that meeting, the Working Group would hold informal consultations in mid-October to organize the discussion.*

16) *The Working Group agreed to proceed as suggested by the Chairman.*

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WORLD TRADE
ORGANIZATION

WT/WGTGP/M/1

15 July 1997

(97-2947)

**Working Group on Transparency
in Government Procurement**

REPORT ON THE MEETING OF 23 MAY 1997

Note by the Secretariat

1) *The Working Group on Transparency in Government Procurement held its first meeting on 23 May 1997 under the Chairmanship of Ambassador Werner Corrales Leal.*

2) *The agenda for this meeting consisted of the following items: (i) existing international instruments and activities; (ii) organization of work; (iii) arrangements for cooperation with other intergovernmental fora; (iv) general statements.*

Existing international instruments and activities

3) *Presentations were made by the representatives of the UNCITRAL and the World Bank on the relevant instruments and activities relating to government procurement in their organizations. The Working Group expressed its appreciation for these presentations. Documents WT/WGTGP/W/1 and WT/WGTGP/W/2 contain the presentations of the representatives of the UNCITRAL and of the World Bank, respectively. The annex to this note contains a record of the specific comments made and questions raised with regard to these presentations and the answers provided by the representatives of the organizations.*

Organization of work

4) *On the basis of consultations with Members, the Chairman proposed the following regarding the work of the Group. The Group would limit itself for the time being to the organization of the work required under the first stage of its mandate under the Ministerial Decision, namely the study of transparency in government procurement practices, taking into account national policies. The Group would request the Secretariat to prepare a paper presenting factual information on the provisions related to transparency in international instruments*

on government procurement procedures (e.g. UNCITRAL Model Law on Procurement of Goods, Construction and Services; World Bank Procurement Guidelines; the Plurilateral WTO Agreement on Government Procurement) and in WTO agreements. Given the widespread view that a way should be found of taking advantage of the information collected on national practices by other bodies, the Group would ask the Secretariat to make contact with APEC and the FTAA to invite them to make available what information they could share with the Group regarding the surveys they had undertaken. As for the replies to the questionnaire of the Working Party on GATS Rules, these were already available in the S/WPGR/W/- series of documents. As regards the timing of meetings, the Group would hold its first full-scale substantive meeting on 21 and 22 July 1997. The Group would take a decision on a subsequent meeting or meetings this year in July, by which time it would have a clearer idea as to the amount of work that had to be undertaken. Finally, the Working Group would note the view of a number of delegations that the mandate of this Group was independent of those of the GATS Rules Group and the Committee on Government Procurement. While this Group's independence should be maintained vis-à-vis the GATS Rules Group, the Chairman would seek to maintain contact with the Chair of that Group so as to facilitate any necessary coordination on practical matters.

- 5) The Working Group agreed to proceed as suggested by the Chairman.
- 6) The Chairman encouraged delegations to submit written contributions.

Arrangements for cooperation with other intergovernmental fora

7) The Working Group noted that the IMF and the World Bank had observer status in this Working Group pursuant to the cooperation agreements concluded by the WTO with these organizations (WT/L/195) and agreed that requests for observer status from other intergovernmental organizations would be considered in accordance with the normal guidelines for observer status for international intergovernmental organizations in the WTO (WT/L/161, Annex 3). The Group agreed to invite UNCITRAL to attend its next meeting.

General statements

8) After the conclusion reached on the organization of work, some Members took the opportunity to make remarks of a general nature. It was stated that in its further work the Group would need to clarify the elements that constituted transparency in government procurement. The information gathering and analysis phase of the Group's mandate would facilitate the identification of these elements. A wide participation of Members in the work of the Group was urged and the hope was expressed that many delegations would bring forward views and proposals that would guide the Group in proceeding with the study phase of its work.

9) Regarding coordination of work with that of the Working Party on GATS Rules, the point was made that, notwithstanding the separate mandates of the two

fora, the duplication of work in this area should be avoided by allowing the possibility of exchanging information on the respective work of the two fora.

10) The delegation of Japan introduced a non-paper regarding the development of elements on transparency in government procurement. In response to a question, the representative of Japan clarified that the views expressed in the paper were based on Japan's experience with the implementation of the relevant provisions of its domestic laws and regulations in force, including the procedures relating to an enforcement mechanism which had been established under the Agreement on Government Procurement.

ANNEX

Comments Made and Questions Raised in Respect of the Presentations Made by
the
Representatives of the UNCITRAL and the World Bank

UNCITRAL

11) *In response to a question on how many countries had incorporated the Model Law, either in whole or in part, in their legislation, the representative of UNCITRAL responded that between 15 to 20 countries either had completed or were in the midst of the legislative process necessary for the application of the Model Law. The countries with economies in transition constituted the main group of countries using the Model Law, but the Model Law could well be applied in other countries and regions.*

12) *In response to a question on the reason why the Model Law had not been used as a basis for the procurement legislation in more countries, the representative of the UNCITRAL responded that the Model Law had only been concluded in 1994 and, given the limited time since then, had been used rather extensively. Harmonization and modernization of national laws in the framework of international conventions was a lengthy process.*

13) *In response to a question on whether government representatives participated in the work of the UNCITRAL, the representative of the UNCITRAL responded that the Commission was composed of representatives of governments. Government representatives had also been directly involved in the preparation of the Model Law which their governments had subsequently agreed by consensus. During the initial drafting stage of the Model Law, the UNCITRAL Secretariat had occasionally consulted experts in a particular field but these experts had often been government officials or delegates. The governments' involvement in the initial drafting stage of the legislative instruments of UNCITRAL was a key to the success of their adoption.*

14) *In response to a question on the way the Model Law was different from the World Bank Guidelines, the representative of the UNCITRAL responded that the scope of the Model Law was broader. The Model Law was a legislative instrument for use by governments as a basis for their national laws applicable to all their procurement activities, whereas the World Bank Guidelines were designed specifically for procurement under projects financed by World Bank loans. Moreover, by virtue of its adoption by governments through the UN decision-making process, the Model Law could be seen as having a particularly significant juridical status. The World Bank Guidelines had juridical effect pursuant to loan agreements between the World Bank and the Borrower countries given treaty status.*

15) A question was asked regarding the range of national procurement laws that the drafters of the Model Laws had used as a source of factual information. The representative of the UNCITRAL responded that the process of the preparation of the Model Law had been initiated in the mid- to late 1980s with a solicitation by the Secretary of the Commission to all the member states of the United Nations and observer governments requesting them to provide the UNCITRAL secretariat with copies of their procurement legislation. The large collection of national procurement legislation thus gathered had been used by the UNCITRAL secretariat as an input to the preparation of the background studies and initial drafts of the Model Law.

16) A question was asked whether the drafters of the Model Law had considered a definition for the terms •public purchase•, •public buyer• and •public sector•. The representative of the UNCITRAL responded that the relevant article under the General Provisions of the Model Law merely indicated that the national legislature would define the term •procuring entity• for the purposes of the enacting law in accordance with the public law of the individual enacting State. In the Guide to Enactment of the Model Law, UNCITRAL indicated certain factors that the legislature might take into account in determining the type of entities that should be covered within the scope of the Model Law.

17) In response to a question on the scope of the procurement covered by the Model Law, the representative of the UNCITRAL responded that the different methods of procurement set forth in the Model Law were intended to apply as broadly as possible to goods, works and services. The design of a procurement method for intellectual and consultancy services in the Model Law was a useful contribution of UNCITRAL to the development of legislation on procurement.

18) A question was raised as to whether the Model Law set forth procedures for dispute settlement and for arbitration. The representative of the UNCITRAL responded that Chapter VI of the Model Law provided model provisions for the establishment of a review mechanism to handle complaints by bidders who considered that they had not been treated in accordance with the requirements of the Model Law. The review mechanism in the Model Law was essentially a three-stage process. In the first instance, the review was to be sought, prior to the entry into force of the procurement contract, through a direct petition to the procuring entity itself. This initial step had been included to allow the resolution of the problem between the complainant and the entity before the matter was submitted to an administrative review body. Finally, the Model Law gave an aggrieved bidder the right to seek judicial review. The Model Law did not provide in detail the requirements for a judicial review process because the mandate of the Commission did not extend to any matters that might involve impinging in this respect on national laws and procedures. With regard to arbitration, while the Model Law did not preclude a state from providing arbitration in the contractor selection phase, it did not expressly envisage arbitration at that stage of the government procurement process. Arbitration had a more significant role in settling disputes that related to the implementation or performance phase of contracts.

19) *In response to a question whether the Model Law was universally applicable by all countries irrespective of the stage of their development, the representative of the UNCITRAL responded that the composition of the Commission was based on a geographical distribution formula of the UN General Assembly which ensured the representation of governments with diverse economic and political systems in its deliberations. While there were differences in the way major legal systems in the world treated procurement, by codifying those procurement practices recognized as the best in the world, the Model Law was susceptible of application by governments in all regions and at different levels of economic development.*

20) *In response to a question on the relationship between ex-ante and ex-post elements of transparency and the notion of public accountability, the representative of UNCITRAL responded that the Model Law contained provisions that were designed to ensure that entities refrained from taking decisions that were important to individual bidders rights and to the integrity of the entire procurement process in an arbitrary or secretive fashion. For example, the procuring entity should include all relevant information about the qualification process in the record of procurement proceedings and, when a supplier's application to qualify was rejected, the entity should provide the supplier with the grounds for his disqualification. A further example of transparency disciplines would be that a procuring entity that had automatically cancelled the bid of a bidder who had offered an improper inducement to influence the procurement process had to inform the bidder of its decision and had to give him an opportunity to challenge any unjustified decision.*

21) *In response to a question whether UNCITRAL had prepared any studies on the transparency aspects of government procurement procedures, the representative of the UNCITRAL responded that while examination of transparency aspects had been at the heart of the process of preparation of the Model Law and had permeated many of the studies and reports of the working group, there were no studies that were exclusively devoted to the topic of transparency.*

World Bank

22) *A question was asked whether the World Bank had been promoting the development of government procurement legislation based on legislative instruments such as the UNCITRAL Model Law in the context of structural adjustment programs. The representative of the World Bank responded that, while there was no direct relationship between the development procurement legislation and the purpose of structural adjustment programs, modernization of procurement law might be included as a condition of a structural adjustment loan or of an investment loan in a given Borrower country. The World Bank provided technical assistance in the area of government procurement. In addition, a grant*

from a special fund established by the World Bank was available for governments• use of experts in this area.

23) In response to a question on whether the World Bank Guidelines were applicable to all procurement financed by World Bank loans irrespective of the size of the procurement, the representative of the World Bank responded that the International Competitive Bidding method was used for large-sized procurement contracts. For contracts of small value, the loan agreements allowed the procuring government to apply its local laws, to the extent that the procedures under the local laws were sufficiently clear and transparent.

24) In response to a question on the guidelines used by the regional development banks in the context of their loan agreements, the representative of the World Bank responded that the basic principles of the guidelines of the regional banks were essentially the same as those of the World Bank Guidelines. In particular the requirements on transparency in the guidelines of the regional banks were very similar to those set forth in the World Bank Guidelines.

25) A question was asked as to the reason for the existence of two separate World Bank Guidelines for procurement of goods and works and for selection and employment of consultants, respectively. The representative of the World Bank responded that different principles applied to procurement of goods and works and procurement of intellectual services. Price was the main evaluation criterion in purchasing goods or works. Therefore, open competitive bidding was the best method for this type of procurement. On the other hand, it was universally agreed by specialists on procurement that open competition based on price was not the best way of procuring intellectual services, which essentially consisted of the experience, knowledge and advice of consultants. Since it would not be feasible for the public purchaser to evaluate proposals from all bidders worldwide who had the necessary experience to provide a certain intellectual service, the procuring authorities usually established a shortlist of consultants who would be capable of fulfilling the terms of reference in question. Those service providers were asked to submit their proposals with a detailed explanation of their experience, staff, work plan, etc. The proposals were evaluated by using a methodology according to which merit points were allocated to quality and price. The total score was obtained by adding up the weighted quality and price scores, where price was given a lower weight than quality. The bidder with the highest points would then be invited to negotiate the contract.

26) In response to a question on whether any services other than intellectual services were covered by the Guidelines on goods and works, the representative of the World Bank responded that the Guidelines also applied to services which were bid and contracted on the basis of performance of a measurable physical output such as drilling, mapping and similar operations. The principles applying to the procurement of such services were similar to those applying to the procurement of civil works.

27) *In response to a question on whether the list of consultants shortlisted by the Borrower government had to be endorsed by the World Bank, the representative of the World Bank responded that while governments established the shortlist, the World Bank had to agree that the consultancy firms on the shortlist had the necessary experience and qualifications to fulfil the terms of reference in question and that there was an equitable geographical spread among the shortlisted firms. In cases where governments did not have the necessary knowledge or experience to develop a shortlist, for example for a consultancy service of a highly specialized nature, the Bank would be willing, at the request of the Borrower, to suggest a shortlist of consultants. For this purpose, the Bank would normally set up an ad hoc committee of Bank staff members to draw up the list.*

28) *In response to a question on whether the World Bank Guidelines on Selection and Employment of Consultants contained different requirements on transparency, the representative of the World Bank responded that, to the extent possible, those Guidelines incorporated the same basic principles of transparency as the Procurement Guidelines. For instance, at the stage of invitation of proposals from consultants, the •Information for Consultants• document must provide adequate information on the selection procedures including a listing of the technical evaluation criteria and other factors that would be applied in the evaluation of proposals. This would enable a consultancy firm to assess the points that it should emphasize and should enumerate in the preparation of a responsive proposal. However, there were no detailed requirements for advertising because bidding was limited to shortlisted firms.*

29) *In response to a question on whether the World Bank had studied the cost of promoting transparency in procurement procedures and its share in the total value of contracts, the representative of the World Bank responded that, for big contracts, the cost of applying transparency procedures was negligible in proportion to the benefits the Borrower achieved in terms of improved competition and therefore economy and efficiency in a procurement process. Small contracts were not subject to any extensive transparency procedures.*

30) *A question was asked on whether the transparency requirements contained in the national legislation of countries with economies in transition went further than the similar requirements in the World Bank Guidelines. The representative of the World Bank responded that newly developed national legislation was often based on the UNCITRAL Model Law which had certain additional requirements in the area of transparency. For instance, certain national legislation provided that contract awards must be announced to all bidders through publication in the press, whereas there was no such requirement under the World Bank Guidelines.*

31) *In response to a question on how the World Bank determined whether a contract should be subject to a prior review or a post review, the representative of the World Bank responded that the Bank applied prior review to expensive or complex contracts. However, because it was costly and time-consuming, the Bank used the prior review process only for procurement above a certain set value. This value was lower in the case of countries with limited experience with procurement.*

The prior review of the Bank assisted the Borrower country in ensuring the regularity of the procurement process. There was now a tendency to use post review more often. Interestingly, some countries found the prior review so helpful that they sometimes asked for it without being contractually obliged to do so.

32) In response to a question on how the World Bank Guidelines treated preferences granted to domestic suppliers, the representative of the World Bank responded that the World Bank Guidelines recognize that many governments grant preferences to protect their domestic manufacturers in pursuit of economic or social policy goals. Under the rules on international competitive bidding, governments were allowed to grant a margin of preference to domestic bidders in procurement of goods which was equivalent to the applicable import duty or 15% of the value of the contract if import duties exceeded 15% of such value.

33) In response to a question on whether domestic preferences were compatible with the principle of transparency, the representative of the World Bank said that giving domestic preferences did not violate the principle of transparency provided that the procurement legislation and the bidding documents stated the existence of any such preferences. The Bank would not allow a government to apply a preference to a procurement unless the bidding document indicated clearly that in the evaluation of the bid in question the local bidders would get the benefit of a margin of preference. However, by increasing the cost of the project for agencies in charge of project execution, granting of domestic preferences conflicted with the objective of economy and efficiency in procurement - getting the best possible value for price in a particular procurement.

34) In response to a question on whether the Bank had carried out a study on the distribution of the procurement contracts financed by World Bank loans among national and foreign firms, the representative of the World Bank said that the Appendices to the World Bank Annual Report contained the lists of procurement contracts by types of goods and works and also showed the distribution of contract awards between local and foreign suppliers/contractors.

35) A question was asked on whether the World Bank had encountered any cases of alleged and proven cases of corruption in the procurement activities under a project financed by a World Bank loan and how the Bank dealt with such a situation. The representative of the World Bank responded that the World Bank considered that there was essentially no room for corruption in case of procurement of goods and works if the detailed rules of International Competitive Bidding were followed in a procurement process. The prior review by the Bank also ensured the regularity of the process. Moreover, the availability of information on the rules of procurement made the whole process self-enforcing since bidders would notify the Bank of any attempt at irregularity by a bidder and/or a procurement official. The World Bank would intervene with the Borrower to ensure that it would withdraw any recommendation that was not in favour of the bidder with the lowest evaluated bid. If the Borrower country insisted on its decision, the Bank would refuse to finance the contract in question and cancel the portion of the loan allocated to the procurement by declaring

misprocurement. Under the Procurement Guidelines and under the Guidelines for Selection and Employment of Consultants, the Bank would declare a supplier or consultant ineligible to be awarded a contract financed by the Bank, either indefinitely or for a stated period of time, if the Bank determined that the supplier or consultant had engaged in corrupt or fraudulent practices. The World Bank had come across a number of cases of corrupt activities in this area. In one case, a major consultancy firm had submitted fraudulent curricula vitae of its staff and had falsified documents consistently, thus winning contracts fraudulently over the years. That firm had been blacklisted for a period of two years.

36) *A comment was also made that the practices of countries seemed to vary in respect of commissions paid in government procurement. Certain countries specifically prohibited the payment of commissions in public tendering while in certain other countries it appeared that commissions were tax-deductible as part of overall costs. The representative of the World Bank responded that the World Bank had amended the Guidelines in August 1996 in order to fight corruption and fraud more intensely. Under the new rules, a firm would be blacklisted if the Bank at any time determined that the firm had engaged in corrupt or fraudulent practices in competing for or in executing a Bank-financed contract. At the same, the Bank required that a provision be included in bidding documents requiring that a bidder declare in the bid form whether he had or had not paid a commission in competing for the contracts and giving details on the purpose of the commission, to whom it was paid and the amount paid. However, the World Bank Guidelines did not preclude a bidder from paying commission fees to an agent for handling a procurement contract. The commission would naturally be included in his price by the bidder, thereby increasing the overall price and decreasing the chances of the bidder to win the contract. A somewhat related problem was the fact that most countries still allowed their nationals to treat bribes paid to foreign officials as tax-deductible business expenditures. The OECD was working on this problem as part of their anti-corruption efforts.*

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Doc#	Access	Symbol	Title - HTML format	Date	Original format		
03-3199 	U	WT/WGTGP/W/41 Catalogue record	Working Group on Transparency in Government Procurement - Positive Effects of Transparency in Government Procurement and its Implementation - Communication [...] from the European Communities Preview (HTML)	17/06/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
03-0675 	U	WT/WGTGP/W/39 Catalogue record	Working Group on Transparency in Government Procurement - Domestic Review Mechanisms related to Transparency in Government Procurement - Communication from the European Communities Preview (HTML)	03/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
03-0692 	U	WT/WGTGP/W/40 Catalogue record	Working Group on Transparency in Government Procurement - Work Ahead Up to the Cancun Ministerial - Communication from the Republic of Korea Preview (HTML)	03/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
03-0655 	U	WT/WGTGP/W/38 Catalogue record	Working Group on Transparency in Government Procurement - Considerations Related to Enforcement of an Agreement on Transparency in Government Procurement - [...]ication from the United States Preview (HTML)	31/01/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-5539	U	WT/WGTGP/W/37	Working Group on Transparency in Government	14/10/2002	E	F	S

		Catalogue record	Procurement - Japan's View on Transparency in Government Procurement - Communication from Japan Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 34KB	3 p. 33KB	3 p. 31KB
02-5319	U	WT/WGTGP/W/33 Catalogue record	Working Group on Transparency in Government Procurement - Work of the Working Group on the Matters Related to Items VI - XII of the List of the Issues Raise[...] Made - Note by the Secretariat Preview (HTML)	03/10/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	30 p. 166KB	33 p. 187KB	38 p. 196KB
02-5216	U	WT/WGTGP/W/34 Catalogue record	Working Group on Transparency in Government Procurement - Capacity-Building Considerations Relating to Transparency in Government Procurement - Communication from the United States Preview (HTML)	30/09/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 31KB	2 p. 32KB	2 p. 31KB
02-5215	U	WT/WGTGP/W/35 Catalogue record	Working Group on Transparency in Government Procurement - Proposal for a Work Plan to Build on the Progress of the Working Group - Communication from the United States Preview (HTML)	30/09/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 35KB	3 p. 36KB	3 p. 35KB
02-5218	U	WT/WGTGP/W/36 Catalogue record	Working Group on Transparency in Government Procurement - Transparency of Contract Award Decisions - Communication from Canada Preview (HTML)	30/09/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 34KB	3 p. 33KB	3 p. 34KB
02-2856	D	WT/WGTGP/W/32 Catalogue record	Working Group on Transparency in Government Procurement - Work of the Working Group on the Matters Related to the Items I - V of the List of the Issues Ra[...] Made - Note by the Secretariat Preview (HTML)	23/05/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	20 p. 122KB	23 p. 123KB	24 p. 160KB
02-2693	U	WT/WGTGP/W/31 Catalogue record	Working Group on Transparency in Government Procurement - Methods of Procurement - Discussion Paper from Australia Preview (HTML)	15/05/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 29KB	2 p. 30KB	2 p. 29KB
01-2395	D	WT/WGTGP/W/30 Catalogue record	Working Group on Transparency in Government Procurement - Public Procurement Regime in Tunisia - Communication from Tunisia Preview (HTML)	09/05/2001	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4 p. 44KB	4 p. 42KB	4 p. 41KB
00-4212	D	WT/WGTGP/W/20/Add.1/Suppl.1 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - Organisa[...]velopment (OECD) - Supplement Preview (HTML)	12/10/2000	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 36KB	3 p. 33KB	3 p. 33KB
00-3554	D	WT/WGTGP/W/20/Add.2/Suppl.1 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - Asian [...] Development Bank - Supplement Preview (HTML)	14/09/2000	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 37KB	3 p. 39KB	4 p. 37KB
00-3597	D	WT/WGTGP/W/20/Corr.1	Working Group on Transparency in Government	14/09/2000	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	E	F	S

		Catalogue record	Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - United States Law (UNCITRAL) - Corrigendum Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 29KB	1 p. 29KB	1 p. 26KB
00-3526	D	WT/WGTGP/W/29 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities of Intergovernmental Organizations - Note by the Secretariat Preview (HTML)	13/09/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 40KB	4 p. 43KB	4 p. 40KB
00-3507	D	WT/WGTGP/W/20/Add.4/Rev.1 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - APEC Goods Group (APEC/GPEG) - Revision Preview (HTML)	11/09/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 33KB	2 p. 34KB	2 p. 32KB
00-3503	D	WT/WGTGP/W/20/Add.6/Rev.1 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - UNCTAD/United Nations Trade Centre - Revision Preview (HTML)	11/09/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4 p. 43KB	5 p. 45KB	5 p. 43KB
00-3504	D	WT/WGTGP/W/20/Add.9 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - United Nations Logistics Services (UNOPS) - Addendum Preview (HTML)	11/09/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 35KB	3 p. 33KB	3 p. 32KB
00-2238	U	WT/WGTGP/W/28 Catalogue record	Working Group on Transparency in Government Procurement - Proposal for a Work Programme for Coordinating International Technical Assistance with Implementation from the United States Preview (HTML)	06/06/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 37KB	3 p. 37KB	3 p. 34KB
99-4840	U	WT/GC/W/385 WT/WGTGP/W/27 Catalogue record	General Council - Working Group on Transparency in Government Procurement - Preparations for the 1999 Ministerial Conference - The WTO's Contribution to Trade Liberalization in Singapore and the United States Preview (HTML)	09/11/1999	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9 p. 59KB	10 p. 60KB	10 p. 56KB
99-4799	U	WT/WGTGP/W/26 Catalogue record	Working Group on Transparency in Government Procurement - Elements for an Agreement on Transparency in Government Procurement - Communication from the European Communities Preview (HTML)	05/11/1999	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7 p. 50KB	8 p. 52KB	8 p. 50KB
99-3986	D	WT/WGTGP/W/25 Catalogue record	Working Group on Transparency in Government Procurement - Documents of the Working Party on GATS Rules Relating to Concessions - Note by the Secretariat Preview (HTML)	27/09/1999	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	24 p. 139KB	25 p. 136KB	25 p. 124KB
99-3889	D	WT/WGTGP/W/24 Catalogue record	Working Group on Transparency in Government Procurement - APEC Non-Binding Principles on Government Procurement - Communication from Hong Kong, China Preview (HTML)	21/09/1999	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16 p. 98KB	17 p. 87KB	17 p. 112KB

99-2576	D	WT/WGTGP/W/20/Add.8 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - World Bank - Addendum Preview (HTML)	24/06/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 38KB	4 p. 39KB	4 p. 37KB
99-2575	D	WT/WGTGP/W/23 Catalogue record	Working Group on Transparency in Government Procurement - Domestic Review Mechanisms - Submission by the United States Preview (HTML)	24/06/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 34KB	2 p. 35KB	2 p. 33KB
99-1385	D	WT/WGTGP/W/22 Catalogue record	Working Group on Transparency in Government Procurement - APEC Non-Binding Principles on Government Procurement Accountability and Due Process - Communication from Hong Kong, China Preview (HTML)	07/04/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 40KB	10 p. 40KB	4 p. 37KB
98-3821	D	WT/WGTGP/W/20/Add.7 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - United Nations Programme (UNDP) - Addendum Preview (HTML)	02/10/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 32KB	2 p. 33KB	2 p. 31KB
98-3824	D	WT/WGTGP/W/21 Catalogue record	Working Group on Transparency in Government Procurement - Communication from Turkey - Government procurement in Turkey and National Procedures and Practices for Transparency in Government Procurement Preview (HTML)	02/10/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	10 p. 56KB	10 p. 59KB	10 p. 55KB
98-3676	D	WT/WGTGP/W/20 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - United Nations International Trade Law (UNCITRAL) Preview (HTML)	24/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 30KB	2 p. 32KB	2 p. 30KB
98-3677	D	WT/WGTGP/W/20/Add.1 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - Organisation for Economic Co-operation and Development (OECD) - Addendum Preview (HTML)	24/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 35KB	3 p. 35KB	3 p. 34KB
98-3678	D	WT/WGTGP/W/20/Add.2 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - Asian Development Bank - Addendum Preview (HTML)	24/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 30KB	2 p. 31KB	1 p. 29KB
98-3679	D	WT/WGTGP/W/20/Add.3 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - African Development Bank - Addendum Preview (HTML)	24/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 32KB	2 p. 32KB	2 p. 31KB
98-3680	D	WT/WGTGP/W/20/Add.4 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - APEC Goods Group (APEC/GPEG) - Addendum	24/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 31KB	1 p. 30KB	1 p. 29KB

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Doc#	Access	Symbol	Title - HTML format	Date	Original format		
98-3681 	D	WT/WGTGP/W/20/Add.5 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - Europea[...] Development (EBRD) - Addendum Preview (HTML)	24/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
98-3682 	D	WT/WGTGP/W/20/Add.6 Catalogue record	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - UNCTAD/[...]tional Trade Centre - Addendum Preview (HTML)	24/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
98-2865 	D	WT/WGTGP/W/19 Catalogue record	Working Group on Transparency in Government Procurement - Communication from Morocco - Transparency in Government Procurement in Morocco Preview (HTML)	20/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
98-2143 	D	WT/WGTGP/W/17 Catalogue record	Working Group on Transparency in Government Procurement - Communication from the European Communities Preview (HTML)	25/05/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
98-2142	D	WT/WGTGP/W/18	Working Group on Transparency in Government	25/05/1998	E	F	S

		Catalogue record	Procurement - Communication from the European Communities Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 32KB	2 p. 34KB	2 p. 31KB
98-0627	D	WT/WGTGP/W/14 Catalogue record	Working Group on Transparency in Government Procurement - Information on Procedures and Practices on Transparency in Government Procurement - Communication from Australia Preview (HTML)	23/02/1998	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4 p. 38KB	4 p. 41KB	4 p. 41KB
98-0936	U	WT/WGTGP/W/15 Catalogue record	Working Group on Transparency in Government Procurement - Review Mechanisms - Communication from the United States Preview (HTML)	19/02/1998	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 31KB	2 p. 31KB	2 p. 31KB
98-0937	U	WT/WGTGP/W/16 Catalogue record	Working Group on Transparency in Government Procurement - Transparency in Procurement Methods - Communication from the United States Preview (HTML)	19/02/1998	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 32KB	2 p. 33KB	2 p. 32KB
98-0551	D	WT/WGTGP/W/13 Catalogue record	Working Group on Transparency in Government Procurement - National Procedures and Practices on Transparency in Government Procurement - Communication from Uruguay Preview (HTML)	16/02/1998	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 p. 44KB	6 p. 46KB	6 p. 45KB
98-0137	D	WT/WGTGP/W/12 Catalogue record	Working Group on Transparency in Government Procurement - National Procedures and Practices on Transparency in Government Procurement - Communication from the Czech Republic Preview (HTML)	16/01/1998	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10 p. 54KB	10 p. 60KB	10 p. 57KB
97-5591	D	WT/WGTGP/W/11 Catalogue record	Working Group on Transparency in Government Procurement - APEC non-binding principles on Government Procurement: Transparency - Communication from Hong Kong, China Preview (HTML)	19/12/1997	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5 p. 35KB	5 p. 45KB	5 p. 37KB
97-5517	D	WT/WGTGP/W/9 Catalogue record	Working Group on Transparency in Government Procurement - National Procedures and Practices Relating to Transparency in Public Procurement - Communication from Hungary Preview (HTML)	16/12/1997	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9 p. 57KB	10 p. 60KB	9 p. 63KB
97-5518	D	WT/WGTGP/W/10 Catalogue record	Working Group on Transparency in Government Procurement - Information on Procedures and Practices on Transparency in Government Procurement - Communication from Hong Kong, China Preview (HTML)	16/12/1997	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 32KB	3 p. 33KB	3 p. 33KB
97-4772	D	WT/WGTGP/W/8 Catalogue record	Working Group on Transparency in Government Procurement - National Procedures and Practices Relating to Transparency in Public Procurement - Communication from Tunisia Preview (HTML)	31/10/1997	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4 p. 34KB	4 p. 36KB	4 p. 38KB
97-4762	D	WT/WGTGP/W/7	Working Group on Transparency in Government	30/10/1997	E	F	S			

		Catalogue record	Procurement - Information on the Republic of Korea's Procedures and Practices on Transparency in Government Procurement from the Republic of Korea Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7 p. 45KB	7 p. 44KB	7 p. 44KB
97-4441 	D	WT/WGTGP/W/6 Catalogue record	Working Group on Transparency in Government Procurement - Synthesis of the Information Available on Transparency-Related Provisions in Existing International Practices - Note by the Secretariat Preview (HTML)	14/10/1997	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	67 p. 369KB	71 p. 353KB	72 p. 416KB
97-3076 	D	WT/WGTGP/W/5 Catalogue record	Working Group on Transparency in Government Procurement - Transparency in Public Procurement - Factual Contribution from the European Communities Preview (HTML)	21/07/1997	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7 p. 79KB	8 p. 61KB	8 p. 60KB
97-2954 	D	S/WPGR/W/21 WT/WGTGP/W/4 Catalogue record	Working Group on Transparency in Government Procurement - Working Party on GATS Rules - APEC Surveys on Government Procurement Systems - Note by the Secretariat Preview (HTML)	15/07/1997	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 94KB	1 p. 26KB	1 p. 27KB
97-2887 	D	WT/WGTGP/W/1 Catalogue record	Working Group on Transparency in Government Procurement - The UNCITRAL Model Law on Procurement of Goods, Construction and Services - Statement by the Representative of the Working Group's Meeting of 23 May 1997 Preview (HTML)	10/07/1997	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7 p. 51KB	8 p. 60KB	8 p. 60KB
97-2888 	D	WT/WGTGP/W/2 Catalogue record	Working Group on Transparency in Government Procurement - World Bank Guidelines on Procurement - Statement by the Representative of the World Bank at the Working Group's Meeting of 23 May 1997 Preview (HTML)	10/07/1997	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 35KB	4 p. 40KB	4 p. 40KB
97-2863 	D	WT/WGTGP/W/3 Catalogue record	Working Group on Transparency in Government Procurement - Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures - Note by the Secretariat Preview (HTML)	09/07/1997	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	39 p. 247KB	43 p. 205KB	41 p. 205KB

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Rec#	Doc#	Symbol	Title - HTML format	Date	Pages	Access	File
1 11 KB	03-3199	WT/WGTGP/W/41	Working Group on Transparency in Government Procurement - Positive Effects of Transparency in Government Procurement and its Implementation - Communication from the European Communities	17/06/2003	3	U	T/WT/WGTGP/W41.doc
2 10 KB	03-0675	WT/WGTGP/W/39	Working Group on Transparency in Government Procurement - Domestic Review Mechanisms related to Transparency in Government Procurement - Communication from the European Communities	03/02/2003	3	U	T/WT/WGTGP/W39.doc
3 7 KB	03-0692	WT/WGTGP/W/40	Working Group on Transparency in Government Procurement - Work Ahead Up to the Cancún Ministerial - Communication from the Republic of Korea	03/02/2003	2	U	T/WT/WGTGP/W40.doc
4 9 KB	03-0655	WT/WGTGP/W/38	Working Group on Transparency in Government Procurement - Considerations Related to Enforcement of an Agreement on Transparency in Government Procurement - Communication from the United States	31/01/2003	3	U	T/WT/WGTGP/W38.doc
5 7 KB	02-5539	WT/WGTGP/W/37	Working Group on Transparency in Government Procurement - Japan's View on Transparency in Government Procurement - Communication from Japan	14/10/2002	2	U	T/WT/WGTGP/W37.doc
6 113 KB	02-5319	WT/WGTGP/W/33	Working Group on Transparency in Government Procurement - Work of the Working Group on the Matters Related to Items VI - XII of the List of the Issues Raised and Points Made - Note by the Secretariat	03/10/2002	30	U	T/WT/WGTGP/W33.doc
7 6 KB	02-5216	WT/WGTGP/W/34	Working Group on Transparency in Government Procurement - Capacity-Building Considerations Relating to Transparency in Government Procurement - Communication from the United States	30/09/2002	2	U	T/WT/WGTGP/W34.doc
8 10 KB	02-5215	WT/WGTGP/W/35	Working Group on Transparency in Government Procurement - Proposal for a Work Plan to Build on the Progress of the Working Group - Communication from the United States	30/09/2002	3	U	T/WT/WGTGP/W35.doc
9 7 KB	02-5218	WT/WGTGP/W/36	Working Group on Transparency in Government Procurement - Transparency of Contract Award Decisions - Communication from Canada	30/09/2002	2	U	T/WT/WGTGP/W36.doc
10 66 KB	02-2856	WT/WGTGP/W/32	Working Group on Transparency in Government Procurement - Work of the	23/05/2002	20	D	T/WT/WGTGP/W32.doc

			Working Group on the Matters Related to the Items I - V of the List of the Issues Raised and Points Made - Note by the Secretariat				
11 5 KB	02-2693	WT/WGTGP/W/31	Working Group on Transparency in Government Procurement - Methods of Procurement - Discussion Paper from Australia	15/05/2002	2	U	T/WT/WGTGP/W31.doc
12 13 KB	01-2395	WT/WGTGP/W/30	Working Group on Transparency in Government Procurement - Public Procurement Regime in Tunisia - Communication from Tunisia	09/05/2001	4	D	T/WT/WGTGP/W30.doc
13 9 KB	00-4212	WT/WGTGP/W/20/Add.1/Suppl.1	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - Organisation for Economic Co-operation and Development (OECD) - Supplement	12/10/2000	3	D	T/WT/WGTGP/W20A1S1.doc
14 8 KB	00-3554	WT/WGTGP/W/20/Add.2/Suppl.1	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - Asian Development Bank - Supplement	14/09/2000	3	D	T/WT/WGTGP/W20A2S1.doc
15 3 KB	00-3597	WT/WGTGP/W/20/Corr.1	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - United Nations Commission on International Trade law (UNCITRAL) - Corrigendum	14/09/2000	1	D	T/WT/WGTGP/W20C1.doc
16 13 KB	00-3526	WT/WGTGP/W/29	Working Group on Transparency in Government Procurement - Technical Cooperation Activities of Intergovernmental Organizations - Note by the Secretariat	13/09/2000	3	D	T/WT/WGTGP/W29.doc
17 6 KB	00-3507	WT/WGTGP/W/20/Add.4/Rev.1	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - APEC Government Procurement Experts Group (APEC/GPEG) - Revision	11/09/2000	2	D	T/WT/WGTGP/W20A4R1.doc
18 15 KB	00-3503	WT/WGTGP/W/20/Add.6/Rev.1	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - UNCTAD/WTO International Trade Centre - Revision	11/09/2000	4	D	T/WT/WGTGP/W20A6R1.doc
19 9 KB	00-3504	WT/WGTGP/W/20/Add.9	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from Other Intergovernmental Organizations - United Nations Office for Project Services (UNOPS) - Addendum	11/09/2000	2	D	T/WT/WGTGP/W20A9.doc

20 8 KB	00-2238	WT/WGTGP/W/28	Working Group on Transparency in Government Procurement - Proposal for a Work Programme for Coordinating International Technical Assistance with Implementation of a Potential Agreement on Transparency in Government Procurement from the United States	06/06/2000	2	U	T/WT/WGTGP/W28.DOC
21 26 KB	99-4840	WT/GC/W/385 WT/WGTGP/W/27	General Council - Working Group on Transparency in Government Procurement - Preparations for the 1999 Ministerial Conference - The WTO's Contribution to Transparency in Government Procurement - Communication from Singapore and the United States	09/11/1999	9	U	T/WT/GC/W385.DOC
22 19 KB	99-4799	WT/WGTGP/W/26	Working Group on Transparency in Government Procurement - Elements for an Agreement on Transparency in Government Procurement - Communication from the European Communities	05/11/1999	7	U	T/WT/WGTGP/W26.DOC
23 86 KB	99-3986	WT/WGTGP/W/25	Working Group on Transparency in Government Procurement - Documents of the Working Party on GATS Rules Relating to Concessions - Note by the Secretariat	27/09/1999	24	D	T/WT/WGTGP/W25.DOC
24 45 KB	99-3889	WT/WGTGP/W/24	Working Group on Transparency in Government Procurement - APEC Non-Binding Principles on Government Procurement - Communication from Hong Kong, China	21/09/1999	16	D	T/WT/WGTGP/w24.doc
25 10 KB	99-2576	WT/WGTGP/W/20/Add.8	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - World Bank - Addendum	24/06/1999	4	D	T/WT/WGTGP/W20A8.DOC
26 8 KB	99-2575	WT/WGTGP/W/23	Working Group on Transparency in Government Procurement - Domestic Review Mechanisms - Submission by the United States	24/06/1999	2	D	T/WT/WGTGP/W23.DOC
27 11 KB	99-1385	WT/WGTGP/W/22	Working Group on Transparency in Government Procurement - APEC Non-Binding Principles on Government Procurement Accountability and Due Process - Communication from Hong Kong, China	07/04/1999	4	D	T/WT/WGTGP/W22.DOC
28 7 KB	98-3821	WT/WGTGP/W/20/Add.7	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - United Nations Development Programme (UNDP) - Addendum	02/10/1998	2	D	T/WT/WGTGP/W20A7.DOC
29 24 KB	98-3824	WT/WGTGP/W/21	Working Group on Transparency in Government Procurement - Communication from Turkey - Government procurement in Turkey and National Procedures and	02/10/1998	10	D	T/WT/WGTGP/W21.doc

			Practices on Transparency in Government Procurement				
30 6 KB	98-3676	WT/WGTGP/W/20	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - United Nations Commission on International Trade Law (UNCITRAL)	24/09/1998	2	D	T/WT/WGTGP/W20.DOC
31 8 KB	98-3677	WT/WGTGP/W/20/Add.1	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - Organisation for Economic Co-operation and Development (OECD) - Addendum	24/09/1998	2	D	T/WT/WGTGP/W20A1.DOC
32 4 KB	98-3678	WT/WGTGP/W/20/Add.2	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - Asian Development Bank - Addendum	24/09/1998	2	D	T/WT/WGTGP/W20A2.DOC
33 6 KB	98-3679	WT/WGTGP/W/20/Add.3	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - African Development Bank and International Monetary Fund - Addendum	24/09/1998	2	D	T/WT/WGTGP/W20A3.DOC
34 5 KB	98-3680	WT/WGTGP/W/20/Add.4	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - APEC Government Procurement Experts Group (APEC/GPEG) - Addendum	24/09/1998	1	D	T/WT/WGTGP/W20A4.DOC
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Search results							
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1 5 KB	98-3681	WT/WGTGP/W/20/Add.5	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - European Bank for Reconstruction and Development (EBRD) - Addendum	24/09/1998	1	D	T/WT/WGTGP/W20A5.DOC
2 10 KB	98-3682	WT/WGTGP/W/20/Add.6	Working Group on Transparency in Government Procurement - Technical Cooperation Activities: Information from other Intergovernmental Organizations - UNCTAD/WTO International Trade Centre - Addendum	24/09/1998	3	D	T/WT/WGTGP/W20A6.DOC
3 17 KB	98-2865	WT/WGTGP/W/19	Working Group on Transparency in Government Procurement - Communication from Morocco - Transparency in Government Procurement in Morocco	20/07/1998	5	D	T/WT/WGTGP/W19.DOC
4 15 KB	98-2143	WT/WGTGP/W/17	Working Group on Transparency in Government Procurement - Communication from the European Communities	25/05/1998	5	D	T/WT/WGTGP/W17.DOC
5 7 KB	98-2142	WT/WGTGP/W/18	Working Group on Transparency in Government Procurement - Communication from the European Communities	25/05/1998	2	D	T/WT/WGTGP/W18.DOC
6 12 KB	98-0627	WT/WGTGP/W/14	Working Group on Transparency in Government Procurement - Information on Procedures and Practices on Transparency in Government Procurement - Communication from Australia	23/02/1998	4	D	T/WT/WGTGP/W14.DOC
7 6 KB	98-0936	WT/WGTGP/W/15	Working Group on Transparency in Government Procurement - Review Mechanisms - Communication from the United States	19/02/1998	2	U	T/WT/WGTGP/W15.DOC
8 7 KB	98-0937	WT/WGTGP/W/16	Working Group on Transparency in Government Procurement - Transparency in Procurement Methods - Communication from the United States	19/02/1998	2	U	T/WT/WGTGP/W16.DOC
9 20 KB	98-0551	WT/WGTGP/W/13	Working Group on Transparency in Government Procurement - National Procedures and Practices on Transparency in Government Procurement - Communication from Uruguay	16/02/1998	6	D	T/WT/WGTGP/W13.WPF
10 31 KB	98-0137	WT/WGTGP/W/12	Working Group on Transparency in Government Procurement - National Procedures and Practices on Transparency in Government Procurement - Communication from the Czech Republic	16/01/1998	10	D	T/WT/WGTGP/W12.WPF
11	97-5591	WT/WGTGP/W/11	Working Group on Transparency in	19/12/1997	5	D	T/WT/WGTGP/W11.WPF

13 KB			Government Procurement - APEC non-binding principles on Government Procurement: Transparency - Communication from Hong Kong, China				
12 27 KB	97-5517	WT/WGTGP/W/9	Working Group on Transparency in Government Procurement - National Procedures and Practices Relating to Transparency in Public Procurement - Communication from Hungary	16/12/1997	9	D	T/WT/WGTGP/W9.WPF
13 12 KB	97-5518	WT/WGTGP/W/10	Working Group on Transparency in Government Procurement - Information on Procedures and Practices on Transparency in Government Procurement - Communication from Hong Kong, China	16/12/1997	3	D	T/WT/WGTGP/W10.WPF
14 13 KB	97-4772	WT/WGTGP/W/8	Working Group on Transparency in Government Procurement - National Procedures and Practices Relating to Transparency in Public Procurement - Communication from Tunisia	31/10/1997	4	D	T/WT/WGTGP/W8.WPF
15 16 KB	97-4762	WT/WGTGP/W/7	Working Group on Transparency in Government Procurement - Information on the Republic of Korea's Procedures and Practices on Transparency in Government Procurement - Communication from the Republic of Korea	30/10/1997	7	D	T/WT/WGTGP/W7.DOC
16 197 KB	97-4441	WT/WGTGP/W/6	Working Group on Transparency in Government Procurement - Synthesis of the Information Available on Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures/.../ices - Note by the Secretariat	14/10/1997	67	D	T/WT/WGTGP/W6.WPF
17 24 KB	97-3076	WT/WGTGP/W/5	Working Group on Transparency in Government Procurement - Transparency in Public Procurement - Factual Contribution from the European Communities	21/07/1997	7	D	T/WT/WGTGP/W5.WPF
18 4 KB	97-2954	S/WPGR/W/21 WT/WGTGP/W/4	Working Group on Transparency in Government Procurement - Working Party on GATS Rules - APEC Surveys on Government Procurement Systems - Note by the Secretariat	15/07/1997	1	D	T/S/WPGR/W21.WPF
19 28 KB	97-2887	WT/WGTGP/W/1	Working Group on Transparency in Government Procurement - The UNCITRAL Model Law on Procurement of Goods, Construction and Services - Statement by the Representative of the UNCITRAL at the Working Group's Meeting of 23 May 1997	10/07/1997	7	D	T/WT/WGTGP/W1.WPF
20 14 KB	97-2888	WT/WGTGP/W/2	Working Group on Transparency in Government Procurement - World Bank Guidelines on Procurement - Statement by the Representative of the World Bank at the Working Group's Meeting of 23 May 1997	10/07/1997	3	D	T/WT/WGTGP/W2.WPF

21 115 KB	97-2863	WT/WGTGP/W/3	Working Group on Transparency in Government Procurement - Transparency- Related Provisions in Existing International Instruments on Government Procurement Procedures and in WTO Agreements - Note by the Secretariat	09/07/1997	39	D	T/WT/WGTGP/W3.WPF
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**POSITIVE EFFECTS OF TRANSPARENCY IN GOVERNMENT PROCUREMENT
AND ITS IMPLEMENTATION**

Communication from the European Communities

The following communication, dated 13 June 2003, has been received from the Permanent Delegation of the European Commission with the request that it be distributed to all Members.

Since the launch of the study phase on Transparency in Government Procurement after the Ministerial Conference of Singapore in 1996, WTO Parties have identified and discussed in detail all elements related to TGP capable of being included in a future WTO Agreement. As Members are on the verge of a decision on modalities for these negotiations, the EC would like to emphasize the general aims to be achieved by these negotiations and the cost that the absence of WTO rules in TGP could imply for WTO Members and in particular for developing countries (DCs).

I. THE BENEFITS OF A MULTILATERAL AGREEMENT ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

More efficiency and innovation

1. In a commercial environment it is difficult to know what the market strategy is or how to assess the economic advantages of our competitors. A lead in a given market is not permanent and is constantly subject to pressure from competitors looking for a share in that market. This situation calls for a continuous analysis of industrial, commercial or marketing strategies in an increasingly complex environment.

2. Public procurement applied in a transparent environment with a clear set of rules defined in advance and respected by all participants may allow tendering companies from both developed and developing countries to foster enhanced competition thus stimulating innovation amongst bidders.

Better value for money

3. Transparent tendering should lead to effective competition by comparing offers from different bidders. When tenders are to be opened to foreign bidders, the differences in terms of value and quality regularly brings prices down, as in any other auction system.

4. Governments and public entities have a political duty to purchase goods, services and works through the most economically advantageous offer. More transparency in procurement open to foreign suppliers contributes to increased competition and governments obtain lower prices, thereby reducing budget expenditure.

Encouraging investment and partnership

5. Access to a foreign market when tenders are to be opened to foreign bidders, is always difficult, requiring, as it does, previous market research, the setting-up of a distribution system, the opening of local branches and/or the appointing of representatives. It is usually the case for foreign bidders wishing to win a public contract to set up a joint venture or similar partnership with local suppliers who are more familiar with domestic law, rules and procedures thus increasing the chances of success. Transparency will increase investment and partnership.

Reducing corruption

6. Amongst the different forms of corruption affecting foreign trade (judicial corruption, political corruption), bribery (to officials and politicians) during the tendering process is one of the most significant and distorting of all corruption practices: extra expenditure for public budgets ultimately borne by tax payers, reducing free competition and quality of deliverables, discouraging investment, etc.

7. Publishing calls for tenders, notifying contract awards, including the successful bidder's name and final price, and making award criteria more transparent and accountable are some of the basic principles of transparency in government procurement which directly affect corruption practices. Although TGP will not eliminate corruption (more sophisticated practices will be used), it will reduce it.

II. IMPLEMENTING RULES ON TGP

Most WTO Members already apply rules on TGP

8. All developed countries and many developing countries already apply rules on TGP which enable procuring entities to attract sufficient bidders and introduce competition, and thus improve the quality of the goods and services supplied while reducing public expenditure. The cost for these countries of introducing WTO rules on TGP would be minimal, if any.

9. Developing countries not applying procurement rules (where transparency would just be a missing element) may justify this by claiming that the absence of rules reduces administrative costs. But it is difficult to find countries where there is a complete lack of rules in government procurement and, even where there are such cases, the savings obtained by introducing competition will more than offset administrative costs. Where procuring rules already exist, the transparency exercise is limited to making such rules available by whatever means and introducing a minimum number of items that should be made public to obtain sufficient participation and accountability. Where procuring rules do not exist, are insufficient or when the introduction of these rules represents an important cost, the Doha mandate obliges to provide the necessary assistance for implementation.

New multilateral rules in TGP will not place institutional constraints on developing countries

10. It is not the case, as it is often claimed, that new multilateral TGP rules will open DC procuring markets to suppliers from developed countries and will limit the ability to give preferences to domestic suppliers. This debate has been closed since Doha, where the scope of TGP was clearly limited to transparency only, without reducing the option of countries to give preference to domestic suppliers.

11. The EC is in favour of minimising the impact of TGP rules on small entities in DCs by making these rules only applicable above a given threshold, which could even be higher for DCs. Good governance and efficient management in the public sector need a selection process that is proportionate to the value of the goods or services to be purchased. A procuring entity launching major works or purchasing high-value goods cannot justify the absence of rules and transparency by claiming insufficient institutional capacity or human resources.

Practical measures to be taken to help developing countries live up to possible future obligations

12. Firstly, by explaining what the future WTO rules might be, and, secondly, by helping to put in place the necessary legislative changes (if any) and new methods. This second aspect is the most sensitive as it covers a wide audience of procuring officials, not only in many central government entities, but also in regions, provinces and municipalities. Thirdly, a minimum of infrastructure will be needed to respond to these future obligations in an efficient manner: publications, notifications, etc.

13. The EC is committed to provide assistance during and after negotiations and is already providing assistance on capacity building to many WTO Members. The EC will enhance assistance in the field of Information Technologies (IT) thus providing easier access to procurement opportunities worldwide.

Conclusion

14. A future multilateral agreement on TGP which, as agreed at Doha, will be limited to transparency, will not open up new markets or increase existing ones. In some cases it could encourage entities to accept foreign bids, but this would only happen on a case-by-case basis. The real benefit for all, procuring entities and bidders alike, is the construction of a minimum set of rules, applicable worldwide, introducing legal certainty in the existing procurement procedure and allowing entities to compare alternative offers and thus obtain better value for money.

15. The EC is of the opinion that the future Agreement on TGP should apply to all procurement, without distinction between national or international (on account, for one thing, of the problem of defining the borderline between national and international bidders), thus allowing domestic bidders also to benefit from a more open and transparent process and clearly indicating to international bidders when a tender is limited to nationals, thus avoiding unnecessary cost.

16. Making government procurement more transparent does not mean renouncing national sovereignty. On the contrary, it should lead to better public opinion control of government action, and also facilitate judicial review. Corruption operates in opaque environments and transparency is the opposite of opacity.

**DOMESTIC REVIEW MECHANISMS RELATED TO TRANSPARENCY
IN GOVERNMENT PROCUREMENT**

Communication from the European Communities

The following communication, dated 30 January 2003, has been received from the Permanent Delegation of the European Commission with the request that it be distributed to all Members.

1. Introduction

The Chairman's checklist of issues¹ refers to domestic review procedures in point VIII. This issue was the object of a communication from the United States of 24 June 1999 (WT/WGTGP/W/23) and has been discussed at the Working Group on several occasions.

In the light of previous discussions and submissions, the European Communities (EC) want to contribute to the further elaboration of this issue in full consideration of the new Doha mandate, in particular the limited scope of the future agreement to transparency only. In this perspective, this paper intends to cover all aspects relating to transparency of domestic review procedures in government procurement. In addition, it examines the kind of provisions that should be envisaged in the future agreement on transparency in government procurement to ensure that parties' measures subject to a future agreement can be reviewed through domestic procedures.

A future agreement would thus, on the one hand, ensure the transparency of the domestic review procedure and, on the other hand, ensure suppliers' right to challenge a procurement in breach of transparency provisions.

2. Transparency of domestic review procedures

All government procurement regimes contain legislative and regulatory provisions to review decisions of procuring entities although the extent, details and procedures may vary in each country.

¹ Last update of the note by the Chairman, "List of Issues Raised and Points Made", JOB(99)/6782, dated 13 November 1999.

The future agreement would ensure that domestic review procedures are transparent. This is nothing new: the GATS², the GATT³, the Agreement on Rules of Origin⁴, the Agreement on Import Licensing⁵, the Agreement on Customs Valuation⁶ and the Agreement on Trade-Related Aspects of Intellectual Property Rights⁷ all contain provisions relating to the transparency of domestic review procedures. Document WT/WGTGP/W/3 prepared by the Secretariat reproduces all these relevant provisions.

Issues requiring further elaboration are as follows:

2.1 Access to review procedure rules

The parties would ensure that existing rules governing the review process for a given tender are available to any bidder who has an interest in this particular tender. Suppliers affected by a measure during the procurement process should also have access to existing rules allowing them to exert their right to launch a challenge.

2.2 Decisions taken by the domestic review body

Decisions taken or the lack of decision taken by the review body should be communicated to the complainant bidder and to any other bidder who may be affected by the decision or lack of decision in writing, in a timely and comprehensive manner allowing complainants to respond accurately to any decision.

3. Challenge procedures within a future agreement on transparency in government procurement

A future agreement on transparency in government procurement should contain provisions allowing suppliers to challenge a procurement in breach of the provisions related to transparency of the procurement process (i.e. breach of obligation to publish a tender notice or contract award notice or any other obligation arising from the Agreement).

This is nothing new: the GATS⁸, the GATT⁹, the Agreement on Rules of Origin¹⁰, the Agreement on Customs Valuation¹¹ and the Agreement on Trade-Related Aspects of Intellectual Property Rights¹² all contain rules requiring Members to have in place domestic review bodies, and the plurilateral Agreement on Government Procurement (GPA)¹³ contains provisions for domestic review procedures where it is alleged that the GPA has been breached. Document WT/WGTGP/W/3 prepared by the Secretariat reproduces all these relevant provisions.

² Articles III.1 and VI:2.

³ Articles X:1 and 3(b).

⁴ Articles 2(g) and (j) and 3(e) and (h).

⁵ Article 1, paragraph 4(a).

⁶ Articles 11 and 12.

⁷ Articles 41 to 61.

⁸ Article VI:2.

⁹ Article X:3(b).

¹⁰ Articles 2(j) and 3(h).

¹¹ Article 11.

¹² Articles 41 to 61.

¹³ Article XX.

3.1 Independence of the review body

Decisions on procurement covered by a future agreement should be subject to review by a body independent from the procuring entity. Discussions with WTO Members have brought to light the differences of understanding about the independence, objectivity and impartiality of the review body. The EC considers that sufficient independence from the procuring entity would be secured if this independence is foreseen at any one step of the review procedure.

3.2 Challenge procedure

WTO Members would remain sovereign to maintain any judicial, arbitral or administrative procedures to review the correct implementation of the provisions and principles related to transparency in government procurement following a similar approach to the GATS¹⁴ and the TRIPS Agreement.¹⁵

The challenge procedure could be governed by the following principles:

- the review body renders prompt and timely decisions, preserving suppliers' commercial interests,
- no discrimination between domestic bidders and those from other parties;
- decisions taken by the review body are effective and enforceable;
- challenge procedures provide for adequate measures to correct proven infringements of the agreement and to protect suppliers' interests in a tender.

Domestic review bodies in many WTO parties often apply provisional measures such as the suspension of the tendering process or provide for remedies such as compensation for the loss or damage suffered (i.e. cost of tender documents). The EC is conscious of the heterogeneity of parties' legal regimes and level of development and consequently understands the difficulties to discuss remedies at this stage. Reference to provisional measures and remedies in this paragraph is intended to provide more clarity and illustrate what the borders are around the domestic review procedures related to transparency in government procurement.

4. Special and differential treatment for developing countries

Within a specific chapter on special and differential treatment that the future agreement may contain, the EC would propose a flexible approach to implement domestic review provisions taking into consideration the outcome of the future agreement.

¹⁴ Article VI.2(b).

¹⁵ Article 41.5.

WORK AHEAD UP TO THE CANCUN MINISTERIAL

Communication from the Republic of Korea

The following communication, dated 30 January 2003, has been received from the Permanent Mission of the Republic of Korea with the request that it be distributed to all Members.

Korea has put forward its specific ideas on transparency in government procurement in the preparatory process leading up to the Seattle Ministerial (WT/WGTGP/W/27). It was mainly on what should be addressed in establishing multilateral rules on transparency in government procurement. The following focuses more on how to deal with this issue in accordance with the specific mandate given at Doha.

A. ASSESSMENT OF CURRENT SITUATION

Significant work had been done during the process up to the Seattle Ministerial. A number of substantive ideas were tabled and discussed. The Working Group on Transparency in Government Procurement (WGTGP) had identified key elements to be included in the multilateral rules as well as related issues, and conducted in-depth discussions thereupon.

The WGTGP reviewed all the specific issues through another full round of discussions last year. However, there still seem to be gaps among Members mainly on the following issues:

- Where we stand: Are we engaged in pre-negotiations? Or are we just exchanging information and/or conducting a series of educational sessions?
- What would be the outcome of all our discussions: Are we aiming at a set of multilateral rules to be subject to DSU? Or a political commitment and/or best-endeavour sort of soft law?
- What would be the elements to be included in the final outcome of this series of negotiations. What would be the core rules to ensure transparency in government procurement?

Korea is of the view that Doha Ministerial Declaration offers a straightforward answer to the first question. Paragraph 26 of the Doha Declaration states that "we agree that negotiations will take place after the Fifth Session of the Ministerial Conference[...]". Thus, it is clear that we should start

the negotiations after the Cancun Ministerial. Accordingly, the process up the Cancun Ministerial will be characterized as a preparation for negotiation.

Korea also believes that the multilateral rules on TGP should be legally binding and subject to the DSU. Otherwise, it would be difficult to ensure effective implementation of the rules, substantially diminishing the benefits of such rules.

At the same time, Korea also believes that the legitimate concerns of the countries should be addressed without compromising the core elements of the rules on TGP.

B. THE WAY FORWARD

Taking into account the current situation, Korea is of the view that more focused and practical work should be done, as the deadline for establishing modalities for negotiations quickly approaches. The following work should be the core business of the Working Group in the next six months:

- Identify the core elements to be negotiated after the Cancun Ministerial. They do not have to be exhaustive and detailed down to the negotiating text.
- Identify issues of particular concerns to developing countries, based on the core elements as above. Developing countries are urged to come forward with specific inputs.
- Explore ways to address those specific concerns.

With a view to facilitating the Members' deliberations, Korea would like to provide the following starters:

- The core elements to be included:
 - Scope and definition.
 - Non-discrimination.
 - Measures to ensure transparency through publication of procurement-related measures (*inter alia* laws and regulations and including setting up focal points for enquiry), publication of procurement opportunities (invitations, tender documentation and technical qualifications, etc.).
 - Measures to ensure transparency in the procedures for award decision(including review of qualification, time-limits).
 - Transparent domestic review process.
 - Exceptions.
 - Dispute settlement and consultations.
 - Special and differential treatment for developing countries.
 - Technical assistance.
- Ways to address concerns of developing countries:
 - Transitional period (e.g. temporary suspension of the application of the DSU).
 - A set of flexibilities for developing countries and their phase-out.
 - Programmed technical assistance.

Korea reserves its rights to amend or add more specific ideas and would like to ask the Members to provide constructive comments on the ideas above.

**CONSIDERATIONS RELATED TO ENFORCEMENT OF AN AGREEMENT ON
TRANSPARENCY IN GOVERNMENT PROCUREMENT**

Communication from the United States

The following communication, dated 27 January 2003, has been received from the Permanent Mission of the United States with the request that it be distributed to all Members.

Introduction

In September 2002, the United States proposed a work plan for the Working Group to build on the progress that it has made over the past several years (WT/WGTGP/W/35). In furtherance of that proposal, the United States makes this submission to address two potential elements of an agreement on transparency in government procurement (TGP agreement) that several Members, in particular developing countries, have singled out as of particular concern. Both elements relate to the enforcement of an agreement: the requirement of domestic review procedures and application of the WTO's *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) to a TGP agreement.

Enforcement provisions in a TGP agreement

A TGP agreement would be an important addition to the rules-based international trading system by setting out basic transparency obligations that suppliers throughout the world could expect to find in the government procurement systems of all Members. These obligations should be subject to the same types of enforcement as existing commitments in other WTO agreements. However, it is important to emphasize that regardless of the enforcement mechanisms that may be built into a TGP agreement, such mechanisms could not be used to challenge domestic preference programmes, which the Doha Declaration has explicitly excluded from a TGP agreement.

With respect to the enforcement mechanisms in a TGP agreement, several Members have raised questions about the interaction between domestic review procedures and application of the DSU. Questions have also been raised about the relationship between application of the DSU and specific procurement decisions. These have included the potential overturning of procurement decisions and the authorization of sanctions if a dispute settlement panel were to find a Member to be in violation of the agreement and authorized retaliation in other sectors. To assist the Members in addressing these concerns, the United States offers the following considerations related to tailoring the most appropriate enforcement provisions for a TGP agreement.

While the Working Group need not decide the particulars of an enforcement mechanism for a TGP agreement until the full contours of the agreement are determined, it could consider how to structure the interaction between domestic review procedures and the application of the DSU in an agreement. The United States suggests that these provisions should serve different purposes and that the different roles should be reflected in a TGP agreement.

Domestic Review Procedures

A TGP agreement should require that Members make available domestic review procedures for both domestic and foreign suppliers to use if they had concerns that a particular procurement was not in compliance with the transparency provisions of an agreement. An agreement could specify that the use of such procedures would be the only method through which a specific procurement could be challenged.

As has been observed repeatedly in the Working Group, and most recently in the Secretariat's note (WT/WGTGP/W/33) of 3 October 2002, many Members maintain domestic review procedures "which allow aggrieved suppliers to lodge complaints against any alleged breaches of the applicable rules and to seek review of the procurement proceedings of an entity, including award decisions". Some Members have administrative mechanisms, while others have judicial mechanisms. Some Members have both.

Many WTO agreements provide for domestic review mechanisms to ensure that complaints or appeals can be raised and resolved under the jurisdiction of an individual WTO Member pursuant to national or local laws. The following are examples:

- GATT Article X:3(b) provides for "judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters".
- Article 2(j) and Article 3(h) of the Rules of Origin Agreement provide that administrative actions related to determinations of origin shall be "reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination".
- Article 5(e) of the Import Licensing Agreement requires that applicants for licenses "shall have the right of appeal or review in accordance with the domestic legislation or procedures of the importing Member".
- Article 11 of the Customs Valuation Agreement (Agreement on Implementation of Article VII of the GATT 1994) provides the right of appeal for valuation determinations. An "initial right of appeal" may be to the customs administration or an independent body, but legislation must also provide "for the right of appeal without penalty to a judicial authority".

Similarly, the Agreement on Technical Barriers to Trade and the Agreements on Subsidies and Countervailing Measures and Anti-Dumping Practices contain domestic review provisions. The TRIPS Agreement contains very elaborate provisions for domestic review and enforcement.

Drawing on these provisions, a TGP agreement could include a simple and flexible provision on domestic review procedures that would accommodate different Members' existing independent administrative or judicial tribunals and review procedures.

Application of the DSU

To address Members' concerns with regard to WTO dispute settlement for a TGP agreement, Members should consider the following:

- phasing-in application of certain provisions of a TGP agreement (and thus application of the DSU) for developing countries, linked to capacity building; and
- providing explicitly in an agreement that resort to the DSU would not be available to challenge a specific procurement, and thus could not be used to overturn a contract award.

Conclusion

The United States recommends that the Working Group at its February 2003 meeting specifically address Members' concerns related to enforcement of a TGP agreement. To frame the discussion related to the enforcement of a TGP agreement, the United States offers this submission.

JAPAN'S VIEW ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

Communication from Japan

The following communication, dated 10 October 2002, has been received from the Permanent Mission of Japan with the request that it be distributed to all Members.

I. OVERVIEW

The Working Group on Transparency in Government Procurement was established in 1996, with a view to ensuring transparent, open and appropriate procedures in government procurement, thereby combating corruption, which is an impediment against competition. The Working Group held 14 meetings in the last six years.

(Reference)

Singapore Ministerial Declaration (December 1996)

21. We further agree to establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement.

Doha Ministerial Declaration (November 2001)

26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity-building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants' development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.

Japan's position towards an agreement on transparency in government procurement

1. The Working Group has made considerable progress in examining elements for inclusion in a transparency agreement, and discussing main issues and options as to how to deal with those issues. With regard to the mandates stated in the Singapore Ministerial Declaration, Japan recognizes that the Working Group has largely accomplished "a study on transparency in government procurement practices" and made fundamental progress to "develop elements for inclusion in an appropriate agreement", during the last six years.

2. As for an appropriate agreement on transparency in government procurement, Japan attaches a great importance to the following:

- (1) Since the transparency provisions in the Agreement on Government Procurement in Annex IV of the WTO Agreement are difficult for developing country Members to follow as it stands, the provisions of a transparency agreement should be flexible enough, so that all WTO Members could accept them.
- (2) A transparency agreement should be legally binding and effective.
- (3) It is a prerequisite that all WTO Members participate in a transparency agreement. Therefore, the framework of such an agreement should be simple, focusing on core principles such as transparency in procurement opportunities (see paragraph 4 below). For example, details of tendering procedures should be dealt with in each Member's domestic laws, and a transparency agreement should ensure that such procedures are transparent.

3. Japan wishes to contribute to establishing a "flexible, effective, and simple" framework for a transparency agreement. In 1999, Japan tabled a draft framework for a transparency agreement and updated it twice (JOB(99)/5239).

4. Elements of a transparency agreement:

Japan considers that important elements are, *inter alia*, the following:

- (1) Non-discrimination in transparency.
 - (2) Definition and scope.
 - (3) Core transparency principles:
 - preparation and publication of procurement rules and enquiry point;
 - publication of procurement opportunities;
 - transparency in decisions on contract awards.
 - (4) Domestic review.
 - (5) Consultations and dispute settlement.
 - (6) Technical cooperation and special and differential treatment for developing countries.
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**Working Group on Transparency
in Government Procurement**

**WORK OF THE WORKING GROUP ON THE MATTERS RELATED TO ITEMS VI-XII
OF THE LIST OF THE ISSUES RAISED AND POINTS MADE**

Note by the Secretariat

This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

1. This note has been prepared in response to a request made at the informal meeting that was held on 12 March 2002 that the Secretariat prepare, for each of the two substantive meetings in 2002, short background papers summarizing the work that has already taken place in the Working Group on the matters related to the sub-items to be discussed, drawing on and listing the documentation of the Group. A note on items I to V prepared for the May 2002 meeting of the Working Group has been circulated in document WT/WGTGP/W32.
2. This note covers items VI to XII of the Informal Note by the Chairman, "List of the Issues Raised and Points Made" (JOB(99)/6782, dated 12 November 1999), namely Transparency of Decisions on Qualification, Transparency of Decisions on Contract Awards; Domestic Review Procedures; Other Matters Related to Transparency; Information to be Provided to Other Governments (Notification); WTO Dispute Settlement Procedures; and Technical Cooperation and Special and Differential Treatment for Developing Countries.
3. Similar to the approach taken in the note on items I to V, the aim is to provide a more concise note than the Informal Note by the Chairman as well as to take into account subsequent discussions in the Working Group and papers submitted. Being a summary, this note does not contain all the details of the points made and explanations given. For this information delegations should consult the Informal Note by the Chairman and the other documentation of the Working Group, a list of which can be found in the Annex to WT/WGTGP/W/32.
4. This note first briefly sets out the information that was considered by the Working Group on provisions in existing international instruments¹ and on national procedures and practices concerning items VI to XII. It will be recalled that at the outset of its work the Working Group sought information from other intergovernmental organizations on relevant international instruments (in particular from UNCITRAL and the World Bank² and requested the Secretariat to provide a note synthesizing the information available on transparency related provisions in existing international

¹ The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services of 1993; the Guidelines for Procurement under IBRD Loans and IDA Credits and the Guidelines for Selection and Employment of Consultants by the World Bank Borrowers, last revised in 1999; and the WTO Agreement on Government Procurement of 1994.

² WT/WGTGP/W/1-2.

instruments on government procurement procedures and on national practices.³ Under each of the items, this note then summarizes the discussions in the Working Group, outlining the issues raised and main points made.

VI. TRANSPARENCY OF DECISIONS ON QUALIFICATION

(a) Information on provisions in existing international instruments and national procedures and practices

5. In international instruments and national legislation provisions with respect to transparency of procedures for qualification of suppliers relate to four main issues: qualification criteria; fair and non-discriminatory application of qualification procedures; listing and registration of suppliers; and notification of qualification decisions.

6. With regard to qualification criteria, a key transparency requirement is that the evaluation of suppliers and decisions relating to their qualification be based on criteria which have been previously set forth in the pre-qualification documents and pre-disclosed.⁴ These provisions also emphasize that qualification criteria be linked to the capability of interested suppliers to perform and be capable of objective application.⁵ The UNCITRAL Model Law sets forth the range of criteria that procuring entities may require the suppliers to meet in order to qualify for participation in procurement proceedings.⁶ The World Bank Guidelines stipulate that the qualification criteria should be geared to establishing the capability and resources of the supplier to perform in relation to the requirements of the contract and lists the factors that should be taken into account.⁷ The Agreement on Government Procurement (GPA) requires that any conditions for participation in tendering procedures be limited to those which are essential to ensure the firm's capability to fulfil the contract in question.⁸

7. In national practice, any particular requirements and conditions regarding qualification procedures are normally set forth in invitations to tender and tender documents, thereby ensuring that all suppliers are informed in advance of the relevant requirements.⁹ Qualification criteria employed may include information needed to establish a supplier's professional and technical capability to perform the terms of the contract and may also include additional requirements, such as pertaining to legal capacity to enter into procurement contracts, financial capacity and stability of suppliers, tax obligations or professional risk indemnity insurance.¹⁰ Additionally, entities may base their qualification requirements on some other considerations, for example protection of health and safety of workers and employment equity for men and women. Entities sometimes use negative criteria for disqualifying suppliers.¹¹

8. All three international instruments prescribe a number of procedures to ensure that the qualification process is fair and does not lead to discrimination among suppliers. The Model Law requires that same criteria must be applied to all suppliers participating in the procurement process.¹² The GPA emphasizes that entities must not discriminate among suppliers of other GPA Parties and between domestic suppliers and suppliers of other Parties and among suppliers of other Parties with regard to conditions of participation. In certain cases, countries make the eligibility of suppliers of

³ WT/WGTGP/W/6.

⁴ WT/WGTGP/W/6, paragraph 70.

⁵ WT/WGTGP/W/6, paragraphs 68-70.

⁶ WT/WGTGP/W/6, paragraph 69.

⁷ WT/WGTGP/W/6, paragraph 69.

⁸ WT/WGTGP/W/6, paragraph 69.

⁹ WT/WGTGP/W/6, paragraph 74.

¹⁰ WT/WGTGP/W/6, paragraph 72.

¹¹ WT/WGTGP/W/6, paragraph 73.

¹² WT/WGTGP/W/6, paragraph 70.

other countries to participate in a procurement depend on these countries providing reciprocal treatment to its suppliers.¹³

9. All three instruments have specific requirements on the provision of information on qualification decisions. Under the Model Law, each supplier that has submitted an application to pre-qualify must be notified whether or not it has been pre-qualified. The GPA requires the entity concerned to advise any supplier having requested to become a qualified supplier of its decision in this regard. The World Bank Guidelines require Borrowers to inform all applicants of the results of the pre-qualification. Under the Model Law and the GPA, the procuring entity must, upon request, communicate to suppliers whose application to qualify was rejected or whose qualification has been brought to an end the grounds therefor.¹⁴ The information available to the Group to date on national systems does not provide details of how decisions on qualification systems are notified to suppliers.

10. Many procuring entities maintain either permanent or occasional lists of qualified suppliers for procurement of specific categories of products, services and public works, in particular in the case of complex projects.¹⁵ Such lists serve to create a pool of readily available information on approved suppliers which the procuring entities may use to request proposals for bids or to evaluate bids. In the case of selective tendering procedures under the GPA, entities maintaining lists of qualified suppliers are required to publish the conditions to be fulfilled by suppliers, the methods of verification of the conditions by entities, up-to-date approved lists of qualified suppliers and the period of validity of the lists.¹⁶ Entities are required to notify the qualified suppliers included on permanent lists of the termination of any such lists or of their removal from them.¹⁷ In order to avoid exclusivity in the preparation and maintaining of lists of qualified suppliers and in the procurement process itself, new suppliers are provided with an opportunity to be admitted to the lists of qualified suppliers at any time.¹⁸ The APEC Non-binding Principles require entities to ensure access for potential new suppliers to procurement opportunities.¹⁹

11. In some national practices, tenderers applying for qualification may be required to prove their enrolment in a professional or trade register.²⁰ In certain countries, all potential suppliers, both local and foreign, are required to be enrolled in a centralized registration system as a prerequisite for participation in government procurement contracts in certain categories of tenders, for instance related to public works. In some countries, foreign natural persons without domicile in the country or foreign legal persons without a branch in the country are required to accredit an agent domiciled in the country who is duly empowered to submit tenders and sign contracts and also to represent them both legally and in non-legal matters.

(b) Discussions in the Working Group

12. The discussions in the Working Group on this matter have focused on three broad issues, namely qualification criteria; lists of qualified suppliers; and provision of information on qualification decisions.

¹³ WT/WGTGP/W/6, paragraph 72.

¹⁴ WT/WGTGP/W/6, paragraph 80.

¹⁵ WT/WGTGP/W/6, paragraph 82.

¹⁶ GPA Articles IX:9 and VIII(a).

¹⁷ GPA Article VIII (f).

¹⁸ GPA Article VIII (d)-(e).

¹⁹ WT/WGTGP/W/24.

²⁰ WT/WGTGP/W/6, paragraph 72.

(i) *Qualification criteria*

13. On the first of these issues, the point has been made that transparency of qualification criteria should reinforce the objective of an open, transparent, efficient and equitable procurement process; ensure uniform provision of information to potential suppliers; and secure sufficient information in relation to suppliers. A key principle of transparency in this respect is that decisions on qualification of suppliers should be taken only on the basis of criteria that had been identified and established early in the procurement process and pre-disclosed to suppliers sufficiently in advance.²¹ In this respect, the suggestion has been made that decisions on supplier pre-qualification should be taken on the basis of conditions and criteria including technical specifications²² and other requirements²³ which have been made known in advance (e.g. through a tender notice or tender documentation)²⁴, or that have been specified in the qualification documentation or other information that has been provided to all participating suppliers.²⁵ Also, any changes in qualification requirements should be made known to all interested suppliers.

14. The view has also been expressed that qualification criteria should be limited to necessary requirements only, such as the relevant financial, commercial and technical capacities of suppliers.²⁶ On the other hand, the view has been held that establishment of qualification criteria should be left within the purview of procuring entities and national authorities which should have sufficient flexibility in developing qualification criteria suited to different types of procurement, sectors and circumstances.²⁷ Also, the prescription of any harmonized qualification criteria or an illustrative listing in an agreement would not be feasible and did not have any bearing on the work on transparency.²⁸

15. With regard to application of qualification criteria, one view has been that the qualification criteria that are set out in invitations to pre-qualify or in tender documents should be applied in a non-discriminatory manner as regards transparency. There could be non-discrimination as regards transparency notwithstanding discriminatory treatment in favour of domestic suppliers, or suppliers from other countries, being built into the criteria themselves pursuant to, for instance, preferences or other domestic sourcing requirements.²⁹ In response, it has been said that application of the principles of objectivity and non-discrimination to pre-qualification criteria went beyond the concept of transparency.³⁰

(ii) *Lists of qualified suppliers*

16. On the second of these issues, the point has been made that, where pre-qualification and registration systems are maintained, such systems should not be exclusive. New suppliers meeting the qualification criteria in time to participate in a tender should be given the same or, in one view, at least a reasonable opportunity to participate in that and subsequent tenders. Qualification systems could be re-opened at periodic intervals to new suppliers.³¹

²¹ WT/WGTGP/M/10, paragraph 44; WT/WGTGP/M/11, paragraph 29.

²² WT/WGTGP/W/26, 7.1.

²³ WT/WGTGP/W/27, VIII.1; Job No. 5803, IV.I.

²⁴ WT/WGTGP/W/26, 7.1.

²⁵ WT/WGTGP/W/27, VIII.1.

²⁶ Job No. 4099.

²⁷ JOB(99)/6782, paragraph 76.

²⁸ JOB(99)/6782, paragraph 76.

²⁹ JOB(99)/6782, paragraph 78.

³⁰ JOB(99)/6782, paragraph 79.

³¹ WT/WGTGP/M/11, paragraph 29; JOB(99)/6782, paragraph 74.

(iii) Provision of information on qualification decisions

17. With regard to transparency of qualification decisions, it has been suggested that information on the basis for selecting suppliers and the way in which the qualification process is conducted should be publicly available to all potential suppliers³² or on request from a supplier of a Member.³³ Moreover, entities should provide unsuccessful suppliers, upon request, with information as to the reasons for the denial of their request to become a qualified supplier.³⁴ On the other hand, the view has been held that provision of *ex post information* on qualification decisions could be impracticable in developing countries especially where a large number of suppliers are involved.³⁵

18. The view has been expressed that suppliers should have the right to challenge qualification decisions if the rules of the system have not been followed. In response, it has also been said that, under certain tendering methods, it is not possible to overturn decisions on qualification even if certain other suppliers could be considered to be qualified in terms of the pre-published criteria.³⁶

VII. TRANSPARENCY OF DECISIONS ON CONTRACT AWARDS**(a) Information on provisions in existing international instruments and national procedures and practices**

19. Government procurement regimes and each of the three instruments put great emphasis on decisions on the award of the contracts not only being objective but also being seen to be objective. Being seen to be objective in decision-making requires, first, that the evaluation criteria, including technical specifications, be objective in nature and publicly announced in advance and, second, that arrangements for the receipt and opening of tenders are such as to ensure their regularity. Transparency in decision-making further entails the availability *ex post* of information on the decisions taken.

(i) Transparency of evaluation criteria

20. All three instruments covered by the Secretariat's note on the Synthesis of the Information Available in WT/WGTGP/W/6 provide that tender documents should contain the criteria, including any factor other than price, to be considered by the procuring entity in determining the successful tender and for awarding the contract. They also emphasize that entities should evaluate tenders only on the basis of the criteria that have been previously published. The provisions of the Model Law on examination, evaluation and comparison of tenders require the procuring entity to evaluate and compare the tenders in order to ascertain the successful tender in accordance with the procedures and criteria set forth in the tender documents and prohibit the use of any criterion that has not been set forth in the tender solicitation documents.³⁷ The GPA also explicitly provides that awards should be made in accordance with the criteria and essential requirements specified in the tender documentation.³⁸ The World Bank Guidelines require that bidding documents shall specify the relevant factors, in addition to price, to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid.³⁹

³² Job No. 5803, IV.1.

³³ Job No. 5239, 3.2.

³⁴ WT/WGTGP/W/27, VIII.2.2; Job No. 5803, IV.3.

³⁵ WT/WGTGP/M/11, paragraph 29; JOB(99)/6782, paragraph 79.

³⁶ JOB(99)/6782, paragraph 79.

³⁷ Model Law Article 34(4)(a), Article 39(1) and Article 48(3).

³⁸ GPA, Article XIII:4(c).

³⁹ World Bank Guidelines on goods and works, paragraph 2.51.

21. Particular attention is given in the three instruments to ensuring the transparency and objectivity of technical specifications criteria and their evaluation. The GPA and the Model Law stipulate that technical specifications⁴⁰ prescribed by procuring entities shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.⁴¹ The GPA and the World Bank Guidelines require that technical specifications prescribed by procuring entities shall be based on international standards, where such exist, otherwise, on national technical regulations, recognized national standards or other equivalent standards, or building codes.⁴² The GPA has an explicit preference for the use of specifications based on performance rather than design or descriptive characteristics. The Model Law requires that any specifications, plans, drawings, designs and requirements or descriptions be based on the relevant objective technical and quality characteristics of the goods.⁴³

22. As regards national practices to guarantee the transparency of evaluation criteria, in some countries, the basic principles and criteria for selecting tenders are established in the procurement legislation⁴⁴; in others, there are no centrally prescribed contract award criteria and agencies determine the criteria that are appropriate in the context of individual procurements.⁴⁵ Certain criteria and procedures are common to the process of evaluation of tenders in most countries. It is invariably required that all evaluation criteria be made available in advance to suppliers in the tender notice or in the tender documents⁴⁶; that only those criteria previously announced be taken into account in the evaluation of bids⁴⁷; and that selection of the winning tender be made in accordance with the evaluation criteria and relative importance of each criterion previously announced. It may be required that the criteria that are communicated to the potential suppliers in the invitation to tender and tender documents cannot be modified without notifying all of the potential bidders through the same channels used to transmit the invitations and the tender documents.⁴⁸ Contracts are awarded, in general, to the tenders which have the *lowest price* or to the tenders determined to be *economically the most advantageous* in terms of the specific evaluation criteria.

23. All three instruments have provisions regarding the application of the principle of non-discrimination in respect of participation in tenders and award of contracts. The Model Law provides that any restrictions on procurement from foreign sources with the purpose of protecting certain economic sectors or on account of certain legal obligations should only be on grounds specified in the procurement regulations or should be pursuant to other provisions of law.⁴⁹ The objective of transparency is promoted by requiring a procuring entity to declare any limitations on participation on the basis of nationality in the invitations to tender and to include in the record of the procurement proceedings a statement of the grounds and circumstances on which a procurement entity has relied for limitation of participation on the basis of nationality. In these cases, the procuring entity is exempted from the obligation to give wide international circulation to the invitation to tender or invitation to pre-qualify.⁵⁰ The Model Law also provides for the possibility that, in evaluating and comparing tenders, a procuring entity may grant a margin of preference in favour of local goods, services and suppliers which permits the procuring entity to select the overall lowest-priced tender of

⁴⁰ Such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the procedures and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities.

⁴¹ GPA, Article VI:1; Model Law Article 16(1).

⁴² World Bank Guidelines on goods and works, paragraphs 2.19 and 2.20.

⁴³ Model Law Article 16(2).

⁴⁴ S/WPGR/W/11/Add.3, Add.8, Add.12, Add.17, Add.19.

⁴⁵ S/WPGR/W/11/Add.4, Add.11.

⁴⁶ E.g., in section "m" of tender documents published in the Commerce Bulletin Daily of the United States.

⁴⁷ S/WPGR/W/11/Add.11, Add.12, Add.17, Add.18, Add.20.

⁴⁸ S/WPGR/W/11/Add.18.

⁴⁹ Guide to Enactment of UNCITRAL Model Law, page 58 and Model Law Article 8(1).

⁵⁰ Model Law Article 23.

a local supplier when the difference in price between that tender and the lowest-priced tender falls within the range of margin of preference.⁵¹ The rules for calculation of such preference margins should be set forth in the procurement regulations. Moreover, the use of a margin of preference is to be pre-disclosed in the tender documents and reflected in the record of the procurement proceedings.⁵²

24. Under the International Competitive Bidding (ICB) procedures, the World Bank Guidelines provide that a margin of preference may be granted to domestically manufactured goods and domestic contractors in the evaluation of bids at the request of the Borrower and under conditions to be agreed under the Loan Agreement.⁵³ The bidding documents should clearly indicate any preferences to be granted, the information required to establish the eligibility of a bid for such preference, and the method that will be followed in the evaluation and comparison of bids.⁵⁴ Moreover, for procurement of goods and works, which by its nature or scope is not expected to be of interest to foreign bidders, the competitive bidding procedure normally used for public procurement in the country of the borrower, National Competitive Bidding (NCB), may be preferred to the ICB procedures but the use of this procedure is subject to specified conditions.

25. Under the GPA and in respect of procurement covered by the Agreement, governments Parties to the Agreement are required to give the products, services and suppliers of any other Party to the Agreement treatment "no less favourable" than that given to their domestic products, services and suppliers and not to discriminate among the goods, services and suppliers of other Parties (Article III:1). Furthermore, each Party is required to ensure that its entities do not treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership and do not discriminate against a locally established supplier on the basis of the country of production of the good or service being supplied (Article III:2). Certain derogations from the fundamental principles of the Agreement are provided for in national schedules appended to the Agreement. In addition, special and differential treatment for developing countries under Article V of the GPA allows for agreed exclusions from the requirement of national treatment under the GPA. Furthermore, the GPA prohibits the use of offsets which are defined as measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.⁵⁵ However, a developing country may at the time of its accession negotiate conditions for the use of offset requirements, to be used only for qualification of suppliers and not as criteria for awarding contracts.⁵⁶

26. The procurement practices of a number of countries provide for award criteria to take into account considerations such as the promotion of domestic supplies and/or suppliers. To this end, the criteria may include factors such as price preference margins, offset requirements, set-asides for small and medium-sized enterprises or for minority business. Some countries have stated that the procuring entity must give suppliers prior information at the invitation to tender stage of the procedures if domestic preferences or any other conditions in a procurement proceeding are applied.⁵⁷

⁵¹ Guide to Enactment of UNCITRAL Model Law, page 58; Model Law Article 34(4)(d) and 39(2).

⁵² Model Law Articles 27(e), 34(4)(d) and 39(2).

⁵³ World Bank Guidelines on procurement of goods and construction services, paragraphs 2.54 and 2.55.

⁵⁴ World Bank Guidelines on goods and works, paragraph 2.54 and Appendix 2, paragraphs 2-5.

⁵⁵ GPA, Article XVI:1.

⁵⁶ Article V.

⁵⁷ S/WPGR/W/11/Add.12, Add.17.

(ii) *Receipt and opening of tenders*

27. All the three instruments have provisions to ensure the regularity of the receipt and opening of tenders and awarding of contracts. The GPA provisions require that procedures and conditions for the receipt and opening of tenders guarantee the regularity of the openings and be consistent with the national treatment and non-discrimination provisions of the GPA.⁵⁸ The Model Law and the World Bank Guidelines set forth detailed conditions which are aimed at preventing any non-transparent action or decision by the procuring entity in the process of the opening of tenders and at enabling suppliers to observe that the entity complies with the procurement criteria and procedures.

28. The three instruments set forth a number of other provisions that safeguard transparency at the bid evaluation stage. The procuring entity may ask bidders for clarifications of their tenders that are needed to evaluate them, but no changes are to be asked or permitted with a view to making unresponsive bids responsive except for the correction of arithmetical errors appearing in the tender.⁵⁹ The GPA requires that any opportunity that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.⁶⁰ The World Bank Guidelines preclude the alteration of bids after the deadline for receipt of bids.⁶¹ Under the GPA, negotiations with entities may only take place where prior notice has been given or where no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth earlier in the notices or tender documentation.⁶² The Model Law prohibits negotiations between the procuring entity and a supplier with respect to a tender submitted by the supplier.⁶³

29. With regard to the confidentiality of tenders, the World Bank Guidelines require that information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with the bidding process until the successful bidder is notified of the award.⁶⁴ Under the procedures on negotiations in the Model Law and in the GPA, entities are required to treat information in tenders, in particular any technical, price or other market information, confidentially and not to provide information intended to assist particular participants to bring their tenders up to the level of other participants.⁶⁵

30. As regards, national practices on receipt and opening of tenders and award of contracts, the countries on which information is available follow procedures that are set forth in the generally applicable procurement laws⁶⁶ or established by individual procuring agencies for their own use.⁶⁷ The details of the procedures and practices on submission and receipt and opening of tenders can be found in paragraphs 109 to 113 of WT/WGTGP/W/6.

⁵⁸ GPA, Article XIII:3.

⁵⁹ Model Law Article 32(1).

⁶⁰ GPA, Article XIII:1(b).

⁶¹ World Bank Guidelines on goods and works, paragraph 2.45.

⁶² GPA, Article XIV:1.

⁶³ Model Law Article 35.

⁶⁴ World Bank Guidelines on goods and services, paragraph 2.46.

⁶⁵ Model Law Article 49(3) and GPA, Article XIV:3.

⁶⁶ S/WPGR/W/11/Add.10.

⁶⁷ S/WPGR/W/11/Add.4, Add.8, Add.11.

(iii) *Ex post information on contract awards*

31. The three instruments lay down provisions requiring procuring entities to inform the public and, in particular, the suppliers that have participated in the procurement process of their award decisions. The Model Law and the GPA require entities to publish a notice award after the award of each contract.⁶⁸ The publications in which individual GPA Parties publish such notices are identified in Appendix II to the GPA. The GPA sets forth in detail the type of information that such notices, to be published within a specified time-limit after the award of each contract, must contain. In addition to the publication of a notice of contract award, the GPA goes on to require entities to promptly inform directly those suppliers that have participated in a tender of the decision on the contract award, in writing if requested.⁶⁹ Under the Model Law, the procuring entity is required to give a notice to other suppliers after it has entered into a contract with a supplier, specifying the name and address of the supplier and the contract price.⁷⁰ Furthermore, the Model Law and the GPA allow an unsuccessful tenderer to seek and obtain pertinent information concerning the reasons why its tender was not selected. The GPA also requires the provision of information on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer. Under the Model Law, however, the procuring entity is not required to justify the grounds for its rejection of tenders.⁷¹

32. As regards the treatment of confidential information on contract awards, the GPA foresees that entities may decide to withhold certain information on contract awards where release of such information may impede law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interests of particular enterprises or might prejudice fair competition between suppliers.⁷² The provisions of the Model Law bar the procuring entity from disclosing certain information, including that relating to the examination, evaluation and comparison of tenders so as to safeguard the public interest or the commercial interest of parties involved in the proceedings.⁷³

33. As regards national practice on *ex post* information, the information available suggests that in most countries, entities are required to announce publicly the results of the contract award periodically or within stipulated time periods which varies from three days to three months.⁷⁴ The content of the information may be specified in national procurement legislation, regulations or guidelines, as well as the media for publication which in some cases may be the same as that for the procurement notice. In addition to the award notification, some countries require the procuring entity to inform all unsuccessful tenderers of the results of the contract award.⁷⁵ In some countries, unsuccessful suppliers may be entitled to a debriefing by the procuring entity as to how their tenders performed. Further details of national practices can be found in paragraphs 120 to 122 of WT/WGTGP/W/6.

34. As regards confidentiality of information on contracts awarded, in some national practices a procuring entity may decide that certain information on the contract award be withheld where divulgence of such information would prejudice the legitimate commercial interests of the winning tenderer or would be contrary to the public interest.⁷⁶

⁶⁸ Model Law Article 14(1) and (2); GPA Article XVIII:1.

⁶⁹ GPA Article XVIII:3.

⁷⁰ Model Law Article 36(6).

⁷¹ Model Law Article 12(1) and GPA Article XVIII:2.

⁷² GPA Article XVIII:4.

⁷³ Model Law Articles 45 and 34(8).

⁷⁴ S/WPGR/W/11/Add.1, Add.2, Add.3, Add.6, Add.8, Add.9, Add.10, Add.17, Add.18.

⁷⁵ S/WPGR/W/11/Add.9.

⁷⁶ S/WPGR/W/11/Add.4, Add.6, Add.10; WT/WGTGP/W/5.

(b) Discussions in the Working Group

(i) *Evaluation criteria*

35. The point has been made that a key requirement with regard to transparency of evaluation criteria is that the evaluation of tenders be conducted⁷⁷ and contract award decisions based strictly on evaluation criteria, including technical specifications and other relevant information, conditions or other requirements⁷⁸, which have been pre-established and made known in advance⁷⁹, for example through a tender notice or tender documentation.⁸⁰ Such criteria should be clear and be capable of objective application, and should be communicated and applied non-discriminately. In this connection, the view has also been expressed that a transparency agreement would not, as a general rule, set out what those criteria should be.

36. The point has also been made that it is necessary to adopt a flexible approach in order to allow for certain situations – for instance, where negotiations may have to be held in order to obtain better terms, or in cases of *force majeure*⁸¹ where the criteria set out in tender documents cannot be strictly adhered to.⁸² Other aspects of the transparency of evaluation criteria are also discussed under item IV in document WT/WGTGP/W/32 relating to Information on Procurement Opportunities, Tendering and Qualification Procedures and under item VI in the present document on Qualification Procedures.

(ii) *Receipt and opening of tenders awarding of contracts*

37. The view has been expressed that procuring entities should have appropriate procedures to ensure that all tenders are received and opened under procedures and conditions guaranteeing the regularity and impartiality of the opening process⁸³ and that there is no opportunity to manipulate the specific elements of tenders or to provide a particular tenderer with information on other tenders.⁸⁴ In response, it has been said that setting out the procedures on how tenders received by procuring entities should be handled to ensure the regularity and impartiality of the procurement proceedings is not within the ambit of the work on transparency. The objective sought can be achieved through *ex post* information.⁸⁵

38. The suggestion has been made that each Member should ensure that only bids of suppliers whose tenders have been received before the previously published final date for submission of tenders may be considered.⁸⁶

39. The point has been made that each Member shall ensure that its governmental agencies treat tenders in confidence.⁸⁷

⁷⁷ Job No. 5803, V.1.

⁷⁸ Job No. 5803, VI.1; WT/WGTGP/W/26, 7.1; WT/WGTGP/W/27, VIII.

⁷⁹ Job No. 4099; Job No. 5239, 4.3 and 4.4; WT/WGTGP/W/26, 7.1.

⁸⁰ WT/WGTGP/W/26; WT/WGTGP/W/27, VIII.1; Job No. 5803, VI.1.

⁸¹ JOB(99)6782, paragraph 81.

⁸² JOB(99)6782 (6th Rev.), paragraph 82.

⁸³ JOB(99)6782 (6th Rev.), paragraph 83.; Job No. 5239, 4.2.

⁸⁴ JOB(99)6782 (6th Rev.), paragraphs 80 and 83.

⁸⁵ JOB(00)3276, VI, paragraphs 1.1-5.2.

⁸⁶ WT/WGTGP/W/26, 7.1; Job No. 5239, 4.1.

⁸⁷ Job No. 5239, 4.2.

(iii) *Ex post information on contract awards*

40. The provision of *ex post* information on contract awards has been said to be one of the crucial elements of transparency in government procurement especially in cases where certain information might not have been provided *ex ante*.⁸⁸

41. The suggestion has been made that entities should make information on contract awards publicly⁸⁹ available.⁹⁰ Such information should be made available publicly for a reasonable period of time.⁹¹ One view has been that any requirement to publish contract award decisions should only be in cases of "less transparent" procurement methods such as single-source procurement or limited tendering. Another view has been that they should be published regardless of the procurement method used.⁹² On the other hand, the view has been held that decisions on contract awards should be provided in accordance with national practices.⁹³ Individual Members should be able to determine whether to notify or debrief unsuccessful tenderers on the outcome of their bids or to publish contract award information as provided in national legislation.⁹⁴

42. There has been exchange of views in the Working Group in relation to the minimum content of *ex post* information to be published. It has been suggested that it should include:

- the name of the procuring entity⁹⁵;
- a description of the goods and services procured⁹⁶;
- other information necessary to identify the procurement⁹⁷;
- if a contract is awarded, the name of the awarded⁹⁸/winning⁹⁹ supplier and the value of the winning award¹⁰⁰;
- if a contract is not awarded to any supplier, the reasons for the decision.¹⁰¹

43. A further view in this connection has been that the *ex post* information in contract award notices could be less detailed than the information to be provided directly to individual suppliers. Another view expressed in this connection has been that the type of information to be provided should be left to the discretion of the procuring entity.¹⁰²

⁸⁸ JOB(00)3276, VI, paragraphs 5.1-5.2; JOB(99)5239, Article 4.4.

⁸⁹ WT/WGTGP/W/27, VIII.3.

⁹⁰ WT/WGTGP/W/27; Job No. 5803, VII.1(a); WT/WGTGP/W/26, 7.2.

⁹¹ WT/WGTGP/W/27.VIII.3.

⁹² JOB(99)6782, paragraphs 85-86.

⁹³ WT/WGTGP/M/10, paragraph 45.

⁹⁴ JOB(99)6782, paragraphs 85-86 and WT/WGTGP/M/10, para 45.

⁹⁵ WT/WGTGP/W/27, VIII.3.

⁹⁶ WT/WGTGP/W/27, VIII.3.

⁹⁷ Job No. 5239, 4.4(a).

⁹⁸ Job No. 5239, 4.4(b).

⁹⁹ WT/WGTGP/W/27, VIII.3.

¹⁰⁰ Option in WT/WGTGP/W/27, VIII.3; Job No. 5239, 4.4(b).

¹⁰¹ Job No. 5239, 4.4(c).

¹⁰² WT/WGTGP/M/10, paragraph 45.

44. A further suggestion with regard to *ex post* information has been that, upon request, unsuccessful suppliers should be provided with more detailed¹⁰³ information and explanation as to the reasons for their non-selection and/or why the winning bid has been chosen.¹⁰⁴ It has also been suggested that any debriefing provided by the entity should be available to all participating suppliers on a non-discriminatory basis.¹⁰⁵ A further point has been that debriefing should be a complementary measure rather than a substitute for public availability of contract award information.¹⁰⁶

45. In response, the point has been made that *ex post* provision of information to unsuccessful bidders could be burdensome and costly for procuring entities, and that some national practices do not provide for this.¹⁰⁷

46. The point has been generally made that information considered confidential, on grounds of commercial or public interest, should be treated as such, and a number of the proposals submitted make provision for this.¹⁰⁸

VIII. DOMESTIC REVIEW PROCEDURES

(a) Information on provisions in existing international instruments and national procedures and practices

47. Review procedures are often considered a key component of transparency and accountability of government procurement practices. The rules set out in the Model Law and the GPA establish the basic features that national review mechanisms must have without going into great detail. The purpose of these provisions is to give suppliers believing that an entity has breached national law or, in the case of the GPA, the rules of the GPA itself, a right of review.¹⁰⁹

48. Under the Model Law and the GPA, as an initial step, complainants are encouraged to seek resolution of their complaints through consultations with the procuring entity itself prior to recourse to an administrative review body.¹¹⁰ Under the Model Law, unless the complaint is resolved by mutual agreement, the procuring entity shall, within prescribed time-limits, issue a written decision including a statement on the reasons for the decision and indicating any corrective measures that are to be taken.¹¹¹ If the matter is not settled through this procedure, the complainant is entitled, under the Model Law, to seek an administrative review.¹¹² The functions of an administrative review may be vested in an existing appropriate administrative body or a body whose competence is exclusively to resolve disputes in procurement matters and which is independent of the procuring entity. The decisions of the review bodies or failure to make a decision within prescribed time-limits shall be subject to judicial review.¹¹³ The Model Law also lays down certain procedures to ensure the openness and fairness of review procedures.¹¹⁴ Under the GPA, Parties may confer the authority to hear challenges by suppliers on national courts or on an impartial and independent review body of an administrative nature. In the event that a bid challenge is heard by a review body which does not have the status of a court of law, either its decisions must be subject to judicial review or it must follow the

¹⁰³ WT/WGTGP/W/26, 7.2.

¹⁰⁴ WT/WGTGP/26, 7.2; WT/WGTGP/W/27, VIII.2.2; Job(99)5803, VII.1(b); WT/WGTGP/M/10, paragraph 46.

¹⁰⁵ WT/WGTGP/W/27, VIII.2.2; Job(99) 5803, VII.2 (c).

¹⁰⁶ Job (00)/3276, page 17.

¹⁰⁷ JOB(99)6782, paragraphs 83.

¹⁰⁸ JOB(99)6782, paragraphs 85; WT/WGTGP/W/26, Article 9.

¹⁰⁹ Model Law Article 52; GPA Article XX:1.

¹¹⁰ GPA Article XX:1.

¹¹¹ Model Law Article 53.

¹¹² Model Law Articles 54 and 55.

¹¹³ Model Law Article 57.

¹¹⁴ Model Law Article 55.

criteria laid down in detail in Article XX:6(a)-(g). These minimum standards are mainly designed to ensure the openness, fairness and equity of the proceedings.¹¹⁵ The World Bank carries out prior or post reviews of the procurement documents, bid evaluations, award recommendations and the contract to ensure that the process is carried out in conformity with the Guidelines.¹¹⁶ In addition the World Bank Guidelines allow a bidder or a consultant who wishes to ascertain the grounds on which its bid or proposal is not selected, after notification of award, to address a request for explanation to the Borrower country or agency. If the bidder or consultant is not satisfied with the explanation given, it may seek debriefing with the World Bank.¹¹⁷

49. Under the GPA, a review body must have the authority to order the correction of a breach of the Agreement or compensation for the loss or damages suffered by a supplier, but this may be limited to costs for tender preparation or protest. Pending the outcome of the challenge, the review body must be able to order rapid interim measures, including the suspension of the procurement process, to correct breaches of the GPA and to preserve commercial opportunities.¹¹⁸ However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. The provisions of the Model Law also provide for the suspension of procurement proceedings which takes account of the need of the procuring entity to conclude a contract in an economic and efficient way without undue disruption and delay in the procurement process.¹¹⁹

50. Many countries have procedures which allow aggrieved suppliers to lodge complaints against any alleged breaches of the applicable rules and to seek review of the procurement proceedings of an entity, including award decisions. The procedures for review of complaints and remedies available to successful complainants are sometimes provided explicitly in procurement legislation¹²⁰ and, in other cases, they may result from more general possibilities to appeal administrative decisions. Regarding the conditions of recourse to review, complaints may be raised on the grounds that the applicable procurement laws and regulations have been violated¹²¹ or, where a country is a party to an international agreement, an alleged breach of the rules of that agreement.¹²² In most cases, procedures are available to any person who has or has had an interest in obtaining a particular contract or who has been or risks being harmed by an alleged infringement.

51. Complaint-based procedures in national practices generally have the following main features. Suppliers are encouraged, in the first instance, to take up the matter directly with the procuring entity for an early resolution.¹²³ In some cases, mediation or good offices of an independent authority can be sought. Finally, suppliers can bring an action against the procuring entity before an independent body or a court. Most countries have designated administrative or judicial authorities to handle procurement-related challenges. The nature of the review authorities varies and, when review bodies are not judicial in character, their decisions are often subject to judicial review.¹²⁴ The review may be handled either by a specialized body established to review challenges in the area of government

¹¹⁵ GPA Article XX:6(a)-(g).

¹¹⁶ World Bank Guidelines on goods and works, Appendix 1, paragraphs 1,2 and on consultants' services, Appendix 1, paragraphs 1, 2 and 4.

¹¹⁷ World Bank Guidelines on goods and works, Appendix 4, paragraph 15 and on consultants' services, Appendix 4, paragraph 15.

¹¹⁸ GPA Article XX:7(a)-(c).

¹¹⁹ Model Law Article 56.

¹²⁰ S/WPGR/W/11/Add.1, Add.3, Add.19.

¹²¹ S/WPGR/W/11/Add.3, Add.17, Add.20.

¹²² E.g., GPA, NAFTA and the Government Procurement Agreement between Australia and New Zealand.

¹²³ S/WPGR/W/11/Add.3, Add.4, Add.6, Add.9, Add.11, Add.12, Add.20, Add.21; WT/WGTGP/W/5; APEC Survey – Philippines.

¹²⁴ S/WPGR/W/11/Add.10, Add.12, Add.13, Add.15, Add.17, Add.18, Add.20.

procurement, an administrative authority with a broader mandate or courts of law.¹²⁵ Apart from complaint-based procedures, the mechanisms that are used in some instances for monitoring the procurement process include the internal audits of procuring authorities, external control or audits by an administrative body in charge of overseeing the proper conduct of procurement proceedings; or oversight by the legislative authorities in some countries.¹²⁶ In those countries where procurement procedures are decentralized, each entity has its own procedures which may vary from one entity to another.¹²⁷

52. The remedies available to successful complainants differ from country to country and may include the following:

- interim measures, including the suspension of the procurement procedures and of the implementation of any decision of the procuring authority taken unlawfully in order to preserve the rights of suppliers¹²⁸;
- recommendations to entities to bring their procurement proceedings and decisions in line with the rules in force¹²⁹;
- damages awarded to the aggrieved supplier¹³⁰ which are sometimes limited to the financial costs of tendering¹³¹.

National laws sometimes provide for the public interest to be taken into account in deciding whether to suspend or cancel a procurement decision; cancelling of procurement procedures or setting-aside decisions and awards.¹³²

(b) Discussions in the Working Group

53. A widely-held view appears to be that any provisions on review in a transparency agreement should not require one model for every Member or introduce elaborate obligations on the particular characteristics of national systems that should be maintained.¹³³ The matter of domestic review procedures was within the purview of domestic legislation and that the primacy of national legislation should be maintained.¹³⁴ Any provisions should be flexible enough to allow Members to design their domestic review mechanisms in accordance with their national legislation and to rely on administrative or judicial review mechanisms that are appropriate to their national legal systems and to accommodate different Members' existing independent administrative or judicial tribunals and review procedures.¹³⁵

54. Those advocating the inclusion of a requirement in a transparency agreement in relation to domestic review procedures base their arguments on the role of such procedures in guaranteeing the overall transparency of the procurement process and the need for an appropriate mechanisms to ensure the enforcement of underlying rules. With regard to the first of these points, the point has been

¹²⁵ S/WPGR/W/11/Add.1, Add.2, Add.8, Add.10, Add.14, Add.15.

¹²⁶ S/WPGR/W/11/Add.4, Add.15, Add.18, Add.19.

¹²⁷ S/WPGR/W/11/Add.15.

¹²⁸ S/WPGR/W/11/Add.1, Add.2, Add.3, Add.6, Add.13, Add.17.

¹²⁹ In Australia, while compliance by an entity with a recommendation of the review authority for a remedy is not mandatory, the review authority may report to the Prime Minister and then to the Parliament if the entity does not act upon a recommendation adequately.

¹³⁰ S/WPGR/W/11/Add.1, Add.11.

¹³¹ S/WPGR/W/11/Add.2.

¹³² S/WPGR/W/11/Add.1, Add.3, Add.10, Add.12, Add.18.

¹³³ WT/WGTGP/W/15 and 17.

¹³⁴ WT/WGTGP/M/14, para 58.

¹³⁵ WT/WGTGP/M/10, paragraph 47 and WT/WGTGP/M/12.

made that the availability of a bid challenge mechanism adds to the transparency of the decision-making process, increases confidence in the effective functioning of the overall procurement system and enables the system to be seen to be transparent. Review procedures should also be in place in the interest of introducing due process and public accountability of decision-making through the procurement process.¹³⁶ Domestic review mechanisms are necessary to ensure that the applicable transparency rules are respected by all involved in a procurement process.¹³⁷

55. The view has also been expressed that there should be no provisions on domestic review mechanisms in a transparency agreement.¹³⁸ According to this view, domestic administrative or judicial review mechanisms are in place for the purpose of public accountability at the domestic level, a matter not within the ambit of a transparency agreement.¹³⁹ The issue of domestic review goes beyond that of transparency and therefore the mandate of the Working Group. A further comment in this respect has been that, since the purpose of domestic procedures in many countries is to review whether procurement has been made in accordance with domestic law and procedures, it might not be feasible to limit the application of review procedures to obligations in a WTO agreement, the scope of which will be limited to transparency. Moreover, the concern has been expressed in this connection that review provisions in a transparency agreement might be used as a means by certain vocal private parties to create complications in the domestic political arena and that additional review procedures might increase the number of challenges and create unnecessary costs for procuring entities.¹⁴⁰

56. A further approach that has been put forward envisages leaving the choice of review procedure to individual Members provided the review mechanism itself was transparent and provided a guarantee of independence.¹⁴¹ Another view has been that the requirements on domestic review procedures in a transparency agreement should be limited to the provision of information on available national review mechanisms and procedures. All that is necessary is that suppliers are made aware that such national mechanisms exist and are provided with information as to how they work. A further suggestion has been that a transparency agreement could contain an exhortation to Members or a best endeavours obligation to provide on and maintain domestic review mechanisms.¹⁴² It has also been suggested that provision of *ex post* information to unsuccessful suppliers and debriefing by procuring authorities would be sufficient and obviate the need for provisions on review¹⁴³ (see also Section VII and X).

57. By way of precedents for review and appeal mechanisms in the WTO system, attention has been drawn to the mechanisms that can be found in a number of WTO agreements, for example the Agreements on Countervailing Measures and Anti-Dumping Practices, Customs Valuation, Import Licensing, Rules of Origin, Preshipment Inspection and TRIPS and in paragraph 3(b) of Article X of the GATT 1994.¹⁴⁴ A note by the Secretariat that was prepared in response to a request by the Working Group, reproduces the relevant provisions in the WTO Agreements.¹⁴⁵ In response, the point has been made that WTO agreements do not have a consistent approach towards domestic review procedures. It might not be feasible to transpose the provisions regarding review mechanisms in other WTO Agreements into a transparency agreement since the scope of the rules under those Agreements went beyond simple transparency obligations.

¹³⁶ WT/WGTGP/W/17.

¹³⁷ WT/WGTGP/W/17.

¹³⁸ WT/WGTGP/M/10.

¹³⁹ WT/WGTGP/M/14, paragraph 58.

¹⁴⁰ JOB(99)6782, paragraphs 99.

¹⁴¹ WT/WGTGP/M/12 and WT/WGTGP/W/15.; WT/WGTGP/M/10.

¹⁴² WT/WGTGP/M/12.

¹⁴³ WT/WGTGP/W/17.

¹⁴⁴ WT/WGTGP/W/15.

¹⁴⁵ WT/WGTGP/W/3.

58. Observations have been made regarding the basic features that domestic review mechanism should have in order to ensure effective, open, fair and transparent review of procurement decisions. While the point has been made that a domestic review mechanism could be achieved through a variety of means, certain features common to most domestic mechanisms and that could be taken into account in developing provisions in this respect have been suggested.¹⁴⁶

59. Regarding the provisions in a transparency agreement on access to review, the point has been made that a review should be available to all interested or potential suppliers or to all suppliers who have participated in the procurement process¹⁴⁷ and are directly or individually affected by the practice or the action¹⁴⁸, including suppliers from other WTO Members.¹⁴⁹

60. Observations have been made on the grounds for domestic review under a transparency agreement. In relation to a transparency agreement, one suggestion has been that reviews should relate to practices and actions that may be inconsistent with the requirements of a future transparency agreement¹⁵⁰, as implemented by Members.¹⁵¹ In this respect, it has been stated that the obligation to provide for review procedures in a transparency agreement should only concern actions within the scope of that agreement, not the substance of preferential measures relating to market access in government procurement.¹⁵²

61. With regard to review bodies, it has been said that a review provision should permit flexibility as to whether a country chooses to provide opportunities to seek review through judicial, arbitral or administrative bodies.¹⁵³ Nevertheless, it should clearly require that such bodies be impartial¹⁵⁴ and operate independently¹⁵⁵ of the procurement entity.

62. With regard to review process itself, the importance of promptness¹⁵⁶ of the process and timeliness of decisions of procuring entities¹⁵⁷, the point has been made that there should be procedures encouraging suppliers, in the first instance, to take up the matter directly with the procuring entity for an early resolution through consultations between the procuring entity and suppliers.¹⁵⁸

63. With regard to *ex post* information, the point has been made that review procedures should result in reasoned conclusions that should be notified to interested suppliers in writing¹⁵⁹ and/or be published in a medium that is publicly or widely available or readily accessible.¹⁶⁰

64. Another suggestion with regard to ensuring transparency of review procedures has been that a transparency agreement should require procurement entities to maintain comprehensive administrative written records of the procurement process¹⁶¹, for instance for a three-year period¹⁶² in order to ensure

¹⁴⁶ JOB(99)/5803, WT/WGTGP/W/27 and Job No. 4099.

¹⁴⁷ WT/WGTGP/W/26 and 27.

¹⁴⁸ WT/WGTGP/W/26 and 27.

¹⁴⁹ WT/WGTGP/W/17 and Job No. 4099.

¹⁵⁰ WT/WGTGP/W/15.

¹⁵¹ WT/WGTGP/W/27.

¹⁵² WT/WGTGP/W/15.

¹⁵³ WT/WGTGP/W/15, 26 and 27.

¹⁵⁴ Job No. 4099.

¹⁵⁵ Job No. 4099, JOB(99)/5803 and WT/WGTGP/W/26 and 27, JOB(99)/5239.

¹⁵⁶ JOB(99)/5239 and WT/WGTGP/W/26.

¹⁵⁷ JOB(99)/5803, WT/WGTGP/W/15 and WT/WGTGP/W/26 and 27.

¹⁵⁸ WT/WGTGP/W/27, JOB(99)/5803 and WT/WGTGP/W/15.

¹⁵⁹ JOB(99)/5239.

¹⁶⁰ WT/WGTGP/W/17, JOB(99)/5803, WT/WGTGP/W/27 and JOB(99)/5239.

¹⁶¹ WT/WGTGP/W/26.

¹⁶² WT/WGTGP/W/27.

that review bodies had an adequate factual basis for review. This issue is discussed under item IX A of this note.¹⁶³

65. In connection with remedies, the point has been made that a review provision should provide for adequate remedies to protect the interests of suppliers and to deter procurement entities from engaging in future actions that would be inconsistent with WTO transparency provisions. Remedies should include the possibility of re-tendering procurements or damages to cover legitimate claims¹⁶⁴ and provide relief to complainants. It has been said that most national review systems already provide remedies for suppliers whose rights have been denied under the applicable laws and regulations.¹⁶⁵

66. The point has been made that review of complaints or other dispute settlement mechanisms are often initiated after the contract has been awarded, making it difficult or impossible to overturn a procurement decision, cancel a contract and start the procurement process all over again. A review provision should ensure that claims from interested suppliers could be heard and decided upon in a manner that did not prejudice their interests in the procurements in question. Such guarantees could be available through rapid decisions on challenges or through suspension of the procurement process while claims are pending or remedies which could include compensation after administrative or judicial procedures have determined that an injury or an economic loss has flowed from the inconsistency of a procurement process with the applicable legislation.¹⁶⁶ In cases in which the procurement process may be suspended, there could be provision for continuing with the award of procurements in the public interest.¹⁶⁷ Since suspension could be detrimental to the public interest and create difficulties in cases of urgent procurements, most national review procedures and the provisions of the GPA provided for exceptions enabling, in circumstances so warranting, public interest considerations to override the interest in suspending a procurement process.

67. In response, it has been said provisions requiring adequate remedies would fall outside the scope of the work on transparency. Prescribing obligations on remedies might have counter-productive repercussions on the procurement practices of governmental authorities; to the extent that procuring authorities would be liable to remedies, they might have a tendency to restrict access to foreign suppliers in order to minimize any such risks.¹⁶⁸

68. The Group also had an exchange of views on the way in which WTO dispute settlement procedures and domestic procedures might interact and in particular whether WTO dispute settlement procedures should apply to obligations with respect to domestic review. A common starting point for the discussion on this point appears to be that the legal criteria for domestic reviews and WTO dispute settlement are different. A distinction should be made between domestic review mechanisms which involve responding to complaints by suppliers against procuring authorities under the law of a country and dispute settlement procedures between governments under the law and procedures of the WTO.¹⁶⁹

69. The concern has been expressed that WTO dispute settlement procedures should not give rise to situations in which the procurement decisions of government authorities could be overturned by recourse to them. In this respect, the view has been expressed that WTO dispute settlement should only apply in respect of obligations of governments in their capacity as regulators. Any procurement decisions taken by them, including contract award decisions, in their capacity as purchasing entities should not be subject to WTO dispute settlement procedures but to domestic review procedures. WTO dispute settlement procedures should apply to issues relating to the consistency of laws of

¹⁶³ WT/WGTGP/W/15.

¹⁶⁴ WT/WGTGP/W/15.

¹⁶⁵ Job No. 4019.

¹⁶⁶ JOB(99)6782, paragraphs 104.

¹⁶⁷ WT/WGTGP/W/15.

¹⁶⁸ JOB(99)6782, paragraphs 105.

¹⁶⁹ WT/WGTGP/W/26 and WT/WGTGP/M/10.

general application with the rules of a transparency agreement and should not be invoked with regard to decisions resulting from national review procedures concerning a particular procurement. The scope of the application of WTO procedures to domestic review provisions should be limited to actions relating to the implementation, through domestic laws and procedures, of the requirements of the transparency agreement in this respect.¹⁷⁰

70. On the other hand, it has been said that challenges of individual award decisions under the provisions of a transparency agreement were unlikely. Moreover, the point has been made that recourse to WTO dispute settlement procedures being a prerogative of governments, could not be had by suppliers who might challenge procurement procedures of government entities.¹⁷¹

71. The view has also been expressed that provisions should reflect the principles of exhaustion of domestic judicial review mechanisms before recourse to WTO dispute settlement procedures.¹⁷² A further point has been made that the possibility for foreign suppliers to have recourse to effective and independent domestic review procedures, as a first avenue for resolving complaints, would minimize the likelihood that such complaints might eventually rise to the level of government-to-government disputes.¹⁷³

IX. OTHER MATTERS RELATED TO TRANSPARENCY

(a) Information on provisions in existing international instruments and national procedures and practices

72. Four main areas have been identified in the discussions in the Working Group in relation to this item. These are maintenance of records of proceedings; information technology; language; and fight against bribery and corruption. The treatment of these matters in the three international and in national practices are presented in turn in the following sections.

(i) *Maintenance of records of proceedings*

73. Both the Model Law and GPA have provisions for the maintenance of records of procurement proceedings. The GPA requires that this information be retained by procuring entities for use, if required, under various procedures such as provision of information by entities (Article XVIII), between governments (Article XIX), under bid challenge procedures (Article XX) and under dispute settlement (Article XXII).¹⁷⁴ Moreover, where limited tendering – rather than open or selective procedures have been adopted, the GPA requires a specific report to be prepared on each such occasion of limited tendering.¹⁷⁵ The Model Law establishes an explicit requirement for the maintenance of a record of the key decisions and actions taken by the procuring entity during the course of the procurement proceedings. As is explained in the Guide to the Enactment of the Model Law, the maintenance of a record is one of the principal mechanisms for ensuring adherence to the rules and also facilitates the exercise of the right of aggrieved suppliers to seek review.¹⁷⁶ They both also set out the minimum content of information to be maintained; these cover the procurement requirement, the procuring entity, suppliers and evaluation of tenders.¹⁷⁷ APEC Non-binding principles require that

¹⁷⁰ JOB(99)6782, paragraph 102.

¹⁷¹ JOB(99)6782, paragraph 131.

¹⁷² JOB(99)6782, paragraph 131.

¹⁷³ JOB(99)6782, paragraph 132.

¹⁷⁴ WT/WGTGP/W/6, paragraph 138; GPA Article XIII:3.

¹⁷⁵ WT/WGTGP/W/6, paragraph 139.

¹⁷⁶ UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment, pages 61 and 71.

¹⁷⁷ WT/WGTGP/W/6, paragraphs 136, 137; Model law, Guide to Enactment, pages 61 and 71; Model Law Article 11(a)-(m); GPA Article XVIII:1(a)-(g).

records should be kept in relation to every contract awarded. The information recorded should be sufficient to justify decisions taken in the procurement process.¹⁷⁸

74. In two instances where information about national practices has been provided, procuring entities are required to maintain certain minimum records about every procurement or contract award.¹⁷⁹

(ii) *Information technology*

75. Information technology can play, and in some countries is already playing, a major role in enhancing transparency. The GPA recognizes the useful role that information technology could play in government procurement and, at Article XXIV:8, provides for the Committee on Government Procurement to consult regularly in the light of unfolding developments with the aim, in particular, of using information technology to promote transparent, efficient, open and non-discriminatory government procurement.¹⁸⁰ In the context of the renegotiation of the Agreement under Article XXIV:7(b), the Committee on Government Procurement has initiated work on possible amendments to the relevant provisions of the GPA to reflect recent developments in information technology.¹⁸¹

76. In the area of information technology national practices appear to have substantially advanced in recent years. Information available indicates that a substantial number of countries, including developing countries, have implemented electronic procurement, electronic tendering or other forms of application of information technology to government procurement¹⁸², though the use is not uniform.¹⁸³ For instance, Chile, Mexico and Brazil have reported to the Working Group their implementation of electronic tendering and procurement systems. Information available suggests that information technology in government procurement has tended to be focused on the development and maintenance of electronic databases which provide information on tender opportunities, contract award notices and similar information. The information provided, nevertheless, suggest a broad thrust of initiatives to take advantage of the benefits offered by information technology in government procurement.¹⁸⁴ In some electronic procurement implementations reported, a dual system has been adopted, involving the obligation on procuring entities to publish information – and receive tenders – both in paper form and electronically, to cater to the needs of those suppliers who may not have access to appropriate information technology facilities.¹⁸⁵

(iii) *Language*

77. The three international instruments have varying provisions as regards language. Under the Model Law, the language of documentation is generally the official language(s) of the enacting State, or, in certain specified cases, in a language customarily used in international trade. The formulation and submission of tenders can be in any language in which the tender notices have been issued or in any other language stipulated by the procuring entity.¹⁸⁶ Under the GPA, a summary of the invitation to tender has to be submitted in a WTO official language, and, if an entity allows tenders to be submitted in several languages, then one of those must be an official WTO language.¹⁸⁷ The World Bank Guidelines stipulate that qualification and tender documents – and the ensuing contract – in the

¹⁷⁸ WT/WGTGP/W/24

¹⁷⁹ GPA/10; WT/WGTGP/W/5.

¹⁸⁰ WT/WGTGP/W/6, paragraph 146.

¹⁸¹ GPA/8.

¹⁸² WT/WGTGP/M/12, paragraphs 11-15.

¹⁸³ WT/WGTGP/W/6, paragraph 142.

¹⁸⁴ WT/WGTGP/W/6, paragraphs 142-145.

¹⁸⁵ WT/WGTGP/M/12, paragraph 12.

¹⁸⁶ WT/WGTGP/W/6, paragraph 146.

¹⁸⁷ WT/WGTGP/W/6, paragraphs 146- 147; GPA Articles IX:8 and XII:2.

case of international competitive bidding, shall be in either English, French or Spanish, but that a subsequent contract entered exclusively with a local supplier may be in the national language.¹⁸⁸ In the case of local tendering and contracting, such as under national competitive bidding procedures, the World Bank Guidelines provide that the national language may be the medium of communication and also used in documentation.¹⁸⁹

78. As regards national practices, generally procurement information is provided in official national language(s). In some instances, summaries are provided in languages traditionally used in international trade. Where countries have several official languages, the information may be provided in all, or provided in one and summarised in the others.¹⁹⁰

(iv) *Fight against bribery and corruption*

79. Neither the GPA nor the Model Law have explicit provisions specifically directed at the fight against bribery and corruption. The World Bank Guidelines require all participants in Bank-financed projects – including borrower countries together with beneficiary organizations, and bidders, suppliers and contractors - to observe the highest standards of ethics during the procurement and execution of contracts. Where a fraudulent or corrupt practice is determined to have taken place, the Bank's Guidelines provide for a number of measures, including: rejection of a proposed contract award, cancellation of the portion of a loan so affected or declaration of the affected supplier as ineligible to participate in further Bank-financed programmes for a stated or an indefinite period of time.¹⁹¹ The Bank also reserves the right to inspect, under certain circumstances, the records and accounts of suppliers and have these audited by independent auditors appointed by it¹⁹², and in large contracts to have suppliers give an undertaking to observe a borrower country's laws on bribery, fraud and corruption.¹⁹³ A number of international instruments have also been established by international forums for fighting bribery and corruption, including the OAS and the OECD.¹⁹⁴

(b) Discussions in the Working Group

(i) *Maintenance of records of proceedings*

80. The point has been made that the maintenance of a record of procurement proceedings and the availability of non-confidential information contained in it to interested parties is one of the principal mechanisms for ensuring adherence to agreed rules and is of particular importance in the functioning of an administrative or judicial review process. Such records provide the basis for an audit trail and support any evaluation of the procurement and thus introduce an element of accountability into the process. It has also been said that the length of time that records of proceedings should be maintained could be linked to the time provided to domestic suppliers in domestic legislation to challenge a procurement decision and to seek a review of a procurement process. Suggestions have been made as regards the type, form and duration of information to be maintained in records.¹⁹⁵ On the other hand, it has been said that a transparency agreement should not have provisions stating explicitly in what form and for how long records should be maintained by entities.

¹⁸⁸ WT/WGTGP/W/6, paragraph 146, WB Procurement Guidelines, paragraph 2.15.

¹⁸⁹ WB Guidelines, paragraph 3.14.

¹⁹⁰ WT/WGTGP/W/6, paragraph 148.

¹⁹¹ WB Guidelines, paragraph 1.15 (a)-(d).

¹⁹² WB Guidelines, paragraph 1.15(e).

¹⁹³ WB Guidelines, paragraph 1.16.

¹⁹⁴ JOB(99)6782, paragraph 118.

¹⁹⁵ JOB(99)6782, paragraphs 109-112; WT/WGTGP/M/10, paragraph 48; WT/WGTGP/W/26, Part III:6.1; JOB(99)5239, paragraph 6.

(ii) *Information technology*

81. There has been a wide recognition that the use of information technology offers enormous opportunities to level the playing field by increasing access to information at low cost to all suppliers. As such, it has been suggested that a transparency agreement could encourage its use as an alternative means of disseminating information about procurement opportunities and contract awards in comparison to more traditional methods of communication. The view has been expressed that electronic tendering using Internet-based systems provides efficient and non-discriminatory access to tender information with minimum equipment requirements and technological know-how.¹⁹⁶ Amongst the other advantages that can be offered are provision of a single point of registration, access to information by suppliers, access to price information by procuring entities, information on tenders and contract awards, and access to supplier information by procuring entities. In some cases, the national systems also provide useful statistical information on government procurement which assists the monitoring, control and justification of government expenditures.¹⁹⁷

82. The view has also been expressed that given the different stages of development amongst the countries, the use of information technology could disadvantage some suppliers – for instance small and medium-scale enterprises in less developed countries, who may not have access to such technology – and accordingly should be optional. A balance should be found whereby a transparency agreement would not constitute an unnecessary barrier to progress in the area of information technology and would accommodate its increasing application in Members, while ensuring that the use of information technology would not result in discrimination against countries which did not have a competitive edge in this area.¹⁹⁸ In this respect, the suggestion has been made that the use of information technology might be promoted in a transparency agreement through the use of a best endeavours clause.¹⁹⁹

(iii) *Language*

83. The discussion in the Working Group on the issue of language has revolved around whether information on procurement opportunities should be made only in Members' official languages, or additionally should be made in a WTO language. The general view appears to be that information should continue to be provided in the official language(s) of Members. It has been suggested that, where possible, however, information could be provided in a WTO language, where a procurement opportunity is likely to provide international interest.²⁰⁰ Certain types of information, such as notification of enquiry points and matters to do with dispute settlement or consultations, should be made in an official WTO language.²⁰¹

(iv) *Fight against bribery and corruption*

84. The view has been expressed that there is an important relationship between transparency in government procurement and reducing the incidence of bribery and corruption in government procurement practices. In response, the point has been made that, while the initiatives in international fora such as the OAS and the OECD have been useful in attacking the problem from various angles, so far there have not been any studies, negotiations or agreements on the relationship between the fight against bribery and transparency in government procurement in a specific and systematic manner. The view has also been expressed that transparency, by itself, is not enough and therefore

¹⁹⁶ JOB(99)6782, paragraphs 113-114.

¹⁹⁷ See WT/WGTGP/M/12, paragraphs 10-14

¹⁹⁸ JOB(99)6782, paragraph 114; WT/WGTGP/M/12, paragraph 15.

¹⁹⁹ See WT/WGTGP/M/10, paragraph 49.

²⁰⁰ JOB(99)6782, paragraph 116; WT/WGTGP/W/26, Article 10, JOB(99)5239, paragraph 7; WT/WGTGP/W/27, Article IX:3.

²⁰¹ JOB(99)5239, Part III:7.1 and 2.4.

needed to be supplemented by other appropriate action and measures. A further view has been expressed questioning the appropriateness of expanding the scope of the work of the Working Group to matters of bribery and corruption which might be more appropriately dealt with in other fora. This view suggests that there should be no explicit linkage between transparency and bribery and corruption in a transparency agreement, and Members should deal with this issue through their own national legislation.²⁰²

X. INFORMATION TO BE PROVIDED TO OTHER GOVERNMENTS (NOTIFICATION)

(a) Information on provisions in existing international instruments and national procedures and practices

85. The GPA, being an international instrument that sets contractual rights and obligations between governments in the area of government procurement, includes provision on exchange of procurement-related information between governments. The relevant provisions relate to provision of information on national legislation; notification of national legislation; provision of information on contract awards; and statistical reporting.

86. The GPA Parties are required, in response to a request by any other GPA Party, to explain their government procurement procedures²⁰³; supply copies of laws, regulations, judicial decisions, administrative rulings or other measures relevant to the Agreement; and provide information concerning procurement by covered entities and their individual contract awards.²⁰⁴

87. As regards the establishment of enquiry points, the provisions on special treatment for developing countries in the GPA require developed country Parties to establish information centres to respond to reasonable requests from developing country Parties for information relating to, among others, laws, regulations, procedures and practices regarding government procurement, addresses of the entities covered by the Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders.²⁰⁵ The coordinates of the contact points of GPA Parties have been notified to the GPA Committee. Furthermore, contact points have also been designated by individual APEC member countries pursuant to the work of the Group of Experts on Government Procurement. These are included in the APEC Surveys and can be accessed through the APEC Home Page on Government Procurement at the Internet (<http://www.apecsec.org.sg/gphome.html>).

88. As regards the notification of national legislation and any changes, the GPA Committee has adopted relevant procedures for such notifications, including responses to a checklist of issues.²⁰⁶ GPA Parties are required to submit the complete texts of their basic legislation (laws and regulations) on government procurement, including the basic legal instruments pursuant to which effect is given to the provisions of the Agreement, in the original language to the Secretariat. Each Party is also required to provide a summary of the implementing legislation in a WTO language.

²⁰² JOB(99)6782, paragraphs 120-121; WT/WGTGP/M/10, paragraph 50.

²⁰³ GPA Article XIX:1.

²⁰⁴ GPA Article XIX:3.

²⁰⁵ GPA Article V:11.

²⁰⁶ GPA/1/Add.1 and GPA Article XXIV:5(a) and (b).

89. Further to the obligations of entities under the GPA relating to the provision of information by procuring entities to an unsuccessful tenderer²⁰⁷, the GPA allows the government of an unsuccessful tenderer to seek such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government is required to provide information on both the characteristics and relative advantages of the winning tender and the contract price. The government may disclose the information thus obtained provided it exercises this right with discretion. In cases where the release of such information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.²⁰⁸

90. The GPA has a general provision in Article XIX:4, requiring that confidential information provided to any government Party to the GPA shall not be revealed without formal authorization from the Party providing the information.²⁰⁹

91. As a means of monitoring procurement covered by the GPA, Article XIX:5 of the GPA requires each Party to collect and provide to the Committee on an annual basis statistics on its procurements covered by the GPA. The type of information that such reports shall contain is stipulated in detail in Article XIX:5, paragraphs (a) to (d). Statistical reports of GPA Parties can be found on the WTO website.

(b) Discussions in the Working Group

92. The issues that have been raised in regard to the type of information that could be provided to other governments relate to notification of national legislation, provision of information on national legislation and practices upon request from interested parties in other Members, for instance through enquiry points established for this purpose, and statistical reporting. The general remark has been made that any requirements relating to the provision to other governments of information on rules and procedures should apply only to the extent that such rules and procedures are within the scope of a transparency agreement. Attention has been drawn to the distinction between the use of notification and that of publication or availability of laws and regulations (summarized under item III in document WT/WGTGP/W/32).

(i) *Notification of national legislation*

93. A suggestion has been made that Members should be required, on request, to provide relevant information about their laws, regulations, procedures and practices affecting the implementation of a transparency agreement.²¹⁰ The possibility of using the relevant provisions in GATT 1994 Article X and GATS Article III for purposes of a transparency agreement has also been mentioned. With regard to notification of information on basic laws and regulations and any amendments thereof, a suggestion has been made that the relevant information about the laws and regulations be provided to the WTO Secretariat, which should then make it publicly available through an electronic medium.²¹¹ In response, a concern has been expressed that notification of all national laws, regulations and administrative guidelines, including those of sub-central and other levels of government covered, might prove to be unduly burdensome.²¹²

²⁰⁷ GPA Article XVIII:2(c).

²⁰⁸ GPA Article XIX:2.

²⁰⁹ GPA Article XIX:4.

²¹⁰ WT/WGTGP/W/26, Article 12; WT/WGTGP/W/27, Article V:3.

²¹¹ WGT/WGTGP/M/10, paragraph 52; WT/WGTGP/W/26, Article 11.

²¹² JOB(99)/6782, paragraph 123.

94. It has also been suggested that Members should be required to provide a list in one of the WTO languages of the relevant generally applicable instruments²¹³, but not copies of each and every law and regulation.²¹⁴ There has also been a suggestion regarding the use of checklists or questionnaires to obtain relevant information on the responsiveness of national laws and regulations to the requirements of a transparency agreement. A further point that has been made in this connection has been that any requirements for notification should apply only to matters that fell within the scope of a transparency agreement, and otherwise should not apply to market access issues.²¹⁵ The point has been made that a requirement to notify information on national legislation, regulation and administrative procedures might prove burdensome for some Members, for instance, if it included relevant information at the sub-central level, and also had to be notified in a WTO language. Particular concerns have been expressed about sharing of confidential information.²¹⁶

(ii) *Enquiry points*

95. With reference to the establishment of enquiry points, it has been suggested that each Member should establish enquiry point(s) and notify its details to other Members.²¹⁷ Other suggestions in this connection have been that there should be a single access point for obtaining information and it should be free of charge.²¹⁸ On the other hand, the point has been made that the establishment of a single enquiry point might require coordination between different government departments and agencies which might present some difficulties for national authorities.²¹⁹ The issue of enquiry points has also been taken up in relation to item III as noted in document WT/WGTGP/W32.

(iii) *Information on contract awards*

96. The main discussion on this issue has been reflected under item VII of the present note. The suggestion has been made that the government of an unsuccessful tenderer might be entitled to seek information on the contract award in question from the government whose entity conducted the procurement.²²⁰ Such information could be limited to how the commitments on a transparency agreement are being complied with in the contract award process²²¹. On the other hand, the view has been expressed that the provision of such post-contract award decision may not be necessary in a transparency agreement, the scope of which will not extend to market access.²²²

(iv) *Statistical reporting*

97. A view expressed on this matter has been that statistical reporting should not be an obligation in a transparency agreement, but that governments may provide relevant information on a voluntary basis.²²³

²¹³ WT/WGTGP/W/26.

²¹⁴ JOB(99)/6782, paragraph 123.

²¹⁵ JOB(99)/6782, paragraph 126.

²¹⁶ JOB(99)/6782, paragraph 123; WT/WGTGP/M/10, paragraph 52.

²¹⁷ JOB(99)5239, Part III:2.1-2.4; WT/WGTGP/W/27, Article V:3-5; WT/WGTGP/W/26, Article 14.

²¹⁸ WT/WGTGP/M/10, paragraph 51.

²¹⁹ WT/WGTGP/M/10, paragraph 51.

²²⁰ JOB(99)/6782, paragraph 123.

²²¹ JOB(99)/6782, paragraph 123.

²²² JOB(99)/6782, paragraph 123.

²²³ JOB(99)/6782, paragraph 125; WT/WGTGP/M/10, paragraph 53.

XI. WTO DISPUTE SETTLEMENT PROCEDURES

(a) Information on provisions in existing international instruments and national procedures and practices

98. Under the GPA disputes between Parties are subject to the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.²²⁴ Dispute settlement procedures are applicable to all the rules of the Agreement. Because of the area covered and of the plurilateral nature of the Agreement, GPA provisions on dispute settlement contain a number of special rules or procedures, for instance on composition of panels, time-periods for panel proceedings and disallowing cross-retaliation in case of disputes arising under other WTO Agreements.²²⁵ Moreover, under the GPA, the DSB has the authority to authorize consultations among parties to the dispute regarding remedies when withdrawal of violating measures is not possible.²²⁶ By their nature, the issue of government-to-government dispute settlement does not arise in the other two international instruments.

(b) Discussions in the Working Group

99. It has been said that the approach to the application of government-to-government dispute settlement in a transparency agreement should reflect the general approach adopted in the WTO. WTO dispute settlement procedures applied to the provisions in the Agreement Establishing the WTO and transparency-related rules and other procedural disciplines in other WTO agreements, for instance GATT Article X.²²⁷ The view has been held that WTO dispute settlement procedures are intended to guarantee the integrity and consistency of the WTO system and to create confidence in it. Without clear provisions on dispute settlement, a future agreement would not have any merits.²²⁸ An enforcement mechanism is necessary in order to ensure that all Members have a consistent understanding of what their commitments are under an agreement.²²⁹

100. Three of the draft texts of an agreement presented contain proposals suggesting that consultations and settlement of disputes with respect to any matter affecting the implementation and operation of the Agreement should follow the provisions of GATT Articles XXII and XXIII and GATS Articles XX and XXIII, respectively, as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes under WTO Agreements.²³⁰ Two of these proposals set out provisions which take into account the specificity of government procurement disputes, suggesting specific provisions in relation to the composition of panels²³¹ and the non-applicability of decisions of a panel or the Appellate Body regarding the inconsistency of a measure with respect to prior contract awards.²³²

101. On the other hand, comments have been made that the question of whether or not there should be a link between WTO dispute settlement procedure and a future agreement would depend on the nature of the obligations and their substance.²³³ Regarding the nature of obligations, the view has been expressed that provisions subjecting a transparency agreement to dispute settlement procedures would not be necessary if its obligations would be of the 'best-endeavours' type since any decisions reached by the Dispute Settlement Body under such an agreement could not be enforceable²³⁴ An

²²⁴ GPA Article XXII:1.

²²⁵ GPA Article XXII:5, 6 and 7.

²²⁶ GPA Article XXIII:3

²²⁷ JOB(99)/6782; WT/WGTGP/M/10 and 11.

²²⁸ WT/WGTGP/M/11.

²²⁹ JOB(99)/6782.

²³⁰ JOB(99)5803; WT/WGTGP/W/26 and 27.

²³¹ WT/WGTGP/W/26 and 27.

²³² WT/WGTGP/W/27.

²³³ JOB(99)/6782; WT/WGTGP/M/11.

²³⁴ WT/WGTGP/M/11.

agreement on transparency could be in the form of guidelines or a code. A further view has been that WTO agreements and DSU are part of the single undertaking. If WTO dispute settlement procedures were to apply to a future transparency agreement, it would be necessary to ensure that it was incorporated in the single undertaking.²³⁵ A further suggestion has been that Article X of GATT could be the basis for dispute settlement in cases involving violation of obligations on transparency.²³⁶

102. Questions have been asked seeking clarification on the types of measures that would be the subject of a WTO dispute settlement and in what circumstances the WTO dispute settlement procedures would apply,²³⁷ for instance in relation to obligations on scope and definition, procurement methods or time-periods in a transparency agreement.²³⁸ Moreover, a comment has been made questioning the application of dispute settlement procedures with significant results in the absence of commitments on market access.²³⁹ Finally, comments have been made expressing the view that it would be premature to consider the applicability of dispute settlement procedures before the elements of a transparency agreement have been more clearly identified and the rules have been prescribed.²⁴⁰

103. By way of an alternative to the WTO dispute settlement mechanism, one suggestion has been that implementation of the rules could be ensured through a peer review mechanism in the committee administering the agreement. Another view has been that domestic review mechanisms existing in Members provide an adequate mechanism to address disputes related to transparency in government procurement.²⁴¹

104. The following questions have been asked regarding the application of specific aspects of WTO dispute settlement procedures: how would suspension of concessions be envisaged under a transparency agreement²⁴²; whether DSB decisions concerning a breach of transparency obligations could apply retroactively; whether national legislation would need to be adapted to take account of the application of WTO dispute settlement procedures²⁴³; and whether there should be provisions regarding non-violation complaints.²⁴⁴ One observation has been that, in terms of paragraph 3 of the DSU, any decisions under the DSU would not alter the rights and obligations of Members.²⁴⁵

105. The matter of the relationship between dispute settlement procedures and domestic review mechanism have been addressed in two of the draft texts of an agreement presented. One proposal suggests that WTO dispute settlement procedures should apply to decisions of domestic review bodies.²⁴⁶ Another proposal suggests provisions encouraging the use of domestic review procedures before the invocation of WTO dispute settlement procedures. This proposal also suggests that all available formal judicial remedies under domestic laws against the inconsistent measure should be exhausted before WTO dispute settlement procedures can be invoked.²⁴⁷ Another view has been that the WTO dispute settlement procedures should not give rise to situations in which the procurement

²³⁵ WT/WGTGP/M/11.

²³⁶ WT/WGTGP/M/11.

²³⁷ WT/WGTGP/M/10 and 11.

²³⁸ WT/WGTGP/M/11.

²³⁹ JOB(99)/6782; WT/WGTGP/M/11.

²⁴⁰ JOB(99)/6782.

²⁴¹ JOB(99)/6782.

²⁴² WT/WGTGP/M/11.

²⁴³ JOB(99)/6782.

²⁴⁴ WT/WGTGP/M/11.

²⁴⁵ WT/WGTGP/M/11.

²⁴⁶ WT/WGTGP/W/26.

²⁴⁷ WT/WGTGP/W/27.

decisions of government authorities could be overturned by recourse to them.²⁴⁸ This matter is further discussed under item VIII of the present note.

XII. TECHNICAL COOPERATION AND SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

A. TECHNICAL COOPERATION AND SUPPORT FOR CAPACITY-BUILDING

(a) Information on provisions in existing international instruments, activities of international intergovernmental organizations and national practice

106. The UNCITRAL Model Law and the World Bank Guidelines do not have specific provisions related to technical cooperation. The obligations of GPA Parties in this respect are set out in Article V of the Agreement under which developed countries are required to provide technical assistance which they may deem appropriate to developing countries. The provision of technical assistance is upon request, on mutual agreement between the Party making the request and the donor Party. The types of assistance envisaged in the GPA include the solution of particular technical problems relating to the award of a specific contract, translation of qualification documentation and tenders made by suppliers of developing countries into an official WTO language and resolving any other problems in the field of government procurement.²⁴⁹ There are also specific provisions for technical assistance to least-developed countries. These require developed country Parties to provide assistance to potential tenderers in such countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers, and likewise assist them to comply with technical regulations and standards relating to products or services which are subject of the intended procurement.²⁵⁰

107. An overview of technical cooperation activities of IGOs (intergovernmental organizations) in the area of government procurement is contained in a note by the Secretariat (WT/WGTGP/W/29). This note, which has been prepared in response to a request by the Group in 2000²⁵¹, describes in broad terms the main features of the assistance available and gives examples of activities based on the relevant information that has been made available to the Group or elsewhere in the WTO. In response to an earlier request by the Group²⁵², information was sought by the Secretariat on the relevant activities of ten IGOs (UNCITRAL, OECD, the Asian Development Bank, the African Development Bank, APEC Government Procurement Experts Group, the European Bank for Reconstruction and Development, ITC, UNDP, the World Bank and UNOPS) and was circulated to the Group in 1998 in documents WT/WGTGP/W/20 and Addenda 1 to 9.

108. In light of the information available to the Group, the following appear to be the major aspects of technical cooperation provided by the IGOs: ensuring the proper application of the principles and rules of the organization in question by interested governments; facilitating participation in activities aimed at the development of international disciplines and rules on government procurement to be agreed by governments pursuant to the more general objectives of the respective international or regional agreements or arrangements; providing support to procurement reform activities in individual countries by establishing or improving the regulatory framework of procurement in individual countries, particularly from the perspective of ensuring that such countries are aware of the standards and the principles that are codified in the existing international instruments on government procurement; and strengthening and supporting public procurement institutions to

²⁴⁸ JOB(99)782, paragraph 102.

²⁴⁹ GPA Article V, paragraphs 8-10.

²⁵⁰ GPA Article V:13.

²⁵¹ GPA/M/10.

²⁵² GPA/M/5.

increase their capacity.²⁵³ The latter forms of technical cooperation relate to the formulation of new, or the improvement of existing, laws, regulations, administrative guidelines and procedures and tender documents; and supporting the establishment or reinforcement of public procurement offices and agencies. Furthermore, assistance to the development of human resources to build up and to sustain capacity in the area of public procurement is provided in the form of training of procurement officials and the organization of workshops, seminars and symposia. Application of information technology to government procurement has recently become another important area of technical cooperation.²⁵⁴

109. A number of Members have shared information on their past and future initiatives relating to technical cooperation in the area of government procurement. A submission by one Member gave some of the reasons it provides technical assistance in the area of government procurement.²⁵⁵ By way of contribution towards the commitment undertaken pursuant to Doha Declaration, several new initiatives and programmes have been planned by the Secretariat as well as individual Members.²⁵⁶

(b) Discussions in the Working Group

110. The discussions in the Working Group have related to both technical cooperation and support for capacity-building before and as part of a transparency agreement. This note focuses on the latter aspect.

111. The view has been expressed that ensuring compliance with the rules and requirements of a future transparency agreement might require changes in national rules and procedures and building up of new institutions in individual countries. Technical cooperation and support for capacity-building would help in responding to some of the administrative and technical challenges in fulfilling the obligations in a transparency agreement.²⁵⁷ As regards the types of areas in which technical cooperation and support for capacity-building would be beneficial, the following have been mentioned: development and improvement of national legislation and procedures²⁵⁸; institution building²⁵⁹; access to information by suppliers including establishment of enquiry points, in particular provision of information to developing country suppliers as to what entities in developed countries usually procure²⁶⁰; provision of information on national legislation and procedures²⁶¹; application of information technology including assistance related to hardware, software and the expertise necessary to disseminate procurement information²⁶²; identifying ways in which suppliers in developing countries and small and medium-sized enterprises could participate in procurement by government entities in developed countries²⁶³; training²⁶⁴; divulging information on how government procurement could influence employment and development in general²⁶⁵; technical advice and other experience-sharing activities such as twinning between developed and developing country agencies and study tours.²⁶⁶

²⁵³ WT/WGTGP/W/29, Section I.

²⁵⁴ WT/WGTGP/W/29, Section II.

²⁵⁵ WT/WGTGP/W/18.

²⁵⁶ WT/WGTGP/M/14, paragraphs 73 and 68.

²⁵⁷ WT/WGTGP/M/14.

²⁵⁸ JOB(99)/6782; WT/WGTGP/W/27; JOB(99)5239.

²⁵⁹ JOB(99)/6782; WT/WGTGP/W/27.

²⁶⁰ JOB(99)/6782; WT/WGTGP/W/27.

²⁶¹ WT/WGTGP/M/14, paragraph 70.

²⁶² JOB(99)/6782; WT/WGTGP/W/26; WT/WGTGP/W/27; WT/WGTGP/M/14, paragraph 70.

²⁶³ WT/WGTGP/M/14, paragraph 64.

²⁶⁴ JOB(99)/6782; WT/WGTGP/W/27; JOB(99)5239.

²⁶⁵ WT/WGTGP/M/14, paragraph 64.

²⁶⁶ WT/WGTGP/M/14, paragraphs 70 and 71.

112. The Working Group has also addressed the issue of the types of provisions on technical cooperation and support for capacity-building that should be included in a transparency agreement. One suggestion has been that the relevant provisions should match the specific requirements in a transparency agreement. In this connection, reference has been made to the provisions of Article 66.2 of TRIPS and Article 67 of TRIPS in terms of which developed country Members should make available technical and financial cooperation, on mutually agreed terms, in response to requests from developing country Members.²⁶⁷ A further suggestion has been that a transparency agreement should specify the areas in which technical cooperation and support for capacity-building could be provided and the form it might take.²⁶⁸ The draft texts of an agreement presented contain provisions on technical assistance. According to these proposals, technical assistance should be provided on request²⁶⁹; on mutually agreed terms and conditions²⁷⁰; and specify the areas in which such assistance could be provided.

113. With respect to the modalities, the view has been expressed that technical assistance and support for capacity-building be based on the needs and requests to be identified by the Members that face challenges in meeting the requirements of a transparency agreement.²⁷¹ It has also been suggested that the committee to be established under a transparency agreement should have procedures in place to monitor and assess technical assistance on an ongoing basis.²⁷² Another suggestion made has been that a framework should be developed under a transparency agreement for keeping track of and rationalizing the various technical assistance activities at the bilateral, regional and multilateral levels.²⁷³ In response, it has been said that establishment of bureaucratic structures in this respect should be avoided.²⁷⁴

B. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

(a) Information on provisions in existing international instruments, activities of international intergovernmental organizations and national practice

114. The UNCITRAL Model Law and the World Bank Guidelines do not have specific provisions related to special and differential treatment. The provisions of Article V of the GPA on special and differential treatment mainly relate to obligations of developed countries and agreed exclusions for developing countries from the coverage. The first of these are aimed at promoting exports from developing countries. GPA Parties are required, in the preparation and application of laws, regulations and procedures, to facilitate increased imports from developing countries. Moreover, developed countries, in the preparation of their coverage lists under the GPA, are required to endeavour to include entities procuring products and services of export interest to developing countries.²⁷⁵ As to the second of these, the agreed exclusions from coverage granted are in the form of exclusions from the rules on national treatment with respect to selected entities, products and services products. These exclusions can be granted to a developing country either at the time of its accession to the Agreement, i.e. in the negotiations of its Schedule of offers or through modifications of its coverage lists after its accession to the Agreement.²⁷⁶ Moreover, exceptions from the non-discrimination obligation are allowed to developing countries participating in regional or global arrangements among developing countries.²⁷⁷ In addition the provisions in Article V allow

²⁶⁷ JOB(99)/6782.

²⁶⁸ WT/WGTGP/M/10.

²⁶⁹ WT/WGTGP/W/26; WT/WGTGP/W/27; JOB(99)5239.

²⁷⁰ WT/WGTGP/W/26; WT/WGTGP/W/26; JOB(99)5239.

²⁷¹ WT/WGTGP/M/10,12 and 14.

²⁷² WT/WGTGP/M/10; WT/WGTGP/W/27.

²⁷³ WT/WGTGP/W/27.

²⁷⁴ JOB(99)/6782.

²⁷⁵ GPA Article V:2 and 3.

²⁷⁶ GPA Article V:4 and 5.

²⁷⁷ GPA Article V:4 and 5.

developing countries at the time of their accession to the agreement to negotiate offset requirements for qualification of suppliers, a measure that is prohibited under the GPA.²⁷⁸

(b) Discussions in the Working Group

115. It has been emphasized that provisions on special and differential treatment are necessary in light of differences in capacity among Members in the area of government procurement and the special circumstances in developing countries.²⁷⁹

116. With regard to the question of how special and differential treatment should be addressed in a transparency agreement, one view has been that it should be reflected in the substantive provisions in order to allow developing countries to comply with them only to the extent that they are capable of undertaking them. The view has also been expressed that the issue of special and differential treatment may be more appropriately addressed once the elements of a future agreement are defined.²⁸⁰

117. As to the types of special and differential treatment in a transparency agreement the suggestions that have been made relate to:

- provision of transitional periods²⁸¹;
- the application of higher level threshold values²⁸²;
- exemptions from coverage, for instance in relation to entities at sub-central levels or services.²⁸³

118. With regard to transitional periods, a suggestion has been made that developing countries and least-developed countries should be allowed respectively one year and two years during which they would apply the agreement on a best endeavours basis. There is also a suggestion that such a transition period could be combined with a standstill clause regarding any modifications to the laws and regulations in the countries that will benefit from it.²⁸⁴

²⁷⁸ GPA Article XVI:2.

²⁷⁹ WT/WGTGP/M/10.

²⁸⁰ JOB(99)/6782.

²⁸¹ WT/WGTGP/M/10 and 12.

²⁸² WT/WGTGP/M/10 and 12.

²⁸³ WT/WGTGP/M/10 and 12.

²⁸⁴ JOB(99)/5792.

**CAPACITY-BUILDING CONSIDERATIONS RELATING TO TRANSPARENCY
IN GOVERNMENT PROCUREMENT**

Communication from the United States

The following communication, dated 26 September 2002, has been received from the Permanent Mission of the United States with the request that it be distributed to all Members.

1. The Doha Ministerial Declaration recognized the importance of capacity-building in relation to transparency in government procurement "both during the negotiations and after their conclusion". This underscores the importance of understanding the practical implications of building specific elements of transparency into a procurement system. That has been, and will continue to be, a central focus of the Working Group.

2. In response to the Doha Declaration, the WTO Secretariat is offering a Symposium on Transparency in Government Procurement on 9-10 October 2002. The Symposium offers an excellent opportunity for Members to consider the practical implications of building transparency into their procurement systems. These are issues that all Members have to face in developing their procurement systems.

3. The United States looks forward to participating in the WTO Symposium, and hopes that Members will take advantage of the opportunity that it offers to consider questions such as the following:

Assessing the Benefits of a Transparent Procurement System

- Who benefits from a transparent procurement system? Domestic suppliers? Foreign suppliers? Governments? Citizens?
- How can building transparency into a procurement system contribute to a Member's development?
- Can the benefits of a transparent procurement system be measured? Are the benefits tangible?
- Why are transparent procurement systems relevant to the WTO's work?

- Is there a relationship between increased transparency and increased competition?

Transparency of Procurement Rules and Procedures

- What models would be the most useful to follow in developing a transparency procurement system? What steps need to be taken to adapt a model such as the UNCITRAL Model Law to a Member's procurement system?
- Would it be more burdensome for a Member to make all of its procurement system transparent or only parts of its system?
- What kind of information do suppliers need on a Member's government procurement framework?
- How can governments efficiently ensure that they provide the same information on a procurement to all interested suppliers?

Information on Specific Procurements

- What are efficient and cost effective ways to make information on procurement opportunities public?
 - How much information needs to be made public? When and to whom should the information be disclosed?
 - If a procurement is closed to foreign suppliers or preferences are given to domestic suppliers, should the procurement be made public? If so, why? What are the ramifications if such procurements are not made public?
 - Is it necessary to provide suppliers with information as to why they did not win a tender?
 - What kind of records should be maintained with respect to particular procurements? How long should such records be kept? Who should have access to them?
 - If suppliers believe that they have been denied information on a procurement, should they have access to an appeal or review body? What should be the role of such a body?
 - How would establishment of domestic review procedures help ensure procurement transparency?
-

**PROPOSAL FOR A WORK PLAN TO BUILD ON THE PROGRESS
OF THE WORKING GROUP**

Communication from the United States

The following communication, dated 26 September 2002, has been received from the Permanent Mission of the United States with the request that it be distributed to all Members.

Overview

1. The Working Group has made considerable progress since its establishment in 1996 toward fulfilling its mandate: *"to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement"*. It has examined extensively policies and practices related to transparency in government procurement. The breadth of the Working Group's consideration of these issues is reflected in the Secretariat's May 2002 *"Documents of the Working Group on Transparency in Government Procurement"* (WT/WGTGP/W/32). They include the following:

- Members made 34 submissions on a wide variety of specific issues.
- Members provided information on their national procedures and practices.
- UNCITRAL provided information on its *Model Law on Procurement of Goods, Construction and Services*.
- Intergovernmental organizations provided information on their transparency-related work.
- The Secretariat provided information on transparency-related provisions in existing international instruments on government procurement procedures and national practices.
- The Checklist of Issues has been repeatedly revised and is currently in its sixth iteration.
- The Working Group held 14 formal meetings to consider all of this information.

2. This study had laid the foundation for the substantial progress that the Working Group has made in developing elements of an agreement on transparency in government procurement. The United States makes this submission to offer an approach for the Working Group to build on this progress to complete its work by the Fifth Ministerial.

Benefits of a Transparent Government Procurement System

3. Transparent government procurement systems engender benefits not only for domestic and foreign suppliers, but also ultimately for the governments themselves and their citizens. The full disclosure of information is essential to a predictable and efficient government procurement process. The use of transparent and predictable procedures will help to ensure that governments obtain the greatest value for their money, resulting in the purchase of better quality goods and services and leading to more efficient use of public resources. This will enable Members to provide more social services, economic and social infrastructure and other public goods to their citizens. Transparent procurement systems will also provide an important tool for Members to combat corruption in public procurement.

4. Ensuring transparency of government procurement systems also has ramifications beyond the government procurement sector. Transparent and predictable procurement procedures are a critical element of good economic governance. They help build public confidence in the management of government affairs, establish a stable and predictable commercial and investment environment, encourage long-term business commitments and provide a solid foundation for sustained economic growth and development.

Objective of an Agreement

5. Every WTO Member conducts government procurement and in doing so follows its own procedures and practices. Some of these are formal requirements; others are informal or ad hoc; some are set out in writing; others are not transparent. Some circumscribe the authority of procuring entities; others give wide latitude to the procuring entities, which can affect the transparency of the procurement process.

6. A number of Members have used the *UNCITRAL Model Law on Procurement of Goods, Construction and Services* as the basic model for their procurement systems. Members also follow World Bank Guidelines (*Guidelines for Procurement under IBRD Loans and IDA Credits and the Guidelines for Selection and Employment of Consultants by the World Bank Borrowers*) in undertaking certain types of procurement.

7. While Members use a myriad of procurement procedures and practices, there is no common set of transparency provisions. Thus, the primary focus of the agreement should be to establish core transparency elements that suppliers throughout the world can be assured of finding in the procurement system of every Member.

8. An agreement on transparency in government procurement will be an important addition to the rules-based international trading system. Applying the principles of transparency that lie at the heart of the WTO to government procurement provides an opportunity for Members to extend and build-on their commitments to ensure the transparency of trade-related measures, as reflected in Article X of GATT 1994 and GATS Article III.

Completion of the Mandate of the Working Group

9. A multilateral agreement on transparency in government procurement does not need to be a complex undertaking, nor one that is overly burdensome, in order to accomplish its objective. The Doha Ministerial Declaration has narrowed its scope by limiting its parameters to "transparency aspects" and explicitly providing that an agreement will neither restrict domestic preferences nor require market access commitments.

10. Over the course of the next 12 months, leading up to the Fifth Ministerial, the task before the Working Group is to refine the extensive discussions that it has had on the potential elements of an agreement, as reflected in the Checklist of Issues, and to identify specific elements that are necessary to ensuring the transparency of government procurement procedures and practices. At this juncture, it is not necessary for the Working Group to decide how a particular element would be addressed in the agreement. In the Working Group's first post-Doha meeting in May, the Working Group informally began this process. For example, there appeared to be a general sense that publication of information on national legislation and procedures relating to government procurement is a necessary element of a transparent procurement system.

11. In carrying out this work, the United States suggests that the Working Group consider organizing the elements of an agreement into the following four categories of Elements:

1. General parameters of a potential agreement
2. Transparency of procurement systems
3. Transparency of specific procurements
4. Operational provisions to fulfill the objectives of a potential agreement

12. The Working Group should systematically over the next three to four meetings work through the issues identified in the Checklist of Issues and for each category decide the elements that may be appropriate for inclusion in a transparency agreement.

13. Some issues, such as the application of the WTO Dispute Settlement Understanding to a transparency agreement, may call for special consideration. The United States looks forward to making further contributions on these issues and engaging in discussions in the Working Group.

Conclusion

14. An agreement on transparency in government procurement is no less important now than it was when the Ministers added this issue to its agenda at the Singapore Ministerial. The predictability and certainty provided by a transparent rules-based government procurement system can complement other efforts to ensure the full integration of all Member economies into the global trading system. The United States believes that all Members have a shared interest in accelerating, rather than delaying, progress toward the creation of such an environment.

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4. Ensuring transparency of government procurement systems also has ramifications beyond the government procurement sector. Transparent and predictable procurement procedures are a critical element of good economic governance. They help build public confidence in the management of government affairs, establish a stable and predictable commercial and investment environment, encourage long-term business commitments and provide a solid foundation for sustained economic growth and development.

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7. While Members use a myriad of procurement procedures and practices, there is no common set of transparency provisions. Thus, the primary focus of the agreement should be to establish core transparency elements that suppliers throughout the world can be assured of finding in the procurement system of every Member.

8. An agreement on transparency in government procurement will be an important addition to the rules-based international trading system. Applying the principles of transparency that lie at the heart of the WTO to government procurement provides an opportunity for Members to extend and build-on their commitments to ensure the transparency of trade-related measures, as reflected in Article X of GATT 1994 and GATS Article III.

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TRANSPARENCY OF CONTRACT AWARD DECISIONS

Communication from Canada

The following communication, dated 26 September 2002, has been received from the Permanent Mission of Canada with the request that it be distributed to all Members.

Flexibility to choose criteria for awarding contracts

Members need flexibility to establish the criteria for deciding on the award of a contract. The criteria for awarding a contract express a government's needs and its priorities as they are to be carried out in a procurement. As agreed by Ministers at Doha, a transparency agreement "...will not restrict the scope for countries to give preferences to domestic supplies and suppliers". Therefore, a government may freely make its own choices regarding the award criteria to apply to a procurement, such as price, the preferred characteristics of the product, any preferences for local suppliers¹, the supplier's ability to meet minimum legal and technical requirements and any other requirement considered relevant by the government. Flexibility should also exist to establish the criteria for separate qualification or registration processes (if they are used), since qualification and registration are steps in the determination of which supplier will be awarded a contract.

Transparency of award decisions

Within the context of flexibility for choice of award criteria, transparency of decisions can be assured by:

- specifying the chosen award criteria and other requirements in the tender documentation, registration or qualification documentation or other information that is provided to all participating suppliers;
- basing award decisions solely on the criteria provided to all participating suppliers; and
- making information available to suppliers and other parties on award decisions.

Governments should not be required to disclose confidential information.

¹ Utilized only to the extent consistent with a country's other international trade obligations related to that procurement.

Benefits of transparency of award decisions

1. Efficiency of the international trading system:

- The importance of transparency, predictability and consistency in the application of measures relating to international trade has been recognized since the GATT 1947.
- Government procurement is an important contributor to world trade. Most governments, like Canada, cannot supply all their government needs through domestic sources. Even where bidding can be restricted to domestic sources, those sources will need to draw on inputs from other parts of the world.

2. Economic efficiency:

- Procuring organizations and the taxpayer will get better value for their money through lower prices and better products.
- By providing clear information on the basis for making decisions, potential suppliers will be able to make informed decisions about whether to bid.
- Potential suppliers will be able to make better bids if they understand the government's needs and priorities.
- Providing information on local content or other requirements for domestic benefits permits potential suppliers, domestic and foreign, to seek effective and efficient ways of meeting these requirements;
- Potential suppliers from other countries will understand whether they may bid, thus avoiding wasted effort bidding on requirements for which they are not eligible.
- Potential sub-contractors will be able to make more effective proposals to possible prime contractors.
- Providing feedback on the outcome of an award permits bidders to prepare better bids in the future.

3. Confidence in the procurement system:

- Predictability and confidence in the government procurement system is ensured through consistency in describing applicable criteria and following the criteria for award of contracts.
 - Transparency of award decisions reduces the possibility of corruption.
 - Providing feedback on the outcome of the award of a contract establishes confidence that the criteria have been applied as described.
-

**Working Group on Transparency
in Government Procurement**

**WORK OF THE WORKING GROUP ON THE MATTERS RELATED TO
THE ITEMS I-V OF THE LIST OF THE ISSUES RAISED AND POINTS MADE**

Note by the Secretariat

1. This note has been prepared in response to a request made at the informal meeting that was held on 12 March 2002 that the Secretariat prepare, for each of the two substantive meetings in 2002, short background papers summarizing the work that has already taken place in the Working Group on the matters related to the sub-items to be discussed, drawing on and listing the documentation of the Group.
2. This note covers items I to V of the Informal Note by the Chairman, "List of the Issues Raised and Points Made" (Job(99)/6782, dated 12 November 1999), namely definition and scope; procurement methods; information on national legislation and procedures; information on procurement opportunities, tendering and qualification procedures; and time-periods.
3. The aim is to provide a more concise note than the Informal Note by the Chairman as well as to take into account subsequent discussions in the Working Group and papers submitted. Being a summary, this note does not contain all the details of the points made and explanations given. For this information delegations should consult the Informal Note by the Chairman and the other documentation of the Working Group. As requested, a list of the documentation of the Working Group can be found annexed.
4. On items I to V, this note first briefly sets out the information that was considered by the Working Group on provisions in existing international instruments and on national procedures and practices. It will be recalled that at the outset of its work the Working Group sought information from other intergovernmental organizations on relevant international instruments (in particular from UNCITRAL and the World Bank)¹ and requested the Secretariat to provide a note synthesizing the information available on transparency related provisions in existing international instruments on government procurement procedures and on national practices.² Under each of the items, this note then summarizes the discussions in the Working Group, outlining the issues raised and main points made.

¹ WT/WGTGP/W/1-2

² WT/WGTGP/W/6

I. DEFINITION AND SCOPE OF GOVERNMENT PROCUREMENT

(a) Information on provisions in existing international instruments and national procedures and practices

5. The three instruments vary as to their scope and coverage. The Model Law is designed to be applicable, in principle, to all types of procurement of goods, construction and services. What is meant by "goods", "construction" and "services" is listed in the Model Law. At the same time, it recognizes that an enacting State may wish to exempt certain types of procurement from the coverage of its procurement legislation, for example defence- and security-related procurement. The World Bank Guidelines are applicable to the procurement of goods, works and related services, and to consultants' services for a project that is financed in whole or in part by a loan from the IBRD or a credit from the IDA. The Agreement on Government Procurement (GPA) covers the procurement of goods, and of all services and construction services that are specified in lists, found respectively in Annexes 4 and 5 of Appendix I. General Notes at the end of most Parties' schedules provide for a number of exceptions. The Model Law defines "procurement" as the acquisition by any means of goods, construction and services. The GPA applies to procurement by any contractual means, including through such methods as purchase or lease, rental or hire purchase, with or without an option to buy, including any combination of products or services.³

6. In order to take into account the existence of procurement legislation at different levels of government, the Model Law presents two options as to the levels of government to be covered. The first option brings within the scope of the Model Law all governmental departments, agencies, organs and other units within the enacting State pertaining to the central government as well as to provincial, local or other governmental subdivisions of the enacting State. A second option allows States to enact the Model Law only with respect to the organs of the national government. The GPA obligations under the Agreement apply to procurement by the procuring entities that each Party has listed in its schedule in Annexes 1 to 3 of Appendix I, relating respectively to central government entities, sub-central government entities and other entities such as public utilities.

7. The international instruments provide for the size of procurement contracts to be taken into account in determining the requirements to which they are subject. The provisions of the GPA apply to procurement in respect of procurement contracts above certain threshold values. Each Party indicates such thresholds applying to the procurement of goods and services under Annex 1, 2 and 3 entities. The Model Law allows a procuring entity engaging in low-value procurement in which there is unlikely to be interest on the part of foreign suppliers to forgo certain procedural requirements relating to announcements at the international level. Under the World Bank Guidelines, National Competitive Bidding procedures may be preferred to International Competitive Bidding procedures when contract values are small.⁴

8. As regards national practice, the data available indicates that there is often no detailed legislative or regulatory definition of government procurement. In most cases, government procurement is defined simply as the procurement of goods and services by central, provincial and local governments, as well as by other public entities, which in certain cases include "utilities" - e.g. suppliers of energy, water, transport and telecommunications services. Some countries treat the use of public funds to finance purchases either fully or partially as a defining criterion. Some countries have stated that procurement by any contractual means is covered, including purchases, leasing, rental or hire purchase, with or without an option to buy. Other countries have stated that the term "procurement" includes all stages of the process by which government agencies acquire from external sources the goods and services they need to fulfil their mandates.

³ WT/WGTGP/W/6, paras. 10-11

⁴ WT/WGTGP/W/6, para. 12

(b) Discussions in the Working Group

9. Three main types of questions have arisen in the discussion on definition and scope:

- the definition and scope of government procurement for the purposes of the study phase in the Working Group;
- the definition of government procurement that should be used for the purposes of any commitments that may be negotiated; and
- the extent to which government procurement, as defined, should fall within the scope of commitments.

(i) *Definition and scope of government procurement for the purposes of the study phase in the Working Group*

10. With regard to this matter, there appears to have been a general acceptance that a broad conception, without preconceived limitations, could be employed, it being understood that the focus of work is on the transparency of such government procurement.⁵

(ii) *Definition of government procurement for the purposes of rules that may be negotiated*

11. With regard to this matter, two main sets of issues have been discussed:

- the first is whether a definition should be employed based on the language in the GATT and GATS for defining government procurement;
- the other is the scope of the contractual arrangements or transactions entered into by government entities that should be considered to constitute government procurement for these purposes.

12. With regard to the first of these points, the view has been expressed that the Group could draw on the **existing definitions of government procurement in GATT Article III:8 and GATS Article XIII:2** as a basis for developing an appropriate definition in a transparency agreement. In this regard, the point has been made that, while it would be useful to draw on the existing language in GATT and GATS, the mere reference to these two provisions may not be sufficient for the purposes of a future transparency agreement.⁶ Other questions that have arisen have included whether the term "governmental purposes" as contained in these provisions is by itself sufficiently clear.⁷

13. With regard to the question of the **types of contractual arrangements or transactions** entered into by government entities that should be considered government procurement, it has been suggested that acquisition by any contractual means, including, for example, through lease or rental, should be covered.⁸ The main issue that has arisen in regard to this matter is the extent to which concessions and BOT (build-operate-transfer) contracts should be covered and, if covered, how they should be defined. Differing views have been expressed on these matters. Some have taken the view that BOT contracts and concessions should not be covered, expressing the view that concessions generally have a different legal basis, purpose and philosophy from those underlying government

⁵ JOB(99)/6782, para. 4

⁶ WT/WGTGP/M/10, para. 19; WT/WGTGP/M/11, para. 17; WT/WGTGP/W/26; JOB(99)/6782, para. 18

⁷ WT/WGTGP/M/10, para. 19; WT/WGTGP/M/11, para. 17

⁸ JOB(99)/5803

procurement. Some others have expressed the view that BOT contracts and at least some types of "concessions" should be considered government procurement.⁹ In this regard, the point which has been made in the discussion is that this term could refer to a range of situations which might have different relationships to government procurement. What was important was to have a proper understanding of which BOT contracts and "concessions" fell within the general definition of government procurement, in particular what was for "governmental purposes".¹⁰ The view has also been expressed that, given the increased interest in some countries in securing private sector involvement in the supply of services traditionally supplied by the government itself, there would be merit in exploring the scope for transparency principles to apply to concessions in general.¹¹ At the invitation of the Working Group, the Secretariat circulated a Note on various issues involved in concessions and BOT contracts (Job (00)/5657).

- (iii) *The extent to which government procurement, as defined, should fall within the scope of commitments on transparency in government procurement*

14. On this matter, the following main issues have arisen:

- whether the rules should apply to procurements by all or only some government entities;
- whether procurement of services as well as of goods should be covered;
- whether only procurement contracts above a certain threshold value should be covered;
- whether procurement that is not open to foreign competition should be covered; and
- what provision should be made for exceptions.

15. With regard to the first of these questions, **the governmental entities to which the rules of a transparency agreement might extend**, three main views have been expressed:

- entities at all levels of government, including at sub-central levels, should be covered;
- central government entities and entities at the highest level of sub-central government should be covered;
- only central/federal government entities should be covered.¹²

The suggestion has also been made that coverage of sub-central entities by developing countries with federal government structures could be a subject for special and differential treatment.¹³ In the discussion on these ideas, the issues that have been raised include the feasibility of securing agreement and compliance at all levels of government and the balance of rights and obligations between Members with differing governmental structures.¹⁴

⁹ WT/WGTGP/M/10, paras. 25-26; Job (99)/6782, paras. 12 and 14

¹⁰ JOB(99)/6782, para. 17

¹¹ WT/WGTGP/M/11, paras. 19-21

¹² WT/WGTGP/W/26; WT/WGTGP/W/27; Job (99)/5239; Job (99)/5803; WT/WGTGP/M/10, para. 20; WT/WGTGP/M/12, paras 4-6

¹³ WT/WGTGP/M/10, para. 20

¹⁴ JOB(99)/6782, para. 6

16. Another issue on which differing views have been expressed is the **extent to which procurement by state enterprises should be covered**. Among the issues which have arisen in this context have been the extent to which enterprises enjoy monopolistic positions or operate in a competitive environment, the extent to which their procurements can be regarded as for "governmental purposes", burdens which might be imposed on Members and the relationship with the provisions of GATT Article XVII.¹⁵

17. With regard to the **coverage of goods and services**, differing views have been expressed about the coverage of services. Those advocating that services should not be covered by a transparency agreement have said that the issue of procurement of services is the subject of separate work in the context of GATS and that the inclusion of services, an area for which procurement procedures are less systemized in some countries than they are for goods, would make a transparency agreement more challenging for developing countries.¹⁶ In response, it has been said that there is no basis in the Working Group's mandate for distinguishing between goods and services; that transparency is as much an issue in regard to the procurement of services as it is in relation to goods; that, as a practical matter, it was often difficult to distinguish between a goods procurement and a services procurement since many procurements involved a mixture of goods and services; and that the existing international instruments, including those of UNCITRAL and the World Bank, provide for rules covering both goods and services.¹⁷

18. With regard to the question of the use of **possible threshold values** of procurement contracts for the purposes of determining coverage, the main issue has been whether their use might avoid unnecessary possible burdens resulting from a transparency agreement. The following main views have been expressed:

- there should be a minimum threshold below which transparency obligations would not apply;
- such thresholds might be a subject for special and differential treatment, with higher levels for developing countries;
- there is no need for thresholds of general application, but they might apply to certain rules where burdens might be disproportionate to the benefits accruing;
- the rules of a transparency agreement would not result in burdens that would warrant the use of thresholds.¹⁸

19. With regard to the question of the **coverage of contracts not open to foreign competition**, one view has been that the transparency of such contracts is not a legitimate concern for an international agreement and therefore should not be covered. Another view has been that it is important to cover also such contracts since foreign suppliers have an interest in clear information indicating that certain contracts are not open to them.¹⁹

20. With regard to the **question of exceptions**, there has been discussion of whether a transparency agreement should contain a general exception clause along the lines of GATT Articles XX and XXI. One view has been that such provisions should be provided for. Another view has been to doubt the need for them, given the limited nature of the obligations envisaged in a

¹⁵ JOB(99)/6782, para. 6; WT/WGTGP/M/10, para. 21

¹⁶ WT/WGTGP/M/10, para. 22; WT/WGTGP/M/11, paras. 7, 11 and 12

¹⁷ WT/WGTGP/M/10, para. 22; WT/WGTGP/M/11, paras. 6, 9, 10, 13, 14; JOB(00)/5645

¹⁸ JOB(99)/6782, para. 10; WT/WGTGP/M/10, paras. 23-24; JOB(99)/5239; WT/WGTGP/W/26;

WT/WGTGP/W/27

¹⁹ WT/WGTGP/M/10, para. 29

transparency agreement. It has also been suggested that exceptions should be envisaged to respond to social and developmental objectives, including procurement for public distribution systems and stabilization programmes for essential commodities. In response, the point has been made that procurement objectives aimed at meeting social and other public policy goals were not inconsistent with the achievement of transparency.²⁰

II. PROCUREMENT METHODS

(a) Information on provisions in existing international instruments and national procedures and practices

21. All three of the international instruments covered by the Secretariat's note on the Synthesis of the Information Available describe the permissible procurement methods and set out the parameters for justified resort to these methods. The principal procurement method foreseen in all three instruments is some form of open procurement. Under certain circumstances, in which the open procurement method is not considered to be appropriate, alternative methods are offered. The special conditions for the use of these other procedures are often related to ensuring adequate transparency. For example, the Model Law contains a requirement that decisions to use alternative methods should be supported in the record of the procurement proceedings by a statement of the grounds and circumstances on which the procuring entity has justified the use of the method in question. Under the GPA, entities are required to prepare a report on each procurement awarded under limited tendering including a statement of the conditions which prevailed.²¹

22. The available information on the national legislation of Members indicates that it generally sets out criteria for determining which type of procurement method would be appropriately used by procuring entities. The basic range of permissible procurement methods is the same in most countries, although there are some variations based on national conditions and procurement policy objectives. Three broad categories of procedures are commonly distinguished: public or open tendering procedures; selective or restricted tendering procedures; and limited tendering, direct contracting, or single tendering procedures. Open and selective tendering procedures appear to be the main procedures in most countries.²² The conditions and circumstances justifying the use of limited tendering commonly specified in national legislation are listed in paragraph 24 of WT/WGTGP/W/6. Typical features of national procedures in regard to the main tendering procedures are set out in paragraphs 22 to 23 of the Synthesis of the Information Available and in the submissions made by Korea, the Czech Republic, Hungary, Japan and Morocco providing information on their respective national procedures and practices.²³

(b) Discussions in the Working Group

23. A common starting-point for the discussion on this matter appears to have been a broad recognition that Members should retain flexibility to use different procurement procedures and that the emphasis should be on ensuring transparency in the choice and use of the method in question rather than on attempting to be prescriptive about the conditions governing which different methods can be used.²⁴

24. In discussions on the relationship between transparency and procurement methods, the following categories of situation have been identified:

²⁰ WT/WGTGP/M/10, paras. 16 and 28; WT/WGTGP/W/26; WT/WGTGP/W/27

²¹ WT/WGTGP/W/6, paras. 14-18

²² WT/WGTGP/W/5; WT/WGTGP/W/6, paras. 20-21

²³ WT/WGTGP/W/7; WT/WGTGP/W/9; WT/WGTGP/W/12; Job No. 939 and WT/WGTGP/W/19

²⁴ JOB(99)/6782; para. 19; WT/WGTGP/W/17; WT/WGTGP/W/26; WT/WGTGP/W/27;; WT/WGTGP/W/31; WT/WGTGP/M/10, para. 31; WT/WGTGP/M/11, para. 25-26

- open procedures under which information on the procurement is made available publicly and all are eligible to participate. It has been said that this method is the most transparent²⁵;
- selective tendering where information on the procurement opportunity is made available publicly as are the selection criteria to be employed. It has been said that this method can be as transparent as the first²⁶;
- selective tendering where information on the procurement opportunity is made available only to pre-selected qualified suppliers²⁷; and
- limited tendering (sometimes called individual, sole source, single source or direct tendering), under which only a single supplier is contacted. It has been said that this method is inherently less transparent. Much of the discussion in the Group on procurement methods has related to the circumstances under which such a method may be employed and how to maximize the transparency in its use.²⁸

25. In regard to possible rules that might be negotiated on procurement methods, the following ideas have been discussed:

- a requirement that each Member should specify in its national legislation the circumstances under which procuring entities may use different procuring methods²⁹;
- an obligation on Members to ensure that their entities comply with these provisions of their national legislation
- a general commitment that, whatever the procurement method used, transparency would be maximized to the extent possible at each stage of the procurement process³⁰;
- in regard to limited tendering:
 - a general requirement that this method only be used in exceptional and justifiable cases;
 - an illustrative list of the circumstances warranting the use of this method;
 - an exhaustive list of the circumstances warranting the use of this method;
 - a requirement to publish notices of invitation to tender and contract award notices; and
 - a requirement on procuring entities to maintain records and provide, in the award of contracts notice, information on the reasons for the use of this method.³¹

²⁵ JOB(99)/6782, para. 22

²⁶ JOB(99)/6782, para. 21

²⁷ JOB(99)/5239

²⁸ JOB(99)/6782, para. 23; WT/WGTGP/W/16

²⁹ JOB(99)/6782, para. 24; WT/WGTGP/M/10, para. 31; WT/WGTGP/W/27

³⁰ JOB(99)/6782, para. 20, WT/WGTGP/M/10, para. 31

³¹ JOB(99)6782, para. 26, WT/WGTGP/W/17

26. With regard to the suggestions made on limited tendering, it has been said that spelling out the exact circumstances and conditions justifying the use of this type of method might go beyond the scope of a transparency agreement and impinge upon the ability of procuring entities to use the most appropriate procurement method in the circumstances of each case.³² In regard to the possible requirement for notices of invitation to tender and contract award notices to be published, the point has been made that this might put undue burdens on procuring entities since limited tendering was often used for small-value procurements.³³

27. A further issue that has been raised in regard to procurement methods is the use of direct negotiation between the procuring entity and suppliers after the submission of initial tenders. In this connection, it has been said that it would be important to retain scope for the use of this method, but that, in its use, transparency should be ensured. This could be done through the provision of advance information on the use of this procedure, through ensuring that all participating suppliers are given information on a non-discriminatory basis and through ex-post information on the contract award.³⁴

III. PUBLICATION OF INFORMATION ON NATIONAL LEGISLATION AND PROCEDURES

28. It should be noted that, in the Chairman's List of Issues on the basis of which the Working Group has been working, the matter of publication is treated separately from that of notification, i.e. the supply of information to other WTO Members. Notification is the subject of Section X in the List of Issues, which will be addressed in a later summary note.

(a) Information on provisions in existing international instruments and national procedures and practices

29. The Model Law and the GPA require the public accessibility of relevant texts. The GPA explicitly requires Parties to publish any law, regulation, judicial decision, administrative rulings of general application and any procedure regarding government procurement in such a manner as to enable other GPA Parties and suppliers to become acquainted with them.³⁵ The Secretariat's note on the Synthesis of the Information Available indicates that the national regulatory frameworks for procurement procedures include: national constitutions; procurement laws; regulations (legislative decrees, cabinet orders, ministerial ordinances implementing various aspects of the basic procurement law); horizontal guidelines on government procurement policies in decentralized procurement regimes; horizontal laws on national budgets or the public sector budget; horizontal laws on financial or budgetary management, public sector control or audit; agency-specific purchasing regulations and guidelines that implement national policies and procedures on procurement; specific laws at the sub-central levels of government; the provisions of regional or other international agreements; separate regulations on procurement of specific goods and services categories and construction works.³⁶

30. Reference has also been made to the existing publication obligations contained in Article X of GATT 1994 and Article III of GATS relating to laws, regulations, judicial decisions and administrative rulings of general application. It has been observed that government procurement is not excluded from the scope of these provisions. The suggestion has been made that any more specific publication requirements that may be negotiated relating to transparency in government procurement should be without prejudice to these existing obligations.³⁷

³² WT/WGTGTP/M/10, para. 31; JOB(99)/6782, para. 26

³³ JOB(99)/6782, para. 26

³⁴ WT/WGTGP/M/10, para. 32

³⁵ WT/WGTGP/W/6, para. 27

³⁶ WT/WGTGP/W/6, para. 30

³⁷ JOB(99)/6782, para. 35; WT/WGTGP/W/26; WT/WGTGP/W/27

(b) Discussions in the Working Group

31. In the discussions on publication, the following main issues have been raised:

- the type of information that should be made available; and
- how this information should be made available.

(i) *The type of information to be made available*

32. The suggestions that have been made generally provide for the publication or public accessibility of laws and regulations.³⁸ In addition, it has been suggested that a number of other types of instrument might be covered by a publication obligation, including requirements that specifically relate to government procurement and are of general application, administrative rulings of general application in connection with procurement, policy guidance and judicial decisions. Some concerns have been raised that an obligation to publish this range of material might be onerous and costly.³⁹ An alternative approach to designating certain types of governmental instruments that has been suggested would be to focus instead on the substance of the information that should be made available rather than on its legal form, namely to require the availability of information which defined the rules of general application to be followed by entities in determining participation in tenders and decisions on awards.⁴⁰

33. Suggestions have also been made specifying that **changes or amendments** to the above material should also be published or made readily and easily available, and indicating the time-frame within which this should be done ("promptly", "in a timely manner").⁴¹

(ii) *How the information should be made available*

34. Two main approaches have been suggested: one is to specify that the information be published, in readily accessible media.⁴² The other would be to require that the information be readily and easily accessible through a public medium, without specifying its "publication". It has been suggested that this latter course could help meet some of the concerns that have been expressed about the burden of publishing administrative rulings and guidelines, judicial decisions, etc.⁴³ It has also been suggested that it should be left up to each Member to decide whether to use electronic media or not.⁴⁴

35. With regard to the **cost** of accessing information, it has been suggested that fees should be levied on a non-discriminatory basis and be limited to the cost of copying and despatch or limited in amount to the approximate value of the service rendered. In response it has been said that the issue of cost is not a matter of transparency. Concern has also been expressed about the need to take into account also the cost of creating the information. Governments should not be denied the possibility of imposing appropriate fees provided that any fees are charged in a non-discriminatory manner.⁴⁵

³⁸ Job Nos. 3245, 4099, 5239, 5803; WT/WGTGP/W/26; WT/WGTGP/W/27; WT/WGTGP/M/10, para. 34

³⁹ JOB(99)/6782, para. 33; WT/WGTGP/M/10, para. 34

⁴⁰ JOB(99)/6782, para. 32

⁴¹ Job Nos. 3245; 4099, 5239, 5803, WT/WGTGP/W/26; WT/WGTGP/W/27

⁴² Job Nos. 5239, 5803; WT/WGTGP/W/27

⁴³ JOB(99)/6782, para. 34; WT/WGTGP/W/26

⁴⁴ JOB(99)/6782, para. 34

⁴⁵ Job No. 5803; WT/WGTGP/W/26; JOB(99)/6782, para. 36; WT/WGTGP/M/10, para. 34

36. With regard to **language**, it has been said that the obligation should be to provide the information in a national language, while leaving Members free to provide information in other languages, including WTO languages.⁴⁶

37. The Working Group has addressed the question of whether there should be a requirement for the establishment of an **enquiry point** from which information on national legislation and procedures can be obtained by interested parties in other Members, including suppliers. Reference has been made to the provisions of Articles III:4 and IV:3 of the GATS and also to those of Article IV:2 of that Agreement and Article V:11 of the GPA which requires that contact/information points be established to facilitate the access of developing countries to information. On this issue, it has been stressed that any requirements for providing contact or enquiry points should be without prejudice to decentralized procurement systems such as those in federal states. The suggestion has been made that, in respect of decentralized national procurement systems, a central enquiry point from which information on individual sub-central enquiry points can be obtained could be designated.⁴⁷

IV. INFORMATION ON PROCUREMENT OPPORTUNITIES, TENDERING AND QUALIFICATION PROCEDURES

(a) Information on provisions in existing international instruments and national procedures and practices

38. The three international instruments that the Working Group has examined each set forth minimum procedures for giving information on tendering opportunities and the relevant procedures that the procurement agency should follow in order to obtain expressions of interest in a specific procurement from potential suppliers. Each of them foresees the publication of a notice of invitation to participate in an official gazette or other official journal. Under the GPA, Parties are required to publish the tender notice in a publicly accessible publication as indicated in each Party's Appendix II to the Agreement. The Model Law and the World Bank Guidelines require procurement notices also to be published in a specialized publication of wide international circulation.⁴⁸ Under the Model Law and the World Bank Guidelines, the procuring entity is required to respond to any request for clarification submitted within a reasonable time, as well as communicating the clarification to all other participating suppliers. Under the GPA, reasonable requests for explanations relating to tender documentation under open and selective procedures must be promptly replied to. Replies to such a request from a participating supplier shall be provided on condition that such information does not give that supplier an advantage over his competitors.⁴⁹

39. The information available to the Group indicates that, although the minimum standard requirements regarding information to be provided are largely the same in international instruments and in national legislation, in national legislation the level of detail of information provided respectively, in initial tender notices and in the subsequent tender documentation, vary from Member to Member.⁵⁰ In national legislation the printed media in which procurement opportunities are advertised differ widely, ranging from government gazettes or official journals to local language newspapers. Additional forms of advertising such as periodic handouts or posting on the notice boards of the procuring entity are also used.⁵¹ Under the GPA, entities must publish also a summary of the main elements of the information in a tender notice in one of the official WTO languages.⁵²

⁴⁶ JOB(99)/6782, para. 37; JOB(99)/5239

⁴⁷ JOB(99)/6782, para. 38; Job No. 5239; WT/WGTGP/M/10, para. 33

⁴⁸ WT/WGTGP/W/6, para. 34

⁴⁹ WT/WGTGP/W/6, paras. 56-57

⁵⁰ WT/WGTGP/W/6, paras. 43-55

⁵¹ WT/WGTGP/W/6, paras. 37-42

⁵² WT/WGTGP/W/6, para. 47

(b) Discussions in the Working Group

40. In the discussions in the Working Group, the importance of timely, sufficiently detailed and readily available prior information on procurement opportunities for ensuring transparency in government procurement has been widely emphasized. The discussion has focused on how this should be best achieved and what provisions might be envisaged in a possible multilateral framework.

41. It has been suggested that the information made available should be sufficient to enable suppliers to assess their interest in a particular procurement and, should they wish to participate in it, to submit responsive bids.⁵³ One general issue, on which differing suggestions have been made, is whether a possible multilateral framework should approach this matter by containing rules about the information that should be made available at each stage of the procurement process, in particular at the stage of issuance of notices of invitation to tender and at the stage of tender documentation, or whether the approach of specifying the information that should be made available in general be adopted, leaving it to each Member to determine the stage at which each component of the information might be supplied.⁵⁴

42. With regard to the specific pieces of information that should be made available, a number of approaches have been suggested:

- to include a specific list of minimum requirements (to be met either at each stage of the procurement process or in total - see preceding paragraph)⁵⁵;
- to provide for an illustrative list of the prior information that should be made available⁵⁶;
- to have no list of prior information, on the grounds that this would be unnecessarily prescriptive, but to rely on general guiding principles of the sort set out at the beginning of the preceding paragraph.⁵⁷

43. With regard to the minimum information that might be specified in notices of invitation to tender and in tender documentation, the following main categories of information have been suggested by some of the Members advocating such a course:

- the name of the procuring entity;
- the goods or services to be procured/the procurement outcome to be achieved;
- the procurement procedure used;
- any (pre-)qualification requirements;
- any restrictions on market access and/or domestic preferences granted;
- the deadlines for the submission of tenders;
- the criteria for evaluation of bids and award of contracts, including technical specifications; and

⁵³ JOB(99)/6782, para. 53; Job No. 5239; WT/WGTGP/W/26

⁵⁴ JOB(99)/6782, para. 53, WT/WGTGP/W/26

⁵⁵ WT/WGTGP/W/26; WT/WGTGP/W/27; JOB(99)/5239; JOB(99)/5803

⁵⁶ JOB(99)/6782, para. 54

⁵⁷ JOB(99)/6782, para. 45; WT/WGTGP/M/10, para. 35

- the date and time for the opening of tenders.⁵⁸

Those who have suggested stage-by-stage requirements have broadly suggested that the first six pieces of information should be provided in the notice of invitation to tender, while the last two, together with amplification of the first six, could be provided in the tender or bid documentation.⁵⁹

44. A point which has been discussed at some length in the Working Group with regard to evaluation criteria is the suggestion that information should be made available on **preferences to national supplies and suppliers** as well as other measures in favour of domestic supplies or suppliers such as offsets. In this regard, the following views have been expressed:

- while the nature and extent of such preferences is not within the scope of the work of the Working Group, the advance provision of information on such preferences is an essential component of transparency since it enables foreign tenderers to assess the extent to which they might have an interest in entering a specific procurement process⁶⁰;
- rules on information on procurement opportunities should only apply in cases where national markets are open to foreign suppliers.⁶¹

45. In regard to the way information on national preferences might be made available, the following views have been expressed:

- full information should be provided in the notices of invitation to tender/tender documentation, by setting it out in detail and/or by making references to applicable laws and regulations⁶²;
- information on national preferences need only be included to the extent it was not adequately provided through laws or regulations of general application.⁶³

46. In regard to the **way in which information should be made available**, one approach has been to suggest that this should be done through publication in a readily accessible medium⁶⁴ while another has favoured a requirement that the information should be publicized through an accessible source.⁶⁵

47. There has been discussion over the extent to which an effort to make **information available at the international level** should be called for. One view has been that the level of availability should be proportionate to the likely level of interest in the procurement, i.e. that where a procurement opportunity is likely to attract international interest, information should be made available through a source to which potential foreign suppliers had access. Another view was that there should be no requirement to publish in international publications; it was up to interested foreign suppliers to keep track of national publications.⁶⁶

⁵⁸ WT/WGTGP/W/26; WT/WGTGP/W/27; JOB(99)/5239; JOB(99)/5803

⁵⁹ JOB(99)/5803

⁶⁰ JOB(99)/6782, paras. 57-59, JOB(99)/5803; WT/WGTGP/M/10, para. 36

⁶¹ JOB(99)/6782, para. 48

⁶² JOB(99)/6782, para. 58; WT/WGTGP/M/10, para. 36

⁶³ JOB(99)/6782, para. 58; WT/WGTGP/M/10, para. 36

⁶⁴ JOB(99)/5239

⁶⁵ WT/WGTGP/W/26

⁶⁶ JOB(99)/6782, para. 51

48. In regard to the media that might be used, there has been a wide view that each government should be free to use **printed and/or electronic media**, with electronic publication an option and not an obligation.⁶⁷

49. In regard to the question of situations where information obligations might not need to apply, the use of **small-value procurements** has been discussed. It has been suggested that publication requirements might not apply to, or might be less strict for, low-value procurements in order to avoid undue administrative costs. Another view has been that there should be no threshold level and that suitably phrased requirements regarding the availability of information would enable Members to avoid undue administrative burdens.⁶⁸

50. The question of the extent to which prior information requirements should apply to procurement conducted under **selective and limited tendering** methods has also been discussed. In this regard, a number of approaches have been suggested:

- certain basic types of information should be provided whatever the procurement method employed for the purposes of achieving maximum transparency⁶⁹;
- the general rules on prior information should only apply to government procurement through open tendering procedures. This is an approach that was suggested in a number of the proposed texts submitted in 1999. It should be noted that some of these texts also suggested rules regarding the transparency of qualification procedures which might be used in selective tendering.⁷⁰

51. With regard to situations where invitations to tender are supplied only to **pre-qualified or pre-selected suppliers**, it has been suggested that there should be a requirement that information on how to qualify or be selected be published in a readily accessible medium at a timing and in a manner which would reasonably allow eligible suppliers to apply for selection.⁷¹ It has also been suggested that there should be some rules regarding the situation where a qualification process covers multiple procurements over a period of time and is not open at all times to applications from interested suppliers, such as periodic publication of an invitation to apply for qualification and the availability of current lists of current qualified suppliers.⁷² It has further been suggested that, where information is made available only to pre-selected or pre-qualified suppliers, all such suppliers should be treated in a non-discriminatory way in this regard.⁷³

52. Regarding **modifications to and clarification of information**, the emphasis in the Working Group has been on non-discriminatory dissemination of any such information. It has also been suggested that any amendments or re-issue of a notice of invitation to tender pursuant to changes in information contained in tender notices and tender documents including those concerning evaluation criteria and technical specifications, should be made available through the same means used for providing the original information and the relevant publications should be given the same circulation as the original document.⁷⁴ In particular, all those suppliers who had originally ordered tender documents or had indicated an interest in the procurement opportunity should have any additional

⁶⁷ JOB(99)/6782, para. 51

⁶⁸ JOB(99)/6782, para. 51

⁶⁹ JOB(99)/6782, para. 46

⁷⁰ JOB(99)/5239; JOB(99)/5803; WT/WGTGP/W/26; WT/WGTGP/W/27

⁷¹ JOB(99)/5239; WT/WGTGP/W/27

⁷² WT/WGTGP/W/27

⁷³ JOB(99)/5803

⁷⁴ JOB(99)/5803; WT/WGTGP/W/27

information transmitted to them through the same means as the one used for providing the original information.⁷⁵

53. As regards clarification of information in tender documents, the point has been made that information provided in response to an individual request for clarification should be transmitted simultaneously to all other participating suppliers. However, it has been pointed out that this might in some cases be impracticable, for instance in cases where the requests from suppliers for further information had been received at different contact points and that this might only be feasible in the case of high-value procurements with limited participation.⁷⁶

54. There has been a discussion in the Working Group regarding whether tender information should be published in a **language** other than national language, in particular where there should be a requirement to provide summary information in a WTO language on procurement opportunities and, if so, which opportunities.⁷⁷ The view has been expressed that requirements concerning publication of notices of invitations to tender should be limited to publication in a national language since the translation into a WTO language of every tender notice would entail Members incurring undue administrative costs and could become too burdensome. Another view has been expressed that procuring authorities should have the discretion to decide whether translation of notices should be limited to those procurement opportunities that might be of interest to international suppliers. On the other hand, it has been suggested that, where possible, tender notices should be published in a WTO language.⁷⁸ A further suggestion has been that, in addition to publication in the official national language, a summary might be published in one of the WTO languages containing the main details of the tender information and small-value procurements could be exempted from this requirement.⁷⁹

55. The Working Group has considered the question of the extent to which **the content of specifications** should be addressed in a transparency agreement. Suggestions have been made that requirements should be specified in a clear and objective manner and defined in terms of required functional performance to the extent possible.⁸⁰ It has also been suggested that, wherever possible, technical specifications based on internationally agreed or other relevant standards should be employed. On the other hand, the relevance of such requirements to transparency has been questioned.⁸¹

56. The question of **advice from suppliers on the development of specifications** has been the subject of suggestions. It has been suggested that such advice should be sought and applied in a non-discriminatory manner and that, if advice has been obtained from a particular supplier, other suppliers should be informed or that supplier should be ineligible to participate in the procurement.⁸²

V. TIME-PERIODS

(a) Information on provisions in existing international instruments and national procedures and practices

57. Each of the three international instruments that the Working Group has reviewed provides that suppliers must be granted a sufficient period of time to prepare their tenders. The Model Law recognizes that the length of that period of time may vary from case to case depending on the circumstances of the given procurement and it is left to the procuring entity to fix the deadline by

⁷⁵ JOB(99)/6782, para. 64

⁷⁶ JOB(99)/6782, para. 63

⁷⁷ JOB(99)/6782, para. 66

⁷⁸ JOB(99)/6782, para. 65; WT/WGTGP/M/10, para. 40

⁷⁹ JOB(99)/6782, paras. 66-67

⁸⁰ WT/WGTGP/W/26

⁸¹ JOB(99)/6782, para 61; WT/WGTGP/M/10, para. 39

⁸² Job No. 5803; WT/WGTGP/W/27

which tenders must be submitted. The GPA prescribes certain minimum deadlines that must be allowed for the preparation, submission and receipt of tenders to enable responsive tendering and for potential suppliers to prequalify. The relevant provisions also contain general considerations that should govern when entities set time-periods for tendering and delivery.⁸³ Most Members' procurement legislation establishes minimum time-periods, with which the purchasing entities must comply. In some countries there are no mandatory requirements and individual government agencies have discretion in setting the minimum time-periods.⁸⁴

(b) Discussions in the Working Group

58. Suggestions made in the Working Group have generally favoured provisions on time-periods that would be couched in terms of the considerations that should be taken into account in setting those periods rather than in terms of prescribing minimum periods. The points have been made that time-periods in national practice varied significantly and that procuring entities needed discretion to establish appropriate periods on a case-by-case basis, having regard to the type of procurement.⁸⁵

59. The suggestion has been made that time-periods should be sufficient to enable interested suppliers to obtain qualification documentation where appropriate and tender documentation and to prepare and submit responsive bids in time.⁸⁶ With regard to the criteria of "sufficiency", the concern has been expressed, that the meaning of the term is unclear and that this might have consequences in a dispute settlement context. In response, it has been clarified that the term should be taken to mean that procuring entities retained considerable flexibility to determine time-periods for individual procurements. A further view has been that the term "reasonable" should be used; this would provide, for instance, for emergency situations in which it might not be possible to provide for adequate or sufficient time-periods.⁸⁷

60. It has also been suggested that some considerations taking into account the characteristics of individual procurements might be specified, in particular the circumstance of the procurement, including the likely level of interest, as well as the complexity of the envisaged procurement.⁸⁸ One concern that has been expressed in this connection is how this would relate to situations in many jurisdictions where time-limits are prescribed by national law.⁸⁹

61. Furthermore, it has been stressed that there should be non-discrimination between potential suppliers with respect to the application of time-periods. The proposed texts suggest that the time allowed for the submission of bids should be the same for all suppliers. On the other hand, the view has been expressed that Members should not be required to set time-periods to suit foreign suppliers, who should be treated on a national treatment and MFN basis.⁹⁰ The question has also been raised as to whether time-periods are an aspect of transparency.⁹¹

62. Finally, the point has been made that time-periods should be specified in tender notices to ensure transparency. Any changes in the time-periods should be made known to all suppliers in the tendering process or the relevant information be made generally available from an accessible source.⁹²

⁸³ WT/WGTGP/W/6, paras. 61-65

⁸⁴ WT/WGTGP/W/6, para. 66

⁸⁵ JOB(99)/6782, para. 69; WT/WGTGP/M/10, para. 42; WT/WGTGP/M/11, paras. 27-28

⁸⁶ WT/WGTGP/W/26; WT/WGTGP/W/27; Job No. 5803; WT/WGTGP/M/10, para. 43

⁸⁷ JOB(99)/6782, para. 71; Job No. 5239

⁸⁸ JOB(99)/6782, para. 70; WT/WGTGP/M/10, para. 43

⁸⁹ JOB(99)/6782, para. 71

⁹⁰ JOB(99)/6782, para. 70

⁹¹ WT/WGTGP/M/10, para. 42

⁹² Job Nos. 3777 and 4099; JOB(99)/6782, para. 71

One proposal also requires that Members should define in advance their policy on whether and in what circumstances late tenders may be accepted.⁹³

⁹³ WT/WGTGP/W/26

ANNEX

**DOCUMENTS OF THE WORKING GROUP ON
TRANSPARENCY IN GOVERNMENT PROCUREMENT**

The Working Group held 13 formal meetings during the period 1997 to 2001. The reports on these meetings (WT/WGTGP/M/1-13) and the annual reports of the Working Group to the General Council (WT/WGTGP/1-5) reflect the work done so far in the Working Group pursuant to the mandate of the Singapore Ministerial Conference in 1996. The discussions in the Working Group on the issues before it have been recorded mainly in the note by the Chair "List of the Issues Raised and Points Made" (Job (99)/6782), last revised in November 1999; and subsequently in the reports of the meetings held in 2000 and 2001, (WT/WGTGP/M/10-12) (List A).

Other documents that have been made available include:

- Members' submissions relating to specific issues. Over the period 1997 to 2000 13 Members have made two or more such submissions. An informal note "List of Proposals on Items III-VII of the Checklist" (JOB(00)/3276), reflecting the proposals made on items III-VII in a succinct form, which identifies the source of the different proposals and summarizes the written and oral comments made on these proposals, most recently revised in May 2000, was prepared by the Secretariat as an auxiliary informal paper for the use of Members wanting to draw on it (List B).
- Information on national procedures and practices submitted by ten Members on national procedures and practices in their countries; the responses to the questionnaire on government procurement of services in the Working Party on GATS Rules and APEC/GPEG Surveys on Government Procurement Systems, updated versions of which are available on the APEC Website (www.apec.sec) (List C).
- Information provided on work in intergovernmental organisations and in the context of regional arrangements (List D).
- Notes by the Secretariat relating to various issues under discussion in the Working Group (List E).

29 May 2002

LIST A –Documents related to the Working Group's work			
	WT/WGTGP/1-5	Annual Reports of the Working Group to the General Council	1997 – 2001
	WT/WGTGP/M/1-13	Reports of the Meetings of the Working Group	July 1997 – September 2001
	JOB(99)/6782	List of the Issues Raised and Points Made – Sixth Revision	12 November 1999
	JOB (00)/3231	Annotated draft agenda for the meeting of 7-8 June 2000	29 May 2000

List B-Members' Submissions Relating to Specific Issues			
2002			
Australia	WT/WGTGP/W/31	Methods of Procurement	15 May 2002
2000			
Informal Note by the Secretariat	JOB(00)/3276	List of Proposals on Items III-VII of the Checklist – – Third Revision	2 May 2000
Switzerland	JOB(00)/5645	Why the Scope of a Future Agreement on Transparency in Government Procurement Should Cover Goods and Services	20 September 2000
United States	WT/WGTGP/W/28	Proposal for a Work Programme for Coordinating International Technical Assistance with Implementation of a Potential Agreement on Transparency in Government Procurement	6 June 2000
1999			
Hungary, Korea, Singapore and the United States	WT/WGTGP/W/27	Preparations for the 1999 Ministerial Conference - The WTO's Contribution to Transparency in Government Procurement	9 November 1999
European Community	WT/WGTGP/W/26	Elements for an Agreement on Transparency in Government Procurement	5 November 1999
Australia	Job No. 5803	Agreement on Transparency in Government Procurement - "Principles-based" Conceptual Draft from Australia	5 October 1999
Japan	Job No. 5239	Transparency in Government Procurement - Draft Text for an Agreement	13 September 1999
Poland	Job No. 3777	Time-limits	29 June 1999
United States	WT/WGTGP/W/23	Domestic Review Mechanisms	24 June 1999
Canada	Job No. 3131	Contract Award Information	2 June 1999
Australia	Job No. 1781	Transparency of Decisions on Qualification	26 March 1999
Norway	Job No. 1067	Publication of Information on National Legislation and Procedures	25 February 1999
Australia	Job No. 1043	Rights and Responsibilities of Government as a Buyer, Value for Money in Government Procurement, Accountability and Due Process	24 February 1999

United States	Job No. 1027	Evaluation Criteria and Technical Specifications	24 February 1999
European Community	Job No. 699	Methods of Procurement	9 February 1999
Venezuela	Job No. 481	Transparency in Government Procurement and the Fight Against Bribery	28 January 1999
1998			
Switzerland	Job No. 3708	Minimal Requirements for Relevant Information to be Published in Tender Notices	22 June 1998
Venezuela	Job No. 3295	Particular Characteristics of Government Procurement, Privatization and Concession-granting Systems	15 June 1998
Norway	Job No. 3245	Contribution to the Working Group on Transparency in Government Procurement Ensuring that Transparency in Procurement Policies and Practices is Achieved	11 June 1998
European Community	WT/WGTGP/W/18	Technical Assistance	25 May 1998
European Community	WT/WGTGP/W/17	Ensuring that Transparency in Procurement Policies and Practices is Achieved	25 May 1998
Australia	WT/WGTGP/W/14	Information on Procedures and Practices on Transparency in Government Procurement	23 February 1998
United States	WT/WGTGP/W/16	Transparency in Procurement Methods	19 February 1998
United States	WT/WGTGP/W/15	Review Mechanisms	19 February 1998
Australia	Job No. 136	Principles of Government Procurement	12 January 1998
1997			
Hong Kong, China	WT/WGTGP/W/10	Information on Procedures and Practices on Transparency in Government Procurement	16 December 1997
Japan	Job No. 6329	Key Elements on Enhanced Transparency	4 November 1997
Switzerland	Job No. 6328	Elements of a Study on Transparency in Government Procurement	3 November 1997
Norway	Job No. 5220	Elements of Transparency under the WTO Working Group on Transparency in Government Procurement	24 September 1997
United States	Job No. 4133	Guiding Principles	21 July 1997
Canada	Job No. 4099	Elements Relating to Transparency in Government Procurement	21 July 1997
European Community	WT/WGTGP/W/5	National Procedures and Practices Relating to Transparency in Government Procurement	21 July 1997
Japan	Job No. 2860	Elements of Transparency in Government Procurement	22 May 1997

LIST C -Information on National Procedures and Practices

2001			
Tunisia	WT/WGTGP/W/30	Public Procurement Regime in Tunisia	9 May 2001
1998			
Turkey	WT/WGTGP/W/21	National Procedures and Practices	2 October 1998
Morocco	WT/WGTGP/W/19	National Procedures and Practices	20 July 1998
Uruguay	WT/WGTGP/W/13	National Procedures and Practices	16 February 1998
Czech Republic	WT/WGTGP/W/12	National Procedures and Practices	16 January 1998

Slovenia	Job No. 3711	Public Procurement in Slovenia	17 June 1998
Japan	Job No. 939	Transparency related proposal by the CCCB in Japan	19 February 1998
1997			
Korea	WT/WGTGP/W/7	National Procedures and Practices	30 October 1997
New Zealand	Job No. 5616	National Procedures and Practices	10 October 1997
Hungary	WT/WGTGP/W/9	National Procedures and Practices	16 December 1997
Poland	Job No. 6691	Elements of Transparency in the Polish Procurement System	3 November 1997
Tunisia	WT/WGTGP/W/8	National Procedures and Practices	31 October 1997

LIST D-Information on the work of Intergovernmental Organizations and in the context of Regional Arrangements

	WT/WGTGP/W/1	Presentation by the Representative of UNCITRAL (the United Nations Commission on International Trade Law) on the UNCITRAL Model Law and the Relevant Activities of the UNCITRAL	10 July 1997
	WT/WGTGP/W/2	Presentation by the Representative of the World Bank on the World Bank Guidelines and the Relevant Activities of the World Bank	10 July 1997
	WT/WGTGP/W/20 and Addenda 1 to 9	Communications received from UNCITRAL, OECD, the Asian Development Bank, the African Development Bank, IMF, APEC Government Procurement Experts Group, the European Bank for Reconstruction and Development, ITC, UNDP and UNOPS providing information on the availability of technical cooperation programmes in the area of government procurement	1998 – 2000
APEC/GPEG	WT/WGTGP/W/24	APEC Non-binding Principles on Government Procurement Developed by the Experts Group	21 September 1999
APEC/GPEG	WT/WGTGP/W/22	APEC Non-binding Principles of Accountability and Due Process	7 April 1999
APEC/GPEG	WT/WGTGP/W/11	APEC Non-Binding Principles on Government Procurement: Transparency	19 December 1997
APEC/GPEG	WT/WGTGP/W/4 S/WPGR/W/21	APEC Government Procurement Experts Group – APEC Surveys on Government Procurement Systems	15 July 1997

LIST E - Notes by the Secretariat on Various Issues

WT/WGTGP/W/3	Transparency-related Provisions in Existing International Instruments on Government Procurement Procedures and in WTO Agreements	9 July 1997
WT/WGTGP/W/6	Synthesis of the Information Available on Transparency-related Provisions in Existing International Instruments on Government Procurement Procedures and on National Practices - Note by the Secretariat	14 October 1997
WT/WGTGP/W/25	Documents of the Working Party on GATS Rules Relating to Concessions - Note by the Secretariat	27 September 1999
Job(00)/5657	Concessions and BOT Contracts – Note by the Secretariat	20 September 2000
WT/WGTGP/W/29	Technical Cooperation Activities of Intergovernmental Organizations - Note by the Secretariat	13 September 2000

METHODS OF PROCUREMENT

Discussion Paper from Australia

The objective of this paper is to promote discussion in the Working Group on Transparency in Government Procurement on the benefits to any future agreement of a flexible non-prescriptive approach to the selection of methods of procurement.

This objective is premised on the belief that a government going to tender has the right to decide what it wants to achieve for the money it spends. For this reason it is important that governments have the flexibility to select the method of procurement necessary to deliver their procurement objectives.

Procurement Methods

Governments can choose among a range of recognized procurement methods: eg open, selective, pre-qualification, sole source. As no single procurement method suits all situations, the appropriateness of one method over another should be determined by the circumstances of each procurement. Attaching a specific procurement method to either prescribed conditions or a monetary threshold may impede a government's ability to realize the efficient and effective delivery of its objectives.

A non-prescriptive approach enables governments to fully consider the requirements and existing market conditions of each procurement, and to select a procurement method on its merits. For example, there may be no need for complicated, expensive procurement processes when purchasing low-risk, low-value products and/or services. However, a procurement method of some complexity may be appropriate where risks are greater and/or the project is of high value or strategic importance. Accordingly, governments should have the flexibility to select the most suitable procurement method on a case-by-case basis.

Probity/Accountability

The selection of the most appropriate procurement method and the subsequent procurement process need to occur within a robust accountability and probity framework. Such a framework sets out government accountability requirements to ensure objective, fair and consistent treatment of tenderers, regardless of the procurement method selected, and provide guidance on issues such as confidentiality and conflict of interest.

A robust accountability and probity framework also requires appropriate documentation of key decisions in the procurement process, including details of the procurement method selected. This documentation creates an audit trail of the decision-making process, facilitating scrutiny by the relevant bodies and mechanisms outlined in the accountability and probity framework.

Summary

Procurement is an important component of Government's overall performance. A flexible non-prescriptive approach to the selection of a procurement method allows government procurement agencies to design and manage their procurement functions to ensure the efficient and effective delivery of their procurement objectives.

PUBLIC PROCUREMENT REGIME IN TUNISIA

Communication from Tunisia

The following communication, dated 4 May 2001, has been received from the Permanent Mission of Tunisia with the request that it be distributed to all Members.

1. Presentation

Government procurement aims to satisfy the widest possible range of needs in respect of works and the supply of goods and services which influence economic growth and the well-being of the population and has come to represent a major financial challenge. The total volume of public procurement is estimated at around 10-15 per cent of GDP.

In Tunisia, it corresponds to 15 per cent of GDP and around half of the national budget.

It should, however, be pointed out that not only does government procurement have considerable financial influence, but it is also an effective tool for promoting, as a matter of priority, the private sector and trade development.

In an endeavour to ensure that the financial resources involved are allocated in the best possible way and with a view to acquiring goods and services which are competitive in terms of both quality and price, Tunisia has set up an appropriate legal framework defining the rules and procedures to be followed when concluding procurement contracts.

Government procurement is currently regulated by a set of legislative and regulatory texts. The basic regulations, which date from 1989, have been updated on a regular basis to take the economic climate into account. These regulations lay down three basic principles: free competition, transparency in the awarding of contracts and preservation of the principles of sound management.

It is true that this mechanism involves a number of procedures – advertising in the newspapers, submission of tenders in sealed envelopes, opening of the envelopes, examination of the tenders, monitoring by procurement commissions, etc. But however numerous they may be, these procedures are not very complex and in fact amount to ways of ensuring that the three above-mentioned principles are upheld, that public funds are properly managed and that all bidders are treated fairly as far as the award of public contracts is concerned.

2. Free competition and transparency

The regulations cover every aspect of these principles. They ensure that government procurement is exposed as far as possible to the broadest possible competition with a view to obtaining the best possible quality and prices. They have made transparency a fundamental principle, closely linked to free competition. This applies to the different phases of government purchasing.

As regards the tender documents, the technical specifications must define the purpose of the procurement and the conditions under which it is to take place. They must also lay down the conditions for participation, the selection criteria and their relative weight, and the rights and obligations of the parties concerned.

The regulatory selection criteria include the technical merit of the services, professional and financial guarantees offered by each of the bidders, price, completion time, etc. Public purchasers may adopt other selection criteria provided that they are adapted to the purpose of the procurement and the conditions under which it is to take place.

The regulations also stipulate that tender documents must be clear as to what is required: characteristics and content must be indicated precisely. They must be defined with reference to previously established technical specifications and possibly to specifically identified national or international standards. Any indication of a brand name or any other element that could direct the purchase towards a given product is prohibited.

With respect to types of procurement, the regulations favour tendering in order to ensure maximum competition and transparency. Although certain provisions allow for single tendering, this remains an exceptional procedure to be applied only in certain specific cases laid down in the regulations, such as extreme urgency owing to unforeseen circumstances or procurement related to research, testing, experimentation, etc.

Even in the case of single tendering or direct contracting, public purchasers are under an obligation to ensure the freest possible competition except when required to use a particular supplier for well-founded reasons.

Still in connection with free competition and transparency, the regulations stipulate that calls for tenders must be advertised as widely as possible to ensure that all potential bidders are informed.

The Tunisian regulations governing the sending, receipt and opening of tenders include precautions to ensure that the various operations involved are carried out with complete transparency. Thus, all bids must be sent by registered mail within the period of time specified in the tender documents and which cannot be less than 20 days, thereby ensuring that competitors are informed in good time of the government procurement portfolio so that they can prepare to compete and submit high-quality tenders for contracts. Any bids which do not comply with these formal conditions or which are received beyond the deadline are automatically rejected.

The opening of the envelopes is carried out collectively by a commission, in the presence of a management auditor (the controller of expenditure for government procurement and the State controller for procurement by State enterprises) and generally in the presence of the participants.

In exceptional cases where the opening of the tenders is not public, for example for reasons of urgency, the administrator is required to post the results of the opening immediately following the meeting of the commission.

The regulations stipulate that, for reasons of transparency, the examination of the bids and the choice of supplier must be carried out by a commission, which proceeds by considering the bids and

eliminating those which do not meet the established conditions and classifies the remaining offers exclusively and strictly on the basis of the selection criteria and weighting set forth in the tender documents. These documents must be transmitted, against receipt, to all candidates, who may in no circumstances modify their bids retroactively.

The commission then draws up a detailed report describing the key features of the procurement procedure and, on the basis of this classification, proposes the bid that it considers the most suitable, i.e., the best value for money according to the previously established selection criteria.

It should be stressed that the regulations do not confine themselves to establishing general principles such as transparency and organizing the procedures required to put them into practice. They also seek to ensure that those principles are properly applied by providing for control, *inter alia* of compliance with the regulations.

3. System of control

Government procurement involves the use of government funds, the management of which must be accounted for at different stages. In addition to a concomitant control by means of on-the-spot inspections and a post check by the Court of Auditors, the regulations have provided for a prior control mechanism in which the procurement commissions play the key role. The purpose of this control is to ensure that procurement is carried out in a proper and regular manner by bringing to light possible irregularities or shortcomings before they occur, as well as examining disputes between the parties concerned.

These commissions are made up of representatives of the main government departments involved in government procurement.

This preventive control mechanism can come into play at any of the successive stages of the government procurement procedure, from the drawing up of technical specifications to the awarding of the contract.

Such a check is essentially consultative, since it takes the form of reasoned opinions notified to the administrative head or managing director of the State enterprise concerned.

4. Challenges and dispute settlement

According to the regulations, any problem, challenge or dispute must be brought before the competent procurement committee, which examines the claims and grounds of each of the parties in the light of the regulations and gives a reasoned opinion.

If the dispute continues, it can be settled amicably by an ad hoc committee chaired by a member of the administrative court and including among its members one representative of the profession and one of the Higher Procurement Commission. This commission endeavours to find common ground between the two parties and proposes what it considers to be the fairest solution.

If the parties do not accept the committee's amicable solution, they may each request arbitration or bring the case before the Tunisian courts.

5. Protection of the domestic industry through the procurement process

Owing to the diversity of the sectors involved, the amount of public expenditure and its impact on domestic industry, government procurement also constitutes a tool of State intervention in the economy.

Consequently, following the example of other countries, the regulations concerning government procurement include measures for protecting local industry by establishing the obligation for foreign suppliers, in cases of international calls for tender, to form a joint venture with Tunisian enterprises or to subcontract as much as possible of the project to local firms.

It should be noted in this context that international donor organizations, such as the World Bank, accept joint ventures and subcontracting and grant local products a 15 per cent preference.

In the context of the current globalization of trade and opening-up of markets, Tunisian regulations on government procurement have provided for a gradual reduction in the preference margin benefiting products of Tunisian origin and its elimination as of 2004.

Last but not least, I cannot conclude without mentioning the most recent measures taken by Tunisia to enhance the transparency and efficiency of the public procurement system. These measures aim to deploy effective information and management tools by using information technology and organizing the necessary training for all those involved in the procurement process.

**TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM
OTHER INTERGOVERNMENTAL ORGANIZATIONS**

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
(OECD)

Supplement

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The information which has been received in response from the Organisation for Economic Co-operation and Development (OECD) was circulated in document WT/WGTGP/W/20/Add.1. The current document reproduces the supplementary information which has been received from the OECD by a communication, dated 9 September 2000.

Technical assistance projects in the procurement field in which **SIGMA** (Support for Improvement in Governance and Management in Central and Eastern Europe) is currently engaged, or projects that are planned, include the following:

- (a) preparation of amendments to public procurement laws in Bulgaria, Romania and Latvia;
- (b) setting up new Public Procurement Offices in the Slovak Republic, Lithuania and Bulgaria;
- (c) advising the Baltic States on how to strengthen their procurement complaints and arbitration procedures;
- (d) providing comparative information on anti-corruption procedures in the area of public procurement;
- (e) setting up a procurement system in Montenegro.

SIGMA has recently completed work, in collaboration with the ILO's International Training Centre in Turin, on developing a training of trainers course in public procurement. The course materials have been translated by several countries and are being used in designing and implementing national training programmes.

It may be of interest to note other work that the OECD is conducting on government procurement even though it does not fall into the category of technical assistance in implementing rules and procedures. The **Development Co-operation Directorate** is undertaking work related to aid-funded procurement.

- **Aid untying:** Agreement on this (via a recommendation focusing on the least developed countries) will help liberalize aid procurement and increase competition, transparency and value for money. It will, of course, also give partner countries greater ownership of the process. By and large, there is broad agreement on the text of a Recommendation, but present work on a mechanism to improve effort sharing among donors is required for approval and implementation. On agreement, there will be an open bulletin board advertising untied aid offers to promote competition and transparency.
- **Strengthening procurement capacities in partner countries:** DAC (Development Assistance Committee) members agree on the importance of building procurement capacities with partner countries in order that the latter can increasingly take over full responsibility for the procurement process. This work, about to commence, will assess essential needs and what donors have done and can do to address them. It will also look at reducing the multiplicity of donor demands on already stretched capacities as well as review ways to encourage more firms in developing countries to successfully bid for aid-funded contracts.
- **Corruption and aid-funded procurement:** The DAC is presently reviewing experience with and the impact of its 1996 Recommendation on this matter. All DAC members have introduced the measures or strengthened procedures as called for by the Recommendation. Preliminary findings suggest that an important role of the Recommendation is the clear and sharp political signal it sends to all that corruption will not be tolerated and will be dealt with in the strictest manner. The DAC is presently addressing proposals made through this review to link up efforts in the DAC and elsewhere in a more concerted and coordinated effort to tackle corruption.
- **"Profiles" of DAC members' procurement regimes:** These profiles set out the essential details of each member's procurement system and have been completed, so far, for the majority of DAC members. They have the objective of improving transparency and, on agreement on a Recommendation on untying, will be linked up to the bulletin board on untied aid offers to provide potential bidders with information on the procurement rules and procedures of the donor supporting the project in question.

The **Working Party of the Trade Committee** examined throughout 1999 and 2000 a series of indicators of the size of government procurement markets in OECD member and non-member countries. The work has concentrated on refining the methodological approaches based on the main aggregates of the 1968 System of National Accounts and in gathering the necessary national statistics.

The various estimates of the size of government procurement markets for OECD member countries are disaggregated by level of government, i.e. general government, central government, local government and social security. Based on the availability of data for non-member countries, a first series of market estimates at the general government level was considered by the Working Party at its meeting which was held on 18-20 September 2000. Work will continue with a view to improving the collection of data and the reliability of the results. Consideration is being given for the preparation of a publication summarizing the work undertaken.

For the moment, the programme of work of the Trade Committee on government procurement does not include activities directly involving technical cooperation between OECD member and non-member countries. Nevertheless, we consider that our quantitative work will be a valuable contribution in the context of ongoing efforts made by various organizations to improve the transparency in government procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/W/20/Add.2/Suppl.1
14 September 2000

(00-3554)

**Working Group on Transparency
in Government Procurement**

Original: English

TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

ASIAN DEVELOPMENT BANK

Supplement

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The information which has been received in response from the Asian Development Bank was circulated in document WT/WGTGP/W/20/Add.2. The current document reproduces the supplementary information which has been received from the Asian Development Bank by a communication, dated 6 September 2000.

Attached is a table showing relevant procurement-related Technical Assistance (TA) that have: (i) been implemented; (ii) are ongoing; (iii) are being processed; or (iv) are planned during the period 1998-2000.

Year Approved	TA/Project Number	Country Name	TA/Project Name	Remarks
1998	3019	People's Republic of China	Policies and Regulatory Framework for the Construction Industry	- Additional work is under consideration to extend TA for another 4-5 months.
	3031	Mongolia	Development of Procurement Legislation and Guidelines	- Completion date 31 June 2000; TCR to be finalized. - Public Procurement Law of Mongolia enacted on 14 April 2000.
	2993	Mongolia	Capacity Building in Project Accounting	- Completion date 31 July 2000.
	2992	Nepal	Improvement of Project Implementation	- Completion date 30 September 1999.
	3028	Viet Nam	Capacity Building in Project Financial Management	- Completion date 31 December 1999.
	5782	RETA	1998 Seminars on Project Implementation and Administration	- Completion date 31 December 1999. - Capacity Building of Executing Agencies in ADB developing member countries focusing on loan administration aspects such as recruitment of consultants, procurement and disbursements.
1999	3156	Bhutan	Capacity Building of the Construction Development Board	
	3160	Cambodia	Improvement of Project Implementation in Cambodia	
	5834	RETA	1999 Seminars on Project Implementation and Administration	
	3287	Cambodia	Strengthening External Aid Portfolio Management	
	3306	Nepal	Strengthening Project Implementation Practices	
	3310	Philippines	Capacity Building for Procurement	

Year Approved	TA/Project Number	Country Name	TA/Project Name	Remarks
2000	3471	Indonesia	Improving Public Sector Procurement	
	3457	People's Republic of China	Implementation of the Tendering and Bidding Law and Related Regulations	- Recruitment of consulting firm is ongoing and consultants are expected to start in late October 2000.
	5906	RETA	Seminars on Business Opportunities in 2000-2001	- Focus on eligible potential suppliers of goods, works, services, consultants and advises them of ADB guidelines, policies and procedures.
	2845	People's Republic of China	Establishment of National Procurement Regulations for Public Sector	- Completion date 31 June 2000. - The Tendering & Bidding Law of China was passed by the National People's Congress in August 1999 and became effective on 1 January 2000.
Future TAs	34067	People's Republic of China	Government Procurement Law	- TA paper is circulating to staff concerned for review and concurrence. - Fact-finding mission completed.
	34150	Mongolia	Establishment of a Central Procurement Monitoring Office	- Fact-finding mission completed.
	34454	RETA	Capacity Building and Training in Portfolio Management in Selected DMCs	- Fact-finding to be scheduled.
	34046	India	Capacity Building for Project Implementation	- Fact-finding to be scheduled.
	34505	Sri Lanka	Procurement Support and Management	- Fact-finding to be scheduled.

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/W/20/Corr.1

14 September 2000

(00-3597)

**Working Group on Transparency
in Government Procurement**

Original: English

TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW (UNCITRAL)

Corrigendum

Paragraph 2, last line: Replace document reference A/CN.9/449 with A/CN.9/474.

Paragraph 3, last line: Replace document reference A/CN.9/448 with A/CN.9/473.

**Working Group on Transparency
in Government Procurement**

**TECHNICAL COOPERATION ACTIVITIES OF INTERGOVERNMENTAL
ORGANIZATIONS**

Note by the Secretariat

1. At its meeting of 7 June 2000, the Working Group on Transparency in Government Procurement requested the Secretariat to prepare a note summarizing the information that had been made available, to the Group or elsewhere in the WTO, on the technical cooperation activities of IGOs (intergovernmental organizations) in the area of government procurement (WT/WGTGP/M/10). This note has been prepared in response to this request.
2. The information summarized is that received from ten organizations¹ describing their relevant activities which was circulated to the Group in documents WT/WGTGP/W/20 and addenda 1 to 9 in response to a request of the Group at its June 1998 meeting (WT/WGTGP/M/5). The Secretariat has checked to see what other information might be available, including in response to the recent questionnaire sent by the Secretariat to other IGOs, but this has not yielded anything additional.
3. The objectives of the technical cooperation activities of IGOs vary depending on the mandate and function of each organization. However, there appear to be some features common to these technical assistance activities. The present note attempts to describe in broad terms the main features of the assistance available, and gives examples of activities - without referring to every relevant project of every organization. Section I gives a brief overview of the objectives sought by technical cooperation activities. The presentation of the information on the specific technical cooperation activities in Section II is structured on the basis of the types of such activities.
4. The note focuses on the activities of IGOs that have been specifically characterized as constituting a form of technical cooperation. However, it is worth also recalling that a great deal of useful information has been generated and exchanged among participating countries, including developing and least developed, as the result of the other work of the IGOs, including, for example, that of the Working Group on Transparency in Government Procurement, the Working Party on GATS Rules, the FTAA Working Group on Government Procurement and the APEC/GPEG (Government Procurement Experts Group).

I. CONTEXT AND PURPOSE

5. One of the main objectives of the technical cooperation activities of IGOs is related to ensuring the proper application of the principles and rules of the organization in question by interested governments. For instance, as part of their fiduciary role, the World Bank and the regional development banks focus their cooperation work on the application of their respective guidelines to procurements carried out in the borrower countries under projects funded by their loans. The WTO

¹ UNCITRAL, OECD, the Asian Development Bank, the African Development Bank, APEC Government Procurement Experts Group, the European Bank for Reconstruction and Development, ITC, UNDP, the World Bank and UNOPS.

Secretariat provides technical cooperation relating to the rules and implementation of the GPA (Agreement on Government Procurement) mainly to WTO Members acceding to the GPA and occasionally to other WTO Members seeking information on the GPA.

6. The establishment or improvement of the regulatory framework of procurement in individual countries is another major area of technical cooperation of IGOs, particularly from the perspective of ensuring that such countries are aware of the standards and the principles that are codified in the existing international instruments on government procurement or otherwise providing support to procurement reform activities in individual countries. In this connection, the World Bank has conducted CPAR (Country Procurement Assessment Reviews) in more than six countries in each of the six regions of the Bank. Each review includes the development of an action plan to improve the public procurement system in the country under review. In more general terms, it appears from the submissions that technical cooperation in the area of procurement is often part of the wider efforts of IGOs, for instance of the World Bank, the regional development banks, the OECD/SIGMA (the Programme for Support for Improvement in Governance and Management in Central and Eastern European Countries) and UNDP, to support public sector development, financial and fiscal management, good governance and the fight against corruption.

7. Another aspect of the technical cooperation work of the international and regional IGOs is to facilitate participation in activities aimed at the development of international principles and rules on government procurement to be agreed by governments pursuant to the more general objectives of the respective international or regional agreements or arrangements. Some examples of this type of technical cooperation are related to the APEC non-binding principles on government procurement developed by APEC/GPEG, the development of rules on government procurement in the FTAA Working Group on Government Procurement and the harmonization of procurement legislation in Central and Eastern Europe with that of the European Community by the OECD/SIGMA programme. The main focus of the WTO Secretariat's technical cooperation activities in this area has been on assisting WTO Members to participate fully in the work of the Working Group on Transparency in Government Procurement.

II. FORMS OF TECHNICAL COOPERATION

8. Legislative reforms and strengthening and supporting national public procurement institutions to increase their capacity to manage and monitor procurement systems seem to be the main target of technical assistance efforts. Human resource development is carried out to support this work of capacity building.

Assistance in the preparation of laws and regulations

9. This form of assistance relates to the formulation of new, or the improvement of existing, laws, regulations, administrative guidelines and procedures and tender documents. The UNCITRAL Secretariat provides technical assistance to countries that propose to enact, or have enacted, legislation based on the UNCITRAL Model Law on Procurement of Goods, Construction and Services, 1994. The World Bank and regional development banks have also been heavily engaged in this area of activity in a number of countries worldwide. For instance, the World Bank has assisted in the preparation of new national procurement legislation in, among others, Albania, Indonesia, Jamaica, Jordan, the Kyrgyz Republic and several other Central Asian countries. The Asian Development Bank has been active in China, Mongolia and Bhutan. The OECD/SIGMA programme and the ITC have provided assistance to a number of countries in Central and Eastern Europe and Africa.

Institution building

10. Supporting the establishment or reinforcement of public procurement offices and agencies plays an important role in technical cooperation provided by some IGOs. This form of assistance involves advice and assistance on the establishment or strengthening of public procurement offices and procurement policy implementation units in individual government departments as well as of procurement complaint and arbitration mechanisms. The OECD/SIGMA programme's work in Lithuania, Romania and the three Baltic countries, the ITC's work in Albania and Slovenia and the Asian Development Bank's work in Mongolia and Laos are examples.

Application of Information Technology

11. Application of information technology to government procurement is part of the work of the APEC/GPEG, the Working Group on Transparency in Government Procurement and the Committee on Government Procurement. Information on Members' national systems was made available in a demonstration session and a seminar on efficiency and transparency in public procurement, organized respectively by the WTO and the Inter-American Development Bank in 1998.

Human resource development

12. Assistance in the development of human resources to build up and to sustain the capacity for good management of public procurement is provided in various forms, such as training and organization of seminars, symposia and workshops.

Training

13. Training activities include the training of procurement officials, the development of local training strategies and the training of trainers. Procurement training is regularly provided by the World Bank and the regional development banks to the procurement staff who are directly involved in the projects financed by the banks and to the staff of the line ministries concerned as part of the implementation process for every new project and of the monitoring and supervision process for such procurement activities. The courses for training of trainers in the field of public procurement organized jointly by the OECD/SIGMA programme and the ILO Training Centre are another example of training activities. Moreover, training materials, in the form of manuals and handbooks, have been prepared, for instance "Public Procurement: A Manual for Central and Eastern Europe" jointly by the OECD/SIGMA programme and the International Training Centre of the ILO in Turin.

Workshops, seminars and conferences

14. Another form of technical assistance has been the organization of workshops, seminars and conferences. Some of the topics that have been treated by these activities in the past include: procurement principles by APEC/GPEG; application of information technology to government procurement by the WTO; bid challenge mechanisms and remedies by APEC/GPEG; efficiency and transparency in public sector procurement by the Inter-American Development Bank; and the WTO Agreement on Government Procurement by the FTAA Working Group on Government Procurement and APEC/GPEG, respectively. The African Development Bank, ITC, the World Bank and UNDP have jointly organized the African Public Procurement Reform Conference. The WTO Secretariat has provided speakers to a number of these regional or national seminars on government procurement. Also the seminars and workshops aimed at providing an overall appreciation of the WTO provisions and mechanisms generally include a presentation on the work on government procurement in the Working Group on Transparency in Government Procurement.

**Working Group on Transparency
in Government Procurement**

Original: English

**TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM
OTHER INTERGOVERNMENTAL ORGANIZATIONS**

APEC GOVERNMENT PROCUREMENT EXPERTS GROUP (APEC/GPEG)

Revision

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The information which has been received in response from the Chair of the APEC Government Procurement Experts Group was circulated in document WT/WGTGP/W/20/Add.4. The current document reproduces the updated information which has been received from the APEC Secretariat by a communication, dated 18 August 2000.

The APEC Government Procurement Experts Group (GPEG) was established in 1995 to consider ways to increase the transparency of, and liberalize, government procurement markets in accordance with the Osaka Action Agenda adopted by APEC Economic Leaders in 1995.

The GPEG finished its full set of government procurement non-binding principles in 1999. These principles are in the areas of transparency, value for money, open and effective competition, fair dealing, non-discrimination, accountability, and due process. The GPEG has encouraged APEC members to review in their individual action plans the consistency of their government procurement systems with the non-binding principles and how best to implement them and voluntarily bring their systems into conformity with the principles, with progress reported to the GPEG. Three APEC member economies are currently undertaking such reviews. (Note: These individual action plans chart each APEC member's progress toward the Bogor goals of trade liberalization by 2010 for developed economies and 2020 for developing economies in the APEC region.)

In the area of technical cooperation, the work of the GPEG has so far focused on two areas: information exchange and educational events.

On information exchange, the GPEG surveyed member economies' existing government procurement systems and publication arrangements for government procurement information. Members' returns to these surveys are posted on the APEC Government Procurement Homepage (website: <http://www.apecsec.org.sg/gphome.html>) for free and easy access by interested parties.

Members update these returns annually. In addition, contact points were established to facilitate the ongoing exchange of information.

On educational events, the GPEG is committed to holding workshops, seminars and training courses to enhance members' understanding of government procurement systems and international agreements. The aim of these activities is to provide a foundation for future work, with a view to achieving the long-term goal of liberalization of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration by APEC Economic Leaders in 1994.

Finally, the GPEG has been discussing the development of electronic commerce and its application to procurement. Work is moving ahead in this area with a particular focus on how the work being done on electronic commerce in APEC links with the GPEG's work on the non-binding principles, including transparency. This is also a part of APEC's developing interest in moving government "on-line," not only in the area of government procurement but in many other areas as well.

**Working Group on Transparency
in Government Procurement**

Original: English

TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

UNCTAD/WTO INTERNATIONAL TRADE CENTRE

Revision

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

The information which has been received from UNCTAD/WTO International Trade Centre was circulated in document WT/WGTGP/W/20/Add.6. The present document reproduces the updated information which has been received from the UNCTAD/WTO International Trade Centre by means of a communication, dated 22 August 2000.

Mission and background

ITC is the focal point institution in the UN system for providing technical cooperation in export promotion and trade development to developing countries and economies in transition. ITC's programme of assistance in international purchasing and supply management (earlier named import operations and techniques) is focused on making systems for the purchase of goods and services to meet the needs of a country more cost-effective. One of the major areas of work of this programme is public procurement.

ITC's efforts in public procurement contribute to its mainstream work in export development and directly affect the quality of governance in a country. ITC responds to countries' requests for assistance in public procurement reform by:

- (1) Undertaking reviews of the present procurement systems to identify needed adjustments in the relevant legal, organizational and operational areas.
- (2) Providing advice, training and other assistance in designing and implementing effective public procurement systems to meet the identified needs.

Work is conducted in cooperation with the World Bank and other partner institutions and uses local staff and local consultancy expertise. Capacity building is a principal objective of ITC's technical cooperation efforts in this area.

While ITC will consider requests for assistance in public procurement activities from any developing or transition country, ITC actively seeks programme opportunities, especially in the priority area of assistance to least developed countries.

Since 1979, ITC assistance projects covering public procurement have emphasized approaches that countries could use to reduce their import expenditures to achieve more positive international trade balances. ITC expertise has been instrumental in designing and implementing projects funded by major multilateral and bilateral donors such as UNDP, the Swedish International Development Agency, the Government of Switzerland and others. Some of the countries benefiting from this early approach to improve import operations were Angola, Burundi, Djibouti, Egypt, Ethiopia, Ghana, Haiti, Mozambique, Niger, Rwanda, countries in the South Pacific, Sudan, Tanzania and Tunisia.

To support these projects - and also to extend technical cooperation where such projects did not exist - ITC has developed a series of technical and training materials addressing various aspects of procurement and materials management. These are available mostly free of charge to developing countries and economies in transition. The materials developed to date include 24 practical guides, 19 case studies and exercises, 12 manuals and directories, a complete three-level commercial English course for importers, eight import management video packs and two computer-based import simulation exercises. ITC also collaborated with the World Bank and the International Labor Organization in the preparation of an early guide to International Procurement and a recent series of handbooks for public procurement training.

ITC is committed to providing advice and assistance to countries seeking to improve their public procurement systems. However, the traditional "case by case" method of providing procurement advice through tailored assistance missions and projects has had a relatively high cost due to the independent analyses needed for each new project. To try to meet the challenge of delivering high quality procurement assistance in a targeted and sustainable manner, ITC is changing its past practice. Recent efforts of ITC have incorporated new strategic priorities and approaches for cooperation with partner countries. The new approach involves developing a set of universal tools and related services to build and operate national capacities for providing procurement training, consultancy and information support to purchasing organizations. This more integrated approach will significantly enhance the response time and cost-effectiveness of ITC's assistance in procurement and supply management operations. It will be centred around materials currently being developed by ITC. Some of these have been jointly developed with the United Kingdom's Chartered Institute of Purchasing and Supply. These include:

- *The Diagnostic Tools* will be used in assessing capacities and diagnosing problems in the procurement process at individual organisations. Separate versions of the diagnostic tools will focus on the needs of small and medium enterprises and of public sector procurement agencies. Collective requirements diagnosed in this manner will enable ITC and local organizations to design highly specific technical assistance programmes to meet identified needs through training, consultancy and information support. It will also be possible to later measure the effectiveness of these programmes.
- *The Modular Learning System* is being developed as the foundation of all future ITC efforts to build up training capacities in its partner countries covering all stages of the purchasing and supply process. Separate versions will exist for use by SMEs and public sector procurement agencies. It will be used for implementing either group-based training or individual open learning, and will include optional information technology support. The modular learning system will eventually integrate the full range of ITC's numerous technical materials and training aids relating to procurement. These will be made available through regular ITC dissemination channels, including through the Internet. Generic basic, intermediate and advanced training courses, to be tailored to specific

country needs, are being developed and piloted to build up the required knowledge and skills of purchasing managers and staff.

- The *Compendium Of Public Procurement Systems* will use existing data to provide a comparative reference on the scope of the public procurement system in a country. The information will be arranged by phase of the procurement process, as defined in the diagnostics and learning tools, for analysis and training purposes. The information in the compendium will provide a benchmark against which a country will be able to compare its procedures to those of other countries (e.g., solicitation methods or contract management approaches). This interactive database enables a country to compare its procurement system to those of other countries and with generally accepted models. The compendium is available for viewing on the ITC website www.intracen.org (InfoBase's).
- *Special materials for Purchasing and Supply Management Associations (PSMAs)*. The PSMAs play a key role in efforts at the national level to upgrade the competencies, recognition and effectiveness of professionals responsible for managing purchasing and supply operations. During 1996, ITC produced a handbook for the establishment and operation of PSMAs. In collaboration with the International Federation of Purchasing and Materials Management (IFPMM), ITC is developing a worldwide PSMAs directory to facilitate the growth of PSMAs. Direct assistance has been provided to PSMAs in Hungary, Poland, Romania, Tanzania, Tunisia and Uganda, mainly through national and regional projects.
- *Public Procurement and SMEs*. Most public procurement systems address in one way or another the issue of how to provide support for the domestic supplier base. Improved techniques for buying goods and services using modern quality standards and business practices can help improve the efficiency of local suppliers as they compete for government contracts. Such improvements in efficiency can enhance trade prospects by making these suppliers more acceptable vendors to global business partners. Inefficient government suppliers provide poor value to their national government, and will be unlikely to engage in any meaningful private sector trading partnerships in the era of global competition. For governments, such efficiencies can directly translate into the acquisition of additional goods and services to meet national needs, funding of higher priority programmes, or even reduced taxes on the public, which aid development. *The ITC Guide on Improving Access of Small and Medium Enterprises to Public Procurement* provides the experience of several countries (India, South Africa, the United States and Hungary) in using targeted and untargeted assistance to help develop local industry. Such assistance includes mentoring programmes, subcontracting opportunities, the payment of price preferences and premiums, and set-asides for small businesses.
- *Electronic Commerce*. An active electronic commerce programme in public procurement can help develop suppliers into global competitors. By introducing new technology solutions in the government-to-business market-place, the government acts as an "incubator" to help build demand for "state-of-the-art" technology. The state of the art is relative to that applied locally in the business sector. Thus, in one country the use of email could be state of the art while in another it is making binding contracts over the Internet. However, government intervention through procurement policies must be balanced by the capacity of domestic sellers to make the required changes and remain to compete in the national public procurement market. Failure to do this will restrict public procurement opportunities to relatively few firms. Such limited competition normally leads to increase prices to the government (absent increased competition from abroad) while it reduces the number of domestic suppliers participating in the business of government. ITC is developing a Model Website for use by developing and transition

countries to start connecting to the World Wide Web. It will be complete with databases and document preparation and bid evaluation application programmes.

Specific projects undertaken

ITC has substantially increased its assistance efforts aimed at reforming public procurement systems and supporting national public procurement policy-making institutions. This assistance is being provided through various projects - and usually involves the development of national procurement guidelines, standard procurement documents and other procurement system elements, aimed at enhancing the implementation of new national procurement legislation. Training of public procurement staff in the application of these guidelines and documents is often a key component of these projects, financed in various cases through World Bank grants to the countries concerned (e.g., Albania, Kyrgyz Republic and Slovak Republic). Assistance in public procurement reform and/or capacity development has also been provided to Belarus, Brazil, Guinea-Bissau, Namibia, Uganda, Ukraine, Viet Nam, Zambia and several Maghreb countries.

The theme of greater harmonization of public procurement systems within regional trading associations is being promoted in several partner initiatives. For example, the Commission for the Union Economique et Monetaire Ouest Africaine (UEMOA), as an outgrowth of the Abidjan Conference, is working with the World Bank and African Development Bank to promote greater integration of public procurement activities among the member states. These member states are Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal, Togo and Guinea-Bissau. Some proposed measures of progress being considered include a decrease in the number of direct contracts, the use of systematic external audits, and the number of people trained in modern procurement techniques. ITC is discussing with COMESA ways to help this regional trade association build the necessary capacity to begin to harmonize public procurement as a further example of this issue.

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/W/20/Add.9

11 September 2000

(00-3504)

**Working Group on Transparency
in Government Procurement**

Original: English

TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

UNITED NATIONS OFFICE FOR PROJECT SERVICES (UNOPS)

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

The present document reproduces the information which has been received from the UN Office for Project Services (UNOPS) by means of a communication dated 31 July 2000.

The United Nations Office for Project Services (UNOPS) was established as a separate, identifiable entity within the United Nations system in order to provide high-quality, timely and cost-effective development services for the successful implementation of projects. These services include, *inter alia*, comprehensive project management and implementation of project components.

In order to meet these obligations, UNOPS has developed a responsive procurement regime consistent with internationally accepted norms for public procurement and subject to continuous review and improvement through internal and external oversight, monitoring by UNOPS' corporate governance mechanisms and policy formulation that takes into account new and emerging tools, trends and resources in public procurement.

Because UNOPS is part of the United Nations, the expertise necessary to maintain its cutting edge procurement regime also is made available to developing countries as capacity-building through UNOPS execution, as well as direct technical assistance. This input recognizes the importance of public procurement as part of any strategy for sustainable development and poverty alleviation and empowers recipient countries with sufficient capacity to satisfy donor requirements for use of funds provided for this purpose.

Capacity-building through execution

Development activities/projects funded by bilateral donors and international financing institutions often are implemented directly by the respective donors. Such a practice may be an expedient way to keep a specific project moving, but it does not promote capacity-building within the recipient's system. While this responsibility is best given to the recipient government, it has been

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UNOPS' experience that a transitional approach to national execution may be appropriate, both for purposes of build capacity and to assure donors that funds will be used according to necessary standards of accountability.

UNOPS facilitates this transition by providing implementation assistance for development programmes with capacity-building by design. Where UNOPS services are requested through a Management Service Agreement (MSA), between a funding source, like any financial institution, and a recipient government, UNOPS often creates a Project Implementation Unit hosted by the beneficiary ministry. The Unit undertakes project implementation activities, including procurement and contracting, within the framework of the recipient government but under the stewardship of an international organization set up for that purpose. Local staff under UNOPS supervision then gain valuable experience through project implementation, which covers not only best practices for public procurement but also contract management and compliance with donor requirements.

The experience gained through this type of transitional approach to project implementation ensures that the government has the capacity to maximize economy and efficiency in procurement, while maintaining the expected standards of transparency, fairness and accountability. This approach also may include specific technical assistance inputs as indicated below.

Technical assistance

UNOPS has internal experts in public procurement norms, laws and practices. The Legal & Procurement Support Division uses expertise acquired through management of UNOPS' procurement regime and offers that knowledge, together with specialized experience in legal aspects of procurement, through technical assistance inputs to development projects. Technical assistance offered by UNOPS in the area of public procurement reform includes the following activities:

Assessment. Review of an existing national procurement regime against international standards; identifying strengths, weakness, opportunities and threats.

Advice: Specific recommendations for and/or assistance with developing a procurement regime consistent with internationally accepted norms and the countries' development priorities; including legal, technical and administrative input.

Training. Instruction on best practices, procurement laws and procedures, international standards, etc.

Technical assistance provided by UNOPS experts often is part of capacity-building through execution. Therefore, it is a cost-effective way to create a national public procurement regime consistent with international norms, while ensuring sustainable development through national capacity.

A recent example of technical assistance is aimed at governance for sustainable human development in the Pacific Islands. The objective of this UNDP project was promotion of sustainable development through strengthening good governance and, thereby, facilitating job creation and sustainable livelihoods. Transparency and accountability in public procurement was considered an essential feature. UNOPS technical experts were requested to review existing procurement activities in several island nations and make recommendations for improvements to their legislation, regulations, procedures and practices, as well as prepare draft national procurement codes.

**Working Group on Transparency
in Government Procurement**

Original: English

**PROPOSAL FOR A WORK PROGRAMME FOR COORDINATING INTERNATIONAL
TECHNICAL ASSISTANCE WITH IMPLEMENTATION OF A POTENTIAL
AGREEMENT ON TRANSPARENCY IN GOVERNMENT PROCUREMENT**

Communication from the United States

The following communication has been received from the Permanent Mission of the United States with the request that it be circulated to the Working Group on Transparency in Government Procurement.

I. INTRODUCTION

Discussions in the Working Group to date reflect the broadly shared view that all Members and their citizens benefit from concrete steps to ensure transparency in government procurement practices. Many individual Members have focused on transparency measures as a key element of their overall domestic efforts to build confidence in the management of government affairs, establish a stable and predictable commercial environment, and provide a solid foundation for future growth and development.

While it appears that all Members are committed to the principles of transparency in government procurement, some delegations have expressed concerns about proposals to develop WTO rules in this area. They note that some Members may face particular administrative or technical challenges in applying those principles to their individual circumstances.

The United States believes that the Working Group should develop concrete and pragmatic means of addressing these issues. Accordingly, we propose that the Working Group, concurrently with the ongoing work on its existing mandate, develop a focused work programme to assess the potential challenges that some Members may face in this area and the availability of international technical assistance to address such challenges (see below). We believe that this approach must be considered in close connection with the emerging substantive results of the Working Group's work on the elements of an appropriate agreement, and in the light of Members' overall interests and objectives in the rules-based international trading system.

II. CONTEXT OF THE PROPOSAL

Flexible Application of Transparency Rules: There is broad agreement in the Working Group that a potential agreement must be flexible enough to be fully and effectively applied in each Member's individual circumstances. The United States believes that effective transparency can be achieved in a wide variety of ways, as appropriate to those circumstances. For example, while there are clear advantages to publishing relevant information on the Internet, an appropriate agreement should provide the flexibility to use other appropriate media, such as official gazettes or newspapers.

In our view, this flexibility in the application of potential WTO rules in this area is relevant to concerns about the administrative and technical challenges that some Members may face in this area. While we agree that steps must be taken to address those challenges, we believe at the same time that appropriate flexibility in the substantive elements emerging from the Working Group can help to ensure that all Members will be in a position to effectively apply the elements of a potential agreement.

Appropriate Transparency Rules Contribute to all Members' Full Integration Into the International Trading System: We believe these issues also should be considered in light of the benefits to all Members of extending and strengthening the WTO system. The predictability and certainty provided by a rules-based transparency regime promotes economic stability and commercial confidence, and can complement other efforts to ensure the full integration of all Member economies into the global trading system. In this sense, the United States believes that all Members have a shared interest in accelerating, rather than delaying, progress toward such an environment. Improved coordination between the development of appropriate rules and the efficient use of international technical assistance, where appropriate, can help to achieve this objective.

III. A METHOD FOR PROCEEDING

The United States proposes that:

- Concurrently with, and drawing on the Working Group's ongoing work on the elements of an appropriate agreement, the Working Group should establish an operational work programme designed to assess relevant administrative and technical assistance needs, identify potential resources for addressing those needs, and facilitate efforts to effectively address challenges that individual Members may face in relation to the elements under discussion.
 - Such a work programme could proceed in two phases. In the first phase, the Working Group could collect and analyse information on potential capacity-building needs in relation to the elements of transparency under discussion and, at the same time, collect information on potential sources of technical assistance relating to those needs.
 - Both these types of information might be organized in appropriate categories, such as issues relating to the development of legal and administrative procedures, training and other human resources issues, and physical infrastructure or other technical needs.
 - In the second phase of the work programme, the Working Group could explore how to use this information efficiently to produce operational results.
 - Prior to the Working Group's next meeting, the Chairman should conduct informal consultations with a broad range of interested delegations with a view to outlining the most efficient way to proceed in developing such a work programme.
 - Based on the numerous submissions that other relevant international organizations have previously made to the Working Group, the Chairman should be authorized to consult with those organizations with a view to drawing on their expertise in this area.
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**General Council
Working Group on Transparency
in Government Procurement**

Original: English

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

The WTO's Contribution to Transparency in Government Procurement

Communication from Hungary, Korea, Singapore and the United States

The following communication has been received from the Permanent Mission of the United States with the request that it be circulated to the General Council and the Working Group on Transparency in Government Procurement.

Attached¹ please find a submission made by the United States on behalf of the delegations of Hungary, Korea and Singapore of a draft consolidated text for an agreement on transparency in government procurement. This text is the result of ongoing informal consultations with a number of delegations, drawing upon the four draft texts that have been submitted to the Working Group on Transparency in Government Procurement and the discussions that have occurred in the Working Group to date. It is submitted by the delegations of Hungary, Korea, Singapore and the United States with a view to early conclusion of a WTO agreement on transparency in government procurement and in light of paragraph 76 of the revised draft of the Ministerial Declaration and with the hope that it may provide a useful basis for further Working Group discussions.

Proposal

That Members use the attached¹ text as the basis for continued efforts to conclude an agreement on transparency in government procurement at the Third Ministerial Conference. In the view of the Members making this submission, this draft text reflects the tremendous progress that Members have already made in this area, building on the comprehensive study and consultations in the Working Group on Transparency in Government Procurement, and provides a strong basis for advancing these efforts. This submission is without prejudice to individual Members' views on the specific elements of the attached text.

Rationale

Recent instability in global financial markets has underscored the importance of capacity building in the public sector and, in particular, of continuing to improve economic management. Members recognize that transparent and predictable procurement procedures are a critical element of

¹ Reproduced in the Annex.

good economic governance, and help to build public confidence, encourage long-term business commitments, and provide a solid foundation for sustained economic growth and development.

Transparency in procurement also helps to ensure that governments obtain the best value for the money they spend, freeing up resources to address pressing economic and social needs. For example, the Ministry of Health of one Member recently reported that it was able to reduce by 20 per cent the price of medicines supplied to patients as a result of the introduction of transparent procurement procedures. All Members can clearly benefit, often on an even greater scale, from the consistent use of such procedures.

Achieving concrete results in this area at the Third Ministerial Conference provides an important opportunity for the WTO to demonstrate that it can respond promptly and flexibly to the needs and interests of all Members. In the view of the delegations making this submission, the achievement of concrete results in this area at the Ministerial Conference can make an important contribution to Members' efforts to strengthen the rules-based international trading system.

ANNEX

DRAFT TEXT FOR AN AGREEMENT ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

Members,

Recognizing that government procurement may provide a means of achieving or supporting Governments' social, environmental and economic objectives for the betterment of their communities,

Recognizing that efficient, effective and appropriate government procurement enhances the management of government resources, the quality of governance and the economic performance of the community as a whole,

Recognizing that transparency, integrity and predictability are integral to efficient and effective government procurement and to the functioning of the multilateral trading system, and

Desiring to establish a multilateral framework of transparency obligations to assure all parties that government procurement shall be conducted fairly, ethically and predictably,

Hereby *agree* as follows:

I. GENERAL OBJECTIVE

This Agreement aims at ensuring transparency [, integrity and predictability] in government procurement. Each Member shall adopt and apply its procurement laws, regulations and requirements in good faith and in a manner that does not undermine the aims of this Agreement.

II. NON-DISCRIMINATION IN TRANSPARENCY

In carrying out its obligations under this Agreement, each Member shall accord to suppliers from any other Member treatment no less favorable than that which it accords to its own suppliers or to suppliers from any other country.

III. SCOPE AND APPLICATION

1. This Agreement shall apply to any law, regulation or requirement governing the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale nor to use in the production of goods or services for commercial sale.

[2. This Agreement

Option 1: [applies to all procurement [within the jurisdiction] of a Member]

Option 2: [does not apply to procurement by government agencies other than those of a Member's central or Federal government and the highest level of sub-central government]

Option 3: [applies to all procurement of a Member's central or Federal government [including departments that perform administrative, research, supervisory, advisory or regulatory functions of a governmental nature]].¹]

3. This Agreement shall not apply to a procurement contract with a value of less than [the *de minimus* threshold specified in domestic procurement rules, which shall in no case be greater than]

Option 1: [... SDRs]

Option 2: [... SDRs for goods and services and ... SDRs for construction services].

3.1 Each Member shall ensure that its procuring entities do not divide intended procurements for the purposes of avoiding application of this Agreement.

IV. EXCEPTIONS

Nothing in this Agreement shall prevent any Member and its procuring entities from taking any action which that Member considers necessary for the protection of its essential security interests or any action which is necessary under GATT Article XX or GATS Article XIV. Any Member and its procuring entities may refrain from disclosing confidential business information or information that would impede law enforcement.

V. TRANSPARENCY OF PROCUREMENT RULES

1. Without prejudice to the obligations of Article X:1 of GATT and Article III:1 and 2 of GATS, each Member shall publish in a timely manner all laws, regulations, and requirements that specifically relate to government procurement and are of general application (hereinafter collectively referred to as "procurement rules") in officially designated media which are readily accessible to the public. Each Member shall publish in the same media and in a timely manner all additions and changes to its procurement rules.

[1.1 Members' procuring entities shall not be required to publish materials which could be prejudicial to the objective and non-discriminatory evaluation of bids or applications for qualification.]

2. *Option 1:* [Such procurement rules shall describe the conditions under which it is appropriate to use different procurement methods. A procuring entity's choice of procurement method shall be in accordance with those conditions.]

2.1 When a procuring entity uses a procurement method in which information on the procurement is provided only to one supplier or to a limited number of suppliers who are selected in advance by the procuring entity through a selection process other than a qualification process, it may depart from the provisions of Articles VI and VII [and VIII] of this Agreement.]

Option 2: [In selecting a procurement method, which may include open, sole source, pre-qualification arrangements, short-listing, staged procurement and other methods of procurement, entities may select the most efficient and effective method to achieve their procurement objective, taking into account market circumstances and the costs and benefits of each procurement method.]

¹ [This Agreement shall not apply to the granting of exclusive rights by a Member.]

3. Each Member shall, upon request by another Member, provide in a timely manner, information and explanations of their procurement rules, procedures, practices and policies, affecting the implementation and operation of this Agreement.

[4. Within one year from the date on which this Agreement takes effect, each Member shall notify to the WTO Committee on Transparency in Government Procurement a list of the titles of its laws, regulations and administrative rulings of general application specifically relating to government procurement [and its officially designated media for publishing information]. Such notifications shall be made in an official WTO language.]

[5. Each Member shall establish an enquiry point which shall disseminate information and provide answers to all reasonable questions from other Members and interested parties in other Members' countries or territories relating to government procurement policies and procedures. Each Member shall notify to the Committee on Transparency in Government Procurement, established in accordance with Article XI of this Agreement, the name, address and other appropriate contact information for this enquiry point.]

VI. TRANSPARENCY OF INFORMATION ON PROCUREMENT OPPORTUNITIES

Invitations to participate in the procurement process

1. Whenever a procuring entity issues an open invitation for bids, or, where appropriate, an invitation to participate in a qualification process, it shall publish the invitation in a medium of general distribution which is readily accessible to the public.

1.1 Where an invitation for bids is extended only to suppliers that the entity has pre-qualified or selected in advance, it shall ensure that the invitation is provided to all such suppliers.

2. The invitations shall include sufficient information to allow suppliers to assess their potential interest in a particular procurement process and to submit responsive bids, and shall include at least the following:

2.1 a description of the proposed procurement, including the nature of the goods and services to be procured and all relevant time-periods;

2.2 the procurement method to be used and information on any applicable preferences or other conditions for participation [, or an explicit reference to procurement rules setting out applicable preferences or other conditions for participation]; and

2.3 information on how to contact the procuring entity to obtain relevant information on the bidding or qualification process and requirements.

Time-periods

3. Procuring entities shall disseminate such invitations in sufficient time to enable interested suppliers to obtain qualification documentation, where appropriate, and tender documentation, and to prepare and transmit responsive submissions.

3.1 Procuring entities shall ensure that such time-periods are the same for all suppliers.

- 3.2 Entities shall ensure that time-periods for the receipt of bids are determined with due consideration of the particular circumstances of the procurement, including the conditions and the complexity of the procurement.

Invitations relating to closed lists of qualified suppliers

4. Whenever a qualification process covers multiple procurements over a period of time and is not open at all times to applications from interested suppliers:

- [4.1 an invitation to apply for qualification shall be published [at least once a year] [regularly]];
- 4.2 current lists of qualified suppliers shall, on request, be made available in a timely manner; and
- 4.3 each invitation to apply for qualification shall include the date and time for receipt of applications for qualification.

Changes to information provided

5. Procuring entities shall disseminate any changes to information provided in an invitation for bids or an invitation to participate in a qualification process in the same medium in which the invitation was provided.

VII. TRANSPARENCY IN QUALIFICATION AND BID DOCUMENTATION

1. With regard to qualification and bid documentation, procuring entities shall provide complete documentation in a timely manner to any interested supplier, upon request, and inform participating suppliers in a timely manner of any changes to the documentation.

2. Where a procuring entity uses a qualification process, qualification documentation shall clearly set out all the criteria that the entity will use to evaluate a supplier's qualifications to participate in the procurement process.

3. Bid documentation shall specify all the information necessary for an interested supplier to prepare and submit responsive bids. Such information, if not already provided in a prior invitation to participate, shall include:

- 3.1 all specifications and criteria the entity will use to evaluate the offered goods or services; and
- 3.2 the date and time for the receipt of tenders and, where appropriate, the date and time for the opening of tenders.

4. Procuring entities shall specify explicit and objective requirements that are, to the greatest extent possible, defined in terms of required functional performance.

5. *Option 1:* [Whenever a procuring entity obtains advice or assistance in the preparation or development of specifications from a supplier [that has a potential interest in the relevant procurement, the entity shall inform suppliers participating in the procurement of such advice or assistance and] [, such supplier shall not be eligible to participate in the relevant procurement].]

Option 2: [When an entity obtains advice or assistance on the development of specifications from a potential supplier, the entity shall apply that advice in a non-discriminatory manner.]

VIII. TRANSPARENCY OF DECISIONS ON QUALIFICATION AND CONTRACT AWARDS

1. Procuring entities shall base contract award decisions and qualification decisions solely on the criteria and other requirements that have been specified in the bid or qualification documentation or other information that has been provided to all participating suppliers.
2. Having awarded a contract, entities shall:
 - 2.1 inform suppliers that have submitted bids of the contract award decision;
 - 2.2 provide suppliers, upon request, with information as to why their bid was rejected or, where applicable, the reasons for the denial of their request to become a qualified supplier; and
 - 2.3 ensure that any debriefing provided by the entity is available to all participating suppliers.

Other post-award information

3. Each entity shall make information on contract awards [publicly available] [available to participating suppliers] for a reasonable period of time. Such information shall include the name of the procuring entity, a description of the goods and services procured, [and] the name of the winning supplier [, and the value of the contract award].
 - [3.1 In cases where procurements are conducted under conditions set forth in Article V:2.1, the entity shall cite in such information the condition in its procurement rules allowing the use of that procurement method.]

IX. OTHER PROVISIONS ON INFORMATION RELATING TO PROCUREMENTS

1. Procuring entities shall maintain [, and make available upon request by another Member,] records of tendering procedures relating to procurements subject to this Agreement. Such records shall be maintained for a period of at least three years.
 - [1.1 In cases where procurements are conducted under conditions set forth in Article V:2.1, the entity shall include in the records the condition in its procurement rules allowing the use of that procurement method.]
2. Members and procuring entities may utilise electronic or paper-based communication methods in all stages of the procurement process, provided that whatever media is chosen complies with the requirements of this Agreement. Members and procuring entities are encouraged to use, to the extent possible, electronic communications at all stages of the procurement process, provided that it complies with the requirements of this Agreement.
3. Except as provided for in Article V.4 of this Agreement, information required under this Agreement shall be provided either in an official national language or in an official WTO language.

X. DOMESTIC REVIEW PROCEDURES

1. Members shall encourage the resolution of procurement disputes relating to the implementation of this Agreement, in the first instance, through consultations between the procuring entity and suppliers.
2. Each Member shall maintain fair and transparent judicial, arbitral or administrative bodies or procedures for the purpose of the prompt review of procurement practices or actions that may be inconsistent with the requirements of this Agreement, as implemented by the Member.
3. Such bodies or procedures shall be operated independently of the procuring entities and shall provide all interested parties who participated in the procurement process and are affected by the practice or action with access to review and timely decisions [that, as appropriate, can address any inconsistent practice or action].
4. Each Member shall ensure that information about domestic review bodies, procedures and decisions is publicly available. Each Member shall maintain an administrative record of the review proceeding for a three-year period.

XI. REVIEW AND INSTITUTIONAL PROVISIONS

1. A Committee on Transparency in Government Procurement (hereinafter referred to as "the Committee") shall oversee the functioning of this Agreement and perform such additional functions related to government procurement as assigned by the General Council.
2. The Committee shall review the implementation of this Agreement [two] years from the date on which it enters into force.

XII. DISPUTE SETTLEMENT

1. Consultations and the settlement of disputes among Members regarding the implementation [in domestic procurement rules] of this Agreement shall be in accordance with Articles XXII and XXIII of GATT 1994 [and Articles XXII and XXIII of GATS], as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement [, except as otherwise specifically provided below].
2. Panels established by the Dispute Settlement Body to examine disputes under this Agreement shall include persons qualified in the area of government procurement.
3. [With regard to any dispute relating to the implementation of this Agreement, each Member should, as appropriate, encourage its interested parties to use the domestic review procedures provided for in Article IX of this Agreement before the Member invokes the provisions of Article XII:1.] [Members recognize that there must be no further judicial remedies available under domestic law against the inconsistent measure before the provision of Article XII:1 is invoked.]
4. [If a panel or the Appellate Body concludes that a measure is inconsistent with this Agreement, it shall only make recommendations that do not affect prior contract awards.]

XIII. TECHNICAL COOPERATION

1. In order to facilitate the implementation of this Agreement, Members shall provide, on request and on mutually agreed terms and conditions, technical cooperation in favour of developing and least developed country Members.

2. In order to ensure the greatest possible efficiency of such technical cooperation, the Committee on Transparency in Government Procurement shall identify specific priorities for individual Members, including with respect to the following areas:

- 2.1 development of national legislation and procedures;
- 2.2 training;
- 2.3 institution building;
- 2.4 access to information by suppliers [, including establishment of enquiry points]; and
- 2.5 the use of information technology.

3. The Committee on Transparency in Government Procurement shall develop a plan to assess and monitor assistance on an ongoing basis, and to coordinate such efforts with other relevant organizations.

XIV. FINAL PROVISIONS

Acceptance and entry into force

[1. Subject to Article X of the Marrakesh Agreement Establishing the World Trade Organization, this Agreement shall enter into force on 1 January 2001 for those Members which have ratified the Agreement by that date.]

Reservations

2. Reservations may not be entered in respect of any of the provisions of this Agreement.

[Transitional provisions]

Operation of other agreements

[3. Members' implementation of the provisions of this Agreement shall not affect their rights and obligations under the WTO Agreement on Government Procurement or any other international agreement covering government procurement.] [The rights and obligations of a Member under the WTO Agreement on Government Procurement or any other international agreement relating to government procurement to which a Member is a party shall prevail to the extent of any inconsistency between the rights and obligations of a Member under this Agreement and the rights and obligations of a Member under the WTO Agreement on Government Procurement or those other international agreements.]

WORLD TRADE ORGANIZATION

WT/WGTGP/W/26

5 November 1999

(99-4799)

**Working Group on Transparency
in Government Procurement**

Original: English

ELEMENTS FOR AN AGREEMENT ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

Communication from the European Communities

The following communication, dated 4 November 1999, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to Members.

The European Communities submitted a non-paper for an agreement on transparency in government procurement to the Working Group on Transparency in Government Procurement on 28 July 1999 (Job No. 4519). During the last few weeks, intensive discussions have taken place inside and outside the Working Group to arrive at more consolidated text elements.

The European Communities would like to emphasize their full commitment to reach a multilateral agreement on transparency in government procurement. In order to further the current process aiming at elaborating elements for such an agreement, the European Communities' draft of 28 July 1999 has been considerably revised, taking into account observations made by other delegations. The European Communities are pleased to share the results of this work with the Members of the Working Group. The proposed text favours a "principles-oriented approach" to transparency in government procurement. In the European Communities' view, it is not necessary in this context to impose one single set of rules onto Members that have widely diverging systems and, in some cases, limited resources.

The European Communities have understood from many delegations that the attached draft has, on most points, struck a fair balance between the different views. It is, however, clear that on some issues of importance, the European Communities' position is either misunderstood or not (yet) shared by certain other Members. The European Communities appreciate that the mandate of the Working Group is limited to elements on transparency in government procurement. Nevertheless, during this exercise it became clear that introducing multilateral rules on transparency in procurement will not be sufficient to resolve possible distortions in procurement practices. Therefore, further work on additional multilateral rules on government procurement is necessary. Obviously, commencing any such negotiations does not imply an automatic opening of procurement markets, but it will create a rules-based environment.

ATTACHMENT
ELEMENTS FOR AN AGREEMENT ON TRANSPARENCY IN
GOVERNMENT PROCUREMENT

Members,

Recognizing the need to further the objectives of the GATT 1994 and of the General Agreement on Trade in Services,

Desiring to render more transparent the legislation and administrative procedures applied in government procurement,

Taking into account the needs of developing country Members in particular with respect to trade and administration,

Realizing that further negotiations are necessary to ensure that governments obtain the best value for money in their procurement practices,

Desiring to provide for a consultative mechanism and the effective and equitable resolution of disputes arising under this Agreement, taking account of the peculiarities of government procurement,

Hereby *agree* as follows:

Article 1

General Objective

1. This Agreement aims at ensuring transparency throughout government procurement covered by GATT 1994 and GATS.
2. The requirements under this Agreement shall be met on a non-discriminatory basis.
3. Members shall adopt and apply their legislation in good faith so as not to undermine the aims of this Agreement.

PART I: DEFINITIONS AND SCOPE

Article 2

Scope

1. This Agreement applies to procurement by governmental agencies of products¹ and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale, without prejudice to Articles XX and XXI of GATT 1994 and Articles XIV and XIV*bis* of GATS, as appropriate.

¹ "Products" in the context of this Agreement include products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale.

2. Notwithstanding the obligation for any procurement to be transparent, any Member may limit the application of Articles 5.1, 5.2, 5.3, 6, 7, 8.3, 9.2 and 14.1 of this Agreement to procurement above the following amounts:

<i>Maximum threshold</i>	<i>Applicable for:</i>
130,000 SDRs	central government contracts for supply of products and services,
200,000 SDRs	sub-central government contracts for supply of products and services,
400,000 SDRs	public enterprise contracts for supply of products and services,
5,000,000 SDRs	all contracts for public works,

provided Member's legislation contains clear and unambiguous provisions on contract valuation.

3. Members shall ensure that procuring entities do not divide intended procurements for the purposes of avoiding application of this Agreement.

PART II: PRINCIPLES OF TRANSPARENCY

Article 3

Public Accessibility of Domestic Legislation

1. Without prejudice to the obligations in Article X:1 of GATT and Article III:1 and 2 of GATS, each Member shall ensure that through a public medium its laws implementing this Agreement, procurement regulations and all administrative rulings of general application in connection with procurement, and all amendments thereof (hereafter: "laws and regulations"), are readily and easily accessible.

2. Members shall notify the WTO Secretariat of the (electronic) medium used. Information shall be provided at no more than the cost of copying and despatch.

Article 4

Methods of Procurement

1. Irrespective of the methods of government procurement used, they shall be specified in advance and applied in accordance with the laws and regulations. The procurement method chosen shall be transparent in accordance with the requirements of this Agreement.

2. Each procuring entity shall ensure that technical specifications are not prepared, adapted or applied in a manner that constitutes a disguised means of achieving objectives which are unrelated to that entity's procurement functions.

Article 5

Tendering Procedures

1. Wherever Members resort to government procurement through open tendering procedures, they shall publicise all necessary information and amendments thereof through an accessible source within sufficient time for potentially interested suppliers to respond in a meaningful manner.²

² This paragraph also covers pre-qualification procedures, wherever applicable.

2. The information referred to in paragraph 1 shall be adequate to allow suppliers to assess their potential interest in a particular procurement and, should they wish to participate in the procurement process, to submit responsive bids. Such information shall at least include:

- (a) name of the procuring entity;
- (b) the goods or services to be procured, and their specifications;
- (c) the procurement procedure used;
- (d) any (pre-)qualification requirements;
- (e) any restrictions on market access and/or domestic preferences granted;
- (f) the contact details for obtaining tender documentation and additional information;
- (g) the award criteria;
- (h) the deadlines for the submission of tenders; and
- (i) the date and time for the opening of tenders.

3. Members shall ensure that the information referred to in paragraph 2 is made available through the use of tender notices, tender documentation, or by other means, provided they allow for broad and easy access to potentially interested suppliers or service providers.

4. Members shall ensure that their laws and regulations clearly prescribe the conditions and, if applicable, thresholds under which procuring entities may choose to utilise procurement methods in which information on the procurement opportunity is provided only to one supplier or to a limited number of suppliers selected in advance by the procuring entity. Members shall ensure that procuring entities do not utilise such methods for the purposes of restricting participation in the procurement process in a non-transparent manner.

Article 6

Bid Periods

1. Sufficient time should be allowed for the preparation, submission and receipt of responsive bids. Time-limits set should not undermine the principles and objectives of this Agreement. They should take account of the particular circumstances as well as the complexity of the envisaged procurement.

2. Members shall clearly define in advance their policy on whether and in what circumstances late tenders may be accepted.

Article 7

Decisions on (Pre-)qualification and Contract Awards

1. Decisions on (pre-)qualification and contract awards shall be taken on the basis of the conditions and criteria (including technical specifications) which have been made known in advance, e.g. through a tender notice or tender documentation. Notwithstanding Article 6.2, only bids of

suppliers whose tenders have been received before the previously published final date for submission of tenders may be considered.

2. Once the contract is awarded, the participating suppliers shall be informed of the rejection of their bid. Unsuccessful bidders can, on request, obtain more detailed information as to why their bid was rejected and/or the winning bid was chosen.

Article 8

Domestic Review

1. Each Member shall maintain fair and transparent judicial, arbitral or administrative review bodies or procedures for the purpose, *inter alia*, of the prompt review of decisions of procuring entities creating legal effects.

2. Such bodies and procedures shall operate independently of the procuring entities and shall provide all interested parties that are directly and individually affected by a decision as mentioned in paragraph 1 with access to review.

3. Members shall ensure that each procuring entity is able to respond to requests for information on the way the procurement was carried out by maintaining a comprehensive administrative record of the procurement proceeding.

Article 9

Confidentiality

1. Any information which is by nature confidential shall be treated as such by the procuring entities. Such confidential information shall not be disclosed without specific permission of the party submitting it.

2. In case information is treated confidentially, where appropriate the procuring entities will furnish a meaningful non-confidential summary thereof.

Article 10

Language

Except if otherwise laid down in this Agreement, Members are encouraged to ensure that all information referred to in this Agreement is provided in a WTO language.

PART III: GENERAL PROVISIONS

Article 11

Notification Requirements

Laws and regulations shall be promptly notified to the WTO Secretariat. Members shall further provide a list in one of the WTO languages of the relevant generally applicable instruments. The WTO Secretariat shall endeavour to make such lists available to the general public through an electronic medium.

Article 12

Requests for Information

On request by another Member, Members shall provide information and explanations on their laws and regulations, procedures and practices affecting the implementation and operation of this Agreement.

Article 13

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 or Articles XXII and XXIII of GATS respectively, as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable within the limitations specified below.

2. The scope of paragraph 1 is limited to disputes among Members regarding the implementation of this Agreement and to decisions of the bodies mentioned in Article 8.1 for as far as such decisions concern procurements exceeding the maximum thresholds listed in Article 2.2.

3. In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraphs 1 and 2 shall apply only to issues of interpretation and application relating to this Agreement.

4. Panels established to examine disputes under this Agreement shall include at least one person qualified in the area of government procurement.

Article 14

Committee on Transparency in Government Procurement

1. The Committee on Transparency in Government Procurement ("the Committee") shall review promptly any particular matter which a Member considers to be detrimental to its interests under this Agreement and where consultations between it and the Member(s) concerned have failed to produce a mutually satisfactory solution. On such matters, the Committee may make such observations as it deems appropriate.

2. The Committee shall review the implementation and provisions of this Agreement, including the thresholds mentioned in Article 2.2, two years after its entry into force and periodically thereafter.

3. After the entry into force of this Agreement, the Committee shall initiate a study how to achieve "best value for money" in government procurement and develop elements for further multilateral rules for adoption in due course.

Article 15

Use of Information Technology

Members are encouraged to make use to the largest extent possible of tools of information technology to disseminate information, in particular for the dissemination of information about procurement opportunities and contract awards.³

Article 16

Technical Assistance

In order to facilitate the implementation of this Agreement, Members shall provide, on request and on mutually agreed terms and conditions, technical cooperation to developing and least developed country Members. Parties recognize in particular the need for developing countries to receive technical assistance to enable them to set up and operate electronic systems for ensuring transparency of procurements.

PART IV: FINAL PROVISIONS

Article 17

Final Provisions

1. Members' implementation of the provisions of this Agreement shall not affect their rights and obligations, if any, under the WTO Agreement on Government Procurement.
2. This Agreement is without prejudice to Members' rights and obligations under GATT 1994 and GATS.

Article 18

Entry into Force

This Agreement shall be open for acceptance, by signature or otherwise, by all WTO Members. It shall enter into force on the date determined by Ministers at [...] and shall remain open for acceptance for a period of two years following that date. An acceptance following the entry into force of this Agreement shall enter into force on the thirtieth day following the date of such acceptance.

³ Members recognize the difficulties which developing countries may have in applying tools of information technology.

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/W/25

27 September 1999

(99-3986)

Working Group on Transparency in Government Procurement

DOCUMENTS OF THE WORKING PARTY ON GATS RULES RELATING TO CONCESSIONS

Note by the Secretariat

At its meeting of 28 June 1999, the Working Group on Transparency in Government Procurement addressed the subject of concessions under the item on "definition and scope of government procurement". In the context of that discussion, it was agreed that the Secretariat would make available to the Working Group the documentation of the Working Party on GATS Rules relating to the subject of concessions (WT/WGTGP/M/8, paragraph 5). The present note has been prepared in response to this request.

The attachments to the note contain a compilation of the documents or sections of the documents of the Working Party on GATS Rules which contain references to "concessions". For the purpose of reflecting in a comprehensive manner the context in which the discussion on concessions took place, references in the Working Party's documents relating to the broader issue of a definition of government procurement in services have also been indicated. The relevant documents are organized under the following attachments:

Attachment 1

Submissions by delegations:

- Communication from Japan – Informal Comments on Concessions, dated 18 May 1999;
- Non-paper from the European Communities – Government Procurement of Services, dated 13 February 1999.

Attachment 2

Sections of the reports of the meetings of the Working Party on GATS Rules (S/WPGR/M/14-24), circulated between November 1997 and September 1999.

Attachment 3

Sections of the replies to the questionnaire on government procurement of services (S/WPGR/W/11 and addenda), circulated between 1996 and 1998.

ATTACHMENT 1

Job No. 2867

Working Party on GATS Rules

18 May 1999

COMMUNICATION FROM JAPAN INFORMAL COMMENTS ON CONCESSION

Several different understandings of the term "concession" have been raised in the Working Party; thus, in order to make progress on the issue, it is essential to streamline the definition. Based on the discussions so far, it had seemed possible to include mention of the following points:

1. contracts made between a government and a (foreign) private company for the purpose of developing the natural resources in the territory of the nation;
2. contracts made between a government and a (foreign) private company for the purpose of constructing and managing industrial sites, railways, public water supply systems and others;
3. government purchase of services including:
 - a) consumption by the government, e.g. cleaning of a government building;
 - b) consumption by the public, e.g. garbage collection.

[Comments after reflection]

- In point one, companies will pay some amount to the government to buy a right for natural resources development.
- In point two, consumers are supposed to pay the companies and governments will give a license to those companies.
- In point three, the government shall pay the companies, thus providing a typical case of government procurement. However, we doubt whether these activities can be called "concessions".

NON-PAPER

FROM THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

GOVERNMENT PROCUREMENT OF SERVICES

1. INTRODUCTION

The purpose of this note is to contribute to the discussion in the Working Party on Rules on government procurement of services. It is to be understood that discussions in this Group are without prejudice to the discussions going on among the Members of the Government Procurement Agreement (GPA) in the Committee on Government Procurement or in the Transparency Group. To the contrary, it is hoped that discussions under the GATS' mandate will bring experts on government procurement together in a co-ordinated way. As was identified by this Group at the informal consultations, to the extent that Members share the desire to reach greater liberalisation on trade in services, and multilateral disciplines on procurement is seen as means to achieve that overall objective, discussions can and should take place in this Group. In addition, work in this Group has already served as a substantial contribution in the Transparency Group, for example.

Much of what is contained in this non-paper is based on the answers to the questionnaire and the synthesis document prepared by the WTO Secretariat (doc. S/WPGR/W/20). It is to be understood, however, that the starting point for our discussions is Article XIII of the GATS.

Finally, it should be noted that while this paper is aimed at progressing discussions, it is without prejudice to the final position of the EC as to which rules might be necessary and how they should apply to procurement of services.

2. OBJECTIVE

The aim of this paper is not to come up with clear or specific rules on procurement but rather to launch a discussion so that we can identify where services-specific elements in any procurement rules would add value to the existing disciplines under the relevant WTO Agreements.

From the outset it is fully recognised that the key principles to achieve liberalisation are transparency and non-discrimination. But we need also to reflect on the different elements of what constitutes government procurement on services. It is therefore suggested to engage the discussion on a possible working definition. This could allow the Group to reach a basis on which to negotiate further disciplines to achieve its objectives.

3. DEFINITION OF PROCUREMENT OF SERVICES

Any definition should be simple and avoiding using qualifications which could narrow the scope of application.

In defining what constitutes a government procurement of services, the language of Article XIII of the GATS offers three elements:

- when is there procurement: i.e. what transactions are covered?
- who is the procuring entity?
- what is being procured?

3.1. What transactions constitute procurement

Pursuant to Article XIII paragraph I of the GATS, the transactions which should be covered are those governed by "laws, regulations or requirements" and which are "purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale."

Accordingly, a general definition of government procurement should in the first place aim at covering those transactions that are currently being exempted from the GATS' scope by virtue of article XIII para 1. Yet, the above criteria have not been included in the definition of the GPA. In addition, from the preliminary discussion, it appears that other type of services transactions are also being procured. There is thus a need to gather further information on the type of services transactions that are being procured before we can decide which criteria to retain.

In the EC, and as a matter of fact under the GPA, the procurement rules apply to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of services, Is this definition broad enough/covering all possible transaction under which a service is being procured?

A service can be purchased on a one-off basis or hired (consultancy) or provided through concessions when the purpose is that the service is being supplied on a permanent or regular basis (examples: cleaning of public roads, or waste collection etc.) or for the execution of works (construction; maintenance contracts/cleaning of buildings, offices etc.). From the preliminary discussions in this Group, it appears that much procurement takes place for execution of services/works, however this is being transacted. Besides buying a service or hiring a service, there is also the transaction for the supply of a service itself. it is the latter type of transaction which seems not to be covered by the present GPA definition.

There is thus a need to explore further how the supply of a service or execution of a work is being transacted. Often, for example, a public authority transfers the execution of a (public) service lying within its responsibility to an undertaking of its choice, and the latter agrees to execute the activity in return for the right to exploit the service, or this right together with payment. Such type of transactions are not to the direct use or benefit of the government and therefore would not, under the present GATS' Article XIII definition, be covered by the procurement rules when such type of contracts are being procured.

We see therefore a need to revisit the conceptual framework described in Article XIII para 1. The definition of "purchase for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale" may not cover all procurement situations for services. In the answers to the questionnaire, the term "concessions" appears several times. It is thus necessary to clarify what is to be understood under this notion by the different WTO Members. The question that arises therefore is

whether the services procurement which goes beyond Article XIII para 1, constitutes a critical mass of economic activity requiring further analysis.

From the above follows, that further discussion is necessary on whether the definition should apply to all stages of the procurement; be limited or not to procurement which is to direct benefit and use of government or goes further so as to include all government purposes or whether some specific transactions or types of supply should be excluded.

Finally, in the EC, contracts are necessarily in written form, and are entered into for pecuniary interest. Only if there is any possible ambiguity on these 2 criteria would they need further specification in the WTO rules.

3.2. Who is the procuring entity?

This is probably the most important element of the definition.

Taking the GATS as the starting point, Article I.3 of the GATS stipulates that the Agreement applies to measures taken by "central, regional or local governments and authorities" and "non-governmental bodies in the exercise of powers delegated by central, regional or local governments and authorities". Following this definition, it would mean that procurement rules should apply to procurement done at ALL levels of government, including by entities upon which the government exerts an influence.

It is realised that specifying to which procurement entities the rules should apply, for the purpose of definition, may be different than on which entities these rules will effectively apply. From the answers to the questionnaire, the definition of procurement relates often to central level only. It is important that this distinction is being made between on the one hand defining the procuring entity for the sake of a definition as opposed to taking up rights and obligations. The latter is probably dependent on the mechanism that will be applied for liberalisation commitments.

Procurement done by entities either governed by public law or under the influence of government, should also be covered. This is for services a very important category in particular in a stage of deregulation and privatisation.

The question will be how to define these entities. Should criteria to determine influence/control of the government be set, such as: financed, in part, for the most part, by the state, regional or local authorities; subject to management supervision by State authorities; having administrative, managerial or supervisory board, more than half of the members being appointed by the State?

In this Group discussion should focus on possible elements/criteria which should lead to a clear understanding on which entities might be covered by the definition. It is recognised, however, that even if criteria existed, every case will have to be examined on its own merits and that the ultimate test should be whether the entity is subject to competition i.e. is the entity offering services in open markets? If that is the case, it cannot be asked to comply with rules which do not apply to its competitors.

3.3. What is being procured?

An answer to the question of what is being procured in the context of the GATS mandate should be straightforward: a service. And to answer what a service is reference should be made to the GATS. For the EC it is important that, from the outset, there is agreement that

the scope of the rules on procurement of services are the same as those for the supply of a service.

The GATS applies to all service activities except those explicitly excluded. An illustrative list of services sectors has been established listing II categories of services sectors. Services in the exercise of governmental authority, for example, are excluded (such as activities conducted by a central bank or monetary authority or any other public entity in pursuit of monetary or exchange rate policies; activities forming part of statutory social security schemes or activities conducted for the account of the financial resources of the Government - see para 1 of Annex on Financial Services).

The approach that the coverage for procurement rules should be the same as for liberalisation of services, would save the time and energy required to come up with another definition of what is a service. The generic word "services" could be used and it would then have to be explained that this covers all services sectors and activities covered by the GATS. This approach creates also the necessary legal certainty that commitments on market access for the supply of a service correspond to those used to determine the applicability of the procurement rules.

It should be noted, that the definition of "services" to determine the scope of application of the procurement rules, is a different exercise from determining which substantive rule (i.e. MFN/National treatment) will effectively apply. This is a question of negotiations so as to secure a mutual balance of benefits.

Besides the above elements, it will be important to consider whether there should be a threshold value below which the procurement rules will not apply.

4. CONCLUSION

As mentioned above, the aim of this exercise is to reach agreement on the broadest definition possible so as to cover the largest range of transactions. To reach such an understanding, elements of a working definition are being suggested.

As far as the definition used in the GATS or in the GPA is concerned, it seems not to address all the elements specific to the procurement of a service which is in most instance not purchased with the purpose to acquire something but rather to obtain a right to consume, exercise, supply or grant a service.

ATTACHMENT 2

References to Concessions in the Reports of the Meetings of the Working Party on GATS Rules

Meeting of 26 November 1997 (S/WPGR/M/14)

5. The Chairperson informed delegations that at an informal meeting on procurement held on 6 November 1997, two sorts of issues had been raised. On substance, a few delegations had suggested that work should focus initially on the **definition** of government procurement and the principle of non-discrimination. On procedure, several delegations had emphasized the need to address the problem of duplication of work between different fora dealing with government procurement in the WTO. One delegation said that there was clearly need for discussion in the Working Party on the elements of government procurement specifically related to trade in services, such as the role of **concessions** on public utilities. It intended to make a written submission dealing with **definitional** issues and illustrating the particularities of services procurement, in order to demonstrate the need to make progress in this area within the Working Party. Another delegation said that even though previously it had been less than enthusiastic about the prospect of such work, it now fully supported the idea. It had come to the view that there was need for work to improve the understanding of what disciplines could apply to services procurement and that the goal should be to develop such disciplines. A third delegation also expressed an interest in pursuing such work within the Working Party and welcomed the positive indications of interest from other delegations.

Meeting of 27 February 1998 (S/WPGR/M/15)

10. The European Communities made a written contribution dealing with **definitional** issues relevant to services procurement. In introducing the submission, the representative of the European Communities indicated that the purpose was to assist the discussion on a working **definition** of government procurement by addressing three questions: what transactions constitute procurement, who is the procuring entity, and what is being procured? Delegations welcomed the submission. Several reiterated the need for a working **definition** in view of the multiplicity of **definitions** of government procurement that had been identified in the replies to the questionnaire.

Meeting of 27 April 1998 (S/WPGR/M/16)

13. The paper submitted by the European Communities at the previous meeting identified three relevant questions: what transactions constitute procurement, who is the procuring entity, and what is being procured? As to the first question, some delegations favoured an approach consistent with that in the Agreement on Government Procurement. Others felt that transactions excluded from the relevant **definitions** in Article I of the GATS provided a clue as to what transactions constituted procurement. One delegation stressed the difficulties faced in her country in defining procurement and, particularly, whether **concessions** should be included. Other delegations echoed the reservations and indicated that more discussion on the matter was necessary. Regarding the second question, i.e. who is the procuring entity, some stated that the level of public control should be the main consideration and that all levels of government should be included. However, others felt that in the case of enterprises owned by the government, the decisive factor should be whether the entity operated like a private enterprise in a competitive context.

14. The Chairman drew delegations' attention to the fact that the Working Group on Transparency in Government Procurement was also discussing questions of **definition** and scope of procurement. One delegation emphasized that the Working Party should aim to provide an input to the Working Group on Transparency and suggested that discussions focus on the specificities of government

procurement of services. The Chairman indicated that he would continue consultations on how best to coordinate work with other fora dealing with government procurement.

Meeting of 23 June 1998 (S/WPGR/M/17)

5. Concerning the **definition** of government procurement, it had been suggested that the Transparency Working Group should employ a sufficiently broad approach to accommodate differing meanings given to the term "government procurement" in national legislations. The Group had also identified a range of issues that would need to be taken into account. In this context, a distinction had been made between the following questions: (i) who was doing the procuring? (ii) what was being procured? and (iii) what types of transactions were covered?

6. In regard to the first question, it had been suggested that entities at all levels of government, as well as enterprises owned or influenced by the government, be covered by a transparency agreement. Another suggestion was initially to apply the relevant rules only to entities at the central or federal government level and to condition the coverage of state enterprises on how they operated.

7. Regarding the second question (what was being procured?), it had been suggested that the scope of a transparency agreement be extended to all goods and services, and any combination of goods and services.

8. In relation to the third question (what types of transactions would be covered?), it had been suggested that acquisition by any contractual means, including through lease or rental, be covered. Questions had been raised as to whether **concessions** and build-operate-transfer (BOT) contracts should be covered as well. In connection with that issue, the delegation of Venezuela had presented a submission concerning the particular characteristics of government procurement, privatization and **concessions**-granting systems (circulated as job no. 3295). With respect to the use of threshold values in determining the coverage of a transparency agreement, the view had been expressed that in principle all contracts should be covered, but that certain provisions might be more flexibly applied to smaller contracts. Other delegations had felt that transparency obligations should only apply above certain threshold levels in order to avoid information costs and that the Group should take into account the relevant national practices.

9. In introducing the discussion, the Chairman recalled that the Working Party on GATS Rules had initially based its deliberations on scope and coverage on a submission from the European Communities. He proposed continuing that discussion with a view to identifying issues for further consideration. Most delegations that spoke indicated an interest in developing a working **definition** of government procurement based on the questions in the EC submission. The need was expressed for an examination of the issue of **concessions**. One delegation noted that some discussion on **concessions** had taken place at the previous meeting and that a similar discussion was being conducted in the Working Group on Transparency in Government Procurement; it was thus important to avoid duplication and to coordinate work. In certain delegations' view, the **definition** of government procurement in GATS appeared to exclude **concessions** where services were not purchased for governmental purposes. Accordingly, those transactions would be subject to the disciplines of Articles II, XVI and XVII of the GATS. However, some delegations expressed reservations about this interpretation. They felt it was necessary first to **define concessions** and then to discuss the relevance of GATS disciplines. In this context, it was proposed that delegations provide information on national regimes relating to **concessions**. One delegation recalled that some information on this subject already existed in the responses to the questionnaire.

10. The Chairman recalled that the Working Party had agreed to address the basic principle of non-discrimination as a second step in the work programme. He reminded delegations of a non-paper submitted by New Zealand (dated 30 September 1997) which examined some issues, including

definition and the principles of MFN and national treatment. While one delegation felt that for practical reasons it would be appropriate to discuss MFN-related issues first, others were of the opinion that the two principles should be dealt with in parallel since they were closely intertwined.

11. The Chairman concluded that there was a need to continue the discussion regarding and **definition** of procurement and, in particular, the treatment of **concessions**. More information on how **concessions** were **defined** and treated within national legislations was necessary; Members agreed to provide this information by the next meeting. Regarding the principle of non-discrimination, he noted that more input from delegations was needed on how to deal with this issue and encouraged Members to submit contributions by the following meeting. He would continue to coordinate work with the different fora dealing with government procurement.

Meeting of 6 October 1998 (S/WPGR/M/18)

16. The Chairman recalled that previous discussions had been focused on the scope and coverage of government procurement of services. He suggested three issues for consideration, based on the questions posed in the Non-paper by the European Communities, dated 13 February 1998. Regarding the first question concerning the transactions that constituted procurement, it had been recognized that more information was needed on how **concessions** were **defined** and treated in national legislations. Although Members had agreed to provide such information, nothing had been received so far. In replying to the questionnaire, detailed information had been provided only by Argentina and Costa Rica, while some reference to **concessions** was also contained in the responses of Colombia, Poland and Hong Kong, China. Regarding the second question (who is the procuring entity?), the EC paper presented two possibilities. One approach would cover procurement at all levels of government, including entities governed by public law and under the influence of government, while the second approach was based on market structure rather than on public ownership or influence per se - every case would be examined on its own merits, the ultimate criterion being whether the entity was subject to competition. Regarding the third question (what is being procured?), the EC paper suggested that all services falling within the scope of GATS should be covered. In this connection, the exclusion from the GATS of "services supplied in the exercise of governmental authority", raised the question of whether the GATS **definition** of such services was sufficiently clear. This was also related to the treatment of **concessions**, as some **concessions** might concern services provided in the exercise of governmental authority.

17. In relation to what transactions constitute procurement, the representative of Venezuela indicated, in a preliminary manner, that in his country **concessions** were governed by public/administrative law rather than private/civil law. That implied an exclusive competence of the State. For instance, petroleum and minerals were regarded as State-owned resources and their exploitation was reserved for the State. When the government gave **concessions**, it granted a right to operate the mines to a private sector entity through a contract, which in some cases involved a royalty while in others no payment to the State was required, except for taxes on revenues. Thus, **concessions** did not constitute a purchase by the government since they involved no acquisition of goods or services and, therefore, they did not constitute government procurement. Additionally, given that they were an exclusive competence of the State and that their commercial and competitive nature was questionable, the granting of **concessions**, and the activities involved, were excluded from the coverage of GATS.

18. The representative of Argentina recalled his doubts about the interpretation of some delegations of what activities might fall under Article XIII of the GATS and the possibility that **concessions** would be covered under the Agreement. For instance, the case of a **concession** granted for operating a motorway, where the government was not buying something for itself, but rather granting the right to operate a public service to a private operator, was a clear case of a service provided in the exercise of governmental authority. It was necessary to continue studying how

concessions would be considered within the GATS framework. The United States suggested that in addressing the issue in future submissions, the **definition** of **concessions** be related to the language of Article XIII, which specifically **defined** procurement in terms of a purchase.

19. The representative of Canada elaborated on the question of what transactions constituted procurement. The EC paper suggested that the transaction for the service itself was distinguished from the buying or hiring of the service. She asked whether the case of a contract providing a license to a private sector contractor to distribute government procurement data on an electronic tendering service, generating revenues from the purchaser of the data, would be considered to be a transaction for the service itself. If so, would it fall within the **definition** of procurement in GATS Article XIII?

20. In summing up, the Chairman observed that there was a need to continue the discussion on the scope and coverage of government procurement of services, and in particular on the issue of **concessions**, and urged Members to contribute their views in writing. He indicated that at the following meeting, the Working Party would revert to the question of how to proceed with the second step in the work programme, which concerned the application of the basic discipline of non-discrimination.

Meeting of 1 December 1998 (S/WPGR/M/19)

24. The Chairman recalled that the previous meeting had been devoted to discussing the scope and coverage of government procurement of services. He felt that the time had come to aim at reaching conclusions and, where necessary, identifying key issues for further consideration. The discussion could then move on to the second item in the work programme, i.e. the application of the basic discipline of non-discrimination to services procurement. The discussion could be divided into three parts, based on the three questions raised in the Non-Paper from the European Communities and their Member States (dated 13 February 1998). In the context of the first question regarding what transactions constitute procurement, delegations had recognized that more information was needed on how **concessions** were **defined** and treated within national legislations. In response to the Questionnaire on Government Procurement of Services detailed information on **concessions** has been provided only by Argentina and Costa Rica. **Concessions** had also been mentioned in the responses of Colombia; Hong Kong, China; and Poland.

25. The representative of Argentina stressed that more information was necessary to understand what was meant by **concessions**. It was important in this context not to focus on **definitions** of transactions between the State and private suppliers since these could vary among legislations. Focus should rather be on the economic nature of the transactions. Procurement contracts had to do with public entities and covered what could be called public services. While the State was responsible for their provision, different procedures existed: the State could use its own resources and personnel or contract a third party to carry out the work. In the latter case, the contractual relationship could be of limited duration and involves only the State and an enterprise which carried out the work and was paid by the State. The other option consisted of a continuous contractual relationship with the supplier which also involved the user of service, who in a way contributed to the payment. This option had to do with public works and public service **concessions**, where the state allowed a private party to supply a service to the public without ceding its competence, and where the supplier normally received a payment from the individual user. The relevant price might be determined and/or subsidized by the State. Such transactions would not include **concessions** related to the exploitation of natural deposit, e.g. mines, which would not be covered by the GATS.

26. The representative of Canada said that the EU paper suggested that the transaction for the service itself (as distinguished from the buying or hiring of the service) did not appear to be covered by the Agreement on Government Procurement. The paper suggested that such transactions were not to the benefit or use of the government and thus would also not be covered by the current GATS

Article XIII **definition** of services. The actual meaning of the critical phrase in the EU paper: the transaction for the service itself is not clear. An elaboration of some examples may be useful. Would for example a contract providing a license to a private sector contractor to distribute government procurement data on an electronic tendering service and generate revenue from purchasers of the data, be considered to fit within the transaction for the service itself and, if so, on what basis would it not meet the **definitions** of a procurement in the AGP and GATS Article XIII? On how to proceed with the work, he suggested requesting the Secretariat to prepare a note listing the types of policies that are applied to government procurement and may not be consistent with non-discrimination, both MFN and national treatment, with a brief explanation of each.

27. The Chairman noted that **definitions** of **concessions** varied and that it would be helpful to have brief descriptions of how **concessions** were treated in domestic legislation provided by Members. On the Canadian proposal, he recalled that various documents had such information, namely S/WPGR/W/3, section 9 of the document S/WPGR/W/20 and the submission from New Zealand (Job. 5446 dated 30 September 1997). He also recalled the other two questions posed in the European Communities submission, i.e. who was the procuring entity and what was being procured had still to be discussed. He suggested continuing discussion in the following meeting on scope and **definition**, and addressing the two remaining questions in this context.

Meeting of 19 February 1999 (S/WPGR/M/20)

27. The Chairman recalled previous discussions of scope and coverage of government procurement of services. At this meeting, he would like to invite further comments to reach preliminary conclusions, not necessarily agreed, and identifying key issues for further consideration. He reminded delegations of the three questions raised in the European Communities' informal paper of February 1998: (a) What transactions constitute procurement?; (b) who is the procuring entity?; and (c) what is being procured?

28. As to the first question, the Chairman noted that an important issue was the **definition** and treatment of **concessions**. The representative of Canada reminded the Working Party of his delegation's request for clarification from the European Communities, and indicated that the issue would be pursued bilaterally. The representative of the European Communities added that the issue raised related to the interpretation of the Government Procurement Agreement. In relation to **concessions**, she added that the relevant **definition** seemed to differ between national legislations; the EC was preparing a submission on this subject and looked forward to contributions from other delegations as well.

29. The representative of the United States recommended to use as a starting-point the **definition** contained in Article XIII of the GATS, which referred to procurement in terms of services purchased "for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale". This mirrored the language contained in Article III:8 of GATT 1994. Given the degree of ambiguity involved, he felt it would be useful if the Secretariat provided background information on the interpretation developed in the goods context. He also noted that the wording in Article XIII did not apparently capture the procurement of services with a view to their use in the supply of goods for commercial sale. The Working Party might want to address the **definitional** and legal implications of this omission. As to **concessions**, he noted that some delegations considered that these were outside the scope of government procurement, and some potentially strong arguments might be made. It would be very useful if further information could be provided on the relevant domestic regimes and any **definitional** distinctions from government procurement.

30. The representative of Australia reiterated the **definitional** difficulties involved and concurred that the starting-point for future work should be Article XIII of the GATS. A BOT contract might be an example of a **concession**; contrasting with the government's purchase of a service the costs involved were born entirely by consumers over a certain period of time. Accordingly, the relevant transactions were subject to general GATS disciplines. By contrast, services like garbage collection, which were totally or partially paid for by the government, might be considered procurement. In trying to develop general criteria, it would be useful to further discuss whether the allocation of costs were a determining factor. Another important issue was the **definition** of "governmental purposes" and, in this context, whether the focus should be on the government's use of a service – as in the case of maintenance and cleaning services – or its role in, and responsibility for, the provision of a service – as in the case of garbage collection. However, the role of governments differed from country to country. The relationship between the government and the private sector was also changing, as more and more companies were delivering services traditionally provided by governments.

31. The representative of Thailand agreed that it would be useful to discuss the interpretation given to the relevant GATT provisions. In Thailand, **concessional** regimes were provided for in many different pieces of legislation; however, they were always **defined** as services supplied in the exercise of governmental authority.

32. The representative of Mexico indicated variations in national legislation with regard to **concessions** and government procurement, for reference purposes. In her country, **concessions** were not assimilated with government procurement since they did not involve direct acquisition of goods or services, nor any expense, by the government. To avoid confusion, Mexico maintained different sets of legislation for, on the one hand, public works, which fell under government procurement, and **concessions** for the provision of public services which had their own rules. In the latter context, the State authorized one or more private companies to offer a public service and also determined the tariffs to be charged. By contrast, public works contracts did not involve the granting of any authorization to private parties to operate a public service. Another difference was that a **concessions** could be transferred to other parties, while the responsibility for the execution of public works remained with the main contractor, notwithstanding the degree of subcontracting involved. While a concessionaire had to provide the economic resources for the execution of the works and the exploitation of the service, in the procurement of public works the costs were covered by the State. In the case of **concessions**, legal relationship involved not only the government and the concessionaire, but the user of the service as well; legal obligations in the sphere of public works were limited to the contractor and the procuring authority.

33. In concluding the discussion on this issue, the Chairman encouraged delegations to submit information on their national regimes, preferably in writing. In turn, the Secretariat would provide a background note on how language similar to that contained in Article XIII:1 of the GATS had been interpreted in the GATT context. He wondered whether the Working Party would find it useful if the Secretariat also prepared a note on possible forms of **concessions** and potentially relevant GATS provisions. The Secretariat indicated that any such note would essentially distinguish between three categories of services: those supplied in the exercise of governmental authority, which were outside the scope of the GATS; services procured by governments which fell under Article XIII; and all other services. If **concessions** were neither services provided in the exercise of governmental authority nor constituted government procurement, then the general MFN obligation and, where relevant, specific commitments applied to them. From a legal perspective, any Secretariat note would not be able to go significantly beyond these principle issues.

34. Several delegations, including Argentina, Venezuela and Malaysia, felt it would be useful to further discuss these issues in the Working Party, based on information provided by Members before the Secretariat was asked to prepare a background note.

Meeting of 16 April 1999 (S/WPGR/M/21)

31. The Chairman recalled that discussions at previous meetings revolved around the scope and coverage of government procurement of services. The starting point was three questions raised in an informal submission by the European Communities: (a) What transactions constitute procurement?; (b) who is the procuring entity?; and (c) what is being procured? It had been agreed to continue this discussion at today's meeting, focusing in particular on the first question and, in this context, the treatment of **concessions**.

32. The representative of Japan stated that **concessions** did not exist in his country. Without prejudging Japan's position, he noted the different forms that they might take: (a) a contract between a government agency and a private company for the purpose of developing natural resources; (b) a government contract with a private company for the purpose of constructing and managing industrial sites, railways, public water supply systems, and others; and (c) government purchases of services which may be consumed by the government, e.g. cleaning of government buildings, or by the public in general, e.g. garbage collection. In cases (a), where a company paid for the right to exploit the natural resources, and (b), where consumers paid the company, it was not evident that the relevant transactions constituted government procurement. The third case, however, where the government paid companies, seemed more typical of government procurement. The financial responsibility for a transaction might be useful in distinguishing government procurement from **concessions**.

33. The representative of Korea said that in his country licenses, authorizations, and approvals related to **concessions** were regulated by the competent ministries. For example, the Ministry of Industrial Resources was responsible for approving mining rights. Since the **definition** of **concessions** and their role in services was unclear, it might be problematic to include them in the Working Party's discussion at this stage.

34. The representative of Australia felt that the discussion of **concessions** showed some links to the recent Secretariat paper (S/WPGR/W/29), which she found useful. The Paper noted that the relevant GATT Articles dealing with government procurement used different wording, i.e. "governmental purpose" in Art. III and "government use" in Art. XVII. Apparently, this had not been intended to imply different meaning, suggesting a relatively narrow interpretation of "governmental purposes". She recommended that Members consider whether "government purposes" in Article XIII of the GATS should be interpreted to mean "government use" in a narrow sense, i.e. that the government "consumes" the service, or to include cases where the government was not the actual consumer. It could be argued that certain services were purchased for government purpose, but not for government use. For example, when a government contracted out training services destined for the private sector, these would be fulfilling a purpose of, but not be used by, the government. Examining the question of what constituted "governmental purposes" would help to clarify which **concessions** could be considered government procurement and which would be subject to normal GATS disciplines. In Australia, procurement of services was not **defined** in law. However, at the federal level, entities were obliged to have regard to the Commonwealth Procurement Guidelines in all procurement cases. A footnote to the Guidelines stated that the terms property and services covered all goods and services, including: consultancies and professional services of all types; real property activities; construction and related services; financial and operating leases for equipment and real property; individual and collective training and educational programmes; services obtained from public utility suppliers; and outsourcing or contracting, including programme delivery and programme support. The inclusion of the latter activities indicated a very broad interpretation of government procurement.

35. The representative of Hong Kong, China, pointed out that the draft Multilateral Agreement on Investment discussed in the OECD contained a **definition** of **concessions**, which included the delegation of activities normally carried out by a government authority to a distinct and independent

legal entity. The representative of the European Communities mentioned a recent draft document on the treatment of **concessions** under Community law which could be of interest to other delegations (Draft Interpretative Document on Treatment of **Concessions** under Community Law; Official Journal of the EC, C94, 7 April 1999). The representative of Venezuela noted a fundamental characteristic of **concessions** which needed to be analysed and borne in mind, i.e. exclusive competence of the State. Other arrangements to be discussed were Built, Operate and Transfer contracts, and contracts pertaining to the management of public utilities. The representative of Argentina noted that not much information was available on **concessions**; he stressed the need for factual material describing how Members **defined concessions**.

36. The representative of Mexico recalled that contracts of the third type described by the Japanese delegation, involving disbursement of funds by the government, had been an element that Mexico had used to identify government procurement. In addition, the Secretariat Note (S/WPGR/W/29) recounted that a panel had used payment by the government as one factor to identify government procurement. More information on Members' **definition of concessions** was necessary before any further analysis could be requested from the Secretariat. The representatives of Malaysia, the United States, and Uruguay concurred.

37. The representative of the United States said that it was apparent from the Secretariat's Note that the existing precedents (negotiating history or dispute panels) did not provide sufficient guidance for the interpretation of the relevant terms in GATS. The Working Party might have to develop its own working **definition**. The representative of Poland also called for such a **definition**; the responses to the procurement questionnaire might contain useful elements. In Poland, government procurement included construction procurement, the delivery of goods, and the provision of services financed fully or partially with public funds. The concept of **concessions** was not used in public procurement.

38. The representative of Thailand, on behalf of ASEAN, felt that the Working Party needed to fully understand the meaning of government procurement. He observed that there was no authoritative WTO interpretation of the term; the existing interpretations by various GATT/WTO bodies of Articles III:8 and XVII:2 of GATT were, however, useful. A key element to be retained was the understanding that "government purpose" and "government use" both meant government consumption. In that context, it was difficult to include the notion of **concessions** if it meant the supply of services in the exercise of governmental authority. According to the rules of international law interpretation, drafting history was only a supplementary means of interpretation to be used on an exceptional basis. As a rule, one had to take into account the ordinary meaning of "government procurement" in its proper context and in the light of relevant GATS provisions.

39. A representative of the Secretariat pointed out that document W/29 made reference to a 1992 panel report (GPR.DS1/R, 23 April 1992) which might be interesting for the Working Party's purposes. However, the report had never been adopted and therefore was not legally relevant. The representative of the United States emphasised that, although the panel arrived at a questionable conclusion, its report illustrated some of the difficulties implied in defining government procurement of services, as in many cases government contracts combine the supply of goods and services.

40. The Chairman encouraged the delegation of Japan to submit its contribution in writing. He suggested continuing the discussion of S/WPGR/W/29 at the next meeting, taking into account considerations contained in the 1992 panel report. To clarify the concept of **concessions**, it would be very useful for delegations to submit written contributions.

Meeting of 19 May 1999 (S/WPGR/M/22 and Corr.1)

25. The Chairman observed that at the previous meeting, the Working Party had its first discussion of issues raised in the Secretariat Note S/WPGR/W/29. Some delegations expressed the need to develop a working **definition** of government procurement. In that context, Australia had recommended to consider whether the term "government purposes" in Article XIII of the GATS should be interpreted to mean "government use" in a narrow sense (i.e. the government "consumes" the service) or also include cases where the government was not the actual consumer. He proposed to discuss both W/29 and these contributions in greater depth. The three questions contained in the European Communities' informal paper were closely related to these **definitional** issues. Additionally, Japan had introduced a typology of **concessions** which distinguished between three types of transactions.

26. The representative of Brazil provided a brief overview of his country's legislation which distinguished between **concessions** and government procurement. In Brazil, the concept of **concessions** was not covered by the legislation that applied to government procurement (Law 8666 of June 1993), but had their own legal framework (Law 8987 of February 1995). Both legislations were applicable to federal, state and municipal governments, as well as to public enterprises, foundations and any form of institution with some level of control, directly or indirectly, by the government. While government procurement was **defined** to consist of acquisition of goods and services by purchase, **concessions** implied the delegation to a private entity of the right to supply a services. The representative of Venezuela added that the situation in his country was similar. **Concessions** and government procurement were different concepts regulated by separate legislations; the discussion of **concessions** might be of didactic value, but could not be part of negotiations on government procurement. In relation to the typology proposed by the delegation of Japan, he said that transactions pertaining to the exploitation of natural resources related to goods and not services. In Venezuela, such transactions did not involve any payment by the government; however, the government was entitled to collect taxes and royalties. In the absence of government procurement, there was no basis to apply GATS disciplines. Referring to contracts for constructing and managing industrial sites or public facilities, he noted that the financial responsibility laid with the users of the service and not the government. The third type of transaction, involving government purchase of services, could be considered government procurement rather than a **concessions**. **Concessions** involved transactions in which an exclusive competence of the government was delegated to a private entity, but the rights or resources involved continued to belong to the government. He reiterated previous requests for more information on Build, Operate and Transfer contracts.

27. The representative of Hong Kong, China, would prefer a working **definition** of government procurement which would minimize the exclusion of transactions from GATS disciplines; however, his delegation's interpretation of the term government procurement, as used in Article XIII:1, covered purchases for government use as well as cases where the government procured, but did not consume the relevant goods and services itself. Street cleaning and garbage collection for the public were cases in point. Regarding the distinction between **concessions** and government procurement, he felt that the criterion of financial responsibility was appropriate; if the government did not pay, a transaction could not be considered government procurement per se. Thus, **concessions** in the form of licenses and franchises would not fall under any government procurement rules. According to the representative of Thailand, the discussion should focus on defining government procurement as referred to in Article XIII. In Thailand the legal situation was clear. Relevant laws distinguished between **concessions** and government procurement; **concessions** were services supplied in the exercise of governmental authority. Contracts concerning the exploitation of natural resources were investment-related, and not particularly relevant for a discussion under Article XIII.

28. The representative of Mexico felt that the analysis of S/WPGR/W/29 should be continued. The Working Party had not considered all relevant **definitional** issues at that stage, and no authoritative interpretation of the term existed. Although her delegation was still considering the issues involved, she observed that one of the fundamental characteristics of government procurement was the financial responsibility by the government. **Concessions** involved the granting to the concessionaire of a right to exploit resources or exercise other prerogatives of the government. Any purchases by the concessionaire would constitute private acquisitions, which could not be covered by government procurement disciplines. She also echoed the request for information on Build, Operate and Transfer contracts.

29. The representative of the United States felt that the typology proposed by the delegation of Japan constituted a good starting-point for developing a working **definition**. The representative of Japan noted that the purpose of current discussions was to **define** government procurement, not **concessions**. His delegation considered the criterion of financial responsibility as relevant. Regarding contracts for exploitation of natural resources, he considered that the resources themselves were goods, but the exploitation activity was a service; for instance, energy services were included in the Services Sectoral Classification List (MTN.GNS/W/120).

30. The representative of Canada concurred that the discussion should focus on determining what was included in the concept of government procurement; **concessions** were a secondary issue. In defining government procurement, a wider range of factors needed to be considered. These included ownership, government control and the relevance of existing disciplines under the TRIMs. The representative of the European Communities referred to a Draft Interpretative Document on treatment of **concessions** under Community Law (O.J. C94 of 7.4.99). It included **definitional** elements which might be useful for the work of the Working Party such as level of exploitation, ownership, financial responsibility, etc. She felt it might be necessary to use a case-by-case approach in the determination of government procurement. The paper on **concessions** mentioned at the previous meeting had some factors that could be used in the work on **definition**, for example, level of exploitation, ownership, financial responsibility, etc. Regarding **concessions**, it was clear from the discussion that not all countries used such a concept.

31. In summing up, the Chairman observed that delegations felt the need to intensify work on a **definition** of government procurement; for that purpose, various routes were being contemplated. The criterion of financial responsibility was generally found relevant. The issues raised by the delegation of Australia were considered useful as well; in general, the concept of government use was perceived to be narrower than that of government purpose. He stressed the importance of submitting contributions in writing as a basis for further discussion.

Meeting of 21 June 1999 (S/WPGR/M/23)

33. The Chairman recalled that several delegations had suggested **definitions** – or elements of a **definition** – of government procurement of services. The notion of financial responsibility seemed to be widely considered one suitable criterion. He invited delegations to introduce additional elements.

34. The representative of Thailand, speaking on behalf of ASEAN, stressed the need for continued efforts to **define** government procurement under Article XIII. While the concept of financial responsibility was relevant, it was not sufficient in itself. "Government purpose" was another key term. However, more work was needed to arrive at a satisfactory **definition**.

35. The representative of Australia suggested developing a hierarchy of procurement activities, reflecting the level of government involvement. Japan's informal paper on **concessions** could be a starting-point. For instance, activities could be ranked as follows: government purchases for consumption by the government; government purchases for consumption by the public; contracts

with private companies for the purpose of constructing and managing industrial sites, railways, etc.; and contracts with private companies for the purpose of developing natural resources. The latter example was not to be considered government procurement.

36. The representative of New Zealand recommended that the Working Party focus on the **definition** of government procurement, rather than on surrounding concepts such as **concessions**. The criterion of financial responsibility was very useful; it implied the assumption of the financial risks and benefits of providing a service on a commercial basis. At the request of another Member, he explained that, in his delegation's view, the concept of **concessions** implied that a private party carried the risk of operating a service and was entitled to charge a fee in return. Thus, the private operator was financially responsible.

37. The Chairman concluded by drawing attention to three questions contained in a European Communities' informal paper of February 1998: what transactions constitute procurement?; who is the procuring entity?; and what is being procured? He felt it might be useful to further examine the range of entities which might be considered to conduct procurement activities. Some Members had expressed the view that, in principle, entities at all Government levels should be covered and that government ownership and control were important criteria. It had also been noted that the focus should be on entities enjoying some degree of exclusivity, i.e. entities not fully subject to market disciplines. He suggested that, at the next meeting, the Working Party tried to further clarify this question, in addition to advancing the discussion on **definitional** issues. The Working Party agreed.

Meeting of 8 September 1999 (S/WPGR/M/24)

40. The Chairman recalled that, during the past two meetings, several delegations had suggested **definitions**, or elements of a **definition**, of what could be considered government procurement of services. The notion of financial responsibility, i.e. the assumption of the financial risks and benefits associated with the purchase of services, seemed to be widely considered one suitable criterion to distinguish procurement from other forms of government involvement. He invited delegations to introduce any additional criteria and comments into the discussion.

41. The representative of Australia said that, following domestic consultations on how to **define** government procurement, her delegation now supported a broad **definition**. This was a pragmatic move since the processes of choosing contracts, as well as the relationship between companies and government, were generally identical and not influenced by notions of financial responsibility. Government procurement was thus considered to include all three categories in the hierarchy Australia had originally suggested: first, government purchases of services for consumption by the government; second, government purchases of services for consumption by the public; and, third, contracts between the government and private companies for the commercial provision of services to the public or to industry. The latter category was covered by the **definition** of GATS Article XIII because it was the government that initiated and organized the supply of the service and, thus, enabled the public to consume it.

42. The representative of Canada felt that the term "hierarchy" was not appropriate as it implied the setting of priorities; she proposed using a more neutral term such as "listing". The representative of the European Communities said that the **definition** offered by Australia was broad and wondered how it squared with relevant GATS provisions, given that the Working Party was mandated to deal with transactions not currently covered by the GATS.

43. The representatives of Venezuela, Brazil and Mexico noted that in their national legislations, **concessions** did not fall, and could not be categorized, under government procurement. The representative of Mexico suggested that examples be given under each category proposed by Australia. She wondered how this categories related to the concept of financial responsibility, which

many delegations considered relevant. In response to several requests, the representative of Australia undertook to submit her contribution in writing.

44. The representative of Hong Kong, China said that considerations related to the structure of the relevant market were important in determining what fell under government procurement. The representative of the United States suggested that the Working Party set aside its discussion on **concessions** for the time being and rather develop a genuine **definition** of government procurement. By default, it would also inform the **definition** of **concessions**.

45. As mentioned in his preparatory Note, the Chairman suggested further examining the range of entities considered to conduct government procurement. At previous meetings, it had been said that, in principle, entities at all government level should be covered, and that government ownership and control were important criteria. The legal form of operation or incorporation had not been mentioned as relevant. Some delegations had noted, however, that attention should be given primarily to entities enjoying some degree of exclusivity, i.e. to entities not fully subject to market disciplines. He invited delegations to further elaborate on these issues.

46. The representative of Canada said that government ownership and control were critical factors in defining government procurement. The representative of Hong Kong, China favoured in principle the inclusion of entities at all levels of government, but was not sure whether the legal form of operation or incorporation should be a determining factor. Criteria related to the form and structure of the markets concerned needed to be considered as well.

47. Notwithstanding the importance attached to **definitional** issues, the Chairman remarked that the negotiations under this item might benefit from Members giving thought to their ultimate purpose. This included in particular the question what common disciplines, if any, might be agreed upon at the end of the process. A prominent candidate would be the concept of non-discrimination. The Working Party endorsed his proposal of raising pertinent questions in the preparatory Note for the next meeting.

ATTACHMENT 3

References to Concessions in the Replies to the Questionnaire on Government Procurement of Services

Communication from Colombia (S/WPGR/W/11/Add.8, dated 4 October 1996)

1. *What is the definition of government procurement employed in completing this questionnaire?*

There is no explicit **definition** of government procurement. However, government procurement should be understood to mean the rules and procedures governing the purchase of goods and services, procurement of works and **concession** of activities of different kinds by public entities among themselves or with private individuals, in order to carry out and implement their objectives.

3.(a) *Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.*

Law 80 of 1993 was issued on the basis of the final indent of Article 150 of the Political Constitution, which empowers Congress to enact the general statute of government procurement and in particular procurement by the National Administration. Regulations under this Law have been enacted in various instruments, including the following: ...

- Decree 1448 of 1995 governing the grant of **concessions** for some telecommunication services; ...

Communication from Hong Kong, China (S/WPGR/W/11/Add.9, dated 7 October 1996)

3.(a) *Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.*

The Stores Regulations, supplemented by Financial Circulars issued by the Secretary for the Treasury, govern the government procurement process. Stores regulations are administrative measures made under the Public Finance Ordinance and are not statutory. The procedures laid down in these regulations and circulars are consistent with the provisions set out in the Tokyo Round of Agreement on Government Procurement.

The tender procedures set out in the Stores Regulations are required to be followed by all government departments for the procurement of stores, services as well as civil and engineering works, with the exception of the following for which separate procedures shall apply -

- (i) Franchises, **concessions**, leases, licences, tenancies and other items procured by public auction or method laid down by statute and government regulations.
- (ii) Private treaty grants of land, land exchanges, extensions and short-term tenancies of land.
- (iii) Consultancy service agreements approved by consultant selection boards appointed by the Secretary for the Treasury.

Communication from the European Communities and their member States (S/WPGR/W/11/Add.10, dated 2 December 1996)

5(a) *How are intended procurement publicised? Are invitations to tender published? If so, where, and in what languages?*

The Directives foresee common advertising rules for the tender procedures.

(i) Traditional sectors

Contracting authorities shall make known, by means of a notice, their intention to award a contract, a work **concession** or a design contest. This notice shall be sent to the Office for Official Publications of the European Communities, which shall publish it not later than 12 days after its dispatch (5 days in accelerated procedures)...

Communication from the Republic of Poland (S/WPGR/W/11/Add.12, dated 10 December 1996)

1. *What is the definition of government procurement employed in completing this questionnaire?*

... The **definition** of "public procurement" encompasses only purchasing activities. It does not include selling government-owned property or granting **concessions** or licenses unless, within the scope of these activities, the government is actually purchasing goods, services or construction.

Communication from Argentina (S/WPGR/W/11/Add.19, dated 2 May 1997)

2. *How are government procurement activities administered? Do what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.*

... Consequently, the procurement regime is subject to a single set of rules (see below, Laws and Regulations in force), with a distinction between goods and services on the one hand and public works on the other. As mentioned, there are also special procedures for public works **concessions**, which may include additional specifications depending on each particular case.

3(a) *Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.*

... The **regime for public works concessions** is contained in Law No. 17.520, as amended by Law No. 21.691, Law No. 23.696 and its Regulatory Decree 1.105/89.

In the case of public works and **concessions** the procedures are primarily contained in specific legislation, while the provisions of the Law on Accounting (Articles 3 and 61, paragraph 147, of Decree 5.720/72) apply on a supplementary basis.

4(a) *What procedures are followed in the procurement process? and*

4(b) *Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.*

The Law on Public Works Concessions (Law 17.520) also recognizes three alternative methods: public tendering, direct contracting with public entities or government-owned companies, and contracting with mixed-capital or private-sector companies. In the latter case, when dealing with works of public interest, the choice is between public tendering or competitions for complete projects. In the latter case, invitations are issued for the presentation of projects with a view to the submission of proposals (Law 23.696, Article 58 and Decree 1.105/89). If a more desirable bid than that of the person presenting the proposal is made, both may improve their respective proposals within a period not exceeding half of the original presentation period. The opening of the bids, and the continuation of the procedure, the award and subsequent continuation of the contract are governed by the principles laid down in the Public Works Regime (Law 13.064).

5.(a) *How are intended procurements publicized? Are invitations to tender published? If so, where, and in what languages? and*

5(b) *Do the extent and form of publicity differ according to tendering procedures applied and/or the value of procurement?*

... Public Works Concessions: There are no specific provisions in Law No. 17.520, apart from the reference to the amendment of Article 4 contained in Law 23.696, which establishes the provisions for competitions for complete projects. In this case the invitation to present projects is made through notices in the Official Bulletin and in two national mass circulation newspapers for five days. These notices must give a summary of the initiative, set the date, hour and place for the submission of bids and the date, hour and place of opening. The time-period between the final publication of notices and the date of submission of bids must be at least 30 days and at most 90 days, except in carefully **defined** exceptional cases where the maximum time-period may be extended.

5(c) *What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.*

... The Law on Public Works Concessions does not contain any provisions in this respect. Consequently, the provisions of the Law on Accounting apply, except as provided for in Law 23.696 on competitions for complete projects.

6(b) *What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?*

... With regard to the tender process itself, in the case of procurement of goods and services, bidders must lodge a bid performance guarantee equivalent to 5 per cent of the total value of the bid or 10 per cent of that value in the case of licences or concessions (Article 61, paragraph 33, of Decree 5.720/72). Bidders do not have to lodge this guarantee at the time of submitting a bid, but must do so at the simple request of the procuring entity (Article 61, paragraph 37).

... With regard to the regime for concessions, any proposal submitted by private individuals for a complete project competition must be accompanied by a maintenance guarantee which may not be less than 2 per cent of the amount of the work. This guarantee is executable in the event of non-submission of the bid, but may be converted into the bid guarantee in the event of an invitation to

tender or competition. Nevertheless, if the bid is made subsequently, and the guarantee proves to be less than 2 per cent - with a 30 per cent margin - the bidder will not be considered to be the author of the proposal.

7.(a) *What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?*

... Law 23.696 and Decree No. 1.105/89 establishing its regulations amended the Law on Public Works **Concessions**, by stipulating as award criteria the economic/financial equation and the scope of the prior investments to be made in each case in order to obtain a real reduction in the tariff or charge to be paid by users.

10. *What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.*

... With respect to public works and public works **concessions**, the provisions of the regulations on State contracts apply.

Communication from Costa Rica (S/WPGR/W/11/Add.22, dated 3 April 1998)

1. *What is the definition of government procurement employed in completing this questionnaire?*

In Costa Rica, government procurement covers all contracting activities conducted by public entities. This includes not only procurement of all types of goods and services, but also the construction of public works, **concessions** for government facilities, public services management **concessions**, public works **concessions** (governed by a special law) and the sale and leasing of government property.

3.(a) *Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.*

With respect to government procurement, Article 182 of the Constitution stipulates that:

"Public works contracts concluded by the State, the municipalities and the autonomous institutions, procurement using funds from such entities, and the sale or lease of goods belonging to them shall be put out to tender, in accordance with the law as to the amount concerned."

The laws enacted in the light of the above constitutional provision are: the Law on Government Procurement (Law No. 7494 of 2 May 1995) which came into force on 1 May 1996, and the Regulation to the Law on Government Procurement (Executive Decree No. 25038-H), published in the Official Journal of 28 March 1996.

This Law on Government Procurement governs the procurement activities of:

- Executive organs;
- the Judiciary;
- the Legislature;
- the Supreme Court of Elections;
- the Office of the Comptroller-General of the Republic;

- the Office of the Ombudsman;
- the decentralized territorial and institutional sector;
- public enterprises (the majority of whose share capital is not in private hands);
- non-State public entities with more than 50 per cent public financing.

Other laws relating to procurement by public entities are:

- Organic Law of the Central Bank of Costa Rica, Article 171 of which regulates the procurement activities of State commercial banks and the Central Bank itself. According to this Article, each bank must issue its own procurement regulations, which must be approved by the governing board and by the Office of the Supervisor of Financial Entities;
- Municipal Code as regards certain regulations, in particular those concerning the sale and donation of municipal property;
- General Law on Public Works **Concessions** and the Regulations thereto, which regulate public works procurement;
- National Emergency Law, which regulates the action to be taken when a national state of emergency is declared;
- Law on Labour Corporations and Regulations thereto, developed to facilitate the shifting of personnel from the public sector to the private sector for the performance of auxiliary services;
- Law on Hydrocarbons and Regulations thereto, which regulate the procedures for granting **concessions** for mining and extraction of hydrocarbons;
- Law on Passenger Transport against Payment, which establishes the procedures for granting **concessions** in that sector and in the taxi transport sector;
- Precedents established by the Office of the Comptroller-General of the Republic, which is the administrative entity responsible for issuing guidelines for the interpretation of regulations in that area.

4.(c) *What are the time-limits for the submission of bids?*

... In the case of open tenders for public works **concessions**, the time-limit is 60 calendar days.

6.(a) *Are there registration, residence or other requirements for potential suppliers?*

For certain types of procedures (tendering by registration, selective tendering and single tendering) potential bidders must enter their names in a register in order to submit a tender. However, registration may take place once the proceedings are already underway. As regards residence, there are no requirements except in the case of public works **concessions**. In Costa Rica, any foreign company may conduct business provided it does so in conformity with the laws in force.

... For public works **concessions**, there are specifications for foreign participating countries, which are required, before signing a contract, to submit a declaration sworn before a notary in which they irrevocably undertake to comply with the requirements of Article 8, paragraph 4 of Law No. 7404 which stipulates that: "If the contract is awarded to a foreign legal person, that person must

transfer its head office to Costa Rica before signing the contract. If such legal person should decide not to transfer its head office, it must set up a domestic joint stock company in which it has full ownership, to act as a concessionaire. The shares of the concessionaire must be registered."

... The purposes of the company, whether Costa Rican or foreign, must expressly include the performance of public works **concessions**. The company is asked to ensure that the social pact **defines** the social conditions and grants the necessary authority to conclude, perform and comply with the contract in all its details, and assume the legal and economic responsibilities attached thereto *vis-à-vis* the government and *vis-à-vis* third parties. This social pact must extend at least ten years beyond the **concession**.

6.(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of intended procurement?

... Three types of guarantee are required for public works **concessions**: a guarantee of participation in the open tendering procedure, a performance guarantee for the construction of the works, and a performance guarantee for the operation of the works.

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

... In the case of public works **concessions**, the government must appoint an Assessment Commission for each procedure. This Commission is responsible for analysing and evaluating the bids. This involves carefully checking the bids against the conditions and specifications contained in the tender documents and comparing in accordance with the methodology **defined** therein. The rejection of bids on the grounds that they are not in line with the estimates reached by the government in previous studies is prohibited.

The analysis should make it possible to establish which bid or bids are most conducive to the general interest bearing in mind the nature of **concessions** and the particular characteristics of the works or services concerned.

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**Working Group on Transparency
in Government Procurement**

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APEC NON-BINDING PRINCIPLES ON GOVERNMENT PROCUREMENT

Communication from Hong Kong, China

The following communication, dated 20 September 1999, has been received from Miss Adeline Wong of Hong Kong, China, in her capacity as Chair of the APEC Government Procurement Experts Group.

I am writing in connection with the APEC Government Procurement Experts Group (GPEG), which was established in 1995 to consider ways to increase transparency of, and liberalize, government procurement markets in accordance with the Osaka Action Agenda adopted by APEC Economic Leaders in 1995.

In accordance with its action plan, the GPEG started the development of a set of non-binding principles on government procurement in 1997. On behalf of the GPEG, I forwarded the elements of and illustrative practices on the principles of transparency as well as accountability and due process to the WTO Working Group on Transparency in Government Procurement on 6 December 1997 and 29 March 1999 respectively for reference at the study phase (documents WT/WGTGP/W/11 and 22).

Since then, the GPEG has continued its work on developing the set of non-binding principles on government procurement. At its last meeting on 8 August 1999, the GPEG completed the development of the whole set of non-binding principles, and agreed to forward them to the Working Group on Transparency in Government Procurement for reference. A copy of the elements of and illustrative practices on the six non-binding principles is reproduced below.

I would like to stress that these elements and illustrative practices are non-binding, and shall not prejudice the position of individual APEC member economies in the discussion on transparency in government procurement in the WTO.

APEC GOVERNMENT PROCUREMENT EXPERTS GROUP

NON-BINDING PRINCIPLES ON GOVERNMENT PROCUREMENT (FINAL)

Introduction

1. One of the agreed APEC collective actions on government procurement (GP) was to develop by 1999 a set of non-binding principles on GP for adoption by members on a voluntary basis. The Government Procurement Experts Group (GPEG) completed the development of the non-binding principles in August 1999 and has identified the elements of and illustrative practices on the principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination, as set out in this paper.

2. The principles developed by the GPEG are non-binding. Individual member economies are in the best position to decide on the applicability of individual elements to them, taking into account the specific characteristics of their economy and the costs and benefits of adopting specific measures. Considering the different levels of economic development among APEC economies and the diverse circumstances in each economy, flexibility will be available in the application of these principles in the course of achieving liberalization of government procurement markets in accordance with the principles, objectives and time-frames in the Bogor Declaration. The examples on practices included in this paper represent some of the possible ways to give effect to the elements of the principles developed by the GPEG, and are not intended to be prescriptive or exhaustive. Also, the elements and illustrative practices developed by the GPEG should not and will not prejudice the World Trade Organization (WTO) discussions on GP nor the positions taken by member economies in the WTO.

Elements of Transparency

3. *The general principle is that sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium at no or reasonable cost. This general principle is applicable to all aspects of GP, including the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts, as further elaborated in paragraphs 5 to 14.*

- *Sufficiency and relevance of information:* to enable potential suppliers to make informed decisions. For example, potential suppliers must have access to information on the conditions for participation and the requirements of the intended procurement in order to decide whether to participate and to prepare a responsive offer.
- *Timeliness:* to ensure that the information is valid and useful when available to the receiver.
- *Availability to all interested parties:* to ensure that the procurement process is fair to all participants and seen to be fair.
- *Through a readily accessible medium at no or reasonable cost:* to ensure that information is accessible in practice.

- *Consistency*: the objectives of maintaining a transparent procurement system can only be achieved if the system remains consistently transparent. This also includes making information up to date and informing relevant parties of changes and additional information promptly.

4. Notwithstanding the above, the following information may be withheld: commercially sensitive information, and information the release of which would prejudice fair competition among suppliers, impede law enforcement, be contrary to public interest or compromise security of the economy concerned. Where such information is withheld, the reason should be given on request.

The general operational environment

5. *The laws, regulations, judicial decisions, administrative rulings, policies (including any discriminatory or preferential treatment such as prohibitions against or set aside for certain categories of suppliers), procedures and practices (including the choice of procurement method) related to GP should be transparent.*

6. This is to let suppliers know the rules of the game so that they can decide whether to participate. In practice, this can include:

- publishing these "rules" in a medium which is readily accessible to all;
- publishing either a positive or negative list of the entities subject to these "rules";
- publishing any changes immediately;
- establishing contact points for enquiries;
- wherever possible, providing a description of the above information on the APEC GP Home Page and linking APEC members' individual GP Home Pages, where available, with the APEC GP Home Page.

Procurement opportunities

7. *Procurement opportunities should be transparent.*

8. This would encourage wider participation leading to increased choices for the buyer and enhanced competition, contributing to achieving better value for money in procurement activities. In practice, this can include:

- making open and competitive tendering the generally preferred method of tendering. Where other procurement methods are to be used, any procurement invitations issued should indicate the intended method;
- where open tendering is adopted, publishing procurement opportunities in a medium readily accessible to suppliers (e.g. official journals/gazettes, newspapers, specialized trade journals, Internet, and through embassies and consulates);
- allowing adequate and reasonable time for interested suppliers to prepare and submit responsive bids;

- publishing contact details of purchasers, and their product/service purchase interests, for suppliers wishing to register their interest in being notified of bidding opportunities which may not be publicly advertised;
- making early advice of complex high-value procurement needs available to interested suppliers through staged procedures such as public requests for information, requests for proposals and invitations for pre-qualification, and allowing adequate time for interested suppliers to prepare and submit a response;
- making available requirements and procedures for pre-qualification of suppliers.

Purchase requirements

9. *All the information required for suppliers to prepare a responsive offer should be made available.*

10. This is to facilitate effective and efficient participation by potential suppliers in the procurement exercise. Also, because potential suppliers know the specific requirements, the non-responsive offers that the buyer may have to process can be minimized, increasing the operational efficiency of the buyer. In practice, this can include:

- including in procurement notices the following information: the nature of the product or service to be procured, specifications, quantity, time-frame for delivery, closing times and dates, where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained;
- publishing any changes to the above information immediately;
- providing tender documentation and other information to suppliers promptly on request;
- wherever possible, drawing up specifications in terms of performance/functional/operational requirements using international or other relevant standards.

Bid evaluation criteria

11. *All criteria for evaluating bids should be transparent and bids should be evaluated and contracts awarded strictly according to these criteria.*

12. This is to ensure fairness and integrity. In practice, this can include:

- setting out in procurement notices and/or tender documentation all evaluation criteria, including any preferential arrangements;
- maintaining proper record of decisions.

Award of contracts

13. *The award of contracts should be transparent.*

14. This would demonstrate government accountability to suppliers and the public. In practice, this can include:

- publishing the outcome of the tender including the name of the successful supplier and the value of the bid;
- as a minimum, promptly notifying unsuccessful suppliers of the outcome of their bids and where and when contract award information is published, and debriefing unsuccessful suppliers on request.

Due process

15. Due process and public accountability are essential elements of fair, open and impartial procurement procedures, and the availability of an avenue/channel for review of complaints is an element of transparency.

Elements of Value for Money

16. The general principle is that GP practices and procedures should be directed to achieving the best available value for money in the acquisition of goods and services to deliver, or support delivery of, government programmes.

17. The test of the best available value for money is a comparison of relevant benefits and costs on a whole of life basis. Purchase price alone is not an adequate indicator of total relevant costs. The lowest-priced compliant offer does not necessarily represent best value for money. Benefits in terms of savings to taxpayers and suppliers may also be obtained through improvement in the procurement processes and management.

Assessment of need

18. The desired outcomes of a procurement activity should be accurately identified.

19. This assists buyers in identifying those factors that will contribute to the value of the procurement's outcome. Buyers should not over-specify or under-specify the attributes and performance required to accomplish their objectives as these actions may affect the quality of value for money achieved.

20. In practice, in identifying the desired outcomes of a procurement activity, buyers may consider:

- where, why and when the need arises and for how long and for which unit or location;
- the programme objectives and functional requirements, with a focus on what is to be achieved rather than how it is to be done, to encourage innovative solutions that may improve the value for money outcome;
- whether the need is for the replacement or enhancement of existing resources, or to meet an entirely new requirement; and
- any alternatives, including the use of in-house resources.

21. Buyers may also develop a business case, including:

- consideration of funds availability;

- analysing and refining the initial statement of need;
- taking specialized advice from technical and procurement experts and on product availability, industry capability and potential risks or constraints;
- identification and treatment of any risks related to the procurement;
- setting out anticipated costs and benefits on a whole of life basis and, where appropriate, financial and sensitivity analysis which might include calculations of discounted cash flows; and
- identifying the costs of project management, including support requirements for technical and commercial expertise at the project approval stage, when these resources will need to be identified and the project team appointed.

Selection of appropriate procurement method

22. Buyers should, according to the needs of each procurement situation, choose the method that is likely to achieve the best value for money outcome. This includes encouraging levels of competition among suppliers commensurate with the anticipated value for money benefits from that competition.

23. No single type of procurement fulfils all requirements. Buyers should choose the method for each procurement that will best enable them to achieve value for money outcomes from a range of procurement methods according to the circumstances of each purchase. Procurement processes should be designed to facilitate appropriate levels of competition.

24. In practice, while open and competitive tendering should generally be the preferred method of tendering, in selecting the appropriate procurement method, buyers may take into account:

- the strategic importance of the procurement;
- the complexity and/or cost of the procurement;
- the complexity of the market-place and environment in which that procurement shall be undertaken; and
- constraints such as urgency, compatibility with existing goods and services, or existence of a sole source of supply.

Evaluation of suppliers and their offers

25. Buyers should evaluate suppliers and their offers to identify the bid offering the best value for money.

26. Buyers should:

- evaluate offers in a comprehensive and fully professional manner by taking account of the benefits and costs involved on a whole of life basis;
- establish or verify the competence, viability and capability of prospective suppliers;

- confirm that products offered comply with requirements including fitness for purpose and time-frames and reflect an understanding of the needs of the end-user;
- assess and allow for relevant risks;
- ensure that unnecessary costs are avoided and other costs are reduced wherever possible, for example, through clarification; and
- ensure that the contractual agreements entered into are a comprehensive and accurate reflection of the terms, conditions and obligations agreed between the suppliers and buyers.

27. In practice, supplier evaluation may be done through a pre-qualification process and/or be part of the evaluation of bids. When evaluating suppliers, buyers may consider their management competence, financial status, technical competence and other matters such as their legal identity, previous contract performance and similar information that will provide an indication of the suppliers capability to meet the procurement requirements. Where supplier evaluation is part of a pre-qualification process resulting in a register of suitable suppliers, buyers should regularly re-evaluate suppliers to confirm their continued ability to deliver value for money outcomes.

28. Evaluation of offers should be done in a whole-of-life context, so as to ensure that the best value is obtained for the procurement. Besides price and fitness for purpose, other factors that may be taken into account include performance, quality, reliability, delivery, inventory costs, running costs, warranties and after-sale support, and disposal.

29. In addition, negotiation, if not prohibited, may be considered to improve the value of a procurement outcome under certain circumstances, for example, when:

- it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the tender notices or documentation;
- only one tender is received;
- potential suppliers raise reasonable objections or propose alternatives to the prescribed terms and conditions;
- offer prices are unfair and unreasonable in the circumstances; or
- there are substantial risks for either party warranting negotiation.

30. As a good policy, and to provide the buyers with the legitimacy for conducting negotiations, it is advisable to state in the tender notices and/or tender documentation that the buyers reserve the right to negotiate for the best offer and, if the submission of alternative proposals is allowed, that alternative proposals that improve the value of the offer may be submitted. The buyers should conduct the negotiations in a structured and ethical manner and should not in the course of negotiations discriminate between different suppliers. Properly drafted tender documentation, including draft contract terms and conditions, should ensure that negotiation with bidders commences from a well-defined base. Proper record of the negotiation should be kept.

The procurement function itself providing value for money

31. *Procurement systems should themselves represent value for money.*

32. Buyers should regularly monitor and evaluate their procurement systems to ensure that they are efficient, effective, appropriate and continue to represent value for money. Costs to buyers and suppliers of procurement activities should be minimised as far as possible.

33. This may be achieved by the following practices:

- procurements are effectively planned and approved prior to commencement;
- specifications are not unnecessarily complex or onerous;
- procurement activity is not unnecessarily complex, costly or time-consuming, but is still designed to adequately deliver value for money outcomes;
- pre-qualification, shortlisting and staged-procurement are undertaken where appropriate;
- regulation and red-tape is not unduly complex or costly for buyers and suppliers to address;
- contracts resulting from procurement activities should be managed so as to produce the best available value outcomes; and
- procurement officials should be trained and competent.

Elements of Open and Effective Competition

34. *The general principles are that the GP regime should be open and procurement methods should suit market circumstances and facilitate levels of competition commensurate with the benefits received.*

Open government procurement regime

35. *The GP regime should be transparent and GP readily accessible to the public and in particular to all potential suppliers. In addition, there should be a predictable bidding environment in which suppliers can readily evaluate their competitiveness and their chances of winning contracts.*

36. These can be achieved by acting consistently with the transparency principles and practices set out in paragraphs 3 to 15 above.

Encouraging competition in an open GP environment

37. *Procurement processes should be designed to encourage levels of competition among suppliers, commensurate with the anticipated value for money benefits from that competition.*

38. Considerations include:

- ensuring that the maximum number of potential suppliers are able to compete, including ensuring access for potential new suppliers to opportunities, consistent with value for money principles and with the efficient operation of the procurement system;
- ensuring that procurement procedures are flexible enough to accommodate market conditions; and
- avoiding unnecessary costs for buyers and suppliers.

39. In practice, buyers may choose from open, limited or restricted procurement processes depending on the circumstances of each procurement. The considerations are set out in paragraphs 22 to 24 above.

40. The following may be necessary to ensure that a procurement action facilitates effective competition:

- specifications are adequate and drawn up, where possible, in terms of performance/functional/operational requirements using international or other relevant standards;
- "or equivalent" should be added to a particular trademark, patent, design or type, specific source of origin, producer or supplier prescribed in tender documentation;
- sufficient time for tendering is allowed to enable interested suppliers to prepare tenders;
- where practicable, sufficient time is allowed to enable interested suppliers to initiate and complete any necessary qualification procedures;
- requests for offers are made in good time, effectively promoted in the market and are clear, succinct and informative;
- bids are evaluated expeditiously on a whole-of-life basis against notified criteria, giving all bidders full opportunity to demonstrate the benefits they can provide; and
- any negotiation undertaken with suppliers is conducted in a structured and ethical manner by trained and experienced negotiators.

41. Also, good market knowledge can help buyers to design and plan the procurement process, to identify possible new sources of supply as well as to conduct the procurement in the most effective manner. Buyers may use methods such as Invitation to Register Interest or Request for Proposals to identify the market and available or possible products or services, or to encourage suppliers to propose solutions where the fundamental nature of a solution to a requirement is not clear.

Responding to conditions that limit competition

42. *Buyers should ensure that limitations to competition are effectively addressed to ensure value for money outcomes.*

43. Competition may be limited by factors such as existence of monopolies or cartels, limited number of qualified suppliers, urgency of requirements, need for compatibility with existing products

and difficulty in persuading suppliers to bid. Buyers should adjust their procurement method to achieve the best value for money in such limited competition situations.

Elements of Fair Dealing

44. *The general principle is that the procurement system should be designed and buyers should conduct themselves in ways such that procurement activities are conducted in a fair, reasonable and equitable manner and with integrity.*

45. Fair dealing is especially important in GP because the expenditure of public funds is involved and procurement activities are thus subject to public scrutiny. Fair dealing promotes public confidence in the procurement process and mutual trust and respect between the buyers and suppliers which includes a clear understanding by all parties to a proposed transaction in regard to their obligations and expectations. This will in turn encourage participation and contribute to achieving the best value for money in the acquisition of goods and services. Unethical behaviour, on the contrary, will add costs to and/or reduce the quality of the goods and services procured and damage the image of the procuring entity.

Procurement process

46. *The procurement process should be fair and seen to be fair, and should treat all parties even-handedly.*

47. This may be achieved by the following practices:

- contact between all procurement and evaluation personnel and tenderers and prospective tenderers should be on a formal basis once the formal procurement process starts;
- all suppliers should be accorded fair and equitable opportunity and treatment at all stages of procurement from access to pre-tender information to debriefing and consideration of complaints (without prejudice to tenders in future);
- qualifications of suppliers and technical specifications should not be prepared, adopted or applied with a view to, or with the effect of, creating unfair advantages to some suppliers;
- tenders should be kept sealed until they are opened and there should be clear policy or regulations setting out the circumstances under which they would be invalidated;
- tenders should be opened by a designated tender opening team, which should authenticate the tenders and keep a duplicate copy of the tenders before passing them to the officers responsible for the evaluation of tenders. The names of the tenderers and tender prices should also be properly recorded by the tender opening team;
- clear and reasonable time-limits should be set for various stages of the procurement process and should be followed strictly by all parties. In particular, there should be a clearly defined policy on whether and in what circumstances late tenders may be accepted;
- technical specifications and evaluations should be undertaken by more than one evaluating staff member or a committee to confirm their freedom from bias, and to verify that the offers contain all the elements necessary to enable them to be compared on a common basis;

- any shortlisting process for negotiations should be conducted in a fair and equitable manner and any negotiations should be conducted in a structured and ethical manner; and
- bids should be evaluated and contracts awarded strictly according to the published criteria. Any action that the buyer is entitled to take, such as negotiations or cancellation of tenders, should be included in the published criteria.

48. *The GP regime should be transparent. This helps to avoid problems such as fraud and corruption.*

49. In practice, this can be achieved by acting consistently with the transparency principles and practices set out in paragraphs 3 to 15 above.

Procurement personnel

50. *Procurement personnel should at all times treat suppliers fairly and even-handedly and with integrity. Officials involved in procurement should have access to, inter alia:*

- advice about legal and legislative obligations and requirements;
- whole-of-Government advice such as Codes of Conduct; and
- agency-specific or work area instructions or directions, including procedures to address instances of conflict of interest.

Disclosure of interests

51. *Procurement personnel should not allow the pursuit of private interests to interfere with the proper discharge of their official duties. Also, they should not allow their conduct to warrant any suspicion of conflict between their official duties and their private interests. Early and open disclosure of personal interests will allow management to prevent a conflict of interest from arising.*

52. In practice:

- procurement personnel should disclose any interest, directly or indirectly possessed, which conflicts or might reasonably be thought to conflict with their public duties, or improperly influence their conduct in the discharge of their public duties; and
- procuring agencies should have a systematic way to address conflict of interests, e.g. where a procurement officer possesses an interest which conflicts with his public duties, the basis of that interest should be discontinued, or the person should cease the duties involved or obtain management permission to continue.

Gifts, benefits and hospitality

53. *Procurement personnel should not solicit or accept gifts, benefits or hospitality which might influence or be perceived to influence the conduct of their duties. Potential suppliers should not seek to influence procurement personnel in their duties by gifts, benefits or hospitality.*

54. In practice:

- procurement personnel should not solicit or accept benefits or advantages whether for themselves, their immediate family or business concern or trust with which they are associated from persons who have or seek to have supplies contracts with their agencies;
- procurement personnel should not accept any gift or hospitality from suppliers except as may be permitted under the rules of their agencies;
- when it is difficult to decide whether an offer of gift or hospitality is acceptable or not, procurement personnel should decline the offer or seek the advice of a superior;
- procurement personnel should report to management immediately any attempts by suppliers to undermine impartiality and independence of action by the offer of benefits or other form of inducement;
- procurement personnel should avoid occasions where their presence may appear to imply a close relationship with the suppliers or lead to perception of a conflict of interest;
- procuring agencies should have a clear policy on whether their procurement personnel may accept any purchasing privileges offered to them by suppliers. If such privileges are allowed, value and quantity limits should be set. It is vital that the requirement for fairness and equity is not compromised by this practice, which can place procurement personnel under pressure to regard certain suppliers favourably.

Confidentiality and accuracy of information

55. *Commercially sensitive information should be kept secure and should not be used for personal gain or to prejudice fair, open and effective competition. Information given by procurement personnel in the course of their work must be accurate, impartial and not designed to mislead.*

56. In practice, procurement personnel should:

- not give one supplier's or tenderer's prices to another to meet or beat;
- not reveal details of commercial arrangements, including the details of contract pricing, in a way that compromises the commercial interests of the supplier or contractor concerned;
- safeguard commercially sensitive information physically so that other parties do not release it deliberately or inadvertently; and
- not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for themselves or for any other person.

57. If a procuring agency engages consultants to assist in the tender evaluation process, they should also be subject to the principles in paragraphs 51 and 53 above. The contractual agreements with such consultants should contain a statement to this effect. The contractual agreements with such consultants should also stipulate that information gained during the tender evaluation may not be disclosed for a specified period after the evaluation.

Separation of responsibilities and authorization power

58. *To minimize the risk of unethical behaviour including fraud and corruption, a procuring agency should separate where practicable the various responsibilities and authorisations in procurement.* One method could be to rotate duties so that key decision areas are not continuously in the control of one individual. Rotation can reduce the risk of relationships that are "too cosy" developing between a particular staff member and a supplier, or the appearance of this.

Procurement records

59. *A record should be kept in relation to every contract awarded. The information recorded should be sufficient to justify decisions taken in the procurement process.*

Elements of Accountability and Due Process

60. *The general principle is that government procuring agencies and individual procuring personnel should be, and are seen to be, accountable to their governments, the end users, the public and suppliers for the efficient, cost-effective and fair conduct of their procurement; and that mechanisms for scrutiny of the procurement process and avenues/channels for review of complaints should be available.*

Procurement process

61. *Governments and individual agencies should establish and make known clear procurement laws/regulations/policies, practices and procedures; and procuring agencies and personnel should follow them without intentional or negligent infraction throughout the entire procurement process.*

Record keeping

62. *Proper record should be kept of the entire procurement process, including decisions and actions taken during the procurement process and the reasons for taking them, to the extent that is sufficient to justify the decisions and actions taken. These records should be retained for a predetermined period.*

63. In practice, matters that should be documented include:

- specifications of the items/services to be procured;
- approval to spend public moneys;
- selection of procurement methods;
- criteria for evaluating and selecting tenders;
- discussions with potential tenderers before tenders close;
- opening and authentication of the tenders received;
- names of the tenderers who have participated in tendering;
- contents of invalid tenders and reasons;

- clarification of tenders or other discussions with tenderers during tender evaluation;
- decisions on selection of tenders;
- authorization and signing of contracts; and
- reasons for varying a contract.

Independent scrutiny

64. *Scrutiny mechanisms should be put in place to support and ensure accountability and due process. Such mechanisms:*

- *should operate in ways that are independent, according to their circumstances, scope, and objectives, and are not subject to the authority, control or influence of scrutinized entities; and*
- *should treat, and be seen to treat, all parties even-handedly and fairly.*

65. In practice, such mechanisms may include:

- management controls and internal audit procedures designed to ensure efficiency, economy and probity in the agency's use of public resources;
- internal scrutiny of actions or decisions of a procurement official or section within an agency by another official or section of that agency; and
- scrutiny by another government agency, which may or may not be independent of government influence, such as an Ombudsman and government audit organization.

Review mechanism

66. *Mechanisms should be put in place for handling complaints about procurement processes or alleged breaches of procurement laws/regulations/policies/procedures which cannot be resolved through direct consultation with the procuring agency in the first instance. Such mechanisms should provide independent, impartial, transparent, timely and effective procedures for the review of such complaints or alleged breaches by suppliers who have, or have had, an interest in the procurement concerned.*

67. In practice, this can include:

- designating a review body/person for the purpose of an objective and impartial review of the complaints/alleged breaches. The review body may take the form of a court, an independent review body, a government agency not directly involved in the procurement, or a reputable private sector arbitration/mediation service. The review body should have no interest in the outcome of the procurement and its members should be secure from external influence during the review;
- providing for correction of the breaches or compensation for the loss or damages caused, which may be limited to the costs of tender preparation or protest;

- making information on the review mechanism including its scope, objectives and operations, and the rights and obligations of all parties involved, readily available and accessible to suppliers; and
- making the review mechanism available equally to domestic and foreign suppliers.

Openness and transparency

68. *The procurement process should be open and transparent.*

69. Openness and transparency support and help ensure accountability and due process. In practice, this can be achieved by acting consistently with the transparency principles and practices, including those in the area of award of contracts, set out in paragraphs 3 to 15 above.

Elements of Non-discrimination

70. *The general principle is that procurement laws, regulations, policies, administrative guidelines, procedures and practices should not be prepared, adopted or applied so as to afford protection/favour/ preference to, or discrimination/bias against, the goods, services or suppliers of any particular economy/economies.* The use of discriminatory practices in government procurement undermines the competitive process and thus the ability of member governments to achieve the best possible value for money outcomes.

71. *This principle should apply at all stages of procurement.*

72. In practice, this can be achieved through the following:

- the same information on procurement opportunities should be available in a timely manner to all potential suppliers. For example, publishing tender information through the Internet allows it to be available instantaneously to all interested suppliers wherever they are;
- criteria for qualification of suppliers, evaluation of bids, and award of contracts should be based solely on the ability to meet the procurement requirements such as technical competence, and value for money considerations in terms of relevant benefits and costs on a whole-of-life basis;
- where open call for tender is not practical, selective invitation to tender should be based on non-discriminatory and objective criteria of ability to meet the procurement requirements, consistent with the open and effective competition principles and practices identified by the GPEG earlier;
- tender specifications should not be prepared, adopted or applied with a view to, or with the effect of, creating bias for or against the goods, services or suppliers of any particular economy/economies; or unnecessary obstacles to trade. Where possible, tender specifications should be drawn up in terms of performance/functional/operational requirements using international or other relevant standards;
- bids should be evaluated and contracts awarded strictly according to the published criteria;

- post-tender negotiations, if allowed, should be notified in the tender notice and/or tender documentation. The buyer should conduct the negotiations in a structured and ethical manner and should not in the course of negotiations discriminate between goods, services or suppliers of different economies. Also, any opportunity to submit revised bids should be provided on a non-discriminatory basis;
- any debriefing should be available to all participating suppliers, and review procedures to all participating suppliers and suppliers having an interest in the procurement concerned, on a non-discriminatory basis; and
- suppliers should not be unjustifiably excluded from the procurement process.

73. Notwithstanding the above, the principle of non-discrimination should not prevent member economies from taking actions that are necessary for the protection of their essential security interests relating to the procurement of arms, ammunition or war materials; or to procurement indispensable for security or defence purposes. This exception should have limited application; it should not be used in an arbitrary or unjustifiable manner with the intention or effect of unnecessarily undermining the non-discrimination principle or restricting international trade.

WORLD TRADE ORGANIZATION

RESTRICTED

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**Working Group on Transparency
in Government Procurement**

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TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

WORLD BANK

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the World Bank by means of a communication, dated 8 June 1999.

General

The World Bank policy unit, OCSPR, issued a new procurement directive in June 1998 revising the Country Procurement Assessment Review (CPAR). In FY99, approximately 20 CPARs were initiated in the six regions of the Bank (see the attached list of countries). Each review includes the joint Bank/government development of an action plan to improve the public procurement system in the country under review. The World Bank anticipates major growth in the area of support for procurement reform activities as the Bank continues to conduct CPARs and finance implementation of activities in the action plans.

To date, the Bank has neither tracked nor maintained data on the implementation of procurement technical assistance activities. Most of the financing is provided under financial management or public sector development projects that are designed and managed outside the procurement family.

Bank procurement staff are actively involved in providing procurement training, advice and assistance in the Bank's client countries. Procurement training is provided as part of the implementation process for every new project. In addition, the Bank works closely with the ILO International Training Center in Turin, Italy and several institutions in Africa to provide procurement training for staff from our client countries. Most of this training is Bank-specific intended to ensure proper implementation of the Bank's procurement guidelines. However, as the guidelines are based on international practices, they have been a source of development of procurement skills and knowledge. In addition, the standard bidding documents prepared for use on Bank-financed projects have been adapted by many countries for use in their public procurement system.

Specific Information by Regions

Latin America/Caribbean Region

1. Procurement Components in Bank-financed Projects

The LCR regional portfolio includes projects for public sector modernization and for financial and fiscal management in several countries (Honduras, Guatemala, El Salvador, Argentina, Colombia, Bolivia, etc.). Many of these include technical assistance, either directly or indirectly, to national procurement authorities as part of a broader programme of public sector reform. One concrete example of this type of work is in Jamaica.

Jamaica: Public Sector Modernization Project: This Bank-financed project, currently under implementation, includes a US\$2 million component to address Government Procurement, Contracting, Internal Control and Auditing. Among other activities, the component is financing the establishment of a **Procurement Policy Implementation Unit** in the Inspectorate Division of the Ministry of Finance; and institutional strengthening of the office of the **Contractor General** and of **Procurement/Contracting Units** and **Procurement Committees** in several Ministries.

New Projects under Preparation: As you know, we intend to include similar procurement components in new projects, as opportunities are identified through our work on CPARs (see below), Country Assistance Strategies (CASs), and other ongoing dialogues with our borrowers. In particular, we expect to include investments in capacity-building in Public Sector Modernization projects in **Trinidad and Tobago** (e.g. through assistance to Central Tenders Board, strengthening of procurement research and supervision capacity, and establishing a training centre) and in Guyana.

2. Country Procurement Assessment Reports (CPARs)

New format CPARs are planned for Guyana, Trinidad and Tobago, the Dominican Republic, Haiti and Uruguay in FY99. A possible CPAR is also under discussion for Paraguay. As you know, one of the key purposes of the new CPAR format is to help governments to increase their capacity to manage and monitor the procurement process. The design of detailed action plans for institutional improvements as part of these CPARs will constitute the delivery of technical assistance in this area. Financing for the CPARs will be provided by the Bank's own administrative budget, supplemented by Strategic Compact funding. Work is already under way on the **Guyana** CPAR and a plan of action to improve procurement processes in the country will be agreed upon with the Guyanese Government by the end of September.

3. Procurement Training delivered by Bank Staff and Consultants

LCR regional procurement staff and consultants regularly deliver about ten "Country" Procurement Seminars per year to government officials of the agencies implementing Bank-financed projects. While these seminars focus primarily on the application of the Bank's own Guidelines for Procurement and for Consultants Selection in Bank-funded projects, the fact that the Bank's guidelines are based in widely accepted international business practices makes the seminars a sort of introduction to international procurement procedures for government agencies.

In addition, through a new training initiative in Peru, Bank staff will provide technical assistance by leading a series of seminars as part of the Peruvian Government's efforts to establish a national programme for procurement training of government officials (a sort of "procurement college"). Topics covered by the seminars will include anti-corruption measures, procurement and privatization, international trade, legal and regulatory frameworks, etc.

Funding for such procurement training usually comes from the Bank's own administrative budget, although Institutional Development Fund (IDF) grants have also been used to launch training-of-trainers programme in Brazil, and the new initiative in Peru is expected to be funded entirely by the Government.

East Asia/Pacific Region

Technical Assistance Projects in the Philippines and China to establish ongoing procurement training facilities through local training institutions to provide training related to implementation of Bank-financed projects as well as improve public sector procurement.

ATTACHMENT

List of Country Procurement Assessment Reviews

Africa Region

Mali
Niger
Mauritania
Guinea
Benin

East Asia/Pacific Region

Viet Nam

South Asia Region

Pakistan

Europe and Central Asia Region

Croatia
Bulgaria
Romania

Latin America/Caribbean Region

Guyana
Dominican Republic
Uruguay
Haiti
Guatemala
Honduras
Trinidad and Tobago
Nicaragua

Middle East/North Africa Region

Jordan
Morocco

DOMESTIC REVIEW MECHANISMS

Submission by the United States

The following communication, dated 23 June 1999, has been received from the Permanent Mission of the United States with the request that it be circulated to Members.

Issue: The Chairman's Checklist paper refers in element VIII to domestic review procedures. At the meeting of the Working Group on Transparency in Government Procurement on 25 February 1999 several Members continued to express concern about including a provision on domestic review mechanisms in a transparency agreement. However, the discussion at that meeting suggested a high degree of commonality in views on the issue. In particular, many of those Members expressing hesitancy appeared to confirm that they in fact already maintain either administrative or judicial mechanisms for hearing complaints regarding violations of domestic law on government procurement.

In order to clarify the issue of domestic review mechanisms and find common ground for addressing it in a transparency agreement, the United States offers the following comments and suggestions.

Background: Very early in the life of the Working Group, participants sought to distinguish domestic review procedures from WTO dispute settlement procedures by requesting the Chairman to address them in two separate sections of his Checklist paper (agreed at the Working Group meeting on 19-20 February 1998). The discussion that prompted the Working Group to separate the two issues highlighted that domestic review mechanisms are provided to resolve supplier complaints at a national level under the sovereign jurisdiction of a particular country, while WTO dispute settlement is available to resolve differences between WTO Members relating to the implementation of WTO obligations. In this discussion and others that followed in the Working Group, many participants noted that they already maintain domestic review mechanisms to resolve suppliers' complaints – some have administrative mechanisms, some judicial, while others have both.

Many WTO agreements provide for domestic review mechanisms to ensure that complaints or appeals can be raised and resolved under the jurisdiction of an individual WTO Member pursuant to national or local laws. The following are examples:

- GATT Article X:3(b) provides for "judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters".

- Article 2(j) and Article 3(h) of the Rules of Origin Agreement provide that administrative actions related to determinations of origin shall be "reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination".
- Article 3(e) of the Import Licensing Agreement requires that applicants for licenses "shall have the right of appeal or review in accordance with the domestic legislation or procedures of the importing Member".
- Article 11 of the Customs Valuation Agreement (Agreement on Implementation of Article VII of the GATT 1994) provides the right of appeal for valuation determinations. An "initial right of appeal" may be to the customs administration or an independent body, but legislation must also provide "for the right of appeal without penalty to a judicial authority".

Similarly, the Agreement on Technical Barriers to Trade and the Agreements on Subsidies and Countervailing Measures and Anti-Dumping Practices contain domestic review provisions. The TRIPS Agreement contains very elaborate provisions for domestic review and enforcement.

Suggested Approach: We believe a transparency agreement should include a simple and flexible provision on domestic review mechanisms – one that can accommodate different Members' existing independent administrative or judicial tribunals and review procedures. Such a provision should ensure that there are transparent, timely and independent decisions on complaints or appeals relating to the transparency of procuring entities' actions and procedures. The scope of review of this provision under WTO procedures should be limited to actions relating to the implementation, through domestic laws and procedures, of the requirements of this Agreement.

Without prejudice to United States views in future discussions on the content of a domestic review provision in a transparency agreement, the following text could be an appropriate starting point for discussion, as it is modelled after existing provisions in other WTO agreements:

"Members shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and correction of procurement actions that may be inconsistent with the requirements of this Agreement, as implemented in Members' laws. Such tribunals or procedures shall be independent of the agencies responsible for procurements covered under this Agreement and shall provide for rapid decisions that, as appropriate, can effect the modification or reversal of any inconsistent actions."

WORLD TRADE ORGANIZATION

RESTRICTED

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**Working Group on Transparency
in Government Procurement**

Original: English

APEC NON-BINDING PRINCIPLES ON GOVERNMENT PROCUREMENT: ACCOUNTABILITY AND DUE PROCESS

Communication from Hong Kong, China

The following communication, dated 29 March 1999, has been received from Miss Adeline Wong of Hong Kong, China, in her capacity as Chair of the APEC Government Procurement Experts Group.

I am writing in connection with the APEC Government Procurement Experts Group (GPEG), which was established in 1995 to consider ways to increase transparency of, and liberalize, government procurement markets in accordance with the Osaka Action Agenda adopted by APEC Economic Leaders in 1995.

In accordance with its action plan, the GPEG started the development of a set of non-binding principles on government procurement in 1997. The GPEG developed in 1997 a set of elements pertaining to the principle of transparency in government procurement and a list of practices illustrating how they could be implemented. On behalf of the GPEG, I forwarded on 6 December 1997 these elements and illustrative practices to the WTO Working Group on Transparency in Government Procurement for reference at the study phase (document WT/WGTGP/W/11).

Since then, the GPEG has continued its work on developing the set of non-binding principles on government procurement. At its recent meeting on 4 February 1999, the GPEG developed the elements of the principle of accountability and due process and a list of illustrative practices, and agreed to forward them to the Working Group on Transparency in Government Procurement for reference. A copy of these elements and illustrative practices is reproduced below.

I would like to stress that these elements of accountability and due process and illustrative practices are non-binding, and shall not prejudice the position of individual APEC member economies in the discussion on transparency in government procurement in the WTO.

APEC GOVERNMENT PROCUREMENT EXPERTS GROUP

NON-BINDING PRINCIPLES ON GOVERNMENT PROCUREMENT: ACCOUNTABILITY AND DUE PROCESS

Introduction

1. Under the APEC collective action plan on government procurement (GP), a set of non-binding principles on GP will be developed for adoption by members on a voluntary basis. The Government Procurement Experts Group (GPEG) has agreed to aim to complete the development of the non-binding principles by 1999. So far, the GPEG has identified the elements of and illustrative practices on the principles of transparency, value for money, open and effective competition and fair dealing.

2. At its ninth meeting on 4 February 1999, the GPEG further identified the elements pertaining to the principle of accountability and due process, and examples illustrating how these elements could be put into practice.

3. As with the principles previously discussed and agreed by the GPEG, the principle of accountability and due process to be developed by the GPEG is non-binding. Individual member economies are in the best position to decide on the applicability of individual elements to them, taking into account the specific characteristics of their economy and the costs and benefits of adopting specific measures. The examples on practices included in this paper represent some of the possible ways to give effect to the elements of accountability and due process identified in this paper, and are not intended to be prescriptive or exhaustive. Also, the elements and illustrative practices to be developed by the GPEG should not and will not prejudice the WTO discussions on GP nor the positions taken by member economies in the WTO.

Elements of accountability and due process

4. *The general principle is that government procuring agencies and individual procuring personnel should be, and are seen to be, accountable to their governments, the end users, the public and suppliers for the efficient, cost-effective and fair conduct of their procurement; and that mechanisms for scrutiny of the procurement process and avenues/channels for review of complaints should be available.*

Procurement process

5. *Governments and individual agencies should establish and make known clear procurement laws/regulations/policies, practices and procedures; and procuring agencies and personnel should follow them without intentional or negligent infraction throughout the entire procurement process.*

Record keeping

6. *Proper record should be kept of the entire procurement process, including decisions and actions taken during the procurement process and the reasons for taking them, to the extent that is sufficient to justify the decisions and actions taken. These records should be retained for a predetermined period.*

7. In practice, matters that should be documented include:
- specifications of the items/services to be procured;
 - approval to spend public moneys;
 - selection of procurement methods;
 - criteria for evaluating and selecting tenders;
 - discussions with potential tenderers before tenders close;
 - opening and authentication of the tenders received;
 - names of the tenderers who have participated in tendering;
 - contents of invalid tenders and reasons;
 - clarification of tenders or other discussions with tenderers during tender evaluation;
 - decisions on selections of tenders;
 - authorization and signing of contracts; and
 - reasons for varying a contract.

Independent scrutiny

8. *Scrutiny mechanisms should be put in place to support and ensure accountability and due process. Such mechanisms:*

- *should operate in ways that are independent, according to their circumstances, scope and objectives, and are not subject to the authority, control or influence of scrutinized entities; and*
- *should treat, and are seen to treat, all parties even-handedly and fairly.*

9. In practice, such mechanisms may include:

- management controls and internal audit procedures designed to ensure efficiency, economy and probity in the agency's use of public resources;
- internal scrutiny of actions or decisions of a procurement official or section within an agency by another official or section of that agency; and
- scrutiny by another government agency, which may or may not be independent of government influence, such as an Ombudsman and government audit organization.

Review mechanism

10. *Mechanisms should be put in place for handling complaints about procurement processes or alleged breaches of procurement laws/regulations/policies/procedures which cannot be resolved*

through direct consultation with the procuring agency in the first instance. Such mechanisms should provide independent, impartial, transparent, timely and effective procedures for the review of such complaints or alleged breaches by suppliers who have, or have had, an interest in the procurement concerned.

11. In practice, this can include:

- designating a review body/person for the purpose of an objective and impartial review of the complaints/alleged breaches. The review body may take the form of a court, an independent review body, a government agency not directly involved in the procurement, or a reputable private sector arbitration/mediation service. The review body should have no interest in the outcome of the procurement and its members should be secure from external influence during the review;
- providing for correction of the breaches or compensation for the loss or damages caused, which may be limited to the costs of tender preparation or protest;
- making information on the review mechanism including its scope, objectives and operations; and the rights and obligations of all parties involved readily available and accessible to suppliers; and
- making the review mechanism available equally to domestic and foreign suppliers.

Openness and transparency

12. *The procurement process should be open and transparent.*

13. Openness and transparency support and help ensure accountability and due process. In practice, this can be achieved by acting consistently with the transparency principles and practices, including those in the area of award of contracts, identified by the GPEG earlier.

**Working Group on Transparency
in Government Procurement**

Original: English

**TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM
OTHER INTERGOVERNMENTAL ORGANIZATIONS**

UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the United Nations Development Programme (UNDP) by means of a communication, dated 28 September 1998.

Since the early 1990s, but increasingly over the past two to three years, UNDP has been changing its execution modality for technical cooperation projects from execution/implementation with the assistance of specialized UN agencies to a new concept of national execution through and by recipient governments. Accordingly, the responsibility for project procurement is being shifted towards the governments, which become fully responsible for managing all project inputs while still remaining accountable to the Administrator of UNDP for matching project objectives. In light of this development, UNDP recognizes that its overall responsibility for the most efficient and transparent use of its funds goes much beyond its fiduciary obligations and must increasingly focus on the development function of procurement and on enhancing government accountability.

In this context, UNDP has joined the ongoing efforts by the International Financing Institutions towards the same objectives, and has become an active member of their Working Group on Harmonization of Policies and Procurement Documentation. Within UNDP, major projects under this agenda will be the development of comprehensive guidelines that will govern all procurement funded by UNDP, with special emphasis on transparency and accountability issues, as well as the development and maintenance of standard documentation for solicitation, evaluation and contracting. UNDP's Programme for Accountability and Transparency is presently supporting work on: (1) the development of CONTACT guidelines (Country Assessments in Accountability and Transparency) as a tool for reviewing and analysing financial management and accountability systems in the public sector. The guidelines will include a specific component on procurement systems, as CONTACT is expanded to other areas of political and administrative accountability and transparency; and (2) the joint UNDP/OECD Comparative Case Study on Anti-corruption Reform (covering six countries) which aims to document, assess and synthesize best practices in anti-corruption. The current guidelines for research include specific components on procurement systems, as one of the areas vulnerable to corruption.

Country Offices of UNDP render assistance to the governments, on a transitional basis, to build up the necessary local capacities at government ministry level to sustain good management of public procurement. The above-mentioned efforts are supported and accompanied by a programme of training courses on transparent public procurement organized by IAPSO, for procurement personnel at UNDP country offices and their government counterparts, both on the national and regional level.

UNDP will also assume a visible role in the forthcoming "African Public Procurement Reform Conference" scheduled 30 November to 4 December 1998 in Abidjan, Ivory Coast. The International Trade Centre, African Development Bank, World Bank and UNDP are jointly holding the Conference to build awareness of the strategic value of public procurement, develop reform plans, and provide means for its sustainability and support.

COMMUNICATION FROM TURKEY

The following communication, dated 28 September 1998, has been received from the Permanent Mission of Turkey with the request that it be circulated to Members.

**GOVERNMENT PROCUREMENT IN TURKEY AND NATIONAL PROCEDURES
AND PRACTICES ON TRANSPARENCY IN GOVERNMENT PROCUREMENT**

I. INFORMATION ON LEGISLATION AND PROCEDURES

The primary legislation on public procurement in Turkey is the "Government Procurement Law" (GPL), Law No. 2886, which entered into force in 1984, altering the old one which had been in effect since 1934.

The Law applies to all types of procurement activities (supply, work and service contracts) of the administrations of general budget, annexed budget, city and town municipalities and other local administrations. Procurement contracts between a supplier/contractor and a contracting authority are executed according to the provisions of this Law.

Utilities which are carried out by either state economic enterprises or some other autonomous administrations are not subject to the provisions of this Law, since these administrations have their own regulations which are not very different from the GPL in many respects.

The GPL not only lays down rules on the selection of contractors and the award of contracts setting out the general principles of good business practice, but also states the conditions of conducting procurement activities, showing the process to be followed, in detail.

The main objectives of the GPL are value for money, efficiency, transparency and non-discrimination. Public procurements are open to all foreign suppliers and there is no restriction on the supplier's nationality or the place of origin. Foreign suppliers have full and non-discriminatory access to procurement information at all stages of the procurement process.

Technical specifications are prepared with the details needed to define the performance criteria rather than design or descriptive characteristics without any reference to a particular trademark or patent, specific origin, producer or supplier.

Contracting entities do not have the discretion of giving preference to domestic suppliers. The GPL permits only the Council of Ministers to do so. According to the Law, if a domestic

preference has to be given, the contracting entity has to obtain permission from the Council of Ministers. The preference margin has to be specified in the bidding documents.

At present, there is no decree in effect giving preference margin to domestic suppliers adopted by the Council of Ministers.

As a general rule, contracting entities have to follow closed and sealed envelope procedures (open tendering) with a prior call for competition. By way of exception, in certain cases specified in the GPL, either restricted or negotiated procedures can be followed.

For each procurement, a contract notice is published with relevant information about the subject-matter of the procurement and bidding procedure.

II. SCOPE OF GOVERNMENT PROCUREMENT

A. PROCURING ENTITIES

Departments of general budget, administrations of annexed budget, local administrations and city and town municipalities are covered by the GPL.

Public entities which are under the coverage of the GPL are shown below.

1. General Budget (including their regional and local sub-divisions)

National Assembly
Presidency of The Republic
Court of Accounts
Constitutional Court
Prime Ministry
State Planning Organization
Undersecretariat of Treasury
Undersecretariat of Foreign Trade
Council of State
Court of Cassation
State Institute of Statistics
Presidency of Religious Affairs
General Directorate of Title Deeds and Cadas
General Directorate of Meteorology
Ministry of Justice
Ministry of Defence
Ministry of Interior
General Directorate of Security
General Command of Gendarmery
Coast Guard Forces
Ministry of Foreign Affairs
Ministry of Finance
Ministry of National Education
Ministry of Public Works and Settlement
Ministry of Health
Ministry of Transportation
Ministry of Agriculture and Rural Affairs
Ministry of Forestry

Ministry of Labor and Social Security
Ministry of Industry and Commerce
Ministry of Energy and Natural Resources
Ministry of Culture
Ministry of Tourism
Ministry of Environment
Undersecretariat of Customs
Undersecretariat of Marine

2. Annexed Budget (Including their Regional and Local Sub-Divisions)

General Directorate of Agriculture Reform
General Directorate of Foundations
General Directorate of Physical Education
General Directorate of Highways
General Directorate of State Hydraulic Works
General Directorate of Coast and Frontier Guard
General Directorate of Forestry
General Directorate of Village Service
General Directorate of Petroleum Affairs
General Directorate of Social Service and Child Protection
General Directorate of Wireless Media
Higher Education Council
State Universities

3. City and Town Municipalities

4. Local Administrations

B. TRANSACTIONS

The scope of the GPL extends to all purchases, sales, services, construction, leasing, exchange, establishment of incorporeal right on property and transportation.

C. ENTITIES WHICH ARE NOT IN THE COVERAGE OF GPL HAVING THEIR OWN REGULATIONS

1. Entities which provide:

- Production, transport and distribution services of electricity.
- Transport by train.
- Services of airports or other terminal facilities by air.
- Telecommunication services.

2. State Economic Enterprise (SEEs)

III. TRANSPARENCY

A. NOTICE OF INVITATION TO TENDER

Regardless of the estimated value of the intended procurement, the procurement must be advertised twice in a daily newspaper in the town or city where bidding is to be held [Article 17(1), Law No. 2886].

The time interval between the first advertisement in the paper and the date of bidding can not be less than ten days and the time interval between the last advertisement and the bidding day can not be less than five days.

On the other hand, for works whose estimated value exceeds the amount to be determined every year by the budget law, in addition to the advertisements in the Article 17(1), the procurement must be advertised in a daily newspaper of major cities at least ten days prior to the date of bidding.

Works whose estimated value exceeds three times the amount of above paragraph will be advertised in the Official Journal at least ten days prior to the date of bidding.

Administrations may advertise these notices also in other papers published domestically or abroad and through other means of publication according to the importance and nature of the work.

In the bidding to be held by way of negotiated procedures the administrations are free to advertise or not to advertise.

Advertisements can be made in foreign countries to ensure sufficient competition for the biddings in which participation of foreign bidders is deemed advantageous by the administrations concerned. Such advertisement is made at least 45 days before the date of the bidding.

B. THE DETAILS THAT MUST BE CONTAINED IN ADVERTISEMENTS

Indicating the following points in advertisements is obligatory:

- (a) Nature, place and amount of the subject-matter of the bidding.
- (b) Where and under what conditions the specification and its enclosures can be obtained.
- (c) The place, date, time and method of procurement.
- (d) Estimated value, if any, and the amount of bid-security.
- (e) The documents that the bidders are required to present.
- (f) In the biddings to be held by submitting bids in sealed and closed envelopes, the deadline and time for submitting the bids.

C. SPECIFICATIONS (TOR)

The specifications and enclosures of any documents, describing all type of specifications of the subject-matter of the bidding, are prepared by the administrations.

In these specifications, in addition to the special and technical conditions to be imposed according to the nature of the procurement, generally the following matters are obligatory to be included:

- (a) The nature, type and quantity of the work.
- (b) The location, boundary, size, section, plot and block number and situation if available. And conditions according to the land registration in selling, leasing, exchanging and creating incorporeal rights on immovables.
- (c) Estimated value, amount and conditions of bid-security and performance security.

- (d) The place of execution of the work, mode and conditions of delivery and receiving of the work.
- (e) The date of commencement and termination of the work, penal interest to be collected in case of delay.
- (f) Qualifications and documents required from the bidders.
- (g) The conditions that the contracting authority shall be free, to award and decide against awarding contract and in determining the suitable price.
- (h) The conditions that the decision of award shall be approved or may be cancelled at the latest within 15 working days from the date of award by the superior authorized to issue payment order.
- (i) The party to pay taxes, duties, charges, and contracting expenses.
- (j) Place and terms of payment and whether an advance payment shall be made; if so conditions and amount thereof.
- (k) Price adjustment clauses in case the variations in the material or unit prices of the works are to be paid.
- (l) The cases and conditions under which extensions may be granted.
- (m) If a premium is to be paid in case of completing the work before its duration, where it is deemed to be advantageous, its conditions and term of payment.
- (n) Mode of settlement of disputes.

IV. REVIEW

Although, there is no independent and specialized Review Body in the GPL, a review procedure is available to all bidders. Bidders may lodge complaints against the application of the procurement procedures and the award of a contract with the procuring entity. If the procuring entity does not accept the complaints, any time, the bidders may lodge appeals according to the general rules.

On the other hand, prior to signing the contract any bidder, company or person who believes that a procurement has been carried out in a manner inconsistent with any provisions of regulations, may file complaint in writing with the Ministry of Finance (that exercises control over the contracting entities' contracting procedures and gives visa to procuring entities to sign contract) or the Court of Account. If the Ministry of Finance or the Court of Account finds any misuse of rules or contracting procedures, etc. during the preparation, execution and conclusion phases of procurement, they may suspend the award of contract.

It is clear that, after the signing the contract, the winner may lodge complaints against the application of the contract with the contracting entity. If the contracting entity does not accept the complaints, the winner may lodge appeals. Also, the procuring entity has a right to go to the court about the application of the contract.

V. METHODS OF PROCUREMENT

Five procurement procedures are applied in Turkey:

1. Closed and Sealed Envelopes Procedure

This procedure is an open tendering method. In this procedure, proposals have to be written and submitted in a closed and sealed envelope.

2. Selective Limited Tendering Procedure

Contracts should be awarded with competition. As it is explained in Article 44 of Law No. 2886, those works such as procurement of aircrafts, warships, war ammunition, military installation and supplies, dams, power stations, harbours, docks, railways, highways, bridges may be procured by employing the method of selective limited tendering procedure. But, in this procedure, at least three bidders must be invited. Also, Article 44 states that, if it is necessary to invite less than three candidates to submit a bid, it is essential to obtain a special permission from the Council of Ministers for this purpose based on the opinion of the Ministry of Finance.

But, in practice, the invitation is not extended to fewer than three bidders.

Under this procedure, proposals have to be written and submitted in a closed and sealed envelope.

Article 2 of Law No. 2886 states that competition is an essential principle. Competition is also an essential principle for the selective limited tendering procedure.

3. Public Tendering Procedure

Those works of which the estimated value does exceed the amount (US\$177,800, February 1998) to be established each year by the budget law, may be procured by employing the method of public tendering. Under this tendering procedure, offers are made verbally by the bidders to the bidding commissions. However, bidders may also submit their offers in writing.

This procedure is a form of open tendering. It is open to all suppliers. The differences between the closed and sealed envelope procedure and public tendering are the amount of works and the type of submission of proposals.

4. Negotiated Procedure

Those works of which the estimated value does not exceed the amount to be established each year by the budget law and also those works explained in Article 51 of GLP may be procured by employing the method of negotiated procedure.

The mode of receiving offers is not limited with a given form in the negotiated procedure. Biddings are concluded by receiving oral or written offers from one or several candidates according to the nature and requirements of the procurement and by reaching an agreement on the price.

The mode of negotiation, what kind of offers have been received and the reasons why the bidder who was awarded the bid has been preferred and explained in the commission's decision.

5. Direct Competition Procedure

Administrations may require all their study, planning and project works and the works related to fine arts to be accomplished by employing competition procedure. A contract may be awarded to the competitor whose project is to be applied through negotiation for the professional supervision related to such works.

In the GPL, also there are some specific procurement modes that are explained below:

1. Procuring entities falling within the scope of the GPL may procure any goods and services from each other by appraising the value after the favourable opinion of the Ministry of Finance.

In this case, production and execution of the goods and services being the subject-matter of the contracts have to be done by the mentioned public entities (in suppliers position), themselves.

2. As is described in Article 81(a) of the GPL, certain construction works up to TL 16 billion (US\$53,731, February 1998) (this value is changed each year by the budget law) and those works explained in Article 81 of the GPL may be procured by the concerned administration and carried out through force account commissions to be composed of the officials of the administration. In this case, the closed and sealed envelope (open tendering) procedure is used.

3. Article 89 of the GPL states that:

- In the cases when it is not possible to enforce the provisions of this Law
- Procurements for the reorganization of the Turkish Armed Forces and Security Department, modernization of their weapons, vehicles and equipment according to the modern technical developments
- For the procurement of the goods and services required to achieve the strategic objectives of the Turkish Armed Forces

the provisions of this Law may be disregarded by the Council of Ministers upon the proposal of the Ministry concerned. The procedures and rules to be employed in such biddings are determined by the concerned administrations and become final after the approval of the Minister concerned.

VI. A SUMMARY OF OBJECTIVES OF GPL, BIDDING DOCUMENTS AND QUALIFYING CONDITIONS

A. OBJECTIVES OF GPL

1. Economy

- Use of Competition
- Most Advantageous Offer
- Procurement Under Most Suitable Conditions and During the Season

2. Efficiency

- Decentralization
- Procurement Process

3. Non-Discrimination

- Open Tender Preferred
- Neutral Objective Specifications
- Rational and Non-discriminatory Qualifications
- Open to Foreign Bidders

4. Transparency

- Clear Rules
- Criteria Stated in Bid Documents
- Advertising

5. Accountability

- Responsible Decision-Makers
- Anti-Corruption Measures
- Control of Major Procurements
- General Guidance to Contracting Agencies

B. STANDARD BIDDING DOCUMENTS CONTAIN PROVISIONS RELATED TO:

- The Scope Of Work To Be Performed Or The Goods To Be Supplied
- Place, Date And Hour Of The Bidding
- Eligibility To Bid
- Method Of Bidding
- Preparation Of Bids
- Deadline For Bid Submission
- Procedure For Bid Opening
- Preparation Of Joint Venture Declaration
- Criteria For Bid Evaluation
- Definition Of Employer/Contractor And Rights And Obligations Of Both Parties
- Procedure For Bid Security And Performance Security
- Procedure For Payment Of The Taxes, Duties, Charges And Expenses
- Starting And Completion Date Of The Work
- Procedure For Measurement, Inspection And Acceptance Of The Work Performed
- Terms Of Payment And Advance Payment

- Price Adjustment Procedure
- Procedure For Variations Of The Work
- Procedure For Damages, Penalties And Delay
- Procedure For Termination Of Contract
- Force Majeure
- Settlement Of Disputes
- Applicable Law

C. MINIMUM QUALIFYING CONDITIONS REGARDING THE CAPABILITY AND CAPACITY OF BIDDERS TO UNDERTAKE THE WORK

- Legal Domicile (Not Necessarily In Turkey)
- Address For Notification (In Turkey)
- Document From Chamber Of Commerce/Industry
 - * Enrolled To The Chamber Of Commerce/Industry, or
 - * Foreign Legal Person Not Having A Branch In Turkey Must Have Documents Approved By The Turkish Consulate In Relevant Country Or By The Turkish Ministry Of Foreign Affairs.
- Signature Circular
- Bid Security (If Required)
- The Bid
- Other Documents
 - * Proof Of The Bidders Financial And Economic Standing
 - * Proof Of The Bidders Technical Knowledge (Tools, Plant, Equipment Etc.)
 - * Tax Payment Certificate
 - * Proof Of The Bidders Past Performance
- In Case Of Joint Venture Associated Undertaking Declaration Signed By The Partners

THRESHOLD VALUES*
(1998)

<u>WITH RESPECT TO</u>	<u>TURKISH LIRA</u>	<u>US\$**</u>
ARTICLE 17/2 OF GPL	12,000,000,000	53,300
(PROCUREMENTS WHOSE ESTIMATED VALUE EXCEEDS THIS AMOUNT ARE ADVERTISED THROUGH NATION-WIDE DAILY NEWSPAPER)		
ARTICLE 17/3 OF GPL	36,000,000,000	159,900
(PROCUREMENTS WHOSE ESTIMATED VALUE EXCEEDS THIS AMOUNT ARE ADVERTISED THROUGH OFFICIAL GAZETTE)		
ARTICLE 45 OF GPL	40,000,000,000	177,800
(PROCUREMENTS WHOSE ESTIMATED VALUE DOES NOT EXCEED THIS AMOUNT CAN BE HELD THROUGH PUBLIC BIDDING PROCEDURE)		
ARTICLE 51/a OF GPL	2,500,000,000	11,100
(PROCUREMENTS WHOSE ESTIMATED VALUE DOES NOT EXCEED THIS AMOUNT CAN BE HELD THROUGH NEGOTIATED PROCEDURE)		
ARTICLE 81/a OF GPL	16,000,000,000	53,731
(CONSTRUCTION WORKS WHOSE ESTIMATED VALUE DOES NOT EXCEED THIS AMOUNT CAN BE DONE THROUGH FORCE ACCOUNT)		
ARTICLE 64 OF GENERAL ACCOUNTING LAW	40,000,000,000	134,327
(ANY COMMITMENT OR DRAFT CONTRACT REQUIRING EXPENDITURE OVER THIS VALUE, GENERAL BUDGET OR ANNEXED BUDGET NEEDS VISA FROM THE MINISTRY OF FINANCE)		

* Threshold values are determined every year by the Budget Law.

** February 1998

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/W/20

24 September 1998

(98-3676)

**Working Group on Transparency
in Government Procurement**

Original: English

TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the United Nations Commission on International Trade Law (UNCITRAL) by means of a communication, dated 16 July 1998.

Communications from other intergovernmental organizations will be circulated as addenda to this document.

The UNCITRAL secretariat provides technical assistance to States preparing legislation based on UNCITRAL legal texts. Such assistance may be provided in various forms, including review of preparatory drafts of legislation from the viewpoint of UNCITRAL legal texts, technical consultancy services and assistance in the preparation of legislation based on UNCITRAL legal texts, preparation of regulations implementing such legislation, comments on reports of law reform commissions as well as briefings for legislators, judges, arbitrators, procurement officials and other users of UNCITRAL legal texts embodied in national legislation. In addition to technical assistance provided directly to the recipient country, the UNCITRAL secretariat may also advise other international organizations that provide law reform assistance in areas related to UNCITRAL work.

The UNCITRAL secretariat has, in one or the other fashion, provided technical assistance to all countries that have enacted legislation based on the UNCITRAL Model Law on Procurement of Goods, Construction and Services, since its adoption in 1994. The countries that to our knowledge have enacted the Model Law are indicated in the latest report of the Secretary-General on the status of UNCITRAL conventions and model laws circulated in document A/CN.9/449.

Under the training and technical assistance programme carried out by the UNCITRAL secretariat, the UNCITRAL secretariat regularly holds seminars and briefing missions primarily in developing countries. The standard programme of UNCITRAL seminars and briefing missions typically envisages some time for discussion of public procurement issues, including the UNCITRAL Model Law on Procurement of Goods, Construction and Services. The latest report of the Secretary-General on the training and technical assistance activities of the UNCITRAL secretariat has been circulated in document A/CN.9/448.

**TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM
OTHER INTERGOVERNMENTAL ORGANIZATIONS**

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the Organisation for Economic Co-operation and Development (OECD) by means of a communication, dated 11 August 1998.

The main source of such assistance within the OECD is **SIGMA** (Support for Improvement in Governance and Management in Central and Eastern European Countries). Most of **SIGMA**'s funding comes from the European Commission's Phare programme, and a substantial proportion of its work is oriented towards the needs of countries in central and eastern Europe, as they make the transition to membership of the European Union. In the procurement field, this includes matching the standards of procurement legislation and administrative procedures achieved by EU members, as well as complying with wider international standards and requirements (such as those of the WTO and the World Bank) relating to government procurement.

Technical assistance projects in the procurement field in which **SIGMA** is currently engaged, or projects that are planned, include the following:

- (a) preparation of new public procurement laws in Bulgaria, Slovenia, Slovakia, Romania and the Former Yugoslav Republic of Macedonia;
- (b) setting up public procurement offices in Lithuania and Romania;
- (c) participation in the work of a procurement advisory committee established by the Government of Latvia;
- (d) developing a training strategy for procurement officials in Hungary;
- (e) advising the Baltic States on how to strengthen their procurement complaints and arbitration procedures;

- (f) providing comparative information on anti-corruption procedures in the procurement area;
- (g) publication of "Public Procurement: A Manual for Central and Eastern Europe" in December 1998;
- (h) a joint project with the International Training Centre of the ILO to prepare a "training of trainers" course in public procurement, based on the EC directives (for completion in December 1998).

Demand from the countries in the region for **SIGMA** assistance in the procurement field is growing as the process of European accession gathers pace.

It may be of interest to note other work that the OECD is conducting on government procurement, even though it does not fall into the category of technical assistance in implementing rules and procedures. The **Development Assistance Committee** (DAC) is reviewing government procurement practices in the context of efforts to untie Official Development Assistance (ODA) to least developed countries. The DAC is looking at the regimes governing bilateral aid procurement, with a particular focus on regimes for tied and untied aid. In addition to general information on the types of aid covered by tied and untied regimes and the locus of procurement responsibility (donor/recipient), the profiles set out information and procedures concerning eligibility, procurement regimes (e.g. international competitive bidding, international shopping, national competitive bidding, direct negotiation), advertising, bidding, evaluation and award, controls and accountability. This work will be completed in the first half of 1999.

Part of this work concerns "helping develop the capacities of the private sector and procurement systems in partner countries". A longer-term objective within this initiative is to identify partner country needs and the donor assistance required to move the responsibility for procurement into the hands of partner countries. This work will investigate the needs and requirements of both donors and recipients related to the further transfer of procurement responsibility to partner countries, including not only capacities to conduct procurement efficiently and effectively, but also in respect of standards for transparency, probity and accountability. The next stage of the discussion of these issues will be held at the meeting of the DAC's Working Party on Financial Aspects on 28-29 October 1998.

The **Trade Directorate** is carrying out research that aims at helping governments have a clearer idea of the size of government markets in OECD economies as well as non-OECD countries and addressing problems of data collection in this area.

The activity has two main objectives:

- (a) Better data on market size will allow countries to assess the potential economic gains deriving from liberal procurement policies. A clearer appreciation of the business opportunities generated by the public sector – at home and in foreign economies – may furthermore help attract broader participation in rule-making at the international level.
 - (b) Moreover, the identification of methodological weaknesses in the context of this research and further work underpinning the development of more rigorous and uniform methods for collecting data on government procurement – which raise complicated and technical issues – can contribute to the more efficient implementation of procurement systems at the national level and to international commitments in this area.
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24 September 1998

(98-3678)

**Working Group on Transparency
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TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

ASIAN DEVELOPMENT BANK

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the Asian Development Bank by means of a communication, dated 20 August 1998.

Please be advised that the following procurement-related Technical Assistance (T.A.) was being implemented or planned for 1998:

- T.A. No. 2802-BHU (Bhutan): Improvement of Regulatory Framework for Procurement and Contracting;
- T.A. No. 2845-PRC (People's Republic of China): Establishment of National Procurement Regulations for the Public Sector;
- T.A. No. 2857-LAO (Laos): Institutional Strengthening of the Procurement Monitoring Office; and
- T.A. No. 3031-MON (Mongolia): Development of Procurement Legislation and Guidelines.

The brief description of the above T.A. can be accessed through the Internet <http://www.asiandevbank.org/law/menlaw.html>, section "Law and Development Bulletin", subsection "Projects by Country" or "Projects by Subject".

In addition, the following Bank activities are relevant to procurement:

- updating of the Bank's Guidelines for Procurement, expected to be approved within this year; and
- the Bank's Anticorruption Policy, approved in July 1998.

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TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

AFRICAN DEVELOPMENT BANK AND INTERNATIONAL MONETARY FUND

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the African Development Bank by means of a communication, dated 21 August 1998.

The Secretariat has been informed by the International Monetary Fund (IMF) by means of a communication, dated 27 August 1998, that the IMF is working on fiscal transparency and is advocating transparency in government procurement. However, the IMF does not have any work programme directly related to government procurement.

The African Development Bank intervenes in its regional member countries through providing loans and grants primarily in the public sector. The Bank in its activities applies its rules of procurement, which are devised to guarantee equity and transparency of the procurement activities. Transparency is an important principle in the Bank's procurement rules.

By its mandate, the Bank must monitor and supervise all procurement activities under its financing. The monitoring process is carried out through the following activities:

- (a) Procurement and Disbursement Workshop for the staff of the government who are directly involved in project implementation such as project implementation units and to the staff of the supervising line ministries. These workshops are conducted at least once every two years in the Bank's borrowing countries.
- (b) Launching missions for the start-up of projects are designed to train project implementation units on the processing of procurement activities.

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- (c) Internally in the Bank, there is a Procurement Review Committee, which is an independent body entrusted with handling complaints and issues of unfairness. This Committee provides a forum to the bidders to address their grievances in an independent and transparent manner.
 - (d) The ADB Procurement Rules contain clauses which deal with the issues of transparency and corruption during the procurement process as well as how bidders can file their grievances against unfairness. Bidders are free to send copies of their communications on issues and questions with the Borrower to the Bank or to write to the Bank directly, when Borrowers do not respond promptly, or the communication is a complaint against the Borrower.
 - (e) Finally, the Bank will organize, in Abidjan, during the period 30 November - 4 December 1998, a continent-wide conference on public procurement. Most of the 53 regional (African) member countries will be represented in the conference at the policy and the operational levels. The International Trade Center, the World Bank, UNDP and the African Development Bank sponsor the conference.
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TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

APEC GOVERNMENT PROCUREMENT EXPERTS GROUP (APEC/GPEG)

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the chair of the APEC Government Procurement Experts Group by means of a communication, dated 31 August 1998.

The APEC Government Procurement Experts Group (GPEG) was established in 1995 to consider ways to increase transparency of, and liberalize, government procurement markets in accordance with the Osaka Action Agenda adopted by APEC Economic Leaders in 1995.

In respect of technical cooperation, the work of the GPEG has so far focused on two aspects: information exchange and educational events.

On information exchange, the GPEG has completed questionnaire surveys on member economies' existing government procurement systems and publication arrangements for government procurement information. Members' returns to these surveys have been put on the APEC GP Homepage (website: <http://www.apecsec.org.sg/gphome.html>) for free and easy access by interested parties. These returns will be updated by Members annually. Moreover, contact points have been established to facilitate ongoing exchange of information.

On educational events, the GPEG is committed to hold workshops, seminars and training courses to enhance members' understanding of government procurement systems and international agreements and to provide a foundation for future work, with a view to achieving the long-term goal of liberalization of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration by APEC Economic Leaders in 1994.

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TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

In consequence, the Secretariat wrote to relevant international and regional intergovernmental organizations requesting them to provide such information. The present document reproduces the information which has been received in response from the European Bank for Reconstruction and Development (EBRD) by means of a communication, dated 2 September 1998.

The EBRD takes a strong interest in the development of national public procurement legislation and the related institution-building activities in its countries of operations based on the public sector procurement models of WTO/GPA and the European Directives. The standard of a country's national public procurement legislation may under certain circumstances become an essential factor in determining the basis of its clients to undertake procurement under Bank-financed operations by applying national procurement procedures instead of the Bank's procurement rules and procedures. The Bank reviews regularly with its clients their laws, regulations and procedures in order to determine their consistency with the principles of the GPA and general acceptability to the Bank.

However, the Bank has not funded any technical cooperation grant-funded projects whose purpose has been solely to assist the governments of our countries of operations to develop and implement modern public procurement legislation, institutions and systems. Whilst it strongly advocates including a transfer of know-how component in the consultants' Terms of Reference wherever appropriate, the Bank's efforts focus primarily on the quality of procurement under the specific projects it finances as opposed to its significance from a general institutional perspective. The Bank's assistance to its clients in public sector procurement under its projects includes training of staff responsible for project implementation.

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TECHNICAL COOPERATION ACTIVITIES: INFORMATION FROM OTHER INTERGOVERNMENTAL ORGANIZATIONS

UNCTAD/WTO INTERNATIONAL TRADE CENTRE

Addendum

At its meeting of 22 June 1998, the Working Group agreed to request the Secretariat to provide information on the technical cooperation programmes of international and regional intergovernmental organizations in the area of government procurement, so as to enable the Group to have as complete a picture as possible of the availability of technical assistance in this field.

The present document reproduces the information which has been received from the UNCTAD/WTO International Trade Centre and circulated in Job No. 667 on 5 February 1998.

Mission and background

ITC is the focal point institution in the UN system for providing technical cooperation in export promotion and trade development to developing countries and economies in transition. ITC's programme of assistance in international purchasing and supply management (earlier named import operations and techniques) is focused on making systems for the purchase of goods and services to meet the needs of a country more cost-effective. One of the major areas of work of this programme is public procurement.

Since 1979, ITC assistance projects covering public procurement have emphasized approaches that countries could use to reduce their import expenditures to achieve more positive international trade balances. ITC expertise has been instrumental in designing and implementing projects funded by major multilateral and bilateral donors such as UNDP, the Swedish International Development Agency, the Government of Switzerland and others. Some of the countries benefiting from this early approach to improve import operations were Angola, Burundi, Djibouti, Egypt, Ethiopia, Ghana, Haiti, Mozambique, Niger, Rwanda, countries in the South Pacific, Sudan, Tanzania and Tunisia.

To support these projects - and also to extend technical cooperation where such projects did not exist - ITC has developed a series of technical and training materials addressing various aspects of procurement and materials management. These are available mostly free of charge to developing countries and economies in transition. The materials developed to date include 24 practical guides, 19 case studies and exercises, 12 manuals and directories, a complete three-level commercial English course for importers, eight import management video packs and two computer-based import simulation exercises. ITC also collaborated with the World Bank and the International Labor

Organization in the preparation of an early guide to International Procurement and a recent series of handbooks for public procurement training.

ITC is committed to providing advice and assistance to countries seeking to improve their public procurement systems. However, the traditional "case by case" method of providing procurement advice through tailored assistance missions and projects has had a relatively high cost due to the independent analyses needed for each new project. To try to meet the challenge of delivering high quality procurement assistance in a targeted and sustainable manner, ITC is changing its past practice. Recent efforts of ITC have incorporated new strategic priorities and approaches for cooperation with partner countries. The new approach involves developing a set of universal tools and related services to build and operate national capacities for providing procurement training, consultancy and information support to purchasing organizations. This more integrated approach will significantly enhance the response time and cost-effectiveness of ITC's assistance in procurement and supply management operations. It will be centred around materials currently being developed by ITC. Some of these have been jointly developed with the United Kingdom's Chartered Institute of Purchasing and Supply. These include:

- *The Diagnostic Tools* will be used in assessing capacities and diagnosing problems in the procurement process at individual organisations. Separate versions of the diagnostic tools will focus on the needs of small and medium enterprises and of public sector procurement agencies. Collective requirements diagnosed in this manner will enable ITC and local organizations to design highly specific technical assistance programmes to meet identified needs through training, consultancy and information support. It will also be possible to later measure the effectiveness of these programmes.
- *The Modular Learning System* is being developed as the foundation of all future ITC efforts to build up training capacities in its partner countries covering all stages of the purchasing and supply process. Separate versions will exist for use by SMEs and public sector procurement agencies. It will be used for implementing either group-based training or individual open learning, and will include optional information technology support. The modular learning system will eventually integrate the full range of ITC's numerous technical materials and training aids relating to procurement. These will be made available through regular ITC dissemination channels, including through the Internet.
- *The Compendium Of Public Procurement Systems* will use existing data to provide a comparative reference on the scope of the public procurement system in a country. The information will be arranged by phase of the procurement process, as defined in the diagnostics and learning tools, for analysis and training purposes. The information in the compendium will provide a benchmark against which a country will be able to compare its procedures to those of other countries (e.g., solicitation methods or contract management approaches). The information will be submitted for review to the concerned countries in the first quarter of 1998. The survey should be completed in the third quarter of 1998. The compendium will be updated as necessary by individual countries but ITC will resurvey periodically to keep the information current.
- *Special materials for Purchasing and Supply Management Associations (PSMAs)*. The PSMAs play a key role in efforts at the national level to upgrade the competencies, recognition and effectiveness of professionals responsible for managing purchasing and supply operations. During 1996, ITC produced a handbook for the establishment and operation of PSMAs. In collaboration with the International Federation of Purchasing and Materials Management (IFPMM), ITC is developing a worldwide PSMAs directory to facilitate the growth of PSMAs. Direct assistance has been provided to PSMAs in

Hungary, Poland, Romania, Tanzania, Tunisia and Uganda, mainly through national and regional projects.

Specific projects undertaken

ITC has substantially increased its assistance efforts aimed at reforming public procurement systems and supporting national public procurement policy-making institutions. This assistance is being provided through various projects - and usually involves the development of national procurement guidelines, standard procurement documents and other procurement system elements, aimed at enhancing the implementation of new national procurement legislation. Training of public procurement staff in the application of these guidelines and documents is often a key component of these projects, financed in various cases through World Bank grants to the countries concerned (e.g., Albania, Kyrgyz Republic and Slovak Republic). Assistance in public procurement reform and/or capacity development has also been provided to Belarus, Brazil, Namibia, Uganda, Ukraine, Viet Nam and Zambia.

COMMUNICATION FROM MOROCCO

The following communication, dated 5 June 1998, has been received from the Permanent Mission of the Kingdom of Morocco with the request that it be circulated to Members.

Transparency in Government Procurement in Morocco

Introduction

The Kingdom of Morocco's government procurement regulations have been regularly adapted to reflect the numerous changes which have taken place in this field.

These various reforms have all had the same purpose, namely to enable the Government to control public expenditure by strengthening its management capabilities, giving the managers a greater sense of responsibility and clarifying relations with the business community.

At present, government procurement is regulated by Decree No. 2-79-439 of 14 October 1976¹ on construction, supply and services contracts awarded by the State, as well as by other laws and regulations.

These instruments make it possible to guarantee transparency in the preparation and award of public contracts through a range of measures such as the definition of requirements, publicization in the press, the submission of sealed bids, the opening of bids in public or private, according to the circumstances, and the evaluation of the bids by interdepartmental commissions.

I. TRANSPARENCY AND THE PREPARATION AND AWARD OF PUBLIC CONTRACTS

The public contract preparation and award phase is the key to the entire procurement procedure. In fact, at this level, the transparency and simplicity of the procedures are such as to ensure that the needs of the procuring entity are met, that potential bidders are well informed and, finally, that all things considered the best possible bid is chosen.

1. The definition of requirements and the transparency of the procurement process

The Decree of 14 October 1976 encourages managers accurately to define their requirements, in terms of quality and quantity, before soliciting bids. For the legislator, it is a question of ensuring

¹Official Journal No. 3339 of 27 October 1976, p. 1140.

that, on the one hand, the managers are in control of the procurement process and, on the other, that the contract is based on clear proposals and well-defined needs. This concern for transparency is illustrated by Article 2.1 of the above-mentioned decree which states that "services which form the subject of contracts must correspond, exclusively, to the nature and extent of the requirements to be met. The department concerned must determine, as precisely as possible, the specifications and the content of these services before any soliciting of bids or negotiation".

2. Transparency of the bid solicitation procedures

Where the award of public contracts is concerned, competition means ensuring that all the bidders are treated fairly.

Moreover, the free play of competition makes possible a better allocation of public resources and a good quality/price ratio.

The bid solicitation procedures adopted in the Decree of 14 October 1976 are of several kinds, depending on the nature of the goods or services and the circumstances in which they are provided. In this connection, a distinction is made between open and restricted procedures.

The open procedures (open adjudication, open tender and open competition) allow anyone to participate and bid.

Under the restricted procedures (restricted adjudication, restricted tender and restricted competition), only those whom the administration decides to consult, and whom it considers to be alone capable of meeting its needs because of the technicality or complexity of the specifications, receive circular letters inviting them to bid. However, these restricted procedures are exceptional and limited by the Decree of 14 October 1976 to specific cases and ceilings which may not be exceeded.

In addition to these procedures, public contracts may be awarded by direct negotiation. This allows the administration, in specified cases, freely to choose the supplier with whom it intends to negotiate the allocation of a contract. Direct negotiation may be used, *inter alia*, to contract for services declared to be secret or matters of public security, for objects which may be manufactured only by patent holders, and in cases of extreme urgency justified by unforeseen circumstances. It should be noted that even in the case of direct negotiation the administration is invited to encourage competition, to the extent possible and by all appropriate means, among the qualified candidates.

3. Publication of tender notices

Genuine competition in government procurement inevitably involves publicization. Thus, to ensure that the invitation to tender is widely circulated and the candidates are well informed, the Decree of 14 October 1976 establishes time-limits and procedures for publicizing the tender notice.

As far as the media used for publicization purposes are concerned, the Decree requires the procuring entity to publish the tender in two newspapers. In the case of restricted bidding, the procuring entity must notify by circular letter the bidders it decides to consult on the basis of their financial standing, human resources and technical competence.

Moreover, whether the bidding is open or restricted, the contents of the notice should be such as to ensure that the bidders are well informed. Thus, the notice should indicate the precise subject of the contract, the administrative and technical documents to be produced by participating bidders, the deadline for the receipt of proposals, and the date for bid opening and evaluation. Time-limits are also imposed on the procuring entity as regards the insertion of the solicitation notice (at least 15 days before the deadline for the receipt of proposals).

4. Bid acceptance and evaluation

The regulations take into account the principle of transparency with respect to the receipt and evaluation of bids through the guarantees they offer the participating bidders.

Thus, the bid or proposal of each bidder must be enclosed in a sealed envelope bearing the name of the bidder and the contract and, where appropriate, that of the lot concerned.

This envelope is accompanied by a second envelope, also sealed, containing the documents required and indicating the date of the tender, the subject of the contract and, in particular, a warning that the envelope should only be opened by the chairman of the commission at bid opening.

The envelopes are either sent through the post or delivered, with acknowledgement of receipt, to the offices of the procuring entity. The envelopes must remain sealed up to the date and hour fixed for bid opening and evaluation and any bid reaching the procuring entity after the expiration of these time-limits will not be accepted.

Whichever method is employed (adjudication, tender or competition), the bids are generally evaluated in public by an interdepartmental commission under conditions which guarantee transparency for the bidders.

It is important to begin by noting the representative membership of this commission which is chaired by the procuring entity. The other members consist of two representatives of the procuring entity's services, a representative of the Ministry of Finance and representatives, as appropriate, of the Ministry of Trade for supply contracts and the Ministry of Public Works for construction contracts. The chairman may employ experts or specialists to advise the commission on the evaluation of the bids.

With respect to the examination and evaluation of the bids, to achieve greater transparency the Decree of 14 October 1976 on government procurement requires the commission to combine several evaluation criteria. Thus, except in the case of adjudication, which is no longer much used and where the only criterion is the lowest bid, in selecting the bid most advantageous for the procuring entity the commission must take into account the evaluation criteria in the solicitation documents, such as the price of the goods, the cost of using them, their technical merit, the professional and financial guarantees offered by each of the bidders and, where appropriate, the proposed completion date and other considerations for which the specific articles and conditions may provide.

In addition, for clarification purposes and to achieve greater transparency, the commission may hear the bidders in order to obtain any necessary explanations concerning their proposals. In the event of several bids being considered generally equivalent, the commission is also empowered to propose that the procuring entity call for new bids.

Finally, as soon as it has made its choice, the commission must inform the other bidders of the rejection of their bids and return the accompanying documents, though not the bids themselves.

At the end of the proceeding, the commission must draw up a report which includes, where appropriate, the comments or objections of the bidders and indicates the reasons for eliminating those who were unsuccessful.

The observance of this set of rules designed to ensure transparency in the awarding of public contracts is the responsibility of the supervisory bodies which intervene either before or after the order forming the subject of the public contract has been filled.

II. SUPERVISION OF GOVERNMENT PROCUREMENT: GUARANTOR OF TRANSPARENCY

The supervision of public expenditure, particularly procurement, is the responsibility of bodies which mainly ensure that public contracts are properly awarded and executed, without neglecting to oversee the management of the public services as a whole.

Thus, the preliminary checks made by Control of Obligations² (CED) ensure that public contracts are properly awarded, and in particular that the procuring entity respects the rules of government procurement and that the expenditure is properly budgeted.

In this respect, Article 11 of the Decree of 30 December 1975 on the CED requires supervisors to check that obligations are covered by an available credit, are consistent with the budget line against which they are to be charged, have been properly evaluated and comply with the laws and regulations.

Thus, the principal purpose of these preliminary controls is preventive, namely to protect the interests of government contractors who are assured that the credits available are sufficient for the State to honour its obligations. A further aim of these controls is to ensure that the contract is balanced and consistent with the texts governing the execution of public contracts.

The preliminary controls are linked with another body of regulations governing the execution of public contracts. *Post facto* controls are applied by the Court of Auditors which has legal powers to oversee the management of the public purse.

There are two aspects to these controls: control of budgetary discipline, which involves verifying the regularity of the financial management of civil servants and officials, and management supervision, which involves assessing the performance of the government services, particularly those responsible for administering government procurement.

III. DISPUTE SETTLEMENT AND REVIEW PROCEDURES

In order to ensure transparency in the relations between the enterprise and the procuring entity with respect to contract performance, the general administrative conditions clearly establish the rights and obligations of each of the parties.

Thus, these regulations specify the relations that must be established at the time of execution of the contract between the procuring entity and the other contracting party, in connection with the monitoring of the works, supplies or services, the administrative orders to be notified to the enterprise, the procedures for granting advances and paying expenses, possible variations, provisional and final acceptance of the works, etc.

Thus, the general administrative conditions define the sanctions to be taken against the supplier in the event of default or non-performance, without neglecting the right of review offered to the latter. In the event of a difference between the procuring entity and the contractor, there is a possibility of hierarchical appeal to the Minister concerned or of administrative appeal. Finally, if the dispute cannot be settled, the parties may have recourse to the administrative courts.

In this way, the Kingdom of Morocco accords great importance to the clarification of public contract awards and implementation procedures. However, the regulations have a number of defects.

²Decree No. 2-75-839 of 30 December 1975 on the Control of State Obligations.

To remedy these, in the last few years, a reform of the government procurement code has been undertaken and a draft decree is in the course of being promulgated.

IV. REFORM OF THE GOVERNMENT PROCUREMENT CODE

The draft Decree on government procurement in the course of being promulgated constitutes a considerable advance towards greater transparency and sounder management of government procurement.

The objectives of the reforms are as follows:

- To improve the rules of free competition and to extend their scope;
 - to introduce mechanisms that guarantee transparency in the preparation, award and performance of public contracts and the simplification of procedures;
 - to strengthen the rules of administrative ethics and to clean up procurement at both government and enterprise levels;
 - to create favourable conditions for the fulfilment of the international commitments undertaken by Morocco.
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WORLD TRADE ORGANIZATION

RESTRICTED
WT/WGTGP/W/17
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**Working Group on Transparency
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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 18 May 1998, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to Members.

ENSURING THAT TRANSPARENCY IN PROCUREMENT POLICIES AND PRACTICES IS ACHIEVED

This contribution considers only what elements are required to ensure that transparency in procurement policies and practices is achieved. As such it does not consider more horizontal issues which would need to be addressed in developing a WTO transparency agreement, such as definition and scope, exchange of information between governments or technical assistance.

Transparency means ensuring that information on procurement rules, practices and opportunities are made widely available in an easily usable form to all interested parties (and particularly potential suppliers), as well as ensuring the right of access to that information. Furthermore, procurement policies and practices should be seen to be transparent and information provided should be respected. In addition, transparency can be a useful tool to encourage open and competitive procurement regimes, thereby helping both purchasers and suppliers to achieve economic benefits.

The following points have been raised to date as requiring consideration in relation to this:

1. Choice of procurement method

The method of procurement used should not undermine the principles and objectives of a transparency agreement to encourage open and competitive regimes. Any provision relating to procurement methods should be sufficiently flexible to accommodate the diversity of different procurement methods used, and should allow for the possibility of using methods which are not based on tendering.¹

¹ Whilst the methods used by WTO Members - at least for larger value contracts - mostly seem to be based on the principle of tendering (open, selective, limited), they are not necessarily limited to this (e.g. purchase cards, electronic catalogues).

The use of methods which, from the outset, severely restrict competition (e.g. single-source procurement) should only be used in justified and exceptional cases. An illustrative list of such exceptional cases should be developed. This should be based on existing widely-found practices including, but not necessarily limited to, the following:

- reasons of extreme urgency brought about by circumstances unforeseeable by the procuring entity;
- national security reasons;
- in procurements involving the protection of patents, copyrights or other exclusive rights; or
- in the absence of responsive bids under methods which do not severely restrict competition.

2. Providing information on national legislation and procedures

It is essential that all interested parties know in advance what the domestic procurement rules are, what procurement opportunities they can expect to be open to them and the general environment in which they are expected to operate. Therefore, laws, regulations, policy guidance and administrative procedures should be readily and easily accessible in a usable form to all interested parties, including potential foreign suppliers. This information should be provided at no more than cost. The medium through which this information is provided (e.g. publication in a Gazette, or in electronic format) should be left to the discretion of Members.

It would be desirable if interested parties were to know either where to go to locate this information, or who to ask. A requirement to notify either the source of this information and/or to establish and notify an enquiry point (which could take the form of an Internet Website) should be considered.

3. Publication of procurement opportunities and procedural requirements

Procurement opportunities and procedural requirements relating to those opportunities should be made known and be generally available through an accessible source.

The source used should be left to the discretion of WTO Members, but its level of availability should be proportionate to the likely level of interest in the procurement. In other words, where a procurement opportunity is likely to attract international interest, procurement opportunities should be published through a source which potential foreign suppliers and service providers have access to, as opposed, for example, to posting a notice in a town hall.

Interested parties should know what the source is and have access to it.

Electronic publication should be used where feasible and taking into account the level of development of individual WTO Members. Electronic publication offers significant benefits in terms of both time and cost, and (based on current trends) will be used increasingly in the coming years. However, at the present time, not all WTO Members have the capability to make use of electronic means of procurement, neither do all suppliers. Some flexibility will therefore be needed. Nevertheless, it seems safe to assume that potential suppliers to those Members who use electronic publication are likely to have access to the Internet. To enable WTO Members to meet such a requirement, suitable technical assistance should be provided.

Exceptions to the obligation to publish procurement opportunities (e.g. to take account of limited tendering in the case of the EC) should only be permitted in exceptional and justified cases. These circumstances should be the same as those set out for the use of procurement methods which severely restrict competition.

3.1 What information should be provided?

All information required for potential suppliers to assess their interest in a procurement opportunity or a registration/qualification system, and to prepare a responsive offer should be made available. This includes both information pertaining to the supplier and information pertaining to the goods/services to be procured. Members should be able to decide whether this is done just through the use of tender notices, or whether the bulk of information is contained in the tender documentation or by other means.

Where procurement takes place by means of tendering, this general principle could usefully be further elaborated through the development of an illustrative list of the sort of information which must be provided including, but not necessarily limited to the following:

- full contact details of the procuring entity, as well as coordinates of a contact point from which additional information may be requested, the final date for making such requests and, if applicable, the cost of such information;
- an identifiable description of the goods and/or services to be provided, together with their quantity or an indication of their extent;
- the place of delivery, site or place of performance of the service and, if applicable, the time-limit for delivery, completion or duration of the contract;
- any requirements relating to the supplier or service provider, for example economic or qualification requirements;
- any technical requirements;
- the criteria for the award of the contract; and
- the final date for the receipt of bids or requests to participate, the address to which this must be sent and details of any language requirements in this respect.

3.2 Time-limits

Sufficient time should be allowed for the preparation, submission and receipt of responsive bids to individual procurement opportunities. Any time-limits which are set should not undermine the principles and objectives of a transparency agreement. They should be determined with due consideration to the particular circumstances of the procurement (including the likely level of interest) as well as the complexity of the procurement.

4. Transparency of decision-making

Decisions on supplier qualification and contract award should be taken only on the basis of criteria (including in relation to technical specifications) which have been made known in advance. Where procurement is carried by means of tendering, this information should be made known through either the tender notice or the tender documentation. A transparency agreement would not, as a general rule, set out what those criteria should be. Nevertheless, as far as technical specifications are

concerned, transparency is increased if these are defined in accordance with international standards where these exist.

In addition, a public announcement about the contract awarded is essential to provide bidders with the opportunity to assess whether the procurement rules and practices have indeed been followed. It is also of interest to industry generally (as potential future bidders) and to governments which will want to see the transparency agreement working in practice. The means by which this is done should be a matter of choice for individual WTO Members, but it should be known to interested parties.

It would also be desirable if unsuccessful bidders were provided with information, when they themselves request it, as to why their bid was rejected and/or the winning bid was chosen. This is an important guarantee of transparency, particularly in circumstances where limited information on the contract awarded is provided.

It is, however, important that the issue of safeguarding confidential information is taken into account. Procuring entities should not be obliged to provide confidential information which would prejudice the legitimate commercial interests of particular enterprises (whether public or private).

5. Domestic review

It is not sufficient that rules are introduced to ensure transparency in government procurement practices. There must also be a domestic mechanism to introduce accountability into the process and to ensure that the rules are respected by everyone involved in the process. This mechanism should itself be transparent and provide a guarantee of independence.

This can be achieved through the combination of a variety of means:

- procuring entities should be required to maintain a proper record of proceedings;
- at their request, unsuccessful suppliers should be informed of the outcome of their bids and debriefed. Individual WTO Members should be able to choose how to do this, but interested parties should know what the method is;
- WTO Members should be required to provide a transparent, fair and independent procedure for the review of complaints which should be available to all potential suppliers, including foreign suppliers. The choice of procedure should be left to individual WTO Members. It should result in a published and reasoned conclusion.

6. Language

WT/WGTGP/W/6 shows that documents and other information relating to tendering proceedings are generally provided in the official language(s) of the country of the procuring entity. As a rule, documents and other information relating to procurement procedures and individual procurements should be allowed to be provided to potential suppliers and service providers in an official language of the country of the procuring entity. In general, potential suppliers wishing to do business in another country will have the necessary language facilities available. There should not be a specific requirement to provide such information in a WTO language. Nevertheless, procuring entities could be encouraged to provide information in a WTO language where a particular procurement opportunity is likely to attract international interest.

The issue of notification requirements to other governments and the WTO should be considered separately.

7. Use of information technology

A transparency agreement should provide for the possibility of using IT tools to disseminate information as an alternative to more traditional methods of communication. It is particularly useful for the dissemination of information about procurement opportunities and contracts awarded. Indeed, as mentioned in section 4 above, electronic means of disseminating information about procurement opportunities should be used wherever this is feasible. However, where they are used, IT tools should not undermine the basic principle of guaranteeing access to information.

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/W/18
25 May 1998

(98-2142)

**Working Group on Transparency
in Government Procurement**

Original: English

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 18 May 1998, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to Members.

TECHNICAL ASSISTANCE

Technical assistance is an important element to ensuring the success of a future transparency agreement. It can and should play a role in helping WTO Members (present and future) to implement the agreement, in developing domestic regimes and in taking further practical steps to enhance transparency of procurement policies and practices.

The European Community has an extensive range of technical assistance and cooperation programmes with third countries which have been developed together with the beneficiary countries to meet their individual needs and priorities. The EC wishes to contribute to the debate within the Working Group on Transparency in Government Procurement by drawing on its own experience of technical assistance programmes to provide a brief overview of why, and in what forms the EC provides, or could foresee, technical assistance in areas which might be of interest to the Working Group.

The reasons the EC provides technical assistance in areas related to government procurement include, but are not limited to:

- the creation of modern and effective public administrations;
- the promotion of good governance and the rule of law;
- helping to achieve best value for money in government purchasing and use of taxpayers' money in this regard;
- assisting in the fight against corruption;
- enabling benefits to be gained from technological advances, particularly in the field of information and communication technology; and
- to facilitate the implementation of agreements and cooperation programmes to which the EC is a Party.

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What forms could technical assistance take?

- economic and policy option analysis, legal advice and assistance in drafting laws, administrative and/or policy guidance;
- training, such as practical training for those who have to implement, use or enforce new legislation, procedures and/or practices, training the judiciary, and training local trainers who will continue training programmes in, for example, business schools or colleges of public administration in the beneficiary country;
- administrative cooperation to enhance institution building and the exchange of information. For example, the EC has a programme providing for the exchange of officials between the EC and the beneficiary country for short periods of up to six months;
- workshops, seminars and the production of user guides, including the development of Internet Websites, search engines and databases, to help provide information about opportunities to do business with governments at home and abroad, and to facilitate access to that information. Such assistance can be of particular benefit to small- and medium-sized enterprises, increasing their confidence and effectiveness in successfully entering procurement markets at home and abroad;
- taking practical steps to make procurement more user-friendly by developing standard forms for tender notices and fill-in-the-blank bid forms, as well as developing a common procurement vocabulary;
- the development of IT tools which can be used to disseminate information about procurement opportunities and practices, and/or to establish full electronic tendering, as well as to facilitate the collection of relevant economic data and statistics;
- the provision of office, IT and/or other equipment necessary for the implementation and enforcement of legislation, procedures and/or practices.

Concluding remarks

The EC fully supports the inclusion of a provision on technical assistance in any future transparency agreement and would advocate the use of language which mirrors that of Article 67 of the TRIPS Agreement. The EC is prepared to consider positively any additional suggestions which might be made in this field.

WORLD TRADE ORGANIZATION

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(98-0627)

**Working Group on Transparency
in Government Procurement**

Original: English

INFORMATION ON PROCEDURES AND PRACTICES ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

Communication from Australia

The following communication, dated 17 February 1998, was received from the Permanent Mission of Australia with the request that it be circulated to Members.

Introduction

1. This note is intended as a contribution to the study phase of the Working Group on Transparency in Government Procurement of the World Trade Organization (WTO). It outlines the procedures and practices of the Australian Commonwealth Government relating to transparency in government procurement, incorporating new simplified purchasing arrangements announced by the Australian Government on 11 December 1997.

2. Australia is a federation. In addition to the National or Commonwealth Government, there are six State Governments and two Commonwealth Territory Governments. Each of these has its own procurement legislation, policies and procedures. The third tier of government is local government.

3. There is no national regulation of procurement by subnational governments and their agencies. However, the Commonwealth, State and Territory Governments and the New Zealand Government are parties to a Government Procurement Agreement (GPA) which commits them to:

- remove discrimination among themselves in government procurement; and
- work in a coordinated way to improve procurement practices and procedures and to introduce greater uniformity across jurisdictions.

Basic principles

4. The Government reaffirmed in December 1997 that value for money, open and effective competition and ethics and fair dealing will remain the guiding and fundamental principles for government buyers.

- Value for money. Commonwealth procurement practices and procedures are directed towards achieving the best available value for money in the acquisition of goods and services for government programmes. The test for the best available value for money is a comparative evaluation of all relevant costs and benefits over the whole life of the goods or service being considered. Buyers will not necessarily obtain the best value of money by accepting the lowest priced offer that meets all mandatory criteria.

- Open and effective competition. This is a central operating principle of Commonwealth procurement, permitting a range of procurement methods. It demands transparency in the procurement process and ease of entry for new and small suppliers.
- Ethics and fair dealing. The Government requires that agencies and individuals conduct activities in a fair and reasonable manner and with integrity.

5. The Commonwealth Government expects its agencies to reflect its wider policies in the way they do business. For example, when acquiring office accommodation and fitting it out with furniture and equipment, agencies need to ensure that they observe government policy and best practice on occupational health and safety. Policies to be supported through government procurement include environmental policy, heritage policy, creation of opportunities for Aboriginal and Torres Strait Islander people, elimination of discrimination against women in private sector employment, and foreign policy (e.g. maintenance of any UN sanctions).

National legislation and procedures

6. Australia does not apply any preference margins, set-asides or offsets requirements with respect to Commonwealth Government procurement.

7. In the Commonwealth Government, the management of procurement is substantially decentralized with each agency being responsible for its own procurement within a centrally-prescribed framework of procurement policy and advisory guidance on best practices and techniques. The policy framework is set out in the *Commonwealth Procurement Guidelines*, which are issued by the Minister for Finance and Administration.

8. Commonwealth departments and agencies bound by the *Financial Management and Accountability Act 1997* and its Regulations are to operate in accordance with the policies and best practices as set out in the Guidelines. The Guidelines can be viewed and down-loaded free over the Internet at <http://www.pa.gov.au>.

Evaluation criteria

9. The Commonwealth Procurement Guidelines direct that the evaluation criteria for any particular procurement should clearly identify the relative importance of all relevant factors, and provide a sound basis for a procurement decision. Agencies should evaluate each offer applying only the evaluation criteria and methodology notified to bidders in the request for tender documentation.

Common use arrangements

10. Strategic Common Use Arrangements (CUAs) will be introduced for goods and services that are fundamental to Commonwealth operations and offer potential significant savings for the Government. The use of these arrangements will be mandated for the term of the arrangement, with the agreement of relevant portfolios, or where the Minister for Finance and Administration, following consultation, concludes that the interests of the Commonwealth are best served by such an arrangement.

11. In key industry segments that are not covered by strategic CUAs, but in which the Government is a major purchaser, or there is a risk of market failure, a pre-qualification scheme for suppliers is being developed by the Department of Finance and Administration. These schemes will help agencies manage risk in their procurement activities and give greater confidence in selecting suppliers that conform to minimum quality, service delivery and performance standards.

12. Although participation in the scheme will not guarantee business for suppliers, it should reduce red tape and the costs of tendering for business by eliminating the need for suppliers to respond to requests from agencies for basic information on each occasion that they tender. This pre-qualification scheme is open to foreign suppliers.

Public announcement of procurement opportunities

13. There is no financial threshold for advertisement of procurement opportunities. As conditions vary, the agency responsible must consider each case on its merits.

14. All Commonwealth agencies must use the *Purchasing and Disposals Gazette* to advertise all publicly available opportunities to do business with the Government, including, but not limited to, invitations to bid, express interest, qualify as approved suppliers, offer proposals or the like. The *Purchasing and Disposals Gazette* is published weekly on *Telstra Transigo* (<http://www.transigs.net.au>). Hard copies can be obtained by telephoning the Transigo Customer Assistance Centre on +61 6250 1355.

15. Agencies may also advertise opportunities in other media.

16. Publicly available procurement opportunities must be notified consistently in ways that provide bidders with reasonable opportunity to meet any pre-qualification requirements for participation in government business, and to bid against particular requirements.

17. Gazettal of opportunities is not required wherever the decision is to confine an approach, for example, a sole source, a limited field of suppliers or to a list of suppliers established following a publicly notified selection process.

18. Commonwealth agencies must publicly notify in the *Purchasing and Disposals Gazette* details of any contract arranged for supplies to be processed or used in Australia where the total estimated liability is \$A 2,000 or more. Agency Heads may decide to exempt notification under the Freedom of Information Act (1982).

Complaint/appeal procedures

19. As a first step, suppliers that complain about procurement processes or decisions are entitled to receive a fair hearing from the agency involved. It is Commonwealth Government policy that agencies offer all unsuccessful bidders a written or oral debriefing. When receiving complaints about procurement processes agencies should act in accordance with the procedures they have in place for handling complaints in general. Often buyers and suppliers can resolve complaints satisfactorily at the agency level.

20. If a supplier or potential supplier is not satisfied with the handling of its complaint by the individual agency concerned, there are other avenues of complaint available.

21. First, any supplier may complain to the Commonwealth Ombudsman concerning the actions or decisions of a buying agency which that supplier considers to be wrong, unjust, unlawful, discriminatory or unfair. If the Ombudsman finds a complaint to be justified, he/she may recommend a remedy, such as:

- an apology;
- a reconsideration of or changes to the decision;
- changes to agency rules or procedures;
- compensation for losses or damages caused by the agency's decision or action; or
- changes to the law that caused the problem.

Recommendations by the Ombudsman are not automatically binding on an agency but, if it fails to act upon the recommendations adequately, the Ombudsman may report to the Prime Minister and then to Parliament.

22. Suppliers may approach the *Purchasing Advisory and Complaints Service* within the Commonwealth Department of Finance and Administration. This service does not replace other avenues for complaint nor can it overturn purchasing decisions made by agencies. It is established to provide an informal advisory mechanism to help suppliers resolve complaints with Commonwealth agencies about purchasing processes, facilitating discussion between the parties involved. Although open to all suppliers, it is expected that this service will be of most benefit to small companies with limited knowledge, experience and resources to pursue complaints directly with agencies. The service should also be of significant assistance to any foreign suppliers which wish to make complaints.

REVIEW MECHANISMS

Communication from the United States

Introduction

As suggested by the Chairman's informal note, the case for including provisions in a WTO transparency agreement requiring national review mechanisms is a strong one. Review mechanisms can ensure due process and public accountability in the procurement process. In fact, the opportunity to seek review should be seen as a cornerstone of transparency. Public procurement authorities are much more apt to vigorously and conscientiously implement transparency provisions if their failure to do so may be challenged before an impartial body. Moreover, there is already ample precedent in WTO agreements for review or appeal mechanisms. Agreements as diverse as the Customs Valuation Agreement, the Anti-Dumping Agreement and the Preshipment Inspection Agreement include provisions on review procedures. Provision for review mechanisms does not have to require one model for every country or an elaborate set of obligations on the particular characteristics of national systems. As long as interested suppliers have access to an impartial body to hear their challenges and the opportunity to obtain decisions and remedies regarding these challenges, a transparency agreement need not dictate the particular kind of system that a WTO Member would choose to employ. The Secretariat's synthesis paper confirms that most national regimes already have review or appeal mechanisms in place. Obviously the scope of a review provision should be limited to the specific transparency obligations in a WTO agreement.

Key features of a review provision in a WTO transparency agreement

Impartiality: A review provision should permit flexibility as to whether a country chooses to provide opportunities to seek review through judicial or administrative bodies or both. Nevertheless, it should clearly require that such bodies be impartial and independent of the procurement process itself. Article X:2(b) of the GATT 1994 provides some guidance in this regard. This does not preclude, however, that suppliers may be encouraged to seek first to resolve issues directly with the relevant procurement entities.

Rapid decisions or possibility to suspend the procurement process: A review provision should ensure that claims from interested suppliers can be heard and decided upon in a manner that does not prejudice their interests in the procurements in question. Such guarantees can be available either through rapid decisions on challenges or through suspension of the procurement process while claims are pending. In cases in which the procurement process may be suspended, there could be provision for continuing with the award of procurements in the public interest.

Remedies: A review provision should provide for adequate remedies to protect the interests of suppliers and to deter procurement entities from engaging in future actions that would be inconsistent with WTO transparency provisions. Remedies should include the possibility of retendering procurements or damages to cover legitimate claims.

Related obligations

To ensure that there is an adequate factual basis for review bodies to reach decisions and provide remedies, a transparency agreement should require procurement entities to maintain written records of the procurement process.

TRANSPARENCY IN PROCUREMENT METHODS

Communication from the United States

Introduction

The Secretariat's synthesis paper and the Chairman's Checklist paper describe what are generally considered the three main categories of procurement methods: (1) open tendering; (2) selective tendering; and (3) single tendering (also known as limited or sole-source tendering). While specific circumstances governing a particular procurement often dictate the need for a particular method, open tendering is generally viewed as the most transparent procedure and single tendering as the least transparent. For this reason, the United States believes that a WTO transparency agreement could set forth specific conditions on the circumstances in which single tendering is justified, thereby ensuring that a substantial loophole to the agreement's obligations is not created, while at the same time allowing members to flexibly choose among alternative procurement methods to best address their procurement needs.

How single or limited tendering can undermine transparency

In many government procurement systems, including that of the United States, statutes and regulations may permit single tendering to be conducted without many of the normal procedural guarantees on transparency. The plurilateral WTO Government Procurement Agreement (GPA) itself provides in Article XV that the Agreement's general transparency provisions need not apply in cases of limited tendering.

If a government has unfettered discretion to utilize single tendering for any or all procurements, it could effectively escape the obligations of a WTO transparency agreement. To avoid such a potential loophole and ensure a common level of mutually agreed balance in obligations, WTO Members may want to consider specifying the general circumstances under which single tendering is justified. Additionally, a transparency agreement could provide that single tendering be conducted with a minimum level of transparency. At the same time, a transparency agreement should not impinge on a country's legitimate use of single tendering when circumstances warrant.

Commonly accepted circumstances justifying single tendering

According to the Secretariat's synthesis paper, the three international instruments (GPA, UNCITRAL Model Law, and World Bank Guidelines) and many countries' national legislation and regulations specify circumstances in which single tendering is justified. A few of these are described below.

Extreme urgency: When events unforeseeable by the procurement authority require urgent procurement of goods and services, many countries permit exceptions to generally applicable transparency requirements. Natural disasters are an obvious example.

Absence of tenders or collusion in tenders: If, as the result of an open tendering procedure, no responsive tenders are received or tenders appear to be collusive, procurement authorities may contact individual suppliers with no requirement that they readvertise.

Proprietary procurements: It may be clear at the outset of a procurement that only one supplier or a limited group of suppliers have the proprietary rights to goods or services being procured.

Commodity markets and fire sales: In commodity markets, there may be no individual suppliers since the market is the supplier. In so-called "fire sales", there may be circumstances in which the procurement authority can realize exceptional savings at a one-time event (e.g. liquidation sales).

National security: Many countries permit waiver of general transparency requirements when a national defence agency undertakes procurement of sensitive goods or services.

The examples identified above are not intended to be exhaustive, nor must a listing in a transparency agreement be exhaustive as well. To the extent, however, that a provision in a transparency agreement may be open-ended, it could still provide general criteria for circumstances that are not included in a non-exhaustive list (e.g. must be published in law or regulation).

WORLD TRADE
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WT|WGTGP|W|13

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(98-0551)

Original: Spanish

Working Party on Transparency

in Government Procurement

NATIONAL PROCEDURES AND PRACTICES ON TRANSPARENCY
IN GOVERNMENT PROCUREMENT

Communication from Uruguay

I. INTRODUCTION

In the Singapore Ministerial Declaration (paragraph 21), the Ministers of Trade agreed to •establish a working group to conduct a study of transparency in government procurement practices, taking into account national policy, and, based on this study to develop elements for inclusion in an appropriate agreement•.

The Singapore mandate is clear in stating that this working group must take account, in conducting its study on transparency in government procurement practices, of national policies in that area.

It is in this context that Uruguay is presenting the Working Group with a description of its national procedures and practices with respect to transparency in government procurement, consisting essentially of an outline of the most important aspects of its Harmonized Text on Accounting and Financial Administration with Relevant and Supplementary Provisions (Texto Ordenado de Contabilidad y Administración Financiera y Normas Concordantes y Complementarias), hereinafter referred to as the TOCAF.

This harmonized text includes: provisions regulating State financial and economic administration; the organization of accounting and revenue services; control requirements for purchase and disposal of property and for procurement affecting government finances in order to ensure the efficiency of preventive measures with respect to revenue, expenditure and payments; and the responsibilities and guarantees governing the activities of officials involved in the management of State property.

II. HARMONIZED TEXT ON ACCOUNTING AND FINANCIAL
ADMINISTRATION WITH RELEVANT AND SUPPLEMENTARY
PROVISIONS (TOCAF)

Under the Uruguayan legal system, government procurement is defined as procurement in which one of the parties is the government, i.e. a State body with administrative functions.

In Uruguay, the provisions regulating government procurement are for the most part contained in the TOCAF.

The TOCAF is a body of laws adopted by Executive Decree and containing legal provisions which drew their inspiration chiefly from Budget Law No. 11,925 of 27 March 1953. Harmonization by the Executive of the relevant provisions has not affected their legal hierarchy. The Decree simply harmonizes and updates the rules of accounting and financial administration for the State as a whole and for the central administration in particular.

The TOCAF was first adopted by Executive Decree 95|91 and amended by subsequent provisions. It was adopted in its current form by Executive Decree 194|97 of 10 June 1997, published in the Official Journal of 20 June 1997.

Article 2 of the TOCAF defines its scope of application as extending to deeds, acts and operations leading to transformations or alterations in public finances and carried out by the Executive, the Legislative or the Judiciary, the Court of Audit, the Electoral Court, the Administrative Court, the Departmental Governments, the autonomous entities and decentralized services, public education institutions and, in general, any State organs, services or entities.

The administrative acts that are subject to the rules of accounting and financial administration include procurement. In this respect, the TOCAF lays down the use of public tendering procedures as a general principle of procurement involving operating costs or investment or expenditure by the State, and auctioning or public tendering for cases which generate income or revenue.

Without prejudice to the application of this general principle, other government procurement procedures are also permitted.

When the amount of the transaction does not exceed a certain value, the law provides for an accelerated tendering procedure and single tendering. Cases in which the State may use both forms of procurement are expressly mentioned in Article 33 of the TOCAF, which also provides for selection by the regulating authority on grounds of proper administration.

The Executive, subject to a favourable ruling by the Court of Audit, may authorize special procurement systems and procedures based on the principles of publicity and equality of bidders when the nature of the market or of the goods or services in question so warrant. Such authorizations must be transmitted to the General Assembly and published in two nationwide newspapers.

III. CONCEPT AND PRINCIPLES OF PUBLIC TENDERING

Uruguayan law defines public tendering as a procedure for the conclusion of certain contracts, whose purpose is to determine the person offering the Government the most advantageous conditions. It consists of an invitation to interested parties to submit

bids on the basis of certain conditions contained in the so-called tender documentation, from which the administration selects the most advantageous bid.

In order to achieve the desired result, the entire procedure was built on the general principles governing the operational and control activities of State bodies in the field of procurement (as expressly set forth in Article 134 of the TOCAF), i.e. flexibility, delegation of authority, avoiding excessive formality and ensuring authenticity, presumption of truth until proof to the contrary, publicity, equality among bidders and competition in competitive tendering and selection procedures.

It should also be recalled that Article 2 of Decree 500|91, regulating administrative procedure in Uruguay in general, stipulates that the public administration must serve the public interest in an objective manner and in full compliance with the law, and that it must act in accordance with the general principles (also applicable to government procurement).

Before proceeding to their examination, it is important to point out that under Uruguayan positive law, these basic principles of administrative procedure (and government procurement) form the foundation on which the administrative procedure model was built, and also serve as a basis for interpretation and incorporation where there is no regulation explicitly covering a given point or area.

The basic principles are:

- (a) Impartiality: in order to guarantee the impartiality of administrative procedures, the officials involved may withdraw or be challenged when there is evidence that their impartiality could in any way be affected either by an interest in the procedure in which they are involved or a relationship of affection or enmity with the parties, or by their having specifically expressed an opinion on the matter at issue (prejudgment).*
- (b) Objective legality: the administrative procedure seeks not only to provide protection, but also to defend the objective rule of law with a view to maintaining legality and justice in the administrative system. This means not only strict compliance with the law, but also ensuring that administrative activity is in keeping with the principle of proper administration.*
- (c) Ex officio instigation: an administrative procedure may be initiated at the request of an interested person or ex officio. If it is initiated ex officio, the competent authority may act on instruction from a higher body, on its own initiative, on substantiated request by the officials concerned or on complaint.*

This principle also ensures that the action cannot lapse or be discontinued for lack of action on the part of the administration; indeed, Decree 500|91 stipulates that the expiry of the time-limits laid down in that respect shall in no case free the competent authority from its obligation to issue a decision, to give an express opinion on the substance of the matter and to issue a resolution on the action.

- (d) Material truth: the administration must act in accordance with the material truth of the facts without being bound by such agreements as may be*

reached between the interested parties in respect of those facts, nor exempted from investigating, hearing and acting in accordance with them by the fact of their not having been invoked or proved by the parties.

(e) Economy, speed and efficiency: the proceedings must be conducted with speed, simplicity and economy, avoiding any procedures or requirements involving unnecessary or arbitrary formalities or precautions that would simply serve to complicate or hinder them.

(f) Avoiding excessive formality: Uruguayan administrative procedure is governed by the principle of avoiding excessive formality in dealing with non-compliance with unessential formal requirements that can be met subsequently.

In no way must this principle provide a pretext for uncertainty, insecurity or lack of legal protection, or provide the administration with absolute freedom to act at its own discretion without observing established forms.

(g) Flexibility, authenticity and concentration on substance: the concept of flexibility stresses the instrumental nature of the proceedings, rejecting excessive rigidity and uniformity.

The concept of authenticity places the emphasis on what is truly important, which also implies that forms must be in keeping with the aims pursued; in other words, if a rule is violated, the measure is sustained as long as the aim is accomplished without detriment to the rights and guarantees of the party concerned.

Concentration on substance implies that the form is a means and not an end in itself, and that administrative acts should be judged on the basis of substance and not form, etc.

(h) Delegation of authority: decentralization in its various forms (allocation of functions, delegation of authority, dispersion) seeks to overcome the usual bureaucratic centralization in which the solution to the most routine administrative problems depends on a formal decision from higher authorities.

(i) Due process: under the Constitution, domestic legislation and the provisions of international law approved by Uruguay, the parties in an administrative procedure enjoy all of the rights and guarantees inherent in due process.

This principle embodies the right to be heard, publicity of proceedings with respect to the parties concerned, the right of a party to state its defence before the ruling is issued, the right to due consideration and appreciation of the arguments submitted and the evidence provided, the right to be defended by a lawyer, the right to submit and produce evidence, the right a substantiated decision, etc.

(j) Adversary proceedings: this principle applies to cases in which the conflict is not simply between an individual and the administration, but also involves

another individual that is in dispute with the first individual, which is the case for challenges against tender awards.

Tender proceedings involve conflicting interests between individuals in which the administration must ensure that both parties are treated in an equal fashion, failing which the impartiality by which the administrative body is bound would be undermined.

(k) Good faith, fairness and presumption of truth until proof to the contrary: the parties, their representatives and lawyers, public officials, and in general all participants in the proceedings must act in accordance with the principles of mutual respect, fairness and good faith.

(l) Substantiation of the decision: this principle follows logically from the preceding principle. Any administrative act (in this case the award or decision not to award a contract in connection with public tender proceedings, an accelerated procedure, etc.) must be accompanied by a clear statement of the reasons or grounds on which it is based and an explanation of the scope of its operative provisions, its aims, and the conditions governing its validity.

Thus, the articles governing tender proceedings and the principles on which they are based clearly provide the contracting parties with maximum guarantees, which are supplemented by those deriving from the challenge mechanisms provided for in Uruguayan positive law with respect to administrative acts associated with the said proceedings.

IV. CRITERIA FOR THE SELECTION OF BIDS

Under Uruguayan legislation, the criteria for the selection of bids are divided into quantitative criteria (measurable parameters) and qualitative criteria (subjective considerations).

Without prejudice to the above, Uruguayan positive law provides for a series of preferences in the consideration of bids, among which the preference relating to domestic production deserves special mention (Articles 42 and 52 of the TOCAF).

Article 52 of the TOCAF stipulates that in all public entity procurement proceedings preference shall be given to domestic products that are equal in quality and potential to foreign products, and that such preferences in respect of domestic production shall be governed by existing or future promotional laws, and their limits and nature shall be stated in the general terms and conditions.

Uruguayan law defines promotional laws as those enacted with a view to stimulating certain activities by placing them in a more favourable situation than would have been the case in the free course of economic relations.

These laws include Article 654 of Law No. 16,170 of 28 December 1990 which stipulates that the margin of 40 per cent established by Law No.13,032 of 7 December 1961 would be reduced to 25 per cent as from the first day of the month following the publication of the Law, to 15 per cent as from 1 July 1991 and to 10 per cent as from 1 January 1992.

Thus, preference to domestic production remains at a permanent 10 per cent.

Article 52 of the TOCAF also stipulates that •In awarding public works contracts, where there is a likeness in the different elements of the bids, preference shall be granted to those which involve greater utilization of domestic labour and raw materials. •

Finally, Article 52 of the TOCAF establishes that •If the procurement takes place abroad, the agreements with the countries members of the trade bodies, communities or customs, integration and production agreements to which Uruguay belongs, in particular the Latin American Integration Association, shall be respected. •

V. ADMINISTRATIVE REVIEW OR JUDICIAL REVIEW BY THE ADMINISTRATIVE COURT OF DECISIONS CONCERNING AWARD PROCEEDINGS

The Uruguayan legal system guarantees both administrative review and judicial review before the Administrative Court of administrative decisions to award or not to award contracts in connection with procurement and public tender proceedings.

The regime derives directly from the Constitution, Articles 317 and 319 of which provide for remedies against administrative acts, and Articles 307 and 313 regulate the competence of the Administrative Court as well as the judicial remedies against administrative acts.

Article 317 of the Constitution stipulates that during the administrative phase, implicit or tacit acts (in this case the administrative decision to award or not to award a contract in public tender proceedings) may be challenged through remedy of reconsideration (before the body responsible for the act), hierarchial remedy (when the body responsible for the administrative act forms part of a hierarchy), and appeal for annulment, which is lodged together with the appeal for reversal as an accessory action. The appeal for annulment must be based on the nullity provisions set forth in Article 309 of the Constitution, i.e. it must concern administrative decisions that are contrary to a rule or right or represent an abuse of power. The specific procedures and time-limits are regulated by Decree 500|91.

If the administrative decision was made by a departmental government, it must be challenged through an appeal for reversal before that body.

Once the available administrative remedies have been exhausted, the Uruguayan Constitution provides for judicial review (Articles 309 to 313) through an action for annulment.

Actions for annulment are brought before the Administrative Court, which is an independent judicial body created by the Constitution.

The Administrative Court has the power to confirm or annul the challenged administrative act and may also determine whether there are grounds for the party whose rights have been violated to bring an action for pecuniary damages.

As mentioned above, Uruguayan positive law provides the contracting parties with maximum guarantees, both during the administrative phase and during the subsequent

judicial phase, by providing the possibility of action for annulment of the administrative act before the Administrative Court and action for pecuniary damages.

VI. SUBREGIONAL CONTEXT

At the MERCOSUR level, the Common Market Group adopted Resolution 79/97 of 13 December 1997 creating an ad hoc group on government procurement with the task of developing a common system for government procurement of goods and services in the member countries.

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NATIONAL PROCEDURES AND PRACTICES ON TRANSPARENCY IN
GOVERNMENT PROCUREMENT

Communication from the Czech Republic

Introduction

With reference to the agreement reached at the last meeting of the Working Group on the proposal from the Chair that delegations would provide information on their national practices relating to the transparency in government procurement the Czech Republic intends to contribute to the study phase of the Working Group.

Information on national legislation and procedures

Public procurement in the Czech Republic is governed by Act No. 199|1994 Coll. on Public Procurement, in the wording of Act No. 148|1996. When drafting the Act, it was drawn both on domestic sources (i.e. Building Procurement Code of 1991) and foreign legal regulations, particularly the •Model Law of Procurement•, designed by the Commission for International Law (UNCITRAL), and EC Directives on Public Procurement from 1993 (Nos. 93|36, 93|37 and 93|38).

According to the Act, the regular manner of public procurement is that the contract is awarded on the basis of a public tender in which an unlimited number of interested parties can participate, provided they meet the terms stipulated by the Act and the tender. Where such method is used, the contracting authority concludes a contract with the participant whose bid was selected as the most suitable.

The Act also provides for •other methods of public procurement•, such as procurement on the basis of invitations issued to several parties, simplified procurement, procurement in cases of small-scale contracts and procurement on the basis of an invitation issued to a single party. The above-mentioned methods may be used only in cases specifically listed by the Act.

General rules on how public notice is given

A public tender, the terms thereof, changes thereto or cancellation thereof shall be announced by the contracting authority in the Commercial Bulletin (•Obchodní věstník•).

The notice of the public tender must not be published in any other way prior to their publication in the Commercial Bulletin, and the content thereof must not be disclosed to any person.

Prequalification

The contracting authority may stipulate in its announcement of a public tender that it shall require proof of applicants' qualifications, to be established by means of prequalification proceedings. In the prequalification proceedings, the contracting authority shall select applicants who by satisfying qualification requirements prove their capability to execute the public procurement.

The contracting authority must request in the qualification documentation particularly the relevant licences and specify the manner in which further prerequisites (e.g. technical and material base necessary for execution of the public procurement, the number of staff of relevant specialised professions decisive for execution of the public procurement) are to be documented. Moreover, the contracting authority must state the time-limit for and place of presentation of the qualification documentation, as well as the time-limit for notification of the results of evaluation.

The time-limit for notification of the results of the prequalification proceedings must end 25 days prior to the expiry of the time-limit for receipt of bids at the latest.

Based on the outcome of the prequalifications proceedings, the contracting authority shall exclude applicants who fail to satisfy the qualification requirements. Only those applicants who have met the qualification requirements may submit bids.

Tender procedures and documents

- Public tender (open procedure)

The notice of the public tender must be published in the Commercial Bulletin. Contracting authorities are obliged to publish the tender notice if the amount the future monetary liability arising from a contract relating to real estate, with the exception of lease, or a set of machinery and equipment forming a separate functional unit, is in excess K_ 20,000,000, or in excess of K_ 5,000,000 in other cases. Tender notices must contain the following elements:

- Definition of the scope of execution of the public procurement;*
- the time and place of execution of the public procurement;*
- qualification requirements for proof of suitability of applicants;*
- the method of bid evaluation;*
- standard requirements for determination of the bid price, including the terms of payment;*

- the time-limit for the receipt of bids and the place where envelopes containing bids shall be opened;
- the time-limit of effectiveness of the bids;
- the place to which the bids are to be delivered and the time when they can be submitted in person;
- the name, registered office, telephone number, telex or facsimile numbers of the contracting authority;
- a notice stating the time of viewing of the place of execution of the public procurement or the time when documentation can be viewed, if any such viewing is envisaged, and provided such documentation is not included in the documentation accompanying the invitation to tender;
- requirement of any security required and specification of the amount thereof.

- Invitation to several parties

The contracting authority may conclude a contract on the basis of a written invitation made to no less than five interested parties in the case of public procurements where the pecuniary value of the contract is in excess of K_ 2,500,000, excluding VAT, for real estate with the exception of a lease, or a set of machinery or equipment constituting a separate functional unit, or in excess of K_ 500,000 in other cases.

Conclusion of a contract on the basis of a written invitation sent by the contracting authority to parties interested in the public procurement whose pecuniary value is in excess of the amount mentioned above, shall also be permissible in the event:

- Of an urgent need, as decided by the Government of the Czech Republic;
- of a specialized public procurement;
- that a public tender was previously organized and cancelled;
- that a publication of the terms of the tender could jeopardise a state secret, defence and security of the state or the property of the contracting authority.

The contracting authority shall send an invitation for submission of bids under (a), (c) and (d) to a minimum of three parties interested in the public procurement and under (b), to all interested parties who execute such specialized public procurement in the Czech Republic.

In the event of invitation to several parties, the contracting authority shall set identical requirements for all parties interested in the public procurement, and state the criteria for evaluation of their bids, i.e. the consideration of the lowest amount, or the most suitable bid on the whole. The contracting authority shall notify all applicants of the selection of the most suitable bid.

The time-limit for submission of bids shall not be shorter than 14 days. If the public procurement is awarded in the event of the urgent need, the Government may resolve to apply a reduced time-limit.

- *Simplified award of contract*

The contracting authority is obliged to request bids from a minimum of three interested parties in the case of public procurement where the pecuniary value of the contract is in excess of K_100,000, excluding VAT, but does not exceed the limits set out for the invitation to several parties.

The contracting authority must specify the requirement of:

-Determination of the bid price depending on the place of execution of the public procurement;

-time-limit for execution and other terms relating to the public procurement.

The contracting authority shall evidence any invitation made by a written record.

- Small-scale public procurement

In the case of public procurement whose future pecuniary value does not exceed K_ 100,000, excluding VAT, the contracting authority may decide to award the public procurement directly a price customarily charged in the place of execution. If the contracting authority decides to award the contract in this manner, it shall draw on market information and on its experience.

- Invitation to a single candidate

Conclusion of a contract on the basis of a written invitation for submission of a bid, sent by the contracting authority to a single candidate interested in the public procurement, shall be permissible only in the case of:

- An urgent need, where human lives or health are threatened, when there is a disaster, natural catastrophe or an imminent threat of extensive damage;*
- a specialized public procurement in cases where only one party interested in the public procurement can execute it;*
- a supplementary or repeated public procurement provided it does not exceed 50 per cent of the price of the original procurement and provided the invitation by the contracting authority is effected within 12 months of the execution of the public procurement;*
- a partial renovation of the object of the original public procurement, if a change of applicant would result in the contracting of authority having to procure execution of a public procurement of different technical parameters, which execution would lead to technical incompatibility or difficulties in operation and maintenance;*
- where publication of the terms of the tender could jeopardise a state secret, defence and security of the state;*
- where a winner of an architectural competition pertaining to the object of execution of the public procurement reaches an agreement with the contracting authority that shall draft the project documentation;*
- execution for the State Material Reserves.*

The applicant must present his business licence prior to conclusion of the contract.

Qualification of applicants and clarification

Applicants must demonstrate in their bids that they are qualified to execute the relevant public procurement. The contracting authority may require in its invitation to tender that other prerequisites for execution of the relevant public procurement be met.

The qualification requirements for execution a public procurement are met by the applicant:

- Who has the relevant licence to engage in business, provided such licence is required under special legal regulations;*
- against whose property no bankruptcy procurement has been issued;*
- who owes no tax according to the records kept by authorities;*
- who has not been duly sentenced for a criminal act related to his object of business, or for economic crime or crime against property;*
- against whom no disciplinary measures have been taken under special legal regulations governing the performance of the relevant specialized activity.*

The applicant shall prove that he satisfies the qualification requirements by submitting his licence to engage in business and an affidavit. The applicant with whom a contract is to be concluded shall prove his qualification by an extract from the Commercial Register (not older than 90 days) and by an extract from the Criminal Register (not older than six months).

Further prerequisites for execution of a public procurement include, but are not limited to:

- A technical and material base necessary for execution of the public procurement;*
- the number of staff of relevant specialized professions decisive for execution of the public procurement;*
- a list of significant procurements delivered by the applicant in recent years.*

Further prerequisites for execution of a public procurement shall be outlined by the contracting party in the invitation to tender or qualification documentation. Applicants may request additional information from the contracting authority as to how they should prove the attainment of further prerequisites up to seven days prior to the expiry of the time-limit set for bidding; such information must be provided to all applicants.

Any applicant is obliged to notify the contracting authority of any changes which occur after the submission of his bid and which concern the data required by the contracting authority as proof of his qualifications.

If an applicant fails to prove his attainment of any one of the qualification requirements or fails to notify any changes in qualifications, the contracting authority shall exclude such applicant from any further participation in subsequent proceedings concerning the public procurement. The decision to exclude an applicant shall be communicated thereto without delay.

Time-limits

Time-limit for the receipt of bids means the period within which bids may be submitted. The time-limit for the receipt of bids shall not be shorter than 36 calendar days. This time-limit shall start running on the day of publication of the public tender in the Commercial Bulletin and shall end on the day and the hour when the envelopes

containing bids are opened. The terms of the public tender shall stipulate the date and hour of the opening of the envelopes containing the bids.

Time-limit of effectiveness of bids means the period of time for which the applicants are bound by their respective bids. The contracting authority shall stipulate this period of time in calendar years in the notice of the public tender. The time-limit of effectiveness of the bids as set forth in the terms of the public tender shall be the same for all applicants, and it shall be extended with respect to the applicants ranking first, second and third in the evaluation up till the conclusion of the contract. The term of effectiveness of the bids without extension shall not exceed 90 calendar years; it shall start running on the day of opening of the envelopes containing the bids and end on the day of dispatch of notices regarding the selection of the most suitable bids.

Transparency of decisions on contract awards

- Method of bid evaluation

Bids shall be evaluated by means of a single criterion or several criteria, and it shall be stated what method shall be used to arrive at the order of bids.

In the event of the evaluation of bids by means of:

-A single criterion, the bids shall be evaluated according to the bid price;

-several criteria, the contracting authority shall apply, in addition to the bid price, some of the following criteria depending on the nature of public procurement: requirements of quality, terms of delivery, qualifications of applicants, quality guarantees, operation and maintenance requirements.

If the contracting authority opts for evaluation by means of several criteria, it shall list these individual criteria in the terms of the tender according to priority attached to them.

- Manner of submission of bids

Bids shall be submitted in person or by registered mail, in writing, in sealed envelopes marked •tender•, with the edges of the flaps stamped by the applicants• seals.

The bids must be delivered to the contracting authority before the end of the time-limit for receipt of bids. Each interested party may submit only one bid; should a breach of these duties occur, the contracting authority shall be obliged to exclude such applicant from the tender.

- Receipt of bids and opening of envelopes containing bids

The contracting authority is obliged to make sure that the envelopes containing the delivered bids are marked with a serial number, date and hour of delivery, and that the bids are entered, together with the above data, in the list of bids. If a bid is delivered in person, the contracting authority shall issue to the person in question a receipt of delivery bearing the data listed in the first sentence herein.

In addition to the contracting authority, the following parties are entitled to participation at the opening of the envelopes containing bids:

- Applicants whose bids have been delivered to the contracting authority within the time-limit for receipt of bids;*
- representatives of the authority in charge of surveillance;*
- representatives of the Ministry of Finance;*
- representatives of the authority from whose budget the public procurement is financed in full or in part, if such authority is not identical with the contracting authority.*

The contracting authority shall appoint a commission comprising at least three members to open the envelopes containing bids. The commission shall open the bids one by one according to their serial numbers and check the completeness of each bid with a view to the requirements prescribed by the contracting authority in the terms of the tender. If the commission discovers after opening the envelope that the bid is not complete with a view to the notice of the tender, the bid is excluded from further assessment and evaluation; such exclusion of any bid is announced to the attendees. The contracting authority shall exclude the respective applicant from further participation in the public tender without delay.

The commission shall draw up a record on the opening of envelopes containing bids. This record shall be signed by the member of the commission. The record shall not be made public but applicants shall be entitled to view the record. A copy of the record shall be provided to any authority whose representatives are entitled to attend the opening of envelopes.

- Evaluation of bids

The contracting authority shall establish a commission composed particularly of persons with education and experience relevant to the nature of public procurement in question. The commission shall have a minimum of five members. There shall always be a representative of the contracting authority on the commission.

The commission shall commence its activity by receiving from the contracting authority those bids which satisfies the terms of the tender with regard to completeness, checked upon the opening of the envelopes containing bids.

After the commission reviews the bids to establish whether their content is in accordance with terms of the tender and whether the applicant proceeded in compliance with principles of protection of economic competition, the commission shall propose to the contracting authority which bids failing to satisfy the above requirements be excluded from the tender.

An applicant excluded from the tender may request that the contracting party state the reason for his decision to exclude him. The contracting authority shall advise the relevant applicant of its decision without delay.

After assessing, and, as the case might be, excluding bids, the commission shall evaluate the remaining bids by the published method of evaluation. The commission shall set the order of individual bids depending on the results of its evaluation.

The commission shall draft a report on the assessment and evaluation of bids, which report shall contain:

- Data on the composition of the commission;*
- an overview of bids received by the commission from the contracting authority for assessment, which overview shall include the names of the respective applicants;*
- the result of the assessment of individual bids;*
- the conclusion from the assessment conducted by any experts invited;*
- a list of bids whose exclusion was proposed to the contracting authority after the commission conducted its assessment;*
- a list of bids evaluated by the commission;*
- a brief description of the method used to evaluate the bids;*
- the results of evaluation of individual bids;*
- the order of bids according to the results of evaluation.*

The report on the assessment and evaluation of bids shall be signed by all members of the commission and submitted to the contracting authority together with all the previous tender documentation. The contracting authority shall then make it possible for any applicants whose bid were assessed and evaluated to view the report at his request.

- Decision by the contracting authority on the most suitable bid*

The contracting authority is obliged to decide on the selection of the most suitable bid based on the assessment and evaluation of the bids by the commission. If the contracting authority's decision on the selection of the most suitable bid does not correspond to the order of bids as determined by the commission, the contracting authority is obliged to justify its decision in writing.

The contracting authority is obliged to notify all applicants, unless they have been excluded from the tender, of its decision on selection of the most suitable bid, including data on the applicant selected and the bid thereof.

The contracting authority shall state data on the applicant ranking second and third in its notification of selection of the bid (name of the applicants, their registered offices, if they are legal entities their domiciles and places of business, if they are physical entities). The notification of selection of the most suitable bid shall include information on the possibility to raise objections.

- Documentation of the public tender and publication of results of public tenders*

When holding a public tender, the contracting authority shall fill in •Public Tender Registration Sheet• and send it to the supervisory authority within 15 days of conclusions of contract. The Public Tender Registration Sheet contains the following information:

- Contracting authority (name, address);*
- manner of award of public procurement (public tender, invitation to several parties, invitation to a single candidate);*
- total number of bids received;*
- highest bid price;*
- lowest bid price;*
- selected applicant (name, address);*
- object of public procurement (unit, number of units);*
- place and district of execution (name, code);*
- price (K_);*
- date of execution of contract relating to the public procurement.*

The contracting authority is obliged to publish the name of the applicant with whom a contract was concluded and the bid price thereof, in the Commercial Bulletin within 30 days of conclusion of contract.

The contracting authority shall preserve the tender documentation, including all bids submitted by applicants for a period of five years.

System of remedies regarding public procurement

The Office for the Protection of Economic Competition performs surveillance over the compliance with the Act. This surveillance takes the form of review of applicants to the procedures employed by the contracting authority.

- Objections to the procedures employed by the contracting authority

Any participant, or, as the case might be, any participant in a prequalification procedure, may raise an objection to individual procedures employed by the contracting authority.

Objections are filed to the contracting authority in writing no later than seven days following the delivery of a notice of procedures employed by the contracting authority, or no later than seven days of delivery of a notice regarding the selection of the most suitable bid.

- Review of procedures employed by the contracting authority by the body of surveillance

The contracting authority's decision on objections may be reviewed by the body of surveillance i.e. by the Office for the Protection of Economic Competition. Proceedings before the body of surveillance are initiated upon delivery of a proposal for review of the contracting authority's decision on objections, unless the body of surveillance instigates proceedings on its own initiative.

The proposal is filed no later than seven days from the delivery of the contracting authority's decision.

If the proposal is filed within the prescribed time-limit, the time-limit for the receipt of bids ceases running from the date on which the proposal is lodged till the date when the decision on the proposal enters into force. The contracting authority must not complete its assessment and evaluation of bids, or conclude the contract. The contracting authority is obliged to advise other applicants of the fact.

Where a proposal for review of the contracting authority's decision regarding selection of the most suitable bid is filed, the body of surveillance examines the application and:

-Cancels the contracting authority's decision, if it finds the proposal well founded, and changes the contracting authority with making a new selection, or, where appropriate, with newly defining the public procurement in question;

-rejects the proposal and upholds the decision issued by the contracting authority, where no violation of the Act is established.

In other cases the Office shall examine the procedures employed by the contracting authority and decide that the said procedures:

-Constitute no violation of the Act, and reject the proposal; or

-constitute a violation of the Act, and charge the contracting authority with making changes, or, as the case might be cancel the tender.

The Office decides on two different levels. An appeal can be filed against the decision of the body of surveillance, the Chairman of the Office decides on such appeals.

- Decision on suits filed against decisions of the Office

The lawfulness of a decision of the Office may be examined by court. Such judicial review falls under the jurisdiction of the relevant High Courts.

Proceedings are instigated solely by virtue of a proposal, labelled in the civil judicial code as •suit•. A suit must be filed no later than two months after the delivery of the decision issued by the administrative body in the last instance.

The suit does not have a suspensive effect on the enforceability of the challenged decision. There is no other remedy available against the court ruling.

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*APEC NON-BINDING PRINCIPLES ON
GOVERNMENT PROCUREMENT: TRANSPARENCY*

Communication from Hong Kong, China

The following communication, dated 6 December 1997, has been received from Miss Adeline Wong of Hong Kong, China, in her capacity as Chair of the APEC Government Procurement Experts Group.

I am writing in connection with the APEC Government Procurement Experts Group (GPEG), which was established in 1995 to consider ways to increase transparency of, and liberalize, government procurement markets in accordance with the Osaka Action Agenda adopted by APEC Economic Leaders in 1995.

Under the action plan of the GPEG, a set of non-binding principles on government procurement will be developed in 1997-2000. In undertaking this work, the GPEG has decided to start with the principle of transparency and subsequently agreed on a set of elements pertaining to the principle of transparency in government procurement and a list of practices illustrating how they could be implemented. The GPEG has also agreed to, as an APEC contribution to WTO's work on transparency in government procurement, forward these elements and illustrative practices to the WTO Working Group on Transparency in Government Procurement for reference at the study phase.

I am pleased to attach a copy of the elements of transparency and illustrative practices developed by the GPEG, which were endorsed by APEC Ministers at their meeting on 21-22 November in Vancouver, Canada.

I would like to stress that these elements of transparency and illustrative practices are non-binding, and shall not prejudice the position of individual APEC member economies in the discussion on transparency in government procurement in the WTO.

INTRODUCTION

1) Under APEC's collective action plan on government procurement (GP), a set of non-binding principles on GP will be developed in 1997-2000 for adoption by members on a voluntary basis. In pursuing this work, the Government Procurement Experts Group (GPEG) has decided to start with the principle of transparency.

2) The GPEG has identified a set of elements pertaining to the principle of transparency in GP, which are set out in the ensuing paragraphs. Examples on practices are also provided for the purpose of illustrating the possible ways to give effect to these elements, and are not intended as prescriptions of how these elements should be given effect in practice. It should also be noted that the elements of transparency in GP identified by the GPEG are non-binding and individual economies are in the best position to decide on the applicability of individual elements of transparency to them, and how best to translate these elements into practical measures, taking into account the specific characteristics of their economy and possibly the costs and benefits of adopting specific transparency measures.

ELEMENTS OF TRANSPARENCY

3) The general principle is that sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium at no or reasonable cost. This general principle is applicable to all aspects of GP, including the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts, as further elaborated in paragraphs 5 to 14.

-Sufficiency and relevance of information: to enable potential suppliers to make informed decisions. For example, potential suppliers must have access to information on the conditions for participation and the requirements of the intended procurement in order to decide whether to participate and to prepare a responsive offer.

-Timeliness: to ensure that the information is valid and useful when available to the receiver.

-Availability to all interested parties: to ensure that the procurement process is fair to all participants and seen to be fair.

-Through a readily accessible medium at no or reasonable cost: to ensure that information is accessible in practice.

-Consistency: the objectives of maintaining a transparent procurement system can only be achieved if the system remains consistently transparent.

This also includes making information up to date and informing relevant parties of changes and additional information promptly.

4) *Notwithstanding the above, the following information may be withheld: commercially sensitive information, and information the release of which would prejudice fair competition among suppliers, impede law enforcement, contrary to public interest or compromise security of the economy concerned. Where such information is withheld, the reason should be given on request.*

The general operational environment

5) *The laws, regulations, judicial decisions, administrative rulings, policies (including any discriminatory or preferential treatment such as prohibitions against or set aside for certain categories of suppliers), procedures and practices (including the choice of procurement method) related to GP should be transparent.*

6) *This is to let suppliers know the rules of the game so that they can decide whether to participate. In practice, this can include:*

- publishing these •rules• in a medium which is readily accessible to all;*
- publishing either a positive or negative list of the entities subject to these •rules•;*
- publishing any changes immediately;*
- establishing contact points for enquiries;*
- wherever possible, providing a description of the above information on the APEC GP Home Page and linking APEC members• individual GP Home Pages, where available, with the APEC GP Home Page.*

Procurement opportunities

7) *Procurement opportunities should be transparent.*

8) *This would encourage wider participation leading to increased choices for the buyer and enhanced competition, contributing to achieving better value for money in procurement activities. In practice, this can include:*

- making open and competitive tendering the preferred method of tendering. Where other procurement methods are to be used, any procurement invitations issued should indicate the intended method;*
- where open tendering is adopted, publishing procurement opportunities in a medium readily accessible to suppliers (e.g. official journals/gazettes, newspapers, specialized trade journals, Internet, and through embassies and consulates);*

- allowing adequate and reasonable time for interested suppliers to prepare and submit responsive bids;
- publishing contact details of purchasers, and their product|service purchase interests, for suppliers wishing to register their interest in being notified of bidding opportunities which may not be publicly advertised;
- making early advise of complex high-value procurement needs available to interested suppliers through staged procedures such as public requests for information, requests for proposals and invitations for prequalification, and allowing adequate time for interested suppliers to prepare and submit a response;
- making available requirements and procedures for prequalification of suppliers.

Purchase requirements

9) All the information required for suppliers to prepare a responsive offer should be made available.

10) This is to facilitate effective and efficient participation by potential suppliers in the procurement exercise. Also, because potential suppliers know the specific requirements, the non-responsive offers that the buyer may have to process can be minimized, increasing the operational efficiency of the buyer. In practice, this can include:

- including in procurement notices the following information: the nature of the product or service to be procured, specifications, quantity, time-frame for delivery, closing times and dates, where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained;
- publishing any changes to the above information immediately;
- providing tender documentation and other information to suppliers promptly on request;
- wherever possible, drawing up specifications in terms of performance|functional|operational requirements using international or other relevant standards.

Bid evaluation criteria

11) All criteria for evaluating bids should be transparent and bids should be evaluated and contracts awarded strictly according to these criteria.

12) *This is to ensure fairness and integrity. In practice, this can include:*

-setting out in procurement notices and/or tender documentation all evaluation criteria, including any preferential arrangements;

-maintaining proper record of decisions.

Award of contracts

13) *The award of contracts should be transparent.*

14) *This would demonstrate government accountability to suppliers and the public. In practice, this can include:*

-publishing the outcome of the tender including the name of the successful supplier and the value of the bid;

-as a minimum, promptly notifying unsuccessful suppliers of the outcome of their bids and where and when contract award information is published, and debriefing unsuccessful suppliers on request.

Due process

15) *Due process and public accountability are essential elements of fair, open and impartial procurement procedures, and the availability of an avenue/channel for review of complaints is an element of transparency. In practice, this can include:*

-designating a body/person for the purpose of reviewing supplier complaints about procurement processes which are not able to be resolved through direct consultation with the procuring agency in the first instance. This may take the form of an independent authority;

-making information on review procedures readily available;

-making the review process available equally to domestic and foreign suppliers.

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**Working Group on Transparency
in Government Procurement**

NATIONAL PROCEDURES AND PRACTICES ON TRANSPARENCY
IN GOVERNMENT PROCUREMENT

Communication from Hungary

1) Introduction

With reference to the agreement reached at the last meeting of the Working Group on the proposal from the Chair that delegations would provide information on their national procedures and practices relating to transparency in government procurement, Hungary intends to contribute to the study phase of the Working Group. The submission follows the structure of the Secretariat's synthesis as contained in document WT|WGTGP|W|6.

The Hungarian Law on Public Procurements is based on the relevant legislation of the European Union and its member States; however, the UNCITRAL Model Law as well as the WTO plurilateral Agreement on Government Procurement was also taken into consideration by the legislators. This paper focuses on the transparency provisions of the Law.

2) Information on national legislation and procedures

The major framework of the legislation on government procurement is a recent and modern Law (Law No. 90 of 1995 on Public Procurements) that is published in the Hungarian Official Gazette (Magyar Közlöny). An English translation of the Law is also publicly available. All the procedural decrees concerning specific aspects of the procedures are also published in the Official Gazette. All announcements concerning government procurement actions and tenders are published in the Public Procurement Bulletin (Közbeszerzési Értesítő), that is established exclusively for the purposes of public procurements.

3) Information on procurement opportunities, tendering and qualification

3.1 General rules on how public notice is given

All announcements shall be published in the Public Procurement Bulletin. An announcement may only be published in any other domestic newspaper following its publication in the Public Procurement Bulletin. If foreign-based bidders (bidders resident abroad) may take part in the procedure, the announcement may also be published in foreign newspapers. In this case, the announcement may not be published in the Public Procurement Bulletin prior to its dispatch abroad.

3.2 Notice of invitation to tender or prequalification

3.2.1 Preliminary information on procurement opportunities

Entities falling under the scope of the Law may, by 31 March each year, prepare preliminary summary information material about their public procurements planned for the year.

The preliminary summary information should contain the following information:

- name and address of the inviter (and the information provider, if different) including telephone, telex and telefax numbers;
- description of procurement, including quality and/or value (separately described procurement of goods, constructions and services);
- expected date of the initiation of tender procedures (if known);
- other relevant information;
- date of posting and receipt of the announcement.

3.2.2 Prequalification

(a) The public procurer may prequalify potential suppliers. The application for prequalification should precede the invitation for bidding by 25 days or more. In the course of the prequalification procedure, the procurer shall not request and the bidder shall not submit a bid.

(b) The invitation for prequalification should contain the following information:

- name, address, of the inviter of bids (including telegraphic, telephone, telex and telefax numbers);
- the procedure chosen (i.e., open tendering, selective tendering, or limited tendering/negotiations; accelerated selection) and reasons for selecting the procedure;
- definition of the contract, subject and quantity of the procurement, time and place of the performance, if submitting a bid for a part of the procurement is accepted;
- deadline for submitting the bids, address for submitting bids, language of submitting bids¹;
- requirement of establishing an economic association from the winning joint bidders¹;
- date and place of opening the bids;
- conditions of providing the collateral¹;
- data and facts requested for verifying the financial, economic and technical suitability of bidders;
- criteria for judging bids;

¹Optional items

- reference to the preliminary summary information¹;*
- dates of dispatch and receipt of the announcement.*

3.3 Tender documents

3.3.1 Open tendering

(a) General transparency rules

The inviter of bids shall describe the certification of the financial, economic and technical suitability of the bidder exclusively in a manner defined in the Act. The inviter of bids shall define the criterion for judgement chosen in the invitation for bidding, i.e. the consideration of the lowest amount, or the most favourable bid on the whole. In the latter case, the order of importance of the criteria as well as any other considerations shall also be defined.

(b) Information content of notices of invitation for open tendering

- name, address, of the inviter of bids (including telegraphic, telephone, telex and telefax numbers);*
- the procedure chosen (i.e., open tender, invitation tender, or limited tender|negotiations);*
- definition of the contract, subject and quantity of the procurement, time and place of the performance, if submitting a bid for a part of the procurement is accepted;*
- name and address of the organization providing the documentation, deadline of applying for the documentation, conditions of purchasing the documentation²;*
- deadline for submitting the bids, address for submitting bids, language of submitting bids¹;*
- definition of the parties to be invited by the inviter of bids for opening the bids;*
- date and place of opening the bids;*
- conditions of providing the collateral¹; conditions of financial consideration, and|or definition of the place where these can be found in detail;*
- requirement of establishing an economic association from the winning joint bidders¹;*
- data and facts requested for verifying the financial, economic and technical suitability of bidders;*
- period of binding by the bid;*
- criterion for judging bids (lowest price, or most favourable list considerations);*
- whether bids in several versions accepted?*
- reference to the availability of preliminary summary information¹;*
- dates of dispatch and receipt of the announcement.*

3.3.2 Selective tendering

(a) General transparency rules

²Optional items

The procedure by invitation can be applied, if only a limited number of bidders is suitable for fulfilling the contract due to the particular nature of the subject of public procurement, or with consideration to the subject of public procurement, and based on the list of qualified bidders, there are at least five qualified bidders suitable for submitting a bid. The procedure commences with an invitation to participation, which shall be published by the inviter of bids through an announcement. This announcement shall contain the following information:

- name, address, of the inviter of bids (including telegraphic, telephone, telex and telefax numbers);*
- the procedure chosen (i.e., open tender, invitation tender, or limited tender|negotiations accelerated procedure), and the reasons for selecting the procedure;*
- list of invited participants;*
- definition of the contract, subject and quantity of the procurement, time and place of the performance, if submitting a bid for a part of the procurement is accepted;*
- requirement of establishing an economic association from the winning joint bidders³;*
- deadline for submitting the bids, address for submitting bids, language of submitting bids¹;*
- conditions of providing the collateral¹;*
- data and facts requested for verifying the financial, economic and technical suitability of bidders;*
- criteria for judging bids;*
- intended number of invited parties¹;*
- reference to the preliminary summary information¹;*
- dates of dispatch and receipt of the announcement.*

Besides the invited ones, referring to the announcement, all parties suitable for fulfilling the contract may apply to participate in the procedure. The inviter of bids shall simultaneously and directly request in writing all applicants for participation, qualified as suitable to submit their bids.

The inviter of bids shall determine a limit figure for invited participants for the tender. This shall allow for at least five bidders.

The inviter of bids may not specify the deadline for participation as a period shorter than 25 days reckoned from publishing the announcement, and the deadline for submitting bids as a period shorter than 40 days reckoned from the dispatch of the invitation for bidding.

(b) Information content of notices of invitation for selective tendering

The tender documents shall contain the following data:

³Optional items

- *deadline for submitting the bids, the address to which bids shall be submitted;*
- *reference to the invitation to participation published;*
- if necessary the place where the documentation was obtained, the deadline and financial conditions for its request;*
- conditions of the financial consideration of the inviter of bids;*
- date and place of opening the bids, those invited to the opening of bids by the inviter of bids;*
- period of binding by the bid;*
- indication of the certificates to be attached;*
- detailed criteria for judging the contracts, if not included in the invitation to participation.*

3.3.3 Limited tendering (negotiations)

(a) General transparency rules

The procedure by negotiation can be applied only in exceptional circumstances defined by the Law.

The commencement of the procedure shall be published. The invitation shall contain the following information:

- name, address, of the inviter of bids (including telegraphic, telephone, telex and telefax numbers);*
- the procedure chosen (i.e., open tender, selective tendering, or limited tendering]negotiations accelerated procedure), and the reasons for selecting the procedure;*
- definition of the contract, subject and quantity of the procurement, time and place of the performance, if submitting a bid for a part of the procurement is accepted;*
- requirement of establishing an economic association from the winning joint bidders⁴;*
- deadline for submitting the bids, address for submitting bids, language of submitting bids¹;*
- conditions of providing the collateral;*
- data and facts requested for verifying the financial, economic and technical suitability of bidders;*
- intended number of invited parties¹;*
- name and address of the already selected applicants¹;*
- reference to the preliminary summary information¹;*
- dates of dispatch and receipt of the announcement.*

⁴Optional items

The parties intended to be invited may be indicated in the announcement; however, all parties - suitable for fulfilling the contract - may apply for participating in the procedure on the basis of the announcement. At least three applicants shall be invited to the negotiation (if there are three qualified ones).

In the course of a procedure by negotiation conducted without publishing an announcement, the inviter of bids shall directly invite the parties selected by him to the negotiation. The relevant provisions apply to publishing the result of the procedure by negotiation conducted without publishing the announcement.

3.4 Clarification

If the inviter of bids prepares the documentation required for submitting appropriate bids, the documentation shall contain the detailed contractual conditions. In the invitation for bidding, the manner and deadline of making the documentation available, the place of obtaining, as well as the financial conditions thereof shall be specified. The inviter of bids shall make the documentation available as of the date of publishing the invitation for bidding.

Furthermore, a bidder may request further information from the inviter of bids in writing not later than ten days prior to the deadline for submitting the bid. The content of the information shall be made available to the other bidders, as well. The inviter of bids shall provide the supplementary information related to the documentation not later than six days prior to the deadline for submitting the bids. The inviter of bids shall provide the information in a manner that does not favour certain bidders over others, and which does not violate equal chances. If the documentation is of a large volume, and/or if bids may only be submitted following the on-site checking of the documentation, or the inspection of the place of performance, the inviter of bids shall set or amend the deadline for submitting the bids with consideration. The inviter of bids may require the bidders in the documentation or in the invitation for bidding to define the part of the contract they intend to involve subcontractors.

3.5 Promptness and timeliness of prior information and timeliness

The inviter of bids may not set the deadline for submitting the bids (submission deadline) as a period shorter than forty days reckoned from publishing the invitation for bidding. In justified cases, the inviter of bids may extend the deadline for submitting the bids on one occasion. The inviter of bids shall publish the extension of the deadline in an announcement prior to the expiry of the original deadline, where the reason for extending the deadline shall also be indicated. The deadline for submitting the bids may not be shortened.

The inviter of bids may amend the conditions specified in the invitation for bidding, and/or the documentation prior to the expiry of the deadline for submitting the bids. A new announcement shall be published on the amended conditions, in which a new deadline for submitting the bids shall be established. The deadline may not be shorter than 40 days.

4) Transparency of decisions on qualifications

4.1 Prequalification

4.1.1 Transparency of criteria

The criteria for prequalification are contained in the invitation for prequalification (see 3.2.2(b)).

4.2 Notification and listing

Results of the prequalification should be published. The notice should contain the following information:

- name, address, of the inviter of bids (including telegraphic, telephone, telex and telefax numbers);*
- the procedure chosen;*
- date of selection;*
- number of applicants of the procedure;*
- names and addresses of the applicants selected and reasons for their qualification;*
- date of publishing the invitation to participation;*
- dates of dispatch and receipt of the announcement.*

5) Transparency of decisions on contract awards

5.1 Transparency of criteria

The general criteria applicable to evaluate the bids are set by the Law.

The inviter of bids shall define the criterion for judgement chosen in the invitation for bidding, i.e., the consideration of the lowest amount, or the most favourable bid on the whole. In the latter case, the order of importance of the criteria as well as any other considerations shall also be defined. For detailed requirements on the content of the invitation see 3.3.1(b).

5.2 Receipt and opening of tenders

The closed documents containing the bids shall be opened on the date of expiry of the deadline for submitting the bids. The inviter of bids, the bidders and the persons invited by them, the members of the Council, or persons appointed by them, furthermore, in the case of an inviter of bids who is granted central budgetary subsidy for public procurement, the organs and persons defined in a separate legal rule, may be present when bids are opened. The names and head offices (places of residence) of the bidders, the consideration requested by them and the deadline of performance undertaken by them shall be announced in the course of opening the bids.

The inviter of bids shall state on opening the bids, or following that, which bids are not valid.

Those who submitted invalid bids, and/or were excluded from the procedure may not take part in the further phase of the procedure.

The inviter of bids shall draw up minutes on the opening and the announcement of the bids, the invalid bids and the excluded bidders.

5.3 Ex post information on contract awards

The inviter of bids shall announce the decision on the judgement of the bids in public. Bidders not present at the announcement shall be immediately informed in writing about the decision. At the announcement of the decision and following that, the provisions on business secrets do not apply in respect of the fact, solution or data, which were taken into consideration by the inviter of bids in the course of judging the bid and in connection with making the decision.

If the inviter of bids accepts the bid of any of the bidders he shall announce the winner orally and in writing immediately.

The inviter of bids shall publish the information on the result of the procedure not later than within 15 days reckoned from its announcement.

The publication shall contain the following information:

- 1. name and address of the inviter of bids;*
- 2. (a) the procedure chosen*
- (b) reasons for applying the procedure in the case of a procedure by negotiation without publishing an announcement*
- 3. date of judgement;*
- 4. criterion for judgement;*
- 5. name and address of the winning bidder;*
- 6. name and address of the bidder submitting the most favourable bid after the winning bid⁵;*
- 7. number of bids received;*
- 8. name(s) and address(es) of bidder(s);*
- 9. subject and quantity of the procurement;*
- 10. amount of consideration;*
- 11. the part and value of the subject of the procurement in respect of which the bidder intends to conclude a contract with a third person¹;*
- 12. other information;*
- 13. date of publishing the invitation for bidding;*
- 14. reference to the preliminary summary information¹;*
- 15. dates of dispatch and receipt of the announcement.*

⁵Items to be filled in if the case exists

Bidders shall be informed, upon their request, within 15 days reckoned from the receipt of the request about the reasons for their exclusion, and/or the refusal of their bids, and/or the reasons for their qualification as unsuitable in the prequalification procedure, as well as about the person of the winning bidder. Upon the completion of the procedure, the inviter of bids shall prepare a written summary of the bids judged. The inviter of bids shall keep this summary for five years, and shall release it to the Council, upon request. The summary should contain the following information:

- 1.name and address of the inviter of bids, as well as subject and value of the procurement;*
- 2.names of bidders selected and reasons for their selection;*
- 3.names of bidders refused, and/or excluded, and the reasons for their refusal and exclusion;*
- 4.name of the winning bidder and the reasons for selecting his bid;*
- 5.the part of the procurement in respect of which the winning bidder may conclude a contract with third persons⁶;*
- 6.reasons for the condition of applying the procedure in the case of a procedure by negotiation;*
- 7.bid price of bidders;*
- 8.reference to the previous summary information¹;*
- 9.date of preparation of the information material.*

At the end of the budgetary year, the inviter of bids shall prepare an annual summary of annual public procurements, which shall be sent to the Council. The annual summary shall contain the following information:

- 1.number and value of the annual procurements of the inviter of bids in excess of the value limit;*
- 2.details of the annual procurements of the inviter of bids in excess of the value limit, as follows:*
 - (a) subjects of the procurement*
 - (b) types of the procedure*
- (c)number of domestic and foreign winning bidders;*
- 3.details of procedures by negotiation in accordance with the cases of their application, specifying the number and value of annual procurements;*
- 4.reference to the previous summary information.¹*

6) Review

⁶Items to be filled in if the case exists

The Law establishes the Public Procurement Council, reporting directly to the Parliament and the Public Procurement Arbitration Committee (hereinafter: Committee). Its responsibility is to act on legal remedy owing to issues of dispute, or matters related to violations of the law:

- (a)conducting a procedure instituted due to the unlawful bypassing of the public procurement procedure;*
- (b)conducting a procedure related to tenders divided into small sub-tenders in order to avoid the application of the Law, as well as in connection with the violation of the principles or rules of the public procurement procedure;*
- (c)judging an application submitted by any interested party against the decision of the inviter of bids.*

The judgement of other legal disputes related to public procurements, not mentioned above, shall come under the jurisdiction of the courts. Three public procurement commissioners shall proceed in the public procurement cases, appointed by the Chairman of the Committee.

- (1) A Public Procurement Arbitration Committee (hereinafter: Committee) acts within the Council; its responsibility is to act on legal remedy owing to issues of dispute, or matters related to violations of the law.*

The decision shall be delivered to the parties and other interested parties, and shall be published in the Public Procurement Bulletin.

Legal Consequences

In its decision, the Committee shall:

- (a)refuse unfounded applications;*
- (b)request the party causing the violation of law to proceed in accordance with the rules of this Act prior to the completion of the public procurement procedure, and/or may make the decision to be made by the inviter of bids subject to a condition;*
- (c)may declare null and void the decision of the inviter of bids made in the course of the public procurement procedure, or completing the public procurement procedure, except for the case if the contract has already been concluded on the basis of this decision;*
- (d)in addition to indicating the violated provision of this Act, it may establish the occurrence of the violation of law;*
- (e)may prohibit the bidder, for not more than five years, to take part in a public procurement procedure;*
- (f)may impose penalty on the organization violating the rules of this Act, or on the person responsible for the violation of law and maintaining legal relationship with the organization;*
- (g)oblige the party violating the law to bear the fee and costs of procedure.*

No appeal may be lodged against the decision of the Committee. The parties whose rights or lawful interests are violated by the decision of the Committee made with regard to the merits of the case may request the court to review the decision in the form of a statement of claim.

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ORGANIZATION

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Working Group on Transparency

in Government Procurement

INFORMATION ON PROCEDURES AND PRACTICES ON
TRANSPARENCY IN

GOVERNMENT PROCUREMENT

Communication from Hong Kong, China

Introduction

1) *The Government of the Hong Kong Special Administrative Region (HKSAR) adopts an open, competitive and non-discriminatory tendering system in the procurement of goods and services. The objective is to ensure that tenderers are treated on an equal footing and that the Government gets the best value for money.*

2) *This note is intended as a contribution to the study phase of the Working Group on Transparency in Government Procurement of the World Trade Organization (WTO). It provides a brief description of the procedures and practices of the Government of the HKSAR, which relate to transparency in government procurement.*

Public announcement of procurement opportunities

3) *Tender notices for procurement of goods and services through open tendering or selective tendering from qualified contractors/suppliers by government departments are published both in English and Chinese in the Government of the HKSAR Gazette on Friday (except when Friday is a public holiday). Where necessary, tender notices may also be advertised in the local and/or international press. For procurements covered by the Agreement on Government Procurement of WTO (GPA), procuring departments will, if appropriate, also notify consulates and overseas trade commissioners of the tender invitations.*

4) To provide sufficient information about the intended procurement to enable contractors/suppliers/service providers to make an initial assessment of their potential interest in the contract and to request the tender documents for preparing their bids, information published in tender invitations covers the tender reference, the procuring department, a description on the nature and quantity of the goods or services required, the likely commencement and completion of the contract, the address, telephone number and faxline of the office from which forms of tender and further particulars may be obtained, the exact location of the tender box in which tenders are to be deposited, and the closing date and time for receipt of tenders. Reference will also be made if the intended procurement is covered by GPA.

5) Apart from publishing tender notices in the Government of the HKSAR Gazette, an outline of the tender information on government procurement of goods and services is also provided on the Finance Bureau Homepage on the Internet (Address: <http://www.info.gov.hk/fb/tender.htm>). Updating of the tender information on the Internet will be made every Friday. In addition, a forecast of invitations to tender for building and engineering works under the Works Digest issued on a quarterly basis, and tender information on tenders invited by the works departments are published on the Works Bureau Homepage on the Internet updated on a weekly basis (Address: <http://www.weplb.gov.hk/>). Furthermore, the Government Supplies Department and the Printing Department also publish information on tenders invited by them on their respective homepages on the Internet (Address: Government Supplies Department - <http://www.info.gov.hk/gsd/tender.htm>, Printing Department - <http://www.info.gov.hk/pd/>), and the tender information will also be updated every Friday.

Information on the criteria used for assessing bids and awarding contracts

6) Tenders are generally accepted on the basis of their compliance with the tender specifications and the tendered sum. In cases where predetermined assessment criteria approved by an appropriate tender board prior to the invitation of tender are used in the evaluation of tenders, procuring departments are required to specify in the tender document the use of a marking scheme in tender evaluation, including an outline of the assessment criteria. This is to ensure that tenderers are fully aware of the conditions relating to the assessment of tenders and to the award of contract.

Tenders received for works contracts

7) For works contracts, the number of tenders received and the range of tendered sums are published on the Finance Bureau Homepage on the Internet in the week after they are opened, together with a note to specify that the tenders have not been checked for conformity and that the tender sums have not been checked for accuracy.

Information on award of contracts

8) *Contracts awarded by the Government of the HKSAR are published for general information in the Government of the HKSAR Gazette before the end of the following month. The notice contains information on the procuring department, the type of tendering procedure adopted, the description of the contract awarded, name of the successful tenderer and the contract sum. Such information is also published on the Finance Bureau Homepage on the Internet. Furthermore, the procuring department is required to, in addition to notifying the successful tenderer of accepting his tender, inform all unsuccessful tenderers of the result of the tender exercise and the reasons why their bids have not been accepted.*

List of approved suppliers|contractors

9) *Where there is frequent need to invite tenders for services or goods but where not all suppliers|contractors in the market are capable of delivering, government departments may establish lists of qualified suppliers|contractors for the purpose of selective tendering, subject to the approval of the Secretary for the Treasury. At present, the Works Bureau maintains permanent approved lists of approved contractors for works categories and suppliers of materials and special contractors for public works. The Government Supplies Department and the Government Property Agency also maintain prequalified list of suppliers|contractors, which are valid for a specified period, for the purpose of selective tendering. Departments maintaining these lists of qualified suppliers|contractors are required to publish the up-to-date lists, the period of validity of the lists, the method of application and assessment and the method of renewal, where applicable, in the Government of the HKSAR Gazette annually. The notice should also specify that any interested firms may submit applications for inclusion any time to the government bureaux|departments concerned direct.*

Channel for complaint|appeal

10) *Suppliers|contractors may lodge complaints about the process or result of a tender exercise to the procuring department direct or to the relevant tender board, Independent Commission Against Corruption, or the Office of the Ombudsman. Under the Ombudsman Ordinance (Cap. 397 of the Laws of the HKSAR), the Ombudsman is empowered to investigate a complaint concerning the procedures adopted in inviting tenders, determining the qualification of persons to tender and the selection of the successful tenderer.*

11) *In connection with the accession to GPA, Hong Kong, China is required to set up a bid challenge system comprising an independent review body to enable suppliers|contractors to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had an interest. Detailed procedures of the system are being worked out by a task force set up by the Government of the HKSAR.*

Release of tender information to members of the public

12) Upon request from members of the public, the procuring departments may provide the following information:

- (a) tender documents upon the payment of a fee where appropriate;
- (b) particulars of a contract, the category of tenderers invited to tender for the contract, and the closing date for receipt of tenders; and
- (c) the number of tenders received for a particular contract, the name of the successful tenderer, the accepted tender sum and the date of the award of the contract. Information on the winning tender should only be provided after the contract has been executed with the successful tenderer.

Guide to Government Procurement

13) The Government of the HKSAR is preparing a Guide to Government Procurement to provide a ready single reference for all those who may be interested in the tendering system and procedures of the Government. In the Guide, we would highlight the principles underlying government procurement practices in Hong Kong, summarize the government procurement process and the Government bodies involved in procurement, and include useful contacts for those who wish to obtain more information about any particular area of government procurement. The Guide, which is expected to be available in December 1997, will be posted on the Finance Bureau Homepage on the Internet.

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WORLD TRADE ORGANIZATION

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Working Group on Transparency in Government Procurement

NATIONAL PROCEDURES AND PRACTICES RELATING TO TRANSPARENCY IN PUBLIC PROCUREMENT

Communication from Tunisia

1. Presentation of the system

In Tunisia, government procurement is the most appropriate legal instrument for carrying out public sector projects and satisfying a great variety of community needs in respect of works, supply of goods and services or studies. As the amounts involved each year are considerable, it is important to ensure optimum allocation of these resources through better buying, i.e. by concluding the best possible contracts.

During the 1980s, there was a decline in the intensity of competition. Calls for tenders brought in only one or two bids, and sometimes none at all. The source of the problem lay in the fact that needs were sometimes poorly expressed and technical specifications were sometimes too scanty or too rigid, with the result that suppliers could neither comply with the specifications for fear of submitting a bid that was incomplete and unreliable, nor stray from the specifications for fear of having their bid rejected.

The problem also stemmed from the fact that not enough was done to ensure that public tenders were widely publicized. For example, there was sometimes a tendency to invoke urgency as a justification for issuing calls for tenders with very short deadlines. While it is true that urgency is a fact of life, it is occasionally deliberately confused with haste to protect public tenders from free competition.

Thus, it had become essential to introduce a new legal framework defining the rules and procedures pertaining to government procurement.

Government procurement is currently regulated by a set of legislative and regulatory texts. These regulations, which were heavily revised in 1989, lay down three basic principles: free competition, transparency in the awarding of contracts and preservation of the principles of sound management.

It is true that this mechanism involves a number of procedures - advertising in the newspapers, submission of tenders in sealed envelopes, opening of the envelopes,

examination of the tenders, control by special commissions, etc. But however numerous they may be, these procedures are not very complex, and in fact amount to ways of ensuring that the three above-mentioned principles are upheld and that public funds are properly managed.

2. Free competition and transparency

The regulations cover every aspect of these principles. They ensure that government procurement is exposed to the broadest possible competition with a view to obtaining the best possible quality and prices. They have made transparency a fundamental principle, closely linked to free competition as a means of ensuring synergy. This applies to the different phases of government procurement.

As regards the tender documents, the technical specifications must define the scope of the procurement and the conditions under which it is to take place. They must also lay down the conditions for participation, the selection criteria and their relative weight, and the rights and obligations of the parties concerned.

The regulations also stipulate that tender documents must be clear as to what is required: characteristics and content must be indicated precisely. They must be defined with reference to previously established technical specifications, and possibly to specifically identified national or international standards. Any indication of a brand name or any other element that could direct the purchase towards a given product is prohibited.

With respect to types of procurement, in order to ensure maximum competition and transparency the regulations favour tendering (appel d'offres) as the normal legal procedure, while maintaining the possibility of awarding contracts (adjudication) on the basis of a single criterion, namely price. Although certain provisions allow for single tendering, this remains an exceptional procedure to be applied only in certain specific cases laid down in the regulation, such as extreme urgency owing to unforeseen circumstances, cases involving national security or the higher interests of the State, or procurement related to research, testing, experimentation, etc.

Still in connection with free competition and transparency, the regulations stipulate that calls for tenders must be advertised as broadly as possible to ensure that all potential bidders are informed.

The Tunisian regulations governing the sending, receipt and opening of tenders include a great number of precautions to ensure that the various operations involved are carried out with complete transparency. Thus, all bids must be sent by registered mail within a period of time specified in the tender documents, which cannot be less than 20 days. Any bids which do not comply with these formal conditions or which are received beyond the deadline are automatically rejected.

The opening of the envelopes, in the case of both auctioning and tendering and even in the case of consultation, is carried out collectively by a commission, in the presence of an operational auditor, and generally in the presence of the participants. In exceptional cases where the opening of the tenders is not public, for example for reasons of urgency, the administrator is required to post the results of the opening immediately following the meeting of the commission.

The regulations stipulate that, for reasons of transparency, the examination of the bids and the choice of supplier must be carried out by a commission, which proceeds by considering the bids and eliminating those which do not meet the established conditions, classifies the remaining offers exclusively and strictly on the basis of the criteria and weighting set forth in the tender documents. These documents must be transmitted, against receipt, to all candidates, who may in no circumstances modify their bids retroactively.

The commission then draws up a detailed report describing all of these operations and singling out, on the basis of this classification, the bid that it considers the most suitable.

It should be stressed that the regulations do not confine themselves to establishing general principles such as transparency and to organizing the procedures required to put them into practice. They also seek to ensure that those principles are properly applied by providing for mandatory control, inter alia of compliance with the regulations.

3. The system of control

Government procurement involves the use of government funds, whose management must be accounted for at different stages. In addition to a concomitant control by means of on-the-spot inspections and a post check by the Court of Auditors, the regulations have provided for a prior control mechanism in which the procurement commissions play the key part. The purpose of this control is to ensure that procurement is carried out in a proper and regular manner by bringing to light possible irregularities or shortcomings before they occur, as well as examining disputes between the parties concerned.

These commissions are made up of representatives of the different Ministries (Trade, Industry, Finances, Equipment and Housing, and Economic Development, the Central Bank etc.).

This preventive control mechanism can come into play in any of the successive stages of the government procurement procedure, from the drawing up of technical specifications to the awarding of the contract.

However, the choice of the stage or stages at which the commission actually intervenes has to take two essential factors into account: firstly, the need for maximum efficiency, and secondly, the need to act promptly. The first of these considerations argues for a more thorough control, while the second argues for as rapid a control as possible.

In view of these considerations, the reform of 1989 opted for the middle-of-the-road solution of controlling the report of the examination of the tenders, a check which is essentially consultative, since it takes the form of reasoned opinions notified to the administrative head or managing director of the State enterprise concerned.

4. Challenges and dispute settlement

According to the regulations, any problem, challenge or dispute must be brought before the competent procurement committee, which examines the claims and grounds of each of the parties in the light of the regulations, and gives a reasoned opinion.

If the dispute continues, it can be settled amicably in an ad hoc committee chaired by a member of the administrative court and including, among its members, a representative of the profession and a representative of the Higher Procurement Commission. This commission endeavours to find common ground between the two parties and proposes what it considers to be the fairest solution.

If the parties have not accepted the committee's amicable solution, they may each request arbitration or bring the case before the Tunisian courts.

5. *Preference for domestic products*

Owing to the diversity of the sectors involved, the amount of public expenditure and its impact on domestic industry, government procurement also constitutes a tool of State intervention in the economy.

Consequently, following the example of other countries, the regulations concerning government procurement include measures for the protection of local industry by establishing the obligation for foreign suppliers, in cases of international calls for tender, to form a joint venture with Tunisian enterprises or to subcontract as much as possible of the project to local firms by granting a 20 per cent preference for products of Tunisian origin. It goes without saying that recourse to international calls for tender is possible whenever the project to be carried out calls for a skill that local enterprises do not possess or a product that is not manufactured locally, or if the project is co-financed by a foreign entity whose regulations require international competition.

It should be noted in this connection that international donor organizations such as the World Bank accept joint ventures and subcontracting, and grant local products a 15 per cent preference.

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in Government Procurement

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INFORMATION ON THE REPUBLIC OF KOREA'S PROCEDURES AND PRACTICES ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

Communication from the Republic of Korea

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I. INTRODUCTION

1. In 1995, Korea enacted the Act Relating to Contracts to which the State is a Party (ARCSP), in line with the GPA, as the basic regulation for government procurement. Unless otherwise provided for in other laws, government procurement is conducted under this Act.

2. In addition to the ARCSP, the Enforcement Decree of the Act Relating to Contracts to which the State is a Party (EDARCSP) was enacted to address matters related to enforcing the ARCSP. The ARCSP prescribes that government procurement exceeding threshold values provided for in the GPA should be proceeded by international tendering. Pursuant to the ARCSP, Korea enacted the Special Regulations of the Enforcement Decree of the ARCSP for a Specific Government Procurement (hereafter the Special Enforcement Decree) and the Special Enforcement Regulations for the ARCSP for Specific Procurement (hereafter the Special Enforcement Regulation) in order to regulate the procedures and criteria for international tendering in detail.

3. Contracts shall be concluded through the agreement of contracting parties on equal standing and shall be implemented on a bona fide basis. All international tendering shall be conducted under the principles of reciprocity. The contract officials shall not impose any special terms or conditions upon the citizens of a member country of the Government Procurement Agreement or upon the products or services produced from those countries.

II. PROCUREMENT METHOD

4. The procurement method in Korea can be classified as follows based on the way each contract is concluded:

(a) Open tendering

5. This is the typical tendering system in which suppliers holding the minimum capability to undertake the contract, such as a licence, facilities, etc. can participate in the tender concerned and compete with each other.

6. The ARCSP prescribes that the contract official shall conduct a public procurement according to the competition principle. However, if necessary, taking into consideration the purpose, nature, scale, etc. of the contract, he may nominate participants or restrict the qualification of the participants.

(b) Selective tendering

7. In cases where the goal of the contract is difficult to achieve unless the supplier has special facilities, technology, and materials, the procuring entity can nominate participants for tendering and determine the winning supplier.

(c) Single tendering

8. Following are the cases in which a single tendering can be applied:

- in the case of a situation where an Act of God or national security is concerned;
- in the case of goods that are set aside for small business;
- in the case of goods that are related to provisions of the Social Welfare Business Act;
- in the case of no bidder, even after a tendering renotification, etc.

III. INFORMATION ON NATIONAL LEGISLATION AND PROCEDURES

9. Korea submitted to the WTO information on national implementing legislation, which was circulated to the Parties to the GPA on 11 February 1997 (GPA/12).

10. As described in the Introduction, the main characteristic of the GP system in Korea is to enact the ARCSP, as the fundamental law which lays out the principles and procedures of government procurement. ARCSP is in line with the WTO/GPA and was promulgated on 5 January 1995.

11. Based on the ARCSP, the main regulations prescribing the procedures and criteria related to GP are as follows:

- Enforcement Decree of the ARCSP (EDARCSP)
- Special Regulation of the Enforcement Decree of the ARCSP for Specific Procurement (Special Enforcement Decree)
- Special Enforcement Regulations for the ARCSP for Specific Procurement (Special Enforcement Regulation)
- Local Financing Act
- Government-Invested Enterprise Management Law (GIEML)
- Act on Government Procurement Business (AGPB)

12. All of these laws and regulations, being related to government procurement are published in the official gazette before they enter into force. Korea is establishing an Internet Home Page to introduce its GP system and regulations in English.

13. In particular, information on the government procurement by SAROK (Supply Administration, Republic of Korea), the central procuring entity, and major government agencies are available from the GINS (Goldstar Information Network Services).

IV. INFORMATION ON PROCUREMENT OPPORTUNITIES, TENDERING AND QUALIFICATIONS

(a) Public notice

14. The Special Enforcement Decree prescribes that the notice of international tendering should be published in the official gazette, the Kwanbo. The procuring entity may make use of a computer network for the notice along with the official gazette.

15. Details of the public notice:

- matters assigned for the tendering;
- place, date and time for the tendering and its opening
- qualification of a bidder;
- decision method for the successful tenderer, etc.

(b) Tender documents

16. Tender documents are the following documents, which the procuring entity prepares and maintains for the tender participants to review, if necessary, from the date of the public notice of the tender to the deadline for submitting the tender:

- public notice of tender or notification of participating in tender;
- documents of notes for tender (describing matters to be kept in mind by participants);
- application form to tender, forms of tenders and contract;
- general and specific conditions of the contract;
- on construction work,
 - design documents (drawings, specification and construction site explanation)
 - a statement of quantity and a detailed explanation of the calculation of the unit price for the quantity
 - the guidance of tender.

(c) Clarification

17. Entities are required to provide tender documentation and to reply promptly to any request from suppliers for explanations relating to tender documentation.

V. TRANSPARENCY OF DECISIONS ON QUALIFICATIONS

(a) Transparency of criteria

18. Qualifications for a bidder, such as contract performance record, technical performance ability, financial capability, etc., can be provided to confirm a supplier's ability to fulfil a contract.

19. To simplify the qualification procedures, entities can avail themselves of a permanent supplier's list.

(b) Notification and listing

20. The procuring entity shall notify each supplier submitting an application to prequalify of whether or not it has been included on the list of qualified suppliers. The procuring entity shall notify each supplier included on the list of the termination of the list or any supplier's removal from the list.

VI. TRANSPARENCY OF DECISIONS ON CONTRACT AWARDS

(a) Transparency of criteria

21. In principle, the decision to award a contract in international tender is based on both the tender price and capability of conducting the contract concerned.

22. In a competitive tendering, the successful tenderer shall be:

- a person who is deemed fully capable of fulfilling the terms of the contract and offers the lowest bids;
- a person who offers the most favourable bid for the state in conformity with the evaluation criteria specified in the public notice or the tender documentation;

- a person whose bid conforms closest to the criteria if the evaluation criteria are determined by the Presidential Decree considering the nature and scale of contracts.

(b) Receipt and opening of tenders

23. Qualified suppliers may submit sealed tenders in person or by mail until the closing time of submission at the place which was specified in the tender notice. The tenders shall remain sealed and shall be deposited until they are opened publicly.

24. The place and time of opening tenders shall be specified in the tender notice. The procuring entity shall open tenders in the presence of the tenderers.

(c) Ex-post information on contract awards

25. When the procuring entity awards the contract, it is required to publish a notice of contract award in the official gazette within 72 days from the date of the decision. Such a notice must contain the following information:

- the scope, quantity and value of the procurement;
- the name and address of the winning tenderer;
- the address of the entity awarding the contract;
- the procedures used in the decision of the contract award;
- the procedure of public notice for open tender;
- the reasons why a limited tender was executed, if applicable;
- other matters concerning the decision on the contract award.

26. The procuring entity is also required to provide an unsuccessful tenderer with information on the reasons why its tender was not selected, characteristics and advantages of the tender selected, and the name of the winning tenderer, if requested.

VII. REVIEW

27. Those who claim to have been disadvantaged in the implementation of the provisions on the scope of the government procurement contract, eligibility for participation, public notice or the decision on the successful tenderer may make an objection to the central agency concerned.

28. Anyone dissatisfied with the ensuing measures by the agency may request a review from the International Contract Dispute Mediation Committee established in the Ministry of Finance and Economy.

29. The Committee shall undertake an investigation and provide mediation. If no objection is raised within 15 days regarding the result of the mediation, it shall have the same effect as a judicial conciliation.

VIII. OTHER MATTERS RELATED TO TRANSPARENCY

(a) Maintenance of record of proceedings

30. When the procuring entity decides on a contract award by the open tender, it shall maintain documentation regarding the following items for five years as well as all documentation related to the tender and contract:

- the names of participants in the tender and the opening of the tender;
- the name of the winning tenderer, the value of the winning award, and the reasons for the decision on the contract award;
- in the event of invalidity of tender, details of the tender and the reason for the invalidity;
- country of origin of goods.

31. When the contract is awarded by a single tendering, the procuring entity shall maintain, for five years, documents recording the following items:

- the purpose of the contract;
- the name of the item to be procured, specifications, quantity, unit price and value;
- specific provisions of laws and regulations applied and the reasons they were applied to the contract;
- the name and address of the other party to the contract;
- the value of the contract and the reasons for awarding the contract;
- country of origin of goods.

(b) Language and other matters

32. The procuring entity may make use of a computer network for the tender notice in addition to the official gazette (for international tendering, publishing the tender notice in the official gazette is required).

33. For the notice of international tendering, the procuring entity shall describe the following items in one of the official WTO languages (English, French or Spanish) at the tail end of the public notice:

- the subject-matter of the contract;
- the time-limits set for the submission of tenders or application to participate in the tender;
- the name and address of the procuring entity.

IX. INFORMATION TO BE PROVIDED TO OTHER GOVERNMENTS

34. Korea has already notified the WTO/Committee on Government Procurement of its national implementing legislation (GPA/12). In international tendering, the principle of non-discrimination in providing information related to government procurement is applied.

35. Member countries of the WTO/GPA are required to provide information on procurement and contract awards in response to a request by any other GPA Party. The Minister of Finance and Economy may request central government agencies to submit relevant materials accordingly.

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**Working Group on Transparency
in Government Procurement**

SYNTHESIS OF THE INFORMATION AVAILABLE ON
TRANSPARENCY-RELATED PROVISIONS IN EXISTING
INTERNATIONAL INSTRUMENTS ON GOVERNMENT
PROCUREMENT PROCEDURES AND ON NATIONAL PRACTICES

Note by the Secretariat

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I. At the second meeting of the Working Group on Transparency in Government Procurement held on 21 July 1997, the Secretariat was requested to complement the information in its note on the transparency-related provisions in existing international instruments (Part A of WT|WGTGP|W|3) with available information on national practices. This note attempts to respond to this request by providing a synthesis of the factual information on national procedures and practices relating to transparency available in the responses to the questionnaire on government procurement of services in the Working Party on GATS Rules (S|WPGR|W|11|Addenda 1-21), the surveys of national legislation of the APEC Government Procurement Experts Group, contributions submitted by delegations by 1 October 1997 (WT|WGTGP|W|5) and other information available in the WTO, e.g. the Trade Policy Review Reports and documents of the Committee on Government Procurement.

II. The contents of the note should not be taken to prejudice what is encompassed by the term 'transparency', which is a matter for the Working Group. Its purpose is to provide background information that may be useful to the Working Group in its study of transparency in government procurement practices.

III. Responses to the questionnaire on government procurement of services in the Working Party on GATS Rules have been received from 21 countries representing a wide geographical distribution of WTO Members. The surveys of

national legislation of APEC economies provide data on an additional four countries in East Asia. Given that the data sources used for this paper were initially designed for the purposes of discussion in other fora, the depth of information on the subject-matter of this note that is contained in individual responses and surveys varies. The present note synthesizes the information available and does not attempt to make a compilation of all national practices and procedures. In order to contribute to greater clarity, the footnotes provide some specific examples of an illustrative nature; they should not be taken to imply that the country or countries mentioned are the only ones using the practice or procedure in question. At the July meeting of the Working Group, some delegations said that the note could have been amplified on the provisions of the existing international instruments that give leeway to the adoption of policies aimed at achieving legitimate social and economic goals, for example offsets or other measures providing special treatment for developing countries. Accordingly, this note contains information on these aspects, in respect both of international instruments and of national practices (notably in Chapter VII, Section A on transparency of evaluation criteria).

I. INTERNATIONAL INSTRUMENTS ON PROCUREMENT

IV. Promoting transparency in procurement procedures is one of the explicit considerations that guide the requirements in the Model Law (Preamble, paragraph (f)), the GPA (Preamble, paragraph 3), the World Bank Guidelines for goods and works (paragraph 1.2(d)) and the World Bank Guidelines for consultants' services (paragraph 1.4(e)). Transparency can be viewed as a linchpin of the other common objectives of these instruments, which are, among others: maximizing economy and efficiency in procurement; fostering and encouraging participation in procurement proceedings by suppliers regardless of nationality and thereby promoting international trade; and promoting the integrity and fairness of and public confidence in the procurement process.

V. The transparency provisions of the three international instruments are aimed at three sets of interested parties:

- Suppliers. The fulfilment of the objectives of procurement regimes requires that potential suppliers should be able to readily obtain adequate information on procurement opportunities, on the conditions to be met to qualify for them and on all matters relevant to the preparation and submission of bids. Their participation will also be enhanced if procurement procedures are perceived by them as fair and equitable.*
- Legislatures and the general public. Transparency is a necessary condition for procurement regimes and decisions to be accountable, in particular in the use of public or, in the case of the World Bank, international funds. For this purpose decisions must not only be impartial, but also be seen to be impartial. This calls for objective criteria, made known in advance, for the taking of such decisions, for the receipt*

and opening of tenders under procedures guaranteeing the regularity of the tender openings and ex-post information on the contracts awarded as well as for review possibilities.

-Other governments. Under the WTO Agreement on Government Procurement, each Party accepts obligations vis-à-vis other Parties to the Agreement, not only to ensure that the suppliers of those Parties benefit from adequate information and transparent procedures, but also to provide information directly to other Parties on its procurement procedures and decisions taken under it.

Transparency may also be important to purchasers, for example because knowledge of prices paid elsewhere may facilitate their attempts to get best value for money.

VI. There exist at present three international instruments on the procedures and practices of governments in the area of procurement:

(i) The UNCITRAL Model Law on Procurement of Goods, Construction and Services was drawn up by the United Nations Commission on International Trade Law (the UNCITRAL)¹ to serve as a model for States for the evaluation and modernization of their procurement laws and practices and the establishment of procurement legislation where none presently exists. As a framework law, the Model Law is intended to provide all the essential principles and procedures for conducting procurement proceedings in the various types of circumstances likely to be encountered by procuring entities. In line with the mandate of UNCITRAL to promote international trade and the notion underlying the Model Law that the wider the degree of competition the better the value received for public expenditures, the Model Law as a general rule promotes non-discrimination. Under the Model Law, this is given effect by the procedures designed, for example, to ensure that non-national suppliers are given adequate transparency. At the same time, the Model Law recognizes that the enacting States may in some cases wish to restrict participation by foreign suppliers with a view to protecting certain domestic industries or for other legitimate reasons. However, with a view to promoting transparency, any such restrictions are subject to the requirement that the imposition of the restriction by the procuring entity should be based only on grounds specified in the procurement regulations or in other legislation.²

¹UNCITRAL is an organ of the United Nations General Assembly established to promote the harmonization and unification of international trade law, so as to remove unnecessary obstacles to international trade caused by inadequacies and divergences in the law affecting trade.

²UNCITRAL Model Law Guidelines page 58 and Model Law Article 8(1) and (2)

(ii) The Guidelines for Procurement under IBRD Loans and IDA Credits and the Guidelines for Selection and Employment of Consultants by the World Bank Borrowers have the purpose of informing those World Bank Borrower countries or their agencies (Borrowers) carrying out a project that is financed in whole or in part by a loan from the IBRD (the International Bank for Reconstruction and Development) or a credit from the IDA (the International Development Association) of the arrangements to be made for procuring goods and works and the procedures for selecting, contracting and monitoring consultants required for the project. In most cases the Bank requires its Borrowers to obtain goods and works through International Competitive Bidding (ICB) open to all eligible suppliers and contractors, with allowance for preferences for domestically manufactured goods and for domestic contractors for works under prescribed conditions.³ The World Bank Guidelines also allow for other methods to be used where ICB is clearly not the most economic and efficient method, for example for the procurement of goods or works which, by their nature or scope, are unlikely to attract foreign competition.⁴

(iii) The WTO Agreement on Government Procurement (1994) establishes an agreed framework of rights and obligations, among WTO Members Parties to the GPA, with respect to their national laws, regulations, procedures and practices in the area of government procurement with a view to achieving greater liberalization and expansion of trade and improving the international framework for the conduct of world trade. The cornerstone of the rules in the GPA is non-discrimination between the supplies and suppliers of WTO Members Parties to the GPA. The GPA applies to the procurement of goods and services, including construction services, above certain threshold values and defined by the schedules of each Party as contained in Appendix I to the GPA.⁵ Certain derogations or exceptions are specified in the schedules of individual Parties in Appendix I to the GPA. In order to ensure that the basic principle of non-discrimination is followed and that access to procurement is actually available to foreign products, services and suppliers, the GPA lays heavy emphasis on procedures for providing transparency of laws, regulations, procedures and practices regarding government procurement.

³World Bank Guidelines on goods and works, paragraph 1.3

⁴World Bank Guidelines on goods and works, paragraph 1.4

⁵GPA, Article III:2

II. DEFINITION AND SCOPE OF GOVERNMENT PROCUREMENT

International instruments

VII. *The three instruments vary as to their scope and coverage. Similarly there is no uniform definition of what is meant by government procurement.*

VIII. *The Model Law is designed to be applicable, in principle, to all types of procurement of goods, construction and services. At the same time, it recognizes that an enacting State may wish to exempt certain types of procurement from the coverage of its procurement legislation, for example defence- and security-related procurement; this may be specified in the procurement law or in the implementing regulations.⁶*

IX. *The Model Law defines •procurement• as the acquisition by any means of goods, construction and services.⁷ What is meant by •goods•⁸, •construction•⁹ and •services•^{10, 11} is listed in the Model Law. In order to take into account the existence of procurement legislation at different levels of government, the Model Law presents two options as to the levels of government to be covered. The first option brings within the scope of the Model Law all governmental departments, agencies, organs and other units within the enacting State pertaining to the central government as well as to provincial, local or other governmental subdivisions of the enacting State. This option may be adopted by non-federal States, and by federal States that may legislate for their subdivisions. A second option would be adopted by States that enact the Model Law only with respect to the organs of the national government.¹² The enacting State may extend application of the Model Law to certain entities or enterprises that are not considered part of the government, if it*

⁶Model Law Article 1(1)

⁷Model Law Article 2(a)-(c)

⁸•Goods• means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves.

⁹•Construction• means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the construction itself.

¹⁰•Services• means any object of procurement other than goods or construction.

¹¹Model Law Article 2(c)-(e). The enacting State may include additional categories of goods or specify certain objects of procurement which are to be treated as services.

¹²Model Law Article 2(b)(i)

has an interest in requiring those entities to conduct procurement in accordance with the Model Law.^{13, 14}

X. *The World Bank Guidelines are applicable to the procurement of goods, works and related services, and to consultants• services for a project that is financed in whole or in part by a loan from the IBRD (International Bank for Reconstruction and Development) or a credit from the IDA (International Development Association).*¹⁵ *The definitions of •goods•¹⁶ and •services related to goods•¹⁷ are set forth in the Guidelines on procurement. The latter also apply to services in which the physical aspect of the activity predominates and which are bid and contracted on the basis of performance of a measurable physical output, for example construction of works, manufacture of goods, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, and satellite imagery.*¹⁸ *The Guidelines on the Selection and Employment of Consultants only apply to services of an intellectual and advisory nature and the term •consultants•¹⁹ is defined therein. The Bank Borrowers use consultants to help in a range of activities, such as policy advice, institutional reforms, management, engineering services, construction supervision, financial services, procurement services, social and environmental studies, and identification, preparation and implementation of projects to complement the Borrowers• capabilities in these areas.*²⁰

XI. *The GPA applies to procurement by any contractual means, including through such methods as purchase or lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.*²¹

¹³Model Law Article 2(b)(ii), Guide to Enactment of UNCITRAL Model Law - pages 65 and 66 list the factors that the enacting State may consider in deciding which entities to cover.

¹⁴Guide to Enactment of UNCITRAL Model Law, page 65

¹⁵World Bank Guidelines on goods and works, paragraph 1.1 and on consultants• services, paragraph 1.1

¹⁶Commodities, raw materials, machinery, equipment, and industrial plant

¹⁷Such as transportation, insurance, installation, commissioning, training and initial maintenance

¹⁸World Bank Guidelines on goods and works, footnote 2 to paragraph 1.1 and on consultants• services, paragraph 1.3

¹⁹•Consultants• includes a variety of private and public entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, United Nations agencies and other multinational organizations, investment and merchant banks, universities, research institutions, government agencies, non-governmental organizations and individual consultants.

²⁰Guidelines on consultants• services, paragraph 1.3

²¹GPA, Article I:2

The obligations under the Agreement apply to procurement: by the procuring entities that each Party has listed in its schedule in Annexes 1 to 3 of Appendix I, relating respectively to central government entities, sub-central government entities and other entities such as utilities; of goods; and of all services and construction services that are specified in lists, found respectively in Annexes 4 and 5 of Appendix I. General Notes at the end of most Parties' schedules provide for a number of exceptions. The Agreement authorizes Parties to modify the mutually agreed coverage of Appendices I to IV under the procedures for rectification and modification specified in Article XXIV:6.²²

XII. The international instruments provide for the size of procurement contracts to be taken into account in determining the requirement to which they are subject. The provisions of the GPA apply to procurement in respect of procurement contracts above certain threshold values. Each Party indicates its thresholds applying to the procurement of goods and services under Annex 1, 2 and 3 entities.²³ The Model Law allows the procuring entity engaging in low-value procurement in which there is unlikely to be interest on the part of foreign suppliers to forgo certain procedural requirements relating to announcements at the international level.²⁴ Under the World Bank Guidelines, NCB procedures may be preferred to ICB procedures when contract values are small.²⁵

National practice

XIII. Several countries have stated that there is no legislative or regulatory definition of government procurement.²⁶ In most cases, government procurement is defined simply as the procurement of goods and services by central, provincial and local governments, as well as by other public entities, which in certain cases include utilities - e.g. suppliers of energy, water, transport and telecommunications services.^{27, 28} Some countries treat the use of public funds to

²²Since its signature in April 1994, the Agreement's scope has been expanded through the incorporation in it of the results of a series of bilateral agreements between individual Parties. A loose-leaf system for Appendices to the Agreement designed to reflect the up-to-date status of the Appendices as such changes occur is being prepared.

²³GPA, Article I:4; a table of thresholds of individual GPA Parties is available on <http://www.wto.org/wto/govt/thresh.htm>. The thresholds as expressed in national currencies of Parties to the Agreement for 1996/97 are available in documents GPA/W/12 and Addenda 1-7.

²⁴Model Law Article 23(b)

²⁵World Bank Guidelines on goods and works, paragraph 3.3

²⁶S/WPGR/W/11/Add.4, Add.8

²⁷S/WPGR/W/11/Add.1, Add.2, Add.10, Add.14

²⁸Eg., within the Community, "government procurement" covers written contracts for pecuniary interest awarded by public authorities (including at a regional and local level), bodies governed by public law and certain utilities in respect of the supply of goods and the provision of services, including construction services. The entities covered are subject to a common EC-wide regime for

finance purchases either fully or partially as a defining criterion.²⁹ Some countries have stated that procurement by any contractual means is covered, including purchases, leasing, rental or hire purchase, with or without an option to buy.³⁰ In one instance, government procurement also includes the concession of activities of public entities among themselves or with private individuals.³¹ Other countries have stated that the term •procurement• includes all stages of the process by which government agencies acquire from external sources the goods and services they need to fulfil their mandates.³² Others have indicated, explicitly or implicitly, that procurement generally does not include non-contractual agreements³³ or any form of government assistance.³⁴

III. PROCUREMENT METHODS

International instruments

XIV. Various methods of procurement are used by government entities, according to circumstances. All three of the instruments covered by this note describe the specific procurement methods that may be used and define the parameters for their use. The instruments provide that more transparent methods of procurement are to be favoured where possible as being more likely to be effective in realizing the objectives of procurement systems, but these instruments allow less inherently transparent means when circumstances warrant it and, in some instances, subject to special conditions often related to ensuring adequate transparency.

XV. As the method of procurement in normal circumstances, the Model Law foresees the use of tendering for procurement of goods and construction services and, for other services, principal method for procurement of services, a method designed to give due weight in the evaluation process to the qualifications and

procurement contracts above certain threshold values. The rules concerning procurement operations under the threshold values are defined by national law, in accordance with the general principles of law laid down in the EC Treaties. The threshold values are set out in Community law. These thresholds are defined with a view to ensuring that competitive procurement rules apply to contracts likely to interest suppliers from other EU member States while allowing administrative and procedural costs on smaller contracts to be kept to a minimum. Contracting authorities are not permitted to split up a contract so as to reach a contract value below the threshold (WT/WGTGP/W/5).

²⁹S/WPGR/W/11/Add.12, Add.18, Add.21

³⁰S/WPGR/W/11/Add.10, Add.19

³¹S/WPGR/W/11/Add.8

³²S/WPGR/W/11/Add.3, Add.6, Add.7, Add.11

³³S/WPGR/W/11/Add.13, Add.18

³⁴S/WPGR/W/11/Add.6

expertise of the service suppliers. For the purposes of the GPA, open tendering procedures, where all suppliers may submit a tender, is a preferred method. The World Bank Guidelines prescribe the use of International Competitive Bidding in the procurement of goods and works and Quality- and Cost-Based Selection for the selection of consultants services as the main method.

XVI. For exceptional and well-defined circumstances, in which the above preferred methods are not considered by the procuring entity to be an appropriate or feasible method for procurement, the three instruments offer alternative methods of procurement which provide a lesser degree of competition among suppliers compared to the principal method. Therefore, conditions on the use of other methods have been included in all three instruments to avoid unjustified resort to these methods of procurement and to limit their use to exceptional cases, while safeguarding the objectives of non-discrimination among suppliers and transparency of the procurement process. The Model Law gives the options of two-stage tendering, requests for proposals and competitive negotiations where it is not feasible for the procuring entity to formulate specifications to the degree of detail required under the tendering method for goods, for example in the procurement of high technology goods or under the principal method of procurement for services. These methods give the procuring entity an opportunity to negotiate with suppliers with a view to settling upon technical specifications and contractual terms. With regard to the selection of suppliers, the Model Law offers a restricted tendering method which permits the procuring entity to solicit participation only from a limited number of suppliers for procurements of a technically complex or specialized nature; a request for quotations or shopping method with simplified and accelerated procedures under which the procuring entity is allowed to solicit quotations from a small number of suppliers for cases of low-value procurement of standardized goods or services; and single-source procurement for exceptional circumstances, such as serious economic urgency due to catastrophic events. With a view to providing transparency as regards decisions of procuring entities to use an exceptional method of procurement rather than the method that is normally required, the Model Law contains a requirement that any such decision should be supported in the record of procurement proceedings provided under Article 11 of the Model Law by a statement of the grounds and circumstances on which the entity has relied to justify the use of the method in question.³⁵

XVII. The GPA prescribes two methods of procurement other than open tendering procedures. Under selective tendering procedures, those suppliers invited to do so by the entity may submit a tender.³⁶ In order to ensure optimum effective international competition under this method, purchasing entities are required to invite tenders from the maximum number of domestic and foreign suppliers consistent with the effective operation of the procurement system. A number of

³⁵Model Law Article 18(4)

³⁶GPA, Articles VII:3(b) and X

safeguards to ensure non-discrimination in the procedures and conditions for qualification of suppliers are set out in Article VIII. Under limited tendering procedures, the entity contacts the potential suppliers individually.³⁷ Because of the inherently non-transparent nature of this method, the GPA closely circumscribes the situations in which it can be used; it is permitted, for example, in the absence of responsive tenders under open or selective procedures, when the product or service can be supplied only by a particular supplier, or for reasons of extreme urgency brought about by events unforeseeable to the entity.³⁸ The GPA subjects this method to special transparency conditions which require entities to prepare a report in writing on each contract awarded which should include, inter alia, a statement of the conditions referred to in Article XV that justified the limited tendering. Furthermore, entities may hold negotiations with suppliers making tenders, provided this is indicated in the initial tender notice or it appears from the tender evaluation that no one tender is the most advantageous, and subject to specified safeguards to ensure that such negotiations do not discriminate between suppliers.³⁹

XVIII. The World Bank Guidelines allow Modified International Competitive Bidding with simplified advertising and currency provisions to be used in the case of quick disbursement loans or in procurement of commodities. Other methods of procurement which are used in circumstances which necessitate departures from the International Competitive Bidding method procedures are: Limited International Bidding which is essentially International Competitive Bidding by direct invitation and without open advertisement and used where the contract values are small or where there is only a limited number of suppliers or other exceptional reasons⁴⁰; National Competitive Bidding, normally used for public procurement in the country of the Borrower, which is considered to be the most efficient and economical way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition⁴¹; Shopping (international and national) which is based on comparing price quotations obtained from several suppliers to ensure competitive prices and is appropriate for procuring readily available off-the-shelf goods or standard specification commodities that are small in value⁴²; and Direct Contracting Without Competition (single-source)⁴³ used under conditions similar to those of single-source procurement under the Model Law or limited tendering under the GPA. As alternatives to the principal method

³⁷GPA, Article VII:3(c)

³⁸GPA, Article XV

³⁹GPA, Article XIV

⁴⁰World Bank Guidelines on goods and works, paragraph 3.2

⁴¹World Bank Guidelines on goods and works, paragraph 3.3-3.4

⁴²World Bank Guidelines on goods and works, paragraph 3.5-3.6

⁴³World Bank Guidelines on goods and works, paragraph 3.7

of selection of consultants, Quality- and Cost-Based Selection, the World Bank Guidelines prescribe Quality-Based Selection for complex or highly specialized assignments or for those which invite innovations.⁴⁴ Other methods of selection of consultants under the World Bank Guidelines, with specified conditions for their use, include Selection under a Fixed Budget, Least-Cost Selection, Selection Based on Consultants' Qualifications and Single-Source Selection.⁴⁵

XIX. While many of the specific requirements relating to transparency referred to in the later sections of this note concern transparency under any of the allowable procurement methods, it should be noted that some of the specific requirements relate more directly to preferred methods of procurement.

National practices

XX. The basic range of permissible procurement procedures is the same in most countries, although there are some variations. Although the terminology employed may differ, three broad categories of procedures are commonly distinguished: public or open tendering procedures; selective or restricted tendering procedures; and limited tendering or direct contracting or single tendering procedures.

XXI. Even though the basic range of procurement methods is the same in most countries, there are significant differences in the conditions under which a purchasing agency can resort to different procedures. Some countries prescribe the procurement method to be used according to a scale of threshold values. In some other countries, the procuring agency has considerable discretion in choosing the appropriate procurement procedure within the parameters of the government's purchasing policy and guidelines⁴⁶ and according to the characteristics and circumstances of the procurement and the complexity of the procurement.⁴⁷ In most countries, open or selective tendering procedures appear to be the main procedures.

XXII. In the information available, typical features of national practices in regard to open tendering procedures are as follows:

-all interested suppliers may submit a tender. However, in some countries only qualified suppliers are invited to participate, at least for certain types of contracts⁴⁸;

⁴⁴World Bank Guidelines on selection of consultants, paragraph 3.2-3.4

⁴⁵World Bank Guidelines on selection of consultants, paragraph 3.5 to 3.11

⁴⁶S/WPGR/W/11/Add.4, Add.11

⁴⁷S/WPGR/W/11/Add.6

⁴⁸S/WPGR/W/11/Add.3, Add.5

- often used for procurement with high threshold values⁴⁹;
- longer time-limits for submitting tenders are provided compared to other methods of procurement⁵⁰;
- used for procurement of basic goods and services that are easy to compare and where contracts are awarded according to price only;
- prior notice of procurement opportunities is invariably given including publication of notices of invitation to tender.

XXIII. Selective tendering procedures are used in procurement under which, because of the nature or the purpose of the procurement, participation is limited to a certain number of selected suppliers.⁵¹ These procedures may have the following features:

- only those suppliers that have been invited to submit a tender by the contracting entity may do so;
- suppliers are selected from a list of qualified suppliers.⁵² In some cases, the minimum number of qualified suppliers that should be invited is specified in the procurement legislation;
- used to ensure that excessive time is not spent on evaluation when evaluation of the tenders is time-consuming⁵³;
- prior notice of procurement opportunities may be given, including publication of notices of invitation to tender.

XXIV. Under limited tendering procedures, the procurement entity contacts the suppliers (or sole supplier) individually. It is generally used as an exception and under conditions and circumstances which may include, depending on the country:

- where there are no satisfactory responsive bids under other methods⁵⁴;

⁴⁹Dominican Republic-TPR 1996, Czech Republic-TPR 1996, Costa Rica-TPR 1995, Venezuela-TPR 1996, Fiji-TPR 1997, Thailand-TPR 1991, Indonesia-TPR 1991, Uruguay-TPR 1992

⁵⁰S/WPGR/W/11/Add.1, Add.2, Add.3, Add.4, Add.12, Add.15, Add.16, Add.19; APEC Survey - Thailand

⁵¹S/WPGR/W/11/Add.1, Add.2, Add.3

⁵²S/WPGR/W/11/Add.2, Add.3, Add.9, Add.15, Add.17, Add.18

⁵³S/WPGR/W/11/Add.1

⁵⁴S/WPGR/W/11/Add.5, Add.8, Add.9

- where the additional procurement is a replacement of the original procurement or cannot be separated from a previous procurement by the original supplier⁵⁵;
- in procurements involving the protection of patents, copyrights or other exclusive rights⁵⁶;
- in unforeseen and compelling emergency situations⁵⁷;
- to safeguard the public interest⁵⁸;
- for contracts of below specified thresholds⁵⁹;
- for procurement of goods available in commodity exchange markets⁶⁰;
- for perishable goods⁶¹;
- for provision of consultancy services or performance of artistic works⁶²;
- when the specifications of the procurement in question cannot be defined sufficiently precisely⁶³;
- when tenders submitted have been collusive;
- when procurement is confidential or sensitive⁶⁴;
- for a private group contract with small and medium enterprises⁶⁵;

⁵⁵S/WPGR/W/11/Add.2, Add.9, Add.14

⁵⁶S/WPGR/W/11/Add.9, Add.14, Add.18, Add.19

⁵⁷S/WPGR/W/11/Add.6, Add.9, Add.14, Add.15; Slovak Republic-TPR 1995, Costa Rica-TPR 1995

⁵⁸S/WPGR/W/11/Add.14, Add.16

⁵⁹S/WPGR/W/11/Add.8, Add.12, Add.14, Add.19; Slovak Republic-TPR 1995

⁶⁰S/WPGR/W/11/Add.8

⁶¹Zambia-TPR 1996

⁶²S/WPGR/W/11/Add.3, Add.8, Add.18, Add.19

⁶³Slovak Republic-TPR 1995

⁶⁴S/WPGR/W/11/Add.16

⁶⁵S/WPGR/W/11/Add.13

-for procurement under tied loans⁶⁶;

-in some instances it has been stated that prior public notice of procurement opportunities is not a requirement under this method.⁶⁷

XXV. Some countries have specified that, in some exceptional cases, procuring entities may conduct negotiations with one or more suppliers to determine the terms of the procurement contract in the context of limited tendering procedures.⁶⁸ Others seem to allow the possibility of negotiations also in other cases, for example in negotiating contract terms with service providers.⁶⁹ The conditions for resort to negotiations vary between countries. In some countries, these conditions are similar to those under which limited tendering is permitted.⁷⁰ In one country, negotiated procedures are sometimes used in the utilities sector after the publication of calls for competition.⁷¹ In another country, negotiations are undertaken in cases of extreme urgency to meet the demand within a given time-frame where sources of supplies are known.⁷²

XXVI. Moreover, some countries conduct a two-stage procedure in the event of a complicated procurement requiring clarification of technical aspects.⁷³ Several countries sometimes employ design or other contests.⁷⁴ Under this procedure, the contracting authority may acquire a plan or design selected by a jury after having been put into competition with or without the award of prizes. Design contests can be organized as a part of another procedure leading to the award of a contract, or can constitute an independent procedure on their own.^{75, 76}

⁶⁶Colombia-TPR 1996, Cameroon-TPR 1995

⁶⁷S/WPGR/W/11/Add.2

⁶⁸S/WPGR/W/11/Add.14, Add.15, Add.17

⁶⁹S/WPGR/W/11/Add.10, Add.12

⁷⁰S/WPGR/W/11/Add.15, Add.17

⁷¹S/WPGR/W/11/Add.1

⁷²S/WPGR/W/11/Add.14

⁷³S/WPGR/W/11/Add.18; Czech Republic-TPR 1996, Brazil-TPR 1996

⁷⁴S/WPGR/W/11/Add.3, Add.10

⁷⁵S/WPGR/W/11/Add.10

⁷⁶Other countries have mentioned, without further explanation, procedures such as •competition based on previous records• and •negotiations-with-retaining-competition•.

IV. INFORMATION ON NATIONAL LEGISLATION AND PROCEDURES

International instruments

XXVII. *Government procurement activities are generally regulated through laws at the central or sub-central levels of government supplemented by administrative rulings and directives of general application. The Model Law and the GPA require the public accessibility of the relevant texts.⁷⁷ The GPA explicitly requires the GPA Parties to publish any law, regulation, judicial decision, administrative rulings of general application and any procedure regarding government procurement (including standard contract clauses) in such a manner as to enable other GPA Parties and suppliers to become acquainted with them. The publications in which individual GPA Parties publish their respective national legislation have to be identified in Appendix IV to the GPA.⁷⁸ The World Bank Guidelines are published by the World Bank and made available to Borrowers.⁷⁹*

XXVIII. *The GPA also provides for other means by which suppliers and/or other governments can obtain information on national procurement procedures. Under the GPA, each entity shall, on request from a supplier of a GPA Party, promptly provide an explanation of its procurement practices and procedures.⁸⁰ The GPA Parties are also required to provide the challenge procedures under Article XX in writing and make them generally available.⁸¹*

National practices

XXIX. *National rules differ in depth, in certain cases specifying relatively detailed procedural obligations, while in other cases containing only general guidelines. In a few instances, there are no laws or regulations relating specifically to procurement and each entity is free to determine its own procurement procedures within the general parameters set by the government purchasing policy.⁸²*

XXX. *The national regulatory frameworks for government procurement procedures include one or more of the following:*

⁷⁷Model Law Article 5; GPA, Article XIX:1

⁷⁸GPA, Article XIX:1

⁷⁹World Bank Guidelines on goods and works, paragraph 1.1; World Bank Guidelines on consultants• services, paragraph 1.1

⁸⁰GPA, Article XVIII:2(a)

⁸¹GPA, Article XX:3

⁸²S/WPGR/W/11/Add.4

- national constitutions⁸³;
- procurement laws⁸⁴;
- regulations, including in the form of legislative decrees, cabinet orders, ministerial ordinances implementing various aspects of the basic procurement law⁸⁵, for example on procedures for registration and qualification of suppliers, on tender evaluation processes or on public entities and enterprises providing network services⁸⁶;
- horizontal guidelines on government procurement policies in decentralized procurement regimes⁸⁷;
- horizontal laws on national budgets or the public sector budget⁸⁸;
- horizontal laws on financial or budgetary management⁸⁹, public sector control or audit⁹⁰;
- agency-specific purchasing regulations and guidelines that implement national policies and procedures on procurement⁹¹;
- specific laws at the sub-central levels of government⁹²;
- the provisions of regional or other international agreements;
- separate regulations on procurement of specific goods and services categories and construction works.⁹³

⁸³S/WPGR/W/11/Add.3, Add.8; Mexico-TPR 1997

⁸⁴S/WPGR/W/11/Add.12, Add.17; Slovak Republic-TPR 1995, Czech Republic-TPR 1996, Venezuela-TPR 1996, Mexico-TPR 1997

⁸⁵S/WPGR/W/11/Add.5, Add.7, Add.8, Add.11, Add.15

⁸⁶S/WPGR/W/11/Add.13

⁸⁷S/WPGR/W/11/Add.4

⁸⁸S/WPGR/W/11/Add.20

⁸⁹S/WPGR/W/11/Add.20

⁹⁰E.g., Audit Act 1901 in Australia, Law on National Budget in Switzerland, the General Financial Rules in India

⁹¹S/WPGR/W/11/Add.6; Costa Rica-TPR 1995, Dominican Republic-TPR 1996

⁹²S/WPGR/W/11/Add.2, Add.5, Add.6, Add.7; Costa Rica-TPR 1995

XXXI. In most countries, such laws, regulations, administrative guidelines, etc. are published in the official journals.⁹⁴ The information available does not specify how they are otherwise made publicly available.

*V. INFORMATION ON PROCUREMENT OPPORTUNITIES,
TENDERING AND QUALIFICATION*

XXXII. The three international instruments recognize that timely, sufficiently detailed and readily available information on opportunities to bid for specific contracts is essential for guaranteeing effective competition. They lay down detailed provisions on the advance information that entities must provide on their intended procurements. Where prequalification is a necessary condition for tendering, information must be provided on the procedures and criteria that have to be fulfilled in order for an interested potential supplier to qualify.⁹⁵

⁹³S/WPGR/W/11/Add.1, Add.9, Add.10, Add.16, Add.17; Costa Rica-TPR 1995, Brazil-TPR 1996

⁹⁴Eg., in the EC the relevant legislation (the Directives) has been published in the Official Journal of the European Communities: the Directives are available to suppliers from the Office for Official Publications of the European Communities in Luxembourg or through designated sales offices. The Directives are also available on the Internet through the SIMAP home page at <http://simap.eu.int>. In addition, a database of all contracting entities covered by the Community Directives is being developed.

⁹⁵Model Law Article 7(3)(a)

A. Notice of Invitation to Tender or to Prequalify

(i) *How public notice should be given*

International instruments

XXXIII. *The relevant provisions in the three instruments set forth a set of minimum procedures for giving public notice of tendering opportunities that the procuring entity should follow in order to obtain expressions of interest in a specific procurement from potential suppliers. Under the Model Law and the GPA, the information on an intended procurement must be advertised primarily through a notice of invitation to participate in the intended procurement.⁹⁶ The publications in which individual GPA Parties publish their notices of invitations to tender have to be identified in Appendix II to the GPA.⁹⁷ The World Bank Guidelines require the Borrower country to notify the projects which include procurement of goods and works on the basis of International Competitive Bidding or any expected consultancy assignments through a General Procurement Notice on the basis of a draft prepared and submitted to the Bank by the Borrower. The Borrower country must notify the international community in a timely manner of the opportunities to bid for specific procurement of goods and works through invitations to bid advertised in the form of Specific Procurement Notices.⁹⁸ For selection of consultants, the preparation of requests for proposals shall involve a Letter of Invitation which shall state the intention of the Borrower to enter into a contract for provision of consultancy services.⁹⁹ Publication of a General Procurement Notice is not required in the case of National Competitive Bidding (see Chapter VII, Section A) and advertising may be limited to the national press or official gazette. Bidding documents may be in the official language of the country, and local currency is generally used for the purposes of bidding and payment.¹⁰⁰*

XXXIV. *All three instruments foresee the publication of a notice of invitation to participate in an official gazette or other official journal.¹⁰¹ Moreover, to create awareness of the procurement opportunity in the international community, the Model Law and the World Bank Guidelines require the notice of invitation to tender also to be published in a newspaper or a relevant trade publication in a*

⁹⁶Model Law Articles 24(2), 37(2) and 48(2); GPA, Article IX:1

⁹⁷GPA, Article IX:1

⁹⁸World Bank Guidelines on goods and works, paragraph 2.7, 2.8 and 2.10

⁹⁹World Bank Guidelines on consultants• services, paragraph 2.9

¹⁰⁰World Bank Guidelines on procurement of goods and works, paragraph 3.4

¹⁰¹Model Law Article 24(1) and GPA, Article IX:1

language customarily used in international trade, in a technical magazine or a professional journal of wide international circulation.¹⁰² Under the World Bank Guidelines, the invitations to bid for goods or works or lists of consultancy assignments which are advertised in the General Procurement Notice and the Specific Procurement Notices are published in *Development Business*.¹⁰³ World Bank Borrowers are also encouraged to transmit invitations to embassies and trade representatives of countries of likely suppliers and contractors.¹⁰⁴

XXXV. The GPA provides that entities at the sub-central level (Annex 2 entities) and public utilities (Annex 3 entities) may use a notice of planned procurement or a notice regarding a qualification system as an invitation to participate in a tender.¹⁰⁵

XXXVI. The GPA requires that any amendment or re-issue of a notice of invitation to tender, after publication of an invitation to participate in an intended procurement but before the time set for the opening or receipt of tenders, shall be given the same circulation as the original documents upon which the amendment is based.¹⁰⁶

National practices

XXXVII. The information available indicates that publication of invitations to tender is often mandatory.¹⁰⁷ The information provided on some countries describes the practice but without being explicit as to whether it is a requirement under the procurement legislation.¹⁰⁸ In one country there are no central laws, regulations or rules for the publication of notices.¹⁰⁹ The extent and form of publicity can differ according to the tendering procedures applied and/or the value of the procurement. With certain exceptions¹¹⁰, publication requirements are

¹⁰²Model Law Article 24(2); World Bank Guidelines for goods and works, paragraph 2.8 and on consultants• services, paragraph 2.5

¹⁰³*Development Business* (UNDB) is a publication of the United Nations Department of Public Information, UN Plaza, New York, New York 10017, USA. A *Development Business* office is maintained at the World Bank, 1818 H Street, N.W., Washington D.C. 20433, USA.

¹⁰⁴World Bank Guidelines on goods and works, paragraph 2.8 and on consultants• services, paragraph 2.5

¹⁰⁵GPA, Article IX:3

¹⁰⁶GPA, Article IX:10

¹⁰⁷S/WPGR/W/11/Add.2, Add.6, Add.8, Add.12, Add.17, Add.18; APEC Survey - Indonesia

¹⁰⁸S/WPGR/W/11/Add.6, Add.18, Add.19

¹⁰⁹S/WPGR/W/11/Add.4

¹¹⁰S/WPGR/W/11/Add.5, Add.8, Add.11, Add.14, Add.15, Add.18

usually associated with open or selective procurement procedures.^{111, 112} Invitations to tender under certain selective tendering procedures may be sent directly to qualified suppliers.¹¹³

XXXVIII. In most instances, requirements for publication of invitations to tender, in particular advertising in the official gazette or in official procurement bulletins, only concern procurements above certain threshold values which may differ depending on the type of procurement¹¹⁴, or are less rigorous for procurements falling below a certain threshold value.¹¹⁵ For example, tender notices are set up in a visible place of the procuring entity for two consecutive days.¹¹⁶ Some Members have stated that the extent and form of publicity does not depend on tendering procedures¹¹⁷ or on the value of procurement.¹¹⁸

XXXIX. Procurement opportunities are advertised through publication of notices of invitation to tender in printed media which may include:

- government gazettes or official journals.¹¹⁹ In some countries gazetting is required for procurement above certain threshold values¹²⁰;
- special supplements to official journals¹²¹;

¹¹¹S/WPGR/W/11/Add.2, Add.16, Add.19; WT/WGTGP/W/5; APEC Survey - Brunei Darussalam; Zambia-TPR 1996

¹¹²In the EC, invitations to tender for •non-priority services• contracts are not published and, for invitations in the case of certain utilities, a procedure without prior call for competition may be followed.

¹¹³S/WPGR/W/11/Add.9, Add.20; APEC Survey - Australia

¹¹⁴S/WPGR/W/11/Add.1, Add.7, Add.12, Add.13; GPA/12/Rev.1; Slovak Republic-TPR 1995

¹¹⁵S/WPGR/W/11/Add.6; WT/WGTGP/W/5

¹¹⁶S/WPGR/W/11/Add.19

¹¹⁷S/WPGR/W/11/Add.5, Add.8

¹¹⁸S/WPGR/W/11/Add.5, Add.8, Add.11, Add.14, Add.15

¹¹⁹E.g., the Singapore Government Gazette, the Hong Kong Special Administrative Region Gazette, the Official Journal in Chile, Kanp_ in Japan and Norsk Lysningsblad in Norway and the Swiss Official Trade Gazette, Pelita Brunei, Diario Oficial de la Federación in Mexico, Kwanbo in Korea, Government Gazettes in Zambia and Mauritius, La Gaceta in Costa Rica

¹²⁰S/WPGR/W/11/Add.1

¹²¹E.g., Supplement S to the Official Journal of the European Communities and the special section of the Official Journal of the Federation of Mexico, Bulletin des Adjudications of the Belgian Official Journal, the •Julkiset hankinnat• of the Finnish Official Gazette

- local newspapers with wide national circulation.¹²² While gazetting is often stipulated by law, additional announcements in the local press may be at the discretion of the procuring entity¹²³;
- specialized daily or weekly publications¹²⁴;
- trade or financial journals and magazines¹²⁵ in order to disseminate information directly to interested suppliers. These may have standing-columns for advertising tenders¹²⁶;
- bulletins or other publications of national trade associations¹²⁷ or chambers of commerce, depending on the type of procurement and the procuring entity¹²⁸;
- specialized publications circulated in a number of countries belonging to the same region¹²⁹;
- foreign press of wide international circulation where an entity's procurement activities require international sourcing.¹³⁰ The national legislation of one country sets out detailed requirements for non-discrimination in the way tender notices are published domestically and internationally. For example, if the announcement of a specific procurement is to be published in a foreign newspaper, the announcement may not be published in the national publication prior to its publication abroad. The announcements published

¹²²E.g., El Mercurio in Chile, the Straits Times in Singapore, the Seoul Shinmoon, the Bahasa Malaysia, the Dominion in New Zealand

¹²³S/WPGR/W/11/Add.12

¹²⁴E.g., the Open Bidding Service (OBS) and the Government Business Opportunities (GBO) publications in Canada, the Commonwealth (Purchasing and Disposals) Gazette in Australia, the Bulletin of Public Procurement in Poland, the Commerce Business Daily in the United States, the New Zealand Tenders Gazette, New Zealand Government and Local Body Tender

¹²⁵E.g., the Indian Trade Journal, Licitationen in Denmark, El Diario Financiero in Chile

¹²⁶S/WPGR/W/11/Add.11

¹²⁷S/WPGR/W/11/Add.15

¹²⁸S/WPGR/W/11/Add.8; Slovak Republic-TPR 1995

¹²⁹E.g., Revista Licitatur circulated in Argentina, Brazil, Paraguay and Chile, Australian and New Zealand annual joint publication on defence equipment •The Yellow Book•

¹³⁰S/WPGR/W/11/Add.19

*abroad and nationally must not contain conflicting or different details and facts*¹³¹;

*-sub-central publications equivalent to an official gazette*¹³² *or local language newspapers*¹³³ *may be used to publish invitations for procurements at sub-central levels of government, such as State governments or municipalities. Tender notices are usually given in the local media within the territorial jurisdiction of the entity in which the good is to be used, the service supplied and the work executed.*¹³⁴ *One country has indicated that, while it is compulsory in the case of federal entities, publication of tender notices of municipalities and countries in the official gazette is on a voluntary basis.*¹³⁵

*XL. Advertising of opportunities to tender through electronic media is described in Chapter IX, Section B of the present note. In addition to the printed and electronic media, the procuring entity may use additional forms of advertising, for example periodic handouts*¹³⁶ *or posting on the notice boards of the procuring entity.*¹³⁷ *Tender notices are sometimes published/notified through the country's embassies abroad and copies given to the local representatives of other countries.*¹³⁸

*XLI. In addition to setting out the general requirements on procedures for advertising, the procurement legislation may in some cases specify the minimum number of newspapers in which tender notices should be published and the number and the frequency of publication of the same tender notice.*¹³⁹ *In one case, procuring entities are required to use the services of a centralized advertising agent for publication.*¹⁴⁰

¹³¹S/WPGR/W/11/Add.17

¹³²S/WPGR/W/11/Add.2, Add.5

¹³³S/WPGR/W/11/Add.14

¹³⁴E.g., Sydney Morning Herald and Queensland Government Procurement Gazette; S/WPGR/W/11/Add.8

¹³⁵S/WPGR/W/11/Add.1

¹³⁶S/WPGR/W/11/Add.6

¹³⁷S/WPGR/W/11/Add.8, Add.12, Add.17; APEC Survey - the Philippines and Thailand

¹³⁸S/WPGR/W/11/Add.14; APEC Survey - Malaysia; Ghana-TPR 1992

¹³⁹S/WPGR/W/11/Add.8, Add.10

¹⁴⁰S/WPGR/W/11/Add.11

*XLII. In some instances, in addition to invitation to tender notices, periodic pre-information notices announcing procurement plans are published, in particular in the works or utilities sectors such as water, energy, transport and telecommunications.*¹⁴¹

(ii) *Information content of notices of invitation to tender*

International instruments and national practices

*XLIII. All three international instruments require entities to include a minimum amount of information in their invitations to tender sufficient to enable prospective suppliers to assess their interest in the intended procurement, to make an informed decision as to whether a copy of the tender document should be requested from the procuring entity and to facilitate their participation in tendering procedures.*¹⁴² *The three instruments refer broadly to the same elements.*

*XLIV. Under the World Bank Guidelines on consultants' services, the document prepared for the assignment called the Terms of Reference shall define the objectives, goals and the scope of the assignment and provide background information to facilitate the consultants' preparation of their proposals. The Terms of Reference shall also list the services and surveys necessary to carry out the assignment and the expected results, for example reports, data, maps or surveys.*¹⁴³

*XLV. Under the GPA, invitations to tender shall contain certain other specific information, including information concerning the method of procurement applied (open, selective, negotiated procedures)¹⁴⁴ and on the mode of procurement (purchase, lease, rental or hire purchase).*¹⁴⁵

XLVI. Since the GPA obligations only apply to procurement by those entities explicitly covered in the schedules of individual GPA Parties in Appendix I to the GPA subject to exceptions contained therein and to goods and services above

¹⁴¹S/WPGR/W/11/Add.1, Add.6, Add.10; APEC Survey - Australia and Hong Kong, China; GPA/10. For example, for works contracts, contracting authorities in the European Community publish indicative notices containing the essential characteristics of the works contracts which they intend to award. For other services and supplies contracts above a certain threshold value, contracting authorities are required to make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement by product area or in each of the service contracts which they envisage awarding during the subsequent 12 months (WT/WGTGP/W/5).

¹⁴²Model Law 25(1); GPA, Article IX:6-8

¹⁴³World Bank Guidelines on consultants' services, paragraph 2.3

¹⁴⁴GPA, Article IX:6(b)

¹⁴⁵GPA, Article IX:6(h)

*specified threshold values, the notices of invitation to participate in intended procurements or the publication in which such notices appear should indicate whether the procurement for which tenders are sought is subject to the obligations of the Agreement.*¹⁴⁶

*XLVII. Finally, under the GPA, being an intergovernmental agreement subscribed to by Parties using different languages, entities must publish in an appropriate publication listed in Appendix II, for each case of intended procurement, a summary notice of the invitation to tender in one of the official languages of the WTO. The notice shall contain at least information regarding the subject-matter of the contract, the time-limits set for the submission of tenders or an application to be invited to tender, and the addresses from which documents relating to the contracts may be requested.*¹⁴⁷

XLVIII. The details of the information that must be made available in notices of invitation to tender are similar to the requirements in international instruments. The information on national practices as well as the specific elements identified in one or more of the international instruments, are listed below with the instrument that explicitly contains that element identified in the footnotes. There are differences among the countries on which information is available as to the level of detail required in tender notices.

XLIX. International instruments and most countries require tender notices to contain information regarding intended procurement:

- the title, the business name and the address (including address, telephone, telex and fax number) of the entity responsible for inviting tenders for procurement and/or awarding the contract or details of the client of consultancy services. The coordinates of a contact point responsible for providing any commercial or technical information*^{148, 149, 150};
- the scope of the procurement with details on the nature and the quantity of the goods and services to be procured or the construction to be effected*¹⁵¹

¹⁴⁶GPA, Article IX:11

¹⁴⁷GPA, Article IX:8

¹⁴⁸Model Law Articles 25(1)(a) and 37(1); GPA, Article IX:6(e); World Bank Guidelines on goods and works, paragraph 2.7

¹⁴⁹World Bank Guidelines on consultants• services, paragraph 2.9; WT/WGTGP/W/5

¹⁵⁰S/WPGR/W/11/Add.1, Add.2, Add.3, Add.5, Add.6, Add.7, Add.9, Add.11, Add.12, Add.14, Add.15, Add.17, Add.18, Add.19; WT/WGTGP/W/5; APEC Survey - Australia, the Philippines and Thailand

¹⁵¹Model Law Articles 25(1)(b) and 37(1); GPA, Article IX:6(a); World Bank Guidelines for goods and works, paragraph 2.7 and on consultants• services, paragraph 2.3

including the category classifications of products and services and a description of their characteristics, product or services category classifications¹⁵²;

- the procurement method chosen¹⁵³;*
- any options for further procurement or joint contracts¹⁵⁴ or for submitting a bid for a part of a procurement¹⁵⁵, the nature and quantity of any recurring contracts¹⁵⁶ and any option to buy in case of leasing¹⁵⁷;*
- the time-table for the supply of goods, the provision of services or for the completion of the construction.^{158, 159} If possible, an estimate of the timing when any option for further procurement may be exercised; in the case of recurring contracts, an estimate of the timing of the subsequent tender notices¹⁶⁰;*
- the place, the date and time for site visits;*
- the criteria for assessing the bids and other performance requirements and awarding contracts¹⁶¹, specifically in cases where there is no tender documentation;*
 - the place of delivery of the goods to be supplied, the site or location where services are to be provided or where the construction is to be effected^{162, 163};*

¹⁵²S/WPGR/W/11/Add.2, Add.3, Add.7, Add.9, Add.11, Add.12, Add.14, Add.15, Add.17, Add.18, Add.21; APEC Survey - Mexico, the Philippines and Thailand. For example, in the European Community, entities are encouraged to use Common Procurement Vocabulary (CPV) to describe the object of the procurement.

¹⁵³WT/WGTGP/W/5

¹⁵⁴S/WPGR/W/11/Add.13

¹⁵⁵S/WPGR/W/11/Add.10, Add.17

¹⁵⁶GPA, Article IX:6(a)

¹⁵⁷S/WPGR/W/11/Add.18

¹⁵⁸Model Law Article 25(1)(c); GPA, Article IX:6(c)

¹⁵⁹S/WPGR/W/11/Add.1, Add.12, Add.18, Add.20; APEC Survey - Mexico

¹⁶⁰GPA, Article IX:6(a)

¹⁶¹S/WPGR/W/11/Add.18, Add.21; WT/WGTGP/W/5; APEC Survey - Mexico and the Philippines

¹⁶²Model Law Articles 25(1)(b) and 37(1)

regarding suppliers:

- any economic and technical conditions, terms and requirements, financial guarantees such as security deposits and any other information required^{164, 165};
- the criteria and procedures to be used for evaluating the qualifications of suppliers¹⁶⁶ and assessing the financial, economic and technical capacity and suitability of the bidder¹⁶⁷;
- indication of whether the execution of the service procured is reserved by law to a particular profession¹⁶⁸;
- indication of the names and professional qualifications of the staff to be responsible for the execution of the services.¹⁶⁹

L. To facilitate obtaining tender documents or prequalification documents by suppliers interested in bidding for the intended procurement, the procuring entity shall also provide information regarding:

- the means of obtaining the documents containing basic tender information and the place from which they may be obtained^{170, 171};
- the price charged¹⁷² and the currency and means of payment for documents^{173, 174};

¹⁶³S/WPGR/W/11/Add.1, Add.2, Add.8, Add.18; WT/WGTGP/W/5; APEC Survey - Australia

¹⁶⁴GPA, Article IX:6(f)

¹⁶⁵S/WPGR/W/11/Add.1, Add.5, Add.8, Add.12, Add.13, Add.19, Add.21; APEC Survey - Thailand; GPA/15

¹⁶⁶Model Law Article 25(1)(d)

¹⁶⁷S/WPGR/W/11/Add.1, Add.3, Add.5, Add.13, Add.17; APEC Survey - the Philippines

¹⁶⁸WT/WGTGP/W/5

¹⁶⁹WT/WGTGP/W/5

¹⁷⁰Model Law Articles 25(1)(f), 25(2)(a) and 37(1)

¹⁷¹S/WPGR/W/11/Add.1, Add.2, Add.12, Add.14, Add.15, Add.17, Add.19, Add.20, Add.21; APEC Survey - Australia, the Philippines, Mexico and Thailand

¹⁷²Model Law Articles 25(1)(g), 25(2)(b) and 37(1)

¹⁷³Model Law Article 25(1)(h) and (2)(c); GPA, Article IX:6(g)

¹⁷⁴S/WPGR/W/11/Add.1, Add.2, Add.14, Add.15, Add.17, Add.19

-the scheduled date for the availability of the documents¹⁷⁵ and the final date for request for documents¹⁷⁶;

-the language or languages in which the documents are available¹⁷⁷;

information regarding submission of applications to tender or to prequalify:

-the address for submitting an application to be invited to tender or to qualify for the suppliers• lists as well as for submission or receipt of tenders^{178, 179};

-the place and the deadline for the submission or receipt of tenders^{180, 181};

-tender opening and closing dates^{182, 183};

-the language or languages in which applications to be invited to tender or qualify for the suppliers• list or bids must be submitted^{184, 185};

and certain other information:

-an indication of whether the entity intends to hold negotiations;

-a description of challenge procedures;

¹⁷⁵World Bank Guidelines on goods and works, paragraph 2.7

¹⁷⁶S/WPGR/W/11/Add.1, Add.15

¹⁷⁷Model Law Article 25(1)(i) and (2)(d)

¹⁷⁸GPA, Article IX:6(d); Model Law Article 25(1)(j); World Bank Guidelines on goods and works, paragraph 2.43 and on consultants• services, paragraph 2.9

¹⁷⁹S/WPGR/W/11/Add.5, Add.12, Add.17

¹⁸⁰Model Law Article 25(1)(j); GPA, Article IX:6(d); World Bank Guidelines on goods and works, paragraph 2.43 and on consultants• services, paragraph 2.9

¹⁸¹S/WPGR/W/11/Add.1, Add.2, Add.5, Add.6, Add.7, Add.8, Add.9, Add.12, Add.13, Add.14, Add.15, Add.17, Add.19, Add.20, Add.21; WT/WGTGP/W/5; APEC Survey - Australia, Mexico and Thailand; GPA/10

¹⁸²S/WPGR/W/11/Add.1, Add.18

¹⁸³S/WPGR/W/11/Add.18; WT/WGTGP/W/5

¹⁸⁴GPA, Article IX:6(d)

¹⁸⁵S/WPGR/W/11/Add.5, Add.1, Add.17, Add.18

*-whether the tender is covered by a trade agreement.*¹⁸⁶

LI. The information content of tender notices issued by entities in countries which are parties to plurilateral or regional agreements (e.g. GPA and NAFTA) is subject to the relevant requirements set out in those agreements.¹⁸⁷ Tender notices indicate whether the procurement falls under any of those agreements or whether the bid is domestic or international.¹⁸⁸ For procurement by entities at the sub-central levels of government in a country, the minimum information to be provided is equivalent to the information required of entities at the central government level.¹⁸⁹

LII. In some Members, entities are required to draw up tender notices on the basis of model specimens or notices.¹⁹⁰

B. Tender Documents

International instruments

LIII. The information contained in tender documents describes the needs of the procuring entity and establishes a set of standards which enables the procuring entity to compare the tenders submitted in an objective and fair manner.¹⁹¹ Tender documents also set out the rules and procedures with which a prospective tenderer should comply in preparing and submitting a responsive tender. The level of detail and complexity of tender documents may vary with the size and nature of the intended procurement but they should include, at least, the information that is required to be published in the notice of intended procurement.¹⁹² The three instruments refer broadly to the same elements.¹⁹³ The specific elements identified in one or more of the three instruments are listed below, with the instrument that explicitly specifies those elements identified in the footnotes:

¹⁸⁶S/WPGR/W/11/Add.1, Add.7, Add.9; APEC Survey - Mexico

¹⁸⁷S/WPGR/W/11/Add.7; APEC Survey - Hong Kong, China

¹⁸⁸S/WPGR/W/11/Add.2, Add.7, Add.18

¹⁸⁹S/WPGR/W/11/Add.2

¹⁹⁰S/WPGR/W/11/Add.10, Add.12

¹⁹¹UNCITRAL Guidelines, page 80

¹⁹²Model Law Articles 26 and 27(a); GPA, Article XII:2

¹⁹³The World Bank Borrowers use Standard Bidding Documents (SBDs) published by the Bank for various types of procurement (World Bank Guidelines on goods and works, paragraph 2.12). Where no SBDs have been issued, the Borrower uses other standard conditions of contract or contract forms acceptable to the Bank. For selection and employment of consultants the Borrower uses the standard Request for Proposals (RFPs) which includes a letter of Invitation, Information to Consultants (ITC), the Terms of Reference, and the proposed contract (World Bank Guidelines on consultants• services, paragraph 2.8 and 2.10 and Appendix 2).

regarding the procuring entity:

- the address of the entity to which tenders should be sent¹⁹⁴;*
- the address where requests for supplementary information or requests for clarification should be sent¹⁹⁵ and the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate with suppliers in connection with the procurement proceedings, without the intervention of an intermediary¹⁹⁶;*

regarding the intended procurement:

- a complete description of the products or services or construction to be procured¹⁹⁷, a brief description of the consultancy assignment¹⁹⁸;*
- where the procurement is for goods, the quantity of or a list of the goods to be procured¹⁹⁹;*
- any requirements (including technical and quality specifications, standards, minimum performance requirements, conformity certification) to be fulfilled and the test methods that will be used to assess the conformity of the equipment or works with those specifications²⁰⁰;*
- necessary plans, drawings, designs and instructional materials²⁰¹;*
- if alternatives to the characteristics of the goods, construction or services, designs, materials, completion schedules, payment terms, contractual terms and conditions or other requirements set forth in the tender documents are permitted, a statement to that effect, and a*

¹⁹⁴GPA, Article XII:2(a)

¹⁹⁵GPA, Article XII:2(b) and World Bank Guidelines on consultants• services, Appendix 2(c)

¹⁹⁶Model Law Article 27(u)

¹⁹⁷Model Law Article 27(d); GPA, Article XII:2(g)

¹⁹⁸World Bank Guidelines on consultants• services, Appendix 2(a)

¹⁹⁹Model Law Article 27(d); World Bank Guidelines on goods and works, paragraph 2.11

²⁰⁰Model Law Article 27(d); GPA, Article XII:2(g); World Bank Guidelines on goods and works, paragraph 2.11 and 2.16

²⁰¹Model Law 27(d); GPA, Article XII:2(g)

*description of the manner in which alternative tenders are to be evaluated and compared*²⁰²;

*-the warranty and maintenance requirements*²⁰³;

*-the location of delivery of the goods to be supplied, services to be provided or installation of the construction*²⁰⁴;

*-the delivery time or schedule of completion of the goods, the construction to be effected or the services to be provided*²⁰⁵;

*-if suppliers or contractors are permitted to submit tenders for only a portion of the goods, construction or services to be procured, a description of the portion or portions for which tenders may be submitted*²⁰⁶;

*-the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, construction or services themselves, such as any applicable transportation and insurance charges, inspection costs as well as customs duties and other charges or taxes applicable to imported goods*²⁰⁷;

*-the currency or currencies in which the tender price is to be formulated and expressed*²⁰⁸ and the exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used²⁰⁹;

²⁰²Model Law Article 27(d) and (g); World Bank Guidelines on goods and works, paragraph 2.17

²⁰³World Bank Guidelines on goods and works, paragraph 2.16

²⁰⁴Model Law Article 27(d); World Bank Guidelines on goods and works, paragraph 2.16

²⁰⁵Model Law Article 27(d); World Bank Guidelines on goods and works, paragraph 2.11 and 2.16 and on consultants• services, Appendix 2(p)

²⁰⁶Model Law Article 27(h)

²⁰⁷Model Law Article 27(i)

²⁰⁸Model Law Article 27(j); GPA, Article XII:2(h); World Bank Guidelines on consultants• services, Appendix 2(i)

²⁰⁹Model Law Article 27(s)

regarding suppliers:

- any economic and technical requirements, financial guarantees and any other information or evidence required from suppliers*²¹⁰;
- requirements as to documentary evidence or other information that must be submitted by suppliers to demonstrate their qualification*²¹¹;
- the criteria and procedures relative to the evaluation of the qualification of suppliers*²¹²;

regarding evaluation of tenders or proposals:

- the criteria to be used by the procuring entity in determining the successful tender and for awarding the contract, including any margin of preference and any factor other than price to be considered in the evaluation of tenders, such as insurance and inspection costs, customs duties and other import charges, taxes and currency of payment for imported goods and the relative weight of such criteria*²¹³ and the way in which such factors will be quantified or otherwise evaluated²¹⁴;

regarding submission and receipt of tenders or proposals:

- the manner, place and deadline for the submission of tenders, applications to prequalify or proposals*²¹⁵;
- the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance*²¹⁶;
- the period of time during which tenders shall be in effect or consultants' proposals shall be held valid*²¹⁷;

²¹⁰GPA, Article XII:2(f); Model Law Article 27(c)

²¹¹Model Law Articles 7(3)(a)(iii) and 27(c)

²¹²Model Law Article 27(b)

²¹³Model Law Article 27(e); GPA, Article XII:2(h)

²¹⁴World Bank Guidelines on goods and works, paragraph 2.11, 2.17 and 2.51 and on consultants' services, paragraph 2.10 and Appendix 2(d)

²¹⁵Model Law Articles 7(3)(a)(iv) and 27(n); World Bank Guidelines on consultants' services, Appendix 2(h) and (l)

²¹⁶GPA, Article XII:2(d)

²¹⁷Model Law Article 27(p); World Bank Guidelines on consultants' services, Appendix 2(o)

-the language or languages in which tenders must be submitted²¹⁸;

regarding opening of tenders:

-the place, date and time of, and persons authorized to be present at, the opening of tenders²¹⁹;

-the procedures to be followed for opening and examining tenders²²⁰;

regarding the procurement contract:

-the terms and conditions of the procurement contract, both general and special, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties²²¹;

-the terms of payment²²²;

-any formalities that will be required, once a tender has been accepted, for a procurement contract to enter into force, including, where applicable, the signing of a written procurement contract and approval by a higher authority of the government together with the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval²²³;

and regarding certain other matters:

-any requirements of the procuring entity with respect to any tender security to be provided by suppliers including the issuer and the nature, form, amount and other principal terms and conditions²²⁴;

²¹⁸GPA, Article XII:2(c)

²¹⁹Model Law Article 27(q); GPA, Article XII:2(e); World Bank Guidelines on goods and works, paragraph 2.44

²²⁰Model Law Article 27(r)

²²¹Model Law Articles 7(3)(a)(ii) and 27(f); World Bank Guidelines on goods and works, paragraph 2.11

²²²GPA, Article XII:2(i)

²²³Model Law Article 27(y)

²²⁴Model Law Article 27(l) and (m)

-any commitments to be made by the supplier or contractor outside of the procurement contract, such as commitments relating to counter-trade or to the transfer of technology.²²⁵

LIV. Under the Model Law, at any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier or contractor, modify the tender documents by issuing an addendum. The addendum shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the solicitation documents and shall be binding on those suppliers or contractors.²²⁶

National practices

LV. The data available do not contain details or examples of tender documents. Some countries have stated that tender documentation must contain all the relevant information to enable suppliers to prepare and submit responsive bids.²²⁷

C. Clarification

International instruments

LVI. Under the Model Law and the World Bank Guidelines, the procuring entity is required to respond to any request by a supplier for clarification of the tender documents or prequalification documents within a reasonable time prior to the deadline for the submission of tenders or application to prequalify so as to enable the supplier to make a timely submission of its tender or application to prequalify. The procuring entity is also required, without identifying the source of the request, to communicate the clarification, any additional information, correction of errors or any other modifications to all other suppliers to which the procuring entity has provided the tender documents. The record of any meeting with any suppliers shall also be communicated to other suppliers.²²⁸

LVII. Under the GPA, entities are required to reply promptly to any reasonable request from suppliers for explanations relating to tender documentation under open and selective procedures. Entities are also required to reply to any reasonable request for relevant information from a supplier participating in the tendering process on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.²²⁹

²²⁵Model Law Article 27(v)

²²⁶Model Law Article 28(2)

²²⁷WT/WGTGP/W/5; APEC Survey - Mexico

²²⁸Model Law Articles 28(1) and (3) and 7(4); World Bank Guidelines on goods and works, paragraph 2.18

²²⁹GPA, Article XII:3(a)-(c)

Also, any significant information given to one supplier regarding invitations to tender for a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.²³⁰

LVIII. Under the World Bank Guidelines, all prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis.²³¹ Borrowers shall provide reasonable access to project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with the Borrower's representatives to seek clarifications. Minutes of the conference shall be provided to all prospective bidders with a copy to the Bank.²³²

National practices

LIX. No detailed information is available on national practices on clarification of tender documents and procedures. In one country, the procurement legislation provides the conditions under which tenderers may request and obtain further information from the procuring entity.²³³

D. Promptness and Timeliness of Prior Information and Deadlines

International instruments

LX. The Model Law and the GPA emphasize the importance of promptness in the access to national legislation and the publication of texts of relevant legislation.²³⁴ The World Bank Guidelines on goods and works emphasize that specific bidding opportunities should be advertised to all those interested in bidding and, in particular, to the international community in a timely manner to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.²³⁵

²³⁰GPA, Article IX:10

²³¹World Bank Guidelines on good and works, paragraph 2.18

²³²World Bank Guidelines on goods and works, paragraph 2.18

²³³Tenderers may, for the purpose of drawing up their bids, request further information from the procuring entity in writing not later than ten days prior to the expiry of the deadline for submitting tenders. The content of the information shall be made available to other tenderers. The procuring entity is required to provide the supplementary information related to tender documents not later than six days prior to the expiry of the deadline for submitting the bid and in a manner that does not favour certain bidders over others (S/WPGR/W/11/Add.17).

²³⁴Model Law Article 5; GPA, Article XIX:1

²³⁵World Bank Guidelines on goods and works, paragraph 2.7 and 2.8

LXI. All three instruments provide that suppliers must be granted a sufficient period of time to prepare their tenders. The Model Law recognizes that the length of that period of time may vary from case to case depending on the circumstances of the given procurement and it is left to the procuring entity to fix the deadline by which tenders must be submitted.²³⁶

LXII. The GPA prescribes certain minimum deadlines that must be allowed for the preparation, submission and receipt of tenders to enable responsive tendering. The relevant provisions also contain general considerations that should govern when entities set time-limits for tendering and delivery. Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining such a time-limit, entities shall, consistent with their own reasonable needs, take into account factors such as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points. Furthermore, each Party is required to ensure that its entities take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.²³⁷

LXIII. Paragraphs 2 and 3 of Article XI of the GPA on deadlines specify the minimum periods that must be provided for the preparation and submission of tenders by suppliers after the issuance of notices of invitation to tender. The deadlines may be shortened under certain circumstances specified in that Article.

LXIV. The World Bank Guidelines also require that the time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and the complexity of the contract and, generally, no less than six weeks from the date of invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for International Competitive Bidding.²³⁸ The relevant provisions require that sufficient time should be allowed to prospective bidders to prepare their bids after they have been notified of the procurement opportunity. A lead time of eight weeks is prescribed between the publication of a General Procurement Notice for procurement on the basis of International Competitive Bidding and the release of the bidding documents to the public. The notifications on opportunities to bid for specific contracts, or to prequalify, in the form of Specific Procurement Notices, shall be published in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.²³⁹

²³⁶Model Law Article 30(1)

²³⁷GPA, Article XI:1

²³⁸World Bank Guidelines on goods and works, paragraph 2.43

²³⁹World Bank Guidelines on goods and services, paragraph 2.7 and 2.8

LXV. The GPA has detailed provisions aimed at allowing a sufficient period of time for potential suppliers to prequalify. To this end, the GPA provides that any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and complete the qualification procedures²⁴⁰; the time required for qualifying suppliers shall not be used in order to keep suppliers of other GPA Parties off a suppliers' list or from being considered for a particular intended procurement²⁴¹; entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time; if, after publication of a tender notice, a supplier not yet qualified requests to participate, the entity shall promptly start procedures for qualification.²⁴²

National practices

LXVI. Most countries' procurement legislation establishes minimum time-limits, with which the purchasing entities must comply. In a couple of countries there are no mandatory requirements and individual government agencies have discretion in setting the minimum time-limits.²⁴³ Some GPA Parties have stated that their time-limits are in line with the relevant provisions of the GPA.²⁴⁴ The time-limits allowed between the publication of notices of invitation to tender and submission of tenders vary from five to 45 days depending on the procurement methods used, the complexity or size of the procurement and whether the tender is advertised locally or internationally.²⁴⁵ Under open and selective tendering procedures, a period of no less than 40 days between publication of notices of invitation to tender and submission of tenders is frequently allowed although some countries may extend this period up to three months.²⁴⁶

LXVII. The information available also indicates the following more specific practices in some countries:

²⁴⁰GPA, Article VIII(a)

²⁴¹GPA, Article VIII(c)

²⁴²GPA, Article VIII(e)

²⁴³S/WPGR/W/11/Add.4, Add.11

²⁴⁴S/WPGR/W/11/Add.1, Add.2

²⁴⁵S/WPGR/W/11/Add.3, Add.6, Add.8, Add.13, Add.15, Add.16, Add.21; APEC Survey - Malaysia and Mexico; South Africa-TPR 1993

²⁴⁶S/WPGR/W/11/Add.1, Add.2, Add.5, Add.6, Add.9, Add.12, Add.13, Add.14, Add.16, Add.17, Add.18; WT/WGTGP/W/5; Malaysia-TPR 1993

- under selective procurement procedures, where procurement procedures provide for the bid to be preceded by an application to participate in the tender, the time-limits between the publication of the invitation to participate in the tender and receipt of the application may be no less than 25 days²⁴⁷;
- time-limits may be reduced for commercial off-the-shelf procurement²⁴⁸ when the procuring entity has published a pre-information notice, for example in the case of works and services contracts²⁴⁹ and under accelerated procedures used in urgent circumstances²⁵⁰;
- in justified cases, the inviter of bids may extend the deadline for submitting bids, provided that the extension of the deadline is published in an announcement prior to the expiry of the original deadline, and the reason for extending the deadline is indicated.²⁵¹

VI. TRANSPARENCY OF DECISIONS ON QUALIFICATION

A. Transparency of Criteria

International instruments

LXVIII. All three instruments contain provisions aimed at ensuring that decisions on the qualification of suppliers are taken and seen to be taken on the basis of criteria that have been previously disclosed, are capable of objective application and linked to the abilities of interested suppliers to perform.²⁵²

LXIX. The Model Law sets forth the range of criteria that procuring entities may require the suppliers to meet in order to qualify for participation in procurement proceedings.²⁵³ The GPA requires that any conditions for participation in tendering procedures be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Entities shall recognize as qualified suppliers such domestic and foreign suppliers that meet the conditions for

²⁴⁷S/WPGR/W/11/Add.2, Add.6, Add.17; WT/WGTGP/W/5

²⁴⁸S/WPGR/W/11/Add.6, Add.10

²⁴⁹S/WPGR/W/11/Add.10

²⁵⁰S/WPGR/W/11/Add.17, Add.18; WT/WGTGP/W/5

²⁵¹S/WPGR/W/11/Add.1, Add.10, Add.17

²⁵²Model Law Article 6; GPA, Article VIII and World Bank Guidelines on goods and works, paragraph 2.9 and 2.10

²⁵³Model Law Article 6(1)(b)

*participation in an intended procurement.*²⁵⁴ *The GPA also prescribes a number of procedures in Article VIII to ensure that the qualification process is fair and does not lead to discrimination among suppliers. The World Bank Guidelines emphasize that qualification of suppliers be based entirely on their capability and resources to perform the particular contract satisfactorily and lists the factors that should be taken into account.*²⁵⁵

*LXX. In order to guarantee fairness of and non-discrimination in the qualification process, the Model Law requires that the same criteria must be applied to all suppliers participating in the procurement proceedings; any qualification criteria shall be predisclosed in the prequalification documents or tender documents; the procuring entity shall evaluate the qualification of suppliers in accordance with the qualification criteria set forth in the prequalification or tender documents; and, in reaching a decision with respect to the qualification of each supplier, the procuring entity shall apply only the criteria and procedures set forth in such documents.*²⁵⁶ *The World Bank Guidelines require that the scope of the contract and a clear statement of the requirement for qualification be sent to those who have responded to the invitation to prequalify.*²⁵⁷

National practices

*LXXI. Registration and qualification systems serve to create a pool of readily available information on supplier firms which the procuring entities may use to request proposals for bids or to evaluate bids.*²⁵⁸

LXXII. So that procuring entities can satisfy themselves that the supplier selected will have the financial and technical capacity to perform the terms of the procurement contract, the following national practices on qualification criteria are employed in one or more of the countries on whom information is available:

-the financial capacity and stability of a supplier are determined by requiring detailed records of accounting operations and the proof that the supplier has fulfilled all his tax obligations²⁵⁹ or has a professional risk indemnity insurance²⁶⁰;

²⁵⁴GPA, Article VIII(b) and (c)

²⁵⁵World Bank Guidelines on goods and works, paragraph 2.9

²⁵⁶Model Law Article 6(3) and (4) and Article 7(5)

²⁵⁷World Bank Guidelines on goods and works, paragraph 2.10

²⁵⁸S/WPGR/W/11/Add.7, Add.16

²⁵⁹S/WPGR/W/11/Add.1, Add.3, Add.9, Add.17, Add.19

²⁶⁰S/WPGR/W/11/Add.10

- the assessment of professional capacity and technical suitability²⁶¹ based on information relating to: major accomplished projects; availability of equipment, plants, materials and key staff; managerial competence²⁶²; adequate production capacity and availability of the licence required to perform the contract; references or certificates issued by independent bodies attesting ability to supply the required goods and services in compliance with appropriate quality standards and quality assurance systems²⁶³;*
- the legal capacity to enter into procurement contracts may have to be substantiated, for example by producing extracts from penal records, etc.²⁶⁴ In some cases, if tenders are submitted by groups of suppliers, a specific legal form can be required once the contract has been awarded even though it may not be required in submitting the tender²⁶⁵;*
- additionally, entities may base their qualification requirements on some other considerations, for example protection of health and safety of workers²⁶⁶ and employment equity for men and women²⁶⁷;*
- in some cases, tenderers applying for qualification may be required to prove their enrolment in one of the professional or trade registers;*
- in certain cases, countries make the eligibility of suppliers of other countries to participate in a procurement depend on these countries providing reciprocal treatment to its suppliers.²⁶⁸*

The criteria for qualification may vary according to the procurement procedure used or the procuring entity, for example rules on qualification in the utilities sector may be less detailed.²⁶⁹

²⁶¹S/WPGR/W/11/Add.3, Add.9, Add.12, Add.17

²⁶²S/WPGR/W/11/Add.6, Add.9, Add.11, Add.12, Add.13, Add.16; GPA/12/Rev.1

²⁶³S/WPGR/W/11/Add.4, Add.11, Add.13

²⁶⁴S/WPGR/W/11/Add.2; Brazil-TPR 1996

²⁶⁵S/WPGR/W/11/Add.10

²⁶⁶S/WPGR/W/11/Add.2

²⁶⁷E.g., Affirmative Action (Equal Employment Opportunity for Women) Act in Australia

²⁶⁸S/WPGR/W/11/Add.2

²⁶⁹S/WPGR/W/11/Add.10

LXXIII. Entities may sometimes use negative criteria for disqualifying suppliers, for example for reasons of bankruptcy, criminal conviction, grave professional misconduct²⁷⁰, failure to respect social security or tax obligations, misrepresentation or failing to supply information that may be required, and inadequate past performance or violation of contractual obligations in a previous public procurement.²⁷¹ Persons who are themselves public employees or who have family or business ties with the officials involved in the specific procuring process or who have acted as experts in settlement of a related procurement dispute may also be excluded from participating in tenders.

LXXIV. Any particular requirements and conditions regarding qualification procedures are normally set forth in invitations to tender and tender documents, thereby ensuring that all suppliers are informed sufficiently in advance of the relevant requirements.²⁷²

LXXV. In addition to being used to ensure the capacity of tenderers to perform, qualification and also registration systems may be used to build up an approved suppliers network and for consolidating relationships with reliable suppliers. The guidelines for procurement in one country advise organizations which purchase items specifically designed and manufactured to meet their requirements to consider developing a list of approved suppliers.²⁷³ One country allows lists of approved suppliers to be used only in exceptional cases, and then the recourse to lists must be justified and approved.²⁷⁴

LXXVI. Registration requirements are compulsory in certain countries and do not exist in others. Their relation to qualification requirements is not always clear. In some cases, they seem to be additional. In certain countries, all potential suppliers, both local and foreign, are required to be enrolled in a centralized registration system as a prerequisite for participation in government procurement contracts in certain categories of tenders.²⁷⁵ Registration systems may include the following features, depending on the country:

²⁷⁰S/WPGR/W/11/Add.10

²⁷¹S/WPGR/W/11/Add.13, Add.17, Add.18

²⁷²S/WPGR/W/11/Add.6, Add.15, Add.17, Add.18

²⁷³S/WPGR/W/11/Add.4

²⁷⁴S/WPGR/W/11/Add.6

²⁷⁵S/WPGR/W/11/Add.1, Add.5, Add.6, Add.8, Add.9, Add.11, Add.12, Add.13, Add.14, Add.15, Add.16, Add.20; Pakistan-TPR 1995, Egypt-TPR 1991, Uruguay-TPR 1992; APEC Survey - Malaysia and Indonesia (e.g. the Authorized Registers of Qualified Bidders in New Zealand, the Unified Registry of Suppliers (•SICAF•) in Brazil, the General Contractors Registry in Chile, the National Registry of Contractors in Venezuela)

- designated authorities handle registration systems and classify suppliers according to their contracting capacity.²⁷⁶ One country has indicated that, while there is no compulsory registration requirement, procuring entities may request that a firm register in the roster of suppliers be kept by the National General Accounting Office which will include all enterprises that bid or contract with the State within five days following the opening of bids.²⁷⁷ In some cases, tenderers are required to enrol in a professional or trade register²⁷⁸;
- in some countries, the registration requirement may be limited to public works²⁷⁹ or to specific sectors²⁸⁰;
- in another instance, non-registered firms are allowed to participate in tenders for non-recurring goods, services or works where the local contractors are unable to meet the required standards in the execution of contracts²⁸¹;
- companies or firms seeking registration are usually required to make a declaration and/or have their background, finances and ability to provide a satisfactory service checked by the registration authorities.²⁸²

LXXVII. Some countries have provided reasons for the operation of registration systems. Creating a readily available pool of information on bona fide firms reduces the time needed to examine qualifications during the tender evaluation and thus facilitates the qualification process. Another country has stated that the registration system helps to reduce the risk that the designated supplier will not be able to implement the contract properly. It has been stated by one country that the registered suppliers also benefit because they are not burdened

²⁷⁶E.g., the Unified Register of Suppliers maintained by the chambers of commerce in Colombia, the Directorate General of Supplies and Disposals and the National Small Industries Corporation in India, the Expenditure and Procurement Policies Unit, Pharmaceutical Department or Construction Industry Development Board in Singapore, the Higher Council of Public Works (CONSULCOP) in Peru, the Government Procurement Division of the Ministry of Finance of Malaysia

²⁷⁷S/WPGR/W/11/Add.19

²⁷⁸S/WPGR/W/11/Add.10

²⁷⁹E.g., the National Register of Public Works Building Contractors in Argentina, the Register of Construction Contractors in Chile and the National Register of Public Works in Peru

²⁸⁰The Unified Suppliers Registry and the Unified Contractors Registry maintained by the PDVSA (the national oil company of Venezuela)

²⁸¹S/WPGR/W/11/Add.14, Add.16

²⁸²S/WPGR/W/11/Add.5, Add.12

by the need to provide the same information each time they participate in a public tender.²⁸³

LXXVIII. *Residence requirements seem to be relatively rare as a condition to participate in tenders. In some countries, it is required that foreign natural persons without domicile in the country or foreign legal persons without a branch in the country must accredit an agent domiciled in the country who is duly empowered to submit tenders and sign contracts and also to represent them legally and in non-legal matters.²⁸⁴ In a country, in order to conclude a contract with the State, a firm must normally be established in the country, but foreign firms are exempted from this requirement in the case of international tenders.²⁸⁵ In some instances, the procuring authority might require the contractor to be within a certain distance of the site of contract performance where there is a legitimate need for the contracting entity to have the contractor in close proximity.²⁸⁶*

LXXIX. *One country maintains •common use arrangements• which are standing offers with companies to supply goods and services based on pre-negotiated terms and conditions and at agreed prices. Issues such as trade terms, delivery arrangements, discount schedules and all other contract details are agreed prior to suppliers being added to the lists. Common use arrangements cover most requirements for recurring needs across departments and are continually monitored to ensure that suppliers meet the required standards. The same country has put in place an •endorsed supplier arrangement•, under which suppliers of information technology and major office machine products under common use arrangements have to demonstrate a commitment to world best practice in terms of quality standards and service, and long-term value-adding activities.²⁸⁷*

B. Notification and Listing

International instruments

LXXX. *The three instruments have specific requirements on the provision of information on decisions to qualify to the suppliers concerned and to the general public. Under the Model Law, the procuring entity shall make available to any member of the general public, upon request, the names of all suppliers or contractors that have been prequalified.²⁸⁸ Each supplier submitting an*

²⁸³S/WPGR/W/11/Add.16

²⁸⁴S/WPGR/W/11/Add.8, Add.9; Dominican Republic-TPR 1996, Bolivia-TPR 1993, the Philippines-TPR 1993

²⁸⁵S/WPGR/W/11/Add.19

²⁸⁶S/WPGR/W/11/Add.6

²⁸⁷S/WPGR/W/11/Add.11

²⁸⁸Model Law Article 7(6)

*application to prequalify shall be notified whether or not it has been prequalified.*²⁸⁹ *Under the Model Law and the GPA, the procuring entity shall, upon request, communicate to suppliers whose application to qualify was rejected or whose qualification has been brought to an end the grounds therefor.*²⁹⁰ *The GPA requires the entity concerned to advise any supplier having requested to become a qualified supplier of its decision in this regard.*²⁹¹ *The World Bank Guidelines require Borrowers to inform all applicants of the results of the prequalification.*²⁹² *Entities maintaining lists of qualified suppliers are required to publish the qualification criteria, the methods of application and assessment up-to-date lists.*²⁹³

*LXXXI. Under the procedures of Article X of the GPA on selective tendering, entities maintaining permanent lists of qualified suppliers are required to publish annually in one of the publications listed in Appendix III a notice containing the following*²⁹⁴:

-the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;

-the period of validity of the lists, and the formalities for their renewal.

*Entities are required to notify the qualified suppliers included on permanent lists of the termination of any such lists or of their removal from them.*²⁹⁵

²⁸⁹Model Law Article 7(6)

²⁹⁰Model Law Article 7(7) and GPA, Article XVIII:2(b)

²⁹¹GPA, Article VIII:1(f)

²⁹²World Bank Guidelines on goods and works, paragraph 2.10

²⁹³S/WPGR/W/11/Add.2, Add.9

²⁹⁴GPA, Article IX:9(a)-(c)

²⁹⁵GPA, Article VIII(f)

National practices

LXXXII. Many procuring entities maintain either permanent or occasional lists of qualified suppliers²⁹⁶ for procurement in specific categories of products, services and public works, in particular in the case of complex projects.²⁹⁷ In preparing and maintaining lists of qualified suppliers, entities generally observe the following procedures:

- in order to avoid exclusivity in the procurement process, ensuring that new suppliers are provided with an opportunity to be admitted to the lists of qualified suppliers at any time or at regular intervals²⁹⁸ and that qualification lists are regularly updated by procuring entities²⁹⁹ by evaluating and approving potential suppliers³⁰⁰;*
- the regular publication of up-to-date approved lists of qualified suppliers, the period of validity of the lists, the qualification criteria, and methods of application.³⁰¹*

²⁹⁶S/WPGR/W/11/Add.2, Add.4, Add.5, Add.13, Add.14; APEC Survey - Thailand; GPA/12/Rev.1

²⁹⁷S/WPGR/W/11/Add.1, Add.2, Add.6, Add.7, Add.9, Add.11, Add.15 (e.g., in the utilities sector in Norway; construction sector in Chile, Korea and Norway; lists of suppliers of information technology products and major office machines and telecommunications hardware under the Endorsed Supplier Arrangement in Australia; lists of approved suppliers of the Government Supplies Department and the Works Branch of Hong Kong, China, •Common Use Arrangements• for recurring needs of goods and services based on pre-negotiated terms and conditions with supplier companies in Australia)

²⁹⁸S/WPGR/W/11/Add.3, Add.4, Add.5, Add.8, Add.14; APEC Survey - Thailand

²⁹⁹S/WPGR/W/11/Add.5

³⁰⁰S/WPGR/W/11/Add.2, Add.3, Add.4, Add.9; APEC Survey - Thailand

³⁰¹S/WPGR/W/11/Add.9, Add.21

VII. TRANSPARENCY OF DECISIONS ON CONTRACT AWARDS

A. Transparency of Criteria

International instruments

LXXXIII. *Government procurement regimes and each of the three instruments referred to in this note put great emphasis on decisions on the award of the contracts not only being objective but also being seen to be objective. This concern lies at the heart of the nexus linking transparency and accountability. Being seen to be objective in decision-making requires, first, that the evaluation criteria, including technical specifications, be objective in nature and publicly announced in advance and, second, that arrangements for the receipt and opening of tenders are such as to ensure their regularity. Transparency in decision-making further entails the availability ex post of information on the decisions taken.*

LXXXIV. *As stated above under the Section on tender documents, all three instruments provide that tender documents should contain the criteria, including any factor other than price, to be considered by the procuring entity in determining the successful tender and for awarding the contract. All three instruments also emphasize that entities should evaluate tenders only on the basis of the criteria that have been previously published.*

LXXXV. *The provisions of the Model Law on examination, evaluation and comparison of tenders require the procuring entity to evaluate and compare the tenders in order to ascertain the successful tender in accordance with the procedures and criteria set forth in the tender documents and prohibit the use of any criterion that has not been set forth in the tender solicitation documents.³⁰² The procuring entity is to apply the same criteria to all tenders in a given procurement proceeding.*

LXXXVI. *The GPA also explicitly provides that awards should be made in accordance with the criteria and essential requirements specified in the tender documentation.³⁰³ Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.³⁰⁴*

³⁰²Model Law Article 34(4)(a), Article 39(1) and Article 48(3)

³⁰³GPA, Article XIII:4(c)

³⁰⁴GPA, Article XIII:4(b)

LXXXVII. The World Bank Guidelines require that bidding documents shall specify the relevant factors, in addition to price, to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid.³⁰⁵ The Borrower is required to prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation for the award of the contract is based.³⁰⁶

LXXXVIII. Particular attention is given in the three instruments to ensuring the transparency and objectivity of technical specifications criteria and their evaluation. The GPA and the Model Law stipulate that technical specifications³⁰⁷ prescribed by procuring entities shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.³⁰⁸ The GPA and the World Bank Guidelines require that technical specifications prescribed by procuring entities shall be based on international standards, where such exist, otherwise, on national technical regulations, recognized national standards or other equivalent standards, or building codes.³⁰⁹ The GPA has an explicit preference for the use of specifications based on performance rather than design or descriptive characteristics. The Model Law requires that any specifications, plans, drawings, designs and requirements or descriptions be based on the relevant objective technical and quality characteristics of the goods.³¹⁰ All three instruments proscribe the use of brand names and other references pointing to, for example, a patent, specific origin, producer or supplier.³¹¹ Moreover, the GPA requires entities not to seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.³¹²

LXXXIX. The Model Law provides that, as a general rule, suppliers and contractors are to be permitted to participate in procurement proceedings without regard to nationality and that foreign suppliers and contractors should not

³⁰⁵World Bank Guidelines on goods and works, paragraph 2.51

³⁰⁶World Bank Guidelines on goods and works, paragraph 2.53

³⁰⁷Such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the procedures and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities

³⁰⁸GPA, Article VI:1; Model Law Article 16(1)

³⁰⁹World Bank Guidelines on goods and works, paragraph 2.19 and 2.20

³¹⁰Model Law Article 16(2)

³¹¹GPA, Article VI:2-3; Model Law Article 16(2); World Bank Guidelines on goods and works, paragraph 2.19 and 2.20

³¹²GPA, Article VI:4

otherwise be subject to discrimination. At the same time, the Model Law recognizes that governments may wish in some cases to restrict procurement from foreign sources with the purpose of protecting certain economic sectors or on account of certain legal obligations. Such restrictions should only be on grounds specified in the procurement regulations or should be pursuant to other provisions of law.³¹³ The objective of transparency is promoted by requiring a procuring entity to declare any limitations on participation on the basis of nationality in the invitations to tender and to include in the record of the procurement proceedings a statement of the grounds and circumstances on which a procurement entity has relied for limitation of participation on the basis of nationality. In these cases, the procuring entity is exempted from the obligation to give wide international circulation to the invitation to tender or invitation to prequalify and the invitation notices do not need to contain certain details, for example on the languages in which they are available, which are necessary only for documents of international circulation.³¹⁴

XC. The Model Law also provides that in evaluating and comparing tenders, a procuring entity may grant a margin of preference in favour of local goods, services and suppliers which permits the procuring entity to select the overall lowest-priced tender of a local supplier when the difference in price between that tender and the lowest-priced tender falls within the range of margin of preference.³¹⁵ The rules for calculation of such preference margins should be set forth in the procurement regulations. Moreover, the use of a margin of preference is to be predisclosed in the tender documents and reflected in the record of the procurement proceedings.³¹⁶

XCI. Under the (ICB) International Competitive Bidding procedures, the World Bank Guidelines provide that a margin of preference may be granted to domestic goods and construction firms in the evaluation of bids at the request of the Borrower and under conditions to be agreed under the Loan Agreement.³¹⁷ The margin of preference for goods manufactured in the country of the Borrower is equivalent to the amount of duties and other related import charges or 15% of the bid price of foreign goods if the said duties and charges exceed 15% of the bid price. To be eligible for a margin of preference, goods must have a domestic content of at least 30%. Borrowers may also grant a margin of preference of 7.5% to bids for works from eligible domestic contractors in World Bank

³¹³Guide to Enactment of UNCITRAL Model Law, page 58 and Model Law Article 8(1)

³¹⁴Model Law Article 23

³¹⁵Guide to Enactment of UNCITRAL Model Law, page 58; Model Law Article 34(4)(d) and 39(2)

³¹⁶Model Law Articles 27(e), 34(4)(d) and 39(2)

³¹⁷World Bank Guidelines on procurement of goods and construction services, paragraph 2.54 and 2.55

*Borrower countries below a specified threshold of GNP per capita when comparing with bids from foreign countries. The bidding documents shall clearly indicate any preferences to be granted, the information required to establish the eligibility of a bid for such preference, and the method that will be followed in the evaluation and comparison of bids.*³¹⁸

*XCII. Moreover, for procurement of goods and works, which by its nature or scope is not expected to be of interest to foreign bidders, the competitive bidding procedure normally used for public procurement in the country of Borrower, the NCB, may be preferred to the ICB procedures as the most economic and efficient method of procurement. The NCB procedure is used where the contract values are small; works are scattered geographically or spread over time; works are labour intensive; or the goods or works are available locally at prices below the international market. It may also be used when the advantages of ICB are clearly outweighed by the administrative or financial burden involved. Under the NCB, the criteria used in the evaluation of bids and the award of the contracts shall be made known to all bidders and not be applied arbitrarily. Adequate response time for preparation and submission of bids shall be provided. To be acceptable for use in World Bank-financed procurement, the Borrower country's procurement procedures shall be reviewed and modified as necessary, to ensure economy, efficiency and transparency and broad consistency with the principles of the World Bank Guidelines.*³¹⁹

XCIII. Under the GPA and in respect of procurement covered by the Agreement, governments Parties to the Agreement are required to give the products, services and suppliers of any other Party to the Agreement treatment no less favourable than that they give to their domestic products, services and suppliers and not to discriminate among the goods, services and suppliers of other Parties (Article III:1). Furthermore, each Party is required to ensure that its entities do not treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership and do not discriminate against a locally established supplier on the basis of the country of production of the good or service being supplied (Article III:2). Certain derogations from the fundamental principles of the Agreement are provided for in national schedules appended to the Agreement. For instance, for sectors in Annex 3 and for procurement by Annex 1-3 entities of services listed in Annexes 4 and 5, the Appendices of certain GPA Parties enable them to make non-discriminatory treatment of other GPA Parties dependent on material reciprocity.

XCIV. In addition, special and differential treatment for developing countries under Article V of the GPA allows for agreed exclusions from the requirement of national treatment under the GPA. The GPA recognizes the need of developing

³¹⁸World Bank Guidelines on goods and works, paragraph 2.54 and Appendix 2, paragraphs 2-5

³¹⁹World Bank Guidelines for procurement of goods and works, paragraph 3.3 and 3.4

countries to: safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development; promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural and backward areas and economic development of other sectors of the economy; and support industrial units so long as they are wholly or substantially dependent on government procurement. Accordingly, a developing country acceding to the Agreement may negotiate with other Parties mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in its coverage lists. After its accession to the Agreement, a developing country Party may modify its coverage list under the normal procedures of the Agreement or request the Committee to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists.³²⁰

XCV. The GPA prohibits, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, Parties from imposing, seeking or considering offsets. These are defined as measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.³²¹ However, a developing country may at the time of its accession negotiate conditions for the use of offset requirements, to be used only for qualification of suppliers and not as criteria for awarding contracts. These offsets shall be set forth in the country's schedule to the Agreement. The existence of such conditions shall be included in the notice of intended procurement and other documentation relating to tendering procedures.³²² One GPA Party's Appendix I to the GPA contains a note on the use of offset requirements.³²³

National practices

XCVI. In some countries, the basic principles and criteria for selecting tenders are established in the procurement legislation³²⁴; in others, there are no centrally prescribed contract award criteria and agencies determine the criteria that are appropriate in the context of individual procurements.³²⁵ The following criteria and procedures are common to the process of evaluation of tenders:

³²⁰GPA, Article V:2, 4 and 5

³²¹GPA, Article XVI:1

³²²GPA, Article XVI:2; Note to GPA Appendix I of Israel

³²³Note to Israel's Appendix I to the GPA

³²⁴S/WPGR/W/11/Add.3, Add.8, Add.12, Add.17, Add.19

³²⁵S/WPGR/W/11/Add.4, Add.11

- it is invariably required that all evaluation criteria be made available in advance to suppliers in the tender notice or in the tender documents³²⁶; that only those criteria previously announced be taken into account in the evaluation of bids³²⁷; and that selection of the winning tender be made in accordance with the evaluation criteria previously announced and relative importance of each criterion;*
- it may be required that the criteria that are communicated to the potential suppliers in the invitation to tender and tender documents cannot be modified without notifying all of the potential bidders through the same channels used to transmit the invitations and the tender documents³²⁸;*
- contracts are awarded, in general, to the tenders which have the lowest price or to the tenders determined to be economically the most advantageous in terms of the specific evaluation criteria. The latter may involve such elements as price, through-life costs such as installation, maintenance and other overhead costs, quality, aesthetic and functional aspects, technical specifications, fitness for purpose, technical merit, performance of the goods and services to be supplied, competence, viability, solvency, scope of prior investment and experience of prospective suppliers, and other considerations such as after-sale service, guarantees, and technical assistance to clients, environmental impact, associated risks, date of delivery, et cetera;*
- in some cases procuring entities are required to state clearly in the tender documents the ranking of the award criteria that they intend to apply by order of importance.³²⁹ However, the information available does not specify how the criteria are weighted in the overall evaluation.*

XCVII. The procurement practices of a number of countries provide for award criteria to take into account considerations such as the promotion of domestic supplies and/or suppliers. To this end, the criteria may include factors such as price preference margins, offset requirements, set-asides for small and medium-sized enterprises or for minority business. Some countries have stated that the procuring entity must give suppliers prior information at the invitation to

³²⁶E.g., in section •m• of tender documents published in the Commerce Bulletin Daily of the United States

³²⁷S/WPGR/W/11/Add.11, Add.12, Add.17, Add.18, Add.20

³²⁸S/WPGR/W/11/Add.18

³²⁹S/WPGR/W/11/Add.10, Add.12, Add.17; APEC Survey - Thailand and Malaysia

*tender stage of the procedures if domestic preferences or any other conditions in a procurement proceeding are applied.*³³⁰

XCVIII. With respect to the treatment of domestic supplies and/or suppliers, the following practices have been indicated:

- some countries have stated that they have no laws, regulations, procedures or practices that accord domestic goods, services and public works and/or suppliers treatment more favourable than that accorded to foreign goods, services and public works and/or suppliers or that discriminate on the basis of nationality of supplier or origin of goods or services.³³¹ In some, the non-discrimination principle is prescribed in the procurement legislation or government purchasing guidelines³³²;*
- the procurement legislation in another country prohibits procurement subject to an international agreement from suppliers originating in countries not parties to that agreement³³³;*
- in some countries, procurement below certain thresholds may be limited to domestic suppliers³³⁴;*
- preferences to bids from domestic supplies/suppliers, which may take the following forms:*
- preference margins, which may vary according to the category of procurement (usually between 3% and 20%)^{335, 336};*

³³⁰S/WPGR/W/11/Add.12, Add.17

³³¹S/WPGR/W/11/Add.5, Add.9, Add.12, Add.14, Add.15; Dominican Republic-TPR 1996, Mauritius-TPR 1995

³³²S/WPGR/W/11/Add.4, Add.13, Add.15

³³³The Trade Agreement Act (TAA) in the United States requires that procurement of products from countries that the President has not exempted from application of the Buy American Act be prohibited for Federal goods contracts that are covered by the GPA. Amendments to the TAA contained in the Uruguay Round Agreements Act 1994 permit the President to waive the purchasing prohibition and apply Buy American preferences in its place for countries that are not signatories to the GPA but agree to apply equivalent competitive procurement procedures and effective anti-corruption measures. The purchasing prohibition does not apply to services that are covered under the GPA.

³³⁴S/WPGR/W/11/Add.12

³³⁵For example, the Buy American Act of 1933 requires that domestic end-products be acquired for public use. The Executive Order implementing the United States Buy American Act of 1933 states that United States Federal agencies, other than the Department of Defense, may determine that an award can be made for a foreign product if an offered price of a domestic product is

-preference may be given to suppliers of goods and services of domestic origin in choosing between otherwise equal bids, in some cases as a tie-breaker.³³⁷

-no general preferences but specific preferences apply to purchases by certain categories of entities or procurement categories.³³⁸

XCIX. Some procurement legislation requires procuring entities to take into account in the award of contracts the ability of tenderers to meet certain offset requirements. In these cases, the inviter of bids is to define such conditions in the invitations to bid and in tender documents. Some countries have indicated that they do not employ such policies.³³⁹ Where countries do, offset requirements may have the following features:

-local content requirements expressed in terms of a percentage of human resources and other inputs, technology transfer, counter-trade, R&D, export, training, national sub-contracting, strategic investment and venture capital investment requirements. Local content requirements may be expressed in terms of percentage of the value of domestic raw materials and products used in the performance of a procurement.³⁴⁰ In some instances, local content requirements are limited to specific sectors.³⁴¹

determined to be unreasonable, i.e. if the domestic price exceeds the price of a foreign product by 6%, or 12% for small businesses. The Department of Defense uses a 50% factor.

³³⁶S/WPGR/W/11/Add.12, Add.17; APEC Surveys - Malaysia and Thailand; Czech Republic-TPR 1996, Sri Lanka-TPR 1995

³³⁷S/WPGR/W/11/Add.3, Add.8, Add.19, Zambia-TPR 1996

³³⁸For example, Article 36 of the EC Utilities Directive requires as a general rule that, where two or more tenders are equivalent in the light of the award criteria (they are equivalent if the price difference does not exceed 3%), preference shall be given to the tenders where the proportion of the products originating in third countries does not exceed 50% of the total value of the products constituting the tender. Another case is the Preferential Margin Scheme for Construction Quality maintained by Singapore for local contractors with consistent good performance. Under the scheme, a local contractor who has been assessed to be eligible on the basis of performance in the recent past is given a preference point in the computation of prices. The contractor is awarded the contract if his tender price does not exceed the lowest tender by the computed preferential margin. In procurement by PETROBRAS (national oil company of Brazil) and in public works contracts in Costa Rica, a margin of preference is given to local suppliers.

³³⁹S/WPGR/W/11/Add.1, Add.2, Add.3, Add.4, Add.5, Add.6, Add.9, Add.13, Add.14, Add.15, Add.16, Add.18, Add.19, Add.21

³⁴⁰S/WPGR/W/11/Add.8, Add.12, Add.17; Venezuela-TPR 1996, Uruguay-TPR 1992, Tunisia-TPR 1994, Indonesia-TPR 1991, South Africa-TPR 1993; Note to Israel's Appendix I to the GPA

³⁴¹E.g., procurement under the United States Cargo Preference Act and the Fly American Act or defence procurement may involve local content requirements. In Australia the Partnerships for

C. *Some procurement regimes provide for other criteria which discriminate on grounds unrelated to the quality of the tender. Such grounds include:*

- the application of domestic sourcing requirements for inputs into the exploration and exploitation of natural resources;*
- the limitation of the participation in tendering for small-size contracts in the service and construction service sectors on the basis of the location of the supplier's principal office³⁴²;*
- criteria favouring a region of the economy in a general framework of regional development for procurement not covered by international agreements and above a certain threshold value³⁴³;*
- set-aside policies encouraging procurement in labour surplus areas³⁴⁴;*
- preference in selection of tenders to small and medium-sized enterprises. Such enterprises may include local cooperatives, micro-enterprises, foundations, communal action associations and in general similar entities of the place where the contract is to be implemented.^{345, 346} In one instance, small-scale sectors may be granted a price preference up to 15% over the large-scale sector, subject to the merits of each case³⁴⁷;*
- set-aside programmes for creating opportunities for training and employment for businesses run by minority groups through government contracts³⁴⁸;*

Development Programme (PfD) under the umbrella of the Civil Offsets Agreement and the Fixed Term Arrangements (FTA) encourages international information technology and telecommunications companies operating in Australia to make use of domestic products, services and skills. Procurement by PETROBRAS (the national oil company of Brazil) and public work contracts in Uruguay may be subject to local content requirements.

³⁴²S/WPGR/W/11/Add.13

³⁴³S/WPGR/W/11/Add.7

³⁴⁴S/WPGR/W/11/Add.6

³⁴⁵S/WPGR/W/11/Add.5, Add.6, Add.7, Add.8, Add.13, Add.17; Cameroon-TPR 1995

³⁴⁶For example, the Small Business Act in the United States requires that awards of any size shall be set aside for small business participation when there is a reasonable expectation that offers will be obtained from at least two small businesses and awards will be made at fair market prices (so-called •Rule of Two•).

³⁴⁷S/WPGR/W/11/Add.14

³⁴⁸S/WPGR/W/11/Add.6, Add.7; APEC Survey - Malaysia

- the granting of national treatment to foreign suppliers on the basis of reciprocity³⁴⁹, in particular, in the services sector^{350, 351};*
- a large number of regional arrangements contain provisions on government procurement.³⁵² The Secretariat has not made a systematic study of this matter to determine to what extent they provide national treatment or preferences to supplies and suppliers of other countries in the region. However, the information available indicates the following preferences in two such arrangements. The ASEAN PTA (the Association of South East Asian Nations Preferential Trading Arrangement) requires member countries to accord each other a preferential margin of 2.5%.³⁵³ Under the Government Procurement Agreement between Australia and New Zealand, six States or Commonwealth Territories in Australia apply preference margins of 10% or 20% to procurement of goods and related services of Australian-New Zealand content.³⁵⁴*

B. Receipt and Opening of Tenders

³⁴⁹S/WPGR/W/11/Add.2, Add.8, Add.18; Indonesia-TPR 1991

³⁵⁰Covered services in Appendix I of certain GPA Parties

³⁵¹E.g., Article 36 of the EC Utilities Directive applies to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries.

³⁵²Apart from the European Community Directives, of the regional arrangements on which information has been supplied in the responses to the questionnaire on government procurement services, only NAFTA has detailed provisions on tendering procedures including transparency provisions. Other regional agreements which contain provisions on government procurement with varying degrees of detail include the Australian-New Zealand Government Procurement Agreement, the European Economic Area Agreement (laying down specific provisions and arrangements concerning the application of certain EC Directives relating to procurement), the Europe Agreements between the European Union and Poland, Hungary, Romania, Bulgaria, the Czech Republic, the Slovak Republic, Estonia, Latvia, Lithuania and Slovenia, the Central European Free Trade Agreement between Hungary, Poland, the Czech Republic and the Slovak Republic, the Customs Union Agreement between the Czech Republic and the Slovak Republic, the US-Israel Free Trade Agreement, the ACP-EC Convention of Lomé, the Euro-Mediterranean Agreements between the EU and Tunisia and between the EU and Israel, Partnership and Cooperation Agreements between the EU and Russia and Ukraine, the Cooperation Agreement between the EU and Chile, the Free Trade Agreement between Colombia, Mexico and Venezuela (Group of 3 Accord), the Free Trade Agreements between Mexico and Costa Rica and Mexico and Bolivia, the Free Trade Agreements between the EFTA countries and Poland, Hungary and Turkey and the three Baltic countries.

³⁵³S/WPGR/W/11/Add.16; APEC Survey - the Philippines

³⁵⁴S/WPGR/W/11/Add.11

International instruments

CI. *The GPA provisions require that procedures and conditions for the receipt and opening of tenders guarantee the regularity of the openings and be consistent with the national treatment and non-discrimination provisions of the GPA.*³⁵⁵

CII. *The Model Law and the World Bank Guidelines set forth detailed conditions which are aimed at preventing any non-transparent action or decision by the procuring entity in the process of the opening of tenders and at enabling suppliers to observe that the entity complies with the procurement criteria and procedures. To this end, these two instruments provide, inter alia, that:*

- bids shall be opened at the time and place stipulated in the notice of invitation to tender or in the tender notice*³⁵⁶;
- all suppliers that have submitted tenders or their representatives shall be permitted by the procuring entity to be present at the opening of tenders*³⁵⁷;
- the technical proposals, submitted separately from financial proposals, shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance, legal, as appropriate) after the closing time for the submission of proposals*³⁵⁸; *the financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority until they are opened publicly*³⁵⁹;
- the name and address of each supplier whose tender is opened and the tender price or the total amount of each bid shall be read aloud to those persons present at the opening of tenders, and communicated on request to suppliers that have submitted tenders but that are not present or represented at the opening of tenders*³⁶⁰;

³⁵⁵GPA, Article XIII:3

³⁵⁶Model Law Article 33(1); World Bank Guidelines on goods and works, paragraph 2.44

³⁵⁷Model Law 33(2); World Bank Guidelines on goods and works, paragraph 2.44

³⁵⁸World Bank Guidelines on consultants' services, paragraph 2.12

³⁵⁹World Bank Guidelines on consultants' services, paragraph 2.12

³⁶⁰Model Law Article 33(3); World Bank Guidelines on goods and works, paragraph 2.44

-the name and address of each supplier whose tender is opened and the tender price or the total amount of each bid shall be recorded immediately in the record of the tendering proceedings.³⁶¹

CIII. The three instruments set forth a number of other provisions that safeguard transparency at the bid evaluation stage. The procuring entity may ask bidders for clarifications of their tenders that are needed to evaluate them, but no changes are to be asked or permitted with a view to making unresponsive bids responsive except for the correction of arithmetical errors appearing on tender.³⁶² The GPA requires that any opportunity that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.³⁶³ The World Bank Guidelines preclude the alteration of bids after the deadline for receipt of bids.³⁶⁴

CIV. Under the GPA, negotiations with entities may only take place where prior notice has been given or where no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth earlier in the notices or tender documentation.³⁶⁵ To safeguard transparency in the course of negotiations, entities shall ensure that any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation; all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations; all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.³⁶⁶ The Model Law prohibits negotiations between the procuring entity and a supplier with respect to a tender submitted by the supplier.³⁶⁷

CV. The World Bank Guidelines require that information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially

³⁶¹Model Law Article 33(2); World Bank Guidelines on goods and works, paragraph 2.44

³⁶²Model Law Article 34(1)

³⁶³GPA, Article XIII:1(b)

³⁶⁴World Bank Guidelines on goods and works, paragraph 2.45

³⁶⁵GPA, Article XIV:1

³⁶⁶GPA, Article XIV:4(a)-(d)

³⁶⁷Model Law Article 35

concerned with the bidding process until the successful bidder is notified of the award.³⁶⁸

CVI. Under the procedures on negotiations in the Model Law and in the GPA, entities are required to treat information in tenders, in particular any technical, price or other market information, confidentially and not to provide information intended to assist particular participants to bring their tenders up to the level of other participants.³⁶⁹

CVII. Under the World Bank Guidelines on consultants' services, information relating to the evaluation of proposals and recommendations concerning awards shall not be disclosed to the other consultants that have submitted the proposals or to other persons until the award of the contract is notified to the successful firm.³⁷⁰

National practices

CVIII. The countries on which information is available follow procedures that are set forth in the generally applicable procurement laws³⁷¹ or established by individual procuring agencies for their own use.³⁷²

CIX. Most countries require that tenders be received and opened at the date, time and place that were previously announced and specified and published in the invitation to tender or tender documents.³⁷³

CX. Practices regarding procedures for submission and receipt of tenders include the following, depending on the country:

-tenders must be submitted in sealed envelopes³⁷⁴ with an identification of the tender and the opening date. Submitted tenders are to be registered with the date of arrival and persons delivering tenders provided with receipts³⁷⁵;

³⁶⁸World Bank Guidelines on goods and services, paragraph 2.46

³⁶⁹Model Law Article 49(3) and GPA, Article XIV:3

³⁷⁰World Bank Guidelines on consultants' services, paragraph 2.28

³⁷¹S/WPGR/W/11/Add.10

³⁷²S/WPGR/W/11/Add.4, Add.8, Add.11

³⁷³S/WPGR/W/11/Add.5, Add.10, Add.12, Add.16, Add.19

³⁷⁴S/WPGR/W/11/Add.1, Add.5, Add.10, Add.11, Add.14, Add.19, Add.20

³⁷⁵S/WPGR/W/11/Add.8, Add.10

-tenders may also be deposited in a tender box or an urn that is to be situated in the place specified in the tender documents.³⁷⁶ Tenders sent by registered mail³⁷⁷ are to be deposited promptly by the procuring entity into the correct tender box³⁷⁸;

-tenders must be kept stored securely by the responsible department or the procuring entity until the designated bid opening time is reached.³⁷⁹ Purchasing entities are not permitted to canvass offers after the closing date from suppliers who have not submitted bids.³⁸⁰

CXI. In regard to procedures for the opening of tenders, practices include, depending on the country:

-all tenders are to be opened on the due date, preferably immediately after the stipulated closing date for submission of tenders, in the specified place and simultaneously.³⁸¹ Tenders submitted later than the stipulated date are not to be considered³⁸² and are to be returned to the tenderer³⁸³;

-tenders are to be opened by a tender opening committee to be designated by the tender body, formally composed of at least two representatives of the procuring entity³⁸⁴, for example an officer serving in a purchasing unit or an independent member from a non-purchasing branch.³⁸⁵ Some countries procedures require that tender notices should specify the persons who are to be present at the tender opening³⁸⁶;

³⁷⁶S/WPGR/W/11/Add.8, Add.9, Add.10, Add.16; APEC Survey - Malaysia

³⁷⁷S/WPGR/W/11/Add.10

³⁷⁸S/WPGR/W/11/Add.16

³⁷⁹S/WPGR/W/11/Add.10, Add.11

³⁸⁰S/WPGR/W/11/Add.10

³⁸¹S/WPGR/W/11/Add.10, Add.16

³⁸²S/WPGR/W/11/Add.10, Add.11, Add.16

³⁸³S/WPGR/W/11/Add.16

³⁸⁴S/WPGR/W/11/Add.2, Add.4, Add.9, Add.10, Add.16, Add.19; APEC Survey - Chile

³⁸⁵S/WPGR/W/11/Add.10

³⁸⁶S/WPGR/W/11/Add.1, Add.10

-in most countries bidders or their proxies are entitled to be present at bid openings³⁸⁷ and in some others the award is announced in a public meeting and any person wishing to attend may be present at the opening of tenders.³⁸⁸ In some countries, if bidders are not allowed to be present, the opening has to be witnessed by at least three members of the staff of the procuring entity³⁸⁹ who are not involved in the tendering procedure.³⁹⁰ One country has indicated that the procuring entities may decide not to have a public opening but to communicate the award to each of the bidders³⁹¹;

-tender opening procedures may vary according to the category of procurement and the procurement method chosen.³⁹² For example, only tenders under open procedures³⁹³ or tenders above a certain threshold value may be publicly opened, or bidders may be allowed to be present at the opening of tenders only in the area of public works.³⁹⁴

CXII. Practices applied at the opening of tenders include, depending on the country:

-a tender protocol is to be set up at the opening³⁹⁵;

-the name of the bidder, the price, when the lowest price is the award criterion, and other conditions met by the bidder are announced immediately.³⁹⁶ One country has indicated that disqualified bids are returned to the interested parties in closed envelopes³⁹⁷;

³⁸⁷S/WPGR/W/11/Add.5, Add.10, Add.12, Add.13, Add.17, Add.18; WT/WGTGP/W/5

³⁸⁸S/WPGR/W/11/Add.14, Add.19, Add.20; Sri Lanka-TPR 1995

³⁸⁹S/WPGR/W/11/Add.10

³⁹⁰S/WPGR/W/11/Add.5, Add.13

³⁹¹S/WPGR/W/11/Add.18

³⁹²S/WPGR/W/11/Add.1; , Morocco-TPR 1996

³⁹³S/WPGR/W/11/Add.10

³⁹⁴S/WPGR/W/11/Add.10

³⁹⁵S/WPGR/W/11/Add.1, Add.19

³⁹⁶S/WPGR/W/11/Add.10, Add.12, Add.17; Morocco-TPR 1996

³⁹⁷S/WPGR/W/11/Add.3

- opened tenders must be registered so that an additional tender cannot be added subsequently without explanation.³⁹⁸ Tenders should be stamped with the date and the time of opening and the stamp must be initialled by the persons responsible for opening tenders³⁹⁹ or by official witnesses⁴⁰⁰;
- announced awards are to be recorded immediately in the official record of the tendering proceedings⁴⁰¹;
- in some cases, minutes of the official record of the opening proceedings are prepared and signed by the members of the commission and by tenderers who are present.⁴⁰² One country has indicated that the opening procedure has to be recorded only in the case of procurement of construction services.⁴⁰³ The record may include the names of the persons that have attended the opening process, names of tenderers, dates of submission of offers, process offered, variety of offers. One country has indicated that the minimum information content of the minutes is specified in its procurement legislation.⁴⁰⁴ Some countries have stated that all tenderers who have participated in the tender have the right to examine the records.⁴⁰⁵

CXIII. Moreover, in some countries, where a stratified tendering procedure is employed, tenders are received in two sealed envelopes.⁴⁰⁶ The first envelope contains the documentation by which it is possible to identify and confirm the existence and participation of the bidder and a description of the required technical specifications of the product or service in question. The second envelope contains the financial bid for the product or service together with the bid security document. During the first phase, known as the •technical phase•, all of the bids are opened in the presence of the participants, and their contents verified. Only the aspects of bids pertaining to the required technical specifications of the product or service in question are examined and only those which meet the technical

³⁹⁸S/WPGR/W/11/Add.4

³⁹⁹S/WPGR/W/11/Add.4

⁴⁰⁰S/WPGR/W/11/Add.3

⁴⁰¹S/WPGR/W/11/Add.8, Add.9, Add.12

⁴⁰²S/WPGR/W/11/Add.3, Add.12; APEC Survey - Chile

⁴⁰³S/WPGR/W/11/Add.2

⁴⁰⁴S/WPGR/W/11/Add.12

⁴⁰⁵S/WPGR/W/11/Add.2, Add.4

⁴⁰⁶S/WPGR/W/11/Add.18

requirements set forth in the bidding conditions are qualified for their second or financial phase, where the final decision is made.⁴⁰⁷ Another country has elaborated that, in negotiated procurements, prices are kept confidential until an award is made. The reason for doing so relates to the proprietary nature of the pricing information. An additional concern is that the knowledge of prices could lead to a situation in which the incumbent contractor has an unfair advantage over its competitors which could affect the integrity of the procurement system.⁴⁰⁸

C. Ex Post Information on Contract Awards

International instruments

CXIV. The three instruments lay down provisions requiring procuring entities to inform the public and, in particular, the suppliers that have participated in the procurement process of their award decisions. The Model Law and the GPA require entities to publish a notice award after the award of each contract.⁴⁰⁹ The publications in which individual GPA Parties publish such notices are identified in Appendix II to the GPA. The GPA sets forth in detail the type of information that such notices, to be published within a specified time-limit after the award of each contract, must contain. Such information shall relate to⁴¹⁰:

- the nature and quantity of products or services in the contract award;
- the name and address of the entity awarding the contract;
- the date of award of the contract;
- the name and address of the winning tenderer;
- the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
- where appropriate, the means of identifying the notice of invitation to tender or justification for the use of a limited tendering procedure; and
- the type of procedure (open, selective or limited) used.

CXV. In addition to the publication of a notice of contract award, the GPA goes on to require entities to promptly inform directly those suppliers that have participated in a tender of the decision on the contract award, in writing if

⁴⁰⁷Czech Republic-TPR 1996, Brazil-TPR 1996

⁴⁰⁸S/WPGR/W/11/Add.6

⁴⁰⁹Model Law Article 14(1) and (2); GPA, Article XVIII:1

⁴¹⁰GPA, Article XVIII:1(a)-(g)

requested.⁴¹¹ Under the Model Law, the procuring entity is required to give a notice to other suppliers after it has entered into a contract with a supplier, specifying the name and address of the supplier and the contract price.⁴¹²

CXVI. The GPA confers on unsuccessful tenderers the right to obtain the necessary information on the contract award. Accordingly, each entity must respond promptly to requests for further information from a supplier of a GPA Party regarding its procurement practices and procedures. In order to foster transparency and accountability of the decisions of the procuring entity, the Model Law and the GPA allow an unsuccessful tenderer to seek and obtain pertinent information concerning the reasons why its tender was not selected. The GPA also requires the provision of information on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer. Under the Model Law, however, the procuring entity is not required to justify the grounds for its rejection of tenders.⁴¹³

CXVII. As regards the treatment of confidential information on contract awards, the GPA foresees that entities may decide to withhold certain information on contract awards where release of such information may impede law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interests of particular enterprises or might prejudice fair competition between suppliers.⁴¹⁴

CXVIII. The provisions of the Model Law bar the procuring entity from disclosing certain information, including that relating to the examination, evaluation and comparison of tenders so as to safeguard the public interest or the commercial interest of parties involved in the proceedings.⁴¹⁵

National practices

CXIX. In most countries for which information is available, entities are required to announce publicly the results of the contract award monthly or within a time-period which varies from three days to three months.⁴¹⁶

CXX. National practices regarding public notice of contract awards include, depending on the country:

⁴¹¹GPA, Article XVIII:3

⁴¹²Model Law Article 36(6)

⁴¹³Model Law Article 12(1) and GPA, Article XVIII:2

⁴¹⁴GPA, Article XVIII:4

⁴¹⁵Model Law Article 45 and Article 34(8)

⁴¹⁶S/WPGR/W/11/Add.1, Add.2, Add.3, Add.6, Add.8, Add.9, Add.10, Add.17, Add.18

- frequently, contract award notices are published in the same media as those in which invitations to tender had been published⁴¹⁷;
- national procurement legislation sometimes provides that, in addition to publication of the contract award notice in the official journal, for the purposes of social control and public participation, entities have to publicize, in simple layman's terms, all relevant information relating to contract awards once a month in a visible and publicly accessible place within the premises of the entity concerned.⁴¹⁸ In one case, in the area of public works contracts, information on contract awards may also be available from the contact points of procurement agencies⁴¹⁹;
- in some countries, there are no central requirements to publish the details of the contracts awarded⁴²⁰ or contract awards are published on a voluntary basis by the procuring entities⁴²¹;
- in some countries, only awards of contracts above a certain threshold value are published.⁴²²

CXXI. The types of information that are included in the public notices of contract awards include:

- the details of the awarding authority;
- the identity and details of the enterprise or natural person to whom the contract was awarded;
- the procurement procedure used;

⁴¹⁷E.g., Contract Award Notice (CAN) in the Official Journal of the European Communities and in the TED database; the Commerce Business Daily in the United States; the Kanp_ or its equivalents at the local level in Japan; the Hong Kong, China Government Gazette; the Unified Journal of Government Procurement which is an Appendix to the Official Journal in Colombia; the Official Journal of the Federation in Mexico; the Purchasing and Disposals Gazette in Australia; the Bulletin of Public Procurement in Poland; the Swiss Official Gazette; the Official Journal in Peru

⁴¹⁸S/WPGR/W/11/Add.8, Add.19, Add.20; APEC Survey - Indonesia

⁴¹⁹S/WPGR/W/11/Add.5

⁴²⁰S/WPGR/W/11/Add.4, Add.14

⁴²¹APEC Survey - Thailand

⁴²²S/WPGR/W/11/Add.11

- the amount, the characteristics and classification of the product or service to be procured;
- the number of tenders received and the form of the award procedure chosen;
- the price or the range of prices to be paid or the highest or lowest offer taken into account;
- the criteria applied;
- references to the related tender notice.⁴²³

One country has indicated that its procurement law provides a specimen for publication of awards of contracts.⁴²⁴

CXXII. In addition to notifying the successful tenderer, the procuring entity may be required to inform all unsuccessful tenderers of the result of the contract award.⁴²⁵ In regard to information made available to unsuccessful tenderers, the country information available indicates the following national practices, depending on the country:

- procuring entities notify such tenderers of their contract award decisions in writing⁴²⁶, with an explanation of the reasons why their bids were not selected and identifying the characteristics and relative advantages of the tender selected⁴²⁷;
- unsuccessful tenderers are notified through a standard regret card⁴²⁸;
- in some countries with deregulated procurement regimes, communication to unsuccessful tenderers of the reasons for not being selected at the request of the tenderer is encouraged under the government's purchasing guidelines⁴²⁹;
- one country has indicated that, while there are no legal obligations, tenderers may obtain information on the successful tender through laws on the

⁴²³SJ/WPGR/W/11/Add.2, Add.5, Add.8, Add.9, Add.11, Add.17, Add.18; WT/WGTGP/W/5

⁴²⁴SJ/WPGR/W/11/Add.17

⁴²⁵SJ/WPGR/W/11/Add.9

⁴²⁶SJ/WPGR/W/11/Add.5; Mexico-TPR 1997

⁴²⁷SJ/WPGR/W/11/Add.1, Add.2, Add.3, Add.8, Add.9, Add.10, Add.12, Add.13, Add.17, Add.18

⁴²⁸SJ/WPGR/W/11/Add.14

⁴²⁹SJ/WPGR/W/11/Add.4, Add.15

freedom of access to information or through recourse to the right of petition⁴³⁰; another country has indicated that, while there is no legal requirement, in practice it is customary to provide the reasons for rejecting bids⁴³¹;

-in some countries, entities are not required to provide each tenderer individually with the pertinent reasons for rejection of its bid⁴³²;

-in some other countries, the reasons for the rejection of the bid are provided in response to a written request by an unsuccessful supplier⁴³³;

-in some countries, all suppliers who have made a bid are entitled to a debriefing so as to give the unsuccessful tenderers the opportunity to discover what they were doing wrong and to assist them to enhance their performance in future bids.⁴³⁴ Typically the debriefing covers an explanation of how suppliers performed against the evaluation criteria⁴³⁵, the significant weaknesses or deficiencies in the tenders; the overall evaluated cost or price and technical rating of the successful tender and the debriefed tender; a summary of the rationale for award; and whether tender selection procedures contained in the tender documents, applicable regulations, and other applicable authorities were followed⁴³⁶;

-tenderers are advised on the relative strengths and weaknesses of their own proposals without a point-by-point comparison of the debriefed suppliers' tenders with those of other suppliers' tenders.⁴³⁷

CXXIII. As regards confidentiality of information on the contract awarded, some countries have stated that a procuring entity may decide that certain information on the contract award be withheld where divulgence of such information would prejudice the legitimate commercial interests of the winning firm or would be contrary to the public interest.⁴³⁸

⁴³⁰S/WPGR/W/11/Add.12

⁴³¹S/WPGR/W/11/Add.8

⁴³²S/WPGR/W/11/Add.3, Add.4, Add.5, Add.7, Add.12, Add.13, Add.16

⁴³³S/WPGR/W/11/Add.5, Add.20, Add.21; WT/WGTGP/W/5

⁴³⁴S/WPGR/W/11/Add.11; WT/WGTGP/W/5

⁴³⁵S/WPGR/W/11/Add.11

⁴³⁶S/WPGR/W/11/Add.6; WT/WGTGP/W/5

⁴³⁷S/WPGR/W/11/Add.4, Add.6

⁴³⁸S/WPGR/W/11/Add.4, Add.6, Add.10; WT/WGTGP/W/5

VIII. REVIEW

International instruments

CXXIV. *Review procedures are often considered a key component of transparency and accountability of government procurement practices. The rules set out in the Model Law and the GPA establish the basic features that national review mechanisms must have without going into great detail. The purpose of these provisions is to give suppliers believing that an entity has breached national law or, in the case of the GPA, the rules of the GPA itself, a right of review.*⁴³⁹

CXXV. *Under the Model Law and the GPA, as an initial step, complainants are encouraged to seek resolution of their complaints through consultations with the procuring entity itself prior to recourse to an administrative review body.*⁴⁴⁰ *Under the Model Law, unless the complaint is resolved by mutual agreement, the procuring entity shall, within prescribed time-limits, issue a written decision including a statement on the reasons for the decision and indicating any corrective measures that are to be taken.*⁴⁴¹

CXXVI. *If the matter is not settled at this stage, the complainant is entitled, under the Model Law, to seek an administrative review.*⁴⁴² *The functions of an administrative review may be vested in an existing appropriate administrative body or a body whose competence is exclusively to resolve disputes in procurement matters and which is independent of the procuring entity. The decisions of the review bodies or failure to make a decision within prescribed time-limits shall be subject to judicial review.*⁴⁴³ *The Model Law also lays down certain procedures to ensure the openness and fairness of review procedures.*⁴⁴⁴

CXXVII. *Under the GPA, Parties may confer the authority to hear challenges by suppliers on national courts or on an impartial and independent review body of an administrative nature. In the event that a bid challenge is heard by a review body which does not have the status of a court of law, either its decisions must be subject to judicial review or it must follow the criteria laid down in detail in Article XX:6(a)-(g). These minimum standards are mainly designed to ensure the openness, fairness and equity of the proceedings.*⁴⁴⁵

⁴³⁹Model Law Article 52; GPA, Article XX:1

⁴⁴⁰GPA, Article XX:1

⁴⁴¹Model Law Article 53

⁴⁴²Model Law Articles 54 and 55

⁴⁴³Model Law Article 57

⁴⁴⁴Model Law Article 55

⁴⁴⁵GPA, Article XX:6(a)-(g)

CXXVIII. The World Bank Guidelines allow a bidder or a consultant who wishes to ascertain the grounds on which its bid or proposal was not selected, after notification of award, to address a request for explanation to the Borrower country or agency. If the bidder or consultant is not satisfied with the explanation given, it may seek debriefing with the World Bank.⁴⁴⁶

CXXIX. Under the GPA, a review body must have the authority to order the correction of a breach of the Agreement or compensation for the loss or damages suffered by a supplier, but this may be limited to costs for tender preparation or protest. Pending the outcome of the challenge, the review body must be able to order rapid interim measures, including the suspension of the procurement process, to correct breaches of the GPA and to preserve commercial opportunities.⁴⁴⁷ However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. The provisions of the Model Law also provide for the suspension of procurement proceedings which takes account of the need of the procuring entity to conclude a contract in an economic and efficient way without undue disruption and delay in the procurement process.⁴⁴⁸

National practices

CXXX. Many countries have procedures which allow aggrieved suppliers to lodge complaints against any alleged breaches of the applicable rules and to seek review of the procurement proceedings of an entity, including award decisions. The procedures for review of complaints and remedies available to successful complainants are sometimes provided explicitly in procurement legislation⁴⁴⁹ and, in other cases, may result from more general possibilities to appeal administrative decisions.

CXXXI. The conditions of recourse to review may comprise the following:

-complaints may be raised on the grounds that the applicable procurement laws and regulations have been violated.⁴⁵⁰ In some cases, where a country is a party to an international agreement, an alleged breach

⁴⁴⁶World Bank Guidelines on goods and works, Appendix 4, paragraph 15 and on consultants• services, Appendix 4, paragraph 15

⁴⁴⁷GPA, Article XX:7(a)-(c)

⁴⁴⁸Model Law Article 56

⁴⁴⁹S/WPGR/W/11/Add.1, Add.3, Add.19

⁴⁵⁰S/WPGR/W/11/Add.3, Add.17, Add.20

of the rules of the agreement itself may constitute grounds for recourse to a review⁴⁵¹;

-in most cases, procedures are available to any person who has or has had an interest in obtaining a particular contract or who has been or risks being harmed by an alleged infringement.

CXXXII. Principal features of complaint-based procedures generally comprise the following:

-provisions encouraging suppliers, in the first instance, to take up the matter directly with the procuring entity for an early resolution.⁴⁵² For this purpose, agencies may have procedures in place for handling complaints directly;

-in some cases, provisions enabling suppliers to seek the mediation or good offices of an independent authority;

-provisions enabling suppliers to bring an action against the procuring entity before an independent body or a court.

CXXXIII. Most countries have designated administrative or judicial authorities to handle procurement-related challenges. The nature of the review authorities varies and, when review bodies are not judicial in character, their decisions are often subject to judicial review.⁴⁵³ The review may be handled by the following types of bodies:

-a specialized body established to review challenges in the area of government procurement⁴⁵⁴;

-an administrative authority with a broader mandate⁴⁵⁵;

⁴⁵¹E.g., GPA, NAFTA and the Government Procurement Agreement between Australia and New Zealand

⁴⁵²S/WPGR/W/11/Add.3, Add.4, Add.6, Add.9, Add.11, Add.12, Add.20, Add.21; WT/WGTGP/W/5; APEC Survey - Philippines

⁴⁵³S/WPGR/W/11/Add.10, Add.12, Add.13, Add.15, Add.17, Add.18, Add.20

⁴⁵⁴OGPR (the Office of Government Procurement Review) and the Government Procurement Review Board under the OGPR in Japan, a panel of arbiters selected by the Office of Public Procurement in Poland, an independent committee of public procurement commissioners under the Public Procurement Council in Hungary, the Higher Tribunal of Public Works Tenders and Contracts (CONSULCOP) in Peru, the International Trade Tribunal in Canada, the International Contract Dispute Mediation Committee in the Ministry of Finance and Economy in Korea and the General Accounting Office (GAO), the Agency Board of Contract Appeals and the Federal Court of Claims in the United States

*-courts of law.*⁴⁵⁶

CXXXIV. Apart from complaint-based procedures, the following mechanisms are used in some instances for monitoring the procurement process:

*-the internal audits of procuring authorities.*⁴⁵⁷ *In those countries where procurement procedures are decentralized, each entity has its own procedures which may vary from one entity to another*⁴⁵⁸;

*-external control or audits by an administrative body in charge of overseeing the proper conduct of procurement proceedings*⁴⁵⁹;

*-in one group of countries in the utilities sector, contract award procedures and practices are periodically examined by independent bodies for the purpose of attesting to their compliance with applicable rules*⁴⁶⁰;

*-oversight by the legislative authorities in some countries.*⁴⁶¹

CXXXV. The remedies available to successful complainants differ from country to country and may include the following:

*-interim measures, including the suspension of the procurement procedures and of the implementation of any decision of the procuring authority taken unlawfully in order to preserve the rights of suppliers.*⁴⁶² *In some*

⁴⁵⁵The Ministry of Commerce in New Zealand, the Ministry of Finance in Singapore and the EC Commission, the Commonwealth Ombudsman or State/Territory Ombudsman in Australia, the Ombudsman and the Controller and Auditor General in New Zealand, the Office of the Comptroller General in Chile, and the Accounts Tribunal or Organs of the System of Internal Control in Brazil, the Ministry of Comptroller and Administrative Development (SEDOCAM) in Mexico, Independent Commissioner Against Corruption in Hong Kong, China, the Federal Commission for Appeal in Switzerland, the General Directorate for Complaints in Mexico, the Ombudsman under the Office of the Commissioner for Administrative Complaints (COMAC), the Comptroller General's Office in Costa Rica

⁴⁵⁶S/WPGR/W/11/Add.1, Add.2, Add.8, Add.10, Add.14, Add.15

⁴⁵⁷S/WPGR/W/11/Add.4, Add.15, Add.18, Add.19

⁴⁵⁸S/WPGR/W/11/Add.15

⁴⁵⁹E.g., the Ministry of Commerce, Audit Office and Serious Fraud Office in New Zealand, the Ministry of Construction and Public Works in the Slovak Republic

⁴⁶⁰S/WPGR/W/11/Add.10

⁴⁶¹New Zealand Parliament's Select Committee public hearing, the Chamber of Deputies in Chile

⁴⁶²S/WPGR/W/11/Add.1, Add.2, Add.3, Add.6, Add.13, Add.17

cases, the review authority is empowered to suspend a procurement before a contract is awarded but not to revoke a contract award.⁴⁶³ In some cases, for instance in the utilities sector, procurement procedures cannot be stopped⁴⁶⁴ although the entity infringing the rules may be asked to pay damages to the supplier wronged unlawfully.⁴⁶⁵ National laws sometimes provide for the public interest to be taken into account in deciding whether to suspend or cancel a procurement decision;

-cancelling of procurement procedures or setting-aside decisions and awards⁴⁶⁶;

-recommendations to entities to bring their procurement proceedings and decisions in line with the rules in force⁴⁶⁷;

-the aggrieved supplier may be awarded damages.⁴⁶⁸ Sometimes these are limited to the financial costs of tendering.⁴⁶⁹

IX. OTHER MATTERS RELATED TO TRANSPARENCY

A. Maintenance of Record of Proceedings

International instruments

CXXXVI. The Model Law establishes an explicit requirement for the maintenance of a record of the key decisions and actions taken by the procuring entity during the course of the procurement proceedings. As is explained in the Guide to the Enactment of the Model Law, the maintenance of a record is one of the principal mechanisms for ensuring adherence to the rules and also facilitates the exercise of the right of aggrieved suppliers to seek review.⁴⁷⁰

⁴⁶³S/WPGR/W/11/Add.2, Add.8, Add.19

⁴⁶⁴S/WPGR/W/11/Add.1, Add.20

⁴⁶⁵S/WPGR/W/11/Add.1

⁴⁶⁶S/WPGR/W/11/Add.1, Add.3, Add.10, Add.12, Add.18

⁴⁶⁷In Australia, while compliance by an entity with a recommendation of the review authority for a remedy is not mandatory, the review authority may report to the Prime Minister and then to the Parliament if the entity does not act upon a recommendation adequately.

⁴⁶⁸S/WPGR/W/11/Add.1, Add.11

⁴⁶⁹S/WPGR/W/11/Add.2

⁴⁷⁰UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment, pages 61 and 71

CXXXVII. Under the Model Law, the record of proceedings should contain, at a minimum, the following key information regarding the procurement, the procuring entity and suppliers and evaluation of tenders⁴⁷¹:

- a brief description of the goods, construction or services to be procured, or of the procurement need for which the procuring entity requested proposals or offers;*
- the names and addresses of suppliers that submitted tenders, proposals, offers or quotations, and the name and address of the supplier or contractor with whom the procurement contract is entered into and the contract price;*
- information relative to the qualifications, or lack thereof, of suppliers that submitted tenders, proposals, offers or quotations;*
- the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract, where these are known to the procuring entity;*
- a summary of the evaluation and comparison of tenders, proposals, offers or quotations, including the application of any margin of preference;*
- any information on rejection of tenders, proposals, offers or quotations under the relevant provisions of the Model Law including a statement to that effect and the grounds therefor;*
- a statement of the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;*
- in procurement proceedings in which the procuring entity limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation;*
- a summary of any requests for clarification of the prequalification or solicitation documents, the responses thereto, as well as a summary of any modification of those documents.*

CXXXVIII. The GPA stipulates that information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures relating to the provision of information by entities (GPA, Article XVIII), between governments (GPA, Article XIX) and under the

⁴⁷¹Model Law Article 11(a)-(m)

*procedures for bid challenge (GPA, Article XX) and dispute settlement (GPA, Article XXII).*⁴⁷²

CXXXIX. Moreover, given the more restrictive nature of limited tendering procedures under the GPA, entities using this method in a given procurement are required to prepare a report in writing on each contract awarded using the limited tendering method, rather than open and selective tendering. Each report shall contain the name of the procuring entity, the value and kind of goods or services procured, country of origin, and a statement of the conditions for using limited tendering as stated in Article XV:1 which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures for information and review as regards the obligations of entities and Parties (GPA, Articles XVIII and XIX) and bid challenge and dispute settlement (GPA, Articles XX and XXII).

National practices

*CXL. The information available on national practices is limited. One country has stated that procuring entities are required to prepare and keep records of certain information related to each procurement.*⁴⁷³ *In another case, the contracting authorities are required to draw up a written report for each contract awarded, which is used either for monitoring purposes or in the case of complaints by suppliers.*⁴⁷⁴

B. Information Technology

International instruments

CXLI. Information technology can play, and in some countries is already playing, a major role in enhancing transparency. With a view to ensuring that the provisions of the GPA do not constitute an unnecessary barrier to technical progress, Article XXIV:8 of the GPA foresees consultations and, if necessary, the negotiation of modifications to the Agreement in view of developments in the use of information technology in government procurement. The consultations in the Committee shall, in particular, aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. The relevant provision of the GPA further states that, when a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential

⁴⁷²GPA, Article XIII:3

⁴⁷³GPA/10

⁴⁷⁴WT/WGTGP/W/5

*problems. In the context of the three-year review of the Agreement under Article XXIV:7(b), the Committee on Government Procurement has initiated work on possible amendments to the relevant provisions of the GPA to reflect recent developments in information technology.*⁴⁷⁵

National practices

*CXLII. Countries' use of electronic means for publicizing procurement opportunities is not uniform. While some have made a substantial investment in the development of information technology systems, some others have only taken preliminary, experimental steps in this direction. Some countries have stated that their legislation does not explicitly provide for the use of electronic means to participate in tendering procedures.*⁴⁷⁶ *In some cases, electronic databases may be provided voluntarily by the purchasing agencies.*⁴⁷⁷ *Some countries have pilot projects for establishing electronic systems focusing both on the processing of tenders and on conducting actual procurements.*⁴⁷⁸

*CXLIII. Information available on the use of information technology in government procurement mainly concerns electronic databases*⁴⁷⁹ *which give information on tendering opportunities in the following way:*

*-tender notices are posted through on-line information and database retrieval services on the Internet.*⁴⁸⁰ *Some agencies have 'home pages' on the Internet for specified types of procurement contracts*⁴⁸¹;

⁴⁷⁵GPA/8

⁴⁷⁶S/WPGR/W/11/Add.18, Add.19

⁴⁷⁷S/WPGR/W/11/Add.4, Add.16, Add.19

⁴⁷⁸The United States Government is planning to develop a FACNET (Federal Acquisition Computer Network Architecture) that would be government-wide and would provide interoperability among users. FACNET would be introduced gradually, with the initial focus on purchases below certain thresholds. The system would allow the use of electronic means in the phases of the procurement process including: posting notices of contracting opportunities, sending tender documents and receiving offers; processing bids, awarding contracts, posting notices of contract award; updating inventories, and, where practical, invoicing customers and paying suppliers. The EDIRAM in Norway and Finland is a pilot project on electronic exchange of information between public purchasers and suppliers. The purchaser will be able to order goods by electronic mail, and the suppliers to return invoices as well as other relevant information in demand to the purchasers (GPA/IC/W/7/Add.6/Suppl.1).

⁴⁷⁹TED (Tenders Electronic Daily) in the EC, Norway and Switzerland under SIMAP (Système d'Information Marchés Publics) project. Canada has the Open Bidding System (OBS), an internationally accessible electronic database on government procurement which is managed by a private company. In the United States, Electronic Commerce Architecture provides for the VANs (value-added networks) to receive calls for tender as they are issued; commercial VANs are used as the interface to the suppliers. The Korean GINS (Goldstar Information Network Service) is operated by a private firm. The JETRO database in Japan; GEMS (Government Electronic Marketplace Service) in Australia and New Zealand.

- in some cases, only tenders above certain threshold values or an outline of the intended tender is so posted⁴⁸²;
- in some GPA Parties, tender notices are issued electronically on all procurement covered by the GPA.⁴⁸³ A code may be used to identify the procurements covered by the GPA and other international agreements⁴⁸⁴;
- some countries have electronic versions of their official gazettes where tender notices are published⁴⁸⁵;
- in some cases, on-line subscribers can order and obtain tender documents electronically.⁴⁸⁶

CXLIV. The databases may have the following features:

- the databases are generally accessible on-line worldwide through the Internet⁴⁸⁷;
- the databases of some countries⁴⁸⁸ extend to all levels of procurement whereas in others⁴⁸⁹ they only cover central government entities;
- some databases contain information on international procurement opportunities, information and advice on doing business with the government, on export possibilities and procurement guidelines at the national

⁴⁸⁰E.g., Tenders Electronic Daily (TED) in the EC, Switzerland and Norway which is the electronic version of the Supplement S to the Official Journal to the European Communities; New Zealand uses Australian Commonwealth's GEMS; the Canadian Open Bidding Service (OBS). S/WPGR/W/11/Add.4, Add.5, Add.6, Add.11, Add.15; WT/WGTGP/W/5; GPA/W/24/Add.1-4

⁴⁸¹E.g., the Works Branch in Hong Kong, China and NASA in the United States

⁴⁸²GPA/W/24/Add.1 and Add.2

⁴⁸³Available in Korea through GINS; in the EC, Norway and Switzerland through TED; in Canada through OBS and through the home page of the Hong Kong Housing Authority

⁴⁸⁴Each notice advertised in the Canadian OBS (Open Bidding Service) and GBO (Government Business Opportunities) contains a field for •Agreement Type• which identifies GPA- and NAFTA-covered procurements.

⁴⁸⁵S/WPGR/W/11/Add.1, Add.5

⁴⁸⁶S/WPGR/W/11/Add.6, Add.7, Add.13

⁴⁸⁷S/WPGR/W/11/Add.5; WT/WGTGP/W/5; GPA/W/24/Add.1-4

⁴⁸⁸S/WPGR/W/11/Add.10, Add.13

⁴⁸⁹S/WPGR/W/11/Add.5, Add.6

level.⁴⁹⁰ Suppliers can browse through the various listings in the database or do a quick search using key words to find opportunities that are of interest⁴⁹¹;

-one country's database contains information on registered suppliers and product lists⁴⁹²;

-some countries' databases provide information about government contracts awarded in the past to help suppliers with market research.⁴⁹³

CXLV. In some cases, tender documents are disseminated and tenders are submitted electronically.⁴⁹⁴ In some other cases, contract awards are also published electronically.⁴⁹⁵ One country has indicated that it provides information on contracts awarded through electronic means, but not on tendering opportunities.⁴⁹⁶ Moreover, some countries are working towards electronic commerce in the procurement proceedings as a whole, including all information exchange between suppliers and procuring entities and the actual ordering of goods and services and invoicing by electronic mail, and electronic payment for the procured goods and services.⁴⁹⁷

⁴⁹⁰GPA/W/24/Add.1-2. OBS in Canada also has a bid matching service which provides suppliers with a description of the goods and services they sell. Using this information, OBS scans its database and automatically faxes to subscribers those opportunities that match their profile. Suppliers can then order the bid documents from the Bid Request Line.

⁴⁹¹OBS in Canada

⁴⁹²Costa Rica-TPR 1995

⁴⁹³E.g., information on the dates for government auctions of surplus goods, a range of material about Australian Government purchasing policies and special purchasing opportunities are advertised in the Australian GEM. In Korea, GINS (Goldstar Information Network Services) covers information on the procurement of about 350 procuring entities including Korea Telecommunications, Korea Electric Power Organizations; database of the National Supply Agency in Costa Rica.

⁴⁹⁴GPA/W/24/Add.2

⁴⁹⁵GPA/W/24/Add.1; e.g. CANs (Contract Award Notices) in the European Community; GINS in Korea; home pages of individual agencies in Hong Kong, China

⁴⁹⁶S/WPGR/W/11/Add.8

⁴⁹⁷S/WPGR/W/11/Add.6; GPA/W/24/Add.1 and Add.4

C. Language

International instruments

CXLVI. Under the Model Law, there is a general requirement that documents relating to tendering proceedings shall be formulated in the official language or languages of the enacting State and, except in certain specified cases, in a language customarily used in international trade. An additional rule in the Model Law allows the formulation and submission of tenders in any language in which the tender documents have been issued or in any other language that the procuring entity specifies in the tender documents.⁴⁹⁸ The GPA requires the submission of a summary of the invitation to tender in one of the WTO official languages.⁴⁹⁹ The World Bank Guidelines require that the qualification documents be prepared in either English, French or Spanish but allow entering into contracts with local bidders in the national language of the Borrower.⁵⁰⁰

CXLVII. Under the GPA, if an entity allows tenders to be submitted in several languages, one of those languages must be one of the WTO official languages.⁵⁰¹

National practice

CXLVIII. Generally, tender notices are published in the official language(s) of the country of the procuring entity.⁵⁰² In some instances, summaries are provided in languages traditionally used in international trade.⁵⁰³ Countries with several official languages publish in all official languages⁵⁰⁴ or give a summary in other official language(s), the original text alone being authentic.⁵⁰⁵ It is stated, in one case, that the public notice may be in English when the payment for procurement

⁴⁹⁸Model Law Articles 17 and 29

⁴⁹⁹GPA, Article IX:8

⁵⁰⁰World Bank Guidelines on goods and works, paragraph 2.15 and on consultants' services, paragraph 1.21 and 1.22

⁵⁰¹GPA, Article XII:1

⁵⁰²S/WPGR/W/11/Add.8

⁵⁰³S/WPGR/W/11/Add.2

⁵⁰⁴E.g., Malay and English in Brunei Darussalam and Chinese and English in Hong Kong, China

⁵⁰⁵S/WPGR/W/11/Add.2, Add.10

is to be in a foreign currency⁵⁰⁶ and tender announcements may be made in a language used in international trade in justified circumstances.⁵⁰⁷

X. INFORMATION TO BE PROVIDED TO OTHER GOVERNMENTS

CXLIX. The GPA is the only international instrument on government procurement that confers on governments that are Parties to it contractual rights and obligations. Therefore, the procedures described in this Chapter concern the exchange of information between governments Parties to the GPA as required under the relevant provisions of the GPA.

A. Information on National Legislation

International instruments

CL. The GPA Parties are required to be prepared to explain their government procurement procedures in response to a request by any other GPA Party.⁵⁰⁸ More particularly, the provisions on special treatment for developing countries require developed country Parties to establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, among others, laws, regulations, procedures and practices regarding government procurement, notices about intended procurement which have been published, addresses of the entities covered by the Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee on Government Procurement established under the Agreement may also set up an information centre to respond to enquiries by developing countries.⁵⁰⁹ The coordinates of the contact points of GPA Parties are included in the relevant documents of the Committee on Government Procurement (Korea - GPA|12|Rev.1, page 10, Norway - GPA|10, page 7, Switzerland - GPA|15, page 7). Moreover, individual APEC member countries have designated contact points in the context of the work of the Group of Experts on Government Procurement. These are included in the APEC Surveys and can be accessed through the APEC Home Page on Government Procurement at the Internet (<http://www.apecsec.org.sg/gphome.html>).

CLI. The GPA has a general provision in Article XIX:4, requiring that confidential information provided to any government Party to the GPA shall not be revealed without formal authorization from the Party providing the information. The definition of confidential information is identical to that in

⁵⁰⁶S/WPGR/W/11/Add.13

⁵⁰⁷S/WPGR/W/11/Add.12

⁵⁰⁸GPA, Article XIX:1

⁵⁰⁹GPA, Article V:11

*Article X of GATT 1994 with the addition of a reference to information which would prejudice fair competition between suppliers.*⁵¹⁰

*CLII. The Committee has adopted a Decision on procedures for the notification of national implementing legislation by the GPA Parties, including responses to a checklist of issues.*⁵¹¹ *The Decision requires GPA Parties, inter alia, to supply, in response to a request from another Party, a copy of any law, regulation, final judicial decision, administrative ruling or other measure relevant to the Agreement. Each Party shall notify the Committee of the coordinates of a contact point established for that purpose. Through its contact point, a Party from which a text has been requested shall use its best endeavours to assist the requesting Party with any translation into a WTO language.*

B. Notification of National Legislation

International instruments

*CLIII. Under the GPA, each Party has an obligation to inform the Committee on Government Procurement of any changes in its national legislation and its administration.*⁵¹² *The Decision requires GPA Parties, inter alia, to submit the complete texts of their basic legislation (laws and regulations) on government procurement in the original language to the Secretariat where these texts will be open for inspection by Parties. These would include the basic legal instruments pursuant to which effect is given to the provisions of the Agreement. Each Party shall provide a summary of that legislation in a WTO language. GPA Parties are also required to describe in a WTO language what other legislation giving effect to the Agreement on Government Procurement exists. This need not take the form of a listing of individual texts but should include sufficient information on the nature of legislation relevant to each category of entities to facilitate another Party requesting a text of interest to it.*

CLIV. In accordance with the Decision of the Committee on Government Procurement (GPA|1|Add.1), the following four GPA Parties have submitted data on their legislation as of October 1997: Canada (GPA|10), Korea (GPA|12|Rev.1), Norway (GPA|13) and Switzerland (GPA|15).

C. Information on Contract Awards

CLV. Further to the obligations of entities under Article XVIII:2(c) of the GPA relating to the provision of information to an unsuccessful tenderer, the GPA allows the government of an unsuccessful tenderer which is a Party to the GPA to

⁵¹⁰GPA, Article XIX:4

⁵¹¹GPA|1|Add.1

⁵¹²GPA, Article XXIV:5(a) and (b)

seek such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government is required to provide information on both the characteristics and relative advantages of the winning tender and the contract price. The government may disclose the information thus obtained provided it exercises this right with discretion. In cases where the release of such information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.⁵¹³ The GPA also imposes a general requirement on Parties to provide, upon request, to any other Party, information concerning procurement by covered entities and their individual contract awards.⁵¹⁴

D. Statistical Information

International instruments

CLVI. As a means of monitoring procurement covered by the GPA, Article XIX:5 of the GPA requires each Party to collect and provide to the Committee on an annual basis statistics on its procurements covered by the GPA. The type of information that such reports shall contain is stipulated in detail in Article XIX:5, paragraphs (a) to (d).

CLVII. The most recent statistical data submitted by Parties to the Tokyo Round Agreement on Government Procurement are contained in the following set of documents: the European Community (GPR|72|Add.3|Rev.1) and Israel (GPR|72|Add.9) for 1992; Japan (GPR|75|Add.9), the United States (GPR|75|Add.6), Austria (GPR|75|Add.5) and Canada (GPR|75|Add.4) for 1993; Singapore (GPR|78) and Finland (GPR|78|Add.3) for 1994; Switzerland (GPR|80|Add.1) and Norway (GPR|80|Add.2) for 1995; and Hong Kong (GPR|81) for 1996. No statistical data have been submitted by GPA Parties since the entry into force of the Agreement in 1996.

⁵¹³GPA, Article XIX:2

⁵¹⁴GPA, Article XIX:3

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***Working Group on Transparency
in Government Procurement***

TRANSPARENCY IN PUBLIC PROCUREMENT

Factual Contribution from the European Communities

A. Introduction

This note is intended as a contribution to the study phase of the Working Group on Transparency in Government Procurement. It seeks to provide an explanation of Community rules and practices as they relate to transparency in government procurement.¹

Within the Community, there are a number of basic principles affecting government procurement which are enshrined in the EC Treaties, including that of transparency. These principles are implemented at Community level through the six public procurement Directives² (so-called secondary legislation). The purpose of the Directives is not to harmonize all national rules on government procurement. Rather they align the procedures to be followed whenever a contract is to be awarded whose value exceeds a certain threshold, by laying down rules generally regarded as being based on common sense.³

A number of these rules relate to the need to ensure transparency in government procurement practices because it is recognized that this is an essential element in the process of an open and competitive procurement regime which safeguards the best interests of the procuring entity, as well as of suppliers, is to be

¹It should not be taken as a legal interpretation of Community legislation in this area. For more details, Members are referred to the relevant Community legislation, which is readily available - see section B.1 of this note.

²See Annex for a list of these Directives.

³For contracts which fall below the threshold levels, the means of ensuring transparency is left to the Member States.

achieved. These rules and practices relating to them are set out in the later parts of this paper.

A.1 Definition of government procurement

Within the Community, “Government Procurement” covers written contracts for pecuniary interest awarded by public authorities (including at a regional and local level), bodies governed by public law and certain utilities⁴ in respect of the supply of goods and the provision of services, including construction services. Procurement by any contractual means is covered, including purchases, leasing, rental or hire-purchase, with or without an option to buy. The entities covered are subject to a common EC-wide regime for procurement above certain threshold values. The rules concerning procurement under the threshold values are defined by national law, in accordance with the general principles of law laid down in the EC Treaties.

The threshold values are set out in Community law.⁵ These thresholds are defined with a view to ensuring that competitive procurement rules apply to contracts likely to interest suppliers from other EU Member States while allowing administrative and procedural costs on smaller contracts to be kept to a minimum. Contracting authorities are not permitted to split up a contract so as to reach a contract value below the threshold.

The present note deals primarily with requirements for procurement contracts which are above the threshold values.

-The thresholds defining which contracts fall under Community law are set at ECU 200,000 for supplies and service contracts (ECU 400,000 for contracts awarded in the utilities sectors and approximately ECU 130,000 for some contracts falling within the scope of the application of the WTO Government Procurement Agreement) and ECU 5,000,000 for works contracts.

A.2 Methods of procurement

Community rules provide for three methods of procurement: (a) the open procedure, whereby any firm is eligible to tender for the contract; (b) a restricted procedure, in which only firms that have been invited to tender by the contracting authority may do so; and (c) a negotiated procedure, in which the contracting

⁴The “utilities” supply water, energy, transport and telecommunications services.

⁵The national currency equivalents of these thresholds are periodically reviewed (every two years as a rule). Any change to the threshold value is required to be published in the Official Journal of the European Communities. Changes to the threshold only take effect once they have been published.

authority consults selected firms and negotiates the contract terms with one or more of them (usually a minimum of three). The choice of procedure depends on the nature of the purchase. However, the use of the negotiated procedure is only permitted in the limited cases set out in the Directives. All three procedures guarantee transparency in the call for tenders and seek to achieve best value for money for individual procurements.

B. Elements of transparency

Transparency relates primarily to the obligation to provide information relating to procurement opportunities and practices and the right to have access to that information, so that potential suppliers and purchasing entities know in advance what their rights and obligations are. In the Community this is ensured through a number of different elements enumerated in the following sections. These elements are principally linked to the procurement process.

B.1 Availability of legislation to suppliers

Potential suppliers and procuring entities need to know what the rules are. In the Community, the relevant legislation (the Directives) has been published in the Official Journal of the European Communities (hereinafter referred to as the "OJ"). The Directives are readily available to suppliers from the Office for Official Publications of the European Communities in Luxembourg or through designated sales offices upon payment of the appropriate fee. The Directives are also available on the Internet through the SIMAP homepage at <http://simap.eu.int>. In due course, Member States' rules and regulations relating to procurement will also be made available at this Internet site.

Furthermore, a database of all the contracting entities covered by the Community Directives is being developed, containing information including addresses, telephone and fax numbers, and contact points. This database will shortly be made available on the Internet on a trial basis.

B.2 Public announcement of procurement opportunities and procedural requirements

Community law requires transparency of procurement opportunities and award procedures, so that all potential suppliers are able to find out about contracts which might interest them. This is secured by the requirement that contracting entities wishing to award a contract whose estimated value exceeds the relevant threshold must publish a tender notice in the Supplement to the OJ (S series) and in the TED data bank.⁶

⁶TED, or Tenders Electronic Daily, is the on-line version of the printed Supplement S to the Official Journal. It is updated five times a week, is hosted by the European Commission Host Organisation (ECHO) and is accessible in many countries via Official Gateways.

The notice is published in full in the original language, which is the only authentic one. However, a summary of the important elements of each notice is published in the other official languages of the Community. A contracting authority must be able to furnish proof of the date of dispatch to the OJ.

In addition to publication in the OJ, notices can be published in the official journals or in the press of the country of the contracting authority. However, where this happens, publication must not be made before the date of dispatch to the OJ, and these other notices must not contain information other than that published in the OJ.

Notices for procurements below the EC thresholds are not required to be published in the OJ - they are instead usually just published in the national official journals and/or in local, regional or national newspapers.

In addition to the invitation to tender notices, pre-information notices are published for planning purposes. For works contracts, contracting authorities publish indicative notices containing the essential characteristics of the works contract which they intend to award. This notice is published in full in all the official languages of the Community. For other services and supplies contracts, contracting authorities are required to make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement by product area or in each of the service contracts which they envisage awarding during the subsequent 12 months where the total estimated value is not less than ECU 750,000.

The extent and form of publicity can differ according to tendering procedures applied and/or the value of the procurement. There are no common advertising rules for contracts below the threshold values.

B.2.1 What information do the notices contain?

The tender notices provide information about the procurement, including an indication of which of the permissible award procedures has been chosen, the award criteria which will be used, deadlines and a contact point for obtaining further information. Their purpose is to provide sufficient information about the intended procurement to enable suppliers, or service providers to make an initial assessment of their potential interest in the contract, to decide whether to request the tender documents in order to prepare their bid and to provide certainty and transparency as to the individual procurement.

Standard forms exist for the use of contracting entities, but their use is not yet mandatory. Contracting entities are also encouraged to use the Common Procurement Vocabulary (CPV) to describe the object of the procurement: this facilitates identification by potential suppliers of suitable contracts.

Information required to be contained in a tender notice includes, but is not necessarily limited to:

Full contact details of the contracting authority

Type of award procedure chosen (open, restricted, negotiated)

Description of the goods or services to be provided, together with their quantity or indication of their extent

For services other than construction services: indication whether the execution of the service is reserved by law to a particular profession, with reference to the law and whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services

Indication of whether the suppliers can tender for part of the contract only

Place of delivery, site or place of performance of service

Time-limit for delivery, completion or duration (if any)

Period during which the tenderer is bound to keep open the tender

Details of the service from which contract and additional documentation may be requested, final date for making such requests and - where applicable - cost of such documents

Final date for receipt of tenders or requests to participate, address to which they must be sent, language(s) in which they must be drawn up

Date, hour and place of tender opening. Where applicable, persons authorized to be present at the opening of tenders

Any deposits and/or guarantees required

Any economic or technical requirements

The criteria for the award of the contract. Criteria other than lowest price must be mentioned if they do not appear in the contract documents

The right of interested suppliers to be informed does not end with the publication of tender notices. If interested suppliers so request, contract and supporting documents, as well as any additional information relating to these documents, must be sent to them within six days of receipt of the application for this information (four days in case of urgency). Tender documentation must contain all the relevant information to enable suppliers to prepare their bids.

B.3 Access for bidders to information on the criteria used for assessing bids and awarding contracts

Community law provides for transparency of the procedures for selecting contractors and awarding contracts, through the use of objective criteria which must be known beforehand. This helps to prevent a contracting authority from selecting candidates and tenders on the basis of criteria different from those initially stated, and to ensure that potential suppliers are fully aware of the conditions relating to the award of the contract. In practice this is achieved by stating either in the tender notice or in the contract documentation all the criteria which are to be applied to the award, where possible in descending order of importance.

B.4 Receipt and management of bids received

Publication of the tender notice marks the point when the contract award procedure begins. Community law sets out minimum time-limits which must be provided for regarding submission of tenders or candidatures. The relevant provisions ensure that the time-limits set do not hamper competition or lead to de facto discrimination between suppliers, particularly against third country suppliers.

The minimum periods that purchasing entities must allow under the different types of procedure are set out schematically in the following table:

	Time-limit for receipt of request to participate*		Time-limit for receipt of tenders*	
	Normal	Urgent	Normal	Urgent
Open procedures			not less than 52 days ¹	
Restricted procedures	not less than 37 days	not less than 15 days	not less than 40 days ²	not less than 10 days
Negotiated procedures	not less than 37 days	not less than 15 days		

*Time-limits start from the day of dispatch of the notices to the Office for Official Publications of the European Communities. Notices must be published in the Official Journal within 12 days of receipt (five days if urgency).

¹Reduced to 36 days in case of work and service contracts where an indicative notice has been published.

²Reduced to 26 days in the case of works and services contracts where an indicative notice has been published.

Reception, registration and opening of bids are governed by national law. The Community only indicates that, in the case of open procedures, the date, time and place of the opening must be published in the tender notice, as well as the persons allowed to be present at the opening. In this way, suppliers have the opportunity to discover who has made bids.

Contacts between the bidders and the purchasing entities are not forbidden, but such contacts must be conducted in a transparent and non-discriminatory manner and should not be used in such a way as to preclude competition.

B.5 Information on awarded contracts

Contracting authorities or contracting entities who have awarded a contract are required to make the result known by means of a contract award notice (CAN). This has to be published in full in the OJ and in the TED data bank in all the official languages of the Communities. In the case of utilities,

publication is done only in the original language. The CAN must be forwarded for publication to the OJ within 48 days of the award of the contract.

The information to be published is not limited to the mention of the actual award of a contract, but must contain the conditions under which the contract has been awarded (i.e. the criteria applied and the price agreed). However, relevant information on the contract award may, under certain limited circumstances, be omitted - i.e. if publishing the information would have harmful effects on the winning firm or the public interest. These exceptions are, however, narrowly interpreted.

In addition, for each contract awarded, the contracting authorities are required to draw up a written report to be communicated to the Commission at its request. This is used either for monitoring purposes or in the case of a complaint to the Commission (see also section C).

Information which should be included in the contract award notice

Details of the awarding authority

Form of the award procedure chosen

Date of award of contract

Criteria for award of contract (optional for the utilities sectors)

Number of tenders received

Name(s) and address(es) of successful supplier(s), contractor(s) or service provider(s)

The nature and quantity of goods supplied, where applicable, by supplier or the nature and extent of services provided

Price or range of prices (minimum|maximum) paid

Where appropriate, indication of whether the contract has been, or may be sub-contracted to third parties

Date of publication of tender notice in the OJ

B.6 Informing unsuccessful bidders of the reasons why their bid was rejected

Contracting authorities must, within 15 days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests in writing of the reasons for rejection of his application or tender, and in the case of a tender, the name of the successful tenderer. Unsuccessful tenderers may ask the contracting entity for additional information if they are not satisfied with the explanation. This provides unsuccessful candidates or tenderers with a means of assessing whether the procurement rules and practices have been followed. In addition, they can then use this information to (hopefully) good effect in future bids.

Furthermore, the contracting authority is required to inform candidates or tenderers who make a request in writing of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to recommence the procedure. In these cases, the OJ must also be informed.

C. Right to review/redress

So far, the transparency rules have dealt with the process of procurement. The Community considers, however, that there is also a need to provide a mechanism to ensure that these rules are respected by contracting authorities, as a major guarantee of the transparency of the process.

For this reason, a mechanism has been established to allow any potential contractor who considers that he has been injured by an unlawful decision on the part of a contracting authority, for example because the correct procedures were not followed, to seek review. In the first instance, matters are taken up directly with the contracting authority. In addition, in each Member State there is a legally authorized body able to resolve conflicts in the field of public procurement.

These review procedures must also be transparent and provide a guarantee of independence. Furthermore, companies have the possibility of lodging complaints with the Commission.

D. Concluding remarks

The Community recognizes that ensuring transparency is an essential element in the procurement process if a regime which safeguards the best interests of the procuring entity, as well as of suppliers, is to be achieved. It helps in providing suppliers, including domestic suppliers, with increased opportunities; it contributes to the increased confidence of suppliers in the reliability of the administration as a business partner and it acts as a mechanism to minimize the misuse of public money and power either by purchasers or suppliers.

Annex

List of European Community Directives Relating to Public Procurement.

Council Directive 93|36|EEC of 14 June 1993 coordinating procedures for the award of public supply contracts. (The Public Supplies Directive.) Official Journal L199|1 of 9 August 1993.

Council Directive 93|37|EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts. (The Public Works Directive.) Official Journal L199|54 of 9 August 1993.

Council Directive 92|50|EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts. (The Public Services Directive.) Official Journal L209|1 of 24 July 1992.

Council Directive 89|665|EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts. (The Public Remedies Directive.) Official Journal L395|33 of 30 December 1989.

Council Directive 93|38|EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. (The Utilities Directive.) Official Journal L199|84 of 9 August 1993.

Council Directive 92|13|EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. (The Remedies Utilities Directive.) Official Journal L76|14 of 23 March 1992.

WORLD TRADE
ORGANIZATION

RESTRICTED

WT|WGTGP|W|4
S|WPGR|W|21

15 July 1997

(97-2954)

**Working Group on Transparency
in Government Procurement
Working Party on GATS Rules**

APEC SURVEYS ON GOVERNMENT PROCUREMENT SYSTEMS

Note by the Secretariat

1. The Secretariat was asked to invite APEC to make available what information it could share with the WTO regarding surveys it had undertaken on the government procurement regimes of APEC economies (WT|WGTGP|M|1 and S|WPGR|M|10).

2. The following information has been received from the Chair of the APEC Government Procurement Experts Group. The documents listed below are available for consultation by the WTO Members in Office 3014 (Mrs. V. Kulaçoğlu, tel. 739 5187) and Office 3110 (Mr. A. Mattoo, tel. 739 5067).

(a) APEC Member Economies • 1996 Individual Action Plan¹, Excerpts on Government Procurement compiled by the APEC Secretariat.

(b) The Government Procurement Experts Group Chair's Summary Observations on the surveys of government procurement systems and of publication arrangements for government procurement information in Member economies.

(c) The surveys have been received from the following APEC Members:

Australia	Malaysia
Brunei Darussalam	Mexico
Canada	New Zealand
Chile	Philippines

¹Available at the APEC website <http://www.apecsec.org.sg>.

China
Hong Kong, China
Indonesia
Japan
Republic of Korea

Singapore
Chinese Taipei
Thailand
United States

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WORLD TRADE
ORGANIZATION

WT|WGTGP|W|1

10 July 1997

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**Working Group on Transparency
in Government Procurement**

THE UNCITRAL MODEL LAW ON PROCUREMENT OF GOODS,
CONSTRUCTION AND SERVICES

Statement by the Representative of the UNCITRAL at
the Working Group's Meeting of 23 May 1997

Introduction

1. The UNCITRAL Model Law on Procurement of Goods, Construction and Services is currently being utilized by States on an increasingly wider scale. Among the various policy objectives of the Model Law is that of transparency in the public procurement process. After introducing the process of formulation of the Model Law, the present paper outlines the manner in which the Model Law promotes transparency. Because of the summary nature of the presentation, the paper does not attempt exhaustively to list and describe all of the provisions contained in the Model Law that facilitate greater transparency. It is intended rather to highlight the principal ways in which national legislation based on the Model Law would promote transparency in public procurement.

I. LEGISLATIVE NATURE AND HISTORY OF MODEL LAW

A. Purpose of Model Law

2. The United Nations Commission on International Trade Law (UNCITRAL) concluded the preparation of the UNCITRAL Model Law on Procurement of Goods, Construction and Services in 1994. The purpose of the Model Law is to provide a model for States modernizing their national procurement legislation or establishing such legislation for the first time. Its scope is limited to the procedures utilized in selecting suppliers and contractors with whom public purchasers conclude procurement contracts.

B. The UNCITRAL Process

3. *UNCITRAL is an intergovernmental technical organ of the United Nations General Assembly. Its primary function is to act as a sort of global •commercial law legislature• for international commerce. The international conventions or treaties, model laws and other legal instruments formulated by UNCITRAL assist States in modernizing the legal regime for international commerce. This enables commercial parties from different countries, regions, and legal and economic systems to successfully implement various types of commercial transactions and to overcome differences among legal systems that might otherwise hinder international commerce.*

4. *The UNCITRAL process takes place at the intergovernmental level. The rotating membership of UNCITRAL is made up of 36 States, elected by the General Assembly on the basis of a regional representation formula. In addition, all other States are invited to participate in the work of UNCITRAL as observers. Both member and non-member States thus participate actively in the development of legal instruments formulated by UNCITRAL. In addition to the input of the delegates, who represent their governments, the work of UNCITRAL benefits from the input of interested international organizations both of intergovernmental and non-governmental character (e.g., World Bank, International Chamber of Commerce, Asian-African Legal Consultative Committee, International Bar Association) as well as the input of experts. It may also be noted by way of introduction that UNCITRAL deals primarily with matters of contractual relations between trading parties, rather than focusing on intergovernmental trade regulation and tariff arrangements.*

5. *It is also noteworthy that the legal texts of UNCITRAL are developed on the basis of a consensus. This is a fitting approach in view of the objective of spanning various types of legal and economic systems, and meeting the needs of international commerce, which involves the interaction of parties from States at various levels of economic development. That approach has successfully led to formulation of instruments widely adopted by and utilized in States at all levels of economic development, such as the United Nations Convention on Contracts for the International Sale of Goods, the UNCITRAL Model Law on International Commercial Arbitration, and the UNCITRAL Arbitration Rules.*

C. Juridical Nature of an UNCITRAL Model Law

6. *The UNCITRAL Model Law on procurement is exactly what its title indicates - a model for emulation by national legislatures. It is not a treaty or convention like the WTO Agreement on Government Procurement although there is harmony in the substantive content of the two instruments. Adoption of legislation based on the Model Law does not depend on reciprocal action by any other State. Apart from that aspect, the Model Law may be viewed as the consensus statement of governments from around the world on the minimum elements of a sound national legislative framework for public procurement. As*

such it is intended to be used by States from all regions and at all levels of economic development.

D. Guide to Enactment

7. Together with the Model Law, UNCITRAL has issued a Guide to Enactment of the Model Law. The Guide is intended to assist legislatures and executive branches of government utilizing the Model Law to modernize or establish procurement legislation.

II. TRANSPARENCY: THE FOUNDATION OF THE UNCITRAL MODEL LAW

8. The preamble to the Model Law lists its main policy objectives. Those include the overarching objective of economy and efficiency in procurement, maximizing participation of bidders and competition among them, fairness in treatment of bidders, objectivity in decision-making, and transparency.

9. Those objectives are closely intertwined, in that it would hardly be possible to achieve economy and efficiency in procurement without maximizing participation and competition, objectives which depend in turn on objectivity and procedural fairness in the selection process. At the foundation of that pyramid of objectives is transparency, on the basis of which procedural fairness is achieved, and thus the confidence of the bidding community in the integrity of the procurement process.

10. Aside from promoting participation in procurement proceedings by assuring bidders of fair treatment, mechanisms that achieve transparency foster the accountability of procuring entities to governmental and legislative oversight bodies, and help to build the confidence of the public, at large in the management and expenditure of public funds.

11. The Model Law reflects the various aspects of transparency that a sound national legislative framework for procurement would establish. Firstly, there is the question of making readily available to as wide an audience as possible information about procurement opportunities. Secondly, there is the body of provisions in a procurement statute designed to ensure disclosure to bidders, and implementation, of the •rules of the game• of the selection of the successful bidder. Lastly, there is the desirability of having what one might term transparency as to the results of a procurement action.

A. Information about Procurement Opportunities

12. This aspect is implemented in the Model Law by procurement methods involving wide participation, and solicitation requirements designed to facilitate such participation. Thus, as the default rule for the procurement of goods or construction, the open tendering method is prescribed (Article 18). Similarly, for procurement of consultancy and other types of intellectual services, a principal

method is included. It may be implemented so as to strike an appropriate balance between publicizing services procurement opportunities and achieving economy and efficiency, from the standpoint both of procuring entities and bidders, in the preparation and consideration of proposals (Chapter IV). A related aspect is the limitation of the use of the less competitive methods of procurement (e.g., restricted tendering, request for quotations, and single-source procurement) to those tightly defined cases in which they are truly appropriate (Articles 19-22).

13. The solicitation requirements related to announcement of procurement opportunities in the Model Law may be supplemented by an enacting State by including in the legal regime requirements also of publication of indicative notices of procurement planned for a given year or other budgetary period.

B. Disclosure of Procedural Rules Governing Procurement

14. The next dimension of transparency has to do with disclosing to interested parties the procedural rules, or •rules of the game•, of the procurement process. This in turn has several aspects, including, as outlined below, accessibility of the relevant legislative and other normative instruments, clarity as to the scope of applicability of procurement rules, and predisclosure and transparency in the rules governing the selection of the successful bidder.

Accessibility of legal texts

15. While most States have among their basic constitutional and legislative principles the requirement that laws have to be published and otherwise made accessible to the general public, the accessibility of normative texts is closely linked to the achievement of the fundamental goals of procurement policy, in particular the objective of transparency. Thus, the Model Law includes an Article requiring accessibility to the general public of legal texts governing procurement (Article 5).

16. A way of facilitating accessibility of normative texts, and clarity in the understanding of applicable rules, is the consolidation to the extent feasible of legislative rules governing the selection procedure. To the extent that those rules may be scattered about the statutes of a given State, accessibility is made more complicated, and transparency may be diminished. Consolidation will assist not only bidders in understanding the procurement process, but also will have the benefit for procuring entities of defining more clearly their obligations.

Clarity in scope of application of procurement rules

17. Another fundamental way of injecting greater transparency into public procurement is to maximize clarity as to the scope of application of the legal regime governing such procurement. This translates into defining clearly: (a) the types of state agencies and other entities covered (Article 2(b)); (b) the types of procurement covered (Article 1); (c) defining any exceptions to the coverage in the procurement law or its implementing regulations and making any such exceptions as surgical and limited as possible (Article 1(2) and (3)).

18. *The recommendation embodied in the Model Law is to extend the coverage of the procurement law to as much as possible of public procurement. Thus, procurement of goods, construction and services is covered. While a slot is included in the Model Law for the enacting State to list the types of procurement that may be excluded from coverage, it is not intended to encourage or recommend extensive exclusions.*

19. *Procuring entities may be uncertain as to which rules to apply if a procurement action is subject to treaty obligations of the State in question. An example is procurement using funds disbursed under a loan agreement between the State and an international financial institution such as the World Bank or with funds provided under a bilateral aid agreement which is tied to the application of specific procurement rules. The Model Law relieves the procuring entity of that uncertainty by deferring to conflicting international treaty obligations of the enacting State (Article 3).*

20. *The extent of possible conflict between legislation based on the Model Law and the procurement rules of international financial institutions such as the World Bank is rather limited, since the Model Law is in basic harmony with the procedures and principles of such rules.*

III. TRANSPARENCY IN CONDUCT OF PROCUREMENT PROCEEDINGS

21. *The Model Law includes a comprehensive set of procedures designed to ensure that procurement proceedings - in the variety of circumstances encountered in everyday practice - are conducted in a transparent manner. Those provisions may be categorized in the manner set forth below.*

A. Use of Most Competitive and Transparent Procurement Method

22. *A basic way in which a procurement law can foster transparency is by guiding procuring entities to use the most competitive and open procurement methods feasible in any given case. This in turn helps to foster transparency, as it may generally be assumed that the more open and competitive the procurement proceedings are, the more transparency there is. As has already been noted, the Model Law follows such an approach, by requiring open tendering for the procurement of goods and construction, except when the circumstances fit the grounds specified for use of less open and competitive methods. A similar approach is followed with respect to the main method for the procurement of consultancy and other intellectual services.*

B. Adequate Range of Alternative Methods

23. *A shortcoming in some procurement laws is that they lack an adequate range of alternative procurement methods to deal with situations in which open tendering may not be the most appropriate method. Such laws may drop down*

from the most open and transparent method to a method that is essentially without competition, such as single-source procurement - or to a method with very limited transparency such as unstructured, simultaneous negotiations with several bidders.

24. *Legislation based on the Model Law may avoid such a pitfall. For example, an enacting State may elect to include in the range of procurement methods available to procuring entities methods such as two-stage tendering and request for quotations (•shopping•). From a transparency point of view, as well as from the standpoint of ease of application of the law by procuring entities, the law should be as clear as possible as to the circumstances in which the alternatives may be used. Additional transparency may be achieved by defining procedures for the alternative methods (Chapter V) and requiring entry into the record of the procurement proceedings - when an alternative method is used - of a statement of the grounds justifying the use of the alternative method (Article 11(1)(g)).*

C. *Negotiation in the Award Process*

25. *The degree to which a procurement law achieves transparency is related also to the manner in which negotiated procurement is handled. Among the methods offered by the Model Law for consideration by legislators, the two-stage tendering is a method that permits negotiations and technical discussions to be conducted with bidders when a procuring entity wishes to discuss with bidders various technical or contractual possibilities to solve its procurement need, while applying the transparent selection procedures of tendering in the second stage (Article 46).*

D. *Predisclosure of Information for Effective Participation in Procurement Proceedings*

26. *At the heart of the provisions of the Model Law aimed at achieving transparency, and its other objectives, are rules requiring predisclosure to participating bidders of various types of information essential for effective participation of bidders in procurement proceedings.*

27. *One essential type of information concerns the qualification criteria and procedures to be applied to bidders seeking to participate in the procurement proceedings. The Model Law identifies an exhaustive list of the general types of qualification criteria that may legitimately be applied (Article 6(1)(b)). Their legitimacy stems from the fact that they are objectively linked to the capacity of a bidder to perform the procurement contract.*

28. *The exhaustive listing of permissible qualification criteria is part of a package of qualification provisions in the Model Law crucial to transparency (Articles 6 and 7). Other provisions include, for example, the requirement that in prequalification proceedings an up or down decision be made on every application (Article 7(5)), that qualification assessments may be made only on the basis of predisclosed criteria (Article 6(3) and (4)), and that applicants for*

prequalification determined to be unqualified be informed of the grounds for their disqualification (Article 7(7)).

29. *The next aspect of essential predisclosure concerns the technical specifications for the procurement in question. The Model Law requires use of objective, functionally defined technical specifications, detailed to the fullest extent possible and referring to relevant national and international standards (Article 16). This contributes not only to transparency, but also to more effective competition and ultimately to better value for the public purchaser.*

30. *A concomitant, essential requirement, in particular in tendering proceedings, as well as in the principal method for procurement of services, is the predisclosure of the technical evaluation criteria by which bids are to be evaluated, and the relative weight of the criteria (Article 27(e); Article 38(m)). The cardinal rule here is that only those evaluation criteria that have been predisclosed may be used (Article 34(4)(a)).*

31. *Another area of importance from the standpoint of transparency and predisclosure to bidders has to do with the terms of the procurement contract and the manner in which they describe the rights and obligations of the parties. It may be noted in this connection that in tendering proceedings the Model Law requires the predisclosure to bidders of the terms of the eventual contract, as well as the manner of its entry into force (Article 27(f); Article 27(y); Article 13).*

32. *Another important way of injecting greater transparency into the legal rules applicable to contractual and other aspects of the procurement process is to utilize harmonized legal instruments. This is particularly relevant in international procurement. To this end a State may wish to consider becoming party to the United Nations Convention on Contracts for the International Sale of Goods, to ensure that internationally harmonized and widely understood and available rules may be readily applicable to the procurement contract.*

33. *Furthermore, use may be made of instruments such as the INCOTERMS of the International Chamber of Commerce (ICC) to define specific aspects of the delivery and insurance terms of the procurement contract, the ICC Uniform Customs and Practice for Documentary Credits (UCP) to define rights and obligations of the issuer and the beneficiary under letters of credit, and the ICC Uniform Rules for Demand Guarantees (URDG) and the ICC Uniform Rules on Contract Bonds (URCB) for defining rights and obligations with respect to bids and performance guarantees. Mention should also be made of the role of standard forms of contract and bidding documents in promoting transparency in the procurement process. For the purposes of dispute settlement under the procurement contract, the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules are widely known and acceptable both to public purchasers and suppliers and contractors.*

E. Clarity of Bid Solicitation Documents

34. *The discussion in the preceding paragraphs underscores the importance from the viewpoint of transparency of comprehensive and clearly drawn bid solicitation documents. For this reason, the Model Law presents detailed provisions, in this regard for tendering proceedings (Article 27), as well as for procurement of consultancy and other intellectual services (Article 38). Also indispensable is an effective mechanism for responding to requests for clarification of the solicitation documents (Article 28; Article 40). This involves responding to requests for clarification in time for the responses to be taken into account in timely bid preparation and submission, and circulation of the clarification to all participating bidders. Related mechanisms include meetings of bidders and site visits, after which the procuring entity prepares minutes that are then provided to the bidders.*

F. *Bid Submission and Opening*

35. *Several Model Law provisions promote transparency at this crucial stage of procurement proceedings when the method used is tendering. Noteworthy are the requirements that the tender validity period be deemed to be only as predisclosed in the solicitation documents (Article 31(1)), that bid opening should coincide with the deadline for submission of bids (Article 33(1)), and that bidders or their representatives should be allowed to attend bid opening (Article 33(2)), at which certain basic information about each bid is read out, including the bid price (Article 33(3)).*

G. *Bid Evaluation*

36. *The Model Law sets forth a number of procedures for tendering proceedings that guard transparency at the climactic bid evaluation stage. Those include, for example, the following: (a) only predisclosed technical and qualification criteria may be applied; (b) no changes are to be solicited or offered with a view to making unresponsive bids responsive (Article 34(1)(a)); (c) prohibition of negotiation (Article 35); (d) preservation of confidentiality as to the contents of bids (Article 34(8)); and (e) correction of arithmetical errors appearing on face of tender, with disclosure of the correction to the bidder (Article 34(1)(b)).*

IV. TRANSPARENCY IN RESULTS OF PROCUREMENT PROCEEDINGS

A. *Notifications to Bidders and General Public*

37. *Mechanisms for recording and disclosing the conduct of procurement proceedings, and the results of such proceedings, constitute another essential step towards transparency in public procurement. They include, in particular: (a) notification to bidders of the results of applications for prequalification, including disclosure of grounds for rejection; (b) notification to participating bidders of the winner of the selection of the successful bidder (Article 36(6)); (c) publication of notice of contract award competition (Article 14).*

B. Record of Procurement Proceedings

38. An important tool for establishing transparency in public procurement is the maintenance of a record of the procurement proceeding. In addition to laying down the requirement, the Model Law details the required contents of the record and the extent and recipients of disclosure of the record (Article 11). Adequate record procedures, in addition to safeguarding transparency, help to make a procurement law self-policing to the extent that interested parties and the general public can monitor the performance of procuring entities.

V. REVIEW PROCEDURES

39. Effective complaint and review procedures are essential for transparency in the public procurement process generally, and the accountability of procuring entities to bidders, oversight and supervisory bodies and the general tax-paying public. The Model Law sets a standard for such a mechanism that has the following key features: (a) affirmation of the right of aggrieved bidders to obtain review of alleged violations by procuring entities of required procedures (Article 52(1)); (b) exemption of certain discretionary matters not involving the rights of individual bidders from the review process so as to prevent excessive disruption of the procurement process (Article 52(2)); (c) several stages of review, commencing with initial petition to the procuring entity (if the procurement contract has not yet entered into force), followed by administrative review, and culminating with judicial review (Articles 53-55 and 57); (d) the possibility of a limited period of suspension of procurement proceedings, except in the presence of strong countervailing public interest (Article 56),

*VI. TECHNICAL ASSISTANCE FOR PREPARATION OF
PROCUREMENT LEGISLATION BASED ON MODEL LAW*

40. The text of the UNCITRAL Model Law and of the accompanying Guide to Enactment are available from the UNCITRAL secretariat (Vienna International Centre, A-1400 Vienna, Austria, P.O. Box 500, tel: 43 1 21345 4060, fax: 43 1 21345 5813). In addition, the UNCITRAL secretariat can assist States in obtaining legal technical consultancy services to assist in the preparation of legislation based on the Model Law.

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Working Group on Transparency in Government Procurement

WORLD BANK GUIDELINES ON PROCUREMENT

Statement by the Representative of the World Bank at
the Working Group's Meeting of 23 May 1997

Introduction

The apparent purpose of the Working Group on Transparency in Government Procurement is very close to the World Bank's objectives in the area of procurement. The World Bank Guidelines prescribe rules for the application of open, transparent and economic procurement procedures to all procurement under the projects financed by the World Bank. The World Bank has closely cooperated with the UNCITRAL over the years in the development of the UNCITRAL Model Law on Procurement of Goods, Construction and Services and is also cooperating with the regional development banks, the OECD and with other international institutions that have an interest in open and transparent public procurement. The World Bank would be happy to support the work of the Working Group in its future activities.

The World Bank is the oldest and largest of the international development finance institutions. It was established in 1945 with the purpose of making loans to developing country members in order to improve their economic situation. Today, almost all countries of the world are members of the World Bank. The World Bank (officially the International Bank for Reconstruction and Development (IBRD)) and the International Development Association (IDA), together finance annually some 40,000 contracts under loans of some \$20 billion that are mostly allocated for specific development projects. Loan agreements of the IBRD and IDA with Borrower countries incorporate by reference the World Bank's Guidelines for Procurement of Goods and Works and the Guidelines for Selection and Employment of Consultants. The Guidelines are based on the principles of the Articles of Agreement establishing the World Bank signed in 1944, which provide that the World Bank must make its loans with due attention to economy and efficiency.

Transparency in public procurement

Transparency is not an end in itself. Its main purpose is to foster competition in procurement. In considering how the public sector should do purchasing, it becomes clear that competition is the best way to get value for money. For example, a public entity which wants to purchase 100 trucks can choose between one of the following two methods

of procurement, which are at the extreme end of the spectrum. On the one hand, it could choose to negotiate with one supplier concerning the price of the trucks. From the point of view of the supplier, it makes sense to ask 30 to 40% more than what he would have charged under conditions of competition and then reduce the price by some 10 or 20% in the negotiations in order to make the purchaser happy, thus obtaining a final price that is still much more than what he could obtain in a competitive situation. On the other hand, with the rules of competitive bidding, every supplier bidding for 100 trucks must submit his bid price by a certain deadline, and has only one chance of doing so (i.e., he is prohibited from subsequently reducing it). The fact that the supplier cannot change his price or conditions after bid opening is the most powerful incentive to each bidder to give his best price in order to stand a chance of getting the contract. By using the most transparent procurement method and open competition, the public sector, in its role as a consumer, will get the best possible price from the supplier.

Another purpose of transparency is to foster the confidence of the taxpayer in the decency and honesty of the public sector purchases. In that sense, it is the most powerful way to fight corruption, which is a serious problem confronting all countries universally. To the extent that corruption manifests itself in public procurement, transparency in procurement and competition in the procurement process contribute to fight it because corruption thrives in the dark. Some of the main elements of transparency are set forth below.

Notification and advertising

One important aspect of transparency in the UNCITRAL Model Law and the World Bank Guidelines is promoting wide participation in the procurement process through publicity and advertising. The World Bank Guidelines require that, when the loan agreement is signed, the Borrower must advertise a General Procurement Notice in the United Nations Development Business (UNDB). Thus interested bidders all over the world are notified in advance about the project that is going to be financed by the World Bank, the type of contracts that are expected to be available for bidding under the project, and where and when the bidding documents will be expected to be available.

A Specific Procurement Notice is published further in the project cycle by the Borrower agency for the particular procurement, either in the UNDB or in the official gazette or in other specialized newspapers in the Borrowing country. The World Bank also requires that all foreign embassies in the Borrowing country be notified of any bidding possibilities. The information is passed on by the embassies to the industries, suppliers, contractors in their countries. Notification is extremely important because if bidders do not know about the bidding possibility they cannot participate in the bidding process. As a result, the procurement process will not take place under the best competitive conditions and the Borrower agency will not get the best possible price. Irregularities in the procurement process could well occur even at this stage. There was recently a case where, in its recommendation for award to the World Bank, the Borrower agency stated that the particular contract was advertised and only one bidder had submitted a bid. Under the World Bank rules, the award is to be approved even if there is only one bidder. However, another supplier protested the approval of the award by the Bank since they had not been informed of the bidding opportunity. An investigation showed that the copy of the advertising in the official gazette produced by the Borrower agency was a falsification, as the advertising had never taken place. This was an attempt to fraudulently influence the award of the contract in favour of one preferred bidder, by suppressing the required notification.

Predisclosure of relevant information

It is important that the rules of the game are publicly announced so that all bidders get the same chance of knowing in advance when and where they have to submit their bids and, particularly, how the bids will be evaluated. It is not permissible to apply any bid evaluation criteria that have not been announced previously.

Public bid opening

Public bid opening is an important feature of transparency. A few years back this was not a generally accepted idea because some countries had the tradition of opening bids only in camera. In this area, like so often in life, perceptions are as important as what actually happens. A bidder who has lost the award which is opened and evaluated without the presence of the bidders may have the perception that the committee opening the bids may have allowed one of the bidders to change its bid price after the opening of the bids. It is for this reason that the World Bank's Guidelines, the UNCITRAL Model Law and most modern procurement laws of individual states emphasize that bids must be opened in the presence of all bidders that have submitted a bid; the bidders must submit their bids by a deadline; and the bids must be opened immediately thereafter in the presence of all bidders that wish to attend; the prices must be read out; and minutes must be established so that facts are clearly established and can no longer be changed.

Accessibility of applicable laws and regulations

It is very important that the bidders have access to the laws and regulations on procurement so that they are aware of the rules under which procurement processes will take place. The World Bank Guidelines are made available to everybody and distributed widely because it is important for bidders to know the rules. The Bank's Standard Bidding Documents set forth clearly the rules of the bidding process, for example instructions to bidders on how to submit their bids, technical specifications, evaluation criteria, conditions of the contract, etc. If the bidding documents are not clear, the bidder may perceive that the procurement official may have had a chance to interpret certain rules in order to give an undue advantage to another bidder. The World Bank has developed mandatory Standard Bidding Documents, e.g., for the purchase of equipment, works, consulting services, pharmaceuticals, textbooks and computers, etc. Since the use of Standard Bidding Documents by the Borrowers has become mandatory, protests and complaints by suppliers have substantially decreased.

Prior and post review

The UNCITRAL Model Law provides a mechanism by which aggrieved suppliers can seek a review of the decision of the bidding authority by the procuring entity itself, by an administrative body or a judicial review body. As regards the contracts under the World Bank funded projects, the World Bank supervises the implementation of the procurement process. Important contracts accounting for around one fourth of the total number of contracts are subject to prior review where the Bank reviews every step of the procurement process to ascertain the conformity of the procurement process with the agreed rules. For other contracts, the Bank uses a post review procedure to ensure that the Borrower has carried out the procurement process in accordance with the agreed rules. In the latter case, when the Borrower submits his application for the withdrawal of funds from the loan account, he has to give the Bank all the relevant information on how he carried out the procurement. Moreover, under the Guidelines, upon a complaint from a bidder, the World Bank checks the allegation to ascertain whether the procurement rules have been properly applied by the Borrower. The Bank does not enter into any

dialogue with the bidders until the award has been made. If, after the award, a bidder wishes to ascertain the grounds on which his bid was not selected, and he is not satisfied with the explanation given by the Borrower, he may seek a debriefing with the Bank, where the relevant staff will explain the process to the bidder.

Technical assistance

The World Bank considers the UNCITRAL Model Law as the best document available at present that could be used as model by governments that want to introduce transparent procurement codes. The World Bank has been providing funds to its borrowing countries under institutional development grants to finance the services of lawyers qualified in the area of procurement that can advise governments on the development of modern and transparent procurement laws, most often based on the UNCITRAL Model Law. The World Bank also gives assistance to governments for the preparation of Standard Bidding Documents. While it has been mostly countries of the former COMECON Agreement and of the former Soviet Union that have received assistance from the World Bank for developing new procurement laws, several African and Asian countries have also improved their procurement laws through technical assistance of the World Bank.

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**WORLD TRADE
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**Working Group on Transparency
in Government Procurement**

TRANSPARENCY-RELATED PROVISIONS IN EXISTING
INTERNATIONAL INSTRUMENTS ON GOVERNMENT
PROCUREMENT PROCEDURES
AND IN WTO AGREEMENTS

Note by the Secretariat

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I. *As requested of the Secretariat at the first meeting of the Working Group on Transparency in Government Procurement held on 23 May 1997, this note provides factual information on the provisions related to transparency in international instruments on government procurement (Part A) and in the WTO Agreements (Part B). In compiling Part A, information on the following international instruments has been included:*

-UNCITRAL Model Law on Procurement of Goods, Construction and Services (1995) (Model Law)

- *Guidelines on Procurement under IBRD Loans and IDA Credits (1996) and Guidelines on Selection and Employment of Consultants by World Bank Borrowers (1997) (World Bank Guidelines, respectively for goods and works and for consultants• services)*
- *WTO Agreement on Government Procurement (1994) (GPA).*

II. *The contents of the note should not be taken to prejudice what is encompassed by the term •transparency•, which is a matter for the Working Group. Its purpose is to provide background information that may be useful to the Working Group in its study of transparency in government procurement practices.*

PART A

TRANSPARENCY-RELATED PROVISIONS IN INTERNATIONAL INSTRUMENTS ON GOVERNMENT PROCUREMENT

I. INTRODUCTION

III. *Promoting transparency in procurement procedures is one of the explicit considerations that guide the requirements in the Model Law (Preamble, paragraph (f)), the GPA (Preamble, paragraph 3), the World Bank Guidelines for goods and works (paragraph 1.2(d)) and the World Bank Guidelines for consultants• services (paragraph 1.4(e)). Transparency can be viewed as a linchpin of the other common objectives of these instruments, which are, among others: maximizing economy and efficiency in procurement; fostering and encouraging participation in procurement proceedings by suppliers; giving all suppliers equal opportunity to compete regardless of nationality and thereby promoting liberalization of international trade; and promoting the integrity and fairness of and public confidence in the procurement process.*

IV. *The transparency provisions of the three international instruments are aimed at three sets of interested parties:*

- *Suppliers. The fulfilment of the objectives of procurement regimes requires that potential suppliers should be able to obtain readily adequate information on procurement opportunities, on the conditions to be met to qualify for them and on all matters relevant to the preparation and submission of bids. Their participation will also be enhanced if procurement procedures are perceived by them as fair and equitable.*
- *Legislatures and the general public. Transparency is a necessary condition for procurement regimes and decisions to be accountable, in particular in the use of public or, in the case of the World Bank, international funds. For this purpose decisions must not only be impartial, but also seen to be impartial. This calls for objective*

criteria, made known in advance, for the taking of such decisions, the receipt and opening of tenders under procedures guaranteeing the regularity of the tender openings and ex-post information on the contracts awarded as well as review possibilities.

-Other governments. Under the WTO Agreement on Government Procurement, each Party accepts obligations vis-à-vis other Parties to the Agreement, not only to ensure that the suppliers of those Parties benefit from adequate information and transparent procedures, but also to provide information directly to other Parties on its procurement procedures and decisions taken under it.

V. Part A of this note starts by outlining the main characteristics of the three instruments (Section II). It then looks at the preferred and supplementary procurement methods provided for in them and the relation of these methods to transparency considerations (Section III). The remaining sections of Part A concern particular aspects of transparency: information on national legislation and procedures (Section IV); information on procurement opportunities, including tendering and qualification (Section V); transparency of decisions on qualification (Section VI); transparency of decisions on contract awards (Section VII); review (Section VIII); other matters related to transparency (Section IX); and information to be provided by governments (Section X).

II. INTERNATIONAL INSTRUMENTS ON PROCUREMENT

VI. *There exist at present three international instruments on the procedures and practices of governments in the area of procurement:*

- (i) *The UNCITRAL Model Law on Procurement of Goods, Construction and Services was drawn up by the United Nations Commission on International Trade Law (the UNCITRAL)¹ to serve as a model for States for the evaluation and modernization of their procurement laws and practices and the establishment of procurement legislation where none presently exists. As a framework law, the Model Law is intended to provide all the essential principles and procedures for conducting procurement proceedings in the various types of circumstances likely to be encountered by procuring entities. In line with the mandate of UNCITRAL to promote international trade and the notion underlying the Model Law that the wider the degree of competition the better the value received for public expenditures, the Model Law as a general rule promotes non-discrimination. Under the Model Law this is given effect by the procedures designed, for example, to ensure that non-national suppliers are given adequate transparency. At the same time the Model Law recognizes that the enacting States may in some cases wish to restrict participation by foreign suppliers with a view to protecting certain domestic industries or for other legitimate reasons. However, with a view to promoting transparency, any such restrictions are subject to the requirement that the imposition of the restriction by the procuring entity should be based only on grounds specified in the procurement regulations or in other legislation.²*
- (ii) *The Guidelines for Procurement under IBRD Loans and IDA Credits and the Guidelines for Selection and Employment of Consultants by the World Bank Borrowers have the purpose of informing those World Bank Borrower countries or their agencies (Borrowers) carrying out a project that is financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD) or a credit from the International Development Association (IDA) of the arrangements to be made for procuring the goods and works and the procedures for selecting, contracting and monitoring consultants³ required for the project. In most*

¹UNCITRAL is an organ of the United Nations General Assembly established to promote the harmonization and unification of international trade law, so as to remove unnecessary obstacles to international trade caused by inadequacies and divergences in the law affecting trade.

²UNCITRAL Model Law Guidelines p.58 and Model Law Article 8(1) and (2)

³For the purposes of the World Bank Guidelines, the term •consultants• includes a wide variety of private and public entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, UN agencies and other multilateral organizations, investment and merchant banks, universities, research institutions, government agencies, non-governmental organizations and individuals. Bank Borrowers use these

cases the Bank requires its Borrowers to obtain goods and works through International Competitive Bidding open to all eligible suppliers and contractors, with allowance for preferences for domestically manufactured goods and works under prescribed conditions.⁴ The World Bank Guidelines also allow for National Competitive Bidding for procurement of goods or works which, by their nature or scope, are unlikely to attract foreign competition.⁵

- (iii) *The WTO Agreement on Government Procurement of 1994 establishes an agreed framework of rights and obligations, among WTO Members Parties to the GPA, with respect to their national laws, regulations, procedures and practices in the area of government procurement with a view to achieving greater liberalization and expansion of trade and improving the international framework for the conduct of world trade. The cornerstone of the rules in the GPA is non-discrimination between the supplier and suppliers of WTO Members Parties to the GPA. The GPA applies to the procurement of goods and services, including construction services, above certain threshold values and defined by the schedules of each Party contained in Appendix I to the GPA.⁶ Certain derogations or exceptions are specified in the Schedules of individual Parties in Appendix I to the GPA. In order to ensure that the basic principle of non-discrimination is followed and that access to procurement is actually available to foreign products, services and suppliers, the GPA lays heavy emphasis on procedures for providing transparency of laws, regulations, procedures and practices regarding government procurement.*

III. PROCUREMENT METHODS

VII. Various methods of procurement are used by government entities, according to circumstances. All three of the instruments covered by this note describe the specific procurement methods that may be used and define the parameters for their use. The instruments provide that more transparent methods of procurement are to be favoured where possible as being more likely to be effective in realizing the objectives of procurement systems, but these instruments allow less inherently transparent means when circumstances warrant it and, in some instances, subject to special conditions often related to ensuring adequate transparency.

organizations as consultants to help in a wide range of activities - such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; social and environmental studies; and identification, preparation, and implementation of projects - to complement Borrowers' capabilities in these areas.

⁴World Bank Guidelines on goods and works, paragraph 2.54 and Appendix 2

⁵World Bank Guidelines on goods and works, paragraph 3.3 and 3.4

⁶GPA Article III:2

VIII. *As the method of procurement in normal circumstances, the Model Law foresees the use of tendering for procurement of goods and construction services and, for other services, principal method for procurement of services, a method designed to give due weight in the evaluation process to the qualifications and expertise of the service suppliers. For the purposes of the GPA, the open tendering procedures where all suppliers may submit a tender is a preferred method. The World Bank Guidelines prescribe the use of International Competitive Bidding in the procurement of goods and works and Quality- and Cost-Based Selection for the selection of consultants• services as the main method.*

IX. *For exceptional and well-defined circumstances, in which the above preferred methods are not considered by the procuring entity to be an appropriate or feasible method for procurement, the three instruments offer alternative methods of procurement which provide a lesser degree of competition among suppliers compared to the principal method. Therefore, conditions on the use of other methods have been included in all three instruments to avoid unjustified resort to these methods of procurement and to limit their use to exceptional cases, while safeguarding the objectives of non-discrimination among suppliers and transparency of the procurement process. The Model Law gives the options of two-stage tendering, requests for proposals and competitive negotiations where it is not feasible for the procuring entity to formulate specifications to the degree of detail required under the tendering method for goods, for example in the procurement of high technology goods or under the principal method of procurement for services. These methods give the procuring entity an opportunity to negotiate with suppliers with a view to settling upon technical specifications and contractual terms. With regard to the selection of suppliers, the Model Law offers a restricted tendering method which permits the procuring entity to solicit participation only from a limited number of suppliers for procurements of a technically complex or specialized nature; a request for quotations or shopping method with simplified and accelerated procedures under which the procuring entity is allowed to solicit quotations from a small number of suppliers for cases of low-value procurement of standardized goods or services; and single source procurement for exceptional circumstances, such as serious economic urgency due to catastrophic events. With a view to providing transparency as regards decisions of procuring entities to use an exceptional method of procurement rather than the method that is normally required, the Model Law contains a requirement that any such decision should be supported in the record of procurement proceedings provided under Article 11 of the Model Law by a statement of the grounds and circumstances on which the entity has relied to justify the use of the method in question.⁷*

X. *The GPA prescribes two methods of procurement other than open tendering procedures. Under selective tendering procedures, those suppliers invited*

⁷Model Law Article 18(4)

to do so by the entity may submit a tender.⁸ In order to ensure optimum effective international competition under this method, purchasing entities are required to invite tenders from the maximum number of domestic and foreign suppliers consistent with the effective operation of the procurement system. A number of safeguards to ensure non-discrimination in the procedures and conditions for qualification of suppliers are set out in Article VIII. Under limited tendering procedures, the entity contacts the potential suppliers individually.⁹ Because of the inherently non-transparent nature of this method, the GPA closely circumscribes the situations in which it can be used; it is permitted, for example, in the absence of responsive tenders under open or selective procedures, when the product or service can be supplied only by a particular supplier, or for reasons of extreme urgency brought about by events unforeseeable to the entity.¹⁰ The GPA subjects this method to special transparency conditions which require entities to prepare a report in writing on each contract awarded which should include, inter alia, a statement of the conditions referred to in Article XV that justified the limited tendering. Furthermore, entities may hold negotiations with suppliers making tenders, provided this is indicated in the initial tender notice or it appears from the tender evaluation that no one tender is the most advantageous, and subject to specified safeguards to ensure that such negotiations do not discriminate between suppliers.¹¹

XI. The World Bank Guidelines allow Modified International Competitive Bidding with simplified advertising and currency provisions to be used in the case of quick disbursement loans or in procurement of commodities. Other methods of procurement which are used in circumstances which necessitate departures from the International Competitive Bidding method procedures are: Limited International Bidding which is essentially International Competitive Bidding by direct invitation and without open advertisement and used where the contract values are small or where there is only a limited number of suppliers or other exceptional reasons¹²; National Competitive Bidding, normally used for public procurement in the country of the Borrower, which is considered to be the most efficient and economical way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition¹³; Shopping (international and national) which is based on comparing price quotations obtained from several suppliers to assure competitive prices and is appropriate for procuring readily available off-the-shelf goods or standard specification commodities that are small

⁸GPA Articles VII:3(b) and X

⁹GPA Article VII:3(c)

¹⁰GPA Article XV

¹¹GPA Article XIV

¹²World Bank Guidelines on goods and works; paragraph 3.2

¹³World Bank Guidelines on goods and works, paragraph 3.3-3.4

in value¹⁴; and Direct Contracting Without Competition (single source)¹⁵ used under conditions similar to those of single source procurement under the Model Law or limited tendering under the GPA. As alternatives to the principal method of selection of consultants, Quality- and Cost-Based Selection, the World Bank Guidelines prescribe Quality-Based Selection for complex or highly specialized assignments or for those which invite innovations.¹⁶ Other methods of selection of consultants under the World Bank Guidelines, with specified conditions for their use, include Selection under a Fixed Budget, Least-Cost Selection, Selection Based on Consultants• Qualifications and Single-Source Selection.¹⁷

XII. While many of the specific requirements relating to transparency referred to in the later sections of this note concern transparency under any of the allowable procurement methods, it should be noted that some of the specific requirements relate more directly to preferred methods of procurement.

IV. INFORMATION ON NATIONAL LEGISLATION AND PROCEDURES

XIII. Government procurement activities are generally regulated through laws at the central or sub-central levels of government supplemented by administrative rulings and directives of general application. The Model Law and the GPA require the public accessibility of the relevant texts.¹⁸ The GPA explicitly requires the GPA Parties to publish any law, regulation, judicial decision, administrative rulings of general application and any procedure regarding government procurement (including standard contract clauses) in such a manner as to enable other GPA Parties and suppliers to become acquainted with them. The publications in which individual GPA Parties publish their respective national legislations have to be identified in Appendix IV to the GPA.¹⁹ The World Bank Guidelines are published by the World Bank and made available to Borrowers.²⁰

XIV. The GPA also provide for other means by which suppliers and/or other governments can obtain information on national procurement procedures. Under the GPA each entity shall, on request from a supplier of a GPA Party, promptly

¹⁴World Bank Guidelines on goods and works, paragraph 3.5-3.6

¹⁵World Bank Guidelines on goods and works, paragraph 3.7

¹⁶World Bank Guidelines on selection of consultants, paragraph 3.2-3.4

¹⁷World Bank Guidelines on Selection of consultants, paragraph 3.5 to 3.11

¹⁸Model Law Article 5; GPA Article XIX:1

¹⁹GPA Article XIX:1

²⁰World Bank Guidelines on goods and works, paragraph 1.1; World Bank Guidelines consultants• services, paragraph 1.1

provide an explanation of its procurement practices and procedures.²¹ The GPA Parties are also required to provide the challenge procedures under Article XX in writing and make them generally available.²²

V. INFORMATION ON PROCUREMENT OPPORTUNITIES, TENDERING AND QUALIFICATION

XV. The three instruments recognize that timely, sufficiently detailed and readily available information on opportunities to bid for specific contracts is essential for guaranteeing effective competition. They lay down detailed provisions on the advance information that entities must provide on their intended procurements. Where prequalification is a necessary condition for tendering, information must be provided on the procedures and criteria that have to be fulfilled in order for an interested potential supplier to qualify.

(a) *Notice of invitation to tender or to prequalify*

(i) *How public notice should be given*

XVI. The relevant provisions in the three instruments set forth a set of minimum procedures for giving public notice of tendering opportunities that the procuring entity should follow in order to obtain expressions of interest in a specific procurement from potential suppliers. Under the Model Law and the GPA, the information on an intended procurement must be advertised primarily through a notice of invitation to participate in the intended procurement.²³ The publications in which individual GPA Parties publish their notices of invitations to tender have to be identified in Appendix II to the GPA.²⁴ The World Bank Guidelines require the Borrower country to notify the projects which include procurement of goods and works on the basis of International Competitive Bidding or any expected consultancy assignments through a General Procurement Notice on the basis of a draft prepared and submitted to the Bank by the Borrower. The Borrower country must notify the international community in a timely manner of the opportunities to bid for specific procurement of goods and works through invitations to bid advertised in the form of Specific Procurement Notices.²⁵ For selection of consultants, the preparation of requests for proposals shall involve a

²¹GPA Article XVIII:2(a)

²²GPA Article XX:3

²³Model Law Articles 24(2), 37(2) and 48(2); GPA Article IX:1

²⁴ GPA Article IX:1

²⁵World Bank Guidelines on goods and works, paragraph 2.7, 2.8 and 2.10 and on consultants• services

*Letter of Invitation which shall state the intention of the Borrower to enter into a contract for provision of consultancy services.*²⁶

*XVII. All three instruments foresee the publication of a notice of invitation to participate in an official gazette or other official journal.²⁷ Moreover, to create awareness of the procurement opportunity in the international community, the Model Law and the World Bank Guidelines require the notice of invitation to tender also to be published in a newspaper or a relevant trade publication in a language customarily used in international trade, in a technical magazine or a professional journal of wide international circulation.²⁸ Under the World Bank Guidelines the invitations to bid for goods or works or lists of consultancy assignments which are advertised in the General Procurement Notice and the Specific Procurement Notices are published in *Development Business*.²⁹ World Bank Borrowers are also encouraged to transmit invitations to embassies and trade representatives of countries of likely suppliers and contractors.³⁰*

XVIII. The GPA requires that any amendment or re-issue of a notice of invitation to tender, after publication of an invitation to participate in an intended procurement but before the time set for opening or receipt of tenders, shall be given the same circulation as the original documents upon which the amendment is based.³¹

(ii) *Information content of notices of invitation*

XIX. All three instruments require entities to include a minimum amount of information in their invitations to tender sufficient to enable suppliers to assess their interest in the intended procurement and to facilitate their participation in tendering procedures.³² The three instruments refer broadly to the same elements. The specific elements identified in one or more of these instruments are listed below, with the instrument that explicitly contains that element identified in the footnotes:

²⁶World Bank Guidelines on consultants• services, paragraph 2.9

²⁷Model Law Article 24(1) and GPA Article IX:1

²⁸Model Law Article 24(2); World Bank Guidelines for goods and works paragraph 2.8 and on consultants• services, paragraph 2.5

²⁹*Development Business* (UNDB) is a publication of the United Nations Department of Public Information, UN Plaza, New York, New York 10017, USA. A *Development Business* office is maintained at the World Bank, 1818 H Street, N.W., Washington D.C., 20433, USA.

³⁰World Bank Guidelines on goods and works, paragraph 2.8 and on consultants• services, paragraph 2.5

³¹GPA Article IX:10

³²Model Law 25(1); GPA Article IX:6-8

on the intended procurement:

- the name and address of the entity responsible for the procurement, awarding the contract and providing any information necessary for obtaining specifications and other documents³³ or details of the client of consultancy services³⁴;*
- the scope of the procurement with details on the nature and the quantity of the goods and services to be procured or the construction to be effected³⁵;*
 - any options for further procurement; the nature and quantity of any recurring contracts³⁶;*
 - the time-table for the supply of goods, the provision of services or for the completion of the construction.³⁷ If possible, an estimate of the timing when any option for further procurement may be exercised; in the case of recurring contracts an estimate of the timing of the subsequent tender notices³⁸;*
- the place of delivery of the goods to be supplied, the location where services are to be provided or where the construction is to be effected³⁹;*

regarding suppliers:

- any economic and technical requirements, financial guarantees and information required⁴⁰;*
- the criteria and procedures to be used for evaluating the qualifications of suppliers.⁴¹*

³³Model Law Articles 25(1)(a) and 37(1); GPA Article IX:6(e); World Bank Guidelines on goods and works, paragraph 2.7

³⁴World Bank Guidelines on consultants• services, paragraph 2.9

³⁵Model Law Articles 25(1)(b) and 37(1); GPA Article IX:6(a); World Bank Guidelines for goods and works, paragraph 2.7 and on consultants• services, paragraph 2.3

³⁶GPA Article IX:6(a)

³⁷Model Law Article 25(1)(c); GPA Article IX:6(c)

³⁸GPA Article IX:6(a)

³⁹Model Law Articles 25(1)(b) and 37(1)

⁴⁰GPA Article IX:6(f)

⁴¹Model Law Article 25(1)(d)

To facilitate obtaining tender documents or prequalification documents by suppliers interested in bidding for the intended procurement, the procuring entity shall also provide information regarding :

- the means of obtaining the documents and the place from which they may be obtained⁴²;*
- the price charged⁴³ and the currency and means of payment for documents⁴⁴;*
- the scheduled date for the availability of the documents⁴⁵;*
- the language or languages in which the documents are available⁴⁶;*

and information regarding submission of applications to tender or to prequalify:

- the address for submitting an application to be invited to tender or for qualifying for the suppliers• lists as well as for submission or receiving tenders⁴⁷;*
- the deadline for the submission or receipt of tenders⁴⁸;*
- the language or languages in which application to be invited to tender or qualify for the suppliers• list must be submitted.⁴⁹*

XX. Under the World Bank Guidelines on consultants• services, the document prepared for the assignment called the Terms of Reference shall define the objectives, goals and the scope of the assignment and provide background information to facilitate the consultants• preparation of their proposals. Terms of

⁴²Model Law Articles 25(1)(f), 25(2)(a) and 37(1)

⁴³Model Law Articles 25(1)(g), 25(2)(b) and 37(1)

⁴⁴Model Law Article 25(1)(h) and (2)(c); GPA Article IX:6(g)

⁴⁵World Bank Guidelines on goods and works, paragraph 2.7

⁴⁶Model Law Article 25(1)(i) and (2)(d)

⁴⁷GPA Article IX:6(d); Model Law Article 25(1)(j); World Bank Guidelines on goods and works, paragraph 2.43 and on consultants• services, paragraph 2.9

⁴⁸Model Law Article 25(1)(j); GPA Article IX:6(d); World Bank Guidelines on goods and works, paragraph 2.43 and on consultants• services, paragraph 2.9

⁴⁹GPA Article IX:6(d)

*Reference shall also list the services and surveys necessary to carry out the assignment and the expected results, for example reports, data, maps or surveys.*⁵⁰

XXI. Under the GPA, invitations to tender shall contain certain other specific information, including information concerning the method of procurement applied (open, selective, negotiated procedures)⁵¹ and on the mode of procurement (purchase, lease, rental or hire purchase).⁵²

XXII. Since the GPA obligations only apply to procurement by those entities explicitly covered in the schedules of individual GPA Parties in Appendix I to the GPA subject to exceptions contained therein and to goods and services above specified threshold values, the notices of invitation to participate in intended procurements or the publication in which such notices appear should indicate whether the procurement for which tenders are sought is subject to the obligations of the Agreement.⁵³

XXIII. Finally, under the GPA, being an intergovernmental agreement subscribed to by Parties using different languages, entities must publish in an appropriate publication listed in Appendix II, for each case of intended procurement, a summary notice of the invitation to tender in one of the official languages of the WTO. The notice shall contain at least information regarding the subject matter of the contract, the time-limits set for the submission of tenders or an application to be invited to tender, and the addresses from which documents relating to the contracts may be requested.⁵⁴

(b) Tender documents

XXIV. The information contained in tender documents describes the needs of the procuring entity and establishes a set of standards which enables the procuring entity to compare the tenders submitted in an objective and fair manner.⁵⁵ Tender documents also set out the rules and procedures with which a prospective tenderer should comply in preparing and submitting a responsive tender. The level of detail and complexity of tender documents may vary with the size and nature of the intended procurement but they should include, at least, the information that is required to be published in the notice of intended procurement.⁵⁶ The three

⁵⁰World Bank Guidelines on consultants• services, paragraph 2.3

⁵¹GPA Article IX:6(b)

⁵²GPA Article IX:6(h)

⁵³GPA Article IX:11

⁵⁴GPA Article IX:8

⁵⁵UNCITRAL Guidelines p.80

⁵⁶Model Law Articles 26 and 27(a); GPA Article XII:2

instruments refer broadly to the same elements.⁵⁷ The specific elements identified in one or more of the three instruments are listed below, with the instrument that explicitly specifies those elements identified in the footnotes:

regarding the procuring entity:

- *the address of the entity to which tenders should be sent⁵⁸;*
- the address where requests for supplementary information or requests for clarification should be sent⁵⁹ and the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate with suppliers in connection with the procurement proceedings, without the intervention of an intermediary⁶⁰;*

regarding the intended procurement:

- a complete description of the products or services or construction to be procured⁶¹, a brief description of the consultancy assignment⁶²;*
- where the procurement is for goods, the quantity of or a list of the goods to be procured⁶³;*
- any requirements (including technical and quality specifications, standards, minimum performance requirements, conformity certification) to be fulfilled and the test methods that will be used to assess the conformity of the equipment or works with those specifications⁶⁴;*

⁵⁷The World Bank Borrowers use Standard Bidding Documents (SBDs) published by the Bank for various types of procurement (World Bank Guidelines on goods and works, paragraph 2.12). Where no SBDs have been issued, the Borrower uses other standard conditions of contract or contract forms acceptable to the Bank. For selection and employment of consultants the Borrower uses the standard Request for Proposals (RFPs) which includes a letter of Invitation, Information to Consultants (ITC), the Terms of Reference, and the proposed contract (World Bank Guidelines on consultants• services paragraph 2.8 and 2.10 and Appendix 2).

⁵⁸GPA Article XII:2(a)

⁵⁹GPA Article XII:2(b) and World Bank Guidelines on consultants• services, Appendix 2(c)

⁶⁰Model Law Article 27(u)

⁶¹Model Law Article 27(d); GPA Article XII:2(g)

⁶²World Bank Guidelines on consultants• services, Appendix 2(a)

⁶³Model Law Article 27(d); World Bank Guidelines on goods and works, paragraph 2.11

⁶⁴Model Law Article 27(d); GPA Article XII:2(g); World Bank Guidelines on goods and works, paragraphs 2.11 and 2.16

- necessary plans, drawings, designs and instructional materials*⁶⁵;
- if alternatives to the characteristics of the goods, construction or services, designs, materials, completion schedules, payments terms, contractual terms and conditions or other requirements set forth in the tender documents are permitted, a statement to that effect, and a description of the manner in which alternative tenders are to be evaluated and compared*⁶⁶;
- *the warranty and maintenance requirements*⁶⁷;
- the location of delivery of the goods to be supplied, services to be provided or installation of the construction*⁶⁸;
- the delivery time or schedule of completion of the goods, the construction to be effected or the services to be provided*⁶⁹;
- *if suppliers or contractors are permitted to submit tenders for only a portion of the goods, construction or services to be procured, a description of the portion or portions for which tenders may be submitted*⁷⁰;
- the manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, construction or services themselves, such as any applicable transportation and insurance charges, inspection costs as well as customs duties and other charges or taxes applicable to imported goods*⁷¹;
- the currency or currencies in which the tender price is to be formulated and expressed*⁷² and the exchange rate that will be used for the

⁶⁵Model Law 27(d); GPA Article XII:2(g)

⁶⁶Model Law Article 27(d) and (g); World Bank Guidelines on goods and works, paragraph 2.17

⁶⁷World Bank Guidelines on goods and works, paragraph 2.16

⁶⁸Model Law Article 27(d); World Bank Guidelines on goods and works, paragraph 2.16

⁶⁹Model Law Article 27(d); World Bank Guidelines on goods and works, paragraph 2.11 and 2.16 and on consultants• services, Appendix 2(p)

⁷⁰Model Law Article 27(h)

⁷¹Model Law Article 27(i)

⁷²Model Law Article 27(j); GPA Article XII:2(h); World Bank Guidelines on consultants• services, Appendix 2(i)

*conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used*⁷³;

regarding suppliers:

- any economic and technical requirements, financial guarantees and any other information or evidence required from suppliers*⁷⁴;
- requirements as to documentary evidence or other information that must be submitted by suppliers to demonstrate their qualification*⁷⁵;
- the criteria and procedures relative to the evaluation of the qualifications of suppliers*⁷⁶;

regarding evaluation of tenders or proposals:

- the criteria to be used by the procuring entity in determining the successful tender and for awarding the contract, including any margin of preference and any factor other than price to be considered in the evaluation of tenders, such as insurance and inspection costs, customs duties and other import charges, taxes and currency of payment for imported goods and the relative weight of such criteria*⁷⁷ and the way in which such factors will be quantified or otherwise evaluated⁷⁸;

regarding submission and receipt of tenders or proposals:

- the manner, place and deadline for the submission of tenders, applications to prequalify or proposals*⁷⁹;
- the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance*⁸⁰;

⁷³Model Law Article 27(s)

⁷⁴GPA Article XII:2(f); Model Law Article 27(c)

⁷⁵Model Law Articles 7(3)(a)(iii) and 27(c)

⁷⁶Model Law Article 27(b)

⁷⁷Model Law Article 27(e); GPA Article XII:2(h)

⁷⁸World Bank Guidelines on goods and works, paragraph 2.11, 2.17 and 2.51 and on consultants• services, paragraph 2.10 and Appendix 2(d)

⁷⁹Model Law Articles 7(3)(a)(iv) and 27(n); World Bank Guidelines on consultants• services, Appendix 2(h) and (l)

-the period of time during which tenders shall be in effect or consultants' proposals shall be held valid⁸¹;

-the language or languages in which tenders must be submitted⁸²;

regarding opening of tenders:

-the place, date and time of, and persons authorized to be present at, the opening of tenders⁸³;

-the procedures to be followed for opening and examining tenders⁸⁴;

regarding the procurement contract:

-the terms and conditions of the procurement contract, both general and special, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties⁸⁵;

-the terms of payment⁸⁶;

-any formalities that will be required, once a tender has been accepted, for a procurement contract to enter into force, including, where applicable, the signing of a written procurement contract and approval by a higher authority of the government together with the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval⁸⁷;

and regarding certain other matters:

⁸⁰GPA Article XII:2(d)

⁸¹Model Law Article 27(p); World Bank Guidelines on consultants' services, Appendix 2(o)

⁸²GPA Article XII:2(c)

⁸³Model Law Article 27(q); GPA Article XII:2(e); World Bank Guidelines on goods and works, paragraph 2.44

⁸⁴Model Law Article 27(r)

⁸⁵Model Law Articles 7(3)(a)(ii) and 27(f); World Bank Guidelines on goods and works, paragraph 2.11

⁸⁶GPA Article XII:2(i)

⁸⁷Model Law Article 27(y)

-any requirements of the procuring entity with respect to any tender security to be provided by suppliers including the issuer and the nature, form, amount and other principal terms and conditions⁸⁸;

-any commitments to be made by the supplier or contractor outside of the procurement contract, such as commitments relating to counter-trade or to the transfer of technology.⁸⁹

XXV. Under the Model Law, at any time prior to the deadline for submission of tenders, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a supplier or contractor, modify the tender documents by issuing an addendum. The addendum shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the solicitation documents and shall be binding on those suppliers or contractors.⁹⁰

(c) Clarification

XXVI. Under the Model Law and the World Bank Guidelines the procuring entity is required to respond to any request by a supplier for clarification of the tender documents or prequalification documents within a reasonable time prior to the deadline for the submission of tenders or application to prequalify so as to enable the supplier to make a timely submission of its tender or application to prequalify. The procuring entity is also required, without identifying the source of the request, to communicate the clarification, any additional information, correction of errors or any other modifications to all other suppliers to which the procuring entity has provided the tender documents. The record of any meeting with any suppliers shall also be communicated to other suppliers.⁹¹

XXVII. Under the GPA, entities are required to reply promptly to any reasonable request from suppliers for explanations relating to tender documentation under open and selective procedures. Entities are also required to reply to any reasonable request for relevant information from a supplier participating in the tendering process on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.⁹² Also, any significant information given to one supplier regarding invitations to tender for a particular intended procurement shall be given

⁸⁸Model Law Article 27(l) and (m)

⁸⁹Model Law Article 27(v)

⁹⁰Model Law Article 28(2)

⁹¹Model Law Articles 28(1) and (3) and 7(4); World Bank Guidelines on goods and works, paragraph 2.18

⁹²GPA Article XII:3(a)-(c)

*simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.*⁹³

*XXVIII. Under the World Bank Guidelines, all prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis.*⁹⁴ *Borrowers shall provide reasonable access to project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with the Borrowers's representatives to seek clarifications. Minutes of the conference shall be provided to all prospective bidders with a copy to the Bank.*⁹⁵

(d) Promptness and timeliness of prior information and deadlines

*XXIX. The Model Law and the GPA emphasize the importance of promptness in the access to national legislation and the publication of texts of relevant legislation.*⁹⁶ *The World Bank Guidelines on goods and works emphasize that specific bidding opportunities should be advertised to all those interested in bidding and, in particular, to the international community in a timely manner to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.*⁹⁷

*XXX. All three instruments provide that suppliers must be granted a sufficient period of time to prepare their tenders. The Model Law recognizes that the length of that period of time may vary from case to case depending on the circumstances of the given procurement and it is left to the procuring entity to fix the deadline by which tenders must be submitted.*⁹⁸

XXXI. The GPA prescribes certain minimum deadlines that must be allowed for the preparation, submission and receipt of tenders to enable responsive tendering. The relevant provisions also contain general considerations that should govern when entities set time-limits for tendering and delivery. Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining such a time-limit, entities shall, consistent with their own reasonable

⁹³GPA Article IX:10

⁹⁴World Bank Guidelines on good and works, paragraph 2.18

⁹⁵World Bank Guidelines on goods and works, paragraph 2.18.

⁹⁶Model Law Article 5; GPA Article XIX:1

⁹⁷World Bank Guidelines on goods and works, paragraph 2.7 and 2.8

⁹⁸Model Law Article 30(1)

needs, take into account factors such as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points. Furthermore, each Party is required to ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.⁹⁹

XXXII. Paragraphs 2 and 3 of Article XI of the GPA on deadlines specify the minimum periods that must be provided for the preparation and submission of tenders by suppliers after the issuance of notices of invitation to tender. The deadlines may be shortened under certain circumstances specified in that Article.

XXXIII. The World Bank Guidelines also require that the time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and the complexity of the contract and, generally, no less than six weeks from the date of invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for International Competitive Bidding.¹⁰⁰ The relevant provisions require that sufficient time should be allowed to prospective bidders to prepare their bids after they have been notified of the procurement opportunity. A lead time of eight weeks is prescribed between the publication of a General Procurement Notice for procurement on the basis of International Competitive Bidding and the release of the bidding documents to the public. The notifications on opportunities to bid for specific contracts, or to prequalify, in the form of Specific Procurement notices, shall be published in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.¹⁰¹

XXXIV. The GPA has detailed provisions aimed at allowing a sufficient period of time for potential suppliers to prequalify. To this end, the GPA provides that any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and complete the qualification procedures¹⁰²; the time required for qualifying suppliers shall not be used in order to keep suppliers of other GPA Parties off a suppliers' list or from being considered for a particular intended procurement¹⁰³; entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time; if, after publication of a tender

⁹⁹GPA Article XI, paragraph 1

¹⁰⁰World Bank Guidelines on goods and works, paragraph 2.43

¹⁰¹World Bank Guidelines on goods and services, paragraph 2.7 and 2.8

¹⁰²GPA Article VIII: (a)

¹⁰³GPA Article VIII : (c)

notice, a supplier not yet qualified requests to participate, the entity shall promptly start procedures for qualification.¹⁰⁴

VI. TRANSPARENCY OF DECISIONS ON QUALIFICATION

(a) Transparency of criteria

XXXV. All three instruments contain provisions aimed at ensuring that decisions on the qualification of suppliers are taken and seen to be taken on the basis of criteria that have been previously disclosed, are capable of objective application and linked to the abilities of interested suppliers to perform.¹⁰⁵

XXXVI. The Model Law sets forth certain criteria that procuring entities may require the suppliers to meet in order to qualify for participation in procurement proceedings.¹⁰⁶ The GPA requires that any conditions for participation in tendering procedures be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Entities shall recognize as qualified suppliers such domestic and foreign suppliers that meet the conditions for participation in an intended procurement.¹⁰⁷ The GPA also prescribes a number of procedures in Article VIII to ensure that qualification process is fair and does not lead to discrimination among suppliers. The World Bank Guidelines emphasize that qualification of suppliers be based entirely on their capability and resources to perform the particular contract satisfactorily and lists the factors that should be taken into account.¹⁰⁸

XXXVII. In order to guarantee fairness of and non-discrimination in the qualification process, the Model Law requires that the same criteria must be applied to all suppliers participating in the procurement proceedings; the procuring entity shall evaluate the qualification of suppliers in accordance with the qualification criteria set forth in the prequalification or tender documents and; in reaching a decision with respect to the qualification of each supplier, the procuring entity shall apply only the criteria set forth in such documents.¹⁰⁹ The World Bank Guidelines require that the scope of the contract and a clear statement of the requirement for qualification be sent to those who have responded to invitation to prequalify.¹¹⁰

¹⁰⁴GPA Article VIII:(e)

¹⁰⁵Model Law Article 6; GPA Article VIII and World Bank Guidelines on goods and works, paragraph 2.9 and 2.10

¹⁰⁶Model Law Article 6(b)

¹⁰⁷GPA Article VIII:(b) and (c)

¹⁰⁸World Bank Guidelines on goods and works, paragraph 2.9

¹⁰⁹Model Law Article 6(3)

¹¹⁰World Bank Guidelines on goods and works, paragraph 2.10

(b) Notification and listing

XXXVIII. The three instruments have specific requirements on the provision of information on decisions to qualify to the suppliers concerned and to the general public. Under the Model Law, the procuring entity shall make available to any member of the general public, upon request, the names of all suppliers or contractors that have been prequalified.¹¹¹ Each supplier submitting an application to prequalify shall be notified whether or not it has been prequalified.¹¹² Under the Model Law and the GPA, the procuring entity shall, upon request, communicate to suppliers whose application to qualify was rejected or whose qualification has been brought to an end the grounds therefor.¹¹³ The GPA requires the entity concerned to advise any supplier having requested to become a qualified supplier of its decision in this regard.¹¹⁴

XXXIX. Under the procedures of Article X of the GPA on selective tendering, entities maintaining permanent lists of qualified suppliers are required to publish annually in one of the publications listed in Appendix III a notice containing the following¹¹⁵:

- the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;*
- the period of validity of the lists, and the formalities for their renewal.*

Entities are required to notify the qualified suppliers included on permanent lists of the termination of any such lists or of their removal from them.¹¹⁶

*VII. TRANSPARENCY OF DECISIONS ON CONTRACT AWARDS**(a) Transparency of criteria*

¹¹¹Model Law Article 7(6)

¹¹²Model Law Article 7(6)

¹¹³Model Law Article 7(7) and GPA Article XVIII:2(b)

¹¹⁴GPA Article VIII:1(f)

¹¹⁵GPA Article IX:9(a)-(c)

¹¹⁶GPA, Article VIII(f)

XL. Government procurement regimes and each of the three instruments referred to in this note put great emphasis on decisions on the award of the contracts not only being objective but also being seen to be objective. This concern lies at the heart of the nexus linking transparency and accountability. Being seen to be objective in decision-making requires, first, that the evaluation criteria, including technical specifications, be objective in nature and publicly announced in advance and, second, that arrangements for the receipt and opening of tenders are such as to ensure their regularity. Transparency in decision-making further entails the availability ex post of information on the decisions taken.

XLI. As stated above under the section on tender documents, all three instruments provide that tender documents should contain the criteria, including any factor other than the price, to be considered by the procuring entity in determining the successful tender and for awarding the contract. All three instruments also emphasize that entities should evaluate tenders only on the basis of the criteria that have been previously published.

XLII. The provisions of the Model Law on examination, evaluation and comparison of bids require the procuring entity to evaluate and compare the tenders in order to ascertain the successful tender in accordance with the procedures and criteria set forth in the tender documents and prohibit the use of any criterion that has not been set forth in the tender documents.¹¹⁷ In evaluating and comparing tenders, a procuring entity may grant a margin of preference in favour of a domestic supplier; but any rules for calculation of such preference margins should be set forth in the procurement regulations and should be calculated accordingly. Moreover, the use of a margin of preference is to be predisclosed in the tender documents and reflected in the record of the procurement proceeding.¹¹⁸

XLIII. The GPA also explicitly provides that awards should be made in accordance with the criteria and essential requirements specified in the tender documentation.¹¹⁹ Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.¹²⁰

XLIV. The World Bank Guidelines require that bidding documents shall specify the relevant factors in addition to the price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid.¹²¹

¹¹⁷Model Law Article 34(4)(a)

¹¹⁸Model Law Articles 27(e), 34(4)(d) and 39(2)

¹¹⁹GPA Article XIII:4(c)

¹²⁰GPA Article XIII:4(b)

¹²¹World Bank Guidelines on goods and works, paragraph 2.51

The Borrower is required to prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation for the award of the contract is based.¹²² Under the provisions on domestic preferences, the Borrower may grant a margin of preference in the evaluation of bids under International Competitive Bidding procedures; but in such cases, the bidding documents shall clearly indicate any preferences to be granted and the information required to establish the eligibility of a bid for such preference.¹²³

XLV. Particular attention is given in the three instruments to ensuring the transparency and objectivity of technical specifications criteria and their evaluation. The GPA and the Model Law stipulate that technical specifications¹²⁴ prescribed by procuring entities shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.¹²⁵ The GPA and the World Bank Guidelines require that technical specifications prescribed by procuring entities shall be based on international standards, where such exist, otherwise, on national technical regulations, recognized national standards or other equivalent standards, or building codes.¹²⁶ The GPA has an explicit preference for the use of specifications based on performance rather than design or descriptive characteristics. The Model Law requires that any specifications, plans, drawings, designs and requirements or descriptions be based on the relevant objective technical and quality characteristics of the goods.¹²⁷ All three instruments proscribe the use of brand names and other references pointing to, for example, a patent, specific origin, producer or supplier.¹²⁸ Moreover, the GPA requires entities not to seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.¹²⁹

(b) Receipt and opening of tenders

¹²²World Bank Guidelines on goods and works, paragraph 2.53

¹²³World Bank Guidelines on goods and works, paragraph 2.54 and Appendix 2

¹²⁴Such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the procedures and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities

¹²⁵GPA Article VI:1; Model Law Article 16(1)

¹²⁶World Bank Guidelines on goods and works, paragraph 2.19 and 2.20

¹²⁷Model Law Article 16(2)

¹²⁸GPA Article VI:2-3; Model Law Article 16(2); World Bank Guidelines on goods and works, paragraph 2.19 and 2.20

¹²⁹GPA Article VI:4

XLVI. The GPA provisions require that procedures and conditions for receipt and opening of tenders guarantee the regularity of the openings and be consistent with the national treatment and non-discrimination provisions of the GPA.¹³⁰

XLVII. The Model Law and the World Bank Guidelines set forth detailed conditions which are aimed at preventing any non-transparent action or decision by the procuring entity in the process of opening of tenders and at enabling suppliers to observe that the entity complies with the procurement criteria and procedures. To this end, these two instruments provide, inter alia, that:

- bids shall be opened at the time and place stipulated in the notice of invitation to tender or in the tender notice¹³¹;*
- all suppliers that have submitted tenders or their representatives shall be permitted by the procuring entity to be present at the opening of tenders¹³²;*
- the technical proposals, submitted separately from financial proposals, shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance, legal, as appropriate) after the closing time for the submission of proposals¹³³; the financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority until they are opened publicly¹³⁴;*
- the name and address of each supplier whose tender is opened and the tender price or the total amount of each bid shall be read aloud to those persons present at the opening of tenders, and communicated on request to suppliers that have submitted tenders but that are not present or represented at the opening of tenders¹³⁵;*
- the name and address of each supplier whose tender is opened and the tender price or the total amount of each bid shall be recorded immediately in the record of the tendering proceedings.¹³⁶*

XLVIII. The three instruments set forth a number of other provisions that safeguard transparency at the bid evaluation stage. The procuring entity may ask bidders for

¹³⁰GPA Article XIII:3

¹³¹Model Law Article 33(1); World Bank Guidelines on goods and works, paragraph 2.44

¹³²Model Law 33(2); World Bank Guidelines on goods and works, paragraph 2.44

¹³³World Bank Guidelines on consultants• services, paragraph 2.12

¹³⁴World Bank Guidelines on consultants• services, paragraph 2.12

¹³⁵Model Law Article 33(3); World Bank Guidelines on goods and works, paragraph 2.44

¹³⁶Model Law Article 33(2); World Bank Guidelines on goods and works, paragraph 2.44

clarifications of their tenders that are needed to evaluate them, but no changes are to be asked or permitted with a view to making unresponsive bids responsive except for the correction of arithmetical errors appearing on tender.¹³⁷ The GPA requires that any opportunity that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.¹³⁸ The World Bank Guidelines preclude the alteration of bids after the deadline for receipt of bids.¹³⁹

XLIX. Under the GPA, negotiations with entities may only take place where prior notice has been given or where no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth earlier in the notices or tender documentation.¹⁴⁰ To safeguard transparency in the course of negotiations, entities shall ensure that any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation; all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations; all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.¹⁴¹ The Model Law prohibits negotiations between the procuring entity and a supplier with respect to a tender submitted by the supplier.¹⁴²

L. The World Bank Guidelines require that information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with the bidding process until the successful bidder is notified of the award.¹⁴³

LI. Under the procedures on negotiations in the Model Law and in the GPA, entities are required to treat information in tenders, in particular any technical, price or other market information, confidentially and not to provide information intended to assist particular participants to bring their tenders up to the level of other participants.¹⁴⁴

¹³⁷Model Law Article 34(1)

¹³⁸GPA Article XIII:1(b)

¹³⁹World Bank Guidelines on goods and works, paragraph 2.45

¹⁴⁰GPA Article XIV:1

¹⁴¹GPA Article XIV:4(a)-(d)

¹⁴²Model Law Article 35

¹⁴³World Bank Guidelines on goods and services, paragraph 2.46

¹⁴⁴Model Law Article 49.3 and GPA Article XIV:3

LII. Under the World Bank Guidelines on consultancy services, information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the other consultants that have submitted the proposals or to other persons until the award of the contract is notified to the successful firm.¹⁴⁵

(c) Ex-post information on contract awards

LIII. The three instruments lay down provisions requiring procuring entities to inform the public and, in particular, the suppliers that have participated in the procurement process of their award decisions. The Model Law and the GPA require entities to publish a notice award after the award of each contract.¹⁴⁶ The publications in which individual GPA Parties publish such notices are identified in Appendix II to the GPA. The GPA sets forth in detail the type of information that such notices, to be published within a specified time-limit after the award of each contract, must contain. Such information shall relate to¹⁴⁷:

- the nature and quantity of products or services in the contract award;
- the name and address of the entity awarding the contract;
- the date of award of the contract;
- the name and address of winning tenderer;
- the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
- where appropriate, means of identifying the notice of invitation to tender or justification for the use of limited tendering procedure; and
- the type of procedure (open, selective or limited) used.

LIV. In addition to publication of a notice of contract award, the GPA goes on to require entities to promptly inform directly those suppliers that have participated in a tender of the decision on the contract award, in writing if requested.¹⁴⁸ Under the Model Law, the procuring entity is required to give a notice to other suppliers after it has entered into a contract with a supplier, specifying the name and address of the supplier and the contract price.¹⁴⁹

¹⁴⁵World Bank Guidelines on consultants• services, paragraph 2.28

¹⁴⁶Model Law Article 14(1) and (2); GPA Article XVIII:1

¹⁴⁷GPA Article XVIII:1(a)-(g)

¹⁴⁸GPA Article XVIII:3

¹⁴⁹Model Law Article 36(6)

LV. The GPA confers on unsuccessful tenderers the right to obtain the necessary information on the contract award. Accordingly, each entity must respond promptly to requests for further information from a supplier of a GPA Party regarding its procurement practices and procedures. In order to foster transparency and accountability of the decisions of the procuring entity, the Model Law and the GPA allow an unsuccessful tenderer to seek and obtain pertinent information concerning the reasons why its tender was not selected. The GPA also requires the provision of information on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer. Under the Model Law, however, the procuring entity is not required to justify the grounds for its rejection of tenders.¹⁵⁰

LVI. As regards the treatment of confidential information on contract awards, the GPA foresees that entities may decide to withhold certain information on contract awards where release of such information may impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises or might prejudice fair competition between suppliers.¹⁵¹

LVII. The provisions of the Model Law bar the procuring entity from disclosing certain information, including that relating to the examination, evaluation and comparison of tenders so as to safeguard the public interest or the commercial interest of parties involved in the proceedings.¹⁵²

VIII. REVIEW

LVIII. Review procedures are often considered a key component of transparency and accountability of government procurement practices. The rules set out in the Model Law and the GPA establish the basic features that national review mechanisms must have without going into great detail. The purpose of these provisions is to give suppliers believing that an entity has breached national law or, in the case of the GPA, the rules of the GPA itself, a right of review.¹⁵³

LIX. Under the Model Law and the GPA, as an initial step, complainants are encouraged to seek resolution of their complaints through consultations with the procuring entity itself prior to recourse to an administrative review body.¹⁵⁴ Under the Model Law, unless the complaint is resolved by mutual agreement, the procuring entity

¹⁵⁰Model Law Article 12(1) and GPA Article XVIII:2

¹⁵¹GPA Article XVIII:4

¹⁵²Model Law Article 45 and Article 34(8)

¹⁵³Model Law Article 52; GPA Article XX:1

¹⁵⁴GPA Article XX:1

*shall, within prescribed time-limits issue a written decision including a statement on the reasons for the decision and indicating any corrective measures that are to be taken.*¹⁵⁵

*LX. If the matter is not settled at this stage, the complainant is entitled, under the Model Law, to seek an administrative review.*¹⁵⁶ *The functions of administrative review may be vested in an existing appropriate administrative body or a body whose competence is exclusively to resolve disputes in procurement matters and which is independent of the procuring entity. The decisions of the review bodies or failure to make a decision within prescribed time-limits shall be subject to judicial review.*¹⁵⁷ *The Model Law also lays down certain procedures to ensure the openness and fairness of review procedures.*¹⁵⁸

*LXI. Under the GPA, Parties may confer the authority to hear challenges by suppliers on national courts or on an impartial and independent review body of an administrative nature. In the event that a bid challenge is heard by a review body which does not have the status of a court of law, either its decisions must be subject to judicial review or it must follow the criteria laid down in detail in Article XX:6(a)-(g). These minimum standards are mainly designed to ensure the openness, fairness and equity of the proceedings.*¹⁵⁹

*LXII. The World Bank Guidelines allow a bidder or a consultant who wishes to ascertain the grounds on which its bid or proposal was not selected, after notification of award, to address a request for explanation to the Borrower country or agency. If the bidder or consultant is not satisfied with the explanation given, it may seek debriefing with the World Bank.*¹⁶⁰

*LXIII. Under the GPA, a review body must have the authority to order the correction of a breach of the Agreement or compensation for the loss or damages suffered by a supplier, but this may be limited to costs for tender preparation or protest. Pending the outcome of the challenge, the review body must be able to order rapid interim measures, including the suspension of the procurement process, to correct breaches of the GPA and to preserve commercial opportunities.*¹⁶¹ *However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. The provisions of the Model Law also provide for suspension of procurement proceedings which take account of the need of the procuring entity to conclude a contract in an*

¹⁵⁵Model Law Article 53

¹⁵⁶Model Law Articles 54 and 55

¹⁵⁷Model Law Article 57

¹⁵⁸Model Law Article 55

¹⁵⁹GPA Article XX:6(a)-(g)

¹⁶⁰World Bank Guidelines on goods and works, Appendix 4, paragraph 15 and on consultants• services, Appendix 4, paragraph 15

¹⁶¹GPA Article XX:7(a)-(c)

*economic and efficient way without undue disruption and delay in the procurement process.*¹⁶²

IX. OTHER MATTERS RELATED TO TRANSPARENCY

(a) Maintenance of record of proceedings

*LXIV. The Model Law establishes an explicit requirement for the maintenance of a record of the key decisions and actions taken by the procuring entity during the course of the procurement proceedings. As is explained in the Guide to the Enactment of the Model Law, maintenance of a record is one of the principal mechanisms for ensuring adherence to the rules and also facilitates the exercise of the right of aggrieved suppliers to seek review.*¹⁶³

*LXV. Under the Model Law, the record of proceedings should contain, at a minimum, the following key information regarding the procurement, the procuring entity and suppliers and evaluation of tenders*¹⁶⁴:

- a brief description of the goods, construction or services to be procured, or of the procurement need for which the procuring entity requested proposals or offers;*
- the names and addresses of suppliers that submitted tenders, proposals, offers or quotations, and the name and address of the supplier or contractor with whom the procurement contract is entered into and the contract price;*
- information relative to the qualifications, or lack thereof, of suppliers that submitted tenders, proposals, offers or quotations;*
- the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract, where these are known to the procuring entity;*
- a summary of the evaluation and comparison of tenders, proposals, offers or quotations, including the application of any margin of preference;*
- any information on rejection of tenders, proposals, offers or quotations under the relevant provisions of the Model Law including a statement to that effect and the grounds therefor;*

¹⁶²Model Law Article 56

¹⁶³UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment, pages 61 and 71

¹⁶⁴Model Law Article 11(a)-(m)

- a statement of the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;
- in procurement proceedings in which the procuring entity, limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation;
- a summary of any requests for clarification of the prequalification or solicitation documents, the responses thereto, as well as a summary of any modification of those documents.

LXVI. The GPA stipulates that information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures relating to the provision of information by entities (GPA Article XVIII), between governments (GPA Article XIX) and under the procedures for bid challenge (GPA Article XX) and dispute settlement (GPA Article XXII).¹⁶⁵

LXVII. Moreover, given the more restrictive nature of limited tendering procedures under the GPA, entities using this method in a given procurement are required to prepare a report in writing on each contract awarded using the limited tendering method, rather than open and selective tendering. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions for using limited tendering as stated in Article XV:1 which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures for information and review as regards obligation of entities and Parties (Articles XVIII and XIX) and on bid challenge and dispute settlement (Articles XX and XXII).

(b) Information technology

LXVIII. Information technology can play, and in some countries is already playing, a major role in enhancing transparency. With a view to ensuring that the provisions of the GPA do not constitute an unnecessary barrier to technical progress, Article XXIV:8 of the GPA foresees consultations, and if necessary, negotiations of modifications to the Agreement in view of developments in the use of information technology in government procurement. The consultations in the Committee shall, in particular, aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. The relevant provision of the GPA further states that when a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems. In the context of the three-year review of the Agreement under Article XXIV:7(b), the Committee on Government

¹⁶⁵GPA Article XIII:3

*Procurement has initiated work on possible amendments to the relevant provisions of the GPA to reflect the recent developments in information technology.*¹⁶⁶

(c) Language

*LXIX. Under the Model Law, there is a general requirement that documents relating to tendering proceedings shall be formulated in the official language or languages of the enacting state and, except in certain specified cases, in a language customarily used in international trade. An additional rule in the Model allows the formulation and submission of tenders in any language in which the tender documents have been issued or in any other language that the procuring entity specifies in the tender documents.*¹⁶⁷ *The GPA requires the submission of a summary of the invitation to tender in one of the WTO official languages.*¹⁶⁸ *The World Bank Guidelines require that the qualification documents be prepared in either English, French or Spanish but allow entering into contracts with local bidders in the national language of the Borrower.*¹⁶⁹

X. INFORMATION TO BE PROVIDED TO OTHER GOVERNMENTS

LXX. The GPA is the only international instrument on government procurement that confers on governments that are Parties to it contractual rights and obligations. Therefore, the procedures described in this section concern the exchange of information between governments Parties to the GPA as required under the relevant provisions of the GPA.

(a) Information on national legislation

*LXXI. The GPA Parties are required to be prepared to explain their government procurement procedures in response to a request by any other GPA Party.*¹⁷⁰ *More particularly, the provisions on special treatment for developing countries require developed country Parties to establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, among others, laws, regulations, procedures and practices regarding government procurement, notices about intended procurement which have been published, addresses of the entities covered by the Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee on Government Procurement established under the Agreement may also set up an information centre to respond to enquiries by developing countries.*¹⁷¹

¹⁶⁶GPA/8

¹⁶⁷Model Law Articles 17 and 29

¹⁶⁸GPA Article IX:8

¹⁶⁹World Bank Guidelines on goods and works, paragraph 2.15 and on consultants• services, paragraph 1.21 and 1.22

¹⁷⁰GPA Article XIX:1

¹⁷¹GPA Article V:11

LXXII. *The GPA has a general provision in Article XIX:4, requiring that confidential information provided to any government Party to the GPA shall not be revealed without formal authorization from the Party providing the information. The definition of confidential information is identical to that in Article X of GATT 1994 with the addition of a reference to information which would prejudice fair competition between suppliers.*¹⁷²

(b) Notification of national legislation

LXXIII. *Under the GPA each Party has an obligation to inform the Committee on Government Procurement of any changes in the national legislation and its administration.*¹⁷³ *The Committee has adopted a Decision on procedures for the notification of national implementing legislation by the GPA Parties, including responses to a checklist of issues.*¹⁷⁴

(c) Information on contract awards

LXXIV. *Further to the obligations of entities under Article XVIII:2(c) of the GPA relating to the provision of information to an unsuccessful tenderer, the GPA allows the government of an unsuccessful tenderer which is a Party to the GPA to seek such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government is required to provide information on both the characteristics and relative advantages of the winning tender and the contract price. The government may disclose the information thus obtained provided it exercises this right with discretion. In cases where release of such information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.*¹⁷⁵ *The GPA also imposes a general requirement on Parties to provide, upon request, to any other Party, information concerning procurement by covered entities and their individual contract awards.*¹⁷⁶

(d) Statistical information

LXXV. *As a means of monitoring procurement covered by the GPA, Article XIX:5 of the GPA requires each Party to collect and provide to the Committee on an annual basis statistics on its procurements covered by the GPA. The type of information that such reports shall contain is stipulated in detail in Article XIX:5, paragraphs (a) to (d).*

¹⁷²GPA Article XIX:4

¹⁷³GPA Article XXIV:5(a) and (b)

¹⁷⁴GPA/1/Add.1

¹⁷⁵GPA Article XIX:2

¹⁷⁶GPA Article XIX:3

PART B

TRANSPARENCY PROVISIONS IN WTO AGREEMENTS

I. INTRODUCTION

LXXVI. WTO Agreements contain extensive transparency provisions aimed at ensuring the adequate provision of information on national trade measures both to economic operators and to other WTO Members. These provisions would appear to be motivated by three main underlying concerns:

- first, that traders and other affected economic operators should, as a basic principle, only be subject to measures which have been previously published or, at least, made otherwise publicly available;*
- second, the need for adequate information on trading opportunities provided under the WTO to be available in order that economic operators can take advantage of them; and*
- third, the need for information on national measures to be available to WTO bodies and other Members as a basis for monitoring the operation of WTO Agreements and, in particular, compliance with them.*

LXXVII. This Part focuses on provisions in WTO agreements, in particular those in Annex I of the WTO, relating to the availability of information on national trade measures to traders and other economic operators. It thus deals with such matters as the publication or public availability of laws, regulations, judicial decisions and administrative rulings, advanced notice of proposed regulations, the provision of information in response to requests and the treatment of confidential information. Another important dimension of transparency is the notification of information by Member governments to other Members through the WTO. Rather than duplicating the considerable work that has been done on compiling information on these notification requirements, notably by the Working Group on Notification Obligations and Procedures, the attention of delegations is drawn to documents G|NOP|W|2|Rev.1 and G|L|112|Add.1 which list existing notification obligations under agreements in Annex 1A of the WTO Agreement.

II. PUBLICATION

(a) Publication

LXXVIII. Article X of GATT 1994 is at the origin of the provisions in other WTO Agreements which set forth specific obligations requiring Members to publish laws, regulations, judicial decisions and administrative rulings of general application effective in Members and which relate to the operation of the respective Agreements. Article X:1 of GATT 1994 reads:

•Article X

1. *Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published.*•

LXXIX. Transparency is part of the general obligations and disciplines in the General Agreement on Trade in Services. The requirement to publish, or make otherwise publicly available, is set out in the following terms:

•Article III

Transparency

1. *Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.*
2. *Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.*•

LXXX. The Agreement on Trade-Related Aspects of Intellectual Property Rights establishes the requirement to publish, or make publicly available, the relevant legislation as part of the procedures on dispute prevention or settlement.

•Article 63

Transparency

1. *Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them.*

Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.•

LXXXI. It may be noted that in the WTO Agreements cited above, the obligation to publish extends to international agreements in force between Members affecting the subject matter of the respective Agreements.

LXXXII. The Agreement on Implementation of Article VII of GATT 1994 stipulates publication of domestic legislation by reference to Article X:1 of GATT 1994. The relevant provision reads:

•Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned.•

LXXXIII. The requirement on publication in the Agreement on Preshipment Inspection is set forth as part of the general transparency obligations imposed on user Members. These provisions read:

•Article 2

Obligations of User Members

Transparency

8. User Members shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.•

LXXXIV. The disciplines governing the application of rules of origin during the transition period under the Agreement on Rules of Origin require Members to comply with the requirements on publication set forth in Article X:1 of GATT 1994. The relevant provisions read:

•Article 2

Disciplines During the Transition Period

Until the work programme for the harmonization of rules of origin set out in Part IV is completed, Members shall ensure that:

(g)their laws, regulations, judicial decisions and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance

with, the provisions of paragraph 1 of Article X of GATT 1994.

LXXXV. Under the Agreement on Import Licensing Procedures the obligation imposed on Members to publish concerns, in particular, the specific procedures governing the application of licensing requirements and the lists of products subject to licensing requirement. The relevant provision reads:

•Article 1

General Provisions

- 4. (a) The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published, in the sources notified to the Committee on Import Licensing provided for in Article 4 (referred to in this Agreement as •the Committee•), in such a manner as to enable governments and traders to become acquainted with them.*

LXXXVI. The relevant obligations of central government bodies in the Agreement on Technical Barriers to Trade with respect to publication or public availability of all regulations and procedures read:

•Article 2

Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

- 2.11 Members shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.*

•Article 5

Procedures for Assessment of Conformity by Central Government Bodies

- 5.8 Members shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.*

Moreover, the Code of Good Practice for the Preparation, Adoption and Application of Standards under the Agreement on Technical Barriers to Trade contains the following provision requiring standardizing bodies to publish the standards adopted by them:

- O. *Once the standard has been adopted, it shall be promptly published.*•

LXXXVII. Annex B of the Agreement on the Application of Sanitary and Phytosanitary Measures stipulates the publication of regulations (sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally) in the following terms:

•Publication of regulations

1. *Members shall ensure that all sanitary and phytosanitary regulations which have been adopted are published promptly in such a manner as to enable interested Members to become acquainted with them.*•

LXXXVIII. The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires Members to give public notice of the initiation of an investigation, of any preliminary or final determination, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. The details of information that such notices should contain, or otherwise make available through a separate report, are also set forth in the relevant provisions. The requirements on public notice also apply to the initiation and completion of reviews of anti-dumping duties and price undertakings and to decisions to apply duties retroactively.¹⁷⁷

LXXXIX. The Agreement on Subsidies and Countervailing Measures requires Members to give public notice of the initiation of an investigation of an alleged subsidy, of any preliminary or final determination, of any decision to accept an undertaking pursuant to Article 18, of the termination of such an undertaking, and of the termination of a definitive countervailing duty. The details of information that such notices should set forth, or otherwise make available through a separate report, are enumerated under the relevant provisions. The requirements on public notice also apply to the initiation and completion of reviews of countervailing duties and to decisions to apply countervailing duties retroactively.¹⁷⁸

(b) Timing of publication

XC. Article X:2 of GATT 1994 requires that national legislation shall be published promptly. The General Agreement on Trade in Services requires that measures be published promptly and, except in emergency situations, at the latest by the time of their entry into force.

XCI. The Agreement on Import Licensing sets forth an obligation to publish licensing requirements and any amendments in advance of their entry into force and sets out specific time-limits. The relevant provision reads:

¹⁷⁷Article 12

¹⁷⁸Article 22

•Article 4(a)

... Such publication shall take place, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. •

XCII. The provisions on transparency in the Agreement on Preshipment Inspection also emphasize the importance of informing exporters of any additional procedural requirements or changes in existing procedures. They require that such modifications shall not be applied to a shipment unless the exporter is informed of these changes at the time the inspection date is arranged. An exception clause applies in emergency situations of the type addressed by Articles XX and XXI of GATT 1994 allowing the application of such additional requirements or changes to a shipment before the exporter has been informed.¹⁷⁹

XCIII. Under the Agreement on Technical Barriers to Trade¹⁸⁰ and the Agreement on the Application of Sanitary and Phytosanitary Measures¹⁸¹, Members are required to allow a reasonable time between the publication of a measure and its entry into force to allow for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member. However, exceptions are allowed for urgent circumstances referred to in the respective Agreements.

III. PUBLIC NOTICE OF PROPOSED REGULATIONS

XCIV. As an integral part of the procedures for the notification of proposed regulations and procedures, the Agreement on Technical Barriers to Trade¹⁸² and the Agreement on Sanitary and Phytosanitary Measures¹⁸³ require Members to give advance public notice of proposed regulations or procedures. Under these provisions, Members are required to publish a notice in a publication at an early appropriate stage in such a manner as to enable interested parties in other Members to become acquainted with the proposal to introduce a particular regulation. However, in case of urgent problems of safety, health, environmental protection or national security, Members are allowed to proceed with the adoption of regulations and procedures without giving advance public notice.

¹⁷⁹ Article 2:6

¹⁸⁰ Article 2.12 and Article 5.9

¹⁸¹ Annex B, paragraph 2

¹⁸² Articles 2.9.1 and 5.6.1

¹⁸³ Annex B, paragraph 5(a)

IV. PROVISION OF INFORMATION IN RESPONSE TO REQUESTS FROM OTHER MEMBERS

XCV. Certain WTO agreements contain obligations on Members to provide information bilaterally to another Member in response to a specific request.

XCVI. Under the General Agreement on Trade in Services, the relevant provision included in Article III on transparency reads:

- 4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1.•*

XCVII. The obligation on the establishment of enquiry point(s) under the transparency provisions in Article III of the General Agreement on Trade in Services reads:

- 4. ... Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the •WTO Agreement•). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.•*

XCVIII. Under the Agreement on Trade-Related Aspects of Intellectual Property Rights, Members shall respond to requests for information from another Member concerning domestic legislation as well as on any specific judicial decisions or administrative rulings or bilateral agreements in the area of intellectual property. The relevant provision under the Article on transparency reads:

•Article 63

Transparency

- 3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.•*

XCIX. The obligation in the Agreement on Trade-Related Investment Measures to respond to requests for information is stated in the following terms:

•Article 6

Transparency

3. *Each Member shall accord sympathetic consideration to requests for information, and afford adequate opportunity for consultation, on any matter arising from this Agreement raised by another Member.*

C. *Under the Agreement on Technical Barriers to Trade, Members must set up a national enquiry point to provide information on any trade-related technical regulations, standards, conformity assessment procedures within the Member's territory whether proposed or adopted, as well as on the Member's participation in bilateral or plurilateral standards-related agreements, regional standardizing bodies and conformity assessment systems. The establishment of enquiry points to provide information on the standardization activities of non-governmental organizations is subject to a best-endeavours obligation.*^{184,185,186}

CI. *Annex B of the Agreement on the Application of Sanitary and Phytosanitary Measures setting forth transparency requirements gives details on the type of information which may be obtained by interested Members from enquiry points established under that Agreement.*^{187,188}

¹⁸⁴Article 10.1, 10.2 and 10.3

¹⁸⁵Document G/TBT/ENQ/-, which is regularly updated, contains the list of names and addresses of enquiry points and any additional information provided by Members concerning their operation.

¹⁸⁶Subsequent to the Decisions adopted by Ministers on 15 April 1994 relating to the Agreement on Technical Barriers to Trade, a WTO Standards Information Service operated by ISO was established to provide information on the activities of the standardizing bodies which have subscribed to the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the Agreement (G/L/1).

¹⁸⁷Annex B, paragraph 3

¹⁸⁸Document G/SPS/ENQ/-, which is regularly updated, contains the list of names and addresses of enquiry points and any additional information provided by Members concerning their operation.

V. PROVISION OF INFORMATION IN RESPONSE TO REQUESTS FROM
ECONOMIC OPERATORS

CII. *The Agreement on the Implementation of Article VII of the GATT 1994 provides as follows:*

•Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.

CIII. *The Agreement on Preshipment Inspection includes specific provisions which require the entities in user Members to provide information in response to requests by exporters. In this respect the Agreement reads:*

•Article 2

Obligations of User Members

Transparency

6. *User Members shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The preshipment inspection entities shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of user Members relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and currency exchange-rate verification purposes, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under paragraph 21.*

CIV. The provisions on transparency to be provided by user Members in the Agreement on Preshipment Inspection requires the preshipment inspection offices maintained by preshipment inspection entities to serve as information points:

•Article 2

Obligations of User Members

Transparency

- 7. User Members shall ensure that the information referred to in paragraph 6 is made available to exporters in a convenient manner, and that the preshipment inspection offices maintained by preshipment inspection entities serve as information points where this information is available. •*

CV. Enquiry points established under Article 10 of the Agreement on Technical Barriers to Trade is to answer all reasonable enquiries not only from other Members but also interested parties in other Members.

CVI. The provisions on increasing participation of developing countries in Article IV of the General Agreement on Trade in Services also require developed country Members to establish contact points to facilitate the access of developing Members• service suppliers to information. The type of information that such contact points should provide is also set forth. The relevant provision reads:

•Article IV

- 2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members• service suppliers to information, related to their respective markets, concerning:*

(a)commercial and technical aspects of the supply of services;

(b)registration, recognition and obtaining of professional qualifications; and

(c)the availability of services technology. •

VI. TREATMENT OF CONFIDENTIAL INFORMATION

CVII. It should be noted that many WTO Agreements contain provisions allowing confidential information to be withheld, notwithstanding the normal transparency obligation. Confidential information is generally defined as information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. In this respect, Article X:1 of GATT 1994 reads:

•... *The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.*•

CVIII. *Furthermore, the Article of GATT 1994 on security exceptions in Article XXI has provisions on the treatment of confidential information which read:*

•*Article XXI*

Security Exceptions

Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests.•

CIX. *Article IIIbis of the General Agreement on Trade in Services reads:*

•*Article III bis*

Disclosure of Confidential Information

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.•

CX. *The language in the Agreement on Trade-Related Intellectual Property Rights, paragraph 4 of Article 63, allowing confidential information to be withheld is similar to that in Article X:1 of GATT 1994.*

CXI. *Article 6 of the Agreement on Trade-Related Investment Measures on transparency also makes a direct reference to the relevant provision in Article X:1 of GATT 1994 and allows Members not to disclose confidential information.*

CXII. *The Agreement on Technical Barriers to Trade allows the withholding of information related to essential security interests. The relevant provision reads:*

•*10.8 Nothing in this Agreement shall be construed as requiring:*

10.8.3 Members to furnish any information, the disclosure of which they consider contrary to their essential security interests.•

CXIII. The provisions on the protection of confidential information are part of the General Reservations under the Agreement on the Application of Sanitary and Phytosanitary Measures. They read:

General Reservations

11. Nothing in this Agreement shall be construed as requiring:

(b) Members to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

CXIV. It might be noted that, while the above provisions of WTO Agreements allow Members to exempt confidential information from transparency obligations, certain other provisions of WTO Agreements mandate the protection of such information. These include Article 10 of the Agreement on Implementation of Article VII of the GATT 1994, Article 12 of the Agreement on Preshipment Inspection and Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

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GOVERNMENT PROCUREMENT – TRANSPARENCY: SYMPOSIUM – GENEVA
9-10 OCTOBER 2002

Symposium on transparency in government procurement

The WTO symposium on transparency in government procurement was organized pursuant to the commitment in [paragraph 26 of the Doha Ministerial Declaration](#) to ensure adequate technical assistance and support for capacity building to developing countries.

Note:

Downloadable files in pdf (portable document format).

> [Guide to downloading files.](#)

N.B. You should download these documents rather than calling them into view through the browser since the formatting may change (eg. paragraph numbering) when viewed through the browser.

Programme and background materials [back to top](#)

Day 1, Wednesday 9 October 2002, morning

9.30 a.m. **Opening remarks**

SESSION 1: Overview of international and regional activities regarding transparency in government procurement

9.45 - 10.00 **Guidelines and activities of the World Bank**

Bernard Abeillé (Africa Region, World Bank)
[Presentation](#) (14 pages; 211 KB)

10.00 - 10.45 **Regional activities and arrangements**

- **Latin America**
Fernando Ocampo (FTAA/NGGP Chairman)
[Presentation in Spanish](#) (22 pages; 152 KB)

- **Africa**
John Mensah-Quainoo (Head of Procurement, African Development Bank)

10.45 - 11.00 **General discussion**

SESSION 2: Economic and developmental implications of government procurement

11.00 - 11.20 **Quantifying the size of government procurement**

Denis Audet (Trade Directorate, OECD)
[Outline](#) (1 page; 91 KB)
[Presentation](#) (11 pages; 420 KB)

11.20 - 11.40 **Developmental significance of government procurement**

Bernard Hoekman (International Trade Division,

World Bank)

[Presentation](#) (6 pages; 60 KB)

[Paper](#) – Evenett and Hoekman (30 pages; 226 KB)

11.40 - 12.00 **General discussion**

SESSION 3: Experience with issues relating to scope and coverage of government procurement

12.00 - 12.20 **National experience with the coverage of the Agreement on Government Procurement**

Marie-Gabrielle Ineichen (WTO Office, SECOFI)

[Presentation](#) (8 pages; 60 KB)

12.20 - 12.40 **Coverage in the Guidelines of the World Bank and the UNCITRAL Model Law**

Jean-Jacques Raoul (Procurement Policy and Services Group, World Bank)

[Presentation](#) (9 pages; 50 KB)

12.40 - 13.00 **General discussion**

Day 1, Wednesday 9 October 2002, afternoon

SESSION 4: Transparency and government procurement procedures

15.00 - 15.30 **Provisions in the Agreement on Government Procurement**

Susan Sheehan (Department of Foreign Affairs and International Trade, Canada)

15.30 - 16.00 **Provisions in the UNCITRAL Model Law and the World Bank Guidelines**

Jean-Jacques Raoul (Procurement Policy and Services Group, World Bank)

[Presentation](#) (6 pages; 51 KB)

16.00 - 16.30 **Regional activities and arrangements in Latin America**

Fernando Ocampo (FTAA /NGGP Chairman)

[Presentation](#) in Spanish (17 pages; 122 KB)

16.30 - 17.00 **General discussion**

SESSION 5: Application of information technology

17.00 - 17.20 **The results of transparency and efficiency achieved with the modernization of federal procurement in Brazil**

Marcos Ozorio de Almeida (Secretariat of Logistics and Information Technology, Ministry of Planning, Brazil)

[Outline](#) (2 pages; 107 KB)

[Presentation](#) 85 pages; 3760 KB)

17.20 - 17.40 **Use of GeBIZ system in government procurement**

Chua Jek Heng (Government Chief Information Office, Infocomm Development Authority,

Singapore)

17.40 - 18.00 **General discussion**

Day 2, Thursday 10 October 2002, morning

SESSION 6: Domestic review procedures and dispute settlement in government procurement

10.00 - 10.20 **Transparency rules and WTO dispute settlement procedures**

Frieder Roessler (Advisory Centre on WTO Law)

10.20 - 10.40 **Experience with appeal and review procedures**

Marian Lemke (Poland)

10.40 - 11.10 **Domestic bid challenge mechanisms**

Steven Schooner (George Washington University)

11.10 - 11.30 **General discussion**

SESSION 7: Technical cooperation and capacity building

11.30 - 11.50 **Role of the World Bank and Regional Development Banks**

Bernard Abeillé (Africa Region, World Bank)
[Presentation](#) (19 pages; 556 KB)

John Mensah-Quainoo (Head of Procurement,
African Development Bank)

11.50 - 12.30 **Capacity building in procurement**

William Kovacic (U.S. Federal Trade Commission)

12.30 - 12.50 **General discussion**

12.50 p.m. **Closing remarks**

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The Doha Declaration explained



The November 2001 declaration of the Fourth Ministerial Conference in Doha, Qatar, provides the mandate for negotiations on a range of subjects, and other work including issues concerning the implementation of the present agreements.

The negotiations take place in the [Trade Negotiations Committee and its subsidiaries](#). Other work under the work programme takes place in other WTO councils and committees.

This is an unofficial explanation of what the declaration mandates.

Issues

- > [implementation](#)
 - > [agriculture](#)
 - > [services](#)
- > [market access \(non-agriculture\)](#)
- > [intellectual property](#)
 - > [investment](#)
 - > [competition](#)
- > [transparency in government procurement](#)
 - > [trade facilitation](#)
 - > [anti-dumping](#)
 - > [subsidies](#)
- > [regional agreements](#)
 - > [dispute settlement](#)
 - > [environment](#)
 - > [e-commerce](#)
 - > [small economies](#)
- > [trade, debt and finance](#)
- > [trade and technology transfer](#)
 - > [technical cooperation](#)
- > [least-developed countries](#)
 - > [special and differential treatment](#)

The work programme

The 21 subjects listed in the Doha Declaration (and the paragraphs that refer to them). Most of these involve negotiations; other work includes actions under "implementation", analysis and monitoring:

Implementation-related issues and concerns

(par 12) > [back to top](#)

"Implementation" is short-hand for problems raised particularly by developing countries about the implementation of the current WTO Agreements, i.e. the agreements arising from the Uruguay Round negotiations.

In Doha this important question was handled in two ways. First, ministers agreed to adopt around 50 decisions clarifying the obligations of developing country member governments with respect to issues including agriculture, subsidies, textiles and clothing, technical barriers to trade, trade-related investment measures and rules of origin.

Agreement on these points required hard bargaining between negotiators over the course

THE DOHA TEXTS

> [Ministerial Declaration](#)

> [Declaration on the TRIPS Agreement and public health](#)

> [Implementation-related issue and concerns – Decision](#)

> [Subsidies – procedures for extensions under Article 27.4 \(the Subsidies and Countervailing Measures Agreement\) for certain developing country members](#)

> [Decision on waiver for EU-ACI Partnership Agreement](#)

> [Decision on EU transitional regime for banana imports](#)

See also

- > [How the negotiations are organized](#)
- > [Implementation decision](#)

of nearly three years.

Many other implementation issues of concern to developing countries have not been settled, however. For these issues, Ministers agreed in Doha on a future work programme for addressing these matters.

In paragraph 12 of the Ministerial Declaration, ministers underscored that they had taken a decision on the 50 or so measures in a separate ministerial document ([the 14 November 2001 decision on "Implementation-Related Issues and Concerns"](#)) and pointed out that "negotiations on outstanding implementation issues shall be an integral part of the Work Programme" in the coming years.

The ministers established a two-track approach. Those issues for which there was an agreed negotiating mandate in the declaration would be dealt with under the terms of that mandate.

Those implementation issues where there is no mandate to negotiate, would be taken up as "a matter of priority" by relevant WTO councils and committees. These bodies are to report on their progress to the Trade Negotiations Committee by the end of 2002 for "appropriate action".

> [Implementation decision explained](#)

Agriculture

([par 13, 14](#)) > [back to top](#)

Negotiations on agriculture began in early 2000, under Article 20 of the WTO Agriculture Agreement. By November 2001 and the Doha Ministerial Conference, 121 governments had submitted a large number of negotiating proposals.

These negotiations will continue, but now with the mandate given by the Doha Declaration, which also includes a series of deadlines. The declaration builds on the work already undertaken, confirms and elaborates the objectives, and sets a timetable. Agriculture is now part of the single undertaking in which virtually all the linked negotiations are to end by 1 January 2005.

The declaration reconfirms the long-term objective already agreed in the present WTO Agreement: to establish a fair and market-oriented trading system through a programme of

Key dates: agriculture

Start: early 2000

"Framework" agreed: **1 August 2004**.

Formulas and other "modalities" for countries' commitments: originally 31 March 2003, now by **6th Ministerial Conference 2005** (in Hong Kong, China)

Countries' comprehensive draft commitments and stock taking originally by **5th Ministerial Conference, 2003** (in Mexico)

Deadline: originally by 1 January 2005, now unofficially by **end of 2006**, part of single undertaking

fundamental reform. The programme encompasses strengthened rules, and specific commitments on government support and protection for agriculture. The purpose is to correct and prevent restrictions and distortions in world agricultural markets.

Without prejudging the outcome, member governments commit themselves to comprehensive negotiations aimed at:

- market access: substantial reductions
- exports subsidies: reductions of, with a view to phasing out, all forms of these
- domestic support: substantial reductions for supports that distort trade

The declaration makes special and differential treatment for developing countries integral throughout the negotiations, both in countries' new commitments and in any relevant new or revised rules and disciplines. It says the outcome should be effective in practice and should enable developing countries meet their needs, in particular in food security and rural development.

The ministers also take note of the non-trade concerns (such as environmental protection, food security, rural development, etc) reflected in the negotiating proposals already submitted. They confirm that the negotiations will take these into account, as provided for in the Agriculture Agreement.

- > [current negotiations](#)
- > [more on agriculture](#)

Services

([par 15](#)) > [back to top](#)

Negotiations on services were already almost two years old when they were incorporated into the new Doha agenda.

The WTO General Agreement on Trade in Services (GATS) commits member governments to undertake negotiations on specific issues and to enter into successive rounds of negotiations to progressively liberalize trade in services. The first round had to start no later than five years from 1995.

Accordingly, the services negotiations started officially in early 2000 under the Council for Trade in Services. In March 2001, the Services Council fulfilled a key element in the negotiating

Key dates: services

Start: early 2000

Negotiating guidelines and procedures: March 2001

Initial requests for market access: by 30 June 2002

Initial offers of market access: by 31 March 2003

Stock taking: originally 5th Ministerial Conference, 2003 (in Mexico)

Revised market-access offers: by 31 May 2005

Deadline: originally by 1 January 2005

mandate by establishing the negotiating guidelines and procedures.

2005, now unofficially end of 2006, part of single undertaking

The Doha Declaration endorses the work already done, reaffirms the negotiating guidelines and procedures, and establishes some key elements of the timetable including, most importantly, the deadline for concluding the negotiations as part of a single undertaking.

The negotiations take place in “special sessions” of the Services Council and regular meetings of its relevant subsidiary committees or working parties.

- > [current negotiations](#)
- > [more on services](#)

Market access for non-agricultural products

([par 16](#)) > [back to top](#)

Key dates: market access

Start: January 2002

Stock taking: 5th Ministerial Conference, 2003 (in Mexico)

Deadline: originally by 1 January 2005, now unofficially by end 2006, part of single undertaking

The ministers agreed to launch tariff-cutting negotiations on all non-agricultural products. The aim is “to reduce, or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries”. These negotiations shall take fully into account the special needs and interests of developing and least-developed countries, and recognize that these countries do not need to match or reciprocate in full tariff-reduction commitments by other participants.

At the start, participants have to reach agreement on how (“modalities”) to conduct the tariff-cutting exercise (in the Tokyo Round, the participants used an agreed mathematical formula to cut tariffs across the board; in the Uruguay Round, participants negotiated cuts product by product). The agreed procedures would include studies and capacity-building measures that would help least-developed countries participate effectively in the negotiations. Back in Geneva, negotiators decided that the “modalities” should be agreed by 31 May 2003. When that date was missed, members agreed on 1 August 2004 on a new target: the Hong Kong Ministerial Conference in December 2005.

While average customs duties are now at their lowest levels after eight GATT Rounds, certain tariffs continue to restrict trade, especially on exports of developing countries – for instance

“tariff peaks”, which are relatively high tariffs, usually on “sensitive” products, amidst generally low tariff levels. For industrialized countries, tariffs of 15% and above are generally recognized as “tariff peaks”.

Another example is “tariff escalation”, in which higher import duties are applied on semi-processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in the countries where raw materials originate.

The negotiations take place in a **Market Access Negotiating Group**.

- > [current negotiations](#)
- > [more on market access](#)
- > [GATT and the Goods Council](#)

Trade-related aspects of intellectual property rights (TRIPS)

([pars 17-19](#)) > [back to top](#)

TRIPS and public health. In the declaration, ministers stress that it is important to implement and interpret the TRIPS Agreement in a way that supports public health – by promoting both access to existing medicines and the creation of new medicines. They refer to their separate declaration on this subject.

This separate declaration on TRIPS and public health is designed to respond to concerns about the possible implications of the TRIPS Agreement for access to medicines.

It emphasizes that the TRIPS Agreement does not and should not prevent member governments from acting to protect public health. It affirms governments’ right to use the agreement’s flexibilities in order to avoid any reticence the governments may feel.

The separate declaration clarifies some of the forms of flexibility available, in particular compulsory licensing and parallel importing. (For an explanation of these issues, go to the main TRIPS pages on the WTO website)

For the Doha agenda, this separate declaration sets two specific task. The **TRIPS Council** has to find a solution to the problems countries may face in making use of compulsory licensing if they have too little or no pharmaceutical

Key dates: intellectual property

Report to the General Council - solution on compulsory licensin and lack of pharmaceutical production capacity: originally by end of 2002, decision agreed 30 April 2003.

Report to TNC – action on outstanding implementation issues under par 12: **by end of 2002** (missed)

Deadline – negotiations on geographical indications registration system (wines and spirits): **by 5th Ministerial Conference, 2003** (in Mexico) (missed)

Deadline – negotiations specifically mandated in Doha Declaration: originally by 1 January 2005, now unofficially **by end 2006**

Least-developed countries to apply pharmaceutical patent provisions: **2016**

manufacturing capacity, reporting to the General Council on this by the end of 2002. (this was achieved in August, 2003, see [intellectual property](#) section of the “Agreements” chapter.) The declaration also extends the deadline for least-developed countries to apply provisions on pharmaceutical patents until 1 January 2016.

Geographical indications – the registration system. Geographical indications are place names (in some countries also words associated with a place) used to identify products with particular characteristics because they come from specific places. The WTO TRIPS Council has already started work on a multilateral registration system for geographical indications for wines and spirits. The Doha Declaration sets a deadline for completing the negotiations: the Fifth Ministerial Conference in 2003.

These negotiations take place in “special sessions” of the TRIPS Council.

Geographical indications – extending the “higher level of protection” to other products. The TRIPS Agreement provides a higher level of protection to geographical indications for wines and spirits. This means they should be protected even if there is no risk of misleading consumers or unfair competition. A number of countries want to negotiate extending this higher level to other products. Others oppose the move, and the debate in the TRIPS Council has included the question of whether the relevant provisions of the TRIPS Agreement provide a mandate for extending coverage beyond wines and spirits.

The Doha Declaration notes that the TRIPS Council will handle this under the declaration’s paragraph 12 (which deals with implementation issues). Paragraph 12 offers two tracks: “(a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee [TNC], established under paragraph 46 below, by the end of 2002 for appropriate action.”

In papers circulated at the Ministerial Conference, member governments expressed different interpretations of this mandate.

Argentina said it understands “there is no agreement to negotiate the ‘other outstanding implementation issues’ referred to under (b) and that, by the end of 2002, consensus will be required in order to launch any negotiations on

these issues”.

Bulgaria, the Czech Republic, EU, Hungary, India, Liechtenstein, Kenya, Mauritius, Nigeria, Pakistan, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand and Turkey argued that there is a clear mandate to negotiate immediately.

Reviews of TRIPS provisions. Two reviews have been taking place in the TRIPS Council, as required by the TRIPS Agreement: a review of Article 27.3(b) which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties; and a review of the entire TRIPS Agreement (required by Article 71.1).

The Doha Declaration says that work in the **TRIPS Council** on these reviews or any other implementation issue should also look at: the relationship between the TRIPS Agreement and the UN Convention on Biodiversity; the protection of traditional knowledge and folklore; and other relevant new developments that member governments raise in the review of the TRIPS Agreement. It adds that the TRIPS Council’s work on these topics is to be guided by the TRIPS Agreement’s objectives (Article 7) and principles (Article 8), and must take development fully into account.

> [more on TRIPS](#)

Relationship between trade and investment

([pars 20-22](#)) > [back to top](#)

This is a “[Singapore issue](#)” i.e. a working group set up by the 1996 Singapore Ministerial Conference has been studying it.

In the period up to the 2003 Ministerial Conference, the declaration instructs the **working group** to focus on clarifying the scope and definition of the issues, transparency, non-discrimination, ways of preparing negotiated commitments, development provisions, exceptions and balance-of-payments safeguards, consultation and dispute settlement. The negotiated commitments would be modelled on those made in services, which specify where commitments are being made – “positive lists” – rather than making broad commitments and listing exceptions.

The declaration also spells out a number of

Key dates: trade and investment

Continuing work in working group with defined agenda: to **5th Ministerial Conference, 2003** (in Mexico)

Negotiations: after 5th Ministerial Conference, 2003 (in Mexico) subject to “explicit consensus” on modalities with deadline: by 1 January 2005, part of single undertaking. But no consensus; **dropped from Doha agenda in 1 August 2004 decision**

principles such as the need to balance the interests of countries where foreign investment originates and where it is invested, countries' right to regulate investment, development, public interest and individual countries' specific circumstances. It also emphasizes support and technical cooperation for developing and least-developed countries, and coordination with other international organizations such as the UN Conference on Trade and Development (UNCTAD).

Since the 1 August 2004 decision, this subject has been dropped from the Doha agenda.

- > statement: [chairman's understanding of the mandate ...](#)
- > [more on trade and investment](#)

Interaction between trade and competition policy

(pars 23-25) > [back to top](#)

This is another "Singapore issue", with a working group set up in 1996 to study the subject.

In the period up to the 2003 Ministerial Conference, the declaration instructs the **working group** to focus on clarifying:

- core principles including transparency, non-discrimination and procedural fairness, and provisions on "hardcore" cartels (i.e. cartels that are formally set up)
- ways of handling voluntary cooperation on competition policy among WTO member governments
- support for progressive reinforcement of competition institutions in developing countries through capacity building

The declaration says the work must take full account of developmental needs. It includes technical cooperation and capacity building, on such topics as policy analysis and development, so that developing countries are better placed to evaluate the implications of closer multilateral cooperation for various developmental objectives. Cooperation with other organizations such as the UN Conference on Trade and Development (UNCTAD) is also included.

Since the 1 August 2004 decision, this subject has been dropped from the Doha agenda.

- > statement: [chairman's understanding of the](#)

Key dates: trade and competition policy

Continuing work in working group with defined agenda: to **5th Ministerial Conference, 2003** (in Mexico)

Negotiations: after 5th Ministerial Conference, 2003 (in Mexico) subject to "explicit consensus" on modalities with deadline: by 1 January 2005, part of single undertaking. But no consensus; **dropped from Doha agenda in 1 August 2004 decision**

[mandate ...](#)
> [more on competition policy](#)

Transparency in government procurement

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A third “Singapore issue” that was handled by a **working group** set up by the Singapore Ministerial Conference in 1996.

The Doha Declaration says that the “negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers” – it is separate from the plurilateral Government Procurement Agreement.

The declaration also stresses development concerns, technical assistance and capacity building.

Since the 1 August 2004 decision, this subject has been dropped from the Doha agenda.

> statement: [chairman's understanding of the mandate ...](#)
> [more on transparency in government procurement](#)

Key dates: government procurement (transparency)

Continuing work in working group with defined agenda: to 5th Ministerial Conference, 2003 (in Mexico)

Negotiations: after 5th Ministerial Conference, 2003 (in Mexico) subject to “explicit consensus” on modalities with deadline: by 1 January 2005, part of single undertaking. But no consensus; **dropped from Doha agenda in 1 August 2004 Decision.**

Trade facilitation

(par 27) > [back to top](#)

A fourth “Singapore issue” kicked off by the 1996 Ministerial Conference.

The declaration recognizes the case for “further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area”.

In the period until the Fifth Ministerial Conference in 2003, the **WTO Goods Council**, which had been working on this subject since 1997, “shall review and as appropriate, clarify and improve relevant aspects of Articles 5 (‘Freedom of Transit’), 8 (‘Fees and Formalities Connected with Importation and Exportation’) and 10 (‘Publication and Administration of Trade Regulations’) of the General Agreement on Tariffs and Trade (GATT 1994) and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries”.

Key dates: trade facilitation

Continuing work in Goods Council with defined agenda: to 5th Ministerial Conference, 2003 (in Mexico)

Negotiations: **after 5th Ministerial Conference, 2003 (in Mexico)** subject to “explicit consensus” on modalities, agreed in 1 August 2004 Decision.

Deadline: originally by 1 January 2005, now **unofficially end of 2006**, part of single undertaking

Those issues were cited in the 1 August 2004 decision that broke the Cancún deadlock. Members agreed to start negotiations on trade facilitation, but not the three other Singapore issues.

> statement: [chairman's understanding of the mandate ...](#)

> [more on trade facilitation](#)

WTO rules: anti-dumping and subsidies (par 28) > [back to top](#)

The ministers agreed to negotiations on the Anti-Dumping (GATT Article 6) and Subsidies agreements. The aim is to clarify and improve disciplines while preserving the basic concepts, principles of these agreements, and taking into account the needs of developing and least-developed participants.

In overlapping negotiating phases, participants first indicated which provisions of these two agreements they think should be the subject of clarification and improvement in the next phase of negotiations. The ministers mention specifically fisheries subsidies as one sector important to developing countries and where participants should aim to clarify and improve WTO disciplines.

Negotiations take place in the Rules Negotiating Group.

> [current negotiations](#)
> [more on anti-dumping](#)
> [more on subsidies](#)

Key dates: anti-dumping subsidies

Start: January 2002

Stock taking: 5th Ministerial Conference, 2003 (in Mexico)

Deadline: originally by 1 January 2005, now unofficially end of 2006, part of single undertaking

WTO rules: regional trade agreements (par 29) > [back to top](#)

WTO rules say regional trade agreements have to meet certain conditions. But interpreting the wording of these rules has proved controversial, and has been a central element in the work of the Regional Trade Agreements Committee. As a result, since 1995 the committee has failed to complete its assessments of whether individual trade agreements conform with WTO provisions.

This is now an important challenge, particularly when nearly all member governments are parties to regional agreements, are negotiating them, or are considering negotiating them. In the Doha

Key dates: regional trade agreements

Start: January 2002

Stock taking: 5th Ministerial Conference, 2003 (in Mexico)

Deadline: originally by 1 January 2005, now unofficially end of 2006, part of single undertaking

Declaration, members agreed to negotiate a solution, giving due regard to the role that these agreements can play in fostering development.

The declaration mandates negotiations aimed at “clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.”

These negotiations fell into the general timetable established for virtually all negotiations under the Doha Declaration. The original deadline of 1 January 2005 was missed and the current unofficial aim is to finish the talks by the end of 2006. The 2003 Fifth Ministerial Conference in Mexico was intended to take stock of progress, provide any necessary political guidance, and take decisions as necessary.

Negotiations take place in the **Rules Negotiating Group**.

> [current negotiations](#)
> [more on regional trade agreements](#)

Dispute Settlement Understanding (par 30) > [back to top](#)

The 1994 Marrakesh Ministerial Conference mandated WTO member governments to conduct a review of the Dispute Settlement Understanding (DSU, the WTO agreement on dispute settlement) within four years of the entry into force of the WTO Agreement (i.e. by 1 January 1999).

The Dispute Settlement Body (DSB) started the review in late 1997, and held a series of informal discussions on the basis of proposals and issues that members identified. Many, if not all, members clearly felt that improvements should be made to the understanding. However, the DSB could not reach a consensus on the results of the review.

The Doha Declaration mandates negotiations and states (in par 47) that these will not be part of the single undertaking – i.e. that they will not be tied to the overall success or failure of the other negotiations mandated by the declaration. Originally set to conclude by May 2003, the negotiations are continuing without a deadline.

> [more on Dispute Settlement Understanding](#)

Key dates: disputes understanding

Start: January 2002

Deadline: originally by May 2003, currently no deadline, separate from single undertaking

[negotiations](#)**Trade and environment**[\(pars 31-33\)](#) > [back to top](#)**New negotiations****Multilateral environmental agreements.**

Ministers agreed to launch negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements. The negotiations will address how WTO rules are to apply to WTO members that are parties to environmental agreements, in particular to clarify the relationship between trade measures taken under the environmental agreements and WTO rules.

So far no measure affecting trade taken under an environmental agreement has been challenged in the GATT-WTO system.

Information exchange. Ministers agreed to negotiate procedures for regular information exchange between secretariats of multilateral environmental agreements and the WTO. Currently, the Trade and Environment Committee holds an information session with different secretariats of the multilateral environmental agreements once or twice a year to discuss the trade-related provisions in these environmental agreements and also their dispute settlement mechanisms. The new information exchange procedures may expand the scope of existing cooperation.

Observer status. Overall, the situation concerning the granting of observer status in the WTO to other international governmental organizations is currently blocked for political reasons. The negotiations aim to develop criteria for observership in WTO.

Trade barriers on environmental goods and services. Ministers also agreed to negotiations on the reduction or elimination of tariff and non-tariff barriers to environmental goods and services. Examples of environmental goods and services are catalytic converters, air filters or consultancy services on wastewater management.

Fisheries subsidies. Ministers agreed to clarify and improve WTO rules that apply to fisheries subsidies. The issue of fisheries subsidies has been studied in the Trade and Environment Committee for several years. Some studies

Key dates: environment

Committee reports to ministers
5th and 6th Ministerial
Conferences, 2003 and 2005 (Mexico and Hong Kong, China)

Negotiations stock taking: 5th
Ministerial Conference, 2003
(in Mexico)

Negotiations deadline: originall
by 1 January 2005, now
unofficially end of 2006, part
single undertaking

demonstrate these subsidies can be environmentally damaging if they lead to too many fishermen chasing too few fish.

Negotiations on these issues, including concepts of what are the relevant environmental goods and services, take place in “special sessions” of the **Trade and Environment Committee**.

Negotiations on market access for environmental goods and services take place in the **Market Access Negotiating Group and Services Council “special sessions”**.

Work in the committee [back to top](#)

Ministers instructed the **Trade and Environment Committee**, in pursuing work on all items on its agenda, to pay particular attention to the following areas:

- The effect of environmental measures on market access, especially for developing countries.
- “Win-win-win” situations: when eliminating or reducing trade restrictions and distortions would benefit trade, the environment and development.
- Intellectual property. Paragraph 19 of the Ministerial Declaration mandates the TRIPS Council to continue clarifying the relationship between the TRIPS Agreement and the Biological Diversity Convention. Ministers also ask the Trade and Environment Committee to continue to look at the relevant provisions of the TRIPS agreement.
- Environmental labelling requirements. The Trade and Environment Committee is to look at the impact of eco-labelling on trade and examine whether existing WTO rules stand in the way of eco-labelling policies. Parallel discussions are to take place in the Technical Barriers to Trade (TBT) Committee.
- For all these issues: when working on these (market access, “win-win-win” situations, intellectual property and environmental labelling), the Trade and Environment Committee should identify WTO rules that would need to be clarified.
- General: ministers recognize the importance of technical assistance and capacity building programmes for developing countries in the trade and environment area. They also encourage members to share expertise and experience on national environmental reviews.

> [more on trade and environment](#)

Electronic commerce

(par 34) > [back to top](#)

The Doha Declaration endorses the work already done on electronic commerce and instructs the **General Council** to consider the most appropriate institutional arrangements for handling the work programme, and to report on further progress to the Fifth Ministerial Conference.

The declaration on electronic commerce from the Second Ministerial Conference in Geneva, 1998, said that WTO members will continue their practice of not imposing customs duties on electronic transmissions. The Doha Declaration states that members will continue this practice until the Fifth Ministerial Conference.

> [more on electronic commerce](#)

Key date: electronic commerce

Report on further progress: **5th Ministerial Conference, 2003** (in Mexico)

Small economies

(par 35) > [back to top](#)

Small economies face specific challenges in their participation in world trade, for example lack of economy of scale or limited natural resources.

The Doha Declaration mandates the **General Council** to examine these problems and to make recommendations to the next Ministerial Conference as to what trade-related measures could improve the integration of small economies.

> [more on Committee on Trade and Development](#)

Key date: small economies

Recommendations: **5th and 6th Ministerial Conferences, 2003 and 2005** (in Mexico and Hong Kong, China)

Trade, debt and finance

(par 36) > [back to top](#)

Many developing countries face serious external debt problems and have been through financial crises. WTO ministers decided in Doha to establish a **Working Group on Trade, Debt and Finance** to look at how trade-related measures can contribute to find a durable solution to these problems. This working group will report to the General Council which will in turn report to the next Ministerial Conference.

Key date: debt and finance

General Council report: **5th and 6th Ministerial Conferences, 2003 and 2005** (in Mexico and Hong Kong, China)

> [more on Committee on Trade and Development](#)

Trade and technology transfer

(par 37) > [back to top](#)

A number of provisions in the WTO agreements mention the need for a transfer of technology to take place between developed and developing countries.

However, it is not clear how such a transfer takes place in practice and if specific measures might be taken within the WTO to encourage such flows of technology.

WTO ministers decided in Doha to establish a **working group** to examine the issue. The working group will report to the General Council which itself will report to the next Ministerial Conference.

> [more on Committee on Trade and Development](#)

Key date: technology transfer

General Council report: **5th and 6th Ministerial Conferences, 2003 and 2005** (in Mexico and Hong Kong, China)

Technical cooperation and capacity building

(pars 38-41) > [back to top](#)

Through various paragraphs of the Doha Declaration, WTO member governments have made new commitments on technical cooperation and capacity building.

For example, the section on the relationship between trade and investment includes a call (par 21) for enhanced support for technical assistance and capacity building in this area.

Within the specific heading "technical cooperation and capacity building", paragraph 41 lists all the references to commitments on technical cooperation within the Doha Declaration: paragraphs 16 (market access for non-agricultural products), 21 (trade and investment), 24 (trade and competition policy), 26 (transparency in government procurement), 27 (trade facilitation), 33 (environment), 38-40 (technical cooperation and capacity building), 42 and 43 (least-developed countries). (Paragraph 2 in the preamble is also cited.)

Under this heading (i.e. pars 38-41), WTO member governments reaffirm all technical cooperation and capacity building commitments made throughout the declaration and add general commitments:

Key dates: technical cooperation

Technical assistance funding raised 80%; Development Agency Global Trust Fund set up: **December 2001**

Director-General reports to General Council: **December 2002**

Director-General reports to ministers: **5th and 6th Ministerial Conferences, 2003 and 2005** (in Mexico and Hong Kong, China)

- The Secretariat, in coordination with other relevant agencies, is to encourage WTO developing-country members to consider trade as a main element for reducing poverty and to include trade measures in their development strategies.
- The agenda set out in the Doha Declaration gives priority to small, vulnerable, and transition economies, as well as to members and observers that do not have permanent delegations in Geneva.
- Technical assistance must be delivered by the WTO and other relevant international organizations within a coherent policy framework.

The Director-General reported to the General Council in December 2002 and to the Fifth Ministerial Conference on the implementation and adequacy of these new commitments.

Following the declaration's instructions to develop a plan ensuring long-term funding for WTO technical assistance, the General Council adopted on 20 December 2001 (one month after the Doha conference) a new budget that increased technical assistance funding by 80% and established a Doha Development Agenda Global Trust Fund. The fund now has an annual budget of 24 million Swiss francs.

> [more on WTO assistance for developing countries](#)

Least-developed countries ([pars 42, 43](#)) > [back to top](#)

Many developed countries have now significantly decreased or actually scrapped tariffs on imports from least-developed countries (LDCs).

In the Doha declaration, WTO member governments commit themselves to the objective of duty-free, quota-free market access for LDCs' products and to consider additional measures to improve market access for these exports.

Members also agree to try to ensure that least-developed countries can negotiate WTO membership faster and more easily.

Some technical assistance is targeted specifically for least-developed countries. The Doha Declaration urges WTO member donors to

Key date: least-developed countries

Reports to: General Council: July 2002, 5th and 6th Ministerial Conferences, 2003 and 2005 (in Mexico and Hong Kong, China)

significantly increase their contributions.

In addition, the **Sub-Committee for LDCs** (a subsidiary body of the WTO Committee on Trade and Development) designed a work programme in February 2002, as instructed by the Doha Declaration, taking into account the parts of the declaration related to trade that was issued at the UN LDC Conference.

- > [more on Sub-Committee on Least-Developed Countries](#)
- > [more on WTO assistance for developing countries](#)

Special and differential treatment (par 44) > [back to top](#)

Key date: special and differential treatment

The WTO agreements contain special provisions which give developing countries special rights. These special provisions include, for example, longer time periods for implementing agreements and commitments or measures to increase trading opportunities for developing countries.

Recommendations to General Council: **July 2002, July 2005**

In the Doha Declaration, member governments agree that all special and differential treatment provisions should be reviewed with a view to strengthening them and making them more precise.

More specifically, the declaration (together with the Decision on Implementation-Related Issues and Concerns) mandates the **Trade and Development Committee** to identify which of those special and differential treatment provisions are mandatory, and to consider the implications of making mandatory those which are currently non-binding.

The Decision on Implementation-Related Issues and Concerns instructed the committee to make its recommendations for the **General Council** before July 2002. But because members needed more time, this was postponed to the end of July 2005.

- > [more on special and differential treatment provisions](#)

Organization and management of the work programme

> [details ...](#)

> [back to top](#)

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DOHA WTO MINISTERIAL 2001

A HISTORIC MOMENT:

'May I take it that this is agreeable?' Gavel, applause, congratulations ...

This is how conference chairman, Qatari Finance, Economy and Trade Minister Youssef Hussain Kamal introduced the ministerial declarations and decision in the closing plenary session of the Doha Ministerial Conference, 14 November 2001.

See also:

[> Doha Ministerial briefing notes](#)

Meeting summaries:

- > [14 November](#)
- > [13 November](#)
- > [12 November](#)
- > [11 November](#)
- > [10 November](#)

Other WTO Ministerials:

- > [Singapore](#) 9-13 Dec. 1996
- > [Geneva](#) 18 & 20 May 1998
- > [Seattle](#) 30 Nov-3 Dec. 1999

“ ... I now would like to submit to delegations for their consideration and adoption, three draft texts which have emerged from the process of intensive decisions and negotiations that we have had over the past few days. These texts are the following:

- the draft Ministerial Declaration in document WT/MIN(01)/DEC/W/1,
- two, the draft Declaration on the TRIPS Agreement and Public Health in document WT/MIN(01)/DEC/W/2, and
- the third, the draft Decision on Implementation-Related Issues and Concerns in document WT/MIN(01)/W/10

Before I propose action on these three texts, allow me to offer my sincere thanks to the Director-General and all of the ministers who have assisted me so ably as Friends of the Chair. I would also like to pay tribute to the hard work and dedication of the Chair of the General Council, the Deputy Directors-General and the Secretariat, and all the ministers and delegations representing their governments at this Ministerial Conference.

The past five days have seen a tremendous amount of committed work by all delegations. Throughout this process I have done my utmost to ensure full transparency and inclusiveness, and I am grateful for the spirit of cooperation and goodwill shown by all participants.

I would like to note that some delegations have requested clarification concerning paragraphs 20, 23, 26 and 27 of the draft declaration. Let me

.....
 [Doha Development Agenda](#)

> [The ministerial declarations and decisions](#)



> [Negotiations, implementation and development](#)

> [The Doha Declaration explained](#)

> [The Doha implementation decision explained](#)

> [How the negotiations are organized](#)

> [The Trade Negotiations Committee](#)

.....

say that with respect to the reference to an 'explicit consensus' being needed, in these paragraphs, for a decision to be taken at the Fifth Session of the Ministerial Conference, my understanding is that, at that session, a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed.

In my view, this would also give each member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that member is prepared to join in an explicit consensus.

I would like to suggest that we take action on the three draft texts before I give the floor to delegations who wish to do so to make a statement for the record.

First I should like to propose that the Ministerial Conference adopt the draft Ministerial Declaration in document WT/MIN(01)/DEC/W/1. May I take it that this is agreeable to members?

It is so agreed. (Gavel, applause, congratulations.)

I should like to propose that the Ministerial Conference **adopt the draft Declaration on the TRIPS Agreement and Public Health** in document WT/MIN(01)/DEC/W/2. May I take it that this is agreeable?

(Gavel, applause.)

Finally I should like to propose that the Ministerial Conference **adopt the draft Decision on Implementation-Related Issues and Concerns** in document WT/MIN(01)/W/10

With regard to the outstanding implementation issues, I would like to recall the cover letter of 5 November 2001, sent to me by the Chairman of the General Council and the Director General, which accompanied the draft decision on implementation. It states that the draft decision proposes immediate action on a number of implementation issues, and provides that remaining issues, which include those referred to WTO bodies as well as those listed in their completion will be addressed in the course of the future work programme in accordance with paragraph 12 of the draft ministerial declaration.

May I take it that the draft **Decision on**

Implementation-Related Issues and Concerns in document WT/MIN(01)/W/10 is acceptable to delegations?

(Gavel, applause.)

May I now offer the floor to delegations wishing to make a statement for the record "

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WTO Symposium on Transparency in Government



FIDUCIARY ASPECTS OF QUALITY AND TRANSPARENCY PROCUREMENT

Bernard Abeillé
October 9, 2002

FIDUCIARY ASPECTS OF QUALITY PROCUREMENT

■ OVERVIEW

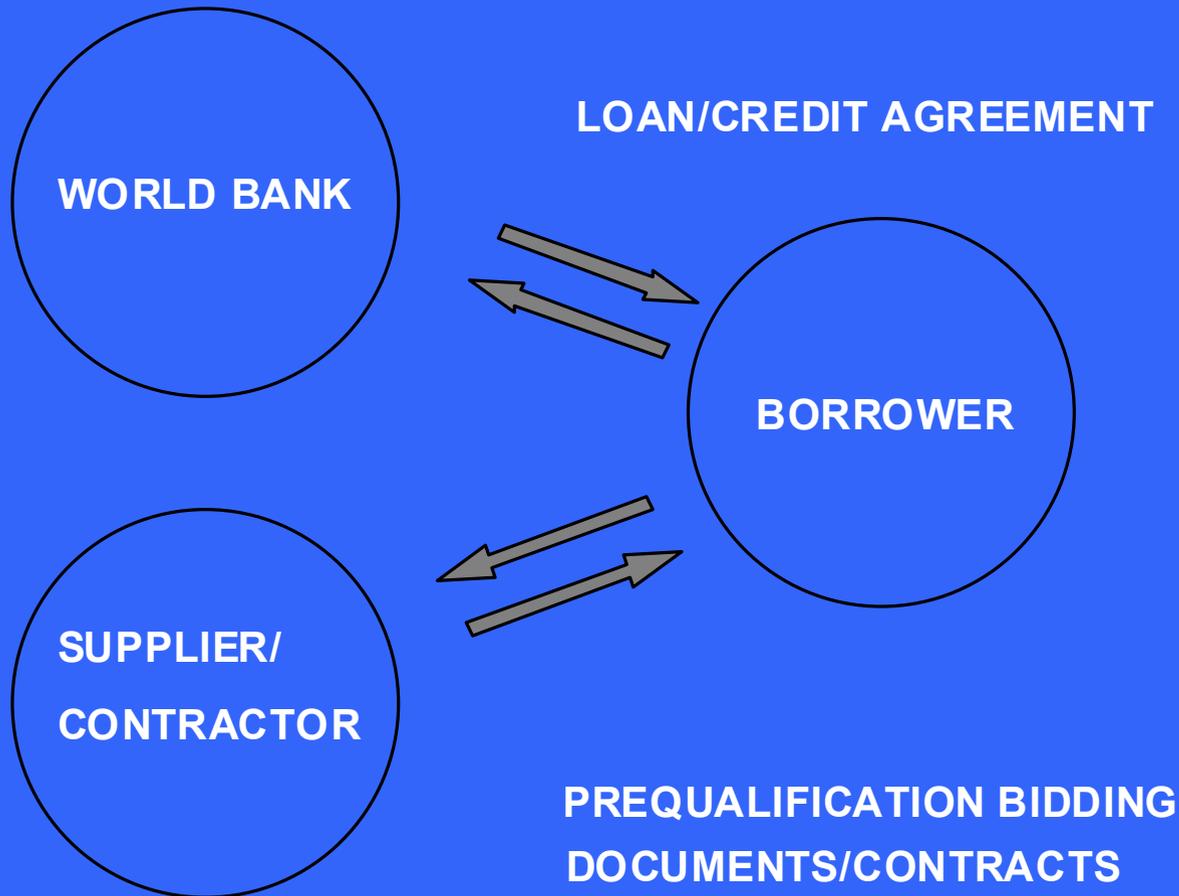
- Bank staff have a **fiduciary responsibility**, mandated by the Articles of Agreement of IBRD and IDA, to ensure that the proceeds of any loan/credit are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

FIDUCIARY ASPECTS OF QUALITY PROCUREMENT



- To fulfil this mandate, the Bank has established detailed **Guidelines** specifically for procurement of goods, works and consulting services
- Basic principles governing the Bank's Procurement Policies:
 - the need for **economy and efficiency**
 - to give all eligible bidders **equal opportunity to compete**
 - as a development institution, encourage the **development of domestic contracting** in the Borrowing country
 - the importance of **transparency** in the procurement process.

PROCUREMENT RELATIONSHIPS



FIDUCIARY ASPECTS OF QUALITY PROCUREMENT

- The **Loan/Credit Agreement** governs the legal relationships between the Borrower and the Bank, and **the Guidelines** are made applicable to procurement of goods and works, and to the selection and employment of consultants for the project as provided in the Agreement
- The rights and obligations of the Borrower and the providers of goods, works and consulting services are governed by the **bidding documents/RFP and by the contracts** signed by the Borrower.

■ ROLE OF BANK STAFF

- Maintains strict neutrality and impartiality throughout the process**

FIDUCIARY ASPECTS OF QUALITY PROCUREMENT

- Appendix 1 of the Guidelines describe the Bank's procedures for reviewing procurement decisions made by the borrower/client. The concurrence of the Bank is communicated to the client through letters conveying the Bank's "no objection" to the Borrower's decision (no-objection letters —NOLs). **The review of the decision and the issuance of the NOL described in Appendix 1 of the *Guidelines* constitute the core of the fiduciary function of procurement.**
- Task Team Leaders (TTLs) sign NOLs responding to Borrower's proposed actions, after a clearance by a Procurement Specialist (PS) or a Procurement Accredited Staff (PAS).

■ Ensuring that sound national fiduciary systems are in place

■ Country Procurement Assessment Reports (CPARs)

[Sound public procurement policies and practices are among the essential elements of good governance]

- **Jointly by the Bank and the Borrower**
- **Findings include Risks**
- **Recommendations/Action Plans → Procurement Reform**

■ **Capacity Analysis**

- **Assessment of management capacities**
- **Prior Review thresholds for contracts based on the risk analysis**

■ **Procurement Arrangements (provisions in Loan Agreements)**

- **Based on appraisal, capacity assessments etc.,**
- **Changes introduced after negotiations require WB approval and internal clearances**

■ During Implementation, WB:

- Monitors the quality of procurement by the Borrower through:**
 - **Prior Reviews**
 - **Post Reviews**
 - **Mandatory Reviews**
 - **Ex-Post Procurement Reviews**
 - **Ex-Post Procurement Audits**
- Reports major deficiencies and proposed remedies**
- Proposes adjustments of the Bank's procurement supervision plan to reflect improvements or deterioration in Borrower's performance**

Transparency in Government Procurement



Principles

Transparency : Key Principles

- **Effective Advertisement (broad + sufficient time)**
- **Public Bid Opening (immediate opening of all financial bids)**
- **Well-formulated Bidding Documents**
 - **Bid Evaluation Criteria (non-discriminatory, disclosed, in monetary terms**)
 - **Qualification of bidder reviewed separately**
 - **Contract Award to the lowest evaluated bidder --without negotiations**

Procedures should exclude:



- **Use of two-envelope system**
- **Use of merit-point system to evaluate bids (for civil works + goods)**
- **Combine bid evaluation with qualification**
- **Use of non quantified bid evaluation criteria**
- **Restricting access to bidding process**

Modern Procurement Regulations

- **Provide to losing bidders an effective way to submit protests**
 - **Protests submitted to an independent entity**
 - **Protests before contract award may lead to re-visit the contract award**
 - **Protests after contract award may lead to compensatory damages**
- **Institutional Mechanisms**
 - **Entities conducting bid evaluations should be distinct from those having a regulatory/control functions**
 - **Registration of qualified bidder is an heavy procedure which require frequent updating**

Compras del Sector Público en Las Américas

Fernando Ocampo

Octubre, 2002

- Acuerdos en las Américas
- Negociaciones en las Américas
 - Centro América
 - Grupo de Negociación de Compras del Sector Público del ALCA

Acuerdos en las Américas

Acuerdos Bilaterales

- México - Bolivia 1995
- México - Costa Rica 1995
- República Dominicana - CA 1998
- México - Nicaragua 2001
- Chile - CA 2002
- Panamá - CA 2002

Acuerdos Subregionales

- NAFTA 1994
- México - Colombia - Venezuela (G3) 1995
- CAN (servicios) 2002

Alcance y cobertura

- En general, incluyen todas las modalidades de compra, salvo las concesiones
- En general, se excluyen las compras indirectas, realizadas por otros entes con fondos estatales (donaciones préstamos, subvenciones, etc.) y con fondos de organismos internacionales
- Algunos excluyen servicios brindados en ejercicio de funciones gubernamentales, tales como seguridad social, pensión, educación , salud
- Algunos excluyen los servicios financieros transfronterizos

Niveles de Gobierno

- Entidades de Gobierno Central se incluyen en todos los acuerdos
- Entidades independientes, proveedoras de servicios públicos y empresas del Estado:
 - » Excluidas en Chile -CA
 - » Costa Rica, Bolivia y Nicaragua las incluyen, aunque México no
 - » EEUU y México las incluyen pero no para Canadá
 - » Panamá excluye compras de las Autoridades del Canal

Niveles de Gobierno

- Entidades de Gobiernos Estatales, Departamentales, Municipalidades y otras formas de gobierno local:
 - » Excluidas en Chile-CA
 - » Costa Rica, Bolivia y Nicaragua las incluyen, aunque México no
 - » Excluidas en G-3
 - » En NAFTA se deja a negociación futura

Umbrales

- NAFTA
- México - Bolivia
- México - Costa Rica
- México - Nicaragua
- G3

Disposiciones sobre Transparencia

- Publicación de leyes y reglamentos
- Publicidad de la invitación a participar
- Requerimientos / Especificaciones para proveedores y para el proceso
- Criterios de evaluación y de otorgamiento de contratos
- Mecanismos de revisión e impugnación

Negociaciones en las Américas

Negociaciones

- TLC Chile - EEUU
- CA4 - Canadá
- Tratado Centroamericano de Contratación Pública
- ALCA

Centroamérica

Alcance y cobertura

- Incluye todas las modalidades de compras relativas a :
 - » bienes
 - » servicios (sujeto a lo dispuesto en el Tratado sobre Inversiones y Comercio de Servicios)
 - » obras públicas
- Lista negativa de entidades

Exclusiones del Tratado

- Contrataciones de defensa de naturaleza estratégica y otras relacionadas con seguridad nacional
- Contrataciones de personal para el cumplimiento de funciones propias de las entidades
- Contrataciones efectuadas con financiamiento de Estados, instituciones regionales o multilaterales o que exijan condiciones incompatibles con las disposiciones del Tratado

Disposiciones sobre Transparencia

- Difusión de:
 - » sistemas de contratación pública
 - » oportunidades de negocios
 - » resultados de los procesos de contratación pública
- Criterios de evaluación y adjudicación de contratos
- Publicación de leyes y reglamentos

El Trabajo del Grupo de
Negociación sobre
Compras del Sector Público
(GNCSP) del ALCA

Declaración de San José

- Objetivo general del GNCSP:
 - » Ampliar el acceso a los mercados para las compras del sector público de los países del ALCA

Finalidad de la negociación

- Mejorar el acceso al mercado de contratación pública en los países del ALCA
- Superar las restricciones y discriminaciones que caracterizan a este mercado
- Incrementar los niveles de competencia

Temas cubiertos en la negociación

- Principios generales
- No-discriminación
- Condiciones compensatorias especiales
- Alcance y aplicación
 - » Umbrales
 - » Valoración de contratos
 - » Excepciones
- Suministro de información

Temas cubiertos en la negociación

- Modalidades de contratación
- Procedimientos de licitación
- Procedimientos de impugnación
- Solución de controversias
- Cooperación y asistencia técnica
- Tratamiento de las diferencias en los niveles de desarrollo y tamaño de las economías
- Modificaciones a la cobertura

Disposiciones sobre Transparencia

- Difusión de leyes y reglamentos
- Publicación de la invitación a participar
- Aplicación de especificaciones técnicas
- Evaluación de las ofertas
- Divulgación y publicación de la adjudicación
- Mecanismos de revisión e impugnación

WTO Symposium on Transparency in Government Procurement
Quantifying the Size of Government Procurement
Geneva, 9-10 October 2002
By Denis AUDET, OECD Trade Directorate

Introduction

Governments are significant purchasers of goods and services and these markets represent huge opportunities for international trade. Informed knowledge about the size of these markets and in particular their internationally contestable shares is relevant for the business community, governments and trade negotiators. This presentation will begin with a comparative review of studies on the quantification of government procurement markets. The pros and cons of various methodological approaches will be outlined. Concrete examples of the size of government procurement markets will be given, including measurements of government procurement detailed by consumption and investment expenditure, by administrative levels, and the shares of government procurement that are potentially opened up to international trade.

Quantifying the size of government procurement markets

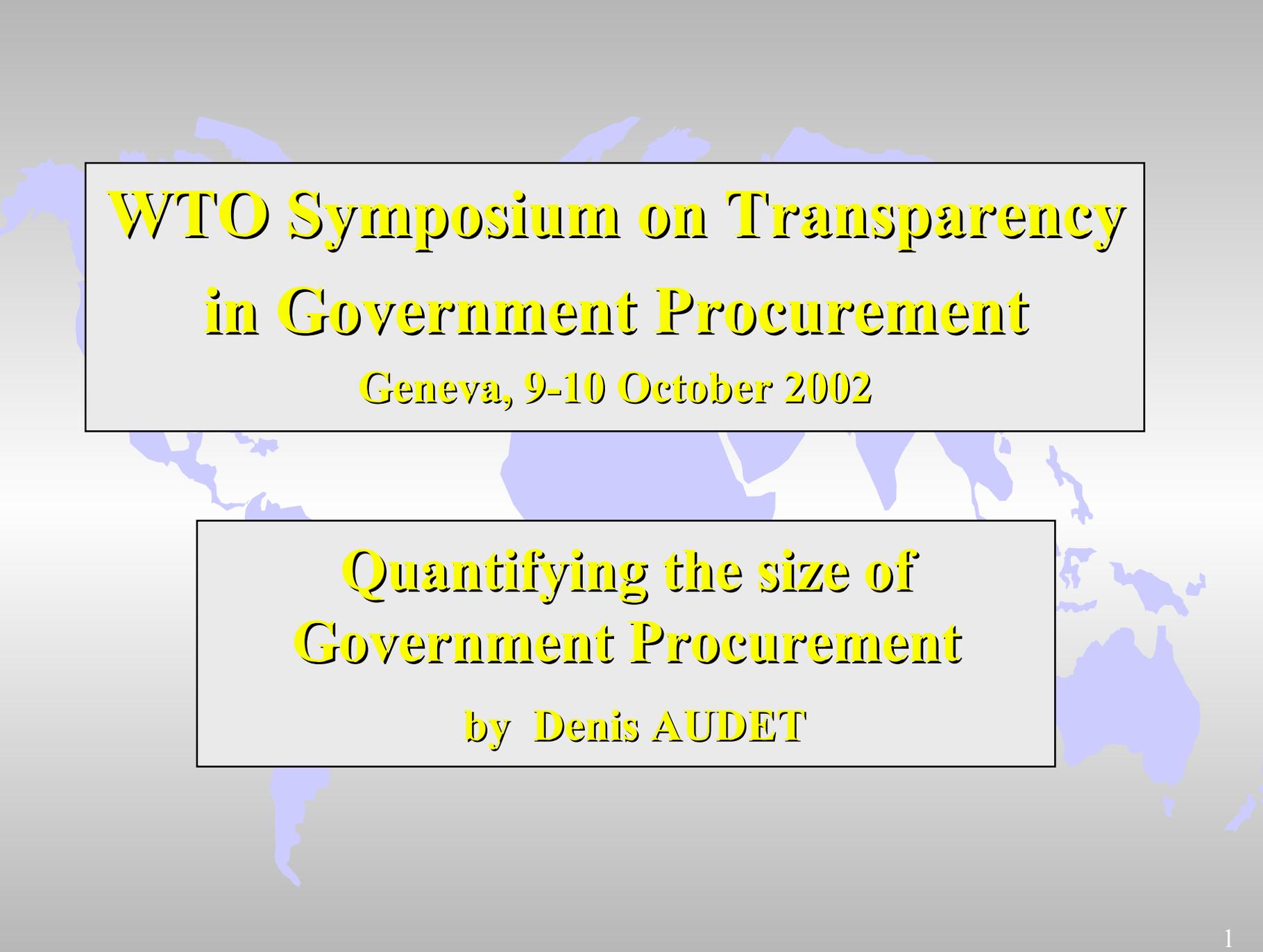
There are few studies on the quantification of the size of government procurement markets, their results are not necessarily comparable as different definitions of procurement are used, and the number of countries covered is usually small. Methodological approaches based on national data drawn from the System of National Accounts (SNA) provide a more reliable basis for estimating the size of government procurement markets in a consistent manner for a large number of countries. Depending on the availability of detailed data, SNA-based data also enables to distinguish consumption and investment expenditure, to measure procurement by administrative levels, and to estimate the shares of government procurement that are potentially opened up to international trade.

The so-called “bottom-up” approach to quantify government procurement refers to the process of gathering national data on procurement expenditure directly from national entities responsible for procurement decisions. Results are often uneven and the reliability of results stems, to a large extent, from the homogeneity and consistency of the compilation and reporting processes. Establishing such processes requires legally binding notification requirements on all concerned procurement entities.

The main estimates of the size of government procurement markets obtained from the recent OECD study, entitled “*The Size of Government Procurement Markets*”¹, will be presented. This study uses SNA-based data and offers various ratios of government procurement markets for over 130 countries. Some of these estimates are:

- The estimate for the world’s total government procurement market is US\$5,550 billion, which is roughly equivalent to 82.3% of the world merchandise and commercial services exports in 1998.
- The world value of the contestable government procurement market is estimated at \$2,083 billion in 1998, which is equivalent to 7.1% of the world GDP or 30.9% of the world merchandise and commercial services exports in 1998.

¹ The PDF file of this OECD publication is available for free on the OECD Online Bookshop which is accessible from the OECD Web site (www.oecd.org), also available in French “*La taille des marchés publics*”.



**WTO Symposium on Transparency
in Government Procurement**

Geneva, 9-10 October 2002

**Quantifying the size of
Government Procurement**

by Denis AUDET

The Size of GP Markets

Authors	Countries	Period	% of GDP
<u>System of National Accounts (SNA)</u>			
EC PP (88)	12 EU	1987	11.7%
EC PP (97)	15 EU	1994	11.2-11.8%
EC GP (97)	EU	1994	8.7%est
François	USA	92-93	18.3%est
Trionfetti	9 EU	83-90	7.0-9.0%
<u>Bottom-Up</u>			
Hoekman	20 GPA	83-92	0.42%
EC PP+ (2000)	15 EU	93-98	13.9-14.6%

Methodological Approaches

System of National Accounts (SNA)

- Measure the share of government in the GDP
- Universally applied : reliable country comparison
- Detailed estimates : by levels ; tradable

Bottom-up approaches

- Uneven results
- Binding notifications on procurement entities

System of National Accounts

$$\text{GDP} = C + I + [X - M] + \#inv.$$

$$G = \text{Cons}_{\text{gov}} + \text{Invest}_{\text{gov}}$$

$$\text{GDP} = C_{\text{non-g}} + I_{\text{non-g}} + G + [X - M] + \#inv.$$

Government Procurement

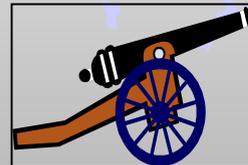


$$G = \text{CONS} + \text{INV}$$

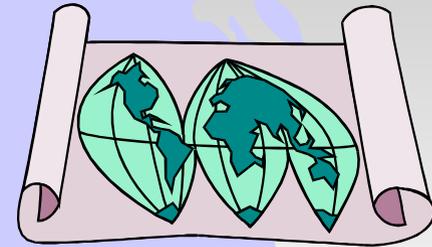
Tradable shares (Theoretical)

G - Compensation **E**mployees (CE)

G - CE - Defence

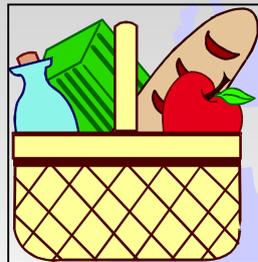


World GP Market in 1998



	G = Consumption + Investment			World	World
	G	G - CE	G - CE - Def	Trade	GDP
				1998	1998
US\$ billion	5,500.6	2,563.5	2,083.0	6,743.0	29,357.7
% of GDP	18.9%	8.73%	7.10%	22.97%	

OECD versus Other Countries



G = Consumption + Investment

G

G - CE

G - CE - Def

19.96%

9.17%

7.57%

14.48%

6.89%

5.10%

OECD  OCDE

**Other
Countries**

GPA Member Countries

Countries	Consumption Expenditure		G = Consumption + Investment		
	Consump.	Cons. - CE	G	G - CE	G - CE - Def
Canada	23.22%	8.87%	25.83%	11.47%	10.40%
EU w. a.	18.80%	6.52%	21.48%	9.24%	8.03%
Hong Kong, China	8.69%	2.49%	11.00%	4.81%	
Iceland	22.09%	9.22%	25.80%	12.92%	11.76%
Israel	25.95%	10.01%			
Japan	10.78%	3.56%	16.77%	9.35%	8.98%
Korea	11.09%	3.98%	16.24%	9.13%	7.20%
Liechtenstein					
Netherlands / Aruba					
Norway	22.02%	8.02%	25.44%	11.44%	9.65%
Singapore	9.35%				
Switzerland	16.21%	5.23%	19.58%	8.60%	8.02%
United States	17.86%	7.17%	19.49%	8.80%	6.18%
OECD w.a.	17.09%	6.31%	19.96%	9.17%	7.57%

Acceding GPA Member Countries

Countries	Consumption Expenditure		G = Consumption + Investment		
	Consump.	Cons. - CE	G	G - CE	G - CE - Def
Acceding Countries					
Albania	10.20%				
Bulgaria	8.08%				
Estonia	16.62%	8.06%	21.05%	12.50%	12.18%
Jordan	23.74%				
Kyrgyz Republic	20.04%	11.74%	21.60%	12.88%	
Latvia	10.70%	7.79%			
Lithuania	15.68%				
Moldova					
Panama	16.37%	3.72%			
Slovenia	19.62%				
Chinese Taipei					
Committed Countries					
China	12.84%				
Croatia					
Georgia					
Mongolia					
Oman	27.34%				
Non-OECD w.a.	14.12%	4.82%	14.48%	6.89%	5.10%

Observer Countries

Countries	Consumption Expenditure		G = Consumption + Investment		
	Consump.	Cons. - CE	G	G - CE	G - CE - Def
Observer Countries					
Argentina					
Australia	17.89%	6.71%	20.02%	8.85%	7.64%
Cameroon	10.22%				
Chile	9.54%				
Colombia	10.27%	1.55%	13.48%	4.75%	4.19%
Czech Republic	20.21%	12.30%	24.94%	17.03%	15.74%
Hungary	26.55%	15.09%	29.77%	18.31%	16.78%
Malta	17.56%	4.24%	21.87%	8.55%	7.99%
Poland	18.61%	6.73%	22.57%	10.69%	9.72%
Slovak Republic	20.49%	10.75%	25.08%	15.34%	14.09%
Turkey	13.89%	3.64%	17.72%	7.47%	6.84%
Non-OECD w.a.	14.12%	4.82%	14.48%	6.89%	5.10%
OECD w.a.	17.09%	6.31%	19.96%	9.17%	7.57%

The Size of GP Markets

Authors	Countries	Period	% of GDP	Tradable
<u>SNA</u>				
EC PP (88)	12 EU	1987		11.7%
EC PP (97)	15 EU	1994		11.2-11.8%
EC GP (97)	EU	1994		8.7%est
François	USA	92-93	18.3%est	
Trionfetti	9 EU	83-90		7.0-9.0%
OECD (GP)	28 OECD	90-97	19.96%	7.57%
	15 EU	90-97	21.48%	8.03%
	106 other	90-94	14.48%	5.10%
	World	1998	18.90%	7.10%
<u>Bottom-Up</u>				
Hoekman	20 GPA	83-92	0.42%	
EC PP+ (00)	15 EU	93-98		13.9-14.6%

GOVERNMENT PROCUREMENT, TRADE AND DEVELOPMENT

Bernard Hoekman

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Policy Objectives

- Minimize procurement costs (efficiency)
- Industrial development (infant industry)
- Technology transfer
- Offset market failures (SMEs)
- “Noneconomic” objectives (e.g., affirmative action)
- Discipline state owned enterprises
- National security

Instruments

- To Attain Value for Money: Competition
 - Mimic the market—bidding rules
 - Transparency mechanisms
 - Accountability—audits, etc.
- To Attain Other Objectives: Limit Competition
 - Import bans
 - Price preferences
 - Local content
 - Restrictions on entry (bidding)

Tradeoffs and Questions

- Pursuit of some objectives can conflict with cost minimization
- Is procurement policy the most efficient instrument to attain other objectives?
 - If not, what constrains use of superior policies?
- Competition requires complementary policies
 - Investment/entry policies—often a local presence is a precondition for contestability of the markets
 - Other policies (trade, etc.) interact with procurement

Rules of Thumb: Competition

- Policies that limit bidding are costly
- Entry matters--even under perfect competition
- FDI is important, especially for services
- Competition policy and challenge mechanisms to discipline collusion (bid rigging)
- Sequencing: Other policies vs. procurement

Transparency

- Strong link to competition/value for money goal
- Market access and anti-corruption dimensions
 - Will transparency increase access?
 - Does it matter?
- Compliance and enforcement
 - Domestic action needed—a broader agenda
- Implementation
 - Sequencing issues again
 - The TRTA agenda

Government Procurement: Market Access, Transparency, and Multilateral Trade Rules*

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Abstract: The effects on national welfare and market access of two important public procurement practices (discrimination and non-transparency) are analyzed with an eye to the ongoing international discussions on procurement reform in the Doha Round as well as regional integration agreements. The analysis suggests that the welfare payoffs of adopting mechanisms that foster domestic competition and transparency are likely to be greater than the return to efforts to ban international discrimination. However, improved transparency is unlikely to result in significant enhancements in market access, which in turn raises questions about the likely enforceability of a WTO transparency agreement.

Keywords: Government procurement, public purchasing, WTO, transparency, corruption, Doha Round

JEL classification: F13, H57

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Government Procurement: Market Access, Transparency, and Multilateral Trade Rules

Simon J. Evenett and Bernard M. Hoekman

Introduction

With the conclusion of the Uruguay Round and the creation of the World Trade Organization (WTO), multilateral disciplines applying to all WTO members were established in many areas. One substantial exception is in government procurement, where the principles of non-discrimination have only been accepted on a plurilateral basis. The absence of general trade policy disciplines on public purchasing practices is therefore a major “hole” in the WTO edifice. Developing countries have been subject to substantial pressure to agree to multilateral disciplines limiting their ability to discriminate in favor of domestic firms when allocating contracts. Their vigorous resistance to such pressure led a number of WTO members in the late 1990s to propose that multilateral efforts be confined to attaining agreement on improving transparency in this area.¹ At the December 1996 WTO Ministerial meeting in Singapore it was agreed to establish a Working Group with the mandate to study on transparency in government procurement practices and develop “elements for inclusion in an appropriate agreement” (WTO, 1996, p. 6).² At the 2001 WTO Ministerial Conference in Doha, Qatar, agreement was reached to launch negotiations on transparency in government procurement in 2003, on the basis of modalities that must be agreed by explicit consensus.

Given that the WTO is a forum to negotiate and enforce market access opening commitments, not surprisingly a major motivation of pursuing transparency is to improve the ability of foreign suppliers to contest procurement markets. Thus, an important question is what effect transparency will have on market access. This paper examines both this question as well as

¹ The United States is playing a lead role in this connection. US legislation requires the United States Trade Representative (USTR) to monitor foreign procurement policies that deny access to markets for American goods and services, and procurement policies figure prominently in USTR’s annual *Foreign Trade Barriers Report*. The Clinton Administration made public procurement a priority trade policy issue, linking this to the broader issue of corruption. “This Administration is determined to ... push initiatives to clean up government procurement practices around the world” (*Financial Times*, May 1, 1995, p. 5). In April 1996, largely at the insistence of the US, OECD members agreed not to allow firms to write off bribes against tax obligations (*Oxford Analytica*, April 18, 1996).

the likely impact on national welfare of alternative multilateral disciplines on government procurement policies so as to permit an assessment of whether reforms that enhance welfare also enhance market access, and visa versa. Traditionally, the formula for successful trade reform under the WTO umbrella has typically involved those initiatives that enhance national welfare through improving market access.³ A major question is whether any proposed set of multilateral procurement disciplines does so. Although the analysis is largely motivated by WTO discussions, it applies also to regional efforts to agree on common rules on procurement. Procurement disciplines are, for example, on the agenda of the Free Trade Area of the Americas (FTAA) initiative, and also will figure in future efforts to expand the coverage of Euro-Mediterranean Partnership Agreements.

We argue that, in many circumstances, explicitly discriminatory and non-transparent procurement policies have little effect on market access, although they can have detrimental effects on national welfare. What matters more for efficient procurement outcomes is the degree of competition in national markets; and so ancillary policies—especially competition policies and the restrictiveness of foreign direct investment (FDI) regimes—are a major determinant of the effects of procurement favoritism.⁴ Insofar as procurement policies create excess profits in an industry, these will be eliminated over time through entry. Indeed, an implication of this analysis is that removal of procurement preference policies need not result in greater sourcing from foreign firms. In such circumstances, liberalization cannot reverse the detrimental effect on imports of prior procurement discrimination.

The market access implications of non-transparency center on the argument that absence of information on procurement opportunities and lack of ‘due process’ may impede the ability of foreign firms to bid for contracts. A lack of transparency may also generate opportunities for corruption. Even though improving transparency is typically beneficial from a national welfare perspective, we show that reforms to this end need not enhance market access; and the latter may detract from the attractiveness of a WTO agreement on transparency in procurement. This

² For an analysis of the origins of this Working Group, and its relationship to the Uruguay Round GPA, and the likely consequences of strengthening transparency provisions in the GPA, see Arrowsmith (1997).

³ As is the case in the small open economy that lowers its tariffs as part of a multilateral trade agreement.

⁴ Foreign direct investment is critical because many of the products purchased by government entities are effectively non-tradable, including many services. In such cases, procurement preferences will only be binding if foreign firms can contest the market through FDI and government entities differentiate across firms on the basis of their “nationality”.

finding also implies that such an agreement may be subject to only weak enforcement as foreign nations will not have strong incentives to bring cases on behalf of their frustrated exporters.

The paper is organized as follows. After a brief discussion on the possible rationales for discrimination (Section 1), we analyze the impact of the most egregious form of discrimination—a ban on government purchases from foreign suppliers (Section 2). Then, we analyze the impact of a less extreme form of discrimination, that of so-called price preference policies (Section 3). These analyses use a straightforward partial equilibrium framework, which we extend in Section 4 to include different configurations for firms' costs. In Section 5 we analyze instances where purchasers either have a strong (rational) preference for being in close geographic proximity to suppliers, or markets where products are non-tradable (such as services). The effect on national welfare and market access of non-transparent procurement regimes is examined in Section 6, with implications for the discussions on procurement reform at the WTO outlined in Section 7. Conclusions are offered in Section 8.

1. Existing analyses of the motives for and effects of discrimination in procurement.

The rationales for discrimination in procurement vary, but in most instances revolve around industrial objectives, national security considerations, or other non-economic objectives. The latter include policies that reserve certain types (or a certain share) of contracts for businesses owned by minorities, for firms located in certain geographic regions, or for small and medium-sized firms. From a normative perspective, of course, a key question is whether discrimination in procurement is an efficient way of attaining the underlying objective. Efficiency is particularly important in this policy area where it is often claimed that an overarching goal of procurement disciplines is 'value for money.'⁵

In the last 25 years a small literature has developed focusing on the effects of international discrimination in procurement. Much of this literature considers procurement discrimination in perfectly competitive markets and, in partial equilibrium settings, typically finds no efficiency rationale for discrimination.⁶ In such settings, observed procurement

⁵ Having said that, it is not difficult to conceive of models where a government buyer with market power could purchase goods at prices below those in a perfectly competitive market and distort the allocation of resources.

⁶ In addition to the seminal analyses of Baldwin (1970) and Baldwin and Richardson (1972), relevant contributions assuming competitive markets include Lowinger (1976), Herander and Schwartz (1982), Joson (1985), and Kim (1994). Miyagiwa (1991), Branco (1994, 1999), Laffont and Tirole (1993), and Trionfetti (2000) extend the analysis to consider imperfect competition.

discrimination is likely to be driven by industrial policy or other non-economic objectives. In contrast, in markets characterized by imperfect competition and a small number of firms, discriminating against foreign bidders may have an efficiency rationale. McAfee and McMillan (1989) show that discrimination may increase national welfare *if* domestic firms have a cost disadvantage in producing the products to be procured *and* only a limited number of firms (foreign and domestic) bid for the contract. An explanation for this finding is as follows: a policy that gives preferences to domestic firms reduces the effective competition they face from foreign firms and so induces domestic firms to raise their bids. However, foreign firms respond by lowering their (pre-preference inflated) bids. If the probability of a low cost foreign firm winning the contract is large enough, this can result in a reduction in the government's expected procurement costs. Here, price preferences effectively shift profits towards domestic firms while potentially reducing government outlays. Even if the cost structure of domestic and foreign firms are identical and account is taken of the social cost of distortionary taxation, discrimination may be optimal simply because foreign profits do not enter into domestic welfare (Branco, 1994; Vagstad, 1995). In the small numbers context assumed by these models, prices will exceed marginal costs, so that shifting demand to domestic firms may also reduce price-cost margins as domestic output expands (Chen, 1995).

Rationales for preferences hold in other settings too. Even if there are many potential suppliers, discrimination may be beneficial to the procuring entity if the products are intangible or if monitoring contractors and enforcing compliance is costly. In such situations by paying quasi-rents to contractors procuring bodies can use the threat of losing repeat business to increase the likelihood of better performance (Laffont and Tirole, 1991; Rotemberg, 1993).⁷ Moreover, geographic proximity may be a precondition for effectively contesting procurement markets—making some products, in particular services⁸, in essence non-tradable. Problems of asymmetric information and contract compliance may imply that entities can economize on monitoring costs by choosing suppliers that are located within their jurisdictions (Breton and Salmon, 1995). In turn this will make it more difficult for foreign firms to successfully bid for contracts, even if the

⁷ Of course, this is not necessarily the optimal instrument. Naegelen and Mougeot (1998) show that alternative instruments, such as cost targets, can be more efficient. Governments may also want to consider dual sourcing in this situation, see for example McGuire and Riordan (1995).

⁸ Given that services are often the largest category of purchases by governments (Francois, Nelson and Palmetier, 1997)—and increasingly so in countries that have been pursuing outsourcing and contracting policies—this has

goods or services involved are tradable. If cross-border trade is frustrated, then attention turns to whether there are barriers to entry through establishment (FDI) and to how procuring entities decide whether suppliers are local “enough”—i.e., effectively raising the issue of which “rules of origin” are applied to foreign subsidiaries in the procurement context. An important question, then, is the extent to which the impact of procurement policy depends on the government's stance towards the degree of domestic and foreign competition, a point developed further below.

Even though there are a variety of situations under which discriminatory procurement can, in theory, enhance national welfare by lowering procurement costs, little is known about whether existing procurement discrimination has this effect. Even in the case where there are significant differences in production costs between domestic and foreign firms and only a small number of potential suppliers, simulation studies suggest that welfare gains are likely to be modest at best. Greater profits of domestic firms will tend to be offset by increased average prices paid by public entities, resulting in at most small welfare gains (Deltas and Evenett, 1997). Worse still, small deviations from the optimal policy eliminate those gains. And given that the optimal policy in each situation will depend on parameters that are unlikely to be observed by policymakers (such as the distribution of the bidders' costs and the expectations that each bidder has about each other bidder's actions), these findings suggest that in practice procurement favoritism is likely to be more costly than a policy of non-discrimination.⁹

In considering the implications for the multilateral trading system, there is interest in the effect of procurement policies on market access as well as national welfare. Given the long history of bargaining over market access in the multilateral trading system, our analysis will consider the effects of discrimination against foreign firms by state buyers on market access, as proxied by the level of imports. If these effects are small, then a nation's exporters are likely to perceive few benefits from negotiating a multilateral agreement on procurement. Consequently, such an agreement will do little to mobilize domestic support for a package of multilateral trade reforms, providing little counterbalance to the opponents of reform. Thus, even though market access is a different concept than national welfare, the extent of domestic political support for a

potentially far-reaching implications for the assessment and design of multilateral disciplines for procurement practices.

⁹ Most of the literature analyzing discrimination is static with technologies and market structures taken as given. To the best of our knowledge dynamics have only recently been investigated in Branco (1999), who shows that discrimination in favor of higher cost domestic firms can enhance their incentives to become more efficient,

welfare-improving trade agreement will depend in large part on its perceived impact on overseas market access.

2. The effect of a ban on government purchases from foreign suppliers

In an influential paper Baldwin and Richardson (1972) analyze the impact on imports, prices, and national welfare of a ban on government purchases of foreign suppliers in a partial equilibrium perfectly competitive framework.¹⁰ They conclude that *in the short run* a procurement ban only has an effect on domestic prices, net imports, and national welfare when government demand for the product is greater than domestic supply (at free trade prices). We show below that, in the case of a small open economy, once allowance is made for entry by new firms, a procurement ban may not have any *long run* effects either.

Our focus on partial equilibrium models can be justified on the grounds that, once one moves beyond the stylized two good model to a world of many goods, changes in government sourcing patterns across foreign and domestic suppliers need not affect national factor prices.¹¹ The focus on perfectly competitive markets is justified in part by empirical studies that suggest that price-cost markups tend to fall rapidly towards competitive levels once the number of firms in an industry reaches as few as five (Bresnahan and Reiss, 1991). Thus, in many situations procuring entities will be able to source from a large number of firms with little market power.

We use a standard supply and demand framework, where P_W is the world price of the good; P_C is the unit price paid by the domestic consumer; P_G is the unit price paid by the domestic government; $D_G(p)$ is the demand schedule of the domestic government; $D_T(p)$ is total domestic demand schedule; $S_H(p)$ is the short run supply schedule of the domestic industry; $LS_H(p)$ denotes is the long run domestic supply curve; ATC and MC are the average total and marginal cost schedules of the representative firm in the domestic industry, respectively; and π is the short run profit of the representative domestic firm. We also assume that the country is small (a price taker on world markets) so that a reduction in imports does not affect the terms of trade.

providing a firmer foundation for interventionist policy in contexts characterized by asymmetric information and imperfect competition. Further work is required in order to explore the robustness of these findings.

¹⁰ See also Herander and Schwartz (1982) and Deardorff and Stern (1998).

¹¹ In a two-good two-country model it is straightforward to show that shifts in government demand for a good towards domestic firms can generate general equilibrium effects. Indeed, in cases when government demand for tradables is large in the appropriate sense, such two-by-two models may well provide the basis for useful policy implications. However, in contexts where government demand for individual goods is not large, a partial equilibrium approach is probably more appropriate.

To establish a point of departure assume that there is free trade. That is, there are no tariffs or other impediments to trade. Each domestic firm has a U shaped average cost curve that reaches a minimum at level C^* . The market is perfectly competitive, with domestic and foreign firms producing perfect substitutes. There is free entry and exit in the long run. In the short run the number of firms in the domestic industry is fixed. In the absence of a ban on government procurement from foreign firms, the long run equilibrium is portrayed in Figure 1. Free entry ensures that profits are zero in the long run, and that $P_W = C^*$. Free trade ensures that domestic consumers and the domestic governments pay the world price, $P_W = P_C = P_G$. Note that in this figure at the initial equilibrium price P_W , domestic industry output is greater than the government's purchases but is less than total domestic demand. In this case, the subsequent imposition of a ban on procurement from foreign suppliers has no effect on equilibrium prices, imports, and quantity traded. All foreign producers that previously supplied the government can find a domestic consumer to supply at world prices; domestic consumers that are abandoned by domestic firms who now supply the government can source foreign suppliers. Each domestic supplier is unable to raise the price charged the government, as other domestic suppliers are willing to step in at the existing world price.

Figure 2 portrays the case when government demand exceeds domestic supply at free trade prices. A procurement ban now implies that the supply decisions of the domestic industry can only be reconciled with the government demand schedule at a higher price, P_G . Since $P_G > P_W$, overall government purchases fall, domestic output rises, and the representative domestic firm makes positive profits. Domestic private sector consumers can still source from abroad, and do so, as foreign suppliers are willing to sell the good at a lower price than domestic suppliers. Overall imports fall from AC to BC. The procurement ban has an adverse effect on national welfare, creating consumption and production distortions equal to a deadweight loss of area ADB. Finally, domestic private sector consumer choices are unaffected by the procurement ban, and thus their welfare does not change. Thus, our framework replicates the principal findings of Baldwin and Richardson (1972).

Consider now the effects of allowing free entry of firms. This does not alter the analysis in Figure 1, as the imposition of a procurement ban does not alter the profitability of domestic firms. In contrast, in the case portrayed in Figure 2, a procurement ban raises the profits of domestic firms in the short run. This will induce other domestic firms to enter, expanding the

total industry supply, and forcing prices down until profits are eliminated at $P_G = P_W$. This result obtains in part because of the assumptions that foreign and domestic firms have identical minimum long run average total costs¹², there are no other trade restrictions, and firm costs do not increase as the industry expands. The latter implies that the long run domestic industry supply curve $LS_H(p)$ is horizontal which, along with the government's demand schedule $D_G(p)$, implies that domestic sales to the government are given by the quantity at point B in the long run equilibrium. Under free entry, therefore, a procurement ban is only distortionary in the short run. (At point B, since $P_G = P_W$, there is no consumption distortion and, as production takes place at the lowest possible production cost in the long run, there is no resource allocation distortion either.)

In sum, the welfare consequences of a procurement ban depend not only on the relative size of government demand and domestic industry output at the free trade prices, but also on the strength of a nation's competition policy as reflected in the ease of entry and exit. The effects of imposing a procurement ban are summarized in Table 1.¹³

Table 1: Long run equilibrium impact of a procurement ban

Variable:	At initial free trade prices, P_w		
	$D_G(p_w) < S_H(p_w)$	$D_G(p_w) > S_H(p_w)$	
		No free entry	Free entry
Price	0	+	0
Domestic industry output	0	+	+
Quantity of imports	0	-	-
Domestic welfare	0	-	0

Key: 0: no impact; — : Decline; + : Increase.

¹² While one might object to this assumption, several observations are in order. First, the assumption that both domestic and foreign firms share the same minimum level of long run average costs does not imply that they have the same cost functions or indeed access to the same technology. Second, if domestic and foreign firms do not have the same minimum level of long run average total costs then, in the absence of any trade barriers, it would have been impossible for both types of firms to potentially supply the domestic government in the initial long run equilibrium. Third, if in the initial long run equilibrium the foreign firms had lower costs than domestic firms, then domestic firms would not be supplying the domestic consumers either—and so would have had no sales. (That is, there would have been no domestic industry to shift government contracts towards!) Fourth, one can relax the assumption of identical minimum average total costs to allow for a foreign cost advantage so long as there is some international friction (such as international transportation costs) that exactly closes the gap between the minimum long run average costs of the foreign and domestic firms. Obviously, the latter argument has a “knife edge” property to it.

¹³ One can question the assumption of constant industry costs that underpins the horizontal industry supply curve. Although in our view in many cases this will be appropriate in practice, we discuss the increasing industry cost case (upward sloping long run supply schedule) in Section 4.

The impact of removing a procurement ban is, therefore, also sensitive to entry. Suppose the market is in long run equilibrium and the ban is eliminated. In the case of Figure 1 nothing changes: the government need no longer buy from domestic firms, but has no incentive to switch to foreign firms as $P_G = P_W$. In the case of Figure 2 with no entry, the pre-liberalization long run equilibrium is point D, where $P_G > P_W$. Removing the procurement ban would shift the equilibrium back to point A, reducing the domestic industry's output, eliminating the rents and the consumption distortion and increasing imports from BC to AC. Procurement liberalization would increase imports, eliminate the distortions created by the ban, and so improve national welfare. This conclusion does not carry over to the free entry case. If point B represents the level of domestic firm's sales to the government in the long run equilibrium before liberalization, removal of the ban does not alter the long run equilibrium price as every domestic supplier can find a buyer at this price, and every domestic buyer can find a domestic or foreign supplier. No one has an incentive to alter their plans, and removal of the procurement ban will not change the level of imports or the output of the domestic industry. Put another way, the damage has already been done: removing a procurement ban need not restore the pre-ban market outcomes.

3. The effects of price preference policies

In practice, rather than ban all purchases from foreign firms outright, governments often employ price preferences to discriminate against foreign suppliers.¹⁴ That is, the government inflates the actual supply price by $\rho\%$ (where $\rho > 0$ is the margin of preference). If the foreign firm's 'preference inflated' price is below that bid by domestic firms, the government purchases from the foreign seller at its actual (not its preference inflated) price. Otherwise, it buys from the lowest price domestic supplier.

The analogue to Figure 1 is represented in Figure 3: at free trade prices the quantity demanded by the government is less than or equal to the quantity supplied by the domestic industry. Irrespective of the size of the parameter ρ , the price preference policy results in the same reallocation of sales between firms observed under a procurement ban. Government purchasers evaluate the supply price of foreign suppliers as $(1+\rho) P_W$, and domestic suppliers as

¹⁴ In the absence of a formal procurement ban against foreign suppliers, the best justification for assuming that a government procurer does not source from abroad is that this is the combined effect of all of its discriminatory procurement policies.

P_W . Switching their purchases to domestic suppliers has no effect on prices, imports, domestic output, and national welfare. Similarly, removal of the preference policy has no effect.

When government demand exceeds domestic supply at free trade prices, two cases must be distinguished. The first is where the percentage difference in prices between P_W and P_G is less than the price preference (Figure 4). Starting from the original long run equilibrium at point A, the preference policy effectively “prices” the foreign supplier out of the market since their supply price to the government rises to $P_W(1+\rho)$. Here, government demand can only be met by domestic suppliers at a higher price P_G . In the absence of entry, point D is both the short and long run equilibrium, and similar to a procurement ban, the price preference policy creates both a long run consumption and resource allocation distortion. Here, removal of the price preference policy would shift the equilibrium back to A, eliminating both distortions and restoring the “lost” market access. However, if we allow for entry, the rents created by the preference policy in the short run attract firms into the industry. Analogous to Figure 2, with the long run supply curve LS_H a long-run equilibrium with domestic firms supplying the government the quantity of goods associated with point B does not distort create long run resource misallocations. Moreover, elimination of the preference policy has no impact on prices, domestic output, net imports, and welfare. With free entry, the reduction in imports caused by imposing a price preference policy cannot be reversed by its removal.

The second case is portrayed in Figure 5: here the price preference parameter, ρ (expressed as a percentage) is less than the percentage increase in price that would result if only domestic suppliers were allowed to sell to the domestic government. Thus, ρ is low enough so as not to “price” foreign suppliers entirely out of the market. Any domestic firm that attempts to price above $P_W(1+\rho)$ will find itself with no customers. Consequently, in the short run prices paid by the state rise to $P_W(1+\rho)$, and the government still imports some foreign goods (equal to amount DE). The price preference creates rents for incumbent domestic firms, as well as consumption and resource allocation distortions. Without entry, the long run equilibrium remains at point D. Elimination of the preference policy would in this case shift the long run equilibrium from point D to A, increasing national welfare and imports.

Allowing for entry in Figure 5 has some new implications. Domestic firms enter until prices fall to P_W and sales to the government reach the quantity associated with point B on the long run supply curve LS_H . However, the additional domestic output reduces long run

equilibrium imports to zero. Thus, price preference policies need not eliminate imports in the short run (as a procurement ban would), but with free entry will eliminate imports in the long run. This implies that even a small price preference can create a large long run increase in industry output and corresponding reduction in imports. When the new long run equilibrium has been established after the introduction of a price preference policy, removal of that policy will have no effect on prices paid by the state. Once again, after the price preference has been imposed free entry ensures that the long run effects of preferences cannot be reversed by their removal.

The impact of a price preference policy is summarized in Table 2. In the case where government demand exceeds domestic industry supply at free trade prices, one cannot observe whether the price preference parameter is such that Figure 4 or Figure 5 characterizes the short run and long run equilibria. Consequently, in this case, we cannot predict whether or not imports will collapse to zero in the short run.

Table 2: Impact of price preferences

Variable:	At Initial Free Trade Prices			
	$D_G < S_H$ Short & Long Run Impact	$D_G > S_H$		
		Short Run Impact	Long Run Impact	
		No entry	Free Entry	
Price	0	+	+	0
Domestic industry output	0	+	+	+
Quantity imported	0	-	-	-
Domestic welfare	0	-	-	0

Key: 0: no impact; — : Decline; + : Increase.

4. Increasing long run industry costs

The results obtained in sections 2 and 3 are sensitive to assumption that the long run supply curve is horizontal.¹⁵ The consequences of relaxing this assumption are straightforward: entry will still occur after a procurement ban is imposed, but this will not drive prices for the government back down to P_W . In the case of figure 2, for example, the long run equilibrium price paid by the government will be found at the point on the line segment DB where this segment

¹⁵ One reason that this assumption may not hold is if factor prices increase as industry output expands because factors are specific. More generally, it is an empirical matter whether an industry has an increasing long run supply curve or a horizontal supply curve.

intersects with the (upward sloping) long run industry supply curve. The implication is that in the long run the domestic market for the product concerned becomes segmented and even though domestic private consumers remain unaffected, there is a resource allocation distortion. Furthermore, the size of this distortion is smaller when entry is possible compared to the no entry case; again demonstrating the importance of entry barriers in determining the magnitude of any resource misallocation created by procurement discrimination. In terms of market access, if the long run industry supply curve is upward sloping, then removing a binding procurement ban or price preference will result in some domestic firms exiting the industry and imports increasing.

Another interesting point emerges when the long run industry supply curve is upward sloping: the market segmentation that results from procurement discrimination also creates an incentive for arbitrage. Given that $P_G > P_W$ in cases where $D_G > S_H$, traders will find it profitable to try to import goods and resell these to the procuring entities. If procurement officials are subject to hard budget constraints and have incentives to minimize costs they may be inclined to circumvent the ban. The same is true if officials are not interested in obtaining value for money—if there is corruption, officials may seek to procure foreign goods at (probably just above) world prices in return for kickbacks from the suppliers. This suggests another channel by which discrimination in procurement can generate incentives for corruption. Moreover, in this case, the incentive to engage in corrupt practices created by procurement discrimination may well mitigate any market access reductions suffered by foreign firms!

5. Procurement of non-tradables, services, and ‘proximity’ goods

Much of what is procured by governments is not tradable—including many services. Francois, Nelson, and Palmetter (1997) note that in 1993 purchases by federal, state, and local authorities in the United States exceeded US\$ 1.4 trillion, equivalent to some 20 percent of GDP. Out of this, federal procurement totaled \$445 billion, of which 68 percent was spent on defense (goods, services, and employee compensation). Of the remaining \$141 billion, employee compensation comprised 48 percent, leaving \$73 billion. Most of this (\$59 billion) was used to procure services. After wages, at the state and local level, the largest category of expenditure is construction. Therefore, to a large extent, services are where the action is in procurement markets.

A difficulty that arises in evaluating discriminatory policies towards the procurement of nontradables is that there will be no world price to pin down the analysis. Independent of the potential effects of discriminatory procurement regimes, national markets will be segmented and prices will depend to a large extent on local factor costs and technologies. However in the long run, free entry ensures that firms earn zero profits, and that prices are set at minimum average total costs. In this case an assumption of U-shaped cost curves conveniently pins down long run prices.

While there are many forms of services procurement discrimination possible, for simplicity we consider the impact of a ban on government purchases from subsidiaries of foreign firms that have already established a local presence.¹⁶ Assume that both domestically-owned (or “home”) and foreign-owned firms have access to the same technology and confront the same factor prices. Figure 6 portrays the long run equilibrium in the absence of the procurement ban: in this case the prevailing price C^* is such that government demand is less than home firms supply, i.e., $S_H(C^*) > D_G(C^*)$. The imposition of a ban has no effect—it merely reallocates customers to foreign affiliates.¹⁷

If at the initial long run equilibrium price C^* (the minimum cost of production), government demand exceeds home supply, so that some foreign affiliates supply the government, a procurement ban acts to segment the market (Figure 7). Home firms supply the government at price P^I , which is higher than C^* , and foreign subsidiaries are left supplying only the private sector at a lower price P^{II} (as home private consumers are unwilling to buy all of the output of these subsidiaries at the initial price C^*). The short-run impact of imposing a procurement ban is therefore to introduce two consumption and two production distortions. Unlike the tradable goods case, in the short run the procurement ban actually raises home consumers’ welfare!

This short run equilibrium will not persist as foreign-owned firms are making losses, and some will exit until the price paid by home consumers rises to C^* , where foreign subsidiaries break even. In Figure 7 this implies that the home consumers’ demand returns to point D from point B. Home firms are making positive profits at the short run equilibrium price P^I . If entry is

¹⁶ Evenett and Hoekman (2000) discuss services procurement issues, including the treatment of services in the WTO Agreement on Government Procurement in greater depth.

¹⁷ In nontradable services markets the appropriate comparison is between government purchases and home firms supply at free trade prices, not between government purchases and total supply.

permitted, this will force down the price paid by the government until firms make zero profits (at price C^* and government demand at point C). Thus the long run effect of the ban is to increase the number of domestic-owned firms and to reduce the number of foreign-owned firms. In contrast to the case of non-tradable goods and services, both free entry *and* exit are needed to eliminate the consumption and resource allocation distortion in the long run. Furthermore, elimination of the ban has no effect on the equilibrium price and so cannot return the market to the pre-discrimination outcome. Table 3 summarizes our results, which reinforce the central role policies towards competition play in determining the long run impact of discriminatory procurement policies.¹⁸

Table 3: Impact of a ban on purchases from foreign-owned firms

Variable:	At Initial Free Trade Prices, C^*			
	$D_G(C^*) < S_H(C^*)$	$D_G(C^*) > S_H(C^*)$		
		Short Run and Long Run without entry or exit	Long Run with exit only	Long Run with entry and exit
Price paid by home consumer	0	-	0	0
Price paid by government	0	+	+	0
Home Firm's output	0	+	+	+
Foreign Subsidiaries' output	0	-	-	-
Domestic Welfare	0	-	-	0

Key: 0: no impact; — : Decline; + : Increase.

6. Transparency

The foregoing has focused almost exclusively on international discrimination, as this is the traditional focus of the WTO negotiators and trade policymakers. In the Doha round, however, considerable emphasis has been put on improving transparency in public procurement. A lack of transparency can impede the ability of foreign firms to bid for contracts even if there is no discrimination. Opaque procurement practices may result from either administrative inefficiencies, the absence of hard budget constraints or oversight by the Ministry of Finance; or rent seeking and corruption. The result can be a major source of loss for the government budget (as contracts will not go to the most efficient supplier). Case studies suggest excess costs per

¹⁸ Note that this analysis can be applied to policies that discriminate across different types of domestic firms, e.g.,

project can be in the 25-50 percent range (Rose-Ackerman, 1995a, b; Ades and Di Tella 1997, Bardhan, 1997).

Analyzing the effects of opaque procurement regimes requires specifying the motives for non-transparency, the impacts (if any) on firms' costs and on the composition of government expenditure. Several cases can be distinguished, the first two of which are straightforward applications of the framework developed in previous sections. The first case considered here refers to a situation where a government has not made the investments necessary to run a transparent procurement regime. For example, the government may be unwilling or unable to spend resources on public announcements of intended future purchases. Potential suppliers—both domestic and foreign—may therefore be uncertain of the demand curve facing them and so be reluctant to enter the market. To the extent that acquiring information about demand levels in potential markets requires incurring fixed costs (additional costs per unit supplied) then one would expect long run (short run) market outcomes to be affected. For example, if informational costs raise the marginal costs of firms (irrespective of location) then this will (i) shift upward the short run supply schedules of domestic firms and (ii) the price at which foreign firms effectively compete will rise above the world price. In this case, improving transparency will help reduce costs, which in turn will lower prices and enhance national welfare.

The second case does not require any administrative inefficiency or lack of administrative capacity. Here, non-transparency is motivated by a desire on the part of a government (or specific entities) to circumvent a non-discrimination rule.¹⁹ If so, implementing a transparent procurement regime (perhaps in response to a WTO agreement on procurement) will have the same effects on market access and national welfare as reducing discrimination; in which case one can refer directly to the results discussed earlier.

These two cases are to be differentiated from a third case where the lack of transparency is the result of the self-interest of government officials—specifically, they attach a positive weight to income from bribes as well as from obtaining value for money for their government agency's purchases. There is a growing body of evidence that corrupt officials deliberately expand expenditures on goods and projects—such as aircraft and construction—which are highly differentiated and for which there are few, if any, comparable reference prices in world markets

legislation that grants preferences to small and medium sized or minority-owned businesses.

(Hines, 1997). Put simply, officials with an interest in rent collection are likely to employ non-transparent procurement regimes to expand government spending on those items where the opportunities for self-enrichment are greatest.²⁰ A consequence of having to pay bribes to bid for government contracts is to reduce number of domestic bidders.²¹ That is, the result can be thought of as shifting outward the government demand curve for products where there are opportunities for corruption, and at the same time shifting in the supply curve of firms.

To see what is the maximum possible effect on market access of imposing transparency in such a context on the procurement regime, assume that until now no foreign firm supplied the domestic government.²² Furthermore, suppose that following a multilateral agreement a transparent procurement regime is imposed and corruption ceases. The first effect is to reallocate government spending away from goods that were more prone to bribery. Figure 8 represents diagrammatically the consequences of this reform. With the opaque procurement system, foreigners would not sell anything to the government and the domestic firms' sold output Q_2 at price P_2 to the state.²³ Imposing transparency allows foreigners to sell the government, and shifts the demand curve from D_g to D_{g1} . The government takes advantage of access to world prices and buys quantity Q_3 , which is less than if the demand curve had remained at D_g . This implies that the quantity imported rises by (Q_3-Q_1) , with increase in market access worth $P_w(Q_3-Q_1)$. Thus, if corruption is the motivation for non-transparency *and* the latter resulted in effectively excluding foreign firms from selling to the government, then imposing a transparent procurement regime will improve market access less than the removal of a procurement ban that was not motivated by malfeasance by officials. Furthermore, if the fall in government demand is large enough so that domestic firms can now (at world prices) entirely supply the government's needs, then market access need not improve at all.²⁴

¹⁹ Of course, this will only be relevant for countries that are subject to such a rule, i.e., current signatories of the plurilateral WTO agreement on government procurement.

²⁰ Further evidence for this argument can be found in Mauro (1998), who finds that spending on education suffers in more corrupt economies and conjectures that the purchase of standard items such as textbooks and the hiring of teachers offer fewer opportunities for corruption than other government projects.

²¹ This is especially likely to drive out small and medium sized enterprises (SMEs). Unlike larger firms, SMEs do not have as many resources to devote to dealing with officials and paying bribes. See Tanzi and Davoodi (2000).

²² Of course, this need not be the case as an opaque procurement regime may be deliberately designed so as to extract bribes from foreign firms. However, this is illegal under US law for US-based firms, while recent initiatives in the OECD context have made it more difficult for other OECD-based firms to engage in bribery.

²³ No doubt some of the premium over the world price (P_1-P_w) is paid in bribes to corrupt officials.

²⁴ The lower impact on market access of transparency reform may be offset by greater imports of those goods that the government now increases expenditure on. In principle, this latter effect may ensure that transparency reform

Elimination of a non-transparent procurement regime will have a second effect, namely expanding the number of domestic firms who are willing to sell to the government. This case is analyzed in Figure 9. The starting point is the same as in Figure 8: in the presence of a non-transparent procurement regime motivated by corruption the equilibrium price P_1 prevails and domestic firms supply quantity Q_1 . Ignoring the effect of transparency reform on the government demand curve, such reform results in more firms entering the market (now that they do not have to spend time and money on officials), and this shifts the supply curve out to S_1 . With the government keen to buy at world price P_W , domestic firms now supply Q_4 and imports expand but only to $(Q_F - Q_4)$, not $(Q_F - Q_1)$ as happened when the procurement ban alone was eliminated. Market access only rises, as a result of transparency reform, by $P_W(Q_F - Q_4)$. Arguably, these new firms could have been attracted from other markets, and imports to those latter markets may well increase—providing additional benefits to foreign firms. (Such an effect will depend on the availability of unemployed resources, which can enter a new market without reducing supplies to other markets, and upon the relative profitability of supplying different markets.) Again, the theoretical case is ambiguous, and it is entirely plausible that transparency reform creates less market access benefits than eliminating discrimination. In this third case, therefore, although there is little debate about the benefits of reducing corruption and the importance from a welfare point of view of transparency in procurement, the market access gains may be limited. If non-transparency in procurement is motivated by the self-enrichment of officials, the market access effects of fully implementing a transparent procurement regime are likely to be less than if protectionist impulses motivated non-transparency.

7. Transparency and trade agreements

The absence of a significant market access benefit to the transparency reform has implications for efforts to include transparency in trade agreements. If the major source of gain from transparency is lower cost procurement, then why is a reform that can be implemented unilaterally an issue for multilateral (or regional) negotiation? A number of arguments are

creates more market access than eliminating a straightforward procurement ban, but the circumstances under which this is likely to occur are restrictive. This is due to the requirement that government demand must end up exceeding domestic firms' supply for imports to increase after the reallocation of government spending towards goods which offered (in the past) fewer opportunities for corruption. This requirement may not be satisfied for all the goods whose government demand expands under a transparent procurement regime.

possible. What follows focuses on the WTO, but the arguments apply also to regional trade agreements.

First, it might be argued that starting with transparency is justified as being a precondition for non-discrimination to be enforceable, that is, as the first step towards market access disciplines (as non-transparency can help entities avoid non-discrimination). This is a rather weak argument for a contemporary initiative on transparency at the WTO given the opposition on the part of many countries to accept a binding non-discrimination rule. A second possible argument is that all WTO rules need not have a market access dimension. If there are gains from transparency, that should be sufficient rationale for agreeing to put such disciplines into the WTO. The critical question here is whether transparency can be better addressed in other fora and organizations such as the UN, development banks or regional organizations. In practice entities such as the UN and the World Bank are actively engaged in assisting governments to improve procurement regimes.

A third argument is that a WTO agreement on transparency might help those governments that still have problems unilaterally implementing procurement reform even after any assistance received from multilateral and bilateral development agencies. Presumably, as is true for other subjects, an attraction of the WTO is that cross-issue linkage can help governments mobilize support for reforms that will be opposed by powerful vested interests. A fourth—closely related—attraction of using the WTO as a focal point for procurement reform is that there is binding dispute settlement mechanism. An open question in this regard is whether exporters will have strong incentives to encourage their governments to bring cases. This depends in part on the net payoff that can be expected from dispute settlement. In practice, the length of time before a case is adjudicated at the WTO plus the absence (at present) of any compensation for forgone profits of “wronged” firms, call into question the usefulness of multilateral dispute settlement procedures when it comes to procurement contracts (Hoekman and Kostecki, 2001).²⁵ Therefore, WTO dispute settlement does not provide strong incentives to

²⁵ This is to say nothing regarding a foreign firm’s fear that a government will retaliate against it in future procurement decisions should the former complain.

WTO members not to erode what little market access benefits accrue from any improvements in transparency.²⁶

One question that will need to be answered during the course of any negotiations on transparency in the WTO concerns what will need to be done at the national (and sub-national) level to implement transparency provisions. Effective deterrents against nontransparency and corruption will be required—such as credible threats of *ex post* punishments that exceed the gains realized by officials and firms (e.g., by firing officials and fining and banning firms caught in attempts to engage in bribery from bidding for contracts for a number of years); the creation of external monitoring devices and institutions (including encouragement and protection of "whistle blowers"); audits by independent entities (that are publicly available and published); and the creation of mechanisms and incentives for losers of corruption to bring cases forward.

Last, but not least, transparency is not costless—indeed, the procedures, training and domestic enforcement institutions that are required to make transparency a reality are complex and extend far beyond the narrow confines of procurement. Insofar as the issue largely revolves around disciplining the scope for corruption, the focus must extend beyond procurement. It must encompass not only the civil service generally, but also institutions such as the police, the judiciary, etc. This suggests that at the very least implementation of WTO rules on transparency on procurement—if they are negotiated—should be linked to (and sequenced with) broader reform efforts by governments to improve governance, and complemented by active support by the development community.

8. Concluding remarks

From the perspective of improving the allocation of economic resources—which in poor countries should be a key objective of development policy—the most successful multilateral trade initiatives have involved policy instruments where reforms improved market access. In doing this, waste and resource misallocation are also reduced. Reductions in tariff rates, by and large, result in *both* improved market access and higher national welfare. While much has been accomplished in reducing these barriers over successive trade rounds, much less has been

²⁶ A challenge or bid-protest mechanism that can be invoked by participants in a procurement process to contest instances where transparency rules appear to be violated may be more effective. At the WTO level, such a mechanism could involve multilateral surveillance (Hoekman and Mavroidis, 2000).

achieved in trade negotiations on public procurement. Our analysis provides one explanation why: potential international disciplines on procurement reforms are unlikely to translate into simultaneous improvements in market access and national welfare. Only under special—that is, not very general—circumstances is the economic case for reforms likely to be strong when the political economy to support such reform is favorable. This calls into question what can be realistically expected, or indeed what should be advocated, in international negotiations on procurement policies.

In many circumstances the impact of discriminatory procurement regimes on national welfare is likely to be limited in magnitude and duration. Often government demand will be too small to affect market outcomes. If the demand of government entities is initially larger than domestic supply—a situation that may be relatively more common in developing countries—discrimination can reduce imports and lower welfare. However, in the long run the distortions created by a discriminatory procurement policy will be smaller in economies with lower barriers to entry. While there may often be detrimental effects of such discrimination on market access—perhaps accounting for the concerted effort over many years in the WTO and OECD to discipline the scope for discrimination in procurement—a key finding of our analysis is that much of the adverse impact on market access may well not be reversed upon liberalization. The damage to market access will already have been done.

The focus of WTO members in the Doha round of negotiations is on transparency in government procurement, not on non-discrimination. We have argued that there is an ambiguous link between transparency and market access, raising doubts regarding the effectiveness of the WTO as an instrument to improve transparency of procurement practices. WTO negotiations may be an effective means for governments to pursue improved procurement procedures and outcomes by helping them to overcome political economy constraints that impede the adoption of better policies. However, although the *quid pro quo* in terms of better access to export markets or improved WTO rules in other areas may allow a transparency agreement to be pushed through at the domestic level, a major question is how such rules will be enforced. The lack of a compelling market access dimension to a potential multilateral agreement on transparency greatly reduces the incentives for firms to lobby their governments to bring cases to the WTO. All of these considerations cast doubt on the magnitude of the potential benefits of embedding

rules on transparency in government procurement in trade agreements—whether multilateral or regional.

A more effective method of encouraging the adoption of efficient procurement practices may well revolve around voluntary mechanisms such as development assistance, policy dialogue, and advocacy. There is a very large overlap between the procurement domain and the issue of public sector governance and improving the investment climate and business environment. It is important that assistance aimed at improving procurement practices be integrated into this broader agenda.

Finally, it can be noted that the argument that has been made here regarding the implications for the WTO of the limited market access dimensions of procurement policies may well apply more generally. There are other subjects that have been proposed for inclusion in the WTO (as well as regional trade agreements)—such as trade facilitation and competition law. Here also the market access link is arguably weak—these are primarily policies that have implications for national welfare and that require national action; indeed, often the issue of discrimination does not even arise.

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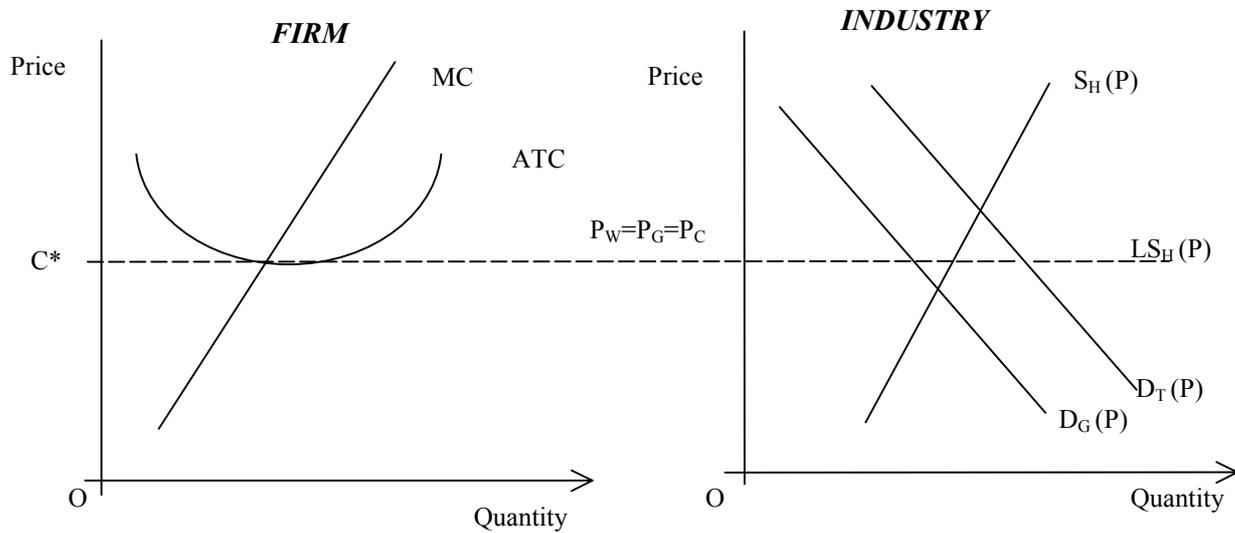


Figure 1

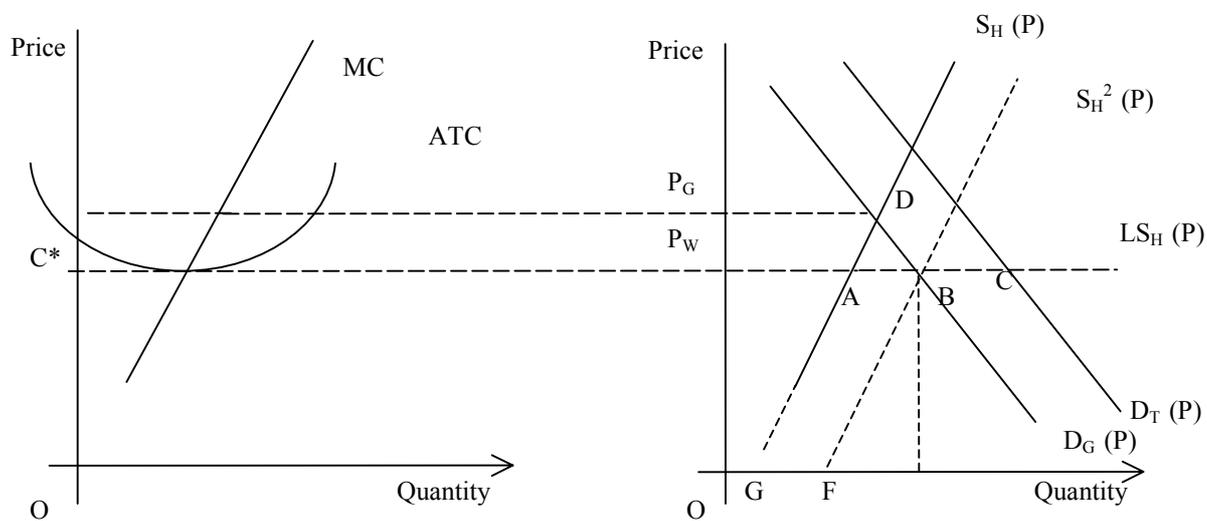


Figure 2

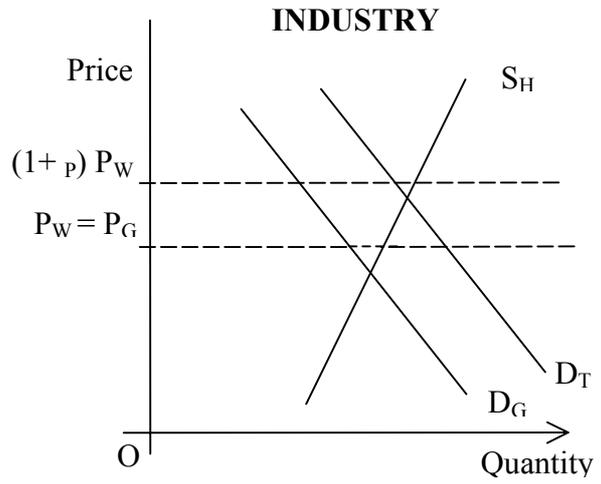
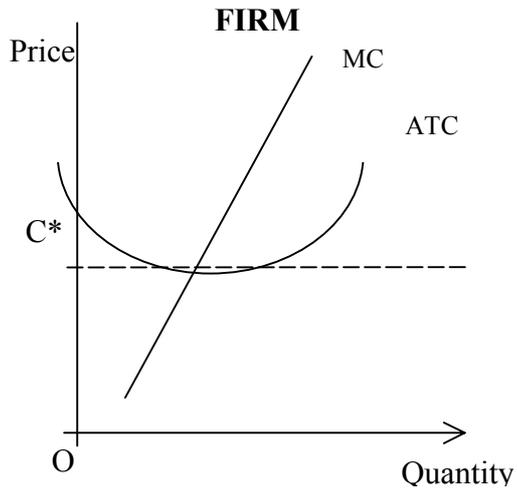


Figure 3

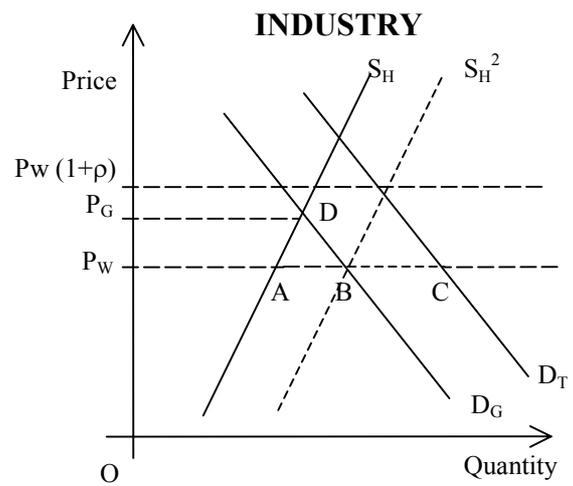
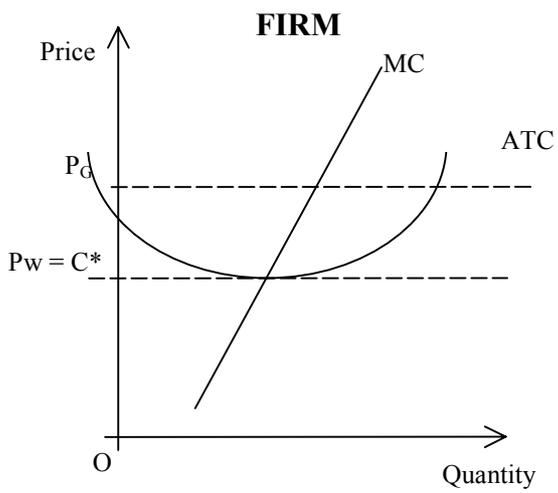


Figure 4

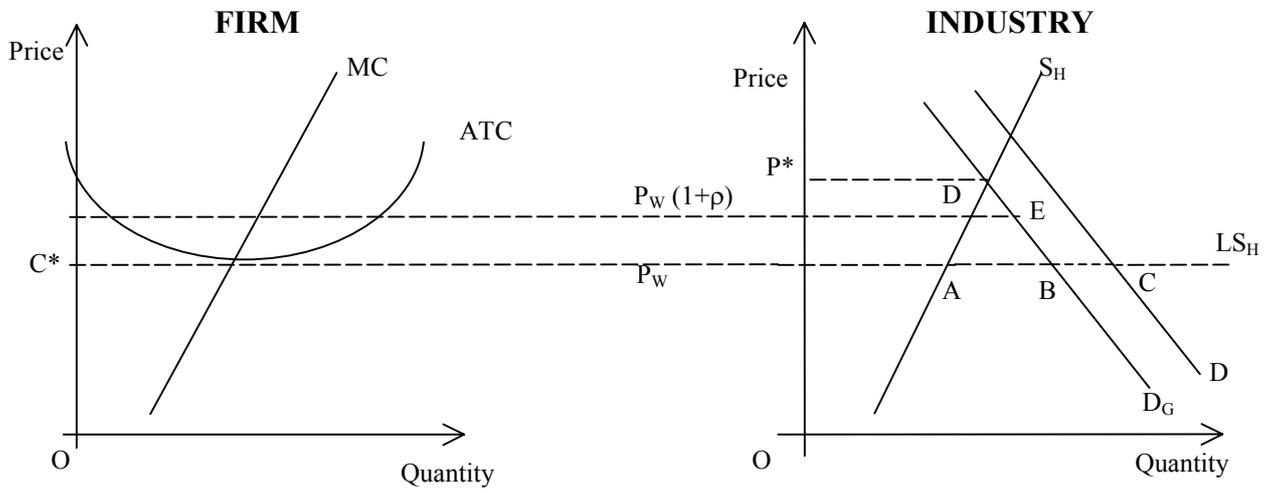


Figure 5

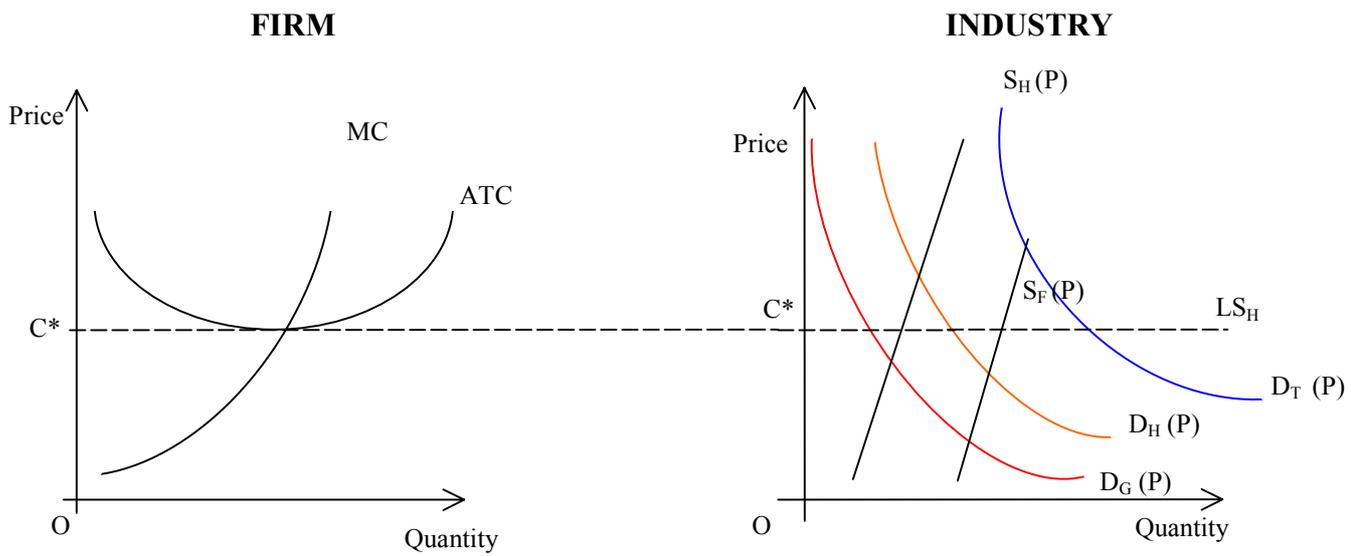


Figure 6

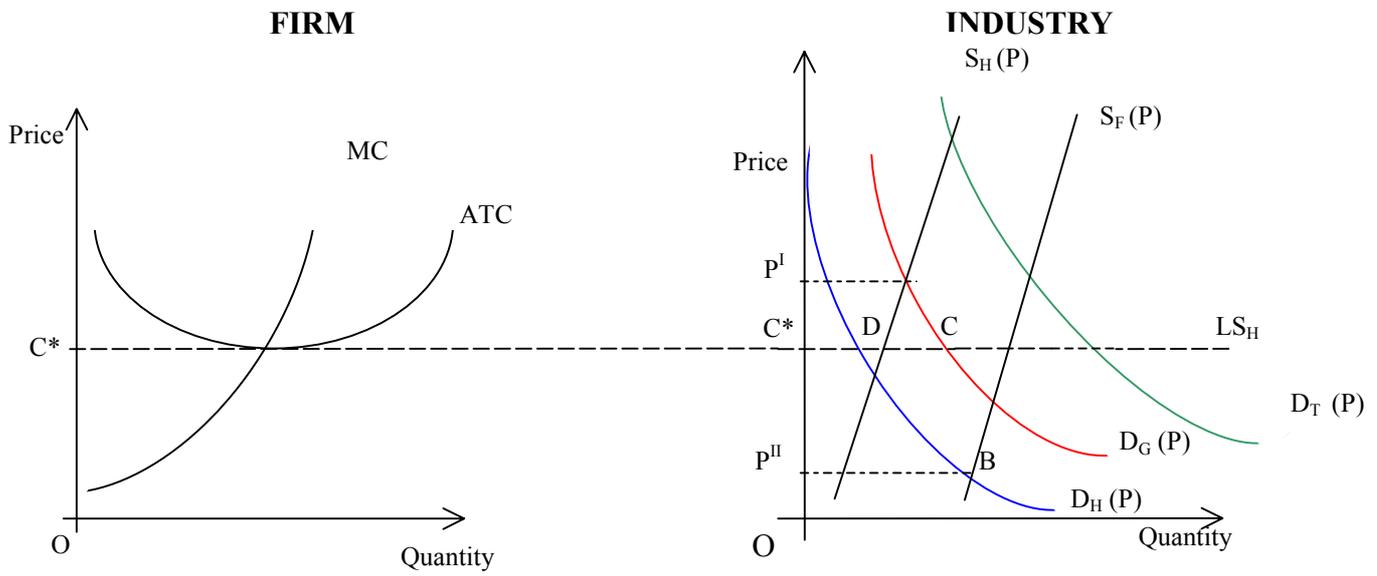


Figure 7

Figure 8:

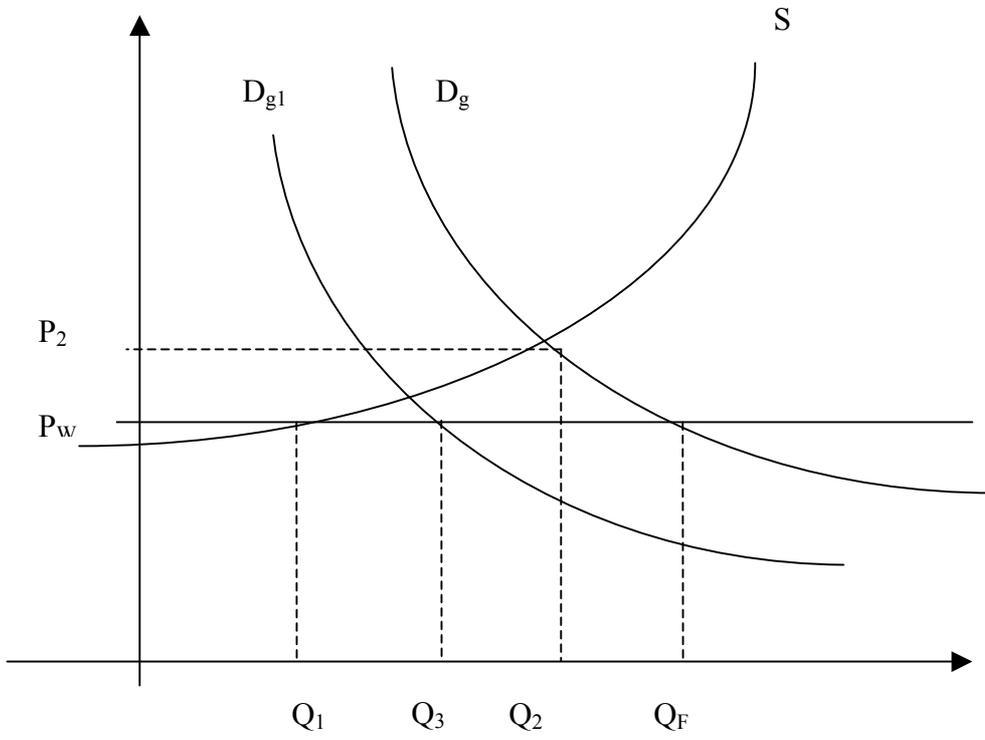
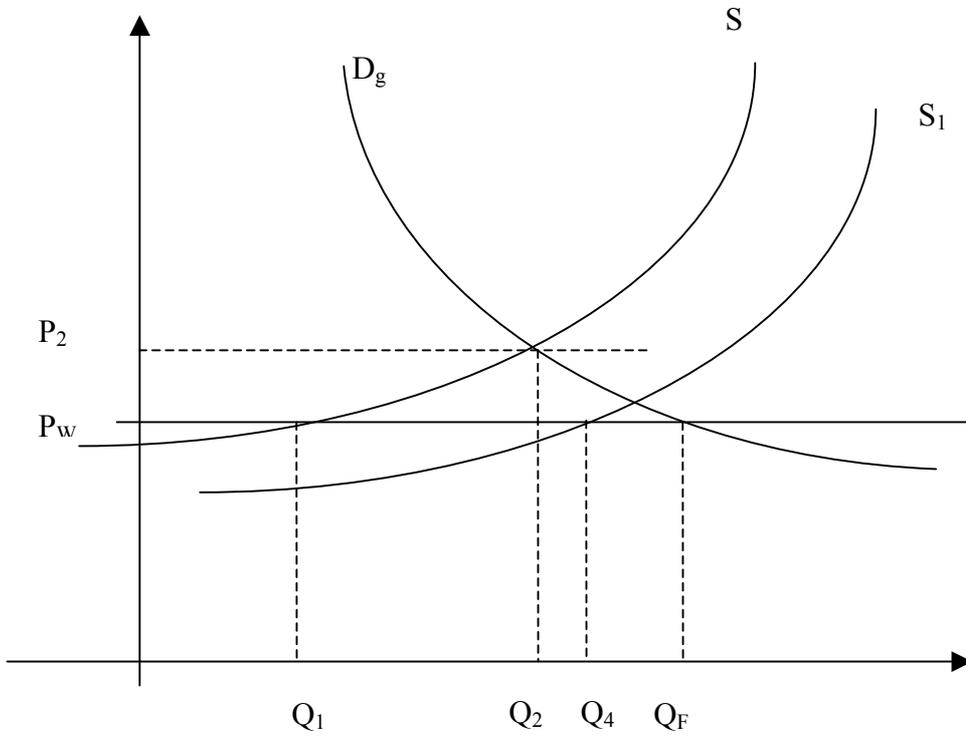


Figure 9:





n general:

Responsibility for government procurement in Switzerland is at three levels:

- federal
- cantonal
- local



National experience with the coverage of the GPA

What did the GPA change?

First international agreement on government procurement also for subfederal level

but:

Implementation remains at the federal, cantonal and local level



National experience with the coverage of the GPA

Before 1996:

- only guidelines
- no challenge procedure

Since 1996:

- federal and cantonal laws
- challenge procedures at the federal and cantonal level



National experience with the coverage of the GPA

Monitoring by a Commission of the confederation and the cantons which can also

- Mediate in specific cases
- Make proposals concerning on-going negotiations in international fora
- Give recommendations on the application of government procurement rules



What has the experience been at these levels?

In general:

Procurement procedure is now transparent, non-discriminatory and foreseeable

→ more participation on a national and international level

Enhanced market access

→ make sure that this is also the case in GPA partners

Challenge procedure is possible

→ as a means of last resort



What has the experience been at these levels?

Procuring entity must better prepare what actually wants to procure

→ makes procurement process more efficient

Reduction of costs for procuring entity

→ more competition in bid procedure



Lessons learnt

- Government procurement cannot solve all problems (reduce unemployment, regional preferences)
- Better market access means better information on procurement opportunities, especially for SME's (tailor-made list of projects)



Lessons learnt

- New developments require adjustment of the rules (e.g. E-procurement)
- Harmonisation of federal, cantonal and local rules is an important objective (even though not required by the GPA)

Experience with Issues Relating to Scope and Coverage of Government Procurement

Coverage in the WB Guidelines and the UNCITRAL Model Law

Jean-Jacques Raoul

World Bank

October 9, 2002

Purpose

- ◆ Briefly explain the coverage of the guidelines of Multilateral Development Institutions and UNCITRAL Model Law in respect to Government Procurement

Guidelines of MDBs

- ◆ Coverage: Most public sector activities (except defense) to the extent that they are funded by the MDB concerned
- ◆ All goods, works, equipment, and services, including consulting services, and BOT/concessions
- ◆ Obligations of the Borrower derive from a Loan Agreement (LA), which
 - covers procurement under the Project
 - refers to the MDB Procurement rules
 - defines procurement methods for Borrower's use
 - supercedes provisions in the national law if inconsistent with LA

General Considerations of MDB Guidelines

- ◆ Need for economy and efficiency
- ◆ Need for high-quality services (Consultants)
- ◆ Equal Opportunity to compete
- ◆ Encourage the development of national industry
- ◆ Importance of transparency in the process

Procurement Methods (Goods, Works and Related Services)

- ◆ Open competitive bidding must generally be used, with or without pre-qualification:
 - International Competitive Bidding is preferred (allows for margin of domestic preference)
 - National Competitive Bidding used for smaller contracts, unlikely interest of international bidders
 - basically similar Principles between ICB and NCB, exceptions: language, advertisement media, bidding time, bid/contract currency, and terms of contract

Procurement Methods - 2

- ◆ Other methods of procurement are allowed, as exceptions (Limited International Bidding, Shopping, Direct contracting)
- ◆ Reserved procurement, Misprocurement

Selection Methods (Consulting Services)

- ◆ Advertisement for expressions of interest, short list of qualified candidates, request for proposals, evaluation of technical and financial proposals
- ◆ Quality and Cost Based Selection is the preferred method – Quality: 80-90% weight, Cost: 20-10% weight.
- ◆ Other selection methods allowed if specified: Quality Based Selection, Selection under a fixed budget, least cost selection, selection based on qualification and single source selection

Procurement of BOT/Concessions

- ◆ Issue is specifically addressed in MDB Guidelines
- ◆ WB Guidelines provide for competitive bidding (Open or Limited) with PQ and/or one or two-stage bidding process
- ◆ If competitive bidding has not been used for selection of concessionaire, then it must be used for procurement of goods and services financed by the WB

UNCITRAL Model Law

- ◆ Scope of application is as specified in the law (art 1)
- ◆ Usually national defense and national security may be excluded (but not necessarily)
- ◆ Exclusions from coverage are to be specified in the law
- ◆ BOT/Concession in principle not excluded. Subsequently, a Legislative Guide on Privately Financed Infrastructure Projects was adopted, complementing the Model Law

Transparency and Government Procurement Procedures

Provisions in the WB Guidelines and
the UNCITRAL Model Law

Mr. Jean-Jacques Raoul

World Bank

October 9, 2002

Purpose

- ◆ Briefly show commonalities related to transparency issues in international instruments and national legislation regarding core principles of procurement, using the World Bank Guidelines, and the UNCITRAL Model Law.

Transparency in WB Guidelines

- ◆ Transparency is needed to foster competition
- ◆ Competition is seen as the best way to get value for money
- ◆ Transparency fosters the confidence of the taxpayer in the public procurement institutions
- ◆ Most powerful way to fight corruption (thrives in the dark)

Transparency in WB Guidelines (2)

- 👉 Critical elements of transparency:
 - ◆ Notification and advertising (allowing sufficient time for participation)
 - ◆ Predisclosure of relevant information (including bid evaluation method)
 - ◆ Public bid opening (and opening immediately following the deadline for bid submission)
 - ◆ Accessibility of applicable laws and regulations
 - ◆ Use of standard bidding and contract documents
 - ◆ Appeal mechanisms
 - ◆ Debriefing
 - ◆ Publication of awards

WB GLs vs UNCITRAL Model Law

They are generally consistent, except that:

- ◆ WB GL do not allow for:
 - selection procedure for services with simultaneous negotiations (Art 43), and
 - procurement of goods or works: request for proposals (Art 48) or competitive negotiations (Art 49)

WB GLs vs UNCITRAL Model Law (2)

- ◆ In WB GL, Consultant services are governed by specific procedures relying on a qualitative and financial assessment of competing proposals.
- ◆ In respect to GPA, WB GL do not allow:
 - Selective tendering (Art X)
 - Opening of tenders where tenderers are not allowed to attend (Art XIII-3)
 - Negotiated tendering (Art XIV); instead, WB provides for two-stage bidding process

El Principio de Transparencia en los Acuerdos de Compras Gubernamentales del Hemisferio Occidental

Fernando Ocampo

Octubre, 2002

Indice

- ☛ El principio de transparencia en los acuerdos comerciales del hemisferio occidental
- ☛ El principio de transparencia en el ALCA: trabajo del GNCSP

El principio de transparencia
en los acuerdos comerciales
del Hemisferio Occidental

Acuerdos sobre contratación pública en las Américas

☛ Acuerdos Bilaterales

- Canadá - Estados Unidos (1993)
- México - Bolivia (1995)
- México - Costa Rica (1995)
- México - Nicaragua (2001)
- Chile - Centroamérica (2002)
- Panamá - Centroamérica (2002)
- República Dominicana - Centroamérica (2002)

Acuerdos sobre contratacion

pública en las Américas (cont.)

☛ Acuerdos Regionales

- México - Estados Unidos - Canadá (NAFTA), 1994
- México - Colombia - Venezuela (G-3), 1995
- Comunidad Andina (servicios), 2002

☛ Negociaciones

- Chile - Estados Unidos
- Centroamérica
- ALCA

Transparencia

☛ Disposiciones existentes en los distintos acuerdos del hemisferio

- Publicación de leyes y reglamentos
- Publicidad de la invitación a participar
- Requerimientos/Especificaciones para proveedores y para el proceso
- Criterios de Evaluación y de otorgamiento de contratos
- Mecanismos de Revisión y de impugnación

Transparencia (cont.)

☛ Obligaciones para las entidades: modelo NAFTA vs. modelo Centroamérica

- Procedimientos detallados para cada una de las etapas del proceso de compra ó aplicación de Leyes Nacionales para las modalidades de contratación que se contemplen a nivel nacional
- G-3 y algunos bilaterales con México: flexibilidad
- Venezuela y Colombia aplican legislación nacional procedimientos
- Costa Rica aplicará licitación selectiva una vez apruebe su reglamento

Transparencia (cont.)

☛ Obligaciones para las Partes

- Publicación de leyes y reglamentos
- Supervisión de las entidades en la aplicación de los principios
- Requerimientos de información sobre los procesos específicos a solicitud (NAFTA, G-3 y bilaterales con México)
- Mantenimiento de documentación por un período de tiempo (NAFTA, G-3 y bilaterales con México)
- Requerimientos de información estadística (NAFTA, G-3 y bilaterales con México)
- Establecer mecanismos de revisión por una autoridad independiente (NAFTA, G-3 y bilaterales con México)

El principio de transparencia
en en el trabajo del
Grupo de Negociación sobre
Compras del Sector Público
del ALCA

Declaración de San José

Objetivos específicos del GNCSP:

- » Lograr un marco normativo que asegure la apertura y la transparencia en los procedimientos de las compras del sector público, sin que implique necesariamente el establecimiento de sistemas idénticos de compras del sector público en todos los países
- » Asegurar la no-discriminación en las compras del sector público dentro del ámbito a negociarse
- » Asegurar un examen imparcial y justo para la resolución de los reclamos y apelaciones relativos a las compras del sector público

Declaración de San José

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El Principio de Transparencia en el GNCSP

- ☛ Difusión de leyes y reglamentos
- ☛ Publicación de la invitación a participar
- ☛ Aplicación de especificaciones técnicas
- ☛ Evaluación de las ofertas
- ☛ Divulgación y publicación de la adjudicación
- ☛ Mecanismos de revisión e impugnación

Propuestas en el Bando de Capítulo

- ☛ Principio general (consenso)
- ☛ Evaluación de ofertas y adjudicación de contratos
 - proveer información a los oferentes para la preparación de ofertas ajustadas a los requerimientos exigidos
 - emplear criterios transparentes y objetivos -de previo conocidos por los interesados- en la evaluación de las ofertas y posterior adjudicación

publicación de la adjudicación de un contrato

- ☛ Difusión de los resultados
- ☛ Notificación a todos los participantes
- ☛ Resoluciones motivadas
- ☛ Publicación de la adjudicación
- ☛ Expedientes completos sobre los procedimientos de contratación pública

Procedimientos de impugnación

- Accesibles a toda persona interesada
- Obligación de todas las entidades de adoptar o mantener las medidas establecidas en las legislaciones
- Deber de emplear procesos oportunos, transparentes e imparciales

Requisitos de impugnación

☛ Resoluciones fundamentadas:

- deben emitirse por escrito y ser notificadas a todos los participantes
- actuaciones deben ser públicas, salvo disposición legal en contrario
- autoridad resolutoria debe ser imparcial e independiente

☛ Existencia de mecanismos de impugnación accesibles para todo interesado

Medidas especiales para economías pequeñas

- ☛ Deber de emplear cualquier método en el tanto sea transparente



**Ministério do Planejamento, Orçamento e Gestão
Secretaria de Logística e Tecnologia da Informação**

The Brazilian Federal Government Procurement Process

Main topics for the October 9th. 2002 OMC/Geneva presentation.

1. General Explanation on the General Services System – SISG and the SIASG IT support system
 - 1.1 Modules*
 - 1.2 Characteristics*
 - 1.3 ITC & interactivity incorporation on the Internet*
 - 1.4 Managerial tools facilities*
 - 1.5 Transparency, accountability and social control characteristics*

In this part of the presentation the Speaker of the Brazilian Delegation will detail the main characteristics of the Federal Government structured system and the philosophy behind the centralized application that enables decentralized purchasing with a mix of real time control and ex-post centralized auditing. This part of the presentation explores the conceptual benefits to both sides in the tendering process.

2. SIASG/COMPRASNET environment
 - 2.1 Some statistics on procurement of goods and services*
 - 2.2 Facilities offered*

A brief explanation on the interfacing of the structured system with the web enabled information and transactional application that permits suppliers and procuring officers to base the whole process on the paperless concept we be made in this part of the presentation.

3. Reverse Auction
 - 3.1 Background information on the adoption of the new mode of procurement*
 - 3.2 Operational procedures*
 - 3.3 Impacts of the use of the reverse auction*

This part of the presentation deals with the fundamentals of the adoption of a new mode of procurement, as well as, the main changes related to traditional practices of public procurement of goods and services in Brazil. Considerations on the quantitative and qualitative impacts generated will also be explained.

4. Virtual Reverse Auction

4.1 Characteristics of the system

4.2 Characteristics of private public partnership

4.3 Operational demonstration

An in depth exploration of the procedures and phases of the electronic inverse auction process will be demonstrated and simulated to demonstrate the flexibility of the system and the in-built controls offered, as well as, the inducement to sound practices, competition and transparency.

5. Brazilian cooperation initiatives on government procurement

5.1 Multilateral initiatives

5.2 Bilateral initiatives

5.3 National & international recognition

The Brazilian Government has been improving its procurement procedures and systems. The objective of the development of the Program to Reduce the Cost of Contracting Goods, Civil Works and Services, which is part of the multiannual budget for the period 2000/2004, is to increase efficiency in the process, reduce its costs, increase competition, enable transparency and foster social control. Due to this the procurement policy of the Federal Government has caught the attention of multilateral organizations, such as the World Bank, IADB, the UN System and the European Union, and some countries, with proposal for technical cooperation in this field. The presenter will explain some of the initiatives underway and the possibilities that might be explored in the future.

Brasília, DF 06/09/2002
Marcos Ozorio de Almeida
Chief Advisor SLTI/MP



COMPRASNET 
PORTAL DE COMPRAS DO GOVERNO FEDERAL

Electronic Procurement the Experience of the Brazilian Federal Government

Marcos Ozorio de Almeida
Secretariat for Logistics and Information Technology



**Ministry of Planning,
Budget and Management**

Federal Government Guidelines



- Less red tape
- Efficient processes
- Standard procedures
- Support information tools for the public manager
- Managerial controls on expenditures
- Increased Competition on tenders
- Cost Reduction
- **Transparency**

Topics Presentation



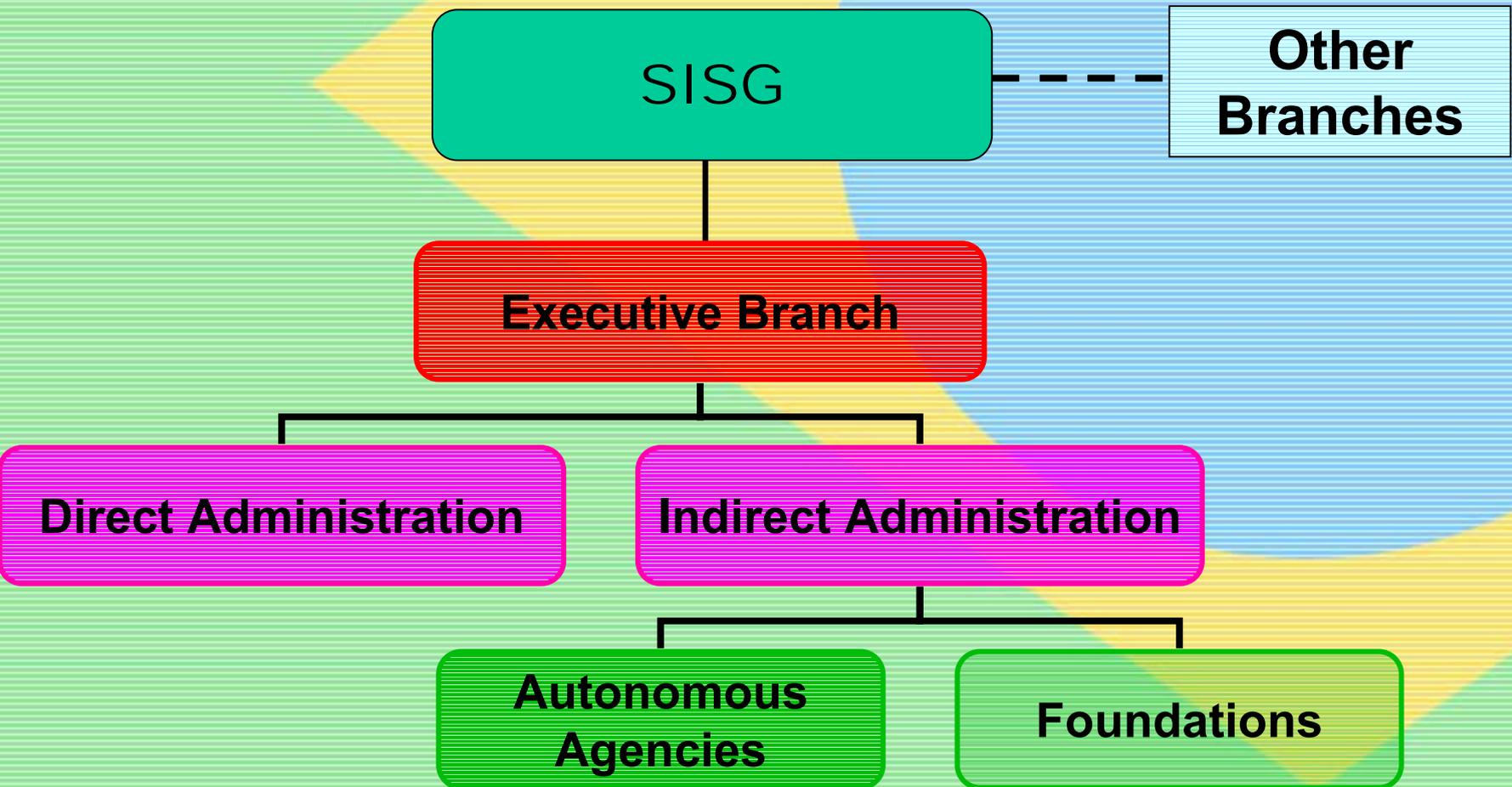
- **General Explanation on the General Services System – SISG, the SIASG IT support system and SIASG/COMPRASNET environment**
- **Inverse Auction and Virtual Inverse Auction**
- **Brazilian cooperation initiatives on government procurement**

SISG and SIASG IT system and COMPRASNET

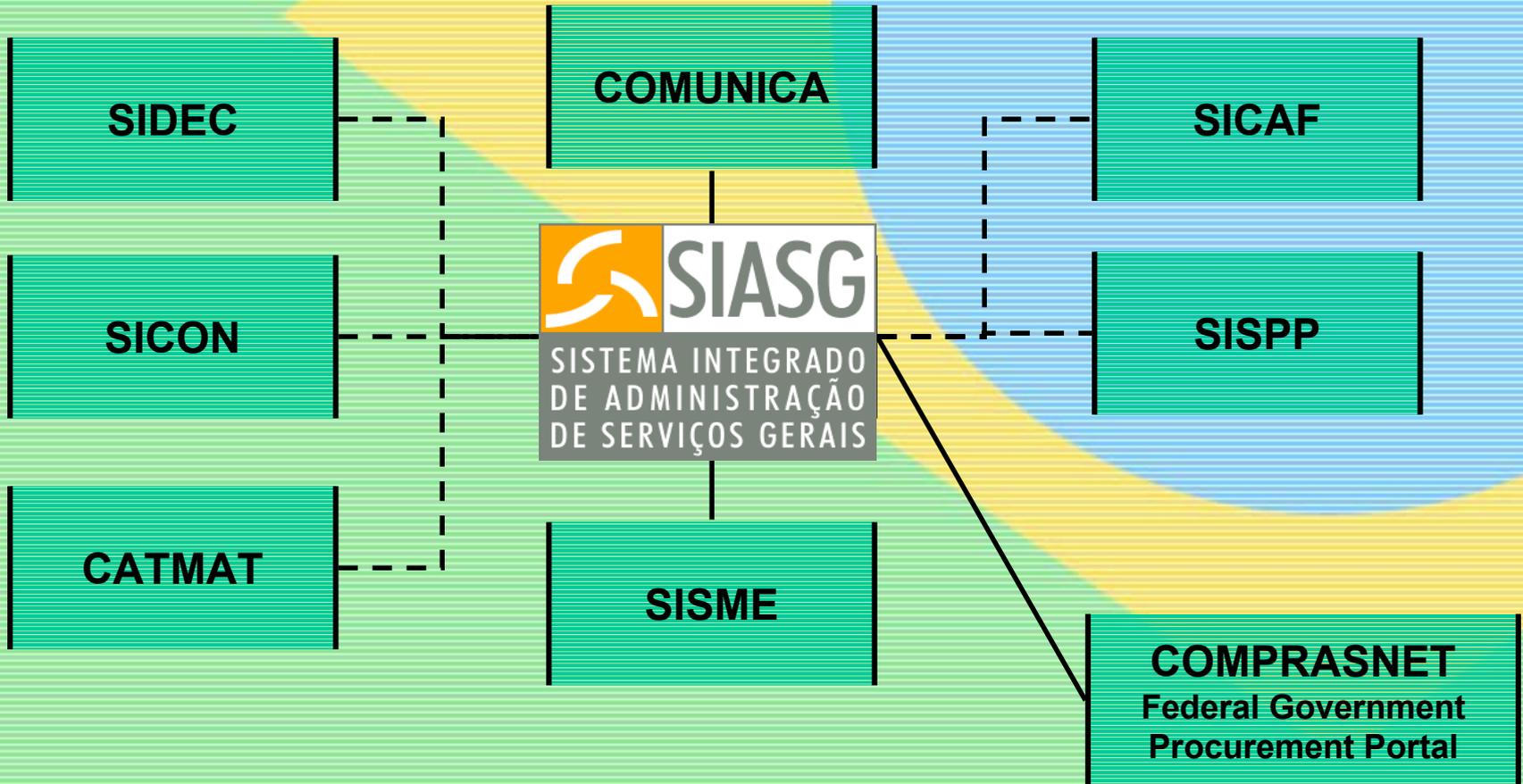


- *Modules*
- *Characteristics*
- *ITC & interactivity incorporation on the Internet*
- *Managerial tools facilities*
- *Transparency, accountability and social control characteristics*
- *Some statistics on procurement of goods and services*
- *Facilities offered*

General Services System - SISG



Information System



Unified System for Pre-registration of Suppliers - SICAF



- Certifies fiscal compliance through on-line consultation (on-line checking of
 - 163 thousand registered suppliers
 - 2,000 new registrations a monthregistration of Federal Government suppliers
- Allows pre-registration through internet “SICAFWeb”

Electronic Posting of Purchases and Contracts - SIDEC

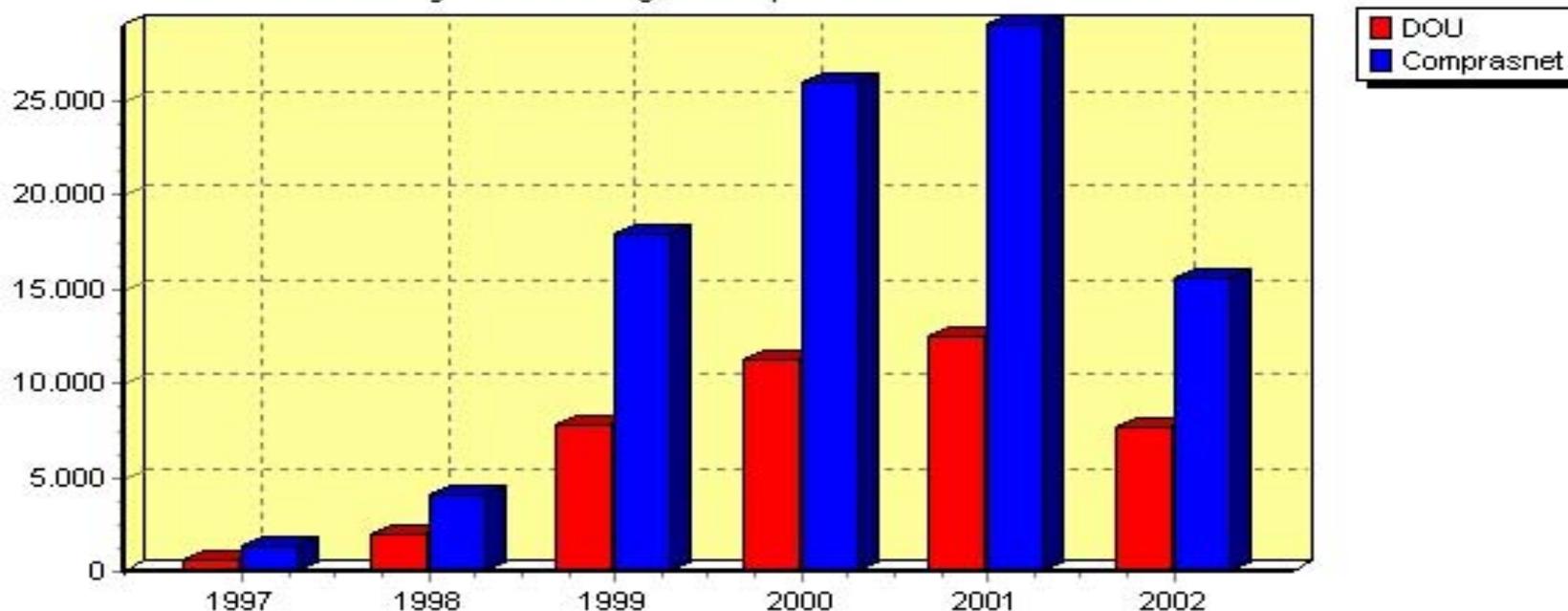


- **Electronic forwarding of documents for publication in the Union's Official Journal**
- **Automatic posting of invitations to bid and tender results on the Internet**
- **Allows searching and download of invitations to bid**

Tenders Announced by SIDEC



Licitações Divulgadas pelo SIDEC



Year	1997	1998	1999	2000	2001	2002
Of. Journal	660	1.958	7.779	11.307	12.457	7.619
Comprasnet	1.400	4.068	17.994	26.055	29.092	15.647

Integrated Price Posting System - SISPP



- **Registers and stores in a data base the prices practiced by the Federal Administration in previous contracts**
- **Provides public managers with a price reference, for assessment of procurement convenience**

Contract Management System– SICON



- **Allows registration and financial monitoring of contracts undertaken within the Federal Administration**

Generation of Draft Awards System - SISME



- Automatic issuance of Award drafts, linked to financial execution of the National Treasury - SIAFI
- Ensures that all Federal Administration contracting and purchases go through the System

Supplies and Services Catalog - CATMAT



- **Defines specifications and quality standards for supplies and services purchased by the Government, adopting the Federal Supply Classification criteria.**
- **45 thousand supply items already catalogued, organized into 13 thousand supply lines and 2 thousand service lines**

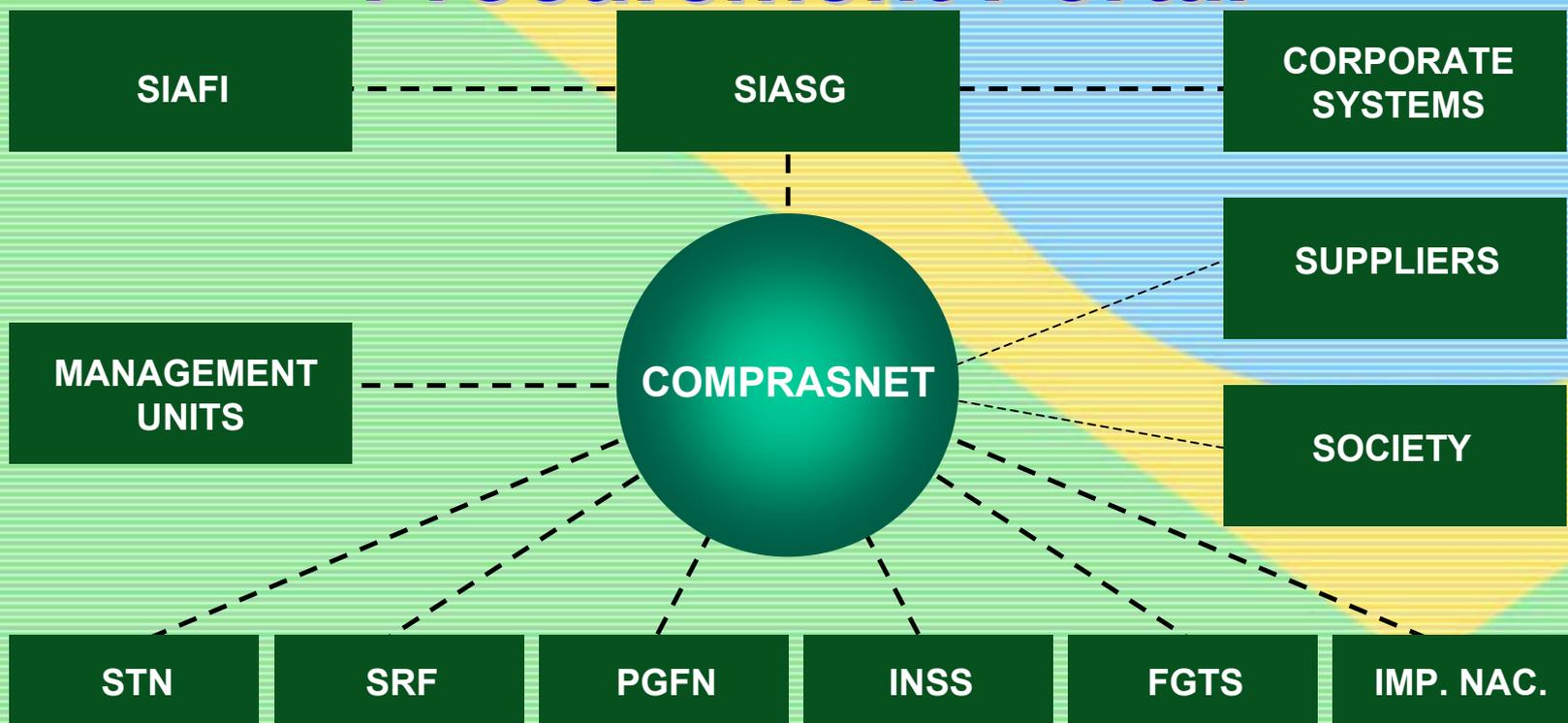
Management Information



- **Data warehouse – Aggregated data on government purchases for monitoring of indicators.**
- **Comprasnet Bulletin – monthly statistical information on current expenditures**



Federal Government Procurement Portal



Placar de Licitações

Última Atualização **11/12/2001** **256** Novas Licitações

Notícias Comprasnet Notícias Comprasnet

Portugal e Espanha querem modelo brasileiro de pregão eletrônico

Os governos de Portugal e Espanha vão solicitar consultoria técnica ao Brasil para instalar em seus países o modelo de pregão eletrônico brasileiro para ...

[Saiba mais...](#)

Comprasnet é referência internacional

O avanço no sistema de compras eletrônicas do Governo Federal já é reconhecido internacionalmente. O Portal Comprasnet recebeu o selo de "Boa Prática ...

[Saiba mais...](#)

FHC garante acesso popular à Internet



Para acessar os serviços por assinatura ou os serviços do Governo (IASG), queira por favor clicar no botão abaixo

ACESSO SEGURO

SISTEMA INTEGRADO DE ADMINISTRAÇÃO DE SERVIÇOS GERAIS

pregão ELETRÔNICO

Cadastre-se Aqui **SICAF WEB**

5:58 PM

BOLETO BANCÁRIO SICAF

O portal brasileiro para oportunidades em infra-estrutura e negócios

Some data on SIASG/ Comprasnet in 2001



- **Accesses on the Portal: 2,100,000
(average monthly – 300,000)**
- **Tenders posted: 29,092 (in 2001)**
- **Suppliers registered: 163,000
(September 2002)**
- **Subscribers: 40,000 suppliers
(September 2002)**
- **Tenders published: 160 a day (average
of 2002)**
- **Total tenders published in 2001: 41,549**

Information and Services available at COMPRASNET



- **Public access through the Internet**
- **Linked to Rede Governo (Government Network)**
- **Electronic inverse bidding**
- **Live inverse bidding**
- **Electronic Price Quoting**
- **Price of purchase registration**
- **Publications and legislation**
- **Complete bidding documents**
- **Tender announcements**

Information and services available at COMPRASNET



- **Tender results**
- **Contract statements**
- **SICAF Payment Form**
- **E-mail by interest profile/Preference Lists**
- **Specialized forum**
- **Payment gateway**

Examples of Transparency and Social Control



- **Electronic Price Quoting**
- **Tender Announcements**
- **Inverse Auctions Agenda**
- **Inverse Auctions Underway**
- **Inverse Auctions Results: Aid Memoirs**



Electronic Price Quoting

COMPRASNET

PORTAL DE COMPRAS DO GOVERNO FEDERAL



Ministério do Planejamento

SERVIÇOS DO PORTAL

ACESSO LIVRE

LEGISLAÇÃO

PUBLICAÇÕES

FALE CONOSCO

AJUDA



Brasília, 27 de Agosto de 2002

Você está visualizando
Atualizar os 5 melhor
Clique no símbolo de classificação da cotação para
no leilão. Caso queira retornar à página anterior, clique no
botão "Voltar".

- SicafWeb
- Pregões
- Cotação de Preg
- Consultas

- Consultas
- Consulta da Sociedade
- Simulador

Legenda
\$↓ 5 últimos lances

Cotações Encerradas

Pesquisa

Período de: * a *

Faixa de datas:

General View

Cotação	Modalidade	UASG
---------	------------	------

BUSCA:



SERVIÇOS DO PORTAL

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LEGISLAÇÃO

PUBLICAÇÕES

FALE CONOSCO

AJUDA



Brasília, 27 de Agosto de 200

Cotação	Modalidade	UASG			
08/170119/000292002	Cotação	MF-DELEGACIA DA REC FED.EM VOLTA REDONDA/RJ			
		Data		Vencedor(es)	
Item	Abertura	Fechamento	Fornecedor(es)	Lance	
CARTUCHO TONER IMPRES	13/08/2002 07:59:33	13/08/2002 17:00:00	JOB DE VOLTA ...	R\$ 2.400,00	\$↓
+ 08/200139/000442002	Cotação	22.DISTRITO DE POLICIA RODOVIARIA FEDERAL/TO			
+ 08/154044/003012002	Cotação	FUNDAO UNIVERSIDADE FEDERAL/AC			
+ 08/194079/001942002	Cotação	MJ/FUNAI-ADMINIST.REGIONAL EM JOAO PESSOA/PB			
+ 08/152004/000322002	Cotação	MEC-IBC-INSTITUTO BENJAMIM CONSTANT/RJ			
+ 08/250019/000282002	Cotação	ESCRITORIO DE REPRES. DO MINIST. DA SAUDE/ES			
+ 08/255030/000472002	Cotação	FNS/CRP.HELIO FRAGA			
+ 08/440001/000732002	Cotação	MMA-COORDENACAO GERAL DE SERVICOS GERAIS/DF			
+ 08/512006/000612002	Cotação	UNIDADE EXECUTORA DA DIRETORIA COLEGIADA			

General View



Tender Posting



SERVIÇOS DO PORTAL

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AJUDA



Brasília, 27 de Agosto de 200

LICITAÇÕES DO GO

Selecione a modali

Selecione a abrang

Clique no Botão OK para Concluir

Sicaf/Web

Pregões

Cotação de Preços

Consultas

Ajuda (máximo 3).

Modalidade

Convite



Tomada



Conco



Conco



Pregão



Concu

Atas de Pregões

Extratos de Contratos

Resultados de Licitações

SICAF - CRC (Certificado de Registro Cadastral)

Linhas de Fornecimento

Extrato de Licitações (sem itens)

Certidão Negativa

Portaria do Diário Oficial

Unidades Administrativas de Serviços Gerais

Abrangência

Estado



Município

General View

Limpar

OK



SERVIÇOS DO PORTAL

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FALE CONOSCO

AJUDA



Brasília, 27 de Agosto de 200

LICITAÇÕES DO GOVERNO FEDERAL

- Selecione a modalidade de licitação desejada (máximo 3).
- Selecione a abrangência geográfica para pesquisa.
- Clique no Botão OK para Continuar.

Modalidade

- Convite
- Tomada de Preço
- Concorrência Pública
- Concorrência Internacional
- Pregão
- Concurso

Abrangência

- Estado
- Município

General View

Limpar

OK



SERVIÇOS DO PORTAL

ACESSO LIVRE

LEGISLAÇÃO

PUBLICAÇÕES

FALE CONOSCO

AJUDA



Brasília, 27 de Agosto de 200

LICITAÇÕES DO GOVERNO FEDERAL

Selecione um ou mais estados para a pesquisa (Selecione segurando Ctrl para selecionar mais de um estado).

Selecione o tipo de licitação desejada.

Clique no Botão OK para Continuar.

Modalidade

Concorrência Pública, Pregão.

Abrangência

Por Estado

Estado

Alagoas
Amazonas
Amapá
Bahia
Ceará
Distrito Federal
Espírito Santo
Goiás

General View

Licitação de Material Serviço Informando Material/Serviço**Forma de Pesquisa** Pesquisando Catálogo Todas

Voltar

OK



SERVIÇOS DO PORTAL

ACESSO LIVRE

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PUBLICAÇÕES

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AJUDA



Brasília, 27 de Agosto de 2002

MINISTÉRIO DA AGRICULTURA E DO ABASTECIMENTO

Secretaria Executiva

Subsecretaria de Assuntos Administrativos

Coordenação-Geral de Serviços Gerais

Concorrência Nº **8/2002**

Objeto: Aquisição de uma solução constituída de Software para emulação de terminal tipo IBM3270 e impressora tipo IBM 3287, utilizando visualizadores de terminal e impressora com tecnologia ActiveX e java dentro de navegadores Internet, com serviços de instalação, configuração, customização e ativação, suporte técnico e manutenção.

Edital a partir de: 16/8/2002 **das** 09:00 **às** 12:00 Hs **e das** 14:00 **às** 16:00 Hs

Endereço: Esplanada dos Ministérios Bloco `D` Ed. Sede Sob, Asa Sul , Brasília - DF

Telefone: (0XX61) 218-2054

Entrega das Propostas: 30/9/2002 às 10:00Hs

Informações Gerais: Valor do edital: R\$ 10,00 (Dez Reais), Código do Depósito: 13000500001 - 001-2, Banco do Brasil -

Agência: 3602-1 Conta: 170500-8.

[Edital](#)

MINISTÉRIO DA EDUCAÇÃO

Fundação Universidade de Brasília

Hospital Universitário de Brasília

General View

Concorrência Nº **36/2002**

Objeto: Contrato de fornecimento de medicamentos a partir da data de assinatura a 31.12.02.

Edital a partir de: 26/7/2002 **das** 08:00 **às** 12:00 Hs **e das** 12:01 **às** 17:00 Hs

Endereço: Av L/2 Qd 604/5 , Asa Norte , Brasília - DF

Telefone: (0XX61) 448-5382 **FAX:** 448-5382

Entrega das Propostas: 27/8/2002 às 09:00Hs

Informações Gerais: O Edital será fornecido mediante recolhimento da importância de R\$10,00 (dez reais), por meio de depósito bancário na C/ C n. 170500/8, agência n. 3602/1, Cod. DV-Fin.1 5410615257006-7, Banco do Brasil, em nome do HUB.

[Edital](#)



Inverse Auction Agenda

Legal Framework



- Law n° 8.666, 1993
- Provisional Measure n.º 2.026, de 4/5/2000
- Decree n° 3.555, de 8 of August of 2000
- Decree n° 3.693, de 2 of December of 2000
- Decree n° 3.697, de 21 of December of 2000
- Decree n° 3.784, de 6 of April of 2001
- Law n° 10.520, de 17 of July of 2002

Inverse Auction and Virtual Inverse Auction



- *Background information on the adoption of the new mode of procurement*
- *Operational procedures*
- *Impacts of the use of the reverse auction*

Advantages of the Inverse Auction



- **Increased competition**
- **Ease of use**
- **Transparency and Social Control Guaranteed**
- **Increased participation opportunities**
- **Use of new technologies**

Inverse Auction



- **New tendering modality, introduced in August 2000**
- **Allows direct confrontation between suppliers**
- **Successive bids are made until a winner is announced**
- **There are two forms:**
 - **Live inverse bidding**
 - **Electronic inverse bidding**



Inverse Auction Use

- Procurement of “common goods and services”
- Performance and quality standards objectively defined in invitation for bid

EXAMPLES

COMMON GOODS

- Office supplies
- Furniture
- General appliances
- Equipment
- Fuels and lubricants
- Microcomputers

COMMON SERVICES

- Cleaning, security and maintenance
- Renting and maintenance of equipment
- Meal voucher
- Telephony
- Transport
- Health insurance

Electronic Inverse Auction



STAGES

- I - Announcement
- II - Qualification
- III - Registration of proposals
- IV - Presentation of bids
- V - Award

II - QUALIFICATION



- **Interested suppliers are previously qualified by the administrator of the electronic inverse auction system**
- **They receive access codes that allow participation in any reverse auction**

CADASTRO

Esta assinatura terá **VALIDADE** por **06 (seis) meses**, podendo ser renovada ao final deste prazo.

Dados Pessoais

Nome:
Data Nasc.: de Janeiro de
Endereço:
Cidade:
UF: AC - Acre
DDD: Telefone:
E-mail:

Supplier's View

Login

Usuário: (mínimo de 4 posições sem espaços em branco)
Senha: (mínimo de 6 posições sem espaços em branco)
Confirme a Senha:

Enviar e-mail

Pergunta:
Resposta:

Caso você esqueça sua senha, você poderá cadastrar uma nova senha. Para tanto, é preciso que você informe alguns dados de seu cadastro, juntamente com a



SERVIÇOS DO PORTAL

ACESSO LIVRE

LEGISLAÇÃO

PUBLICAÇÕES

FALE CONOSCO

AJUDA



Brasília, 27 de Agosto de 2002

PODER JUDICIÁRIO**Superior Tribunal Militar****Pregão Nº 36/2002****Objeto:** Fornecimento, com instalação, de balcões, armários e estante.**Edital a partir de:** 19/8/2002 **das** 13:00 **às** 17:55 Hs**Endereço:** SAS, Pç dos Tribunais Superiores, EdSede do STM,, Asa Sul - cep 70098-900 , Brasília - DF**Telefone:** (0XX61) 313-9189 **FAX:** 226-3629**Entrega das Propostas:** 30/8/2002 às 14:00Hs**Informações Gerais:** O fornecimento da cópia do Edital será mediante indenização no STM ou no site www.comprasnet.gov.br.[Edital](#)**PRESIDÊNCIA DA REPÚBLICA****Advocacia Geral da União****Coordenação-Geral de Serviços Gerais**

General View

Pregão Nº 18/2002**Objeto:** Pregão Eletrônico - Aquisição de material de consumo de informática.**Edital a partir de:** 23/8/2002 **das** 08:00 **às** 12:00 Hs **e das** 14:00 **às** 17:59 Hs**Endereço:** SIG qd 06, lote 800, 3º andar, sl 12 , Setor de Industrias Gráficas , Brasília - DF**Telefone:** (0XX61) 343-4844 **FAX:** 343-4859**Entrega das Propostas:** a partir de 4/9/2002 às 09:00Hs no site www.comprasnet.gov.br**Abertura das Propostas:** 5/9/2002 às 09:00Hs no site www.comprasnet.gov.br**Informações Gerais:** O edital deverá ser retirado exclusivamente no site www.comprasnet.gov.br[Edital](#)**MINISTÉRIO DA DEFESA****Gabinete do Ministro****Pregão Nº 9/2002**



SERVIÇOS DO PORTAL

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FALE CONOSCO

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Brasília, 27 de Agosto de 2002

ACOMPANHAMENTO

Sicaf/Web

Pregões

Agendados

Cotação de Preço

Encerrados e Não Homologados

Consultas

Acontecendo neste momento

Clique no número

Pregões encerrados**Pregões que estão acontecendo**

Simulador do Pregão Eletrônico

General View

Próximos pregões Eletrônicos agendados

Código	Orgão	Número	Horário início para envio de Propostas	Data de início	Situação
200005	MJ-CGS-COORDENACAO GERAL DE LOGISTICA/DF	312002	27/08/2002 14:00	28/08/2002 14:00	Aberto para Propostas
330005	MPAS-CGSG-COORD. GERAL DE SERVICOS GERAIS/DF	252002	28/08/2002 08:00	28/08/2002 16:00	Fechado para Propostas
170184	DELEGACIA DA REC.FEDERAL EM N.HAMBURGO/RS	12002	29/08/2002 08:00	29/08/2002 15:00	Fechado para Propostas
170316	DEL. ESPECIAL INST. FINANCEIRAS - RJ	22002	29/08/2002 08:00	29/08/2002 14:00	Fechado para Propostas
200005	MJ-CGS-COORDENACAO GERAL DE LOGISTICA/DF	342002	29/08/2002 08:00	29/08/2002 14:00	Fechado para Propostas
330005	MPAS-CGSG-COORD. GERAL DE SERVICOS GERAIS/DF	262002	29/08/2002 08:00	29/08/2002 14:00	Fechado para Propostas
330005	MPAS-CGSG-COORD. GERAL DE SERVICOS GERAIS/DF	272002	29/08/2002 08:00	29/08/2002 16:00	Fechado para Propostas
110102	UNIDADE REGIONAL DA DGA NO RIO DE JANEIRO/RJ	82002	29/08/2002 10:00	30/08/2002 10:00	Fechado para Propostas

III - REGISTRATION OF PROPOSALS



- Bidders make their price proposals through the Internet, on the day and time defined on the Invitation to Bid
- the inverse auction begins with the opening of the proposals

Busca

OK

SERVIÇOS POR ASSINATURA

LIVRE ACESSO

LEGISLAÇÃO

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PÁGINA INICIAL

Proposta:

Os valores de proposta devem ser informados com as casas decimais e sem pontos e vírgulas de separação (Ex: mil quinhentos e vinte reais e trinta centavos - 152030).

O Valor Total deve ser igual ao Valor Unitário multiplicado pela Quantidade.

Item	Descrição	Unid. de Fornecimento	Quant. X	Valor Unitário	Valor Total
1	<u>COPO</u>	CX	280	0,50	140,00
Marca deste copo		descrição do produto			
2	<u>COPO</u>	CX	60		

Supplier's View

Declaro que estou ciente e concordo com as condições contidas no edital e seus anexos.

Obs.: Os itens cujo campo de proposta estiver em branco não serão cadastrados, podendo ser encaminhados posteriormente. Os itens de sua proposta, depois de enviados e aceitos, não poderão ser alterados ou excluídos.

Voltar

Incluir



Inverse Auctions Underway

IV - PRESENTATION OF BIDS



- **Bidders can make their bids on the Internet**
- **the system only accepts prices that are lower than the lowest initial proposal or the previous bid**
- **the bidding stage may be concluded in two ways:**
 - 1. Randomly**
 - 2. Upon the reverse auctioneer's decision**

COMPRASNET

PORTAL DE COMPRAS DO GOVERNO FEDERAL



Ministério do Planejamento

Brasília, 23 de Setembro de 2002

- SERVIÇOS DO PORTAL
- ACESSO LIVRE
- LEGISLAÇÃO
- PUBLICAÇÕES
- FALE CONOSCO
- AJUDA

- Sicaf/Web
- Pregões
 - Agendados
 - Encerrados e Não Homologados
 - Acontecendo neste momento
 - Simulador do Pregão Eletrônico
- Cotação de Preg
- Consultas

137 Novas Licitações

Os Negócios Eletrônicos - Os Municípios e as Compras.net -

NOTÍCIAS COMPRASNET

[mais Notícias](#)

- Pregão ganha primeiro lugar no Concurso de Inovações**
O Ministério do Planejamento, Orçamento e Gestão ganhou o primeiro lugar entre os destaques do 7º Concurso de Inovações na Gestão Pública Federal - Prêmio...

[Saiba mais...](#)

- Pregão Eletrônico trouxe economia de R\$ 500 milhões em 2 anos**
O Ministro do Planejamento, Orçamento e Gestão, Guilherme Dias, disse, ao abrir o Seminário "A Nova modalidade de licitação", que o pregão eletrônico trouxe...

[Saiba mais...](#)

CADASTRO

Faça seu cadastro para utilizar os serviços do Portal.

[Clique aqui](#)

DESTAQUE

SISTEMA INT DE ADMIN DE SERVIÇOS

O portal brasileiro oferece oportunidades em informática e negócios

Curso para servidores das áreas de recursos humanos

Conheça os serviços disponíveis



SG: 200999 - MIN. DO PLANEJAMENTO ORÇAMENTO E GESTAO/DF Numero: 1352001

Item	Descrição	Lance Mínimo (R\$)	Seu Último Lance (R\$)	Situação	Lance	
------	-----------	--------------------	------------------------	----------	-------	--

(Clique sobre o número do item para ver as propostas)

Horário de Brasília: 19/11/2001 16:15

 1	<u>COPO</u>	196,00	196,00	Aberto	<input type="text"/>	Enviar
 2	<u>COPO</u>	48,00	48,00	Fechado		

Supplier's View



- Seu lance é o vencedor.



- Seu lance NÃO é o vencedor.

/11/2001 16:16:21) Pregoeiro Fala: Estamos abrindo o item 1 para lances.

/11/2001 16:16:11) Pregoeiro Fala: Boa tarde ao fornecedores.

Mensagem:

Ok



ACOMPANHAMENTO DE PREGÃO

- Clique no número da licitação para ver detalhes

Pregões agendados

Pregões encerrados e não homologados

General View

Pregões Eletrônicos que estão acontecendo

Código	Nome	Número
330005	MPAS-CGSG-COORD. GERAL DE SERVICOS GERAIS/DF	<u>322002</u>

Pregões Presenciais que estão acontecendo

Código	Nome	Número
510190	GERÊNCIA EXECUTIVA EM BLUMENAU/SC	<u>12002</u>
254445	INSTITUTO DE TECNOLOGIA EM IMUNOBIOLOGICOS	<u>12002</u>
90004	JUSTICA FEDERAL DE 1A. INSTANCIA - MA	<u>82002</u>
255011	MS-FNS-FUNDAÇÃO NACIONAL DE SAUDE/MT	<u>172002</u>
170177	SUP.REGIONAL RECEITA FEDERAL 10A.RF/RS	<u>72002</u>
153233	ESCOLA AGROTECNICA FEDERAL DE SANTA TERESA/ES	<u>22002</u>



SERVIÇOS DO PORTAL

PROCESSOS LIVRES

LEGISLAÇÃO

PUBLICAÇÕES

FALE CONOSCO

AJUDA

Brasília, 23 de Setembro de 200

ACOMPANHAMENTO

Clique no número

MINISTÉRIO DA PLANEJAMENTO
Secretaria Executiva
Subsecretaria de Administração
Coordenação-Geral

Pregão nº 32200

Objeto: Pregão Eletrônico deste Ministério.

Descrição: Informação através de disquete

Data da Realização

Data da Abertura

Clique sobre o número

<http://www.comprasnet.gov.br/livre/Pregao/encerrados.asp?ipgCod=5153&ipgIte...>

Recursos Impetrados

COMPRASNET Não foram impetrados recursos para este item

Menores lances dos Participantes

CNPJ/CPF	Razão Social	Lance Mínimo
03615937000160	MULTIPLIK COMERCIO E SERVICOS LTDA EPP	3460,00
04453347000140	JOSE APARECIDO DE ARAUJO	3465,00
00794891000286	MOVAP LTDA	3500,00
62444393000180	RIPEL COMERCIO DE PAPEIS E MATERIAL DE ESCRITORIO LTDA	4000,00
04779912000164	TCA - MUNDIAL COMERCIO E SERVIÇOS LTDA - ME	4050,00
04252973000179	MARIKA COMERCIAL S. ME	4050,00
02228958000160	MARIKA COMERCIAL LTDA	4900,00
03370409000198	LUCANE COMERCIAL E REPRESENTACOES LTDA	4950,00
48254833000105	INDUSTRIA DE ARTEFATOS DE PAPEL ANHANGUERA LTDA	5500,00
02866437000138	INFORPAPER COMERCIAL DE FITAS E PAPEIS LTDA	5750,00
00846864000129	EXCLUSIVA GRAFICA PAPELARIA E INFORMATICA LTDA	5975,00
04879948000110	VETTA COMÉRCIO DE EQUIPAMENTOS LTDA	6000,00
00120428000178	PAPELARIA BRITO COMERCIO, IMPORTACAO E REPRESENTACAO LT	6000,00
04783246000138	PAPELARIA WESPI LTDA.	6000,00
03616315000156	EXPEDGRAF GRAFICA E PAPELARIA LTDA EPP	6000,00

Central

te cópia

Item

12345678

PECAS / COMPONENTES - COPIADORA

Encerrado

150,00

Recurso

MAQUINA CALCULAR / COMPONENTE

Encerrado

9,48

Recurso

MAQUINA CALCULAR / COMPONENTE

Encerrado

111,00

Recurso



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PLAST

[97](#)[98](#)[99](#)[100](#)

Pregão Eletrônico - Microsoft Internet Explorer fornecido por Rede MP

COMPRASNET
Pregão Eletrônico

Propostas para o item **86** do Pregão **322002**

Proposta	Valor (R\$)
Proposta 1	9633,00
Proposta 2	18620,00
Proposta 3	12160,00
Proposta 4	14820,00
Proposta 5	17480,00
Proposta 6	18202,00
Proposta 7	18601,00
Proposta 8	13110,00
Proposta 9	13281,00
Proposta 10	18601,00
Proposta 11	18620,00
Proposta 12	18430,00

Fechar

, 23 de Setembro de 200

[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)

General View

[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)[Recurso](#)

PORTA

[Encerrado](#)

2555,00

BLOCO RECADO

[Encerrado](#)

3442,50

CARRETEL DE FITA MAGNETICA

[Encerrado](#)

20480,00

CARRETEL DE FITA MAGNETICA

[Encerrado](#)

760,00



Inverse Auctions Aid Memoirs

V - AWARD



- **The winner is announced immediately on the electronic system (Aid Memoirs of the session)**
- **the winner must prove eligibility to supply to the Federal Government**
- **the system posts the results of all approved reverse auctions**



SERVIÇOS DO PORTAL

ACESSO LIVRE

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Brasília, 15 de Agosto de 200

ACOMPANHAMENTO

Sicaf/Web

Pregões

Cotação de Preços

Consultas

Atas de Pregões

Clique no número

Pregões agenda

Pregões encerrados e não ho

Extratos de Contratos

Resultados de Licitações

Pregões Eletrônicos que estão ac

SICAF - CRC (Certificado de Registro Cadastral)

Código

Linhas de Fornecimento

Número

Extrato de Licitações (sem itens)

mento

Pregões Presenciais que estão ac

Certidão Negativa

Portaria do Diário Oficial

Código

Número

254445

Unidades Administrativas de Serviços Gerais

BIOLOGICOS

12002

280101

MICT-CGSG-COORD.-GERAL DE SERVICOS GERAIS/DF

32002

170121

DELEGACIA DA RECEITA FEDERAL EM NITEROI/RJ

22002

153233

ESCOLA AGROTECNICA FEDERAL DE SANTA TERESA/ES

22002

General View



SERVIÇOS DO PORTAL

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FALE CONOSCO

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Brasília, 15 de Agosto de 200

CONSULTA ATA DE PREGÃO

Informe UF e Órgão, ou Uasg, ou Período

Caso não saiba o código da Uasg, informe o nome ou parte dele.

UF Órgão

OU

Código

Nome

Uasg OU

OU

Período de a de

General View

[SERVIÇOS DO PORTAL](#)[ACESSO LIVRE](#)[LEGISLAÇÃO](#)[PUBLICAÇÕES](#)[FALE CONOSCO](#)[AJUDA](#)

Brasília, 15 de Agosto de 2002

CONSULTA ATA DE PREGÃO

Informe UF e Órgão, ou Uasg, ou Período

Caso não saiba o código da Uasg, informe o nome ou parte dele.

UF	<input type="text" value="DF - Distrito Federal"/>							
Órgão	<input type="text" value="ADVOCACIA-GERAL DA UNIAO"/>							
OU								
Uasg	<table><tr><td><input type="text"/></td><td>Código</td></tr><tr><td><input type="text"/></td><td>Nome</td></tr></table>	<input type="text"/>	Código	<input type="text"/>	Nome			
<input type="text"/>	Código							
<input type="text"/>	Nome							
OU								
Período	<table><tr><td><input type="text" value="Janeiro"/></td><td>de</td><td><input type="text" value="2002"/></td><td>a</td><td><input type="text" value="Julho"/></td><td>de</td><td><input type="text" value="2002"/></td></tr></table>	<input type="text" value="Janeiro"/>	de	<input type="text" value="2002"/>	a	<input type="text" value="Julho"/>	de	<input type="text" value="2002"/>
<input type="text" value="Janeiro"/>	de	<input type="text" value="2002"/>	a	<input type="text" value="Julho"/>	de	<input type="text" value="2002"/>		

General View

[SERVIÇOS DO PORTAL](#)[ACESSO LIVRE](#)[LEGISLAÇÃO](#)[PUBLICAÇÕES](#)[FALE CONOSCO](#)[AJUDA](#)

Brasília, 15 de Agosto de 200

CONSULTA ATA DE PREGÃO

Unidade Gestora: ▾**Número do Pregão:**[Voltar](#)[OK](#)

General View



General View

RESIDÊNCIA DA REPÚBLICA
 Advocacia Geral da União
 Ordenação-Geral de Serviços Gerais

Ata de Realização do Pregão Eletrônico
 Nº 1/2002

Às 10:00 horas do dia 19 de fevereiro de 2002, reuniu-se o Pregoeiro Oficial deste Órgão e respectivos membros da Equipe de apoio, designados por Portaria 33-DGA/AGU de 18/04/2002, para em atendimento às disposições contidas no Decreto 3555/2000, com as alterações do Decreto nº 3693/2000, referente ao Processo nº 00404013989200168, realizar os procedimentos relativos ao Pregão nº 002. Objeto: Pregão Eletrônico - Contratação de empresa especializada para a prestação de serviços de limpeza, conservação e higienização incluindo o fornecimento de todos os materiais e equipamentos, nas instalações da Procuradoria da União no Estado de Goiás/GO.. Inicialmente, o Pregoeiro abriu a sessão pública em atendimento às disposições contidas no edital, divulgando as propostas recebidas e abrindo a fase de lances. Ao final do prazo previsto no edital, foram encerradas as ofertas de lances.

Item: 1

Descrição: Limpeza e Conservação Predial

Objeto: Contratação de empresa especializada para a prestação de serviços de limpeza, conservação e higienização incluindo o fornecimento de todos os materiais e equipamentos, nas instalações da Procuradoria da União no Estado de Goiás/GO..



SERVIÇOS DO PORTAL

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Brasília, 15 de Agosto de 200

Item: 1

Descrição: Limpeza e Conservação Predial**Descrição Complementar:** Serviço de limpeza, conservação e higienização, incluindo o fornecimento de todo o material e equipamento, nas instalações da PU/GO.**Quantidade:** 1**Unidade de fornecimento:** UN**Valor de referência:** R\$ 33600,00**Valor do menor lance:** R\$ 20350,00**Situação:** **Adjudicado****Adjudicado para:** SECAL SERVICOS DE ENGENHARIA CONSERVACAO E ASSEIO LTDA, por R\$ 20350,00

General View

Histórico

Item: 1

Participaram deste item as empresas abaixo relacionadas, com suas respectivas propostas:

Fornecedor	CNPJ/CPF	Valor (R\$)
SECAL SERVICOS DE ENGENHARIA CONSERVACAO E ASSEIO LTDA	26906867/0001-02	27931,56
ORRA GARDEN GRAMADOS E PAISAGISMO LIMITADA	02451546/0001-94	2505,75
ARTESUL-SERVICOS, CONSTRUCOES E SANEAMENTO LTDA	03059584/0001-69	2485,20
ARTESUL - ART LIMPEZA E SERVICOS LTDA	01260858/0001-58	1851,36
CONSERVADORA DE LIMPEZA FERLIM LTDA	42116376/0001-06	2690,43
AGROSERVICE EMPREITEIRA AGRICOLA LTDA	00478727/0001-89	30986,52
AGROSERVICE - CUIDO ADMINISTRAÇÃO E SERVIÇOS LTDA	02377675/0001-80	27494,04

Observações (Obs: lances com * na frente foram excluídos pelo pregoeiro)

Valor do lance R\$

CNPJ/CPF

Data



SERVIÇOS DO PORTAL

ACESSO LIVRE

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AJUDA



Brasília, 15 de Agosto de 2002

Histórico

Item: 1

Observação: Participaram deste item as empresas abaixo relacionadas, com suas respectivas propostas:

Fornecedor	CNPJ/CPF	Valor (R\$)
AL SERVICOS DE ENGENHARIA CONSERVACAO E ASSEIO LTDA	26906867/0001-02	27931,56
ORA GARDEN GRAMADOS E PAISAGISMO LIMITADA	02451546/0001-94	2505,75
RTESUL-SERVICOS, CONSTRUCOES E SANEAMENTO LTDA	03059584/0001-69	2485,20
IP - ART LIMPEZA E SERVICOS LTDA	01260858/0001-58	1851,36
NSERVADORA DE LIMPEZA FERLIM LTDA	42116376/0001-06	2690,43
ROSERVICE EMPREITEIRA AGRICOLA LTDA	00478727/0001-89	30986,52
CUDO ADMINISTRAÇÃO E SERVIÇOS LTDA	02377675/0001-80	27494,04

General View

Propostas (Obs: lances com * na frente foram excluídos pelo pregoeiro)

Valor do lance R\$	CNPJ/CPF	Data	
1850,00	42116376/0001-06	19/02/2002 10:02:21	*
27400,00	00478727/0001-89	19/02/2002 10:07:25	
27000,00	02451546/0001-94	19/02/2002 10:08:03	
26950,00	42116376/0001-06	19/02/2002 10:08:35	
26900,00	26906867/0001-02	19/02/2002 10:09:20	
26850,00	00478727/0001-89	19/02/2002 10:09:49	
26800,00	42116376/0001-06	19/02/2002 10:10:23	
26750,00	02451546/0001-94	19/02/2002 10:10:55	
26700,00	26906867/0001-02	19/02/2002 10:10:59	
26650,00	42116376/0001-06	19/02/2002 10:11:30	
26600,00	00478727/0001-89	19/02/2002 10:11:40	



SERVIÇOS DO PORTAL

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Brasília, 15 de Agosto de 200

lances (Obs: lances com * na frente foram excluídos pelo pregoeiro)

Valor do lance R\$	CNPJ/CPF	Data	
1850,00	42116376/0001-06	19/02/2002 10:02:21	*
27400,00	00478727/0001-89	19/02/2002 10:07:25	
27000,00	02451546/0001-94	19/02/2002 10:08:03	
26950,00	42116376/0001-06	19/02/2002 10:08:35	
26900,00	26906867/0001-02	19/02/2002 10:09:20	
26850,00	00478727/0001-89	19/02/2002 10:09:49	
26800,00	42116376/0001-06	19/02/2002 10:10:23	
26750,00	02451546/0001-94	19/02/2002 10:10:55	
26700,00	26906867/0001-02	19/02/2002 10:10:59	
26650,00	42116376/0001-06	19/02/2002 10:11:30	
26600,00	00478727/0001-89	19/02/2002 10:11:40	
26500,00	02451546/0001-94	19/02/2002 10:12:03	
26450,00	42116376/0001-06	19/02/2002 10:12:22	
26400,00	26906867/0001-02	19/02/2002 10:12:38	
26000,00	00478727/0001-89	19/02/2002 10:13:13	
25950,00	42116376/0001-06	19/02/2002 10:13:42	
25900,00	00478727/0001-89	19/02/2002 10:14:06	
25800,00	02451546/0001-94	19/02/2002 10:14:25	
25750,00	26906867/0001-02	19/02/2002 10:14:50	
25500,00	00478727/0001-89	19/02/2002 10:15:07	
25300,00	42116376/0001-06	19/02/2002 10:15:31	
25200,00	00478727/0001-89	19/02/2002 10:15:58	
24100,00	02451546/0001-94	19/02/2002 10:16:10	

General View



SERVIÇOS DO PORTAL

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Brasília, 15 de Agosto de 2002

25200,00	00478727/0001-89	19/02/2002 10:15:58
24600,00	02451546/0001-94	19/02/2002 10:16:10
24000,00	42116376/0001-06	19/02/2002 10:16:45
23900,00	00478727/0001-89	19/02/2002 10:17:25
23800,00	26906867/0001-02	19/02/2002 10:17:38
23750,00	00478727/0001-89	19/02/2002 10:18:21
23500,00	42116376/0001-06	19/02/2002 10:18:27
23400,00	26906867/0001-02	19/02/2002 10:19:05
23300,00	00478727/0001-89	19/02/2002 10:19:54
23250,00	26906867/0001-02	19/02/2002 10:20:26
23100,00	00478727/0001-89	19/02/2002 10:21:10
23050,00	26906867/0001-02	19/02/2002 10:22:00
23040,00	00478727/0001-89	19/02/2002 10:22:55
23000,00	02451546/0001-94	19/02/2002 10:23:31
22990,00	26906867/0001-02	19/02/2002 10:23:53
22980,00	00478727/0001-89	19/02/2002 10:24:23
22950,00	02451546/0001-94	19/02/2002 10:24:33
22750,00	00478727/0001-89	19/02/2002 10:25:13
22650,00	26906867/0001-02	19/02/2002 10:25:45
22620,00	02451546/0001-94	19/02/2002 10:26:56
22600,00	00478727/0001-89	19/02/2002 10:27:20
22550,00	26906867/0001-02	19/02/2002 10:27:37
22540,00	02451546/0001-94	19/02/2002 10:31:55
22530,00	26906867/0001-02	19/02/2002 10:32:25

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	22530,00		26906867/0001-02				19/02/2002 10:32:25
	22520,00		00478727/0001-89				19/02/2002 10:34:13
	22510,00		26906867/0001-02				19/02/2002 10:34:46
	22505,00		00478727/0001-89				19/02/2002 10:35:27
	22500,00		26906867/0001-02				19/02/2002 10:36:18
	22490,00		00478727/0001-89				19/02/2002 10:36:43
	22480,00		26906867/0001-02				19/02/2002 10:37:05
	22475,00		00478727/0001-89				19/02/2002 10:37:27
	22470,00		26906867/0001-02				19/02/2002 10:37:51
	22465,00		00478727/0001-89				19/02/2002 10:38:47
	22460,00		26906867/0001-02				19/02/2002 10:39:35
	22455,00		00478727/0001-89				19/02/2002 10:40:59
	22450,00		26906867/0001-02				19/02/2002 10:42:00
	22445,00		00478727/0001-89				19/02/2002 10:42:25
	22440,00		26906867/0001-02				19/02/2002 10:42:46
	22335,00		00478727/0001-89				19/02/2002 10:43:15
	22330,00		26906867/0001-02				19/02/2002 10:43:34
	22325,00		00478727/0001-89				19/02/2002 10:44:36
	22320,00		26906867/0001-02				19/02/2002 10:45:22
	22315,00		00478727/0001-89				19/02/2002 10:45:57
	21250,00		26906867/0001-02				19/02/2002 10:46:57
	21200,00		42116376/0001-06				19/02/2002 10:47:53
	21000,00		00478727/0001-89				19/02/2002 10:48:09
	20900,00		26906867/0001-02				19/02/2002 10:48:32

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	22315,00		00478727/0001-89				19/02/2002 10:45:57
	21250,00		26906867/0001-02				19/02/2002 10:46:57
	21200,00		42116376/0001-06				19/02/2002 10:47:53
	21000,00		00478727/0001-89				19/02/2002 10:48:09
	20900,00		26906867/0001-02				19/02/2002 10:48:32
	20850,00		42116376/0001-06				19/02/2002 10:49:18
	20500,00		00478727/0001-89				19/02/2002 10:49:32
	20400,00		26906867/0001-02				19/02/2002 10:50:08
	20350,00		26906867/0001-02				19/02/2002 10:50:25

Pontos do Item

Evento	Data	Observações
Aberto	19/02/2002 10:00:58	
Encerrado	19/02/2002 10:02:32	
Aberto	19/02/2002 10:06:02	
Encerrado	19/02/2002 10:50:33	
Judicado	28/02/2002 15:16:02	

Cursos Impetrados

C: 00478727000189

General View

Descrição: A conduta do Sr. Pregoeiro é contrária ao MANUAL DO PREGOEIRO, extraído da própria página do COMPRASNET, in verbis: c) Encerrando um item - é uma decisão do pregoeiro que deve ser comunicada pelo Chat aos participantes do certame e ser tomada no momento em que não houver mais competição ou novos lances. Após o encerramento, ... É certo que o Sr. Pregoeiro deveria decidir por sua suspensão e não pelo encerramento, como foi feito.

Data: 19/02/2002 11:34

C: 00478727000189



SERVIÇOS DO PORTAL

ACESSO LIVRE

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Brasília, 15 de Agosto de 2002

ta: 19/02/2002 11:34

C: 00478727000189

Descrição: Fundamento para interposição de recurso. Sr. Pregoeiro, conforme solicitado através de questionamento registrado em tela, estavam incluindo um novo lance, e o mesmo não foi registrado, e foi declarado encerrado o pregão, qual a posição em relação ao fato? Sendo certo que tal procedimento não se coaduna com o subitem 6.7 do Edital. O que feriu o princípio da economicidade.

ta: 19/02/2002 10:59

General View

ca de Mensagens

	Data	Mensagem
goveiro	19/02/2002 10:05:38	Lances excluídos em razão de apresentarem cotação inferior ao solicitado no Edital, ou seja, foi solicitado valor global anual .
goveiro	19/02/2002 10:07:14	Senhores Licitantes, a partir deste momento o Sistema esta aberto para lances.
059584/0001-69	19/02/2002 10:09:08	Porque a nossa proposta foi excluída..
059584/0001-69	19/02/2002 10:09:27	Porque a nossa proposta foi excluída..
059584/0001-69	19/02/2002 10:12:58	QUANDO CADASTRAMOS NOSSA PROPOSTA, FOI FEITA UMA OBSERVAÇÃO QUE O VALOR ERA MENSAL..
006867/0001-02	19/02/2002 10:13:37	pregoeiro quantas empresa participa neste momento
260858/0001-58	19/02/2002 10:15:02	SENHOR PREGOEIRO, QUANDO APRESENTAMOS PROPOSTA O SISTEMA SO ACEITOU O PREÇO MENSAL E NAO O ANUAL, PORÉM EM NOSSA PLANILHA ESTA TANTO MENSAL QUANTO ANUAL, NAO JUSTIFICANDO A NOSSA DESCLASSIFICAÇÃO



SERVIÇOS DO PORTAL

ACESSO LIVRE

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Brasília, 15 de Agosto de 2008

60858/0001-58	19/02/2002 10:15:02	SENHOR PREGOEIRO, QUANDO APRESENTAMOS PROPOSTA O SISTEMA SO ACEITOU O PREÇO MENSAL E NAO O ANUAL, PORÉM EM NOSSA PLANILHA ESTA TANTO MENSAL QUANTO ANUAL, NAO JUSTIFICANDO A NOSSA DESCLASSIFICAÇÃO
pregoeiro	19/02/2002 10:17:00	O subitem 4.6.2 do Edital solicitou que a proposta de preço fosse apresentada com preço unitário e total, todavia, o Sistema esta operando com valor global anual, tornado os valores excluídos inexequíveis.
59584/0001-69	19/02/2002 10:17:09	SR PREGOEIRO AO INVES DE DESCLASSIFICAR A PROPOSTA, V. SAS, PODERIA MUTIPLICAR O VALOR MENSAL POR 12
06867/0001-02	19/02/2002 10:20:15	quantas empresas participantes?????
pregoeiro	19/02/2002 10:20:34	Não é permitido ao Pregoeiro a alteração dos valores informados.
16376/0001-06	19/02/2002 10:20:53	Será que essas empresas estão ctando preços para 03 homens ?
pregoeiro	19/02/2002 10:25:13	Todas as cotações devem estar em conformidade com o Edital, sob pena de desclassificação
60858/0001-58	19/02/2002 10:26:08	SENHOR PREGOEIRO O ITEM 4.6 CITADO EXIGE PROPOSTA 48 HS. APOS O ENCERRAMENTO DA ETAPA DE LANCE QUE ESTA OCORRENDO NESTE MOMENTO OU SEJA PREÇOS UNITARIOS E TOTAIS ATUALIZADO EM CONFORMIDADE COM OS LANCE EVENTUAMENTO OFERTADOS. NO ENCAMINHAMENTO DE NOSSA PROPOSTA O SISTEMA SO ACEITOU O PREÇO UNITARIO MENSAL. E RECEBEMOS MENSAGEM DE QUE NOSSA PROPOSTA FOI ENCAMINHADA COM SUCESSO PORTANTO A DESCLASSIFICACAO DE NOSSA PROPOSTA TORNA SE INJUSTIFICA
59584/0001-69	19/02/2002 10:26:39	SR. PREGOEIRO, ENTAO EM TODOS OS PREGOES ELETRONICOS DEVERÁ SER INFORMADO O VALOR ANUAL, INDEPENDENTE DO EDITAL SOLICITAR OU NÃO?
06867/0001-02	19/02/2002 10:26:47	nao estou obtendo as minhas respostas, ha! algum poblema
78727/0001-89	19/02/2002 10:27:08	É possível informar quantas empresas estão participando da etapa de lances?
pregoeiro	19/02/2002 10:28:38	Todas as cotações devem estar em conformidade com o Edital, sob pena

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Brasília, 15 de Agosto de 200

		lances?
pregoeiro	19/02/2002 10:28:38	Todas as cotações devem estar em conformidade com o Edital, sob pena de desclassificação.
pregoeiro	19/02/2002 10:29:01	No momento, existem 06 usuários conectados
059584/0001-69	19/02/2002 10:29:24	MAS O EDITAL NAO PEDIA O VALOR ANUAL, COMO A NOSSA PROPOSTA FOI DESCLASSIFICADA?
006867/0001-02	19/02/2002 10:29:35	pregoeiro não estou tendo respostas??
060858/0001-58	19/02/2002 10:29:48	SENHOR PREGOEIRO, A MEU VER, A DESCLASSIFICACAO DE PROPOSTA EM RAZAO DE NAO APRESENTAÇÃO DO VALOR GLOBAL ANUAL NO SISTEMA NAO E MOTIVO JUSTIFICAVEL PARA DESCLASSIFICAR TANTAS EMPRESAS. COMO FICA A COMPETITIVIDADE DO PREGAO.
006867/0001-02	19/02/2002 10:29:53	quantas empresas participa neste momento dos lances
078727/0001-89	19/02/2002 10:30:01	Qual o tempo para isto, entre um lance e outro?
pregoeiro	19/02/2002 10:31:34	Dentro de vinte minutos estará encerrada a etapa de lances.
059584/0001-69	19/02/2002 10:33:27	SR. PREGOEIRO, ENTAO EM TODOS OS PREGOES ELETRONICOS DEVERÁ SER INFORMADO O VALOR ANUAL, INDEPENDENTE DO EDITAL SOLICITAR OU NÃO?
059584/0001-69	19/02/2002 10:37:39	SR. PREGOEIRO, O SR. FALOU QUE O SISTEMA OPERAR COM PREÇO ANUAL. PERGUNTO, EM TODOS OS PREGOES DEVERÁ SER CONSIDERADO O PREÇO ANUAL, SIM OU NÃO?
059584/0001-69	19/02/2002 10:37:42	SR. PREGOEIRO, O SR. FALOU QUE O SISTEMA OPERAR COM PREÇO ANUAL. PERGUNTO, EM TODOS OS PREGOES DEVERÁ SER CONSIDERADO O PREÇO ANUAL, SIM OU NÃO?
pregoeiro	19/02/2002 10:37:48	Este Pregoeiro somente pode pronunciar a respeito dos certames realizados por este Órgão. Questões relativas ao Sistema deverão ser encaminhadas ao Ministério do Planejamento, pelo telefone 0800782323
006867/0001-02	19/02/2002 10:39:27	pregoeiro não teria que estar participando somente 03 empresa as quais apresentaram seus preços corretos

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Brasília, 15 de Agosto de 200

06867/0001-02	19/02/2002 10:39:27	pregoeiro não teria que estar participando somente 03 empresa as quais apresentaram seus preços corretos
16376/0001-06	19/02/2002 10:39:51	Sr. Pregoeiro, gostaríamos de saber se estão cotados os três funcionários, solicitados ?
16376/0001-06	19/02/2002 10:40:47	Se fosse para fazer o serviço com quantitativo, reduziríamos para dois funcionários. pode ?
16376/0001-06	19/02/2002 10:44:09	As respostas por favor !
pregoeiro	19/02/2002 10:44:58	O Edital prevê 03 Serventes.
pregoeiro	19/02/2002 10:46:40	O efetivo de Serventes não pode ser inferior a 03.
260858/0001-58	19/02/2002 10:46:46	SENHOR PREGOEIRO, EMBASADO EM QUAL ITEM DO EDITAL O SENHOR DESCLASSIFICOU AS PROPOSTA APRESENTADAS COM PREÇOS INCONSISTENTES ?
pregoeiro	19/02/2002 10:47:10	Todos os questionamentos foram respondidos?
pregoeiro	19/02/2002 10:47:52	Encerraremos esta fase em três minutos.
478727/0001-89	19/02/2002 10:48:56	Sr Pregoeiro, e caso o Sr. encerre no momento de um lance? e o mesmo não for registrado?
pregoeiro	19/02/2002 10:49:51	São considerados os lances registrados no Sistema.
260858/0001-58	19/02/2002 10:49:54	SENHOR PREGOEIRO, O QUE VALE É O QUE CONSTA DO EDITAL E NAO INFORMAÇÕES EM CASO DE DUVIDAS. NAO TIVE DUVIDA EM NENHUM MOMENTO HAJA VISTO QUE O EDITAL NAO SOLICITOU PROPOSTA SOMENTE ANUAL. ?
pregoeiro	19/02/2002 10:50:52	Encerrada a etapa de lances.
260858/0001-58	19/02/2002 10:55:45	O VENCEDOR E TODAS AS EMPRESAS PARTICIPANTES SAIRÁ AGORA ?
478727/0001-89	19/02/2002 10:58:29	Sr. Pregoeiro, o procedimento de encerrar o pregão da forma em que ocorreu não se coaduna com o subitem 6.7 do Edital.
pregoeiro	19/02/2002 10:59:05	Menor preço cotado - R\$ 20.350,00 apresentado pela empresa SECAL SERVIÇOS DE ENGENHARIA CONSERVAÇÃO E ASSEIO LTDA.

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Brasília, 15 de Agosto de 2002

Pregoeiro	19/02/2002 10:59:05	Menor preço cotado - R\$ 20.350,00 apresentado pela empresa SECAL SERVIÇOS DE ENGENHARIA CONSERVAÇÃO E ASSEIO LTDA.
Pregoeiro	19/02/2002 11:33:35	Dentro de trinta minutos encerraremos o prazo para manifestação da intenção de interposição de recurso.
178727/0001-89	19/02/2002 11:55:29	Conforme exarado pelo Sr. Pregoeiro às 10:05:38, deveria estar participando da etapa de lances, três empresa, conforme relação de proposta, e não seis, como o que ocorreu.
Pregoeiro	19/02/2002 12:09:02	Encerrado o prazo para manifestação de interposição de recursos.
178727/0001-89	19/02/2002 12:21:54	Sr. Pregoeiro, obrigado pela atenção dispensada.

Com o encerramento da fase de lances, os licitantes melhor classificados foram declarados vencedores dos respectivos itens, foi divulgado o resultado da licitação conforme indicado no quadro Resultado da Sessão Pública e foi concedido o prazo recursal conforme preconiza o inciso XVII, do artigo 11, do Decreto 3555/2000. Nada mais havendo a declarar, foi encerrada a sessão cuja ata foi lavrada e assinada pelo Pregoeiro e equipe de apoio.

ALEXANDRE MOREIRA DE ASSIS FILHO
Pregoeiro Oficial

General View

MILDO MEIRELES SANTOS
Equipe de Apoio



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Relatório

Voltar



Tender Results



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Brasília, 15 de Agosto de 200

CONSULTA RESULTADO DE LICITAÇÃO

Informe UF e Órgão, ou Uasg

Caso não saiba o código da Uasg, informe o nome ou parte dele

UF

Órgão

ou

Código

Nome

Uasg ou

OK

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Brasília, 15 de Agosto de 200

CONSULTA RESULTADO DE LICITAÇÃO

Informe UF e Órgão, ou Uasg

Caso não saiba o código da Uasg, informe o nome ou parte dele

UF

Órgão

ou

Código

Nome

Uasg ou

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CONSULTA RESULTADO DE LICITAÇÃO

Informe a data do resultado da licitação ou seu número

Uasg:

110062 - COORDENADORIA-GERAL RECURSOS HUMANOS/DGA/AGU ▼

Modalidade:

05 - Pregão ▼

Data:

▼ de ▼ ou Número: 0012002

Voltar **OK**

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Brasília, 25 de Setembro de 2002

Uasg: 110061 - COORDENAÇÃO-GERAL DE SERVIÇOS GERAIS

Data: 07 / 2002

Modalidade: 05 - Pregão

Número da Licitação: 17/2002

CNPJ/CPF: 01.740.439/0001-13

Razão Social/Nome: TECNO E QUALITY TELEMATICA LTDA ME

Ítem da Licitação: 00001

Situação: INFORMADO

Cod. do Serviço: 122971

Identificação Serviço: COMPUTADOR DE DADOS (REDE MICRO - SWITCH)

Descrição Detalhada do Serviço: POSSUIR NO MÍNIMO 24 PORTAS SWITCH FAST ETHERNET 10/100BASETX, COM CONECTORES RJ 45 DIRETAMENTE NO EQUIPAMENTO, NÃO SENDO PERMITIDO O USO DE CONECTORES DO TIPO TELCO OU HARMÔNICAS. DEVE SUPOSTAR AS SEGUINTE TECNOLOGIAS ETHERNET, FAST ETHERNET, GIGABIT ETHERNET; CAPACIDADE PARA NO MÍNIMO 2 PORTAS FAST ETHERNET 100BASEFX; IMPLEMENTAR O PROTOCOLO 802.3X; IMPLEMENTAR CONTROLE DE FLUXO EM FULL DUPLEX E HALF DUPLEX; IMPLEMENTAR GERENCIAMENTO VIA WEB; IMPLEMENTAR O PROTOCOLO SPANNING TREE; PERMITIR O EMPILHAMENTO COM OUTRO SWITCH DE FORMA A CONSTRUIR UMA ÚNICA UNIDADE LÓGICA SENDO QUE TODA A PILHA DEVE SER GERENCIADA COM ÚNICO ENDEREÇO IP, ATÉ 192 PORTAS 10/100MBPS; POSSUIR NO MÍNIMO 4 FILAS PARA PRIORIZAÇÃO DE TRÁFEGO; DEVE SUPOSTAR GERENCIAMENTO RMON IMPLEMENTADO NO MÍNIMO 4 GRUPOS; POSSUIR DESEMPENHO NO MÍNIMO 6 MPPS; POSSUIR CAPACIDADE DE PRIORIZAÇÃO DE TRÁFEGO BASEADA EM IEEE 802.1P, IP TOS/DSCP, ENDEREÇO IP, ENDEREÇO MAC, PORT TCP/UDP E PORTA FÍSICA; PERMITIR O EMPILHAMENTO DE NO MÍNIMO 8 (OITO) EQUIPAMENTOS, VIA PORTA ESPECIAL PARA ESTE FIM, FORMANDO UM ÚNICO SEGMENTO LÓGICO; OS SWITCHES DEVERÃO VIR ACOMPANHADOS DOS MÓDULOS DE EMPILHAMENTO PARA MONTAR 7 PILHAS DE 5 E FORNECIMENTO DOS RESPECTIVOS CABOS DE CONEXÃO.

Quantidade: 35

Marca: 3com modelo 3c17206U

Preço Unitário: 4.370,35

Unidade: UN

Valor Total: 152.962,25



Inverse Auction Simulator



Brasil Telecom

A tecnologia próxima de você

MINISTÉRIO DO PLANEJAMENTO



Trabalhando em todo o Brasil



Simulador do pregão

Cadastro

Nome :

E-mail :

Nome para acesso :

Senha para acesso :

Confirmar Senha :

Cadastrar

Impacts of the Inverse Auction



- **Total expenditure on procurement of goods and services: R\$ 14.2 (US\$ 5.7) billion/year (2001 – US\$ 1.00 x R\$ 2.50)**
- **Out of this total, 20% has been procured by means of inverse auctions - amounting to R\$ 2.8 (US\$ 1.1) billion/year**
- **Estimated direct economy in 20 % of the expenditures, i.e. R\$ 560 (US\$ 224) million/year**

Impacts of the Inverse Auction



- **Number of Inverse Auctions:**
until 23 of September of 2002
- **6.350 Inverse Auctions**
- **Value of goods and services
acquired: R\$ 1,685 billion (US\$
674 million)**

Inverse Auctions Awarded: until August of 2002*



Year	Type of Auction	Number of Auctions	Value in R\$
2000	Live	81	29.140.348,09
	Electronic	1	67.120,00
2001	Live	2236	786.556.105,00
	Electronic	63	8.687.286,96
2002	Live	2094	746.714.610,00
	Electronic	181	17.864.469,61
Total		4656	1.589.029.939,66

Source: Monthly COMPRASNET Statistical Bulletin

Services acquired by inverse auction: main by value



Materials and Services

Medical Assistance - Hospital: Complementary Health/Contracts	163.528.616,34
Telephone - Conventional/Mobil	70.469.681,01
Labour Outsourcing - Administrative Support	53.506.670,64
Plane Tickets National/International - Reservation and Sales	50.912.236,52
Building Cleaning and Conservation	39.460.196,08
Vigilance and Security	34.393.162,48
Events Promotion	11.941.397,58
Veicule Location - Personnel Transport	11.373.849,66
Travel Agencies	9.244.275,86
Airplane Location	8.121.800,00

Materials acquired by inverse auction: main by value



Materials and Services	Value of Acquisition R\$
HUMAN INSULINE	110.303.926,76
MILITARY CLOTHING	41.965.468,36
FOTOVOLTAIC MODULES	37.010.000,00
AUTOMOTIVE VEICULES - PICKUPS	32.218.804,00
AUTOMOBILES	24.869.745,58
SULFATES OF INDINAVIR	18.128.165,00
MICROCOMPUTERS - ACCESSORIES/COMPONENTS	13.864.538,80
PRINTER CARTRIGES	12.603.263,13
CLOTHING FOR SPORTS/SPORTS UNIFORMS	11.078.138,40
COMPUTERS	10.742.474,75

Impacts of the Inverse Auction



- The purchases by means of the reverse auction may reach 40 % of the total contracts undertaken by means of competitive bidding (around R\$ 5.7/ US\$ 2.3 billion a year)

Impacts of the Inverse Auction



- Increased amount of purchases made under competitive modalities
- More transparency and opportunities to participate
- More agile and non bureaucratic procedures
- Suppliers pre-register only once
- Reduction in the time required for Qualification of suppliers
- Less time required for tendering
- Electronic posting of tender with ample access by the interested parties
- Staff freed for more complex activities

Inverse Auction in the States



- Law 10.520/2002 has extended use of the inverse auction by states and municipalities
- Several States (São Paulo, Bahia, Pernambuco, Mato Grosso etc.) developed, bought or entered into partnerships of their own inverse auction systems



Brazilian cooperation initiatives on government procurement

Cooperation initiatives Underway



- *Multilateral initiatives* (World Bank, IADB, OAS)
- *Bilateral initiatives* (Governments of Bolivia, Peru, Colombia, Nicaragua, India etc.)
- *States and municipalities*
- *National & international recognition* (COMDEX, CONIP, Hélio Beltrão Prize European Union e-gov Best Practice, UN-UNOPS Fair of July 2001)

Possible Cooperation initiatives



- **Planning**
- **Legislation**
- **Human Resources Training**
- **IT Information systems modelling**
- **Experience interchange**
- **Standards for procurement procedures and bidding documents and regulations**



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**WORLD BANK
AFRICA REGION
ROLE AND RESPONSIBILITIES
IN IMPROVING GOVERNMENT PROCUREMENT**

Bernard Abeillé
October 10, 2002



Role & Responsibilities

Ensuring Economy, Efficiency and Transparency of Public Resources through:

- **Assessment of national systems**
- **Developing national capacities**
- **Fiduciary Compliance (Prior/Post Reviews + Audits)**





Main Focus

- **Building Capacity at the country level**
 - Country Procurement Assessment Reviews (CPARs)
 - Procurement Reforms
 - Country Specific Procurement Seminars
- **Enhanced Decentralization of Staff**
- **Enhance Fiduciary Compliance**
 - Accelerate Prior Reviews + more systematic post reviews
- **Modernize Monitoring/Communication Tools**
 - Procurement Reforms Observatory
 - Access to Africa Proc.WEBSITE

Services Rendered by Africa Procurement



Project Preparation

- Conduct Capacity Assessments
- Procurement Arrangements

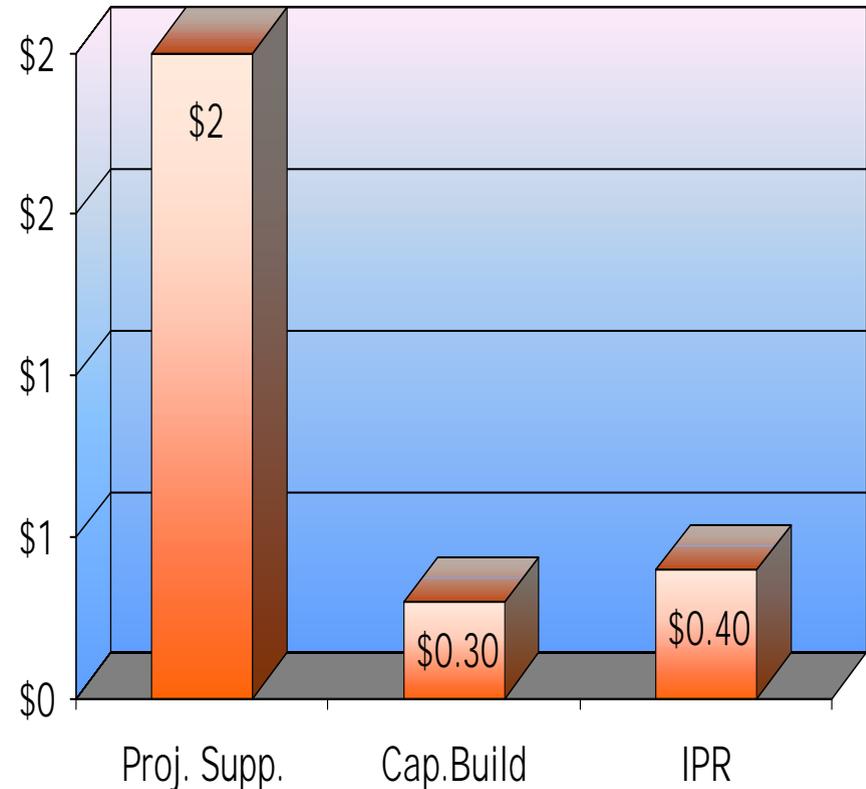
Supervision of Procurement Activities

- Prior Reviews above thresholds
- Post Proc. Reviews

Organize Independent Procurement Reviews

Deliver Country Specific Procurement Seminars

Conduct Country Procurement Assessment Reports (CPARs)



Country Procurement Assessment Reviews (CPARs)



■ **Country Procurement Assessment Review**

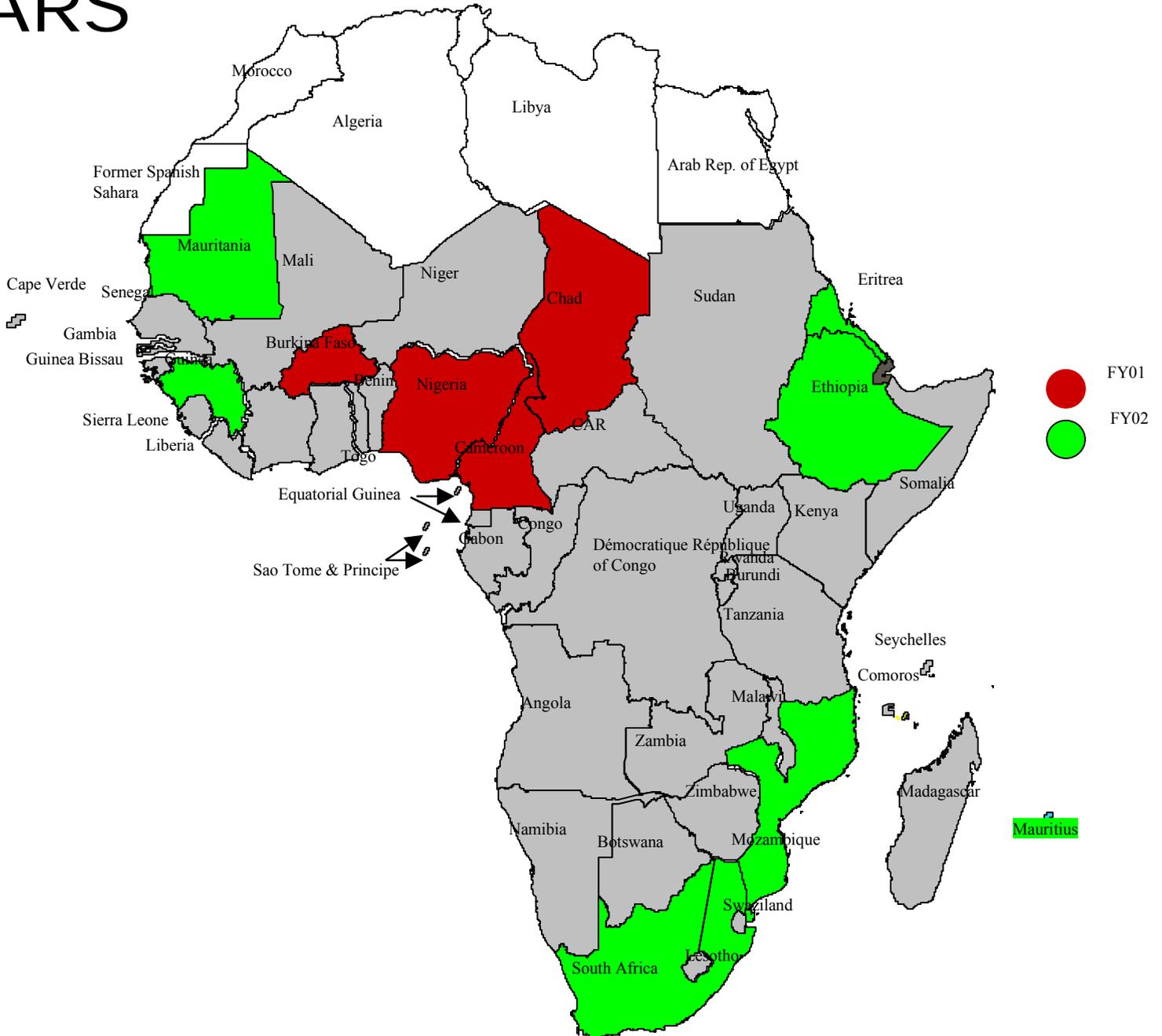
[Sound public procurement policies and practices are among the essential elements of good governance]

- **Jointly by the Bank and the Borrower**
- **In Partnership with other Donors (AfDB, EU,)**
- **Country Directors responsibility**
- **Report: Findings, Recommendations/Action Plans**
- **Action Plan → Procurement Reforms**

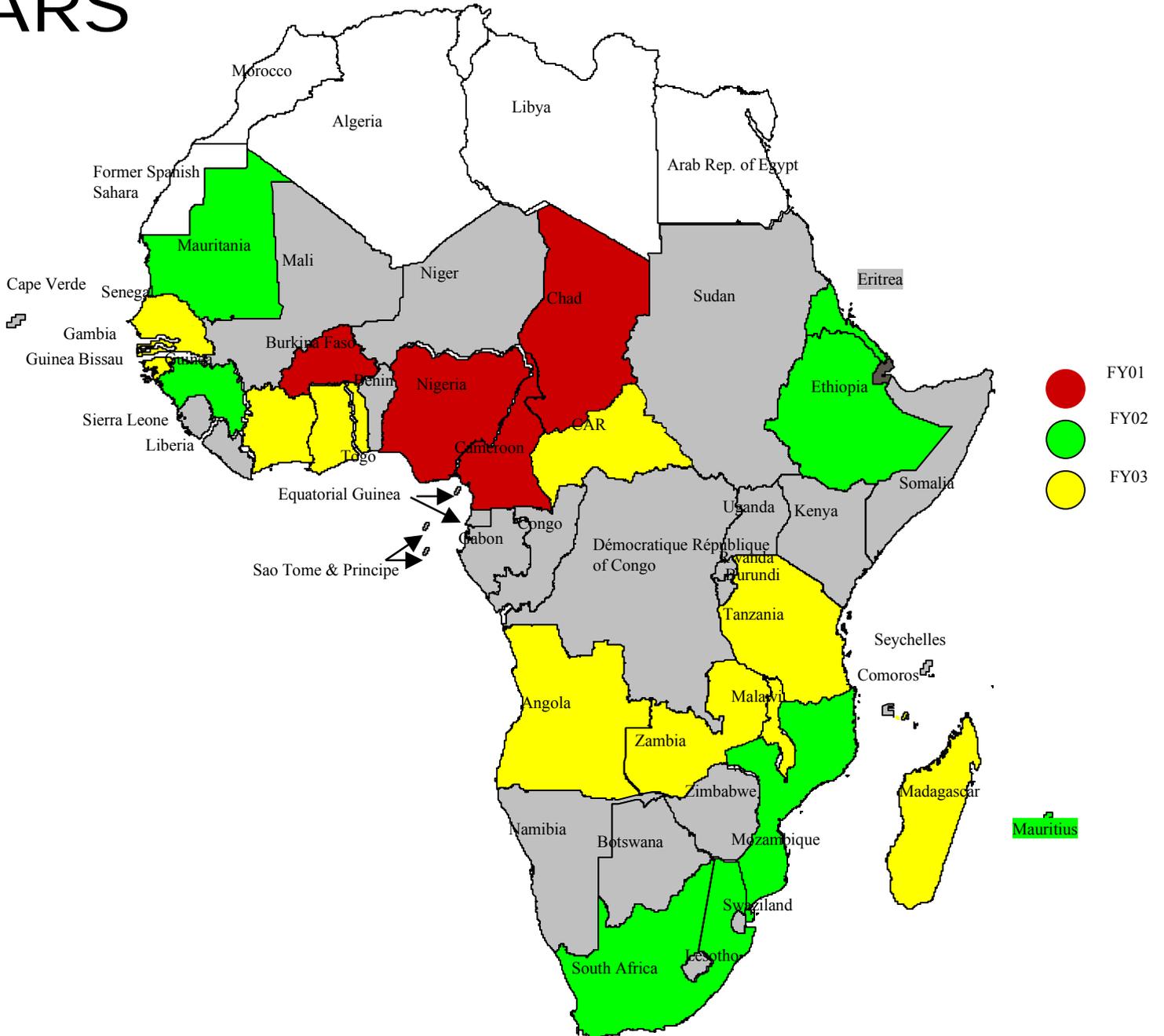
CPARS



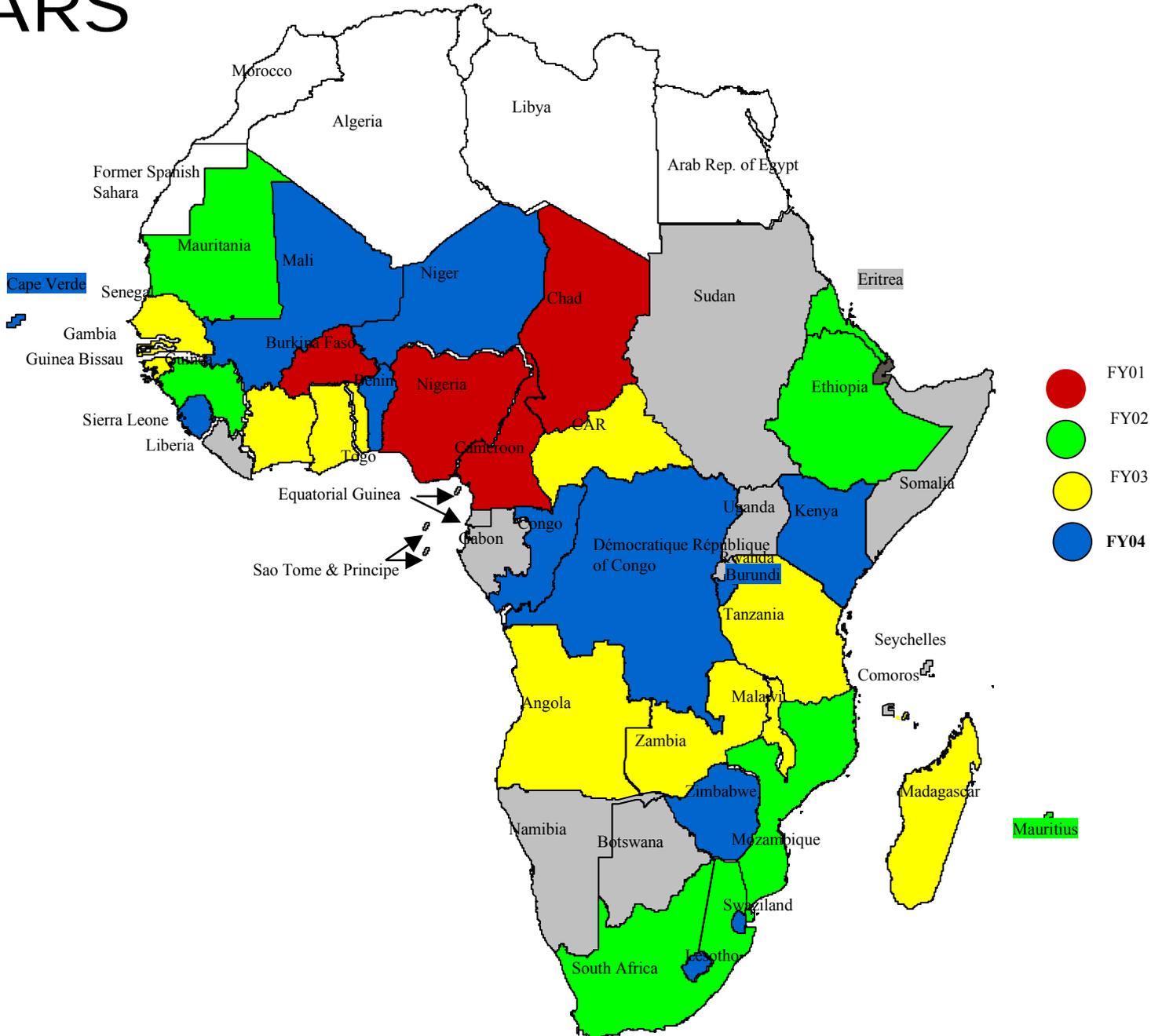
CPARS



CPARS



CPARS





CPAR Follow-up

- **Country Dialogue & Capacity Building:**
 - WB coordinates and monitors CPARs
 - WB supports & monitors Procurement Reform Programs
 - WB organizes sub-regional workshops on Procurement Reforms
- **Sub-Regional Organizations may play a major role (WAEMU, COMESA ...)**
- **Procurement Reforms are at the center of:**
 - WB Country Assistance Strategy (CAS)
 - PRSCs
- **Partnership with other donors is growing rapidly**



**WORLD BANK
AFRICA REGION
EXAMPLES OF WB CONTRIBUTION
IN IMPROVING GOVERNMENT PROCUREMENT**

Bernard Abeillé

October 9, 2002

World Bank Involvement in Procurement Reforms:



- **Procurement Reforms as a result of CPARs in:**
 - Angola, Benin, Burkina Faso Cameroon, Chad, Ethiopia, Eritrea, Ghana, Guinea, Kenya, Mauritania, Niger, Nigeria, Uganda, and South Africa

- **WB supports Procurement Reforms in Rwanda and Burundi, at the request of Governments**

- **WB supports WAEMU and COMESA sub-regional initiatives in partnership with AfDB**

Number of CPARs in FY03 and FY04



CPARs	FY02	FY03	FY04	FY05
Total # of Reports Of which:	8	9	16	4
Full CPARs	6	8	7	3
CPAR Updates	1		1	0
Issues Papers	1	1	8	1



Example of Angola

- Government had already launched a review of its procurement system
- Government sought WB assistance to carry out its review
- To avoid duplication of previous Government's efforts, the WB:
 - **Took stock of work already done**
 - **Carried out its own diagnostic with AfDB**
 - **Brought Bank experience in this area**
 - **Associated other donors**
 - **Shared its findings with the Government**



Concept Memorandum (CM)

- A **CM** was shared with the WB Country Team and AfDB
- **It identified:**
 - **Country specific Issues:**
 - Post-Conflict situation
 - Lack of sound procurement code
 - Lack of professional skills
- **It proposed:**
 - **A strategy based on a realistic time-table and indicators**
 - **Areas of focus including:**
 - Short-term action to get immediate impact
 - Long-term capacity building program



Bringing Bank's Experience

- **Ensuring Government Ownership**
- **Mobilizing resources**
 - **A National Task Force**
 - **Other donors**
 - **The private sector + Civil Society**
- **Recruiting a highly qualified national consultant**
- **Using international best practices as benchmark**



Comprehensive Analysis

- **Analyze of public procurement:**
 - ✓ Legal framework
 - ✓ Practices
 - ✓ Institutional capacities
 - ✓ Fairness and transparency
- **Analyze of private sector:**
 - ✓ Imports (Volume + Regulations + Practices)
 - ✓ Consulting services
 - ✓ Construction industry
 - ✓ Manufacturers & Suppliers
- **Evaluation of risks for Bank-financed projects**



Results as of to-day

- **Government of Angola has been briefed, using the CPAR Executive Summary;**
- **The Government is finalizing its action plan before the WB issues a final CPAR; and**
- **WB funds have been made available to support the first steps of the reform.**



END





Government procurement: services

This multilateral Working Party on GATS Rules (WPGR) was established by the Council for Trade in Services. Among its responsibilities are negotiations on government procurement of services, as required under Article XIII: 2 of the General Agreement on Trade in Services (GATS).

See also:

- > [Transparency in government procurement](#)
- > [Plurilateral Government Procurement Agreement](#)

> [The starting point: How government procurement is exempt from the usual rules](#)

The mandate

GATS Article XIII says:

Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not a view to commercial resale or with a view to use in the supply of services for commercial sale.
2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

Find out more ...

... about [services trade under the WTO and the General Agreement on Trade in Services \(GATS\)](#) (to return to this page click on your browser's "back" button or come through "trade topics")

Working Party on GATS Rules (WPGR)

Search Documents Online

Documents of the working party on GATS Rules in government procurement use the code S/WPGR/* (where * takes additional values) These links open a new window: allow a moment for the results to appear.

- **Annual reports of the working party to the Council for Trade in Services** (Document code S/WPGR/* and Title varies) > [search](#) > [help](#)
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04-5143 	U	S/WPGR/14 Catalogue record	Working Party on GATS Rules - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2004) Preview (HTML)	25/11/2004	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
03-6420 	U	S/WPGR/13 Catalogue record	Report of the Working Party on GATS Rules to the Council for Trade in Services (2003) Preview (HTML)	03/12/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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02-6706	U	S/WPGR/8 Catalogue record	Report of the Working Party on GATS Rules to the Council for Trade in Services (2002)	05/12/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>

	01-4785	U	S/WPGR/6 Catalogue record	Report of the Working Party on GATS Rules to the Council for Trade in Services Preview (HTML)	04/10/2001	2 p. 35KB	2 p. 33KB	2 p. 33KB	E E S <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	00-5036	U	S/WPGR/5 Catalogue record	Report of the Working Party on GATS Rules to the Council for Trade in Services Preview (HTML)	24/11/2000	1 p. 28KB	2 p. 30KB	2 p. 30KB	E E S <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	99-4639	U	S/WPGR/4 Catalogue record	Report of the Working Party on GATS Rules to the Council for Trade in Services Preview (HTML)	26/10/1999	2 p. 32KB	2 p. 31KB	2 p. 30KB	E E S <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	98-4857	U	S/WPGR/3 Catalogue record	Report of the Working Party on GATS Rules to the Council for Trade in Services Preview (HTML)	03/12/1998	1 p. 30KB	2 p. 31KB	2 p. 30KB	E E S <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	97-5218	U	S/WPGR/2 Catalogue record	Activities of the Working Party on GATS Rules - Report to the Council for Trade in Services Preview (HTML)	26/11/1997	2 p. 32KB	2 p. 33KB	2 p. 31KB	E E S <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	96-4482	U	S/WPGR/1 Catalogue record	Activities of the Working Party on GATS Rules - Report to the Council for Trade in Services Preview (HTML)	23/10/1996	2 p. 24KB	2 p. 28KB	2 p. 29KB	E E S <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

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9 6 KB	98-4857	S/WPGR/3	Report of the Working Party on GATS Rules to the Council for Trade in Services	03/12/1998	2	U	T/S/WPGR/3.DOC
10 6 KB	97-5218	S/WPGR/2	Activities of the Working Party on GATS Rules - Report to the Council for Trade in Services	26/11/1997	2	U	T/S/WPGR/2.WPF
11 7 KB	96-4482	S/WPGR/1	Activities of the Working Party on GATS Rules - Report to the Council for Trade in Services	23/10/1996	2	U	T/S/WPGR/1.WPF
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WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/1

23 October 1996

(96-4482)

Working Party on GATS Rules

ACTIVITIES OF THE WORKING PARTY ON GATS RULES

Report to the Council for Trade in Services

In view of the fact that the Working Party has had no further opportunity to meet since its meeting of 8 and 14 October and in the light of subsequent consultations regarding the final paragraph, the attached Report of the Working Party to the Council for Trade in Services is submitted on the Chairman's responsibility.

Activities of the Working Party

1) The Working Party on GATS Rules was established in March 1995 by the Council on Trade in Services to carry out the negotiating mandates contained in the GATS on emergency safeguard measures, government procurement in services and subsidies. Article X requires that multilateral negotiations shall be held on the question of emergency safeguard measures, based on the principle of non-discrimination, the results of which are to enter into effect not later than 1 January 1998. Article XIII of GATS calls for multilateral negotiations on government procurement in services within two years from the date of entry into force of the WTO Agreement. Article XV of GATS stipulates that negotiations will be held with a view to developing the necessary disciplines to avoid the trade-distortive effects of subsidies that may arise in certain circumstances and to address the appropriateness of countervailing procedures. It also required Members to exchange information concerning all subsidies related to trade in services and to establish a future work programme to determine how, and in what time frame, negotiations on such multilateral disciplines will be conducted.

2) The Working Party has held eight meetings. The Working Party first took up the issue of emergency safeguard measures, followed at intervals of three months by government procurement in services and subsidies. Thus, since its fifth

meeting, the Working Party has considered all three negotiating mandates at every meeting. Differing views have been expressed by Members in regard to the desirability of developing an emergency safeguard mechanism under GATS and substantive discussions are continuing in regard to this question. Working papers on emergency safeguard measures were submitted to the Working Party by Australia (S/WPGR/W/5), Thailand (S/WPGR/W/6) and Switzerland (S/WPGR/W/14). The Working Party agreed that those Members wishing to do so would provide written contributions in relation to questions raised in document S/WPGR/W/15 on emergency safeguard measures.

3) The discussions in the Working Party on the subject of government procurement in services have addressed various aspects of possible disciplines, particularly in relation to transparency. In addition, Members have considered the implications of the existence of the Agreement on Government Procurement (GPA) for any disciplines that might be developed in GATS, as well as some of the reasons given by Members as to why they are not signatories of the GPA. Members are also engaged in an information-gathering exercise in relation to national procurement regimes with a view to preparing for negotiations on procurement in services.

4) The Working Party's deliberations on the subject of subsidies have so far been of a preliminary nature. Many delegations have noted the inherent complexity of the subsidy issue in services, urging a careful and systematic approach to the negotiating mandate. Some discussion has taken place on the question whether a distinction should be made between broad-based subsidies of general applicability and narrower, sector specific subsidies. The Working Party has begun to consider the modalities of the information exchange exercise called for in the negotiating mandate. A working paper on conceptual issues relating to subsidies was submitted to the Working Party by Chile (S/WPGR/W/10).

Future Work

5) The Working Party proposes that the Council for Trade in Services recommend that Ministers might adopt the following text:

•Ministers note that more analytical work will be required on emergency safeguard measures, government procurement in services, and subsidies. They agree that the Working Party on GATS Rules should aim, in accordance with the provisions of Article X, to complete negotiations on the question of emergency safeguard measures by 31 December 1997. If negotiations have not been concluded by that date, the Council for Trade in Services may extend the provisions of Article X of the GATS to an appropriate time. Ministers agree to review progress in the GATS Rules negotiations at their meeting in 1998, bearing in mind the need to carry forward the negotiations expeditiously. •

WORLD TRADE ORGANIZATION

S/WPGR/2

26 November 1997

(97-5218)

Working Party on GATS Rules

ACTIVITIES OF THE WORKING PARTY ON GATS RULES

Report to the Council for Trade in Services

The Working Party on GATS Rules held six formal meetings in 1997. In each meeting, the Working Party considered all three negotiating mandates: emergency safeguard measures under Article X, government procurement under Article XIII and subsidies under Article XV.

Negotiations on emergency safeguard measures under Article X of the GATS

Differing views have been expressed by Members with regard to the desirability of developing an emergency safeguard mechanism under the GATS. Substantive discussions are continuing on the subject without prejudging the position of any delegation in respect of the desirability, feasibility or form of any possible emergency safeguard mechanism. Several Members responded on a voluntary basis to a series of written questions on emergency safeguard measures (contained in S/WPGR/W/15). Other submissions on the subject of safeguards were also received from Members during 1997 (circulated as documents S/WPGR/W/17, 18, 19, 22 and 23).

In the last three meetings, the Working Party has focused on four key questions identified by the Chairperson in an informal note (dated 3 June 1997): (i) On whose behalf would emergency safeguard action be taken? (ii) In what circumstances would emergency safeguard action be taken and what would be the purpose of such action? (iii) What approach should be adopted in respect of injury/adverse effects, and the relevant causal link between injury/adverse effects and commitments under the GATS? (iv) What measures would be taken under the emergency safeguard mechanism? Are some measures deemed more suitable than others? At the request of Members, the Secretariat prepared a note which focused on the second question, containing hypothetical examples of situations in which emergency safeguard action may be taken (circulated as S/WPGR/W/24).

Since Members recognized that there still remained many points to be considered in order to conclude this negotiation, they decided to propose to the Council for Trade in Services to extend the application of the first sentence of paragraph 1 and paragraph 2 of Article X until the end of June 1999, notwithstanding the second sentence of paragraph 1 and paragraph 3 of Article X.

Negotiations on government procurement under Article XIII of GATS

Progress was made in the information gathering exercise on national procurement regimes. The twenty-one responses received so far to the questionnaire on national procurement regimes were circulated as addenda to document S/WPGR/W/11. The

Secretariat prepared a synthesis of the first nineteen responses to the questionnaire (issued as document S/WPGR/W/20). The information gathering exercise has provided a basis for negotiations on disciplines. An indicative tabulation relating questionnaire responses to possible elements of multilateral disciplines was presented in a Chair's note (dated 21 February 1997) and has formed the basis for the commencement of a structured consideration of these elements. The need to coordinate work with the Working Group on Transparency in Government Procurement was emphasized by several delegations.

Negotiations on subsidies under Article XV of GATS

At its meeting of 23 January 1997, the Working Party approved a questionnaire to facilitate the information exchange, mandated by Article XV, on subsidies related to trade in services. Two responses to the questionnaire have been received so far (circulated as documents S/WPGR/W/16/Add.1 and Add.2). Some delegations also expressed the need to continue the technical analysis of subsidies related to trade in services.

Working Party on GATS Rules

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES**

1. The Working Party on GATS Rules held five formal meetings in 1998. In each meeting, the Working Party considered all three negotiating mandates: emergency safeguard measures under Article X, government procurement under Article XIII and subsidies under Article XV.

Negotiations on emergency safeguard measures under Article X of the GATS

2. Differing views have been expressed by Members with regard to the desirability of developing an emergency safeguard mechanism under the GATS. Substantive discussions are continuing on the subject without prejudging the position of any delegation in respect of the desirability, feasibility or form of any possible emergency safeguard mechanism, with the objective of concluding negotiations by 30 June 1999.

3. In recent meetings, the Working Party has focused on four key questions identified by the Chairperson in an informal note (dated 3 June 1997): (i) On whose behalf would emergency safeguard action be taken? (ii) In what circumstances would emergency safeguard action be taken and what would be the purpose of such action? (iii) What approach should be adopted in respect of injury/adverse effects, and the relevant causal link between injury/adverse effects and commitments under the GATS? (iv) What measures would be taken under the emergency safeguard mechanism? Are some measures deemed more suitable than others?

4. The delegation of Hong Kong, China, made a submission suggesting some broad principles that might be included as part of any safeguard mechanism (circulated as S/WPGR/W/26). The Chairperson circulated an informal note (dated 16 September 1998) containing responses, not necessarily agreed, to the above four questions. The questions raised in this note were discussed during an informal brainstorming session on 1 October 1998 and in subsequent meetings. The delegation of Venezuela made an informal submission (dated 14 October 1998) listing issues for the organization of future discussions on emergency safeguards. The Secretariat prepared a paper (S/WPGR/W/27) describing, first, alternative forms that a safeguard mechanism under the GATS may take and then elaborating on the list of issues identified in the submission from Venezuela.

Negotiations on government procurement under Article XIII of GATS

5. Costa Rica submitted a response to the questionnaire on national procurement regimes (S/WPGR/W/11/Add.22), adding to the twenty-one responses received during 1997. An indicative tabulation relating questionnaire responses to possible elements of multilateral disciplines, presented in a note from the Chairperson (dated 21 February 1997), has formed the basis for a structured consideration of these elements. In recent meetings, discussion has focused on the scope and coverage of any disciplines on government procurement on the basis of a non-paper submitted by the European Communities and Their Member States (dated 13 February 1998). In this context, the issue of how concessions should be treated has received particular attention. Members have emphasized

the need for the Working Party to continue to coordinate work with the Working Group on Transparency in Government Procurement .

Negotiations on subsidies under Article XV of GATS

6. Delegations expressed the need to continue the technical analysis of subsidies related to trade in services. To this end the Secretariat prepared a note presenting information on the subject contained in WTO Trade Policy Reviews (circulated as S/WPGR/W/25). The Chairperson circulated an informal note (dated 3 April 1998) to facilitate identification of the circumstances in which subsidies may cause trade distortions. Discussion on the relevant conceptual and legal issues is continuing even as efforts are being made to advance the information exchange.

Working Party on GATS Rules

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES**

1. The Working Party on GATS Rules held six formal meetings in 1999 (S/WPGR/M/20-25). In each meeting, the Working Party considered all three negotiating mandates: emergency safeguard measures under Article X; government procurement under Article XIII; and subsidies under Article XV.

Negotiations on emergency safeguard measures under Article X of the GATS

2. Differing views continued to be expressed by Members on the desirability, feasibility and possible form of an emergency safeguard mechanism in services. The contributions made and the issues thought to require further consideration are recorded in document S/WPGR/W/27/Rev.2. In recent meetings, Members focused in particular on: (i) possible indicators to underpin trade-related injury concepts (an informal Secretariat paper, Job No. 5294 gives an overview of such indicators, drawing on a previous submission by Venezuela, Job No.2860); (ii) basic disciplines which would need to govern any future safeguard action, regardless of the mechanism which may finally be adopted (including MFN treatment, advance notice, temporary and degressive application, clear specification of the measures envisaged, protection of "acquired rights" of established suppliers); and (iii) the range of applicable measures and other relevant issues.

3. On recommendation by the Working Party, the Council for Trade in Services decided in June 1999 to extend the negotiations on the question of emergency safeguard measures until 15 December 2000; the results shall enter into effect on a date not later than the date of entry into force of the results of the next round of mandated services negotiations (S/L/73).

Negotiations on government procurement under Article XIII of GATS

4. Discussions focused on the range of activities and entities which may be covered by Article XIII of GATS. An informal paper by Japan contains a typology of such activities (Job No. 2867), and a Secretariat Note compiles background information on the interpretation of procurement-related provisions under GATT which might be relevant for the interpretation of similar GATS provisions (S/WPGR/W/29). Recently, Members started giving thought to the scope and depth of procurement disciplines, if any, which might be agreed upon at the end of the negotiating process.

Negotiations on subsidies under Article XV of GATS

5. Hong Kong, China made a submission under the information exchange programme mandated under Article XV (S/WPGR/W/16/Add.13), adding to two other submissions received in 1997. A proposal that Members provide information on subsidy-related access problems encountered in foreign markets is being considered by Members. Discussions have continued on the potential for subsidies, which are extended under one mode (e.g. investment aid under mode 3) to distort trade under other modes, and the effects on trade of export subsidies in services.

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES**

1. In 2000, the Working Party on GATS Rules has held four formal meetings to date. Minutes of the meetings are contained in documents (S/WPGR/M/26-29). A fifth meeting is scheduled on 30 November 2000. In each meeting, the Working Party considered all three negotiating mandates: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV). Written contributions, both formal and informal, made by delegations have supported the debate under the three items.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. Differing views continued to be expressed regarding the desirability of an emergency safeguard mechanism (ESM) in services, but Members agreed to leave this question aside for the time being and to concentrate on feasibility issues. In order to structure the debate, the Chairperson circulated an illustrative list of themes which could usefully be discussed, without prejudice to the final outcome of the negotiations (Job No. 1979/Rev.1). The list includes issues such as the definition of "domestic industry" and the issue of "acquired rights", the modal application of a safeguard mechanism, the concept of "like service", the identification of indicators and criteria for determining injury and causality, the possible forms of a safeguard measure, the questions of compensation and special and differential treatment, situations justifying safeguard action and relevant procedural matters. All issues were examined in both formal and informal meetings. The Working Party also examined a Concept Paper which was introduced in March by Thailand on behalf of the ASEAN Members (S/WPGR/W/30). The Paper contains elements of a possible emergency safeguard mechanism in services.

3. The Working Party is also considering the extension of the negotiating deadline for this subject-matter, which is currently set for 15 December 2000.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

4. Discussions have continued on definitional issues as well as on possible multilateral disciplines in this area.

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

5. The Working Party has continued to consider the need for and possible scope of disciplines on subsidies which may have trade-distortive effects. In March, Argentina and Hong Kong, China presented a communication discussing relevant issues and identifying a number of topics for further work (S/WPGR/W/31). At the request of the Working Party, the Chairperson circulated a Checklist of issues, whose purpose is to help to address in a more systematic manner relevant questions under this agenda item (Job No. 4519/Rev.1). Members agreed to take up one item at each successive

meeting. The first item on the list ("Definition of a Subsidy in Services (including relevance of the definition in the Agreement on Subsidies and Countervailing Measures")) was discussed in September.

Working Party on GATS Rules

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES**

1. Since its last annual report¹, the Working Party on GATS Rules has held five formal meetings. Minutes of the meetings are contained in documents (S/WPGR/M/30-34). In each meeting, the Working Party considered the three negotiating mandates: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV).

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. At its meeting on 20 November 2000, the Working Party agreed to extend the negotiating mandate under Article X until 15 March 2002 (doc. S/C/W/184). This proposal was adopted by the Council for Trade in Services at its meeting on 1 December 2000.

3. Differing views continued to be expressed regarding the desirability and feasibility of an emergency safeguard mechanism (ESM) in services. Most discussions were held on the basis of the illustrative list of themes circulated by the Chairperson (Job No. 1979/Rev.1). The list includes issues such as situations justifying safeguard action, the definition of "domestic industry" and the issue of "acquired rights", the modal application of a safeguard mechanism, the concept of "like service", the identification of indicators and criteria for determining injury and causality, the possible forms of a safeguard measure, the questions of compensation and special and differential treatment, and relevant procedural matters. A number of delegations presented informal written contributions on specific aspects of a possible ESM. Moreover, a group of delegations presented an informal *Draft agreement on emergency safeguard measures for trade in services*, on 31 October 2000. All issues were examined in both formal and informal meetings.

4. The Working Party also discussed the organization of future work, keeping in mind the negotiating deadline of 15 March 2002. In July 2001, the Working Party requested the Chairperson to prepare, under his responsibility, a synopsis which would outline the current state of the discussion under the ten items identified in the Chairperson's Note, Job No. 1979/Rev.1. The synopsis was circulated on 7 August (JOB(01)/122) and is without prejudice to the questions of desirability and feasibility, nor to the form that a possible ESM might take. It presents, in a synthetic way, the main options proposed until July 2001, and indicates comments made by Members.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

5. Discussions have continued on definitional issues as well as on possible multilateral disciplines in this area.

¹ S/WPGR/W/35, 3 November 2000.

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

6. The Working Party has continued to consider the need for, and possible scope of, disciplines on subsidies which may have trade-distortive effects. Delegations proceeded on the basis of the Chairperson's Checklist (Job No. 4519/Rev.1), and took up one item at each successive meeting. The fifth and last item was addressed in July. At that meeting, it was decided that the Checklist would remain on the table for the time being and that the five topics it contains would remain open for discussion.

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES (2002)**

1. Since its last annual report¹, the Working Party on GATS Rules held five formal meetings.² In each meeting, the Working Party considered the three negotiating mandates it is entrusted with: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV).

2. On 22 July 2002, the Working Party adopted work programmes on emergency safeguard measures, subsidies and government procurement respectively, recognizing, *inter alia*, that these did not prejudice in any way the outcome of the negotiations under the respective agenda items, and that the undertaking of individual items of work, including the questions of desirability and feasibility, should be without prejudice to each other under each subject of negotiations (S/WPGR/7).

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

3. At its meeting on 15 March 2002, the Working Party agreed to extend the negotiating mandate under Article X until 15 March 2004 (S/C/W/205/Rev.1). This proposal was adopted the same day by the Council for Trade in Services (S/L/102).

4. Moreover, on 22 July 2002, the Working Party adopted a work programme for organizing its work on emergency safeguard measures (S/WPGR/7). Main elements are, *inter alia*, to identify, elaborate and consolidate elements for an ESM, to address the questions of desirability and feasibility, to encourage Members to put forward submissions as early as possible before 31 December 2002, and to finalize the negotiations by 15 March 2004.

5. Various delegations presented formal and informal written contributions in relation to the mandate contained in Article X.³ During several formal and informal meetings, delegations continued their examination of issues related to a possible ESM, including the question of desirability and feasibility, the form of a possible ESM, the modal application of safeguard measures, the concept of special and differential treatment, and relevant procedural matters, such as notification, consultation and surveillance. Divergent views continued to be expressed on these issues.

¹ S/WPGR/6, 4 October 2001.

² Minutes of the meetings are contained in documents S/WPGR/M/35-39.

³ See *Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services*, Communication from the United States (S/WPGR/W/37); *Modal Application of an Emergency Safeguard Measure*, Communication from the European Communities and Their Member States (S/WPGR/W/38); Contribution from Cuba, the Dominican Republic, Guatemala, Honduras and Nicaragua (JOB(01)/166); *Elements for a Possible "Core Mechanism" for Temporary Suspension or Modification of Commitments*, Communication from Australia (JOB(02)/8). See also JOB(02)/9 and JOB(02)/85.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS ARTICLE XIII

6. On 22 July 2002, the Working Party adopted a work programme on government procurement (S/WPGR/7). It provides, *inter alia*, for continued discussion on the basis of submissions from Members and materials available, and encourages Members to put forward submissions as early as possible before 31 March 2003.

7. In their discussions, Members examined a Communication from the European Communities and their Member States on government procurement of services (S/WPGR/W/39). The issue of the scope of the mandate contained in Article XIII was also raised.

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

8. On 22 July 2002, the Working Party adopted a work programme on subsidies (S/WPGR/7). It provides, *inter alia*, for continued discussion on subsidies on the basis of submissions from Members and materials available, and encourages Members to put forward submissions on subsidies as early as possible before 31 March 2003.

9. Discussions under this agenda item focused on the information exchange mandated in Article XV, and on the need for further information on services subsidies in general. Members gave consideration to a simplified questionnaire put forward by the delegations of Argentina, Chile and Hong Kong, China (JOB(02)/84). Moreover, the Secretariat circulated a further addendum to the overview of information on subsidies contained in Trade Policy Review reports (S/WPGR/W/25/Add.3).

Working Party on GATS Rules

**UPDATE TO THE ANNUAL REPORT OF 2002 OF THE WORKING PARTY
ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2003)**

1. Since its last annual report¹, the Working Party on GATS Rules held 3 formal meetings.² In each meeting, the Working Party considered the three negotiating mandates it is entrusted with: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV). It also held various informal meetings on the three items.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. Members continued their examination of various themes as they had emerged from previous meetings and submissions. Issues under examination included desirability and feasibility of an emergency safeguard mechanism (ESM), the interpretation of the GATS Article X mandate, modal application, examples presented by Members of safeguard-type provisions contained in economic integration agreements, in Members' schedules and in WTO instruments, as well as S&D. There were diverging views as to whether some of the examples constituted safeguard-type provisions. Members also discussed possible common elements of various types of ESM, based on the Synopsis³ and on the Overview of the Synopsis,⁴ and process-related issues such as transparency, notification, consultation, surveillance provisions and expedited dispute settlement proceedings.

3. Many delegations called for the Working Party to discuss actual or hypothetical situations where a safeguard action might be needed, and which form action could take, as an important aspect for further progress in the negotiations. One example was presented at the February meeting by Thailand, on behalf of the ASEAN Members. The Working Party is still examining whether this example can be considered as a possible situation justifying an ESM. Other delegations suggested that discussion of existing safeguard-type provisions applying to services should continue.

4. As requested by Members the Secretariat prepared three background documents: (i) a *Compilation of References Made by Delegations to Safeguard-Type Provisions*⁵; (ii) a note on *Core Elements Contained in Members' Proposals – Overview of the Synopsis*⁶; and (iii) a note on *Safeguard-Type Provisions in Economic Integration Agreements*⁷.

5. On 14 March 2003, the former Chairperson of the Working Party, Mr. Thomas Chan, circulated under his responsibility a Report on Negotiations on Emergency Safeguard Measures⁸, as

¹ S/WPGR/8, 5 December 2002.

² Meetings of 3 December 2002, 25 February 2003 and 13-14 May 2003..

³ JOB(01)/122 + Add.1.

⁴ JOB(02)/200 and --/Rev.1.

⁵ JOB(03)/20.

⁶ JOB(02)/200 and --/Rev.1.

⁷ S/WPGR/W/4/Add.1.

⁸ S/WPGR/9.

mandated in the work programme on ESM adopted on 22 July 2002.⁹ Delegations had a first exchange of views on this Report during an informal meeting held on 20 April. At the formal meeting of 13-14 May, the Working Party gave further consideration to the Report. Comments made by delegations are recorded in the minutes of this meeting.¹⁰ At the same meeting, the European Communities introduced a written contribution on *Scope for Emergency Safeguard Measures (ESM) in the GATS*.¹¹ A number of delegations welcomed this contribution. Other delegations expressed different views.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS ARTICLE XIII

6. Discussions continued on the Communication from the European Communities and their Member States on government procurement of services.¹² In May, the European Communities introduced a new contribution proposing a legal framework for government procurement in services.¹³ At the same time, several delegations maintained the view that Article XIII excluded from the negotiations the obligations of most-favoured-nation treatment, market access and national treatment, whilst others underlined that the mandate of Article XIII:2 included no such limitation.

7. Members noted the possibility of duplication between the WPGR and the Working Group on Transparency in Government Procurement (WGTGP). The WPGR should be aware of the relevant issues raised in the WGTGP.

8. At its meeting on 13-14 May 2003, the Working Party requested the Secretariat to prepare a note providing an *Overview of Government Procurement-Related Provisions in Economic Integration Agreements*. The note was issued on 24 June 2003.¹⁴

9. On 30 June 2003, Mr. Santiago Urbina, Chairperson of the Working Party, submitted a note under his responsibility to report on the progress of work, as mandated in the work programme on government procurement adopted on 22 July 2002.¹⁵

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

10. The delegation of Poland circulated an informal contribution containing thoughts on the definition of subsidies in services.¹⁶ Two main issues emerged from the discussion: (i) the scope of a generic definition of subsidies in the services context, including the relevance of the definition contained in the SCM Agreement; and (ii) the meaning of the concept of trade-distortive or "actionable" subsidies. Several delegations recalled the mandate in GATS Article XV to exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers. The need for more information on services subsidies from Members as well as other sources such as other intergovernmental organizations was also stressed by several delegations.

11. On 17 March 2003, the Chairperson circulated a revised *Checklist on Subsidies*,¹⁷ as had been agreed at the February meeting.¹⁸ This new revision, prepared again under the responsibility of the

⁹ S/WPGR/7.

¹⁰ S/WPGR/M/42.

¹¹ S/WPGR/W/41.

¹² S/WPGR/W/39.

¹³ S/WPGR/W/42.

¹⁴ S/WPGR/W/44.

¹⁵ S/WPGR/11.

¹⁶ JOB(02)207.

¹⁷ JOB(03)57.

¹⁸ The first version of the Checklist had been circulated as Job No. 4519, 17 July 2000.

Chairperson, includes two changes. First, the question of categorization of subsidies has been explicitly spelled out under the first point, i.e. definition of a subsidy in trade in services. Second, a new issue has been added, relating to concepts relevant to what should be regarded as trade-distortive subsidies. The *Checklist* is without prejudice to the position of any Member.

12. On 30 June 2003, Mr. Santiago Urbina, Chairperson of the Working Party, submitted a note under his responsibility to report on the progress of work, as mandated in the work programme on subsidies adopted on 22 July 2002.¹⁹

¹⁹ S/WPGR/10.

Working Party on GATS Rules

**ANNUAL REPORT¹ OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES (2003)**

1. Since its last update to the annual report, the Working Party on GATS Rules held two formal meetings: on 2-3 July 2003 and 1 October 2003. Reports of these meetings are contained in documents S/WPGR/M/43 and S/WPGR/M/44. They should be read in conjunction with this update. The three negotiating mandates the Working Party is entrusted with were put on the agenda of the two meetings: emergency safeguard measures (Article X), government procurement (Article XIII) and subsidies (Article XV). At its meeting of 2 and 3 July, the Working Party also took stock of progress made in the negotiations, as reflected in the report of that meeting, and subsequently reported by the Chairman in his personal capacity to the Special Session of the Council for Trade in Services.²

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. At the meeting of July 2003, the question of emergency safeguard measures was not addressed. At the meeting of 1 October 2003, delegations continued their examination of issues related to the question of ESM, including desirability and feasibility. Also, a delegation drew attention to the usefulness of examining examples of safeguard-type provisions contained in economic integration agreements and in Members' schedules. As an answer to a Chairman's suggestion that Members should examine the hypothetical example presented by ASEAN Members under the different approaches considered by the Working Party, the Swiss delegation submitted a non-paper which goes through the example under approach (e) (i.e. no explicit ESM). Various points of views, as well as preliminary reactions were expressed. The delegation of Thailand, speaking for a number of other delegations, responded to questions previously asked regarding how an ESM model might apply to a hypothetical example it presented. These discussions are reflected in paragraphs 2-22 of S/WPGR/M/44.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

3. The issue of government procurement was not addressed at the meeting of July 2003. At the meeting of 1 October 2003, the European Communities explained its proposal to negotiate an annex to the GATS that would lay down the conditions under which a number of GATS provisions would apply to government procurement.³ The EC argued that this proposal showed that an agreement was feasible and could easily be put in place, enabling negotiations of commitments for government procurement within the framework of the GATS. A number of delegations commented and asked questions, while others reserved their position for the time being. Some delegations recalled their

¹ This report, together with the update in document S/WPGR/12, complete the reporting requirement for 2003.

² TN/S/M/8.

³ S/WPGR/W/42.

views on the negotiating mandate under Article XIII, questioning the negotiations on market access issues, and pointed out the uncertainty arising from work undertaken in other fora. These discussions are reflected in paragraphs 23-38 of S/WPGR/M/44. Also, the Secretariat had prepared a note on government procurement disciplines in economic integration agreements.⁴

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

4. The issue of subsidies was discussed at both the meetings of July and October 2003. Discussions focused on the issue of definition and on ways to obtain more information on subsidies in services sectors. Regarding the latter point, a proposal by the delegation of Chile, supported by various other delegations, was put forward and several Members referred to UNCTAD's work on a study on subsidies in services sectors. In addition, Members mandated the Secretariat to update its previous Note on subsidy disciplines in economic integration agreements notified under Article V and to put together a list of studies pertaining to subsidies in services sectors that have been done by other international organizations. These discussions are reflected in paragraphs 44-69 of S/WPGR/M/43 and paragraphs 39-83 of S/WPGR/M/44.

⁴ S/WPGR/W/44.

Working Party on GATS Rules

**ANNUAL REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES (2004)**

1. Since its annual report for 2003, the Working Party on GATS Rules held five formal meetings: on 2 December 2003, on 10 and 15 March 2004, on 24 March 2004, on 23 June 2004, and on 20 September 2004.¹ While the meeting of 10 and 15 March was specifically devoted to the issue of the deadline for the negotiations under Article X, the three negotiating mandates the Working Party is entrusted with were put on the agenda of the other meetings: emergency safeguard measures (Article X), government procurement (Article XIII), and subsidies (Article XV). The Working Party also held a number of informal meetings.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. At the meeting of December 2003, discussions focused on the hypothetical example of an emergency situation provided by a group of delegations from ASEAN², as well as on a non-paper earlier submitted by the delegation of Switzerland which analyzed avenues available under a "no ESM scenario". At the meeting of 10 and 15 March, the Working Party agreed on the content of a draft decision on the extension of the negotiations pursuant to the mandate under Article X³, which was later adopted by the Council for Trade in Services.⁴ In subsequent meetings, delegations discussed an informal communication from the group of ASEAN Members (JOB(04)/4), which provided further thoughts on an emergency safeguard mechanism. Members expressed divergent views on various aspects, including regarding desirability and feasibility. To facilitate discussions, the Chairperson compiled a list of main questions raised (JOB(04)/49). Focal issues of interest included situations justifying a safeguard, link to progressive liberalization, the concept of limited window, domestic industry and acquired rights, injury determination, applicable measures and modal issues, duration and compensation, surveillance, and special and differential treatment.⁵

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

3. At the meetings of December 2003 and March 2004, delegations continued their discussion of an earlier communication from the European Communities on a proposed framework for government procurement of services under the GATS (S/WPGR/W/42). They also considered an informal communication from Singapore (JOB(03)/216), which listed a number of issues and questions for further discussion in the light of the proposal by the European Communities. At the meetings of June

¹ Reports of these meetings are contained in documents S/WPGR/M/45, S/WPGR/M/46 (and corr.1), S/WPGR/M/47, S/WPGR/M/48 and S/WPGR/M/49. They should be read in conjunction with this report.

² Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines and Thailand.

³ As reflected in S/C/W/236.

⁴ As reflected in S/L/159.

⁵ Discussions on emergency safeguard measures are reflected in paragraphs 5-22 of S/WPGR/M/45, in S/WPGR/M/46 and S/WPGR/M/46/Corr.1, paragraphs 2-38 of S/WPGR/M/47, paragraphs 46-47 of S/WPGR/M/48, and paragraphs 39-58 of S/WPGR/M/49.

and September 2004, discussions focused on a new communication from the European Communities (S/WPGR/W/48), which provided examples of how commitments and MFN exemptions relating to government procurement could be incorporated in the GATS. The delegation of Hong Kong, China circulated an informal communication (JOB(04)/130), which listed questions relating to the proposal from the European Communities. Many questions and issues were raised, including the application of the MFN obligation, the relationship to the GPA, modal application, scheduling approaches, the possibility of distinguishing between goods and services, link to development, and procedural rules. As requested, the Secretariat prepared a Note on *Government Procurement-Related Provisions in Economic Integration Agreements* (S/WPGR/W/49).

4. A number of delegations continued to reiterate that, in their view, the negotiating mandate under Article XIII did not entail market access issues, while others thought that these were covered. Some delegations drew attention to the General Council's decision, in the July Package, that there be no negotiations on the Singapore issue of transparency in government procurement, while others pointed out that the July Package also called on Members to intensify efforts to conclude the rule-making negotiations, including those on Article XIII.⁶

III. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

5. Delegations first focused on an informal communication from Chile (JOB(03)/218), which provided anonymous examples of subsidies that might distort trade in services. Delegations tended to concentrate on the first example, which raised issues relating to export subsidies. Members also discussed an informal communication from the delegation of Chinese Taipei on the definition of subsidies in services (JOB(04)/78). At the last meeting, discussions focused on an informal communication from the delegation of Hong Kong, China that put forward some thoughts on the possible way forward on aspects such as the information exchange, other sources of information about subsidies, the definition of subsidy, and trade distortion (JOB(04)/127). Noting the lack of progress in that area, some delegations called for a target date to be set for the exchange of information pursuant to Article XV, while others raised doubts about the precise meaning of Article XV in that regard. The importance of working on a definition of subsidy was stressed, as well as the need for discussing concrete negotiating proposals. It was also recommended to address different aspects of the negotiations in tandem. As requested, the Secretariat produced four Notes, which were subsequently discussed: *Overview of Subsidy Disciplines Relating to Trade in Services in Economic Integration Agreements* (S/WPGR/W/46), *List of Publications from International Organizations Relating to Subsidies in Services* (S/WPGR/W/47), *Subsidies for Services Sectors: Information Contained in WTO Trade Policy Reviews* (S/WPGR/W/25/Add.4), and *Limitations in Members' Schedules Relating to Subsidies* (S/WPGR/W/13/Add.2).⁷

⁶ The discussions on government procurement are reflected in paragraphs 23-33 of S/WPGR/M/45, paragraphs 39-53 of S/WPGR/M/47, paragraphs 26-45 of S/WPGR/M/48 and paragraphs 2-38 of S/WPGR/M/49.

⁷ The discussions on subsidies are reflected in paragraphs 34-52 of S/WPGR/M/45, paragraphs 54-80 of S/WPGR/M/47, paragraphs 5-25 of S/WPGR/M/48, and paragraphs 59-80 of S/WPGR/M/49.

**ANNUAL REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES (2005)**

1. Since its annual report for 2004, the Working Party on GATS Rules held three formal meetings: on 24 November 2004, on 7 February 2005, and on 20 June 2005.¹ The three negotiating mandates the Working Party is entrusted with were put on the agenda of each meeting: emergency safeguard measures (Article X), government procurement (Article XIII), and subsidies (Article XV). The Working Party also held one informal meeting.

2. In the three areas, discussions referred to the need to consider work priorities in the context of upcoming key timelines and the current state of discussions, including as mentioned by the Chairperson in the annotated agenda circulated as JOB(05)/115. Various delegations expressed concerns regarding the lack of progress across the three areas of negotiations as well as the information exchange foreseen in paragraph 1 of Article XV.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

3. At the meetings of November 2004 and February 2005, delegations continued their discussion on emergency safeguard measures on the basis of an informal communication from a group of ASEAN Members² (JOB(04)/175), which presented answers to questions raised with respect to their proposal. Issues touched upon in the discussion included: situations justifying the use of a safeguard measure; the definition of domestic industry; availability of appropriate statistics; the relationship between safeguard measures and obligations in bilateral investment treaties; link to progressive liberalization; and the use of safeguard-type entries in schedules.

4. At the meeting of June 2005, a representative from UNCTAD presented a paper on emergency safeguard measures that the organization had earlier circulated. The ensuing discussion touched upon a number of issues, such as the purpose and effects of a safeguard mechanism in services, relevant comparisons with rules in the area of goods, special and differential treatment, domestic industry, procedures and indicators, compensation, as well as possible approaches for a way forward.³ Divergent views were expressed on the various aspects raised in relation to emergency safeguard measures, including desirability and feasibility.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII.**

5. At the meetings of November 2004 and February 2005, delegations continued their discussion of an earlier proposal by the European Communities for a framework under GATS for government

¹ Reports of these meetings are contained in documents S/WPGR/M/50, S/WPGR/M/51, and S/WPGR/M/52. They should be read in conjunction with this report.

² Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines and Thailand.

³ Discussions on emergency safeguard measures are reflected in paragraphs 33-55 of S/WPGR/M/50, paragraphs 55-79 of S/WPGR/M/51, and paragraphs 4-37 of S/WPGR/M/52.

procurement in services (S/WPGR/W/48). At the meeting of June 2005, the European Communities presented a communication on the structure of an annex to the GATS on procedural rules for government procurement (S/WPGR/W/52). Issues raised in the discussion included the application of the MFN obligation, the relationship to the Government Procurement Agreement (GPA), modal application, the possibility of distinguishing between goods and services, scheduling approaches, comparisons with approaches taken in regional trade agreements, thresholds, and elements of procedural rules. As requested, the Secretariat prepared the following Note: *Main Approaches to the Undertaking of Commitments on Government Procurement in Economic Integration Agreements: Summary Observations* (S/WPGR/W/51).

6. A number of delegations continued to reiterate that, in their view, the negotiating mandate under Article XIII did not entail market access issues, while others thought that these were covered. Some delegations drew attention to the General Council's decision, in the July Package, that there be no negotiations on the Singapore issue of transparency in government procurement, while others pointed out that the July Package also called on Members to intensify efforts to conclude the rule-making negotiations, including those on Article XIII.⁴

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

7. At the meeting of November 2004, delegations pursued their discussion on issues relating to the information exchange, the definition of subsidy, and trade distortion, including in the light of a previous communication from the delegation of Hong Kong, China (JOB(04)/127). At the meeting of February 2005, delegations discussed an informal communication from the United States, which put forward some thoughts regarding the information exchange. The delegation of Singapore also presented an informal communication which enumerated a number of relevant issues for the negotiations, in particular with respect to definition (JOB(04)/180). At the meeting of June 2005, delegations discussed an informal communication from the delegations of Chile, Hong Kong, China, Mexico, Peru and Switzerland, which put forward suggestions regarding the development of a provisional definition of subsidy and suggested next steps for the information exchange, including timelines (JOB(05)/96).

8. During the three meetings, the issues raised, and on which various views were expressed, included the scope and depth of the information exchange provided for in Article XV:1, the selection of sectors and timelines for the provision of information, the relevance of the ASCM concepts for a provisional definition in services, the treatment of public services, and flexibility for developing countries pursuant to Article XV:1. As requested, the Secretariat prepared the following informal Note: *Synthesis of Views Expressed on the Definition of Subsidy* (JOB(05)/4).⁵

⁴ Discussions on government procurement are reflected in paragraphs 56-70 of S/WPGR/M/50, paragraphs 37-54 of S/WPGR/M/51, and paragraphs 38-58 of S/WPGR/M/52.

⁵ Discussions on subsidies are reflected in paragraphs 4-32 of S/WPGR/M/50, paragraphs 2-36 of S/WPGR/M/51, and paragraphs 59-81 of S/WPGR/M/52.

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Doc#	Access	Symbol	Title - HTML format	Date	Original format		
05-4371 	D	S/WPGR/M/53 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 21 September 2005 - Note by the Secretariat Preview (HTML)	30/09/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					13 p. 124KB	16 p. 111KB	16 p. 112KB
05-3887 	D	S/WPGR/M/52 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 20 June 2005 - Note by the Secretariat Preview (HTML)	07/09/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					23 p. 169KB	27 p. 204KB	26 p. 175KB
05-1118 	D	S/WPGR/M/51 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 7 February 2005 - Note by the Secretariat Preview (HTML)	18/03/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					19 p. 148KB	23 p. 164KB	22 p. 159KB
05-0194 	D	S/WPGR/M/50 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 24 November 2004 - Note by the Secretariat Preview (HTML)	17/01/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					19 p. 169KB	22 p. 170KB	21 p. 151KB
04-4567	D	S/WPGR/M/49 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 20 September 2004 - Note by the Secretariat	27/10/2004	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>

				Preview (HTML)	23 p. 179KB	26 p. 179KB	26 p. 166KB
04-3131	D	S/WPGR/M/48 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 23 June 2004 - Note by the Secretariat	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					14 p. 117KB	16 p. 116KB	16 p. 124KB
04-1806	D	S/WPGR/M/47 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 24 March 2004 - Note by the Secretariat	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					23 p. 178KB	28 p. 173KB	27 p. 170KB
04-1631	D	S/WPGR/M/46/Corr.1 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 10 and 15 March 2004 - Note by the Secretariat - Corrigendum	Preview (HTML)	E <input checked="" type="checkbox"/>	--	S <input type="checkbox"/>
					1 p. 41KB		1 p. 37KB
04-1484	D	S/WPGR/M/46 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 10 and 15 March 2004	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					2 p. 46KB	2 p. 46KB	2 p. 43KB
03-6654	D	S/WPGR/M/45 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 2 December 2003 - Note by the Secretariat	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					15 p. 116KB	17 p. 130KB	16 p. 129KB
03-5703	D	S/WPGR/M/44 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 1 October 2003 - Note by the Secretariat	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					18 p. 115KB	20 p. 125KB	21 p. 123KB
03-4643	D	S/WPGR/M/43 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 2 and 3 July 2003 - Note by the Secretariat	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					16 p. 104KB	18 p. 107KB	18 p. 106KB
03-3282	D	S/WPGR/M/42 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 13 and 14 May 2003 - Note by the Secretariat	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					16 p. 107KB	19 p. 116KB	19 p. 110KB
03-1537	D	S/WPGR/M/41/Corr.1 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 25 February 2003 - Note by the Secretariat - Corrigendum	Preview (HTML)	E <input checked="" type="checkbox"/>	--	--
					1 p. 31KB		
03-1390	D	S/WPGR/M/41 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 25 February 2003 - Note by the Secretariat	Preview (HTML)	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					13 p. 89KB	15 p. 95KB	16 p. 97KB

 02-7073	D	S/WPGR/M/40 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 3 December 2002 - Note by the Secretariat Preview (HTML)	23/12/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 43KB	4 p. 39KB	4 p. 39KB
 02-6205	D	S/WPGR/M/39 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 23 October 2002 - Note by the Secretariat Preview (HTML)	12/11/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	8 p. 69KB	10 p. 68KB	9 p. 68KB
 02-4172	D	S/WPGR/M/38 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 15 July 2002 - Note by the Secretariat Preview (HTML)	26/07/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	10 p. 73KB	11 p. 76KB	11 p. 75KB
 02-3540	D	S/WPGR/M/37 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 3 June 2002 - Note by the Secretariat Preview (HTML)	26/06/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	8 p. 61KB	9 p. 63KB	9 p. 61KB
 02-1653	D	S/WPGR/M/36 Catalogue record	Working Party on GATS Rules - Report of the Meetings of 13 and 15 March 2002 - Note by the Secretariat Preview (HTML)	03/04/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 46KB	5 p. 43KB	4 p. 43KB
 01-6241	D	S/WPGR/M/35 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 28 November 2001 - Note by the Secretariat Preview (HTML)	07/12/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 45KB	5 p. 45KB	5 p. 44KB
 01-4965	D	S/WPGR/M/34 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 3 October 2001 - Note by the Secretariat Preview (HTML)	10/10/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 38KB	3 p. 35KB	3 p. 34KB
 01-3442	D	S/WPGR/M/33 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 2 July 2001 - Note by the Secretariat Preview (HTML)	10/07/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 43KB	4 p. 41KB	4 p. 41KB
 01-2533	D	S/WPGR/M/32 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 10 May 2001 - Note by the Secretariat Preview (HTML)	17/05/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	5 p. 47KB	5 p. 47KB	5 p. 45KB
 01-1767	D	S/WPGR/M/31 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 21 March 2001 - Note by the Secretariat Preview (HTML)	06/04/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 45KB	5 p. 44KB	5 p. 44KB
 00-5643	D	S/WPGR/M/30 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 30 November 2000 - Note by the Secretariat Preview (HTML)	22/12/2000	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>			

00-4148	D	S/WPGR/M/29 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 27 September 2000 - Note by the Secretariat Preview (HTML)	11 p. 79KB E <input checked="" type="checkbox"/>	13 p. 84KB F <input type="checkbox"/>	13 p. 83KB S <input type="checkbox"/>
00-3291	D	S/WPGR/M/28/Corr.1 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 7 July 2000 - Note by the Secretariat - Corrigendum Preview (HTML)	4 p. 44KB E <input checked="" type="checkbox"/>	5 p. 44KB --	5 p. 43KB --
00-3240	D	S/WPGR/M/28 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 7 July 2000 - Note by the Secretariat Preview (HTML)	1 p. 31KB E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
00-2222	D	S/WPGR/M/27 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 4 May 2000 - Note by the Secretariat Preview (HTML)	11 p. 78KB E <input checked="" type="checkbox"/>	13 p. 90KB F <input type="checkbox"/>	13 p. 87KB S <input type="checkbox"/>
00-1623	D	S/WPGR/M/26 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 24 March 2000 - Note by the Secretariat Preview (HTML)	11 p. 81KB E <input checked="" type="checkbox"/>	14 p. 90KB F <input type="checkbox"/>	13 p. 86KB S <input type="checkbox"/>
99-4741	D	S/WPGR/M/25 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 8 October 1999 - Note by the Secretariat Preview (HTML)	21 p. 118KB E <input checked="" type="checkbox"/>	25 p. 148KB F <input type="checkbox"/>	24 p. 134KB S <input type="checkbox"/>
99-3731	D	S/WPGR/M/24 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 27 July 1999 - Note by the Secretariat Preview (HTML)	9 p. 69KB E <input checked="" type="checkbox"/>	11 p. 76KB F <input type="checkbox"/>	11 p. 75KB S <input type="checkbox"/>
99-2785	D	S/WPGR/M/23 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 21 June 1999 - Note by the Secretariat Preview (HTML)	8 p. 60KB E <input checked="" type="checkbox"/>	10 p. 69KB F <input type="checkbox"/>	9 p. 67KB S <input type="checkbox"/>
99-2505	D	S/WPGR/M/22/Corr.1 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 19 May 1999 - Note by the Secretariat - Corrigendum Preview (HTML)	8 p. 58KB E <input checked="" type="checkbox"/>	8 p. 61KB --	8 p. 60KB --
99-2413	D	S/WPGR/M/22 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 19 May 1999 - Note by the Secretariat Preview (HTML)	1 p. 28KB E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
				7 p. 59KB	8 p. 62KB	8 p. 61KB

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99-1882 	D	S/WPGR/M/21 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 16 April 1999 - Note by the Secretariat Preview (HTML)	07/05/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
99-1072 	D	S/WPGR/M/20 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 19 February 1999 - Note by the Secretariat Preview (HTML)	17/03/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
99-0216 	D	S/WPGR/M/19 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 1 December 1998 - Note by the Secretariat Preview (HTML)	21/01/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
98-4548 	D	S/WPGR/M/18 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 6 October 1998 - Note by the Secretariat Preview (HTML)	13/11/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
98-3041	D	S/WPGR/M/17 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 23 June 1998 - Note by the Secretariat	31/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>

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98-2352	D	S/WPGR/M/16 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 27 April 1998 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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98-0819	D	S/WPGR/M/15 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 13 February 1998 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					3 p. 29KB	3 p. 35KB	3 p. 34KB
97-5289	D	S/WPGR/M/14 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 26 November 1997 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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97-5096	D	S/WPGR/M/13 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 1 October 1997 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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97-3574	D	S/WPGR/M/12 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 23 July 1997 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					4 p. 38KB	4 p. 39KB	4 p. 40KB
97-2795	D	S/WPGR/M/11 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 22 May 1997 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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97-1896	D	S/WPGR/M/10 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 13 March 1997 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					4 p. 33KB	4 p. 40KB	4 p. 37KB
97-0910	D	S/WPGR/M/9 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 23 January 1997 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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96-5320	D	S/WPGR/M/8 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 8 and 14 October 1996 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					3 p. 33KB	3 p. 35KB	3 p. 37KB
96-3687	D	S/WPGR/M/7 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 29 July 1996 - Note by the Secretariat Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					3 p. 43KB	3 p. 34KB	3 p. 35KB

96-2887 	D	S/WPGR/M/6 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 3 June 1996 - Note by the Secretariat Preview (HTML)	22/07/1996	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 34KB	3 p. 39KB	3 p. 37KB
96-1874 	D	S/WPGR/M/5 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 28 March 1996 - Note by the Secretariat Preview (HTML)	13/05/1996	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 32KB	3 p. 39KB	3 p. 39KB
96-0989 	D	S/WPGR/M/4 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 23 February 1996 - Note by the Secretariat Preview (HTML)	19/03/1996	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 29KB	3 p. 37KB	3 p. 32KB
95-4151 	D	S/WPGR/M/3 Catalogue record	Working Party on GATS Rules - Report of the Meeting of 8 December 1995 - Note by the Secretariat Preview (HTML)	21/12/1995	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 29KB	3 p. 34KB	3 p. 34KB
95-3523 	D	S/WPGR/M/2 Catalogue record	Working Party on GATS Rules - Report of the Meeting Held on 18 October 1995 - Note by the Secretariat Preview (HTML)	14/11/1995	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 27KB	2 p. 31KB	2 p. 31KB
95-2510 	D	S/WPGR/M/1 Catalogue record	Working Party on GATS - Report of the Meeting Held on 17 July 1995 - Note by the Secretariat Preview (HTML)	29/08/1995	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 31KB	3 p. 39KB	3 p. 35KB

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1 58 KB	05-4371	S/WPGR/M/53	Working Party on GATS Rules - Report of the Meeting of 21 September 2005 - Note by the Secretariat	30/09/2005	13	D	T/S/WPGR/M53.doc
2 104 KB	05-3887	S/WPGR/M/52	Working Party on GATS Rules - Report of the Meeting of 20 June 2005 - Note by the Secretariat	07/09/2005	23	D	T/S/WPGR/M52.doc
3 85 KB	05-1118	S/WPGR/M/51	Working Party on GATS Rules - Report of the Meeting of 7 February 2005 - Note by the Secretariat	18/03/2005	19	D	T/S/WPGR/M51.doc
4 85 KB	05-0194	S/WPGR/M/50	Working Party on GATS Rules - Report of the Meeting of 24 November 2004 - Note by the Secretariat	17/01/2005	19	D	T/S/WPGR/M50.doc
5 103 KB	04-4567	S/WPGR/M/49	Working Party on GATS Rules - Report of the Meeting of 20 September 2004 - Note by the Secretariat	27/10/2004	23	D	T/S/WPGR/M49.doc
6 62 KB	04-3131	S/WPGR/M/48	Working Party on GATS Rules - Report of the Meeting of 23 June 2004 - Note by the Secretariat	20/07/2004	14	D	T/S/WPGR/M48.doc
7 106 KB	04-1806	S/WPGR/M/47	Working Party on GATS Rules - Report of the Meeting of 24 March 2004 - Note by the Secretariat	22/04/2004	23	D	T/S/WPGR/M47.doc
8 3 KB	04-1631	S/WPGR/M/46/Corr.1	Working Party on GATS Rules - Report of the Meeting of 10 and 15 March 2004 - Note by the Secretariat - Corrigendum	08/04/2004	1	D	T/S/WPGR/M46C1.doc
9 7 KB	04-1484	S/WPGR/M/46	Working Party on GATS Rules - Report of the Meeting of 10 and 15 March 2004	01/04/2004	2	D	T/S/WPGR/M46.doc
10 66 KB	03-6654	S/WPGR/M/45	Working Party on GATS Rules - Report of the Meeting of 2 December 2003 - Note by the Secretariat	18/12/2003	15	D	T/S/WPGR/M45.doc
11 79 KB	03-5703	S/WPGR/M/44	Working Party on GATS Rules - Report of the Meeting of 1 October 2003 - Note by the Secretariat	28/10/2003	18	D	T/S/WPGR/M44.doc
12 70 KB	03-4643	S/WPGR/M/43	Working Party on GATS Rules - Report of the Meeting of 2 and 3 July 2003 - Note by the Secretariat	05/09/2003	16	D	T/S/WPGR/M43.doc
13 68 KB	03-3282	S/WPGR/M/42	Working Party on GATS Rules - Report of the Meeting of 13 and 14 May 2003 - Note by the Secretariat	19/06/2003	16	D	T/S/WPGR/M42.doc
14 4 KB	03-1537	S/WPGR/M/41/Corr.1	Working Party on GATS Rules - Report of the Meeting of 25 February 2003 - Note by the Secretariat - Corrigendum	17/03/2003	1	D	T/S/WPGR/M41C1.doc
15 56 KB	03-1390	S/WPGR/M/41	Working Party on GATS Rules - Report of the Meeting of 25 February 2003 - Note by the Secretariat	12/03/2003	13	D	T/S/WPGR/M41.doc

16 13 KB	02-7073	S/WPGR/M/40	Working Party on GATS Rules - Report of the Meeting of 3 December 2002 - Note by the Secretariat	23/12/2002	3	D	T/S/WPGR/M40.doc
17 34 KB	02-6205	S/WPGR/M/39	Working Party on GATS Rules - Report of the Meeting of 23 October 2002 - Note by the Secretariat	12/11/2002	8	D	T/S/WPGR/M39.doc
18 40 KB	02-4172	S/WPGR/M/38	Working Party on GATS Rules - Report of the Meeting of 15 July 2002 - Note by the Secretariat	26/07/2002	10	D	T/S/WPGR/M38.doc
19 30 KB	02-3540	S/WPGR/M/37	Working Party on GATS Rules - Report of the Meeting of 3 June 2002 - Note by the Secretariat	26/06/2002	8	D	T/S/WPGR/M37.doc
20 16 KB	02-1653	S/WPGR/M/36	Working Party on GATS Rules - Report of the Meetings of 13 and 15 March 2002 - Note by the Secretariat	03/04/2002	4	D	T/S/WPGR/M36.doc
21 16 KB	01-6241	S/WPGR/M/35	Working Party on GATS Rules - Report of the Meeting of 28 November 2001 - Note by the Secretariat	07/12/2001	4	D	T/S/WPGR/M35.doc
22 9 KB	01-4965	S/WPGR/M/34	Working Party on GATS Rules - Report of the Meeting of 3 October 2001 - Note by the Secretariat	10/10/2001	3	D	T/S/WPGR/M34.doc
23 14 KB	01-3442	S/WPGR/M/33	Working Party on GATS Rules - Report of the Meeting of 2 July 2001 - Note by the Secretariat	10/07/2001	4	D	T/S/WPGR/M33.doc
24 18 KB	01-2533	S/WPGR/M/32	Working Party on GATS Rules - Report of the Meeting of 10 May 2001 - Note by the Secretariat	17/05/2001	5	D	T/S/WPGR/M32.doc
25 17 KB	01-1767	S/WPGR/M/31	Working Party on GATS Rules - Report of the Meeting of 21 March 2001 - Note by the Secretariat	06/04/2001	4	D	T/S/WPGR/M31.doc
26 48 KB	00-5643	S/WPGR/M/30	Working Party on GATS Rules - Report of the Meeting of 30 November 2000 - Note by the Secretariat	22/12/2000	11	D	T/S/WPGR/M30.doc
27 16 KB	00-4148	S/WPGR/M/29	Working Party on GATS Rules - Report of the Meeting of 27 September 2000 - Note by the Secretariat	09/10/2000	4	D	T/S/WPGR/M29.doc
28 4 KB	00-3291	S/WPGR/M/28/Corr.1	Working Party on GATS Rules - Report of the Meeting of 7 July 2000 - Note by the Secretariat - Corrigendum	11/08/2000	1	D	T/S/WPGR/M28C1.DOC
29 48 KB	00-3240	S/WPGR/M/28	Working Party on GATS Rules - Report of the Meeting of 7 July 2000 - Note by the Secretariat	04/08/2000	11	D	T/S/WPGR/M28.doc
30 50 KB	00-2222	S/WPGR/M/27	Working Party on GATS Rules - Report of the Meeting of 4 - 5 May 2000 - Note by the Secretariat	06/06/2000	11	D	T/S/WPGR/M27.doc
31 85 KB	00-1623	S/WPGR/M/26	Working Party on GATS Rules - Report of the Meeting of 24 March 2000 - Note by the Secretariat	20/04/2000	21	D	T/S/WPGR/M26.doc
32 38 KB	99-4741	S/WPGR/M/25	Working Party on GATS Rules - Report of the Meeting of 8 October 1999 - Note by the	02/11/1999	9	D	T/S/WPGR/M25.DOC

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33 33 KB	99-3731	S/WPGR/M/24	Working Party on GATS Rules - Report of the Meeting of 27 July 1999 - Note by the Secretariat	08/09/1999	8	D	T/S/WPGR/M24.DOC
34 28 KB	99-2785	S/WPGR/M/23	Working Party on GATS Rules - Report of the Meeting of 21 June 1999 - Note by the Secretariat	06/07/1999	8	D	T/S/WPGR/M23.DOC
35 2 KB	99-2505	S/WPGR/M/22/Corr.1	Working Party on GATS Rules - Report of the Meeting of 19 May 1999 - Note by the Secretariat - Corrigendum	21/06/1999	1	D	T/S/WPGR/M22C1.DOC
36 29 KB	99-2413	S/WPGR/M/22	Working Party on GATS Rules - Report of the Meeting of 19 May 1999 - Note by the Secretariat	15/06/1999	7	D	T/S/WPGR/M22.DOC
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Rec#	Doc#	Symbol	Title - HTML format	Date	Pages	Access	File
1 35 KB	99-1882	S/WPGR/M/21	Working Party on GATS Rules - Report of the Meeting of 16 April 1999 - Note by the Secretariat	07/05/1999	9	D	T/S/WPGR/M21.DOC
2 29 KB	99-1072	S/WPGR/M/20	Working Party on GATS Rules - Report of the Meeting of 19 February 1999 - Note by the Secretariat	17/03/1999	7	D	T/S/WPGR/M20.DOC
3 29 KB	99-0216	S/WPGR/M/19	Working Party on GATS Rules - Report of the Meeting of 1 December 1998 - Note by the Secretariat	21/01/1999	7	D	T/S/WPGR/M19.DOC
4 22 KB	98-4548	S/WPGR/M/18	Working Party on GATS Rules - Report of the Meeting of 6 October 1998 - Note by the Secretariat	13/11/1998	5	D	T/S/WPGR/M18.DOC
5 18 KB	98-3041	S/WPGR/M/17	Working Party on GATS Rules - Report of the Meeting of 23 June 1998 - Note by the Secretariat	31/07/1998	5	D	T/S/WPGR/M17.DOC
6 12 KB	98-2352	S/WPGR/M/16	Working Party on GATS Rules - Report of the Meeting of 27 April 1998 - Note by the Secretariat	10/06/1998	3	D	T/S/WPGR/M16.DOC
7 11 KB	98-0819	S/WPGR/M/15	Working Party on GATS Rules - Report of the Meeting of 13 February 1998 - Note by the Secretariat	27/02/1998	3	D	T/S/WPGR/M15.WPF
8 8 KB	97-5289	S/WPGR/M/14	Working Party on GATS Rules - Report of the Meeting of 26 November 1997 - Note by the Secretariat	02/12/1997	2	D	T/S/WPGR/M14.WPF
9 15 KB	97-5096	S/WPGR/M/13	Working Party on GATS Rules - Report of the Meeting of 1 October 1997 - Note by the Secretariat	19/11/1997	4	D	T/S/WPGR/M13.WPF
10 14 KB	97-3574	S/WPGR/M/12	Working Party on GATS Rules - Report of the Meeting of 23 July 1997 - Note by the Secretariat	03/09/1997	4	D	T/S/WPGR/M12.WPF
11 20 KB	97-2795	S/WPGR/M/11	Working Party on GATS Rules - Report of the Meeting of 22 May 1997 - Note by the Secretariat	30/06/1997	5	D	T/S/WPGR/M11.WPF
12 14 KB	97-1896	S/WPGR/M/10	Working Party on GATS Rules - Report of the Meeting of 13 March 1997 - Note by the Secretariat	01/05/1997	4	D	T/S/WPGR/M10.WPF
13 10 KB	97-0910	S/WPGR/M/9	Working Party on GATS Rules - Report of the Meeting of 23 January 1997 - Note by the Secretariat	07/03/1997	3	D	T/S/WPGR/M9.WPF
14 11 KB	96-5320	S/WPGR/M/8	Working Party on GATS Rules - Report of the Meeting of 8 and 14 October 1996 - Note by the Secretariat	13/12/1996	3	D	T/S/WPGR/M8.WPF
15 11 KB	96-3687	S/WPGR/M/7	Working Party on GATS Rules - Report of the Meeting of 29 July 1996 - Note by the Secretariat	19/09/1996	3	D	T/S/WPGR/M7.WPF

16 12 KB	96-2887	S/WPGR/M/6	Working Party on GATS Rules - Report of the Meeting of 3 June 1996 - Note by the Secretariat	22/07/1996	3	D	T/S/WPGR/M6.WPF
17 13 KB	96-1874	S/WPGR/M/5	Working Party on GATS Rules - Report of the Meeting of 28 March 1996 - Note by the Secretariat	13/05/1996	3	D	T/S/WPGR/M5.WPF
18 11 KB	96-0989	S/WPGR/M/4	Working Party on GATS Rules - Report of the Meeting of 23 February 1996 - Note by the Secretariat	19/03/1996	3	D	T/S/WPGR/M4.WPF
19 10 KB	95-4151	S/WPGR/M/3	Working Party on GATS Rules - Report of the Meeting of 8 December 1995 - Note by the Secretariat	21/12/1995	3	D	T/S/WPGR/M3.WPF
20 9 KB	95-3523	S/WPGR/M/2	Working Party on GATS Rules - Report of the Meeting Held on 18 October 1995 - Note by the Secretariat	14/11/1995	2	D	T/S/WPGR/M2.WPF
21 10 KB	95-2510	S/WPGR/M/1	Working Party on GATS - Report of the Meeting Held on 17 July 1995 - Note by the Secretariat	29/08/1995	3	D	T/S/WPGR/M1.WPF
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Working Party on GATS Rules

REPORT OF THE MEETING OF 21 SEPTEMBER 2005

Note by the Secretariat¹

1. Due to the absence of the Chairperson, the Working Party elected Ms. Clare Kelly, from New Zealand, to preside over this meeting. The agenda for the meeting, contained in WTO/AIR/2649, included the following items: adoption of the annual report to the Council for Trade in Services, emergency safeguard measures, subsidies, government procurement, date of the next meeting, and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda, contained in JOB(05)/189. The agenda was adopted.

I. ANNUAL REPORT OF THE WORKING PARTY ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2005)

2. The Chairperson invited the Working Party to adopt the draft annual report contained in document S/WPGR/W/53 and to transmit it to the Council for Trade in Services. It covered the meetings of the Working Party from November 2004 to June 2005.

3. Some delegations proposed changes to the draft report. The following delegations participated in the ensuing discussions: Hong Kong, China; United States; Chile; New Zealand; Switzerland; Thailand; Republic of Korea; Chinese Taipei; the Philippines; the European Communities; and Brazil. After some modifications had been made to the draft, the Working Party adopted the Annual Report, which was circulated as document S/WPGR/15.

II. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

4. The Chairperson reminded delegations of the need to focus their attention on work priorities and ways to carry them through. The current state of the negotiations on the three topics was known to all and, in the context of the broader negotiating agenda and timelines, delegations needed to think pragmatically about what could realistically be achieved over the remaining period of time. This was relevant for the three negotiating issues under the responsibility of the Working Party. On emergency safeguard measures, the delegation of Australia had indicated that it wished to report on the workshop on ESM that it had organized last July, and which it had announced at the last meeting. In reacting, delegations should take the opportunity to express their views on work priorities. At the end of the discussion at the last meeting of the Working Party, as well as in the annotated agenda, the Chairperson had noted that core divergences remained, but that there seemed to be some openness to consider new or alternative ideas and approaches. Some delegations had made general suggestions in that regard at the last meeting. She sought guidance from delegations on any particular avenues of work that might be further explored.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

5. The representative of Australia reported that the workshop, held in Bali, was conducted by Australian academics Malcolm Bosworth and Ray Trewin, as well as by Greg McGuire, currently an adviser to Indonesia's Ministry of Trade. Various ASEAN Members had sent capital-based officials to the workshop, which was designed to provide senior officials with an appreciation of the broad range of issues related to the application of an ESM in services. The workshop was divided in a number of thematic sessions, including the following: ESM within GATS and the Doha Development Agenda; key issues in the application of an ESM in services; the question whether an ESM for services could work and if so how; alternatives to an ESM and the role of domestic policy; regulatory regimes for telecommunications and ESMs; Australia's experience and lessons in liberalizing telecommunications; financial services under the GATS and the optimal level of financial regulation; Indonesia's experience and lessons in liberalizing financial services; practicalities of applying an ESM to services; and possible ways forward. As expected, no conclusions or recommendations emerged from the proceedings whose primary purpose was to provide an opportunity for capital-based officials to look at the specifics of an ESM. The issues relating to safeguards in services were very complex, and the workshop proved a useful forum to discuss the various proposals put forward to date, and the benefits and disadvantages of safeguards in services.

6. The representative of the Philippines thought that the workshop had contributed to a better understanding of the practicalities of an ESM. The main economic theme was the need to provide sufficient checks in any ESM model to ensure that the mechanism was not captured by domestic protectionist tendencies. One of the presenters had noted that most of the technical and feasibility concerns that had been raised in the Working Party could be addressed in one way or another. The insulation of an ESM from protectionist tendencies was a policy objective shared by the governments from the group of ASEAN delegations. This objective was pursued within a policy framework that was also informed by vital political economy considerations. ASEAN Members had demonstrated much flexibility in many of the issues involved, as reflected in their communication from November 2004 (JOB(04)/175), and willingness to consider the concerns of others. In the context of services, there inevitably was an array of potential safeguard situations. Safeguards in services were not as simple as imposing tariffs or quotas at the border. An ESM could therefore not be explained in a hypothetical scenario or addressed by a single rule of injury determination, or a single form of trade remedy. The author of the UNCTAD paper had argued that it was necessary to step back and look for simpler forms of resolving the most fundamental issues at hand. While some Members would view such complexity as detrimental to an ESM in services, he looked at it positively. The situation required more creativity and cooperation on the part of WTO Members as well as greater flexibility for regulators, while bearing in mind the need to preserve legal certainty of commitments.

7. His delegation continued to be interested in how the Members that maintained safeguard-type measures in their schedules dealt with feasibility issues. This could provide additional insights. The representative noted that there had been some informal discussion in the workshop on the possible link between the reduction or elimination of ENTs, particularly those that were not fully transparent, and the process of establishing an ESM in services. Some delegations had raised in the Working Party the possibility of a waiver mechanism as a potential interim or alternative solution, and this had also been discussed in the workshop. This discussion had highlighted some concerns about what form such a mechanism might take or the procedures it might embrace, as well as the possibility of experiencing similar feasibility issues in defining the parameters of 'exceptional circumstances' or whatever criteria chosen for a waiver. The workshop had also suggested the possibility of exploring non-horizontal options, such as allowing Members to inscribe an ESM in schedules on a sectoral basis along with a set of general disciplines, or developing a narrow safeguard-like instrument for sectors where liberalization concerns were greatest. However, these approaches were ex-ante disciplines that might not be adequate to deal with political economy interests. While his group of delegations remained open to exploring such interim or alternative solutions that might also be acceptable to Members, their authorities had fundamental concerns on how effective temporary solutions could be. He hoped to hear the views of other Members on these proposed solutions or approaches. The negotiations were now at a crossroad. While he recognized that there might be valid concerns that an

ESM be captured by protectionist interests or that it could potentially disrupt legal predictability, he believed that cooperation could solve technical issues. The capacities and experience of all Members could be harnessed towards solving many of the seemingly intractable technical, legal or policy issues raised in the last ten years. Members could see their concerns addressed through compromise and negotiations, and should thus not reject the idea of an ESM altogether. The question of feasibility and desirability could not be resolved by generating hypothetical scenarios, as some Members had long been suggesting. Aside from the likelihood that such scenarios would be rejected as inadequate to make the case for an ESM, the services sector was so complex that negotiations could not be reduced to one concrete scenario or the other.

8. While there might be valid technical issues to grapple with, he believed that Members had to take strategic political and economic decisions, if the deadlock in these negotiations was to be broken. His group of delegations had considered the possibility of updating JOB(04)/175 or of presenting another proposal in the Working Party. Some of the relevant authorities, however, had wondered whether this would only lead to never-ending debates, which would not be constructive. The authorities were presently studying this issue and revisiting fundamental interests. The alternative approaches or interim solutions alluded to by Members as well as at the Bali workshop were being considered in capitals; his group of delegations was presently exploring avenues of moving these negotiations forward, but other Members were expected to be constructive in discussions. Consideration of the way forward lied as much with the proponents as with other Members. In that context, he asked delegations if informal consultations would truly be useful; could they help to address the concerns of Members or were these too systemic and deep? Noting that some delegations had approached his group of delegations to work together on fundamental issues, he wondered whether bilateral meetings would be useful. While acknowledging that the proponents were supposed to drive the process, he asked whether the Working Party would be agreeable to the Chairperson using his good offices in terms of finding a feasible way forward. An ESM was of fundamental political and economic importance for his group of delegations. He was under no illusion that this issue, which had been discussed for the last 10 years, could be solved in the next three months before the Hong Kong Ministerial. However, delegations might be able to come to some common understandings and views, which could be built upon during the final stages of the Round.

9. The representative of Malaysia said that the workshop had been a meeting point where participants discussed and strived to understand each others' concerns on the issue of an ESM. She understood Australia's point of view in trying to impress upon participants the practicalities of an ESM. She supported the intervention from the delegation of the Philippines on the discussion derived from the workshop. Interim and non-horizontal approaches had been mentioned in both the workshop and the WPGR, but her delegation was not ready to explore alternative approaches in the absence of substantive progress, despite strenuous efforts from ASEAN Members to facilitate the process. She wished to thank the Chair of the Special Session of the Council for Trade in Services for organizing a brainstorming session on ESM before the summer break. Particularly notable was the information that a group of Members had entered into bilateral agreements on services with provisions on ESM. She thought that questions of feasibility and desirability would have been thoroughly considered at that stage. This would be relevant to the Working Party's discussion and could enable to make quick progress. Feedback from the workshop indicated concerns on the lack of checks and balances, and she proposed that such concerns, or any other concerns that Members might have, be discussed further in the WPGR in order to advance work on an ESM.

10. The representative of New Zealand said that his delegation had been able to attend the workshop as an observer and considered that the event had proved informative and constructive. It highlighted the usefulness of an informal small-group process for dealing with such complex technical issues. He thus supported the continuation of such discussions, including with the assistance of the Chairperson. The representative of Indonesia expressed appreciation for the assistance of Australia in organizing the workshop. He associated his delegation with the statements of the delegations of the Philippines and Malaysia.

11. The representative of Pakistan thought that such discussions in a workshop could yield positive results. Her delegation wished to see balanced progress on rules and market access. Members had to engage in this Working Party to ensure positive results on both ESM and subsidies. She supported the views expressed by the Philippines and hoped to see further exchanges involving all sides.

12. The representative of Hong Kong, China said that he would support exploring alternative ideas and approaches. He had an open mind in that regard, but it was important to make the necessary distinctions between, on the one hand, the question of the need for an ESM and, on the other hand, the question of how it could operate in practice. Informal exchanges should take place to explore any alternative ideas or approaches that delegations might come up with. Willingness and open-mindedness had to be shown by all sides. He would be prepared to contribute his thoughts to such informal exchange.

13. The representative of Chinese Taipei was encouraged to see that issues relating to an ESM could be discussed in the workshop. An ESM was of fundamental importance to certain countries pondering further liberalization. Therefore, she supported the suggestions by the delegation of the Philippines to have additional informal exchanges, with the assistance of the Chairperson. Some ideas touched upon in the seminar, such as non-horizontal approaches, could be explored further.

14. The representative of Thailand said that her authorities had found the workshop very useful. She associated her delegation with the statement made by the Philippines, including the suggestions on the way forward.

15. The representative of Cuba expressed support for the intervention by the delegation of the Philippines. She drew attention to the fact that, after so many years, the same difficulties persisted. While the proponents had show flexibility in trying to find a solution, there was a lack of political will from others. She underscored that this topic was her delegation's priority in the Working Party.

16. The representative of the European Communities considered that the suggestions of the delegation of the Philippines for the way forward, such as informal discussions and bilateral consultations, had already been pursued in the past. He supported the continuation of such efforts, but this should also be done in other rules areas such as government procurement. In response to comments on safeguard provisions in bilateral trade agreements on services, he said that this issue had already been discussed in past meetings. There were significant differences between such bilateral agreements and the GATS, especially regarding the levels of flexibility. No safeguard provisions in services existed in bilateral trade agreements that used a positive-list approach modelled on the GATS.

17. The representative of Brazil supported the suggestion that informal consultations be undertaken. The Chair of the Special Session had organized a brainstorming last June, and he might be asked, along with the Chair of the Working Party, to facilitate informal exchanges between delegations. In principle, his authorities had no problems with consultations on the other two areas within the remit of the Working Party.

18. The representative of Trinidad and Tobago said that the issue of ESM was important for countries such as hers, which were small and vulnerable. She was interested in any documents coming out of the workshop, which could be drawn upon in the WPGR. Many small economies were sometimes confronted with difficult situations. Efforts to advance market access thus needed to proceed in a complementary manner to efforts on rules so that sufficient fall-back positions could be ensured to face such difficult times. Cooperation in developing an ESM was key and her delegation was looking forward to participate in consultations.

19. The representative of India welcomed the suggestions made by the delegation of the Philippines relating to the organization of future work. His delegation was open to discussing various alternative approaches, which would help to take the negotiations forward.

20. The representative of the United States asked the delegation of the Philippines to clarify what it had in mind when referring to the good offices of the Chairperson. She agreed that some form of consultations should be contemplated, but this should be done under the auspices of this Working Party. The brainstorming undertaken by the Chair of the Special Session had been under his personal responsibility. Despite a productive exchange, a lot of questions remained unanswered and her delegation continued to question the need for and the feasibility of an ESM in services. The onus for developing a workable proposal clearly rested with the proponents. Her delegation was very sensitive to the political needs of some Members and was interested in consultations that would help to promote creative ideas.

21. The representative of the Philippines emphasized that all delegations needed to show the willingness and open-mindedness required to move forward on this issue. The Chairperson would eventually decide whether to offer his good offices in finding a way forward. He was hoping that the Chairperson could facilitate such informal exchanges, but was also envisaging that ASEAN Members might convene consultations among a small group. He invited delegations that had been less vocal in the Working Party to signal their interest in participating in such discussions. If some Members had no willingness to negotiate and had already taken the decision that there was no need for an ESM, these might not prove very helpful however. The Working Party would then be bound to repeat the discussions of the last 10 years.

22. The representative of Brazil said that he had learned much about the GATS by listening to the arguments of those in favour as well as those against an ESM. The Working Party had so far engaged in two types of approaches. One was to discuss fictitious examples. Another avenue, favoured by his delegation, was to look at some schedules to examine entries that had effects equivalent to that of safeguards so as to learn from experience. This could help to clarify feasibility issues raised in relation to an ESM. He had questions for some Members in relation to their scheduling entries, but understood that additional time might be needed since the questions had not been circulated in advance. They were addressed to Japan, the United States, the European Communities, and Canada. The revised Japanese offer (TN/S/O/JPN/Rev.1) contained an entry similar to a safeguard that allowed the introduction of future and temporary limitations. It was to be found in the commitment on freight transport by road (CPC 7123). In Japan's Uruguay Round schedule, the entry for that sector clearly referred to emergency safeguard measures, and the Japanese delegation had indicated in the past that this had been a mistake. In the revised offer, the entry had been replaced, in mode 3 under market access, by the following: "None except that on a temporary and non-discriminatory basis, limitations on the number of service suppliers and on the number of service operations or on the quantity of service output may be applied". The inscription suggested that in some situations the number of service suppliers, service operations or the quantity of service output might be limited. Since the measure affected mode 3, it might be used to limit 'expansionary activities' that could cause injury or threat thereof to the domestic industry and affect acquired rights. He asked for clarifications on the following aspects: What were the situations that justified the application of the measure? What type of information would be considered in making a determination of injury or threat thereof? What would be the statistical source that the proponents would use? Would these statistics need to be provided according to the mode of supply? What type of evidence would be sought in determining the potential injury? What parameters were considered in setting the quantitative limits? Would these be applied to the established local and foreign suppliers as well as on those wishing to establish? How would expansion of service supplies be defined (increases in turnover, profits, product range, regional representation, etc)?

23. The representative further said that the revised offer from the United States (TN/S/O/USA/Rev.1) contained an inscription similar to a safeguard. It allowed exemptions on rural local exchange carriers to ensure interconnection. The entry, which was found in a footnote to the Reference Paper on telecommunications, seemed to be discriminatory. It enabled a state regulatory authority to exempt rural local exchange carriers for a limited period of time from the obligations of section 2.2 of the Reference Paper with regard to interconnection with competing local exchange carriers. In relation to this inscription, he invited the United States to provide clarifications about the following aspects: In which situation was this exemption applied? What type of information would be considered in determining the exemption? To which modes of supply would this safeguard apply? What data would be used? Would statistics need to be provided according to the modes of supply? What was the type of surveillance applied and what were the elements considered in such a process? How was the limited period of application stipulated?

24. The representative said that the revised offer of Canada (TN/S/O/CAN/Rev.1) also contained an inscription similar to a safeguard measure. It required a public convenience and necessity test in relation to distribution services. The entry, which was found in the sub-sector 'Retail sales of motor fuel' (CPC 613) and applied to the province of Prince Edward Island under mode 3, read as follows: "Public convenience and necessity test. (criteria related to approval include: examination of the adequacy of current levels of service, market conditions establishing the requirement for expanded services, the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to provide proper service)". He thought that the concept of "effect on public convenience" might have a close relation to issues such as the consideration of consumers' views, as well as to the broader economic impact of the application of a safeguard measure. Therefore, he asked Canada to explain the concrete parameters for the application of this measure. Further, what type of information would be considered in determining the adequacy of current levels of service? What type of statistics would be used? Would they be disaggregated by sub-sector (e.g., three digit CPC, four digit CPC)? How would the requirement for expanded services be defined (increases in turnover, profits, product range, regional representation, etc)? Could the measure imply restrictions to the acquisition of new facilities, new hiring, increased marketing, expansion of consumer base, or new strategic alliances? Would any limitations to expansion be discriminatory, or would they also apply to domestic suppliers? Would the consideration of new entrants with regard to public convenience take into account domestic suppliers and, if so, what would be the criteria? Would discriminatory restrictions be consistent with bilateral investment treaties providing for national treatment to established foreign investors, including foreign service suppliers? Would the Parties to these agreements be exempted on the basis of acquired rights? How could it be determined whether public convenience was affected by scheduled liberalization, as opposed to other factors? What weight would be given to public convenience compared to economic factors?

25. The representative continued by referring to the revised offer from the European Communities (TN/S/O/EEC/Rev.1). It contained a safeguard-type entry that required an economic needs test based on, in his view, unclear criteria in relation to distribution services. The entry, which related to retailing services under mode 3 and was specific to Belgium, Cyprus, Denmark, France, Italy, Malta and Portugal read: "(e)conomic needs test applied on a national treatment basis. The economic needs test, when applied, sets a limit on the number of department stores (large department stores in France and larger than 2000 sq. m. in Portugal). Main criteria: The number of and impact on existing stores, population density, geographic spread, impact on traffic conditions and creation of new employment." He asked what type of information would be considered in determining the impact on existing stores, what type of statistics would be used, and whether these would be disaggregated by sub-sector (e.g., three digit CPC, four digit CPC)? Further, how could it be determined whether the existing stores were affected by liberalization undertaken in accordance with the schedule of commitments, as opposed to other factors? How would safeguard measures be different from the market access limitations listed, and would their use be less feasible than the use of such limitations? The representative encouraged the relevant Members to engage in this discussion, at least in

forthcoming meetings. There was no presumption that the entries he mentioned were safeguard measures. However, some entries contained elements that, if explained, could inform the debate on feasibility issues raised in relation to an ESM. He reiterated that his delegation stood ready to respond to questions as well.

26. The representative of Japan noted that similar questions on Japan's schedule of commitments had been raised in the past and said that he would communicate the details of Brazil's intervention to his authorities and come back to this at a later time.

27. The representative of the European Communities said that the questions raised by Brazil related to an economic needs test which was not applied on a discriminatory basis nor in response to emergency or injury situations. He did not think that such questions were relevant to the Working Party's discussions.

28. The representative of the United States said that the Working Party, in continuing discussions pursuant to Article X, had been looking at proposals on an emergency safeguard mechanism. The questions put forward by Brazil were outside of the mandate. Nevertheless, her delegation had responded during the bilateral request-offer process. She hoped to see the questions in writing and was open to again discuss these issues further with Brazil in the hope of addressing its concerns. The entry in the US schedule that was highlighted by Brazil was not an emergency safeguard mechanism nor was it intended to play such a role. A different standard was being applied for the Article X mandate.

29. The representative of Canada, in a preliminary manner, saw little parallels between ENTs and an ESM. ENTs in schedules had emerged from earlier negotiations and, to the extent they were impediments to trade, they would be discussed in the context of on-going and future market access negotiations. Article XVI specifically contemplated ENTs. Their existence did not militate in favour of equipping the GATS with an ESM, but highlighted the flexibility already imbedded within the GATS.

30. The representative of Hong Kong, China hoped that the delegation of Brazil could share its questions with the whole Membership. He asked the Secretariat to inform the Working Party of Notes prepared in the past on safeguard provisions in economic integration agreements. When discussing safeguard-type entries in schedules, it was important to look at measures that, even if not using the word 'safeguard' as such, had the effect of introducing uncertainty in specific commitments by providing an element of discretion in deciding the level of market opening granted in practice. Two types of measures were closely related to safeguards. The first were some entries referring to ENTs. ENTs were one way of specifying an Article XVI limitation; however, many such entries did not specify a criterion nor the type of limitation that could be imposed. One could presume that such entries had been included in schedules because the relevant Members had wanted to reserve a certain amount of discretion in terms of limiting market access. In that sense, there might be some resemblance between unspecified ENTs and safeguard-type provisions. Second, subsidies could also act as very effective safeguard measures for those Members that could afford it. Subsidies could tilt the level playing field in favour of the domestic suppliers in situations where injury was caused by supplies of foreign service suppliers. Various Members had included in their schedules horizontal carve-outs on subsidies. The representative was puzzled by previous interventions suggesting that Brazil's questions were of no relevance to this Working Party. Many resembled some of the issues raised in the Committee on Specific Commitments (CSC). He was looking for Members to respond to these questions, whether in this Working Party or in the CSC. Such questions would continue to be asked until they were addressed in a substantive manner. He was not intending to single out any particular Member, but rather aimed at addressing the more general problem of unclear entries that might have effects similar to safeguards or that, in their operation, would be posing the same type of feasibility questions. If some Members considered that such entries did not have similar effects to

safeguards nor posed similar feasibility questions, he was waiting for an explanation. A solution to this issue was to eliminate or reduce these types of entries through Members' offers.

31. The representative of the United States said that, while it might prove interesting to look at the entries in all Members' schedules, this might detract from discussions on the question of an ESM. She did not think that this was an appropriate way to respond to the proponents of an ESM, and she wondered whether the proponents thought that examining entries in every single Member's schedule would prove useful. Further, there was no definition of what might be safeguard-type provisions. She agreed with the delegation of Hong Kong, China that the occurrence of certain limitations and other trade obstacles should be reduced. This was a purpose of the negotiations. In the CSC, her delegation had supported informal discussions to address technical questions relating to schedules. One could continue to ask questions, but, given that some might feel that these did not fall under the mandate and that Members were not obligated to answer, she wondered whether this would be a prudent way to advance the Article X mandate. She had not agreed to launch such an exercise.

32. The representative of Chile noted that the approach, mentioned earlier, consisting of the provision of examples of situations requiring a safeguard was an important way to address this question. She did not see such examples as fictitious, but rather hoped that the proponents put forward concrete examples in order to see whether or not a safeguard-type mechanism was necessary and feasible. She thought that the questions put forward by Brazil were useful and did not mind whether they were discussed in the WPGR or the CSC.

33. Reacting to previous interventions, the representative of the European Communities did not consider that ENTs were similar to safeguards. Economic needs tests carried a certain level of discretion, but Members without commitments in certain sectors or with the inscription "unbound" had even more discretion. This should be kept in mind when attempting comparisons.

34. The representative of the Philippines thought that Brazil's intervention was a positive and constructive contribution to help solve some feasibility issues previously raised regarding safeguards. Delegations should not perceive this exercise as an attempt to target any particular delegation, but rather as a complement to on-going discussions about an ESM. Hopefully, reticent delegations would at least discuss such issues in the informal consultations that ASEAN would convene.

35. The representative of China believed that Brazil's intervention was relevant to the discussion on Article X. The examples mentioned were, in his view, equivalent to safeguards, and he was looking forward to answers from relevant Members. He agreed with the suggestions made by the Philippines on organization of work.

36. The representative of the United States did not endorse the course of action proposed by Brazil. The Chairperson might have to conduct consultations on how best to proceed on this point. Engaging in an informal discussion of Brazil's questions could mean that the Working Party would have to examine similar questions on every Member's schedule. Her authorities would further consider this issue, but the US delegation would certainly not participate unless assured that every Member would be subject to the same questions. In any event, she would not be interested in discussions in formal mode. The burden was on the proponents to demonstrate the need for an ESM; the burden was not on others to demonstrate why entries in their schedules were not safeguard-type provisions. Trying to shift the burden in such a way was not acceptable.

37. The representative of the Philippines did not see Brazil's intervention as an attempt to shift the burden, but as a constructive effort to further the negotiations on ESM.

38. The representative of Brazil was open to consultations by the Chairperson on this issue. He would circulate the questions and revert to them at the next meeting. He encouraged delegations to ask questions on his country's schedule, hoping that this could help to avoid scheduling inaccuracies.

He was not trying to shift the burden of proof, but rather attempted to ease the burden of rejoinder. Many questions had been put to the proponents in relation to feasibility. The four large economies at which the questions were directed could share their experience. They were in a good position to respond because they had sophisticated bureaucracies, but the intent was not to target any Member in particular.

39. The representative of Thailand was grateful for Brazil's intervention and looked forward to further discussions on this topic. The scheduling entries mentioned could lead to a form of suspension of specific commitments, which was why there was no impending need for an ESM. In some ENTs, the criteria could serve as a trigger point similar to what might be used for an emergency situation in safeguard provisions.

40. The representative of Hong Kong, China noted that the Secretariat Note S/CSS/W/118 contained a list of ENTs in Members' schedules. A similar list relating to subsidies could be found in the Secretariat Notes S/WPGR/W/13 and addenda. Like the delegation of Chile, he was interested in pursuing this discussion either in this Working Party or in the CSC.

41. In response to a previous question, the Chairperson said that the Notes prepared by the Secretariat on safeguard-type provisions in economic integration agreements had been circulated as S/WPGR/W/2, S/WPGR/W/4, and S/WPGR/4/Add.1 (incl. Corr.1). In summing up, she noted the appreciation of Members for the seminar held in Indonesia on ESM issues, as well as the strong interest of some delegations in advancing on this question. Proponents, as well as other delegations, had signalled their openness to considering possible alternatives and approaches on the way forward. Some delegations had stressed that the responsibility for advancing this negotiation lied with the proponents. It had been suggested that the Chairperson should undertake consultations and hold informal exchanges as appropriate, and ASEAN Members had said they might hold additional meetings. In addition, Brazil had made an intervention on what it considered as limitations in schedules resembling safeguards, and had invited comments from other delegations in reaction to its questions. Views differed to a significant degree on the utility of answering such questions in this Working Party, and it was noted that the Chairperson should include this point in his consultations. She invited the Working Party to take note of comments made.

III. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

42. The Chairperson suggested that delegations pursue their discussion of the communication from Chile; Hong Kong, China; Mexico; Peru; and Switzerland (JOB(05)/96) on a provisional definition of subsidy for the purpose of information exchange and of the suggestions contained therein. It would be of interest to know, from those that had not given a view to date, what steps were envisaged regarding the provision of information as per Article XV:1. While having all Members agree on a working definition and select sectors might prove useful, delegations should keep in mind that these were not pre-conditions for the provision of information.

43. The representative of Hong Kong, China wished to emphasize three general points in relation to JOB(05)/96. First, he was not looking for a perfect and agreed definition of subsidies for the purpose of developing disciplines, but rather for a working definition that individual Members could use as a basis for initiating the information exchange as mandated in Article XV:1. That mandate was clear and he did not see any reason for such an exercise to be confused with notifications. Both the 1997 Secretariat questionnaire and the 2002 simplified questionnaire by Hong Kong, China and others had suggested that delegations use either the definition of the Agreement on Subsidies and Countervailing Measures (ASCM) or their own definition. The proposal for a provisional definition was a response to the repeated complaints by some Members that the lack of a definition made it difficult to exchange information. Second, there was no need for a common definition before proceeding with the information exchange. That would be ideal, but the discussions would be shaped by the information coming forward. It was important for the information exchange to go ahead, rather

than to dwell on details. In any event, no definition used by individual Members for the purpose of the information exchange would prejudice any eventual definition or the scope of disciplines. Third, sponsors of the communication had suggested the possibility of self-selecting a certain number of sectors, along with a certain timeframe. Specific suggestions had been made in the communication, but he was open to other Members' views as to what would be realistically achievable. He recognized the capacity constraints that some developing Members might face and was open to ideas on how this might be addressed, e.g. by providing information on fewer sectors, by having a longer timeframe, or - as had been suggested by the EC - by setting a *de minimis* level.

44. Turning to specific issues raised at the last meeting, the representative noted that a comparison had been made between the US proposal and JOB(05)/96. While there might be some small differences, JOB(05)/96 built upon the US proposal in regard to both a provisional definition and the sector focus. A difference between the two proposals was that the sponsors of JOB(05)/96 did not believe that there was a need to narrow down the focus to one sector. Drawing information from only one or two sectors might introduce a bias in the analysis of subsidies and of their trade-distorting effects. Letting Members exchange information by starting from a few sectors of their choice would yield information of a sufficiently broad range to permit appropriate analysis. A question had also been raised about the terms "on terms more favourable than those available to the potential recipient or beneficiary in the market", used in the proposed working definition. He said that this wording had been drawn from jurisprudence on the notion of "conferring of a benefit", which figured in the ASCM definition. Regarding questions on the choice of sectors, for example whether they should be based on W/120, he did not think that this should be a hurdle given that it was left to individual Members. The concept of specificity had been retained in the provisional definition partly to address the concerns of some Members over the potentially wide scope of the definition. At the same time, he thought that the notion of specificity might not be readily transposable to the services context and might need modifications. Members that did not consider that this notion was relevant to the definition could decide not to use it for the purpose of the information exchange. The Members that used the concept could explain how they applied it in gathering information.

45. Regarding non-governmental bodies, he thought that every Member would have an idea of the meaning of these terms since they were found in Article I of the GATS. He recalled that the provisional definition was not intended to be perfect, but to help the information exchange. With respect to questions on general infrastructure and public services, he said that 'general infrastructure' was a notion used in the ASCM. The terms 'public services' were introduced to cover services provided by the government to the public in general. This also was an attempt to address concerns that the information exchange might be too broad and thus hurt some sensitivities. He was ready to consider suggestions on how to better define this concept. He stressed that the references in paragraph 3(d) of the annex in JOB(05)/96 did not prejudice the scope of Article I:3 of the GATS. Paragraph 2 of the annex specified that only subsidies within the scope of Article I:3 were covered. With regard to flexibility for developing countries, he was aware of the recognition in Article XV of the role of subsidies in relation to the development programmes of developing countries and the importance of taking into account the needs of Members, especially developing economies, for flexibility in this area. Such flexibility might be something to further consider during the negotiations of disciplines. Regarding comments that the provision of information was sensitive, he pointed out the high aspirations of some Members on transparency in other areas. In JOB(05)/96, the sponsors had made many suggestions, relating for example to the choice of sectors or public services, to address sensitivities and he was open to further ideas in that regard.

46. The representative of Turkey saw utility in the information exchange and believed it would be important to develop a provisional definition, which would not prejudice the positions of Members. The definition could be based upon existing WTO provisions and jurisprudence. A limited number of service sectors of interest to the entire Membership might be chosen, for example two sectors. There might be merit in selecting the same sectors for all Members. The Working Party might

initially focus on subsidies based on export performance. The concerns of Members, as expressed at the last meeting, needed to be addressed.

47. The representative of Guatemala reiterated her support for proceeding with the information exchange, subject to the development of a provisional definition of subsidy. It should only aim at facilitating the information exchange and not prejudge positions of Members in the development of disciplines. Any deadline should provide the necessary time for allowing government institutions to gather the information. Since a deadline before the Hong Kong Ministerial would be difficult to comply with, further discussion of this aspect was needed. The selection of sectors should be left for each Member to decide. Flexibility for developing countries should be provided in terms of the number of sectors chosen.

48. The representative of Pakistan encouraged Members to start the process of information exchange. The proposal by the United States (JOB(05)/5) had made some useful suggestions in that regard. The Working Party might consider asking UNCTAD or the OECD to make presentations if they were doing work in this area. On the definition, she agreed with the use of the ASCM definition as a provisional basis for facilitating the information exchange. Elements could be added to it. Subsidies could entail specific financial contributions or concessions made by a government at federal, state, provincial or lower levels to an entity providing services locally or exporting and competing with entities not enjoying these benefits. The definition would only target sectors where Members had already made commitments.

49. Regarding the timeframe proposed in JOB(05)/96, the representative of Switzerland said that she was open to other Members' views as to what would be realistically achievable. She understood that some Members would need more time and her delegation was ready to accommodate such needs. However, she thought that a strong positive signal would be given if Members could exchange information on the selected sectors by the Hong Kong Ministerial. It would be regrettable if the proposed timeframe was not further considered.

50. The representative of Thailand reiterated her support for developing a provisional definition for the purpose of facilitating the information exchange. Some elements contained in paragraph 8 of JOB(05)/96 could be used as a flexible basis for sharing information. Any future disciplines could be looked at in the light of Article IV, the purpose of which was to increase the participation of developing countries. Certain forms of government assistance could create an artificial and unfair competitive advantage for domestic suppliers.

51. The representative of the European Communities said that his delegation had provided information in all sectors. He recalled the communication from his delegation from 6 July 2000, as well as his intervention at the last meeting (paragraph 62 of S/WPGR/M/52), which mentioned the websites where relevant information on subsidies could be accessed.

52. The representative of Hong Kong, China thought that the steps taken by the EC might be a good example of how one could get started on the information exchange. He asked if the EC could provide insights on the definition used in gathering such information. The representative recalled that the US had suggested to focus on export subsidies, and he thought this was an interesting idea. He asked the delegation of the United States how they would define export subsidies for the purpose of sharing information. In view of the need for the Working Party to focus on what was realistically achievable, a reality check was needed regarding the information exchange. Since the first questionnaire, only four Members had provided written replies and one Member had provided information orally. Apart from a few Members that had reported difficulties in gathering and providing information for the information exchange, no Member had indicated any attempts or signalled any progress in responding to the questionnaire or otherwise gathering information. He had shown willingness and made suggestions to try to accommodate the concerns of those that had experienced difficulties. A problem mentioned was the absence of definition, which his group had

attempted to address in their proposal. Second, some delegations had pointed to the potentially broad scope of the information exchange and its resource implications, and he had consequently suggested to start with few sectors at a time. Third, some delegations had felt that the information exchange should focus only on areas where the subsidies were causing trade distortion. In that regard, he reiterated that the purpose of the information exchange was to provide an information base that could serve for analysing the problems and devising appropriate solutions as necessary. He strongly believed that the information exchange was required for enhancing discussions on trade distortion and possible disciplines. The exchange would also provide a better basis to decide on an appropriate definition. The mandate in Article XV:1 was clear and remained to be fulfilled.

53. The representative noted that many schedules contained carve-outs for subsidies. Like for safeguards, it might be that Members with such carve-outs were hesitant to engage in a substantive way in the negotiations on subsidies because they already had protected their position. Subsidies could be effective safeguard measures, so long as a Member could afford it. While the information exchange was not necessarily a pre-condition for moving forward, it was an important component of the negotiations. The fact that the mandate could not be fulfilled by Members over the last 8 years had been a matter of great concern and he wondered about Members' willingness. This situation contrasted with the emphasis put by some delegations on transparency in other areas. The representative therefore requested the Chairperson to reflect, in her report to the Special Session of the Council for Trade in Services, the fact that the mandate had remained unfulfilled until now. The Chairperson should also conduct informal consultations on ways to facilitate progress on the information exchange. The Chairperson's report to the Special Session should be made with a view to seeking guidance on this matter, keeping in mind that the subsidy negotiations were part of the overall services negotiations. Progress should be made in parallel in both the market access and the rules negotiations.

54. The representative of Chile agreed with the delegation of Hong Kong, China regarding the importance of the information exchange. Many Members had not fulfilled the mandate. While some had said that they had encountered difficulties, others clearly had the resources needed to provide the information and should therefore do so. She was open to discuss the difficulties faced by those delegations with more limited resources. It was important first to constitute an information base before moving on to other aspects of the negotiations. Hopefully, the information on subsidy programmes mentioned in Trade Policy Reviews and in other sources could be shared with the Working Party. Delegations could then analyse whether there was a problem to address. She thought that subsidies would, as pointed by the delegation of Thailand, lead to an uneven playing field. Regarding the way forward, she agreed with the suggestions made by the delegation of Hong Kong, China, in particular the undertaking of informal consultations.

55. The representative of the United States said that she needed to consult with her authorities before agreeing to any proposal to request the Chairperson to make certain statements or take actions in the Special Session of the Council for Trade in Services.

56. In summing up, the Chairperson noted that no more Members had provided information today pursuant to the exchange mentioned in Article XV:1. Different suggestions had been made to address the concerns that Members might have regarding the provision of information. Several delegations had expressed support for energizing the information exchange. The idea had been raised that, in the light of the lack of fulfilment of the mandate, some guidance should be sought from the Special Session, although opposing views had been expressed. It also had been suggested that the Chairperson undertake informal consultations on the way forward. She urged Members to make efforts to provide information as appropriate and hoped that the proponents could lead the way. Delegations should inform the Working Party of any problems that they were facing in gathering information, so that these could be addressed. She invited the Working Party to take note of comments made.

IV. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

57. The Chairperson invited delegations to continue their discussion on the basis of the latest communication from the European Communities (S/WPGR/W/52) and to focus on possible procedural rules. A key question was whether there were such rules around which there could be a greater degree of support for advancing discussions.

58. The representative of the European Communities recalled that his delegation's communication referred to procedural rules that could be developed for government procurement in services. He underscored that delegations should participate actively and in good faith in all three topics under the responsibility of the Working Party. Of course, delegations with particular interests in one of the topics could take the lead, as the EC was doing on procurement. However, other delegations needed to participate to ensure progress in the negotiations as a whole. All three areas had to advance at the same pace.

59. The representative of Hong Kong, China said that he conducted the negotiations in the three areas in good faith, but, in the light of the discussion on the information exchange mandate, he feared that not everybody shared this view. Concerning the EC proposal, he had not yet received a satisfactory answer to the question on how the proposed framework for government procurement would square with reciprocity provisions in the Government Procurement Agreement (GPA). The answers given so far had suggested that the EC was relying upon exemptions from the MFN obligation similar to existing exemptions pursuant to Article II of the GATS. He still was puzzled about how this approach would allow for a reconciliation of the reciprocity provisions in the GPA with the multilateral commitments that the proposed EC framework envisioned. He hoped to obtain clear answers in order to progress in the discussions.

60. The representative of Brazil reiterated that he disagreed with the delegation of the European Communities regarding the scope of the mandate in Article XIII. His delegation was therefore not prepared to engage in any discussion relating to market access or national treatment. He might be willing to address, however, other parts of the communication from the European Communities.

61. In response to the question from the delegation of Hong Kong, China, the representative of the European Communities said that under the EC proposal Members' commitments would apply multilaterally. If the GPA contained additional elements that applied only amongst GPA Members on the basis of reciprocity, these would be preserved by a specific provision to that effect. He did not see a major problem with the relationship between the framework and the GPA, but was open to suggestions. He took note of Brazil's views and welcomed the Brazilian delegation's readiness to engage on some parts of S/WPGR/W/52. Should the Chairperson undertake informal consultations on subsidies and ESM, he should also do so on government procurement.

62. The Chairperson invited the Working Party to take note of comments made.

V. DATE OF THE NEXT MEETING

63. The Chairperson suggested that the Working Party hold its next formal meeting during the next cluster of services meetings after the Hong Kong Ministerial. She noted the interest on the part of delegations for the Chair to undertake informal consultations and to take appropriate steps to facilitate informal exchanges.

VI. OTHER BUSINESS

64. No issue was raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 20 JUNE 2005

Note by the Secretariat¹

1. The meeting of the Working Party on GATS Rules was opened by Ms. Clare Kelly, from New Zealand. The agenda for the meeting, contained in WTO/AIR/2595, included the following items: election of the new chairperson, emergency safeguard measures, government procurement, subsidies, date of the next meeting, and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda, contained in JOB(05)/115. The agenda was adopted.

2. The Chairperson recalled that at the last meeting she had asked delegations to reflect on what should be priorities for this year and how to implement them. In the annotated agenda circulated in preparation for the informal meeting of 13 June, she had shared her personal assessment of the situation in the light of consultations undertaken with the assistance of the incoming Chairperson. Discussions on subsidies were still at an early stage and discussions on ESM and government procurement were characterized by important divergences of views. Accordingly, no substantive progress had been made in moving closer to any consensus, and it seemed unlikely that much could be achieved if divergences in positions and levels of ambition were not addressed. A reality check was indeed important as delegations now needed to think in a pragmatic manner about what could be done over the remaining short period of time. In that context, she had made some suggestions regarding possible areas of focus for this year.

I. ELECTION OF THE NEW CHAIRPERSON

3. The Chairperson noted that it had not been possible to proceed with the hand-over of the chairmanship at the first meeting of the year. The consultations undertaken by the Chairperson of the Council for Trade in Services, last March, had suggested that Mr. Sumanta Chaudhuri, from India, seemed to enjoy the support of the whole membership. She proposed that the Working Party elect Mr. Sumanta Chaudhuri as Chairman of the Working Party on GATS Rules. Mr. Chaudhuri was elected by acclamation. The incoming Chairperson thanked delegations for their confidence and thanked the outgoing Chairperson for the work done under her tenure. Delegations expressed their appreciation for the outgoing Chairperson's efforts and dedication, and congratulated the new Chair on his election.

II. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

4. The Chairperson recalled that at the last meeting UNCTAD had been invited to present to a study on emergency safeguard measures. Ms. Mina Mashayekhi, Head of the Trade Negotiations and Commercial Diplomacy Branch of UNCTAD, would introduce this paper, which had been presented last March at UNCTAD's Commission on Trade in Goods and Services and Commodities.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

5. The representative of UNCTAD said that the study, entitled "Emergency Safeguard Measures in the GATS: Beyond Feasible and Desirable", had been authored by Mario Marconini, a consultant. The predisposition of the author was in favour of the inclusion of an emergency safeguard mechanism (ESM) in the GATS because it would improve the Agreement. With appropriate provisions for special and differential treatment, an ESM would encourage progressive liberalization with due respect for national policy objectives by helping Members to sell the logic of GATS liberalization at home. An ex-post instrument such as an ESM would help to convince reluctant sectors to bind liberalization through commitments. If the mechanism was adequate, it should make the GATS a more reliable and meaningful framework for liberalization. The debate on an ESM in services had placed the burden of proof on those in favour of an ESM, but if a similar burden of proof had been applied in relation to the Agreement on Safeguards and Article XIX of the GATT, there would be no safeguards in the area of goods. The Europe Agreements also contained safeguard provisions. Accordingly, once the desirability was established, an ESM would become feasible. The paper noted that while an ESM appeared to go against classical economic theory, the real world was different: governments needed to address adjustment costs, ensure orderly exit from a market and deal with impacts on employment. Those losing out from liberalization needed to be brought on board by addressing imperfections in factor mobility; there was a need for breathing space to build capacities. Developing countries frequently lacked the regulatory and institutional framework to address these issues in a GATS-consistent manner. The case for an ESM was stronger in services because liberalization was a novel phenomenon and involved complex regulatory issues, which made it difficult to foresee the economic, social and developmental impacts.

6. With respect to domestic industry, she noted that differences in legal systems made it difficult to agree on common definitions. Accordingly, the author had proposed that definitions of domestic industry, as well as the concept of like services, be left to individual Members to decide. This would be combined with stringent requirements, such as notification. National definitions would have to be notified at the beginning of the process and the reason for preferring one definition over another would have to be clearly specified. The definition of domestic industry also related to mode 3, particularly the distinction between pre- and post-establishment, which raised questions about acquired rights, possible grounds for discriminatory treatment, and expansion of established suppliers' operations. The paper argued that it was easier to apply an ESM at the pre-establishment phase because many countries would not want to force disinvestment. With respect to modal application, the author recommended that an ESM apply to all modes of supply so as to avoid imbalances. However, each mode faced specific problems. For example, under mode 1, issues of enforcement and circumvention arose. Regarding mode 4, some countries had concerns about the possibility of abuse. She noted that the author proposed, in relation to mode 4, the inclusion of provisions on special and differential treatment.

7. In relation to indicators and criteria to ensure a stringent application of ESM, the representative of UNCTAD said that the focus would be on a three-pronged investigation (import surge, injury or threat thereof, and causal link) based on the Agreement on Safeguards. The author also proposed to apply an economic interest test and a public interest test. Public notices and hearings as well as questionnaires to importers and other interested parties would guarantee a comprehensive analysis and thereby ensure that safeguards would not be used for protectionist purposes. In terms of applicable safeguard measures, she said that there was a convergence of views on: applying an ESM on an MFN basis; using the form of suspending specific commitments - possibly also in relation to Article XVIII; resorting to such measures as subsidies, quantitative restrictions, or taxes, which would be least trade restrictive; and safeguard measures being temporary and degressive. The paper noted that S&D treatment might, for example, provide for renewal in the application of safeguard measures, greater duration of application, non-application to mode 4, and a *de minimis* clause. The paper argued that compensation should be limited to unavoidable cases; it would be best not to have compensation requirements, at least not in the initial period of existence of an ESM. Developing countries might be allowed not to compensate as a form of S&D treatment.

8. The author had tried to address a number of arguments made in the course of negotiations. Regarding lack of data, he pointed out that the petitioning firm would usually be able to produce data to trigger the mechanism. On arguments that an ESM would entail costs for the invoking country by having negative economic impacts, the paper said that countries should be able to determine for themselves whether or not policies would be harmful. Regarding mode 4, the representative of UNCTAD said that commitments under this mode were weaker than those under mode 3 and already had built-in safeguards. An ESM might actually help to remove limitations on mode 4. The paper also referred to the existence of economic needs tests in schedules, which had equivalent effects to that of safeguards. Regarding arguments on the burden of proof, she noted the lack of experience with an ESM. A mechanism first had to be created, and it could then be tested and revised as greater experience was collected. In terms of the modalities for ESM application, the paper mentioned three different approaches: a horizontal approach, which most developing countries supported and which was more in line with the GATS framework; a reference document, which would be optional and attached to national schedules, but which raised issues of bargaining power; and a schedule-based ESM which might provide for the right to resort to safeguards, but this would vary sector-by-sector and Member-by-Member and thus raised concerns of fragmentation. In terms of way forward, the paper emphasized that, in addition to contributions from ASEAN Members, other contributions had been made and provided for simplified versions of an ESM, such as for example Australia's model II. Constructive solutions were needed because an ESM would improve the overall functioning of GATS, in particular given that the GATS lacked rules for antidumping and strong competition disciplines. The key question was not whether the system should have an ESM or not, but rather what type of ESM was feasible and desirable to fit the aims and objectives of the GATS.

9. The representative of Thailand, on behalf of Brunei Darussalam, Indonesia, Malaysia, Myanmar, and the Philippines said that they generally agreed with the assessment made in the annotated agenda with respect to the three items under the responsibility of the Working Party. Recent discussions had focused on the practicality of a possible mechanism. Doubts and concerns had been expressed over the availability of reliable statistical data at a sufficiently disaggregated level, the ways and means to keep track of cross-border transactions, the sort of measures applicable to mode 1, and determinants of 'like services'. She did not believe that these technical and conceptual obstacles were insuperable. Working with proxies would allow to come to terms with them. Procedures were equally important. Some Members had invited her group of delegations to come forward with a set of commitments that they might be willing to undertake if a safeguard mechanism existed. She did not think this would be the most appropriate way to approach the question of emergency safeguards because it was based on power relations and because Members had different political and economic constraints. Further, it was impossible to predict all possible eventualities. She preferred to approach the issue on the basis of key principles, such as the need for rules in a rules-based system, as well as the analogy between trade in goods and trade in services and the reasons why some suggested that the latter, which was more complex, should be deprived of a remedy that would make liberalization more manageable. The representative considered that the lack of a single authoritative statement on whom an ESM would protect reflected the multiple purposes of a possible mechanism. For example, it might aim to protect the domestic industry, diversify the economy, correct regulatory failures, and facilitate orderly exit. Purposes could be changing according to sector specificities, and might sometimes temporarily conflict with other policy goals. Therefore, consultations were a very important element of future procedures in order to build confidence by being transparent about what was going to be done or not.

10. Regarding future work, the representative said that her group of delegations was open to new ideas. Certain issues had not been put into question so far, and these were key touchstones of a future safeguard mechanism: the first was that emergency safeguards should be applied on an MFN basis, consistently with the principle of non-discrimination in Article X; second, the measures should be time-bound; third, the show-just-cause obligation could in effect deter any potential abuse, as the burden of proof was upon invoking Members. Article X could not be looked at in isolation, but put

into the context of Article XXI procedures, as well as the negotiations under Article VI:4, on subsidies and on ENTs. The UNCTAD paper contained recommendations that could be further reflected upon. She agreed that political imperatives made a strong case for an ESM; this logic had never been called into question in the case of goods. She believed that safeguards could also be positive economically by facilitating the adjustment process. Therefore, the starting point should be what sort of ESM was practical and desirable in order to support the notion of progressive liberalization and make the GATS complete. She agreed that the impact of regulatory change induced by liberalization was very difficult to assess beforehand. By definition, unforeseen developments could not be predicted and trying to come up with hypothetical examples did not seem relevant. Members tended to forget that safeguards were a temporary recourse. What mattered most were ways to enhance the transparency and predictability aspects of the mechanism through consultation or surveillance provisions.

11. The representative of Malaysia thought that the UNCTAD paper was strongly supportive of the position that the group of ASEAN countries had put forward over the years. The fundamental principle was the need to provide symmetry for both goods and services. The Working Party should not deviate from what needed to be done, which was to address the goals and objectives behind an ESM. She agreed with the consultant that there was no political will to advance the negotiations. Arguments about the need for concrete examples were a departure from the precedent of GATT Article XIX, where questions had been raised after the mechanism had been fully integrated into the multilateral system, and not before. Currently, the GATS did not provide a sufficient safety net after commitments had been made. Article XXI permitted a permanent withdrawal of commitments, but an ESM aimed at providing a temporary suspension while adjustment was made to address market failures. Article XXI was the last option, not the first one, because it entailed a permanent modification of commitments, which would have negative impacts on further liberalization efforts. The author's arguments on domestic industry were similar to those of the group of ASEAN Members. The ideas in relation to S&D treatment were creative, in particular the *de minimis* clause, the non-application of ESM to LDCs, and the non-application of an ESM to mode 4 for developing countries.

12. The representative of Pakistan looked forward to further discussions on the various elements mentioned in the paper so as to be able to develop some type of mechanism in the future. She appreciated the points made regarding the Agreement on Safeguards; it was incumbent on all to work towards the development of rules. An ESM was to address situations where no unfair trade practices were involved and where some foreign enterprises had fairly been able to dominate the field. Delegations had to see if some kind of protection should be provided to domestic small and medium enterprises, which were particularly numerous in developing countries and LDCs. The study was very useful in pointing out that provisions on S&D treatment could be used to ensure that such a mechanism would not be abused in the future, especially against developing country Members. She hoped that UNCTAD could come up with more statistics on the extent to which the Agreement on Safeguards had been used; she suspected that safeguard measures in goods were not used as much as anti-dumping measures, which were designed to counter unfair trade practices. However, the GATS had no rules for unfair trade practices, neither for dumping nor for subsidies. An ESM would be very useful for Members contemplating to liberalize and for those who already had liberalized in many services sectors.

13. The representative of the United States thought that the UNCTAD paper was well written and quite interesting, but tended to oversimplify the issues involved. For example, while the GATT experience with safeguards was surely useful, there were fundamental differences between the GATT and the GATS. One such fundamental difference was that the GATT had one mode of supply only, while the GATS comprised four modes of supply. Another difficulty related to the intangibility of services. These were basic and critical differences. No safeguard mechanism had been included in the GATS because it was difficult to determine how it would work in the context of services. Article X had been developed so as to provide more time to analyse the issue. It referred to "the

question of emergency safeguard measures", which was for a reason. The only principle in Article X that guided the Working Party in this work was non-discrimination. There was no consensus on other principles. Most of the compromise options put forward in the paper were not consistent with the principle of non-discrimination, for example the proposals on domestic industry, on how to address modes 3 and 4, and on S&D treatment. Regarding differences between the GATT and the GATS, the former was intended to cover all manufactured goods from the start, while the GATS used a bottom-up approach and allowed for modification of commitments and for some regulatory freedoms. In her view, the examples seen so far did not deal with emergency situations. She was not convinced that Members would do away with non-transparent ENTs or labour market tests if a way was somehow found to apply an ESM to services. Therefore, such discussions only amounted to opening additional Pandora's boxes. She appreciated the argument presented by the author that the flexibility of the GATS, in the absence of a safeguard mechanism, might lead Members to be overly cautious about making commitments. However, she had not been persuaded that a case had been made for an ESM in view of what had been offered so far by way of new commitments. If the GATT approach were to be applied more faithfully, a pre-condition for a safeguard should be that substantially all services sectors be covered by commitments.

14. Wishing to focus on how a mechanism of this sort might actually work in practice, the representative noted that the paper seemed to consider the public interest provision as essentially equivalent to transparency provisions. There seemed to be a significant difference between what was described in the paper and the presentation by the UNCTAD representative in terms of the economic interest and the public interest tests. From the presentation, the examination of a causal link seemed to be precisely the same examination as contemplated by the economic interest test, i.e., to investigate whether injury was caused by a factor other than an increase in foreign supply. Moreover, to date, no safeguard measure under the GATT had ever been upheld under the WTO dispute settlement system, despite the relatively good state of data available for investigations of increased imports of goods. Yet every panel that had looked into such investigations had found data problems that prevented it from upholding the action taken. The paper seemed to gloss over this question by suggesting that data problems would not be serious, but they were a serious issue in the goods context despite better statistics. How much more severe would this problem be in the services context, given that the data was much less precise?

15. The representative noticed that the paper said on page 6 that there were additional reasons why safeguards might be more relevant for services than for goods, including the deregulation of important public services. The author later went on to argue that the GATT model could address relevant issues by finding an increase in supply, injury and a causal relationship, but in the case of unforeseen effects from deregulation, the kinds of problems encountered could include disruptions of supply, as opposed to an increase such as in the case of market failure. Similarly, market failure might not result in injury to suppliers, but could instead be beneficial to suppliers and harmful to consumers, for example, if poor market design enabled suppliers to capture excessive rents. This suggested to her delegation that the GATT model might not be very effective at addressing regulatory crises in the services context. Her delegation was also somewhat troubled by the way the paper failed to address how the causal link for each mode of supply could be established.

16. The paper seemed to assume that it would be to the benefit of developing countries to come up with a quick solution and dismiss a few other issues that needed to be ironed out, as opposed to taking time to negotiate and find out what was effective and what provided comfort to all Members. For example, the author seemed to say that since it was too difficult to develop a single definition of domestic industry, this should simply be left for each Member to decide. Her delegation failed to see how such discretion could satisfy anybody. Further, such an approach was inconsistent with the principle of non-discrimination. The question of an ESM had been discussed for 10 years now and what was needed were insights on how to tackle the issues and concerns raised, as opposed to looking for an easy way out and relying solely on political will. Her delegation could perhaps muster political

will to use an ESM in certain sectors, but one had to be accountable to oneself in these negotiations. On S&D treatment, the paper suggested on page 23 that an ESM should not apply to developing countries' mode 4 exports. She did not think that this proposal in anyway matched the concept of special and, in particular, differential treatment. It would not be acceptable to propose an ESM in an area where it was very difficult, even for the most developed countries, to produce data and to ensure enforcement, and where the procedures appeared to be more complex for developing countries. The paper said that some developing countries had difficulties in setting up regulatory procedures, but how would these countries then be able to set up the appropriate procedures to use an ESM? Further, the paper ignored the fact that even in the goods area Article 9 of the Safeguards Agreement did provide for S&D treatment, but with an implicit *de minimis* rule. No such rule was proposed here, which was strange given that the paper had made more general, albeit simplistic, comparisons to the goods area. She reiterated that S&D treatment might not be compelling for services because the very nature of the GATS inherently lent itself to such treatment. Regarding the points made by the outgoing Chairperson about the state of play and the need for a reality check, she wished to correct the assumption that the Working Party was now under time pressure; the negotiations on this issue did not have a deadline, as a distinct extension had been negotiated. If anything, proponents might make a case for the results to be captured in the current round. She hoped that delegations would not resort to simplistic approaches by declaring that this was a matter of political will. Valid issues had been raised and the answers provided by the proponents had been analysed very carefully. However, in responding, the proponents had sometimes shot away from the target. She feared that, on the basis of the proposals put forward, the only Members that would actually be able to use an ESM, should one be agreed upon, would be the more economically advanced countries.

17. The representative of China thought that the in-depth analysis provided by UNCTAD helped clarify various misunderstandings. The focus of current negotiations should not be on hypothetical cases, which would lead to endless technical discussions. As in the case of the Agreement on Safeguards, an ESM in services was a policy issue rather than an economic concern. The objective was to grant WTO Members sufficient confidence and useful leverage in further liberalizing their services sectors. Experience in drafting and implementing trade obligations in the goods area had demonstrated that it was much more important to grant Members recourse to ex-post instruments than ex-ante measures. Only in doing so could Members' doubts be dispelled and further liberalization commitments be taken. A proper and feasible ESM should provide sufficient flexibility while at the same time observe rigid disciplines and standards. It was necessary to respect Members' rights to take decisions according to their own national and sectoral situation, while establishing a code of acceptable standards and criteria at the multilateral level. The current negotiation should go beyond the debate about feasibility and desirability. A multilaterally-accepted ESM with rigid standards and criteria would be far more predictable and balanced than the prevailing quasi-safeguard measures such as ENTs which were favoured by so many WTO Members.

18. The representative of Australia noted that the rules negotiations were complex and difficult, with many divergences of views and different levels of ambition. His delegation was still examining the paper by UNCTAD, but agreed with the former chairperson's suggestion in paragraph 6 of JOB(05)/115, which suggested that it might be more constructive to discuss concrete examples of situations justifying the use of safeguards against the background of the commitments that a Member might contemplate taking in this round and of the existing instruments available under the GATS to address such situations. He announced that Australia was holding an ESM workshop for ASEAN Members, which was to take place in Bali from 13 to 15 July. He hoped that the workshop would address many of the issues involved in a possible ESM and that it would help equip participating officials with the skills and knowledge to consider all relevant questions.

19. The representative of Chinese Taipei, referring to the presentation by the representative from UNCTAD, noted with interest the comments suggesting that once the desirability of an ESM was established it would also become feasible. Regarding the definition of domestic industry, it seemed

difficult to come up with a single definition for all Members and modes of supply. Accordingly, the question of whom the safeguard measure would protect was particularly relevant. In the goods context, the definition of domestic industry was quite broad, encompassing the concept of like or directly competitive products. In services, it might be up to the Member applying the safeguard to define the scope of protection under each mode. Moreover, she noted that the paper by UNCTAD said on page 16 that an ESM in services should allow much room for the authorities to look into possible causes of injury other than increases in the supply of foreign services. The four modes of supply complicated the analysis. Investigating authorities should clarify the mode of supply under evaluation and the safeguard measure should be specific to that mode. While Members might have some discretion in applying a safeguard measure, in the event of a dispute the burden of proof would be on the Member that had imposed the safeguard. Further, she noted that the representative from UNCTAD had indicated that developing countries frequently lacked the regulatory or institutional frameworks, for example competition law, to address relevant issues in a GATS-consistent manner. While the UNCTAD representative had said that an ESM could address the GATS' lack of anti-dumping rules and of strong competition-related disciplines, these were different in nature from safeguards since they were not directed at unfair trade.

20. The representative of Brazil considered that the paper from UNCTAD helped overcome several prejudices against the feasibility and the necessity of safeguard measures. The paper was not simplistic, but clear and helpful in its suggestions. Safeguards already existed in Members' schedules of commitments, as well as in offers. A key issue was how to deal with such a situation and how to balance the multilateral safeguards to be developed with the individual quasi-safeguards. The lack of safeguard measures and, maybe, also of remedies against the unfair trade practices had clearly been a problem in the services negotiations. A solution would help contribute to achieving concrete results in these negotiations. Concerning the intangibility of services, he observed that in some cases services imports could have very tangible effects, for example in terms of affecting employment, developmental or technological policies. The intangibility of services should not serve as an excuse not to develop safeguards to address those very tangible problems. He noted that the quasi-safeguard measures included in schedules or offers were non-emergency safeguards; in many cases they appeared to be systematic safeguards, such as ENTs, that could be applied without any proof and in the absence of data. While it was difficult to achieve a multilateral definition of domestic industry, the authorities had a very clear picture of the domestic industry when concrete problems arose. This issue should therefore not serve as a deterrent to negotiations. His delegation intended to present shortly a paper on quasi-safeguard measures contained in schedules of specific commitments.

21. The representative of Japan thought that the presentation by the representative of UNCTAD helped to better understand the arguments of the proponents of an ESM. He wished to make a few points in reaction to previous interventions. First, some had wondered why the GATS should not have a safeguard mechanism since the GATT had one. He thought that the differences between goods and services were clear and significant. In the goods area, safeguard measures were applied at the border, but in services they would be applied inside the territory of a Member to companies which already had invested. Therefore, the fact that safeguard measures were available in the goods area did not substantiate the case for an ESM in services. Second, a statement was made that there should be rules on safeguards because the WTO was a rule-making organization. The key question, however, was whether the proposed rules were desirable or not; Members should make desirable and helpful rules. Third, it had been said that the GATS lacked devices to deal with unfair trade, but at issue in these negotiations were measures to deal with fair trade. Fourth, the point had been made that it was not fair to ask the proponents to present sectors where a commitment could not be made without an ESM because situations were unpredictable. He did not think that such a stance helped to advance the negotiations. If situations were truly unpredictable, it was impossible to know the appropriate rules or measures that might be devised to address them. Like Australia, he asked the proponents to present concrete situations where a safeguard measure was needed. Fifth, he was not comfortable with statements to the effect that this was a political issue and that safeguard measures would give

Members comfort. It was important to understand that safeguard measures in services would also give many Members and many service suppliers discomfort. While his delegation was ready to discuss issues in a substantive manner, general statements regarding the comfort level provided by safeguard, as well as exchanges of political messages, would not help to achieve progress.

22. The representative of Canada highlighted the differences with trade in goods as well as the experience regarding safeguards in the goods area. Aside from its modal structure, the inherent flexibility of the GATS could not be ignored as well as the challenges in determining injury or finding adequate data. While a premise of the paper seemed to be that an ESM would be helpful in overcoming political resistance to liberalization, all Members faced some political challenges when pondering liberalization, but an ESM was not the proper answer. Solutions might rather lie in public consultations, outreach, and information sharing. The author seemed to assume that an ESM was needed and that Members should not worry if it did not work, if the methodology was questionable or if the data was problematic. The assumption seemed to be that such problems would be resolved over time, after the creation of an ESM. This was a dangerous approach. An ESM risked rendering uncertain the commitments undertaken under existing rules. The representative felt that it might be useful to further consider the issue of the potential for circumvention by service providers if a safeguard was applied in one mode of supply. For example, a safeguard under mode 3 might lead to further service supplies through modes 1, 2 or 4. Coming back to challenges in using the goods model, he was not sure how border measures might be applicable in the area of services. Given technical complexities in the application of a safeguard, his delegation remained unconvinced of its desirability and feasibility in services. The representative informally circulated to delegations a chart on the application of safeguards in goods from 1995 to 2002, which showed that the number of investigations initiated went from 2 in 1995 to 152 in 2002. An investigation *per se* had a significant chilling effect. Regarding comments about caution in undertaking commitments, his personal view was that initial and revised offers already showed that Members were very cautious. Members needed to conduct the necessary consultations before they undertook commitments in any event. He wondered whether UNCTAD could organize a meeting with the author of the paper.

23. The representative of Hong Kong, China believed that many of the issues raised in the UNCTAD paper recalled very detailed and in-depth discussions that had taken place over many years in the WPGR. A key problem was that delegations did not have answers for many of the issues. In contrast, the paper appeared simplistic in assuming that there were very clear answers to all questions. The author presumed that there was a case for ESM and then focused on the various technical aspects and on how some sort of political compromise might be achieved. One argument made in the paper to substantiate the case for an ESM in services was that such an instrument already existed in goods. He echoed points made by other delegations on the deep differences between goods and services. One element in that regard was the number, extent and structure of commitments. On the goods side, only tariffs could be used as a means of protection and full national treatment was already provided for measures behind the border. These aspects could not simply be brushed aside as insignificant to the consideration of an ESM in services. The paper also argued that an ESM was needed for political reasons. However, political will was not one-sided, but had to come from all sides. Proponents needed to specify the political problems they were facing. The political will of other Members would then be needed to examine these problems and see how to address them. If this issue was a political problem, the appropriate way to proceed seemed to be along the lines of what the outgoing Chairperson had suggested in the annotated agenda. The Working Party should not confine itself to solely look at possible mechanisms within Article X, but rather examine the broader context and consider other alternatives that might help address the political issues that the proponents had raised. This might help to break the deadlock in the present negotiations.

24. The representative thought that the section of the UNCTAD paper entitled "true concerns" missed one of the most important concern, i.e., why there was a need for an ESM in the first place. This related to such basic questions as: for what purpose would an ESM be used, from what would it

protect, whom would it protect, and by what means should protection be provided. These fundamental questions needed to be addressed. The concern not to create a monster, as mentioned in the paper, did not arise solely because of the potential complexity of a mechanism, but also because of the lack of a clearly defined purpose to benchmark the use and impact of any potential mechanism. A monster was fearsome because nobody knew what it might do next. Similarly, his delegation had concerns about an ESM because it did not know what it might be used for. The experience in the area of goods clearly showed that it was extremely difficult to contain a monster once it had been let out of the box. Accordingly, he would be extremely cautious to create something and see later what might be done about it. The expression of political will should come through the presentation of real-world situations that might justify the use of an ESM. Turning to the paper's mention of some past proposals made in the Working Party, he recalled that the Australian proposal had two variants. One was the core mechanism and the other was an approach akin to a fast-track waiver-type mechanism. If delegations wished to look back at past contributions in order to search for alternatives, the latter option should not be overlooked. Regarding comments on quasi-safeguard type provisions in schedules and related concerns, he felt that the best way to proceed might be to ensure that such provisions became less of a concern.

25. The representative of the European Communities drew attention to the comment by the UNCTAD representative that an ESM might be needed because some countries did not have good competition regimes. He also noted the remarks by the delegation of Thailand on the importance of a rules-based system. The EC was attached to the development of necessary rules in the WTO, but such thinking was not shared by all Members and the rules agenda had diminished since the Seattle Ministerial. Members should not attach importance only to one aspect of the rules agenda, including within this Working Party's agenda. Delegations needed first to clarify the problem and see whether means were already available to address it. If not, one would then look at what might be put in place and how it should look like. Most likely, negotiators went through these steps when putting together rules on safeguards in the area of goods. He thought that the UNCTAD paper did not care whether a problem existed or not. There was a call for an ESM because one existed already for goods, without discussing the fact that the Working Party had been unable to identify situations justifying a safeguard. The paper further said that the lack of data was not an obstacle to the development of an ESM, but made it difficult to provide compensation. He thought this was a contradiction and should be further explored. Noting that the Europe Agreements had been mentioned in the discussion, he recalled that these were part of a system of pre-integration and did not allow for the kind of flexibility enjoyed in the GATS. The Agreements provided for full national treatment and full market access and included specific provisions to overcome the lack of flexibility during a limited window of 10 years. After such time, the provisions could not be invoked. He noted that the UNCTAD paper did not mention the concept of a limited window, which had been put forward by a group of ASEAN Members in 2004. Further, while the UNCTAD paper suggested that the concept of unforeseen developments did not need to be taken into account, it remained relevant in the goods area since GATT Article XIX still applied. The representative also asked, in reference to the approach taken in the Europe Agreements, whether a safeguard mechanism would be necessary when a Member had already used the flexibility of the GATS, for example by limiting the quantity of service suppliers. Alternatively, could safeguards only be applied in situations where a Member had undertaken either full commitments or very extensive commitments not subject to quantitative limitations? The paper also mentioned the financial crisis of the 1990s, and he wondered whether the author was aware of the Annex on Financial Services and the relevant policy carve-outs it contained.

26. Since the problem at issue had not been identified, it was difficult to know whether means were available to address it. The GATS already contained many safety valves, and caution should be exercised in considering additional ones. Concerning Article XXI, some delegations seemed to think that its use was limited to a definitive withdrawal or modification of commitments, but this was not clearly supported by the relevant provisions. It might be possible to modify commitments for a temporary basis; for example going from "none" to "unbound until 2011, none afterwards".

Moreover, the paper said that degressivity would be difficult to implement and he hoped the UNCTAD representative could explain why. With respect to S&D treatment, he failed to understand why there should be no compensation and why safeguards on mode 4 should not be applied against developing countries. Practically all mode 4 commitments were subject to quantitative limitations. Finally, the paper said that pre-approval was out of question and he wondered why this possibility should be excluded. Article XXI did not need pre-approval, but provided for compensation, while waivers did not provide for compensation, but required pre-approval.

27. The representative of Chile shared many of the concerns expressed by the delegations of Japan, Canada and Hong Kong, China. The UNCTAD paper was based on a number of debatable assumptions, for example that an ESM would improve the overall functioning of the GATS or that it would lead to more commitments. She was concerned about suggestions that Members should simply adopt a mechanism, see how it worked and then improve upon it. Experience with anti-dumping rules, for example, showed the difficulties and she did not want to go down the same path with an ESM in services. The main issue was that the problem had not been defined. Like others, she hoped that the proponents could come up with some concrete examples of situations justifying an ESM. It might be helpful to ask regulators for information in that regard. Most commitments in the GATS simply bound liberalization that had previously been undertaken. Such liberalization, before being bound in schedules, might have given rise to some situations justifying an ESM. Rather than discussing in abstract terms, delegations might ask their regulators how liberalization had proceeded and whether such situations had occurred, and then share such information with the Working Party.

28. The representative of New Zealand said that her preliminary views on the UNCTAD paper were similar to those heard earlier from the delegations of the United States, Hong Kong, China, Japan, and Canada, particularly regarding the need to develop good rules rather than to proceed quickly. She agreed with Canada's suggestion to have an informal meeting with the author of the paper. Regarding the suggestion in the Chairperson's annotated agenda, her delegation had views similar to those put forward earlier by the delegation of Hong Kong, China. If there was a political problem, the Working Party needed to look for practical political solutions. The proposal to examine concrete examples against existing instruments would be helpful in that regard. She had no problems with further discussions of technical issues of interest to proponents, but the burden for reinvigorating the discussion naturally lied with them.

29. The representative of the Republic of Korea thought that today's discussion highlighted that there was nothing new under the sun. The issue had been discussed for 10 years and it was important to have a reality check this year. Her delegation had concerns about applying an ESM to mode 3, if only because it would undermine investment. In the goods area, her country had applied safeguards, lost the ensuing dispute, and been subjected to retaliation. Her country also had successfully challenged other Members' safeguard measures in two years of dispute settlement procedures and it took another year for the measure to be lifted. Her delegation was thus still examining whether it was useful and appropriate to have safeguard measures in services, but wanted to provide constructive inputs to the discussion. Should an ESM be developed, some basic principles had to be followed: first, services should be liberalized as much as goods trade; second, a mechanism should have strict procedures; finally, safeguards would have to be applied in a non-discriminatory manner. On the link established in the UNCTAD paper between the need for an ESM and the lack of strong competition regimes, she thought that it was more important to solve the problem by improving competition regimes. She also wondered about the differences between ENTs and an ESM, and why an ESM would be more needed than ENTs.

30. The representative of the Philippines associated himself with the statement made by the delegation of Thailand, also on behalf of Brunei Darussalam, Indonesia, Malaysia and Myanmar. He was grateful for the paper by UNCTAD, which came at a critical juncture. His delegation was conscious of the political, technical and strategic concerns expressed in relation to an ESM, but upon

further reflection remained convinced that these negotiations were of fundamental importance. He hoped that the paper by UNCTAD could be a solid starting point for renewed discussions in the Working Party, in particular the proposal on definitions coupled with stringent information and notification requirements, as well as proposals on S&D treatment whereby developing countries, for example, would be exempt from mode 4 safeguards. The recommendations in the paper were well reflected and recognized the complexities and difficulties of services. He did not wish to characterize UNCTAD's comparison of the GATT and the GATS as simplistic. A more appropriate question might be whether the differences between goods and services were deep enough to support the argument that there should be no ESM. There were strong political economy considerations underlying the proposal for an ESM. Desirability and feasibility issues had been held against an ESM over the last 10 years, but they were not insurmountable. Desirability was a matter of both perception and choice. What was desirable to one Member might not be desirable to another. It seemed more important to give Members the choice of using safeguards or not. This was a political and economic choice of sovereign governments that should not be precluded through the non-inclusion of an ESM in the GATS. On the question of feasibility, there was enough information that could provide a basis for resolving some difficult aspects. His delegation hoped to table focused discussion papers on outstanding issues such as those identified by the outgoing Chairperson in her annotated agenda. He was ready to continue to explore the potential for an ESM with a view to making liberalization more manageable to developing countries. He took good note of Japan's urging to not confine discussions to political messages but to engage in substantive and productive technical discussions, as well as the concrete suggestions made by Chile and Hong Kong, China. He did not pretend to possess all answers, but many delegations had much greater capacities and technical experience in services which might be harnessed toward solving many previously raised technical, legal or policy issues.

31. The representative of Singapore noted that an overarching theme in the paper was the relationship between liberalization and the need for an ESM. However, he stressed the different structure of GATT and GATS, with the latter being more flexible. He wished to refer the Working Party to a paper that his delegation had tabled in 1997 (S/WPGR/W/19). Among other issues, it had highlighted that adequate mechanisms were already present in the GATS and the WTO Agreement to address possible safeguard situations, including the WTO waiver provisions. The delegation of Hong Kong, China had already alluded to a fast-track waiver mechanism. As mentioned by others, many technical issues had not been resolved yet, including the concepts of domestic industry and acquired rights. In approaching the ESM issue, his delegation was informed by two practical considerations. On the export side, domestic services suppliers, which were largely SMEs, needed a stable environment to operate in foreign markets. SMEs, unlike multinational enterprises, had less financial resources and know-how and often undertook significant risks in investing overseas. Safeguards that limited the expansion of operations might frustrate the business plans of these companies. While Members might face challenges in selling liberalization domestically, there was a parallel challenge to ensure certainty for one's own suppliers. A proper balance was needed. On the import side, it was important to keep in mind that foreign investors created employment. He drew attention to the section of his delegation's 1997 paper that discussed the impact of safeguards on economic welfare. Unlike the GATT, the use of ESMs in the GATS could reduce the overall domestic output and employment. While the output of national service suppliers would increase, the output of foreign service suppliers might decline due to new restrictions.

32. The representative of Switzerland recalled her country's long-standing position on the issue of an ESM. The UNCTAD paper claimed that an ESM was needed to sell the logic of liberalization at home. However, GATS commitments did not always coincide with the actual level of liberalization. The GATS enabled a Member to start by liberalizing a sector at the national level only and monitor the effects, and finally consolidate the liberalization under the GATS as and when appropriate. This was an important aspect that had to be taken into account. Further, like other delegations, she stressed the flexibility, including with respect to scheduling, provided by the GATS. She also disputed the

assumption that the establishment of an ESM would carry no costs, if only because an ESM would render the legal environment less certain.

33. The representative of Argentina thought that the UNCTAD paper would be helpful in advancing discussions in the Working Party. His delegation was generally in favour of a complete system of rules for trade in services. However, like others, he had doubts about the technical possibility of developing an ESM. Regarding comments by other delegations on the flexibility of the GATS, he suggested having a look at certain sectors to see whether an ESM might help in securing better commitments, for example in maritime transport and audiovisual services. Regarding the latter sector, if such work was not done in the WTO, it would end up being done in other agreements administered by other international organizations.

34. The representative of Turkey said that his delegation had not made up its mind on the issue of an ESM. Doubts persisted on whether an ESM was desirable and feasible. His authorities lacked appropriate statistics in services, which also had implications for the assessment of trade. His delegation was open to continued discussion of the issue and thought that the existing flexibility of the GATS could be sufficient to tackle relevant situations. The representative of Indonesia considered that the UNCTAD paper was a constructive contribution. He reiterated the importance attached to this issue, as earlier stated by the delegations of Thailand and the Philippines. An ESM provided a certain level of comfort to the domestic industry which was encouraged to take an active part in the liberalization process.

35. The representative of UNCTAD remarked that the paper mentioned not only the political need for an ESM, but also, on page 5, the adjustment costs flowing from liberalization. An ESM would deal with these temporary costs, for example negative impacts on employment. Regarding data problems, she thought that these permeated all areas of services negotiations. However, petitioning firms would be able to put forward data at the firm level, for example relating to the occurrence of losses, decline in profits or price reductions. The burden would be on petitioning firms. Regarding compensation, the paper said it would be difficult to quantify substantially equivalent levels of concessions. The ongoing Article XXI process would give some indication on how to do such calculations. The public interest and economic interest tests should be seen as complementary. The tests went beyond transparency because views expressed should be taken into account. On the definition of domestic industry, the approach taken in the paper was not simplistic; it just took into account the fact that different countries had different definitions. Constitutional requirements could not be ignored. Strict notification and transparency requirements regarding national definitions would prevent abuse and would not undermine the predictability of GATS commitments. With respect to S&D treatment, one suggestion in the paper was that consideration be given to non-application of an ESM to mode 4. Regarding ENTs, she observed that many had been scheduled without criteria and thus provided ample discretion, while an ESM would be based on strict indicators and criteria, and include a monitoring mechanism. An ESM would thus be preferable to ENTs. Concerning degressivity, the paper was in favour of this concept and, in this context, referred to varying levels of quantitative restrictions and subsidies. The representative concluded by indicating that she would convey questions and comments to the author of the paper, and that UNCTAD would try to provide an opportunity for interested delegations to meet with him.

36. The Chairperson hoped that delegations would be able to use the opportunity for an informal meeting with the author organized by UNCTAD. The representative of Japan asked for further elaboration from the UNCTAD representative on the differences between an ESM and ENTs. The representative of UNCTAD said that safeguards were supposed to deal with emergency situations that countries faced when opening up their market, while ENTs were ex-ante measures that acted as proxies for an ESM. Currently, most countries scheduled no criteria for their ENTs. They thus had provided full discretion to decide on establishment and expansion on a case-by-case basis. An ESM

would be less amenable to abuse since it would arguably be accompanied by strict notification requirements, review processes, indicators and criteria.

37. The Chairperson noted that the core divergences that had been mentioned in the annotated agenda had again surfaced in the discussion. At the same time, he discerned some openness from both sides in terms of looking at new ideas and alternative mechanisms. Some suggestions were made to consider earlier models presented in the Working Party and examine real world situations of liberalization and any ensuing problems. There was some support for the outgoing Chairperson's suggestion, in the annotated agenda, regarding the need for concrete examples of situations justifying the use of safeguards against the background of commitments that a Member might contemplate undertaking in this Round and of instruments potentially available under the GATS to address such situations. He invited the Working Party to take note of comments made.

III. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

38. The Chairperson remarked that the European Communities had recently circulated a communication, S/WPGR/W/52, on a proposal for an Annex to the GATS on government procurement in services. He invited delegations to focus their discussions on this contribution and also recalled the importance of a reality check in all three areas under the responsibility of the WPGR.

39. The representative of the European Communities said that the communication aimed at identifying the structure of a GATS Annex on procedural rules for government procurement. The annotated agenda of the Chairperson suggested that efforts on government procurement might this year focus on aspects other than market access. The latter topic had already been the subject of various contributions recently, but less time had been spent on procedural rules. During the last meetings, some delegations had called for deepening work on this aspect, including on the basis of the Secretariat Note on Government Procurement Provisions in Economic Integration Agreements (S/WPGR/W/49). The delegation of Singapore had also noted, last November, that most of the agreements reviewed by the Secretariat contained rules covering a number of recurring topics, such as non-discrimination, valuation of contracts, technical specifications, procurement methods, qualification of suppliers, procedural rules regarding invitations to participate, time limits for tendering and delivery, tender documentation, and award of contracts. His delegation had tried to develop proposals for procedural rules on government procurement in services with respect to these topics. The proposals were guided by some key principles: that the rules be simple, easy to understand and easy to apply. This had led his delegation to propose thresholds at the same level for all WTO Members. While he had previously pointed out that the flexibility of the GATS could allow each Member to set a threshold at the level it wished, some delegations had expressed concerns about a non-transparent and too complex system. The use of common thresholds would provide for simplicity and transparency, and implied that many procurement markets in developing countries or small economies would not be covered by the relevant rules to be developed in the GATS. His delegation had also taken due note of some delegations' call for provisions on S&D treatment.

40. Past discussions had suggested that Members preferred that the MFN obligation in respect of government procurement apply to all sectors, including where no commitments had been made, along with the possibility of MFN exemptions and the inclusion of an exception relating to the plurilateral Government Procurement Agreement (GPA). Regarding technical specification, qualification of suppliers, award of contract, and appeal procedures, he recalled the applicable rules in the context of Article VI of the GATS, in particular paragraphs 2, 3, and 4. It would be useful to consider specific rules applicable to government procurement in addition to those of Article VI. With regard to valuation of contracts, procurement methods, time limits for tendering and delivery, and tender documentation, the communication put forward questions which should help define the procedural rules to be developed and suggested some options in that regard. Noting the Chairperson's comments on the need for a reality check, he believed that the problem at issue was clear: a significant part of

services markets were not subject to the obligations of market access and national treatment. In certain sectors, government procurement represented more than 50% of business opportunities. Solutions appeared increasingly clear and it was desirable and technically feasible to advance on this topic. He hoped to focus discussions on procedural rules and on the structure and content of a possible GATS Annex on government procurement.

41. The representative of Brazil recalled that the issue of government procurement had been dropped from the Doha Development Agenda in 2004. While the topic might have proved of interest to some delegations who wished to postpone discussion on issues of vital importance for the Round, such an exercise should not be repeated in the area of services. Negotiations on government procurement as suggested by the EC communication, did not fall under the mandate of Article XIII. Market access, national treatment and MFN clearly did not apply to government procurement. The procedural aspects mentioned in the EC paper contained elements of market access and therefore also fell outside the scope of Article XIII. His delegation thus had serious concerns about the proposal for an Annex on Government Procurement. In addition to the issue of mandate, he had concerns about the points made in relation to Article VI and the idea of a negative list of entities.

42. The representative of Canada said that the paper was still being reviewed by her authorities and that comments would be made at a later stage. The representative of Switzerland said that government procurement in services was an important topic and that the EC contributions formed a good basis for further discussions. Part I, paragraph 10 said that, according to studies conducted by the EC, no effective cross-border procurement took place below certain thresholds and that the EC therefore considered that all Members should apply the same level of thresholds, regardless of the size of their procurement market. She thought that it was a valuable idea to combine the general flexibility of the framework proposed with increased efficiency and transparency in that regard. She sought further information on the thresholds above which effective cross-border procurement took place. What did 'effective' mean in that context? Did the EC propose to apply the same thresholds for all sectors? Concerning Part II of the communication, her delegation was ready to discuss procedural rules because these were relevant to ensuring effective opening of procurement markets. The Secretariat Note S/WPGR/W/49 provided a useful source of inspiration in that regard. Paragraph 17 of the EC communication said that valuation rules should enable Members to identify whether services were the primary subject of a given government procurement contract. She hoped the EC delegation could elaborate. She also asked for an explanation of the terms, used in paragraph 19, "when technical specifications are drawn up in terms of functional performance".

43. The representative of India thought that the EC communication was not different in substance from that of May 2004. He therefore reiterated previously expressed concerns on the scope of the mandate under Article XIII; paragraph 2 was guided by paragraph 1. While the EC paper claimed to focus on procedural rules, it covered such a fundamental principle as non-discrimination, despite the exclusion of national treatment and MFN treatment through Article XIII. Other elements such as valuation of contracts, procurement methods or invitation rules had been discussed in the Working Group on Transparency in Government Procurement and strong concerns had been expressed in that context about the overly prescriptive character of such norms. This had to be kept in mind.

44. The representative of Chinese Taipei wondered whether it would be appropriate to have different threshold levels for countries at uneven stages of economic development. Moreover, she asked the EC to elaborate on paragraph 17 of the communication, which said that valuation rules should enable Members to identify whether services were the primary subject of a given government procurement contract.

45. The representative of Japan remarked that paragraph (e) of Annex C of the July Package required Members to intensify their efforts to conclude the negotiations on rule-making under GATS Articles VI:4, X, XIII and XV in accordance with the respective mandates and deadlines. He did not

understand why the delegation of Brazil thought that the situation had changed as a result of the July Package. He wished to come back to the EC communication at the next meeting.

46. The representative of Malaysia echoed the statements made by Brazil and India on the scope of the mandate under Article XIII and on the fact that, through the July Package, Members had dropped the issue of transparency in government procurement from the Doha Development Agenda. Elements proposed for discussion by the EC related to what had been discussed in the Working Group on Transparency in Government Procurement. She did not want to see these issues brought back in the WPGR.

47. The representative of Hong Kong, China said that he was open to discussing substantive issues without prejudice to the question of the mandate. A protracted discussion on the mandate would not lead anywhere. Nevertheless, he wondered whether a suggestion had been made about the need to seek clarification or guidance regarding the specific mandate under Article XIII:2. He was perplexed by some of the previous interventions, which seemed to suggest that the mandate in Article XIII:2 was devoid of any content. Turning to the communication from the European Communities, he considered that some of the questions raised previously, such as in JOB(04)/130, remained unanswered, including on the relationship between the proposed government procurement framework and the GPA. Regarding the section of the EC communication on non-discrimination, he took note of the suggestion that the MFN obligation should be applied across the board, which was consistent with the position of his delegation. However, apart from the suggested exception from MFN treatment for the GPA, no solid argument had been made for other MFN exemptions for government procurement in services. Judging from experience with current exemptions under Article II, including the past two MFN reviews, his delegation would be extremely hesitant to consider any such exemptions for government procurement, unless there were compelling reasons for doing so. Any such exemptions would need to be carefully circumscribed and limited in their application. Regarding thresholds, he supported the questions put forward by Switzerland. He hoped that the EC delegation could put together a comparison between the provisions it had put forward so far and those of the GPA and of other economic integration agreements as identified in S/WPGR/W/49.

48. The representative of the United States echoed the delegation of Japan's comments concerning the mandate under Article XIII, including in the context of Annex C to the July Package. She recalled her remarks in past meetings. Turning to the EC communication, her delegation was hard-pressed to make a distinction between goods and services when dealing with government procurement. In the context of the Tokyo Round Agreements, goods were clearly covered as were services incidental to the supply of goods. The GPA negotiated in the Uruguay Round drew no distinctions in the rules covering the procurement of goods and services. From her perspective, there was an interest in keeping the relationship of goods and services as in the GPA, despite the existence of the mandate under Article XIII. She acknowledged the challenge in reconciling that mandate with that of the GPA. In her view, Article XIII clearly encompassed transparency aspects. She took note, in particular, of paragraphs 10 and 23 in the EC communication regarding transparency. Her delegation was interested in further discussing specifically these elements.

49. The representatives of China and Indonesia shared the concerns of Brazil and India on the interpretation of the mandate under Article XIII. The representative of Indonesia believed that the scope of the mandate should be examined carefully before entering into negotiations.

50. Reacting to comments made by the delegations of Japan and the United States, the representative of Brazil agreed that Annex C of the July Package called for negotiations on government procurement and other rules areas within the mandates provided by the GATS. However, the communication by the EC did not comply with the relevant mandate. He hoped that the United States and Japan would pay similar attention to other paragraphs of Annex C, namely the call for offers in sectors and modes of supply of interest to developing countries. He also felt that some

delegations had earlier put into question what was mandated in Annex C and in Article X by saying that safeguard measures might not be needed. Article X provided for negotiations and not for an examination of whether safeguards were desirable or feasible. The mandate to negotiate on government procurement did not entail derogation from paragraph 1 of Article XIII. Nothing suggested that paragraph 1 was temporary in nature.

51. The representative of Chile echoed the questions put forward by the delegation of Switzerland regarding thresholds. She also wondered whether thresholds would differ for different government entities. Concerning S&D treatment, she observed that paragraph 12 included an example and invited the EC to provide others. Regarding MFN treatment, she agreed fully with the delegation of Hong Kong, China in relation to paragraph 15. On the valuation of contracts, she requested clarification on the common rules mentioned in paragraph 17. Finally, regarding paragraph 19, she asked whether the EC wanted to engage in work additional to that being conducted under Article VI:4, and under what mandate.

52. The representative of Argentina agreed with the delegations of Brazil, India and China regarding the scope of the mandate. As pointed out by the delegation of Hong Kong, China, a discussion of the mandate might not lead anywhere, but the same was true for the discussion of non-mandated topics. The Working Party was supposed to negotiate and not simply to engage into discussions for the sake of discussions. The *demandeurs* on this topic should aim to limit themselves to the mandate so that their communications might be met with interest.

53. Reacting to the intervention by the delegation of Brazil, the representative of the United States said that her delegation was complying with Annex C of the July Package, including with respect to giving special attention to sectors and modes of supply of interest to developing countries. Nothing in Annex C said that a Member had to respond to every single request. Concerning Article XIII, her delegation was concerned about suggestions that the decision in the July Package to put aside the Singapore issue of transparency in government procurement somehow affected the mandate under that Article, which was specifically reaffirmed. While her delegation might have some questions about Article XIII, she strongly disagreed with the view that transparency was outside of its mandate. Nothing in the July Package took the notion of transparency out of the negotiations under Article XIII. That said, she had indicated that her delegation was struggling with the notion of how to approach government procurement in services given that, domestically, rules for goods and services were linked. Concerning points made in relation to Article X, she did not think that discussions in the past 10 years on the question of emergency safeguard measures amounted automatically to a mandate to negotiate an ESM. Her delegation had thus fully complied with Annex C.

54. The representative of the Republic of Korea was open to discussions on this issue regardless of the mandate. She welcomed the focus on procedures, but thought that elements of market access were also contained in the EC communication. Concerning paragraph 18, she wondered about the intentions of the EC in making links to the negotiations on domestic regulation. The representative of Pakistan wished to associate her delegation with statements made by Malaysia, China, India and Brazil. It was important to have clarity on this issue, especially since 50% of the activities in some services sectors related to procurement.

55. The representative of Singapore recalled his previously expressed views on Article XIII, including on the mandate. He took note of the suggestion in paragraphs 15 and 16 of the communication from the EC to address the relationship between the GPA and a possible Annex in the GATS. This provided a good way forward. On domestic regulation, in particular paragraphs 18 and 19, he asked the EC to give examples of the proposed additional provisions on technical specification and qualification of suppliers for government procurement that might be needed.

56. The representative of the European Communities believed that Article XIII was clear. Paragraph 1 said that obligations under Articles II, XVI and XVII did not apply to government procurement, which meant that all other provisions of the GATS already applied. Paragraph 2 contained a general mandate for negotiations on government procurement in the GATS, which, so as to be meaningful, related to Articles II, XVI and XVII. He wished to associate himself with the position expressed by the delegations of the United States, Japan and Hong Kong, China concerning the first intervention by the delegation of Brazil. He also disagreed with the comment by the delegation of Brazil to the effect that a negative listing of entities would be contrary to the spirit of the GATS. The EC had suggested to adopt either a positive or a negative list of entities. Regarding the possibility of different threshold levels according to stages of development, his delegation had considered such an approach. However, some delegations had commented that it would be too complex. Further, internal studies had showed that service suppliers did not make the effort to bid for a procurement contract in a foreign market below a certain level. It thus seemed simpler and more consistent with business practices to have common thresholds. In most agreements, the thresholds used were the same for all services sectors, except for construction where they were typically higher. One could thus envisage a higher threshold for construction and a common threshold for all other sectors. He did not want to prejudge negotiations by suggesting what the specific levels should be.

57. Regarding questions on valuation of contracts, the representative said that the scope of the provisions would be limited to situations where services were the primary subject of government procurement contracts. The best way of determining the primary subject would be decided by the Working Party. One option would be to focus on when services represented the majority of the value of a contract, but other options were possible. With respect to comments by the US delegation on the distinction between goods and services, the representative pointed out that, while the GPA's procedural rules covered both goods and services, it contained different schedules of commitments for goods and for services. He did not see problems in developing rules of procedures in the GATS which would be compatible with each Member's domestic system. Concerning the relationship between the GPA and the proposed framework under the GATS, it would be necessary to have an exception from the obligation of MFN treatment so that commitments undertaken by Parties to the GPA were not automatically extended to all WTO Members. The communication also proposed the possibility to take exemptions to the obligation of MFN treatment. It seemed appropriate to offer the possibility to take such exemptions since the need to do so when the GATS entered into force did not exist. These exemptions would be subject to negotiations. With regard to questions relating to Article VI, the communication had noted the possible usefulness of negotiations on domestic regulations for similar issues in respect of government procurement, while indicating that there might be a need to develop rules specific to government procurement. The intent was not to bring aspects of Article VI:4 negotiations into the negotiations pursuant to Article XIII, but rather to try to benefit from the former in order to develop rules adapted to government procurement on, for example, qualification of suppliers and technical specification.

58. The Chairperson observed that, since the paper had been recently circulated, a number of delegations had expressed a desire to come back with substantive comments at the next meeting. The well-known and wide divergences on the scope of the mandate, in particular whether it covered market access issues, had again surfaced in the discussions. The EC had indicated an intent to focus on procedural rules, but some delegations said that elements of the paper concerned market access as well. Specific questions were put forward in respect of varying versus common threshold levels, as well as in relation to the studies referred to in the communication. Suggestions were also made regarding the need to further look at the relationship with the GPA. Some delegations had also sought greater clarity regarding the links made to Article VI and hoped that examples could be presented. He proposed to revert to this paper at the next meeting and invited the Working Party to take note of the comments made.

IV. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

59. The Chairperson invited delegations to consider the recent proposal from the delegations of Chile, Hong Kong, China, Mexico, Peru and Switzerland, contained in JOB(05)/96 on a provisional definition of subsidies in services. It also called on Members, for the purpose of the information exchange under Article XV, to provide information in five sectors of their choice by November 2005. Delegations might also want to come back to communications circulated just prior to the last formal meeting which touched upon related issues, namely the Secretariat's synthesis of views expressed on the issue of definition, JOB(05)/4, and a communication from the United States on the information exchange, JOB(05)/5.

60. In presenting the communication, the representative of Hong Kong, China said that it followed up on previous discussions on the definition of subsidy, including the suggestion by the United States in JOB(05)/5 to agree provisionally on a basic definition as a first step to have a focused information exchange. Many delegations had expressed the view that the definition contained in the Agreement on Subsidies and Countervailing Measures (ASCM) could be a useful starting point for considering a definition for services. Part of the motivation for the paper was that the lack of a definition had been mentioned by some delegations as reason for the chicken-and-egg problem that had plagued discussions under Article XV. The lack of definition had also been cited as a reason for difficulties in fulfilling the mandate on information exchange. The communication put forward some ideas to help move towards a working definition for the purpose of both the information exchange and further work under Article XV. Such a working definition should not prejudge any definition that might be adopted for the purposes of possible disciplines. The communication did not presume that subsidies falling under the provisional definition should be disciplined or that they were trade distortive. The provisional definition would facilitate the information exchange, which in turn would facilitate Members' consideration of relevant issues. Elements of the provisional definition contained in the annex to the communication were primarily based on the ASCM, subject to some necessary adjustments in the context of services. The communication thus retained the core notion of financial contribution, as well as the concept of price or income support. On the issue of benefit or advantage conferred, the sponsors had largely followed the jurisprudence on the goods side. The concept of specificity was also retained as part of the definition, but without trying to define it in detail at this stage. It should be further developed over time. In addition, the proposal referred to Article 1:3(a) to further define the scope of relevant measures, namely those taken by central, regional or local governments and authorities, as well as non-governmental bodies in the exercise of delegated authority. The annex also included a list of circumstances of financial contributions, with small adjustments in relation to the ASCM. For example, point (d) referred to government services and the notion of general infrastructure was extended to include the provision of public services by governments; and point (e) referred to government purchases of services. The working definition was not intended to be perfect, but to facilitate work on information exchange and other substantive discussions. The communication also suggested that Members provide information in five sectors of their choice by November 2005. Failure to fulfil the mandate for information exchange would be of major concern and would have to be brought up for further attention at higher levels.

61. The representative of Japan compared the proposal by the group of Members with the previous one by the United States. Though both stressed the importance of narrowing down the scope of subsidies examined, they significantly differed in some respects. The more recent one suggested that information be provided in five sectors, while the US proposal suggested that one or two sectors be selected. As seen at the last meeting, it was difficult to get Members to agree on one or two sectors. On the other hand, leaving it to each Member to choose relevant sectors might undermine the comparability of the data. In contrast to the more recent proposal, the United States was concerned that a working definition close to that of the ASCM would capture too wide an array of subsidies. The proposal by the group of Members therefore seemed more user-friendly at the stage of collecting information, while the US proposal was more user-friendly at the stage of analysing information. The

issue was to agree on the priority. Regarding JOB(05)/96, he wondered how broadly the five sectors mentioned were to be defined: should they be picked out of the 12 sector groupings of MTN.GNS/W/120? Further, was it necessary to collect information exhaustively for each sector selected? If so, it seemed very difficult to complete this exercise by November. He also wondered whether the elements listed in paragraph 8 were meant to be exhaustive, since some elements might be missing.

62. The representative of the European Communities thought, in a preliminary manner, that any definition that might be developed for services would not be very different from what existed in the context of goods. The definition of subsidy used within the EC was the same for goods and services. While the first part of the provisional definition in paragraph 1 of the annex seemed clear, this was not the case for the last part, i.e., "on terms more favourable than those available to the potential recipient or beneficiary in the market". Even if the proposed definition was meant to be provisional, the anti-circumvention provision of the ASCM did not seem to have been taken into account. Also, it was not clear whether the sponsors were calling for an exchange of information or rather for a notification of all subsidies in five sectors. His delegation had previously said that notification should take place only once an agreement had been set up, not before. The information exchange pursuant to Article XV should not be confused with a notification. He wondered whether the sponsors of the communication would be able to offer by November all the information they were asking for. In the EU, notification requirements comprised a *de minimis* rule; only subsidies beyond a certain level, where distortive effect might be considered to arise, were notified. It did not seem realistic to omit such a rule. He recalled that the EC had concerns regarding notifications, not information exchange, and said that information on subsidies in the EC could be found at: <http://europa.eu.int/grants> (for aids at the community level) and http://europa.eu.int/comm/competition/state_aid/scoreboard (for aids at the level of Member States).

63. The representative of Pakistan was interested in rules on subsidies in order to respond to concerns from domestic stakeholders when market access commitments were undertaken. Subsidies by the home country of multinational service companies might artificially boost the competitiveness of these firms when operating abroad and negatively impact upon small and medium size enterprises in the host country. Regarding the communication, she asked the sponsors whether the information exchange would be confined to those sectors where specific commitments had been made and where market access was being sought. She thought that the burden of information exchange might be avoided where no commitments had been taken and where there was no competition with suppliers of other countries.

64. The representative of El Salvador did not think that the establishment of a deadline for the submission of information, as suggested in paragraphs 7 and 10 of the communication, was appropriate. The representative of Turkey considered that the concept of specificity found in the communication from the group of Members did not exist as such in the definition of subsidy in the ASCM. Rather, specificity was used for the definition of the scope of a subsidy. In the communication, specificity was one of the essential elements and it was therefore necessary to clarify its meaning so as to facilitate the information exchange.

65. The representative of Thailand felt that the proposed provisional definition was a practical approach given the lack of progress on the information exchange mandated by Article XV. The lack of a definition had made Members unsure of what information to share. The proposed approach was flexible, as modifications were possible along the way. She agreed that the ASCM was a good starting point. Regarding the definition in the annex, she had concerns about the exclusion of non-specific assistance schemes from the outset, but understood that this was a starting point and that sponsors might have wished to narrow down the scope to subsidies more likely to have trade distortive effects. Concerning paragraph 2 of the annex, she wondered if the term "non-governmental bodies in the exercise of delegated powers" included private bodies in the sense of

Article 1.1(a)(1)(iv) of the ASCM. Finally, she thought that elements contained in paragraph 8 would allow to obtain sufficiently detailed information to better understand assistance programmes; analysis of potential trade distorting effects and the information exchange could thus go hand in hand.

66. The representative of Norway supported the outgoing Chairperson's assessment and thought that a reality check was highly needed. There was merit in agreeing on a provisional definition of subsidy to advance on the information exchange. As a preliminary comment, he was somewhat concerned about the proposed deadline of November 2005, just before the Hong Kong Ministerial. He asked the sponsors to clarify whether they were calling for a notification of subsidies by such date.

67. The representative of Canada remained sceptical that the concepts and rules contained in the ASCM could be readily transposed to the services context. Some issues raised in the communication required further clarification. While she supported conceptual consistency between agreements to the extent possible, services sectors were unique and did not easily lend themselves to the determination of like services. This gave rise to problems in such areas as the definition of domestic industry. The use of the ASCM also presumed the existence of consistent and internationally-agreed sources of statistical data. In the absence of such data, it would be difficult to assess the magnitude of any alleged subsidy and to engage in a meaningful information exchange concerning relative levels of subsidization. The scope of any new definition of subsidy, as well as any resulting disciplines, should not compromise policy imperatives in respect of access to, and delivery of, public services.

68. The representative of Chinese Taipei shared the view that it was unavoidable to touch upon definitional issues in order to have a focused information exchange and consider possible disciplines. The same had applied in the goods context. The development of a provisional definition would encourage Members to share their subsidy information. Regarding paragraph 1 of the annex and in particular the concept of specificity, she wondered if the sponsors could further elaborate. In the ASCM, subsidies granted not only to particular sectors, but also to certain groups of enterprises, were considered specific. She further asked about the level of aggregation of the proposed sectors and the number of subsidies to be notified per sector.

69. The representative of Brazil anticipated some difficulties with the proposed provisional definition as well as the deadline of November 2005. Like others, he hoped the sponsors would clarify whether they were looking for a notification or an exchange of information. In approaching this debate, his delegation was guided by some parameters. First, the ability to provide public services should in no way be harmed by any disciplines. Second, Article XV specifically provided additional flexibility for developing countries and this should be taken into account.

70. The representative of China saw the benefits of a provisional definition for the purpose of information exchange and further negotiations. However, the limited capacity and resources of developing Members might cause some difficulties in collecting information on subsidies in a short period of time; those more capable could take the lead. Regarding the annex, the representative hoped that item (c) of paragraph 3 could be made more specific and that a definition of "general infrastructure and public services" could be provided so as to clearly differentiate with services provided in the exercise of governmental authority. He also enquired how the sponsors wanted to address subsidies in sectors other than general infrastructure and public services when these were of no trade distortive effect such as subsidies granted in relation to universal service.

71. In a preliminary manner, the representative of the Philippines thought that the information exchange would be an important basis for developing the necessary disciplines contemplated under Article XV. However, given the time and resources implications, the process needed to be governed by a coherent framework so as to make it as useful as possible to the negotiations. With respect to the communication from the US, he wondered if the proposed approach would be helpful for collecting and analyzing relevant information since services sectors seemed diverse and complex. Regarding

JOB(05)/96, he wondered whether the sponsors had taken into account the concern expressed by the US that relying upon the ASCM definition for the information exchange might lead Members to list a vast array of potential subsidies. Was it correct to presume that sectors not subject to any specific commitments would be included? Would it be more useful to agree on the same five sectors for all Members? While some Members might not have subsidies in these sectors, common benchmarks could nevertheless provide useful insights on subsidies being granted, including on disparities between developed and developing countries. He also asked whether there was a particular relevance for the date of November 2005 which might be too soon. The challenge was to strike an appropriate balance between avoiding information overload and having too little information to be useful.

72. The representative of Guatemala favoured the use of a provisional definition in order to assist the exchange of information, without prejudging the future development of disciplines. Regarding paragraph 3(e) of the annex, on government purchases of services, the representative of India asked whether the sponsors saw any link with Article XIII of the GATS on government procurement. With respect to paragraph 3(d) of the Annex, on government goods and services, he asked the sponsors how this squared with the scope of the GATS, especially paragraphs 3(b) and 3(c) of Article I. Finally, he thought that the proposed deadline for the provision of information might prove very demanding, especially given the upcoming Ministerial Conference.

73. While the communication used elements from the ASCM, the representative of Qatar thought that its use was controversial and sponsors needed to do more work on the definition. The deadline of November 2005 was not realistic and could be decided upon at a later time. Disparities in capacity to provide statistical information existed; many developing countries did not have readily available data. The characteristics of services, including their intangibility, did not seem to be properly captured by the proposed definition. He supported the comments made by Canada and Norway.

74. The representative of Australia saw the merit of a provisional definition which might help to overcome the chicken-and-egg situation. There might be difficulties in applying the proposed definition in certain sectors, and Members might usefully identify elements of the definition that would pose difficulties in that regard. It was clear that for many Members the provision of information proved sensitive. His delegation was thus still reflecting on the proposal to submit information in five sectors and had some concerns regarding the November deadline. This might not be the best way to build confidence in the process, and he wondered whether it would not be better for Members to provide generic examples without identifying particular subsidies.

75. The representative of New Zealand said that her delegation was one of the few that had provided information in the 1997 exchange on the basis of the ASCM definition. In doing so, her delegation had been clear that it was not notifying subsidies, nor making assumptions about the transposition of the ASCM definition to services. The provision of information had not proved very demanding in terms of resources, nor had it had adverse or unanticipated results. The representative of Singapore said that some commentators had noted that the GATS might not necessarily cover export-oriented measures. He thus wondered whether the sponsors intended to cover subsidies granted in relation to exports. Second, he fully associated his delegation with comments made by Canada and Brazil regarding subsidies for public services, as well as with Brazil's reference to Article XV:1 on flexibility for developing countries.

76. The representative of the United States considered that the communication was a pragmatic approach to encourage progress in connection with the information exchange. However, regarding the proposed provisional definition, his delegation remained somewhat uncertain as to the kind of subsidies that Members might be expected to report. For example, how might one report on subsidies in health care, education or public utility services without providing an elaborate description of the domestic regulatory regime for these sectors, if these were to be part of a definition. While this was not to say that subsidies in these areas should be excluded or not, further guidance would be needed to

narrow down the scope of the enquiry. It could address the nature of subsidies to be reported, such as subsidies that could reasonably be considered to have a direct effect on exports. Focusing initially on such subsidies would advance work towards developing necessary disciplines in the area that mattered most. Such a targeted approach would also make any exchange of information more manageable and productive. He agreed with the sponsors of the communication that the substance of a provisional definition could largely be drawn from the ASCM. However, as noted in his delegation's communication, there might be scope for appropriate changes. He was not entirely certain about each of the changes that had been made to the ASCM definition in order to produce the proposed provisional definition. He wondered whether the specificity concept of the ASCM really applied to the provisional definition proposed. The adjective specific in paragraph 1 of the Annex only modified the terms financial contributions and this differed significantly from the ASCM. Even within a non-specific subsidy programme, each financial contribution went to a particular firm and was by definition specific. He thus wondered why specificity would modify 'financial contribution', as opposed to 'subsidy' or 'programme'. Further, the adjective specific did not seem to modify the terms 'income or price support' and he wondered about the intent of the sponsors in that regard. With respect to paragraph 3 of the annex, he thought that some changes to the ASCM terminology appeared to fundamentally change the meaning of the disciplines and might not be required by the different characteristics of services.

77. The representative of Bolivia hoped that the sponsors could clarify the scope of paragraph 10(b) of the communication, where it was suggested that Members provide information on subsidies in five sectors by November 2005. The representative of Malaysia sought clarification on whether the sponsors were contemplating a notification exercise or an exchange of information. She had concerns about the deadline of November 2005. She also drew attention to paragraph 1 of Article XV, which recognized the role of subsidies in relation to development programmes of developing countries.

78. The representative of Hong Kong, China said that the sponsors of the communication were encouraged by the apparent interest in making substantive progress. The proposal was squarely within the mandate for information exchange in Article XV:1 and did not imply a notification process. The information exchange had to be useful for the purpose of the negotiations, which was why the communication proposed some parameters. He was interested in knowing whether any of these parameters, as set out in paragraph 8, were causing particular problems. He did not have strong views as to what five sectors should be selected or whether these sectors should be committed or not. The proposal had emphasized that this was a matter of choice for individual Members, at least for the purpose of starting the information exchange. Given the different interests of Members, proceeding in such a way would yield information on a reasonably wide array of sectors to enable appropriate analysis and discussions. Concerning public services, the purpose of a provisional definition was to facilitate the information exchange and there was no presumption that these subsidies were trade distortive or that they should be disciplined. In supplying information on subsidies, Members might also provide their views on subsidies that in their opinion served important public policy objectives and deserved special consideration in any subsequent discussion. With respect to the question put forward by the delegation of Singapore on export-related measures, he thought that the US delegation had provided an answer by mentioning export subsidies in its communication. He asked the delegation of Singapore to indicate what part of Article I of the GATS, which defined the Agreement's scope, precluded the discussion of subsidies relating to exports of services. He would come back to other questions raised, including on definition, at the next meeting.

79. The representative of Singapore said that his comment was based on the observation that some commentators had suggested that the GATS' four modes of supply covered import-related measures only.

80. Taking note of delegations' comments in regard to the proposed deadline of November, the representative of Hong Kong, China said he hoped that delegations would indicate what they saw as a

reasonable timeframe, especially since the sponsors of the communication were not proposing an exhaustive notification of subsidies in the chosen sectors. Regarding the intervention by the delegation of Singapore, he noted that the interpretation of the GATS was the prerogative of Members. He wished to know whether Singapore thought that the GATS only covered measures relating to the import of services and, if so, what was the basis for such a view.

81. The Chairperson suggested that delegations continue the discussion of this communication at the next meeting and invited the Working Party to take note of comments made.

V. DATE OF THE NEXT MEETING

82. The Chairperson indicated that the Working Party would hold its next formal meeting during the next cluster of services meetings, the exact date of which would be announced in due course.

VI. OTHER BUSINESS

83. The representative of Brazil wondered why documents from the OECD had been made available for the meeting. The Secretariat said that this had been done at the request of delegations, as noted in the report of the last meeting. The representative of Chile recalled that her delegation had initially raised this issue because these OECD documents contained some examples of subsidies, even if many were not trade distortive.

Working Party on GATS Rules

REPORT OF THE MEETING OF 7 FEBRUARY 2005

Note by the Secretariat¹

1. The meeting of the Working Party on GATS Rules was chaired by Ms. Clare Kelly, from New Zealand. The agenda for the meeting, contained in WTO/AIR/2485, included the following items: subsidies, government procurement, emergency safeguard measures, date of the next meeting and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda, contained in JOB(05)/7. The agenda was adopted.

I. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

2. The Chairperson called attention to the three documents circulated since the last meeting. First, the Secretariat had prepared a synthesis Note on the definition of subsidies, contained in JOB(05)/4. Further, the delegation of Singapore had circulated an informal communication (JOB(04/180), which enumerated a number of relevant issues for the negotiations, in particular with respect to definition. Finally, an informal communication from the United States (JOB(05)/5) put forward some thoughts in relation to the information exchange. She called on delegations to make the necessary distinctions between the issues of definition and information exchange since, in past meetings, many had seemed to feel that the exchange of information was not conditional on prior agreement on a definition, or vice-versa. On the information exchange, a basic question before the Working Party was how the provision of useful information could be encouraged. On the definition of subsidy, an important issue to consider was whether the elements found in the Agreement on Subsidies and Countervailing Measures (ASCM) were adequate in the context of services or, if not, what modifications might be relevant.

3. A representative of the Secretariat said that the Note mentioned by the Chairperson provided a synthesis of the views expressed by delegations, either orally or through submissions, on definitional issues since the beginning of the negotiations. It was intended to assist discussions by refreshing delegations' minds on what had been said. The Note was organized on the basis of points raised, e.g., price or income support, financial contribution, conferring of a benefit. It was not intended to express views on what might need to form part of a definition of subsidy. Neither did the Note wish to imply any form of consensus in the Working Party on this issue.

4. The representative of the United States said that the informal communication from her delegation was intended to assist in the discussions, in particular with regard to the information exchange. While recognizing the obligation to exchange information concerning all subsidies relating to trade in services provided to domestic suppliers, she stressed that this was not tantamount to having to provide all possible information in advance of the negotiations. She was concerned that the submission of much information in an unfocused manner could create a significant burden without yielding useful results. It would slow down work and, thus, be counterproductive for those having particular interests in these negotiations. Narrowing the scope of enquiries to a manageable range

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

would contribute to a more productive exchange of information. One way would be to adopt provisionally a definition of subsidy for services. Many had suggested that the definition contained in the ASCM could provide a useful starting point. While her delegation shared this view, the relevant definition was still broad enough to confront delegations with a vast array of potential subsidies. To make the information exchange more worthwhile, other means of focusing efforts could be considered, such as analyzing examples of subsidies on an industry-by-industry basis or concentrating on certain types of subsidies that caused trade-related problems. The Working Party might thus want to discuss which sectors could provide a useful starting point. Tourism could be considered because this was a sector of importance to a wide range of Members, although she did not want to preclude other sectors. Similarly, it might be useful for the Working Party to consider which kinds of subsidies to examine initially, like those explicitly linked to export performance. She hoped that such a targeted information exchange would help to assess the extent to which new disciplines on subsidies were merited and, at the same time, provide a foundation for considering the form that any new disciplines might take.

5. The representative of Singapore recalled that he had provided an extensive preview of his delegation's informal communication at the last meeting. The document suggested that the ASCM definition be used as a starting point for work on a definition of subsidy in services. It also provided an illustrative list of issues that could relate to subsidies in services. The synthesis Note by the Secretariat captured some similar elements.

6. The representative of Chile wished to answer questions with respect to the information she had provided at the last meeting on some domestic support programmes. One question was about the access of foreign-owned companies to programmes in the sectors of telecommunications, electricity and maritime transport. Her government did not impose restrictions relating to foreign investments through any of these programmes. However, the necessary entry requirements in relation to foreign capital had to be observed in each of the sectors. Another question was whether the rural electrification programme was limited to families, which she said was not the case. A delegation had also asked for more information on the programme relating to maritime transport. She said that she would provide the Secretariat with additional information on the programmes mentioned. Furthermore, documents produced for a recent OECD meeting of services experts already contained relevant information on two programmes.

7. The representative of the United States wished to comment on the synthesis Note by the Secretariat and the informal communication from the delegation of Singapore. She thought that the former Note effectively brought together the main ideas expressed to date on the subject. The synthesis also showed that, on the issue of definition alone, many topics could be explored further, possibly for an indefinite period. Many of the suggestions put forward seemed to be more about defining what was not a subsidy. She wondered whether it could be inferred from the synthesis that Members were not foreseeing any particular type of subsidy as problematic. It would be good to have a better idea of the types of subsidies that Members thought should be disciplined, so as to get a sense of their prevalence. This would help to determine the nature of the problem at hand, which in turn would help in crafting an appropriate definition. On Singapore's contribution, she noted that the communication seemed to suggest that certain aspects of subsidies might already be covered by disciplines, that other subsidies might be excluded because they achieved an important public purpose, and that some kinds of government support, such as government purchasing, might not be relevant to services. She wondered what was left when all these elements had been stripped away. Were there any particular types of subsidies that actually presented a significant problem in the services context? She hoped to hear the views of other Members on this point. While she would not like to see subsidy provisions interfere with important public policy objectives, it could not be said with certainty that policy measures designed to achieve a public purpose could never have adverse effects on trade. Consequently, it seemed more prudent to use a broad definition, at least from the outset. The representative noted that Singapore referred, in paragraph 3(c) of JOB(04)/180, to the concept of income or price support and that it questioned whether regulatory measures could be

considered a form of price support. She sought further clarification on the kinds of regulatory measures that might be relevant.

8. The representative of Hong Kong, China said that he was puzzled by the interpretation given to the mandate on information exchange in the communication from the United States. He thought that the mandate was sufficiently clear: Members had to exchange information regarding all subsidies related to trade in services that they provided to their domestic service suppliers. The terms "for the purpose of negotiations", to which the United States had drawn attention, did not limit the scope of the information exchange. It was mandatory for all Members to provide information relating to all relevant subsidies. That being said, he thought that the ideas put forward by the United States were positive since they suggested practical ways to engage in a more focused exchange of information. One constructive idea was to agree provisionally on a definition of subsidy. He noted that the ASCM was a useful starting point; previous discussions on definition in the Working Party, as captured by the Secretariat Note, had often referred to it. The synthesis Note served to remind delegations of the work ahead in reaching a definition of subsidy in the context of services. While he agreed that it was useful to try to develop a workable definition of subsidies for the purpose of the negotiations, other areas of work should not be held hostage; the chicken-and-egg syndrome that had plagued negotiations in the past should be avoided. On the sectoral focus proposed, he considered that this was a constructive suggestion and a practical way of proceeding. His delegation had mentioned such an option in JOB(04)/127. Providing information in a gradual manner could be a way forward if doing so at once proved too difficult. He wished to know what information the United States would be able to provide under the approach it suggested. On the choice of sector, he wondered whether the sector of tourism had particular problems with subsidies as compared to other sectors such as transport or construction. These had been mentioned in the past as sectors where subsidies might be more prevalent. In that regard, he wished to be updated on the status of the study undertaken by UNCTAD on services subsidies. He did not think that agreement of all delegations on a sector was needed before proceeding further; it could be left to individual Members to choose the sectors they thought would be useful for the purpose of information exchange. Leaving the choice of the sector to each Member would not lead to less focused discussions since mandated negotiations contemplated horizontal rules.

9. Reacting to the communication from the United States, the representative of Japan considered it was useful to narrow the scope of the information exchange by focusing on certain sectors. However, his delegation was not convinced by the choice of the tourism sector. It was a sector where subsidy programmes served, for example, to improve the infrastructure or otherwise helped attract tourists. Many levels of governments, as well as non-governmental organizations, were involved in providing support for this sector. In that context, it might be difficult to determine which subsidies should be the subject of information exchange. He also considered that tourism was in certain regards quite different from other sectors, where the main focus was on how to supply services abroad. In the case of tourism, the main focus was to promote activities within one's own territory. He thus wondered whether tourism was the appropriate choice if the main purpose of the information exchange was to assist in the negotiations.

10. The representative of Thailand thought that the suggestion to focus on relevant sectors was useful. She did not mind starting with tourism, although exploring subsidy schemes in infrastructural services such as telecommunications or transport could also be quite relevant. She noted that the earlier communication from Chile (JOB(03)/218) included an example in this sector. While measures such as tax exemptions or duty free concessions might be seen to constitute a subsidy in the light of the ASCM definition, these would not be subsidies under mode 2 because they did not restrain a Member's own citizens from going abroad. In such cases, exports actually occurred within the country, and the GATS did not address this reverse territorial aspect of subsidies. In Thailand, the board of investment offered, with conditions, corporate tax exemptions to hotel and other tourism-related services. Foreign ownership was allowed in that sector. She doubted that a modal approach was relevant to subsidization of this nature. The determination of whether subsidies in the tourism

sector had distortive effects was problematic. For one, the issue of like services was difficult, given the various consumer preferences at play. How to determine the degree of substitutability of staying in different locations? Further, competition in the tourism industry was not based solely on, for example, the price of a hotel; competition depended on many other factors, e.g., cultural or natural endowment of the destination country. Possible trade-distortive effects of subsidies, if any, had to be seen in that broader context and could be cancelled out by other influences in the tourism industry.

11. In a preliminary manner, the representative of Pakistan welcomed efforts by the United States to suggest ways towards a constructive information exchange. She agreed with the suggestion to narrow down the scope of the information exchange by working on the basis of a provisional definition of subsidy, adopting a sectoral focus, and concentrating on particular types of subsidies, such as those directly linked to export performance. She also took note of suggestions made in an earlier communication from Hong Kong, China and supported the proposal to invite UNCTAD to present its study on services subsidies. In concluding, she felt, in the light of the three communications discussed today, that it might be advisable to try to agree upon a satisfactory definition while endeavouring to collect information on a step-by-step basis.

12. The representative of Chinese Taipei asked whether the United States wished to develop a provisional definition of subsidy before proceeding with the information exchange or, alternatively, develop a definition on the basis of the information gathered on a sectoral basis. She also wondered, in regard of examples provided in paragraph 5 of the document, whether the United States considered it necessary to formulate a definition that would exclude the elements referred to or, rather, include such programmes in a definition but exempt them from legal challenge. Further, she welcomed the proposal to proceed on the information exchange on a sector-by-sector basis. However, other sectors mentioned in the Secretariat Notes on subsidies covered by Trade Policy Reviews (S/WPGR/W/25 and addenda) could also be examined. On the communication from Singapore, she thought that the ASCM definition provided a useful starting point, but she had various specific comments. With respect to paragraph 3(b), the notion of price or income support should be included in a definition of subsidy in services so as to cover all relevant measures. Subsidy-like effects of regulatory measures should not form part of a definition, but be covered by other provisions of the GATS. On the issue of benefits, she thought that inadequate statistics, as well as the complexity associated with multiple modes of supply, made the measurement of benefits conferred on recipients particularly challenging.

13. The representative of the Republic of Korea sympathized with concerns that too broad a definition might make the information process too burdensome; the ASCM definition constituted a good basis. She wondered whether concentrating on certain specific sectors would help to narrow down the definition. She hoped that the information exchange could proceed, first, with tourism and then move on to other sectors. While tourism might be a peculiar sector, gradually extending the information exchange to other areas could reveal other sectoral peculiarities. She agreed with the suggestion by Chile to circulate the OECD papers mentioned.

14. With respect to the communication from the United States, the representative of Chile supported the interpretation of the mandate put forward by the delegation of Hong Kong, China. Article XV contained an obligation to provide information on all subsidies. Second, while agreement on a provisional definition might be useful, this was not a prerequisite for exchanging information. From the Working Party's experience so far, she did not think that the absence of a definition would lead to too much information. Third, while proceeding on a sector-by-sector basis was positive, sectors other than tourism, such as construction or transport, might be more relevant, given their clearer link to exports. She understood that the United States was also open to look at such sectors. Fourth, she thought that the Working Party could pursue various avenues in a simultaneous manner; the information exchange could proceed alongside a discussion on definitional issues, including the question of whether programmes with public policy objectives would be relevant.

15. The representative also wished to provide preliminary comments with regard to the communication from Singapore. On paragraph 3(a), she thought that the various elements forming a financial contribution in the ASCM would also capture the reality of services trade. Subsidization of such services as telecommunications, computer, tourism, or transport services through grants, tax credits, etc. was easily conceivable and could be the subject of further examination. With respect to paragraph 3(b), she did not think that there was a direct relationship between negotiations under Article XV and those under Article VI:4. The subject matter of the latter negotiations was well defined, while types of subsidy disciplines that could be negotiated under Article XV were still being discussed. However, regulatory measures might have subsidy-like effects. While regulations could distort trade in services, a subsidy, in turn, might be considered to constitute an unnecessary barrier to trade. From that perspective, there might be a link between the two Articles. This topic should be further discussed. On paragraph 3(d), she hoped that Singapore could elaborate on the definition of the term 'benefit', and possibly provide more concrete examples. Concerning paragraph 3(e), she thought that a definition would have to cover actions taken by all levels of government. With respect to paragraph 3(h), it would be useful to consider the "traffic light" approach in the context of services. It could assist in addressing particular sectoral sensitivities. "Green light" or non-actionable subsidies could be those used in the fulfilment of a public policy objective. Examples of such subsidies were to be found in the previously mentioned OECD documents on universal service, which could be circulated.

16. The representative of Switzerland said that the communication from the United States was a constructive contribution to the negotiations. Article XV:1 called for the provision of information on all subsidies relating to trade in services that governments provided to their service suppliers. This mandate was clear and not limited in scope. It was also important to discuss how to proceed in fulfilling such an obligation. She agreed with the United States' suggestion on the understanding that it did not deal with the scope of the information exchange or of the mandate, but with the procedural question of how to proceed. It was up to each Member to decide how it wanted to fulfil that mandate, e.g., provision of information all at once or on a step-by-step basis. Members did not have to proceed in the same manner. However, she had concerns about using the information exchange as a basis for deciding whether disciplines were necessary or not. The information provided might be partial and incomplete. She was particularly concerned about paragraph 7 in the communication from the United States, which stated that a targeted information exchange might help to assess the extent to which new disciplines on subsidies were merited. Furthermore, the communication contained interesting thoughts about definitional issues. A definition was relevant in two contexts, that of the information exchange and that of the negotiation of disciplines. For the purpose of the information exchange, the definition contained in the ASCM could be used. Relying on that definition did not carry any legal implications in terms of rights and obligations, but provided an opportunity to test that definition, in addition to saving time.

17. With respect to the synthesis Note by the Secretariat, she appreciated in particular that it elaborated on the concrete critiques and proposals for improvements made by delegations in relation to the ASCM definition. Paragraph 4 of that Note highlighted the concrete modification proposals made regarding the concepts of purchase of services and of income or price support. Another specific point underscored in the Note concerned the issue of the GATS carve-out for governmental services. She thought that the subsidy definition used in the ASCM provided a good basis for work on subsidy disciplines in services.

18. The representative of India appreciated the efforts by the delegation of the United States to propose a practical way of moving ahead on the information exchange. However, he wondered about the choice of tourism as a focal sector and asked if the United States considered that it caused particular trade-related problems. Delegations might have to grapple with the fact that the choice of the sector depended on the information available. The suggestion to focus on subsidies directly linked to exports might be a useful starting point. With respect to the Secretariat Note, he recalled that many

delegations had not expressed any views on the definition of subsidy and that there were many differences of opinion among those that had done so.

19. The representative of Colombia believed that the terms "for the purpose of negotiations" in Article XV had been included so that the information exchange could proceed in parallel with, and contribute the necessary inputs to, the negotiation of disciplines. She welcomed the suggestion to adopt a provisional definition. The Working Party should discuss the necessary elements. The definition contained in the ASCM could be used as a starting point. Like the delegations of Switzerland and Hong Kong, China, she believed that the mandated information exchange concerned all subsidies, not solely some of them. Concerning the proposal to start with tourism, she thought that distortive effects were much more significant in other sectors, such as construction, audiovisual or maritime transport services. An alternative approach might be to discuss, in a general manner, the different types of measures that might have trade-distortive effects, for example investment incentives, research and development subsidies, export credits and tied aid.

20. The representative of Singapore said that even though the Working Party had discussed this topic for the last 10 years, little progress had been made. This highlighted the complexity of the issues involved. The communication from his delegation raised a number of questions that were relevant to the discussion, but did not aim to provide answers; the Working Party still had much work to do. Many Members still had not articulated their views on the issue of definition. The communication from his delegation had highlighted that a number of GATS provisions already covered aspects of subsidies. The ASCM might also be relevant to aspects of services subsidies. These provisions had to be kept in mind so as to avoid duplication, e.g., as regards negotiations under Article VI:4.

21. The representative of Indonesia believed that the ASCM definition could constitute a useful starting point for a definition of subsidy for services. He agreed with the United States that the scope of the information exchange might need to be narrowed by focusing on selected sectors, which needed to be chosen with care. It was preferable not to start with sectors that received government support for public service purposes, such as health and education. While committed to meeting its obligations under the WTO, his delegation thought that a suitable timeframe for developing countries might need to be considered with respect to the information exchange. The information exchange amounted to an additional obligation to fulfil.

22. The representative of Canada believed that it might be useful to discuss what the Working Party was expecting the information exchange to achieve. There was no guarantee, even with a provisional definition, that Members would rush to provide information. Informal discussions might be warranted. It was not clear what the link was between the information exchange and the negotiations. He agreed with the point made by the delegation of Switzerland that the information exchange should not represent a decision point to agree on either the need for disciplines or the form any disciplines might take. An interesting avenue to explore would be concrete examples of adverse effects. Some had suggested a sectoral focus and, in that regard, it would be useful if Members that had been adversely affected could come up with specific sectoral examples. This might allow the Working Party to determine whether there was a problem and, if so, its magnitude. One could then better determine how to proceed.

23. The representative of Australia noted that these negotiations involved complex technical issues. He agreed that Members needed to arrive at a provisional definition of subsidy, for which the ASCM provided a good starting point. He supported the suggestion to start with the tourism sector, as this was a sector of interest to a wide range of Members. Such a sectoral discussion should be of a generic nature rather than Member-specific. It should proceed in parallel with efforts to further consider the definition of subsidy in the context of GATS. As Singapore had noted, the Working Party had had discussions on the definition for a long time. A previous communication from Poland (JOB(02)/207) had rightly pointed out that the issue of who was granting the subsidy was a basic

element to be considered in the context of a definition. The ASCM could also provide some useful guidance to differentiate between trade in services subsidized by governments and the provision of public services by governments. The delegation of Hong Kong, China had pointed out the relevance of GATS Articles 1:3(b) and 1:3(c) in this context. Members needed to distinguish between what was a public subsidy and what was a subsidy conferring a benefit in the commercial sense.

24. The representative of Hong Kong, China thought that the point made in the communication from Singapore with respect to the relationship between Article XV and existing provisions under the GATS (e.g., Articles VI:4, VIII, IX, XVII, XXIII:3) should be examined further. Given time constraints, he suggested that issues flowing from that communication, as well as from the Secretariat Note, be taken up in more detail during an informal meeting. This would also help to reach a provisional definition of subsidy, as suggested by the delegation of the United States. Regarding the OECD studies, he considered that they contained a number of interesting observations about the role of subsidies in certain services sectors, in particular their contribution to the achievement of public policy objectives, which had to be recognized. Examples provided in paragraph 5 of the communication from the United States alluded to this aspect. Future discussions might shed light on what could be regarded as non-actionable subsidies. He might share his delegation's thoughts on this issue at a later point. In regard to the points made by the delegation of Canada about the information exchange, he said that, while it would be logical to determine what might be achieved before embarking upon any exercise, the reality was that issues relating to the Article XV mandate had already been discussed for 10 years. It was now time to act upon the information exchange rather than talk about it.

25. The representative of the European Communities wished, at this point, to raise two questions on the communication from the United States. First, he enquired what type of information would be the target of the proposed exercise. Did the proposal contemplate a notification of each subsidy or the sharing of information of a more general nature? Second, would it cover only direct and specific subsidies to a service supplier, and not indirect subsidies, for example the organization of Olympic Games which, by attracting tourists, might benefit a city? Finally, he reiterated that the best way to obtain information for the negotiations would be for those Members that considered themselves adversely affected by subsidies of others to share their experience in that regard. Article XV:2 provided for consultations in such instances. Had any Member been adversely affected and requested consultations pursuant to Article XV:2 and, if so, what had been the result?

26. The representative of South Africa welcomed the approach taken by the delegation of the United States in its informal communication. While Article XV referred to subsidies that might have trade-distortive effects and also recognized the important role of subsidies in relation to development programmes, the information exchange referred to all subsidies granted to service suppliers. This complicated the situation. For her delegation, it was more important to have disciplines on subsidies that had a trade-distortive effect than trying to examine a large amount of subsidies that might not be useful for the Working Party's purposes at this juncture. On the proposal to adopt a sectoral approach to the information exchange, she had doubts about the choice of the tourism sector and preferred discussing construction and transport services.

27. With regard to the communication from the United States, the representative of Mexico believed that the mandate on information exchange contained in Article XV was clear. It concerned all subsidies. He thought that the suggestion to develop a provisional definition might facilitate the exchange of information, but it should not prejudice the final outcome of disciplines to be developed. His delegation needed to analyse further the implications of the proposed sectoral focus, but he thought, as others, that it might be best to start with sectors other than tourism. He expressed some concerns with respect to the comment contained in paragraph 7 of the communication from the United States to the effect that a sectoral focus could assist in assessing the extent to which new disciplines on subsidies were merited. The information exchange was not a prerequisite for the development of disciplines. The result of the information exchange would not determine whether disciplines should

be developed. Both avenues were complementary. Discussion of the objectives of the information exchange should not prevent it from taking place. Concerning the intervention by the European Communities, he believed that Article XV:2 was independent from Article XV:1 and did not substitute for the information exchange foreseen in paragraph 1.

28. The representative of China, in a preliminary manner, thought that the suggestions by the United States might represent a practical way forward. However, further consideration was needed by his authorities, in particular with respect to the selection of tourism as a starting point for the information exchange.

29. The representative of the United States wished to react to some of the questions raised. She recalled that the purpose of the communication from her delegation was to stimulate a more fruitful discussion and, hopefully, encourage a substantive exchange of information. She appreciated that the delegation of Thailand did not want to await a consensus before providing examples in the tourism sector. Her delegation was not wedded to any particular sector, but had simply thought that a large number of delegations shared an interest in tourism. She took note of the suggestion that the Chairperson conduct consultations on the organization of work, but the communication had been introduced with a view to simplifying the exchange, not to create more discussions about where to start. Her delegation had reiterated that the ASCM definition could be a useful starting point, but it had to be recognized that this definition had its limits. In that regard, paragraph 5 of the communication gave examples of certain types of measures that might not reasonably be considered as part of a definition in the context of services. In response to the question by India as to whether the U.S. had experienced particular subsidy-related problems, she said that the intent was to stimulate discussion of what might be problematic and not to invoke paragraph 2 of Article XV. It was not implied that any problem raised should be acted upon or disciplined. It was important to get a better sense of what the problems were, and a way to do so was to proceed sector by sector. This would prevent delegations from getting lost in details.

30. Reacting to comments from Mexico and Switzerland in relation to paragraph 7 of the communication, the representative said that her delegation did not want to condition the information exchange, but help to provide the Working Party with a better idea of where disciplines might be needed and where they were not. She did not see what was problematic with such an approach given the mandate in Article XV. This was not prejudging how the negotiations might evolve. The proposed alternative - putting aside different views about the interpretation of the last sentence of Article XV:1 - to amass information on all possible services subsidies might take up all of the Working Party's time and resources, and ensure that work on disciplines never advanced. Her delegation's communication wished to avoid protracted debates about interpretation and to propose a practical way of moving ahead. This was not prejudging future disciplines and whether such disciplines, if any, should deal with concepts such as actionable/non-actionable subsidies. Problems had to be identified, notwithstanding the fact that paragraphs 1 and 2 of Article XV were completely separate. The first two sentences of paragraph 1 were clear and provided direction to the work on information exchange. The Working Party's goal was to come up with disciplines to address problems, and the purpose of the information exchange should be seen in that context. She took note of the interest of some delegations in other sectors. Her delegation had not intended to start with sectors where trade distortive effects might be of particular concern to the United States, but with a less controversial area that was of interest to many developing countries.

31. The representative of Hong Kong, China sought some clarifications on the intervention by the delegation of the United States. He understood that the suggestion was to leave it to each delegation to identify focal sectors for the purpose of the information exchange. Paragraph 7 of JOB(05)/5 suggested to exchange information by focusing on one or two sectors at a time, such as tourism, or on certain types of subsidies, like those directly linked to export performance. He wondered why there would be a need for the Working Party to express further recommendations in that context. The provision of any information about subsidies that might affect trade in services would be a useful

starting point. He was looking forward to the information that might be provided by the United States at a later stage.

32. The representative of the European Communities recalled that it would be useful, in preparing more detailed comments on the communication, to receive answers to the two questions that his delegation had raised. In relation to a comment by the delegation of Mexico, he agreed that paragraphs 1 and 2 of Article XV were distinct. Article XV:1 said that Members had to exchange information on their own subsidies, but most of the information brought to the Working Party in recent years had nothing to do with this provision. Many Members were still asking for additional information not falling within the ambit of paragraph 1, e.g., Secretariat Notes on provisions contained in RTAs or information contained in Trade Policy Reviews. Information pursuant to paragraph 2 would not be most useful in assessing what kinds of problems existed, their magnitude, and possible means to address them. The European Communities had never asked for consultations pursuant to Article XV:2 since the entry into force of the GATS, nor had any Member requested such consultations with the EC. Regarding Article XV:1, he recalled that his delegation had circulated an informal communication with information on the subsidy regime of the European Union. He thus thought that the EC had complied with this aspect of Article XV.

33. The representative of the UNCTAD wished to inform the Working Party that her organization's paper on government support measures would be made available at the forthcoming meeting of the UNCTAD Commission on Trade in Goods and Services and Commodities on 14-18 March 2005. She hoped that it would help to build consensus in the Working Party and to improve the understanding of relevant facts and issues.

34. In summing up, the Chairperson said that while not all delegations shared the U.S.' interpretation of the mandate for the information exchange, many found the suggestion of a sectoral approach to be useful. However, views differed on which sectors to start with. Tourism had attracted much support, although its peculiar characteristics had been noted. Transport, telecommunications and construction had also attracted some interest. Another key element emerging from the meeting was the degree of support for using the definition of the ASCM as a basis for a working definition for the information exchange. Support had also been expressed for this definition to serve as a basis for discussion on disciplines. Some delegations had also emphasized public policy objectives as an area for further work. Others had noted the importance of discussing concrete examples of problems. Some delegations had called for informal discussions on the information exchange as well as on definitional issues.

35. Recalling that 2005 was an important year in the negotiations, the Chairperson called on the Working Party to focus its work if progress was to be made. This was not an academic exercise. It was now time to concentrate on the key issues, and she urged delegations to consider whether the various proposals put forward would allow for information to be tabled at the next meeting. This could be done in relation to tourism or any other sector on which delegations could offer information. Proponents should lead the way. Further, she noted that many delegations had not yet expressed detailed views on various issues under consideration, including on definition, and it would be important for them to participate as the Working Party moved forward.

36. The representative of Chile suggested to circulate the previously mentioned documents from the OECD. The Chairperson agreed and invited delegations to take note of the comments made.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

37. The Chairperson invited Members to pursue their discussions, which had centred recently on the proposal by the European Communities (S/WPGR/W/48). While divergent views and different levels of ambition remained, delegations had examined a number of issues related to the proposal for a framework of rules in this area. These included: the application of the MFN obligation, concrete

ways in which contracts covering both goods and services might be dealt with, and modal distinctions. Delegations might also want to express specific views with respect to procedural or transparency provisions. Recent Notes by the Secretariat on government procurement provisions and scheduling approaches in RTAs might provide useful background material.

38. The representative of the European Communities recalled that at the last meeting a number of delegations had said that they were ready to work on procedural rules that could be developed for government procurement in the context of the GATS. The Secretariat Note S/WPGR/W/49, on the government procurement provisions contained in economic integration agreements (EIAs), provided a good working basis and a useful source of inspiration in regard to procedural rules. Most of the agreements reviewed in that Note contained procedural rules typically covering such topics as: non-discrimination, valuation of contracts, technical specifications, procurement methods, qualification of suppliers, procedural rules regarding invitations to participate, time limits for tendering and delivery, tender documentation, and award of contracts. This provided the structure of an annex to the GATS on procedural rules for government procurement and the question now was what types of rules should be developed under relevant headings. His delegation believed that these rules should be simple, easy to understand, and easy to apply. They would apply to committed sectors. The intent was to use the flexibility of the GATS to develop a framework on government procurement that suited everyone and enabled each Member to undertake relevant government procurement commitments in the sectors it wished to open to international competition and according to the limits it would set in order to fulfil its public investment and development needs. His delegation was reflecting on rules of procedure that met such objectives, and he invited interested delegations to provide suggestions, in particular in regard to special and differential treatment in favour of developing countries. He underscored that the negotiations on the three topics falling under the responsibility of this Working Party should advance at the same rate and invited all delegations to engage in discussions on government procurement as they did for other topics.

39. The representative of Egypt wished to reiterate the position of his delegation according to which the mandate of Article XIII did not include MFN, market access or national treatment. He did not think that the approach proposed by the European Communities fell within the scope of that mandate. He also wished to echo the views expressed by some delegations regarding the implications of the July Package, which had dropped the issue of transparency in government procurement from the negotiations under the Doha Development Agenda. For the negotiations to proceed in a more meaningful manner, it would be essential for the Working Party to agree on the scope and purpose of the mandate under Article XIII before engaging into in-depth and complex discussions on matters on which serious reservations had been repeatedly expressed.

40. The representative of Canada thought that the Secretariat Note on government procurement provisions in EIAs (S/WPGR/W/49) clearly pointed out extensive commonalities of procedural rules across the different agreements. Many useful precedents and references thus existed for the Working Party in identifying rules that might be appropriate for government procurement commitments in the GATS. On that basis, she believed that there was value in continuing to discuss this issue, particularly with respect to transparency and other rules.

41. The representative of the United States first wished to answer some of the questions included in the Chairperson's annotated agenda, even if these might have been mainly directed at the EC. The first question was whether the MFN obligation should apply in sectors where no government procurement commitments had been taken. Her delegation thought that, in principle, the same rationale would seem to apply to procurement as to other policies already covered by the GATS, namely that Members should endeavour to treat all other Members on an equal basis. The second question was whether any of the suggested derogations from the MFN obligation (e.g., MFN exemptions, Article V, provisions on the relationship with the GPA) would allow a Member to deviate from the level of treatment committed in the proposed government procurement column in schedules. In her view, it would seem necessary to allow for deviations from the MFN principle in order to

accommodate EIAs, existing obligations under the GPA, and existing policies that accord more favourable treatment to selected countries. She hoped that the EC could provide answers. In reaction to the intervention from the delegation of Egypt, she reiterated that the mandate in Article XIII had been reaffirmed by the General Council in Annex C of that document. The decision on transparency in government procurement in the context of the July Package related to the relevant Singapore issue and did not affect Article XIII. This interpretation was reinforced by the content of Annex C.

42. The representative of India wished to lend support to the delegation of Egypt. He recalled that these points had been raised by his delegation and various others at every meeting. There was a serious divergence on the scope and purpose of the mandate. Ignoring it was not the best way of moving forward. Even on the issue of transparency in government procurement, a large number of Members had expressed serious reservations. As a result, the issue got dropped from the Doha Development Agenda. Since the situation had not changed, a reality check was needed. On the procurement rules contained in EIAs, he wished to recall that many Members had no experience with such types of provisions. The fact that some Members had agreed upon such rules amongst themselves should therefore not suggest that their multilateral extension would be the best option.

43. The representative of Brazil shared the concerns expressed by Egypt and India on this question. The scope of the mandate should be examined carefully before entering into negotiations on an annex as proposed by the EC. Article XIII pointed in a different direction. Paragraph 1 of that Article provided that MFN, market access and national treatment were not part of the negotiating mandate in paragraph 2.

44. The representative of Hong Kong, China wished to respond to questions included in the annotated agenda. Concerning the first question, he understood that the EC's proposal followed the structure of the GATS. If so, the MFN obligation should logically apply as provided in Article II, i.e., across all sectors irrespective of whether government procurement commitments had been undertaken. Concerning the second question, he wished to stress that derogations from MFN (be it Article V, a provision on the relationship with the GPA or MFN exemptions) would not allow a Member to grant less favourable treatment than had been inscribed in its schedule of commitments. He recalled that his delegation was willing to pursue discussions under this agenda item without prejudice to the question of the mandate. Focusing on substance would be preferable to protracted debates about what the mandate effectively covered. He wished to note that other provisions of the GATS, apart from those excluded by Article XIII, already applied at present to measures pertaining to government procurement, assuming these measures affected trade in services pursuant to Article I. Therefore, government procurement was already subject to Article III on transparency, insofar as it related to measures of general application which pertained to or affected the operation of the Agreement, or significantly affected trade in services. Accordingly, he was not sure why there was a need for further debate in that regard.

45. The representative of Canada wished to support the delegation of Hong Kong, China in its call for focusing on substantive issues. Members had to engage constructively and positively in all discussions in this Working Party.

46. The representative of Switzerland wished to answer the questions in the annotated agenda, and hoped that the delegation of the European Communities could do likewise. She thought that confining the MFN obligation to sectors where government procurement commitments had been taken would not be compatible with the structure of the GATS. The GATS' MFN obligation was a general obligation which applied across the board. The MFN obligation should thus apply to all government procurement in services under the GATS, irrespective of specific commitments. Concerning the need for MFN exemptions, she wondered whether many preferential arrangements in this area actually lied outside the ambit of Article V and of the GPA.

47. The representative of Japan said that Article XIII covered market access issues and not only transparency. Like the delegations of Canada and Hong Kong, China, he did not think it was very productive to further discuss the mandate. It would be preferable to assess how practical and useful the framework proposed by the EC really was. In reference to the intervention by the delegation of India, he considered that the Singapore issue of transparency in government procurement was different from what was discussed under this agenda item. The EC was proposing a framework allowing Members to include government procurement commitments in their GATS schedules; Members who did not want to undertake such commitments were free not to do so. The Singapore issues had concerned rules applying to all Members, which had made some delegations hesitant to engage in negotiations. Given the flexibility of the GATS, it was not unrealistic to discuss such a framework of rules for procurement.

48. Concerning the questions contained in the annotated agenda, the representative of the Republic of Korea agreed with other delegations that the MFN obligation should also apply to sectors where no commitments on government procurement were taken. MFN derogations might be necessary for GPA Members or for agreements falling under Article V, although this could be discussed further in the course of negotiations. She was disappointed that the Singapore issue of transparency in government procurement had been dropped from the Doha negotiating agenda, but that did not change the relevant mandate under the GATS.

49. The representative of South Africa wished to support the interventions of the delegations of India, Egypt and Brazil in regard to the mandate. A reality check was needed; it did not seem wise to proceed without having a clear idea of what the Working Party sought to achieve. The same applied to the topic of subsidies. Agreement on the scope of the mandate was needed before proceeding to any substantive negotiations.

50. The representative of the United States wished to react to some of the previous interventions regarding the mandate. She thought that, while the July Package did not, from a legal point of view, affect the transparency aspects of the mandate under Article XIII, the delegation of India had indicated political concerns to negotiate on transparency, whether in the context of the Singapore issues or elsewhere. India had not questioned that transparency was included in the mandate under Article XIII. She would be concerned if arguments relating to transparency in government procurement in the GATS were made contingent on the existence of a mandate under the Singapore issues. In the past, her delegation had said that it was useful to bear in mind any results achieved in respect of the Singapore issues, but this was not intended to prevent negotiations under Article XIII or conditioning them on discussions on Singapore issues. Her delegation had never implied that the Article XIII mandate excluded transparency or was linked to the Singapore mandate. She could not concur with any insinuations that the Article XIII mandate had been rendered superfluous by decisions on the Singapore issue of transparency in government procurement. Annex C of the July Package explicitly affirmed the negotiating mandate under Article XIII. If, as some seemed to suggest, transparency was not part of the Article XIII mandate, what would be left? No delegation had ever implied a link between Article XIII and the Singapore issues in the context of the discussions on the July Package.

51. The representative of Egypt reiterated the view that it might be suitable for the Working Party to address the implications of the July Package on the mandate of Article XIII. The representative of Mexico supported the interventions by the delegations of Egypt, India, Brazil and South Africa, in particular with regard to the need to clarify the mandate.

52. The representative of the European Communities recalled his delegation's long-held views on the mandate. Paragraph 2 of Article XIII provided for negotiations on government procurement without any qualification. It did not limit the negotiations to transparency aspects. If the intent had been to exclude market access from the negotiations, this would have been specified. A distinct issue was that certain Members might not want, or did not have the political will, to negotiate on this topic.

Lack of political will had been apparent in the case of the Singapore issues, but the current context was different since the relevant mandate directly came from an international agreement that bound every Member. Further, while various delegations had serious doubts about other mandates in the area of rules, this did not prevent them from actively participating in the discussions. With respect to the application of the MFN obligation, his delegation shared the interpretations put forward by some delegations. The intent was to extend to government procurement the obligations of the GATS: the MFN obligation would apply, but as in the GATS certain derogations would be permitted, taking into account economic integration agreements and the specificities of the GPA. He invited delegations to participate actively in all areas of the rules agenda and not just in some of them.

53. The representative of Mexico confirmed that his delegation did not share the interpretation of the European Communities with respect to the mandate on government procurement.

54. The Chairperson noted that discussions had focused on the scope of the mandate and that divergences of opinion were clear. Some delegations thought that it would be more productive to focus on substance rather than engage in a circular discussion on the mandate. Others had said that the mandate needed to be addressed before discussing substance. Concerning the issue of MFN, there had been a good degree of support for broad application, consistent with relevant principles of the GATS. However, there would be a need for derogations to take into account preferential trade agreements and the GPA. She wished to reiterate that 2005 was an important year in the negotiations and that time was running short. Delegations now needed to focus on what they considered doable and achievable. She invited the Working Party to take note of the comments made.

III. EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

55. The Chairperson suggested that Members pursue their discussion in the light of the latest document brought to the Working Party's attention, JOB(04)/175, in which a group of Members from ASEAN provided written answers to previously raised questions. Issues raised included the availability of statistics, the definition of domestic industry, the relevance of obligations contained in bilateral investment treaties, the link between an ESM and progressive liberalization in the market access negotiations, and the relevance of certain entries in schedules.

56. The representative of the Philippines, speaking also for the delegations of Brunei Darussalam, Indonesia, Malaysia, Myanmar and Thailand, elaborated on issues previously raised in the light of questions listed in the annotated agenda. With respect to statistics, relevant issues related, on the one hand, to the determination of injury and, on the other hand, to the increase in imports. Concerning the former element, he recalled that the delegation of the United States had said at the last meeting that the information provided for a particular example, optometry, did not make a compelling case to suggest that a domestic industry had been injured or that injury had been due to trade. The U.S. delegation had not only mentioned a number of indicators which would need to be considered (e.g., past sales volumes, revenue of the sector, employment, compensation of opticians), but expressed doubts whether such information actually existed. The representative said that such data should be provided by the firms constituting the domestic industry or associations representing the industry. If they could not produce the required statistics to substantiate their claim of injury, the investigation would conclude that the case for a safeguard measure had not been made. The following data might be generated by petitioning firms: decline in profits, returns on investment, cash flow, occurrence of losses, price reductions, fundamental changes in the price structure in relation to losses or decline in profits, reduction in the number of domestic suppliers, decline in the growth of output or sales, change in market share, reduced level of capacity utilization. These indicators were drawn from the original ASEAN non-paper (Job. 6830) from 2000. A point had also been made that employment, wages and sales volumes could have increased for the sector as a whole. In this case, there would be no injury to the domestic industry.

57. Turning to the use of relevant import statistics, the representative considered that this aspect merited further thought. The original non-paper from ASEAN had referred to a number of indicators either in absolute or relative terms. These included information provided by professional associations, affected firms, regulatory authorities, and immigration or labour authorities, as well as, for mode 3, statistics on foreign investment, such as data on capital flows compiled by the central bank, the board of investment or the securities and exchange commission. Research institutes, think-tanks or even consulting firms might also have useful data. Relevant statistics for modes 3 and 4 might not appear to be too problematic. Even data sources for imports under modes 1 and 2 might exist. Again, if the key question of increased imports could not be addressed by the petitioning industry, the case for applying a safeguard measure would presumably fail.

58. The representative wished to come back to a question put at the last meeting with respect to the temporary suspension of regulatory reform. The point had been made by a delegation that more competition, not less competition, was the most effective means of achieving universal service objectives. He agreed that this might indeed be the case in several situations, although there could be others where liberalization would not ensure the kind of universal service that a government might want to achieve. In such cases, governments had to intervene and implement the necessary regulatory measures. This was evident from the documents discussed during a recent meeting at the OECD. The example that the group of delegations from ASEAN had provided was one where the initial measures that a Member had bound proved ineffective in ensuring access to universal service. A related safeguard measure was not intended to restrict competition, but to temporarily modify the regulations bound in order to ensure provision of universal service.

59. On the relationship between bilateral investment treaties (BITs) and the application of safeguard measures, he thought that this issue was dictated to a large extent by the mandate in Article X, which underscored the principle of non-discrimination. Any safeguard would need to be applied on an MFN basis. Some had raised the concern that a Member party to a BIT might face the possibility of having its safeguard measure challenged not in the context of the WTO but in that of a BIT or free trade agreement. While not foreclosing such a possibility, he thought that a Member intending to invoke a safeguard that would derogate from BIT obligations would have to decide whether it wanted to comply with the non-discrimination obligation of the GATS and risk legal challenge under the BIT or, alternatively, whether it wanted to exempt the other party to the BIT from the application of the safeguard measure. The second scenario was a non-starter given that an ESM would have to be applied on a non-discriminatory basis. The Member would have to make a judgement as to what legal challenge it would want to risk facing: one under the WTO for violation of the MFN obligation or one under a BIT.

60. Turning to the link between an ESM and progressive liberalization in the market access negotiations, he reiterated that it was up to individual Members to make the kind of links they deemed appropriate. Some of the delegations for which he was speaking had previously indicated that they would be more flexible in terms of undertaking further commitments in the presence of an ESM. These commitments might vary from one Member to another. With respect to concerns that an ESM might not yield greater commitments than would otherwise have been the case, the representative said that all Members had high levels of ambition in the services negotiations, as reflected in the types of requests received. Developing countries had also expressed clear offensive interests. A safety net would be needed to safeguard the higher levels of liberalization proposed in offers, assuming that they actually materialized. With respect to a point made by Mexico about other measures to address similar situations, he thought that, should an ESM not be available, the alternative might be to adopt a scheduled approach whereby each Member would condition its commitments on the application of a safeguard mechanism as already appeared in some schedules. Another alternative would be to use Article XXI procedures, although the purpose of that Article was to address situations where a Member wanted to permanently modify its schedule of commitments. A Member could also inscribe as many economic needs tests (ENTs) as possible in its schedule. He had not advocated such an alternative, because a more transparent and objective use of ENTs, if not full elimination, was being

advocated in other fora. However, if there was no ESM, a viable option for many Members would be to include many ENTs in their schedule. This might not be the best solution for the system, given that many ENTs suffered from a lack of transparency and objectivity of criteria. An ESM seemed preferable because it would be multilaterally agreed upon, with clear and transparent criteria.

61. The representative of the United States wished to draw attention to the question of like services. For an injured industry to produce relevant information to the government, similar things needed to be compared. For example, a memoranda from one lawyer might not be exactly like that from another lawyer; the quality of the service might be different. She still felt that no clear answer had been put forward on how to establish injury. How could it be ascertained whether the cross-border supply of legal services by fax, mail, e-mail or telephone was causing injury? She was concerned that Members at lower levels of economic development might face difficulties, because of resource constraints, in amassing all the types of information mentioned by the delegation of the Philippines. She wondered, in that context, which Members might be most likely to use an ESM.

62. The representative wished to register a clarification with respect to paragraph 49 of the report of the last meeting (S/WPGR/M/50) in relation to an intervention by her delegation. It was noted that the delegation of the United States had said that it was not useful to look at other tools that were available in the GATS. She clarified that this remark related to attempts to compare the type of analysis that was needed for an ENT and that for an ESM. Questions with respect of an ESM related to a tool that would be negotiated multilaterally for all Members to use on an MFN basis, while ENTs tended to be customized by the particular Member that was including them in its schedule. What was under consideration pursuant to the mandate of Article X were negotiations on the question of a multilateral mechanism. If criteria were to be developed for such a mechanism, the kind of questions asked would be different from those posed in respect of customized entries in a Member's particular schedule. The relevant section of S/WPGR/M/50 should be read accordingly.

63. The representative of Mexico said that the points made by the delegation of the Philippines in response to previous comments from his delegation had not alleviated his concerns. He wished to reflect further on the issue and hoped to come back with examples of measures that could be useful in addressing the types of situations mentioned by the group of Members from ASEAN.

64. The representative of Hong Kong, China remarked that the issues mentioned in the annotated agenda all pertained to feasibility, which was understandable since these were the topics that delegations had recently focused upon. However, for his delegation, the fundamental questions were: what were the circumstances justifying a safeguard and, especially, who was going to be protected by its application, and against what would protection be provided? These remained to be answered satisfactorily. While he had said at the last meeting that it might not be useful to try to exhaust all circumstances where a safeguard might be necessary, he clarified that he would deem it useful if proponents could demonstrate to other Members, in at least a few cases, the circumstances where a safeguard would be needed as opposed to other available means. This might yield more information on the desirability of an ESM. Concerning feasibility aspects, he was not trying to suggest that ENTs raised the same issues as an ESM. Safeguard measures and ENTs were designed for different objectives and were to be used for different purposes. He was thus not arguing in favour of the use of ENTs in order to substitute for an ESM, or vice-versa. Neither did he want to pass judgement on whether one of these was more desirable than the other. However, he was trying to shed some light on feasibility questions. Issues pertaining to the application of an ENT could be very similar to those relating to the application of an ESM. He wondered about the extent to which issues relating to the determination of economic harm in the context of an ESM would not also arise with respect to the determination of economic needs in the context of an ENT. In the latter case, would a Member have to substantiate the notion of economic needs through statistics on trade in services? In the last meeting, the delegation of the United States had cited some statistical elements that a government might have to compile in order to substantiate the use of an ESM, such as past sales volumes, revenue of the sector, employment, compensation of opticians. Would these elements also be relevant for the

application of ENTs? If so, it might be instructive to learn about the experience of Members in applying ENTs. If feasibility issues had been resolved for ENTs, could one assume that they would not be a problem in the context of an ESM? Conversely, if feasibility questions were a problem for an ESM, they might also be problematic in the context of ENTs. He thought that the second avenue was the most likely. He also asked Members that had either safeguard-type entries in their schedule or safeguard-like mechanisms in free trade agreements to explain how they had resolved feasibility issues. He was not questioning the purpose of such mechanisms in free trade agreements, which had been discussed in past meetings, but asked how feasibility issues had been dealt with.

65. With respect to the relationship between BITs and ESM, he reiterated that the Article X negotiations were based on the principle of non-discrimination. This would mean that safeguard measures would have to be applied on an MFN basis. In that context, rather than discussing the compatibility of safeguard measures with BITs, the more relevant question might be that of the compatibility of BITs with the MFN obligation. Another issue was the extent to which an ESM, should one be developed, related to the free trade agreements concluded by WTO Members. A previous Secretariat Note (S/WPGR/W/4 and addendum) had highlighted that some EIAs contained safeguard-type provisions, while others did not. To what extent would those Members that had no such provisions in their EIAs be able to apply an ESM that might be elaborated in the WTO? Reacting to a point made by the representative of the United States with respect to the determination of likeness, the representative believed that such issues would be relevant not only for the application of a safeguard, but also for various other measures. For example, likeness had to be taken into account in the context of the national treatment obligation.

66. The representative of the European Communities considered that the discussion had still not yielded sufficient insights regarding situations justifying the application of a safeguard. He asked the group of delegations from ASEAN whether, in their proposal, a safeguard would apply to all commitments or only to commitments that were not subject to quantitative restrictions. For example, if a Member had a horizontal limitation providing that foreign ownership was limited to 30%, it seemed difficult to conceive that an established foreign supplier could cause injury to local service suppliers. If a Member had taken a commitment limiting to three the number of licences for foreigners, would it be possible to apply a safeguard measure to any of the three foreign suppliers allowed? He also wished to obtain more information on possible sources of injury. Would it be solely an increase in the number and/or an increase in the value of services provided? Would it be in absolute terms or rather in relative terms compared to local service suppliers? With respect to the point raised by the delegation of Hong Kong, China on the relationship between an ESM and provisions in EIAs, he thought these issues were already being addressed for goods trade in the Negotiating Group on Rules. This issue might also need to be considered in the context of services, but he did not want to prejudge the work of the Negotiating Group on Rules.

67. The representative of the Republic of Korea wished to ask some questions to the group of delegations from ASEAN in relation to suggestions that ENTs might become an alternative approach to an ESM. First, would ENTs address issues such as injury caused by the increase of trade? Second, would they target consumers or providers? Third, would they allow for discriminatory measures as in the case of an ESM? Fourth, if ENTs were to be used as an alternative, would this mean that they would be linked solely to future commitments?

68. The representative of Canada said that the challenges associated with an ESM had been discussed for about 10 years because of a lack of convergence within the Working Party over its relevance in the context of trade in services. Concerning data collection problems, he noted that the issue of causality had not been addressed by proponents. Given the characteristics of trade in services, a safeguard measure could have a wide and quick effect on various sectors of the economy that were not intended to be affected by the measure in the first place. He was not certain about the points made with respect to the relationship between BITs and an ESM, given that bilateral investment agreements did not have the same characteristics as free trade agreements.

69. The representative of the United States associated herself with some of the questions raised by the delegations of the EC and the Republic of Korea with regard to ENTs. She reiterated that even if an ESM were – despite efficiency problems – negotiated, this would provide no guarantee that ENTs would not continue to be used. Bringing ENTs into a discussion on the question of an ESM thus did not appear very productive. She would have doubts about a Member that decided to include various ENTs in its schedule solely for the sake of strengthening its position in the Article X negotiations. The ineffective use of any tool should not be encouraged. She doubted that efforts to include as many ENTs as possible in schedules would be a good solution from a systemic point of view, whether an ESM existed or not. The delegation of Hong Kong, China might produce, if it wished, examples of ENTs that displayed direct similarities with safeguard measures. However, it would not be for delegations that were not *demandeurs* to bear that burden. The delegation of the Philippines might be contemplating that the existence of an ESM would lead governments to forego using ENTs, but she doubted that every Member would want to make that commitment.

70. The representative of Chile wished that the Working Party further discuss what might be the scope of a safeguard measure in relation to the dispute settlement provisions of BITs or EIAs. It might be interesting to hear the views of Members in that regard. He also hoped to further deepen the analysis of issues relating to ENTs.

71. The representative of Brazil suggested that UNCTAD be invited to present its paper on ESM which, he understood, would be made available for the next UNCTAD Commission on Trade in Goods and Services and Commodities. The representative of UNCTAD confirmed that the document would be circulated at the Commission meeting on, 14-18 March and welcomed the opportunity for a representative of the organization or the author of the document to present it in the WPGR.

72. The representative of the United States sought clarification of Brazil's request with respect to circulation and presentation of the UNCTAD document. The representative of Brazil said that he proposed that that UNCTAD be invited to present their document. It would be useful if Members could obtain a copy at the UNCTAD meeting in March so as to prepare themselves for discussions. His delegation was still planning to eventually present a paper on safeguard-type entries contained in schedules of Members.

73. The representative of the Philippines wished to offer preliminary responses, on behalf of the group of delegations he was speaking for, to some of the questions raised. Concerning the link between ENTs and an ESM, he understood that this topic had been raised so as to see whether questions of feasibility existed in both contexts. In responding to a question of what might be alternatives to an ESM, he had suggested that one such alternative might indeed be the scheduling of ENTs in relevant sectors, although he recalled that this was not an idea that had originated from his delegation. Because of the lack of transparent and objective criteria, it was often unclear whether ENTs were intended to address situations of injury to the domestic industry. While ENTs and ESM were not the same instruments, they were not completely different either. From his perspective, ENTs were not the preferred option, but they were tools that were available under existing rules. While the delegation of the United States had said that there were no guarantees that, with an ESM in place, ENTs would not be scheduled, it could also be said that the existence of an ESM might strengthen arguments for keeping ENTs to a minimum. Members that had experience with using ENTs could share their insights as this might shed some light on feasibility issues in the context of an ESM. In response to a question from the delegation of the Republic of Korea on whether ENTs would be linked to future commitments, he thought that Members could only schedule new ENTs in respect of future commitments, and not of existing commitments. He was not suggesting that one tool was better than the other, but clear multilateral rules and criteria appeared to offer greater certainty and predictability in comparison with a tool that lacked transparency and objective criteria.

74. Concerning the link with BITs, many relevant questions had been put forward, for example, whether Members that had no safeguard provisions in their trade agreements could have recourse to a

multilaterally established ESM. Because of the non-discrimination principle enunciated in Article X, he thought that Members that did not have safeguard-type provisions in their BITs would still be able to use a multilaterally agreed ESM and apply it to other parties to that BIT. With respect to the issue of like services, he believed that it might be difficult to determine likeness a priori. Relevant contexts would have to be taken into account on a case-by-case basis. This issue of likeness had many facets, including, for example, with respect to the national treatment obligation and not solely in relation to an ESM. In response to a comment that the amount of information needed for the operation of an ESM might make its use by developing countries more difficult, he noted that the special and differential treatment provisions proposed might help to address such concerns. At the same time, his group of delegations had not wanted to propose an ESM that would cater solely to interests of developing countries. While, on the goods side, cases attracting most attention were those where developed countries invoked a safeguard, experience with the Agreement on Safeguards showed that the propensity for developing countries to impose safeguard measures had increased over the years. This trend suggested that an ESM could be relevant to both developing and developed countries. A challenge for this Working Party might be to ensure that the criteria to be complied with would not be so onerous as to prevent use of an ESM by developing countries.

75. Concerning a question by the delegation of the European Communities on whether a safeguard would apply in a situation where there were only three licensees in a particular sector, the representative considered that the answer depended on how domestic industry was defined. If the three foreign licensees were considered as part of the domestic industry under a Member's domestic legislation, they would obviously not be subject to a safeguard measure. If the licensees did not fall within a Member's definition of domestic industry despite having a commercial presence, a safeguard measure could be applied. He thought that unanticipated consequences could still occur, despite efforts by the government to calibrate the commitment. This needed to be examined on a case-by-case basis. Even if a government had estimated that the granting of three licences would not cause serious injury, it was possible that the increase in the supply of services by the three licensees, or their dominance of the market, went beyond of what had been foreseen. Concerning a question by the delegation of the EC on whether injury would be measured in relation to the increase in number or value, he recalled that the original proposal from ASEAN had said that no single criterion might be decisive. Again, the circumstances would have to be examined case by case. The same logic would apply to the question of whether values and numbers should be examined in relative or absolute terms; it might be useful to look at both aspects. In addition, he recalled that under the proposed ESM causality would have to be established on a case-by-case basis as well. It had to be ascertained that injury arose from the increase in imports and related unforeseen developments, and was not due to other factors.

76. In summing up the discussion, the Chairperson noted the broad range of issues raised, including the relationship between BITs and an ESM, the link with ENTs, the relationship of an ESM with progressive liberalization, as well as issues relating to statistics. UNCTAD had been invited to present a paper on safeguards at the next meeting, to which no objections were voiced. She invited the Working Party to take note of the comments made.

IV. DATE OF THE NEXT MEETING

77. The Chairperson indicated that the Working Party would hold its next formal meeting during the next cluster of services meetings, the exact date of which would be announced in due course. Noting that some delegations had mentioned the possibility of holding an informal meeting, she thought that this was a sensible idea and suggested that such a meeting be considered before the next cluster of services meetings. It was important however that delegations came prepared with clear ideas of what they saw as being achievable this year, their priorities in terms of what could be done in the light of the Hong Kong Ministerial, and how to implement them. Reality checks had to be applied across the board in the Working Party; delegations needed to focus on what was achievable, doable and realistic.

78. The representative of the Philippines asked whether particular dates were being contemplated. The Chairperson said that possible dates included the first week of April or the week of 25 April. She would consult delegations about timing and content of such an informal meeting. While he agreed to work on the assumption that one informal meeting would be held before the next cluster, the representative of the Philippines said that the possibility to hold additional meetings should be kept open, given the possibility that new contributions might be circulated.

79. While not opposing additional meetings, the representative of Japan doubted that these would be productive if no new inputs were put forward by the proponents. The representative of South Africa wished to be consulted in due course. The representative of Hong Kong, China said that, since some recent contributions to the Working Party on the topic of subsidies had not yet been fully discussed (e.g., JOB(05)/4 and JOB(04)/180), the decision to convene an informal meeting should not hinge upon the submission of new contributions. He recalled that his delegation was also working on a paper on the topic of subsidies. The Chairperson said that an informal meeting should add value to on-going work, as opposed to repeating the same points that had been made over the last 10 years.

V. OTHER BUSINESS

80. The Chairperson wished to clarify that her successor would only be elected at the beginning of the next formal meeting.

WORLD TRADE ORGANIZATION

RESTRICTED
S/WPGR/M/50
17 January 2005

(05-0194)

Working Party on GATS Rules

REPORT OF THE MEETING OF 24 NOVEMBER 2004

Note by the Secretariat¹

1. The meeting of the Working Party on GATS Rules was chaired by Ms. Clare Kelly, from New Zealand. The agenda for the meeting, contained in WTO/AIR/2443, included the following items: adoption of the annual report to the Council for Trade in Services, subsidies, emergency safeguard measures, government procurement, date of the next meeting and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda, contained in JOB(04)/167. The agenda was adopted.

I. ANNUAL REPORT OF THE WORKING PARTY ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2004)

2. The Chairperson invited the Working Party to adopt the draft annual report contained in document S/WPGR/W/50 and transmit it to the Council for Trade in Services. It covered the meetings of the Working Party from December 2003 to September 2004.

3. Some delegations proposed changes to the draft report. The following delegations participated in the ensuing discussions: United States; Hong Kong, China; India; the Philippines; European Communities; Brazil; Mexico; Canada; and Chinese Taipei. After some modifications had been made to the draft, the Working Party adopted the Annual Report, which was circulated as document S/WPGR/14.

II. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

4. The Chairperson suggested that delegations pursue their discussion of the informal communication from Hong Kong, China, contained in JOB(04)/127, which provided suggestions on the way forward with respect to various aspects of these negotiations. Concerning the information exchange, delegations could consider ways to encourage a greater number of inputs. Delegations might also want to reflect on the extent to which they had used other existing sources of information, for example Secretariat Notes on information contained in Trade Policy Reviews. A significant amount of information was available and might allow interested Members to develop their views on any specific problems to be addressed or any necessary disciplines. On the definition of subsidy, she noted that the relevant elements in the Agreement on Subsidies and Countervailing Measures (ASCM) could provide a useful starting point for further discussion. She indicated that UNCTAD was not yet ready to present a study on subsidies, and that the Working Party would be kept informed of any development in that regard.

5. The representative of Chile wished to provide some information on domestic support programmes relating to services. She reiterated that the primary objective of her delegation in this area was to increase transparency so as to comply with the mandate in Article XV and paragraph 7 of

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

the Guidelines and Procedures for the Negotiations on Trade in Services. With such objectives in mind, her delegation had presented a simplified questionnaire jointly with Hong Kong, China and Argentina in 2002, as well as a list of examples of subsidy programmes in December 2003. She supported the ideas put forward by Hong Kong, China in JOB(04)/127 to encourage the exchange of information, and recognized that Chile had lagged behind in providing information on activities receiving governmental support. Her delegation did not consider this exercise as equivalent to a notification; the exchange of information should rather permit Members to elaborate a list of activities, which could subsequently be analyzed to see whether disciplines were needed. In that light, she wished to mention some activities that received government support in Chile. The three programmes concerned fulfilled public policy goals and, in her view, did not distort trade. She hoped that the provision of these examples could encourage participation by other Members in the exchange of information.

6. The first example was the Development Fund for Telecommunications, enshrined in Law 18.168 (the General Telecommunications Law). This fund was constituted from appropriations yearly earmarked in the budget, but there also could be other appropriations. The objective of the Fund was to increase the coverage of telecommunication services in rural areas and low income urban areas, in particular in geographically remote towns and villages. The Sub-Secretary of Telecommunications, on the basis of specific requests, would be elaborating a yearly programme of projects eligible for subsidies. The programme focused on the following types of undertakings: public telephony or call centres; community telephone information centres; telecommunication services of free reception or local broadcast, whose transmissions were to be made available directly to the public at large free of charge; and any other telecommunication service that directly benefited the relevant community. All projects could be complemented by the installation of further lines. The second example was the programme of Rural Electrification for Poor Families, which was launched in 1994; the State financed 70% of investments under such programmes. The third example was in the area of maritime transport. When the State wanted services to be provided on special shipping lines that were not covered by domestic companies, a competitive bidding process was held to grant a subsidy to those Chilean shipping companies that committed to provide the required service. More information could be found on these programmes through the internet. A number of Members probably engaged in similar activities, and she invited them to share such information so as to deepen knowledge and increase transparency. More transparency meant greater certainty at the time of undertaking new commitments.

7. The representative of the United States recognized the concerns expressed by some delegations regarding the information exchange, as well as fears of getting bogged down in definitional issues. She believed that the merits of an exchange of information would be enhanced by some sort of understanding on how subsidies might be defined in the services context. Her delegation was trying to explore possible ways of capturing both aspects. She had suggested at the last meeting that Members' resources could be used to contribute analytical papers that would assess whether subsidies were more likely in certain sectors or whether, for example, certain kinds of subsidies might be more relevant to trade than others. Noting that some of the proponents had not yet provided information, even of a partial nature, she thought that such analysis might help reduce the scope of issues to be confronted and thereby focus discussions. In preparing such analysis, account could be taken of previous contributions in the Working Party, including those from Chile and Poland. One way of approaching the analysis could be to explore a few services sectors and consider how the definition of subsidy contained in the ASCM might apply. For example, would government support of health care and education be captured in this definition? What about subsidies that supported mass transit or those underpinning universal access to telecommunications, electric power or postal services? How would the specificity test in the ASCM affect the scope of services subsidies that could be captured by a definition? Because the ASCM had been negotiated in the context of trade in goods, it should not necessarily be assumed that its definition would be entirely appropriate for services. Consequently, another question to consider was whether any aspects of the ASCM definition needed to be adapted to better correspond to the context of trade in services. Her delegation

was working on a paper addressing such points (whether subsidies were more likely to be applied in certain sectors, whether some types of subsidies were more relevant to trade than others, and definitional aspects) and thought it could help advance discussions, including the exchange of information. She hoped to be able to present such a paper at the next meeting, but could make no promise. With respect to the presentation by Chile, she wondered whether non-Chilean companies were also eligible for the programmes relating to telecommunications. In the case of the programme relating to electricity, she asked whether it was only available to homes or also to industrial facilities in rural areas. Concerning shipping, she hoped to obtain more information on the programme; how could reducing shipping costs not distort trade?

8. The representative of Chile said that some of the issues mentioned by the delegation of the United States, such as public policy objectives, trade distortion, definition, and the relevance of the ASCM, needed to be further analyzed. On the questions raised, she noted that any company established under Chilean law would have access to the programmes mentioned, even if foreign-owned. The Chilean telecommunication sector was open to foreign competition. She indicated that she would reply to other questions at the next meeting.

9. The representative of Singapore recalled that, along with other delegations, he had suggested that focusing first on the definition of subsidy would help address the “chicken and egg” problem in the negotiations. The ASCM definition could serve as a starting point for such discussions as had already been argued in the Working Party in the past. For example, earlier in the negotiations, certain Members had suggested that some modifications to the ASCM definition might be necessary in order to cater to the characteristics of services trade. The Secretariat had also done a useful background paper in 1996, S/WPGR/W/9, which touched upon these issues. It might be useful to revisit this and discuss how such concepts as the “existence of a financial contribution”, “government or any public body”, “any form of income or price support”, or the “conferral of a benefit to the supplier”, which were used in the ASCM, could apply in the services context. Accordingly, he wished to highlight some of the salient issues and questions pertaining to the applicability of the ASCM to services.

10. First, could the various elements of financial contribution listed in the ASCM (e.g., grants, loans, equity infusion, loan guarantees, tax credits) be used in the services context? Second, some Members had highlighted that regulatory measures could have subsidy-like effects. In that context, how should the negotiations under Article VI:4 inform the Article XV negotiations? Would disciplines resulting from the negotiations under Article VI:4 be sufficient to address issues relating to regulatory measures? Should the WPGR avoid creating overlapping disciplines relating to such measures? Third, while the term “benefit” was not defined in the ASCM, it had been discussed and clarified in the jurisprudence. For instance, the Appellate Body had clarified that a “benefit to the recipient” meant that the recipient must be a natural or legal person. The term did not imply a benefit to a company's productive operations. He wondered whether it would be appropriate for the Working Party to consider such jurisprudence, even if it did not relate to trade in services.

11. Fourth, in addition to the reference to “government or any public body”, Article 1.1(a)(1)(iv) of the ASCM also covered situations where a government entrusted or directed a private body to carry out the functions illustrated in Article 1.1(a)(1)(i)-(iii) “which would normally be vested in the government and the practice, in no real sense, differs from practices followed by governments”. Taking Article 1.1(a) as a whole, could it be inferred that the ASCM captured subsidies granted by various levels of government and private entities, which had been entrusted with certain governmental functions? If so, the ASCM notion of imposing obligations on central, regional and private bodies might not be altogether new to the GATS. Through Article I:3(a), the GATS applied to measures taken by “central, regional or local governments authorities” and by “non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities”. He thought that the formulation used in the GATS provided greater clarity and wondered whether it might be appropriate to use such language in a definition of subsidy for services. It should nevertheless be kept in mind that, as stipulated in GATS Article I:3(c), subsidies granted by these bodies neither on a

commercial basis nor in competition with other service suppliers should be outside the remit of the GATS. Fifth, he wondered whether the "traffic light" approach used in the ASCM to classify subsidies could be applied in the services context. Should legitimate subsidies such as those granted for social services, health services, or basic education services be included in the category of green-light subsidies? In fact, Article XV appeared to provide for this through its recognition of the "role of subsidies in relation to the development programmes of developing countries". Article XV also required the taking into account of the "needs of Members, particularly developing countries". Regarding the category of red-light subsidies, he noted that the ASCM prohibited export subsidies and local-content related subsidies. One view, as expressed by some commentators, was that the GATS did not cover export-related measures. If so, could export subsidies fall within the remit of Article XV? This issue might need to be discussed further. Sixth, he drew attention to the fact that paragraph 40 of the Secretariat Note S/WPGR/W/9 said that "an important objective of the GATS Article VIII was to prevent cross-subsidization from occurring across activities or sectors". Though not particularly rigorous, Article IX, which related to business practices, also extended some competition disciplines to the GATS. He considered that these provisions might relate to some aspects of subsidies and wondered how they should inform work pursuant to the mandate in Article XV. Shouldn't the WPGR avoid duplicating disciplines relating to competition-related issues as well?

12. The representative considered that other provisions in the GATS, in addition to those he had just mentioned (Articles VI, VIII, IX), might also address certain aspects of subsidies. As a reality check, it was important to keep these provisions in mind, since they might have a bearing on the scope of eventual Article XV disciplines. First, the national treatment obligation was potentially far reaching; it captured discriminatory subsidies granted in sectors listed in a Member's schedule of specific commitments, unless an appropriate limitation had been inscribed. Second, given that Article XXIII:3 provided for non-violation complaints, even if a subsidy - or for that matter any measure - did not violate any GATS provisions, it might need to be modified or withdrawn if a Member considered that any benefit it could reasonably have expected to accrue under a specific commitment of another Member was being nullified or impaired as a result of the subsidy. Third, Article XV:2 provided that if a Member was adversely affected by a subsidy of another Member, it might request consultations. Such requests had to be accorded sympathetic consideration. Finally, the representative also stressed that the statistical and measurement difficulties in services trade had to be recognized as work proceeded in the negotiations, even if such difficulties should be no reason to ignore the mandate in Article XV. Additional issues could also be raised. For example, in relation to the issue of definition, the Working Party might need to consider the applicability to services of other ASCM concepts such as specificity and serious prejudice. The points he had highlighted were for discussion purposes and without prejudice to Singapore's position on the scope of the mandate or other aspects of these negotiations, such as the applicability of the ASCM definition to services.

13. In response to comments from the delegation of Chile, the representative of Hong Kong, China wondered whether distinctions could be made between domestic and foreign services on the basis of particular modes of supply. Certain modes of supply might be particularly important in some of the sectors mentioned, for example in shipping. He was grateful that Chile set an example on how the exchange of information might be advanced and hoped that others could do the same. The various programmes mentioned by Chile were in support of public policy objectives, for example to ensure the supply of essential utilities in certain areas. He wondered how the issue of public policy objectives should be treated in the development of disciplines. While some subsidy programmes aimed to further certain legitimate public policy objectives, it was hard to envisage that such programmes would not have any distortive effects. If so, how could a balance be struck? In that context, he had been reflecting on the extent to which an ASCM-type "traffic light" system might be applicable to subsidies in services. Could certain subsidies granted in pursuance of some public policy objectives, possibly in certain specific sectors, be defined as tolerated or non-actionable even if they had certain trade distortive effects? He hoped to provide further thoughts on this at an appropriate juncture.

14. On the definition of subsidy, he looked forward to the upcoming contribution from the United States and agreed that it would be useful to examine a few services sectors. He concurred that the ASCM definition provided a useful starting point for the purpose of comparison. The Working Party already had had extensive discussions on the issue of definition on the basis of contributions from Members (e.g., Argentina; Poland; Chinese Taipei; Hong Kong, China), which had touched upon the ASCM definition. It would be useful to refresh delegations' minds and build on these previous discussions. He suggested that the Working Party request the Secretariat to produce a synthesis Note on the basis of the background Note that they had produced in 1996 (S/WPGR/W/9), communications from Members, and ensuing comments by delegations. The Note could provide information on various issues relating to the definition of subsidy. Singapore's intervention today had already alluded to a structure that could be used in such a Note. Such a synthesis note would be helpful in facilitating and advancing discussions efficiently on the definition of subsidy. Concerning the information exchange, he thought that no delegation disputed that the information exchange had to be done. However, the issue of how to carry it out remained. For the moment, the meaning of the relevant mandate in Article XV could be left aside and delegations might instead focus on what could be done. Various suggestions had been made and Members now had to provide information rather than talk about it. While Switzerland's suggestion to set a timeframe was attractive, some delegations had indicated that information would be forthcoming. Progress could thus be assessed later, for example during the first cluster of next year. He underscored that the mandate had to be fulfilled for the purpose and as part of the negotiations.

15. The Chairperson said that, in assessing progress on the information exchange, delegations might want to reflect on whether some subsidy-specific transparency issues warranted particular attention.

16. The representative of Switzerland recalled that Article XV contained a clear legal obligation to exchange information concerning all subsidies related to trade in services. This obligation existed since 1994 and its fulfilment had therefore been long overdue. The Working Party now needed to be concrete and her delegation accordingly had invited Members to fulfil the obligation to exchange information by the second cluster of 2005. Members had to make sure that the two mandates contained in Article XV - one on the development of multilateral disciplines and the other on information exchange - were implemented. The proposed concrete timeframe had to be seen in this light; it should be understood as an implementation measure and would not entail a change of the mandate. With regard to JOB(04)/127, she drew attention to paragraph 16 where the delegation of Hong Kong, China proposed that the Secretariat prepare a composite note on issues to be considered for a definition of subsidies. She supported this idea, which would be an important contribution to advance work in this area. Various Members were of the opinion that the definition in the ASCM could provide a useful starting point for further discussions in the services context. That raised the question of whether any elements should be added, modified or omitted in order to take into account the particularities of services. She proposed that the Secretariat elaborate, in addition to the composite note proposed by the delegation of Hong Kong, China, a separate note regarding, on the one hand, concrete critiques that were raised against using the ASCM definition and, on the other hand, concrete improvement proposals made in the Working Party. She noted that various Members had submitted contributions touching upon the issue of the definition of subsidy in services, and substantive discussions had ensued during previous meetings. A note providing an overview of these points would help highlight elements of the definition where further work was needed.

17. The Chairperson said that the specific suggestions of the delegation of Switzerland for further Secretariat work might be incorporated in the proposal for a new Note as suggested by the delegation of Hong Kong, China, rather than as a separate Note. A possibility might be to update the Secretariat Note from 1996 circulated as S/WPGR/W/9 so as to reflect the discussions since. The representative of Switzerland found this to be acceptable as long as the specific elements that she had highlighted were addressed, i.e., concrete criticisms by delegations regarding the use of the ASCM definition of subsidy and concrete improvement proposals. The Chairperson indicated that all elements raised by

delegations, including the aspects just mentioned, could be reflected in a Secretariat Note on the definition of subsidy.

18. The representative of Canada sought clarification on the proposal for further work. He understood that what was proposed was basically a reminder of all existing proposals regarding a possible definition of subsidy. He wished to clarify that the work requested from the Secretariat would not involve the consolidation of existing proposals into a draft text of a definition. Regarding the proposal by the delegation of Switzerland, he thought that there had not been many substantive comments on the issue of definition; this could not, however, be seen as implying any kind of agreement on definition. The Note should be allowed to be updated to incorporate any further comments.

19. The Chairperson said that her understanding of what was being proposed was a synthesis of comments and contributions made in the Working Party on the issue of definition. Such a synthesis would include the relevant caveats to reflect that it was work in progress and did not represent any consensus.

20. The representative of the European Communities noted that the Chairperson had in the past produced a checklist of issues which touched upon the definition of subsidy. A possibility might be to update that document. He hoped that the delegations of Hong Kong, China and Switzerland could elaborate on their proposal for further work.

21. The representative of Hong Kong, China said that his intent was not to foreshadow any potential agreement among Members. He was looking for a synthesis of what had been done so far, which, of course, was work in progress. Many delegations had expressed an interest in advancing work on the definition of subsidy. A Note would help refresh everybody's memory in a systematic manner as to what the issues were and what views or proposals had been expressed so far. The intervention by Singapore and the original background Note by the Secretariat (S/WPGR/W/9) could be useful points of reference. The proposed composite note would help structure and focus the discussions in the Working Party on the various aspects relating to the definition of subsidy. Such a Secretariat Note might also take note of the points made by the delegation of Singapore regarding the various other provisions in the GATS that could be relevant for subsidies. He agreed that duplication should be avoided, although this was not a pressing concern as long as the substantive work pursuant to the mandate under Article XV was not further advanced.

22. The representative of the United States said that her delegation's impression was that the essence of what had been proposed was a reminder of what Members had tabled or introduced. Her delegation might be able to consider a Note in the form of a succinct recording of what Members had said in a category format. She was concerned about the Working Party developing some sort of an illustrative list of elements of a definition; the usual caveats would not prove sufficient. The standing of the document should also be discussed. Her delegation would prefer that its forthcoming paper be included in the proposed Note, rather than included in an update. The possibility to go back to the checklist approach could be explored as a first option. She agreed that it was important to keep in mind the ideas expressed in the past on the issue of definition so as to not repeat the same discussions.

23. The Chairperson asked the Secretariat to clarify the work that had been done in the past on this issue. A representative of the Secretariat said that the checklist was a short informal communication from the Chairperson, which had been updated in the past and could be updated again. Another idea expressed was to update the Secretariat Note prepared in 1996 (S/WPGR/W/9), which provided background information on relevant issues pertaining to subsidies in the context of trade in services. That Note touched upon a series of issues, including definition. Given that these two Notes were quite different, delegations might wish to clearly specify the type of work that they wanted the Secretariat to undertake.

24. The representative of the United States said that her delegation's preference was closer to what Hong Kong, China had originally proposed or to the idea of a checklist than to that of an update of S/WPGR/W/9. Her delegation could not support an exercise that would criticize anything. Nothing in the ASCM had changed since the preparation of S/WPGR/W/9 and discussions in the Working Party were still at an early stage, where delegations could forward their views.

25. The representative of Hong Kong, China said that three types of work had been mentioned today. The first was the idea of an update of the Chairperson's checklist (JOB(03)/57). That document was a succinct list of issues that might be relevant to the negotiations under Article XV. Such a list contained no information on work that had been done by the Working Party so far. He was open to updating the checklist. However, recent discussions in the Working Party related to elements that had already been mentioned in the checklist. An additional element might be added to cover what the delegation of Singapore had raised today with respect to the relevance of other GATS provisions. Paragraph 4 of the checklist ("to what extent do WTO rules already discipline services subsidies?") already captured that aspect, but could specify the various provisions to which the delegation of Singapore had drawn attention to. The second type of work was more analytical in nature and consisted in building upon the Secretariat Note from 1996. The third type of work was what his delegation had originally asked for: a synthesis of the contributions and discussions so far in the Working Party on the question of the definition of subsidy. This would be done on the basis of the various communications from Members on the issue, the ensuing discussions, and comments by delegations. Such a synthesis note would provide a structured reminder and would be work-in-progress and could be updated as needed. If some had concerns about the status of any such Secretariat Note, a possibility could be to circulate it as a room document.

26. The Chairperson confirmed that what was under consideration was the third type of work just mentioned, i.e., a neutral synthesis of contributions and discussions which would assist delegations in approaching future work on the issue of definition.

27. The representative of the European Communities indicated that the purpose of his previous intervention was to seek clarification on the work proposed and not to put forward a specific view as to what should be produced by the Secretariat. He cautioned that most of the interventions on the definition of subsidy were limited to raising questions, rather than providing answers.

28. The representative of South Africa expressed concerns about the proposal by Switzerland to set a concrete timeframe for the information exchange. While committed to providing information on subsidies, she felt that setting specific timelines would amount to imposing additional obligations.

29. In summing up the discussions under this agenda item, the Chairperson highlighted, in relation to the information exchange, the presentation of information by Chile and the proposal by one delegation to set a concrete timeframe for compliance with the mandate in the last sentence of Article XV:1. On the definition of subsidy, discussions had focused on the applicability of the definition contained in the ASCM. She highlighted the intervention made by the delegation of Singapore and hoped that it could be circulated to Members. Links between the negotiations under Article XV and other GATS provisions were also underscored, as was the role of public policy objectives in informing possible approaches to subsidy disciplines. She welcomed indications from some delegations that communications would be submitted, hopefully for the next meeting.

30. Concerning future work by the Secretariat, the Chairperson recalled that the proposal originally put forward by Hong Kong, China was for the Secretariat to prepare a synthesis Note on past contributions and discussions in the Working Party on the definition of subsidy. She had consulted interested delegations and, on that basis, wanted to propose that the Secretariat be tasked to prepare such a Note and circulate it as a JOB document. The representative of Switzerland said that she could go along with the proposal on the understanding that the aspects she had earlier mentioned would also be covered in the JOB document. The Chairperson said that the Note would cover all

relevant aspects of the discussions and contributions made so far. The representative of the United States said that her understanding was that the paper would organize the issues that had been raised by delegations, as opposed to analyzing or criticizing ideas expressed, or introducing new ideas. The Chairperson said that the proposed Note would not go beyond presenting the issues raised so as to help organize and structure discussions. At the request of the delegation of Brazil, she also confirmed that work by the Secretariat would concern solely the synthesis, as opposed to updates of the checklist and of S/WPGR/W/9.

31. The representative of Hong Kong, China recalled that other suggestions included in his delegation's informal communication (JOB(04/127) remained on the table; agreement on the synthesis note should not be seen to imply that the information exchange mandated under Article XV:1 had been complied with. This remained to be addressed.

32. As there was no opposition, the Chairperson concluded that the Secretariat should prepare the Note as just set out and invited the Working Party to take note of the comments made.

III. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

33. The Chairperson suggested that delegations continue their discussions under this topic on the basis of the answers provided by the group of Members from ASEAN to questions surrounding their proposal contained in JOB(04)/4. These answers were contained in JOB(04)/175.

34. The representative of the Philippines, on behalf also of the delegations of Brunei Darussalam, Indonesia, Malaysia, Myanmar, and Thailand, clarified that the content of JOB(04)/175 was the same as that of the room document circulated at the last meeting. Acknowledging that delegations had not had much time to study the answers provided at the last meeting, he invited questions and comments on the informal communication. He also reiterated his invitation for Members to send written questions to the group of delegations he was speaking for.

35. In reviewing the answers provided, the representative of the United States said that she found herself drawn back to issues such as situations that might justify the use of a safeguard, the feasibility of determining injury and of applying remedial measures. Regarding situations justifying a safeguard, the information provided in the optometry scenario did not make a compelling case that a domestic industry had been injured or that the alleged injury was due to trade. To make this case more compelling, information would be needed on such elements as past sales volumes, the revenue of the sector, employment, compensation of opticians and other technicians. She wondered whether such information existed. As currently described, one could infer that an established group of opticians had experienced a decline in profitability due to competition from more efficient service suppliers. However, employment, wages and sales volumes could have increased for the optometry sector as a whole. Regarding the example referring to temporary suspension of regulatory reform, she noted that regulatory reform involved a degree of uncertainty regarding the future development of a market and thought that it was understandable that one would consider whether a safeguard would enable countries to undertake more ambitious liberalization. However, the question remained as to whether Members retained sufficient discretion to address an ensuing crisis without resorting to a safeguard mechanism. For example, JOB(04)/175 indicated that competition from foreign service suppliers had somehow undercut the ability of domestic suppliers to fulfil their universal service obligation. If such a scenario were to occur, the appropriate regulatory action was to adapt the mechanism providing for universal service, and not to limit the cross-border supply of services. The Reference Paper in telecommunications acknowledged that each Member had the right to define its own universal service programmes. However, these had to be administered in a transparent, non-discriminatory and competitively neutral manner and should not be more burdensome than necessary. Ensuring the viability of such programmes was certainly laudable, but not if done in a discriminatory manner or in a way that only served to protect a revenue stream for incumbent operators. More competition, not less, was the most effective means to achieving universal service objectives.

36. The representative considered that the answers concerning the source of statistics did not seem to reflect the actual situation, where reliable data was simply difficult to compile in services. In the case of the United States, most official data on services was collected through periodic surveys that were not nearly as detailed as customs data for merchandise trade and suffered from significant time lags. For example, the United States did collect data on the sale of services through foreign-owned affiliates, but such data was reported with a two-year delay and the sectors covered were not highly detailed. For example, architectural, engineering and construction services tended to be bundled together. Country-specific details on a sector-by-sector basis were available only for about a dozen countries. In light of these limitations, she asked whether the proponents of an ESM had any ideas on how official data from their own systems could demonstrate a link between trade in services and economic harm. Even the United States would have very severe difficulties doing this. What would developing countries from various parts of the world be able to do? The provision of real life examples by the proponents might help to advance the debate.

37. The representative of Canada said that his delegation continued to question the need for an ESM. Nevertheless, it remained engaged on the issue and aimed to ensure that a useful discussion continued. On the concept of a limited window, he thought that, if an ESM was something Members were ready to agree to, his delegation would see a certain logic in this concept. Unexpected developments, if any, associated with liberalization initiatives would most likely reveal themselves within a fixed period of time after implementation. Regarding the proposal that each Member use its own definition of domestic industry, his delegation believed that such an approach was undesirable. It would encourage Members to offer definitions of domestic industry that would allow for the maximum possible use of an ESM. Introducing such tailored definitions would lead to uncertainty and would undermine confidence in the ability of the WTO system to deliver reasonable outcomes. With respect to the relationship between an ESM and bilateral investment treaties (BIT), he noted that the group of ASEAN Members conceded, in JOB(04)/175, that the application of an ESM could create legal conflicts with the provisions of BITs. It might thus be useful for the Working Party to consider this relationship more closely. In light of potential conflict, the Working Party might also want to consider whether an ESM would undermine efforts aimed at creating the positive investment climate needed to promote trade and development. On the issue of injury determination, the group of ASEAN Members conceded in JOB(04)/175 that services trade statistics could not be expected to be consistently available at a sufficiently disaggregated level or according to the four modes of supply. Confidence in the ability of the system to deliver fair outcomes could again risk to be undermined if services trade data was not available at the level needed for the credible application of an ESM. This might lead to investigations being initiated without just cause being shown. Burdening enterprises with the task of having to react to investigations launched on less than solid grounds would be hugely unpopular, as well as wasteful and unreasonably intrusive.

38. The representative of Hong Kong, China wished to raise a few points. On situations justifying a safeguard, he wondered whether it was necessary to exhaust all possibilities. There might be value in an approach where the merit in using a safeguard was assessed for each particular situation. His delegation considered that the various examples provided so far suggested that some Members might want to invoke a safeguard, but the examples did not justify the use of safeguard measures. On the definition of domestic industry, he considered that it would be difficult to advance without settling the fundamental issue of who was to be protected. Individual Members could let the Working Party know whom they would want to protect – assuming there was to be an ESM. This could help consider a common definition of domestic industry, if such was the intent of Members. On the relationship between BITs and an ESM, he drew attention to the fact that the mandate in Article X called for negotiations "based on the principle of non-discrimination". He understood this to mean that any safeguard would be applied on a MFN basis. In that context, he did not see the need to talk about any deviations from the obligation of most-favoured-nation treatment. Issues relating to BITs had been discussed during the last review of MFN exemptions. Some had argued that measures relating to BITs were not inconsistent with the MFN obligation; the issue of whether MFN exemptions were required for such agreements had also been raised. He would have thought that the

broader issue of the relationship between BITs and the MFN obligation was more relevant than that of the link between BITs and safeguard measures.

39. The representative of Japan first sought clarification from the group of ASEAN Members regarding the distinctions drawn between the definition of domestic industry and of domestic companies. He thought that the proposed approach did not correspond to the definition of domestic industry used in the Agreement on Safeguards, or what might commonly be understood by such terms. For example, assume that foreign coffee shop chains had greatly increased their market share in Japan. Some might say that this had caused a certain amount of injury to traditional domestic coffee shops. However, as a result of the arrival of these foreign chains, the coffee shop industry in Japan had flourished. To the average consumer, all these companies, all suppliers - traditional shops as well as foreign-owned chains - constituted the domestic industry. Second, with respect to the example relating to opticians, he wondered whether the impact had really been unintended or unanticipated for the government, although it might have been unexpected for some opticians. When a government decided to open the market to foreign suppliers, such consequences were usually anticipated.

40. The representative of Switzerland recalled that her delegation, at the meeting of March, had elaborated on four concerns in the light of JOB(04)/4. Her delegation had considered the answers provided in JOB(04)/175 in the light of these concerns. On the link between an ESM and progressive liberalization in market access negotiations, she regretted that some Members had so far made a negative link only. As indicated previously on many occasions, she would prefer to see a concrete positive link between the market access negotiations and an ESM. JOB(04)/175 said that an ESM would make it easier to convince domestic constituencies to accept greater liberalization. It also indicated that the group of ASEAN Members was open to suggestions on how to further elaborate such a link, but did not suggest a concrete positive connection. Her delegation hoped that the group of ASEAN Members could indicate the sectors or sub-sectors where they were prevented from taking commitments because of the absence of an ESM. Another concern related to the fact that an ESM would compromise commitments negotiated in the last round. Her delegation was very concerned to see that JOB(04)/175 advocated an ESM for future as well as existing commitments. The concerns previously expressed by her delegation thus remained.

41. The representative of Mexico believed that the communication failed to answer two fundamental questions. First, what alternative measures existed in WTO Agreements to address the kind of situations identified by the group of ASEAN Members? There had not been appropriate evaluation of this aspect. Second, assuming - without conceding - that there would be an ESM, how could it be ensured that a safeguard measure was the least-trade restrictive alternative available? He thought this was a key aspect in the discussion. Recalling his delegation's position on this issue, he indicated continued interest in pursuing constructive exchanges.

42. The representative of the Philippines wished to provide preliminary answers to questions raised. On situations justifying a safeguard, he agreed that it might not be necessary to exhaust all possible situations. Each example would have to be examined on a case-by-case basis. Concerning opticians, he said that in domestic consultations the industry representatives had referred to revenue and employment losses and to closure of operations. Some but not all of the employment lost had been compensated by new hiring by the foreign suppliers that had caused injury. He considered that all the information on the injury suffered would, of course, have to be substantiated by a petitioning industry. An earlier communication from his group of delegations had referred to the kind of information that would need to be provided to show that the situation justified the imposition of a safeguard measure. On points raised by Japan, he acknowledged that turnover might have increased for the sector as a whole, but this could be due to an increase in the revenue of the foreign-owned suppliers at the expense of domestic ones. With respect to the example on regulatory reform, he considered that the flexibility of the GATS with respect to regulatory measures only existed in the absence of certain additional commitments. The example was relevant where such additional

commitments had been undertaken. The issue in this example was not one of restricted competition; it captured a situation where a Member had committed to a particular way of determining the interconnection rates, which affected the ability of the domestic service supplier to provide universal service. Expected revenue relating to the commitment with respect to the determination of interconnection rates had not materialized, thus affecting the possibility to provide universal service. Accordingly, there should be some scope to temporarily modify or withdraw the commitment with respect to the determination of interconnection rates.

43. Concerning the definition of domestic industry, he noted that the proposal to let each Member use its own concept did not aim to encourage the development of definitions that would suit a particular desire to impose a safeguard. Using the definition found in Article XXVIII of the GATS as a common basis was difficult since it was, for some Members, contrary to their domestic legislation or Constitution. Rather, each Member could notify its definition of domestic industry. Given that such definitions already seemed to exist in some cases, the scope for manipulations would be limited. Regarding a point made by the delegation of Hong Kong, China, he thought that the target group for protection would be the domestic companies, defined according to foreign equity participation. When notifying their definition of domestic industry to the Council for Trade in Services (CTS), Members would make a policy judgement concerning the target group for protection, i.e., whether it would include established foreign suppliers. Those who disagreed with such a concept could put forward their own thoughts; common elements might thus be developed to form the basis of an alternative approach to defining domestic industry. In reference to points raised by the delegation of Japan, he noted that under the approach proposed by his group of delegations, Japan would be free to include foreign chains of coffee shops in the definition of domestic industry that it would notify to the CTS. He recalled that some delegations had criticized proposals made on ESM because these were considered too similar to the Agreement on Safeguards, but on this issue particular efforts had been made to be creative and deviate from the goods model.

44. On the issue of statistics, the representative recognized that there might be a lack of disaggregated data according to specific modes of supply or particular activities in some sectors, but work was underway in international organizations to develop appropriate statistics for trade in services. His delegation had begun looking at systems for developing databases for services statistics. Professional associations also kept statistics. Not one source of statistics could provide all the information necessary to establish that a safeguard was justified. Looking at all sources concurrently could provide an appropriate picture. He recalled that Australia had made a contribution on how to ascertain injury. Statistics could also be complemented by some form of qualitative assessment of the injury suffered. Turning to questions on the relationship between bilateral investment treaties (BITs) and the imposition of safeguard measures, he noted that Article X provided that an ESM should be based on the principle of non-discrimination. Therefore, ideally, an invoking country would have to apply a safeguard measure on a non-discriminatory basis, possibly without regard to its BIT obligations. That gave rise to the possibility that the other party to a BIT could raise a legal challenge in the context of the dispute settlement proceedings of the bilateral agreement. That possibility existed not solely in the context of a possible ESM, but also with respect to other obligations that a WTO Member might have undertaken, and which might create some legal tensions with another party to a BIT. At the last meeting, he had drawn attention to how the MFN provision had been broadly interpreted in dispute settlement proceedings of BITs. Possible conflicts between BITs and an ESM might then be more apparent than real. He agreed with Canada's suggestion to examine this relationship further. On the link between an ESM and progressive liberalization, he considered that it was difficult to identify either the sectors that Members would open to competition if an ESM was agreed upon or those that would remain closed in the absence of an ESM. A more enlightening approach might be to examine cases in the market access negotiations, where a Member, for example, had said that it was prepared to open certain sectors if an ESM was established. Others had said that they would consider conditioning their forthcoming offer in a similar manner. This could suggest the sectors that might be opened with an ESM in place.

45. The representative of the United States clarified that her intervention had been intended to focus on technical aspects, even if some broader concerns remained. On the example relating to regulatory reform in telecommunications, she noted that JOB(04)/175 had said that competition from foreign service suppliers was undercutting the ability of domestic suppliers to fulfil their universal service obligation. If such a scenario were to occur, it seemed logical that the appropriate regulatory action would be to adapt the mechanism providing for the universal service, not to limit the cross-border supply of services. The answer provided by the group of delegations did not address this point. On the issue of statistics, she thought that the responses - for example in paragraphs 33 and 34 of JOB(04)/175 - only attempted to address the questions in a very general manner. It was not clear how data problems could be solved in practice. It would be useful if the proponents could provide more information on the kind of data that they could actually produce, as well as possible examples, for a given sector in order to determine injury, for example under modes 1, 3 and 4.

46. The representative of Japan said he understood that the proponents suggested that domestic industry could be defined so as to exclude segments on the basis of some percentage of foreign equity. However, employees of foreign coffee shops in Japan were Japanese. Applying a safeguard measure to such shops would have a negative impact on Japanese employees. He doubted that such an approach was reasonable in terms of benefits to the national economy.

47. Commenting on the technical feasibility of safeguard measures, the representative from Hong Kong, China considered that useful inferences could be drawn by looking at economic needs tests (ENTs). Even if ENTs and ESM were different, the same arguments made regarding the technical infeasibility of an ESM could be made concerning ENTs if one were to substitute the terms "economic needs" with the concept of serious injury caused by increased imports. Nevertheless, ENTs were inscribed in schedules for the four modes of supply, suggesting that they could be applied in each of these modes and sectors. Experience from Members in applying economic needs tests might thus help to answer some of the questions put forward regarding the feasibility of applying safeguard measures. A key distinction between an ESM and ENTs was that the former might involve a multilaterally-agreed criteria. For many ENTs, it was not clear what type of measure could be imposed and on the basis of what criteria. Technical problems relating, for example, to statistics might suggest that ENTs were not feasible after all.

48. The representative of Brazil recalled that his delegation had said that this issue was of significant interest and that examining fictional situations was not the only way to pursue discussions. He had invited the Members with safeguard-type entries in their schedule to explain how they had dealt with feasibility issues. Such entries seemed to pose similar challenges than had been raised regarding an ESM. His delegation was hoping to present, at the next meeting, a document which would look at schedules of Members and examine safeguard-type entries or limitations that could produce equivalent effects to that of an ESM. The questions put to the proponents of an ESM might also be put to those having such entries. A discussion on the basis of such concrete examples might prove useful in the lead-up to a review of negotiations in 2005.

49. The representative of the United States thought that some of the issues raised by Brazil had been dealt with in the bilateral request-offer process since they concerned schedules of commitments. In reaction to points made by the delegations of Brazil and Hong Kong, China, she thought that ENTs were different from an ESM and doubted whether comparisons could usefully be made. The mandate in Article X concerned the question of an ESM and therefore related to elements such as unforeseen circumstances and serious damage. It was not useful to look at other types of tools that were available in the GATS. She wished to explore more carefully some of the technical questions rather than engage in a political discussion. She was not looking for additional hypothetical examples, but for real situations. In the case of legal services supplied under mode 1, for example, how many memoranda, destined for how many citizens, would have to cross the border for harm to be caused to a domestic industry in, say, the Philippines? Suppose a consumer in the Philippines decided to seek legal advice from a Philippine lawyer who had moved abroad and established a practice in the

United States. Even though employing mostly Americans, that practice could still have many clients from the Philippines, which might affect Philippine lawyers operating in the Philippines. Her delegation was not asking for all possible scenarios to be exhausted, but was looking at the types of statistical issues that, for example, a developing country might face. The coffee shop example discussed earlier showed that the use of a safeguard against established foreign suppliers could actually result in a government hurting its own citizens by reducing the total number of employees in the industry. With respect to mode 4, she wondered to what extent natural persons from various Members would need to provide sufficiently similar services to allow for the determination of an injury. She reiterated her interest in examples that might help to clarify how and on what basis governments would determine whether to impose a safeguard.

50. The representative of the Philippines appreciated these efforts to look at some of the more technical issues. Concerning the example relating to regulatory reform, he was not suggesting that access of new foreign service suppliers be restricted. Instead, the point was that an additional commitment might need to be modified or withdrawn in cases where a Member might want to use a particular method of calculating interconnection rates rather than another. With respect to statistics, he recalled that past contributions from Venezuela and Australia had referred in more detail to this issue. This had been discussed and addressed in past contributions from his delegation, which had listed about 15 determining factors that had to be evaluated. All of these factors could be looked at by the companies petitioning for a safeguard measure; regulatory authorities and professional associations could also make contributions. He thought that his authorities, as well as those of other countries he was speaking for, knew how to obtain such data, although it might not be as easy for all developing country Members. In most situations, the relevant domestic companies would have available the data needed to show the kind of injury being suffered. For instance, the ASEAN contribution from 2000 had referred to declining profits, returns on investment, cash flows, occurrence of losses, price reductions, etc. The representative recognized the points made by the delegation of Japan on possible effects on employment. In the end, one had to balance the interests of service suppliers against those of consumers and of employees of foreign service suppliers. He was not suggesting that in all cases the interests of consumers or employees of foreign service suppliers should be set aside. He had indicated in the past that all such interests would have to be ascertained on a case-by-case basis. Concerning the example on legal services raised by the United States, he thought that the issue of like services, as explained in a recent contribution from his group of delegations (JOB(04)/4), would also have to be assessed on a case-by-case basis. On the points made with respect to ENTs, he thought that there were some links with the concept of ESM, although ENTs were scheduled ahead of time and often did not contain clear criteria. In contrast, an ESM would be governed by strict criteria.

51. The representative from Hong Kong, China wished to react to previous interventions on the issue of ENTs. The delegation of the United States had asked what might be the elements of an ENT relating to injury or other factors that might be taken into account in the application of an ESM. It was hard for him to answer such a question since his delegation did not have ENTs in its schedule. In addition, most ENTs did not clearly indicate the criteria guiding their application, which made it difficult to assess whether such criteria were similar to the factors governing the use of an ESM. Some criteria could be similar, but more transparency with respect to ENTs was needed. Turning to another point made by the delegation of the United States, he recognized that ENTs and ESM were different types of instruments that had different objectives. However, issues of feasibility would often be the same, for example as regards the compilation and use of statistics to ascertain whether action was needed. The application of both instruments also raised questions with regard to particular modes of supply.

52. The representative of Japan looked forward to the forthcoming contribution by the delegation of Brazil and hoped that it would introduce new elements and avoid repetition of past discussions. Concerning the limitation in Japan's initial offer on road transport services, he said that such a measure did not discriminate against foreigners and was therefore different from an ESM.

53. The representative of the European Communities considered that the discussion at this meeting had not brought forward any new elements, except maybe with respect to BITs. His delegation did not agree that an analogy could be drawn between ENTs and an ESM. Concerning the link between an ESM and progressive liberalization, he expressed serious concerns about comments suggesting that certain offers were conditional on the existence of an ESM. Given the content of these offers, he wondered what commitments might be offered in the absence of an ESM.

54. The representative of the United States thought that it was critical that all delegations participate in the discussions on substantive and technical issues. She disagreed with points made by the delegation of Hong Kong, China regarding ENTs. While some ENTs might lack transparency, the criteria relating to statistics might be totally different from what might be relevant in the case of an ESM. She doubted the usefulness of engaging in a comparison given the dearth of information on ENTs; this might distract the Working Party from a detailed discussion of the question of an ESM.

55. In summing up, the Chairperson noted that positions were still far apart and did not seem to be converging. Nevertheless, delegations had engaged in a substantive technical discussion on such issues as the definition of domestic industry, the availability of appropriate statistics, and the concept of a limited window. There was disagreement on possible analogies between ENTs and an ESM. She invited the Working Party to take note of the comments made.

IV. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

56. The Chairperson suggested that delegations pursue the discussion of the latest proposal from the European Communities on a framework under GATS for government procurement in services, contained in S/WPGR/W/48. Issues that could be examined further had been mentioned, for example, in the informal communication from Hong Kong, China (JOB(04)/130), in an earlier communication from Singapore (JOB(03)/216) as well as in the annotated agenda and the report of the last meeting. These issues included: whether the MFN obligation would apply in sectors where government procurement commitments were not taken; the relationship between the MFN obligation and reciprocity provisions in the Government Procurement Agreement (GPA); and, more generally, whether the manner in which commitments were undertaken in the GATS was best suited for liberalization of government procurement. The Chairperson noted that interest had been expressed in further discussing issues relating to transparency and procedural rules and recalled that various delegations also had reiterated that negotiations should not cover market access issues. In that context, and in the light of the Note requested from the Secretariat on government procurement provisions in economic integration agreements, S/WPGR/W/49, delegations might want to consider what type of procedural rules might be relevant in the context of these negotiations.

57. The Chairperson noted that the Secretariat had prepared, as requested, a Note providing summary observations on approaches taken in economic integration agreements (EIAs) regarding commitments on government procurement (S/WPGR/W/51). In presenting this document, a representative of the Secretariat pointed out that government procurement provisions in EIAs generally did not use terms such as "schedules" or "commitments" and that such provisions did not form part of a services chapter; they constituted a distinct set of provisions, alongside sets of disciplines relating to trade in services. In general, the scope of the procurement-related disciplines, including liberalizing obligations, was further defined through annexes, which typically specified the sector coverage, the procuring entities covered, and threshold values above which the provisions applied. The Note provided further details on some key features of these annexes, for example classification issues or whether a positive-list or negative-list approach was followed. The agreements reviewed covered both goods and services. The Note also highlighted that while the relevant agreements did not provide for the inscription of limitations or reservations to particular liberalization obligations, many of them allowed for country-specific exclusions from the scope of the set of provisions. These tended to take the form of notes in the annexes. In addition, the agreements reviewed usually did not make distinctions between modes of supply. The representative said that

further details might best be provided by the parties involved, since scope and coverage of the agreements, including annexes, differed significantly.

58. With respect to the latest Secretariat Note (S/WPGR/W/51), the representative of the European Communities noted that in most EIAs the sectors and entities covered, as well as the thresholds, were specified in annexes. In the context of the GATS, these would correspond to schedules of commitments, to which his delegation had proposed to add a fifth column for government procurement, where the sectors covered and thresholds would be specified. In the case of the GATS, the sectors would be listed on the basis of a positive-list approach. With respect to procuring entities, his delegation had proposed that they be listed in the schedule, sector by sector, on the basis of either a positive-list or negative-list approach. To accommodate concerns that it might not be practical to include long lists of entities alongside sector-specific commitments, it might be preferable to list covered entities - especially if they were the same for all sectors - in an annex to the schedule. With respect to the sectoral scope of government procurement provisions in EIAs, he noted that the lists of covered sectors contained in annexes (whether based on a positive-list or negative-list approach) were generally not exhaustive. The question of how to treat procurement contracts covering simultaneously sectors committed and sectors where no commitments had been taken also arose in most EIAs. This was therefore not a new issue. Concerning modal application, the Note indicated that a few EIAs made distinctions for certain modes of supply. For example, an agreement did not cover mode 1 for financial services and another exempted mode 2. The GATS' Understanding on Commitments in Financial Services limited commitments on government procurement to mode 3. It was thus possible - and in some cases desirable - to undertake commitments on government procurement mode-by-mode. The EC proposal allowed Members to undertake mode-specific commitments, although in most cases Members making government procurement commitments would not draw distinctions between modes of supply. The information contained in the two recent Secretariat Notes (S/WPGR/W/49 and S/WPGR/W/51) provided a good basis to develop the procedural rules and scheduling guidelines that were needed to open procurement markets in the context of the GATS.

59. Turning to questions mentioned in the Chairperson's annotated agenda, he first indicated that it was appropriate to allow Members, only at the time of entry into force, to list procurement-related exemptions to the MFN obligation, as was done in 1994 for all services. In addition, his delegation had proposed an exception to cover the preferences that parties to the GPA granted each other. In addition, Article V of the GATS would cover the preferential treatment granted as part of EIAs with respect to government procurement. On the question of the relationship between the MFN obligation and the reciprocity provisions in the GPA, the representative said that the commitments taken in the GPA, with the limitations they contained, could obviously not affect commitments taken in the GATS. Such limitations would only have value for parties to the GPA to the extent that the sectors concerned were not committed, or were committed at a lower level, in the GATS. Concerning the general question of whether the structure of the GATS was suited for commitments on government procurement, he reiterated that this was the case. The structure of the GATS provided for maximum flexibility and should thus permit Members to take commitments according to their needs.

60. With respect to S/WPGR/W/51, the representative of Hong Kong, China observed that all EIAs reviewed covered both goods and services. Accordingly, the question of how to treat government procurement contracts involving the supply of both goods and services, which confronted the Working Party, did not arise in EIAs. The Note also highlighted that the EIAs generally did not make distinctions between different modes of supply. While under the European Communities' proposal a Member could choose not to differentiate between modes of supply, government procurement commitments would still have to be read in conjunction with market access and national treatment commitments that were made under the respective modes of supply. Hence, modal issues would not go away even if government procurement commitments did not draw modal distinctions. For instance: how should one interpret a situation where a government procurement commitment was combined with a "none" in mode 1 and an "unbound" or a partial commitment in mode 3?

Divergences thus existed between the approach typically taken in EIAs and the one being proposed by the European Communities in the Working Party.

61. Putting aside questions surrounding the negotiating mandate for the time being, the representative raised certain fundamental issues which he thought had to be fully addressed before further considering the European Communities' proposal. Such issues were: the relationship between the proposed framework and the GPA; the application of the MFN obligation; the reconciliation of the proposed MFN exemptions with the non-application and reciprocity provisions in the GPA; modal application; and the scheduling approach for government procurement commitments. His delegation saw MFN as a general obligation under the GATS and as a fundamental principle of the multilateral trading system. If the GATS were to be extended to cover government procurement in services, MFN should be a general obligation applicable to all government procurement in services covered under the GATS, irrespective of whether government procurement commitments were made in the additional column being proposed. Ample derogations from the MFN principle already existed under the GATS framework and his delegation would be very hesitant to see any further carve-out. The delegation from the European Communities had said that the proposed framework would provide for the application of the MFN obligation as a general rule. However, his understanding of the EC proposal was that the MFN principle would not apply in sectors where no government procurement commitments had been undertaken. In contrast, the MFN obligation in the GATS applied to all services sectors, irrespective of specific commitments. The possibility to take MFN exemptions did not obviate the need to apply the MFN obligation across the board. His delegation would have serious doubts about the usefulness of the proposal of the European Communities if it allowed Members to freely deviate from the MFN obligation or permitted Members to maintain largely bilateral or plurilateral reciprocal systems for government procurement in services. If this were the case, he wondered whether time should be spent on discussing this issue multilaterally.

62. His delegation had previously signalled its willingness to discuss proposals without prejudice to the question of the negotiating mandate. However, he was intrigued by the views of the European Communities concerning the distinction made between implementation and the mandate for the negotiations, as recorded in paragraphs 62 and 79 of the report of the previous meeting. He wondered, if such logic was to apply in regard of Article XIII, whether the question of the mandate should be treated as an implementation issue and referred to the Regular Session of the Council for Trade in Services for resolution. He was open to pursuing discussions in this Working Party before involving the Council for Trade in Services. He disagreed with the interpretation put forward by the delegation of the European Communities on the issue of the mandate, and was open to further work on this item on the basis of any proposal put forward by Members.

63. Without prejudice to his delegation's position on the negotiating mandate or other issues under Article XIII, the representative of Singapore recalled the issues and questions raised by his delegation in the informal communication circulated as JOB(03)/216. Recognizing the divergence of views among Members on the negotiating mandate, he pointed out that Article XIII specifically mandated negotiations on government procurement. If there was to be progress on this issue - as for all other negotiating issues in services and in the Doha Development Agenda -, the Working Party had to start addressing the technical aspects. His delegation was not a *demandeur* on this issue, but recognized the existence of the various mandates in services and remained engaged and constructive in all aspects of the negotiations. While some of the issues arising from the European Communities' proposed framework had been clarified over the past year, a number of questions had to be further discussed. For example, one basic question was whether a clear distinction could be made between goods and services for the purpose of procurement. The relevant provisions in the GPA and in the EIAs mentioned in the Secretariat Notes S/WPGR/W/49 and S/WPGR/W/51 related to both goods and services; no distinctions were made. He also underscored the comments made in past meetings by other Members to the effect that government procurement policies were not developed in the perspective of the GATS' modes of supply. As highlighted in S/WPGR/W/51, EIAs generally did not make modal distinctions. He considered that there was scope for further discussions on the

framework proposed by the European Communities, as well as on other issues in the Article XIII negotiations; information on the way government procurement commitments had been undertaken in EIAs, as summarized in S/WPGR/W/51, constituted useful reference material. By the same token, it might be timely to look at transparency and procedural rules relating to government procurement.

64. In its most recent communication (S/WPGR/W/48), the European Communities had suggested that relevant rules be contained in an Annex to the GATS. This seemed a logical suggestion. However, what type of procedural rules might be contained in such an Annex? Another question, highlighted in the annotated agenda, concerned the approach that might be contemplated for the negotiation and application of such rules. Procedural rules contained in EIAs might provide a starting point. In that regard, S/WPGR/W/49 mentioned such issues as non-discrimination, valuation of contracts, technical specifications, procurement methods, qualification of suppliers, invitations to participate, time limits, tender documentation, and award of contracts. Further, in paragraph 4 of S/WPGR/W/49, the Secretariat had noted that some provisions of the GPA had often been incorporated by reference in EIAs. There was a fairly extensive commonality of procedural rules in the EIAs. It might be useful for the Working Party to discuss how existing rules, with appropriate modifications, might provide a working basis. Secretariat Notes prepared for the Working Group on Transparency in Government Procurement (WGTGP/W/6, WGTGP/W/32, WGTGP/W/33) might also prove useful. In his view, the two following elements were critical: private challenge procedures, and special and differential treatment for developing countries. Concerning the first element, procurement was often a one-shot event that could not be reversed. Accordingly, in addition to typical dispute settlement procedures, Article XX of the GPA and relevant provisions of EIAs provided for private challenge procedures at the national level. Possible models were listed in S/WPGR/W/49. Members might also want to consider whether domestic review procedures contained in Article VI:2 of the GATS were sufficient for the purpose of Article XIII disciplines. Concerning the second element, he considered that procedural rules would also have to address the concerns of developing countries; special and differential treatment might therefore be necessary. For example, Article XVI:2 of the GPA provided that developing countries might "at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content". It also stated that the "conditions shall be objective, clearly defined and non-discriminatory". He wondered whether such provisions might be applicable in the context of the Article XIII negotiations and what modifications, if any, might need to be made in order to address the legitimate concerns of developing countries. In closing, he recalled that government procurement provisions in the EIAs to which Singapore was party were not negotiated in isolation, but as part of an overall package of rights, obligations and concessions.

65. The representative of Canada hoped to comment on S/WPGR/W/51 at a future meeting. He wondered whether the delegations of the European Communities and Singapore could circulate copies of their interventions, either formally or informally. The feasibility of any approach to scheduling commitments in this area was strongly linked to the procedural rules that would apply. These rules should be simple (e.g., one set for all procurement) and provide for transparency (e.g., posting of all procurement notices). Further, open competition should be the norm rather than the exception, and such rules should build on the existing structure of the GATS.

66. The representative of Mexico noted that various EIAs to which his country was a party were mentioned in the Secretariat Note S/WPGR/W/49. He wished to draw attention to the clarification made in paragraph 2 of the Note to the effect that the procurement provisions reviewed had to be read in the light of the totality of the rights and obligations contained in such agreements. These provisions resulted from bilateral negotiations and formed part of a broader package of rights and obligations. He underscored the need for the Working Party to focus on transparency given that no consensus on the scope of the negotiating mandate could be reached.

67. The representative of Switzerland noted that most agreements reviewed in the Secretariat Note S/WPGR/W/51 specified in annexes the services sectors that were subject to the government

procurement provisions. While some EIAs followed a positive-list approach, others used a negative-list approach. The Note also pointed out that most agreements limited the scope of the relevant provisions to specified entities, as well as to procurement above a certain threshold value. These EIAs thus clearly provided considerable flexibility to parties with regard to many key aspects. She considered that the approach proposed by the EC was well suited for liberalization of procurement; a very positive aspect of the EC proposal was its flexibility, based upon the GATS' approach to scheduling commitments. The contributions by the European Communities provided a good basis to deepen discussions and should be further considered in detail.

68. The representative of the European Communities wished to address some questions raised by delegations. The first concerned differences between procurement contracts for goods and for services. While the mandate in Article XIII provided for negotiations on government procurement for services, the recent Notes by the Secretariat highlighted that in all the EIAs reviewed certain services and goods were covered and others were not. Accordingly, the need to determine whether a given contract was within the scope of procurement provisions arose in EIAs in the same way that it might arise in future GATS provisions on government procurement. Another relevant example related to the GATT Agreement on Government Procurement, which covered only goods and not services. Therefore, this issue was neither new nor difficult to address. In a GATS framework on procurement, certain services sectors would be covered and others would be excluded, as in all existing agreements. The second question concerned modal application. He considered that the flexibility to take procurement commitments for particular modes only, which was provided in certain agreements as well as in the GATS' Understanding on Commitments in Financial Services, was useful even if such flexibility might not be used extensively. With respect to the work ahead on procedural rules, he shared the proposals made by the delegation of Singapore. The Notes by the Secretariat, in particular S/WPGR/W/49, contained useful information that could be used to define the content of a future GATS Annex on Government Procurement. Echoing comments by the delegation of Canada, he thought that such rules should be simple and the same for all sectors. Concerning the rules for the scheduling of commitments, the latest communication from his delegation provided some indications in this regard. Flexibility had to be a guiding principle in developing scheduling guidelines for government procurement commitments. Concerning comments made by the delegation of Singapore on the specific needs of developing countries, the representative underscored that the structure of the GATS provided all Members - but in particular developing countries - with the necessary flexibility to cater to particular needs.

69. Concerning the Secretariat Note S/WPGR/W/51, the representative of the Dominican Republic highlighted that the government procurement provisions in EIAs applied to both goods and services. Government procurement had to be dealt with in an integral manner. In the relevant body, her delegation had indicated a willingness to negotiate transparency in government procurement, but not market access. Progress in this area had been linked to the improvement of conditions of access with respect to mode 4. The issue of government procurement involved aspects of governance and development policy, for which this Working Party was not the most appropriate forum.

70. In summing up the discussion, the Chairperson said that delegations, in discussing S/WPGR/W/51, had highlighted features of EIAs such as modal application and coverage of both goods and services. Delegations had also looked at issues arising from the proposal by the European Communities, relating for example to MFN application. Key principles and possible ways forward in relation to the development of procedural rules had also been mentioned. She invited the Working Party to take note of the comments made.

V. DATE OF THE NEXT MEETING

71. The Chairperson indicated that the Working Party would hold its next formal meeting during the next cluster of services meetings, the exact date of which would be announced in due course.

VI. OTHER BUSINESS

72. No point was raised under this item.
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Working Party on GATS Rules

REPORT OF THE MEETING OF 20 SEPTEMBER 2004

Note by the Secretariat¹

1. The meeting of the Working Party on GATS Rules was chaired by Ms. Clare Kelly, from New Zealand. The agenda for the meeting, contained in WTO/AIR/2375, included the following items: government procurement, emergency safeguard measures, subsidies, date of the next meeting and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda, contained in JOB(04)/129. She noted, in response to previous queries, that UNCTAD's study on services subsidies had not yet been completed. The agenda was adopted.

I. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

2. The Chairperson suggested that delegations pursue their discussion of the latest communication from the European Communities on a proposed framework under GATS for government procurement in services (S/WPGR/W/48). A number of questions had been put forward, as reflected in the report of the last meeting, contained in S/WPGR/M/48. A few of the issues raised were mentioned in the annotated agenda prepared for this meeting. She noted that a number of delegations had reiterated their views on the scope of the negotiating mandate or had reserved their positions for the time being. Also, the delegation of Hong Kong, China had recently submitted an informal communication (JOB(04)/130), which raised some questions in relation to the proposal from the EC. She also recalled that the Working Party had requested the Secretariat to expand upon earlier work on government procurement-related provisions in economic integration agreements (EIA). The new Note was circulated as S/WPGR/W/49.

3. A representative from the Secretariat explained that the document elaborated upon the earlier Secretariat Note of June 2003 on the same subject (S/WPGR/W/44). It provided an overview of the main types of provisions across agreements, and highlighted some similarities and differences. The Note did not attempt to simply replicate all relevant content of the agreements, since this would have led to an unreasonably long document. Nevertheless, it reproduced a significant number of relevant provisions. The representative stressed that a few important caveats had to be kept in mind, as spelled out in Part I of the Note. For instance, no attempt had been made to assess the scope and coverage of the various agreements, for example their definition of procurement, the sectors covered, etc. This obviously called for caution in assessing the impact of the provisions reviewed. Part II of the Note highlighted key observations. It underscored, for example, various similarities across the agreements reviewed, which tended to include, in addition to rules on non-discrimination, procedural rules relating to such issues as transparency, fair and open procurement procedures, accountability and due process. At the same time, differences between agreements also existed, mostly in terms of the types of provisions included and the level of detail or comprehensiveness. Indeed, the rules contained in a good number of agreements approached in their comprehensiveness - and in some instances went beyond - those contained in the WTO's Government Procurement Agreement (GPA), while other

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

agreements provided for a less extensive or detailed set of procedural rules. Part III of the Note contained information on the relevant government procurement provisions, and sought to make it easily accessible.

4. The representative of Hong Kong, China said that he would share observations on the Secretariat Note at a later time. The informal communication from his delegation elaborated on questions that he had raised at the previous meeting about the EC's proposal, and he hoped that it would lead to constructive discussions in the Working Party.

5. The representative of the European Communities thought that the Note from the Secretariat contributed to a better understanding of provisions relating to government procurement in EIAs. The Note showed that such agreements had been signed by many Members, both developed and developing, as well as by signatories and non-signatories to the GPA. This showed that agreements on government procurement were in the interest of all Members, notwithstanding their size or level of economic development. Many Members were parties to various regional, bilateral or plurilateral agreements, and the relevant procurement commitments were fully compatible. A framework for government procurement in the GATS could thus also be perfectly compatible with other agreements. It would provide a multilateral point of reference for future bilateral or regional agreements on government procurement. The Note also highlighted similarities of provisions across agreements, and he thought that this could provide inspiration for developing appropriate procedural rules for government procurement in the GATS.

6. The latest communication from his delegation (S/WPGR/W/48), which provided examples of government procurement commitments that could be made in the GATS, underscored the practical feasibility of the proposed framework, and he wished to recall its key principles. The objective was to use to the maximum the flexibility of the GATS to develop an agreement allowing each Member to undertake government procurement commitments in the sectors it wished to open to international competition, and within the limits it wished to set, so as to suit its needs in matters of public investment and development. Since such commitments would be taken sector-by-sector, his delegation was not proposing that the national treatment obligation apply horizontally. Given that the GATS' MFN obligation applied to all sectors, he wondered whether this obligation should, with respect to government procurement, also apply in an horizontal manner or only to sectors where commitments were made. He was open to further discussions and thought it was up to the Working Party to determine this issue. With respect to the relationship between the GPA and a future GATS framework on government procurement, his delegation had suggested the inclusion of an exception to the GATS' MFN obligation that would preserve the rights and obligations of parties to the GPA, including reciprocity requirements. He noted that certain GPA Members had signalled their interest in jointly elaborating a provision addressing the relationship between the two agreements.

7. In response to questions raised by delegations on modal application, he drew attention to the fact that government procurement commitments in the Understanding on Commitments on Financial Services only covered mode 3. Accordingly, there already was a precedent for government procurement commitments limited to one particular mode of supply. With respect to contracts covering various services sectors with different levels of commitment, he did not think this was a new issue. It already existed in sectors which in the GPA were not subject to the same regime, as well as for the supply of services involving clusters of sectors in the GATS. The representative noted that many questions had also been raised regarding the conventions to be used in scheduling government procurement commitments under the GATS. For example: Should the conventions used for the scheduling of commitments pursuant to Article XVI and XVII be used or those for the scheduling of additional commitments under Article XVIII? How should government procurement commitments be read in the light of commitments under Articles XVI and XVII? It would be useful to develop scheduling guidelines for this purpose and the latest communication from his delegation could help to identify some elements in that regard. Members could jointly develop such guidelines.

8. The representative of India recalled past discussions about the mandate in Article XIII and underscored, in that regard, that his delegation had not accepted the type of approach contained in the EC's proposal, in particular the fact that it provided for market access and national treatment. It might also be useful for the Working Party to keep in mind that, pursuant to the July Package, the uncertainty regarding the Singapore issues had largely been resolved, with the issue of transparency in government procurement being dropped from the negotiating agenda. This had occurred after long and difficult discussions, where a large number of Members had raised objections to the inclusion of transparency issues relating to government procurement. Note should be taken of that experience. The Working Party was currently discussing not only transparency, but also market access issues. The approach proposed by the EC even linked the issue directly with Article XIX. Delegations needed to keep in mind the decisions taken as part of the July Package and determine how to address the mandate in Article XIII, as this was central.

9. In considering the latest communication from the European Communities, the representative of the United States said that the attention of her delegation focused on the substance of government procurement policies, rather than on the specific sectors involved or the modes by which services were supplied. This reflected the policy reality, since procurement policies were not elaborated in view of the services sectoral classification list (MTN.GNS/W/120), the GATS' modes of supply, or a distinction between goods and services. Rather, procurement policies were developed with the more general purpose of providing broad guidance to many diverse government agencies on how to meet their individual needs. She thought that the examples provided in S/WPGR/W/48 reinforced the fact that procurement policies tended to be more cross-cutting. The examples suggested that commitments might be based upon some threshold value of contracts, that there might be reservations relating to certain domestic laws and practices, or that the scope of commitments might be limited solely to central, as opposed to local, government entities. But there was no indication that policies were inherently more relevant to one sector than another, such as architectural services, as opposed to telecommunication services. Similarly, example 5 provided by the EC shed some light on how government procurement rules could be crafted to exclude certain modes of supply, such as mode 1. While such an approach was conceivable, it seemed unlikely that it would be applied on a sector-specific basis. Scheduling commitments in the form of a GATS schedule seemed rather ill-suited to the objective. She indicated that her delegation questioned whether an approach to government procurement based upon GATS scheduling of specific commitments would not be unduly complicated. Currently, there were few, if any, sectoral or modal distinctions in procurement policies. But if governments were to be presented with a list of sectors in which to liberalize procurement and given the opportunity to distinguish between four modes of supply, this could result in an untenable level of complexity that ultimately might be less liberalizing than a more horizontal approach, such as in the GPA. The end result could be procurement policies that tried to affect specific sectors or modes of supply in response to political pressures.

10. She appreciated that the communication from the European Communities pointed to the need for careful consideration of MFN implications. As noted by the EC, Article XIII could be read to exclude government procurement from the scope of Article II, as well as Articles XVI and XVII. The communication therefore suggested that, should procurement disciplines be developed, Members be given the opportunity to list relevant MFN exemptions. Her delegation also appreciated the fact that Part III of the paper recognized that extending any new GATS rules to procurement on an MFN basis could undermine the value of commitments under the GPA. She took note of the invitation, in Part IV of the communication, to discuss procedural rules. In particular, her delegation agreed that transparency in bidding procedures was an important issue. She thought that the Note by the Secretariat might constitute a useful reference document for the Working Party's discussions in that regard. While still examining the information contained, she observed, in a preliminary manner, that the provisions reviewed did not appear to differentiate between goods and services. Her delegation had already indicated in the past that drawing such distinctions seemed difficult. The Note also demonstrated that there did not appear to be sectoral variations. While most if not all of these

agreements allowed for inclusion or exclusion of selected sectors or products through annexes, the provisions themselves did not appear to vary by sector. She looked forward to a more detailed reaction from the EC to the questions raised, including those included in JOB(04)/130.

11. With regard to the Note by the Secretariat, the representative of Canada observed that many EIAs included government procurement provisions, and that participants to these agreements were both developed and developing countries. He also thought that the document highlighted a fairly extensive commonality of procedural rules in the various agreements, which the Working Party could usefully build on. Regarding the proposal by the EC, he hoped to further pursue discussions on issues previously raised, for example scheduling approaches. For more detailed discussions, government procurement experts from capital might have to provide specific inputs or attend the meetings. With respect to comments made by the delegation of India, he hoped that the representative could clarify the relationship implied between the July Package and the mandate in Article XIII.

12. The representative of Brazil expressed support for the Indian delegation's position regarding the mandate and scope of Article XIII of the GATS. In the view of her delegation, the mandate did not provide for negotiations on market access and national treatment, but only on transparency.

13. Without prejudice to the negotiating mandate, the representative of Singapore recalled the questions raised in the informal communication from his delegation, circulated as JOB(03)/216. A critical issue to discuss was the interface between the GPA and the proposed Annex on Government Procurement in the GATS. He drew attention to the question raised in paragraph 2(e) of his delegation's communication, which noted that the annexes to the GPA contained specific non-application or reciprocity conditions among parties to that agreement, relating for example to sectors and thresholds. How could such conditions apply in the GATS context? This key question was also raised in JOB(04)/130. If one wanted to follow the precedents of the GPA, what had been suggested by the EC might not be sufficient. Regarding the Note by the Secretariat, he noted, in a preliminary manner, that the trade agreements concluded by Singapore were comprehensive and covered a wide set of trade issues. The government procurement chapters should not be seen in isolation; they were negotiated as part of an overall package. Government procurement represented between 10% and 15% of GDP in a number of countries and there was therefore a trade rationale for including chapters on government procurement in Singapore's free trade agreements. Among other benefits, government procurement disciplines helped to attain value for money for taxpayers, and benefited governments and consumers alike. The procurement provisions in these agreements were comprehensive and largely based on the GPA. They also took into account technological developments. Information on Singapore's government procurement regime could also be found in a communication circulated to this Working Party in 1997 (S/WPGR/W/11/Add.16).

14. The representative of Peru underscored that, despite the participation of some developing countries in the EIAs reviewed in the Note by the Secretariat, the nature and scope of procurement-related provisions seemed limited. This reflected the complexity of the issue in particular for developing countries. He noted that the Doha Agenda was supposed to benefit in a greater manner developing countries and considered that including the issue of market access in government procurement in the negotiations would directly affect the interests of developing countries. He wished to support the interventions made by the delegations of India and Brazil. His delegation was, however, willing to discuss the issue of transparency in government procurement.

15. The representative of Indonesia reiterated the reservations of his delegation regarding the scope of the mandate contained in Article XIII, which was limited to transparency issues and did not include MFN, market access or national treatment. The representative of Chinese Taipei, like the delegations of Singapore and the United States, highlighted that government procurement encompassed a wide range of issues, including goods, which were not covered by the GATS. With respect to the proposal by the European Communities, she thought that certain aspects remained to be

clarified and she therefore appreciated the questions circulated by the delegation of Hong Kong, China. She wondered, in particular, whether the delegation of the EC could provide more concrete examples to illustrate how government procurement commitments applied across different modes of supply. Concerning the intervention by the delegation of India, she sought clarification on the relationship established between the Singapore issue of transparency in government procurement and the mandate in the GATS.

16. The representative of Venezuela expressed concerns with respect to these negotiations. Her Minister had stressed, at the Ministerial Conference in Cancun, the need to incorporate development-related elements that would involve the population in its entirety. Tellingly, paragraph 15 of the Doha Ministerial Declaration stated that the negotiations on trade in services should be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. Her delegation considered that asymmetries between countries had increased. Developing countries still exported traditional services, while developed countries exported modern services. The importance of an assessment of trade in services for developing countries also had to be kept in mind. Asymmetries in levels of development between Members were evident and underscored the unsuitability of negotiations on issues which could negatively affect the economies of developing countries. Government procurement was a necessary public policy tool to foster equitable, democratic and environmentally sustainable development. Regarding the proposal from the EC, she supported the interventions by the delegations of India and Brazil. The General Council had decided not to pursue negotiations on transparency in government procurement under the Doha Agenda. It thus seemed illogical to raise the same issue in the GATS' context. Before discussing possible modalities for the adoption of government procurement commitments, Members should clarify the mandate under Article XIII of the GATS, as the second paragraph of Article XIII did not specify the scope of the negotiations.

17. The representative of Australia said that, since the Note by the Secretariat mentioned agreements to which his country was party, it was being further examined by his authorities. He was particularly interested in comparing the way government procurement chapters were framed in EIAs with what the European Communities were proposing. In relation to S/WPGR/W/48, he indicated that, like Canada, his delegation was interested in discussing the appropriate procedural rules.

18. The representative of Hong Kong, China said that his delegation had engaged in substantive discussions on the proposals submitted, but this was without prejudice to the question of the mandate. A discussion of the mandate did not appear fruitful at this stage and the scope of the negotiations would partly be defined in the course of the negotiations themselves. A key question was how to reconcile the MFN obligation, as well as proposed MFN exemptions, with reciprocity provisions under the GPA. Taking a commitment approach to government procurement in the GATS meant that such commitments would guarantee a minimum level of treatment that had to be accorded to all Members. MFN exemptions would only allow to grant to some Members better treatment than that provided for in the scheduled commitment. He was not yet sure how such an arrangement would fit with existing reciprocity arrangements under the GPA and sought further clarification. Regarding modal application, he sought clarification on the proposal that government procurement commitments be read together with market access and national treatment commitments already inscribed in Members' schedules. Questions (d) and (e) in JOB(04)/130 related to that particular issue. He took note of the intervention by the delegation of the United States regarding the relevance of the GATS' scheduling approach to government procurement. In that regard, it might be useful if the Secretariat prepared a summary of the type of approaches taken in EIAs with respect to the undertaking of commitments on government procurement. This might help clarify some scheduling issues.

19. The representative of Switzerland thought that the Note prepared by the Secretariat provided an important background for the discussion on procedural rules. Procedures were important to ensure effective competition in government procurement. She noted that Switzerland was party to some

agreements reviewed in the Note, including the EFTA-Mexico Agreement and the EFTA Convention. In the framework of the EFTA Convention (Article 37), Member States reaffirmed their rights and obligations under the GPA and broadened the scope of their commitments with a view to liberalizing public procurement markets in accordance with the relevant annex to the Convention. The underlying purpose was to equalize the level of obligations with that of the bilateral agreement on government procurement between Switzerland and the European Communities. Regarding the EFTA-Mexico agreement, she noted that the relevant provisions were found in Articles 56 to 68, as well as in annexes XII to XVII, and was uncertain about the information contained in the table on page 5 of the Note. The recent contributions from the EC provided a good basis to deepen discussions on government procurement; the proposed approach was easily understandable and interesting. She recalled her delegation's interest in discussing how situations where a contract covered sectors with different thresholds would be handled.

20. The representative of Malaysia expressed reservations regarding the mandate on government procurement in the GATS in the light of the July Package, which had dropped transparency in government procurement from the Doha Development Agenda. In the Working Group on Transparency in Government Procurement, developing countries had strongly opposed negotiations on this issue on the grounds that it might ultimately affect market access. Developing countries were not ready to negotiate, as government procurement was a key tool for development.

21. According to the representative of the Republic of Korea, the Note by the Secretariat suggested that procedural rules were very important elements in developing a procurement agreement. Without a common understanding on procedures, commitments might not achieve their initial purpose. She was interested in detailed answers from the delegation of the EC to questions listed in JOB(04)/130. Turning to S/WPGR/W/48, she thought, in a preliminary manner, that the proposal to add an additional column for government procurement commitments might not be as simple as envisaged. Factoring in the different governmental entities and different thresholds for each sector in regard of which a Member would assume commitments, as well as issues relating to the application of the MFN obligation and the relationship with the GPA, increased complexity. She wondered about the costs and benefits of having another agreement in addition to the GPA and the regional trade agreements.

22. Reacting to the intervention by the delegation of India, the representative of Japan believed that the mandate in paragraph 2 of Article XIII did not preclude negotiations on market access and national treatment. And it was not affected by decisions on the Singapore issues. Turning to the communication from the European Communities, he thought that the proposed approach to scheduling commitments was interesting and clear. At the same time, he understood the concerns expressed by the delegation of the United States and was open to other approaches. Regarding procuring entities, paragraph 4 of the EC communication proposed to include those covered by Article I:3 of the GATS. However, such entities were different from those covered by the GPA. He hoped for more elaboration from the EC on that point. Further, he was wondering what the EC's intentions were with respect to the development of procedural rules. Were they aiming at something similar to the disciplines found in the GPA or something different?

23. The representative of Egypt lent support to India's intervention regarding the scope of the mandate under Article XIII. For various countries, especially those that had chosen not to be part of the GPA, government procurement regulations did not differentiate between goods and services. It was thus difficult to accept the approach proposed by the EC. The representative of South Africa indicated that she preferred not to enter into discussions on this issue without first determining the scope of what was to be included. Clarity should be sought, beforehand, on the objectives to be achieved and the scope and extent of these negotiations. She agreed with the delegations of India, Brazil, Peru and Venezuela that the market access and national treatment obligations proposed by the EC did not fall within the mandate of Article XIII.

24. In a preliminary manner, the representative of China felt that the Note by the Secretariat highlighted the complexity of government procurement issues. She shared the reservations expressed by previous speakers on the scope of the mandate in Article XIII. Turning to the communication from the European Communities, she thought that the proposed approach to scheduling commitments was difficult to understand since negotiations on specific commitments proceeded pursuant to Article XIX, while negotiations on government procurement were dealt with under Article XIII. Reacting to previous interventions, the representative of the United States said that discussions on the scope of the mandate in Article XIII should not be confused with decisions taken on Singapore issues in the July Package. Delegations needed to be cautious not to mix up different issues and mandates.

25. With respect to the Note by the Secretariat, the representative of Chile said that the information contained was being further studied and stressed that government procurement disciplines in EIAs were negotiated in a broader context, as part of a trade-off. Her delegation therefore did not necessarily want to see such disciplines transposed in another context. While she did not agree with some of the views expressed on the scope of the mandate, she acknowledged that concerns existed and hoped to discuss them further. Turning to the communication from the EC, she agreed with the delegation of the Republic of Korea that, while straightforward at first sight, the proposal involved complex technical issues that required detailed analysis. A better assessment and understanding of the costs and benefits of the proposed approach was needed, especially for developing countries.

26. The representative of the Philippines recalled that his delegation had expressed reservations on the scope of the mandate under Article XIII. He thought that paragraph 2 of Article XIII was necessarily limited by paragraph 1 of the same Article. The Vienna Convention on the Law of Treaties clearly allowed to deduce that the scope of the negotiations was limited to transparency issues, and did not cover market access, MFN or national treatment. He thus wondered whether the mandate was affected by the July decision of the General Council. A possible view was that, since the Singapore issue of transparency in government procurement did not make a distinction between goods and services, the decision might also have an effect on the mandate on transparency in government procurement for services. One might then wonder the extent to which Members should continue their work in this Working Party without a clearer indication of whether the mandate in Article XIII had been somewhat modified. He did not wish to suggest a particular position, but thought that delegations had to bear this aspect in mind. If the delegation of the EC continued to believe that the mandate in Article XIII covered market access as well, it might be useful to examine the appropriate form for a continued discussion of such issues.

27. The representative of India wished to clarify his position. He noted the continued wide divergence of views about the scope of the mandate. In addition, the implications of the July Package had to be considered. On the one hand, there was the legal aspect alluded to by the delegation of the Philippines. The second aspect, which his delegation had tried to highlight, was the need for a reality check. After a prolonged period of discussion, the issue of transparency in government procurement had been dropped because of strong reservations voiced by a large number of Members. And that development had to be taken into account.

28. The representative of Canada felt that some of the options just outlined by the delegation of the Philippines were not options that his delegation had considered and he did not think that they were accurate. He supported the suggestion made by the delegation of Hong Kong, China for further work by the Secretariat on the scheduling approaches used in EIAs. The representative of Cuba wanted to associate her delegation with those that had reservations about the scope of the mandate under Article XIII. An acceptable understanding between Members should be a precondition for more technical discussions on a multilateral framework. Market access and national treatment issues were not part of the mandate. She reserved the right to come back to these issues.

29. The representative of the United States shared the assessment of the delegation of Canada regarding what she viewed as theoretical questions put forward by the delegations of the Philippines and India. She stressed that the mandate under Article XIII had always existed independent of any other mandates, including those concerning the Singapore issues. Her delegation had registered many times its interest in exploring the scope for progress with respect to the Singapore issue of transparency in government procurement, but never put any conditions or made legal linkages with the work under Article XIII. In the past, she simply had drawn attention to comparisons between proposals in this Working Party and what already had been committed by Members of the GPA, and the interest in exploring how one could proceed with transparency in government procurement in a broader sense in the WTO. Her delegation had also noted the difficulties in making distinctions between services and goods when examining proposals under Article XIII or obligations assumed under EIAs or the GPA. But this had nothing to do with the legal status of any of those mandates, which stood on their own. She could not accept, contrary to some views expressed, that Ministers could in any way have modified the mandate in Article XIII of the GATS. This certainly had not been the intent of those who took the decision in July.

30. The representative of Japan agreed that Members had decided in the July Package that no further work towards negotiations on three Singapore issues would take place within the WTO under the Doha Agenda. However, at the same time, Annex C to the July Package mandated Members to intensifying efforts to conclude negotiations in four rule-making areas, including the negotiations pursuant to Article XIII. The mandate under Article XIII thus continued to exist after the July Package. While acknowledging that delegations had different views about its exact scope, he disagreed with suggestions that it had been modified. The representative of Chinese Taipei supported the views just expressed by the delegations of Japan and the United States. She also called attention to the fact that the services section of the July Package called for intensified efforts in negotiations on Article XIII. Although her delegation was particularly interested in discussing procedural issues relating to government procurement, it was not clear, in the light of previous interventions, how the Working Party would approach this agenda item in future meetings.

31. On the issue of the negotiating mandate, the representative of the European Communities said that no delegation had the authority to modify Article XIII; rather the WTO membership would need to amend the agreement. He agreed that Article XIII had to be interpreted according to the Vienna Convention, but did not share the interpretation put forward by the delegation of the Philippines. Paragraph 2 of Article XIII said, literally, that there should be multilateral negotiations on government procurement, not that there should be multilateral negotiations on transparency in government procurement. The paragraph also provided for negotiations to take place under the GATS, and not in a different context. He agreed that paragraph 2 had to be read in its proper context, together with paragraph 1. Doing that revealed that all provisions of the GATS already applied to government procurement, except Articles II, XVI and XVII. He wondered why Members would negotiate on issues already covered by the agreement, although it was possible to build on existing obligations. If the intent had been to exclude Articles II, XVI and XVII from negotiations, the Article would have been drafted differently: it would first have provided for negotiations and, second, excluded Articles II, XVI and XVII. Further, negotiations on government procurement were consistent with the GATS' objective of progressive liberalization. Since government procurement was important in numerous services sectors, many commitments would have little value if it was excluded. It thus made sense that government procurement commitments be undertaken in as many sectors as possible.

32. He wished to associate himself with the comments of the US, Japan and Chinese Taipei on the relationship between the July Package and Article XIII. How could the General Council have decided that efforts should be intensified in the services rule-making areas, including procurement, if, according to some, the mandate in Article XIII was limited to transparency and, at the same time, negotiations on transparency in government procurement pursuant to Article XIII had been dropped? Why then would the reference to Article XIII have been kept in the services part of the July Package?

If such interpretations were true, reference to Article XIII in the July Package would have been deleted, unless the General Council implicitly agreed that the mandate in Article XIII was not limited to transparency. Regarding the link between procurement and development, he said that the proposal from his delegation provided sufficient flexibility to take into account the level of development of every Member. It was difficult to rule out, from the outset, that a government taking commitments on procurement would not get better value for money and foster the development of its own service suppliers. Lack of competition might simply perpetuate existing inefficiencies. Some developing countries exported computer services under mode 4, which was an area where extensive government procurement occurred. The countries concerned might wish to see some government procurement commitments under relevant modes. The proposal also provided for sufficient flexibility in scheduling commitments. He hoped for further clarification from the delegation of the United States regarding comments that the GATS' modes of supply and the services sectoral classification list were not well suited for government procurement.

33. The proposed additional column for government procurement commitments served to indicate whether the award procedure for contracts was open to foreigners or not. Once access to the award procedure was provided, the market access and national treatment limitations, if any, applied to the supply of the service. A separate column for government procurement made it easier for operators to assess market opportunities. On the question from the delegation of Switzerland on how to schedule the absence of government procurement commitments, he noted that his delegation was open to either inscribing an "unbound" or leaving a blank entry. That could be discussed and agreed upon in eventual scheduling guidelines for government procurement. Concerning questions on procurement contracts covering many services sectors, he did not see this as something new or as posing technical problems. Such situations occurred under other agreements on government procurement as well as within the GATS. Many services were combinations of different services. Determining the main object of each contract, based on the value of individual parts, was of key importance. The Note by the Secretariat listed various provisions in EIAs on the valuation of contracts and this might help to provide a solution. With respect to questions on whether the thresholds for the two sectors mentioned in example 6 of S/WPGR/W/48 would be added up, he thought that the answer depended on whether the two contracts could be separated. If so, each threshold would apply to the relevant part. If the contract could not be separated because the various elements were closely linked, the main object of the contract would need to be determined. Regarding the question on the procurement entities to be covered, his delegation proposed to use Article I:3 of the GATS as a reference. Any entity falling under the Article could be covered although, of course, each Member could take commitments with respect to a more limited number of entities, excluding for example the sub-federal level. He then turned to a question from the delegation of Chinese Taipei on whether a Member could violate, through measures relating to government procurement, the obligations of Article VI of the GATS that applied to sectors where specific commitments were undertaken. In his view, the Article VI applied to government procurement since it was not excluded by Article XIII, although provisions in that Article often applied only to the extent that a commitment had been undertaken. Insofar as there were no commitments on government procurement at this time, there was room to manoeuvre in applying Article VI to government procurement. Concerning a question on whether it was necessary to list the covered entities for the purpose of establishing legal certainty, he emphasized that his delegation's proposal provided ample flexibility in terms of scheduling.

34. Regarding the question by the delegation of Chinese Taipei on a hypothetical scenario where a Member had inscribed "unbound" in the market access column and "none" in the national treatment and government procurement columns, he wondered about the practical value, in such cases, of making commitments on government procurement. The issue could be addressed in negotiations, nevertheless. Regarding a question from Hong Kong, China on the interaction with the GPA, he was open to working with interested delegations on an annex on government procurement and did not foresee any significant technical problems. With respect to the definition of procurement, he referred to the definition contained in Article XIII:1. Regarding the definition of what was being procured, he

thought that this would be defined on a case-by-case basis by each procurement contract. On questions put forward by Japan on scheduling issues, he recalled that it might be useful to jointly develop relevant conventions. With respect to entities covered, he agreed that the coverage of Article I:3(a) of the GATS was different from the GPA, but noted that the proposal provided ample flexibility. Article I:3(a) was only a starting point. On whether the EC was aiming at procedural rules similar to those found in the GPA or more flexible provisions, his delegation was not opposed in principle to having more flexible rules under the GATS. In concluding, he invited delegations to put their questions in writing and have them circulated sufficiently in advance of the next meeting to allow for the preparation of appropriate answers. His delegation was surprised to see the issue of the mandate being raised again; issues of political will should not be mixed up with interpretations of Article XIII. Ministers had agreed that work under this mandate be pursued.

35. The representative of the Philippines said that the delegation of the European Communities should not be surprised about disagreement with regard to the mandate in Article XIII. Reservations to that effect had continuously been expressed. Paragraph 2 of Article XIII must not be interpreted in isolation, but in the context of paragraph 1. He saw paragraph 1 as a provision of a permanent nature which informed the interpretation of paragraph 2. On the relationship between the July Package and the mandate under Article XIII, he merely sought to better understand other delegations' views. He had not wished to put forward a particular interpretation. The mandate in Article XIII pertained to transparency in government procurement, and he had not objected to proceeding in the Working Party in accordance with that mandate. If proponents endeavoured to focus on transparency rather than market access issues, the membership might better appreciate this issue.

36. The representative of the United States thanked the delegation of the Philippines for the clarification. Given time constraints, she indicated that she would pursue discussions with the delegation of the EC on a bilateral basis. The representative of India said that, even though he had mentioned that there was a divergence regarding the mandate, he had not put forward a legal interpretation suggesting that the mandate in Article XIII was dead. Discussions had proceeded on the basis of other delegation's interpretation of what the delegation of India had said. He had simply indicated that Members should recall the experience in the July Package in terms of the EC proposal, which related not only to transparency, not only to market access, but also had a link to Article XIX.

37. The representative of Pakistan noted that asymmetries between developed and developing countries, as reflected in the context of the July Package, needed to be kept in mind when discussing government procurement in the Working Party. The representative of Hong Kong, China expanded upon his proposal for further work from the Secretariat. The discussions today had highlighted various options of how government procurement commitments could be undertaken. In that context, the Secretariat could provide some summary observations on how EIAs addressed this issue. Was it done on a sectoral or modal basis? Was a distinction drawn between goods and services?

38. In summarizing key points of the discussion, the Chairperson noted that a range of views had been expressed on the interpretation of Article XIII. A number of delegations had reiterated their position that paragraph 1 affected the scope of the negotiating mandate and wondered whether the July Package had further implications for these negotiations. Others had held the view that paragraph 2 of Article XIII did not preclude the discussion of market access issues and failed to see linkages between the July Package and discussions in the Working Party. She noted that there had been a useful technical discussion of the latest communication from the European Communities. Issues raised included the issue of MFN treatment, MFN exemptions, and the relationship to the GPA. Some concerns were also raised on the applicability of the GATS' scheduling approach to government procurement commitments. These issues warranted further discussion. She noted that delegations generally felt that the Secretariat Note contained in S/WPGR/W/49 provided useful background information. It showed that many EIAs had procurement disciplines, although some delegations had noted that commitments exchanged under such agreements were part of a more comprehensive

package and that this context had to be kept in mind. Further, pursuant to the proposal by the delegation of Hong Kong, China, she said that a Note by the Secretariat summarizing how EIAs addressed issues relating to scheduling approaches should be a helpful contribution to discussions. She proposed that the Working Party take note of statements made.

II. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

39. The Chairperson suggested that the Working Party pursue its discussion of issues raised in the informal communication from Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines and Thailand, contained in JOB(04)/4. This could be assisted by questions compiled in the Note from the Chairperson (JOB(04)/49) as well as by points raised at the informal meeting of 11 June, some of which had been mentioned in the annotated agenda. She thought that all delegations would benefit from a thorough examination of these issues, including the technical aspects involved. She noted that the group of Members from ASEAN had made available a room document providing answers to questions raised on their proposal.

40. The representative of the Philippines apologized for the late circulation of these preliminary answers. Rather than discussing the room document in detail, he wished, given time constraints, to focus in particular on issues mentioned in the annotated agenda. On acquired rights and the definition of expansionary activities, he recalled that the group of delegations for which he was speaking had originally suggested that certain expansionary activities not be covered by the concept of acquired rights, namely: establishment of additional branches or subsidiaries; acquisition, merger or consolidation with any other service supplier, whether foreign or national; supply of additional capacity of the relevant service to the domestic market; infusion of additional capital; and acquisition of additional equity. Upon presenting JOB(04)/4, the group of delegations had indicated that the list of examples could be refined. He thought that the acquisition of new facilities, new hiring, expansion of consumer base or new strategic alliances also seemed to be expansionary activities, which should be restricted during the safeguard period. Of course, nuances were necessary. For example, replacements of existing staff should not be considered an expansionary activity. All these activities would further enhance an established foreign service suppliers' market share at a time when their dominance was a factor contributing to the injury being suffered. Allowing such expansionary activities would appear to perpetuate or aggravate the situation. He considered that such items as increases in turnover or profits would fall within the ambit of acquired rights, rather than expansionary activities. A firm established in a particular market would endeavour to maximise profits, and that was an acquired right of any firm. However, increases in product range and in regional representation were expansionary activities.

41. On the question of whether discriminatory restrictions would be consistent with bilateral investment treaties (BITs) providing for national treatment of established foreign producers, including service suppliers, he said that to the extent that an emergency safeguard measure might affect the more favourable treatment accorded to a particular Member under a bilateral investment treaty, the invoking Member might either (i) exempt the other Member from the application of the safeguard, thus respecting in full the acquired rights of service suppliers of that other Member, or (ii) subject it to the non-discriminatory application of the safeguard measure. In the latter case, the invoking Member precluded certain expansionary activities of service suppliers of the other party to the BIT and assumed the risk of a legal challenge under the dispute provisions of that treaty. A fundamental question was the extent to which Members wanted bilateral treaties to prevail over their multilateral treaty obligations. He thought, from a precautionary perspective, that it might be preferable to preclude potential litigation between parties to a BIT by opting against a non-discriminatory approach. Adopting a discriminatory approach, on the other hand, would appear to perpetuate a particular MFN exemption-type situation. Recent jurisprudence under BITs might suggest an increasing pattern for tribunals to interpret MFN clauses in a broad manner. He referred to the decision in *Maffezzini vs. Spain*, which could be found on the World Bank website (ICSID Case No.

ARB/97/7). Of course, this was not to suggest that this particular decision would have probative value in any dispute under WTO law. With respect to questions on the implications of different definitions of domestic industry for a determination of injury or for the definition of acquired rights, the group of delegations for which he was speaking had thought that Article XXVIII of GATS provided ample guidance. But several delegations had expressed concerns because their domestic definitions were different. To avoid such problems, it might be left to each Member to define domestic industry in accordance with its own legislation. The possible uncertainty of such an approach would be avoided if each Member notified its national definition of domestic industry to the Council for Trade in Services. In case of a safeguard measure, any affected Member might examine whether the threshold established in the notified definition had been met. On the type of statistics to be used, he considered that national statistical offices, as well as the relevant regulatory authority for a particular sector or sub-sector, would be the first recourse. When not sufficient or adequately disaggregated, statistics kept by international organizations might provide a useful alternative or supplement. Statistics maintained by relevant professional associations might also be pertinent. He acknowledged that services trade statistics would not be consistently available in a disaggregated manner according to the four modes of supply. Other information might need to be provided as part of the determination of injury.

42. Regarding the mode-specific use of safeguard measures, he indicated, in the case of mode 3, that a Member should not seek to fully restrict further entry of foreign service suppliers as a first option. Where appropriate, a Member might impose additional conditions for establishing a commercial presence. In the case of Shangri-La, foreign service suppliers might be required to enter into joint-venture arrangements with smaller local retailers. In mode 2, in the example of ship repair and maintenance, measures might range from the imposition of fees and charges to outright prohibition so as to discourage or restrict the propensity to consume abroad. A Member seeking to invoke a safeguard measure should contemplate less trade restrictive policy approaches. In that particular case, the imposition of fees and charges might be a less trade restrictive option and, if resources were available, it could be complemented by subsidies. Concerning the concept of 'limited window', he considered that there was no justification or precedent for making distinctions between those commitments providing for actual liberalization and those merely binding existing policies. There seemed to be little value-added in further complicating the issue by drawing such distinctions. The link between the proposed ESM and liberalization should not be overly formalized. An ESM would make it easier to convince domestic constituencies to accept greater liberalization. His group was open to ideas on how to further elaborate this concept.

43. The representative of Japan said that he needed more time to study the room document. On acquired rights, he thought that activities such as the establishment of new branches or acquisition and mergers formed part of the initial business plan of a company investing in a foreign country. Such activities were essential to recoup the initial cost of investment and generate revenue for shareholders. Permitting Members to stop such activities would deter foreign investment. Concerning the definition of domestic industry, he doubted that defining domestic industry on the basis of the percentage of foreign capital participation would help achieve the objectives of the proponents.

44. The representative of Hong Kong, China said that he would further reflect on the room document. On situations justifying safeguards, the examples hitherto provided - Shangri-La and the optometrists - had not clarified the more fundamental issue of why an ESM was called for. At best, the examples depicted situations where some Members might want to use an ESM, but not situations where the use of an ESM would be justified. For instance, in the Shangri-La example, what had been unforeseen at the time of undertaking commitments? Why would an ESM be needed when it was acknowledged that other policies would have to be adopted to address a situation that was primarily structural in nature? On the example of optometrists, he remained uncertain about the real cause of the problem. On the one hand, the main professional services provided by optometrists, i.e. eye examination, were not subject to any commitment and were not affected by the influx of foreign

services. On the other hand, the business of preparing and selling glasses, the most lucrative part of the business, was covered by the liberalization commitment under retail services and might have been foreseen in the first instance. An analogy might be drawn with pharmacists, where very often the dichotomy between their services of advising on the need for medicine and the more lucrative business of selling medicine called for regulatory responses, such as the institution of professional standards to ensure that the sale of medicines was accompanied by a certain degree of professional expertise, including for consumer protection.

45. On the link to progressive liberalization, he did not consider that the room document suggested a concrete, substantive and positive linkage to liberalization. The question was whether the membership would benefit overall in terms of progressive liberalization. On the one hand, an ESM would allow roll-back of liberalization commitments on a temporary basis, but on the other hand there might not be any substantive improvement to the package that was being negotiated. He noted the analogy being drawn with the history of the goods safeguards, but recalled that his delegation had serious misgivings about this mechanism. Perhaps a more appropriate analogy was a positive effect that might be expected in the market access negotiations, but that did not appear to be the case so far in services. Finally, regarding the concepts of acquired rights and domestic industry, he did not think that these were entirely new issues given the existence of various economic needs tests (ENTs) in each mode of supply. Even though they served a different purpose, ENTs did not specify the type of quantitative limitation that could be imposed as a result. It might be useful to draw on the experience of Members that had ENTs. What type of measures did they impose to stop new economic activities?

46. The representative of China wished to comment on the point made by the delegation of Japan regarding the effect of an ESM on investment. Article XXI of the GATS allowed a Member to withdraw its commitments permanently, which certainly had an effect on investment. Therefore, she did not think that an ESM could be said to be unnecessary or undesirable because of its effects on investment. Since a permanent withdrawal of commitments was feasible, it should also be feasible to have an ESM to suspend commitments temporarily.

47. The representative of the European Communities signalled that he would come back to the written answers at the next meeting. He could not agree with the suggestion to leave it to each Member to determine its own concept of domestic industry. On situations justifying a safeguard, his delegation considered that neither of the two examples justified a safeguard. Such situations could either be dealt with through domestic regulation or have been foreseen at the time of undertaking a commitment. There also remained the option of withdrawing a commitment through Article XXI. On the link to progressive liberalization, he thought, assuming that an appropriate example of a safeguard situation could be found, that a positive linkage would have to be demonstrated. He failed to see that a Member having made commitments subject to quantitative restrictions or other limitations should be able to invoke a safeguard.

48. The representative of Canada hoped to come back with questions at the next meeting. However, he wondered why the room document only focused on the questions listed in the Chairperson's annotated agenda. His authorities thought that it would be useful to address other issues raised in past meetings. For example, his delegation had asked a question on the role that domestic regulation and capital markets would play in restoring equilibrium in the absence of an ESM. He hoped to get a response from the group of ASEAN Members. The Chairperson explained that the room document from the group of ASEAN Members was in response to the compilation of questions contained in JOB(04)/49, which was an indicative list of questions raised. Delegations might of course want to raise further questions.

49. The representative of Chile expressed concerns with the approach proposed for the definition of domestic industry. A problem with the application of trade remedy law in the goods area related to the degree of discretion implied. Proposing that domestic industry be defined by each Member and

linking such a definition to the determination of injury resulted in a high level of discretion, which was a concern to investors and service exporters. In the case of optometrists, consumer interests were highly important since liberalization led to lower prices. She also wondered whether the proponents had thought of an example of safeguard situation for mode 1 and wondered about the type of measures envisioned. While she recognized that there might be difficulties in distinguishing between commitments providing for actual liberalization and those binding the status quo, she thought that the approach proposed posed problems with respect to the concept of unforeseen circumstances or the length of the 'limited window'. In addition, she shared concerns expressed by others regarding the definition of expansionary activities. Finally, with respect to mode 4, she had concerns about a quota being imposed on top of a quota and about how the number of suppliers below the average level of a recent representative period would be defined. How could it be calculated in the first two or three years of liberalization if entry of suppliers had not been allowed before?

50. In a preliminary manner, the representative of Australia thought that the example of optometry services was not entirely convincing. It was difficult to distinguish between foreign and domestic suppliers when both were supplying the service from the same territory. A Member making a commitment on retail services still had the option of qualification and licensing measures to regulate who could perform certain types of activities. He had strong reservations about the idea of leaving it to each Member to define domestic industry. Allowing a Member to unilaterally change its definition would have implications on the type of safeguard measures imposed.

51. The representative of Switzerland said that she would come back to the room document after further examination. On acquired rights, the group of ASEAN Member had tried to address previous criticism about adverse effects of an ESM on legal certainty and predictability of market liberalization undertaken in negotiations based on a balanced exchange of concessions. A number of countries wanted to ensure that investment conditions for entering their market were liberal, and the GATS was the main instrument for concretizing that policy, as it was multilateral and legally binding. However, an ESM would conflict with such policy approach by making the legal environment much less certain, both for pre-established foreign service suppliers and for those that wanted to enter new markets. Second, on the link to progressive liberalization, she did not think that the room document addressed the issue of a positive linkage. She had suggested that the proponents identify the particular commitments that an ESM might prompt them to undertake and which they would not have undertaken otherwise. She hoped that the group of Members from ASEAN could elaborate in this regard.

52. The representative of Japan disagreed with the argument made by the delegation of China regarding Article XXI. Commitments could be modified if a certain procedure was followed. Such procedures provided for a certain degree of legal stability. It would be much easier to modify commitments under the proposed ESM. A key difference between trade in goods and trade in services pertained to mode 3, where the importance of legal stability was even greater. When investing in a foreign country, a longer-term outlook was necessary. The fact that safeguard measures were allowed in goods did not provide justification for safeguards in services. Each Member could inscribe certain conditions in its schedule. This was a matter for negotiation, like ENTs. It would be harmful to investments to have an agreement on safeguard measures.

53. The representative of Brazil wished to emphasize the importance, especially for developing country Members, of having more flexible mechanisms to modify commitments in emergency situations. The possibility to use an ESM, which would be more flexible than Article XXI, would provide a safer regulatory context and even a more stable legal context, with clear rules applying only to emergency situations. This could stimulate countries, especially developing ones, to schedule more commitments. The representative of China did not think that it could be said that an ESM was not needed because it would have an effect on investment. Permanent withdrawal of commitments under Article XXI had larger effects on investment. While certain procedures needed to be followed under

Article XXI, certain rules and procedures, still to be negotiated, would also need to be followed under an ESM.

54. The representative of the Philippines wondered whether questions raised at this meeting could be compiled in another Note from the Chairperson so as to facilitate the provision of answers. On the comments from Japan, he said that the list of expansionary activities provided was preliminary and was intended to spark discussions. He welcomed comments to the effect that mergers and acquisitions were part of the normal business plan of companies and indicated that the group of delegations he was speaking for would continue to reflect on these issues. Where certain established foreign service suppliers had caused injury, allowing these suppliers to establish new branches or make acquisitions during that critical period of time might aggravate the situation. They should thus be precluded from expansionary activities in the relevant period. Outright prohibition of entry or participation in the market should be the last resort, as other measures should be examined beforehand. Turning to another comment from the delegation of Japan, he said that if a Member defined domestic industry as including all established suppliers, whether foreign or national, the foreign suppliers already established could continue to merge, expand, or make acquisitions. The only effect of a safeguard measure would then be on foreign service supplier who had not yet entered the market. The situation would be different if a Member defined domestic industry as including solely domestically-owned suppliers. In that situation, established foreign service suppliers would be subject to a safeguard measure, keeping in mind that certain acquired rights would be protected. The notion of expansionary activities was relevant in that context. With respect to Article XXI, he underscored that an ESM would provide for a temporary modification or withdrawal of commitments, whereas Article XXI provided for a permanent one. Article XXI required compensation to be offered, and that was a key distinction with the proposed ESM, where no compensation was required during an initial period of three years. A degree of legal stability and certainty was nevertheless maintained. There would be more instability in an Article XXI situation in which there was continued disagreement on the level of compensation to be granted.

55. Turning to questions from the delegation of Hong Kong, China, he indicated that in the Shangri-La example the authorities might not have foreseen, in making the commitment, the pace and extent of foreigners' impact on the domestic market. By way of example, the authorities might have anticipated that foreign suppliers would reach a market share of 50% over 5 years, but they actually reached 60-70% over a period of three years. Regarding the link to progressive liberalization, he indicated that domestic consultations had suggested that an ESM might contribute to undertaking more liberal commitments. He was open to listening to delegations on how to formalize such a linkage. On comments made to the effect that the Shangri-La example represented a problem of a structural nature that could not be addressed by a safeguard measure, he felt it was not fruitful to try to define a 'structural problem'. He also wondered why a temporary reprieve in the form of a safeguard measure could not form part of a broader policy package undertaken to address any such problem. Regulatory responses were not always sufficient. On comments by the delegation of Australia, he considered that fears relating to Members unilaterally changing their definition of domestic industry could be addressed by a notification procedure. An additional requirement could prohibit safeguard measures from being imposed during a given period of time after a change in the definition of domestic industry. On the question put by Canada, he noted that there would be a role for regulatory authorities in addressing the situation. Indeed, his group of delegations advocated a procedure prompting Members to see whether less trade-restrictive policy tools, such as domestic regulations, were available. If such regulatory measures were not sufficient, or not deemed sufficient, safeguard measures could be used as a complement. He hoped to be able to provide further written answers upon receiving questions in writing.

56. The Chairperson urged delegations to forward their questions to the group of Members from ASEAN. A decision on whether to draw up a new list could be taken at a later time, if necessary.

57. The representative of Japan wished to react to statements from the delegations of China and the Philippines. He underscored that a Member could only modify commitments pursuant to Article XXI if an agreement had been reached with affected Members or if an arbitration had been made. In the case of a waiver, a decision by the Ministerial Conference was needed. Under the proposed ESM, however, commitments could be modified and affected Members could only see if this was done properly after the modification had occurred. This was a key difference from Article XXI or Article IX of the Marrakesh Agreement, and it had implications for legal stability.

58. The Chairperson said that the room document from the group of delegations from ASEAN helped to focus discussions. Areas that could usefully be pursued further included issues of domestic industry and acquired rights, situations justifying safeguard actions, and links between an ESM and progressive liberalization. She invited the Working Party to take note of the comments made.

III. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

59. The Chairperson suggested that delegations focus their attention on the recent communication from the delegation of Hong Kong, China, contained in JOB(04)/127. It put forward some thoughts and proposals on the possible way forward on such aspects as the information exchange, the definition of subsidies or trade distortions. As requested, the Secretariat had produced an update of previous Notes on subsidy-related limitations in schedules, circulated as S/WPGR/W/13/Add.2. The Note, covering the period from June 2000 to the present, was brief and self-explanatory. Pursuant to a query from delegations at the last meeting, it observed that no definition of subsidies could be identified in schedules. Delegations might also want to further comment on issues raised in past communications from Chinese Taipei on the definition of subsidies and from Chile on the list of examples of subsidy programmes, or to pursue past discussions on export subsidies.

60. The representative of Hong Kong, China believed that the negotiations on subsidies had picked up momentum over the last year and welcomed contributions by a number of delegations. The communication from his delegation was intended to contribute to this process. He did not wish to initiate a procedural debate; the negotiations should be driven primarily by contributions from Members. Discussions on subsidies had so far focused on four main aspects. The first was the information exchange required under Article XV. The second was the information on subsidies from other sources, as a supplement to the information exchange. The third was the discussion on the definition of subsidies, which partly responded to the views of some delegations that the lack of a definition might have hampered the information exchange as well as further discussions on the development of any necessary disciplines. The fourth, which was more recently introduced by a contribution from Chile, related to the trade distortiveness of subsidies. On the information exchange, he noted that Article XV:1 provided that all Members should exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers. The mandate was sufficiently clear. So far, only four Members had provided such information, despite efforts by various delegations to facilitate the information exchange through the preparation of a revised questionnaire, the use of alternative definitions of subsidies, or the gradual provision of partial information. Lack of engagement in the information exchange was a cause for concern not only because it amounted to an unfulfilled mandate, but also because it perpetuated the existing lack of transparency. Delegations that had not yet shared information could provide an indicative timeframe for that contribution. He also suggested that Members explain the difficulties encountered so that these could be addressed. Members that had listed limitations relating to subsidies in their schedules could explain what subsidy programmes were covered by such limitations. He noted that information on subsidies should in any event be readily available upon request through enquiry points pursuant to Article III. Members that had subsidies identified in their trade policy reviews, as compiled by the Secretariat in S/WPGR/W/25 and addenda, could share information about such programmes. He emphasized that, should the information exchange remain unsuccessful, it would be necessary to

request the Chairperson to highlight such failure in her report to the Special Session of the Council for Trade in Services, with a view to seeking further guidance on how to proceed.

61. Concerning other sources of information on subsidies, he hoped that the Chairperson could continue to report on the status of work being done by UNCTAD and that the Secretariat could keep the Working Party informed of any other sources relating to subsidies in services. Members could also draw the Working Party's attention to any information of relevance. On the definition of subsidies, the contributions from Members had provided a good basis for further discussions. In order to move forward, Members that had subsidy-related limitations in their schedules could share the definitions that they used or the scope of such limitations. Members that were parties to economic integration agreements containing provisions on services subsidies, as reflected in S/WPGR/W/46, could also indicate the definitions used for such purposes. If the definitions used in schedules or EIAs were not deemed relevant for the purpose of the negotiations under Article XV, delegations could explain why. He also wished to suggest that the Secretariat compile, on the basis of previous contributions and discussions, a composite note on issues to be considered for a definition of subsidies. On the issue of trade distortion, Members with subsidies identified in their trade policy reports, as well as those that were parties to EIAs containing disciplines on services subsidies, could share their views on whether such subsidies were trade distortive and on why they had wanted to include relevant disciplines in EIAs, and how such disciplines were operationalized. In providing information pursuant to the information exchange, delegations might comment on the possible trade distortive effects and on the need for disciplines. In that context, Members might wish to provide information on the policy objectives behind subsidy programmes and whether such objectives impinged on consideration of trade distortiveness. He also invited those Members that had raised subsidy-related issues in negotiating proposals to Special Sessions of the Council for Trade in Services to elaborate on these issues and indicate whether and how Article XV negotiations might be relevant. Delegations might also want to comment on subsidies that played a particular role in relation to the development programmes of developing countries.

62. In a preliminary manner, the representative of the European Communities wished to clarify a few points. He agreed that Article XV:1 contained an obligation to exchange information, but, as previously indicated, he did not think that exchanging information was tantamount to notifying all subsidies. It was not appropriate to start with a general notification exercise. Regarding the suggestions made in JOB(04)/127, he noted that the questionnaire had not been very popular, including for those that had proposed it. The reference in paragraph 12 of the communication from Hong Kong, China to the information provided by the European Communities on its own regime for state aid should be considered as falling under the exchange of information, and not under other sources of information. A communication from the European Communities, circulated as Job. 4302 from 6 July 2000, had responded to his delegation's obligation to exchange information with other WTO Members. If the ambiguity between notification and exchange of information could be resolved, many more Members might make similar contributions. He noted that paragraph 9 of JOB(04)/127 suggested that the Chairperson of the WPGR raise the issue at the Special Session of the Council for Trade in Services. He was not convinced that such process was the most appropriate, as this issue pertained to implementation more than to negotiations. Such reports might more appropriately be made to the Regular Session of the Council for Trade in Services. On the definition of subsidies, he thought that Members with subsidy-related limitations in their schedules would most likely provide the broadest possible definition of such limitations. For obvious reasons, nobody would want to create problems with respect to the interpretation of its schedule. He was not sure that suggestions regarding definitions of subsidies in EIAs would necessarily be very useful, at least as far as the European Union was concerned, since the relevant agreements provided for maximal integration, with full liberalization. In such cases, the concept of state aid had been used, as explained in the previous EC communication on the Community regime. Finally, regarding the issue of trade distortion, he believed that the key point that was not addressed in the communication was whether Members detecting distortions caused by subsidies or proposing relevant disciplines had made use of

the consultations provisions of Article XV:2, thus indicating that they considered themselves adversely affected by a subsidy of another Member. He was interested in the results of such consultations, if any, and thought that relevant information might help to advance discussions in a concrete and useful manner.

63. The representative of the United States warned that without an agreed definition of what constituted a subsidy Members might well be wasting their time and resources to develop lists of subsidies that in the end might not be considered subsidies. Vastly different lists of subsidies might be submitted, with some Members reporting substantially fewer subsidies than others. The fact that one Member reported fewer subsidies might simply be the result of a Member having defined subsidies more narrowly. Resources could be more productively used to contribute analytical papers that could help assess whether subsidies were more likely to be applied in certain sectors or whether certain kinds of subsidies might be more relevant to trade than others. Such contributions might be instrumental in reducing the scope of issues to be confronted and thereby focusing discussions. Further, her delegation disagreed with Hong Kong, China's interpretation of Article XV:1 with respect to the exchange of information. The relevant mandate was qualified by the terms "for the purpose of such negotiations". In addition, it did not call for the information to be provided in advance of the negotiations. It would not make sense for Members to provide information without having some common understanding of what would constitute a relevant subsidy. Consequently, there was no obligation to embark upon an exhaustive information exchange of the kind described by the delegation of Hong Kong, China.

64. On the Note by the Secretariat, she wished to point out that the reservations listed appeared to apply either to all sectors or to sectors where direct and indirect government participation was common for public welfare reasons, such as in health and education services. Moreover, Members had not specified whether they maintained subsidies, but had rather sought to ensure that the commitments did not cover subsidies, should any exist. This could suggest that Members were uncertain about the kind of policies that could constitute services subsidies. If no subsidies were actually granted, she further doubted whether an inscription in the market access or national treatment columns would be considered to constitute a restriction. In domestic consultations, her delegation had encountered confusion within the education community on whether research grants or student loans would constitute a subsidy. Since every country maintained some level of public support for education, healthcare or urban transportation, it might not be wise to include certain public welfare policies in any discussions of trade-related subsidies.

65. The representative of Mexico said that the communication from Hong Kong, China was being further examined by his authorities. In his view, transparency and the exchange of information were key elements of these negotiations. However, they were not preconditions. Discussions on the various aspects of these negotiations should continue independently of the information gathered. Such information, as well as that which could be provided by the Secretariat or observer organizations could obviously be very helpful, but, as signalled by the delegation of the United States, progress also depended on Members making significantly more analytical contributions.

66. The representative of Switzerland considered, on the basis of S/WPGR/W/13 and addenda, that more than 35 Members had entered limitations regarding subsidies. The absence of an agreed definition of subsidy did not seem to pose problems for the scheduling and implementation of these limitations. This should be borne in mind in future work. Further, she expressed support for the communication from Hong Kong, China and thought that the invitation to Members, in paragraph 3, to present concrete proposals was of crucial importance. On the information exchange, she endorsed the suggestion, in paragraph 7(a), to set an indicative timeframe by which information would be provided. Her delegation considered that the mandate entailed a clear obligation to exchange information concerning all subsidies related to trade in services. Setting a concrete timeframe seemed the most appropriate way to make progress and she invited delegations to fulfil the obligation to

exchange information by the second cluster of next year. She suggested that the Chairperson put on record that the information exchange had to be fulfilled by such proposed timeframe. Substantive work relating to these negotiations could proceed simultaneously with the information exchange.

67. She reiterated that export subsidies were the most harmful type of subsidy; their purpose was always to affect trade and they distorted competition in third markets. What would be the value of securing market access commitments in sectors where competition was being distorted by operators of third countries subsidized by their home governments? Such practices could create problems for all Members. In addition, there was no obligation to schedule export subsidies if these were granted on a national treatment basis. There was a clear need for action on this issue. On definition, she believed that export subsidies in services could, in general terms, be circumscribed as support measures of a Member granted to a service provider in respect of, or in direct connection with, the supply of a service in the territory of another Member. The ASCM defined export subsidies as subsidies contingent upon export performance and Annex 1 to that agreement provided an illustrative list of such subsidies. She thought that it would be helpful to examine whether a similar concept could also be used in the context of services.

68. The representative of Chinese Taipei welcomed the contribution from the delegation of Hong Kong, China. She saw value in the suggestion to set a timeframe by which Members would provide the relevant information. However, such information should assist the Working Party in assessing issues relating to the development of disciplines on subsidies, but not be used for negotiations or disputes in the future, since no disciplines had been developed under Article XV. Regarding the previous communication from her delegation, she wished to emphasize that it was designed to test, with the use of concrete examples, whether and to what extent the ASCM could provide a good basis for developing a working definition of subsidies. Dealing with definitions was inevitable if disciplines were to be developed. However, this was not necessarily the first priority. The issues of definition and trade distortion could be discussed in parallel, as they were separate, although related, concepts. There was no particular reason why the two concepts should be linked up for the purpose of analysis as part of negotiations. Regarding Switzerland's intervention, she thought that export subsidies could be a priority issue. Turning to the discussion at the last meeting of the first example listed in the communication from Chile, in particular the issue of who would be the beneficiaries of the programme, she noted that the companies concerned needed to have exportable services with a local content of at least 50% and thought that this gave an advantage to domestic services, compared with services provided from abroad. It would cause unfair competition in third markets. Export subsidies in general had trade distortive effects, in particular under mode 1, which was a situation comparable to trade in goods. However, it was difficult to see how the programme's requirement that 50% of the exported service be of domestic content could be achieved in relation to modes 3 or 4.

69. The representative of Thailand considered subsidies an important area of rule-making. She hoped that a definition could be reached and the extent to which subsidies existed in services industries and distorted trade could be determined. The issues of definition and trade distortion could be examined separately. Notwithstanding their policy goals, subsidies altered the conditions of competition and interfered with price signals. Nevertheless, she acknowledged that the effects depended on the form of subsidy, the market structure, the eligibility conditions, and how they interacted with other policies. Turning to the Note by the Secretariat, she considered that the subsidy-related entries in schedules, while not providing much information on definition, revealed certain policy intentions. For example, in mode 3, only those companies that were present on the territory were eligible for subsidies. In mode 4, only citizens and/or residents were eligible. Things were less clear for modes 1 and 2. The entries also highlighted the sectors and areas that were of particular concern to some Members, such as research and development, audiovisual, and education. Examining these sectors could be a good starting point.

70. The representative of Chile hoped that the list of suggestions contained in the communication from Hong Kong, China could motivate Members to provide information on their subsidies. Her delegation hoped to do so at the next meeting. This was an information exchange, not a notification exercise. It could help to provide an inventory of subsidies which could then be analyzed to assess trade distortive effects. Eventually, the Working Party might be able to develop some disciplines. On the other hand, further analysis could also permit to highlight programmes meeting certain public policy objectives. More information was needed in order to proceed to such analysis. Like Switzerland, she considered that setting a timeframe for the information exchange was a practical way to advance the matter. She also thought that it would be useful to know the status of the work carried out by UNCTAD and to be informed of other relevant sources of information. She called on Members to submit communications on specific issues, in particular regarding definition or trade distortion. She hoped to deepen the discussion of the first examples contained in her delegation's communication at the next meeting.

71. On the communication from the delegation of Hong Kong, China, the representative of Australia thought that the suggestion for more focused work on the issues of definition and trade distortion was particularly useful. His delegation considered that priority should be given to the definition of subsidy. Otherwise, the chicken-and-egg problem would persist and complicate the exchange of information. A common definition would allow Members to exchange information in earnest without being required to subjectively evaluate what subsidies created trade distortions. He wondered whether the communication from Hong Kong, China did not place too much emphasis on the concept of trade distortion, rather than on the need for a definition.

72. The representative of the Republic of Korea expressed general support for the proposals in JOB(04)/127 on the information exchange and wanted to be kept informed of the status of UNCTAD's work on subsidies. She recalled her view that the subsidy definition of the ASCM could be used as it was. No specific objections had been voiced. Since it had been suggested that the definition of the ASCM be used as a guide for the information exchange, those who wished to use a different definition could explain why. On the issue of export subsidies, she supported the idea of closely examining the illustrative list of export subsidies found in Annex 1 to the ASCM to see how this could be applied in services. With respect to the discussion at the last meeting on the issue of the conferment of a benefit, she did not think that a modal distinction could be made when providing a subsidy. The beneficiary was the company that supplied services, whether that beneficiary decided to export services under modes 1, 2, 3 or 4. In this regard, government support to trade associations, part of Chile's first example, might not fall within the definition of direct beneficiaries because these were not service suppliers *per se*. They rather supported their members through marketing and exhibition activities, which were not directly related to export performance. Such types of indirect support were not in the illustrative list in the ASCM. Regarding trade distortive effects, she noted that in the case of mode 3 the subsidy aimed to support the company to go abroad and establish subsidiaries. The subsidies used might include insurance guarantees for outward foreign investment, or income or corporate tax reductions for related remittances. At the same time, the company might benefit from investment incentives offered by the host country. In such cases, how could trade distortive effects be determined? The situation was similar for mode 4. While government support for mode 4 exports would fall within the ambit of export subsidies, subsidies to workers might be motivated by social policies to alleviate unemployment problems. At the same time, since Members had scheduled such policy tools as ENTs and labour market tests, it seemed difficult to assess the degree of trade distortive effects. With respect to definitions of services subsidies found in schedules or EIAs, she did not think that her delegation had envisioned specific definitions. There was thus ample room for discussing definitions to be used in the future.

73. The representative of the United States added that the definition in the ASCM seemed to be an appropriate starting point for the purpose of comparison. The representative of Singapore said that he would revert to the communication from Hong Kong, China at a later time. An important point

highlighted in previous interventions was the role that subsidies played in relation to legitimate public policy objectives. This was already envisaged in paragraph 1 of Article XV, which specified that negotiations should recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. On export subsidies, he recalled that a number of commentators had said that the GATS might not necessarily cover export-related measures. He still was not sure whether or how export subsidies were captured by the negotiating mandate under Article XV. Finally, like Australia, he emphasized the need to focus on the definition of subsidy, using, as suggested by the US, the ASCM as a possible starting point.

74. The representative of El Salvador expressed concerns regarding paragraphs 7(f), 10(a) and 18(a) of the communication from the delegation of Hong Kong, China. Since there was no agreed definition of subsidies, her delegation had reservations regarding the information contained in the Note by the Secretariat circulated as S/WPGR/W/25 and addenda. Consequently, she did not think that it was yet appropriate to try to further clarify its content. The representative of Guatemala shared Hong Kong, China's concerns with respect to the non-fulfilment of the information exchange. Lack of clarity with respect to subsidies and their effects produced uncertainty, which could even have an impact on the scheduling of commitments. He considered that it would be useful to be informed of the results of the study on services subsidies conducted by UNCTAD, and hoped that it could be presented in the Working Party.

75. On the Note by the Secretariat contained in S/WPGR/W/13/Add.2, the representative of China sought clarification regarding the statement in paragraph 2 to the effect that discriminatory subsidies might also be granted in situations where no commitments had been undertaken. She wondered whether that meant that certain subsidies were provided to domestic service suppliers even if not inscribed in Members' schedules. Regarding the communication from the delegation of Hong Kong, China, she wished in particular to echo the proposal in paragraphs 13(a) and 13(b) concerning the study by UNCTAD and the provision of additional sources of information by the Secretariat. A representative of the Secretariat clarified that the scheduling of limitations to national treatment in schedules was intended to provide cover for discriminatory effects of subsidies in situations where national treatment commitments were undertaken. In sectors or sub-sectors where such commitments had not been undertaken, there was no requirement to list such measures.

76. The representative of Hong Kong, China wished to react to points made. He considered that the suggestion by the delegation of Switzerland regarding a timeframe for the information exchange was quite useful, as it could help authorities to plan ahead. On the definition of subsidy, the suggestions in his delegation's communication were aimed at avoiding the chicken-and-egg syndrome. He agreed with the delegation of Australia that it would be important to move forward on the definition of subsidy, but felt that the various issues under discussion under this agenda item had to proceed in parallel. The discussion on definition or trade distortion should not be conditioned upon the information exchange, or vice-versa. In order to build on the work done so far, he had requested the Secretariat to produce a composite note on the issue of definition. Responding to a comment from the delegation of Singapore, he believed that export subsidies were clearly within the scope of the GATS and of the mandate under Article XV. First, Article XV said that Members should enter into negotiations with a view to developing the necessary multilateral disciplines to avoid trade distortive effects of subsidies. To the extent that export subsidies might have trade distortive effects, these should be addressed in the negotiations. Second, nothing in Article I:1 of the GATS confined the meaning of measures affecting trade in services solely to measures affecting imports.

77. He would reflect further on the remarks by the delegation of the European Communities and comment more extensively at a future meeting. He did not agree that issues relating to the information exchange were within the ambit of the Regular Session rather than the Special Session of the Council for Trade in Services. Negotiations under Article XV were part of the services

negotiations, which were overseen by the Special Session. They included the information exchange, as exemplified by the fact that such article specified that the information exchange was for the purpose of negotiations. On comments regarding paragraph 2 of Article XV, he noted that he also would be pleased if any delegation wished to share experience in that regard. Referring to earlier discussions on the scope of the mandate under Article XIII, he cautioned against reading too much into Article XV:2 when entering into negotiations pursuant to Article XV:1. Turning to comments from the delegation of the United States, he noted that he had encouraged delegations to make concrete proposals and did not think that their discussion should be conditional on the information exchange. He took note of the difficulties affecting the information exchange, but hoped that the delegation of the United States could further explain what, in their view, should be done in respect of the last sentence of paragraph 1 of Article XV. Regarding comments on the need to recognize the role of subsidies in relation to public policy objectives, he said that this aspect had to be taken into account in any future discussions on trade distortiveness. His delegation intended to provide further thoughts on this issue.

78. The representative of Canada said that the proposals and suggestions raised today would be carefully examined by his authorities. Accordingly, he did not wish to express any definitive views at this stage. An informal meeting in advance of the next formal meeting could be held to discuss the way forward, if needed. The representative of the United States indicated that she did not share the interpretation of the delegation of Hong Kong, China with respect to the relationship between the negotiations in this Working Party and those pursuant to Article XIX. These were parallel negotiations governed by different mandates. She could not support the proposal concerning the setting of a timeframe for the information exchange, as it would in effect amend Article XV:1.

79. The representative of the European Communities wished to react to the latest intervention by the delegation of Hong Kong, China. He could not see any relation between the points made regarding the interpretation of the different mandates. Rather, he had noted that a number of proposals had been put forward relating to the concept of trade distortion. The best way to gather information on this issue seemed to be to ask Members that had encountered problems because of subsidies granted by others to inform the Working Party of their experience under Article XV:2. With respect to the suggestion relating to the Chairperson's report, he noted that the negotiations were under the umbrella of the Special Session. However, the problem raised related to the implementation of an obligation that had been in effect since 1994 and not to the ongoing negotiations. Issues of implementation were dealt with in the Regular Session.

80. In summing up discussions, the Chairperson noted that many procedural and substantive suggestions had been made in the light of the informal communication from the delegation of Hong Kong, China, including on timeframe and on further work by the Secretariat. She urged all delegations to carefully consider these suggestions in preparation for the next meeting. On the study by UNCTAD, she undertook to let the membership know when the document would be available. On information exchange, useful ideas suggesting some flexibility regarding the relevant format were discussed; delegations might want to exhaust existing resources in the first instance. She also considered that the proponents of the discussions on subsidies might want to set an example, and commended the delegation of Chile for intending to submit information at the next meeting. Hopefully others would do the same. She noted that some delegations had called for concrete negotiating proposals and that a range of views had been expressed regarding the nature of the information exchange. A delegation, supported by others, had called for a concrete timeframe for the submission of information, while others placed higher priority on the development of a definition. A large number of delegations would prefer the various aspects to proceed in tandem. There seemed to be general agreement that the definition of subsidy in the ASCM provided a useful starting point for further discussion on this issue. She proposed that the Working Party take note of statements made.

IV. DATE OF THE NEXT MEETING

81. The Chairperson indicated that the Working Party would hold its next formal meeting during the next cluster of services meetings, the exact date of which would be announced in due course.

V. OTHER BUSINESS

82. The representative of Chile wished to draw the attention of delegations to the discussion in the Negotiating Group on Rules, the following day, of a communication from Chile on Article V of the GATS.

Working Party on GATS Rules

REPORT OF THE MEETING OF 23 JUNE 2004

Note by the Secretariat¹

1. The meeting of the Working Party on GATS Rules was chaired by Ms. Clare Kelly, from New Zealand. The agenda for the meeting, contained in WTO/AIR/2337, included the following items: subsidies, government procurement, emergency safeguard measures, date of the next meeting and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda contained in JOB(04)/74.
2. The Chairperson noted that the order of the items on the agenda had been modified and indicated her intent to continue to do so, taking into account a variety of factors. She did not think that the order of the items should have any substantive bearing. Delegations needed to discipline themselves, including regarding the length of their interventions, so that all issues could be appropriately discussed. Even though the current meeting of the Working Party would last only a half-day, the informal meeting of 11 June had permitted to alleviate some of the time pressure. The agenda was adopted.
3. The Chairperson indicated that she had held, since assuming her new position, informal discussions with many delegations regarding the work of the Working Party. It was evident that not all delegations attached the same priority to each of the three issues under the responsibility of the Working Party. However, she thought that all delegations did want to thoroughly examine the three topics, discuss various technical issues without prejudging any given outcome, and avoid getting tangled in procedural problems. She would pursue consultations with delegations as she had not yet been able to talk to all.
4. The Chairperson also recalled that no decision had been taken at the informal meeting on whether the Secretariat should prepare a non-attributable and informal summary of discussions at that meeting. Indeed, a delegation had expressed concerns regarding how such informal summaries could be interpreted. The Chairperson believed that a summary would help keep track of the Working Party's discussions and avoid repetition. In addition, it had to be kept in mind that many developing countries had limited resources and could not attend the informal meeting. A summary might also be of assistance to them. To alleviate the concerns expressed, she suggested that the non-attributable summary by the Secretariat take the form of a non-paper instead of a JOB document. The representative of Hong Kong, China enquired about the difference between a summary in the form of a non-paper as opposed to a summary in the form of a JOB document, as had typically been done in the past. The Chairperson noted that a key difference was that the status of the proposed summary would be like that of a room document and, as such, it would not appear on the document distribution facility. It would however be translated and distributed to delegations. Since there were no objections, she suggested that the Working Party proceed as suggested. It was so agreed.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

I. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

5. The Chairperson said that discussions during the last meeting had focused on the list of examples of subsidy programmes provided by the delegation of Chile in the informal document JOB(03)/218. Many felt this was a useful way to advance work, as it could help delegations assess whether some types of subsidies created trade distortions of concern to them. Also, she noted that the delegation of Chinese Taipei had recently circulated an informal communication (JOB(04)/78). Like the room document presented by that delegation at the last meeting of the Working Party, it discussed the definition of subsidy and other issues in the light of the examples mentioned in Chile's communication. In addition, the delegation of Chinese Taipei had circulated a new room document, which provided answers to questions raised on its contribution during the last meeting.

6. The Chairperson invited delegations to offer any additional comments on the latest Note by the Secretariat (S/WPGR/W/25/Add.4), which contained information on subsidies found in recent Trade Policy Reviews (TPR). Delegations might also want to build on previous discussions on the definition of subsidies and to see how progress could be made on the information exchange. Those that had not yet shared information might be able to provide suggestions as to how to overcome the difficulties encountered. Further, she asked delegations to start giving some thought to how best to organize future discussions so as to get a clearer picture of the need for disciplines to avoid the trade distortive effects that subsidies might have. In the last two or three meetings, various delegations had raised a number of issues and basic questions that had not been fully discussed, even though they often concerned core tasks of the Working Party. This might be more fully addressed at the next meeting. Finally, she reported that UNCTAD had not yet finalized its study on subsidies.

7. The representative of Chinese Taipei said that the informal communication from her delegation, contained in JOB(04)/78, was based on the room document which she had presented at the last meeting. It had been modified to take into account the comments then made by various delegations. She reiterated that the purpose of this document was to test, in the light of some concrete examples, whether and to what extent the Agreement on Subsidies and Countervailing Measures (ASCM) provided an appropriate basis for developing a working definition of subsidies in services. She did not think that the ASCM necessarily was the only source of inspiration. The Agreement on Agriculture contained subsidy disciplines and her delegation did not wish to preclude looking at this model, even though that Agreement used the ASCM definition as its reference. She also drew attention to the room document that her delegation had circulated for the current meeting, which contained answers to specific questions raised pursuant to her intervention at the last meeting.

8. The representative of Switzerland thought that the submissions from Chile and Chinese Taipei contributed to improving the Working Party's understanding of the issue. Her delegation thought that export subsidies had to be addressed as a priority; they were the most harmful type of subsidies. Export subsidies distorted competition in third markets; suppliers from such markets faced unfair competition from abroad, as did exporters from other countries. In addition, export subsidies did not appear in Members' schedules. The value of new market access commitments would be diminished if competition was distorted by subsidized suppliers of a third country. Another advantage of dealing with export subsidies as a priority was that it seemed easier to tackle the most harmful categories of subsidies rather than all of them at once. For subsidies other than export subsidies, it was not always obvious to determine whether a trade distortive effect existed. In contrast, trade distortive effects were inherent to export subsidies. Further, while many subsidies were motivated by national policy objectives, export subsidies were in the overwhelming majority pure trade measures. Focusing on them thus did not involve discussing the issue of legitimate policy objectives and might allow Members to have an early harvest. Her delegation hoped that Members, in the context of the current Round of negotiations, could design and agree on a process of progressive phase-out of export subsidies in services sectors. She envisaged a process that was flexible and compatible with the architecture of the GATS.

9. With respect to the informal communication from Chinese Taipei, she noted that paragraph 12 stated that service suppliers under mode 1 would probably be beneficiaries of the programme. She considered that suppliers under modes 3 and 4 would also be covered by the programme. As far as the effects of the programme were concerned, she hoped to hear the views of the delegation of Chinese Taipei with respect to the effects of the subsidy programme under these modes. Concerning the sharing of information, it was important to comply with the clear mandate in Article XV. Since achieving transparency was crucial and no progress had been made on this issue, she considered that it was time to agree on a target date for the required exchange of information. With respect to the definition of subsidies, she wished to draw attention to two past Notes prepared by the Secretariat, S/WPGR/W/13 from 1996 and S/WPGR/W/13/Add.1 from 2000, which listed limitations related to subsidies contained in Members' schedules. She asked whether the Secretariat could prepare a Note, before the end of the year, on the definitions of subsidies contained in schedules.

10. The representative of Colombia wished to focus on the first example contained in the communication from Chile, the Exportation Programme. She raised four issues: the financial contribution, the benefit, the provider of the subsidy, and domestic content. First, she thought that it was pertinent to assess whether the programme involved a financial contribution. This assessment was made difficult by the lack of detailed information, particularly on the type of activities covered by the programme. For example, the programme allegedly provided for a sharing of the costs of export market development activities, but it was not clear what such activities entailed. Did the programme cover such activities as market intelligence, development of commercial offices abroad, information on regulatory conditions designed to improve exporters' knowledge of foreign markets? Would such activities be permitted? The representative pointed out that the description of the programme said that the activities contemplated were those that suppliers could not, or would not, normally attempt on their own. Could that mean that the activities concerned general infrastructure, that is the type of services that governments should provide? Second, assuming there was a financial contribution, it would be necessary to analyse the value of the contribution received by the exporter. The description of the Exportation Programme did not make clear whether the exporters would reimburse the costs incurred by the government. If there was full reimbursement, no benefit would be conferred. An element of benefit could be identified if it were clear that the programme resulted in lower costs for the exporter. She wondered whether, in such a context, repayment of 4% of the company's incremental revenues was equal to the costs to the government. Third, regarding who granted the financial contribution, she considered that the terms "a government or any public body within the territory of a Member", which were used in the ASCM, could apply and cover all levels of government. Fourth, concerning domestic content, which was a condition of eligibility for the Exportation Programme, she thought that this concept was probably more difficult to use in services than in goods trade. Defining the origin of a service might be more complex for certain modes of supply. This issue could benefit from further discussions.

11. The representative of the Republic of Korea agreed with Switzerland that discussions should concentrate on export subsidies and lead to a concrete result at the end of the negotiations. Regarding the definition of subsidies, she considered that the definition in the ASCM could be applied to services. She wished to focus on the three questions listed in Chile's communication. Concerning the first question, on the element of subsidy, she thought that the Exportation Programme involved a financial contribution, but sought clarification on the comments by the delegation of Chinese Taipei concerning the repayment of 4% of incremental revenues. The fact that support was not provided directly to enterprises but rather to trade associations, which she assumed were not governmental organizations, made the analysis more complex. The government was not providing subsidies directly to a company; the relationship was indirect. With regard to assistance for market information and intelligence, she thought that the link to exports was more limited and lacked specificity. Concerning the beneficiaries of the programme, she did not think that distinctions pursuant to modes of supply were made when granting subsidies to companies. For example, the companies that received the

subsidies could use the contribution for advertisement or promotion to attract foreign consumers. Complexities relating to mode 3 should also be further discussed. Concerning the effects of the programme, she considered that the issue of subsidy and that of distortion should be separated. Based on the ASCM, the Exportation Programme would be considered a prohibited export subsidy because it included a domestic content requirement. The analysis of trade distortions should take into account the situation of small and medium-sized enterprises, but this could best be addressed horizontally as part of the discussion of legitimate policy objectives. Further, regarding the contribution by Chinese Taipei, she wished to point out that Article 2.3 of the ASCM provided that any export subsidy would be deemed specific. Hence, there was no need for further analysis in this regard.

12. The representative of Japan thought that the communication from Chile was useful for advancing discussions and welcomed the contribution from Chinese Taipei. He hoped Members could present information on subsidies they found trade distortive, on the basis of the inputs provided by their national industries. The representative of China thanked the delegation of Chinese Taipei for providing, in its room document, written answers to questions raised at the last meeting and indicated she would revert to this at a later time.

13. The representative of Hong Kong, China noted that the communication from Chinese Taipei, even though its purpose was to contribute to the development of a working definition of subsidies in services, referred to some notions in the ASCM that did not relate to the definition of subsidies. For example, the paper touched upon issues relating to trade distortions, which he felt should be examined separately from the definition of subsidies. He agreed that it was useful to examine the applicability to services of concepts contained in the ASCM, and he saw four key elements in that regard. The first was the definition of subsidy in Article 1, which was generic and unrelated to the notion of trade distortion. Second, the concept of specificity in Article 2 was related to the concept of trade distortion since only specific subsidies could be actionable under the ASCM. A third element was the scope of prohibited subsidies in Article 3, which was distinct from the notion of specificity. A fourth element related to the scope of actionable subsidies. In that regard, Article 5 of the ASCM mentioned adverse effects on other Members: injury to domestic industry, nullification and impairment of benefits, and serious prejudice to Members' interests. He thought that it would be useful to distinguish these elements so as to better structure discussions in the Working Party. The representative considered that apart from the definition, all other elements related, to varying extents, to the notion of trade distortion. However, trade distortion should not be directly equated with these elements. The fact that certain subsidies were not specific did not necessarily mean they were not trade distortive. For example, prohibited subsidies were deemed specific even if not captured by the concept of specificity in Article 2.1. Likewise, possible difficulties in assessing adverse effects of subsidies in services did not necessarily mean that these were not trade distortive. Moreover, the representative noted that the communication made various references to adverse effects as well as to trade distortions. However, adverse effects were not the only conceivable type of distortion; for instance, subsidies contingent on exports were prohibited in the ASCM. He thought that notions such as adverse effects, injury, or actionable were not directly relevant to the examination of subsidies contingent on exports.

14. Turning to the first example listed in the communication from Chile, the Exportation Programme, he wished to echo the comments of the delegation of Switzerland on the trade distortiveness of export subsidies, especially given the relevance of such effects to all Members. It might be useful to focus on the concept of export contingency in order to see whether it could be applied in the context of trade in services. This might provide some insights into the possibility or necessity of developing disciplines. In examining this issue, a key distinction to keep in mind was that services, unlike goods, were generally intangible. Further, he agreed with comments made by the delegation of the Republic of Korea on the relevance of making distinctions by mode of supply. He did not think that the effects of export subsidies could easily be distinguished or analysed on a modal basis. Subsidy programmes related to the export of services were not specific to any particular mode. Effects in third markets might not be best captured by an analysis according to mode of supply.

Regarding information, he welcomed the suggestion by the delegation of Japan that Members provide information on the subsidies which their suppliers have found to be distortive, but he thought this could not be a substitute for the information exchange mandated under Article XV. Paragraph 1 of that Article referred to the exchange of information on all subsidies affecting trade in services and not only to trade distortive subsidies. He recalled that his delegation had made various suggestions in the past, for example that Members use their own definition, share information in a gradual manner, or share the difficulties they had encountered in collecting information. He asked those delegations that had scheduled limitations relating to subsidies to indicate the definition they used. Members whose subsidies had been identified in the TPR reports, as compiled by the Secretariat in S/WPGR/W/25 and addenda, could share information on these subsidies and, if appropriate, explain why they did not think that the measures involved actually constituted subsidies.

15. The Chairperson said that the Secretariat was not aware of definitions of subsidies contained in schedules, but could verify and report at the next meeting.

16. The representative of Chile considered that the communication from his delegation had helped to initiate a substantive discussion and move away from the chicken-and-egg problem, which had characterized deliberations on the need for a definition. Many themes could be further analysed, but he thought that delegations wanted to concentrate on export subsidies. Obviously, many aspects needed to be discussed, relating for example to definition, domestic content, or the applicability of the modes of supply. His delegation aimed at providing a more detailed intervention in this regard at the next meetings. All issues, however, could not be addressed at once but might better be tackled in a gradual manner. Discussions so far seemed to suggest that delegations agreed that export subsidies could distort trade in services. It therefore seemed reasonable to focus work on them. He hoped to see Members' positions start converging towards the need for disciplines in this area. Many limitations in schedules related to subsidies, often in the horizontal section, without providing any definition. However, this should not prevent Members from discussing issues relating to export subsidies. After all, the GATS did not contain a definition of services. He agreed with other delegations that the definition in the ASCM could be used as a basis. Concerning the link between subsidies and modes of supply, his delegation did not have a final position, but thought that the delegation of Hong Kong, China might be right in saying that such a distinction was not fundamental. Regarding the exchange of information, he indicated that his delegation hoped to soon make a contribution. He supported the idea of fixing a target date for the exchange of information and thought that the end of the year could be a reasonable timeline. Finally, regarding the requests made for work by the Secretariat, he believed that, even if no definitions were found in schedules, further information could be provided on limitations relating to subsidies. Members that had scheduled limitations could explain what definition of subsidies they had in mind.

17. The representative of the United States said that her delegation continued to question the usefulness of hypothetical subsidy programmes, as contained in the communication from Chile. The mandate under Article XV:1 referred to the voluntary submission of information by Members on their own subsidies. The communication from Chile and other recent contributions did not follow this approach. She hoped that interested Members would provide information on their own domestic subsidies, if any. To go beyond what was contemplated in Article XV:1 meant going beyond what Members had agreed and presupposed the existence of a definition of subsidies in the services context, which was not the case. To illustrate problems of using hypothetical examples, she noted for discussion purposes that even under the disciplines of the ASCM, which might or might not be relevant in the context of services, some of the examples would not be classified as actionable subsidies. For example, many governments provided general trade statistics and information regarding export market opportunities. Export promotion activities could encompass government guides on how to export, overseas marketing reports, and marketing bulletins. She questioned whether such activities should be subject to specific disciplines. However, export promotion programmes that provided, for example, low cost loans to particular companies might be an area that

the Working Party might want to examine further. Regarding Chile's example on infrastructure, she noted that under Article 1 of the ASCM the provision of a good or service by a government could be considered a financial contribution and potentially a subsidy if a benefit was provided to the recipient. However, the provision of general infrastructure was not a financial contribution. The issue, in the context of the ASCM, was how general infrastructure was to be defined. In the view of her delegation, certain types of infrastructure created for the broad societal welfare of a country, region, state or municipality should not be subject to specific disciplines. This category included, for example, interstate highways, schools, health care facilities, sewage systems or police protection, assuming they were provided for the public good and where available to all citizens on the same terms. Obviously, some other types of infrastructure could be more difficult to categorize in this way. In concluding, she reiterated the need for caution relating to questions on what would fall under Article 1:3(b), what would fall under the scope of the GATS, and what would fall under the scope of scheduled commitments. Her delegation was uneasy about the Working Party discussing interpretations of the ASCM. That Agreement was monitored by another Committee of the WTO.

18. The representative of Mexico considered that contributions such as that of the delegation of Chinese Taipei provided a basis for substantive discussions and decisions on the types of disciplines to elaborate. He wanted to follow the approach taken by Chile and Chinese Taipei, that is to consider concrete examples on the basis of three questions: what was the form of the subsidy, who was the beneficiary, and what were the effects on trade? Regarding the aspect of the first example that related to the industry, he agreed that to the extent that specificity existed and adverse effects could be demonstrated, there was no doubt that the programme entailed a subsidy. Concerning the second aspect that related to trade associations, he believed that more analysis would have to be conducted before determining whether a subsidy was involved. He thought that the second example was very clear and he considered that Chinese Taipei's identification of elements of subsidies in sub-paragraphs (ii) and (iv) of its communication, relating to income tax exemptions, was accurate. With respect to the third example, relating to tourism, he believed that the import duty exemption on advertising and promotional material, which benefited only some suppliers, was more of a national treatment issue. In such a case, the commitment, if any, would have to reflect such measures. He wondered why the contributors thought it was necessary, at this stage of the discussions, to identify the beneficiaries, or those affected by the subsidy, according to modes of supply. It was more important to identify whether a subsidy existed and leave aside, for the moment, the issue of the modes of supply.

19. Concerning the fourth example, on scientific research and technology transfer, he considered that the effects would have to be further analysed before determining whether or not a subsidy was involved. This could be done through an investigation, and delegations might better focus on the parameters upon which it should be based. Regarding the fifth example, he again wondered why it was necessary to discuss the modes of supply at this stage of the analysis. If the subsidy resulted in a change in the conditions of competition in the market, certain suppliers would be affected, but this could be determined through a subsequent investigation. Finally, he wished to provide answers to each of the questions listed in paragraph 31 of the communication from Chinese Taipei. Regarding sub-paragraph (a), he answered in the affirmative to both questions. On sub-paragraph (b), he also answered positively. The definition of subsidy should be based on experience. Concerning sub-paragraph (c), his answer was positive, but only in part, because further discussions would be needed. With respect to sub-paragraph (d), he agreed that certain subsidies should be characterized as non-actionable, for example subsidies aimed at the development of a viable services sector in developing countries. Developing countries should benefit from certain prerogatives. On sub-paragraph (e), he believed that beneficiaries could, in principle, be identified, although more analysis was needed and much could be gained from the experience acquired in other areas. Concerning sub-paragraph (f), he thought that the answer to this question was found in the first element of the first example, which in his view included the import substitution effect. Regarding sub-paragraph (g), he believed it was difficult to answer all questions at this time, noting that the task at hand was the elaboration of disciplines, which would form the basis for investigations that might be conducted. Keeping that in

mind, he thought that if a subsidy affected trade in more than one mode of supply, such effects would have to be considered in the light of possible countervailing measures. On sub-paragraph (h), the concept of trade distortions in services would have to take into account the modes of supply. He reiterated that this should be discussed after other elements of disciplines had been identified. On sub-paragraph (i), he believed that subsidies mentioned in schedules should be assessed case-by-case. Finally, lack of information should not be used to avoid substantive discussions on this issue. The communications from Chile and Chinese Taipei provided a useful basis for developing disciplines pursuant to the mandate in Article XV.

20. The representative of Australia considered the contribution by Chinese Taipei to be useful for discussions. The Agreement on Agriculture, even though it contained disciplines on domestic support, did not contain a definition of subsidies. The definition contained in the ASCM was the reference point. In paragraph 14, the contribution noted that the ASCM prohibited export subsidies and import substitution subsidies because of their impact on trade. He wished to draw attention to the fact that certain subsidies were considered non actionable if they were not specific and made widely available. Regarding paragraph 15, he noted that subsidies contingent on exports or on the use of domestic over imported goods were deemed specific in the ASCM. They were prohibited because they were presumed to cause serious trade distortions. In such cases, a complainant did not need to show trade effects. Finally, he thought that the question contained in paragraph 31(b) was interesting, as it seemed to suggest that the development of future disciplines on services subsidies might follow the development of rules on subsidies for goods. For example, during the Tokyo Round, an illustrative list of export subsidies was developed, without having a definition of subsidies.

21. The representative of the European Communities said that his intervention was without prejudice to the EC's final position on necessary disciplines. He reminded that on 6 July 2000, his delegation had circulated an informal communication describing the Community regime for state aid. The rules applied both to services and to goods sectors. The application to services might raise particular issues, namely when determining whether a subsidy was trade distortive. For example, it was not always easy to establish the productive capacity of a service company or sector. These concepts were normally used in certain state aid disciplines in the EC. The core issue was whether state aid distorted competition, and not solely whether it distorted trade. Hence, EC rules in this area were more stringent than any disciplines that could be developed in the Working Party. In addition, as highlighted in his delegation's communication from 2000, compliance with the EC rules on state aid was monitored by a central and independent authority, i.e., the Commission. The general principle was that state aid was banned because it distorted competition by giving some enterprises an advantage over others. However, the possibility existed that certain state aids be permitted by the Commission. In this regard, a number of public policy objectives were exhaustively listed in the Treaty. In addition, specific rules regarding transport were in place, given the different policy framework for that sector. Provision was also made to ensure that the provision of services of general interest was not prevented. He reminded delegations that the Commission published every year a scoreboard on state aid, which was available on the Commission's website. However, the information did not distinguish between services and non-services sectors.

22. His delegation needed additional time to further analyse the communication from Chinese Taipei. In a preliminary manner, he observed that the only example listed in the communication from Chile that could eventually be considered trade distortive, was the first one, the Exportation Programme. While others had noted that export subsidies were trade distortive *per se* and could not be justified by public policy objectives, he hoped for further elaboration on this point. Such statements might be too sweeping. Further, he recalled that paragraph 2 of Article XV provided for consultations in cases where a Member felt that it had been adversely affected by a subsidy of another Member. He proposed that Members that had received complaints from their industry and engaged in consultations pursuant to Article XV share the results with the Working Party.

23. While noting that the communication from Chinese Taipei was being further analysed by his authorities, the representative of Canada recalled that his delegation had expressed doubts as to whether the ASCM could readily be applied to services. Caution needed to be exercised in that regard. In light of the discussion today, he thought it might be worthwhile to further discuss the concept of trade distortion. The Working Party needed to consider whether there was a problem and, if so, what its scope and magnitude was. Since the discussion of hypothetical examples had highlighted that information was lacking to assess the effects of programmes, Members might want to come forward with actual cases of distortive subsidy programmes.

24. The representative of Chinese Taipei thanked delegations for the comments and questions raised with respect to the informal communication from her delegation. She considered that the discussion had underscored a few key questions, such as the meaning of export subsidies, the definition of trade distortion, and the relevance of the modes of supply. Given time constraints, she said that she would provide detailed replies for the next meeting. In her view, the discussion had helped to highlight a number of areas where, given the special characteristics of trade in services, further work would have to be done. In this regard, she drew attention, in particular, to paragraph 31(e) of the communication, which asked how the benefits to the recipient of the subsidy could be defined under the various modes of supply when traditional notions of domestic and foreign origin, exports and imports, could not readily be transferred to services. Also, paragraph 31(f) raised the question of how export subsidies could be defined under modes 3 or 4, and paragraph 31(i) whether subsidies inscribed in services schedules should be exempt from eventual disciplines.

25. The Chairperson noted that the Working Party had had a very useful discussion of the informal communications from Chinese Taipei and Chile. Export subsidies, the definition of subsidy, and possible trade distortive effects had attracted particular interest. Delegations had also raised the question of the information exchange and a variety of ideas had been put forward so as to make a greater collective effort to meet the mandate under Article XV. In addition, a suggestion had been made for the Secretariat to take a closer look at the limitations relating to subsidies found in schedules and, in particular, to see whether any definitions had been included. She proposed that the Secretariat update its previous Notes on this issue, contained in S/WPGR/W/13 and S/WPGR/W/13/Add.1, and use the opportunity to list any definitions of subsidies contained in schedules. She proposed that the Working Party take note of statements made.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

26. The Chairperson suggested that delegations concentrate on the new contribution from the delegation of the European Communities, contained in S/WPGR/W/48, concerning a framework under GATS for procurement of services. She recalled that it had been agreed at the last meeting that the Secretariat expand on its earlier Note on government procurement provisions in regional trade agreements and noted that, given the amount of information involved, it could be ready for Members' consideration at the next meeting of the Working Party.

27. Concerning the Note being prepared by the Secretariat, the representative of the United States said that her delegation had expressed a concern at the last meeting about the identification of relevant provisions. She thought that consultations with delegations from countries participating in such agreements might be warranted before the document was circulated. She wondered whether, if a particular agreement did not specifically identify a government procurement provision, the Secretariat would make a judgement as to what was effectively involved. She wished to know whether the Secretariat had so far only considered provisions explicitly referring to government procurement. If so, no consultations might be needed. After consulting with the Secretariat, the Chairperson said that the Note was examining those provisions which the relevant agreements presented as pertaining to government procurement.

28. The representative of the European Communities indicated that the new communication built on two previous contributions from his delegation, from July 2002 and May 2003. It aimed at providing some answers to questions raised during the last meetings, notably by Singapore in an informal communication of December 2003, contained in JOB(03)/216. As requested by a number of delegations, the communication provided examples of commitments and MFN exemptions relating to government procurement. These examples underscored the feasibility of commitments on government procurement in services, including with respect to thresholds, possible limitations on the coverage of entities, and various modes of supply. The examples illustrated the flexibility of the framework proposed, which allowed Members to adjust their commitments in line with their developmental and public policy objectives. The proposed framework would also permit to grant more favourable treatment to services suppliers from developing countries or regions. The communication further addressed the relationship between, on one hand, commitments relating to government procurement and, on the other hand, commitments under Articles XVI and XVII of the GATS. It also aimed to respond to questions about the treatment of public contracts covering services under different CPC categories, as well as questions about the scope of the agreement, in particular the distinction between services contracts and goods contracts. On this issue, his delegation proposed to follow, *mutadis mutandis*, the precedent used in the GATT Code on Government Procurement. With respect to the relationship with the Government Procurement Agreement (GPA), the communication proposed to include an exception in a GATS Annex on Government Procurement so as to exempt GPA commitments from the application of the MFN obligation. Finally, the contribution underlined the importance of developing appropriate procedural rules in order to ensure the commercial value of future GATS commitments on government procurement.

29. The representative of Chinese Taipei had a number of questions on the communication. First, paragraph 3 suggested that even when no commitments had been made on government procurement, all GATS provisions except Articles II, XVI and XVII applied to relevant laws, regulations and requirements. She asked whether the conditional obligations would apply to government procurement once a sector was included in the schedule, even if no government procurement commitment was taken. For example, if a Member's government procurement regulations or practices were inconsistent with the obligation contained in Article VI:2, in particular with respect to domestic review, could another Member have recourse to the DSU pursuant to Article XXIII? She noted that provisions of the GATS other than Articles II, XVI and XVII might apply to government procurement since they had not been explicitly excluded through Article XIII:1. However, paragraph 2 of Article XIII, which called for negotiations, cast doubt on whether all other GATS provisions applied to government procurement. Second, did the EC consider Article I:3(a), which referred to measures taken by central, regional or local governments and authorities, as well as to non-governmental bodies in the exercise of powers delegated by governments, to be relevant in the context of their proposed framework?

30. Third, regarding example 6 in the communication, she said that the limitation inscribed for government procurement was quite different from that used in the market access and national treatment columns. In these two columns, the annotation "unbound except..." clearly indicated what was not subject to the obligations. In contrast, the government procurement column said "none for contracts above 200,000 SDR". There was no mention of the level of treatment granted for contracts below 200,000 SDR. Fourth, would it be necessary for a Member to list the covered entities? Fifth, could the EC explain how Members could schedule their government procurement commitments under the various modes of supply. What was the meaning of a government procurement commitment under mode 4? This issue needed to be further clarified and should be subject to further discussions. Finally, she asked how the proposed framework would apply to two scheduling situations. In the first case, market access was "unbound" and the commitments in both the national treatment and government procurement columns read "none". In the second case, commitments in both the market access and government procurement columns were without limitations and national

treatment was "unbound". What was the value of commitments under government procurement in such situations?

31. The representative of Singapore drew attention to an earlier informal communication from his delegation, contained in JOB(03)/216. He thought that the examples provided in the communication from the EC helped to illustrate what government procurement commitments would look like and how they would relate to commitments in the market access and national treatment columns. These examples were further studied by his authorities and he would provide more detailed views at a later time. Without prejudging the scope of the mandate under Article XIII, he assumed that there would be two parts to the negotiations. First, the government procurement commitments and, second, the Annex which would contain certain disciplines to govern these commitments. Work on this Annex would help to better understand the implications, reach and depth of government procurement commitments. The communication from the EC provided some answers to questions raised in the earlier communication from his delegation. The communication had noted, in paragraph 2(b), that while GATS Article XIII:I referred to the exclusion of MFN, market access and national treatment, possibly in the interim period, it was silent on the applicability of other GATS provisions to government procurement in services. Could this be interpreted, by implication, to mean that all other GATS provisions already applied? Paragraph 3 of the EC's communication indicated that government procurement laws and regulations were subject to all GATS provisions apart from those contained in Articles II, XVI and XVII. He took note of this view, and his authorities would reflect on it. Paragraph 4 of the communication suggested that government procurement commitments should apply to all levels of government, as envisaged in GATS Article I:3. He felt it was appropriate to put commitments on government procurement on the same footing as other GATS commitments.

32. The representative then drew attention to the question contained in paragraph 2(f) of his delegation's communication, which related to Article III:3 of the GPA. He thought that the communication from the EC captured the concepts reflected in this Article. Indeed, paragraph 8 of the communication stated that any benefit gained from government procurement commitments under the GATS would be subject to the traditional commitments on market access and national treatment. He hoped the EC could confirm the intention to apply the concepts found in GPA Article III:3. His next question related to the interface between the GPA and the GATS obligation of MFN treatment. The EC, in paragraph 15, proposed a one-off possibility to schedule MFN exemptions. Paragraphs 21 to 25 further elaborated on the interface between the GPA and the MFN obligation of the GATS. He felt, on a preliminary basis, that the EC's suggestions in that regard were practical. Concerning example 6, which addressed a situation where a contract covered several services sectors, he asked how the "main object of the contract" could be determined in practice. What was the threshold value of the covered services? What percentage of the total value would be governed by the commitment? Concerning paragraphs 18 to 20 of S/WPGR/W/48, where the EC suggested possible ways to address contracts involving the provision of both goods and services, he thought that the EC's proposed use of Article 1.1 (a) of the GATT Code on Government Procurement was interesting and invited the EC to operationalize this proposal.

33. The representative of Canada wished to offer some preliminary comments and seek clarifications. She appreciated the concrete nature of the EC communication which allowed the discussions to move forward. However, her delegation had some reservations about the level of complexity involved in determining what commitments actually applied to a specific procurement case. The EC might wish to simplify the approach. With respect to example 2, paragraph 4 pointed out the breadth of the organizations covered by the government procurement commitment. She wondered if the EC could explain how partial commitments, both within a specific level of government and for an entire level of government, would be expressed. Concerning example 3, she noted that many WTO Members had structures where decision-making about the type and form of preferential policies was decentralized. How could this be addressed? She also wished to see how an exception for a 5% domestic price preference would be dealt with.

34. Examples 4 and 5 reflected a situation where government procurement commitments for mode 4 were more open than the corresponding market access and national treatment commitments. She wondered whether the delegation of the European Communities could provide further explanation. She understood that example 5 also dealt with a situation where no limitations appeared in the market access and national treatment columns under mode 3, but the government procurement commitment was more restrictive. How would these restrictions be operationalized in individual procurement cases? Moving to example 6, where a procurement covered several sectors, she referred to paragraph 13 of the EC communication ("and if the contract cannot be divided into two different contracts"). She asked if the intention of the EC was to suggest that procurements be divided on the basis of GATS commitments? With respect to MFN exemptions, she hoped the EC could provide practical examples of preferential conditions, and indicate how these would be operationalized in individual procurement cases. Finally, with respect to thresholds, she asked if the EC had considered the possibility of scheduling thresholds horizontally so as to reduce complexity. In concluding, she indicated that the proposal helped to clarify one possible methodology for the scheduling of commitments on procurement in the GATS. The feasibility of such an approach was closely linked with the procedural rules that would apply. Her delegation shared the EC's view on the importance of developing such rules.

35. The representative of Hong Kong, China wished to focus on some technical issues raised by the EC's communication. As a general point, he believed that the proposed framework should not affect Members' obligations under the GPA in respect of services. The relationship of the proposed framework with the GPA should be clearly addressed in the proposed GATS Annex on Government Procurement. He asked how the proposed framework would relate to Members' obligations under the GPA in respect of services. More particularly, which rules would apply in situations where certain services were covered by commitments under both the GPA and GATS? Would bidders from Members who are Parties to the GPA and those of Members who are not Parties be subject to different rules? What would be the situation if both types of bidders were involved in a particular procurement? Would there be any difference in the obligations applied to them? With respect to the scheduling of commitments on government procurement, he asked whether the EC was proposing MFN and national treatment obligations as general obligations or as obligations only applicable to those sectors where commitments on procurement were undertaken? Further, he noted that the communication proposed that commitments in the government procurement column should be read in conjunction with Members' existing commitments on market access and national treatment for the relevant sector and mode. He noted the examples included in the communication, but hoped the EC could provide greater clarity on this issue. For instance, in example 4, "unbound" was inscribed under both modes 1 and 2 for national treatment, while the government procurement commitment said "none for contracts above 5 million SDR". In such a situation, would the latter commitment be confined, in practice, to mode 3?

36. Moreover, the representative invited the EC to explain how the government procurement commitments applied across different modes of supply, especially in respect of modes 1 and 2. He also wondered how a commitment in the government procurement column would be read in conjunction with national treatment commitments across different modes. For instance, under example 3, where full national treatment commitment was granted under modes 1, 2 and 3, would the Member be obliged to provide the same treatment to bidders across all modes of supply? With respect to paragraphs 14 to 17, which related to MFN exemptions, his delegation considered MFN treatment as a fundamental principle of the multilateral trading system. Should the GATS' coverage of government procurement be extended, he did not see why the MFN obligation should not be a general obligation. His delegation needed to reflect further on the EC's suggestion to permit MFN exemptions with respect to government procurement in services. In considering whether new derogations to the MFN obligation were warranted, his delegation would take into account the experience with existing MFN exemptions. He asked the EC whether, and if so how, the elements of non-application and reciprocity in the GPA could be reconciled with the proposed MFN exemptions

for government procurement in services. He also wished to obtain more specific details on the proposed provision in the Annex that would exclude GPA commitments from the MFN obligation.

37. With respect to example 1 of the EC's communication, where no commitments were taken for government procurement, the representative of Switzerland asked why the EC considered that it was necessary in such cases to inscribe "unbound" in the government procurement column. In comparison, when no additional commitments were undertaken, the additional commitment column remained empty. She wondered why the EC was proposing in that regard an approach different than the one taken in the case of additional commitments. Concerning example 6, the communication stated that in cases where government procurement commitments had been made only in one of the two sectors concerned by a given contract, a specific provision of the GATS Annex on government procurement would define the main object of the contract, which would be determined according to the value of each category of service covered. She invited the EC to elaborate on how the relevant value would be defined. Further, in example 6, government procurement commitments for each of the two sectors (computer services and management consulting) were taken for contracts above 200,000 SDR. Would that mean that for a specific contract covering both sectors, the thresholds added up to 400,000 SDR, or would the threshold of 200,000 SDR apply to the whole contract? In a situation where the thresholds were not added up, what would happen if the threshold for computer services was 200,000 SDR and that for management consulting services 40,000 SDR? What threshold would apply to a contract covering both sectors?

38. The representative of the United States hoped to be able to provide further comments and questions at a later time. While believing that Article XIII provided the basis for discussions on government procurement in services, her delegation wanted to ensure that any proposal arising from such discussions supported existing commitments and efforts to broaden commitments under the GPA. She hoped that delegations could circulate the questions raised.

39. The representative of India wished to recall that Members held different views about the scope of the mandate under Article XIII. While paragraph 1 of the communication from the EC stated that the proposal was made within "the framework of the negotiations under the mandate given by GATS under Article XIII:2", he indicated that Article XIII:1 was also relevant, reiterating his delegation's previously expressed position. He also drew attention to the uncertainty that existed with respect to the Singapore issues in the Doha Round. As said in the past, without a clear understanding on the status of these issues, his delegation had to reserve its position in the Working Party in that regard. Notwithstanding these general positions, he hoped to get back to specific questions in upcoming meetings.

40. The representative of Malaysia fully supported the views expressed by the delegation of India.

41. The representative of Japan said that his delegation recognized the potential importance of government procurement in services. The communication from the EC provided a good basis to deepen discussions on this issue. He considered that the proposed approach to schedule commitments on government procurement was easily understandable and interesting. He hoped to hear the opinions of other Members in that regard, especially developing countries. He understood that, according to the EC's proposal, the MFN obligation would always prevail, no matter whether a commitment was made in a particular area. On the other hand, in the GPA, MFN only applied in areas where Members made commitments. The proposed approach thus needed to be further examined. With respect to the entities covered by the potential rules on government procurement in services, he noted that the EC proposed that all entities falling under Article I:3(a) be covered. However, these entities were different from those falling under the GPA. He wondered how such differences could be addressed. In addition, he drew attention to paragraph 22, which mentioned that the GATS agreement on government procurement would not affect GPA rules and obligations. He believed that such a

provision would be important. Finally, with respect to procedural rules, he wondered how far the EC intended to go. Was the intent to follow the approach taken in the GPA with respect to rules on transparency or tendering procedures?

42. The Chairperson suggested that delegations share copies of their questions to the delegation of the European Communities and hoped that written answers could be provided in preparation of the next meeting of the Working Party.

43. The representative of the European Communities said that he hoped to start the next session by providing answers to questions he would not have time to address today. Receiving questions in advance could enable his delegation to prepare written answers before the next meeting. With respect to the question by Chinese Taipei on the applicability of GATS to government procurement, he agreed that all GATS Articles other than Articles II, XVI and XVII already applied to government procurement. A distinction had to be drawn between, for example, Article III on transparency which applied to government procurement in all services sectors and provisions of Article VI which applied to sectors where government procurement commitments had been made, that is only for certain Members through the Understanding on Financial Services. He noted that the negotiating mandate in paragraph 2 of Article XIII was not limited to Article II, XVI and XVII. Negotiations could also touch upon the application of any other Article. With respect to the point made by Chinese Taipei on the meaning of limitations on government procurement, he indicated that such limitations referred to the opening of government procurement. He wished to avoid ambiguities with respect to limitations on national treatment or market access. The inscription "none for contracts above 200,000 SDR" implied that the commitment was "unbound" below that threshold. This could be more explicitly expressed in Members' commitments so as to avoid ambiguity.

44. Some delegations had asked whether it was necessary to list the entities covered by the commitment in the government procurement column. Obviously, if all entities were covered, it was not necessary to list them. However, pursuant to his delegation's proposal, Members would be free to establish either positive or negative lists of entities. Regarding a question by Canada on the different levels of government, he believed that Members could, for example, inscribe "none" for the central government and "unbound" for local governments. The same could be done for entities within a given level of government. Concerning Members that had a federal structure and could thus have different limitations in place for different sub-federal governments, he noted that it was already possible in the GATS to list market access or national treatment limitations for certain specific sub-central governments. The same approach could be taken for commitments on government procurement. With respect to questions relating to Article III of the GPA, he wished to confirm that the same approach would be taken in the proposed GATS Annex on Government Procurement. Government procurement commitments in the GATS would cover the award of contracts, while the provision of the service thereafter would be covered by Articles II, XVI and XVII of the GATS. A foreign company participating in a procurement of another Member would still be subject to any limitations inscribed in that Member's schedule when supplying the service to fulfil the contract. The representative indicated that, due to lack of time, he would answer the remaining questions at the next meeting.

45. The Chairperson noted that the presentation by the European Communities had generated a number of questions, which focused on the scheduling of commitments on government procurement, the scope of the mandate in Article XIII, the nature and scope of the proposed Annex on Government Procurement, and coherence between Members' commitments under the GPA and commitments on government procurement in the GATS. She invited the Working Party to take note of the comments made.

III. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

46. The Chairperson said that the Working Party would not be able, due to lack of time, to enter into a substantive discussion on emergency safeguard measures and suggested that the issue be reverted to at the next meeting. The representative of Venezuela indicated that this agenda item was of significant importance to his delegation, and experts were taking part today. He said that his authorities were revising a communication which they had previously circulated in the Working Party, contained in JOB(01)/48, and that his delegation had wished to offer comments in this regard. He had also hoped to comment on the latest contribution from a group of ASEAN countries, in particular with respect to acquired rights, the duration of the safeguard measure, surveillance, and special and differential treatment. Given time constraints, he agreed to come back to this issue at the next meeting of the Working Party.

47. The representative of the Philippines suggested that emergency safeguard measures be the first issue to be raised at the next meeting of the Working Party. The representative of the European Communities enquired whether the intent was to address government procurement before emergency safeguard measures. The Chairperson said she saw no need now to discuss the order of the agenda items of the next meeting and expressed confidence that all interests could be met.

IV. DATES OF THE NEXT MEETING

48. The Chairperson indicated that the Working Party would hold its next formal meeting during the next cluster of services meetings, the exact date of which would be announced in due course.

V. OTHER BUSINESS

49. No point was raised under this item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 24 MARCH 2004

Note by the Secretariat¹

1. The Working Party on GATS Rules held this meeting under the chairmanship of Mr. Santiago Urbina, from Nicaragua. The agenda for the meeting was contained in WTO/AIR/2271. It included the following items: emergency safeguard measures, government procurement, subsidies, date of the next meeting, other business, and election of the new chairperson. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda contained in JOB(04)/11. The agenda for the meeting was adopted.

I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

2. The Chairperson recalled that the decision taken by the Council for Trade in Services on the extension of the negotiating mandate, pursuant to a recommendation from the Chairperson of the Working Party on GATS Rules, could be found in document S/L/159. He then drew attention to the fact that a group of ASEAN Members had circulated a communication (JOB(04)/4) providing further thoughts on an emergency safeguard mechanism. Members now had the opportunity to express their views on that contribution or to raise other substantive or technical issues. In that regard, the discussion of hypothetical examples might continue to prove useful. Members had expressed different views on whether the Shangri-La example justified the application of safeguard measures. However, setting that aside, the type of safeguard measure proposed to be applied in that particular situation and its effects, as well as the determination and calculation of injury, still could be discussed. As always, Members could also consider alternative approaches or other hypothetical situations.

3. The representative of the Philippines noted that the communication from the group of ASEAN Members had been presented during an informal meeting and he asked that his intervention at the time be reflected in the records of this meeting (see paragraphs 4 to 8 below).

4. The representative of the Philippines, speaking also on behalf of the delegations of Brunei Darussalam, Indonesia, Malaysia, Myanmar and Thailand, stressed the importance of the negotiations on rules and on emergency safeguards in particular. He wished to present an informal communication providing further thoughts on an emergency safeguard mechanism. The context for this new contribution was, first, that the delegations concerned had thought of revising the ASEAN draft text submitted to the Working Party in 2000 in order to look where further flexibility could be provided. This exercise also helped to identify points of convergence that had emerged since 2000. He wished to highlight key points of the paper. In terms of the policy context for establishing an emergency safeguard mechanism, he emphasized that given the binding and largely irrevocable nature of services commitments, some form of an ESM would be needed to address, on a temporary and extraordinary basis, adverse consequences that might arise in the implementation of services commitments. He

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

agreed that the application of an emergency safeguard mechanism would not be appropriate for situations not attributable to commitments made by Members. While he thought that regulatory measures could in some instances be adequate, such measures would not be sufficient to adequately address all emergency situations. At the same time, the existence of an ESM would not necessarily mean that a safeguard measure would be the only means of resolving an emergency situation, as various policy tools might be needed. An ESM would provide the necessary margin for the effective combination of policy tools. While some had questioned the usefulness of establishing an ESM because some situations might arise out of structural factors calling for longer-term solutions, it should not be assumed that all emergency situations were structural in nature. An ESM would be a necessary element of a solution in cases where domestic private stakeholders suffered injury, or threat of injury, as a consequence of liberalization and regulatory reforms bound in schedules of commitments. An ESM would be an essential safety net for services liberalization. He thought that most Members, especially developing countries, saw an ESM as an integral component of the overall balance sought to be achieved in the current round of services negotiations. An ESM might be seen as a condition *sine qua non*, or at least something that would be likely to induce, a positive outcome in the overall services negotiations. It would also help governments, particularly in developing countries, to alleviate their constituents' concerns about making commitments. An ESM would provide some comfort since a temporary safety net would be available if the extent or pace of committed liberalization had been misjudged. An ESM might be seen as filling the gap between permanent commitment and permanent withdrawal. Such a safety net would be expected, at least, to encourage Members to consider certain requests for liberalization which would not otherwise have been contemplated. This positive linkage was buttressed by certain delegations stating that they could accommodate greater liberalization given the comfort level that an ESM would bring.

5. With respect to the elements that an ESM could include, the representative of the Philippines said that an attempt had been made to pay heed to calls of various Members for a more creative approach, not too closely patterned after the Agreement on Safeguards. Nevertheless, he considered that some elements of the goods model remained essential for an ESM to be workable and effective. A first element was that any safeguard measure be taken on an MFN-basis, as already reflected in Article X of the GATS. Second, it had been argued that any injury or threat thereof which could arise as a result of liberalization would presumably manifest itself within a concrete period of time. If so, Members could consider a limited window of time during which an ESM could be invoked. Logically this should be a certain period after the actual liberalization or reforms entered into force, although the full entry into force of a Member's commitments might be a better benchmark since the ESM was intended to apply only to liberalization and reforms which had been committed under a Member's schedule of commitments. The third element related to limited duration. A number of Members had said that the period of application of a safeguard measure should be relatively short. While the draft text proposed by ASEAN in 2000 had envisaged an initial period of application of three years, with a maximum of seven or eight years, he thought that the total period would need to be reduced. Maybe this could be seen from the perspective of special and differential treatment, in the sense that developing countries could be the beneficiaries of an extension. Such extension could be of a maximum of three years and subject to either prior review by Council for Trade in Services (CTS) confirming that reasonable grounds existed for continuing the application of the safeguard measure or, alternatively, adopting Article XXI-type procedures. Where a longer or even indefinite suspension of commitments was needed, the situation would probably lend itself to a permanent modification or withdrawal of commitments under Article XXI. In other words, any measure extending beyond the time limit should automatically lead to the initiation of Article XXI procedures. Related to the issue of duration was the notion of provisional safeguard measures. A lot of Members might feel that, given the shortened timeframe and streamlined procedures for invoking an ESM, the provisional safeguard measures proposed in the ASEAN draft text of 2000 might not be indispensable.

6. The fourth element related to acquired rights. A major criticism levelled against an ESM was that it would erode the legal certainty and predictability of market liberalisation and regulatory reform

undertaken by Members as a result of negotiations. Regarding mode 3, where the supply of a service was accompanied by substantial capital investment, concerns had been raised about the possibility that foreign service suppliers be required to disinvest. Given governments' keen interest in attracting investment, they would be most reluctant to consider measures tantamount to forcing disinvestment. Nevertheless, the ASEAN draft had sought to alleviate such concerns by proposing three options regarding acquired rights. For example, the first option aimed at protecting all acquired rights of pre-established foreign service suppliers. Additional concerns had been raised to the effect that the application of a safeguard measure might have anti-competitive effects in a given sector. He thought that the second and third options of the ASEAN draft text addressed such concerns. Based on discussions of the ASEAN draft text, he considered it was logical to adopt an approach that would protect acquired rights along the lines of the second option. However, there might be a need to revisit and refine, in light of the views expressed, the list of activities that the ASEAN draft considered as falling outside the ambit of acquired rights.

7. With respect to the fifth element, conditions of application, the representative of the Philippines thought that, while the onus of proving the need for an emergency safeguard measure should rest with the Member invoking an ESM, the ASEAN draft text could be reconsidered in favour of a more streamlined approach, as suggested for example in the communication from Australia circulated in 2002 (JOB(02)/8), in particular model II. Nevertheless, certain elements remained fundamental. These included: that the situation faced by the domestic industry resulted from the implementation of a Member's commitments undertaken under Part III of the GATS; that there be a sudden increase in the supply of services by foreign suppliers; that injury or threat of serious injury be determined for the relevant domestic industry; that there be causality between injury and the increase in supply of the relevant service; and that the situation be of an emergency nature. In terms of procedure, he considered that Australia's Model II approach could provide a useful template. In exchange for less prescriptiveness at the invoking Member's end, an ESM should provide for more accountability *vis-à-vis* affected Members and a stronger surveillance role for the CTS. Therefore, a Member should be allowed some latitude in conducting an investigation and suspending its commitments, akin to what was allowed under Article XXI, as long as the substantive elements previously mentioned were duly established. If the threshold was met, the justification for invoking a safeguard action could form part of the notification submitted to the CTS, possibly through a "show just cause" report, as suggested by Australia. The report could be based on a checklist of issues which would include the following: who requested the action and why; how implementation of GATS commitments had caused injury or damage; extent of injury or damage; sector and modes affected; who had been consulted during the investigation process; what less trade-restrictive options had been considered and why these had been deemed inadequate; how this approach would remedy the situation; the duration required; and the phase-out plan, where appropriate. This would provide greater transparency on the part of the invoking Member, a chance for the membership to be appraised of the situation, and a stronger surveillance role for the Council for Trade in Services.

8. The sixth element related to the definition of domestic industry. Recognizing that a number of delegations had some concerns with the proposed use of the definition found in Article XXVIII of the GATS, he considered that determining which entities fell under the definition of domestic industry had to be largely left to the national laws of each Member. This amounted to a radical departure from the previous ASEAN draft text. Seven, with regard to applicable measures, he indicated that the principle that safeguards be applied only to the extent necessary to prevent or remedy serious injury or threat thereof remained paramount. In order to address some concerns, it was important that measures inconsistent with commitments should, to the extent possible, only be taken as a last resort. Regarding coverage, he still considered that an ESM should apply to all modes of supply, even though it might appear more difficult in some sectors to enforce a safeguard measure in certain modes. In addition, he considered that most delegations seemed to think that a safeguard measure should be sector-specific and, to the extent possible, mode-specific. The eighth element of a revised ESM concerned a surveillance mechanism. This might require further elaboration if an increased role was

to be accorded the CTS. Various submissions and interventions had alluded to the need for a mechanism to be set up to ensure that an ESM was credible and not subject to abuse. In this respect, the ASEAN draft text probably needed to be revisited and revised. The ninth element concerned special and differential treatment for developing countries. Given that many developing countries were increasingly dependent on, and had expressed interest in the temporary movement of natural persons, he thought that in cases where a quantitative restriction was used as a safeguard measure on Mode 4, it should not reduce the number of mode 4 suppliers in the affected sector below the level of a recent representative period. One of the additional elements that had not been elaborated upon in the communication related to compensation. Since the period of applicability of a safeguard would be shorter and an extension would be subject to an approval process, compensation might not be necessary. Another element concerned the concept of unforeseen circumstances, which remained key. In light of a previous submission from Argentina, he thought that perhaps unforeseen circumstances should relate primarily to increases in the supply of services. He did not think that unforeseen circumstances should be defined in an ESM and thought it might be preferable to let jurisprudence develop. The same would go for the concept of like services. The onus would be on the invoking Member to establish likeness. In concluding, he stressed the importance that the group of delegations he was speaking for attached to the issue of an ESM and wished to emphasize the flexibility shown by indicating readiness to move away from the ASEAN draft text presented in 2000.

9. The representative of the United States said that her delegation would want to have its statements made at the informal meeting on the communication from the group of ASEAN Members reflected in the record of this meeting (see paragraph 10 below).

10. The representative of the United States said that the issue of emergency safeguard measures was very sensitive, but that it was important to assess where the divide lied, so that obstacles to finding common ground could, if possible, be surmounted. She noted that concerns raised over many years of discussions still remained to be addressed, including the questions raised in the communication from the EC on modal application. She felt that the presentation by the delegate of the Philippines appeared to yield little in terms of new thinking. The focus was still on the mechanism approach.

11. The representative of Hong Kong, China, while stressing that his delegation remained to be convinced of the need for and the value of an ESM, noted the importance of pursuing substantive discussions and technical analysis. He wanted to comment on three parts of the communication. First, regarding part II, he took note of the situations described in paragraph 6 where a certain group of stakeholders suffered injury consequent to bound liberalization commitments. He wondered what such a situation could be. For instance, who would be the stakeholders in that situation, why did the injury in such a situation need to be redressed through a safeguard, and what was the safeguard intended to protect against? In that regard, it would also be interesting to get a better understanding of what was meant by "unintended or unanticipated consequences" in paragraph 3. While helpful to the discussions in past meetings, the Shangri-La example did not seem to provide clear answers to these questions since it implied structural problems rather than a safeguard situation. Clearer examples of the situations referred to in paragraph 6 might prove helpful. Second, regarding part III, he took note of the fact that the communication highlighted the link between an ESM and progressive liberalization in market access negotiations; this probably related to the issue of desirability. He wondered whether the use of the terms "safety net" implied that an ESM was to be used in situations where structural adjustments were required as a result of liberalization. He doubted that an ESM should aim to address such situations, which could and should be anticipated. Rather, the purpose of an ESM might be to address emergencies or unforeseen circumstances. Third, concerning part IV, he took note of the fact that the proponents found it desirable or even necessary to have an ESM in place when undertaking liberalization, although he did not necessarily agree that an ESM should be a pre-condition for further liberalization. It was not clear how the ESM described in the communication would establish a concrete, substantive and positive linkage to liberalization. The communication did not suggest how

Members would find it compelling to undertake liberalization if and when there was an ESM. He wondered whether the proponents could elaborate further on this issue, especially since the initial offers received so far did not point out the existence of such a positive linkage.

12. The representative of Chinese Taipei considered that the communication from the group of ASEAN Members was a useful basis for constructive discussions, which she hoped could focus on technical issues relating to the feasibility of safeguards in services. She had several preliminary comments on the communication. Regarding parts III and IV, she was sympathetic to the view that an ESM would make it easier to persuade domestic industries in developing countries to accept further opening of markets. Also, she agreed that a safeguard measure could only be applied as a result of an emergency situation, which was characterized by its extraordinary nature and its link to unforeseen developments. With respect to part V, she agreed that certain elements contained in the goods model, such as MFN or conditions of application, were also important in the services context. Regarding procedures, she concurred that model II in the submission by Australia provided a basis for discussing a more simple and streamlined ESM. However, the particular nature of services trade probably meant that a more creative approach was needed in some respects. More time was also needed for in-depth discussions of such topics as the definition of domestic industry and the cross-modal application of safeguard measures. Her delegation also asked whether her delegation was correct in assuming that an ESM could only be invoked in relation to further liberalization commitments and not with respect to existing commitments. Further, paragraphs 13(a) and 13(b) indicated that the determination of situations justifying a safeguard, as well as the concept of like services, were best left to jurisprudence. However, she thought that panels and the Appellate Body had not generally examined these elements in disputes arising out of the Agreement on Safeguards. Rather, their existence was determined by the investigative authorities, who had to give reasoned and adequate explanations in their reports. Without prejudice to the position of her delegation, she thus felt it might be inappropriate, if the intent of the proponents was to mirror the disciplines in goods, to let panels determine such issues on a case-by-case basis. Rather, investigative authorities might be vested with such issues. Finally, regarding paragraph 13(c) on compensation, she wondered what would constitute a "relatively short period of application of a safeguard measure".

13. The representative of the United States wished to give a number of comments and raise questions on the communication by the group of ASEAN Member to try to get a better and clearer understanding of the underlying intentions. The questions should in no way be perceived as an endorsement of the approach taken, on which she had, in the past, expressed concerns. Noting that the Working Party had recently agreed to extend the mandate in an open-ended and indefinite fashion and that there was no guarantee of an outcome or of the timing of any outcome, she indicated that her delegation was interested in a substantive and technical discussion on issues regarding feasibility. First, with respect to paragraph 3 of the communication, she asked how the proponents proposed to determine whether serious injury or threat of serious injury was being caused by liberalization undertaken according to a Member's schedule of commitments as opposed to other factors. She also hoped to get further details regarding transparency and the type of information that would be considered in making a determination of injury or threat thereof. For example, what would be the source of statistics used by the group of ASEAN Members? Would these statistics be provided according to mode of supply? Second, her delegation wished to have a description, for each of the countries that had prepared the submission, of a transparent process which would allow for public comment by all interested parties and the legal basis for such a process that the respective countries would be able to undertake. Some of the information provided in paragraph 12(e) only described the conditions of application in very general terms and, hence, did not help to examine the feasibility of a possible emergency safeguard mechanism. Third, concerning paragraph 4, she sought clarification of what was meant by the terms "or are never scheduled as part of a Member's liberalization commitments" and how they related to the scheduling guidelines. Fourth, regarding paragraphs 10 and 12(b), she wondered what type of regulatory reform was referred to, and how an emergency safeguard measure would be imposed? Regarding paragraph 12(b), she thought that some of the

comments by the representative of Hong Kong, China were very relevant. Fifth, she took note of the fact that paragraph 12(c) mentioned special and differential treatment in favour of developing countries with respect to duration. She wondered what would happen in situations involving predominantly developing countries. In such instances, would the beneficiary of special and differential treatment be the developing country whose industry suffered injury or the developing countries whose suppliers had caused injury?

14. Sixth, regarding paragraph 12(d) on acquired rights, she thought that it was imperative that these be protected, should there be agreement to negotiate provisions on emergency safeguards. Introducing restrictions not contemplated by services suppliers at the time of establishment would result in a poor investment climate, provide an unstable basis for business decisions, and could have a negative effect on employment in the country imposing the safeguard. Since the sponsors of the communication did not think that the concept of domestic industry should be defined, she asked for a clarification of the relationship between the proposed approach on acquired rights in option 2 and national treatment commitments and any other bilateral commitments not captured by Article V of the GATS such as those flowing from bilateral investment treaties. Seventh, regarding paragraph 12(d), she had concerns about the proposal to extend acquired rights to mode 4. Acquired rights had been mentioned in the context of establishing a commercial presence, where stability and predictability were important for making long-term investment decisions. Mode 4 implied temporary movements and, hence, should not carry the same implications. Foreign natural persons, by definition, were not permanent parts of the labour market. She wondered whether mode 4 was not indeed the mode where it might be easier to transpose a goods-type safeguard mechanism.

15. The representative of Canada, while reiterating concerns regarding the case for an ESM in services, wished to ask preliminary questions on the communication. He first wondered why the proponents felt comfortable with transposing the goods model to services given that goods trade was similar only to mode 1, but not to other modes of services supply. With respect to acquired rights, he noted that paragraph 12(d) mentioned that expansionary activities of established firms would not fall under acquired rights and, hence, could be subject to safeguard measures. He asked how that would apply in practice and wondered what limiting expansion might entail. For example, did that mean banning acquisitions of new facilities, new hiring, increased marketing, expanding consumer base, or new strategic alliances? Would domestic suppliers also be subjected to such restrictions? Regarding paragraph 12(e)(v), he considered that it would be important to have a better understanding of what might be an emergency situation in mode 3. Finally, he wondered what role domestic regulation and capital markets would play in restoring market equilibrium in the absence of an ESM.

16. The representative of Venezuela wished to provide preliminary comments on the communication. She noted that her authorities had some concerns with regard to issues such as the application of a safeguard measure to all modes of supply, in particular modes 1 and 3, acquired rights, compensation, and duration. She thought, like the group of ASEAN Members, that emergency safeguard measures were part of the overall balance to be achieved in the current round of negotiations. An effective safeguard mechanism could facilitate liberalization. In particular, developing countries, who were net importers of services, could benefit from a safety net, which would help to overcome domestic resistance to greater commitments that could have unforeseen economic effects, for example in financial services, transport, and professional services. At the same time, an ESM should allow for special and differential treatment of developing countries as provided for in the GATS. An ESM should not be conditional on new commitments to greater openness, but rather would help to comply with commitments already undertaken and to support liberalization in line with the principles set out in Articles IV and XIX of the GATS. With regard to the extension of the period of application of a safeguard measure, in paragraph 12(c), she considered that a review or approval process in the CTS would put a greater burden on the invoking Member than the use of Article XXI procedures. She also highlighted the continued relevance of the two previous contributions from her delegation, on indicators for the determination of injury and on the causal

relationship (JOB(01)/48, JOB(01)/101, and JOB(01)/101/Add.1). She indicated that her delegation would present a modification to the section of JOB(01)/48 relating to statistics.

17. The representative of Chile also wished to put forward some preliminary questions and comments. Regarding paragraph 7, she clarified that, although a developing country, Chile did not consider an ESM necessary. It still was not clear how, from a technical point of view, such a mechanism could work. Much had been said about the political rationale, but fundamental questions of a technical nature still remained to be answered. Regarding paragraph 12(b), she asked about the proposed duration of the limited window. Did such limited window refer only to actual liberalization commitments, in contrast to commitments that merely bound policies that had been in place for some time? Concerning the issue of special and differential treatment, would such treatment be for developing countries subject to a safeguard measure or those imposing a safeguard measure? With respect to paragraph 12(g), she asked what less trade restrictive options, or policy tools, regulations and solutions were being referred to and whether examples could be provided. Regarding paragraph 12(h), she wished to hear more from the proponents with respect to the type of surveillance exercised, the role of the Council for Trade in Services, and the information to be presented. On paragraph 12(i), she wondered why special and differential treatment was only mentioned with respect to mode 4, given that various developing countries, including Chile, had interests in other modes of supply as well. She also asked what type of special and differential treatment was contemplated. Moreover, like Hong Kong, China, she enquired how the link between liberalization and an ESM could be operationalized, and be reflected in the offers that would be submitted in the coming months. Finally, she emphasized that the issue of acquired rights was very sensitive for her delegation and, as the delegation of Canada, wondered what was the proposed scope of the term "expansionary activities".

18. The representative of Brazil commended the quality of discussions and, in this context, expressed satisfaction about the extension of the mandate. He suggested that, in the future, the sessions be organized so as to permit more interaction. In his view, the establishment of an ESM was not a prior condition for further market access commitments, because the GATS had other mechanisms that provided flexibility. It was nevertheless an important element since it could provide some comfort to domestic constituencies. On the submission by the group of Members from ASEAN, he wondered why the idea of limited window was being introduced since it had no counterpart in goods trade. He failed to see why, in services, an ESM should be applied only until a certain point in time. Regarding limited duration, he also wondered why a shorter duration was contemplated than for trade in goods. Reacting to comments of other delegations, and recalling the open and constructive approach of his delegation, he also wondered why feasibility issues raised regarding an ESM would not also arise under Article XXI. He then asked how Article XXI could be implemented in that context and what would be the consequences. The case currently discussed under Article XXI might also provide some guidance for temporary modifications of commitments. Finally, he reiterated interest in examining safeguard clauses found in schedules and initial offers so as to see how feasibility issues were dealt with in such cases.

19. Regarding Brazil's suggestion on the organization of discussions, the Chairperson proposed, in order to help structure the debate, to compile questions raised.

20. While the communication from the group of ASEAN Members was still being analysed by his authorities, the representative of the European Communities considered, at first sight, that it did not really bring forward new elements and that it did not contain answers to previously raised questions on modal application or on situations justifying a safeguard. It was important to focus discussions and work on the issues raised today. He wished to make a few specific points. First, he wondered why the paper suggested that an ESM would require neither previous authorization nor compensation. Compensation was needed under Article XXI while under waiver procedures, which entailed exceptional circumstances, authorization was required. Second, regarding paragraph 12(f), he wondered why the paper suggested that each Member adopt its own definition of domestic

industry, as opposed to having a clear and multilaterally-agreed definition. Third, on surveillance procedures, he asked whether the proponents were revising the ASEAN draft text, as hinted in paragraph 12(h). Finally, regarding the link between ESM and liberalization, he mentioned a hypothetical scenario where a horizontal limitation provided for maximum foreign ownership of 49%, conditional on a safeguard. It was not clear how such safeguard could work since there were no foreign suppliers that could injure domestic suppliers.

21. Taking up the issue of acquired rights in paragraph 12(d), the representative of the Republic of Korea noted that the communication seemed to suggest that, should the second option be followed, disallowing mergers and acquisitions could alleviate concerns about possible anti-competitive effects. Such limitations on mergers and acquisitions, especially if in place for three years, appeared very restrictive and would seem to impact on the overall economic environment. She thought that this issue highlighted the need for further discussion on the type of measures that could be taken as safeguards.

22. The representative of China considered that, although some Members' commitments tended to simply reflect the level of liberalization in place during the Uruguay Round, it had to be recognized that others had undertaken commitments beyond their actual regulatory capacity and the then prevailing liberalization level. At the end of the current round, some Members might also have to make commitments that go beyond the status quo. These Members should be given the option of invoking safeguard measures in case of emergency. Her delegation therefore considered that it was necessary to have an ESM in services. Nevertheless, a number of technical issues needed to be addressed. She asked Members that had safeguard-type measures in their schedules to explain how these were intended to be implemented. Turning to the communication, she expressed support for the efforts of the group of ASEAN Members, as well as for the idea that the Council for Trade in Services should assume greater responsibility in monitoring the implementation of an ESM. With respect to the concept of limited window, she asked whether the period of entry into force of a Member's commitments, mentioned in paragraph 12 (b), referred to the date of entry into effect of a schedule or, rather, to the date when the implementation period in the sector ended. In addition, it was important that a mechanism include the possibility of provisional safeguard measures. As well, her delegation was still considering the need for compensation, which might be necessary in order to discourage Members from using an ESM at their discretion. Concerning acquired rights, these should not be confined to modes 3 and 4, as they might be relevant for other modes. Finally, regarding duration, she wondered why the communication proposed three years given that the Agreement on Safeguards allowed up to four years, with the possibility of an extension for another four years.

23. While considering that the communication contained to a certain extent new elements including some positive points, the representative of Switzerland thought that, overall, it remained close to the draft text presented in 2000. Although paragraph 4 of the communication suggested that some Members considered regulatory measures to be in themselves unfailingly sufficient to redress injury, she reiterated that her delegation had never argued that a given measure might fully address the problem at hand. Regarding paragraph 11, she felt that the modalities for autonomous liberalization had a major role to play in the discussions of an ESM. Countries could liberalize progressively and take into account their own experience with liberalization. In such a context, unexpected effects of undertaking commitments were largely sidelined. So far, countries had tended to take commitments when they felt confident to bind themselves at the international level. She thought that the idea of a limited window, in paragraph 12(b), was extremely useful. Also, the communication contained some constructive thoughts on the issue of acquired rights.

24. She wished to elaborate on four concerns of a non-technical nature, which her delegation hoped could be taken into account in the discussions. First, it had to be recognized that some Members wanted to send a clear and firm message to investors that their policy was to provide for liberal conditions of market entry. Because of its legally binding and multilateral character, the

GATS was the main instrument in pursuing such a policy, but an ESM would go against such policy by making the legal environment less certain for all Members. The establishment of an ESM thus had a cost. Second, an ESM would compromise all commitments made in previous negotiations. Third, there could only be a very limited set of situations, if any, where an ESM might be necessary. However, the communication did not take this into account. Her delegation would have preferred to see proposals that would limit the scope of an ESM to what was strictly necessary. Fourth, while some delegations were trying to make a link between ESM negotiations and market access negotiations, it was unfortunate that a negative link was drawn. Proponents should rather create a positive and concrete link by identifying the commitments they could undertake if there was an ESM. These four concerns were of a political nature and related to the issue of desirability; she hoped they would be taken into account.

25. The representative of Australia recalled that Australia's communication circulated in 2002 had been without prejudice to his delegation's position on desirability and feasibility of an ESM. The communication from the group of ASEAN Members still needed to fully address the issues of desirability and feasibility, and failed to concretely address definition of injury in services. In relation to injury, he considered that the communication focused only on one aspect, that is injury to service providers in a particular sector. The national economic interests of a Member imposing a safeguard might be more relevant. It consisted of the benefits conferred by a safeguard on all participants, minus the cost to those that did not gain from its imposition. Determination of injury needed to take both aspects of the equation into account. Members should also have deeper discussions on the factors that had to be examined in any determination of injury. For example, reduction in competition in the retail sector might have adverse consequences for consumers, while an increase in the price of financial and telecommunication services might negatively impact on intermediate users.

26. The communication from the group of ASEAN Members proposed that any safeguard measure extending beyond the permitted time limit should automatically lead to the initiation of Article XXI procedures. He believed that the conversion of a temporary measure into a permanent measure defeated the purpose of an ESM, were it considered to be desirable. The maximum period of application proposed, six years, seemed overly long for a domestic industry to engage in restructuring. In contrast, the Australian communication had mentioned a period of two years. With respect to acquired rights, he doubted that the second and third options proposed were practical. Asking a foreign service supplier to limit its operations might work in some sectors, but not in others. For example, requesting a retail chain to place a cap on the number of outlets might be relatively straightforward, but things were more problematic when the ongoing provision of a service was concerned. A safeguard measure in insurance services might deprive policy holders of insurance cover, interrupt the flow of pension contributions, and threaten the prudential standing of companies by interrupting the flow of new contracts. In addition, Members would need to take into account commitments made under bilateral investment treaties, particularly the possible violation of the MFN obligation with regard to the treatment of established foreign firms. He also remarked that, in many instances, the communication proposed to leave important aspects of an ESM in the hands of the authorities of the invoking Member, for example the determination of likeness. This raised concerns with regard to transparency, objectivity, and fairness. Such concerns were even greater in the case of services than for goods. He also wished to challenge the assumption reflected in footnote 4 that permanent modification of commitments pursuant to Article XXI was a right and, thus, that a temporary modification should be construed the same way. He recalled that a permanent modification of commitments had to be accompanied by compensation. Finally, he welcomed the reference to the Australian proposal for the inclusion of a "show just cause" report. However, it needed to be recalled that the indispensable information listed in the proposal was only indicative and represented the absolute minimum that needed to be included.

27. The representative of Colombia thought that focusing, as a start, on technical elements included in the communication from the group of ASEAN Members would help to advance and

organize discussions. Colombia's participation in discussions was without prejudice to its ultimate position. The negotiations attracted significant interest in the public and private sectors in her country. While some elements of the Agreement on Safeguards could be used in a possible mechanism for services, others could perhaps be left aside. She understood the need expressed in paragraph 3 of the communication to protect the domestic industry against injury resulting from liberalization commitments, but it was not clear how one could make a distinction between such cases and others not directly related to the implementation of commitments. Concerning paragraph 12(c), she wondered whether the proposed duration should be the same as the one provided for in the goods area. Regarding paragraph 12(e), her delegation thought that any ESM should not apply to foreign suppliers already established. Rather, safeguard measures could apply to future entrants. With respect to paragraph 12(i), she considered that the concept of special and differential treatment should apply to all four modes of supply. The Safeguards Agreement, as well as the earlier ASEAN draft text, could provide useful elements in that regard, for example the establishment of a *de minimis* clause providing for non-application of a safeguard in certain cases. She noted that mode 4, given its scope, could benefit from various regulatory safety nets, which made effective application of a safeguard more difficult. Finally, she expressed support for the idea of compiling a list of the questions raised, and wondered whether the previous synopsis by the Chairperson could be updated.

28. The representative of New Zealand reiterated that her delegation remained to be convinced of the usefulness of an emergency safeguard in services. A compilation by the Chairperson of questions raised would be helpful. Regarding injury, she wondered, in light of the importance of considering a broader economic picture than solely damage to a particular industry, whether consumers' views would also be taken into account in a process of assessing injury, and what weight would be given to them. Imports that a domestic industry might consider to be damaging could provide consumers with more choice and lower costs. Concerning modal application, she wondered, in view of paragraph 12(g), what type of safeguard measures the group of ASEAN Members could envisage under mode 2. She thought that applying safeguard measures to such a mode of supply seemed as problematic as the notions of forced disinvestment or of labour deportation with respect to modes 3 and 4. Also, she asked whether the use of the terms "prevent injury" in paragraph 12(g) meant that an ESM could be invoked as a pre-emptive measure in the face of potential injury and, if so, how such a situation could be considered an emergency, and how such emergency could be demonstrated. Finally, she wondered about the role that the group of ASEAN Members envisaged in future discussions for the 2002 communication from Australia.

29. The representative of Cuba highlighted the political importance of the negotiations on emergency safeguards and their influence on the market access negotiations. He expressed support for the concept of limited window in paragraph 12(b) and thought that the issues of acquired rights, mentioned in paragraph 12(d), and of prior notification to the Council for Trade in Services, in paragraph 12(e), should be further elaborated on. Finally, regarding paragraph 12(f), he considered that it was not optimal to allow each Member to use its own definition of domestic industry.

30. The representative of the United States said that she could not agree at this juncture to an update of the synopsis, recalling concerns previously expressed with this particular document. She was not objecting to a compilation of questions, however. The Chairperson took note of the reservations regarding the synopsis. The proposed list of questions was simply intended to facilitate the preparations of an in-depth discussion.

31. The representative of Japan recalled his delegation's position on the issue of an ESM. Regarding acquired rights, he said that the application of safeguard measures to mode 3 would deter investors wanting to establish a commercial presence. The representative of Mexico did not think that safeguard measures were necessary in the context of trade in services. Other domestic policy instruments could be used to deal with circumstances that, according to some, could justify the application of safeguard measures.

32. While she did not want to associate her delegation with any particular position on an ESM, the representative of Trinidad and Tobago thought that it was important to discuss ways to minimize the possibility of abuse. In that context, the concept of surveillance could be elaborated on. She wondered whether the idea of progressively reducing the restrictiveness of a safeguard measure as conditions improved was being considered. The communication could further address ways to minimize the damage that safeguard measures might cause to foreign suppliers that had already invested. She also shared some of the questions put forward by New Zealand and Australia concerning the impact of safeguards on consumers.

33. The representative of Hong Kong, China felt that various delegations, when speaking on the issue of an ESM, might have different types of safeguard measures in mind. It was thus important to clarify this question. First, he wondered how safeguard measures would be different from market access or national treatment limitations listed in schedules. If possible safeguard measures were the same, or a subset of the range of conceivable market access or national treatment limitations, why would such measures be less feasible than a market access or national treatment limitation? He recognized that measures listed as limitations in schedules tended to be in place and then to be progressively liberalized, whereas safeguard measures were introduced after liberalization had occurred. If safeguards were less feasible for modes 1 and 2, would this imply that market access and national treatment limitations were also less feasible in those modes? If so, what would be the purpose of the GATS of covering these modes of supply? Second, should there be a situation justifying safeguards, one feasible measure that could be taken against a surge of services imports were discriminatory subsidies to support competing domestic suppliers. Such subsidies could be effective under any mode of supply, provided that the suppliers to be safeguarded could be clearly identified. The problem was that such type of measure was costly and might thus be more affordable for some Members than for others. Third, economic needs tests (ENT) were found in schedules for mode 3 but also for modes 1, 2 and 4. Presumably, these ENTs were meant to be used to restrict the imports of services. While the underlying objectives were different from safeguards, they might entail the same type of measures. The argument that safeguard measures were not feasible for all modes, for example modes 1 and 2, would thus also mean that ENTs were not feasible and, hence, had to be removed from schedules. Finally, he considered that the feasibility of safeguard measures would depend mostly on the type of measure that might be taken as well as on the particular circumstances of individual sectors. One inference to be drawn from the earlier communication from the EC on modal application (S/WPGR/W/38) could be that there was possibly no single type of safeguard that would fit all modes and sectors.

34. The representative of Argentina said that he agreed with the first point made by the representative of Hong Kong, China. Questioning the feasibility of applying a restriction to trade in services amounted to questioning the feasibility of the GATS. He also agreed that feasibility of safeguards under certain modes depended on the type of measure being contemplated. Discriminatory subsidies could be one feasible measure, although they were costly. A similar option consisted of discriminatory taxes. Apparently less costly, they were technically feasible for any mode of supply. The representative of Brazil also reacted to the intervention by the representative of Hong Kong, China. Stating that trade under modes 1 and 2 could not be restricted meant that there was no need to seek market access through these modes since such trade could, in any event, not be prevented. Delegations should also address entries in schedules and offers that had an effect similar to those of safeguard measures.

35. The representative of the United States expressed strong concerns about the points made by the delegations of Argentina and Brazil. There was no point in shifting the debate to such issues as the value of existing commitments, which did not provide answers to the technical questions raised on the communication from the group of ASEAN Members.

36. The representative of the Philippines wished to answer as many questions as possible, but considered that a written compilation would be of significant assistance. Future discussions could be structured so as to permit a more interactive debate. On the general question why an approach based on the goods model was deemed preferable, he acknowledged that the group of delegations he was representing was not entirely comfortable with a strict transposition of the goods model to services. Nevertheless, it provided useful elements, some of which could not be set aside in a services context. For example, the concept of injury seemed indispensable. It was also important to assess whether injury was being caused by factors not related to a Member's liberalization commitments. Regarding the comments by Hong Kong, China on the possible use of discriminatory subsidies as safeguard measures, he thought that not all countries had the resources to provide subsidies. On Argentina's related point that discriminatory taxes might be used instead, he was not sure whether all such measures were necessarily covered by the GATS. Concerning the reference to economic needs tests, he indicated that not all Members had included them in their schedules and that the greatest number of ENTs were found in schedules of developed countries. Using ENTs as an alternative instrument of flexibility would mean that not all Members would be on an equal playing field. With regard to consumers interests, he thought that an investigative authority would be expected to consult and take into account the broadest range views possible, including those of consumers. The investigation would have to involve as many potentially affected sectors as possible. With respect to the statistics used for injury determination, he said that the source would be national statistics. For many Members, little information existed at a sufficiently disaggregated level so as to be used for mode-specific purposes. But statistics were perhaps not the sole determinant of whether injury was being caused to a domestic industry. Rather, they could serve to buttress the petition of a sector claiming injury.

37. In response to comments about the role of domestic regulations, he emphasized that regulations would not always be effective in responding to injury caused to the domestic industry. While some problems might be structural in nature, he did not wish to convey the idea that this was true in all cases, quite the contrary. Trying to characterize, in the Working Party, situations that were structural in nature could lead to endless debates, and it might be preferable to leave this for the investigating authorities to determine. Reacting to a related point, he agreed that an ESM should not be used mistakenly as a remedy for structural problems. When injury in a given sector called for the application of an ESM, the invoking Member was not precluded from using other policy tools that might be available. An ESM could not cure all problems. If the authorities realized, after the limited period of time during which a safeguard measure could remain in place, that a structural problem existed, they would then have to decide whether to invoke Article XXI procedures. With respect to the question from the representative of Hong Kong, China on whether a safeguard measure could be used in situations where structural adjustments were required as a result of liberalization, he reiterated that applying a safeguard measure for three or more years in response to structural problems would not provide a cure for such problems and that, if the problem had not been cured, a Member would have to decide whether to invoke Article XXI procedures. On a point made by the delegation of Switzerland concerning autonomous liberalization, he believed that an ESM, by providing an additional safety net, could encourage a Member to bind liberalization previously undertaken autonomously. He was open to further discussion on that point.

38. The Chairperson suggested, given time constraints, that the delegations representing the Members that had prepared the communication consider providing answers in writing in preparation of the next meeting.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

39. The Chairperson recalled that the delegation of Singapore had presented, at the last meeting, a communication, circulated as JOB(03)/216, which proposed some issues and questions for discussion in the Working Party. He invited Members to take up the paper again since, at the December meeting,

only preliminary comments could be made. Members might also want to further comment on the proposal by the European Communities for a framework of rules in the area of government procurement under the GATS. In that regard, he recalled that a number of delegations had noted the importance of using concrete examples, including scheduling examples, to better understand how such a framework might apply.

40. The representative of Singapore recalled that his delegation had submitted the communication to help focus work, and without prejudging the scope of the mandate. As a Member of the Government Procurement Agreement (GPA), his authorities had to ascertain how results of negotiations pursuant to Article XIII could relate to GPA commitments. He thought that the communication from the European Communities had helped domestic consultations on that point. He considered that the issue mentioned in paragraph 2(j) of his delegation's communication, relating to private challenge procedures, might not necessarily be ready for consideration at this juncture. Paragraph 2(h), which asked how the proposed framework could be operationalized under the various modes could be addressed as a priority. The EC could perhaps provide examples to show how scheduling would work under varying circumstances. For example, what if there were varying thresholds for different modes? Examples could also touch upon the possible format and content of MFN exemptions. Regarding paragraph 2(g) of his delegation's communication, which alluded to the work in the Working Group on Transparency in Government Procurement (WGTGP), he wondered, given the uncertainties surrounding the WGTGP, whether the Secretariat could prepare, for ease of reference, a compilation of government procurement procedures and disciplines in regional trade agreements. He wondered whether similar work had already been done in the past in other fora.

41. The Chairperson noted that the Secretariat had prepared, for the WGTGP, documents on procurement disciplines found in regional trade agreements, for example WT/WGTGP/W/6, WT/WGTGP/W/32, and WT/WGTGP/W/33. In addition, the Secretariat had recently circulated to the Working Party an overview of government procurement-related provisions in economic integration agreements (S/WPGR/W/44).

42. The representative of the European Communities expressed support for the suggestion that the Secretariat prepare a compilation of procurement provisions contained in the economic integration agreements listed in S/WPGR/W/44. That Note could be elaborated upon by compiling the relevant procedural rules. Work done in the WGTGP only focused on certain provisions relating to transparency. The representative of Chinese Taipei, like the delegation of Singapore, asked the European Communities to present concrete examples so as to help clarify the concepts used in their proposal. Regarding provisions on procedures, he agreed that, given the situation surrounding the WGTGP, the Working Party might want to use, for the time being, examples of such provisions from economic integration agreements.

43. The representative of the United States noted that her delegation was seeking greater transparency in relation to procurement of both goods and services. She considered that it was difficult, as a practical matter, to distinguish between services procurement and goods procurement since most cases involved a mixture of both. Existing international instruments, including the GPA, UNICTRAL, and the World Bank instruments had rules covering services and goods. Procurement laws and regulations generally did not distinguish between them, and drawing a distinction for purposes of transparency did not seem practical nor necessary. She thought that the communication circulated by Singapore would help focus discussions in the Working Party. Following up on a question put to the EC in that communication, she enquired whether the EC considered that Article I:3(a) of the GATS was relevant in that context.

44. The representative of Australia believed that the questions surrounding the scope of the mandate contained in Article XIII of the GATS, particularly whether it covered market access issues, needed to be resolved for progress to be made. He also supported Singapore's suggestion to look at

examples of government procurement procedures in regional trade agreements. The Secretariat Note circulated as S/WPGR/W/44 provided a good basis and could be expanded. Another issue of importance for his delegation was whether the MFN obligation should apply. He noted in that regard that the EC proposed the possibility of listing MFN exemptions, and that an option could be to include a specific exception in order to protect the preferential treatment amongst signatories to the GPA. These issues needed to be discussed further.

45. The representative of Chile indicated that her delegation saw various elements of interest in the communications from the European Communities and Singapore. Given the current uncertainty surrounding the WGTGP, she had doubts about whether this was the appropriate moment to enter into detailed discussions on this issue. Nevertheless, she wondered whether the EC could present statistics on government procurement in services, more specifically with respect to sectors and markets where there was participation from developing countries. This would prove helpful in assessing the benefits of disciplines in this area for developing countries. Also, she expressed interest in concrete examples of how such commitments could be incorporated in schedules. Finally, she supported the suggestion to have the Secretariat prepare a Note on provisions on transparency and procedures found in bilateral and regional trade agreements.

46. The representative of China recalled her delegation's position on this issue and, without prejudice to that position, wished to raise questions concerning MFN treatment in light of the proposal by the EC. She thought that MFN exemptions found in existing lists of Members could not be expanded. In that context, how could the GPA be added to those lists of exemptions?

47. Reacting to questions mentioned in paragraph 2(b) of the communication from Singapore, the representative of Hong Kong, China indicated that the preliminary view of his delegation was that, to the extent that the conditions in Article I were met, the Articles of the GATS other than Articles II, XVI and XVII, already seemed to be applicable to government procurement. Would that include the general transparency provisions in Article III and, if so, to what extent were they being complied with? Similarly, did the generally applicable provisions in Article VI already apply? With respect to the proposal by the EC to schedule government procurement commitments in an additional column, he noted that Article XIII excluded the application of Articles XVI and XVII, but not Article XVIII. A Member might thus have the possibility to undertake additional commitments with respect to government procurement in the current negotiations.

48. The representative of the Republic of Korea hoped that the EC could provide further statistics, as mentioned by Chile. In view of paragraph 5 of the Secretariat Note circulated as S/WPGR/W/44, she asked the EC to explain the rationale for having services contracts in sectors of telecommunications, water, energy and transport covered by a separate EC directive. Regarding the question raised by China on MFN exemptions, she thought this depended on the scope of negotiations pursuant to Article XIII. If negotiations were about transparency, MFN treatment should be granted. If they involved market access, the issue would need further thought since the preferential treatment flowing from the GPA needed to be taken into account.

49. The representative of Japan said his delegation was still reflecting on elements contained in the communications from the EC and Singapore, including proposals with respect to MFN, and wished to come back to this issue at the next meeting.

50. The representative of Singapore referred to the point made by the representative of the United States that procurement contracts often covered both goods and services. Sometimes services could be incidental to goods procurement, while at other times goods could be incidental to services procurement. He wondered whether the Tokyo Round Code on procurement had provisions to address such situations.

51. The representative of Hong Kong, China called attention to the fact that paragraph B.2 of the Understanding on Commitments in Financial Services contained provisions on procurement. This underscored the point that there was already scope under the GATS for procurement disciplines. He did not want to establish a link between the provisions of the Understanding and his earlier comment about Article XVIII, but there was an element of complementarity.

52. The representative of the European Communities wished to answer some of the questions raised. On the issue of MFN treatment, he indicated that Article II of the GATS currently did not apply to government procurement and recalled that Members were allowed to list exemptions at the end of the Uruguay Round. He considered it logical that an extension of the scope of application of Article II to government procurement be accompanied by an opportunity for Members to list relevant exemptions since there had been no need to do so during the Uruguay Round. With respect to the GPA, he did not propose an exemption, but rather an exclusion from the application of the MFN obligation. An exclusion was more practical since additional Members could, in the future, become signatories to the GPA. With respect to the points raised regarding the importance of distinguishing between procurement of goods and procurement of services, he considered that the situation under the GATS was similar to that which prevailed when the GATT Code on Government Procurement only covered goods. Article 1.1.a. of that Code specified that it applied to laws, regulations, procedures and practices regarding procurement of products by the entities subject to this Agreement, and that this included services incidental to the supply of products if the value of these incidental services did not exceed that of the products themselves, but not service contracts *per se*. A similar provision could be contemplated in a GATS Annex on Government Procurement. Such distinctions worked well in practice. For example, the European Union had different laws for government procurement of goods and services. The question of which law applied regularly came up. The distinction was based on whether the principal purpose of the contract was procurement of goods or procurement of services in function of the value of the goods and services supplied. He agreed with Hong Kong, China's interpretation that the GATS, other than Articles II, XVI and XVII, applied to government procurement. He also agreed that various Members had already used Article XVIII to make commitments on government procurement for financial services. Concerning the link between government procurement disciplines and the exclusion of services supplied within the exercise of governmental authority in Article I:3 of the GATS, he indicated that Article I:3 excluded certain services, while government procurement as defined in Article XIII related to purchases of services by the government. The scope of Article XIII depended on whether the client was a public entity, and not on the type of service supplied.

53. The Chairperson asked for a clarification of the type of government procurement provisions that should be compiled in a Secretariat Note, as requested by Singapore and others. The representative of the European Communities considered that all provisions relating to procurement should be included in a compilation.

III. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

54. The Chairperson recalled that at the last meeting the delegation of Chile had presented and circulated a communication, JOB(03)/216, which proposed to discuss and analyse examples of subsidy programmes in services sectors. A good number of delegations felt that this was a helpful way to focus discussions. Given that reactions tended to be preliminary in nature, he invited Members to pursue that discussion. Also, the delegation of Chinese Taipei had made available a room document that analyzed the examples of subsidy programmes put forward by Chile in light of the definition of subsidies in the Agreement on Subsidies and Countervailing Measures (ASCM). He also encouraged Members to continue the discussion initiated at the last meeting concerning disciplines on services subsidies found in regional trade agreements. Finally, he indicated that, as requested, the Secretariat had prepared an update of an earlier note on information on subsidies in services sectors contained in WTO Trade Policy Reviews (TPR), circulated as S/WPGR/W/25/Add.4.

55. A representative from the Secretariat explained that the Note covered the 26 TPR reports issued since the last update in August 2002. In terms of findings, the Note highlighted that tax incentives were the preferred tool to subsidize and that subsidies were generally found in all sectors, but mainly in tourism, transport, and banking. However, as indicated on previous occasions, the Note suffered from certain limitations that had to be kept in mind. One caveat related to the fact that TPR reports tended to focus on certain sectors more than on others, depending on the particular situation of a country, which meant that the sectoral focus of subsidies mentioned could not be said to be fully comprehensive. Another limitation was that TPR reports were prepared with a broader purpose in mind; the amount of information on particular subsidy programmes was thus often quite limited and made classifications difficult. Moreover, no definition of subsidies existed in services. In that context, the overview provided by the Secretariat was to be seen as a "best estimate" on the basis of limited information. Finally, it was important to keep in mind that being listed as a donor of subsidies did not imply any wrong-doing. The Note did not address the issue of trade distortive subsidies.

56. The representative of Chile hoped that the communication presented by her delegation could lead to an interactive debate between delegations and reiterated that the purpose of the communication was to analyse and better understand the issues involved. The intent at this time was not to propose disciplines to be elaborated in this area. She thought that such an exchange of views was very relevant in the context of market access negotiations, just as the deliberations on emergency safeguard measures. Discussions of examples obviously needed to be complemented by discussions of a definition of subsidies, as well as greater information sharing. She wished to focus her comments today on the first example mentioned in the communication, the Export Programme. Such types of programmes, contingent on either export performance or the use of domestic inputs, had been prohibited in the goods area because they were considered to be trade distortive *per se*. She wished to suggest answers, in a preliminary manner, to the questions listed in part IV of the communication from her delegation. The first question concerned the element of subsidy or financial contribution in the programme. The ASCM could be used as a basis. The Export Programme was described as supporting enterprises by sharing the costs of export market development activities. She considered that by sharing costs, the government was, in effect, providing a direct transfer of funds, which was a form of financial contribution. The second question related to the beneficiary of the programme. The information found in paragraphs 4 and 7 of the communication made it clear that the programme benefited enterprises or professional associations operating within the national territory.

57. The following question asked under which modes of supply. She wished to clarify that the purpose of that question was rather to ask under which mode(s) of supply the subsidy was distorting trade in services. While the beneficiaries of the subsidy were enterprises established within the territory, the subsidy might affect conditions in foreign markets because it was contingent on exports through modes 1, 3 or 4. The fourth question related to the effects of the programme. Despite the lack of detailed information, it might be assumed that such programmes produced some effects in other markets, as the beneficiaries would have an advantage when competing with the domestic industry of another Member. A similar effect could be observed when enterprises of Neverland competed with enterprises of other countries in third markets. The fifth question asked whether these effects were trade distortive. She thought it was obvious that a support programme would have an impact on the normal functioning of a market, although such effects might not necessarily be adverse to other Members' interests. For example, it could be that export programmes benefited a small or medium size enterprise, whose development had strategic importance for the country, but whose impact in other markets was minimal given the size of the company. It could also be that enterprises benefiting from such programmes exported to markets where the services concerned were not produced domestically. She believed that it was also important to keep in mind a previous communication from Poland, JOB(02)/207, where it was recalled that the trade distortive effect was not a constitutive element of the definition of subsidies in the ASCM. The ASCM permitted the adoption of measures against subsidies only if these caused adverse effects on other Members'

interests. The ASCM, in addition, prohibited certain subsidy programmes because it was assumed that they had, *per se*, a trade distortive effect. She wished to emphasize that her delegation's intent in the discussion of examples was not to propose to prohibit any support programme in the field of services, but rather to advance discussions on an issue of great relevance for the market access negotiations. She also called on Members to share information on their subsidy programmes. Finally, she requested that the issue of subsidies be inscribed as the first agenda item for the next meeting

58. The representative of Chinese Taipei introduced a room document, which aimed to the development of definitions of subsidies in services. The document, without prejudice to her delegation's position, examined whether the ASCM, as well as the jurisprudence under that agreement, provided a suitable basis by using the concrete examples of subsidy programmes listed in Chile's communication. The analysis was based on the questions mentioned in that communication. She took note of the point made earlier by Chile that the question concerning modes of supply was not intended to refer to the beneficiary of the subsidy. Her analysis of the Export Programme proceeded in two parts, according to the two recipients: the industry and the members of national trade or industry associations. The first part of her analysis focused on the former group. Regarding the form of the subsidy, she noted that the programme was designed to increase export sales; it directly targeted the industry by sharing the costs and risks of activities through repayable contributions. She considered that the programme met the definition of subsidy under Article 1.1 of the ASCM because it constituted a financial contribution by a government. With regard to the second question, concerning the benefits to the recipient, she said that the ASCM did not contain a definition of benefit. The report of the panel on Canada/Aircraft concluded that a financial contribution would only confer a benefit, i.e., an advantage, if it was provided on terms more advantageous than available on the market. In that regard, since the programme provided that the repayment be based on 4% of the incremental revenues in the target market, she considered that the existence of a benefit to the company depended on whether the total amount of the repayment, minus disbursements under the programme, was lower than the interest that would have been incurred if the company had borrowed on the market. Identifying the beneficiary and the relevant mode of supply was more complicated, particularly for mode 2, and also because the programme required a domestic content of 50%. With respect to the third question, relating to the effects of the programme and whether such effects were distortive, she considered that the programme clearly provided a prohibited subsidy under Article 3.1 of the ASCM. Accordingly, it was likely to distort trade through mode 1.

59. The second part of her analysis focused on the part of the programme that targeted members of national trade or industry associations. Concerning the first question on the form of the subsidy, she said that the financial assistance provided to national trade associations, whose activities included helping their members to develop market information, could be considered to be a subsidy under the ASCM because it amounted to a government provision of goods or services other than general infrastructure, according to Article 1.1(a)(1)(iii). On the second question, she indicated that the beneficiaries of the programme were the members of national trade associations. Regarding the third question, she thought that determining trade effects was difficult. Nevertheless, the fact that the programme related to export promotion raised suspicions that the subsidy was contingent on export performance. In conclusion, she wished to raise three sets of questions regarding this programme. First, to what extent could the definition of subsidy in Article 1 of the ASCM be used in the services context? Should the subsidies captured by that definition, but not distorting trade, be exempt from disciplines? Should there be other exemptions, for example development-related subsidies? Second, how could the benefits to the recipient be defined under various modes of supply when traditional notions of domestic and foreign, exports and imports, could not readily be transferred to services? Third, how could export subsidies be defined under modes 3 and 4?

60. The representative of Japan considered that the communication from Chile provided a useful basis for future discussions and indicated that her delegation would come back to it at a later stage.

61. The representative of Switzerland stated that his delegation, in the context of market access negotiations, would have significant problems advising suppliers to take the risk of entering new foreign markets if the possibility existed that they could be affected by unfair competition from suppliers of third countries receiving financial support from their government and no recourse was available. This was the main reason why his delegation was interested in progress on the issue of subsidies. In addition, he wished to make some more specific points regarding the issue of export subsidies in services. First, he noted that there were various reasons, most of which were legitimate, for subsidizing service suppliers. However, export programmes were cases where the motivations for the subsidies were, in the overwhelming majority of cases, trade oriented. This had to be discussed as a matter of priority. Second, while a discriminatory subsidy had to be listed as a limitation in schedules, export subsidies were often non-discriminatory and, hence, did not need to be scheduled, despite being very distortive. This created a problem of level playing field and of lack of transparency. Third, export subsidies could only be addressed in the GATS; regional or bilateral trade agreements could not effectively deal with issues such as effects in third markets. Therefore, his delegation was seeking an agreement in this round on a framework that would allow for a progressive elimination of such subsidies. Moreover, in light of the lack of time allotted to the issue in past meetings and the recent contributions made, he supported Chile's suggestion to put the issue of subsidies as the first item on the agenda of the next meeting. He also called attention to the obligation to share information pursuant to Article XV.

62. Turning more specifically to the examples listed in the communication from Chile, the representative of Switzerland said that subsidies having effects in third markets were most relevant in these negotiations. Examples A and B mentioned in the communication from Chile referred to export subsidies. Subsidies by governments artificially allowed service providers to be more competitive by offering lower prices. With respect to mode 3, the key question was to what extent national treatment was granted, as subsidies were generally limited to domestic service suppliers. Some subsidies, while granted to suppliers having established a commercial presence, could also have distortive effects on trade under mode 1. Mode 1 imports would, in such cases, be distorted. Concerning the beneficiaries of the programme, she thought that some subsidies that were aimed at benefiting suppliers with a commercial presence could in turn affect exports of services through mode 1.

63. Regarding the first example, the Export Programme, she wished to distinguish between the part of the programme directly targeting the industry and the one aimed at national trade associations. Regarding the former, any subsidies involved were not discriminatory within the meaning of Article XVII as foreign suppliers established in the territory had the same access as domestic suppliers. The problem was that competition was distorted in third markets. Domestic companies in these markets would face unfair competition from abroad. The same was true for service suppliers of third countries who exported to these markets. Her delegation was concerned about such unfair competition and thought this needed to be addressed as a priority. Description of the programme in paragraph 5 of the communication suggested that it was akin to an export risk scheme. She considered that governments should not operate support schemes that afforded companies cheaper risk insurance than from private sources. The conditions attached to the contribution from the government, described in paragraph 6, were much more favourable than comparable schemes from a private financial service supplier. The subsidy programme thus provided an unfair advantage. The situation was different for pure political risk insurance, where the role of governments was legitimate. Turning to the part of the programme relating to national trade associations, she stressed that that part was not directed at individual companies but, rather, at the whole sector and that it did not support exports, as was the case in the other part of the programme, but aimed to promote a sector as a whole. The generic aspect of this part of the programme made it far less problematic than the other part described in paragraph 5. It was hard to see that it would artificially lower prices of services sold or exported.

64. Regarding example B in the communication from Chile, she called attention to paragraph 8(d), which in her view described a typical export subsidy that harmed foreign competitors. In conclusion, she indicated that subsidy rules in the goods area could only be used as a starting point. A lot of adjustments would have to be made, especially since services were not being checked at the border in relation to the price paid. This meant that any subsidy disciplines could not be built on the notion of countervailing duties as in goods trade. A key concern in services was to have national treatment applied, especially in mode 3. Nevertheless, as showed in the examples, some subsidies, even if granted in a non-discriminatory manner to established suppliers, could distort competition in third markets.

65. The representative of Turkey considered that the definition of subsidies and related disciplines was complicated by the fact that services sectors had very different particularities. For example, it was difficult to set rules that could meet the requirements of both banks and restaurants. The extent of trade distortion in a given sector would depend on secondary effects of the subsidy, which would be different for each sector. For example, a subsidy to the banking sector would indirectly benefit other sectors by reducing interest rates on credit. Therefore, categorizing services sectors into main sub-groups and having a study done on trade impacts per sub-group might help to advance discussions. The level of restrictions could then be determined for each sub-group. The use of sub-groups could also be useful for considering public policy objectives, which were more prominent in such sectors as health and education. It was important to keep the balance between the ability of governments to pursue social policy objectives and tackling trade distortions. Also, the scope of services sectors as defined in Article I:3(b) of the GATS included a wide range of enterprises, from small-sized firms to multinational companies. Trade distortions seemed more likely when the recipient of a subsidy was a significant player in the market, and this had to be taken into account when categorizing subsidies.

66. The representative of Colombia believed that looking at concrete examples was a positive way to advance discussions because it helped to provide more information on subsidy practices and fostered technical analysis. With respect to the Export Programme, she considered it would be beneficial to further analyze that programme in light of the criteria and concepts contained in the ASCM, for example, the existence of a financial contribution by a government or any public body within the territory of a Member or the conferring of a benefit. It was also important to further assess the applicability of the concept of specificity, as well as the granting of subsidies conditional on export performance. The update of the Secretariat Note on subsidy information found in TPR reports provided useful examples of subsidy programmes. She highlighted that the update indicated that the majority of subsidies took the form of tax incentives, duty-free inputs and free zone incentives, as well as preferential credit, sometimes linked to exports. In the banking sector, for example, 33 Member governments provided subsidies, often in the form of tax incentives. In addition, 24 Members provided subsidies to the transport sector in general, 25 to maritime transport in particular, 14 to air transport, and 14 to rail transport. The Note also listed subsidies in such sectors as energy, telecommunications, construction, software and information technology. Since the Note, which drew on TPR reports, necessarily lacked detailed information on subsidy programmes, she considered that Members that had such programmes in place could provide additional information, maybe along the lines suggested in Chile's communication.

67. The representative of Brazil characterized the position of his delegation on this issue as one of creative and careful curiosity. Whatever the outcome of the discussions, Article XV provided that the negotiations had to recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. He also wanted to draw attention to the Agreement on Agriculture, which he thought could be helpful in discussions. Annex 2 of that Agreement contained a list of green-box measures, one of which was referred to as general services. Such measures included research, pest and disease control, training services, extension and advisory services,

inspection services, marketing and promotion services, infrastructural services, including electricity, roads, port facilities, water supplies, etc. He thought there might be common ground between such examples and the last two examples mentioned in the communication from Chile.

68. The representative of Hong Kong, China lent support to the proposal by Chile that subsidies be the first item on the agenda of the next meeting. He wished to comment on the first example found in the communication from Chile. He had found three distinct elements of subsidies in the programme. First, there was a financial contribution by the government. Second, the contribution was to an established entity fulfilling certain export or content criteria. Third, the subsidy was contingent on exports. An additional element of importance was that of benefit, and further analysis was needed to see whether concepts used in the ASCM could be readily applied in the context of services. Regarding the second question, he considered it was clear that the company receiving support was the beneficiary of the programme. However, it was not clear that the subsidies were specific to any mode of supply. Indeed, it seemed unlikely that a subsidy programme targeting services exports would specify any particular mode of supply to be subsidized. Hence, trying to make a modal distinction in terms of the recipient of the subsidy was not very meaningful. The same could be said regarding the effects of subsidies. As pointed out by Switzerland, subsidies were likely to distort conditions of competition in a foreign market in favour of the exported services, to the detriment of the domestic services in that foreign market as well as those exported by third countries. He believed that, in such cases, the distortive effects did not easily lend themselves to any modal distinction, as they would affect all suppliers supplying services to the same market. The impact of such distortive effects would appear to arise within the boundary of the market concerned and would not be related to any particular mode of supply. Reacting to comments made by other delegations, he said that his delegation considered that the issue of distortive effects and that of the definition of subsidies should be separated. While the definition could be generic and be relevant across all sectors, the distortive effects might need to be analysed having regard to the particular circumstances of individual sectors. It would be useful to assess distortive effects in the light of the policy objectives of the subsidies. He expressed support for Switzerland's approach to the issue, emphasizing the need, first, to try to achieve transparency of subsidy practices and, second, to see whether a level playing field could be established. In that regard, he hoped to hear more on the notion of progressive elimination of subsidies. He also stressed the importance of sharing information pursuant to Article XV.

69. The representative of Canada said that the nature of the programmes mentioned in the communication from Chile, combined with the particular characteristics of services trade, underlined the difficulties involved in defining trade-distortive subsidies in services. Considering possible disciplines was equally complex. Various programmes in the communication were described as aiming to promote social prosperity, or to satisfy broad economic objectives beyond the context of trade in services, relating for example to infrastructure development. He believed that subsidies in some cases could correct distortions arising from market failure, satisfy important needs, and often contribute to what was public policy in many countries. These subsidies were not necessarily trade distortive. He agreed that it was important to structure the discussion on subsidies and that the use of examples could be helpful in that regard. Regarding the room document presented by Chinese Taipei, he was surprised by the approach used, which seemed to involve judging compliance with the ASCM. He considered that it was premature because it seemed to suggest that this Agreement should apply to services subsidies or be replicated in the GATS. Regarding the intervention by the representative of Switzerland, he wondered why reference was made to risk insurance, which he did not see in the description of the programme.

70. While reserving her delegation's position on the applicability of the ASCM to subsidies in the services area, the representative of China had some preliminary comments and questions on the room document from Chinese Taipei. She wondered whether it was appropriate to conclude that, because they were prohibited in the ASCM, subsidies contingent on local content were most likely to be

distortive in services trade. Regarding the financial assistance provided to national trade associations, she mentioned that Chinese Taipei's room document suggested that such assistance amounted to the government providing goods and services other than general infrastructure to the private sector. She asked why financial assistance to national trade association was regarded as government provision of goods and services. With respect to generic export promotion activities, the room document said that the use of the term 'export' raised suspicions that the subsidy was contingent on export performance. She found it difficult to draw such inferences. With respect to the second example listed, concerning services related to technology, the room document said that the elimination of import duties did not constitute a subsidy while income tax holidays for computer training could be considered as a subsidy. She wished to hear more about the underlying reasoning. Regarding the tourism example, she hoped that the delegation of Chinese Taipei could elaborate, in the light of the conclusion reached in the previous example, on why the import duty exemption for advertising and promotional material was thought to be a subsidy. With respect to the tourism example, she also hoped to hear more on the point made in the room document regarding the application of personal income taxes to local investors. Finally, concerning the example on scientific research and technology transfer, she wished to have further explanation of why the burden of proof should depend on whether a subsidy was deemed non-actionable or not.

71. The representative of New Zealand said she was interested to hear more from delegations about the nature of distortions. 'Distortion' was not a clearly defined term and could not be automatically associated with subsidies. She shared the view expressed by Hong Kong, China that the issue of what was trade distortive should be de-linked from the definition of subsidies. The underlying policy objectives would be a very important factor in clarifying the notion of trade distortion. In response to questions raised at the last meeting by Hong Kong, China in the context of the Secretariat Note S/WPGR/W/46, she wished to confirm that the subsidy disciplines relating to services in the Australia-New Zealand Closer Economic Relations Agreement had never been invoked. Article 11 of the Protocol on trade in services under that Agreement prohibited Members from introducing new or expanding existing export subsidies, export incentives and other assistance measures having a direct distorting effect on trade. Article 19 of the Protocol provided for consultations in cases where an obligation had not been, or might not be, fulfilled, or the achievement of an objective of the Protocol was being frustrated. To date no consultations had been requested by either party on perceived trade distorting effects arising from export subsidies in services.

72. The representative of the United States recalled the previous comments from her delegation on the exercise proposed by Chile. With respect to the update of the Secretariat Note on information on services subsidies contained in TPR reports, she took note of the caveats mentioned by the representative of the Secretariat and also wished to draw attention to paragraph 3 of the Note. Accordingly, it needed to be kept in mind that potentially relevant information was compiled against the background of the definition of subsidies and related concepts contained in the ASCM, and that not all data recorded in TPR reports might be compatible with this definition. Paragraph 3 also indicated that some of the subsidies mentioned might be financial contributions to services which were beyond the scope of the GATS, i.e., services falling under Article I:3(b) or services in areas excluded under the Annex on Air Transport Services. These caveats needed to be kept in mind in discussing the information provided in the Note. The Working Party should focus on what was covered by the mandate under Article XV. She would come back to the room document from Chinese Taipei at a later stage.

73. The representative of the Australia wished to associate himself with the statement made by the delegation of New Zealand in response to the questions previously raised by Hong Kong, China. Services subsidies were not an issue or a problem under the Australia-New Zealand Closer Economic Relations Agreement. The representative of Singapore believed that a number of commentators had said that the GATS might not necessarily cover export-related measures. If that was the case, and without prejudging the position of his delegation, how could export subsidies relate to the GATS?

74. Commenting on the Secretariat Note on subsidy-related information contained in TPR reports, the representative of the Republic of Korea noted that one of these reports pointed out that subsidies to services sectors were increasing, while those relating to goods were declining. Also, subsidies that were hidden before privatisation had now become important for pursuing certain policy objectives. The information compiled from TPR reports also highlighted that different motivations for providing subsidies existed, for example regional development, universal service obligations, or security concerns. Without implying that such subsidies should be subject to disciplines, she found it useful to see that the role of subsidies in services was growing. With respect to the definition of subsidies, she believed that definitional elements of the ASCM could apply, especially the existence of a financial contribution and of a benefit. However, a key issue in the services sector was the question of modal application, which needed to be further explored. She wondered how the concept of export subsidies could be applied to the four modes of supply.

75. The representative of Mexico indicated that the possible elaboration of disciplines on subsidies was a key aspect of the services negotiations for his delegation. He thought that the communication from Chile provided a useful way to focus discussions, and he would come back to the examples at a later stage.

76. The representative of Hong Kong, China wished to react to a comment made by the delegation of Singapore. Since Article XV provided for negotiations on subsidies that might have distortive effects on trade in services, it should be clear that delegations could talk about any subsidy issue relating to trade in services. Also, Article XV said that the exchange of information concerned all subsidies relating to trade in services. Obviously, delegations could still disagree over whether certain subsidies were trade distortive or not. With respect to the update of the Secretariat Note on information on services subsidies contained in TPR, he wished to take note of the caveats mentioned by the representative of the Secretariat. The Note included a possible subsidy being granted by Hong Kong, China, which referred to tax exemptions provided under double taxation arrangements for international operations of ships or airlines. He wished to clarify that, in his view, such measures were covered by the general exception under Article XIV(d) of the GATS and should not be subject to any subsidy disciplines to be developed. Such disciplines should not apply to measures covered by the general and security exceptions under Articles XIV and XIV *bis*, as well as perhaps to services supplied under the exercise of governmental authority and prudential measures in financial services. He suggested that Members whose subsidies had been mentioned in the Note share their views as to the types of measures that might not constitute subsidies or that should not be subject to subsidy disciplines because they did not have trade distortive effects.

77. The representative of Chile indicated that she had asked her authorities for information on the two Chilean programmes mentioned in the Secretariat Note on information contained in TPR reports. She would later come back to this issue. In a preliminary manner, it appeared that such programmes aimed to fulfil some public policy objective.

78. The representative of Chinese Taipei said she hoped to obtain in writing the questions raised regarding the room document. Concerning her reference to the ASCM for a possible model definition, she thought that the Agreement was commonly used and thus could not be ignored, although she acknowledged that services trade, given the different modes of supply, was more complex. With regard to the question raised by the delegation of Singapore, she was of the view that export-related measures, such as export subsidies, were within the scope of the GATS.

79. Regarding the preceding discussion on ESM, the Chairperson said that his successor would circulate, as quickly as possible, a list of questions raised in the light of the recent contribution by the group of Members from ASEAN. The list would serve as a tool to focus discussions and facilitate the provision of answers. With respect to government procurement, he noted that the Secretariat was asked to elaborate on its previous Note contained in S/WPGR/W/44. The additional Note might take

some time to be completed given the large amount of potentially relevant information. Concerning subsidies, he noted that the discussion inspired by Chile's communication and the room document from China Taipei had proved useful. He recalled that the delegation of Chile, supported by others, had asked for the issue of subsidies to be put as the first item on the agenda for the next meeting. He asked the membership if they could agree to such a proposal.

80. The representative of the Philippines said he was open to such an idea, but that was conditional on the incoming Chairperson conducting consultations on this issue and perhaps having informal sessions of the Working Party between the clusters of meetings so as to alleviate concerns about the lack of time to discuss all issues. The representative of the United States thought that consultations by the Chairperson might be appropriate, but was not sure about the need for informal meetings raised by the delegation of the Philippines. Regarding the work to be undertaken by the Secretariat, for example with respect to procurement, she reserved the right to provide her delegation's views and opinions at the time the relevant document was circulated so that positions or interpretations were not prejudged. The representative of Canada did not think that consultations on the order of agenda items were necessary. The representative of Chile agreed with Canada and doubted the usefulness of consultations on such procedural issues. The Chairperson preferred not to pre-empt his successor.

IV. DATES OF THE NEXT MEETING

81. The Chairperson said that the Working Party would hold its next formal meeting during the next cluster of services meetings. The exact date would be announced in due course.

V. OTHER BUSINESS

82. No point was raised under this item.

VI. ELECTION OF THE NEW CHAIRPERSON

83. The Chairperson recalled that, according to the rules of procedures, the hand-over of the chairmanship needed to take place at the end of the first meeting of the year. He indicated that, as a result of consultations, the Chairman of the Council for Trade in Services, Ambassador Camara, had announced at the meeting of the Council held on 15 March that Ms. Clare Kelly, from New Zealand, seemed to be supported by the whole membership. He thus proposed that the Working Party elect Ms. Kelly as Chairperson of the Working Party on GATS Rules. Ms. Clare Kelly was elected by acclamation.

84. The incoming Chairperson thanked delegations for their confidence and thanked the outgoing Chairperson for the work done under his tenure. Delegations expressed their appreciation for the outgoing Chairperson's engagement and congratulated the new Chairperson on her election.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/46/Corr.1*

8 April 2004

(04-1631)

Working Party on GATS Rules

REPORT OF THE MEETING OF 10 AND 15 MARCH 2004

Note by the Secretariat¹

Corrigendum

At the request of the United States, the following correction should be made:

The part of paragraph 5 that summarized the intervention of the United States should now read: "The representative of the United States said that her delegation was ready to show further flexibility and proposed to drop the reference in the draft decision to the terms "as required", which her delegation had previously insisted on. Her delegation was now satisfied with the introduction to the paragraph and thus felt that it was no longer necessary to include the terms "as required"."

* In English and Spanish only

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

Working Party on GATS Rules

REPORT OF THE MEETING OF 10 AND 15 MARCH 2004

1. The Working Party on GATS Rules held, under the chairmanship of Mr. Santiago Urbina from Nicaragua, a special meeting to discuss the deadline for negotiations pursuant to Article X of the GATS. The agenda for the meeting was contained in WTO/AIR/2258. The agenda for the meeting was adopted.

I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER ARTICLE X OF THE GATS: DEADLINE FOR NEGOTIATIONS

A. SESSION OF 10 MARCH 2004

2. The Chairperson informed delegations that he had been conducting consultations with the main protagonists regarding whether negotiations pursuant to Article X should be extended beyond 15 March 2004, and on what terms. He noted that these consultations had not yet permitted reaching a consensus. The Chairperson then proposed that the meeting be continued in informal mode. The formal meeting was adjourned and the Chairperson indicated it would be reconvened at a later time.

B. SESSION OF 15 MARCH 2004

3. The Chairperson resumed the meeting of the Working Party. He first drew attention to the terrorist attacks in Madrid on 11 March and condemned such abominable acts. To show solidarity with the families of the victims and with the people of Spain, the Chairperson asked the Working Party to hold a minute of silence. The representative of Spain thanked the Chairperson and the Working Party for sharing condolences and for expressing support.

4. The Chairperson informed delegations that he had conducted extensive consultations since the session of 10 March so as to help reach a solution with regard to an extension of negotiations under Article X of the GATS. He expressed gratitude to those delegations who had expressed flexibility, as this had allowed him, in the consultations, to focus on resolving the major points of difference. Although not all positions could be accommodated in full, the draft decision which he had circulated under his responsibility in JOB(04)/9 represented a balanced outcome. He hoped delegations could accept it, along with some modifications resulting from consultations recently held. These modifications only concerned paragraph 2 of the draft decision, which would now read: "Subject to the outcome of the mandate under paragraph 1, as required, the results of such negotiations shall enter into effect on a date not later than the date of entry into force of the results of the current round of services negotiations". The Chairperson indicated that this draft decision seemed to be gathering consensus. He stressed that in this process all protagonists had to make difficult concessions. He asked if the Working Party could agree on the content of such a decision.

5. The representative of the United States said that her delegation was ready to show further flexibility and proposed to drop the reference in the draft decision to the terms "as required", which her delegation had previously insisted on. The representative of the Philippines asked for a short

recess so as to better assess that proposal. The representative of Pakistan wished to have some time to consult with his authorities and thus lent support. The representative of Colombia wanted to bring to the attention of the Working Party that the Spanish translation of the text of the draft decision did not seem entirely accurate.

6. The Chairperson noted that the draft decision, which only had a few words in brackets, had been circulated the previous week so as to enable delegations to receive proper instructions from their authorities for today's meeting. Regarding the Spanish translation of the decision, he thanked the representative of Colombia for her comments and said he was confident that the Spanish version of any decision adopted would accurately reflect the original text. The Chairperson proposed a short recess, to which the Working Party agreed.

7. In resuming the session, the Chairperson asked if the Working Party was ready to agree on the text of the draft decision mentioned earlier, along with the modification proposed by the United States. The representative of Pakistan informed the Working Party that he was now ready to agree to the proposed draft decision.

8. The representative of the Philippines said that what he was agreeing to at this point was for the draft decision to be transmitted to the Council for Trade in Services for approval. The Chairperson confirmed that the authority to adopt the decision rested with the Council for Trade in Services. He was seeking agreement of the Working Party to send this particular decision for adoption to the Council for Trade in Services.

9. The Working Party agreed to send the draft decision, as modified, to the Council for Trade in Services for approval.

Working Party on GATS Rules

REPORT OF THE MEETING OF 2 DECEMBER 2003

Note by the Secretariat¹

1. The Working Party on GATS Rules opened its forty-fifth meeting under the chairmanship of Mr. Santiago Urbina, from Nicaragua. The agenda for the meeting was contained in WTO/AIR/2221. It included the following items: Annual Report of the Working Party on GATS Rules to the Council for Trade in Services, emergency safeguard measures, government procurement, subsidies, date of the next meeting, and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda contained in JOB(03)/215.

2. The representative of Brazil enquired about the status of the study on subsidies being undertaken by UNCTAD and wondered whether the Chairperson could address this topic under "other business". The Chairperson said he would comment on this issue under the agenda item pertaining to negotiations on subsidies. There was no request to add any items under Other Business. The agenda for the meeting was adopted.

I. ANNUAL REPORT OF THE WORKING PARTY ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2003)

3. The Chairperson explained that the Working Party needed to adopt its Annual Report to the Council for Trade in Services. He recalled that, in view of the Cancun Ministerial Meeting, the Working Party on GATS Rules had adopted, in July 2003, an update to its 2002 Annual Report, contained in document S/WPGR/12, which covered the meetings of the Working Party up to May 2003. Short and factual, the draft Annual Report that Members needed to adopt at this meeting covered meetings held in July and October, and was contained in document S/WPGR/W/45. It had to be read in conjunction with the July update. The Working Party was invited to adopt this report and transmit it to the Council for Trade in Services.

4. A number of delegations proposed drafting changes to the draft report. The following delegations participated in the ensuing discussion: Switzerland, Philippines, United States, Brazil, European Communities, India, Mexico, Canada, and China. Following a number of revisions, Members adopted the Annual Report, which was circulated as document S/WPGR/13.

II. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

5. The Chairperson recalled that at the last meeting the delegation of Switzerland had presented a non-paper that examined an hypothetical scenario and analysed the possibilities available to a Member in the absence of an ESM. Also, the delegation of Thailand, speaking for a number of other delegations, had provided answers to questions previously asked regarding how a particular ESM model might apply to a hypothetical situation. He invited delegations to pursue their discussion on that basis, given that many could only express preliminary comments at the last meeting. In light of

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

some of the issues mentioned by delegations at the last meeting, he suggested that questions that could be addressed related, for example, to the following: in responding to a given situation, what was the role and relevance of domestic regulation and of other measures permitted by GATS, and what was the importance of the type of commitment inscribed in the schedule? What would be the form and effect of the emergency safeguard measure used to react to the situation described in the hypothetical example? What would be the role and relevance of an emergency safeguard mechanism in encouraging more commitments or more liberal commitments? Delegations might also wish to consider whether other ESM models or approaches, or other hypothetical situations, might help bring forward relevant considerations. While it was his desire to pursue the discussion in light of the substantive contributions made at the last meeting, the Chairperson underscored that the deadline for these negotiations was fast approaching. Document S/L/102, adopted by the Council for Trade in Services on 15 March 2002, extended the deadline to 15 March 2004. He indicated that he would subsequently take the floor in order to invite views from delegations as to how best to proceed up to mid-March, given that the Working Party currently had only one other formal meeting planned before the expiration of the deadline, tentatively scheduled at present for the first week of February.

6. The representative of Brazil thought that, in addition to the questions formulated by the Chairperson, another relevant item to guide discussions related to how a collective mechanism such as an ESM would stimulate Members to get rid of, and stop resorting to, certain entries in schedules that could have an effect equivalent to that of an ESM. The representative of the United States considered that the annotated agenda contained the Chairperson's suggestions to help guide discussions, but was not something that Members needed to agree to.

7. The representative of the Philippines, speaking also for the delegations of Brunei Darussalam, Indonesia, Malaysia and Thailand, wished to offer some observations on the non-paper from the delegation of Switzerland. While measures such as zoning or shopping-hour regulations might help to alleviate, to a certain extent, injury suffered by domestic industry, he did not think these were sufficient to address fully the problem sought to be rectified through an emergency safeguard measure. Domestic regulations did not really reduce the inflow of foreign service suppliers, in this case foreign retailers, which might benefit from such advantages as access to greater resources, economies of scale, or integrated network of affiliates. What was really required was a measure to allow domestic service suppliers to have time to adjust. Regarding zoning regulations, he considered, as mentioned by the representative of Korea at the last meeting, that such measures might be related to economic needs tests found in schedules. He also wondered whether zoning regulations would not simply result in displacing the injury from one area to another.

8. The representative of Brazil stated that his delegation was not campaigning for or against an ESM. Rather, his delegation wanted to analyse the tools available within GATS so as to make the whole architecture of the Agreement more transparent and predictable. He saw the question of ESM in that light. With respect to the non-paper from Switzerland, he agreed that the GATS was a flexible agreement but noted that Members nevertheless needed to be very cautious before undertaking a commitment. Being cautious did not preclude the occurrence of unforeseen events, however, which was why the Agreement's flexibility was not sufficient. Emergency safeguard measures thus had a role to play. He thought that an ESM would be preferable to the scheduling of economic needs tests (ENTs). Many, if not most, of the numerous ENTs listed in schedules had no clear criteria and produced an effect equivalent to that of a safeguard. He thought it was preferable to discuss the issue multilaterally so as to design a mechanism that could be supervised collectively, rather than to have individual Members craft and list their own ESM in their schedules. Regarding domestic regulations, he did not think that it was advisable to use domestic regulations as a way to overcome an unforeseen problem arising from commitments undertaken. He also wondered whether Switzerland could further explain the relevance of the non-discriminatory programme for the training of workers, which was suggested in the non-paper. Finally, he expressed doubts about two other alternative avenues

mentioned by Switzerland, i.e., Article XXI procedures and seeking a waiver. Specifically, he wondered why it would not be feasible to withdraw a commitment temporarily if it was possible to do so permanently under Article XXI.

9. The representative of Hong Kong, China thought that discussing examples was useful since it helped to focus on the concrete issues that delegations had to face in the consideration of an ESM. Regarding the non-paper presented by Switzerland, he agreed that the GATS provided great flexibility, and noted that it was essential to have the proper regulatory framework in place when undertaking liberalisation so as to cater for the structural adjustment that might occur as a consequence. He had reservations about the suggestion that economic needs tests could be a solution. It was not apparent that ENTs were intended to address situations similar to those for which an ESM might be needed. Economic needs tests were supposed to be based on clear, objective and pre-established criteria. Their application should thus be predictable. An ESM would be intended, in contrast, to address unforeseen or emergency circumstances. An ENT could thus not be used to address the latter set of circumstances. He indicated that, had he to choose between ENTs and multilateral rules to address unforeseen and emergency circumstances, the initial preference of his delegation would be the latter. Regarding economic needs tests that lacked clear criteria, he thought this was a problem in itself. Regarding the role and relevance of domestic regulation in responding to a given situation, he thought that the GATS, by permitting non-discriminatory domestic regulations, provided ample flexibility to governments in dealing with any situation that might arise, even when full commitments were undertaken. He was not certain, however, whether some of the situations suggested in the Swiss paper could really be considered as measures that would be consistent with a full commitment. With respect to the suggestion to have different shopping hours for small retailers and large retailers, he wondered, in the event all the large retailers were foreign and all the small retailers were domestic, and if the intent of differential treatment related to national origin, whether the possibility of a *de facto* national treatment violation would arise. Determination of what regulations would be consistent with commitments could only be done on a case-by-case basis.

10. Turning back to the Shangri La example previously presented, the representative of Hong Kong, China had some questions for the group of delegations that had indicated that such example could justify the use of emergency safeguard measures. He asked what were the emergency and unforeseen circumstances that required the use of emergency safeguard measures and whether such circumstances arose from liberalization undertaken or commitments made? Was that only a transitional problem? Were the circumstances mentioned in the example different from structural adjustment, which was presumably unavoidable and should have been foreseen when undertaking reforms and liberalization? What kind of measures would have been undertaken to address the situation in the example of Shangri La and why were such measures not listed in the schedule? How did the situation in that example differ from a scenario where withdrawal of commitments was intended?

11. The representative of China wished to comment on the non-paper presented by Switzerland. Referring to the perceived flexibility at the time of making commitments, he said that China's commitments had not been made according to the level of development of Chinese services industry, or to regulatory capacity, because of the nature of accession negotiations. Moreover, China had not been allowed to inscribe an ENT in its schedule. China had made commitments, including phase-in commitments, in sectors where it had little experience. He indicated that it was hard, at the time a commitment was made, to predict the results of liberalisation. As a result, ESM was an issue that was seriously considered by China during the current services negotiations. His delegation thought that a safeguard mechanism would be helpful for further liberalization in the new round of negotiations and that the absence of such a mechanism might lead the domestic industry to consider further commitments to be neither feasible nor desirable. Liberalization might then take place according to one's own development level and regulatory capacity.

12. The representative of the European Communities considered that the Shangri La example was special in that it related to the issue of large retailers versus small retailers, rather than domestic suppliers versus foreign suppliers. It might be that large retailers originated in other countries, but that was not always the case. Increasingly, supermarkets from developing countries were expanding within their own country, as well as abroad. Distinctions between large and small retailers could not simply be equated to issues relating to foreign versus domestic suppliers, which was probably why Switzerland had mentioned the role of domestic regulation. She asked whether the delegation of the Philippines could explain how time would permit small retailers to adjust to competition from large retailers, which might be foreign or domestic. She did not see how the protection of domestic industry for a period of time would allow small retailers to adjust to competition from large retailers and felt that such an issue would be more appropriately dealt with through domestic regulation than by keeping foreign suppliers out of the market.

13. The representative of Indonesia agreed with Switzerland that the GATS was flexible and that Members had policy options to react when facing a situation such as that of Shangri La. Members could, for instance, liberalize autonomously at the national level only and decide at a later stage whether to make commitments under GATS. The issue at stake, though, was whether GATS provisions as they now stood adequately addressed the situation where a Member, after having undertaken market access commitments, suffered serious injury because of a radical increase in imports of services. He said that the existing provisions of the GATS were not designed to protect the domestic industry in such a situation, as a Member currently could not respond swiftly to deal with it. Emergency situations could only be addressed through temporary measures taken in a timely manner. Temporary suspension might be appropriate in certain cases in order to address injury. Regarding domestic regulations, he considered that these might only serve as a partial solution and could not be used to address the underlying problems.

14. The representative of Switzerland indicated that the non-paper by his delegation examined a range of possibilities available to a government in a given situation, but recalled that it did not express a preference for any of the particular measures mentioned. Regarding the comments made by the delegation of the Philippines, he said that his delegation had never argued that one given measure, such as zoning plans, would be sufficient to address fully the problem at hand. He thought there was a large array of measures that could be taken and that, in such a context, an ESM did not provide added value. The non-paper showed that the GATS was flexible and that a variety of avenues could be used on a case-by-case basis. He considered that even an ESM would not be sufficient to address fully the situation at hand in the Shangri La example, because structural problems could not be solved by an emergency safeguard measure. With regard to a point previously raised about the link between zoning plans and specific commitments, he considered that zoning plans, because they were not listed as a market access limitation in Article XVI, were deemed *prima facie* to be a domestic regulation. Zoning plans had to be used sensibly and not as a disguised trade barrier. In reaction to the intervention made by the representative of China, he recognized that there was a difference in levels of commitments between original and more recent Members. In any event, he was not aware of cases where an ESM was the only possible means of resolving a given problem and felt viable alternatives existed for all Members, notwithstanding the time at which they joined the WTO.

15. Regarding a point raised by the representative of Hong Kong, China, the representative of Switzerland indicated that the problem at hand was structural and related to the relationship between small retailers and large retailers, as noted by the representative of the EC. Domestic regulations sought to address this structural issue, but not to keep foreign suppliers out of the market for a certain period of time. Restrictions on foreign suppliers through an ESM would not help to solve this problem. Concerning the points raised with regard to economic needs tests, he said that his delegation was of the view that ENTs should be removed whenever possible. When they needed to be scheduled, ENTs had to be based on objective, transparent and predictable criteria. He disagreed with

the idea that an ESM would make commitments more liberal. Rather, it would diminish and compromise the value of commitments negotiated during the Uruguay Round. Finally, recalling that the purpose of an ESM allegedly was to address emergency and unforeseeable effects caused by commitments, he wondered whether these could occur when commitments had been in effect for many years. For example, he did not see why, when Members had commitments in place for some 10 years or so, an ESM should continue to apply to all Members and all sectors.

16. The representative of Philippines, speaking also on behalf of Brunei Darussalam, Indonesia, Malaysia and Thailand, agreed, like Switzerland and others, that the GATS was flexible, but noted that because of other factors a Member might, notwithstanding that flexibility, be constrained at the time of taking commitments. Concerning the point made by Switzerland that an ESM was not needed because a government could use a variety of measures even when commitments had been made, he said that he saw domestic regulations as something that should not be used to discriminate against foreign suppliers. Domestic regulations, as understood under the GATS, should not serve as a disguised market access barrier. He considered that this discussion highlighted that an ESM was necessary, desirable and feasible, and wondered why a case could be made for an ESM in the goods sector, but not in services. Regarding the point by the representative of the EC that the use of an emergency safeguard measure in the case at hand would not help to solve a structural problem, he thought one could not imply that all problems were structural and that they could never be overcome after a given period of time. In any event, an emergency safeguard measure could only be employed for a limited period. The group of delegations he was speaking for had mentioned a time limit of three years for developing countries, perhaps with the possibility of extension. There was no intention to suggest that modification of commitments be permanent. A key difference between the model proposed by ASEAN in 2000 and a modification of commitments was that, in the former, the offering of compensation was not required for the first three years. With respect to comments by the delegation of Switzerland that the situation justifying the emergency safeguard measure needed to be "unforeseeable", he felt that this issue only arose because of the decision of the Appellate Body in US – Lamb, where unforeseen circumstances were treated as an additional element that an investigative authority needed to take into consideration. He was not certain, however, that the Appellate Body had precisely used the words "unforeseeable circumstances". He considered that the unforeseen or emergency circumstances in the Shangri La example requiring a safeguard measure related to the sudden increase in supplies by foreign service suppliers, which was not foreseen at the time the commitment was made. He indicated that he would like to revert to some of the questions asked by Hong Kong, China, at a later time. Finally, the interventions under this agenda item showed that there was interest in fleshing out and clarifying various questions. This pointed to the need to make further efforts to meet the 15 March deadline or, otherwise, to have an appropriate alternative.

17. While she did not necessarily agree with all the options mentioned in the non-paper by Switzerland, the representative of the United States thought it raised important questions about the relevance of the hypothetical example presented. The ensuing discussion still had not solved the questions of desirability and feasibility. No threshold on the question of an ESM had been reached. Looking more carefully at the paper on the modal application of an ESM previously circulated by the European Communities might have helped to focus discussions, which had often tended to be circular in nature. Reacting to a response provided by Thailand at the last meeting, she considered that the type of emergency at issue was still not apparent. She also sought additional clarification of Brazil's position, including with regard to the role of ENTs and Article XXI. Her delegation did not see that a case had been made for an ESM under modes 1, 2 or 3. Since the structure of the GATS was different from that of agreements on goods, the Agreement on Safeguards could not simply be used as a model for services, given the basic differences between the sets of relevant disciplines. She feared that the discussion was moving away from the key issues that needed to be addressed.

18. The representative of Brazil was not convinced that the hypothetical situation could be characterized as a structural issue, i.e., small versus large retailers. If the problem was caused by domestic suppliers, it could be solved through domestic procedures. If it was caused by foreign suppliers, actions of governments in addressing the situation could be inconsistent with commitments, which was why different remedies were needed for such situations. Regarding the question put by the delegation of the United States, he said that questions such as that of feasibility had not prevented negotiators from designing Article XXI.

19. The representative of Canada recalled the question he had asked at the last meeting, which related to the prospect of a pre-established foreign firm undertaking further domestic expansion after the application of a safeguard measure. The representative of Chinese Taipei indicated that she had reservations regarding some of the views expressed regarding the relation between zoning regulations and the obligations of market access and national treatment. Foreign suppliers should not receive less favourable treatment than that granted to domestic suppliers, unless it was inscribed in schedules. She shared the view expressed by the delegation of the Philippines that domestic regulations were not sufficient to address the ESM problem.

20. In response, the representative of the Philippines, speaking also for the delegations of Brunei Darussalam, Indonesia, Malaysia and Thailand, said that the concept of domestic industry, as ASEAN had proposed to define it, would be used for initiation of investigation and data collection. Whether foreign suppliers established in Shangri La would be subject to the application of an emergency safeguard mechanism depended to a large extent on the degree of acquired rights that would be granted to such suppliers, as agreed by Members. Whether a foreign supplier would be allowed to undertake further domestic expansion also depended to a large extent on the degree of acquired rights agreed upon.

21. The Chairperson thanked delegations for their interventions. He called attention to his initial intervention under this agenda item. In light of the deadline of 15 March 2004 for the negotiations on the question of emergency safeguard measures, he asked delegations for their views and suggestions regarding how best to proceed in the coming months, in light of the mandate of obtaining results by mid-March.

22. The representative of the Philippines, also speaking for the delegations of Brunei Darussalam, Indonesia, Malaysia and Thailand, reiterated the commitment to conclude negotiations by the deadline of 15 March 2004. He asked, to that end, that the Chairperson preside over dedicated informal sessions of the Working Party before the next cluster of meetings in February. The representative of China supported this suggestion. The representative of the United States indicated she could not support that suggestion, as she did not consider that such sessions would change the position of Members on the question of an ESM. No specific dates needed to be fixed for consultations by the Chairperson. Should the dates of the next cluster of meetings be available, it would be possible to work backward and suggest when he might want to have consultations. The Chairperson noted that the Working Party needed, pursuant to Article X, to obtain a result and that he remained at the disposal of delegations in order to facilitate that process. The representative of Brazil stressed the interest of his delegation in taking part in any consultations.

III. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

23. The Chairperson recalled that at the last meeting the delegation of the European Communities had formally explained its proposal for a framework of rules in the area of government procurement in the GATS, contained in document S/WPGR/W/42. Various delegations had made observations and asked questions relating, for example, to the role and relevance of procedural rules, the relevance for each mode of supply, and the possible use of concrete examples to facilitate discussions on the

applicability of the proposed framework. A number of delegations also had reserved the right to comment at a later point. In addition, the delegation of Singapore recently submitted a communication, circulated as JOB(03)/216.

24. In introducing this communication, the representative of Singapore noted that the mandate for negotiations on procurement in the GATS was a complex issue because of the potential overlap with the Government Procurement Agreement (GPA) and the negotiations on transparency in government procurement. Moreover, wide differences existed amongst delegations with regard to the interpretation of the mandate contained in Article XIII. The proposal by the European Communities served as a useful basis to undertake domestic consultations. He considered that the proposal provided flexible modalities to make commitments in government procurement in services. Given that consultations were still ongoing domestically, he was not in a position to express definitive views. Nevertheless, these consultations had so far permitted to identify a number of issues and questions arising from the proposal by the EC, and he hoped these could facilitate discussions in the Working Party. He then proceeded to the issues listed in the communication from his delegation. Point (a) referred to the differences of views regarding the interpretation of the mandate contained in Article XIII and asked whether the negotiating history could shed some light on the issue, as hinted in paragraph 15 of the latest communication from the EC (S/WPGR/W/42). Point (b) referred to the applicability of provisions other than national treatment, market access and MFN to government procurement in services. Point (c) addressed the potential overlap between the GPA and the modalities proposed in S/WPGR/W/42, while point (d) referred to the MFN exemption proposed in paragraphs 13 and 14 of the communication from the EC. He sought further clarification from the EC on these issues.

25. Point (e) asked how the proposed MFN exemption for government procurement in the GATS should apply, if at all, to the specific non-application or reciprocity conditions contained in GPA Annexes. Point (f) referred to the relationship between GPA Article III:3 and the modalities in S/WPGR/W/42. He wondered whether the intent of the EC was to include the qualification in paragraph 11 of its proposal into the eventual outcome of negotiations under Article XIII of GATS so as to avoid any ambiguity. Recognizing the need to avoid duplication between the work of the WPGR and that of the WGTGP, point (g) asked whether the WPGR should start looking at other sources for discussing procedural rules or rather wait further for developments in the WGTGP. Point (h) asked, as Japan did at the last meeting, how the proposed modalities might be operationalized under the various modes of supply. He considered that examples might help to clarify the issue. Point (i) asked whether some of the disciplines on government procurement contained in section B:2 of the Understanding on Commitments in Financial Services could be used for other services sectors, and, if so, how it would interact with the proposed modalities in S/WPGR/W/42. Point (j) asked to what extent Article XX of the GPA, which referred to domestic review procedures, would apply in the context of possible GATS disciplines on government procurement. He noted that Article VI:2 already contained some provisions on domestic review procedures. Finally, point (k) called attention to the fact that Articles V and XVI of the GPA, among others, contained provisions relating to developing countries and special and differential treatment. He thought these provisions might serve as a useful reference for negotiations pursuant to GATS Article XIII.

26. The representative of the European Communities intended to answer key questions raised at the October meeting of the Working Party and to react, on a preliminary basis, to some of the points in the communication by Singapore. Regarding the relationship between the GATS annex on government procurement, proposed by his delegation, and the Government Procurement Agreement (GPA), he indicated that a provision of the proposed annex could ensure that GPA commitments not be extended to all Members on an MFN basis. This would not take the form of a typical MFN exemption, but rather that of a specific article of the annex that would cover not only Members of the GPA and their current commitments, but also future GPA Members and future commitments. In

addition, his delegation had raised in its communication the possibility of listing MFN exemptions. These would not serve to clarify the relationship between the GPA and the GATS, since this would be done through the inclusion of a specific article to that effect within the text of the Agreement, but rather to address the fact that Article II of the GATS did not apply to government procurement and that, consequently, in 1994 Members had not listed MFN exemptions pertaining to government procurement. His delegation thus thought it might be appropriate that, only at the time of entry into force of a GATS Agreement on Government Procurement, Members could have the possibility to list MFN exemptions relating to procurement. The format of such exemptions could be discussed, but he did not see *a priori* why the current format would not be applicable. Concrete examples might be helpful in determining whether some adjustments might be necessary.

27. With respect to questions raised regarding procedural rules, he recalled that his delegation did not intend to duplicate discussions taking place in the WGTGP and that procedural rules developed by that Working Group could be imported into the GATS. In waiting for an agreement on transparency in government procurement to be developed, the WPGR could, as suggested by various delegations, discuss procedural rules on the basis of those contained in either the GPA or in bilateral or regional agreements. In that regard, the work done by the Secretariat, in S/WPGR/W/44, highlighted that a significant number of regional agreements contained such procedural rules. He wondered whether the Secretariat could draw up a list of provisions relating to procedures and transparency in the agreements mentioned in its previous Note. Turning to the question raised by Singapore on Article III of the GPA, he noted that national treatment in the GPA applied only to procurement laws, regulations, procedures and practices, and not to trade in services. That meant that, when actually providing the service, the foreign supplier, once selected for the procurement contract, had to conform to the rules and limitations of the GATS. The same principle was being followed in his delegation's proposal for an annex on government procurement within GATS. Article XVI and XVII would apply once the contract had been awarded. For example, should a foreign service supplier of construction services win a procurement contract in the market of a Member that had a commitment in government procurement for that sector, that supplier would still need to respect the conditions and limitations listed by the Member under Article XVI or Article XVII for that sector, for each relevant mode.

28. Concerning questions raised on the modal applicability of the commitments on government procurement, particularly those regarding modes 2 and 4, the representative of the European Communities said that, since the commitments on government procurement would relate to invitations to tender and awarding of contracts, distinctions between modes were not essential. One could imagine a single commitment for all four modes of supply in the government procurement column of the schedule, with the supply of the service then being governed by commitments in columns relating to Articles XVI and XVII. A full commitment for all modes of supply in the government procurement column for, say, computer services, would amount to non-discriminatory access to invitations to tender in that sector, as well as non-discriminatory treatment in the procedures relating to the awarding of the contract. Once the contract had been awarded, typical limitations inscribed in the market access or national treatment columns, for any given mode, would apply to the supply of the service. That being said, some WTO Members might prefer to undertake separate government procurement commitments for each mode of supply. For example, access to government procurement might be limited to firms established in the territory, as was done in the Understanding on Commitment in Financial Services. He considered that commitments on procurement for modes 2 and 4 could be relevant. Natural persons often needed to enter the market in order to submit a tender. There were some cases where governmental entities consumed services abroad for the organisation of an event in another country. He noted that many delegations had called for the use of concrete scheduling examples and thought it might indeed be useful to proceed accordingly.

29. Regarding invitations to tender covering various sectors, he thought this question was not relevant only for government procurement since many services resulted from the combination of

various other services. In such cases, commitments in the relevant sectors were needed so that the supply of the service was entirely covered. It might be examined whether some relevant clusters existed in the field of government procurement, as there might be more generally in the provision of services under the GATS. On the issue of domestic review procedures, he noted that Article VI:2 of the GATS already touched upon this issue and that Members might want to consider whether that Article was sufficient or whether more precise provisions would be needed as part of a GATS annex on government procurement. With respect to reciprocity conditions in the GPA, he noted that the GATS functioned differently, as each Member's commitments were extended to all other Members and could not contain reciprocity provisions. Concerning provisions relating to developing countries, including special and differential treatment, he recalled the views of his delegation on the benefits accruing to Members, including developing economies, as a result of a framework of rules on government procurement. The GATS' flexibility offered the possibility for each Member to take various levels of commitments, in sectors of choice, with thresholds, exclusions, price preferences, or other limitations and conditions. This would permit each Member, principally developing Members, to adapt their commitments to their developmental needs and the particular situation in each services sector. He felt that a discussion on general principles for the treatment of developing countries could be useful.

30. The representative of Canada asked some questions to the delegation of the EC in relation to paragraphs 6 and 8 of S/WPGR/W/42. Paragraph 6 mentioned procurement involving both services and goods. He indicated that, previously, the GATT Code on Government Procurement only applied to goods and that past experience might help to deal with services procurement that included some goods. He asked whether the EC thought it would be necessary to develop and agree on rules that would somehow distinguish between, on the one hand, services procurement which included incidental goods, for example a maintenance procurement that might include spare parts, and, on the other hand, goods contracts. Would it be useful to have a general statement of scope that would focus on services with incidental goods and that would let the methodology to be determined by implementing governments? He understood that this was the approach followed in the GATT Code on Government Procurement. Regarding paragraph 8, he thought the proposal by the EC implied that thresholds might differ between services sectors. He wondered whether this was indeed what the European Communities had in mind. If so, how would a Member assess the benefits of these varying thresholds and how would such multiple thresholds guarantee the efficiency of government operations? Finally, since procurement often involved a variety of services that could be brought together in a given tender, did the EC envisage developing rules to determine in which of these services sectors it might fall into?

31. The representative of Chinese Taipei made preliminary observations on the communication from Singapore. She welcomed the idea of looking into the GATS negotiating history to see whether some light could be shed on the interpretation of Article XIII. She noted that her delegation's understanding of the mandate contained in that Article was the same as that suggested by the European Communities in paragraph 15 of S/WPGR/W/42, i.e., that the obligations of market access, national treatment and most-favoured-nation should not apply to government procurement until appropriate procedural rules were developed. She also agreed with Singapore that it was important to have a clear understanding of the relationship between the GPA, the WGTGP and the GATS. Notwithstanding negotiations under Article XIII, she thought that the special rules of the GPA would continue to apply between GPA Members. Finally, coming back to some of the questions she had directed at the EC during the last meeting, she noted that procurement in services was often characterized by clusters. For example, a tender for mass transit systems might involve various services sectors, such as legal, accounting, engineering, architecture, transport, construction and other related services. Some of these sectors might be subject to commitments and others not. She thus sought the views of the European Communities on how their proposed framework would address such situations and thought that concrete and specific examples should be used in future discussions.

32. The representative of Mexico recalled the view of his delegation regarding the interpretation of the negotiating mandate contained in Article XIII. In that regard, he understood that the negotiations aimed at determining how obligations other than those of Articles II, XVI and XVII applied to government procurement. He wondered what was the basis for the EC's view on the negotiating mandate, as found in paragraph 19 of the communication.

33. The representative of the European Communities intended to answer immediately some of the questions raised. Concerning procurement covering both goods and services, he indicated that for a large number of Members the rules governing procurement were the same for goods and services. For these Members, establishing a distinction between the two types of procurement was not essential and applying GATS rules on procurement would not pose difficulties. Other Members, including the EC, drew a distinction in their domestic legislation between procurement of goods and procurement of services. A borderline had to, and could, be drawn between the two types of procurement so as to clarify which legislation had to be complied with. In GATS, it would be useful to also draw such a borderline. This would have to be discussed between Members. It might be decided that procurement which covered principally the provision of services would fall under the GATS, as opposed to procurement covering principally the provision of goods. The content of such a clause would have to be determined. With respect to the question by the delegation of Canada on thresholds, he said his delegation hoped to develop an agreement providing for maximum flexibility; each Member should be free to specify a threshold for each of its commitments. Thresholds could vary from sector to sector, as was already the case in the GPA, and from Member to Member, depending on the size of the economy or the level of development. With regard to procurement contracts covering multiple services, he indicated that this was an issue inherent to GATS itself, and was not solely arising with respect to procurement. The provision of a service that included other services classified elsewhere required commitments in all relevant sectors. The same would be true for government procurement.

IV. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

34. The Chairperson indicated that, as requested by the Working Party, the Secretariat had prepared two Notes. He also recalled that at the last meeting, in an effort to help discussions, the delegation of Chile, with support from a number of other delegations, had suggested that delegations provide concrete examples of subsidies that might distort trade in services. Some delegations had indicated that the compilation of such a list of examples would eventually need to be discussed further. However, Members were free to come forward with their own examples and to seek the views of Members in that regard. This seemed to be a logical step which could help to focus attention on possible subsidy-related problems and issues. In that respect, a communication from Chile, contained in JOB(03)/218, had recently been circulated. The Chairperson also recalled that delegations had had a substantive discussion on the definition of subsidy at the last meeting. Members might want to pursue that discussion by trying to assess where areas of commonality existed and what were some of the remaining key issues to be addressed. Moreover, as indicated at the last meeting, he had wanted to hear more from delegations regarding the proposal that the Secretariat prepare a Note on notifications covering services that were made to the Committee on Subsidies and Countervailing Duties. Some Members had expressed support for this proposal, while others had expressed concerns. Discussions he had had since then did not lead him to believe that these concerns had receded. He thus thought it might be more useful if each Member wishing to do so used this available information as a possible source of inspiration for providing anonymous examples of subsidies that might distort trade in services. He also reminded delegations that it had been agreed at the last meeting that the Secretariat, subsequently to the two Notes for today's meeting, would prepare an update to the Note on services subsidies in Trade Policy Reports. This could be done for the next meeting of the Working Party, depending on overall workload. Finally, regarding the question raised at the outset of this meeting about UNCTAD's work on subsidies, he said that such work had not yet

been completed yet. UNCTAD might possibly be able to inform delegations at the next meeting of the Working Party.

35. A representative of the Secretariat said that the two Notes prepared at the request of Members were short and factual. The first was an overview of subsidy disciplines in economic integration agreements notified under Article V of the GATS, circulated as S/WPGR/W/46. The Secretariat already had done a similar Note, dated 20 May 1996, which had been circulated as S/WPGR/W/12. The current Note thus only looked at the 24 agreements notified after that date. Thirteen of these agreements contained some disciplines on subsidy practices, 11 of which were agreements between the EC and other European countries. The second Note prepared by the Secretariat was a list of publications from other international organizations relating to subsidies in services, circulated as S/WPGR/W/47. While the list was not necessarily exhaustive, the Secretariat preferred it to be as comprehensive as possible. As a result, however, Members should not consider all studies listed to be of direct relevance for the mandate of the Working Party. He invited Members to contact the Secretariat, should they want to provide additional information or obtain further details.

36. The representative of Chile regretted that the communication from his delegation could only be circulated very recently. The communication was intended to further the negotiating mandate in Article XV. Since little information had been exchanged pursuant to paragraph 2 of Article XV, it was essential, in order to develop disciplines pursuant to paragraph 1 of Article XV, to know the subsidy programmes that Members currently had in force, so as to identify types of programmes and their sectoral focus, and to distinguish those that did distort trade in services from those that did not. The communication from his delegation intended to focus the discussion on real examples of subsidies that Members were applying. Although the identity of the Member providing the subsidy was not specified, the communication contained real examples found on the internet. The issue of subsidies could not be separated from market access issues. One needed to know, when undertaking a commitment, whether foreign service suppliers were benefiting from subsidies, as this could generate distortions. He considered that the discussion of examples needed to complement both the exchange of information and the work on the development of disciplines. The communication from his delegation divided examples of subsidy programmes in two groups. The first group listed two programmes which contained elements that he thought had been prohibited in the area of goods, because the subsidy was contingent on either exports or domestic content. The programmes contained in the second group did not appear to entail subsidies prohibited under the disciplines on goods. He noted that his delegation had encountered various subsidies relating to air transport and maritime transport services, but preferred not to focus discussion on such issues on this occasion, although it seemed important to discuss them in the future. Finally, the communication concluded with three questions, which he hoped would foster discussions between Members.

37. The representative of Hong Kong, China said he looked forward to an eventual circulation and presentation of the study being undertaken by UNCTAD, as had been done in other subsidiary bodies. With regard to the Note by the Secretariat on studies relating to services subsidies done by other international organizations, he indicated that his authorities were assessing whether useful information or lessons could be extracted from these studies. Concerning the Note by the Secretariat on subsidy disciplines in economic integration agreements, he observed that a significant number of economic integration agreements had been notified since the previous Secretariat Note on the subject, over half of which contained disciplines on subsidies in services sectors. He thought it would be useful if those Members that were parties to the agreements containing such disciplines could contribute to the discussions of the Working Party by expanding upon a few specific issues. The first issue related to what was the motivation or intention for including subsidy disciplines in the agreements. Second, Members might want to elaborate on the coverage of these disciplines, as many seemed to apply to both services and goods. Another aspect was whether the disciplines also covered subsidies for exports of services to other markets. He thought that one of the agreements mentioned

in S/WPGR/W/46 had disciplines explicitly covering export subsidies, and hoped that the relevant Members could elaborate as to why such scope was selected. Third, he wondered whether those delegations that had disciplines in economic integration agreements could explain how they operationalized them, including how they addressed the issue of definition of subsidy and how they determined the appropriate criteria for invoking such disciplines. In that regard, it would be interesting to understand what developments in the market could trigger the disciplines. He also asked whether these subsidy disciplines had been invoked and, if so, under what circumstances. In addition, he thought that some of the disciplines mentioned in the Secretariat Note seemed to imply recognition that subsidies could affect conditions of competition and that, more particularly, export subsidies could have a direct distorting effect on trade in services. He hoped to hear more in that regard from Members participating in such agreements.

38. With respect to the communication from Chile, he noted that the two first examples referred to situations where the subsidy was related to the export of services. The observations just made on the basis of the Secretariat Note on subsidy disciplines in economic integration agreements would also be relevant. He looked forward to views of other Members and wondered how the first two programmes mentioned in the communication from Chile would be treated under the subsidy disciplines of economic integration agreements previously referred to. It was useful to also consider the examples in light of these disciplines and to see how Members that were parties to such agreements saw such situations. The examples listed in part III of the communication from Chile showed that it might be important to discuss other types of subsidies that were, by their nature, less trade distortive and could, because they related to public policy objectives, be regarded as tolerable or non-actionable. Discussions on both types of subsidies could take place in parallel.

39. Programmes similar to the general infrastructure programme mentioned in the communication from Chile were being run by many governments. This raised the question whether certain areas or forms of government support should be considered as non-actionable under any disciplines to be developed. He believed similar considerations would apply to the example listed by Chile pertaining to scientific research and technology transfers. While some Members had scheduled limitations to national treatment for such subsidies, it was obvious that many governments provided very significant funding for technology and human resources development so as to enhance the competitiveness of their economy. He thought it was important to discuss whether such programmes, in whatever form, should be accommodated in the disciplines to be developed. With respect to the definition of subsidy, he considered that recent discussions on the issue had highlighted important areas of commonality, but he hoped to hear more from the delegations that had not intervened on this particular point. He asked whether the Chairperson, in order to assist discussions on definition, as well as on the points raised by the delegation of Chile, would consider further updating the Chair's Checklist of Issues, so as to cover points raised in recent meetings. The two key starting points for listing relevant issues were, first, the definition of subsidy and, second, the examination of subsidies that might have distortive effects on trade in services. Finally, he invited other delegations to come forward with additional anonymous examples so as to highlight the types of subsidy programmes in existence and the types of problems they might cause. This would provide the basis for further discussions of the type of disciplines that might be needed.

40. The representative of India made some observations on the examples put forward in Chile's communication. He thought a distinction was made in the first example between specific firms and the generic industry and wondered whether a similar distinction was made in the goods context and what would be the implications in services. He also wondered about cases where a subsidy targeted a service embodied in a physical good, and whether this would be considered as a subsidy relating to a good or a service, especially in light of the examples given for tourism. It could also be useful to assess how some of the examples might relate to national treatment commitments.

41. In relation to the first question posed in Chile's communication, pertaining to the elements of subsidies in each programme, the Chairperson said that the first example might include direct transfers of funds, tax breaks, loans, and provision of export development assistance. With regard to the second question, regarding the beneficiaries, he considered that the modal application needed to be assessed further.

42. The representative of the United States expressed concerns with regard to the source of the examples being provided by the delegation of Chile, given these were real-world situations. With that in mind, she had difficulty with the implicit assumption that Members had agreed to analyse the particular examples on the basis of the questions suggested by Chile. On a preliminary basis, she thought the questions were probably relevant and interesting, but it might have been easier if Members had put forward their own subsidy programmes as examples. Another avenue to consider was Article XV:2, which provided that any Member that considered itself adversely affected by a subsidy of another Member might request consultations with that Member, and that such requests shall be accorded sympathetic consideration. With regard to suggestions about pursuing various issues in tandem, she thought that, while the absence of a definition of subsidy did not necessarily mean other elements of Article XV needed to be sidestepped, a piecemeal approach might be more appropriate.

43. The Chairperson, taking note of the reservations, remarked that the discussion was analytical in nature and did not aim at determining whether given programmes were legal or illegal.

44. The representative of Brazil considered that the communication from Chile represented a useful way to focus discussions. While he thought some of the examples listed bore similarities to programmes provided in his country, his delegation was not taking a restrictive approach to the discussion but hoped to pursue the discussion further at the next meeting.

45. The representative of Canada noted that the range of examples provided by the delegation of Chile, in addition to the complexities related to the four modes of supply, underlined the difficulties in defining what was a subsidy in services trade. Trying, subsequently, to decide which subsidies were distorting and to discipline them would be a significant challenge, especially given the different aims and objectives of the various programmes. He thought that in considering whether certain subsidy programmes had distortive effects, it was important to determine the extent to which existing GATS obligations, especially national treatment, could help in addressing potential effects of subsidies. For example, with regard to the example of the infrastructure programme listed in the communication, any company supplying the service through mode 3 would, in the event of a full national treatment commitment, have access to the subsidy. He hoped to provide further comments at the next meeting.

46. The representative of Japan believed that the contribution by Chile was a positive step forward, as it permitted to better grasp the issues at hand and to avoid the chicken-and-egg situation previously experienced. He encouraged other delegations to come forward with additional real, but anonymous, examples. The issue was complex and he wondered what was the element pertaining to services trade in the examples on tourism and on scientific research and technology transfer, in particular. Further analysis of the examples would thus be useful. With respect to the Secretariat Note on subsidy disciplines found in economic integration agreements, he expressed interest, as the delegation of Hong Kong, China, in hearing more from those Members that applied such disciplines. He noted, however, that the circumstances under which such disciplines were used might be different in the context of regional trade agreements than in GATS, since the levels of integration envisaged were quite different. Under GATS, how could Members address issues arising from subsidies to a specific service sector when the levels of commitments for such a sector varied across the membership? This issue needed to be addressed in the future.

47. The representative of New Zealand considered the communication from Chile to be a useful contribution to the discussion which was being studied more fully by her authorities. Regarding a point raised by the delegation of Hong Kong, China, she believed it was very important to consider the underlying policy objectives in analyzing the examples put forward. A question to that effect could be added to the list included in Chile's communication. Particularly, what was the prime objective of the measure and were any benefits to services industries incidental or explicit? In considering these issues, she believed that limited inferences could be drawn from the treatment of subsidies in the goods context. Finding an appropriate manner to treat public service subsidies would be key to advancing the Working Party's discussions in this area. She also supported Hong Kong, China's call for participation of a greater number of delegations, including in the information exchange and the discussion of the examples put forward by Chile. With respect to the Secretariat Note on subsidy disciplines found in economic integration agreements, she noted that the entry into force, in 1988, of the Protocol on Trade in Services of the Australia-New Zealand Closer Economic Relations Trade Agreement created substantially free trade and investment conditions in services between the two countries on a negative list basis with very few exceptions. She did not recall that trade distortive subsidies had been identified in the field of services. She intended to revert to the questions raised by some delegations at the next meeting of the Working Party, after having had the opportunity to consult with her authorities.

48. The representative of Switzerland believed that the communication by Chile constituted a very good contribution to the work of the Working Party. On a preliminary basis, he thought that the paper confirmed that there was an issue to be addressed and that the membership needed to devote greater energy and resources. It also highlighted that it was sensible to discuss the issue of definition in parallel with the examination of substantive issues such as suggested in the communication from Chile. He recalled the importance of the obligation of information exchange and stressed that, while not a substitute for such an exercise, the discussion of examples was consistent with that objective. Like Japan, he hoped that this discussion would help to solve the chicken-and-egg dilemma, which had prevented progress in the past.

49. The representative of Australia stated that the Secretariat Note on subsidy disciplines in economic integration agreements confirmed the view that it was possible to consider subsidy rules for services in a manner which, if not identical, might parallel and be based on rules already applying to subsidies in goods. He would inform his authorities of questions raised regarding the Australia-New Zealand Closer Economic Relations Trade Agreement. Chile's communication was an effective way to assist the discussions of difficult conceptual issues such as definition. He would revert to the contribution by Chile at the next meeting.

50. The representative of Chinese Taipei considered that the paper from Chile was helpful in facilitating the discussions of the Working Party. On a preliminary basis, she observed that subsidies granted to service providers were sometimes associated with goods and could thus be governed by the Agreement on Subsidies and Countervailing Measures. Also, it was important to consider what modes of supply might be affected by subsidies. As mentioned by Canada, all established suppliers could benefit from the subsidy in the example of the infrastructure programme. It might therefore be difficult to identify trade distortive effects. She hoped to comment further at the next meeting.

51. The representative of Chile thanked delegations for their comments on the communication. She underscored that her delegation did not want to limit the list of examples to those that were most clearly distortive, such as export subsidies. It was also important, in the context of services, to discuss examples that related to public services or social policy objectives. Even if such subsidies might not be disciplined, they could not be ignored in the Working Party's discussion. The questions raised by India were interesting, and her delegation had some doubts regarding the issue of services embodied in goods as well as the application of the obligation of national treatment. Such issues needed to be

further discussed. Concerning the point raised by some delegations about subsidies available to foreign suppliers having established a commercial presence in the territory, pursuant to mode 3, she thought this also needed to be carefully considered. Such subsidies might have a trade distortive effect when the recipients supplied services outside the territory of the Member granting the subsidy. She looked forward to pursuing this discussion at the next meeting.

52. The Chairperson thanked delegations for their participation, and the Working Party took note of statements made. In reviewing the discussions on all agenda items, he welcomed the adoption of the Annual Report, although he had hoped delegations could avoid drafting details. On emergency safeguard measures, delegations had focused on issues arising from the non-paper by Switzerland and the proposed hypothetical application of an emergency safeguard mechanism to the Shangri La example. With respect to the upcoming deadline for the negotiations, he had gotten endorsement from all Members to conduct consultations before the next meeting of the Working Party in order to address issues relating to that deadline. With respect to negotiations on government procurement, the contribution from Singapore had helped stimulate the discussion, including with regard to the proposal from the European Communities for a framework of rules in this area. Concerning the negotiations on subsidies, the contribution from Chile, with examples of subsidy programmes and related issues, had helped to enrich the discussion. Various delegations had made preliminary comments and raised questions in light of this communication and the Notes prepared by the Secretariat for this meeting. Some reservations had been raised pertaining to the use of concrete examples.

V. DATE OF THE NEXT MEETING

53. The Chairperson noted that the dates of the next cluster of services meetings would be confirmed later in the light of further consultation.

Working Party on GATS Rules

REPORT OF THE MEETING OF 1 OCTOBER 2003

Note by the Secretariat¹

1. The Working Party on GATS Rules opened its forty-fourth meeting under the chairmanship of Mr. Santiago Urbina, from Nicaragua. The agenda for the meeting was contained in WTO/AIR/2173. It included the following items: emergency safeguard measures, government procurement, subsidies, date of the next meeting, and other business. To assist delegations in the preparation of the meeting, the Chairperson had prepared an annotated agenda contained in JOB(03)/190. The agenda for the meeting was adopted.

I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X)

2. The Chairperson recalled it was not possible to address this agenda item during the last formal meeting, even though Members had an extensive discussion of ESM during the stocktaking. He urged delegations not to repeat the general points made then, as he was convinced that the views of all Members had been registered, but rather to focus on new elements. He invited delegations to continue their discussion of actual or hypothetical situations where a safeguard action might be needed, and which form such action should take. Delegations could discuss examples against the background of the various models and proposals that had been put forward. This might help assess common elements and the possibility of combining elements, and to address questions that have been raised regarding such models, including process-related and technical issues, but also questions of desirability and feasibility.

3. The representative of Brazil considered that, while looking at hypothetical and concrete examples was a valuable exercise, it would also be useful if Members that had in their schedules or in regional trade agreements a safeguard-type measure pertaining to services explain how they met, in such instances, the issue of desirability and feasibility. The Chairperson invited Members to give due consideration to Brazil's suggestion.

4. The representative of Switzerland noted the interest in past meetings in the Shangri La example, which was one of the major inputs to the Working Party's discussion. He stressed that more work needed to be done on the basis of this example and recalled that it had been suggested in a previous meeting to go through it in light of the different models that had been put forward in the negotiations pursuant to Article X. Switzerland had tried to do that with respect to one of the models, the *status quo* model. It attempted to do so in an objective manner, covering aspects it was not necessarily supportive of. He asked delegations to indicate, including at the next meeting, if they shared the assessment or wanted to propose other considerations. Switzerland's analysis would be distributed to delegations in a non-paper, which discussed possibilities available to Shangri La in a scenario without ESM. The non-paper distinguished between the scheduling phase and the period following entry into force of Shangri La's commitment regarding the distribution sector.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

5. Regarding the first period, the paper pointed out that the GATS was very flexible, as commitments could reflect the specific circumstances prevailing in each country and sector. Shangri La knew that its distribution sector was important and, most of all, very fragile. Given the flexibility of the GATS, one possible solution would have been for Shangri La to take only a partial commitment and to schedule limitations. A second point mentioned was that commitments did not always coincide with the actual level of liberalization. A Member could take GATS commitments only after a number of years of experience at the national level, when it considered the internal situation to be mature. In other words GATS would have enabled Shangri La to start by liberalizing its distribution sector at the national level only, monitor possible unwelcome affects, and finally consolidate the liberalization under the GATS as appropriate. The representative said that such an approach would have been even more convenient for Shangri La in light of the modalities for autonomous liberalization.

6. Apart from scheduling flexibility, the GATS was also flexible regarding national policy choices and regulation. Full commitments under the GATS only limited the ability of Members to introduce measures which did not comply with Articles XVI and XVII. However, any measure that was compatible with these Articles and respected the requirements set forth by Article VI could be introduced. Many countries had elaborated and enacted policies in the distribution sector to preserve given structures. For instance, countries had zoning plans and provisions regarding the opening hours for the retail business. The issue at stake concerned national policy choice. Even in the absence of GATS commitments, there would be an intrinsic drive in Shangri La towards bigger distribution entities, as a result of capital accumulation in the private sector, which raised problems for small and traditional shops in any event. Her delegation did not see how an ESM, which was by definition a temporary measure, could solve such problems. Switzerland thus considered the enforcement of appropriate sector policies, which, of course, did not need to be discriminatory, to be essential in this context.

7. The representative of Brazil sought clarification regarding the second stage mentioned by the representative of Switzerland, that is the period following entry into force of the commitment. He enquired what kind of measures could be taken after the scheduling of a commitment in order to overcome the kind of difficulties faced in the sector. The representative of Switzerland said that, after scheduling commitments, national policy measures such as zoning laws or opening hour provisions for retail businesses could be taken into consideration.

8. The representative of the United States said she looked forward to further discussions of the scenarios put forward by the delegation of Switzerland. The representative of Japan indicated that he supported the general thrust of the ideas expressed by the Swiss delegation. The GATS was flexible and allowed for intermediate options that contributed to liberalization. The Swiss delegation might want to elaborate on this specific question. Reactions to this non-paper from demandeurs of an ESM could help to launch a more focused discussion on the desirability and feasibility of such a mechanism.

9. The representative of the European Communities stressed that her delegation, like the representative of Switzerland, found it difficult to understand how a temporary suspension of commitments could prove an appropriate remedy in the Shangri La example. She invited delegations that had put forward the Shangri La example to explain whether the domestic regulation measures mentioned by Switzerland would not be appropriate. In response to Brazil's intervention, she indicated that her delegation had already replied earlier to such questions. When the European Union concluded agreements on services based on the GATS model, with the same flexibility, no safeguard-type provisions were included. The EU did not see the need, desirability or feasibility for provisions of this nature in such agreements. The situation was different in other agreements that had no exceptions or possibilities to withdraw commitments.

10. The representative of Brazil, in reference to the bilateral agreements concluded by the European Union, indicated he might come back to this issue at a subsequent meeting. With respect to the presentation by Switzerland, he agreed that the GATS was flexible. He stressed that many old monopolies had been open to competition in the last few years, and that many governments were still evaluating the consequences of a more liberal approach to some sectors. In light of this, they might be more cautious in taking on new commitments. An alternative could be to have an emergency safeguard mechanism that would encourage Members to be less cautious and take more commitments. Without an ESM, Members might avoid taking commitments that they might find difficult to comply with later on. Finding a middle ground could help governments, but also internal constituencies, to be more flexible with respect to facing competition from foreign suppliers. Agreeing on an ESM could also level the playing field, as such a multilateral mechanism would be preferable, including for transparency and predictability, than entries in schedules pertaining to safeguards or non-specified economic needs tests. He also stressed the importance of looking at other cases than just the Shangri La example, as an ESM might not be feasible in that particular case, but in other instances.

11. The representative of Chile, as a preliminary reaction, considered that the first situation depicted by the delegation of Switzerland did not really address the issue facing this Working Party, i.e., situations where a Member decided to liberalize and introduced a commitment and, later, faced a surge in imports that was not foreseen. Thus, the alternatives 3 and 4 of the non-paper might be the ones that Members needed to reflect upon, should the approach of the Swiss delegation be followed. She also indicated, regarding alternative 3, that the flexibility of the agreement with respect to domestic regulation was relative since regulation could not be used in a way that amounted to a market access restriction.

12. The representative of Chinese Taipei, reacting in a preliminary manner, asked the Swiss delegation to elaborate on the flexibility of GATS in terms of domestic regulation. She wondered why the imposition of different shopping hours for local small shops than for larger stores would not amount to a modification of commitments.

13. The representative of Switzerland thanked delegations for their questions and looked forward to pursuing this exchange of views. He said it was important to keep in mind that an ESM was by definition a temporary measure and, thus, could not address structural problems as those arising in the Shangri La example. The structural changes occurring in the distribution sector of Shangri La were triggered by the accumulation of capital, which encouraged the creation of larger commercial structures. This would have happened with or without GATS commitments, and domestic regulations needed to be introduced to address these structural changes. He stressed that many regulations, including zoning plans, could be used for preserving specific structures. Also, bigger shops could be required to close by a certain time and on some days. He stressed that such use of domestic regulation was consistent with Articles XVI and XVII.

14. The representative of Thailand, speaking also on behalf of Brunei, Indonesia, Malaysia and the Philippines, wished to reply to questions raised in a previous meeting on the ASEAN draft ESM and the Shangri La example. The first question was "why Shangri La had made far-reaching commitments or undertaken full commitments". She thought that this question was not really relevant. There were many possible reasons for Shangri La to make far-reaching commitments, for example political pressure that might have been brought to bear upon the authorities during the negotiations, or conditionalities required under structural adjustment programmes, or Shangri La might not have foreseen that liberalization commitments could lead to such serious injury. The second question was "whether there was a way, other than a safeguard measure, that could have allowed Shangri La to deal with this problem, for example, modification of domestic regulation or some other kind of legislative response". She replied that alternative measures could complement a safeguard measure, but not address completely or fully the problems sought to be rectified by an emergency safeguard measure. Domestic regulatory measures, like zoning ordinances or limited store

operating hours, did not really reduce the inflow or supply of foreign retailers, which had access to more and less expensive resources, integrated network of vertical and horizontal affiliates, etc. While efficiencies on the part of the big foreign retailers might be difficult to match in any case, at least with the possible resort to an ESM, domestic service suppliers would have time to adjust, if they could, to the situation. During the time that an emergency safeguard measure was in place, small domestic service suppliers might, for instance, create cooperatives in the same locality so as to try to benefit from economies of scale. Of course, this was just an example of what domestic suppliers might do during the time that an ESM was in place, but did not in any way preclude the necessity of looking at other methods to boost competitiveness in the face of foreign competition.

15. The representative of Thailand referred to the third question: "How much time would Shangri La need in order to adapt to the situation arising from the liberalization?". She stated that for a developing country like Shangri La, at least three years with the possibility of an extension were required, while such a period could be shorter for a developed country, for example from one and a half to two years. The fourth set of questions went as follows: "At what point in time could we distinguish between 'old' and 'new' service providers? How could a one distinguish between national and foreign providers, how do the authorities define domestic industry, and what would happen with acquired rights?" The group of delegations she was speaking for understood 'old' services providers to mean those, whether domestic or foreign, that were already established in Shangri La's market and 'new' service providers as those, whether domestic or foreign, which were not yet established in the market. This distinction became relevant only when an ESM had been determined necessary and would be applied to the relevant industry, in this case the retail sector. 'Old' service providers which qualified as domestic service suppliers would not be affected by an ESM. 'Old' service providers which did not qualify as domestic service suppliers and were therefore, following her proposed definition, considered as foreign service suppliers would be susceptible to the application of an ESM. Of course, the degree or extent to which an ESM would be applied to the latter would depend on the acquired rights these old foreign service providers would be entitled to. She recalled that recognition of acquired rights was set out as options 1 to 3 in the ASEAN draft, and she invited Members to negotiate on this issue. On the other hand, 'new' service providers would always be susceptible to an ESM. For example, in the situation contemplated in Shangri La, if a big foreign retailer had not yet established in Shangri La, then during the period that an ESM was applied, that retailer would not be able to enter the market of Shangri La, assuming that this was the nature of the temporary suspension availed of.

16. She noted that the distinction between domestic and foreign service suppliers was based on the definitions already agreed upon by Members in GATS Article XXVIII and the intent was not to introduce new definitions in that regard. The distinction was relevant in determining who had the right to request the initiation of a safeguard investigation. It was also pertinent in determining which service providers were deemed foreign for purposes of assessing an increase in supply and the cause of injury. In concluding, she noted that Canada had also asked how the ASEAN draft ESM would apply to the Shangri La example but indicated this could be addressed at a later point, possibly in an informal setting.

17. The representative of the Republic of Korea raised some questions with respect to the aspects of the Swiss non-paper pertaining to domestic regulation. First, with regard to differences in opening hours between supermarkets and small shops, she wondered whether these were "like" and how one could actually distinguish between big supermarkets and small shops that one wanted to protect. Second, about zoning plans, she thought such regulations might be related to economic needs tests found in schedules and wondered whether they could be treated as a domestic regulation issue. Also, she asked if, when facing a surge of imports, administrations could actually apply a stricter zoning plan without nullifying market access. In addition, she asked whether domestic regulations could be transitional measures as envisaged in an ESM and whether a new regulation to protect small shops had to be gradually lifted over a certain period so as to not nullify market access. With regard to the

non-discriminatory training programme for employees in the distribution sector, she wondered whether assistance should not rather be provided to owners of small shops since employees could work in supermarkets and earn better wages. She also sought clarification as to how a training programme could be discriminatory under GATS since it would necessarily be for domestic workers and not for foreigners. She looked forward to more interactive discussion on the examples.

18. The representative of Canada sought a clarification from the delegation of Thailand regarding the concept of domestic industry. He thought that domestic industry, as defined in Article XXVIII of the GATS, would be used in the ESM proposed by ASEAN in terms of the ability to initiate an investigation and data collection, but not as regards the application of an emergency safeguard measure. He understood that Thailand was suggesting that suppliers already established in Shangri La would not be subject to an emergency safeguard measure. He wondered whether a supplier already established would be prohibited, after application of such a measure, from undertaking further domestic expansion, for example the opening of an additional branch.

19. The representative of Switzerland, in reaction to previous interventions, stressed that cases where actual liberalization coincided with a commitment to liberalise under the GATS was the exception rather than the rule. In most cases, Members had a long experience of implementing liberalization measures before a commitment came into force. He thus thought that one should not overstate the questions raised earlier about cautiousness and time to adjust, because emergency situations arising from liberalization, if any, would have occurred before the commitment entered into force. He also indicated that, for those Members who had restrictions in place and decided to undertake a liberalization commitment under the GATS, the flexibility of the GATS allowed phase-in commitments, which entailed an adjustment period. He pointed out that Members could, for example, schedule an economic needs test only for a certain period of time, after which the possibility of using it lapsed.

20. With respect to remarks from the delegation of the Republic of Korea, he did not think that likeness played a role in the examples of domestic regulation that his delegation had raised. This issue came up only in cases where there was discrimination. Shop opening hours were frequently different for big and small shops. Persons working in small shops were often self-employed, which was not the case in supermarkets, where governments wanted to protect employees. Such provisions were in force in various countries that had full commitments in distribution services. Concerning zoning plans, he thought market access did not imply the possibility of constructing any type of building anywhere in a city. Since training programmes were directed at individuals who wanted to get vocational training and did not involve service suppliers, they did not raise discrimination issues under GATS. However, one could also imagine cases of training programme that were aimed directly at the service suppliers, to help them train their employees. For such situations, if they existed, he considered that a Member that had a commitment would have to treat all suppliers in a non-discriminatory manner.

21. The representative of Indonesia expressed concerns about some of the alternative avenues proposed in the Swiss non-paper, namely the modification of commitments under Article XXI of the GATS and the possibility of seeking a waiver under Article IX(g) of the Marrakesh Agreement. He thought that the use of the latter provisions would be more problematic than those of Article XXI, especially since issues falling under Article IX needed to be brought to the attention of the Ministerial Conference.

22. The Chairperson thanked delegations for their interventions and took note of the statements.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII)

23. The Chairperson proposed to continue discussion of this topic by giving consideration to the two most recent contributions. He first recalled that, at the meeting of the Working Party in May of this year, the European Communities had introduced orally a framework for negotiations on government procurement of services. The document was later distributed as S/WPGR/W/42, but could not be discussed during the last meeting of the Working Party. Second, he also drew the attention of delegations to a Note from the Secretariat containing an Overview of Government Procurement-Related Provisions in Economic Integration Agreements (S/WPGR/W/44), dated 24 June 2003. The Secretariat had been asked, in May, to prepare a compilation of provisions relating to government procurement found in the agreements that had been notified to the WTO under GATS Article V. He indicated that the initial intention was to provide delegations with a full reproduction of the pertinent texts, but such a compilation would have amounted to more than 100 pages and, thus, proven too unwieldy for information. Therefore, the Secretariat opted for an overview of the main provisions relating to government procurement in the 25 economic integration agreements notified so far to the WTO under GATS Article V. The annex to the Note contained a list of the relevant provisions of each agreement and the Secretariat was ready to provide deeper analysis based on a specific mandate from Members. He said that discussions did not prejudge the scope and results of negotiations under Article XIII and urged delegations not to re-state well-known positions.

24. The representative of the European Communities wanted to take the opportunity to present formally her delegation's communication of May 2003 and to highlight five points in particular. First, she indicated that the communication proposed to negotiate an annex to the GATS that would lay down the conditions under which a number of GATS provisions would apply to government procurement. Second, such an annex to the GATS would extend the application of the MFN principle to government procurement and at the same time provide for an exception for GPA commitments, thereby ensuring compatibility between the GATS and GPA provisions on procurement. Third, the government procurement commitments of Members would be specified in the new columns that the European Communities proposed that Members introduce in schedules of commitments. As a starting point for the negotiations on government procurement, commitments would read "unbound" for all sectors and all Members. Fourth, she argued that the proposal for an annex to the GATS, as contained in the communication, showed that such an agreement was feasible and could easily be put in place, enabling negotiations of commitments for government procurement within the framework of the GATS. Five, she considered that the benefits for all WTO Members and in particular for developing countries would be meaningful, for example through the positive impact on national budgets and the development of key infrastructures of high quality. In addition, she wished to underscore the flexibility of the proposed framework, as it provided the possibility for each WTO Member to open government procurement in sectors where the Member would most benefit from international services, at its pace and to the extent it wished open. She noted, in that regard, that the communication mentioned that it would be possible to open only certain activities, above certain thresholds, for selected procuring entities and with the limitations a Member might wish to maintain. She also thanked the Secretariat for its note on the overview of government procurement provisions contained in economic integration agreements which clearly showed that it was possible to have procurement agreements bilaterally and plurilaterally in parallel with the GPA.

25. The representative of Brazil said that the communication from the European Communities had been submitted to domestic constituencies, but that no response had been received so far. He confirmed that his delegation would engage in discussions once responses were received, while recalling Brazil's interpretation of the mandate for negotiations on this issue.

26. The representative of Canada said the communication from the European Communities, while still being reviewed domestically, constituted a useful overview of the kind of issues that would need to be addressed in the Working Party to deal with the issue of government procurement in the GATS.

In Canada's view, among the issues mentioned in the EC communication, the Working Party should focus at this stage on the development of procedural rules. He thought it was necessary to have a more detailed understanding of the framework of rules that might be developed before looking at issues such as scheduling modalities or integration with the agreement on government procurement. In conclusion, he indicated that the Note from the Secretariat on government procurement in economic integration agreements provided a useful reference tool for examining the scope and types of procedural rules in place.

27. The representative of Australia invited the EC to elaborate on the linkages between the proposed framework of procurement rules under GATS and the GPA, given that many WTO Members were not signatories to the latter agreement. The representative of Norway said that the communication from the European Communities could serve as a basis for possible rules on government procurement under the GATS. He considered that a clear set of rules in that area was important to lowering trade barriers. Such rules would offer some minimum legal certainty to service providers, provide greater transparency, and foster competition, innovation, and investment. He stressed that his delegation believed that further discussion of rules should reflect, as contemplated in the EC communication, the need for Members to open up government procurement opportunities gradually, according to their national policy objectives.

28. The representative of the United States wanted to ask some questions on the communication from the European Communities and also signalled her intention to come back to some of the ideas expressed in that communication at the next meeting. She asked whether the EC could elaborate on paragraph 19 of the communication, which indicated that various provisions of the GATS already applied to government procurement of services, including regarding linkages. She restated her delegation's interest in transparency and, in that regard, appreciated the notion contained in paragraph 18 of the communication. Noting that paragraph 9 of the communication made reference to Article I:3 of the GATS, she expressed interest in the status of the rest of Article I:3, in particular I:3(a), in this analysis.

29. The representative of Japan considered that more in-depth discussion on government procurement was needed and indicated that his delegation reserved the right, at this time, to express a final position on this issue. With respect to the mandate for negotiations on procurement, he did not foresee any impediments to negotiations on market access, national treatment and MFN, in accordance with GATS Article XIII:2. While appreciating the benefits of disciplines on government procurement for services, he raised some technical questions, for instance whether commitments could be taken on procurement for each of the four modes of supply. In particular, he wondered whether commitments in procurement could be taken for modes 2 and 4 and said concrete examples would be useful to the discussion. He also asked what the procurement situation would be in a sector such as distribution services. Regarding MFN, he said that account should be taken of the current negotiations on the Government Procurement Agreement, including linkages. Finally, he stressed that the description of concrete situations or commitments would be a useful contribution to future discussions.

30. The representative of Chinese Taipei considered that the communication from the EC could serve as a basis for discussing the technical issues pertaining to government procurement in services and had some preliminary questions to raise. She first noted, as the Canadian delegation, that paragraph 18 of the EC communication invited Members to discuss procedural rules. She had some reservations on this issue, because many procedural rules would put too much of an administrative burden on entities. While special attention should be paid to the inclusion of transparency requirements, she did not think that certain procedural features such as tender publication, bidding period, tender opening, or contract awarding should be included. Instead, these should be left to each Member to regulate. Second, regarding the European Communities' proposal to include a fourth column in schedules where commitments on procurement could be made for each specific sector, she

wanted to remind delegations that procurement in services is often characterized by clusters. For example, a tender for mass transit systems might involve various service sectors, such as legal, accounting, engineering, architecture, transport, construction and other related services. Some of these sectors might be subject to commitments and others not. Therefore, she thought Japan's suggestion to discuss concrete examples could help shed some light on this aspect of the EC proposal.

31. The representative of Singapore said that his delegation had an open mind regarding the proposal by the European Communities, given that Singapore was party to the GPA and had experience with procurement disciplines in its various bilateral agreements. While still reflecting on the mandate for negotiations contained in Article XIII, his authorities thought that the EC communication provided a useful basis for domestic consultations. His first preliminary question referred to paragraph 1 of Article XIII of GATS. He sought clarification as to whether the European Communities thought that provisions such as those contained in Articles III or VI applied to government procurement in services. Second, regarding the link between the GPA and Article XIII of the GATS, he asked how the EC proposal addressed the overlap with obligations undertaken by Members in the GPA. He wondered, for example, whether paragraphs 8 and 9 of the EC communication would duplicate GPA commitments and obligations. The representative then referred to paragraph 16 of a previous Note from the Secretariat on government procurement in services, S/WPGR/W/3 of 1995, which stated that Article 3.3 of the GPA made it clear that the GPA only contained rules on the government purchase of services and did not deal with other measures affecting market access and national treatment, as these measures remained the subject of GATS. He wondered how the EC proposal would affect Article 3.3 of the GPA. Third, regarding transparency, he noted that the EC stated, in paragraph 16 of its communication, that a GATS Annex on government procurement could provide that the provisions of a future Agreement on Transparency would apply to procurement of services under the GATS. Given the post-Cancun uncertainty about the work of the Working Group on Transparency in Government Procurement, he wondered whether one needed to wait for this issue to mature in other fora and thought it would be useful to look at precedents on such procedures in RTAs and in the GPA. Fourth, in reference to questions raised by Japan, he sought clarification on how the proposal by the EC would relate to the modal nature of GATS schedules. In summing up, he welcomed the proposal from the EC, noting in particular that the creation of a fourth column in schedules provided flexibility, and said the EC might want to provide further clarification regarding the proposal to allow MFN exemptions, as this might address some issues related to the overlap with the GPA.

32. The representative of Colombia, while noting the communication from the European Communities was still being examined domestically and that her delegation's position on the issue was well known, asked whether the EC could explain the types of benefits that the proposed disciplines on procurement might bring to developing countries. She also enquired whether the EC could elaborate on paragraph 6 of its communication, concerning procurement involving a combination of goods and services, as she understood that the GATS did not apply to aspects pertaining to goods. She asked whether concrete examples could be provided in order to illustrate such situations.

33. The representative of Switzerland reiterated the importance its delegation attached to this topic, including from the point of view of service suppliers. She considered that the proposal from the EC was workable, as it would allow Members to liberalise their government procurement markets in a flexible manner, sector by sector. She considered that the flexibility contemplated in the EC proposal was in line with the structure of the GATS and took into account development levels and national policy objectives. She asked whether the EC delegation could elaborate on paragraph 16 of its communication.

34. The representative of India, noting that the position of his delegation on the mandate of Article XIII was well known, indicated that there was uncertainty regarding the WGTGP and that, in

consequence, his delegation wanted to reserve its position for the time being. Regarding this point, the Chairperson said that the situation might become clearer towards year-end, which would assist delegations in their evaluation.

35. The representative of the Republic of Korea noted that her delegation was open to further discussions regarding the development of disciplines on government procurement in services. Regarding paragraph 6 of the communication from the EC, she wondered how the proposed definition would relate to what is being discussed in the GPA and also to the definition of public services, and thought further examination of these issues would be needed. Regarding the proposal to discuss procedural rules, she thought such rules were quite technical and was not sure whether the Working Party had sufficient expertise as compared to other fora. While acknowledging there was uncertainty regarding the WGTGP, she noted the importance of ascertaining the kind of work that would be done in that Working Group. Also, she supported Japan's proposal to discuss concrete examples and asked the EC whether it could present statistics on government procurement in services, including the proportion of procurement provided by foreign suppliers.

36. The representative of Malaysia noted the uncertainty surrounding the issue of government procurement after Cancun and recalled the position of its delegation concerning the mandate contained in Article XIII. He wanted to come back at the next meeting when, possibly, there would be greater clarity about how government procurement would progress in other fora.

37. The representative of the European Communities appreciated the comments, questions, and suggestions made and indicated that she would report to her authorities and that her delegation would reply at the next meeting. In the meantime, she wanted to respond to three points. First, regarding the GPA, she explained that her delegation proposed that the MFN obligation apply to government procurement in services but, at the same time, was fully aware that the GPA represented more favourable treatment amongst parties to that agreement. She indicated that one possibility, should it be decided to apply MFN to government procurement in services, was to provide for specific exemptions to protect more favourable treatment among signatories to the GPA. Second, she reiterated that her delegation considered that a number of GATS provisions, including Articles III, VI, VII, XII, and XXIII did already apply to government procurement. While Article XIII:1 mentioned Articles II, XVI and XVII of the GATS, it was silent regarding other provisions of the GATS, which was why the proposal from her delegation examined Articles II, XVI, and XVII and how to have them apply to government procurement. Third, concerning the question raised by the delegation of Colombia on procurement that involved both goods and services, she considered that any GATS agreement on procurement, in order to be meaningful, should cover all contracts whose main object was the procurement of a service, even if such contract incidentally involved procurement of goods necessary for the supply of the service. She stressed that her delegation did not intend to extend the scope of GATS to trade in goods, but rather that the intent was to avoid reducing the meaningfulness of disciplines on procurement in services. This would be the case if services procurement contracts could be excluded simply because they also involved, for example, procurement of some construction materials, or computers, or pens and papers necessary for the provision of the service, the latter being the main subject of the contract. In conclusion, she reiterated the intention of her delegation to provide further responses at the next meeting.

38. The Chairperson thanked delegations for their participation and took note of statements made.

III. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV)

39. The Chairperson suggested that discussion on the issue of subsidies take place on the basis of the revised *Checklist on Subsidies* (JOB(03)/57), which was a tool to help delegations address in a systematic manner issues that had been raised in the negotiations under Article XV. For example, the first issue in the *Checklist* suggested that Members consider what might be an appropriate definition

of subsidies in services, what would be the relevance of the Agreement on Subsidies and Countervailing Measures (ASCM) in that regard, and whether and how services subsidies should be categorized. Another issue addressed in the *Checklist* related to concepts relevant to what should be regarded as trade-distortive subsidies and permissible or non-actionable subsidies.

40. He indicated that, as suggested at the last meeting, he had made available as room documents some past communications on the definition of subsidies so as to facilitate discussion. These communications were from Hong Kong (Job 5870), Argentina (Job 6629), and Poland (JOB(02)/84). He noted that the lack of significant progress in the information exchange certainly did not prevent discussion of such issues, although meaningful information would greatly facilitate it. He recalled that Article XV said that "Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers". In sharing such information, Members were free to use their own working definition, possibly the one they used in scheduling limitations relating to "subsidies" in their schedules of commitments. They did not necessarily need to collect and present all information at once, but could also do it step by step. He noted that the checklist did not prejudge the position of any Member, but might help, along with submissions from Members, to focus discussions. With respect to UNCTAD's work on subsidies in services, he understood that such research was still ongoing.

41. The representative of Poland noted the interest of his delegation in further discussions on multilateral disciplines on subsidies in services, as well as in greater transparency in this area. He thought that discussing the definition of subsidy was a logical starting point in the development of disciplines. He also considered that such a discussion could contribute to the information exchange, which had been disappointing to date since a number of delegations blamed the absence of an agreed definition for lack of progress in that regard. Nevertheless, he considered that delegations could provide information on the basis of their own definition.

42. The informal paper earlier circulated by his delegation aimed at asking some questions that would need to be answered in order to make progress. He considered that the problems identified were the same as those identified in communications from Hong Kong, China and Argentina, which suggested there was a common ground to agree on a definition. He argued that two key issues for further discussion would be, first, the broad definition of subsidy, such as found in Article 1 of the ASCM, and, second, possible exclusions from such a broad definition. Regarding the latter, he noted the concepts of specificity and non-actionable subsidies in the ASCM. He thought that the text of the GATS, including Article XV, could suggest other exclusions but that attention should first be given to the broad definition of subsidies. It could be built on answers to four questions: who was granting the subsidy, to whom, what was the form of the subsidy, and, possibly, what were the benefits to the recipient of the subsidy.

43. Regarding the first question, he indicated that Article I:3(a) of the GATS provided some answers as suggested previously by the delegation of Argentina. He noted the suggestion by the delegation of Hong Kong, China to elaborate a detailed list of entities in that regard, but thought it might be technically difficult to do. He wondered whether the delegation of Hong Kong, China was thinking of a list of entities similar to what was used in the GPA. With respect to the second question, i.e., to whom was the subsidy granted, he considered that the issue essentially consisted in determining whether Article I:3(c) of the GATS was sufficient. Regarding the third question, the form of the subsidy, he considered that Article 1.1. of the ASCM provided a good basis and noted that this was also identified in earlier contributions from Hong Kong, China and Argentina. He thought that considering purchases of goods and services by governments as a form of subsidy could be problematic for services. This element of Article 1.1 of the ASCM, as well as the concept of price or income support, would need, in his view, to be the subject of further elaboration. Finally, regarding the question of benefits, he indicated that the preliminary view of his delegation was that the concept

of benefits to the recipient should be part of the definition. He noted this would imply such matters as calculation of a benefit.

44. The representative of Chile said that the contributions from Hong Kong, China, Poland and Argentina clearly suggested that a common basis for working on a definition was emerging. He noted that the three documents mentioned the concepts of financial contributions, benefits, who provided the subsidies, etc. Members thus had the necessary elements to develop a consensus definition. Turning to the issue of the information exchange on subsidies, he indicated that efforts to obtain more transparency in that regard had not been fruitful over the last years and underscored that exchange of information was fundamental in order to develop disciplines on subsidies. In considering ways to enhance the information available to delegations, he considered that Members could undertake an exercise similar to the one taking place in the Working Party on Domestic Regulation, where Members were working on a list of examples of measures that fell within the ambit of Article VI:4 of the GATS. Such examples had been submitted on a voluntary basis. It would be of interest to conduct a similar exercise in this Working Party with respect to subsidies that affected services, but without mentioning the Members that provided such subsidies. For instance, he suggested that Chile could provide information on subsidies which affected its private sector, without identifying the Member providing the subsidy. He considered that this could allow for more information on subsidies to be collected. Such information might then be used to work on some sort of a typology or to try to classify such information by areas such as social, cultural, environmental, research and development subsidies, assistance to small and medium size enterprises, subsidies contingent on exports, assistance to underprivileged regions, etc. Members could also consider the sectors, the type of contribution, the direct beneficiary, etc. In concluding, he indicated that such an exercise would help to provide more information, without Members feeling pressured or blamed, and recalled that responding to the questionnaire on subsidies prepared by the Secretariat remained important.

45. The Chairperson asked delegations to consider this proposal by the delegation of Chile and see how it could help further work in the Working Party, including on the definition of subsidies.

46. The representative of Hong Kong, China noted the importance of the definition of subsidies, but emphasized that agreeing on such a definition should not be a pre-condition for proceeding with the information exchange. He concurred with Poland that sufficient common ground existed to move forward. He looked forward to reactions and engagement from Members that had not made contributions on the issue of definition. In response to the specific question raised by Poland regarding who provided the subsidy, he explained that his delegation's starting point was Article I:3(a) and that enumeration of entities simply referred to the elements contained in Article I:3(a). He clarified that his delegation was not envisaging an explicit listing of entities and agreed with Poland that this would be a difficult exercise. Recalling the importance of fulfilling the mandate to provide information on all subsidies related to trade in services, he wondered why many Members were not able to provide such information based on their own definition. He stressed that the purpose of information exchange was not to target the practices of certain Members, but rather to evaluate the scale and types of subsidies in existence so that Members would be better equipped for discussing possible elements of disciplines, although the absence of information should not prevent such discussion either. He expressed support for the proposal earlier made by Chile and said that the Working Party should remain open to other sources of information on subsidies, including from other parts of the WTO and from other international organizations, including UNCTAD and the OECD.

47. The Chairperson noted that the delegation of Norway had put forward some years ago ideas similar to the one advanced today by the delegation of Chile.

48. The representative of the United States raised some questions regarding the presentation from the delegation of Poland and the non-paper previously distributed by that delegation. She thought, after consulting the various submissions made in the Working Party, that the situation for services

seemed different and more complex than for goods. She believed that the means by which governments supported private services were wide ranging, as governments could, for example, offset private sector risk by payments, by regulatory policies, or by legislation. She stated that her delegation was interested in considering whether it was possible or desirable to develop rules to govern these various instruments. Defining services subsidies would help to specify the type of information to be exchanged as well. For example, she wondered whether information would be sought on subsidies such as education grants, federal support for women's sports programs or scholarships, and whether these would be relevant.

49. She considered that the contribution by Poland constituted a useful basis to continue exploring such issues. In particular, regarding to whom the subsidy was granted, she asked what were the reasons for addressing such an issue for services if it was not dealt with in the ASCM. She wondered whether such reasons related to service suppliers not acting on a commercial basis, for example, whether some concrete examples could be examined, and what were the commercial interests involved. She also asked why Article I:3(c) would not be adequate in that regard and expressed interest in hearing more from other delegations on this issue. She also invited the representative of Poland to explain what was meant by the terms receipt of the benefit on the third line of page three of the informal paper. Concerning the suggestions made by the delegation of Chile, she said these ideas would be transmitted to her authorities for further examination. The list of examples used in the WPDR was illustrative; it was not presumed that these examples were indeed restrictions. Her delegation considered it important to address the question of scope and definition of services subsidies because this would help to define the type of information to put in a list of examples. She concluded by indicating that she would revert later to the proposal by Chile as well as related efforts to address the question of definition and scope.

50. The representative of Argentina did not foresee significant difficulties in coming to an agreement on what a subsidy was, especially for purposes of the exchange of information. Many Members had entries in their schedules that pertained to subsidies. He gave support to the proposal by Chile; the exercise would be straightforward, useful, and would essentially consist of providing examples of subsidy-related problems encountered by exporters of services. Once a sufficient number of examples were collected, Members could try to develop some classification, taking into account possible exclusions for particular policy objectives or with regard to trade distorting effects.

51. The representative of Colombia agreed that similarities existed between the elements of a definition identified in the contributions from Poland, Argentina and Hong Kong, China. Therefore, a good basis existed for moving to more technical discussions on this issue. She thought that, in the future, a matrix that would link the four elements highlighted by Poland to the earlier contributions by Argentina and Hong Kong, China might be help to structure discussions on the definition of subsidies. She supported the proposal by the representative of Chile, arguing that complementing the mandate of information exchange with concrete examples of support programmes that might cause trade obstacles would be useful. In addition, similarly to the representative of Hong Kong, China, she thought that the Secretariat should explore with some other international organisations such as the OECD, the World Bank, or perhaps some regional organisations, whether they had information on support programmes. She also wondered, while taking into account the workload this might involve, whether the Secretariat could analyse the notifications made by Members in the Subsidies and Countervailing Duties Committee so as to identify those that related to services.

52. The representative of Australia considered that one of the main problems with using the definition drawn from Articles 1 and 2 of the ASCM for the purpose of the information exchange was that the principle of territoriality could not be applied directly to a service. Although most subsidies in services were provided domestically this did not preclude a subsidised entity from providing services to third countries, for instance the provision of a subsidy to a company that establishes a commercial presence in another country or the provision of a subsidy to a firm sending service experts

to a third country for work. Also, he considered that the contributions from Argentina and Hong Kong, China alluded to, but did not directly consider the possible ramifications of subsidy disciplines for public services, education, health and related social services. In practice, subsidies for these types of activities should not be an issue because of the carve-out under Article I:3(b) of the GATS. However, he stressed that such sensitivities needed to be kept in mind in developing any subsidy principles on services. In this regard, point (e) in the conclusion of Hong Kong, China's paper might be further expanded. His delegation agreed with the proposition in Hong Kong, China's contribution that since not all subsidies were trade distorting, the definition of measures covered by subsidy disciplines should be limited to those that actually distorted trade in services. Experience so far with goods and agriculture, seemed to suggest that the objectives of disciplining distortive subsidies and implementing public policy were not incompatible *per se*, but that services had to be treated differently given the importance of regulatory structures and public services. He said that Members might consider the framing of common elements for the reduction, phasing out or even outlawing of certain subsidies, while at the same time permitting governments to pursue public policy objectives.

53. The representative of Cuba considered that the proposal by the delegation of Chile would help in obtaining more information on subsidies and could provide a basis for defining and categorising them. She also emphasized the need to look into possible other sources of information, such as UNCTAD and the OECD. She wondered whether the Chair could clarify the situation with respect to the presentation of work by UNCTAD in this Working Party.

54. The Chairperson said that studies by such organizations as UNCTAD could be used by WTO Members for their own analysis. He indicated that, once UNCTAD published any study, whether pertaining to subsidies or other relevant issues, there would be no problem in their coming to a meeting of the Working Party to present the study and inform delegations. He had been informed that UNCTAD was working on a study on subsidies, which was not yet completed and thought that, once finalized, the study would be presented within UNCTAD. Delegations would most certainly be invited to such a presentation and, subsequently, could consider the steps to be taken regarding the study.

55. The representative of Switzerland attached great importance to the definition of subsidies and the obligation of information exchange contained in Article XV, which did not depend on a common definition of services. More information on existing types of subsidies was needed in order to identify trade distortive measures and to proceed with the negotiations. Her delegation was convinced that the work on the definition of subsidies and the exchange of information could very well be carried out simultaneously. Regarding the proposal by Chile, she indicated that her delegation would give further consideration to it. She also asked whether those Members that had scheduled limitations regarding subsidies could elaborate on the scope of such limitations.

56. The representative of Brazil expressed support for the proposal from the delegation of Chile. He also wondered whether Members would agree, and whether the Secretariat thought it would be possible, to prepare a note on subsidy disciplines pertaining to services contained in RTAs notified under Article V of the GATS. Regarding the work being conducted by UNCTAD, he thought that Members had agreed during the last cluster of services meetings that a similar position would be adopted regarding work from the OECD and UNCTAD. Accordingly, UNCTAD would be invited to present their study in the WPGR once it was completed, without having to wait for a presentation to UNCTAD Members.

57. The Chairperson said that, once finalized, the UNCTAD study would be circulated and discussed and that it could also be looked at in this Working Party.

58. The representative of the United States agreed with Brazil and noted that there might have been a misunderstanding as the concerns previously expressed related more to this Working Party

commissioning a study from another organization. She considered that, as had been done in the past for example with respect to the OECD, Members could request that an observer organization, which had done a paper, present it in this Working Party.

59. The representative of Brazil wanted to confirm that UNCTAD, after having finished its study, was invited not only to circulate but also to present the study in this Working Party. The Chairperson said that he thought he was basically in tune with the representative of Brazil and hoped this discussion had clarified the issue.

60. The representative of Indonesia thought that no opposition had been expressed over past years with respect to the proposed definitions by Poland, Argentina and Hong Kong, China. Members' views were apparently converging on this issue and some more work could be done so as to further clarify and crystallize agreement. Spelling out more explicitly areas of agreement would be helpful in that regard. He stressed that a more concrete discussion on subsidies was needed in the WPGR in the future, especially regarding scope and definition.

61. The Chairperson explained that the Secretariat had provided an overview of services subsidies as referred to in Trade Policy Reviews (TPRs) (S/WPGR/W/25 and corresponding addendums). On the provisions governing services subsidies in RTAs, the Secretariat had prepared a note in 1996 (S/WPGR/W/12). He thought further work could be done but that there might be overlaps.

62. The representative of the Republic of Korea considered it useful to exchange views on subsidies, including those that might be trade distortive, although this should not prejudice any position. It should be kept in mind that subsidies were one of the legitimate means used by all countries to promote the development of domestic industries. She welcomed the suggestion by Chile and thought it was important to maintain the anonymity of the source of the subsidy. While it was too early to specify a classification or typology, as also suggested by Chile, her delegation would be open to discuss classification suggestions, including legitimate policy objectives such as environment or cultural protection or restructuring of domestic services industries.

63. Regarding the Secretariat Note on services subsidies in TPRs, she noted that the last update had been done in September 2002 and thought the Note could be updated or re-circulated. On the definition of subsidies, she thought that the GATS Article I:3 already provided answers with regard to who was granting the subsidies. She indicated that her delegation considered that the definition found in the ASCM was sufficient, excluding any regulatory measures; however, she had doubts about income and price support. She thought this could be further explored and was not sure how it would be applied in services. Rather than determining beforehand what might be trade distortive, it would be preferable to concentrate on basic issues such as the definition of subsidies and information sharing.

64. The representative of Thailand considered it useful to further discuss the definition of subsidies and emphasized that there was a clear mandate in the GATS to develop disciplines on subsidies. She acknowledged that the ASCM could provide a very useful starting point for the definition of subsidy in services but was still reflecting on whether this definition was sufficient in order to cover the particular characteristics of services compared to goods. She expressed support in principle for the proposal by Chile but asked for further clarifications.

65. The representative of Chile provided further explanations on his delegation's proposal. He had suggested that work could be carried along similar lines as in the WPDR, where Members had provided examples of measures that fell within Article VI:4, but not Articles XVI or XVII. Members could, on a voluntary basis, provide information on subsidies that they themselves were providing or on the subsidies provided by others that affected their service suppliers. He stressed that the purpose would be to collect as much information as possible on subsidies that affected trade in services, so as

to help develop disciplines. The elaboration of a typology to classify subsidies would only take place at a later stage. He recalled that information would be provided on a voluntary basis and that Members granting the subsidies should not be identified.

66. The representative of Hong Kong, China hoped to address the concerns expressed by some delegations with respect to the proposal by Chile. He stressed that the information would be provided on a voluntary basis and that it should be up to Members to draw from their own and preferred sources of information. The examples put forward would only represent the views of that Member. He hoped that these clarifications could help alleviate some concerns. On the definition of subsidy, he underscored that the concepts of scope and definition of a subsidy, on the one hand, and that of trade distortion, on the other hand, were quite distinct concepts which should not be equated. On the question raised by the delegation of Australia concerning public services, he indicated that the starting point for looking at this issue was Article I:3, in particular I:3(a). Article I:3(c) excluded services provided under the exercise of governmental authority, but the fact that other services would not be excluded did not necessarily mean that they could not be legitimately help to attain certain public policy objectives. He thought it would be important to obtain further information of those types of subsidies in order to elaborate the concepts of trade distortive subsidies and non-actionable subsidies.

67. The representative of Poland reacted to comments and questions made following his intervention on the definition of subsidy. Regarding the first question put forward by the representative of the United States, he said that the definition in Article I:3(a) was quite clear and straightforward. He noted that different elements were to be found within Article 1 of the ASCM, particularly in sub-paragraphs 1.1(a)(1) and 1.1(a)(1)(iv), and wondered whether each of these elements had the same meaning as what was covered by Article I:3(a) of the GATS. His delegation could agree that the definition in Article I:3(a) was sufficient, but wanted to draw attention to this issue. He thought that a more important issue concerned Article I:3(c). Looking at a situation where private suppliers of medical or education services would operate alongside public providers, he considered that Article I:3(c) would not be sufficient in order to address the question of to whom the subsidy was granted. Further consideration should be given to this issue. The concept of benefit was an important part of a definition and should be developed depending on the form of subsidies agreed to. He noted that Article XIV of the ASCM could be used and could be modified so as to take into account the specificity of the services sector. He thought the Australian intervention raised the question of a possible division of subsidies along different categories, for example prohibited subsidies, actionable subsidies, and non-actionable subsidies, but this would be a matter to be further developed after reaching agreement on the definition of subsidies. Concerning the intervention by the representative of the Republic of Korea, he considered price and income support, especially the latter, to be an important element of the definition, maybe more in services than in goods. However, this was a complex issue given the various modes of supply, although it also depended on how specificity was defined in the services area.

68. The representative of Singapore indicated that it was important to be clear about what the negotiating mandate under Article XV did not cover. In this regard, he mentioned that discriminatory subsidies were governed by the national treatment obligation, needed to be scheduled in order to be maintained, and that they were consequently not covered by Article XV. He also considered that, pursuant to Article I:3(c), subsidies granted in the context of services supplied in the exercise of governmental authority would fall outside the scope of the negotiating mandate of Article XV. One would also expect subsidies granted to achieve such legitimate objectives as, for example, education and health to be carved-out from Article XV. He also thought, looking at paragraph 1 of Article XV, that subsidies that did not have distortive effects would not be covered either. It might thus be said that the mandate, limited in scope, covered non-discriminatory subsidies that might have distortive effects. Regarding the definition of subsidy, while the ASCM might provide a good starting point, it should be kept in mind that the GATS had four modes of supply and that this raised the issue of territoriality as mentioned by Australia. This might mean that the ASCM was not readily applicable

in a GATS context; a Note by the Secretariat prepared in 1996 (S/WPGR/W/9) had discussed this issue. The representative also referred to implicit subsidies, which some might associate with certain regulations or lack thereof. He did not think that the ASCM covered such subsidies nor that GATS disciplines should do it.

69. On the question of the information exchange, the representative of New Zealand thought, like other delegations, that it was possible for Members to provide information before reaching agreement on a definition of subsidies, and that Members could also share information gradually through partial submissions. She considered favourably the proposal by Chile to compile a list of examples, but stated that such an exercise should complement, rather than substitute for, efforts already undertaken to exchange information through the use of the questionnaire. Turning to the contribution from Poland, she considered that the issue of public services would be crucial as discussions moved forward and thought that services falling under Article I:3(c) would naturally not be covered by subsidy disciplines. In that regard, her delegation saw it perfectly possible for public services to co-exist with private services without being in competition with them.

70. The Chairperson wondered whether the delegate of New Zealand could further elaborate on how she viewed the co-existence between private and public services in the context of subsidies. The representative of New Zealand said her delegation had given careful thought to this question and that addressing subsidy disciplines in a way that was consistent with Article I:3 would be helpful to discussions. She thought that addressing clearly the issue of public services, taking into account national policy objectives and the close interest from civil society and others groups, would help raise the level of ambition of negotiations on market access or subsidies.

71. The representative of Hong Kong, China thought that one example of co-existence without competition of public and private services related to cases where governments provided certain services, for example utilities, to residents in remote areas where no private supplier was present. Since the mandate in Article XV referred to subsidies that might have distortive effects on trade in services and to the development of the necessary disciplines to avoid such effects, he did not agree that discriminatory subsidies would be outside the scope of such disciplines, simply because they would be subject to scheduling under Article XVII. He signalled that the meaning of discriminatory subsidies was not necessarily always very clear given that modes 1 and 2 were defined by territory, while modes 3 and 4 were defined by the nationality of the supplier. The concept of discriminatory subsidies was not entirely clear in the context of export subsidies. In his view, the issue had not yet been settled and it seemed preferable to reserve such discussion for a later stage.

72. The representative of Poland thought that the co-existence without competition between private and public services was the exception rather than the rule. In his view, Article I:3(c) would not appear to be sufficient for the purpose of subsidy disciplines, and this issue would need to be addressed in some way in the development of disciplines, for example through the definition of to whom the subsidy was granted, or in elaborating further the concept of policy objectives that appeared in the GATS.

73. The Chairperson summarized the status of work to be undertaken on subsidies. He indicated that the Secretariat could first undertake an update of its earlier Note from 1996 on subsidy disciplines relating to trade in services in RTAs. With respect to the proposal to update the Secretariat Note on services subsidies found in WTO Trade Policy Reviews, he noted that the last update was quite recent, less than a year ago. Consequently, it seemed reasonable to work on the document on RTAs and to update the Note on TPRs at a later point. Regarding the proposal by the delegation of Chile, he thought that in order to make progress discussions would need to concentrate on the specific problems encountered with respect to subsidies that might cause trade distortions. He asked delegations to give further consideration to the exercise proposed by Chile and recalled that such an exercise would be voluntary. Each delegation would use its own sources, and the Member granting the subsidy would

not be identified. Delegations might want to raise this issue with their authorities, and he would soon like to undertake some consultations to prepare for the next meeting of the Working Party.

74. The representative of Colombia wondered about the status of the two suggestions she had made regarding further work. The first one was that the Secretariat explore with other international organizations the information existing on support programmes or subsidies. The second possibility was that the Secretariat develop a document that would look at the notifications that had been made to the Subsidies and Countervailing Duties Committee to highlight subsidies related to services sectors. She understood this was a lengthy task, but wondered whether the Secretariat could do it.

75. A representative from the Secretariat indicated, regarding the first proposal by Colombia, that the Secretariat could communicate with other international organizations with which it usually had contacts such as UNCTAD, the World Bank, and the OECD, and later come back with some feedback. With respect to the second proposal, he noted that the Secretariat was always ready to conduct work Members thought useful but said he was somewhat reluctant to analyse the notifications under the ASCM because trying to extract the elements that might be services related might involve some policy judgements and interpretations by the Secretariat.

76. The representative of Canada wondered how one could avoid that the various examples of subsidies that would be compiled be characterized as subsidies that necessarily distort trade in services. Some kind of caveat should be provided in that regard. The Chairperson indicated that, in his view, the purpose of the proposal was to gather as much information as possible and that, further ahead, this information could be used to help Members think about whether certain subsidies were trade distortive or not.

77. The representative of the United States considered that the explanation given earlier by the Chairperson on the proposal by Chile contributed to accommodating the concerns and interests of delegations. Regarding the analysis of notifications in the Committee on Subsidies and Countervailing Duties, she indicated that the kind of interpretative exercise this might involve raised concerns. She noted that her delegation was interested in suggestions that had been put forward, including the suggestion by Chile, the parameters of which were clarified by various interventions. She also thought that updates to the Secretariat Notes on TPRs and RTAs might be of use, although one would need to keep in mind the risk of value judgements. She saw as constructive the suggestion that the Secretariat find out the kind of research and information that other international organizations had available. However, her delegation had strong objections over the proposal that the Secretariat investigate subsidy notifications and try to determine those relating to services. Regarding the intervention made by Canada, she understood that the examples would be supplied on a voluntary basis and would not amount to a mechanism of reverse notification.

78. Regarding the suggestion by Chile, the Chairperson thought that time was needed for consultations as well as for further evaluation by Members. He emphasized that examples relating to subsidies in services sectors could already be found in the various updates of the Secretariat Note on information contained in Trade Policy Reviews.

79. The representative of Chile, with regard to the intervention from the delegation of Canada, explained that the fact that some Members would provide examples of subsidies would not mean that other Members agree that these were indeed subsidies. He then sought clarification from the Chairperson regarding the steps that would be taken up to the next meeting concerning the proposal from his delegation.

80. The Chairperson said he preferred leaving time for delegations to reflect further on this proposal and to conduct consultations and possibly an informal meeting in order to prepare for the meeting planned for December.

81. The representative of Mauritius thought that the issue needed to be approached with caution and that the work to be undertaken by the Secretariat should be factual rather than analytical. Information already published by other organizations should be the focus of information gathering, rather than information that would be more subject to value judgements. He was not sure that consultations should be held before seeing what is available in terms of published information. The representative of Argentina sought clarification on the work to be undertaken.

82. The Chairperson explained that it had been agreed that the Secretariat would prepare an update of the Note on RTAs and would consult with other international organizations. Afterwards, the Secretariat could do an update of the Note on TPRs. He also indicated that he would hold consultations on the proposal by Chile. The representative Argentina thought that agreement of all other Members was not necessarily needed in order for a Member to present a communication indicating the subsidies that caused problems to its suppliers, although he considered it would be preferable if all could agree beforehand. The representative of Brazil suggested that the forthcoming consultations also be used to see whether common ground could be found on the proposal by Colombia to examine the notifications. The Chairperson said that concerns had been expressed by delegations on this suggestion, but that possibilities of finding common ground could be explored.

83. The Chairperson thanked delegations for their constructive engagement on each of the issue discussed. On emergency safeguard measures, he recalled that various questions would need to be studied at the next meeting, in particular those raised in the discussion of the non-paper by the delegation of Switzerland and the responses provided by the representative of Thailand on previously asked questions. On government procurement, the Chairperson noted that a significant number of Members commented and asked questions on the proposal presented by the European Communities. Some Members had reserved the right to comment on the proposal at a later stage, given the current status of work in the Working Group on Transparency in Government Procurement. Concerning subsidies, he highlighted again the progress made.

IV. DATE OF THE NEXT MEETING

84. The Chairperson said that the next formal meeting of the Working Party was expected to take place during the next cluster of services meetings, which had been tentatively scheduled for the beginning of December.

V. OTHER BUSINESS.

85. The representative of Brazil announced that UNCTAD would be holding an expert meeting on foreign direct investment and development, which would address the experience of developing countries in privatizing services sectors. The seminar would take place in Geneva from 29 to 31 October 2003.

Working Party on GATS Rules

REPORT OF THE MEETING OF 2 AND 3 JULY 2003

Note by the Secretariat¹

1. The Working Party on GATS Rules opened its forty-third meeting under the chairmanship of Mr. Santiago Urbina, from Nicaragua. The agenda for the meeting was contained in WTO/AIR/2128. It included seven items: update to the 2002 Annual Report of the Working Party on GATS Rules to the Council for Trade in Services; stock-taking of progress made in the negotiations; subsidies; emergency safeguard measures; government procurement; date of the next meeting; and other business. To assist delegations in the preparation for the meeting, the Chairperson had prepared an Annotated Agenda contained in JOB(03)/125. The agenda for the meeting was adopted.

I. UPDATE TO THE ANNUAL REPORT OF 2002 OF THE WORKING PARTY ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2003)

2. The Chairperson said that, in view of the Cancún Ministerial Meeting, a draft update to the 2002 Annual Report of the Working Party to the Council for Trade in Services had been circulated on 20 June 2003 as document S/WPGR/W/43. This report conveyed factual information on the activities carried out by the Working Party since the 2002 annual report had been issued (S/WPGR/8), and covered the time-period up to, and including, the last meeting. The Working Party was invited to adopt this report and transmit it to the Council for Trade in Services.

3. Various delegations proposed drafting changes to the draft report. The delegations of Argentina; Brazil; Canada; Chile; China; Chinese Taipei; the European Communities; Hong Kong; India; Japan; Pakistan; Philippines; Switzerland; Thailand; the United States; and Uruguay participated in the discussion, which started in formal and was continued in informal mode. A first revision of the draft report was issued as S/WPGR/W/43/Rev.1. Following further drafting changes, the Working Party adopted the Update to the 2002 Annual Report, which was circulated as document S/WPGR/12.

II. STOCK-TAKING OF PROGRESS MADE IN THE NEGOTIATIONS

4. The Chairperson recalled that the work programmes on emergency safeguard measures, subsidies and government procurement, adopted on 22 July 2002, called for the Working Party "to prepare for the opportunity provided by the Fifth Ministerial Conference to take stock of progress made in the negotiations". On 16 June, the Working Party had had an informal discussion on the possible form and content of such a stock-taking. Following that meeting, and after having discussed informally with a number of delegations, but also taking into account the limited time available, he had included a specific agenda item for this meeting. This would give delegations an opportunity within the framework of the Working Party to take stock of the progress made in the negotiations under the three agenda items. He suggested that the Chairperson's reports on emergency safeguard measures (S/WPGR/9), subsidies (S/WPGR/10) and government procurement (S/WPGR/11) be used as background documents. This stock-taking discussion would be reflected in the minutes of the

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

meeting and referred to in the Chair's oral report to the Special Session. Delegations would be free to explain their positions on that occasion as well.

5. The Chairperson briefly introduced the two reports on subsidies and government procurement which had been circulated the previous week. As indicated at the May meeting, the form of the reports followed the approach taken in the report on ESM presented in March. Practically, this meant that each report consisted of (i) a factual introduction, recalling work done so far under the relevant agenda item, and (ii) the Chair's assessment of the situation and suggestions for a way forward. The reports were circulated on his responsibility and did not prejudice the position of any delegation.

6. The representative of the United States said she wanted to focus first on process and format. Her delegation appreciated the work put into the reports on subsidies and government procurement, which had been submitted on the Chairperson's responsibility. She noted that these reports followed the format of the Report on emergency safeguard measures, although the work programmes contained different mandates. The work programme on ESM specifically stipulated that the note by the Chairperson should identify "areas of convergence and divergence among Members, with a view to providing a basis to facilitate further negotiations". The work programmes on subsidies and government procurement only provided for a note "to report on the progress of work", but did not include any reference to an assessment. On the positive side, the reports were well-done. With respect to the stock-taking, her delegation had not agreed that the Working Party should produce a report covering eight years of work. The work programmes, which had been carefully negotiated in July 2002, stipulated that the Working Party would "prepare for the opportunity provided by the Fifth Ministerial Conference to take stock of progress made in the negotiations". She enquired what an oral report from the Chair would entail, and noted that the information contained in the update to the annual report might be used for the stock-taking. The stock-taking should start in July 2002 and cover the period since.

7. The Chairperson said that it was not the intention that the Working Party produced a stock-taking report. As explained in the Annotated Agenda prepared for this meeting, he had decided, after consulting informally with delegations, to include a specific agenda item so as to allow delegations to take stock of the progress made in the negotiations under the three negotiating mandates. In this context, the Chairperson's reports on emergency safeguard measures, subsidies and government procurement could be used as background documents. This stock-taking discussion would be reflected in the minutes of the meeting and referred to in the oral report that he was expected to present to the Special Session. Delegations so wishing would then have opportunity to explain their positions at the Special Session as well.

8. The representative of the European Communities thanked the Chairperson for dedicating a specific point of the agenda to the stocktaking of progress made in the negotiations on ESM, subsidies and government procurement in services. In the EC's view, according to the work programmes adopted on 22 July 2002, the Fifth Ministerial Conference provided for an opportunity to take stock of progress. It was up to Members to decide whether they wanted to make use of that opportunity, and in this regard, the initiative of the Chairperson was timely and welcomed, because it allowed Members to express their views on how the negotiations had progressed. The Report on emergency safeguard measures by the former Chairperson and the Reports on subsidies and procurement by the present Chairperson had been submitted on their own responsibilities and could not replace Members' views. Nevertheless, the EC could agree with the Chairperson's suggestion to use these reports as background documents for today's discussion. From a general perspective, the EC wished to underline a number of elements that, in its view, emerged from the discussion in the WPGR over the past years and that, to a certain extent, were reflected in the Chairpersons' reports. First, the mandates on the three agenda items stemmed from the text of the GATS and should be treated on an equal footing, regardless of the importance that individual Members might attach to each of them. Second, the discussions on these three issues had been held without prejudice to the outcome of the negotiations. Third, while a great number of contributions on procurement and on emergency safeguard measures

were on the table, it appeared that an important amount of technical work still had to be done on subsidies. Fourth, the EC had been the most active participant in the discussions of the three issues. Indeed, it had presented several submissions and, as regards subsidies, was among the few Members that had exchanged information within the Working Party. Since the three work programmes had been adopted, the European Communities and Poland had been the only Members that had put forward submissions.

9. With respect to government procurement, the EC was of the view that technical work was well advanced thanks to 24 formal contributions by Members, as well as to the notes by the successive Chairpersons and the WTO Secretariat. Concrete proposals were now on the table and allowed the WPGR to move forward into a subsequent stage of the negotiations, provided Members showed sufficient willingness. In this context, the EC was of the opinion that the value of GATS commitments would be significantly enhanced if they were extended to government procurement of services. This was the case for many services sectors, and in particular those of specific interest to developing countries. Discussion of the EC proposals of July 2002 and May 2003 had shown that the GATS offered a flexible framework that could enable Members to move towards more transparency and increased competition in government procurement markets, leaving it to individual Members to open up on a sectoral basis where and when it suited them best. Based on the discussions, comments and suggestions of Members, the latest EC communication proposed concrete ways to achieve these aims. An Annex to the GATS could be negotiated laying down the conditions under which GATS provisions would apply to government procurement. The communication had shown that an agreement on government procurement of services was feasible and could be easily put in place, so as to enable the negotiation of commitments on procurement in the framework of the GATS. Members had underlined the need to avoid duplication of work with the Working Group on Transparency in Government Procurement (WGTGP) and to ensure compatibility between the GATS and the Agreement on Government Procurement (GPA). The EC had designed the May 2003 proposal with these concerns in mind which, hence, provided a good basis for the negotiation of a framework agreement. From a technical point of view, the negotiations could and should be completed before the end of the negotiations on specific commitments. This would allow Members wishing to undertake commitments in respect of government procurement to do so. Opening government procurement to international competition had a positive impact on national budgets, on the development of infrastructure and on economic growth. The EC was convinced of the WTO membership's keen interest in more transparency and increased competition in government procurement markets.

10. With respect to emergency safeguard measures, the EC was of the view that the question of feasibility and desirability of an ESM in services, which had not been solved at the time of concluding the GATS negotiations, remained unresolved after many years of discussions. Indeed, the EC had the feeling that scepticism over the possibility of developing an ESM within the GATS had been growing over time. In this regard, it could be observed that most of the contributions either directly addressed feasibility and desirability, or were made without prejudice to the position on these two issues. The ASEAN proposal to develop an ESM based on the model applying to trade in goods had raised a number of questions intrinsically related to desirability and feasibility (like the modal application of an ESM and the protection of acquired rights). No answer had been provided so far. In this situation, many delegations, including the EC, had tried to move forward the work of the WPGR by calling for a discussion of actual or hypothetical situations where a safeguard action might be needed, and which form that action could take. However, only one hypothetical example submitted by ASEAN was on the table and the WPGR was still examining whether it could justify an ESM within the meaning of Article X. Many delegations had raised questions that remained unanswered. It is in this context that a small number of Members had suggested to enter into negotiation on an agreement even if fundamental technical issues had not been solved. However, it was not possible to ignore the problems encountered in the development of an ESM. The EC reiterated the assessment made in its last contribution to the WPGR, which had been supported by several delegations, that an ESM could not constitute an instrument for introducing new general exceptions to the GATS or alternatives to the

situations foreseen in Article XXI. A positive conclusion on the question of an ESM presupposed: (i) the identification, in case they existed, of concrete examples, whether actual or hypothetical, of emergency situations in services that were not already addressed by GATS provisions, and (ii) a demonstration that an ESM would be feasible and desirable to deal with such situations. It had to be acknowledged that none of these two conditions had been met so far.

11. Turning to the issue of subsidies, the European Communities shared the views of the Chair that an important amount of technical work still had to be done. The exchange of information on subsidies related to trade in services that should have helped to prepare the negotiation of any eventual disciplines had practically not taken place. One of the reasons for the current situation might be the absence of an agreed definition of subsidies in the services area. In this regard, the EC wished to underline the importance of reaching such a definition, following an approach closely related to the GATS framework, as suggested in the recent report of the Chair. The EC also believed that a confusion between exchange of information and notification of subsidies had contributed to the small amount of information submitted. The EC considered that the GATS did not establish an obligation to notify subsidies, but only to exchange information. Indeed, the notification of subsidies could only result from an obligation that Members might wish to undertake in the framework of the negotiations. On that basis, the EC had already submitted a contribution explaining the Community regime for aid in the services area (Job No. 4302), and encouraged Members that had not yet provided information to follow this example in order to move forward the technical work of the WPGR. It was important to underline at this stage that the requirement under Article XV was for Members and, not for third parties, to exchange information. In this respect, the EC wished to clarify that the only contribution expected from UNCTAD was the bibliography of relevant material on subsidies.

12. The representative of the Philippines said that, in his delegation's view, this agenda item constituted THE stock-taking, and the three Chair reports provided reference material. In his understanding, there would not be a stock-taking report after this meeting, but the Chairperson of the WPGR would present, as usual, an oral report to the Special Session of the Council for Trade in Services in which he would refer to this discussion. On that occasion, each delegation would have the opportunity to make additional comments. With respect to the negotiations on emergency safeguard measures, he felt there was some confusion among certain Members concerning his delegation's position. The Philippines was not opposed to discussing technical issues if this could help to clarify feasibility of an ESM. The list of documents annexed to the Chair's Report showed that many contributions had already been made on technical issues and that extensive discussions had been held. ASEAN had offered answers to virtually all questions. Some of the answers were obviously not satisfactory to some delegations, but this did not justify allegations that answers had not been provided. For instance, concerning the issue of acquired rights, ASEAN was not in a position to dictate a solution, but had offered three options in its draft agreement. He felt that, in fact, some delegations had already decided that an ESM was not feasible. ASEAN had nevertheless continued to address questions raised by those delegations, for instance by presenting an example of a situation justifying safeguard action, in order to convince them that an ESM was feasible. With respect to the issue of desirability, his delegation attached great importance to paragraph 31 of the Chair's Report on ESM: political will from all Members was necessary in order to solve the issue of desirability and to finalize negotiations by 15 March 2004. Should it be impossible to resolve the political dimension in the Working Party, decisions then needed to be taken at a higher level (CTSSS, TNC or Ministerial Meeting). The position of the sceptics was influenced by their domestic constituencies or their own fears of how an ESM might work. This was due in part to the fact that the Agreement on Safeguards had been misused by certain Members. He noted that the Dispute Settlement Body had never upheld any safeguard measure applied in the goods area. It was imperative to get political guidance now, especially in view of the negotiating deadline. Subsidies were a difficult issue, in particular when Members tried to transpose the goods model to services. There was a "chicken-and-egg" situation and more information on services subsidies was needed in order to determine what kind of subsidies should be addressed. This information should come from Members, but international organizations should not be precluded. Article XV clearly mandated that disciplines on subsidies be established.

Concerning government procurement, he doubted that the negotiations were at a well-advanced stage, despite the active role played by the European Communities. In fact, the Working Party had not moved beyond a discussion on the scope of the mandate. Not all delegations accepted that Article XIII entailed negotiations on market access and national treatment. If Article XIII was read in light of the Vienna Convention, it was clear that the limitation contained in paragraph 1 applied to paragraph 2. He disagreed with paragraph 13 of the Chair's Report where it stated that Members had "focused on a Communication from the EC". Rather, the main focus of discussion had been the scope of the mandate (paragraph 14). Moreover, in paragraph 16 of the Report, the main reason why the issue of government procurement had been "dormant" was due to the doubts regarding the scope of the mandate. The Working Party needed to determine the scope of the mandate in the procurement negotiations, rather than the "degree of ambition" (paragraph 21).

13. The representative of Uruguay, speaking on behalf of Mercosur (Argentina, Brazil, Paraguay and Uruguay), thanked the former and the current Chairpersons for producing the reports on emergency safeguard measures, subsidies and government procurement. With respect to the negotiations on ESM, and without prejudice to their results, Mercosur was of the view that, should work continue at the current pace, it would be very difficult, if not impossible, to reach a result within the March 2004 time-frame. This was a statement of fact. The Working Party had spent eight years on this subject and had extended the deadline on four occasions. Mercosur did not consider that substantive progress had been made on the issue of subsidies either and wished to recall that, according to the Negotiating Guidelines, Members "shall aim to complete negotiations [...] prior to the conclusion of negotiations on specific commitments".² Speaking on behalf of Uruguay only, he wanted to support the statement made by the representative of the Philippines regarding paragraphs 13 and 14 of the Chair's report on government procurement: it should be clarified that the discussion focussed on the scope of the mandate, and that, in addition, comments were made on the EC proposal. He acknowledged that the report was made on the Chair's responsibility and remained in his hands.

14. The representative of Switzerland said that there was a problem of balance between the three reports. The reports on subsidies and government procurement were not as precise as the report on ESM, although Articles XV and XIII were as important as Article X. For instance, the exchange of information in Article XV should be carried out without preconditions, and this should be mentioned in the section on "way forward". Moreover, Article XV mandated negotiations on "necessary multilateral disciplines" for trade-distorting subsidies. Finally, it was not up to the Working Party to conduct a collective stock-taking, but it was for senior officials in capitals to see whether they wanted to take this opportunity and in what form.

15. The representative of the United States wished to commend the Chair for the substance of the reports on subsidies and government procurement. She recalled that her delegation had problems only with the interpretation of the mandate contained in the work programmes. However, the reports had been prepared under the responsibility of the Chairperson and should be put forward without changes. With respect to the negotiations on ESM, desirability was a question of substance, not of political will. Enforcing a safeguard measure was not the same as enforcing limitations contained in specific commitments. The "political will" that was missing was a will to provide answers to questions posed by her delegation. The problems that the "demandeurs" wanted to address with an ESM needed to be identified concretely. The United States wanted to secure liberalization, and not to provide second-best solutions. "Real" examples of situations in which an ESM might be taken should include precise indications, including the country involved and the year during which the situation arose.

16. The representative of Thailand supported the statement made by the delegation of the Philippines regarding emergency safeguard measures and government procurement. Her delegation did not want to prejudge the issue of subsidies, on which her government had not yet taken position. With respect to emergency safeguard measures, she recalled that a great deal of technical work had

² S/L/93.

been carried out since 2000. It was now time to get political guidance. Her delegation did not accept the assertion that no answers had been provided to questions posed by other delegations and, in fact, could produce a big compilation of the answers given to questions concerning the papers presented by ASEAN. ASEAN wanted to negotiate, and, therefore, was ready to be open, reasonable and constructive. The Working Party should not go back to the issue of desirability, but discuss technical issues. These could be overcome to make an ESM possible.

17. The representative of India wished to associate his delegation with the statement made by the Philippines regarding government procurement. The scope of the mandate was a fundamental issue, and negotiations were not advanced. The focus of the discussion had been on the scope of the mandate, not on the EC proposal. Therefore, his delegation disagreed with paragraphs 13 and 14 of the Chair's report. In paragraph 21, it should be indicated that the real issue was the scope of the mandate.

18. The representative of Hong Kong, China said his delegations appreciated the Chair's efforts to make the reports factual and balanced. With respect to emergency safeguard measures, fundamental questions, such as those referred to in paragraph 29 of the report, remained to be answered and technical work had to continue. The membership as a whole should come to grasp with the fact that eight years of work had not brought delegations closer to any result. Members needed to engage into substantive discussions with a view to concluding the negotiations, i.e. finding an outcome. "Demandeurs" and "sceptics" should work together so as to make a conclusion by the deadline possible. Hong Kong, China was interested in continuing the discussion on government procurement, including on the framework proposed by the EC which was the only proposal on the table so far. He acknowledged that the scope of the mandate was not settled, but noted that Members had agreed on a work programme which stated that the "undertaking of the individual items of work should be without prejudice to each other". The Working Party could, therefore, spend time discussing substantive issues raised in Members' submissions.

19. Subsidies were a systemic issue causing great concern to his delegation. A number of documents were on the table and could serve as a basis for continuing discussions. He wondered why, in paragraph 15, the Chair's report characterized the discussion on subsidies as having been "restricted". The information exchange was an important component of the mandate in Article XV and concerned all subsidies that Members provided to their service suppliers. Except for a few delegations, it had not been carried out although it was clearly compulsory ("... shall exchange information ..."). Two reasons had been given: the lack of a definition for subsidies and the fact that the amount of information to be submitted might be too burdensome. Did that imply that there were too many services subsidies? Recent discussions on definitional issues had been interesting. If the Chair's report considered discussions on government procurement in a positive light, the same could be said about subsidies: the discussions on a definition had been substantive, although engagement from some Members was still lacking. Concerning the perceived abundance of information, his delegation would be pleased to consider ways of organizing the exchange of information. However, capacity should not be a problem for those Members that had been able to prepare comprehensive requests for almost all WTO Members. He acknowledged that there was a "chicken-and-egg" dilemma and could agree that limited progress had been made on technical issues. Members should engage actively in these negotiations, including on the information exchange, which did not necessarily depend of a common definition of services subsidies. The absence of an agreed definition might affect the information exchange, but not impede it. In fact, work on the two issues should proceed in parallel and his delegation intended to make some suggestions in this regard. The purpose of an information exchange was to gather information on subsidies, which would provide the basis for evaluating and developing possible disciplines. Various sources could be used, and UNCTAD was doing interesting work in this regard.

20. The representative of Indonesia said that he supported the statement by the Philippines and Thailand regarding emergency safeguard measures. His delegation was deeply concerned about the

lack of substantial progress since the ASEAN Member had presented a draft text, nearly three years ago. The Working Party should carefully consider whether the current mode of negotiations should be maintained or whether changes might be needed to speed up the process. Substantial progress should have been made before the Cancún Ministerial Meeting. ASEAN had tried to accommodate the needs of developed and developing countries. For instance, with respect to the issue of acquired rights, ASEAN had proposed a very moderate alternative compared to its original proposal. The current ASEAN draft text provided adequate solutions for substantive and procedural issues. Trade in services presupposed that burdens were shared, not only benefits. An ESM should be seen as a mechanism for burden sharing when the domestic industry was harmed by another country's policy. Members should try to overcome the remaining issues in good faith. Indonesia could understand the benefits of examining real examples of situations in which an ESM could be used. However, this was not necessarily a good way of proving feasibility, considering that the level of specific commitments was low and that services data were underdeveloped. Case law might also help to strengthen the rules, should actual situations arise. He shared the view by India and others that, contrary to what was indicated in the Chairperson's report, the focus of the discussions on government procurement had been on the scope of the mandate, not on the EC proposal.

21. The representative of Cuba supported the statements by the Philippines and Thailand regarding the state of the negotiations on emergency safeguard measures and shared the concerns about the current stalemate. There were sufficient elements on the table to indicate to Ministers that a number of delegations attached importance to this issue and wanted to work on technical questions. Political will was needed in order to make progress; and there was a link with the negotiations on market access. With respect to subsidies, Cuba wished to continue working on the definition and categorization of subsidies that might have distortive effects on trade, taking into account "the role of subsidies in relation to the development programmes of developing countries", and the necessary flexibility for developing and least-developed country Members to implement national policies. Cuba shared the view that the negotiations on government procurement had focused on the scope of the mandate in Article XIII. Some proposals on the table exceeded this mandate which clearly excluded issues related to market access and national treatment. Finally, as a general comment, she said that imbalances in negotiations were frequent. Ministers would not be able to find their way through a great deal of factual information and would need recommendations. There was the risk that last-minute "recommendations" could lead to further unbalanced results. The negotiating process should be transparent, and a stock-taking should result in recommendations to Ministers and indicate the way forward.

22. The representative of Colombia welcomed the Chairperson's initiative to devote a specific item to a stock-taking discussion. Her delegation was concerned by the lack of progress in this Working Party, which cast doubts on its ability to comply with the agreed deadlines. Colombia was not a "demandeur" for an ESM, but was nevertheless ready to work in a constructive manner in order to achieve a result. As the deadline was drawing closer, delegations should focus on technical issues and work on the elements which might be included in an ESM. Colombia attached importance to the issue of subsidies and was disappointed by the limited progress in this area. Article XV contained a mandate to exchange information concerning all subsidies related to trade in services that Members provided to their domestic service suppliers. Nevertheless, very little information had been submitted so far, which complicated technical discussions. More information, in particular from those Members which had many subsidy programmes in place, could help promote the negotiations. Initial offers contained references to subsidy programmes. Moreover, Colombia understood that UNCTAD was collecting information on support programmes in services, independently of a possible definition and without prejudice to their impact on trade. This initiative could play a useful role in this Working Party. Concerning government procurement, Colombia was still analysing the last EC contribution and was of the view that the scope of the mandate should also be discussed.

23. The representative of Chile said there was a need to make progress on all issues and called on all delegations to be flexible. Discussions could not advance if delegations had already decided on

their final positions. Technical work should help to determine how best to solve relevant issues. Progress in this Working Party and in the market access negotiations were linked. He acknowledged there was a problem with the mandate on government procurement. Although there were no uncertainties regarding the mandate in Article XV, and in particular the fact that the information exchange concerned all subsidies, no progress had been made. One solution might be to concentrate on sectors. The lack of a definition of services subsidies was not an excuse for not progressing; delegations could use alternative definitions. Notification and exchange of information were two different issues and priority should be given to the latter. The information exchange should take advantage of all possible sources and, in this respect, a contribution from UNCTAD would be welcome.

24. The representative of Canada said that Canada remained unconvinced of the desirability and feasibility of an ESM, but was willing to continue working constructively on this issue. He recalled that, in June 2001, his delegation had submitted a written proposal for a multilateral surveillance procedure. With respect to government procurement, he considered that the scope of the mandate in Article XIII was broader than some delegations implied.

25. The representative of Egypt supported the statement made by the Philippines regarding government procurement, and the fact that the issues raised by some delegations were outside the scope of the mandate.

26. The representative of Australia understood that there would be no agreed stock-taking report by the Working Party, but that the Chair would refer to this discussion in his oral report to the Special Session. With respect to the negotiations on emergency safeguard measures, he said that very little progress had been made towards common ground and Members were still far apart. The Chairperson's report contained an accurate summary of the various options and a realistic assessment of the situation. It was not clear how the current discussion would lead to a result by the agreed March 2004 deadline, but an outcome had to be found. With respect to government procurement, he noted the Chair's comment, in paragraph 16 of the report, that this issue was important for some Members, but less so for others. Australia was not a signatory of the GPA and probably belonged to the second category. However, his delegation did not consider that the mandate was as restricted as some suggested; Article XIII would allow Members to make voluntary commitments in relation to government procurement. Duplication of work should be avoided and priority should rest with the WGTGP.

27. The representative of Japan reiterated the views expressed at the last meeting regarding emergency safeguard measures. The Working Party had had useful substantive discussions, but needed to advance its understanding of the issues at stake. His delegation welcomed the EC proposal on government procurement, which was fully within the Article XIII mandate. The Working Party should determine its level of ambition and proceed with substantive discussions based on Members' contributions. An important amount of technical work remained to be done on subsidies, and he agreed with the Chair that there was a "chicken-and-egg" situation. Japan took note of the comments by "demandeurs" that the information exchange should be carried out to provide the Working Party with relevant information. Based on the understanding that the reports on government procurement and subsidies had been issued under the Chair's responsibility, Japan did not propose changes or amendments. With respect to the stock-taking, his delegation understood, like others, that the Working Party would not issue a report. It was up to each Member to make its own assessment, based on the material available.

28. The representative of the People's Republic of China said that her delegation had not been consulted concerning the form of the stock-taking. At the informal meeting on 16 June, China was in favour of a collective stock-taking for three reasons: (i) the stock-taking was different from the Chair's reports; (ii) an objective and factual report prepared and adopted by the Working Party would have been a positive signal; and (iii) it would have helped Ministers to assess the situation, in

particular on ESM. Nevertheless, China was ready to follow the suggestion made by the Chairperson in his Annotated Agenda. Her delegation was concerned about the slowness of the negotiations on ESM. The fact that these negotiations had not led to any achievement after eight years was regrettable. Moreover, at the current pace, there would not be any result by the deadline, and this might affect the market access negotiations. The stumbling-block was that some Members, which had such a mechanism in their own schedule or in bilateral agreements, did not find it desirable for other Members. She disagreed with the argument that liberalization under GATS was less deep than under bilateral agreements, because, in some sectors, Members had undertaken full commitments. What could they do if, in the future, an emergency situation arose in one of these sectors? There was clearly a need for an ESM and it would be too late to start negotiating it once an emergency situation had arisen. With respect to the issue of feasibility, she noted that Brazil had made a useful proposal; Members having a safeguard mechanism, in their schedule or in bilateral agreements, should explain to the Working Party how they implemented it concretely. Creative solutions should be found to take into account the specificities of services trade. There was a need for political will from all Members. Finally, her delegation shared the view expressed by the Philippines regarding the negotiations on government procurement: market access and national treatment were outside the scope of the mandate.

29. The representative of Venezuela said that the negotiations on subsidies had to continue. There was abundant subsidy-related information available outside this organization, which could be compiled and analysed. He agreed with Chile that information should be exchanged on a sector basis, for instance on environmental services. UNCTAD had experts in this area who could offer considerable contributions. With respect to government procurement, he supported the statement by the Philippines regarding paragraphs 13 and 14 of the Chairperson's report. The scope of the mandate was in fact the main focus of the discussion under this agenda item. At some point, Members should also consider more closely the issue of duplication: government procurement of services should be discussed in this Working Party, not in the WGTGP. He would revert later to the issue of emergency safeguard measures.

30. The representative of Norway said it was worrying that the scope of the mandate would be considered as the only issue in the discussion on government procurement. Several contributions had been made, in particular from the EC, which had presented a useful document. Government procurement was an important part of services markets and the EC proposal could allow to develop a flexible tool to gradually open markets according to each Member's particular situation. The Chairperson's report on government procurement was well conceived.

31. The representative of the United States thanked for the clarifications given with regard to the stock-taking. She noted that the Chairperson had no mandate to make any type of recommendation. The Working Party should abide by its work programme concerning the stock-taking and, in particular, the three negotiating issues should be treated equally.

32. The Chairperson said he would make a factual presentation to the Special Session of the Council for Trade in Services, which would not contain any recommendations.

33. The representative of Chinese Taipei said that the existence of an ESM could favour domestic industry's support for trade liberalization. It was time to enter into substantive discussions on the basis of the ASEAN draft agreement. With respect to government procurement, the GATS mandate allowed to discuss any issue. On subsidies, the lack of definition should not impede other work, for instance on categorization. Discussions on trade-distorting subsidies should be based on information provided by Members.

34. The representative of Brazil said that the concerns of his delegation were reflected in the intervention made by Uruguay. He also shared the views expressed by the Philippines. Uncertainty in the rules area would lead to limited market-access commitments and expectations regarding new

commitments might not be fulfilled. Brazil wanted to engage constructively on the issues of emergency safeguard measures and subsidies, so as to avoid that some Members be tempted to craft their own solutions. The Working Party should provide solutions available to all, which would then be put under the supervision of the whole membership. Similarly to what had been done with Article XXI, Members could take a pragmatic approach, design an initial safeguard mechanism, build on it and adjust it, if necessary, in the light of experience. The Chairpersons' reports were good, but should contain initiatives in terms of procedure. This Working Party should look at other WTO negotiating bodies in order to borrow some of their methods to fasten discussions. The Chairperson should take a more proactive role in presenting alternatives, drafting initial suggestions, etc. There was a lack of political will and some delegations clearly applied a double standard in this respect. They did not want to clarify certain issues which were not in their interest, but insisted on including in the WTO agenda other questions they considered necessary to be solved. Should the same approach prevail in other areas, very little could be achieved in the WTO.

35. The representative of Malaysia said that the stock-taking exercise was important because it allowed to determine where the Working Party stood. The negotiations on rules were a complementary facet of the market access negotiations. The rules negotiations had started in 1995 and one of the mandates was still not clearly identified. A great deal of discussions had taken place on emergency safeguard measures and several deadlines had not been met. The March 2004 deadline was drawing closer and, although it was supposed to be the last extension, there were already talks that it might be extended again. Hence, Ministers could not be told that everything was going well. His delegation was pressured to accept that some issues, the desirability of which had never been discussed, be put on the WTO agenda at Cancún. For Malaysia, an ESM was desirable because it would give the necessary confidence to liberalize services. Malaysia had not tabled yet its initial offer because the private sector did not find it desirable to open the market. The Shangri La example reflected some of the problems faced by ASEAN countries. Moreover, during the 1997 financial crisis, money flowing out of Malaysia had caused an emergency situation, which had led the government to freeze all grants to students wanting to study abroad. This showed that an ESM was feasible. Ministers should be aware of the lack of progress in the rules negotiations. Further guidance was needed and Malaysia hoped that they would agree that there was a political need for an ESM. Progress in the market access negotiations was also limited, as evidenced by the statements made at the last meeting of the Special Session by developing countries complaining about the lack of mode 4 commitments. With respect to subsidies, there was a clear mandate to negotiate, and more efforts should be devoted to information gathering. Concerning government procurement, his delegation supported the statement by the Philippines. The Chairperson's report could be more balanced. His delegation was of the view that there was no progress on government procurement; the only relevant contributions concerned the scope of the mandate. Discussions on government procurement were short and totally lacked momentum.

36. The representative of Singapore agreed with Australia and Canada that the mandate in Article XIII allowed Members to raise any issue. His delegation was carefully studying the last EC contribution on this matter. With respect to emergency safeguard measures, his delegation's position was guided by the precedents of Singapore's recent free trade agreements with Members like the United States, Australia, New Zealand and EFTA. On subsidies, Singapore was examining the contribution by Poland as well as the revised Checklist.

37. The representative of the Republic of Korea supported a factual report by the Chairperson to the Special Session of the Council for Trade in Services, reflecting the stock-taking discussion. She trusted that the report would be objective. Her delegation was concerned about the lack of progress on the three agenda items. On emergency safeguard measures, "demandeurs" and "sceptics" should come to a compromise on how to approach this issue. An ESM should not be open to abuse, but if it contributed to further liberalization, Korea was willing to engage constructively. Concerning subsidies, she supported other delegations that had emphasized the need to continue the information exchange, taking advantage of various sources of information, including UNCTAD. Negotiations

were in a stalemate because many delegations had already decided on their final position. Rule-making was an important part of the services negotiations. This included government procurement where the discussion on the scope of the mandate had a flavour of *déjà-vu*.

38. The representative of New Zealand said that very limited progress had been achieved on emergency safeguard measures considering the time spent on this issue. A considerable amount of work remained to be done in order to conclude the negotiations within the deadline and her delegation was ready to continue to actively engage in this area. The Chairperson's report on subsidies contained an accurate summary of the discussions. She noted the binding nature of the requirement to provide information on all subsidies related to trade in services and recalled that her country was one of the four Members to have submitted such information. The absence of an agreed definition had not prevented them from responding to the questionnaire; it was not a prerequisite for submitting such information. Nevertheless, further technical work would facilitate discussions and, in this respect, the paper from Poland was a useful contribution.

39. The representative of the United States thanked the delegation of Malaysia for its frank statement. Her delegation was among those that continued asking questions which, in turn, were also raised by people giving political guidance in capitals. Answers were needed in order to have a proper definition of what was being negotiated since these could be no blank cheque. The reference to the 1997 financial crisis was helpful since it helped to understand what this Working Party was talking about. For any example, it would be useful to know where and when a situation justifying a safeguard action had occurred. One should also keep in mind that some emergency situations could be addressed through Article XII or XIV, for instance. She welcomed Brazil's comment that an ESM was needed in order to help promote liberalization. She enquired whether, in the view of the "demandeurs", an ESM should apply only to new market-access commitments. The matrix presented informally by New Zealand at a previous meeting could be helpful and should be used in future. It would facilitate discussion on modal application, whether with specific or hypothetical examples. The negotiations on emergency safeguard measures should be as specific as the market access negotiations.

40. The representative of the European Communities noted that the Chairperson's report on emergency safeguard measures referred to political will without prejudice to the outcome of the negotiations. In his view, all delegations had political will, but no common view on the outcome. It should be kept in mind that all three negotiating mandates were related to trade liberalization. Concerning the interpretations of treaties, he noted that, in addition to textual interpretation, contextual and teleological interpretations were also relevant. A textual interpretation of Article XIII led to the conclusion that there was a mandate to negotiate on market access and national treatment, otherwise paragraphs 1 and 2 would have been put in reverse order. A teleological interpretation led to the same result because one of the objectives of GATS was progressive liberalization of services.

41. The representative of Peru welcomed the comments by the United States because they showed interest in other delegations' position. Flexibility and political will were key to successfully conclude the negotiations. As his delegation had indicated on several occasions, the mandate in Article XIII did not cover market access and national treatment. Moreover, it did not contain a deadline, and discussions under this agenda item were most of the time short and not substantive. The comments by the European Communities did not help to bring positions closer. Emergency safeguard measures and subsidies had clear mandates. Progress in these negotiations did not only entail progressive liberalization, but promote the participation of developing countries as stipulated in Article IV. Rule-making was an essential aspect of the services negotiations. For instance, developing countries could not open their market without knowing what kind of subsidies were granted to competitors in other markets. He supported Brazil's intervention regarding consistency between the procedures applied in this Working Party and other WTO bodies.

42. The representative of the Philippines said that the United States had raised some key technical issues that the Working Party was trying to address. ASEAN had prepared answers to some of the questions posed to them at the last meeting and hoped that they would also help to solve the issues raised by the United States. Concerning the EC's comment on the Article XIII mandate, he recalled that the Appellate Body favoured a literal interpretation of WTO provisions. With respect to the view that a teleological interpretation of Article XIII was consistent with the objective of progressive liberalization, he noted that some WTO agreements, such as the TRIPs agreement, pointed in an opposite direction.

43. The Chairperson thanked delegations and took note of their statements. As indicated at the beginning of the meeting, he intended to refer to this discussion in a factual manner in his oral report to the Special Session of the Council for Trade in Services.

III. NEGOTIATIONS ON SUBSIDIES (GATS ARTICLE XV)

44. The Chairperson suggested to address the issue of subsidies first, since it had not been addressed at the last meeting due to lack of time. He recalled that, on 17 March 2003, his predecessor had circulated a revised Checklist on Subsidies (JOB(03)/57), as agreed at the February meeting. The initial Checklist had been circulated on 17 July 2000 under the then Chairperson's responsibility.³ It was meant to be used as a tool to help Members to address in a systematic manner issues which had been raised in the negotiations under Article XV. The revision, prepared under the responsibility of the Chairperson, included two changes. First, the question of categorization of subsidies was explicitly spelled out under the first point, i.e. definition of a subsidy in trade in services. Second, a new issue had been added, relating to concepts relevant to what should be regarded as trade-distortive subsidies. The *Checklist* was without prejudice to the position of any Member. At the February meeting, delegations had had an interesting exchange on the definition of subsidies in services, based in particular on an informal submission by the delegation of Poland (JOB(02)/207). Two issues had dominated the discussion: (i) the generic definition of subsidies in the services context, including the relevance of the definition contained in the SCM Agreement; and (ii) the meaning of the concept of trade-distortive or "actionable" subsidies. With respect to the latter, Poland and other delegations had referred to concepts such as specificity, public policy objectives, nature of the subsidies, permissible or non-actionable subsidies, etc. He recalled that Article XV stipulated that, for the purpose of the negotiations, "Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic services suppliers." The Working Party had not made real progress on this information exchange recently and he encouraged delegations' suggestions on this point too. It was difficult to understand why Members should not be able to submit domestically available information to this Working Party.

45. The representative of Hong Kong, China recalled that the negotiation on subsidies was important for his delegation. Services subsidies could have the same trade distortive effects as goods subsidies. Subsidies were not equally available to all Members, and multilateral disciplines would be useful to ensure a level-playing field. His delegation also recognized the value of subsidies to achieve certain policy objectives, including development; hence, the distinction between non-actionable and trade-distortive subsidies should also be discussed. His delegation had three suggestions to make. First, the information exchange should continue since it had not been fulfilled in spite of being mandatory. Members could submit information based on their own definition of "subsidy". It would be useful, but not strictly necessary, if, in addition, they would provide their working definition because it would contribute to developing a general definition for services subsidies. Secondly, the concept of subsidy was not alien to Members since a number of them had entered relevant limitations in their schedules. The Secretariat had compiled information in that regard in S/WPGR/W/13 and Add.1. Members having subsidy-related limitations in their schedules and/or in their initial offers could share their views on what the scope was for such subsidies. Thirdly, in order to address the

³ Job No. 4519, 17 July 2000.

concerns of those delegations which felt that the amount of information might be too significant for one exchange, Members could consider providing as an initial step only certain elements. For instance, they could submit information that was readily available to them. In that context, Members should be aware of the ongoing work in UNCTAD, so that information related to subsidies could be shared with this Working Party. Concerning the definition of subsidies, he noted that various Members had submitted written contributions on this issue. These papers could be re-circulated (by e-mail or as room documents), which could help focus the discussion. The issue of categorization of subsidies should also be given further thought. His delegation was open-minded and had no preconceived idea.

46. The representative of Colombia said that the negotiation on subsidies was fundamental in the perspective of progressive liberalization contemplated in Article XIX. The private sector in Colombia had expressed concerns at the prospect of liberalizing sectors which could be subsidized abroad. The information exchange should be carried out, and the suggestions just made by Hong Kong, China were interesting. Discussing subsidy-related limitations in schedules and initial offers was an interesting starting-point and the Members concerned should provide relevant information.

47. The representative of Chile agreed with the representative of Colombia and Hong Kong, China. The Working Party should ensure that all themes be discussed at the next meeting. He called for flexibility from those Members which were reluctant to seek information from UNCTAD. Article XV did not limit the sources of information that could be used. He supported Hong Kong, China's proposal that, as an initial step, Members submit information on some sectors only. His delegation would make comments on the definition of subsidies at the next meeting.

48. The representative of the United States said that her delegation did not oppose a presentation from UNCTAD or any other organisation, but wanted to know what kind of information would be submitted. Her delegation also needed to reflect on how the Chair should best liaise with UNCTAD. Moreover, any Member aware of the information available at UNCTAD could bring it to the attention of the Working Party without prior approval.

49. The representative of Brazil said that his delegation attached importance to that part of the GATS package. It was difficult to understand why a contribution from UNCTAD was so problematic, since it would not be the first time that an intergovernmental institution would make a contribution to a WTO body. It was important to know what UNCTAD was doing and to get such information first hand. Advance information on the content of the presentation should not be a precondition for UNCTAD's contribution.

50. The representative of the European Communities recalled that the Working Party had agreed at the last meeting that UNCTAD would provide a bibliography, which would have allowed Members to consult themselves the documents concerned. However, the bibliography had not been submitted. She considered that it was important for the Working Party to agree on a common definition of services subsidies, although it was not necessarily a prerequisite to exchange information. She stressed that exchange of information did not mean notification of all subsidies and recalled that the European Communities had submitted general information on its subsidy regime.

51. The representative of the United States said that her delegation had always maintained the position that, should other organizations be present, an understanding was needed as to what exactly they would present. The United States did not have any problem with UNCTAD making a presentation, but needed to understand what this would entail. As an observer, UNCTAD could intervene when something was raised concerning their work or one of their documents. Moreover, Members could consult the documents concerned, raise relevant points and then request comments from UNCTAD. She noted that the bibliography proposed at the last meeting had not been submitted.

52. The representative of Thailand said that her delegation wanted to participate constructively in this discussion. Members should have a common understanding on some key concepts in Article XV. Ignorance about services subsidies explained why it was difficult to provide information. Her delegation was nevertheless ready to participate constructively in this negotiation and did not oppose information being submitted by other international organizations.

53. The representative of Hong Kong, China said that there was a chicken-and-egg problem which had to be solved. The information exchange depended on a definition of subsidy and vice-versa. Delegations should address these issues in a constructive manner. He took note of the previous exchange regarding a contribution from UNCTAD, whereby the Working Party would obtain preliminary indications from UNCTAD as to whether and what sort of relevant information they could present. Other delegations should be flexible and open-minded on this matter.

54. The representative of Uruguay said that UNCTAD should present its work, as it had done on previous occasions and as other organizations had done as well. It would be sad if the Working Party could not accept a contribution from an organisation which had worked closely with the GATT/WTO for many years. The update report that the Working Party had just adopted stressed the necessity to collaborate with other organizations (S/WPGR/12, para. 10). His delegation wished to urge the Working Party to invite an UNCTAD representative to present the study concerned at the next meeting. Before that, UNCTAD could perhaps circulate a bibliography so that Members would be well-prepared. He further noted that not only existing schedules, but also some initial offers contained limitations relating to subsidies, as referred to in the Chair's report (S/WPGR/10, para. 20). It would be interesting to know how the Members having scheduled such limitations, or proposed them in their offers, defined "domestic supplier".

55. The representative of Chile was in favour of a presentation by UNCTAD. The organisation that had prepared a study was in a better position than anybody else to present it. Since an UNCTAD representative was in the room, the Working Party could ask him to provide some information regarding the status of the study concerned.

56. The representative of Thailand said that Members were clearly mandated to negotiate on subsidies, but the scope of this negotiation should be determined. Her capital needed to have a clearer idea on the scope (for instance, would subsidies for health services for poor people be covered?) and felt that a definition would help to negotiate disciplines.

57. The representative of the United States said that the Working Party should first be given an opportunity to consult the bibliography, which had been requested at the last meeting, so as to have an idea of the kind of information available. Moreover, the representative of UNCTAD could be asked now to give delegations some indication regarding the status of work.

58. The representative of Hong Kong, China considered that the Working Party had previously taken note that UNCTAD would be invited to provide relevant information. His delegation looked forward to listening to UNCTAD as to when they would be able to provide this information.

59. The representative of Uruguay said that UNCTAD was an observer and could present a paper. It would be useful if UNCTAD could provide such a contribution in advance of the meeting so as to allow Members to be prepared and make comments.

60. The representative of UNCTAD explained that the work undertaken on subsidies consisted of a compilation of all available data concerning different types of support programmes and other forms of governmental intervention. This work relied on secondary sources, including information from other intergovernmental organisations, as well as information made public by governments in official publications. UNCTAD avoided to define what a "subsidy" was and did not pass judgement on what would be trade-distortive and what would not. The only objective was to provide empirical evidence

on support programmes and government interventions in the area of services. A complete first draft could be available by the time of the next meeting of the Working Party.

61. The representative of Canada took note that UNCTAD was relying on secondary sources, such as international organisations and national governments. He enquired what sources had been consulted, and whether the information would be presented on a country basis or more generally.

62. The representative of UNCTAD explained that the information used came from the OECD, regional integration agreements, and national sources. The compilation attempted to establish a typology so as to facilitate reading and analysis, but did not try to determine whether there was trade-distortiveness. It was a collection of empirical data.

63. The representative of Canada enquired what would happen at the next meeting concerning the proposed UNCTAD contribution. The Chairperson recalled that, according to the rules of procedures, observers needed Members' approval to submit a document. He enquired whether Members agreed that UNCTAD would submit a bibliography and then present the study to the Working Party. The representative of Brazil said that it would be preferable if UNCTAD could present directly the actual study. In any case, a decision should be made now to save time. The Chairperson said that the bibliography would be the first step; the compilation would follow. The representative of Cuba said that the provision of information by an intergovernmental organisation was a simple issue and regretted that UNCTAD be censored. Moreover, the kind of information used by UNCTAD was not a secret. She agreed with Brazil that UNCTAD should present its document at the next meeting.

64. The representative of Chile asked whether the submission of the bibliography and the study would take place at the same meeting or at two different meetings. The Chairperson said that one possibility was for UNCTAD to circulate the bibliography well in advance of the meeting. Then, at the meeting itself, the Working Party could focus on substance and look at the compilation. The representative of Chile agreed. The representative of Peru said that the Working Party should make a decision to invite UNCTAD before the end of this meeting. The representative of the European Communities said that her delegation was not in a position to agree now to a presentation by UNCTAD at the next meeting. The representative of the United States said that her delegation could agree that UNCTAD present a bibliography, but not to invite a speaker from UNCTAD. This was partly a technical and partly a systemic issue for her delegation. An alternative would be for a Member to present the UNCTAD document, and then UNCTAD could respond to questions raised.

65. The representative of the Philippines said that, although his delegation did not agree with the United States' position, he considered that it left room for Members that were interested in an UNCTAD contribution. This should, however, not prejudice in any way the systemic approach towards the participation of an accredited observer in WTO bodies.

66. The representative of the United States said that her delegation considered that decisions regarding the submission of material by an observer should be taken on a case-by-case basis.

67. The Chairperson said that Members agreed that UNCTAD would submit a bibliography as a first step. He would consult to see whether UNCTAD could make a further presentation, taking into account the concerns expressed. At the next meeting, delegations should continue their exchange of views on the definition of services subsidies and carry on the information exchange. Considering that the Working Party had not managed to deal with the remaining agenda items, he intended to convene an informal meeting to address emergency safeguard measures, government procurement, and, time permitting, subsidies.

68. The representative of Thailand said that more time should be devoted to the rule-making part of the services negotiations.

69. The representative of Uruguay reserved his position in the discussion relating to UNCTAD, which, in his view, raised systemic concerns. It was a matter of preoccupation that some delegations wanted to see first a bibliography and the content of a paper before giving the go-ahead. The representative of Colombia shared these concerns.

IV. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (GATS ARTICLE X) AND GOVERNMENT PROCUREMENT (GATS ARTICLE XIII)

70. The Chairperson regretted that, due to lack of time, it was not possible to discuss emergency safeguard measures and government procurement at that meeting. He intended to hold an informal meeting before the next formal meeting to advance work on these issues. Time permitting, delegations would then also have an opportunity to continue their debate on subsidies.

V. DATE OF THE NEXT MEETING

71. The Chairperson said that the next formal meeting of the Working Party was expected to take place during the next cluster of services meetings, which had been tentatively scheduled from 29 September to 10 October 2003. The Working Party would meet during the first week of the cluster and the exact date would be communicated to delegations in due time.

VI. OTHER BUSINESS

72. Nothing was raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 13 AND 14 MAY 2003

Note by the Secretariat¹

1. The Working Party on GATS Rules opened its forty-second meeting under the chairmanship of Mr. Thomas Chan, from Hong Kong, China. The agenda for the meeting was contained in WTO/AIR/2089. It included six items: appointment of the Chairperson; negotiations on emergency safeguard measures under GATS Article X; negotiations on government procurement under GATS Article XIII; negotiations on subsidies under GATS Article XV; date of the next meeting; and other business. The Chairperson drew attention to the Annotated Agenda (JOB(03)/80) in which his successor, Mr. Santiago Urbina, proposed themes for discussion.

2. He indicated that his successor intended to have, under "other business", a first informal exchange of views on the item, contained in the three work programmes (S/WPGR/7), which called on the Working Party "to prepare for the opportunity provided by the Fifth Ministerial Conference to take stock of progress made in the negotiations". The agenda for the meeting was adopted.

A. APPOINTMENT OF THE CHAIRPERSON

3. The Chairperson said that, in accordance with the rules of procedure for meetings of the Council for Trade in Services (S/L/15), the election of the new chairperson should have taken place at the first meeting of the year in order to take effect at the end of that meeting. However, when the Working Party had met in February, the Chairperson of the Council for Trade in Services was still consulting on the slate of chairs for the subsidiary bodies. It had been decided that the election of the new Chairperson would take place at the beginning of the May meeting. He proposed that the Working Party elect Mr. Santiago Urbina, from Nicaragua, as Chairperson of the Working Party on GATS Rule.

4. Mr. Santiago Urbina was elected by acclamation.

B. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X OF THE GATS)

5. The Chairperson recalled that, as mandated by the work programme on emergency safeguard measures, the outgoing Chairperson had circulated on 14 March 2003 a Report on Negotiations on Emergency Safeguard Measures (S/WPGR/9). Delegations had been invited to exchange views on this Report at an informal meeting held on 15 April. The record of that meeting was found in a Note by the Secretariat, circulated as JOB(03)/80. As agreed at the April meeting, delegations could ask that the comments they had made during that informal meeting, and which were reflected in the Secretariat's Note, be included in the formal minutes of this meeting. Delegations so wishing were invited to make further statements on this issue.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

6. The representative of Brazil said his delegation was satisfied with the approach taken in the Chair's Report on ESM. The conclusion pointed out an essential element, i.e. that political will was needed. This observation did not pass judgement on anybody's position, but indicated that there was a need for flexibility from all Members in order to get out of the current impasse. The same questions and answers had been repeated, and there was little progress towards common views. In these conditions, there would be no substantive result by March 2004. It was also time to discuss how to approach the stocktaking.

7. The representative of the United States requested that the statement her delegation had made at the last informal meeting be reflected in the report of this meeting.² At the informal meeting, the United States had noted that the Report had been drafted under the Chair's own responsibility. Nevertheless, her delegation would have liked to have an opportunity such as this one to react and add further thought during the preparation of the report. With respect to the period covered by the Report, her delegation had understood that it would start from July 2002; she took note that the Chair had chosen a more comprehensive approach. Much of the Report highlighted areas of convergence and divergence, but some elements might have been misplaced. For instance, the question of desirability and feasibility also involved concerns regarding economic and practical feasibility, which called for a more practical and focused discussion. Her delegation agreed with the Chair's assessment that the way forward involved adopting a more practical approach. The EC paper on modal application should be further addressed. The United States was concerned with the emphasis the Report put on political will. Political will was required on both sides, and the substantive aspect of this political will could be, for instance, a willingness to engage in a more precise and concrete debate, or responsiveness on concrete examples. But it should be avoided passing judgement on delegations which had difficulties with some issues in this negotiation. Concerning the work programme, there was no need for proposing any particular way forward. Rather, it was more important to lay out the facts, the areas of convergence and divergences, and indicate where further work might be possible. In view of next year's deadline, the Working Group should focus more on specific issues, rather than preparing some sort of political decision. There should be a discussion on how to prepare for the stocktaking provided for in the work programme. The way forward should include the elements just stated by the delegation of Japan.³ For any future work on this sensitive issue, in particular the stocktaking, the United States would insist that any report be agreed by consensus of the Members, and not in the form of a Chair's note. If there was a stocktaking, Members should be able to make as much input as possible.

8. The representative of Argentina said that the Report on ESM reflected the state of play of the negotiations, i.e. that there was no convergence of views for the time being. Political will was important and was linked to the question of desirability. The issue of feasibility could be treated from a technical point of view.

9. The delegation of Japan requested that the statement that his delegation had made at the last informal meeting be reflected in the report of this meeting.⁴ At that informal meeting, Japan had agreed that the debate had not brought about any convergence of views among delegations. The reason was not a "lack of eagerness", as mentioned in paragraph 22 of the Report, but was rather due to the fact that the negotiations on emergency safeguard measures involved complex issues and were difficult to conceptualize. His delegation took note of the observations contained in the last part of the Report. The questions of feasibility and desirability were crucial and essential to the discussions. As stated in paragraph 29 of the Report, basic issues regarding the *raison d'être* of an ESM remained, such as: for what situations a safeguard was needed; when would it be needed; who should be protected; against what, etc. Answering these questions was a prerequisite because they could arise

² See JOB(03)/80, paragraph 5.

³ See paragraph 9 below.

⁴ See JOB(03)/80, paragraph 4.

later in a dispute and were related to the legal stability of the commitments. It was necessary to further discuss concrete examples because this would help answering the basic questions. His delegation was ready to participate in future discussions.

10. The representative of the European Communities requested that the statement that his delegation had made at the last informal meeting be reflected in the report of this meeting.⁵ At that informal meeting, the European Communities had said that it was important to clarify the purpose of the work undertaken under this agenda item and keep in mind that all outcomes were possible. The purpose was not necessarily the establishment of an ESM. Many basic questions remained open. With respect to paragraph 25 of the Report, the European Community was of view that the question of desirability was also linked to feasibility, and not only to the form of an ESM. On paragraph 26, she noted that many safeguard-type provisions in bilateral trade agreements referred, for instance, to balance-of-payments and infant industry problems and, hence, were not of the same nature as the GATT Article XIX safeguard provision. Moreover, these agreements were based on a top-down approach and did not entail a possibility to withdraw commitments. Since the GATS was different, another approach was required. With respect to paragraph 27, she said that the question of feasibility did not involve any political dimension. It was necessary to discuss concrete examples. As her delegation had stated at the last formal meeting, three different outcomes were possible in this negotiation: (i) should the WPGR be able to identify situations justifying an ESM and demonstrate the feasibility and desirability of an ESM to deal with them, the result could be an ESM agreement; (ii) should the WPGR have identified such situations, but failed to prove feasibility and desirability of an ESM, the result could be making Article X:2 permanent; and, (iii) should the WPGR be unable to identify such situations, this would suggest that there was no need for an ESM. Political will was needed to reach any of these three outcomes, not only to agree to establish an ESM.

11. The representative of Thailand, speaking on behalf of ASEAN, said her delegation had taken note of all the points made in the ESM Report as well as of the suggestions for a way forward. She shared the view that political will was needed in order to solve certain issues.

12. The representative of Switzerland requested that the statement his delegation had made at the last informal meeting be reflected in the report of this meeting.⁶ At that meeting, Switzerland had agreed with the Chair's Report that the discussion on emergency safeguard measures had not brought about convergence and that views remained very different. ESM was a difficult issue. The question of desirability involved a political dimension, while that of feasibility referred to technical issues. The Working Party should concentrate on the latter one. Solving the many technical problems would help to take a political decision.

13. The Chairperson thanked delegations for their comments on the Report on emergency safeguard measures. In light of the comments made at the last formal and informal meetings, but also taking into account suggestions by the outgoing Chair in his Report, he invited Members to continue their examination of concrete examples of situations where safeguard action might be needed, and of the form such action could take. With respect to the elements of a possible ESM, Members might also wish to revert to issues such as: (i) identification of possible common elements for an ESM based on the Synopsis (JOB(01)/122 + Add.1) and the Overview of the Synopsis (JOB(02)/200/Rev.1); and (ii) discussion of process-related issues, such as transparency, notification, consultation, surveillance provisions and expedited dispute settlement proceeding. Members might also wish to continue their deliberations on the issues of desirability and feasibility. He recalled that, since the last formal meeting, the European Communities had circulated a written contribution on *Scope for Emergency Safeguard Measures (ESM) in the GATS* (S/WPGR/W/41).

⁵ See JOB(03)/80, paragraph 6.

⁶ See JOB(03)/80, paragraph 11.

14. The representative of the European Communities said that the written contribution in W/41 reflected the statement made by his delegation at the last formal meeting. The objective was to focus the discussion on what the Working Party was mandated to do. Negotiations under Article X should not aim at introducing a series of exceptions into the GATS with a view to granting a specific treatment to infant industries, or to escaping the disciplines of Article XXI. A positive conclusion on the question of ESM presupposed two things. First, the identification, in case they existed, of concrete examples of emergency situations in the services area that were not already addressed by GATS provisions. In this regard, his delegation welcomed the example presented by ASEAN at the last meeting. Other such examples could also help to determine whether an ESM was necessary. Second, it should be demonstrated that an ESM would be feasible and desirable to deal with these situations, i.e. that the difficulties and concerns raised in respect of an ESM could be overcome in practice. The question of feasibility called for technical responses and it was necessary to work on examples. The matrix proposed by New Zealand could be helpful in his regard.

15. The representative of Norway said that his delegation was increasingly sceptical regarding feasibility and desirability of an ESM. He shared the doubts expressed by the European Communities in their contribution. It was difficult to identify real examples, and the goods' safeguard model was not appropriate for services. The flexibility provided by the architecture of the GATS and exception clauses such as Article XII already served as safety valves and allowed countries to defend their interests. Norway was ready to listen to more examples and to discuss desirability and feasibility.

16. The representative of Switzerland supported the contribution by the European Communities and the statement just made by Norway. His delegation was also increasingly sceptical. The structure of the GATS and existing safety nets explained why Article X referred to "the question" of an emergency safeguard measure.

17. The representative of Chile said that both the EC paper and the Shangri La example provided by ASEAN at a previous meeting could be useful means to overcome the current "stalemate" situation described by the outgoing Chair. The mandate was to finish negotiations no later than 15 March 2004. This could mean three things: (i) not reaching an agreement on a mechanism and ending these negotiations; (ii) finding a solution acceptable to all; or (iii) continuing the negotiations. Chile agreed with much of the content of the EC paper. One of the merits of the GATS was its flexibility. In addition, the GATS provided numerous escape valves, such as general exceptions, Article XXI, domestic regulations, prudential measures in the financial services sector, etc. Chile's free trade agreements with the EC and the US did not contain an ESM although they provided for a very high level of liberalization in services. Nevertheless, her delegation could understand the need of some Members to have an additional mechanism. For Chile, this mechanism would need to have certain characteristics so as not to affect the legal certainty of commitments. For example, it must only be used in times of emergency, be of a temporary nature, and adopted and applied in a transparent and objective manner. Chile wished to make the following questions with respect to the Shangri La example: Why had Shangri La made far reaching commitments in such a sensitive sector? Why and how had the employment structure in the retail sector changed with the entry of foreign companies? Was there a way, other than a safeguard measure, that would allow Shangri La to deal with this problem, for example, modification of domestic regulations or some other kind of legislative response? How much time would Shangri La need to adapt to the situation arising from the liberalization of its retail sector? At what point in time could the authorities of Shangri La distinguish between "old" service providers and "new" ones? How did they distinguish between national and foreign providers? How and when could injury be determined by the authorities of Shangri La? How did the authorities define domestic industry in Shangri La and what would happen with acquired rights? Answers to these questions could promote a concrete discussion that would allow delegations to make progress on the basic question of feasibility of an ESM. Her delegation was willing to aid in the search for answers to these and any other questions. The Working Party should use the next few

months to discuss the technical merits, or the absence of such, of an escape valve, be it called ESM or otherwise.

18. The representative of Thailand, speaking on behalf of ASEAN, said she was concerned to see that scepticism was spreading. Examining concrete examples was not everything since the mechanism to be negotiated was meant to address future situations. The GATS already contained some safety nets, but they were not necessarily adequate for a Member having undertaken extensive commitments in a sector. The flexibility provided for in Article XIX would become increasingly irrelevant as Members continued to liberalize and GATS' ultimate objective was full liberalization. Article XXI offered permanent solutions, which was different from the kind of situations contemplated under Article X.

19. The representative of the United States said that the EC contribution was useful in clarifying the scope of Article X. Her delegation hoped to get more concrete examples and to continue to fine tune the scope of these negotiations. The Working Party should also examine to what extent those examples could be addressed under existing GATS provisions. The United States shared the view of the European Communities that Article X clearly stipulated that the negotiations addressed "the question of" an ESM. The problems faced by the drafters of the GATS on this question had not been solved. The matrix presented by New Zealand should be introduced more formally because it would help future discussions. Her delegation hoped the Working Party would be able to find elements of common understanding on the concept of "emergency" and noted that this question had been raised in the informal contribution by Chile, Costa Rica and Switzerland.⁷ The comments and questions by Chile on the Shangri La example were interesting and useful. It was necessary to understand what was intended with a temporary remedy in such a situation, and whether that remedy was contemplated under Article X.

20. The representative of Brazil said his delegation took note of the EC's understanding that the GATS provided enough flexibility to allow countries to take into account concerns related to infant industries and other sectoral constraints. This position was important in view of bilateral market access negotiations. Referring to paragraph 8 of the report of the last meeting,⁸ he noted that some examples in the Secretariat's compilations referred to agreements between the European Communities and other countries. Some of these agreements might contain safeguard provisions applying to trade in goods and services. In cases where they applied to services, he enquired how the European Communities had addressed the question of desirability and feasibility when drafting these provisions.

21. The representative of Uruguay drew attention to the Note by the Secretariat in JOB(03)/20, containing a compilation of references made by delegations to safeguard type measures, which could provide possible examples. Uruguay was not a "demandeur" on this subject, but wished to have more information, in particular on certain measures notified to the Committee on Regional Trade Agreements. His delegation had mentioned some examples of safeguard-type provisions, including in agreements by the European Communities. It had been recognized that they covered services, but had not been applied. Those delegations which had notified such provisions should explain how these would be applied, based on the elements contained in the overview of the Synopsis⁹ (situation justifying an ESM, like services, domestic industry and acquired rights, compensation, etc.). Practical information could help to focus the debate. He agreed that the purpose of an ESM was not to protect infant industries or correct structural problems (para. 5 of S/WPGR/M/41), but wondered why infant industries were referred to in bilateral agreements concluded by the EC as a possible reason for a safeguard measure. He also enquired how Japan had solved feasibility and desirability problems concerning the safeguard provision contained in its schedule of specific commitments.

⁷ *Possible Comprehensive Approach for an Emergency Safeguard Mechanism*, JOB(01)/81.

⁸ S/WPGR/M/41.

⁹ JOB(02)/200/Rev.1.

22. The representative of Norway, referring to comments by Brazil, explained that the EFTA Convention had to be considered in a historical perspective. It had been negotiated in the 60's and covered only goods. Under a recent modification, it had been extended to new sectors, such as services. That explained why the safeguard provision had become general to cover goods and services. Other agreements contained a safeguard clause only for goods.

23. The representative of the European Communities noted that the representatives of Uruguay and Brazil were coming back to questions to which his delegation had already provided answers, as reflected in minutes of past meetings. He noted that delegations agreed that an ESM was not intended for infant industry protection or to address structural adjustment. Free trade agreements provided for full liberalization and did not contain an Article XXI-type provision. GATS Article XXI provided for permanent solutions, while Article X envisaged temporary protection in emergency situations. The Shangri La example could be helpful and the questions raised by Chile were pertinent. How long would it take Shangri La to correct the situation? How would it avoid a repetition of the problem? What was the damage, in particular in sectors where there was a majority of foreign suppliers? Was it really impossible to foresee the situation at the time of making the commitment? These were some questions which should be discussed.

24. The representative of the Philippines said that the debate was circular. Questions, such as those on infant industries, had been raised 3 years ago. A great deal of technical discussion had taken place in the past, in formal and informal meetings. For the time being, it was not possible to move beyond hypothetical examples. All this signalled that other delegations had done their analysis, and had decided they did not want an ESM. ASEAN still wanted to discuss technical issues. The questions by Chile were useful. His delegation would like to get indications from other Members as to what ASEAN should undertake in order to move the debate forward. These negotiations were not heading towards a conclusion because Members were discussing the same issues time and again: characteristics of an ESM, concepts of "emergency" and of "unforeseen developments", etc. Should suddenness and "unforeseen developments" be demonstrated? He enquired how the EC defined "structural adjustment". For instance, did the EC consider that the problem described in the Shangri La example was one of structural adjustment? He indicated that ASEAN was not looking for a permanent solution under Article X.

25. The representative of Argentina said that, instead of focusing on positive listing and flexibility provided for by the GATS, Members should consider to what extent the existence of an ESM would facilitate the undertaking of specific commitments.

26. The representative of Switzerland said that the Shangri La example reflected developments which a number of countries had experienced. Improved access to capital allowed to create big shops. New forms of organizing distribution were contemplated. Most countries that had moved from small to big shops, a foreseeable development, had implemented accompanying policy measures (working time, etc.). One should not assume that the overall outcome was bad only since some shops were loosing, but had to consider the global efficiency of the economy. The main aspect of the Shangri La example was that capital came from abroad and not from national sources. Why had Shangri La undertaken a full commitment? To what extent could other measures be implemented (such as opening hours, social schemes, etc.).

27. The representative of Malaysia said there was a link between this issue and the bilateral market access negotiations. His delegation did not feel obliged to participate in these negotiations if there was nothing new to add. Not reaching an agreement on an ESM could adversely affect the level of ambition in the services negotiations to the detriment of the common objective of progressive liberalization. The absence of an ESM was a perfect excuse for the private sector not to do anything. Would Malaysia be able to open its market in future rounds of negotiations? Malaysia had not made extensive commitments during the Uruguay Round, but had liberalized autonomously since. His

government might prefer not to schedule recent liberalization measures, thereby retaining sort of an "inherent" safeguard. Shangri La was a good example. The case for an ESM was not linked to the question of infant industries, but to the need for a safety valve. Both the top-down approach in FTAs or the bottom-up system of the GATS ultimately led to the same result.

28. The representative of the European Communities said that it was possible to focus the debate with examples and pertinent questions. He took note that ASEAN considered that an ESM should be available in unforeseen circumstances and applied on a temporary basis. Structural problems needed permanent solutions and conjunctural problems temporary solutions. Did the Shangri La situation require a permanent or a temporary solution? Delegations should discuss examples of conjunctural problems and examine what type of temporary solutions might be needed.

29. The representative of Uruguay noted that, while the EC delegation considered that certain provisions in bilateral agreements were not "emergency" safeguard provisions, it had not questioned that these were "safeguard" provisions. Moreover, they had been notified as such. His delegation wished to have more information on how these provisions were applied in practice. This could be useful to those Members that did not have such provisions in their bilateral agreements. He had not found a reply from the EC on this questions in the minutes of past meetings.

30. The representative of Brazil said that the report of the last meeting had motivated his questions to the EC. He wondered whether the EC had taken into account the questions of feasibility and desirability when designing the safeguard provisions in its bilateral agreements, or in the EEA. His delegation was still interested in understanding how these provisions worked. He also noted that the EC had made a distinction between safeguard and emergency safeguard. However, the question of feasibility arose with respect to both.

31. The representative of New Zealand took note of the suggestion to circulate the matrix that her delegation had presented informally at a previous meeting in a more formal way. New Zealand would be ready to do it at the July meeting, if the Working Party so wished.

32. The representative of China said that, in the goods sector, liberalization had been deepened since 1947 because the GATT provided for a safety valve. The same should apply in services. The compilation undertaken by the Secretariat showed that no delegations questioned the need for safeguard measures in agriculture, steel, etc. Unforeseen developments could occur in services trade as well. They even occurred in the TRIPs area. Thus, an ESM was desirable. She noted that, at the last meeting, the EC had stated that an ESM in agriculture was "possible". The EC did not question the desirability of such a safeguard provision, but focussed only on feasibility. Thus, the Working Party could agree now on the desirability of a services ESM and focus on feasibility.

33. The representative of Switzerland considered that the difference between the top-down approach in FTAs and the bottom-up in the GATS was crucial. Bottom-up approach allowed Members to gather experience with domestic policy adjustments, without legally binding commitments. This was unique to the GATS. The drafters of the GATS had chosen this approach because services trade involved complex questions, and it had not been possible to simply copy the goods model. Taking action against the import of a good was easy. An horizontal ESM would, however, be highly controversial: how to calculate the damage, where to find statistics, etc.

34. The representative of Japan said that the reply to the questions regarding the schedule of his country could be found in paragraph 15 of the report of the last meeting (S/WPGR/M/41). The measure referred to as "emergency safeguard measures" in the Japanese Schedule, under Road Transport Services, subsector of Freight Transport Services, aimed at ensuring a stable supply of services in exceptional situations where over-capacity in a clearly delimited area disturbed the normal operation or continuation of the business in question; the measures would allow to prevent, for a

limited period of time, operators from coming into the market or to restrict the output of already existing operators in that market. Those measures were applied on a non-discriminatory basis, i.e. they did not make any distinction between foreign and domestic suppliers and only in exceptional circumstances, as defined in detail in relevant rules and regulations, which ensured transparent application. Therefore, there was no unforeseen situation. Moreover, they concerned one specific subsector, not any sector. On the other hand, discussions under Article X addressed measures discriminating foreign suppliers, non-transparent, and potentially applicable in all services sectors.

35. The representative of the European Communities said the Working Group would not progress if questions were raised again, that had already been answered. Delegations needed to work on examples, including the questions posed by Chile and contributions from delegations such as the EC communication in S/WPGR/W/41. Work should focus on identifying situations where a safeguard action could be needed and what type of reply could be given. The EC had notified measures in bilateral agreements for transparency purposes, and this did not imply that these measures were "safeguards" within the meaning of Article X.

36. The representative of the United States said that the Working Party should address the EC contribution and earlier contributions, such as that from Chile, Costa Rica and Switzerland. The New Zealand matrix should facilitate a more specific discussion. It would be useful if the actual structure of the matrix could be circulated, because it would allow for a more concrete discussion of the EC proposal on modal application. Comparing an emergency safeguard mechanism in goods and in services amounted to comparing apples and oranges. The situation referred to in relation to the TRIPs Agreement involved a waiver (Article IX of the WTO Agreement) and not an ESM. The Shangri La example should be examined in the light of the questions raised by the EC submission on modal application.¹⁰ Her delegation had various questions with respect to this example: What was the situation involving the application of an ESM? What would be the response in a situation where people were obliged to buy more from discount and superstore shops in suburban areas? Would the government act on mode 3? Many questions had already been discussed, as mentioned by the delegation of the Philippines, but had not received an adequate answer. She wondered whether the introduction of zoning requirements might amount to closing a market. Another question was how to draw the line between responses to truly unforeseen situations and mere domestic protection. It was also necessary to discuss the question of desirability from the perspective of potentially affected foreign suppliers.

37. The representative of Thailand, speaking on behalf of ASEAN, said that the ASEAN Members had presented their Draft Agreement on ESM¹¹ (ADA) nearly three years ago. A recap of the major points contained in this draft was appropriate at this juncture because it would also respond to some of the questions just raised. The ADA contained a horizontal mechanism based on investigation and establishment of a causal link between injury and increased supply or consumption of foreign services. It was modelled on the safeguard mechanism in goods, rather than the agriculture's special safeguard or the safeguard in textiles because ASEAN felt that the majority of the membership preferred such an investigation-type mechanism. Second, the main aim had been to find a reasonable recourse to temporary measures for Members in emergency situation that might arise from their specific commitments. Because of its temporary nature, the ESM was distinct from Article XXI. Third, ASEAN had tried to use existing agreements and terms as much as possible. For example, the preamble, object and purpose, and definitions were mostly based on the GATS and other WTO agreements. Staying on familiar ground should provide some comfort for Members. Fourth, the ADA contained many elements to ensure transparency and increase accountability. For instance, the relevant authorities had to examine numerous criteria to ensure that abusive use would not occur easily. There were separate articles covering issues such as compensation, consultation, transparency,

¹⁰ *Modal Application of an Emergency Safeguard Measure*, S/WPGR/W/38.

¹¹ Job No. 6830, dated 31 October 2000.

notification and surveillance, and a reference to WTO dispute settlement. No less important were the "conditions of application" or, in other words, the situations justifying a safeguard action. Thus, the ADA contained necessary sub-mechanisms for prevention of abuse. Fifth, the draft contained some provisions for developing countries in recognition of their particular needs. The preamble mentioned developing countries' need to enhance competition in services. There were *de minimis* clauses, both for general application and for mode 4 in particular. Special consideration on timeframe was also proposed. The requirements on consultation and transparency had no special condition for developing countries because they were devised so that all WTO members could meet them comfortably.

38. She further explained that the preamble of the ADA set out the object and purpose of possible rules governing an ESM in services. It referred to Article X of the GATS and mentioned the need for Members to have reasonable recourse to temporary measures in response to emergencies. Contrary to what some had perceived, the reference to "structural adjustment" and "competition" were intended to underline the fact that a safeguard measures was not to be used for protectionist purposes. The definitions contained in Article I were borrowed from the GATS and other WTO agreements as far as possible. The two notable exceptions were "domestic industry" and "like or directly competitive services". The definition of domestic industry had to be read in conjunction with Article II on Conditions of Application, which defined the "situation justifying a safeguard action". Taking into account other views, ASEAN had come up with a middle ground solution and proposed a *de facto* use of two definitions of "domestic industry" – one for establishing injury and one for the application of the measure (ADA Articles I and II). If the ASEAN text were to be put into practice, injury caused by foreign suppliers would be a basis for safeguard action, but foreign companies might or might not be affected by the measure which protected acquired rights. Therefore, the only remaining key issue was how much and how far "acquired rights" would be protected. On this point, Article II proposed three options. Option 1 fully protected the rights of foreign investors acquired before the safeguard measure was applied, based on domestic laws and regulations. Option 2 was also based on domestic laws and regulations, but would not protect rights granted but not yet exercised, which meant that foreign companies might have to "freeze" their expansion during the period of application. Option 3 limited the rights of foreign suppliers only to those contained in the invoking Member's schedule of specific commitments. This was a workable and technically sound solution. It solved the problem of establishing mode 3 injury, without affecting already established foreign suppliers or affected them only to a limited extent, depending on the acquired rights protection. For protection of acquired rights in modes 1 and 4, the non-retroactivity provision in Article II:5 was adequate. This meant that contractual rights obtained before the use of an ESM would not be affected. Article III governed the determination of serious injury and threat thereof. The criteria were mainly derived from an earlier paper by Venezuela (Job No. 5294) while the investigation was modelled on the safeguard in goods. First, the competent authority had to determine that there was an increase in supply or consumption of foreign services on the basis of a non-mandatory, non-exhaustive list of indicators and sources of information. Second, it had to find out whether there was serious injury or threat thereof on the basis of another list of criteria. Then it had to establish the causal link between the increase and the serious injury or threat thereof.

39. In her view, Article IV provided for applicable measures, whereby Members could temporary withdraw or modify their specific commitments on market access and national treatment and any additional commitments. This would grant sufficient flexibility to Members to find suitable measures for each situation. If Members believed that they were able to enforce the limitations in their specific commitments, then they should have no problem suspending or modifying these commitments when applying a safeguard measure. Another important point in Article IV was the "necessity test", which was meant to prevent unjustified trade restrictions on a case-by-case basis. Article V referred to compensation, which was important to guarantee a reasonable use of an ESM. A compensation mechanism should be efficient but not too cumbersome. Article VII was modelled on the Agreement on Safeguards and contained provisional measures that might be applied under critical circumstances. There were some specific rules for invoking and applying provisional measures to ensure that they

would be used under strict disciplines and in a transparent manner. Transparency was an important principle to prevent abuse and was complemented by an obligation to consult. A multilateral surveillance mechanism was foreseen under Article X. These requirements were not overly burdensome, especially for developing countries. The surveillance provisions were borrowed from the goods' approach and the CTS should be the body to discharge this function. Article IX aimed at assisting developing countries and provided, *inter alia*, for a longer application period and for less cumbersome compensation. Finally, there were provisions for dispute settlement, review and entry into force of the agreement. ASEAN had done its best to come up with a possible mechanism for ESM which was usable, flexible and feasible. The investigation-based model was the best way to prevent abuse. However, ASEAN recognized that there had been other proposals and approaches, and had expressed on many occasions its readiness to work on combining elements of the ADA with other suggestions. The ADA was a good basis of any workable emergency safeguard mechanism, but ASEAN Members were open to listening to other ideas. The deadline of 15 March 2004 was drawing near and there was no more time to be wasted on rhetorical debate.

40. The representative of Brazil said that his delegation had been one of the proponents of this issue and believed that there might be some room for an ESM under the GATS. Brazil remained open to arguments. The debate should be open and frank. Concrete examples were useful to test desirability and feasibility and all Members should engage in this exercise. Members which had safeguard measures in services should be able to give information on why they had them (desirability) and how they were applied (feasibility). Further reflection would be needed on how a safeguard applying in goods could be translated in the services context. He enquired how Japan had solved the question of feasibility when it had scheduled an emergency safeguard, irrespective of whether it was an Article X type provision, and whether Japan would accept that other Members use the same device. He drew attention to footnote 29, page 102 of the US initial offer (TN/S/O/USA), which read: "Rural local exchange carriers may be exempted by a state regulatory authority for a limited period of time from the obligations of section 2.2. with regard to interconnection with competing local exchange carriers". He asked whether this could be considered a safeguard measure under mode 3 and, if so, whether the United States had solved the question of feasibility when scheduling this measure and, in particular, how it would be implemented it.

41. The representative of Canada said that desirability and feasibility were linked. If an ESM was not feasible, it was not desirable. Hence, desirability was not only a political issue. Today's discussion showed how useful it had been to present the Shangri La example. The matrix by New Zealand could be helpful too. He suggested that the Shangri La example could be tested against the different safeguard models presented by Members, which might allow to identify their merits and disadvantages.

42. The representative of Chile said that her delegation was interested in looking at how the ASEAN draft agreement and other proposals would work when applied in a Shangri La-type situation.

43. The representative of Cuba said that her delegation saw the current situation with concern. The same arguments were repeated, which showed a lack of willingness of some Members to establish an ESM. Such a mechanism was desirable and the Working Party should continue to examine concrete examples.

44. The representative of the United States took note of the suggestion made by Canada and would come back to it. Further clarification was needed. Her delegation did not want to discuss a mechanism before answering the core questions of desirability and feasibility. She was concerned about delegations going through other Members' schedules and trying to characterise certain commitments as "safeguard measures".

45. The Chairperson said that the proposal by Canada was something for Members to undertake. The representative of Canada agreed.

46. The representative of Colombia said her delegation was still considering what type of solution should be given in this negotiation. The debate should focus on technical elements. Colombia had some doubts, in particular with respect to mode 3. One could revert to the ASEAN draft agreement and also discuss how the Shangri La situation would be addressed in this context.

47. The representative of Mexico said that the discussion was in a stalemate. The suggestion by Canada might help to move forward. Feasibility and desirability were not referred to in the mandate of Article X. As noted in the Chair Report, the question of desirability was unique to this negotiation. He enquired whether the Secretariat could explain why this was the case.

48. A representative of the Secretariat said that the articulation of this debate had been in the shape of desirability. Questions of feasibility had also been raised at the beginning of the discussions on safeguards. It was true that this was the only rule-making area out of the four under the GATS in which the question of desirability and feasibility had arisen in such a focused manner.

49. The representative of Thailand, speaking on behalf of ASEAN, took note of the suggestion by Canada, and of the various questions raised during the meeting. She hoped that the next meeting would be as fruitful.

50. The representative of the European Communities remarked that the debate was not only rhetorical. It was not so easy to implement a safeguard measure. Acquired rights had to be taken into account. The EC submission on modal application raised a number of questions, and so had the representative of Chile in her intervention. This should be the basis for further work.

51. The representative of Australia said that the discussion of both the mandate of Article X and the objectives of an ESM in the context of the Shangri La example was interesting. In Australia's view, Article X provided a mandate to discuss the question of emergency safeguards. The word "emergency" should be emphasised. Relevant measures were temporary and selective; their objective was to limit imports to enable a particular services industry to adjust to heightened competition from foreign service suppliers. It was therefore essential that the industry already existed and that it was exposed to a sudden surge in imports. The timeframe for the implementation of emergency measures should be short and the remedies designed to enable industry to adjust. Article X did not provide a mandate for measures designed to achieve broader policy objectives, such as long-term plans for industrial development through protection of infant industries. His delegation welcomed the comments by Thailand on behalf of ASEAN and the reaffirmation of ASEAN's commitment to negotiations as mandated by Article X of GATS. The Working Party should focus on a procedure or mechanism to govern possible safeguard actions.

52. The representative of Chinese Taipei wondered whether it was feasible to apply an ESM to the four modes of supply. The existence of an ESM might help domestic industries support the liberalization of trade in services. In this respect, her delegation shared the view of ASEAN that Members might need to convince their domestic industries to support the further opening of their markets, reminding their industries that emergency actions might be employed whenever injury or threat of injury occurred. From this point of view, justifying the necessity of an ESM would not be a problem. Due to the different nature of each industry, whether an ESM was practicable for each mode might need to be assessed case-by-case. Nevertheless, this should not stall the negotiations. Her delegation hoped that Members would agree to step up the pace of the negotiations and enter as soon as possible into substantive discussions of the procedures for an ESM.

53. The representative of Thailand, speaking on behalf of ASEAN, said that ASEAN was open to consider any element which might allow to move forward, such as the suggestion by Canada. The Shangri La example was a first attempt. Other papers on the table should be taken into account. The matrix proposed by New Zealand was a good contribution and ASEAN would try to find examples to fill it. She recalled that the ASEAN draft agreement merely called for the suspension of measures, without prescribing what kind of action should be taken.

54. The representative of China said that her delegation supported Brazil in asking those Members which had safeguard-type provisions in their schedules to explain how they implemented them in practice.

55. The representative of the United States called for further clarification of the suggestion put forward by Canada. Her delegation wanted to see concrete examples of experiences and problems to further discuss questions of desirability and feasibility. However, the US had reservations regarding any formalised exercise involving the application of the various types of mechanisms presented by delegations to the Shangri La example.

56. The representative of Thailand, speaking on behalf of ASEAN, said that the situation described in the Shangri La example was not merely hypothetical because it was based on experiences made in various countries in retail services. She enquired how Canada's suggestion would be implemented. She encouraged delegations to read the ASEAN draft agreement again and hoped that those delegations which had been asked questions regarding safeguard-type provisions in schedules or bilateral agreements would reply.

57. With respect to the suggestion by Canada, the Chairperson felt that it was up to the Members that had presented a proposal to try and apply the Shangri La example to it. He noted that many proposals were not exhaustive, but focused on specific elements of an ESM.

58. The representative of the United States said her delegation needed to hear from delegations what problems they had encountered would justify the use of a safeguard measure. Some countries had undertaken extensive liberalization, but had not signalled any problem. The United States would carefully study the responses given by Thailand.

59. The representative of Brazil said that several tracks could be pursued. They included discussing concrete examples of safeguard provisions and experiences in implementing them.

60. The Chairperson noted some progress on substantive issues as well as on feasibility and desirability. Technical issues had also been discussed in the latter context. The Shangri La example had raised many questions. The matrix by New Zealand was welcomed. He recommended that the suggestion by Canada would be left for Members' consideration and noted that some Members were also interested in discussing safeguard provisions in RTAs.

61. The representative of the United States said that desirability and feasibility raised substantive issues, not only technical problems.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII OF THE GATS)

62. The Chairperson drew attention to the work programme on government procurement, whereby Members were encouraged to put forward submissions as early as possible before 31 March 2003. It had been agreed to continue discussion on the basis of submissions from Members and materials available. He recalled that, at the last meeting, the European Communities had requested the Secretariat to undertake a compilation of transparency rules and procedures contained in bilateral and plurilateral agreements. At that meeting, it had been decided that, before undertaking this

compilation, the Secretariat would check whether relevant information was already available in the Working Group on Transparency in Government Procurement (WGTGP) and would report to the Working Party on GATS Rules. It now appeared that no such work had been undertaken in the WGTGP. The Secretariat would therefore undertake the requested compilation and endeavour to circulate it by the next formal meeting of the Working Party. A preliminary research made by the Secretariat on procurement-related provisions in various agreements showed that it was difficult to separate transparency-related provisions from other provisions. Moreover, the question of what were transparency-related provisions in the field of government procurement was still debated in the WGTGP. In order not to prejudice this issue, the document to be produced by the Secretariat would be a compilation of all provisions related to government procurement found in economic integration agreements. This document would be without prejudice to the scope and the results of the negotiations under Article XIII. With respect to information on relevant activities of the Working Group on Transparency in Government Procurement, he intended to consult informally with Ambassador Saborío Soto, the Chairperson of that Group, to see what kind of contribution could be made to this Working Party. Finally, he recalled the work programme on government procurement which stipulated, *inter alia*, that the Chairperson would "circulate a note by 30 June 2003 to report on the progress of work". As to the form of the report, his intention was to follow the approach taken in the Report on ESM. Practically, this meant that the report would consist of (i) a factual introduction, recalling work done so far under this agenda item, and (ii) the Chair's assessment of the situation and suggestions for a way forward. This report would be circulated on the Chair's responsibility and would not prejudice the position of any delegation. He would welcome comments and suggestions from delegations in this respect.

63. The representative of the European Communities recalled the EC proposal for a legal framework for services procurement (S/WPGR/W/39). Opening government procurement was beneficial, in particular to developing countries. The purpose was to develop a multilateral framework which would allow Members to liberalize their public procurement market in a flexible manner, sector by sector, according to their developmental needs and national policy objectives. It would also be possible to progressively open opportunities for bidding which would allow Members time to implement the necessary regulatory frameworks. A Member taking no commitment on its government procurement under the GATS would have no obligation. The Working Party had already discussed in detail the EC proposal, which had helped to see how such a framework could be implemented. A services procurement agreement could take the form of an annex to the GATS, which would specify the conditions under which the GATS would apply to public procurement. This annex would include three parts. First, a fourth column would be added in the current schedules, entitled "Government procurement", where Members would indicate, for each sector, the possibilities for bidding. "Unbound" would mean no commitment. "None" would indicate that foreign suppliers were allowed to bid and would be treated like nationals; limitations could be listed, concerning entities covered, thresholds, national treatment (other than those in Article XVII column). Second, most-favoured-nation treatment would apply to government procurement, except for commitments taken by signatories to the Agreement on Government Procurement under that Agreement. Exemptions to MFN treatment could be scheduled at the time of signing on the GATS Agreement on procurement. Third, procedures were indispensable to ensure non-discriminatory treatment. In order to avoid duplication, the GATS Annex on Government Procurement could refer to the future Transparency Agreement and indicate that this Agreement would apply to procurement under the GATS. The EC intended to submit a written proposal containing these elements.

64. The representative of the United States said that, although the report on government procurement would be submitted on the Chair's responsibility, Members should be given the opportunity to comment. In fact, the work programme did not indicate that the report was under the Chair's responsibility. The section of the report discussing the way forward might have serious implications for Members.

65. The Chairperson said he hoped to rely on Members' inputs and views, so that the report would be acceptable to everybody. On the other hand, it was not his intention to negotiate the draft. But Members would have ample opportunity to make their views known.

66. The representative of Switzerland stated his delegation was interested in the EC proposal. The flexibility proposed by the EC, in line with the GATS structure, would take into account development levels and the right to regulate. Commitments on government procurement would be a significant achievement from the point of view of services suppliers.

67. The representative of Thailand said that it was the prerogative of the Chairperson to draft his report. Members should be consulted, but should not be involved in drafting the report. With respect to the EC proposal, her delegation was of the view that Article XIII did not allow to engage in market access negotiations. Her delegation would further comment after seeing the EC proposal in written form.

68. The representative of Chile expressed interest in the EC proposal and the flexible framework suggested. Further clarification was needed regarding the rules of procedures.

69. The representative of India was concerned about the direction taken by the debate. The Article XIII mandate was clear: it did not include negotiations on Articles II, XVI and XVII. His delegation would come back on the EC proposal. India trusted that the report to be submitted by the Chair would be factual and balanced. Members should be granted an opportunity to give their input and all views should be taken into account. The compilation to be undertaken by the Secretariat should be without prejudice to Members' position on Article XIII.

70. The representative of Brazil said his delegation would come back to the EC proposal after it was circulated in written form. The Chair should be given the flexibility he needed to draft his report, and he should not feel compelled by any delegation. Delegations would be given an opportunity later on to disagree or criticize the report.

71. The representative of Hong Kong, China recommended, with respect to the scope of the discussion, that the EC proposal could be discussed on the understanding that it would be without prejudice to delegations' position on the scope of the mandate. Concerning the report, the Chair should consult with delegations, but needed flexibility to draft it. Moreover, having Members draft the report would be a waste of time and resources.

72. The representative of the Philippines said that the preparation of the report should left to the Chairperson. It was his prerogative to conduct consultations. Like India, his delegation understood that the compilation to be undertaken by the Secretariat would be without prejudice to Members' position on Article XIII and would be subject to comments by Members. The proposal by the EC went beyond the mandate contained in Article XIII. It was premature to consider a possible annex referring to the agreement in the Transparency Group because it was impossible to know whether there would be such an agreement. The issue should be left aside for the time being, pending a result in the other group. Inviting the Chairperson of the Transparency Group would allow to know what that Group was doing. It would be ambitious to go beyond that.

73. The representative of Peru noted that the mandate of Article XIII did not include negotiations on market access and national treatment. The report on government procurement would be on the Chair's responsibility and should be balanced.

74. The representative of Malaysia said that the mandate was limited. Transparency in government procurement was to be dealt with in another group, which had met certain difficulties in drawing the line between transparency and market access provisions. Despite the flexibility it

provided for, the EC proposal did involve market access issues. The report should be drafted under the Chairperson's responsibility. Consultations should be held to take into account Members' concerns, but Members should not be engaged in the drafting process. His delegation wanted to reflect on the suggestion to invite the Chairperson of the Transparency Group.

75. The representative of Japan said that duplication of work should be avoided. The framework proposed by the EC gave more concrete ideas on what could be done in this Working Party.

76. The representative of Chinese Taipei enquired whether the framework just presented by the EC differed greatly from the previous EC contribution in S/WPGR/W/39. At the time, transparency procedures were mentioned.

77. The representative of Indonesia said his delegation was concerned about the scope and direction of the EC proposal. According to Article XIII, the negotiations should be limited to transparency and not include Articles II, XVI and XVII. The report should be drafted under the Chair's responsibility. His delegation was ready to participate in consultations.

78. The representative of the Republic of Korea said the report should be left in the hands of the Chairperson. Discussions on the EC proposal should not prejudice the result of the negotiations and should not duplicate work in the Committee on Government Procurement. She enquired how parallel market access negotiations on government procurement would be conducted under the GATS and the Agreement on Government Procurement.

79. The representative of the United States said that her delegation preferred transparency-related issues, in relation to both goods and services, to be dealt with in the WGTGP and looked forward to Ministers giving a mandate to negotiate an Agreement on Transparency in Government Procurement. Procurement law did not always distinguish between goods and services. The United States looked forward to a more concrete discussion on how to achieve the objectives of the WGTGP. In that regard, it would be useful to keep in contact with the Chairperson of that Group. The report should be without prejudice to Members' views and positions. No position should be compromised. She wished that delegations would hold the same views in other bodies of the WTO. The section on the way forward should take into account all positions expressed in this Working Party. Her delegation was not interested in drafting the report, but would like to have an opportunity to express views. The report should be balanced, even if it were under the Chair's responsibility.

80. The representative of Singapore said that Article XIII:2 was silent on what should be the object of the negotiations. Thus, any issue could be discussed. His delegation was ready to give further consideration to the EC proposal. He enquired what implications the EC proposal would have on Article III of the Agreement on Government Procurement. Duplication of work should be avoided.

81. The representative of the European Communities said that the scope of Article XIII was not limited to transparency issues, nor constrained by the activities of another group. Despite the doubts expressed by some delegations, opening government procurement had positive effects, in particular on the budget and national economies generally. The arguments concerning the scope of the mandate, which had no foundations, served only to underline the absence of substantive arguments. The EC proposal, which was based on total flexibility, could benefit all Members, especially developing countries and his delegation was ready to listen to suggestions on how to improve it. This proposal would be circulated soon in written form. The annex in the third part could refer to the future Agreement on Transparency and, hence, avoid duplication. This was why it was also important that the Chairperson of the Transparency Group informed this Working Party, preferably at the next meeting. The negotiations of commitments would not take place in this Working Party, but in the usual context of bilateral market access negotiations. The discussion in this Working Party concerned only a general framework and the annex specifying the conditions under which government

procurement would be dealt with in the GATS. Today's proposal was a concrete follow-up of the EC proposal made last July, taking into account questions and comments made at the last meeting. Article III of the GPA did not affect market access under the GATS. The new column proposed by the EC would contain commitments under the GATS for opening possibilities to bid for government procurement, but would not exempt Members from complying with Articles XVI and XVII or the commitments under the GPA. Similarly, the GPA did not prevent Members from complying with their GATS commitments on government procurement.

82. The Chairperson said he would prepare the report under his responsibility. He would consult with the Chairperson of the Transparency Group and would revert to this issue at the next meeting. The Secretariat would undertake a compilation of provisions related to government procurement, found in economic integration agreements.

D. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV OF THE GATS)

83. The Chairperson regretted that, due to lack of time, it was not possible to discuss subsidy issues. He suggested that it would be the first agenda item at the next meeting of the Working Party.

E. DATE OF THE NEXT MEETING

84. The Chairperson said that the next formal meeting of the Working Party was expected to take place during the next cluster of services meetings, which had been tentatively scheduled from 30 June to 11 July 2003. The Working Party would meet during the first week of the cluster and the exact date would be communicated to delegations in due time.

F. OTHER BUSINESS

85. The Chairperson said that, due to lack of time, it was not possible to have a first informal exchange of views on the sentence, contained in the three work programmes (S/WPGR/7), calling on the Working Party "to prepare for the opportunity provided by the Fifth Ministerial Conference to take stock of progress made in the negotiations". He intended to convene an informal meeting for that purpose.

Working Party on GATS Rules

REPORT OF THE MEETING OF 25 FEBRUARY 2003

Note by the Secretariat¹

Corrigendum

At the request of the European Communities, the following corrections should be made:

- In paragraph 5, fifth line, the word "stiffening" should be deleted.
- Paragraph 17 should read as follows:

The representative of the European Communities said that a distinction should be made between safeguards-type provisions and emergency safeguard measures. The fact that paragraph 2 of Article X had not been invoked so far was a reason to ask the "demandeurs" to provide concrete examples. An ESM could not be used to address structural problems. The negotiating history of Article X indicated that, during the Uruguay Round, attempts had been made to set up an ESM, but it had been found unfeasible. The distinction between a "safeguard" and an "emergency safeguard measure" had not been understood. If retail distribution suffered from structural problems, an ESM would not be the right answer. On the issue of EC approach towards safeguards for agriculture, the EC recalled its communication on modal application, where it clearly indicated that safeguards for goods were feasible and that feasibility of safeguards for services had still to be proved. Some economic integration agreements, such as the agreement between the EC and Mexico, or between the EC and Chile, did not contain an ESM. On the other hand, the EEA contained a safeguard-type provision, but was based on a top-down approach and contained far reaching provisions on free movement of goods, people, services and capital which produced direct effect (i.e. that individuals could enforce through national courts).

* In English only.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

Working Party on GATS Rules

REPORT OF THE MEETING OF 25 FEBRUARY 2003

Note by the Secretariat¹

1. The Working Party on GATS Rules held its forty-first meeting under the chairmanship of Mr. Thomas Chan, from Hong Kong, China. The agenda for the meeting was contained in WTO/AIR/2031. It included six items: negotiations on emergency safeguard measures under GATS Article X; negotiations on government procurement under GATS Article XIII; negotiations on subsidies under GATS Article XV; date of the next meeting; other business; and appointment of the Chairperson. The Chairperson drew attention to the Annotated Agenda (JOB(03)/30) in which he proposed themes for discussion. The agenda for the meeting was adopted.

A. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X OF THE GATS)

2. The Chairperson recalled that the following documents, requested by Members at the meeting of 3 December 2002, had been circulated by the Secretariat: (i) a *Compilation of References Made by Delegations to Safeguard-Type Provisions*, in JOB(03)/20; (ii) a revision of the note on *Core Elements Contained in Members' Proposals – Overview of the Synopsis*, in JOB(02)/200/Rev.1; and (iii) a note on *Safeguard-Type Provisions in Economic Integration Agreements* in S/WPGR/W/4/Add.1. He drew Members' attention to a previous note by the Secretariat on *Economic Needs Tests* (S/CSS/W/118) which included a compilation of ENTs found in Members' schedules of specific commitments. Following on the informal meeting held on 29 January 2003, he invited delegations to continue their deliberations on concrete examples of situations in which a safeguard measure would be needed and how it could be applied in practice. In that regard, Members' contributions, whether actual or hypothetical, were essential. Members might wish to refer to the matrix presented at the informal meeting on 29 January 2003 as a possible way of structuring the discussion of relevant examples.² With respect to the identification, elaboration and consolidation of elements of a possible ESM, Members might also wish to revert to other issues previously discussed, including their intention: (i) to identify possible common elements for an ESM based on the Synopsis (JOB(01)/122 + Add.1); (ii) to discuss the idea of creating a procedural framework or core mechanism or combining different models that had been proposed; and (iii) to further address process-related issues, such as transparency, notification, consultation, surveillance provisions and expedited dispute settlement proceedings. Members might also wish to continue deliberations on the issues of desirability and feasibility. During the last meetings, some delegations had put forward their views on these issues, but more guidance was needed.

3. He recalled that, according to the work programme on emergency safeguard measures,³ the Chairperson would circulate a note by 15 March 2003 "to report on the results of work under item (a) [of the work programme], identifying areas of convergence and divergence among Members, with a view to providing a basis to facilitate further negotiations". Item (a) referred to Members' task "to

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² *Summary of Comments Made During the Informal Meeting of 29 January*, Note by the Secretariat, JOB(03)/21.

³ S/WPGR/7.

identify elaborate and consolidate elements for an ESM and to address the question of feasibility and desirability of ESM". Obviously, Members' inputs and contributions were crucial in that regard. His current assessment was that the Working Party had not gone very far and that the work on these two issues had not brought forth any tangible results so far. There was very little convergence on the fundamental issues, and many basic questions remained open; different views had been expressed as to whether these should be addressed and, if so, how. He observed that, even if the Working Party were to decide to start drafting an emergency safeguard mechanism, there would appear to be no common basis among Members on how to proceed. For instance, there seemed to be no consensus on the very fundamental issue of the form of a possible ESM or on the question of whom should be protected by an ESM. It was his duty to report on this state of play.

4. The representative of the European Communities said his delegation fully supported the Chair's proposal to base discussions on the examination of concrete examples, and welcomed the matrix presented by New Zealand at the last informal meeting. Indeed, experience gathered in implementing the GATS had not brought any concrete example of emergency situation, and Article X:2 had never been used. In addition, no concrete example had been identified on a hypothetical basis in the written contributions submitted to the Working Party. The EC was looking forward to any examples that ASEAN or other interested Members like Brazil or Uruguay could share with the Working Party. His delegation had observed some confusion regarding the scope of the mandate given by Article X. It was therefore timely and necessary to recall the legal framework of an emergency safeguard measure within the context of GATS. Should there be a group of "friends of fair trade" or a group of "friends of legal certainty", all WTO Members would ask to be included. Contrary to antidumping measures that constituted a reaction to unfair trade, an emergency safeguard measure was a reaction to fair trade and challenged legal certainty. Friends of fair trade and of legal certainty would therefore consider that an emergency safeguard measure could not be a Pandora's box. With respect to the scope of an ESM, the EC wished to focus on the words "question" and "emergency", both contained in Article X.

5. First, Article X expressly referred to "emergency" safeguard measures. A safeguard measure that was in conformity with the wording and spirit of Article X needed to be based on a situation of emergency, which was characterised by its extraordinary nature and intended to deal with unforeseen developments as had been clearly indicated by ASEAN in WPGR meetings in November and December last year. Such characteristics were not met by the mere increase in trade and stiffening competition that was inherent in any liberalisation commitment. The mandate set out in Article X was not intended to allow Members to introduce new general exceptions into the GATS, nor to carry out structural adjustments or to protect infant industries. The GATS had provisions dealing with general exceptions, set out in Articles XIV and XIV*bis*. As regards structural problems, which by their very nature were not extraordinary, the bottom-up architecture of the GATS afforded Members enough flexibility to fully take them into account when undertaking commitments. Also, Article XXI provided for a procedure to deal with situations where Members decided to modify or withdraw their commitments in whole or in part. The infant industry argument was based on alleged (expected) future comparative advantages and had nothing to do with rapid (surge) market disruption. This had been clearly illustrated by Professor Messerlin during the informal seminar on ESM that ASEAN had organised in Nyon last year. Furthermore, situations of emergency related to capital movements that could seriously compromise the balance of payments or the monetary policy of Members were already contemplated by the GATS. Article XII provided a remedy for serious balance-of-payments and external financial difficulties or threat thereof. As regards capital movements causing serious difficulties for monetary policy, no specific remedy was needed since, by application of the Annex on Financial Services, the GATS did not cover the activities conducted by a central bank, a monetary authority, or any other public entity in pursuit of monetary or exchange rate policies.

6. Second, Article X clearly stipulated that negotiations would address the "question" of emergency safeguard measures. At the time of concluding GATS negotiations, notwithstanding the

existence of a precedent in the goods area, no agreement had been reached on an ESM in services because the question of its feasibility and desirability had not been solved. This explained the language in Article X, as was clearly indicated in document S/WPGR/W1. The contributions submitted to the WPGR, which, in the absence of concrete examples of emergency situations, were based on abstract considerations, showed that this question remained unresolved. Most of the proposals, whether they directly referred to feasibility and desirability or were made without prejudice to that question, had identified a number of issues showing the difficulties of applying an ESM to services (legal certainty of commitments, modal application, protection of acquired rights, applicability of the principle of non-discrimination, etc.). In all circumstances, the application of a safeguard measure to any of the four modes of supply, taking into account inter-modal relations, raised important concerns already identified by the European Communities⁴, which had not been fully addressed by the WPGR. For the European Communities, a positive conclusion on the question of ESM presupposed therefore: (i) the identification, in case they existed, of concrete examples of emergency situations in the services area that had not already been addressed by GATS provisions; and (ii) the demonstration that an ESM would be feasible and desirable to deal with the identified situations (i.e. that the difficulties and concerns that had been raised in respect of ESM could be overcome in practice). His delegation was considering the possibility of submitting a contribution to the WPGR along the lines of this statement. This input should be taken into account by the Chairperson in the preparation of his report. Turning to the Note by the Secretariat on *Safeguard-Type Provisions in Economic Integration Agreements*,⁵ he said that, although the note clearly stated that it did not purport in any way to prejudge the measures covered by Article X, it indicated that the provisions reproduced in the document were comparable to GATT Article XIX. His delegation profoundly disagreed with that affirmation. All the provisions contained in the so-called Europe Agreements concluded with Central and Eastern European countries, were infant industry provisions and, therefore, not comparable with Article XIX of GATT. They should be compared with Article XVIII of GATT, a provision that it had not been deemed necessary to introduce in the GATS.

7. The representative of Thailand, speaking on behalf of the ASEAN Members, referred to the negotiating history of GATS Article X and recalled that discussions on possible safeguard actions in services during the Uruguay Round took place in the Group of Negotiations on Services (GNS). Document MTN.GNS/W/70, dated 13 September 1989, summarised the principal points which had been made at the time with respect to safeguard concepts and provisions. Safeguard-related issues were raised in several sectoral discussions, including basic telecommunication, construction, engineering design, transport, and tourism. A number of grounds were given for invoking an emergency safeguard measure. For example, for telecommunications, construction and engineering design services, possible grounds for invoking safeguards were protection of infant industries, physical infrastructure and national culture as well as significant increase in imports and the prevention of abuse of market power (including cross-subsidisation and the monopolization of information).⁶ Under transportation and tourism, possible grounds for safeguards included protection of environment (including prevention of traffic congestion), dumping of services products, infrastructure development subsidies, and prevention of excessive market access of foreign providers; natural disasters were mentioned for tourism.⁷ At that time, grounds for safeguards and general exceptions were discussed together and participants in the GNS recognized that some of these cases could be better dealt with under general exceptions. However, the general impression remained that possible grounds for invoking safeguard provisions in the context of trade in services could still be numerous and that the need for safeguard action might differ from sector to sector.⁸ A concrete attempt by UR participants to address the issue of safeguards could be found in the draft services

⁴ S/WPGR/W/38.

⁵ S/WPGR/4/Add.1.

⁶ MTN.GNS/W/70, paragraph 17.

⁷ *Ibid.*, paragraph 19.

⁸ *Ibid.*, paragraphs 20 and 18.

agreement presented by the EC on 18 June 1990 (MTN.GNS/W/105), which contained a provision entitled *Article XI – Emergency Safeguard Measures*: "[I]f a given service is being imported into the territory of a party in such, substantially increased quantities [in absolute or relative terms] or a party is faced with such a major external cause of disturbance of its market for a given service as to cause or threaten to cause serious injury to domestic providers of like or directly competitive services, the party shall be free, subject to the conditions and procedures laid down in paragraph 2, to, suspend, in whole or in part, a liberalization commitment under this Agreement ...". Therefore, a rationale for invoking an emergency safeguard, as proposed by the EC, was the "major external cause of disturbance of its market for a given service as to cause or threaten to cause serious injury to domestic providers".

8. In her view, the UR negotiating history also revealed that negotiators had found inspiration in a number of existing agreements, for instance, the Rome Treaty establishing the EEC, the Convention establishing the EFTA and the OECD Code of Liberalisation of Current Invisible Operations. Safeguard-related provisions were not designed exclusively for services, as the agreements did not distinguish between goods or services. They simply provided for protective measures in cases where implementation of commitments led to serious economic difficulties in sectors, areas or region, or, as in the OECD Code, "serious economic or financial disturbance" in the country concerned. The Secretariat had already compiled a number of documents giving details on safeguard provisions in regional trade agreements (S/WPGR/W/2, S/WPGR/W/4 and S/WPGR/W/4/Add.1). These agreements called for various comments. First, many of them comprised at least one developed country member. For example, NAFTA, EFTA and various agreements concluded by the EC with several Central and Eastern European countries contained safeguard provisions which could affect trade in services. Few of these agreements had only developing country members. Second, safeguard provisions that could affect trade in services were being agreed upon under various regional agreements. The most recent example was the Consolidated Version of the Convention Establishing the EFTA, concluded in June 2002, and the Agreement between the EC and Slovenia, concluded in 1999. Grounds for invoking safeguard measures under these agreements were numerous. None of them required "emergency" as a prerequisite for safeguard action. ASEAN recognized that certain peculiarities of these FTAs might have necessitated these safeguard measures and it would be useful if parties to these agreements could give further clarification to the Working Party in this respect. For instance, parties to an agreement between the EC and one country "may introduce measures which derogate from the provisions of this Chapter as regards the establishment of Community companies and nationals if certain industries: are undergoing restructuring; or are facing serious difficulties, particularly where these entail serious social problems in (...); or face the elimination or a drastic reduction of the total market share held by (...) companies or nationals in a given sector or industry in (...); or are newly emerging industries in (...)". Under other agreements, the most common ground for invoking a safeguard would be "serious difficulties" which could be economic, societal or even environmental, while under NAFTA, the criteria were more specific to the financial sector.

9. She said that two examples of safeguard mechanisms could be found under the GATS framework. The first example was a measure in the schedule of Japan, under freight transport services, mode 3. No specific situation justifying invocation was provided. The commitment merely stated "Emergency safeguard measures concerning the limitations on the number of service suppliers and on the number of service operations or on the quantity of service output". The second case was the Bulgarian transitional service safeguard approved in the accession process, which had since expired. Under these provisions, Bulgaria had been allowed to "impose a suspension of its commitments to permit a foreign service supplier to establish an initial or an additional commercial presence in Bulgaria in order to address specific adjustment concerns" (WT/ACC/BGR/5, para. 88). No other specific criteria were required for Bulgaria to invoke the measure, nor were there criteria to determine what would constitute "specific adjustment concerns". In her view, the aforementioned cases indicated that the context of a safeguard action could be broad and not particularly specific. Many of these measures had been envisaged even to facilitate domestic adjustment, as in the

Bulgarian safeguard case, or nurture infant industries, as in the agreements between the EC and various countries. In the WPGR, discussions on the "context" seemed to be more specific. The ASEAN Draft Agreement on Emergency Safeguard Measures proposed that "an emergency safeguard measure may be applied to trade in services only if the applying Member has determined, in accordance with the provisions of this Agreement, that, as a result of the effect of its specific commitments undertaken under Part III of the GATS, there is an emergency where there is an increase in supply of the service concerned by a supplier or suppliers of another Member, [or consumption thereof,] either, in absolute terms or relative to domestic supply [or consumption of such domestically supplied service], which is causing or is threatening to cause serious injury to the domestic industry that supplies like or directly competitive services" (Article 11:1).

10. ASEAN wished to offer the following hypothetical example in retail services as a possible situation that justified a safeguard action. Take the case of Shangri-La, a developing country with a largely agrarian society where the population was scattered across small villages. Like in many other countries, the distribution sector was an important component of the domestic economy. Many workers were low-skilled, received relatively low-wages, worked mainly on a part-time basis and the percentage of women was higher than men. The retail sector acted as an entry point into the labour market for many of these workers. The structure of the distribution sector reflected what might be described as the early 20th century United States experience: the dominant marketing channel was a general store in small towns; in larger cities, small conveniently located stores specialized in a narrow range of items with perhaps a few large department stores selling a much wider range of goods.⁹ The fact that the level of development of a country affected the structure of its distribution sector was also confirmed by an OECD study.¹⁰ The livelihood of low-wage people depended a lot on small independent stores in villages and small towns which not only acted as major employers, but performed a vital role in providing food, basic amenities, etc. Then, Shangri-La liberalised its distribution sector, both wholesale and retail, and granted full market access and national treatment in modes 1 to 3. Within months, foreign majority-owned retail chains opened vast numbers of retail outlets. They had direct impacts on the small independent shops. People began to buy more from discount or superstores in the suburb areas, forcing small shops to close down. At the village level, independent small shops lost customers to 24-hour service shops and began to vanish. Few of the former employees could immediately get a job in the modern 24-hour shops as these often required higher education levels, such as computer skills. As a result, in a short period after full liberalization small independent shops collapsed across the country and a large number of unskilled workers in rural areas were out of work. The combined market share of foreign-owned retail businesses jumped dramatically. She said that this example was a first attempt to illustrate a situation in which a safeguard measure could be needed. ASEAN was still reflecting upon this example and reserved its right to revert to, and elaborate on, it. Her delegation was interested in hearing other Members' comments and contributions in this debate.

11. The representative of Canada shared the concerns by the European Communities regarding the underlying economic reasons for an ESM, in particular the references to structural adjustment. There was a need for concrete examples. NAFTA could not be considered as an example of a conventional safeguard. The historical account made by the delegation of Thailand was interesting, but an ESM should address circumstances not taken into account when a commitment had been undertaken.

12. The representative of Brazil said that the EC argument that an ESM would impair legal certainty was difficult to reconcile with the EC proposal of a safeguard in agriculture. In his view, the best starting-point was to discuss what an ESM should be. Reference to technical problems was not an excuse. Provisions such as GATS Articles XIV and XXI did not obviate the need for an ESM.

⁹ S/C/W/37, page 3.

¹⁰ Pilat, Dirk (1997) Regulation and Performance in the Distribution Sector, OECD, Paris.

The historical account given by Thailand was useful. Members had never used Article X because there was no framework, but this did not mean that they would not need it in future.

13. The representative of the United States said that the distinction, introduced in the Overview of the Synopsis, between "domestic industry" and "acquired rights" would be useful for examining the modal application. She agreed with the Chairperson that a reality check was needed and agreed with the points raised by the European Communities; the introduction of an ESM was not a decided issue, and concrete examples were needed. Articles XII or XIV*bis*, for instance, addressed relevant concerns. In her view, the problem raised in the example given by ASEAN could be solved through regulatory measures in the sense of Article VI. The modal application of the various elements contained in the Overview of the Synopsis should be looked at. It would be interesting to know whether positions had changed regarding the definition of "domestic industry". The creation of an ESM did not hinge only on political considerations, but very practical concerns, including concerns with regard to mode 4. The "demandeurs" had to provide examples, and demonstrate desirability and feasibility of an ESM.

14. The representative of Switzerland thanked the European Communities for their statement. He noted that the EFTA Convention covered many sectors, not only services. Moreover, the level of obligations undertaken under that agreement was very high, full market access and national treatment were extended to all sectors across the board. It provided for the free movement of natural persons and abolished all restrictions on capital movements. The EFTA Convention also contained provisions on government procurement beyond the WTO Agreement on Government Procurement. The GATS, on the other hand, was based on the principle of progressive liberalization.

15. The representative of Japan said that the safeguards-type provisions listed in S/WPGR/W/4/Add.1 obviously contemplated a very high level of liberalization. Hence, comparison with the GATS was not helpful. He further noted that many economic integration agreements did not contain any safeguard mechanism. Types and policy objectives of the measures concerned were different; some related more to balance of payment restrictions, others to prudential measures or Article XIV-type measures. Discussions under Article X had to take into account the general structure of the GATS itself. He agreed with others that concrete examples should be discussed and, in that regard, he would welcome indications as to how competent authorities would apply a safeguard measure under mode 3. Turning to the ASEAN example of liberalization in the retail sector, he enquired how injury would be measured, whether it would force disinvestment or prevent new investments. It should also be borne in mind that foreign stores would employ local people. The emergency safeguard measure in the Japanese schedule aimed at ensuring a stable supply of services on a non-discriminatory basis. It did not aim at protecting the Japanese suppliers, and did not represent an economic needs test. It was, therefore, not a safeguard-type measure.

16. The representative of Argentina noted that Article X:1, second sentence, stipulated that "the results of such negotiations shall enter into force ...". This implied that there should be a result. Moreover, it was difficult to reconcile the idea that an emergency situation should be unforeseen with the assertion that the GATS provided sufficient flexibility at the time of scheduling to take into consideration all possible problems which could arise as a result of a commitment. Recalling that the GATS called for progressive liberalization, he enquired whether a safeguard measure would be desirable when the multilateral system had reached the level of liberalization of economic integration agreements. He wished the delegation of Japan could give more details on how the emergency safeguard measure contained in the schedule would be applied.

17. The representative of the European Communities said that a distinction should be made between safeguards-type provisions and emergency safeguard measures. The fact that paragraph 2 of Article X had not been invoked so far was a reason to ask the "demandeurs" to provide concrete examples. An ESM could not be used to address structural problems. The negotiating history of

Article X indicated that, during the Uruguay Round, attempts had been made to set up an ESM, but it had been found unfeasible. The distinction between a "safeguard" and an "emergency safeguard measure" had not been understood. If retail distribution suffered from structural problems, an ESM would not be the right answer. The European Communities was in favour of introducing a safeguard for agricultural products because it was possible to implement safeguard measures in goods trade. Some economic integration agreements, such as the agreement between the EC and Mexico, or between the EC and Chile, did not contain an ESM. On the other hand, the EEA included such a mechanism, but entailed a higher level of commitments.

18. The representative of Australia agreed that progress on the question of an ESM had been limited and that there was little convergence on fundamental issues. The proposal by New Zealand to use a matrix to discuss concrete examples deserved further consideration. Work could proceed on a sectoral basis which might allow for a clearer assessment of relevant situations. He enquired whether any Member had tried to fill the matrix.

19. The representative of Thailand, speaking on behalf of the ASEAN Members, said that the fact that an ESM had not been needed so far did not mean that it would not be needed in future as further liberalization was underway. The application of a safeguard measure would amount to the temporary withdrawal of a specific commitment under Articles XVI, XVII or XVIII. The fact that Members scheduled limitations under these provisions implied that they believed it was possible to enforce the corresponding restrictions. Questioning the enforcement of a safeguard measure amounted in fact to questioning structure and functioning of the GATS.

20. The representative of Switzerland said that the EEA had entered into force at the same time as the results of the Uruguay Round. Despite a high level of commitments, no safeguard measures had been invoked, and there appeared to be no case in which an ESM would have been desirable and feasible. He enquired whether the "demandeurs" of an ESM would contemplate the liberalization of government procurement, as the EFTA agreement did. Both hypothetical and actual examples of situations where an ESM would be needed had to be discussed.

21. The representative of Canada said that more discussion was needed on how "further liberalization" could justify an ESM. Circumstances that might not have been contemplated at the time a commitment was undertaken could include changes in technology or in the regulatory framework.

22. The representative of Brazil said that the absence of any real liberalization so far in services explained why it was difficult to find actual examples. Hence, only hypothetical examples could be discussed for the time being. Should there be a real liberalization, governments ought to be able to suspend commitments, without resorting to a unilateral interpretation of what a safeguard was.

23. The representative of New Zealand welcomed the example mentioned by ASEAN. The matrix presented by his delegation at the January informal meeting might provide a framework for further discussion. He recalled that the matrix would contain two columns. A first column could describe examples of factual circumstances that might justify the imposition of a safeguard measure, ordered according to the modes of supply. These examples could draw on factual circumstances that had arisen in practice or on hypothetical situations. A second column would contain possible legislative or regulatory responses in these factual circumstances. Thus, the example introduced by ASEAN would appear in the first column, and possible measures would be listed in the second one. If, for illustrative purposes, the matrix were applied to the goods sector, the first column would describe an unexpected situation and remedial measures, such as a tariff increase, would be in the second column. Some examples could be found in the compilation prepared by the Secretariat in JOB(03)/20. He concurred that more specific examples were needed.

24. The representative of Guyana said he was concerned with the current situation. The overall intent of these negotiations was simply to establish rules governing the use of an ESM. One example of a situation justifying a safeguard action could be a terrorist act. Measures taken after such an event might affect services providers across the four modes and in various sectors (tourism, transport, health, etc). Guyana called for the completion of the negotiations on emergency safeguard measures.

25. The representative of the Republic of Korea said that an ESM was necessary if further liberalization was contemplated. The difference between GATS and economic integration agreements was not particularly significant: a "none" listed in a sector meant full liberalization. The ASEAN example was a pertinent one. In this case, employees could move to a big shop, but not the employers. Regulation discriminating foreign suppliers would be considered a violation of national treatment. To the extent that withdrawal of commitments was possible under Article XXI, it should be possible also to contemplate a temporary suspension of commitments.

26. The representative of the European Communities said that a full commitment under the GATS was still different from liberalization under an economic integration agreement to the extent that the latter went further in terms of regulatory harmonization and precluded possibilities to withdraw commitments. An ESM was not the response to a structural problem. The "results" referred to in the second sentence of Article X:1 could take three possible forms: (i) should the WPGR be able to identify situations justifying an ESM and demonstrate the feasibility and desirability of an ESM to deal with them, the result could be an ESM agreement; (ii) should the WPGR have identified such situations, but failed to prove feasibility and desirability of an ESM, the result could be making Article X:2 permanent; and, (iii) should the WPGR be unable to identify such situations, this would suggest that there was no need for an ESM. Measures taken in response to a terrorist act would be justified under Articles XIV or XIV*bis*. Examples to be discussed should be concrete and specific, whether real or not.

27. The representative of the United States said that a terrorist act was a completely inappropriate example. In any case, measures taken in the aftermath of such an event would fall under Article XIV or XIV*bis*. Article X:1 referred to negotiations on the "question" of an ESM and did not assume any particular end result. A way of moving forward was to discuss examples. She wondered what kind of safeguard measures would be contemplated in the ASEAN example. The response should be discussed mode by mode.

28. The representative of Chinese Taipei said that an ESM should not be used to address structural problems. Nevertheless, a measure to address temporary problems was needed. The concept of unforeseen developments had been used in the context of disputes. More concrete elements were necessary to define concepts such as domestic industry and to better understand the meaning of causation.

29. The representative of Chile agreed with Switzerland regarding the difference between the GATS and economic integration agreements. The latter involved a higher level of liberalization for both goods and services. The example mentioned by ASEAN could be addressed in the context of the matrix proposed by New Zealand.

30. The Chairperson noted that the discussion had focused on situations justifying an ESM. The concrete and hypothetical example presented by the delegation of Thailand, on behalf of the ASEAN Members, had prompted an interesting debate. Delegations had referred to the need for additional concrete examples, both actual and hypothetical, referring to possible situations where safeguard action were needed. There was no need to draw a hard and fast distinction between actual and hypothetical examples as today's hypothetical could be tomorrow's actual example. He reminded Members that examination of examples is just one aspect of the work on ESM. Regarding references to safeguard-type provisions in regional trade agreements, Members pointed to the differences

between the GATS and economic integration agreements. Some referred to the background and mandate of GATS Article X which had been debated before, and perhaps there was no need for another debate at this juncture. The issue of structural adjustment was not new, and had been highlighted in the Synopsis. He proposed to take note of the statements made and revert to these issues at the next meeting. With respect to the work programme on emergency safeguard measures, he recalled that the Chairperson had to circulate a note by 15 March 2003. He would take into account the discussion during the meeting.

B. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII OF THE GATS)

31. The Chairperson drew Members' attention to the work programme on government procurement agreed by the Working Party. He recalled that Members were encouraged to put forward submissions as early as possible before 31 March 2003, and that it had been agreed to continue work on the basis of submissions and materials available. Following on the discussion at the informal meeting on 29 January 2003, he suggested that delegations focus, *inter alia*, on desirability and feasibility of developing disciplines for government procurement in services and on other related issues. Discussion of these issues would be without prejudice to Members' ability to raise questions concerning the scope of negotiations.

32. The representative of the European Communities said that an interesting debate had taken place during the informal meeting on 29 January.¹¹ One conclusion had been to discuss desirability and feasibility of services procurement rules. The EC written communication¹² indicated that liberalization of government procurement could benefit developing countries. At the last informal meeting, various delegations had stressed the importance of transparency and procedural rules. There was a preference to concentrate first on horizontal disciplines before considering the need for sectoral rules. Transparency disciplines could apply to the criteria used to assess tenders, for instance. He suggested that the Secretariat be asked to undertake a compilation of transparency rules and procedures contained in bilateral and plurilateral agreements.

33. The representative of Australia said that the EC contribution dealt with various issues under consideration in the Working Group on Transparency in Government Procurement (WGTGP). Initiating a discussion on similar issues in this Working Party would duplicate work. The WPGR should delay consideration of these issues pending a result in the WGTGP.

34. The representative of the Philippines said that the mandate contained in Article XIII excluded negotiations on market access and national treatment. Moreover, the same issues should not be addressed in two different bodies. His delegation had serious objections to the desirability of rules for services procurement.

35. The representative of the United States preferred that transparency issues be addressed in the WGTGP. The Chair of the WGTGP would be welcome to share information with the WPGR, but it was not necessary to establish a formal structure for that purpose. The Chair of the WPGR could also seek coordination on his own capacity. Information could be provided on the type of issues which were being discussed in the WGTGP since 1996. The presentation should be balanced and remain oral.

36. The representative of Norway was in favour of a coordination of work with the WGTGP and supported the suggestion that its Chairperson inform the WPGR. He also supported the EC request for a compilation of transparency disciplines to be undertaken by the Secretariat.

¹¹ See *Summary of Comments Made During the Informal Meeting of 29 January*, Note by the Secretariat, JOB(03)/21.

¹² S/WPGR/W/38.

37. The representative of Chile said that transparency was an important theme, and that duplication between the WPGR and the WGTGP should be avoided. It would be useful if the Chairperson of the latter Working Party could provide information. Her delegation supported information on transparency disciplines in economic integration agreements.

38. The representative of the Republic of Korea said that it was not desirable to duplicate work. She enquired what kind of information Members were interested in.

39. The representative of Venezuela wondered whether the compilation contemplated by the European Communities would concern only ratified agreements or include draft agreements. The representative of the European Communities said that only ratified agreements should be taken into account. The representative of the United States said that her delegation would be pleased to provide transparency provisions in agreements which would soon be ratified, such as the US-Chile and US-Singapore agreements.

40. The Chairperson noted the emphasis by Members to avoid overlap of work between the WPGR and the WGTGP, and some had indicated a preference for issues relating to transparency to be addressed in the latter. Regarding the compilation of information as proposed by the European Communities, the Secretariat would first check whether the requested information was already available in the WGTGP and would report to the WPGR at the next meeting. With respect to information on relevant activities in the WGTGP, he proposed that the format and content of an information exchange should be left flexible and should not be prejudged for the time being. He or his successor could consult the Chairperson of the WGTGP on an informal basis to see how information exchange could be arranged, whether it would be a briefing by the Chair or another means.

C. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV OF THE GATS)

41. The Chairperson recalled that, according to the work programme on subsidies, Members were encouraged to put forward submissions as early as possible before 31 March 2003. It had also been agreed to continue discussion on the basis of submissions from Members and materials available. Following on the discussions at the informal meeting on 29 January¹³, which had focused on the submission by the delegation of Poland¹⁴, he suggested that delegations continue their debate on the issues raised at that meeting, including definition of subsidies in services, categorisation of such subsidies, scope of "actionable" subsidies, and possible parallels between the GATS and the SCM Agreement. In this regard, Members might wish to consider whether and, if so, how the *Checklist on Subsidies*¹⁵ should be revised with a view to structuring future discussions. The Chairperson recalled that, in November last year, a delegation had drawn attention to an UNCTAD seminar on audiovisual services during which the issue of subsidies in the audiovisual sector had been raised. The UNCTAD Secretariat had circulated a summary of the seminar to the Special Session of the Council for Trade in Services last December. Should the Working Party wish to obtain more specific information on subsidies, it could agree to invite a representative from UNCTAD to make a presentation at the next meeting. He had also been informed, on an informal basis, that UNCTAD would be ready to share information on subsidies in other services sectors as well (such as tourism, energy, construction). Delegations were invited to give their views on this issue.

42. The representative of the United States said that in the communication on audiovisual and related services, presented in the Special Session in December 2000, her delegation had proposed to

¹³ *Summary of Comments Made During the Informal Meeting of 29 January*, Note by the Secretariat, JOB(03)/21.

¹⁴ JOB(02)/207.

¹⁵ Job No. 4519/Rev.1, 6 October 2000.

consider developing an understanding on subsidies in this sector.¹⁶ It might be confusing to further discuss audiovisual services in the WPGR. Her delegation would, however, be interested in other delegations' opinion and would like to see relevant papers before deciding on whether UNCTAD should be invited to make a contribution.

43. The representative of Hong Kong, China said that his delegation was in favour of updating the Checklist. The definition of "subsidy" could be based on the SCM Agreement; an alternative definition for the authority granting the subsidy could refer to Article I:3(a). It would also be interesting to further discuss categorisation of subsidies, and the criteria and parameters for granting subsidies.

44. The representative of the European Communities said that UNCTAD had already made a presentation on the seminar on audiovisual services at the Special Session. With respect to information concerning other services sectors, her delegation was not in a position to take a decision without having seen the relevant documents. It was primarily up to Members to bring subsidy-related information to this Working Party.

45. The representative of Argentina agreed with Poland that a definition of "subsidy" could include some basic elements of Article 1 of the SCM Agreement. Three elements were essential: (i) the existence of a financial contribution, which was (ii) granted by a public authority, and (iii) conferred a benefit. GATS Article I:3(a) was broad enough and could be used as a basis for identifying entities granting the subsidy. Other important concepts included the need for a subsidy to be specific, the potential trade-distorting effects and consideration of public policy objectives. The exclusion of some sectors might be envisaged. Possible criteria for establishing a categorisation should be discussed. Any information that UNCTAD could submit would be welcome.

46. The representative of Brazil supported the comments just made by the delegation of Argentina. The WPGR should not preclude any source of information and a contribution from UNCTAD was welcomed. UNCTAD might send written material to the Working Party. The representative of Mexico said that the Working Party should be open to any source of information. The Secretariat should seek information in contacts with other international organizations. The representative of Canada expressed some doubts regarding the opportunity to invite UNCTAD to present information. His delegation wished to know what type of information UNCTAD intended to submit. The representative of Chile supported a contribution from UNCTAD. The Working Party needed to answer the questions posed by Poland. The issue of categorisation of subsidies should be included in the Checklist, as well as the question of whether countervailing duties could be applicable. The representative of Chinese Taipei said her delegation was studying the applicability of the SCM definition and how the concept of specificity could apply to services. More information on subsidies was needed. However, it was difficult to notify them without an agreed definition.

47. The representative of Australia said her delegation felt that there were three key areas. First, the issue to whom a subsidy was granted was not regulated in the SCM agreement; the test was rather whether a subsidy implied a benefit, but did not depend on whether the service was supplied on a commercial basis. Second, specificity could be defined by mode of supply; a subsidy granted to all providers within a given mode would not be specific. Third, the question of whether the concept of trade-distortiveness should be part of a definition depended on the underlying intention. Members might also want to consider whether some subsidies should be prohibited and, if so, on what basis. It should also be examined how trade distortive effects could be measured.

¹⁶ Communication from the United States on *Audiovisual and Related Services*, S/CSS/W/21, 18 December 2000.

48. The representative of the United States said that her delegation was in favour of transparency. There was a need for better defining what the Working Party meant by "subsidy" before considering types of information. Her delegation wished to have a look at documentation before it was formally presented; appropriate time should be left to coordinate with relevant services experts.

49. The representative of Indonesia said that the contribution by Poland was a useful basis for further deliberation. Indonesia supported an update of the Checklist. Information from other international organizations was welcome.

50. The representative of Switzerland said that the first step in this negotiation was to have a common understanding on the definition of a subsidy. GATS Article I referred to measures "affecting trade in services", which meant that the negotiations on services subsidies were limited to those subsidies which effectively affected trade. Among trade-distortive subsidies, his delegation considered that those subsidies having effects on third markets, i.e. export subsidies, should be given priority. He noted that other delegations shared the view that subsidies granted in the pursuit of social or other public policy objective were a sensitive issue and should be dealt with appropriately. Members' right to resort to such instruments must not be affected. National schedules of commitments offered a way to preserve public prerogatives in fulfilling policy objectives. For instance, the Swiss schedule of specific commitments limited the scope of commitments in education services to private education; as a consequence, measures concerning public education, including subsidies, were not covered by the commitment.

51. The representative of Thailand said her delegation was confused with regard to what constituted a subsidy. A definition was needed. Thailand was apprehensive of any kind of subsidy since, as a developing country, it was short of financial resources. Some public policy objectives had to be kept in mind. Her delegation was open to considering contributions from UNCTAD or any other organization.

52. The representative of China said that the contribution by Poland provided a valuable input. It was crucial to identify subsidies and their nature. The information exchange provided for in GATS Article XI was important. China supported a contribution by UNCTAD to enhance information in relevant sectors.

53. The representative of Norway recalled that his delegation had responded to the 1997 questionnaire.¹⁷ He agreed that the SCM Agreement was a useful reference point. Rules for services subsidies should coincide to the extent possible with that Agreement. Legitimate social objectives should not be affected by subsidy disciplines.

54. The representative of Poland said that the contribution from his delegation was a first step, which concentrated only on definition. He agreed that other issues, such as specificity, policy objective, had to be considered, and his delegation was prepared to join other in further work. With respect to the comment by Australia, he doubted whether specificity should be determined according to the mode of supply. His delegation supported an update of the checklist but considered it might be premature to revise it now, since the Working Party was still struggling with the first item, i.e. definition of subsidy.

55. The representative of Australia said that there was a difference between firm-specific and industry-specific subsidies. A subsidy applied to all industries within a given mode of supply would not be specific. The representative of Poland said that the SCM Agreement contained the concept of industry specificity, but modes of supply did not exist. A subsidy was not specific if all industries, no matter the mode, received it.

¹⁷ S/WPGR/W/16 and S/WPGR/W/16/Add.1.

56. The representative of the Republic of Korea supported an update of the Checklist, as well as contributions from international organizations.

57. The representative of UNCTAD indicated that the sectoral reports referred to were not focused on subsidies *per se*, but contained subsidy-related information. Her organization would be ready to point out the relevant information, which could be used as "raw material". All documents were publicly available, but quite voluminous. UNCTAD could extract the relevant information without prejudice to any issue under negotiation in this Working Party.

58. The Chairperson noted that delegations were interested to continue their debate on the definition of services subsidies. This issue included two different aspects which could be distinguished in future discussions: (i) the generic definition of subsidies in the services context, including the relevance of the definition contained in the SCM Agreement; and (ii) the meaning of the concept of trade-distortive or "actionable" subsidies. With respect to the latter, Poland and other delegations had referred to concepts such as specificity, public policy objectives, nature of the subsidies, permissible or non-actionable subsidies, etc. On the suggestion by Members to update the Checklist, he suggested including the issues of categorization of subsidies and concepts relevant to what should be regarded as trade-distortive subsidies. Information exchange concerning all subsidies related to trade in services, pursuant to Article XV, should be continued. No delegation seemed to have difficulty as a matter of principle with information submitted by UNCTAD or another organization. The Secretariat would request UNCTAD to provide a list of relevant documents before inviting them for a presentation of the relevant information. Moreover, interested delegations could get in touch directly with UNCTAD.

D. DATE OF THE NEXT MEETING

59. The Chairperson said that the next formal meeting of the Working Party was expected to take place during the next cluster of services meetings, which had been tentatively scheduled from 12 to 23 May 2003. The Working Party would meet during the first week of the cluster and the exact date would be communicated to delegations in due time.

E. OTHER BUSINESS

60. Nothing was raised under this agenda item.

F. APPOINTMENT OF THE CHAIRPERSON

61. The Chairperson said that, in accordance with the rules of procedure for meetings of the Council for Trade in Services (S/L/15), the election of a new chairperson should take place at the first meeting of the year and take effect at the end of that meeting. However, the Chairperson of the Council for Trade in Services was still consulting on the slate of chairs for the subsidiary bodies. As a consequence, the election of the new Chairperson would take place at the beginning of the next meeting.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/40

23 December 2002

(02-7073)

Working Party on GATS Rules

REPORT OF THE MEETING OF 3 DECEMBER 2002

Note by the Secretariat¹

1. The Working Party on GATS Rules held its fortieth meeting under the chairmanship of Mr. Thomas Chan, from Hong Kong, China. The agenda for the meeting was contained in WTO/AIR/1984. It included six items: adoption of the annual report to the Council for Trade in Services; negotiations on emergency safeguard measures under GATS Article X; negotiations on government procurement under GATS Article XIII; negotiations on subsidies under GATS Article XV; date of the next meeting; and other business. The Chairperson drew attention to the Annotated Agenda (JOB(02)/202) in which he proposed themes for discussion. The agenda for the meeting was adopted.

A. ADOPTION OF THE ANNUAL REPORT TO THE COUNCIL FOR TRADE IN SERVICES

2. The Chairperson recalled that the draft annual report of the Working Party to the Council for Trade in Services had been circulated on 20 November 2002 as document S/WPGR/W/40. Like its predecessor, this report conveyed factual information on the activities carried out by the Working Party since the 2001 annual report had been issued. He drew attention to a typo in the draft report: in paragraph 9, the informal document referred to was in fact JOB(02)/84 and not --82. This typo would be corrected in the final version of the report.

3. The representative of Poland enquired whether reference to the paper on subsidies circulated at this meeting by his delegation could be referred to in paragraph 9 of the report. The Chairperson replied that this would not be possible since the paper had not officially been circulated yet. However, it would be mentioned in the 2003 annual report.

4. The representative of the United States asked that the following words be added at the end of the first sentence of paragraph 5: "... and on desirability and feasibility of such a mechanism". This would reflect the fact that the US written contribution addressed the issue of desirability and feasibility and not that of an ESM as such. The representative of the Philippines said the issue of desirability and feasibility was already referred to in the second sentence of paragraph 5 and all delegations were aware that it was still under discussion. The text should therefore be maintained as it was. The representative of the United States recognized that the issue of desirability and feasibility was mentioned in the second sentence, which referred to issues being discussed. The first sentence, however, addressed written contributions by Members, which made it necessary there to also include a reference to desirability and feasibility. During the following exchange of views, involving the delegations of the Philippines, Thailand and the United States, the representative of Uruguay suggested that the first sentence of paragraph 5 refer to "[V]arious delegations presented formal and informal written contributions in relation to the mandate contained in Article X". The Chairperson suggested that the report be adopted, subject to this change. Further, in paragraph 9, the correct reference was JOB(02)/84 (and not -82). It was so agreed.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

B. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X OF THE GATS)

5. The Chairperson said that, as agreed at the meeting on 23 October 2002, the Secretariat had prepared a note highlighting core elements contained in the various written proposals that Members had put on the table in the negotiations under GATS Article X. This Note, entitled *Core Elements Contained in Members' Proposals – Overview of the Synopsis*, had been circulated as JOB(02)/200. The table contained in this document gave an overview of the issues raised by Members. This Note was meant to be a guide to reading the Synopsis (JOB(01)/122 + Add.1) and, therefore, followed the same structure.

6. He recalled that, according to the work programme on emergency safeguard measures agreed by the Working Party in July,² Members were encouraged to put forward submissions as early as possible before 31 December 2002. Moreover, Members had agreed, *inter alia*, to identify, elaborate and consolidate elements for an ESM, and to address the question of feasibility and desirability of an ESM. It had also been agreed that the Chairperson would circulate a note by 15 March 2003 to report on the results of such work. This meeting provided an opportunity for delegations to continue their exchange of views on the issues of desirability and feasibility. The Annotated Agenda prepared for this meeting also proposed that delegations give further thought to various issues which had been raised on 23 October, i.e.: (i) to identify possible common elements for a services ESM based on the Synopsis; (ii) to examine concrete cases or examples where a safeguard measure would be needed and how it could be applied; (iii) to discuss the idea of working out a procedural framework or core mechanism, or combining different models that have been proposed; (iv) to further address process-related issues, such as transparency, notification, consultation and surveillance provisions; and (v) to explore the idea of expedited dispute settlement proceedings. He reminded that, according to the work programme on ESM, the Chairperson was expected to circulate a note by 15 March 2003, "identifying areas of convergence and divergency among Members, with a view to providing a basis to facilitate further negotiations". Needless to say that Members' input and contributions would be crucial to enable the Chairperson to fulfill this task. He proposed that the Working Party continue discussions on emergency safeguard measures in informal mode.³ It was so agreed.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII OF THE GATS)

7. The Chairperson said that the work programme on government procurement agreed by the Working Party encouraged Members to put forward submissions as early as possible before 31 March 2003, and stipulated that discussion should continue on the basis of submissions from Members and materials available. He recalled that, at the last meeting, Members had addressed the Communication from the European Communities and their Member States on government procurement of services.⁴

8. The representative of the European Communities recalled that, in some services sectors, government procurement represented more than 50 per cent of total activity, which reduced in the same proportions the value of specific commitments in these sectors. Opening government procurement was a tool for development, enabled public authorities to purchase services at the lowest cost, and could favour transfer of technology and know-how. The EC proposed that negotiations on government procurement make full use of the flexibility offered by the GATS and develop a multilateral framework taking into account Members' needs at all level of development. Members could start negotiating an understanding including rules and procedures on transparency as well as modalities for the application of Articles II, XVI and XVII. Then, they could decide which sectors

² S/WPGR/7, specifically paragraph 3.

³ See *Summary of Comments Made During the Informal Meeting of 3 December 2002*, Note by the Secretariat, JOB(02)/216.

⁴ S/WPGR/W/39.

would be opened and to what extent. Sectors in which commitments regarding access to, and national treatment in respect of, government procurement of services would be undertaken would be subject to the multilaterally agreed rules. This flexible framework would allow governments to take into account legitimate concerns. For instance, should a government wish to reserve certain procurement to local small-and-medium sized enterprises, it could determine a threshold below which the commitments would not apply. The EC was ready to discuss further any concern or comment with all interested delegations. He regretted that, due to time constraints, delegations could not engage in a substantive discussion at this meeting.

9. The representative of Switzerland said that government procurement was an important topic deserving a thorough discussion at the next meeting. The representative of the Philippines said that his delegation was concerned about the EC proposal because it exceeded the negotiating mandate in Article XIII. In his view, negotiations under this agenda item were limited to transparency issues. The representative of Canada said that his delegation attached importance to this agenda item and would forward questions to the European Communities. The representatives of Malaysia, Peru, Indonesia and Kenya supported the statement made by the representative of the Philippines.

10. The Chairperson said that he would hold an informal meeting in January or February next year to continue discussion of this topic. At that meeting, the agenda items would be addressed in the following order: government procurement, subsidies and emergency safeguard measures.

D. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV OF THE GATS)

11. The Chairperson drew attention to an informal contribution by Poland on definition of services subsidies.⁵ He regretted that, due to time constraints, discussion of this agenda item had to be postponed and suggested to revert to this issue at the next informal meeting.

E. DATE OF THE NEXT MEETING

12. The Chairperson indicated that the next formal meeting of the Working Party was expected to take place during the next cluster of services meetings, which had been tentatively scheduled from 27 February to 3 March 2003. The Working Party would meet during the first week of the cluster and the exact date would be communicated to delegations in due time.

F. OTHER BUSINESS

13. The Chairperson recalled that, at the last meeting, he had informed the Working Party that he had received a letter from Ambassador Smith, Chairman of the Special Session of the Committee on Trade and Development, requesting information on any discussions or other developments relating to special and differential (S&D) treatment that had taken place in the Working Party on GATS Rules. A few days later, he had received a letter from Ambassador Jóhannesson, Chairman of the Working Group on Trade and Transfer of Technology, seeking similar information in relation to trade and technology transfer. As agreed at the last meeting of the Working Party, he had replied to these Chairpersons, informing them in a factual manner on issues related to, respectively, S&D and trade and technology transfer, that had arisen – or not, as the case may be – in this Working Party under each of the three agenda items. Copies of the two letters were available outside the meeting room. These letters were without prejudice to the position of any Member on the issue of S&D.

⁵ JOB(02)/207.

Working Party on GATS Rules

REPORT OF THE MEETING OF 23 OCTOBER 2002

Note by the Secretariat¹

1. The Working Party on GATS Rules held its thirty-ninth meeting under the chairmanship of Mr. Thomas Chan, from Hong Kong, China. The agenda for the meeting was contained in WTO/AIR/1930. It consisted of five items: negotiations on emergency safeguard measures under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The Chairperson drew attention to the Annotated Agenda (JOB(02)/144) in which he proposed themes for discussion under the three agenda items.

2. The representative of Thailand said he intended to make a statement under "Other Business". The Chairperson announced that he would inform delegations on a letter he had received from the Chairperson of the Committee on Trade and Development Special Session.

3. The agenda for the meeting was adopted.

A. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X OF THE GATS)

4. The Chairperson recalled that, under the Work Programme on emergency safeguard measures adopted by the Working Party in July,² Members were encouraged to put forward submissions as early as possible before 31 December 2002. Moreover, Members had agreed, *inter alia*, to identify, elaborate and consolidate elements of an ESM and to address the question of feasibility and desirability. It had also been agreed that the Chairperson would circulate a note by 15 March 2003 to report on the results of such work. The Annotated Agenda circulated prior to this meeting proposed that, for the purpose of identifying, elaborating and consolidating elements of an ESM, delegations might continue their comparison of the various proposals on the table. In his view, five broad approaches could be identified: (a) the "horizontal" safeguard mechanism; (b) the "scheduled" safeguard; (c) the "consensus-based" safeguard mechanism; (d) the "core" safeguard mechanism; and (e) no explicit safeguard mechanism. Based on the elements contained in the Synopsis³, Members might want to identify the main differences as well as possible common elements. The question of feasibility might also be addressed in this connection. This discussion was without prejudice to the question of desirability of an ESM. Members wishing to address this question were encouraged to present submissions.

5. The representative of the United States noted that, while items (a) to (d) (paragraph 2 of the Annotated Agenda, JOB(02)/144) could be interpreted as different "approaches", item (e) should be considered as an "outcome", based on a review of the issues of feasibility and desirability. It might be useful to reformulate (e) in this sense, since the negotiations on an ESM were without prejudice to an outcome.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² S/WPGR/7, specifically paragraph 3. See also S/WPGR/M/38.

³ JOB(01)/122 of 7 August 2001 and JOB(01)/122/Add.1 of 21 December 2001.

6. The Chairperson replied that the five approaches were based on proposals by Members and were intended to facilitate discussions. Item (e) included the situation, raised by some Members at previous meetings, where even in the absence of an established ESM, a Member decided to inscribe an ESM in its schedule of specific commitments. He stressed that the approaches – or outcomes – identified in the Annotated Agenda were not meant to prejudge the negotiations in the Working Party.

7. The representative of Switzerland said that the option described under (e) went beyond the particular situation just described by the Chairperson and deserved further consideration, in particular in discussing desirability of an ESM. The Chairperson said that Members were invited to address the issue of desirability in this meeting.

8. The representative of the United States recalled that her delegation had submitted a proposal on desirability and feasibility and noted that these issues had been raised by other Members as well in their proposals. Members were free to put forward more submissions, but contributions already on the table should not be forgotten.

9. The Chairperson proposed that the Working Party continue discussions on emergency safeguard measures in informal mode.⁴ It was so agreed.

10. In concluding discussions under this agenda item, the Chairperson stressed that substantive inputs were needed. He noted an interest to take up further the Australian proposal in order to see how it could be merged with other approaches on the table. Clearly, more work was required on desirability and feasibility. It was also important to discuss concrete cases in which safeguard measures might be needed. With respect to the request made during the informal session for inputs by the Secretariat, he suggested that the Secretariat could highlight core elements contained in the various written proposals on the table.

B. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV OF THE GATS)

11. The Chairperson drew Members' attention to the Work Programme agreed by the Working Party. He recalled that Members were encouraged to put forward submissions as early as possible before 31 March 2003, and that it had been agreed to continue discussion on the basis of submissions and materials available. He noted that, at the last meeting, there was a general feeling that more information on subsidies was needed. Members had been invited to give consideration to a simplified questionnaire put forward by the delegations of Argentina, Chile and Hong Kong, China, for the purpose of information exchange on subsidies (JOB(02)/84). Moreover, the Secretariat had circulated an updated summary of information on subsidies contained in TPR reports (S/WPGR/W/25/Add.3). He invited delegations to continue the discussion on information exchange on the basis of these documents. Members might also wish to consider if they had other suggestions to further the gathering of information, and any other technical and analytical work.

12. The representative of Chile said that this agenda item was particularly important for her delegation. In the course of the ongoing market access negotiations, her delegation had asked Members having sent requests to Chile to provide information on the subsidies they maintained in sectors they wanted Chile to open. But no information had been provided so far. Increasing transparency on subsidies remained a key objective and any type of information was useful. In a process of market opening, addressing the issue of subsidies was in everybody's interest. She noted that it had been said on various occasions that no sufficient information was available. However, the webpage of some Members contained a wealth of information on their subsidy regimes in different sectors. The problem was that this information did not always cover important elements such as

⁴ See *Summary of Comments Made During the Informal Meeting of 23 October 2002*, Note by the Secretariat, JOB(02)/159.

amounts, beneficiaries, etc. For the next meeting, specific questions could be made to these Members on their subsidy programmes. With respect to the Secretariat document W/25/Add.3, she noted that (i) the information focused on some services sectors only (mainly tourism, transport, financial services); (ii) it was not clear whether subsidies targeted services exports, and (iii) developing countries appeared to subsidize more than developed countries. She enquired which sources were consulted when drafting TPR reports.

13. The representative of Ecuador said that the examples in W/25/Add.3 were limited to some sectors and concerned mostly developing and least-developed countries. She drew attention to a submission that Saudi Arabia had circulated in the Committee on Trade and Environment and in the Committee on Trade and Environment Special Session on *Energy Taxation, Subsidies and Incentives in OECD Countries and Their Economic and Trade Implications on Developing Countries, in Particular Developing Oil Producing and Exporting Countries*⁵ and suggested that it be circulated in this Working Party because it contained interesting information on subsidies in the energy sector. It would be important for the Working Party on GATS Rules to be aware of this document.

14. The representative of Hong Kong, China suggested that, under this agenda item, Members might also want to address the issue of permissible subsidies, including schemes aimed at promoting government policies in the health and education sectors, or research and development.

15. The representative of Uruguay said that the Working Party was mandated by Article XV to develop the necessary multilateral disciplines to avoid trade-distortive effects. Technical work and negotiations on subsidies had to be carried out on this basis, taking into account the Work Programme on subsidies.

16. The representative of Cuba enquired why the simplified questionnaire put forward by the delegations of Argentina, Chile and Hong Kong, China (JOB(02)/84, 12 July 2002) had not included the question on the policy purpose of the subsidy which was contained in the original questionnaire (see S/WPGR/W/16).

17. The representative of the Republic of Korea said that the Secretariat's document W/25/Add.3 was a good basis for furthering the information exchange. Noting that this compilation focused on some services sectors of an infrastructural nature, she suggested that Members might be more proactive in other sectors. The document also concentrated on small economies where tourism was a key sector. It might be useful to refer to previous documents to have a more general view. More information would allow to work on the form, nature and definition of services subsidies. She wondered whether incentives provided to foreign investors should be addressed. In the goods sectors, investment incentives were not covered, unless there was a violation of the TRIMs Agreement. It was interesting that tariffs and tax exemptions on goods should be considered as incentives to some services, such as tourism. Other questions included whether consumer tax exemptions on oil used for airplanes and ships, or support provided to education and training of certain professionals should be regarded as subsidies. The definition of subsidy contained in the Agreement on Subsidies and Countervailing Measures was broad and more factual data on services subsidies were needed. Work on categorisation of various services-related subsidy programmes should also be considered. The Working Party should examine how to update the checklist on subsidies.

18. The representative of New Zealand recalled that her delegation had submitted in 1997 a response to the subsidy questionnaire in S/WPGR/W/16/Add.2 and would endeavour to update this information. New Zealand would welcome if other countries, developed and developing, submitted information under the simplified questionnaire in JOB(02)/84. Her delegation was interested in any

⁵ Document WT/CTE/W/215 and TN/TE/W/9.

clarification that might emerge as to the scope of measures that were being addressed under this agenda item.

19. The representative of Chile recognized the importance of the policy objective behind subsidies. However, as a first step, it was important to obtain as much information as possible on subsidy programmes. She agreed with Hong Kong, China that the issue of permissible subsidies would need to be addressed. The representative of the Republic of Korea had raised a range of interesting questions. Chile welcomed New Zealand's intention to update its reply to the questionnaire and encouraged other countries to do the same. She enquired about the necessary procedure to circulate a document presented in one WTO body in another body.

20. The representative of Switzerland noted that W/25/Add.3 compiled information contained in documents which had been circulated in another WTO body. The Secretariat might provide via by e-mail the document referred to by the delegation of Ecuador, as it did for other documents. He wondered whether there were some guidelines for circulating documents in other bodies. Document W/25/Add.3 was a good basis. More information on the existing types of subsidies was needed in order to identify trade-distortive measures and proceed with this negotiation. Information was available because all Members should have a broad idea of the kind of subsidies they maintained. Switzerland was willing to go on with this exercise, but a critical mass of interested Members was necessary.

21. The representative of Chinese Taipei noted that some subsidy programmes listed in W/25/Add.3 were different from those in the SCM Agreement. Therefore, she agreed that, as mentioned by the Secretariat, the term "subsidy" and related concepts might not have been used in TPR reports with the SCM Agreement definition in mind. Those types included incentives and concessions relating to investment programmes, in particular in the tourism sector; subsidies through the procurement of goods and services from public entities; exemptions from indirect taxes, in particular VAT, usually not conformity with the SCM Agreement; most subsidies in W/25/Add.3 were specific, as required by the SCM Agreement. She wondered whether a broader definition would be needed in the services context, which would take into account the particular nature of services sectors. A first step would be to agree on the scope and definition of a subsidy for services. The SCM Agreement could offer some guidance, but it was not a panacea. It was not appropriate at this stage to discuss permissible subsidies before other issues, such as types and scope of subsidies, had been addressed.

22. The representative of the United States said that circulating documents from one body to another raised systemic issues and she preferred to consult her capital on this question. She supported Switzerland's practical proposal that each delegation should obtain information within its own government as quickly as possible. Further discussion was needed on what type of subsidies should be addressed under this mandate. It would be impossible to identify all subsidies. For instance, should scholarships be classified as subsidies? How many Members had such educational grants, should they be considered justified? Hence, the scope of subsidies should be discussed and only trade-distortive ones be addressed under this agenda item.

23. The representative of Paraguay said that information on services subsidies was useful in view of the ongoing market access negotiations. Members should provide information on existing subsidies, and discuss a definition for, and the scope of, services subsidies. Lack of information prevented many Members from opening their markets. His delegation supported proposals to improve transparency.

24. The representative of Mexico said that the information contained in W/25/Add.3 was limited but did nevertheless give a general idea of what types of subsidy programmes existed, and which sectors were concerned. Most subsidies granted in developing countries took the form of tax

exemptions, while other countries granted direct financial assistance for a number of policy purposes. Taking as a starting-point statistics on international trade in services, it should be possible to identify countries granting subsidies impacting on international services trade, and the sectors which were targeted. Each Member, developed and developing, could then provide information on subsidies in these sectors (type of programme, amounts involved, beneficiaries, etc.). Mexico would be ready to contribute to such an exercise. On the basis of the information collected, it could be possible to assess the potential for trade-distortive effects and identify legitimate support.

25. The representative of Mauritius enquired whether the compilation of TPR-related information on subsidies undertaken by the Secretariat covered all TPR reports since 1995.

26. The representative of Brazil said that it would be difficult to deviate from the requirement in Article XV to exchange information on all subsidies related to trade in services that were provided to domestic suppliers. This information exchange was a first and important step, and had proved to be difficult since the beginning of the negotiations. He doubted whether scholarships should be a focal issue in terms of trade-distortiveness. When negotiating the Tokyo Round Subsidy Code and the subsequent SCM Agreement, governments had moved into the negotiating phase once they had obtained all the information available on subsidies. Some information was thus needed. In the Working Party, the questionnaire W/16 had been the first procedural step to comply with the information exchange. Few delegations had replied, none of them was a large trading partner. The simplified questionnaire in JOB(02)/84 would hopefully provide more input. In addition, Members might wish to consider further refining the mechanism that had been used in order to obtain information. Information drawn from TPR reports appeared to be significantly limited since the TPR mechanism operated along specific procedures and all TPR reports had the same structure. The review of a Member's trade policy was conducted in the light of Members' obligations in the WTO, with a view to increasing transparency. In preparing the reports, the Secretariat did not focus on services subsidies since those were not the object of specific rules. For instance, the questionnaire submitted to Brazil by the Secretariat staff drafting the TPR report in 1996 and 2000 did not contain questions on services subsidies. Members could consider ways of ensuring that, in future, the TPR Division take into account the negotiations in this Working Party and include information on services subsidies, without prejudice to the question of trade-distortiveness. Seeking information in other fora had already been proposed in this Working Party. Brazil had suggested that the OECD could play an important role in providing information on export credit. The Secretariat had prepared a note on the *Arrangement on Guidelines for Officially Supported Export Credits*, including on the so-called *Yellow Book*⁶, but no data had been available on subsidies *per se* because, in his understanding, the OECD had not been in a position to provide such information. Members might want to explore again the idea of involving the OECD in the process of information gathering. Finally, it should be kept in mind that Members' schedules contained limitations for discriminatory subsidies and, hence, could be a source of information.

27. The representative of Guyana said that the GATS, and in particular Articles IV, V and XV, aimed at promoting economic development, but also ensuring the participation of developing countries. Those countries, especially the small economies, relied on services and needed to be able to use subsidies to stimulate economic growth. He wondered whether the information contained in TPR reports was accurate and reliable. For instance, the information provided, on page 16 of W/25/Add.3, on subsidies in the United States did not coincide with the relevant limitations in the US schedule of specific commitments. On the other hand, detailed information was provided for Dominica and other Members. On page 29, regarding subsidies in the TPR report of the European Communities, it was stated that "no figures are available on subsidies granted by the 15 Member States". Countries did not seem to provide the same type of information and there was a need to have a clearer view before addressing the issue of trade-distortiveness.

⁶ JOB(01)/66.

28. A representative of the Secretariat, replying to the question by the delegation of Chile, said that, in drafting TPR reports, the Secretariat relied primarily on information provided by the Member under review, but also on any pertinent source (Internet, for instance). A questionnaire was used as a working document, in particular when information was difficult to find in the public domain. It was sent to the authorities of the Member under review. Its structure reflected that of the final report. Information was sought primarily in sectors with strong government involvement. In many countries, this was typically the case for tourism, transport, telecom, etc. Other sectors, which may be economically important, but where governments intervened to a lesser extent – construction, professional services – attracted less attention. It had to be kept in mind that TPR reports were not meant to provide a systematic picture on subsidies (whether for goods or services), but focused on Members' trade policies and practices from a broad perspective with a view to enabling a multilateral assessment of the effects on the world trading system. Regarding the proposal by the delegation of Ecuador to circulate, in the Working Party on GATS Rules, a document of Saudi Arabia, which had been initially distributed in the Committee on Trade and Environment, she said that she was not aware of specific procedures in this respect. However, there might be systemic implications, and the position of the submitting delegation might need to be taken into account. She noted that the contribution in question was an official WTO document, which each delegation was free to consult; a reference to this document would be recalled in the minutes of the meeting.⁷ With respect to the question by the delegation of Mauritius, she confirmed that all TPR reports had been reviewed in the compilations undertaken by the Secretariat since 1995, which were contained in documents S/WPGR/W/25, including Add.1 to 3. With respect to the comment by Brazil regarding subsidy-related limitations in Members' schedules, she recalled that the Secretariat had compiled relevant entries in document S/WPGR/W/13 and Add.1.

29. The representative of Chile suggested that Members having scheduled limitations relating to subsidies could provide information on these subsidies.

30. The Chairperson noted that the exchange of information mandated in Article XV remained an important issue. Various delegations had referred to other possible sources of information, including the simplified questionnaire. He drew attention to the Work Programme which stipulated that the discussion should continue on the basis of submissions from Members as well as from materials available. Members should use existing sources to the fullest extent possible. Mention had been made to the need to categorise subsidies and/or clarify scope and definition of services subsidies. These issues could be further discussed at the next meeting. He was ready to update the Checklist of Issues, but substantive input from Members was needed, in particular on the issues raised during this meeting.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII OF THE GATS)

31. The Chairperson drew attention to the Work Programme on government procurement agreed by the Working Party. He recalled that Members were encouraged to put forward submissions as early as possible before 31 March 2003, and had agreed to continue discussion on the basis of submissions from Members and materials available. At the last meeting, the European Communities and their Member States had introduced a communication on government procurement of services (S/WPGR/W/39), which delegations might want to further discuss.

32. The representative of the European Communities replied to questions raised at the July meeting.⁸ Concerning the coordination of work between this Working Party and the Working Group on Transparency in Government Procurement (WGTGP), he said that GATS Article XIII contained a general mandate for government procurement in services, while WGTGP's mandate was limited to

⁷ See paragraph 13 above.

⁸ See S/WPGR/M/38.

transparency, in both goods and services. Addressing transparency issues in both fora should not be problematic and discussion should continue in parallel, since progress in one forum could facilitate progress in the other. Consistency should be ensured and information exchanged so that compatible disciplines could be developed on both sides. With regard to the relationship between horizontal and sectoral disciplines, the EC was ready to discuss various approaches. He felt, however, that there was a preference for horizontal disciplines, which could be complemented, whenever necessary, with sectoral rules.

33. The representative of Chinese Taipei noted that the negotiation under Article XIII included two main aspects, i.e. procedural and market access-related issues. On procedural aspects, including transparency, general rules could be modelled on those of the Agreement on Government Procurement. It was important to ensure that challenge procedures be in the hands of independent entities. The intangible nature of services was likely to influence the nature of the contracts, and she supported a discussion on sector-specific rules. The proposal to undertake market access commitments on a sectoral basis was an interesting aspect of the paper. The Working Party should examine the provision of government procurement under the various modes of supply and their respective implications. In that respect, modes 3 and 4 seemed to be most relevant. It was important to foresee the possibility of thresholds in order to limit the administrative burden .

34. The representative of India said that the mandate contained in Article XIII paragraph 1 exempted government procurement from the application of Articles II, XVI and XVII. The discussion on government procurement in the Working Party should respect this exclusion. He noted with concern that the paper by the European Communities referred to Articles II, XVI and XVII and wanted to register his delegations's disagreement with this approach.

35. The representative of Pakistan supported the statement made by the delegation of India.

36. The representative of Egypt said that market access-related issues should be addressed in the Committee on Government Procurement. He asked the European Communities to elaborate on paragraph 7 of W/39, which stated that "MFN and national treatment requirements are not sufficient to ensure equal treatment and non-discrimination in the area of government procurement" and that "domestic procedural principles" should be developed. Finally, his delegation was of the view that MFN, national treatment and market access issues should not be addressed under Article XIII.

37. The representative of China enquired about the relationship between the MFN obligation, referred to in the EC paper, and the Agreement on Government Procurement. She supported the statements made by the delegations of India, Pakistan and Egypt regarding the scope of the mandate.

38. The representative of the European Communities recalled that their communication proposed a flexible framework for commitments on government procurement. Members could undertake such commitments on a voluntary basis, by sector and mode, whenever suitable. Some modes of supply were irrelevant for some sectors (for instance, mode 1 in the construction sector). He noted that in the Understanding on Commitments in Financial Services, some Members had opened their government procurement under mode 3 only. He agreed that it was important to allow for thresholds and it could be left to each Member to determine their level. Disciplines should be developed with respect to transparency and internal proceedings, with a view to ensuring effective market access and national treatment. The MFN obligation should apply as soon as a framework on government procurement was developed. Signatories to the Agreement on Government Procurement should be able to take MFN exemptions so as to grant more favourable treatment to other signatories.

39. The representative of the United States wondered how discussions should proceed in this Working Party in order to avoid duplication, or even contradiction, with the WGTGP.

40. The representative of the European Communities replied that an important amount of work had already been carried out in the WGTGP and could be used in this Working Party. *Vice-versa*, any relevant work in the WPGR could be useful for the WGTGP. Information could be exchanged between the two fora so as to ensure compatibility – or perhaps even identity – of disciplines.

41. The Chairperson noted that a number of interesting questions had been discussed in relation to the EC contribution. Some interventions had also been made on the scope of the mandate. He invited the Working Party to take note of the statements made and revert to this issue at the next meeting.

D. DATE OF THE NEXT MEETING

42. The Chairperson indicated that the next formal meeting of the Working Party was expected to take place during the next cluster of services meetings, which had been tentatively scheduled from 2 to 13 December. The Working Party would meet during the first week of the cluster and the exact date would be communicated to delegations in due time.

E. OTHER BUSINESS

43. The representative of Thailand informed the Working Party that his delegation had organised a brainstorming session on emergency safeguard measures in services on 26 September 2002. The purpose had been to allow Members to exchange views in a free and non-committing manner. Thailand noted with grave concern that slow progress had been made during the negotiations on ESM, even after three extensions of the mandate, over the past seven years. His delegation was of the view that the brainstorming exercise would be useful for those who had been working for some time in the field, and also for newcomers with whom Thailand would work closely in the future, to facilitate progress in the Working Party. Thailand had sent invitations to more than 30 delegations from all regions. Around 30 participants had been able to attend the seminar. Thailand wished to thank them for their active interest, as well as the Chairperson of the Working Party, and the WTO and UNCTAD Secretariats.

44. The Chairperson informed the Working Party that, on 22 October, he had received a letter from Ambassador Smith, Chairman of the Special Session of the Committee on Trade and Development. He recalled that, during its meeting held on 28 January – 1 February 2002, the TNC had agreed that "...the review of all special and differential treatment provisions with a view to strengthening them and making them more precise, effective and operational provided for in paragraph 44 of the Ministerial Declaration shall be carried out by the Committee on Trade and Development in Special Sessions." Pursuant to that mandate, the Chairperson of the Special Session of the CTD was now requesting information on any discussions or other developments relating to special and differential (S&D) treatment that had taken place in the Working Party on GATS Rules. This information should be conveyed to the Special Session of the CTD by 30 November 2002. Therefore, he intended to write a letter to the Chair of the Special Session of the CTD, recalling the mandate of this Working Party and informing him, in a factual manner, on S&D-related issues that had arisen in the Working Party, if any, under the three agenda items. This report to the CTDSS would be without prejudice to the position of any Member on the issue of S&D. It was so agreed.

Working Party on GATS Rules

REPORT OF THE MEETING OF 15 JULY 2002

Note by the Secretariat¹

1. The Working Party on GATS Rules held its thirty-eighth meeting under the chairmanship of Mr. Thomas Chan, from Hong Kong, China. The agenda for the meeting was contained in WTO/AIR/1860. It consisted of six items: work programme for the Working Party; negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The Chairperson drew attention to the *Annotated Agenda* (JOB(02)/83) which proposed themes for discussion under the three agenda items

2. The agenda for the meeting was adopted.

A. WORK PROGRAMME FOR THE WORKING PARTY

3. The Chairperson recalled that paragraph 2 of the *Communication from the Chairperson of the Working Party on GATS Rules* transmitting the *Draft Fourth Decision on Negotiations on Emergency Safeguard Measures* stipulated that, "the Chairman will carry out consultations to establish a programme structuring future work of the Working Party"². At its meeting of 3 June 2002, the Working Party had agreed that the consultations on a work programme for negotiations on emergency safeguard measures should continue and that they should include work programmes for negotiations on subsidies and government procurement as well. Members had also agreed that the possible elements for the work programmes be set out in a Note to be issued by the Chairperson under his own responsibility. On the basis of further informal consultations, he had issued a Chairperson's Note (JOB(02)/82) setting out what were, in his view, the possible elements for the work programmes on emergency safeguard measures, subsidies and government procurement. On 10 July, the Working Party had held an informal meeting at which delegations had been consulted on the elements of the draft work programme. A number of delegations had indicated that they could support the elements as they were. Some delegations had raised concerns or suggestions on individual elements, while others had expressed doubts on the need for changes. After further informal consultations, the work programme, as it now stood, struck an appropriate balance and represented, in his view, the basis on which an agreement could most likely be achieved.

4. Introducing this draft work programme, he stressed three points of understanding under which this draft had been prepared. First, the work programme should not in any way prejudice the outcome of the respective negotiations on emergency safeguard measures, subsidies and government procurement. Members would remain free to bring up any relevant issues for discussion, including the questions of feasibility and desirability, as well as the scope of the negotiations under any of the three subjects of negotiations. Second, benchmarks for submissions were indicative, with a view to encouraging Members to put forward submissions on the respective subjects as early as possible, and

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² S/C/W/205/Rev.1.

would be without prejudice to Members' right to put forward further suggestions and raise relevant issues by way of submissions at any time, under any of the three subjects of negotiation. Third, the undertaking of individual items of work should be without prejudice to each other. For instance, the identification, elaboration and consolidation of elements for ESM should be undertaken without prejudice to addressing the question of feasibility and desirability of ESM and *vice versa*. Similarly, the raising of any relevant issues for discussion by Members should be without prejudice to the continued discussion already being undertaken and *vice versa*. He was aware that there were remaining disagreements over some elements of the work programme. However, many delegates had pointed out that the work programme was no more than a tool to assist the Working Party to organize its work, and had indicated that they were prepared to accept the programme as it was. It was in this same spirit that he wished to appeal to delegations' flexibility. He suggested to turn to informal mode to have an exchange of view on the draft work programme.

5. Upon resuming the formal meeting, the Chairperson said that the informal discussion had allowed a useful exchange. Noting that there were some remaining concerns, he proposed that Members consider adopting the work programme in JOB(02)/82 with the following changes: (i) "work programme" would read "work programmes" throughout the text to reflect that separate work programmes were established for the respective subjects of negotiations, and the first paragraph should be read as referring to all three work programmes; (ii) a reference to paragraph 7 of the Negotiating Guidelines would be added in paragraph 2 of JOB(02)/82. Moreover, the work programmes would be adopted taking note that the three subjects of negotiations were at different stages of progress, and that benchmark for submissions were only indicative. It was also understood that the work programmes would not prejudice in any way the outcome of the negotiations. With respect to the three subjects of negotiations, any issue could be raised, including on the scope of the negotiations or the mandate.

6. The representative of Mexico said that his delegation wished to advance work on all three agenda items. However, the modifications just suggested by the Chairperson did not fully address the concerns of his delegation. Further clarification was needed, in particular with respect to government procurement. Moreover, it was not appropriate to repeat the first paragraph under each agenda item because the first sentence of paragraph 1 of JOB(02)/82 related only to emergency safeguard measures. He proposed that the three points of understanding that the Chairperson had just read out in his introductory statement be included in the work programme instead of the current paragraph 1.

7. The representative of India took note of the views expressed in the informal discussion which had just taken place. His delegation wanted a work programme in place to be able to proceed with the substantive work. However, India had some remaining concerns. First, it should be explicitly reflected in the work programme that the benchmarks for submissions under the various items were only indicative and that Members could put forward submissions after that date. Second, there should be an understanding on the negotiating mandates, to ensure that delegations had a clear idea on what the Working Party was aiming at. It would be useful to have a revised proposal in writing and come back to it later on.

8. The representative of Brazil thanked Mexico for his suggestions. In the interest of adopting a work programme as quickly as possible, his delegation was ready to consider any proposal to accommodate remaining concerns. Brazil had always worked under the assumption that benchmarks for submissions were indicative. He enquired whether India could circulate its drafting suggestions in writing.

9. The representative of the Philippines, speaking on behalf of ASEAN, said that his delegation could support the changes proposed by the Chair. ASEAN was cognizant of the concerns expressed by Mexico and India, and wished to see drafting suggestions by these delegations. He noted that the deadline of 15 March 2004 for negotiations on emergency safeguard measures was compulsory and,

thus, was not an indicative benchmark. The Chairperson noted that the references to the benchmarks concerned only the benchmarks for submissions.

10. The representative of the European Communities said that her delegation had come prepared to accept the text as it was in JOB(02)/82, although it did not necessarily contain everything the EC wanted. After listening to the informal debate, the EC would also have been open to the changes suggested by the Chair. Her delegation would be prepared to look at the suggestions made by Mexico and India, but could not give any guarantee as to what it would do with them without having seen them in writing. She enquired why Mexico insisted on three separate work programmes. In her view, the proposal by the Chair to add an "s" to "work programme" throughout the text would clearly indicate that the Working Party was dealing with three different work programmes. Should it be necessary to adopt them separately, then the Uruguay Round principle "nothing is agreed until everything is agreed" would apply.

11. The representative of the United States said that his delegation could accept the work programme contained in JOB(02)/82, as well as the changes proposed by the Chairperson during this meeting. The United States took careful note of the three points made by the Chair in his introductory statement and agreed with them. He noted that the reference made, in JOB(02)/82, to the Fifth Ministerial Meeting was similar to the reference made in the Communication from the Chairperson contained in S/C/W/205/Rev.1, i.e. that the Fifth Ministerial Meeting provided an opportunity for a stock-taking.

12. The Chairperson invited the Working Party to revert to this item at the end of the meeting.

13. At the end of the afternoon session, the Chairperson drew attention to document JOB(02)/82/Rev.1, which contained a revised work programme, taking into account concerns raised during the morning. The main change was that the three points made earlier in his introductory statement were now reflected in the text and replaced the first sentence of former paragraph 1. Moreover, in line with the suggestions he had made in the morning: (i) an "s" had been added to "work programme" (title, paragraphs 1(a) and 2), to make it clear that each item had a separate work programme, and to recognize the fact that they were at different stages of progress; and, (ii) a reference to paragraph 7 of the Negotiating Guidelines had been added to the work programme on emergency safeguard measures. These changes were meant only to clarify the work programmes and he hoped that the text as it then stood could form the basis for a consensus.

14. The representative of the European Communities sought clarification regarding the last two sentences of paragraph 1(c).³ The Chairperson replied that these sentences were meant to illustrate the first sentence. This sentence reflected Members' understanding in previous consultations that the treatment of individual items of work should be without prejudice to each other. The representative of the Philippines, speaking on behalf of ASEAN, expressed concerns regarding paragraph 1(c), in particular the second sentence. He understood that the first sentence referred to the relationship among the three agenda items, and not to different elements within an item. The last sentence of the paragraph was not problematic. The Chairperson said that the second sentence of paragraph 1(c) was meant to clarify the relationship between the two elements of paragraph 3(a).⁴

³ Paragraph 1(c) of JOB(82)/82/Rev.1 reads as follows: "The undertaking of individual items of work should be without prejudice to each other. For instance, the identification, elaboration and consolidation of elements for ESM should be undertaken without prejudice to addressing the question of feasibility and desirability of ESM and vice versa. Similarly, the raising of any relevant issues for discussion by Members should be without prejudice to the continued discussion already being undertaken by Members and vice versa."

⁴ Paragraph 3(a) of JOB(02)/82/Rev.1 reads as follows: "to identify, elaborate and consolidate elements for ESM and to address the question of feasibility and desirability of ESM;"

15. The representative of Uruguay agreed with the European Communities that the last two sentences of paragraph 1(c) lacked clarity. He suggested to delete them and add, at the end of the first sentence, the following words: "... under each negotiating mandate".

16. The representative of India recalled that his delegation had concerns, in particular with respect to the benchmark and the scope of the negotiating mandate under GATS Article XIII. Paragraphs 1(a) and (b) partly addressed these concerns. With respect to paragraph 1(c), he shared the doubts of other delegations and would consider the suggestion just made by Uruguay.

17. The representative of Switzerland said that, in spite of remaining concerns, his delegation had come prepared to support the work programme as contained in JOB(02)/82, which would have enabled the Working Party to proceed in a precise manner on the substantive issues. However, the delicate balance which had been reached was once again put into question. He needed to consult his capital on this new version. He shared the concerns expressed with respect to paragraph 1(c).

18. The representative of the United States understood the concerns expressed regarding paragraph 1(c). However, the second sentence was important for his delegation and should be retained or reflected somewhere else.

19. The Chairperson felt that the Working Group was very close to an agreement. The proposal made by the representative of Uruguay could alleviate the concerns expressed with respect to paragraph 1(c). The second and third sentences of this paragraph were on record in his introductory statement and could be deleted from the text. He proposed that Members consider adopting the work programmes on an *ad referendum* basis, which meant that the text would be adopted, unless any Member(s) objected to it within one week from that meeting. The text proposed for adoption was contained in JOB(02)/82/Rev.1, with the modification proposed by Uruguay on paragraph 1(c), i.e. the second and third sentences of that paragraph would be deleted, and the words "under each negotiating mandate" would be inserted at the end of the first sentence. The one-week deadline would allow the Working Party to take advantage, for any further consultations, of the services week, should it be necessary.

20. The representative of Mexico said that the Working Party was very close to achieving a result. Paragraph 1(c) would be acceptable with the modification suggested by Uruguay. In the absence of any objection, the text could be agreed on an *ad referendum* basis. The representative of the Philippines also said he could support the *ad referendum* procedure.

21. The representative of Uruguay said that, with some flexibility, the text could be adopted at this meeting. He proposed to include a reference to feasibility and desirability in the new paragraph 1(c), so as to take into account the concern expressed by the United States with respect to the proposal his delegation had just made. Thus, a reference to "including the question of feasibility and desirability" could be inserted into the first sentence, between the words "work" and "should". The representative of the United States said that his delegation could accept this suggestion.

22. The representative of Switzerland sought further clarification concerning the *ad referendum* procedure. A representative of the Secretariat replied that the *ad referendum* procedure was used when, although there was no complete consensus, Members were very close to agreeing on a text. The *ad referendum* procedure provided a period of time during which those delegations which might still be in doubt as to whether they could join the consensus, could come back and notify the Secretariat that they were not able to join the consensus. In such a case, the *ad referendum* adoption of the text would be void and the Working Party would go back to the status quo, i.e. a draft instead of an adopted work programme. The Chairperson had suggested that Members would have one week, i.e. until Monday 22 July, for expressing any objection to the text. The representative of Switzerland said that his delegation could go along with this procedure.

23. The Chairperson clarified that the text he submitted to the *ad referendum* adoption procedure was the text contained in JOB(02)/82/Rev.1, with a new paragraph 1(c) which would read: "The undertaking of individual items of work, including the question of feasibility and desirability, should be without prejudice to each other under each subject of negotiations".

24. The Working Party adopted the work programme in JOB(02)/82/Rev.2, as modified, *ad referendum*.

B. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X OF THE GATS)

25. The Chairperson invited delegations to give further consideration to the Communication from the European Communities and Their Member States on *Modal Application of an Emergency Safeguard Measure* (S/WPGR/W/38), as well to the Communication from Australia on *Elements for a Possible "Core Mechanism" for Temporary Suspension or Modification of Commitments* (JOB(02)/8).⁵ Delegations might also wish to continue their comparison of the various approaches on the table with a view to identifying possible common elements. In this regard, delegations might give some thought to what they would see as possible outcomes from a broader perspective, taking into account not only their standpoints, but also the views and positions expressed by other Members. He proposed that this discussion take place in informal mode.⁶

26. The representative of Australia said that the informal communication presented by her delegation in JOB(02)/85 reflected the intervention she had made at the informal meeting of 3 June. A few major points needed to be emphasised. The two models had been discussed, at least in general terms, and this discussion should not be repeated. The Australian model was based on less prescriptiveness and more accountability, and would allow Members in genuine emergency situations to take corrective action by temporarily suspending the commitment that was causing the emergency. A number of delegations had suggested that it might be useful to seek a compromise that would be broadly acceptable to all Members. Her delegation had suggested that a possible compromise could lie in a strengthened CTS role, somewhere between the two models suggested. The CTS role should have enough "teeth" to discourage abuse, while allowing Members facing genuine difficulties to take temporary remedial action without having to obtain explicit CTS approval. Australia had found that most of the elements of the Synopsis either clearly applied or were not relevant to the core mechanism. For example, points A to H of the Synopsis could be dealt with expeditiously since both Australian models dealt with these issues in a fairly extensive fashion and made clear whether they were applicable or not. It might, however, be useful to focus efforts on process-related issues (point I of the Synopsis), where the two models centered on guidelines and disciplines aimed at upholding good faith and creating a credible and effective mechanism for dealing expeditiously with the temporary suspension of commitments. There were a number of remaining questions, the main ones being the duration of the process once the CTS was notified and the precise role of the CTS. Notification and surveillance were important issues, which were addressed in points 1 to 5 of JOB(02)/85. But the key issue that had to be resolved *a priori* was whether a Member had an absolute right to suspend a commitment. At the next meeting, Members could focus on the issue of absolute right, and the Working Group might well conclude that Members did have a qualified right to suspend commitments in certain conditions. She was unsure, however, what these conditions would be. After having reached some understanding on this issue as soon as possible, Members would be ready to move on to the next step, which was designing a mechanism or procedure governing Members' temporary suspension of their commitments. She urged Members to avoid falling back into the trap of losing sight of the forest for the tree, in other words in getting bogged down in irrelevant details or in details that were not going to lead to anything practical. The focus should be on

⁵ See also Communication from Australia on *Questions raised at the informal meeting of the Working Party on GATS rules held on 12 February 2002*, JOB(02)/9, 13 February 2002.

⁶ See *Summary of Comments Made During the Meeting of 3 June*, JOB(02)/96.

designing a practical and workable mechanism and, then, on looking at the respective roles of the invoking Member and the CTS. Under the core mechanism proposal, Australia had spelt out quite clearly the role and the disciplines on the invoking Member, but had not managed to do so for the role of the CTS, mainly because there were too many outstanding questions in terms of process.

C. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV OF THE GATS)

27. The Chairperson invited delegations to continue their general exchange of views on subsidies. He noted that, on 12 July, an informal paper had been circulated by the delegations of Argentina, Chile and Hong Kong, China (JOB(02)/84) and invited the delegation of Chile to introduce it.

28. The representative of Chile recalled that the primary objective was to increase transparency in the area of subsidies, so as to comply with the mandate contained in Article XV and with paragraph 7 of the Negotiating Guidelines. Against this background, Chile, together with Argentina and Hong Kong, China presented a simplified questionnaire, which was based on the 1997 questionnaire circulated in document S/WPGR/W/16, to which only four Members had responded so far. Various Members had considered at the time that it was difficult to respond to the questionnaire, because there was no agreed definition for subsidy in services and the questions were too detailed. The new informal paper suggested that the definition contained in the Agreement on Subsidies and Countervailing Measures (SCM Agreement) be used as a working basis, but Members might use any other definition of subsidy, as long as it was specified. Argentina, Chile and Hong Kong, China had kept only five of the ten questions in S/WPGR/W/16, and had simplified them. It was important to obtain replies, even if, in a first round, the level of precision was not very high. What mattered was to increase transparency in services subsidies. This was particularly important at the beginning of a market access negotiations.

29. The Chairperson welcomed this new contribution which would allow to continue the debate on the need for more and improved information on services subsidies. He recalled that, at the last meeting, delegations had addressed issues such as scope, modalities, problems encountered, results achieved – or not achieved – in this information exchange to date. It had also been suggested that Members might provide information on subsidies they encountered in other markets, without identifying the trading partner(s) concerned. Moreover, several Members had suggested that the Chairperson's Checklist on Subsidies (Job No. 4519/Rev.1) be revised. He was ready to consider such a revision, should Members so wish, but concrete proposals were needed.

30. The representatives of the Republic of Korea, Canada, the United States, Mexico, Uruguay, Canada thanked Argentina, Chile and Hong Kong, China for the written contribution.

31. The representative of Hong Kong, China recalled that the Working Party had a mandate to fulfill on subsidies and hoped that this simplified questionnaire in JOB(02)/84 would help Members to address seriously the issue of subsidies.

32. The representative of the Republic of Korea said that the proposed simplified questionnaire represented a good start to gather information on subsidy programmes. At the last meeting, his delegation had suggested that the Secretariat update its note on information contained in WTO Trade Policy Reviews (S/WPGR/W/25), and undertake a compilation of subsidy-related information found in the various sectoral proposals. This information would be very helpful to facilitate discussions.

33. The Chairperson recalled that, at the last meeting, the Working Party had an inconclusive discussion on the background work that the Secretariat could usefully undertake under this agenda item. Having addressed this issue in his informal consultations, he understood that there was no objection to ask the Secretariat to update its background note on information contained in WTO Trade Policy Reviews (S/WPGR/W/25 and Addenda).

34. The representative of Canada said that the simplified questionnaire proposed in JOB(02)/84 did not seem to make it less difficult for Members to notify relevant subsidies in services. Fundamental questions remained, such as how to define a subsidy. Moreover, it was not clear whether governmental assistance to service sectors was trade-distortive. He asked further clarification with respect to the sentence, in paragraph 4, that the existence of subsidies in different markets was "relevant". The representative of Chile said that the information exchange under Article XV covered all subsidies, not only trade-distortive ones. In a second instance, the Working Party could examine the nature of the subsidies and address the various questions in the Chair's Checklist. Chile was ready to participate in market access negotiations, but wanted to be assured that its market would not be distorted by subsidies granted in other markets; this was the message that the word "relevant" tried to convey.

35. The representative of the United States said that the purpose of the discussion was to look at the need for any possible new disciplines to address trade-distortive effects of subsidies. He wondered how the Secretariat could distinguish between trade-distortive and non trade-distortive subsidies in collecting information contained in TPR reports. If the Secretariat did not make that distinction, then the undifferentiated information was not really helpful for the discussion under Article XV. A representative of the Secretariat said that the initial demand for this compilation had been triggered by the feeling that, as the information exchange under Article XV was not taking off, there was a need to find a substitute. As indicated in relevant disclaimers to documents S/WPGR/W/25 and its Addenda, the Secretariat never attempted to propose whether a given subsidy was trade-distortive or not. It was up to Members to make this judgement.

36. The representative of Mexico said that TPR reports did not allow to tell whether a subsidy was trade-distortive and it was up to Members to judge that. The informal paper by Argentina, Chile and Hong Kong, China in JOB(02)/84 contained useful ideas on what to do before discussing the need for new disciplines. It would be useful if the Secretariat could update its compilation of TPR-related information.

37. The representative of the Republic of Korea said that factual information provided by the Secretariat, such as updating information contained in TPR reports and compiling relevant elements in sectoral proposals, could be considered as part of the information exchange in Article XV, which concerned all subsidies. This was a first step which should not pose difficulties.

38. The representative of Uruguay said that there were two sources of information for subsidies. First, the information contained in TPR reports was interesting and did not prejudice whether these subsidies were trade-distortive. Second, Members could provide information on the subsidies they found in notifications or in legislations. He wondered whether the replies to the simplified questionnaire proposed in JOB(02)/84 would be given on a voluntary basis.

39. The representative of Canada enquired whether the information contained in TPR reports was based on the notifications made under Article 25 of the SCM Agreement. Should this be the case, the information would have to be read in the particular context of the SCM Agreement, in the light of the definition contained in Article 1 of that Agreement. It was important to keep in mind the distinction between trade-related and trade-distortive subsidies. Moreover, some subsidies might concern goods, but had no relevance for services. A representative of the Secretariat said that TPR reports were based on any information available. They did not distinguish between trade-distortive and non trade-distortive subsidies, nor did they necessarily indicate whether the objective of the subsidy was trade-related or, say, social.

40. The representative of Argentina said that the purpose of the simplified questionnaire was to comply with the information exchange, but not to decide whether subsidies were trade-distortive or not. He trusted that all delegations, and in particular those who traditionally emphasised the need for

transparency, could support the approach proposed in JOB(02)/82. The representative of Chile said that it was up to each Member to decide whether to reply to the simplified questionnaire.

41. The Chairperson understood that there was a general feeling among Members that more information was needed. Such information could come from Members and the Secretariat. Members were invited to give consideration to the simplified questionnaire proposed by Argentina, Chile and Hong Kong, China. The Secretariat would undertake to update its note on TPR-related information for the next meeting of the Working Party, on the same basis as in the past.

D. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII OF THE GATS)

42. The Chairperson invited delegations to continue their general exchange of views on government procurement. He noted that, on 11 July, the European Communities and their Member States had circulated a communication on government procurement of services (S/WPGR/W/39).

43. The representative of the European Communities said that the communication in S/WPGR/W/39 underscored the size of government procurement markets, as well as the particular interest developing countries would have to liberalise this sector. The EC proposed to make the best use of the flexibility provided by the GATS and to discuss the implementation of a number of general principles applying to services, and, where necessary, the possibility of choosing which sector could be opened up. In other words, each Member would be free to undertake commitments where it would be in its interest and have the possibility of opening up on a partial basis, indicating which restrictions were maintained.

44. The Chairperson recalled that, at the last meeting, Members had exchanged views on the scope of the mandate contained in Article XIII. The *Annotated Agenda* prepared for this meeting identified some references to previous discussions on the issue of the mandate, which had been first raised at this Working Party in July 2000.

45. The representatives of Chile, Japan, Canada, Venezuela, India, Philippines, Mexico, Peru and Pakistan thanked the European Communities for the communication.

46. The representative of Chile said that her delegation was aiming at the best effective access to procurement markets. In Chile, government procurement was open and transparent. Her delegation could share the objective of the EC proposal to do away with unnecessary restrictions, increase transparency and achieve simplified procedures. She enquired what the EC position was with respect to thresholds, since this issue was not mentioned in the EC communication; yet, it was an important one. Secondly, the relationship between the MFN principle and the Agreement on Government Procurement should be specified. Thirdly, more information was needed on the linkage between development of general disciplines (Section A) and sectoral disciplines (Section B).

47. The representative of Japan noted that the EC communication made a reference, in Section A, to the need for consistency between this Working Party and the Working Party on Transparency in Government Procurement (WGTGP). He enquired how the European Communities intended to ensure this consistency. Japan was open to a discussion on sector-specific rules, but would be interested in having more details on the kind of issue that should be addressed in this context. Japan had particular interest in the sectors of construction, engineering and architecture, and, in the light of further explanations from the EC, might want to submit an own contribution. Section C, dealing with commitments was ambitious, but, given the importance of government procurement in trade in services, the Working Party should work towards this objective.

48. The representative of Canada said that the EC communication contained a number of new ideas. His delegation intended to come back to it at future meetings.

49. The representative of Venezuela said the negotiations should be driven by contributions from Members. The European Communities had announced on several occasions in the past that it intended to deepen this issue. As the document was not available in Spanish, it had not been possible for her delegation to analyse it. Venezuela was prudent since procurement of services was an important aspect of development policies, and should remain so. She noted that paragraphs 8 and 15 of W/39 acknowledged that flexibility was necessary for developing countries in order to take into account national policy objectives. A mere liberalisation of markets might bring benefits, but would need to be complemented by adequate policies. She enquired which criteria had been used by the European Communities to select the various sectors referred to in paragraph 13, and whether only those sectors should be discussed.

50. The representative of India recalled that he had indicated the position of his delegation on the scope of the mandate contained in Article XIII at the last meeting, i.e. paragraph 1 of Article XIII exempted government procurement from the application of Articles II, XVI and XVII. The discussion on government procurement should be in accordance with the mandate in Article XIII. Whether transparency and the provisions on domestic regulation applied to government procurement was a matter for discussion. Transparency issues were examined in the WGTGP, which had not yet reached any conclusion. It would therefore be difficult to address the transparency issues raised in W/39. It was India's understanding that Members could not be asked to take more extensive or onerous commitments than what appeared in their schedules.

51. The representative of the Philippines, speaking also on behalf of Malaysia, took note of the direction taken in the EC proposal. Philippines and Malaysia understood, however, that the negotiating mandate under Article XIII included only transparency issues; Articles II, XVI and XVII were outside the negotiations. He expressed concern regarding paragraph 10 of W/39 and wondered how the Working Party could discuss MFN since Article II was excluded from the scope of the negotiations. Section C, which spoke about "access to" and "national treatment" raised similar concerns. The Article XIII mandate was limited to transparency issues.

52. The representative of Mexico did not share the EC view, in paragraph 10 of W/39, on the applicability of various GATS provisions to government procurement. On paragraph 12, he noted that the respective coverage of the various provisions of Article VI remained unclear. He enquired how the European Communities had selected the sectors mentioned in paragraph 13 and said that governments' participation in other sectors, such as energy, telecommunication or audiovisual services was still important in a number of countries. He asked what the difference was between the approach proposed by the EC and the undertaking of commitments under Article XVIII.

53. The representative of Peru said that the mandate in Article XIII covered only transparency-related issues in government procurement. The representative of Pakistan stressed, like others, that Articles II, XVI and XVII fell outside the scope of the negotiating mandate of Article XIII.

54. The representative of the European Communities thanked delegations for their comments and questions. The negotiating mandate in Article XIII did not contain any limitation. The issue of thresholds was important and should be further examined. With respect to the relation between the MFN obligation and its impact on the Agreement on Government Procurement, one could envisage exemptions from this obligation. The list of sectors in paragraph 13 was illustrative and his delegation was open to further suggestions. It might be useful to take one sector of interest to various Members and see which rules could be developed in that particular sectors. The respective mandates of this Working Party and of the WGTGP were different, and it should be possible to continue negotiating in the two bodies, while ensuring consistency. He reiterated that the EC proposal aimed at ensuring a maximum of flexibility, in particular for developing countries, which should be able to open their procurement markets while pursuing national policy objectives.

55. The Chairperson proposed to revert to the EC communication and to continue the general debate on the scope of the mandate under Article XIII. The minutes of past discussions on this latter issue could be found in S/WPGR/M/28 and S/WPGR/M/29.

E. DATE OF THE NEXT MEETING

56. The Chairperson indicated that the next formal meeting of the Working Party was expected to take place during the week of 21 October 2002. The definitive date would be communicated in due time.

F. OTHER BUSINESS

57. Nothing was raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 3 JUNE 2002

Note by the Secretariat¹

1. Mr. Hugo Cayrus, from Uruguay, opened the thirty-seventh meeting of the Working Party on GATS Rules. The agenda for the meeting was contained in WTO/AIR/1803. It consisted of six items: appointment of a new chairperson; negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. He drew attention to the Annotated Agenda (JOB(02)/43, 24 May 2002) that had been prepared by the Chairperson designate, Mr. Thomas Chan, to assist delegations in their preparation for the meeting.

2. The representative of Thailand, speaking on behalf of the ASEAN Members, referred to the extension of the deadline for negotiations on emergency safeguard measures and called on Members to reflect on how to make progress. Work should focus on substantive issues. Nevertheless, a work programme should be established quickly, which should not prejudice future work.

3. The agenda for the meeting was adopted.

A. APPOINTMENT OF THE NEW CHAIRPERSON

4. The Chairperson recalled that, according to the rules of procedure for meetings of the Council for Trade in Services (S/L/15), the hand-over of the chairmanship should have taken place at the end of the last meeting of the Working Party. However, as the Chairman of the Council for Trade in Services had not finalized his consultations on the chairmanships of the subsidiary bodies at that time, it had been decided that the hand-over would take place at the beginning of the following meeting. Accordingly, he proposed that the Working Party elect Mr. Thomas Chan, from Hong Kong, China, as Chairman of the Working Party on GATS Rules.

5. Mr. Thomas Chan was elected by acclamation.

B. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X OF THE GATS)

1. Establishment of a Work Programme

6. The Chairperson informed the Working Party that his consultations on a work programme had revealed much convergence in views among Members. There was a common wish to arrive at a simple, broad and flexible work programme as early as possible, to enable the Working Party to move ahead with substantive work. Members had made many useful suggestions in that regard. At the last open-ended informal consultation, on 29 April 2002, he had made a report on the guiding principles and the suggested elements for the work programme. Members had expressed support for these guiding principles and had indicated that they agreed on, or had flexibility to accept many of the suggested elements. There remained, however, differences in views regarding some elements, which

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

prevented him from putting forward a concrete proposal for the work programme. He proposed, therefore, to continue his consultations with a view to identifying a possible formulation for a work programme, which would be acceptable to all Members. He would then set out in a Chairperson's Note, circulated on his own responsibility, the elements which would hopefully form the basis for a consensus. He stressed that, in his view, delegations were very close to reaching a consensus, and appealed to their flexibility on this matter so that an agreement could be reached as soon as possible. The Working Party took note of this statement.

7. The representative of Thailand, speaking on behalf of the ASEAN Members, said that the ASEAN Members were ready to participate constructively in the consultations on the establishment of a work programme. They hoped that it would be finalized by the next formal meeting of the Working Party. In the meantime, Members should also focus on substantive work.

2. Discussion on substantive issues

8. The Chairperson invited delegations to continue their examination of the Communication from the European Communities and Their Member States on *Modal Application of an Emergency Safeguard Measure* (S/WPGR/W/38, 21 January 2002), as well as the Communication from Australia on *Elements for a Possible "Core Mechanism" for Temporary Suspension or Modification of Commitments* (JOB(02)/8, 13 February 2002). He recalled that the Annotated Agenda circulated for this meeting identified four broad approaches emerging from the various proposals tabled by Members. Based on the elements contained in the Synopsis, Members might wish to compare these four approaches in order to identify main differences as well as possible common elements. In addition, delegations should feel free to raise any other issue relevant for the negotiations on emergency safeguard measures. Any suggestion as to how the Working Party might structure its discussions in the coming months would also be welcome; this was without prejudice to the questions of desirability and feasibility of emergency safeguard measures. He proposed that this discussion take place in informal mode.

9. With respect to future steps, the Chairperson proposed to continue the consultations on a work programme for emergency safeguard measures, with a view to setting out possible elements in a Note to be issued by the Chairperson on his own responsibility. It was so agreed.

C. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV OF THE GATS)

10. The Chairperson said that, in the course of his consultations on a work programme, some Members had indicated an intention or willingness to discuss a programme structuring future work on subsidies. Taking into account paragraph 7 of the Negotiating Guidelines (S/L/93), he encouraged delegations to exchange views on how the Working Party might proceed in the coming months, and on suggestions to establish a work programme. In addition, Members were also invited to continue their general exchange of views on this item.

11. The representative of Chile recalled that the Negotiating Guidelines, stipulated, *inter alia*, that negotiations on subsidies had to be concluded "prior to the conclusion of negotiations on specific commitments". Her delegation proposed that a work programme be established for subsidies, including a timeframe to present submissions, a date for a stock-taking, as well as a report to be presented to the Fifth Ministerial Meeting. The Checklist on Subsidies (Job No. 4519/Rev.1, 6 October 2000) should be revised, in particular point 2. Article XV stipulated that the necessary disciplines be developed to avoid trade-distortive effects of subsidies. However, the exchange of information provided for in the last sentence of Article XV:1 concerned all subsidies, which was important since it would help determine the scope of work. Various background notes by the Secretariat contained information on services subsidies, and four Members had made notifications under a questionnaire circulated in 1997. Her delegation proposed that the Chairperson should

undertake informal consultations by the next meeting with a view to establishing a work programme. She drew attention to document S/WPGR/W/9, which contained a series of interesting questions to be further discussed.

12. The representative of the Republic of Korea supported the proposal to undertake consultations on a work programme for subsidies. The Working Party should focus on information gathering and analysis of the current situation. The Secretariat could do some background work, including an update of its Note on information contained in Trade Policy Reviews² and a compilation of subsidy-related information found in the various sectoral proposals submitted to the Special Session. The Checklist on Subsidies should be revised.

13. The representative of Hong Kong, China supported a work programme for subsidies, as well as a stock-taking at the Fifth Ministerial Meeting. The Working Party could review the references to subsidies found in Members' sectoral proposals to the Special Session.

14. The representative of Argentina supported the proposal to set out a work programme on subsidies, with a review at the Fifth Ministerial Meeting. He agreed with Chile that the Checklist should be revised and recalled that Article XV provided for an information exchange concerning all subsidies related to trade in services. He supported the proposal to update S/WPGR/W/25.

15. The representative of Mexico said that the mandate contained in Article XV to exchange information had not been fulfilled. A work programme should be established, building on the information exchange. The Fifth Ministerial Meeting was an appropriate date for a review. His delegation would like to participate in the consultations by the Chair.

16. The representative of Canada recalled that a questionnaire had been established in 1997 in order to fulfill the mandate of Article XV to exchange information (S/WPGR/W/16). However, very few Members had responded. Her delegation still considered that Members should first try to respond to this questionnaire before envisaging the next step.

17. The representative of the European Communities indicated that her delegation intended to make a similar proposal for a work programme on government procurement under the next agenda item. She suggested that the consultations to be undertaken by the Chair for the two issues be linked.

18. The representative of the United States said that his delegation needed a better understanding of the concerns expressed by those Members who were requesting a work programme on subsidies, in particular where, in their view, new disciplines were needed and what their objective should be. He pointed out the existing questionnaire, in respect of which his delegation had expressed its views. He requested further clarification regarding the proposed timeframe for submissions and the idea of having a stock-taking at the next WTO Ministerial Meeting.

19. The representative of Chile replied that the purpose of the transparency exercise was to gain a better understanding on existing subsidies with a view to, perhaps, classifying them. Some kind of status report or progress report could be prepared on the occasion of the Fifth Ministerial Meeting. Informal consultations could be organized with a view to reconsidering the Checklist.

20. The representative of the United States said that his delegation's understanding of Article XV was that the Working Party's mandate was limited to addressing trade-distortive subsidies, and not all subsidies. Members having information on trade-distortive subsidies should share it in order to help focus the debate. The representative of Chile agreed that Article XV mandated to negotiate the necessary disciplines to avoid trade-distortive effects of subsidies, but noted that the information

² S/WPGR/W/25 + Add 1 and 2.

exchange referred to in the last sentence of paragraph 1 of Article XV concerned all subsidies. On the basis of the information gathered with respect to all subsidies, the Working Party might then be able to identify subsidies having trade-distortive effects.

21. The representative of Venezuela recalled that the mandate referred to the "necessary" disciplines to avoid trade-distortive effects. Any information in this respect would be useful. She drew attention to the fourth sentence of Article XV:1, which stipulated that negotiations should recognize "the role of subsidies in relation to development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area".

22. The representative of Pakistan agreed with Chile that the information exchange concerned all subsidies. Identifying the subsidies that had a trade-distortive effect entailed subjective judgement.

23. The representative of Paraguay supported the proposal for establishing a work programme and stressed the importance of the information exchange to increase the level of transparency.

24. The representative of Brazil said his delegation was open to any suggestion which would contribute to moving the discussion ahead on this subject-matter. The exchange of information was a prerequisite for further work and covered all subsidies. The necessary disciplines to be established would then address only subsidies with trade-distortive effects, and a definition would be required for this latter concept. In the past, the Working Party had already addressed various interesting issues under this agenda item and it might be useful to refer to reports of past discussions.

25. The representative of Ecuador supported Chile's proposal to establish a work programme. More information was needed on subsidies. Ecuador did not grant subsidies to its producers, but considered that subsidies were a problem in services trade.

26. The representative of Canada added that very few Members had replied to the 1997 questionnaire on subsidies, mainly because they did not know what kind of information should be included. There was no agreed definition of "subsidy", let alone of "trade-distortive" subsidy. Addressing all subsidies was too big an exercise and delegations needed to determine a focus. It could be more useful to discuss the five points contained in the Checklist.

27. The representative of Peru supported the proposal for a work programme, including a stock-taking. Transparency was fundamental in this area and the information exchange in Article XV encompassed all subsidies. It was important to agree on common criteria to define the concepts of "subsidy" and "trade-distortive".

28. The Chairperson noted that various suggestions had referred to the need for gathering information. In that regard, submissions by Members on issues related to subsidies were welcome and could form the basis for further work. Information on subsidies in services should come primarily from Members. Only four Members had responded to the 1997 questionnaire so far. More responses would be welcome. He further suggested that the Secretariat update the background note on information contained in WTO Trade Policy Reviews (S/WPGR/W/25 and Addenda) and undertake to compile subsidy-related information contained in the sectoral proposals presented by Members to the Special Session. He was prepared to review the Checklist on Subsidies (Job No. 4519/Rev.1) and would wait for Members' concrete proposals in this respect. A representative of the Secretariat added that, following a proposal made by a delegation some time ago, Members might also want to consider providing information on subsidy problems encountered in third markets, without identifying the trading partner(s) concerned.

29. The representative of Pakistan enquired what kind of information would be included in the background note on information contained in WTO Trade Policy Reviews. His delegation needed to further reflect on the implications of such a Note. A representative of the Secretariat replied that S/WPGR/W/25 and its Addenda contained information found in individual Trade Policy Review reports, on a sector-specific basis. Since these reports were not meant to address specifically subsidy issues, TPR-based information did not necessarily provide a comprehensive picture, nor allow judgement on whether those subsidies had trade-distortive effects or not. The Secretariat had made this clear in its previous overviews. With respect to the compilation of subsidy-related information contained in sectoral proposals, the representative of the United States suggested that, in order to ease the Secretariat's task, Members should let the Secretariat know what information they wanted to be included. According to the representative of Canada, it was up to each individual delegation to examine subsidy-related information in sectoral proposals and to bring it to the attention of this Working Party.

30. The representatives of Hong Kong, China enquired why it was problematic to compile the information contained in the sectoral proposals, since they were already public. The representative of Mexico said he had difficulties to understand why some delegations objected to the Secretariat compiling existing information. The representative of Brazil noted that the background note on TPR-related information had already been updated twice and asked why it was problematic to undertake a third update.

31. The representative of Pakistan said that his delegation needed to reflect whether this would set a precedent with systemic implications. He had doubts about the modalities and the ultimate objective of addressing the Article XV mandate via TPR-reports. The representative of the United States said that the purpose of the consultations to be undertaken by the Chair should be to come up with a full approach for a work programme; TPR-based information could be an element.

32. The Chairperson noted that no Member opposed the suggestion to establish a work programme for subsidies. He would, therefore, include this issue in his consultations, with the objective of setting out possible elements which would be included in a Chairperson's Note circulated on his own responsibility. Noting Members' wish to discuss certain suggestions for work which might usefully be undertaken by the Working Party in the coming months, he proposed that these issues be addressed as well during the consultations. No request for documents would be made to the Secretariat for the time being. It was so agreed.

D. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII OF THE GATS)

33. The Chairperson said that, as in the case of subsidies, some Members had indicated an intention or willingness to discuss a programme structuring future work on government procurement. Members were, therefore, invited to exchange views on how the Working Party might proceed on this item in the coming months, and to make suggestions for a possible work programme. Members were also encouraged to continue their general exchange of views on this item.

34. The representative of the European Communities recalled that the Negotiating Guidelines provided that negotiations on government procurement in services should be completed prior to the conclusion of negotiations on specific commitments. Substantive discussions on this issue should start in the coming weeks, and the Working Party needed to structure its work under this agenda item. The European Communities wished a work programme to be established for government procurement, which could include a call for Members to make submissions and provide for a stock-taking in March 2003. The report that the Working Party would present to the Fifth Ministerial Meeting should include a section on government procurement. He said that government procurement represented more than fifty per cent of activities in certain services sectors, some of which were of particular interest to developing countries. The absence of multilateral disciplines in government

procurement was particularly problematic for these sectors. The European Communities intended to work actively on this issue in the Working Party and was ready to discuss with interested delegations their specific interests. Informal consultations might be needed.

35. The representative of India took note of the suggestion made by the European Communities. He proposed to discuss the scope of the mandate contained in Article XIII before undertaking substantive work. In his view, Articles II, XVI and XVII were excluded from any negotiations on disciplines for government procurement in services. His delegation wished to participate in informal consultations.

36. The representative of Chile supported the proposal to establish a work programme on government procurement. Her understanding of Article XIII was that Articles II, XVI and XVII did not apply pending the entry into force of negotiated disciplines, which did not mean that these provisions were excluded from the scope of the negotiating mandate. She enquired whether the Secretariat could give some indications on the intentions of the drafters of Article XIII.

37. A representative of the Secretariat said that this point had already been debated, but no conclusion had been reached. The Secretariat could undertake some research by looking at minutes of past meetings.

38. The representative of Peru supported the interpretation given by the delegation of India with regard to the scope of the mandate. Article XIII did not mandate market access negotiations for government procurement. His delegation was ready to participate in consultations on a work programme.

39. The representative of Pakistan agreed with the delegations of India and Peru. His delegation could agree that a work programme be established for government procurement. The work programmes for the three issues under consideration in this Working Party should be included in a single document.

40. The representative of Mexico agreed that a work programme for government procurement be discussed during the consultations on the work programme for emergency safeguard measures and subsidies. With respect to the scope of the mandate, his delegation considered that Articles II, XVI and XVII were not applicable to government procurement and, therefore, were outside the negotiations. Consultations should not go beyond the scope of Article XIII.

41. The representative of Venezuela agreed with the delegation of Mexico. Venezuela was ready to take part in consultation on a possible work programme, which should not go beyond the purview of Article XIII. No actual request had been made to the Secretariat to prepare any material under this agenda item. She could not support a request for a Secretariat's note on the historical background, but only a list of existing contributions by Members. The outcome of this negotiation should not be prejudged.

42. The representative of Uruguay said that the undertaking contained in doc. S/C/W/205/Rev.1 to establish a work programme concerned only emergency safeguard measures. Nevertheless, his delegation considered it made good sense to establish a work programme for subsidies and government procurement as well. Should the Secretariat be asked to undertake background work, it could only be a list of documents containing relevant contributions and discussions. The Secretariat should not be put in the difficult situation of having to make contributions which should come in fact from delegations.

43. The representative of Indonesia supported the statements made by the delegations of India, Peru and others. Before starting consultations on a work programme, his delegation would like to know what elements would be discussed.

44. The representative of Switzerland said that consultation on a work programme for government procurement should not prejudice the outcome of the negotiations. It would be more efficient to have one work programme encompassing the three issues under consideration in the Working Party. With respect to Article XIII, it might be worthwhile to go beyond the actual text and look at the preparatory work. Article XIII:1 might mean that, except for Articles II, XVI and XVII, all other GATS provisions already applied to public procurement. Pursuant to such an interpretation, what remained to be negotiated would be precisely Articles II, XVI and XVII.

45. The representative of Chile considered that the legal commitment in doc. S/L/W/205/Rev. 1 to establish a work programme concerned the three agenda items of the Working Party. The Negotiating Guidelines also mandated the completion of the negotiations on subsidies and government procurement. Her delegation would be ready to envisage some work from the Secretariat on this issue, such as a compilation of minutes. She noted that a list of documents already existed for this Working Party.

46. The representative of Canada said it was encouraging to see that delegations started to look at this issue. His delegation could agree that the Secretariat prepare a factual background document but work should otherwise be Member-driven. Consultations on a work programme should not prejudice the outcome of the negotiations. A work programme should not prevent Members from presenting submission at any time.

47. The representative of the European Communities welcomed the readiness of Members to discuss a work programme for government procurement. Looking at the minutes of the last meeting, he understood that the Chairperson was requested to carry out consultations to establish a work programme for the three issues. He agreed that it should not prejudice the outcome of negotiations. Limiting the scope of discussion would amount, however, to prejudging the outcome. The mandate in Article XIII:2 did not contain any limitation of the negotiating mandate. While paragraph 1 of Article XIII exempted government procurement from the application of Articles II, XVI and XVII, other GATS provisions did apply to government procurement.

48. The representative of Argentina said that no contribution from the Secretariat was needed for the time being. Any future contribution should be discussed within the overall framework for the negotiations, where it could be adjusted to the work programme Members might agree on.

49. The representative of Brazil said that the discussion on the scope of Article XIII mandate had a strong taste of "déjà vu". His delegation was ready to discuss it again, although this might not be very productive. Defining a work programme seemed to be the task at hand, and Brazil wished to associate itself with the statement made by Uruguay.

50. The representative of the United States said that his delegation was ready to consider work programmes for the issues of subsidies and government procurement, with the understanding that they should not prejudice the outcome of the negotiations. Since some progress had already been made in the discussions for a work programme on emergency safeguard measures, it might not necessarily be helpful to pursue one single work programme for the three issues. The scope of the mandate in Article XIII was ambiguous, and different interpretations might be possible. A detailed debate could be useful at a later stage.

51. The representative of Mexico said that Article XIII indicated that Articles II, XVI and XVII did not apply. Whatever was agreed to in negotiations under paragraph 2 of Article XIII would thus

not be applicable to these provisions. There was no consensus for the time being to ask anything from the Secretariat. Any Member could make any contribution at any time. There was a need for concrete propositions in order to be able to establish a work programme.

52. The Chairperson noted that, while no Member was opposed to establishing a work programme for government procurement, some delegations had raised the need to look at the elements which might be included. He proposed to address the issue of a work programme for government procurement in his consultations, including possible elements for such a work programme. The outcome would be set up in a Chairperson's Note to be circulated on his own responsibility. He remarked that the work programme should not prejudge the result of the negotiations and, in that sense, it might not be advisable to debate the scope of the mandate in this context.

E. DATE OF THE NEXT MEETING

53. The Chairperson indicated that the next formal meeting of the Working Party was expected to take place during the week of 15 July. The definitive date would be communicated in due time.

F. OTHER BUSINESS

54. Nothing was raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETINGS OF 13 AND 15 MARCH 2002

Note by the Secretariat

1. The Working Party on GATS Rules held its thirty-sixth meeting under the chairmanship of Mr. Hugo Cayrus, from Uruguay. The agenda for the meeting was contained in WTO/AIR/1727. It consisted of six items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; other business; and appointment of a new chairperson. The agenda for the meeting was adopted.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

1. Extension of the deadline for negotiations under GATS Article X

(a) Session of 13 March 2002

2. The Chairperson recalled that the deadline for negotiations under GATS Article X would expire on 15 March 2002. Over the last two months, he had held several bilateral, plurilateral and multilateral consultations with delegations, the aim being to reach a consensus on an extension of the deadline. The main points of view raised in these consultations were as follows: (i) several delegations had expressed their frustration at the need to extend the deadline for a fourth time; other delegations, however, felt that progress had been made in the discussions; (ii) certain delegations had said that this should be the last extension of the deadline; (iii) in principle, no delegation had communicated any opposition to extending the deadline; (iv) however, different opinions had been expressed as regards the length of the extension. Some delegations were in favour of a date close to the end of the negotiations, whilst other delegations favoured a short extension (e.g. one year). Alternatives had been put forward, such as extending the deadline until the WTO's Fifth Ministerial Conference or until March 2004. Other delegations meanwhile expressed their flexibility as regards the date of the extension, but had said that there should be a progress report or a "stocktaking" of the progress made, at the Fifth Ministerial Conference. Some delegations also had made reference to establishing a work programme for these negotiations in the Working Party. The consultations had led him to the following conclusions: the two opinions at opposite extremes (i.e. a one-year extension or an extension until the end of the negotiations) should be ruled out because it was impossible to reach a consensus on either one. Moreover, several delegations supported the idea of the final deadline for negotiations on safeguards coinciding with the future Fifth Ministerial Conference, but other delegations were equally strong in expressing their opposition to this idea; so at present it was clear that there was no consensus on extending the deadline up until the Fifth Ministerial Conference. He recalled that, should no consensus be found, the mandate of the negotiations on emergency safeguard measures would end.

3. He reminded Members that, at the informal meeting of the Working Party on 7 March, he had put forward a proposal which attempted to take into account, as much as possible, the different stances taken by delegations. This proposal comprised the following items: a decision to extend the deadline until 15 March 2004, which would be accompanied by a communication from the

Chairperson containing two additional elements: (i) a reference to the Fifth Ministerial Conference in 2003 as an opportunity to carry out a "stocktaking" of the progress made in the negotiations, and (ii) a reference to the possibility of a work programme in order to structure the Working Party's future activities in this field. At the meeting on 7 March, many delegations had indicated that this proposal was acceptable. Other delegations, however, had withheld their opinion in order to consult their capitals. The proposal had then been faxed on 8 March 2002 to each delegation in the three official languages. He stressed that this proposal was the result of what the Chairperson had been able to identify as a possible solution leading to consensus on this issue.

4. A representative of the Secretariat apologised for the premature distribution of document S/C/W/205, containing the Communication from the Chairperson of the Working Party and the Draft Decision on the extension of the deadline. This document, which had been prepared to be circulated at the beginning of the meeting of the Council for Trade in Services, had been circulated by mistake in this Working Party.

5. The representatives of the European Communities, Thailand, on behalf of ASEAN, Mexico, Brazil, Canada, New Zealand, Paraguay, Mauritius, Argentina, the Republic of Korea, Japan, Chile, Poland and Turkey thanked the Chairperson for the efforts he had made in attempting to find a consensus on the extension of the deadline.

6. The representative of the European Communities said that reaching a decision on this matter had been difficult. Her delegation could now accept the draft transmitted by the Chairperson on 8 March. The representative of Thailand, on behalf of ASEAN, recalled that ASEAN attached great importance to the issue of emergency safeguard measures. ASEAN greatly appreciated the efforts made by the Chairperson and was aware of the urgency of the matter. A successful conclusion of the negotiations under Article X would have a bearing on the overall services negotiations. ASEAN had difficulties with the proposal made by the Chairperson and wished to have more time to consult in order to come up with a positive solution. The representative of Mexico said that the proposal made by the Chairperson was the result of an intensive process of consultations. Although it was not Mexico's preferred option, his delegation was ready to accept this proposal.

7. The representative of Brazil said that the issue of emergency safeguard measures was important to his delegation. There seemed to be no objection to the idea of prolonging the negotiating deadline, which was now the main objective of the Working Party. The extension of the deadline should be kept separate from the idea, raised by some delegations, of conditioning availability of an ESM on achieving a higher level of liberalisation. Brazil wished to avoid a scenario where there would be no ESM and no meaningful liberalization. In fact, Members should aim at having both an ESM and meaningful liberalisation.

8. The representative of Canada said his delegation could support the proposal made by the Chairperson. It was a well-balanced and carefully crafted text. The representative of New Zealand said that, although it did not fully reflect New Zealand's interests, the proposal of the Chairperson represented the best possibility for reaching a consensus. It was now time to go back to substantive work. The representative of Paraguay said that his delegation had shown flexibility during the consultations with the objective of finding a consensus on the extension of the deadline. He was concerned about the possible adverse effects of an eventual failure to reach a consensus on this issue. The representative of Mauritius said that the Working Party had come a long way and was close to a solution. A decision should be made as soon as possible. The representative of Argentina said that the proposal made by the Chairperson was balanced and took into account the different positions which had been expressed on this issue. It was important to continue working on an ESM.

9. The representative of the Republic of Korea said that, although it did not reflect Korea's preferred option, the draft proposed by the Chairperson was balanced and his delegation was ready to

join the consensus to adopt it. It was now time to revert to substantive issues. The representative of Japan said that his delegation had difficulties with the subject of emergency safeguard measures, but was nevertheless ready to join the emerging consensus on the basis of the proposal made by the Chairperson. The representative of Chile said that, like others, his delegation was ready to agree to the text proposed by the Chairperson. Chile still remained to be convinced of the necessity to include an ESM into the GATS, but was nevertheless ready to continue working on this matter. The representative of Poland supported the proposal made by the Chairperson. A period of two years should be sufficient for Members to reach an agreement on safeguard measures. The representative of Turkey said his delegation could support the proposal made by the Chairperson.

10. The Chairperson called for all delegations' flexibility on this issue. He said that the formal meeting of the Working Party would resume on Friday 15 March, at 9 a.m. In the meantime, he would ensure that all delegations would be kept informed of new developments.

(b) Session of 15 March 2002

11. The Chairperson resumed the meeting of the Working Party. He reminded delegations that, during the meeting of 13 March, a number of delegations had indicated that they were ready to accept the proposal he had made on 8 March 2002 regarding the extension of the deadline under GATS Article X. Some delegations, however, had asked to suspend the meeting in order to continue consultations on this matter. On 14 March, he had sent a fax to all Members, inviting them to an informal meeting on the same day, at 6 p.m. He had attached to the fax a proposal by Thailand, on behalf of the ASEAN Members, whereby the second sentence of paragraph 2 of the Communication from the Chairperson would read: "The Chairman will carry out consultations to establish a programme structuring future work of the Working Party". In the informal meeting of 14 March, no delegation had opposed the change proposed by ASEAN. Consequently, he proposed to modify his original proposal in order to take into account ASEAN's suggested text. The date of 15 March 2004 stipulated in the draft Decision would remain unchanged. The draft Decision, as well as the Communication from the Chairperson, would be transmitted to the Council for Trade in Services for approval.¹

12. It was so agreed.

2. Discussion on substantive issues

13. The Chairperson said that, since its last formal meeting, the Working Party had held two informal meetings – 17-18 January 2002 and 12 February – which had allowed a debate on various written communications:² *Communication from Cuba, Guatemala, Honduras, Nicaragua and Dominican Republic*, JOB(01)/166; *Communication from the European Communities and Their Member States*, S/WPGR/W/38; and *Communication from Australia*, JOB(02)/8 and JOB(02)/9.

14. The representative of the European Communities recalled that the Communication contained in S/WPGR/W/38 had been presented during the informal meeting of 12 February. Her delegation was interested to hear delegations' views on this paper. She requested that S/WPGR/W/38 be derestricted.

¹ See document S/C/W/205/Rev.1.

² The reports of these meetings are contained in documents JOB(02)/2 and JOB(02)/14.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

15. The Chairperson said that, in the absence of new contributions, delegations were invited to address the issue of subsidies on the basis of the Chairperson's Checklist contained in Job No. 4519/Rev.1 (6 October 2000). Delegations could comment on any point of that list.

16. The representative of Argentina said that his delegation was interested in substantive discussions. Work on this subject should continue.

17. The representative of Brazil said that this agenda item was important and work should be carried on in the coming months. Trade-distortive effects of subsidies were a matter of concern. In its communication on construction services and related services (S/CSS/W/113), Brazil indicated that subsidies played a crucial role in restricting access to foreign markets by developing country firms and proposed that that this issue be addressed in the negotiations in the context of the development of horizontal disciplines on subsidies under Article XV of the GATS, so as to ensure a level-playing field between developed and developing countries.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

18. The Chairperson proposed that delegations should continue their general exchange of views on any aspect of government procurement of services.

D. DATE OF THE NEXT MEETING

19. The Chairperson indicated that the next formal meeting of the Working Party was expected to take place during the week of 27 May. The definitive date would be communicated in due time.

E. OTHER BUSINESS

20. Nothing was raised under this agenda item.

F. APPOINTMENT OF THE CHAIRPERSON

21. The Chairperson said that, in accordance with the rules of procedure for meetings of the Council for Trade in Services (S/L/15), and which had also been adopted for this Working Party, the election of a new Chairperson was to take place at the first meeting of the year and take effect at the end of that meeting. However, given that the Chairperson of the Council for Trade in Services was still holding consultations on the issue, he proposed that the election of the new Chairperson take place at the beginning of the next meeting. It would be the first item on the agenda of the next meeting.

22. It was so agreed.

Working Party on GATS Rules

REPORT OF THE MEETING OF 28 NOVEMBER 2001

Note by the Secretariat

1. The Working Party on GATS Rules held its thirty-fifth meeting under the chairmanship of Mr. Hugo Cayrus, from Uruguay. The agenda for the meeting was contained in WTO/AIR/1674. It consisted of five items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The agenda for the meeting was adopted.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairperson recalled that the Working Party had held an informal meeting on 23 November to discuss issues related to emergency safeguard measures.¹ He intended to continue this debate in informal mode.² Delegations so wishing could nevertheless make formal statements.

3. The representative of Turkey said that foreign suppliers established in his country were considered as national suppliers, regardless of any foreign equity ceiling. Foreign established suppliers (FES) should therefore be included in the definition of "domestic industry", which would also solve problems related to "acquired rights". Mode 3 should not be excluded from an emergency safeguard mechanism (ESM). Schedules of specific commitments indicated that more restrictions were listed under modes 1 and 4 than under mode 3, which meant that liberalization under the latter mode was more likely to cause injury. As long as "acquired rights" were protected, any Member wishing to take a safeguard measure in order to restrict new entrants should be entitled to do so. There should be a compensation requirement in order to prevent abuse of an ESM. However, in view of the difficulty of implementing and withdrawing compensation, a short period of time should be determined during which no compensation was required. Turkey was in favour of a horizontal ESM because the concept of a scheduled safeguard was not compatible with the unforeseen nature of an emergency situation. There was no basis in GATS Article X to support the argument that safeguards should apply only to new commitments. He noted that the specific commitments referred to in paragraph 2 of Article X, which Members were entitled to modify or withdraw, clearly referred to Uruguay Round commitments.

4. The representative of Brazil said, with respect to the Non-paper presented by New Zealand³, that having to demonstrate the existence of a relevant "circumstance" (unforeseen developments) amounted to introducing a fourth condition. The link made, in the paper presented by the United States⁴, between a safeguard measure and increased liberalization should solve the question of "desirability". Nevertheless, his delegation found it difficult to agree with the conditions proposed by the United States. In fact, the link between an ESM and increased liberalization worked the other way round: Members would feel comfortable having an ESM before making additional specific

¹ See JOB(01)/164.

² See JOB(01)/168.

³ *Situations Justifying an Emergency Safeguard Action*, JOB(01)/146.

⁴ *Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services*, S/WPGR/W/37.

commitments. An ESM should not be limited to new commitments. He enquired what would be the conditions of application of a scheduled safeguard. Without a minimum of agreed conditions, there was a risk of ending up with many different safeguards in different sectors.

5. The representative of Mexico said that "emergency" should be an element to be considered, but should not be a fourth condition. The issue of "desirability" involved political and technical aspects, and both should be considered. Mexico's reading of the US contribution was that an ESM would be less undesirable if it were scheduled, but not that it was desirable per se. He noted that application of an ESM to mode 4 might raise difficult questions. Application to modes 1 and 2 should also be discussed more seriously. Concrete, practical examples might be useful in that context. A full assessment of the potential impact of an ESM, in particular on investments, should be made.

6. The representative of India said that an ESM should apply only to scheduled measures. The application of the concept of "unforeseen developments" would introduce an additional element which, given the problems of statistics in services, might make an ESM unworkable. No mode of supply should be excluded *a priori* from an ESM, but decisions should be made on a case-by-case basis. The definition of "domestic industry" should include only national suppliers. "Acquired rights" of FES should be protected, but this should not entail the right for them to expand. "Acquired rights" under mode 4 should be protected as well. The investigating authority should look actively for all relevant information relating to the establishment of injury, but should retain discretion in establishing the list of relevant criteria. The safeguard measure should take the form of a temporary suspension of specific commitments and should not be more trade-restrictive than necessary. Article 7.4 of the Agreement on Safeguards (AS) could be used as a model. Provisions on special and differential treatment should be included. Transparency and notification requirements were key. Article 13 of the AS could provide a model for a surveillance mechanism.

7. The representative of Australia said that, during the last three years, there had been little progress towards common ground. Members remained far apart on the definitions and elements of an ESM. The same questions and answers were being constantly recycled. Her delegation welcomed the efforts made recently by some Members to explore ways to refocus the debate in more productive directions. Australia was particularly interested in suggestions that Members focus on a procedure to handle possible safeguard actions, rather than on the "desirability" and "feasibility" of a safeguard action itself. The Non-paper by Argentina was a good step in that direction. Australia agreed that, should Members decide that an ESM was desirable – an ESM and not a safeguard action -, such a mechanism should be as simple and as transparent as possible. Her delegation doubted that trying to address every possible issue underlying a safeguard action was the most efficient way to approach the development of a GATS mechanism. If such a mechanism was abused, remedial action would be initiated. Besides, Members could always insert a clause mandating regular review of the effectiveness of the ESM. Referring to the wish of some Members to exclude mode 3 and/or mode 4 from the coverage of an ESM, she wondered whether it would be worthwhile to devote time and efforts to develop a mechanism applying only to modes 1 and 2. It might then be better to develop a horizontal mechanism and let Members decide – if and when a safeguard action took place – whether such action was justified given the circumstances, without predefining in great detail what was justifiable, what were the right circumstances, etc. Not having a mechanism would not necessarily prevent action given the flexibility of the GATS. Without prejudging Australia's position on the issue of "desirability", having a mechanism could, on the other hand, provide a structure to enhance transparency of any safeguard action and to allow for peer review and surveillance. She noted that Article XXI provided for permanent withdrawal of commitments. A similar type of mechanism for temporary withdrawal might perhaps be explored. In any case, the Working Group should aim at a decision on this matter by 15 March 2002, and that decision should then be carried out as quickly as possible so as to allow Members to focus on request/offer negotiations.

8. The Chairperson suggested to turn to the organisation of future work. He informed that, on 19 and 20 November, he had held informal consultations, which had allowed him to hear some thirty delegations on this issue, including on the question of whether or not work should start on a draft text. This issue had also been raised during the informal meeting of 23 November. The result of those consultations was the following: while some delegations would like to start working on a draft text, others considered it was premature to engage in such a work because, in their view, positions were still far apart on some fundamental issues. A third group of delegations had indicated their flexibility. He concluded that there was no consensus for the time being to work on a draft text. He stressed that the process was in Members' hands and that neither the Chairman nor the Secretariat were in a position to move the process ahead. He noted that delegations had made various suggestions on how to pursue discussions on substance, for instance: (i) continue analysis on the basis of the Synopsis and/or the Checklist of issues in order to compare the different approaches (a proposal had been made to revise the Synopsis); (ii) discuss concrete situations in which a safeguard measure might be needed; (iii) deepen understanding on basic concepts; (iv) make an inventory of points where there was convergence of views and points where positions differed. These suggestions were not mutually exclusive and could in fact be combined. On 23 November, he had made two suggestions that delegations could take into account in the preparation of future meetings: (i) with respect to the different elements contained in the Synopsis, delegations might want to examine where, in their views, there was possible common ground and where positions differed; (ii) delegations might also want to consider which elements might be common to both an horizontal and a scheduled safeguard. Work could then focus on these common elements, if any, that would need to be defined regardless of the precise context in which a possible ESM might later be used. He would prepare an Addendum to the Synopsis, which would include the new written contributions. Moreover, he intended to hold a two-day informal meeting on 17 and 18 January 2002 and another one in February (dates to be confirmed).

9. The representative of Brazil said that his delegation would have preferred engaging in drafting but could nevertheless accept the proposal just made by the Chairperson. Efforts should be made to avoid repetition.

10. The representative of Philippines, speaking on behalf of the ASEAN Members, recalled that the ASEAN Members were keen to start working on a draft text. At the very least, the Working Group should start examining areas of common ground, which would facilitate a platform for subsequent drafting. Should this not be possible, then it would clearly indicate a lack of political will. Moreover, discussions would go in circles. At this point in time, the ASEAN Members did not want to ask for an extension of the deadline. The representative of Australia wondered when a decision would be made. The Chairperson replied that these decisions were in the hands of Members.

11. The representative of Indonesia expressed concern that, after seven years, the negotiating deadline would, again, not be respected. The representative of Paraguay suggested to hold a meeting in December so as to make progress. The representative of Mexico considered that a meeting in December did not leave delegations with enough time to prepare. The representative of the Republic of Korea supported the Chairperson's intention to prepare an Addendum to the Synopsis. He stressed the need to make progress.

12. The representative of Pakistan stressed that work should move forward. The Working Group was unfortunately facing the risk of another extension of the deadline, which would send a bad political signal. The issues on the table had already been discussed many times in the past. The problem was that there was a lack of political will to make progress. Therefore, he wanted to formally propose to start working on a draft text. The representatives of Paraguay and Cuba supported the proposal made by Pakistan. The representatives of the European Communities, Canada, the United States, Japan and Switzerland said that there was no sufficient basis to start working on a draft text.

13. The Chairperson concluded that there was no consensus to start drafting and suggested to continue work on the basis of the proposal he had just made. It was so agreed.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

14. The Chairperson said that, in the absence of new contributions, delegations were invited to address the issue of subsidies on the basis of the Chairperson's Checklist contained in Job No. 4519/Rev.1 (6 October 2000). Delegations could comment on any point of that list.

15. The representative of Brazil said that it was important to negotiate disciplines on trade-distortive subsidies. He noted that several sectoral proposals circulated in the Special Session touched upon this subject. The representative of Argentina indicated that his delegation intended to submit a contribution at the next meeting. The representative of Hong Kong, China said that her delegation continued to attach great importance to this agenda item. Members, especially those who had raised subsidy-related issues in their sectoral proposals, should share their experience in this field.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

16. The Chairperson proposed that delegations should continue their general exchange of views on any aspect of government procurement of services.

17. The representative of the European Communities said that this agenda item was important for her delegation. She hoped to be in a position to inject new thoughts in the discussion next year.

D. DATE OF THE NEXT MEETING

18. The Chairperson indicated that the next formal meeting of the Working Party would take place in the week of 11 March 2002, i.e. in the services "cluster".

E. OTHER BUSINESS

19. Nothing was raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 3 OCTOBER 2001

Note by the Secretariat

1. The Working Party on GATS Rules held its thirty-fourth meeting under the chairmanship of Mr. Hugo Cayrus, from Uruguay. The agenda for the meeting was contained in WTO/AIR/1620. It consisted of six items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; annual report on the activities of the Working Party to the Council for Trade in Services; date of the next meeting; and other business. The agenda for the meeting was adopted.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairperson drew attention to a Synopsis he had circulated on his own responsibility at the beginning of August (JOB(01)/122). The Synopsis was an attempt to provide a structured overview of different options made with respect to core elements of a possible safeguard mechanism which had been discussed by Members on the basis of the ten items proposed in the Chairperson's Checklist, Job No. 1979/Rev.1. He recalled that, during the last informal meeting, on 25 September, Members had had an extensive exchange of views on these topics listed, and had addressed in a preliminary manner an informal Communication from Mauritius on *Emergency Safeguard Measures* (JOB(01)/143) as well as an informal Communication from Venezuela on *Causality Link* (JOB(01)/101/Add.1).¹ He noted that three additional written contributions had been received since the last informal meeting: New Zealand on *Situations justifying an Emergency Safeguard Action*, (JOB(01)/146); Argentina on *Elementos para establecer una salvaguardia de emergencia en servicios*, (JOB(01)/148); and the United States had presented a formal communication on *Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services*, (S/WPGR/W/37). He suggested to turn to informal mode to discuss these various contributions.

3. The Chairperson said that the next formal meeting of the Working Party had been tentatively scheduled on 3 December. He recalled that, during the informal meeting on 2 July, he had mentioned that, in view of the negotiating deadline of 15 March 2002, the Working Group should meet at the end of November in order to discuss the organization of future work, including the possibility of working on a text. Therefore, he intended to hold an informal meeting on 23 November. In the meantime, he would welcome any suggestions from delegations. On 23 November, an opportunity would also be given to address substantive issues. In his view, work would need to be very intensive between November 2001 and the expiration of the deadline.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

4. The Chairperson said that, in the absence of new contributions, delegations were invited to address the issue of subsidies on the basis of the Chairperson's Checklist contained in Job No. 4519/Rev.1 (6 October 2000). Delegations could comment on any point of that list. He also invited comments on how to continue work under this agenda item in the coming months.

¹ See Note by the Secretariat, JOB(01)/150 dated 10 October.

5. No delegation intervened under this agenda item.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

6. The Chairperson proposed that delegations should continue their general exchange of views on any aspect of government procurement of services.

7. The representative of the European Communities referred to the statement made by her delegation at the last formal meeting of the Working Party. Work on emergency safeguard measures should not preclude progress on the other two items of the agenda. With respect to government procurement, this Working Party (WPGR) should not duplicate the work of the Working Group on Transparency in Government Procurement (WGTGP), but complement it. She suggested that WPGR could focus on issues directly linked to the procurement process, such as qualifications of bidders. This issue was dealt with in WGTGP, but only to ensure that transparency was achieved. WPGR could go further and examine, for instance, the following questions: what limitations, if any, should there be to the criteria used? To what extent could the purchaser require that a service supplier demonstrate "technical capability"? Should there be rules stating how technical capability could be demonstrated? Should the purchasing entity be able to require that a service supplier be established in the country? Are there any general grounds for excluding service suppliers from eligibility, e.g. bankruptcy, severe professional misconduct? She also drew attention to two Notes by the Secretariat, circulated in November 2000, which had never been really discussed and suggested that they be examined in the Working Party (Job No. 7053 and Job No. 7072).

8. The representatives of Chile, Australia, Switzerland, New Zealand, Hong Kong, China concurred that government procurement was an important area and that the Working Party should devote more time to it. The representative of Chile sought further clarification regarding the European Communities' suggestion to work on qualifications of bidders. The representatives of Switzerland and Hong Kong, China were ready to explore the suggestion made by the European Communities. Replying to Chile, the representative of the European Communities said that the idea was to examine what kind of additional rules would be necessary to assess the qualifications of bidders and what kind of limitations could be put in place.

9. The representative of Mexico said that the Working Party should discuss the scope of the mandate contained in GATS Article XIII.

D. ADOPTION OF THE ANNUAL REPORT

10. The Chairperson drew attention to the draft Annual Report of the Working Party, which had been circulated as document S/WPGR/W/36. This document was mainly of a factual nature.

11. The representative of Venezuela said that paragraph 5 of the draft report did not really reflect the real situation with respect to government procurement. The paragraph stated that "discussions have continued on definitional as well as on possible multilateral disciplines". In her recollection, however, no such discussions had taken place during the last months. Moreover, the Spanish version referred to "debates", while the word "discusiones" would be more correct.

12. The representative of the European Communities suggested that a sentence might be added to paragraph 5 which would indicate that several delegations had stressed the importance of pursuing work on the issue of government procurement.

13. The Working Party took note of the statements made and adopted the Annual Report.

E. DATE OF THE NEXT MEETING

14. The Chairperson indicated that the next formal meeting of the Working Party had been tentatively scheduled for 3 November 2001.

F. OTHER BUSINESS

15. Nothing was raised under this agenda item.

WORLD TRADE ORGANIZATION

RESTRICTED
S/WPGR/M/33
10 July 2001

(01-3442)

Working Party on GATS Rules

REPORT OF THE MEETING OF 2 JULY 2001

Note by the Secretariat

1. The Working Party on GATS Rules held its thirty-third meeting under the chairmanship of Mr. Hugo Cayrus, from Uruguay. The agenda for the meeting was contained in WTO/AIR/1577. It consisted of five items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The agenda for the meeting was adopted. The Chairperson drew attention to an informal Note (JOB(01)/95) he had circulated to assist delegations in their preparation for the meeting.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairperson recalled that, during the last informal meeting on 26 and 27 June, Members had had an extensive exchange of views on the ten topics listed in the Chairperson's Note, Job No. 1979/Rev.1, and had addressed in a preliminary manner an informal communication from Chile, Costa Rica and Switzerland on a *Possible Comprehensive Approach for an Emergency Safeguards Mechanism (ESM)* (JOB(01)/81).¹ Three other informal written contributions had been circulated since that meeting; *Emergency Safeguard Mechanism: a Multilateral Surveillance Procedure*, by Canada (JOB(01)/100); *Negociaciones sobre Medidas de Salvaguardias Urgentes: Relación de Causalidad*, by Venezuela (JOB(01)/101); Non-paper by Japan on *Emergency Safeguard Measures* (JOB(01)/105). He suggested to turn to informal mode to discuss these contributions.²

3. With respect to the organization of future work, the Chairperson said that, as a result of the last informal meeting of the Working Party, as well as the various bilateral and plurilateral informal consultations he had held over the last weeks, it appeared that there was no consensus to work on a draft text. Taking this into account, he wished to make the following suggestion as a possible way to organise work, at least until November 2001. First, he would prepare, under his own responsibility, a synopsis which would outline the current situation of the discussion under the ten items identified in the Chairperson's Checklist (Job No. 1979/Rev.1). This synopsis would take into account written and oral contributions. It would present, in a synthetic way, the main options introduced until the end of July 2001 (written contributions, minutes, etc.) and indicate the main comments made by Members. The synopsis would be intended to facilitate further analysis by Members and would be without prejudice to the question of feasibility and desirability, nor to the form of a possible ESM. The synopsis could be presented at the beginning of September. Secondly, taking into account that the Fourth Ministerial Conference might require most of delegations' attention, he proposed that the Working Party should hold two meetings before November 2001 in order to continue the current negotiations on ESM. Tentative dates were: (i) an informal meeting on Tuesday 25 September, and (ii) a formal meeting on 3 October, during the October services "cluster". Thirdly, he wished to point out that, taking into account the deadline of 15 March 2002, the Working Party might have to

¹ See Note by the Secretariat, JOB(01)/108.

² See Note by the Secretariat, JOB(01)/109.

consider, in November, the possibility of working on a draft text. He anticipated that work would be very intensive between November 2001 until the expiration of the deadline.

4. It was so agreed.

5. Regarding how work should be structured in September and October, the Chairperson proposed that the Working Party should continue its analysis of the written contributions and work on the basis of the synopsis. Delegations might also want to concentrate on some key topics which were central to the debate, and for which different positions existed. The framework for discussion should nevertheless be flexible enough to allow delegations to address any issue they deemed appropriate. He recalled that delegations wishing to do so could raise the questions of feasibility and desirability of an ESM.

6. The delegations of the European Communities said that issues such as the exclusion of mode 3 or the link with future liberalization were among the key policy topics to be considered.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

7. The Chairperson invited delegations to address item 5 of the Chairperson's Checklist (Job No. 4519/Rev.1), i.e.: *Is there a need for additional GATS disciplines to avoid trade-distortive effects? This would include consideration of the appropriateness of countervailing procedures. Next steps.* He noted that, after completion of discussion on this topic, the Chairperson's Checklist of issues would have been exhausted. Therefore, he encouraged delegations to consider how the Working Party should continue its work under this agenda item.

8. The representative of Hong Kong, China said that some subsidies, such as tax reliefs or direct financial contributions from governments (either at the federal or sub-federal level), could have significant effects on trade. Her delegation was trying to collect evidence of trade-distortive subsidies in order to make a contribution to the Working Party. However, since Hong Kong, China seldom applied trade-distortive subsidies, this evidence was difficult to find. In her view, there was no ground to believe that, unlike industrial or agricultural subsidies, services subsidies had no trade effects and that no additional rules were needed. She suggested that Members could further discuss the issues raised in an informal paper presented by her delegation in September 2000 (Job No. 5870), including, for instance, the definitions of "financial contribution", "government", "specific supplier", and "services", as well as whether consumer subsidies should be addressed in future disciplines.

9. The representative of Chile felt that work on emergency safeguard measures took most of the time of the Working Party and that, as a result, subsidies and government procurement were not sufficiently addressed. She wondered how this concern could be addressed. The Chairperson said that negotiations under Articles XIII and XV were in the hands of Members who were always free to submit proposals. The emphasis put on emergency safeguard measure was also due, in part, to the fact that the Working Party had a deadline to complete this negotiation.

10. The representative of Mexico supported what had been said by Hong Kong, China and Chile. He agreed that it was up to Members to make contributions to move the process ahead. He noted that, while some subsidies could be justified due to their social objectives (health or education, for instance), other subsidies had trade-distortive effects.

11. The representative of Brazil agreed with Hong Kong, China that it could not be assumed that services subsidies did not have the same trade-distortive effects as similar subsidies in goods. With respect to item 5 of the Checklist, his delegation did not have specific views on the issue of countervailing measures. He noted that item 5 was closely related to item 3. Existing disciplines were not sufficient to address trade-distortive effects of subsidies, in particular because the scope of

national treatment across modes was not clear. In addition, the national treatment obligation did not solve the question of competition in foreign markets. He noted that several sectoral negotiating proposals tabled in the Special Session referred to subsidies (in audiovisual or distribution, for example). In some instances, it was proposed to negotiate sectoral rules on subsidies. Brazil wanted to caution against such work being carried out in the Special Session because it might prejudice the nature of possible disciplines to be discussed in this Working Party. With respect to future work, he suggested that Members continue their discussion on the basis of the Checklist, going back to the first item, without prejudice to the possibility of introducing new elements.

12. The representative of New Zealand said that the negotiating deadline of 15 March 2002 explained why the focus had increasingly shifted to emergency safeguard measures. With respect to future work on subsidies, his delegation would support any initiative that would stimulate work. One option could be to address all the elements of the Checklist, which would favour an overall perspective. Keeping in mind the specific mandate in Article XV, which was to address trade-distortive subsidies, any information that Members might provide with respect to such subsidies would facilitate discussions.

13. The representative of the United States said that since trade in services was different from trade in goods, it could not readily be assumed that subsidy-related problems were similar. The mandate contained in Article XV was ambivalent since it pointed out that, "in certain circumstances", subsidies "may" have trade-distortive effects. More information on actual trade distortions associated with subsidies was therefore needed. He agreed that national treatment could not necessarily solve all the problems but it was still a powerful requirement. With respect to the question of subsidies in the audiovisual sector, he suggested that a pragmatic approach could rely on scheduling. As to future work, his delegation was open, but had a preference for discussing the five items of the Checklist at the same time.

14. The representative of Australia said that, both with respect to subsidies and government procurement, it would be useful to go back to basic issues and have a clear idea on what the Working Group was mandated to do. A structure and a timeframe would greatly help discussions. Key issues should be identified.

15. The representative of the European Communities supported the proposal to address all issues of the Checklist.

16. The Chairperson concluded that the Checklist would remain on the table. Delegations having an interest in the subject were encouraged to make contributions.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

17. The Chairperson proposed that delegations should continue their general exchange of views on any aspect of government procurement of services.

18. The representative of the European Communities said that work on emergency safeguard measures should not preclude progress on the other two items of the agenda. She stressed the economic importance of government procurement and considered that their exclusion from the scope of the GATS reduced the value of specific commitments. WPGR should, however, not duplicate the work of the Working Group on Transparency in Government Procurement (WGTGP), but complement it. In that regard, WPGR could focus on issues directly linked to the procurement process, such as qualifications of bidders. This issue was dealt with in WGTGP, but only to ensure that transparency was achieved. WPGR could go further and examine, for instance, when qualifications could be required or to what extent could a purchaser require that a service supplier should demonstrate technical capability.

D. DATE OF THE NEXT MEETING

19. The Chairperson indicated that the next formal meeting of the Working Party had been tentatively scheduled for 3 October 2001.

E. OTHER BUSINESS

20. Nothing was raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 10 MAY 2001

Note by the Secretariat

1. The Working Party on GATS Rules held its thirty-second meeting under the chairmanship of Mr. Hugo Cayrus, from Uruguay. The agenda for the meeting was contained in WTO/AIR/1542. It consisted of five items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The agenda for the meeting was adopted. The Chairperson drew attention to an informal Note (Job(01)/42, 1 May 2001) he had circulated to assist delegations in their preparation for the meeting.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairperson invited delegations to address, in informal mode, the following topics contained in the Chairperson's Note Job No. 1979/Rev.1: special and differential treatment (item 7); indicators and criteria (item 4); compensation (item 6); definition of "domestic industry" and the issue of "acquired rights" (item 1); situations justifying an ES action (item 8).¹ He drew attention to the following documents, which had been circulated since the last meeting: communication by Venezuela on *Indicators and Criteria for the Determination of Serious Injury or Threat Thereof*, JOB(01)/48 (18 April 2001); non-paper by Brazil on *Compensation*, JOB(01)/50 (19 April 2001);² communication by Mexico on *Emergency Safeguard Measures*; Note by the Secretariat on *WTO Members' Practice Relating to Article 8 of the Agreement on Safeguards*, JOB(01)/61 (3 May 2001).

3. With respect to future work, the Chairperson proposed that the Working Party hold a two-day informal meeting on 26 and 27 June. He recalled that, at the last formal meeting, his predecessor had made some suggestions on how work might be organized until the summer break.³ This proposal, on which he had been consulted, was also reflected in the Annotated Agenda prepared for the April informal meeting of the Working Party.⁴ On this basis, he wanted to propose the following arrangement for the June meeting. The first part would be related to substantive discussion, with a view to completing consideration of the Chairperson's Note Job No. 1979/Rev.1. He intended to have an open-ended debate on all items in Job No. 1979/Rev.1. Any other issue that Members might wish to raise would be considered as well. For that purpose, delegations were encouraged to indicate to the Chair, sufficiently in advance of the meeting, specific topics that they would like to address. These issues could then be reflected in an Annotated Agenda so that everybody could come fully prepared to the meeting. He might also propose some specific topics which, in his view, could benefit from further consideration. He strongly encouraged Members to submit written contributions as soon as possible. The second part of the June meeting would be a process discussion to assess what had been achieved since April 2000 and to determine what the next steps should be, including whether it might

¹ See *Summary of the Comments Made During the Informal Meeting on 10 May 2001*, Note by the Secretariat, Job (01)/74 (17 May 2001).

² These two communications were presented during an informal meeting on 23 April 2001, see JOB(01)/54 (26 April 2001).

³ See S/WPGR/M/31, para. 5.

⁴ See JOB(01)/47, 10 April 2001.

be useful to work on a text. He indicated that he intended to conduct informal consultations with delegations in the coming weeks, so as to get an idea of the range of options reasonably available. He also strongly encouraged delegations to directly contact him. The June informal meeting would be important to prepare the formal meeting in July. Members should come ready to discuss the organization of the work programme after the summer break, taking into account the 15 March 2002 deadline.

4. The representative of Mexico introduced a communication on ESM addressing the following issues which, in Mexico's view, deserved further consideration: definition of "domestic industry"; the concepts of "emergency" vs. "unforeseen developments"; the issue of "acquired rights"; determination of injury or threat thereof; and compensation.⁵ He indicated that Mexico was currently assessing the feasibility of a services ESM and reserved its right to modify its position in view of future developments.

5. The representative of Argentina said that, with respect to the mandate contained in Article X, his delegation was in favour of a pragmatic solution which should add value to the GATS. The first question to be considered was the situation in which a safeguard measures would be justified. An ESM should remain a last-resort measure. He noted that, in Argentina, the expansion of some enterprises in various sectors could be suspended, which was a form of safeguard measure. This measure applied primarily in financial services. He also pointed to the prudential carve-out in the Annex on Financial Services. The difficulties linked to availability of data and statistics should not be exaggerated. In this regard, he welcomed the non-paper submitted by Venezuela, which contributed to demystifying the problem. While the indicators and criteria listed in the paper were undoubtedly useful as a first step, a case-by-case approach should nevertheless prevail in individual cases. With respect to mode 4, the type of service concerned would determine which of the two envisaged criteria – number of suppliers or volume of services – would be relevant in a given case. As to the definition of "domestic industry", GATS Article XXVIII should remain the starting-point. Should this not be the case, what would then be the value of this provision, and what would happen to schedules of commitments containing national treatment limitations under mode 3 (such as discriminatory subsidies)? Suspending the establishment of new foreign suppliers was not appropriate if the injury was caused by established foreign suppliers. An alternative solution to consider could be a mechanism which would be quick, automatic and of short duration (18-20 months); the invoking country would not need to grant compensation and, should the measure need to be prolonged, the procedures of Article XXI should be invoked. He noted that a communication presented by the United States in S/WPGR/W/17 (13 March 1997) contained various elements which deserved further consideration.

6. The representative of the United States said that his delegation did not view paragraph 2 of the Annex on Financial Services as being a safeguard measure. This provision had specific enumerated purposes, which were different from the circumstances addressed by GATS Article X. With respect to future work, his delegation supported the approach reflected in the minutes of the last formal meeting (S/WPGR/M/31) and outlined in the April Annotated Agenda (JOB(01)/47). One of the items mentioned was the question of desirability of an ESM, which had explicitly been left aside for the time being. Nevertheless, the United States considered that it was important to discuss when and how desirability of an ESM should be addressed.

7. The representative of Argentina concurred that the prudential carve-out was not a safeguard within the meaning of GATS Article X, but had different objectives.

8. The representative of the European Communities said that a number of new issues had emerged in the course of the discussion. The representative of Brazil noted that a decision was

⁵ See JOB(01)/67, 9 May 2001.

needed, at the July meeting, on how to move forward. His delegation did not rule out working on a text. The question of desirability was not essential. An ESM was necessary and the question was how to make it operational. The representatives of Mexico and Chile agreed to the work programme proposed by the Chairperson. The representative of Paraguay associated himself with the comments made by the delegation of Brazil concerning feasibility. The representative of Thailand, speaking on behalf of ASEAN, said that the ASEAN Members were ready to discuss the next steps. The representative of Venezuela indicated that her delegation was ready to work on a text. The representative of Chile informed the Working Party that her delegation intended to present a written communication, together with other delegations, by the June meeting.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

9. The Chairperson invited delegations to address item 4 of the Chair's Checklist (Job Nno. 4519/Rev.1, 6 October 2000), which reads as follows: *(a) The wider role of subsidies, including to pursue public policy objectives; (b) The role of subsidies in relation to development, and the needs of developing country Members for flexibility, including special and differential treatment.* He drew attention to a Note prepared by the Secretariat, following a request made at the last meeting, on the *OECD Arrangement on Guidelines for Officially Supported Export Credits*, and the so-called "Yellow Book" (JOB(01)/66, 8 May 2001).

10. The representative of Hong Kong, China noted that subsidies could be used to pursue different policy objectives, such as promotion of public health or education. Moreover, the GATS recognized these objectives as perfectly legitimate. Subsidy disciplines should not affect them, but should aim at correcting trade-distortive effects. Her delegation did not question the right of governments to set their own policy objectives, but wondered whether subsidies were the proper course of action in all instances. Members should use subsidies in a proper way, so as to diminish trade-distortive effects. She noted that the level of trade-distortiveness could vary greatly from one case to another.

11. The representative of Brazil said that, when asking for information on the *OECD Arrangement on Guidelines for Officially Supported Export Credits* and the so-called "Yellow Book", his delegation intended to contribute to the process of data gathering. This was not meant to prejudge the trade-distortive effects of any subsidy. Brazil was of the view that the Arrangement might be a good source of information, given the fact that it was a public instrument and entailed a notification procedure. He noted that paragraph 8 of the Secretariat Note JOB(01)/66 indicated that the Arrangement contained "a set of procedural rules, including notification, consultation and information exchange" and paragraph 9 related to special sectoral guidelines applying to ships, nuclear power plants and aircraft. The Note further indicated, in paragraph 11, that the "Yellow Book" did not contain information on actual disbursements. He understood that the "Yellow Book" did not contain information on interest rates and other specific information on export credit and export finance. He further noted that the Arrangement applied to "all official support for export of goods and/or services", which suggested that it could be a good source of information for export subsidization practices. The issue of trade-distortive subsidies was important for Brazil, not only in services, but also in goods and agriculture. In Brazil's view, the Arrangement had had an unfortunate influence on the negotiations of the Agreement on Subsidies and Countervailing Measures and this should be avoided in the negotiations of any services disciplines.

12. A representative of the Secretariat said that the information referred to in paragraph 8 of the Note was available only to the Participants to the Arrangement. Participation was also open to non-OECD Members.

13. The representative of Canada said that subsidies were always granted in pursuit of a particular public policy objective. The basic question to be considered was whether and to what extent subsidies actually distorted trade.

14. The representative of Argentina said that Article XV clearly mandated the Working Party to address trade-distortive subsidies. It was premature to consider the objectives pursued by subsidies before having considered what kind of disciplines were needed. The Secretariat paper S/WPGR/W/9 contained interesting questions which should be further considered (he noted in particular paragraph 15). Subsidy disciplines could apply to all measures which were not captured by the schedules of specific commitments.

15. Addressing item 4(a) of the Checklist, the representative of the United States said that subsidies in services seemed to exist mainly in so-called public-good sectors, such as education, health, post and transport. It was important for governments to maintain the ability to meet public policy objectives in these areas, including by providing assistance to service suppliers and consumers. The possible trade effects should be looked at. The United States was of the view that the next step would be to consider whether existing GATS disciplines were sufficient. Concerning the evolution of subsidy rules in the goods area, he noted that the general approach had been to balance the rights of governments to take measures in furtherance of economic and social policies, with the need to offset or neutralize adverse effects of measures on the trade interests of others.

16. The representative of Singapore said that his delegation did not intend to question public policy objectives, but whether subsidies distorted trade. The representative of Australia asked the United States whether, in its view, state-funded education, provided as a result of a public policy choice, could be considered to have trade-distortive effects and, if so, how such effects did arise. The representative of the United States noted that one of the previous items on the Checklist related to evidence of trade-distortive subsidies. However, very few examples had been provided in this regard. The problem to be resolved had to be identified before developing any new disciplines. The representative of Brazil said his delegation did not question the right of governments to employ subsidies to achieve public policy objectives. The question was whether they resulted in trade-distortive effects. There was no economic reason why subsidies provided in services would not have, in similar circumstances, the same trade-distortive effects as a subsidy granted in the goods area. National treatment disciplines did not capture trade-distortive subsidies (in mode 1, for instance). He noted that some sectoral negotiating proposals tabled in the Special Session referred to the need for subsidy rules.

17. The Chairperson said that, at the next formal meeting, delegations would be invited to address the fifth and last topic of the Checklist (Job No. 4519/Rev.1), i.e.: *Is there a need for additional GATS disciplines to avoid trade-distortive effects? This would include consideration of the appropriateness of countervailing procedures. Next steps.* He noted that, with this topic, the Chairperson's Checklist of issues would have been exhausted. At the next meeting, he would like, therefore, to invite views on how delegations intended to continue work under this agenda item in order to move forward.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

18. The Chairperson proposed that delegations should continue their general exchange of views on any aspect of government procurement of services.

19. The representative of Chile indicated that her delegation intended to raise some issues related Article XIII at the next meeting.

D. DATE OF THE NEXT MEETING

20. The Chairperson indicated that the next formal meeting of the Working Party had been tentatively scheduled for 2 July 2001.

E. OTHER BUSINESS

21. Nothing was raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 21 MARCH 2001

Note by the Secretariat

1. The Working Party on GATS Rules held its thirty-first meeting under the chairmanship of Mr. Tony Sims, from the United Kingdom. The agenda for the meeting was contained in WTO/AIR/1508. It consisted of seven items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; organization of future work; date of the next meeting; other business; and appointment of a new chairperson. The agenda for the meeting was adopted. The Chairperson drew attention to an informal Note (Job(01)/35, 14 March 2001) he had circulated to assist delegations in their preparation for the meeting.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairperson invited delegations to address the issue of compensation, and to revert to the definition of "domestic industry" and the issue of "acquired rights" in informal mode.¹

3. The representative of Venezuela indicated that his delegation was working on Article III of the ASEAN Draft Agreement ("ADA") and intended to circulate a written contribution on indicators and criteria. The representative of Mexico said that his delegation intended to make a written contribution on the issues of "domestic industry" and "acquired rights". The representative of Guyana said that the whole question of an ESM was linked to GATS Article IV. The impact on smaller economies and small services providers should be taken into account. Multilateral rules had to be put in place so as to avoid bilateral solutions. His delegation wished to reserve its position on a possible emergency safeguard mechanism until his government had studied the issue in details.

4. The Chairperson suggested that the Working Party hold a two-day informal meeting in the second half of April, to discuss the following topics, contained in the Chairperson's Checklist (Job No. 1979/Rev.1, 6 October 2000): (i) applicable measures (item 5); notification, consultation, transparency and surveillance mechanism (item 9); indicators and criteria (item 4); and compensation (item 6). The dates of 23 and 24 April had been booked tentatively. It was so agreed.

5. Turning to future work, the Chairperson recalled that, at its meeting in December 2000, the CTS had agreed to extend the deadline for negotiations on a possible ESM for services to 15 March 2002. He assumed that all Members had agreed to this extension in good faith and were all committed to ensuring there was no need for any further extension. By 15 March 2002, therefore, the Working Party should expect either to have concluded that a services safeguard would not be desirable, or, alternatively, have completed work on a text which would enter into effect no later than the other results of the current round of negotiations. This raised the question of how the Working Party should organize its work in the remaining time. Having consulted with his successor, he believed it was important to continue with an intensive series of informal meetings to explore key

¹ See *Summary of Comments Made During the Informal Meeting on 21 March 2001*, Note by the Secretariat, Job(01)/45, 5 April 2001.

aspects of any ESM. The Working Party would continue to work on a thematic basis whilst giving due consideration to any texts which might be on the table – in line with the modalities agreed at the 7 July 2000 meeting. In his view, the Working Party should aim to complete its run-through of issues on the Chairperson's Note, Job No. 1979/Rev.1, by June. As agreed, a two-day informal meeting would be held in the second half of April. Then, informal discussions could take place during the May meeting. A further two-day informal meeting could take place in June. Informal and formal discussions could be held in July. Without wishing to bind his successor, he anticipated that the June meeting could be in two parts: (1) complete discussions on the items contained in Job No. 1979/Rev.1 and any other substantive issues Members wish to raise; (2) have a process discussion which would (i) assess what the Working Party had achieved since the current phase of work started in April 2000, (ii) consider whether and to what extent any preliminary conclusions could be drawn on the issues of feasibility and, perhaps, also on desirability of any ESM, and (iii) consider whether work on a text would be useful. He noted that it was too early to say much about work in the autumn, but it was clear that many Members would wish to focus on the Fourth Ministerial Meeting. With the safeguard deadline of 15 March 2002, this suggested that the Working Party would have a very intensive period of work between November 2001 and March 2002.

6. The representative of Thailand, speaking on behalf of the ASEAN Members, agreed that the list of themes contained in Job No. 1979/Rev.1 should be exhausted by the summer break. In the course of the discussion, reference should be made to the relevant provisions of the ADA. In view of the negotiating deadline, it was imperative to begin the drafting process as soon as possible after the summer break and the ADA was a suitable basis for this. The representative of the United States said that, with respect to future work, consideration of feasibility and desirability issues would influence his delegation's decision regarding a text. The representative of Brazil agreed with the proposal made by the Chairperson regarding future work. Issues of feasibility and desirability should be addressed before the summer break. The definition of "domestic industry" remained a fundamental question for Brazil. In his view, this would be one of the main preliminary conclusions to be reached before engaging in more substantive work. The representative of Cuba asked whether the Secretariat could provide input for the next meeting in the form of concrete examples of applicable measures and how they could be applied. The Chairperson replied that this kind of information should come primarily from Members.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

7. The Chairperson invited delegations to address item 3 of the Chairperson's Checklist (Job No. 4519/Rev.1, 6 October 2000).² Delegations wishing to come back on item 1 or 2 of the Checklist were welcome to do so. He recalled that, in November 2000, Members had asked the Secretariat to prepare a new update of relevant information contained in WTO Trade Policy Reviews. The revised document had been circulated on 12 December 2000 (S/WPGR/W/25/Add.2) and covered nine Reviews, completed between May and December 2000.

8. The representative of Hong Kong, China said that existing GATS disciplines for subsidies were not sufficient. She noted that GATS Article II, VIII and XVII were relevant provisions. The latter was potentially the most relevant one, but did not solve all the problems, partly because the number of specific commitments on Article XVII was limited. Moreover, it would not apply to cases where, in the absence of foreign-established suppliers, a Member wishing subsidized its domestic industry and caused import substitution. She further noted that GATS disciplines did not apply *vis-à-vis* services suppliers established in another country and that there was a lack of jurisprudence

² Item 3 reads as follows: *To what extent do WTO rules, in particular the GATS and its national treatment and most-favoured-nation disciplines, already discipline services subsidies or provide the means to do so? This would include consideration of technical issues related to the GATS, including mode specificity and the concept of "like service".*

concerning the likeness of services supplied under different modes. In her view, disciplines on domestic regulation could have an indirect relevance on the adverse effect of services subsidies. Hong Kong, China hoped to present in a near future a written contribution on the questions of the relationship between modes 1 and 2, as well as on the scope of national treatment.

9. The representative of Switzerland said that MFN was a relevant discipline in the absence of national services suppliers. When looking at the types of subsidies described in S/WPGR/W/25/Add.2, it was difficult to imagine situations where MFN would be capable of limiting the negative effects of a subsidy. National treatment was a potentially powerful instrument. Extending it to all services for the purpose of subsidy disciplines, and not only to those services for which specific commitments existed, appeared to be very ambitious. However, with respect to trade-distorting subsidies, national treatment might be subject to general disciplines. National treatment should not be used to prohibit certain measures, but only to limit possible trade-distortive effects of subsidies. The questions of likeness of services and specificity of modes were linked and should be further examined.

10. The representative of Brazil recalled that, at the last meeting, his delegation had suggested that the Secretariat could use the OECD document on "Arrangement on Guidelines for Officially Supported Export Credits", the so-called "yellow book", as a source of information since it was a public document. Turning to the applicability of existing disciplines, he said that national treatment would not capture export-enhancing subsidies. Moreover, the concept of likeness as well as the scope of national treatment deserved further consideration. Should national treatment be mode-specific, then the question of likeness might be obviated. He drew attention to paragraphs 27, 28 and 29 of document S/WPGR/W/9. The first sentence of paragraph 27 raised a fundamental question. Another crucial question, raised in paragraph 28, was that of mode-specificity, which pertained to the structure of the GATS. Brazil's preliminary view on the matter was that, should these disciplines not be considered mode-specific, there might be an inconsistency with the schedules of commitments.

11. The representative of Korea said that the MFN and national treatment obligations were insufficient to discipline the complex nature of services subsidies. Article II being a general obligation, the MFN principle should also apply to subsidies referred to in Article XV, except in the case of an MFN exemption. National treatment only applied if there were specific commitments. Different sets of rules for subsidies might be needed, depending on whether specific commitments existed or not. When trying to define a services subsidy, account should be taken of the fact that trade in services was different from trade in goods. The application of countervailing duties in services would be difficult, due to the lack of data. Specificity should not be the only criterion for regulating subsidies.

12. The representative of Guyana said that the issue of national treatment was complex. Its scope was different from country to country. In his view, there was a need for some form of standard.

13. The Chairperson said, referring to Brazil's suggestion, that the Secretariat would examine what kind of contribution it could make on the basis of the OECD "yellow book". He recalled that empirical data should come primarily from Members. He proposed that, at its next formal meeting, the Working Party address item 4 of the Checklist Job No. 4519/Rev.1.³

³ Item 4 reads as follows: "(a) *The wider role of subsidies, including to pursue public policy objectives;* (b) *the role of subsidies in relation to development, and the needs of developing country Members for flexibility, including special and differential treatment*".

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

14. The Chairperson proposed that delegations should continue their general exchange of views on any aspect of government procurement of services.

15. The representative of Australia said that her delegation intended to submit a written contribution under this agenda item at the next meeting of the Working Party.

D. ORGANIZATION OF FUTURE WORK

16. The Chairperson recalled that, at the informal meeting of the Council for Trade in Services held on 20 February, delegations had discussed the organization of future work. It had been suggested that Members should consider how on-going work in the subsidiary bodies could be structured in the most efficient and productive way, in terms of issues which might need to take priority and of how to allocate time among them, while taking into account the concerns and constraints of small delegations. It had been agreed that an item to that effect would be inserted in the agenda of each of the subsidiary bodies.

17. The representatives of the European Communities, Hong Kong, China, Australia and Mexico recognized that a deadline had been fixed for the negotiations on emergency safeguard measures, but stressed that work should proceed equally on the other two agenda items of the Working Party. The representative of Australia added that the Working Party should address the terms of reference on government procurement. Members should provide information to help the process in this regard. The representative of Brazil recalled that, in the discussion of the Negotiating Guidelines in the Special Session, his delegation held the view that the negotiations in all three areas should be completed. The representative of Japan noted that some kind of interaction with the Working Group on Transparency in Government Procurement would be useful. The Working Party took note of the comments made.

E. DATE OF THE NEXT MEETING

18. The Chairperson indicated that the next formal meeting of the Working Party had been tentatively scheduled for 14 May 2001.

F. OTHER BUSINESS

19. Nothing was raised under this agenda item.

G. APPOINTMENT OF A NEW CHAIRPERSON

20. The Chairperson recalled that the Chairperson of the Services Council had consulted Members on the appointment of chairpersons for the four subsidiary bodies, at the informal meetings of the Council for Trade in Services held on 7 February, 20 February and 15 March. On this basis, he proposed that the Working Party elect Mr. Hugo Cayrus, from Uruguay, as its next Chairperson.

21. Mr. Hugo Cayrus was elected by acclamation.

Working Party on GATS Rules

REPORT OF THE MEETING OF 30 NOVEMBER 2000

Note by the Secretariat

1. The Working Party on GATS Rules held its thirtieth meeting under the chairmanship of Mr. Tony Sims, from the United Kingdom. The agenda for the meeting was contained in WTO/AIR/1444. It consisted of five items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The agenda for the meeting was adopted.

2. The Chairperson drew attention to an informal Note (Job No. 7352, 17 November 2000) he had circulated to assist delegations in their preparation for the meeting.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

1. Discussion on substantive issues

3. The Chairperson recalled that, at the last formal meeting of the Working Party, most of the discussion on emergency safeguard measures had taken place in informal session (See Job No. 3449/Add.2, 6 October 2000). Since that meeting he had issued a revised list of themes for discussion (Job No. 1979/Rev.1, 6 October 2000). From 1 to 3 November, the Working Party had held an informal meeting at which it had considered all the themes listed in Job No. 1979/Rev.1. A summary of the meeting, made under the Chairperson's responsibility, was contained in document Job No. 6943 + /Add.1 (3 November 2000). He would invite Members to comment on the papers submitted since the last meeting. The discussion was without prejudice to the issues of desirability and form of a possible safeguard mechanism. He asked the representative of Thailand to introduce, on behalf of the ASEAN Members, their Non-paper containing a Draft Agreement on Emergency Safeguard Measures for trade in services (Job No. 6830, 31 October 2000).

4. The representative of Thailand, speaking on behalf of the ASEAN Members, recalled that this Non-paper had been introduced at the informal meeting held on 1 and 2 November 2000. He said that, as was the case with the ASEAN "Concept-paper" (S/WPGR/W/30, 14 March 2000), this latest communication was not an ASEAN position paper, but was intended to assist the Working Party in carrying out its mandate under GATS Article X. The primary objective was to provide Members with a comprehensive Draft Agreement, containing workable provisions, which had the widest possible basis for acceptance by Members. This objective helped to explain that the ASEAN Members had needed time to produce it. The Draft Agreement followed the general approach of the Concept-paper, i.e. to devise a safeguard mechanism based on prior investigation and establishment of causal link between injury and increased supply or consumption of foreign services. In ASEAN's view, the records of the Working Party showed that a large majority of the Members were in favour of such a mechanism, as opposed to some kind of "automatic" mechanism, such as those existing in the areas of agriculture and textiles. The ASEAN Members believed that the Draft Agreement and the GATS had to be complementary and that there was no inconsistency between the two sets of rules. In fact, the Draft referred to definitions contained in Articles I and XXVIII of the GATS, and new definitions

were used only in cases of absolute necessity. Therefore, most of the key definitions under the general framework of the GATS, such as "trade in services", "supply of a service", "commercial presence", "juridical person", would apply to the proposed safeguards mechanism.

5. He noted that the main elements of the Concept-paper had been retained in the Draft. Many of them had been clarified, and some had been adjusted or developed further in the light of comments made in the Working Party. Timeframes were now specified. The proposed figures were believed to be reasonable and technically appropriate. On the other hand, ASEAN Member countries still proposed "options" in some areas where they wanted to share their thoughts and reflections with the Members. ASEAN hoped to hear views and comments from the Members, which hopefully would help to find solutions. The Draft also contained some new elements. There was no "options" with regard to the definition of domestic industry because the progress achieved in the discussion has suggested that, first, the issue of domestic industry was closely linked to the question of acquired rights, and second, if "domestic industry" were to be defined only for injury determination purposes, the debate could now focus on how broad or how narrow these rights should be defined. Therefore, the options were now proposed with respect to acquired rights. Therefore, Article I:2(a) had to be read in conjunction with Article II:4 of the Draft. Another new element were the lists of indicators, sources of information, and criteria for determining increased supply or consumption and serious injury or threat thereof, which were based on the Secretariat's Note, Job No. 5294 (/Rev.1 and 2). They were now incorporated in the mechanism. The proposed list was a non-exhaustive and non-mandatory one. The provision on surveillance was also new. It reflected discussions in the Working Party but Members had to further examine this issue. As a starting point, ASEAN proposed a provision based on the Agreement on Safeguards, with the Council for Trade in Services as the body to discharge these functions. To conclude his introduction, he said that ASEAN had tried to propose a Draft Agreement that was as comprehensive as possible at this stage of negotiation and hoped that it would be used in the discussion of the ten themes listed in Job No. 1979/Rev.1 (6 October 2000). He stressed that, in preparing this Draft, ASEAN's objective was to strike a balance between, on the one hand, what they believed to be a legitimate right for Members to have recourse to emergency action in response to emergencies that resulted from specific commitments and, on the other, the need to ensure that there was no abuse in doing so. As far as ASEAN was concerned, this discussion was without prejudice to Members' positions on the issue of desirability and the question of "horizontal v. sector-specific safeguards".

6. A number of delegations thanked the ASEAN Members for submitting the Draft Agreement.

7. The representative of the Republic of Korea recalled that his delegation had tabled an informal communication at the last meeting on *Definition of the Domestic Industry* (Job No. 6034, 2 October 2000). In his view, the suggestions made in this paper had found a good adaptation in the ASEAN Draft Agreement.

8. The representative of the European Communities said that the ASEAN Draft Agreement contributed to identifying real problems. However, it did not make progress towards resolving most of the technical problems. She expressed concern regarding the lack of reference to "unforeseen developments". The object and purpose of an emergency safeguard mechanism (ESM) had to be discussed further. In her view, an ESM was a remedy to an extraordinary situation. The definition of "domestic industry" and its practical consequences also needed further consideration, as well as the standards for investigation, which should be high for a services safeguard. Invoking a safeguard measure in the area of services should not be easier than in the goods area.

9. The representative of Uruguay said that it was important to protect foreign investments. The definition of "domestic industry" and that of "acquired rights" were relevant in this regard. Acquired rights had to be protected. The representative of Argentina said that his delegation remained flexible on the issue of emergency safeguard measures and was ready to examine any workable alternative

which could be implemented within the current GATS framework. The representative of Mexico said that his delegation was particularly concerned with the protection of acquired rights of foreign investors. His delegation was ready to continue working on the ASEAN Non-Paper or on any other proposal.

10. The representative of Japan considered that feasibility of an ESM remained a key question, and its desirability was still a pending issue. Foreign investments had to be protected, hence the definition of "domestic industry" and the treatment of acquired rights were important issues. His delegation was concerned that some options might have a chilling effect on foreign investors. Moreover, it was fundamental to determine in which situations a safeguard measure could be justified. The representative of Colombia said that any definition of domestic industry should protect domestic production and employment. Therefore, a definition of "domestic industry" had to protect established services providers, regardless of ownership. Once foreign suppliers were established they should have the same rights as national providers, including the right to expand. Her delegation feared that an ESM would limit the growth of foreign participation (future foreign investments or the expansion of existing companies with additional foreign capital) in services activities in Colombia. The representative of India said that his delegation was still analyzing the ASEAN Non-paper and the comments made by delegations at the informal meeting on 1 and 2 November.

11. The representative of Norway said that it was crucial to protect foreign established suppliers. A great amount of work remained to be done. His delegation was willing to participate and to consider any proposal. The representative of Switzerland supported the comments made by the European Communities, in particular concerning the philosophy which should underlie a possible ESM. His delegation was ready to continue to discuss this subject-matter and to explore alternatives. Definition of "domestic industry", modal application of an ESM and the burden of proof were key issues. Safeguard measures should not be mere policy options. The credibility of any future mechanism that might be designed was crucial.

12. The representative of the United States believed there was common ground on some basic concepts concerning feasibility. In particular, there seemed to be a strong view that a possible ESM should not harm or discourage investments and that there should be high standards of investigation. A number of difficult issues remained to be addressed, such as the lack of reliable data for many sectors, modal application and how to avoid that an ESM would affect disproportionately mode 4.

13. The representative of Ecuador said that an ESM was important, not only as a mechanism to protect the domestic industry, but also as a tool which would facilitate Members' participation in the services round in general. Clear rules for the protection of "acquired rights" would help the opening of markets and the efforts to attract investments. An ESM would create a favourable climate for developing countries to liberalise their services sectors, knowing that that they could rely on rules to protect themselves for a limited period and in a flexible manner.

14. The representative of Canada said that his delegation still had concerns regarding how an ESM would operate. Key conceptual issues, such as the definition of "domestic industry", the concept of "acquired rights", the determination of injury, had important policy implications. He was ready to continue discussion of these issues.

15. The representative of Australia said her authorities were concerned about the definition of "domestic industry" proposed in the ASEAN Draft Agreement, particularly because it seemed to provide a narrow definition for the purpose of establishing injury and a broader one for applying the remedy. Foreign established suppliers should not be excluded from injury determination or from requesting safeguard protection. Foreign established suppliers should retain all existing rights, including those of expansion. A safeguard measure should only be applied in the mode of supply causing injury. The necessity test proposed in Article IV:1 of the ASEAN Draft Agreement might not

deter an invoking party from applying measures going beyond facilitating adjustment of domestic industry. The effect of such a necessity test should be further considered. The possibility of investigating under one mode of supply and applying the remedy in another one was problematic. Her delegation wanted to further consider the link between "unforeseen developments" and "emergency situations", in the light of recent WTO case-law.

16. The representative of Brazil said that many issues remained to be further discussed, such as the definition of "domestic industry". Like others, his delegation attached great importance to the protection of foreign direct investments. An ESM should strike a balance between the burdensome resort to GATS Article XXI and too flexible a system which might give rise to abuse. His delegation was willing to continue discussion on the basis of the ASEAN text, as well as any further contribution. The representative of Costa Rica said that any ESM should protect the acquired rights of investors. The representative of Bolivia said that it was important to have an ESM in order to pursue the opening of services sectors. An ESM should not threaten foreign investments.

17. The representative of Thailand, speaking on behalf of the ASEAN Members, said that, in ASEAN's view, the Draft Agreement dealt with the issue of situations justifying safeguard action and already reflected the philosophy behind the concept of "unforeseen developments". With respect to the Communication by the Republic of Korea (Job No. 6034), the "third option" proposed by Korea was in essence quite similar to the solution proposed in the ASEAN Draft Agreement. The solution proposed by ASEAN was basically former Option 2 of the ASEAN Concept-paper, plus protection of acquired rights, or, said differently, former Option 1, minus injury caused by established foreign suppliers. This amounted to having *de facto* two different definitions of domestic industry: one for establishing injury (former Option 2 - narrower), and one for the application of the measure (former Option 1 - broader). On this particular point, ASEAN was basically saying the same thing as Korea, viewed from another angle. The definition in Article I:2(a) of the ASEAN Draft Agreement corresponded to the definition provided under paragraph 6 of the Korean paper. Article II:4 of the ASEAN Draft, with its three options, covered the issue of application of an ESM to established foreign suppliers, or non-application, as the case may be. In this sense, it corresponded to paragraphs 5 and 11 of the Korean paper. The ASEAN Draft did not define the extent of foreign suppliers' rights which should be shielded from safeguard action. ASEAN believed that the Korean paper left room for similar flexibility in paragraph 11, where it discussed the "appropriate form" in which ESMs might be applied. He asked whether the delegation of Korea agreed with this understanding. ASEAN found the result of this comparison encouraging as it might provide the "middle ground" that Members were looking for. If Members were able to agree on this point, the only remaining issue would then be how to define acquired rights. The representative of the Republic of Korea agreed that the two papers basically coincided in this regard. Korea's Option 3 was overall reflected in the ASEAN Draft. His delegation was still considering the issue of acquired rights. He noted nevertheless that the solution proposed in the Korean paper on this issue was slightly different from Option 1 of the Concept-paper. He enquired what was meant by "rights vested upon a service supplier" (Article II:4 of the ASEAN Draft).

18. The Chairperson noted a broad recognition by delegations that the two contributions made by ASEAN this year had helped to focus the debate. In his view, three key issues had to be addressed in priority: (i) situations justifying safeguard action; (ii) the definition of "domestic industry" and the concept of "acquired rights"; and, (iii) the standards of investigation. He suggested to meet informally at the beginning of next year, in order to address these issues. A date would be communicated to Members soon. He also intended to circulate an annotated agenda.

2. Extension of the deadline under GATS Article X

19. The Chairman recalled that GATS Article X:1 provided for multilateral negotiations on the question of emergency safeguard measures, whose results should have entered into effect not later

than end-1997. This deadline had been extended already twice by the GATS Council and would expire on 15 December 2000. Since the last formal meeting of the Working Party, he had held a series of informal consultations on this issue. At an informal meeting on 3 November, he had reported to the Working Party on the results of these consultations (Job No. 6944, 3 November 2000). In his report, he indicated that, while all delegations seemed to feel that the deadline for safeguard negotiations should be extended and that work should be concluded some time before the end of the current round of negotiations, views regarding the length of the extension ranged from three months to the end of the services negotiations. The weight of opinion was, however, between twelve and eighteen months. On 3 November, he had made a two-pronged proposal (Job No. 6947, 3 November 2000): (i) to extend the deadline for safeguard negotiations by 18 months, to 15 June 2002; and (ii) provide for a stock-taking exercise in December 2001 to review progress made and to plan for the final months of the negotiations. Since that date, a number of delegations had indicated, however, that they would not be in a position to accept this proposal. Therefore, he had held a further informal meeting, on 23 November, with the objective of reaching a consensus on this issue. The results of this last informal meeting had been faxed to Members on 24 November, and, on 28 November, a new proposal had been submitted. It included a draft communication by the Chairperson of the Working Party to the Council for Trade in Services, as well as a draft decision. In this draft decision, it was proposed to extend the deadline by 15 months, i.e. until 15 March 2002.

20. The representatives of Uruguay, El Salvador, Hong Kong, China, Norway, the Republic of Korea, Guatemala, India, and Brazil supported the proposal made by the Chairperson.

21. The representative of Pakistan said that his delegations was ready to join the consensus. He would nevertheless appreciate to hear information regarding the legal basis of the decision to extend the negotiating deadline, and, in particular, what was the meaning of the words "*Having regard to the provisions of Article X*" of the GATS.

22. In response, the Secretariat pointed out that the same language had been used in two previous decisions to extend the deadline for negotiations under Article X. The fact that these two decisions had been effective and unchallenged was a legal precedent which would appear to establish the ability of the Council for Trade in Services to take such decisions and given them legal effect. Indeed, over the past five years, the Council had taken a large number of decisions with more substantive effect, including the addition to the GATS of a very large number of new commitments. There was nothing in the GATS or in the WTO Agreement that would limit the power of the Council to take such decisions, except that in cases where formal interpretation or formal amendment of the GATS was in question, the formal procedures in the WTO Agreement might be invoked. This had never yet been found to be necessary.

23. A representative of the Secretariat further added that the legal basis for any action taken by the Council for Trade in Services was based on its mandate, as stipulated in paragraph 5 of Article IV of the WTO Agreement, namely to "oversee the functioning of the GATS". This would, in principle, entitle the Services Council to adopt any decision concerning the functioning of the GATS, unless otherwise provided for in the WTO Agreement. For example, the adoption of an authoritative interpretation of, or introducing an amendment to, a provision of the GATS would have to be decided upon by the General Council (or the Ministerial Conference), as stipulated in Articles IX and X of the WTO Agreement, respectively. The question of whether the Services Council had the mandate to adopt a decision postponing the deadline for a negotiation had been raised six months after the entry into force of the WTO Agreement in 1995 with respect to the deadline of the negotiations on financial services. That decision had legal implications that were going beyond simply extending the time for negotiations. It also extended the deadline for the listing of MFN exemptions by Members in that sector. The main legal question was then whether such an extension would constitute an "amendment" to the GATS within the meaning of Article X of the WTO Agreement. The legal analysis and the discussion of this issue at the time (the details of which could be provided if

Members so wished) had concluded that the mere change of a date (i.e. extending a deadline) should not in itself be considered an amendment to the GATS. Therefore, a decision on that matter would fall within the mandate of the Services Council. As regards the second point raised by the delegation of Pakistan, concerning the phrase in the Decision "*having regard to the provisions of Article X*" of the GATS, the representative of the Secretariat stated that this phrase did not contradict the essence of the Decision, which actually carried forward all the substantive elements of Article X. The only element in the Article that the Decision altered was the deadline for the negotiations.

24. The representative of Egypt noted that the reference to a stock-taking was included in the communication and not in the decision itself. His delegation was nevertheless still prepared to accept the text proposed by the Chairperson, on the understanding that there would be an opportunity to take stock of the progress made on the occasion of the next annual report of the Working Party. The Chairperson said that there was an agreement on this point.

25. The representative of Panama said that his delegations had some doubts regarding the language used in the draft decision and did not agree entirely with the explanation given by the Secretariat. He would, however, join the consensus.

26. The representative of Thailand, speaking on behalf of the ASEAN Members, noted that it was not the first time that the deadline needed to be extended. In the view of the ASEAN Members, it would have been possible to complete the work within 12 months with the necessary political will. The ASEAN delegations would nevertheless not stand in the way of the consensus solution proposed by the Chairperson, but hoped it would be the last extension, and that an agreement would be reached by 15 March 2002.

27. The Chairperson concluded that the Working Party approved the Chairperson's communication to the Council for Trade in Services, as well as the draft decision. He would submit the draft decision to the Council for approval. It was so agreed.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

28. The Chairperson recalled that, at the last meeting, Members had addressed in informal session, item 1 of the Chairperson's Checklist on Subsidies, i.e. *Definition of a subsidy (including relevance of the definition in the Agreement on Subsidies and Countervailing Measures* (Job No. 4519, 17 July 2000). A summary of the meeting was contained in the Secretariat's Note Job No. 6142 (9 October 2000). A revised Checklist had been circulated as Job No. 4519/Rev.1 (6 October 2000).

1. Examination of evidence

29. The Chairperson invited delegations to address item 2 of the Checklist (Job No. 4519/Rev.1): *Examination of any evidence of subsidies which may have distortive effects on trade in services (including production, distribution, consumption and export subsidies). Consideration of sources of information*. He stressed that contributions from Members were needed in order to make progress on this point. With respect to data gathering, he recalled that, in their communication presented in March (S/WPGR/W/31, paragraph 9), Argentina and Hong Kong, China had made various suggestions to improve the data situation. Moreover, the Secretariat had updated two previous notes: (i) S/WPGR/W/13/Add.1 presented subsidy-related entries found in schedules attached to the Fourth and Fifth Protocol, as well as in schedules of Members which had acceded to the WTO since January 1996. In S/WPGR/W/25/Add.1, the Secretariat had compiled subsidy-related information extracted from 37 Trade Policy Reports published since December 1997.

30. The representative of Argentina said that his authorities had begun to review some practices relating to services export subsidies, a subject which had received little attention so far in the Working Party. They had gathered information on export credits for services concerning about thirty countries, based upon publicly available information. Normally, the subsidy element of an export credit resulted from the soft conditions attached to it, for instance the interest rate. Such programmes generally referred to the export of services in general. Some countries were more specific and the beneficiary sectors included construction, environmental projects, consulting services, engineering services. There was no reliable data as to the subsidy component of these programmes. Only one country had recently begun to publish information indicating the subsidy rate which, for some years, exceeded eight per cent. From an economic point of view, there should be no reason why a government practice which might distort trade in goods, would not distort services trade, if applied in the same manner. These practices affected sectors where many developing countries had competitive advantages. An UNCTAD communication (see Job No. 4235, 16 July 1999) noted, in paragraph 17, that businesses in developed countries normally benefitted from financial support of their governments. It stated, for instance, that trade flows in construction services were affected by heavy government subsidies to exporters, tied aid, external financing packages, etc.

31. The representative of Hong Kong, China said that his authorities were still consulting with the industry. It was hard to come up with concrete details because governments did not seem to be willing to state exactly what sort of subsidies they were undertaking. Many of these subsidies might be at a sub-federal level, or involve tax-related matters. The scope of the problem was potentially large. As said by Argentina, export-enhancing and import-substituting subsidies would probably have the strongest effects. But efforts to attract investments could also affect trade in services. Subsidies in the goods area could have a negative effect on trade in services. For example, it was conceivable that subsidies for a very large aircraft or for building new headquarters could have a distortive effect on related trade in services. The distortive effect would depend on the type of subsidy, how specific it was and whether it was given on a national treatment basis. Subsidies given on a national treatment basis had a less injurious effect. In turn, this called for more commitments in the national treatment area. His delegation would try to present more concrete examples.

32. The representative of Brazil said that his authorities were coordinating with the private sector and other pertinent government agencies in order to assess the types of subsidies having trade distortive effects. He noted with interest what had been said by Argentina. In that regard, the OECD document on "Arrangement on Guidelines for Officially Supported Export Credits", the so-called "yellow book", was a useful source of information to identify sectoral subsidy programmes. Another source was the compilation of Trade Policy Reports prepared by the Secretariat (S/WPGR/W/25 and -/Add.1). He suggested that this document could be updated to include the latest TPR reports. This document clearly indicated the existence of subsidies in some sectors, like maritime transport. Brazil also attached great importance to the discussion of disciplines to avoid trade-distortive effects in services. Several delegations supported Brazil's request for an update of the Secretariat's Note on Trade Policy Reports.

33. The representative of Guyana said that subsidies were necessary for his country to help its services suppliers to catch up. As in the goods context, a different treatment was needed for developing and least-developed countries.

34. The representative of the Republic of Korea noted that the fact that GATS dealt with four modes of supply, as opposed to one in the goods sector, complicated the issue. However, the concepts used in the goods context might be imported into the services context. More attention should be paid nevertheless to national treatment. He noted that it was difficult to define "regulatory subsidies"; in this context, other provisions of the GATS might be relevant. He understood the concerns regarding infrastructural services, but caution should be exercised in this regard. For instance, education provided by a government should not be considered a subsidy, but what about telecommunications?

35. The representative of the United States agreed with Argentina that, intuitively, there should be no economic reason why government action in the goods sector should be more likely to distort trade than the same type of action in services. However, in spite of efforts by his authorities to obtain inputs, US companies had not yet reported on problems they might face with distortive subsidies, and the reasons for this silence were not clear. It might be that subsidies were less prevalent in services as opposed to goods. This issue would be worth considering. It might also be related to national treatment implications and whether national treatment obligations might curb some of the more potentially distortive subsidies.

36. The representative of Argentina said that subsidy disciplines should take the need for special and differential treatment into account. From an economic point of view, the effect of subsidies granted by the fifteen main exporters in the world, who captured 82 per cent of international trade in services, was different from a subsidy granted by a relatively marginal country. He agreed that policies in some services sectors were based on legitimate objectives on which all Members could agree, such as health or education. But some subsidies were granted to sectors which had nothing to do with such objectives. There were practices directly affecting exports of services, or subsidies granted to sectors which in most cases had an international dimension, such as shipping. More information was needed in order to carry out the Article XV mandate.

37. The representative of Thailand, speaking on behalf of the ASEAN Members, said that the second item was linked to other issues on the Checklist, and flexibility was necessary in addressing them. In the light of the fact that the national treatment obligation was subject to commitments, subsidy disciplines should apply only in committed sectors. With respect to the third point of the Checklist, the representative of Panama said that it would be important to clarify the incidence of the lapsing of certain disciplines of the Agreement on Subsidies and Countervailing Measures. The role of subsidies in development and the need for special and differential treatment should also be examined. The possibility that goods subsidies could also affect services trade should be analysed, but only once a services subsidy was defined. The representative of Mexico drew attention to the legal aspects involved in subsidies. Programmes for export credits might legally not be considered a subsidy, but they nevertheless had trade-distortive effects. How Members would define a subsidy was therefore important. All programmes that had trade-distortive effects should be taken into account, whatever their legal structure. The representative of the European Communities noted that S/WPGR/W/25 merely listed subsidies, without prejudging their potential distorting effect on trade. The difficulty was to establish a benchmark to decide at what level services subsidies had trade-distortive effects. The representative of Canada said that there was no evidence of trade-distortions in this area. Many forms of government assistance were not relevant to the discussion. His delegation was interested in examining further data on governmental assistance, and in particular the effects of such assistance on services trade.

38. The Chairperson said that the starting point for some delegations was that, in principle, government assistance for services should be no more trade-distortive than for goods. Lack of empirical evidence was a problem and the reasons for it were unclear. When subsidies were identified in a given sector, this did not necessarily imply that they were trade-distorting. If Members were to start drafting some disciplines, they needed to identify such distortions. He noted that some delegations had promised written contributions. As requested by delegations, the Secretariat would update S/WPGR/W/25 to include information from new Trade Policy Reports. However, empirical evidence of any trade-distortive effects should come from Members.

2. Definition of "subsidies"

39. The Chairperson thanked the delegation of Argentina for the Non-paper on *Definition of subsidies in services* (Job No. 6629, 24 October 2000). Delegations were invited to address this Non-paper, as well as the Communication introduced by Hong Kong, China at the last meeting of the Working Party, *Definition on subsidies in services* (Job No. 5870, 27 September 2000).

40. The representative of Argentina said that the Non-paper presented by his delegation took the definition contained in the Agreement on Subsidies and Countervailing Measures (ASCM) as a starting-point. Central elements of that definition, such as "financial contribution" or "specificity", were relevant. Subsidies had to be distinguished from other regulatory practices which, although they might benefit suppliers, should fall under other disciplines of the GATS.

41. A number of delegations thanked the delegation of Argentina for submitting this Non-paper.

42. The representative of Kenya said that only rich countries could afford significant levels of subsidies. With respect to the notion of "specificity" of a subsidy, referred to in paragraphs 10 and 11 of the Argentinian paper, it was relatively easy to distinguish between general measures of economic policy and those benefitting certain firms, in particular in the context of goods. However, the distinction might be blurred in some contexts. For instance, a subsidy extended to a bank, in order to prevent it from going bankrupt and, thus, harming small-scale savers, could be said to be specific, but would in fact have wider economic policy implications. He agreed that, as stated in paragraph 14 of the Argentinian Non-paper, the definition of the ASCM might need to be further refined.

43. The representative of New Zealand agreed that the definition of the ASCM could be used as a starting-point for any services subsidy disciplines. The notions of "financial contribution" and "benefit" were important. He also felt that this definition might need to be refined, in the light of the specific mandate of Article XV. His delegation was open-minded as to the scope of any definition, and in particular as to whether regulatory measures should be included. As shown in paragraph 11 of the EC Communication (Job No. 4302, 6 July 2000), some economic advantage could be conferred by granting a services provider privileged access to infrastructure, for instance. When exploring the notion of "benefit" and "financial contribution", implications related to regulatory practices should be borne in mind. Discussion of these issues should not be foreclosed, even though it might lead to the conclusion that these practices should be dealt with under Article VI:4 of the GATS.

44. The representative of Hong Kong, China said that regulatory measures might fall under other provisions of the GATS and should not be tackled under Article XV. Introducing regulatory interventions into the equation could complicate matters. He agreed with paragraph 11 of the Argentinian Non-paper, but enquired what level of specificity would be relevant. The question of special and differential treatment was an important one. Developed countries had more resources to use for the purpose of subsidizing. In his view, disciplines should apply across the board, but the issue of whether they should apply only to committed sectors was worth discussing. He was conscious of the political realities and difficulties surrounding social subsidies and wanted to protect the WTO from being accused of telling governments what to do in the education or health sectors. He agreed with the EC that definitional elements were needed to determine trade-distortiveness. Having classes of subsidies, as in the ASCM, might be the best way to address this problem.

45. The representative of the United States considered that the Argentinian Non-paper was a constructive effort, although his delegation could not endorse all the points made. On paragraph 6, he agreed that GATS Article XIII carved-out government procurement from GATS disciplines, but would not necessarily reach the same legal conclusions. It was true, however, that government procurement might potentially confer an indirect benefit in commercial services. The analysis in paragraph 7 deserved further consideration. He noted the concerns raised in paragraph 8 regarding

measures of a regulatory nature, but wondered whether the terms used ("income or price support") would actually embrace this type of measures. The analysis on "specificity" was very sound. As pointed out by Hong Kong, China, a definition of subsidies could refer to different classes of subsidies, in terms for their potential for distortion.

46. The representative of Switzerland said that, at least at the beginning, the debate should focus on the financial nature of subsidies. Regulatory matters would fall under other provisions of the GATS. For the sake of coherence, the definition of "public body" should refer to GATS Article I (paragraph 7 of the Argentinian paper). He enquired what idea stood behind the second sentence of paragraph 8. The notion of specificity was a pragmatic approach to consider the notion of trade-distortions. Another issue was whether a subsidy in the area of goods could also affect services: if the good was not exported, it would probably be covered by GATT disciplines, but might nevertheless affect services trade.

47. The representative of Japan said that defining the scope of "subsidies" was a prerequisite to establishing disciplines. Using the ASCM as a starting-point was a good approach. He agreed that entities granting subsidies should be defined by reference to GATS Article I:3(a). Japan was interested in further discussing the issues raised in paragraph 8 of the Argentinian paper and asked what was meant by "income or price support". The representative of Canada said that, while the issue of definition was important conceptually, his delegation had not determined yet whether specific subsidy disciplines were relevant for services. With respect to paragraph 9 of the Argentinian paper, he wondered how the notion of benefit could have the effect of narrowing the scope of the definition. In the goods context, two conditions had to be satisfied for a subsidy to be deemed to exist, namely "financial contribution" and "benefit". The representative of the European Communities disagreed with the last sentence in paragraph 6 of the Argentinian paper because there were no disciplines yet on government procurement. The issue of regulatory interventions should be given further consideration. The representative of Brazil said that Article 1 of the ASCM provided a good basis for further work. The four types of financial contribution and the specificity of the subsidy were key elements. It was important to provide for a carve-out for GATS Article XIII:1. His delegation was still reflecting on the question of regulatory interventions. He concurred with the conclusion expressed in paragraph 12 of the Argentinian paper.

48. The representative of Chile commented on the exclusion of government activity from subsidy disciplines, raised in paragraph 3(d) of the Communication by Hong Kong, China (Job No. 5870, 27 September 2000). Such exclusion might have the consequence that different Members with different situations might have different disciplines. On the other hand, it should be remembered that government services not supplied on a commercial basis could have distortive effects on international trade when the relevant markets were open to competition (this was the case in air and maritime transport, for instance).

49. The representative of Argentina said that the distinction, in paragraph 6, between government procurement of goods and subsidy disciplines aimed at maintaining a distinction which already existed in goods trade, where it was recognized that public procurement as such did not fall under the ASCM. The same standard should apply in services trade. Paragraph 8 raised the question whether the concept of "income or price support" could be transferred in the context of services. It might be said that any regulatory intervention could imply price support to the extent that it granted a competitive advantage (see, for instance, footnote 5 of the Non-paper). The notion of "benefit" (paragraph 9) should not be considered in isolation, but in relation to the concepts of financial contribution and specificity. Any definition should be precise enough to avoid circumvention.

50. Responding to the comment made by Chile, the representative of Hong Kong, China pointed to paragraph 8 of Job No. 5870. The definition contained Article I:3(b) stated, *inter alia*, that services provided in the exercise of governmental authority were services not supplied on a commercial basis.

51. The Chairperson noted that the Argentinian paper had been well-received. Several topics had been identified, such as: using the ASCM definition, and its various elements, as a basis for further work; the issues of regulatory interventions and social subsidies; whether it was opportune to establish classes of subsidies. This listing was not exhaustive. At the next meeting, he would invite Members to address item 3 of the Checklist (*To what extent do WTO rules, in particular the GATS and its national treatment and most-favoured-nation disciplines, already discipline services subsidies or provide the means to do so? This would include consideration of technical issues related to the GATS, including mode specificity and the concept of "like service"*). Delegations would have an opportunity to come back on points 1 and 2 as well. He suggested that it might be useful for the Working Party to discuss these issues informally and invited reactions from delegations in this regard. As agreed earlier, the Secretariat would undertake a further update of S/WPGR/W/25.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

52. The Chairperson said that, as agreed at the July meeting, the Secretariat had circulated two documents under this agenda item: (i) a list of documents dealing with relevant activities in the Working Group on Transparency in Government Procurement and the Committee on Government Procurement (Job No. 7053, 7 November 2000); and (ii) a factual note compiling services concessions made in the framework of the Agreement on Government Procurement (Job No. 7072, 8 November 2000).

D. DATE OF THE NEXT MEETING

53. The Chairperson indicated that the next formal meeting of the Working Party would take place in March 2001, as part of the cluster of services meetings. The exact date remained to be determined. He recalled that he would convene an informal meeting on the issue of emergency safeguard measures at the beginning of next year.

E. OTHER BUSINESS

54. The Chairperson recalled that, on 3 November 2000, the Secretariat had circulated draft annual reports from the Council for Trade in Services, the Special Session of the Council and the subsidiary bodies (see Job No. 6990). The annual reports had to be adopted by the Council for Trade in Services and its subsidiary bodies prior to their submission to the General Council on 7 December. Moreover, the reports had to be circulated in their final form at least 10 days before the General Council meeting. Given this requirement and the time constraints imposed by the schedule of services meetings, it had been necessary to resort to a written procedure for adopting these reports. The draft report for the Working Party on GATS Rules was contained in document S/WPGR/W/35. Delegations had been invited to communicate to the Secretariat by 17 November 2000 any views or comments they might have on these draft reports. In the absence of any comment, the report had been considered to be adopted on 17 November 2000; it had been issued in its final form on 23 November 2000 in document S/WPGR/5.

Working Party on GATS Rules

REPORT OF THE MEETING OF 27 SEPTEMBER 2000

Note by the Secretariat

1. The Working Party on GATS Rules held its twenty-ninth meeting under the chairmanship of Mr. Tony Sims, from the United Kingdom. The agenda for the meeting was contained in WTO/AIR/1381. It consisted of five items: negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The agenda for the meeting was adopted.
2. The Chairperson drew attention to an informal Note (Job No. 5538, 15 September 2000) he had circulated to assist delegations in their preparation for the meeting.
 - A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS
3. In the absence of new contributions from Members, the Chairperson proposed to revert to items 1 (definition of "domestic industry") and 2 (issue of "acquired rights") of Job No. 1979 (29 March 2000). Delegations were also invited to consider two informal papers prepared by the Secretariat following requests by the Working Party at its informal meeting on 22 June 2000: first, a factual background note on GATT/WTO dispute settlement practice on the concept of "unforeseen developments", as contained in GATT Article XIX (Job No. 5077, 18 August 2000); and, secondly, a technical paper on the possible forms of special and differential treatment in an emergency safeguard mechanism (Job No. 5539, 15 September 2000). Finally, in view of future thematic discussions in the Working Party, delegations would also be invited to comment on whether the Chairperson's Note Job No. 1979 should be revised. He proposed to discuss these issues in informal mode.
4. The representative of Thailand, on behalf of ASEAN, informed the Working Party that ASEAN was working intensively on a draft agreement on a possible safeguard mechanism for trade in services. He stressed that this draft was not based solely on ASEAN's position, but was an attempt to take into account, to a very large extent, the discussion so far in the Working Party. The draft was nearly completed. It would propose solutions to most of the conceptual issues raised in the Working Party. ASEAN was trying its best to circulate a well-conceived draft in the very near future.
5. The representative of Poland replied to a question posed at the July meeting by the delegation of Kenya (see para. 11 of S/WPGR/M/28) in relation to the communication presented by Poland in S/WPGR/W/34. The National Bank of Poland had confirmed that the Foreign Exchange Law was in force since 12 January 1999. The possibility, contained in Article 18 of the Law, to introduce a safeguard measure was not related to any particular reason existing in the Polish economy – there had been no currency crisis in Poland in the nineties – but was justified by the fact that the Polish economy was subject to an in-depth restructuring. A progressive liberalization of capital flows had been implemented in the country. Such policy might entail foreign exchange or financial disadvantages.

6. The Chairperson suggested to turn to informal mode to discuss the issues mentioned earlier. The Secretariat would prepare a note summarizing the comments made.¹ It was so agreed.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

7. The Chairperson drew attention to a communication circulated by the delegation of Poland in document S/WPGR/W/16/Add.4/Suppl.1 (dated 20 September 2000).

8. The representative of Poland said that this paper was a supplement to the notification made in document S/WPGR/W/16/Add.4, describing subsidy programmes and aids in services granted in the years 1997-1998. He recalled that, when presenting the initial document, his delegation had promised information on aids granted in 1999 as soon as the data were available. He noted that, although the aids in 1999 were granted only under the second of the programmes listed, all three were still in force. The third programme would be operational until 2009. The sums indicated for these programmes were in Polish zlotys (4 zlotys approximated 1 US dollar in 1999). The Chairperson thanked the delegation of Poland and urged other delegations to respond to the 1997 subsidy questionnaire.

9. The Chairperson recalled that, as agreed at the last meeting of the Working Party, he had circulated a Checklist on Subsidies (Job No. 4519, 17 July 2000). In preparing it, he had tried to maintain a balance between, on the one hand, those delegations who wanted a comprehensive list, and, on the other hand, those who were in favour of a short list. He had attempted to present topics in a logical order, so as to allow for a sequential approach. One item would be proposed for each successive meeting; however, since all these issues were interconnected, it would be artificial to ignore cross-linkages. He intended, therefore, to ensure flexibility when addressing the items on the list. It should not become a straightjacket. He enquired whether delegations had suggestions or comments to make.

10. The representative of Brazil said that point 5 of the list should include a reference to the possible need for additional GATS disciplines to avoid trade-distortive effects, including the appropriateness of countervailing procedures. This latter point was explicitly mentioned in the Article XV:1 mandate. The Chairperson said that the list would be revised to include this suggestion.

11. The representative of Canada supported the Chairperson's proposal to have a more structured discussion on subsidies. He reiterated his delegation's concerns about any discussion of the relevance of subsidies granted for public policy objectives. To the extent that WPGR wanted to engage in a substantive discussion on this point, Canada would convey strong views on this issue.

12. The Chairperson suggested to turn to informal mode to discuss item 1 of the Checklist, i.e. "Definition of a subsidy in services (including relevance of the definition in the Agreement on Subsidies and Countervailing Measures)". The Secretariat would prepare a note summarizing the comments made. It was so agreed.²

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

13. The Chairperson invited further comments on the informal communication presented at the last meeting by the European Communities and its Member States (*Government procurement of services – Possible developments of multilateral disciplines*, Job No. 4021, 26 June 2000). Delegations were also free to raise any other point.

¹ This Note is contained in Job No. 3449/Add.2 (6 October 2000).

² This Note is contained in Job No. 6142, (6 October 2000).

14. The representative of the European Communities said they were still reflecting on a number of issues and, following the discussion at the last meeting, examining the possibility of presenting a list of points for further consideration. These included, *inter alia*, the issues of transparency, market access and national treatment, and MFN.

15. The representative of Poland said that his delegation supported work on transparency in government procurement of services as transparency was of basic importance in this field. She noted that GATS Article III already covered transparency. Similar issues were being examined by the Working Group on Transparency in Government Procurement ("WGTGP"), and provisions ultimately agreed to in the WGTGP would cover a wider range of products, including services.

16. The representative of Thailand, on behalf of the ASEAN Members, considered that the scope of the Article XIII mandate should be discussed before embarking on a more ambitious exercise. The relationship, if any, between the first and the second paragraphs deserved further consideration. The meaning of the phrase "government procurement in services under this Agreement", in para. 2, was of fundamental importance. He enquired whether this meant that negotiations in the Working Party were subject to the exemptions specified in Article XIII:1 or whether these could be modified in the course of the negotiations.

17. The representative of Brazil said that the Article XIII mandate was not necessarily conducive to market access negotiations. The question of MFN was difficult to dissociate from market access issues. Work on transparency should concentrate in the WGTGP so as to avoid duplication, but also because of the nature of government procurement: Brazilian legislation on government procurement did not distinguish between procurement of goods and services. Economic reality also showed that, in many cases, both goods and services were involved in the same transaction. For instance, a purchase of computer equipment would often include after-sale services.

18. The representative of Venezuela said that it was important to look at the scope of the mandate of Article XIII. It was important to bear in mind the incentive mechanisms that might be used by developing countries to promote competitiveness of local suppliers. All provisions related to transparency, both in goods and services, should be analyzed in the WGTGP. Work on this subject should also take into account relevant discussions in the Special Sessions of the GATS Council concerning the assessment of services trade and the benefits of trade liberalization for developing countries. The representative of the Republic of Korea considered that work on transparency should be conducted in the WGTGP. The representative of Canada said that further reflection was needed on the scope of Article XIII mandate, as presented in the EC paper. Canada agreed with the approach outlined by the EC whereby possible disciplines should be considered first, followed, at a later stage, by discussions on market-access commitments. Canada agreed that non-discrimination and transparency obligations were two important aspects of potential disciplines that could be examined by this Working Party. The possibility of additional disciplines that might be appropriate in a services agreement, with a focus on market access, should not be precluded.

19. The representative of India disagreed with the interpretation in para. 2 of the EC communication. His delegation felt that the intention of the negotiators was to exclude the three Articles referred to in Article XIII:1 from being part of any procurement disciplines in services, while the second paragraph mandated Members to consider whether – and negotiate the extent to which – the other provisions of the GATS should apply to government procurement. The representative of Argentina expressed interest in the points raised by Brazil regarding the negotiating mandate and ways to organize work in this Working Party. He noted that the scope of the negotiating mandate was a question which had already been raised in other contexts in this Working Party. The representative of the United States expressed doubts as to whether it was useful to examine the mandate of Article XIII. Should the mandate exclude national treatment, market access, and MFN, he wondered what it would actually cover. His delegation was pleased with the progress achieved on transparency

in the WGTGP, which covered both goods and services. The representative of Hong Kong, China said that his delegation understood that the multilateral negotiations covered all GATS Articles. He shared India's view that the first sentence of Article XIII should not be interpreted to mean that all other GATS provisions already applied, but disagreed with the suggestion that Articles II, XVI and XVII would not be part of the negotiations. The representative of Egypt supported the position expressed by India on the mandate of Article XIII. The representative of Japan expressed doubts whether it could be inferred from the first paragraph of Article XIII that all GATS provisions, except Articles II, XVI and XVII, already applied. However, his delegation was of the view that these three provisions were part of the negotiations.

20. The representative of the European Communities maintained that the explicit reference to Articles II, XVI and XVII in the first paragraph of Article XIII clearly implied that the other GATS provisions did apply. He said that it was desirable to establish disciplines on transparency and suggested that this work might be pursued in parallel in this Working Party and the WGTGP which could be mutually supportive.

21. The representative of Canada said that work on transparency in government procurement was important on its own merits. It was not, however, the only element of an agreement to improve market access in government procurement. Discussions on transparency should therefore continue in this Working Party and in the WGTGP.

22. The Chairperson recalled that, as agreed in July, the Secretariat would circulate before the next meeting of the Working Party: (i) a checklist of documents dealing with relevant activities in the Committee on Government Procurement and in the WGTPG, and (ii) a factual note compiling services concessions included in the framework of the Agreement on Government Procurement

D. DATE OF THE NEXT MEETING

23. The Chairperson informed the Working Party that the next formal meeting would take place on 30 November and 1 December 2000. He recalled that, as agreed during the informal session on safeguards, he would hold a three-day informal meeting on the issue of emergency safeguard measures on 1, 2 and 3 November.

Working Party on GATS Rules

REPORT OF THE MEETING HELD ON 7 JULY 2000

Note by the Secretariat

Corrigendum

Please note the following changes, requested by the delegation of Brazil:

Paragraph 28 should read:

"28. The representative of Brazil said that document W/25/Add.1 indicated the existence of subsidy practices in various services sectors (tourism, air and maritime transport, financial services, audiovisual); subsidies might also exist in sectors such as postal services, construction, R&D and advertising. It was possible to identify certain patterns in subsidy programmes, associated with the level of development of countries; for example, subsidies in tourism were generally granted by developing countries through tax incentives, while subsidies in the audiovisual sector seemed to be mostly granted by developed countries. Work should concentrate on subsidies that were contingent upon export performance and that had an effect on international trade in services, even though no precise information was available for the time being. Subsidies affecting competition in third markets should also be taken into account. Brazil agreed with others that work should focus on a list of topics including definitional *issues*, MFN, national treatment, likeness, mode specificity of subsidies, possible exceptions, and possible use of countervailing measures. ***However, the issues should not be considered in a strictly sequential manner, but altogether. Discussions should not be limited at their initial stage, to definitional issues, for example, the definition of subsidies, but also consider the other aspects that were mentioned.***"

Paragraph 42 should read:

"42. The representative of Brazil said that paragraph 1 of the EC paper went too far since Article XIII of the GATS only mandated Members to have multilateral negotiations on government procurement in services, but did not prejudice the result. He shared other delegations' doubts regarding the applicability of Articles III and VI to government procurement. The application of Article III:1 might be envisaged, but not III:3, which applied only if there were specific commitments. The same comments would apply to Article VI, paragraphs 1, 3, 5 and 6; moreover, any disciplines developed under GATS Article VI:4 in the WPDR could apply only to scheduled sectors. His delegation ***did not view the mandate of Article XIII as necessarily conducive*** ~~could not go along with suggestions to consider eventual~~ ***to market access negotiations for government procurement because this would be outside the scope of the mandate of Article XIII.*** Work on transparency should concentrate in the WGTGP."

* In English only. Please note that the changes are indicated in bold and italics.

Working Party on GATS Rules

REPORT OF THE MEETING OF 7 JULY 2000

Note by the Secretariat

1. The Working Party on GATS Rules held its twenty-eighth meeting under the chairmanship of Mr. Tony Sims, from the United Kingdom. The agenda for the meeting was contained in WTO/AIR/1343. It consisted of five items: negotiations on safeguards under GATS Article X; negotiation on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The agenda for the meeting was adopted.
2. The Chairperson drew attention to an informal Note (Job No. 4058, 27 June 2000), he had circulated to assist delegations in their preparation for the meeting.
 - A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS
3. The Chairperson said that good progress had been made since the beginning of this year on the question of an emergency safeguard mechanism ("ESM"). The ASEAN Concept Paper (S/WPGR/W/30, 29 March 2000, hereinafter the "ACP") was a substantive contribution which had helped to focus discussion. The Working Party had held four informal meetings which had allowed detailed exchanges on the eight themes listed in the Chairperson's Note, Job No. 1979, as well as on issues raised by Members. This process had helped Members to identify important questions to be considered, irrespective of the form of any ESM. The Secretariat had prepared, under its own responsibility, a Note summarizing the informal discussions (Job No. 3449, 7 June 2000 and 3449/Add.1, 27 June 2000). Under this agenda item, he intended to address, first, the substantive aspects of the Working Party's work on an ESM and, second, procedural matters. With respect to the substantive debate on an ESM, the Chairperson suggested that Members elaborate on issues raised in past formal and informal meetings, for instance in relation to the ACP or the eight themes listed in Job No. 1979. Members were, of course, free to raise any other issue. He pointed out three papers tabled by the Secretariat, which delegations might want to consider: S/WPGR/W/32 (15 May 2000) described past and future work of the Inter-Agency Task Force on Statistics in International Trade in Services; S/WPGR/W/33 (31 May 2000) dealt with patterns of limitations scheduled under mode 2; the Secretariat had prepared a second revision of Job No. 5294 (*Relevant Criteria, Sources and Conditions*, Job No. 5294/Rev.2) in the light of recent informal discussions held in the Working Party. Before opening the floor for the general discussion, the Chairperson invited the delegation of Poland to introduce its communication on *Emergency Safeguards Mechanism Contained in Article 18 Act of 18 December 1998 on Foreign Exchange Law* (S/WPGR/W/34, 3 July 2000).
4. The representative of Poland said that the communication was of an informative nature, intended to contribute to elaborating rules governing an ESM in services and to give an example of a situation in which such measures might be used. The mechanism described was meant to deal with events presenting an extraordinary risk to the Polish financial system, for example if the foreign exchange reserves decreased substantially. Poland had not used this mechanism so far. A number of delegations thanked Poland for presenting this communication and said they would revert to it at the next meeting of the Working Party.

5. Introducing document S/WPGR/W/32, a representative of the Secretariat indicated that, in a few years, the work on a services manual might be sufficiently advanced to use services statistics in negotiations. This did not, however, imply that they could also be used in the context of safeguard action, since these statistics would still be at quite a high level of aggregation. In that regard, it might also be worth recalling that, in the area of goods, safeguard actions were not necessarily based on official statistics, which, in many cases, were still too aggregated and too old in order to provide an empirical basis for an emergency action. The 1999 report of the Committee on Safeguards (G/L/338, 26 October 1999) listed, for instance, products such as sandals or safety matches, for which official statistics were unlikely to be available. Thus, the situation in services might not be very different from goods. The key question seemed to be what data, rather than what statistics, would be available.

6. The representative of Thailand, speaking on behalf of the ASEAN Members, informed the Working Party that ASEAN had taken the initiative to hold a series of informal meetings to discuss technical issues related to the ACP. The purpose was to provide an informal setting in which Members might further exchange views and provide ASEAN with inputs, which, together with the on-going work in the Working Party, could be used as a basis for a draft text on emergency safeguard measures. So far, two such meetings had been held at the Mission of Thailand and another meeting would be held on 25 July, open to all Member wishing to participate. ASEAN was of the view that, since the ACP had been submitted to the Working Party, a thorough and useful debate had taken place. All key issues that could possibly be identified at this stage had been examined and needed to be properly digested. ASEAN would seriously reflect on comments received and hoped to be able to submit a draft text to the Working Party in the autumn. Turning to the papers prepared by the Secretariat, he said that Job No. 5294/Rev. 2 faithfully reflected discussions in the Working Party on indicators and criteria for injury determination and would help ASEAN to update the ACP. S/WPGR/W/33 was a good attempt to establish patterns of limitations under mode 2, as these were contained in schedules of commitments. This paper showed that such limitations existed under the GATS for both horizontal and sector-specific purposes. An ESM was in essence an additional limitation to a Member's specific commitments. If such limitations already existed under mode 2, then it would only be consistent with the GATS framework to allow Members to apply a safeguard measures also under mode 2. The patterns provided in W/33 were concrete proof that, for a large number of Members, it was feasible to apply limitations to their specific commitments under mode 2. It should then also be feasible to apply and enforce an ESM under mode 2. He noted that W/33 enumerated the types of measures that might be taken as ESMs, and were not necessarily limited to measures targeted at consumers. Relevant measures included, for instance, requirements on the supplier to be locally established; some 80 Members had scheduled this type of limitation in financial services. It would then be only logical to allow that such a measure be used as an ESM. ASEAN was therefore convinced that an ESM was applicable for all modes, including mode 2.

7. The representative of Argentina said that sub-paragraphs (iii) and (iv) of paragraph 1 of the Polish communication were very interesting because they described two situations that were not included in any provision of the GATS, for example Article XII. It might be interesting to examine paragraph 1(iii) because of the obligation on all Members to authorize the inflow of capital where there were commitments, in particular in light of footnote 8 to Article XVI of the GATS. If mode 1 were to be liberalized by a Member, for instance, such a situation could occur; this was probably what Poland had in mind.

8. The representative of Egypt said that the paper presented by Poland was relevant because it indicated the circumstances in which a safeguard measure could be taken and gave some understanding of the terms "unforeseen circumstances". He hoped that other Members could also describe situations in which they would take safeguard measures. He further noted that the mechanism presented by Poland aimed at preserving the stability and integrity of the financial system and that increased supply of services in the financial sector could affect the equilibrium of the balance-of-payments.

9. The representative of India wished to encourage ASEAN Members in their efforts to present a revised text. The Working Party had to bear in mind its mandate and deadline, and all delegations should engage fully under this agenda item.

10. The representative of Brazil agreed that the Working Party had made very significant progress in the last months, thanks to the ACP and the examination of the eight points listed in Job No. 1979. The process had led to a better focus and an improved understanding of the elements which might be part of an ESM; this helped to visualise possible disciplines for an ESM which would be operational, not more burdensome than Article XXI, and would give the necessary comfort and legal certainty to Members wishing to liberalise access to their market. Brazil was pleased to participate in the process initiated by the ASEAN Members. Concerning the availability of data and statistics, Brazil was of the view that data provided by companies played a very important role and were sufficiently disaggregated; the problem of statistics should therefore not be exaggerated.

11. The representative of Kenya asked the delegation of Poland if the legislation presented in W/34 had been made necessary by capital inflows attracted in the last decade. The representative of Poland said her delegation would answer at the next meeting of the Working Party.

12. The United States said that the law referred to in W/34 might be more relevant to other areas of the GATS. He agreed that discussions on ESMs, in particular those held in informal mode, had been very fruitful and had raised an important number of questions. All delegations had constructively participated. On Job No. 5294/Rev.2, he welcomed the clarification made in table 2, but still had questions regarding the difficulties that might be encountered in obtaining reliable statistics on many of these factors, in particular those related to increases in imports. The point made by the Secretariat regarding the possible use of unofficial data and sources was worth considering. W/33 gave a good overview of the types of measures that had been scheduled under mode 2, but a large number of them were not specific to mode 2. The types of restrictions that looked most relevant for an ESM would appear to be discriminatory tax measures; restrictions on transfers; payments or capital transactions; exclusions from insurance reimbursement and public support; as well as various forms of quantitative restrictions. While all these measures might theoretically be used under an ESM, it was not clear how some very basic safeguard concepts, such as degressivity, could be incorporated.

13. The representative of the European Communities said she doubted whether the communication presented by Poland went beyond what was covered by GATS Article XII and the carve-out for prudential measures contained in the Annex on Financial Services.

14. The representative of Canada noted that an ESM raised difficult conceptual issues, but also had profound trade policy implications. Therefore, Members had to ensure that any such mechanism would be on solid ground. The question of transparency should be looked at, not only in terms of WTO procedures, but also from a domestic point of view to ensure due process. In relation to Job No. 5294/Rev.2, he wished to emphasize the importance of a clear causal link between the increased supply of foreign services and its impact on domestic suppliers. There was currently a lack of data which made it difficult to ensure that such a link was duly established. It was necessary to relate the increased participation of foreign suppliers to liberalization commitments undertaken by the Member concerned, based on objective criteria.

15. The representative of Japan expressed appreciation for the initiative taken by the ASEAN Members in tabling a concept paper and for the progress made so far in the Working Party. Japan looked forward to a revision of the ACP.

16. The representative of Venezuela suggested that a twelfth point should be added in table 2 of Job No. 5294/Rev.2, which would relate to transboundary movements in transport, whether by air,

road or sea. Information from international or national transport agencies in specific sectors would be needed. He agreed that many relevant statistics or information sources were private; in the case of services, the weight of such information could be considerable.

17. The representative of the Republic of Korea considered that the matter raised by Poland in W/34 related mainly to GATS Article XII. He acknowledged that the ACP had facilitated and focused the debate, and was looking forward to the revised text. He wished to clarify previous interventions by his delegation concerning the distinction between national and foreign firms: the reason Korea had stressed the need for this distinction was to facilitate drafting, but the intention was not to discriminate against foreign established suppliers. His delegation supported option 1 in paragraph 5 of the ACP.

18. In summing up, the Chairperson said that ASEAN and other delegations felt that the Working Party had had a detailed debate on all key issues relating to an ESM. It was now time to reflect and to consider a revised text. A number of delegations had expressed interest in participating in informal meetings held by the ASEAN Members. In his view, delegations had shown a high level of engagement in the last months. With respect to substance, it had been suggested that, in revising the ACP, ASEAN should look carefully at the issues of transparency and due process. Different opinions had been expressed on W/33: a first view was that limitations under mode 2 did exist and, thus, that it was possible to take safeguard action under this mode, but one delegation had wondered whether, in practice, such a safeguard action would work. More discussion was therefore needed on this subject. With respect to Job No. 5294/Rev.2, there clearly remained questions related to the availability of statistics, but interesting points had been made about using unofficial data sources. The importance of a causal link was stressed in this context and there seemed to be a consensus on this point. He noted that various views had been expressed with respect to the communication circulated by Poland in W/34: some saw it as a new element in the discussion, whilst others considered that the issues raised were already covered by GATS Article XII and the prudential carve-out.

19. Before concluding on this agenda item, the Chairperson suggested to consider how to organise work in the coming months in view of the 15 December deadline. He recalled that the question of principle about the desirability of a safeguard could not be prejudged and that it had been agreed to leave this question aside for the time being. Members had had very useful formal and informal discussions on a number of themes in recent months but many issues remained unresolved and discussions needed to continue. Meanwhile, ASEAN had indicated that it was planning to table a draft safeguard text in the autumn. Having any such text or texts would help the Working Party to focus on hard policy choices, including feasibility and desirability, which would have to be tackled in relation to any possible safeguard. In his view, it would therefore be appropriate to give due consideration to any such text(s) and discuss them in a comprehensive manner, whilst at the same time not excluding discussion of any other past or present contribution which might be on the table. He was of the view that, in order to keep order in the debate, it would be useful to continue to consider any contribution on a thematic basis, in the same way as the Working Party had structured its work in recent months, although it might need to be reconsidered whether the list of themes contained in Job No. 1979 needed to be expanded. Finally, he proposed that the Working Party should consider in September how to organise its time in the autumn, on the basis of what would be on the table. It was so agreed.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

20. The Chairperson drew attention to the papers prepared by the Secretariat, based on proposals by Argentina and Hong Kong, China in S/WPGR/W/31. In S/WPGR/W/25/Add.1, the Secretariat had compiled subsidy-related information extracted from 37 Trade Policy Reports published since December 1997, thereby updating a previous Note circulated in January 1998. S/WPGR/W/13/Add.1 presented subsidy-related entries found in schedules attached to the Fourth and Fifth Protocols, as

well as in schedules of Members which had acceded to the WTO since January 1996. As mandated by the Working Party, the Secretariat had also undertaken a survey of regional trade agreements notified since 1996, in order to update a previous Note (S/WPGR/W/12). However, no relevant information had been found additional to that already contained in S/WPGR/W/12. The Secretariat had also enquired whether work carried out at the OECD could provide relevant information and, in particular, whether the 1996 study on *Public Support to Industry*¹ had been updated; the answer was, in both cases, negative. The Chairperson understood that Australia and New Zealand were still considering whether they could supply any relevant information on ANZERTA. He encouraged delegations to complete the 1997 subsidies questionnaire (S/WPGR/W/16) and recalled that, in doing so, Members had the flexibility of not answering to all questions and of using their own definition of "subsidy". Moreover, any example of export subsidies would be welcome. He suggested two points for discussion: (i) delegations should give their views on the desirability and content of a possible checklist of issues, which might help the Working Party to address the issues raised in a more systematic manner; (ii) with respect to the substance, delegations might wish to focus on issues 10(a) and 10(b) of S/WPGR/W/31, i.e. "factors to be considered in developing any subsidies disciplines" and "social objectives of subsidy programmes". He invited the European Communities to introduce their informal note on *The Community Regime for State Aid in the Services Area* (Job No. 4302, 6 July 2000).

21. The representative of the European Communities said that this informal note intended to outline the EC regime for subsidies ("state aids" in EC law). The document did not give a detailed explanation of the disciplines for each sector, but simply underlined some aspects which were specific to the services area. The definition for "state aid" contained four elements: (i) transfer of state resources; (ii) economic advantage; (iii) selectivity; and (iv) effect on competition and trade between Member states. The EC aimed at establishing a competitive internal market free of distortions and, since subsidies might give an unfair advantage to one company, the principle was that state aid was prohibited. There were, however, a certain number of exceptions, in principle in exceptional circumstances, where subsidies might have a beneficial impact. Section D of Job No. 4053 described these exemptions and explained that the Commission, which was responsible for scrutinizing subsidies within the EC, had some discretion. The Commission had to verify, in particular, that the proportionality test was met, i.e. that the subsidy did not go beyond what was recognized to be the legitimate objective. The main specificities of the services area, as compared to the goods, were: (i) determination of the production capacity of services producers was much more complex; (ii) the concept of general economic interest services had to be respected, for those services, such as energy and communication, which were recognized to fulfil a public mission; and (iii) transport services, although subject to the general provisions on state aid, were subject to special rules. The EC policy in this field was not static, but evolved continuously. A number of delegations thanked the European Communities for their informal note and said they would comment on it at the next meeting of the Working Party.

22. The representative of Argentina said that W/13/Add.1 showed that national treatment could be a general discipline for subsidies. His delegation had started to do some homework on subsidies that could have distortive effects on trade (such as financing operations, export guaranties, and subsidies on interest rates) and hoped to make a contribution at the next meeting; he noted that, on pages 9, 17 and 21 of W/25/Add.1, the Secretariat had earmarked some of these subsidies. If they had a distorting effect on trade in goods, the same could arise in the case of services. He was in favour of developing a checklist of pertinent issues. In particular, the checklist should allow, as had been the case in safeguards with Job No. 1979, to discuss all subjects listed, without waiting for a conclusion on one item before moving to the next. Two subjects deserved particular consideration: (i) subsidies having a distortive effect on trade, and (ii) the application of current GATS disciplines to subsidies.

¹ Report by the Industry Committee to the Council at Ministerial Level, OCDE/GD(96)82, Paris, 1996. This study is available on request at the WTO Secretariat.

23. The representative of Hong Kong, China noted that W/13/Add.1 showed that acceding countries had frequently included a horizontal limitation for modes 1 and 2 and, sometimes, mode 3, with respect to the non-eligibility of non-nationals for subsidies. This might mean that acceding countries had particularly carefully analysed the need for such limitations or that they had made more wide-ranging commitments than most other Members. He agreed with the representative of Argentina that the question of national treatment could become a general principle in subsidies. With respect to W/25/Add.1, he took issue with the statement, in para. 5, that the application to services of the subsidy definition used in the Agreement on Subsidies and Countervailing Measures had not posed any problems in principle. It appeared to his delegation that a number of subsidies, including social and cultural subsidies, had not been mentioned at all. He said that the subsidies attributed to Hong Kong, China in table 1 of W/25/Add.1, under "Banking" and "Other financial services" reflected the intervention made by the government in the stock market in 1998; implying that this intervention had the effect of a subsidy was a subjective judgement which he would refute strongly. The government of Hong Kong, China had intervened to prevent a stock market movement which would have undermined the Hong Kong dollar; the government had bought all the constituent components of the Hang Seng Index (not just banks), but had played no part in the management of companies, and there had been no suggestion that companies in the Hang Seng Index had secured more favourable treatment. So, there was no financial contribution and no benefit conferred. He was disappointed that there was nothing to report concerning subsidy disciplines in regional trade agreements and this was perhaps due to the fact that only the ANZERTA and the EC had detailed enough rules. Concerning the follow-up on W/31, he supported the suggestion to use the points in paragraph 10 as a rolling-checklist of matters to be considered, and agreed with Argentina that all relevant issues should be addressed (such as public policy objectives, MFN, national treatment, trade-distorting effects, remedies, flexibility for developing countries) without prejudice to any final outcome.

24. Responding to the comments made by the representative of Hong Kong, China on W/25/Add.1, a representative of the Secretariat said that there was inevitably an element of subjectivity involved in classifying the content of TPR reports. He noted that the same criteria had been used throughout the TPR reports, and no account had been taken of the underlying policy intentions.

25. The representative of New Zealand supported the idea of having a rolling checklist of issues to the extent it helped to focus discussion. Documents W/31 and W/9 provided a source of useful information. He suggested to look in particular at questions raised in paragraph 41 of W/9. A checklist of issues had to focus on the essential purpose of the mandate contained in Article XV, namely the avoidance of distortive effects on services trade. There was, thus, a need to identify services subsidies having trade-distortive effect, since they would influence the shape of possible disciplines.

26. The representative of Uruguay suggested that W/25/Add.1 should be updated on a regular basis.

27. The representative of Switzerland said that W/25/Add.1 pointed out the lack of an agreed definition and confirmed that subsidies tended to concentrate on three sectors (maritime, tourism and financial services). It also highlighted the importance of determining the extent to which some sectors, such as health services, were provided under governmental authority. He noted that W/13/Add.1 was not as exhaustive as W/25/Add.1 because subsidies had been scheduled only if granted in sectors in which specific commitments had been undertaken. The problem of definition should be included in a checklist of issues, although agreement on a definition might be reached only when delegations had developed a clearer idea of the disciplines to be established. The implications of using national treatment as a disciplines should be examined more thoroughly. The scope of modes

1 and 2 and their relation with mode 3 should be clarified. Countervailing measures should also be discussed.

28. The representative of Brazil said that document W/25/Add.1 indicated the existence of subsidy practices in various services sectors (tourism, air and maritime transport, financial services, audiovisual); subsidies might also exist in sectors such as postal services, construction, R&D and advertising. It was possible to identify certain patterns in subsidy programmes, associated with the level of development of countries; for example, subsidies in tourism were generally granted by developing countries through tax incentives, while subsidies in the audiovisual sector seemed to be mostly granted by developed countries. Work should concentrate on subsidies that were contingent upon export performance and that had an effect on international trade in services, even though no precise information was available for the time being. Subsidies affecting competition in third markets should also be taken into account. Brazil agreed with others that work should focus on a list of topics including definitional issue, MFN, national treatment, likeness, mode specificity of subsidies, possible exceptions, and possible use of countervailing measures.

29. The representative of Canada said it would be useful to have general information about the frequency of use of the mechanism described by the EC in their informal Note, Job No. 4302. He considered that a checklist of issues would help to structure the discussion, but stressed that, according to the mandate of Article XV, work should focus on trade-distorting subsidies and not on subsidies in general. The checklist should concentrate on the definition of subsidies, the identification of trade-distortive subsidies in services, and the analysis of existing disciplines. It was premature to look at possible new disciplines.

30. The representative of the United States supported the idea of having a checklist of issues, whose content should be of an evolving nature. It was therefore not necessary to be comprehensive at this point. His delegation was in favour of a short and focused list to begin with. He associated himself with the suggestions made by Canada with respect to the content of the checklist and agreed that it was too early to address possible additional disciplines.

31. The representative of Thailand, speaking on behalf of the ASEAN Members, was also in favour of a checklist. Paragraph 10 of W/31 as well as elements contained in W/9 provided a good basis for such a list. He noted that some of the key issues, such as MFN, national treatment or likeness, had already been addressed in the context of the safeguard discussion and Members could refer to this discussion to the extent it was relevant for subsidies.

32. The representative of Australia said that work should concentrate on trade-distortive effects of subsidies and that a rolling checklist of issues should be short as a starting-point. There was a need to identify the core issues under this agenda item. The representative of Mexico supported the idea of a short checklist, containing the three issues mentioned earlier, i.e., definition, identification of trade-distortive subsidies, and analysis of fundamental principles (MFN and national treatment). The representative of Japan felt that a checklist of issues should give priority to definitional issues and trade-distorting effects.

33. The representative of Argentina was in favour of a longer checklist, closer to eight points than three. A real discussion was needed on the issue of trade-distortive effects because a subsidy might operate like a tariff in the subsidizing country. Any checklist should include subsidies subject to export-performance in order to discuss distortive effects on third markets.

34. The representative of Hong Kong, China said that, in order to consider questions like definition, one needed to know the scope and depth of the field of subsidies. It was essential to go through all issues before concluding on one in particular. The representative of the European Communities agreed that all the points on the checklist should be examined. MFN, national treatment

and definition should be on the list. The representative of Venezuela concurred that trade-distorting effects in third markets should be discussed and suggested that the concept of "nullification or impairment" be also included in a checklist.

35. In summing up, the Chairperson noted that there was broad support for a checklist of issues to structure the debate under this agenda item. Two different views had been expressed, however, on how to proceed: some delegations had said that all items should be addressed one after the other, while others wanted to focus first on core items. There was no need to decide at this stage how many items should be included in the list. He noted that three points had received broad support, namely: definition, trade-distortive effects and scope of current disciplines, in particular national treatment and MFN. Other points raised included the role of subsidies for developing countries, mode-specificity, likeness, remedies (including countervailing measures), public policy objectives, possible exceptions and the concept of "nullification or impairment". He suggested that, on the basis of this discussion, he would draft a checklist to be circulated by the end of July, so that the Working Party could discuss it at its next formal meeting. He also proposed that, in the September meeting, delegations start discussing the first item on the list, whatever it would be.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

36. The Chairperson invited the European Communities to introduce their informal communication on *Government procurement of services – possible development of multilateral disciplines* (Job No. 4021, 26 June 2000).

37. The representative of the European Communities said that, with this paper, his delegation hoped to reactivate the debate on possible disciplines that might be established for government procurement. It was too early to discuss market access commitments and the focus should be instead on the principles of national treatment and transparency. Since GATS Article XIII:1 expressly provided that Articles II, XVI and XVII did not apply to government procurement of services, it might be inferred that other provisions of the GATS did apply, notably Articles III and VI. It might therefore be useful to explore the possibility of extending the principles of Article VI to government procurement. Concerning non-discrimination, the discussion could address, as a starting-point, such issues as MFN, treatment of bilateral or plurilateral agreements, national treatment, review mechanisms and flexibility for developing countries. With regard to transparency, he recalled the activities carried on in the Working Group on Transparency in Government Procurement ("WGTGP") and noted that, in the Working Party on Domestic Regulation ("WPDR"), the EC had submitted an informal paper in February 2000, outlining possible elements of transparency. In a number of respects, these two Working Groups examined similar elements and concepts, although discussion in the WGTGP also covered issues specific to the procurement context. In order not to duplicate work, transparency-related issues should continue to be addressed in that Group. He recalled that, in February 1998, the EC had presented a paper in the WPGR, focusing on what constituted government procurement of services.² While views expressed in this paper remained valid, he believed that, at this stage, it was preferable to avoid restarting a discussion on definitional issues. A number of delegations thanked the EC for their informal communication.

38. The representative of India said that disciplines on government procurement, if and when developed, could not impose more onerous obligations on Members than what they had committed to in schedules. This Working Party should wait for the results of the work currently going on in the WGTGP. He disagreed with the EC's interpretation, in paragraph 2 of Job No. 4021, that "... provisions, such as Articles III and VI applied to government procurement".

² Communication dated 13 February 1998, no Job No.

39. The representative of Hong Kong, China said he did not entirely agree with the priorities and the thrust of the EC informal communication. Like India, he had some doubts regarding the suggestion, in paragraph 2, that the explicit exclusion of Articles II, XVI and XVII implied that other provisions of the GATS might apply. It would first be necessary to define what government procurement was. On the question of Article VI, he wondered whether the EC was suggesting that any horizontal disciplines that might be agreed under Article VI:4 would apply to government procurement. Government procurement was not a sector as such. He recalled that accountancy disciplines applied only where specific commitments had been made. He agreed with the EC that national treatment was a vital part of any procurement disciplines but he did not see why it had to be dealt with separately from the question of market access, since both national treatment and market access were the subject of specific commitments. He asked what the EC had in mind when referring to "a subsequent phase" (paragraph 2). Transparency was an important matter in government procurement and his delegation supported work on this subject in whichever forum progress was most likely to be made. He enquired what level of government the EC suggested should be covered by any transparency provision; in his view, this should be all levels of government. He recognized, however, that, given the heavy burden this might put on developing country Members, longer phase-in provisions could be considered.

40. The representative of New Zealand said that his delegation was in the process of reviewing the EC paper, and in particular paragraph 2. It would be useful to focus on non-discrimination, including the issues suggested by the EC in paragraph 4. His delegation wondered how the EC would link the issue of transparency with the work currently going on in the WGTGP and in the WPDR. Work should not be duplicated. He was of the view that, at this stage of the process, the prime focus for government procurement in the WPGR should be on more substantive issues, for example scope and coverage, MFN and national treatment, as well as procurement procedures. He recalled that a non-paper presented by New Zealand in 1997 addressed some of these issues³ and suggested that it might be useful to have a more structured discussion under this agenda item too.

41. The representative of the United States said that the legal interpretation contained in paragraph 2 was interesting and deserved further discussion. It might be difficult to separate the issues of non-discrimination and market access and, therefore, it might be worth examining whether some sectors were of special importance for government procurement in services. The United States placed great importance on the work currently carried on in the WGTGP. He recalled that in that body, several delegations had said that services should not be included in a transparency agreement and wondered, therefore, in what forum those delegations would like to address transparency in services procurement. Transparency was essential if substantive disciplines were to be agreed upon. The United States was currently reflecting on the issue of definition.

42. The representative of Brazil said that paragraph 1 of the EC paper went too far since Article XIII of the GATS only mandated Members to have multilateral negotiations on government procurement in services, but did not prejudge the result. He shared other delegations' doubts regarding the applicability of Articles III and VI to government procurement. The application of Article III:1 might be envisaged, but not III:3, which applied only if there were specific commitments. The same comments would apply to Article VI, paragraphs 1, 3, 5 and 6; moreover, any disciplines developed under GATS Article VI:4 in the WPDR could apply only to scheduled sectors. His delegation could not go along with suggestions to consider eventual market access negotiations for government procurement because this would be outside the scope of the mandate of Article XIII. Work on transparency should concentrate in the WGTGP.

43. The representative of Canada said that the suggested approach of considering possible disciplines first and, at a later stage, discussing market-access commitments, was consistent with the

³ Non-paper from New Zealand, Job No. 5446, 30 September 1997.

views expressed by Canada in this Working Party. Non-discrimination and transparency obligations were two important aspects which could be examined by this Working Party, although other obligations might also be needed. She enquired how the EC saw the application of existing GATS disciplines, such as Articles III and VI, in the government procurement context. She recalled that Canada could not support the criteria proposed by Japan in communication Job No. 6789 (12 November 1999), focusing on determining when a governmental entity was privatized. She also believed that it was premature to establish a framework for the application of disciplines, as suggested in the Chairperson's Note Job No. 782 (11 February 2000).

44. The representative of Japan said that transparency and non-discrimination were important principles in the context of government procurement, for which it was desirable to establish disciplines, separated from market access. With respect to the informal communication from the EC, he would welcome clarification on the fourth and fifth sentences of paragraph 2. He wondered how the EC intended to address principles relating to transparency and non-discrimination in the context of market access negotiations. Japan considered that discussion on transparency in government procurement in this Working Party should be interrelated with work going on in the WGTGP and in the WPDR. With respect to transparency disciplines, it would be more appropriate that the same principles apply to both goods and services. The WPGR could give a useful input to the WGTGP.

45. The representative of Switzerland said that her delegation was in favour of focusing discussions on transparency in government procurement in the WGTGP. On non-discrimination, she supported addressing the points raised in paragraph 4 of the EC informal communication, especially the issue of national treatment. Discussions on MFN treatment would also seem important, but might be more difficult.

46. The representative of Australia sought clarification on paragraph 2 of the EC informal communication, especially the first and last sentences. The focus should be on transparency and non-discrimination and work should be coordinated with other relevant bodies dealing with government procurement. It might be useful to have a paper summarizing relevant aspects of other bodies' work in this area. The representative of Thailand, speaking on behalf of the ASEAN Members, said that it was important to look closely at the scope of the negotiating mandate under Article XIII. The ASEAN Members intended to come back to a number of points raised in the informal communication by the EC, in particular in paragraph 2. The representative of the Republic of Korea enquired whether the Secretariat could provide information on the status of concessions made by Members under the Agreement on Government Procurement in the services area. The representative of Mexico agreed with those delegations who had expressed concern regarding paragraph 2 of the informal communication by the EC, relating to the application of some GATS provisions to government procurement. Referring to the last sentence of paragraph 2, her delegation doubted whether the mandate of Article XIII:2 necessarily involved market access negotiations. It was therefore necessary to clarify the mandate before going further. Some fundamental elements, such as definition or scope of a possible agreement, would seem to deserve immediate attention. Non-discrimination was important, but certain elements listed in paragraph 4 of the EC informal communication did not fit into Article XIII mandate. On transparency, work should not duplicate activities in other fora.

47. The representative of the European Communities replied that the "subsequent phase" mentioned in paragraph 2 of the informal communication, referred to a gradual approach to liberalizing government procurement, having regard to the sensitive nature of the subject for many Members. Establishing principles on transparency and non-discrimination first would seem to be a realistic approach and further liberalization could then be considered. His view was that Article XIII mandate allowed for such a gradual approach to negotiations. On transparency, it was important not to duplicate work in other bodies. The EC was still reflecting on the scope and coverage of a possible agreement. He felt that the interpretation, in paragraph 2, regarding the applicability of Articles III

and VI of the GATS was correct, at least concerning those provisions which were not dependent upon specific commitments.

48. The representative of Hong Kong, China wondered in which body the EC intended to address transparency issues. He could not share the view, expressed by several Members, that market access might not fall within the scope of Article XIII. The extent to which Article XVI:2 would be relevant to government procurement was another question. The representative of the European Communities agreed that there should be no duplication of activities and that work on transparency in government procurement should probably take place in one body only. However, there was no need to designate it now; the Working Party should gather information on the relevant activities going on in other bodies.

49. The Chairperson noted that the informal communication by the EC had prompted strong reactions on a number of issues, for instance with respect to paragraphs 1 and 2. He noted that some delegations were interested in further exploring non-discrimination, while others found it difficult to separate this issue from market access. Delegations disagreed on the question of whether Article XIII included the mandate to address market access issues. On transparency, many delegations had questions about the relationship between work in this Working Party and activities going on in other bodies. Questions were also raised about how future work might be structured. Taking into account requests made at this meeting, he proposed that the Secretariat would, by the November meeting, (i) circulate a checklist of documents dealing with relevant activities in the Committee on Government Procurement and in the WGTPG, and (ii) prepare a factual note compiling services concessions made in the framework of the Agreement on Government Procurement. It was so agreed.

D. DATE OF THE NEXT MEETING

50. The Chairperson said that the next formal meeting had been tentatively scheduled for 27 September, which was the first day of the September/October services cluster. He proposed that an informal meeting on safeguards be held, if necessary, on 19 September; this date would be confirmed after Jeûne Genevois.

51. The representative of Brazil said that the meetings of the Working Party on GATS Rules should be scheduled, as far as possible, within the services week, so that experts from capitals could attend. The Chairperson took note of this point which was of concern to other delegations too. He had raised it with the other Chairpersons and with the Chairperson of the Services Council and they had acknowledged that the services clusters would necessarily exceed one week. Thus, one or more subsidiary body(ies) would have to meet outside this week.

Working Party on GATS Rules

REPORT OF THE MEETING OF 4 - 5 MAY 2000

Note by the Secretariat

1. The twenty-seventh meeting of the Working Party on GATS Rules was opened by Mr. Siva Somasundram, of Singapore, Chairperson of the Working Party. The agenda for the meeting was contained in WTO/AIR/1288. It consisted of six items: appointment of a new chairperson; negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting; and other business. The agenda for the meeting was adopted.

2. The Chairperson drew attention to an informal Note (Job No. 2598, 28 April 2000) he had prepared in cooperation with Mr. Tony Sims, designated new Chairperson, to assist delegations in their preparation for the meeting.

A. APPOINTMENT OF THE NEW CHAIRPERSON

3. The Chairperson recalled that Mr. Stuart Harbinson, former Chairperson of the Services Council, had circulated a list of names for the chairs of the subsidiary bodies, including the Working Party on GATS Rules. It had been agreed that, in the absence of any objections by delegations, it should be assumed that there was a consensus on these names and that the subsidiary bodies should proceed with the election of their new chairpersons. No such objections had been raised. He, therefore, proposed that Mr. Tony Sims, from the United Kingdom, be the next chairperson of the Working Party.

4. Mr. Tony Sims was elected by acclamation.

B. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

5. The Chairperson indicated that he intended to open the floor twice on this agenda item. First, he would invite Working Party Members to continue their discussion on substantive issues. Second, he intended to have an exchange of views on how to organize work in the coming weeks and months, in view of the deadline of 15 December. He encouraged delegations to give further consideration among others to the ASEAN Concept Paper (ACP) (S/WPGR/W/30) and elaborate on preliminary comments made at the last meeting. It was important for the authors of this paper to receive as much input as possible, both in terms of general and more specific comments. Contributions were also welcomed on the eight themes listed in the Chairperson's Note of 29 March 2000 (Job No. 1979). The issues identified in this Note were earmarked mainly for informal meetings, but Members should also use opportunities to advance work during formal meetings. These issues needed to be addressed in defining possible elements of any safeguard mechanism, irrespective of its form. At the informal meeting held on 7 April, some delegations had suggested other issues to be added to the list, such as the concept of "unforeseen developments", transparency or provisional measures. Delegations might also want to address the comments and questions raised in the Chairperson's Note of 11 February (Job No. 782), since they had not really been discussed at the last meeting. Finally, he reiterated calls for hypothetical or real-life examples of situations in which emergency safeguard measures might be used.

6. The representative of Thailand, speaking on behalf of ASEAN, said that the ASEAN Members found the list of themes contained in Job No. 1979 useful. It contained the key issues identified in the ACP, as well as in other submissions, that needed to be thoroughly discussed before any substantial progress could be made. ASEAN would therefore strongly urge the Working Party to concentrate its efforts on these eight themes, so as to arrive at an early consensus on them. He wished to underline, however, that discussion of this list should not preclude the Working Party from discussing other inputs from Members, including the ACP.

7. He wished to offer comments on the Chairperson's Note Job No. 782, as well as on the informal Note by the Secretariat Job No. 5294/Rev.1. The latter was an important and positive step forward in the ESM negotiation with a view to developing a credible and well-balanced mechanism for injury investigation. The new third section would provide a key component for such a mechanism. Causality requirements were essential to prevent abuse of an ESM. It was important for the Working Party to come up with appropriate disciplines to be respected by the investigating Member, which, however, allowed for flexibility in the demonstration of a causal link. Referring to the goods area was a good starting point. "Objective evidence" of a causal link had to be demonstrated in services in the same manner as under the Agreement on Safeguards (AS). WTO practice might be referred to for the interpretation of the relevant terms. ASEAN also agreed with the suggestion that more than one injury criterion should be met in order to demonstrate injury. This was one area where the particularities of services, as opposed to goods, should be duly taken into account. Flexibility should be used as to the exact number of criteria to be met. Another possible element to be introduced into this section could be the requirement for the investigating authority to consider "factors other than increased supply or consumption of service" in order to demonstrate causality (see para. 13.3 of the ACP). To develop further rules in this regard, reference might be made for example to the Agreement on Anti-Dumping and to the relevant WTO practice in anti-dumping injury determinations. Finally, he agreed with the suggestion that transparency should be increased in the investigation phase in order to prevent abuse. This could mainly take the form of notification and consultation. ASEAN felt that Article 12 of the AS should be used as model, to be adjusted to the services context (Section X of the ACP). Turning to the Chairperson's Note Job No. 782, he said that ASEAN was in favour of a "necessity test" with regard to the choice, extent, and scope of the ESM to be applied. Article 5.1 of the AS would be, to a certain extent, a suitable model (see also paras. 9 and 14 of ACP). ASEAN believed that provisions on degressivity should be included in the mechanism, and that Article 7.4 of the AS could be referred to as a model (see also ACP para. 20). ASEAN was still reflecting on the issues of provisional safeguard measures and compensation, and would be pleased to hear Members' responses to the ACP in this regard. ASEAN was in favour of a provision on special and differential treatment (S&D) for developing countries (ACP para. 29). The ASEAN delegations would like to come back to the points raised in para. 11 of the Chairperson's Note.

8. He then referred to questions addressed by Members with respect to the ACP, and in particular to the questions posed by Canada, which appeared in Annex II of S/WPGR/M/26. A careful reading of the ACP, which had been circulated well before the last meeting, already contained many answers these questions. ASEAN agreed that the GATS dealt with "supply" rather than "consumption" of services. This basic idea underpinned the concept of the four modes; it was clear that in modes 1, 3 and 4, an ESM would affect (or restrict) the capacity to supply the service concerned. In mode 2, it was true that a restriction could only be imposed on the consumption, since the invoking Member did not have the jurisdiction to regulate supply of service outside its territory. Because of this peculiarity, mode 2 might raise some complications in the application of ESM. However, a restriction on consumption was tantamount to a *de facto* restriction of the supply itself. With respect to Canada's question concerning mode 2, ASEAN thus believed that an ESM might be applied even in this mode. This was logical, taking into account the framework of the GATS which allowed Members to include, in their respective schedules, limitations to their specific commitments in all modes, including mode 2. ASEAN suggested that the Secretariat be requested to examine Members' schedules of commitments in order to find examples of existing limitations under mode 2. If such limitations were already applied by Members, it would be logical to allow Members to apply

them as ESM under mode 2. ASEAN would also appreciate if the Secretariat could provide inputs on how Members actually implemented these limitations. With respect to the second question posed by Canada, ASEAN noted that the phrase "operating within the territory of a Member" meant what it said: there had to be some kind of physical presence by the supplier in the territory of the invoking Member. ASEAN believed that the modes of supply were of no relevance for defining the domestic industry. Taking them into account could indeed result in a farcical situation in respect of mode 2, because this could lead to a possible inclusion of foreign suppliers abroad in the domestic industry. With regard to the second part of the question on how to define domestic industry, ASEAN wished to draw attention to the ACP itself which was amply clear. Para. 5 proposed two options: the first one included foreign suppliers established in the country through commercial presence; the second option included only national suppliers. The Canadian delegation might also wish to refer to footnote 2 as well as to the Annex, which compiled relevant issues and was intended to facilitate the debate. With respect to the third question by Canada, he felt that paras. 12 and 13, in particular 13.3, of the ACP were self-explanatory. Concerning the fourth question, a careful reading of paras. 3 and 4 of the ACP clearly pointed out that, in this conceptual framework, an ESM could be applied across all modes of supply. This issue was, however, quite separate from the appropriateness of a given measure in respect of the mode of supply. It might not be possible to have a homogeneous measure that could be applied in all modes, and, presumably, account should be taken of the extent to which a particular mode of supply caused serious injury to the domestic industry.

9. Commenting on the fifth question raised by Canada, he noted that footnote 11 of the ACP suggested that Members might either refer to existing models in the goods area, or attempt to devise a new framework specific to services. In the latter instance, Members might want to work through Job No. 5294/Rev.1, which showed what indicators and criteria of quantifiable nature might be obtainable and relevant to determine serious injury or threat thereof. The collection of data would depend on the Members' respective domestic legislation. ASEAN did not believe that there was need for a multilateral provision governing the national authorities' work in implementing rights or obligations under international law. With respect to the sixth question, para. 14, in particular its chapeau, indicated that the applicable measures included "any or a combination of" the three types of measures provided for in the paragraph. With respect to the seventh question, he believed it was clear from the ACP that ASEAN was aiming at an overall equivalence of commitments under the GATS, regardless of sectors. Footnote 16 of the ACP also referred to the applicable provisions in the goods sector which, in turn implied that the key issue was the trade value of the commitments concerned.

10. In response to the eighth question, he referred to para. 16 of ASEAN's statement introducing the ACP¹ which was clear on the issue at hand. There was a significant difference between "selectively" drawing on a source, and a good faith attempt to draw inspiration from that source and to adapt its valid or applicable elements to a different context. The provisions governing safeguards in goods, and their use, constituted a useful reference, but services trade was different in many aspects. A rule that worked in the goods area might not necessarily lend itself to direct translation into the services context. In many cases, at least some adjustments were required; provisional measures were an example. Responding to the first part of question nine, he felt that no prior approval from the Council on Trade in Services (CTS) was required before the suspension of equivalent commitments by the Member affected by an ESM. The ACP intentionally used the same language as the AS, and this was also quite clear from a careful reading of paras. 15 and 16, together with footnote 16. However, in order to disapprove of such a suspension, the CTS would have to make a formal decision to that effect. In this sense, there was no "imbalance" as suggested. In fact, it would seem to be inappropriate if all procedural steps were to be approved by the CTS. If no such imbalance was perceived to exist in the context of the goods agreement, there was no logic of it being raised in the context of services. With regard to the last part of question nine, he stressed that the whole question of an ESM revolved around the issue of temporary withdrawal or modification of commitments under

¹ See Annex I of S/WPGR/M/26.

the GATS. This was wholly distinct from issues related to GATS Article XXI, which dealt with longer term developments.

11. ASEAN Members supported the Chair's proposal to hold two informal meetings in May and June, and a formal meeting in July, provided that the Working Party agreed to keep a record of informal meetings for future reference. It was ASEAN's hope that the Working Party finished discussing Job No. 1979 by the end of the informal meeting in June. The formal meeting in July would then provide an opportunity to wrap up the discussion and seriously consider a way forward for the negotiation on ESMs.

12. The representative of Japan supported a definition of "domestic industry" which included established foreign suppliers. However, it was necessary to define the concept of "established foreign suppliers" and, in particular, consider whether it included joint ventures, branches or representative offices. On the relation between domestic industry and the MFN principle, Japan noted that there had been considerable support for para. 6 of the ACP. However, further discussion might be needed with respect to the scope of "like services and service suppliers", as provided for in GATS Article II. The Working Party had to further discuss whether the definition of "acquired rights" included expansion activities (injection of additional capital, establishment of subsidiaries, mergers, acquisitions, etc); business had to be kept in mind. Japan felt that many delegations were of the view that disinvestment should not be allowed. However, what was meant by "disinvestment"? Did it include, for instance, the suspension of business, the withdrawal of licenses or authorizations? Transparency should be discussed in relation to indicators and criteria. Japan was interested in a notification mechanism along the lines of Article 12 of the AS. On applicable measures, Japan supported replacing "temporary withdrawal" with the terms "temporary suspension" (para. 14 of the ACP). Japan would like to further consider the possible impact on the scope of ESMs of the disciplines currently discussed in the context of domestic regulations and subsidies. The duration of an ESM should be as short as possible. Further work was needed to develop objective criteria for assessing "substantially equivalent level" of specific commitments (para. 16 of the ACP).

13. The representative of Peru said that, according to Peruvian legislation, all established companies operating on the Peruvian territory were considered to be domestic industries, regardless of their ownership regime. Peru therefore supported option 1 of para. 5 of the ACP. Consequently, any safeguard measure should focus in principle on new foreign competitors. As to the related question of whether this might entail a violation of the MFN principle, an analysis carried out by UNCTAD maintained that the MFN principle did not mean that foreign investors had to be treated in an equal or identical manner, regardless of their specific activities in the importing country. Differential treatment could be justified *vis-à-vis* industries from various countries if there were in objectively different situations. This analysis coincided with para. 6 of the annex to the ACP. A safeguard measure applied under mode 3 against possible foreign investors would not create a problem with regard to the MFN principle, because the decisive issue was whether the foreign supplier was already established or not, and not its nationality. Peru was still considering the merits of introducing a compensation requirement, taking into account the nature of the mechanism and the characteristics of Article XXI of the GATS. In the event of a such a requirement, there was a risk that it might be more onerous for a Member to adopt a temporary ESM than resorting to a permanent modification of commitments under Article XXI. When seeking an ESM, not only would a Member be required to compensate, as under Article XXI, but would also have to go through an investigation procedure to demonstrate injury and a causal link. One possible outcome would be to allow for the application of ESMs without compensation for specified short periods of time. A similar mechanism was provided for in the AS. What would be the relationship between the application of a provisional ESM and compensation? Would compensation be due when a provisional ESM was enforced? Para. 29 (option 2) of the ACP exempted developing countries from compensation. He believed that S&D should be included in an ESM mechanism.

14. The representative of Canada asked for the comments made by the representative of Thailand on behalf of ASEAN to be circulated in writing.

15. The representative of the European Communities considered that discussions in informal meetings should be the object of a summary record, even if only an informal one, so as to be brought to the attention of formal meetings. The position Members had on the issue of "domestic industry" was influenced by their internal legislation. Because of the specific nature of services, it would seem important that "domestic industry" be considered to include foreign-established suppliers. As pointed out by Japan, the concept of "foreign established suppliers" would need to be examined. For instance, how should branches be treated, which were instructed and controlled from other places? How should joint ventures be treated? Would there be a distinction in case of majority/minority shareholding, and could a threshold for such majority shareholding be established? The case of representative offices was perhaps easier; in the EC, representative offices were not considered to be established suppliers. With respect to acquired rights, she asked what would happen if foreign established suppliers were few in number, but represented quite a high percentage of the business in the country. Could this be seen as a form of inverted protectionism against further foreign competition? The question of further investment needed to be explored because denying the possibility of further investment could actually amount to going backward. This might apply to capital investment, but also to investment in personnel. It should be possible in principle to apply an ESM across all four modes of delivery even though questions remained as to whether it was possible to effectively apply measures under mode 2. With respect to the concept of "like service", the EC had some concerns about reference to end-use in the ACP, but was willing to further discuss the issue. Work on classification issues might not be sufficiently advanced to enable Members to identify "like" or "directly competitive" services. Case-law could be important since some issues, which could have an impact on the safeguard discussion in services, had been dealt with in dispute settlement. Indicators and criteria needed to be further examined, in particular those whose usefulness was questioned. The greater the number of relevant criteria which might be identified, the better the cause for a safeguard mechanism. She asked whether the Secretariat could give an update on the progress made by the U.N. Inter-Agency work on Statistics. The EC would also try to provide information on the type of statistics available within the Community. With respect to applicable measures, the question of additional commitments under Article XVIII needed serious study. For instance, some Members had scheduled the fact that they were developing new legislation and committed on implementing it upon completion; would such a commitment be covered by an ESM? The EC was in favour of a necessity test whose criteria might depend on the ongoing work in the domestic regulations context. With respect to compensation, she noted that the shorter the duration of an ESM, the lesser the need for a compensation requirement. She agreed with Peru that the relationship between a compensation requirement under GATS Article X and Article XXI had to be kept in mind. S&D was enshrined in the GATS, but Members might find it easier to determine its content once they had a clearer idea of the safeguard mechanism itself.

16. The representative of Pakistan generally supported the ACP and hoped that the deadline of 15 December would be met. He would revert to this matter at the next meeting.

17. The representative of the Republic of Korea did not have a final view on the definition of "domestic industry". However, he strongly believed that foreign investments and foreign firms should be protected. Should option 1 of the ACP be adopted for the definition of "domestic industry", a number of issues would need to be considered. For instance, "new entrants" should be defined, as well as the scope of "acquired rights", including the right for foreign established suppliers to expand. Korea was of the view that it would be difficult to apply an ESM to prevent the expansion of foreign established companies. To the extent that an ESM applied only to new foreign entrants, irrespective of their origin, there should not be a violation of the MFN obligation. However, there remained the possibility of a *de facto* violation, as mentioned in para. 7 of the annex to the ACP. On the other hand, a problem could arise with regard to Article X, first paragraph. If the determination of injury and causality was based on the concept of domestic industry, including foreign established suppliers,

and lead to the conclusion that the new entrants were not responsible for the injury, applying an ESM to them might be problematic. Korea was of the view that, taking into account their limited availability, a list of indicators and criteria should be illustrative. There was no need for a necessity test. An ESM should apply to specific commitments undertaken under GATS Article XVI, XVII and XVIII. The Working Party needed to discuss the re-introduction of quantitative restrictions under Article XVI. It was necessary to adopt S&D provisions depending on economic status of developing countries, including a specific *de minimis* provision.

18. The representative of Uruguay agreed to proceed on the themes identified in the Chairperson's Note Job No. 1979, with the understanding that work should also focus on the ACP. It was important to define the scope of domestic industry and ensure protection of acquired rights. S&D was an horizontal concept which had to be included.

19. The representative of Egypt supported option 1 of the ACP for defining "domestic industry" because it used the same language as that contained in Article 4 para. 1 of the AS. But various types of foreign-established suppliers still needed to be defined, as well as the relationship with the MFN principle. Egypt agreed with using the terms "supply and consumption", as proposed in the ACP. The concept of "unforeseen developments" might be more difficult to apply in services than in goods; possible criteria could be considered in this regard. Egypt recognized the temporary nature of an ESM, which should be applied to the extent necessary to prevent serious injury or threat thereof, and supported the application of a necessity test. Provisional measures should be included in an ES mechanism but should be limited and non-renewable; the range of possible measures should be more limited than those available after a full investigation procedure. An ESM needed to include a compensation requirement, in spite of the problems to determine a "substantially equivalent level". Data availability was a horizontal problem in services, which should be addressed. An ESM should also provide for S&D, in particular with respect to the relevant minimum thresholds of supply and the extension of the period of application of a safeguard measure.

20. The representative of Australia supported option 1 of the ACP for the definition of domestic industry. She shared the questions raised by Korea regarding new entrants. Predictability for investors was fundamental in the development of an ESM; the middle ground between disinvestment and full national treatment (post-establishment rights) should be explored. Australia strongly supported the development of common guidelines to establish trade and injury links; a mandatory, but not exhaustive list of relevant criteria could be established, based on the proposal by Venezuela. She was also in favour of exploring the feasibility of a necessity test to ensure that any measure adopted was not unduly trade-restrictive. It was necessary to provide for compensation, including for developing countries, in order to avoid misuse. The concept of "substantially equivalent" benefits had to be further examined in this regard. The Working Party might consider whether, when an affected party suspended a substantially equivalent level of specific commitments (para. 16 of the ACP), the MFN obligation was also suspended.

21. The representative of New Zealand sought clarification with respect to Korea's position on a necessity test. The representative of Korea, responded that the scope of an ESM should be limited to the extent necessary to prevent or remedy serious injury. However, strict criteria might be too burdensome and Members should retain a certain level of discretion.

22. The representative of the United States considered that the Chairperson's Note Job No. 1979 was a good basis for further work since it contained the issues key to the basic question of feasibility. The United States was of the view that the definition of "domestic industry" should include foreign-established suppliers and that "acquired rights" would have to be protected under a possible ESM. A number of interesting questions were raised as to how to define these concepts. As noted by the EC, restrictions on the expansion of business might in fact force suppliers to go backward. With respect to indicators and criteria, Job No. 5294/Rev.1 was a good starting-point but provided little

guidance on how to measure increased imports. Extending the concept of applicable measures to additional commitments under Article XVIII required careful consideration.

23. The representative of India shared the views expressed by Uruguay and Egypt with regard to the inclusion of S&D treatment.

24. The representative of Poland said that his capital was considering the possibility of presenting a non-paper to the Working Group. Poland was of the view that foreign-established suppliers should be included in the definition of "domestic industry". In addition, the definition should be consistent with Article XXVIII of the GATS. Poland was examining the issue of cross-modal application of ESMs, focusing on the feasibility of applying measures under mode 2. With respect to "like services", he noted some difficulties due to a lack of statistical data. Poland had some reservations against the inclusion of a compensation requirement. Examination of relevant indicators and criteria should continue. Applicable measures should include temporary suspension or modification of specific commitments under Articles XVI, XVII and XVIII. A necessity test was desirable.

25. The representative of Hong Kong, China said his delegation was not convinced of the need for compensation, primarily because an ESM should be short in duration. He was not sure that a short ESM would justify incurring all the difficulties associated with compensation. If compensation were to be introduced, questions such as cross-retaliation and data problems in assessing the "substantially equivalent level of specific commitments" needed to be looked at. The questions raised in para. 9 of Job No. 782 were also relevant. On the ACP, Hong Kong, China was concerned about para. 17, which suggested that the right of suspension of commitments should not be exercised for the first three years. Rights and benefits of services suppliers should be protected. He agreed that, in general, there should be some flexibility for developing countries, but the question remained as to what might be covered under S&D. Looking for a threshold was an interesting idea. Developing countries should not be exempted from a compensation requirement. It might be difficult for any invoking country to determine the origin of a service.

26. The representative of Guatemala said that acquired rights should be protected. Guatemala legislation did not distinguish between national and foreign established suppliers. Therefore, she preferred option 1 contained in para. 5 of the ACP.

27. The representative of Argentina said that the choice between options 1 and 2 in para. 5 of the ACP would influence the effectiveness of the measure. The first option was narrowly linked with the mode of supply in the goods sector and the AS. The questions raised by Korea in this regard were relevant: who should be protected and against what? How could a new entrant, not present in the market, cause injury? On MFN, his delegation would further reflect on the points raised by Peru. He had some doubts about the need for a compensation clause because an ESM should be of short duration. It would be interesting if the ASEAN Members could, even informally, indicate what they had in mind as to the maximum period of time for a safeguard measure.

28. The representative of Mexico said that his delegation would like to concentrate on the ACP. There were many similarities between the goods and services sectors, but also differences. To the extent possible, advantage should be taken of the experience and the legislative approach in the goods area. A safeguard mechanism was not an end in itself, but a means in order to achieve a goal. The choice between options 1 and 2 in para. 5 of the ACP would depend on what was intended to be protected. The concepts of "like services" and "acquired rights" were very important and would have a decisive influence on what might be the final result. Transparency in investigation and consultation procedures should be addressed and a maximum duration for the investigation process be determined. A national authority should be able to start an investigation procedure *ex officio*. In para. 14 of the ACP, the concept of "suspension" would be more suitable than the concept of "withdrawal". Mexico was of the view that S&D provisions should be considered.

29. The representative of El Salvador said that his delegation was in favour of option 1 of para. 5 of the ACP. The legislation of his country granted foreign-established investors the same rights as national ones; acquired rights should thus be protected. The concept of S&D should be included.

30. The representative of Brazil said that, regardless of what the definition of domestic industry would ultimately be, work should concentrate on defining more precisely "established foreign suppliers". Brazilian legislation granted full national treatment to any established firm. Brazil reserved its position concerning the need for a necessity test; the use of ESMs should not be too burdensome. His delegation was not sure whether a compensation mechanism would be necessary, especially if the duration of the measure was to be short. The possibility for cross-retaliation should be excluded. S&D-related provisions remained to be devised but, as a matter of principle, should be included.

31. The Chairperson recalled the questions raised by Peru and Argentina, and the requests for Secretariat's contributions. The representative of Thailand, on behalf of ASEAN, said he would provide answers at a later stage. A Member from the Secretariat mentioned that an example of mode 2 limitations was the exclusion, from public insurance schemes, of the costs of healthcare treatment abroad. The Secretariat would be pleased to undertake a full-scale examination of current schedules with regard to mode 2 limitations; it would be far more difficult, however, to obtain information on how these limitations were actually implemented. Concerning the U.N. Inter-Agency Work on Statistics, the Secretariat would get back to the Working Party with a progress report.

32. In summing up, the Chairperson noted that a number of delegations considered it important to proceed on the basis of Job No. 1979 to determine whether a safeguard mechanism was feasible; other delegations felt that work should concentrate on the ACP. In his view, a conceptual discussion was necessary if driven by inputs from Members. On the definition of "domestic industry", many delegations were in favour of including foreign-established suppliers; it was also suggested to further discuss the precise scope of these terms. It seemed that the Working Party was close to a consensus that there should be no disinvestment. Open questions remained, however, such as the definition of "disinvestment", expansion activities, etc. He would come back in due time to issues 1 and 2 of Job No. 1979. On indicators and criteria, a number of delegations had referred to Job No. 5294/Rev.1. It had also been suggested that the anti-dumping experience in goods should be considered more thoroughly. With respect to applicable measures, some delegations suggested that the word "suspension" be used instead of "withdrawal" in para. 14 of the ACP. A number of delegations were in favour of a necessity test, but it was also said that Members should retain some discretion. Some delegations were reluctant to consider the suspension of commitments under Article XVIII. Mixed views were expressed on compensation: a number of delegations were not sure about the need for compensation, particularly if the ESM was of short duration. Some Members had pointed out the difficulties in implementing such provisions (lack of data, cross-retaliation, etc.). Many delegations were in favour of including S&D, while noting that the content remained to be defined. Criteria were needed to specify "unforeseen developments" if the concept was to be used. He encouraged delegations to circulate any specific comments before the next meeting of the Working Party. The Secretariat would conduct a factual search in schedules in order to identify existing limitations under mode 2 and would prepare a progress report on developments on the statistical side.

33. The Chairperson sought the views of delegations on how work should be structured in the coming weeks and months. It would be useful to have had a discussion of the eight issues listed in Job No. 1979 before the summer break. The Working Group should decide on the number of meetings and whether these should be formal or informal. Ideally, the advantages of free-flowing informal discussions should be combined with some sort of record which could be referred to the future. On timing and number of meetings, the Chairperson proposed to hold the next formal meeting on 7 July; informal meetings would be held on 5 May (items 3 and 4 of Job No. 1979), 22 May (items 5 and 6) and 22 June (items 7 and 8, plus any other issue delegations might want to raise). On

record-keeping, he suggested that a Note be prepared, for instance under the Secretariat's responsibility, which would contain a summary of informal discussions.

34. The delegations of Thailand on behalf of ASEAN; the European Communities; Brazil; United States; Hong Kong, China; India; Uruguay; Japan; the Republic of Korea; and New Zealand took the floor and supported in general the proposals made by the Chair. It was so agreed.

C. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

35. The Chairperson noted that, at their last meeting, Working Party Members had a promising discussion on this subject-matter. A number of substantive issues had been raised, in particular in relation to the Communication presented by Argentina and Hong Kong, China (S/WPGR/W/31). Para. 10 of W/31 raised a number of key points which the Working Party needed to further consider. Delegations might also want to revert to the Chairperson's Note of 14 February 2000 (Job No. 782) and should feel free to add any other pertinent issue. Factual information on Members' experience with subsidies encountered in foreign markets would greatly facilitate discussion on this item. As far as background documentation was concerned, the Secretariat was currently working on updates proposed in paras. 9(a), (b) and (c). The Secretariat would endeavour to make these documents available for the next meeting of the Working Party. Delegations should make suggestions as to how they would like to proceed with respect to paras. 9(d), (e) and (f) of W/31. With respect to disciplines on export subsidies in ANZERTA (para. 9(e)), he understood that Australia and New Zealand would come back to the Working Party. On 9(f), the Working Party was expecting a clearer indication of the types of institutions the authors of W/31 had in mind.

36. In reply, the representative of Argentina mentioned work carried out in the OECD, and in particular the 1996 study on *Public Support to Industry, Report by the Industry Committee to the Council at Ministerial Level*. The Secretariat could enquire whether updated or additional information had been made available since the publication of this report.

37. The representative of the European Communities hoped to table a document on relevant jurisprudence at the next formal meeting of the Working Party. Para. 6 of W/31 contained interesting considerations. When considering possible disciplines, there might be a need to identify policy areas which could be agreed to warrant some form of public intervention. There could also be a need to determine to what extent disciplines should be horizontal or sector-specific. The issues raised in para. 10(c) to (f) might perhaps be addressed at a later stage. Para. (a) would require in-depth examination. In her view, the concept of necessity was not directly relevant; work should focus on the trade distortive effects. The question of remedies would also be important. The Working Party also needed to look at social objectives of subsidy programmes (para. 10(b)), and determine what types of subsidies would fall into this category. Transparency should also be discussed.

38. The representative of New Zealand said, on behalf of Australia and New Zealand, that they were still considering whether any further information could be provided on ANZERTA, as suggested in para. 9(e) of W/31.

39. The representative of Hong Kong, China proposed that the Working Party agree, as a starting-point, to focus on paras. 10 (a) and (b) before addressing other issues. On the question of social subsidies, he noted that GATS Article XV stated that Members should negotiate on disciplines to avoid trade-distortive effects of subsidies. Thus, where there was no trade, there was no reason to investigate the matter. Some years ago, most social areas could have been excluded (health, education, social welfare), but now trade was increasingly taking place. Mode 3 played an important role in these areas, as well as, increasingly, modes 1 and 4. Most governments did subsidize social services and should retain the ability to do so effectively. Disciplines might, however, be needed to avoid trade-distortive effects. Would a green box be desirable? The ongoing work on domestic regulation could have an indirect impact on the activities of this Working Party, if domestic regulation

were to be based on such criteria as competency, ability to supply and not more burdensome than necessary to ensure the quality of a service. It could impact on the distribution of subsidies in a positive way. Hong Kong, China was in favour of considering a necessity test. National treatment would go a long way in reducing the adverse effect of subsidies, but would affect only mode 3. The impact on other suppliers, in particular under mode 1, would need to be considered.

40. The representative of the United States said that his authorities had initiated a new process of consultation with domestic constituencies, based in particular on W/31. He hoped to share information on the results of this process with the Working Party in a near future. Updates by the Secretariat would be most useful. His delegation was not yet fully prepared for a detailed discussion on some of the issues raised on para. 10 of W/31. Some consideration should be given to developing a rolling checklist of issues for future consideration, based on W/31 and W/9. He stressed the need for more factual information.

41. The representative of the Republic of Korea said that discussion should focus on subsidies with trade-distortive effects. The concept of a green box should be considered. He agreed with para. 10(c) of W/31 regarding countervailing measures. His delegation would try to provide information at the next meeting of the Working Party.

42. The representative of Canada was in favour of adopting a systematic approach to subsidies, starting for instance with work on definitions, examination of the relevance of the Agreement on Subsidies and Countervailing Measures, etc.

43. The representative of Uruguay agreed with suggestions for updated information contained in para. 9 of W/31. His delegation was still analysing para. 10 and was interested in views on possible ways forward. With respect to para. 43 of S/WPGR/M/26, he said that, in the fourth sentence of this paragraph, the word "industrial" should precede "goods", since export subsidies were not prohibited in all sectors, for instance in agriculture.

44. The representative of Japan, while looking forward to receiving additional information pursuant to paras. 9(e) and (f) of W/31, was also interested in information under para. 9(d). He expressed interest in a green box concept and believed that "trade distortive" effects should be addressed with priority.

45. The representative of Bolivia said that his country did not maintain any type of subsidies.

46. The Chairperson stressed the need to receive answers to the 1997 questionnaire. He understood that some delegations would endeavour to provide written contributions by the next meeting. Mentioning that was not his intention to draw any particular conclusion for the time being, he noted that the discussion had focused on issues raised under paras. 10(a) and (b) of W/31. Several delegations were in favour of further considering the issue of social subsidy programmes. He suggested that the Working Party come back to the proposal of developing a rolling checklist of issues; delegations should give further reflection to this idea. At the next formal meeting, Members might want to focus on points raised in paras. 10(a) and (b).

47. The representative Mauritius requested the Chairperson to give further thought to producing a checklist of issues for discussion. The checklist could take into account developments since 1996.

48. The Chairperson said that he intended to revert to the issue of a checklist of issues at the next meeting. Canada's suggestion of a systematic approach might impinge on the order in which issues would be addressed in a checklist; he wondered whether the Canadian delegation wanted to provide further input.

D. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

49. The Chairperson recalled that, at the last meeting, several delegations had expressed support for work being pursued in parallel on definition and possible multilateral disciplines. Delegations were thus encouraged to comment on both issues.

50. The representative of the European Communities informed the Working Party that her delegation was planning to circulate a written submission, which she hoped would be ready in June. It would focus on possible multilateral disciplines, including transparency and non-discrimination.

51. The representative of Canada said that, as stated at the last meeting, his delegation could not agree with the criteria proposed by Japan (Job No. 6789, 12 November 1999) to determine whether a governmental entity was privatized. He also believed that it was premature to establish a framework for possible disciplines in the absence of any development regarding these disciplines. The Working Party should first examine and specify disciplines before considering their application. Issues related to non-discrimination (national treatment and MFN) should be considered.

52. The representative of Japan said that the paper submitted by his delegation (Job No. 6789) was a useful basis for work. In his view, a recent dispute between Korea and the United States had arisen precisely because the current GPA lacked a precise definition of publicly-owned enterprises. He invited Members to consider how the Japanese proposal could be improved.

53. The representative of the United States said that his delegation had done further work on definitional issues, in particular in the context of the Free Trade Areas of the Americas (FTAAs) Negotiating Group on Government Procurement. A U.S. proposal presented to that Negotiating Group identified four characteristics of transactions falling within the definition of "government procurement": (i) the entity made an acquisition as a government entity, or was subject to the control or influence of a government entity; (ii) goods and services were supplied in the furtherance of governmental purposes; (iii) there was a mutual exchange of benefits; (iv) the transaction was not subject to normal competitive market forces. He hoped his delegation would be in a position to submit additional proposals in a near future. In his view, the Japanese proposal was very specific to the Agreement on Government Procurement (GPA).

54. The representative of the Republic of Korea supported that work should continue on definitional issues and disciplines. The GPA was a plurilateral agreement which covered goods and services. It might therefore be possible to borrow some definitions and disciplines, but account should be taken of the needs of developing countries.

55. The representative of Hong Kong, China said that it was time to consider disciplines and he stressed the importance of non-discrimination in this context.

56. The Chairperson looked forward to receiving, as indicated, written contributions which might help to advance the discussion on disciplines. He noted some hesitation as to whether or not it was appropriate, at this stage, to discuss a possible framework for disciplines.

57. DATE OF THE NEXT MEETING

58. The Chairperson indicated that, as previously agreed, the next formal meeting of the Working Party would take place on 7 July. In addition, an informal meeting would be held on 22 May, to address issues 5 and 6 of Job No. 1979. A second informal meeting, on 22 June, would allow Working Party Members to discuss items 7 and 8, the issue of "unforeseen developments" as well as any other issues they might want to raise.

Working Party on GATS Rules

REPORT OF THE MEETING OF 24 MARCH 2000

Note by the Secretariat

1. The Working Party on GATS Rules held its twenty-sixth meeting under the chairmanship of Mr. Siva Somasundram of Singapore. The agenda for the meeting was contained in WTO/AIR/1242. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting; and other business. The agenda for the meeting was adopted.
2. The Chairman drew attention to an informal Note (Job No. 782, 11 February 2000) he had circulated to assist delegations in their preparation for the meeting.
 - A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS
3. The Chairman thanked the ASEAN delegations for the effort they had made in tabling a so-called "Concept paper" on emergency safeguard measures (ESMs) (S/WPGR/W/30).
4. The representative of Thailand, speaking on behalf of ASEAN, presented the ASEAN Concept paper.¹
5. The representative of Egypt said the Concept paper was comprehensive and included all elements which could lead the Working Party to an agreement on ESMs. The references made to provisions of other WTO agreements, such as Anti-Dumping or Safeguards would facilitate work. A number of issues, such as "like and directly competitive service", definition of "domestic industry", injury, causality and acquired rights, needed more effort to be solved.
6. The representative of Hungary shared the premise, expressed in para. 1 of the Concept paper, that, if Members were able to agree on the availability of an ESM, a standard set of rules was then needed for its application. As to the object and purpose, it should be made explicit that an ESM was a safety valve for unforeseen circumstances and that possibility of abuse should be prevented. He wondered whether there was a need to selectively quote from the preamble of the GATS (para. 2), and to define an ESM (para. 3), noting that there was no such definition in the GATT nor in the Agreement on Safeguards (AS). In paras. 3 and 14, the word "withdrawing" should be replaced with "suspending", to make clear that the measure was only temporary. The Working Party should focus on the potential implications of the application of an ESM in the context of mode 3 and, in particular, on the definition of "domestic industry". The issues raised in the annex to the Concept paper deserved in-depth discussion. Hungary was of the view that an ESM should be taken on behalf of the "domestic industry", which should include all established foreign suppliers and, thus, that an ESM should apply only to new foreign entrants; this would avoid problems with the MFN obligation. He

¹ The statement by the ASEAN Members is contained in annex I to this Note.

noted that companies established in Hungary were regarded as domestic enterprises, irrespective of their ownership; there was, thus, no legal possibility to take safeguard action against wholly or partly foreign-owned companies. With respect to Part IV, Hungary considered that an ESM should only be available in cases of unforeseen developments. Safeguard measures were taken in situations of fair competition and as a result of an obligation undertaken. The authorities should have discretion whether or not to resort to an ESM. He enquired why para. 8 referred only to the "increase in supply or consumption" of a given service in general terms and did not specify whether there was an increase in imported services. As to the conditions of application, he recommended examining the potential applicability in the services context of the footnote to Article 2 of the AS, referring to customs unions. Comparing para. 28 with Article 9.1 of the AS, he noted that the latter contained an additional condition for the non-applicability of an ESM against products originating in developing countries, namely that the collective share of small suppliers should not account for more than a specified percentage of total imports; this condition should be examined in the context of services. As to para. 29, Hungary could accept the first option but had problems with the second option exempting developing countries from the obligation to maintain substantially equivalent levels of concessions or to offer compensation

7. The representative of Uruguay said his country's position was open on this issue. With respect to the Concept paper, he supported the approach to use the AS as a working basis whenever possible. As to the definition of "domestic industry", no distinction should be made between national and foreign suppliers, as was the case in Uruguay's legal system. Thus, an ESM should apply only to new foreign suppliers, without affecting companies that were already present. "Acquired rights" had to be protected, taking into account the importance of foreign investment, in particular for developing countries. Any possible application of a safeguard measure should respect the principle of non-retroactivity. Finally, it was important that the concept of special and differential treatment of developing countries (S&D) be included.

8. The representative of Hong Kong, China noted that he remained to be convinced that an ESM was desirable from a trade liberalization point of view. Nevertheless, his delegation was ready to contribute to the Working Party's mandate in working out the details of a possible ESM, and then decide whether or not it was appropriate. The way to make progress was to focus on some fundamental issues and get agreement on them before tackling the more detailed concepts. Among those fundamental issues were "national" vs. "domestic" industry, and "acquired rights". "Domestic industry" should cover foreign established enterprises. He noted that in GATS Article XXVIII, the definition of "national" included joint ventures; if a foreign company had 49 per cent of a domestic firm, it might not be affected by an ESM whereas it would be affected if it had 51 per cent. There was no MFN problem as long as withdrawal or modifications of market-access commitments were applied to services and services suppliers from all other Members. Nor was there a problem in taking action against suppliers from Members covered by an MFN exemption: if the country was still able to offer an MFN exemption, it could be asked whether there was a real emergency situation. On the question of "acquired rights", Hong Kong, China was firmly against any measure that could lead to disinvestment. What remained to be considered was the right to expand. As to flexibility for developing countries, he felt that some of the options contained in the Concept paper might not be appropriate given that in GATS there was scope for fewer commitments from developing countries.

9. The representative of Japan recalled that the question of desirability of an ESM still remained to be solved. With respect to the Concept paper, Japan recalled that an ESM was meant to cope with unforeseen circumstances. In that regard, para. 2 put too much emphasis on strengthening domestic services and enhancing competition in services industries in developing countries. Relatively less emphasis was placed on issues associated with increased volumes of imports and unforeseen circumstances. Moreover, the preamble of the AS did not make such reference to developing countries. Japan considered that the concept of "unforeseen development" was an important condition for invoking a safeguard measure. The Working Party should further discuss the appropriateness of

using the concept of "supply and consumption". Was it possible to restrain consumption by modifying the behaviour of consumers? The definition of "domestic industry" should include established foreign suppliers. To the extent that a measure applied to all new entrants, there should not be an MFN problem. He enquired what the terms "irrespective of its mode of supply" meant in this context (para. 11). Japan would oppose discrimination among Members in the application of a safeguard measure, but needed to reflect on selection of modes of supply. Applicable measures (para. 14) should not go beyond what was really necessary. Further consideration should be given to the treatment of subsidies and domestic regulation disciplines under an ESM. In Japan's view, some reference points should be introduced (as in Article 5.1 of the AS). Due to data problems in services trade, it might be difficult to establish the appropriate level of compensation. It could be appropriate to create rules for arbitration (para. 16). The duration of a safeguard measure should be as short as possible. The concept of provisional measures should be approached with caution. With respect to S&D, it was not appropriate to exempt developing countries from compensation obligations as this might lead to abuse.

10. The representative of Mexico noted that the Concept paper relied to a large extent on the provisions of the AS, which was positive because it contributed to ensuring coherence between the goods and services areas. Various aspects required further analysis in order to determine whether an ESM was applicable in services. With respect to para. 2, she felt that a reference to the preamble of the GATS could be sufficient. An ESM was a means, not an objective as such. The definition of "domestic industry" was linked to the decision which would ultimately be taken with respect to established foreign suppliers. For Mexico, acquired rights had to be respected and maintained. The concept of "like and directly competitive services" had to be further analyzed; in services, two or more sectors could provide the same service without necessarily being in direct competition. A safeguard measure should not be applied to services which were not directly competitive. A measure should be based on three conditions: (i) an investigation had determined the increase in consumption; (ii) injury or threat of injury had been established; (iii) a causal link existed between (i) and (ii). Investigations should follow transparent procedures, including a maximum timeframe for completion. An option, which was not in the Concept paper and should be discussed, was whether an investigation could be initiated *de officio*, i.e. at the initiative of the investigating authorities. The criteria to determine injury had to be objective and quantifiable; considering the paucity of data in services, a certain amount of flexibility and creativity would be needed. Mexico agreed that applicable measures included the suspension of specific commitments under Articles XVI, XVII and XVIII. It should be made clear that these commitments would be "suspended" and not "withdrawn". When applying a safeguard measure, the four modes of delivery should be considered. The duration of a safeguard measure should be short, with a possibility of extension and flexibility for developing countries. Mexico was also considering the concepts of degressivity and of a period of non-application for a service which had already been the object of a safeguard measure. Consultation, transparency and notification requirements should be included in a possible agreement, as they were in the AS. The same applied to S&D for developing countries, similar to the AS, even though it might sometimes be difficult to determine the origin of a service.

11. The representative of Australia said that an ESM should be limited to unforeseeable developments which caused genuine injury. Australia was concerned about the possibility of suspending the right of retaliation for three years (para. 17 of the Concept paper). The possibility of determining specific timeframes (paras. 18 and 19), as well as the concept of degressivity were useful. The concept of provisional safeguard measures should be further discussed with a view to preventing abuse. With respect to developing countries, Australia supported option 1 of para. 29; however, S&D should not mean that developing countries were given a lower threshold. To promote future work, it might be useful, as Hong Kong, China had suggested, to assess the major issues in a structured fashion.

12. The representative of New Zealand considered that a safeguard measure, as envisaged by GATS Article X, would focus on assisting services suppliers that were faced with unexpected, and even adverse, developments arising from obligations under the GATS. As noted for instance by the Appellate Body in the recent case *Argentina – Safeguard Measures on Imports of Footwear*, it was clear that the object and purpose of a safeguard measure was to deal with matters out of the ordinary. A difficult issue was the application of a safeguard measure to different modes of supply, and, in particular, to mode 2. In relation to domestic industry, New Zealand preferred the first option in para. 5. Footnote 5 of the Concept paper, addressing the issue of "like or directly competitive" services, was a useful start. "Unforeseen developments" was a relevant concept. Section V underlined the need for criteria and indicators to quantify injury and help to determine causality in the absence of reliable statistics in services. Job No. 5295/Rev. 1 should be used in future discussions. With respect to para. 14, measures should be "suspended" instead of "withdrawn". Section VIII contained important procedures provisions concerning degressivity and duration, which should be part of an ESM. Option 2 of Section XI tended to leave too much scope for potential abuse. New Zealand was of the view that the Chairperson's idea of exploring a "necessity-test" in relation to an ESM (para. 7(a) of Job No. 782) was useful. An important aspect, not covered in either paper, was the link between liberalization commitments and an ESM. Arguments in favour of an ESM tended to be based on the notion that, by providing a safety valve, it would enable Members to accept a higher level of liberalization than reflected in current schedules. The Working Party should explore this link in practice. Possibilities included an ESM that would only be available for new commitments, or an ESM governed by horizontal procedural disciplines that might only apply if the opportunity to use an ESM had been negotiated with other trading partners as part of liberalization commitments.

13. Commenting on the Concept paper, the representative of the Republic of Korea said that he would prefer safeguard measures which focused on protecting the national rather than the domestic industry. Acquired rights of established foreign suppliers should be protected and there should be no forced disinvestment. As a compromise, it could be examined whether juridical persons could be included into the domestic industry concept on the basis of ownership, within the meaning of GATS Article XXVIII. Adopting the domestic industry concept might cause problems with the MFN treatment since new entrants might be discriminated. The concepts of "supply or consumption" of services (para. 3) had to be further developed. The concept of "like or directly competitive" services should be interpreted on a case-by-case basis and, thus, there was no need to define it. The concept of "unforeseen development" was unclear and difficult to prove: it should thus be excluded as a condition for the application of a safeguard measure. Para. 9 should be clarified because, in its current form, it gave a panel wide discretion in interpreting whether a safeguard measure was "necessary to prevent or remedy the serious injury...". There was a need to clarify that the injury criteria and indicators were illustrative only; guidelines could be adopted in this respect to prevent abuse of an ESM. As to compensation, it was reasonable to maintain an equivalent level of specific commitments. Provisional safeguard measures should in principle be included, in a manner similar to Article 6 of the AS, to cover cases where delays would cause irreparable damages; however, such measures should be confined to exceptional situations and made subject to strict requirements to prevent abuse. With respect to para. 8 of the Chairperson's Note, Korea was not sure that it was possible to single out the relevant criteria.

14. The representative of Switzerland said that the question of desirability and feasibility of an ESM was still unresolved for her delegation. With respect of Section II of the Concept paper, it would be more appropriate to make a general reference to the objectives listed in the GATS. An ESM should not be used by a Member to meet national policy objectives, nor to make the economy more competitive. An ESM was an emergency mechanism to overcome temporary difficulties. It allowed for structural adjustment, but was not meant to directly enhance competition. As to the definition of "domestic industry", Switzerland supported option 1 of para. 5. The maximum duration should be mentioned in the draft. With respect to the determination of serious injury or threat thereof (paras. 13.1 and 13.2), a list of the relevant indicators should be part of the draft: Venezuela's

proposal should be developed further. Switzerland could not, at this stage, support a temporary withdrawal or modification of additional commitments under Article XVIII. For further discussions, it might be useful to think about a list of commitments that should be exempt from for emergency safeguard measures. Turning to compensation, Switzerland considered that the wording contained in para. 15 ("... shall endeavour to...") was not strong enough. She enquired about the reasoning behind para. 17. She supported the idea of a progressive adjustment process, as mentioned in paras. 19 and 20, but was not sure about the need for provisional measures (para. 22). Concerning developing countries, she was not convinced that measures contained in para. 29 were necessary. With respect to the points raised in the annex to the Concept paper, Switzerland was of the view that "domestic industry" included the suppliers as a whole of like or directly competitive services, operating within the territory of the Member; therefore, foreign suppliers should have the right to invoke a safeguard measure. Switzerland could not agree with an approach that would give national suppliers the right to use a safeguard against established foreign suppliers. The concept of "acquired rights" had to be respected to enable investors to plan strategic activities many years ahead. Switzerland supported a dynamic interpretation of the concept of "acquired rights": a foreign company established in a country should have the right to expand its business activities.

15. The representative of India said that safeguard measures should be available to protect national suppliers *vis-à-vis* any foreign supplier. This was especially important for developing countries opening up their service sectors under mode 3. It should therefore be possible to apply a safeguard measure to established foreign suppliers. In order to protect acquired rights, a solution would be to prevent any further increase, not only of new entrants, but also to put a cap on the activities of existing foreign suppliers. However, an ESM might not lead to actual disinvestment by existing foreign suppliers. India supported option 2 of para. 5 of the Concept paper. The ESM should apply to all modes of supply; however, specific provisions for each mode might be necessary, in particular with respect to mode 4, to protect the interests of developing countries. The concept of S&D was also relevant for this mode which was of special importance to developing countries. With respect to the determination of serious injury to domestic industry or threat thereof, India agreed with the investigation procedure laid out in the Concept paper. Additional flexibility could be needed for the use of injury indicators in services as compared to goods. India supported the temporary withdrawal or modification of specific commitments undertaken pursuant to Articles XVI, XVII or XVIII, as proposed in the Concept paper. Compensation should not be required from developing countries invoking an ESM (option 2 of para. 29) and there should be no right for affected Members to suspend equivalent commitments. An ESM should be a temporary measure, which should be phased out at regular intervals if the situation improved. India supported the proposed provisions concerning consultation, transparency and notification.

16. Commenting on the Concept paper, the representative of Brazil said that his delegation supported option 1 (para. 5) concerning the definition of "domestic industry". Brazilian legislation did not distinguish between foreign- and domestically-owned companies. The definition of "domestic industry" was crucial in order to clarify questions related to MFN, national treatment and acquired rights. On para. 13, Brazil enquired why the term "imported services" had not been used.

17. The representative of the European Communities said her comments on the Concept paper were without prejudice to the Communities' position on the question of feasibility. On Section II, she wondered to what extent a safeguard measure could be necessary to meet national policy objectives. Moreover, since a safeguard was temporary by nature, it did not fit well with the objectives set out in paras. 2.2 and 2.3. The concept of "unforeseeable development" should be included in this Section. The EC had difficulties to figure out how an ESM could be applied to different modes, in particular mode 2. Predictability was essential in the context of mode 3, given the impact on investment. A list of illustrative measures applicable mode by mode should perhaps be envisaged. The idea of "suspension" of commitments was preferable to "withdrawal". More thought should be given to the concept of "supply or consumption" of a service. A clear definition of "domestic industry" was

needed and the EC favoured option 1 in para. 5. With respect to footnote 5, she had doubts concerning the substitutability and end-purposes of services and thought that more work was needed to define a "directly competitive" service. As mentioned by previous speakers, there were difficulties with data and statistics in services. "Serious injury" had to be clearly defined, but "threat" of serious injury might prove difficult without reliable statistics. A safeguard measure should always be applied on an MFN basis, but might vary across modes of supply. Determination of serious injury should be the result of an in-depth investigation. Section V might have to be expanded to explain the different steps of an investigation (minimum rights for defense, treatment of confidential information, deadlines for investigations, etc.). The interests of the wider public, including consumers, could also be given consideration. The notion of proportionality (least trade-restrictive measure) should be examined with respect to the applicable measures and a list of relevant measures could be elaborated. With respect to compensation, she wondered how a "substantial level of equivalent commitments" could be calculated. Some arbitration procedure should be available in case there was no agreement on the level of compensation. The EC had doubts about the denial of compensation during the first three years and about the concept of provisional measures. The envisaged duration had to be as clearly stated as possible. Finally, a set of rules on emergency safeguard measures should apply in a non-discriminatory manner to all Members, including developing countries.

18. The representative of Argentina said that, according to Argentinian legislation, any company established in the country was a domestic firm. In the context of mode 3, the definition of "domestic industry" would influence the range of measures available to a country wanting to resort to a safeguard measure.

19. The representative of Guatemala said her delegation supported a horizontal ESM, whose existence would be important in the negotiation of specific commitments. The object and purpose as described in Section II of the Concept paper were appropriate. A safeguard measure was a temporary intervention, contrary to Article XXI. Safeguard measures should not be used as protectionist instruments. In Section XI, it would be relevant to include provisions demonstrating, as a pre-requisite for the application of a safeguard measure against a developing country, that a substantive percentage of domestic industry suffered from injury or threat thereof. Finally, she wondered what form a possible agreement on safeguard could take.

20. The representative of Norway said that the Concept paper covered essentially what needed to be discussed. When stating the object and purpose, care should be taken not to rewrite the preamble of the GATS. The concept of "unforeseen development" was important and should be further discussed. Established foreign suppliers should be covered by the definition of "domestic industry". Acquired rights should cover the whole spectrum of the rights related to the provision of services, including equity holdings at the time of ESM enforcement. An ESM should be applied only to the extent necessary to prevent or remedy serious injury. If the problem was an increase in cross-border supply, the ESM should not encompass, for instance, a freeze on foreign equity acquisition under mode 3. An ESM had to be applied on an MFN basis, irrespective of the modes of supply. There was already a bias between countries that supplied services through commercial presence and those supplying the same service through mode 1 or 4. Thus, putting a lid on mode 1 but not on mode 3, could be seen as a violation of MFN. However, it seemed that the supply of individual services was in fact linked to certain modes of supply, which, in turn, might imply that the violation of MFN might not be such a problem after all. Norway considered that the concept of "like or directly competitive service" needed further discussion. Turning to the specific time-limit for the application of an ESM, she noted that this issue was linked to the question of S&D; an ESM was not really necessary, and at least not for developed countries, because the GATS already offered sufficient flexibility. Seeking longer time-frames for developing Members would perhaps mean looking for a very short time-frame in the general provisions. Applying S&D only in the context of least-developed countries might be another option to explore. She doubted whether the suspension of commitments should also include additional commitments under Article XVIII, in particular if these involved regulatory issues. A link

could be made here with the work on subsidies in the Working Party. Compensation was important to ensure that an ESM would not be misused. It was important to have clear procedural criteria for a provisional ESM. Such measure could be implemented, for instance, after the investigation was completed, but before consultations. Norway thought, like the EC, that an illustrative list of measures, but also of injury criteria, would be useful.

21. The representative of Canada wondered in what circumstances an ESM would be appropriate, given the structure of, and existing commitments under, the GATS. He also expressed concern that this mechanism would be used for purposes other than the alleviation of emergencies. Canada had already forwarded a number of questions and comments to the ASEAN Members and would be pleased to share them with the Working Party. The Chairman suggested that these questions be circulated to Working Party Members.²

22. The representative of the United States said his delegation was still sceptical about the need for an ESM. However, the recent start of a new round of services negotiations was a good opportunity to renew work on this subject, and see how a safeguard could be applied in sectors for which improved market-access commitments were being considered. The United States was still in the process of analysing the Concept paper as well as other countries' submissions on this subject. He noted that some delegations had made specific references to the contribution of an ESM to further liberalization; this was the case, for instance, in Egypt's answers to questions relating to an ESM (S/WPGR/W/15/Add.5) where it was stated that "designing a safeguard clause should encourage countries to become more forthcoming with substantive offers to liberalize". The United States would also renew the call for concrete examples of situations that would require application of a safeguard measure. More domestic industry input into the negotiations might help in this regard. The Working Party should also keep in mind alternative ways which countries had chosen to address structural adjustment concerns; for instance, the 1997 telecom negotiations and certain recent accessions had included a phase-in of commitments, as necessary. With respect to para. 2.3 of Section II of the Concept paper, the United States noted that many of the structural adjustment goals might also be met by scheduling more flexibility for the phase-in of new commitments in schedules, rather than erecting procedural hurdles at a later date via an ESM. A major concern for the United States was to avoid abuse. Transparency played a key role in the application of safeguard measures, and further information was needed on exactly how an investigation could be carried out. Some elements regarding due process in investigations appeared to be missing. The United States shared the concern already expressed with respect to option 2 of Section III; more details were needed as to how the two options related to various modes of supply, for instance, how juridical persons established in foreign countries would be treated under option 2. With respect to conditions of application and determination of injury, he enquired how terms such as "increase in supply or consumption of service", injury and causal link, would be measured, in the absence of detailed statistics. Like the EC, the United States would find a list of potentially applicable measures very useful. He was very concerned about proposals for extending application of safeguard measures to additional commitments of a regulatory nature pursuant to Article XVIII; the obvious example was basic telecommunications. On S&D, his authorities were not convinced that the concepts taken from the AS were appropriate in a services context. Job No. 5294/Rev.1 needed further reflection, there was an impression that the criteria and indicators discussed related mostly to injury rather than identifying objective criteria for determining whether imports had actually increased. On the Chairperson's Note (Job No. 782), he agreed that it would be useful to examine further alternatives to the traditional safeguard remedy, restrictions on market access, including looking at domestic subsidies, and supported further work on transparency (para. 6). Regarding S&D, he felt that, in practice, statistical problems might make it difficult for developed countries, in applying a safeguard measure, to avoid adverse impacts on trade of developing countries.

² Canada's questions and comments can be found in annex II to this Note.

23. The representative of Poland noted that the lack of statistical data was the main obstacle. A key question was whether an ESM should include a compensation requirement. For Poland, the purpose of an ESM would be to encourage Members to undertake more liberalization, by providing a possibility for temporary withdrawal or modification of commitments without the need to compensate. With compensation, an ESM would become similar to the procedure of modification of schedules under Article XXI. Definitions contained in the Concept paper needed to be further specified, such as the concept of "like or directly competitive service", "domestic industry". The application of an ESM to mode 2 raised several questions.

24. The representative of Mauritius said that the ASEAN Concept paper was a valuable contribution to the work of the Working Party. It raised a number of questions needing clarification. He regretted that, due to other meetings taking place in parallel, African countries were not able to attend this meeting. An ESM was a means to be resorted to in unforeseen and unforeseeable circumstances, and not an end in itself. The issue of S&D was central to developing countries. More contributions and proposals should be made by Members, in particular by those who had the necessary experience in the services sector.

25. The Chairman noted the range of questions raised regarding the Concept paper. A first question was why the notion of "supply or consumption of a service" was found preferable to that of "import". Second, Japan had enquired what "irrespective of its mode of supply" (para. 11) meant. Switzerland wanted to understand the reasoning behind para. 17. Canada had also posed several questions. The Chairman would welcome Thailand attempting preliminary answers to some of these questions.

26. On a preliminary basis, the representative of Thailand explained that the terms "supply or consumption" were used instead of "imports" because the latter term would not cover all possible scenarios in services trade, in particular mode 2. "Supply or consumption" had been referred to in many papers of the Working Party. ASEAN was aware, nevertheless, that the concept of "imports" needed to be captured; "supply or consumption" had been used in conjunction with the idea of "service of another Member" (see for instance paras. 3, 8 or 13) so as to ensure that only foreign – or imported – services were taken into account. The terms "irrespective of its mode of supply" (para. 11) was meant to indicate that MFN treatment would apply across all modes of supply. Para. 11 was currently between square brackets because the issue of MFN had to be solved first. For instance, there were uncertainties whether exempting some foreign suppliers under mode 3 might constitute a violation of the MFN principle. The terms "operating in the territory" (para. 3) meant that there should be a physical presence of the service supplier in the territory of the Member invoking an ESM. Para. 17 addressed the legitimate concern that an ESM should not be too burdensome for the invoking Member as compared to Article XXI. The concept of "unforeseen developments" had not been included in the Concept paper because, even though the ASEAN Members had been advocating it, they did not believe that a consensus could be reached on it. However, ASEAN remained open to further discuss this issue. The question remained whether a fourth condition should be included, relating to the circumstances in which an ESM could be invoked. If so, what criteria should be used? Should there be a reference to "unforeseen developments", as in the goods area, or to "unforeseeable developments", as suggested by some Members?

27. The Chairman said that Working Party Members had to consider how to structure future work. He intended to put forward a very short list of themes which could allow a more focused discussion on some key issues. This – non-exhaustive – list could include, for instance, the questions of defining "domestic industry" and "acquired rights", applicable measures, indicators and criteria, compensation, etc. He intended to hold an informal meeting on 7 April, at which a draft list could be discussed, and first comments be made on the issues of "domestic industry" and "acquired rights". When preparing for this meeting, delegations could usefully refer to the ASEAN Concept paper, as well as document S/WPGR/W/27/Rev.2, and various points made during this meeting.

28. The representative of Canada suggested that the issues of statistics and data, "like or directly competitive products", MFN and national treatment, S&D be included in the list. The representative of the European Communities felt that the application of an ESM to individual modes should be discussed as well.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

29. The Chairman noted that little progress had been made under this agenda item in 1999. This was largely due to the fact that the Working Party had not received, apart from a submission by Hong Kong, China, empirical information on Members' subsidy programmes. There had been no discussion of issues raised in previous Chairperson's Notes and Secretariat's papers. Nor had any information been submitted, pursuant to a proposal by Norway, on subsidy-related problems encountered in foreign markets. The two submissions for this meeting – Poland's reply to the subsidy questionnaire and a communication presented by Argentina and Hong Kong, China – might represent a new dawn of this subject-matter. The Chairman thanked the delegation of Poland for having provided its responses in the context of the information exchange (S/WPGR/W/16/Add.4). Poland was only the fourth Member to answer to the questionnaire the Working Party had agreed to and circulated in 1997. He encouraged all delegations to submit responses since there was very little the Chair or the Secretariat could do to advance the work of the Working Party without concrete inputs from delegations.

30. The representative of Poland said the notification presented by his delegation covered subsidies applied in the service sector during 1997-1998. Poland expected to submit further information on the application of these subsidy programmes in 1999, as soon the data would be available. The data submitted had already been presented, in a slightly different format, in the Committee on Subsidies and Countervailing Measures. The notification contained in W/16/Add.4 covered three subsidy programmes: (i) loans and grants from so-called EFSAL funds, a credit line in the International Bank for Reconstruction and Development; this programme was not concentrated on the services sector only; (ii) direct grants aimed at lowering the prices of some services in order to make them accessible to specific social groups; the support was available under the same conditions for national and foreign suppliers operating in Poland; (iii) various programmes for restructuring, transforming and developing the banking sector, and allowing it to operate in a market economy.

31. The representative of Hong Kong, China said that the communication his delegation was presenting jointly with Argentina (S/WPGR/W/31) was aimed at stimulating the debate on this subject and the rules that might be considered. His delegation did not have fixed views as to what the final outcome might be. An analysis of the available data showed a great paucity in this area, which was an issue to be tackled; Members were therefore strongly urged to complete the 1997 questionnaire and to come forward with any issue of interest or concern they had met. Subsidies did exist in many areas, some supported "normal" government activities and might not be considered to be subsidies in governments' mind. Other subsidies might have trade-distortive effects (such as export-enhancing or import-substituting), some might have none at all. Argentina and Hong Kong, China considered that no firm conclusion could be drawn from currently available data and, therefore, suggested that the Secretariat be asked to do additional work in this area (para. 9). With respect to para. 9(d), the idea was that the need for some MFN exemption related to subsidies given in those particular sectors; the notion of developing disciplines in subsidies – which might well include box-type approaches – could assist in the joint aim that "such MFN exemption should not exceed a period of ten years". Para. 10 set out a number of areas the Working Party should further consider. Argentina and Hong Kong, China did not have answers to many of the questions posed, nor any fixed ideas on the end-product. They accepted that all governments provided subsidies in many areas, particularly in social sectors. There was, thus, no intention to categorise all subsidies as not legitimate or not allowed, but to discuss how those subsidies with trade-distortive effects could be tackled.

32. The representative of Argentina supported what had been said by the delegation of Hong Kong, China. The communication was without prejudice to Argentina's position on this theme, but sought to stimulate the debate by presenting, in a different manner, themes which had been already tackled in the Working Party. The first problem to be addressed in this area was the lack of information. In this regard, the exchange of information on the basis of the questionnaire might be useful, although it should not necessarily be limited to the questionnaire. The remarks contained in the first part of the communication were tentative since they were based on unsystematic information. The communication thus proposed that the Secretariat looked for additional data. Para. 9(e) pointed to the only two regional agreements which specifically referred to subsidy disciplines in some services sectors; it would be useful to gain a better understanding of this experience. The second part of the document proposed themes for discussion. The objective was, as mentioned in para. 15, to address trade-distortive subsidies.

33. The representative of Chile supported the proposal that the Secretariat update document S/WPGR/W/12, since the number of regional trade agreements (RTAs) had nearly doubled since 1996. An update would give a better picture of how RTAs had dealt with this topic. The preliminary conclusions contained in para. 6 of W/31 were interesting, and the proposed update could consider these elements as well. The Secretariat should be called upon to contact and seek information from other bodies, such as UNCTAD. The Working Party should also look at some sectoral subsidies on which information might be available in more specific organizations, such as ITU, WHO or ICAO. Any analysis should take into account the needs of developing countries and the link with national policy objectives.

34. The representative of Norway noted that the available information did not allow to draw conclusions and agreed that the Secretariat's papers S/WPGR/W/12 and S/WPGR/W/25 should be updated. Norway had doubts as to how much information the analysis of subsidy-related entries in Members' specific commitments would yield, since specific commitments undertaken during the Uruguay Round did not necessarily reflect the current situation. There might be a need to more closely define "subsidy" because it was difficult to reply to the questionnaire as there was no agreement on a definition. The definition in the Agreement on Subsidies and Countervailing Measures (SCM) could be used as a working definition for the time being. The Working Party had to be careful when discussing subsidies with social objectives (health, education and social welfare), which were part of governments' responsibilities in many societies. It should not be presumed at the outset that these areas were wholly within the scope of the GATS. The creation of a green box implied defining what was an "allowable" subsidy. The Agriculture Agreement and the SCM Agreement adopted a different approach in that regard, and the Working Party might want to discuss which approach it wanted to adopt in the area of services. The consequences of having a different approach than the SCM Agreement would need to be looked at since goods and services seemed to be increasingly integrated in many sectors.

35. The representative of the United States noted that, based on contributions made to this Working Party, it was still unclear whether Members considered subsidies as posing significant problems to further services liberalization or to the stability of the commitments already made. This did not mean that additional work and study would not be productive. The SCM Agreement provided guidance but it was not clear whether its concepts could or should be directly transposed into the services context. The best lesson to be drawn from the SCM Agreement was the need to pursue subsidy rules in an evolutionary manner, based on a continuous assessment in the context of services. This might be particularly appropriate for GATS in that many services providers were involved in infrastructural activities which served broad societal needs. This idea was reflected in the joint communication by Argentina and Honk Kong, China. There might also be other reasons for special treatment on a sector-specific basis. As noted in the Chairperson's Note, certain obligations already existed in the GATS framework (MFN, national treatment), which provided some discipline for particularly trade-distorting subsidies. The GATS approach to MFN and national treatment allowed

countries to maintain socially desirable subsidies or other forms of assistance. However, it needed to be further explored how these obligations related to mode 1 and 2 commitments and this issue could have far-reaching implications for the work on subsidies. His comments should not be construed as favouring a toleration of practices which might be manifestly trade-distorting. However, the standard of "trade distortion" had to be gauged in the services context, and it should not simply be presumed that the standards applicable for goods could be readily transferable. The United States had started a process of domestic consultation and hoped to provide the Working Party with more considered views in a near future. With respect to W/31, he supported the proposals made in paras. 9(a), (b) and (e), but needed further clarification as to what was intended in paras. 9(c) and (f).

36. The representative of Argentina replied that the idea underlying para. 9(f) was that the Secretariat could examine investigative work done by other international organizations in the area of services subsidies. For instance, the OECD worked annually on a programme entitled "public support to industry", which covered nearly all economic activities. Other delegations had said that it would be interesting to gather sectoral information, which, however, would entail a great amount of work for the Secretariat. Thus, the idea was to deal with international organization of a general nature, such as OECD, UNCTAD, and maybe some regional bodies, such as APEC. With respect to 9(c), S/WPGR/W/13 could be updated in order to include commitments on basic telecommunications and financial services. The representative of Hong Kong, China added that a number of countries had acceded to the WTO since S/WPGR/W/13 had been done, and could be usefully be included.

37. The representative of the United States noted that his delegation had no problems with updating W/13 on the basis of what had been done in telecommunications, financial services and recent accessions. However, it was not for the Secretariat to interpret the schedules of commitments.

38. The representative of Switzerland supported the proposal to update factual data. The second part of the W/31 (para. 10) should be used as a basis for future work.

39. The representative of Japan agreed with the Chairperson's Note that the problem with subsidies was not their existence as such, but their trade-distorting effects. Some subsidies served good social purposes. Attention should be paid to GATS Article XIV, in addition to Articles I.3(c) and XIII. As a mechanism to justify subsidies was not necessarily covered by these provisions, but could still be considered necessary for social goods, Japan was interested in exploring the idea of a "green box". He agreed with the analysis made in paras. 4 to 8 of W/31 and supported paras. 9(a), (b) and (c); his authorities wanted to further consider (d). The issue raised in para. 10(d) was important but perhaps premature to address at this stage. On para. 10(e), Japan believed, like the United States, that there was a need to clarify the implications of national treatment, especially in relation to modes 1 and 2.

40. The representative of Canada said it would be worth examining whether government assistance in the services sector distorted trade within and across modes. Other open issues revolved around the definition of subsidies in the services context, and the appropriateness of countervailing duties as a remedy. Canada would welcome further elaboration of the possibility of a "green box". At this time, it was not clear how the consideration of social objectives related to certain modes of supply. Finally, he sought further information on the envisaged sources for data gathering and the kind of work involved.

41. The representative of Thailand, on behalf of ASEAN, said that the ASEAN Members were still reflecting on the communication presented by Argentina and Hong Kong, China.

42. The representative of New Zealand welcomed Poland's paper as an example to be followed by other Members. With respect to the communication by Argentina and Hong Kong, China, he appreciated that the paper managed to revisit a number of Secretariat's papers, in particular W/9,

which the Working Party had not fully addressed. He supported para. 9 and agreed that the Secretariat undertake what was proposed in sub-paras. (c) and (f). New Zealand, in conjunction with Australia, did not have a definitive response for sub-para. (e). Article XV contained the clear mandate to identify those subsidies which had trade-distortive effects and, from there, seek to determine what disciplines might be appropriate. The experience with subsidies in the goods area had led to the SCM Agreement and to the "traffic light" approach. New Zealand was of the view that countervailing measures were not very likely to work in the services area. Thus, the approach of capping and reducing subsidies, used in the Agriculture Agreement, could usefully be considered (paras. 15, 20-22 of W/9 contained a discussion in this regard). Better empirical information was needed on the incidence and types of subsidies occurring in the services sector. Members had to come forward with information, which needed not necessarily be limited to the questionnaire. The Chairperson's Note contained useful ideas in this regard.

43. The representative of Uruguay said that the proposals contained in the communication by Argentina and Hong Kong, China would help to move work ahead. With respect to para. 12 of the Chairperson's Note, the fact that there had not been a debate so far on "export-enhancing" subsidies did not mean that there was no problem. First, there was no factual information to indicate that "export-enhancing" subsidies did not have trade-distortive effects. Second, export subsidies were prohibited in the goods sector because they were problematic. They were the most trade-distorting type of subsidisation. He was thus not prepared to endorse statements suggesting that such subsidies would not be a problem in the area of services. The Chairman explained that, in para. 12 of his Note, he had tried to indicate that, to date, the Working Party had not received any factual information with respect to export subsidies but this was not an attempt to suggest that export subsidies were not a problem.

44. The representative of Australia noted that a number of issues raised in W/31 were being discussed in her capital with industry and other government agencies. She agreed that the Secretariat undertake a data gathering exercise under para. 9. It was also important to have more contributions from Members before considering disciplines. Like New Zealand, Australia was still considering the proposal that the Secretariat work on ANZCERTA and her delegation might be able to revert to this issue at a future meeting.

45. The representative of Brazil said that the communication presented by Argentina and Honk Kong, China provided a useful input in the Working Party's discussion on subsidies. Brazil agreed with the proposals for further data gathering.

46. The representative of Mexico noted that there remained an important amount of work to be done on the subject. Some fundamental issues had not been fully looked into, for instance, the identification of possible trade-distorting effects of subsidies in services. The structure of any particular disciplines would necessarily be complex, due to the specificity of services. One difficult problem was, for instance, the national treatment implications of granting a subsidy under mode 3 which might have distortive effects for modes 1 and 2. It would be important to consider a definition of "subsidy" or decide whether the same definition used in goods could be applied in services. Mexico supported the proposals made in paras. 9(a) and (b) of W/31.

47. The representative of the Republic of Korea said there was a need to discuss which subsidies were subject to Article XV, in light of Article I.3 of the GATS. The interlinkages between goods and services had to be kept in mind, in particular possible indirect trade-distortions. There was also a need to think of subsidies with respect to mode 3, considering that a lot of countries were trying to attract foreign capital. Referring to para. 10(b) of W/31 and para. 14 of the Chairperson's Note, Korea would like to discuss the extent to which subsidies having social objectives fell under Article XV. With respect to the need for disciplines (para. 10(c) of W/31), the applicability of the existing SCM Agreement to services subsidies, in particular key concepts contained therein (such as specificity),

might be considered. In addition, the Working Party should examine whether to consider modal or sectoral specificity in order to take into account the characteristics of services.

48. The representative of the European Communities noted they were still in the process of analysing the communication presented by Argentina and Hong Kong, China.

49. The representative of Poland said that the concept of a "green box" for subsidies would seem to imply the possibility of countervailing measures. The Working Party ought to bear in mind that, during its five-year existence, the concept of non-actionable subsidies proved inapplicable in the SCM Committee and was not prolonged. However, the concept of "specificity" contained in the SCM Agreement could be interesting. In Poland's understanding, so-called social subsidies would not be specific as they would be available under the same conditions to all suppliers.

50. The representative of Hong Kong, China expressed doubts whether it was possible to apply the goods' definition of subsidies. In W/31, it had been clearly stated that funds used in the context of normal government activities were deemed to be legitimate. A lengthy discussion on a possible definition might not be productive at this stage. With respect to Canada's question concerning the concept of a "green box", he noted that New Zealand had raised different options to be considered.

51. In summing up, the Chairman noted that most delegations seemed to want the Secretariat to undertake further background work, as suggested in para. 9 of W/31. He felt that there was a consensus for the suggestions in sub-paras. 9(a), (b) and possibly (c), provided that it was merely an update of what had been done in the financial services and basic telecommunication negotiations. He proposed that the Secretariat be mandated to carry out this work, with the objective of having this information ready for the next meeting, or soon thereafter. It was so decided.

52. The Chairman suggested that paras. 9(d), (e) and (f) be taken up at a future meeting. The Working Party could have, by that time, a clearer indication from the authors of W/31 of the type of institutions referred to under 9(f). On 9(e), he understood that Australia and New Zealand would come back to the Working Party. A number of substantive issues had been raised in relation to possible disciplines, which would deserve further consideration: the need to define subsidies, the importance of focusing on trade-distorting subsidies, the applicability of existing GATT disciplines, the treatment of subsidies aiming at social objectives, the relevance of countervailing measures, and the increasing interrelationship between goods and services. In future meetings, the Working Party should come back to the proposal made by Argentina and Hong Kong, China, and in particular its para. 10 which could form a checklist of issues that needed to be considered. Members would, of course, be free to add any other pertinent issues that they considered should be taken up under GATS Article XV. It was so agreed. The Chairman encouraged delegations to present information on their respective experiences with trade-distorting subsidies in services.

C. NEGOTIATIONS ON GOVERNMENT PROCURMENT UNDER ARTICLE XIII OF THE GATS

53. The Chairman recalled that for most of the past year the Working Party had focused its work under this agenda item on the issue of definition. At the previous meeting, however, a number of delegations indicated that they were ready to begin considering, in parallel, the scope for and structure of possible multilateral disciplines. Accordingly, he proposed to start by addressing the issue of definition – based in particular on the paper made available by the delegation of Japan (Job No. 6789, 12 November 1999). Delegations could then exchange views on disciplines and, in particular, a possible institutional framework.

54. In introducing the submission, the representative of Japan indicated that the proposal regarding the treatment of privatized entities under the Government Procurement Agreement (GPA) had been presented to the Committee on Government Procurement in the context of the on-going

review of that agreement. The GPA had a provision stipulating objective criteria for determining the range of public entities deemed to conduct government procurement, Article XXIV:6(b). According to that Article, a party could exclude an entity from the application of the agreement on the grounds that government control or influence over it had been effectively eliminated. The exercise of this right could be frustrated by the lack of clear criteria of what would constitute effective elimination of government control or influence, including privatization. The basic idea behind the proposal was that a privatized entity would be considered not to conduct government procurement when it operated in circumstances where market disciplines prevailed, endowed with independent management, not subject to any government control or influence. To determine whether market disciplines prevailed two criteria were relevant: (i) government intervention in the entity should have been removed, and (ii) its operations made subject to competition.

55. The representative of Canada expressed concern whether the wording put forth in the submission from Japan would achieve its objectives. In her view, the proposed criteria might not be sufficient to ensure that an entity was no longer under government influence and control. Conversely, it would preclude the possibility that there might be other features of a privatized entity. She inquired about the role of "market opening effects" of a privatization. The proposed criteria to identify privatized entities whose withdrawal would not be subject to compensation were difficult to apply in practice. In case of the proposed para. (b), she felt that a requirement that half the board of an entity consist of non-government appointees was insufficient to ensure the removal of influence and control by the government. She sought further clarification with respect to para. (c). The wording did not appear to preclude the existence of a significant level of government ownership of an entity when privatized, which would be inconsistent with the concept of removal of government influence and control.

56. With respect to para. (c), the representative of Japan acknowledged that there might be room for minor share holdings by the government, but the intention was to rule out significant government holdings in the entity concerned. He reiterated that the proposal was relevant for the discussion in the Working Party, particularly in relation to what constituted a public enterprise.

57. The representative of the United States said that the submission addressed a very specific provision of the plurilateral Government Procurement Agreement, relating to its coverage; its applicability to the work of the Working Party was therefore unclear. The GPA coverage was based on scheduling of specific entities rather than a generic definition of procurement. In seeking to define the meaning of privatization, Japan's paper might have some relevance for the discussion on definition of procurement, with respect to the references in Article XIII:1 to "governmental agencies" and "governmental purposes". However, if that was the intention, he could not agree with the proposed test.

58. The representative of Thailand, on behalf of ASEAN, reiterated support for a parallel track approach to the work on definition and disciplines. More time was needed to reflect on the suggestion contained in the Chairperson's note, as well as on the Japanese proposal.

59. Turning to the points raised in paras. 22 to 25 of his Note, the Chairman recalled that a useful starting-point regarding possible disciplines might be New Zealand's non-paper of 30 September 1997 (Job No. 5446). The paper referred to the responses given to the procurement questionnaire of 2 April 1996. In his view, there appeared to be two broad options for a framework of possible disciplines (irrespective of their content). Under the first option – the most ambitious one – government procurement disciplines would apply to all services sectors included in a Member's schedule. Under the second option, Members would undertake disciplines on government procurement in specifically selected areas. In turn, two alternatives seemed to be possible under the latter approach, one modelled on the Understanding on Commitments in Financial Services (UC), the other on the telecommunications Reference Paper (RP). Under an UC-type approach, Members

would indicate the sector(s) they were prepared to subject to the commonly negotiated disciplines and, if relevant, any departure therefrom. Under an RP-type approach, Members would, on the basis of a "reference procurement paper", specify the disciplines they were willing to accept in the sector(s) concerned. He invited delegations' views on these issues.

60. The representative of Canada indicated that more discussion was required before a decision on the most appropriate approach could be taken. It would be worth exploring first the issues raised in the New Zealand paper, as the concepts of non-discrimination and elimination of discriminatory provisions required substantive discussion. It was also necessary to more fully examine the implications for non-discrimination of the proposed terms of "full and fair opportunity for domestic suppliers". It was premature to go beyond basic disciplines to consider modalities such as those described in paras. 23 to 25 of the Chair's note

61. The representative of New Zealand said that, given the resumption of services negotiations, the Working Party should look into what could be achieved in the area of government procurement in the services area. Therefore, he agreed with the Chairperson's Note that it was time to look at a full range of questions, including those related to market access and national treatment. In relation to para. 23, he was aware that the GATS positive list approach raised questions with regard to the sectoral coverage of government procurement in services. It was nevertheless desirable, from the liberalization standpoint, to define services procurement as comprehensively as possible. He welcomed the clarification contained in para. 24 that the envisaged result were general solutions, which might be applied on a sectoral basis. He believed that the second option given in the Note offered a possibility to make progress in this area.

62. The representative of Hong Kong, China expressed his authorities' interest in achieving comprehensive commitments in government procurement of services. What needed to be developed was a common view on the extent to which Members were prepared to commit on government procurement in relation to the specific commitments they already had. The two possible options set out in the Chairperson's Note, i.e. an RP-type or an UP-type approach, were very similar in nature since both allowed for derogations. His delegation was flexible in this regard but wanted to cover as many sectors as possible, subject to negotiations. He hoped the Working Party could move discussions forward by taking up definition and disciplines in parallel.

63. The representative of the United States considered that the Chairperson's questions regarding the feasibility of horizontal disciplines were legitimate. He suggested that horizontal disciplines might be appropriate on issues such as transparency, but perhaps less so in relation to the liberalization of market access. All efficient public systems would apply the same transparency requirements across all sectors. His delegation was not opposed to exploring sectoral approaches for government procurement disciplines under the GATS that could include the negotiation of market-access commitments; to be effective, such commitments would have to be based on transparency disciplines. This was closely related with the on-going discussions in the Working Group on Transparency in Government Procurement, and coordination between the two fora was therefore necessary.

64. The representative of the European Communities suggested that, if work on horizontal disciplines was undertaken, both transparency and non-discrimination should be addressed.

65. In summing up, the Chairman noted different views on how to proceed with the discussion of possible disciplines. Some delegations thought it premature to talk about a framework, while others would find this discussion useful. It was also said that the Working Party should be focusing on the key concepts of national treatment and most favoured nation as they related to government procurement. He felt that the New Zealand paper remained relevant and could guide further work; this would not preclude discussion on the scope of disciplines. He suggested discussing definitional

and conceptual issues (non-discrimination, transparency, horizontal disciplines applicable to all sectors *vs.* horizontal disciplines applicable on a sectoral basis), in parallel at the next meeting. He urged Members to present submissions on these issues.

D. DATE OF NEXT MEETING

66. The Chairman indicated that the next formal meeting had been scheduled to start on 4 May, in the afternoon, and to continue in the morning of 5 May. Then, the formal meetings of the Working Party would, to the extent possible, be aligned with the meetings of the Services Council.

ANNEX I

Statement by the ASEAN Members to introduce the ASEAN Concept Paper on ESMs in Services at the meeting of WPGR on 24 March 2000

Mr. Chairman,

1. It is an honour and privilege for the ASEAN Members of the WTO (namely, Brunei Darussalam, Indonesia, Malaysia, Myanmar, Philippines, Singapore, and Thailand) to be given the opportunity today to introduce to the Working Party on GATS Rules a proposal pertaining to the negotiating mandate under Article X of the GATS on emergency safeguard measures for trade in services. This proposal has kindly been circulated to the Members by the Secretariat at our request under reference S/WPGR/W/30 dated 14 March 2000.

2. At the outset, I must state that it is not our intention to submit an ASEAN position paper on this important topic. This Concept Paper is a document intended for assisting the WP in its search for a way forward. The primary objective is therefore to produce a paper which has a widest possible basis for acceptance by Members, based on the results of the work conducted so far by the WP. This objective should, in our view, help explain the time it has taken the ASEAN Members to produce the paper.

3. Also, with this same objective in mind, ASEAN has opted for a *Safeguards Agreement approach*, as opposed to the approaches followed in Article V of the Agreement on Agriculture and Article VI of the Agreement on Textiles and Clothing. Indeed, the meeting reports of 1999 clearly show that a large majority of the Members are in favour of a safeguard mechanism based on prior *investigation* and *establishment of causal link* between injury and increased supply or consumption of foreign services.

4. Before I go into details, it is important to underline that, since we are very much still in the conceptual stage, many of the time-frames referred to in the paper are not just as yet specified, but rather left open to discussion.

With your permission I now wish to briefly go through the important points contained in the paper.

5. First, the object and purpose of a possible set of rules to govern ESMs in services. Here, we try to stay as much as possible within the framework of the GATS. The reasons are, inter alia, to recognize the particularities of the area of services, as opposed to that of goods, when it comes to applying safeguard measures. These are reflected in paragraphs 2.1 and 2.2 of the paper. The reference to "structural adjustment" and "competition" in paragraph 2.3 is intended to underline the fact that ESMs are not to be used for protectionist purposes - a point of concern formally voiced by a large number of Members.

6. Next, the definitions. As a general rule, we try to refer to Article XXVIII of the GATS to the extent possible and relevant to the application of ESMs in services. Also, where applicable, we try to refer to other provisions of the GATS, or otherwise to those of other WTO covered agreements that, in our view, may be translated into the services context without too much distortion. These are, for example, Article 4.1 of the Anti-Dumping Agreement and Article 4.1 of the Agreement on Safeguards. We feel that the Members would be more comfortable with this approach since we are not trying to depart from some of the well-established notions in the WTO system.

7. A notable exception is perhaps the notion of "like or directly competitive services" we have attempted to define in footnote 5. Here, there is no GATS definition to refer to, and the practices in

goods remain vague. Moreover, the WP has never really discussed this concept. We feel however that it would be useful to include it in the paper at this stage. We wish to encourage comments and suggestions both on the "like services" and the "directly competitive services" ideas, as well as whether Members should attempt to define these terms.

8. One important point remains the definition of the domestic industry. Here, we have decided to propose two options, due to the fact that a large number of Members are still reflecting on this important question, and also because there are still some key technical issues which are yet to be resolved among the Members before any sound decision may be made. In the Annex to the paper, we have tried to compile these issues in a systematic way in order to facilitate future discussions. We also believe that the Members should arrive at a common understanding on these issues as soon as possible.

9. The first option in the definition of domestic industry includes foreign suppliers established in the country through commercial presence, by using the criterion of "operation" within the territory of the applying Member, which indeed implies a physical presence of some sort by the supplier in that territory. The second option includes only "national" suppliers of the invoking Member - the "nationality" criteria being those contained in GATS Article XXVIII.

10. The main difference between these two options lies indeed in mode 3. In the first option, the idea is to protect from an ESM foreign suppliers established in the country through commercial presence *before* the safeguard action, or at least not to make them target of these measures. Their "acquired rights", it goes without saying, will be protected. In other words only new entrants would be affected by the safeguard measure. In the second option, these companies will be affected by the ESMs in the same manner as all other foreign companies. The issue remains, however, as to the definitions of "acquired rights", "new entrants", as well as other relevant concepts. They are addressed in the Annex. ASEAN does not, at this stage, believe that it is in a position to resolve all these issues on behalf of all other Members.

11. With regard to the conditions of application of the ESMs, we believe that paragraphs 8 to 11 cover the views of a large majority of the Members as expressed on the WP so far. One important point to note is that we use the notion of "increase in supply or consumption" instead of "increased import" as is the case for goods. This is because in our view, and in many Members' view, the notion of "import" would not be suitable for the services context. Also, paragraph 11 is kept between brackets, although we accept the notion that MFN is part of the principle of non-discrimination as mandated by GATS Article X. This is because, in our view, the applicability of MFN in this context is very much dependent on the resolution of the issues raised in Section B of the Annex.

12. With regard to the determination of serious injury or threat thereof, we use as basis the relevant provisions in the Safeguards and AD Agreements, with some "innovations" designed to adapt these provisions to the services context. We therefore propose in Section V a three-step approach for the investigation. The invoking Member must, first, demonstrate an increase in supply or consumption of foreign services; second, the existence of a serious injury or a threat thereof; and finally, establish a causal link between the injury and the increase. We believe that this is well in keeping with the work of the WP so far. A thought worth considering even at this point is the advisability of drafting detailed rules for the investigation in the same fashion as the AD or the Subsidies Agreements. In this case, elements of Job no. 5294/Rev.1, and future work on it, may be incorporated into the text. We are prepared to develop this point further in the future.

13. With regard to the applicable measures, three categories of these are identified in Section VI. We believe that these measures cover all the possible sub-categories of specific measures as discussed so far in the WP. Discussion should indeed continue and focus on specific measures such as subsidies or those affecting regulatory disciplines, such as the Telecom Reference Paper. These specific

measures, however, could and should be addressed in the context of the three types of measures identified here. But there would be no need to include an exhaustive list of specific applicable measures in the text.

14. I now turn to the issue of compensation. This issue is still very much under debate in the WP. Some delegations have expressed doubt about the utility of such a provision in the context of services. Others, on the other hand, find it relevant. Here, we have taken the language from the Agreement on Safeguards in order to stimulate debate. Members may however wish to consider how relevant such a compensation provision would be in the context of the different modes of services trade.

15. Section VIII deals with the issues of duration and review of the ESMs. It is intended to reflect the principles of "temporary basis" (paragraph 18), "degressivity" (paragraph 20), and "limited frequency of use" (paragraph 21). So far, as far as we know of, no Member has expressed objection to these principles. With regard to the question of extending an ESM, in keeping with our general approach, we believe that the rules should provide for this possibility, subject to a procedural restraint (a new investigation), and a substantive condition (evidence of adjustment of the industry concerned).

16. Paragraph 22 deals with provisional measures. This is an important issue. We need to find a balance between the necessity of providing Members with the scope to deal with critical circumstances and the legitimate concerns that arise in respect of provisional measures given the peculiarities of services trade. Provisional measures, on the condition that they are used under strict disciplines and with transparency, would allow the investigating Members to reasonably respond to critical circumstances pending conclusion of the investigation.

17. Section X deals with notification, consultation, publications of legal texts, and communication of information. The aim is to ensure transparency which is one of the best tools that we know of for preventing abuse in the application of ESMs. These rules would moreover be in keeping with the object and purpose of the GATS and the WTO Agreement.

18. Next comes the issue of developing countries. In this regard, it has been suggested that perhaps there would be no need for provisions on special treatment for developing countries, since all Members already have the opportunity to assess their commitments under the GATS. We believe however that, with the overall objective of progressive liberalization in mind, developing countries may need some protection in the process. The proposed provisions in the paper are designed to assist developing countries in their endeavours to realize this objective. Moreover, as pointed out by some delegations, developing countries may be less capable, from the technical point of view, to assess the implications of commitments made. Also, the capacity of adjustment of their domestic industry may prove to be less than that of developed countries.

19. Paragraph 28 sets the threshold for non-application of ESMs to a service of a developing country Member. Paragraph 29 allows them to extend the period of application of an ESM beyond the period provided under paragraph 18. Option 2 of paragraph 29 also exempts developing countries from the compensation obligations.

20. Paragraph 31 deals with dispute settlement. It simply refers to the DSU, including Article 22 which allows, subject to authorization by the DSB, suspension of concessions or obligations under the GATS or under another WTO covered agreement – the so-called "cross retaliation". This is a principle to which so far no Member has expressed objection.

21. Finally, I turn to the issue of review of these proposed rules. Since this is a new matter, a review of the rules after a certain period of application would be a logical step to take. With this possibility, Members should be more comfortable to agree upon the possibility of using ESMs in services.

22. Let me conclude by saying that, with its limited knowledge and expertise, ASEAN has tried its best, with good faith, to contribute to the Working Party's recent progress in ESM negotiation, by coming up with this concept paper. It is ASEAN's belief that, for the months to come, the paper should provide a most suitable basis on which the WP may continue its endeavour to bring to a successful conclusion its negotiating mandate under GATS Article X.

ANNEX II

Canada Comments/Questions on ASEAN Safeguard Concept Paper

Meeting of WPGR on 24 March 2000

1. Regarding definitions, paragraph 3 suggests that ESMs apply to both supply and consumption of services, and across modes of delivery. It would be helpful to understand how an ESM could be applied in a mode 2 consumption abroad scenario, i.e., how does one deal with situations where the consumer moves abroad to consume a service. What type of safeguard is being contemplated here? Canada believes that the GATS applies broadly to the supply, not consumption, of a service. Do ASEAN Members have a different view?
 2. In paragraph 5 under option 1, it is not clear what "operating within the territory of a Member" means. Does the paragraph only apply to modes 1, 3 and 4? Does it cover mode 2? Also, how is domestic industry to be defined; does it include foreign owned, domestically established firms? Clarification of these issues would be central to a proper determination of injury.
 3. In paragraph 6, it is not clear whether a determination of serious injury is to include, as in the case in GATT Article XIX, an examination of the causal link and, in particular, the examination of other factors that may impact on injury.
 4. In terms of the section relating to "Conditions of Application", it is not clear from reading paragraphs 8 through 11 together, whether an ESM is intended to apply across modes, or solely within a given mode.
 5. Regarding the section relating to determining serious injury, paragraphs 12 and 13 appear to set out a framework for establishing the existence of serious injury. The provisions, however, do not provide guidance on how a determination of serious injury would actually be made. The framework raises the issues of: (i) what kind of quantifiable data would be required to establish serious injury; and, (ii) how would such data be collected. Also, it would be helpful to have further guidance on indicators and criteria which in particular may be relevant for services.
 6. The section on applicable measures raises the issue of whether an ESM is to apply across GATS undertakings on market access, national treatment and other areas (i.e., GATS Article XVIII), or whether its scope is to be limited to a particular case; (e.g., where market access commitments are at issue, would market access to a particular sector be suspended?). What kinds of remedies would be contemplated?
 7. The section dealing with compensation level of commitments raises the issue of whether the level of commitment refers to the trade value of the commitment, or does the level of commitment remain the same if one commitment is exchanged for another commitment in another sector?
 8. In terms of the section on provisional measures, the paper appears to selectively draw on the Safeguard Agreement. The process for applying provisional measures appears to circumvent such procedural considerations as the affect of an increase in imports, and a preliminary investigation.
 9. With regard to paragraph 16 on compensation, is the approval of the Council on Trade in Services (CTS) required before suspension of equivalent benefits by Member affected by the ESM can be implemented? Is there an imbalance here since approval of the CTS is not required to impose an ESM? Also, how does the requirement for a CTS approval under paragraph 16 affect members' rights under GATS Article XXI?
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WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/25

2 November 1999

(99-4741)

Working Party on GATS Rules

REPORT OF THE MEETING OF 8 OCTOBER 1999

Note by the Secretariat

1. The Working Party on GATS Rules held its twenty-fifth meeting under the chairmanship of Mr. Siva Somasundram of Singapore. The agenda for the meeting was contained in WTO/AIR/1171. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

2. The Chairman indicated that he would raise, under other business, the question of the Working Party's Annual Report to the Council for Trade in Services. The agenda for the meeting was adopted.

3. The Chairman drew attention to an informal Note (Job No. 5332) he had circulated on 16 September 1999, to assist delegations in their preparation for the meeting.

A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

4. The Chairman recalled that the Secretariat had issued a second revision of document W/27 (S/WPGR/W/27/Rev.2, 16 September 1999) as well as a brief overview of trade and injury indicators - based mainly on an informal paper from Venezuela - which could be used to identify safeguard-type situations (Job No. 5294, 13 September 1999).

5. The representative of Thailand, speaking on behalf of ASEAN, indicated that ASEAN intended to circulate a concept paper on possible rules for emergency safeguard measures before the end of the year. The objective was to produce a paper having the widest possible basis for acceptance. Turning to the Secretariat informal Note (Job No. 5294), he said that this paper should be made a formal document in due time. As to the second revision of W/27, ASEAN was of the view that it incorporated the essence of recent work. Paragraph 7 rightly pointed out that the dividing line between the concept of sector-specific safeguards and horizontal safeguards might be less sharp than initially conceived.

(a) Concepts of injury and causality

6. The Chairman proposed to focus the discussion on potential injury and causality indicators which might be used in any sort of safeguard mechanism, irrespective of whether it was sector-specific or horizontal, or any other variant under consideration. The informal note by the Secretariat (Job No. 5294) provided a checklist of possible indicators, building upon the Venezuelan proposal and including comments made at the last meeting. Quite a few blank spots remained, however, and it would be useful to have delegations' views on how to fill them.

7. The representative of the European Communities pointed out uncertainties surrounding the term "party" which appeared on page 2 of Job No. 5294 (second column, third comment). It was her

understanding that this term referred to the industry seeking safeguard protection, rather than to the Member concerned. The Chairman said that it was also his understanding that the "invoking party" was the industry making the petition for safeguard action.

8. The representative of Thailand, speaking on behalf of ASEAN, said that discussions on Job No. 5294 should not prejudge Members' position on whether national or domestic suppliers should be protected. He suggested that the structure of the paper be adjusted to better suit the objective of the Working Party's work. The second part should be divided into two sections, one dealing with indicators relating to changes in supply or consumption of services, and the other one dealing with the question of causality. In the latter context, the Working Party should discuss, *inter alia*, procedures as well as criteria to determine what factors contributed to injury, apart from increased foreign supplies of services. A further element would be the determination of the relative importance of these factors. With respect to the content of the list, ASEAN was of the view that the indicators and criteria currently contained under both headings were normally available, or could be made available, to the investigating authorities. For instance, reductions in price or number of suppliers could be monitored in a continuous manner and be a basis for safeguard action. When combined, these facts and figures were sufficiently detailed and comprehensive to allow for an objective determination. ASEAN strongly believed that the Working Party needed a consensus as soon as possible on these indicators and criteria, irrespective of the ongoing debate on whether a safeguard mechanism should be sector-specific or horizontal.

9. The representative of Japan sought further clarification on certain injury-related criteria listed on page 1 of Job No. 5294, i.e. criteria number 2 ("Decline in consolidated offers"), number 7 ("Reduced capacity utilisation") and 11 ("Changes in the level of inventories"). Secondly, she emphasized the importance of objective rules and procedures governing the application of any criteria and indicators. In this context, Japan believed that the GATT Agreement on Safeguards (AS) was relevant, as pointed out in paragraph 15 of document W/27/Rev.2. In particular, the first sentence of Article 4:2(b) of the AS might deserve further consideration. Finally, her delegation felt that certain data, such as those found in IMF Balance-of Payments statistics or OECD foreign direct investment statistics could be a useful underpinning of certain indicators.

10. The Chairman recalled that the list on page 1 of Job No. 5294 was a summary of the points contained in Venezuela's submission as well as of proposals made by Members at the last meeting, in particular Korea. He invited these Members to further elaborate on why they considered these indicators to be useful. The second issue raised by Japan was a relevant point which could be taken up in future discussions. Finally, the availability of IMF and other statistics could be reflected in the comments section of Job No. 5294.

11. The representative of the United States indicated that his delegation had taken note of the request that the Working Party should reach a consensus as soon as possible on various criteria and indicators. While the United States remained prepared to engage in a general discussion, he wished to reiterate that delegations should attempt to describe real-life situations, which could assist the Working Party in reaching some kind of common understanding on appropriate indicators or criteria.

12. Referring to the concepts of "unforeseen" and "unforeseeable" developments, the representative of India concurred with previous ASEAN statements that the term "unforeseen" was intended to capture developments which a Member could not reasonably have foreseen at the time of scheduling its commitments. Thus, it was not a totally subjective criterion; it did have scope for objective application. The concept of "unforeseeable" development might be even more subjective. On the question of injury, India considered that the relevant indicators in the goods area could be examined with a view to deciding on their adaptability to services. The indicators contained in the Venezuelan paper and additions made in the Working Party should be considered. Examples should be provided to better understand their applicability. India supported the statement made by Thailand,

on behalf of ASEAN, concerning the need for an early consensus on the indicators to be applied for determining injury and causality. In services, greater flexibility than in the goods area might be needed to cope with the complexity of the sector as well as problems in data collection and analysis.

13. The representative of New Zealand said that Job No. 5294 provided a starting-point which could help the Working Party to identify and understand how a possible emergency safeguard mechanism might work in the services area. New Zealand agreed with comments made at the last meeting that, given the inadequacy of statistics in the services area, it was important to have a broad list of indicators. Several criteria must have been met before action could be taken. Concrete examples might be needed.

14. The representative of Mexico was of the view that the two documents prepared by the Secretariat helped to focus the discussion and to define some concepts which had been discussed in an abstract context. Her authorities were asking for more concrete examples so as to better understand the desirability and scope of various criteria when applied to specific situations. It would be very useful if delegations having some kind of experience in this area could share it with the Working Party.

15. The representative of the European Communities said that the question of whether the reasons contributing to sectoral adjustment problems should affect the permissibility of a safeguard action was important. It might influence, for example, the actual form that such a mechanism could take. On previous meetings, there had been suggestions that, if government regulation were in some way contributing to an emergency situation, most governments would be reticent to admit it. The appropriate action could involve changes in regulation. The reasons contributing to the adjustment problems could thus be relevant in determining the type of safeguard measure and its period of application. Like others, the European Communities was looking for concrete examples. Although it was likely that, if there were such examples, they might already have been raised in the GATS Council under Article X.

16. The representative of the United States concurred with the European Communities that the Working Party should look more closely at the question of changes in regulation. There could be situations, as identified by the European Communities, in which regulatory changes might be the cause of increased imports, which in turn caused injury, and it was understandable that governments were hesitant to recognise that fact. Second, there might also be situations in which a change in regulation itself was the cause of injury, regardless of trade developments. For example, while imports might not be increasing, a change in regulation could lead to product innovations and shifts in sectoral demand.

17. In summing up the discussion, the Chairman noted that Members acknowledged the particular importance of trade and injury indicators, irrespective of what safeguard mechanism would be in place. It was necessary to consider more than one indicator in order to establish an increase in supplies and ensuing injury. Second, hypothetical or real-life examples would advance discussions in the Working Party. Third, to further clarify the indicators listed in Job No. 5294, it might be useful to make a distinction between, on the one hand, indicators or criteria that were relevant in establishing changes in consumption of services and, on the other hand, the causal link between a surge in imports and injury. That distinction might prove difficult to make, but was potentially very useful. Job No. 5294 might be developed in this regard. Fourth, delegations which had suggested individual indicators should try and provide answers to the questions raised during the meeting. Fifth, flexibility was a recurrent theme: the dearth of statistics on trade in services might have an impact on the kind of indicators the Working Party would eventually be able to agree upon. He noted that it might be difficult to arrive at an early consensus on indicators until the Working Party started examining their use in concrete - real-life or hypothetical - situations.

18. Referring to the interventions by the United States and the European Communities, the representative of Thailand, speaking on behalf of ASEAN, said that government regulation might be at the origin of certain adjustment problems. As a matter of principle, account should be taken by the investigating authority of all reasons contributing to injury as factors affecting the permissibility of safeguard actions. Article 4:2(b) of the AS might be used as a basis for developing rules in this regard.

(b) Horizontal *versus* sector-specific safeguards

19. The Chairman noted that the Working Party had agreed, at its last meeting, to focus on the criteria and principles which would need to govern any type of safeguard action, regardless of the basic mechanism (sector-specific, horizontal or other) which might ultimately be chosen. Relevant examples were contained in previous submissions by Hong Kong, China and the United States (S/WPRG/W/26, 10 February 1998 and S/WPRG/W/17, 13 March 1997). These referred, *inter alia*, to principles such as MFN treatment, advance notice, temporary and degressive application, clear specification of the measures envisaged, and protection of "acquired rights" of established suppliers. While the Working Party might be able to agree in principle on all these points, implementation in practice might raise difficult questions. For example, one might ask whether and how MFN treatment could be ensured if a Member, which was committed to allow only for a small number of suppliers in a sector, intended to further restrict entries on short notice. If a schedule contained very limited access guarantees in a sector, should the Member be entitled to further tighten access conditions under safeguard provisions? In past meetings, many delegations had rejected the idea of linking the use of safeguards to the quality of commitments undertaken in a sector. However, it might be useful at least to discuss the potential implications for MFN. How the protection of "acquired rights" could be guaranteed in practice would be another question. Would foreign-owned suppliers, which were already established under mode 3, continue to have exactly the same rights as any other domestically established supplier – including the right to expand their market shares through take-overs, mergers, new investment, etc.? Or was the concept of "acquired rights" meant only to protect the *status quo* of foreign suppliers – in terms of production, market share or other business indicators? If so, what would be the relevant benchmark? He felt it was important that such basic concepts be further specified and, thus, made applicable in practice.

20. The representative of Thailand, speaking on behalf of ASEAN, suggested that the Working Party discuss the basic principles that should form part of a possible set of rules governing safeguards. As reflected in document W/27/Rev.2, paragraph 7, this discussion should not prejudice the final conclusion of the Working Party on the approach to be adopted. As the first point proposed by the United States in document S/WPGR/W/17¹ was at the very heart of the debate on horizontal *vs.* sector-specific safeguards, it would be useful to revert to it once the Working Party had a clearer idea of common principles. ASEAN felt that there were a number basic principles that most, if not all, Members could readily agree on. For instance, at least four principles, which ASEAN countries viewed as relevant, were common to the papers by the United States (S/WPGR/W/17) and by Hong Kong, China (S/WPGR/W/18): (i) advance notice; (ii) temporary application; (iii) MFN treatment; and (iv) objective criteria as a basis for action. Two additional principles - referred to in the Hong Kong, China paper - were also of relevance: (i) an ESM should be limited to the minimum necessary to tackle the problems arising from an emergency situation; and (ii) any action would be subject to dispute settlement under GATS Article XXIII. With respect to the proposed clear specification of the measure, the US paper was more specific than the Hong Kong, China paper; in ASEAN's view, rules in services might go a step further than those in the goods sector by specifying the particular safeguard measures that might be applied if the investigation established injury caused by increased consumption of foreign services. Possible measures had to include suspension of

¹ This point reads: "inclusion in a schedule of a safeguards-type provision in a given sector must be paired with a commitment to liberalization in that sector".

obligations under GATS Articles XVI, XVII and XVIII, and should be applicable across all sectors. With respect to other principles identified in the US paper, ASEAN would like to have more details, for instance: on degressivity, what kind of timeframe was envisaged for the phasing-out period and would Article 7 of the AS be a suitable model? On the question of frequency in invoking safeguards, what kind of timeframe and other conditions were envisaged? On the principle of compensation, should there be no such possibility at all or would an adapted version of Article 8 of the AS be acceptable? On this last point, ASEAN was of the view that the purpose of Article XXI was different from that of a safeguard mechanism: while the former provided for longer-term or permanent adjustments, a safeguard was of temporary nature. With respect to the Hong Kong, China paper, ASEAN wished to have further clarification on two principles (contained in paragraphs 11 and 12): (i) public policy concern; and (ii) remedying the injury identified.

21. On a preliminary basis, the representative of the United States noted that the concept of degressivity, similar to that of limited duration, was linked to the stated purpose of an ESM: structural adjustment. Thus, while there could be temporary relief, an industry should be taking necessary measures to become competitive in the domestic and global market. Article 7 of the AS set forth the principle but did not contain any concrete rules on how it might be applied. His authorities were currently considering whether greater precision was needed for services. The concept of frequency was also linked to the concept of structural adjustment, in that relief should not be granted over and over again. Finally, the concept of non-compensation was related to the basic objective of a safeguard, which was distinct from that of Article XXI. The history in the goods area, predating the existence of the AS, showed that when governments were faced with requests from industries to provide relief, they would look at the various options available to them, including GATT Article XIX and Article XXVIII. The latter path was often preferred because it was the easiest one. Both provisions required compensation, but Article XIX required in addition that there be findings of injury and causality. The authorities concerned thus tended to address structural adjustment problems with Article XXVIII and, as a result, Article XIX had become a dead letter. The solution, found in the AS, was a provision allowing for safeguard measures during a short period of non-compensation. The objective was to create an incentive to use the proper measure, i.e. a safeguard, as opposed to Article XXVIII.

22. With respect to the issue of compensation and possible relevance of Article 8 of the AS, the representative of India noted that the compensation should depend on the nature of the safeguard measure adopted. This issue should be separated from GATS Article XXI. The need for compensation should be considered later, once the Working Party had reached a common understanding on the circumstances under which an ESM could be used and the types of measures that would be permissible.

23. The representative of Hong Kong, China said that the objective of the paper previously presented by his delegation was to see whether a mechanism not open to abuse could be set up and be workable. Hong Kong, China saw the need for flexibility, but also wanted to ensure that the scope for abuse was minimized. This was the intention underlying the two points identified by Thailand - public policy concern and remedying the injury identified. His delegation had a kind of "necessity test" in mind: the envisaged measure had to be necessary to address the emergency. Turning to the issue of MFN introduced by the Chairman in his opening remarks, he failed to see a problem. As to "acquired rights", he agreed this was a difficult issue which needed to be further discussed. Its relevance depended on whether an ESM differentiated between national and domestic service suppliers.

24. The Chairman said that MFN issues related, for instance, to the situation of the already established foreign services supplier, *vis-à-vis* foreign services suppliers which were outside the invoking country. Assuming that the invoking country did not impose restrictions on the established

services suppliers, what would be the impact, in terms of access, on foreign services suppliers not established.

25. The representative of Japan noted that the AS was relevant for the discussion of the Working Party. A safeguard was an exceptional action in emergency situations, which required advance notice, temporary application, degressivity, clear specification of the measures envisaged. Moreover, the measures taken should be limited to the minimum necessary to tackle the problem, and as closely specified as possible. Japan considered that any action should be taken on behalf of all domestic suppliers in a sector, irrespective of ownership.

26. The representative of the Republic of Korea said that it was necessary to clarify the meaning of "acquired rights", since it might be inconsistent with the MFN principle. The notion of "acquired rights" had to be interpreted strictly, to exclude the suspension of basic business requirements. With respect to degressivity, there was a need to examine the relationship with the principle of temporary application: if a safeguard action was temporary and short, degressivity might not be relevant.

27. In summing up, the Chairman encouraged Members to contribute to clarifying the concept of "acquired rights" in submissions. The relationship between Article XXI and any possible safeguard mechanism under Article X also needed to be further explored. This was closely related to the issue of compensation.

(c) Applicable measures and other relevant issues

28. The Chairman invited delegations to comment on three points. First, while many Members had expressed the view that it should be possible in safeguard cases to suspend commitments under Article XVIII, others had raised doubts as to whether this should include the suspension of regulatory principles (e.g. principles spelled out in the telecommunications Reference Paper). Second, delegations might want to introduce any new thoughts on whether certain types of safeguard measures, e.g. subsidies, should be preferred to others, e.g. quotas (W/27/Rev.2, para. 27). Third, delegations might need to further discuss the idea that safeguard actions under certain modes, e.g. modes 1 and 2, should be given priority over actions under other modes (W/27/Rev.2, para. 14).

29. The representative of Japan noted that a safeguard action could include the suspension of commitments under Articles XVI and XVII, but also under Article XVIII. As additional commitments varied among Members, this opened different options. His delegation felt that, in principle, it should be up to the Member concerned to choose.

30. The representative of Thailand, speaking on behalf of ASEAN, said that suspension of additional commitments under Article XVIII should be possible. However, some issues, such as regulatory disciplines, might need special consideration. ASEAN was prepared to further examine this point. Subsidies and other measures suspending national treatment commitments should be treated on an equal footing with the suspension of other obligations. Given the particularities of each mode of supply, ASEAN was willing to discuss the idea of prioritising actions under certain modes, although this might raise difficult questions.

31. The representative of the Republic of Korea said that trading conditions under modes 3 and 4 tended to be more restricted than under other modes. Considering that safeguard situations required immediate action, he doubted whether actions under certain modes should unconditionally be given priority. It was up to Members to choose the proper mode to remedy serious injury.

32. In summing up, the Chairman suggested that the Working Party come back to the points raised by Japan with respect to Article XVIII. The question of whether it should be possible to suspend regulatory principles under a safeguard mechanism was important; it went beyond the scope

of the Reference Paper in telecommunications. Should a distinction be made between the different modes of supply in safeguard situations? He noted that several views had been expressed on this question. He encouraged delegations to make written submissions to support the work of the Working Party.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

33. The Chairman recalled that the delegation of Norway had proposed at the April meeting that Members discuss subsidy-related problems they might have encountered in export markets. No submissions had been received so far on this subject.

34. The representative of New Zealand proposed that the Working Party focus on the two issues contained in the Chair's Note (Job No. 5352). His delegation intended to provide a more detailed contribution at a future meeting. The Secretariat's paper S/WPRG/W/9, dated 6 March 1996, was still a useful starting point.

35. The representative of Hong Kong, China agreed with New Zealand that W/9 should be used in future discussions and noted that, as reflected in that paper, the interpretation of the national treatment obligation was relevant in addressing subsidies. He thought it would be useful to have more background information and suggested that the Secretariat look at other papers, for instance in the area of investment, where services subsidies might have been discussed.

36. With respect to export-enhancing subsidies, the representative of Japan recommended that the Working Party consider which of the arguments used in the goods sector would be relevant for services. For example, if a government subsidized a university to attract foreign students, should this be considered as an export-enhancing subsidy under mode 2? Subsidies could result in very different types of trade distortions depending on the areas involved, and it might be necessary to develop a sectoral categorisation.

37. The representative of the European Communities noted that the subsidy programmes referred to in point (b) of the Chair's Note (Job No. 5352) appeared to be *de facto* export subsidies, although the Note did not explicitly mention it. He called for a restrictive definition of export subsidies, as laid down in Article 3 of the Agreement on Subsidies and Countervailing Measures. The interpretation of *de facto* export subsidization developed by some recent panels should be kept in mind.

38. The Chairman proposed that the Working Party address the various points contained in W/9 before considering the need for rules in this area. The relevance of the rules existing in the goods area could also be discussed in that context. He suggested that the Secretariat be requested to look at the work done in other WTO bodies, to see what could be relevant for this Working Party. It was so decided.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

39. The Chairman recalled that, at its last meeting, the Working Party had discussed the range of entities which might be deemed to carry out "government procurement". Nevertheless, doubts had remained as to whether and in what circumstances entities that were not directly owned and controlled by the government should be covered. This could include, for instance, private companies mandated to exercise some exclusive rights (such as monopoly providers of telecommunication or transport services). Another question was whether government-owned entities operating under competitive market conditions should fall under possible government-procurement disciplines.

40. The representative of Japan said the definition of "government procurement" needed to be elaborated further, based on concrete examples. He noted that the disciplines contained in

Section B.2 of the Understanding on Commitments in Financial Services were expressed in general terms. The question which arose was how to concretely ensure MFN and national treatment. Such issues were being considered in the context of the review of the Agreement on Government Procurement. Japan considered it would be appropriate to wait for the outcome of this review. This would be particularly relevant for the definition of entities deemed to carry out government procurement. Japan had submitted informal proposals on this topic in the review of the Agreement on Government Procurement.

41. The representative of Thailand, speaking on behalf of ASEAN, said that, while it was important to develop a definition of government procurement under Article XIII, ASEAN would support the idea of working on possible disciplines, including non-discrimination, at the same time. Speaking on behalf of Thailand only, he suggested that the Working Party concentrate on the wording contained in Article XIII and try to define the term "governmental agencies".

42. The representative of New Zealand asked whether it would be possible to circulate the papers Japan had referred to in its intervention, noting that not all Working Party Members participated in the Agreement on Government Procurement. The representative of Mexico supported this proposal. The Chairman indicated that he would explore this possibility.

43. The representative of the United States said that, with respect to definitions, there was a need to concentrate on the text of Article XIII. The definition contained in that provision was sufficient and had worked well in other contexts. As to the notion of government agencies, his delegation understood that it covered a wide variety of entities. Entities having some exclusive rights, without being directly controlled by the government, might be an obstacle to market access, but should not raise procurement-related issues, especially if there was no government ownership. The question of government-owned enterprises engaged in commercial activities in competitive markets was more difficult.

44. The representative of the European Communities said that the Working Party should concentrate on the mandate contained in Article XIII, i.e. consider multilateral disciplines on government procurement. Procurement was also discussed in other fora and work was currently carried out to arrive at multilateral rules on transparency. It was important for this Working Party to explore substantial rules, i.e. the application of the MFN principle and national treatment, and to examine existing discriminatory practices.

45. The Chairman invited delegations to comment on the three points contained in his Note (Job No. 5352), which built upon a paper previously submitted by New Zealand (Job No. 5446, 30 September 1997). The three points related to the substantive mandate contained in Article XIII.

46. The representative of New Zealand recalled that the paper presented by his delegation was an attempt to explore possible areas of common understanding in the application of fundamental WTO principles to government procurement in services. First, the Working Party should confirm the importance of the MFN and national treatment obligations. Second, it should examine measures departing from these obligations and weigh them against other criteria used by Members for procurement decisions. This examination should be based on an analysis of different types of measures rather than on individual Members' practices. Third, the Working Party should discuss the concept of "full and fair opportunity" for domestic suppliers and the extent to which it was compatible with the non-discrimination principle. In this regard, New Zealand acknowledged that Members, whilst seeking the best price or the economically most advantageous tender, might wish to ensure that domestic suppliers were not overlooked and had a full and fair opportunity to compete. It should therefore be examined how the concept of "full and fair opportunity" for domestic suppliers could be given effect in ways which were compatible with the non-discrimination principle. In New Zealand's view, the concept as such was consistent with MFN and national treatment. Further discussion on the

ways in which it could be given effect might help to meet some concerns that MFN and national treatment obligations in government procurement could disadvantage domestic suppliers *vis-à-vis* foreign competitors. New Zealand's preliminary thinking was that "full and fair opportunity" might call for public advertising of opportunities to tender, openness to registration of interest, market research, etc. Fourth, the Working Party might need to explore the possibility of transition mechanisms to ensure gradual implementation of the non-discrimination principle.

47. The representative of the United States said that the Working Party should continue its work on parallel tracks, i.e. on definitional issues and on possible disciplines, as mandated in Article XIII. It should take into account the work on transparency in government procurement which was going on in another forum and avoid duplication.

48. The representative of Canada agreed that the Working Party should proceed on parallel tracks and, in doing so, examine the questions raised in the New Zealand paper as well as any other pertinent issues.

49. The representative of Hong Kong, China said that the MFN principle was a very important starting-point for government procurement in services. National treatment was negotiable under the GATS but there should be as little departure as possible. Transparency was a very important principle, and the work done in the Working Group on Transparency in Government Procurement was fully relevant. At this stage, the Working Party should be focusing on more general procurement disciplines rather than pursuing the type of sectoral approach adopted in the Understanding on Commitments in Financial Services.

50. In summing up, the Chairman noted that Members were ready to focus on the substance contained in the Article XIII mandate. There seemed to be broad agreement that the Working Party should get beyond discussions on definition and begin to consider multilateral disciplines. Useful work had been carried out by other WTO bodies dealing with government procurement and the Working Party should draw on that work in fulfilling its mandate. The New Zealand paper provided a good basis but delegations should be open to additional questions. The Understanding on Commitments in Financial Services was referred to as an example but it should not prejudice the scope or direction of future work. The Chairman encouraged delegations to submit contributions.

D. DATE OF THE NEXT MEETING

51. The Chairman proposed that, in view of the preparation of the Seattle Ministerial Conference, the Working Party should hold its next meeting early next year, at a date to be announced in due course.

52. The Working Party so agreed.

E. OTHER BUSINESS

53. The Chairman said that the decision not to schedule an additional meeting this year had implications for the Annual Report which had to be submitted to the Council for Trade in Services. He intended to circulate first draft, which was modelled largely on the Working Party's last year report. He suggested to adopt an *ad referendum* procedure, i.e. delegations could forward their comments, if any, to the Secretariat by 20 October. If no comments were received by that date, the Annual Report would be considered adopted.

54. The Working Party so agreed.

Working Party on GATS Rules

REPORT OF THE MEETING OF 27 JULY 1999

Note by the Secretariat

1. The twenty-fourth meeting of the Working Party of GATS Rules was chaired by Mr. Siva Somasundram of Singapore. The agenda of the meeting was contained in WTO/AIR/1129. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

2. The Chairman indicated that he had circulated a Note, Job No. 4141 dated 12 July 1999, to assist delegations in their preparation for the meeting. The Note recapitulated where the Working Party stood on its three negotiating issues and proposed a certain structure for the discussion.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

3. The Chairman commended delegations' efforts in reaching an acceptable compromise providing for the extension of the deadline on safeguards. The Working Party's recommendation, which was adopted by the Services Council on 24 June, testified to a spirit of cooperation and flexibility. He hoped that a similar spirit would enable the Working Party to progress with its discussions and successfully conclude the negotiations on safeguards. He urged delegations to contribute not only general statements, but concrete examples of safeguard-type situations, assessments of individual injury and causality concepts, descriptions of the adjustments required, and other relevant issues. Written submissions would be particularly welcome.

4. The Chairman proposed proceeding in accordance with what had been agreed at the previous meeting. He thus invited Members to discuss, first, the question of injury and causality based on indicators listed in Venezuela's informal submission (Job. No. 2860 of 17 May), then focus on alternative safeguard concepts and, finally, take up other items contained in document S/WPGR/W/27/Rev.1 and, in particular, the question of applicable measures.

(i) Concepts of injury and causality

5. The Chairman recalled that several delegations had noted at the previous meeting that more work was needed to explore the relevance of individual injury and causality indicators. The informal paper by Venezuela seemed to be a useful starting-point for such work; several participants had also pointed out the need for flexibility in selecting adequate indicators. He felt that that it would be most productive if delegations deepened their understanding of individual indicators – their significance and their limits – before addressing the issue of flexibility.

6. The representative of Thailand, speaking on behalf of ASEAN, said that a safeguard measure should be applied only after an investigation looking into all relevant factors of an objective and quantifiable nature. The Venezuelan paper was a useful contribution in this respect; it showed that indicators of increased imports, injury and causality were available to the invoking party. All listed indicators were relevant. They were normally available, or could be made available and used for

continued monitoring, supplemented by qualitative analysis. Referring to concerns about confidentiality, he noted that it was for the invoking party, which had the burden of proof, to provide relevant information in the event of safeguard situations. The causal link between increased supplies and injury had to be demonstrated on the basis of objective evidence, using a flexible approach which took into account the specificities of services trade.

7. The representative of the European Communities said that, given the inadequacy of services statistics, it was important to have a broad selection of indicators. They should cover a variety of causes as no single criterion was by itself sufficient. Further work on indicators would also help to determine the feasibility of a safeguard mechanism and, by implication, its desirability.

8. The representative of the Republic of Korea suggested that, in addition to the criteria listed by Venezuela, other factors might be relevant for the determination of injury. Referring to the Agreements on Safeguards and on Textiles and Clothing, he mentioned changes in the level of inventories, reductions in exports, and declining (relative) wages. Indicators based on value-added taxes (VAT) could be misleading as the relevant returns varied significantly between countries.

9. The representative of Japan expressed reservation about the emphasis that some other Members had placed on the need for flexibility; clear procedures and criteria were required to arrive at objective and transparent decisions. It would be difficult to decide *a priori* on this issue. The obligations to conduct public hearings and to grant compensation, contained in Articles III:1 and VIII:1 of the Agreement on Safeguards, were other important issues for future discussion. In addition, he enquired why the last two injury criteria listed in the Venezuelan paper referred to national suppliers only.

10. The representative of Australia concurred that the indicators proposed by Venezuela were a useful starting point to establish the existence of injury. However, substantial losses had to be involved. Before safeguards could be invoked, the link to increased supplies had to be ascertained and the impact of balance-of-payments or macroeconomic problems be ruled out. Measures should be taken on behalf of all domestic suppliers, irrespective of whether they were of national or foreign origin. *A prima facie* case had to be established before the start of an investigation, it had to be based only on factual evidence.

11. The representative of the United States said that the Venezuelan paper was useful in identifying how a possible emergency safeguard mechanism could be structured; concepts like increased imports, injury and causality were essential. He reiterated his delegation's call for real-world examples and, more generally, for problem cases which might warrant safeguard measures.

12. The representative of Venezuela, addressing questions raised in the discussion, said that the list of injury criteria was meant to be illustrative rather than exhaustive. Injury had to be evaluated with respect to a services industry and not necessarily a service. On the point raised by Japan, he noted that all proposed criteria should indeed have referred to national as well as domestic suppliers/markets. Concerning value added taxes, he noted that different tax rates in individual countries and sectors might affect their relevance as an indicator. Further comments would be provided at the next meeting of the Working Party.

13. The Chairman invited delegations' comments on a question which had been earmarked for, but not addressed, at the previous meeting. Should the reasons contributing to increased imports be relevant in determining the permissibility or the actual form of a safeguard measure? For example, should it matter if macroeconomic problems had played a role or an industry's capacity to adjust had been affected by government regulation rather than own weaknesses?

14. The representative of Venezuela said that macro-economic effects had to be eliminated in the evaluation of injury. He also felt that it was necessary, but difficult, to prove that a government's policy had done harm to its own industry. The burden rested on the invoking party.

15. The representative of the United States noted that, depending on the relevant causality standard, the responsibility to prove that injury had been caused by increased imports, rather than by a change in government regulation, might rest on the invoking party. If the increase in imports was to be considered the primary cause of injury, the invoking party had to exclude other potential causes. The representative of Venezuela added that, in his country's legal system, the party opposing the application of government measures would also have to furnish evidence in response to claims made in the administrative process. The representative of the European Communities observed that governments might have a vested interest in proving that they were not responsible for the injury suffered by their industry.

16. The representative of Thailand, speaking on behalf of ASEAN, said that the reasons contributing to increased imports needed to be taken into account in deciding on the permissibility of safeguard action. While he considered the Chairman's questions to be pertinent, he feared that identifying the role of individual factors might imply an element of subjectivity. It was important to use objective criteria. The representative of Venezuela observed that it was difficult to develop examples without a clearer picture of future safeguard disciplines.

17. The Chairman reminded delegations of the suggestion to set up a "checklist" of individual injury and causality indicators introduced in the Working Party. Such a list could be developed in conjunction with a second revision of document S/WPGR/W/27. It would be open for future suggestions and would not prejudice delegations' positions on feasibility and desirability. The Working Party agreed to request the Secretariat to produce an informal document, including the indicators proposed by Venezuela, additional concepts introduced since, and comments made in the Working Party. The Chairman noted that the informal nature of the document would not prevent Members from discussing its content in formal session.

(ii) The question of horizontal versus sector-specific safeguards

18. The Chairman recalled the Working Party's discussion of various concepts previously introduced: (1) Horizontal, generally available safeguards; (2) sector-specific safeguards which would also be generally available; (3) sector-specific safeguards whose content and inclusion in schedules would be negotiated case-by-case; and (4) a "hybrid" approach based on a general framework mechanism whose inclusion in schedules would then be decided through negotiation. Discussions had focused so far on the principle advantages of either approach in terms of transparency, predictability etc., and the relevant legal basis in the GATS. While inviting additional comments, the Chairman also mentioned the possibility, previously raised by the delegation of Japan, that the Working Party temporarily suspended this discussion and rather focused on basic elements which would form part of any safeguards mechanism. It might be possible to work out common rules and principles, which would be equally relevant for horizontal and scheduled safeguards. The United States submission of 17 March 1997 (S/WPGR/W/17) contained an illustrative list of such rules and principles. These included the requirement to give adequate advance notice before invocation; use safeguards only temporarily and with a specified maximum period of duration; limit access to a given safeguards-type provision – for example, once during the course of a specified period of time – and prevent re-invocation during the specified period; apply safeguards on a degressive basis; clearly specify the envisaged action by mode and sector or sub-sector; respect "established rights" (although a different term was used in the paper) if limits were imposed on mode 3; and waive compensation if the rules are respected. Although some of these issues had already been touched upon in the discussion of document S/WPGR/W/27/Rev.1, they might warrant greater attention with a view to reaching a common understanding.

19. The representative of Hong Kong, China found this idea useful. The paper submitted by his delegation, document S/WPGR/W/18, shared many of the elements proposed in the United States paper, such as the need for advance notice, temporary application, application on an MFN basis, objective and identifiable criteria. His delegation was still considering, however, whether a safeguard mechanism needed to be paired with a commitment to liberalize and whether compensation should be waived. Further elaboration of such issues would be a way forward.

20. The representative of Thailand, speaking on behalf of ASEAN, noted that it was widely accepted in the Working Party that sector-specific safeguards, if any, should be made generally available. No link should be established between an emergency safeguard mechanism and scheduling. Without prejudice to this question, ASEAN was ready to discuss the elements contained in the United States' paper which was a useful contribution. However, it remained limited in scope as it dealt only with scheduled safeguards whose legal basis in the GATS was not beyond doubt. He sought further clarification on the "hybrid" approach proposed by the United States delegation, in particular on the question whether general framework rules would apply across all sectors while the measures would be sector-specific.

21. The representative of Japan said that, while his delegation was still considering the different forms an EMS could take, it was inclined to support a horizontal approach. Safeguards were meant to deal with unforeseen developments which, by implication, could not be predicted and scheduled. To advance the discussion at that stage, however, the Working Party should rather focus on the basic elements of any mechanism: All elements contained in the United States' submission were relevant in this context. However, unlike the United States, his delegation felt that it was not always necessary to specify an action by mode; it should be left to Members to make this choice.

22. The representative of Switzerland echoed Japan's view that most of the elements listed in the United States' paper - such as temporary application, degressivity, clearly specified criteria, MFN application, no divestment - were central to any safeguard mechanism. On the issue of compensation, he felt like Hong Kong, China that more reflection was needed. Without a requirement to compensate, safeguards could lend themselves to abuse, especially by powerful domestic interests.

23. The representative of Mexico said that her delegation favoured horizontal safeguards on the grounds of transparency and integrity. In view of the peculiarities of services trade, however, such a mechanism might need to be flexible and, in addition to general rules, allow for sector- or mode-specific solutions. She called for practical examples to advance the discussion. A safeguard mechanism should be available to all WTO Members, without prejudice to provisions for special and differential treatment of developing countries. Access must not in any way be linked to scheduling or made contingent on other GATS provisions, such as Article XXI, which pursued different ends. Several elements listed in the United States' paper should be used, such as adequate advance notice; degressive and temporary application; maximum duration (with special treatment for developing countries); MFN application; and objective and identifiable criteria. On compensation, closer examination was necessary. Compensation would imply that safeguards protection was at a cost to the invoking Member, thus limiting its use to exceptional circumstances and preventing any protectionist abuse. In addition, the concept of adjustment could be added to ensure that the sectors protected were committed to carrying out adjustment with a view to regaining competitiveness by the time the measures were removed.

24. In response to an issue raised by Thailand, the representative of the United States noted that the principle scope of emergency safeguard measures should be addressed in a context different from the rules governing application. In his delegation's view, measures would be sector-specific and scheduled, whereas the general rules would be horizontal. Without prejudice to the final mechanism, elements of these rules could be discussed. On compensation, his delegation was still examining the issues involved - including concerns about abuse - in the light of Article XXI which was a potential

alternative. If a safeguards mechanism were to be put in place, and if it contained a compensation requirement, this might create a bias in favour of modifications of commitments under Article XXI which were available without proof of injury or causality.

25. The representative of Japan concurred that the relationship between a possible safeguard mechanism and the provisions under Article XXI needed to be clarified. A safeguard measure should be easier to invoke in principle, but only for a limited period. The need for compensation should be further examined with a view to achieving a balance between easy availability of safeguards and prevention of protectionist misuse. The experience in the area of goods could help to inform the discussion on this issue.

26. The representative of the European Communities observed that a possible safeguards mechanism and the provisions of Article XXI had to accommodate different situations. A safeguard mechanism would be in place to respond speedily to emergency cases, which could be addressed and solved within a relatively short period of time, whereas Article XXI modifications dealt with longer-term changes in competitive conditions of a systemic nature.

27. The Chairman said that the Working Party should revert to discussing basic elements of a safeguard mechanism at the following meeting. He invited delegations to re-examine the relevant submissions by the United States and Hong Kong, China.

(iii) Applicable measures and other relevant issues

28. The Chairman noted that the question of applicable measures was one of the few items of document S/WPGR/W/27/Rev.1 which the Working Party had not yet discussed in depth. He suggested that Members consider, first, whether safeguard actions should be limited to the suspension of commitments under Article XVI and XVII or also include commitments under Article XVIII, and, second, whether there should be a preference for measures such as subsidies. Their application might prove more transparent, more predictable and less distortive from a supplier's perspective than, for example, quotas, while quotas might be deemed less costly and more efficient from the invoking country's perspective.

29. The representative of Thailand, speaking on behalf of ASEAN, said that the main safeguard measures envisaged were restrictions on market access and suspensions of national treatment, but the possibility of suspending commitments made under Article XVIII should not be precluded. Subsidies as safeguard measures amounted to a suspension of national treatment; they were preferable on transparency and predictability grounds. Nevertheless, the applicability of different types of safeguard measure needed to be evaluated for each mode; actions under mode 3 had to take acquired rights fully into account.

30. The representatives of Hong Kong, China and Japan agreed that, in general, the possibility of suspending commitments under Article XVIII should not be ruled out and that priced-based measures, including subsidies, were in principle preferable to quotas. However, more time was needed to discuss concrete examples and reach a final decision. The representatives of Japan and Uruguay also said that the on-going negotiations under Article XV of GATS might help to further clarify subsidy-related questions. Noting that subsidy-type remedies represented departures from national treatment, the representative of Japan recognized that Members might also want to suspend market-access commitments.

31. The representative of the Republic of Korea observed that the Agreement on Safeguards did not specify the type of restrictions to be applied. While its Article 5 prescribed the level at which any quantitative restrictions should be set, Article 6 provided that provisional safeguard measures be price-based. He felt that it might be useful to review the historical background of these provisions

and, in addition, clarify who would pay for any subsidies. Recognizing that price-based measures were in principle preferable to quantitative restrictions, he added that, given that the main purpose was to remedy injury (or threat thereof) caused by increased imports, quota-type restrictions tended to have shorter implementation periods and produce immediate results. The representative of Egypt concurred that the choice between subsidies and quota-type measures depended on the situation to be remedied; the fact that safeguard measures were applied only for limited periods had to be taken into account.

32. The representative of the United States said that his delegation was still considering the possibility of suspending Article XVIII commitments. However, it would be a matter of concern if regulatory principles, including those under the telecommunications Reference Paper, could be suspended as well. While quotas tended to be the most disruptive type of trade restriction, it was not clear whether subsidies were able to meet all positive expectations associated with price-based measures. The representative of Uruguay expressed doubts about the perceived advantages, in terms of transparency, predictability and less distortive effects, of subsidies.

33. Concluding on this item, the Chairman said that Members recognized that applicable measures could involve the suspension of commitments under Article XVI and XVII. While some concerns had been raised about the withdrawal of Article XVIII commitments, no delegation had ruled out this possibility at that stage. The discussion on whether price-based measures (e.g. subsidies) were preferable to others (e.g. quotas) had not yet led to clear conclusions. While price-related measures were considered to be more transparent, less distortive and disruptive by some delegations, others noted that quota-type restrictions offered more immediate remedies. The key challenge was to identify the best available remedy from the perspective of all parties involved, and the Working Party would need to revert to this issue at its next meeting.

34. The Working Party requested the Secretariat to prepare a second revision of S/WPGR/W/27, tracing the discussion on emergency safeguards at this and the past two meetings. In this context, the Chairman encouraged delegations to use the summer break to reflect on the structure of future discussions and submit suggestions which he would then circulate in his preparatory Note for the next meeting. Ideally, the submissions should include concrete cases where safeguards, of one type or another, might be needed and outline the implications for future rule-making.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

35. The Chairman drew the Working Party's attention to a recent submission from Hong Kong, China under the information exchange programme pursuant to Article XV. It had been circulated as document S/WPGR/W/16/Add.3.

36. The representative of Hong Kong, China explained his authorities' response to the relevant questionnaire. It excluded expenditure for a range of social services and social welfare programmes which governments throughout the world maintained in pursuit of legitimate welfare objectives. Subsidies for services supplied in the exercise of governmental authority, as defined in Article I:3(b) of the GATS, had also been excluded. All subsidies listed in the response were granted on a national-treatment basis under mode 3. While compliance with national treatment was likely to reduce any trade distortive effects, such subsidies might nevertheless cause spill-over effects between modes. According to the Scheduling Guidelines (document MTN.GNS/W/164), Members were not obliged, however, to extend national treatment to suppliers established outside their territorial jurisdiction. Nevertheless, the submission recommended that the issues involved - distortive effects and mode specificity of subsidies - be further discussed by the Working Party. This could help to clarify the meaning of national treatment under modes 1 and 2 and, in turn, might enable Members to schedule more significant commitments for national treatment especially under these modes. As a

preliminary response to a question from the delegation of Japan, he explained that all subsidies were provided to established service suppliers only.

37. The representative of Brazil noted that discussions in the General Council had shown a broad consensus for negotiating subsidy disciplines under Article XV in the next round. Although only three delegations had yet responded to the relevant questionnaire, it was important that the mandate of Article XV be met. Subsidy disciplines were in the interest of all Members and in particular of developing countries, which often lacked the resources for active subsidization. He suggested that Members take up again relevant issues raised in the Secretariat background paper on subsidies, document S/WPGR/W/9, in order to advance work.

38. The representative of Guyana noted that some Members had excluded subsidies from national treatment obligations, while others had undertaken full commitments. The resulting imbalance was a matter of concern; it could seriously affect the competitive position of developing country suppliers in foreign markets. He felt that any disciplines to be developed under Article XV would need to take this disparity into account.

39. Summing up the discussion on this item, the Chairman reminded delegations of the information exchange requirement under Article XV. In his preparatory Note for the next meeting, he intended to draw attention to core issues raised in the Secretariat background paper on subsidies.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

40. The Chairman recalled that, during the past two meetings, several delegations had suggested definitions, or elements of a definition, of what could be considered government procurement of services. The notion of financial responsibility, i.e. the assumption of the financial risks and benefits associated with the purchase of services, seemed to be widely considered one suitable criterion to distinguish procurement from other forms of government involvement. He invited delegations to introduce any additional criteria and comments into the discussion.

41. The representative of Australia said that, following domestic consultations on how to define government procurement, her delegation now supported a broad definition. This was a pragmatic move since the processes of choosing contracts, as well as the relationship between companies and government, were generally identical and not influenced by notions of financial responsibility. Government procurement was thus considered to include all three categories in the hierarchy Australia had originally suggested: first, government purchases of services for consumption by the government; second, government purchases of services for consumption by the public; and, third, contracts between the government and private companies for the commercial provision of services to the public or to industry. The latter category was covered by the definition of GATS Article XIII because it was the government that initiated and organized the supply of the service and, thus, enabled the public to consume it.

42. The representative of Canada felt that the term "hierarchy" was not appropriate as it implied the setting of priorities; she proposed using a more neutral term such as "listing". The representative of the European Communities said that the definition offered by Australia was broad and wondered how it squared with relevant GATS provisions, given that the Working Party was mandated to deal with transactions not currently covered by the GATS.

43. The representatives of Venezuela, Brazil and Mexico noted that in their national legislations, concessions did not fall, and could not be categorized, under government procurement. The representative of Mexico suggested that examples be given under each category proposed by Australia. She wondered how this categories related to the concept of financial responsibility, which

many delegations considered relevant. In response to several requests, the representative of Australia undertook to submit her contribution in writing.

44. The representative of Hong Kong, China said that considerations related to the structure of the relevant market were important in determining what fell under government procurement. The representative of the United States suggested that the Working Party set aside its discussion on concessions for the time being and rather develop a genuine definition of government procurement. By default, it would also inform the definition of concessions.

45. As mentioned in his preparatory Note, the Chairman suggested further examining the range of entities considered to conduct government procurement. At previous meetings, it had been said that, in principle, entities at all government level should be covered, and that government ownership and control were important criteria. The legal form of operation or incorporation had not been mentioned as relevant. Some delegations had noted, however, that attention should be given primarily to entities enjoying some degree of exclusivity, i.e. to entities not fully subject to market disciplines. He invited delegations to further elaborate on these issues.

46. The representative of Canada said that government ownership and control were critical factors in defining government procurement. The representative of Hong Kong, China favoured in principle the inclusion of entities at all levels of government, but was not sure whether the legal form of operation or incorporation should be a determining factor. Criteria related to the form and structure of the markets concerned needed to be considered as well.

47. Notwithstanding the importance attached to definitional issues, the Chairman remarked that the negotiations under this item might benefit from Members giving thought to their ultimate purpose. This included in particular the question what common disciplines, if any, might be agreed upon at the end of the process. A prominent candidate would be the concept of non-discrimination. The Working Party endorsed his proposal of raising pertinent questions in the preparatory Note for the next meeting.

ITEM D: DATE OF THE NEXT MEETING

48. The next meeting is scheduled to take place in the vicinity of the October meetings of the Committee on Government Procurement and the Transparency Working Group, possibly on Friday, October 8, 1999.

ITEM E: OTHER BUSINESS

49. No matters were raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 21 JUNE 1999

Note by the Secretariat

1. The twenty-third meeting of the Working Party of GATS Rules was chaired by Mr. Siva Somasundram of Singapore. The agenda of the meeting was contained in WTO/AIR/1110. It consisted of five items: negotiations on safeguards under Article X of the GATS, including the extension of the deadline for the negotiations; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

2. The Chairman indicated that he had circulated a Note, Job No. 3432 dated 14 June 1999, to assist delegations in their preparation for the meeting. The Note recapitulated where the Working Party stood on its three negotiating issues and proposed a certain structure for the discussion.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

(i) Extension of the deadline

3. The Chairman recalled that Article X:1 provided for multilateral negotiations on the question of emergency safeguard measures, whose results should have entered into effect not later than end-1997. The deadline was extended in November 1997 by the Council for Trade in Services to 30 June 1999. After it had become clear that the Working Party would not be able to conclude the negotiations by that date, he had held a number of informal consultations to explore Members' views on how to proceed. While there had been broad agreement that the safeguard negotiations should continue, delegations had voiced diverging views on their future timing and the need to coordinate them with the next services round. To a certain extent, interpretation problems surrounding the meaning of the first and second sentence of Article X:1 also played a role.

4. Two drafts had finally emerged from his consultations – a Chairman Communication to the Council for Trade in Services and a draft Council Decision on the safeguards negotiations - which tried to strike a fair balance between the views expressed. He drew attention to three elements of the drafts:

First, the draft Council Decision explicitly provided for a conclusion date of the negotiations, which had not been specified in Article X:1 and the 1997 Council Decision. The date was set at 15 December 2000, reflecting many delegations' views that the current momentum in the safeguards negotiations needed to be maintained and, if possible, increased.

Second, the draft Decision set a final date for the entry into effect of the results of the safeguards negotiations, mirroring language already used in Article X:1. This date should be no later than the date of entry into force of the results of the next services round. There would thus be sufficient time after the conclusion of the negotiations to enact any necessary changes

to GATS and national legislation, possibly in conjunction with the implementation of the results of the new round. By the same token, the Decision did not preclude the possibility of an earlier implementation date should Members deem it necessary.

Third, the Chairman's draft Communication summarized the broad parameters within which Members of the Working Party wished the deadline to be extended. In particular, it made clear that the extension would not prejudice any country's position on the desirability and feasibility of an emergency safeguard mechanism in services. The second paragraph of the Communication reflected the main thrust of opinions voiced, but not necessarily agreed, during his consultations. This part of the Communication represented a finely calibrated balance between various positions.

5. The Chairman asked delegations to approve the Communication and the draft Council Decision, as they had emerged from his consultations.

6. The representative of Brazil, noting he would have preferred a more balanced text, nevertheless commended the Chairman's efforts to reach a consensus. His authorities were concerned that the draft texts failed to give sufficient legal certainty that, should no agreement be reached by 15 December 2000, the Working Party was committed to further extending the mandate of the negotiations. Although many developing countries seemed satisfied with the decision as it stood, the record of the negotiations was not satisfactory from Brazil's perspective. However, his delegation did not want to block a consensus. The representative of Poland felt that the second paragraph of the draft Decision might not be sufficiently precise, pointing out a potential inconsistency with the second sentence of Article X:1. The Chairman explained that the Council Decision, which extended the deadline in 1997, already provided for an override over this sentence. The representative of Poland stated his delegation was ready to approve the draft texts in view of this clarification.

7. The Working Party approved the Chairman's Communication to the Council for Trade in Services and the attached draft Decision ("Second Decision on Negotiations on Emergency Safeguard Measures").

8. The representative of Egypt expressed concern that again it had been necessary to extend the deadline of the negotiations although, under Article X:1 of GATS, the results should have entered into effect in January 1998. His delegation was firmly convinced that emergency safeguard measures were part of the built-in agenda resulting from the Uruguay Round and, thus, were not linked to the impending negotiations under Article XIX of GATS. He urged all Members to work in good faith towards an early conclusion on safeguards; the results should be put into force immediately after 15 December 2000 and not be postponed to an – uncertain – later date. Serious discussions should be held on the shape, elements and model of a safeguard mechanism, whose existence would foster liberalization commitments in particular by developing countries. The representatives of Morocco and India shared these views.

9. The representative of the United States said his delegation looked forward to the Working Party resuming its work on safeguards. While delegations might have different views on the question of an emergency safeguard mechanism (ESM), it was important to reach an understanding on its own merits and not to create links with other issues, such as the next services round. Since Article X:1 clearly called for negotiations on the question of safeguards, Members needed to decide first, if such a mechanism was necessary at all and then determine its elements. His delegation had been willing to take part in hypothetical discussions on what form safeguards might take, but this willingness should not be misconstrued as agreement to ESM in principle. Discussions on whether and how such a mechanism should be constructed would help Members to work through their differences more effectively, with mutual respect for each other's views.

10. The representative of Thailand, reserved the ASEAN delegations' position on the interpretation of Article X. However, if there were differing views, these should not affect Members' efforts to cooperate and come up with a concrete result. The representative of Argentina stated that Article X contained a clear mandate for negotiations on ESM; the Working Party needed to make it operational. The representative of Uruguay concurred; the safeguards negotiations were part of the Uruguay Round built-in agenda.

11. The representatives of Switzerland and Japan stated that their acceptance of the Chairman's Communication and the draft Decision did not imply an obligation to create an emergency safeguard mechanism. Questions related to the desirability and feasibility of such a mechanism were still open.

(ii) Situations justifying the application of safeguards measures

12. The Chairman recalled past discussions about the concept of "unforeseen developments". Some delegations had viewed it as a useful – or even pivotal – concept to govern the invocation of a potential safeguard mechanism. Others had felt, however, that it could not serve a reasonable purpose given, *inter alia*, its vagueness and scope for discretion. While rehearsing this debate might not be productive, he encouraged delegations to advance any new ideas and, in particular, explore the related concept of "unforeseeable developments".

13. The representative of Thailand, speaking on behalf of ASEAN, noted the customary definition of the term "unforeseen developments" in the GATT context. As explained on previous occasions, the term was intended to capture developments which negotiators of the invoking party could or should not reasonably have foreseen at the time of scheduling. Despite subjective elements, this was a meaningful and viable concept from a legal point of view. A degree of discretion, to be exercised within legal limits, was recognized in any system and did not preclude the effective application of a legal concept. It would thus be premature to reject the notion of "unforeseen developments" without discussing its possible scope for objective application. Moreover, he was not convinced that the concept of "unforeseeability" would be less subjective; the borderline between the two concepts seemed to be thin.

14. The representative of Australia said that her delegation's previous introduction of the term "unforeseeable developments" had been intended to distinguish the role of subjective and objective factors in the invocation of a potential safeguard mechanism. Australia was concerned about the potential for abuse; the distinction between "unforeseeable" and "unforeseen" developments was a secondary issue. Her delegation remained interested in developing objective tests for emergency situations, based on readily available information or standard practice.

(iii) Concepts of injury and causality

15. The Chairman suggested that delegations focus first on the individual indicators proposed in Venezuela's informal paper of May 1999 (Job No. 2860). On that basis, they might explore two issues raised in his preparatory Note: Should the reasons contributing to increased imports be relevant in determining the permissibility or the actual form of a safeguard action? What degree of flexibility should Members have in selecting adequate indicators? He drew attention to relevant provisions of the Anti-Dumping Agreement (Article 3:4), which allowed for some flexibility, and recalled a proposal by the Polish delegation to set up a non-exhaustive "checklist" of the injury and causality indicators discussed in the Working Party.

16. The representative of Thailand, speaking on behalf of ASEAN, suggested that the Working Party, as a starting-point, consider the relevant indicators in the goods area. They might need to be adapted to reflect the specificities of services trade. However, Venezuela's informal paper demonstrated that effective indicators could be developed. In response to the two questions raised by the Chairman, he observed that the reasons contributing to increased imports should be taken into

account in the application of safeguards and that, although Article 3:4 of the Anti-Dumping Agreement was a useful model, greater flexibility might be needed in the services context. The proposed checklist might prove a useful instrument. The representative of the Republic of Korea concurred that an injury determination could be based on statistical criteria. She stressed that objective indicators were essential to prevent the abuse of a safeguard mechanism. The paucity of statistics did not imply that there was no injury and that no safeguards were needed. The burden of proving injury and causality should rest on the invoking party, however. Venezuela's paper could be used as a starting point for setting up the checklist proposed by Poland.

17. The representative of the European Communities said that injury and causality indicators needed to be defined and applied more flexibly in services than in goods trade; the greater their number, the greater the possibility of providing evidence. The representative of the United States said it was necessary first to examine and apply the proposed indicators, before the need for flexibility could be discussed. He reiterated his delegation's request that concrete examples be provided to test various concepts.

18. The representative of Poland noted that the checklist proposed by his delegation would be useful in keeping track of discussions in the Working Party and identify elements on which agreement had been reached. The representative of Japan sought further clarification on various terms contained in the Venezuelan paper; the Chairman undertook to convey the relevant questions to the delegation of Venezuela.

(iii) The question of horizontal versus sector-specific safeguards

19. The Chairman recalled that previous discussions in the Working Party had focused on four principal types of safeguards: horizontal, generally available safeguards; sector-specific, generally available safeguards; sector-specific, scheduled safeguards; and sector-specific safeguards to be scheduled in accordance with a generally agreed framework. He also introduced two questions raised in his preparatory Note, which were intended to explore differences and, possibly, similarities between general (horizontal) and sector-specific safeguards. Assuming that there was a generally available ESM, would it be possible for Members under Article XVIII of GATS to forego the right to invoke it? Should the relevant invocation criteria be related to the existence of scheduled limitations in individual sectors? If delegations' answers to these questions were in the affirmative, the distinction between general (horizontal) safeguards and scheduled safeguards might prove less strict than it appeared on the surface. Responding to questions raised by the representative of the United States, he stressed that his questions were merely intended to stimulate the discussion, but not to express a position on any of the options.

20. On the question of horizontal versus sector-specific safeguards, the representative of Thailand, speaking on behalf of ASEAN, expressed a preference for a horizontal mechanism. However, he was also prepared to consider the possibility of sector-specific safeguards, in various forms, as long as these were not related to scheduling. Such a link would not be acceptable to his delegation. The conceptual and practical distinction between scheduled and non-scheduled safeguards had to be maintained; emergency safeguard measures under Article X:1 needed to be available regardless of scheduling. Members would then be free to forego, or place additional limitations on, their use.

21. The representatives of Argentina, Hong Kong, China, Guatemala and Uruguay also expressed preference for an horizontal approach to safeguards. The representative of Japan, noting that his delegation's position was still open in this respect, suggested that a horizontal approach might be used as a working hypothesis to advance discussions. The representative of Hong Kong, China observed that, while sector-specific and horizontal safeguards might achieve similar effects, a horizontal mechanism was preferable for transparency purposes. He also wondered whether Article XVIII was conceived to allow for the suspension of general rights, which one day might include an ESM,

conferred on all WTO Members under GATS. The representative of Argentina expressed similar reservations. Moreover, he rejected the idea of establishing a link between the level of commitments in a given sector and the possibility of invoking a safeguard. This would imply value judgements on the restrictiveness of limitations and, thus, introduce an element of subjectivity. He failed to see why, for safeguards purposes, full commitments should be treated differently from cases where limitations had been scheduled.

22. The representative of the United States recalled a submission which his delegation had made in March 1997 (circulated as S/WPGR/W/17). It was meant to contribute to the discussion on horizontal versus sector-specific safeguards, provided Members had decided to create an ESM. The submission explained why a horizontal approach to safeguards was neither feasible nor desirable, and then listed ten considerations relevant for developing a framework for sector-specific, scheduled safeguards. He felt that some of the comments made by proponents of a horizontal approach were not too distant from these considerations. They would also prevent the proliferation of different types of mechanisms across sectors and countries and, thus, address concerns raised by Hong Kong, China. Even if that there was no legal basis in the GATS for scheduled safeguards, as suggested by some Members, the Services Council would be free to endorse such an approach.

23. The representative of Thailand, speaking on behalf of ASEAN, noted that, while nothing in the GATS might prevent Members from scheduling sector-specific safeguards, this was not the approach foreseen in Article X.

24. The representative of the European Communities felt that considerations listed in the United States' submission could be applied to horizontal safeguards as well. As sector-specific safeguards would need to accommodate the specificities of individual sectors and modes, they could lead to a maze of different mechanisms in schedules, and further complicate the interpretation of commitments. She also wondered whether Members were able to clearly anticipate emergency situations at the level of sectors and modes.

(iv) Other issues

25. The Chairman proposed further exploring the question of compensation and the possible use of Article 8 of the Agreement on Safeguards as a model. On previous occasions, several delegations had pointed out definitional and analytical problems, raising the question whether compensation should be required at all. Alternatively, compensation could remain confined to negotiations under Article XXI, which would be triggered automatically once a pre-defined "safeguards period" had expired. It was also conceivable to establish a compensation requirement in principle which could then be waived if a country undertook genuine efforts to promote adjustment.

26. The representative of Thailand, speaking on behalf of ASEAN, expressed preference for an approach based on Article 8 of the Agreement on Safeguards. The main challenge was to define the level of "equivalent" adjustments to compensate adversely affected Members. In ASEAN's view, safeguards actions would consist of the suspension of market access and/or national treatment obligations; and the requirement to compensate would depend on the measures adopted. This issue had to be kept separate from negotiations under Article XXI. Safeguards were temporary measures which should not be confused with longer-term protection as available under Article XXI.

27. The representative of the European Communities concurred that the level of compensation had to be determined in view of the actions taken and their effects on other Members. For example, degressive application of safeguards might require less, if any, compensation. In the event of systemic problems in major sectors, Article XXI might come into play. However, this was to be decided case-by-case, possibly based on some general principles.

28. In summing up, the Chairman noted the range of views expressed on the principle approach - horizontal or sector-specific mechanism - to be adopted for safeguards. On some more technical issues, positions seemed to be closer. He proposed that, at the next meeting, the Working Party take up again the issues of causality and injury, based on the Venezuelan paper and other contributions. Members might also want to deepen their understanding of the basic rules and disciplines needed for any type of safeguards mechanism. In addition, he offered to identify further points, based on document S/WPGR/W/27/Rev.1, which had not drawn sufficient attention to date. These points, possibly including the question of applicable measures, would be flagged in his preparatory Note for the meeting. The Working Party agreed.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

29. The Chairman recalled that, at the previous meeting, some delegations had expressed interest in exploring issues raised in a Secretariat document of March 1996 (S/WPGR/W/9). In the main, these revolved around the question of "import substituting" and "export enhancing" subsidies – their empirical relevance, their treatment under current GATS provisions and the need for any additional disciplines. He invited delegations' comments and called for concrete examples of trade-distorting subsidies encountered in foreign markets.

30. The representative of Hong Kong, China indicated that his delegation might make a written contribution in respect of the information exchange exercise mandated under Article XV at the next meeting. On the cross-modal effects of subsidies, he drew delegations' attention to some basic questions which needed to be further examined. For example, although a Member had undertaken full commitments under the national treatment column for one mode, certain policies falling under that mode might affect competitive conditions under other modes. However, the structure that had been chosen for scheduling seemed to imply that there were no such cross-model impacts. On the other hand, Members were committed under Article XVII:1 to ensuring national treatment in respect of "all measures" affecting the supply of a service.

31. The representative of New Zealand said that his delegation also hoped to have a paper ready for the next meeting. He stressed his authorities' continued interest in subsidy-related issues and called for further work on the trade-distortive effects which might arise in particular from export-enhancing subsidies.

32. The Chairman reiterated the importance of the information exchange exercise mandated under Article XV.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

33. The Chairman recalled that several delegations had suggested definitions – or elements of a definition – of government procurement of services. The notion of financial responsibility seemed to be widely considered one suitable criterion. He invited delegations to introduce additional elements

34. The representative of Thailand, speaking on behalf of ASEAN, stressed the need for continued efforts to define government procurement under Article XIII. While the concept of financial responsibility was relevant, it was not sufficient in itself. "Government purpose" was another key term. However, more work was needed to arrive at a satisfactory definition.

35. The representative of Australia suggested developing a hierarchy of procurement activities, reflecting the level of government involvement. Japan's informal paper on concessions could be a starting-point. For instance, activities could be ranked as follows: government purchases for

consumption by the government; government purchases for consumption by the public; contracts with private companies for the purpose of constructing and managing industrial sites, railways, etc.; and contracts with private companies for the purpose of developing natural resources. The latter example was not to be considered government procurement.

36. The representative of New Zealand recommended that the Working Party focus on the definition of government procurement, rather than on surrounding concepts such as concessions. The criterion of financial responsibility was very useful; it implied the assumption of the financial risks and benefits of providing a service on a commercial basis. At the request of another Member, he explained that, in his delegation's view, the concept of concessions implied that a private party carried the risk of operating a service and was entitled to charge a fee in return. Thus, the private operator was financially responsible.

37. The Chairman concluded by drawing attention to three questions contained in a European Communities' informal paper of February 1998: what transactions constitute procurement?; who is the procuring entity?; and what is being procured? He felt it might be useful to further examine the range of entities which might be considered to conduct procurement activities. Some Members had expressed the view that, in principle, entities at all Government levels should be covered and that government ownership and control were important criteria. It had also been noted that the focus should be on entities enjoying some degree of exclusivity, i.e. entities not fully subject to market disciplines. He suggested that, at the next meeting, the Working Party tried to further clarify this question, in addition to advancing the discussion on definitional issues. The Working Party agreed.

ITEM D: DATE OF THE NEXT MEETING

38. The Chairman suggested holding the next meeting on Tuesday, 27 July 1999. The Working Party agreed.

ITEM E: OTHER BUSINESS

39. No matters were raised under this agenda item.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/22/Corr.1*

21 June 1999

(99-2505)

Working Party on GATS Rules

REPORT OF THE MEETING DATED 19 MAY 1999

Note by the Secretariat

Corrigendum

Paragraph 27 of document S/WPGR/M/22 summarises the views of the delegation of Hong Kong, China. The second sentence, which reads: "Such a definition should include cases in which the government did not consume directly the service.", should now read:

"However, his delegation's interpretation of the term government procurement, as used in Article XIII:1, covered purchases for government use as well as cases where the government procured, but did not consume the relevant goods and services itself. Street cleaning and garbage collection for the public were cases in point."

* English only.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/22

15 June 1999

(99-2413)

Working Party on GATS Rules

REPORT OF THE MEETING OF 19 MAY 1999

Note by the Secretariat

1. The twenty-second meeting of the Working Party on GATS Rules was chaired by Mr. Siva Somasundram of Singapore. The agenda of the meeting was contained in WTO/AIR/1086. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

2. The Chairman indicated that in order to assist delegations in their preparation for the meeting he had circulated a Note, Job No. 2803 dated 11 May 1999. The Note recapitulated where the Working Party stood on the three issues and proposed a certain structure for the discussion.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

3. The Chairman recalled that at the previous meeting a useful discussion of various issues listed by the Secretariat in document S/WPGR/W/27 had been conducted. As requested at that meeting, the Secretariat had meanwhile produced a revision (S/WPGR/W/27/Rev.1) which incorporated recent contributions. He suggested using that document as a basis for the discussion and addressing relevant issues in the order suggested in the preparatory Note.

(i) Situations justifying the application of safeguards measures

4. The Chairman noted that in past discussions the concept of "unforeseen developments" had been frequently referred to. It was, however, his impression that Members had approached this concept from different angles. For instance, there was a notion that unforeseen developments related to market developments not anticipated by governments at the time they negotiated commitments. Alternatively, but not in a mutually exclusive manner, the concept had also been tied to import-related developments confronting individual services suppliers in a committed sector. This second notion corresponded to the conventional interpretation contained in Article XIX of GATT, but not explicitly taken up in the Agreement on Safeguards (AS). Based on the second notion, a previous Secretariat document (S/WPGR/W/24 of 3 September 1997) asked whether the concept of unforeseen developments could be made legally meaningful. This question had been answered by some Members in the negative. It might be helpful to further clarify these different notions of "unforeseen developments" and to determine, first, whether they were relevant to the Working Party's discussion and, second, whether it would be possible to give them legal effect. He suggested that delegations give actual or hypothetical examples.

5. The representative of Thailand observed that the Working Party had achieved some encouraging progress. Discussion on the feasibility of an emergency safeguards mechanism (ESM) for services would facilitate judgement on its desirability. The concept of "unforeseen developments" was essential to the GATT Article XIX mechanism for goods. He acknowledged that the concept might leave room for various interpretations but, thus far, had not posed serious problems in the goods area. "Unforeseen developments" should be interpreted as developments occurring after the negotiation of a tariff concession which could not be reasonably expected to have been foreseen by negotiators at the time when the concession was made. Such developments could be of different nature; they might primarily be import-related, but other market developments should also be taken into account, for instance, technological changes.

6. The representative of Canada reiterated that the main difficulty still faced by the Working Party was determining circumstances where safeguards would be warranted. The Agreement on Safeguards had been suggested as a model, but it did not include references to "unforeseen developments" because it was recognized in the Uruguay Round that the concept had never been clearly defined. By contrast, the AS referred to objective, clearly defined circumstances, i.e. import surges that might cause injury. However, such import surges were difficult to identify in services; they had to be closely circumscribed in order not to affect liberalizing commitments. The representative of Australia concurred that the legitimate role of safeguards was to facilitate adjustment to more liberal market conditions. In her view, the concept of "unforeseen developments" posed problems, one of them being its subjectivity. As an alternative, she proposed exploring the notion of "unforeseeable developments". It might be possible to develop objective criteria in this regard; they could be based, for instance, on available information, reasonable precautions, standard practices, etc. The representative of Japan echoed Australia's concern as to the concept of unforeseen developments. If it were understood to capture "market developments", the term would be very broad - including non-trade-related developments - and required a clear definition. By contrast, the concept of "import-related developments" suffered from the difficulty of specifying the term "imports" in trade in services. The representative of the European Communities associated herself with Australia's interest in exploring the concept of "unforeseeable developments" and with Japan's comments on "market developments". The latter could be linked to injury and causality in bound sectors; the relevant injury test should be conducted for the "domestic industry" as a whole.

7. The representative of Barbados requested further clarification of the criteria which might be used to test "foreseeability". In her view, the focus should be on whether or not there had been injury. The representative of Thailand added that regarding the distinction between "unforeseen" and "unforeseeable", the borderline was very thin in the GATT context.

8. The representative of the United States reiterated reservations as to whether Article XIX of GATT could be used as a model for any possible safeguard mechanism in the area of services. He also felt that the concept of "unforeseen developments" was very subjective and proposed focussing on injury rather than its cause. The example concerning technological changes was interesting; in his view, however, technological developments were foreseeable. He observed that document W/27 had placed emphasis on the protection of juridical persons, but the possibility of protecting natural persons through safeguards should also be considered.

9. The representative of Switzerland was in favour of relating the safeguards concept to the interests of domestic industry. It should cover producers of like or directly competitive products, established within the territory of a Member, regardless of ownership and control. Special and differential treatment for developing countries should be possible. Both the possibilities of horizontal and sector-specific approaches should be studied. She also suggested considering the prioritisation of individual modes; for example, safeguards on modes 3 and 4 should be possible only after action had been taken on modes 1 and 2. Members should be required to take the public interest into account, i.e. to weigh the interests of consumers, users and producers. All actions should be limited in duration. Finally, compensation should be required to ensure that measures are not taken for

protectionist purposes. The representative of Japan felt that, if the relevant criteria were met, all domestic suppliers should be protected against all new suppliers entering into the market.

10. Regarding the passive subject, the representative of Venezuela said that his delegation had no specific views on who would qualify for protection in relevant cases; it could be enterprises, industries, natural persons, etc. Article 4 of the Antidumping Agreement contained a definition of industry which could be taken into account. As to the circumstances justifying an action, he added that the effects of "unforeseen circumstances" – increases in the supply of a services and the injury caused by it - should be analysed together. The representative of Korea felt that no Member would want to open its market to an extent that a serious injury could occur. In turn, this implied that all such injury was unforeseen and that there was no need to impose both the conditions of "unforeseen development" and "serious injury". As safeguards were exceptional measures, employed when other measures were not effective, they should not be taken when a situation could be addressed under other GATS provisions. In considering whether ESMs should be taken, the benefit ensuing to the whole of the economy, as opposed to an industry, should be taken into account. Since this implied a subjective evaluation, the invocation of safeguard provisions should be left to the discretion of the Members concerned.

11. In summing up, the Chairman noted that many delegations considered the concept of "unforeseen developments" as essential, while others felt it was too subjective in nature. Alternatively, it had been suggested to discuss the concept of "unforeseeability" which might be made subject to an objective test concerning the justification of an action, the benefits for the economy as a whole and public interest issues had been mentioned. Some delegations had called for more concrete examples of situations justifying the use of safeguard measures and, in this context, an in-depth discussion of the importance of technological changes.

(ii) *The question of horizontal versus sector-specific safeguards*

12. The Chairman recalled that the delegation of Japan had proposed a conceptual distinction between three principal approaches for safeguards: (a) horizontal safeguards (available to all Members in standard format across all sectors); (b) sector-specific safeguards (available to all Members in sector-specific format); and (c) sector-specific safeguards which would be available only if included in schedules. Additional variants were possible. This conceptual distinction was also related to an issue discussed at the previous meeting, namely, the distinction between (a) *ex-ante* safeguards to be included in schedules and (b) *ex-post* safeguards which would be available whenever the relevant criteria were met.

13. The representative of Thailand, on behalf of ASEAN, said that the distinction suggested by the delegation of Japan was relevant. It made clear that a sector-specific approach did not necessarily call for scheduling. He felt that there was no legal basis in Article X for a scheduled mechanism since the Article envisioned *ex-post* safeguards to cope with unforeseen circumstances. While favouring a horizontal approach, he could also consider a sector-specific ESM which was unrelated to the scheduling of commitments. The representative of the European Communities added that an *ex-ante* approach would require Members to clearly identify possible emergency situations in advance. Instead, a general framework for safeguards might be developed, including conditions for application. Regarding sector-specific approaches, the prudential carve-out for financial services could be considered a model. The representative of Japan reiterated reservations *vis-à-vis* the inclusion of sector-specific safeguards in schedules as these could affect the quality and stability of commitments. In any case, the circumstances justifying an action should have been unforeseeable at the time of scheduling.

14. The representative of the United States observed that all approaches were potentially relevant. There was also a possibility of combining horizontal and sectoral approaches, based on a general

framework mechanism that countries could include in their schedules. It could indicate in a more specific manner the comfort level that a country might need when opening its market, given that the case for safeguards was related to liberalization. Whether the circumstances were unforeseen was not as important as reaching agreement on the level of "imports" acceptable for a country. He felt that the financial services carve-out could not be considered as a safeguard of the kind referred to in Article X. Using it for such purposes could unduly diminish the financial services commitments.

15. In summing up, the Chairman noted the additional variant introduced in the discussion, namely the combination of horizontal and sector-specific elements. In this context, basic framework rules would define general criteria for invocation, while more specific rules could deal with sectoral peculiarities. He reminded delegations that all options remained open for consideration.

(iii) *Concepts of injury and causality*

16. The Chairman thought it useful to further discuss indicators which might be used to (a) prove the existence of injury and (b) establish a causal relationship between increased foreign presence in a market and such injury. He recalled that the delegation of Venezuela had voiced some suggestions in this regard, which had also been made available in an informal paper (Job No. 2860 of 17 May 1999). It was also worth discussing on the degree of flexibility that Members should have in selecting adequate indicators; the delegation of Brazil had mentioned that Article 3 of the Antidumping Agreement could provide some guidance. Secondly, he drew delegations' attention to questions raised by the Secretariat in document W/24. In particular, (a) should the reasons which contributed to an increase in imports be taken into account, or only the increase in imports *per se*, and (b) should the existence of injury caused by increased imports be a sufficient condition for safeguard action, or should there be additional criteria (e.g. the existence of market imperfections)?

17. The representative of Thailand reiterated views previously expressed by his delegation on the use of Articles 4:2(a) and (b) of the AS and Article 3 of the Antidumping Agreement as models in determining injury and causality. Venezuela's submission demonstrated that relevant indicators were available. Confidentiality was not an issue since the burden of proof would rest on the invoking party, who would have access to information that could be considered confidential. The representative of Venezuela concurred. He suggested referring to increased "supply or consumption" of foreign services, rather than increased imports. The representative of Argentina shared these views and added that it remained to be decided how existing information could be made comparable. The representatives of Uruguay, Cuba, Poland, and Egypt welcomed the Venezuelan submission and the views expressed on the use of relevant provisions of the AS. Also, it was suggested that track should be kept of the discussion on various injury indicators in order to facilitate an overall assessment. The analysis should continue.

18. The representative of the United States felt that the criteria proposed in the Venezuelan submission were too broad. More concrete examples of real world situations, taking into account the four modes of supply, would help to clarify the proposal. Referring to a question posed in the Chairman's Note for the meeting, the representative of Japan wondered whether "market imperfections" could be taken into account in the determination of injury and causality.

19. In summing up, the Chairman observed that most delegations wished to discuss the Venezuelan submission in greater detail. Real-world examples relating to the determination of injury and causality would be helpful. Most delegations that had spoken felt that Articles 4:2 (a) and (b) of AS were relevant; given data problems in services, the approach underlying Article 3 of the Antidumping Agreement could also be taken into account. He suggested continuing at the following meeting the discussion of the concepts of injury and causality, the notions of unforeseen vs. unforeseeable developments as well as any other issues deemed relevant under this item.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

20. The Chairman recalled that at the previous meeting the delegation of Norway had suggested that Members provide any available information regarding trade-distorting subsidies encountered in foreign markets. The proposal had been well received. He invited delegations' contributions in this regard.

21. The representative of Switzerland stressed that the mandate of Article XV had to be fulfilled. Despite the lack of information, it should be possible for delegations to discuss such issues as existing subsidy disciplines in GATS, subsidies with trade-distortive effects and the definition and categorization of subsidy schemes, which had been suggested in the Chairman's Note dated 10 February 1999 (Job No. 772). She shared the view expressed in paragraph 7 of that Note regarding the national treatment obligation for mode 1. If no limitation had been inscribed for national treatment, services supplied from abroad and consumed in the country must not be discriminated against in terms of subsidies. She also felt that subsidy schemes that had an "export-enhancing" effect were a problem but no disciplines or remedies existed in the GATS. Other issues that could be discussed had been pointed out in document S/WPGR/W/9.

22. The representative of New Zealand expressed interest in contributing to a discussion along the lines suggested in Norway's submission. Subsidy schemes might undermine a services exporter's position in other markets. The representative of Japan said that in addressing trade-distortive subsidies, delegations might start from the criteria laid down in Article XVII.

23. The representative of the United States stressed the need to comply with the exchange of information mandated by Article XV; relevant information could be provided in different ways. He recalled that his delegation had clarified in the past that it would endeavour to contribute, but not necessarily by way of replying to the questionnaire. The representative of Argentina added that the principal mandate of Article XV was to develop disciplines for subsidies to avoid trade-distortive effects, and the exchange of information was not the only possibility of fulfilling that mandate.

24. In summing up, the Chairman reiterated the importance of the information exchange exercise mandated by Article XV, as pointed out by some delegations. He emphasized the term "mandated" because Members had to fulfill a common obligation under the Agreement. Even partial responses to the questionnaire would be helpful; additional contributions along the lines of Norway's proposal would be appreciated as well. He also observed an interest in continuing the discussion of questions raised in his Note of February 1999, in conjunction with issues discussed in S/C/WPGR/9, at the next meeting.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

25. The Chairman observed that at the previous meeting, the Working Party had its first discussion of issues raised in the Secretariat Note S/WPGR/W/29. Some delegations expressed the need to develop a working definition of government procurement. In that context, Australia had recommended to consider whether the term "government purposes" in Article XIII of the GATS should be interpreted to mean "government use" in a narrow sense (i.e. the government "consumes" the service) or also include cases where the government was not the actual consumer. He proposed to discuss both W/29 and these contributions in greater depth. The three questions contained in the European Communities' informal paper were closely related to these definitional issues. Additionally, Japan had introduced a typology of concessions which distinguished between three types of transactions.

26. The representative of Brazil provided a brief overview of his country's legislation which distinguished between concessions and government procurement. In Brazil, the concept of concession was not covered by the legislation that applied to government procurement (Law 8666 of June 1993), but had their own legal framework (Law 8987 of February 1995). Both legislations were applicable to federal, state and municipal governments, as well as to public enterprises, foundations and any form of institution with some level of control, directly or indirectly, by the government. While government procurement was defined to consist of acquisition of goods and services by purchase, concessions implied the delegation to a private entity of the right to supply a services. The representative of Venezuela added that the situation in his country was similar. Concessions and government procurement were different concepts regulated by separate legislations; the discussion of concessions might be of didactic value, but could not be part of negotiations on government procurement. In relation to the typology proposed by the delegation of Japan, he said that transactions pertaining to the exploitation of natural resources related to goods and not services. In Venezuela, such transactions did not involve any payment by the government; however, the government was entitled to collect taxes and royalties. In the absence of government procurement, there was no basis to apply GATS disciplines. Referring to contracts for constructing and managing industrial sites or public facilities, he noted that the financial responsibility laid with the users of the service and not the government. The third type of transaction, involving government purchase of services, could be considered government procurement rather than a concession. Concessions involved transactions in which an exclusive competence of the government was delegated to a private entity, but the rights or resources involved continued to belong to the government. He reiterated previous requests for more information on Build, Operate and Transfer contracts.

27. The representative of Hong Kong, China, would prefer a working definition of government procurement which would minimize the exclusion of transactions from GATS disciplines; such a definition should include cases in which the government did not consume directly the service. Regarding the distinction between concessions and government procurement, he felt that the criterion of financial responsibility was appropriate; if the government did not pay, a transaction could not be considered government procurement *per se*. Thus, concessions in the form of licenses and franchises would not fall under any government procurement rules. According to the representative of Thailand, the discussion should focus on defining government procurement as referred to in Article XIII. In Thailand the legal situation was clear. Relevant laws distinguished between concessions and government procurement; concessions were services supplied in the exercise of governmental authority. Contracts concerning the exploitation of natural resources were investment-related, and not particularly relevant for a discussion under Article XIII.

28. The representative of Mexico felt that the analysis of S/WPGR/W/29 should be continued. The Working Party had not considered all relevant definitional issues at that stage, and no authoritative interpretation of the term existed. Although her delegation was still considering the issues involved, she observed that one of the fundamental characteristics of government procurement was the financial responsibility by the government. Concessions involved the granting to the concessionaire of a right to exploit resources or exercise other prerogatives of the government. Any purchases by the concessionaire would constitute private acquisitions, which could not be covered by government procurement disciplines. She also echoed the request for information on Build, Operate and Transfer contracts.

29. The representative of the United States felt that the typology proposed by the delegation of Japan constituted a good starting-point for developing a working definition. The representative of Japan noted that the purpose of current discussions was to define government procurement, not concessions. His delegation considered the criterion of financial responsibility as relevant. Regarding contracts for exploitation of natural resources, he considered that the resources themselves were goods, but the exploitation activity was a service; for instance, energy services were included in the Services Sectoral Classification List (MTN.GNS/W/120).

30. The representative of Canada concurred that the discussion should focus on determining what was included in the concept of government procurement; concessions were a secondary issue. In defining government procurement, a wider range of factors needed to be considered. These included ownership, government control and the relevance of existing disciplines under the TRIMS. The representative of the European Communities referred to a Draft Interpretative Document on treatment of concessions under Community Law (O.J. C94 of 7.4.99). It included definitional elements which might be useful for the work of the Working Party such as level of exploitation, ownership, financial responsibility, etc. She felt it might be necessary to use a case-by-case approach in the determination of government procurement. The paper on concessions mentioned at the previous meeting had some factors that could be used in the work on definition, for example, level of exploitation, ownership, financial responsibility, etc. Regarding concessions, it was clear from the discussion that not all countries used such a concept.

31. In summing up, the Chairman observed that delegations felt the need to intensify work on a definition of government procurement; for that purpose, various routes were being contemplated. The criterion of financial responsibility was generally found relevant. The issues raised by the delegation of Australia were considered useful as well; in general, the concept of government use was perceived to be narrower than that of government purpose. He stressed the importance of submitting contributions in writing as a basis for further discussion.

ITEM D: DATE OF THE NEXT MEETING

32. The Chairman suggested holding the next formal meeting on Monday, 21 June 1999. The Working Party agreed.

ITEM E: OTHER BUSINESS

33. No matters were raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 16 APRIL 1999

Note by the Secretariat

1. The twenty-first meeting of the Working Party on GATS Rules was chaired by Mr. Siva Somasundram of Singapore, after taking over from Mr. Harald Fries of Sweden. The agenda of the meeting was contained in WTO/AIR/1053. It consisted of six items: installation of new chairman; negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

ITEM A: INSTALLATION OF NEW CHAIRMAN

2. Mr. Harald Fries, who had served as Chairman of the Working Party for 1998, announced that Mr. Siva Somasundram had been appointed Chairman for 1999 at the meeting of the Council for Trade in Services of 23 March 1999. Mr. Fries expressed his thanks to all delegations for their positive contributions and the cooperation extended to him during the past year, and to the Secretariat for its support.

ITEM B: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

3. The Chairman (Mr. Siva Somasundram) observed that the negotiations on safeguards warranted particular attention, given the June-deadline. To assist delegations in their preparations for the meeting, an informal Note (Job No. 1998) had been circulated. It contained some background information and suggestions for discussion. It should not, however, prevent Members from raising any other issue considered relevant.

4. He gave a brief summary of points raised during the informal discussion held on 24 March in the Working Party: First, it was generally agreed that work should continue on the basis of the "List of issues for future discussion" contained in a Secretariat Note of November 1998 (S/WPGR/W/27). Second, participants welcomed a statement by Indonesia indicating that ASEAN was working on a draft text for discussion. It was felt that a concrete draft might provide fresh impetus to the work. Third, given the upcoming deadline, several delegations noted a possible need to accelerate the frequency of meetings and/or envisage informal meetings before end of June. He thus recommended that, in scheduling the next formal meeting, delegations keep the possibility of additional meetings in mind.

5. The Chairman turned to the individual issues raised in Section II of document W/27. As discussed at the informal meeting and outlined in the Chairman's note for the meeting, he stressed the need to focus on key issues. As a starting-point, he took stock of elements of past discussions whose importance appeared to be widely accepted in principle. These seemed to include:

- (a) First, definition and scope: There was a widely held view that only governments and government-mandated bodies should be authorized to take safeguard actions. Concerning the potential beneficiaries of such action, delegations had embraced the

principle that "acquired rights" of established suppliers must be respected. There were questions, however, concerning the compatibility of this principle with MFN treatment.

- (b) Second, the notions of temporariness and degressivity of safeguard actions appeared to be broadly accepted as well; Article 7 of the Agreement on Safeguards (AS) might provide a model.
- (c) Third, no delegation had questioned the need for procedural rules governing investigation of injury in the event that an injury criterion was included (modelled on Article 3 of AS).
- (d) Fourth, the range of applicable measures: many participants had expressed the view that any measures should be limited to the temporary suspension of Market Access and National Treatment obligations. However, the ensuing question whether certain measures – such as subsidies – might be preferable to others – e.g. quotas – had not drawn particular attention to date.
- (e) Fifth, the concepts of transparency and notification: again, the AS (Article 12) might be used as a model.
- (f) Sixth, the inclusion of a provision ensuring special and differential treatment of developing countries, where Article 9 of the AS might prove a useful example.

6. The Chairman stressed that the above summary was without prejudice to delegations' general position on the need for a safeguards mechanism in services, its actual form and a satisfactory solution to other open issues. In turning to the issues which seemed to warrant further discussion at this stage, he mentioned: First, questions related to the use of horizontal versus sector-specific safeguards. For example, the delegation of Japan had proposed at the previous meeting a distinction between three principal approaches for safeguards: (i) horizontal (available to all Members in standard format across all sectors); (ii) sector-specific (available to all Members in sector-specific format); and (iii) sector-specific/scheduled safeguards (available only if included in schedules). There might be even more variants, whose relevance had not been thoroughly explored. Second, situations justifying the application of safeguards measures (type of injury). The question had been raised whether there were compelling examples of situations where safeguards would be (or would have been) needed to facilitate sectoral adjustment in the absence of other remedies. Third, the availability of sufficiently precise statistical information on the existence of injury, and the possibility of establishing a causal relationship between increased foreign presence in a market and such injury.

(i) Use of horizontal versus sector-specific safeguards

7. The representative of Thailand, on behalf of ASEAN, discussed the different approaches outlined by the delegation of Japan. The distinction made between the format of a mechanism and the conditions of its use was helpful. A safeguard mechanism could adopt a horizontal or sector-specific format, depending on the outcome of the negotiations under Article X of the GATS. The conditions of use were a separate issue; the GATS did not make the availability of safeguards contingent on scheduling. The safeguard mechanism envisaged under Article X was meant to be available to Members facing unexpected problems arising from their obligation under the GATS. Thus, they could not be defined ex-ante and included in Members' schedules of commitments. Scheduled safeguards could only cope with foreseeable difficulties.

8. The representative of Hong Kong, China concurred that safeguards should be available for unforeseen situations, which was not possible with an ex-ante approach. He favoured a horizontal

mechanism applicable to all Members, but did not exclude the possibility of applying it only to certain sectors. The representative of the European Communities observed that ex-ante safeguards required reasonably precise information on the situation to be addressed, while an ex-post mechanism could be more general and, thus, cater for unforeseen circumstances. In supporting a horizontal approach, the representative of Korea felt that scheduled safeguards could not cover all possible contingencies, given the pace of technological progress. Moreover, the scheduling of safeguards would depend on bargaining power; small economies would be disadvantaged.

9. The representative of the United States favoured a sector-specific mechanism, available only if included in schedules. He emphasised the concept of liberalization, the most valid motivation for developing a safeguard mechanism. The representative of Canada appreciated the conceptual distinction introduced by the delegation of Japan. He wondered whether the application of an emergency safeguard to individual modes would create advantages for those service suppliers which could switch relatively easily between modes. However, application across several modes could prove more trade restrictive than necessary to address the perceived problem.

10. The representative of Argentina found that the distinction introduced by Japan was interesting from an analytical perspective. However, his delegation favoured a general approach, either applicable to all or some sectors. The rules should be the same for all Members, without prejudice to possible preferential treatment being accorded to developing countries. A schedule-based approach could result in fragmentation of the system. The representative of Egypt supported a horizontal approach applicable to all modes and all sectors. The representatives of Uruguay, Australia, Cuba and Hungary shared this view. While supporting a horizontal approach, the representative of India added that it might be necessary to develop separate rules for the four modes of supply in view of their particular characteristics. The representative of Brazil, also favouring a horizontal approach, acknowledged the possible need for flexibility in some sectors. The representatives of Pakistan associated himself with the comments made by Egypt and India.

11. The representatives of New Zealand and Poland, while arguing for a horizontal mechanism, did not exclude the possibility of developing sector-specific rules. The Polish representative noted that the use of a horizontal mechanism could be made subject to certain conditions in relation to modes 3 and 4. The representative of Japan felt that a schedule-based approach was excessively flexible which could lead to instability, while a sector-specific approach might suffer from data problems in virtually all sectors.

(ii) Situations justifying the application of safeguards measures

12. The representative of Thailand, on behalf of ASEAN, mentioned a situation where, as a result of unforeseen developments and of GATS obligations, a Member's market was inundated by foreign services supplied via commercial presence and/or presence of natural persons. The increase could be in absolute or relative terms, to an extent that caused or threatened to cause disruption to domestic producers of like or directly competitive services. This could happen to any Member, considering especially that the GATS required progressive liberalization. Like the representative of Egypt he suggested adopting the parameters contained in Article XIX of GATT 1994 and the Safeguards Agreement in this respect. The representative of Poland felt that a definition of the circumstances allowing for an action might need to be developed, reference to unforeseen developments was too broad a term. He acknowledge that, while Article XIX of GATT used this term, more concrete language had been provided in the AS.

13. The representative of the United States sought further clarification as to what was meant by unforeseen as against foreseen circumstances. He recognized that GATT Article XIX referred to unforeseen developments, but failed to find such reference in the Safeguard Agreements. The perceived need for safeguards implied the possibility of injury in the future; thus, any approach

involved some element of foreseeability. The representative of Japan wondered why the term "unforeseen" had been eliminated from the Safeguards Agreement.

14. The representative of Thailand felt that the concept of unforeseen developments was very relevant for legal reasons. Article 1 of the AS referred to Article XIX of GATT, which contained the terms "emergency" and "unforeseen". Those terms suggested that the mechanism was meant to cope with situations that were unexpected when the commitments were made; there was no need to repeat this notion in the Safeguards Agreement. He saw no basis for establishing a link between the availability of safeguards and scheduled commitments under Part III of the GATS.

15. The representative of India felt that a safeguard mechanism should address unforeseen emergency situations not anticipated by Members at the time of scheduling commitments under GATS. It should provide for flexibility and enable a domestic industry to gradually adjust. For instance, rapid technological changes might permit developed countries to supply services electronically through mode 1 although such supplies had not been considered feasible at the time of scheduling. Existing provisions under the GATS were not sufficient to deal with such problems.

16. Several delegations wondered whether it was possible to describe situations, actual or hypothetical, where safeguards might have been useful. The delegation of Brazil noted that a similar exercise had been carried out in the Antidumping Committee's discussion on circumvention issues.

(iii) *Injury and causality*

17. The representative of Thailand, on behalf of ASEAN, said that the relevant injury criterion should be "serious injury". It would cover an adverse situation beyond normal expectations at the time of scheduling. For the determination of injury, the concepts contained in Article 4.2(a) of the AS could be utilised. The causality requirement in the area of goods, i.e. Article 4.2(b) of the AS, could also be translated into the services context, provided some key terms were modified. The representative of Canada reiterated doubts whether there were sufficiently objective empirical criteria to apply these concepts. The representative of Brazil observed that statistical problems also existed in the goods context. The Agreement on Implementation of Article VI of GATT (Antidumping Agreement) thus provided for flexibility and allowed injury determinations to be based, for instance, on concepts such as constructed value, best information available, and even consultations with affected Members during an investigation. The representative of Egypt felt that the application of such concepts should not be prejudged and that, in any case, the burden of proof should be left to the invoking Member.

18. The representative of Australia said that the applicability of safeguards could be made contingent on the existence of adequate data. Injury and causality were important concepts, and Members should not be allowed to take action in response to injury that was unrelated to a surge in imports. To illustrate the difficulties in determining causality, the representative of the United States cited a goods case, in which all indicators pointed to the existence of injury. However, the investigating authority, seeking to establish a causal link, found that the main cause was not imports, but a downturn in the economy. Several Members noted that the lack of services statistics was a serious impediment, which could also affect the determination of appropriate remedies; the Working Party should further discuss this issue.

19. The representative of Venezuela gave examples of indicators that could be used in establishing injury: losses experienced by domestic suppliers; decline in capacity utilisation; capacity reductions; decline in sales in a sector; reduction in productivity; reduction in prices or changes in the structure of prices; declining number of domestic suppliers; and decreasing employment in the sector concerned. An increase in foreign supplies would be reflected in: tax declarations (e.g. for sales taxes); indicators related to financial transactions; statistics maintained by competent

professional associations or regulators (including information on market shares or number of foreign professionals); capital flows; and revenue figures. Such information might not be centralized in one agency, but could be available in various private and public entities. Confidentiality should not be a problem; it had been tackled in antidumping cases. For the determination of causality, data series (before and after market entry) could be used as in the goods area. The burden of proof would rest on the invoking party. He noted that any type of administrative information might be admissible in such cases. In most legal systems, the standard of proof necessary for administrative action on economic grounds was lower and allowed for more flexibility than in penal cases. The Working Group could invite antidumping experts to explain how injury determinations were made in relevant situations.

(iv) *Questions related to compensation*

20. The representative of Thailand, on behalf of ASEAN, noted that Members needed to carefully think about the conceptual issues contained in Article 8 of the AS, and their applicability to services. It might prove difficult to determine the level of any compensatory measures. In addition, he proposed considering differential treatment of developing countries; Articles 8.3 and 9 of the AS were relevant in this context. The representative of Argentina said that his authorities were studying this issue. A solution might depend on the form of the safeguard mechanism ultimately adopted; there were different approaches within the WTO. The representative of Hong Kong, China, noted difficulties with the interpretation of Article 8 of the Safeguards Agreement which might cause problems. The representative of Japan shared this view. The representative of Brazil said that, to his knowledge, Article 8 of the AS had not been used frequently. He would expect that, if Members saw an imbalance in the application of safeguards, they would seek compensation.

21. The representative of the European Communities noted that the need for compensation would depend on the type of adjustment, (e.g. minor adjustments might not require compensation), and the nature of the services industry involved. The representative of Poland said that further discussion might be useful, starting from the existing rules for goods. The representative of Korea felt that Article 8 of the AS could be a model in services. The representative of New Zealand wondered whether all aspects, in particular Articles 8.2 and 8.3, could be applied.

(v) *Other issues*

22. The representative of Thailand, on behalf of ASEAN, distinguished two broad categories of safeguard measures, relating either to market access or national treatment. The representative of Argentina expressed a preference for the suspension of market-access commitments in emergency cases.

23. The representatives of Canada and the United States reiterated their delegations' basic position concerning the desirability of safeguards; however, the discussion of feasibility issues might provide helpful insights in this context. The representative of Brazil called for a rapid conclusion of the negotiations in order to promote new liberalization commitments in the next round of services negotiations. The representative of Argentina observed an increased need for a safeguard mechanism, as the new round was expected to improve significantly on the Uruguay Round schedules. The representative of Korea also favoured an expeditious conclusion of the safeguard negotiations.

24. The representative of the European Communities added that any safeguard mechanism should address emergency situations. It should thus be used for limited periods only, otherwise Article XXI of the GATS would need to be invoked. The concept of adjustment, and how it could be best achieved, required further discussion; it was related to the principles of transparency and notification. The range of possible measures might need to be discussed case-by-case.

25. The representative of India said that it would be preferable if safeguard measures were taken only by governments, and not by agencies with delegated powers. Safeguards should protect the national industry, including natural and juridical persons, of the Member taking the measure. The interests of foreign suppliers under mode 3 should be protected and there ought to be no measures requiring disinvestment. However, it might prove necessary for developing countries to temporarily suspend national treatment obligations even for established companies. He supported the concept of special and differential treatment for developing countries, in particular with regard to mode 4. The representative of Cuba concurred. The representative of Thailand, on behalf of ASEAN, noted that special and differential treatment for developing countries was consistent with the objectives of the GATS; Article 9 of the AS would be of relevance.

26. In summarizing the discussion, the Chairman observed that the concept of unforeseen developments, as contained in Article XIX of the GATT, had been a focal issue for many delegations. It might be useful to consider its absence from the Safeguards Agreement at the next meeting. He encouraged delegations to provide examples of situations, be it even hypothetical ones, justifying the application of safeguards measures; document S/WPGR/W/24 might prove a source of inspiration. Further work was also needed on the question of compensation as provided for in Article 8 of the AS, and its applicability to services. Continued discussion of feasibility issues might assist Members in their judgement of the desirability of a safeguards mechanism. He proposed requesting the Secretariat to update document W/27 to reflect all contributions, without prejudice to delegations' positions, as a basis for future discussion. The Working Party agreed.

ITEM C: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

27. The Chairman recalled the two issues which had been raised in the preparatory Notes for previous meetings: the applicability of current GATS disciplines to either "import-substituting" or "export-enhancing" subsidies. Cases in point were assistance programmes which might enable domestic transporters, hospitals, hotels or banks to expand their sales to foreigners at the expense of foreign suppliers. He invited delegations' comments on this or any other relevant issue.

28. The representative of Norway pointed out the lack of progress in this area. In particular, Members were very hesitant to contribute to the exchange of information mandated by Article XV of GATS and explain their subsidies regimes. To advance work, he suggested that delegations provide any available information regarding trade-distorting subsidies in other markets. Such information should be submitted without reference to any particular country. However, this was not intended to substitute for the information that Members were required to submit under Article XV of GATS. The representative of Brazil noted that, as subsidization in general was not a very transparent practice in goods, this could also be the case in services. However, subsidies might have an important trade-distorting effect. The representative of Argentina found Norway's proposal very useful. Concrete examples could also help to clarify whether the subsidy definition used in the questionnaire was appropriate, given that some Members had raised doubts in the past.

29. The representative of the United States acknowledged the lack of transparency. However, the workload on administrations should not be further increased. Subsidy experts in capitals were already inundated with reporting requirements in other fora, possibly preventing them from replying to the WPGR questionnaire. The representative of Uruguay reiterated the need for balanced discussion of all three areas covered by the Working Party's mandate. The lack of replies to the questionnaire should not prevent delegations from exploring other ways to advance work. The representative of Hong Kong, China, had no objection to the proposal made; but noted that it should not distract from the exchange of information under Article XV.

30. The Chairman encouraged delegations to submit answers to the questionnaire. In addition, he noted that several participants had expressed support for the additional initiative proposed by Norway

under which Members would provide information on subsidy-related problems encountered in export markets. He suggested that this may be a further way of taking the work on subsidies forward.

ITEM D: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

31. The Chairman recalled that discussions at previous meetings revolved around the scope and coverage of government procurement of services. The starting point was three questions raised in an informal submission by the European Communities: (a) What transactions constitute procurement?; (b) who is the procuring entity?; and (c) what is being procured? It had been agreed to continue this discussion at today's meeting, focusing in particular on the first question and, in this context, the treatment of concessions.

32. The representative of Japan stated that concessions did not exist in his country. Without prejudging Japan's position, he noted the different forms that they might take: (a) a contract between a government agency and a private company for the purpose of developing natural resources; (b) a government contract with a private company for the purpose of constructing and managing industrial sites, railways, public water supply systems, and others; and (c) government purchases of services which may be consumed by the government, e.g. cleaning of government buildings, or by the public in general, e.g. garbage collection. In cases (a), where a company paid for the right to exploit the natural resources, and (b), where consumers paid the company, it was not evident that the relevant transactions constituted government procurement. The third case, however, where the government paid companies, seemed more typical of government procurement. The financial responsibility for a transaction might be useful in distinguishing government procurement from concessions.

33. The representative of Korea said that in his country licenses, authorizations, and approvals related to concessions were regulated by the competent ministries. For example, the Ministry of Industrial Resources was responsible for approving mining rights. Since the definition of concessions and their role in services was unclear, it might be problematic to include them in the Working Party's discussion at this stage.

34. The representative of Australia felt that the discussion of concessions showed some links to the recent Secretariat paper (S/WPGR/W/29), which she found useful. The Paper noted that the relevant GATT Articles dealing with government procurement used different wording, i.e. "governmental purpose" in Art. III and "government use" in Art. XVII. Apparently, this had not been intended to imply different meaning, suggesting a relatively narrow interpretation of "governmental purposes". She recommended that Members consider whether "government purposes" in Article XIII of the GATS should be interpreted to mean "government use" in a narrow sense, i.e. that the government "consumes" the service, or to include cases where the government was not the actual consumer. It could be argued that certain services were purchased for government purpose, but not for government use. For example, when a government contracted out training services destined for the private sector, these would be fulfilling a purpose of, but not be used by, the government. Examining the question of what constituted "governmental purposes" would help to clarify which concessions could be considered government procurement and which would be subject to normal GATS disciplines. In Australia, procurement of services was not defined in law. However, at the federal level, entities were obliged to have regard to the Commonwealth Procurement Guidelines in all procurement cases. A footnote to the Guidelines stated that the terms property and services covered all goods and services, including: consultancies and professional services of all types; real property activities; construction and related services; financial and operating leases for equipment and real property; individual and collective training and educational programmes; services obtained from public utility suppliers; and outsourcing or contracting, including programme delivery and programme support. The inclusion of the latter activities indicated a very broad interpretation of government procurement.

35. The representative of Hong Kong, China, pointed out that the draft Multilateral Agreement on Investment discussed in the OECD contained a definition of concessions, which included the delegation of activities normally carried out by a government authority to a distinct and independent legal entity. The representative of the European Communities mentioned a recent draft document on the treatment of concession under Community law which could be of interest to other delegations (Draft Interpretative Document on Treatment of Concessions under Community Law; Official Journal of the EC, C94, 7 April 1999). The representative of Venezuela noted a fundamental characteristic of concessions which needed to be analysed and borne in mind, i.e. exclusive competence of the State. Other arrangements to be discussed were Built, Operate and Transfer contracts, and contracts pertaining to the management of public utilities. The representative of Argentina noted that not much information was available on concessions; he stressed the need for factual material describing how Members defined concessions.

36. The representative of Mexico recalled that contracts of the third type described by the Japanese delegation, involving disbursement of funds by the government, had been an element that Mexico had used to identify government procurement. In addition, the Secretariat Note (S/WPGR/W/29) recounted that a panel had used payment by the government as one factor to identify government procurement. More information on Members' definition of concessions was necessary before any further analysis could be requested from the Secretariat. The representatives of Malaysia, the United States, and Uruguay concurred.

37. The representative of the United States said that it was apparent from the Secretariat's Note that the existing precedents (negotiating history or dispute panels) did not provide sufficient guidance for the interpretation of the relevant terms in GATS. The Working Party might have to develop its own working definition. The representative of Poland also called for such a definition; the responses to the procurement questionnaire might contain useful elements. In Poland, government procurement included construction procurement, the delivery of goods, and the provision of services financed fully or partially with public funds. The concept of concessions was not used in public procurement.

38. The representative of Thailand, on behalf of ASEAN, felt that the Working Party needed to fully understand the meaning of government procurement. He observed that there was no authoritative WTO interpretation of the term; the existing interpretations by various GATT/WTO bodies of Articles III:8 and XVII:2 of GATT were, however, useful. A key element to be retained was the understanding that "government purpose" and "government use" both meant government consumption. In that context, it was difficult to include the notion of concessions if it meant the supply of services in the exercise of governmental authority. According to the rules of international law interpretation, drafting history was only a supplementary means of interpretation to be used on an exceptional basis. As a rule, one had to take into account the ordinary meaning of "government procurement" in its proper context and in the light of relevant GATS provisions.

39. A representative of the Secretariat pointed out that document W/29 made reference to a 1992 panel report (GPR.DS1/R, 23 April 1992) which might be interesting for the Working Party's purposes. However, the report had never been adopted and therefore was not legally relevant. The representative of the United States emphasised that, although the panel arrived at a questionable conclusion, its report illustrated some of the difficulties implied in defining government procurement of services, as in many cases government contracts combine the supply of goods and services.

40. The Chairman encouraged the delegation of Japan to submit its contribution in writing. He suggested continuing the discussion of S/WPGR/W/29 at the next meeting, taking into account considerations contained in the 1992 panel report. To clarify the concept of concessions, it would be very useful for delegations to submit written contributions.

ITEM E: DATE OF THE NEXT MEETING

41. The Chairman suggested holding the next meeting on Wednesday, 19 May 1999. The Working Party agreed.

ITEM F: OTHER BUSINESS

42. No points were raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 19 FEBRUARY 1999

Note by the Secretariat

1. The twentieth meeting of the Working Party on GATS Rules was chaired by Mr. Harald Fries of Sweden. The agenda of the meeting was contained in WTO/AIR/1009. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

2. The Chairman indicated that in order to assist delegations in their preparation for the meeting he had circulated a Note, Job. No. 772 dated 10 February 1999. The Note recapitulated where the Working Party stood on the three issues and proposed a certain structure for the discussion.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

3. The Chairman noted that at the previous meeting, the Working Party had had a first exchange of views on the Secretariat Note entitled "Issues for Future Discussions on Emergency Safeguards" (S/WPGR/W/27); delegations had agreed to continue this discussion. The Note considered, first, alternative forms that a safeguard mechanism under the GATS might take and, second, elaborated on the list of issues identified in the outline submitted by Venezuela (Job No. 5412, dated 14 October 1998). He suggested addressing the individual issues one-by-one.

Alternative forms of a safeguard mechanism

4. The Chairman recalled the initial discussion regarding the pros and cons of a sector-specific versus a uniform, generally applicable, safeguard mechanism. He invited the proponents of a sector-specific mechanism to elaborate on its possible form. Relevant issues in that context included: (i) the need for, and potential content of, any general rules and principles; (ii) the sectors for which such a mechanism should be prepared; and (iii) the possibility that either all Members had access to the mechanism or only those which had reserved the right to use it in their schedules.

5. The representative of the United States briefly summarized his delegation's previous submission on the subject (S/WPGR/W/17). It was based on the hypothesis that liberalization commitments might be facilitated if it were possible to inscribe safeguards-type provisions in schedules. The relevant disciplines would not be very different from those provided for under Article XIX of GATT, including degressivity, temporariness, etc. However, he saw no realistic possibility to include an injury test, given serious data problems. Rather, a set of conditions conferring the right to take action could be developed for a limited number of services sectors. While financial services might not be a good example, given the prudential carve-out, safeguards-type provisions could be envisaged, at least conceptually, for telecommunications.

6. Some delegations expressed concerns about a sector-specific approach incorporated in schedules. The representative of Korea felt that small economies without strong bargaining power

might have problems to achieve its inclusion in negotiations. The representative of European Communities noted conceptual difficulties in developing a list of sectors where safeguards could be needed and expressed preference for a horizontal approach. The representative of Brazil also favoured a horizontal approach, commensurate with the notion of unforeseen developments. The representative of Thailand said that data problems were not a strong argument against a horizontal mechanism since sector-specific rules would suffer from similar problems. Moreover, it would be difficult to identify sectors which, on a longer-term basis, were more prone to safeguard-type situations than others. He requested clarification as to the legal basis of a sector-specific approach. The representative of Australia said it might not be practical to develop separate disciplines for different sectors, given the statistical problems involved. The representative of New Zealand, echoing these concerns, favoured the development of horizontal rules.

7. Expressing support for a horizontal mechanism, the representative of Mexico felt that a sector-specific approach could fragment the system and jeopardize its predictability and stability. She also wondered about the legal basis. The representative of India, noting various problems, expressed strong opposition to a sector-specific approach. The representative of Uruguay stressed the conceptual difficulties involved, *inter alia*, in safeguard actions under mode 3, and the lack of comparable statistics at international level. However, the mandate of Article X of the GATS was clear and formed part of the Uruguay Round implementation process. Among the various options, Uruguay would prefer a horizontal approach. It should not necessarily be based on the models contained in the Agreements on Agriculture and on Textiles, which captured exceptional circumstances. Special and differential treatment for developing countries should be ensured in any mechanism. The representative of Thailand, while reiterating ASEAN's support for a horizontal approach, was also open to consider arguments in favour of a sector-specific model.

8. The representative of Japan distinguished three options for a safeguard mechanism: scheduled safeguards; safeguards specific to certain sectors; and a horizontal mechanism. In his view, the first option would introduce instability in scheduled commitments. The second option would be available to all Members in a certain sector, unrelated to the schedules. He suggested to discuss alternative mechanisms in parallel with the issues identified in Section II of the Secretariat Note. The representative of Canada stressed the importance of advancing the work on safeguards, and suggested discussing the individual issues in detail. In turn, this was compatible with a horizontal approach which, in any event, appeared to command more support. The representative of the United States noted that several delegations seemed to presume that the Working Party needed to decide between a horizontal and a sector-specific approach. However, the real issue to be decided was whether safeguards were needed at all. A number of considerations arguing against a horizontal approach had not been sufficiently addressed.

9. In introducing the discussion on Section II of document W/27, the Chairman emphasized the importance of certain key issues, such as situations justifying the application of safeguard measures and the concepts of injury and causality. He also called for concrete examples in this context.

Definition and scope

10. According to the Chairman, the common view seemed to be that only governments and government-mandated bodies should be authorized to apply safeguards. Regarding the potential beneficiaries, a strong majority of delegations had argued in favour of the domestic rather than the national industry only. No delegation seemed to question the principle of protecting the "acquired rights" of established foreign-owned firms. However, there were doubts as to whether such protection contravened the MFN principle. Moreover, some delegations had questioned the purpose of preventing new entries into an industry through a safeguard action under Mode 3.

11. The representative of Japan concurred that governments should be the active subjects and the domestic industry, rather than national industry, the passive subject in any safeguard action. He shared the view that established suppliers should be protected; this would not pose any MFN problem since all Members were covered in principle. He doubted whether mode-specific actions would entail serious efficiency losses and, thus, whether disciplines were necessary to prevent such actions. The representative of Korea argued that the MFN obligation required to give Members equal treatment to "like suppliers" of other Members; however, if locally established service suppliers were "like" the service suppliers established abroad, then their protection could be inconsistent with the MFN principle.

Situations justifying application (type of injury)

12. The Chairman noted three key issues under this heading: the need for compelling examples of situations where safeguards were needed to facilitate sectoral adjustment; the availability of empirical data which would allow to establish a credible link between increased foreign supplies and injury to industry; and the question of a public interest clause.

13. The representative of Venezuela said that several indicators could be used to prove the existence of injury, including the revenue from value added tax. It had been argued that information provided for tax purposes was normally confidential. However, confidentiality was protected, for instance, in antidumping and safeguards cases for goods, where one of the elements used to evaluate injury were tax declarations. Other indicators could be offer/sales statistics, which were normally maintained by private enterprises and chambers of commerce; the number of providers in the market; changes in prices and the price structure; market share; capital flows recorded by national statistical offices for individual activities, groups of enterprises and purposes; as well as statistics on the entry of foreigners and their professional activities. While delegations had emphasized the need for reliable proof, it was necessary to bear in mind that the standards of proof tended to be lower in economic investigations than in penal cases. The representative of the United States expressed reservations as to whether capital flows could be used to measure increased imports and ensuing injury. Capital flows were associated with a wide variety of economic activities and not necessarily related to sales of services. The representative of Argentina pointed out that the first step in any investigation was the determination of an "increase in imports"; the number of foreign services suppliers in a market could be used in this context as a proxy for trade under mode 4. However, he wondered how "imports" could be defined for the other modes of supply, bearing in mind paragraph 14 of the Secretariat Note. The challenge would be to find a definition consistent with the concept of domestic industry, including all established providers, and then to identify appropriate statistics.

14. The representative of Australia saw the concepts of injury and causality as important elements in any safeguards rules for services; it was necessary to ensure that measures were taken only if resulting from injury surges in imports. The representative of Japan expressed concern about the use of not properly defined "public interest" clauses. He acknowledged, however, that the concept could serve as a positive element and prevent excessive application of safeguards in individual case; Article 3 of the Safeguards Agreement provided for a public hearing system that might be used in the services context as well.

15. The representative of the European Communities recalled that the purpose of a safeguard mechanism was to facilitate adjustment in emergency situations; the concepts of injury and causality were intended to define such situations. It was clear that the focus had to be on injury caused by imports rather than on any other structural issues which might be arising at the same time. The representative of Canada recommended to discuss first the notion of injury and then link it to trade. Precise information was necessary for that purpose, and it might be useful to further consider the options mentioned by Venezuela.

Temporary or provisional measures

16. The Chairman indicated that this point combined items 3 and 6 of the initial Venezuelan proposal. All statements at previous meetings had emphasized that safeguards should provide breathing space for adjustment, i.e. that they should be temporary. Otherwise, commitments would need to be modified under Article XXI.

Applicable procedures/investigation of injury

17. According to the Chairman, there seemed to be general agreement that any safeguard disciplines should include provisions regarding the investigation of injury. Several Members had previously referred to Article 3 of the Agreement on Safeguards as a possible model, provided it could be filled with substance.

Applicable measures. National treatment and non-discrimination principles

18. The Chairman recalled a suggestion at the previous meeting that additional commitments under Article XVIII should not be affected by safeguard actions; he wondered whether there were any conflicting views. No delegation took the floor.

Transparency and notification

19. The Chairman indicated that this point combined items 7 and 8 of the Venezuelan proposal. He felt that all Members agreed on the importance of these items; the Agreement on Safeguards could be used as a model. As for the three previous items, no in-depth discussion might be necessary at that stage.

Special and differential treatment

20. The Chairman recalled various general statements made at the previous meeting. One delegation said it might be premature to conduct an in-depth discussion at present. The representative of Thailand noted the importance of the principle of special and differential treatment which was consistent with the preamble of GATS; Article 9 of the Agreement on Safeguards constituted an appropriate model.

21. In conclusion, the Chairman noted that many delegations had expressed the view that the Working Party should continue focusing on a few key issues, in parallel with discussions on alternative forms of a safeguard mechanism.

Additional Statements

22. The representative of Thailand, on behalf of ASEAN, stressed the need for the Secretariat to prepare a draft safeguards agreement. There was an obligation to implement the results of the negotiations by the deadline of end June 1999. Any other outcome could contravene the mandate of Article X and, thus, affect the rights and obligations of Members under the WTO Agreements. The representative of Poland, supporting this view, recalled his delegation's submission of May 1997 which had called on the Working Party to complete the negotiations in time. The representative of Egypt stressed that the creation of safeguards rules was not an option, but an obligations. Therefore, concrete result should be in place by end of June 1999. The representative of the United States reiterated the existence of conceptual problems that needed to be resolved. He saw no point in requesting the Secretariat to draft disciplines, given that a general agreement on the need for

safeguards had not been reached. Delegations were free to submit their own draft texts. The representative of Malaysia drew attention, again, to the question of what would be the legal basis of a sector-specific safeguard action and reminded delegations of the obligation to have rules by the June deadline. A draft prepared by the Secretariat would have been a valuable basis for further discussion.

23. The Chairman observed that there were competing views on how to proceed in the light of the obligations established under Article X. He suggested holding an informal meeting in the second half of March to address these issues in the light of the end of June deadline. The Working Party agreed.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

24. The Chairman reminded delegations of the information exchange exercise mandated under Article XV. Subsidies had not attracted much attention in past meetings. He felt that further work would benefit greatly from a collective effort to improve the Working Party's understanding of (a) the circumstances in which subsidies were likely to create trade distortions; and (b) the relevance of existing GATS disciplines in such circumstances. In his view, two scenarios seemed to warrant particular attention, i.e. the granting of either import-substituting or export-enhancing subsidies. Recalling the contribution made by Argentina at the previous meeting, he invited comments from other delegations.

25. The representative of Argentina clarified a misunderstanding which might be implied in paragraph 7 of the Chairperson's Note of 10 February 1999. While encouraging an in-depth discussion of subsidies-related issues, his delegation was not proposing a joint interpretation exercise to define the scope of current disciplines. The representative of India said that his delegation was not convinced of the need for any action, but was willing to discuss other views.

26. Given the relatively low level of participation in this area and the time constraints facing the safeguards negotiations, the Chairman proposed keeping subsidies on the agenda of future meetings; however, he would not invite any in-depth discussion. The representative of Japan concurred that it was reasonable to focus on safeguards, given the existing deadline. The representative of Argentina reiterated his delegation's interest in subsidy issues, but recognized current time constraints. He did not object to the Chairperson's proposal which he understood, would not prevent Members from raising subsidy-related issues and government procurement would be treated in the same way. The representative of Uruguay, while not objecting to the proposal, emphasized the need for balance between the three areas remitted to the Working Party.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

27. The Chairman recalled previous discussions of scope and coverage of government procurement of services. At this meeting, he would like to invite further comments to reach preliminary conclusions, not necessarily agreed, and identifying key issues for further consideration. He reminded delegations of the three questions raised in the European Communities' informal paper of February 1998: (a) What transactions constitute procurement?; (b) who is the procuring entity?; and (c) what is being procured?.

28. As to the first question, the Chairman noted that an important issue was the definition and treatment of concessions. The representative of Canada reminded the Working Party of his delegation's request for clarification from the European Communities, and indicated that the issue would be pursued bilaterally. The representative of the European Communities added that the issue raised related to the interpretation of the Government Procurement Agreement. In relation to concessions, she added that the relevant definition seemed to differ between national legislations; the

EC was preparing a submission on this subject and looked forward to contributions from other delegations as well.

29. The representative of the United States recommended to use as a starting-point the definition contained in Article XIII of the GATS, which referred to procurement in terms of services purchased "for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale". This mirrored the language contained in Article III:8 of GATT 1994. Given the degree of ambiguity involved, he felt it would be useful if the Secretariat provided background information on the interpretation developed in the goods context. He also noted that the wording in Article XIII did not apparently capture the procurement of services with a view to their use in the supply of *goods* for commercial sale. The Working Party might want to address the definitional and legal implications of this omission. As to concessions, he noted that some delegations considered that these were outside the scope of government procurement, and some potentially strong arguments might be made. It would be very useful if further information could be provided on the relevant domestic regimes and any definitional distinctions from government procurement.

30. The representative of Australia reiterated the definitional difficulties involved and concurred that the starting-point for future work should be Article XIII of the GATS. A BOT contract might be an example of a concession; contrasting with the government's purchase of a service the costs involved were born entirely by consumers over a certain period of time. Accordingly, the relevant transactions were subject to general GATS disciplines. By contrast, services like garbage collection, which were totally or partially paid for by the government, might be considered procurement. In trying to develop general criteria, it would be useful to further discuss whether the allocation of costs were a determining factor. Another important issue was the definition of "governmental purposes" and, in this context, whether the focus should be on the government's use of a service – as in the case of maintenance and cleaning services – or its role in, and responsibility for, the provision of a service – as in the case of garbage collection. However, the role of governments differed from country to country. The relationship between the government and the private sector was also changing, as more and more companies were delivering services traditionally provided by governments.

31. The representative of Thailand agreed that it would be useful to discuss the interpretation given to the relevant GATT provisions. In Thailand, concessional regimes were provided for in many different pieces of legislation; however, they were always defined as services supplied in the exercise of governmental authority.

32. The representative of Mexico indicated variations in national legislation with regard to concessions and government procurement, for reference purposes. In her country, concessions were not assimilated with government procurement since they did not involve direct acquisition of goods or services, nor any expense, by the government. To avoid confusion, Mexico maintained different sets of legislation for, on the one hand, public works, which fell under government procurement, and concessions for the provision of public services which had their own rules. In the latter context, the State authorized one or more private companies to offer a public service and also determined the tariffs to be charged. By contrast, public works contracts did not involve the granting of any authorization to private parties to operate a public service. Another difference was that a concession could be transferred to other parties, while the responsibility for the execution of public works remained with the main contractor, notwithstanding the degree of subcontracting involved. While a concessionaire had to provide the economic resources for the execution of the works and the exploitation of the service, in the procurement of public works the costs were covered by the State. In the case of concessions, legal relationship involved not only the government and the concessionaire, but the user of the service as well; legal obligations in the sphere of public works were limited to the contractor and the procuring authority.

33. In concluding the discussion on this issue, the Chairman encouraged delegations to submit information on their national regimes, preferably in writing. In turn, the Secretariat would provide a background note on how language similar to that contained in Article XIII:1 of the GATS had been interpreted in the GATT context. He wondered whether the Working Party would find it useful if the Secretariat also prepared a note on possible forms of concessions and potentially relevant GATS provisions. The Secretariat indicated that any such note would essentially distinguish between three categories of services: those supplied in the exercise of governmental authority, which were outside the scope of the GATS; services procured by governments which fell under Article XIII; and all other services. If concessions were neither services provided in the exercise of governmental authority nor constituted government procurement, then the general MFN obligation and, where relevant, specific commitments applied to them. From a legal perspective, any Secretariat note would not be able to go significantly beyond these principle issues.

34. Several delegations, including Argentina, Venezuela and Malaysia, felt it would be useful to further discuss these issues in the Working Party, based on information provided by Members before the Secretariat was asked to prepare a background note.

35. Regarding the second question, i.e. who is the procuring entity, the Chairman recalled that two criteria had been suggested thus far: (a) government control of the entities concerned; and (b) the relevant market structure, in particular the existence of competition. The representative of Canada, agreeing with views expressed in the non-paper from the European Communities, stressed the difference between a definitional exercise, aimed at determining the types of entities to be covered by the rules, and a negotiating process, in which individual entities would be made subject to the rules. In defining the scope of procurement rules, the level of government control should be the main consideration. The representative of the United States said that the range of potentially relevant entities extended from Central to Sub-central levels of government, with the latter involving particular difficulties. As to the existence of government control, he felt that any definition should exclude procurement by entirely privately-owned enterprises since the notion of government procurement implied some degree of government ownership.

36. Regarding the third question, i.e. what is being procured, the Chairman wondered whether it was necessary to further specify services not falling under the GATS, i.e. "services supplied in the exercise of governmental authority" as stated in Article I:3. In addition, he enquired whether there were other issues to be raised in this context and/or whether the Working Party was ready to address the second item of the work programme, i.e. the basic disciplines of non-discrimination. No views were expressed. The Chairman concluded that the next meeting would continue to focus on the first item of the work programme.

ITEM D: DATE OF THE NEXT MEETING

37. The Chairman suggested holding the next formal meeting on Friday, 16 April 1999. The Working Party agreed.

ITEM E: OTHER BUSINESS

38. No matters were raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 1 DECEMBER 1998

Note by the Secretariat

1. The nineteenth meeting of the Working Party on GATS Rules was chaired by Mr. Harald Fries of Sweden. The agenda of the meeting was contained in WTO/AIR/980. It consisted of six items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; report on the activities of the Working Party to the Council for Trade in Services; date of the next meeting of the Working Party; and other business.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairman recalled that the Secretariat had been asked to produce a paper which had been circulated as S/WPGR/W/27. The paper considered, first, alternative forms that a safeguard mechanism under the GATS might take, based on Members' suggestions. It then elaborated on the list of issues submitted by Venezuela (Job No. 5412, dated 14 October 1998), drawing upon views expressed by delegations and the precedents in Article XIX of GATT 1994 and the Agreement on Safeguards. In structuring the discussion, he suggested that Members address the two parts of the paper separately.

Alternative forms of a safeguard mechanism

3. Several delegations emphasized the need to thoroughly examine the applicability of the different forms of safeguard mechanisms which had been identified in the Secretariat's note. The representatives of the European Communities and Mexico noted that the specificities of services trade had to be taken into account. The representative of Brazil stressed that one basic rationale of a safeguard mechanism was to serve as a remedy in the event of unforeseen developments. The representatives of Australia and the European Communities expressed support for an approach similar to that used in the Safeguards Agreement, under which all domestic firms, regardless of ownership, received the same treatment. The representative of Thailand added that a desirable mechanism could incorporate quantitative criteria as well as procedural restraints. The representative of Egypt indicated that any safeguard mechanism should combine elements contained in Article XIX of GATT 1994, Article 5 of the Agreement on Agriculture, and Article 6 of the Agreement on Textiles and Clothing.

4. The representative of Japan expressed reservations about the possibility of including sector-specific safeguard mechanisms in individual schedules. In his view, this might allow for excessive flexibility and could lead to instability in existing commitments. Such an approach could be improved, however, if it were combined with some form of common guidelines. The representative of Mexico added that the idea of sector-specific safeguard mechanisms was interesting for discussion, but could lead to fragmentation in the system. She thus felt that a horizontal or general safeguard mechanism was more appropriate. The representative of Hong Kong, China concurred. According to the representative of Hong Kong, China different types of emergency safeguard measures could

render the interpretation of schedules extremely difficult. In light of statistical problems, it might be necessary to apply a horizontal mechanism to certain sectors initially and extend it to others when statistics became available. The representative of Poland and Norway indicated their preference for a sector-specific approach. The latter recognized, however, potential negative implications for transparency as compared to a general safeguard provision. The representative of the European Communities noted that a sector-specific approach might be able to respond to specific requirements of individual service sectors. However, the Working Party had not had sufficient discussions to draw any conclusion at that stage. The representative of the United States agreed that additional work was needed on this approach before decisions could be made. The ability to invoke safeguards would depend on specific criteria associated with the characteristics of a sector. Perhaps no injury determination should be required since such a determination could not be based on sufficient empirical information.

5. In relation to Article 5 of the Agreement on Agriculture, the representative of the United States expressed doubts about its applicability to services. The policy background was very different in agriculture and while there was no injury requirement, invocation of the Article relied on a considerable amount of empirical information which was lacking in the case of services. The representative of Canada also noted that though an injury criterion was absent, rigorous data requirements had to be fulfilled in order to trigger the mechanism. These included information on the volume of imports and domestic consumption of the product in question and its import price. Also, the data had to be available for a series of consecutive years in order to set the trigger price levels. It was doubtful whether such data requirements could be met in services trade. The representative of Japan voiced similar concerns. The representative of Venezuela added that one interesting element of the mechanism was that it allowed for a continued degree of market access.

6. Referring to Article 6 of the Agreement on Textiles and Clothing, the representative of the United States noted similarities with Article XIX of GATT 1994 and, in consequence, similar data requirements. However, developments in the textiles sector were captured by excellent statistics, which was not the case in services. The representative of Canada drew the attention of the Working Party to the fact that this mechanism could be invoked in a selective manner, based on criteria such as serious damage. Such an approach would be difficult to apply to services trade. The representative of Japan voiced concerns regarding the non-MFN basis of this mechanism but regarded as positive that the burden of proof was placed on the country imposing safeguards. The representative of Venezuela recommended another element in the safeguard mechanism of the textiles agreement for closer consideration, namely the special treatment foreseen for small exporting countries and least developed countries.

Definition and scope of safeguards in services

7. The representatives of Australia and the European Communities said that safeguard measures should be applied by the Members themselves, whether via government regulation or delegated powers. From the Communities' point of view, it was important in the latter case, that the delegation of power was clear and compliance with the relevant conditions ensured. For instance, if a professional association was to be involved, it would need to follow the same steps as any government agency in applying safeguard measures.

8. The representative of Australia expressed support for an approach modelled on the Agreement on Safeguards where any action is to be taken on behalf of a domestic industry. In turn, the concept of domestic industry was defined to cover the producers as a whole of like or directly competitive products operating within the territory of a Member. The representative of Hong Kong, China said that, in principle, any measure should apply only to new entrants, not to pre-existing enterprises, and irrespective of nationality. The representative of Japan was also sceptical whether a distinction could, or should be made. He noted the importance of defining imports clearly. The

representative of Brazil felt that no distinction should be made between national and foreign own investment, and action should affect only new entrants. The representative of Canada remarked that the use of nationality criteria could have the effect of expropriating foreign investors. In turn, this could affect investment in foreign jurisdictions.

9. The representative of Australia saw the possibility of a conflict between the protection of acquired rights of locally established foreign firms and the MFN principle. Safeguards should not consist of measures which forced disinvestment or undermined the MFN obligation. The representative of the United States noted the importance both of protecting the status of established suppliers and of respecting the MFN principle. In his view, the real question was what purpose could be served by a safeguard measure which applied to mode 3. The issue of acquired rights would need to be discussed extensively. The representative of Venezuela stressed the policy interest in guaranteeing investment and ensuring predictability.

10. Discussing sectoral coverage, the representative of Australia proposed focusing on areas where adequate statistics were available. However, this was a difficult issue, given the general lack of data. With regard to modal coverage she preferred a safeguard mechanism applicable to individual modes only. While it could be argued that foreign suppliers might then focus on unrestricted modes, this possibility should not be overestimated, given the costs involved in switching between modes. However, her delegation could also support an approach which allowed for broader implementation, provided this was based on a case-by-case assessment. The representative of Brazil felt that it was important to take into account the objectives of a safeguard, e.g. protection of employment or investment. The labour intensity of many services was an important argument in favour of a safeguard mechanism. While not yet convinced of the necessity of a safeguard mechanism, the representative of the European Communities expressed preference for a horizontal approach which was more transparent. The current lack of information in many industries about the functioning of the GATS would be compounded by new sector-specific rules. She also saw no need to distinguish between modes for the purpose of safeguard actions. The representative of Egypt favoured a mechanism which covered all services and all modes of supply without deterring investment.

Situations justifying the application. Type of injury

11. The representative of the European Communities noted that the Members arguing in favour of safeguards had failed so far to give compelling examples of situations calling for emergency protection. However, it was essential that such examples be discussed. The representative of Canada reiterated that the state of statistics in the services area rendered the concept of serious injury to domestic industry irrelevant. In the goods context, a safeguard could be applied to imported products that were traded fairly, i.e. not dumped or subsidised, with a view to preventing economic displacement in the domestic market. Thus, it was essential to apply the most stringent injury standards which, in turn, needed to rely on precise information on the financial status of individual firms in the industry concerned. The representative of Australia felt that the Agreement on Safeguards could provide a model for circumstances in which such measures could be invoked in services; however, statistical deficiencies posed problems for the establishment of injury. It would also be necessary to ensure that wider public interest considerations would be taken into account in any investigation. For example, this included the interest of industries relying on the service in question as an input. The representative of Japan felt that the concept of public interest was vague and could create unnecessary uncertainty. The representative of Thailand, on behalf of ASEAN, pointed out that the Agreement on Textiles and Clothing contained provisions on the attribution of damage which should be taken into account; the burden of proof rested with the invoking Member.

Temporary or provisional measures

12. The representative of Canada observed that in the goods context safeguards were intended to allow a domestic industry to adjust to foreign competition during a limited transition period. The Working Party should consider what circumstances should be addressed by a safeguard in the services context and whether a principle of adjustment was also appropriate. The representative of Australia felt that Article 7 of the Agreement on Safeguards could provide a model. However, given the lack of statistics, she had reservations with regard to provisional safeguard measures. For the European Communities the temporary nature of the measure followed from its purpose to address an emergency situation. Permanent relief could be sought under other GATS provisions. Members needed to consider the length of an appropriate period and the remedies available if the emergency situation persisted after the period had elapsed. For instance, should there be a requirement to invoke Article XXI in such cases?

Applicable procedures. Investigation of injury

13. The representative of Canada wondered what kind of information would be used for the investigation. Reference had been made to income tax and VAT declarations; however, such information was protected in Canada, and possibly in other countries, under privacy laws. The representative of Venezuela noted that it was for the affected industry to supply the relevant information corroborating the existence of injury. The representative of Australia suggested that Article 3 of the Agreement on Safeguards could serve as basis for further discussion. Hong Kong, China, also felt that elements of this Agreement could be used in the services context.

Applicable measures. National Treatment and non-discrimination principles

14. The representative of Canada was sceptical whether safeguard actions involving temporary suspensions of market access or national treatment could ever be enforced, particularly in relation to Modes 1 and 2. For example, services provided electronically would be difficult to identify, monitor and restrict. The representative of Australia noted that while safeguard actions would involve the suspension of market access and national treatment commitments, it was doubtful whether they should affect additional commitments under Article XVIII. She felt that such actions should be available as protection against unforeseeable injury related to the scheduling of liberalizing commitments. However, her delegation was mindful of the conceptual problems involved, including the definition of unforeseen developments, and the relevant timeframe. The representative of the European Communities reiterated the MFN requirement contained in Article X of the GATS. Regarding foreign exchange restrictions, the representative of Japan reminded delegations of the relevant provisions of Article XI of the GATS. The representative of Egypt noted that a provisional suspension of market access and national treatment, on an MFN basis, should be acceptable.

Transparency and notifications

15. The representative of the European Communities recognized the importance of such obligations. The representative of Australia stressed the need for similar standards as in the area of goods.

Special and differential treatment

16. The representative of Australia, recognizing the importance of special and differential treatment, felt it premature to discuss details at that stage. The representative of the European Communities observed that there were already relevant provisions within the GATS, their extension to safeguard situations might need to be addressed case-by-case. Account could be taken, for example

of different levels of development within an industry. The representative of Egypt stressed the importance of the principle of special and differential treatment for developing countries.

Summary observations

17. The Chairman noted that many delegations were prepared to consider the option of a sector specific safeguard mechanism. However, its application should be based on general rules. While the mechanism provided for under the Agreement on Agriculture had very heavy statistical requirements; its counterpart in the textiles area was at odds with the MFN principle. There seemed to be agreement that only Member governments or officially mandated bodies should be entitled to take safeguard measures. While many delegations had indicated that there should be no distinction between domestic and national suppliers, views expressed in previous meetings suggested that this issue might require more discussion. The same applied to the concept of acquired rights, although there seemed to be agreement that existing investments should be protected. More discussion was also needed to specify circumstances justifying the application of measures and the relevant injury criteria.

18. The Working Party decided to continue the discussion of the Secretariat Note at the next meeting. The representative of Thailand emphasised the importance of producing concrete results - e.g. draft safeguard rules by the June 1999 deadline. The representative of Egypt reiterated that as a next step the Secretariat should prepare a draft agreement, based on views expressed by Members. The discussion of the current Secretariat Note would not advance the work of the Working Party.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

19. The Chairman recalled that at the previous meeting, some delegations had suggested a discussion of the two issues identified in the Chairman's Note (Job No. 5169, dated 22 September 1998). This could help to clarify the precise scope of existing GATS disciplines in the area of subsidies and identify circumstances of trade distortion, if any, which were not satisfactorily covered at present. The two issues related to subsidy programmes which had (a) an "import-substituting" effect, or (b) an "export-enhancing" effect.

20. The representative of Argentina agreed with the assessment made by the Secretariat in paragraph 39 of document S/WPGR/W/9, ("*...while the national treatment obligation does not impose any restraint on the level of subsidies that may be granted by Members, it is nevertheless a potentially powerful discipline with respect to the non-discriminatory use of subsidies. But realization of this potential depends, first of all, on the extent to which Members schedule commitments free of national treatment limitations relating to subsidies, and secondly, on whether the national treatment obligation is interpreted to extend across modes of supply.*") The clarification given in the Scheduling Guidelines (document MTN/GNS/W/164), exempting Members from adopting measures outside territorial jurisdiction, implied that there was no obligation under Article XVII to extend subsidies to suppliers located abroad. However, the Scheduling Guidelines referred exclusively to the treatment of suppliers and not of services, although both were covered by the GATS. Argentina felt that the obligation of national treatment applied to all services provided in the territory of a Member, regardless of their source or mode of supply. The limitations scheduled with regard to subsidies compiled in document S/WPGR/W/13, suggested that other Members shared this interpretation; otherwise they would not have exempted subsidies from national treatment under Modes 1 and 2

21. Regarding import-substituting subsidies effects, it was useful to distinguish between services of national and of domestic origin. If with regard to Mode 3 only national suppliers benefitted from subsidies and not the suppliers of other Members - although located on the territory of the subsidy granting Member, this would amount to a clear violation of national treatment. By contrast, if the subsidies benefitted all domestically produced services regardless the origin of the supplier, they would not normally violate national treatment under Mode 3. However, Mode 3 might expand to the

detriment of trade under other Modes. Structured that way, subsidies such as investment incentives, which were subject to the national treatment obligation with regard to Mode 3, might need to be assessed in a wider context.

22. Regarding subsidies with export-enhancing effects, their importance in practice would depend upon the predominant mode through which a service was provided. The representative of Argentina doubted, however, whether services subsidization was essentially designed to promote exports. Nevertheless, it was conceivable that investment or localization incentives promoted production not only for domestic consumption, but also for consumption by foreigners. A case in point were services which could be delivered electronically. However, as in other service areas, lack of information affected further exploration of this issue seriously.

23. The representative of Venezuela stressed the need for further clarifications of the scope of the work under Article XV. She proposed that an informal meeting or a brainstorming session be held to clarify matters. The proposal received some support and it was agreed to revert to it at a future meeting.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

24. The Chairman recalled that the previous meeting had been devoted to discussing the scope and coverage of government procurement of services. He felt that the time had come to aim at reaching conclusions and, where necessary, identifying key issues for further consideration. The discussion could then move on to the second item in the work programme, i.e. the application of the basic discipline of non-discrimination to services procurement. The discussion could be divided into three parts, based on the three questions raised in the Non-Paper from the European Communities and their Member States (dated 13 February 1998). In the context of the first question regarding *what transactions constitute procurement*, delegations had recognized that more information was needed on how concessions were defined and treated within national legislations. In response to the Questionnaire on Government Procurement of Services detailed information on concessions has been provided only by Argentina and Costa Rica. Concessions had also been mentioned in the responses of Colombia; Hong Kong, China; and Poland.

25. The representative of Argentina stressed that more information was necessary to understand what was meant by concessions. It was important in this context not to focus on definitions of transactions between the State and private suppliers since these could vary among legislations. Focus should rather be on the economic nature of the transactions. Procurement contracts had to do with public entities and covered what could be called public services. While the State was responsible for their provision, different procedures existed: the State could use its own resources and personnel or contract a third party to carry out the work. In the latter case, the contractual relationship could be of limited duration and involves only the State and an enterprise which carried out the work and was paid by the State. The other option consisted of a continuous contractual relationship with the supplier which also involved the user of service, who in a way contributed to the payment. This option had to do with public works and public service concessions, where the state allowed a private party to supply a service to the public without ceding its competence, and where the supplier normally received a payment from the individual user. The relevant price might be determined and/or subsidized by the State. Such transactions would not include concessions related to the exploitation of natural deposit, e.g. mines, which would not be covered by the GATS.

26. The representative of Canada said that the EU paper suggested that the transaction for the service itself (as distinguished from the buying or hiring of the service) did not appear to be covered by the Agreement on Government Procurement. The paper suggested that such transactions were not to the benefit or use of the government and thus would also not be covered by the current GATS

Article XIII definition of services. The actual meaning of the critical phrase in the EU paper: the transaction for the service itself is not clear. An elaboration of some examples may be useful. Would for example a contract providing a license to a private sector contractor to distribute government procurement data on an electronic tendering service and generate revenue from purchasers of the data, be considered to fit within the transaction for the service itself and, if so, on what basis would it not meet the definitions of a procurement in the AGP and GATS Article XIII? On how to proceed with the work, he suggested requesting the Secretariat to prepare a note listing the types of policies that are applied to government procurement and may not be consistent with non-discrimination, both MFN and national treatment, with a brief explanation of each.

27. The Chairman noted that definitions of concessions varied and that it would be helpful to have brief descriptions of how concessions were treated in domestic legislation provided by Members. On the Canadian proposal, he recalled that various documents had such information, namely S/WPGR/W/3, section 9 of the document S/WPGR/W/20 and the submission from New Zealand (Job. 5446 dated 30 September 1997). He also recalled the other two questions posed in the European Communities submission, i.e. who was the procuring entity and what was being procured had still to be discussed. He suggested continuing discussion in the following meeting on scope and definition, and addressing the two remaining questions in this context.

ITEM D: REPORT ON THE ACTIVITIES OF THE WORKING PARTY TO THE COUNCIL
FOR TRADE IN SERVICES

28. The Chairman noted that the draft report of the Working Party to the Council for Trade in Services had been circulated as S/WPGR/W/28. The report was essentially factual in nature. The Working Party adopted the report with a modification suggested by the representative of Thailand, on behalf of ASEAN.

ITEM E: DATE OF THE NEXT MEETING

29. The Chairman suggested holding the next formal meeting on Friday, 26 February 1999. The Working Party agreed.

ITEM F: OTHER BUSINESS

30. No matters were raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 6 OCTOBER 1998

Note by the Secretariat

1. The eighteenth meeting of the Working Party on GATS Rules was chaired by Mr. Harald Fries of Sweden. The agenda of the meeting was contained in WTO/AIR/916. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairman recalled that, as agreed at the previous meeting, he had circulated a Note (Job No. 4935, dated 16 September 1998), containing provisional, not necessarily agreed, responses to the four key questions concerning a possible emergency safeguard mechanism. That document also listed other related questions, some of which had been discussed during the brainstorming session held on 1 October 1998. The Chairman proposed that delegations address both the text and the questions in the Note. Since delegations were already familiar with each others basic positions, and these had been reflected in the Note, he suggested that the discussion should focus on possible solutions to problems and on how the Working Party's work should be structured over the period before the end-June 1999 deadline.

3. Regarding the points made in the Chairperson's Note, the representative of Canada said that the discussion should explore the implications of emergency safeguard measures using hypothetical examples. With respect to the question on whose behalf actions would be taken, absent from the Note was a requirement to examine the effects of a safeguard measure on services consumers and the society as a whole. This would still need to be addressed. The question whether a distinction between national and locally established foreign suppliers was feasible should be considered in terms of the national treatment obligation. The treatment of commercially established foreign suppliers and their acquired rights would touch on investment-related aspects. As to whether it could be left to a Member taking a safeguard action to justify its choice of "like or directly competitive" services, the GATT practice was that the use of exceptions should be circumscribed. As a consequence, Members should not be given the latitude to define "like or directly competitive" services. In this respect guidelines could be developed. In relation to other GATS provisions which allow for certain restrictions, the prudential carve-out in financial services also provided an element of flexibility to Members. In regard to what measures should be taken, the restrictions on capital movements were not a remedy in emergency safeguard situations where a domestic industry had to cope with unexpected foreign competition. In his view, the Working Party should continue the discussion of the issues raised in the Chairperson's Note.

4. On the procedural question, the representative of Venezuela said that the issues that had been identified so far should be dealt with methodically to identify differences and points of convergence. For that purpose an outline for future discussion could be established. Such an outline could include:

a) definition and scope of safeguards in services; b) situations justifying its application and the type of injury; c) temporary or provisional measures; d) applicable procedures and investigation of injury; e) applicable measures; f) periods of application or time-limits; g) transparency; h) notifications; i) special and differential treatment. The proposal was an attempt to put some order to the ideas that the Working Party had been debating for some time. A number of delegations expressed support for this proposal.

5. In relation to the questions in the Chairperson's Note, Egypt's delegation recalled its submission in document S/WPGR/W/15/Add. 5. Accordingly, no distinction between domestic and foreign investment, in relation to commercial presence, was intended. In Egypt, foreign direct investment was protected by domestic legislation and bilateral agreements for the protection of investment. As to how to structure the work of the Working Party, the representative felt that many delegations agreed on the need to have a safeguard mechanism in services. As the next step, he proposed that the Secretariat be requested to prepare a draft of possible safeguard disciplines to focus the discussion. Such a draft would not prejudice the position of any delegation. In that context, the Secretariat could use the information contained in Members' submissions, regional agreements, and the work conducted by other international organizations such as UNCTAD.

6. The representative of Hong Kong, China supported Egypt's proposal. His delegation had already argued that focusing on what a safeguard mechanism would look like, without prejudice to the outcome of the discussion on whether such a mechanism was merited, would be the most efficient way of taking forward the discussion. Document S/WPGR/W/26, dated 10 February 1998, contained some general and operational principles that could be embodied in the outline of a possible emergency safeguard mechanism. He recalled that Members had expressed concern about the lack of statistics and proof of causality; his delegation was thus considering submission of a paper that might shed some light on the issues related to feasibility. Other delegations such as Australia, Argentina, Brazil, Colombia, India, Norway, Poland and Thailand on behalf of ASEAN, expressed support for a text outlining a possible safeguard mechanism. Such an approach would help focus the discussion and allow delegations to raise any problems that they might have.

7. The representative of Thailand added that the Secretariat could assist this process by, first, compiling the various views expressed by delegations and, second, preparing a draft of possible disciplines. Such a draft should reflect all possible options for a safeguard mechanism including the approaches followed in Article V of the Agreement on Agriculture and Article VI of the Agreement on Textiles and Clothing. In these two cases, a causal link between imports and injury was not required.

8. The representative of the United States expressed reservations about initiating a drafting process. In his view drafting would be an appropriate next step once an agreement had been reached within the Working Party on the need for a safeguard mechanism and that was still not the case. While many questions had been addressed, the fundamental issues of desirability and feasibility had still not been resolved. A drafting exercise would not provide an answer to those questions and could distract from other possible options. He felt that Members should explore the safeguards question on a sector-by-sector basis, since a general safeguard mechanism would not work in services due to the difficulty of establishing injury and a causal link with increased imports. The Working Party should not ignore the option of building a safeguard regime on specific criteria for certain sectors. Those criteria would not necessarily be dependant upon injury, but take into account sector-specific regulatory approaches.

9. The representative of Canada also felt it would be premature to develop a draft safeguard mechanism. In light of the various options that had been put forward as basis for a draft, namely, Article XIX of the GATT, the sector-specific approach, the safeguards provisions of the Agreements on Agriculture and the Agreement on Textiles and Clothing, Members needed to decide how to

proceed. In other words, the elements that could serve as the criteria for a drafting exercise would need to be identified by Members in advance through the discussion in the Working Party. His delegation was not in a position to engage in a drafting process at that stage and he suggested reverting to this question at the following meeting. The representative of Japan shared those reservations. He suggested that at that stage it was more appropriate to request the Secretariat to prepare a list containing all issues hitherto raised by delegations. It might be useful to consider the desirability question looking at the merits of having a safeguard mechanism in the context of the next round of services negotiations. The representative of Korea argued that a draft could incorporate all options that had been mentioned by Members, which could address the concerns expressed by the United States and Canada.

10. The representative of the European Communities found the Venezuelan proposal a useful way to structure the inputs already provided by delegations. The Secretariat could prepare a summary of all inputs along those lines. In her view such a summary would reflect a variety of views as to what exactly would be covered by the different elements; this would suggest that a consideration of the summary should precede the drafting of disciplines. The representative of Uruguay favoured continuing the discussion of issues in greater depth and stressed the need to maintain a balance in addressing the different areas of work of the Working Party.

11. In summing up the discussion, the Chairman indicated that the proposal of requesting the Secretariat to draft an outline of an emergency safeguard mechanism had attracted ample support; however, some delegations had not been in a position to agree. He added that a number of delegations shared the view that a drafting exercise should be the next step, particularly in light of the June 1999 deadline. He urged delegations to consult capitals on the steps to be taken for the following meeting. A consensus seemed to have emerged on continuing the discussion based on a list of issues, including some alternative options, along the lines of the Venezuelan proposal. Members could then decide on how to structure the work over the period up to the June 1999 deadline. The Working Party agreed to this proposal.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

12. The Chairman recalled that at the June meeting the Working Party had agreed to clarify its understanding of the scope of existing GATS disciplines which covered subsidies. The objective would be to identify cases of trade distortion, if any, which were not satisfactorily covered by the existing framework. As agreed in that meeting, the discussion would be based on Section IV of the 1996 Secretariat paper on "Subsidies and Trade in Services" (S/WPGR/W/9) which had not received sufficient attention in the Working Party. Building on that paper, two issues might merit further consideration: a) the implications of subsidy programmes which had an "import-substituting" effect, and b) the implications of subsidy programmes which have an "export-enhancing" effect. In relation to the former, national treatment commitments under mode 3 and 4 ensured that locally-established foreign service suppliers were not excluded from sector-specific subsidy schemes. However, it might need to be clarified whether it was also ensured that such subsidy schemes did not disadvantage foreign services imported under mode 1 or consumed abroad under mode 2. The second class of subsidies included those granted to domestic suppliers of transport, hospital, and hotel services which might enable them to increase sales to foreigners at the expense of foreign suppliers. Were there serious problems in practice? What disciplines under the GATS, if any, would be relevant? And what remedies would be available, apart from consultations under Article XV:2, to affected suppliers? The chairman also reminded delegations of the information exchange exercise mandated under Article XV of the GATS. No reply to the questionnaire had been received since the summer of 1997. He emphasized the importance of this exercise in clarifying the extent and focus of subsidization in services.

13. The representative of Hong Kong, China reiterated his authorities' intention to submit responses to the questionnaire as soon as possible. However, definitional problems needed to be addressed. For instance, could a government's contribution to the education or health care system be considered a subsidy? That was something the Working Party would have to consider. On the questions raised by the Chairman, it would seem clear that subsidies administered on a national treatment basis were less likely to have a trade distortive effect. Concerning the potentially adverse effects of domestic subsidies on modes 1 and 2, it was generally recognized that Members had no obligation to extend benefits to a service supplier located in the territory of another Member. Nevertheless, this was a major issue that needed to be explored. Another issue for discussion was the potential distinction between types of subsidies, namely, prohibited, actionable and non-actionable. It was also necessary to determine the compensatory actions that might be taken. In his view, apart from consultations, the ultimate remedy should be provided by the dispute settlement mechanism.

14. The representative of New Zealand referred to document S/WPGR/W/9, section IV, paragraph 39. The extent to which provisions of the GATS had a disciplining effect depended on whether Members' schedules contained national treatment commitments in the sector concerned and the existence of any relevant limitations. The answers to the questionnaire were vital to advance the discussion. Without information, the Working Party lacked the basis for assessing the importance of this issue and identifying any gaps in the existing provisions.

15. The Chairman noted the difficulty of embarking in substantive discussions, and wondered whether the Working Party should discuss future priorities. For instance, in the absence of further responses to the questionnaire and submissions from Members, would it be preferable to set this agenda item aside and concentrate on safeguards and government procurement? Argentina suggested that before deciding on priorities, the Working Party should in any event attempt to address the two questions posed in the Chair's Note. These were important issues that Members needed to consider. The Working Party agreed to revert to this issue at the next meeting.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

16. The Chairman recalled that previous discussions had been focused on the scope and coverage of government procurement of services. He suggested three issues for consideration, based on the questions posed in the Non-paper by the European Communities, dated 13 February 1998. Regarding the first question concerning the transactions that constituted procurement, it had been recognized that more information was needed on how concessions were defined and treated in national legislations. Although Members had agreed to provide such information, nothing had been received so far. In replying to the questionnaire, detailed information had been provided only by Argentina and Costa Rica, while some reference to concessions was also contained in the responses of Colombia, Poland and Hong Kong, China. Regarding the second question (who is the procuring entity?), the EC paper presented two possibilities. One approach would cover procurement at all levels of government, including entities governed by public law and under the influence of government, while the second approach was based on market structure rather than on public ownership or influence *per se* - every case would be examined on its own merits, the ultimate criterion being whether the entity was subject to competition. Regarding the third question (what is being procured?), the EC paper suggested that all services falling within the scope of GATS should be covered. In this connection, the exclusion from the GATS of "services supplied in the exercise of governmental authority", raised the question of whether the GATS definition of such services was sufficiently clear. This was also related to the treatment of concessions, as some concessions might concern services provided in the exercise of governmental authority.

17. In relation to what transactions constitute procurement, the representative of Venezuela indicated, in a preliminary manner, that in his country concessions were governed by

public/administrative law rather than private/civil law. That implied an exclusive competence of the State. For instance, petroleum and minerals were regarded as State-owned resources and their exploitation was reserved for the State. When the government gave concessions, it granted a right to operate the mines to a private sector entity through a contract, which in some cases involved a royalty while in others no payment to the State was required, except for taxes on revenues. Thus, concessions did not constitute a purchase by the government since they involved no acquisition of goods or services and, therefore, they did not constitute government procurement. Additionally, given that they were an exclusive competence of the State and that their commercial and competitive nature was questionable, the granting of concessions, and the activities involved, were excluded from the coverage of GATS.

18. The representative of Argentina recalled his doubts about the interpretation of some delegations of what activities might fall under Article XIII of the GATS and the possibility that concessions would be covered under the Agreement. For instance, the case of a concession granted for operating a motorway, where the government was not buying something for itself, but rather granting the right to operate a public service to a private operator, was a clear case of a service provided in the exercise of governmental authority. It was necessary to continue studying how concessions would be considered within the GATS framework. The United States suggested that in addressing the issue in future submissions, the definition of concessions be related to the language of Article XIII, which specifically defined procurement in terms of a purchase.

19. The representative of Canada elaborated on the question of what transactions constituted procurement. The EC paper suggested that the transaction for the service itself was distinguished from the buying or hiring of the service. She asked whether the case of a contract providing a license to a private sector contractor to distribute government procurement data on an electronic tendering service, generating revenues from the purchaser of the data, would be considered to be a transaction for the service itself. If so, would it fall within the definition of procurement in GATS Article XIII?

20. In summing up, the Chairman observed that there was a need to continue the discussion on the scope and coverage of government procurement of services, and in particular on the issue of concessions, and urged Members to contribute their views in writing. He indicated that at the following meeting, the Working Party would revert to the question of how to proceed with the second step in the work programme, which concerned the application of the basic discipline of non-discrimination.

ITEM D: DATE OF THE NEXT MEETING

21. The Chairman proposed holding the next formal meeting on Tuesday, 1 December 1998.

ITEM E: OTHER BUSINESS

22. No matters were raised under this agenda item.

Working Party on GATS Rules

REPORT OF THE MEETING OF 23 JUNE 1998

Note by the Secretariat

1. The seventeenth meeting of the Working Party on GATS Rules was chaired by Mr. Harald Fries of Sweden. The agenda of the meeting was contained in WTO/AIR/854. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.
2. The Chairman said that he had circulated a Note, dated 15 June 1998, with the intention of assisting delegations in their preparation for the meeting. As indicated in the Note, he suggested a modification in the order of the agenda items to facilitate the participation of experts in government procurement. The Working Party agreed to this proposal.

ITEM A: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

3. The Chairman recalled that the Working Party had agreed to structure its work as outlined in the Chair's Note dated 21 February 1997. At the previous meeting, the discussion on "the scope and coverage of government procurement of services" had already started. He drew Members' attention to the fact that in the Working Group on Transparency in Government Procurement the issues related to scope and definition of procurement were also being discussed; he had invited the Secretary of that Working Group to brief the Working Party on the status of those deliberations.
4. The Secretary of the Transparency Working Group said that an informal Note by the chairman entitled "List of Issues Raised and Points Made" (job no. 1860) had been circulated to introduce the main agenda item, i.e. transparency-related provisions in existing international instruments on government procurement and national procedures and practices. Concerning the first issue - "Definition and Scope of Government Procurement"- the view had been expressed that obligations on transparency should only be applicable if market access for foreign supplies and suppliers had been permitted. Other delegations had expressed a preference for applying transparency disciplines as broadly as possible.
5. Concerning the definition of government procurement, it had been suggested that the Transparency Working Group should employ a sufficiently broad approach to accommodate differing meanings given to the term "government procurement" in national legislations. The Group had also identified a range of issues that would need to be taken into account. In this context, a distinction had been made between the following questions: (i) who was doing the procuring? (ii) what was being procured? and (iii) what types of transactions were covered?

6. In regard to the first question, it had been suggested that entities at all levels of government, as well as enterprises owned or influenced by the government, be covered by a transparency agreement. Another suggestion was initially to apply the relevant rules only to entities at the central or federal government level and to condition the coverage of state enterprises on how they operated.

7. Regarding the second question (what was being procured?), it had been suggested that the scope of a transparency agreement be extended to all goods and services, and any combination of goods and services.

8. In relation to the third question (what types of transactions would be covered?), it had been suggested that acquisition by any contractual means, including through lease or rental, be covered. Questions had been raised as to whether concessions and build-operate-transfer (BOT) contracts should be covered as well. In connection with that issue, the delegation of Venezuela had presented a submission concerning the particular characteristics of government procurement, privatization and concession-granting systems (circulated as job no. 3295). With respect to the use of threshold values in determining the coverage of a transparency agreement, the view had been expressed that in principle all contracts should be covered, but that certain provisions might be more flexibly applied to smaller contracts. Other delegations had felt that transparency obligations should only apply above certain threshold levels in order to avoid information costs and that the Group should take into account the relevant national practices.

9. In introducing the discussion, the Chairman recalled that the Working Party on GATS Rules had initially based its deliberations on scope and coverage on a submission from the European Communities. He proposed continuing that discussion with a view to identifying issues for further consideration. Most delegations that spoke indicated an interest in developing a working definition of government procurement based on the questions in the EC submission. The need was expressed for an examination of the issue of concessions. One delegation noted that some discussion on concessions had taken place at the previous meeting and that a similar discussion was being conducted in the Working Group on Transparency in Government Procurement; it was thus important to avoid duplication and to coordinate work. In certain delegations' view, the definition of government procurement in GATS appeared to exclude concessions where services were not purchased for governmental purposes. Accordingly, those transactions would be subject to the disciplines of Articles II, XVI and XVII of the GATS. However, some delegations expressed reservations about this interpretation. They felt it was necessary first to define concessions and then to discuss the relevance of GATS disciplines. In this context, it was proposed that delegations provide information on national regimes relating to concessions. One delegation recalled that some information on this subject already existed in the responses to the questionnaire.

10. The Chairman recalled that the Working Party had agreed to address the basic principle of non-discrimination as a second step in the work programme. He reminded delegations of a non-paper submitted by New Zealand (dated 30 September 1997) which examined some issues, including definition and the principles of MFN and national treatment. While one delegation felt that for practical reasons it would be appropriate to discuss MFN-related issues first, others were of the opinion that the two principles should be dealt with in parallel since they were closely intertwined.

11. The Chairman concluded that there was a need to continue the discussion regarding and definition of procurement and, in particular, the treatment of concessions. More information on how concessions were defined and treated within national legislations was necessary; Members agreed to provide this information by the next meeting. Regarding the principle of non-discrimination, he noted that more input from delegations was needed on how to deal with this issue and encouraged Members to submit contributions by the following meeting. He would continue to coordinate work with the different fora dealing with government procurement.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

12. As indicated in his Note dated 15 June 1998, the Chairman proposed a three-pronged approach to the discussions. First the conceptual discussion should continue on the basis of the Chairperson's note of 3 April 1998. Second, delegations might wish to clarify their understanding of the precise scope of existing GATS disciplines applying to subsidies; that might help to identify circumstances of trade distortion, if any, which are not satisfactorily covered in the existing framework. Finally, given it was necessary to advance the information exchange programme mandated by Article XV and improve the common understanding of the role of subsidies in services sectors, the Chairperson asked Members to indicate when their responses to the questionnaire were likely to be ready.

13. The delegation of Australia gave examples of subsidies maintained in her country at the federal level, including an air services subsidy scheme providing assistance for regular air deliveries of educational material, general freight and passengers to remote areas; a Regional Telecommunications Infrastructures Fund; and tax concessions to companies establishing regional headquarters in Australia. In addition, government assistance for services such as education and health might be regarded as subsidies. However, such assistance would have a minimal impact on trade and would not be an appropriate area for subsidy disciplines under the GATS.

14. Some delegations argued in favour of using, as a basis for discussions in the Working Party, the definition and framework of the Subsidies Agreement. In their view, there was no difference between subsidies in goods and services as the criteria and schemes were basically the same. Other delegations, however, emphasized the need to examine whether the definition of subsidies in the Subsidies Agreement was appropriate for services sectors. In addition, it was questionable whether the remedies, i.e. countervailing measures, contained in the Subsidies Agreement could be applied to services.

15. Some delegations shared the view that conducting a discussion on the scope of existing GATS disciplines would be helpful. A previous Secretariat Note on Subsidies and Trade in Services (S/WPGR/W/9) had not been fully discussed. In light of the views expressed, the Chairman proposed conducting a discussion on the basis of document S/WPGR/W/9 at the following meeting. The Working Group agreed to this proposal.

16. Concerning the replies to the subsidies questionnaire, one delegation underlined that empirical information was a prerequisite for a substantive debate. Two delegations indicated that they aimed at submitting their replies within a few months.

ITEM C: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

17. The Chairman proposed that the Working Party should aim at concluding the discussion on the four key questions contained in a Chairperson's Note, dated 3 June 1997, at the present meeting. He recalled that at the previous meeting the Working Party had held some discussion on the first question, i.e. on whose behalf would a safeguard action be taken? Several delegations had responded that action could be taken on behalf of all domestically established suppliers, regardless of ownership and control; while others had felt that it could be designed to protect only nationally owned suppliers. He recalled that the Secretariat had been asked to examine WTO jurisprudence relevant to the issue of

whether distinctions could be made between domestically established suppliers. The delegations concerned had expressed particular interest in the implications of the Panel Report and the Report of the Appellate Body on the European Communities regime for the importation, sale and distribution of bananas. The Reports had used the definition in Article XXVIII of GATS to affirm that juridical persons established in the territory of a Member would be regarded as service suppliers of another Member if they were owned or controlled by natural or juridical persons of that other Member. The Chairperson noted that it was for the Working Party to examine the implications, if any, of that report for its discussion.

18. Resuming the discussion of the first question, some delegations indicated that emergency safeguard measures would normally be taken to protect the national industry. This was understood to mean the totality of the natural and juridical persons supplying like or directly competitive services of the Member taking the measures according to the definition provided for in Article XXVIII of the GATS. Other delegations felt that the rules of origin contained in Article XXVIII of the GATS were not relevant for determining what "national industry" meant; in their view, the Article provided a legal definition of "service supplier of other Member" which was not a suitable concept for the purpose of a safeguard mechanism.

19. In relation to the second question, concerning the circumstances in which safeguard actions might be taken and the relevant purpose, some delegations pointed out cases where, as a result of unforeseen developments and of obligations under the GATS, there was a dramatic increase in consumption of foreign services. If such increase would cause or threaten to cause disruption of the national industry, the purpose of an action would be to provide time for adjustment to foreign competition. These delegations felt that the concept of "increased consumption of foreign services" was more appropriate than the concept of "increased imports", since the latter might not always be relevant to services given the four modes of supply. In this context, other delegations stressed the need to give concrete examples of circumstances warranting a safeguard action. In concluding this discussion, the Chairman observed that the Working Party seemed to share the view that the objective of a safeguard action should be to facilitate adjustment to foreign competition.

20. In relation to the third question, concerning the approach to be adopted in respect of injury/adverse effects and the causal link between injury/adverse effects and commitments under the GATS, some delegations felt that the relevant criterion was serious injury. It could be measured by employing, *mutatis mutandis*, the provisions of Article 4:2(a) and (b) of the Agreement on Safeguards. One delegation expressed reservations as there were important differences between GATS and the Agreement on Safeguards in Goods, including the fact that in services limitations could be scheduled in advance. Therefore, the conditions for imposing safeguards on services should be stricter than in the goods area. Some views were expressed on the issue of who carries the burden of proving causality. Delegations who spoke all agreed that the burden of proof would lie on the Member taking safeguard action. However, some delegations questioned whether it would be at all possible to prove causality in the area of services.

21. In relation to the fourth question, relating to the measures to be taken under the emergency safeguard mechanism, some delegations suggested that some measures could be temporarily applied in relation to all modes of supply, at both the pre-establishment and post-establishment stages. For instance, restrictions on market access, which could include regulations, taxes and quotas, could be applied in relation to all modes of supply, while a suspension of national treatment could be used in regard to mode 3 and mode 4. One delegation emphasized that in the case of post-establishment acquired rights would not be affected; foreign services suppliers already established might not, however, qualify for new benefits which could be granted to national suppliers. For example, only national banks could be offered subsidies in such cases, and market access could be suspended for new foreign banks.

22. Other delegations found these concrete examples very helpful, and called for more such contributions from Members. The Chairman also stressed the need for more concrete examples. He proposed preparing a note taking stock of the views expressed so far in the Working Party on the four questions and identifying appropriate issues for the brainstorming session to be held soon after the summer break. The Working Party agreed. Finally, the Chairman suggested that the Working Party would discuss at the next formal meeting what could be achieved in the period up to the negotiation deadline of 30 June 1999.

ITEM D: DATE OF THE NEXT MEETING

23. It was agreed that the Working Party would meet next on 6 October 1998.

ITEM E: OTHER BUSINESS

24. No matters were raised under other business.

Working Party on GATS Rules

REPORT OF THE MEETING OF 27 APRIL 1998

Note by the Secretariat

1. The sixteenth meeting of the Working Party on GATS Rules was chaired by Mr. Harald Fries of Sweden. The Working Party expressed its warm appreciation of the contribution made by the outgoing Chairperson, Miss Jill Courtney of Australia. The agenda for the meeting was contained in WTO/AIR/815. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

2. The Chairman recalled previous discussions on the issue of how to proceed with the negotiations on safeguards. It had been suggested that work on the formulation of disciplines, both general and operational, should proceed in parallel with an assessment of the desirability and feasibility of a safeguard mechanism for services. However, some reservations had been expressed about discussion of disciplines at that stage. In the Chairman's view, however, Members' deliberations on feasibility and desirability would have greater content if these were based on some idea of what a possible safeguard mechanism would look like. Moreover, even in addressing the four questions in the Chairperson's note of 3 June 1997, there appeared to be a close link between the twin issues of what possible disciplines could be and whether they would be desirable and feasible. The Chairman, therefore, suggested that it may be appropriate to explore these twin issues in the context of the four questions.

3. Most delegations that spoke supported the Chairman's proposal. Some were, however, keen to ensure adequate emphasis on the issues of desirability and feasibility. One delegation suggested setting time limits for the examination of each of the four questions. This suggestion was endorsed by a number of delegations, though some felt that the questions should not be treated in a compartmentalised manner. The Chairman suggested that the Working Party could aim to have some provisional responses, not necessarily agreed, after the following meeting.

4. In relation to the first question, i.e. on whose behalf emergency safeguard action would be taken, one delegation felt that the "national industry" could be protected; this was believed to be in line with the definition contained in Article XXVIII of the GATS. In addition, it might be necessary to examine the need for appropriate definitions of national and non-national services suppliers. A problem of defining nationality could arise in the case of joint ventures between national and foreign suppliers, and it might be necessary to establish a threshold percentage of equity ownership.

5. Most delegations that spoke expressed reservations about this approach; they preferred not to distinguish between national and foreign-owned suppliers in the context of establishment. Some indicated that such a distinction would be inconsistent with their domestic regimes. One delegation

suggested that it would be helpful to reach an understanding that would exclude the possibility of distinguishing between foreign and domestically owned suppliers with respect to commercial presence. Another delegation indicated that the positive contributions made by established foreign suppliers to domestic employment should be taken into account.

6. To assist the discussion, it was proposed that the Secretariat gather information on how "national or domestic industry" had been defined in various WTO instruments and jurisprudence. The Working Party endorsed that proposal.

7. The Chairman recalled previous discussions on the idea of a "brainstorming" session. He proposed that the session be held soon after the summer break. Working Party Members would meet informally possibly outside of the WTO, as individuals rather than as country representatives, to allow for a frank discussion unencumbered by the need to maintain national positions. In order to give a clear focus to the session, he offered to prepare a list of relevant issues. The Working Party agreed to this proposal.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

8. The Chairman recalled that in previous meetings the need had been expressed for detailed discussion on the scope of, and the reason for, subsidies in the services sector. In addition, some delegations had called for more analysis of the impact of subsidies on services trade to identify possible trade distortions. The Chairman had offered to prepare a note addressing the conceptual issues involved, which had been circulated as job no. 1931 on 3 April 1998. The note suggested a step-by-step approach starting with the question of the circumstances in which subsidies were likely to have trade-distortive effects.

9. One delegation indicated that before adopting the path suggested by the note, the Working Party needed to address the fundamental issue of how subsidies should be defined in the area of services; he felt that the goods definition should not be automatically applied. Some shared the view that the goods' definition was far too encompassing; it had already complicated the response to the subsidies questionnaire and hindered the exchange of information required for discussion. Other delegations noted that the only practical way to proceed was using the broad definition applied in the goods area. Some participants supported a discussion on definitional issues, but pointed out that such a discussion could not be conducted without more information on actual subsidy policies. Information submitted by Members would help to determine whether the definition for goods was suitable for services as well. The Chairman suggested that in responding to the questionnaire, Members could use their discretion in the choice of definitions and sectoral coverage. However, some concerns were expressed regarding the implications of such an approach for the comparability of information.

10. Questions were raised concerning the feasibility of countervailing procedures in services areas, given the information and definition problems involved.

11. In summing up, the Chairman observed that delegations wished to continue the discussion of definitional and feasibility issues in parallel with the questions suggested in the Chairman's note of 3 April 1998. He urged Members to make increased efforts to provide responses to the questionnaire.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII
 OF THE GATS

12. The Chairman informed delegations that another response to the questionnaire had been received, from Costa Rica (circulated as S/WPGR/W/11/Add.22). He observed that the information gathering exercise had provided a sound basis for discussion of possible multilateral disciplines. In conducting such a discussion, it would be helpful to keep in mind the non-paper submitted by New Zealand (dated 30 September 1997) which examined some of the issues arising from the application of fundamental WTO principles to government procurement in services. He also suggested that the discussion of issues could follow the order contained in the indicative tabulation relating questionnaire responses to possible elements of multilateral disciplines (Chair's note dated 21 February 1997). This would be consistent with suggestions made by delegations that work should focus initially on the definition of government procurement and then move on to the issue of non-discrimination.

13. The paper submitted by the European Communities at the previous meeting identified three relevant questions: what transactions constitute procurement, who is the procuring entity, and what is being procured? As to the first question, some delegations favoured an approach consistent with that in the Agreement on Government Procurement. Others felt that transactions excluded from the relevant definitions in Article I of the GATS provided a clue as to what transactions constituted procurement. One delegation stressed the difficulties faced in her country in defining procurement and, particularly, whether concessions should be included. Other delegations echoed the reservations and indicated that more discussion on the matter was necessary. Regarding the second question, i.e. who is the procuring entity, some stated that the level of public control should be the main consideration and that all levels of government should be included. However, others felt that in the case of enterprises owned by the government, the decisive factor should be whether the entity operated like a private enterprise in a competitive context.

14. The Chairman drew delegations' attention to the fact that the Working Group on Transparency in Government Procurement was also discussing questions of definition and scope of procurement. One delegation emphasized that the Working Party should aim to provide an input to the Working Group on Transparency and suggested that discussions focus on the specificities of government procurement of services. The Chairman indicated that he would continue consultations on how best to coordinate work with other fora dealing with government procurement.

ITEM D: DATE OF THE NEXT MEETING

15. It was agreed that the Working Party would meet next on 24 June 1998.¹

ITEM E: OTHER BUSINESS

16. One delegation requested that meetings dealing with services issues be scheduled closer together to facilitate the participation of experts from capitals. The increasing complexity of the issues involved necessitated more inputs from capitals.

¹ However, in light of the suggestion made under "Other Business", and to avoid a clash with another meeting, the date of the meeting was subsequently changed to 23 June 1998.

RESTRICTED

S/WPGR/M/15
27 February 1998

WORLD TRADE
ORGANIZATION

(98-0819)

Working Party on GATS Rules

REPORT OF THE MEETING OF 13 FEBRUARY 1998

Note by the Secretariat

1) The fifteenth meeting of the Working Party on GATS Rules was chaired by Ms. Jill Courtney of Australia. The agenda for the meeting was contained in WTO/AIR/761. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF
THE GATS

2) The Chairperson noted that since the mandate for the negotiations on emergency safeguard measures had been extended until the end of June 1999, the Working Party needed to consider how to structure its work in order to use the time available most productively. She recalled that the idea of a work programme had come up in previous discussions and suggested that it might be possible to design such a programme so as to preserve a balance between different views, including those pertaining to the desirability and feasibility of safeguards. The suggestion received support from delegations.

3) One delegation expressed the view that designing a work programme did not necessarily prejudice the outcome of the discussions. In such a work programme other options, like scheduling safeguards as opposed to a safeguard mechanism, should be discussed, although it had been argued that it might not always be possible to foresee all circumstances that warrant a safeguard measure. Several delegations favoured a work programme consisting of further discussion of the questions identified in the informal note dated 3 June 1997, where conceptual issues such as injury, causal link, and likeness could also be taken up. A few delegations said that it may be useful to set time limits for the examination of each question, preserving some flexibility in view of the complexity of the issues. The Chairperson said that she would consult with delegations regarding the structure of the work programme, which would include a brainstorming session clearly focused on specific issues.

4) Hong Kong, China, made a submission on •Emergency Safeguard Measures: A way forward on the possible principles• (circulated as S/WPGR/W/26). In introducing the submission, Hong Kong, China indicated that the paper suggested possible guiding principles for an emergency safeguard mechanism. The principles had been classified into two groups, four that were general and derived from other WTO agreements, and five that were operational. Delegations were generally in agreement with most of the principles but sought clarification with regard to some of them. A few delegations said that they had no objections to discussing broad principles, but emphasized also the need to address the relevant conceptual and practical issues. One delegation noted that the principles needed to address issues raised by the four modes of supply. Several delegations expressed the view that the operational principles could be developed further. One delegation suggested the possibility of establishing a link between the duration of safeguard measures and the period of time that the modification of a schedule might take. The need for a mechanism to monitor safeguard measures was also raised. A few delegations said that they would submit comments in writing.

5) In terms of areas of parallel work, one delegation suggested that the discussions of the feasibility of such a mechanism could be advanced by further considering concepts such as unforeseen circumstances, like products, assessment of injury, and the determination of causality. It was also suggested that some idea of the desirability of a safeguard provision could be obtained if Members examined their schedules of specific commitments to identify situations where liberalization had been stalled by the absence of a safeguard provision. A few delegations expressed reservations about the usefulness of the latter approach.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

6) The Chairperson noted that the information exchange mandated by Article XV had not advanced significantly, and urged delegations to provide responses soon since such information would put delegations in a better position to proceed with substantive discussion. She recalled that at the previous meeting, the need to continue the technical analysis of subsidies related to services was expressed. The Secretariat had been requested to collect information on the subject from the WTO Trade Policy Reviews and other sources. A note containing such information had been circulated as document S/WPGR/W/25.

7) Most delegations that spoke regarded the note as useful, despite its necessarily partial coverage. The preliminary identification of types of subsidies used in different sectors in some countries was regarded as helpful; the note also illustrated the difficulty of identifying the final beneficiaries of subsidies in services. One delegation was of the view that Members needed to identify the objective of the current negotiations before trying to advance any discussion on disciplines. Another delegation said that due account should be taken of the developmental role subsidies had played in certain countries, particularly in areas which the private sector did not find profitable.

8) A number of delegations indicated that they had difficulty in responding to the questionnaire because its definition of subsidies was too wide. The need was expressed for detailed discussion on the scope of, and the reasons for, government involvement in the services sector. It was also necessary to carry out more analysis of the impact of subsidies on services trade, with a view to identifying trade-distortive subsidies on which a working definition should focus. One delegation suggested that Members should come up with their own definition of subsidies for the purpose of the questionnaire which, in turn, would assist the Working Group in developing a working definition more focused on trade distortion. The Chairperson offered to prepare a note identifying questions to assist Members in addressing the conceptual issues involved. The Working Group agreed to this proposal.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT
UNDER ARTICLE XIII OF THE GATS

9) The Chairperson noted that the information gathering exercise on national procurement regimes had provided the basis for a discussion of possible multilateral disciplines which had already begun. She recalled that some delegations had suggested that work should focus initially on the definition of government procurement and the principle of non-discrimination. It was also suggested that the Working Party should consider how best to coordinate work between different fora dealing with Government Procurement in the WTO to avoid duplication of work or fragmentation of resources.

10) The European Communities made a written contribution dealing with definitional issues relevant to services procurement. In introducing the submission, the representative of the European Communities indicated that the purpose was to assist the discussion on a working definition of government procurement by addressing three questions: what transactions constitute procurement, who is the procuring entity, and what is being procured? Delegations welcomed the submission. Several reiterated the need for a working definition in view of the multiplicity of definitions of government procurement that had been identified in the replies to the questionnaire.

11) One delegation suggested that priority should be given to areas where duplication with the work of the Working Group on Transparency in Government Procurement was least likely, namely, the issue of non-discrimination and, particularly, the national treatment principle. One delegation noted that trade rules on government procurement needed to go beyond national treatment and ensure transparency. Some delegations supported the view that the work of the Working Party should add value to the rules that already existed and those that were being developed in other fora. The Chairperson indicated that she would continue consultations on the procedural issues of coordination of work, and agreed with the view that work in other fora should be beneficial for, rather than a constraint on, progress of negotiations within the Working Party.

ITEM D: DATE OF THE NEXT MEETING

- 12) It was agreed that the Working Party would meet next on Monday, 27 April 1998.

ITEM E: OTHER BUSINESS

- 13) No matters were raised under other business.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/14

2 December 1997

(97-5289)

Working Party on GATS Rules

REPORT OF THE MEETING OF 26 NOVEMBER 1997

Note by the Secretariat

1) The fourteenth meeting of the Working Party on GATS Rules was chaired by Ms. Jill Courtney of Australia. The agenda for the meeting was contained in WTO/AIR/719. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business, under which it was agreed to consider the finalisation of the Report of the Working Party to the Council for Trade in Services.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF GATS

2) The Chairperson informed delegations that on the basis of the discussions of the Working Party, she had proposed to the Council for Trade in Services to adopt the Decision extending the mandate for the negotiations on emergency safeguard measures under Article X of the GATS until the end of June 1999. One delegation observed that the Decision would ensure a continued mandate for negotiations under Article X without modifying Article X in any other way. In particular, paragraph 2 of Article X would still be relevant only for the modification or withdrawal of commitments within three years of their coming into force. In all such cases, paragraphs 2 to 5 of Article XXI would continue to apply after the notification procedure. Another delegation, speaking on behalf of several delegations, noted that procedures for modification of schedules under Article XXI had not yet been agreed, and that negotiations on such procedures should proceed without prejudice to negotiations under Article X.

3) One delegation suggested that it would be useful to agree on a work programme in order to use the time available most productively. One possibility was that the first six months of next year be devoted to negotiating broad-based legally binding disciplines, such as those suggested in its earlier submission (S/WPGR/W/18) and the rest of the time to more detailed discussion. It offered to submit a paper on the subject. Several delegations supported the idea, but two delegations were concerned that agreeing on such a work programme may prejudice the question of whether there should be a safeguard provision in the GATS. Some delegations suggested that the work programme could be designed to preserve a balance between different views, and a consideration of the desirability and feasibility of safeguards could proceed in parallel with a discussion of other issues. The Chairperson said that she would consult with delegations on this subject, as well as the possibility of holding a •brainstorming• session on the subject of safeguards some time next year.

ITEM B:NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF GATS

4) The Chairperson noted that so far only two responses to the questionnaire on subsidies had been received, even though 15 May 1997 had been established as the deadline for submission of responses. She urged delegations to make an effort to provide responses soon since this information would put delegations in a much better position to proceed with substantive discussions. One delegation emphasized the importance of work in this area, and suggested that the analysis of subsidies related to trade in services could continue while more responses to the questionnaire were awaited. To this end, the Secretariat was asked to collect information on the subject from the WTO trade policy reviews and other sources.

ITEM C:NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF GATS

5) The Chairperson informed delegations that at an informal meeting on procurement held on 6 November 1997, two sorts of issues had been raised. On substance, a few delegations had suggested that work should focus initially on the definition of government procurement and the principle of non-discrimination. On procedure, several delegations had emphasized the need to address the problem of duplication of work between different fora dealing with government procurement in the WTO. One delegation said that there was clearly need for discussion in the Working Party on the elements of government procurement specifically related to trade in services, such as the role of concessions on public utilities. It intended to make a written submission dealing with definitional issues and illustrating the particularities of services procurement, in order to demonstrate the need to make progress in this area within the Working Party. Another delegation said that even though previously it had been less than enthusiastic about the prospect of such work, it now fully supported the idea. It had come to the view that there was need for work to improve the understanding of what disciplines could apply to services procurement and that the goal should be to develop such disciplines. A third delegation also expressed an interest in pursuing such work within the Working Party and welcomed the positive indications of interest from other delegations.

ITEM D:DATE OF THE NEXT MEETING

6) It was agreed that the Working Party would meet next on Friday, 13 February 1997.

ITEM E:OTHER BUSINESS

7) The Working Party adopted, with minor modifications, the annual Report to the Council for Trade in Services.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/13

19 November 1997

(97-5096)

Working Party on GATS Rules

REPORT OF THE MEETING OF 1 OCTOBER 1997

Note by the Secretariat

1) The thirteenth meeting of the Working Party on GATS Rules was chaired by Ms. Jill Courtney of Australia. The agenda for the meeting was contained in WTO/AIR/668. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF GATS

2) The Chairperson noted that since the previous meeting, one more submission on the subject of emergency safeguard measures had been received from Peru (S/WPGR/W/23), as well as a response to the questionnaire from Cuba (S/WPGR/W/15/Add.7). The report of the last meeting (S/WPGR/M/12) had not mentioned the communication received from ASEAN on the subject of emergency safeguard measures (S/WPGR/W/22). The Chairperson recalled that the Secretariat had been requested to prepare a note on •Examples of situations in which emergency safeguards may be taken•, which had been distributed as document S/WPGR/W/24, and invited comments from Members.

3) The Secretariat paper was seen as a useful contribution to the current discussions, though two delegations felt that it had perhaps gone beyond what had originally been requested. Some delegations noted that the paper was concerned with only one of the four key questions identified by the Chairperson in the note of 3 June 1997, and a consideration of the other questions remained important. In particular, how injury would be determined, and how a causal link would be established between injury and increased services imports given the paucity of data, were identified by some delegations as key questions.

4) A number of delegations emphasized the importance of analysing the circumstances in which safeguard action may be taken. Some delegations observed that the basic role of safeguard action should be to provide temporary relief in order to make possible gradual rather than abrupt adjustment, and thus help to reduce the social costs of adjustment. A few delegations expressed doubts about the usefulness of distinguishing between injury-causing developments which were primarily domestic in origin and those which were primarily foreign in origin (discussed in Section II of S/WPGR/W/24). An increase in services trade could occur through the combined effects of domestic and foreign developments, and to distinguish between the two would be difficult. The focus, several

delegations felt, should be on whether injury had been caused by increased imports, and the underlying reasons should not be relevant to determine the permissibility of safeguards. Many delegations were of the view that •unfair• trading developments should not be the basis for safeguard action since there were other GATS provisions to deal with such situations. However, some delegations felt that the door should not be closed to the possibility of safeguard action to deal with injury caused by unfair trade practices.

5) Addressing Section III of S/WPGR/W/24, the need to limit safeguard action to deal only with unforeseen circumstances was emphasized by numerous delegations. However, some expressed doubts about the feasibility of developing objective criteria to determine whether circumstances were indeed unforeseen.

6) With regard to Section IV of S/WPGR/W/24, some delegations stated that it was not desirable to impose additional conditions for safeguard action - beyond demonstrating that injury was caused by increased imports. One delegation felt that the introduction of factors like the ones mentioned in paragraph 16 of S/WPGR/W/24 would make the mechanism too complicated to implement. A few delegations also doubted the desirability of creating a presumption in favour of economically superior instruments of safeguard action, such as subsidies. One delegation identified the reasons for its opposition to the idea. First, a Member might need to use measures with a real impact on imports over a short period of time, and so the quantitative restrictions listed in Article XVI may be more efficient. Secondly, the implementation of a subsidy as a safeguard could violate national treatment, which was not feasible in certain countries due to the nature of legal regimes. A few delegations felt that it would be desirable to include a public interest clause in an emergency safeguard mechanism. Such an inclusion would ensure that authorities took into account not only the benefits to an industry but also the costs to other sectors from safeguard action. One delegation expressed the view that if there was a need for a safeguard action at all, it should be related to national welfare objectives rather than trade policy-related objectives, since the latter were covered by GATS provisions and/or scheduled reservations.

7) Several delegations felt that the issue of how far policy objectives should be built *ex ante* into the schedules, and how much scope there should be for *ex post* safeguard action needed to be carefully considered (discussed in Section V of S/WPGR/W/24). Some delegations noted that measures listed in a schedule, to protect or to allow time for gradual adjustment, would be safeguards, but not emergency safeguards. An emergency safeguard would be to cope with an emergency situation which was unforeseen. The delegation of Mexico said that the safeguard contained in NAFTA with respect to financial services, referred to in Section V, was due to certain Mexican legislation, and did not constitute a safeguard measure to cope with an unforeseen or emergency situation. The very nature of an emergency situation, due to unforeseen circumstances, made it difficult for those situations to be provided for in legislation and to be within the control of the government. One delegation suggested that it was important to consider how far a Member could anticipate and specify the circumstances in which it would invoke a safeguard measure. It felt that the notion of scheduled safeguards, as opposed to a more general provision, should be examined on a more exhaustive basis while considering the desirability and feasibility of a safeguard provision in GATS. However, some delegations felt that scheduling safeguards in advance did not seem very useful. One delegation noted that not every injury situation and relevant remedy instrument could be fully examined in advance, and so the process of negotiating scheduled commitments would become too complicated. Another delegation said that Members should be cautious about the idea of scheduled safeguards since a situation could be created in which the possibility to respond to unforeseen circumstances, which were *a priori* the same for everybody, would be available to certain countries and not to others.

8) Several delegations addressed the modal issues raised by safeguard action. One delegation noted that in the context of mode 1, it would be difficult to restrict transactions at the border, especially electronic transactions, and that safeguards would rarely be needed for mode 2 as consumption did not occur in the country wishing to apply the safeguard. Another delegation was of the view that increased •consumption• of foreign services may be a more appropriate concept than increased •imports• since it was not clear as to how the latter notion could be applied to modes 2, 3 and 4. Several delegations expressed doubts about the desirability of application of safeguards post-establishment but some felt that, even though acquired rights should be preserved, they could be suspended during an emergency. One delegation observed that the stage at which a person was considered a foreign services supplier was not always clear. Frequently foreign service suppliers participated in joint ventures where their equity might be in the minority. Moreover, it would create an unpredictable element in the GATS if the rights that foreign suppliers had as corporate citizens of the country in which they were operating could be lessened.

9) The delegation of Thailand informed the Working Party that his delegation had organized a seminar on •Emergency Safeguard Measures in GATS•. A brief outline of the content of the seminar was provided by the Secretariat.

10) The Chairperson said that she would hold further informal meetings to continue the discussion based on the Secretariat's paper, taking into account the comments already made, and to address the other questions in the Chairperson's note of 3 June 1997. She also noted that her consultations had revealed that Members agreed, in principle, that it would not be possible to conclude the negotiations on emergency safeguard measures before the end-of-the-year deadline specified in Article X. She recalled that at the previous informal meeting, Members had agreed to consider whether a deadline of 30 June 1999 would be acceptable. She proposed that the Working Party take a decision in principle on extending negotiations until 30 June 1999 under the existing terms stipulated in Article X of the GATS. On this basis, the Secretariat would prepare a draft decision to be circulated to Members for comments within the next two weeks. Members agreed to the Chairperson's proposal.

11) One delegation sought clarification on certain aspects of the Secretariat's note of 1 October 1997 on •Extending the negotiations on safeguards•. Some Members indicated that they would need to reflect on the modalities for the extension.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF GATS

12) The Chairperson indicated that only two responses to the questionnaire on subsidies had so far been received, from Norway and New Zealand, circulated as documents S/WPGR/W/16/Add. 1 and 2, respectively. She urged delegations to make an effort to provide responses soon and stressed the importance of such information for substantive discussions on the subject.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF GATS

13) The Chairperson indicated that two more responses to the questionnaire had been received since the previous meeting, from Peru (S/WPGR/W/11/Add.20) and Turkey (S/WPGR/W/11/Add.21). She observed that the synthesis prepared by the Secretariat of the first 19 responses and the more recent responses provided a large corpus of information on national regimes. She also drew Member's attention to a non-paper submitted by New Zealand on the subject of government procurement.

14) In introducing the non-paper, the representative of New Zealand said that its purpose was to examine issues and questions arising from the application of fundamental WTO principles to government procurement in services and explore possible areas of common understanding on such principles. The non-paper did not attempt to examine the question of the possible form that the outcome of negotiations might take nor did it seek to comment on any possible relationship between the negotiations and other work in the government procurement field.

15) Norway provided some clarification regarding its procurement of construction services, which was referred to in the synthesis of different procurement regimes (S/WPGR/W/20), under the heading Laws and Regulations in Force. According to the document, procurement above specified thresholds took place through a central specialized agency. In Norway, state construction works above the WTO GPA thresholds were usually undertaken by either the Directorate of Public Construction and Property or by the Norwegian Defense Construction Service, the latter being responsible for defense entities. All Norwegian municipalities and counties, which were also covered by the WTO GPA, were however responsible for their own construction services and organised these independently and on an individual basis.

16) One delegation suggested that substantive discussion could begin by looking at the question of how government procurement should be defined. As a first step, Members needed to examine what services would be covered by any provisions on government procurement that resulted from the current negotiations. The next step would be to examine what entities would be covered, an issue for which Article I of the GATS would be relevant. Another delegation suggested that it would be appropriate to address the principle of non-discrimination, and emphasized the importance of clarifying how the work of the Working Party would relate to ongoing work on procurement in other WTO fora.

17) The Chairperson noted that more discussion was necessary in respect of definitions and/or the principle of non-discrimination. She suggested holding an informal meeting on 6 November 1997 to discuss issues related both to government procurement and safeguards. Members agreed with the Chairperson's suggestion.

ITEM D: DATE OF THE NEXT MEETING

18) It was agreed that the Working Party would meet next on Wednesday, 26 November 1997.

ITEM E: OTHER BUSINESS

19) No matters were raised under other business.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/12

3 September 1997

(97-3574)

Working Party on GATS Rules

REPORT OF THE MEETING OF 23 JULY 1997

Note by the Secretariat

1) The twelfth meeting of the Working Party on GATS Rules was chaired by Ms Jill Courtney of Australia. The agenda was contained in WTO/AIR/634 and WTO/AIR/634/Add.1. The agenda consisted of six items: requests for observer status; negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on Government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

ITEM A: REQUESTS FOR OBSERVER STATUS

2) Members agreed that the IMF, OECD, United Nations, UNCTAD and World Bank, who had previously been invited to meetings on an ad hoc basis, would be granted observer status on a permanent basis.

ITEM B: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF GATS

3) The Chairperson noted that since the previous meeting, a submission on the subject of emergency safeguard measures had been received from Singapore (S/WPGR/W/19). The substantive discussion in the area of safeguards focused on the four questions identified by the Chairperson in an informal note (dated 3 June 1997):

1. On whose behalf would emergency safeguard action be taken?
2. In what circumstances would emergency safeguard action be taken and what would be the purpose of such action?
3. What approach should be adopted in respect of injury/adverse effects, and the relevant causal link between injury/adverse effects and commitments under the GATS?
4. What measures would be taken under the emergency safeguard mechanism? Are some measures deemed more suitable than others?

4) Delegations agreed that these four questions captured the key issues which needed to be addressed. Several delegations said that question 2 was the one which was most immediately relevant and should therefore be given precedence in discussions.

5) With regard to question 1, many delegations felt that safeguard actions should be taken on behalf of domestic industry, but there was some difference of opinion with regard

to how •domestic• should be defined. Several delegations felt that the definition contained in Article XIX of GATT 1994 and the Agreement on Safeguards would be adequate, and no distinction needed to be made between nationally-owned and foreign-owned domestic enterprises. However, a few delegations suggested that the latter distinction may be relevant in defining the potential beneficiaries of safeguard actions. Some delegations also pointed to the difficulty in defining •like and directly competitive• services and service suppliers, and the limitations of the Central Product Classification in this respect. One delegation said that safeguard actions should only be taken on behalf of an industry which already existed, while another noted that it must address the difficulties of the whole industry rather than those faced by only a few firms.

6) In addressing question 2, most delegations were of the view that safeguard actions should be taken to remedy or prevent injury to domestic industry caused by an increase in imports resulting from unforeseen developments and GATS commitments. Some delegations, however, expressed doubts over whether the notion of •unforeseen developments• could be made operational. One delegation suggested that it may be necessary to develop certain tests to determine whether a particular development was indeed unforeseen, for instance normal increases in trade could be exempt, a certain lapse of time could be required after entry into force of the commitment, and an appropriate level of overall concessions could be required to be maintained. Another delegation said, however, that the application of safeguard measures should not necessarily depend on a sectoral liberalization commitment.

7) All delegations who spoke agreed that safeguard action must be temporary. It was also generally felt that an emergency safeguard mechanism should deal with situations other than those covered by the existing exception provisions and Article XXI. Some delegations pointed to the need to take a wider view of economic welfare than injury to an industry as a basis for safeguard action and to take into account the economic costs of safeguard action in key infrastructural services like transportation, telecommunications and financial services. One delegation said that an emergency safeguard mechanism in services should be more than a mere extrapolation of the mechanism in goods, and should cover new areas like protection of consumers and the infrastructure, as well as addressing problems arising from dominant positions in markets. Another delegation said that safeguard measures should facilitate adjustment and not reflect long-term plans for industrial development.

8) In the context of question 3, several delegations pointed to the significant empirical difficulties that would arise in establishing injury, and the relevant causal link between injury and increased imports in services industries. But some delegations were of the view that these difficulties should not be a barrier to creative engagement in the issues under discussion. It was noted that the absence of statistics was not a difficulty faced only in the context of an emergency safeguard mechanisms, but could also arise in the context of other GATS articles, such as Article XXI dealing with modification of commitments. The need was expressed to establish clear criteria for the determination of injury, such as the levels of sales, earnings and employment.

9) While some delegations felt that question 4 was best dealt with later, others felt that it was crucially linked to other questions. For instance, the issue of who could be the beneficiaries of, and the circumstances which would prompt, safeguard action may not be separable from the type of measures that could be taken. Several delegations raised the issue of modal coverage of safeguard measures, and expressed concern about the possibility of measures being taken against locally-established foreign firms which could lead to disinvestment. Many delegations emphasized that any safeguard action must be taken on a non-discriminatory basis. Some said that safeguard measures should not be limited to

restrictions on market access but could also involve temporary suspension of national treatment. However, some delegations expressed doubts about the desirability of the latter possibility.

10) It was widely felt that future discussions, particularly of question 2, should be based on concrete examples, which the Secretariat was requested to provide. The Chair, in her summing up, identified at least three other possible sources for illustrative examples. First, certain Members' internal legislation may contain safeguard-type provisions. Secondly, Members may wish to examine their own schedules of specific commitments to indicate the type of situations where liberalization had been stalled by the absence of a safeguard provision. Finally, other international organizations like UNCTAD and the OECD may be able to provide useful examples based on their experience and research.

11) Several delegations were of the view that a seminar or brainstorming session should be held on the subject of safeguards. This could involve interested delegations, experts from the Secretariat and from other international organizations, as well as academics. The precise format and the timing of such a session needed further consideration.

12) Some delegations broached the question of whether it would be necessary to extend the deadline for the current negotiations. Others felt that it may be somewhat premature to consider an extension. One delegation said that, in any case, there was no question of the end-of-the-year deadline necessarily implying an end to debate on the question of safeguards. It was agreed that the Chair would begin informal consultations on the subject of an extension.

ITEM C: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF GATS

13) Two responses to the questionnaire on subsidies had so far been received, from Norway and New Zealand, circulated as documents S/WPGR/W/16/Add.1 and Add.2, respectively. Introducing its response, the Norwegian delegation noted that its subsidies regime did not differ between goods and services, and all schemes covered both, with the exception of schemes for the maritime transport sector. The response covered ongoing programmes, not one-shot subsidies. Norway had followed the format of the notifications for the Agreement on Subsidies and Countervailing Measures in its response to the subsidies questionnaire to reduce the administrative burden. Introducing its response, New Zealand said that it had focused on subsidies which had a bearing on trade in services. The response also included certain questions which might need to be addressed. One delegation noted that it was encountering difficulties in responding to the questionnaire since there was widespread subsidization of certain social services like education, public hospitals and social welfare, and taking account of all these subsidies would be a massive exercise.

14) The Chairperson urged other delegations to make an effort to provide their responses soon.

ITEM D: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF GATS

15) In the area of government procurement, discussion focused on the synthesis the Secretariat had prepared of the responses to the questionnaire on national regimes (issued as document S/WPGR/W/20). The Secretariat took note of certain modifications in the synthesis suggested by some delegations to more accurately represent their current procurement regimes. Several delegations noted that the synthesis revealed considerable

similarity between national regimes as well as some diversity. Some delegations felt that the information gathering exercise had provided an adequate basis for serious negotiations on disciplines. One delegation said that it might be best to begin with the definition of government procurement, since the Working Group on Transparency was addressing the issue of transparency. Another delegation suggested that the principle of non-discrimination could also be considered at an early stage. One delegation emphasized the need to take into account the decentralized nature of most services procurement in devising disciplines, and indicated that it was in the process of preparing a paper which it hoped would help to advance discussion. The need to coordinate work with the Working Group on Transparency was emphasized by several delegations.

ITEM E: DATE OF THE NEXT MEETING

16) It was agreed that the Working party would meet next on Wednesday, 1 October 1997.

ITEM F: OTHER BUSINESS

17) No matters were raised under other business.

RESTRICTED

S/WPGR/M/11
30 June 1997

WORLD TRADE ORGANIZATION

(97-2795)

Working Party on GATS Rules

REPORT OF THE MEETING OF 22 MAY 1997

Note by the Secretariat

1) The eleventh meeting of the Working Party on GATS Rules was chaired by Ms. Jill Courtney of Australia. The agenda consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

Negotiations on Safeguards under Article X of GATS

2) The Chairperson indicated that since the previous meeting, several delegations had provided useful responses to the written questions relating to an emergency safeguard mechanism in GATS, circulated as document (S/WPGR/W/15). In addition to Thailand, whose response had come in before the previous meeting and had been circulated as S/WPGR/W/15/Add.1, the Working Party had received responses from India (Add.2), Poland (Add.3), European Communities and their Member States (Add.4), Egypt (Add.5), and Mexico (Add.6). A submission on the subject had also been received from Hong Kong (S/WPGR/W/18).

3) Introducing its response to the questionnaire, the delegation of Egypt stated that the responses should be seen as preliminary. She said that a positive view should be taken of an emergency safeguard mechanism (ESM) since it would serve to encourage Members to make substantive liberalization commitments. Members should not rule out the possibility of an ESM in the GATS with wider objectives than those foreseen in Article XIX of GATT. Furthermore, Articles XII, XIV, and XXI of the GATS were designed to address situations very different from those in which recourse would be sought to an ESM under Article X. As to whether a distinction should be made between establishment rights *per se* and post-establishment operations in relation to possible safeguard measures under modes 3 and 4, the delegation did not see that any purpose would be served by dis-establishment, withdrawal of licenses of operating service suppliers or digressing from a Member's previous commitments. As to the definition of "domestic industry", at this stage this delegation was of the view that such a definition should

encompass established suppliers of foreign origin, including any joint ventures, as well as national suppliers.

4) The representative of Hong Kong said that the purpose of their submission was to help advance the discussion on an ESM in a focused manner. The paper suggested an approach under which the Working Party could conduct a balanced examination of a set of key issues in order to assess whether having an ESM would be appropriate. These issues related to: dealing with the four modes of supply in considering how to establish an ESM; the difficulty in demonstrating serious injury and in establishing causality; distinguishing between domestic service suppliers and national service suppliers.

5) The representative of Mexico indicated that in preparing answers to the questionnaire, the aim had been to contribute to the analysis of the possibility of having an ESM in the services sector; therefore the information contained in that document should not be interpreted as Mexico's position on the subject. She observed that in services, the different forms of access to the market were based on laws and regulations for each specific sector; it would, therefore, be important to determine whether it was appropriate to modify these laws and regulations when introducing safeguards in emergency situations. She felt that the Working Party should work on a definition of "injury", and address the difficulties presented by the lack of statistics in services.

6) In introducing its submission, the representative of India said that a safeguard measure should address an unforeseen situation and focus on specific commitments in the schedule of the Member invoking the safeguard mechanism. The measure should apply on an MFN basis, for a limited period of time, and subject to other conditions to be drawn up in the course of the discussion.

7) In Poland's view there was a need to develop an ESM under GATS. This mechanism should be intended to deal with a threat to a domestic industry arising from increased imports. It would support liberalization of services trade and help achieve higher level of commitments. The economic objective of a safeguard action should be to protect domestic production consisting of national service suppliers. The distinction between foreign and national service suppliers should be based on the definitions contained in Article XXVIII of GATS. He also said that the distinction between establishment rights *per se* and post-establishment operations should be relevant in relation to possible safeguard measures under modes 3 and 4. A Member could use the mechanism only in respect to new entrants. Safeguard actions should be applied in principle on a non-discriminatory basis except for the cases provided for in Article V of GATS. The criteria in the existing Safeguards Agreement defining critical circumstances, duration, and procedure of application could in principle be adapted to the services context.

8) The representative of the European Communities and their Member States indicated that in their view the questions of desirability and feasibility of a ESM under GATS were still unclear. Further discussion should be conducted on the question of desirability, focusing on whether a safeguard mechanism could indeed serve as a device for progressive liberalization. As to the feasibility question, she felt that the Working Party needed to pursue further discussions on the disciplines that

would be attached to a possible safeguard clause. Invoking such a clause would only be justified when a Member faced unforeseen circumstances in an area where that Member had made specific commitments. Bearing in mind that Members also had obligations under the GATS with respect to services areas where specific commitments had not been taken, it was necessary to examine whether the invocation of a safeguard would be limited to specific commitments. In light of the fact that there was not a definition or a clear understanding of what was meant by •unforeseen circumstances•, it would be useful to determine to what extent Members wanted to pursue that notion and whether they wanted to achieve a certain degree of common understanding on it. Since she was sceptical about the need for a safeguard clause because it could be used as an instrument to close the market rather than to open it, it would be useful to identify what Members could conceive as •unforeseen circumstances•. She stressed the importance of defining •injury• and, in this respect, the notion of •industry•. These questions should be addressed taking into account the different modes of supply, especially mode 3. She shared the view that for these distinctions the Working Party should take into account the definitions contained in GATS. As to the issue of how to measure imports and, in this respect, the difficulties presented by the lack of statistics, she considered that these arguments could not be decisive against the feasibility of a safeguard clause since statistics were required for other purposes within the context of GATS. Lack of data, nevertheless, raised questions about the availability of statistics and whether the information provided by those statistics was sufficient for the determination of injury. She suggested that the Working Party pursue further discussion on the notions of •increased imports• and •causal link•.

9) The representative of the United States observed that as a working proposition the notion of •injury• was based on very specific criteria that relied on sophisticated data, within the context of existing GATT Agreements. This was because countries conceived injury in different ways which made it necessary to develop specific disciplines for its determination. He said that in the absence of data in the services area, it would be preferable to use the term •adverse effects• instead of •injury• because Members could not expect, notwithstanding any effort undertaken to improve statistics, to have the kind of data in services that would enable the notion of injury to be used in a predictable and transparent manner. He raised the question of whether the Safeguard mechanism under GATS should be a generic one applied to any sector as it was under Article XIX of GATT 1994, or whether it should be designed on the basis of scheduled commitments that would include safeguard-type provisions to address specific circumstances. He expressed reservations about the possibility of justifying safeguards on the basis of unanticipated circumstances. In services, Members did not bind only a tariff, but a set of regulations that had an objective. Members should, therefore, be able to inscribe a safeguard in their schedule to address situations in which they might take a temporary measure.

10) The Chairperson summarized the informal discussion conducted on the 20 May 1997. She observed that the Working Party was making progress on this issue in terms of the range of views and ideas that had been expressed. She said that based on the previous informal consultations and the formal discussion now being conducted, Members might wish to focus on four questions: (a) On whose behalf would emergency safeguard action be taken? (b) In what circumstances would

emergency safeguard action be taken and what would be the purpose of such action? (c) How would injury be determined and how would a causal link be established with increased imports?, and (d) What measures would be taken under the emergency safeguard mechanism? Are some measures deemed more suitable than others?

11) The representative of Morocco indicated that he would like to include in the discussion whether an emergency safeguard measure would be feasible in situations where a license was required in a given sector, and also to what extent a safeguard action could be applicable to a specific sector, for instance telecommunications. The representative of Hong Kong suggested that for the time being issues of procedure could be set aside and the discussion should focus on how the principles to be attached to a possible ESM would work in practice. The Chairperson proposed circulating a non-paper containing the list of the questions referred to previously, as a basis to structure the informal consultations. The Working Party accepted this proposal.

Negotiations on subsidies under Article XV of the GATS

12) The Chairperson recalled that the Working Party had established 15 May 1997 as the deadline for submissions of responses to the subsidy questionnaire (S/WPGR/W/16). She noted that no responses had been received yet. She urged delegations to make their best effort to provide responses as soon as possible because that information would help in the substantive discussion. She stressed that the Working Party should not let any substantive discussion of the subject depend entirely on the information gathering exercise.

Negotiations on Government Procurement under Article XIII of GATS.

13) The Chairperson indicated that since the previous meeting, responses to the procurement questionnaire had been received from Mexico (S/WPGR/W/11/Add.18) and Argentina (S/WPGR/W/11/Add.19). This brought the total number of responses received to 19, including the ones that had been received previously from Norway, Switzerland, Brazil, New Zealand, Japan, United States, Canada, Colombia, Hong Kong, European Communities, Australia, Poland, Korea, India, Chile, Singapore and Hungary. She recalled that at the previous meeting Members had requested the Secretariat to obtain information on government procurement regimes gathered by APEC and FTAA. She indicated that this information had already been requested but it would probably take some time before it could be provided. She suggested that meanwhile those Members of the Working Party who were also Members of APEC and/or FTAA may choose to make available to the Working Party their submissions made in those groups. She recalled that at the previous meeting, New Zealand had shared with Members the preliminary results of their analysis of the responses to the questionnaire, and some other delegations had planned to undertake their own analysis.

14) The representative of Canada stated that the Government Procurement Expert Group, within the context of APEC, had decided to provide an input into

the work of the Working Group on Transparency in Government Procurement. That contribution, which would be in the form of the surveys and the Chairperson's summary of survey conclusions, would be forthcoming over the summer period. He said that his delegation was willing to submit individually its surveys prepared for the APEC and FTAA processes.

15) The representative of New Zealand stated that her delegation had continued with the analysis of the responses examining the third area identified in the Chairman's note of 21 February 1997, namely questions 5, 7 and 8 relating to disciplines on procurement procedures. She noted that responses suggested that government procurement in services is largely decentralised, and that procedures followed in different Members regarding publication, tender processing and post-award information, were quite similar. She said that these common threads could provide a useful basis for further analysis and discussion in the Working Party. A formal submission of the results was still being considered by her authorities.

16) The representative of Argentina indicated that they had also initiated an analysis, so far covering parts 1 and 2, relating to Scope and Coverage and Basic Disciplines, i.e. national treatment and MFN treatment. In his view, it would be important to consider whether it would be desirable to have a definition of government procurement when drawing up future disciplines or whether it was sufficient to have a definition like the one in paragraph 1 of Article III of GATS. As to coverage, he said that most replies refer to services in general, without clarifying the existence of possible exceptions relating to different sectors, which in his view did not necessarily mean that all services sectors were covered by the relevant legislation. Generally countries applied the same norms to government procurement of goods and services, while some did have distinctions. In his view, in cases where different modalities were used, the Working Party should analyze how to determine the application of the standards in mixed contracting, which included goods and services. Another issue to be reflected upon would be the degree of centralization and decentralization of both standards and operational aspects. Other aspects that deserved attention were MFN treatment, which did not seem to characterise the relations between Members in this area, and the granting of preferences to national suppliers of services, which seemed to be a common practice.

17) Noting that the delegation of New Zealand was considering the circulation to Members of the results of its examination of the responses to the questionnaire, the Chairperson encouraged Argentina to consider doing the same. She invited delegations to comment on the procedural aspects of the work in this area.

18) The representative of Norway stressed that her delegation would like to see the Working Party advancing its discussion in this area. To this effect she suggested that the Secretariat prepare a paper analysing the responses to the questionnaire that the Working Party had received so far. Based on such a paper, the Working Party could examine the similarities and differences of the various regimes more deeply. Subsequently, Members should start work on the basis of the Chairperson's note outlining the main elements to be include in an agreement. Several delegations expressed support for this proposal. Australia indicated that perhaps the Secretariat should start the analysis of parts 1 and 2, namely Scope and

Coverage and Basic Disciplines, i.e. national treatment and MFN treatment. Argentina, in supporting Australia's proposal, said that bearing in mind the fact that the third item of the note related to transparency and to avoid duplication of work, it would perhaps be useful to initiate the analysis with parts 1 and 2 only. Several delegations supported this proposal but emphasized the importance of transparency in this area and stressed the need to avoid setting any explicit or implicit priorities.

19) In summarizing the discussion, the Chairperson said that there was a general consensus that the Secretariat should be asked to prepare an analysis of the responses to the questionnaire. She indicated that in suggesting that the analysis begin with parts 1 and 2 of the Chair's note, there was no intention of setting priorities among the possible elements of multilateral disciplines but to follow a sequence in the light of what could be achieved before the following meeting.

Date of the next meeting of the Working Party.

20) The Chairperson said that a tentative date for the following meeting would be 23 July 1997. This date would be confirmed after consulting with the other bodies related to government procurement.

Other Business.

21) There was no item under Other Business.

RESTRICTED

S/WPGR/M/10

1 May 1997

WORLD TRADE ORGANIZATION

(97-1896)

Working Party on GATS Rules

REPORT OF THE MEETING OF 13 MARCH 1997

Note by the Secretariat

1) The tenth meeting of the Working Party on GATS Rules was chaired by Ms. Jill Courtney of Australia. The agenda consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on Government procurement under Article XIII of the GATS; negotiations on subsidies under Article XV of the GATS; date of the next meeting of the Working Party; and Other business.

Negotiations on Safeguards under Article X of GATS

2) The Chairperson recalled that the Working Party had agreed at its eighth meeting last October that delegations would try to provide answers on a voluntary basis to a series of written questions which had been circulated in a working document S/WPGR/W/15. She also recalled that at the previous meeting several delegations had indicated their intention to submit written answers to the questionnaire. She indicated that written answers had been submitted only by the delegation of Thailand (S/WPGR/W/15/Add.1). She stressed the need for more written submissions and more general views on safeguards from Members if the Working Party was to meet the deadline of the end of 1997. Several delegations indicated that answers to the questionnaire were under preparation in capitals and would be submitted shortly.

3) In presenting the response to the questionnaire, the delegate of Thailand emphasized the preliminary nature of the submission. Not all the questions were answered, and Thailand would continue to explore the remaining aspects and would submit comments in due course. He also proposed an informal meeting of the Working Party to discuss the issue of safeguards. Several delegations expressed their support for this proposal.

4) One delegation noted that of the three areas being considered by the Working Party, the negotiations on safeguards under Article X of GATS were the only ones that had a precise deadline. Without disregarding the government procurement and subsidies negotiations, safeguards should be given an appropriate

degree of priority. He also recalled that a group of delegations had submitted on 29 July 1996 what could be points of discussions on this issue.

5) Other delegations reiterated the view that one of the objectives of an emergency safeguard mechanism in GATS would be to address an unforeseen situation affecting a Member's schedule of commitments. Such a mechanism would be available to the host country as an emergency measure, which by definition would be of a transitional nature. Another representative expressed reservations about the desirability of having a general safeguards mechanism, given the practical difficulties involved. He indicated that safeguards might be appropriate in the context of scheduling, where one would be tailoring a safeguard measure to the particular sector involved. Certain actions of a temporary nature could thus be taken in an appropriate specific sectoral context. Following this approach, some criteria would need to be developed, including with respect to different modes of supply. Perhaps the hardest obstacle to overcome was the determination of injury, which should be subject to objective criteria. He noted that the absence of data was a problem in services and therefore the notion of a safeguard had to be formulated in somewhat different terms than those applied in the context of GATT. The representative stated that he would circulate these ideas among the Members.

6) Some delegations supported the view that even though the questionnaire had been tailored to address the desirability and feasibility of safeguards in services, further analytical work was needed on the conceptual problems identified in the papers that had been submitted. One of these delegations suggested that the Working Party should discuss each mode of supply at a time, starting with the most complex one, which in his view was the commercial presence mode. He also proposed that the Secretariat prepare a paper, identifying possible safeguard measures applicable to the commercial presence mode, particularly in the post establishment phase. Such a paper should also identify the possible impact on other modes of safeguard measures adopted in the commercial presence mode. Finally, consideration should be given to the question of the applicability of safeguard measures to joint ventures and the practical difficulties inherent in their application.

7) One representative observed that a vital starting point for the discussion was the first question of the questionnaire relating to the justification and purpose of a safeguard measure. Another key question was 1(d), concerning the economic objectives of a safeguard, and she wondered whether the objectives listed in the question were in fact broad enough. She suggested that the protection of the interests of consumers and users under the general principles of competition law and policy should feature in any analysis of these issues in the services context. She suggested a postponement in the preparation of any paper identifying safeguards for the different modes of supply until the Working Party had conducted a more in-depth informal discussion of the answers to the Questionnaire and identified common issues that needed to be carried forward on an item by item basis.

8) In summing up the discussion, the Chairperson observed that there was general agreement on having informal consultations on this agenda item soon and indicated that she would be consulting on a suitable date for that purpose. As to

the issue of how to structure the discussion in an informal meeting, she noted that there had been proposals for an analytical input in respect of the justification and purpose of safeguards in a mode by mode analysis. As a response to those proposals, she said that she intended to circulate a non-paper under her own responsibility which would deal with some of the issues referred to, and which would be designed to focus the discussion on issues that needed to be addressed in order to make progress in the subject. Delegations were agreeable to the Chairperson's suggestion.

Negotiations on Government Procurement under Article XIII of the GATS

9) The Chairperson noted that since the previous meeting Singapore (S/WPGR/W/11/Add.16) and Hungary (S/WPGR/W/11/Add.17) had submitted answers to the Procurement Questionnaire. She also drew the attention of the Working Party to the note circulated by the former Chairman suggesting how some of the principles requiring discussion in the Government Procurement field might be linked to particular parts of the procurement questionnaire. She invited delegations to comment on this note and also to express views on what to do with information that the Working Party had from the replies to the procurement questionnaire.

10) The representative of New Zealand stated that her delegation had examined some of the key principles pertaining to government procurement in services together with the questionnaire responses received. The examination had been confined so far to the first two areas identified in the Chairman's note. Her delegation had sought to draw out areas where common threads appeared to emerge from the questionnaire responses, to highlight major questions requiring examination and to suggest some approaches to the further work of the Working Party in this area. She indicated her observations and said that she was considering to circulate them among the Members. Several delegations supported the view that the Working Party should not go through a process of examining Members' answers one by one, but instead should attempt to identify patterns in the information submitted. One delegation observed that in other regional groupings, specifically APEC and FTAA, questionnaires had been circulated and responses had been given by a large number of participants. He suggested expanding the scope of the exercise through inclusion of information gathered in those questionnaires.

11) One delegation expressed the concern that there may be duplication of work in the area of transparency. He therefore suggested that the Working Party should in the first instance focus on the basic disciplines of national treatment and MFN, and that transparency could then be taken up at a later stage. In his view, Members could consider how to incorporate national treatment and MFN in the present context, since the approach in GATS was different from the approach followed in the plurilateral agreement on government procurement. Another representative was of the view that the Working Party should cover all aspects of procurement. In his opinion, without a discussion of transparency, any provisions relating to national treatment and MFN would have limited meaning. The Working Party had to examine all relevant principles, and in the light of progress, determine how best to avoid overlap. Another delegation suggested that there should be coordination

with the GPA Committee and transparency body. Where possible, back-to-back meetings should be organized with the other two bodies dealing with procurement.

12) In regard to the Chairman's note dated 21 February 1997, the representative of Hong Kong suggested that for the sake of completeness, three more elements of multilateral disciplines be included in the discussion: first, exceptions which would go under item 2 of the basic principles; second, challenge procedures which could go under item 4 on enforcement mechanisms; and third, reporting requirements, which could be a new item or go under item 3.a. on disciplines on procurement procedures. Similarly, the representative of India requested the inclusion of question 2 on the administrative structure under item 3.a. on disciplines on procurement procedures so that the question would be covered by the substantive discussion.

13) In summarizing the discussion, the chairperson noted that the Working Party had expressed some concern about duplication of work in this area. Nevertheless, she stressed that these concerns should not prevent the Working Party from continuing to work on its mandate. In response to a proposal for coordination of meetings, she stated that consultations with the other bodies would be conducted to that effect. In light of the preceding discussion, the Chairperson suggested that the Secretariat be requested to compile the information gathered by ATEC and FTAA in the area of government procurement. The Working Party was agreeable to this suggestion. Also, the Chairperson noted that certain delegations had indicated their interest in including some issues not covered by the Chairman's note on linkages between various principles relevant to procurement and the questionnaire. She assured delegations that the discussion would cover these points. She also indicated her intention to hold informal consultations on the issue of procurement at an appropriate time.

Negotiations on Subsidies under Article XV of GATS

14) The Chairperson recalled that at its previous meeting the Working Party had established 15 May 1997 as the deadline for submissions of responses to the subsidy questionnaire (S/WPGR/W/16). She observed that once the information had been received, the Working Party would be in a better position to proceed with substantive discussions. She emphasized the importance of meeting the deadline and urged delegations to make every possible effort to that effect.

Date of the next meeting of the Working Party

15) The Chairperson stated that she would consult further on the date of the next meeting.

Other business

16) No matters were raised under other business.

RESTRICTED

S/WPGR/M/9

7 March 1997

WORLD TRADE
ORGANIZATION

(97-0910)

Working Party on GATS Rules

REPORT OF THE MEETING OF 23 JANUARY 1997

Note by the Secretariat

1) The ninth meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of five items: negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; negotiations on safeguards under Article X of the GATS; date of the next meeting of the Working Party; and Other Business.

Negotiations on subsidies under Article XV of the GATS

2) The Chairman stated that in light of the comments made at the eighth meeting of the Working Party on the subsidies questionnaire prepared by the Secretariat, and following further informal discussions, a revised draft of the subsidies questionnaire was before the Working Party. The Working Party approved the text and established 15 May 1997 as the deadline for submission of responses. The Chairman noted that the Singapore Declaration called for more analytical work in the area of subsidies and invited comments on the subject.

3) The representative of the Philippines made the following statement on behalf of ASEAN: •ASEAN acknowledges that an information exchange exercise in subsidies is mandated by Article XV of GATS. We note that the draft questionnaire requires detailed and comprehensive information on all subsidy programmes related to services trade administered by Members. As we have no indications as to how subsidy disciplines in services would eventually be devised, some of the responses to the questionnaire may not be clear and could prejudice the negotiations. In addition, we would like to underline that the statistical and conceptual problems associated with services data would make the information exchange exercise untenable. ASEAN is of the view that a more prudent and constructive approach is for the WPGR to work on the subsidy disciplines in parallel with an analytical exercise. As a start, the Secretariat could elaborate on the following questions: i) In light of the four modes of services, what could constitute subsidies in services? Should there be one definition for all four modes or individual definition of each mode?; ii) Is the definition contained in Article XV:1 of the Agreement on Subsidies and Countervailing Measures able to take into

account the differences in the four modes of supply?; iii) What are the trade distortive effects? How does one define and measure these effects under the four modes of supply?•.

4) Some delegations expressed the view that the information to be provided should be a narrative description, which could be comprehensive, but not at a level of detail that would prove excessively burdensome. One delegation added that Members should use the working definition contained in the questionnaire and avoid an alternative definition. She also stressed the importance of providing information covering all areas of services at all levels of government. Another delegation reiterated that the information exchange was mandated under Article XV of GATS and that Members expected to receive as much information as was available from other Members.

5) Several delegations observed that starting analytical work without an adequate information base would be very difficult. Others also acknowledged that conducting analytical work without completing the information exchange on subsidies might limit the discussion to a degree, but were nevertheless of the view that the analytical discussion should be started shortly.

Negotiations on government procurement under Article XIII of the GATS

6) The Chairman recalled that Ministers in Singapore referred to the need for more analytical work on procurement and invited comments from delegations. He also suggested that Members might consider the implications of the new government procurement negotiating mandate from Singapore for the work of the Working Party. He emphasized that the Working Party still had a negotiating mandate that they needed to respond to, but at the same time, it was important to avoid unnecessary duplication of work.

7) One delegation stated that it was clear there would be overlaps between the work of the Working Party and the work of the new working group mandated in Singapore. He noted that there were three potential fora for procurement in the WTO -- under the Government Procurement Agreement, under GATS Article XIII, and under the Singapore mandate. He expressed concern regarding the risk of contradictory discussions going on in parallel fora. He suggested deferring the establishment of an agenda for negotiations in the Working Party, at least until it became clearer as to what might develop in the new group mandated by the Singapore Ministerial.

8) Several delegations were of the view that the focus of attention of the Working Party should be its own agenda. It was premature to consider possible implications of the Singapore decision for the Working Party or how work might be coordinated with the new body. These questions would have to wait until the new body was up a running. A number of delegations were of the view that the Singapore decision should not slow down the pace of work in the Working Party. The Chairman proposed that the Working Party might use the material provided in answers to the questionnaire to consider some of the key principles that would need to be addressed when considering the GATS mandate on procurement. The Working Party agreed to do this at its next meeting, and the Chairman undertook

to circulate a short note that would provide an indication of how the questionnaire replies might relate to particular principles. The Chairman urged those Members who had not yet submitted replies to the questionnaire to make such submissions as soon as possible; if it was their intention to participate in the information gathering exercise.

Negotiations on safeguards under Article X of GATS

9) The Chairman recalled that at the last meeting Members agreed to provide answers on a voluntary basis to a series of written questions contained in the working document S/WPGR/W/15. He observed that such information would help the Working Party in its task and urged Members to do their utmost to provide written replies to the questions as quickly as possible. He also reminded delegations that some of them had undertaken to provide information on services safeguard measures contained in domestic legislation. He emphasized that in the safeguards area the Working Party needed to recognize that it was under time pressure, particularly in view of the Ministerial endorsement of the December 1997 deadline for negotiations on this subject. The Working Party established a target date of the end of February 1997, by which delegations would endeavour to provide written answers to the Chairman's questions. Several delegations confirmed their intention to submit written replies. The Chairman also noted that certain delegations had already made written submissions to the Working Party, which contained useful material for the discussion. It was suggested that the Working Party should agree upon a timetable for its work on safeguards at the next meeting.

Date of the next meeting of the Working Party

10) The Working Party agreed to hold its next meeting on Thursday, 13 March 1997.

Other business

11) The Chairman recalled that the standard practice in WTO was for the Chairpersons to rotate on a yearly basis. He noted that his term had expired and urged Members to reach consensus on the appointment of a new chairperson for the next meeting.

RESTRICTED

S/WPGR/M/8
13 December 1996

WORLD TRADE ORGANIZATION

(96-5320)

Working Party on GATS Rules

REPORT OF THE MEETING OF 8 AND 14 OCTOBER 1996

Note by the Secretariat

1) The eighth meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of six items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; report on the activities of the Working Party to the Council for Trade in Services; date of the next meeting of the Working Party; and other business.

Negotiations on safeguards under Article X of GATS

2) The Chairman noted that since the last meeting of the Working Party, some of its Members had held useful informal discussions on the question of emergency safeguards under GATS. The representative of Switzerland formally introduced a submission to the Working Party (S/WPGR/W/14) which had previously been discussed in an informal meeting. He indicated that the paper sought to cover issues that would have to be addressed in deciding upon the question of emergency safeguards under GATS. The emphasis was upon conceptual issues rather than matters of form and practical modalities. The paper was presented without prejudice to the basic question as to whether emergency safeguard measures were desirable under GATS.

3) The Chairman stated that following informal consultations and discussions in the Working Party, it had been agreed that a series of questions presented by the Chairman on various aspects of the safeguards issue, supplemented by a number of additional questions proposed by delegations, would be issued as a document of the Working Party (S/WPGR/W/15). It was further agreed that Members of the Working Party would supply written answers to these questions on a voluntary basis, and that those intending to do so would endeavour to provide the answers by the time of the next formal meeting of the Working Party.

Negotiations on subsidies under Article XV of GATS

4) The Chairman recalled that the Working Party had requested the Secretariat to draft proposed language for a questionnaire that would serve as a

basis for the information exchange on subsidies relating to trade in services which was called for in paragraph 1 of Article XV. The relevant document was now before the Working Party. The Chairman also recalled that the Working Party had already agreed on an approach to defining subsidies for the purpose of an information exchange. The definition of subsidies would be that contained in paragraph 1 of the Agreement on Subsidies and Countervailing Measures, and Members were at liberty to vary or supplement this definition if they so desired, provided that any modifications were indicated at the time of supplying information.

5) Several delegations expressed the view that the definition of subsidies in the secretariat note should be treated as indicative, and that Members would be free to introduce their own variations as they saw fit. One representative proposed that the Working Party should consider excluding broad-based social subsidies affecting trade in services from the purview of the information exchange. Other delegations said that they preferred to avoid any *a priori* exclusion of a category of subsidy measures, particularly in light of the scarcity of readily available information on the subsidy policies of governments in the field of services. Another delegation emphasized the need for clarity with respect to the objectives and nature of subsidy measures, bearing in mind that due consideration must be given both to the potential for subsidies to distort trade and the legitimacy of certain social and economic aims underlying some subsidies. A representative stated that her delegation understood the information-gathering exercise to encompass both federal and sub-federal subsidy measures. An idea proposed by one delegation was to take as a starting point the definitions and disciplines of the Agreement on Subsidies and Countervailing Measures, and to see how far the mandate of the Working Party could be carried on this basis.

6) A number of delegations said that in their view, replies to the proposed questionnaire should be supplied on a voluntary basis. One of these delegations added that appropriate flexibility should be shown towards developing countries in relation to the responses required, and that any information provided should not be misused in the context of possible future negotiations. Another delegation challenged the view that responses to the questionnaire should be provided on a voluntary basis, bearing in mind that all Members were already committed to an information exchange under Article XV:1. One representative said that the proposed questionnaire was too detailed and would impose a substantial burden on delegations. He suggested that an alternative approach might be to focus on specific sectors, on the premise that subsidies in the field of services only affected a limited number of service activities. Other delegations were of the view that it would be inadvisable to truncate the scope of information-gathering efforts at the outset.

7) Some more specific proposals were made in relation to the draft questionnaire. One delegation suggested that the order of the fifth, sixth, seventh and eighth questions should be changed, such that questions seven and eight would come first, followed by question six and question five. It was also suggested that question 11 should be deleted, but this was opposed on the grounds that the question was already formulated in a manner which recognized that the relevant statistical information requested may not be available. Another proposal was for

the language of question 8 to be changed so as to ask about eligibility for subsidies rather than about the sectors and entities that have actually benefitted from subsidies. Finally, a delegation proposed the addition of two further questions, both of which focused on contrasting approaches and policies relating to subsidies in the respective fields of goods and services.

8) The Working Party agreed to hold informal consultations on this matter prior to the next meeting of the Working Party. In the meanwhile, the Secretariat would produce a second draft of the subsidies questionnaire, taking account of the drafting suggestions that had been made.

Negotiations on government procurement under Article XIII of GATS

9) The Chairman noted that nine countries -- Norway, Switzerland, Brazil, New Zealand, Japan, the United States, Canada, Colombia and Hong Kong -- had submitted replies to the procurement questionnaire. Certain delegations said that it was important that more Members submit replies to the questionnaire, as additional information on national procurement regimes would be useful for the negotiations. The Chairman observed that pressure of work had made it difficult to meet deadlines that had been set, and urged those delegations intending to do so to submit replies to the questionnaire at their earliest convenience. One delegation was of the view that while the exchange of basic information was useful and important, the time was approaching when the Working Party would need to engage in negotiations on substantive matters, such as the application of the principles of most-favoured-nation and national treatment, and transparency, to procurement in the sphere of services.

10) A delegation cautioned against the proliferation of duplicative work on government procurement in the WTO, bearing in mind proposals for further work in this field currently under consideration in the context of preparations for the Singapore Ministerial Meeting. This delegation was of the view that it would be possible to establish a division of labour that would avoid such duplication. The GATS exercise entailed substantive negotiations on such matters as MFN and national treatment. Other delegations emphasized that there already existed a negotiating mandate under Article XIII of GATS, although this did not preclude consideration of other proposals made elsewhere. One representative said that while the GATS Article XIII mandate was clear, the need to seek a balanced approach to procurement should be borne in mind when considering the recent initiative put forward in the context of the Singapore Ministerial Meeting.

Report on the activities of the Working Party to the Council for Trade in Services

11) Following extensive formal and informal discussions on the Working Party's report to the Council, the Chairman indicated that he would forward a text to the Council, in light of further informal consultations.

Date of the next meeting of the Working Party

12) The Chairman stated that the date of the next meeting of the Working Party would be fixed in due course, probably for January 1997.

Other business

- 13) No matters were raised under other business.

RESTRICTED

S/WPGR/M/7
19 September 1996

WORLD TRADE ORGANIZATION

(96-3687)

Working Party on GATS Rules

REPORT OF THE MEETING OF 29 JULY 1996

Note by the Secretariat

1) The seventh meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of six items: negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; negotiations on safeguards under Article X of the GATS; work of the Working Party in relation to the Singapore Ministerial Meeting; date of the next meeting of the Working Party; and other business.

Negotiations on subsidies under Article XV of GATS

2) The Chairman noted that a particular theme in earlier discussions had been how to define subsidies in order to be able to proceed with the information exchange called for in paragraph 1 of Article XV. Several delegations had suggested that a starting point should be the experience gained under the Agreement on Subsidies and Countervailing Measures. The Chairman posed the question whether the definitions employed in Article 1 and Article 2 of this Agreement would be suitable as a basis for the information exchange on subsidies relating to trade in services. He noted that the basic thrust of the definition in Article 1 involved an actual or potential charge on the government account, or any income or price support, that conferred a benefit. Article 2 defined specificity. Thus, the notification requirements under the Agreement on Subsidies and Countervailing Measures concerned specific subsidies that conferred a benefit and involved an actual or potential charge on the government account (including revenue foregone) or any form of income or price support. The Chairman reminded Members that the present exercise did not involve a notification requirement, but merely an information exchange. Given the exploratory nature of the exercise, perhaps it should be kept as simple as possible in the first instance. Moreover, there was no sense in which information provided would be subject to legal interpretation. Several delegations reiterated the latter point, emphasizing that all the negotiating mandate called for was an exchange of information.

3) A number of delegations doubted the appropriateness of a questionnaire approach to the information exchange exercise. Others indicated that they saw little alternative to an approach based on a questionnaire. It was generally agreed that it

would be helpful to develop a set of relevant questions, but it was important not to insist upon excessive uniformity, as this would militate against the provision of useful information. The approach should be sufficiently flexible to allow Members to describe their subsidy policies in the manner they regarded as most useful for the work of the Working Party. It was also noted that if necessary, additional information could be solicited from Members at a later stage. One delegation stated that the approach adopted, including in relation to the definition of subsidy, should take adequate account of developing country considerations. Another delegation expressed the view that it would be more useful to focus upon the kinds of subsidies employed by Members, rather than upon the trade effects of such measures, since it would frequently be difficult to judge the trade effects of subsidies in a services context.

4) All delegations who spoke on the matter agreed that it was necessary to have a working definition of subsidies for the purpose of the information exchange. However, several delegations were of the view that the definitional element contained in Article 2 of the Agreement on Subsidies and Countervailing Measures was unsuitable for the present purposes. If the information exchange exercise related only to specific subsidies as defined in Article 2, this would truncate discussion in the Working Party and frustrate transparency. The suggestion was made that the working definition should be based on Article 1 of the Agreement, and that Members could then indicate additional definitional elements if they so wished. This approach was endorsed by the Working Party and the Chairman indicated that the Secretariat would draft a set of possible questions to be addressed in the information exchange exercise. The Working Party would consider the proposed questions at its next meeting.

Negotiations on government procurement under Article XIII of GATS

5) The Chairman referred to the discussions regarding government procurement that were taking place in the context of preparations for the Singapore Ministerial Meeting, and said that it was important to stay abreast of those discussions, as they may have implications for the Working Party's consideration of its negotiating mandate in this area. A number of delegations agreed with the Chairman, and one said that a proliferation of duplicative negotiating mandates and processes should be avoided. The representative of the United States said that his authorities had put forward a proposal in the heads of delegation preparatory process for Singapore. He said his government favoured a horizontal focus, believing that a single instrument covering all procurement was desirable, even if some specificities relating to services might have to be dealt with separately. Another delegation said that it should be borne in mind that a negotiating mandate already existed in services, whereas the comprehensive approach was still only a proposal.

6) The Chairman also reminded delegations that the Working Party had agreed to a voluntary exchange of information regarding national procurement regimes. So far, answers to the procurement questionnaire agreed by the Working Party (S/WPGR/W/11) had only been received from Norway (S/WPGR/W/11/Add.1) and Switzerland (S/WPGR/W/11/Add.2). A number of delegations indicated that answers to the questionnaire were under preparation in capitals and would be submitted shortly.

Negotiations on safeguards under Article X of GATS

7) The Chairman recalled that the Working Party had agreed at its March meeting to hold informal discussions on safeguards, and that it would be useful if delegations were to put forward some of their ideas on the question of an emergency safeguards mechanism in GATS. Although no additional submissions had been made to those of Australia (S/WPGR/W/5) and Thailand (S/WPGR/W/6), the Chairman proposed that the Working Party should hold an informal meeting prior to its next formal session. This proposal was supported by the Working Party. The Chairman expressed the hope that an informal setting would provide the opportunity to push the discussion forward both on substance and procedural questions. He noted that the deadline for completing the safeguards negotiations was 31 December 1997, which was less than a year and a half away, and that much work remained to be done.

8) The delegations of Egypt, India, Malaysia, Pakistan, Peru, Thailand and Venezuela submitted an informal note at the meeting which listed six points for discussion. These were definitional issues, criteria for determining serious threat of injury in trade in services, examination of emergency safeguard measures in other documents, the objectives of emergency safeguard measures in GATS, examination of possible emergency safeguard measures for different modes of supply, and special needs for developing countries. Eleven other delegations expressed their support for this proposal. Three other delegations voiced doubts about the merits of the case for emergency safeguards in GATS, but welcomed the informal note and agreed that the discussion needed to be advanced. Several delegations emphasized that many of the issues involved in this discussion were technically complex and in need of careful attention.

Consideration of the work of the Working Party in relation to the Singapore Ministerial Meeting

9) The Chairman raised the question whether the Ministerial Meeting in Singapore provided an opportunity to push forward the work of the Working Party on any front. It was for consideration whether there were any areas where new instructions from Ministers might be useful. Delegations indicated that these matters would be discussed in due course, including in the context of the heads of delegation process and the Council on Trade in Services.

Date of the next meeting of the Working Party

10) The Working Party agreed to hold its next meeting on the afternoon of Tuesday, 8 October 1996, immediately following an informal meeting that would take up the issue of safeguards.

Other business

11) No matters were raised under other business.

RESTRICTED

S/WPGR/M/6

22 July 1996

WORLD TRADE ORGANIZATION

(96-2887)

Working Party on GATS Rules

REPORT OF THE MEETING OF 3 JUNE 1996

Note by the Secretariat

1) The sixth meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of five items: negotiations on government procurement under Article XIII of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on safeguards under Article X of the GATS; date of the next meeting of the Working Party; and other business.

Negotiations on government procurement under Article XIII of the GATS

2) The Chairman recalled that the Working Party had agreed to set aside part of the present meeting for a discussion on the concept of transparency in the field of government procurement. In response to a request from one delegation, a representative from the Secretariat made a short presentation on transparency provisions contained in the Agreement on Government Procurement. The Secretariat representative said that transparency and non-discrimination were the twin pillars upon which the Agreement was founded. She identified three essential aspects of transparency. The first concerned pre-tendering procedures and the requirement for tendering entities to provide adequate and timely information of the intention to procure. Secondly, following the award of a contract, certain information relating to the award decision had to be made public. The third general aspect of transparency provisions under the Agreement related to the obligation to publish established rules and procedures in a readily accessible manner. The Secretariat representative also referred to discussions that had taken place in the Committee on Government Procurement in regard to the influence of information technology in promoting transparency, including through increased computerization of information relating to procurement.

3) Many delegations who spoke emphasized the key role of information in relation to procurement regimes, and therefore the need for a maximum degree of transparency. In this connection, information technology was crucial. One representative wondered whether the centralized collection and dissemination of information might be a task that could be suitably performed at the multilateral level. Another idea was to use the Internet as a medium for making information available in relation to procurement. The point was also made that while under

some national and regional procurement regimes all information was centralized, under others this was not the case, and trying to centralize all information might prove costly and difficult. Several delegations raised specific aspects of transparency, emphasizing the importance that they attached to them. These included the clarity and neutrality of technical specifications in tender documents, with emphasis where possible on performance rather than design, the prior specification of evaluation criteria, the establishment of clear and reasonable deadlines for all procedural aspects of procurement, and the use of bid challenge possibilities and other aspects of due process as instruments of transparency. One delegation expressed the view that transparency was not only important for suppliers, but was also useful in obliging purchasers to think carefully about the exact nature of the good or service to be purchased.

4) Some delegations expressed the view that although transparency was obviously of great importance, the need to promote non-discriminatory approaches to procurement and to respect due process were also vital elements of an open and competitive system of procurement. One delegation, supported by several others, said that it was also important to bear in mind the objective of progressive liberalization. Moreover, while transparency was undoubtedly crucial, it should not be over-emphasized. An excessive concern with transparency requirements could force governments and purchasing authorities into undesirable regulatory interventions whose effect might be to prejudice the openness of procurement markets. It was a matter of balance. Another representative observed that the GATS transparency requirements in Article III applied to Article XIII, and wondered what status any new transparency requirements relating to procurement might have within the structure of GATS as a whole. Would they be of general application, or applied selectively? Would they be linked to scheduled commitments, perhaps appearing as additional commitments? Other delegations agreed that these questions should be examined.

5) The representative of the United States made reference to the submission by his authorities of a proposal relating to procurement in the context of preparations for the Singapore Ministerial Meeting. He noted that this proposal emphasized the role of transparency, and foresaw a more gradual approach towards the question of non-discrimination in procurement. He urged the Working Party to keep abreast of the progress of discussions in the preparatory process for the Singapore meeting, since they could have implications for the work of the Working Party. In the meanwhile, he was of the view that the GATS exercise should move ahead in accordance with its mandate.

6) One delegation enquired about the actual coverage of the Agreement on Government Procurement (GPA) in terms of current procurement activity. The representative of the Secretariat said that extreme caution was required in making any estimates of covered procurement. However, it seemed that most central government entities (excluding defence-related entities) were covered by all GPA signatories. Perhaps somewhere between one-half and three-quarters of all sub-central procurement was similarly covered. It was important to note that these crude estimates did not capture the considerable variations in coverage that existed among countries. No estimate could be made of coverage in respect of other procurement entities, such as parastatals. One delegation emphasized the difficulty

of making reliable quantitative estimates, and added that there were vast gaps in coverage, worth trillions of dollars worldwide.

Negotiations on subsidies under Article XV of GATS

7) In considering the next steps in work on subsidies, particularly in relation to the requirement to determine a future work programme and to exchange information on subsidies related to trade in services, several delegations expressed the view that it was essential to arrive at a definition of subsidy. It was also suggested that perhaps a working definition could be agreed upon, without prejudice to any future decision regarding the nature of subsidy disciplines under GATS. A delegation said that if the concern was that the negotiations may be prejudged through the early establishment of a definition of subsidy for information gathering purposes, one way of avoiding this risk would be to focus in the first instance on the objectives of subsidies. Another delegation said that at least in the first instance, the Working Party should look at a broad definition of subsidy, going beyond the question whether a subsidy involved a direct budgetary contribution from government. The suggestion was made that as a first step, the Working Party might consider whether the Agreement on Subsidies and Countervailing Measures provided any useful guidance in the matter of a definition. The Chairman urged delegations to reflect further on this issue, which would be taken up at the next meeting.

8) A number of delegations addressed the question whether it was appropriate to distinguish between different categories of subsidy. One of these delegations made a three-fold distinction between subsidies directed explicitly at support of particular industries, subsidies designed to meet broad social and economic objectives, and other forms of government support. Another delegation said subsidy practices might be divided between those that were broad-based and permissible, those with trade effects that may need to be disciplined, and those that were clearly discriminatory and actionable, in that they focused on specific sectors or activities. A number of delegations agreed that categories such as these may correspond to different levels of discipline and available remedies that might be established, in a similar fashion to the approach adopted in the field of goods. However, further analysis would be required on this point. A delegation emphasized his view that while it may be warranted to make these kinds of distinctions, no subsidy practices should be excluded *a priori* from examination by the Working Party. A number of delegations were of the view that although it may be legitimate to exclude certain types of subsidy, such as broad-based social subsidies, from disciplines under GATS, such an approach should take into account the effects of subsidies as well as their aims. One delegation stated that any subsidy disciplines would need to accommodate the existence of different modes of supply under GATS. Referring to an earlier discussion in the Working Party, as well as to the Chilean submission in S/WPGR/W/10, a delegation expressed the view that it was as yet unclear that in choosing whether to emphasize a normative or a remedial approach to subsidy disciplines, the normative approach should be paramount. It was yet to be established that injury and causality investigations would be especially difficult in services. More generally, a good deal of analysis remained to be done in relation to the subsidy issue.

Negotiations on safeguards under Article X of GATS

9) The Chairman recalled that the Working Party had agreed it would be useful to discuss safeguards further in an informal setting, and that such a discussion would be more fruitful if it was based on written submissions by Members. Although certain delegations had indicated their intention to submit papers on safeguards, in addition to those already submitted by Australia and Thailand, these had not yet been forthcoming. The Chairman indicated his preference to wait for some written submissions before fixing a date for an informal meeting.

Next meeting of the Working Party

10) The Chairman said that the next meeting would be scheduled towards the end of July, if possible to coincide with meetings of the Committee on Subsidies and Countervailing Measures.

Other business

11) No matters were raised under other business.

RESTRICTED

S/WPGR/M/5

13 May 1996

WORLD TRADE ORGANIZATION

(96-1874)

Working Party on GATS Rules

REPORT OF THE MEETING OF 28 MARCH 1996

Note by the Secretariat

1. The fifth meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of five items: negotiations on subsidies under Article VX of the GATS; negotiations on emergency safeguards under Article X of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and Other Business.

Negotiations on subsidies under Article XV of GATS

2. The Chairman observed that this was the first time the issue of subsidies had been placed on the agenda. He recalled that the negotiating mandate in Article XV acknowledged that subsidies may, in certain circumstances, have distortive effects on trade in services. The mandate called upon Members to enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations were also to address the appropriateness of countervailing procedures. The mandate further stated that the negotiations would take into account the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. In addition, the Chairman observed that a footnote to paragraph 1 of Article XV required that a work programme be established to determine how, and in what time-frame, negotiations on multilateral disciplines were to be conducted. Finally, the mandate also stipulated that Members would exchange information concerning all subsidies related to trade in services that they provided to their domestic service suppliers.

3. The Chairman drew the attention of delegations to a background note by the Secretariat (S/WPGR/W/9) introducing the subject. In addition, Chile had circulated a document on subsidies immediately prior to the meeting, which would be circulated as a submission to the Working Party. In introducing his paper, the representative of Chile noted that subsidies could distort trade in services in various ways and could undermine the value of market access commitments under GATS. Moreover, subsidies could take many forms, not necessarily involving a financial

contribution by governments. It was essential to distinguish between broad-based subsidies aimed at achieving social and other national objectives, or at addressing market failure, and those subsidies designed to secure commercial advantage for a particular sub-set of services or service suppliers. These different categories of subsidy should not be treated in the same manner under GATS. It would be helpful in clarifying these issues if Members were to exchange information regarding their subsidy programmes, and a good starting point might be the notification obligations under Article 25 of the Agreement on Subsidies and Countervailing Measures.

4. The representative of Chile noted that enormous difficulties would be encountered in any attempt to define injury or causality under subsidy investigations in services, not least because of the complementarity in some circumstances of different modes of supply. A question would also arise as to the nature of countervailing measures in services. Moreover, a countervailing instrument could be misused for protectionist ends. These considerations favoured an approach that would focus on commitments to eliminate subsidies or reduce their effect on trade.

5. Recognizing the inherent complexity of the subsidy issue in services, many delegations urged a careful and systematic approach to the negotiating mandate. It was important to take full account of the structure of GATS, and the fact that certain subsidy disciplines already existed within this structure. Several delegations also noted that some lessons could be gleaned from the experience of dealing with subsidies in the field of goods, although there were important differences as well when it came to services. The difference in emphasis between *a priori* disciplines on subsidies and reliance on anti-subsidy remedies should be borne in mind. One representative stated that in exploring the kind of subsidy disciplines that might be developed, due consideration should be given to the needs of developing countries. Many delegations stressed the need for gathering information, including in relation to the subsidy practices of Members.

6. In summing up the discussion, the Chairman observed that many delegations had called for caution and careful analysis as the Working Party came to grips with the Article XV negotiating mandate. He urged delegations to put their ideas down on paper, and to give further consideration to those aspects of the negotiating mandate that called for the establishment of a work programme and the exchange of information. The Working Party agreed that the Secretariat would prepare two papers. One would identify subsidy and countervailing measure provisions applicable to services in regional agreements. The other would list subsidy measures that had been inscribed in Members' schedules of specific commitments.

Negotiations on safeguards under Article X of GATS

7. The Chairman noted that differences of view had been expressed as to whether the Article X negotiating mandate committed Members to establish safeguard disciplines, or only to explore the possibility of doing so. He urged that this issue be set aside, and that delegations focus instead on the substantive question of what a safeguard provision might be used for, and how such a provision might

work. These were the issues to be addressed in considering the mandate for a decision on “the question of emergency safeguard measures based on the principle of non-discrimination.” The Chairman observed that those arguing against the establishment of a safeguard mechanism had based their case on the view that emergency safeguards were intrinsically unnecessary in the field of services, that the nature and scope of specific commitments under GATS rendered safeguards superfluous, and that methodological and statistical difficulties in designing and implementing a safeguard provision were so severe as to outweigh any possible benefit from doing so. On the other hand, those defending the case for a safeguard had argued that action under Article XXI to withdraw or modify specific commitments was not designed as an emergency safeguard, and could not meet the need for such a provision. Those in favour of a safeguard instrument also argued that higher levels of scheduled commitments would likely be forthcoming if subsequent emergency safeguard action were possible, that some domestic legislation may already contemplate safeguards for services and would need to be accommodated in GATS, and that methodological and statistical challenges were not sufficient reason for dispensing with any further consideration of the merits of a safeguard provision. The Chairman said that these different views needed to be developed and defended with greater specificity if the Working Party were to make further progress. He urged delegations to focus on this challenge and to follow the example of those who had already made written submissions. In response to a request from several delegations, the Chairman agreed to circulate his introductory comments as an informal document.

8. In opening the discussion, the Chairman also drew the attention of delegations to a note prepared by the Secretariat entitled “Emergency Safeguard Measures in GATS: The Applicability of Concepts Applied in the WTO Agreement on Safeguards” (S/WPGR/W/8). Several delegations agreed that more work should be done in relation to the question whether a safeguard mechanism should be developed in GATS. A number of these delegations undertook to prepare written submissions. Certain representatives said that in addressing the various negotiating mandates before it, the Working Party should accord balanced treatment to all of the subjects, bearing in mind the differences in priorities and interests that existed among Members.

9. Some delegations reiterated earlier statements regarding the case for and against a safeguard mechanism. Among the important issues to be addressed as the Working Part deliberated further, delegations identified the questions of how to define an emergency, how to accommodate the needs of developing countries, how to define critical circumstances, how to provide for temporary safeguard action, and how to address differences arising from alternative modes of supply. At the suggestion of a number of delegations, the Chairman proposed that after more written submissions had been received, the Working Party should hold an informal meeting to discuss safeguards in more depth, and consider the next steps to be taken in pursuit of the negotiating mandate. Members of the working Party agreed with the Chairman’s suggestion. It was also agreed that safeguards, like the other two negotiating subjects under the Working Party’s mandate, would remain for the time being on the agenda of future meetings.

Negotiations on government procurement under Article XIII

10. The Chairman recalled that at its previous meeting, the Working Party had agreed that it would not take up government procurement in a substantive manner at the present meeting, but rather would seek to secure agreement on a set of questions that Members would attempt to answer in regard to their procurement regimes. An informal meeting had been held on 25 March 1996, at which delegations had come close to agreeing on an appropriate set of questions. The Chairman recalled the understanding that a pragmatic approach would be adopted to information-gathering, in order to ensure that this did not become an end in itself, thus crowding out substantive discussion. Delegations would make their best endeavours to provide all the information sought. Notwithstanding the voluntary nature of the exercise, the Chairman urged the Working Party to agree upon a date by which delegations would provide information. The Working Party agreed on the set of questions drafted by the Secretariat and modified at the informal meeting, and also agreed that 28 June 1996 would be the date by which delegations would attempt to provide replies to the questions. In the meantime, the set of questions would be issued as a working document.

Next Meeting of the Working Party

11. The Chairman said that the date of the next meeting of the Working Party would be set to coincide with a meeting of the Committee on Government Procurement.

Other Business

12. No matters were raised under Other Business.

RESTRICTED

S/WPGR/M/4
19 March 1996

WORLD TRADE ORGANIZATION

(96-0989)

Working Party on GATS Rules

REPORT OF THE MEETING OF 23 FEBRUARY 1996

Note by the Secretariat

1. The fourth meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of four items: negotiations on government procurement under Article XIII of the GATS, negotiations on emergency safeguards under Article X of the GATS, next meeting of the Working Party, and Other Business.

Negotiations on Government Procurement under Article XIII of the GATS

2. The Chairman observed that in deciding how to respond to the Article XIII negotiating mandate on government procurement, it was important to consider what lessons could be drawn from the existing plurilateral Government Procurement Agreement (GPA). In particular, he considered it would be useful to understand why the GPA had not attracted broader membership. One representative said that her authorities had subscribed to the Tokyo Round Agreement on Government Procurement, but had decided not to participate in the Uruguay Round Agreement because of its reciprocity-based discriminatory features. This decision had not, however, influenced the open and non-discriminatory approach to procurement maintained by her authorities. Another representative indicated that his country also maintained open, non-discriminatory and transparent procurement arrangements, but had not signed the GPA. Among the reasons for this were the fact that with its current membership, the GPA did not seem to offer significant procurement opportunities for developing countries, and membership implied significant administrative costs.

3. One delegation expressed the view that a key element of a sound procurement regime was transparency. Transparent procurement arrangements required timely publication of information on tenders and tendering decisions, equitable procedures based on clear criteria, and effective arrangements to deal with any disputes that may arise. The establishment of such arrangements did not necessarily require detailed or cumbersome procedures. A number of other delegations agreed that transparency was very important in the field of procurement. It was suggested that transparency should be the focus of discussion at a future meeting. Several delegations emphasized that in dealing with the

GATS negotiating mandate on procurement, it should be borne in mind that there were different models or approaches to the development of a multilateral procurement regime from which governments could choose.

4. The Chairman recalled that at the last meeting of the Working Party, the Secretariat had been asked to prepare a note on alternative approaches to information gathering on Members' procurement regimes. The resulting document was to be found in S/WPGR/W/7 and Addendum 1. The Chairman noted that while no delegation had questioned the need to improve the information base available to the Working Party, certain differences of emphasis were apparent as to how this might best be achieved. A number of delegations stressed the need for a systematic and reasonably detailed approach based on a questionnaire, even if this proved relatively time consuming. Other delegations emphasized a more flexible and informal approach to the issue, which would not be overly burdensome upon governments. Most of these delegations also expressed the view that information should be gathered on a voluntary basis. Among the other issues mentioned by delegations, upon which more information might be useful, were the reasons why countries had not signed the GPA, the economic impact of procurement activity, and the experience of governments with procurement regimes under regional trade agreements. It was also suggested that use might be made of information on national procurement regimes contained in the country reports prepared for the Trade Policy Review exercise. Several delegations said that whatever approach was adopted, the Working Party should be careful not to allow the search for information to become a substitute for engagement in serious discussion of the substantive issues involved in dealing with the Article XIII negotiating mandate.

5. Members agreed that the Secretariat should draw up a list of questions that governments might be requested to answer. The Chairman said that such a document would be prepared for the next meeting of the Working Party, at which time he hoped agreement could be reached to initiate an information-gathering exercise. The Chairman also proposed that at the next meeting but one, the Working Party should focus explicitly on the question of transparency in the field of government procurement. Following the suggestion of certain delegations, he also proposed that the Secretariat be available at that same meeting to answer any questions that Members might wish to raise in regard to the GPA. The Chairman informed the Working Party that, as agreed at an earlier meeting, he had conferred with the Chairman of the Committee on Government Procurement, and had agreed to maintain contact as work proceeded.

Negotiations on Safeguards under Article X of GATS

6. A number of delegations reiterated their view that it was necessary to develop an emergency safeguards mechanism in GATS. An escape clause was essential if Members were to continue to schedule specific commitments and support progressive liberalization of trade in services. Otherwise, Members would have no means to deal with unforeseen circumstances that caused or threatened injury to domestic industry. Several delegations said that the immediate task before the Working Party was to explore and define concepts necessary for a safeguard provision. In this connection, work was needed on such concepts as domestic

industry, injury, "imports," and like services. A central issue was how to design possible safeguard measures in the light of commitments under GATS based on modes of supply. In this connection, a number of delegations referred to particular problems associated with the concept of safeguards under those modes dealing with commercial presence and the movement of natural persons, where safeguard measures in a post-establishment context may be undesirable. Some delegations also observed that the nature and duration of remedies needed to be examined. Statistical problems would have to be addressed. A further question was whether rules of general applicability could be developed, or whether a sectoral focus was called for. One delegation said that while there was no doubt that practical difficulties and conceptual challenges would arise in the design of any safeguard mechanism, these factors should not prevent Members from examining the fundamental question as to whether or not there was a case for an emergency safeguard provision under GATS.

7. Other delegations continued to express reservations about the desirability of a safeguard mechanism under GATS, both on conceptual and practical grounds. In the view of some of these delegations, it would be misleading to rely too heavily on safeguard provisions relating to goods as a model for provisions in services. This was in part because import surges of the kind that might occur in the case of goods were not a phenomenon typically encountered in the field of services. Moreover, the design of GATS permitted Members to proceed gradually with liberalization commitments. Some delegations were of the view that Article XXI provided a suitable vehicle for addressing problems that may arise as a result of commitments taken under GATS. One delegation suggested that the possibility of a more flexible use of Article XXI provisions should be considered as a potential safeguard mechanism, and noted that straightforward reliance for such purposes on Article XXI as now constituted could lead to an excessively frequent use of the provision. Another delegation also noted that Article XXI did not allow action to be taken immediately, and required compensatory adjustments in Members' specific commitments.

8. A number of delegations argued that the wording of the Article X negotiating mandate meant that Members were committed to developing a safeguard mechanism. Other delegations contested this interpretation, arguing that both the wording of the mandate and the history of its negotiation indicated that no commitment had been made to agree on a safeguard provision. Rather, Members had agreed to explore the case for such a provision. Some delegations said that what was important at this stage was that Members should engage seriously in negotiations on the subject, and not merely state a position for or against a safeguard mechanism. One delegation said that it may be necessary to acquire more experience of the operation of GATS before deciding whether to institute an emergency safeguard provision.

9. In response to a request from a number of delegations, the Chairman said that the Secretariat would prepare a further note on safeguards, focusing on the applicability to trade in services of concepts and principles used in the goods context in the Agreement on Safeguards. This note would be available at the Working Party's next meeting.

Next Meeting of the Working Party

10. The Chairman said that the date of the next meeting would be decided in consultation with delegations.

Other Business

11. No matters were raised under Other Business.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/3

21 December 1995

(95-4151)

Working Party on GATS Rules

REPORT OF THE MEETING OF 8 DECEMBER 1995

Note by the Secretariat

1) The third meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of four items: negotiations on government procurement under Article XIII of the GATS, negotiations on safeguards under Article X of the GATS, next meeting of the Working Party, and other Business.

Negotiations on Government Procurement under Article XIII of the GATS

2) The Chairman drew the attention of Members of the Working Party to a note by the Secretariat on government procurement of services (S/WPGR/W/3). Several delegations said they found the note a useful introduction to the issues. A number of delegations observed that the lack of fully multilateral rules on government procurement represented a significant gap in the multilateral trading system. It was also stated that it would be desirable to have common procurement rules covering both goods and services. Some delegations indicated their strong interest in exploring ways of inducing greater participation in disciplines on procurement. Among the important disciplines identified by delegations for inclusion in rules on procurement were most-favoured-nation treatment, national treatment, market access and effective enforcement. Delegations also laid particular emphasis on transparency, which was not only about publication of relevant rules, but also details of procedure and criteria for taking decisions. One delegation expressed the view that procurement disciplines should be comprehensive, covering such matters as the development of tender specifications on the basis of performance rather than design, reasonable qualification conditions for bidding, clear award procedures, and adequate opportunity to challenge contract award decisions.

3) Several delegations considered that it would be useful for members of the Working Party to consider why more governments had not signed the Government Procurement Agreement (GPA). While recognizing that this was an important question, some delegations cautioned against assuming too strong or explicit a link between the GATS negotiating mandate and the GPA. The nature

of the relationship between the two would emerge from the work of the Working Party, and also as experience was acquired with the GPA. Some delegations of governments who were signatories of the GPA said that they attached importance to encouraging others to join. One representative said her authorities had determined that the potential gains from signing the GPA were insufficient to outweigh the administrative costs of membership. Moreover, this assessment had been made against the background of a deregulated, non-preferential, and open government procurement policy that stressed value for money under competitive market conditions. Several delegations acknowledged that balance was required -- the attainment of broad-based commitments among governments on procurement should not be compromised by overly burdensome procedural and administrative requirements. On the other hand, the latter requirements must be strong enough to guarantee predictable market access.

4) Many delegations expressed the view that the next step the Working Party should take was to improve the information base on procurement. Some delegations suggested that information should be exchanged on national procurement requirements and procedures, as well as on laws and regulations. While some considered that a questionnaire might be designed for this purpose, others were in favour of a voluntary exchange of information along somewhat less structured lines, and still others thought a survey might be useful. One delegation said that it may be helpful to review existing procurement disciplines under the WTO. In view of the importance attached by delegations to the information-gathering aspect of the Working Party's activities at this early stage, the Chairman suggested that the secretariat would prepare a brief note on different approaches to the collection of information. The note would be an input into discussions of these issues at the next meeting of the Working Party. Delegations were agreeable to the chairman's suggestion.

5) In summing up the discussion, the Chairman said that the Working Party had held a useful preliminary exchange of views on the issues that would have to be addressed in future meetings. He referred to the critical role of information gathering for future work. He also noted the inverse relationship that might exist between burdensome procedures and a broad commitment to procurement disciplines. A question that had been raised and would seem to warrant further consideration was why more governments had not joined the GPA. He looked forward to further reflection on these and other matters in subsequent meetings, and urged delegations to bring forward information and views that would contribute to the work. The Chairman also indicated that he would consult with the Chairman of the Committee on Government Procurement in order to identify areas of common interest, and would report back to the Working Party on these consultations.

Negotiations on Safeguards under Article X of the GATS

6) The Chairman drew the attention of the Working Party to a submission on safeguards by Australia (S/WPGR/W/5). The Chairman also noted that the Secretariat had produced a further note on procedures for safeguards in various

trade agreements (S/WPGR/W/5). In introducing the Australian paper, the representative of Australia pointed out that the paper was basically non-judgemental, seeking to set out some of the issues that would have to be addressed by the Working Party in considering the development of an emergency safeguard mechanism in services. Among these were the fashion in which different modes of supply should be treated, the nature of measures available, the relationship between trade liberalization and a safeguard mechanism, and the question of compensation.

7) The representative of Thailand presented a paper explaining why, in Thailand's view, it was desirable to develop emergency safeguards in GATS. An emergency safeguard was required because existing mechanisms did not offer an adequate safety valve to deal with adverse circumstances that might arise as a consequence of a Member's specific commitments. More work was required, however, on the precise nature of a suitable mechanism. Thailand intended to circulate its paper as a working paper of the Working Party. Several delegations expressed support for Thailand's view, and agreed there was a need to explore the issue further. One delegate referred to an idea he had raised before -- that Article XXI (modification of schedules) might be used as a vehicle for introducing the necessary flexibility when emergency safeguard action was required. Other delegations repeated views expressed in previous meetings, to the effect that the design of any safeguard instrument in the field of services was a highly complex matter, fraught with practical difficulties. Several of these delegations also expressed doubt about the need for such an instrument, but expressed willingness to continue exploring the matter.

8) In summarizing the discussion, the Chairman noted that differing views were emerging in regard to the case for an emergency safeguard provisions in GATS. These views needed to be developed further, and he urged delegations to do so. He also urged delegations to provide information to the Working Party on any safeguard provisions they might have in national legislation.

Next Meeting of the Working Party

9) It was agreed that the next meeting of the Working Party would be held in February 1996, on a date to be determined .

Other Business

10) No matters were raised under Other Business.

RESTRICTED

S/WPGR/M/2
14 November 1995

WORLD TRADE ORGANIZATION

(95-3523)

Working Party on GATS Rules

REPORT OF THE MEETING HELD ON 18 OCTOBER 1995

Note by the Secretariat

1) The second meeting of the Working Party on GATS Rules was chaired by Ambassador Christer Manhusen of Sweden. The agenda consisted of four items: appointment of a chairperson, safeguard negotiations under Article X of the GATS, the next meeting of the Working Party, and other business.

Appointment of a Chairperson

2) The Chairman indicated that despite consultations on the appointment of a chairperson for the Working Party, a consensus had still not been achieved. He stressed that Members should come to a decision in the very near future.

Safeguard negotiations under Article X of the GATS

3) The Chairman noted that no delegations had yet made written submissions on the question of safeguards for services. The representative of Australia indicated that her authorities were working on a paper that might be available for the next meeting of the Working Party. The Chairman reminded delegations that a background paper by the Secretariat (S/WPGR/W/1) had been before the Working Party at its first meeting, and also noted that another Secretariat paper (S/WPGR/W/2) had been prepared for the second meeting, which examined safeguard provisions on services in a number of regional trade agreements. He invited delegations to comment on these papers, and to offer any other ideas they may have on the issues before the Working Party.

4) Noting that an argument for having an •emergency• safeguard provision in GATS, similar to that of Article XIX of GATT, was that such a mechanism might induce further liberalization, one delegation wondered whether this would indeed be the effect of such a provision. The possibility that a liberalizing outcome might result from the introduction of a safeguard should be weighed against the risk that such a mechanism might also be turned to protectionist ends. Moreover, there were formidable technical difficulties to be overcome in establishing a viable safeguard. Among the issues that would have to be addressed were the definition of •like product,• the determination of injury and causality, the definition of •domestic• industry in the light of commercial presence, and the nature of appropriate

remedies. In addition, the statistical requirements for managing a safeguard instrument were considerable, and the requisite information was simply not available at present.

5) This delegate said that the question of safeguard action under Mode 3 (commercial presence) was particularly delicate, as once a commercial presence had been established, safeguard action might imply some form of •disestablishment• -- a prospect that more than one delegation considered highly undesirable. In any event, it would be difficult to reconcile the notion of temporary relief via safeguard action with any disestablishment requirement under Mode 3, although it might be possible to envisage a safeguard measure under Mode 3 that would inhibit investments that had not yet occurred. As regards cross-border trade (Modes 1 and 2), safeguard measures would often prove difficult to enforce. Enforcement would be easier under Mode 4 (movement of natural persons), but would nevertheless require the establishment of enforcement machinery.

6) Several other delegations that spoke supported these views regarding the complications involved in designing and implementing an emergency safeguard. All the delegations that acknowledged these problems also stated that it would be premature to close off the discussion. More reflection was needed, as well as more experience with the operation of GATS. A representative was of the view that reflections on the case for an emergency safeguard in services should take account of the absence of provisions on anti-dumping and countervailing actions under GATS. One delegation raised the possibility of adapting Article XXI of GATS in order to provide an accelerated procedure for modifying a schedule, comparable to what is already permitted in Article X:2 as a temporary arrangement pending the completion of negotiations on emergency safeguard measures. Another delegation was of the view that in the long run, there was indeed a case for developing a safeguard instrument. He said that while •safety valves• of various kinds already existed, these were not adequate in the kind of situation envisaged under emergency safeguards. Other representatives suggested that those who believed there was a need for a services safeguard should explain in written submissions why they considered that this was the case.

7) One delegation wondered what the implication would be for a Member's right to use a services safeguard provided for in domestic legislation if no such provision existed in the GATS. A representative of the Secretariat expressed a preliminary view on the matter. He said that in the absence of a safeguard provision in the GATS, Members would be unable to suspend the application of their specific commitments in the manner permitted, for example, under Article XIX of GATT. The possibility always existed, however, of renegotiating a commitment under Article XXI. The Chairman suggested that the Working Party might revert to this question in due course if any delegation so wished.

8) In summing up the discussion, the Chairman said that the exchange of views in the working Party had been useful, and more work would be required along these lines. It was clearly premature for conclusions to be drawn. He urged delegations to make written submissions to the Working Party, particularly those who perceived a need for a safeguards mechanism. The Chairman also indicated that in response to requests made at the meeting, the Secretariat would try to identify instances in which safeguard mechanisms in agreements relating to trade in services had been invoked, and would also

provide available information on procedures and criteria established under regional trading agreements for the invocation of safeguard measures.

Next meeting of the Working Party

9) It was agreed that the next meeting of the Working Party would be held on Friday, 8 December 1995. The Working Party would first take up the GATS Article XIII mandate on negotiations in relation to government procurement, and then resume its discussion on safeguards.

Other Business

10) No matters were raised under other business.

RESTRICTED

S/WPGR/M/1
29 August 1995

WORLD TRADE ORGANIZATION

(95-2510)

Working Party on GATS Rules

REPORT OF THE MEETING HELD ON 17 JULY 1995

Note by the Secretariat

1. The first meeting of the Working Party on GATS Rules was chaired by Ambassador Christer Manhusen of Sweden. The agenda consisted of seven items: appointment of a chairperson, participation of observers, organization of work, requirements for technical assistance from the Secretariat, safeguards negotiations under Article X of the GATS, future meetings of the working party, and other business.

2. The Chairman noted that the Working Party on GATS Rules had been set up by the Council on Trade in Services to carry out the mandates on safeguards, government procurement and subsidies carried over from the Uruguay Round. Article X of GATS required that multilateral negotiations be held on the question of emergency safeguards, the results of which were to enter into force by 1 January 1998. Article XIII of GATS called for multilateral negotiations on government procurement within two years of entry into force of the Agreement. Finally, Article XV of GATS stipulated that negotiations would be held with a view to avoiding trade-distortive effects of subsidies and addressing the appropriateness of countervailing procedures. The Working Party was required to establish a work programme to determine how, and in what time-frame, negotiations on these multilateral disciplines would be conducted.

Appointment of a Chairperson

3. The Chairman indicated that consultations were continuing on the appointment of a chairperson for the working party. He noted that the names of two candidates had been put forward, but that consensus had not yet been achieved. The Chairman indicated that he would continue his consultations in the hope of settling the matter before the next meeting of the Working Party.

Participation of Observers

4. On the question of observers, the Chairman suggested that the Working Party should follow the precedent set by the Services Council. This would mean that the same governments invited to the Services Council would also be invited to meetings of the Working Party, along with four international organizations --

namely, the World Bank, the International Monetary Fund, UNCTAD, and the United Nations. The Working Party agreed to this proposal.

Organization of Work

5. The Chairman reminded members of the Working Party that two decisions had already been taken in the Services Council concerning the manner in which the Working Party would organize its work. The first was that the Working Party would take up the three subjects it was mandated to address in the order that they appeared in the GATS. This meant that following safeguards, the Working Party would take up government procurement and then subsidies. The second decision was that the Working Party would begin work on each of the three subjects in a staggered fashion at intervals of four months. Thus, work on safeguards would start at the present meeting, followed by government procurement around November 1995, and subsidies in March 1996. One delegation suggested that meetings on these subjects in the services sphere should, as far as practicable, be conducted back-to-back with other WTO meetings on the same subjects. The Working Party agreed that in future it would attempt to co-ordinate its meetings in this manner.

Requirements for Technical Work by the Secretariat

6. The Chairman noted that it had been agreed at the first meeting of the Services Council, on 1 March 1995, that the Secretariat would prepare background notes on each of the three topics to be addressed by the Working Party. He said that it was reasonable to anticipate that the Secretariat might be asked to prepare additional notes as the work proceeded, and that therefore the possibility should be left open for Working Party requests to be made on an *ad hoc* basis.

Safeguard Negotiations under Article X of GATS

7. The Chairman drew the attention of members of the Working Party to the Secretariat background note on safeguards, contained in document S/WPGR/W/1. He indicated that the Secretariat paper was intended as a preliminary discussion of some basic issues, which gave rise to the questions summarized in paragraph 17 of the document. The note had avoided addressing issues of detail concerning the nature and scope of possible safeguard action or the precise modalities of a safeguard instrument, on the grounds that a number of more basic issues should be considered beforehand. By examining safeguards in relation to each of the four modes of supply, the note demonstrated that the case for safeguard action was not necessarily the same under different modes. Many delegations expressed their appreciation for the Secretariat note, which they considered a useful starting point for their deliberations.

8. One representative raised the question whether examples could be found of safeguard measures already in existence in the services area. In his experience, such measures were few, and it might be useful to consider why this was the case. Perhaps the answer lay in the fact that services sectors were already sufficiently protected, or that such measures simply did not make practical sense. The Working Party agreed that the Secretariat would look for examples of the use of safeguard measures in other international agreements dealing with trade in services.

9. Another representative expressed the view that any consideration of possible safeguards instruments would need to take account of the difficulties that exist with statistics in the field of services. The issue was how to deal with such matters as injury, or more generally with the preconditions that might trigger a safeguard action, in the absence of an adequate statistical base. The Chairman agreed that this could indeed be a problem, and indicated that the forthcoming Secretariat paper on statistical issues in services may provide a useful background against which to consider the question further at a later date.

10. Several delegations noted that the negotiating mandate on safeguards, set out in Article X of GATS, did not prejudge the question whether a safeguard instrument was necessary or desirable. In particular, it was unclear what the justification might be for a safeguard measure taken in the context of establishment trade. In this case, a safeguard would constitute a departure from national treatment, resulting in discrimination between national and foreign investors in the domestic market. Some delegations also felt that the case for safeguard provisions had to be considered in the light of the nature and extent of existing commitments and of the way in which specific commitments were scheduled under GATS. Moreover, in view of the fact that current GATS commitments had entered into force in the absence of a safeguard instrument, it would seem legitimate to consider the case for a safeguard provision in the context of future, higher levels of commitment by Members.

11. Summing up, the Chairman said that the Working Party had had a useful preliminary exchange of views, and many delegations had indicated their intention to reflect further on these matters before they were discussed again in the Working Party. He encouraged delegations to make written submissions to the Working Party, in order to facilitate future discussions.

Future Meetings of the Working Party

12. The Working Party agreed that for the foreseeable future it would hold meetings approximately every two months. The next meeting of the Working Party would be held on Wednesday, 18 October 1995.

Other Business

13. No matters were raised under other business.

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05-3956 	D	S/WPGR/W/53 Catalogue record	Working Party on GATS Rules - Draft Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2005) Preview (HTML)	12/09/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
05-2502 	D	S/WPGR/W/52 Catalogue record	Working Party on GATS Rules - Communication from the European Communities - Government Procurement in Services Preview (HTML)	15/06/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
04-4790 	D	S/WPGR/W/51 Catalogue record	Working Party on GATS Rules - Main Approaches to the Undertaking of Commitments on Government Procurement in Economic Integration Agreements: Summary Observations - Note by the Secretariat Preview (HTML)	11/11/2004	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
04-4757 	D	S/WPGR/W/50 Catalogue record	Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2003) Preview (HTML)	09/11/2004	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
04-3605	D	S/WPGR/W/49 Catalogue record	Working Party on GATS Rules - Government Procurement-Related Provisions in Economic Integration Agreements -	31/08/2004	E	F	S

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04-3590	D	S/WPGR/W/13/Add.2 Catalogue record		Working Party on GATS Rules - Limitations in Members' Schedules Relating to Subsidies - Note by the Secretariat - Addendum Preview (HTML)	30/08/2004	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8 p. 94KB	8 p. 76KB	8 p. 87KB
04-2092	D	S/WPGR/W/48 Catalogue record		Working Party on GATS Rules - Communication from the European Communities - Government Procurement in Services Preview (HTML)	11/05/2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 p. 95KB	7 p. 83KB	7 p. 90KB
04-0564	U	S/WPGR/W/25/Add.4 Catalogue record		Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Addendum Preview (HTML)	12/02/2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	41 p. 840KB	48 p. 856KB	47 p. 809KB
03-6070	D	S/WPGR/W/46 Catalogue record		Working Party on GATS Rules - Overview of Subsidy Disciplines Relating to Trade in Services in Economic Integration Agreements - Note by the Secretariat Preview (HTML)	12/11/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4 p. 42KB	5 p. 50KB	5 p. 70KB
03-6065	D	S/WPGR/W/47 Catalogue record		Working Party on GATS Rules - List of Publications from International Organizations Relating to Subsidies in Services - Note by the Secretariat Preview (HTML)	12/11/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 42KB	4 p. 39KB	4 p. 39KB
03-6041	D	S/WPGR/W/45 Catalogue record		Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2003) Preview (HTML)	11/11/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 34KB	2 p. 34KB	2 p. 30KB
03-3552	D	S/WPGR/W/43/Rev.1 Catalogue record		Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2003) - Revision Preview (HTML)	03/07/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p. 40KB	4 p. 41KB	4 p. 41KB
03-3375	D	S/WPGR/W/44 Catalogue record		Working Party on GATS Rules - Overview of Government Procurement-Related Provisions in Economic Integration Agreements - Note by the Secretariat Preview (HTML)	24/06/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 p. 105KB	7 p. 53KB	7 p. 52KB
03-3307	D	S/WPGR/W/43 Catalogue record		Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2003) Preview (HTML)	20/06/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 37KB	3 p. 35KB	3 p. 34KB
03-2748	D	S/WPGR/W/42 Catalogue record		Working Party on GATS Rules - Communication from the European Communities - Government Procurement of Services Preview (HTML)	22/05/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5 p.	5 p.	5 p.

03-1568 	U	S/WPGR/W/4/Add.1/Corr.1 Catalogue record	Working Party on GATS Rules - Safeguard-Type Provisions in Economic Integration Agreements - Note by the Secretariat - Corrigendum Preview (HTML)	17/03/2003	41KB E  1 p. 30KB	42KB --	42KB --
03-1234 	D	S/WPGR/W/41 Catalogue record	Working Party on GATS Rules - Communication from the European Communities and their Member States - Scope for Emergency Safeguard Measures (ESM) in the GATS Preview (HTML)	03/03/2003	E  2 p. 31KB	F  2 p. 33KB	S  3 p. 32KB
03-1072 	U	S/WPGR/W/4/Add.1 Catalogue record	Working Party on GATS Rules - Safeguard-Type Provisions in Economic Integration Agreements - Note by the Secretariat - Addendum Preview (HTML)	20/02/2003	E  14 p. 81KB	F  16 p. 80KB	S  15 p. 82KB
02-6449 	D	S/WPGR/W/40 Catalogue record	Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2002) Preview (HTML)	20/11/2002	E  2 p. 35KB	F  2 p. 32KB	S  2 p. 34KB
02-4999 	U	S/WPGR/W/25/Add.3 Catalogue record	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Addendum Preview (HTML)	19/09/2002	E  30 p. 214KB	F  35 p. 226KB	S  36 p. 240KB
02-3883 	U	S/WPGR/W/39 Catalogue record	Working Party on GATS Rules - Communication from the European Communities and Their Member States - Government Procurement of Services Preview (HTML)	12/07/2002	E  5 p. 42KB	F  6 p. 45KB	S  6 p. 45KB
02-1663 	U	S/WPGR/W/38/Corr.1 Catalogue record	Working Party on GATS Rules - Communication from the European Communities and their Member States - Modal Application of an Emergency Safeguard Measure - Corrigendum Preview (HTML)	03/04/2002	E  1 p. 27KB	F  1 p. 27KB	S  1 p. 27KB
02-0350 	D	S/WPGR/W/38 Catalogue record	Working Party on GATS Rules - Communication from the European Communities and their Member States Preview (HTML)	21/01/2002	E  6 p. 48KB	F  7 p. 53KB	S  7 p. 52KB
01-4726 	U	S/WPGR/W/37 Catalogue record	Working Party on GATS Rules - Communication from the United States - Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services Preview (HTML)	02/10/2001	E  4 p. 39KB	F  4 p. 40KB	S  4 p. 41KB
01-4481 	D	S/WPGR/W/36 Catalogue record	Working Party on GATS Rules - Draft - Report of the Working Party on GATS Rules to the Council for Trade in Services Preview (HTML)	20/09/2001	E  2 p. 33KB	F  2 p. 31KB	S  2 p. 30KB
00-5397	D	S/WPGR/W/25/Add.2	Working Party on GATS Rules - Subsidies for Services	12/12/2000	E	F	S

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00-4831	D	S/WPGR/W/35 Catalogue record	Working Party on GATS Rules - Draft - Report of the Working Party on GATS Rules to the Council for Trade in Services Preview (HTML)	03/11/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 32KB	2 p. 32KB	2 p. 29KB
00-3730	D	S/WPGR/W/16/Add.4/Suppl.1 Catalogue record	Working Party on GATS Rules - Communication from the Republic of Poland - Response to the Questions Relevant to the Information Exchange Required under the [...] negotiating Mandate - Supplement Preview (HTML)	20/09/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 30KB	1 p. 30KB	1 p. 28KB
00-2849	D	S/WPGR/W/25/Add.1/Corr.1 Catalogue record	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Corrigendum Preview (HTML)	11/07/2000	E	--	--	<input checked="" type="checkbox"/>		
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00-2744	D	S/WPGR/W/34 Catalogue record	Working Party on GATS Rules - Communication from Poland - Emergency Safeguards Mechanism Contained in Article 18 Act of 18 December 1998 on Foreign Exchange Law - Working Paper Preview (HTML)	03/07/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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00-2369	D	S/WPGR/W/13/Add.1 Catalogue record	Working Party on GATS Rules - Limitations in Members' Schedules Relating to Subsidies - Note by the Secretariat - Revision Preview (HTML)	14/06/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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00-2197	D	S/WPGR/W/33 Catalogue record	Working Party on GATS Rules - Patterns of Limitations Scheduled under Mode 2 - Background Note by the Secretariat Preview (HTML)	31/05/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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00-2166	D	S/WPGR/W/25/Add.1 Catalogue record	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Addendum Preview (HTML)	29/05/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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00-1974	D	S/WPGR/W/32 Catalogue record	Working Party on GATS Rules - Inter-Agency Task Force on Statistics of International Trade in Services - Progress Report, May 2000 - Background Note by the Secretariat Preview (HTML)	15/05/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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00-1073	D	S/WPGR/W/31 Catalogue record	Working Party on GATS Rules - Communication from Argentina and Hong Kong, China - Development of Multilateral Disciplines Governing Trade Distortive Subsidies in Services Preview (HTML)	16/03/2000	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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00-1015 	D	S/WPGR/W/30 Catalogue record	Working Party on GATS Rules - Communication from ASEAN - Concept Paper: Elements of a Possible Agreed Draft of Rules on Emergency Safeguard Measures for Trade in Services (GATS Article X) Preview (HTML)	14/03/2000	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
00-0816 	D	S/WPGR/W/16/Add.4 Catalogue record	Working Party on GATS Rules - Communication from the Republic of Poland - Response to the Questions Relevant to the Information Exchange Required under the [...] Negotiating Mandate - Addendum Preview (HTML)	02/03/2000	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
99-3807 	D	S/WPGR/W/27/Rev.2 Catalogue record	Working Party on GATS Rules - Issues for Future Discussions on Emergency Safeguards - Note by the Secretariat - Revision Preview (HTML)	16/09/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
99-3105 	D	S/WPGR/W/16/Add.3 Catalogue record	Working Party on GATS Rules - Communication from Hong Kong, China - Response to the Questions Relevant to the Information Exchange Required under the Subsid[...] Negotiating Mandate - Addendum Preview (HTML)	23/07/1999	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
99-1867	D	S/WPGR/W/27/Rev.1	Working Party on GATS Rules - Issues for Future	07/05/1999	E	F	S

		Catalogue record	Discussions on Emergency Safeguards - Note by the Secretariat - Revision Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 p. 52KB	7 p. 55KB	7 p. 54KB
99-1349	D	S/WPGR/W/29 Catalogue record	Working Party on GATS Rules - Interpretation of Procurement-Related Provisions in GATT - Possible Application to Article XIII of GATS - Background Note by the Secretariat Preview (HTML)	31/03/1999	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	4 p. 39KB	4 p. 44KB	4 p. 41KB
98-4692	D	S/WPGR/W/27 Catalogue record	Working Party on GATS Rules - Issues for Future Discussions on Emergency Safeguards - Note by the Secretariat Preview (HTML)	20/11/1998	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5 p. 44KB	5 p. 46KB	5 p. 45KB
98-4691	D	S/WPGR/W/28 Catalogue record	Draft - Report of the Working Party on GATS Rules to the Council for Trade in Services Preview (HTML)	20/11/1998	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 p. 31KB	2 p. 33KB	2 p. 31KB
98-1399	D	S/WPGR/W/11/Add.22 Catalogue record	Working Party on GATS Rules - Communication from Costa Rica - Reply to the Questionnaire on Government Procurement of Services - Addendum Preview (HTML)	03/04/1998	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11 p. 67KB	12 p. 76KB	12 p. 68KB
98-0482	D	S/WPGR/W/26 	Working Party on GATS Rules - Communication from Hong Kong, China - Emergency Safeguard Measures: A Way Forward on the Possible Principles Preview (HTML)	10/02/1998	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3 p. 32KB	3 p. 33KB	3 p. 33KB
98-0286	D	S/WPGR/W/25 	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat Preview (HTML)	26/01/1998	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	12 p. 105KB	15 p. 117KB	15 p. 195KB
97-4009	D	S/WPGR/W/11/Add.21 	Working Party on GATS Rules - Communication from Turkey - Response to the Questionnaire on Government Procurement of Services - Addendum Preview (HTML)	10/09/1997	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5 p. 43KB	6 p. 42KB	5 p. 45KB
97-3573	D	S/WPGR/W/24 	Working Party on GATS Rules - Examples of Situations in which Emergency Safeguard Action may be Taken - Note by the Secretariat Preview (HTML)	03/09/1997	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9 p. 69KB	10 p. 73KB	9 p. 74KB
97-3468	D	S/WPGR/W/15/Add.7 	Working Party on GATS Rules - Communication from Cuba - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS - Addendum Preview (HTML)	25/08/1997	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	7 p. 49KB	8 p. 56KB	8 p. 56KB
97-3560	D	S/WPGR/W/23 	Working Party on GATS Rules - Communication from Peru - Emergency Safeguards Preview (HTML)	21/08/1997	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 p.	2 p.	2 p.

97-3443 	D	S/WPGR/W/11/Add.20 Catalogue record	Working Party on GATS Rules - Communication from Peru - Reply to Questionnaire on Government Procurement of Services - Addendum Preview (HTML)	15/08/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	28KB 10 p. 55KB	28KB 11 p. 62KB	27KB 10 p. 67KB
97-3213 	D	S/WPGR/W/16/Add.2 Catalogue record	Working Party on GATS Rules - Communication from New Zealand - Response to the Questions to the Information Exchange Required under the Subsidies Negotiating Mandate - Addendum Preview (HTML)	23/07/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	17 p. 65KB	19 p. 79KB	19 p. 75KB
97-3150 	D	S/WPGR/W/22 Catalogue record	Working Party on GATS Rules - Communication from ASEAN - Emergency Safeguards Preview (HTML)	23/07/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 29KB	3 p. 32KB	3 p. 30KB
97-2954 	D	S/WPGR/W/21 WT/WGTGP/W/4 Catalogue record	Working Group on Transparency in Government Procurement - Working Party on GATS Rules - APEC Surveys on Government Procurement Systems - Note by the Secretariat Preview (HTML)	15/07/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 94KB	1 p. 26KB	1 p. 27KB
97-2833 	D	S/WPGR/W/20 Catalogue record	Working Party on GATS Rules - Synthesis of the Responses to the Questionnaire on Government Procurement of Services - Note by the Secretariat Preview (HTML)	07/07/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	16 p. 98KB	18 p. 123KB	17 p. 101KB
97-2793 	D	S/WPGR/W/19 Catalogue record	Working Party on GATS Rules - Communication from Singapore - Emergency Safeguard Measures Preview (HTML)	25/06/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 40KB	4 p. 44KB	4 p. 43KB
97-2768 	D	S/WPGR/W/16/Add.1 Catalogue record	Working Party on GATS Rules - Communication from Norway - Response to the Questions Relevant to the Information Exchange Required under the Subsidies Negotiating Mandate - Addendum Preview (HTML)	23/06/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	17 p. 72KB	17 p. 70KB	18 p. 72KB
97-2370 	D	S/WPGR/W/15/Add.6 Catalogue record	Working Party on GATS Rules - Communication from Mexico - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS - Addendum Preview (HTML)	22/05/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	7 p. 48KB	8 p. 56KB	8 p. 54KB
97-2137 	D	S/WPGR/W/15/Add.4 Catalogue record	Working Party on GATS Rules - Communication from the European Communities and their Member States - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS Preview (HTML)	20/05/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	8 p. 61KB	9 p. 59KB	8 p. 58KB
97-2139 	D	S/WPGR/W/15/Add.5 Catalogue record	Working Party on GATS Rules - Communication from Egypt - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS Preview (HTML)	20/05/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	6 p. 56KB	7 p. 50KB	7 p. 51KB

97-2082 	D	S/WPGR/W/18 Catalogue record	Working Party on GATS Rules - Communication from the Hong Kong - Emergency Safeguard Measures in Services: A Way Forward Preview (HTML)	16/05/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	8 p. 54KB	9 p. 69KB	9 p. 67KB
97-1980 	D	S/WPGR/W/11/Add.19 Catalogue record	Working Party on GATS Rules - Communication from Argentina - Questionnaire on Government Procurement of Services - Addendum Preview (HTML)	02/05/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	10 p. 64KB	11 p. 73KB	11 p. 72KB
97-1944 	D	S/WPGR/W/15/Add.3 Catalogue record	Working Party on GATS Rules - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS Preview (HTML)	02/05/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	5 p. 49KB	5 p. 38KB	5 p. 42KB
97-1891 	D	S/WPGR/W/15/Add.2 Catalogue record	Working Party on GATS Rules - Communication from India - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS Preview (HTML)	29/04/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 30KB	2 p. 30KB	2 p. 28KB
97-1185 	D	S/WPGR/W/11/Add.17 Catalogue record	Working Party on GATS Rules - Communication from the Republic of Hungary - Response to the Questionnaire on Government Procurement of Services - Addendum Preview (HTML)	13/03/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	37 p. 147KB	37 p. 150KB	39 p. 158KB
97-1186 	D	S/WPGR/W/11/Add.18 Catalogue record	Working Party on GATS Rules - Communication from Mexico - Questionnaire on Government Procurement of Services - Addendum Preview (HTML)	13/03/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	10 p. 58KB	11 p. 68KB	11 p. 84KB
97-1115 	D	S/WPGR/W/17 Catalogue record	Working Party on GATS Rules - Communication from the United States - Emergency Safeguards Preview (HTML)	13/03/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 27KB	2 p. 29KB	2 p. 29KB
97-1012 	D	S/WPGR/W/15/Add.1 Catalogue record	Working Party on GATS Rules - Communication from Thailand - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS Preview (HTML)	11/03/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 48KB	4 p. 40KB	4 p. 39KB
97-0903 	D	S/WPGR/W/11/Add.16 Catalogue record	Working Party on GATS Rules - Communication from Singapore - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	06/03/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	8 p. 55KB	8 p. 52KB	8 p. 54KB

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97-0413 	D	S/WPGR/W/16 Catalogue record	Working Party on GATS Rules - Questions Relevant to the Information Exchange required under the Subsidies Negotiating Mandate - Note by the Secretariat Preview (HTML)	05/02/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
97-0409 	D	S/WPGR/W/11/Add.15 Catalogue record	Working Party on GATS Rules - Communication from Chile - Questionnaire on Government Procurement of Services Preview (HTML)	21/01/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
97-0145 	D	S/WPGR/W/11/Add.14 Catalogue record	Working Party on GATS Rules - Communication from India - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	17/01/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
97-0011 	D	S/WPGR/W/11/Add.13/Corr.1 Catalogue record	Working Party on GATS Rules - Communication from the Republic of Korea - Response to the Questionnaire on Government Procurement of Services - Corrigendum Preview (HTML)	03/01/1997	E <input checked="" type="checkbox"/>	--	--
97-0112	D	S/WPGR/W/11/Add.11 Catalogue record	Working Party on GATS Rules - Communication from Australia - Response to the Questionnaire on Government	02/01/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>

			Procurement of Services Preview (HTML)		20 p. 99KB	21 p. 108KB	21 p. 120KB
96-5319	D	S/WPGR/W/15 Catalogue record	Working Party on GATS Rules - Questions relating to an Emergency Safeguard Mechanism in GATS - Note by the Secretariat Preview (HTML)	12/12/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					3 p. 40KB	3 p. 36KB	3 p. 33KB
96-5158	D	S/WPGR/W/11/Add.12 Catalogue record	Working Party on GATS Rules - Communication from the Republic of Poland - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	10/12/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					11 p. 65KB	11 p. 64KB	12 p. 65KB
96-5159	D	S/WPGR/W/11/Add.13 Catalogue record	Working Party on GATS Rules - Communication from the Republic of Korea - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	10/12/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					8 p. 52KB	9 p. 59KB	9 p. 56KB
96-5056	D	S/WPGR/W/11/Add.10 Catalogue record	Working Party on GATS Rules - Communication from the European Communities and their Member States - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	02/12/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					27 p. 145KB	29 p. 156KB	29 p. 174KB
96-4434	D	S/WPGR/W/11/Add.6 Catalogue record	Working Party on GATS Rules - Communication from the United States - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	21/10/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					15 p. 81KB	16 p. 82KB	16 p. 88KB
96-4268	D	S/WPGR/W/14 Catalogue record	Working Party on GATS Rules - Communication from Switzerland - Safeguards and Trade in Services Preview (HTML)	10/10/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					4 p. 42KB	4 p. 40KB	4 p. 43KB
96-4074	D	S/WPGR/W/11/Add.9 Catalogue record	Working Party on GATS Rules - Communication from Hong Kong - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	07/10/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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96-4054	D	S/WPGR/W/11/Add.7 Catalogue record	Working Party on GATS Rules - Communication from Canada - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	04/10/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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96-4056	D	S/WPGR/W/11/Add.8 Catalogue record	Working Party on GATS Rules - Communication from Colombia - Questionnaire on Government Procurement of Services Preview (HTML)	04/10/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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96-4048	D	S/WPGR/W/11/Add.4 Catalogue record	Working Party on GATS Rules - Communication from New Zealand - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	30/09/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					18 p. 95KB	18 p. 95KB	17 p. 89KB

96-3863 	D	S/WPGR/W/11/Add.5 Catalogue record	Working Party on GATS Rules - Communication from Japan - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	27/09/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	12 p. 69KB	12 p. 68KB	12 p. 70KB
96-3673 	D	S/WPGR/W/11/Add.1/Corr.1 Catalogue record	Working Party on GATS Rules - Communication from Norway - Response to the Questionnaire on Government Procurement of Services - Corrigendum Preview (HTML)	19/09/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 28KB	1 p. 23KB	1 p. 22KB
96-3432 	D	S/WPGR/W/11/Add.3 Catalogue record	Working Party on GATS Rules - Communication from Brazil - Response to the questionnaire on government procurement of services Preview (HTML)	02/09/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	11 p. 64KB	11 p. 63KB	11 p. 62KB
96-2832 	D	S/WPGR/W/11/Add.2 Catalogue record	Working Party on GATS Rules - Communication from Switzerland - Response to the Questionnaire on Government Procurement of Services Preview (HTML)	10/07/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	13 p. 73KB	14 p. 81KB	13 p. 75KB
96-2548 	D	S/WPGR/W/11/Add.1 Catalogue record	Working Party on GATS Rules - Communication from Norway - Questionnaire on Government Procurement of Services Preview (HTML)	20/06/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	9 p. 54KB	10 p. 58KB	9 p. 55KB
96-1953 	D	S/WPGR/W/13 Catalogue record	Working Party on GATS Rules - Limitations in Members' Schedules Relating to Subsidies - Note by the Secretariat Preview (HTML)	21/05/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	7 p. 66KB	8 p. 41KB	7 p. 36KB
96-1930 	D	S/WPGR/W/12 Catalogue record	Working Party on GATS Rules - Provisions on Subsidies relating to Trade in Services in Regional Trade Agreements - Note by the Secretariat Preview (HTML)	20/05/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 38KB	3 p. 34KB	3 p. 34KB
96-1203 	D	S/WPGR/W/10 Catalogue record	Working Party on GATS Rules - Communication from Chile - The Subsidies Issue Preview (HTML)	02/04/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 38KB	3 p. 35KB	3 p. 85KB
96-1182 	D	S/WPGR/W/11 Catalogue record	Working Party on GATS Rules - Questionnaire on Government Procurement of Services - Note by the Secretariat Preview (HTML)	02/04/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 35KB	5 p. 36KB	4 p. 32KB
96-0815 	D	S/WPGR/W/8 Catalogue record	Working Party on GATS Rules - Emergency Safeguard Measures in GATS: The Applicability of Concepts applied in the WTO Agreement on Safeguards - Note by the Secretariat Preview (HTML)	06/03/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	5 p. 59KB	6 p. 50KB	6 p. 55KB
96-0816	D	S/WPGR/W/9 Catalogue record	Working Party on GATS Rules - Subsidies and Trade in Services - Note by the Secretariat	06/03/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>			

	96-0673	D	S/WPGR/W/7/Add.1 Catalogue record	Preview (HTML) WORKING PARTY ON GATS RULES - INFORMATION ON GOVERNMENT PROCUREMENT OF SERVICES - Note by the Secretariat - Addendum Preview (HTML)	22/02/1996	12 p. 90KB E <input checked="" type="checkbox"/>	13 p. 99KB F <input type="checkbox"/>	14 p. 99KB S <input type="checkbox"/>
	96-0387	D	S/WPGR/W/7 Catalogue record	Preview (HTML) WORKING PARTY ON GATS RULES - INFORMATION ON GOVERNMENT PROCUREMENT OF SERVICES - Note by the Secretariat Preview (HTML)	02/02/1996	2 p. 26KB E <input checked="" type="checkbox"/>	2 p. 29KB F <input type="checkbox"/>	2 p. 29KB S <input type="checkbox"/>
	95-4100	D	S/WPGR/W/6 Catalogue record	Preview (HTML) Working Party on GATS Rules - Communication from Thailand - A Discussion Paper on Gats Emergency Safeguards Preview (HTML)	18/12/1995	3 p. 30KB E <input checked="" type="checkbox"/>	3 p. 32KB F <input type="checkbox"/>	3 p. 37KB S <input type="checkbox"/>
	95-3999	D	S/WPGR/W/5 Catalogue record	Preview (HTML) Working Party on GATS Rules - Communication from Australia - Some Conceptual Issues Concerning the Application of Safeguards to Trade in Services Preview (HTML)	06/12/1995	2 p. 27KB E <input checked="" type="checkbox"/>	2 p. 30KB F <input type="checkbox"/>	2 p. 30KB S <input type="checkbox"/>
	95-3741	D	S/WPGR/W/4 Catalogue record	Preview (HTML) Working Party on GATS Rules - Safeguards Procedures in Regional Trade Agreements - Note by the Secretariat Preview (HTML)	24/11/1995	5 p. 41KB E <input checked="" type="checkbox"/>	6 p. 48KB F <input type="checkbox"/>	5 p. 53KB S <input type="checkbox"/>
	95-3458	D	S/WPGR/W/3 Catalogue record	Preview (HTML) Working Party on GATS Rules - Government Procurement of Services - Note by the Secretariat Preview (HTML)	08/11/1995	4 p. 40KB E <input checked="" type="checkbox"/>	5 p. 46KB F <input type="checkbox"/>	5 p. 40KB S <input type="checkbox"/>
	95-2953	D	S/WPGR/W/2 Catalogue record	Preview (HTML) Working Party on GATS Rules - Safeguard Provisions in Regional Trade Agreements - Note by the Secretariat Preview (HTML)	05/10/1995	13 p. 92KB E <input checked="" type="checkbox"/>	14 p. 113KB F <input type="checkbox"/>	15 p. 104KB S <input type="checkbox"/>
	95-1864	D	S/WPGR/W/1 Catalogue record	Preview (HTML) Working Party on GATS Rules - Emergency Safeguard Measures under Article X of GATS - Note by the Secretariat Preview (HTML)	06/07/1995	2 p. 35KB E <input checked="" type="checkbox"/>	3 p. 33KB F <input type="checkbox"/>	3 p. 36KB S <input type="checkbox"/>

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4 9 KB	04-4757	S/WPGR/W/50	Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2003)	09/11/2004	2	D	T/S/WPGR/W50.doc
5 260 KB	04-3605	S/WPGR/W/49	Working Party on GATS Rules - Government Procurement-Related Provisions in Economic Integration Agreements - Note by the Secretariat	31/08/2004	80	D	T/S/WPGR/W49.doc
6 11 KB	04-3590	S/WPGR/W/13/Add.2	Working Party on GATS Rules - Limitations in Members' Schedules Relating to Subsidies - Note by the Secretariat - Addendum	30/08/2004	8	D	T/S/WPGR/W13A2.doc
7 21 KB	04-2092	S/WPGR/W/48	Working Party on GATS Rules - Communication from the European Communities - Government Procurement in Services	11/05/2004	6	D	T/S/WPGR/W48.doc
8 152 KB	04-0564	S/WPGR/W/25/Add.4	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Addendum	12/02/2004	41	U	T/S/WPGR/W25A4.doc
9 16 KB	03-6070	S/WPGR/W/46	Working Party on GATS Rules - Overview of Subsidy Disciplines Relating to Trade in Services in Economic Integration Agreements - Note by the Secretariat	12/11/2003	4	D	T/S/WPGR/W46.doc
10 10 KB	03-6065	S/WPGR/W/47	Working Party on GATS Rules - List of Publications from International Organizations Relating to Subsidies in Services - Note by the Secretariat	12/11/2003	3	D	T/S/WPGR/W47.doc
11 6 KB	03-6041	S/WPGR/W/45	Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services	11/11/2003	2	D	T/S/WPGR/W45.doc

			(2003)				
12 10 KB	03-3552	S/WPGR/W/43/Rev.1	Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2003) - Revision	03/07/2003	3	D	T/S/WPGR/W43R1.doc
13 20 KB	03-3375	S/WPGR/W/44	Working Party on GATS Rules - Overview of Government Procurement-Related Provisions in Economic Integration Agreements - Note by the Secretariat	24/06/2003	6	D	T/S/WPGR/W44.doc
14 8 KB	03-3307	S/WPGR/W/43	Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2003)	20/06/2003	2	D	T/S/WPGR/W43.doc
15 14 KB	03-2748	S/WPGR/W/42	Working Party on GATS Rules - Communication from the European Communities - Government Procurement of Services	22/05/2003	5	D	T/S/WPGR/W42.doc
16 3 KB	03-1568	S/WPGR/W/4/Add.1/Corr.1	Working Party on GATS Rules - Safeguard-Type Provisions in Economic Integration Agreements - Note by the Secretariat - Corrigendum	17/03/2003	1	U	T/S/WPGR/W4A1C1.doc
17 7 KB	03-1234	S/WPGR/W/41	Working Party on GATS Rules - Communication from the European Communities and their Member States - Scope for Emergency Safeguard Measures (ESM) in the GATS	03/03/2003	2	D	T/S/WPGR/W41.doc
18 41 KB	03-1072	S/WPGR/W/4/Add.1	Working Party on GATS Rules - Safeguard-Type Provisions in Economic Integration Agreements - Note by the Secretariat - Addendum	20/02/2003	14	U	T/S/WPGR/W4A1.doc
19 7 KB	02-6449	S/WPGR/W/40	Working Party on GATS - Draft - Annual Report of the Working Party on GATS Rules to the Council for Trade in Services (2002)	20/11/2002	2	D	T/S/WPGR/W40.doc
20 103 KB	02-4999	S/WPGR/W/25/Add.3	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Addendum	19/09/2002	30	U	T/S/WPGR/W25A3.doc
21 16 KB	02-3883	S/WPGR/W/39	Working Party on GATS Rules - Communication from the European Communities and Their Member States - Government Procurement of Services	12/07/2002	5	U	T/S/WPGR/W39.doc
22 4 KB	02-1663	S/WPGR/W/38/Corr.1	Working Party on GATS Rules - Communication from the European Communities and their Member States - Modal Application of an Emergency Safeguard Measure - Corrigendum	03/04/2002	1	U	T/S/WPGR/W38C1.doc
23 22 KB	02-0350	S/WPGR/W/38	Working Party on GATS Rules - Communication from the European Communities and their Member States	21/01/2002	6	D	T/S/WPGR/W38.doc

24 15 KB	01-4726	S/WPGR/W/37	Working Party on GATS Rules - Communication from the United States - Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services	02/10/2001	4	U	T/S/WPGR/W37.doc
25 6 KB	01-4481	S/WPGR/W/36	Working Party on GATS Rules - Draft - Report of the Working Party on GATS Rules to the Council for Trade in Services	20/09/2001	2	D	T/S/WPGR/W36.doc
26 29 KB	00-5397	S/WPGR/W/25/Add.2	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Addendum	12/12/2000	10	D	T/S/WPGR/W25A2.doc
27 5 KB	00-4831	S/WPGR/W/35	Working Party on GATS Rules - Draft - Report of the Working Party on GATS Rules to the Council for Trade in Services	03/11/2000	2	D	T/S/WPGR/W35.doc
28 4 KB	00-3730	S/WPGR/W/16/Add.4/Suppl.1	Working Party on GATS Rules - Communication from the Republic of Poland - Response to the Questions Relevant to the Information Exchange Required under the Subsidies Negotiating Mandate - Supplement	20/09/2000	1	D	T/S/WPGR/W16A4S1.doc
29 6 KB	00-2849	S/WPGR/W/25/Add.1/Corr.1	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Corrigendum	11/07/2000	2	D	T/S/WPGR/W25A1C1.DOC
30 6 KB	00-2744	S/WPGR/W/34	Working Party on GATS Rules - Communication from Poland - Emergency Safeguards Mechanism Contained in Article 18 Act of 18 December 1998 on Foreign Exchange Law - Working Paper	03/07/2000	2	D	T/S/WPGR/W34.doc
31 12 KB	00-2369	S/WPGR/W/13/Add.1	Working Party on GATS Rules - Limitations in Members' Schedules Relating to Subsidies - Note by the Secretariat - Revision	14/06/2000	8	D	T/S/WPGR/W13A1.doc
32 12 KB	00-2197	S/WPGR/W/33	Working Party on GATS Rules - Patterns of Limitations Scheduled under Mode 2 - Background Note by the Secretariat	31/05/2000	4	D	T/S/WPGR/W33.doc
33 96 KB	00-2166	S/WPGR/W/25/Add.1	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews - Background Note by the Secretariat - Addendum	29/05/2000	29	D	T/S/WPGR/W25A1.doc
34 16 KB	00-1974	S/WPGR/W/32	Working Party on GATS Rules - Inter-Agency Task Force on Statistics of International Trade in Services - Progress Report, May 2000 - Background Note by the Secretariat	15/05/2000	5	D	T/S/WPGR/W32.doc
35 18 KB	00-1073	S/WPGR/W/31	Working Party on GATS Rules - Communication from Argentina and Hong Kong, China - Development of Multilateral	16/03/2000	5	D	T/S/WPGR/W31.DOC

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1 30 KB	00-1015	S/WPGR/W/30	Working Party on GATS Rules - Communication from ASEAN - Concept Paper: Elements of a Possible Agreed Draft of Rules on Emergency Safeguard Measures for Trade in Services (GATS Article X)	14/03/2000	10	D	T/S/WPGR/w30.doc
2 30 KB	00-0816	S/WPGR/W/16/Add.4	Working Party on GATS Rules - Communication from the Republic of Poland - Response to the Questions Relevant to the Information Exchange Required under the Subsidies Negotiating Mandate - Addendum	02/03/2000	12	D	T/S/WPGR/W16A4.doc
3 29 KB	99-3807	S/WPGR/W/27/Rev.2	Working Party on GATS Rules - Issues for Future Discussions on Emergency Safeguards - Note by the Secretariat - Revision	16/09/1999	7	D	T/S/WPGR/W27R2.DOC
4 18 KB	99-3105	S/WPGR/W/16/Add.3	Working Party on GATS Rules - Communication from Hong Kong, China - Response to the Questions Relevant to the Information Exchange Required under the Subsidies Negotiating Mandate - Addendum	23/07/1999	7	D	T/S/WPGR/w16a3.doc
5 24 KB	99-1867	S/WPGR/W/27/Rev.1	Working Party on GATS Rules - Issues for Future Discussions on Emergency Safeguards - Note by the Secretariat - Revision	07/05/1999	6	D	T/S/WPGR/W27R1.DOC
6 14 KB	99-1349	S/WPGR/W/29	Working Party on GATS Rules - Interpretation of Procurement-Related Provisions in GATT - Possible Application to Article XIII of GATS - Background Note by the Secretariat	31/03/1999	4	D	T/S/WPGR/W29.DOC
7 18 KB	98-4692	S/WPGR/W/27	Working Party on GATS Rules - Issues for Future Discussions on Emergency Safeguards - Note by the Secretariat	20/11/1998	5	D	T/S/WPGR/W27.DOC
8 6 KB	98-4691	S/WPGR/W/28	Draft - Report of the Working Party on GATS Rules to the Council for Trade in Services	20/11/1998	2	D	T/S/WPGR/W28.DOC
9 36 KB	98-1399	S/WPGR/W/11/Add.22	Working Party on GATS Rules - Communication from Costa Rica - Reply to the Questionnaire on Government Procurement of Services - Addendum	03/04/1998	11	D	T/S/WPGR/W11A22.DOC
10 8 KB	98-0482	S/WPGR/W/26	Working Party on GATS Rules - Communication from Hong Kong, China - Emergency Safeguard Measures: A Way Forward on the Possible Principles	10/02/1998	3	D	T/S/WPGR/W26.WPF
11 48 KB	98-0286	S/WPGR/W/25	Working Party on GATS Rules - Subsidies for Services Sectors - Information Contained in WTO Trade Policy Reviews -	26/01/1998	12	D	T/S/WPGR/W25.WPF

			Background Note by the Secretariat				
12 14 KB	97-4009	S/WPGR/W/11/Add.21	Working Party on GATS Rules - Communication from Turkey - Response to the Questionnaire on Government Procurement of Services - Addendum	10/09/1997	5	D	T/S/WPGR/W11A21.WPF
13 30 KB	97-3573	S/WPGR/W/24	Working Party on GATS Rules - Examples of Situations in which Emergency Safeguard Action may be Taken - Note by the Secretariat	03/09/1997	9	D	T/S/WPGR/W24.WPF
14 25 KB	97-3468	S/WPGR/W/15/Add.7	Working Party on GATS Rules - Communication from Cuba - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS - Addendum	25/08/1997	7	D	T/S/WPGR/W15A7.WPF
15 6 KB	97-3560	S/WPGR/W/23	Working Party on GATS Rules - Communication from Peru - Emergency Safeguards	21/08/1997	2	D	T/S/WPGR/W23.WPF
16 28 KB	97-3443	S/WPGR/W/11/Add.20	Working Party on GATS Rules - Communication from Peru - Reply to Questionnaire on Government Procurement of Services - Addendum	15/08/1997	10	D	T/S/WPGR/W11A20.WPF
17 36 KB	97-3213	S/WPGR/W/16/Add.2	Working Party on GATS Rules - Communication from New Zealand - Response to the Questions to the Information Exchange Required under the Subsidies Negotiating Mandate - Addendum	23/07/1997	17	D	T/S/WPGR/W16A2.WPF
18 8 KB	97-3150	S/WPGR/W/22	Working Party on GATS Rules - Communication from ASEAN - Emergency Safeguards	23/07/1997	2	D	T/S/WPGR/W22.WPF
19 4 KB	97-2954	S/WPGR/W/21 WT/WGTGP/W/4	Working Group on Transparency in Government Procurement - Working Party on GATS Rules - APEC Surveys on Government Procurement Systems - Note by the Secretariat	15/07/1997	1	D	T/S/WPGR/W21.WPF
20 59 KB	97-2833	S/WPGR/W/20	Working Party on GATS Rules - Synthesis of the Responses to the Questionnaire on Government Procurement of Services - Note by the Secretariat	07/07/1997	16	D	T/S/WPGR/W20.WPF
21 12 KB	97-2793	S/WPGR/W/19	Working Party on GATS Rules - Communication from Singapore - Emergency Safeguard Measures	25/06/1997	4	D	T/S/WPGR/W19.WPF
22 34 KB	97-2768	S/WPGR/W/16/Add.1	Working Party on GATS Rules - Communication from Norway - Response to the Questions Relevant to the Information Exchange Required under the Subsidies Negotiating Mandate - Addendum	23/06/1997	17	D	T/S/WPGR/W16A1.WPF
23 23 KB	97-2370	S/WPGR/W/15/Add.6	Working Party on GATS Rules - Communication from Mexico - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS - Addendum	22/05/1997	7	D	T/S/WPGR/W15A6.WPF

24 24 KB	97-2137	S/WPGR/W/15/Add.4	Working Party on GATS Rules - Communication from the European Communities and their Member States - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS	20/05/1997	8	D	T/S/WPGR/W15A4.WPF
25 20 KB	97-2139	S/WPGR/W/15/Add.5	Working Party on GATS Rules - Communication from Egypt - Response to the Questions Relating to an Emergency Safeguard Mecanism in GATS	20/05/1997	6	D	T/S/WPGR/W15A5.WPF
26 25 KB	97-2082	S/WPGR/W/18	Working Party on GATS Rules - Communication from the Hong Kong - Emergency Safeguard Measures in Services: A Way Forward	16/05/1997	8	D	T/S/WPGR/W18.WPF
27 34 KB	97-1980	S/WPGR/W/11/Add.19	Working Party on GATS Rules - Communication from Argentina - Questionnaire on Government Procurement of Services - Addendum	02/05/1997	10	D	T/S/WPGR/W11A19.WPF
28 14 KB	97-1944	S/WPGR/W/15/Add.3	Working Party on GATS Rules - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS	02/05/1997	5	D	T/S/WPGR/W15A3.WPF
29 7 KB	97-1891	S/WPGR/W/15/Add.2	Working Party on GATS Rules - Communication from India - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS	29/04/1997	2	D	T/S/WPGR/W15A2.WPF
30 89 KB	97-1185	S/WPGR/W/11/Add.17	Working Party on GATS Rules - Communication from the Republic of Hungary - Response to the Questionnaire on Government Procurement of Services - Addendum	13/03/1997	37	D	T/S/WPGR/W11A17.WPF
31 31 KB	97-1186	S/WPGR/W/11/Add.18	Working Party on GATS Rules - Communication from Mexico - Questionnaire on Government Procurement of Services - Addendum	13/03/1997	10	D	T/S/WPGR/W11A18.WPF
32 6 KB	97-1115	S/WPGR/W/17	Working Party on GATS Rules - Communication from the United States - Emergency Safeguards	13/03/1997	2	D	T/S/WPGR/W17.WPF
33 12 KB	97-1012	S/WPGR/W/15/Add.1	Working Party on GATS Rules - Communication from Thailand - Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS	11/03/1997	4	D	T/S/WPGR/W15A1.WPF
34 22 KB	97-0903	S/WPGR/W/11/Add.16	Working Party on GATS Rules - Communication from Singapore - Response to the Questionnaire on Government Procurement of Services	06/03/1997	8	D	T/S/WPGR/W11A16.WPF
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1 7 KB	97-0413	S/WPGR/W/16	Working Party on GATS Rules - Questions Relevant to the Information Exchange required under the Subsidies Negotiating Mandate - Note by the Secretariat	05/02/1997	2	D	T/S/WPGR/W16.WPF
2 54 KB	97-0409	S/WPGR/W/11/Add.15	Working Party on GATS Rules - Communication from Chile - Questionnaire on Government Procurement of Services	21/01/1997	19	D	T/S/WPGR/W11A15.WPF
3 19 KB	97-0145	S/WPGR/W/11/Add.14	Working Party on GATS Rules - Communication from India - Response to the Questionnaire on Government Procurement of Services	17/01/1997	7	D	T/S/WPGR/W11A14.WPF
4 2 KB	97-0011	S/WPGR/W/11/Add.13/Corr.1	Working Party on GATS Rules - Communication from the Republic of Korea - Response to the Questionnaire on Government Procurement of Services - Corrigendum	03/01/1997	1	D	T/S/WPGR/W11A13C1.WPF
5 54 KB	97-0112	S/WPGR/W/11/Add.11	Working Party on GATS Rules - Communication from Australia - Response to the Questionnaire on Government Procurement of Services	02/01/1997	20	D	T/S/WPGR/W11A11.WPF
6 9 KB	96-5319	S/WPGR/W/15	Working Party on GATS Rules - Questions relating to an Emergency Safeguard Mechanism in GATS - Note by the Secretariat	12/12/1996	3	D	T/S/WPGR/W15.WPF
7 31 KB	96-5158	S/WPGR/W/11/Add.12	Working Party on GATS Rules - Communication from the Republic of Poland - Response to the Questionnaire on Government Procurement of Services	10/12/1996	11	D	T/S/WPGR/W11A12.WPF
8 24 KB	96-5159	S/WPGR/W/11/Add.13	Working Party on GATS Rules - Communication from the Republic of Korea - Response to the Questionnaire on Government Procurement of Services	10/12/1996	8	D	T/S/WPGR/W11A13.WPF
9 90 KB	96-5056	S/WPGR/W/11/Add.10	Working Party on GATS Rules - Communication from the European Communities and their Member States - Response to the Questionnaire on Government Procurement of Services	02/12/1996	27	D	T/S/WPGR/W11A10.WPF
10 43 KB	96-4434	S/WPGR/W/11/Add.6	Working Party on GATS Rules - Communication from the United States - Response to the Questionnaire on Government Procurement of Services	21/10/1996	15	D	T/S/WPGR/W11A6.WPF
11 16 KB	96-4268	S/WPGR/W/14	Working Party on GATS Rules - Communication from Switzerland - Safeguards and Trade in Services	10/10/1996	4	D	T/S/WPGR/W14.WPF
12 25 KB	96-4074	S/WPGR/W/11/Add.9	Working Party on GATS Rules - Communication from Hong Kong -	07/10/1996	8	D	T/S/WPGR/W11A9.WPF

			Response to the Questionnaire on Government Procurement of Services				
13 21 KB	96-4054	S/WPGR/W/11/Add.7	Working Party on GATS Rules - Communication from Canada - Response to the Questionnaire on Government Procurement of Services	04/10/1996	8	D	T/S/WPGR/W11A7.WPF
14 41 KB	96-4056	S/WPGR/W/11/Add.8	Working Party on GATS Rules - Communication from Colombia - Questionnaire on Government Procurement of Services	04/10/1996	12	D	T/S/WPGR/W11A8.WPF
15 46 KB	96-4048	S/WPGR/W/11/Add.4	Working Party on GATS Rules - Communication from New Zealand - Response to the Questionnaire on Government Procurement of Services	30/09/1996	18	D	T/S/WPGR/W11A4.WPF
16 31 KB	96-3863	S/WPGR/W/11/Add.5	Working Party on GATS Rules - Communication from Japan - Response to the Questionnaire on Government Procurement of Services	27/09/1996	12	D	T/S/WPGR/W11A5.WPF
17 3 KB	96-3673	S/WPGR/W/11/Add.1/Corr.1	Working Party on GATS Rules - Communication from Norway - Response to the Questionnaire on Government Procurement of Services - Corrigendum	19/09/1996	1	D	T/S/WPGR/W11A1C1.WPF
18 30 KB	96-3432	S/WPGR/W/11/Add.3	Working Party on GATS Rules - Communication from Brazil - Response to the questionnaire on government procurement of services	02/09/1996	11	D	T/S/WPGR/W11A3.WPF
19 34 KB	96-2832	S/WPGR/W/11/Add.2	Working Party on GATS Rules - Communication from Switzerland - Response to the Questionnaire on Government Procurement of Services	10/07/1996	13	D	T/S/WPGR/W11A2.WPF
20 26 KB	96-2548	S/WPGR/W/11/Add.1	Working Party on GATS Rules - Communication from Norway - Questionnaire on Government Procurement of Services	20/06/1996	9	D	T/S/WPGR/W11A1.WPF
21 13 KB	96-1953	S/WPGR/W/13	Working Party on GATS Rules - Limitations in Members' Schedules Relating to Subsidies - Note by the Secretariat	21/05/1996	7	D	T/S/WPGR/W13.WPF
22 10 KB	96-1930	S/WPGR/W/12	Working Party on GATS Rules - Provisions on Subsidies relating to Trade in Services in Regional Trade Agreements - Note by the Secretariat	20/05/1996	3	D	T/S/WPGR/W12.WPF
23 10 KB	96-1203	S/WPGR/W/10	Working Party on GATS Rules - Communication from Chile - The Subsidies Issue	02/04/1996	3	D	T/S/WPGR/W10.WPF
24 11 KB	96-1182	S/WPGR/W/11	Working Party on GATS Rules - Questionnaire on Government Procurement of Services - Note by the Secretariat	02/04/1996	4	D	T/S/WPGR/W11.WPF
25 21 KB	96-0815	S/WPGR/W/8	Working Party on GATS Rules - Emergency Safeguard Measures in GATS: The Applicability of Concepts applied in the WTO Agreement on Safeguards - Note by	06/03/1996	5	D	T/S/WPGR/W8.WPF

			the Secretariat				
26 49 KB	96-0816	S/WPGR/W/9	Working Party on GATS Rules - Subsidies and Trade in Services - Note by the Secretariat	06/03/1996	12	D	T/S/WPGR/W9.WPF
27 7 KB	96-0673	S/WPGR/W/7/Add.1	WORKING PARTY ON GATS RULES - INFORMATION ON GOVERNMENT PROCUREMENT OF SERVICES - Note by the Secretariat - Addendum	22/02/1996	2	D	T/S/WPGR/W7A1.WPF
28 8 KB	96-0387	S/WPGR/W/7	WORKING PARTY ON GATS RULES - INFORMATION ON GOVERNMENT PROCUREMENT OF SERVICES - Note by the Secretariat	02/02/1996	3	D	T/S/WPGR/W7.WPF
29 9 KB	95-4100	S/WPGR/W/6	Working Party on GATS Rules - Communication from Thailand - A Discussion Paper on Gats Emergency Safeguards	18/12/1995	2	D	T/S/WPGR/W6.WPF
30 19 KB	95-3999	S/WPGR/W/5	Working Party on GATS Rules - Communication from Australia - Some Conceptual Issues Concerning the Application of Safeguards to Trade in Services	06/12/1995	5	D	T/S/WPGR/W5.WPF
31 11 KB	95-3741	S/WPGR/W/4	Working Party on GATS Rules - Safeguards Procedures in Regional Trade Agreements - Note by the Secretariat	24/11/1995	4	D	T/S/WPGR/W4.WPF
32 45 KB	95-3458	S/WPGR/W/3	Working Party on GATS Rules - Government Procurement of Services - Note by the Secretariat	08/11/1995	13	D	T/S/WPGR/W3.WPF
33 9 KB	95-2953	S/WPGR/W/2	Working Party on GATS Rules - Safeguard Provisions in Regional Trade Agreements - Note by the Secretariat	05/10/1995	2	D	T/S/WPGR/W2.WPF
34 21 KB	95-1864	S/WPGR/W/1	Working Party on GATS Rules - Emergency Safeguard Measures under Article X of GATS - Note by the Secretariat	06/07/1995	5	D	T/S/WPGR/W1.WPF
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Working Party on GATS Rules

- DRAFT -

**ANNUAL REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES (2005)**

1. Since its annual report for 2004, the Working Party on GATS Rules held three formal meetings: on 24 November 2004, on 7 February 2005, and on 20 June 2005.¹ The three negotiating mandates the Working Party is entrusted with were put on the agenda of each meeting: emergency safeguard measures (Article X), government procurement (Article XIII), and subsidies (Article XV). The Working Party also held one informal meeting.

2. In the three areas, discussions referred to the need to consider work priorities in the context of upcoming key timelines and the current state of discussions, including as mentioned by the Chairperson in the annotated agenda circulated as JOB(05)/115.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

3. At the meetings of November 2004 and February 2005, delegations continued their discussion on emergency safeguard measures on the basis of an informal communication from a group of ASEAN Members² (JOB(04)/175), which presented answers to questions raised with respect to their proposal. Issues touched upon in the discussion included: situations justifying the use of a safeguard measure; the definition of domestic industry; availability of appropriate statistics; the relationship between safeguard measures and obligations in bilateral investment treaties; link to progressive liberalization; and the use of safeguard-type entries in schedules.

4. At the meeting of June 2005, a representative from UNCTAD presented a paper on emergency safeguard measures that the organization had earlier circulated. The ensuing discussion touched upon a number of issues, such as the purpose and effects of a safeguard mechanism in services, relevant comparisons with rules in the area of goods, special and differential treatment, domestic industry, procedures and indicators, compensation, as well as possible approaches for a way forward.³ Divergent views were expressed on the various aspects raised in relation to emergency safeguard measures, including desirability and feasibility.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII.**

5. At the meetings of November 2004 and February 2005, delegations continued their discussion of an earlier proposal by the European Communities for a framework under GATS for government procurement in services (S/WPGR/W/48). At the meeting of June 2005, the European Communities

¹ Reports of these meetings are contained in documents S/WPGR/M/50, S/WPGR/M/51, and S/WPGR/M/52. They should be read in conjunction with this report.

² Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines and Thailand.

³ Discussions on emergency safeguard measures are reflected in paragraphs 33-55 of S/WPGR/M/50, paragraphs 55-79 of S/WPGR/M/51, and paragraphs 4-37 of S/WPGR/M/52.

presented a communication on the structure of an annex to the GATS on procedural rules for government procurement (S/WPGR/W/52). Issues raised in the discussion included the application of the MFN obligation, the relationship to the Government Procurement Agreement (GPA), modal application, the possibility of distinguishing between goods and services, scheduling approaches, comparisons with approaches taken in regional trade agreements, thresholds, and elements of procedural rules. As requested, the Secretariat prepared the following Note: *Main Approaches to the Undertaking of Commitments on Government Procurement in Economic Integration Agreements: Summary Observations* (S/WPGR/W/52).

6. A number of delegations continued to reiterate that, in their view, the negotiating mandate under Article XIII did not entail market access issues, while others thought that these were covered. Some delegations drew attention to the General Council's decision, in the July Package, that there be no negotiations on the Singapore issue of transparency in government procurement, while others pointed out that the July Package also called on Members to intensify efforts to conclude the rule-making negotiations, including those on Article XIII.⁴

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

7. At the meeting of November 2004, delegations pursued their discussion on issues relating to the information exchange, the definition of subsidy, and trade distortion, including in the light of a previous communication from the delegation of Hong Kong, China (JOB(04)/127). At the meeting of February 2005, delegations discussed an informal communication from the United States, which put forward some thoughts regarding the information exchange. The delegation of Singapore also presented an informal communication which enumerated a number of relevant issues for the negotiations, in particular with respect to definition (JOB(04)/180). At the meeting of June 2005, delegations discussed an informal communication from the delegations of Chile, Hong Kong, China, Mexico, Peru and Switzerland, which put forward suggestions regarding the development of a provisional definition of subsidy and suggested next steps for the information exchange, including timelines (JOB(05)/96).

8. During the three meetings, the issues raised, and on which various views were expressed, included the scope and depth of the information exchange provided for in Article XV:1, the selection of sectors and timelines for the provision of information, the relevance of the ASCM concepts for a provisional definition in services, the treatment of public services, and flexibility for developing countries pursuant to Article XV:1. As requested, the Secretariat prepared the following informal Note: *Synthesis of Views Expressed on the Definition of Subsidy* (JOB(05)/4).⁵

⁴ Discussions on government procurement are reflected in paragraphs 56-70 of S/WPGR/M/50, paragraphs 37-54 of S/WPGR/M/51, and paragraphs 38-58 of S/WPGR/M/52.

⁵ Discussions on subsidies are reflected in paragraphs 4-32 of S/WPGR/M/50, paragraphs 2-36 of S/WPGR/M/51, and paragraphs 59-81 of S/WPGR/M/52.

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Government Procurement in Services

The following communication, dated 13 June 2005, from the delegation of the European Communities is being circulated to the Members of the Working Party on GATS Rules.

1. In its communications on government procurement in services of July 2002, May 2003 and May 2004, the European Communities (hereinafter the EC) submitted proposals for a framework that could be developed under the GATS, including an Annex to the GATS on procedural rules for government procurement and the possibility to make specific commitments in GATS Schedules to open up to international competition government procurement in services. These communications underlined the flexibility of such framework and the benefits that could be drawn from it. The underlying principle would be that each WTO Member would have the possibility to undertake relevant government procurement commitments in the sectors it wishes to open to international competition and according to the specifications it would set in order to fulfil its public investment and development needs.

2. In the EC communication submitted in May 2004 (S/WPGR/W/48), the EC gave in particular elements that could be developed into **scheduling guidelines for government procurement commitments under the GATS**. The WTO Secretariat Note S/WPGR/W/51 on the main approaches to the undertaking of commitments on government procurement in Economic Integration Agreements (EIAs) provides interesting observations that could enable the Working Party on GATS Rules to further work on such scheduling guidelines.

3. The WTO Secretariat Note S/WPGR/W/49, on the government procurement provisions contained in economic integration agreements, provides a good working basis and a useful source of inspiration in regard to **procedural rules** that could be developed for government procurement in the context of the GATS. Singapore, in its Statement of 24 November 2004, underlined that most of the agreements reviewed in that Secretariat Note contain procedural rules typically covering such topics as: non-discrimination, valuation of contracts, technical specifications, procurement methods, qualification of suppliers, procedural rules regarding invitations to participate, time limits for tendering and delivery, tender documentation, and award of contracts. This provides the structure of an annex to the GATS on procedural rules for government procurement and the question now is what types of rules should be developed under the relevant headings.

4. In this context, the EC is hereby putting forward a new contribution that aims at helping defining the appropriate procedural rules to be developed in an Annex to the GATS on government procurement in services. Such rules are particularly important to ensure the effective opening of government procurement markets. They would apply to sectors where Members undertake specific government procurement commitments.

I. PRELIMINARY CONSIDERATIONS

A. SCOPE AND DEFINITIONS

5. The proposed GATS Annex would indicate that it applies to government procurement of services as it is defined in Article XIII:1 of the GATS. This brings into the scope of the Annex any law, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale nor with a view to use in the supply of services for commercial sale.

6. During discussions in the Working Party on GATS Rules, some WTO Members have suggested that the scope of government procurement in services, as opposed to government procurement of goods, should be defined. In its Statement of 24 November 2004, Singapore underlined that a basic question to address was whether a clear distinction could be made between goods and services procurement.

7. The Tokyo Round Agreement on government procurement had to address this question since it was aimed at covering government procurement of goods. Its Article I: 1 (a) provided that: "This Agreement applies to any law, regulation, procedure and practice regarding the procurement of products by the entities subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts *per se*."

8. The GATS Annex on Government Procurement could include a provision precisizing that it applies to measures by Members affecting the government procurement of services, defined as covering government procurement contracts in which services are the primary subject.

9. Within the scope of the Annex, the procuring entities could be defined as encompassing all entities listed in Article I: 3 (a) GATS. Nevertheless, the Annex should recognise the right for a WTO Member to limit the scope of its government procurement commitments to a limited group of procuring entities, which could be listed in the Schedule, sector by sector, on the basis of either a positive-list or negative-list approach. For practical purposes, Members might consider listing covered entities in an annex to their Schedule, especially in the case they were to be the same for all committed sectors.

B. THRESHOLDS

10. Threshold values would be indicated in the Members' Schedules. According to studies conducted by the EC in the framework of the integration of the EC procurement market, it appears that below certain thresholds no effective cross-border procurement takes place. The EC is therefore of the opinion that all Members should apply the same level of thresholds, regardless of the size of their procurement market. This would increase the efficiency and transparency of the future GATS Annex on Government Procurement.

C. SPECIAL AND DIFFERENTIAL TREATMENT

11. The positive list structure of the GATS and the flexibility of the proposed approach, notably the possibility to schedule partial commitments including specific limitations, mean that WTO Members would retain full discretion about the timing and coverage of the commitments they would undertake to open their government procurement markets to international competition. Developing countries would therefore be able to open up progressively their government procurement markets in the services sectors they see fit, and to implement measures aimed at the development of certain

services sectors and domestic industry, including the possibility of applying preferential pricing policies.

12. In addition to this “built-in flexibility”, the EC considers that it may be useful to reflect on specific special and differential treatment provisions in the GATS Annex on government procurement. For instance, it is often accepted in government procurement instruments to include provisions in favour of offset regimes aimed to develop industrial sectors or regions.

II. RULES APPLICABLE TO PROCUREMENT PROCEDURES

A. NON-DISCRIMINATION

1. National treatment

13. In its previous communications, the EC proposed that WTO Members could indicate in a fifth column of their GATS Schedules, for each sector and each mode of supply, whether and if so, which specific commitments and limitations they undertake for laws, regulations or requirements governing government procurement in services.

2. MFN treatment

14. The Most-Favoured Nation (MFN) clause of the GATS applies across the board to each services sector, regardless of whether the sector has been subject to specific market access or national treatment commitments. Discussions in the Working Party on GATS Rules have suggested that WTO Members would favour following this principle also as regards government procurement in services.

15. However, there could be a one-off possibility to schedule MFN exemptions at the time of entry into force of the GATS Annex on Government Procurement, to take account of the fact that MFN exemptions relating to government procurement were not scheduled at the time of entry into force of the GATS because Article II GATS was not applying to government procurement. The scheduling of MFN exemptions relating to government procurement could follow the usual structure of the GATS lists of MFN exemptions.

16. Finally, the EC has proposed that the GATS Annex on Government Procurement include an exception to the MFN principle to ensure that the more favourable treatment that GPA parties may accord to each others in the framework of the GPA regime, are not extended on an MFN basis to non GPA parties.

B. VALUATION OF CONTRACTS

17. In order to prevent Members’ procuring entities from splitting or dividing government procurement contracts with the intention of avoiding or circumventing the application of future specific commitments for procurement above certain thresholds, some common rules on the valuation of contracts should be fixed. These valuation rules should furthermore enable Members to identify whether services are the primary subject of a given government procurement contract.

C. TECHNICAL SPECIFICATION AND QUALIFICATION OF SUPPLIERS

18. The provisions of Article VI of the GATS and the disciplines of Article VI:4, once agreed, would apply to government procurement in services. Article VI:4 refers to specific types of domestic regulation, more precisely to licensing requirements and procedures, qualification requirements and procedures, and technical standards.

19. The question may be discussed whether those provisions and disciplines would be sufficient to ensure that domestic regulations relating to technical specification and qualification of suppliers in the case of government procurement are not unduly restrictive. The need to have tenders that reflect the diversity of possible technical solutions (when technical specifications are drawn up in terms of functional performance) or the use of official or permanent lists of qualified suppliers by some WTO Members, would however plead for the development in the GATS Annex on Government Procurement of additional specific provisions on technical specification and qualification of suppliers for government procurement.

D. PROCUREMENT METHODS

20. Three broad categories of procedures are commonly distinguished: public or open tendering procedures, selective or restricted tendering procedures (whereby only those suppliers invited to do so may submit a tender) and limited tendering or direct contracting or single tendering (where the procuring entity contacts directly potential suppliers).

21. The agreements reviewed in the Secretariat Note S/WPGR/W/49 (pp. 23-34) explicitly foresee as a standard procedure the use of open or selective tendering procedures and permit, under certain conditions, the use of limited tendering procedures.

22. Accordingly, the GATS Annex on Government Procurement could indicate that, in general, open or selective procurement should be favoured. Conditions and circumstances justifying the use of limited tendering could also be specified in the GATS Annex on Government Procurement.

23. Effective access to government procurement opportunities is closely linked to competitive and transparent procedural rules. This heading would also cover information on procurement opportunities, tendering, and qualification and contract award procedures. It could include a minimum set of information to be provided in procurement notices, such as title, date and place for submission of tenders, etc.

E. TIME PERIODS

24. The GATS Annex on Government Procurement should fix reasonable time periods that would enable interested suppliers to prepare and submit requests for participation where appropriate and/or to prepare and submit tenders in a responsive manner. In determining time periods, Members could take into account such factors as the distance, the use of electronic means and the complexity of the tender.

F. TENDER DOCUMENTATION

25. The GATS Annex on Government Procurement could provide that the information made available should be sufficiently precise to enable suppliers to assess their interest in a particular government procurement contract and, should they wish to participate in it, to submit tenders. Sufficiently precise tender documentation should attract only the best-qualified service providers and at the same time achieve effective competition. Specific elements of information to be included are the address of the entity where tenders should be sent, the language or languages in which tenders and any other documents may be submitted, the criteria for awarding the contract and the terms of payment.

G. CONTRACT AWARD

26. The GATS Annex on Government Procurement could assert the principle that contracts are awarded either to the lowest tender or to the tender determined to be economically the most advantageous in terms of the specific evaluation criteria set earlier in the procurement notice or tender documentation (for instance quality, price, technical merit, aesthetic and functional characteristics, environmental criteria, which are linked to the subject matter of the contract, etc.).

27. The GATS Annex on Government Procurement could in addition provide that, as regards domestic review of decisions to award a specific contract, and appropriate and prompt information of bidders, provisions of GATS Article VI:2 and VI:3, respectively, should apply.

III. CONCLUSION

28. The EC looks forward to discussing elements presented in this Communication and to elaborating an Annex to the GATS on Government Procurement in Services.

Working Party on GATS Rules

**MAIN APPROACHES TO THE UNDERTAKING OF COMMITMENTS ON
GOVERNMENT PROCUREMENT IN ECONOMIC INTEGRATION AGREEMENTS:
SUMMARY OBSERVATIONS**

Note by the Secretariat¹

I. INTRODUCTION

1. At the Working Party's meeting of 20 September 2004, the Secretariat was asked to prepare a Note summarizing main approaches taken in economic integration agreements with respect to commitments on government procurement, including scheduling issues. The summary observations in the next section were prepared after examining the relevant provisions in the economic integration agreements (EIA) reviewed in S/WPGR/W/49.² Part II is thus not intended to provide a description of approaches followed in each agreement, but to highlight some of the main trends. Further details on the scope of particular agreements, or their annexes, might best be provided by parties to such agreements.

II. SUMMARY OBSERVATIONS

A. GENERAL STRUCTURE

2. At the outset, it should be pointed out that government procurement provisions in EIAs typically do not refer to such terms as commitments or schedules, which are used in the GATS. Rather, the application of liberalizing obligations (e.g., the sectors to which they apply) is generally determined by the Article relating to the scope or coverage of the whole set of government procurement provisions. In most agreements, the scope and coverage (e.g., in terms of thresholds, sectors, procuring entities) is further defined through annexes.

3. Both goods and services are included within the scope of the government procurement provisions of all agreements reviewed.³ Relevant obligations (non-discrimination, award procedures, etc.) typically apply across the sectors covered, although a few exceptions exist in specific cases.⁴

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² See Table 1 on page 5 of S/WPGR/W/49. With respect to the EC, this Note focuses, unless indicated otherwise, on the recent EC Directive 2004/18/EC. Given their close relationship with EC Directives, the EEA and the Europe Agreements with Bulgaria and Romania are not examined in Part II.

³ While EC Directive 2004/18/EC has broader coverage, EC Directive 2004/17/EC applies specifically to contracts awarded by entities in such sectors as water, energy, transport and postal services sectors. Such contracts can, however, involve the supply of goods or services.

⁴ For example, the EC Directive sometimes make distinctions (e.g., Article 31 "Cases justifying the use of the negotiated procedure without publication of a contract notice").

B. SERVICES COVERED

4. Most agreements specify, in an annex, the service sectors that are subject to procurement provisions. While the EFTA-Mexico, EC-Mexico, EC-Chile and EFTA Agreements, as well as the EC Directive, list the service sectors that are covered (i.e., positive-list approach)⁵, the NAFTA, US-Chile and US-Singapore Agreements use a negative-list approach (i.e., all relevant service sectors are covered except those listed). The Japan-Singapore Agreement specifies that all services listed in each country's relevant GPA annex (which is based on a positive list of services sectors for these countries) are covered except for certain sectors which are mentioned in its annex. The Republic of Korea-Chile Agreement provides that all service sectors referred to in the Services Sectoral Classification List (MTN.GNS/W/120) are covered. Other agreements do not have country-specific annexes specifying sector coverage.

C. ENTITIES COVERED

5. Most agreements limit the scope of the provisions to procurement by specified entities. The relevant lists are often structured by type of entity, e.g., central government entities, sub-central government entities, government enterprises. In addition, the annexes on entities in the US-Singapore and Japan-Singapore Agreements refer to entities included in relevant annexes of the Government Procurement Agreement (GPA), which also follow a positive-list approach. In contrast, the Chile-El Salvador and Chile-Costa Rica Agreements use a negative-list approach. The Australia-New Zealand and New Zealand-Singapore Agreements do not contain lists of entities; the entities covered are those captured by the definition of government procurement.⁶ The definition of contracting authorities in the EC Directive includes, in addition to State, regional or local authorities, bodies governed by public law, which themselves are further defined (see Article 1(9)). A non-exhaustive list of bodies and categories of bodies governed by public law is annexed to the Directive.

D. THRESHOLDS

6. Agreements also typically limit the scope of the provisions to procurement above a certain threshold value. Thresholds often differ between types of entity (e.g., central government entities versus sub-central government entities) and also vary between goods, construction services and other services (thresholds are generally higher for construction services than other services). Apart from construction, however, agreements do not have different thresholds across services sectors or similar types of entities. The Australia-New Zealand, Singapore-Australia, Chile-Costa Rica and Chile-El Salvador are the only agreements that do not have specific thresholds.

E. CLASSIFICATION

7. Agreements that include lists of service sectors (either those covered or those excluded) tend to make reference, at least in part, to either the provisional CPC and/or the Services Sectoral Classification List. Exceptions are the NAFTA (where the US and Canada refer to the Common Classification System)⁷ and the US-Chile Agreement (where the Common Classification System is used by both signatories).

⁵ While the EC-Chile Agreement uses a positive list approach for the EC, the relevant annex for Chile's sectoral coverage provides that no services from the universal list of services (W/120 and relevant CPC categories) are excluded.

⁶ Article 48(e) of the New Zealand-Singapore Agreement and clause 1(e) of the Australia-New Zealand Government Procurement Agreement (Revised 1997).

⁷ See Appendix 1001.1b-2-B of Annex 1001.1b-2 of NAFTA for more information. For construction services, the Common Classification System is based on CPC Division 51. Mexico's temporary schedule of services refers to the CPC. Canada's schedule refers to the Common classification system, but notes that the appropriate CPC definitions will continue to be applied until such time as definitions under the NAFTA classification system are mutually agreed upon.

F. COUNTRY-SPECIFIC RESERVATIONS

8. While the agreements reviewed do not provide for the inscription of limitations or reservations to particular liberalization obligations, many provide for country-specific exclusions from the coverage of the set of provisions. These typically take the form of Notes in annexes, which typically exclude, for example, certain forms of procurement or certain services. They do not specifically permit price preferences or other discriminatory measures, although Mexico has reserved certain rights in that regard in the agreements to which it is party. The extent to which country-specific derogations are included in agreements might depend on the scope of common exceptions or derogations that parties have agreed to (typically found in the text of the agreement), as well as on the comprehensiveness of an agreement.

9. Examples of country-specific derogations include: (a) a derogation regarding contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time (for EFTA States in the EFTA Mexico Agreement); (b) a derogation allowing Mexico to impose certain local content requirements for particular types of projects (in NAFTA, the EFTA-Mexico, and EC-Mexico Agreements); (c) a derogation for contracts awarded under an international agreement and intended for the joint implementation or exploitation of a project by signatory States and for contracts awarded under the particular procedure of an international organization (for EFTA States in the EFTA-Mexico Agreement); and (d) a derogation for set asides for small and minority businesses (for the US and Canada in the NAFTA).

G. MODAL COVERAGE

10. The agreements reviewed generally do not make distinctions between different modes of supply. The only mode-specific derogations that could be identified in the context of this study are the following: Article 16.02(4)(c) of the Chile-El Salvador and Chile-Costa Rica Agreements which exclude cross-border financial services from the chapter's coverage; and Article 2(2)(e) of Chapter 6 of the Singapore-Australia Agreement which excludes from coverage the procurement of goods and services outside the territory of the procuring Party, for consumption outside this territory.

Working Party on GATS Rules

- DRAFT -

**ANNUAL REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES (2004)**

1. Since its annual report for 2003, the Working Party on GATS Rules held five formal meetings: on 2 December 2003, on 10 and 15 March 2004, on 24 March 2004, on 23 June 2004, and on 20 September 2004.¹ While the meeting of 10 and 15 March was specifically devoted to the issue of the deadline for the negotiations under Article XV, the three negotiating mandates the Working Party is entrusted with were put on the agenda of the other meetings: emergency safeguard measures (Article X), government procurement (Article XIII), and subsidies (Article XV). The Working Party also held a number of informal meetings.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. At the meeting of December 2003, discussions focused on the hypothetical example of an emergency situation provided by a group of delegations from ASEAN², as well as on a non-paper earlier submitted by the delegation of Switzerland which analyzed avenues available under a "no ESM scenario". At the meeting of 10 and 15 March, the Working Party agreed on the content of a draft decision on the extension of the negotiations pursuant to Article X³, which was later adopted by the Council for Trade in Services.⁴ In subsequent meetings, delegations discussed an informal communication from the group of ASEAN Members (JOB(04)/4), which provided further thoughts on an emergency safeguard mechanism. Members expressed divergent views on various aspects, including regarding desirability and feasibility. To facilitate discussions, the Chairperson compiled a list of main questions raised (JOB(04)/49). Focal issues of interest included situations justifying a safeguard, link to progressive liberalization, the concept of limited window, domestic industry and acquired rights, injury determination, applicable measures and modal issues, duration and compensation, surveillance, and special and differential treatment.⁵

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

3. At the meetings of December 2003 and March 2004, delegations continued their discussion of an earlier communication from the European Communities on a proposed framework for government procurement of services under the GATS (S/WPGR/W/42). They also considered an informal

¹ Reports of these meetings are contained in documents S/WPGR/M/45, S/WPGR/M/46 (and corr.1), S/WPGR/M/47, S/WPGR/M/48 and S/WPGR/M/49. They should be read in conjunction with this report.

² Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines and Thailand.

³ As reflected in S/C/W/236.

⁴ As reflected in S/L/159.

⁵ Discussions on emergency safeguard measures are reflected in paragraphs 5-22 of S/WPGR/M/45, in S/WPGR/M/46 and S/WPGR/M/46/Corr.1, paragraphs 2-38 of S/WPGR/M/47, paragraphs 46-47 of S/WPGR/M/48, and paragraphs 39-58 of S/WPGR/M/49.

communication from Singapore (JOB(03)/216), which listed a number of issues and questions for further discussion in the light of the proposal by the European Communities. At the meetings of June and September 2004, discussions focused on a new communication from the European Communities (S/WPGR/W/48), which provided examples of how commitments and MFN exemptions relating to government procurement could be incorporated in the GATS. The delegation of Hong Kong, China circulated an informal communication (JOB(04)/130), which listed questions relating to the proposal from the European Communities. Many questions and issues were raised, including the application of the MFN obligation, the relationship to the GPA, modal application, scheduling approaches, the possibility of distinguishing between goods and services, link to development, and procedural rules. A number of delegations reiterated that, in their view, the negotiating mandate under Article XIII did not entail market access issues, while others thought that these were covered. Some delegations drew attention to the General Council's decision, in the July Package, that there be no negotiations on the Singapore issue of transparency in government procurement, while others pointed out that the July Package also called on Members to intensify efforts to conclude the rule-making negotiations, including those on Article XIII. As requested, the Secretariat prepared a Note on *Government Procurement-Related Provisions in Economic Integration Agreements* (S/WPGR/W/49).⁶

III. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

4. Delegations first focused on an informal communication from Chile (JOB(03)/218), which provided anonymous examples of subsidies that might distort trade in services. Delegations tended to concentrate on the first example, which raised issues relating to export subsidies. Members also discussed an informal communication from the delegation of Chinese Taipei on the definition of subsidies in services (JOB(04)/78). At the last meeting, discussions focused on an informal communication from the delegation of Hong Kong, China that put forward some thoughts on the possible way forward on aspects such as the information exchange, other sources of information about subsidies, the definition of subsidy, and trade distortion (JOB(04)/127). Noting the lack of progress in that area, some delegations called for a target date to be set for the exchange of information pursuant to Article XV, while others raised doubts about the precise meaning of Article XV in that regard. The importance of working on a definition of subsidy was stressed, as well as the need for discussing concrete negotiating proposals. It was also recommended to address different aspects of the negotiations in tandem. As requested, the Secretariat produced four Notes, which were subsequently discussed: *Overview of Subsidy Disciplines Relating to Trade in Services in Economic Integration Agreements* (S/WPGR/W/46), *List of Publications from International Organizations Relating to Subsidies in Services* (S/WPGR/W/47), *Subsidies for Services Sectors: Information Contained in WTO Trade Policy Reviews* (S/WPGR/W/25/Add.4), and *Limitations in Members' Schedules Relating to Subsidies* (S/WPGR/W/13/Add.2).⁷

⁶ The discussions on government procurement are reflected in paragraphs 23-33 of S/WPGR/M/45, paragraphs 39-53 of S/WPGR/M/47, paragraphs 26-45 of S/WPGR/M/48 and paragraphs 2-38 of S/WPGR/M/49.

⁷ The discussions on subsidies are reflected in paragraphs 34-52 of S/WPGR/M/45, paragraphs 54-80 of S/WPGR/M/47, paragraphs 5-25 of S/WPGR/M/48, and paragraphs 59-80 of S/WPGR/M/49.

WORLD TRADE ORGANIZATION

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Working Party on GATS Rules

GOVERNMENT PROCUREMENT-RELATED PROVISIONS IN ECONOMIC INTEGRATION AGREEMENTS

Note by the Secretariat¹

At its meeting of 24 March 2004, the Secretariat was requested to expand upon its earlier Note of 24 June 2003 on government procurement-related provisions in economic integration agreements (S/WPGR/W/44). This new Note compiles and provides more information on the types of provisions on government procurement found in economic integration agreements (EIAs) notified under GATS Article V.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

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I. INTRODUCTION

1. The initial Note by the Secretariat on this topic (S/WPGR/W/44) provided summary information on the procurement-related provisions of each relevant agreement. To avoid duplication, the present document aims at providing a general overview of the main types of government procurement-related provisions encountered in these EIAs. While highlighting some similarities and differences in the types of procurement provisions, it does not attempt to provide a detailed description of what is found in each agreement. In addition, the Note does not simply replicate all relevant provisions of the agreements, since this would have led to an unreasonably bulky document. Moreover, the full text of these agreements can already be found in official WTO documents (see Table 1). Rather, for each of the issues reviewed, the Note reproduces the relevant provisions of some agreements so as to illustrate similarities and differences by way of example.

2. While this note focuses on the main government procurement-related provisions found in these EIAs (e.g., provisions relating to tendering procedures, offsets, or challenge procedures), it needs to be kept in mind that no attempt has been made to assess the scope and coverage of the respective agreements, i.e., how government procurement is defined, what are the exceptions or exclusions, or what sectors, thresholds, levels of government or entities are covered. Addressing these issues in detail would have required much more time and resources because it would have involved, in many cases, going through the various annexes or list of commitments attached to the procurement provisions. An element of caution is thus necessary since the impact of the procurement provisions reviewed would also need to be seen in the context of the definitional scope of an agreement. Similar or even identical provisions of different agreements may nevertheless have different implications when scope or definition is taken into account. Further, this Note only looks at procurement-related provisions and does not cover provisions of a horizontal nature that may be found in other sections of EIAs, but that can nonetheless be of relevance for government procurement (e.g., horizontal transparency disciplines including those governing the publication of laws and regulations).

3. Also, this Note will not discuss agreements whose government procurement-related provisions essentially consist of calls for future negotiations, co-operation or consultations on the issue (i.e., US-Jordan, CARICOM, Singapore-EFTA, and Chile-Mexico agreements). Nor does it cover the Europe Agreements involving countries that now form part of the European Union². Of the 10 Europe Agreements that have been notified under Article V, only those involving Bulgaria and Romania have thus been reviewed. It should also be noted that since the circulation of the last Secretariat Note on this issue in 2003, the European Communities now has new Directives in force on government procurement.³ The relevant rules have been consolidated in two Directives: Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts; and Directive 2004/17/EC of 31 March 2004 on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.⁴ Since the provisions of these two Directives tend to be similar - a key difference relates to scope and coverage -, this Note refers, unless indicated otherwise, to the

² The Europe Agreements have been concluded between the European Communities and, respectively, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic, and Slovenia.

³ The Directives entered into force on 30 April 2004. Member States have up to 21 months to implement them in national law. Until they have done so, the current directives continue to apply.

⁴ According to the webpage of the European Commission, the objectives of the legislative package were to simplify and clarify the existing Directives and to adapt them to modern administrative needs, for example by facilitating electronic procurement and, for complex contracts, by introducing more scope for dialogue between contracting authorities and tenderers in order to determine contract conditions. The text of these two directives can be found at:

http://europa.eu.int/comm/internal_market/publicprocurement/legislation_en.htm.

Directive with the broadest sectoral coverage, i.e., Directive 2004/18/EC. In addition, for information purposes, the agreement between Chile and the European Communities has been included in the list of the agreements reviewed despite the fact that it has not yet been notified under Article V. The agreement, notified under GATT Article XXIV, includes a chapter on procurement that covers services.

4. Overall, the following observations are thus based on a total of 18 agreements (see Table 1). The WTO Government Procurement Agreement (GPA) is often referred to in the following Parts because some EIAs incorporate certain of its provisions by reference. In that regard, it should be noted that GPA Members are currently engaged in a process of review of the existing provisions of that Agreement with a view to simplifying it. Therefore, it can be assumed that the text of the Agreement will undergo modifications at the end of the review process.

5. Members may also wish to consult Secretariat Notes prepared for the Working Party on Transparency in Government Procurement, which dealt, at least in part, but sometimes with more detail, with related matters: WT/WGTGP/W/6, WT/WGTGP/W/32, WT/WGTGP/W/33.

6. The Note is structured as follows. The following Part provides a summary of key points and observations. Part III then provides information on the government procurement provisions found in EIAs. It is divided in 13 sections, corresponding to issues on which disciplines are typically found in EIAs: non-discrimination, procurement methods, invitations to participate, etc.

Table 1
Agreements Reviewed in This Note⁵

Economic Integration Agreement	Document reference ⁶	Relevant provisions ⁷
EC Treaty of Rome, as well as enlargement.	WT/REG39 WT/REG170 and WT/REG3 (enlargement)	Directives 2004/18/EC, 2004/17/EC, 89/665/EEC, 92/13/EEC.
Australia – New Zealand (ANZCERTA)	WT/REG40	Art. 11 + 1997 Government Procurement Agreement (revised)
EEA	WT/REG138	Art. 65 + Annex XVI
NAFTA	WT/REG4	Chapter 10
EC – Bulgaria	WT/REG1	Art. 68
EC – Romania	WT/REG2	Art. 68
New Zealand – Singapore	WT/REG127	Part 8, Art. 46-58
EFTA – Mexico	WT/REG126	Chapter III, Art. 56-68 + Annexes XII-XVII
EC – Mexico	WT/REG109	Title III, Art. 25-38 + Annexes X-XIII
EFTA (cons. version)	WT/REG154	Art. 37 + Annex R
Chile – Costa Rica	WT/REG136	Chapter 16
Japan – Singapore	WT/REG140	Chapter 11, Art. 101-102
Singapore – Australia	WT/REG158	Chapter 6
US – Chile	WT/REG160	Chapter 9
US – Singapore	WT/REG161	Chapter 13
Chile – El Salvador	WT/REG165	Chapter 16
Republic of Korea – Chile	WT/REG169	Chapter 15
EC-Chile	WT/REG164	Title IV, Art. 136-162

⁵ As of August 2004. The Agreement between the EC and Chile is included for information purposes, even though not notified under Article V of GATS. As noted earlier, the Europe Agreements involving countries that now form part of the European Union are not reviewed.

⁶ WTO document reference number, where a copy of the agreement, as well as related information, can be found, are also available at: http://www.wto.org/english/tratop_e/region_e/provision_e.xls

⁷ Agreements that include provisions on government procurement that solely provide for future negotiations, consultations or co-operation on procurement issues are not included. See Annex to S/WPGR/W/44 for a more complete picture in this regard.

II. MAIN OBSERVATIONS

7. A significant share of the agreements notified under Article V contain substantive disciplines on government procurement for services (25 out of 34). More than half of these 25 agreements involve the EC (owing largely to the 10 Europe Agreements notified). Many also involve developing countries, and some Members are parties to more than one such EIA (e.g., Chile and Singapore are each party to four agreements⁸). Also, while a good number of the signatories of the agreements reviewed in this Note are parties to the WTO's plurilateral Government Procurement Agreement (GPA), many are not, i.e., Australia, New Zealand, Chile, Costa Rica, El Salvador, Mexico, Bulgaria, and Romania.

8. Significant similarities exist across the procurement provisions found in many of the EIAs reviewed in this Note. In addition to obligations relating to non-discriminatory treatment, they tend to include additional procedural rules relating to fair and open procurement procedures, transparency, and to accountability and due process. Most of the agreements reviewed contain a number of detailed procedural obligations that procuring entities have to fulfil to ensure the effective application of basic principles. The general purpose of these procedural requirements is to guarantee that access to procurement is effectively open and an equal opportunity is given to foreign suppliers in competing for government contracts. Most of the 18 agreements considered in the following Part have provisions - with different degrees of detail and comprehensiveness however - relating to the valuation of contracts (e.g., key principles to be followed for determining the value of contracts), technical specifications (e.g., to avoid unnecessary obstacles to trade), procurement methods (e.g., to specify permissible methods and, more specifically, the conditions under which procedures other than open tendering can be used), qualification of suppliers (e.g., focus on criteria essential to ensure fulfilment of the contract), invitations to participate (e.g., requirements relating to the publication of a tender notice), time limits (e.g., minimum periods of time for allowing suppliers to prepare and submit tenders), tender documentation (e.g., requirements relating to the type of information contained in tender documentation provided to suppliers), award of contracts (e.g., rules regarding award criteria and information of results), provision of information (e.g., requirement to publish laws, regulations, decisions, rulings and other procedures relating to government procurement), and challenge procedures (e.g., requirement to allow suppliers recourse to an impartial body to review complaints).

9. Despite such general similarities across agreements, differences exist in terms of the types of provisions included, as well as the levels of detail and comprehensiveness of such provisions. Agreements such as, for example, NAFTA, EFTA, Singapore-US, Japan-Singapore, EFTA-Mexico or the EC Directives have very detailed and comprehensive rules which often approach - and in some cases go beyond - those contained in the WTO's GPA. Other agreements, like the Chile-Costa Rica and Chile-El Salvador agreements or the agreements involving New Zealand and Australia, provide for a less extensive and detailed set of procedural rules overall. However, it needs to be emphasized that no direct link necessarily exists between the degree of comprehensiveness of the provisions reviewed and the level of liberalization achieved or of the scope of entities and service sectors covered.

10. Finally, instead of containing their own detailed provisions, many agreements rather incorporate by reference the provisions of other agreements. The EFTA, Japan-Singapore and US-Singapore agreements incorporate many GPA provisions by reference. In other cases, the parties to a particular agreement do not comply with identical obligations: some provisions of the GPA are incorporated by reference and apply to one signatory while related provisions of the NAFTA Chapter on Government Procurement are incorporated by reference and apply only to the other signatory. This is the case in the EC-Mexico and EFTA-Mexico agreements, where some NAFTA provisions apply to Mexico and related GPA provisions apply to the EC and EFTA States.

⁸ Without counting the EC-Chile Agreement

III. REVIEW OF MAIN PROVISIONS

A. NON-DISCRIMINATION

11. All agreements reviewed in this Note contain specific provisions relating to non-discrimination. However, their exact content and drafting differ across agreements. The **EFTA** and the **US-Singapore** Agreements each incorporate by reference Article III of the GPA (reproduced below).⁹ According to that provision, parties are required, with respect to procurement covered by the Agreement, to give services and suppliers of the other parties treatment no less favourable than that they give to their domestic services and suppliers or the services and suppliers of any other party. Further, each party is required to ensure that its entities do not treat a locally-established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership and do not discriminate against a locally-established supplier on the basis of the country of production of the service being supplied.

GPA

Article III: National Treatment and Non-Discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:
 - (a) that accorded to domestic products, services and suppliers; and
 - (b) that accorded to products, services and suppliers of any other Party.
2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:
 - (a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and
 - (b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.
3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.

12. The Agreement between **Japan and Singapore** also incorporates Article III of the GPA by reference, except that the application of paragraph 1 (b), providing for MFN treatment, is specifically excluded.¹⁰ Article 26 of the **EC-Mexico** Agreement and Article 57 ("National Treatment and Non-Discrimination", reproduced below) of the **EFTA-Mexico** Agreement reflect Article III of the GPA, except that like in the Japan-Singapore agreement, the issue of non-discrimination amongst foreign services or foreign suppliers (i.e., MFN treatment) is not addressed.¹¹ Article 3 ("National

⁹ See Article 6 of Annex R of the EFTA Agreement and paragraph 1 of Article 13:3 and paragraph 5 of Article 13:2 of the US-Singapore Agreement.

¹⁰ See paragraph 1 of Article 101 of the Japan-Singapore Agreement.

¹¹ In the GPA or NAFTA, for example, the obligation of MFN treatment relates to discrimination between Parties to the agreement. Such type of an obligation may not be necessary in agreements in which there are only two parties. It should also be noted that in the GPA, Members typically attach reciprocity conditions to their commitments.

Treatment") of Chapter 6 of the **Singapore-Australia** Agreement includes similar language, but further specifies that "(a) Party shall not discriminate in favour of corporate bodies in which that Party is a shareholder".

EFTA-Mexico

Article 57: National Treatment and Non-Discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the products, services and suppliers of the other Party treatment no less favourable than that accorded to domestic products, services and suppliers.
2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Chapter, each Party shall ensure:
 - (a) that its entities do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of foreign affiliation to, or ownership by, a person of the other Party; and
 - (b) that its entities do not discriminate against locally- established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is the other Party.
3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Chapter.

13. Article 1003 ("National Treatment and Non-Discrimination", reproduced below) of **NAFTA** contains language similar to that used in the Japan-Singapore, US-Singapore and EFTA agreements. One difference is that such Agreement refers to "treatment no less favourable than the most favourable treatment that the Party accords to (...)". Also, it does not include the expression "provide immediately and unconditionally" used in the GPA. Paragraphs 1, 2 and 5 of the **US-Chile** Agreement ("National Treatment and Non Discrimination") are similar to Article III of the GPA, except that, like others, the granting of "no less favourable treatment is solely in relation to domestic services and suppliers (in the sense of national treatment) and not in relation to services and suppliers of non-parties (in the sense of MFN). Like in the NAFTA, treatment no less favourable does not have to be provided "immediately and unconditionally".

NAFTA

Article 1003: National Treatment and Non-Discrimination

1. With respect to measures covered by this Chapter, each Party shall accord to goods of another Party, to the suppliers of such goods and to service suppliers of another Party, treatment no less favorable than the most favorable treatment that the Party accords to:
 - (a) its own goods and suppliers; and
 - (b) goods and suppliers of another Party.
2. With respect to measures covered by this Chapter, no Party may:
 - (a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for the particular procurement are goods or services of another Party.

3. Paragraph 1 does not apply to measures respecting customs duties or other charges of any kind imposed on or in connection with importation, the method of levying such duties or charges or other import regulations, including restrictions and formalities.

14. The national treatment and non-discrimination provisions of the **EC-Chile** (Article 139) and the **Republic of Korea-Chile** Agreements (Article 15.3), which essentially have the same content as the Article of the GPA reproduced above, include an additional paragraph which provides that "(e)ach Party shall ensure that the procurement of its entities (...) takes place in a transparent, reasonable and non-discriminatory manner, treating any supplier of either Party equally and ensuring the principle of open and effective competition".

15. The **Australia-New Zealand** Agreement contains provisions (Clauses 2 and 4, reproduced below) relating to the granting of treatment no less favourable than that granted to domestic services and suppliers, but also includes additional concepts such as equal opportunity and equal access. The **New Zealand-Singapore** Agreement includes similar language (see paragraphs (c) and (d) of Article 49).

Australia-New Zealand: Government Procurement Agreement (revised 1997)

2. It is agreed that, except as stated otherwise in this Agreement, the Parties will:

(...)

(c) Provide to services, goods and suppliers of the other Parties equal opportunity and treatment no less favourable than that accorded to their own domestic services, goods and suppliers (see 4 below).

(d) Promote opportunities for ANZ suppliers to compete for government business on the basis of value for money and avoid purchasing practices which are biased in favour of foreign goods and suppliers.

(...)

4. In accordance with Clause 2 (b) and (c) of this Agreement, Parties to the Agreement will not use amongst themselves any form of procurement practice which:

- discriminates against;
- is biased against; and
- or has the effect of denying equal access or opportunity to any ANZ supplier.

16. The **Chile-Costa Rica** and **Chile-El Salvador** Agreements each contain an Article on national treatment and non-discrimination (Article 16.04 in each case), which use the same language¹². It provides for national treatment, except that this is limited to "government procurement carried out by entities through tendering" (Article 16.04(1)). Paragraph 2 then provides that when different procedures are used, Parties shall adopt "such measures as are reasonably available to ensure compliance with the obligations established in Article 16.03(1)(f)".¹³ Article 16.03(1)(f), which bears some resemblance to what is found in the New Zealand-Australia and New Zealand-Singapore Agreements, provides as follows:

¹² The provisions of these two agreements are always identical. Even though notified separately, the provisions result from the negotiations on the framework for a free trade agreement between governments of Central America and Chile.

¹³ Tendering procedures are defined (Article 16.01) as "all government procurement procedures other than contracting on own account". Hence, the use of different procedures in Article 16.04 would mean contracting on own account.

Chile-El Salvador
Article 16.03: General rights and obligations

1. The Parties agree upon the following rights and obligations, as provided in this Chapter:

(...)

(f) to refrain from applying measures that:

(i) Are discriminatory;

(ii) are arbitrary; or

(iii) have the effect of denying equal access or opportunity to a supplier from another Party.

17. As regards EU Members, Article 2 of the **EC Directive** simply provides that “contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way”.¹⁴ The explanatory memorandum to the Commission's proposed Directive in 2000 (COM(2000)275, page 18) noted that “in accordance with the established case-law of the Court of Justice, the general principle of equality of treatment, of which the prohibition of discrimination on grounds of nationality is no more than a specific expression, is one of the fundamental principles of Community law. Under this principle, analogous situations must not be treated in different ways unless the difference in treatment is justified by objective reasons.”

18. The **Europe Agreements** with Bulgaria (Article 68, reproduced below) and Romania (Article 68) provide for access to contract award procedures under a treatment no less favourable than that accorded to domestic companies.

EC-Bulgaria
Article 68

1. The Parties consider the opening up of the award of public contracts on the basis of the principles of non-discrimination and reciprocity, in particular in the GATT context, to be a desirable objective.

2. The Bulgarian companies as defined in Article 49 shall be granted access to contract award procedures in the Community pursuant to Community procurement rules under a treatment no less favourable than that accorded to Community companies as of the entry into force of the Agreement.

Community companies as defined in Article 49 shall be granted access to contract award procedures in Bulgaria under a treatment no less favourable than that accorded to Bulgarian companies at the latest at the end of the transitional period referred to in Article 7.

Community companies established in Bulgaria under the provisions of Chapter II of Title IV in the form of subsidiaries as described in Article 45 and in the forms described in Article 55 shall have upon entry into force of the Agreement access to contract award procedures under a treatment no less favourable than that accorded to Bulgarian companies. Community companies established in Bulgaria in the form of branches and agencies as described in Article 45 shall be granted such treatment at the latest by the end of the transitional period.

The Association Council shall periodically examine the possibility for Bulgaria to introduce access to award procedures in Bulgaria for all Community companies prior to the end of the transitional period.

¹⁴ The EEA Agreement provides, in the area of procurement, for the application of the EC Directives. Thus, for the purposes of this Note, no specific reference will be made to the EEA. As noted earlier, this Note focuses on the EC Directive with the broadest sectoral coverage: 2004/18/EC.

3. As regards establishment, operations, supply of services between the Community and Bulgaria, as well as employment and movement of labour linked to the fulfilment of public contracts, the provisions of Articles 38 to 59 are applicable.

Offsets

19. It may also be noted that various EIAs include a provision that explicitly prohibits offsets. While the **Japan-Singapore** and **US-Singapore** Agreements incorporate Article XVI:1 of the GPA by reference (reproduced below), the **NAFTA** (Article 1006, reproduced below), **US-Chile** (paragraph 4 of Article 9.2.), **New Zealand-Singapore** (Article 53), **Australia-New Zealand** (paragraph 2 of Article 11), **EC-Mexico** (Article 28), **EFTA-Mexico** (Article 60), **EC-Chile** (Article 140, reproduced below), **Chile-El Salvador** (paragraph 3 of Article 16.04, reproduced below), **Chile-Costa Rica** (paragraph 3 of Article 16.04), and **Republic of Korea-Chile** Agreements (Article 15.4) include their own provisions on offsets.¹⁵ They do not tend to vary very significantly. Many of these agreements also include a definition of offsets, which is inserted either within the text of the relevant Article or in the section on definitions.

GPA Paragraph 1 of Article XVI: Offsets

1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.¹ (...)

¹ Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

NAFTA Article 1006: Prohibition of Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or the award of contracts, consider, seek or impose offsets. For purposes of this Article, offsets means conditions imposed or considered by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, countertrade or similar requirements.

EC-Chile Article 140: Prohibition Of Offsets And National Preferences

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or in the award of contracts, consider, seek or impose offsets, nor conditions regarding national preferences such as margins allowing price preference.

¹⁵ Although it is not replicated in the EIAs reviewed, paragraph 2 of Article XVI of the GPA permits developing countries to negotiate conditions for the use of offsets at the time of accession to the Agreement.

Chile-El Salvador

Article 16.04: National treatment and non-discrimination

(...)

3. Each Party shall ensure that its entities do not demand offsets from suppliers of another Party participating in a government procurement process.

(...)

20. In sum, and not surprisingly, all the agreements reviewed contain provisions on non-discriminatory treatment. The obligation to grant treatment no less favourable to services and suppliers of the other party than that granted to domestic services and suppliers is central to any set of government procurement provisions found in EIAs, even though sometimes expressed in different terms. Obviously, the actual implications of the non-discrimination provisions contained in these agreements, i.e., the extent to which they imply liberalization, depend on the service sectors, entities and thresholds typically found in annexes to the set of procurement provisions. Most agreements contain, in addition, a provision specifically providing for the prohibition of offsets. It should also be noted that many agreements complement the general provisions on national treatment or non-discrimination with additional references to non-discriminatory treatment in the context of particular procedural obligations. For example, the agreement between **Australia and Singapore** provides, in addition to the obligation on national treatment (Article 3), that tendering procedures be "conducted in a fair and non-discriminatory manner" and that the "tender evaluation process be fair and non-discriminatory" (Article 6 of Chapter 6: Tendering Principles).

B. VALUATION OF CONTRACTS

21. A majority of the agreements reviewed include specific provisions relating to the valuation of contracts. These provisions generally set out key principles to be followed in determining the value of contracts covered, especially since agreements typically only apply to contracts above certain threshold values. Relevant provisions typically include at least some of the following elements: an obligation to take all forms of remuneration into consideration in the valuation; an anti-avoidance clause, providing that the valuation method shall not be used, nor procurement requirement be divided into separate contracts, with the intention of avoiding the application of the agreement; criteria for valuation when contracts are awarded in separate parts; criteria for valuation in the case of contracts that do not specify a total price or in the case of contracts for the lease, rental or hire purchase of services; and special valuation provisions in cases where an intended procurement specifies the need for option clauses.

22. Many agreements incorporate by reference Article II of the GPA (reproduced below): **Japan-Singapore, US-Singapore, EC-Mexico** in the case of the EC, **EFTA-Mexico** in the case of EFTA, **EFTA**.

GPA
Article II: Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts¹ for purposes of implementing this Agreement.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.
4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
 - (a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
 - (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.
5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:
 - (a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;
 - (b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.

If there is any doubt, the second basis for valuation, namely (b), is to be used.

6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

¹ This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article IX.

23. The **NAFTA** also includes a similarly detailed provision on the valuation of contracts (Article 1002, reproduced below). That NAFTA Article has been incorporated by reference in the EC-Mexico and EFTA-Mexico agreements, both in relation to Mexico solely. The **EC Directive** also has detailed rules on valuation of contracts: Article 9 entitled "Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems".¹⁶

NAFTA
Article 1002: Valuation of Contracts

1. Each Party shall ensure that its entities, in determining whether a contract is covered by this Chapter, apply paragraphs 2 through 7 in calculating the value of that contract.
2. The value of a contract shall be estimated as at the time of publication of a notice in accordance with Article 1010.
3. In calculating the value of a contract, an entity shall take into account all forms of remuneration, including premiums, fees, commissions and interest.
4. Further to Article 1001(4), an entity may not select a valuation method, or divide procurement requirements into separate contracts, to avoid the obligations of this Chapter.
5. Where an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:
 - (a) the actual value of similar recurring contracts concluded over the prior fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
 - (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.
6. In the case of a contract for lease or rental, with or without an option to buy, or in the case of a contract that does not specify a total price, the basis for valuation shall be:
 - (a) in the case of a fixed term contract, where the term is 12 months or less, the total contract value, for its duration or, where the term exceeds 12 months, the total contract value, including the estimated residual value; or
 - (b) in the case of a contract for an indefinite period, the estimated monthly instalment multiplied by 48.If the entity is uncertain as to whether a contract is for a fixed or an indefinite term, the entity shall calculate the value of the contract using the method set out in subparagraph (b).
7. Where tender documentation requires option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, including all possible optional purchases.

¹⁶ The Europe Agreements are not mentioned in this context since they do not contain specific procedural rules. The procurement provisions in these agreements are essentially limited to non-discrimination. This might relate to the fact that the countries with which the EC has concluded these agreements are committed to progressively taking over the *acquis communautaire* in the area of procurement.

Directive 2004/18/EC

Article 9: Methods for calculating the estimated value of public contracts,
framework agreements and dynamic purchasing systems

1. The calculation of the estimated value of a public contract shall be based on the total amount payable, net of VAT, as estimated by the contracting authority. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract.

Where the contracting authority provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

2. This estimate must be valid at the moment at which the contract notice is sent, as provided for in Article 35(2), or, in cases where such notice is not required, at the moment at which the contracting authority commences the contract awarding procedure.

3. No works project or proposed purchase of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive.

4. With regard to public works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the contracting authorities.

5. (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 7, this Directive shall apply to the awarding of each lot.

However, the contracting authorities may waive such application in respect of lots the estimated value of which net of VAT is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate value of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying Article 7(a) and (b).

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 7, this Directive shall apply to the awarding of each lot.

However, the contracting authorities may waive such application in respect of lots, the estimated value of which, net of VAT, is less than EUR 80 000, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

6. With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

(a) in the case of fixed-term public contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value;

(b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

7. In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

(a) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

- (b) or the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.

The choice of method used to calculate the estimated value of a public contract may not be made with the intention of excluding it from the scope of this Directive.

8. With regard to public service contracts, the value to be taken as a basis for calculating the estimated contract value shall, where appropriate, be the following:

- (a) for the following types of services:
- (i) insurance services: the premium payable and other forms of remuneration;
 - (ii) banking and other financial services: the fees, commissions, interest and other forms of remuneration;
 - (iii) design contracts: fees, commission payable and other forms of remuneration;
- (b) for service contracts which do not indicate a total price:
- (i) in the case of fixed-term contracts, if that term is less than or equal to 48 months: the total value for their full term;
 - (ii) in the case of contracts without a fixed term or with a term greater than 48 months: the monthly value multiplied by 48.

9. With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

24. Other agreements tend to be less detailed with regard to valuation principles, although many include specific provisions on how to calculate threshold values (adjustment for inflation; conversion to national currency, etc.). The Agreement between **New Zealand and Singapore** also includes specific provisions on valuation of contracts (Article 50). It replicates paragraphs 1 to 3 and paragraph 6 of Article II of the GPA. The **EC-Chile** Agreement (Article 141, reproduced below) contains an anti-avoidance clause and an obligation to take into account all forms of remuneration in calculating the value of a contract.

EC-Chile
Article 141: Valuation Rules

1. Entities shall not split up a procurement, nor use any other method of contract valuation with the intention of evading the application of this Title when determining whether a contract is covered by the disciplines of thereof, subject to the conditions set out in Annexes XI and XII, Appendices 1 to 3.
2. In calculating the value of a contract, an entity shall take into account all forms of remuneration, such as premiums, fees, commissions and interests, as well as the maximum permitted total amount, including option clauses, provided for by the contract.
3. When, due to the nature of the contract, it is not possible to calculate in advance its precise value, entities shall estimate this value on the basis of objective criteria.

25. Other examples include paragraph 1 of Section G of Annex 9.1 of the **US-Chile** Agreement and paragraph 1 of Appendix 2 to Annex 15.2 of the **Republic of Korea-Chile** Agreement, which mention the need to take into account all forms of remuneration when determining values and provides an illustrative list. The other agreements reviewed do not contain specific provisions in this regard.

Republic of Korea-Chile
ANNEX 15.2

APPENDIX 2

Value Of Thresholds

1. In calculating the value of a contract, entities shall include any procurement for which the value of the procurement is estimated to be below the relevant values specified in the Parties' respective Appendices to Annex 15.1 of this Chapter. Entities shall include in such an estimate the maximum total estimated value of the procurement and any resulting contracts over the duration of such contracts, taking into account all options, premiums, fees, commissions, interest and other revenue streams or forms of remuneration, provided for in such contracts.

(...)

C. TECHNICAL SPECIFICATIONS

26. Many agreements include specific provisions relating to the technical specification of the goods and services to be procured, i.e., such characteristics as quality, performance, or processes or methods of production. Such provisions typically provide that technical specifications shall not constitute unnecessary obstacles to international trade.

27. Several agreements incorporate by reference Article VI of the GPA (reproduced below): **Japan-Singapore**, **US-Singapore**, **EC-Mexico** with respect to the EC, **EFTA-Mexico** with respect to EFTA, and **EFTA**. In addition to paragraph 1, which relates to technical specifications as unnecessary obstacles to international trade, the following paragraphs are about the need for technical specifications to be expressed in terms of performance and be based on international standards where appropriate (paragraph 2), the avoidance of requirements or reference to particular trademarks, patents, suppliers or the like (paragraph 3), and about precluding effects on competition arising from the receipt of advice from a firm on the preparation of specifications.

GPA
Article VI: Technical Specifications

1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.
2. Technical specifications prescribed by procuring entities shall, where appropriate:
 - (a) be in terms of performance rather than design or descriptive characteristics; and
 - (b) be based on international standards, where such exist; otherwise, on national technical regulations¹, recognized national standards², or building codes.
3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.
4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

¹ For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

² For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

28. Article 1007 of the **NAFTA** (reproduced below) addresses the same four issues that are addressed in the Article VI of the GPA. The EC-Mexico and EFTA-Mexico agreements - both in the case of Mexico only - incorporate this NAFTA Article by reference. Article 9.7 of the **US-Chile** Agreement is along the same lines, except that an additional paragraph is added to specify that "for greater certainty, this Article is not intended to preclude a Party from preparing, adopting or applying technical specifications to promote the conservation of natural resources".

NAFTA
Article 1007: Technical Specifications

1. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specification with the purpose or the effect of creating unnecessary obstacles to trade.
2. Each Party shall ensure that any technical specification prescribed by its entities is, where appropriate:
 - (a) specified in terms of performance criteria rather than design or descriptive characteristics; and
 - (b) based on international standards, national technical regulations, recognized national standards, or building codes.
3. Each Party shall ensure that the technical specifications prescribed by its entities do not require or refer to a particular trademark or name, patent, design or type, specific origin or producer or supplier unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation.
4. Each Party shall ensure that its entities do not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in that procurement.

29. Article 149 of the **EC-Chile** Agreement and Article 15.11 of the **Republic of Korea-Chile** Agreement (reproduced below), which are identical, also include detailed provisions on technical specifications. These Articles contain key elements found in the NAFTA or the GPA provisions mentioned above, except that they do not explicitly mention the avoidance of the receipt of advice on specifications from a person having interest in the procurement.

Republic of Korea-Chile
Article 15.11: Technical Specifications

1. Technical specifications shall be set out in the notices, tender documents or additional documents.
2. Each Party shall ensure that its entities do not prepare, adopt or apply any technical specifications with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.
3. Technical specifications prescribed by entities shall:
 - (a) be in terms of performance and functional requirements, rather than design or descriptive characteristics; and
 - (b) be based on international standards, where they exist or, in absence of such standards, on national technical regulations¹, recognised national standards² or building codes.
4. Paragraph 3 does not apply when the entity may objectively demonstrate that the use of technical specifications referred to in that paragraph would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued.
5. In all cases, entities shall consider bids which do not comply with the technical specifications but meet the essential requirements thereof and are fit for the purpose intended. The reference to technical specifications in the tender documents must include words such as "or equivalent".

6. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words, such as "or equivalent", are included in the tender documentation.

7. The tenderer shall have the burden of proof to demonstrate that its bid meets the essential requirements.

¹ For the purpose of this Chapter, a technical regulation is a document, which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

² For the purpose of this Chapter, a standard is a document approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

30. The **EC Directive** (Article 23) also contains detailed rules on this particular aspect. Technical specifications are required to "afford equal access" and not to have "the effect of creating unjustified obstacles to the opening of public procurement to competition". The use of European standards is encouraged. Where references are made to a European standard or, in its absence, to a national standard, tenders based on equivalent arrangements must be considered. To demonstrate equivalence, tenderers should be permitted to use any form of evidence.

Directive 2004/18/EC
Article 23: Technical specifications

1. The technical specifications as defined in point 1 of Annex VI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

3. Without prejudice to mandatory national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

(a) either by reference to technical specifications defined in Annex VI and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or — when these do not exist — to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words 'or equivalent';

(b) or in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

(c) or in terms of performance or functional requirements as mentioned in subparagraph (b), with reference to the specifications mentioned in subparagraph (a) as a means of presuming conformity with such performance or functional requirements;

(d) or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in subparagraph (b) for other characteristics.

4. Where a contracting authority makes use of the option of referring to the specifications mentioned in paragraph 3(a), it cannot reject a tender on the grounds that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

5. Where a contracting authority uses the option laid down in paragraph 3 to prescribe in terms of performance or functional requirements, it may not reject a tender for works, products or services which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down.

In his tender, the tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

6. Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements as referred to in paragraph 3(b) they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,
- the requirements for the label are drawn up on the basis of scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.

Contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

7. 'Recognised bodies', within the meaning of this Article, are test and calibration laboratories and certification and inspection bodies which comply with applicable European standards.

Contracting authorities shall accept certificates from recognised bodies established in other Member States.

8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words 'or equivalent'. to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice to the question of the principal economic operator's liability.

31. The **Singapore-Australia** (Article 5 of Chapter 06, reproduced below), the **Chile-Costa Rica** and **Chile-El Salvador** Agreements (Article 16.06), contrasting from the previously mentioned agreements, use less detailed rules. They focus solely on the need not to create unnecessary obstacles

to trade, i.e., along lines similar to paragraphs 1 of the relevant Article of the GPA and Korea-Chile Agreement or paragraph 2 of NAFTA (reproduced above). The **Australia-New Zealand** and **New Zealand-Singapore** Agreements have no Article specifically addressing the issue of technical specifications. Nevertheless, Article 12:1(a) of the Australia-New Zealand Agreement provides that Members shall examine the scope for taking action to harmonize requirement relating to various matters, including technical specifications. Paragraph 2(d) of Article 46 of the New Zealand-Singapore Agreement states that the parties should provide "a mechanism for co-operation to work toward achieving the greatest possible consistency in contractual, technical and performance standards and specifications (...)".

Singapore-Australia
Article 5: Technical Specifications

Technical specifications laying down the characteristics of the goods or services to be procured shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

D. PROCUREMENT METHODS

32. The agreements reviewed typically contain provisions providing for tendering procedures to be applied in a non-discriminatory manner and specifying the types of procurement methods that can be used. Open tendering procedures, whereby all interested suppliers may submit a tender, are encouraged, while other procedures are allowed under certain conditions or circumstances. As is the case for various other provisions, a significant number of the agreements either follow the approach taken in the GPA or under NAFTA, which closely parallel each other: **Japan-Singapore** (incorporates GPA Articles VII, X and XV), **US-Singapore** (incorporates GPA Articles VII, X and XV), **NAFTA, EC-Mexico** (incorporates GPA Articles VII, X and XV for the EC and NAFTA Articles 1008, 1011 and 1016 for Mexico), and **EFTA-Mexico** (incorporates GPA Articles VII, X and XV for EFTA and NAFTA Articles 1008, 1011 and 1016 for Mexico), and **EFTA** (incorporates GPA Articles VII, X and XV).

33. These agreements explicitly foresee as a standard procedure the use of open tendering procedures and permit, under certain conditions and provided particular procedures are followed, the use of selective tendering procedures, whereby only those suppliers invited to do so may submit a tender, and of limited tendering procedures, where the procuring entity contacts the potential suppliers individually (see GPA Articles X and XV and NAFTA Articles 1011 and 1016).

34. With respect to selective tendering procedures, purchasing entities are required, in order to ensure effective competition, to invite tenders from the maximum number of domestic and foreign suppliers. Procedures and conditions for qualification must not discriminate against suppliers of other parties. NAFTA Article 1011(4) further provides that, upon request of a supplier, an entity shall provide information concerning a decision not to invite or admit that supplier to tender.

35. Regarding limited tendering procedures, the provisions of the above-mentioned agreements closely circumscribe situations in which this method can be used, for example in the absence of tenders in response to an open tender or selective tender, when the tenders submitted have been collusive, when the service can be supplied only by a particular supplier, or for reasons of extreme urgency brought about by events unforeseeable by the entity.

GPA
Article VII: Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.
2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.
3. For the purposes of this Agreement:
 - (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.
 - (b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.
 - (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.

Article X: Selection Procedures

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.
2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.
3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.
4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

Article XV: Limited Tendering

1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:
 - (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
 - (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
 - (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
 - (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services¹;
 - (e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV²;
 - (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation

of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;

(g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;

(h) for products purchased on a commodity market;

(i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;

(j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

¹ It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by the Agreement.

² Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

NAFTA
Article 1008: Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are:
 - (a) applied in a nondiscriminatory manner; and
 - (b) consistent with this Article and Articles 1009 through 1016.
2. In this regard, each Party shall ensure that its entities:
 - (a) do not provide to any supplier information with regard to a specific procurement in a manner that would have the effect of precluding competition; and
 - (b) provide all suppliers equal access to information with respect to a procurement during the period prior to the issuance of any notice or tender documentation.

Article 1011: Selective Tendering Procedures

1. To ensure optimum effective competition between the suppliers of the Parties under selective tendering procedures, an entity shall, for each procurement, invite tenders from the maximum number of domestic suppliers and suppliers of the other Parties, consistent with the efficient operation of the

procurement system.

2. Subject to paragraph 3, an entity that maintains a permanent list of qualified suppliers may select suppliers to be invited to tender for a particular procurement from among those listed. In the process of making a selection, the entity shall provide for equitable opportunities for suppliers on the list.

3. Subject to Article 1009(2) (f), an entity shall allow a supplier that requests to participate in a particular procurement to submit a tender and shall consider the tender. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. Where an entity does not invite or admit a supplier to tender, the entity shall, on request of the supplier, promptly provide pertinent information concerning its reasons for not doing so.

Article 1016: Limited Tendering Procedures

1. An entity of a Party may, in the circumstances and subject to the conditions set out in paragraph 2, use limited tendering procedures and thus derogate from Articles 1008 through 1015, provided that such limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers.

2. An entity may use limited tendering procedures in the following circumstances and subject to the following conditions, as applicable:

(a) in the absence of tenders in response to an open or selective call for tenders, or where the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or where the tenders submitted come from suppliers that do not comply with the conditions for participation provided for in accordance with this Chapter, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;

(b) where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services, including software to the extent that the initial procurement of the software was covered by this Chapter;

(e) where an entity procures a prototype or a first good or service that is developed at its request in the course of and for a particular contract for research, experiment, study or original development. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be subject to Articles 1008 through 1015. Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards, but does not include quantity production to establish commercial viability or to recover research and development costs;

(f) for goods purchased on a commodity market;

- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers;
- (h) for a contract to be awarded to the winner of an architectural design contest, on condition that the contest is
 - (i) organized in a manner consistent with the principles of this Chapter, including regarding publication of an invitation to suitably qualified suppliers to participate in the contest,
 - (ii) organized with a view to awarding the design contract to the winner, and
 - (iii) to be judged by an independent jury; and
- (i) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest. 3. An entity shall prepare a report in writing on each contract awarded by it under paragraph 2. Each report shall contain the name of the procuring entity, indicate the value and kind of goods or services procured, the name of the country of origin, and a statement indicating the circumstances and conditions described in paragraph 2 that justified the use of limited tendering. The entity shall retain each report. They shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

36. The **EC Directive**, while containing key elements of the agreements mentioned above, also differs in certain aspects. The Directive (Article 28) provides for the use of either open or restricted procedures. Restricted procedures bear resemblance with but are defined differently from "selective tendering procedures". They are defined as "those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender". The Article also provides that negotiated procedures can be used, although only in specific cases and circumstances, as provided for in Articles 30 (for cases with prior publication of a contract notice) and 31 (for cases without publication of a contract notice) of the Directive.¹⁷ Further, another type of procedure, called "competitive dialogue"¹⁸, can be used in specific circumstances (as provided in Article 29). Such circumstances relate to cases of particularly complex contracts where the use of open or restricted procedures would not allow the award of the contract. Further, Article 44 of the Directive includes procedural rules regarding the choice of participants invited to tender. For example, a minimum number of candidates invited in restricted and negotiated procedures is set and the number of invitations shall be "sufficient to ensure genuine competition".

¹⁷ Article I of the EC Directive defines negotiating procedures as "those procedures whereby the contracting authorities consult the economic operators of their choice and negotiate the terms of contract with one or more of these". The use of negotiated procedures without publication of a contract notice (Article 31) bears resemblance to what other agreements call 'limited tendering procedures'. See also Section J on negotiation for some related issues.

¹⁸ Article I of the Directive defines competitive dialogue as "a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chose are invited to tender".

Directive 2004/18/EC

Article 28: Use of open, restricted and negotiated procedures and of competitive dialogue

In awarding their public contracts, contracting authorities shall apply the national procedures adjusted for the purposes of this Directive.

They shall award these public contracts by applying the open or restricted procedure. In the specific circumstances expressly provided for in Article 29, contracting authorities may award their public contracts by means of the competitive dialogue. In the specific cases and circumstances referred to expressly in Articles 30 and 31, they may apply a negotiated procedure, with or without publication of the contract notice.

Article 29: Competitive dialogue

1. In the case of particularly complex contracts, Member States may provide that where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract, the latter may make use of the competitive dialogue in accordance with this Article.

A public contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.

3. Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Articles 44 to 52, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement.

4. Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document. The contract notice or the descriptive document shall indicate that recourse may be had to this option.

5. The contracting authority shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs.

6. Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue.

These tenders shall contain all the elements required and necessary for the performance of the project. These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.

7. Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with Article 53.

At the request of the contracting authority, the tenderer identified as having submitted the most

economically advantageous tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.

8. The contracting authorities may specify prices or payments to the participants in the dialogue.

Article 30: Cases justifying use of the negotiated procedure with prior publication of a contract notice

1. Contracting authorities may award their public contracts by negotiated procedure, after publication of a contract notice, in the following cases:

(a) in the event of irregular tenders or the submission of tenders which are unacceptable under national provisions compatible with Articles 4, 24, 25, 27 and Chapter VII, in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered.

Contracting authorities need not publish a contract notice where they include in the negotiated procedure all of, and only, the tenderers which satisfy the criteria of Articles 45 to 52 and which, during the prior open or restricted procedure or competitive dialogue, have submitted tenders in accordance with the formal requirements of the tendering procedure;

(b) in exceptional cases, when the nature of the works, supplies, or services or the risks attaching thereto do not permit prior overall pricing; Official Journal of the European Union EN 30.4.2004 L 134/136

(c) in the case of services, *inter alia* services within category 6 of Annex II A, and intellectual services such as services involving the design of works, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;

(d) in respect of public works contracts, for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

2. In the cases referred to in paragraph 1, contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender in accordance with Article 53(1).

3. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

4. Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate whether recourse has been had to this option.

Article 31: Cases justifying use of the negotiated procedure without publication of a contract notice

Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice in the following cases:

(1) for public works contracts, public supply contracts and public service contracts:

(a) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report is sent to the Commission if it so requests;

(b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;

(c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures with publication of a contract notice as referred to in Article 30 cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

(2) for public supply contracts:

(a) when the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

(b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years;

(c) for supplies quoted and purchased on a commodity market;

(d) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations;

(3) for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates, in the latter case, all successful candidates must be invited to participate in the negotiations;

(4) for public works contracts and public service contracts:

(a) for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services:

— when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities, Official Journal of the European Union EN 30.4.2004 L 134/137 or

— when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract;

(b) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply the provisions of Article 7.

This procedure may be used only during the three years following the conclusion of the original contract.

37. The **EC-Chile** Agreement provides that entities award public contracts by open or selective tendering according to their national procedures and in a non-discriminatory manner (Article 143).

Article 144 provides for certain disciplines to be followed when selective tendering procedures are followed, e.g., need to select the maximum number of domestic suppliers and suppliers from the other party, need to make the selection in a fair and non-discriminatory manner and on the basis of the criteria indicated in the notice of intended procurement or in tender documents. The Agreement permits parties to use a procedure other than open and selective tendering in specific cases and only when certain conditions (set out in Article 145) are met. These conditions reflect in part those contained in Article XV of the GPA ("Limited tendering").

EC-Chile

Article 143: Tendering Procedures

1. Entities shall award their public contracts by open or selective tendering procedures according to their national procedures, in compliance with this Title and in a non-discriminatory manner.
2. the purposes of this Title:
 - (a) open tendering procedures are those procedures whereby any interested supplier may submit a tender.
 - (b) selective tendering procedures are those procedures whereby, consistent with Article 144 and other relevant provisions of this Title, only suppliers satisfying qualification requirements established by the entities are invited to submit a tender.
3. However, in the specific cases and only under the conditions laid down in Article 145, entities may use a procedure other than the open or selective tendering procedures referred to in paragraph 1 of that Article, in which case the entities may choose not to publish a notice of intended procurement, and may consult the suppliers of their choice and negotiate the terms of contract with one or more of these.
4. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.

Article 144: Selective Tendering

1. In selective tendering, entities may limit the number of qualified suppliers they will invite to tender, consistent with the efficient operation of the procurement process, provided that they select the maximum number of domestic suppliers and suppliers of the other Party, and that they make the selection in a fair and non-discriminatory manner and on the basis of the criteria indicated in the notice of intended procurement or in tender documents.
2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed, under the conditions of Article 146(7). Any selection shall allow for equitable opportunities for suppliers on the lists.

Article 145: Other Procedures

1. Provided that the tendering procedure is not used to avoid maximum possible competition or to protect domestic suppliers, entities shall be allowed to award contracts by means other than an open or selective tendering procedure in the following circumstances and subject to the following conditions, where applicable:
 - (a) when no suitable tenders or request to participate have been submitted in response to a prior procurement, on condition that the requirements of the initial procurement are not substantially modified;

- (b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
- (c) for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries of goods or services by the original supplier where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment, software or services;
- (e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
- (f) when additional services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the services described therein. However, the total value of contracts awarded for the additional construction services may not exceed 50 % of the amount of the main contract;
- (g) for new services consisting of the repetition of similar services and for which the entity has indicated, in the notice concerning the initial service, that tendering procedures other than open or selective might be used in awarding contracts for such new services;
- (h) in the case of contracts awarded to the winner of a design contest, provided that the contest has been organised in a manner which is consistent with the principles of this Title; in case of several successful candidates, all successful candidates shall be invited to participate in the negotiations; and
- (i) for quoted goods purchased on a commodity market and for purchases of goods made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals and not for routine purchases from regular suppliers.

2. The Parties shall ensure that, whenever it is necessary for entities to resort to a procedure other than the open or selective tendering procedures based on the circumstances set forth in paragraph 1, the entities shall maintain a record or prepare a written report providing specific justification for the contract awarded under that paragraph.

38. The approach followed in the **US-Chile** Agreement is less detailed. Article 9.9 provides that contracts be awarded by means of open tendering, but specifies that, provided this is not used to avoid competition or to protect domestic suppliers, other means of award contracts can be used in certain circumstances. A list of such circumstances is provided, which include some of the conditions listed in Article XV ("Limited Tendering") of the GPA. Paragraph 3 of the Article also provides that "an entity shall maintain a record or prepare a written report providing specific justification for any contract awarded by means other than open tendering procedures". The Agreement between the **Republic of Korea and Chile** is along similar lines (Article 15.6, reproduced below).

Republic of Korea-Chile
Article 15.6: Tendering Procedures

1. Entities shall award their public contracts by open tendering procedures according to their respective domestic procedures, in compliance with this Chapter and in a non-discriminatory manner.
2. Provided that the tendering procedure is not used to avoid competition or to protect domestic suppliers, entities shall be allowed to award contracts by means other than an open tendering procedure in the following circumstances and subject to the following conditions, where applicable:
 - (a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior tendering procedure, including any conditions for participation, provided that the requirements of the initial procurement are not substantially modified in the contract as awarded;
 - (b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents, copyrights or proprietary information or in the absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
 - (c) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
 - (d) for quoted goods purchased on a commodity market and for purchases of goods made under exceptionally advantageous conditions, which only arise in the very short term in the case of unusual disposals, and not for routine purchases from regular suppliers;
 - (e) when an entity procures prototypes or a first good or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
 - (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein, provided that the total value of contracts awarded for additional construction services does not exceed 50 per cent of the amount of the main contract; or
 - (g) insofar as it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time under an open tendering procedure and the use of such procedure would result in serious injury to the entity, the entity's program responsibilities or the responsible Party. This exception may not be used as a result of a lack of advance planning or concerns relating to the amount of funds available to an entity within a particular period of time.
3. The Parties shall ensure that, whenever it is necessary for entities to resort to a procedure other than open tendering procedures based on the circumstances set forth in paragraph 2, the entities shall maintain a record or prepare a written report providing specific justification for the contract.

39. The rules contained in the Agreement between **Singapore and Australia** are also relatively general. Article 6 provides that open or limited tendering procedures may be used. Unlike in the agreements referred to above, however, the relevant conditions are not further specified. The Article provides, among other things, that the procedures used shall provide for mechanisms to eliminate

conflict of interest, achieve value for money, and be conducted in a fair and discriminatory manner. The **New Zealand-Singapore** Agreement (Article 52) provides that procurement procedures be consistent with the APEC Non-binding Principles on Government Procurement and good commercial practice. It stipulates that "in cases of procurement by open call for tender, invitations to tender shall be advertised in a publicly accessible medium; and in cases of procurement by selective invitation to tender, prior calls to prequalify or register interest shall be advertised in a publicly available medium". The **Australia-New Zealand, Chile-El Salvador** and **Chile-Costa Rica** Agreements have no detailed rules governing the types of procurement methods that can be used. Clause 2 (f) of the Australia-New Zealand Agreement mandates parties to "achieve maximum simplicity and consistency in the application of procurement policies, practices and procedures". The Chile-Costa Rica and Chile-El Salvador Agreements provide that in cases where tendering procedures are not used (i.e., contracting on own account), parties are required to "adopt such measures as are reasonably available" to "refrain from applying measures that are discriminatory, arbitrary or have the effect of denying equal access or opportunity to a supplier from another Party" (see Articles 16.04(2) and 16.03(1)(f)).

E. QUALIFICATION OF SUPPLIERS

40. Various agreements incorporate by reference the provisions of the GPA on qualification of suppliers (Article VIII): **Japan-Singapore, US-Singapore, EFTA, EC-Mexico** in the case of the EC, and **EFTA-Mexico** in the case of EFTA. The **NAFTA** provisions on qualification of suppliers (Article 1009, reproduced below), which are similar in general to those of the GPA, have been incorporated by reference by Mexico in the EC-Mexico and EFTA-Mexico Agreements.

41. The relevant provisions call for non-discrimination among suppliers of other parties or between domestic suppliers and suppliers of other parties. They also commit parties to ensuring that the qualification procedures are consistent with a series of principles. Some relate to transparency, such as the obligation to publish conditions for participation in tendering sufficiently in advance so as to permit suppliers to initiate or to complete the qualification procedures. A further requirement stipulates that the conditions governing the qualification of suppliers shall be limited to those which are essential to ensure the fulfilment of the contract. GPA Article VIII or NAFTA Article 1009 also provide, among other things, that entities that maintain a permanent list of qualified suppliers need to ensure that suppliers may apply for qualification at any time, and that any interested supplier be informed of the decision of the entities.

NAFTA
Article 1009: Qualification of Suppliers

1. Further to Article 1003, no entity of a Party may, in the process of qualifying suppliers in a tendering procedure, discriminate between suppliers of the other Parties or between domestic suppliers and suppliers of the other Parties.
2. The qualification procedures followed by an entity shall be consistent with the following:
 - (a) conditions for participation by suppliers in tendering procedures shall be published sufficiently in advance so as to provide the suppliers adequate time to initiate and, to the extent that it is compatible with efficient operation of the procurement process, to complete the qualification procedures;
 - (b) conditions for participation by suppliers in tendering procedures, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions, shall be limited to those that are essential to ensure the fulfillment of the contract in question;
 - (c) the financial, commercial and technical capacity of a supplier shall be judged both on the basis of that supplier's global business activity, including its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the procuring entity;
 - (d) an entity shall not misuse the process of, including the time required for, qualification in order to exclude suppliers of another Party from a suppliers' list or from being considered for a particular procurement;
 - (e) an entity shall recognize as qualified suppliers those suppliers of another Party that meet the conditions for participation in a particular procurement;
 - (f) an entity shall consider for a particular procurement those suppliers of another Party that request to participate in the procurement and that are not yet qualified, provided there is sufficient time to complete the qualification procedure;
 - (g) an entity that maintains a permanent list of qualified suppliers shall ensure that suppliers may apply for qualification at any time, that all qualified suppliers so requesting are included in

the list within a reasonably short period of time and that all qualified suppliers included in the list are notified of the termination of the list or of their removal from it;

(h) where, after publication of a notice in accordance with Article 1010, a supplier that is not yet qualified requests to participate in a particular procurement, the entity shall promptly start the qualification procedure;

(i) an entity shall advise any supplier that requests to become a qualified supplier of its decision as to whether that supplier has become qualified; and

(j) where an entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall, on request of the supplier, promptly provide pertinent information concerning the entity's reasons for doing so.

3. Each Party shall:

(a) ensure that each of its entities uses a single qualification procedure, except that an entity may use additional qualification procedures where the entity determines the need for a different procedure and is prepared, on request of another Party, to demonstrate that need; and

(b) endeavor to minimize differences in the qualification procedures of its entities.

4. Nothing in paragraphs 2 and 3 shall prevent an entity from excluding a supplier on grounds such as bankruptcy or false declarations

42. The **US-Chile** Agreement also contains detailed procedural rules on qualification of suppliers (Article 9.8: "Conditions for Participation", reproduced below). They provide that entities publish a notice sufficiently in advance to provide interested suppliers to submit and prepare applications, where suppliers are required to satisfy registration, qualification or any other conditions for participation in procurement (paragraph 1). The Article also lists a series of disciplines, many of which are similar to the relevant NAFTA or GPA provisions, e.g., limiting the scope of conceivable conditions to essential requirements, and promptly starting qualification procedures to allow a supplier to be included in a list. While not detailed in some respects (i.e., no specific provision on non-discrimination in respect of these types of procedures), the US-Chile Agreement contains rather specific provisions on other issues. For example, paragraph 4 of Article 9.8 explicitly proscribes requirements stipulating, as a condition for participation, that a supplier has been awarded contracts by an entity of the party or that the supplier has prior work experience in the territory of that party. Paragraph 5 provides that, when rejecting an application for qualification or ceasing to recognize a supplier as qualified, the entity concerned shall, at the supplier's request, promptly give a written explanation of the reasons. The provisions contained in Article 15.7 of the Agreement between the **Republic of Korea and Chile** ("Conditions for Suppliers' Participation in Procurement") reflects paragraphs 1, 2(a), 2(b), 3, and part of paragraph 4 of the US-Chile Agreement. Although worded differently, Article 146 of the **EC-Chile** Agreement ("Qualification of Suppliers", reproduced below) also includes detailed provisions on qualification of suppliers touching upon similar issues.

US-Chile
Article 9.8: Conditions For Participation

1. Where an entity requires suppliers to satisfy registration, qualification, or any other requirements or conditions for participation ("conditions for participation") in order to participate in a procurement, the entity shall publish a notice inviting suppliers to apply for participation. The entity shall publish the notice sufficiently in advance to provide interested suppliers sufficient time to prepare and submit applications and for the entity to evaluate and make its determinations based on such applications.

2. Each entity shall:

- (a) limit any conditions for participation in a procurement to those that are essential to ensure that the potential supplier has the legal, technical, and financial capacity to fulfill the requirements and technical specifications of the procurement;
- (b) base qualification decisions solely on the conditions for participation that it has specified in advance in notices or tender documentation; and
- (c) recognize as qualified all suppliers of the other Party that meet the requisite conditions for participation in a procurement covered by this Chapter.

3. Entities may establish publicly available lists of suppliers qualified to participate in procurements. Where an entity requires suppliers to qualify for such a list in order to participate in a procurement, and a supplier that has not yet qualified applies to be included on the list, the entity shall promptly start the qualification procedures for the supplier and shall allow the supplier to participate in the procurement, provided there is sufficient time to complete the procedures within the time period established for tendering.

4. No entity may impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party. An entity shall judge a supplier's financial and technical capacities on the basis of its global business activities including both its activity in the territory of the Party of the supplier, and its activity, if any, in the territory of the Party of the entity.

5. An entity shall promptly communicate to any supplier that has applied for qualification its decision on whether that supplier is qualified. Where an entity rejects an application for qualification or ceases to recognize a supplier as qualified, that entity shall, on request of the supplier, promptly provide it a written explanation of the reasons for its decision.

6. Nothing in this Article shall preclude an entity from excluding a supplier from a procurement on grounds such as bankruptcy or false declarations.

EC-Chile

Article 146: Qualification Of Suppliers

1. Any conditions for participation in procurement shall be limited to those that are essential to ensure that the potential supplier has the capability to fulfil the requirements of the procurement and the ability to execute the contract in question.

2. In the process of qualifying suppliers, entities shall not discriminate between domestic suppliers and suppliers of the other Party.

3. A Party shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.

4. Entities shall recognise as qualified suppliers all suppliers who meet the conditions for participation in a particular intended procurement. Entities shall base their qualification decisions solely on the conditions for participation that have been specified in advance in notices or tender documentation.

5. Nothing in this Title shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations or conviction for serious crime such as participation in criminal organisations.

6. Entities shall promptly communicate to suppliers that have applied for qualification their decision on whether or not they qualify.

Permanent Lists Of Qualified Suppliers

7. Entities may establish permanent lists of qualified suppliers provided that the following rules are respected:

- (a) entities establishing permanent lists shall ensure that suppliers may apply for qualification at any time.
- (b) any supplier having requested to become a qualified supplier shall be notified by the entities concerned of the decision in this regard.
- (c) suppliers requesting to participate in a given intended procurement who are not on the permanent list of qualified suppliers shall be given the possibility to participate in the procurement by presenting the equivalent certifications and other means of proof requested from suppliers who are on the list.
- (d) when an entity operating in the utilities sector uses a notice on the existence of a permanent list as a notice of intended procurement, as provided in Article 147(7), suppliers requesting to participate who are not on the permanent list of qualified suppliers shall also be considered for the procurement, provided there is sufficient time to complete the qualification procedure; in this event, the procuring entity shall promptly start procedures for qualification and the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off the suppliers' list.

43. The Agreement between **Singapore and Australia** includes provisions on qualification of suppliers (Article 7: "Registration and Qualification of Suppliers", reproduced below), although they are much less detailed than those contained in the agreements mentioned above. They focus on non-discrimination and conditions relating to permanent lists of registered or qualified suppliers.

Singapore-Australia
Article 7: Registration And Qualification Of Suppliers

1. In the process of registering and/or qualifying suppliers, the entities of a Party shall not discriminate between domestic suppliers and suppliers of the other Party.
2. Any conditions for participation in open tendering procedures shall be no less favourable to suppliers of the other Party than to domestic suppliers.
3. The process of, and the time required for, registering and/or qualifying suppliers shall not be used in order to keep suppliers of the other Party off a list of suppliers or from being considered for a particular procurement.
4. Entities maintaining permanent lists of registered and/or qualified suppliers shall ensure that suppliers may apply for registration or qualification at any time, and that all registered and qualified suppliers are included in the lists within a reasonably short time.

44. The **EC Directive** includes detailed provisions relating to criteria for qualitative selection, which, given their level of specificity and the level of integration contemplated do not resemble provisions typically included in other EIAs (see Articles 45 to 52). For example, Article 48 ("Technical and/or professional capability") lists types of evidence of the supplier's technical capability that may be required in the notice or invitation to tender, e.g., list of principal services delivered in the past three years, and a description of the supplier's measures for ensuring quality.

45. The **Chile-Costa Rica, Chile-El Salvador, Australia-New Zealand** and the **New Zealand-Singapore** Agreements do not include specific provisions on qualification of suppliers. As pointed out in the preceding Section, disciplines pertaining to tendering procedures (e.g., Article 52 of the New Zealand-Singapore Agreement) more generally may nevertheless impinge on the use of measures taken by entities with respect to qualification.

F. PROCEDURAL RULES REGARDING INVITATIONS TO PARTICIPATE

46. Many EIAs include specific provisions on procedures to be followed prior to the actual tendering process, for example a requirement for parties to publish an invitation to participate in the form of a tender notice in a publicly accessible publication, in order to inform interested suppliers about the procurement opportunity.

47. The **Japan-Singapore, US-Singapore, EFTA-Mexico** in the case of EFTA, **EC-Mexico** in the case of the EC, and **EFTA** Agreements incorporate by reference Article IX of the GPA ("Invitation to Participate Regarding Intended Procurement", reproduced below). The relevant provisions are similar to **NAFTA** Article 1010 ("Invitation to Participate"), which has been incorporated by reference in the EC-Mexico and EFTA-Mexico Agreements, in both cases for Mexico only.

48. In addition to a requirement to publish an invitation to participate, the provisions of these EIAs provide, for entities at the central government level, that it take the form of a notice of proposed procurement. Elements of information that such notices need to contain include the type and quantity of services to be procured; the procuring procedures that will be followed; a statement of the economic, technical or other requirements; the types of documents or information required of suppliers; etc. These Agreements typically provide that entities below central government levels may, instead, use a notice of planned or intended procurement. It has to include at least some of the elements of information that are required in the case of central government entities. The provisions also typically include specific procedures where a notice regarding a qualification system is used as an invitation to participate, as well as in cases where entities maintain permanent lists of qualified suppliers in case of selective tendering procedures. Parties are also required to indicate whether the procurement is covered by the provisions of the EIA.

GPA

Article IX: Invitation to Participate Regarding Intended Procurement

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.
2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.
4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.
5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.
6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:

- (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;
- (b) whether the procedure is open or selective or will involve negotiation;
- (c) any date for starting delivery or completion of delivery of goods or services;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation; and
- (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

- (a) a statement that interested suppliers should express their interest in the procurement to the entity;
- (b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

- (d) the nature of the products or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.

49. The **EC Directive** also contains relevant rules which, given the type of integration contemplated in the EC, tend to go beyond the rules found in other EIAs. Articles 35 and 36 contain rules regarding the publication of notices. They provide, among other things, that contracting authorities make known, by means of a prior information notice the estimated total value of services contracts they intend to award over the following twelve months. The Articles also include an obligation to publish, along with detailed technical specifications, and to specify the information that need to be included in notices (see part of Annex VII A, reproduced below). Article 40 (reproduced below) includes further provisions relating to invitations to participate in the case of restricted, competitive dialogue, or negotiated procedures.

Directive 2004/18/EC

ANNEX VII A
INFORMATION WHICH MUST BE INCLUDED IN PUBLIC CONTRACT NOTICES

NOTICE OF THE PUBLICATION OF A PRIOR INFORMATION NOTICE ON A BUYER PROFILE

1. Country of the contracting authority
2. Name of the contracting authority
3. Internet address of the 'buyer profile' (URL)
4. CPV Nomenclature reference No(s)

PRIOR INFORMATION NOTICE

1. The name, address, fax number and email address of the contracting authority and, if different, of the service from which additional information may be obtained and, in the case of services and works contracts, of the services, e.g. the relevant governmental internet site, from which information can be obtained concerning the general regulatory framework for taxes, environmental protection, employment protection and working conditions applicable in the place where the contract is to be performed.

2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.

3. In the case of public works contracts: the nature and extent of the works and the place of execution; if the work is to be subdivided into several lots, the essential characteristics of those lots by reference to the work; if available, an estimate of the range of the cost of the proposed works; Nomenclature reference No(s).

In the case of public supply contracts: the nature and quantity or value of the products to be supplied, Nomenclature reference No(s).

In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A; Nomenclature reference No(s).

4. Estimated date for initiating the award procedures in respect of the contract or contracts, in the case of public service contracts by category.

5. Where appropriate, indicate whether a framework agreement is involved.

6. Where appropriate, other information.

7. Date of dispatch of the notice or of dispatch of the notice of the publication of the prior information notice on the buyer profile.

8. Indicate whether the contract is covered by the Agreement.

CONTRACT NOTICES

Open and restricted procedures, competitive dialogues, procedures, negotiated procedures:

1. Name, address, telephone and fax number, email address of the contracting authority.
2. Where appropriate, indicate whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes.
3.
 - (a) The award procedure chosen;
 - (b) Where appropriate, the reasons for use of the accelerated procedure (in restricted and negotiated procedures);
 - (c) Where appropriate, indicate whether a framework agreement is involved;
 - (d) Where appropriate, indicate whether a dynamic purchasing system is involved;
 - (e) Where appropriate, the holding of an electronic auction (in the event of open, restricted or negotiated procedures, in the situation covered by Article 30(1)(a)).
4. Form of the contract.
5. Place of execution/performance of the works, for delivery of products or of the provision of services.
6.
 - (a) Public works contracts:
 - nature and extent of the works and general nature of the work. Indication in particular of options concerning supplementary works, and, if known, the provisional timetable for recourse to these options as well as the number of possible renewals, if any. If the work or the contract is subdivided into several lots, the size of the different lots; Nomenclature reference number(s),
 - information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects,
 - in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the works for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.
 - (b) Public supply contracts:
 - nature of the products to be supplied, indicating in particular whether tenders are requested with a view to purchase, lease rental, hire or hire purchase or a combination of these, nomenclature reference number. Quantity of products to be supplied, indicating in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. Nomenclature reference number(s),
 - in the case of regular or renewable contracts during the course of a given period, indicate also, if known, the timetable for subsequent contracts for purchase of intended supplies,
 - in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the supplies for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded.
 - (c) Public service contracts:
 - category and description of service. Nomenclature reference number(s). Quantity of services to be provided. Indicate in particular options concerning supplementary purchases and, if known, the provisional timetable for recourse to these options as well as the number of renewals, if any. In the case of renewable contracts over a given period, an estimate of the time frame, if known, for subsequent public contracts for purchase of intended services, in the event of a framework agreement, indication also of the planned duration of the framework agreement, the estimated total value of the services for the entire duration of the framework agreement and, as far as possible, the value and the frequency of the contracts to be awarded,
 - indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
Reference to the law, regulation or administrative provision.
 - indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.

7. If the contracts are subdivided into lots, indication of the possibility of tendering for one, for several or for all the lots.
8. Any time limit for completion of works/supplies/services or duration of the works/supply/services contract; where possible any time limit by which works will begin or any time limit by which delivery of supplies or services will begin.
9. Admission or prohibition of variants.
10. Where applicable particular conditions to which the performance of the contract is subject.
11. In the case of open procedures:
 - (a) name, address, telephone and telefax number and electronic address of the service from which contract documents and additional documents can be requested;
 - (b) where appropriate, time limit for submission of such requests;
 - (c) where appropriate, cost of and payment conditions for obtaining these documents.
12. (a) Time limit for receipt of tenders or indicative tenders where a dynamic purchasing system is being used (open procedures);
 - (b) time limit for receipt of request to participate (restricted and negotiated procedures);
 - (c) address where these have to be transmitted;
 - (d) the language or languages in which they must be drawn up.
13. In the case of open procedures:
 - (a) persons authorised to be present at the opening of tenders;
 - (b) date, time and place for such opening.
14. Where appropriate any deposit and guarantees required.
15. Main terms concerning financing and payment and/or references to the texts in which these are contained.
16. Where applicable, the legal form to be taken by the grouping of economic operators to whom the contract is to be awarded.
17. Selection criteria regarding the personal situation of economic operators that may lead to their exclusion, and required information proving that they do not fall within the cases justifying exclusion. Selection criteria and information concerning the economic operators' personal situation, information and any necessary formalities for assessment of the minimum economic and technical standards required of the economic operator. Minimum level(s) of standards possibly required.
18. Where there is a framework agreement: the number and, where appropriate, proposed maximum number of economic operators who will be members of it, the duration of the framework agreement provided for, stating, if appropriate, the reasons for any duration exceeding four years.
19. In the case of a competitive dialogue or a negotiated procedure with the publication of a contract notice, indicate, if appropriate, recourse to a staged procedure in order gradually to reduce the number of solutions to be discussed or tenders to be negotiated.
20. In the case of a restricted procedure, a competitive dialogue or a negotiated procedure with the publication of a contract notice, when recourse is had to the option of reducing the number of candidates to be invited to submit tenders, to engage in dialogue or to negotiate: minimum and, if appropriate, proposed maximum number of candidates and objective criteria to be used to choose that number of candidates.
21. Time frame during which the tenderer must maintain its tender (open procedures).
22. Where appropriate, names and addresses of economic operators already selected by the contracting authority (negotiated procedures).

23. Criteria referred to in Article 53 to be used for award of the contract: 'lowest price' or 'most economically advantageous tender'. Criteria representing the most economically advantageous tender as well as their weighting shall be mentioned where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.
24. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
25. Date(s) of publication of the prior information notice in accordance with the technical specifications of publication indicated in Annex VIII or statement that no such publication was made.
26. Date of dispatch of the notice.
27. Indicate whether the contract is covered by the Agreement.

SIMPLIFIED CONTRACT NOTICE FOR USE IN A DYNAMIC PURCHASING SYSTEM

1. Country of contracting authority.
2. Name and e-mail address of contracting authority.
3. Publication reference of the contract notice for the dynamic purchasing system.
4. E-mail address at which the technical specification and additional documents relating to the dynamic purchasing system are available.
5. Subject of contract: description by reference number(s) of 'CPV' nomenclature and quantity or extent of the contract to be awarded.
6. Time frame for submitting indicative tenders.

CONTRACT AWARD NOTICES

1. Name and address of the contracting authority.
2. Award procedures chosen. In the case of negotiated procedure without prior publication of a contract notice (Article 28), justification.
3. Public works contracts: nature and extent of the contract, general characteristics of the work.

Public supply contracts: nature and quantity of products supplied, where appropriate, by the supplier; nomenclature reference number.

Public service contracts: category and description of the service; nomenclature reference number; quantity of services bought.

4. Date of contract award.
5. Contract award criteria.
6. Number of tenders received.
7. Name and address of the successful economic operators.
8. Price or range of prices (minimum/maximum) paid.
9. Value of the tender (tenders) retained or the highest tender and lowest tender taken into consideration for the contract award.
10. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.

11. Date of publication of the tender notice in accordance with the technical specifications for publication in Annex VIII.
12. Date of dispatch of the notice.
13. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning the deadline for lodging appeals, or if need be the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

Directive 2004/18/EC

Article 40: Invitations to submit a tender, participate in the dialogue or negotiate

1. In restricted procedures, competitive dialogue procedures and negotiated procedures with publication of a contract notice within the meaning of Article 30, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders or to negotiate or, in the case of a competitive dialogue, to take part in the dialogue.
2. The invitation to the candidates shall include either:
 - a copy of the specifications or of the descriptive document and any supporting documents, or
 - a reference to accessing the specifications and the other documents indicated in the first indent, when they are made directly available by electronic means in accordance with Article 38(6).
3. Where an entity other than the contracting authority responsible for the award procedure has the specifications, the descriptive document and/or any supporting documents, the invitation shall state the address from which those specifications, that descriptive document and those documents may be requested and, if appropriate, the deadline for requesting such documents, and the sum payable for obtaining them and any payment procedures. The competent department shall send that documentation to the economic operator without delay upon receipt of a request.
4. The additional information on the specifications, the descriptive document or the supporting documents shall be sent by the contracting authority or the competent department not less than six days before the deadline fixed for the receipt of tenders, provided that it is requested in good time. In the event of a restricted or an accelerated procedure, that period shall be four days.
5. In addition, the invitation to submit a tender, to participate in the dialogue or to negotiate must contain at least:
 - (a) a reference to the contract notice published; Official Journal of the European Union EN 30.4.2004 L 134/142
 - (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
 - (c) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
 - (d) a reference to any possible adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Article 44, or to supplement the information referred to in that Article, and under the conditions laid down in Articles 47 and 48;
 - (e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice, the specifications or the descriptive document.

However, in the case of contracts awarded in accordance with the rules laid down in Article 29, the information referred to in (b) above shall not appear in the invitation to participate in the dialogue but it shall appear in the invitation to submit a tender.

50. The **EC-Chile** Agreement also contains detailed rules on invitations to participate, although their content differs somewhat from those referred to above. Article 147 requires the publication of a

notice inviting interested suppliers to participate and also lists the type of information that, at a minimum, should figure in such notices. In addition, the Article requires notices to contain information on the main criteria used for award of the contract. It also includes specific provisions for notices of planned procurement (focusing on entities operating in the utilities sector) and for notices with respect to permanent lists of qualified suppliers. The Article (paragraph 10) further provides that notices be published "in a timely manner through means which offer the widest possible and non-discriminatory access to the interested suppliers of the Parties" and that these means be "accessible free of charge through a single point of access".

51. The **US-Chile** Agreement (Article 9.4: Publication of Notices of Intended Procurement) is not as detailed as provisions of the agreements mentioned above. It focuses on the requirement to publish a notice inviting tenders and on the types of information that such notices need to contain. Article 15.8 of the **Republic of Korea-Chile** Agreement is similar to Article 15.8 of the US-Chile agreement. The key difference is that the former Agreement contains an additional provision along the lines of paragraph 10 of Article 147 of the EC-Chile Agreement, mentioned above.

<p>US-Chile <u>Article 9.4: Publication Of Notice Of Intended Procurement</u></p> <p>1. For each procurement covered by this Chapter, an entity shall publish in advance a notice inviting interested suppliers to submit tenders for that procurement ("notice of intended procurement"), except as provided in Article 9.9(2). Each such notice shall be accessible during the entire period established for tendering for the relevant procurement.</p> <p>2. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfill to participate in the procurement, the name of the entity issuing the notice, the address where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders, and the dates for delivery of the goods or services to be procured.</p>

52. Other agreements contain less detailed rules, if any, concerning invitation to participate. Article 6 of Chapter 6 of the **Singapore-Australia** Agreement and paragraph 2 of Article 52 of the **New Zealand-Singapore** Agreement contain a paragraph requiring publication of an invitation to participate. Article 16.05 of the **Chile-Costa Rica** and of the **Chile-El Salvador** Agreements simply contains the following provision:

<p>Chile-Costa Rica / Chile-El Salvador <u>Article 16.05: Transparency and the provision of information</u></p> <p>1. Further to Article 17.04 (Provision of Information), each Party shall ensure that its entities effectively publish and afford an understanding of:</p> <p>(...)</p> <p>(b) the business opportunities created by the corresponding government procurement processes, providing the suppliers of another Party with all the information necessary to participate in said procurements; and (...)</p>

G. TIME LIMITS FOR TENDERING AND DELIVERY

53. Many EIAs include specific prescriptions concerning minimum periods that must be allowed for the preparation, submission and receipt of tenders so as to ensure responsive tendering. Deadlines must be set long enough to allow all suppliers, domestic and foreign, to prepare and submit tenders before the closing of the tendering procedures.

54. As for the preceding observations relating to tendering procedures (e.g., invitation to participate), many of the agreements reviewed include provisions replicating those of the GPA (Article XI) or NAFTA (Article 1012), which are similar. The **Japan-Singapore**, **US-Singapore**, **EFTA-Mexico** in the case of EFTA, **EC-Mexico** in the case of the EC, and **EFTA** Agreements incorporate by reference Article XI of the GPA ("Time-Limits for Tendering and Delivery"). Article 1012 of **NAFTA** has been incorporated by reference in the EC-Mexico and EFTA-Mexico Agreements, in both cases for Mexico only.

55. All these agreements contain a general provision specifying that prescriptions of time limits need to provide adequate space to allow suppliers of another party to submit tenders before the closing of the procedures, and that such factors as the time required for transmitting tenders by mail from foreign points need to be taken into account (Article XI:1 of the GPA and Article 1012(1) of NAFTA). Both models provide, in open procedures, for the period for the receipt of tenders to be no less than 40 days from the date of publication of the notice. For selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender must not be less than 25 days and that for the receipt of tenders not less than 40 days. Special provisions for selective tendering procedures involving the use of a permanent list of qualified suppliers are also included. The agreements provide that these time limits may be reduced in certain specified circumstances, e.g., where a state of urgency, to be duly substantiated, renders them impracticable. Further, there is an obligation to take into account certain factors when establishing a delivery date for services procured, e.g., extent of subcontracting anticipated, complexity of the procurement, time of production. Article XI of the GPA is reproduced below.

<p>GPA <u>Article XI: Time-limits for Tendering and Delivery</u></p>
<p><i>General</i></p> <p>1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.</p> <p>(b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.</p>
<p><i>Deadlines</i></p> <p>2. Except in so far as provided in paragraph 3,</p> <p>(a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article IX;</p> <p>(b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to</p>

tender;

(c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article IX.

3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:

(a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:

(i) as much of the information referred to in paragraph 6 of Article IX as is available;

(ii) the information referred to in paragraph 8 of Article IX;

(iii) a statement that interested suppliers should express their interest in the procurement to the entity; and

(iv) a contact point with the entity from which further information may be obtained,

the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;

(b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;

(c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article IX; or

(d) the period referred to in paragraph 2(c) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.

4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

56. Article 38 of the **EC Directive** ("Time limits for the receipt of requests to participate and for receipt of tenders") also provides for various time limits. The Article 38 (reproduced below) require contracting authorities to take into account, when fixing time limits, the complexity of the contract and the time required for drawing up tenders. In the case of open procedures, the period between the time the notice is sent and the receipt of tenders shall be no less than 52 days. The Agreement provides detailed time limits for various circumstances, for example in the case of restricted and negotiated procedures. Limits can be reduced by seven days where notices are drawn-up and transmitted by electronic means, in accordance with specific procedures.

Directive 2004/18/EC

Article 38: Time limits for receipt of requests to participate and for receipt of tenders

1. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article.
2. In the case of open procedures, the minimum time limit for the receipt of tenders shall be 52 days from the date on which the contract notice was sent.
3. In the case of restricted procedures, negotiated procedures with publication of a contract notice referred to in Article 30 and the competitive dialogue:
 - (a) the minimum time limit for receipt of requests to participate shall be 37 days from the date on which the contract notice is sent;
 - (b) in the case of restricted procedures, the minimum time limit for the receipt of tenders shall be 40 days from the date on which the invitation is sent.
4. When contracting authorities have published a prior information notice, the minimum time limit for the receipt of tenders under paragraphs 2 and 3(b) may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days.

The time limit shall run from the date on which the contract notice was sent in open procedures, and from the date on which the invitation to tender was sent in restricted procedures.

The shortened time limits referred to in the first subparagraph shall be permitted, provided that the prior information notice has included all the information required for the contract notice in Annex VII A, insofar as that information is available at the time the notice is published and that the prior information notice was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.
5. Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission indicated in point 3 of Annex VIII, the time limits for the receipt of tenders referred to in paragraphs 2 and 4 in open procedures, and the time limit for the receipt of the requests to participate referred to in paragraph 3(a), in restricted and negotiated procedures and the competitive dialogue, may be shortened by seven days.
6. The time limits for receipt of tenders referred to in paragraphs 2 and 3(b) may be reduced by five days where the contracting authority offers unrestricted and full direct access by electronic means to the contract documents and any supplementary documents from the date of publication of the notice in accordance with Annex VIII, specifying in the text of the notice the internet address at which this documentation is accessible.

This reduction may be added to that referred to in paragraph 5.
7. If, for whatever reason, the specifications and the supporting documents or additional information, although requested in good time, are not supplied within the time limits set in Articles 39 and 40, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.
8. In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in Article 30, where urgency renders impracticable the time limits laid down in this Article, contracting authorities may fix:
 - (a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices indicated in point 3 of Annex VIII;
 - (b) and, in the case of restricted procedures, a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender. request was made in good time before the deadline for the submission of tenders.

57. Article 150 of the **EC-Chile** Agreement, as well as its Annex XIII, Appendix 3, provide detailed time lines. The first paragraph of the Article reflects many elements of paragraph 1 of Article XI of the GPA, e.g., requirement for time limits to be adequate, taking into account such factors as normal time to transmit tenders from foreign to national points. The Annex provides, like the agreements that reproduce the GPA or NAFTA provisions, for a minimum of 40 days between the date of publication of the invitation to participate and that of the receipt of tenders. When certain qualification requirements need to be met, the period shall be no less than 40 days, along with a period of no less than 25 days between the publication of the invitation and the submission of applications for being invited. The Annex also provides that the periods can be reduced in certain circumstances (e.g., state of urgency), but not to less than 10 days in any event, and not in a way that prevents the preparation and presentation of adequate tenders.

58. The provisions of the **US-Chile** Agreement (Article 9.5: Time Limits for the Tendering Process) provide that time limits for the tendering process need to be sufficient for suppliers to prepare and submit tenders, "taking into account the nature and complexity of the procurement". It specifies that no less than 30 days shall be provided between the date on which the notice of intended procurement is published and the deadline for submitting tenders. Where there are no qualification requirements for suppliers, the time limit can be reduced, although not to less than 10 days, when specific circumstances exist, e.g., state of urgency.

59. The **Republic of Korea-Chile** Agreement is less detailed. Article 15-10 (reproduced below) provides that time limits need to be sufficiently long to enable the preparation and submission of responsive tenders and that the period between the publication of the advance notice of intended procurement and the submission of tenders shall be no less than 10 days.

Republic of Korea-Chile
Article 15.10: Time-Limits

1. Time-limits established by the entities during a procurement process shall be sufficiently long to enable suppliers to prepare and submit responsive tenders, in relation to the nature and complexity of the procurement.
2. Notwithstanding paragraph 1, entities shall establish no less than ten days between the date on which the advance notice of intended procurement is published and the final date for the submission of tenders.

60. Other agreements (e.g., Singapore-Australia, Chile-Costa Rica) do not have specific provisions on this particular issue.

H. TENDER DOCUMENTATION

61. Many of the agreements reviewed contain provisions specifically on the type of information that the tender documentation provided to suppliers should contain. Again, various agreements include provisions modelled on either GPA Article XII ("Tender documentation") or NAFTA Article 1013 ("Tender documentation"), which are similar. The **Japan-Singapore, US-Singapore, EFTA-Mexico** in the case of EFTA, **EC-Mexico** in the case of the EC, and **EFTA** Agreements incorporate by reference Article XII of the GPA, while Article 1013 of **NAFTA** has been incorporated by reference in the EC-Mexico and EFTA-Mexico Agreements, in both cases for Mexico only.

62. These agreements include a general obligation requiring that the tender documentation provided to suppliers contain all information necessary to submit responsive tenders. Examples of specific elements of information to be included are the address of the entity where tenders should be sent, the criteria for awarding the contract, or the terms of payment. The agreements further provide that entities need to forward tender documentation to any supplier participating in open tendering procedures or requesting to participate in selective tendering procedures. Entities shall also reply promptly to any reasonable request for explanation, provided it does not provide a supplier with an advantage over its competitors in the process.

NAFTA
Article 1013: Tender Documentation

1. Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders, including information required to be published in the notice referred to in Article 1010(2), except for the information required under Article 1010(2) (h). The documentation shall also include:

- (a) the address of the entity to which tenders should be submitted;
- (b) the address to which requests for supplementary information should be submitted;
- (c) the language or languages in which tenders and tendering documents may be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which tenders should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of the opening;
- (f) a statement of any economic or technical requirements and of any financial guarantees, information and documents required from suppliers;
- (g) a complete description of the goods or services to be procured and any other requirements, including technical specifications, conformity certification and necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transportation, insurance and inspection costs, and in the case of goods or services of another Party, customs duties and other import charges, taxes and the currency of payment;
- (i) the terms of payment; and
- (j) any other terms or conditions.

2. An entity shall:

- (a) forward tender documentation on the request of a supplier that is participating in open tendering procedures or has requested to participate in selective tendering procedures, and reply promptly to any reasonable request for explanations relating thereto; and
- (b) reply promptly to any reasonable request for relevant information made by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

63. The **US-Chile** Agreement (Article 9.6: "Information on Intended Procurement") also provides that entities provide tender documentation including all the information necessary for submitting responsive tenders. While the Article does not include a detailed list of elements of information to be made available, it does specify that the award criteria need to be included. It goes further than the agreements mentioned above by further requiring disclosure of the weights or, where appropriate, the relative values that will be assigned to these criteria in evaluating tenders. Entities shall inform suppliers in writing if the criteria are modified in the course of a procurement and allow adequate time for the modification or re-submission of tenders. The Agreement also includes provisions regarding the need to promptly forward the documentation in written form to the supplier upon request (conditional on availability of the documentation through electronic means).

US-Chile
Article 9.6: Information On Intended Procurements

1. An entity shall provide interested suppliers tender documentation that includes all the information necessary to permit suppliers to prepare and submit responsive tenders. The documentation shall include all criteria that the entity will consider in awarding the contract, including all cost factors, and the weights or, where appropriate, the relative values, that the entity will assign to these criteria in evaluating tenders.
2. Where an entity does not publish all the tender documentation by electronic means, the entity shall, on request of any supplier, promptly make the documentation available in written form to the supplier.
3. Where an entity, during the course of a procurement, modifies the criteria referred to in paragraph 1, it shall transmit all such modifications in writing:
 - (a) to all suppliers that are participating in the procurement at the time the criteria are modified, if the identities of such suppliers are known, and in all other cases, in the same manner as the original information was transmitted; and
 - (b) in adequate time to allow such suppliers to modify and re-submit their tenders, as appropriate.

64. The **EC-Chile** Agreement (Article 148) is less detailed. It only contains a general obligation to include in the tender documentation all necessary information to allow for the submission of responsive tenders (this is the basic elements found in all the agreements that contain such obligation). In a manner similar to the US-Chile Agreement, there are rules on the need to forward documentation upon request, which are conditional on the tender documents being freely accessible through electronic means. Unlike the US-Chile Agreement, however, Article 148 (paragraph 3) also requires that entities promptly reply to reasonable requests for relevant information. Article 15.9 of the **Republic of Korea-Chile** Agreement ("Tender Documentation") reflects paragraphs 1 and 2 of Article 148 of the EC-Chile Agreement.

EC-Chile
Article 148: Tender Documentation

1. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders.
2. Where contracting entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any supplier of the Parties.
3. Entities shall promptly reply to any reasonable request for relevant information relating to the intended procurement, on condition that such information does not give that supplier an advantage over its competitors.

65. Relevant **EC** rules in this area are quite detailed and more specific than what is commonly found in free trade agreements. Article 36 of the EC Directive ("Form and manner of publication of notices") provides that the contract notice contain, as a minimum, the elements of information listed in Annex VII A which, in turn, tends to be more detailed than the relevant GPA provision. Further, Article 39 ("Open procedures: Specifications, additional documents and information") requires, among other things, the contracting authorities to send the specifications and any supporting documents within six days of receipt of a request to participate, unless the documents had been made available by electronic means. Article 40 ("Invitations to submit a tender, participate in the dialogue or negotiate", reproduced in Section F) includes detailed rules on the type of specifications, descriptive documents or supporting documents to the participants, along with timelines for doing so.

66. The other EIAs do not contain specific provisions on tender documentation. It may be noted, nevertheless, that paragraph 5 of Article 6 of the **Singapore-Australia** Agreement provides that "entities shall not provide to any tenderer information that with regard to a specific procurement in a manner which would have the effect of giving that tenderer an advantage over other tenderers".

I. AWARD OF CONTRACTS

67. As for previous topics mentioned, a group of the agreements reviewed contain procedural rules for submission, receipt and opening of tenders so as to ensure fairness, equity and transparency in the procurement process. The **Japan-Singapore, US-Singapore, EFTA-Mexico** in the case of EFTA, **EC-Mexico** in the case of the EC, and **EFTA** Agreements incorporate by reference Article XIII ("Submission, Receipt and Opening of Tenders and Awarding of Contracts") and XVIII ("Information and Review as Regards Obligations of Entities") of the GPA. Another group of agreements (EC-Mexico and EFTA-Mexico agreements, in both cases for Mexico) use Article 1015 of the **NAFTA**.

68. Under these agreements, only bids that conform to the essential requirements of the tender notice or documentation and are from a supplier that complies with the conditions for participation can be considered for award. Entities have the obligation to select the tenderer who has been determined to be fully capable of undertaking the contract and whose bid is either the lowest or is determined to be the most advantageous in terms of the evaluation criteria set forth in the notices or tender documentation. An entity that has received a bid that is abnormally lower in price than others may make enquiries to ensure that the tenderer can comply with the conditions of participation and is capable of fulfilling the terms of the contract. The agreements further specify that tenders can be forwarded by such means as telex or mail, but not by telephone.

69. Information must also be provided, upon awarding the contract, on the award decision in the form of a notice that provides information on such matters as the nature and quantity of the products and services covered, the name and address of the winning tenderer, and the value of the winning award or the highest and lowest offers taken into account. Moreover, in response to a request from a supplier from a party to an agreement, the procuring entity must provide prompt and pertinent information on: its procurement practices; the reasons why a supplier's application to qualify was rejected; why an existing qualification to tender was rescinded; and on the characteristics and relevant advantages of the tender selected.

GPA

Article XIII: Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

(a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and

(b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

Receipt of Tenders

2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

Opening of Tenders

3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

Award of Contracts

4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.
- (b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.
- (c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

Option Clauses

5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.

70. NAFTA Article 1015 (reproduced below) includes the elements mentioned in the GPA, but goes further on a number of points. Its procedural rules specify (paragraph 5) that having been awarded contracts by the party concerned in the past or having prior work experience in its territory cannot be conditions for awarding a contract. It also specifies that the submission of tenders by electronic means is permitted.

71. The NAFTA Article also provides for suppliers to be promptly informed of decisions on contract awards, if they so request (paragraph 6), and for the prompt publication of relevant information (paragraph 7). NAFTA Article 1015 also permits entities to withhold information in specific cases, e.g., where it would impede law enforcement or might prejudice fair competition between suppliers (paragraph 8). Similar procedural rules are contained in Article XVIII of the GPA ("Information and Review as Regards Obligations of Entities").

NAFTA

Article 1015: Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. An entity shall use procedures for the submission, receipt and opening of tenders and the awarding of contracts that are consistent with the following:
- (a) tenders shall normally be submitted in writing directly or by mail;
- (b) where tenders by telex, telegram, telecopy or other means of electronic transmission are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the supplier and a statement that the supplier agrees to all the terms and conditions of the invitation to tender;

- (c) a tender made by telex, telegram, telecopy or other means of electronic transmission must be confirmed promptly by letter or by the dispatch of a signed copy of the telex, telegram, telecopy or electronic message;
- (d) the content of the telex, telegram, telecopy or electronic message shall prevail where there is a difference or conflict between that content and the content of any documentation received after the time limit for submission of tenders;
- (e) tenders presented by telephone shall not be permitted;
- (f) requests to participate in selective tendering procedures may be submitted by telex, telegram or telecopy and if permitted, may be submitted by other means of electronic transmission; and
- (g) the opportunities that may be given to suppliers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be administered in a manner that would result in discrimination between suppliers.

In this paragraph, "means of electronic transmission" consists of means capable of producing for the recipient at the destination of the transmission a printed copy of the tender.

2. No entity may penalize a supplier whose tender is received in the office designated in the tender documentation after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the entity. An entity may also consider, in exceptional circumstances, tenders received after the time specified for receiving tenders if the entity's procedures so provide.
3. All tenders solicited by an entity under open or selective tendering procedures shall be received and opened under procedures and conditions guaranteeing the regularity of the opening of tenders. The entity shall retain the information on the opening of tenders. The information shall remain at the disposal of the competent authorities of the Party for use, if required, under Article 1017, Article 1019 or Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).
4. An entity shall award contracts in accordance with the following:
 - (a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation;
 - (b) if the entity has received a tender that is abnormally lower in price than other tenders submitted, the entity may inquire of the supplier to ensure that it can comply with the conditions of participation and is or will be capable of fulfilling the terms of the contract;
 - (c) unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest-priced tender or the tender determined to be the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation;
 - (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation; and
 - (e) option clauses shall not be used in a manner that circumvents this Chapter.
5. No entity of a Party may make it a condition of the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the territory of that Party.
6. An entity shall:
 - (a) on request, promptly inform suppliers participating in tendering procedures of decisions on contract awards and, if so requested, inform them in writing; and

(b) on request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender, the relevant characteristics and advantages of the tender selected and the name of the winning supplier.

7. No later than 72 days after the award of a contract, an entity shall publish a notice in the appropriate publication referred to in Annex 1010.1 that shall contain the following information:

- (a) a description of the nature and quantity of goods or services included in the contract;
- (b) the name and address of the entity awarding the contract;
- (c) the date of the award;
- (d) the name and address of each winning supplier;
- (e) the value of the contract, or the highest-priced and lowest-priced tenders considered in the process of awarding the contract; and
- (f) the tendering procedure used.

8. Notwithstanding paragraphs 1 through 7, an entity may withhold certain information on the award of a contract where disclosure of the information:

- (a) would impede law enforcement or otherwise be contrary to the public interest;
- (b) would prejudice the legitimate commercial interest of a particular person; or
- (c) might prejudice fair competition between suppliers.

72. The relevant procedural rules in the **EC Directive** are in some respects more detailed than those in the GPA. For example, Article 41 ("Informing candidates and tenderers") requires entities to inform a supplier, upon request, of the reasons for rejection within 15 days. Unlike other agreements, the Article also provides that candidates and tenderers shall be informed of the grounds for not having been awarded a contract for which there has been a call for competition. Article 43 ("Content of reports") requires a written report to be drawn up for each contract, which must include information on the names of the candidates or tenderers admitted and the reasons for selection, as well as the names of the candidates or tenderers rejected and the relevant reasons. Article 53 ("Contract award criteria") is more specific than the procedural rules included in paragraph 4 of Article XIII of the GPA or paragraph 4 of Article 1015 of NAFTA. It requires the contracting authority to specify the relative weighting, or at least the ranking, of each criterion used to choose the tender when the decision is not solely based on price. Article 55 ("Abnormally low tenders") contains detailed procedures in situations where, for a given contract, tenders appear to be abnormally cheap.

Directive 2004/18/EC

Article 41: Informing candidates and tenderers

1. Contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure or implement a dynamic purchasing system; that information shall be given in writing upon request to the contracting authorities.

2. On request from the party concerned, the contracting authority shall as quickly as possible inform:
— any unsuccessful candidate of the reasons for the rejection of his application,
— any unsuccessful tenderer of the reasons for the rejection of his tender, including, for the cases

referred to in Article 23, paragraphs 4 and 5, the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements, — any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement.

The time taken may in no circumstances exceed 15 days from receipt of the written request.

3. However, contracting authorities may decide to withhold certain information referred to in paragraph 1, regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

Article 43: Content of reports

For every contract, framework agreement, and every establishment of a dynamic purchasing system, the contracting authorities shall draw up a written report which shall include at least the following:

- (a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;
- (b) the names of the successful candidates or tenderers and the reasons for their selection;
- (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the name of the successful tenderer and the reasons why his tender was selected and, if known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;
- (f) for negotiated procedures, the circumstances referred to in Articles 30 and 31 which justify the use of these procedures;
- (g) as far as the competitive dialogue is concerned, the circumstances as laid down in Article 29 justifying the use of this procedure;
- (h) if necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system.

The contracting authorities shall take appropriate steps to document the progress of award procedures conducted by electronic means.

The report, or the main features of it, shall be communicated to the Commission if it so requests.

Article 53: Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

- (a) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or
- (b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a) the contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the contracting authority, weighting is not possible for demonstrable reasons, the contracting authority shall indicate in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document, the criteria in descending order of importance.

Article 55: Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

- (a) the economics of the construction method, the manufacturing process or the services provided;
- (b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work, for the supply of the goods or services;
- (c) the originality of the work, supplies or services proposed by the tenderer;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;
- (e) the possibility of the tenderer obtaining State aid.

2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in these circumstances, it shall inform the Commission of that fact.

73. Provisions found in other agreements reviewed tend to be less detailed. The **US-Chile** Agreement (Article 9.10: "Awarding of Contracts") includes rules on the selection of suppliers (e.g., need to conform to essential requirement of tender documentation and to satisfy the conditions for participation) and the relevant criteria. This reflects some of the provisions contained in paragraph 4 of Article XIII of the GPA (or paragraph 4 of NAFTA Article 1015). Further, Article 9.11 ("Information on Awards") of the US-Chile Agreement includes rules concerning the need to promptly inform non-successful participants, upon request, of the reasons and the publication of award information. Unlike other agreements referred to above, the US-Chile Agreement does not have procedural disciplines governing the receipt or opening of tenders.

US-Chile
Article 9.10: Awarding Of Contracts

1. An entity shall require that in order to be considered for award, a tender must be submitted in writing and must, at the time it is submitted:

- (a) conform to the essential requirements of the tender documentation; and
- (b) be submitted by a supplier that has satisfied the conditions for participation that the entity has provided to all participating suppliers.

2. Unless an entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is determined to be the most advantageous in terms of the requirements and evaluation criteria set out in the tender documentation.

3. No entity may cancel a procurement, or terminate or modify awarded contracts, in order to avoid the obligations of this Chapter.

Article 9.11: Information On Awards

Information Provided To Suppliers

1. Subject to Article 9.15, an entity shall promptly inform suppliers participating in a tendering procedure of its contract award decision. On request, an entity shall provide a supplier whose tender was not selected for award the reasons for not selecting its tender and the relative advantages of the tender the entity selected.

Publication Of Award Information

2. After awarding a contract covered by this Chapter, an entity shall promptly publish a notice that includes at least the following information about the award:

- (a) the name of the entity;
- (b) a description of the goods or services procured;
- (c) the name of the winning supplier;
- (d) the value of the contract award; and
- (e) where the entity has not used open tendering procedures, an indication of the circumstances justifying the procedures used.

Maintenance Of Records

3. An entity shall maintain records and reports relating to tendering procedures and contract awards covered by this Chapter, including the records and reports provided for in Article 9.9(3), for a period of at least three years.

74. The **EC-Chile** Agreement also includes rules on the award of contracts (Article 153: "Awarding of Contracts") and the need to inform tenderers of relevant decisions (Article 154: "Information on Contract Award"). In addition, it includes an obligation aimed at guaranteeing transparency and non-discrimination in procedures and conditions for the opening and receipt of bids (Article 152: "Submission, Receipt and Opening of Tenders"). The **Republic of Korea-Chile** Agreement is more succinct. It includes rules on the award criteria along the lines of paragraphs 1 and 2 of Article 9.10 of the US-Chile Agreement (or Article 153 of the EC-Chile Agreement). With respect to information, entities are required to "provide for effective dissemination of the results of government procurement processes".

EC-Chile

Article 152: Submission, Receipt And Opening Of Tenders

1. Tenders and requests to participate in procedures shall be submitted in writing.
2. Entities shall receive and open bids from tenderers under procedures and conditions guaranteeing the respect of the principles of transparency and non-discrimination.

Article 153: Awarding Of Contracts

1. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be submitted by a supplier which complies with the conditions for participation.
2. Entities shall make the award to the tenderer whose tender is either the lowest tender or the tender which, in terms of the specific objective evaluation criteria previously set forth in the notices or tender documentation, is determined to be the most advantageous.

Article 154: Information On Contract Award

1. Each Party shall ensure that its entities provide for effective dissemination of the results of government procurement processes.
2. Entities shall promptly inform tenderers of decisions regarding the award of the contract and of the characteristics and relative advantages of the selected tender. Upon request, entities shall inform any eliminated tenderer of the reasons for the rejection of its tender.
3. Entities may decide to withhold certain information on the contract award where release of such information would prevent law enforcement or otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of suppliers, or might prejudice fair competition between them.

75. Similar provisions in other agreements are couched in more general terms. The **Chile-Costa Rica** and **Chile-El Salvador** Agreements (Article 16.05: "Transparency and the provision of information") require entities to publish and afford an understanding of the outcome of government procurement processes, while parties are held to "ensure that contract awards are duly based on the criteria established prior to the award by its contracting entities". The **Singapore-Australia** Agreement mandates entities (paragraph 7 of Article 6 ("Tendering Principles") of Chapter 6) to promptly inform unsuccessful suppliers, on request, of reasons for rejection, subject to certain exceptions. Article 13 ("Transparency") mandates parties to publish and make accessible, among other things, decision on contract awards. The **New Zealand-Singapore** Agreement (paragraph 4 of Article 52) includes information requirements in the case of rejection identical to those of the Australia-Singapore Agreement. Further, the **Australia-New Zealand** (Clause 2(e)) and **New Zealand-Singapore** (Article 49(e)) Agreements calls on parties to use value for money as the main determinant in procurement decisions.¹⁹ The Singapore-Australia Agreement (Article 6(2) of Chapter 6) requires parties to ensure that tendering procedures achieve value for money outcomes.

¹⁹ Article 48 of the New Zealand-Singapore Agreement defines value for money as "the best available outcome for money spent in terms of the procuring agency's needs. The test of value for money requires relevant comparison of the whole life costs and benefits relating directly to the procurement". "Whole of life costs and benefits" is then defined as including "fitness for purpose and other considerations of quality, performance, price, delivery, accessories and consumables, service support and disposal".

J. NEGOTIATION

76. Some agreements, in particular those following closely the GPA, specify that entities may hold negotiations with tenderers, provided this is indicated in the initial tender notice or it appears from the evaluation that there is no single most advantageous bid. Certain procedural safeguards are intended to ensure that such negotiations do not discriminate between suppliers. Several agreements (**Japan-Singapore**, **US-Singapore**, **EFTA**, EC-Mexico with respect to the EC and EFTA-Mexico with respect to EFTA) incorporate by reference Article XIV of the GPA ("Negotiation"). Article 1014 of the **NAFTA** ("Negotiation Disciplines"), which is incorporated by reference in the **EC-Mexico** and **EFTA-Mexico** Agreements in the case of Mexico, is very similar to the GPA provisions. In addition to specifying the conditions for negotiations, these agreements mandate entities not to discriminate between suppliers. For example, it requires them to ensure that the elimination of participants is carried out in accordance with the pre-determined criteria.

GPA
Article XIV: Negotiation

1. A Party may provide for entities to conduct negotiations:
 - (a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article IX (the invitation to suppliers to participate in the procedure for the proposed procurement); or
 - (b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.
2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.
3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:
 - (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;
 - (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;
 - (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and
 - (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

77. Article 151 ("Negotiations") of the **EC-Chile** Agreement includes most of the elements contained in the agreements mentioned above. As mentioned in Section D on procurement methods, the **EC Directive** (Articles 30 and 31) contains detailed provisions on the use of negotiated procedures, which impose strict conditions on the conduct of negotiations. Other agreements do not have distinct procedural rules focusing on negotiations.

K. PROVISION OF INFORMATION

78. The agreements reviewed typically contain a general requirement to publish laws, regulations, judicial decisions, administrative rulings of general application and any procedures regarding government procurement covered by the relevant disciplines.²⁰

79. The **Japan-Singapore**, **US-Singapore** and **EFTA** Agreements incorporate parts of Article XIX of the GPA ("Information and Review as Regards Obligations of Parties").²¹ In addition to providing for the publication of laws, regulations and other procedures in specified publications, parties are required, among other things, to be prepared to explain to the other Party, upon request, their government procurement procedures. Paragraph 5, which was incorporated only in the EFTA Agreement, contains rules on the collection of statistics and their provision to the other parties.

GPA

Article XIX: Information and Review as Regards Obligations of Parties

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.
2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.
3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.
4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.
5. Each Party shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:
 - (a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;
 - (b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated

²⁰ Various EIAs have general obligations on transparency (e.g., publication of laws and regulations) that are not specific to government procurement issues. Even though they may complement or substitute for the provisions related to procurement, they are not looked at in this Note in view of their horizontal nature.

²¹ In the case of the former two Agreements, this applies only to paragraphs 1 to 4 of Article XIX of the GPA.

value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;

- (c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and
- (d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.

To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.

80. Although differing from each other, the **NAFTA** (Article 1019: "Provision of Information"), as well as the **EC-Mexico** (Article 31: "Provision of Information") and the **EFTA-Mexico** Agreements (Article 63: "Provision of Information", reproduced below) include transparency rules that reflect key elements of the GPA. NAFTA (Article 1020: "Technical Cooperation") also includes rules on such issues as the provision of information with respect to training and orientation programmes relating to a party's procurement systems.

EFTA-Mexico
Article 63: Provision of Information

1. Each Party shall promptly publish any law, regulation, precedential judicial decision, administrative ruling of general application and any procedure regarding government procurement covered by this Chapter in the appropriate publications referred to in Annex XIX.
2. Each Party shall designate upon entry into force of this Agreement one or more contact points to:
 - (a) facilitate communication between the Parties;
 - (b) answer all reasonable inquiries from the other Party to provide relevant information on matters covered by this Chapter; and
 - (c) on request of a supplier of a Party, provide in writing within a reasonable time period a reasoned answer to the supplier and the other Party as to whether a specific entity is covered by this Chapter.
3. A Party may seek such additional information on the award of the contract as may be necessary to determine whether the procurement was made fairly and impartially, in particular with respect to unsuccessful tenders. To this end, the Party of the procuring entity shall provide information on the characteristics and relative advantages of the winning tender and the contract price. Where release of this information would prejudice competition in future tenders, the information shall not be released by the requesting Party, except after consultation with, and agreement of, the Party that provided the information.
4. Upon request, each Party shall provide to the other Party information available to that Party and its entities concerning covered procurement of its entities and the individual contracts awarded by its entities.

5. No Party may disclose confidential information the disclosure of which would prejudice the legitimate commercial interests of a particular person or might prejudice fair competition between suppliers, without the formal authorisation of the person that provided the information to that Party.

6. Nothing in this Chapter shall be construed as requiring any Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest.

7. Each Party shall collect and exchange on an annual basis statistics on its procurements covered by this Chapter.¹ Such reports shall comply with the requirements of Annex XX.

¹The first exchange of information under paragraph 7 of Article 63 (Provision of Information) will take place two years after the entry into force of this Agreement. In the meantime, the Parties will communicate to each other all available and comparable relevant data on a reciprocal basis.

81. The **EC-Chile** (Article 142), **US-Chile** (Article 9.3), and **Republic of Korea-Chile** (Article 15.5, reproduced below) Agreements focus on a requirement to publish procurement laws and regulations as well as any modifications. In addition, the **Singapore-Australia** Agreement (Article 13 of Chapter 6) provides that "parties shall apply all procurement laws, regulations, procedures and practices consistently, fairly and equitably so that their corporate governance structures provide transparency to potential suppliers".

Republic of Korea-Chile
Article 15.5: Transparency

1. Each Party shall promptly publish any law, regulation, judicial decision and administrative ruling of general application and procedure, including standard contract clauses, regarding procurement covered by this Chapter, in the appropriate publications, including officially designated electronic media.

2. Each Party shall promptly publish in the same manner as in paragraph 1 any modification to such measures therein.

82. The **Chile-Costa Rica** and **Chile-El Salvador** Agreements (Article 16.05) provide that entities "effectively publish and afford an understanding" of "their respective systems of government procurement" and "outcomes of government procurement processes". Parties also undertook to inform each other of their domestic legislation governing government procurement, as well as any changes, within one year from the date of entry into force of the Agreement.

83. The **EC Directive** (see Annex VIII) includes specific rules on publication of procurement-related information. For example, contracting authorities are required to send relevant information to the Office for Official Publications of the European Communities²². Practices relating to the publication of laws and regulations are governed by other EC provisions that are not specific to procurement. Further, as noted before, Article 41 of the Directive ("Informing candidates and tenderers") provides, among other things, that, on request from a supplier, authorities shall quickly inform any unsuccessful candidate or tenderer of the reasons for the rejection of his application or tender.

84. Some agreements, in particular among those most recently concluded, have procurement-related disciplines on the provision of information through electronic means. The **US-Chile**

²² See also the detailed rules on publication of notices (Articles 35 and 36), including with respect to publication of results of the awards.

Agreement (Article 9.17: "Public Information", reproduced below) mandates parties to ensure that they maintain electronic databases providing information of all covered procurements.

US-Chile
Article 9.17: Public Information

1. In order to facilitate access to information on commercial opportunities under this Chapter, each Party shall ensure that electronic databases that provide current information on all procurements covered by this Chapter that are conducted by entities listed in Annex 9.1(A), including information that can be disaggregated by detailed categories of goods and services, are made available to interested suppliers of the other Party, through the Internet or a comparable computer-based telecommunications network. Each Party shall, on request of the other Party, provide information on:
 - (a) the classification system used to disaggregate information on procurement of different goods and services in such databases; and
 - (b) the procedures for obtaining access to such databases.
2. Entities listed in Annex 9.1(A) shall publish notices of intended procurement in a government-wide, single point of entry electronic publication that is accessible through the Internet or a comparable computer-based telecommunications network. For entities listed in Annex 9.1(B), each Party shall facilitate a reasonable means for suppliers of the other Party to easily identify procurement opportunities, which should include a single point of entry.
3. Each Party shall encourage its entities to publish, as early as possible in the fiscal year, information regarding the entity's procurement plans.

85. The **EC-Chile** Agreement (Article 156: "Information Technology") as well as the Chile-Korea (Article 15.14), the **Chile-Costa Rica** and the **Chile-El Salvador** (Article 16.11, reproduced below) Agreements, encourage the use of electronic means of communication in the dissemination of information on government procurement.

Chile-El Salvador
Article 16.05: Transparency and the provision of information

1. Further to Article 17.04 (Provision of Information), each Party shall ensure that its entities effectively publish and afford an understanding of:
 - (a) Their respective systems of government procurement;
 - (b) the business opportunities created by the corresponding government procurement processes, providing the suppliers of another Party with all the information necessary to participate in said procurements; and
 - (c) the outcomes of government procurement processes.
2. Each Party shall ensure that contract awards are duly based on the criteria established prior to the award by its contracting entities.
3. Each Party undertakes to inform the other Parties within not more than one year after this Agreement comes into force of the legislation governing government procurement in its territory and of the entities covered by this Chapter. This obligation extends to all changes in such information.

86. The Agreement between the **EC and Mexico** (Article 33: "Information Technology", reproduced below) also calls for co-operation aiming at ensuring, among other things, that the information that parties exchange through electronic means are comparable in terms of accessibility and quality.

EC-Mexico
Article 33: Information technology

1. The Parties shall cooperate with a view to ensuring that the type of procurement information, notably in tender notices and documentation, held on their respective databases is comparable in terms of quality and accessibility. The Parties shall also cooperate with a view to ensuring that the type of information exchanged through their respective electronic means between interested parties for the purposes of public procurement is comparable in terms of quality and accessibility.
2. Paying due attention to issues of interoperability and interconnectivity, and after having agreed that the type of procurement information referred to in paragraph 1 is comparable, the Parties shall grant access to suppliers of the other Party to relevant procurement information, such as tender notices, held on their respective databases, and to their respective electronic procurement systems, such as electronic tendering, in accordance with Article 26.

87. The **Singapore-Australia** Agreement (Article 11 of Chapter 6: "Electronic Procurement", reproduced below) includes provisions encouraging greater use of electronic means in the procurements process, including in terms of access to information.

Singapore-Australia
Article 11: Electronic Procurement

1. The Parties shall, within the context of their commitment to promote electronic commerce, seek to provide opportunities for government procurement to be undertaken through electronic means, hereafter referred to as "e-procurement".
2. Each Party shall work toward a single entry point for the purpose of enabling suppliers to access information on procurement opportunities in its territory.
3. To facilitate access of suppliers of one Party to e-procurement opportunities of the other Party, the Parties shall, to the extent possible, cooperate to ensure policies and procedures are adopted that:
 - (a) promote equitable access for all potential suppliers of the other Party;
 - (b) promote the use of systems that are the most cost-effective for potential suppliers, where the Parties utilise authentication systems;
 - (c) provide for the least cost to potential suppliers, where the Parties elect to procure goods or services through online or reverse auctions;
 - (d) protect documentation from unauthorised and undetected alteration; and
 - (e) provide appropriate levels of security for data on, and passing through, the procuring entity's network.
4. Each Party shall, to the extent possible, make procurement opportunities that are available to the public accessible to suppliers via the Internet or any publicly available electronic medium. To the extent possible, each Party shall make available relevant documentation by the same means.

88. The **EC Directive** goes further in this regard than most other agreements. Article 42 ("Rules applicable to communication") provides that the tools used by contracting authorities for communicating electronically, as well as the technical characteristics, must be non-discriminatory and generally available. It also includes rules on devices for the electronic transmission and receipt of tenders or requests to participate (also found in Annex X), e.g., electronic signatures.

L. CHALLENGE PROCEDURES

89. Many of the agreements reviewed contain mandatory requirements for the establishment of a domestic bid challenge system. Adversely affected suppliers have a right of recourse to an independent domestic tribunal or review body.

90. The **Japan-Singapore**, **US-Singapore** and **EFTA** Agreements incorporate by reference Article XX ("Challenge Procedures") of the GPA (reproduced below). Parties may confer the authority to hear challenges on national courts or an impartial and independent review body. In the event that a bid challenge is heard by a body that does not have the status of a court of law, either the body's decisions must be subject to judicial review or it must comply with the procedures and criteria laid down in detail in these agreements. For example, the challenge body must have the authority to order the correction of a breach of the agreement or, within certain limits, compensation for the loss or damage suffered by a supplier. Pending the outcome of the challenge, the body must be able to order rapid interim measures, including suspension of the procurement process, to correct breaches of the relevant obligations and to preserve commercial opportunities.

GPA

Article XX: Challenge Procedures

Consultations

1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

Challenge

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.

6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;

- (f) witnesses can be presented;
 - (g) documents are disclosed to the review body.
7. Challenge procedures shall provide for:
- (a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
 - (b) an assessment and a possibility for a decision on the justification of the challenge;
 - (c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.
8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

91. The **EC-Mexico** (Article 30) and **EFTA-Mexico** (Article 62) Agreements replicate the provisions of Article XX of the GPA, except that an additional clause is in both cases included:

"A Party may require under its legislation that a challenge procedure be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-day period described in paragraph 5 shall begin no earlier than the date that the notice is published or the tender documentation is made available. Nothing in this provision precludes the right of interested suppliers to judicial review."

92. The **US-Chile** Agreement (Article 9.13) also has detailed rules concerning the establishment of independent review authorities. Although it does not use the same terms as the agreements referred to above, it includes as a key element the requirement to establish an independent authority to review challenges with authority to take interim measures. However, no specific provision is made for compensation to be paid for loss or damage suffered.

US-Chile
Article 9.13: Domestic Review Of Supplier Challenges

Independent Review Authorities

1. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent from its entities to receive and review challenges that suppliers submit relating to the Party's measures implementing this Chapter in connection with a procurement covered by this Chapter and make appropriate findings and recommendations. Where a challenge by a supplier is initially reviewed by a body other than such an impartial authority, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the entity that is the subject of the challenge.
2. Each Party shall provide that an authority it establishes or designates under paragraph 1 has authority to take prompt interim measures pending the resolution of a challenge to preserve the supplier's opportunity to participate in the procurement and to ensure that the Party complies with its measures implementing this Chapter, including by suspending the contract award or the performance of a contract that has already been awarded.

3. Each Party shall ensure that its review procedures are published and are timely, transparent, effective, and consistent with due process principles.
4. Each Party shall ensure that all documents related to a challenge to a procurement covered by this Chapter are made available to any authority it establishes or designates under paragraph 1.
5. Notwithstanding other review procedures provided for or developed by each of the Parties, each Party shall ensure that any authority it establishes or designates under paragraph 1 provides at least the following:
 - (a) an opportunity for the supplier to review relevant documents and to be heard by the authority in a timely manner;
 - (b) sufficient time for the supplier to prepare and submit written challenges, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
 - (c) a requirement that the entity respond in writing to the supplier's challenge;
 - (d) an opportunity for the supplier to reply to the entity's response to the challenge; and
 - (e) prompt delivery in writing of the decisions relating to the challenge, with an explanation of the grounds for each decision.
6. Each Party shall ensure that a supplier's submission of a challenge will not prejudice the supplier's participation in ongoing or future procurements.

93. The **NAFTA** (Article 1017: "Bid Challenge") also includes detailed rules in this area (reproduced below). Article 1017 requires parties to establish an independent reviewing authority, which may direct the entity concerned to re-evaluate offers, or terminate or re-compete the contract in question. Unlike the GPA, which specifically provides the challenge body with the authority to order correction of breaches or payment of compensation, the NAFTA provides that entities "normally shall follow the recommendations of the reviewing authority".

NAFTA
Article 1017: Bid Challenge

1. In order to promote fair, open and impartial procurement procedures, each Party shall adopt and maintain bid challenge procedures for procurement covered by this Chapter in accordance with the following:
 - (a) each Party shall allow suppliers to submit bid challenges concerning any aspect of the procurement process, which for the purposes of this Article begins after an entity has decided on its procurement requirement and continues through the contract award;
 - (b) a Party may encourage a supplier to seek a resolution of any complaint with the entity concerned prior to initiating a bid challenge;
 - (c) each Party shall ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;

- (d) whether or not a supplier has attempted to resolve its complaint with the entity, or following an unsuccessful attempt at such a resolution, no Party may prevent the supplier from initiating a bid challenge or seeking any other relief;
- (e) a Party may require a supplier to notify the entity on initiation of a bid challenge;
- (f) a Party may limit the period within which a supplier may initiate a bid challenge, but in no case shall the period be less than 10 working days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;
- (g) each Party shall establish or designate a reviewing authority with no substantial interest in the outcome of procurements to receive bid challenges and make findings and recommendations concerning them;
- (h) on receipt of a bid challenge, the reviewing authority shall expeditiously investigate the challenge;
- (i) a Party may require its reviewing authority to limit its considerations to the challenge itself;
- (j) in investigating the challenge, the reviewing authority may delay the awarding of the proposed contract pending resolution of the challenge, except in cases of urgency or where the delay would be contrary to the public interest;
- (k) the reviewing authority shall issue a recommendation to resolve the challenge, which may include directing the entity to re-evaluate offers, terminate or re-compete the contract in question;
- (l) entities normally shall follow the recommendations of the reviewing authority;
- (m) each Party should authorize its reviewing authority, following the conclusion of a bid challenge procedure, to make additional recommendations in writing to an entity respecting any facet of the entity's procurement process that is identified as problematic during the investigation of the challenge, including recommendations for changes in the procurement procedures of the entity to bring them into conformity with this Chapter;
- (n) the reviewing authority shall provide its findings and recommendations respecting bid challenges in writing and in a timely manner, and shall make them available to the Parties and interested persons;
- (o) each Party shall specify in writing and shall make generally available all its bid challenge procedures; and
- (p) each Party shall ensure that each of its entities maintains complete documentation regarding each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with this Chapter.

2. A Party may require that a bid challenge be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10-working day period described in paragraph 1(f) shall begin no earlier than the date that the notice is published or the tender documentation is made available.

94. The EC also has detailed rules on challenge procedures, which are contained in separate Directives.²³ An unsuccessful applicant or tenderer is entitled to bring contract award procedures before national review bodies such as courts or specialized administrative bodies. Prior to the signature of a contract, the review bodies are empowered in appropriate cases to take interim measures, including the suspension of the award procedures. In cases where the contract has been signed, damages can be awarded to aggrieved tenderers.

Directive 89/665/EEC
Articles 1, 2 and 3

Article 1

1. The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC and 77/62/EEC, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles, and, in particular, Article 2 (7) on the grounds that such decisions have infringed Community law in the field of public procurement or national rules implementing that law.

2. Member States shall ensure that there is no discrimination between undertakings claiming injury in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

3. The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular public supply or public works contract and who has been or risks being harmed by an alleged infringement. In particular, the Member States may require that the person seeking the review must have previously notified the contracting authority of the alleged infringement and of his intention to seek review.

Article 2

1. The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers to:

- (a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority;
- (b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;
- (c) award damages to persons harmed by an infringement.

2. The powers specified in paragraph 1 may be conferred on separate bodies responsible for different aspects of the review procedure.

3. Review procedures need not in themselves have an automatic suspensive effect on the contract award procedures to which they relate.

²³ Rules on challenge procedures in public procurement are contained in Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts; and Directive 92/13/EEC, which applies to entities operating in the water, energy, transport and telecommunications sectors. For the sake of brevity, this Note focuses on the rules contained in the Directive 89/665/EEC, which are of more general application.

4. The Member States may provide that when considering whether to order interim measures the body responsible may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public interest, and may decide not to grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking these measures.

5. The Member States may provide that where damages are claimed on the grounds that a decision was taken unlawfully, the contested decision must first be set aside by a body having the necessary powers.

6. The effects of the exercise of the powers referred to in paragraph 1 on a contract concluded subsequent to its award shall be determined by national law.

Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may provide that, after the conclusion of a contract following its award, the powers of the body responsible for the review procedures shall be limited to awarding damages to any person harmed by an infringement.

7. The Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.

8. Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 177 of the EEC Treaty and independent of both the contracting authority and the review body.

The members of such an independent body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary. The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.

Article 3

1. The Commission may invoke the procedure for which this Article provides when, prior to a contract being concluded, it considers that a clear and manifest infringement of Community provisions in the field of public procurement has been committed during a contract award procedure falling within the scope of Directives 71/305/EEC and 77/62/EEC.

2. The Commission shall notify the Member State and the contracting authority concerned of the reasons which have led it to conclude that a clear and manifest infringement has been committed and request its correction.

3. Within 21 days of receipt of the notification referred to in paragraph 2, the Member State concerned shall communicate to the Commission:

- (a) its confirmation that the infringement has been corrected; or
- (b) a reasoned submission as to why no correction has been made; or
- (c) a notice to the effect that the contract award procedure has been suspended either by the contracting authority on its own initiative or on the basis of the powers specified in Article 2 (1) (a).

4. A reasoned submission in accordance with paragraph 3 (b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial or other review proceedings or of a review as referred to in Article 2 (8). In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.

5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3 (c), the Member State shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That

notification shall confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.

(...)

95. Other agreements are less detailed. Article 155 of the **EC-Chile** Agreement (reproduced below) provides for challenges to be heard by an impartial and independent reviewing authority, which can, if appropriate, provide for correction of a breach or for compensation. Article 15.13 of the **Chile-Costa Rica** and **Chile-El Salvador** Agreements is along the same lines, except that it does not provide the reviewing authority with authority to take rapid interim measures to correct breaches of the Agreement and preserve commercial opportunities. Article 16.08 in these agreements requires each party to adopt or maintain administrative or judicial procedures that permit, on request, prompt review of administrative decisions affecting government procurement.

EC-Chile
Article 155: Bid Challenges

1. Entities shall accord impartial and timely consideration to any complaints from suppliers regarding an alleged breach of this Title in the context of a procurement procedure.
2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Title arising in the context of procurements in which they have, or have had, an interest.
3. Challenges shall be heard by an impartial and independent reviewing authority. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedural guarantees similar to those of a court.
4. Challenge procedures shall provide for:
 - (a) rapid interim measures to correct breaches of this Title and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied; and
 - (b) if appropriate, correction of the breach of this Title or, in the absence of such correction, compensation for the loss or damages suffered, which may be limited to costs for tender preparation and protest.

96. The **Singapore-Australia** Agreement adopts an even more general approach. Article 12 of Chapter 6 ("Review of Tender Process") requires parties to provide suppliers with non-discriminatory, timely, transparent and effective access to an administrative tribunal or judicial body to review alleged breaches.

Singapore-Australia
Article 12: Review Of Tender Process

1. In the event of a complaint by a supplier that there has been a breach of the procuring Party's laws, regulations, procedures or practices regarding procurement in the context of a procurement in which they have, or have had, an interest, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall

accord timely and impartial consideration to any such complaint.

2. Each Party shall provide suppliers of the other Party with non-discriminatory, timely, transparent and effective access to an administrative or judicial body competent to hear or review complaints of alleged breaches of the procuring Party's laws, regulations, procedures and practices regarding procurement in the context of procurements in which they have, or have had, an interest.

3. Each Party shall make information on complaint mechanisms generally available.

97. The **New Zealand-Singapore** Agreement does not have rules calling for the establishment of a challenge body. Article 54 ("Disputes between a supplier and the Procuring Government Body") provides for complaints by suppliers to be brought to the designated body in whose territory it is located. The body receiving the complaint can then raise it with the designated body of the other party, for the alleged breach to be investigated. The **Australia-New Zealand** Agreement includes similar monitoring procedures (Annex 2 to Government procurement agreement (revised 1997)).

M. OTHER ISSUES SUBJECT TO SPECIFIC DISCIPLINES

98. Since this Note aims to review key elements of government procurement disciplines in economic integration agreements, it necessarily needs to distinguish between more and less relevant provisions. Some provisions not covered in the previous sections may nevertheless be worth mentioning. For example, many agreements contain provisions on cooperation between parties or entities, as well as on future reviews of the agreement. Many of the agreements also contain an Article on denial of benefits²⁴, as well as provisions on the privatisation of entities or divestiture from entities.²⁵ The latter provisions relate to the withdrawal of entities from a party's list of commitments when a government decides to relinquish control over an entity.

99. The **US-Chile** Agreement (Article 9.12, reproduced below) includes specific 'good governance' provisions. It mandates each party to ensure that certain actions are considered criminal offences under its law, e.g., procurement officials soliciting money.

US-Chile
Article 9.12: Ensuring Integrity In Procurement Practices

Each Party shall adopt the necessary legislative or other measures to establish that it is a criminal offense under its law for:

- (a) a procurement official of that Party to solicit or accept, directly or indirectly, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions;
- (b) any person to offer or grant, directly or indirectly, to a procurement official of that Party, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions; and
- (c) any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign procurement official, for that foreign procurement official or for a third party, in order that the foreign procurement official act or refrain from acting in relation to the performance of procurement duties, in order to obtain or retain business or other improper advantage.

100. The **EC Directive** includes rules on a "dynamic purchasing system", which is a completely electronic process for commonly used purchases. Article 33 lays down specific rules for setting up and operating such an electronic auction system in order to ensure fair treatment of any supplier who wants to take part. In addition, Article 54 (reproduced below) of the Directive provides rules for the use of electronic auctions.²⁶ Such a process enables contracting authorities to ask tenderers to submit new prices, revised downwards. It can be used by contracting authorities prior to the awarding of a contract in open, restrictive or negotiated procedures when contract specifications can be determined with precision.

²⁴ NAFTA, EFTA-Mexico, Chile-Costa Rica, Chile-El Salvador.

²⁵ NAFTA, EC-Mexico, EFTA-Mexico, Chile-Costa Rica, Chile-El Salvador.

²⁶ In the Directive, an electronic auction is defined as "a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods".

Directive 2004/18/EC
Article 54: Use of electronic auctions

1. Member States may provide that contracting authorities may use electronic auctions.
2. In open, restricted or negotiated procedures in the case referred to in Article 30(1)(a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement as provided for in the second indent of the second subparagraph of Article 32(4) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 33.

The electronic auction shall be based:

- either solely on prices when the contract is awarded to the lowest price,
- or on prices and/or on the new values of the features of the tenders indicated in the specification when the contract is awarded to the most economically advantageous tender.

3. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice. The specifications shall include, *inter alia*, the following details:
 - (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
 - (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
 - (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
 - (d) the relevant information concerning the electronic auction process;
 - (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
 - (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 53(2).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the specifications; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

6. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or

values submitted, provided that that is stated in the specifications. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. Contracting authorities shall close an electronic auction in one or more of the following manners:
 - (a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;
 - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
 - (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting authorities have decided to close an electronic auction in accordance with subparagraph (c), possibly in combination with the arrangements laid down in subparagraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

8. After closing an electronic auction contracting authorities shall award the contract in accordance with Article 53 on the basis of the results of the electronic auction.

Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as put up for tender in the published contract notice and defined in the specification.

Working Party on GATS Rules

LIMITATIONS IN MEMBERS' SCHEDULES RELATING TO SUBSIDIES

Note by the Secretariat¹

Addendum

I. INTRODUCTION

1. At its meeting of 23 June 2004, the Working Party on GATS Rules requested the Secretariat to bring documents S/WPGR/W/13 and S/WPGR/W/13/Add.1 up to date by listing the subsidy-related limitations contained in schedules of specific commitments submitted since the last update in June 2000. The following section presents these subsidy-related limitations. The list was compiled by reviewing the commitments of acceding Members, as well as other new commitments, such as those resulting from acceptance of the Fourth or Fifth Protocol.

2. As in S/WPGR/W/13 and S/WPGR/W/13/Add.1, it is worth recalling that the information contained in this Note is limited in at least two respects. First, only those entries that make explicit reference to subsidies and other forms of financial contributions or transfers of funds by the public authorities of a Member have been taken into account. Nevertheless, given the limited amount of information available, the entries listed do not necessarily constitute subsidies as the term might be understood by Members. Secondly, it has to be kept in mind that discriminatory subsidies may also be granted in situations where no commitments have been undertaken. For obvious reasons, Members' schedules are silent on any such programmes.

3. At its meeting of 23 June 2004, the Working Party also requested the Secretariat to indicate whether Members' schedules of specific commitments contained definitions of subsidies. The Secretariat could find no such definitions in schedules.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

II. COMPILATION OF SUBSIDY-RELATED LIMITATIONS IN SCHEDULES OF SPECIFIC COMMITMENTS

(a) Armenia (GATS/SC/137, p. 3)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	[...]	[...] <u>Subsidies</u> 1), 2), 3), 4) Unbound with respect to subsidies. Only legal entities constituted under Armenian legislation are eligible for subsidization, irrespective of their capital ownership.	

(b) China (GATS/SC/135, p. 2)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	[...]	[...] (3) Unbound for all the existing subsidies to domestic services suppliers in the sectors of audio-visual, aviation and medical services.	

(c) Croatia (GATS/SC/130, p. 2)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	[...]	<p>[...]</p> <p><u>Subsidies</u></p> <p>1,2,3) Eligibility for subsidies from the Republic of Croatia may be limited to legal persons established within the territory of Croatia or a particular geographical sub-division thereof. Research and development subsidies are limited to legal persons established in Croatia.</p> <p>4) To the extent that any subsidies are made available to natural persons, their availability may be limited to the nationals of the Republic of Croatia.</p>	

(d) Former Yugoslav Republic of Macedonia (GATS/SC/138, p. 5 and 17)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
<u>All sectors</u> [...]	[...]	[...] Subsidies 1) 2) 3) 4) Eligibility for subsidies reserved for national services and service suppliers.	
II. COMMITMENTS IN SPECIFIC SECTORS			
[...]			
5. EDUCATION SERVICES <u>All education services included in this section:</u> Subsectors listed below only cover privately funded education services. Educational services in investigation, security and defense areas and in history and culture of people and nationalities in FYROM are excluded.	[...]	1) 2) 3) 4) Unbound for grants and scholarships	

(e) Georgia (GATS/SC/129, p. 2)

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of Natural Persons

Sector or subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
Commitments include all sectors	[...]	1) Unbound for subsidies 2) Unbound for subsidies 3) [...] Eligibility for subsidies may be limited to persons established in a particular geographical sub-division of Georgia.	

(f) Lithuania (GATS/SC/133, p. 2 and 19)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
	[...]	(3) [...] Eligibility of subsidies may be limited to legal persons established within the territory of Lithuania or a particular geographical subdivision thereof. (4) [...] Subsidies available only to natural persons may be limited to Lithuanian citizens	
II. SECTOR-SPECIFIC COMMITMENTS			
8. HEALTH RELATED AND SOCIAL SERVICES A. Hospital services (CPC 9311)	[...]	[...] (3) None, except foreign private establishment and their consumers may not be entitled to receive financial support from public resources, including usage of public medical insurance funds. [...]	

(g) Nepal (GATS/SC/139, p. 3)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
All Sectors included in this Schedule	[...]	[...] (3) None, except [...] - Incentives and subsidies are available only to enterprises wholly owned by Nepalese nationals.	

WORLD TRADE ORGANIZATION

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Working Party on GATS Rules

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Government Procurement in Services

The following communication, dated 6 May 2004, from the delegation of the European Communities is being circulated to the Members of the Working Party on GATS Rules.

1. Within the framework of the negotiations under the mandate given by GATS Article XIII:2, the European Communities (hereinafter the EC) submitted in July 2002 and May 2003 contributions with proposals on a framework that could be developed under the GATS for government procurement in services, and on the benefits that could be drawn from them. The EC is hereby putting forward a new contribution aiming at replying to questions on its two communications mentioned above, which were raised by WTO Members, including by Singapore in its Non-Paper of November 2003, circulated as JOB(03)/216.

2. As requested by several WTO Members in previous meetings of the Working Party on GATS Rules, this contribution includes examples of government procurement commitments and MFN exemptions that could be scheduled by Members. It proposes to define the scope of application of future GATS provisions on government procurement and clarifies the relationship between the proposed GATS framework for government procurement in services and the plurilateral Agreement on Government Procurement (GPA). Finally, it notes the importance attached by several Members to the development of an appropriate set of procedural rules.

I. SCHEDULING OF GOVERNMENT PROCUREMENT COMMITMENTS AND OF MFN EXEMPTIONS

A. SPECIFIC GOVERNMENT PROCUREMENT COMMITMENTS

– Example 1 – no government procurement commitment

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments	Limitations on government procurement
Advertising (CPC 871)	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section		Unbound

3. This example reflects the current situation, when no commitments have been made for government procurement in services. In such a situation, laws, regulations and requirements governing government procurement in services in this particular sector would only be subject to the GATS provisions, to which they are already subject today, i.e. all GATS provisions other than GATS Articles II, XVI and XVII. This includes notably (but not only) GATS Article III on Transparency covering relevant measures of general application, GATS Article VI on Domestic Regulation (in particular as regards domestic review), GATS Article VII on Recognition, GATS Article XII on Restrictions to safeguard the Balance of Payment, GATS Article XXIII on Dispute Settlement and Enforcement.

– Example 2 – full government procurement commitment above a specific threshold

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments	Limitations on government procurement
CPC 84 – Computer services	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section		None for contracts above 200.000 SDR (Special Drawing Rights)

4. In this situation, a commitment has been made for all government procurement contracts in the CPC 84 sector above the 200.000 SDR (Special Drawing Rights) threshold. This means that all laws, regulations, procedures and practices regarding government procurement in services above this threshold have to be open to services regardless of their country of production and to foreign service providers and to locally-established suppliers with foreign affiliation or ownership on a National Treatment and MFN basis (unless MFN exemptions have been scheduled – see section B hereafter). All entities listed in GATS Article I:3, i.e. central, regional & local governments and authorities, as well as non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities, are covered by this commitment. WTO Members could schedule thresholds adapted to their economic size and needs, on a sector by sector basis.

– Example 3 – partial government procurement commitment

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments	Limitations on government procurement
Architectural Services (CPC 8671)	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section		None for central procuring entities only, and for contracts above 200.000 SDR. Domestic price preference of 5%.

5. In this situation, only procurement by central governments and authorities is covered. The threshold is 200.000 SDR. In addition, a 5% price preference may be awarded to domestic service providers.

– Example 4 – articulation between government procurement commitment on one side and market access and national treatment commitments on the other side

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments	Limitations on gov. procurement
Construction services (CPC 51)	Modes 1,2) Unbound Mode 3) None Mode 4) Unbound except as indicated in the horizontal section	Modes 1,2) Unbound Mode 3) None, except that the CEO is subject to a residency requirement. Mode 4) Unbound except as indicated in the horizontal section		None for contracts above 5.000.000 SDR.

6. In this situation, procedures to award public contracts above the 5 million SDR threshold in the construction sector have to be open to foreign service providers, on a National Treatment and MFN basis (unless MFN exemptions have been scheduled – see section B hereafter). Central, regional & local governments and authorities, as well as non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities, are covered by this commitment.

7. However, these commitments for government procurement have to be read in conjunction (i.e. cumulatively) with Members' existing market access and national treatment commitments for the relevant sector (including horizontal commitments – or limitations). This means that a foreign service provider having been awarded a government procurement contract would then have to comply with market access and national treatment conditions applying to foreign service providers. This is a general rule – i.e. the validity of this comment is not limited to this specific example. In the particular case above, it may be obliged to establish a commercial presence and to comply with a residency requirement, as such conditions may be imposed on all foreign construction companies willing to provide services in the territory of the WTO Member under consideration.

8. This means that the GATS commitments for government procurement would not apply to measures affecting trade in services other than measures regarding government procurement: any benefit gained from government procurement commitments under the GATS would be subject to the traditional GATS commitments on market access and national treatment.

– Example 5 – government procurement commitment limited to some modes of supply

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments	Limitations on government procurement
Telecom services	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section	As contained in the attached Reference Paper	Modes 1, 2) Unbound Modes 3, 4) None for contracts above 200.000 SDR, except that Mode 4 is limited to ICTs.

9. In this situation, government procurement of telecom services may be open only to foreign service providers that have established a commercial presence in the territory of the WTO Member under consideration.

10. The indication of an “Unbound” in modes 1 and 2 in the government procurement column serves precisely to indicate that companies that are not established in the territory of the WTO Member under consideration, may not bid for a government procurement contract in the telecom sector.

11. It may be recalled that in financial services, some WTO Members have already opened, under the Understanding on Commitments on Financial Services, government procurement of financial services to suppliers of other WTO Members established in their territory.

– Example 6 – government procurement of services covering several sectors

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitm.	Limitations on government procurement
CPC84 – Computer services	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section		None for contracts above 200.000 SDR (Special Drawing Rights)
Management Consulting Services & Related (CPC 865 & 866)	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section	Modes 1,2,3) None Mode 4) Unbound except as indicated in the horizontal section		None for contracts above 200.000 SDR (Special Drawing Rights)

12. In this situation of a government procurement contract covering services falling in several CPC categories, e.g. CPC 84 (computer services) and CPC 865 (Management Consulting Services), procedures to award such contract would have to be open to foreign service providers, on a National Treatment and MFN basis (unless MFN exemptions have been scheduled – see section B hereafter), since commitments have been made in all services categories covered by the contract.

13. If GATS government procurement commitments have been made only in one of the two sectors concerned, e.g. CPC 84 but not CPC 865, *and if* the contract cannot be divided into two different contracts – one covering activities falling in CPC 84, which would be covered by GATS commitments in this example, and the other covering activities falling into CPC 865, which would not be covered by GATS commitments in this example –, a specific provision of the GATS Annex on government procurement would define how to determine the “main object of the contract” (determined according to the value of each category of service covered). This provision would be similar to the one dealing with mixed contracts covering the procurement of goods and services (see Part II of this paper). In this example, if the “main object of the contract” appears to be the procurement of computer services, the contract would then be covered by the Member’s GATS government procurement commitments.

B. MFN EXEMPTIONS

14. The proposed agreement on government procurement in services would provide that the MFN Treatment should apply to the government procurement procedures in sectors opened to international competition.

15. However, at the time when the GATS entered into force, WTO Members had the possibility to list MFN exemptions. GATS Article XIII:1 specifically provided that Article II on MFN does not apply to government procurement, which rendered irrelevant the scheduling of MFN exemptions at that point in time. Since the agreement on procurement that will result from GATS Article XIII:2 negotiations would extend the application of MFN to procurement, consistency would require that this extension should be accompanied by the one-off possibility to schedule MFN exemptions. This possibility would be provided for in a specific article of the GATS Annex on Government Procurement.

16. MFN exemptions could for instance be scheduled by WTO Members to provide more favourable treatment to service providers originating from countries of their region or from developing countries. They would follow the usual structure of GATS MFN exemptions.

– Example – government procurement MFN exemption that could be scheduled

Sector or subsector	Description of measure indicating its inconsistency with the MFN Treatment obligation	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Architectural Services (CPC 8671)	Measures aimed at offering preferential conditions for the provision of architectural by nationals of countries X, Y, Z.	Countries X, Y, Z.	10 years	This measure reflects the wish to foster regional cooperation.

17. These MFN exemptions would not serve to cover the benefits deriving from being a Party to the GPA. The relationship between the GPA and the GATS would be done through the inclusion of specific provisions in the future GATS Annex on Government Procurement (see part III), which would ensure that the GATS does not extend on an MFN-basis to other WTO Members the more favourable treatment that GPA parties may accord to each other in the framework of the GPA regime. This specific provision would cover current GPA Parties, as well as future GPA Parties, who will not need to schedule an MFN exemption for that purpose.

II. SCOPE OF THE GATS AGREEMENT ON GOVERNMENT PROCUREMENT

18. Several Members underlined the need to define the scope of government procurement provisions under the GATS, since the GATS covers trade in services. The situation is similar to the one prevailing before the entry into force of the WTO Agreement, when the GATT was covering trade in goods and the GATT Code on Government Procurement was applying to the procurement of goods.

19. Article 1-1 (a) of the GATT Code on Government Procurement was providing that it applied to any law, regulation, procedure and practice regarding the procurement of products by the entities subject to the Code, and that this included services incidental to the supply of products if the value of these incidental services did not exceed that of the products themselves, but not service contracts *per se*.

20. An analogous provision could be included in the "Annex to the GATS on Government Procurement of Services".

III. RELATIONS WITH THE GPA

21. It was underlined in several meetings of the Working Party on GATS Rules that new government procurement rules and obligations under the GATS should not extend on an MFN-basis to other WTO Members the more favourable treatment that GPA parties may accord to each other in the framework of the GPA regime.

22. The EC has proposed that a specific provision would organise appropriate interface between the GPA and the "Annex to the GATS on Government Procurement in Services". This provision would ensure that the GATS agreement on government procurement would not affect GPA rules and obligations, which would continue to apply between existing and future GPA parties. It would also make clear that benefits gained by GPA parties from GPA commitments would not be extended under the GATS on an MFN-basis to other WTO Members.

23. In a specific service sector, a GPA-party may make no government procurement commitment under the GATS, but may have made a commitment under the GPA. In this case, government procurement contracts awarded by the GPA-party under consideration would only have to be opened to GPA-parties, under the conditions set out by the GPA.

24. In another specific service sector, a GPA party may make a limited government procurement commitment under the GATS (limited sectoral coverage, limited coverage of procuring entities – for instance restricted to the central level, + scheduling of price preferences), and a broader commitment under the GPA (broader sectoral coverage, broader coverage of procuring entities and no price preference). A WTO Member that would not be party to the GPA would only be assured of having access to the government procurement contracts awarded by the GPA party under consideration, as limited by the GATS commitments of that GPA party. This is not dissimilar to the situation that prevails today with the coexistence of bilateral and regional government procurement agreements between WTO Members, some of which may be party to the GPA and some of which may not be, e.g. NAFTA.

25. In order to ensure the effective co-existence and coherence of both systems (GPA and future GATS regime), further in-depth consideration should be given on the relative level of government procurement commitments under the GPA and under the GATS.

IV. PROCEDURAL RULES

26. The importance of developing appropriate procedural rules, in order to ensure that access to procurement opportunities will be effective, has been underlined in previous contributions and in discussions of the Working Party on GATS Rules, with several Members mentioning in particular challenge procedures.

27. The EC underlined that a number of such provisions were already included in the text of the GATS, such as for instance in GATS Article VI on Domestic Regulation, in particular as regards domestic review. More specific rules on the transparency of bidding procedures may have to be developed in the GATS Annex on Government Procurement. The rules contained in the bilateral and regional agreements listed by the WTO Secretariat in S/WPGR/W/44 may be a useful source of inspiration in this regard. The EC would therefore like to invite Members to share the experience they may have got from the bilateral, regional and/or plurilateral agreements they have signed, and to discuss procedural rules that they think have to be implemented to ensure the effective application of future GATS obligations regarding opportunities to bid, national treatment and MFN treatment.

Working Party on GATS Rules

SUBSIDIES FOR SERVICES SECTORS

INFORMATION CONTAINED IN WTO TRADE POLICY REVIEWS

Background Note by the Secretariat¹

Addendum

I. INTRODUCTION

1. At its meeting of 1 October 2003, the Working Party on GATS Rules requested the Secretariat to prepare an update of the information on subsidies in services contained in Trade Policy Reviews. This document, which complements the information provided in S/WPGR/W/25, - Add. 1, Add. 2 and Add. 3, covers 26 Reviews carried out between August 2002 and 11 February 2004 (WT/TPR/S/103 to 128). Relevant information has been added, in italics, in the overview table already contained in the previous documents (Table 1).

2. The compilation of information from TPR reports necessarily suffers from certain limitations, as explained at length in the introduction to previous versions of this Note². The same considerations continue to apply. Suffice it to recall, for instance, that the selection of Members to be reviewed, or the content of reports, are not driven by subsidy-related issues and problems, but rather by a Member's main policy challenges and constraints. As a result, the amount of information contained on subsidies in reports might vary from Member to Member. Also, TPR reports do not normally attempt to assess the possible distortive effects of subsidies on trade. While most reports contain some information on subsidies, the limited level of detail sometimes makes it difficult to identify the extent to which a benefit is actually being conferred or the identity of the recipient of the subsidy.

3. It also needs to be kept in mind that, while this Note compiles potentially relevant information against the background of the definition of "subsidy" and related concepts (e.g., "benefit", "financial contribution") contained in the Agreement on Subsidies and Countervailing Measures (ASCM), not all data recorded in TPR reports may be compatible with this definition. As previous versions of this Note, the compilation of information from TPR reports focuses, in the light of Article 2 of the ASCM, on specific subsidies. As well, some of the subsidies mentioned in TPR reports may be financial contributions to services which are beyond the scope of the GATS, i.e., services provided in the exercise of governmental authority (Article I:3(b)) or services excluded through the Annex on Air Transport Services.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² See introductions to: S/WPGR/W/25, S/WPGR/W/25/Add.1, S/WPGR/W/25/Add.2, and S/WPGR/W/25/Add.3.

II. POLICY PATTERNS

4. The information contained in the TPR reports issued since September 2002 generally tends to confirm the broad patterns identified in previous documents. Subsidies are found in the whole range of services sectors, but mainly in tourism, transport and banking. A good number of Members also provide subsidies relating to telecommunications services, many of which in the form of grants relating to the fulfilment of universal service obligations. Concerning the types of measures used, Members continued to rely on tax incentives more than on direct grants. A significant number of Members used duty-free inputs and free zone incentives, which sometimes appeared to be linked to exports.

Table 1: Forms of financial assistance to services sectors - information from TPR Reports

➤ MEASURE ➤	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members ²
▼ SECTOR ▼							
Tourism	Botswana Canada Israel Switzerland Liechtenstein Costa Rica Czech Rep. Slovak Rep. <i>Australia</i> <i>Lesotho</i> <i>Morocco</i> <i>Turkey</i>	Canada Nigeria ¹ Iceland India Jamaica South Africa Trinidad & Tobago Turkey Grenada Mauritius Slovak Rep. Barbados Uganda <i>Botswana</i> <i>Morocco</i>	South Africa <i>Burundi</i>	Nigeria ¹ Argentina Egypt India Israel Jamaica Nicaragua Philippines Solomon Is. Tanzania Trinidad & Tobago Uruguay Madagascar Ghana Macau, China Costa Rica Dominica Grenada St. Kitt & Nevis Saint Lucia St. Vincent & G. Gabon Cameroon Mauritius Slovak Rep. Malawi Haiti Barbados <i>Australia</i> <i>Dominican Republic</i> <i>Zambia</i> <i>Venezuela</i> <i>Lesotho</i> <i>Morocco</i> <i>Niger</i> <i>Senegal</i> <i>Honduras</i> <i>Guyana</i> <i>Thailand</i> <i>Turkey</i> <i>Sri Lanka</i>	Argentina Egypt India Jamaica Kenya Nicaragua Peru Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay Mozambique Ghana Macau, China Dominica Grenada S. Kitt & Nevis Saint Lucia St. Vincent & G. Malawi Haiti Barbados <i>Burundi</i> <i>Morocco</i> <i>Niger</i> <i>Senegal</i> <i>Honduras</i> <i>Bulgaria</i> <i>Guyana</i>	Guinea ¹ Lesotho Singapore Brunei D. Mauritius Guatemala Slovenia Barbados <i>New Zealand</i> <i>Indonesia</i> <i>The Gambia</i>	63

► MEASURE ► ▼ SECTOR ▼	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members ²
Transportation general or unspecified	Canada Switzerland Liechtenstein Czech Rep. <i>Australia</i> <i>Namibia</i> <i>South Africa</i> <i>New Zealand</i>	Poland Grenada		Philippines Poland Korea RP Madagascar Slovak Rep. Malawi <i>Australia</i> <i>Morocco</i> <i>Sri Lanka</i>	Mozambique Malawi <i>Venezuela</i> <i>Morocco</i> <i>The Gambia</i>	Brunei D. Czech Rep. Slovak Rep. <i>Indonesia</i> <i>Bulgaria</i> <i>The Gambia</i> <i>Sri Lanka</i>	24
Maritime transport	<i>Australia</i> Solomon Islands ¹ Czech Rep. Pakistan India <i>Turkey</i>	Thailand U.S. India		Egypt India Jamaica Peru Singapore Turkey U.S. Brazil <i>Japan</i> Mauritius Mexico Barbados <i>Australia</i> <i>Venezuela</i> <i>HK, China</i> <i>Indonesia</i> <i>Honduras</i> <i>Turkey</i> <i>U.S.</i> <i>Sri Lanka</i>	Egypt Jamaica Papua N.G. Peru Turkey Pakistan Barbados <i>Indonesia</i> <i>Honduras</i>	EC Korea RP U.S. Mauritius India <i>Australia</i>	25
Air transport	<i>Canada</i> <i>U.S.</i>	Papua N. G.	Hungary ¹	Egypt Macau, China Mexico <i>Venezuela</i> <i>HK, China</i> <i>Niger</i> <i>Honduras</i>	Hungary Papua N.G. <i>Niger</i> <i>Honduras</i>	EC (F, I, P, G) India EC <i>New Zealand</i> <i>U.S.</i>	14
Rail transport	India Kenya Switzerland Czech Rep. <i>South Africa</i> <i>Turkey</i>			<i>Australia</i> <i>Hong Kong,</i> <i>China</i> <i>Senegal</i>		Slovak Rep. ¹ Malawi India EC <i>Indonesia</i> <i>Senegal</i>	13
Banking	Poland Brazil <i>Australia</i> <i>South Africa</i>	Indonesia Thailand Poland EC (D) Costa Rica Slovak Rep.	HK, China Thailand Norway Slovak Rep. Mexico India ¹ <i>Indonesia</i> <i>Thailand</i> <i>Turkey</i>	Singapore Tanzania U.S. Poland Korea RP Switzerland Ghana Macau, China Mauritius Malaysia India Barbados <i>Australia</i>	Trinidad & Tobago ¹ Jamaica Singapore Tanzania Thailand Mozambique Saint Lucia St. Vincent & G. <i>Morocco</i> <i>The Gambia</i>	Korea RP Brunei D. Czech Rep. Slovak Rep. India Barbados	33

➤ MEASURE ➤ ▼ SECTOR ▼	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members ²
Other financial services	<i>Australia</i>	Indonesia Thailand <i>U.S.</i>	HK, China Thailand	Singapore U.S. Korea RP Brazil Dominica St. Kitt & Nevis Barbados <i>Australia</i> <i>U.S.</i>	Singapore Thailand Trinidad & Tobago ¹ Mozambique Saint Lucia St. Vincent & G. Barbados <i>Morocco</i> <i>The Gambia</i>		17
Software, info technology, communications, info processing	Canada <i>Australia</i> <i>Turkey</i>	Jamaica		Canada Egypt India Korea RP Grenada Slovak Rep. Pakistan <i>Australia</i> <i>Sri Lanka</i>	Jamaica Trinidad & Tobago ¹ Uruguay Madagascar Grenada Pakistan India <i>The Gambia</i>	Korea RP Pakistan	15
Construction	U.S. <i>Australia</i> <i>Chile</i>	Argentina Poland		Argentina Bolivia Trinidad & Tobago Turkey Korea RP Poland India <i>Australia</i> <i>Venezuela</i> <i>Niger</i> <i>Sri Lanka</i>	Mozambique Brunei D. India <i>Niger</i>		15
Recreation, culture & sports	Canada Korea RP Norway <i>Australia</i>	Jamaica		Bolivia Costa Rica <i>Australia</i> <i>Niger</i> <i>Senegal</i> <i>Honduras</i> <i>Sri Lanka</i>	Bolivia Israel <i>Niger</i> <i>Senegal</i> <i>Honduras</i>		12
Telecom	Peru Singapore <i>Australia</i> <i>Venezuela</i> <i>El Salvador</i> Canada <i>Botswana</i> <i>Namibia</i> <i>Chile</i> <i>U.S.</i>	India		India St. Kitt & Nevis ¹ <i>Venezuela</i>	Trinidad & Tobago ¹ Mozambique Saint Lucia India <i>The Gambia</i>	Mauritius India <i>Niger</i> <i>The Gambia</i>	18
Audiovisual services	Argentina Canada EC <i>Australia</i> <i>New Zealand</i> <i>The Gambia</i>			<i>Canada</i> Jamaica Tanzania Korea RP Mexico	Jamaica Tanzania <i>Burundi</i>		11
Wholesale & retail trade, distribution	<i>Australia</i>	Turkey		Trinidad & Tobago Korea RP <i>Australia</i> <i>Venezuela</i> <i>Honduras</i> <i>Sri Lanka</i>	Tanzania <i>El Salvador</i> <i>Honduras</i> <i>Bulgaria</i> <i>The Gambia</i> <i>Sri Lanka</i>		11

➤ MEASURE ➤ ▼ SECTOR ▼	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members ²
Real estate	<i>Australia</i>	India		Canada Japan <i>Australia</i>	Trinidad & Tobago		5
Energy	<i>Australia</i> <i>Turkey</i>			Madagascar Costa Rica Slovak Rep. Guatemala Haiti <i>Australia</i> <i>Sri Lanka</i>	<i>The Gambia</i>	Brunei D. Guatemala India <i>El Salvador</i> <i>Bulgaria</i> <i>U.S.</i> <i>The Gambia</i>	14
Other & unspecified sectors	<i>Australia</i> <i>New Zealand</i> <i>Morocco</i> <i>Turkey</i>	Australia Bangladesh Turkey Czech Rep. Uganda	Canada	Singapore Korea RP Costa Rica Dominica St. Kitt & Nevis <i>Australia</i> <i>Venezuela</i> <i>Morocco</i> <i>Senegal</i> <i>Honduras</i> <i>Thailand</i>	Hungary Singapore Dominica Saint Lucia St. Vincent & G. <i>Mauritania</i> <i>Dominican Republic</i> <i>Burundi</i> <i>Senegal</i> <i>Honduras</i> <i>Thailand</i> <i>The Gambia</i>	Brunei D. Czech Rep. Mauritius Slovak Rep. <i>El Salvador</i> <i>The Gambia</i>	28
Number of cases	74	44	15	165	112	60	

1 Subsidy programme envisaged.

2 Counting EC as one.

Source: WTO Secretariat.

ANNEX

Content of Individual Trade Policy Reviews

Mauritania -- WT/TPR/S/103

P. 49, para. 86

In 2002, the new Investment Code introduced a free points regime applicable to enterprises whose total production is exported.³ The enterprises covered by this regime are under the supervision of the customs administration and benefit from advantages such as exemption from export duties and taxes, exemption from import duties and taxes on production means and inputs, simplified customs formalities and controls, and freedom to recruit up to four expatriate agents without authorization or a work permit. These enterprises pay a flat rate of 25 per cent on profits and the minimum flat rate tax (IMF) of 2 per cent on turnover, which constitutes advance payment of the profits tax.

Australia – WT/TPR/S/104

P. xiii, para. 25

In the period under review, Government support to the services sector, through direct financial assistance, tax expenditures, and funding to public-sector institutions, has risen; the main recipients have been **finance and insurance, cultural and recreational, transport and storage, property, and business and communication services**. Several access restrictions have remained in force. Financial services reforms (e.g. prudential rules, institutional) have been pursued in several areas in the light of recommendations made in 1997. Liberalization of telecommunications has led to further privatization of state-owned firms, increased entry of private sector operators, and lower tariffs; however, operational costs relating to the universal service obligation have been a concern. Support for domestic advertisement and film producers has been maintained through local-content requirements in television broadcasting as well as **film production** funding. As regards maritime services, state involvement seems to have been reduced; financial assistance to **shippers of freight** between Tasmania and the mainland has been maintained. **Maritime road, and rail transport** have also benefited from tax rebates on fuels. Efforts have been made to reduce air transportation costs and improve the quality of services through more operators and airport leasing. E-commerce is being promoted through network funding and bilateral arrangements.

P. 60-61, para. 96

Despite public spending cuts as part of the fiscal consolidation programme (Chapter I), between 1997/98 and 2000/01, different forms of direct financial, tax or institutional assistance to exports of goods and **services** followed an overall upward trend, largely due to increased support for exports of primary and mining products as well as certain services (Table III.6). By contrast, assistance to exports of manufactured goods declined.

³ According to Article 8 of the Code the following may be covered by the free points regime: activities directly intended for export (the production and sale of goods abroad or the supply of **services**), activities indirectly intended for export comprising the integral sale of goods or supply of **services** to beneficiaries situated in Mauritania whose activities directly involve export.

Table III.6
Commonwealth assistance to exporters of goods and services, 1997-02
 (\$A million)

	1997/98	1998/99	1999/00	2000/01 ^a	2001/02 ^a
General export measures	549	543	546	579	605
of which:					
(i) primary products (DFA, FI)	55	53	58	63	69
(ii) manufacturing sector	229	208	201	212	32
- food, beverages and tobacco (DFA)	7	8	8	9	9
- textiles, clothing, footwear and leather (DFA, FI, TE)	19	16	15	17	17
- wood and paper products (DFA, TE)	4	3	3	<3	<3
- printing, publishing and recorded media (DFA)	3	3	3	3	3
- petroleum, coal, chemical and associated products (DFA, FI, TE)	9	10	10	11	11
- non-metallic mineral products (DFA, TE)	3	2	2	<2	<2
- metal product manufacturing (DFA, TE)	10	8	9	6	6
- motor vehicles and parts (FI, DFA, TE)	4	18	19	70	70
- other transport equipment	n.a.	n.a.	n.a.	n.a.	..
- other machinery and equipment (DFA, TE)	61	32	31	20	20
- other manufacturing (DFA, TE)	17	13	14	21	21
- unallocated manufacturing (DFA, TE)	92	95	87	50	70
(iii) services sector	247	266	266	290	288
- electricity, gas, and water supply (DFA)	<1	<1	<1	<1	<1
- construction (DFA, FI, TE)	22	24	27	30	30
- wholesale trade (DFA, TE)	15	15	12	17	17
- retail trade (DFA, FI)	22	25	24	23	23
- accommodation, cafés and restaurants (DFA, FI)	28	32	33	37	37
- transport and storage (DFA, FI, TE)	48	52	49	48	48
- communication (DFA, FI)	19	20	22	25	23
- finance and insurance (DFA)	<1	<1	<1	<1	<1
- property and business services (DFA)	22	23	22	24	24
- government administration and defence (FI)	2	2	2	3	3
- education (DFA, FI)	20	20	18	20	20
- health and community services (DFA)	<1	<1	<1	<1	<1
- cultural and recreational services (DFA, FI)	25	28	29	33	33
- personal and other services (DFA)	1	1	1	1	1
- unallocated services (FI)	20	21	24	26	26
(iv) mining sector (DFA, FI)	8	9	10	11	11
(v) unallocated other ^b (FI)	10	7	11	3	5

.. Not available.

n.a. Not applicable

a Estimates.

b Includes programmes or amounts of funding where the industry is not stated or recipients are unknown.

Note: DFA: direct financial assistant; FI: funding to institutions; TE: tax expenditures. To calculate the total, data given as "<A\$1 million" have been read as \$A 1 million.

Source: Productivity Commission (2001), *Trade & Assistance Review 2000-01*, Tables 4.3, 4.4, 4.5, 4.6, 4.7 and 4.8 [Online], 12 December, Annual Report Series 1999-2000, AusInfo. Available at: <http://www.pc.gov.au/research/annrpt/> [11 June 2002].

P. 109-113, para. 77

The estimated level of support provided to the services sector through direct financial assistance, tax expenditures, and funding to public-sector institutions has been increasing (Table IV.5); budgetary outlays aimed at encouraging investment, R&D, and exports have been allocated mainly to **finance and insurance, cultural and recreational, transport and storage, property, and business and communication services.**

Table IV.5
Developments in domestic support to services, 1997-02
(\$A million)

	Type ^a	1997/98	1998/99	1999/00	2000/01 ^b	2001/02 ^b
Electricity, gas & water supply						
Industry-specific measures						
Renewable Energy Commercialization ^c	DFA	-	2	3	7	12
Renewable Energy Equity Fund ^c	DFA	-	-	<1	3	3
General investment measures						
Development allowance	TE	14	2	2	4	4
Infrastructure Bonds	TE	60	55	44	31	13
Infrastructure borrowing tax offset scheme	TE	3	25	25	43	43
General export measures						
Export Market Development Grants Scheme	DFA	<1	<1	<1	<1	<1
General R&D measures						
Cooperative Research Centres	FI	3	4	5	5	3
R&D Start and related programmes	DFA	1	1	1	2	2
R&D tax concession	TE	1	1	1	1	1
Total		83	91	81	97	82
Construction						
General export measures						
Austrade export promotion ^d	FI	20	22	25	27	27
Export Market Development Grants Scheme	DFA	2	2	2	2	2
TRADEX	TE	-	-	-	1	1
General R&D measures						
Cooperative Research Centres	FI	-	-	-	-	2
CSIRO research	FI	24	25	25	22	22
Innovation Investment Fund	DFA	-	-	-	2	3
R&D Start and related programmes	DFA	2	<1	<1	1	1
R&D tax concession	TE	19	15	8	8	8
Total		67	64	60	63	65
Wholesale trade						
General investment measures						
Development allowance		<1	-	-	12	11
General export measures						
Export Market Development Grants Scheme	DFA	15	15	12	13	13
TRADEX	TE	-	-	-	4	4
General R&D measures						
R&D Start and related programmes	DFA	-	<1	2	1	1
R&D tax concession	TE	14	13	20	21	22
Total		30	28	35	51	51

	Type ^a	1997/98	1998/99	1999/00	2000/01 ^b	2001/02 ^b
Retail trade						
Industry-specific programmes						
Pharmacy Restructuring grants	DFA	7	11	13	10	-
General investment measures						
Development allowance	TE	<1	<1	<1	<1	<1
General export measures						
Australian Tourist Commission	FI	18	21	21	21	21
Export Market Development Grants Scheme	DFA	4	4	3	2	2
General R&D measures						
R&D tax concession	TE	2	3	5	5	5
Total		32	38	41	39	29
Accommodation, cafes & restaurants						
General investment measures						
Development allowance	TE	1	1	1	-	-
General export measures						
Export Market Development Grants Scheme	DFA	4	5	5	9	9
Australian Tourist Commission	FI	24	27	28	28	28
Total		29	33	34	37	37
Finance & insurance						
General investment measures						
Development allowance	TE	27	6	6	1	1
Offshore Banking Unit	TE	17	30	35	35	30
Infrastructure borrowing tax offset scheme	TE	3	19	19	19	19
General export measures						
Export Market Development Grants Scheme	DFA	<1	<1	<1	<1	<1
General R&D measures						
R&D Start programme	DFA	1	<1	<1	1	1
Innovation Investment Fund	DFA	-	5	5	<1	<1
R&D tax concession	TE	54	26	18	19	20
Total		102	86	83	76	71
Communication services						
Industry-specific measures						
Investment incentive to IBM	DFA	-	-	-	2	1
Software Engineering Centres	FI	-	2	6	6	6
General investment measures						
Development allowance	TE	-	18	-	33	30
General export measures						
Export Market Development Grants Scheme	DFA	1	1	1	2	2
Austrade export promotion ^d	FI	17	18	20	22	22
Australian Tourist Commission	FI	1	1	1	1	1
General R&D measures						
Cooperative Research Centres	FI	2	2	2	3	6
CSIRO research	FI	22	21	21	21	21
Innovation Investment Fund	DFA	-	12	20	5	6
R&D Start programme	DFA	7	10	12	14	14
R&D tax concession	TE	16	7	30	31	32
Total		66	93	114	140	141

	Type ^a	1997/98	1998/99	1999/00	2000/01 ^b	2001/02 ^b
Transport & storage						
Industry-specific measures						
Investment incentive to Asia Pacific Space Centre	DFA	-	-	-	-	6
General investment measures						
Development allowance	TE	33	<1	<1	6	5
Infrastructure Bonds	TE	55	50	41	29	12
Infrastructure borrowing tax offset scheme	TE	4	31	31	13	13
General export measures						
Export Market Development Grants Scheme	DFA	18	18	15	11	11
Australian Tourist Commission	FI	30	34	34	35	35
TRADEX	TE	-	-	-	2	2
General R&D measures						
R&D Start and related programmes	DFA	-	1	5	2	2
R&D tax concession	TE	4	12	5	5	6
Total		144	147	132	102	91
Property & business services						
General investment measures						
Development allowance	TE	1	-	18	2	2
General export measures						
Export Market Development Grants Scheme	DFA	22	23	22	24	24
General R&D measures						
Biotechnology Innovation Fund	DFA	-	-	-	-	1
Cooperative Research Centres	FI	7	4	3	4	5
R&D Start & related programmes	DFA	6	14	22	28	28
Innovation Investment Fund	DFA	-	1	1	<1	<1
R&D tax concession	TE	40	48	65	68	70
Total		76	89	131	126	129
Government administration & defence						
General investment measures						
Development allowance	TE	-	3	3	-	-
General export measures						
Austrade export promotion ^d	FI	2	2	2	3	3
General R&D measures						
R&D Start & related programmes	DFA	<1	<1	<1	<1	<1
Total		2	6	6	3	3
Education						
General investment measures						
Development allowance	TE	-	1	1	<1	<1
General export measures						
Australian Tourist Commission	FI	<1	1	1	1	1
Export Market Development Grants Scheme	DFA	11	11	8	9	9
Austrade export promotion ^d	FI	8	8	9	10	10
General R&D measures						
R&D Start & related programmes	DFA	5	5	7	4	4
R&D tax concession	TE	2	1	3	3	3
Total		27	26	29	27	27

	Type ^a	1997/98	1998/99	1999/00	2000/01 ^b	2001/02 ^b
Health & community services						
General export measures						
Export Market Development Grants Scheme	DFA	<1	<1	<1	<1	<1
General R&D measures						
Cooperative Research Centres	FI	12	12	13	13	13
R&D Start programme	DFA	7	10	12	18	18
R&D tax concession	TE	2	3	3	3	3
Total		22	25	29	35	38
Cultural & recreational services						
Industry-specific measures						
Australian Film Commission ^b	DFA	30	16	17	17	17
Australian Film Finance Corporation & Film Australia ^b	DFA	48	48	48	48	48
Film industry division 10B & 10BA	TE	20	21	21	21	19
General export measures						
Australian Tourist Commission	FI	3	4	4	4	4
Austrade export promotion ^d	FI	16	17	19	21	21
Export Market Development Grants Scheme	DFA	6	7	6	8	8
General R&D measures						
Biotechnology Innovation Fund	DFA	-	-	-	-	1
Cooperative Research Centres	FI	5	2	2	2	2
R&D Start & related programmes	DFA	-	<1	<1	<1	<1
R&D tax concession	TE	1	-	4	4	4
Total		129	115	122	127	126
Personal & other services						
General export measures						
Export Market Development Grants Scheme	DFA	1	1	1	1	1
General R&D measures						
R&D Start & related programmes	DFA	2	2	2	4	4
R&D tax concession	TE	<1	<1	<1	<1	<1
Total		3	4	4	6	6
Unallocated services						
General export measures						
Austrade export promotion ^d	FI	19	20	23	25	25
Australian Tourist Commission	FI	1	1	1	1	1
General R&D measures						
CSIRO research	FI	9	9	9	10	10
R&D Start & related programmes	DFA	-	<1	2	<1	<1
Other programmes						
Building IT Strengths	DFA	-	-	42	6	55
Total		29	31	75	42	91
Total outlays		445	484	563	544	605
Total tax expenditures		395	391	409	426	383
Total budgetary assistance		840	875	973	970	988

- Nil.

a DFA: direct financial assistance; FI: funding to institutions; TE: tax expenditures.

b 2000-01 data are Budget estimates and 2001-02 data are Budget appropriations.

c The above industry allocations reflect the availability of recently supplied data. In the *Trade & Assistance Review 1999-2000*, these programmes were classified under the unallocated category due to a lack of information. Consequently, the previous classification is no longer appropriate.

d Estimates for 1999/00, 2000/01, and 2001/02 are based on Austrade industry allocations for 1998/99. Austrade has not assembled data on the industries benefiting from its export promotion activities for subsequent years.

Note: Figures may not add to total due to rounding.

Source: Productivity Commission (2001), *Trade & Assistance Review 2000-2001*, Table 4.6 [Online], 11 December, Annual Report Series 2000-2001, AusInfo. Available at: <http://www.pc.gov.au> [28 February 2002].

P. 119, para. 98

During the period under review, the universal service obligation (USO) subsidy levels have been an issue and the subject of comprehensive reform. Telstra's USO requires that standard **telephone services, including services for the disabled, public payphones, digital data services and prescribed carriage services**, are reasonably accessible to all people in Australia on an equitable basis at affordable prices, wherever they reside or carry on business. As a matter of course, Telstra's \$A 1.8 billion USO claim (lodged on 28 September 1998) was subject to scrutiny by the independent regulator, the Australian Communications Authority (ACA), which finally estimated Telstra's cost for 1997/98 at \$A 548 million. Given the unprecedented size of the claim, however, and its potential to cause industry instability and deter investment, the authorities decided the setting of a subsidy would be set by agreement between the carriers, or capped at the historical level of \$A 253.2 million. The subsidies for 1998/99 and 1999/00 varied in line with ACA advice, at around \$A 280 million in each year. Following the 1997/98 claim, an extensive review of Australia's USO arrangements was undertaken and, in 2000, new arrangements were enacted. Amongst other things, the Minister was empowered to set USO subsidies for up to three years in advance, based on the advice of the ACA. This approach enables a range of factors to be considered in setting subsidies. According to the authorities, the setting of subsidies in advance provides industry with certainty, helping it to plan. Subsidies of \$A 240 million, \$A 234.1 million, and \$A 231.7 million have been set for 2001/02, 2002/03, 2003/04.

P. 121, para. 107

The Australian film production industry receives government support in several ways. The Australian Film Commission provides screen, cultural, and industry support through a range of measures including project development through script and other pre-production assistance, post-production grants and low-budget production funding, and grants in support of a vigorous and diverse screen culture.⁴ The Australian Film Finance Corporation (FFC), the principal government agency for funding the production of Australian **film and television programmes**, has annual public funding of \$A 50 million for the period from 2001/02 to 2003/04.⁵

P. 122, para. 110

Financial assistance to **shippers of freight** between Tasmania and the mainland under the Tasmanian Freight Equalisation Scheme (TFES) was modified and put in effect as of 1 July 1999. The modified TFES provides a more transparent and appropriate basis for assistance to shippers and defines more clearly the transport cost disadvantage (the difference between a shipper's wharf gate to wharf gate cost and the notional road freight cost for an equivalent freight task). All commodities are being compensated on an identical basis, that is, on a per twenty-foot container (TEU) basis. The TFES assists in alleviating the comparative interstate freight cost disadvantage incurred by the

⁴ Australian Film Commission online information. Available at: <http://www.afc.gov.au/about/whowe/index.html> [17 April 2001].

⁵ Minister of Communications, Information Technology and the Arts online information. Available at: <http://www.dcita.gov.au/> [24 April 2001]; and Australian Film Finance Corporation online information. Available at: <http://www.ffc.gov.au/intro.html> [17 April 2001].

shippers of eligible non-bulk goods. Eligible items include goods produced in Tasmania for use or sale on the mainland as well as equipment and raw materials of Australian origin used as inputs by mining, manufacturing, agricultural, fishing, and forestry industries in Tasmania. Cargoes intended for export, bulk cargoes, and goods manufactured overseas are ineligible. Some 1,450 shippers benefit from the scheme.

Dominican Republic -- WT/TPR/S/105

P. 42-43, para. 105, 107 and 109

In January 2001, the Dominican Republic notified the export subsidy measures maintained under the Free Trade Zone Law (Law No. 8-90) of 8 January 1990, and requested an extension of the transition period provided for in Article 27.4 of the WTO Agreement on Subsidies and Countervailing Measures.⁶ The Ministerial Conference directed the Committee on Subsidies and Countervailing Measures to extend the transition period under this Article for certain export subsidies provided by Members.⁷ (...)

More than half of the enterprises installed in FTZs are engaged in the production of textiles. The authorities indicated, however, that there had been increasing diversification in recent years. Activities with particularly high growth rates include the production of jewellery, electronic components, **marketing services**, and pharmaceutical products. Chapter IV(4) contains a more detailed description of individual industries operating in FTZs. (...)

As described in detail in the previous Secretariat Report on the Dominican Republic, Law No. 8-90 grants considerable incentives for a renewable period of fifteen years to enterprises located in FTZs. These incentives include the exemption from the payment of: income and corporate taxes; value-added tax on imports, and import duties for all inputs and all equipment used in establishing and operating the company; municipal taxes; export taxes; and various specific taxes. Additional benefits under this Law, such as a 20-year exemption from the above taxes, and rental subsidies, are available for companies located in FTZs in the Haitian-Dominican border area.

P. 82, para. 132

The Tourism Development Law aims to promote **tourism** development in specifically defined priority regions. In particular, the Law offers exemptions from income tax and a 50% reduction of ITBIS for enterprises investing in tourism-related activities in the stipulated regions. In order to administer the benefits, the Law established a Council for Tourism Development (CONFOTUR), composed of representatives from various ministries and the National Hotel and Restaurant Association (ASONAHORES). In addition, the Law created a Fund for the Promotion of Tourism, to promote tourism to the Dominican Republic internationally in a more effective manner.

Zambia – WT/TPR/S/106

P. 45, para. 80

Zambia provides a variety of incentives to assist exporters and investment in export-oriented industries. Under the 1993 Investment Act, most recently amended in 1998, a concessional income tax of 15%, compared with the standard rate of 35%, is granted to exporters of non-traditional goods

⁶ WTO document G/SCM/N/74/DOM, 8 January 2002.

⁷ WTO document WT/MIN(01)/17, 20 November 2001.

who hold an investment licence.⁸ Investments in the **tourism** sector that earns foreign exchange in excess of 25% of gross annual earnings are exempt from duties and VAT.

P. 79-80, para. 111

New investment in the sector has come from Zambians and from foreigners, largely through the privatization programme. Revitalization is taking place in the Livingstone/Victoria Falls area, as Zambia is in a position to take advantage of the decline in tourism in neighbouring countries. As part of the effort to expand tourism, the Government has offered several incentives. These included reducing corporate tax to 15% for **tourist operators** and recognizing them as exporters of non-traditional exports, and refunding VAT on costs incurred in establishing tourism enterprises and zero-rating accommodation offered by **hotels, lodges, and guest houses** in the Livingstone District for two years. A Tourism Development Master Plan has lagged, however, because of the Government's failure to provide necessary resources in recent Budgets. It is hoped that a bilateral partner will assist in developing the Tourism Master Plan in 2003.

Japan -- WT/TPR/S/107

P. 66, para. 41

According to the authorities, no exclusive rights or subsidies are given to Japanese-flag carriers. Nonetheless, support measures for Japanese-flag carriers (the "International Ship Regime") have been unchanged since Japan's previous Review.⁹ According to the authorities, the International Ship Regime does not distort trade in **maritime transport services**; it aims to place Japanese vessels on an equal footing with those of other countries that provide preferential tax treatment for their registered ships.

Venezuela -- WT/TPR/S/108

P. 32, para. 65

Venezuela provides a series of investment incentives, primarily in the form of tax reductions or credits. New investments made within five years of the entry into force of the 1999 Income Tax Law are eligible for a 10 per cent reduction in the top income tax rate in the farm, agribusiness, manufacturing, fisheries, fish-farming, livestock, tourism, **construction**, electrical power, **telecommunications**, and science and technology (other than hydrocarbons-related) industries (or of 80 per cent under certain conditions in the farm, livestock, fisheries and aquacultural sectors). Tax reductions are also granted for greenfield investments in the hydrocarbons industry (8 per cent), **hotel construction** (75 per cent) and in sectors that are considered to be of particular importance for the country's economic development or that create jobs (see Chapter III(4)(ii)(a)). Investors undertaking industrial projects that are in their pre-operation stages may be exempted from the value-added tax for a period of five years or until the pre-operation stages have been completed.

P. 66, para. 145-146

Exporters of goods and **services** may qualify for the recovery of VAT. Upon application to SENIAT, the exporter is entitled to recover all taxes paid on inputs represented in imported goods

⁸ Investment licences are granted by the Zambia Investment Centre for all activities, excluding banking, insurance, mining and quarrying.

⁹ These measures include tax breaks in ship-registration tax and local property tax.

purchased and services received in connection with his export activities.¹⁰ In his application to SENIAT the exporter must provide a list of domestic purchases of goods, domestic services received and services provided in Venezuela by non-resident natural or non-domiciled legal persons, indicating the amount invoiced and the VAT.

Under cover of Partial Regulations No. 2 of the Law on VAT, in force since 26 August 1999, exporters of goods and services may also recover the tax paid on domestic and imported purchases of capital goods and on services that increase the value of such goods or are necessary for them to perform the functions for which they are intended, made during the pre-operational phase of implementation of industrial projects essentially intended to produce goods for export or to generate hard currency.¹¹ To qualify for the tax credit the volume of exports of goods or services must represent at least 50 per cent of the enterprise's operations, or 25 per cent if the goods produced are exempt from VAT. In the case of **tourism projects**, foreigners must account, on average, for not less than 40 per cent of the stays each year. The recovery regime has a maximum period of validity of five years from the commencement of the pre-operational phase. If on the expiry of this period the applicant can show that the pre-operational phase has not yet ended, the duration of the recovery regime may be extended for a further period of not more than five years.

P. 67, para. 151

Free area activities are restricted to specific sectors or types of goods and services. For example, the Free Area for the Promotion of Tourism Investment in the Paraguaná Peninsula was established under the Law on the Establishment and Regime of the Free Area for the Promotion of Tourism Investment in the Paraguaná Peninsula, Falcón State, of 6 August 1998 for promoting the provision of tourism services and commercial services related to tourism. The Cultural, Scientific and Technological Free Area of Mérida State (ZOLCCYT), established under the Law on the Cultural, Scientific and Technological Free Area of Mérida State of 14 July 1995 and regulated by Decree No. 2.714 of 9 September 1998, operates under a preferential tax regime set up for the purpose of encouraging the **production, dissemination and distribution of cultural, scientific and technological goods and activities** in the region. Activities relating to the production, **distribution**, marketing and promotion of goods subject to the regime carried out within ZOLCCYT are exempt from income tax.

P. 74, para. 190

The entity responsible for tourism grants incentives in the form of exemptions from customs duties on the importation of vessels, aircraft, vehicles and parts used for **transporting tourists**.

P. 119-120, para. 165

The supply of universal telecommunications services is guaranteed by the State. CONATEL is therefore obliged to set as one of its priorities the supply of services intended gradually to meet the universal service obligation, ensuring *inter alia*, that everyone can be connected to a **fixed public telephone network**, and there is a sufficient number of public telephones, and there is general **access to the Internet**. The universal service is guaranteed through the Universal Service Fund (FSU), whose purpose is to subsidize the infrastructural costs involved in compliance with the universal service obligations. Universal service obligations are attributed through an open selection process to

¹⁰ The legal basis for the refunding of taxes is Resolution No. 454 of 8 June 2000 and Decree No. 596 of 21 December 1999 (Partial Regulations No. 1 of the VAT Law concerning the Recovery of Tax Credits for Exporter Taxpayers).

¹¹ Decree No. 236 of 2 August 1999 adopting Partial Regulations No. 2 of the VAT Law on the Recovery of Tax Credits, published in Official Gazette No. 36.772 of 25 August 1999.

the operator that seeks the lowest amount from the FSU. The FSU's resources come from contributions by operators of telecommunications services for profit, with the exception of suppliers of sound broadcasting or open television services; the contributions amount to 1 per cent of the operator's gross revenue from the services covered by the authorization. As at September 2002, the FSU's resources had not been utilized.

P. 122, para. 179

Vessels listed in RENAVE which are engaged in **international transport** operations in Venezuelan ports benefit from a 10 per cent reduction in port and quay charges. In addition, they only have to pay this tax once each calendar year, whereas foreign vessels must pay the tax each time they utilize the National Marine Navigation Support System (*Sistema Nacional de Ayudas a la Navegación Acuática*) (SNANA). Other incentives include permanent exemption from the Tax on Capital Assets and from VAT on temporary or permanent import of vessels. The Law also gives those who earn revenue from merchant marine activities or shipyards an income tax (ISRL) reduction amounting to 75 per cent of the amount of new investment in the purchase or lease of new vessels or navigation equipment, new maritime security technology, and vocational training of their employees.

P. 123, para. 182

The INEA proposes fees for marine-related services. For commercial vessels, navigation fees are determined according to the vessel's gross tonnage. The principle of national treatment does not apply to the payment of such charges and navigation fees. **Vessels** listed in the RENAVE pay 50 per cent of the fee stipulated for the use of pilot services and 50 per cent of navigation fees. This percentage may be applied to foreign-registered vessels, but only on the basis of reciprocity. The same applies to fees for tug and berthing services.

P. 125-6, para. 198

The **air transport** subsector benefits from a number of tax incentives. The Civil Aviation Law grants a five-year exemption (until the end of 2006) from all duties on imports of civil aircraft, accessories and parts, and all vehicles required for the operation of aircraft. Imports of materials and equipment, accessories, and parts to be used for extinguishing fires and air rescue are duty-free. Persons earning revenue from the supply of public air transport services are granted an income tax reduction over five years amounting to 75 per cent of new investment in modernizing fleets or purchasing aircraft provided that they meet environmental protection requirements, or for investment in incorporating new technology in the services they supply, or in training technical aviation personnel. Aircraft to be used for public air transport purchased until the end of 2006 are also exempt from the capital assets tax.

Hong Kong, China – WT/TPR/S/109

P. 35, para. 78

There do not appear to have been any major changes in the HKSAR's income tax system, and particularly the use of tax incentives, since the previous Review, with taxes on profits and earnings accounting for almost 60% of total taxes collected in fiscal year 2000/01 (Chapter I). The income tax system retains low statutory tax rates and few tax incentives. Statutory tax rates of 16% and 15% are levied on the profits of corporations and unincorporated businesses, respectively.¹² Effective tax rates on profits tend to be lower than statutory rates, however, as a consequence of incentives, especially

¹² There is also a Salaries Tax calculated on a sliding scale that cannot exceed the standard rate of 15% of total income.

accelerated depreciation; for example, companies may immediately write off 100% of expenditure on manufacturing plant and machinery and on computer software and hardware. Moreover, profits earned from **international shipping**¹³, and from **airline services**¹⁴, and interest income from deposits placed locally with all authorized banking institutions by corporations (except financial institutions) and individuals are exempt from tax. Exemptions on property tax are also provided. Owners of land or buildings are charged property tax at the standard rate of 15% (less an allowance of 20% for repairs and maintenance); however property owned by a corporation carrying on a business in Hong Kong, China is exempt from this tax.¹⁵ The authorities considered that during 1998/99 and 1999/00 the most important tax incentives were those affecting profits and salaries taxes; taxes forgone as a consequence of these incentives amounted to HK\$31.2 billion. No breakdown was available on the amounts of revenues forgone as a consequence of individual tax incentives, such as accelerated depreciation and the other exemptions.

P. 50, para. 2

Sectoral policies have undergone little change since Hong Kong, China's Review in 1998. By and large, Hong Kong, China continues to follow a policy of minimal intervention, allowing market forces to allocate resources. The authorities maintain that no "winners" are picked nor "losers" salvaged, and that Hong Kong, China does not discriminate for or against particular sectors. The Government's role is that of "proactive market enabler" or "facilitator" maintaining an institutional framework conducive to market development, providing the required infrastructure and support services, fostering applied research and development together with technology transfer, and investing in human capital in all sectors of the economy. Nevertheless, the 2002-03 Budget Speech states that Hong Kong, China needs to focus on "high-value-added" economic activities and lists four areas of particular importance: financial services, logistics, tourism, and producer and professional services.¹⁶ In addition, the Government takes "appropriate measures" to secure projects deemed beneficial to the economy when the private sector is not ready to invest in them. Some measures are aimed at certain sectors. For example, a 100% immediate write-off for tax purposes is accorded for expenditure on machinery and plant related to manufacturing processes as well as computer hardware and software, and there is a reciprocal tax exemption for income earned from **shipping services**. Furthermore, over the next few years the Hong Kong Government will waive the Mass Transit Company's (MTRC) dividend payments to help it fund a **rail-link** to the Disneyland amusement park.¹⁷

El Salvador – WT/TPR/S/111

P. 54, para. 96

The Export Reactivation Law grants a refund of 6% of the f.o.b. value of the exports to natural or legal persons, whether Salvadoran or foreign, owning enterprises that export Salvadoran goods and **services** outside the Central American area, except for exports of metallic and non-metallic mineral products derived from the exploitation of the subsoil. In principle, traditional products such as coffee, sugar and cotton, are not eligible for this refund; however, subject to the approval of the Ministries of Finance and of the Economy, coffee and sugar with at least 30% of local content

¹³ Shipping profits are exempted from tax when they are derived from: international operations of a Hong Kong registered ship; the international operation of a ship by a non-resident shipowner from a country that provides tax exemption in respect of uplifts by a non-resident shipowner from Hong Kong, China; and the international operation of a ship by an enterprise of a country with which Hong Kong, China has signed an agreement for the avoidance of double taxation on/covering shipping income.

¹⁴ Profits earned from airlines originating in a country that has a double taxation agreement with Hong Kong, China.

¹⁵ Inland Revenue Department (undated).

¹⁶ The Government of the HKSAR (2002a).

¹⁷ *Financial Times*, 10 July 2002.

(calculated on the basis of the value added generated in the factory) may benefit from it (for "organic" or "gourmet" coffee and refined sugar the refund applies irrespective of local content). Between 1998 and 2001, Salvadoran exports benefiting from the refund accounted for between 7.6% and 8.2% of total exports (Table III.7).

P. 55-56, para 101-103 and 106

Domestic or foreign enterprises engaged in the production, assembly (*maquila*), manufacturing, processing or marketing of goods and services may be established and operate in a free zone. The new law also explicitly mentions the provision of **services linked to international and regional trade (such as storage, packing and repacking, re-exportation, grouping of packages, the distribution of goods and other related or complementary activities)** as an activity eligible for the benefits available in free zones.

Where enterprises satisfy the criteria described above but for technical reasons are not located in free zones, they may apply to the Ministry of the Economy to have their establishment declared an Inward Processing Warehouse (*Depósito para Perfeccionamiento Activo*, DPA), provided that they are situated in an industrial, agricultural or agro-industrial zone, their facilities meet the appropriate industrial, occupational and environmental safety requirements, and they have a stable administrative and financial structure.

The advantages available to users who set up in free zones or inward processing warehouses include exemption from:

- Import duties on machinery, equipment, tools, parts and accessories, implements, etc. needed to carry out the activity encouraged;
- import duties on lubricants, catalysts, reagents, fuels and any other consumables needed for the productive activity;
- income tax during the period in which they carry out their operations in the country, reckoned from the tax year in which the beneficiary began operating;
- municipal taxes on company assets and net worth, for the period in which they carry out operations in the country, from the first year of operation;
- tax on the transfer of real property, when purchasing real property to be used for the activity encouraged. (...)

The tax concessions and incentives do not apply to certain activities, in particular: hotels; travel agencies and airlines; air, sea and land transport; financial activities; fishing, except for tuna fishing; mining; and the production and marketing of sugar, ethyl alcohol, and any product that contains them.

P. 81, para. 44-45

The legislative framework for the sector does not include provisions concerning end-consumer subsidies; however, the Government does grant direct subsidies focused on low-income users. In view of the shortage of resources, up to March 2001 the revenues of the public enterprise CL were indirectly tapped through discounts granted by that enterprise on invoices for **energy sales to distributors**. Since April 2001, these subsidies have been covered by the State through the National Electricity and Telephony Investment Fund (Fondo de Inversión Nacional en Electricidad y Telefonía, FINET) (see Section (iii)).

P. 95-96, para. 97

The National Electricity and Telephony Investment Fund (FINET) was established for the purpose of facilitating access to electricity and telephone services for rural communities and low-income families. FINET's functions include subsidizing telephone infrastructure and the supply of **telephone services** (and of electrical energy, see Section 4) in rural and low-income areas, provided that they benefit the community.¹⁸ The Law provides for the Fund to subsidize these activities using the income obtained as a result of investing its resources. The assets of the Fund consist mainly of contributions from the State, 98.5% of the resources generated by granting concessions to use the radio-frequency spectrum, and all the resources produced by concessions for generating geothermal and hydroelectric power. In January 2002, 18 FINET-funded projects awarded by auction, with a total value of US\$1.64 million, were in progress, together with 57 projects awarded by competition for funds (*concurso de fondos*), with a total value of US\$5.54 million.

Canada – WT/TPR/S/112/Rev1

P. 73, para. 180

The Ontario Sound Recording Tax Credit is a 20% refundable tax credit for certain expenditures incurred by a qualifying corporation in the production of "eligible Canadian **sound recordings**" by "emerging Canadian artists or groups".¹⁹

P. 115, para. 82

In November 2000, the CRTC established a national revenue-based contribution collection mechanism effective 1 January 2001, whereby companies would contribute a percentage of their revenues that are considered to be contribution-eligible (Decision 2000-745). The purpose of the contribution is to fund local **telephone service** in high-cost areas in Canada (i.e. rural and remote areas). This mechanism was to be reviewed and finalized during 2002.²⁰ The authorities have indicated that, aside from subsidies to fund services in high cost areas, cross-subsidies have been eliminated in the telecommunications industry, and that the competitive services offered by the incumbent operators are not being subsidized by other monopoly or near-monopoly service offerings.

P. 122, para. 113

Following the 11 September 2001 attacks, the Canadian Government announced a Can\$160 million programme to compensate Canadian **air carriers** for losses resulting from the closure of Canadian airspace; the authorities indicated that Can\$99.3 million were actually disbursed, of which Air Canada received Can\$69.8 million.²¹ The Government has also provided indemnity for third-party aviation war-risk liability following the cancellation of this coverage by insurance underwriters. The programme was extended until 1 March 2003.

¹⁸ Electricity consumption associated with water extraction and pumping projects and with buildings used for providing educational and health services, if community owned or administered, are considered to be of benefit to the community.

¹⁹ Department of Finance online information. Available at: http://www.fin.gc.ca/taxexp/2001/taxexp01_e.pdf

²⁰ See: Telecom Decision CRTC 99-16 available online at: <http://www.crtc.gc.ca/archive/Decisions/1999/DT99-16.htm>; and Decision CRTC 2000-745, at: <http://www.crtc.gc.ca/archive/Decisions/2000/DT2000-745e.htm>.

²¹ Canada newswire on line information. Available at: <http://www.newswire.ca/releases/April2002/18/c5924.html>.

Burundi – WT/TPR/S/113

P. 43, para. 81-82

The Free Zone Law provides for four types of free zone enterprise: agricultural and stock-breeding enterprises, industrial and handicraft enterprises, commercial enterprises; and service enterprises. Some activities do not qualify for the free zone regime: trade in precious metals and mineral ores; exploration, mining, enrichment, refining, buying and selling of mineral ores; and coffee-related activities such as roasting. One of the conditions of eligibility is export of the entire output (in the case of commercial firms, import and re-export of imported goods in an unaltered state or after packaging). The generation of "substantial" value added (of at least 35 per cent) is a condition applicable to agricultural and stock-breeding, industrial and craft enterprises in free zones. The service enterprises eligible for free zone enterprise status are those intending to provide one or more of **the following services**: assembly of computer equipment; software manufacture; packaging for export; printing and publication; production and distribution of cinematographic films; sound recording; and organized tourism services. Both foreign and domestic investors may obtain free zone status. An advisory commission set up by the Ministry of Trade and Industry is responsible for free zone enterprises.

The tax benefits granted by the decree-law are total exemption from existing or prospective indirect taxes, from registration fees and stamp duties, and from profits tax during the first ten years of operation, followed by a regime in which the taxation rate is reduced to 15 per cent instead of the standard 40 per cent rate. Any free zone enterprise that has created more than 100 permanent jobs for Burundian nationals is subject to a 10 per cent profits tax, and any free zone enterprise which reinvests at least 25 per cent of the profits earned over the last ten years of its existence pays 10 per cent less than the standard rate. Commercial free zone enterprises are liable to a 1 per cent turnover tax, this rate being reduced to 0.8 per cent in cases where the enterprise creates more than 20 permanent jobs. The dividends distributed to shareholders are exempt from all taxes during the lifetime of the company. Free zone enterprises are also exempt from the 3 per cent tax on the wages of foreign workers.

P. 87, para. 110

Bujumbura's **hotels** have a capacity of 1,067 beds. The State intervened in this sub-sector by participating in the capital of the Novotel and Source du Nil hotels and the Lake Tanganyika Club. The Club has been privatized, while the Source du Nil is in the process of privatization. The Government has signed an agreement with the hotel chain Accor for the management of Novotel. Outside Bujumbura, there are hotels at Kayanza, Ngozi, Gitega, Muyinga, Cankuzo and Kirundo. The national park of Ruvubu has its own eco-tourism camp. Foreign nationals must pay their hotel bills either in foreign currency or in Burundi francs purchased through official channels (a certificate must be provided by the bureau de change). Prices can be set freely. The Government is not systematically evaluating the performance of the hotels and has not yet developed a hotel classification system.

Southern African Customs Union – WT/TPR/S/114

P. A1-96, para. 50 (Botswana)

Although there are no universal service provisions in the **Telecommunications** Act, BTA is responsible for implementing government policy on such services and on special tariffs for disadvantaged users. The Government is currently formulating a new universal service policy to replace existing subsidies paid annually to BTC, under the Rural Telecommunications Programme, to

provide basic services to rural users. BTA is developing a programme based on a universal service fund, and is proposing legislative changes.

P. A1-103, para. 80 (Botswana)

Tourism became eligible for government support under the Financial Assistance Policy (FAP) in 1996 (Financial Assistance Policy (FAP-Tourism), 1996). However, this scheme has recently been discontinued and replaced by the Citizen Entrepreneurship Development Agency (CEDA), which also covers tourism.

P. A2-147, para. 57 (Lesotho)

In 2002, the Lesotho Government enacted the Tourism Act, 2002²², which establishes the Lesotho Tourism Development Corporation (LTDC), a 51% government-owned corporation with wide powers, including the designation of **tourism** development areas and provision of financial assistance in the shape of grants, loans or tax exemptions for tourist development. The LTDC is chaired by the Director of Tourism and has a Board comprising representatives of Government, local associations, and the private sector.

P. A3-180, para. 39 (Namibia)

Farmers benefit periodically from emergency drought relief. In 2002/03, for example, N\$1.5 million was given to livestock farmers north of the veterinary Cordon Fence in the form of a subsidy of N\$150 per head for cattle delivered to the abattoirs. The Meat Board administered the scheme on behalf of the Government. Drought relief costing N\$36.4 million was provided from April 1996 to November 1998,²³ and again in 1998-99 at a cost of N\$2.1 million.²⁴ Marketing incentives (subsidies) were paid to farmers at N\$15 or N\$100 per animal sold, depending upon size, to encourage farmers to reduce stock levels. A restocking scheme to replace breeding animals sold during the drought also paid N\$13 or N\$70 per head. **Transport** subsidies of N\$3.77 per kilometre were paid to contractors transporting animals to markets.

P. A3-202, para. 62 (Namibia)

After announcing in 1999 that new entrants would be allowed by 2000, the Government extended the timetable to 2004 at the latest, when the telecommunications market would be fully opened. Namibia is a founding member of the Telecommunication Regulators' Association of Southern Africa (TRASA), inaugurated in September 1997 among SADC nations.²⁵ The Government approved a Telecommunications Policy and Regulatory framework in 1999 along the lines of the SADC Protocol on Transport, Communication and Meteorology, and the Model Regulatory Framework for Telecommunications. From 2002 until 2004, the Government may defer competition in any market segment for socio-economic reasons. The Government will establish a Universal Service Fund to finance universal services, such as basic **telephone services** in rural areas. All telecommunications equipment should comply with the National Operators Network and have type approval from the Namibian Communication Commission.

²² Act No. 4 of 2002.

²³ WTO document G/AG/N/NAM/7, 12 July 1999.

²⁴ WTO document G/AG/N/NAM/11, 12 May 2000.

²⁵ Other founding members are Botswana, Mozambique, South Africa, Tanzania, and Zambia.

P. A4-283, para. 81 (South Africa)

Overall policy in road transport is the responsibility of the DoT. The planning, construction, and maintenance of roads and bridges, other than those under SANRAL or local governments, are the responsibility of the provincial governments. Streets are the responsibility of metropolitan, district or local communities. The bulk of the road and street system is financed by national and local taxes, but SANRAL operates 600 km of state toll roads, and has concessioned 1,300 km to private consortia which toll those roads. While legislative and executive powers for public transport are a provincial competency, the DoT is responsible for policy formulation, monitoring, and strategic implementation. The DoT is currently working on redesigning the subsidies scheme for public transport, so as to redress the current practice of paying subsidies to **buses and commuter rail**²⁶, to the exclusion of the taxi industry, and of subsidizing only about 35% of the commuting public. The National Land Transport Transition Act (Act No. 22 of 2000)²⁷, provides for a new system of 'permissions' to replace permits for taxi and bus transport, and is meant to lay the foundation for a fully integrated, long-term, user-orientated land transport system. Both DTI and DoT are engaged in a major initiative to recapitalize the **taxi** fleet.

P. A4-284, para. 86 (South Africa)

The Industrial Development Corporation (IDC) currently provides medium-term finance in the form of loans, suspensive sales, equity and quasi-equity for the development and expansion of the tourism industry (Table AIII.1). Also, the Department of Trade and Industry (DTI) provides the subsector with the Small and Medium Enterprise Development Programme (SMEDP)(Chapter III(4)(ii)). According to the authorities, other than exchange control and immigration regulations, there are no barriers to foreign entry.

Table AIII.1
Incentive schemes, January 2003

Name of scheme	Objective	Access criteria	Description
(...)			
Capacity Building Support for Retail Finance Intermediaries (RFIs)	To provide capacity building support to new RFIs to initiate a loan portfolio and to assist existing RFIs to expand their loan portfolios.	To qualify, an RFI must: - be legally constituted; - have clearly defined SMME target markets; - have sound accounting and financial systems; - have sound internal organizational guidelines, policies and procedures; - have capacity to carry out current and proposed projects; - have clear and achievable short and medium term objectives.	Support will be structured around the capacity needs to the RFIs. The grants range from R 10 000 to R 500 000.
(...)			
Seed Loans for Retail Finance Intermediaries (RFIs)	To provide initial capital to new organizations to initiate their portfolio, and to fund operational expenses over a predetermined period.	To qualify and RFI must: - be legally constituted; - have clearly defined SMME target markets; - have sound accounting and financial systems; - have sound internal organizational guidelines, policies and procedures; - have capacity to carry out current and proposed projects; - have clear and achievable short and medium term objectives; - have matching funds of at least 15% of envisaged operating expenses.	The amount ranges between R 50 000 and R 20 million. Seed loans are converted to grants once mutually agreed upon performance criteria are met.

Source: Department of Trade and Industry online information. Available at: http://www.dti.gov.za/review.asp?iSDivID=143&iEvent_ID=172

²⁶ In the Department's budget for 2002/2003, the allocation for buses and rail amounts to R 37 million (National Department of Transport, 2002b).

²⁷ This has been amended by the National Land Transport Transition Amendment Act (Act No. 31 of 2001).

New Zealand – WT/TPR/S/115

P. 77, para. 36

New Zealand grants subsidies to **education, broadcasting, film production, land transport, air transport, business, and tourism services**.²⁸ Most domestically produced services, with the exception of some financial services, are subject to the GST. Financial services, with the exception of most insurance services (GST does not apply to life insurance and reinsurance), are exempt from GST because of the difficulty of levying the GST on this type of service. This exemption is under review and the proposal is that the business-to-business supply of financial services will be zero-rated instead of exempt.²⁹

Morocco – WT/TPR/S/116

P. 27, para. 75

Exporting enterprises are exempt from corporation tax (IS) and the general income tax (IGR) for a period of five years, after which there is a 50 per cent reduction in these taxes. For enterprises exporting **services, including hotels**, the exemption or reduction only applies to turnover in foreign currency. Enterprises established in prefectures or certain provinces covered by a decree and handicrafts enterprises are eligible for a 50 per cent reduction in the IS or IGR for a period of five years.

P. 58, para 131

The 1995 Investment Charter gave investors additional benefits (Chapter II(6)). In 2000, the Government also established the Hassan II Fund for economic and social development³⁰ which, *inter alia*, promotes investment in certain industrial sectors.³¹ It contributes up to 50 per cent of the purchase price of industrial land and up to 30 per cent of the cost of building business premises.³²

P. 87-88, par. 101-102

In view of **tourism's** importance, the Government is seeking to promote investment, for which benefits are available under the Investment Charter, the Hassan II Fund, the Finance Laws, and special provisions (Table IV.5). A reduction in VAT for hotels is under consideration.

On 10 January 2001, a framework agreement was signed between the Government and the General Confederation of Moroccan Enterprises (CGEM) reaffirming that tourism was a national priority and defining several objectives for the coming decade, including an increase in the number of

²⁸ For a full description of these programmes see WTO document S/WPGR/16/Add.2, 23 July 1997.

²⁹ GST and Financial Services [Online]. Available at: <http://www.taxpolicy.ird.govt.nez/publications/files/html/gstfinserv/cl.html> [20.11.2002].

³⁰ Decree No. 2-00-129 of 16 March 2000 establishes the trust fund No. 3.1.04.04 called the "Hassan II Fund for economic and social development"; Dahir No. 1-02-02 of 29 January 2002 enacts Law No. 36-01 creating the Hassan II Fund for economic and social development and its implementing Decree No. 2-02-93 of 12 March 2002.

³¹ For example textiles (spinning, weaving and finishing); electronics; clothing and knitted and crocheted articles; automobile sub-contracting (manufacture of automobile components and precision engineering); leather; **tourism**; fishing; **environmental protection through the treatment, recycling and industrial use of waste**.

³² The contribution to the cost of the land is based on a maximum price of DH 250/m² and the cost of building on a maximum cost of DH 1,500/m². The contribution may be 100 per cent if it only concerns purchase of land.

tourists to 10 million by 2010. The implementation of these objectives has been codified in the Implementation Agreement signed on 29 October 2001, which constitutes the operational charter for the new tourism policy (called "Vision 2010").³³ The following are some of the measures taken to achieve the objectives: liberalization of land ownership and State participation in the cost of purchasing land (through the Hassan II Fund); tax exemptions and simplification; better training and a more professional approach in tourism-related occupations; facilitation of access to financing; increased resources for promoting tourism; restructuring of the Moroccan National Tourism Board (ONMT)³⁴; availability of special financing for the renovation of hotels; liberalization of air transport; and the creation of a strategic steering committee. At the legal level, two decrees have recently been adopted on the classification of hotels and the status of tourist facilities; a new text regulating tourist transport, independently of the text on passenger transport, is under consideration.³⁵

Table IV.5
Indicative framework for investment in tourism

Taxes	Description
Registration tax	Reduction in the fees for establishing tourism companies, with a rate of 0.5 per cent for registration duties. Exemption from registration fees for purchase deeds for land to be used for investment projects within a maximum period of 36 months. Reduced rate of 1 per cent for registration fees for emphyteutic leases on properties to be used for hotels and accessory buildings. Reduced registration fees for the sale of businesses.
Customs duties	Exemption from customs duties for investment of DH20 million or more under agreements concluded with the Government.
IS and IGR	Total exemption from IS or IGR on the part of the taxable base corresponding to the turnover of hotel companies in foreign currency over a period of five years and a 50 per cent reduction as of the sixth year. Reduction of 50 per cent in the IS for five years for all companies setting up in the following provinces <i>inter alia</i> : Larache, Nador, Tangiers, Asilah, Tetouan. Reduction of 50 per cent in the IS, without any time limit, for any company setting up in the province of Tangiers, which can be combined with the aforementioned benefits.
Other benefits	Free convertibility guaranteeing foreign investors total freedom to transfer tax-free profits (capital, capital gains and income). Total exemption from the business tax and the urban tax for a period of five years for investment in creating an enterprise and for any additional investment. Reduction of 100 per cent on dividends and other yields from holdings received by companies. Reductions and exemptions for capital gains and profits made when disposing of or selling fixed assets. Ceiling of DH50 million for the basis used to calculate the rentable value of taxable investment.

Source: Information provided by the Moroccan authorities.

P. 93, para. 120

In order to lower transport costs, the Government has granted several tax benefits, for example, exemption from VAT, with the right to deduction, for **international transport operations and the supply of related services**; exemption from VAT for the import of motor coaches, lorries and capital goods needed for TIR activities; exemption from VAT, with the right to deduction, for the purchase of motor coaches, lorries and related capital goods; imposition of a minimum customs tariff (2.5 per cent) on imports of trailers for the transport of textiles and clothing products for export;

³³ "Vision 2010" fixes precise targets, for example, reaching a figure of 10 million tourists by 2010, the provision of 80,000 additional rooms, DH30 to 40 billion in investment in hotels, generation of DH80 billion in foreign currency earnings annually, and the creation of 600,000 new jobs.

³⁴ A draft law on the restructuring and organization of the ONMT has already been prepared.

³⁵ Decree No. 2-01-186 of 5 March 2002 amending and supplementing Decree No. 2-81-471 of 16 February 1982 establishing classification of tourist facilities, and Decree No. 2-02-640 of 9 October 2002 implementing Law No. 61-00 on the status of tourist facilities.

refund of VAT on diesel fuel to public road transport companies; and extension of the deduction of VAT on diesel fuel to enterprises engaged in the road transport of goods on their own account.

P. 98, para. 149

An offshore financial centre, which is composed of **banks and portfolio management companies and holdings**, is situated in Tangiers. Only subsidiaries and branches of well-known international banks, with minimum capital or allotment of US\$500,000 may be set up there. Offshore banks are exempt from registration and stamp duty when constituting or increasing capital or purchasing property for leasing. They are also exempt from VAT on the purchase of capital goods and supplies needed for conducting their activities, duties and taxes on the import of equipment, furniture and capital goods needed for their operations. Dividends paid out to shareholders, interest on customers' deposit accounts and investments and on loans granted by offshore banks are also exempt from levies. Offshore banks benefit from optional imposition of corporation tax (IS) for the first 15 years following the date of issue of approval at a rate of 10 per cent, or a flat rate tax fixed according to the equivalent value in DH of US\$25,000, free of any other tax on profits or revenue; for offshore holdings, the flat rate tax is the equivalent in DH of US\$500 for the first 15 years after their establishment; after that period, they are subject to IS according to the ordinary law regime.

Indonesia – WT/TPR/S/117

P. 31, para. 48

Investment incentives apply to all, including foreign, investors. They include duty and VAT concessions on imported inputs and capital goods, and additional incentives for export-oriented investment as well as investment in certain regions (e.g. eastern Indonesia). Special investment incentives, such as income tax, value-added tax, and luxury tax exemptions, may also be approved by BKPM on a case-by-case basis.³⁶ The criteria for granting tax holidays, of up to eight years, for new investors in designated "pioneer" industries, such as capital goods, **sea and air transport**, and agri-businesses, were clarified in 1999³⁷; these measures were largely eliminated under the IMF package in January 2000.

P. 85-87, para. 69-71

The Government has acquired equity in recapitalized private **banks**: four banks taken over by IBRA and seven joint national domestic banks (Table IV.3).³⁸ All seven state banks also needed substantial recapitalization and restructuring; four of them (Bank EXIM, BDN, BBD, and Bapindo) were merged to become Bank Mandiri in September 1998.³⁹ State ownership of banks has increased substantially, and now dominates the sector (almost 85% of total third-party bank liabilities and three-quarters of the sectors' assets at end 2001). State bank divestment has lagged. It was initially due to be completed by end 2001 with BCA and Bank Niaga being divested in 2000; at end 2001, only 32.5% of BCA had been divested (10% to the public).⁴⁰ However, in 2002, IBRA sold a 51% stake (out of a total state share of 97.2%) in Bank Niaga for Rp 5.6 trillion to a joint-venture, and 40% (out of total state share of 70.3%) of BCA. Bank Bali was also merged with four weak recapitalized banks (Bank Universal, Bank Patriot, Bank Prima Express, and Bank Artamedia) to form Bank Permata in September 2002. In early 2002, the Government presented a comprehensive plan to Parliament for

³⁶ U.S. Embassy Jakarta (2001a).

³⁷ Presidential Decision No. 7, Evaluation Criteria for Taxation Facilities in Particular Industrial Fields.

³⁸ Of the 13 banks taken over by IBRA, nine were merged with Danamon in 2000, and BCA, Niaga, and Bali were recapitalized.

³⁹ The other state banks (BNI, BTN, and BRI) have continued operations subject to recapitalization and restructuring. The four state banks accounted for some half of total banking assets at end 2001.

⁴⁰ Bank Bukopin was fully divested in late 2001 by the original owners exercising share option rights.

divesting remaining banks by 2004, including majority stakes in Bank Lippo and Bank Danamon, and of 30% of Bank Mandiri, in 2002.⁴¹ The Government's latest timetable, announced in November 2002, is to divest at least 51% of Bank Danamon in early (March) 2003 by placement with a strategic partner, and to sell (as yet unspecified) shareholdings to the public in Bank Lippo, Bank Mandiri, and Bank International Indonesia.⁴²

P. 95, para. 102

The Directorate General of Land Communications (Ministry of Communications and Information) is responsible for road and rail transportation. Transportation of dangerous goods, special goods, and heavy-duty equipment is regulated, including by technical requirements. Transport border crossings were informally established with Malaysia, Brunei Darussalam, and Papua New Guinea in 2002. Transport border crossing regulations apply to both goods and passengers, and cabotage restrictions apply. Foreign investment is prohibited in public transport (taxi and bus services). The Government subsidizes **passenger rail and bus (economy) travel**, but intends to phase out such subsidies gradually.

P. 97, para. 110

International **tourism** is increasingly important for Indonesia, particularly for Bali where one third of the economy depends directly on tourists. Nationally, there were approximately 5.1 million visitors, accounting for 9% of total exports (in value terms), in 2001.⁴³ However, the industry has suffered severely from several recent developments, including the political upheavals during 1998 and the East Timor crisis in 1999. The industry was again hit by the 11 September 2001 events in the United States, which adversely affected global tourism, and the bombing in Bali in October 2002. Occupancy rates at hotels in major tourist destinations have declined recently from already low levels to around 30%; in Bali they dropped from 60% to below 10% after the bombing. The Government implemented various rescue (in late 2002), rehabilitation (first half of 2003) and normalization programmes (second half 2003). The rescue programme included special support arrangements and additional overseas export promotion. Bali tourism is beginning to rebound. Most foreign tourists, especially in Bali, are Japanese, Australian, or Taiwanese.

Niger – WT/TPR/S/118

P. 44, para. 64-65

Enterprises which invest in one of the activities covered by the Investment Code are eligible for tax and customs incentives during the investment phase and for five years during the operating phase, depending on the approval regime applicable – A, B or C (Table III.3). The sectors covered by the Code are production or processing of primary agricultural, livestock or fisheries products, production for export, mining or processing of quarrying products or mineral substances (access to which is subject to the Mining or Petroleum Codes, where applicable), **air transport**, and the **building of hotels or social housing**. Investment in the production of handicrafts⁴⁴, **cultural and**

⁴¹ Parliament established a special committee to oversee each bank sale.

⁴² Indonesia's latest agreement with the IMF included launching the sale of majority stakes in Bank Danamon (for conclusion by end 2002) and in Bank Lippo by July, to be finished December 2002. The majority divestment of Bank Niaga was to be completed by 15 September 2002 (see IMF, 2002d).

⁴³ World Bank (2002).

⁴⁴ Investment of CFAF 2 to 25 million; exemption from tax on industrial and commercial profits (BIC), the minimum fiscal tax (IMF), the business licence fee, and property tax.

artistic production⁴⁵, the building of hotels, schools and clinics⁴⁶, and technological innovation⁴⁷ may also be eligible for special incentives.

Approved investment enjoys exemption from duties and taxes on imports of material and equipment needed to set up a production unit, unless these are available locally. The benefits given during the operating phase are mainly fiscal because enterprises in Niger are subject to heavy and dissuasive taxation: the business licence fee (12 per cent), the minimum fiscal tax (1 per cent), and tax on industrial and commercial profits (45 per cent). Employers must also pay social contributions amounting to 15.4 per cent of the payroll. The benefits increase in proportion to the amount of the investment or the creation of jobs for Niger's nationals.

P. 52, para. 95-96

Niger has not notified the WTO of its various subsidy programmes, but according to the authorities it intends to do so. According to the information available to the WTO Secretariat, these programmes concern in particular the incentives under the Investment Code (section (4)(ii)), the sectoral regimes (mining, petroleum, **telecommunications**), and the agreement between the State and the company COMINAK, which exploits uranium.

Senegal – WT/TPR/S/119

P. 48-51, para. 66 and 69

The following are the sectors covered by the Code: agriculture, fishing, livestock breeding and related processing activities, storage and packaging of products of plant, animal or fish origin; manufacturing; prospecting, mining or processing of mineral substances; **tourism and other hotel-related activities; cultural activities by a small- or medium-sized enterprise⁴⁸; services provided by small- or medium-sized enterprises in the areas of** health, education, assembly and maintenance of industrial machinery and equipment; port infrastructure work; installation and management of railways. The authorities are currently examining broader sectoral coverage for the Code, including telecommunications and “new technologies” such as call centres so as to give investors access to the guarantees and benefits of the Code. (...)

Enterprises approved under the Investment Code are eligible for a number of benefits under the common regime and one or more of the four privileged regimes (Table III.3). The four privileged regimes correspond to the four priority objectives of the Investment Code: the promotion of small- and medium-sized enterprises (SMEs); the upgrading of local resources through processing in Senegal; the development of technological innovation through research or the use of research findings; and the establishment of economic activities in regions in the interior of Senegal.⁴⁹

⁴⁵ Exemption from duties and taxes, including VAT, except for the statistical charge, on cinematographic production equipment and building materials, tools and equipment produced locally or imported and utilized on one single occasion, where equivalent local products are not available, provided that they are used directly for the purposes of the investment.

⁴⁶ Minimum investment of CFAF 50 million; during the installation phase, exemption from duties and taxes, including VAT, except for the statistical charge, on materials, tools and equipment produced locally or imported where equivalent local products are not available.

⁴⁷ Fiscal rebate of two thirds of the cost incurred in purchasing or finishing the innovation and of BIC for the fiscal year following that in which the innovation is introduced.

⁴⁸ Defined in Article 17 of the Code. A small- or medium-sized enterprise is one that invests CFAF5 to 200 million, creates at least three jobs for Senegalese nationals, and keeps proper accounts.

⁴⁹ Zone A includes the city of Dakar and its surroundings; Zone B covers the rest of the Dakar region and the region of Thiès; Zone C includes the regions of Diourbel, Louga and Kaolack; and Zone D covers the regions of Fatick, Kolda, Tambacounda, Ziguinchor and Saint-Louis.

Although Senegal has not notified the WTO of any trade-related investment measure, one of the conditions of approval of projects under the privileged regime for the upgrading of local resources through processing in Senegal is that 65 per cent (in value terms) of intermediate consumption should be of Senegalese origin or that the cost of imported products should represent less than 35 per cent of the total cost of the products obtained after processing in Senegal. The Senegalese authorities indicate that there is no exhaustive list of enterprises benefiting from this regime.

Honduras – WT/TPR/S/120

P. 21, para. 31

Honduran legislation grants fiscal incentives for investment in certain **tourism** projects (see Chapter III(4)(v)).

P. 67-68, para. 157-161

As explained in section (3)(iv), Honduras has two schemes providing fiscal incentives for exporting goods. The Law on Tourism Incentives (Decree No. 314-98 of 18 December 1998), including its amendments, also offers a range of fiscal incentives to encourage national and foreign investment in the development of the tourism sector.

Enterprises eligible under the Law on Tourism Incentives are companies located in areas deemed by the Honduran Tourism Institute to have tourism potential, which are engaged in activities directly related to **tourism** and which provide services such as accommodation (e.g. hotels, lodges and time-share apartments); inward tourism; **air and water passenger transport; vehicle rental; and recreation**, with the exception of casinos, nightclubs or private clubs, discotheques, games rooms, cinemas or television rooms, billiard parlours, gymnasiums, saunas and the like, Internet cafés and teaching centres. **Convention centres** and Honduran craft workshops and **shops** are also eligible for incentives under the Law.

The Law on Tourism Incentives provides 10-year income tax exemption for projects that are "new", i.e. projects by Hondurans or foreigners "that do not involve expansion, remodelling, change of ownership, or the like".⁵⁰ Moreover, beneficiaries under the Law pay no duty or other taxes on imports of printed materials for the promotion of tourism projects or of Honduras as a tourism destination; new motor vehicles for sole use within the enterprise; new and used aircraft and boats; new goods and equipment needed for tourism construction and the launching of tourism projects (with a few exceptions); and replacement goods and equipment for a period of 10 years.

Expansion, remodelling or replacement projects carried out by established entrepreneurs whose activities fall within the scope of the Law are also eligible for the above benefits, with the exception of income tax exemption. The Law further provides that persons whose activities are not directly related to tourism but who invest in new projects involving the remodelling or expansion of convention centres or hotels may deduct up to 15 per cent of their investment returns for tax purposes over a period of 10 years.

The Ministry of Tourism authorizes the granting of benefits under the Law on Tourism Incentives. Those interested in making use of the Law must apply to the Ministry with full details of the project they wish to develop. Before issuing its final decision, the Ministry consults other government bodies, including the Honduran Tourism Institute.

⁵⁰ Article 5 of the Law on Tourism Incentives.

Bulgaria -- WT/TPR/S/121

P. 67, para. 88

"Free trade zones" were originally established in Bulgaria in 1987. The Customs Act of 1998 redefined them as "free zones".⁵¹ Currently six such zones exist. Free zones are formally part of Bulgaria's customs territory but separated from it by fixed checkpoints. Import duty and VAT are not paid on imported goods entering free zones unless they are released for sale in Bulgaria, while Bulgarian goods may be stored in free zones without payment of VAT. Goods leaving a free zone may be exported or re-exported from Bulgaria or be brought into another part of the customs territory of Bulgaria. The perimeter and the entry and exit points of free zones are subject to supervision and control by the customs authorities. **Handling, storage, and warehousing** are the most common activities, but goods may be admitted to the free zones for inward processing or processing under customs control, as temporary imports, or under the normal import regime.

P. 70, para. 101-102

According to the authorities, state aid is provided for purposes of compensating high production costs in key economic sectors that have considerable social implications, such as the **energy and transportation sectors**, and for other social considerations, such as aid to the poor, producers in mountainous regions, employment promotion, and environmental protection.

In line with the Government's conservative fiscal stance, the amount of state aid offered has declined both in absolute and relative levels in recent years. As a percentage of GDP, state aid declined from 3.3 in 1999 to 0.7% in 2001. Similarly, direct subsidies have declined, from 2.5% of GDP to 0.6% in 2002. The mining and transport sectors have benefited the most from state aid; with assistance for the production of coal (29.5%) and provision of transport services (29.0%) accounted for almost 60% of the total in 2001.

Guyana – WT/TPR/S/122

P. 53-54, para. 84

Guyana applies a number of incentive schemes; some are applied across-the-board and are contingent on an investor meeting specific criteria or making certain investments. The incentives, include benefits for industrial estates, accelerated depreciation, flat business tax rate, export allowances, loss carryforward, construction allowance, and research and development allowances. Guyana also offers several sector-specific programmes. In this respect, tax and tariff incentive programmes are available to promote trade and investment in **tourism**, fisheries, mining, forestry, manufacturing, and agriculture (Table III.10). Locals and foreigners are treated alike with respect to these incentives.

P. 93-94, para. 157

In the 2002 Budget Speech the Government announced plans to enhance the contribution of the tourism sector through, *inter alia*, the abolition of the 10% room tax for tourism facilities that are deemed to be resorts.⁵² The Government of Guyana is encouraging an increase in the number of hotel rooms and improvement in existing plant and other facilities in the **tourism** sector. To facilitate this

⁵¹ The main legislation is Decree No. 2242 of 1987 (*State Gazette* No. 55/1987, amended in No. 153/1998); the Customs Act, 1998, Article 166-179 and its implementing regulation, Article 620-653; the VAT Act, the Excise Act, and their implementing regulations.

⁵² Ministry of Finance (2002a), p. 50.

growth, the government has made available a package of incentives. This comprises mainly duty-free and consumption tax concessions for basic furnishings, plant, equipment, and building materials. In order to qualify for duty and consumption tax exemption an applicant must provide, *inter alia*, a project profile or business plan and an environmental impact assessment. Duty-free concessions will be limited to 25% of the value of the investment for refurbishing, and 50% of the value of investment for new facilities or expansion.

Thailand – WT/TPR/S/123

P. 58-59, para. 84

In August 2000, the BOI undertook various reforms in its investment incentive schemes⁵³:
(...)

- The BOI selected five targeted industries: agri-business, automobiles, fashion, electronics, and **high-valued services**⁵⁴; these industries appear to be eligible for exemptions of import duties on certain machinery and a corporate tax holiday for eight years, irrespective of the location of the project.⁵⁵ (...)

P. 79, para. 41

Several government institutions were formed to help rehabilitate the financial sector. The Financial Sector Restructuring Agency (FRA), under the Ministry of Finance, was established in 1997 to determine the viability of 56 suspended debt-laden finance companies and to review their rehabilitation plans. These firms (with total assets of B 860 billion or 11% of the financial sector) were liquidated, and asset auctions completed in late 1999. The state-owned Asset Management Corporation, established in 1997, purchased some of these assets as "bidder of last resort"; its assets totalled B 25.8 billion at end of 2000. The Financial Institutions Development Fund (FIDF), established in 1985 to rehabilitate distressed institutions, was instrumental in taking over and re-capitalizing/restructuring troubled **banks**. It has also provided a blanket guarantee for depositors and non-subordinated creditors of every financial institution incorporated in Thailand since 1997. The authorities plan to establish the Deposit Insurance Agency (DIA) to operate a limited deposit insurance scheme when the economy and financial sector achieves sustainable growth and stability. Draft legislation establishing the DIA is being considered by the Ministry of Finance.

P. 88, para.81

Urgent tourism development measures, aimed at raising annual tourism earnings by B 50 million, were introduced in April 2001 to stimulate the economy. The package included preventing attractions from deteriorating, improved immigration procedures, and market promotion. The Committee for National Tourism Development, chaired by the Prime Minister, was formed in 2001 to prepare tourism plans and policies. Government promotion is directed at attracting long-stay tourists. The average length of stay of international visitors is eight days. The Government is revising the Hotel Act of 1935 and introducing a hotel grading system. The Board of Investment offers tax and other investment incentives for **hotels** with more than 100 rooms, and is considering

⁵³ According to Board of Investment Announcement No. 1/2543 (1/2000).

⁵⁴ BOI Bulletin No.68/45, 10 April 2002 "BOI Targets Five Industries For Proactive Marketing Campaign" [Online]. Available at: http://www.boi.go.th/english/focus/boi_pr_target_industries02.html.

⁵⁵ These incentives also seem to apply to enterprises engaged in other priority activities. Priority activities are: agriculture and agriculture products; technological and human resource development; public utilities and infrastructure; environmental protection; and targeted industries.

granting special privileges to foreign investors in certain types of accommodation, such as retirement homes.

Chile – WT/TPR/S/124

P. 54, para. 149

The Fund for the Promotion and Development of Remote Areas, instituted in 1980, has as an objective to contribute to the development of various provinces in Chile's extreme north and south by providing assistance to small- and medium-sized enterprises investing there. Funds are accorded only to producers of goods and services in the **construction**, machinery, equipment, special animal feed, and small-scale fishing industries. Annual individual investment must not exceed U.F. 50,000, equivalent to US\$1.3 million. Funds granted under this programme may not be accepted together with any other public benefit granted for the same goods or services. Pursuant to Law No. 19.606 of 30 March 1999 the Fund contributes 20% of the cost of the investment or reinvestment in projects carried out until 31 December 2007. The amount paid out in 2002 was Ch\$1,422 million, equivalent to US\$2.3 million.

P. 81, para. 121

In 1994, the Chilean Government established the Telecommunications Development Fund to encourage improved telecom service to rural and low income areas. The original goal of the fund was to provide public telephone service to about 6,000 unserved localities, a target that was met over the five-year period 1995-99. After this objective was achieved, the government redefined the fund to support community telecenters, which offer various kinds of **communication services, including internet access**, to the public. An initial target is to install telecenters in about 90 municipal towns with over 8,000 rural inhabitants. By 2006, there would be telecenters in all 341 municipalities. The Fund is administered by Subtel and financed by contributions from the government budget.

Turkey -- WT/TPR/S/125

P. 68, para. 114

Few changes have been introduced to the overall Turkish investment incentive programme, which became region- rather than sector-specific in 1993.⁵⁶ The Programme for Incomplete and/or Operating Enterprises was abolished on 30 June 2001. There are two main investment encouragement programmes: the General Investment Encouragement Programme (GIEP), and Aids Granted to Small and Medium-sized Enterprises (SMEs) Investments. The purpose of these programmes is to encourage and orient investments, in order to reduce regional imbalances within the country, and create new employment opportunities, while using technologies with greater value added. To qualify for any of these programmes, potential investors have to apply for an investment incentive certificate, which is non-transferable. In addition, regional programmes, designed to address specific needs of under developed regions, are put into force for specified periods as necessary.

⁵⁶ Several incentive schemes run in parallel to the general investment aid programme. These include assistance provided to exporters (such as duty concessions, export finance, insurance, guarantee, promotion, and marketing assistance) (section (3)(v)), to the agriculture sector (including input subsidy payments), to the **energy** sector (such as subsidies for the production of hard coal), to **maritime** (tax incentives), and to **tourism** (including corporate income tax exemption). See Chapter IV for details.

P. 68-69 para. 116

Under the Aids Granted to SMEs, companies entitled to receive investment incentives are those: operating in manufacturing, agri-industry, **tourism, education and health**, mining, and **software** industries; employing up to 250 workers; and holding assets not exceeding TL 600 billion. The incentives are the same as under the GIEP, except that different ceilings are set for the amount of credit to be allocated and the interest rate to be applied depending on the regional location of the investment.⁵⁷

P. 108, para. 98

The BSRP also aims to promote a healthier financial situation among private banks through the implementation of internationally accepted minimum capital requirements. In February 2002, the BRSA announced a new plan to recapitalize **banks** after a strict three-level audit of the 26 major private money deposit banks.⁵⁸ Prior to the audit, all banks have to switch to inflation adjusted financial statements. The next phase of the plan involves the possible use of public money but with incentives to maximize shareholders' contributions⁵⁹, as well as to merge with other banks. Furthermore, the plan seeks to accelerate new lending by requiring that a portion of any public funds be on-lent to non-related parties.

P. 114-115, para. 128

Special tax incentives are provided to Turkish investors in the maritime subsector. The wages of seafarers working on ships registered under Turkey's International Ship Registry are exempted from income tax and funds; and revenues gained from operating and transferring **ships** registered under Turkish International Ship Registry, are exempted from personal income and corporate income tax. Profits from non-operation activities are not covered by the exemption. Book profits resulting from sales of vessels can be deducted from the purchase price of the same kind of replacement vessels within three years and after deducting the realized depreciation amount.⁶⁰

P. 116, para. 138

Turkey's railway system consists of over 10,000 km of track.⁶¹ The share of railways in total transport has diminished over the years, to 4% of freight and 2% of passenger transport. The Turkish State Railways (TCDD), a state-owned enterprise affiliated to the Ministry of Transport (MT), has *de jure* monopoly in providing railway passenger and freight transport services. It owns and operates the whole **railway** system, together with seven ports that have rail access (i.e. Haydarpaşa, Mersin, Iskenderun, Derince, Izmir, Samsun, and Bandırma). There are no private rail operators. TCDD has freedom to introduce fares on a market basis or to increase them, after verbal approval by the MT.

⁵⁷ The investment credit limit allocated to SMEs is TL 300 billion, with a 10% interest rate in priority development regions and 15% in other regions, and maturity of four years. The operational credit limit for SMEs is TL 120 billion, with a 15% interest rate in the priority development regions and 25% in other regions, and maturity of two years. With the investment credits, no repayment is made in the first year.

⁵⁸ The auditing stage was completed in mid-June 2002. The first two audits were made by major audit firms (the first chosen by the bank itself and the second by the BRSA), and the third by BRSA.

⁵⁹ Three banks were assessed to have capital needs: the administration of Pamukbank was assessed to have a capital deficit of US\$2 billion as of December 2001, and was taken over by the SDIF; the capital of Sekerbank was increased by its shareholders; while Vakıflar Bankası was given a subordinated loan amounting to TL213.3 trillion by the SDIF upon a resolution of the BRSA.

⁶⁰ Turkish International Ship Registry Law No. 4490 of 16 December 1999, Article 12.

⁶¹ During 2001-05, the objective is to set up 185 km of new tracks, renew 1,800 km, and complete 180 km of signalling works and 160 km of electrification (Undersecretariat of State Planning Organization, 2001).

The construction of new railway infrastructure and ports is the responsibility of the Directorate General of Ports, Railways and Airports Construction of the MT. In 2002, TCDD received government subsidies amounting to TL 266.8 trillion for: track maintenance and repair, in accordance with Law No. 233 and TCDD's main statutes; uneconomic lines, under Decree No. 7-11254 of 23 January 1976; express trains; and **ferry traffic** on lake Van. Subsidies paid to TCDD totalled TL 197.8 trillion in 2001 (124% of TCDD's revenue for operational activities and 19% of total railway expenditure).

P. 118, para. 144

The Turkish Government remains active in the **tourism** subsector. It grants incentives for tourism investments in accordance with the Tourism Encouragement Law; provides infrastructure and public services for tourism; defines zones with high tourism potential; promulgates designated tourism centres or areas by decree; elaborates and approves land-use plans; conducts environmental controls; promotes the country abroad; carries out research and collects statistics; and provides vocational training. Local administrations are responsible for similar matters at the local level. Investors in the tourism sector also have access to incentives granted under the general investment aid programme (Chapter III(2)(iii)(d)).

United States – WT/TPR/S/126

P. xi, par. 26

As the United States is among the world's largest producers, exporters, and importers, domestic support although not targeted at exports may significantly affect trade. Assistance to domestic producers may take the form of tax exemptions, financial outlays, and credit programmes. Since the last Review of the United States, there have been sizeable financial transfers in **air transport** and agriculture. In air transport, government financial support was extended to U.S. carriers in the aftermath of 11 September 2001. In agriculture, the Farm Security and Rural Investment Act of 2002 expanded the coverage of marketing loan provisions; and introduced a counter-cyclical income support mechanism that, although not linked to current production, increases subsidies when commodity prices fall, and vice versa. The new legislation may thus further blunt the effects of market signals on production decisions, and runs the risk of large increases in assistance in the event of price falls. Under the new Act, government payments in 2003 were expected to approach the high level of 2001; such payments had declined substantially in 2002 when commodity prices increased and virtually no ad hoc emergency payments were disbursed.

P. 80, para. 212-213

Nine of the 50 programmes notified at federal level are in favour of agriculture; five federal programmes are in favour of the aerospace and aeronautic sectors. The **energy** sector was the recipient of the largest number of notified programmes (14), mostly geared towards energy conservation, although measures to encourage the development of domestic coal, oil, and gas resources were also notified. Six programmes applied to fisheries, including subsidies for fishing vessels, research and development in management of U.S. fisheries, and conservation of marine resources. Assistance to lumber and timber was also notified, as were five programmes to encourage the extraction and processing of mineral resources, including iron ore and steel. The subsidy notification also contains a description of the Emergency Steel Loan Guarantee Act of 1999.

P. 132, para. 127

Under the Capital Construction Fund (CCF) and Construction Reserve Fund (CRF), U.S. citizens owning or leasing vessels may obtain tax benefits to construct qualified vessels. The CCF

provides tax-deferral benefits to **vessel operators** in U.S.-foreign commerce, Great Lakes, non-contiguous domestic trade, and U.S. fisheries. CCF vessels must be built in the United States and documented under the laws of the United States. The purpose of the CCF programme is to make up for the competitive disadvantage operators of U.S.-flag vessels face in the construction and replacement of their vessels relative to foreign-flag operators whose vessels are registered in countries that do not tax shipping income.⁶² The CRF is a financial assistance scheme that provides tax deferral benefits to U.S.-flag operators; eligible parties can defer gains attributable to the sale or loss of a vessel, provided the proceeds are used to expand or modernize the U.S. merchant fleet.

P. 134-135, para. 139-144

In order to assist the U.S. aviation industry after the 11 September attacks, the U.S. President signed into law, on 22 September 2001 the Air Transportation Safety and System Stabilization Act (ATSSSA), which made available funds to compensate U.S. **air carriers'** losses suffered as a result of the attacks.⁶³ Under the Act, up to US\$5 billion in compensation was authorized for direct losses incurred by air carriers as a result of any federal ground stop order issued by the Secretary of Transportation (or its continuation); and for the incremental losses by air carriers incurred beginning 11 September 2001 and ending 31 December 2001, as a direct result of the attacks. At the close of the programme on 31 December 2002, the DOT had transferred a total of just over US\$4.6 billion to 426 U.S. air carriers.

In addition to the federal grants, the Act made available to airlines up to US\$10 billion in federal loan guarantees.⁶⁴ The guarantees were to be allocated to airlines on a discretionary basis by the Air Transportation Stabilization Board, established for that purpose.⁶⁵ Borrowers had to submit their applications no later than June 2002. Approximately US\$1.6 billion in loan guarantees has been committed; the only application pending as at October 2003, was that of United Airlines.

Two distinct programmes were established under the ATSSSA to help airlines meet increased insurance costs after September 2001. The two programmes require two separate transactions and may be in effect for different periods of time. Under the first FAA Aviation Insurance Program, the FAA provides, *inter alia*, indemnity for third-party aviation war-risk liability beyond US\$50 million per occurrence, following the cancellation of this coverage by commercial insurance underwriters.⁶⁶ There is no aggregate limit to the overall disbursements, but the maximum per occurrence limit is twice the limit the carrier had in its war risk liability policy prior to 11 September 2001. Since November 2002, domestic airlines may, in addition to extended third party war risk coverage, obtain expanded coverage for war risk hull and passenger, crew, and property liability.

The second programme, also run by the FAA, consists, *inter alia*, of reimbursements to U.S. air carriers for the increase in the cost of insurance premiums, relative to the premium that was in effect at the beginning of September 2001. Payments for this support were to be made from a revolving fund established for this purpose.⁶⁷ Approximately US\$60 million was disbursed for 30 days of additional war risk premium expense immediately after 11 September 2001. According to the authorities, no further payments were being made or contemplated.

⁶² MARAD online information. Available at: <http://www.marad.dot.gov/TitleXI/crf.html>.

⁶³ The Act is available online at: <http://www.treas.gov/offices/domestic-finance/atsb/hr2926.pdf>.

⁶⁴ See for example U.S. General Accounting Office GAO (2001).

⁶⁵ The Regulations for Air Carrier Guarantee Loan Program are found in the Federal Register of 12 October 2001. Available online at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=f:12ocr2.pdf.

⁶⁶ Information available online at: <http://insurance.faa.gov>.

⁶⁷ The legislation is available online at: <http://apo.faa.gov/Insurance/49USC443.pdf>.

Prior to September 2001, support to the U.S. air transport industry had been confined largely to the provision of federal subsidies for service to remote areas. The main programmes were the DOT's Essential Air Service (EAS) Subsidy Programme (under which approximately US\$100 million were spent in 2002) and the grants provided to small communities under the Small Community Air Service Development Pilot Program (approximately US\$20 million), under which funds were appropriated for the first time in FY 2002 (October 2001-September 2002). Under the EAS Program a community is eligible for subsidies if it is more than 70 miles away from the nearest medium or large hub airport, and if the service costs less than US\$200 per passenger.

To cut costs after 11 September 2001, major airlines have retreated from airports in small and midsize cities. According to a recent GAO Study, new financial incentives granted by local governments since September 2001 have been the most effective instrument to attract airline services back to small communities.⁶⁸ These have consisted mostly of subsidies, revenue guarantees, and reduced airport fees.

P. 139, para. 161

The universal service provisions in the Communications Act of 1934 require common carriers, as defined under the Act, to provide access to **telecommunications services** at reasonable and affordable rates throughout the country, including rural, insular, and high costs areas, and to public institutions.⁶⁹ To finance this universal service, telecommunications companies must pay a percentage of their interstate end-user revenues to the Universal Service Fund. The contribution is revised quarterly depending on the needs of the universal service programmes. In the fourth quarter of 2003, this contribution factor was 9.2%. In 2002, universal service support needs totaled US\$5.9 billion.

P. 148, para. 199

Government-sponsored enterprises (GSEs) are private companies established and chartered by the U.S. Government for public policy purposes in the **financial sector**. GSEs include: the Federal National Mortgage Association (Fanny Mae); the Federal Home Loan Mortgage Corporation (Freddie Mac); the Farm Credit System (Farmer Mac); the Federal Agricultural Mortgage Corporation; the Federal Home Loan Banks; and the Student Loan Mortgage Association (Sallie Mae), which is on a congressionally mandated track to rescind its GSE charter. While the benefits provided to the GSEs vary according to each GSE's charter, some common benefits include an exemption from state and local taxation and potential access to a back-up credit line with the U.S. Treasury. In addition, GSE debt is eligible for use as collateral for public deposits, for unlimited investment by federally chartered banks and thrifts, and for purchase by the Federal Reserve in open-market operations. GSE securities are not guaranteed by the U.S. Government, but they are treated as government securities for certain purposes under U.S. securities laws. GSE obligations are classified by financial markets as "agency securities" and priced at yield above those on U.S. Treasuries, but below those on AAA corporate obligations.⁷⁰ The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (GSE Act, P.L. 102-550) established the current regulatory structure for Fannie Mae and Freddie Mac; other GSEs are regulated under a different legal structure.

⁶⁸ See General Accounting Office (2003a).

⁶⁹ An explanation of the U.S. universal service regime is available online at: http://www.fcc.gov/wcb/universal_service/welcome.html.

⁷⁰ Congressional Budget Office (1985), and (2003b).

The Gambia – WT/TPR/S/127P. 17-18, para. 17

Under the Investment Promotion Act, special incentives are available to encourage investment in "**priority sectors and activities (Table II.2)**". In addition to investing in these sectors, other eligibility criteria are that: investment must be organized as a company or partnership under the Law of The Gambia; the minimum investment of fixed assets must be US\$100,000 or the equivalent in local or any other freely convertible currency; and that investments are outside the free zones. Any investor satisfying the eligibility criteria may apply to GIPFZA for a Certificate of Special Investment. These certificates are valid for five years, and are renewable. In considering an application for a certificate for special investment, GIPFZA is required to carry out an appraisal of the proposed project or business to contribute to the achievement of the following objectives: (a) the generation of new foreign-exchange earnings or savings through exports, or import substitution, or service activities; (b) the use of local materials, suppliers, and services; (c) the creation of employment opportunities in The Gambia; (d) the introduction of advanced technology or upgrading of indigenous technology; (e) the contribution to locally or regionally balanced socio-economic development; and (f) any other objectives that the Agency may consider relevant for achieving the objectives of the Investment Promotion Act. It is not required for a project to meet each of these criteria. No specific benchmarks or objective indicators have been developed to date to assess the performance of a project or business against these desired objectives, giving GIPFZA a certain degree of discretion in awarding investment incentives.

Table II.2
Priority sectors and activities under the Investment Promotion Act

Sector	Qualifying activities
Agriculture	- Crops: groundnuts, cashew, sesame, cotton, cereals - Animal husbandry: livestock, poultry including meat processing, tannery, export of live animals - Floriculture and horticulture, agro-processing
Fisheries	- Aqua-culture: fish and shrimp farming - Fishing and fish processing at industrial level
Tourism	- Eco-tourism: national heritage and others - Up-country tourism: motels, tourist camps, sport fishing, river cruising - Hotel development for a 4 or 5 stars
Forestry	- Development of private/community forest parks agro-forestry plantation
Manufacturing	- Assembling and packaging processing - Foundry and forging - Light pharmaceuticals and cosmetics
Energy	- Electricity generation and distribution - Renewable energy sources: solar, wind, hydro-energy
Skills development	- Vocational training: carpentry, welding, masonry - Development of specialized skills: electronics, computing, others
Other services	- Financial services - Off-shore services - Health and veterinary services - River and air transportation - Information technology
Minerals exploration and exploitation	- Petroleum exploration: refer to Petroleum Act and regulations - Mining of precious stones and others: refer to Mineral Act.
Communications	- Transportation (land, sea, and air) - Communication equipment.

Source: Government of The Gambia.

P. 19-20, para. 23-25

In its capacity as administrator of free zones, the GIPFZA has developed criteria that all investors (regardless of the category to which they belong) must satisfy in order to benefit from free-zone incentives⁷¹:

- investments must be in **the following activities**: warehousing, breaking bulk, assembling, storage, grading, cleaning, mixing, labelling, packaging and repackaging, processing, manufacturing, telecommunication, information technology, energy, financial and offshore services, health and veterinary services, or transportation services;
- transactions are to be carried out in specified foreign exchange;
- activities must significantly add value to qualify finished products for conferment of origin status;
- investments must generate employment and train nationals;
- a substantial portion of output (the benchmark currently used by GIPFZA is 70%) must be exported to foreign markets, the remainder can be sold on the domestic market, in which case they are treated as imports; and
- investment must contribute positively to domestic capital formation.

Applications to operate within the free zone are submitted to GIPFZA, which is required to make a decision within a period of 30 days. Licences are granted for a period of not less than one year, and not greater than 30 years, and are renewable. GIPFZA may suspend, amend or revoke a licence if the licensee fails to carry out any authorized activity within six months of the issue of the licence; substantially ceases, for a reasonable length of time, its activities in the zone; or contravenes the provisions of the Free Zones Act or conditions attached to the licence. Appeals may be lodged with the Secretary of State responsible for trade.

Investment incentives generally take the form of customs duty exemptions on selected items, exemptions from various domestic indirect taxes, tax holidays, and a special scheme for accelerated depreciation (Chapter III(4)(i)). The incentives provided to free-zone investors take the form of tax and duty concessions or exemptions (Chapter III(3)(v)), and apply equally to all three classes of investor.

P. 43, para. 64

Amongst the criteria that The Gambia Investment Promotion and Free Zones Agency is required to take into account in granting incentives are: the capacity of the business under consideration to contribute to the generation of new earnings or savings of foreign exchange through increased exports; import substitution; and the level of local content (materials or services) of the goods to be produced or of the **services** to be supplied.

P. 81, para. 81

The Gambia's 1.3 million people shared 33,300 fixed telephone lines in 2000, i.e. a teledensity of 2.56 (Table IV.13), which was above the African average of 2.48, and well above the sub-Saharan Africa's average of 0.75.⁷² Fixed line telephony services are provided by GAMTEL, a

⁷¹ The criteria are not specified in the Free Zones Act itself. Please see online information. Available at: http://www.gipfza.gm/Free_Zones_/body_free_zones_.html

⁷² ITU (2001).

public monopolist, with a subscriber base of 38,359 at end 2002.⁷³ The Permanent Secretary of the Department of State for Communication, Information and Technology (DOSCIT), and a representative of DOSFEA, are members of the GAMTEL board of directors. GAMTEL is also the Government's vehicle for the maintenance and expansion of the telephone network system, and for the development of fibre-optic cables and wireless telephone technology. GAMTEL does not receive government funding for its recurrent expenses. Recent capital expenditure plans for the maintenance and expansion of the telephone network is supported primarily by donor funds, and to a lesser extent government counterpart funding, and own funds. GAMTEL has begun the implementation of an expansion project, running from 2003 to 2007, and mainly financed by a grant of €15 million, which aims to significantly increase the number of fixed-line phones. GAMTEL currently pays an annual subvention of D3 million to The Gambia **Radio and Television Services**.

Sri Lanka – WT/TPR/S/128

P. 54

Table III.10
Export incentives

(a) **Non-exhaustive list of incentives available to exporters**

Beneficiary	Incentive	Policy objective
To direct/indirect exporters of non-traditional products and services ^a (...)	Concessionary income tax rate of 15% for 20 years commencing as of 1 April 1995	Encourage exports

a These include **ship repair, refurbishing of ship cargo containers**, and provision of computers and **software**.

(b) **Incentives to export trading houses**

Annual turnover (US\$ million)	Income tax holiday				Import duty exemption		Exemption from exchange control
	Full	10%	15%	20%	Capital goods	Raw materials	
5-10	n.a.	5 years	Thereafter	n.a.	Yes	Yes	Yes
10-25	5% tax up to 5 years	5 years	Thereafter	n.a.	Yes	Yes	Yes
>25	0% tax up to 5 years	5 years	Thereafter	n.a.	Yes	Yes	Yes

Source: Government of Sri Lanka; and Board of Investment of Sri Lanka [Online]. Available at: http://www.boisrilanka.org/web/investinc_common.php?conID=1.

P. 58-59, para. 103 (and Tables AIII.3 and AIII.4)

Sri Lanka offers a wide range of tax incentives, notably tax holidays, primarily for investment purposes. In 2002, Sri Lanka notified a list of tax incentives available equally to national and foreign enterprises investing in Sri Lanka.⁷⁴ The 2002 Budget proposed the rationalization of tax incentives but not their elimination. The Government was committed to granting no new exemptions either under the Board of Investment (BOI) or Inland Revenue Department (IRD) regimes.⁷⁵ Under the IRD

⁷³ Strictly speaking, the Government's share in GAMTEL is 99%; while The Gambia National Insurance Company has a 1% share.

⁷⁴ WTO document G/SCM/N/74/LKA, 7 January 2002.

⁷⁵ Sri Lanka operates two distinct direct tax systems: the normal regime, and the other under the auspices of the BOI. However, moves appear to be afoot to amend the BOI Act so as to abolish this distinction.

regime, income tax exemptions are provided usually for five years. Despite this policy, there are still an array of tax incentives in place, which seem to overlap; some are contingent on export and investment performance (Table AIII.3 and AIII.4). These incentives are considered exceptions to the new policy, according to which, a "limited" number of incentives would remain in place. These were aimed at assisting non-traditional exports (i.e. others than exporters of tea, rubber and coconut), and sectors such as information technology, electronics, industrial tools, and food processing, as well as, investments exceeding Rs 500 million in specific services. There is also a 5-10 year income tax holiday for pioneering investment in power generation, transmission and distribution, and for the development of highways, sea and airports, railways, and water services. Upon expiry of the tax holiday, these enterprises will be subject to a 15% income tax.⁷⁶ The revenue forgone as a result of these tax incentives has not been assessed.

Table AIII.3
Investment incentives under the Board of Investment (BOI) regime, September 2003

Category	Qualifying Criteria			Incentives			Exemption from exchange control
	Minimum investment (US\$)	Minimum export requirement (% of output)	Full tax holiday ^a	Concessionary income tax	Import duty exemptions		
				10%, 15%, 20%	Capital goods	Raw material	
(...)							
Export-oriented services	150,000	70	5 years	10% 2 years 15% thereafter 20% n.a.	Yes	Yes ^b	Yes
Small-scale infrastructure projects ^c	500,000	n.a.	5 years	10% 2 years 15% n.a. 20% thereafter	Yes ^d	No	As determined by the Board
IT related training institutes (min 300 students in IT related Training Institutes)	n.a.	n.a.	3 years	10% 2 years 15% thereafter if the industry is export oriented 20% thereafter if the industry is not export oriented	Yes	No	No
(...)							
Power generation, transmission and distribution	10,000,000	None	6 years	10% n.a. 15% thereafter 20% n.a.	Yes ^d	No	As determined by the Board
Development of highways, sea ports, airports, water services	25,000,000	None	8 years	10% n.a. 15% thereafter 20% n.a.	Yes ^d	No	As determined by the Board

- a The tax holiday period will start from the year the enterprise begins to make profits or not later than two years of the date of commencement of commercial operations or production whichever is earlier, except for existing enterprises undertaking an expansion of its same location or new location.
- b On raw materials used to produce exports.
- d During the project establishment/implementation period
- e Power generation, tourism and/or recreation, warehousing and/or cold storage, garbage collection and/or disposal, construction of houses (not less than 25 housing units in no more than 4 locations), construction of hospitals.
- f If exports are less than 70% only during the project implementation period.
- g IT enabled services includes call centre or contact centres, transcription (data entry), data centres, hosting centres, e-governance, related projects and any other related activity determined by the Board.

Source: Board of Investment of Sri Lanka [http://www.boisrilanka.org/web/investinc_common.php?conID=1] [04 April 2003] and Advanced Technology Incentive Scheme [Online]. Available at: http://www.gov.lk/imst/activities/advanced_technology/index.html.

⁷⁶ IMF (2002c).

Table AIII.4
Investment incentives under the Inland Revenue Act

Category	Qualifying Criteria	Incentive: Exemption from Income Tax
(...)		
Companies engaged in:	Company must be incorporated on or after 1 April 2002; or	Five years (from the year in which the company starts making profits or no later than two years from the date that the company starts operations whichever is earlier)
(...)	a company incorporated as a new undertaking prior to 1 April 2002; or	
- any project engaged in the provision of refrigerated transport services or cold room storage services	a company incorporated after 1 April 2002 with a minimum investment of Rs 2.5 million; or	
	Company is an investment of more than Rs 250 million	
Companies engaged in infrastructure development projects:	Company must be incorporated on or after 1 April 2002 with minimum investment of	Exemption period is for
- development of an airport, seaport, highway or railway;	Rs 1,000 million	6 years
- development of an industrial park	Rs 2,500 million	8 years
- development of a warehouse or store	Rs 5,000 million	10 years
- provision of any sanitation facility or solid waste management system	Rs 7,000 million	12 years
- power generation, transmission or distribution		(from the year in which the company starts making profits; or no later than two years from the date that the company starts operations whichever is earlier)
- development of water services		
- urban housing or town centre development		
Small-scale infrastructure facilities:	Company must be incorporated on or after 1 April 2002 with minimum investment of Rs 10-50 million made within one year from incorporation	Five years (from the year in which the company starts making profits; or no later than two years from the date that the company starts operations whichever is earlier)
- generation of power		
- tourism and recreation		
- warehousing and cold storage		
- garbage collection or disposal		
- construction of houses		
- construction of hospitals		
(...)		

Source: Government of Sri Lanka.

P. 60, para. 107

The need to support small and medium-size enterprises (SMEs) has been emphasized in the Government's industrialization strategy.⁷⁷ An SMEs Policy Unit has been established at the Ministry of Enterprise Development, Industrial Policy and Investment Promotion to help SMEs get installed and develop their businesses. Industrial parks are being created in the rural areas to cater to SMEs. The Export Development Board implements special programmes to support export-oriented SMEs. Under the Inland Revenue Act, tax incentives are also provided to small-scale infrastructure facilities engaged in, *inter alia*, power generation, **tourism and recreation, warehousing and cold storage, and construction of houses and hospitals.**

⁷⁷ A small-scale enterprise is defined as one with fixed assets not exceeding Rs 20 million; and a medium-size enterprise is defined as one with fixed assets above Rs 20 million but not exceeding Rs 50 million.

P. 60, para.110

In emergency situations the Government may offer relief packages. For instance, in 2001 a relief package was offered to the **hotel and tourist industry** to cover for temporary losses incurred after a terrorist attack on the international airport. The industry was granted a moratorium on the repayment of capital and interest from 1 August 2001 until 31 March 2002; the moratorium could be extended on a case-by-case basis. Other relief measures adopted during 2001 included removal of a 1% turnover tax on banking and finance; removal of import duties on essential raw materials; reduction of import duty on bagged cement to 15% and bulk cement to 10%; reduction of interest rates on loans in foreign currency to 6%; and the allocation of Rs 1 billion for drought relief.⁷⁸

P. 106, para. 115-116

Passenger bus services are provided by private operators and state-owned regional transport companies (RTCs, also called cluster bus companies) under the Central Transport Board. RTC services account for about one third of the commuter bus market. RTCs are poorly managed and over-staffed (over 40,000 staff for 5,000 operating buses). Their operating losses rose by 55% in 2001, but fell by 9% in 2002, to Rs 2.2 billion. Government subsidies to RTCs totalled Rs 1.2 billion in 2002.⁷⁹ Private bus operators are disadvantaged by small operations and low government-set fares. A new bus-fare policy for private and public operators, adopted in 2002, replaced the ad hoc fare revisions with annual reviews using an improved cost-based pricing formula.⁸⁰ However, the Government directed RTCs not to adopt the 15% fare increase recommended by the National Transport Commission (NTC), the national transport regulator, from July 2002. The regulatory regime for bus transport remains fragmented with overlapping responsibilities vested in provincial Councils and the NTC (National Transport Commission Act No. 37 of 1991).

The Government is establishing private-public partnership arrangements (PPPA) in RTCs to improve efficiency. In 2002, the Public Enterprises Reform Commission (PERC) invited investors to acquire 39% equity in and to manage RTCs. They are expected to inject extra funds through government-guaranteed debt financing, maintain existing employees on no worse terms and conditions, and provide public services under government supervision, all in return for state subsidies.⁸¹ As a result of low interest in RTCs, divestment was postponed. Six RTCs were to have been divested to a private consortium in 2003. However, following court action, Cabinet withdrew this award and the PERC is calling for new tenders for all 13 RTCs.

P. 108, para. 125

The BOI supports **tourism** with tax incentives (Chapter III(3)). Tourism on the east coast, which was closed in 1987 for security reasons, re-opened in 2002. The Government has established a concessional loan facility of up to Rs 50 million to help hotels in the Trincomalee district to refurbish.

⁷⁸ Ministry of Finance (undated).

⁷⁹ Rs 225 million was also paid to subsidize bus travel by school children and Rs 300 million to fund bus services on uneconomic rural routes.

⁸⁰ Cost components of the formula are fuel (27%), crew (22%), repairs (12%), service, lubricants, tyres, and tubes (11%), depreciation (10%), finance costs and risk (10%) and overheads (8%). Interim fare increases are possible when diesel prices rise rapidly.

⁸¹ Government guarantees are limited to 30% of the investor's purchased equity.

Working Party on GATS Rules

**OVERVIEW OF SUBSIDY DISCIPLINES RELATING TO TRADE IN SERVICES
IN ECONOMIC INTEGRATION AGREEMENTS**

Note by the Secretariat¹

I. INTRODUCTION

1. At its meeting of 1 October 2003, the Secretariat was asked to provide an overview of subsidy disciplines relating to trade in services in economic integration agreements notified under GATS Article V.

2. The following overview takes into account a previous Note of the Secretariat dated 20 May 1996 (*Provisions on Subsidies Relating to Trade in Services in Regional Trade Agreements*)². The present Note thus only looks at agreements, 24 in total, notified under Article V after that date and focuses on specific provisions on services subsidies that go beyond GATS-type obligations such as national treatment or MFN. An Annex lists the agreements reviewed, as well as the relevant provisions.

3. Of the 24 agreements reviewed, 13 contain disciplines on subsidy practices relating to services. Of these, 11 are agreements between the European Communities and other European countries, which contain disciplines on state aids that may distort competition. Four other agreements include provisions calling for further consideration of this issue in the future, sometimes making a reference to the negotiations under Article XV of the GATS.

II. OVERVIEW OF RELEVANT PROVISIONS

A. AGREEMENTS WITH DISCIPLINES ON SUBSIDIES IN SERVICES SECTORS

4. A first group of economic integration agreements with subsidy disciplines relating to services are the agreements signed between the European Communities and other European countries. As explained in the previous Note from the Secretariat (see paragraph IV of S/WPGR/W/12), such agreements contain a provision similar to that of Article 87 of the EC Treaty, prohibiting aid which may distort competition. For example, Article 64 of the *Europe Agreement establishing an association between the European Communities and their Members States and the Republic of Slovakia* states:

"1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and the Slovak Republic: (...)

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² S/WPGR/W/12

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86, and 92 of the Treaty establishing the European Economic Community."

5. Paragraph 3 then envisages the adoption by the Association Council, within three years of the Agreement's entry into force, of rules to implement provisions relating to state aids. Paragraph 4 indicates that, for purposes of applying the provisions of paragraph 1(iii), the Slovak Republic shall be regarded, during the first five years of entry into force of the agreement, as an area identical to those areas of the Community described in Article 92(3)(a) of the Treaty establishing the European Economic Community. That provision of the EC Treaty says: "3. The following may be considered to be compatible with the common market: (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment."

6. Paragraph 4 also includes provisions on transparency. It specifies that each Party shall report annually on the total amount and the distribution of the aid given and shall provide, upon request, information on aid schemes. In addition, when a Party considers that a particular practice is incompatible with the terms of paragraph 1, paragraph 6 allows such a Party, to take "appropriate measures", in certain specific circumstances, e.g., when such incompatible practice is not adequately dealt with under the implementing rules mentioned in paragraph 3 of the Article.

7. Other agreements notified after 20 May 1996 and that include similar but not necessarily identical disciplines on subsidies are the agreements between, on one hand, the European Communities and their Member States and, on the other hand, the following WTO Members: Hungary (Article 62), Poland (Article 63), Czech Republic (Article 64), Romania (Article 64), Bulgaria (Article 64), Estonia (Article 63), Lithuania (Article 64), Latvia (Article 64), Slovenia (Article 65)³.

8. The *Agreement establishing the European Economic Area* (EEA) concluded between the European Communities and their Member States, and Norway, Iceland and Liechtenstein also contains substantive disciplines on state aids that may distort competition (Article 61 to 64 and Protocol 27). The agreement was notified on 10 October 1996, but its relevant provisions were already described in paragraph V of the previous Secretariat Note. In short, paragraph 1 of Article 61 stipulates that "(s)ave as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement". Paragraphs 2 and 3 then respectively indicate which types of state aid either are to be, or may be, considered to be compatible with the functioning of the Agreement. Article 62 then provides for state aid to be reviewed for their compatibility with Article 61. It specifies that the EC Commission shall conduct such review for EC Member States according to the rules laid out in the EC Treaty, and that the EFTA Surveillance Authority shall do the same according to the rules set out in an agreement between the EFTA States. Article 62 also provides for cooperation between the EC Commission and the EFTA Surveillance Authority, as set out in Protocol 27.

9. In the event that one of the surveillance authorities considers that the implementation by the other surveillance authority of Articles 61 and 62 is not in conformity with the maintenance of equal conditions of competition, Article 64 provides that an exchange of views takes place. If no solution can be agreed within two weeks, the affected Contracting Party may adopt appropriate interim

³ In addition to the information provided in S/WPGR/W/12, the delegation of the European Communities presented a Communication to the Working Party entitled *The Community Regime for State Aid in Services Area* (JOB(00)/4302), which can be of use in view of the relationship between the subsidy disciplines found in the EC Treaty and the Europe Agreements.

measures in order to remedy the resulting distortion of competition. Consultations are then to be held and, if no commonly acceptable solution is found within 3 months and if the practice causes or threatens to cause distortion of competition affecting trade between the Contracting Parties, the interim measures may be replaced by definitive measures. Such measures must be strictly necessary to offset the effect of such distortion and priority shall be given to such measures that least disturb the functioning of the EEA.

10. The *Protocol on Trade in Services to the Australia-New Zealand Closer Economic Relations Agreement* (ANZCERTA) contains a prohibition on the introduction of new or the expansion of existing "export subsidies, export incentives and other assistance measures having a direct distorting effect on trade" between Member States (Article 11). The Article also mandated Parties to work towards the elimination of any such measures by 30 June 1990. This Agreement was notified under GATS Article V in October 1997, but was already mentioned in paragraph II of the previous Note from the Secretariat on this issue.

11. The *Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy*⁴ provides, in paragraph 1 of Article 69, that "Member States shall harmonize national incentives to investments in the industrial, agricultural and services sectors". The following paragraphs of Article 69 then provide, among other things, that the Council for Finance and Planning (COFAP), a principal organ of the Community, make proposals regarding incentives regimes "consistently with relevant international agreements".

B. AGREEMENTS WITH PROVISIONS CALLING FOR FUTURE CONSIDERATION OF THE ISSUE

13. A number of agreements, while not containing substantive disciplines on subsidy practices, provide for future consideration of the issue. Some refer in that regard to possible results of the negotiations under GATS Article XV. Paragraph 3 of Article 16 of the *European Free Trade Association (EFTA)*, notified by Switzerland, Norway, Liechtenstein and Iceland, provides that Member States shall review the scope of application of the Chapter on State Aid "with a view to extending the disciplines on state aid to the field of services, taking into account international developments in the sector". Such reviews are to take place at yearly intervals.

14. The *Free Trade Agreement between the EFTA States and Mexico* provides, in Article 19, that "Parties shall pay particular attention to any disciplines agreed under the negotiations mandated by Article XV of the GATS with a view to their incorporation into this Agreement". Similarly, Article 23(2) of the *Agreement between New Zealand and Singapore on a Closer Economic Partnership* states that the Parties "shall pay particular attention to any disciplines agreed under Article XV of GATS with a view to their incorporation into this Agreement". Paragraph 3 of the same Article says that "Parties shall consult on appropriate steps in regard to subsidies related to trade in services where any subsidy issues arise in bilateral services trade under this Agreement".

15. The *Singapore-Australia Free Trade Agreement* provides, in Article 21, that "Parties shall review the treatment of subsidies in the context of developments in international fora of which both Parties are Members" and that "Parties shall consult on appropriate steps in regard to subsidies related to trade in services where any subsidies issues arise under this Chapter".

⁴ The Revised Treaty was notified by the following WTO Members: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

ANNEX

Economic Integration Agreement Notified under GATS Article V since 20 May 1996⁵

Economic Integration Agreement	Date of Notification	Document reference	Where Relevant Provision(s) Can Be Found
EC – Slovak Republic	27 August 1996	S/C/N/23	Art. 64
EC – Hungary	27 August 1996	S/C/N/24 and S/C/N/24/Corr.1	Art. 62
EC – Poland	27 August 1996	S/C/N/25 and S/C/N/25/Corr.1	Art. 63
EC – Czech Republic	9 October 1996	S/C/N/26	Art. 64
EC – Romania	9 October 1996	S/C/N/27	Art. 64
EC – Norway, Iceland, Liechtenstein	10 October 1996	S/C/N/28	Art. 61-64, Protocol 27
EC – Bulgaria	25 April 1997	S/C/N/55	Art. 64
Canada – Chile	13 November 1997	S/C/N/65	--
New Zealand – Australia	21 October 1997	S/C/N/66	Art. 11
Chile – Mexico	14 March 2001	S/C/N/142	--
EFTA – Mexico	22 August 2001	S/C/N/166 and S/C/N/166/Corr.1	Art. 19
New Zealand – Singapore	19 September 2001	S/C/N/169	Art. 23
EC – Latvia	11 February 2002	S/C/N/187	Art. 64
EC – Estonia	11 February 2002	S/C/N/188	Art. 63
EC – Lithuania	11 February 2002	S/C/N/189	Art. 64
EC – Slovenia	11 February 2002	S/C/N/190	Art. 65
Chile – Costa Rica	24 May 2002	S/C/N/191	--
EC – Mexico	21 June 2002	S/C/N/192	--
United States – Jordan	18 October 2002	S/C/N/193	--
Japan – Singapore	14 November 2002	S/C/N/206	--
EFTA	3 December 2002	S/C/N/207	Art. 16
EFTA – Singapore	24 January 2003	S/C/N/226	--
CARICOM	19 February 2003	S/C/N/229	Art. 69
Singapore – Australia	1 October 2003	S/C/N/233	Art. 21

⁵ Internet links to the agreements are found at http://www.wto.org/english/tratop_e/region_e/type_e.xls

Working Party on GATS Rules

**LIST OF PUBLICATIONS FROM INTERNATIONAL ORGANIZATIONS
RELATING TO SUBSIDIES IN SERVICES**

Note by the Secretariat¹

I. INTRODUCTION

1. At its meeting of 1 October 2003, Members asked the Secretariat to compile a list of studies published by other international organizations that contain information on subsidies in services sectors.

2. In the absence of a definition of subsidies, the following list includes studies that contain potentially relevant information, without regard to trade effects. Thus, it should not be implied that the Secretariat considers the studies listed below as necessarily being of direct relevance to Members' discussions pursuant to the negotiating mandate under Article XV. Most studies do not tend to focus on trade.

3. The compilation consists of studies prepared by the well-known international organizations, i.e., IMF, ITU, OECD, UNCTAD, World Bank. Further updates to the list may be provided as additional information becomes available.

II. LIST OF STUDIES

A. INTERNATIONAL MONETARY FUND.

- IMF Working Paper no. 95/91 by Benedict J. Clements, Rejane Hugounenq, and Gerd Schwartz (1995), *Government Subsidies: Concepts, International Trends, and Reform Options*, Washington.
<http://www.imf.org/external/pubs/cat/longres.cfm?sk=1359.0>
- IMF Working Paper no. 98/166 by Benedict Clements, Hugo Rodriguez, and Gerd Schwartz (1998), *Economic Determinants of Government Subsidies*, Washington.
<http://www.imf.org/external/pubs/cat/longres.cfm?sk=2836.0>

B. INTERNATIONAL TELECOMMUNICATION UNION

- ITU (2003), *Trends in Telecommunication Reform 2003: Promoting Universal Access to ICTs – Practical Tools for Regulators, Chapter 5: Minimum-Subsidy Auctions for Public Telecommunications Access in Rural Areas*, Geneva.
<http://www.itu.int/publications/docs/trends2003.html>

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

C. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT²

- OECD, Maritime Transport Committee (1996), *Treatment of Support Measures; 1996 Inventory on Support Measures and Arrangements Provided to International Shipping*, Paris.
- OECD, Maritime Transport Committee (1997), *Treatment of Support Measures; Updated 1996 Inventory on Support Measures and Arrangements Provided to Shipping*, Paris.
- OECD, Maritime Transport Committee (1998), *Treatment of Support Measures; Support Measures Granted by Member States and Selected non-Member Countries to their Shipping and Shipping Related Industries – February 1998 Update*, Paris.
- OECD (1998), *Spotlight on Public Support to Industry*, Paris.
<http://www1.oecd.org/media/publish/pb98-35a.htm>
- OECD (1998-1999), *Improving the Environment through Subsidies*, Paris.
<http://oecdpublications.gfi-nb.com/cgi-bin/oecdbookshop.storefront>
- OECD, Development Centre Study by Charles Oman (2000), *Policy Competition for Foreign Direct Investment: A Study of Competition Among Governments to Attract FDI*, Paris.
<http://oecdpublications.gfi-nb.com/cgi-bin/oecdbookshop.storefront>
- OECD (2001) *Competition Policy, Subsidies and State Aid*, Paris.
[http://www.oecd.org/olis/2001doc.nsf/LinkTo/daffe-clp\(2001\)24](http://www.oecd.org/olis/2001doc.nsf/LinkTo/daffe-clp(2001)24)
- OECD (2003), *Environmentally Harmful Subsidies: Policy Issues and Challenges*, Paris.
<http://oecdpublications.gfi-nb.com/cgi-bin/oecdbookshop.storefront>
(The documents made available for the related workshop are available on-line at http://www1.oecd.org/agr/ehsw/meeting_doc.htm)
- OECD (2003), *Export Credit Financing Systems in OECD Member and non-Member Countries, 2002 Supplement*, Paris.
<http://oecdpublications.gfi-nb.com/cgi-bin/oecdbookshop.storefront>
(Various information is available from the OECD website on the issue of export credits including the text of the Arrangement on Guidelines for Officially Supported Export Credits: http://www.oecd.org/topic/0,2686,en_2649_34169_1_1_1_1_37431,00.html.)
- OECD, Development Centre Technical Paper no. 203 by Andrew Charlton (2003), *Incentive Bidding for Mobile Investment: Economic Consequences and Potential Responses*, OECD Development Centre, Paris.
<http://www.oecd.org/dataoecd/39/63/2492289.pdf>
(An overview of OECD work in this area is available at: http://www.oecd.org/document/37/0,2340,en_2649_33725_11082405_1_1_1_1,00.html)

² The OECD Secretariat informed us that the three first studies listed below could be distributed to WTO Members as working papers. Since these studies are not otherwise available (e.g., through the internet), the Secretariat will distribute electronic versions to delegations on request.

D. UNCTAD³

- UNCTAD (1993) *The Impact of Subsidies on Trade in Services: Background note by the UNCTAD Secretariat*, New York and Geneva.
- UNCTAD (1996), *Incentives and Foreign Direct Investment*, New York and Geneva.
<http://www.unctad.org/Templates/Webflyer.asp?docID=3597&intItemID=2068&lang=1>
- UNCTAD (2000), *Tax Incentives and Foreign Direct Investment: A Global Survey*, New York and Geneva.
http://www.unctad.org/en/docs/iteipcmisc3_en.pdf
- UNCTAD Study Series on Policy Issues in International Trade and Commodities, by Erich Supper (2001), *Is There Effectively a Level Playing Field for Developing Country Exports?*, New York and Geneva.
http://www.unctad.org/en/docs/itcdtab2_en.pdf

E. WORLD BANK

- World Bank Working Paper no. 1868 by Mansoor Dailami and Michael Klein (1998), *Government Support to Private Infrastructure Projects in Emerging Markets*, Washington.
<http://econ.worldbank.org/view.php?type=5&id=574>
- World Bank Working Paper no. 37 by Pablo Serra (2000), *Subsidies in Chilean Public Utilities*, World Bank Institute, Washington.
http://rru.worldbank.org/HTML/document_37.html
- World Bank Working Paper no. 2276 by Arvind Panagariya (2000), *Evaluating the Case for Export Subsidies*, Washington.
<http://econ.worldbank.org/view.php?type=5&id=1030>
- World Bank Working Paper no. 2473 by Luc Laeven (2000), *Banking Risks around the World; The Implicit Safety Net Subsidy Approach*, Washington.
<http://econ.worldbank.org/view.php?type=5&id=1283>
- World Bank (2001), *Development Finance Institutions; Measuring their Subsidy*, Washington.
http://publications.worldbank.org/e-commerce/catalog/product?item_id=356079

³ The UNCTAD Secretariat informed us that some of reports of experts meetings in given services sectors (e.g., audiovisual services, construction services), as well as notes prepared by the UNCTAD Secretariat in that context, contain some information on subsidies and government support. See www.unctad.org

Working Party on GATS Rules

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**ANNUAL REPORT¹ OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES (2003)**

1. Since its last update to the annual report, the Working Party on GATS Rules held two formal meetings: on 2-3 July 2003 and 1 October 2003. Reports of these meetings are contained in documents S/WPGR/M/43 and S/WPGR/M/44. They should be read in conjunction with this update. The three negotiating mandates the Working Party is entrusted with were put on the agenda of the two meetings: emergency safeguard measures (Article X), government procurement (Article XIII) and subsidies (Article XV). At its meeting of 2 and 3 July, the Working Party also took stock of progress made in the negotiations, as reflected in the report of that meeting, as well as in the report of the following meeting of the Special Session of the Council for Trade in Services.²

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. At the meeting of July 2003, the issue of emergency safeguard measures was not addressed. At the meeting of 1 October 2003, delegations continued their examination of issues related to a possible ESM, including the questions of desirability and feasibility. The Swiss delegation presented a non-paper which examined a particular example and analysed the possibilities available to a member government in the absence of an ESM. Various points of views, as well as preliminary reactions were expressed. The delegation of Thailand, speaking for a number of other delegations, responded to questions previously asked regarding how an ESM model might apply to a hypothetical example. These discussions are reflected in paragraphs 2-22 of S/WPGR/M/44.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

3. The issue of government procurement was not addressed at the meeting of July 2003. At the meeting of 1 October 2003, the European Communities explained its proposal for a framework of rules in this area.³ Also, the Secretariat had prepared a note on government procurement disciplines in economic integration agreements.⁴ A number of delegations commented and asked questions, while others reserved their position for the time being or recalled their views on the mandate for negotiations. These discussions are reflected in paragraphs 23-38 of S/WPGR/M/44.

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

4. The issue of subsidies was discussed at both the meetings of July and October 2003. Discussions focused on the issue of definition and on ways to obtain more information on subsidies in

¹ This report, together with the update in document S/WPGR/12, complete the reporting requirement for 2003.

² TN/S/M/8.

³ S/WPGR/W/42

⁴ S/WPGR/W/44

services sectors. Regarding the latter point, a proposal by the delegation of Chile, supported by various other delegations, was put forward and several Members referred to UNCTAD's work on a study on subsidies in services sectors. In addition, Members mandated the Secretariat to update its previous Note on subsidy disciplines in economic integration agreements notified under Article V and to put together a list of studies pertaining to subsidies in services sectors that have been done by other international organizations. These discussions are reflected in paragraphs 44-69 of S/WPGR/M/43 and paragraphs 39-83 of S/WPGR/M/44.

Working Party on GATS Rules

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**UPDATE TO THE ANNUAL REPORT OF 2002 OF THE WORKING PARTY
ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2003)**

Revision

1. Since its last annual report¹, the Working Party on GATS Rules held 3 formal meetings.² In each meeting, the Working Party considered the three negotiating mandates it is entrusted with: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV). It also held various informal meetings on the three items.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. Members continued their examination of various themes as they had emerged from previous meetings and submissions. Issues under examination included desirability and feasibility of an emergency safeguard mechanism (ESM), the interpretation of the GATS Article X mandate, modal application, alleged safeguard-type provisions contained in economic integration agreements, in Members' schedules and in WTO instruments, as well as S&D. Members also discussed possible common elements of various types of ESM, based on the Synopsis³ and on the Overview of the Synopsis,⁴ and process-related issues such as transparency, notification, consultation, surveillance provisions and expedited dispute settlement proceedings.

3. Many delegations called for the Working Party to discuss actual or hypothetical situations where a safeguard action might be needed, and which form action could take, as an important aspect for further progress in the negotiations. One example was presented at the February meeting by Thailand, on behalf of the ASEAN Members. The Working Party is still examining whether this example can be considered as a possible situation justifying an ESM. Other delegations suggested that discussion on alleged existing safeguard-type provisions applying to services should continue.

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4. As requested by Members the Secretariat prepared three background documents: (i) a *Compilation of References Made by Delegations to Safeguard-Type Provisions*⁵; (ii) a note on *Core Elements Contained in Members' Proposals – Overview of the Synopsis*⁶; and (ii) a note on *Safeguard-Type Provisions in Economic Integration Agreements*⁷.

5. On 14 March 2003, the former Chairperson of the Working Party, Mr. Thomas Chan, circulated under his responsibility a Report on Negotiations on Emergency Safeguard Measures⁸, as

¹ S/WPGR/8, 5 December 2002.

² Meetings of 3 December 2002, 25 February 2003 and 13-14 May 2003..

³ JOB(01)/122 + Add.1.

⁴ JOB(02)/200 and --/Rev.1.

⁵ JOB(03)/20.

⁶ JOB(02)/200 and --/Rev.1.

⁷ S/WPGR/W/4/Add.1.

⁸ S/WPGR/9.

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mandated in the work programme on ESM adopted on 22 July 2002.⁹ Delegations had a first exchange of views on this Report during an informal meeting held on 20 April. At the formal meeting of 13-14 May, the Working Party gave further consideration to the Report. Comments made by delegations are recorded in the minutes of this meeting.¹⁰ At the same meeting, the European Communities introduced a written contribution on *Scope for Emergency Safeguard Measures (ESM) in the GATS*.¹¹ A number of delegations welcomed this contribution. Other delegations expressed different views.

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II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS ARTICLE XIII

6. Discussions continued on the Communication from the European Communities and their Member States on government procurement of services.¹² In May, the European Communities introduced a new contribution proposing a legal framework for government procurement in services.¹³ At the same time, several delegations maintained the view that Article XIII excludes from the negotiations the obligations of most-favoured-nation treatment, market access and national treatment, whilst others underlined that the mandate of Article XIII:2 included no such limitation.

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7. Members noted the possibility of duplication between the WPGR and the Working Group on Transparency in Government Procurement (WGTGP). The WPGR should be aware of the relevant issues raised in the WGTGP, and information exchanges between the two Groups should be allowed for on a flexible basis.

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8. On 24 June 2003, the WTO Secretariat issued a note prepared at the request of Members, presenting an Overview of Government Procurement-Related Provisions in Economic Integration Agreements.

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9. On 30 June 2003, Mr. Santiago Urbina, Chairperson of the Working Party, submitted a note under his responsibility to report on the progress of work, as mandated in the work programme on government procurement adopted on 22 July 2002.¹⁵

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III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

10. The delegation of Poland circulated an informal contribution containing thoughts on the definition of subsidies in services.¹⁶ Two main issues emerged from the discussion: (i) the scope of a generic definition of subsidies in the services context, including the relevance of the definition contained in the SCM Agreement; and (ii) the meaning of the concept of trade-distortive or "actionable" subsidies. Several delegations recalled the mandate in GATS Article XV to exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers. Members could obtain this information from different sources, including intergovernmental organizations.

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Deleted: Mr. Santiago Urbina, Chairperson of the Working Party, informed that, as mandated in the work programme on government procurement adopted on 22 July 2002, he would submit a note by 30 June 2003 under his responsibility to report on the progress of work.¹⁴

11. On 17 March 2003, the Chairperson circulated a revised *Checklist on Subsidies*,¹⁷ as had been agreed at the February meeting.¹⁸ This new revision, prepared again under the responsibility of the Chairperson, includes two changes. First, the question of categorization of subsidies has been explicitly spelled out under the first point, i.e. definition of a subsidy in trade in services. Second, a

Deleted: The need for more information on services subsidies from Members as well as other sources such as other intergovernmental organizations was also stressed by some delegations.

⁹ S/WPGR/7.

¹⁰ S/WPGR/M/42.

¹¹ S/WPGR/W/41.

¹² S/WPGR/W/39.

¹³ S/WPGR/W/42.

¹⁵ S/WPGR/11.

¹⁶ JOB(02)207.

¹⁷ JOB(03)57.

¹⁸ The first version of the Checklist had been circulated as Job No. 4519, 17 July 2000.

new issue has been added, relating to concepts relevant to what should be regarded as trade-distortive subsidies. The *Checklist* is without prejudice to the position of any Member.

12. On 30 June 2003, Mr. Santiago Urbina, Chairperson of the Working Party, submitted a note under his responsibility to report on the progress of work, as mandated in the work programme on subsidies adopted on 22 July 2002.¹⁹

Deleted: Mr. Santiago Urbina, Chairperson of the Working Party, informed that, as mandated in the work programme on subsidies adopted on 22 July 2002, he would submit a note by 30 June 2003 under his responsibility to report on the progress of work

¹⁹ S/WPGR/10.

Working Party on GATS Rules

**OVERVIEW OF GOVERNMENT PROCUREMENT-RELATED PROVISIONS
IN ECONOMIC INTEGRATION AGREEMENTS**

Note by the Secretariat¹

I. INTRODUCTION

1. At its meeting on 13-14 May 2003, the Secretariat was asked to prepare a compilation of provisions relating to government procurement found in the agreements that have been notified to the WTO under GATS Article V.

2. When starting this work, the initial intention was to provide delegations with a full reproduction of the pertinent texts. However, such a compilation would have amounted to more than 100 pages and, thus, proven too unwieldy for information. Therefore, the current Note provides only an overview of the main provisions relating to government procurement in economic integration agreements. The Secretariat stands ready to provide a deeper analysis based on a specific mandate from Members.

3. This Note covers the 25 economic agreements notified so far to the WTO under GATS Article V (see Annex). Virtually all agreements (24 out of 25) contain government procurement-related provisions. However, the level of detail and the obligations incurred vary from mere commitments to negotiate to highly specified procurement regimes.

4. This Note is without prejudice to delegations' position on the scope of the mandate in GATS Article XIII.

II. OVERVIEW OF RELEVANT PROVISIONS

(a) Treaty of Rome (EC)

5. The notification under GATS Article V of the Treaty Establishing the European Community explains that the Treaty "embraces a common market for public-sector procurement and construction contracts which is based on various Council directives co-ordinating procurement procedures in all public-sector procurement subject to the Treaties. The public procurement directives are based on three main principles:

- EC-wide advertising of contracts so that firms in all Member States have an opportunity of bidding for them;
- the banning of technical specifications liable to discriminate against potential foreign bidders;

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

- application of objective criteria in tendering and award procedures.

The directives on public works were co-ordinated in Council Directive 93/37/EEC ("the Works Directive") of 14 June 1993 and the directives on supplies were consolidated in Council Directive 93/36/EEC ("the Supplies Directive") of 14 June 1993. The latter also aligned the text on Supplies with that on Works. The Council directive 92/50 concerning the coordination of public procurement on services has been adopted on 18 June 1992. It should be noted that public works, supplies and services contracts in the water, energy, transport and telecommunications sectors are covered by a separate Directive 93/38/EEC."²

(b) Australia – New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)

6. Access to government procurement between Australia and New Zealand is governed by the 1991 Government Procurement Agreement, which, in turn, is based on Article 11 (*Government Purchasing*) of the ANZCERTA. The latter provision stipulates, *inter alia*, that "the maintenance of preferences for domestic suppliers over suppliers from the other Member State is inconsistent with the objectives of this Agreement, and the Member States shall actively and on a reciprocal basis work towards the elimination of such preferences".

7. Provisions of the 1991 Agreement relate in particular to: measures aiming at maximising competitive opportunities for suppliers of both Parties, including an illustrative list of discriminatory or biased procurement practices; exemptions; preference margins for Australian or New Zealand made goods and services; monitoring procedures; guidelines for the assistance of purchasing officers and other interested bodies; transitional arrangements; review of the Agreement; and definitions.

(c) European Economic Area³ (EEA)

8. The Agreement on the EEA contains procurement provisions applying to goods and services (Article 65, *Other Common Rules*). Annex XVI, entitled *Procurement*, lists the EC procurement instruments which shall be applicable to EEA Contracting Parties as well as the sectoral adaptations needed. It also contains a list of bodies and entities covered.

(d) Europe Agreements

9. The 10 so-called Europe Agreements⁴ contain very similar provisions on government procurement. Most agreements state that Parties consider "the opening up of the award of public contracts on the basis of the principle of non-discrimination and reciprocity, in particular in the GATT and WTO context,⁵ to be a desirable objective".⁶ Relevant provisions further stipulate, *inter alia*, that, from the entry into force of the agreement, companies shall be granted access to award procedures in the Community pursuant to Community procurement rules under a treatment no less favourable than that accorded to Community companies. In turn, Community companies must be granted treatment no less favourable than that accorded to local companies; the date of entry into force of this requirement may be different depending on whether the EC companies are established in the country concerned or not.

² WT/REG39/1, page 9.

³ Signatories to the EEA Agreement are: the European Communities, Iceland, Liechtenstein and Norway.

⁴ The Europe Agreements have been concluded between the European Communities and, respectively, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic, and Slovenia.

⁵ Some agreements refer only to GATT, others only to WTO and a third category to both GATT and WTO.

⁶ NB: this clause does not appear in the agreement with Lithuania.

(e) North American Free Trade Agreement⁷ (NAFTA)

10. Government procurement rules are contained in Part four, Chapter ten (*Government Procurement*) of the NAFTA. Section A contains provisions relating to: the scope and coverage of the Chapter (entities; goods, services or construction services; thresholds; examples of procurement methods); valuation of contracts; national treatment and non-discrimination; rules of origin; denial of benefits; prohibition of offsets; and technical specification.

11. Section B specifies tendering procedures, including: qualification of suppliers; invitation to participate; selective tendering procedures; time limits for tendering and delivery; tender documentation; negotiation disciplines; submission, receipt and opening of tenders and awarding of contracts; and limited tendering procedures.

12. Section C stipulates the bid challenge procedures that Parties have to adopt for government procurement. Section D contains general provisions, including exceptions; provision of information; technical cooperation; joint programs for small business; rectifications and modifications; divestiture of entities; further negotiations; and definitions.

(f) Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy⁸ (CARICOM)

13. In Article 239 (*Undertaking*), CARICOM Member States "undertake to elaborate a Protocol relating, *inter alia*, to [...] government procurement [...]."

(g) Free Trade Agreement Canada – Chile

14. The free trade agreement between Canada and Chile does not contain any government procurement-related provision.

(h) Free Trade Agreement Chile – Mexico

15. In the free trade agreement between Chile and Mexico, the Parties agree that the Free Trade Commission established under the treaty shall "begin negotiations on a chapter on government procurement one year after this Agreement comes into force, at which time it shall appoint negotiators and establish appropriate procedures" (Art. 20-08, *Future Negotiations*).

(i) Agreement Between New Zealand and Singapore on a Closer Economic Partnership

16. Under Part 8 (*Government Procurement*) of the Agreement, the Parties "agree to establish a single New Zealand/Singapore government procurement market [...]". This shall be achieved by, *inter alia*, implementing the APEC Non-Binding Principles on Government Procurement. Further, relevant provisions include: scope and coverage (thresholds, schedules of commitments); definitions; general principles (such as non-discrimination and value for money); valuation of contracts; rules of origin; procurement procedures; prohibition of offsets; procedures to be followed in the event of a dispute between a supplier and the procuring government body; exemptions; and administration and review.

⁷ Signatories to the NAFTA are Canada, Mexico and the United States.

⁸ Members of CARICOM are Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia,, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

(j) Free Trade Agreement Between EFTA and Mexico

17. Provisions contained Chapter V (*Government Procurement*), Articles 56 to 68, of the FTA between EFTA and Mexico include: coverage (such as covered entities; goods, services or construction services; thresholds, examples of procurement methods); national treatment and non-discrimination; rules of origin; denial of benefits; prohibition of offsets; procurement procedures, including notification, consultation and dispute settlement; procedures for bid challenge; provision of information; technical cooperation; exceptions; privatisation of entities; further negotiations and "other provisions".

(k) Free Trade Agreement between the European Communities and Mexico

18. Provisions contained in Title III (*Government Procurement*), Articles 25 to 38, of the FTA between the EC and Mexico include: coverage (such as covered entities; goods, services or construction services; thresholds, examples of procurement methods); national treatment and non-discrimination; rules of origin; prohibition of offsets; procurement procedures, including notification, consultations and dispute settlement; procedures for bid challenge; provision of information; technical cooperation; information technology; exceptions; rectifications or modifications; privatisation of entities; further negotiations; and final provisions.

(l) Free Trade Agreement between Jordan and the United States

19. The Agreement establishing a free trade area between Jordan and the United States stipulates that "Pursuant to Jordan's July 12, 2000, application for accession to the WTO Agreement on Government Procurement, the Parties shall enter into negotiations with regard to Jordan's accession to that Agreement" (Art. 9, *Government Procurement*).

(m) Convention Establishing the European Free Trade Association (consolidated version)⁹ (EFTA)

20. Under the EFTA Convention, Member States "reaffirm their rights and obligations under the WTO Agreement on Government Procurement (GPA). Under this Convention, the Member States broaden the scope of their commitments under the WTO Government Procurement Agreement with an aim to pursue liberalisation in public procurement markets in accordance with Annex R" (Art. 37). The same provision further calls on Members to "secure non-discriminative, transparent and reciprocal access to their respective public procurement markets and shall ensure open and effective competition based on equal treatment". Provisions and Appendices contained in Annex R relate, *inter alia*, to the scope of the EFTA procurement regime, definitional and competition issues, activities covered and excluded, establishment of thresholds, national treatment and non-discrimination, procurement and challenges procedures, information exchange and institutional arrangements.

(n) Free Trade Agreement Between Chile and Costa Rica

21. Part six, Chapter 16 (*Government Procurement*) of the Free Trade Agreement between Chile and Costa Rica includes provisions relating to: definitions; objective (establish a "single market for government procurement"), scope (ensuring equal conditions, non-discrimination and transparency in government procurement processes) and coverage (definition of entities, identification of goods and services concerned); general rights and obligations (relating, *inter alia*, to the promotion of competition, transparency, non-discrimination, the quality-price ratio principle, simplicity and publicity in the application of measures, etc.); national treatment and non-discrimination; transparency and the provision of information; technical specification; denial of benefits; appeal

⁹ The EFTA comprises Iceland, Liechtenstein, Norway and Switzerland.

procedures for affected suppliers; modifications to coverage; privatization; information technology; Committee on government procurement; cooperation and technical assistance; relation to other chapters of the FTA.

(o) Agreement Between Japan and Singapore for a New-Age Economic Partnership

22. Article 101 (*Scope of Chapter 11*), contained in Chapter 11 (*Government Procurement*), stipulates, *inter alia*, that "[p]aragraph 2 of Article I, and Article II to Article XXIII of the Agreement on Government Procurement in Annex 4 to the WTO Agreement [...] shall apply mutatis mutandis to procurement of goods and services specified in Annex VIIA, by entities specified in Annex VIIB". Article 102 provide for exchange of information on government procurement between the Parties.

(p) Free Trade Agreement Between EFTA and Singapore

23. In Chapter VI (*Government Procurement*) of the FTA between EFTA and Singapore, the Parties stipulate that their rights and obligations in respect of public procurement "shall be governed by the WTO Agreement on Government Procurement" (Art. 51:1). They further agree to cooperate "with the aim of increasing the understanding of their respective procurement systems, and achieving further liberalisation and mutual opening up of public procurement markets" (Art. 51:2). Other provisions relate to the exchange of information through "contact points" (Art. 52); whenever a Party "grants additional benefits with regard to the access to its public procurement markets, it shall agree to enter into negotiations with a view to extending these benefits to another Party on a reciprocal basis." (Art. 53).

ANNEX

Economic Integration Agreement Notified Under GATS Article V¹⁰

Economic Integration Agreement	Entry into force	Document reference	Relevant Provision(s)
EC Treaty of Rome	1 January 1958	WT/REG39	Directives 93/37/EEC; 93/36/EEC; and 93/38/EEC.
Australia – New Zealand (ANZCERTA)	1 January 1989	WT/REG40	Art. 11 + 1991 Government Procurement Agreement
EEA	1 January 1994	WT/REG138	Art. 65 + Annex XVI
EC – Hungary	1 February 1994	WT/REG50	Art. 66
EC – Poland	1 February 1994	WT/REG51	Art. 67
NAFTA	1 April 1994	WT/REG4	Part 4, Chapter 10
EC – Bulgaria	1 February 1995	WT/REG1	Art. 68
EC – Czech Republic	1 February 1995	WT/REG18	Art. 68
EC – Romania	1 February 1995	WT/REG2	Art. 68
EC – Slovak Republic	1 February 1995	WT/REG18	Art. 68
CARICOM	1 July 1997	S/C/N/229	Art. 239
Canada – Chile	5 July 1997	WT/REG38	- -
EC – Estonia	1 February 1998	WT/REG144	Art. 67
EC – Lithuania	1 February 1998	WT/REG145	Art. 68
EC – Latvia	1 February 1999	WT/REG143	Art. 68
EC – Slovenia	1 February 1999	WT/REG146	Art. 69
Chile – Mexico	1 August 1999	WT/REG125	Art. 20-08
New Zealand – Singapore	1 January 2001	WT/REG127	Part 8, Art. 46-58
EFTA – Mexico	1 January 2001	WT/REG126	Chapter III, Art. 56-68 + Annexes XII-XVII
EC – Mexico	1 March 2001	WT/REG109	Title III, Art. 25-38
US – Jordan	17 December 2001	WT/REG134	Art. 9
EFTA (cons. version)	1 June 2002	S/C/N/207	Art. 37 + Annex R
Chile – Costa Rica	15 February 2002	WT/REG136	Part six, Chapter 16
Japan – Singapore	30 November 2002	WT/REG140	Chapter 11, Art. 101-102
EFTA – Singapore	1 January 2003	WT/REG148	Part VI, Art. 51-53

¹⁰ As of June 2003.

Working Party on GATS Rules

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UPDATE TO THE ANNUAL REPORT OF 2002 OF THE WORKING PARTY ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2003)

1. Since its last annual report¹, the Working Party on GATS Rules held 3 formal meetings.² In each meeting, the Working Party considered the three negotiating mandates it is entrusted with: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV). It also held various informal meetings on the three items.

I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS ARTICLE X

2. Members continued their examination of various themes as they had emerged from previous meetings and submissions. Issues under examination included desirability and feasibility of an emergency safeguard mechanism (ESM), the interpretation of the GATS Article X mandate, modal application, safeguard-type provisions contained in economic integration agreements and in WTO instruments, as well as S&D. Members also discussed possible common elements of various types of ESM, based on the Synopsis³ and on the Overview of the Synopsis,⁴ and process-related issues such as transparency, notification, consultation, surveillance provisions and expedited dispute settlement proceedings.

3. Many delegations called for the Working Party to discuss actual or hypothetical situations where a safeguard action might be needed, and which form action could take, as a prerequisite for further progress in the negotiations. One such example was presented at the February meeting by Thailand, on behalf of the ASEAN Members.

4. As requested by Members the Secretariat prepared three background documents: (i) a *Compilation of References Made by Delegations to Safeguard-Type Provisions*⁵; (ii) a note on *Core Elements Contained in Members' Proposals – Overview of the Synopsis*⁶; and (iii) a note on *Safeguard-Type Provisions in Economic Integration Agreements*⁷.

5. On 14 March 2003, the former Chairperson of the Working Party, Mr. Thomas Chan, circulated under his responsibility a Report on Negotiations on Emergency Safeguard Measures⁸, as mandated in the work programme on ESM adopted on 22 July 2002.⁹ Delegations had a first exchange of views on this Report during an informal meeting held on 20 April. At the formal meeting

¹ S/WPGR/8, 5 December 2002.

² Meetings of 3 December 2002, 25 February 2003 and 13-14 May 2003..

³ JOB(01)/122 + Add.1.

⁴ JOB(02)/200 and --/Rev.1.

⁵ JOB(03)/20.

⁶ JOB(02)/200 and --/Rev.1.

⁷ S/WPGR/W/4/Add.1.

⁸ S/WPGR/9.

⁹ S/WPGR/7.

of 13-14 May, delegations gave further consideration to the Report. At the same meeting, the European Communities introduced a written contribution on *Scope for Emergency Safeguard Measures (ESM) in the GATS*.¹⁰

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS ARTICLE XIII

6. Discussions continued on the Communication from the European Communities and their Member States on government procurement of services.¹¹ In May, the European Communities introduced a new contribution proposing a legal framework for negotiations on government procurement in services.¹²

7. Members stressed the need to avoid duplication between the WPGR and the Working Group on Transparency in Government Procurement (WGTGP). The WPGR should be aware of the relevant issues raised in the WGTGP, and information exchanges between the two Groups should be allowed for on a flexible basis.

8. At the same time, several delegations maintained the view that Article XIII excludes from the negotiations the obligations of most-favoured-nation treatment, market access and national treatment.

9. Mr. Santiago Urbina, Chairperson of the Working Party, informed that, as mandated in the work programme on government procurement adopted on 22 July 2002, he would submit a note by 30 June 2003 under his responsibility to report on the progress of work.¹³

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

10. The delegation of Poland circulated an informal contribution containing thoughts on the definition of subsidies in services.¹⁴ Two main issues emerged from the discussion: (i) the scope of a generic definition of subsidies in the services context, including the relevance of the definition contained in the SCM Agreement; and (ii) the meaning of the concept of trade-distortive or "actionable" subsidies. The need for more information on services subsidies from Members as well as other sources such as other intergovernmental organizations was also stressed by some delegations.

11. On 17 March 2003, the Chairperson circulated a revised *Checklist on Subsidies*,¹⁵ as had been agreed at the February meeting.¹⁶ This new revision, prepared again under the responsibility of the Chairperson, includes two changes. First, the question of categorization of subsidies has been explicitly spelled out under the first point, i.e. definition of a subsidy in trade in services. Second, a new issue has been added, relating to concepts relevant to what should be regarded as trade-distortive subsidies. The *Checklist* is without prejudice to the position of any Member.

12. Mr. Santiago Urbina, Chairperson of the Working Party, informed that, as mandated in the work programme on subsidies adopted on 22 July 2002, he would submit a note by 30 June 2003 under his responsibility to report on the progress of work.

¹⁰ S/WPGR/W/41.

¹¹ S/WPGR/W/39.

¹² S/WPGR/W/42.

¹³ S/WPGR/7, paragraph 5.

¹⁴ JOB(02)207.

¹⁵ JOB(03)57.

¹⁶ The first version of the Checklist had been circulated as Job No. 4519, 17 July 2000.

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Government Procurement of Services

The following communication is circulated at the request of the European Communities to Members of the Working Party on GATS Rules.

1. Within the framework of the negotiations under the mandate given by GATS Article XIII:2, the European Communities (hereafter "the EC") submitted in July 2002 a contribution with proposals on a framework for rules for government procurement of services that could be developed, and on the benefits that could be drawn from them. WTO Members have discussed this contribution and raised questions, which helped clarify their concerns and interests. The EC is hereby putting forward a new contribution aiming at suggesting practical steps and putting forward concrete proposals for the negotiations under the mandate of GATS Article XIII:2.

I. OBJECTIVES OF A FRAMEWORK FOR GOVERNMENT PROCUREMENT OF SERVICES UNDER THE GATS

2. The objective pursued is to offer a multilateral framework for rules for government procurement of services providing WTO Members with the possibility to open their Government procurement markets with maximum flexibility to modulate their level of openness to their development needs and their national policy objectives. The possibility to open up government procurement opportunities progressively and sector by sector would give WTO Members time to establish the relevant regulatory framework where necessary. This would also mean that a Member taking no commitment as regards access to, and national treatment in respect of, government procurement opportunities, would actually have no additional obligation in these regards as compared to the present situation.

3. In other words, the system proposed would offer the possibility for Members to open up their Government procurement opportunities if they so wish, sector by sector, partially or fully, now or at a later stage. WTO Members would open up government procurement opportunities in the sectors where they would most benefit from international services, at their pace and to the extent they wish to open up (e.g. the possibility to open up only certain activities, above certain thresholds, for selected procuring entities, and with scheduled limitations to National Treatment).

4. Procedural rules agreed multilaterally shall give assurance that access to procurement opportunities will be effective. The binding of such access will give legal certainty to service providers. The proposed framework would provide supplementary access to foreign government procurement opportunities, and would improve tender conditions where such access already exists by

introducing more transparency and certainty regarding applicable rules, and by cutting down discrimination.

II. SCOPE AND FORM OF THE AGREEMENT

5. WTO Members could approve the text of an Annex to the GATS, that would specify the conditions under which GATS would apply to Government procurement of services. GATS Article XIII could be amended to refer to that Annex.

6. “**Government procurement of services**” for the purpose of this “Annex to the GATS” should cover procurement of services by any governmental agency or body (see paragraph on procuring entities in part III. A. below). It should also cover procurement involving a combination of services and goods when the latter are necessary for the provision of the service considered and their procurement cannot be done separately, and presupposing that the value of the service is greater than the value of the goods.

III. MODALITIES FOR THE SCHEDULING OF COMMITMENTS REGARDING GOVERNMENT PROCUREMENT OF SERVICES (ACCESS TO OPPORTUNITIES TO BID AND NATIONAL TREATMENT), AND FOR THE APPLICATION OF THE MOST-FAVOURLED-NATION PRINCIPLE.

A. GOVERNMENT PROCUREMENT COMMITMENTS

7. The EC suggests that a 4th specific column (“Government procurement” column) should be added to the existing three of the GATS Schedules of commitments of WTO Members (Article XVI, Article XVII and Article XVIII columns). WTO Members would indicate in that column, for each sector and each mode of supply, whether – and if so, which – specific restrictions apply to Government procurement, that would limit bidding opportunities for foreign service providers or impinge on the National Treatment principle.

8. For instance, **thresholds** above which tenders would fall under the scope of GATS, would be indicated in Members’ schedules of commitments in the Government procurement column, for each sector where Government procurement is opened to international competition.

9. Here also would be listed restrictions on the **procuring entities** to be covered by commitments. GATS Article I:3 provides that for the purposes of this Agreement, “measures by Members” means measures taken by central, regional or local governments and authorities, and by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. All these entities are therefore a priori covered and any exclusion of some of them for some specific sectors would have to be explicitly indicated in Members’ Schedules.

10. **Price preferences** would also have to be indicated in Members’ schedules of commitments in the Government procurement column, for each sector where Government procurement is opened to international competition.

11. These commitments for Government procurement would have to be read in conjunction (i.e. cumulatively) with Members’ existing Market Access and National Treatment commitments for the relevant sector (including horizontal commitments – or limitations).

12. An “**Unbound**” in the Government procurement column for a specific sector would indicate that the WTO Member concerned has made no commitment to provide foreign suppliers with opportunities to bid, nor made any National Treatment commitment for Government Procurement of Services.

B. MOST-FAVOURED-NATION TREATMENT

1. Application of the MFN principle – Built-in exemption for GPA (*Agreement on Government Procurement*) obligations

13. The EC suggests that the “Annex to the GATS on Government Procurement of Services” provide that the Most-Favoured-Nation treatment should be applied to Government procurement, without prejudice to the obligations and rights under the Agreement on Government Procurement. This means that when a GPA-signatory accords to a WTO-Member in the framework of the GPA regime a more favourable treatment, this treatment would not have to be accorded on an MFN-basis to other WTO Members. Specific provisions would organise appropriate interface between the GPA and the “Annex to the GATS on Government Procurement of Services”.

2. MFN Exemptions

14. At the time when the GATS entered into force, WTO Members had the possibility to list MFN exemptions. GATS Article XIII:1 specifically provides that Article II on MFN does not apply to Government procurement. Since the agreement on procurement that will result from GATS Article XIII:2 negotiations should extend the application of MFN to procurement, consistency would require that this extension should be accompanied by the possibility to schedule MFN exemptions.

IV. PROCEDURAL RULES TO BE APPLIED

15. The EC, with its experience of the EC Single Market and of the GPA, is acutely aware that MFN and national treatment commitments are necessary but would not be sufficient to ensure in practice equal treatment and non-discrimination in the area of government procurement. In order to ensure effective market opening, procedural rules (on transparency, bidding periods etc.) have to be developed. This is why, at the time of the Uruguay Round, the EC and other WTO Members supported the decision that market access, national treatment and MFN obligations should not apply to government procurement until appropriate procedural rules are developed, and that the GATS should provide WTO Members with a mandate to negotiate these procedural rules multilaterally. The GATS therefore provides on the one hand in its Article XIII:1 that laws, regulations and requirements governing government procurement of services are exempted from the disciplines contained in GATS Articles II (Most-Favoured-Nation Treatment), XVI (Market Access) and XVII (National Treatment)¹, and on the other hand in its Article XIII:2 that WTO Members have a mandate to negotiate multilaterally on Government procurement².

16. In order to avoid duplication of work with the Working Group on Transparency in Government Procurement, the EC suggests that the “Annex to the GATS on Government Procurement of Services” to be negotiated refers to the future Agreement on Transparency and states that the provisions of that future Agreement will apply to Government procurement of services under the GATS.

¹ It is to be underlined that GATS Articles other than Articles II, XVI and XVII, do apply to Government procurement, since the exclusion provided for in GATS Article XIII:1 does not extend to them.

² Some WTO Members have tried to argue that the mandate of GATS Article XIII:2 excludes a priori discussions on market access. GATS Article XIII:2 however, does not provide for any exclusion: it provides for “multilateral negotiations on Government procurement”, without excluding any specific aspect from the negotiations. Obviously, this mandate was meant to negotiate first and foremost procurement rules and modalities for the binding of opportunities to bid and of non-discrimination commitments that would enable GATS principles to apply appropriately to Government procurement. GATS Article XIII:2 also indicates that these negotiations should be done “under the GATS Agreement”, i.e. not in other frameworks.

17. For information purposes, WTO Members will find in the Annex to this submission a reference to the elements that have been identified in the Transparency Working Group as the ones to be covered in a future Transparency Agreement.

18. The EC would like to invite Members to discuss procedural rules that they think have to be implemented to ensure the application of these transparency principles and the effectiveness of future GATS obligations regarding opportunities to bid, national treatment and MFN treatment.

V. ADDITIONAL PROVISIONS

19. One should note that the provisions of GATS, notably (but not only) GATS Article III on Transparency covering relevant measures of general application, GATS Article VI on Domestic Regulation (in particular as regards domestic review), GATS Article VII on Recognition, GATS Article XII on Restrictions to safeguard the Balance of Payment, GATS Article XXIII on Dispute Settlement and Enforcement, do apply to Government procurement of services.

ANNEX

Reference for Information, on the Elements identified by the Working Group on Transparency in Government Procurement, that would apply to Government Procurement of Services under the GATS.

The Working Group on Transparency in Government Procurement (WGTGP) has developed the elements to be included in a future Agreement on Transparency in Government Procurement based in the informal note by the Chairman: "List of issues raised and points made" (JOB(99)/6782) dated 12 November 1999.

The latest state of discussion on these issues is contained in the Secretariat's notes of 23 May 2002 (WT/WGTGP/W/32) and 3 October 2002 (WT/WGTGP/W/33).

Working Party on GATS Rules

**SAFEGUARD-TYPE PROVISIONS IN
ECONOMIC INTEGRATION AGREEMENTS**

Note by the Secretariat²

Corrigendum

1. The last two paragraphs on page 13 (starting with "(a) shall ensure that ..." and "(b) shall avoid ...") should be deleted.

¹ In English only.

² This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES**

Scope for Emergency Safeguard Measures (ESM) in the GATS

The following communication is circulated at the request of the European Communities and their Member States, to Members of the Working Party on GATS Rules.

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This submission is made in accordance with point 3, (a) and (b), of the work program on ESM adopted by the WPGR on 22 July 2002. It summarises the views of the European Communities on this issue.

I. ARTICLE X OF GATS EXPRESSLY REFERS TO *EMERGENCY SAFEGUARD MEASURES*

1. A safeguard measure that is in conformity with the wording and spirit of Article X of GATS needs to be based on a situation of emergency, which is characterised by its extraordinary nature and intended to deal with unforeseen developments. Such characteristics are not met by the mere increase in trade and competition that is inherent in any liberalisation commitment.

2. The mandate set out in Article X of GATS was not intended to allow Members to introduce new general exceptions into the GATS, to carry out structural adjustments or to protect infant industries. The GATS already has provisions dealing with general exceptions, which are set out in articles XIV and XIV bis of GATS. As regards structural problems, which by their very nature are not extraordinary, and in particular the protection of infant industries, the bottom-up architecture of the GATS affords Members enough flexibility to fully take them into account when undertaking commitments. Also the Agreement provides for a procedure to deal with situations whereby Members decide to modify or withdraw in whole or in part their commitments (Article XXI of GATS).

3. Furthermore, situations of emergency related to capital movements that can seriously compromise the balance of payments or the monetary policy of Members are already contemplated by the GATS. The Agreement provides in its Article XII a remedy for serious balance-of-payments and external financial difficulties or threat thereof. As regards capital movements causing serious difficulties for monetary policy, no specific remedy is needed since, by application of the annex on financial services, the GATS does not cover the activities conducted by a central bank or monetary authority or any other public entity in pursuit of monetary or exchange rate policies.

4. It is therefore not surprising that no concrete example of emergency situation has yet been provided by the experience gathered in the application of GATS¹ or identified on a hypothetical basis by the different written contributions submitted to the WPGR².

II. ARTICLE X CLEARLY STIPULATES THAT NEGOTIATIONS WILL ADDRESS THE QUESTION OF ESM

5. At the time of concluding the GATS negotiations, notwithstanding the existence of a precedent in the goods area, ESM in services could not be agreed since the question of their feasibility and desirability was not solved. This explains the language used by Article X³.

6. The contributions submitted to the WPGR, which, in the absence of concrete examples of emergency situations, are based on abstract considerations, show that this question remains still unresolved. Most of them, whether they directly refer to feasibility and desirability or are made without prejudice to that question, have identified a number of issues that show the difficulties for the application of ESM in the GATS (legal certainty of commitments, modal application, protection of acquired rights, applicability of the principle of non-discrimination,...).

7. From a modal application perspective, the goods model is not appropriate for services, since trade in goods is equivalent only to cross-border supply of services (mode 1). A very extensive interpretation of the analogy argument might lead to cover trade in services in modes 2 and 4, but in no case the establishment under mode 3. In all circumstances, the application of ESM to any of the four modes of supply as well as the inter-modal relations raise important concerns already identified by the European Communities⁴ and which so far have not been fully addressed by the WPGR.

III. A POSITIVE CONCLUSION ON THE QUESTION OF ESM PRESUPPOSES THEREFORE

- (a) The identification, in case they exist, of concrete examples of emergency situations in the services area that are not already addressed by GATS provisions, and
- (b) The demonstration that an ESM would be feasible and desirable to deal with the identified situations (i.e. that the difficulties and concerns that have been raised in respect of ESM can be overcome in practice).

¹ The second paragraph of Article X has never been enacted.
² Listed in JOB(02)/200.
³ S/WPGR/W/1.
⁴ S/WPGR/W/38.

Working Party on GATS Rules

SAFEGUARD-TYPE PROVISIONS IN ECONOMIC INTEGRATION AGREEMENTS

Note by the Secretariat¹

Addendum

I. INTRODUCTION

1. At its meeting on 3 December 2002, the Secretariat was asked to undertake a compilation of safeguard-type provisions contained in economic integration agreements, building on previous work. This Note takes into account the agreements that have been notified to the WTO under GATS Article V (see Annex).

2. The Note builds on, and complements, previous notes by the Secretariat contained in S/WPGR/W/2 and S/WPGR/W/4. As in S/WPGR/W/4, provisions relating to balance-of-payments measures under GATS Article XII and exceptions to general obligations in the sense of GATS Article XIV have been left aside. The provisions reproduced below focus on sector-specific or industry-specific safeguard provisions comparable to GATT Article XIX. This Note does not purport in any way to prejudge the nature or qualification of the measures referred to as "emergency safeguard measures" within the meaning of GATS Article X.

II. RELEVANT PROVISIONS

**A. TREATY ESTABLISHING THE EUROPEAN COMMUNITY, CONSOLIDATED VERSION
(1 JANUARY 1958)**

Article 134 (ex Article 115)

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

B. THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) (1 JANUARY 1994)

Annex 1413.6 – Section B - Payments System Protection

1. If the sum of the authorized capital of foreign commercial bank affiliates (as such term is defined in the Schedule of Mexico to Annex VII), measured as a percentage of the aggregate capital of all commercial banks in Mexico, reaches 25 percent, Mexico may request consultations with the other Parties on the potential adverse effects arising from the presence of commercial banks of the other Parties in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation. The consultations shall be completed expeditiously.

2. In considering the potential adverse effects, the Parties shall take into account:
- (a) the threat that the Mexican payments system may be controlled by non-Mexican persons;
 - (b) the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange-rate policy effectively; and
 - (c) the adequacy of this Chapter in protecting the Mexican payments system.

3. If no consensus is reached on the matters referred to in paragraph 1, any Party may request the establishment of an arbitral panel under Article 1414 or Article 2008 (Request for an Arbitral Panel). The panel proceedings shall be conducted in accordance with the Model Rules of Procedure established under Article 2012 (Rules of Procedure). The Panel shall present its determination within 60 days after the last panelist is selected or such other period as the Parties to the proceeding may agree. Article 2018 (Implementation of Final Report) and 2019 (Non-Implementation -- Suspension of Benefits) shall not apply in such proceedings.

C. THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA (1 JANUARY 1994)

Article 112

1. If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Contracting Party may unilaterally take appropriate measures under the conditions and procedures laid down in Article 113.

2. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement.

3. The safeguard measures shall apply with regard to all Contracting Parties.

Article 113

1. A Contracting Party which is considering taking safeguard measures under Article 112 shall, without delay, notify the other Contracting Parties through the EEA Joint Committee and shall provide all relevant information.

2. The Contracting Parties shall immediately enter into consultations in the EEA Joint Committee with a view to finding a commonly acceptable solution.

3. The Contracting Party concerned may not take safeguard measures until one month has elapsed after the date of notification under paragraph 1, unless the consultation procedure under paragraph 2 has been concluded before the expiration of the stated time limit. When exceptional circumstances requiring immediate action exclude prior examination, the Contracting Party concerned may apply forthwith the protective measures strictly necessary to remedy the situation.

For the Community, the safeguard measures shall be taken by the EC Commission.

4. The Contracting Party concerned shall, without delay, notify the measures taken to the EEA Joint Committee and shall provide all relevant information.

5. The safeguard measures taken shall be the subject of consultations in the EEA Joint Committee every three months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application.

Each Contracting Party may at any time request the EEA Joint Committee to review such measures.

Article 114

1. If a safeguard measure taken by a Contracting Party creates an imbalance between the rights and obligations under this Agreement, any other Contracting Party may towards that Contracting Party take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of the EEA.

2. The procedure under Article 113 shall apply.

D. CONVENTION ESTABLISHING THE EUROPEAN FREE TRADE ASSOCIATION, CONSOLIDATED VERSION (1 JUNE 2002)

Article 40

1. If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Member State may unilaterally take appropriate measures under the conditions and procedures set out in Article 41.

2. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Convention.

3. The safeguard measures shall apply with regard to all Member States.

4. This Article is without prejudice to the application of specific safeguard provisions set out in the Annexes to this Convention or of special safeguard measures in accordance with Article 5 of the WTO Agreement on Agriculture.

Article 41

1. A Member State which is considering taking safeguard measures under Article 40, shall, without delay, notify the other Member States through the Council and shall provide all relevant information.

2. The Member States shall immediately enter into consultations in the Council with a view to finding a commonly acceptable solution.

3. The Member State concerned may not take safeguard measures until one month has elapsed after the date of notification under paragraph 1, unless the consultation procedure under paragraph 2 has been concluded before the expiration of the stated time limit. When exceptional circumstances requiring immediate action exclude prior examination, the Member State concerned may apply forthwith the protective measures strictly necessary to remedy the situation.

4. The Member State concerned shall, without delay, notify the measures taken to the Council and shall provide all relevant information.

5. The safeguard measures taken shall be the subject of consultations in the Council every three months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application.

Each Member State may at any time request the Council to review such measures.

E. THE EUROPE AGREEMENTS

1. Europe Agreement between the European Communities and Bulgaria (1 February 1995)

Article 51

During the first five years following the date of entry into force of this Agreement, or for the sectors referred to in Annex XVb and XVc during the transitional period referred to in Article 7, Bulgaria may introduce measures which derogate from the provisions of this chapter as regards the establishment of Community companies and nationals if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Bulgaria, or
- face the elimination or a drastic reduction of the total market share held by Bulgarian companies or nationals in a given sector or industry in Bulgaria, or
- are newly emerging industries in Bulgaria.

Such measures:

- (i) shall cease to apply at the latest two years after the expiration of the fifth year following the date of entry into force of this Agreement; and
- (ii) shall be reasonable and necessary in order to remedy the situation; and
- (iii) shall only relate to establishments in Bulgaria to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in Bulgaria at the time of introduction of a given measure compared to Bulgarian companies or nationals.

The Association Council may exceptionally, upon request by Bulgaria, and if the necessity arises, decide to prolong the period referred to in indent (i) for a given sector for a limited period of time not exceeding the duration of the transitional period referred to in Article 7.

While devising and applying such measures, Bulgaria shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, Bulgaria shall consult the Association Council and shall not put them into effect before a one month period following the notification to the Association Council of the concrete measures to be introduced by Bulgaria, except where the threat of irreparable damage requires the taking of urgent measures in which case Bulgaria shall consult the Association Council immediately after their introduction.

Upon the expiration of the fifth year following the entry into force of the Agreement, or for the sectors referred to in Annexes XVb and XVc upon expiration of the transitional period referred to in Article 7, Bulgaria may introduce such measures only with the authorization of the Association Council and under conditions determined by the latter.

2. Europe Agreement between the European Communities and the Czech Republic (1 February 1995)

Article 51

During the first six years following the date of entry into force of this Agreement, or for the sectors referred to in Annexes XVIa and XVIb, during the transitional period referred to in Article 7, the Czech Republic may introduce measures which derogate from the provisions of this chapter as regards the establishment of Community companies and nationals if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in the Czech Republic, or
- face the elimination or a drastic reduction of the total market share held by Czech Republic companies or nationals in a given sector or industry in the Czech Republic, or
- are newly emerging industries in the Czech Republic.

Such measures:

- (i) shall cease to apply at the latest two years after the expiration of the sixth year following the date of entry into force of this Agreement or for the sectors included in Annex XVIa and in Annex XVIb upon the expiration of the transitional period referred to in Article 7; and
- (ii) shall be reasonable and necessary in order to remedy the situation; and
- (iii) shall only relate to establishment in the Czech Republic to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in the Czech Republic at the

time of introduction of a given measure compared to Czech Republic companies or nationals.

The Association Council may exceptionally, upon request of the Czech Republic, and if the necessity arises, decide to prolong the periods referred to in point (i) above for a given sector for a limited period of time.

While devising and applying such measures, the Czech Republic shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, the Czech Republic shall consult the Association Council and shall not put them into effect before a one-month period following the notification to the Association Council of the concrete measures to be introduced by the Czech Republic, except where the threat of irreparable damage requires the taking of urgent measures in which case the Czech Republic shall consult the Association Council immediately after their introduction.

Upon the expiration of the sixth year following the entry into force of this Agreement, or for the sectors included in Annexes XVIa and XVIIb upon expiration of the transitional period referred to in Article 7, the Czech Republic may introduce such measures only with the authorization of the Association Council and under conditions determined by the latter.

3. **European Communities – Estonia Europe Agreement (1 February 1998)**

Article 50

Up to the end of 1999, Estonia may introduce measures which derogate from the provisions of this Chapter as regards the establishment of Community companies and nationals if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Estonia, or
- face the elimination or a drastic reduction of the total market share held by Estonian companies or nationals in a given sector or industry in Estonia, or
- are newly emerging industries in Estonia.

Such measures:

- shall cease to apply at the latest on 31 December 1999,
- shall be reasonable and necessary in order to remedy the situation, and
- shall only relate to establishments in Estonia to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in Estonia at the time of introduction of a given measure compared with Estonian companies or nationals.

While devising and applying such measures, Estonia shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, Estonia shall consult the Association Council and shall not put them into effect before a one-month period following the notification of the Association Council of the concrete measures to be introduced by Estonia, except where the threat of irreparable damage requires the taking of urgent measures in which case Estonia shall consult the Association Council immediately after their introduction.

**4. Europe Agreement between the European Communities and Hungary
(1 February 1994)**

Article 50

During the first stage referred to in Article 6, or for the sectors included in Annexes XIIa and XIIb during the transitional period referred to in Article 6, Hungary may introduce measures which derogate from the provisions of this Chapter as regards the establishment of Community companies and nationals if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Hungary, or
- face the elimination or a drastic reduction of the total market share held by Hungarian companies or nationals in a given sector or industry in Hungary, or
- are newly emerging industries in Hungary.

Such measures:

- shall cease to apply at the latest two years after the expiration of the first stage referred to in Article 6, or for the sectors included in Annexes XIIa and XIIb upon the expiration of the transitional period referred to in Article 6, and
- shall be reasonable and necessary in order to remedy the situation, and
- shall only relate to establishments in Hungary to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in Hungary at the time of introduction of a given measure compared to Hungarian companies or nationals.

While devising and applying such measures, Hungary shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, Hungary shall consult the Association Council and shall not put them into effect before a one-month period following the notification to the Association Council of the concrete measures to be introduced by Hungary, except where the

threat of irreparable damage requires the taking of urgent measures in which case Hungary shall consult the Association Council immediately after their introduction.

Upon the expiration of the first stage referred to in Article 6, or for the sectors included in Annexes XIIa and XIIb upon expiration of the transitional period referred to in Article 6, Hungary may introduce such measures only with the authorization of the Association Council and under conditions determined by the latter.

5. Europe Agreement between the European Communities and Latvia (1 February 1999)

Article 51

During the transitional period referred to in Article 3, Latvia may introduce measures which derogate from the provisions of this Chapter as regards the establishment of Community companies and nationals if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Latvia, or
- face the elimination or a drastic reduction of the total market share held by Latvian companies or nationals in a given sector or industry in Latvia, or
- are newly emerging industries in Latvia.

Such measures:

- shall cease to apply at the latest upon the expiration of the transitional period referred to in Article 3, and
- shall be reasonable and necessary in order to remedy the situation, and
- shall only relate to establishments in Latvia to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in Latvia at the time of introduction of a given measure compared with Latvian companies or nationals.

While devising and applying such measures, Latvia shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, Latvia shall consult the Association Council and shall not put them into effect before a one-month period following the notification of the Association Council of the concrete measures to be introduced by Latvia, except where the threat of irreparable damage requires the taking of urgent measures in which case Latvia shall consult the Association Council immediately after their introduction.

Upon expiration of the transitional period referred to in Article 3, Latvia may introduce such measures only with the authorization of the Association Council and under conditions determined by the latter.

6. European Communities – Lithuania Europe Agreement (1 February 1998)

Article 51

During the transitional period referred to in Article 3, Lithuania may introduce measures which derogate from the provisions of this Chapter as regards the establishment of Community companies and nationals if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Lithuania, or
- face the elimination or a drastic reduction of the total market share held by Lithuanian companies or nationals in a given sector or industry in Lithuania, or
- are newly emerging industries in Lithuania.

Such measures:

- shall cease to apply at the latest on the expiration of the transitional period referred to in Article 3,
- shall be reasonable and necessary in order to remedy the situation, and
- shall only relate to establishments in Lithuania to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in Lithuania at the time of introduction of a given measure compared with Lithuanian companies or nationals.

While devising and applying such measures, Lithuania shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, Lithuania shall consult the Association Council and shall not put them into effect before a one-month period following the notification of the Association Council of the concrete measures to be introduced by Lithuania, except where the threat of irreparable damage requires the taking of urgent measures in which case Lithuania shall consult the Association Council immediately after their introduction.

On expiration of the transitional period referred to in Article 3, Lithuania may introduce such measures only with the authorisation of the Association Council and under conditions determined by the latter.

7. Europe Agreement between the EC and the Republic of Poland (1 February 1994)

Article 50

During the first stage referred to in Article 6 for the sectors included in Annexes XIIa and XIIb, or for the sectors included in Annexes XIIc and XIId during the transitional period referred to in Article 6, Poland may introduce measures which derogate from the provisions

of this chapter as regards the establishment of Community companies and nationals in certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Poland, or
- face the elimination or a drastic reduction of the total market share held by Polish companies or nationals in a given sector or industry in Poland, or
- are newly emerging industries in Poland.

Such measures:

- shall cease to apply at the latest two years after the expiration of the first stage referred to in Article 6 for the sectors included in Annexes XIIa and XIIb, or for the sectors included in Annexes XIIc and XIId upon the expiration of the transitional period referred to in Article 6, and
- shall be reasonable and necessary in order to remedy the situation, and
- shall only relate to establishments in Poland to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in Poland at the time of introduction of a given measure compared to Polish companies or nationals.

While devising and applying such measures, Poland shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, Poland shall consult the Association Council and shall not put them into effect before a one-month period following the notification to the Association Council of the concrete measures to be introduced by Poland, except where the threat of irreparable damage requires the taking of urgent measures in which case Poland shall consult the Association Council immediately after their introduction.

Upon the expiration of the first stage referred to in Article 6 for the sectors included in Annex XIIb, or for the sectors included in Annexes XIIc and XIId upon expiration of the transitional period referred to in Article 6, Poland may introduce such measures only with the authorization of the Association Council and under conditions determined by the latter.

8. Europe Agreement between the European Communities and Romania (1 February 1995)

Article 51

During the first five years following the date of entry into force of the Agreement, Romania may introduce measures which derogate from the provisions of this Chapter as regards the establishment of Community companies and nationals in certain industries:

- are undergoing restructuring, or

- are facing serious difficulties, particularly where these entail serious social problems in Romania, or
- face the elimination or a drastic reduction of the total market share held by Romanian companies or nationals in a given sector or industry in Romania, or
- are newly emerging industries in Romania.

Such measures:

- (i) shall cease to apply at the latest two years after the expiration of the fifth year following the date of entry into force of this Agreement; and
- (ii) shall be reasonable and necessary in order to remedy the situation; and
- (iii) shall only relate to establishments in Romania to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in Romania at the time of introduction of a given measure compared to Romanian companies or nationals.

The Association Council may exceptionally, upon request by Romania, and if the necessity arises, decide to prolong the period referred to in indent (i) above for a given sector for a limited period of time not exceeding the duration of the transition period referred to in Article 7.

While devising and applying such measures, Romania shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, Romania shall consult the Association Council and shall not put them into effect before a one month period following the notification to the Association Council of the concrete measures to be introduced by Romania, except where the threat of irreparable damage requires the taking of urgent measures in which case Romania shall consult the Association Council immediately after their introduction.

Upon the expiration of the fifth year following the entry into force of the Agreement, Romania may introduce such measures only with the authorization of the Association Council and under conditions determined by the latter.

9. Europe Agreement between the EC and the Slovak Republic (1 February 1995)

Article 51

During the first six years following the date of entry into force of this Agreement, or for the sectors referred to in Annexes XVIa and XVIb, during the transitional period referred to in Article 7, the Slovak Republic may introduce measures which derogate from the provisions of this chapter as regards the establishment of Community companies and nationals if certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in the Slovak Republic, or

- face the elimination or a drastic reduction of the total market share held by Slovak Republic companies or nationals in a given sector or industry in the Slovak Republic, or
- are newly emerging industries in the Slovak Republic.

Such measures:

- (i) shall cease to apply at the latest two years after the expiration of the sixth year following the date of entry into force of this Agreement or for the sectors included in Annex XVIa and in Annex XVIIb upon the expiration of the transitional period referred to in Article 7; and
- (ii) shall be reasonable and necessary in order to remedy the situation; and
- (iii) shall only relate to establishment in the Slovak Republic to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals already established in the Slovak Republic at the time of introduction of a given measure compared to Slovak Republic companies or nationals.

The Association Council may exceptionally, upon request of the Slovak Republic, and if the necessity arises, decide to prolong the periods referred to in point (i) above for a given sector for a limited period of time.

While devising and applying such measures, the Slovak Republic shall grant whenever possible to Community companies and nationals a preferential treatment, and in no case a treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the introduction of these measures, the Slovak Republic shall consult the Association Council and shall not put them into effect before a one-month period following the notification to the Association Council of the concrete measures to be introduced by the Slovak Republic, except where the threat of irreparable damage requires the taking of urgent measures in which case the Slovak Republic shall consult the Association Council immediately after their introduction.

Upon the expiration of the sixth year following the entry into force of this Agreement, or for the sectors included in Annexes XVIa and XVIIb upon expiration of the transitional period referred to in Article 7, the Slovak Republic may introduce such measures only with the authorization of the Association Council and under conditions determined by the latter.

10. European Communities – Slovenia Europe Agreement (1 February 1999)

Article 52

During the first four years following the date of entry into force of this Agreement, or for the sectors referred to in Annex IX(a), during the transitional period referred to in Article 3, Slovenia may introduce measures which derogate from the provisions of this Chapter as regards the establishment of Community companies and nationals of certain industries:

- are undergoing restructuring, or
- are facing serious difficulties, particularly where these entail serious social problems in Slovenia, or

- face the elimination or a drastic reduction of the total market share held by Slovenian companies or nationals in a given sector or industry in Slovenia, or
- are newly emerging industries in Slovenia.

Such measures:

- (i) shall cease to apply at the latest two years after the expiry of the fourth year following the date of entry into force of this Agreement or, for the sectors included in Annex IX(a), upon the expiry of the transitional period referred to in Article 3, and
- (ii) shall be reasonable and necessary in order to remedy the situation, and
- (iii) shall relate only to establishments in Slovenia to be set up after the entry into force of such measures and shall not introduce discrimination concerning the activities of Community companies or nationals already established in Slovenia at the time of introduction of a given measure, by comparison with Slovenian companies or nationals.

The Association Council may exceptionally, at the request of Slovenia, and if the necessity arises, decide to prolong the periods referred to in (i) above for a given sector for a limited period of time.

While devising and applying such measures, Slovenia shall grant preferential treatment wherever possible to Community companies and nationals, and in no case treatment less favourable than that accorded to companies or nationals from any third country.

Prior to the adoption of these measures, Slovenia shall consult the Association Council and shall not put them into effect before a one month period has elapsed following the notification to the Association Council of the concrete measures to be introduced by Slovenia, except where the threat of irreparable damage requires the taking of urgent measures, in which case Slovenia shall consult the Association Council immediately after their adoption.

Upon the expiry of the fourth year following the entry into force of this Agreement or, for the sectors included in Annex IX(a), upon the expiry of the transitional period referred to in Article 3, Slovenia may introduce such measures only with the authorisation of the Association Council and under conditions determined by the latter.

- (a) shall ensure that the other Party is treated as favourably as any non-Party; and
 - (b) shall avoid unnecessary damage to the commercial, economic and financial interests of the other party.]
-

ANNEX

Economic Integration Agreement Notified Under GATS Article V²

RTA	Doc. No. /Source	Relevant Provisions
Canada-Chile	Canada Foreign Affairs website	--
Chile-Mexico	WT/REG125/1	--
EC Treaty of Rome	WT/REG39/1(Standard Format) Text of the Treaty from EU website	Art. 134 (ex 115)
EC-Bulgaria	WT/REG1/6	Art.51
EC-Czech	WT/REG18/6	Art.51
EC- Estonia	WT/REG144/1	Art. 50
EC- Hungary	EU OJ L347 31 Dec. 93 (EU website)	Art. 50
EC-Latvia	REG143/1	Art. 51
EC-Lithuania	REG145/1	Art. 50
EC-Poland	EU OJ L348 31 Dec. 93 (website)	Art. 50
EC-Romania	WT/REG2/5	Art. 51
EC-Slovak	WT/REG18/7	Art. 51
EC-Slovenia	WT/REG146/1	Art. 52
EC-United Mexican States	WT/REG109/1	--
EEA	WT/REG138/1	Arts. 112-114
EFTA-Mexico	WT/REG126/1	--
Japan-Singapore	WT/REG140/1	--
New Zealand-Singapore	WT/REG127/1	--
NAFTA	NAFTA website	Annex 1413.6 Sec B
EFTA	EFTA website	Arts. 40 & 41
ANZCERTA	T/UR/GNS/W/47	--
Common Nordic Labour Market	Nordiske overenskomster af 6. marts 1982 om fælles nordisk arbejdsmarked, Retsinformation, Denmark (website)	--
EFTA- Singapore	EFTA website	--
Chile - Costa Rica	WT/REG/136/1	--
Cartagena Agreement	Andean Community website	--
US-Jordan	WT/REG134/1	--

² As of 31 December 2002.

Working Party on GATS Rules

- DRAFT -

REPORT OF THE WORKING PARTY ON GATS RULES TO THE COUNCIL FOR TRADE IN SERVICES (2002)

1. Since its last annual report¹, the Working Party on GATS Rules held five formal meetings.² In each meeting, the Working Party considered the three negotiating mandates it is entrusted with: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV).

2. On 22 July 2002, the Working Party adopted work programmes on emergency safeguard measures, subsidies and government procurement respectively, recognizing, *inter alia*, that these did not prejudice in any way the outcome of the negotiations under the respective agenda items, and that the undertaking of individual items of work, including the questions of desirability and feasibility, should be without prejudice to each other under each subject of negotiations (S/WPGR/7).

I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS ARTICLE X

3. At its meeting on 15 March 2002, the Working Party agreed to extend the negotiating mandate under Article X until 15 March 2004 (S/C/W/205/Rev.1). This proposal was adopted the same day by the Council for Trade in Services (S/L/102).

4. Moreover, on 22 July 2002, the Working Party adopted a work programme for organizing its work on emergency safeguard measures (S/WPGR/7). Main elements are, *inter alia*, to identify, elaborate and consolidate elements for an ESM, to address the questions of desirability and feasibility, to encourage Members to put forward submissions as early as possible before 31 December 2002, and to finalize the negotiations by 15 March 2004.

5. Various delegations presented formal and informal written contributions on specific aspects of a possible emergency safeguard mechanism (ESM) in services.³ During several formal and informal meetings, delegations continued their examination of issues related to a possible ESM, including the question of desirability and feasibility, the form of a possible ESM, the modal application of safeguard measures, the concept of special and differential treatment, and relevant procedural matters, such as notification, consultation and surveillance. Divergent views continued to be expressed on these issues.

¹ S/WPGR/6, 4 October 2001.

² Minutes of the meetings are contained in documents S/WPGR/M/35-39.

³ See *Desirability of a Safeguard Mechanism for Services: Promoting Liberalization of Trade in Services*, Communication from the United States (S/WPGR/W/37); *Modal Application of an Emergency Safeguard Measure*, Communication from the European Communities and Their Member States (S/WPGR/W/38); Contribution from Cuba, the Dominican Republic, Guatemala, Honduras and Nicaragua (JOB(01)/166); *Elements for a Possible "Core Mechanism" for Temporary Suspension or Modification of Commitments*, Communication from Australia (JOB(02)/8). See also JOB(02)/9 and JOB(02)/85.

II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS ARTICLE XIII

6. On 22 July 2002, the Working Party adopted a work programme on government procurement (S/WPGR/7). It provides, *inter alia*, for continued discussion on the basis of submissions from Members and materials available, and encourages Members to put forward submissions as early as possible before 31 March 2003.

7. In their discussions, Members examined a Communication from the European Communities and their Member States on government procurement of services (S/WPGR/W/39). The issue of the scope of the mandate contained in Article XIII was also raised.

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

8. On 22 July 2002, the Working Party adopted a work programme on subsidies (S/WPGR/7). It provides, *inter alia*, for continued discussion on subsidies on the basis of submissions from Members and materials available, and encourages Members to put forward submissions on subsidies as early as possible before 31 March 2003.

9. Discussions under this agenda item focused on the information exchange mandated in Article XV, and on the need for further information on services subsidies in general. Members gave consideration to a simplified questionnaire put forward by the delegations of Argentina, Chile and Hong Kong, China (JOB(02)/82). Moreover, the Secretariat circulated a further addendum to the overview of information on subsidies contained in Trade Policy Review reports (S/WPGR/W/25/Add.3).

Working Party on GATS Rules

SUBSIDIES FOR SERVICES SECTORS

INFORMATION CONTAINED IN WTO TRADE POLICY REVIEWS

Background Note by the Secretariat¹

Addendum

I. INTRODUCTION

1. At its meeting on 15 July 2002, the Working Party on GATS Rules requested the Secretariat to prepare an update of information contained in Trade Policy Reviews on subsidies in services. This document, which complements the information contained in S/WPGR/W/25, - Add. 1 and Add. 2, covers 24 Reviews carried out between January 2001 and July 2002 (WT/TPR/S/79 to 102). Relevant information has been added, in italics, in the overview table already contained in the previous documents (Table 1).

2. As has been noted on past occasions, TPR-based information does not necessarily provide a comprehensive picture of Members' trade policies in any narrowly defined area. The selection of countries for review follows a schedule established by the Trade Policy Review Body and, thus, is not driven by subsidy-related considerations. Moreover, to be as relevant as possible within the TPR's overall mandate, the individual reports seek to focus on a country's main policy challenges and constraints; among these, services subsidies do not appear to have figured prominently to date. While many reports contain some information on such subsidies, no attempts have been made to assess their wider economic implications or any (distortive) effects on trade.

3. Potentially relevant information for this Note was compiled and structured against the background of the definition contained in Article 1 of the Agreement on Subsidies and Countervailing Measures.² However, the terms "subsidy" and related concepts ("financial contribution", "state aid", "tax benefits", etc.) may not have been used in TPR reports with the same definition in mind.

4. As in the two preceding documents, the following types of assistance have not been included: (i) Exemptions from indirect taxes, in particular VAT, which are frequently intended to encourage consumption rather than production of a service; (ii) generally available support, for example in the context of regional development or research programmes; and (iii) company-internal cross-subsidization between monopoly and market-oriented activities in sectors such as telecommunications. By contrast, government financial interventions in the form of share purchases and similar equity transfers have been taken into account. This drew some criticism in the past as such actions might have been driven by macroeconomic concerns and no particular service sector

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² Accordingly, a subsidy is deemed to involve a financial contribution by a government or public body which confers a benefit. This covers assistance provided in the form of direct transfers of funds, including grants, loans and equity infusions; potential direct transfers of funds or liabilities, e.g. loan guarantees; government revenue foregone; supply of goods and services other than general infrastructure; purchase of goods; payments to funding mechanisms; or income and price support.

might have been targeted (S/WPGR/M/28). However, the Secretariat felt that it might be preferable, for the sake of consistency, to continue applying the above subsidy definition to the information contained in TPRs rather than introducing additional considerations case-by-case.

5. As discussed in the initial Secretariat Note, it may be difficult in individual cases to identify the ultimate beneficiaries of a subsidy, which may include the direct recipients, downstream industries, or individual consumers.³ Thus, given the infrastructural importance of many services sectors as providers of generally available inputs, it might be necessary to look beyond the subsidized sector, e.g., communication or transport, and take into consideration the users of the services rendered. Moreover, various qualifications have to be kept in mind when surveying subsidy-related information in TPR reports. For example, there is often no information as to whether the subsidy is discriminatory or not. In some instances, it may also be difficult to determine if the subsidy is targeted at a service or a good. Finally, one should not discard the possibility that some of the "subsidies" mentioned in TPR reports are in fact financial contributions to services provided "in the exercise of governmental authority" (GATS Article 1:3(b)).

II. POLICY PATTERNS

6. The information contained in the last 24 TPR reports largely confirms the sector pattern identified in the previous document: services-related subsidies are found mainly in three sectors, tourism, transport (in particular maritime transport) and banking services. However, it is not clear whether this is the result of governmental policy choices or whether it is simply due to the fact that TPR reports tend to focus on these sectors.

7. Concerning the measures used, the update confirms Members' strong reliance on tax incentives as compared to direct grants. This may reflect a preference in the political process for less obvious and, in terms of immediate disbursements, less "costly" forms of support. However, these observations are rather impressionistic in nature; for example, they may overrate developments in sectors that attracted particular policy attention at the time of reporting. As a general feature, it appears that areas such as financial services have been reviewed in more detail than, for instance, rail or road transport and professional services.

³ For example, the provision of basic health services may be ensured through: (a) cost-free treatment in state-owned hospitals; (b) the extension of public funds to commercially independent hospitals; or (c) government-sponsored premiums for basic health insurance. While possibly conferring the same benefits to the same target group, such measures might be defined, respectively, as the provision of infrastructural services, subsidies for the health sector, social transfers and/or subsidies for insurers.

Table 1: Financial assistance to individual services sectors - information from TPR Reports, July 2002

➤ MEASURE ➤ ▼ SECTOR ▼	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members
Tourism	Botswana Canada Israel Turkey Switzerland Liechtenstein <i>Costa Rica</i> <i>Czech Rep.</i> <i>Slovak Rep.</i>	Canada Nigeria ¹ Iceland India Jamaica South Africa Trinidad & Tobago Turkey <i>Grenada</i> <i>Mauritius</i> <i>Slovak Rep.</i> <i>India</i> <i>Barbados</i> <i>Uganda</i>	South Africa	Nigeria ¹ Argentina Egypt India Israel Jamaica Nicaragua Philippines Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay <i>Madagascar</i> <i>Ghana</i> <i>Macau, China</i> <i>Costa Rica</i> <i>Dominica</i> <i>Grenada</i> <i>St. Kitt & Nevis</i> <i>Saint Lucia</i> <i>St. Vincent & G.</i> <i>Gabon</i> <i>Cameroon</i> <i>Mauritius</i> <i>Slovak Rep.</i> <i>Malawi</i> <i>Haiti</i> <i>Barbados</i>	Argentina Egypt India Jamaica Kenya Nicaragua Peru Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay <i>Mozambique</i> <i>Ghana</i> <i>Macau, China</i> <i>Dominica</i> <i>Grenada</i> <i>S. Kitt & Nevis</i> <i>Saint Lucia</i> <i>St. Vincent & G.</i> <i>Malawi</i> <i>Haiti</i> <i>Barbados</i>	Guinea ¹ Lesotho Singapore <i>Brunei D.</i> <i>Mauritius</i> <i>Guatemala</i> <i>Slovenia</i> <i>Barbados</i>	47
Transportation general or unspecified	Canada Switzerland Liechtenstein <i>Czech Rep.</i>	Poland <i>Grenada</i>		Philippines Poland Korea RP <i>Madagascar</i> <i>Slovak Rep.</i> <i>Malawi</i>	<i>Mozambique</i> <i>Malawi</i>	<i>Brunei D.</i> <i>Czech Rep.</i> <i>Slovak Rep.</i>	13
Maritime transport	Australia India Solomon Islands ¹ <i>Czech Rep.</i> <i>Pakistan</i> <i>India</i>	India Thailand U.S. <i>India</i>		Egypt HK, China India Jamaica Peru Singapore Turkey U.S. Brazil Japan <i>Mauritius</i> <i>Mexico</i> <i>Barbados</i>	Egypt Jamaica Papua N.G. Peru Turkey <i>Pakistan</i> <i>Barbados</i>	<i>EC</i> Korea RP <i>U.S.</i> <i>Mauritius</i> <i>India</i>	22

➤ MEASURE ➤ ▼ SECTOR ▼	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members
Air transport		Papua N. G.	Hungary ¹	Egypt <i>Macau, China</i> <i>Mexico</i>	Hungary Papua N.G.	EC (F, I, P, G) <i>India</i> <i>EC</i>	7
Rail transport	India Kenya Switzerland <i>Czech Rep.</i>					<i>Slovak Rep.</i> ¹ <i>Malawi</i> <i>India</i> <i>EC</i>	7
Banking	Poland Brazil	Indonesia Thailand Poland EC (D) <i>Costa Rica</i> <i>Slovak Rep.</i>	HK, China Thailand Norway <i>Slovak Rep.</i> <i>Mexico</i> <i>India</i> ¹	Singapore Tanzania U.S. Poland Korea RP Switzerland <i>Ghana</i> <i>Macau, China</i> <i>Mauritius</i> <i>Malaysia</i> <i>India</i> <i>Barbados</i>	Trinidad & Tobago ¹ Jamaica Singapore Tanzania Thailand <i>Mozambique</i> <i>Saint Lucia</i> <i>St. Vincent & G.</i>	Korea RP <i>Brunei D.</i> <i>Czech Rep.</i> <i>Slovak Rep.</i> <i>India</i> <i>Barbados</i>	29
Other financial services		Indonesia Thailand	HK, China Thailand	Singapore U.S. Korea RP Brazil <i>Dominica</i> <i>St. Kitt & Nevis</i> <i>Barbados</i>	Singapore Thailand Trinidad & Tobago ¹ <i>Mozambique</i> <i>Saint Lucia</i> <i>St. Vincent & G.</i> <i>Barbados</i>		14
Software, info technology, communications, info processing	Canada	Jamaica		Canada Egypt India Korea RP <i>Grenada</i> <i>Slovak Rep.</i> <i>Pakistan</i>	India Jamaica Trinidad & Tobago ¹ Uruguay <i>Madagascar</i> <i>Grenada</i> <i>Pakistan</i> <i>India</i>	Korea RP <i>Pakistan</i>	11
Construction	U.S.	Argentina Poland		Argentina Bolivia Trinidad & Tobago Turkey Korea RP Poland <i>India</i>	<i>Mozambique</i> <i>Brunei D.</i> <i>India</i>		10
Recreation, culture & sports	Canada Korea RP Norway	Jamaica		Bolivia <i>Costa Rica</i>	Bolivia Israel		7

➤ MEASURE ➤ ▼ SECTOR ▼	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members
Telecom	Peru Singapore	India		India <i>St. Kitt & Nevis</i> ¹ <i>India</i>	Trinidad & Tobago ¹ <i>Mozambique</i> <i>Saint Lucia</i> <i>India</i>	<i>Mauritius</i> <i>India</i>	8
Audiovisual services	Argentina Canada EC			Canada Jamaica Tanzania Korea RP <i>Mexico</i>	Jamaica Tanzania		7
Wholesale & retail trade, distribution		Turkey		Trinidad & Tobago Korea RP	Tanzania		4
Real estate		India		Canada Japan	Trinidad & Tobago		4
Energy				<i>Madagascar</i> <i>Costa Rica</i> <i>Slovak Rep.</i> <i>Guatemala</i> <i>Haiti</i>		<i>Brunei D.</i> <i>Guatemala</i> <i>India</i>	7
Other & unspecified sectors	Australia	Australia Bangladesh Turkey <i>Czech Rep.</i> <i>Uganda</i>	Canada	Singapore Korea RP <i>Costa Rica</i> <i>Dominica</i> <i>St. Kitt & N.evis</i>	Hungary Singapore <i>Dominica</i> <i>Saint Lucia</i> <i>St. Vincent & G.</i>	<i>Brunei D.</i> <i>Czech Rep.</i> <i>Mauritius</i> <i>Slovak Rep.</i>	18
Number of cases	36	41	12	108	75	40	

- 1 Subsidy programme envisaged.
- 2 Counting EC Member States individually.

Source: WTO Secretariat.

ANNEX

Content of Individual Trade Policy Reviews**Mozambique – WT/TPR/S/79**p. 14, para. 28-29

Investments in new undertakings benefit from exemption of payment of customs duties on equipment goods classified in the "Customs Manual" in "K" Class. Imports involved with expansions, rehabilitation or modernization, or a new company formed through reorganization are not eligible for this exemption. These benefits exist only when the goods to be imported are not produced in Mozambique or, if produced, are not available at similar quality and price conditions.

Investments in provincial capitals in new undertakings or in the rehabilitation of existing ones due to obsolescence benefit from a reduction of 50% of Industrial Contribution Tax and Supplementary Tax rates, during the period of recovery of the investment made, but not exceeding ten fiscal years from the start of operation. In certain provinces (Niassa, Cabo Delgado, and Tete), the reduction is 80%. Outside of provincial capitals, the reduction is 65%. Special incentives exist for undertakings destroyed by acts of war. These incentives can be extended for certain periods at lower rates; these vary by province.

Table II.2 provides detailed information on the investment projects approved in 1999 and the projected employment involved.

Table II.2
Investment projects approved in 1999, and projected employment

Branch	Number of projects	Value (US\$)		Total		Employment	
		Foreign investment	Investment by nationals	Value (incl. loans)	Per cent	Number	Per cent
Agriculture and agri-business	55	10,192,614	7,485,629	238,871,039	31.13	8,040	38.54
Transport and communication	20	698,655	2,646,880	23,655,950	3.08	778	3.73
Tourism and hotels	20	8,426,400	7,143,115	103,180,866	13.45	1,406	6.74
Fishing and aquaculture	12	62,004,964	54,870,939	148,314,940	19.33	730	3.50
Industry	65	19,079,190	17,239,886	170,903,377	22.27	4,846	23.23
Construction and public works	21	8,179,780	3,215,563	34,796,513	4.53	2,161	10.36
Mineral resources	1	n.a.	10,250	582,324	0.08	16	0.08
Banking, insurance and leasing	5	310,056	7,017,185	8,087,393	0.05	75	0.36
Other	35	14,063,754	6,072,084	39,000,183	5.08	2,811	13.47
TOTAL	234	121,955,413	105,701,532	767,392,586	100.00	20,863	100.00

n.a. Not applicable.

Source: Investment Promotion Center (2000a), *Situação de Investimento Autorizado*, Maputo, January.

Madagascar – WT/TPR/S/80

P. 13, paras. 22-23

An entity needs to be legally established in Madagascar in order to benefit from investment incentives. The incentives include reduced tax on profits, accelerated depreciation on goods related to the investment, reduced customs duties of 5% on imported equipment, and exemption from import and excise taxes during the start-up of an investment.

Special benefits are directed toward investment in agriculture, fisheries, crafts, manufacturing, mining, **energy**, **tourism** (hotels), and **transportation**. For example, taxes related to the acquisition of buildings is reduced from 12% to 10% for these activities

P. 13-14 . paras. 26-28

Madagascar has been actively promoting export-oriented activities since 1991, and export-processing zones (EPZs) in particular, as a means of increasing foreign direct investment. The regulations related to EPZs are governed by Law No. 91-020 of 12 August 1991, which is currently under review. About 50% of the companies licensed to operate within EPZs are concentrated in the apparel and textile branches, with the balance divided among food processing, footwear, jewellery, and **service providers such as data processing** [(Table II.2)].

[...]

Incentives under the EPZs scheme include:

- (i) a grace period on the corporate tax for the first 2-15 years of operation (depending on the type of business), the rate of taxation is 10% as opposed to 33% for non-EPZ companies;
- (ii) after the grace period, the corporate tax is reduced by an amount based on 75% of the non-initial investment;
- (iii) exemption from customs duties and taxes on imported equipment, inputs, spare parts, packaging, and building materials;
- (iv) taxation of dividends is reduced from 25% to 10%;
- (v) 99 year leases are available for investment (land is generally not available for purchase by foreigners);
- (vi) free repatriation of profits after payment of taxes; and
- (vii) 100% foreign ownership.

Ghana – WT/TPR/S/81

P. 25, para. 46

The investment incentives include exemption from tariff and other duties on imported plant, machinery, and equipment falling with Chapters 82, 84, 85 and 98 of the Customs Schedule.⁴ Other incentives include accelerated depreciation provisions and a reduced company tax rate of 8% for firms exporting non-traditional products, and 25% for income from licenced **hotels**. Tax holidays of five

⁴ Any enterprise may apply to the Centre to have tariffs and duties eliminated on other plant, machinery, and equipment falling outside these chapters.

years apply to certain activities, such as general farming, fisheries, aquaculture, livestock, and real estate. Investments in **rural banks** and cattle ranching are exempted from income tax for ten years. Location incentives also apply.⁵ Investors are also entitled to an automatic immigration quota tied to the value of the investment: investments of US\$10,000 receive an immigration quota for one person.

P. 76, paras. 73-74

Tourism development based on private sector participation is a government priority. According to the Government's "Vision 2020", tourism is to be expanded to make Ghana a major international venue and regional tourist destination. Investment incentives are provided to hotels. The company tax rate for the sector is reduced from 35% to 25%, depending on location of the investment (urban/rural). Additionally, approval can be given by the Minister of Tourism for investors in hotels of at least 50 rooms to defer payment of import duties until completion of the project and commencement of operations. Certain items, such as furniture, fans, air conditioners, and television sets, can also be imported duty free. A National Tourism Development Plan 1992-2010 is being implemented by the Ministry of Tourism aimed at more than doubling the size of the industry by 2010. Medium-term developmental projects are contained in the Tourism Development Action Programme for 1996-2000, as well as the Tourism Public Awareness Programme and Tourist Behaviour Code for 1996-2000. Net foreign exchange earnings in 2010 are projected under the long-term plan to rise to US\$1.6 billion.

To attract private investment, the Plan calls for improving the public and private sector institutional framework for investment; simplifying investment procedures; adopting tourism investment incentives; establishing a tourism financial credit programme; and creating a Tourism Development Fund to be financed from a 1% tax on hotel and restaurant expenditure.

Macau, China – WT/TPR/S/82

P. 57, para. 26

Offshore **banks** are not regulated by the same legislation as full-licensed banks. New legislation to govern Macau's offshore banking activities was introduced in 1999.⁶ The main purpose of the legislation is to facilitate the establishment of offshore banks so that Macau SAR may become an offshore financial service centre, thus the application process has been simplified and expedited. Offshore financial institutions (OFIs) may not engage in the operations that are specifically prohibited in the licence granted by the Chief Executive and/or in operations that are contrary to Macau's laws. OFIs must register at least 51% of their shares locally. The Chief Executive of Macau SAR may, on a case-by-case basis, authorize OFIs to grant credit or provide guarantees to residents so long as the goal of the operation is in the interest of the Government. OFIs are exempt from profit tax and business registration tax.⁷

P. 61, para. 46

Air Macau has been exempt from income taxes since 1995. In addition, the **airline** is exempt from consumption tax on fuels. Air Macau holds the monopoly rights for air, passenger, and cargo transport services. However, any decision whether to operate a particular route, rests with the airline itself and it is based purely on market considerations. Civil servants and/or government-related cargoes are not compelled to fly Air Macau.

⁵ Manufacturing industries located in cities other than Accra receive a 25% tax rebate. A 50% tax rebate is paid if located outside regional capitals.

⁶ Decree-Law No. 58/99/M of 18 October 1999.

⁷ Law No. 3/99/M, 8 September 1999.

P. 64, para. 63

Macau, China provides a number of sector-specific and general incentives to encourage investment. These include interest rate subsidies and refundable and non-refundable subsidies for investment projects. Imported goods to be used in the **tourism** industry are not taxed. Other sector-specific incentives include: property tax exemption for up to eight years in Macau and 12 years in Taipa and Coloane; industrial tax exemption for the same period; property transfer tax exemption for the transfer of buildings used for tourism purposes; and exemption of vehicle tax for vehicles used in the tourism sector (Decree-Law No.81/89/M).

Costa Rica – WT/TPR/S/83

P. 68-69, paras. 188-189, 196-197 and 199

The Tourism Development Incentives Act (Law No. 6990 of 5 July 1985) establishes a series of incentives and concessions for domestic and foreign enterprises investing in the **tourism** sector. The incentives include exemption from all taxes and surcharges applicable to the importation or local purchase of articles indispensable to the operation and installation of hotel trade services; exemption from all taxes and surcharges applicable to the importation or local purchase of goods indispensable to the construction of piers and other tourist embarkation points; and exemption from all taxes, other than customs duties, on the importation of public transport vehicles with a minimum of 15 seats, etc.

Enterprises awarded contracts for **gas and oil exploration and development** are exempted from payment of all taxes and surcharges, general and local, on the importation of machinery, equipment, vehicles for field work, instruments, spare parts, materials and other goods and services they need to carry out their contracts properly. The exemption covers the exploration period and the first 10 years of development of the oil or gas, provided the goods to be imported cannot be obtained in the country under similar conditions of quality, quantity and price; in any case they must then be purchased in the country and benefit from the same exemption.⁸

The Costa Rican Cancer Institute Establishment Act (Law No. 7765 of 17 April 1998) exempted the Costa Rican Cancer Institute (Instituto Costarricense Contra el Cáncer) from the payment of any taxes, duties, contributions, levies, charges or surcharges on the goods or services it imports or purchases in the country. These exemptions also apply to the holders of concession contracts for the provision of **cancer prevention and treatment services** and to research and teaching activities under such contracts.

The Tax Exemption and Price Control for Literary, Educational, Scientific, Technological, Artistic, Sporting and Cultural Productions Act (Law No. 7874 of 23 April 1999) **exempted literary, educational, scientific, technological, artistic, sporting and cultural productions** declared to be in the public interest from sales tax, selective consumption tax, charges, surcharges, consular fees and customs duties.

In March 2000, a training programme financed by the National Apprenticeship Institute (Instituto Nacional de Aprendizaje, INA) began to be developed. This institution has allocated 500 million colones for training in the **tourism**, agricultural and industrial sectors. MEIC has promoted this programme among businessmen belonging to the CES and has worked with them to enable them to make use of these resources and to facilitate the development of small and medium-sized enterprises through targeted training. More than 150 enterprises in the metallurgical, plastics, graphic arts and food industries are now benefiting from this programme.

⁸ Regulations on the bidding system for oil and gas exploration and development contracts, Executive Decree No. 25785 of 22 January 1997.

P. 98, para. 67

The State **banks** enjoy advantages over their private competitors since they have the guarantee and fullest cooperation of the State and all its departments and institutions. The Executive Board in each case is appointed by the Government Cabinet and their capital may be increased by law or by capitalization. Public deposits in the State banks are fully guaranteed by the State, while private banks do not have any kind of insurance to protect public deposits. The authorities indicated that they were looking at the possibility of creating deposit insurance for private banks.

Brunei Darussalam – WT/TPR/S/84P. 80, para. 46

As with other sectors of the economy, the Government tends to be dominant in services. This is particularly true for social and personal services, which account for over half of the sector's contribution to GDP. In addition, other services, notably **transport and communication** services and **energy generation and distribution**, have a strong Government presence. The Seventh National Development Plan allocated around 22% of its total funding to public utilities, including electricity, transportation, and telecommunications, in addition to finance for **social services** and **construction**, which accounts for the largest share of government funding in the Plan.

P. 81, para. 51

However, progress seems to have been slow and much remains to be done especially in order to improve transparency in **financial services**. In addition, there has been a tendency in the past for the Government to assist financial companies in trouble. In the 1980s, for example, following financial failure of the United National Finance Company in 1985, the National Bank of Brunei, the second largest local bank, in 1986, and Jan Shen, a commodity trading firm, in 1988, the Government provided relief through the budget.

P. 94, para. 94

The new "Tourism Master Plan", launched in July 1999, focuses on the economic and social benefits of **tourism** for Brunei, while preventing an erosion of Brunei's socio-cultural and religious values, and ensuring conservation of the environment. Particular activities targeted by the Master Plan include niche markets such as eco-tourism, adventure and cultural tourism, theme parks, and cruising.⁹ The Plan also outlines investment strategies and policies for infrastructure development in order to promote the sector.¹⁰ In this regard, the Government would like to see tourist arrivals increase to 1 million by 2000. In addition to improving infrastructure, the Government is also trying to attract local employment in the industry; it announced in July 2000 that it would compensate employers in the industry for up to 80% of their costs of training local workers. The Government is also making efforts to develop the sector in eco-tourism, international exhibitions and fora, and as a gateway for the BIMP-EAGA area.¹¹

⁹ Ministry of Industry and Primary Resources (1998).

¹⁰ Borneo Bulletin (2000).

¹¹ Government of Brunei Darussalam (1997).

WTO Members of the Organization of East Caribbean States (OECS) – WT/TPR/S/85

Dominica - WT/TPR/S/85/DMA

P. 14, paras. 54-55

To encourage the establishment of new businesses, Dominica, like other OECS countries, offers a wide range of incentives to potential investors in the areas of manufacturing, **services, and hotel development**. These incentives generally imply a temporary exemption from taxes on profits, on import duties, and on the general consumption tax (CGT), and are contained in the Income Tax Act, the Fiscal Incentives Act, the Hotel Aids Act, the Customs (Control and Management) Act, the Consumption Tax Act, and the Alien Landholding Act. Horizontal incentives for foreign investors are also in place with respect to exemptions from foreign exchange remittance limitations under the Foreign Exchange Control Act.

Under the Fiscal Incentives Act No. 17 of 1974, Cap. 84: 51 of the revised Laws of Dominica, an approved enterprise may import plant, equipment, spare parts, raw materials or components free from customs duties for constructing, altering, reconstructing or extending the approved enterprise. Also under this Act, an enterprise may be granted complete or partial exemption from the payment of income tax on profits.

P. 43, para. 175

Offshore **insurance services** are regulated by the Exempt Insurance Act No. 14 of 1997. All risks and premiums must originate from abroad, and shareholders must reside outside Dominica. To benefit from the status of exempt insurance, a company must be incorporated in Dominica under the Companies Act 1994 and obtain a licence specifying the type of insurance activities in which the company may engage. Some nationality requirements apply: at least one of the directors of the licensed company must be a resident citizen of Dominica. Minimum paid-up capital must be US\$100,000. Mergers and acquisitions are allowed with prior approval of the Minister of Finance. All licensees are exempt from income tax, capital gains tax or other direct taxes on profits or on the transfer of the assets and securities, as well as from import duties.¹² Licensees are also exempt from withholding taxes on their dividends or interest, as well as from the provisions of the Exchange Control Ordinance with respect to the limitation of remittances, and do not require permission to issue shares to non-residents. Licensees, holding companies or management companies may place fixed-term deposits and hold current accounts with a person licensed under the Offshore Banking Act of 1996. The benefits of the Act may also be extended to holding companies and management companies incorporated in Dominica.

P. 45-46, paras. 184-185 and 188

In addition to financial services, Dominica's offshore services industry comprises international business companies, **management services operations, a medical school, Internet gaming**, and the Economic Citizenship Programme. Plans are currently under way for the establishment of an offshore ship registry, possibly in 2001. The contribution of the offshore sector to central government revenue was EC\$10 million in 1999 [(Table IV.2)].

International business companies (IBCs) are regulated by the International Business Companies Act No. 10 of 1996. [...] IBCs enjoy a wide range of benefits including exemption from all local taxes, duties, and other similar charges for 20 years, and exemption from the regulations of the Exchange Control Ordinance.

¹² Transfers between licensees or to a holding company or management company do not require the approval of the Minister of Finance. In all other cases prior written approval of the Minister is required.

Internet gaming is among the offshore activities that are developing rapidly in Dominica. [...] Companies licensed to operate on-line gaming business in Dominica enjoy the fiscal incentives and tax exemptions granted to offshore businesses domiciled in Dominica, including exemption from income, withholding, sales, and other taxes, and customs duty concessions for imports needed to carry on Internet gaming. [...]

P. 48, para. 192

The **tourist industry** may benefit from the Hotel Aid Act, as amended by the Hotel Aid (Amendment) Act No. 21 of 1991 and the Income Tax Act No. 37 of 1982, which allows for a 20-year relief from income tax and import duties on building materials, machinery, and equipment for approved hotel and resort developments. For the purposes of the Hotel Aid Act, a hotel is defined as a building or group of buildings containing no less than five bedrooms. The Aid to Development Enterprises Act provides for the granting of relief from customs duties on raw materials and inputs, materials, tools, plant, machinery, and building materials to be used, among other things, in the equipping of hotels.

Grenada - WT/TPR/S/85/GRD

P. 8, para. 26

Investors benefit from a number of fiscal incentives. The GIDC is an industrial development agency responsible for stimulating, facilitating, and assisting investors. The focus of the GIDC is to encourage investment in projects that generate employment and foreign exchange, particularly in **tourism**, manufacturing and **information technology**. This is done mainly through incentives schemes, including exemptions from taxes on corporate profits for up to 15 years, as well as on import duties and taxes on plant, machinery, equipment, spare parts, raw materials, and components.

P. 25, paras. 103, 111-112

The legislation of Grenada provides a package of benefits and concessions for specific activities such as manufacturing or processing industries, **data processing**, deep-sea fishing and shrimping. There are also incentives for **hotels, and for some other service activities**. Incentives available include tax holidays, import duty exemptions, repatriation of profits, and withholding tax exemptions. In some cases, these incentives are trade-related, including local-content requirements, and export-performance requirements.

The Hotels Aids Act of 1954 allows for full exemption from taxes on profits for ten years for hotels, apartments, and guest houses, as well as exemption from customs duties and taxes on articles of hotel equipment to equip and upgrade hotel property, service vehicles, material for construction, repair, renovation or extension to **hotel properties**. The Qualified Enterprises Act, Cap. 276 provides for tax benefits and exemptions for certain enterprises. The authorities noted that the Act is rarely used, and that currently only three enterprises benefit from it.

Grenadian enterprises may also receive concessionary credits, funded or guaranteed by the Caribbean Development Bank (CDB), for between US\$750,000 and US\$5 million at a current (2000) preferential rate of interest of 8.75% with a repayment period of up to 14 years with three years grace. To benefit, projects are expected to have an expected minimum rate of return of 12%. The areas of priority are agriculture, livestock, fisheries, manufacturing, mining, **tourism, transportation**, and infrastructure. Support through concessionary loans at preferential interest rates is also available from the Agricultural and Industrial Development Bank (AID) for the establishment and development of production activities. Grenada, as an ACP country may benefit from financial contributions from the European Investment Bank (EIB).

P. 39-40, paras. 177 and 179

Despite the recent positive developments, **tourism** in Grenada is nevertheless faced with several problems. Relatively high wages for the region and relatively less developed infrastructure compared with competing markets, have made tourism in Grenada lag behind that of other islands in the Caribbean. Despite recent improvement, small hotels have not performed well and some have fallen behind on their debt service to the state-owned Grenada Development Bank and to commercial banks. To address this problem, the GBT has assisted small hotels by helping to finance the cost of marketing as well as some development programmes.

Tourism activities benefit from tax concessions and other incentives provided by the Government. The two major concessions under the Hotels Aid Act of 1954 are a holiday on corporate income taxes granted to hotels with over ten rooms for up to ten years, and a waiver of duties on imports of building materials and equipment for the construction and furnishing of a hotel, or for upgrading facilities. In addition, multiple renewals of these concessions have been granted, and some hotels have been exempted from paying import duties on all imports. The Grenada Industrial Development Corporation (GIDC) is responsible for facilitating new investment in the industry, and makes recommendations to the Ministry of Finance for the granting of concessions to hotels under the Hotel Aid Act of 1954.

St. Kitt and Nevis - WT/TPR/S/85/KNA

P. 27, para. 119

Under the Income Tax Act No. 17 of 1966, **hotel** owners are granted a tax holiday (their profits are exempt from income tax) for five years, if the hotel has fewer than 30 rooms, and for ten years if the hotel has more than 30 rooms. Moreover, under the Hotels Aid Ordinance, Cap. 342 of the Laws of St. Kitts and Nevis, total relief from customs duties on materials, supplies, and structures is granted for the construction, enlargement or equipping of a hotel of at least ten rooms. Tax waivers are also granted on a case-by-case basis to foreign investors for the construction of infrastructure, with preference given to the construction of hotels, casinos, homes, and office buildings. These incentives are decided by Cabinet; they do not require approval by Parliament. Offshore companies registered in St. Kitts under the Companies Act of 1996, and in Nevis under the Nevis Island Business Ordinance of 1984, are exempt indefinitely from taxes on their offshore activities.

P. 37, para. 176

The Trusts Act of 1996 regulates the registration of **trusts**, which is to be done in the Registrar of Trusts of the High Court. [...] Trusts are granted a large number of advantages and privileged treatment: they are exempt from income, withholding, capital gains, and stamp taxes for all transactions with non-residents. Beneficiaries of a trust do not lose this exemption if trustees are active in the Federation, own or lease property for an office or residence for beneficiaries, hold meetings, conduct banking, sign employment contracts, and arrange for goods and services. [...]

P. 38, paras. 180 and 183

Telecommunications and postal services in St. Kitts and Nevis accounted for 14.6% of GDP in 1999, up from 9.7% in 1995. In order to develop the industry, the Government intends to establish information technology parks, where office space would be made available for rent to new enterprises in the informatics industry, and tax and fiscal incentives would be offered.

P. 40, para. 92

[tourism] In order to attract private sector investment, the Government provides a package of investment incentives similar to that offered by other OECS countries. The package applies to both local and foreign investors for establishments of at least ten rooms, and offers a tax holidays on profits for a maximum of a ten years (for hotels of 30 or more rooms; five years for hotels of between 10 and 30 rooms), with exemptions from import duties on construction material and equipment. Additional benefits, such as exemptions from import duties on operating supplies, can be negotiated for investments that are deemed to make a significant impact on the Government's objectives, mainly large establishments. The Government intends to reduce the threshold for these incentives in an effort to promote local investment in guest houses.

Saint Lucia - WT/TPR/S/85/LCA

P. 23, para. 90

The Free Zone Act No. 10 of 1999, which repealed the Customs Free Zone Act No. 18 of 1983, provides for the establishment and operation of export processing zones. Cabinet may, by Order, designate any geographical area to be a free zone. The Act establishes a Free Zone Management Authority (FZMA), administered by a Board comprising representatives from both the public and the private sector, who are also responsible for granting licences for operation in the zones. Enterprises conducting trade and investment activities in manufacturing, **financial services, telecommunications, professional services**, and other activities may apply to operate within a free zone. Licences are specific to a business. Price controls do not apply to sales of goods and services within the free zone. The main industrial free zones are in Vieux Fort, Cul-de-Sac, and Odsan.

P. 38, para. 169

The **tourist industry** benefits from income tax concessions and other incentives provided by the Government. These concessions are inscribed in the Tourism Incentives Act No. 7 of 1996, which repealed the Hotel Aids Ordinance No. 25 of 1959, and exempted approved tourist products from income tax for 15 years (tourism products are defined as any product created by a tourism project). The Act also grants customs duty and consumption tax waivers for the importation of supplies, equipment, and materials needed for the construction of a hotel. The Ministry of Commerce is responsible for the administration of the incentives under the Tourism Incentives Act.

St. Vincent and the Grenadines - WT/TPR/S/85/VCT

P. 22, paras. 100.101

Although there are no free zones currently in operation, there is legislation in this respect. The legislation is recent and is aimed at promoting the development of free zones in the near future; it declared a part of the Diamond Estate in the parish of St. George on the island of St. Vincent, as a free zone. The Export Free Zones Act No. 15 of 1999 grants the Port Authority the responsibility for administration and control of free zones. Enterprises producing either goods or services may operate in a free zone. The First Schedule of the Act lists activities that may be carried out in a free zone. These include **warehousing and storing**; manufacturing and assembly; trans-shipment; exporting; importing; and provision of services such as **banking, insurance, and professional services**.

Companies require an approval from the Authority to operate in a free zone. They must be incorporated locally in accordance with the Companies Act. Incentives include: exemption from import and export licensing requirements; total income tax relief in respect of profits made in manufacturing operations; total income tax relief with respect to international trading activities; exemption from the payment of customs duties on the importation of capital goods, consumer goods,

raw materials, component articles, or data to be used for an approved activity; duty free importation of articles included in the Third Schedule of the Export Free Zones Act for use in construction or repairs of premises inside a free zone; and exemption from the provisions of the Exchange Control Act. Enterprises operating in the free zone may not borrow from banks located in the customs territory of St. Vincent and the Grenadines.

P. 23, para. 105

Incentives exist in the form of tax holidays, import duty exemptions, repatriation of profits, and withholding tax exemptions. The incentives scheme is managed by the Ministry of Trade, Industry, and Consumer Affairs, while the St. Vincent and the Grenadines Development Corporation provides investment promotion services. Applications for incentive benefits are submitted to the Ministry, which decides on the level and type of concessions to be granted. The main beneficiaries of the incentives scheme are manufacturing enterprises and **hotels**.

P. 25, para. 110

The **Hotels Aid Act No. 16 of 1988** allows for full exemption from taxes on profits for hotels, apartments, and guest houses, as well as exemption from customs duties and consumption tax on articles of hotel equipment to equip and upgrade hotel property, service vehicles, material for the refurbishment, renovation or expansion of existing hotels, or for the construction of new hotels. The benefits are applicable if the hotel has at least five rooms, or if the expansion is of no less than five rooms. For the construction of new hotels, the period of income tax exemption is ten years for hotels of between five and 20 rooms; 12 years for hotels of between 21 and 34 rooms; and 15 years for hotels of 35 rooms or more. The period of income tax exemption for repairs and expansion is: nine years for hotels creating an addition of between five and nine rooms; ten years for hotels adding between ten and 35 rooms; and 15 years for expansions of more than 35 rooms. The length of the customs duty benefits is determined by Regulation.

P. 34, para. 167

Incentives granted to the **tourism** industry are detailed in the Hotel Aid Act No. 16 of 1988. Incentives are granted for the improvement by repair, renovation or replacement of existing facilities of a hotel. These incentives include complete or partial exemption from import duty and consumption tax on building materials and articles of hotel equipment imported or purchased locally for purposes stated above. Incentives are also offered for hotel expansion. Investors who may wish to add five or more guest rooms or apartments to an existing hotel can benefit from income tax exemption and duty free concessions on, among other things, construction materials and hotel equipment. The period of tax exemption is contingent on the number of additional rooms/apartments. The construction of a hotel with not less than ten guest rooms or apartments, or in the case of local investors, not less than five guest rooms or apartments, is eligible for exemption from income tax and duty-free concessions on buildings materials and hotel equipment. Advertising and promotional material related to the tourist industry may be imported free of customs duty and consumption tax. Duty-free concessions are also offered for the importation of other ancillary facilities related to the development of tourism, not necessarily linked to hotel development.

Gabon – WT/TPR/S/86

P. 89, para. 107

Tax facilities for **tourism**-related companies and enterprises participating exclusively in an approved project include exemptions from corporation tax (for companies) or personal income tax (individual entrepreneurs) during construction of the project and for the first eight years of operation. Additional tax facilities for such companies during the next eight years of operation include

exemption from corporation tax on half the taxable profits (companies) or personal income (individuals) and during the next three years of operation, the write-off of losses against profits. Tourism enterprises are also exempted from the property tax for six years after completion of their project and, at the end of that period, they benefit from a tax ceiling of 10 per cent of the rental value of their property, with an abatement of 80 per cent in the first year, 60 per cent in the second, 40 per cent in the third and 20 per cent in the fourth. Other tax advantages are also granted to tourism-related companies. In return, those companies and enterprises participating exclusively in an approved project undertake to give priority to employing Gabonese workers and to respect environmental protection legislation.

Cameroon - WT/TPR/S/87

P. 66, para. 74

Tourism activities are regulated by Law 98/006 of 14 April 1998. The Government's policy is aimed at further developing and promoting tourism. The Government hopes to attract 500,000 tourists by 2002, but has yet to outline a specific strategy to attain this goal. The National Tourism Council was established in April 1998 to advise the Government on measures to promote the development of tourism in Cameroon.¹³ Under Law 98/006, fiscal incentives could be granted to attract investment (domestic and foreign) in the sector.

United States – WT/TPR/S/88

P. 95, para. 47

[ship repair] The Federal Government provides direct support to the industry through the procurement of goods and services from shipyards and related industries to repair government-owned vessels. In the event that ships are repaired abroad, 50% *ad valorem* duty is imposed on vessels when re-entering the United States, based on the cost of equipment and non-emergency repairs obtained in foreign countries for U.S.-flag vessels. The duty is based on the cost of the repairs, and applied to the good. U.S.-owned foreign-flag vessels are not subject to the duty. Under the NAFTA, this duty was terminated. The OECD Shipbuilding Agreement (see below) would eliminate this duty for countries signatory to the Agreement.

Czech Republic – WT/TPR/S/89

P. 27, para. 46

The Czech Republic has changed its policy on foreign investment incentives progressively during the period under review. In May 2000, a package of incentives was approved, changing the previous policy of offering investment incentives on a case-by-case basis (subject to governmental approval), a major change from the "no incentives" policy during 1992-98.¹⁴ In addition to the foreign investment incentive package, foreign investors are offered a wide range of other incentives, such as grants and loans at interest rates below market rates (Chapter IV(3)). All investment incentives are equally available to foreign and domestic investors.

¹³ The Council was created under Law 98/006 of 14 April 1998. Decree No. 99/112 of 27 May 1999 established its organization and functions. The Council is composed of representatives from the Government and the private sector.

¹⁴ Changes to the incentive package include, *inter alia*, lowered investment threshold; allowed incentives to be applied to the expansion of production facilities already in operation (previously only newly founded companies with new production facilities qualified); and 40% of total investment must go into plant machinery.

P. 65, para. 7

Progress has been made in improving the health of the small **banks** as well as privatizing some large state-owned banks, but the cost of bank assistance has been substantial. In response to poor asset quality in the small banking sector, the central bank implemented in 1996-97 a programme of supervisory actions designed to encourage the banks to improve their situation (Consolidation Program II).¹⁵ As a result, several small banks were liquidated, merged or went into bankruptcy.¹⁶ To further address weaknesses in small banks, the Government approved in October 1996 a large-scale restructuring programme (Stabilization Program). As part of the programme, a government institution bought poor quality assets of the banks at book value. Liquidity crisis in the banks were also solved through loans as well as an increased coverage of the deposit insurance scheme. The cost of bank assistance during the period 1991-98 was estimated at the equivalent of 10.5% of GDP.

P. 71, paras. 32-34, 36 and 38

Progress has been made in liberalizing the **transport services sector** during the period under review. As in 1996, the sector portrays a mixed picture. While the Czech Republic has a relatively competitive trucking industry and a non-subsidized airline company, passenger railway services and, to a lesser extent, bus services require large amounts of transfers to cover their losses. Full harmonization of the Czech Republic's transport laws and legislation with the EU's *acquis communautaire* is planned for the end of 2002. Road transportation remained by far the most important mode of freight traffic transportation throughout the 1990s, accounting for at least 80% of the total in recent years. In 1999, 42% of imports were transported by road while 56% were transported by rail.

(ii) *Rail transport*

Within the framework of Act No. 9/1993 Coll. on Czech Railways, freight and passenger **railways** are owned and operated by the State through Czech Railways (ČD). Large amounts of funds (grants and subsidies) are transferred to ČD to cover losses from passenger transport. In early 2001, ČD's accumulated losses amounted to CZK 40 billion. The losses originate from passenger services. Passenger fares are regulated by the Government and subsidized in accordance with social obligations to provide mobility for the public. Subsidies on railway freights were abolished in January 1995. Fares for freight are now determined through negotiations with shippers.¹⁷ The Government allows in some instances access to tracks for companies wishing to provide their own rail transportation. Prices for access to tracks are set by the Ministry of Finance based on cost information supplied by ČD.

(iii) *Road transport*

The main laws related to **road transport** are Act No. 111/1994 Coll. on Road Transport and Act No. 304/1997 Coll. on Roads. Foreign investment is prohibited in road transport (passenger and freight).¹⁸ Nevertheless, the Czech Republic's trucking industry is relatively competitive. Truck transportation is undertaken by private carriers, with less than 1% of truck transportation undertaken by state-owned companies.¹⁹ Bus transportation is provided by private national companies, but, in

¹⁵ Consolidation Program I, implemented in 1991-93, was aimed at cleaning up the portfolios of former state-owned banks/organizations.

¹⁶ World Bank (1999a), Vol. 1.

¹⁷ World Bank (1999b), Vol. 2.

¹⁸ The regulation applies to the following for passengers: transit, "closed door" tours, picking up or setting down on an international journey, and transport within the country. It applies to the following for freights: transit, delivery on an international journey, collection on an international journey, return cargo where collection is authorised, return cargo where delivery is authorised, and transport within the country (OECD, 2000b).

¹⁹ World Bank (1999b), Vol. 2.

contrast to truck transportation, the State compensates the carrier (in case of public interest) for demonstrable loss incurred. Bus transport companies receive about CZK 2 billion annually. Transportation on international and long-distance routes is not subsidized. Fuel taxes on cars, trucks and buses contribute towards the cost of highway maintenance and construction.

(iii) *Internal waterway transport*

[...] Foreign investors are allowed to operate in inland **waterway freights**, including chartering activities. Licensing criteria include, *inter alia*, the approval by the investor's national authority to operate in its home country. In order to fly the Czech flag, vessels must be owned by a Czech party who must reside in the Czech Republic. Currently, no merchant ship is registered in the Maritime Register of the Czech Republic. There is only one national shipping company in operation (Czech Ocean Shipping). Although Act No. 61/2000 Coll. provides for the possibility of state aid, no such aid has so far been granted.

P. 74, para. 46

One state-aid programme specifically targets the **tourism** sector. Under the State Programme for Tourist Support, investors may receive grants up to 50% of investment costs for the development of spa-related activities. In addition, as in all sectors, investors in the tourism sector have access to the incentives offered under the Government's state aid programmes [(Chapter IV(3))].

Mauritius – WT/TPR/S/90

P. 72, para. 69

Fiscal incentives (duty and tax concessions and rebates) are granted to **hotel** promoters under the Hotel Management Scheme and the Hotel Development Scheme (Table AIII.4). In addition, the Development Bank of Mauritius offers concessionary interest rates on loans for the construction or upgrading of hotel facilities. The Government, through the Mauritius Tourism Promotion Authority (MTPA)²⁰, also promotes tourism in the major overseas markets: some Mau Rs 100 million were earmarked for tourism in the 1999/2000 national budget. In recent years, the Government has taken steps to encourage joint-promotion efforts from the public and private sectors. Other areas of public-private cooperation include trade fairs and international tourism exhibitions. [...]

P. 75, para. 80

Offshore **banks** are not subject to Mauritian taxes or domestic monetary policy measures.

P. 77, para. 93

In Mauritius, **telecommunications and postal services** have always been provided by separate bodies. In accordance with the 1933 Post Office Act (as amended), the Mauritius Post Office (MPO) operates as a Government Department under the portfolio of the Ministry responsible for Public Utilities. [...] The MPO receives subsidies from the Government. [...]

P. 78, para. 97

[Maritime transport] Mauritius has three shipping companies, of which one is owned by the State. The State-owned company exercises exclusive rights over freight and passenger shipping between Mauritius and Rodrigues; the prices of its services are subsidized by the Government. The two other

²⁰ The MTPA is a parastatal. Its main object is to promote Mauritius abroad as a tourist destination (Section 4 of the 1996 Mauritius Tourism Promotion Authority Act).

companies are jointly owned (joint-ventures) by Mauritians and foreigners, and their vessels mostly carry out regional trade. National vessels are entitled to a 50% discount from berthing fees. Shipping to Europe, the United States and the Asia-Pacific region is handled by foreign vessels. Mauritius does not participate in any cargo-sharing agreements.

WT/TPR/S/91 – Slovak Republic

P. 30, paras. 55-57 and 59

The Government's main priority is to attract investment into industry. The main sectors attracting investment within the next five years are expected to be **power engineering**, metallurgy, engineering, wood processing, chemical industry, electrical engineering, **information technologies**, **tourism**, textiles, clothing, footwear, and glass.

(iv) Incentives

In an attempt to increase foreign direct investment, the Slovak Government has enhanced financial incentives to foreign investors. More generous tax incentives were introduced in 1999 (Act No. 366/1999), and again in 2000 (Act No. 466/2000). The 1999 package granted foreign investors established before end-2001 with a full five-year tax holiday (extendable at a rate of 50% for another five years, subject to additional investment levels), provided investment in the venture exceeded €5 million and foreign equity was above 75%.²¹ The incentives apply to greenfield investments in the production of manufactured goods previously imported into Slovakia or not produced domestically or intended for export. For certain service industries, such as **hotels** and **passenger transport**, a lower investment threshold of €1.5 million applied. The incentives for businesses established after 2001 and up to end-2003 were changed slightly, especially by reducing the threshold for manufacturing goods to €4.5 million and the minimum foreign share to 60%. Other incentives include duty- and VAT-free imports of certain machinery and equipment, job-creation and training benefits, and opportunities to obtain low-cost land.

Investment legislation is currently being reviewed and additional incentives are expected to be introduced. The Government approved the new legislation in May 2001 (decision No. 424/2001) and it is currently being considered by the National Council. This will extend the full tax holiday to ten years, and further reduce the threshold to €2.35 million (and €1.65 in depressed regional areas with unemployment above 10%). At least 80% of the revenue must come from industrial production or from services.

[...] It is unclear whether the benefits of investment incentives outweigh their costs. These are typically not the most effective measures for attracting investment. While the economic rationale for incentives is generally based on the need to correct market failures, alternative policies attacking the cause of the problem are likely to be more efficient. Moreover, competition from neighbouring countries offering more generous incentives for FDI to obtain investment is likely to make their provision counterproductive. The revenue forgone from such incentives can be very large, and can end up transferring tax revenue to foreign investors and their governments, with little economic gain to the host country. Investors tend to be influenced by other factors, such as market potential, and political and economic stability, rather than investment incentives.

P. 100, paras. 93-94

[Financial services – banking] Before 1999, the three large state-controlled banks (VUB, SLSP, and IRB) suffered from political interference and poor management. As a result, they

²¹ For investment in regional areas with an unemployment rate exceeding 15%, the minimum level of foreign investment is €2.5 million.

accumulated large amounts of poor quality non-performing assets and became deeply insolvent. The Government, in cooperation with the National Bank, embarked on a comprehensive restructuring programme involving two basic operations, designed to reduce non-performing loans in these banks from 40% to 20% of assets. The first was a Sk 18.9 billion direct equity infusion provided by the National Bank through the state budget at end-1999. The second was a Sk 105 billion carve-out of bad assets, conducted in two stages, of Sk 74.1 million in December 1999 and Sk 30.9 million in June 2000. These loans were transferred to a new agency, the Slovenska konsolidacna (the Slovak Consolidation Agency - SC), and to the state financial institution Konsolidacna banka (the Consolidation Bank - KOB), and were replaced by loans to SC and KOB guaranteed by the Government. These operations have restored the capital adequacy ratio of these banks to levels above 8%, according to international standards.

A further measure supporting bank privatization was the conversion of the banks' state-guaranteed loans to SC and KOB into state bonds in January and March 2001. The bonds were issued with maturities of either five, seven or ten years, with a combination of fixed and floating interest rates. Interest is to be paid twice yearly, with the first payment due one year from the date of issue. The issuance of these bonds will assist the banks by providing assets that can be used to manage liquidity and other risks.

P. 107, paras. 122 and 124

[Transport] Only private carriers undertake truck transportation. Road transportation on international and long-distance routes is not subsidized. The Government has approved plans to privatize the Slovak Bus Transport Companies by divesting 49% of shares in the majority of companies by end-2001. It also intends to introduce regulations, during 2001, designed to improve the efficiency of state subsidies provided for bus transport. Subsidies are to be terminated on routes over 100 kilometres. Public tenders are also to be invited where subsidies exceed Sk 1 million annually.

[...] The state-owned Slovak Railways is heavily indebted and continues to operate at large losses, amounting to Sk 15 billion from 1993 to 1997. The railway network requires substantial investment to be modernized and extended. The Government's plans are currently concentrated on a gradual restructuring of Slovak Railways according to the Project for the Transformation and Restructuring of the Railways, approved in 2000. Slovak Railways is to be separated into two enterprises from 1 August 2001. Slovak Railways will maintain the railroad network, while all freight and passenger services will be transferred to a new 100% state-owned joint-stock company. The latter will also be split into passenger and freight operations and gradually privatized by 2005, involving both domestic and foreign participation. Government subsidies will cover only passenger services subject to fare regulation by the Government, and these subsidies will be reduced progressively through rationalization of loss-making routes and fare increases. Passenger rail fares were raised by 15% from February 2001. Freight rates have been deregulated and are no longer subsidized.

P. 108, para. 132

The Ministry of Economy administers the "Support Programme for **Tourism** Development" together with the state-owned Slovak Guarantee and Development Bank. The Bank also provides support to entrepreneurs, especially small and medium-sized firms, in the form of bank guarantees, up to 65% of justified costs. Further aid is provided within this Support Programme in the form of non-refundable financial assistance of up to Sk 4 million. State aid to the tourism industry amounted to Sk 29.2 million in 2000.²² It is estimated to be Sk 45 million in 2001.

²² State Aid Office (2001), p. 24.

WT/TPR/S/92 – Malaysia

P. 83, para. 52

[Financial services – banking] In 1998, the BNM introduced a programme to consolidate finance companies into fewer institutions; to this end, the Government provided incentives including an exemption from stamp duty and from real property gains tax, and tax credit amounting to 50% of the accumulated losses of banking institutions to be acquired.²³ The programme was extended in 1999 to all domestic banking institutions, and on 14 February 2000, the Government granted approval for the formation of ten banking groups, which were completed by the end of 2000.²⁴ [...]

WT/TPR/S/93 – Uganda

P. 46, paras. 74, 77-78

[...] The European Investment Bank-Uganda Apex Loan Scheme (section (3)(vi) is meant to address economic modernization more broadly, beyond just the export sector. Phase I of the programme (€15 million) was successfully implemented and phase II (€25 million) is under implementation. The investments financed under the programme relate to new projects and/or expansion, modernization, restructuring, and diversification of existing activities. Eligible activities include agri-industry, manufacturing, horticulture and flower growing, fishing/fish processing, mining and quarrying, **hotels and tourism, and other services such as garbage collection and disposal, and cleaning equipment for industries**. At the end of March 2000, 57 projects had been financed at a total cost of €25 million.

Investment incentives are not available for several types of businesses, namely wholesale and retail commerce, the personal services sector, public relations business, car hire service and operation of taxis, bakeries, confectioneries for the Uganda market only, postal services, and professional services.²⁵

WT/TPR/S/94 – Guatemala

P. 69, para. 64

Against the background of Guatemala's potential in geothermal and hydroelectric **energy**, the Government is undertaking particular efforts to increase the use of renewable energy. According to the authorities, a law to promote the development of renewable energy, which was under preparation at of mid-2001, provides for fiscal incentives to promote investment in the generation of renewable energy. In addition, the authorities planned to open an information and promotion centre on renewable energy in order to disseminate information, support feasibility studies, and co-finance projects in this area.

P. 85, para. 142

The authorities emphasized that the State does not provide **tourism services** nor any specific fiscal incentives for the tourist sector. However, they also noted that as of mid-2001 the Tourism Law of 1974 was being revised and that the reintroduction of sector-specific investment incentives was being considered. Support for micro- and small enterprises in the tourist sector is available through

²³ Bank Negara Malaysia (2001g).

²⁴ Accordingly, 51 of 54 existing banking institutions were consolidated into the ten banking groups, and 96% of the total assets of the domestic banking sector were consolidated.

²⁵ Uganda Investment Authority (2000), p. 53.

the programme PYMETUR; this programme is sponsored by FUNDESA, a non-profit organization of business persons.

WT/TPR/S/95 – Pakistan

P. 110, para. 99

[Transport – shipping] Under the 1997 Merchant Shipping Policy, covering several areas (including the acquisition, registration, operation, and maintenance of ships), a 30% shipbuilding subsidy has been made available to Pakistani shipowners for the placing of orders for new vessels with national shipyards²⁶; vessels under this scheme must be registered in Pakistan and must not be sold to foreign investors before ten years of service under the Pakistani flag.²⁷ Under the 2001 Merchant Marine Policy, ships (including floating craft, tugs, dredgers, survey vessels) purchased or chartered by a Pakistani entity and flying the Pakistani flag may be exempt from payment of all import duties and surcharges until the year 2020; however, if any of these vessels are demolished within a period of five years from the date of purchase, the beneficiaries are liable for payment of the full duty applicable to ships purchased for demolition purposes. [...]

P. 111, para. 102

In the light of the world-wide expansion of the **information technology and software** market, since August 2000 Pakistan has pursued an information technology (IT) policy focused on: human resource development; infrastructure development; telecommunications; databases; software industry development for exports and local markets; and exponential increase in Internet use.²⁸ This policy has been implemented through several tax, financial, and regulatory incentives. These measures include: the elimination of import duties on most IT and telecommunication products (as of July 2000); income tax holidays for computer training (up to 2005), and export of computer software (for 15 years); exemption from sales tax and registration requirements upon importation of hardware by software companies; subsidized rental allowance for office facilities/space in Software Technology Parks and free Internet connections for public-sector universities; concessionary export finance (Chapter III(3)(viii)); a facility for software companies to retain 25% of their export earnings in foreign exchange in order to meet expenditures on the purchase of hardware/software, foreign travel, marketing, and hiring of consultants; and an exemption from minimum tax of 0.5% on remittances from software exports.²⁹ Several procedural barriers (e.g. processing of licence applications) have been lifted. Foreign investment is unrestricted.³⁰

WT/TPR/S/96 – Malawi

P. 33, paras. 88-89

Incentives are available to investors under the Investment Promotion Act (e.g. investment allowances and duty-free importation of raw materials used in manufacturing). New investments, both foreign and domestic, between US\$5-10 million have the option of either a five-year tax holiday or an indefinite company tax rate of 15% (instead of the standard rate of 30%); for investments above US\$10 million, a ten-year holiday may be chosen. The foreign investment share must be at least

²⁶ Shipbuilding is largely undertaken by the state-owned Karachi Shipyard and Engineering Works, which is also involved in ship repair, submarine and warship construction, and general engineering; another state-owned shipbuilder, the Pakistan Navy Dockyard, works exclusively for the Pakistani Navy (U.S. Commercial Service, 1999c).

²⁷ U.S. Commercial Service (1999c).

²⁸ Ministry of Science and Technology (2000).

²⁹ Pakistan Software Export Board (2000a); and Ministry of Finance (2000a).

³⁰ U.S. Commercial Service (1999a).

30%. No investor has as yet exceeded the minimum investment threshold to receive tax holidays. Although the Government may also declare certain "strategic" industries to be eligible for a tax holiday of five years and thereafter a company tax rate of 15%, no such activities have yet been declared by the Ministry of Finance and Economic Planning.

The Minister of Finance and Economic Planning also has discretion to rebate tariffs and surtaxes on imported inputs where to do so is considered within the "public interest" (section 52 of the Finance and Audit Act). Investment projects are considered eligible, and such rebates have been granted frequently to investors in, for example, hotel projects. The Government is currently introducing specific criteria and a point-scale rating system on which to apply these rebates as a means of limiting the discretionary element of the scheme. The criteria for granting rebates to investors are employment creation; capital injection; export potential; domestic value added; generation of net foreign exchange earnings; promotion of high technology transfer; creation of inter-industry linkages; and increasing the geographical spread of industries. The rebate share is determined according to a point system, with the maximum rebate set at 75%.³¹ The rebate extends for the first ten years of operation, and the point system slightly favours investment in manufacturing, agriculture, **tourism**, **transport**, and mining. Applications are made to the Malawi Revenue Authority, which makes recommendations to the Minister of Finance and Economic Planning based on the decisions of a Committee formed to review the application.³²

P. 87-88, paras. 90-91

Malawi Railways (1994) Ltd was formed in 1994 when **railway** and lake transport services were split to commercialize both operations for privatization. It was privatized in late 1999, under a concession agreement, initially for 20 years. The operator, an international consortium called the Central East African Railways Company Ltd, comprises CFM, a Mozambique railway and port company; Rail Development Corporation of the U.S.A.; and Edlow Resources Ltd. The Government retained ownership of the rail network and buildings, while the operator acquired the rolling stock. The Central East African Railway Company operates the Nacala rail link. Since Malawi Railways was privatized, freight tonnage has risen by 30%.

The operator is required, as part of the concession agreement, to continue providing passenger services under a personal service obligation (PSO). Government subsidies will be granted for a minimum of five years.

P. 90, para. 102

The Government recently introduced special **tourism** incentives, such as tax concessions. Investors of minimum specified amounts in designated tourism areas are to receive duty-free status on selected goods following the 2001/02 Budget. Hotel services are subject to a 10% service charge (of which 5% is retained by the Government, 4% by the hotels and 1% for training), and to the 10% surtax.

WT/TPR/S/97 - Mexico

P. 66-67, para. 175

Other tax concessions include: sector-specific concessions, for instance in favour of the **cinematography industry**, **air and maritime transport**, and agriculture, fishing and forestry; and

³¹ For example, the points awarded for export potential increase from "one" if 5% to 20% of production is exported to "five" if at least 85% is exported.

³² The Committee comprises the Malawi Revenue Authority, the Malawi Investment Promotion Agency, the Ministry of Finance and Economic Planning, and the Ministry of Commerce and Industry.

measures to promote technological development or more environmentally friendly equipment. A few of these fiscal advantages are contingent on meeting national-content requirements (e.g. exemption of the tax on vehicles), or are granted only if no domestic substitute is available (duty-free import of decontaminating equipment) [(Table III.9)].

P. 106, box IV.1, fourth para

In 1999, the IPAB intervened in two commercial banks – Banca Serfin and BanCreceer – to protect more than 3.5 million accountholders. In both cases, the IPAB prevented their bankruptcy by injecting resources for their recapitalization; shareholders lost the capital invested. Banca Serfin returned to the private sector in mid 2000, although the IPAB remained the largest creditor; in September 2001, BanCreceer was sold to Banorte, through public bid, for Mex\$1.6 billion (some US\$176 million).

WT/TPR/S/98 – Slovenia

P. 74, para. 35

Aware of the potential for development of the industry, and of the growing competition from neighbouring countries since the return to peace in the region, the Government of Slovenia has introduced a number of programmes to support the industry and improve the quality of local services. In 2000, a total of SIT 2 billion of budgetary funds were earmarked by the Government for **tourism** development; funds were also earmarked by the National Tourism Board for tourism promotion (SIT 1.2 billion), with a particular focus on European markets; financial incentives of up to SIT 1 billion were oriented for the improvement of the quality of services. [...]

WT/TPR/S/99 – Haiti

P. 64, para. 65

Measures to encourage investment in **energy** are essentially tax-related, in the form of reductions on taxable amounts and tax exemption in specific cases. Thus, duty-free treatment is granted for imports of capital goods and raw materials needed for exploitation and production during the set-up phase, with the exception of imports of petroleum products. As is the case for mining and quarrying, concessions for investment in the energy sub-sector are not governed by the Investment Code, but are negotiated between the State and the companies concerned.

P. 70, para. 91

Tourism projects are not governed by the Investment Code but by specific laws. In accordance with the provisions in force, any investment in tourism would be eligible *inter alia* for the following benefits, granted directly by the MEF on the basis of a reasoned opinion from the MT:

- Concession or rental of State land, and assistance from officials of the Department of Tourism;³³
- exemption from all import duties and taxes on construction materials, furnishings, kitchen, sanitary and electrical equipment, appliances, items and finishings used in hotel construction, renovation or expansion;

³³ The public domain is inalienable. It may not be sold but may be the subject of a concession. The Department provides technical assistance to tourism investors and assists them in their contacts with government services.

- five-year tax exemption as of the date of entry into operation, in the case of construction; and
- two-year tax exemption in the case of renovation leading to the creation of 30 permanent full-time jobs.

WT/TPR/S/100 – India

P. 76-79

Table III.14
Explicit (plan) subsidies (Budget 2001-2002)
(Rs million)

Ministry	Subsidy	Total planned expenditure (Budget 2001-2002)
[...]		
Ministry of Non-Conventional Energy Sources		
Solar Energy Programme	Subsidy is provided on solar lanterns, home lighting systems, street lights and solar pumps.	677.50
Other Sources of Energy	Financial support is provided for feasibility studies, detailed preparation for project reports and towards interest subsidy for the installation of these projects.	2,715.00
Ministry of Power	Interest Subsidy to Power Finance Corporation: provides assistance to power utilities at concessional lending rates through the interest subsidy given by Central Government for modernization and renovation of existing thermal power stations and life extension of power stations.	3,500.00
[...]		
Ministry of Shipping	Subsidy to Shipping Corporation of India: the Shipping Corporation of India runs passenger services between mainland and Andaman Nicobar Islands and mainland and Lakshadweep Islands. The subsidy is provided to meet the operational losses for running these services.	..
	Other programmes: grants to develop ship ancillary services, National Ship Design and Research Centre, research and development schemes for ship-building, and subsidy to sailing vessel industry.	2.00
Ministry of Tourism and Culture	Other programmes: The provision is for payment of interest differential subsidy to specific financial institutions on the loans to finance construction of one, two and three star hotels projects.	90.00
[...]		

.. Not available.

Source: Ministry of Finance (2001c), *Budget 2001/2002*.

[...]

Table III.15
Explicit (non-plan) subsidies, 1997/98 and 2001/02
 (US\$ million and per cent)

	1997/98 ^a	2001/02 ^b	Growth rate (%)
Total subsidies	5,285.6	6,565.2	24.2
Major subsidies	4,941.7	6,134.3	24.1
[...]			
Other subsidies	322.9	399.4	23.7
[...]			
Payments to state governments in lieu of sales tax on aviation fuel sold to international airlines (including Air India)	0.0	n.a.	-
Subsidy for operations of charter flights for Haj pilgrims	20.6	34.0	65.0
Subsidy to the railways for dividend relief and other concessions	141.6	n.a.	-
[...]			
Subsidy to Shipping Corporation of India for uneconomic shipping lines	3.0	n.a.	-
Subsidy to shipyards	12.8	10.6	-17.1
Cochin Ship Yard Ltd	2.8	4.4	57.3
Hindustan Shipyard Ltd	3.5	0.9	-74.9
Acquisition of Ships - interest differentials	6.5	5.3	-17.9
[...]			
Compensation for exchange loss	37.4	323.1	763.8
Industrial Development Bank of India	4.9	32.6	571.3
Industrial Credit and Investment Corp. of India	19.2	12.6	-34.5
National Housing Bank	0.8	1.8	125.2
Housing Development Finance Corp.	12.6	14.3	14.1
Exchange loss under NRI Bond Scheme	n.a.	1.8	-
Exchange loss on Resurgent India Bonds	n.a.	259.9	-
[...]			
Subsidy for Assam gas project	n.a.	0.0	-
[...]			

n.a. Not applicable.

.. Not available.

a Revised

b Budgeted.

Note: Rupee/US\$ exchange rate used for 2001/02 = 2000/01 April-December only (= 45.39244).

Source: Ministry of Finance online information. Available at www.nic.in/indiabudget/budget98-99 and www.nic.in/indiabudget/ub2000.

P. 125, para. 91

Significant steps have thus been taken since the early 1990s to strengthen the **banking** sector. [...] For the three public banks identified thus far as being weak, the Reserve Bank has recommended additional injections of capital by the Government to help them achieve the required minimum capital adequacy ratios. These and other recommendations discussed above are currently under consideration by the Government. [...] Fiscal measures, to allow banks to deduct up to 7.5% of their total income (previously 5%) against provisions made for bad and doubtful debts as well as to deduct up to 10% of their NPAs falling in the category of loss or doubtful assets (previously 5%) on the last day of the accounting year, were also announced.³⁴ [...]

³⁴ Ministry of Finance (2002b), Part B, paragraph 68.

P. 131, para. 105

Under the NTP 99, the licence issuing authority remains the Department of **Telecommunications**. [...] A range of incentives are also provided to encourage investment in the sector. These include amortization of licence fee, tax holidays of up to five years, rebate on subscription of shares/debentures, tax relief for financing through venture capital, and reduced rates of import duty on various telecommunications equipment.³⁵

P. 133, para. 109

[Construction] Road services are being improved, including through upgrading the present national highway infrastructure and developing new highways connecting major cities.³⁶ The National Highways Act, 1956 was amended in 1995 to allow participation by the private sector, which is being encouraged to invest through build, operate and transfer (BOT) schemes. Incentives for private-sector investment include tax holidays of up to ten years³⁷, and zero rates of import duty on construction equipment; FDI up to 100% is also permitted.³⁸

P. 135, paras. 114-115

In addition, to encourage exports of **software**, profits derived from software exports are exempt from income tax under Section 80HHE of the Income Tax Act, although the extent of these exemptions is being reduced gradually.³⁹ The Government has also created software technology parks, which are administered by an autonomous society (Software Technology Parks of India, STPI) under the Department of Information Technology, Ministry of Communication and Information Technology. The STPI provides state-of-the-art high speed data communication facilities and single window services to exporters. It has set up 24 centres, including 24 international gateways across the country. The parks, along with similar parks for computer hardware firms, provide infrastructure facilities, and other benefits such as exemptions from payment of income tax for a period of ten years (up to 2010) under Sections 10A and 10B of the Income Tax Act and exemption from payment of excise duties on inputs purchased in the domestic tariff area (DTA).⁴⁰ Foreign direct investment of up to 100% is permitted. All computer software companies established either in export-processing zones or as export-oriented units have the same liberal framework for imports and investment; as export-oriented companies, however, there may be certain export obligations in order to qualify for tax

³⁵ Equity held by non-resident Indians (NRIs), OCBs or International Funding Agencies will be counted as foreign equity (Ministry of Communications, 2002, p. iv).

³⁶ The National Highways Authority of India estimates that although India's national highway network is less than 2% of the country's total road network, it carries some 40% of total traffic (NHAI, "Road Network", [Online]. Available at: <http://www.nhai.org/roadnetwork.htm>, [4 April 2002]).

³⁷ Up to 100% for five years and 30% for the next five years, which may be availed of over a 20 year period (NHAI, "Government policy", [Online]. Available at: <http://www.nhai.org/govtpolicy.htm>, [4 April 2002]).

³⁸ Subject to total foreign equity limit of Rs 15 billion.

³⁹ Under Section 80 HHE of the Income Tax Act, computer software is defined as any computer program recorded on any disc, tape, perforated media or other information storage device or any customized electronic data or any product or service of similar nature, as notified, which is transmitted from India by any means. Exemptions under Section 80 HHE of the Income Tax Act are granted as follows: 80% of profits for the assessment year beginning 1 April 2001; 70% for the year beginning 1 April 2002; 50% for the year beginning 1 April 2003; 30% for the year beginning 1 April 2004; no deductions will be granted as of assessment year beginning 1 April 2005.

⁴⁰ Firms that manufactured computer software on or after 1 April 1981 in any free-trade zone, or on or after 1 April 1994 in any software or hardware technology park, or on or after 1 April 2001 in any special economic zone, are eligible for income tax holidays up to 31 March 2010. Key infrastructure facilities provided in the software parks include high speed data communication services.

exemptions. As at 1 April 2001, a total of 6,652 software units were registered with the STPI Centres; software exports by these units were valued at some US\$3.6 billion in 2000/01.⁴¹

WT/TPR/S/101 – Barbados

P. 23, paras. 18-19

A number of tax incentives are available for domestic and foreign investment under the Income Tax Act. Additional incentives cover capital allowances, dividend taxation, and loss carry-forwards.⁴² In addition, sector-specific legislation has been enacted for **offshore banking, trusts, insurance and other financial companies, as well as for shipping companies and hotels** (Chapter III(4)(iii)).⁴³

Foreign investment incentives are administered by the Ministry of Finance and the Ministry of Tourism, in coordination with the Barbados Investment and Development Corporation (BIDC). The BIDC also provides advisory services and other assistance to companies looking to establish businesses in Barbados. Applications for investment incentives are evaluated on the basis of a number of criteria, including local value added, net foreign exchange, potential export sales, and environmental impact. Foreign investment is not, however, subject to performance requirements.

P. 54, para. 108

The Government of Barbados is committed to actively supporting businesses, notably through the provision of tax incentives and, to a lesser extent, financial assistance. Assistance is available to companies in an array of sectors, ranging from agri-food and manufacturing to **tourism and financial services**. Proposals contained in the 2001 Financial Statement mentioned additional support for sugar and cotton producers, grants to improve technology, marketing and product quality in agri-food production, funding for **hotels and restaurants and other tourism-related industries**; and further financial assistance to the manufacturing sector. There are no available estimates of the overall budgetary cost of assistance to private and public commercial companies. According to the authorities, revenue loss from tax exemptions in 2000/01 amounted to BDS\$140 million or 2.7% of GDP.

P. 80, paras. 79-82

Tourism services are provided mainly by private operators, although the Government retains partial or full ownership of certain hotels. Government policy is to create an attractive environment for private investment. The Government also gets involved in the development of areas considered essential but unattractive to the private sector. For example, the Government has participated in the redevelopment of the former refinery site into a hotel project, and has also injected public funds in the rescue of small hotels.

The Ministry of Tourism is in charge of formulating tourism policy. The Barbados Tourism Authority is a statutory board responsible for marketing Barbados as a tourist destination. The Ministry of Tourism administers the Hotel Aids Act, which provides concessions to hotels during the construction phase and allows for capital expenditure to be written off against revenue for nine years

⁴¹ Software units established under the EOU/EPZ/STP schemes may sell up to 50% of the f.o.b. value of their exports in the domestic tariff area (DTA) (Ministry of Information Technology, undated, p. 5).

⁴² Lowtax.net online information. Available at: <http://www.lowtax.net/lowtax/html/jbsnews.html>; and Ministry of Economic Development online information. Available at: http://www.barbadosbusiness.gov.bb/miib/Legislation/Acts/Investment_acts.cfm.

⁴³ Ministry of Economic Development online information. Available at: http://www.barbadosbusiness.gov.bb/miib/Legislation/Acts/Investment_acts.cfm.

after the period of construction. Among other government support schemes, the Tourism Loan Fund of BDS\$30 million provides hotels with concessionary financing. The Small Hotels Investment Fund provides concessionary loans to properties with less than 75 rooms; some BDS\$500,000, or about 10% of the amount allocated to this fund, had been disbursed in February 2002.

The Ministry of Tourism announced a new bill in 2001 to stimulate investment in the tourism sector. The proposed legislation encompasses the entire hospitality industry, whereas the existing Hotel Aids Act 1967 focuses on concessions to hotels only. New provisions under the Draft Sustainable Tourism Bill include the right to import or purchase locally free of duties and taxes, building materials and a number of specified items. In addition, new concessions to qualifying tourism projects were to be added to the Income Tax Act. These differ from those currently made available under the Hotel Aids Act. They include a provision to allow investors to write off expenditure against revenue over a 15-year period, rather than the present ten years; the accelerated write-off of up to 150% of interest incurred on loans to invest in or upgrade inland hotels, historical, cultural or heritage assets.

To facilitate the opening of new air routes to Barbados, the Government announced in 2001 that it would make available an additional BDS\$20 million over the following three years; BDS\$6.5 million would be provided immediately. The funds were used to market Barbados as a destination in the cities that are the gateways to the recently established US Airways flight out of Philadelphia. In October 2001, as part of the National Emergency Programme, BDS\$30 million was released in support of the industry. Half of these funds were to be used in marketing support.

P. 82, paras. 87-90

Under the Shipping Incentives Act of 1982, **shipping companies** registered under the Barbados flag, when involved in the operation or leasing of ships, or in shipbuilding or repairs are entitled to a number of tax benefits. These include duty-free imports of ships and materials, exemption from tax for dividends paid to residents, reductions in taxes on dividends paid to non-residents and, at the Minister's discretion, full or partial exemption from taxes on profits. The Principal Registrar is based in London, with a subsidiary Registrar in Bridgetown. The Registry has had an ISO 9002-94 Quality certificate since March 1996.

To qualify for these benefits, ships must be registered under the Barbados Flag. Eligible ships must be: "foreign-owned", i.e. not owned by citizens of Barbados or by a company registered under the Companies Act; and either "foreign-going" vessels (see below) or pleasure yachts that do not carry passengers or cargo for hire or reward. There are currently 83 vessels registered under the Barbados flag. These include 35 cargo ships, 15 yachts, eight barges, and eight bulk carriers. [...]

The existence of bilateral taxation agreements together with the provisions described above results in particularly favourable opportunities for ships owned and operated by nationals of partner countries, who can obtain domestic tax benefits by operating through a Barbados shipping company managed and controlled from Barbados.

WT/TPR/S/102 – European Union

P. 59-60, paras. 166 and 120

No figures are available on subsidies granted by the 15 Member States, but the Commission has estimated that the category of "State aid" (see below) was €80 billion in 1999, amounting to 1% of EU's GDP.⁴⁴ For the period 1997-99, state aid averaged €90 billion annually, down by about 10%

⁴⁴ COM(2001)412.

from 1995-97.⁴⁵ **Rail transport** was the leading category on average (€ 31.5 billion annually), followed by manufacturing (€27.6 billion). [...]

In the wake of the events of 11 September 2001, which led the United States to make commitments to support **air transport service** providers, the Commission decided to continue the existing framework for state aid in the sector, with a few minor modifications (e.g., subsidizing increased insurance expenditure), but to propose the adoption of a new instrument "to react against unfair competition from subsidised third country airlines".⁴⁶ The instrument would allow for duties to be imposed on foreign air carriers equal to the amount of subsidies granted, and the procedures to do so would follow closely along the lines of the existing instrument for manufactured products (section (1)(xi)(b)). The proposed instrument is designed to fill a gap in the existing EU legislative framework to counter allegedly unfair practices in the air transport sector, noting that an instrument exists for unfair pricing practices in maritime transport; it should also be noted that countervailing procedures for subsidies in the services sector do not exist under GATS although the possibility of their negotiation is foreseen.⁴⁷

⁴⁵ COM(2001)403.

⁴⁶ European Commission Press Release IP/02/394. For background, see COM(2001)574.

⁴⁷ See Article XV of GATS.

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES**

Government Procurement of Services

The following communication has been received from the European Communities and their Member States with the request that it be circulated to the Working Party on GATS Rules.

I. INTRODUCTION

1. Within the framework of the negotiations under the mandate given by GATS Article XIII:2, the European Communities and their Member States (hereafter "the EC") hereby submits a contribution with proposals on a framework for rules for government procurement of services that could be developed, and on the benefits that could be drawn from them.

II. SIZE OF GOVERNMENT PROCUREMENT MARKETS

2. The OECD¹ estimated the size of total procurement for all levels of government at US\$ 5550.6 billion in 1998, roughly equivalent to 82.3% of world exports. Services represent a substantial part of government procurement (est. 60%). The world value of government procurement of goods and services, excluding defence-related expenditure and compensation of employees, was estimated at US\$ 2083 billion, equivalent to 7.1% of world GDP or 30.1% of world exports. Of this figure, OECD countries account for 86.1%. Non-OECD countries represent a mere 13.9 %, i.e. US\$ 287.7 billion. The largest opportunities therefore arise in the industrialised countries. Developing countries could thus particularly benefit from the opening up of government procurement of services and gain access to these large markets.

III. BENEFITS OF INCREASED COMPETITION IN GOVERNMENT PROCUREMENT

3. Improved conditions for import competition in government procurement play a crucial role in enabling public authorities to purchase services at the lowest cost, giving taxpayers value for money, improving the quality of government services and permitting better allocation of resources. Opening up competition to foreign services providers can also stimulate domestic industry, promote innovation and contribute to good governance. Conversely, policies to favour national or local services and/or services providers over those which are foreign have effects similar to other protectionist measures, introduce distortions that limit choice, increase prices and discourage economic efficiency. On balance, preferential price policies shift profits to domestic firms, but these benefits are ultimately offset by increasing procurement costs.

¹ *The Size of Government Procurement Markets*, Offprint from OECD Journal on Budgeting Vol.1, No.4, March 2002, ISBN 9264196307

4. On the export side, whereas GPA signatories have access to a significant part of world government procurement markets, countries that are not GPA parties – mainly developing countries - have no guaranteed access to these markets. Companies from non GPA countries thus suffer from their lack of access to procurement covered by the GPA.²

5. In some sectors, government procurement accounts for a small share of total domestic demand and preferential practices in procurement have therefore a limited impact on overall trade in services of these sectors. For certain sectors however, in which government procurement represents an important part of the market, the scope and effectiveness of market access granted under GATS commitments is greatly impaired by the existence of preferential practices in procurement (see the example of the construction services sector in Annex).

IV. RECOMMENDATIONS FOR A FRAMEWORK FOR GOVERNMENT PROCUREMENT OF SERVICES UNDER GATS

6. GATS Article XIII:1 exempts laws, regulations and requirements governing government procurement of services from the disciplines contained in GATS Articles II (Most-Favoured-Nation Treatment), XVI (Market Access) and XVII (National Treatment). GATS Article XIII:2 gives WTO Members a broad mandate to negotiate multilaterally on government procurement of services, under the GATS Agreement, which addresses international trade in services.

7. MFN and national treatment requirements are not sufficient to ensure equal treatment and non-discrimination in the area of government procurement. The experiences of the EC Single Market and of the GPA have shown that in order to ensure effective market opening, domestic procedural principles have to be developed.

8. The rules to be worked out for government procurement of services would therefore have to be complete enough to ensure competition, but they could at the same time offer flexibility to be acceptable to all and let developing countries implement national policies aimed at the development of certain services sectors, including the possibility to apply preferential prices policies.

9. With this objective in view, the EC proposes a framework that includes:

A. GENERAL RULES

10. GATS Article III general transparency obligations apply to government procurement of services, since the Articles of the GATS that do not currently apply to laws, regulations or requirements concerning government procurement, pursuant to GATS Article XIII:1, are GATS Articles II (MFN), XVI (Market Access) and XVII (National Treatment).

11. The EC suggests to examine which principles should be laid down as regards:

- (a) Transparency (e.g. public accessibility of domestic legislation, transparency of procurement methods and tendering procedures, bid periods, publication of calls for tenders, decisions on pre-qualification and contract awards, challenge procedures, protection of confidential information and language, limited tendering, negotiation periods and conditions). Consistency with the work under way in the Transparency

² The WTO Agreement on Government Procurement (GPA) sets forth rules for open and transparent bidding for services and construction work. It guarantees non-discrimination between foreign and domestic firms. The GPA is however a plurilateral agreement and applies only to Members that have specifically adopted it, mainly developed countries. Lack of flexibility of the GPA has been cited as a major reason for developing countries' choice not to join this plurilateral Agreement. The GATS could offer to these countries a much more flexible framework, enabling them to benefit from increased competition whilst keeping the possibility to implement national policies with domestic preferences.

Group should be ensured, through regular contacts and exchange of information about work in progress between this Group and the Working Party on GATS Rules.

- (b) the criteria for assessing bids and awarding contracts (how to achieve "best value for money" in government procurement?);
- (c) the application of the Most Favoured Nation treatment;
- (d) notification and statistical reporting requirements;
- (e) appropriate flexibility for individual developing countries in line with the principles set out in GATS Articles IV and XIX:2.

12. Guarantees regarding the challenge procedures, as stipulated in GATS Article VI (which applies to government procurement pursuant to GATS Article XIII:1), are essential to ensure effective enforcement of agreed rules. Members are invited to reflect on whether additional provisions, specific to challenge procedures regarding decisions linked to government procurement, are necessary and should be discussed in this framework.

B. SECTOR-SPECIFIC RULES

13. Some services sectors may present peculiarities that would justify specific rules or principles on, say, registration obligations, (pre-)qualification requirements / professional qualifications / technical capability, selection and award. The EC therefore suggests to carry out a sector by sector analysis, focusing first on those sectors where government procurement is significant and where WTO Members would have interests. Sectors that could be looked at, depending on Members interests, could include, *for instance*, computer and related services, construction services, engineering and architectural services, environmental services, catering services, building-cleaning services and travel agencies.

C. COMMITMENTS AS REGARDS ACCESS TO, AND NATIONAL TREATMENT IN RESPECT OF, GOVERNMENT PROCUREMENT OF SERVICES

14. As a further step, the EC suggests that each WTO Member should, besides the set of principles agreed, make commitments as regards access to, and national treatment in respect of, government procurement of services, with the possibility to choose which sectors to open, with – where necessary – limited restrictions on national treatment (e.g. price preferences), within the model of the current system of GATS schedules of commitments. This is not possible under the GPA where a sector either is not listed or has to follow GPA rules.

15. This would offer WTO Members, in particular developing countries, maximum flexibility to modulate the level of openness and liberalisation of their government procurement markets to their development needs and their national policy objectives. The possibility to open up government procurement markets progressively would allow time for WTO Members to establish the relevant regulatory framework where necessary. This would also mean that a Member taking no commitment as regards access to, and national treatment in respect of, government procurement markets, would have actually no additional obligation in these regards as compared to the present situation.

ANNEX

The example of the construction services sector

This annex is provided purely as an illustrative case. The Construction Services sector has been chosen as an example since government procurement has an important impact on this sector, but a similar case could be made for other services sectors.

1. The UNCTAD X Plan of Action³ states that UNCTAD should help developing countries in identifying the priority services sectors where liberalisation should take place and the main trade barriers that developing countries face in those sectors, especially those which limit developing country ability to export their services. Under this Plan of Action, the UNCTAD Secretariat produced a note on the "regulation and liberalisation of the construction services sector and its contribution to the development of developing countries"⁴, with a view to prepare the experts meeting of 23-25 October 2000⁵ devoted to that subject.

2. The outcome of these discussions underlines that the construction services sector in developing countries is a fundamental economic activity which permeates all sectors, draws on a large part of capital formation and provides the essential support for developing a national economy. Construction services are an important tool for development because of their role in building social and industrial infrastructure. They are an instrument for employment creation, a key infrastructure service and a tool for upgrading welfare. Companies from developing countries have increasingly entered into ad-hoc co-operation agreements with companies of developed countries, focused around specific projects. This provides opportunities for acquisition of experience and access to technology for developing country firms. Representatives of developing countries at the October 2000 UNCTAD experts meeting observed that in order to support the development of developing country firms' capacities, fair competition in the international markets for construction services should be ensured.

3. The above-mentioned UNCTAD papers also note that some developing countries have been exporting construction services successfully and have attained a certain competitive advantage, although they have had limited success in penetrating the markets of developed countries. Tightening credit conditions and accumulated debt are forcing companies, as in developed countries, to look for opportunities outside their domestic market, often through subcontracting. Representatives of developing countries at the October 2000 UNCTAD experts meeting underlined that government procurement practices are limiting exports of construction services from developing countries.

4. Construction services procured by government at all levels are indeed estimated to account for as much as half of the total demand for construction services. GATS Art. XIII:1 provisions thus exclude much of the trade in this sector from GATS disciplines. Government procurement practices, which discriminate in favour of domestic suppliers, have therefore a significant impact on trade in this sector.

5. Developing countries have not wished to participate in the GPA. This is based on the general perception that by opening their government procurement to international tendering they will permit foreign firms to capture a significant part of their domestic business, whilst it should be considered that the construction services so obtained would be provided at more competitive prices, thus

³ TD/386

⁴ TD/B/COM.1/EM.12/2, 1 August 2000

⁵ Report published on 18 December 2000 by UNCTAD under ref. TD/B/COM.1/32-TD/B/COM.1/EM.12/3

stimulating development and growth elsewhere in the economy, and that on other markets, export opportunities would be provided to their domestic construction industry.

6. UNCTAD thus recommends⁶ that specific commitments in the construction sector could be complemented by pro-competitive provisions addressed to measures either peculiar to the construction sector, or which were judged to have a negative impact on trade within the sector, such as transparency in government procurement policies. UNCTAD concludes that given the significance of government procurement in influencing trade in construction services, a sector-specific approach to this issue could be considered.

⁶ TD/B/COM.1/EM.12/2

Working Party on GATS Rules

Original: English

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES**

Modal application of an emergency safeguard measure

Corrigendum

At the request of the delegation of the European Communities and their Member States document S/WPGR/W/38 should be considered unrestricted.

Groupe de travail des règles de l'AGCS

**COMMUNICATION DES COMMUNAUTÉS EUROPÉENNES
ET DE LEURS ÉTATS MEMBRES**

Application d'une mesure de sauvegarde d'urgence en
fonction du mode de fourniture

Corrigendum

À la demande de la délégation des Communautés européennes et de leurs États membres le document S/WPGR/W/38 doit être considéré comme faisant l'objet d'une distribution non restreinte.

Grupo de Trabajo sobre las Normas del AGCS

**COMUNICACIÓN DE LAS COMUNIDADES EUROPEAS
Y SUS ESTADOS MIEMBROS**

Aplicación de una medida de salvaguardia
urgente a los modos de suministro

Corrigendum

A petición de la delegación de las Comunidades Europeas y sus Estados miembros el documento S/WPGR/W/38 deberá considerarse de distribución general.

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES**

The following communication is circulated at the request of the European Communities and their Member States, to Members of the Working Party on GATS Rules.

MODAL APPLICATION OF AN EMERGENCY SAFEGUARD MEASURE

1. This note seeks to look into some issues related to the discussions of the Working Party on GATS rules on the basis of Article X of GATS, regarding a possible emergency safeguard measure (ESM) for trade in services, in particular in the light of the four modes of supply a service. The following comments are made without prejudice to a Community position on the desirability and feasibility of such a mechanism and should in no way be interpreted as meaning acceptance of an ESM.

I. STATE OF PLAY

2. Safeguard measures have been present in the goods area since 1947 (Article XIX of GATT 47). A safeguard is conceptually a straightforward instrument that applies to foreign goods crossing the border. It aims at protecting from fair trade the domestic industry, defined as follows: *'the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products'*. (Article 4.1. (c) of the Safeguard Agreement). The main criterion therefore is the place of operation of the companies.

3. In services, there is no similar past history of safeguard measures. Designing such an instrument within the GATS framework is complicated among other things because of the four modes of delivery of a service in contrast to the single mode of trading goods under GATT.

4. Mode 3 has been the main subject of discussions in the Working Party on GATS Rules during the last year and several Members have concluded therefrom that they cannot apply a safeguard against foreign established companies (i.e. to mode 3). One should not, however, conclude from the above that the application of a safeguard measure in the three other modes of supply does not raise concerns. There is now a need to discuss in-depth these other modes and inter-modal relations as well, which have been neglected so far by the Working Party.

5. This note will consider the issue of applying a safeguard for each mode of supply individually and make preliminary comments as to whether it is technically possible to have a uniform set of rules applying across the four modes. This point was raised in the document submitted by Mauritius (JOB(01)/143, 24 September 2001).

II. APPLICABILITY OF A SAFEGUARD MEASURE TO THE FOUR MODES OF SUPPLY

A. MODE 1 - CROSS BORDER SUPPLY OF SERVICES

6. A service supplier located within the territory of a Member provides services into the territory of another Member. If the service supplier is a juridical person, it has the origin of the Member where it is located.

7. Some Members seem to consider that a safeguard for mode 1 does not present conceptual difficulties as this form of trade is at first sight very similar to what happens in the goods area.

8. The situation, however, is not that straightforward. In the goods area, it is feasible for customs officers to impose duties on identified goods and, therefore, to prevent them from crossing the border, where appropriate. There is, however, no similar proceeding for services: no customs officers identify services crossing the borders and services are not all embodied in a good. Services can be provided by sending a communication, written or not, via mail, phone, fax or Internet (e.g. professional services, travel agencies). Indeed, no Member can seriously consider stopping all incoming mail or communications: enforcing measures at the border therefore is not that simple for services.

9. This being said, a Member may well state that cross border supply of services into its territory is illegal, even though enforcement of such a prohibition is difficult, if not impossible, to implement. Governments would thus have to trust that companies act in accordance with their legislation. If, however, some companies breach this prohibition, trade would take place in practice but consumers would most likely lose the right to legal action against foreign services providers not fulfilling adequately their contracts. It remains to be seen whether this would have any impact.

10. Different sectors are likely to be affected in different ways. Financial services under mode 1 take place in the form of wholesale commercial banking, investment banking, private banking, insurance of large risks, reinsurance and financial information services. In telecoms, a Member could be tempted to use a safeguard in order to protect companies established within its territory from competition of companies operating from abroad. This could be the case because established companies invest in its terrestrial infrastructure while, for instance, satellite companies operating on cross border basis do not need to do so. In addition, all distribution activities, and in particular distance selling, could be affected as well as transport, and in particular maritime. It is worth noting that the above-mentioned sectors all have an infra-structural character and have close links with trade in goods. There is a need, therefore, to look at the implication of a safeguard measure in these services, and in particular on possible effects on trade in goods and development.

11. Acquired rights are not easy to identify and to evaluate. This is an important and difficult issue. Would operating prior to the date of implementation of the safeguard measure give rights to continue business? If so, a criterion might be whether the right to provide services under mode 1 was used by service suppliers before the safeguard measure is taken. In addition, would long term business relationships deserve particular consideration? Alternatively, would acquired rights be recognised only if previously formalised in contracts? In that context, an analysis of the provision on products 'en route' in Article XIII:2.(b) of GATT 1994 would be useful.

12. In addition to companies operating prior to the application of the measure, other service suppliers may be affected. This is the case for companies that operate in activities related to the sector directly concerned by the safeguards such as, for instance, for express delivery companies if a safeguard were taken in the field of air transport freight forwarding. In the goods area, downstream or upstream economic effects of a safeguard measure are disregarded, except for Members who apply a

public interest clause. In the GATS context, it is worth considering whether a different approach would be preferable, in particular given the lack of harmonised classification.

B. MODE 2 – CONSUMPTION ABROAD

13. A supplier provides services in the territory of a Member to a consumer of another Member. In this case, the precise origin of the service supplier is almost irrelevant, what matters is that the consumption occurs in a foreign country. As Mexico put it in its document (JOB(01)/67 of 9 May 2001), import takes place on a foreign market.

14. A safeguard measure for mode 2 would occur when a Member decides to reserve for its own industry (including foreign established companies) all domestic consumption of a service sector and consequently prevents its nationals from consuming similar services abroad (including from foreign subsidiaries of its domestically owned enterprises).

15. It is important to keep in mind that the difficulties which may be remedied by a safeguard measure must be sector specific and not across all activities of the economy. In the latter case, limitations are more likely to be linked to external financial difficulties of the Member, as defined in GATS Article XII, and any solution should be found in conformity with this provision.

16. Under these circumstances, the need for a safeguard mechanism to cover this mode of supply is not obvious. One may envisage cases similar to mode 1, in particular where mode 1/mode 2 distinction is not simple to draw (for instance, services provided on Internet). In addition, as for mode 1, enforcement will be difficult to ensure.

17. There is a need to clarify cases where a safeguard could be used in that mode of delivery. The most commonly cited sector under mode 2 is tourism, but it is difficult to imagine a case where preventing citizens from leaving the country to consume tourism services abroad would not result from financial difficulties or wider political reasons covered by the general exemptions in Article XIV and XIV bis.

18. Acquired rights: If a service supplier established in another Member has had for a number of years considerable share of its trade with customers originating in the Member invoking the safeguard, would it be denied all rights to pursue this business relation? If not, what is the meaning of acquired rights under mode 2? The situation is somehow similar to mode 1.

C. MODE 3 – COMMERCIAL PRESENCE

19. The service is supplied by the service supplier of one Member, through commercial presence in the territory of another Member. The origin of the supplier is the one of those natural or legal persons that control or own that supplier.

20. Mode 3 raises important practical difficulties, such as identification of domestic industry (given that determination of nationals who own and control large companies or financial holdings can prove difficult), standing of the complainant, representativity of the domestic industry.

21. In addition, under GATS, foreign-established companies¹ are not considered as part of domestic industry and can be treated less favourably than domestically-owned and controlled firms. However, most WTO Members are bound by their internal legislation and network of bilateral investment treaties, according to which they usually grant national treatment to foreign established

¹ 'Foreign established companies' mean companies established within the territory of a Member but owned or controlled by natural or juridical persons of other Members.

companies. Applying a safeguard measure to mode 3, that is against foreign established companies, conflicts therefore with such other sets of regulation. More importantly, some Members question the desirability of a safeguard mechanism applicable to mode 3, as this will scare foreign investors.

22. In that context, two options have been discussed: exclusion of mode 3 from the scope of any safeguard mechanism or exclusion limited to new entrants.

23. Full exclusion of mode 3 would be satisfactory to protect foreign investors, but would lead to some discrimination as using a safeguard in mode 1 would favour established companies vis-à-vis companies that provide services on a cross-border basis (same comments as for mode 1 - problem of cross mode competition). Here, the safeguard could then be used as an incentive to 'attract' investment and could distort trade flows. In addition, this will send a very negative signal to small and medium enterprises that cannot afford to establish a commercial presence in every export market and that operate on a cross border basis.

24. Protection of already established foreign companies: a safeguard would only be used against newcomers by preventing them from entering the domestic market. There is a risk that Members see this as an easy solution as it gives the impression of protecting adequately acquired rights. One should be cautious with this approach, as it does not seem to give the proper reply to the situation justifying a safeguard measure. If injury is caused by increase in supply of services under mode 3, new entrants cannot be responsible for this. Closing the market to newcomers will not correct insufficiencies in the market that, most likely, originate in a lack of sound regulatory framework, including competition authority, in the services sector concerned. On the other hand, this option may encourage domestic industry to lobby their government so as to use a safeguard to close the market once a limited number of foreign companies enter the market. In fact, the debate newcomers versus traditional operators is not new in the WTO context (see for instance Article 3(j) of the WTO Import Licensing Agreement, which states that, for the purpose of granting non-automatic licences, consideration shall be given to new importers.)

25. Acquired rights: different options have appeared (cf. communication from Mexico):

- (a) *Full protection*: companies established prior to the safeguard measure would not be affected. The level of protection needs to be clarified: would such companies be guaranteed full national treatment or treatment bound in the list of specific commitments of the Member invoking the safeguard?
- (b) *Protection limited to exercised rights*: companies established would not be forced to disinvest but they would not be allowed to expand their activities. The situation would be frozen and could create an imbalance in favour of the largest company on the market, as the other ones would not be allowed to compete to gain market share.

26. Link with BITs needs to be examined. If a Member has committed within a BIT to grant national treatment to foreign investment, then a safeguard might give the right to pursue the matter before the courts designated in the BIT as competent for solving disputes.

D. MODE 4 – MOVEMENT OF NATURAL PERSONS

27. The service is supplied by a service supplier of one Member, through presence of natural persons of a Member in the territory of another Member. The service supplier is either a natural or a juridical person. It could be a company sending employees abroad or a natural person providing services for his own account.

28. Most specific commitments made by Members in mode 4 currently concern entry of business visitors, intra-corporate transferees or contractual service suppliers. This means that natural persons transferred are all employees (or minority partners) of juridical persons. In such cases, mode 4 cannot be seen in isolation from modes 1 and 3: mode 4 supply of services is only authorised if there is market access under either mode 3 (for intra-corporate transferees and business visitors seeking to establish a commercial presence) or mode 1 (for contractual service suppliers and business visitors seeking to negotiate or conclude contracts). The service suppliers beneficiaries of the commitments are companies and not individuals and, similarly, injury suffered on the domestic market of the Member invoking the safeguard must be found on the whole service suppliers of the like service, within the territory of the market of that Member.

29. Some Members have made mode 4 commitments for independent professionals. In this case, however, there is a need to reflect on the definition of the domestic industry: would the domestic industry only include self-employed professionals or juridical persons as well?

30. In practice, a safeguard measure could take the form of a numerical limitation on entries of natural persons. It is probably one of the easiest safeguard measures to enforce, as Members control at their external borders entry of foreign natural persons (passport, visa, working permit). Here again, it is worth noting that the problems must be sector-specific and not be linked to a general approach taken by a Member on immigration or labour market policies applicable across all services sectors

31. Acquired rights: who are the beneficiaries of acquired rights under mode 4? What treatment would be granted to natural persons who are in the territory of the Member at the time a safeguard measure is taken? Would they be requested to leave the territory as soon as possible or would they be allowed to remain until the end of their contract? In the case of intra-corporate transferees, do acquired rights include the right to replace an expatriate once his posting has finished? In this case, one may consider that the service supplier has exercised its right to send an intra-corporate transferee and should be allowed to continue.

III. IS A UNIFORM SET OF RULES FOR ALL MODES OF SUPPLY POSSIBLE

32. More thought needs to be given to this question. These are only preliminary comments:

- (a) To preclude discussions of coverage of all modes would be premature for the following reasons:
 - (i) It seems difficult to separate completely a safeguard under mode 1 from mode 2.
 - (ii) Applying a safeguard to one mode only does not take into account reality of cross-mode competition and would create trade distortion:
 - A safeguard limited to mode 1 could be used as an instrument to 'encourage' foreign companies to invest in a given market in order to operate there. This would not be sufficiently attractive if the Member concerned has a small economy, but for large market, this could be an effective instrument, particularly detrimental to small and medium size enterprises as compared to large companies. On the other hand, a safeguard measure applied to modes 1 and 3 would lead to discrimination between companies of the same Member: a company that has established a commercial presence in the Member invoking a safeguard prior to the adoption of the measure may be authorised to pursue its activities while a company that would seek to invest after adoption of the same measure, or that provides the like services from the

territory of another Member, would be prevented from doing so and would lose the market. Again, this problem already exists in the goods area as companies producing within the territory of the Member invoking the safeguard are not affected by the safeguard measure and new investment is allowed (except if this is a circumvention issue). This deserves an assessment for services.

- (iii) At the same time, a measure should be limited to the action necessary to remedy the situation (does that mean only to the mode that is causing injury?)
 - (iv) Mode 4 is intrinsically linked either to mode 1 or mode 3 and cannot be treated in isolation to other modes of supply.
- (b) Some aspects do not appear mode-specific:
- (i) The situation justifying a safeguard;
 - (ii) The conduct of the investigation;
 - (iii) Notification to WTO;
 - (iv) Consultation;
 - (v) Compensation mechanism, if any;
 - (vi) Indicators of injury: domestic industry supplying like services should show injury. There is no argument for changing criteria depending on the mode of supply considered, as the affected industry remains the same: *the producers as a whole of the like or directly competitive services*.
 - (vii) Determination of domestic industry: the same service supplier may have different origins, depending on the mode of supply under which it has chosen to operate. Thus, a Brazilian subsidiary of a Community company, supplying services both in Brazil and Argentina, will be considered by Brazil as a Community company and by Argentina as a Brazilian company. This is not a problem because the safeguard may not be discriminatory. The major difficulty is about including or not foreign-established companies within the domestic industry but is there a reason to take a different approach, depending on the mode of supply considered?
- (c) Some elements call for mode-specific solution:
- (i) The most appropriate measure to remedy a situation justifying a safeguard;
 - (ii) Indicators and criteria for the purpose of measuring increase in supply of service;
 - (iii) Acquired rights: however, consistency should be maintained across modes of supply. For instance, if acquired rights are broadly defined for mode 3, for sake of consistency the same should apply for modes 1, 2 and 4.
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COMMUNICATION FROM THE UNITED STATES

Desirability of a Safeguard Mechanism for Services:
Promoting Liberalization of Trade in Services

The following communication is circulated at the request of the United States to Members of the Working Party on GATS Rules.

1. The United States offers the following proposal with the goal of focusing discussion in the Working Party on the fundamental question of the desirability of a safeguards mechanism for services. In the event that the Working Party concludes that such a mechanism is desirable, this paper suggests several approaches to making safeguards feasible; that is, designing a safeguard that would genuinely help promote GATS goals. This proposal is without prejudice to our final position on the need for safeguards in the GATS.

I. DESIRABILITY AND FEASIBILITY OF SAFEGUARDS FOR SERVICES

2. The United States continues to believe that the Working Party has not adequately addressed the fundamental issue of whether a safeguard mechanism is desirable in the services context. Further, the numerous, disparate approaches suggested by Members (e.g. ASEAN, Mexico) serve largely to raise even more questions about how a safeguard could be applied in practice. A number of delegations have voiced the opinion that a safeguard in Mode 3 would be counter-productive in that it would threaten foreign direct investment and could lead to forced disinvestment. This group may also wish to consider whether similar disincentives exist in Modes 1, 2 and 4. The possibility of cancellation of a long-term contract to provide, for example, long-distance telephone services, or the forcible expulsion of visa-holders under Mode 4 might also give pause to would-be investors and traders.

3. Further, we believe that no Member has yet made a convincing case in favor of safeguards. The GATS was designed to provide Members with significant flexibility in designing their schedules. No Member has to schedule a commitment with which it is not comfortable. Allowing access to a safeguard above and beyond the inherent protections of the positive-list approach might run counter to the GATS goals of promoting more open services trade. To date, no Member has shown that the existence of a safeguard mechanism would enable that Member to make more extensive commitments to liberalization than it could make without one. The United States believes that this case should be convincingly demonstrated in order for the Working Party to determine that a safeguard is desirable. Accordingly, we invite Members favoring a safeguard to provide examples of the additional commitments they would be prepared to undertake were a safeguard made available.

A Safeguard Must Encourage Liberalization

4. A central purpose of the GATS is to encourage liberalization of trade in services. The purpose of a safeguard mechanism is, theoretically, to allow Members, by providing them with a measure of security, to undertake more extensive liberalization commitments than they might otherwise make. WTO Members have committed to liberalizing trade in services and are working toward that goal. Since Members plan to take steps to open trade in services, a safeguard mechanism would be desirable only if its existence gave members the necessary confidence to make deeper commitments than they might already plan to make. For example, if a Member has already recognized the inherent value in opening its services market to foreign investment, that Member might consider whether the availability of a safeguard might lessen this benefit by discouraging foreign investment and international trade in services.

II. QUESTIONS REGARDING A POTENTIAL SAFEGUARD MECHANISM

5. Without prejudice to the outcome of discussion in the Working Party on the desirability of a safeguards mechanism in the GATS, the United States submits the following questions and observations for Members' consideration:

A. SAFEGUARDS SHOULD NOT APPLY TO EXISTING COMMITMENTS

6. The GATS has been in effect for more than five years. During that time, Members have not had recourse to a safeguards mechanism. Indeed, many Members have continued to open their markets and broaden their commitments. Clearly, such a mechanism is not necessary for the protection of commitments made in Members' original schedules, or subsequently in the absence of a safeguard. To apply a safeguard to existing commitments could be seen as regressive and even counter to GATS goals. The first paper the Secretariat prepared for this Working Party (S/WPGR/W/1) notes that Members entered into their initial GATS commitments without recourse to safeguards and that a safeguard would be best discussed in the context of higher commitments. Indeed, the Secretariat suggested that "the justification for designing any new safeguard mechanism would be its contribution to future market opening." This question is echoed in a later Secretariat paper (S/WPGR/W/15) which asks whether it is more appropriate to consider safeguards in the context of governments being more forthcoming in their commitments. A 1997 submission from Hong Kong China (S/WPGR/W/18) notes that Members have already willingly bound themselves to commitments in the absence of a safeguard and asks whether, therefore, a safeguard should only be related to future commitments. Consistent with our views on the GATS goals of liberalizing services trade, the United States believes that any potential safeguard should only apply to new commitments made by Members after the safeguards mechanism takes effect *and* which are more significant than the Member would have made if it had not had recourse to a safeguard.

B. A POTENTIALLY USEFUL PRECEDENT IN AGRICULTURE AGREEMENT

7. We have noted in the past that the goods model may not be appropriate for services. However, this should not preclude us from looking for useful precedents in other WTO agreements. While by no means a perfect example, the Special Safeguard in the Agriculture Agreement offers a precedent for linking access to a safeguard to new, demonstrably liberalizing commitments.

8. Article 5 of the Agreement on Agriculture provided a special safeguard mechanism to Members, but there were three important conditions applied on the application of the safeguard. First, it is only available with respect to products having been designated in the Member's schedule as subject to the safeguards provision, and this eligibility was linked to the commitment to remove non-tariff measures. Second, specific triggers were established for implementing the safeguards, and establishment and implementation of the safeguard mechanism is scrutinized by the Committee on

Agriculture. Third, the special agricultural safeguard is of limited duration - only to be applied during the reform process and a number of countries have proposed termination in the current agriculture negotiations. When scheduling commitments, Members could consider whether these commitments might result in a sudden surge in imports that threatened domestic suppliers. If a Member believes its commitment was deep enough to pose a risk, the Member could schedule access to a safeguard. The "special agricultural safeguard" was directly linked to commitments undertaken by a Member which were recognized as being more liberalizing than the status quo - it is only available for products that were subject to the tariffication process which removed non-tariff measures. The United States has proposed a similar approach for services (S/WPGR/W/17) and we continue to believe that, if the working party determines that a safeguards mechanism is desirable, Members should schedule access to the mechanism based on new commitments which they feel to be particularly risk-prone and meritorious of special protection.

C. PREDICTABILITY IN APPLICATION

9. We have noted in the past that the presence of a safeguard mechanism, especially if available in Mode 3, could have a potentially chilling effect on investment. A scheduling approach would help to mitigate this negative impact. A potential investor would be able to see in advance whether a particular sector might be the subject of a safeguard action and could choose whether to take on this added risk. A non-specific, horizontal safeguard might, conversely, lead investors to conclude that the risk of sudden, unforeseen legal barriers renders a market unattractive. It would be unreasonable, and in many cases could amount to expropriation, to invite in a foreign investor and then require him to dismantle and remove his investment. Of course it might also be counter-productive for a country to dis-allow its own citizens from, for example, seeking legal advice from attorneys of a country in which they planned to do business. And the possibility of the instantaneous unilateral termination of a temporary visa could further deter foreign services providers. In short, the availability of a safeguard in any sector or mode of supply could have a deterrent effect on international trade in services and might therefore be seen as contradictory to GATS liberalization goals and to a Member's own economic interests. The transparency of a scheduled safeguard might help to mitigate these problems.

D. SAFEGUARDS LINKED TO LIBERALIZATION

10. In order for a Member to schedule access to a safeguard, the Member would need to demonstrate that access to the safeguard would enable that Member to schedule more significant liberalization commitments than would be possible in the absence of the safeguard. We offer the following examples for consideration and discussion:

- A Member offers to bind a commitment which is less liberal than existing practice, e.g. a Member currently allowing foreign executives a six-month temporary working stay binds a commitment allowing a three-month stay. Should this be seen as liberalization simply because there was no previous binding? If so, is it enough to merit access to a safeguard?
- A Member with no binding in a sector binds existing practice. In the first example, the Member would bind at six months. This might be seen as liberalization, but perhaps not significant enough to merit a safeguard since it does not seem to put the Member at any additional risk.
- A Member offers to bind a commitment that is broader than current practice. To use the same example, the Member which currently allows foreign service providers a six-month temporary working visit binds an offer permitting multiple entries and stays of up to one year. This would appear to represent a significant opening of the Member's services market and could be seen as risky enough to merit the special protection of a safeguard.

- It is also useful to consider market access and national treatment. For example, access to a safeguard could be limited to commitments of “none” in these areas.

11. We have argued that the scheduling nature of the GATS allows Members to include in their schedules access to safeguards-type protections. Should the Working Party agree on a structure for a safeguards mechanism, we would propose that this be the only safeguard to which Members would have access. If this group reaches consensus on the desirability of a safeguard and subsequently designs a feasible mechanism that promotes opening of markets, it would be confusing and ultimately counter-productive for Members to schedule ad hoc safeguards without regard for the agreed-upon structure. Additionally, when considering whether to schedule access to the safeguard, Members would benefit from considering whether existing access to relief under GATS Articles XXI and XII offers sufficient or more appropriate protections.

III. CONCLUSION

12. The United States has offered the foregoing proposal as an invitation to Members which feel the need for a safeguards mechanism to offer evidence that such a mechanism would promote the fundamental goals of the GATS. We continue to believe firmly that it should not be the role of this Working Party to promulgate rules that run counter to the over-arching objectives of the GATS. In sum, if we cannot delineate any direct connection between safeguards and liberalization of trade in services, we should consider whether it would be desirable to have such safeguards. Only when we have determined that safeguards will lead to more open services markets can we begin to address the methodology to definitively link a safeguards mechanism to concrete commitments to liberalize services markets.

Working Party on GATS Rules

- DRAFT -

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES**

1. Since its last annual report¹, the Working Party on GATS Rules has held five formal meetings. Minutes of the meetings are contained in documents (S/WPGR/M/30-34). In each meeting, the Working Party considered the three negotiating mandates: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV).

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. At its meeting on 20 November 2000, the Working Party agreed to extend the negotiating mandate under Article X until 15 March 2002 (doc. S/C/W/184). This proposal was adopted by the Council for Trade in Services at its meeting on 1 December 2000.

3. Differing views continued to be expressed regarding the desirability and feasibility of an emergency safeguard mechanism (ESM) in services. Most discussions were held on the basis of the illustrative list of themes circulated by the Chairperson (Job No. 1979/Rev.1). The list includes issues such as situations justifying safeguard action, the definition of "domestic industry" and the issue of "acquired rights", the modal application of a safeguard mechanism, the concept of "like service", the identification of indicators and criteria for determining injury and causality, the possible forms of a safeguard measure, the questions of compensation and special and differential treatment, and relevant procedural matters. A number of delegations presented informal written contributions on specific aspects of a possible ESM. Moreover, a group of delegations presented an informal *Draft agreement on emergency safeguard measures for trade in services*, on 31 October 2000. All issues were examined in both formal and informal meetings.

4. The Working Party also discussed the organization of future work, keeping in mind the negotiating deadline of 15 March 2002. In July 2001, the Working Party requested the Chairperson to prepare, under his responsibility, a synopsis which would outline the current state of the discussion under the ten items identified in the Chairperson's Note, Job No. 1979/Rev.1. The synopsis was circulated on 7 August (JOB(01)/122) and is without prejudice to the questions of desirability and feasibility, nor to the form that a possible ESM might take. It presents, in a synthetic way, the main options proposed until July 2001, and indicates comments made by Members.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

5. Discussions have continued on definitional issues as well as on possible multilateral disciplines in this area.

¹ S/WPGR/W/35, 3 November 2000.

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

6. The Working Party has continued to consider the need for, and possible scope of, disciplines on subsidies which may have trade-distortive effects. Delegations proceeded on the basis of the Chairperson's Checklist (Job No. 4519/Rev.1), and took up one item at each successive meeting. The fifth and last item was addressed in July. At that meeting, it was decided that the Checklist would remain on the table for the time being and that the five topics it contains would remain open for discussion.

Working Party on GATS Rules

**SUBSIDIES FOR SERVICES SECTORS
INFORMATION CONTAINED IN WTO TRADE POLICY REVIEWS**

Background Note by the Secretariat

Addendum

I. INTRODUCTION

1. The Working Party on GATS Rules, at its meeting of 7 July 2000, called on the Secretariat to continue monitoring Trade Policy Reviews (TPRs) for information concerning subsidies in services. More specifically, on 30 November 2000, the Secretariat was requested by the Working Party to prepare a new overview document concerning such subsidies, based on recent TPRs. While the previous document of 9 May 2000 (S/WPGR/W/25/Add.1) was based on 37 TPRs issued between January 1998 and April 2000, the present Note covers nine Reviews completed between May and December 2000. Relevant information has been included, in italics, in the overview table which was already contained in the May 2000-document.

2. As has been noted on past occasions, TPR-based information does not necessarily provide a comprehensive picture of Members' trade policies in any narrowly defined area. The selection of countries for review follows a schedule established by the Trade Policy Review Body and, thus, is not driven by issue-related considerations. Moreover, to be as relevant as possible within the TPR's overall mandate, the individual reports seek to focus on a country's main policy challenges and constraints; among these, services subsidies do not appear to have figured prominently to date. While many reports contain some information on such subsidies, no attempts have been made to assess their wider economic implications or any (distortive) effects on trade.

3. The subsidy definition generally used for Trade Policy Reviews is based on the definition contained in the WTO Agreement on Subsidies and Countervailing Measures. Accordingly, a subsidy is deemed to involve a financial contribution by a government or public body which confers a benefit. This covers assistance provided in the form of direct transfers of funds, including grants, loans and equity infusions; potential direct transfers of funds or liabilities, e.g. loan guarantees; government revenue foregone; supply of goods and services other than general infrastructure; purchase of goods; payments to funding mechanisms; or income and price support. As discussed in the initial Secretariat Note, it may be difficult in individual cases to identify the ultimate beneficiaries of a subsidy, which may include the direct recipients, downstream industries, or individual consumers.¹ Thus, given the infrastructural importance of many services sectors as providers of generally available inputs, it might

¹ For example, the provision of basic health services may be ensured through: (a) cost-free treatment in state-owned hospitals; (b) the extension of public funds to commercially independent hospitals; or (c) government-sponsored premiums for basic health insurance. While possibly conferring the same benefits to the same target group, such measures might be defined, respectively, as the provision of infrastructural services, subsidies for the health sector, social transfers and/or subsidies for insurers.

be necessary to look beyond the subsidized sector, e.g., communication or transport, and take into consideration the users of the services rendered.

4. As in the two preceding documents, the following types of assistance have not been included: (i) Exemptions from indirect taxes, in particular VAT, which are frequently intended to encourage consumption rather than production of a service; (ii) generally available support, for example in the context of regional development or research programmes; and (iii) company-internal cross-subsidization between monopoly and market-oriented activities in sectors such as telecommunications. By contrast, government financial interventions in the form of share purchases and similar equity transfers have been taken into account. This has drawn some criticism at the July meeting of the Working Party as such actions might have been driven by macroeconomic concerns and no particular service sector might have been targeted (S/WPGR/M/28). However, the Secretariat felt that it might be preferable, for the sake of consistency, to continue applying the above subsidy definition to the information contained in TPRs rather than introducing additional considerations case-by-case.

II. POLICY PATTERNS

5. The information contained in recent TPR reports largely confirms the sector pattern identified in the previous document: WTO Members tend to concentrate their services-related subsidies on three sectors, tourism, maritime transport and banking services. Concerning the measures used, the update confirms Members' strong reliance on tax incentives as compared to direct grants. This may reflect a preference in the political process for less obvious and, in terms of immediate disbursements, less "costly" forms of support. However, these observations are rather impressionistic in nature; for example, they may overrate developments in sectors that attracted particular policy attention at the time of reporting. As a general feature, it appears that areas such as financial services have been reviewed in more detail than, for instance, rail or road transport and professional services.

Table 1: Subsidies for individual services sectors - information from TPR Reports, 1998 – 2000

➤ MEASURE ➤	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members
▼ SECTOR ▼							
Tourism	Botswana Canada Israel Turkey <i>Switzerland</i> <i>Liechtenstein</i>	Canada Nigeria ¹ Iceland India Jamaica South Africa Trinidad & Tobago Turkey	South Africa	Nigeria ¹ Argentina Egypt India Israel Jamaica Nicaragua Philippines Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay	Argentina Egypt India Jamaica Kenya Nicaragua Peru Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay	Guinea ¹ Lesotho Singapore	24
Transportation general or unspecified	Canada <i>Switzerland</i> <i>Liechtenstein</i>	<i>Poland</i>		Philippines <i>Poland</i> <i>Korea RP</i>			4
Maritime transport	Australia India Solomon Islands ¹	India Thailand U.S.		Egypt HK, China India Jamaica Peru Singapore Turkey U.S. <i>Brazil</i> <i>Japan</i>	Egypt Jamaica Papua N.G. Peru Turkey	<i>EC</i> <i>Korea RP</i>	16 (30) ²
Air transport		Papua N. G.	Hungary ¹	Egypt	Hungary Papua N.G.	<i>EC (F, I, P, G)</i>	7 ²
Rail transport	India Kenya <i>Switzerland</i>						3
Banking	<i>Poland</i> <i>Brazil</i>	Indonesia Thailand <i>Poland</i> <i>EC (D)</i>	HK, China Thailand <i>Norway</i>	Singapore Tanzania U.S. <i>Poland</i> <i>Korea RP</i> <i>Switzerland</i>	Trinidad & Tobago ¹ Jamaica Singapore Tanzania Thailand	<i>Korea RP</i>	14 ²
Other financial services		Indonesia Thailand	HK, China Thailand	Singapore U.S. <i>Korea RP</i> <i>Brazil</i>	Singapore Thailand Trinidad & Tobago ¹		8
Software, info technology, communications, info processing	Canada	Jamaica		Canada Egypt India <i>Korea RP</i>	India Jamaica Trinidad & Tobago ¹ Uruguay	<i>Korea RP</i>	7

➤ MEASURE ➤	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members
▼ SECTOR ▼							
Construction	U.S.	Argentina <i>Poland</i>		Argentina Bolivia Trinidad & Tobago Turkey <i>Korea RP</i> <i>Poland</i>			7
Recreation, culture & sports	Canada <i>Korea RP</i> <i>Norway</i>	Jamaica		Bolivia	Bolivia Israel		6
Telecom	Peru Singapore	India		India	Trinidad & Tobago ¹		4
Audiovisual services	Argentina Canada <i>EC</i>			Canada Jamaica Tanzania <i>Korea RP</i>	Jamaica Tanzania		6 (20) ²
Wholesale & retail trade, distribution		Turkey		Trinidad & Tobago <i>Korea RP</i>	Tanzania		4
Real estate		India		Canada <i>Japan</i>	Trinidad & Tobago		4
Other & unspecified sectors	Australia	Australia Bangladesh Turkey	Canada	Singapore <i>Korea RP</i>	Hungary Singapore		7
Number of cases	28 (42) ²	29	8	59	40	8 (35) ²	121 (149) ²

1 Subsidy programme envisaged.

2 Counting EC Member States individually.

Source: WTO Secretariat.

ANNEX

Content of Individual Trade Policy Reviews

Norway - WT/TPR/S/70

page 63, para. 142

The *Press Subsidies Programme* aims at promoting and maintaining a diversified press. Newspapers with one or more issues per week with an average circulation between 1,000-6,000 copies can apply for grants. Grants are also given to newspapers in an unfavourable market position and with an average circulation up to 80,000. The size of the grant is calculated on the basis of the individual newspaper's annual circulation.

page 103, para. 134

Through the Government Bank Investment Fund and the Government Bank Insurance Fund, the State retains a stake in Den norske Bank (DnB) and Christiania Bank og Kreditkasse (CBK), the major **commercial banks**. State participation in the banking sector increased at the beginning of the 1990s as the result of government intervention to rescue troubled banks after heavy losses required substantial injections of capital through the Government Bank Insurance Fund (GBIF). The Government thus became the major shareholder in CBK, DnB and Fokus Bank. [State participation in the sector has diminished significantly since.]

Poland - WT/TPR/S/71

page 66, para. 116

Activities in many sectors benefit from a range of investment-related tax concessions, as well as subsidized credit and loan guarantees. Loan guarantees, for example, are provided on investment loans extended for the purposes of maintaining existing infrastructure; for environmental protection; to privatized state-owned enterprises; and to introduce new technology resulting from research and development. ... The main sectors to benefit from these arrangements in recent years have been iron and steel, **transport**, food and agriculture, energy, **construction**, and pharmaceuticals.

page 67, para. 119

The **banking sector** has also received grants, loans, and tax incentives to encourage cooperative banks to restructure and to establish regional banks. The scheme is administered jointly by the Ministry of Finance and the National Bank of Poland.

page 112, para. 210

Privatization of the state-owned **railway** company (PKP) is planned. PKP has suffered large and increasing losses, estimated at Zl 1 billion in 1998, partly due to declining coal movements. [...] The restructuring programme provides for expenditure of Zl 1.65 billion annually [...]

European Union - WT/TPR/S/72

page 122, para. 94

The European **Banking** Federation filed a complaint to the Commission in December 1999 about the State guarantees for Germany's Landesbanks, and the Commission began a formal investigation.²

page 133, para. 123

According to the Commission, European companies suffer from relative financial fragility compared with their main competitors; in recent years the Commission has operated a "one-time-last-time" approach to state aid, which has paved the way for the restructuring and privatization of many of the state flag-carrier **airlines**. The conditions attached to aid have been strictly monitored and enforced and the Commission does not intend to permit further aid for restructuring purposes.³ It is estimated that from 1990 through 1996, flag carriers received support worth over US\$ 9 billion.⁴

page 136, para. 130

The considerable decline in the number of ships under national flags led the various Member States to initiate state-aid programmes in **maritime transport services**. In 1997, the Commission re-examined these programmes taking into account their fiscal implications. State aid may normally be granted only for ships registered under the national flag and can only be implemented to safeguard Community jobs, maintain seafaring know-how, and improve skills. Tax abatements for shipping companies are considered to be state aid and should be restricted to maritime transport activities.

page 140, para. 141

The MEDIA II Programme is a central component of the European **audio-visual** support programme, allocating ECU 45 million over five years in support of training of audio-visual professionals, and ECU 265 million on development of production projects and distribution of audio-visual products. MEDIA II will expire in December 2000. The proposed allocation for the future MEDIA Plus programme over five years is €50 million for training and €350 million for the development and distribution of projects.⁵

Republic of Korea - WT/TPR/S/73

page 88f, para. 132

Non-tax measures allegedly included subsidies through the financial market stabilization package (purchase of bad loans from **banks** by the state-owned Korea Asset Management Corporation (KAMCO); [...] and R&D in the **information and communication industries**.

² *Bulletin Quotidien Europe*, Nos 7652, 7644, 7633, 7621 and 7600.

³ For instance, the assistance of the French Government to Air France, authorized in 1994 and challenged by the Court of First Instance in response to complaints by European competitors, was confirmed by the Commission in July 1998 (European Press Release IP/98/682). Proceedings were also reopened in the cases of Olympic Airways, given that conditions of the 1994 State Aid Agreement were not being complied with. Furthermore, aid to TAP and Alitalia was allowed, despite, in the case of the latter, irregularities in compliance with the terms of the aid package (European Press Releases IP/98/135 and IP/98/495).

⁴ *The Economist*, 27 September 1997.

⁵ COM(1999) 658 final.

Table III.9
Main internal tax incentives in force relating to production and trade under the Special Tax Treatment Control Law (January 1999)

Target and stated objective	Designated activity and/or beneficiary	Measure	Expiry date
Small and medium-sized enterprises (SMEs) To reduce concentration of economic wealth by conglomerates and strengthen economic fundamentals.	SMEs involved in fishery, manufacturing, mining, construction, transportation, wholesale and retail, value-added (communication) network (VAN) business, research & development business, engineering, auto-repair, industrial waste or sewage disposal. [...]	Investment reserves for losses may be treated as losses in the calculation of income (up to 20% of the business assets).	31 December 2003
	Newly set SMEs established in rural areas or new capital venture technology-intensive firms established in designated areas to undertake mining, manufacturing, VAN business, research & development business, broadcasting, data processing & computer business, engineering, transportation and warehousing. [...]	Reduction of income or corporation tax by 50% for a six-year period.	31 December 2003
	SMEs involved in manufacturing, data processing and computer-related business, VAN, research & development business, broadcasting, data processing & computer business, engineering, transportation and warehousing. [...]	Reduction in corporate or income tax by 20%.	31 December 2003
Business restructuring To facilitate business restructuring, re-engineering and financial structure improvement.	[...]	Income tax deferral for the amount of investment in business assets of an individual firm converted into a corporation.	Undefined
	Livestock, fishery, mining, manufacturing, construction, transport all activities. Financial sector activities.	50% reduction on the special additional tax on capital gains from the alienation of assets of financial institutions.	31 December 2000
		Tax deductions for financial institutions purchasing and assuming assets and liabilities of another such institution.	Undefined
Balanced (regional) development To deal with pollution and traffic congestion in urban centres (mainly Seoul) by encouraging firms to move out of metropolitan areas.	[...]	Income or corporation tax reduction by 50% for a six-year period.	31 December 2000
	Hospitals in areas with inefficient or non-existent medical facilities.	Income or corporate tax reduction of the amount equivalent to 3% of the amount invested in assets for the new hospital for the taxable year of the date of completion.	
Value-added tax (VAT) related sectoral incentives	[...]		
	National housing construction.	VAT exemption.	Undefined

Source: Ministry of Finance and Economy (1999), *Korean Taxation 1999*, [Online].

page 95, para. 138

As from 1999, industry-specific subsidies have also been made available to **culture-related industries**.⁶

page 163, Para. 124

To overcome the financing problems of Korean **shipping** companies, the authorities have announced plans to create a W 500 billion (US\$437.8 million) fund during the second half of 2000 to help cash-strapped shipping companies purchase vessels⁷; the programme (sponsored by Korea Shipowners Association) was being worked out in June 2000. The Shipping Industry Promotion Act, which promoted the development of the national fleet for the purpose of securing stable transport capacity, was to be eliminated as of July 1999, thus eliminating the legal basis for direct government support (including subsidies) to national shipping companies.⁸

Bahrain – WT/TPR/S/74

[No reference to service-related subsidies.]

Brazil – WT/TPR/S/75

page 107, para. 125

There has been a substantial transfer of public control to private entities, assisted by the Programme of Incentives to the Restructuring and Strengthening of the National Financial System (PROER).⁹ Under PROER, the Federal Government committed itself to financing 100% of the costs of restructuring provided that the state-owned **banks** were either privatized, converted into developmental agencies, or liquidated. In the event that none of these three alternatives was chosen, the Federal Government would provide only 50% of the restructuring costs, with the remainder to come from the States.

page 110, para. 141

In general no incentives are granted to the **insurance** sector. However, the tax on financial services (IOF) has been reduced to 0% for insurance operations in the agricultural sector, on mortgages (obligatory insurance), on export credit, and for satellites BRASILSAT I and II (launching and operations risks).¹⁰

page 114, para. 163

Maritime transport: The revenue from **transportation** of merchandise is exempt from the Social Integration Programme (PIS) and the Contribution for Social Security (COFINS).¹¹ The cost

⁶ Culture-related industries include producers of video programming, Internet bookstore start-ups, and producers of computer game software, music disks, and TV programming. A soft loans programme is expected to cover 500 firms and create 14,000 jobs (*The Korea Herald* [Online], 12 May 1999. Available at: <http://www.koreaherald.co.kr/> [30 September 1999]).

⁷ Ministry of Maritime Affairs and Fisheries information, published in *The Korea Herald* [Online], 31 December 1999. Available at: <http://www.koreaherald.co.kr/> [10 January 2000].

⁸ OECD (1998c).

⁹ Resolution No. 2.208, 3 November 1995.

¹⁰ Decree No. 2.888, 21 December 1998.

¹¹ Law No. 9.432, 8 January 1997.

of freight for Brazilian exports and import is not taken into account in the calculation of import duties and export taxes if goods are transported in vessels registered in the Special Brazilian Registry (REB).

Japan – WT/TPR/S/76

page 65. Para. 112

In order to achieve various policy objectives, including investment in certain equipment to address environmental concerns and stimulate demand, Japan has a complex system of tax breaks ... The FY2000 amendment included special taxation measures, concerning public welfare, the energy sector, and **housing**.

page 107; para. 95

Under the regime ["International Ship Regime"], certain Japanese-flag ships are entitled to preferential tax treatment ...¹² According to the authorities, the International Ship Regime has no distortionary effects on trade in **maritime transport services**; it aims to place Japanese vessels on an equal footing for with those of other countries that provide preferential tax treatment for their ships registered.

Switzerland and Liechtenstein – WT/TPR/S/77

page 52, para. 92

The [Swiss] Confederation also grants subsidies in the form of: ... and direct grants and allowances for the development of **tourism** (about Sw F 3.6 million per year over 1997-01); and direct grants and allowances to monopoly suppliers of infrastructural services such as **railways and other public transport**. Financial assistance by the Swiss Confederation to suppliers of public transport services amounted to some Sw F 3.3 billion in 1996, Sw F 3.8 billion in 1997, Sw F 5.7 billion in 1998, and Sw F 3.8 billion in 1999.

Page 52, para. 93

The Government [of Liechtenstein] also provides financial support of some Sw F 500,000 per year for international **tourism** marketing activities, and of Sw F 12 million per year for **public transport**.

Page 91, Para. 72

Banking and fund management services (Switzerland): Cantonal tax incentives are available.

Page 104, para. 118

The Swiss Corporation for Hotel Credit has a working capital of SwF 118 million; it provides concessional loans (with subsidized interest rates at 2 percentage points below the normal rates) and credit guarantees to small and medium-sized companies investing in tourist areas. The Confederation

¹² These include tax breaks in ship-registration tax and local property tax.

allocated a credit of Sw F 18 million for the period 1997-01 (i.e. Sw F 3.6 million per year on average) to finance innovation and cooperation between **tourism** operators.¹³

Page 105, para. 120

Tourism: The Liechtenstein Government provides financial support of some Sw F 500,000 per year (on average) for marketing activities.

Canada – WT/TPR/S/78

Page 50f, paras. 181 and 185

Cultural Policy:

The Secretariat Report for Canada's 1996 Review contained an overview of the main trade-related instruments of support, often granted in combination, which include direct subsidies, tax incentives, foreign ownership restrictions (see document S/WPGR/W/25) and local-content requirements.¹⁴

The rules governing tax deductibility available to Canadian advertisers were changed to provide full deductibility in any periodical – as defined in the Foreign Publishers Advertising Services Act, regardless of the nationality of ownership – that includes at least 80% original or Canadian content. Canadian advertisers will receive half the deduction for ads placed in foreign periodicals under the de minimis exemption, as well as advertisements placed in magazines created by foreign investors that include less than 80% original or Canadian content. The authorities have stated that the policy does not discriminate among foreign suppliers. In December 1999, the Canadian Heritage Minister announced a three-year Can\$150 million fund to provide direct financial assistance to Canadian magazines.¹⁵

¹³ Arrêté fédéral finançant l'encouragement de l'innovation et de la coopération dans le domaine du tourisme de 1997 à 2001, 10 octobre 1997, Article 8. The annual allowance of Sw F 8 million, formerly granted by the Confederation to hotels and inns, was abolished in 1998.

¹⁴ WTO (1996).

¹⁵ For details see Canadian Heritage online information. Available at: <http://www.pch.gc.ca>.

Working Party on GATS Rules

DRAFT

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES**

1. In 2000, the Working Party on GATS Rules has held four formal meetings to date. Minutes of the meetings are contained in documents (S/WPGR/M/26-29). A fifth meeting is scheduled on 30 November 2000. In each meeting, the Working Party considered all three negotiating mandates: emergency safeguard measures (Article X); government procurement (Article XIII); and subsidies (Article XV). Written contributions, both formal and informal, made by delegations have supported the debate under the three items.

**I. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER GATS
ARTICLE X**

2. Differing views continued to be expressed regarding the desirability of an emergency safeguard mechanism (ESM) in services, but Members agreed to leave this question aside for the time being and to concentrate on feasibility issues. In order to structure the debate, the Chairperson circulated an illustrative list of themes which could usefully be discussed, without prejudice to the final outcome of the negotiations (Job No. 1979/Rev.1). The list includes issues such as the definition of "domestic industry" and the issue of "acquired rights", the modal application of a safeguard mechanism, the concept of "like service", the identification of indicators and criteria for determining injury and causality, the possible forms of a safeguard measure, the questions of compensation and special and differential treatment, situations justifying safeguard action and relevant procedural matters. All issues were examined in both formal and informal meetings. The Working Party also examined a Concept Paper which was introduced in March by Thailand on behalf of the ASEAN Members (S/WPGR/W/30). The Paper contains elements of a possible emergency safeguard mechanism in services.

3. The Working Party is also considering the extension of the negotiating deadline for this subject-matter, which is currently set for 15 December 2000.

**II. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER GATS
ARTICLE XIII**

4. Discussions have continued on definitional issues as well as on possible multilateral disciplines in this area.

III. NEGOTIATIONS ON SUBSIDIES UNDER GATS ARTICLE XV

5. The Working Party has continued to consider the need for and possible scope of disciplines on subsidies which may have trade-distortive effects. In March, Argentina and Hong Kong, China presented a communication discussing relevant issues and identifying a number of topics for further work (S/WPGR/W/31). At the request of the Working Party, the Chairperson circulated a Checklist of issues, whose purpose is to help to address in a more systematic manner relevant questions under

this agenda item (Job No. 4519/Rev.1). Members agreed to take up one item at each successive meeting. The first item on the list ("Definition of a Subsidy in Services (including relevance of the definition in the Agreement on Subsidies and Countervailing Measures")) was discussed in September.

COMMUNICATION FROM THE REPUBLIC OF POLAND

Response to the Questions Relevant to the Information Exchange Required
Under the Subsidies Negotiating Mandate

Supplement

With reference to document S/WPGR/W/16/Add.4, the following additional information is being circulated at the request of the delegation of the Republic of Poland to Members of the Working Party on GATS Rules.

This document covers subsidies supplied in the service sector in Poland in 1999 (supplement to the programmes notified in document S/WPGR/W/16/Add.4)

1. Loan from EFSAL fund

No assistance granted in 1999 to the service sectors.

2. Direct grants for extra charges to products and services

Grants for meals sold in milk bars	18.3 mln PLN
Grants for railway passenger domestic transport	537.7 mln PLN
Grants for passenger bus transport	148.2 mln PLN
Grants for publication of specialised school and university books	10.8 mln PLN

3. Assistance for restructuring of the banking sector

No assistance granted in 1999.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/W/25/Add.1/Corr.1*
11 July 2000

(00-2849)

Working Party on GATS Rules

SUBSIDIES FOR SERVICES SECTORS INFORMATION CONTAINED IN WTO TRADE POLICY REVIEWS

Background Note by the Secretariat

Corrigendum

The attached table is intended to replace Table 1 on page 3 of document S/WPGR/W/25/Add.1.

**Table 1: Subsidies for individual services sectors - information from TPR Reports,
January 1998 to April 2000**

➤ MEASURE ➤	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members
▼ SECTOR ▼							
Tourism	Botswana Canada Israel Turkey	Canada Nigeria* Iceland India Jamaica South Africa Trinidad & Tobago Turkey	South Africa	Nigeria* Argentina Egypt India Israel Jamaica Nicaragua Philippines Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay	Argentina Egypt India Jamaica Kenya Nicaragua Peru Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay	Guinea* Lesotho Singapore	22
Transportation generally	Canada			Philippines			2
Maritime transport	Australia India Solomon Islands*	India Thailand U.S.		Egypt HK, China India Jamaica Peru Singapore Turkey U.S.	Egypt Jamaica Papua N.G. Peru Turkey		12

* In English only

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➤ MEASURE ➤	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of WTO Members
▼ SECTOR ▼							
Air transport		Papua N. G.	Hungary*	Egypt	Hungary Papua N.G.		3
Transportation generally (cont'd) Rail transport	India Kenya						2
Banking		Indonesia Thailand	HK, China Thailand	Singapore Tanzania U.S.	Trinidad & Tobago* Jamaica Singapore Tanzania Thailand		8
Other financial services		Indonesia Thailand	HK, China Thailand	Singapore U.S.	Singapore Thailand Trinidad & Tobago*		6
Software, information technology, communications, and information processing	Canada	Jamaica		Canada Egypt India	India Jamaica Trinidad & Tobago* Uruguay		6
Construction	U.S.	Argentina		Argentina Bolivia Trinidad & Tobago Turkey			5
Recreation, culture & sports	Canada	Jamaica		Bolivia	Bolivia Israel		4
Telecom	Peru Singapore	India		India	Trinidad & Tobago*		4
Audiovisual services	Argentina Canada			Canada Jamaica Tanzania	Jamaica Tanzania		4
Wholesale & retail trade, distribution		Turkey		Trinidad & Tobago	Tanzania		3
Real estate		India		Canada	Trinidad & Tobago		3
Other & unspecified sectors	Australia	Australia Bangladesh Turkey	Canada	Singapore	Hungary Singapore		6
Number of cases	18	25	7	43	40	3	90

* Subsidy programme envisaged.

Source: WTO Secretariat.

COMMUNICATION FROM POLAND

Emergency Safeguards Mechanism contained in Article 18 Act of 18 December 1998
on Foreign Exchange Law

Working Paper

This paper contains information on emergency safeguards mechanism, which exists in the Polish legislation. Its purpose is to contribute and facilitate the discussion in the Working Party on GATS Rules.

1. **Purpose** – when safeguard measures may be introduced:

In the event of an extraordinary risk to the stability and integrity of the financial system of the Republic of Poland – in particular in following situations:

- (i) if the foreign exchange reserves of the Republic of Poland decrease substantially;
- (ii) if the balance of payments equilibrium is disturbed, thus causing a direct risk to solvency of the Republic of Poland in relations with abroad;
- (iii) if the supply of money increases as a result of the inflow of capital from abroad to an extent and at the pace substantially hindering or preventing control over such money supply;
- (iv) if the stability and integrity of the monetary policy is directly threatened as a result of capital flow between Poland and abroad.

These special restrictions may be introduced by the Council of Ministers individually or jointly, and may apply to all or a certain category of entities, and to all or a certain kind of transactions.

2. **Duration:** up to six month.

3. **Forms of safeguard measures:**

- (i) the obligation imposed on residents to resale foreign means of payment to the entities indicated in such Regulation;
- (ii) the obligation to express pecuniary obligations and effect payments in foreign exchange abroad exclusively in convertible currencies;
- (iii) the obligation to obtain a foreign exchange permit to engage in foreign exchange operations which, pursuant to the provisions of this Act, are not subject to such obligation;

- (iv) restriction to the rights of the non-residents who are not engaged in economic activities to sell and buy foreign currencies and foreign exchange gold or foreign exchange platinum.

The terms "a resident" and "a non-resident" used above shall have the following meaning:

- (i) resident:
 - a) a natural person domiciled in Poland or a legal entity with its seat in Poland, as well as any other entity with its seat in Poland, capable of incurring obligations and acquiring rights on its own behalf;
 - b) Polish diplomatic offices, consular divisions and other Polish representative offices and special missions endowed with diplomatic or consular immunities and privileges;
- (ii) non-resident:
 - a) a natural person not domiciled in Poland or a legal entity not having its seat in Poland, or any other entity not having its seat in Poland, capable of incurring obligations and acquiring rights on its own behalf;
 - b) the person referred to in point (i) letter a) above, to the extent such person engages in activities abroad through its enterprise, branch or a representative office with its seat abroad;
 - c) branches and representative offices of persons and entities, referred to in letters a), b), having their seats in Poland, established pursuant to international agreements concluded by the Government of the Republic of Poland, unless such agreements provide otherwise;
 - d) foreign diplomatic offices, consular divisions, special missions and international organisations, as well as other foreign representative offices endowed with diplomatic or consular immunities and privileges pursuant to agreements, laws or commonly established international practice.

Up to date there was no need to introduce this mechanism in practice.

Working Party on GATS Rules

LIMITATIONS IN MEMBERS' SCHEDULES RELATING TO SUBSIDIES

Note by the Secretariat

Addendum

I. INTRODUCTION

1. At its meeting of 24 March 2000, the Working Party on GATS Rules requested the Secretariat to update document S/WPGR/W/13 in order to include subsidy-related limitations contained in schedules of specific commitments submitted since. To facilitate reading, the format of this Note is slightly different from the original, but the purpose remains the same and the information provided is not affected.

2. The following tables present subsidy-related entries which have been found in: (i) the commitments scheduled by Members following the extended negotiations on basic telecommunications, concluded on 15 February 1997, which are attached to the Fourth Protocol to the GATS; (ii) the commitments undertaken by Members in the extended negotiations on financial services, concluded on 12 December 1997, which are attached to the Fifth Protocol to the GATS; (iii) and the schedules of Members which have acceded to the WTO pursuant to Article XII of the WTO Agreement since 1 January 1996.

3. As in S/WPGR/W/13, it is worth recalling that the information contained in this Note is limited in at least two respects. First, only those entries that make explicit reference to subsidies and other forms of financial contributions or transfers of funds by the public authorities of a Member have been taken into account. A number of entries have been left aside, either because the precise nature of the measure was difficult to ascertain, or because the absence of an agreed definition of what constitutes a "subsidy" under the GATS would have resulted in problems of interpretation. In this regard, tax exemptions and other forms of fiscal incentives have not been included although they might imply a financial advantage. Secondly, it has to be kept in mind that subsidization may also occur in sectors or modes of supply for which no commitments have been undertaken. For obvious reasons, Members' schedules are silent on any such programmes.

I. NEGOTIATIONS ON BASIC TELECOMMUNICATIONS (FOURTH PROTOCOL)

(b) Bangladesh (GATS/SC/8/Suppl. 1, p. 2)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2. COMMUNICATION SERVICES C. <u>Telecommunication services</u> All Subsectors	[...]	(1,3) Certain subsidies and tax benefits may only be extended to national operators.	[...]

II. NEGOTIATIONS ON FINANCIAL SERVICES (FIFTH PROTOCOL)

(a) Republic of Korea (GATS/SC/48/Suppl. 3, p. 3)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>ALL SECTORS INCLUDED IN THIS SCHEDULE (ALL SECTORS)</p> <p>The revisions in the ALL SECTORS section of this schedule only pertain to mode 3 of the ALL SECTORS commitments contained in the document GATS/SC/48/Suppl.1/Rev. 1.</p>	<p>(3) [...]</p>	<p>(3) [...]</p> <p>Eligibility for subsidies, including tax benefits, may be limited to companies which are established in Korea according to the pertinent laws.</p> <p>Unbound for research and development subsidies.</p>	<p>[...]</p>

(b) Republic of Slovenia (GATS/SC/99/Suppl. 1, p. 3)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	[...]	<p>[...]</p> <p><u>Subsidies:</u></p> <p>None, other than for branches established in the Republic of Slovenia by a foreign company. Eligibility for subsidies from the Republic of Slovenia may be limited to juridical persons established within the territory of the Republic of Slovenia or a particular geographical sub-division thereof. Unbound for subsidies for research and development. The supply of a service, or its subsidization, with the public sector is not in breach of this commitment.</p>	

III. COUNTRIES HAVING ACCEDED TO THE WTO SINCE 1ST JANUARY 1996

(a) The Republic of Bulgaria (GATS/SC/122, p. 3)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS ¹ [...] Subsidies	[...]	[...] (1) (2),(3),(4) Eligibility to or availability of granting and availing of subsidies will be reserved for Bulgarian juridical persons or Bulgarian citizens, respectively. The supply of a service, or its subsidization, within the public sector is not in breach of this commitment.	

¹ Footnote omitted.

(b) Republic of Estonia (GATS/SC/127, p. 2)

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of Natural Persons

Sector or subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
All Sectors	[...]	1,2) Only Estonian taxpayers, i.e. those legal persons registered under Estonian Law and Estonian citizens are eligible for national subsidies of Estonia.	

(c) Qatar (GATS/SC/120, p. 3 and 4)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	[...]	[...] 3), 4) National services industries and services may have some kind of incentives and assistance, like industrial land blocks, easy financial loans, market research and marketing programmes including the organization of exhibitions or facilitating its taking part in Qatari pavilion in international fairs and exhibitions, with free or lowered costs, establishing of marketing centres (inside or outside the country), and/or granting discount on the prices of its advertising programmes in national TV and national advertising agencies and some other incentives alike.	
	[...]	4) [...] Housing and social programmes and some aspects of free health care, are limited to Qatari citizens.	

(d) United Arab Emirates (GATS/SC/121, p. 1)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	[...]	3) [...] (iii) Government subsidized services may only be extended to UAE nationals.	

(e) Jordan (WT/ACC/JOR/33/Add.2 – WT/MIN(99)/Add.2, p. 2)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
A. HORIZONTAL COMMITMENTS			
All sectors included in this schedule		Regarding subsidies, modes (1), (2), (3) and (4) are Unbound.	

Working Party on GATS Rules

PATTERNS OF LIMITATIONS SCHEDULED UNDER MODE 2

Background Note by the Secretariat

A. INTRODUCTION

1. This Note responds to a request by the Working Party on GATS Rules at its meeting of 4 and 5 May 2000. It is intended to give an overview of the types of limitations which Members have entered in their schedules of specific commitments under mode 2. Given the Working Party's interest in illustrative examples of such limitations, an attempt has been made to identify broad patterns of exemplary cases, rather than giving an accurate account of individual entries. For the same reasons, no distinction has been made between limitations scheduled in the market access and national treatment columns.

2. The following overview seeks to capture and categorise all limitations scheduled under mode 2, although there may be doubts in individual cases about their relevance for this mode. Repetitive entries are particularly frequent; limitations may have been scheduled as applying to all four modes or, more often, to modes 1 and 2, which may reflect Members' difficulties in some cases to delimit precisely the respective scope of individual modes. The only omissions concern entries which have not been expressed in terms of limitations, but of entitlements (for instance, "soliciting is allowed"), one or two reciprocity-type clauses, as well as a few provisions of a very specific nature which proved difficult to interpret. All other entries have been treated the same way, regardless of whether they were confined to mode 2 or repeated under some or all other modes.

3. When the same limitation appears under various sectors or sub-sectors in a given schedule, it has been counted each time. Thus, the number of limitations indicated in square brackets refers to the measures and not to the Members actually maintaining them. Moreover, the figures should be considered only as rough estimates as quite a few entries are simply too vague to be categorised with certainty.

4. Finally, Members may have different legal interpretations of some of the limitations identified below (for instance in relation to GATS Articles VI or XI). However, the purpose of this Note is simply to reflect actual entries in schedules, regardless of their legal status.

B. HORIZONTAL LIMITATIONS

5. More than twenty Members have scheduled horizontal limitations under mode 2. As already noted, these limitations are not necessarily specific to mode 2, but often extend to mode 1 or even to all four modes of supply. Three main types of limitations have been found:

- (a) **Restrictions on transfers, payments or capital transactions abroad.** The implementing measures may take the form of a special authorization or a fee to be paid. Some countries have reserved the right to apply such measures across the board, others have limited it to specific types of financial operations. [9]

- (b) **Discriminatory subsidy regimes.** These limitations generally apply to the four modes of supply or have been entered only with respect to modes 1 and 2. [6]
- (c) **Discriminatory taxation of services provided from, or consumed abroad.** [4]

C. SECTORAL LIMITATIONS

6. More than sixty Members have scheduled sector-specific limitations under mode 2. The vast majority of these limitations are to be found in the area of financial services and to a significant degree in business services. In communication services, the most common limitation pertains to call-back restrictions. It is worth noting that some entries, including residence requirements, may amount in fact to a prohibition on the consumption abroad of the services concerned and, thus, be economically equivalent to scheduling "unbound".

1. **Business Services**

- (a) **Commercial presence or residence requirements.** Such limitations have been found in the sub-sectors of real estate services; placement and supply services of personnel; investigation and security services; and legal services. [10]
- (b) **Authorization and/or licensing requirement.** Relevant criteria include minimum qualification, local training or citizenship requirements. These limitations exist mainly in the areas of auditing services; scientific and technical consulting services (related to investigation and security services); R&D services on natural, social sciences and humanities; and services related to hunting. [9]
- (c) **Requirement that legal services be supplied by a natural person.** [6]
- (d) **Registration or notification requirements.** Relevant entries exist in rental/leasing services without operators (relating to aircrafts and ships), and in architectural services. [4]
- (e) **Discriminatory taxation.** Two such entries have been found for convention services. [2]
- (f) **Exclusions of services consumed abroad from insurance coverage.** Public medical insurance programmes do not cover costs of private medical services consumed abroad, including dental services and services provided by midwives and nurses. [2]

2. **Communication Services**

- (a) **Requirement to supply services only through a given network and/or operator, and under specified conditions.** Relevant limitations concern in general long-distance and international traffic and prohibitions of call-back services. [20]
- (b) **Licensing, authorization and registration requirement.** These limitations pertain to the installation and use of telecommunications equipment and networks, and the provision of telecommunication services. [3]
- (c) **Local establishment as a prerequisite for obtaining licenses or concessions.** [1]

3. Construction and Related Engineering Services

No limitations found.

4. Distribution Services

No limitations found.

5. Educational Services

- (a) **Exclusion of services supplied or consumed abroad from public support schemes.** [3]

6. Environmental Services

No limitations found.

7. Financial Services¹

- (a) **Licensing, registration and/or authorization requirements governing purchases and/or consumption of financial services abroad.** The activities subject to authorization or approval include, in particular, opening bank accounts, requesting loans, borrowing in foreign currency, purchasing "new financial products" such as derivatives, or purchasing unrefined gold. [39]
- (b) **Services consumed abroad may be subject to discriminatory taxation.** [20]
- (c) **Licensing, registration and/or authorization requirements for the foreign-based financial service provider.** The measures concerned may consist of an obligation on the foreign service supplier to be licensed or approved, be subject to regulatory supervision, or to have complied with relevant deposit requirements. [44]
- (d) **Requirement on the supplier to be locally established** (permanent residence or commercial presence). This category includes citizenship requirements or requirements that the supply of a service be undertaken jointly with established companies. [80]
- (e) **Limitations on compulsory insurance.** A number of entries provide that compulsory insurance (insurance of risks, motor vehicle third-party liability, for instance) have to be concluded with companies established in the territory of the Member and/or with authorized, exclusive or licensed suppliers. [12]
- (f) **Limitations on the quantity of services which can be supplied and/or consumed abroad.** Relevant measures may take the form of quantitative restrictions (for instance, only 25 percent of the risk can be covered by a non-resident insurer) or, more frequently, provisions that insurance can be contracted abroad only if no home country company is prepared to handle the risk in question. [27]

¹ Some entries of a prudential nature have been ignored for the purpose of this Note. However, the borderline between prudential measures and market access or national treatment limitations is not always clear and it could be argued that additional entries should have been disregarded in the present context (see in particular 7(c)).

- (g) **Restrictions on transfers, payments or capital transactions.** Three Members have scheduled limitations relating to exchange controls of various types. [3]

8. Health Related and Social Services

- (a) **Exclusions of medical treatment obtained abroad from insurance coverage.** This type of limitation may cover all types of medical services or be limited to private health services. [6]

9. Tourism and Related Travel Services

- (a) **Limitation on the amount of currency (local and foreign) that permanent residents are entitled to take abroad.** This foreign exchange restriction was entered by one Member with respect to "Hotels and restaurants, including catering". [1]
- (b) **Commercial presence requirement.** This type of limitation has been found with respect to for travel agencies and tour operators. [1]

10. Recreational, Cultural and Sporting Services

- (a) **Discretionary authorizations.** The relevant entry relates to "access to management functions in news agencies". [1]

11. Transport Services

- (a) **Requirement of commercial presence or (permanent) residence.** Such limitations have been scheduled with respect to some auxiliary services. [3]
- (b) **Authorization or registration requirements.** Such entries have been found with respect to maintenance and repair of vessels. [2]
- (c) **Prior notification requirements.** An entry of this type has been found for chartering of ships for "Internal waterways transport, rental with operators". [1]

Working Party on GATS Rules

SUBSIDIES FOR SERVICES SECTORS

INFORMATION CONTAINED IN WTO TRADE POLICY REVIEWS

Background Note by the Secretariat

Addendum

I. INTRODUCTION

1. To enhance information on subsidy programmes in the area of services, the Working Party on GATS Rules, at its meeting of 4 and 5 May 2000, requested the Secretariat to update a previous Note (S/WPGR/W/25, circulated on 26 January 1998) based on 31 Trade Policy Reviews (TPRs). While the initial document covered the period from January 1995 to December 1997, the current Note aims to extract similar information from the 37 TPRs published since.

2. Although this Note draws on information from all TPRs published from 1998 to present under the aegis of the WTO, it cannot claim to give a representative picture. First, the selection of countries for review does not reflect analytical purposes, but the country schedule established by the Trade Policy Review Body. Second, coverage and content of reports are largely determined by the availability of data as well as the Secretariat's assessment of country-specific review priorities at the time of drafting. The fact that some reports do not include subsidy-related information, therefore, does not necessarily point to the absence of such schemes in the countries concerned. Nevertheless, the TPR reports may be considered a reasonably reliable source of information in this area. They normally take into account not only material provided by national governments, but any additional information deemed relevant, including reports by international organizations and academic research papers. The factual accuracy of the individual reports has been checked by the country under review.

3. Reflecting data limitations and/or resource constraints, TPR reports have not always sought to trace the compound effects of various subsidies in individual sectors or to gauge their relative importance. Also, it has proved difficult to detail the underlying policy objectives of many programmes. For example, a particular support scheme may be social in nature or informed by industrial policy considerations, geared toward improving consumer welfare or upgrading sectoral performance, enhancing overall economic efficiency or simply shielding vulnerable domestic suppliers from import competition.

II. CONCEPTS AND DEFINITIONS

4. The subsidy definition generally used for Trade Policy Reviews is based on the definition contained in the WTO Agreement on Subsidies and Countervailing Measures. Accordingly, a subsidy is deemed to involve a financial contribution by a government or public body which confers a benefit. The TPR reports thus tend to cover assistance granted in the form of direct transfers of funds, including grants, loans and equity infusions; potential direct transfers of funds or liabilities, e.g. loan guarantees; government revenue foregone; supply of goods and services other than general infrastructure; purchase of goods; payments to funding mechanisms; or income and price support.

5. As noted before, the application of this definition to services sectors has not appeared to pose problems in principle. However, it may prove difficult in individual cases to identify the ultimate beneficiary of a subsidy, which may have been destined for downstream users rather than the immediate recipient. Exemptions from indirect taxes, in particular VAT, have generally been ignored for the purposes of this overview as such measures in many cases are aimed to support consumption rather than production of the service concerned. Some measures may have been intended primarily to promote public policy or infrastructural objectives. Given the infrastructural importance of many services sectors and their role as generally available inputs, it could thus be misleading to equate certain recipients, e.g., railways, with actual beneficiaries which might include any social or economic group relying on rail transport. Moreover, Members may use different terminology or have different demarcations between the public and private sectors.¹ The ambiguities arising from these factors no doubt affect cross-country comparability.

III. POLICY PATTERNS

6. Available evidence suggests that WTO Members tend to concentrate their services-related subsidies on three sectors: maritime transport, tourism, and financial services. This is consistent with patterns revealed in the previous compilation. Of the 37 Members covered in the TPR reports under study in this update, at least 12 have aided their maritime transport sector. This compares to the pattern found previously, where 23 of 44² Members covered by the TPRs were reported to have subsidized maritime transport. In the current sample, 22 Members have offered tourism subsidies; while the previous group had had 14 governments promoting investment in the hotel and tourism sector. For financial services, the current group of 37 has at least 8 Members offering subsidies (including measures applied in the wake of financial crises, which may be falling under the GATS' prudential carve-out for financial services). Of the Members covered by the previous Note, at least 10 had assisted their offshore banking sector or rescued ailing domestic banks. However, such findings may be influenced by the reports' focus on sectors where politically or economically important developments have been under way.³

7. The following Table confirms the high number of programmes for tourism. They are being operated mainly in developing countries. Possibly reflecting fiscal constraints, these programmes tend to rely on tax holidays and other fiscal advantages and do not normally provide for actual disbursements. Support schemes for transport and financial services, however, seem to exist across the full spectrum of WTO Members. Support policies favouring shipping companies have often used tax incentives. In financial services, a number of initiatives may have been *ad hoc* in nature, driven by the perceived need to prevent the imminent collapse of large banks, rather than influenced by longer-term policy strategies. A trend not previously apparent seems to be for governments to encourage the development of the financial services sector through tax incentives and/or offshore schemes.

¹ For example, the provision of basic health services may be ensured through: (a) cost-free treatment in state-owned hospitals; (b) the extension of public funds to commercially independent hospitals; or (c) government-sponsored premiums for basic health insurance. While conferring the same benefits to the same target group, such measures might be defined, respectively, as the provision of infrastructural services, subsidies for the health sector, social transfers and/or subsidies for insurers.

² Counting individually the EC Member States.

³ As a general feature, it appears that areas such as financial services have been reviewed in more detail than, for example, rail or road transport and professional services.

Table 1:
Subsidies for individual services sectors - information from TPR Reports, 1995 to 1997

➤ MEASURE ➤	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of countries
▼ SECTOR ▼							
Tourism	Botswana Canada Israel Turkey	Canada Nigeria* Iceland India Jamaica South Africa Trinidad & Tobago Turkey	South Africa	Nigeria* Argentina Egypt India Israel Jamaica Nicaragua Philippines Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay	Argentina Egypt India Jamaica Kenya Nicaragua Peru Solomon Is. Tanzania Trinidad & Tobago Turkey Uruguay	Guinea* Lesotho Singapore	22
Transportation generally	Canada			Philippines			2
Maritime transport	Australia India Solomon Islands*	India Thailand U.S.		Egypt HK, China India Jamaica Peru Singapore Turkey U.S.	Egypt Jamaica Papua N.G. Peru Turkey		12
Air transport		Papua N.G.	Hungary*	Egypt	Hungary Papua N.G.		3
Rail transport	India Kenya						2
Road transport							
Banking		Indonesia Thailand	HK, China Thailand	Singapore Tanzania U.S.	Trinidad & Tobago* Jamaica Singapore Tanzania Thailand		8
Other financial services		Indonesia Thailand	HK, China Thailand	Singapore U.S.	Singapore Thailand Trinidad & Tobago*		6

➤ MEASURE ➤	Direct grants	Preferential credit & guarantees	Equity injections	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of countries
▼ SECTOR ▼							
Software, information technology, communications, and information processing	Canada	Jamaica		Canada Egypt India	India Jamaica Trinidad & Tobago* Uruguay		6
Construction	U.S.	Argentina		Argentina Bolivia Trinidad & Tobago Turkey			5
Recreation, culture & sports	Canada	Jamaica		Bolivia	Bolivia Israel		4
Telecom	Peru Singapore	India		India	Trinidad & Tobago*		4
Audiovisual services	Argentina Canada			Canada Jamaica Tanzania	Jamaica Tanzania		4
Wholesale & retail trade, distribution		Turkey		Trinidad & Tobago	Tanzania		3
Real estate		India		Canada	Trinidad & Tobago		3
Other & unspecified sectors	Australia	Australia Bangladesh Turkey	Canada	Singapore	Hungary Singapore		6
Number of cases	18	25	7	43	40	3	90

ANNEX

Content of Individual Trade Policy Reviews

As an update to the previous document, which had covered TPR reports from January 1995 to December 1997 (S/WPGR/W/25), the content of this Annex is directly taken, with some minor editing, from reports published since that time. References deal with subsidy programmes for individual services sectors. Not included is information on generally available subsidies, for example in the context of regional development or research programmes, and company-internal cross-subsidization between monopoly and market-oriented activities in sectors such as telecommunications. Reductions or exemptions on a value-added tax (VAT) or on other indirect taxes have for the most part been considered as consumer subsidies and have not been included.⁴ (Schemes exist, for example, to benefit consumption of medical, transport, or educational services.) Capital injections to financial institutions during a financial crisis have been listed as subsidies for a Member's financial services sector, regardless of the prudential carve-out for financial services in the Fifth Protocol to the GATS.

INDIA - WT/TPR/S/33 (1998)

pages 86-87, paras. 138, 140

To promote the development and exports of the **software** industry seven Software Technology Parks (STPs) and an Electronic Hardware Technology Park (EHTP) Scheme are in place... EHTPs and STPs are allowed zero duty on all imports, 100 per cent foreign participation, and tax holidays ... Data are not available on the amount of total forgone revenue attributed to these fiscal benefits.

page 92, para. 48

Other major recipients of total non-plan subsidies include the **railways**, for which subsidies have remained around 3 per cent since 1995/96.

page 93, Table III.19

Explicit (non-plan) subsidies, in part
(Rs million)

	1995/96	1996/97	1997/98 ^a
Other subsidies			
Payments to State Governments in lieu of sales tax on aviation fuel sold to international airlines (including Air India)	283.3	16.2	0.1
Subsidy for operations of charter flights for Haj pilgrims	170.5	373.8	420.0
Subsidy to the railways for dividend relief and other concessions	4,177.3	4,657.1	5,367.2
Insurance schemes for the poor	160.0	140.0	160.0
Subsidy for coal transport by rail-cum-sea route	0.5	0.0	0.0
Subsidy to Shipping Corporation of India for uneconomic shipping lines	124.0	110.0	110.0
Compensation for exchange loss	1,425.2	1,499.5	1,539.5
...			
- National Housing Bank	22.0	28.9	29.0
- Housing Development Finance Corpn.	590.0	539.5	800.0

^a Budgeted.

Source: Government of India (1996c), Budget 1996/97, Expenditure Budget; and Government of India (1997b), Budget 1997/98, Expenditure Budget.

⁴ VAT exemptions applicable to the tourism sector, however, have been included as these are not likely to be targeted at the consumers.

page 96, para. 155

Section 80IA of India's Income Tax Act grants tax holidays for a period of five consecutive assessment years in a number of cases, including industrial undertakings, **hotels, ships**, the development and maintenance of any infrastructure facility, research and development, and the commercial production of mineral oil...

page 151, paras. 117, 118

For export industries, additional incentives, such as a five-year tax holiday, tax exemption on income from exports, duty-free imports of inputs and access to some imports on the restricted list through Special Import Licenses (SILs), are also provided. There is no ceiling on the amount of foreign equity participation in the **software** and hardware technology parks and export-processing zones (EPZs), or in 100 per cent export oriented units.

page 163, paras. 156, 158

The major Indian ports are organized as Port Trusts, i.e. semi-autonomous statutory entities with a non-profit objective organized under the Indian Ports Act, 1908 and the Major Ports Trust Act, 1963. In addition to infrastructure planning and construction, Port Trusts have the power to operate ship and cargo handling facilities and services (such as pilotage, cargo, storage and container stations) and to frame regulations. The Port Authorities have their own budgets, and can raise dues (tariffs are set individually for each port) and incur debts subject to government approval. The financial situation of the Port Trusts is mixed, with some ports requiring financial support, such as subsidies, concessional lending for some capital expenditures, or restructuring of debts. Since the **ports** do not pay taxes, even on their commercial activities, they have a negative impact on the Government's fiscal position.⁵

Another significant feature of the new guidelines on private-sector participation is that it opens up **port development** on build-operate-transfer (BOT), or similar schemes, for up to 30 years, relieving scarce public resources of the cost of financing. Financial incentives to port investors include a five-year tax holiday, a five-year tax concession period and, as an incentive to financial institutions who provide long-term finance, a deduction of taxable income derived from financing of investments provided that this amount is credited to a special reserve. Additional fiscal incentives are also being provided to encourage the development of port infrastructure. Several State Governments are going ahead with minor port projects involving the private sector.

page 166, para. 169

The National Telecommunication Policy, 1994 (NTP) states that "Private investment and association of the private sector would be needed in a big way to bridge the resources gap. Private initiative would be used to complement the Departmental efforts to raise additional resources, both through increased internal generation and adopting innovative means like leasing, deferred payments, BOT (build-operate-transfer), BLT (build-lease-transfer), etc.". In line with this policy, private [**telecommunications**] services providers have been extended fiscal benefits such as tax holidays, additional access to external commercial borrowing, etc.

page 170-71, para. 184 plus Box IV.4

Special incentives are offered to national and foreign investors in the **tourism** industry, including interest subsidy, income tax incentives, import concessions, and concessional licensing for

⁵World Bank (1995a).

imports of special items for the hotel industry (Box IV.4). Preferences in access to water and electricity are also extended to the industry.

Incentives in the tourism industry

Incentives to the tourism industry provided by the Central Government include:

- An interest subsidy of 3 per cent on loans from financial institutions is available to one-, two-, and three-star categories of hotel projects outside the metropolitan cities of Bombay, Calcutta, Delhi and Madras. A subsidy of 5 per cent is available to such hotel projects if they are in the travel circuits and destinations identified for intensive development in the National Action Plan for Tourism.
- Heritage hotels are eligible for the 5 per cent interest subsidy.
- As a fiscal incentive, 50 per cent of profits derived by hotels, travel agents and tour operators in foreign exchange are exempt from income tax. The balance of profits in foreign exchange is also exempt provided it is re-invested in tourism projects.
- Import of special items for the hotel industry is permitted subject to import entitlement. Concessional customs duty is charged for imports of specified goods required for initial setting up or substantial expansion of hotels. Moreover, the tourism sector can import at a concessional rate of duty under the Export Promotion Capital Goods (EPCG) Scheme.
- Announced in the 1997/98 Budget, new hotels located in a hilly area, rural area, place of pilgrimage, or a specified place of tourist importance, receive a tax deduction of 50 per cent of profits and exemption from expenditure tax. In respect of hotels located in other places, excluding the four metropolitan cities, the tax deduction is 30 per cent of the profits.

Source: Government of India (1996k), Department of Tourism Annual Report 1995/96 and Government of India (1997b), Budget 1997/98.

SOUTH AFRICA – WT/TPR/S/34 (1998)

page 130, para. 135

The Industrial Development Corporation (IDC) provides two financing schemes, at its prevailing interest rates, for the promotion of **tourism** in South Africa. Under both schemes, owners, members or shareholders are required to finance at least 40% of their total assets. Under the Eco-tourism Scheme, for projects in conservation areas, financing is normally provided in the form of loan facilities, and in risk participation, including equity, to promoters who are not in a position to provide sufficient equity capital. The General Tourism Scheme finances the renovation, refurbishment and extension of existing accommodation. The maximum IDC funding per project under this Scheme is limited to R 10 million, subject to the condition that turnover for accommodation represents at least 70% of the total turnover.

The following incentive schemes exist: Eco-Tourism Scheme, General Tourism Scheme, Business Loans for Retail Financial Intermediaries, Seed Loans for Retail Financial Intermediaries, Capacity building support for Retail Financial Intermediaries.

BOTSWANA – WT/TPR/S/35 (1998)

pages 47-48, paras. 51-53

The Financial Assistance Policy (FAP) is the most significant positive inducement for investment in Botswana. The policy was introduced in 1982, and substantially revised for the third time in 1995. It applies only to manufacturing, small-scale mining, mineral processing, agriculture other than beef production, and **tourism**, and to selected linking service industries (which supply the primary qualifying sectors)....

All FAP assistance is provided in the form of non-repayable grants. These grants are aimed at promoting the creation of self-sustainable enterprises, with the proviso that economic and/or social returns to Botswana are greater than the purely financial returns to the projects assisted. However,

qualifying businesses must have a reasonable chance of becoming financially viable. A project must therefore demonstrate a real economic rate of return to Botswana of at least 6%.

pages 65-66 (page 66 on LAN version), para. 73

The tourist industry is encouraged principally through financial assistance under the FAP; this may be in the form of capital grants, unskilled labour grants, or training grants. The total value of unskilled labour plus training grants, summed over a five-year period, should not be more than 50% of the domestic value added accruing to Botswana citizens over the period.⁶ In the tourism sector such assistance is available to hotels, motels, lodges, guest houses, tourist apartments, tourist camping sites, caravans, hunting camps, tented-camp safari and tour operators, urban tourism, horse back safaris, walk trails safaris and transport of guest travellers and tourists including travel agents.

LESOTHO – WT/TPR/S/36 (1998)

pages 69-70 (pages 71-72 on LAN version), para. 77

Lesotho mainly attracts South African tourists, for which it faces increasing competition from other African destinations. The Lesotho National Development Corporation (LNDC) has been promoting **tourism** actively and a number of hotels, mountain lodges and a national park have been developed. There were 417,000 visitors in 1992 (more than twice the 1988 figure). There has been an overcapacity in Maseru since the construction of the government-financed Lesotho Hilton. The occupancy rate was 30% in 1992, compared with 20% in the 1980s. The LNDC intends to develop a major ski-resort/casino complex in the Highlands Water Area Scheme.⁷

NAMIBIA – WT/TPR/S/37 (1998)

[No reference to service-related subsidies.]

SWAZILAND – WT/TPR/S/38 (1998)

[No reference to service-related subsidies.]

NIGERIA - WT/TPR/S/39 (1998)

pages 114-115, paras. 182-84, 187

Tourism in Nigeria does not yet attract large numbers of visitors or receipts (Chart IV.8). In order to develop this sector, the authorities have developed a new tourism policy and put in place a package of incentives to attract private sector investment in **tourism** development.

The authorities have also indicated the need to grant preferential credit and fiscal status to potential investors in tourism.

HUNGARY – WT/TPR/S/40 (1998)

pages 54-55 (pages 54-56 on LAN version), para. 72 and Box III.2 (part of)

A significant aspect of the tax system in this early phase was that foreign investors were treated more favourably than domestic entrepreneurs. Such "positive discrimination" was thought necessary to compensate foreign investors for what they perceived to be the relatively high risk of

⁶"Domestic value added" is defined as sales revenue minus tradeable inputs minus transfers to citizens.

⁷EIU (1997).

investing in an economy in the early stages of transition. Most of these preferences were abolished at the end of 1993, however, and any incentives are now largely accorded to domestic and foreign investors alike. Two notable exceptions involve the special deduction granted to companies with at least 30% foreign participation and the tax allowance for fully foreign-owned **offshore companies**. Although the last date for qualifying for this special deduction was the end of 1993, existing enterprises continue to enjoy the incentive for which they originally qualified until 2003. Fully foreign-owned offshore companies can still qualify for the tax allowance.

Box III.2: Tax incentives for investment, 1996, excerpts

(Ft million)

Incentive	Description	Amount
Incentive for offshore companies	This incentive, which was introduced on 1 January 1994, is available for offshore trading or service companies . A tax credit of 85% of the tax due, granted to offshore companies, was withdrawn and replaced beginning 1 January 1997 with a low rate of corporate income tax, i.e. 3%. Offshore companies are not entitled to any other tax incentives.	397

Source: Hungarian authorities.

page 90, para. 71

Conscious that internationalization of the Hungarian economy, the rise in living standards, and the development of tourism are likely to result in future expansion of **air transport** activities, the Government and the industry have engaged in wide-ranging modernization of the sector. This involves, *inter alia*, the recapitalization of Malév, including the purchase and leasing of new aircraft, the expansion of the Budapest-Ferihegy airport (the only airport in Hungary capable of meeting international transport needs), and the transformation of the former Soviet military air-bases into domestic and cargo airfields.⁸ Recapitalization of Malév is considered to be essential if the national carrier is to compete internationally and is therefore a prerequisite for the complete opening of air transportation to foreign competition. While no direct subsidies are given to Malév, it does receive other forms of assistance, including a reduction in customs duties on spare parts and equipment as well as a tax exemption for fleet renewal.

AUSTRALIA – WT/TPR/S/41 (1998)

page 78, para. 115

Direct financial assistance is provided mainly in the form of sector-specific bounties and subsidies and also in the form of concessional loans, interest rate subsidies and government guarantees.⁹ In 1996/97, the highest percentage of budgetary financial assistance went to the manufacturing sector, which received almost 60% of total outlays, followed by primary production, **services**, and mining and energy, with 22%, 14% and 5%, respectively, of all assistance.¹⁰

page 138, para. 114

Despite financial assistance from the Government, the **shipping** sector has continued to decline. It is estimated that the total value of assistance through expenditure on capital grants and accelerated depreciation for the sector has been \$A 137 million over a ten-year period up to 1997. In addition, voluntary redundancy programmes for the sector cost the Shipping Industry Reform Authority (SIRA) an additional \$A 43 million.

⁸ A second terminal was completed at Budapest-Ferihegy airport in 1993. Further expansion is under way, involving the construction of a third terminal, which will be operated by a foreign-owned company.

⁹ Industry Commission (1997c).

¹⁰ Industry Commission (1997c).

JAMAICA - WT/TPR/S/42 (1998)

page 66, para. 66 and Table III.12

Some of the existing incentive schemes include measures aimed at encouraging exports, such as the Export Industry Encouragement Act (EIEA) and the Factory Construction Act, or to save or earn foreign exchange, such as the Jamaica Export Free Zones Act (Table III.12).

Investment incentives available in Jamaica

Sectors	Incentives	Requirements/conditions	Concessions
...			
Information Processing	Jamaica Export Free Zone Act	All transactions must be conducted in US\$. Company cannot sell in domestic market more than 15% of production.	Exemption from import duties on raw materials and machinery. Duty relief on raw materials and capital goods in perpetuity. Possibility of single-entity free zones.
...			
Film	Motion Picture Encouragement Act	Must be recognized producer.	Income tax relief for nine years. Duty-free importation of machinery and equipment.
Tourism	Hotel Incentives Act	Must contain at least ten bedrooms and facilities for meals	Income tax relief for nine years. Duty-free importation of building materials and furnishings.
	Resort Cottages Incentives Act	Articles must be used for the construction and equipment of resort cottages.	Income and dividends tax relief for ten years. Duty-free importation of articles used in construction of resort cottages.
All industries			
...			
	International Finance Companies (Income Tax Relief) Act ^b	To encourage establishment of offshore banking facilities.	Income tax relief on profits and capital gains. National treatment not applicable.
	Shipping Incentives Act ^c	Vessels must be owned by local companies (state owned).	Relief from income tax and import duties for ten years.
...			

- a Extension to services to be implemented.
- b Currently not in use.
- c Under amendment
- d Suspended.

Source: National Industrial Policy; and information provided by the Jamaican authorities.

page 73, para. 89

The National Investment Bank of Jamaica (NIBJ) has a debt restructuring programme to provide companies registered in Jamaica with financing of up to 50% of the debt to be restructured, to a maximum of J\$50 million per company. The balance of the debt is expected to be restructured by the creditor bank, in the form of an interest rate reduction, a write-off, or by rescheduling. Funds are provided at a rate based on NIBJ's cost of funds, for a maximum period of seven years. The sectors targeted under this programme include agriculture, manufacturing, mining, **tourism, information technology, entertainment and infrastructure.**

page 74, para. 97 (see also page 115, paras. 103, 104)

There are also a number of sector-specific incentive programmes that grant tax and import duty relief, such as the **Hotel Incentives Act, the Resort Cottages Incentives Act, the Shipping Incentives Act, the Motion Picture Encouragement Act**¹¹, the Cooperatives Societies Act. Under these Acts, tax incentives include investment allowances up to 40% for plant and machinery and a five-year period to carry forward tax losses (carry forward of losses now applies across the board). In the case of free zones, income from qualifying activities is indefinitely exempt from tax.

page 120, para. 119

Among specialized development financial institutions, the National Development Bank, owned by the Government, provides medium and long-term financing to businesses (particularly manufacturing and **tourism**) through commercial banks. Funding is provided through the National Industrial Bank of Jamaica (NIBJ) (Chapter III(4)(i)), the European Investment Bank, the Caribbean Development Bank, and through bond issues of the Bank of Jamaica..... The Trafalgar Development Bank provides medium and long term financing to productive enterprises in the private sector; its activities are concentrated on the foreign exchange loan market. Around half of the loans disbursed are directed to manufacturing, with agriculture, tourism and mining following at a certain distance.....¹²

page 125, para. 136

Shipping services are provided by over 30 shipping lines. Jamaican shipping companies may benefit from the incentives included in the Shipping Incentives Act, by which they are exempt from income tax and from import duties for a period of ten years after their establishment.

MALI - WT/TPR/S/43 (1998)

[No reference to service-related subsidies.]

TURKEY - WT/TPR/S/44 (1998)

pages 68-70, paras. 92-93 and Table III.17

Until 31 December 1993, export income was exempted from the payment of corporate income tax... The reduction, which had been progressively reduced, was 20% and limited to the following activities; (i) revenue earned abroad and brought to Turkey from services such as **repairs**, and **construction** facilities; and (ii) producer-exporter companies' revenue from exports of industrial products above US\$250,000 a year.

Exporters can take advantage of a large number of export credit schemes, operated by the Export Credit Bank of Turkey (Turk Eximbank)...

¹¹The Motion Picture Industry (Encouragement) Act provides recognized motion picture producers the right to import into Jamaica any plant, equipment, machinery and materials for the building of studios or for use in motion picture production free of customs duty, additional stamp duty and general consumption tax, provided the goods cannot be manufactured domestically [*footnote moved from page 113, para. 97*].

¹²Loans by the Trafalgar Development Bank outstanding in 1996 reached J\$1.29 billion, compared to J\$2.64 billion for the National Development Bank, and J\$1.19 billion for the Agricultural Credit Bank. See: BOJ Annual Report 1996, p.p.22-26.

Key features of the export credit and guarantee programmes, June 1998, in part

Scheme	Eligibility	Conditions	Amount of credit
8. <u>Tourism Marketing Credit Programme</u> ^e	Tourism companies selected by Ministry of Tourism and those attracting more than US\$1 million worth of currency to Turkey annually	Interest rate: 75% Maturity maximum 180 days Maximum 40% of project cost and TL equivalent of US\$500,000	1997: US\$15 million
11. <u>Overseas Chain Stores Investment Credit Programme</u> ^e	Turkish entrepreneurs' overseas investments for the establishment of shopping malls and chain stores	Interest rates: determined specifically for each project Maturity maximum 7 years Maximum 75% of investment amount if local content is 50% or more, otherwise 60%	1997: US\$8 million
14. <u>Project Credits Programmes</u> ^h	Foreigners buying Turkish goods and services , min. 50% domestic content	Interest rate: depends on the countries' relative credit risk standing and is calculated in relation to LIBOR Maturity 2 years or more Deferred payments Maximum 85% of the goods and services provided from Turkey	1977: US\$113 million

e Programme introduced after 1993.

h Buyers Credit and Guarantee Programme was renamed Project Credits Programme; mostly project financing is provided under this programme.

Source: Government of Turkey.

page 73, paras. 101-103

With the objective of promoting export-oriented investment and production, the Government of Turkey has established ten free zones. The enterprises established in the zones are active in a wide range of areas, including high-technology investments, leather products, and storage facilities.¹³ A new initiative is the **Istanbul Stock Exchange International Securities Market Free Zone**, which commenced operation in the first half of 1997. Its main objective is to create an international finance centre operating in the field of stock purchases/sales, stock barter, maintenance and other transactions within the body of the Istanbul Stock Exchange.

A wide range of financial benefits are extended to the free zones. These include, *inter alia*, ...exemption from corporate, income and value-added taxes.

page 80, para. 122

To qualify for the general investment aid programme, potential investors have to apply for an investment incentive certificate, which is non-transferable. Any investment project, whether foreign or domestic, receives the same treatment....¹⁴ In addition to the geographical location, priority is given to **infrastructure services, tourism, yacht and shipbuilding sectors**. Where the investment is not realized as foreseen by the incentive, the funds are returned with interest.

page 139, para. 127

Special tax incentives are provided to Turkish investors in the **maritime** sector. Incentives include: an income tax of only 10% on the wages of the seafarers during international voyages; and

¹³ Those in operation include Aegean, Antalya, Erzurum Eastern Anatolia, Istanbul Ataturk Airport, Istanbul International Stock Exchange, Istanbul Leather, Mardin, Menemen Leather, Mersin, and Trabzon.

¹⁴ However, the administration differs: foreign investment applications are handled by the General Directorate of Foreign Investment, while domestic investor applications are handled by the General Director of Incentive and Implementation.

the book profit resulting from sale or loss of a vessel can be deducted from the purchase price of the same kind of replacement vessel within three years and after deducting the realized depreciation amount.

pages 143-44, paras. 153-54

The Turkish Government has played an active role in the **tourism** sector. It grants incentives for tourism investments (Box IV.4) in accordance with the Tourism Encouragement Law... Investors in the tourism sector have priority in incentives granted under the general investment aid programme.

page 145, Box IV.4

Incentives offered only to the tourism industry

Special incentives are offered to national and foreign investors for investment in the construction and management of tourist facilities (Law No. 2634 on the Encouragement of Tourism). Investors with a Tourism Operation Certificate issued by the Ministry of Tourism may benefit from the following incentives:

- corporate income tax exemptions (temporary measure): maximum 20% of the foreign exchange earnings of tourist establishments is deducted from the total gross profit subject to taxation;
- the Central Bank of Turkey provides up to 20% of fixed investment costs in cash;
- a property tax exemption for five years (temporary measure);
- the allocation of public land for the construction of tourist facilities on long-term lease;
- permission to employ foreign personnel and artists (up to 20% of the total personnel);
- discount rates on water, electricity and gas prices;
- priority in allocation of telephone, fax and telex lines; and
- foreign exchange retention quotas: a percentage of foreign exchange earned by tourist establishments may be retained by the investors and used for essential imports required for operation.

Source: Government of Turkey; and Yamamoto, K. (1997), "Development of International Tourism in Turkey - its effects and problems", Journal of International Economic Studies, No. 11, p. 80.

SOLOMON ISLANDS – WT/TPR/S/45 (1998)

page 35, para. 73

Tourist development projects are entitled to special additional incentives. These include a set five-year tax holidays; 50% outright deduction in the first year for capital expenditures (excluding land), and 5% annually thereafter; 50% write-off for the costs of vessels built locally for tourism; and duty-free import of capital equipment and materials for two years.

page 94, para. 121

Although the Government has no direct interests in tourism resorts following the privatization of the Mendana Hotel, it encourages private development by offering various tax concessions. The Foreign Investment Board may grant income tax incentives permitted under the Income Tax Act. These include a five-year tax holiday on **tourist hotels and resorts** (subject to minimum bedroom number requirements of 300 and 50, respectively), and other tourist-oriented projects. Approved projects may also depreciate capital expenditure over two years, and write off overseas promotion at a rate of 150%. The same benefits apply to expenditure on expansion and renovation of eligible resorts incurred from 1 January 1989.

page 95, para. 127

An important priority for the Government is to develop inter-island **shipping services**. It has indicated that it would consider either subsidizing non-commercial routes, or licensing by tender unprofitable routes to private operators.

BURKINA FASO – WT/TPR/S/46 (1998)

[No reference to service-related subsidies.]

ARGENTINA – WT/TPR/S/47 (1998)

page 87, para. 151

Fiscal incentives are available for specific production projects in agriculture, livestock and industry and for **tourism services**; industrial projects can enjoy benefits until the end of 2005.¹⁵ The authorities indicated that no new projects are being approved. The benefits consist of tax breaks through credit bonds for amounts equivalent to the capital invested in the project, or, from December 1994, of VAT credit certificates equivalent to the VAT paid to suppliers of raw materials and semi-manufactures.

page 139, para. 158, 160

Following legislative reforms aimed at promoting the local **film industry**, in October 1994 the Argentine Film Law was amended to include: a 10% tax on the rental and sale of home video; a 10% tax on the sales price of all tickets for the screening of films; the obligatory exhibition and remuneration of national short subject films (to be implemented); and an authorization to the Argentina Film Institute to oversee the compulsory local processing, dubbing, and sub-titling of foreign films.¹⁶ ... Since 1995, 50% of the tax revenue from film-related activities has been used to subsidize domestic film production.¹⁷

page 142, para. 174

To provide some stimulus to the [**construction**] sector, the Government launched a 1995-99 investment programme, but this has not yet been implemented because it contains fiscal and financial constraints. Further measures included fiscal incentives (including a reduced VAT rate levied on new houses), a 1996 credit programme (with securitized mortgages), and credits from the state-owned National Mortgage Bank, (BHN) with longer maturities and lower interest rates, estimated be worth US\$850 million in 1996 and US\$1.1 billion in 1997.¹ In 1997, a mortgage insurance mechanism was under consideration to enable the finance of 95% of the new house value.

TOGO - WT/TPR/S/48 (1998)

[No reference to service-related subsidies.]

¹⁵ Decree 2054/92, 10 November 1992; MEOSP Resolution 1280/92, 11 November 1992; Decree 1125/96, 4 October 1996; and Decree 69/97, 23 January 1997.

¹⁶ Law 17741, 14 May 1968 was amended by Law 24377, 28 October 1994.

¹⁷ Decree 815/95, 14 June 1995.

TRINIDAD & TOBAGO - WT/TPR/S/49 (1998)

page 53, para. 65

Under the Corporation Tax Act, an export allowance, in the form of a tax credit, is granted to locally incorporated companies for exports to non-CARICOM countries of locally manufactured or produced goods, **services**, and agricultural products.¹⁸ Branches of foreign corporations are not eligible for this allowance. The tax credit covers the profits on the proportion of exports sales to total sales so that profits on exports are effectively tax exempt. In 1996, export-allowance claims amounted to TT\$18 million (US\$3 million), implying a forgone revenue of TT\$6.3 million (US\$1.1 million) at the 35% corporate tax rate. In 1997, under the Finance Act, this allowance was expanded to include services connected with the building industry (architectural, engineering, etc.). The Minister of Finance has declared that this export allowance will be eliminated by 1 January 2000.

page 56, para. 78

With the aim of stimulating job creation and investment in distressed areas of the country, the Ministry of Trade and Industry has proposed an Enterprise Zones Programme. The Programme has not yet been legislated. To qualify as an Enterprise Zone an area must have an unemployment rate at least 50% above the national average or a poverty rate exceeding the national average.... Activities qualifying for the zones are assembly, manufacturing, agricultural and agro-processing, research and development, **information processing, telecommunication and financial services**.... Investors in the Enterprises Zones who invest at least TT\$50,000 and employ at least two persons are entitled to tax incentives. Such incentives include a tax credit of TT\$3,000 for each new employee and TT\$3,000 for each TT\$50,000 of investment, altogether not exceeding TT\$50,000, provided at least 50% of the new employees are zone residents.¹⁹

page 58, paras. 84-85

Sector-specific investment incentives are available under different legislation. The **Hotel Development Act** provides investment incentives to hotel owners and hotel operators which include a tax holiday for a period of five to ten years as well as customs and excise duty exemption on building materials and articles of hotel equipment to be used exclusively in connection with the construction and equipping of a hotel project. The Ministry of Tourism has discretion on the granting of concessions based on the size and cost of the hotel project.

page 60, paras. 92-93

The Venture Capital Investment Programme, which is governed by the Venture Capital Act of 1994 and the Venture Capital Regulation of 1996, was launched in 1996 to mobilize equity financing for small and medium-sized enterprises involved in agriculture, **tourism**, manufacturing **and non-financial services**. Under the programme, investors (individuals or corporations) in registered venture capital companies²⁰ are eligible for a tax credit of 35% of the amount invested. By early 1997, three venture capital companies were registered under the programme.²¹

¹⁸The export allowance is calculated as follows: Export allowance = (Export sales/Total sales) x Total sales profit.

¹⁹Ministry of Trade and Industry, 1996.

²⁰Individuals and companies interested in establishing a venture capital company must become incorporated under the Companies Act and have at least TT\$50,000 in paid up capital and an authorized capital of between TT\$5 million and TT\$20 million. The venture capital company must raise at least TT\$500,000 in paid up capital and begin making equity investment within 12 months of its registration.

²¹Forde and Joseph *et al.* (1997).

Concessionary financing is available from development banks to some sectors. Credits at preferential rates may be obtained from the Agricultural Development Bank (ADB) for the agricultural sector and from Development Finance Limited (DFL) for the manufacturing, **tourism**, agro-processing and industrial services sectors...²²

page 101, para. 116

With a view to encouraging the development of the **hotel industry**, the Hotel Development Act was enacted in 1963 and subsequently amended to provide incentives to hotel owners and operators. These incentives include: a tax holiday for a period of five to ten years; an accelerated depreciation for equipment owned by the hotelier; a capital allowance in respect of approved capital expenditure; carry-over of losses incurred by owners and/or operators during the tax holiday period; and tax exemption on dividends accruing to the owner/operator.

URUGUAY – WT/TPR/S/50 (1998)

pages 50-51, paras. 108-109

Law No. 15.921 of 17 December 1987 and Decree No. 455/988 of 8 July 1988, which regulate the operation of the free-trade zones, allow storage and warehousing, manufacturing, **financial institutions, data processing** and other activities that the Executive deems beneficial to the country's economy (Article 2). However, companies established in a free trade zone are not allowed to undertake manufacturing, commercial or service activities outside the free zones (Article 14), that is, separate companies have to be established to conduct operations outside the zone. The free zones are administered, supervised and controlled by the Ministry of Economy and Finance, through the Directorate of Free Zones (Article 5).

page 95, para. 111

The [**tourism**] sector is eligible for incentives provided under the Industrial Promotion Law of 1974.²³ The benefits, which include tax and duty exemptions, are granted through the Ministries of Tourism and of Economy with the approval of the Ministry of Industry, Energy and Mining.²⁴ Incentives are provided mainly for investment in tourism resorts, equipment, renovation and amelioration of existing facilities.

INDONESIA – WT/TPR/S/51 (1998)

page 118, Box IV:5

Bank restructuring in Indonesia

...

Another aspect of the Government's policy in the sector is to restore the confidence of depositors and creditors in the banking system. The Government has already announced that it would provide a full guarantee to all depositors and creditors of locally incorporated commercial banks. In addition, it has created the Indonesian Bank Restructuring Agency (IBRA), an institution responsible for the supervision and the restructuring of ailing **banks**. The Agency also exercises a preventive role in detecting bank failures.

...

Source: WTO Secretariat, based on information provided by the Government.

²²These two development banks were established as wholly government-owned institutions in the late 1960s and early 1970s, respectively, to encourage the development of capital markets and of targeted economic sectors. Private capital was injected in both banks in the late 1980s, after which their lending has become less concessional, with interest rates more in line with market rates.

²³ Law No. 14.178, 28 March 1974.

²⁴ The Ministry of Tourism was created in 1986 to promote this industry (Law No. 15.851, 24 December 1986).

HONG KONG, CHINA - WT/TPR/S/52 (1998)

page 40, para. 60

With the exception of income from certain **international shipping** services, which are tax exempt, profits (total income minus total deductions) derived from trading, professional or business activities in Hong Kong are subject to statutory tax rates of 16% in the case of corporations and 15% for unincorporated businesses.

page 75, para. 38

There are no publicly owned **banks** in Hong Kong. However, in August 1998, in an attempt to stabilize share prices on the Hong Kong Stock Exchange, the Hong Kong Monetary Authority (HKMA) purchased shares in several companies, including nearly a 9% stake in the Hong Kong and Shanghai Banking Corporation (HSBC) Holdings, the Hong Kong-based international banking group, which accounts for some 30% of the benchmark Hang Seng Index.

page 87, para. 83

According to the authorities, Hong Kong has no market access restrictions or exceptions to MFN treatment for shipping service. The only exception to national treatment pertains to the international operations of ships registered in Hong Kong; the income for owners of these ships derived from cargo uplifts or towage operations in Hong Kong or elsewhere is exempt from Hong Kong's profits tax.²⁵ Such an exemption constitutes tax relief for the export of **shipping** services.

CANADA - WT/TPR/S/53 (1998)

page 59, para. 79

The Export Development Corporation also has equity participation in Exinvest, incorporated in 1995 to establish or invest in corporations, partnerships, joint ventures or other incorporated bodies that provide financial support to sales for goods and **services**.

²⁵The Government estimates that HK\$28 million in tax revenue were forgone per annum as a result of this exemption.

page 71, Table III.11 and paras. 118, 120

Selected federal subsidy programmes, in part
Can\$ million

Name of subsidy	Form of subsidy	Amount of subsidy	
		1995/96	1993/94
Industrial programmes		761.7	903.5
...	Repayable or non-repayable contributions		
Support Program for Tourist Attraction and Infrastructure Projects			
...			
Business Incentive Program and the Cooperative Tourism Marketing Initiative	Contributions or repayable contributions	5.5	n.a.
Communications Technology R&D Incentive Program	Non-repayable contributions	3.0	5.9
Western Transportation Industrial Development Program	Non-repayable contributions	1.1 ^a	0.6

n.a. Not applicable.

Note: Grants are unconditional transfer payments which are not subject to being accounted for or audited but, for eligibility and entitlement, may be verified.
Contributions are conditional transfer payments for a specified purpose, which are subject to being accounted for and audited to a contribution agreement.

Source: WTO document G/SCM/N/25/CAN, 2 December 1997; and Government of Canada.

The two largest beneficiaries of budgetary appropriations in 1996/97 were the Canada Mortgage and Housing Corporation and the Canadian **Broadcasting** Corporation, totalling together nearly Can\$3 billion.....²⁶

Cultural industries are also the focus of several assistance programmes, including book writing and publishing, film and video production, film distribution, and the "cultural milieu" in general.

page 73, para. 124

According to a report released in March 1998, current and capital expenditures deemed eligible for federal SR&ED tax incentives increased from Can\$4.5 billion in 1988 to Can\$6.9 billion in 1992 and, in the case of smaller CCPCs, from Can\$0.7 billion in 1988 to Can\$1.4 billion in 1992.²⁷ ...Manufacturing, **communication services**, **wholesale trade** and the **real estate finance** sectors accounted for 91% of the value of SR&ED tax credit claims.

page 105, paras. 85, 87-88

Assistance is provided to the **audiovisual** sector through direct subsidies, tax incentives, copyright remuneration, local-content requirements (mainly in the form of broadcasting quotas) and foreign-ownership restrictions.²⁸

²⁶According to Article 2 of the SCM Agreement, only the subsidies that are specifically provided to an enterprise or industry or group of enterprises or industries are notifiable.

²⁷Finance Department and Revenue of Canada, Release Evaluation of Federal Income Tax Incentives for Scientific Research and Experimental Development, <http://www.fin.gc.ca/newse98/98-031e.html>.

²⁸For details, see WTO (1996a), Chapter IV(5)(v).

The Canadian Film or Video Production Tax Credit, introduced in 1995, provides a refundable tax credit for film producers meeting Canadian-content requirements.... The Government introduced in 1997 the Film or Video Production Services Tax Credit, which consists of a refundable tax credit to film production services corporations of up to 11% of eligible labour expenses. This tax credit is intended to allow film producers, both domestic and foreign, employing Canadians for production services performed in Canada, to qualify for assistance. The scheme is expected to provide approximately Can\$55 million per year in direct benefits to the film industry.

page 107, Table IV.8

Main federal support measures for audiovisual services, 1997-98

Sector	Direct financial assistance (incl. grants, funds to agencies, etc.)	Tax measures	Local-content requirements	Foreign investment provisions
Broadcasting	Canadian Television Fund CTF): Can\$200 million (including Can\$50 million contribution from Telefilm Canada and Can\$50 million contribution from private sector). CBC radio/TV appropriation: Can\$858 million.	Income Tax Act disallows an eligible business deduction expenses for advertising placed on non-Canadian stations.	60% of Canadian content for conventional TV (private licensees must show 50% Canadian content in prime time; public licensees must show 60% Canadian content in prime time). Pay, speciality TV and pay-per-view services have varying Canadian-content requirements. 30% Canadian content for radio broadcasts (music) ^a . French-language radio: 65% of vocal popular music must be in French. Cable TV: majority of channels received by the subscriber must be Canadian.	Ownership limitations of 20% of the licensee company and 33.3% of the holding company.
Film and video	Telecom budget: Can\$210 million (includes government appropriation, returns on investment, and Can\$50 million contribution to CTF). National Film Board appropriation: Can\$57.3 million.	Canadian Film or Video Production Tax Credit; and Film or Video Production Services Tax Credit.		Investments must meet "net benefit to Canada" requirement of the Investment Canada Act both for new business and acquisition of existing businesses.
Sound Recording	Sound Recording Development Program: Can\$9.45 million		Music productions must fulfil specified criteria to qualify as Canadian works.	Investments must meet "net benefit to Canada" requirement of the Investment Canada Act both for new businesses and acquisition of existing businesses.

a This requirement will be raised to 35% in 1999.

Source: Heritage Canada.

GUINEA - WT/TPR/S/54 (1999)

[No reference to service-related subsidies.]

EGYPT - WT/TPR/S/55 (1999)

Table II.4

Fields of investment under the Law of Investment Guarantees and Incentives (8/1997)

Air transportation and directly related services
Financial leasing
Hospital and medical centres offering 10% of their service capacity free of charge
Hotels, motels, boarding houses, tourist villages, tourist travel and transportation
Housing projects whose units are to be leased unfurnished for non-administrative purposes
Infrastructure relating to drinking water, sewage, electricity, roads and communications services
Overseas maritime transport
Production of computer software and systems
Transport of goods in refrigerated vans; refrigerators for the preservation of agricultural products, industrial products, and foodstuffs; container depots and grain silos
Underwriting subscriptions to securities
Venture capital

Source: General Authority for Investment (GAFI), *Law of Investment Guarantees and Incentives and its Executive Regulations*, May 1997.

page 55, para. 109

Tax exemptions are also provided for investments outside the Old Valley and under the New Communities Law, or for investments made in certain sectors such as **tourism**.

page 97, para. 110 and Table IV.9

Around 25% of Egypt's international trade is carried by **ships** flying the national flag. Egypt provides a number of incentives for companies flying the national flag, including up to 75% discount on supplies and the use of infrastructure owned by the General Authority for Ports; up to 50% discount on service charges by the General Authority of Red Sea Ports, for vessels using Safaga Port; and discounts on agency fees and use of ports for a period over 48 hours.

Investment incentives in the tourism industry

Scheme	Exemptions or concessions
Taxes	All tourist establishments except restaurants are exempt from paying taxes for 5 years in Cairo; 10 years in remote areas; and 20 years in El Wady El Gedeed and Toshka areas under the Law of Investment Guarantees and Incentives (8/1997). Rebuilding and expansion activities of tourist-related premises are exempt from taxes on 50% of income. Law 93 of 1996 allows a reduction up to 75% of fees for tourist and passenger ships entering Egyptian ports.
Customs duty	Under Decree 11 of 1996, there appears to be a 5% rate of customs duty on all imported equipment, except for restaurants. Imported limousines by tour operators are exempt from duty. Motor vehicles for public transport imported by tourist resorts established in remote areas appear to receive duty reductions of 5%. Alcoholic beverages may be imported by hotels at a rate of 300% duty. ^a
Land acquisition/development	... Low interest loans are provided to developers for infrastructure services, by the Tourism Development Authority. Law 72 of 1996 allows the expansion of tourist facilities and exemptions for tourist projects. The Tourism Development Authority offers land to private developers for a nominal rate of US\$1 per square metre in designated tourist areas.

^a MFN rates on alcoholic beverages range from 1,200% for beer to 3,000% for spirits.

Source: Information provided by the Egyptian authorities.

UNITED STATES - WT/TPR/S/56 (1999)

page 82, para. 110

Eximbank is responsible for assisting the export financing of U.S. goods and services through a variety of loan, guarantee, and insurance programmes.²⁹ It guarantees both working capital loans for U.S. exporters and the repayment of loans by foreign purchasers of U.S. goods and services. In addition, the Federal Credit Insurance Agency (FCIA) an affiliate of the Eximbank, the Federal Government's general trade finance agency, provides credit insurance to cover the risk of non-payment by foreign buyers for political or commercial reasons. The bank does not compete with commercial lenders but rather supplements conventional lending, assuming risks that commercial banks cannot take on. Eximbank programmes have minimum acceptance levels and varying coverage for foreign content included in U.S. manufactured and produced items. The Eximbank is required to 'set aside' up to 10% of its operations for small businesses. It must also review the environmental impact of transactions requesting financing. Moreover, Eximbank is required to provide financing for U.S. goods and **services shipped on U.S. vessels**.³⁰

page 99, para. 162

...The corporate tax is also used as an instrument of government policy; that is, it embodies tax relief measures that assist some activities or industries relative to others. Among the main forms of tax relief accorded to companies are accelerated depreciation, deferral of income from controlled foreign corporations, reduced corporate tax rates, tax credit for corporations receiving income from doing business in U.S. possessions, exclusion of income of foreign sales corporations, and a credit for increasing research activities.... Tax expenditures are recognized as an alternative to other government policy instruments, such as direct expenditures and regulations. They are estimated to cost the Federal Government billions of dollars in lost tax revenues; such measures are aimed in particular at sectors (such as **small life insurance company** deduction, deferral of tax on **shipping** companies, excess bad debt reserves of **financial institutions**.)

page 106, para. 180

The Maritime Administration (MARAD) has provided financial assistance to U.S. **shipowners** through the Federal Ship Financing Programme (Title XI) and the Capital Construction Fund (CCF) programme.³¹ Title XI provides for federal government guarantees of private sector financing or refinancing obligations for the construction or reconstruction of U.S. flag vessels in U.S. shipyards. These financing guarantees are also available to foreign shipowners.

BOLIVIA – WT/TPR/S/57 (1999)

page 32, para. 22

Under the Temporary Import Regime, the payment of import duties and internal taxes is suspended for goods entering Bolivia for a limited period and for a defined use.³² Permits for temporary entry are issued for a 90-day period, which may be extended once, under certain

²⁹As notified to the WTO (WTO document G/SCM/N/38/USA, 19 November 1998).

³⁰<http://www.exim.gov/mover.html> [4 August 1998].

³¹The United States has not ratified the OECD Shipbuilding Agreement concluded in 1994, which is meant to eliminate all direct and indirect support and to combat injurious pricing practices. Provisions are made for a standstill on existing subsidy levels and on new measures of support during the intervening period, but allow for the continuation of previously committed aid subject to certain conditions.

³²Supreme Decree No. 24440, 13 December 1996.

conditions. Goods benefiting from this regime include ... machinery and equipment for **repair; equipment and apparatus for scientific, sport or cultural events...**

ISRAEL – WT/TPR/S/58 (1999)

page 26, para. 33

Israel has a number of laws to encourage foreign investment. The incentives include, *inter alia*, investment grants, tax breaks (rebate on profit tax), research and development support, wage financing, and training support.³³ The incentives offered depend on the location of the company as well as on the type of industry (preference is given to industrial, **tourism** and agricultural projects).

page 39, para. 29

Concessional duties on imports are granted within the framework of several schemes.... **Performing troupes of artists and entertainers**, and petroleum companies are also allowed to import duty free.

page 115, para. 132

The Government has played an active role in the **tourism** sector. Investors in tourism are eligible for government incentives under the framework of the Encouragement of Capital Investments Law of 1959. An approved investor may choose between a capital incentive package in the form of a grant equivalent of up to 24% of the investments in fixed assets, tax exemption and tax deduction, or an enhanced tax-incentive package; the benefits are contingent on the location and the size of the investment. The total cost of the scheme in 1998, excluding forgone revenue, was NIS 243 million.

PHILIPPINES - WT/TPR/S/59 (1999)

page 59, para. 91

The basic system of incentives is defined in and regulated by the Omnibus Investment Code. The Code provides for investment incentives made under the Philippines Investment Priorities Plan (IPP), which includes a list of promoted areas of investment eligible for Government incentives, and incentives granted to export-oriented enterprises, regardless of whether they fall within the IPP.... In early 1999, the IPP list includes, as priority investment areas, *inter alia*, industries that are undergoing industrial adjustments (e.g. chemical products and engineered products and components) ...**infrastructural services, transport carriers**, social and housing projects, motor vehicles and components, **tourism**, and research and development activities.

ROMANIA - WT/TPR/S/60 (1999)

[No reference to service-related subsidies.]

NICARAGUA - WT/TPR/S/61 (1999)

pages 38-39 , para. 24

Nicaragua's scheme for the concessional entry of imports was revised substantially in 1997 when new tax legislation was introduced; further adjustments were made in 1999.³⁴ Changes were both to reduce tax evasion, by specifying those items that are exempt from tax payments, and to

³³ Government-guaranteed loans were eliminated in January 1997.

³⁴ Law 257, 4 June 1997; and Law 303, 24 March 1999.

abolish administrative discretion in making exceptions to the law or granting tariff exemptions. At present, duty-free imports include... imports relating to the **construction of hotels and entertainment centres**.

page 93, para. 120

Fiscal incentives available since 1960 to investors in new **tourism**-related facilities (i.e. hotels, entertainment centres) were expanded in 1999.³⁵ These incentives now include tax reductions on capital (100%) and income (from 80% to 100% depending on the location) for a ten-year period (renewable if new works are undertaken); duty- and tax-free import or purchase of all construction-related contracts, related material, machinery, and equipment; exemption from municipal taxes; sale of state-owned land (payment in money or shares), or land concessions from 20 to 99 years (as from 1999); tax breaks on real estate tax for a ten-year period (as from 1999); and tax breaks to financial institutions on earnings from loans for tourism projects (as from 1999). In recent years, 34 projects benefiting from these incentives are to invest US\$128 million, build 1,392 hotel rooms and create 1,940 jobs.

PAPUA NEW GUINEA - WT/TPR/S/62 (1999)

page 61, para. 37

Imports of aircraft and parts by a PNG registered company with a PNG **airline** operator's licence are duty free. Similarly, a PNG registered **shipping** company may import all ships duty free, including boats, ferries, tankers, and fishing vessels but not pleasure craft. Registered PNG companies may also import marine engines and outboard motors of up to 40 hp duty free.

page 121, para. 160

Air Niugini is also the only licensed "first level" domestic **air carrier** operating regular flights to major centres. This monopoly situation, together with price control based on uniform pricing practices, results in high cost services. Other airlines may operate but not in direct competition with the national carrier. Air Niugini has had difficulties trading profitably and has accumulated government-guaranteed debts; it recently received a further injection of government funds.

THAILAND – WT/TPR/S/63 (1999)

page 54, para. 70

Important increases have taken place in credit commitments under the Merchant Marine Financing, which is a credit of up to seven years extended to domestic merchant marine businesses to finance the purchase of new or used ships. The objective is to help develop the Thai **shipping** sector in order to lessen dependence on foreign vessels and alleviate Thailand's current account deficit. Nearly B 4 billion of credit commitments had been made under this programme at the end of 1998, up from B 13 million in 1995. The scheme is believed to have increased the share of merchant ships that fly the Thai flag from 0.44% in 1995 to 9.43% in 1998.

page 104, paras. 115-117

Since the 1995 Review, Thailand's banking sector has been hit by a widespread crisis that has undermined the financial system; the number of financial companies fell from 91 at the end of 1996 to 36 at the end of August 1998, and is expected to decrease to 24 after the current programme of

³⁵ Decree 520, published on 13 August 1960, and its amendments; and BCN (1998b).

consolidation is terminated; the number of banks will decrease from 15 to 13 at the end of the consolidation process. Moreover, four of the remaining **banks** have received Government intervention in the form of large injections of public funds through debt-equity swaps. These four banks are currently being privatized without any restriction on foreign ownership.

In 1996, the Bank of Thailand agreed to bail out two major **financial institutions**, Finance One Company and Bangkok Bank of Commerce. In late 1997, the Government, through the Financial Institutions Development Fund (FIDF), injected a large amount of money into financial institutions to provide liquidity.³⁶ After the Government accepted the International Monetary Fund's rescue package, the FIDF was entrusted to provide a (blanket) guarantee of the deposits and liabilities of the remaining financial institutions in order to restore confidence.

The new prudential requirements have posed an additional burden on financial institutions in their attempts to find foreign or local partners, raise capital through public offering, and thus achieve the Government's objective of private-sector-led recapitalization. On 14 August 1998, in response to these problems, the Government announced a package of capital support measures to restructure the financial sector, including the provision of public funds to recapitalize remaining financial institutions.

page 106, Box IV:1

International Banking Facilities

Off-shore banking was launched in Thailand with the establishment of the Bangkok International Banking Facilities (BIBFs) in March 1993... The operations of the International Banking Facilities include: taking deposits or borrowing in foreign currencies from abroad; lending in foreign currencies in Thailand (out-in lending) and abroad (out-out lending), non-baht cross-currency foreign exchange transactions; discounting bills or providing guarantees against any debts denominated in foreign currencies to persons residing abroad; undertaking financial transactions that involve international trade in cases where buyers and sellers reside abroad; seeking loans from foreign sources; and acting as fund managers in arranging loans. In addition, IBFs can engage in other investment banking services such as provision of financial information; undertaking investment feasibility studies; financial advisory services; advisory services for business acquisition and take-over or mergers; and arranging or underwriting debt instruments for selling abroad.

The authorities granted the following privileges to IBFs: a reduction in the corporate income tax rate from 30% to 10%; exemption from special business tax (including municipal tax), which is currently at 3.3% of total turnover; and exemption from withholding tax on interest income from deposits or lending for out-out transactions with non-Thai residents; exemption from stamp duties; and reduction of withholding tax from 15% to 10% on interest on foreign loans for countries that have a double-taxation agreement with Thailand. Provincial International Banking Facilities (PIBFs) are granted the same tax concessions.

...

Source: Government of Thailand.

KENYA – WT/TPR/S/64 (1999)

pages 45-46, para. 89

Several incentive schemes (e.g. tax holidays, remission and refunds of import duties, accelerated depreciation, and investment allowance) are in place to encourage investment in Kenya (Chapter II(3)(ii)). More specifically, import duties on inputs used in the manufacture of certain specified products are fully or partially remitted (section (2)(iii)(e)). An investment allowance (deduction of up to 60%) is provided in the manufacturing and **hotel** sectors. VAT paid on inputs used in business activities of registered companies is refunded.³⁷

³⁶ Nidhiprabha (1998), p. 309. In order to finance this expenditure, B 400 billion of bonds had been issued in January 1999 (in March 1999, one dollar was worth approximately 36 baht).

³⁷ Companies with combined turnover of taxable goods and services exceeding KSh. 2 million per year must be registered for VAT purposes.

page 79, para. 108

With the exception of **passenger fares and services** provided in distant parts of the country, other railway freight services are not subsidized.

ICELAND – WT/TPR/S/65 (2000)

page 99, para. 146

The **tourism** sector has been one of the fastest growing industries in recent years.... Private firms play a leading role in the tourist industry, but the State also participates through the Ministry of Communications, the National Tourist Board, Ferðamálaráð Íslands, and a special loan fund....

TANZANIA – WT/TPR/S/66 (2000)

page 16, paras. 32-33

Businesses that are identified as priority sectors may import capital goods at the rate of 5%. The 12 priority sectors for the purposes of investment promotion are: ...**air aviation; ...commercial, development, and micro-finance banks;...tourism and tour operators; and radio and television broadcasting.**

Both the lead and priority sectors also benefit from deferment of value-added taxes until the investment commences operations. Additionally, a tax holiday is granted for the first five years; and a capital allowance deduction in the years of income of 100% is also granted.

page 17, para. 39 and Table II.3

Table II.3 contains the minimum investment capital required by the Government of Zanzibar for coverage under the Investment Act. All capital goods brought in during the start-up of an investment are assessed a zero rate of duty, but a service charge of 5% of the duty payable is levied. The Minister responsible for investment has the discretion to grant tax holidays of between one and five years...

Minimum investment levels for Zanzibar
(US\$ '000 and T Sh)

Project sector	Proposed capital	
	Foreigners (US\$ '000)	Citizens (T Sh '000)
Hotel ^a	4,000	300,000
Tour operator & related services	100	14,500
Agriculture	200	29,000
Fisheries	1,000	12,000
Industries	400	50,000
General business ventures & trading	350	50,000
Services	150	22,000

^a Quality hotel projects of up to ten bedrooms are also encouraged. An average investment of US\$30,000 per room is required and will be considered as minimum investment for such projects.

Source: Zanzibar Investment Promotion Agency.

page 19, para. 49

Zanzibar also passed legislation in 1998 establishing a Free Port Authority. The Authority is seeking to establish Zanzibar as a regional **distribution** centre, with packaging and minimal processing facilities. The authority has sheds for lease, as well as land for lease on which to build such sheds. Plans call for a "bonded warehouse" operation: at least 80% would be for the export market with the remaining 20% permitted onto the local market, subject to local tariffs. Investment

incentives for this free port operation are essentially identical as for the EPZs, except that such operations are eligible for a 20-year tax holiday.

SINGAPORE – WT/TPR/S/67 (2000)

page 72, para. 118

Like several other countries in the region, Singapore makes extensive use of tax incentives to encourage investment in certain activities and sectors. Tax incentives, which apply equally to foreign and local companies, have been an important tool in implementing the Government's development policy since independence. Initially set up to encourage labour-intensive industrial development under the Pioneer Status award, currently tax incentives are used to encourage foreign direct investment (FDI) in high-technology sectors, and skills development and training activities.... Most other programmes grant tax exemptions or tax concessions for companies investing in **high-technology industries or services**, or providing high-skill employment opportunities for Singaporeans.

page 98, Box IV:1

Offshore banking in Singapore

...

Offshore banking became permissible in Singapore in 1973 with the creation of the first ACU, as part of an effort by the Government to develop Singapore into an international financial centre. The growth of offshore banking has been aided, in part, by Government incentives. These include a concessional tax on profits (10% compared with the standard rate of 27%). In addition, ACUs are not subject to reserve and liquidity requirements.

...

Source: International Monetary Fund (1995), *Singapore: A Case-study in Rapid Development*, Occasional Paper 119; and Monetary Authority of Singapore (1999), *Annual Report 1998/99*.

pages 100-101, para. 50 and Table IV.4

In addition to regulation, the MAS has an important role in developing Singapore into an international financial centre by providing incentives for **banks and financial institutions** to invest in certain activities (Table IV.4). The incentives include concessional corporate tax rates of 10%, compared with the standard rate of 26%, and tax holidays for a number of activities. In recent years, particular emphasis has been placed on developing Singapore as the premier fund management hub over the next decade.³⁸ In offering these incentives, national treatment is extended to all foreign investors.

³⁸ Republic of Singapore (1998c).

Incentives offered by the Monetary Authority of Singapore

Scheme	Eligibility	Incentive
Operational headquarters (OHQ) incentives	Financial institutions providing management and other approved headquarters related services to subsidiary, associated or related companies in other countries	Concessional corporate tax rate of 10% for five to ten years (renewable) for income from providing qualifying OHQ services to approved network. Tax exemption for dividend income from approved network companies and on dividends distributed from the OHQ for five to ten years (renewable).
Double deduction for R&D expenditure	Eligible financial institutions engaged in R&D	Double deduction for qualifying R&D expenses against income.
Tax incentive for Asian Current Unit (ACU) income	Banks and merchant banks	Concessional tax rate of 10% on income derived from offshore ACU activities with non-residents and other qualifying financial institutions in Singapore.
Tax exemption scheme for fund management	Fund management	Investment income of foreign investors exempt from tax; fund managers managing at least S\$5 billion of foreign investors' funds given a five to ten year tax holiday (renewable on a case-by-case basis) on their fee income. Other fund managers taxed at a concessional rate of 10% on fee income.
Tax incentive scheme for approved trustee companies	Trustee or custodian services	Income from these activities provided to non-resident beneficiaries taxed at 10%; investment income from the trusts exempt from tax.
Tax incentive scheme for bond market activities	Bond market players	Tax holiday for fee income from arranging, underwriting and distributing qualifying debt securities; interest income qualifying from debt securities paid to financial institutions and corporations in Singapore taxed at 10%; interest from qualifying debt securities payable to non-residents exempt from withholding tax; income from trading in debt securities taxed at 10%.
Tax exemption scheme for syndicated facilities	Banks, merchant banks and approved securities companies	Tax exempt for income from arranging, underwriting and participating in syndicated credit, guarantee and debt facilities which are arranged in Singapore and for which proceeds are used outside Singapore.
Tax incentive scheme for transactions in foreign securities	Banks, merchant banks and securities companies	Income from transactions in foreign securities and related services taxed at 10%. Income from arranging and underwriting initial public offerings of foreign currency denominated shares on the Singapore Stock Exchange and from transactions in foreign securities listed on the Stock Exchange exempted from tax.
Tax incentive scheme for foreign securities lending and borrowing	Banks, merchant banks and securities companies	Concessional tax rate of 10% on net income from loans of foreign securities to eligible parties and to income from arranging such loans. Withholding tax exemption on loan fee or manufactured dividend or interest paid to non-residents.
Tax incentive for credit rating agencies	Credit rating agencies	Concessional tax rate of 10% for five years on income from providing credit rating services with respect to the issue of foreign securities in Singapore.
Tax incentives for finance and treasury centres (FTC)	Corporate treasury centres	Concessional rate of 10% on fee income received from the provision of financial and treasury services to approved network companies and income from conducting trading and other treasury activities on FTC's own account. Interest paid on foreign currency denominated loans from network companies and banks outside Singapore and on foreign currency denominated bonds issued by the FTC may also be exempt from withholding tax.
Tax incentive for offshore insurance business	Insurance companies	Concessional tax rate of 10% on income from writing offshore insurance business.
Incentives in new technology schemes for insurers	Insurance companies	Grants may be made for training staff in new and specialized lines of risks, reinsurance or captive insurance business.

Source: Singapore authorities.

page 111, para. 84

Singapore Airlines (SIA) is the national airline and is publicly listed. The Government holds a majority share of 53.8% through its holding company, Temasek Holdings. SilkAir, a wholly owned subsidiary of Singapore Airlines, operates to short-haul, secondary points in the region... A tax incentive administered by the TDB is available for **aircraft leasing companies** on income derived from offshore aircraft leasing. Approved companies, which need to apply to the TDB for this incentive, may also depreciate aircraft bought during the incentive period over 20 years, instead of five years.

page 114, para. 98

In an effort to keep Singapore attractive to ships and to keep costs competitive as a premier hub port, the MPA introduced a concession of 20% on port dues to all container vessels (excluding long-staying ships) from May 1996. The concession was extended up to 2000. In addition, a tax exemption is provided by the Trade Development Board for approved international **shipping** companies (Chapter III(3)(vi)). A number of steps have also been taken to improve port management and accommodate efficiently the growing number of ships calling at Singapore.

page 118, para. 110

The IDA actively supports the development of Singapore's communication network and infrastructure. Under its Development Grant Scheme, the IDA provides assistance to encourage the local **telecommunications** industry to upgrade its network infrastructure; to encourage research and development in advanced telecommunications; and to encourage the development of enhanced capabilities and innovative services.³⁹ All companies registered in Singapore may apply for the grants and must meet one of two criteria.⁴⁰ The IDA has made available over S\$250 million for the industry thus far under this programme.

page 123, para. 128

The Singapore Tourism Board will also develop its role as a one-stop agency for **tourism** development, offering updated information on industry development and incentives for investors in the industry.

BANGLADESH - WT/TPR/S/68 (2000)

page 69, para. 138

Items included in the "Crash Programme" also have access to various facilities, including soft loans at a concessional interest rate, and assistance for market exploration and securing joint-venture partners. The current crash programme includes ... **engineering consultancy** and **services**...

PERU - WT/TPR/S/69 (2000)

page 49, para. 124

Incentives to promote **port services** take the form of exemptions from import duties and domestic taxes granted to merchandise entering "centres for export, transformation, industry, commercialization, and services" – CETICOS – through the ports of Ilo, Matarani or Paita. Merchandise imported under the transit regime from any other entry point may also benefit from this exemption provided it is re-exported or exported after transformation in the CETICOS through one of the above-mentioned ports.

³⁹ Generally up to 50% of the qualifiable direct project costs are provided by the IDA, with co-financing provided by the recipient. The projects range, on average, between one and three years.

⁴⁰ The criteria are: to foster the strategic development of info-communication and postal infrastructure and services and enhance the competitiveness of Singapore as a global and regional business hub; and to foster innovation and advancement of technology and enhance the capability, efficiency and quality of info-communication services (Telecommunications Authority of Singapore (undated (a))).

page 50, para. 132

Most exonerations affecting the general sales tax (IGV) and the excise tax (ISC) were consolidated in Supreme Decree No. 055-99-EF of 15 April 1999. Under this Decree, in addition to the exonerations affecting imports and those applied in CETICOS, certain activities are exempted from the IGV or the ISC. Activities exempt from the IGV are industrial enterprises located on the Peruvian border; financial institutions in the process of winding up; as well as lodging and food services rendered by firms established in Peru by foreign-based **tourist operators**. The importation or sale of residual fuel or diesel to power generating and distributing firms are exempt from the ISC.

page 80, para. 75

A special investment fund (FITEL) has been created to promote universal access [to **telecommunications**] through private investment in regions where demand does not otherwise make such investment profitable. The fund, administered by OSIPTEL, is financed through a contribution from all enterprises in the sector, equivalent to 1% of their sales during the previous month, which at the end of 1999 had reached an accumulated value of US\$44 million. FITEL monies are used to subsidize concessions granted through public bids to operate services in rural areas; these concessions are granted to the enterprise that makes the lowest bid for a subsidy to supply the service in question.

Working Party on GATS Rules

**INTER-AGENCY TASK FORCE ON STATISTICS OF
INTERNATIONAL TRADE IN SERVICES**

PROGRESS REPORT, MAY 2000

Background Note by the Secretariat

Responding to a request from the Working Party on GATS Rules, at its meeting of 4-5 May 2000, this Note briefly describes past and future work of the *Inter-Agency Task Force on Statistics of International Trade in Services*. The special focus is on work on the *Manual on Statistics of International Trade in Services* and short-term prospects in this area. The Annex provides a short overview of the Manual. More detailed information, including the draft Manual itself, is available in the Secretariat.

I. MAJOR ACHIEVEMENTS

In 1994, following requests from GATT and UNCTAD representatives, the United Nations Statistical Commission decided to establish the *Inter-Agency Task Force on Statistics of International Trade in Services* (Task Force), with the following major objectives:

- (i) to strengthen co-operation between international organizations in the area of trade in services statistics, and to liaise with other agencies or groups involved in it;
- (ii) to promote the development of international concepts and definitions and classifications for trade in services statistics; and
- (iii) to improve the availability, quality and comparability of trade in services statistics collected at international level.

The Task Force is convened by the Organisation for Economic Co-operation and Development (OECD) and consists of members of the Statistical Office of the European Communities (EUROSTAT), the International Monetary Fund (IMF), the United Nations Statistics Division (UNSD), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, and the WTO Secretariat.

From the outset, it was agreed that the Task Force would focus on the statistical requirements of GATS. However, given the huge gap between these requirements and available statistical data, concepts and practices, the Task Force considered its work as a long-term exercise.

It first examined the activities and requirements of international institutions in this field, and especially those of the WTO. It then analysed existing gaps between statistical frameworks and statistical needs, and the extent to which a new statistical framework could contribute to closing these gaps.

At its fifth meeting, in May 1996, the Task Force decided to develop a conceptual framework and classifications for statistics on trade in services to be published in a *Manual on Statistics of International Trade in Services* (Manual). The objective was to meet requirements of GATS as far as possible, while ensuring compatibility with existing statistical systems, especially the 5th edition of the Balance of Payments Manual (BPM5) and the System of National Accounts (SNA 1993), and without creating excessive additional burden on reporting countries. It was also decided that the Manual's guidelines should be suitable for a phased implementation (i.e. countries could implement the guidelines flexibly and progressively, according to, *inter alia*, their own requirements).

An outline was prepared, and provisional drafts were produced, calling on both external consultants and contributions from Task Force Members. These drafts were also reviewed by national representatives at several meetings of the United Nations and OECD.

The first complete draft of the Manual (5 November 1999) was circulated by the U.N. and the IMF to national statistical institutions and Central Banks of their member countries as part of a world-wide review, and made publicly available on the OECD's web pages¹. Over 60 National Statistical Offices, Central Banks and National Economic Institutes responded with comments to the Task Force by the end of January, 2000. A vast majority of respondents warmly welcomed the Manual. They recognized its positive impact on statistics of trade in services, as well as its usefulness as a guide for the improvement of statistical compilation systems. The phased approach recommended in the Manual was found to be particularly appropriate. However, many respondent countries noted that collection of additional statistical data would imply additional burden on compilers and on their financial resources. A vast majority of them stressed that they would be able to implement the advanced requirements only in the long term. In a number of cases, statistical offices were unaware of the needs of their national trade negotiators.

At its tenth meeting, in February 2000, the Task Force reviewed the countries' comments and decided on the appropriate modifications to the draft Manual.

II. FUTURE WORK AND PROSPECTS

Members of the Task Force are now redrafting the *Manual* to take account of comments received as a result of world-wide consultations with a range of statisticians and users of statistics, including balance of payments compilers, national accountants, compilers of data on employment and income, classifications experts, statisticians responsible for the compilation of data on production and/or use of services, and trade negotiators. This next draft of the *Manual* will be discussed at a meeting of UN experts in July 2000. Following this meeting, and after further redrafting as appropriate, the *Manual* will be translated into the official languages of the United Nations (French, Spanish, Russian, Arabic, and Chinese as well as English) before being presented to the United Nations Statistical Commission for its approval in 2001. Following this approval, the *Manual* will be co-published by the European Communities, IMF, OECD, UN, UNCTAD and WTO.

¹ [http://www.oecd.org/std/serv\(99\)2.pdf](http://www.oecd.org/std/serv(99)2.pdf).

The Manual represents a considerable progress in the area of statistics on trade in services, and in particular, it provides for:

- a much more detailed classification than currently available (BPM5) for the compilation of trade in services between residents and non residents;
- concepts and definitions for FATS statistics (GATS mode3);
- a classification for FATS statistics; and
- clarification and guidelines on the statistical treatment of GATS' mode of supply;

However, it should be noted that the first version of the Manual will be only a first step towards fulfilling GATS' statistical needs. First, the Manual's classifications still lack considerable detail with regard to requirements arising from negotiations (ultimately, the detail of the Central Product Classification would be needed). Second, availability of data broken down by partner countries is expected only for major items in the classifications. Third, although partial guidelines on the statistical treatment of GATS' modes of supply are given, it is not expected that countries would be able to compile complete statistics by mode on supply in the foreseeable future. Finally, implementation of the Manual will likely take some time, even for countries with advanced statistical compilation systems. Successful implementation will depend on efforts by national statistical agencies and Central Banks, and, above all, on the willingness of governments to provide the necessary resources.

ANNEX

Overview of the Manual on Statistics of International Trade in Services

The first *Manual on Statistics of International Trade in Services (Manual)* is being prepared by the Interagency Task Force authorized by the United Nations Statistical Commission on Statistics of International Trade in Services (the Task Force) to meet the needs of a variety of producers and users of statistics on international trade in services. These include in particular statistical compilers, but also governments and international organizations that must use statistical information in connection with international negotiations pertaining to trade in services, and also businesses and others that wish to assess developments in international services markets. A particular impetus for the preparation of a separate manual on statistics of international trade in services has been the recent tendency for trade agreements to cover services as well as goods, and the need for statistics both to guide the negotiations relating to these agreements and to monitor the outcomes.

The *Manual* describes the four modes through which services may be traded under GATS. While the *Manual* features important new areas in the field of international services statistics, it does so by building upon, rather than by modifying, internationally agreed standards for statistical compilation. It provides a framework and a set of recommendations that will allow for the provision of a range of statistics on international trade in services. These recommendations are summarized in Chapter 1 and elaborated on in the remainder of the *Manual*. Chapter 2 proposes the framework and describes its links to existing international standards and frameworks. Chapter 3 focuses on the compilation of statistics relating to resident-nonresident trade in services, building on the balance of payments framework described in the fifth edition of the *Balance of Payments Manual (BPM5)*. Chapter 4 recommends standards for compiling statistics on “foreign affiliates trade in services”, or FATS, drawing to a considerable extent on the concepts and definitions of the *System of National Accounts 1993 (1993 SNA)*.

The *BPM5* framework contains, inter alia, recommendations for the definition, valuation, classification, and recording of resident-nonresident trade in services. By building on this framework, the *Manual* recommends extending the *BPM5* classification of transactions by type of service to provide more detail through the Extended Balance of Payments Services (EBOPS) classification. While not yet complete, a draft correspondence table showing the relationship between the EBOPS classification and version 1.0 of the Central Product Classification is included as an annex to the *Manual*. This table assists in the provision of clear definitions of the various components of the EBOPS classification. Except for the treatment of *construction services* (discussed in subsection 3.8.4 of the *Manual*), the recommendations contained in the *Manual* are consistent with *BPM5*. Thus, a country’s balance of payments statistics will provide many of the data that are needed to implement the recommendations relating to the measurement of resident-nonresident trade in services. Recommendations are made in the *Manual* on the attribution of resident-nonresident transactions across the modes of supply.

As well as providing services by way of trade between residents and nonresidents of an economy (measured in balance of payments statistics), an economy may also supply services internationally through the activities of foreign affiliates abroad. The *Manual* recognizes this in its discussions on and recommendations for FATS statistics, which comprise the major part of the third mode of supply, commercial presence. Included are recommendations on (1) the selection of foreign affiliates to be covered (which follows the definition of foreign-controlled enterprises used in the *1993 SNA*); (2) the attribution of FATS statistics (including a discussion on attribution by activity and by product); and (3) the variables to be compiled. While this is a less well-developed area statistically than the balance of payments statistics, some FATS statistics for foreign-owned affiliates

in the compiling economy may be found in, or derived from, existing statistics on domestic production, including national accounts statistics based on the recommendations of the *1993 SNA* .

The recommended basic FATS variables discussed in this draft of the *Manual* are: number of enterprises, sales (turnover) and/or output, employment, value added, and exports and imports of goods and services. Additional FATS variables identified are assets, compensation of employees, net worth, net operating surplus, gross fixed capital formation, taxes on income, and research and development expenditures. The definitions of these variables are drawn from the *1993 SNA*.

The final area in which the *Manual* moves beyond existing statistical frameworks is in the area where enterprises producing services in one country employ individuals who are residents of another country (in the *BPM5* and *1993 SNA* sense) on a short-term basis. While some limited data are available from balance of payments statistics, there is a need for further development of statistics related to employment and income of foreign nationals. However, this area, which is part of the fourth mode of supply (presence of natural persons), is still under discussion by the Task Force, so there is relatively little discussion on, or recommendation for, compiling relevant statistics included in the current draft of the *Manual*.

The *Manual* proposes a phased approach to implementation, so that countries, including those that are beginning to develop statistics on international trade in services, can implement these developments gradually and begin to structure available information in line with this new international standard framework. The sequence of elements, as suggested, takes into account the relative ease that many compilers may find in their implementation. However, the order is quite flexible, so that countries can meet the priority needs of their own institutions. Full implementation - to be seen as a long term goal, would represent a considerable increase in the detail of information available on trade in services.

COMMUNICATION FROM ARGENTINA AND HONG KONG, CHINA

Development of Multilateral Disciplines Governing Trade Distortive Subsidies in Services

The following communication is circulated at the request of Argentina and Hong Kong, China (HK,C) to Members of the Working Party on GATS Rules. This paper is submitted without prejudice to the authors' positions in the WTO on this matter.

Article XV of GATS mandates Members to enter into negotiations with a view to developing multilateral disciplines which would avoid the distortive effects that subsidies in services may have on trade in services. The negotiations shall take account of the needs of developing country Members. Singularly little progress has been made on this area of GATS rule making in the last five years. This paper aims to move the debate forward. It first considers the (inadequate) data that exists on subsidies in services and on their prevalence and distortiveness. It then suggests ways to improve the available data. Finally it postulates what sorts of principles might need to be addressed and discusses a number of areas which might be fruitful in pursuing disciplines.

I. BACKGROUND

2. A useful starting point is the two notes prepared by the Secretariat in 1996 and 1998 in response to requests by the Working Party on GATS Rules. The first Note, circulated on 20 May 1996 as S/WPGR/W/12, described subsidy provisions relating to trade in services that existed in regional trade agreements notified at that time. The second Note, circulated on 26 January 1998 as S/WPGR/W/25, presented some empirical evidence of subsidy programmes in services, based on WTO Trade Policy Reviews (TPRs).

3. The information in S/WPGR/W/25 offers some tentative insights into Members' subsidy practices in services. It permits an examination of the negotiating challenges facing the development of such disciplines, and the potential economic benefits that could be derived from such disciplines through reduced distortion of international trade.

A. ANALYSIS OF TRADE POLICY REVIEWS

4. S/WPGR/W/25 covered subsidy programmes reported by Members within the context of the 31 TPRs carried out between 1995 and the end of 1997. The reviews cover 30 Members, including 17 developing country Members and 13 developed country Members (counting the European Community as one). The Secretariat pointed out that the results have to be treated with caution, since they depended largely on the efforts made by the respective governments to collect and report information about national or sub-national subsidies in services. We would say that the data needs to

be considered with considerable caution, since it is apparent that some Members had discounted altogether subsidies in certain important areas (see para.5 below). Nevertheless while the data is only indicative, some insights can be derived.

5. Evidence cited in S/WPGR/W/25 suggests that subsidies may be concentrated in certain sectors, for example: audio-visual services, air and maritime transport, tourism and banking services. The note indicates a number of interesting features of each of these sectoral subsidies. The programmes in tourism, for example, appear to be operated primarily by developing Members and rely mainly on tax holidays and other fiscal advantages rather than on cash benefits. In contrast, the audio-visual sector appears to be subsidised more by developed Members. A significant number of both developed and developing Members subsidise air and water transport. 9 Members reported subsidising banking (though the authors understand that several Members which have provided such subsidies did not report them). Only 4 governments reported providing subsidies for health and education activities, only 3 reported providing subsidies for telecommunications, and only 2 reported providing subsidies for energy production. However, these low levels beg the question of whether or not all subsidies were being reported or identified. Indeed, there is some evidence that sectors such as insurance, postal services, construction, research and development services and advertising, may be subsidised.

6. While the information provided in S/WPGR/W/25 is very sketchy, some pointers might be drawn. First, direct subsidising of exports of services seems not to be very prevalent¹. This could be a reflection that Members are more concerned about the protection of domestic industries than the enhancement of international competitiveness of those industries. Secondly, domestic subsidies that potentially distort international trade also seem to be mainly concentrated in a few sectors. While the Secretariat note sheds only limited light on the objectives of these sectoral subsidies, one might postulate that they respond to challenges specific to the individual services sectors and, in many cases, serve non-economic policy objectives. For example, in land transport, subsidies are frequently targeted at a number of externalities, including the environmental benefits associated with the greater use of public as against private transport, the desire to maintain public transport in thinly populated areas, the conversion of state-owned transport systems into privatised firms, and the achievement of various national security objectives. In audio-visual services, subsidies are provided to preserve national culture, and to support the arts in general. Health and education are subsidised both to promote social stability and social mobility.

B. SUBSIDIES RULES IN REGIONAL TRADING ARRANGEMENTS

7. Additional insights into possible approaches to the development of multilateral disciplines might be obtained from the information provided in S/WPGR/W/12 on the subsidy disciplines in services contained in existing regional trade agreements. S/WPGR/W/12 indicates that only a few of such agreements contains provisions on subsidies. Article 11 of the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) states the “*Member States shall not introduce new, or expand existing, export subsidies, export incentives and other assistance measures having a direct distorting effect on trade between them in service and shall work towards the elimination of any such measures by June 30, 1990*”. Article 92 of the EC Treaty states that unless otherwise provided “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition favouring certain undertakings or the product of certain goods, shall in so far as it affects trade between Member States, be incompatible with the common market*”. Article 93 provides the Commission with the authority to instruct the Member State concerned to abolish or alter a state aid. The Note also includes that Article 92 has been applied in certain services sectors, including air transport and banking.

¹ However, subsidised export credits, guarantees and insurance programmes do seem to occur in some sectors, for example construction

8. Existing regional trade agreements (as at 1996) thus provide two separate approaches to the issue of subsidies in services-elimination/prohibition of export subsidies (Australia/New Zealand), and a general obligation to avoid state aid that distorts international competition. Implementation of the latter obligation within the European Community has been accompanied by a great deal of guidance by the Commission on a sector by sector basis, as provided for in Article 93 of the EC Treaty.

II. POSSIBLE AVENUES FORWARD

A. ADDITIONAL DATA

9. It is clear from the foregoing that there is a great shortage of reliable data. It is therefore important that Members endeavour to complete the subsidies questionnaire. In this regard, it is also suggested that Members could bring forward any specific subsidy related problem or situation they may have encountered or identified in foreign markets, particularly in relation to subsidies with an import substituting or export enhancing effect. However, there are other areas which we would also pursue to improve our data. The authors propose that:

- (a) The Secretariat be asked to update S/WPGR/W/25, to include the TPR material on Members reviewed in 1998 and 1999. Some 32 Members were reviewed in the period, and this should considerably enhance the data that can be drawn from this source.
- (b) The Secretariat be asked to update W/WPGR/W/12 to cover new RTAs notified since 1996. As more of the recent RTAs have had a service component, there could be more material on subsidies here.
- (c) The Secretariat be asked to undertake an analysis of the subsidies scheduled in Members specific commitments (SCs), both to take further S/WPGR/W/13 and to update the paper for the Basic Telecommunications and Financial Services Commitments made since the paper was done. As S/WPGR/W/9 points out, where SCs have been undertaken in the national treatment (NT) column, Members maintaining subsidies must either enter them or bring them into conformity with the NT provisions. Thus an analysis of the SCs should provide some additional data.
- (d) The subsidies question should be kept in mind when undertaking the MFN Exemption Review, as it appears some Exemptions are related to subsidies.
- (e) The Secretariat be asked to do more research on:
 - (i) the implementation of the disciplines on export subsidies in the ANZCERTA agreement (i.e. the prohibition of new export subsidies). How was this implemented and have there been any cases?
 - (ii) the "jurisprudence" on the application of the EEC rules on state aid as regards services sectors. The paper could also include some information on the guidelines on state aid developed by the European Commission regarding certain services sectors (e.g. maritime transport)

This background material would help in the discussion suggested under paragraph 10(d) of this paper.

- (f) The Secretariat be asked to do factual research into the work of other relevant international bodies/institutions in the area of subsidies in services or related to services sectors.

B. POLICY ISSUES FOR CONSIDERATION

10. There are many important policy issues that need to be addressed when considering any subsidy disciplines. In this regard, S/WPGR/W/9 of 1996 remains a valuable source of background material and of identifying the issues we need to tackle. The below focus on five issues:

(a) Factors to be considered in developing any subsidies disciplines?

It would be useful to consider what sort of basic elements should be considered when developing any subsidy disciplines. These would probably point the way to the issues that need to be addressed. The following would seem to need to be considered in developing elements for subsidies disciplines:

- questions of **MFN and NT**
- issues relating to the problem of **Mode specificity** and “**like services**”
- **territorial application**: the question of Mode 3 versus modes 1 and 2
- transparency
- whether the concept of “**necessity**” has a role
- whether the concept of “**least trade restrictiveness**” has a role
- **trade distortive effects**, as set out in Art XV
- the **remedies**, if any, including countervailing measures, that we would wish to contemplate.

- possible exceptions
- timeframes for elimination
- flexibility for developing and least developed country Members.

Some of these elements are discussed below.

(b) Social objectives of subsidy programmes

Subsidies in many areas have a very high social objective, for example in health, education and social welfare . Indeed many Members, certainly for the purposes of TPRs, do not seem to view such as a “*financial contribution by a government..... which confers a benefit*”. In such circumstances, how should they be dealt with? Some ideas, not necessarily mutually exclusive, might be:

- (i) creation of a “green box” concept in services for allowable subsidies.
- (ii) moving towards a position where any subsidies had to be undertaken on an NT basis.
- (iii) introduction of a requirement to spell out the specific objectives of the subsidy, and a necessity test on whether its method of implementation was the least trade restrictive available.

(c) Should countervailing action be a part of any disciplines?

Article XV:1 of GATS mandates that the negotiations shall address the appropriateness of countervailing measures. S/WPGR/W/9 flagged up the problems with considering countervailing measures as a remedy against subsidies. It can be argued that use of countervailing measures would be inappropriate in the context of services and that other remedies would be more appropriate. Art 4 of the Agreement on Subsidies and Countervailing Measures provides some ideas.

(d) A gradual approach to elimination or reduction of subsidies?

It can be argued that the way to deal with subsidies is not through an (aggressive) approach, such as countervailing measures but rather on a gradual basis, possibly by a similar approach to that in agriculture and TRIMS : ie. a programme under which Members agree: to cap the current levels of subsidies; and to reduce their subsidies (in a range of sectors to be agreed multilaterally). Discussion of the experiences of New Zealand and Australia on the prohibition of new and expanded export subsidies and the elimination of existing export subsidies might be instructive- as might discussion of the experience of the EU in containing and reducing state aid that distorts international competition

(e) Does national treatment overcome many subsidies problems?

As flagged up in Secretariat paper S/WPGR/W/9 and Hong Kong, China's response of the Questionnaire S/WPGR/W/16/Add 3, a high degree of commitments in the NT column would go a long way in reducing the adverse trade effects of subsidies. In this regard it is necessary to consider the interaction of Modes 3 with modes 1 and 2 and the question of the extent of NT across modes of supply and outside the territorial jurisdiction of a Member. The distinction between the "service" and the "service supplier" is important here. The recent Chair's Note Job No 782 also deals with this issue.

(f) Sectoral versus horizontal approach

The available data suggests that subsidies are concentrated in certain sectors. A possible way to tackle matters is thus through a sectoral approach. We have achieved some disciplines on subsidies through the Basis Telecoms Reference Paper. It is possible that the dual track approach (i.e. pursuing the development of Article XV disciplines and exploring the possibility of sectoral disciplines in parallel) is likely to be the most effective.

11. Through this paper the authors hope to stimulate debate and to move the discussion forward so that good progress can be made in 2000.

COMMUNICATION FROM ASEAN

Concept Paper: Elements of a Possible Agreed Draft of Rules on
Emergency Safeguard Measures for Trade in Services (GATS Article X)

The following communication is circulated at the request of ASEAN to Members of the Working Party on GATS Rules.

This paper is an attempt by the ASEAN Members of the WTO, namely Brunei Darussalam, Indonesia, Malaysia, Myanmar, Philippines, Singapore and Thailand, to conceptualize a number of technical issues related to the topic. It does not necessarily reflect the official positions of the ASEAN Members on these issues.

I. Introduction

1. This paper is submitted to the Working Party on GATS Rules for consideration and discussion, without prejudice to individual Members' respective positions. As such, it is intended to reflect the feeling of a number of Members that a *standard set of rules* for the application of ESMs in services may be agreed upon by all Members on the basis of the following elements.

II. Object and Purpose of the Rules

2. The object and purpose of such rules would be, inter alia, to *clarify, implement, and reinforce* the object and purpose of the GATS, including that of:

- 2.1 recognizing the right of Members, particularly of developing countries, to regulate the supply of services within their territories in order to meet national policy objectives;
- 2.2 facilitating the increasing participation of developing country Members in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;
- 2.3 allowing structural adjustment of the domestic service industry of Members, in particular that of developing countries, with a view to enhancing competition in the area of services, and facilitating the development of the services industry of developing countries which are essential to their national economic development programmes.

III. Definitions¹

3. *Emergency safeguard measure* is understood to mean “actions taken by a Member on the supply or consumption of a service of another Member with a view to temporarily withdrawing or modifying its GATS specific commitments in order to temporarily safeguard its domestic industry against serious injury or threat thereof.”

4. *Service of another Member* is understood to mean “a service supplied:

4.1 from the territory of that other Member into the territory of the Member intending to apply an emergency safeguard measure;

4.2 in the territory of that other Member to the service consumer of the Member intending to apply an emergency safeguard measure;

4.3 by a service supplier of that other Member, through commercial presence in the territory of the Member intending to apply an emergency safeguard measure²;

4.4 by a service supplier of that other Member, through presence of natural persons of a Member³ in the territory of the Member intending to apply an emergency safeguard measure”.

5. *Domestic industry* is understood to mean⁴:

Option 1

“Suppliers as a whole of the like or directly competitive⁵ services operating within the territory of the Member intending to apply an emergency safeguard measure, or those whose collective output of the like or directly competitive services constitutes a major proportion of the total domestic supply of those services”.

OR

¹ Should there be inconsistency between the definitions herein contained and those provided under GATS Article XXVIII, the definitions herein shall prevail to the extent relevant to the application of ESMs.

² The Working Party needs to discuss further the issue of foreign companies (juridical persons of another Member as defined in accordance with GATS Article XXVIII) already established through commercial presence within the territory of the Member applying ESMs at the time of entry into effect of the ESMs.

ASEAN is of the view that, in order to achieve progress in this area, the Members should arrive as soon as possible at a common understanding on a number of key issues related to the application of ESMs in the context of mode 3, which are raised in the ANNEX to this Paper.

³ See definition in Article XXVIII (k)

⁴ This definition is based on Article 4.1 of the Anti-Dumping Agreement and Article 4.1 of the agreement on safeguards.

⁵ “Like or directly competitive services” may be defined as “services which are similar in nature and are supplied to consumers for the same end-purposes”. This is indeed only one of many possible definitions of this concept. An in-depth discussion and study by the Working Party may be needed. GATT practices under Articles III, VI and XIX may be referred to, but they remain vague. Also, one may refer to discussions in the Council for Trade in Services under the E-Commerce agenda item.

Option 2

“Suppliers as a whole of the like or directly competitive services who are natural persons or juridical persons⁶ of the Member intending to apply an emergency safeguard measure, or such natural persons/juridical persons of the invoking Member whose collective output of the like or directly competitive services constitutes a major proportion of the total domestic supply of those services”.

6. *Serious Injury* is understood to mean⁷ “a significant overall impairment in the position of a domestic industry that is determined in accordance with the criteria and indicators for the determination of serious injury referred to in Paragraph 13 below”.

7. *Threat of Serious Injury* is understood to mean “serious injury that is determined to be clearly imminent, in accordance with the criteria and indicators for the determination of serious injury referred to in Paragraph 13 below.”

IV. Conditions of application

It is understood that:

8. ESM may be applied to a service of another Member only if the applying Member has determined, pursuant to the rules contained herein, that there is an emergency situation resulting from an *increase in supply or consumption* of such service, in absolute terms or relative to domestic supply or consumption of such domestically supplied service, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that supplies like or directly competitive services.

9. ESM shall be applied only to the extent and within a period of time⁸ necessary to prevent or remedy the serious injury or the threat thereof *and* to facilitate adjustment of the domestic industry concerned.

10. ESMs shall be applied only where serious injury or a threat thereof has been determined pursuant to an investigation referred to in Part V below.

[11. ESM shall be applied to a service on an MFN basis, irrespective of its mode of supply.]⁹

V. Determination of Serious injury or Threat Thereof

It is understood that:

12. The determination of serious Injury or threat thereof shall be carried out pursuant to an investigation to be conducted by the competent authorities of the Member intending to apply an emergency safeguard measure, at the request of its domestic industry¹⁰. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

⁶ Natural and juridical persons as defined by GATS Article XXVIII (k), (l), (m), and (n).

⁷ This definition is based on Article 4.1 of the agreement on safeguards.

⁸ See Section VIII below.

⁹ The inclusion of this Paragraph is pending resolution of the issues raised in Section B of the ANNEX.

¹⁰ Members should agree upon procedural rules in the conduct of ESM investigation similar to those in Article 3 of the Agreement on Safeguards.

13. In the investigation, the competent authorities shall¹¹:
- 13.1 examine all relevant indicators and sources of information relating to the volume of supply or consumption of the service of another Member concerned, in order to demonstrate an increase in this supply or consumption; and
 - 13.2 evaluate all relevant criteria of an objective, quantifiable nature having a bearing on the situation of the domestic industry concerned, in order to demonstrate the existence of a serious injury or threat thereof; and
 - 13.3 demonstrate, on the basis of several injury criteria, that there is evidence of a causal link between increased supply or consumption of the service of another Member and serious injury or threat thereof.¹² When factors other than increased supply or consumption of a service of another Member are causing serious injury to the domestic industry at the same time, such injury shall not be attributed to increased supply or consumption of such service.

VI. Applicable Measures

It is understood that¹³:

14. Where serious injury or threat thereof has been determined pursuant to an investigation referred to in Part V above, the Member concerned may, with regard to a service of another Member, apply safeguard measures only to the extent necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment. The applicable measures shall include any or a combination of the following:

- 14.1 temporary withdrawal or modification of specific commitments undertaken pursuant to GATS Article XVI;
- 14.2 temporary withdrawal or modification of specific commitments undertaken pursuant to GATS Article XVII¹⁴;
- 14.3 temporary withdrawal or modification of additional commitments undertaken under GATS Article XVIII¹⁵.

¹¹ This is based on Article 4.2 of the Agreement on Safeguards and Article 3 of the Anti-dumping Agreement. Alternatively, this provision may contain all the details on the relevant indicators and criteria. For example, the contents of Job 5294/Rev.1 may be incorporated in the text or included as a footnote.

¹²The factual information used as basis must cover a certain period of time to be specified.

¹³The question as to whether the applicable measures should be mode-specific will depend on how the issues in the ANNEX are resolved.

¹⁴ The issue of subsidies as ESM should be dealt with under this provision.

¹⁵The issue of special considerations for regulatory disciplines should be dealt with under this provision.

VII. Compensation (Level of Commitments)¹⁶

It is understood that:

15. A Member intending to apply the ESM shall endeavour to maintain a substantially equivalent level of specific commitments to that existing under the GATS¹⁷ between it and the Members of which service suppliers would be affected by such a measure.

16. To achieve this objective, the Members concerned may agree on adequate means of compensation relating to trade in services for the adverse effects of the measure on their trade in services. If no agreement is reached within a certain period of time¹⁸, the Member of which service suppliers are affected shall be free to suspend the application to the Member applying the ESM of substantially equivalent level of specific commitments under the GATS, the suspension of which the Council for Trade in Services does not disapprove.

17. The right of suspension referred to in Paragraph 16 shall not be exercised for the first three years that an ESM is in effect, provided that the ESM has been taken as a result of an absolute increase in supply or consumption of a service and that such ESM conforms to the rules contained in this paper.

VIII. Duration¹⁹

It is understood that:

18. A Member shall apply ESMs only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed x years, unless it is extended under Paragraph 19.

19. The period of application of an ESM may be extended only after a new investigation, made pursuant to a request by the domestic industry concerned, determines that the ESM continues to be necessary to prevent or remedy serious injury *and* that there is evidence, based on objective criteria, that the domestic industry concerned is adjusting. The total period of application of an ESM including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed x years.

20. In order to facilitate adjustment in a situation where the expected duration of an ESM is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

21. No ESM shall be applied again to a service that has been subject to such a measure, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

¹⁶ This is based on GATT Article XIX:3 and Article 8 of the Agreement on Safeguards.

¹⁷ the wording of GATS Article XXI:2(a) may be referred to as model.

¹⁸ To be determined by the Members.

¹⁹ This is based on Article 7 of the Agreement on Safeguards

IX. Provisional Measures²⁰

It is understood that:

22. A provisional ESM may be applied by a Member in critical circumstance where delay would cause damage which would be difficult to repair, and pursuant to a preliminary determination of serious injury. This provisional measure shall be of a limited, non-renewable, period of application with the sole purpose of allowing the Member concerned to temporarily stabilize the situation pending the result of an investigation.

X. Consultation, Transparency, and Notification

It is understood that:

23. A Member intending to apply or extend an ESM²¹ shall provide adequate opportunity for prior consultations with those Members of which service suppliers have a substantial interest in the matter, with a view to, *inter alia*, reviewing the information notified under Paragraph 26, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in Paragraph 15.

24. Each Member shall publish promptly and, except in critical circumstances, at the latest by the time of their entry into force or their effective date, all relevant laws, regulations and administrative measures and procedures relating to the application of an ESM, including the results of an investigation.

25. Each Members shall respond promptly to all requests by any other Member for specific information on any of their laws, regulations and administrative measures and procedures of general application, as well as those relating to the application of an ESM.

26. A Member shall immediately notify the Council for Trade in Services upon:

- 26.1 initiating an investigation;
- 26.2 making a finding of serious injury or threat thereof;
- 26.3 taking a decision to apply a provisional ESM;
- 26.4 taking a decision to apply or extend an ESM.

A Member shall also immediately notify the results of consultations, reviews, as well as of compensation and proposed suspensions of commitments to the Council for Trade in Services .

27. Members shall notify promptly the Council for Trade in Services of their laws, regulations and administrative measures and procedures relating to ESMs as well as any modification made to them.

²⁰ This is based on Article 6 of the Agreement on Safeguards

²¹ This provision shall not apply to provisional ESMs.

XI. Developing Countries²²

It is understood that:

28. ESMs, provisional or otherwise, shall not be applied against the supply of a service or a service supplier of a developing country Member if its share of the total supply of the service concerned in the territory of the Member intending to apply the measure does not exceed a certain proportion to be specified.

29. Option 1

A developing country Member shall have the right to extend the period of application of an ESM for a period of up to x years beyond the maximum period referred to in Paragraph 18 above.

OR

Option 2

A developing country Member shall have the right to extend the period of application of an ESM for a period of up to x years beyond the maximum period referred to in Paragraph 18 above. It shall also be exempt from obligations referred to in Paragraphs 15 and 16 above.

XII. Surveillance

30. Members may agree to set up a mechanism of surveillance by an appropriate forum along the lines of Article 13 of the Agreement on Safeguards.

XIII. Dispute Settlement

It is understood that:

31. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to disputes arising under these rules.

XIV. Review

It is understood that:

32. These rules shall be reviewed by the Members x years after its entry into force. The review shall be completed within x years .

²² This is based on Article 9 of the Agreement on Safeguards

ANNEX

Mode 3, Domestic Industry Definitions & Issues Relating to Acquired Rights

1. The application of emergency safeguard measures in the context of mode 3 raises several important issues both in respect of Members' existing MFN and National Treatment obligations as well as the specific mandate contained in Article X of the GATS. It would be important for Members to address these issues as they will be central to their efforts in formulating an appropriate and effective safeguard mechanism.

2. Suggested below are several questions, answers to which should assist Members thinking on (a) the appropriate safeguard measures in respect of mode 3; (b) their impact on MFN, national treatment commitments, and other modes of supply; (c) the appropriate definition of domestic industry for the purposes of, inter alia, safeguards petitions as well as injury determination; and (d) the issue of acquired rights. They are not intended to be exhaustive nor to be suggestive of the positions that Members may take on these issues.

A. Mode 3 Safeguards

3. Should a safeguard measure be applied to only new foreign entrants? What if injury is primarily being caused by already established foreign suppliers? Should a Member have the right to invoke a safeguard measure in respect of such suppliers? Should not an effective safeguard mechanism provide for such a course of action?

B. Impact on National Treatment, MFN & Supply Modes

4. Assuming it is decided that Members will have the right to take safeguard action against already established foreign suppliers. This would in effect allow a Member to discriminate against established foreign suppliers for safeguard purposes. Such discrimination may be inconsistent with the national treatment commitments of the invoking Member. It may also run foul of bilateral investment protection agreements that Members may be party to. Should it thus be sanctioned? But again presumably any safeguard measure would result in a temporary withdrawal or modification of a Member's commitment (be it market access, national treatment or an additional commitment). Why should national treatment commitments in mode 3 be excluded from such temporary withdrawals or modifications? Would such an exclusion modify "the conditions of competition" against service suppliers making use of the other modes of supply?

5. Assuming that it is decided that Members will not take safeguard action against already established foreign suppliers. Would this not be inconsistent with a Members' MFN obligation¹ vis-à-vis new entrants? If so, why should adherence to a fundamental principle such as MFN be made secondary to protecting the rights of already established foreign suppliers? As the MFN obligation is a horizontal commitment and is not dependant on scheduling, should it not be sacrosanct even in the context of a safeguard situation?

6. But is there really a problem of MFN? It could be argued that in targeting only new foreign entrants, there is no discrimination on the basis of nationality and hence no violation of MFN. A distinction is made only on the basis of the particular situation of the foreign supplier i.e. whether the foreign supplier is already established or not. Thus for example, suppliers from Member X already

¹ Assuming that the invoking Member has not claimed an MFN exemption in respect of the affected sector - in which case the issue would not arise at all.

established in the invoking Member Y will not be subject to a safeguard measure, but new entrants from X would be subject to such a measure as would new entrants from Member Z. Given the equal discrimination against new entrants from X and Z, there is no violation of MFN.

7. Nevertheless, under this latter scenario, is there a de-facto violation of MFN? This could possibly be argued by the new entrant from Z.

8. Another issue relating to MFN treatment is the relationship between the existing MFN exemptions of Members and the invocation of a safeguard measure. Assume that under an MFN exemption claimed by Member A, it is able to extend preferential treatment to Member B. Also now assume that A is faced with an emergency situation in respect of the concerned sector and is forced to impose a safeguard measure to restrict imports. Does A have the right to continue to provide preferential treatment to B under its MFN exemption and thus exempt B from the safeguard measure?

9. Article X specifically states that the “multilateral negotiations on the question of emergency safeguards measures (be) based on the principle of non-discrimination”. Safeguard measures targeted against already established foreign suppliers may run foul of the invoking Member’s national treatment commitments. Similarly a carve-out for such suppliers may run foul of the Member’s MFN obligation. It would appear that whatever position Members take on this issue, we may not be able to satisfy the principle of non-discrimination. How should we get around this problem?

C. Domestic Industry Definitions

10. The definition of domestic industry for the purposes of safeguard petitions and injury determination will be dependant on the position that Members take on actions against already established foreign suppliers. Should domestic industry constitute both national suppliers as well as established foreign suppliers? Or should it constitute only national suppliers so as to allow Members to cushion injury caused to national suppliers by established foreign suppliers? If domestic industry were to be defined as comprising both types of suppliers could not a situation arise where established foreign suppliers² attempt to keep out other foreign entrants by seeking safeguard action? This scenario may be particularly insidious; although similar competition concerns could arise even if domestic industry were to be defined as comprising national suppliers.

D. Acquired Rights

11. The issue of acquired rights has also been raised in the Working Party’s discussion of safeguard measures in mode 3. It has been suggested that any safeguard mechanism should protect acquired rights and exclude the possibility of disinvestment. This may be an important principle to maintain but much would depend on how acquired rights are defined.

12. Take for example a narrow definition based on ownership such as that provided for in Articles XXVIII(m) and (n). Members may categorically exclude safeguard actions that result in disinvestment. Thus, established foreign suppliers would still be allowed to retain their current equity holdings. But could a Member freeze the status quo as a form of safeguard action, preventing any increase in equity holdings? Would this be still consistent with protecting acquired rights as defined by ownership? Could a Member withdraw or modify national treatment commitments in respect of established foreign suppliers if these do not impact on ownership (and acquired rights as so defined)?

13. The flipside would revolve around a broader definition of acquired rights. Could acquired rights, for instance, be defined both in terms of ownership as well as the rights accruing from being

² By virtue of accounting for a major proportion of the total domestic supply of the concerned services.

granted permission to operate within a Member's territory. The latter rights would include for instance national treatment. If so defined, would the protection of acquired rights prevent Members from withdrawing or modifying national treatment commitments as a safeguard action against established foreign suppliers?

14. There is also the issue of acquired rights and compensation. Assume that an invoking Member agrees to compensate affected Members with a "substantially equivalent level" of market access in mode 3 in respect of another sector other than the affected one. Can the invoking Member withdraw such compensation upon the termination of the safeguard measure? If so, would this be an acceptable impact on commercial presence and acquired rights however defined.

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COMMUNICATION FROM THE REPUBLIC OF POLAND

Response to the Questions Relevant to the Information Exchange Required Under the Subsidies Negotiating Mandate

Addendum

The following communication is being circulated at the request of the delegation of the Republic of Poland to Members of the Working Party on GATS Rules.

All data concerning the amounts of subsidies contained herein is given in New Polish Zlotys (PLN)¹.

The responses cover subsidies applied in the services sector in Poland in the period of 1997 – 1998.

¹ The average exchange rate between New Polish Zloty and US Dollar was:

1 PLN = 0.308 USD in 1997,

1 PLN = 0.286 USD in 1998.

I. LOAN FROM EFSAL FUNDS

1. Characteristics of the programme

Support of businesses involved in restructuring or liquidation processes, especially those located in the regions particularly endangered with unemployment, through:

1. Provision of resources (loans) for restructuring investments and for "hedging" purposes (grant for allowances for personnel dismissed due to group reductions, pension and retirement allowances, remuneration for unused annual leaves, compensations for shortened notice of termination).
2. Support of buyout by the Industrial Development Agency (IDA) the outstanding debts from banks provided that the bank is not involved in conciliatory proceedings pursuant to the law of 3 February 1993 concerning financial restructuring on enterprises and banks and changing some laws (Journal of Laws No. 18, item of 1996, No. 52, item 235, No. 106, item 496, No. 118, item 561 of 1997, No. 98, item 603, No. 141, item 943) and buyout of the claims of the debtor's providers (the amount of the debts bought out by the IDA must represent 10 per cent of the total amount of the debtors liabilities, however can not be less than PLN 100 000 – or the sum of these liabilities represents 20 per cent of the total amount of the debtor's liabilities).

The following entities are eligible for the assistance, which can be granted only once:

- state owned enterprises;
- companies which stock is owned by the Treasury;
- companies which stock is owned by the Treasury and the employees (farmers, fishermen);
- companies which stock is owned by the Treasury and other organisational units and natural persons, where the liabilities were converted into stocks (shares) pursuant to conciliatory agreements reached with the banks according to the procedures determined by the law of 13 February 1993 concerning financial restructuring on enterprises and banks and changing some laws – for the "hedging" purposes only;
- companies which stocks have been contributed as a share in Sugar Partnerships, as long as their stock is held by the Treasury, Sugar Partnerships, employees and sugar beets producers, or when the Treasury is the only shareholder.

The entities requesting the EFSAL assistance must submit an application that *inter alia* includes information concerning their current economic and financial standing as well as their financial standing during the preceding years, forecasts for the coming years, the programme of short, medium and long term actions, SWOT analysis and:

- restructuring or liquidation programme;
- a copy of the application submitted to the relevant minister concerning transformation of their enterprise into a company whose stock is held exclusively by the Treasury, and in case of companies - information of the forecasted date of making the stocks of the Treasury publicly available;

- information concerning the legal status of the real estate: buildings and land;
- opinions of: financing bank, Tax Office;
- standpoint of the principal borrowers concerning the debts restructuring;
- information on the effects of the actions aimed at obtaining financial resources from other sources;
- the programme for making the unnecessary assets productive;
- proposals related to restructuring, employment and wages freeze agreed with the trade unions.

The conditions of the loans awarded within the Ist Tranche were more advantageous compared to commercial loans – the interests rate from 1/3 to 0.8 of the refinanced credit rate (mostly 0.5), the maturity periods were from 2 to 6 years, and the repayment grace period was in most cases 1 year, the principal repayment – quarterly and the interests monthly. According to the recommendations of the World Bank, the loans awarded within the IInd Tranche are less advantageous (the interests rate may not be lower than the WIBOR rate).

The decision concerning allocation of the resources is made by the Minister of Finance (up to PLN 2 million in case of a loan and up to PLN 0.5 million in case of a grant). The assistance that exceeds these amounts is allocated by the decision of the Council of Ministers.

2. Policy objectives of the programme

Support of enterprise restructuring and provision of "hedging" in case of the liquidation, when it is impossible to obtain resources for these purposes from other sources.

3. Availability of the programme to the services sector vs. goods sector

No special rules.

4. Form of the subsidy

Grant (exclusively for the "hedging" purposes) and investment loan.

5. Sectors eligible under the subsidy

Among services sector : typography, transport, construction, heating supply.

6. Eligibility criteria

See point 1.

7. Calculation of the subsidy

No fixed rules. The amount of the subsidy depends on the proposed restructuring or liquidation programme described in the application for the support from EFSAL funds.

8. Time Limits

The agreement between the International Bank for Reconstruction and Development and the government of Poland assumed extending of adaptation loans for the enterprises and financial sector in three tranches:

Ist Tranche – USD 125 million;

IInd Tranche – USD 100 million;

IIIrd Tranche – USD 125 million.

The Ist tranche (being an equivalent of USD 125 million) amounting to PLN 282.4 million – was made available in 1994. The IInd tranche (being an equivalent of USD 100 million) amounting to PLN 261.9 million – was received by the Treasury in April 1995.

Approximately 86 per cent of the EFSAL funds was consumed by the end of 1998.

The Polish Side has resigned from applying for the IIIrd tranche of EFSAL resources.

9. Disciplines assumed under the regional agreements

Pursuant to Art. 63 of the Europe Agreement establishing an association between Poland and the EC, any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of the Agreement, insofar as it may affect trade between the Community and Poland. However during the first five years after the entry into force of this Agreement, Poland shall be regarded as an area where standard of living is abnormally low or where there is serious underemployment and any public aid granted to promote the economic development may be considered to be compatible with the EU common market. The Association Council shall, taking into account the economic situation of Poland, decide whether that period should be extended by further periods of five years.

10. Amount of assistance granted

In 1997 the total assistance provided amounted to PLN 75.5 million, including: grants – PLN 12.8 million, and loans – PLN 62.6 million. Within that, support for service sectors constituted:

- transport – PLN 7.2 million in loans
- typography – PLN 1.9 million in loans
- construction – PLN 1.4 million in grants, PLN 4.0 million in loans

In 1998 the total assistance provided amounted to PLN 53.6 million, including: grants – PLN 14.7 million, and loans – PLN 38.8 million. Within that, support for service sectors constituted:

- transport – PLN 3.0 million in grants, PLN 8.4million in loans
- construction – PLN 0.2 million in grants, PLN 2.0 million in loans
- heating supply – PLN 2.0 million in loans

11. Effects on trade

The programme does not directly impact the foreign trade.

II. DIRECT GRANTS FOR EXTRA CHARGES TO PRODUCTS AND SERVICES

1. Characteristics of the programme

I. Grants for the meals sold in milk bars

The businesses conducting the activities included in the scope of the regulation receive grants within the limits determined by the budget law. The businesses may obtain grants for the meals sold in milk bars after fulfilment of the criteria:

- They run milk bars, defined as self-service, non-alcoholic, catering enterprises for public, which sell meals produced of milk, dairy and vegetable products used to prepare regular meals.
- The above-mentioned milk bars apply margin not exceeding 25 per cent of the value of used food products.
- They maintain quantitative-qualitative ledgers of the food products used for preparing the meals in the milk bars.

II. Grants for railway passenger domestic transport

Direct grants for railway passenger transport were awarded for the transport: within urban agglomeration, regional (local), inter-regional (long distance) by means of regular passenger trains, speeded-up trains, excluding passenger transport by means of express, Inter-City, Euro-City and Euronight (hotel) trains in domestic and international communication. The regulation of the Minister of Finance promulgated annually, beside setting the level of the grant rates, determines the scope of subsidies for railway transport and sets the conditions to be met by the carriers in order to obtain grants for transport services they provide. In 1997 these issues were regulated by the Minister's of Finance regulation of 31 July 1997 on setting the rates of direct grants for passenger railway and bus transport (Journal of Laws No. 94, item 574).

In order to obtain the grants the carriers had to fulfill all the following conditions:

- Provide transport services in accordance with the trains schedule;
- Apply tariffs not exceeding the official prices determined by the Minister of Transport and Maritime Economy, and the tariffs or price-lists set by the carriers according to the provisions of the law of 15 November 1984 – Transport Law (Journal of Laws of 1995 No. 119, item 575 and of 1997 No. 23, item 117, No 96, item 591, No. 101, item 629, and No. 141, item 942).
- To accept as valid rights of some persons to enjoy free or reduced price tickets as provided by the law of 20 June 1992 concerning the rights to free and reduced price tickets for public transport (Journal of Laws No. 54, item 254, of 1994 No. 40, item 150, No. 80, item 368, No. 113, item 547 of 1995 r. No. 50, item 261 and of 1996 r. No. 100, item 460).
- To submit a list of the subsidised transport units to the Minister of Transport and Maritime Economy and obtain confirmation of including these units in the aggregated amount of the grant for the given fiscal year, in order to determine rate of the subsidy.

III. Grants for passenger bus transport

Grants for bus passenger transport were awarded for the regular domestic inter-city transport. In order to obtain the grants the carriers had to fulfil all the following conditions:

- Provide transport services in accordance with the buses schedule agreed by all the carriers during the district schedule conferences;
- To apply official prices for regular domestic bus transport, as determined by the Minister of Transport and Maritime Economy in consultation with the Minister of Finance;
- To accept as valid the same persons rights to enjoy free or reduced price tickets according to the provisions of the law of 20 June 1992 concerning the rights to free and reduced price tickets for public transport;
- To submit a list of the subsidised transport units to the Minister of Transport and Maritime Economy, and those who organise transport within the Viovodship of Katowice to the Voivod of Katowice, and obtain confirmation of including these units in the aggregated amount of the grant for the given fiscal year, in order to determine rate of the subsidy.

IV. Grants for publication of specialised school and university books

These grants are awarded for publishers of school and university books:

- for teaching specialised subjects in vocational schools;
- for schools of national minorities;
- for special schools;
- for university books.

The above-mentioned grants may be awarded for the publication of the books approved for use in schools, therefore fulfilling the education programme requirements. The Minister of National Education determines the list of the approved and recommended books for use in schools. The books subsidised by the grants are published in small number of copies, which increases the publication costs. Without the above-mentioned grants the publishing houses would be scarcely interested in publishing the books the demand for which is limited.

The Ministry of National Education evaluates the applications of publishers willing to obtain the above-mentioned grants. The specimen of the application form is included in the ordinance of the Minister of National Education of 27 August 1992. The grants are awarded to the publishers of the school and university books on the basis of rates for the printed sheet. The Minister of National Education annually determines the rates of grants for school and university books.

2. Policy objectives of the programme

Lowering the prices of domestic passenger transport, meals sold in milk bars, specialised school and university books in order to provide increased accessibility of some services to specific social groups.

3. Availability of the programme to the services sector vs. goods sector

Programme applies to services sector only.

4. Form of the subsidy

Grants from the state budget.

5. Sectors eligible under the subsidy

See point 1.

6. Eligibility criteria

See point 1.

7. Calculation of the subsidy

See point 1.

8. Time limits

The value of the grants is set in the state budget every year.

9. Disciplines assumed under the regional agreements

Pursuant to Article 63 of the Europe Agreement establishing an association between Poland and the EC, any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of the Agreement, insofar as it may affect trade between the Community and Poland. However during the first five years after the entry into force of this Agreement, Poland shall be regarded as an area where standard of living is abnormally low or where there is serious underemployment and any public aid granted to promote the economic development may be considered to be compatible with the EU common market, The Association Council shall, taking into account the economic situation of Poland, decide whether that period should be extended by further periods of five years.

10. Amount of assistance granted

In 1997 the grants under this scheme amounted to PLN 928.4 million and were awarded for:

	<u>In millions of PLN</u>
Meals sold in milk bars	13.9
Passenger domestic railway transport	710.0
Passenger inter-city bus transport, including grants for inter-city connections in the urban agglomeration of Katowice organised (delegated) by local governments, and municipal associations	193.4
Publication of specialised school and university books	11.0

In 1998 the grants under this scheme amounted to PLN 752.6 million and were awarded for:

	<u>In millions of PLN</u>
Meals sold in milk bars	17.0
Passenger domestic railway transport	560.0
Passenger inter-city bus transport, including grants for inter-city connections in the urban agglomeration of Katowice organised (delegated) by local governments, and municipal associations	164.0
Publication of specialised school and university books	11.6

11. Effects on trade

Considering the purposes of the programme, there are no effects on the foreign trade.

III. ASSISTANCE FOR RESTRUCTURING OF THE BANKING SECTOR

1. Characteristics of the programme

- (i) Treasury bonds for increasing the capital of Bank Gospodarki Zywnosciowej S.A (BGZ) and regional banks and for restructuring of claims of the cooperative banks

Pursuant to the provisions of the law of 3 February 1993, the BGZ obtained the Treasury bonds amounting to PLN 1 622.4 million for increase of the bank's own capital. According to the conditions of the issue of the Treasury bonds the buy-out of the bonds (issued in 1994) will take place by the year 2009.

At the same time, within the issue of 1994 and pursuant to the provisions of the Minister's of Finance ordinance of 2 June 1995 concerning the proportion of the split of the Treasury bonds for restructuring of claims, between the regional banks and associated cooperative banks (Journal of

Laws No.64, item 330), part of the bonds amounting to PLN 45 million was earmarked for increasing the reserves of the regional banks established according to the provisions of the above-mentioned law of 24 June 1994. Since 1995 the bonds have been transferred to the successively emerging regional banks.

The Treasury bonds are also earmarked for restructuring of the claims of cooperative banks associated with the regional banks. Pursuant to the provisions of the law of 24 June 1994 and the provisions of the Minister's of Finance ordinance of 2 June 1996, the Treasury bonds of the value that on the day of the issue was over PLN 251 million were earmarked for that purpose.

According to the conditions of the Treasury bonds issue, the buy-out of the bonds (issued in 1994) will take place successively within the period 1996-2009.

(ii) The refundable assistance for cooperative banks implementing the repair programmes

According to the resolution adopted by the Parliament on 12 July 1995 concerning support of the repair processes carried out by cooperative banks, the amount of PLN 40 million was earmarked for refundable assistance to the cooperative banks taking over other cooperative banks being in crisis.

The National Bank of Poland in consultation with the Ministry of Finance provides this assistance within the limits of the earmarked funds by respective decrease of the portion of profits paid to the state budget.

(iii) Tax incentives for cooperative banks establishing regional banks

The provisions of the ordinance of the Minister of Finance concerning abstaining from income tax collection from some cooperative banks, granted additional financial support to the cooperative banks.

Moreover, by the virtue of the Minister's of Finance ordinance of 4 July 1996 (Polish Monitor No. 42, item 406) the collection of the taxes from BGZ S.A, regional banks and cooperative banks on income related to the Treasury bonds destined for restructuring of cooperative banking sector, was also abstained. The overall financial results of the above-mentioned ordinance are estimated to reach PLN 620.4 million by the year 2009.

2. Policy objectives of the programme

Restructuring of the banking sector.

3. Availability of the programme to the service sectors vs. goods sectors

Programme applies to service sector only.

4. Form of the subsidy

Grants, loans, tax incentives.

5. Sectors eligible under the subsidy

Banking sector.

6. Eligibility criteria

(i) The process of reconstruction of the co-operative banking sector continued throughout the year of 1997 according to the provisions of the law of 24 June 1994 concerning restructuring of cooperative banks and Bank Gospodarki Żywnościowej (*Food Economy Bank*) and change of some other laws (Journal of Laws No. 80, item 369, of 1995 No. 142, item 704, of 1996 No. 106, item 496, and of 1997 No. 121, item 770, No. 140, item 939). The programme was aimed at creation of three-tier co-operative banking group that would include local cooperative banks, regional banks and national bank. The undertaken actions resulted with establishment of all 9 regional banks predicted by the law. In 1997, pursuant to the provisions of the above-mentioned law, the regional banks obtained the Treasury bonds totalling PLN 69.3 million (according to the bond's value on the day of the issue), including PLN 36.3 million earmarked for restructuring of the claims of the associated cooperative banks and PLN 33.0 million for increase of the capital reserves of the regional banks. Together – including the treasury bonds transferred to the banks in the period of 1995-1996 – the regional banks obtained the Treasury bonds totalling PLN 194.4 million, of which PLN 131.4 million was earmarked for claims restructuring and PLN 63.0 million for capital reserves increase.

(ii) Refundable assistance for cooperative banks implementing the repair programmes

In 1997 within the limits of the earmarked funds, the National Bank of Poland in consultation with the Ministry of Finance provided the assistance totalling PLN 9.8 million to 5 cooperative banks.

In the period 1995-1997 such assistance totalling PLN 39.8 million was provided to 31 cooperative banks.

Moreover, according to the resolution adopted by the Parliament on 11 January 1996 concerning the assumptions of the financial policy for 1996, NBP has earmarked the amount of PLN 40 million for refundable assistance to support the banks taking over other cooperative banks being in crisis. In 1997, NBP in consultation with the Minister of Finance provided assistance totalling PLN 25.7 million to 15 banks out of the resources earmarked for this purpose and not consumed in 1996.

Altogether, from the resources earmarked for support of the cooperative banking sector and in connection with the resolution of 11 January 1996, the assistance totalling PLN 36.7 million was provided to 21 banks.

In attempt to further support the process of cooperative banks restructuring and implementing the Parliament resolution of 24 January 1997 concerning the assumptions for the financial policy for the year 1997, NBP has decided to earmark the next tranche of the assistance of PLN 20 million. Within the limits of these resources, in 1997 NBP in consultation with the Minister of Finance has provided the assistance amounting to PLN 9.6 million to 7 banks.

(iii) Tax incentives for the cooperative banks

The ordinance of the Minister of Finance concerning abstaining from income tax collection from some cooperative banks (Polish Monitor No. 5, item 39), granted additional financial support to the cooperative banks. According to the provisions of the ordinance the abstaining regarded the following:

- 70 per cent of the income tax due for 1996 of the cooperative banks that establish new regional banks according to the provisions of the law of 24 June 1994 concerning restructuring of cooperative banks, BGZ and change of some other laws;

- the income tax due for the year 1997 from the remaining cooperative banks up to the equivalent of 70 per cent of the tax due for 1996.

The condition making possible to use this abatement was to transfer at least 80 per cent of the 1996 balance surplus to the undivided fund of cooperative banks' resources and transfer all the means obtained due to the abstained taxes.

The estimated outcome of implementation of the above-mentioned ordinance is for the 1996 budget – approximately PLN 50 million and for 1997 budget – about PLN 23 million.

The support actions undertaken in the period of 1994-1997 implemented *inter alia* in the form of tax abatements or Treasury bonds for restructuring, contributed to improvement of the financial standing of the cooperative banks.

It was reflected by increase of net equity, total receivables and improvement of the solvency ratio of the cooperative banks as well as by decrease of the general losses of these banks.

7. Calculation of the subsidy

No fixed rules. The amount of the subsidy depends on the restructuring programme and is decided by the Minister of Finance acting in agreement with the National Bank of Poland (see also point 5).

8. Time limits

According to the conditions of the Treasury bonds issue, being the main component of the assistance provided within the scope of the above-mentioned programme, the buy-out of the bonds will be terminated in the year 2009.

9. Disciplines assumed under the regional agreements

Pursuant to Article 63 of the Europe Agreement establishing an association between Poland and the EC, any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of the Agreement, insofar as it may affect trade between the Community and Poland.

However during the first five years after the entry into force of this Agreement, Poland shall be regarded as an area where standard of living is abnormally low or where there is serious underemployment and any public aid granted to promote the economic development may be considered to be compatible with the EU common market. The Association Council shall, taking into account the economic situation of Poland, decide whether that period should be extended by further periods of five years.

10. Amount of assistance granted

In 1997 the assistance provided to the cooperative banking sector totalled approximately PLN 137.5 million, including the assistance provided in the form of:

- Treasury bonds earmarked for restructuring of the cooperative banks and newly established regional banks – PLN 69.3 million;
- loans extended by NBP – PLN 45.2 million; and
- tax incentives – PLN 23 million.

In 1998 no state aid granted for restructuring the banking sector.

11. Effects on trade

The programme does not directly impact the foreign trade.

Working Party on GATS Rules

ISSUES FOR FUTURE DISCUSSIONS ON EMERGENCY SAFEGUARDS

Note by the Secretariat

Revision

1. The Secretariat has produced this second revision of an earlier Note on safeguards-related issues, initially dated 20 November 1998, at the request of the Working Party on GATS Rules. The revision is intended to incorporate points raised at the Working Party's meetings of 19 May, 21 June and 27 July 1999. Like the two previous versions, it considers, first, alternative forms that a safeguard mechanism under the GATS may take and then elaborates on various conceptual issues. For ease of reference, any substantive changes over the first revision are indicated in italics.

I. ALTERNATIVE FORMS OF A SAFEGUARD MECHANISM

2. Members have suggested several alternative forms for a possible safeguard mechanism under the GATS. One view has been to model it closely on the mechanism in the goods area. Such a mechanism could include quantitative criteria and procedural restraints. The applicability of concepts in the Agreement on Safeguards (AS) to the GATS context has been discussed in a previous Note by the Secretariat (S/WPGR/W/8).

3. A second view has been to include safeguard-type provisions for specific sectors in a Member's schedule of specific commitments (this view has been expressed in a Communication from the United States, S/WPGR/W/17). Rules may still need to be developed for Members who include such safeguard-type provisions in their schedules. It has been suggested that such rules - general, sector-specific or mode-specific - could include the requirement that a Member including a safeguards-type provision in its schedule in a given sector must combine it with a commitment to liberalization in that sector. The extent of liberalization which would justify inclusion of a safeguard provision would presumably be determined through negotiations. Concerns have been voiced, however, that the ability to negotiate the inclusion of safeguards may depend on bargaining power, thus disadvantaging small economies; that it could prove conceptually and politically difficult to identify sectors where "unforeseen circumstances" are likely to occur or otherwise earmark potential areas for safeguard action; and that there is no legal basis in the GATS to underpin a conditional and/or sector-specific approach to safeguards.

4. A third model is contained in Article 5 of the Agreement on Agriculture. The relevant provision does not require injury to domestic industry as a basis for safeguard action. Actions are triggered by import volume increases or import price reductions, and permit the imposition of additional duties up to specified limits. The volume trigger, which leads to the non-discriminatory application of additional duties, is sensitive to the degree of import penetration, while the price trigger, which may result in additional duties on a consignment-by-consignment basis, is related to certain base-year prices in domestic currency. There have been doubts, however, whether such intense data requirements could be met in services. On the other hand, it has been argued that data problems also exist in the area of goods; they should not prevent the development of a mechanism

which is sufficiently flexible in terms of quantitative evidence and includes appropriate procedural constraints.

5. A fourth alternative could be modelled on Article 6 of the Agreement on Textiles and Clothing which provides for a transitional safeguard mechanism for products not yet integrated into GATT 1994 and not subject to restriction. Special treatment is envisaged when applying safeguards against small exporters, least-developed countries, wool producers, outward-processing trade and cottage industries. Members need to demonstrate that a particular product is being imported from the country in question in such increased quantities as to cause serious damage, or threat thereof, to the domestic industry producing like and/or directly competitive products. The safeguard is applied selectively to particular exporters. It has been argued, however, that this seems to contravene the non-discrimination principle enshrined in Article X of GATS and imply significant data requirements.

6. Recent discussions have focused on the pros and cons of horizontal sector-specific versus safeguards. A conceptual distinction has been made in this context between those sector-specific safeguards, which would be negotiated case-by-case for inclusion in schedules (possibly based on some commonly agreed principles), and others which would be made generally available. In addition to the reservations mentioned above (para. 4), it has been noted that the parallel existence of sectoral safeguard variants could lead to fragmentation of the system and affect transparency. *More fundamentally, a point has also been made that the use of a sector-specific concept would presuppose the existence of some advance information on the nature and scope of future emergency situations; however, Article X envisaged an ex-post mechanism to cope with unforeseen circumstances which might arise over time.* A horizontal mechanism, based on generally applicable criteria, would be available to all Members whenever the situation in a given sector and, possibly, mode of supply meets the relevant criteria. However, apart from questions concerning desirability, doubts have been expressed whether such a broad-based mechanism could be made subject to effective disciplines (see also Section II.5). The idea has also been discussed that a safeguards mechanism conceived for general application might be made available only in sectors considered prone to crises situations. The selection of such sectors, however, might prove difficult and could unduly affect trade and investment decisions.

7. *It appears that delegations favouring a sector-specific mechanism also recognize the need or usefulness of some commonly accepted principles ("hybrid approach"), while delegations endorsing a horizontal, generally available mechanism have expressed doubts about the need for sectoral variants without, however, precluding such a possibility at present. The idea has also been raised that, presuming the existence of a horizontal safeguards mechanism, Members might be free to forgo its use in individual areas by way of an Additional Commitment under Article XVIII, and that it might be possible to link the availability of such a mechanism to the quality of commitments scheduled under Articles XVI and XVII; the dividing line between the two concepts might thus be less sharp than initially conceived. However, these considerations have not drawn strong interest among Members.*

8. *Several participants have endorsed the view that it might be more efficient for the time being not to further discuss basic conceptual issues but, rather, focus on common principles which might need to underlie any safeguard mechanism, whether horizontal or sector-specific in nature. Examples of such common principles – MFN-basis, advance notice, temporary application, degressivity, clear specification of measures envisaged, protection of "acquired rights" of established suppliers, etc. - can be found in written submissions from Hong Kong, China (S/WPGR/W/26, 10 February 1998) and the United States (S/WPGR/W/17, 13 March 1997).*

II. LIST OF ISSUES FOR FUTURE DISCUSSIONS

1. Definition and scope of safeguards in services

- Active subject: who applies the safeguard? E.g. government, professional associations, central banks

9. Safeguards would normally be applied by a Member. It is conceivable that the responsibility for action is delegated to a particular agency. Under the GATS, measures by Members are defined broadly to include measures taken by central, regional or local governments, as well as non-governmental bodies in the exercise of powers delegated by the government. Governments can, therefore, be held accountable in the WTO for decisions or actions affecting trade in services by non-governmental bodies, which exercise delegated powers. This may be relevant if such bodies were to have responsibility for the administration of safeguard action. Another view is that safeguard actions should be taken only by governments, thus excluding agencies with delegated powers.

- Passive subject: to whom is it applied? Country, industry of a country, specific company

10. There are two related aspects of this question: first, on whose behalf is safeguard action taken and second, against whom such action is taken. In the goods case, safeguard action is taken on behalf of a domestic industry - defined to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products. In the Working Party, one view has been that the goods precedent should be followed, and safeguard action be taken to protect all domestically established suppliers – *possibly including natural persons* - of like or directly competitive services, regardless of *nationality*, ownership and control. According to this view, it would not be desirable to use, for the purpose of safeguard action, the relevant definition in GATS Article XXVIII.

11. Another view has been that safeguard action should be available to protect the national industry, which is understood to mean all natural and juridical persons of the Member taking the measure who supply like or directly competitive services. According to this view, the distinction between national and foreign entities should be based on the relevant definition in GATS Article XXVIII. While it has been argued that some Members' domestic legislation would not allow for such a distinction to be made, it has also been noted that there would be no obligation to introduce it. *There seems to be agreement that any safeguards action would presuppose that the suppliers seeking protection account for a significant share ("a major proportion") of the industry concerned.*

12. The response to the second aspect of the question, concerning against whom safeguard action is taken, depends on the response to the first aspect. Thus, it would seem that measures could either be taken against suppliers of the like or directly competitive products located outside the territory of the relevant Member, or also against foreign suppliers of such products located in the territory of the Member. Two observations are relevant. First, even Members who wish to make a distinction within the class of domestically established suppliers on the basis of nationality have stated that "acquired rights" of foreign suppliers should be respected, and measures which force disinvestment must not be taken. (It would be necessary to examine closely what is meant by the protection of acquired rights and whether this would be consistent with MFN.) Second, given the Article X requirement that any emergency safeguard measures be "based on the principle of non-discrimination", it is clear that safeguard action must be applied on an MFN basis to all foreign services and service suppliers.

- Objective: What is covered? All kinds of services? Which sectors? Which modes of supply?

13. One view has been that a general safeguard provision under Article X would need to cover all services and sectors. Another view has been that safeguard action should only be available for certain sectors where it is possible to produce adequate quantitative evidence (see also paras. 6 and 7).

14. With regard to modes, it has been argued either that safeguard actions be taken with respect to all modes of supply or that it would be for the invoking Member to decide on the modal coverage, based on the policy objectives involved. It has been noted that mode-specific safeguard action could create economic distortions, and that such action might not be effective since it could be circumvented by foreign suppliers switching to unrestricted modes. However, other delegations felt that this possibility was remote since switching between modes might imply significant costs. Moreover, it might be counterproductive to target all modes; for instance, if the purpose of safeguard action was to prevent unemployment, it would be unreasonable to restrict new investment or take action against locally established foreign firms. *The idea has also been raised that safeguard actions under certain modes should be given priority over others; for example, measures under modes 3 and 4 might be taken only after measures under modes 1 and 2 had proven ineffective.*

2. Situations justifying application

- Type of injury

15. One view is that Article XIX of GATT 1994 and of the Agreement on Safeguards are relevant precedents. The determination of whether increased imports have caused or are threatening to cause serious injury to domestic industry should be made by employing, mutatis mutandis, the rules provided for in Article 4:2(a) and 4:2(b) of the Agreement on Safeguards:

"(a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all the relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute or relative terms, the share of the domestic market taken by increased imports, changes in level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

(b) The determination referred to in the subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than dramatic increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports."

16. It might be appropriate to substitute the notion of "consumption of foreign services" for "imports" to cover supply through each of the four modes; Members also need to consider whether the reference to "domestic industry" should be replaced by "national industry". *Moreover, a point has been made that, given the scope of the GATS, not only industries (i.e. juridical persons), but natural persons as well might qualify for safeguards protection.*

17. Another view is that it might be difficult in the area of services, given the state of statistics, to demonstrate injury and show that it is caused by increased imports. However, data problems in the goods area had not prevented the creation of anti-dumping and similar mechanisms, which rely heavily on empirical information. *While individual injury indicators might not be reliable, the combination of various indicators might provide a reasonably comprehensive picture. Some delegations have noted that it would be inappropriate to aim at the same standard of evidence as in criminal-law cases. Others feel, however, that (excessive) flexibility could prove a double-edged sword and open the door for abuse.*

- Additional considerations

18. It has been suggested that any safeguard action should take into account the wider public interest, and not only industry-specific considerations. Article 3 of AS could be used in this regard. However, it might be necessary to clarify the concept of "public interest" which, according to one view, seems to allow for too much leeway at present.

19. *The question has also been raised if factors not directly related to trade should be taken into account by the investigating authority. There seems to be a general view that macro-economic disruptions and other problems of an economy-wide nature would not justify the use of safeguards in individual areas. This is commensurate with Article 4:2(b) of AS which stipulates that "when factors other than increased imports are causing injury ... at the same time, such injury shall not be attributed to increased imports". It appears, however, that an additional aspect may warrant further discussion: the possibility that government regulation in individual sectors – e.g. universal service obligations – impinged on an industry's ability to adjust to sudden increases in foreign supplies. Given the interplay of economic and social policy objectives and the role of regulation in many services areas, such situations are more likely to arise in services than in merchandise trade. Would it be desirable and technically possible to separate such from other genuinely import-(or investment-)related developments? How could vested interests within administrations be prevented from downplaying adverse effects associated with domestic regulation? Could this result in situations where internal regulatory problems and distortions are solved at the expense of foreign supplies?*

- Relevant circumstances

20. To facilitate for future work, it might be helpful to develop a clearer idea of the circumstances justifying safeguard action. *Reference has been made to the concept of "unforeseen developments", enshrined in Article XIX of the GATT, but not explicitly repeated in the Agreement on Safeguards. According to one view, this is a legally meaningful and viable concept, despite the degree of subjectivity involved. According to another view, there is no need for such a concept as the occurrence of "serious injury" already implies a drastic change in trading conditions which had not been foreseen at the time the commitments were made. Other participants have expressed doubts whether the notion of unforeseen developments was sufficiently precise to prevent abuse and stressed the need for objective tests of emergency situations, based on readily available information or standard practice. The list of indicators contained in an informal submission by Venezuela (Job No. 2860, dated 17 May 1999) has been widely considered a useful basis for future discussion; the Secretariat was requested to use it as starting-point for a working document listing any conceivable indicators proposed by Members and the comments made in the Working Party. It has also been stressed, however, that such work needed to be complemented by the examination of hypothetical safeguard situations for all four modes of supply in order to further explore the relevance of individual concepts and indicators.*

3. Temporary or provisional measures – periods of application

21. Members seem to agree that any safeguard measure must be temporary. There is also a view that any safeguard measure should be progressively liberalized during the period of application. Article 7 of the AS dealing with Duration and Review of Safeguard Measures may be relevant. This provision contains detailed rules on the length of time for which safeguard measures might be applied, and the interval that must elapse before a new safeguard measure may be introduced on a product that has previously been the subject of safeguard action. It has been suggested to pay particular attention to the principle of adjustment in defining terms and modalities of safeguard action.

22. With regard to provisional safeguard measures, it may be useful to consider Article 6 of the AS which permits the adoption of such measures in "critical circumstances where delay would cause

damage which it would be difficult to repair ... pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury”.

4. Compensation

23. One view is that Article 8 of the AS could be used as a model. Reservations have been expressed, however, in regard of certain definitional uncertainties and difficulties in determining the level of compensation. Another view is that the need for compensation could be made contingent on the type of adjustment envisaged and the nature of the services-industry involved. *For example, degressive application might require less, if any, compensation.*

24. *Recent contributions have referred to, on the one hand, the role of compensation as a potential deterrent against protectionist abuse. On the other hand, it has also been noted that a compensation requirement could render the invocation of (temporary) safeguards too burdensome for Members – in combination with additional procedural constraints – and, thus, create a bias in favour of (permanent) modifications of commitments under Article XXI. Since the underlying economic challenges are essentially different - sudden import surges versus longer-term changes in competitive conditions – other delegations indicated that they would not consider this to cause problems in practice. Reference has also been made to the concept of special and differential treatment of developing countries.*

5. Applicable procedures

25. No detailed views have been expressed, but it seems obvious that an investigation would be required. Article 3 of the Agreement on Safeguards dealing with investigation has been suggested as a starting point. This provision stipulates that a safeguard measure may only be applied following an investigation, and prescribes the procedures that must be followed. For the determination of injury, the concepts contained in Article 4.2(a) of the AS have been proposed as relevant. The causality requirement in the area of goods, i.e. Article 4.2(b) of the AS, could be translated into the services context, provided some key terms were modified. The Agreement on Implementation of Article VI of GATT (Antidumping Agreement) has been cited as an approach which provided for the necessary flexibility in injury determinations, allowing for action based on "best information available" and for the possibility of consultations with affected Members during an investigation.

26. While concerns have been expressed that available information might be subject to confidentiality constraints, it has also been noted that similar constraints have not proved a problem in antidumping or safeguards cases for goods (Article 3:2 of AS specifies the treatment of confidential information). *Moreover, confidentiality might not prove a critical issue: the burden of proof laid with the invoking party who would have access to the information required.*

6. Applicable measures. National treatment and non-discrimination principles

27. There seems to be agreement that safeguard actions should only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment, as is required by Article 5 of the AS. Safeguard actions could take the form of temporary market access restrictions or temporary suspension of the national treatment principle. While it has been suggested that measures could also take the form of foreign exchange restrictions and limitations on the movement of capital, this may raise questions of consistency with GATS Article XI. *No delegation has ruled out the possibility that Additional Commitments under Article XVIII might also be suspended in safeguard situations; a point has been made, however, that the suspension of regulatory disciplines, including those under the telecom Reference Paper, might not be a suitable or desirable course of action. The discussion on whether certain types of measures (e.g. subsidies) should be deemed preferable to others (e.g. quotas) has not yet led to clear conclusions. While the advantages of price-based measures – more transparent, less distortive and disruptive – have been stressed by some delegations, others have noted that quota-*

type restrictions tend to have shorter implementation periods and are able to produce immediate results. The ongoing negotiations under Article XV might help to further clarify subsidy-related questions.

28. Some of the issues discussed under other items, such as those pertaining to the modal application of safeguard action, are also relevant.

7. Notification and Transparency

29. Members have emphasized the need for transparency and advance notification, but no specific discussion has taken place. The relevant elements of the AS include: Article 3 on Investigation which requires public notice to interested parties, public hearings and publication of findings; Article 12 on Notification and Consultation which requires notification to the Committee on Safeguards at each stage on initiation of an investigation, finding serious injury, and taking a decision to apply measures, as well as giving Members with substantial export interest in the product an opportunity for prior consultations; and Article 13 on Surveillance which establishes the Committee on Safeguards with responsibility *inter alia* for monitoring the implementation of the AS.

8. Special and differential treatment

30. Some Members have suggested that there should be special and differential treatment for developing countries. Article 9 of the AS dealing with Developing Country Members may be relevant. This provision stipulates that safeguard measures shall not be taken against a product originating in a developing country Member as long its share of imports of the product concerned in the importing country does not exceed certain threshold levels. The provision also allows developing countries greater flexibility with respect to the length of time for which safeguard measures might be applied, and the interval that must elapse before a new safeguard measure may be introduced on a product that has previously been the subject of safeguard action.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/W/16/Add.3

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COMMUNICATION FROM HONG KONG, CHINA

Response to the Questions Relevant to the Information Exchange Required Under the Subsidies Negotiating Mandate

Addendum

The following communication is being circulated at the request of the delegation of Hong Kong, China to Members of the Working Party on GATS Rules.

EXPLANATORY NOTE

I. INTRODUCTION

1. Attached to this note is the response of Hong Kong, China to the Questionnaire on Subsidies (S/WPGR/W/16). Below we set out the scope of the response and highlight some key issues which have emerged in our consideration of the issue.

II. SCOPE OF RESPONSE

2. For the purpose of its response to the Questionnaire on Subsidies (S/WPGR/W/16), Hong Kong, China relies on the definition in para. 1.1 of the Questionnaire but has not included details on the financial contributions made by the government or public bodies in pursuit of *legitimate social welfare objectives* since it is the recognised responsibility of any government to provide a range of social services to the public. For transparency sake, we would like to point out that the government does maintain certain social welfare programmes, and it does so primarily through subventions to organisations to undertake such activities as provision of public housing, hospitals, education, vocational training and retraining and social welfare services. The government directly provides some of the services in these areas, such as out-patient medical clinics and a limited number of schools and social welfare facilities. There is a healthy private sector in these fields, where demand for services over and above, or different from, those provided by the government is found.

3. For the avoidance of doubt, Hong Kong, China would like to highlight that government expenditure on services supplied in the *exercise of governmental authority* (i.e. any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers) falls outside the scope of the questionnaire because in accordance with the definition of Article I(3)(b) of GATS, "services" includes any service in any sector except services supplied in the exercise of governmental authority.

4. In assessing whether any *benefit* has been conferred on the recipients, as required by para. 1.1(b) of the Questionnaire, reference has been made to Article 14 of the Agreement on Subsidies and Countervailing Measures.

III. ISSUES WORTHY OF CONSIDERATION

5. It is already a requirement under the GATS to schedule any subsidies which may be given, if they fall within the measures listed in article XVI or contravene Article XVII. Subsidies granted on a national treatment basis (and which do not infringe Article XVI) are thus not schedulable.

6. Hong Kong, China notes that in general, subsidies which are administered on a *national treatment* basis are likely to have less trade distortive effects. However, it could also be argued that subsidies provided on a national treatment basis to all firms established within the territory of a Member but not overseas service suppliers (Mode 3) would have trade distortive effects under Modes 1 and 2. The question of *mode specificity* of disciplines is a complex one as the effects of a subsidy could spill over from one mode to another.

7. A related question is whether a Member is obliged to give national treatment to suppliers outside its *territorial jurisdiction*. The Scheduling Guidelines (MTN:GNS/W/164) state not. But the trade distortive effects of subsidies in this regard are unclear.

8. For transparency sake, Hong Kong, China has included in its return details of financial contributions from the government which are provided on a national treatment basis. Indeed, all the subsidies listed in our response are granted on a national treatment basis (insofar as Mode 3 is concerned). It is suggested that the questions of *trade distorting effects* and *mode specificity* of subsidies should be further discussed at the Working Party.

9. The response submitted is without prejudice to Hong Kong, China's future negotiating position in the WTO. Hong Kong, China may amend its response in the light of further discussions in the Working Party that may clarify the scope of subsidies in services and the type of measures that members seek to address.

RESPONSE BY HONG KONG , CHINA TO THE QUESTIONNAIRE ON SUBSIDIES

1. *Please identify any subsidy programmes related to trade in services, with a brief description of each programme.*

The following are possible subsidies that are caught by the working definition adopted by Hong Kong, China as set out in the explanatory covering note. They may not be regarded as subsidies if further parameters are added to the definition of "subsidies" (e.g. "specificity").

- (a) Stamp duty remission program for regional derivative warrants and convertible bond: stamp duty is waived for trading of these products on the Stock Exchange of Hong Kong Limited (SEHK).
- (b) Stamp duty exemption for stock lending and borrowing: stamp duty is exempted for lending and borrowing stocks of companies listed on the SEHK.
- (c) Stamp duty exemption for hedging transactions by stock options market makers: the stock transactions for hedging purposes undertaken by market makers issuing stock options in SEHK are exempted from stamp duty.
- (d) The Government has provided a revolving loan facility of HK\$100 million to the Hong Kong Tourist Association (HKTA) for the setting up of an International Events Fund. The aim of which is to provide the necessary seed money to support the staging of some 50 major international events in a period of 5 years. The HKTA may draw down the loan within a period of 5 years from the date of the first draw down. The HKTA has to pay a simple 5% annual interest on the outstanding amount of the loan.
- (e) The Services Support Fund (SSF) was established in July 1996 with an allocation of HK\$50 million from Government to provide financial support to projects which would benefit the further development, and increase the competitiveness, of Hong Kong's service sector. Such projects should be non-profit-making in nature, except for the projects' long-terms self-sufficiency. The Fund has so far supported a total of 27 projects and the Government has recently approved an increase of commitment of \$50 million for the Fund.

2. *Please state the policy objectives underlying the use of each subsidy.*

- (a) To encourage the development of the market of regional derivative warrants and convertible bonds in Hong Kong.
- (b) To encourage the development of the market of stock borrowing and lending in Hong Kong.
- (c) To encourage the development of the market of stock options in Hong Kong.
- (d) To attract more international events to stage in Hong Kong and in turn enhance the attractiveness of Hong Kong as a tourist destination.
- (e) To support the growth of the service industries and to enhance their competitiveness.

3. *Please indicated the availability, in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, e.g. when a company produces both goods and services.*

Nil.

4. Please indicate the form of each subsidies (e.g. tax concession, loan, grant, etc.).

(a) - (c) : In the form of waiving of stamp duty.

(d) The International Event Fund aims to provide different types of financial support to event organisers, including (i) upfront equity infusion; (ii) loan, which may be at commercial rate, concessionary rate of interest-free; (iii) grant; and (iv) in-kind assistance such as implementing umbrella publicity and marketing programs to boost the events' publicity and ticket sale.

(e) In the form of grants or loans.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

(a) The stamp duty would have been payable by all investors in regional derivative warrants and convertible bonds. Hence, the scheme directly benefits all investors, both local and overseas, in regional derivative warrants and convertible bonds.

(b) Stock lenders and borrowers, who are essentially brokerage houses and institutional investors.

(c) Market makers for stock options.

(d) The Government provides a loan to the HKTA, which manages the International Events Fund. Event organisers could apply for funding support under the Fund. We expect that the Fund will be used to support the staging of some 50 major international events in Hong Kong. **The Fund is not targeted at any specific sectors or enterprises.**

(e) Service support bodies, trade and industry association, education and research institutions and professional bodies can apply for financial support for undertaking projects which meet the funding criteria. Private companies can also apply but they must demonstrate that the relevant projects would be non-profit-making and would meet the funding criteria for the Fund. **The Fund is not targeted at any specific sectors or enterprises.**

6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other condition).

(a) All investors, local and overseas, in regional derivative warrants and convertible bonds are entitled to the stamp duty exemption.

(b) All stock borrowers and lenders (local and overseas) who are essentially brokerage houses and institutional investors.

(c) Market makers (local and overseas) for stock options.

(d) The HKTA, in consultation with the Steering Committee of the Fund, will take into consideration criteria such as the soundness of the event proposal, the potential in generating world-wide media coverage, the appeal to overseas audience, the compatibility with Hong Kong's tourism business cycle, the appeal to commercial sponsors, the credentials of the organisers applying for financial support, as well as the overall financial position of IEF. There is no restriction on the nationality of the applicant.

(e) *See Annex*

7. Please indicate how the subsidy is calculated (e.g. on production, on exports, on a fixed or fluctuating basis, etc).

(a)-(c) : 0.25% of the consideration of the transaction.

(d) There is no fixed formula. When considering the level of funding support to be provided to event organisers, the factors set out in paragraph 6(d) above will be taken into consideration.

(e) Under the SSF, the amount of the funding support requested have to be clearly set out and itemised in the applications. The applicant organisations must also provide detailed explanation and justification for the projects. The applications would be carefully assessed by an SSF Vetting Committee which would make recommendations to the Director-General of Industry. In considering whether funding support would be given, the Committee would take into account whether the proposed budget is reasonable and realistic, the benefits that such a project will bring to the service sector and the technical and management capability of the applicant organisation.

8. Please specify any time limits attached to the subsidies described above.

(a)-(c) : no time limit.

(d) The HKTA has to repay all outstanding loan together with the outstanding interests accrued by the end of the 5 years credit period.

(e) There is no specific time limits attached to the projects to be funded by the SSF. However, in considering a project proposal, due consideration will be given to whether the schedule of implementation of the proposed project is well-planned and the duration reasonable. Based on past experience, the duration of most SSF funded projects ranges from 1-2 years.

9. Please indicate any subsidy disciplines already assumed in the context of regional agreements.

Nil.

10. Where such information is available, Members may wish to indicate:

- **subsidy per unit or total annual subsidy outlays in respect of each subsidy granted;**

(a) HK\$2,031,504 in 1997

(b) Data not available¹.

(c) HK\$284,239,484 from 1 June 1996 to 30 November 1997.

(d) Data not available.

(e) Regarding the projects approved so far, the average funding support for each project is HK\$1.83 million.

¹ Reporting on stock borrowing and lending is by the number of transaction, not by traded value, hence no information on the amount of stamp duty exempted.

- *statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.*
 - (a) Regional derivative warrants and convertible bonds were first introduced in Hong Kong in April 1997, the same month when stamp duty exemption was granted on such trade. Since its introduction, there have been 17 regional derivative warrants listed on the SEHK with an average daily turnover of \$20.8 million, or 0.2% in terms of the total turnover of the Exchange. There has been no regional convertible bond listed on the SEHK yet.
 - (b) Since the introduction of the stamp duty exemption, the number of transaction of local stock lending and borrowing has grown substantively. In 1994, the number of transaction reported was 1,245 and in 1997, the figure grew to 20,048, representing growth of about 1,500 times.
 - (c) The stamp duty exemption on stock option trading was effective at the same time when the first stock option was launched in September 1995. Since then, the number of stock options has grown from 1 to 17 with turnover in terms of number of contracts traded grown by 48% over the same period.
 - (d) Data not available.
 - (e) Data not available.

ANNEX

Eligibility Criteria for Services Support Fund (SSF)

1. Funding support will be provided for projects which are beneficial to the overall development of Hong Kong as a service centre or which constitute to the further development of one or more service industries, such as by enhancing international competitiveness or domestic capacity for production.
 2. The benefits must accrue to one or more service industries as a whole, and not just to a single private company or consortium of private companies.
 3. Projects to be funded should be non-profit-making except for the purpose of long-term self-sufficiency.
 4. Funds will not be provided for the creation of civil service posts.
 5. In considering a proposal, due consideration will be given to -
 - (a) the benefit that it will bring to the service sector;
 - (b) whether there is a demonstrated need for the proposed project;
 - (c) the technical and project management capability of the applicant institution/organisation;
 - (d) whether the proposed project's schedule of implementation is well-planned and the duration reasonable;
 - (e) whether the proposed budget is reasonable and realistic;
 - (f) whether there is or likely to be a duplication of the work currently carried out by other organisations; and
 - (g) if recurrent expenditure will be incurred (e.g. manpower costs and other administrative expenses), whether the proposed project has a potential of becoming self-sufficient after a certain period of time.
 6. There is no restriction on the nationality or place of incorporation of the applicant.
-

Working Party on GATS Rules

ISSUES FOR FUTURE DISCUSSIONS ON EMERGENCY SAFEGUARDS

Note by the Secretariat

Revision

1. The Secretariat has prepared this revision of an earlier Note, dated 20 November 1998, at the request of the Working Party on GATS Rules. The revision takes into account the discussion of safeguard-related issues which took place in the Working Party's meetings of 1 December 1998, 19 February 1999 and 16 April 1999. For ease of reference, any substantive changes over the initial version are indicated in italics.

2. The paper considers first, alternative forms that a safeguard mechanism under the GATS may take. It then elaborates on issues for further discussion, building on an outline submitted by Venezuela (Job No. 5412, dated 14 October 1998), contributions by Members in Working Party meetings, and the precedent in Article XIX of GATT 1994 and the Agreement on Safeguards.

I. Alternative forms of a safeguard mechanism

3. Members have suggested several alternative forms for a possible safeguard mechanism under the GATS. One view has been to model it closely on the mechanism in the goods area. *Such a mechanism could include quantitative criteria and procedural restraints.* The applicability of concepts in the Agreement on Safeguards (AS) to the GATS context has been discussed in a previous Note by the Secretariat (S/WPGR/W/8).

4. A second view has been to include safeguard-type provisions for specific sectors in a Member's schedule of specific commitments (this view has been expressed in a Communication from the United States, S/WPGR/W/17). Rules may still need to be developed to be followed by Members who include such safeguard-type provisions in their schedules. It has been suggested that such rules - general, sector-specific or mode-specific - could include the requirement that a Member including a safeguards-type provision in its schedule in a given sector must combine it with a commitment to liberalization in that sector. The extent of liberalization which would justify inclusion of a safeguard provision would presumably be determined through negotiations between the concerned Member and its trading partners. *Concerns have been voiced, however, that the ability to negotiate the inclusion of safeguards may depend on bargaining power, thus disadvantaging small economies; that it could prove conceptually and politically difficult to identify sectors where "unforeseen circumstances" are likely to occur or otherwise earmark potential areas for safeguard action; and that there is no legal basis in the GATS to underpin a conditional and/or sector-specific approach to safeguards.*

5. A third model is contained in Article 5 of the Agreement on Agriculture. The relevant provision does not require injury to domestic industry as a basis for safeguard action. Actions are triggered by import volume increases or import price reductions, and permit the imposition of additional duties up to specified limits. The volume trigger, which leads to the non-discriminatory application of additional duties, is sensitive to the degree of import penetration, while the price trigger, which may result in additional duties on a consignment-by-consignment basis, is related to certain base-year prices in domestic currency. *There have been doubts, however, whether such intense data requirements could be met in services. On the other hand, it has been argued that data problems also exist in the area of goods; they should not prevent the development of a mechanism*

which is sufficiently flexible in terms of quantitative evidence and includes appropriate procedural constraints.

6. A fourth alternative could be modelled on Article 6 of the Agreement on Textiles and Clothing which provides for a transitional safeguard mechanism for products not yet integrated into GATT 1994 and not subject to restriction. Special treatment is envisaged when applying safeguards against small exporters, least-developed countries, wool producers, outward-processing trade and cottage industries. Members need to demonstrate that a particular product is being imported from the country in question in such increased quantities as to cause serious damage, or threat thereof, to the domestic industry producing like and/or directly competitive products. The safeguard is applied selectively to particular exporters. *It has been argued, however, that this seems to contravene the non-discrimination principle enshrined in Article X and imply significant data requirements.*

7. *Recent discussions have focused on the pros and cons of sector-specific versus horizontal safeguards. A conceptual distinction has been made in this context between those sector-specific safeguards which would be negotiated case-by-case for inclusion in schedules and those which would be based on some commonly agreed principles. In addition to the reservations mentioned above (para. 4), it has been noted, however, that the parallel existence of several safeguard variants could lead to fragmentation of the system and affect transparency. A horizontal mechanism, based on generally applicable criteria, would be available to all Members whenever the situation in a given sector and, possibly, mode of supply meets the relevant criteria. However, apart from questions concerning desirability, doubts have been expressed whether such a broad-based mechanism could be made subject to effective disciplines (see also Section II.5). The idea has also been discussed that a safeguards mechanism conceived for general application might be made available only in sectors considered prone to crises situations. The selection of such sectors, however, might prove difficult and could unduly affect trade and investment decisions.*

II. List of issues for future discussions

1. Definition and scope of safeguards in services

- Active subject: who applies the safeguard? E.g. government, professional associations, central banks

8. Safeguards would normally be applied by a Member. It is conceivable that a Member may delegate the responsibility for action to a particular agency. Under the GATS, measures by Members are defined broadly to include measures taken by central, regional or local governments, as well as non-governmental bodies in the exercise of powers delegated by the government. Governments can, therefore, be held accountable in the WTO for decisions or actions affecting trade in services by non-governmental bodies, such as those regulating particular service sectors, which exercise delegated powers. This may be relevant if such bodies were to have responsibility for the administration of safeguard action. *Another view is that safeguard actions should be taken only by governments, thus excluding agencies with delegated powers.*

- Passive subject: to whom is it applied? Country, industry of a country, specific company

9. There are two related aspects of this question: first, on whose behalf is safeguard action taken and second, against whom such action is taken. In the goods case, safeguard action is taken on behalf of a domestic industry - defined to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products. In the Working Party, one view has been that the goods precedent should be followed, and safeguard action be taken to protect all domestically established suppliers of like or directly

competitive services, regardless of ownership and control. According to this view, it would not be desirable to use, for the purpose of safeguard action, the relevant definition in GATS Article XXVIII to determine what constitutes national industry.

10. Another view has been that safeguard action should be available to protect the national industry, which is understood to mean all natural and juridical persons of the Member taking the measure who supply like or directly competitive services. According to this view, the distinction between national and foreign entities should be based on the relevant definition in GATS Article XXVIII. *While it has been argued that some Members' domestic legislation would not allow for such a distinction to be made, it has also been noted that there would be no obligation to introduce it.*

11. The response to the second aspect of the question, concerning against whom safeguard action is taken, depends on the response to the first aspect: all those who do not benefit from such action would suffer its consequences. Thus, it would seem that safeguard action could either only be taken against suppliers of the like or directly competitive products located outside the territory of the Member taking such action, or also against foreign suppliers of such products located in the territory of the Member. Two observations are relevant. First, even Members who wish to make a distinction within the class of domestically established suppliers on the basis of nationality have stated that "acquired rights" of foreign suppliers should be respected, and measures which force disinvestment must not be taken. (It would be necessary to examine closely what is meant by the protection of acquired rights and whether this would be consistent with MFN.) Second, given the Article X requirement that any emergency safeguard measures be "based on the principle of non-discrimination", it is clear that safeguard action cannot be selective, but must be applied on an MFN basis to all foreign services and service suppliers.

- Objective: What is covered? All kinds of services? Which sectors? Which modes of supply?

12. One view has been that a general safeguard provision be created under Article X which would cover all services and sectors. Another view has been that safeguard action should only be available for certain sectors where it is possible to produce adequate quantitative evidence.

13. With regard to modes, it has been argued either that safeguard actions be taken with respect to all modes of supply or *that it would be for the invoking Member to decide on the modal coverage, based on the policy objectives involved.* The argument has been advanced that mode-specific safeguard action could create economic distortions, and that such action may not be effective since it could be circumvented by foreign suppliers switching to unrestricted modes. *However, this possibility should not be overestimated as switching between modes may imply significant costs.* The other view is that action can only be taken with respect to certain modes. The argument is that it may be counterproductive to target all modes; for instance, if the purpose of safeguard action is to prevent unemployment, it may not make sense to restrict new investment or to take action against locally established foreign firms. The issues discussed under the previous item may also be relevant.

2. Situations justifying application. Type of injury.

14. One view is that we should follow the precedent of Article XIX of GATT 1994 and of the Agreement on Safeguards. The determination of whether increased imports have caused or are threatening to cause serious injury to domestic industry should be made by employing, mutatis mutandis, the rules provided for in Article 4:2(a) and 4:2(b) of the Agreement on Safeguards:

- "(a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent

authorities shall evaluate all the relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute or relative terms, the share of the domestic market taken by increased imports, changes in level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

- (b) The determination referred to in the subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than dramatic increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports."

15. It may be deemed appropriate to substitute the notion of "consumption of foreign services" for "imports" to cover supply through each of the four modes; it would also need to be considered whether references should be to "domestic industry", as above, or to "national industry".

16. The other view is that it is likely to be difficult in the area of services, given the state of statistics, to demonstrate injury and show that it is caused by increased imports. *However, it has been noted that data problems in the goods area had not prevented the creation of anti-dumping and similar mechanisms, which rely heavily on empirical information.*

17. It has also been suggested that any safeguard action should also take into account the wider public interest, and not only industry-specific considerations. *Article 3 of SA could be used in this regard. However, it may be necessary to clarify the concept of "public interest" which, according to one view, seems to allow for too much leeway at present.*

18. *To facilitate for future work, it might be helpful to develop a clearer view of the circumstances justifying safeguard action; it has been noted that mere reference to "unforeseen developments" may not be sufficiently precise.*

3. Temporary or provisional measures – periods of application

19. Members seem to agree that any safeguard measure must be temporary. There is also a view that any safeguard measure should be progressively liberalized during the period of application. Article 7 of the AS dealing with Duration and Review of Safeguard Measures may be relevant. This provision contains detailed rules on the length of time for which safeguard measures might be applied, and the interval that must elapse before a new safeguard measure may be introduced on a product that has previously been the subject of safeguard action. *It has been suggested to pay particular attention to the principle of adjustment in defining terms and modalities of safeguard action.*

20. With regard to provisional safeguard measures, it may be useful to consider Article 6 of the AS which permits the adoption of such measures in "critical circumstances where delay would cause damage which it would be difficult to repair ... pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury".

4. Compensation

21. *One view is that Article 8 of the AS could be used as a model. Reservations have been expressed, however, in regard of certain definitional uncertainties and difficulties in determining the level of compensation. Another view is that the need for compensation could be made contingent on the type of adjustment envisaged and the nature of the services-industry involved. Reference has been made to the concept of special and differential treatment of developing countries.*

5. Applicable procedures. Investigation of injury. E.g. statistics, income-tax and VAT declarations, growth of the bound sector

22. No detailed views have been expressed, but it seems obvious that an investigation would be required. Article 3 of the Agreement on Safeguards dealing with investigation *has been suggested as a starting point*. This provision stipulates that a safeguard measure may only be applied following an investigation, and prescribes the procedures that must be followed. *For the determination of injury, the concepts contained in Article 4.2(a) of the AS have been proposed as relevant. The causality requirement in the area of goods, i.e. Article 4.2(b) of the AS, should be translated into the services context, provided some key terms were modified. The Agreement on Implementation of Article VI of GATT (Antidumping Agreement) has been cited as an approach which provided for the necessary flexibility in injury determinations, allowing for action based on "best information available" and for the possibility of consultations with affected Members during an investigation.*

23. *Indicators to be used in establishing injury might include: losses experienced by domestic suppliers; decline in capacity utilisation; capacity reductions; decline in sales; declining productivity; reduction in prices or changes in the price structure; declining number of domestic suppliers; and shrinking employment. An increase in foreign supplies would be reflected in: tax declarations (e.g. for sales taxes); indicators related to financial transactions; statistics maintained by competent professional associations or regulators (including information on market shares or number of foreign professionals); capital flows; and revenue figures. For the determination of causality, data series (performance before and after market entry) could be used in the same way as in the goods area; the burden of proof would rest on the invoking party. It has been noted that any type of administrative information might be used; the standard of proof in such instances would not need to be as high as in penal cases.*

24. *While concerns have been expressed that such information, if it were available, would be subject to confidentiality constraints, it has also been noted that similar constraints have not proved a problem in antidumping or safeguards cases for goods. Article 3:2 of SA specifies the treatment of confidential information.*

6. Applicable measures. National treatment and non-discrimination principles

25. There seem to be agreement that safeguard actions should only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment, as is required by Article 5 of the AS. Safeguard action could take the form of temporary market access restrictions or temporary suspension of the national treatment principle. While it has been suggested that measures could also take the form of foreign exchange restrictions and limitations on the movement of capital, this may raise questions of consistency with GATS Article XI. *It is conceivable that safeguard actions involve the temporary suspension of other obligations, resulting for example from additional commitments under Article XVIII, but no detailed views have been expressed so far. Similarly, there has been no in-depth discussion of whether specific types of measures (e.g. subsidies) should be deemed preferable to others (e.g. quotas). However, the possibility has been raised of limiting the scope of safeguard actions only to measures falling under Article XVI.*

26. Some of the issues discussed under other items, such as those pertaining to the modal application of safeguard action, are also relevant.

7. Notification and Transparency

27. Members have emphasized the need for transparency and advance notification, but no specific discussion has taken place. The relevant elements of the AS include: Article 3 on Investigation which requires public notice to interested parties, public hearings and publication of findings; Article 12 on Notification and Consultation which requires notification to the Committee on

Safeguards at each stage on initiation of an investigation, finding serious injury, and taking a decision to apply measures, as well as giving Members with substantial export interest in the product an opportunity for prior consultations; and Article 13 on Surveillance which establishes the Committee on Safeguards with responsibility *inter alia* for monitoring the implementation of the AS.

8. Special and differential treatment

28. Some Members have suggested that there should be special and differential treatment for developing countries. Article 9 of the AS dealing with Developing Country Members may be relevant. This provision stipulates that safeguard measures shall not be taken against a product originating in a developing country Member as long its share of imports of the product concerned in the importing country does not exceed certain threshold levels. The provision also allows developing countries greater flexibility with respect to the length of time for which safeguard measures might be applied, and the interval that must elapse before a new safeguard measure may be introduced on a product that has previously been the subject of safeguard action.

Working Party on GATS Rules

**INTERPRETATION OF PROCUREMENT-RELATED PROVISIONS IN GATT
POSSIBLE APPLICATION TO ARTICLE XIII OF GATS**

Background Note by the Secretariat

1. This Note has been prepared in response to a request by the Working Party on GATS Rules at its meeting of 19 February 1999. It provides background information on the interpretation of GATT provisions on government procurement, which are similar to those contained in Article XIII:1 of GATS. The purpose is to assist the Working Party in its discussion regarding the transactions that might be considered to constitute procurement of services. In preparing this Note, the Secretariat has drawn on GATT/WTO documents and publications, which delegations might want to read in parallel, particularly the Guide to GATT Law and Practice. However, this Note should not be regarded as an exhaustive or authoritative interpretation of GATT or GATS provisions.

I. RELEVANT PROVISIONS

2. In excluding government procurement of services from the application of Articles II, XVI and XVII of the GATS, Article XIII:1 refers to "... *procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale...*" (emphasis added). The Agreement contains no further definition of these terms, nor has any interpretation been provided by competent WTO bodies. However, the interpretation given to similar provisions under GATT might provide some useful guidance.

3. Under Article III:8(a) of GATT, government procurement is exempt from the principle obligation to national treatment with regard to internal taxation and regulation. The Article refers to "...procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale..." (emphasis added).

4. The two provisions not only fulfil a similar function, namely to exclude government procurement from the application of certain disciplines of the Agreements concerned, but are also formulated in almost identical terms. Given this concordance, one could reasonably assume that Article III of GATT served as a model for the drafting of Article XIII of GATS.

5. An additional reference to government procurement is contained in Article XVII:2 of GATT.¹ It exempts government procurement from the disciplines imposed by Article XVII:1 in respect of State Trading Enterprises, stating that these disciplines "...shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the

¹ GATT Article XVII:2 "The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods* for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment...."

production of goods* for sale..." (emphasis added). Although the purpose of these provisions is similar to those contained in Articles XIII:1 (GATS) and III:8 (GATT), it uses different language to define the excluded procurement transactions. Thus, rather than "governmental purposes", reference is made to "immediate or ultimate consumption in governmental use". The second defining element used in GATT Article III (commercial resale/use) is retained in principle in Article XVII:2, except for the word "commercial".

II. INTERPRETATIONS

A. "GOVERNMENTAL PURPOSES" VERSUS "GOVERNMENTAL USE"

Drafting history

6. Since the exceptions of Article III:8(a) and XVII:2 are part of the same legal framework, the question arises as to the reasons for such differences. Are they intended to establish different criteria for procurement transactions in the two areas or have the relevant terms ("governmental purposes" and "governmental use") been considered equivalent at the time of drafting?

7. As to the drafting history of Article XVII, it has been noted that "at Havana, paragraph 2 of the Geneva Draft Article 30 [it corresponds to paragraph 2 of GATT Article XVII] was amended, (1) to conform the language to the wording of Article 18:8(a) [corresponds to Article III:8(a) of GATT] to avoid difficulties of interpretation and (2) to extend the "fair and equitable treatment" rule to also cover "the laws and regulations and requirements referred to in paragraph 8(a) of Article 18".² This seems to suggest that, originally, the two provisions were meant to refer to the same type of government procurement. In the same vein, John Jackson concludes that "the government procurement exception [for state trading enterprises] was intended to be virtually the same as that expressed in Article III, paragraph 8(a), but the wording diverged when the Havana changes were picked up in GATT Article III but not in Article XVII, although the Havana changes were stated to be non-substantive."³

8. The drafting history of Article III:8(a) recounts that it had been agreed at Havana that "paragraph 5 [III:8] was an exception to the whole of Article 18 [III]". It has been noted that "the Sub-Committee had considered that the language of paragraph 8 would except ... laws, regulations and requirements governing purchases effected for governmental use where resale was only incidental". Subsequently, during discussions at Havana "it was stated that paragraph 8 had been redrafted... specifically to cover purchases made originally for governmental purposes and not with a view to commercial resale, which might nevertheless later be resold..." (emphasis added).⁴

Accession Working Parties

9. The report of the Working Party on Accession of Venezuela notes that, in relation to purchases by State enterprises, some members had questioned whether buy-national provisions were consistent with Articles XVII and III of the General Agreement. "A member added that in order to conform with Article III obligations the preference...should only be applied to imports by the State for its own consumption and not to imports by enterprises engaged in normal commerce..." (emphasis added). It is worth noting that in this context "consumption" is used instead of "purposes". The representative of Venezuela stated that "... Decree 1182 [buy national provision] will be brought into conformity with Article III of the General Agreement... its application to purchases other than those for ultimate consumption in governmental use would not deny the benefits of Article III to imports of

² GATT, Analytical Index: Guide to Gatt Law and Practice, p. 485.

³ Jackson, John; *World Trade and the Law of Gatt*, Boos-Merrill Company, 1969; pp. 291 and 359.

⁴ GATT, Analytical Index: Guide to Gatt Law and Practice, p. 190.

other contracting parties..." (emphasis added). It seems that in this context the definitions of government procurement contained in the two GATT Articles were used interchangeably to cover acquisitions by the government "for its own consumption and not for normal commerce".⁵

Panel reports

10. The non-adopted 1992 Panel Report on "United States - Procurement of a sonar mapping system", in addressing relevant provisions of the Agreement on Government Procurement (AGP), also referred to terms contained in Articles III:8 and XVII:2 of GATT.⁶ The issue at hand was whether an acquisition by a private company, in connection with a contract between this company and a governmental entity, constituted government procurement under the AGP or private procurement subject to GATT disciplines. While the AGP did not define "government procurement", the Panel noted that its Article I referred to "such methods as purchase or as lease, rental or hire-purchase, with or without an option to buy". Since all these methods were means of obtaining the use or benefit of a product, the Panel considered that the word "procurement" could be understood accordingly.⁷

11. Attempting to clarify scope and coverage of "government procurement" in the AGP, the Panel looked at references contained in the GATT. Thus, its attention was drawn to the terms "procurement by governmental agencies of products purchased for governmental purposes" [Article III:8(a)] and "products for immediate or ultimate consumption in governmental use" [Article XVII:2].

12. In this respect, the Panel observed that "the emphasis [of GATT provisions] on the concepts of 'governmental use', 'governmental purposes', and 'procurement by government agencies' supported its [i.e. the Panel's] own understanding of the concept of government procurement." The Panel thus felt that in considering any particular case, the following characteristics, none of which alone could be decisive, provided guidance as to whether transactions should be regarded as government procurement within the meaning of Article I:1(a) of GPA: payment by government, governmental use of or benefit from the product, government possession and government control over the obtaining of the product.

13. Although the Panel did not elaborate further on the definition of "governmental use" and "governmental purposes", it found a consistent, mutually supportive, relationship between them and its own characterization of government procurement. In considering the specifics of the case, the Panel noted that the US governmental entity "...would also enjoy the benefits of the system's purchase - Antarctic research and the preparation of seabed maps - which were clearly for government purposes, and the Government can thus be regarded as the ultimate beneficiary of the system...".

B. "COMMERCIAL RESALE" AND "USE IN THE PRODUCTION OF GOODS FOR COMMERCIAL SALE"

14. According to the drafting history of Article III, while paragraph 8(a) of Charter Article 18 on national treatment was revised at Havana by adding the word "commercial" before "resale" and "sale", and this change was brought into Article III of the General Agreement in 1948, parallel changes which had been made to paragraph 2 of Article 29 (on government procurement) were not brought over into the paragraph 2 of Article XVII.⁸

⁵ Accession of Venezuela, Report of the Working Party, L/6696, adopted on 11 July 1990, paras. 68-71.

⁶ GPR.DS1/R, dated 23 April 1992 (not adopted).

⁷ GATT, Analytical Index: Guide to Gatt Law and Practice, p. 192.

⁸ *Ibidem*, p. 193.

15. Reportedly, the change was made to cover cases in which governments had received tied loans to purchase equipment from the country granting the loan, and which might resell such equipment later to private entities. The new wording was intended "...to cover purchases made originally for governmental purposes and not with a view to commercial resale, which might nevertheless later be sold."⁹ Thus, it seems that the word "commercial" was introduced to ensure the continued application of the national treatment exemption to procurement of goods which are sold after use.

⁹ *Ibidem*, p. 190.

Working Party on GATS Rules

ISSUES FOR FUTURE DISCUSSIONS ON EMERGENCY SAFEGUARDS

Note by the Secretariat

1. This paper was requested by the Working Party on GATS Rules in its meeting of 6 October 1998. The paper considers first, alternative forms that a safeguard mechanism under the GATS may take. It then elaborates on the list of issues identified in the outline submitted by Venezuela (Job No. 5412, dated 14 October 1998), drawing upon the submissions made by Members and the precedent in Article XIX of GATT 1994 and the Agreement on Safeguards.

I. Alternative forms of a safeguard mechanism

2. Members have suggested several alternative forms for a possible safeguard mechanism under the GATS. One view has been to model it closely on the mechanism in the goods area. The applicability of concepts in the Agreement on Safeguards (AS) to the GATS context has been discussed in a previous Note by the Secretariat (S/WPGR/W/8).

3. A second view has been to include safeguard-type provisions for specific sectors in a Member's schedule of specific commitments (this view has been expressed in a Communication from the United States, S/WPGR/W/17). Rules may still need to be developed to be followed by Members who include such safeguard-type provisions in their schedules. It has been suggested that such rules - general, sector-specific or mode-specific - could include the requirement that a Member including a safeguards-type provision in its schedule in a given sector must combine it with a commitment to liberalization in that sector. The extent of liberalization which would justify inclusion of a safeguard provision would presumably be determined through negotiations between the concerned Member and its trading partners.

4. A third view has been to use the model in Article 5 of the Agreement on Agriculture. This Article deals with Special Safeguard Provisions which are triggered by import volume increases or import price reductions, and permit the imposition of additional duties up to specified limits. The volume trigger is sensitive to the degree of import penetration, while the price trigger is related to certain base-year average prices in domestic currency. The volume trigger leads to the non-discriminatory application of additional duties, whereas the price trigger leads to additional duties fixed on consignment-by-consignment basis. It is notable that the provision does not require injury to domestic industry as a basis for safeguard action.

5. A fourth view has been to use the model in Article 6 of the Agreement on Textiles and Clothing. This Article deals with a transitional safeguard mechanism which has been established for products not yet integrated into GATT 1994 and not subject to restriction. This safeguard is applied selectively to particular exporters. Safeguards may be maintained for a maximum of three years. Special treatment is envisaged when applying safeguards against small exporters, least-developed countries, wool producers, outward-processing trade and cottage industries. It is notable that this provision requires a Member to demonstrate that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or threat thereof, to the domestic

industry producing like and/or directly competitive products; and that the damage can be attributed to imports from the country in question.

II. List of issues for future discussions

6. The italicised headings below have been taken from the outline submitted by Venezuela (Job No. 5412, dated 14 October 1998).

1. *Definition and scope of safeguards in services.*

- *Active subject: who applies the safeguard? E.g. government, professional associations, central banks.*

7. Safeguards would normally be applied by a Member. It is conceivable that a Member may delegate the responsibility for action to a particular agency. Under the GATS, measures by Members are defined broadly to include measures taken by central, regional or local governments, as well as non-governmental bodies in the exercise of powers delegated by the government. Governments can, therefore, be held accountable in the WTO for decisions or actions affecting trade in services by non-governmental bodies, such as those regulating particular service sectors, which exercise delegated powers. This may be relevant if such bodies were to have responsibility for the administration of safeguard action.

- *Passive subject: to whom is it applied? Country, industry of a country, specific company.*

8. There are two related aspects of this question: first, on whose behalf is safeguard action taken and second, against whom such action is taken. In the goods case, safeguard action is taken on behalf of a domestic industry - defined to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products. In the Working Party, one view has been that the goods precedent should be followed, and safeguard action be taken to protect all domestically established suppliers of like or directly competitive services, regardless of ownership and control. According to this view, it would not be desirable to use, for the purpose of safeguard action, the relevant definition in GATS Article XXVIII to determine what constitutes national industry.

9. Another view has been that safeguard action should be available to protect the national industry, which is understood to mean all natural and juridical persons of the Member taking the measure who supply like or directly competitive services. According to this view, the distinction between national and foreign entities should be based on the relevant definition in GATS Article XXVIII. It has been noted, however, that individual Members were not obliged to make this distinction when taking safeguard action.

10. The response to the second aspect of the question, concerning against whom safeguard action is taken, depends on the response to the first aspect: all those who do not benefit from such action would suffer its consequences. Thus, it would seem that safeguard action could either only be taken against suppliers of the like or directly competitive products located outside the territory of the Member taking such action, or also against foreign suppliers of such products located in the territory of the Member. Two observations are relevant. First, even Members who wish to make a distinction within the class of domestically established suppliers on the basis of nationality have stated that "acquired rights" of foreign suppliers should be respected, and measures which force disinvestment must not be taken. (It would be necessary to examine closely what is meant by the protection of acquired rights and whether this would be consistent with MFN.) Second, given the Article X

requirement that any emergency safeguard measures be "based on the principle of non-discrimination", it is clear that safeguard action cannot be selective, but must be applied on an MFN basis to all foreign services and service suppliers.

- *Objective: What is covered? All kinds of services? Which sectors? Which modes of supply?*

11. One view has been that a general safeguard provision be created under Article X which would cover all services and sectors. Another view has been that safeguard action should only be available for certain sectors where it is possible to produce adequate quantitative evidence.

12. With regard to modes, one view has been that safeguard action be taken with respect to all modes of supply. The argument has been advanced that mode-specific safeguard action could create economic distortions, and that such action may not be effective since it could be circumvented by foreign suppliers switching to unrestricted modes. The other view is that action can only be taken with respect to certain modes. The argument is that it may be counterproductive to target all modes; for instance, if the purpose of safeguard action is to prevent unemployment, it may not make sense to restrict new investment or to take action against locally established foreign firms. The issues discussed under the previous item may also be relevant.

2. *Situations justifying application. Type of injury.*

13. One view is that we should follow the precedent of Article XIX of GATT 1994 and of the Agreement on Safeguards. The determination of whether increased imports have caused or are threatening to cause serious injury to domestic industry should be made by employing, *mutatis mutandis*, the rules provided for in Article 4:2(a) and 4:2(b) of the Agreement on Safeguards:

- "(a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all the relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute or relative terms, the share of the domestic market taken by increased imports, changes in level of sales, production, productivity, capacity utilisation, profits and losses, and employment.
- (b) The determination referred to in the subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than dramatic increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports."

14. It may be deemed appropriate to substitute the notion of "consumption of foreign services" for "imports" to cover supply through each of the four modes; it would also need to be considered whether references should be to "domestic industry", as above, or to "national industry".

15. The other view is that it is likely to be difficult in the area of services, given the state of statistics, to demonstrate injury and show that it is caused by increased imports.

16. It has also been suggested that any safeguard action should also take into account the wider public interest, and not only industry-specific considerations.

3. *Temporary or provisional measures.*

17. Members seem to agree that any safeguard measure must be temporary. There is also a view that any safeguard measure should be progressively liberalized during the period of application. Article 7 of the AS dealing with Duration and Review of Safeguard Measures may be relevant. This provision contains detailed rules on the length of time for which safeguard measures might be applied, and the interval that must elapse before a new safeguard measure may be introduced on a product that has previously been the subject of safeguard action.

18. With regard to provisional safeguard measures, it may be useful to consider Article 6 of the AS which permits the adoption of such measures in “critical circumstances where delay would cause damage which it would be difficult to repair ... pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury”.

4. *Applicable procedures. Investigation of injury. E.g. statistics, income-tax and VAT declarations, growth of the bound sector.*

19. No detailed views have been expressed, but it seems obvious that an investigation would be required. Article 3 of the Agreement on Safeguards dealing with investigation may be relevant. This provision stipulates that a safeguard measure may only be applied following an investigation, and prescribes the procedures that must be followed.

5. *Applicable measures. National treatment and non-discrimination principles.*

20. There has been limited discussion of measures. There would seem to be agreement that safeguard action should only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment, as is required by Article 5 of the AS. Safeguard action could take the form of temporary market access restrictions or temporary suspension of the national treatment principle. It is also conceivable that safeguard action may involve the temporary suspension of other obligations, such as those arising from additional commitments undertaken under Article XVIII. While it has been suggested that measures could also take the form of foreign exchange restrictions and limitations on the movement of capital, this may raise questions of consistency with GATS Article XI.

21. Some of the issues discussed under other items, such as those pertaining to the modal application of safeguard action, are also relevant.

6. *Periods of application or time-limits.*

22. See the discussion under item 3 above.

7. *Transparency.*

23. Members have emphasized the need for transparency but no specific discussion has taken place. The elements of the AS which are relevant include Article 3 on Investigation which requires public notice to interested parties, public hearings and publication of findings; Article 12 on Notification and Consultation which requires notification to the Committee on Safeguards at each stage on initiation of an investigation, finding serious injury, and taking a decision to apply measures, as well as giving Members with substantial export interest in the product an opportunity for prior consultations; and Article 13 on Surveillance which establishes the Committee on Safeguards with responsibility *inter alia* for monitoring the implementation of the AS.

8. *Notifications.*

24. Members agree that there should be advance notification. Article 12 of the AS dealing with Notification and Consultation, mentioned above, may be relevant.

9. *Special and differential treatment.*

25. Some Members have suggested that there should be special and differential treatment for developing countries. Article 9 of the AS dealing with Developing Country Members may be relevant. This provision stipulates that safeguard measures shall not be taken against a product originating in a developing country Member as long its share of imports of the product concerned in the importing country does not exceed certain threshold levels. The provision also allows developing countries greater flexibility with respect to the length of time for which safeguard measures might be applied, and the interval that must elapse before a new safeguard measure may be introduced on a product that has previously been the subject of safeguard action.

Working Party on GATS Rules

DRAFT

**REPORT OF THE WORKING PARTY ON GATS RULES
TO THE COUNCIL FOR TRADE IN SERVICES**

1. The Working Party on GATS Rules held five formal meetings in 1998. In each meeting, the Working Party considered all three negotiating mandates: emergency safeguard measures under Article X, government procurement under Article XIII and subsidies under Article XV.

Negotiations on emergency safeguard measures under Article X of the GATS

2. Differing views have been expressed by Members with regard to the desirability of developing an emergency safeguard mechanism under the GATS. Substantive discussions are continuing on the subject without prejudging the position of any delegation in respect of the desirability, feasibility or form of any possible emergency safeguard mechanism.

3. In recent meetings, the Working Party has focused on four key questions identified by the Chairperson in an informal note (dated 3 June 1997): (i) On whose behalf would emergency safeguard action be taken? (ii) In what circumstances would emergency safeguard action be taken and what would be the purpose of such action? (iii) What approach should be adopted in respect of injury/adverse effects, and the relevant causal link between injury/adverse effects and commitments under the GATS? (iv) What measures would be taken under the emergency safeguard mechanism? Are some measures deemed more suitable than others?

4. The delegation of Hong Kong, China, made a submission suggesting some broad principles that might be included as part of any safeguard mechanism (circulated as S/WPGR/W/26). The Chairperson circulated an informal note (dated 16 September 1998) containing responses, not necessarily agreed, to the above four questions. The questions raised in this note were discussed during an informal brainstorming session on 1 October 1998 and in subsequent meetings. The delegation of Venezuela made an informal submission (dated 14 October 1998) listing issues for the organization of future discussions on emergency safeguards. The Secretariat prepared a paper (S/WPGR/W/27) describing, first, alternative forms that a safeguard mechanism under the GATS may take and then elaborating on the list of issues identified in the submission from Venezuela.

Negotiations on government procurement under Article XIII of GATS

5. Costa Rica submitted a response to the questionnaire on national procurement regimes (S/WPGR/W/11/Add.22), adding to the twenty-one responses received during 1997. An indicative tabulation relating questionnaire responses to possible elements of multilateral disciplines, presented in a note from the Chairperson (dated 21 February 1997), has formed the basis for a structured consideration of these elements. In recent meetings, discussion has focused on the scope and coverage of any disciplines on government procurement on the basis of a non-paper submitted by the European Communities and Their Member States (dated 13 February 1998). In this context, the issue of how concessions should be treated has received particular attention. Members have emphasized

the need for the Working Party to continue to coordinate work with the Working Group on Transparency in Government Procurement .

Negotiations on subsidies under Article XV of GATS

6. Delegations expressed the need to continue the technical analysis of subsidies related to trade in services. To this end the Secretariat prepared a note presenting information on the subject contained in WTO Trade Policy Reviews (circulated as S/WPGR/W/25). The Chairperson circulated an informal note (dated 3 April 1998) to facilitate identification of the circumstances in which subsidies may cause trade distortions. Discussion on the relevant conceptual and legal issues is continuing even as efforts are being made to advance the information exchange.

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/W/11/Add.22

3 April 1998

(98-1399)

Working Party on GATS Rules

Original: Spanish

COMMUNICATION FROM COSTA RICA

Reply to the Questionnaire on Government Procurement of Services

Addendum

The following communication is being circulated at the request of Costa Rica to members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

In Costa Rica, government procurement covers all contracting activities conducted by public entities. This includes not only procurement of all types of goods and services, but also the construction of public works, concessions for government facilities, public services management concessions, public works concessions (governed by a special law) and the sale and leasing of government property.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

Each institution administers its own procurement activity. Only in the case of the Executive are the activities centralized in one unit, the National Supply Unit of the Ministry of Finance, although a plan for the decentralization of the Ministries is currently being introduced.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

With respect to government procurement, Article 182 of the Constitution stipulates that:

"Public works contracts concluded by the State, the municipalities and the autonomous institutions, procurement using funds from such entities, and the sale or lease of goods belonging to them shall be put out to tender, in accordance with the law as to the amount concerned."

The laws enacted in the light of the above constitutional provision are: the Law on Government Procurement (Law No. 7494 of 2 May 1995) which came into force on 1 May 1996, and the Regulation to the Law on Government Procurement (Executive Decree No. 25038-H), published in the Official Journal of 28 March 1996.

This Law on Government Procurement governs the procurement activities of:

- Executive organs;
- the Judiciary;
- the Legislature;
- the Supreme Court of Elections;
- the Office of the Comptroller-General of the Republic;
- the Office of the Ombudsman;
- the decentralized territorial and institutional sector;
- public enterprises (the majority of whose share capital is not in private hands);
- non-State public entities with more than 50 per cent public financing.

Other laws relating to procurement by public entities are:

- Organic Law of the Central Bank of Costa Rica, Article 171 of which regulates the procurement activities of State commercial banks and the Central Bank itself. According to this Article, each bank must issue its own procurement regulations, which must be approved by the governing board and by the Office of the Supervisor of Financial Entities;
- Municipal Code as regards certain regulations, in particular those concerning the sale and donation of municipal property;
- General Law on Public Works Concessions and the Regulations thereto, which regulate public works procurement;
- National Emergency Law, which regulates the action to be taken when a national state of emergency is declared;
- Law on Labour Corporations and Regulations thereto, developed to facilitate the shifting of personnel from the public sector to the private sector for the performance of auxiliary services;
- Law on Hydrocarbons and Regulations thereto, which regulate the procedures for granting concessions for mining and extraction of hydrocarbons;
- Law on Passenger Transport against Payment, which establishes the procedures for granting concessions in that sector and in the taxi transport sector;
- Precedents established by the Office of the Comptroller-General of the Republic, which is the administrative entity responsible for issuing guidelines for the interpretation of regulations in that area.

3.(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The Costa Rican regime does not distinguish between the procurement of goods and services. The procedures are the same, as are the rules to determine the appropriate procedures.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

The procurement procedures applied in Costa Rica are:

- (i) Public or open tender, in which any interested person may participate;
- (ii) tendering by registration, in which any interested person may submit a bid whether invited to do so or not provided that person appears in the register of bidders held by each institution at the time of opening of the tender;
- (iii) selected tendering, in which, as in the case of tendering by registration, any interested party appearing in the register of bidders prior to the opening of the tender may submit a bid, whether or not directly invited to participate;
- (iv) single tendering, under which the government may directly select the bidder after examining the prices and sometimes considers only one supplier;
- (v) Auctioning, essentially an oral procedure used for the sale or leasing of government property.

4.(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

The use of tendering procedures depends on the ordinary annual budget of the institution concerned and the estimated value of the specific transaction. The public sector is divided into ten categories of entities according to budget. For each category, a threshold is established for the use of open tendering together with the amounts below which each of the other procedures may be used. In certain specific cases, the law expressly indicates that only open tendering may be used.

4.(c) What are the time-limits for the submission of bids?

In the case of open tenders, the time-limit for the submission of bids is 30 working days for public works contracts or contracts involving goods or services that are imported or to be imported, and 15 working days for all other types of goods and services.

In the case of tendering by registration, the time-limit for the submission of bids is ten working days, regardless of the nature of the procurement.

For selective tender procedures, the time-limit is three working days.

No time-limit has been set for single tendering.

In the case of auctioning, the minimum time-limit between the publication of the invitation to tender and the date of the auction itself is ten working days.

In the case of open tenders for public works concessions, the time-limit is 60 calendar days.

Publicity for inviting tenders

5.(a) How are intended procurements publicized? Are invitations to tender published? If so, where, and in what languages?

In the case of open tenders, publication of the call to tender is mandatory in the Official Journal and optional in newspapers with national or international circulation.

In the case of tendering by registration, if there are more than ten registered bidders the government may decide to publish the invitation in the Official Journal or to invite the bidders directly. If there are less than five bidders registered, publication in the Official Journal is mandatory. In either case, the administration may choose to publish the notice of invitation to tender in newspapers with national or international circulation, but not in lieu of publication in the Official Journal.

In selective tender procedures, publication of calls to tender in the Official Journal is not mandatory. As in the case of tendering by registration, notices can be published in national newspapers.

Notices or invitations are published in Spanish, which is the official language.

5.(b) Do the extent and form of publicity differ according tendering procedures applied and/or the value of the procurement?

They do differ - see above.

5.(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The following details are required to be published in the invitation:

- Identification of the procuring administration;
- type and number of the tender;
- brief but clear description of the procurement;
- identification of the office providing information;
- cost of the tender documentation and where it can be obtained;
- date, time-limit and address for the submission of bids.

5.(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set.

The government may provide the documentation free of charge or may charge for the reproduction of the documents, depending on the procurement and the scope and complexity of the tender conditions.

5.(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

Electronic means have not so far been used to advertise procurement opportunities.

Requirements laid down for possible suppliers**6.(a) Are there registration, residence or other requirements for potential suppliers?**

For certain types of procedures (tendering by registration, selective tendering and single tendering) potential bidders must enter their names in a register in order to submit a tender. However, registration may take place once the proceedings are already underway. As regards residence, there are no requirements except in the case of public works concessions. In Costa Rica, any foreign company may conduct business provided it does so in conformity with the laws in force.

Article 108 of the Law on Government Procurement stipulates that "Each institutional supply agency shall keep a register of suppliers interested in participating in government procurement procedures (...). To enter such registers, potential participants must establish with the administration their natural or legal personality, their nationality, the authority of their representatives and the nature of their intended participation (as direct suppliers or as intermediaries)."

Under Article 5.4 of the Regulations to the Law on Government Procurement, a foreign bidder may participate through a representative of foreign firms. The bidder must so state expressly in the original proposal. Representatives of foreign firms may participate directly on behalf of a third party if they can provide reliable proof of their status as representatives by supplying a certified copy of the representation contract. Moreover, all forms of representation recognized by common law are permitted. The tender conditions set forth the requirements for domestic and foreign bidders to establish certainty with respect to their existence, representation and capital stock.

Finally, it should also be noted that Article 366 of the Commercial Code states that all foreign firms may conduct their business freely in Costa Rica through distributors, concessionaires, agents or factors and representatives of foreign companies, either Costa Rican or foreign, with the exception of agencies and branch offices of foreign companies whose products are made in Costa Rica, which may directly and freely distribute and represent their own products and products of duly certified Central American origin.

For public works concessions, there are specifications for foreign participating countries, which are required, before signing a contract, to submit a declaration sworn before a notary in which they irrevocably undertake to comply with the requirements of Article 8, paragraph 4 of Law No. 7404 which stipulates that: "If the contract is awarded to a foreign legal person, that person must transfer its head office to Costa Rica before signing the contract. If such legal person should decide not to transfer its head office, it must set up a domestic joint stock company in which it has full ownership, to act as a concessionaire. The shares of the concessionaire must be registered."

It is also important to note that according to Article 14 of the said Law, all conditions being equal, priority is given to nationals. This Article states that where a possible concessionaire does not intend to construct the public works directly, but rather to sub-contract the work to another company, preference will be given to bids which indicate that sub-contracted work will be carried out by domestic companies.

The sworn declaration and the contract must be signed by a person authorized to conclude contracts and enter into commitments on behalf of the company, who must prove such status by presenting an authentic act, issued in accordance with the laws of his country of origin and authenticated by the Consul of Costa Rica and the Ministry of Foreign Affairs. The certificate showing that the company has been duly constituted in its principal place of business must also be authenticated through the same channels.

The purposes of the company, whether Costa Rican or foreign, must expressly include the performance of public works concessions. The company is asked to ensure that the social pact defines the social conditions and grants the necessary authority to conclude, perform and comply with the contract in all its details, and assume the legal and economic responsibilities attached thereto *vis-à-vis* the government and *vis-à-vis* third parties. This social pact must extend at least ten years beyond the concession.

6.(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of intended procurement?

The Law on Government Procurement and the Regulations thereto provide for two types of guarantees. The first is a participation guarantee, which may be from 1 to 5 per cent of the amount of the procurement as defined in the tender conditions. This gives the offer legitimacy, and permits any errors that are rectifiable to be corrected. The exact amount is set by the government, and is determined by the complexity of the procurement and the need to protect against any damage that could be caused by breach of contract on the part of the bidder. If the amount has not been mentioned in the tender conditions, the minimum amount mentioned above is applied. The government may also establish a fixed guarantee amount (in cases where the amount cannot be determined or where no expenditure is involved for the government). For further details, see Article 33 of the above-mentioned Regulations.

This guarantee is required for open tendering and tendering by registration, and may or may not be required for the other procedures.

It is also possible to establish a so-called floating guarantee, which backs the same bidder in several tender procedures (Article 34 of the above-mentioned Regulation).

The second guarantee is a performance guarantee, and represents 5 to 10 per cent of the contract amount, as must also be specified in the tender conditions. It is used to compensate for any damages or prejudice attributable to the contractor. If there is a penalty clause for delay, the guarantee may only be enforced if the contractor refuses to cancel the amount in question.

The performance guarantee is required for open tendering and tendering by registration, and is optional for the other procedures. It must be specified in the tender conditions, failing which it is understood to represent 5 per cent. If the tender conditions do not specify the time-limit for providing the guarantee, that limit is understood to be ten working days following the signature of the act. The government may also establish fixed amounts (see Articles 34 and 35 of the above-mentioned Regulation).

Three types of guarantee are required for public works concessions: a guarantee of participation in the open tendering procedure, a performance guarantee for the construction of the works, and a performance guarantee for the operation of the works.

The participation guarantee is intended to ensure the seriousness of the bid until the corresponding public instrument has been signed and the next guarantee deposited. Its value varies from 1 to 5 per cent depending on the amount allocated in the bid to the construction of the new works or to the repair, extension, preservation or renovation of the already existing public works.

The performance guarantee amounts to 5 per cent of the cost allocated in the bid to the construction of the new works, or of the cost of the repair, extension, preservation or renovation of the already existing works. Subject to authorization by the Office of the Comptroller General and to the

conditions expressly set forth in Article 28 of the Regulations to Law No. 7404, it is possible to demand a higher percentage. Unless otherwise indicated in the tender conditions, it is understood that the guarantee must be deposited within 30 working days following the date of the public act to be signed.

The performance guarantee for the operation of the works must be deposited within ten working days following the date of handing over of the works to the full satisfaction of the government. The amount is fixed by the government, and consists of a percentage based on the average annual expenditure deemed necessary to look after, repair and maintain the goods in question.

6.(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

The registers of suppliers do not address aspects such as the financial capability or experience of the enterprise. They contain more general data on potential bidders such as, for example, their address, ownership, representatives and company origin.

These lists must be updated at least once a year, but any interested party may ask to be included in the appropriate register at any time subject to the requirements laid down by the institution concerned.

The financial capability of a firm tends to be evaluated during the review of the bids in conformity with the tender conditions. Article 45 of the Regulations to the Law on Government Procurement stipulates that "The tender conditions must contain at least the following: ... precise indication of the documents to be submitted for the evaluation of the suitability of the bidder from the economic, technical or other point of view when the nature or complexity of the transaction so warrants."

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

Following the criteria indicated in the tender documents, the tender is awarded to the bid which on balance is deemed to be the most suitable.

In the case of open tendering, Article 56, paragraph 2 of the Regulations of the Law on Government Procurement stipulates that the government must study and assess the bids in the light of the conditions and specifications contained in the tender conditions and the relevant regulations. Bidders that fail to meet basic tender conditions or that are in breach of the relevant legal provisions in any significant way are excluded from the procedure. As stated in Article 56, paragraph 3 of the Regulations, bids in which the price is unacceptable must also be rejected.

The Regulations to the Law on Government Procurement (Article 45.1.10) also state that the tender conditions must contain a description of the system for the evaluation and comparison of bids, expressly indicating the factors to be considered, the degree of importance of each such factor in the overall comparison of bids and the method of evaluating and comparing bids in relation to each factor.

Once the bids that are eligible from the legal, financial and technical point of view have been selected, the government proceeds to their qualification, seeking to determine, in accordance with the tender conditions, which bid is most likely to satisfy the public interests pursued.

For tendering by registration and selective tendering procedures, the Regulations state that the government must apply the rules and principles of public tendering, particularly with respect to the conditions governing selection and award, to the extent that they are compatible with each individual tendering procedure.

In the case of public works concessions, the government must appoint an Assessment Commission for each procedure. This Commission is responsible for analysing and evaluating the bids. This involves carefully checking the bids against the conditions and specifications contained in the tender documents and comparing in accordance with the methodology defined therein. The rejection of bids on the grounds that they are not in line with the estimates reached by the government in previous studies is prohibited.

The analysis should make it possible to establish which bid or bids are most conducive to the general interest bearing in mind the nature of concessions and the particular characteristics of the works or services concerned.

Substantive criteria such as the price of the goods or services, quality, the supplier's record, after-sales service or any other element considered in the award must be duly indicated in the tender conditions, which must specify the criteria used and the weight given to each one of them.

7.(b) Is procurement subject to any offset provisions, such as local content, technology transfer or counter-trade requirements?

There are no offset measures.

7.(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

No preference is given to any particular enterprises or group of enterprises. One of the underlying principles of government procurement in Costa Rica is the principle of non-discrimination.

7.(d) Do the procurement criteria differ according to sector or region of the economy?

There is no difference according to sector or region of the economy.

7.(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The extent of discretion consists simply in the possibility of defining the factors and parameters which form the system of qualification for a particular tender and their weight or influence in a specific case. Once this has been defined, the government no longer has any discretion, since a properly- structured and well-balanced evaluation system must inevitably lead to the selection of the best bid, which is the one that achieves the highest rating.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

Tenders are received by the office responsible for conducting the procurement proceedings (usually the supply department of that office) up to the established time-limit for submission, in a sealed envelope. Once the time-limit has elapsed, the envelopes are opened, in the presence of the interested parties and their representatives if they so wish. An official record is drawn up known as

the Tender Protocol, containing a confirmation of the bids received, a description of their basic aspects and such observations as may be made by those present.

8.(b) Are entities required to publish details of contracts awarded and/or notify unsuccessful tenderers?

In Costa Rica, the responsible institutions are required to inform the participants (not only the successful tenderer) in a particular procurement procedure of the results of the tender through the same channels used to transmit the invitation to tender. In other words, if the invitation was published in the Official Journal, the award must also be published in the Official Journal; if, on the other hand, the invitation was transmitted directly, the award is also communicated directly.

8.(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

There is no obligation for the government to communicate or publish the reasons why a bid was rejected or why it was not selected in a particular case. However, the interested parties may learn of the reasons by consulting the administrative file of the case, which is open to the public.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of "domestic" in relation to domestic services and suppliers.

Most-favoured-nation treatment

In Costa Rica, the most-favoured-nation principle is applied to all legislation in the field of government procurement, subject to the following reservations and observations:

- (i) *The most-favoured-nation principle is subject to the principle of reciprocity.*

Article 5 of the Law on Government Procurement states that as a matter of general principle, government procurement procedures shall respect the principle of equality of participation of all potential bidders. It also states that the Regulations to the Law and the provisions governing the specific procedures for each case shall not include any rule that hinders free competition between potential bidders.

According to this same provision, the participation of foreign bidders is governed by the principle of reciprocity, according to which they are treated in the same way as Costa Ricans are treated in their country of origin. Article 5 of the Regulations to the Law stipulates that foreigners shall be denied participation advantages if Costa Ricans are not granted such advantages in the bidder's country of origin. In order to help to establish this reciprocity, the Law stipulates that the government may request a potential bidder to provide proof of any aspects it deems relevant as a condition for participating in the tender.

- (ii) *Most-favoured-nation treatment with respect to the selection of bids is granted for the countries of Central America and Panama in the case of goods, and to Mexico in the case of services. This is done pursuant to agreements concluded with those countries*

and without prejudice to the application of the most-favoured-nation principle to other countries with which reciprocity can be demonstrated.

Article 12 of the Industrial Production Incentives Law (Law No. 7017 of 16 December 1985) states that "in any procurement by the Government of the Republic, autonomous institutions, semi-autonomous institutions, municipalities or any other official entities, preference shall be given to products manufactured by the domestic industry where the quality is comparable, the supply adequate and the price equal to or less than that of imported goods."

This provision also applies to the countries of Central America pursuant to Article III (establishing the principle of national treatment) of the General Treaty on Central American Economic Integration, and to Mexico pursuant to Article 12.4 (National Treatment and Non-Discrimination) of the Free Trade Agreement between Costa Rica and Mexico (Law No. 7474 of 20 December 1994) and Panama, pursuant to Article 12 (National Treatment) of the Free Trade and Preferential Exchange Agreement (Law No. 5252 of 31 July 1973).

Similarly, where there is proof of reciprocity, the law permits the granting of national treatment to countries which apply that principle to bids from Costa Rica.

(iii) *An exception is made to the principle of national treatment in the case of the subcontracting of domestic construction companies when the bidder for a public works concession does not plan to build the works itself.*

In such cases, as will be seen, preference is given to domestic construction companies. Article 14 of the Law on Public Works Concessions states that in the selection of a concessionaire, where the potential concessionaire does not intend to build the public works itself preference will be given to bids which indicate that the work will be done with subcontracted domestic enterprises.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

In Costa Rica there are two possible procedures for challenging an award: remedy of review and appeal. The two remedies are mutually exclusive, and no distinction is made between nationals and foreigners with respect to their use. In other words, the national treatment and most-favoured-nation principles are fully applied. The choice of remedy depends on the amount of the challenged award and the budget of the institution that organized the tender. There is also a difference in the amount required to appeal public works contracts and other contracts.

Remedies of review and appeals must be submitted in writing and must contain the reasons for the appellant's challenge together with the relevant evidence, signed by the legal representative of the challenging bidder.

Either of the remedies has a suspensive effect on the award.

If the amount of the challenged award does not warrant an appeal, the challenging party should file a remedy of review. This remedy should be filed with the institution that organized the tender, which is responsible for hearing and settling the case.

The remedy must be filed within five working days following the communication of the award, and is notified to the successful bidder. Following such notification, there is a time-period of 15 working days to settle the case.

Appeals are submitted to the Office of the Comptroller-General of the Republic within ten working days following the publication of the notice of award in the Official Journal. The Office of the Comptroller must grant the parties concerned at least two hearings, and must resolve the appeal within a period of 40 working days, extendable by 20 additional working days where necessary to collect evidence that could not be obtained within the initial time-limit.

In the case of both remedies of review and appeals, the final decision marks the exhaustion of administrative remedies, and may only be reviewed through judicial channels.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Yes, Costa Rica is party to the General Treaty on Central American Integration, Article 3 of which establishes the applicability of the principle of national treatment with respect to goods.

Similarly, the Free Trade and Preferential Exchange Agreement with Panama (Law No. 5252 of 31 July 1973) contains a provision (Article XII) on national treatment with respect to goods.

Finally, the Free Trade Agreement concluded between Costa Rica and Mexico (Law No. 7474 of 20 December 1994) contains a chapter specifically devoted to government procurement (Chapter XII).

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurement:

- **On both an aggregate and sectoral basis;**
- **by origin of services and suppliers.**

12.(b) Please provide statistics (if available) on the:

- **Share of services procurement in total procurement;**
- **share of procurement of each service in total domestic output of the service;**
- **share of procurement of each service in total domestic consumption of the service.**

Updated statistical information will be supplied to the WTO Secretariat at a later date.

*WORLD TRADE
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S/WPGR/W/26
10 February 1998

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Working Party on GATS Rules

COMMUNICATION FROM HONG KONG, CHINA

Emergency Safeguard Measures:
A way forward on the Possible Principles

The following communication is circulated at the request of Hong Kong, China to Members of the Working Party on GATS Rules

Background

1) The purpose of this paper is to suggest some broad principles Members might wish to see included as part of an Emergency Safeguard Measures (ESM) agreement or mechanism. The paper does not seek to pre-empt any decision on whether or not an ESM is necessary. Nor does it suggest that work should not be undertaken in parallel to examine the very real practical problems there would be in introducing an ESM.

Broad Based Principles

2. The idea behind this paper is that it should be possible to consider, separately from the issue of whether or not Members support an ESM in GATS, many of the basic principles that would need to be included in any ESM. These principles are drawn from existing WTO Agreements, noticeably the GATT Safeguard Agreement. The ideas are also taken from a previous paper for the WP on GATS Rules submitted by Hong Kong, China (HKC) and circulated as S/WPGR/W/18 on 16 May 1997.

3. It is suggested that there are, at least, nine key principles we should discuss, as set out below. We have noted in brackets the linkages we see between several of the principles and the four questions posed by the Chairman.

General Principles

- (i) an ESM should be applied on an **MFN** basis;

- (ii) an ESM should represent the **minimum measure** necessary to adopt in order to tackle the problems arising from an emergency situation;
- (iii) an ESM should be **time-bound** and should be removed as soon as circumstances return to normal;
- (iv) there should be **sufficient advance notice** to inform other Members of the proposed ESM action;
- (v) Any ESM Agreement would **be subject to Article XXIII** (dispute settlement);

Operational Principles

- (vi) initiation of an ESM should be based on **objective and well-defined criteria**. (Q.2 - under what circumstances);
 - (vii) the measure to be taken under the ESM should be **clearly specified** (i.e. the remedial action to be taken). (Q.4 - what measures);
 - (viii) the relationship of the proposed ESM to the **public policy concern** which it is seeking to remedy should be spelt out. (Q.1 and Q.2 - on whose behalf and under what circumstances);
 - (ix) it should be clearly shown that a proposed ESM will **remedy the injury identified**. (Q.1 and Q.3 - on whose behalf and concept of injury);
4. As regards (i), this is, it is hoped, not a matter that needs further elaboration.
 5. As regards (ii), it will be necessary to ensure that any ESM is not open to abuse and only does the minimum necessary to tackle the problem. Deciding relevant reference points could however be problematic, in view of the four modes of supply and - arguably - the faster rate of change inherent in many services industries compared to goods. Thus reference to the average level of employment / market penetration / imports etc. over the previous three years (as in the GATT Safeguard Agreement), might not be appropriate.
 6. As regards (iii), as a principle it seems clear the ESM would need to be time bound.
 7. As regards (iv), it will be necessary to establish some detailed rules about advance notice of the various key stages of an ESM action, including the need to afford adequate opportunity for prior consultation with affected parties. Consideration will also need to be given to the idea of a provisional ESM. But as a concept the idea of sufficient advance notice appears sound.
 8. As regards (v), that the ESM be subject to the Article XXIII should, it is hoped, be not a matter of controversy.
 9. As regards (vi), while it may be very difficult to identify the criteria in some of the services areas, it seems only reasonable and logical that such should be **objective and well defined**. It is suggested that they need not be standard across the board criteria (e.g. "a 20% drop in profits/sales/employment"). But whatever criteria are cited, they should be objective and well defined.

10. As regards (vii), it will surely be necessary to set out clearly what measures are proposed to counter the perceived problem. It is only through such that (other) Members or a Panel will be able to gauge the appropriateness and balance of the measure.

11. As regards (viii), it is suggested that the Member initiating the ESM should spell out clearly what the public policy concern it is seeking to address is. This type of principle is suggested because the nature of an emergency situation in services could be very different from those encountered on the goods side. Emergencies in goods are limited to a product and domestic industry producing like or directly competitive products. In services the position may not be so clear cut.

12. As regards (ix), given the four modes of supply and the, possibly, less direct relationship between the cause and effect in services than in goods, it is suggested that a Member initiating an ESM should be required to show that the measure proposed will indeed remedy the problem.

13. With the above as the basic principles, any emergency safeguard agreement should be on a sound footing. In addition to discussing the above, we also need to conduct further discussions on the detailed operation of the principles.

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Working Party on GATS Rules

SUBSIDIES FOR SERVICES SECTORS

INFORMATION CONTAINED IN WTO TRADE POLICY REVIEWS

Background Note by the Secretariat

I. INTRODUCTION

1) Government assistance for individual economic activities may be granted in many different forms and for a variety of purposes. Responding to a request by the Working Party on GATS Rules (WPGR), this Note presents some empirical evidence, based on 31 WTO Trade Policy Reviews, of subsidy programmes for services sectors.¹ The Note thus focuses on a particular policy instrument - financial support - whose use may be accompanied by a variety of other measures, such as regulated prices and access conditions.

2) Given the dearth of empirical information, TPR reports have not always been able to identify the interaction of such measures in individual cases or gauge their relative importance. Similarly, it has proven difficult to detail the underlying objectives of various programmes which, for instance, may be social in nature or be informed by industrial policy considerations. (A particular support scheme may be intended mainly to improve consumer welfare, upgrade sectoral performance, enhance overall economic efficiency, or simply shield vulnerable domestic suppliers from import competition.) Given the infrastructural importance of many services sectors and their rôle as generally available inputs, it could be misleading in individual cases to equate the recipients, e.g. railways, with actual beneficiaries which may include any social or economic group relying on rail transport.

3) Although this Note is based on all Trade Policy Reviews conducted since 1995 under the aegis of the WTO, it cannot claim to give a representative picture. First, the selection of countries for review does not reflect any analytical purposes,

¹ Pursuant to the TPR's mandate, the four largest entities in world trade are to be reviewed every two years. The European Union was thus covered twice during the relevant period.

but the country schedule established by the Trade Policy Review Body. Second, coverage and content of reports are largely determined by the availability of data, which in turn depends on government co-operation, as well as the Secretariat's assessment of country-specific review priorities at the time of drafting. The fact that some reports do not include subsidy-related information, therefore, does not necessarily point to the absence of such schemes in the countries concerned. Nevertheless, the TPR reports can be considered a reasonably comprehensive source of information in this area. They normally take into account not only material provided by national governments, but any additional information deemed relevant, including reports by international organizations or academic research papers. The factual accuracy of the individual reports has been checked by the country under review. The Secretariat is not aware of any other mechanism which would subject a similarly wide range of countries, regardless of geographic location and level of development, to independent review.

II. CONCEPTS AND DEFINITIONS

4) *The subsidy definition generally used for Trade Policy Reviews is based on the definition established by the WTO Agreement on Subsidies and Countervailing Measures. Accordingly, subsidies are deemed to involve a financial contribution by governments or public bodies which confers a benefit. The TPR reports thus cover assistance granted in the form of direct transfers of funds, including grants, loans and equity infusions; potential direct transfers of funds or liabilities, e.g. loan guarantees; government revenue foregone; supply of goods and services other than general infrastructure; purchase of goods; payments to funding mechanisms; or income and price support.*

5) *The application of this definition to services producers has not appeared to pose problems in principle. However, it may prove difficult in many services areas to identify the ultimate beneficiary of a subsidy, given that support may have been destined for downstream users rather than the immediate recipient. Moreover, some measures may have been intended primarily to promote public policy or infrastructural objectives.² The resulting ambiguities, in turn, could affect cross-country comparability.*

III. POLICY PATTERNS

6) *Available evidence suggests that WTO Members tend to concentrate their services-related subsidies on four sectors: audiovisual services, air and maritime transport, tourism, and banking. Of the 44 countries (including the individual EU member States) which have been reviewed under WTO provisions, at least 17 have aided their audiovisual industries; 14 have sought to promote investment in their hotel and tourism sector; 13*

² For example, the provision of basic health services may be ensured through: (a) cost-free treatment in state-owned hospitals; (b) the extension of public funds to commercially independent hospitals; or (c) government-sponsored premiums for basic health insurance. While conferring the same benefits to the same target group, such measures might be defined, respectively, as the provision of infrastructural services, subsidies for the health sector, social transfers and/or subsidies for insurers.

have supported their national airlines and a large number seems to have subsidized maritime transport (Table). At least 10 Members have assisted their offshore banking sector or rescued ailing domestic banks. It is worth recalling, however, that these findings may be influenced by the reports' focus on sectors where politically or economically important developments are under way.³

7) A closer look at the Table also reveals certain country-sector clusters. While the development of audiovisual industries has proved an important concern for several industrial countries (including Canada and EU Member States), programmes for hotel and other tourism sectors are being operated mainly in developing countries. Possibly reflecting fiscal constraints, these programmes rely mainly on tax holidays and other fiscal advantages and do not normally provide for actual disbursements.

8) Support schemes for transport and financial services seem to exist across the full spectrum of WTO members. A number of initiatives may have been ad hoc in nature, driven by the perceived need to prevent the imminent collapse of large banks, rather than the result of longer-term policy planning. Reflecting the emergency character of many aid packages for banks, governments have frequently resorted to equity injections and, at least on a temporary basis, acquired shares. By contrast, support policies favouring national airlines or shipping companies have more often relied on tax incentives.

³ As a general feature, it appears that areas such as telecommunications, financial or audiovisual services have been reviewed in more detail than, for example, rail or road transport and professional services.

Subsidies for individual services sectors - information from TPR Reports, 1995 to 1997

▷ MEASURE ▷	Direct grants	Preferential credit & guarantees	Equity injections ¹	Tax incentives	Duty-free inputs & free zones	Other & unspecified measures	Number of countries
▽ SECTOR ▽							
Professional services	<i>Czech R.</i>				<i>Cyprus</i>		2
Telecommunication				<i>Domin. R. Paraguay Uganda</i>	<i>Cyprus</i>		4
Audiovisual services	<i>Canada Norway All EU MS</i>			<i>All EU MS</i>			3 (17) ³
Distribution				<i>Paraguay</i>	<i>Cyprus</i>	<i>Korea</i>	3
Educational services				<i>Paraguay</i>	<i>Bénin</i>		2
Banking			<i>Brazil Norway Venezuela Mexico Paraguay EU(France)</i>	<i>Uganda</i>	<i>Morocco Cyprus Mauritius</i>		10
Other financial services			<i>Paraguay</i>	<i>Malaysia Mauritius</i>	<i>Cyprus</i>		4
Health services	<i>Czech R.</i>			<i>Paraguay</i>	<i>Bénin</i>		3
Tourism (hotels)		<i>Morocco Cyprus Fiji</i>		<i>Colombia Japan Venezuela Zambia Fiji Malaysia Costa Rica Côte d'Iv. Uganda Thailand Sri Lanka Mauritius</i>	<i>Colombia Morocco Fiji</i>		14
Recreation, culture & sports	<i>Canada</i>			<i>Paraguay</i>	<i>Cyprus</i>		3
Maritime transport ²	<i>Chile</i>			<i>Norway Cyprus Malaysia Fiji Costa Rica Thailand Mauritius</i>	<i>Cyprus</i>	<i>EU MS</i>	10 (ca. 20) ³
Air transport	<i>Czech R. EU MS³</i>			<i>Singapore Costa Rica Thailand Mauritius</i>			6 (13) ³
Rail transport	<i>Czech R. N Zealand Mexico</i>						3
Road transport	<i>Czech R.</i>			<i>Uganda</i>	<i>Zambia</i>		5

	<i>Chile</i>			<i>Costa R.</i>			
Other & unspecified sectors				<i>Uganda</i> <i>Thailand</i> <i>Mauritius</i>	<i>Bénin</i>	<i>EU MS</i>	<i>5</i> <i>(6-20)³</i>
Number of cases	<i>14</i> <i>(35)³</i>	<i>3</i>	<i>7</i>	<i>39</i> <i>(53)³</i>	<i>16</i>	<i>2</i> <i>(13-22)³</i>	

1 Includes capital injections into ailing banks.
transport (Fiji).

2 Includes coastal transport (Chile) and inter-island

3 Counting EU Member States individually.

4 Belgium, France, Germany, Greece, Ireland, Italy, Portugal, Spain.

ANNEX

Content of Individual Trade Policy Reviews

The content of this Annex is directly taken, with some minor editing, from individual TPR reports published since January 1995. All references deal with subsidy programmes, past or present, for individual services sectors. Not included is information on generally available subsidies, for example in the context of regional development or research programmes, and company-internal cross-subsidization between monopoly and market-oriented activities in sectors such as telecommunications.

(i) Costa Rica (1995)

*Since 1985 fiscal incentives, available to **hotels, air and water transport, tourist agencies** and **car rental** companies, have been granted. The extent of the incentives depends on the balance-of-payments situation, the utilization of domestic inputs, the impact on employment and regional development, etc.*

Since 1985, incentives for tourist development have been granted on the basis of tourism contracts between the Costa Rican Tourist Institute and interested companies. These must be engaged in tourism-related activities and meet specific criteria ... In 1992, the fiscal incentive consisting of the deduction from the revenue tax up to an amount equivalent to 50 per cent of the sum invested in shares of any company having concluded a tourism contract, was suppressed. At present firms engaged hotel services, water and air transport of tourists, tourism activities and car hire and which have concluded a tourism contract benefit to different extends from certain permanent incentives which include tariff and internal tax concessions, reductions on equipment and parts, and accelerated depreciation of assets.

(ii) Côte d'Ivoire (1995)

*Since 1959, the Investment Code had ... granted **hotel companies** particularly advantageous tax conditions.*

(iii) Mauritius (1995)

*Like other industries eligible for tax incentives, **hotels** benefit from a 15 per cent corporate tax rate and dividends are tax free for ten years from the start of operations. A one-time exemption of customs duties on the importation of approved equipment is permitted to holders of hotel development certificates. ... Tour operators and car rental agencies are granted a 60 per cent duty concession on air-conditioned buses. The Development Bank of Mauritius offers concessional interest rates on loans for the construction or upgrading of hotel facilities. **Shipping companies** are exempt from corporate tax; the crew pays no income tax and there is no import duty on the purchase of ships. The Mauritius Shipping Corporation has reserved freight and passenger shipping between Mauritius and Rodrigues to a State-owned ship; rates are subsidized to ensure that prices of goods destined for Rodrigues are not inflated by high transport costs.*

*Offshore **banks**, for which legislation came into force on 1 January 1989, are not subject to Mauritian Export Service Zone enterprises, which must have 70 per cent local*

participation, include such services as accountancy, law, medicine, international marketing, quality control, preshipment services, civil engineering, re-insurance, trans-shipment and entrepôt trade. The incentives mainly consist of duty exemptions on imported equipment, ...

As part of its diversification strategy Mauritius has also developed a legal and regulatory infrastructure for offshore activities, defined as those that do business with non-residents and in foreign currencies. These include **offshore banking** and **other financial services**, e.g. insurance, **fund management**, [aircraft] **leasing** and **international data processing**. ... Offshore businesses pay no taxes, although they may elect to do so, and their non-resident staff are entitled to a 50 per cent income tax credit. Office equipment may be imported duty free.

(iv) Sri Lanka (1995)

Ample incentives are available to firms exporting a majority share, typically 90 per cent, of their production. The sectoral focus is on areas such as **tourism** and other services industries ... Specific incentives such as income-tax concessions are available in selected sectors, subject to minimum commitments.

(v) Thailand (1995)

The investment incentives offered by the Board of Investment (BOI) are applicable to a significant number of services activities, including aspects of **tourism** and transport services. BOI investment incentives are offered to the tourism industry for hotel projects with 100 or more rooms, provided they are located in Zone 2 or 3, and such tourist promotion services as ocean marinas and tour boats. BOI investment incentives are also available for such transport-related activities as international **maritime transportation**, **air transportation services** and **pipeline transport**. [An Annex Table lists the following services as eligible for investment promotion: Mass transit systems; communication services via satellite; telephone services; pipeline transport, cable car services; international maritime transportation; loading/unloading facilities for sea transport; ferryboat or high-powered ship services; tourist promotion services; air transportation services; hotels; disinfection services for products or produce; refuse, industrial waste, or water disposal services; transportation of hazardous chemicals; educational institutes or vocational training centres; hospitals; Thai motion picture production or related services.]

(vi) Uganda (1995)

Transportation, construction, telecommunications, banking and **tourism** are listed as priority areas under the Investment Code [foreign investments in these sectors are eligible for tax holidays, duty drawbacks and the free transfer of funds.]

(vii) Brazil (1996)

A Participation Scheme operated by the National Development Bank (BNDESPAR) has the basic function to provide financial resources, through equity participation, to priority projects agreed with enterprises. Its equity participation is deemed to be temporary and in all cases to cover only a minority share. In May 1996,

*BNDESPAR's portfolio was estimated at US\$7 billion, covering more than 162 enterprises mainly in electricity, petrochemicals, pulp and paper, **commercial banks** and mining. There are individual programmes for ... development of **capital markets, commerce***

(viii) Canada (1996)

*Financial support for **cultural services**: ... grants provided by federal and provincial governments amounting to Can\$5.8 billion, or slightly less than 1 per cent of GDP, in fiscal year 1993/94. Over half of total federal spending on culture is destined for broadcasting, benefiting in particular the 59 radio and 31 television stations operated by the Canadian Broadcasting Corporation (CBC). The Federal Government also funds Telefilm Canada and the National Film Board, two State-owned institutions mandated to promote production and distribution of Canadian films.*

Government spending on culture and national heritage, FY 1993-94

(Can\$-000)

	Federal	Provincial	Municipal	Total
Libraries ^a	47,452	754,618	1,052,965	1,855,035
Broadcasting	1,509,358	217,179	...	1,724,537
Heritage institutions	434,612	367,288	49,377	851,277
Other activities ^b	94,329	124,069	249,195	467,593
Performing arts	114,586	140,584	61,925	317,095
Film and video	240,438	76,651	...	317,089
Nature parks	190,016	67,225	...	257,241
Literary arts	167,533	21,291	...	188,824
Arts education	4,402	80,585	...	84,987
Visual arts and crafts	13,227	40,629	...	53,856
Multiculturalism ^c	6,601	39,957	...	46,018
Sound recording	5,526	3,629	...	9,155
Total Expenditure	2,827,539^d	1,933,705	1,413,462	6,174,706^e

Note: Figures may not add up to totals due to rounding....Not available.

a Includes estimated expenditure of school libraries.

bIncludes expenditure that cannot be broken down by function, such as financial support for cultural facilities, centres, festivals, municipalities, cultural exchange programmes and arts organizations.

c Includes expenditure related to heritage cultures.

dIncludes only grants and contributions by Human Resources Development Canada related directly to training and employment development in the cultural sector.

e Includes inter-governmental transfers of about Can\$351 million.

(ix) Colombia (1996)

The Foreign Trade Bank of Colombia (BANCOLDEX) provides credit facilities, in pesos or U.S. dollars, on preferential terms for firms operating in the free zones, including **tourism** zones. These credits are intended to cover fixed investment, technology or infrastructure projects. The amount of credit can be as much as the net value of exports for a period not exceeding 10 years. Grace periods vary from 2 to 5 years. Interest for loans in pesos is set at the prevailing rate for fixed-term deposits.

A new tourism law is under preparation. ... This programme is to include the establishment of a Tourism Promotion Fund, fiscal incentives, etc. as well as the opening of promotion offices abroad. Since 1994 tourism-related free zones have been created as an incentive to attract investment to the sector.

(x) Czech Republic (1996)

Support in the form of grants and interest subsidies is given by the Energy Agency, acting on the authorization of the Ministry of Industry and Trade, for ... **energy advisory services**.

The central Government provides grants and interest subsidies for the operating losses of the State **railway**, subsidies to **bus companies** in respect of concessionary fare schemes, and subsidies to the national **airline** covering interest costs of the leasing of technical equipment. These subsidies amounted to K_ 5.77 billion for rail transport,

K 1.24 billion for road transport and *K* 0.16 billion for air transport. Some of these subsidies will be gradually eliminated, in accordance with price deregulation, and the air transport subsidies are expected to be eliminated at the end of 1997.

Revenue from privatization is used to subsidize interest on loans for the privatization of **health care** facilities (except pharmacies). •Health• loans are granted at interest rates some six percentage points below the commercial rate, and for an eight-year term rather than the four-year term common in Czech commercial lending.

(xi) Dominican Republic (1996)

Since the structural reform programme began in 1990, there have been no specific sectoral incentives for enterprises in the services sector, except that, under special contracts with the Government, enterprises providing **telecommunication services** are exempt from tax on profits.

(xii) El Salvador (1996)

No reference to government assistance for services sectors.

(xiii) Republic of Korea (1996)

The Small Business Administration (SBA), established in February 1996, provides technical advice, assists in labour supply, grants financial support, aids rural SMEs and helps to modernize **distribution**.

(xiv) Morocco (1996)

According to several publications, the [investment] codes grant exemptions from customs and taxes on imported capital goods, loans on preferential terms and special advantages for the acquisition of land for the construction of **hotels**. It has also been decided recently to reschedule the debt of hoteliers and reduce VAT in the sector. The Government grants a reduction of interest rates on certain credits for investment in the sector and spends approximately 150 million dirhams yearly in promoting tourism.

An offshore finance market has been established in Tangier for banks and companies dealing in portfolio management and acquisition of holdings. ... Offshore **banks** are exempt from registration fees and stamp duty on the official documents establishing their charters, increase in capital and acquisition of business premises. They are also exempt from VAT on capital goods and equipment necessary for their activities and from import duties and taxes on equipment, moveable property and capital goods needed for their operations. Dividends distributed to shareholders, interest on customer deposits and investments, and interest on loans from offshore banks are also exempt from all charges.

(xv) New Zealand (1996)

The Government has assumed responsibility for that portion of the debt resulting from refinancing of the NZ **Railways** Corporation (NZRC) ... In 1990, the Crown

accepted responsibility for loans totalling \$1.1 billion; NZRC, which owns leases for railway tracks and is not engaged in rail operations, remains under Crown ownership.

Traditionally, the Government was directly involved in most areas of **insurance**, often through government-backed mutual and life insurance funds.

(xvi) Norway (1996)

In 1991, to stem the [banking] crisis, the Government established the Government Bank Insurance Fund and, through successive capital injections from this and the Government Bank Investment Fund, became sole or majority shareholder in the three largest **commercial banks**. ... The total value of bank support during the period 1989 to 1993 amounted to some NKr 30 billion, or somewhat under 5 per cent of annual GDP; capital injections during the period 1991-93 from the Insurance Fund alone totalled some NKr 16.2 billion. The authorities estimate that they will be able to recover at least the major part of the public support by re-privatization of the banks temporarily taken over by the State, and from the proceeds of the assets absorbed. [Wilse (1995) notes that •The Government and the Storting have stated that the activities of [the Insurance Fund] shall be of limited duration. The Fund's varying participation in the banks either directly or through the banks• own guarantee funds must be gradually phased out once the banking crisis is behind us and deposit insurance can again be based on capital generated by the banks. •]

In order to facilitate the recruitment to the Norwegian fleet, a tax reimbursement scheme was introduced in 1993. Parliament allocated NKr 340 million to the scheme for 1995. The scheme is subject to a number of constraints, the main one being that the **shipping** industry should also contribute an equivalent amount. The tax reimbursement scheme applies to seafarers employed on ships registered in the ordinary Norwegian register, NOR, and who are liable to Norwegian taxation. It also encompasses seafarers on ships in the NIS register if the entire mandatory crew is subject to Norwegian taxation.

The principal subsidy schemes to support Norwegian culture in the **audiovisual sector** are subsidies for the production of films and television programmes and licence fees to the Norwegian Broadcasting Corporation, the main public service broadcaster. ... Subsidies to films are awarded in the form of grants, on the basis of applications. Grants are primarily intended for the production of feature length films and documentaries of special value. In principle, only independent film producers may submit applications for grants. The producer must finance at least 10 per cent of the total production costs. The total sum granted in 1995 was NKr 160 million. ... The two other modes of support for Norwegian feature film are production support and box office bonuses. Production support is awarded selectively and is intended principally to provide a source of funding for films of artistic aspiration.

(xvii) Singapore (1996)

The Approved **Aircraft Leasing** Scheme administered by the Trade and Development Board, was introduced in 1995 to encourage aircraft operating lessors to establish an operations base in Singapore. Under the Scheme, approved companies enjoy a concessionary tax rate of 10 per cent on income derived from offshore leasing operations. The concession is for a five-year period and may be extended thereafter.

(xviii) Switzerland (1996)

Agriculture and some monopoly suppliers of **infrastructural services** have long benefited from high subsidization. ... Apart from these areas, however, there is no evidence of significant sector-specific assistance.

(xix) United States (1996)

No reference to government assistance for services sectors.

(xx) Venezuela (1996)

The Income Tax Law of 1994 grants new investors in ... **tourism** an income tax rebate equivalent to 20 per cent of new investment, excluding land, undertaken within five years following the entry in force of the law.

The Law of Tourism grants authorized operators certain fiscal advantages and preferential rates for public services. Entitlement to such benefits requires the payment of a fee to support the Tourist Capacitation and Promotion Fund; the Fund also receives a share of the revenue from privatization. [The Fund ... is charged, among other things, with training tourist professionals and the promotion of the sector, both in Venezuela and abroad.]

A major crisis finally erupted in 1994, when the authorities were compelled to nationalize or close about one-third of the 47 **banks** in operation ... The direct fiscal cost in terms of spending to recapitalize or support ailing institutions or to pay depositors has been estimated at some US\$9 - 11 billion, or some 13 per cent of GDP.

(xxi) Zambia (1996)

There are deductible allowance for •wear and tear• of buildings and equipment in the farming, manufacturing and **tourism** sectors. ... Zambia also receives some funding from the EU for the development of tourism, as a non-traditional export, under the Export Development Programme.

Following the liquidation of the United Bus Company, a State-owned enterprise, the Government suspended the customs duty on imported buses from 1994 to 1995.

(xxii) Benin (1997)

The Investment Code ... provides for three preferential regimes, A, B and C, a special regime, and an ordinary law regime. ... The special regime is accorded to enterprises providing services in the fields of **health, education** and public works, and to cottage industries. It grants certain tariff reductions, but (in principle) does not entail tax exemptions.

(xxiii) Chile (1997)

In 1994, the Government implemented another programme to promote development in the Province of Arauco and the communes of Lota and Coronel which

belong to the Province of Concepción. This programme includes four distinct schemes. ... The fourth scheme promotes ... **tourism**, ...

In general, no subsidies are granted to enterprises that supply transport services. Subsidies are only granted to **transportation** services operate in isolated areas, where the State has a responsibility to provide public transportation. ... Maritime transportation services are not subsidized, with the exception of **coastal transportation** to isolated areas where there is not enough demand to justify the existence of a regular shipping service. In such cases the Government ensures the provision of transportation at a subsidized rate. Subsidies are allocated by the relevant ministry through a public bid, and are administered by the authorities of the region concerned.

(xxiv) Cyprus (1997)

In July 1996, the Government announced a three-year plan to upgrade the **tourism** industry, including interest subsidies for improvements in existing establishments, encouragement of investment in infrastructure, and exemptions from import duties on hotel equipment for renovation.

The term **•offshore enterprises•** refers to any legal entity whose beneficial ownership and business activities lie outside the country of registration. Such enterprises can only derive income from abroad. ... Profits on offshore business managed from Cyprus are taxed at 4.25 per cent; those controlled from abroad are completely tax exempt. ... Since the introduction of the first incentives in 1975, aimed at increasing foreign demand for **banking, legal, accounting and telecommunications services**, over 26,000 offshore enterprises have registered in Cyprus. The most important such activities, as measured by employment, are **trade, marketing and distribution; ship management and maritime services; business and engineering consultancy; publishing; banking; insurance and financial services**.

Incentives to register ships in Cyprus include low registration fees and a completely tax-free status for **shipping** companies. This includes exemption from tax on profits and dividends, capital gains tax on the sale of ship or shares, income tax on crew wages, stamp duty on deeds and estate duty. Domestic shipping companies are eligible for preferential tax treatment through a 30 per cent reduction of the annual tonnage tax if the ships are operated by a Cypriot ship management company. Additional refunds of this tax are paid relative to length of employment of Cypriot nationals on the vessels.

(xxv/xxvi) European Union (1995 AND 1997)

1995 REVIEW

The Commission's 1993 Competition Report notes that **•the liberalization of financial and postal services** continued to generate complaints from private competitors of state-owned banks and postal administrations, concerning, among other issues, injections of public funds in the context of privatizations. A recent rescue operation by the French Government of Credit Lyonnais highlights the problems involved.

Various member States grant assistance to **shipping** lines established in their territories and flying the national flag ... The support schemes are generally intended to

compensate the cost differential associated with national registration. ... The guidelines are currently being revised with a view to their strengthening.

1997 REVIEW

*Certain services sectors, in particular those where State involvement and support has traditionally been high, are subject to specific guidelines. The Commission put in place a set of rules for **air transport services** in 1994, following the report of a group of •wise men• in 1992 and the injection of large subsidies in some main European carriers in the period 1991-94. [Large State subsidies were granted from 1991 to 1994 to Sabena, Air France, Olympic Airways, TAP, Air Lingus and Lufthansa.] Under the new guidelines in 1996, the Commission cleared a Ptas 87 billion rescue plan for Iberia, but rejected a proposed Lit 1,500 billion capital injection into Alitalia. Commission guidelines for the examination of State aid to Community shipping lines have recently been adopted.*

The Community framework on State aid to the transport sector has come under criticism in recent years. In view of the increasing level of market deregulation (in particular, in air transport), market participants have voiced concerns about the potentially negative effects of State aid for the growing number of competitors. In spite of the •one time, last time• principle, they criticize the persistence of State aid awarded to various airlines (Iberia, Aer Lingus, Air France, Olympic, Alitalia). In 1995-96, more than 100 cases of State aid were examined by the Commission in the transport sector.

*Public support to the **audiovisual sector** ... is provided in the form of direct subsidies, reimbursable loans, tax incentives and local-content requirements. Policy at the EU level is aimed at providing support to the industry, encouraging private investment, and the broadcast of European works.*

The Community provides financial support for the development and distribution of European audiovisual work through the Media II programme (ECU 265 million over a period of five years, starting in 1996). Over the same period, Media II will also provide training for audiovisual professionals with support of around ECU 45 million from the European Commission. In order to increase private participation in the sector, the Commission has proposed establishing a five-year ECU 60 million, European Guarantee Fund, which would provide a guarantee for investors in cinema and television production. The proposal is based on the experiences of several Member States that provide similar national guarantee instruments. The Guarantee Fund would complement the Media II programme by focusing primarily on the financing of European cinema and television films.

(xxvii) Fiji (1997)

*The Fiji Development Bank, which was established in 1967, provides long-term finance to the private sector at preferential rates. ... Loans to the industrial and commercial sector totalled F\$173.4 million, with manufacturing and **tourism** holding 24.5 per cent and 17.8 per cent of the amount, respectively.*

Projects for approved hotel buildings or expansion may be entitled under the Hotels Aid Act to receive an investment allowance, from the Ministry of Tourism and Civil Aviation. In addition to normal depreciation, 55 per cent of approved capital expenditure (excluding cost of land) may be set-off against the hotel owners• taxable

*income. A cost write-off of 55 per cent may be allowed by the Minister of Tourism and Civil Aviation to a taxpayer for support-projects in the tourism sector such as tourist vessels. All contributions to promotion and marketing activities that are organized and/or approved by the FVB are given a 150 per cent tax allowance. If approved by the Fiji Trade and Investment Board and the Ministry of Tourism and Civil Aviation, the Fiji Development Bank may grant preferential rate loans up to F\$200,000 to indigenous Fijians in the tourism sector. The Five Star Hotel Incentives, for which a hotel must have at least 200 rooms and a minimum investment of F\$40 million, include the following: a 20-year tax holiday period; losses to be carried forward to six years; duty-free entry of all capital equipment, plant and machinery; and a 100 per cent write-off on all capital expenditure in any one year during a period of eight years. Since January 1996, the Government has provided concessionary fiscal duties to assist **inter-island shipping**, fishing and tourist vessels ...*

(xxviii) *Malaysia (1997)*

*One of the most striking features of Malaysia's industrial policy is the pervasiveness of various incentives, particularly tax incentives, aimed at the [...] and **tourism** sectors. ... Furthermore, in a move to promote exports of services from Malaysia through the facilitation of a regional headquarters function, approved operational headquarters are subject to a statutory corporate tax rate of 10 per cent instead of the normal rate of 30 per cent.*

*In addition to incentives to promote Malaysian ownership, tax incentives are available to the **insurance sector**. [Tax reductions and exemptions were also provided to encourage the development of the insurance industry which has the potential to contribute to growth and mobilise long-term savings to support the nation's industrialisation drive. (Bank Negara Malaysia, 1996b.)] Some of these incentives are conditional upon local ownership of the companies. ... Since the 1994 year of assessment, a double deduction had been granted for freight charges paid to a Malaysian incorporated **shipping** company for transportation on board a Malaysian ship. This double deduction has been withdrawn effective 1 January 1997 (year of assessment 1998). The income of a shipping company, derived or deemed to be derived from the operations of Malaysian ships, is exempt from income tax. Dividends distributed from the income of a shipping enterprise to shareholders are also exempt from tax. The shipping industry is also assisted through the Shipping Fund. [The Malaysian Shipping Finance Fund was established on 30 October 1992 to increase shipping capacity and to carry Malaysia's cargo, as a measure to overcome the problem of a deficit in the services account of Malaysia's current account. The Fund consist of a RM 500 million Ship Financing Facility and a RM 200 million Shipping Venture Facility which are both allocated through the offices of the Bank Negara Malaysia. An additional RM 300 million is provided by the private sector.]*

*Investors can apply for tax incentives through the offices of the Malaysian Industrial Development Agency. [Establishment, expansion and modernization of **hotels** and **tourist projects** designated by the Malaysian Industrial Development Agency as promoted activities are eligible for consideration of pioneer status and investment tax allowance under the Promotion of Investment Act 1986. Other tax incentives for the tourism industry ... include an initial industrial building allowance of 10 per cent and a subsequent annual allowance of 2 per cent, plus a double deduction for training and promotional expenditure. ... In addition, local companies organizing conferences*

bringing in at least 500 foreign participants are also to be given income tax exemptions up to the year 2000.] Furthermore, a Special Fund for Tourism is administered by the Bank Negara Malaysia; applications are to be made through commercial banks.

(xxix) Mexico (1997)

*Assistance is used to support the development of priority activities of general interest, and to provide basic goods and services at prices below their market level or production cost. Government assistance amounted to some 30.1 billion pesos (about US\$3.9 billion) during 1996; the main support was provided through [...]and] the national **railway** company, which was granted 2,073 million pesos to cover its operational deficits.*

*The Government acted swiftly with a number of measures to avoid a collapse of the **banking** sector. As an immediate short-term measure, the Government announced in January 1995 a scheme to recapitalize banks with capital ratios below the 8 per cent stipulated minimum. Since then several programmes to support debtors and banks have been provided: restructuring of loans which are basically sound (UDI scheme) ...; debt relief to various small debtors ... in the form of interest subsidy and the possibility of restructuring under the UDI scheme; reduction of the financial burden of mortgage debtors in the form of additional resources for restructuring under the UDI scheme ...; assistance to private toll road concessionaries who faced financial problems due to substantive decline in highway traffic as well as increased cost of debt service in the form of debt restructuring and interest rate swap arrangements; ...; programmes to support banks: a capitalization programme with the aim of raising the capitalization level of banks through ... assistance in domestic currency to banks and small financial institutions to address solvency and liquidity problems.*

(xxx) Paraguay (1997)

*Since 1989 a regime of investment incentives has been operated by the Ministry of Industry and Trade. These incentives, ... were extended in 1994 to cover **transport, warehousing, health, mass media, telecommunications and tourism-related construction projects** (mainly hotels and shopping centres/malls) and, most recently, in 1996 to include **educational projects**. Incentives, valid for a period of five years, include exemptions from taxes for the creation of enterprises; tariffs on imports of capital goods, raw materials and inputs anticipated in the investment project; taxes and charges on foreign loans; a temporary exemption of 95 per cent of the corporate earnings tax; and tax exemptions on rents, royalties, patents, etc. These incentives can be extended up to ten years where investment is due to repatriation of capital or destined to regions determined by the Technical Secretariat for Planning ... Between 1989 and 1996, these incentives were used by 3,195 enterprises, creating 76,206 jobs and generated total investments of around US\$2 billion (¢4.1 trillion), a third of which was foreign investment. Most of the investment took place in manufacturing (food, tobacco, textiles, chemicals) and services (warehouses, construction, transportation).*

*In May 1995, the Central Bank of Paraguay (BCP) had to intervene in the operations of several **financial institutions** including four commercial banks, ten finance houses, two savings and loan associations and two private pension schemes which were undergoing a liquidity crisis. In general, BCP's intervention consisted of: taking over the*

management of institutions with problems; providing financial resources for the continuation of their operations; ... Financial assistance to four banks led to the largest monetary expansion in the history of Paraguay, equivalent to 4 per cent of GNP. ... between mid-1995 and March 1996, emergency measures, comprising a 15-year loan of up to US\$100 million, deferred interest payments and tax holidays, were effected to rescue the four banks whose operating licences were finally withdrawn. By February 1996, the BCP had provided credit of US\$391 million, 80 per cent of which had been channelled to the above-mentioned four banks to repay depositors and foreign debts. In early 1997, plans were being made to rescue four more banks using deposit funds from the State-owned Institute of Social Security.

(xxxi) Japan (1997/98)

*Hotels registered under the Law to Maintain International **Tourist Hotels** may receive tax preferences to maintain their facilities.*

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10 September 1997

(97-4009)

Working Party on GATS Rules Original: French

COMMUNICATION FROM TURKEY

Response to the Questionnaire on Government Procurement of Services

Addendum

The following communication is circulated at the request of Turkey to members of the Working Party on GATS Rules.

I. *EXISTING PROCUREMENT REGIMES*

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Government procurement means the purchase/sale of goods and services (including transport and construction) by institutions financed from the general budget or having a joint budget and by local authorities. Government procurement is governed by Law No. 2886 on Government Procurement.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

In general, government procurement activities are decentralized. Each public service issues an invitation to tender for its own needs in accordance with the Law on Government Procurement.

While there is a centralized procurement body, the State Supply Office (DMO), which has its own budget, government entities are not obliged to use this agency for their own needs.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

-Law on Government Procurement: governs entities financed from the general budget or having a joint budget and local authorities;

-Public enterprises, funds, entities with circulating capital and institutions with their own budget have their own regulations; however, these regulations have provisions similar to those of the Law on Government Procurement;

-Government Procurement Circular: lays down the principles that apply in this area and it is published every year by the Ministry of Finance;

-Acceptable value notice: lays down the principles that apply for construction, and is published every year by the Ministry of Construction and Housing.

3.(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The Law on Government Procurement does not distinguish between goods and services procurement.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Five procurement procedures are applied:

1. Selective tendering procedure;

2. limited open tendering procedure;

3. open tendering procedure;

4. negotiated procurement;

5. direct competition procedure.

4.(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Selective tendering is the normal procedure, but other procedures are used according to the value of the procurement:

-Open tendering for contracts not exceeding TL 25 billion;

-negotiated procurement procedure for contracts not exceeding TL 1.5 billion.

4.(c) What are the time-limits for submission of bids?

The minimum time-limit for submission is ten days from first publication. In some circumstances where publication is not required, the submission time-limit may be lengthened or shortened by the procuring entity.

Publicity for inviting tenders

5.(a) How are intended procurements publicized? Are invitations to tender published? If so, where, and in what languages?

Regardless of the estimated value of the intended procurement, it must be advertised in a local newspaper.

-Procurement for an estimated value of over TL 7 billion must also be publicized in the daily newspapers of major towns or cities with a minimum time-limit of ten days.

-Procurement for an estimated value of more than TL 21 billion must be published in the Official Journal with a minimum time-limit of ten days. In general, these public notices are in Turkish. (The thresholds of the estimated values in TL may vary from year to year.)

5.(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

In the case of negotiated procurement and limited open tendering, publication is not mandatory. In cases where publication is required, the content and conditions of publication are similar.

5.(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The following details of the intended procurement are published:

- Object, value and place of intended procurement;*
- conditions and place for obtaining the bidding form and its annexes;*
- procedure, place and date of award;*
- if necessary, estimated value and amount of provisional security;*
- documents required from suppliers;*
- date, time-limit and place for submission of bids.*

5.(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Payment of a fee for obtaining the tender documents and the amount involved are a matter decided by the procuring entity concerned.

5.(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

Electronic means are not normally used to advertise procurement opportunities.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

Potential suppliers must have:

-Legal residence in Turkey;

-a notification address in Turkey.

6.(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

In the case of tendering in the construction area, potential suppliers are requested to provide information on their financial situation and references on work previously performed.

6.(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

In the construction area, potential suppliers must prequalify in terms of their capability with respect to the tender concerned. The criteria applied to determine such capability are published each year in a notice. Institutions use these criteria to select potential suppliers for different tenders.

A list of approved suppliers does not exist.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

In general, the criterion followed in the award of tenders is that of the most attractive bid in terms of price. In the case of construction, the most attractive bid in terms of price is the least expensive price.

7.(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

In general, tender invitations do not contain conditions of this kind.

7.(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

Preference cannot be given to particular enterprises or groups of enterprises.

7.(d) Do the procurement criteria differ according to sector or region of the economy?

In the case of major public works of a particular nature, the procurement criteria may differ.

7.(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The purchasing authority has no margin of choice or discretion in favour of certain potential suppliers.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

In general, tenders are received unopened. In the case of negotiated procurement, tenders may be received registered or by declaration.

8.(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

The successful tenderers are made known only in the case of tenders for construction work of a value exceeding TL 500 billion. Unsuccessful tenderers are not made known.

8.(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

During the meeting of the Award Commission unsuccessful tenderers are told the reasons why their bid was rejected. Likewise, if unsuccessful tenderers so request in writing, they are also given the reasons why they were not selected.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of •domestic• in relation to domestic services and suppliers.

The Law on Government Procurement does not establish a legal definition of •domestic supplier•. Nevertheless, a decision of the Council of Ministers is

required for a government authority to be able to give preference to a domestic supplier.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Parties may lodge complaints and appeals against the award of a contract initially with the government authority that issued the invitation to tender. Where the latter does not accept the complaint or appeal, an action may be brought against it.

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Working Party on GATS Rules

EXAMPLES OF SITUATIONS IN WHICH EMERGENCY
SAFEGUARD ACTION MAY BE TAKEN

Note by the Secretariat

I. INTRODUCTION

1) In order to assist the Working Party on GATS Rules in its deliberations on an emergency safeguard mechanism under Article X of the GATS, the Secretariat was asked to provide hypothetical or, if available, empirical examples of situations pertaining to services trade in which emergency safeguard action may be taken.

2) In responding to the Working Party's request, the Secretariat was confronted with a problem. To establish whether a situation, hypothetical or real, qualifies as one in which safeguard action should or may be taken, it is necessary to have certain criteria. However, it is in order to determine what such criteria may be that examples have been sought by the Working Party. To overcome this problem of circularity, and so as not to preempt the result of further discussions, the Secretariat took a pragmatic approach which is not based on any particular *a priori* definition of safeguard situations. Rather, the following examples seek to capture a wide-range of situations, *other than those covered by existing GATS provisions dealing with exceptional circumstances*,¹ which might be potential candidates for emergency safeguard action.

3) There seems to be a certain degree of agreement that safeguard measures should be taken only if, as a result of *unforeseen developments* and of the effect of the obligations incurred by a Member under the GATS, imports of services take place in such increased quantities and under such conditions as to cause or threaten serious injury to national/domestic suppliers of like or directly competitive services. Furthermore, there seems to be agreement that measures should be *temporary*.

4) The Informal Note by the Chairman of 3 June 1997 identified four key questions concerning a possible emergency safeguard mechanism. As requested by the Working Party, this note focuses only on the second question, concerning the circumstances in which safeguard action could be taken. One of the other questions that the Working Party needs to deal with concerns on whose behalf safeguard action could be taken, i.e. domestic

¹These include Articles III bis, XII, XIV, XIV bis and Paragraph 2 of the Annex on Financial Services.

suppliers, regardless of nationality, or only national suppliers.² This issue, and the related issue of how like or directly competitive services and service suppliers would be defined, is not discussed in this paper, and the term •domestic industry• is used to refer to the intended beneficiaries of safeguard action. The paper also does not discuss the approach that could be adopted (conceptual and empirical) to demonstrate injury/adverse effects, and to establish a causal link with increases in imports attributable to GATS commitments. The final question pertaining to remedies is only addressed to the extent that seemed directly relevant to the circumstances in which safeguard action could be taken.

5) The next Section provides examples of circumstances in which domestic industry may suffer injury. It illustrates the difficulty in establishing a causal link with increased imports when other contributing factors are present, and also raises the question of whether the nature of underlying factors should be relevant in determining the permissibility and the form of safeguard action. Section III takes a closer look at the notion of unforeseen developments and asks how far it is possible to make the notion legally meaningful. Section IV provides examples of the possible grounds for, and forms of, safeguard action and discusses the possibility of incorporating certain economic criteria in these determinations. Finally, Section V illustrates the distinction between government objectives which could be foreseen, and therefore seem to be candidates for *ex ante* scheduling, and those which seem more appropriately to be the basis for *ex post* safeguard action.

II. CIRCUMSTANCES IN WHICH DOMESTIC INDUSTRY MAY SUFFER INJURY

6) At one level, it is easy to construct examples. One could pick any industry, say the domestic basic telecommunications sector, and consider a large increase in imports of foreign services (say, call-back services) which cause injury, reflected in significantly reduced profits, output and employment. Similar examples could be constructed for other industries but this would probably not help greatly to advance the current discussion. In order to create more illuminating examples, it may be necessary to look deeper at the reasons for the increase in imports.

7) For expositional purposes it may be useful to distinguish between:

- developments which are primarily domestic in origin; and
- developments which are primarily foreign in origin.

Developments which are primarily domestic in origin

8) Consider the following examples of situations in each of which there is likely to be an increase in imports and injury to domestic industry, but the underlying factors differ. The examples are presented roughly in order of •increasing exogeneity•, i.e. in order of diminishing responsibility of domestic industry and domestic government for the difficulties:

- (i) Management errors in, say, business services lead to significant increases in the costs of production and hence prices of services, as well as deterioration in their

²A distinction can be made between •domestic• suppliers, which would include all suppliers located in a Member's territory, and •national• suppliers who are *either themselves nationals or owned by nationals of the Member concerned.*

quality; or in the telecommunications or banking sector, firms fail to invest in new technologies, which hurts their competitiveness.

- (ii) Huge domestic wage increases outpace increases in labour productivity in a particular sector and push up production costs, and firms are not allowed to hire foreign workers.³ Or strikes disrupt production in a particular sector.
- (iii) Government policies directly affect the competitiveness of firms: e.g. banks are forced to make bad or subsidised loans to failing industries or depressed regions; radio stations are induced to broadcast several hours of socially desirable but unpopular programmes, which do not interest advertisers.
- (iv) Government policies indirectly affect the competitiveness of firms: e.g. a sudden tightening of monetary policy leads to an increase in interest rates and appreciation of exchange rates.⁴
- (v) Domestic preferences shift towards foreign services or to services in which foreign service suppliers have a comparative advantage.⁵ There could, for instance, be an evaporation of trust in national educational institutions or national hospitals following certain isolated scandalous developments. Or there could be a sudden shift in preferences for foreign entertainers or audiovisual services.
- (vi) Adverse political or natural shocks affect firms: e.g. civil disorder or earthquakes lead to the damage of domestic industry; or, less dramatically, bad weather hurts the tourist industry.

9) Most negative domestic shocks are themselves responsible for injury to firms. But it could be argued in some cases that it is the surge in imports, consequent upon the worsened competitiveness of domestic firms, that is ultimately responsible for injury to the industry. For instance, increased wages may be the source of the problem for the domestic industry, but it is the ability of national consumers to substitute cheaper foreign services for more expensive domestic ones which ultimately leads to injury.

10) Notably, the Agreement on Safeguards, states in Article 4.2(b) that •When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.•⁶ The examples in this Section

³Certain shocks may affect domestic firms more than foreign firms because inputs are non-tradable, either naturally or because of policy. Skis-slopes are an example of a naturally non-tradable input, while restrictions on international labour mobility are an example of policy-induced non-tradability.

⁴See footnote 3 above. In this case, it is the segmentation of capital markets which makes domestic firms excessively vulnerable to domestic interest rate increases.

⁵It could also be that foreign preferences shift dramatically away from national suppliers.

⁶It may be relevant that the Agreement on Implementation of Article VI of GATT 1994, in Article 3.5 states that •The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors may not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade-restrictive practices of and competition

highlight the problems that may arise in establishing a causal link between injury to industry and increased imports even when the fact of such increase is not in dispute.

11) Several further questions arise:

Should the reasons which contribute to the increase in imports be relevant in determining the permissibility or the form of safeguard action, or should attention be restricted to the increase in imports *per se* regardless of the underlying reasons?⁷

If the underlying reasons for increase in imports are deemed to be relevant, then further questions arise:

To what extent should safeguard action be used to remedy failings intrinsic to the domestic industry itself, such as poor management?

To what extent should governments be allowed to offset through safeguard action the adverse effects on domestic firms of direct and indirect policy interventions? Should they be required to modify the problem-causing policies themselves as a condition for safeguard action? In this context, should a distinction be made between policies which have economy-wide effects, and those which have industry-specific effects?

To what extent should governments be able to use safeguard action to insure domestic industry against the normal rough and tumble of free markets, caused by factors such as a shift in preferences or changes in the weather?

Developments which are primarily foreign in origin

12) In the above examples, increased imports were a consequence of certain domestic developments, and it was difficult to establish whether injury was attributable to increased imports alone. It is the foreign supplier performance-enhancing developments which may provide more straightforward examples. But there may be reason to distinguish between developments which are deemed •fair• and others which are not.

•Fair• trading developments

(i) *Foreign technological innovations* make newer, better or cheaper foreign services available. For instance a foreign supplier provides new patented telecommunication services which affects the profitability of domestic suppliers. If the innovation will eventually become nationally available, then the difficulties are temporary. If however, the innovation will not be accessible for the economically meaningful future, then domestic industry may cease to be viable.

(ii) Foreign service suppliers have exclusive access to *inputs which become cheaper*. Or foreign service suppliers in a sector benefit from improvements in

between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

⁷In the goods context, the question of establishing a causal link between injury and increase in imports in the presence of other contributing factors has been addressed, but no further distinction has been made between the underlying causes for the increase in imports.

complementary infrastructure, such as better road access to tourist resorts, or enhanced airport or port capacity facilitating multi-modal transport.

(iii) Effective advertising by foreign service suppliers induces large *shifts in demand* towards their services. This could happen in any sector. e.g. audiovisual, tourism or financial services.

Some questions mirror the ones raised in the previous section:

To what extent should governments be able to use safeguard action to insure domestic industry from the uncertainty inherent in free markets, caused by factors such as a changes in technology, input prices and consumer preferences?

To what extent should governments be able to use safeguard action to protect domestic industry from the adverse consequences of restrictions which deprive it of access to cheaper foreign inputs?

•Unfair• trading developments

(iv) *Foreign governments provide assistance* to foreign suppliers who sell to the domestic market. This could most explicitly take the form of new subsidies or tax exemptions by another Member.

Should issues which relate to the appropriateness of countervailing measures be taken up under Article XV or can they also provide a case for safeguard action - at least while Article XV disciplines are being developed?

(v) Foreign service suppliers indulge in *anti-competitive practices*. For instance, they use profits from protected domestic markets to finance an expansion in low-priced exports.

Certain practices of monopoly and exclusive service suppliers can already be addressed under Article VIII of the GATS. Should other issues which relate to anti-competitive practices be dealt with, for instance, by strengthening Article IX of GATS which deals with business practices, or can they also provide a case for safeguard action?

More fundamentally, should Article X deal, as does GATT Article XIX, with fair trading practices to which there must be an MFN-based response (already built into Article X), or should its scope be expanded to deal with unfair trading practices to which there may be a non-MFN response?

III. UNFORESEEN DEVELOPMENTS

13) It may not be easy to determine what could constitute unforeseen developments. In the area of goods, this term has been interpreted (though without consensus) to mean developments after the negotiation of a tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated.⁸ Unfortunately, the only recorded application of this interpretation did not lead to a clear result.⁹ The interpretation has also been characterised as unduly widening the scope of the escape clause and rendering tariff concessions less stable.¹⁰ The need for follow up review of Article XIX language with a view to obtaining greater stability of trade concessions was noted in a 1963 GATT report.¹¹ It is notable that the Agreement on Safeguards, while defining in Article 1 safeguard measures as those provided for in Article XIX of GATT 1994, does not contain any mention of the term unforeseen developments.

14) One argument could be that it is unduly difficult and not particularly fruitful to try and verify that a development was indeed foreseen. The question is:

Is it feasible to develop criteria to determine whether circumstances were in some objective sense foreseeable? Is the notion to be a permissive one in which all benefit of doubt goes to the party invoking it or is it possible to make judgements on what could reasonably have been foreseen?

For instance, any of the examples cited above could be unforeseen either because of poor foresight or because they were genuinely impossible to foresee. However, it may be the case that certain changes in policy, such as a tightening of monetary policy, should have been foreseen, perhaps because it was known that the government would respond to inflationary problems. Or, it may be well known that certain markets, such as fashion designing, are characterised by high variations in demand conditions.

⁸See page 4 of the Report of the Intersessional Working Party on the Complaint of Czechoslovakia Concerning the Withdrawal by the United States of a Concession under the Terms of Article XIX (GATT/CP/106, 27 March 1951).

⁹The same Working Party, except the representative of the United States, first agreed with the Czechoslovak representative that the fact that hat styles had changed did not constitute an unforeseen development within the meaning of Article XIX (page 5). But then the Working Party, with the exception of the Czechoslovak representative, agreed that the degree to which the change in fashion affected the competitive situation, could not reasonably be expected to have been foreseen by the United States authorities in 1947, and that the conditions of Article XIX that the increase in imports must be due to unforeseen developments and to the effect of the tariff concession can therefore be considered to have been fulfilled (page 6).

¹⁰One GATT expert writes, "As one reviews this remarkable GATT report on Article XIX, it appears quite clear that the result of the findings made was to greatly extend the scope of the escape clause and render it available for invocation in a wide variety of situations. It almost appears that a mere rapid increase in the proportion of imports to the domestic production would make invocation of Article XIX justifiable, especially when all benefit of doubt goes to the party invoking it. The net result is to render tariff concessions and other GATT obligations less stable." (See page 563 of J.H. Jackson, *World Trade and the Law of GATT*, Bobbs-Merrill Company, Inc., Indianapolis, Kansas City, New York, 1969.)

¹¹See page 3 of the Report of the Working Party on Procedures for Tariff Reductions (L/2002, 30 April 1963).

Would it be possible and useful to distinguish between sectors where significant variations in demand and supply are part of normal business conditions and others where they are not?

IV. EXAMPLES OF POSSIBLE GROUNDS FOR, AND FORMS OF, SAFEGUARD ACTION

15) The clearest case for safeguard action is based on the need to facilitate economic adjustment. Increased imports, even when they contribute to an increase in the aggregate welfare of the society, may adversely affect the interests of certain groups, such as those whose skills are specific to the import competing industry. The social costs of adjustment may be lower if the import-competing domestic firms are given time to adjust, either by improving their competitiveness or by moving resources into other areas of production. The role of safeguard action is thus to provide temporary relief in order to make possible gradual rather than abrupt adjustment.

16) What are the circumstances which make safeguard action necessary and desirable? Even if the shock to domestic industry is temporary, private enterprises may still not be equipped to weather the storm. For instance, they could be subject to constraints which force them to behave myopically -for instance, capital market imperfections, which limit the ability of firms to borrow. If the shock is permanent, and domestic industry is no longer viable, there may still be a reason to ensure the continued operation of private enterprises for a certain period. That is, there may exist positive externalities, i.e. benefits for society which private firms do not take into account. An example could be the social benefits from preventing instantaneous layoffs of relatively immobile factors of production.

Is the fact of injury caused by increased imports a sufficient condition for safeguard action, or should there be additional conditions? For instance, should Members be required to demonstrate the existence of market imperfections and/or positive externalities which make safeguard action necessary and desirable?¹²

17) It is evident that services like transport, telecommunications and financial services play an important infrastructural role in the economy. For instance, the sudden availability of cheap imported transport services may provide a huge benefit to domestic consumers and goods exporters even as they injure the domestic transport industry. Even though the economy as a whole may benefit from cheaper imports, it is well-known that governments are subject to strong pressures for safeguard action from the injured industry, and that countervailing pressures from user industries or consumers tend to be relatively weak.¹³ The question arises whether there might be reason to create multilateral disciplines to ensure a more balanced appraisal of the case for safeguard action.

¹²No such conditions are imposed in the goods context, but Members may not wish to limit themselves to the goods precedent.

¹³In recognition of this problem, the Agreement on Safeguards, in Article 3:1 stipulates that the investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. However, in substantive terms, it is still injury to industry, rather than national welfare more generally, which would seem to be the basis for action.

Should safeguard action be justified only by the need to protect a particular industry from injury, or should the justification be based on a wider view of national welfare? Should the inclusion of a •public-interest• clause be left to the discretion of individual Members?

18) Even though safeguard actions may be justified, restrictions on imports may not provide a solution in response to certain shocks, and may not be the most desirable instruments even when they do provide a solution. For instance, say the domestic health industry is in difficulty, direct support may be a more suitable instrument than import restrictions, provided that the necessary resources can be raised through non-distortionary means. While both measures may help the industry, import restrictions hurt consumers by leading to an increase in prices, which can be avoided through direct assistance. However, import restrictions may violate market access commitments while direct assistance may well be inconsistent with a Member's national treatment commitments.

Should there be a presumption in favour of economically superior instruments of safeguard action?¹⁴

V. EXAMPLES OF OBJECTIVES WHICH CAN BE REFLECTED IN SCHEDULES

19) It could be argued that even if the causes of injury cannot be anticipated, the negative effects that would prompt government intervention are sometimes known in advance. That is a government may be able to see what declines in output, or increases in unemployment would induce it to act. Now in the GATS there is significant scope for *ex ante* scheduling of limitations, in a way that there is not in the goods context. In the goods context, Members make commitments on a single dimension, i.e. the tariff, and there is no possibility of including, for instance, limitations relating to national share of output. But there is greater scope in the GATS for a Member to write into its schedule certain circumstances that would trigger government intervention. This is for instance what Mexico has done in the financial services chapter of NAFTA.¹⁵ Thus, the desire to maintain a certain national share of output, employment or assets in certain sensitive sectors would seem to be typical candidates for *ex ante* scheduling rather than *ex post* safeguard action. To not include such elements in schedules, but to invoke them as a basis for safeguard action, may have the effect of inflicting avoidable uncertainty on the market participants - the very thing that the GATS is designed to prevent.

20) It may, however, be the case that even though a Member is reconciled to reductions in national output and employment in a particular industry, the *speed* at which this is happening (due to a rapid increase in imports) imposes a high social cost. This could form the basis for temporary safeguard action to facilitate *more gradual adjustment*, as

¹⁴Article 5 of the Agreement on Safeguards stipulates that Members should choose measures most suitable for the achievement of objectives such as prevention or remedying serious injury and facilitation of adjustment.

¹⁵Thus, Annex 1413.6 Section B of NAFTA provides that if the sum of authorized capital of foreign commercial bank affiliates reaches 25 per cent of the aggregate capital of all commercial banks in Mexico, Mexico may request consultations with the other NAFTA parties on the potential adverse effects arising from the presence of commercial banks of other parties and the possible need for remedial action, including further temporary limitations on market participation.

discussed in the previous section. Alternatively, a Member may change its mind, and decide after making a commitment that it would like to maintain a national share of output or employment. Even though this permanent change in policy would ideally take the form of a modification of commitments under Article XXI, emergency safeguard action may still be needed as an interim measure while the Article XXI-process is completed, for instance if there is a sudden flood of imports which threatens to drive domestic industry out of business.

21) If it is accepted that the only objective of safeguard action should be making more gradual adjustment possible, then ensuring that safeguard action is temporary may be the key discipline. This would ensure that intervention serves only to help industry deal with either temporary shocks, such as a brief surge in imports, or facilitates adjustment in response to permanent shocks, such as a fundamental shift in comparative advantage.

If it can be ensured that intervention is temporary and not (frequently) repeated, how much need is there to establish criteria which would be difficult to enforce, such as those which seek to establish whether or not events were foreseen?

22) Finally, the key question may be posed thus:

When should objectives be built *ex ante* into the schedules and not be the basis for safeguard action, and when should more liberal commitments be scheduled with the scope for *ex post* safeguard action?

The former option has the virtue of creating a more certain environment for both domestic and foreign suppliers, but the disadvantage of perhaps leading to excessively cautious, and therefore less liberal scheduling. The attractiveness of the latter option will depend strongly on the ability to devise adequate procedural disciplines which prevent abuse of the safeguard mechanism and ensure that the security created by GATS commitments is not undermined. On balance, Members may feel that motives for intervention in certain sectors (or certain modes) are more appropriately the subject of *ex ante* scheduling and that in certain sectors (or with respect to certain modes) there is greater scope for developing enforceable procedural disciplines on safeguard action - for instance, because of greater availability of statistics.

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COMMUNICATION FROM CUBA

Response to the Questions Relating to an Emergency
Safeguard Mechanism in GATS

Addendum

The following communication is being circulated at the request of Cuba to members of the Working Party on GATS Rules.

It has been requested that these replies be circulated to members of the Working Party on GATS Rules together with the observation that they are intended to contribute to the discussion and analysis for evaluating the possibility of applying safeguards to trade in services, and should not prejudice Cuba's position on this matter or be interpreted as representing its position.

1. What is the justification and purpose of an emergency mechanism under GATS?

The question of what a safeguard mechanism would be for involves the following considerations:

(a) Would an emergency safeguard for services be intended to deal with the kind of situation foreseen in Article XIX of GATT - that is, a temporary threat to a domestic industry arising from increased imports? Would it have any other objective?

Yes, an emergency safeguard for services would be intended to deal with situations involving a temporary threat to domestic industry arising from increased imports of services or from the existence of services which, owing to their

higher quality, their lower price or their volume and variety, are more competitive than domestic services.

This means that safeguards could be applied in response to a temporary threat to the domestic industry caused by services provided under any of the existing modes of supply for trade in services.

(b) Are existing •safeguard• mechanisms in GATS, notably those contained in Article XII and Article XIV, sufficient to address any difficulties governments might encounter as a consequence of their GATS commitments? Similarly, does Article XXI provide an adequate vehicle for reversing or modifying scheduled commitments in the event of unanticipated difficulties?

We do not consider the existing •safeguard• mechanisms or instruments contained in Articles XII, XIV, XIV-bis and XXI of GATS sufficient to address any difficulties governments might encounter as a consequence of their GATS commitments since, for example, the mechanism contained in Article XII (Restrictions to Safeguard the Balance of Payments) does not allow the adoption or maintenance of restrictions for the purpose of protecting a specific service sector. Moreover Article XXI, while it provides a suitable instrument for withdrawing or modifying commitments in the schedules in case of unforeseen difficulties, provides that this can only be done after three years have elapsed from the date on which the commitment entered into force, and does not therefore permit the application of a safeguard in response to an emergency. Consequently, we consider that the mentioned GATS provisions should be reinforced with an emergency safeguard mechanism which would also provide an efficient instrument for applying such measures wherever necessary, as in the case of the Agreement on Safeguards with respect to trade in goods.

(c) Does the nature of commitments undertaken in GATS - whereby Members may choose whether to schedule a sector, and may also condition market access and national treatment with respect to commitments that are made - obviate the need for safeguards? Or would it be more appropriate to think in terms of the idea that the existence of a safeguard would allow governments to be more forthcoming with respect to their scheduled commitments?

The nature of the commitments undertaken in GATS whereby Members may choose whether to schedule a sector and may also condition market access and national treatment with respect to commitments that are made does not obviate the need for the safeguard mechanism, which would ensure that a State may apply emergency safeguards to a sector of the economy which is not included in its Schedule of Specific Commitments where such sector is temporarily threatened. Indeed, the very existence of this mechanism could serve as an incentive for States to be more forthcoming in scheduling their commitments, since they would have the possibility of resorting to one of these measures where necessary, regardless of what they have included in their schedules.

(d) What would be the economic objective of a safeguard - to protect production, investors or employment? Would it protect all domestic production, or

only that part of production attributable to national suppliers? Would it aim to protect investment by nationals, or all domestically-based investments? What would be the objective of allowing departures from national treatment under modes 3 and 4? Is the distinction between establishment rights per se and post-establishment operations relevant in relation to possible safeguard measures under modes 3 and 4?

The economic objective of a safeguard would be to protect domestic production in its entirety, i.e. domestic supply of services, including both domestic suppliers and foreign suppliers established in the country through commercial presence or the movement of natural persons, and which, since they operate within the country, must also be protected by the State in question from any temporary threat caused by a service supplier from another State.

The objective of allowing departure from national treatment under modes 3 and 4, i.e. of applying safeguards to foreigners established in the national territory through commercial presence or movement of natural persons, would be to prevent them from endangering domestic suppliers in the strict sense of the term, in other words suppliers from the country in question, owing their competitiveness in the domestic services market, and in cases where any of the measures referred in Article XIV of the GATS proves necessary (see the reply to question 1(b)).

Yes, the distinction between establishment rights per se and post-establishment operations is relevant in relation to possible safeguard measures under modes 3 and 4, including in cases where a safeguard measure applied to mode 3 has a significant influence on mode 4, since the application of such measures would be possible both at the time of establishment in the territory of the country of foreign natural or juridical persons as well as following their establishment, i.e. in the course of subsequent operations.

(e) Would a safeguard mechanism need to contemplate special provisions for developing countries or does the concept of progressive liberalization offer adequate leeway in this respect?

We think that it would be appropriate for the safeguard mechanism for trade in services to include special provisions for developing countries like those established for trade in goods, with particular attention, as appropriate, to the least-developed countries, in accordance with their trade development and financial needs. These provisions should cover the possible need to apply the mechanism in reinforcement of the developing country provisions contained in Article IV of the GATS, which stipulate that the participation of developing countries in world trade shall be facilitated in accordance with their domestic services capacity and its efficiency and competitiveness, and market access in sectors and modes of supply of export interest to them liberalized.

The establishment of special provisions for the developing countries within the safeguard mechanism would make it possible to develop a concrete definition of uniform treatment for all developing country members in the application of safeguards. Indeed, a progressive liberalization clause, as contained in Part IV of

the GATS, would leave it up to each country to determine voluntarily the differentiated treatment to be applied in accordance with its national policy, and could undermine the application of policies consistent with the principles of the WTO itself.

The adoption of special provisions for developing countries within the safeguard mechanism would ensure that safeguards were implemented in accordance with the level of development of the Member countries.

(f) Is there anything intrinsic to service transactions, such as intangibility, simultaneity of production and consumption, or the need for physical proximity between the producer and the consumer, which makes (some) services transactions different from goods transaction in ways that might influence arguments as to the necessity or utility of safeguard measures in services?

No, these features have no bearing on the necessity or utility of safeguard measures in services. As with trade in goods, what determines the necessity or utility of emergency safeguard measures in services is a temporary threat to the domestic industry. Features intrinsic to trade in services could have a significant influence on the type of safeguard measures to be applied and on the specific regulations governing their imposition, but never on the necessity or utility of emergency safeguard measures in services. Indeed, such measures are necessary, in fact essential, in addressing an obvious temporary threat to the domestic industry.

(g) Is anything intrinsic to services markets, such as the role and importance of regulatory regimes, standards and certification requirements, which makes services markets different from goods markets in ways that might influence arguments as to the necessity or utility of safeguards measures in services?

While regulatory regimes, standards and certification requirements have no bearing on the necessity or utility of safeguard measures in services, where there are international agreements governing certain service activities they could influence the specific regulations to be established by the WTO for the safeguard mechanism, since such agreements must be consistent with the WTO regulations. Thus, a thorough revision of general international standards for the various service activities is required in order to eliminate any inconsistencies among them.

It should also be borne in mind that the violation of already existing international standards for the different service activities could cause a temporary threat to the domestic industry of a Member country and necessitate the application of emergency safeguard measures, a fact which underscores the need to establish a mechanism governing the implementation of such measures within the context of the WTO.

(h) Is anything intrinsic to the role of services in the economy, such as their important support and infrastructure role, which makes services markets different from goods markets in ways that might influence arguments as to the desirability of safeguards measures in services?

The role of services in the economy and their important support and infrastructure role have no bearing on the desirability or necessity of emergency safeguard measures in that area (which are dictated solely by a temporary threat to the domestic industry caused by a service supplier from another Member country), although they do influence the nature of such measures: for example, financial services, which influence all branches of the economy through their potential horizontal effect, could influence the type and form of safeguard measures and the conditions governing their application.

(i) Do Members maintain any emergency safeguard measures in national legislation? If so, what are these measures and how are they implemented?

Cuba's national legislation does not yet provide for emergency safeguard measures.

2. What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

(a) What, in terms of GATS, is the equivalent of increased imports under Article XIX of GATT? In mode 1, the cross-border flow of services may be similar to the import of goods, but the situation is quite different under other modes. How should the possibility of safeguards be triggered in these circumstances?

In terms of trade in services under GATS, the equivalent of increased imports under Article XIX of GATT would be the increase in the cross-border flow of services to a Member country from another Member country. Thus, mode 1 calls for action similar to the existing emergency safeguard measures for trade in goods in case of a temporary threat to the domestic service industry.

In mode 2, the safeguard mechanism could be triggered on the basis of pre-established objective criteria for determining that domestic consumption in a given service sector has dropped significantly as a result of an increase in consumption abroad in the same services sector, as reflected, for example, in an unusual flow of foreign exchange out of the country for that purpose.

In modes 3 and 4, safeguard measures would be introduced, or the safeguard mechanism triggered, through the legislation governing quantitative and qualitative restrictions on the establishment and subsequent operation in the country of natural and juridical persons involved in the supply of a given service, since they could pose a threat to the domestic service industry owing to the competitiveness.

(b) How should serious injury be determined? Injury to whom or what?

Serious injury is defined as a significant overall impairment of a domestic service industry to the benefit of one or more foreign service suppliers established in the country whose domestic industry is affected.

The injury to the domestic service supplier and to the balance of payments of the country in which the service is consumed is in itself quantifiable.

For domestic service suppliers, serious injury will be considered to have taken place if there is a considerable drop in demand for the service they supply, reflected in a considerable decrease in earnings resulting from the supply of such service, or if there has been a significant diversion of domestic consumption of the service towards a foreign supplier.

In the case of modes 3 and 4, the injury is also reflected in the balance of payments of the country in which the service is consumed, provided the net effect for its economy is negative, through a significant increase in remittances of profits to the country of origin of the foreign suppliers established in the country where the service is consumed.

(c) What standards would be required to determine that increased competition from foreign sources caused injury to the national industry?

The standards required to determine that increased competition from foreign sources caused injury to the national industry would be: a decrease in the volume of domestic services and, ultimately, in the earnings resulting from the supply of such services; and conversely, an increase in the volume of services and in the earnings of one or more foreign service suppliers.

(d) How would the national industry be defined for the purpose of determining injury?

The national industry would be defined as: •the domestic suppliers as a whole of like or directly competitive services operating within the territory of a Member, or those whose collective supply of like or directly competitive services constitutes a major proportion of the total domestic supply of those services•.

In this connection, domestic suppliers must be understood to mean suppliers that are domestic in the strict sense of the term as well as foreign suppliers established in the national territory in the case of modes 3 and 4.

(e) Should a link be established between the nature of a specific commitment in a particular sector, including in relation to limitations on market access and national treatment, and the availability of a safeguard measure? In other words, should the availability or nature of a safeguard be restricted where limitations have been inscribed?

There should not necessarily be any restrictions on the availability of a safeguard measure when a State has included limitations on market access and national treatment in its Schedule of Specific Commitments, since this could leave defenceless a Member that needs to apply an emergency safeguard measure in response to a temporary threat to its domestic service industry regardless of what is included in its Schedule.

(f) What measurement and identification problems arise in services that might complicate the development of a safeguard instrument, and how should they be dealt with?

The problems that might complicate the development of a safeguard instrument in services would be the lack of an international register for the classification of services and the difficulty in determining the possible methods for measuring injury to a domestic service industry owing firstly to the lack of compatible statistics for domestic industries among Member countries, and secondly to the difficulty of identifying precisely the foreign service suppliers directly causing the injury.

3. What form might a safeguard mechanism for services take?

(a) What type of measure should be applied? Would taxes, foreign exchange restrictions, other quantitative limitations, or regulatory restraints be suitable as safeguard measures?

While the measures to be applied would generally be quantitative, qualitative measures would also be possible. Quantitative restrictions, generally speaking, would consist in restrictions on the volume of services, on the number of service suppliers, on the total number of natural persons that can be employed in a given service sector or that a service supplier may employ, and on foreign equity participation. Measures could also be introduced to restrict or lay down the specific types of juridical persons that may supply a service. In the latter case, the possible types of services that could be supplied would be restricted.

Where it is necessary to resort to an emergency safeguard in services, practical measures could include, specifically, foreign exchange restrictions and other quantitative limitations.

(b) What would be the implications of different modes of supply for the kind of measures employed?

A given mode of supply would call for specific measures according to its particular characteristics. In other words, where it is necessary to apply an emergency safeguard in services, the mode of supply determines the type of measures to be taken.

For example, in mode 1, the volume of services could be restricted and/or exchange measures applied.

Mode 2 poses the greatest problem as to the type of measure to be applied, since its intrinsic features limit the options. In this case, we consider that measures would have to be decided on the basis of reciprocal treatment.

In modes 3 and 4, in addition to limiting the volume of services and/or imposing foreign exchange measures, it would also be possible to limit the number

of service suppliers, the total number of natural persons that could be employed in a given service sector or that a service supplier may employ, and foreign equity participation, and to restrict or lay down the specific types of juridical persons entitled to supply a service.

(c) *Would there be circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes at the same time?*

There may be circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes at the same time. In such cases, appropriate measures could be applied in respect of effects in each mode of supply attributable to a common cause.

(d) *Should safeguards be applied on a non-discriminatory basis in all circumstances?*

Emergency safeguard measures should always be applied on a non-discriminatory basis to •producers• of services that cause a temporary threat to the domestic industry in question. Emergency safeguard measures are designed to be applied to all service suppliers that cause a temporary threat to the domestic services industry.

(e) *How quickly would it be possible for a Member to take a safeguard measure? Would the notion of •critical circumstances•, as developed in the Agreement on Safeguards, apply in the services area?*

Where it has been determined that there is a temporary threat to the domestic industry in services, a Member may find it necessary to apply an emergency safeguard on the basis of the notion of •critical circumstances• as developed in the Agreement on Safeguards. Indeed, the provisions governing emergency safeguards with respect to trade in goods are perfectly applicable to trade in services.

(f) *What should be the duration of any safeguard measures adopted?*

The duration of any given emergency safeguard would depend on the time needed to prevent or repair the serious injury and to make the necessary adjustments. The basic criteria for determining the maximum period of application of a measure in a given situation cannot be fixed in advance.

(g) *Would safeguard measures be made degressive during their period of application?*

Not necessarily. However, a degressive scale could be applied, extending to trade in services the policy applied to trade in goods under Article XII, paragraph 2(b) of the GATT, which stipulates that:

•Contracting parties applying restrictions (...) shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that subparagraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that subparagraph. •

(h) Would a Member taking a safeguard action be required also to adopt adjustment measures?

A Member taking an emergency safeguard action should adjust the measure progressively as the causes for its application diminish. At the same time, and in order to help to eliminate the said causes, the sectors benefiting from such safeguard measures should make the adjustment that would allow them to compete once again with foreign suppliers and to ensure that the measures are not used for protectionist purposes.

(i) Would the application of safeguard measures be accompanied by compensatory adjustments in the schedule of the Member taking the measure?

No, we do not think that they should be incorporated in the Schedule of Commitments.

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COMMUNICATION FROM PERU

Emergency Safeguards

The following communication is being circulated at the request of Peru to members of the Working Party on GATS Rules.

The delegation of Peru attaches great importance to emergency safeguards for services as a useful instrument for countering the possibly negative effects of the liberalization of trade in services. In this connection, we consider that a multilateral discipline on this issue would encourage many Members of the WTO - particularly developing countries - to participate actively in the next round of negotiations for the year 2000. Moreover, in view of the role played by services in the overall functioning of the economy and in the development process, we believe that a general emergency safeguard mechanism, whose implementation would not depend on sectoral liberalization commitments and which would not necessarily be restricted by such commitments, would be the most appropriate.

1. On whose behalf would emergency safeguard action be taken?

There appears to be a consensus that the beneficiary of an emergency safeguard would depend on the mode of supply to which the safeguard applies, as is explained in the chairperson's note of 1 May 1997.

Another issue is the relevance of the definition of domestic industry and national industry. In Peru, according to the domestic legislation in effect, the words "domestic industry" would include industries established in Peru, whether they are owned by nationals or foreigners.

2. In what circumstances would emergency safeguard action be taken and what would be the purpose of such action?

We agree with delegations which consider that an "unforeseen development" would be a reason for the adoption of an emergency safeguard. The measure should be time-bound and it should be applied on a non-discriminatory basis. In any event, the purpose of

such a measure would be to remedy any situation that arose as a result of commitments under the GATS.

It is also obvious that any general emergency safeguard would not be designed to deal with the situations included in Articles XII of the GATS (balance-of-payments difficulties), XIV (measures taken for reasons of public order or morals, security, public health *inter alia*) and XXI (modification of schedules), and with unforeseen developments such as those listed by Peru in 1989 (document MTN.GNS/W/74), namely, protection of consumers and the physical infrastructure, prevention of dominant market positions, or other practices identified more recently.

In other words, we believe that a safeguard measure for services should be more than a simple extrapolation of safeguards such as those provided for trade in goods. We therefore consider that a safeguard measure for services should be broader and should not be restricted to covering the case of injury or threat of injury due to an unforeseen increase in imports, because in the case of services this could only theoretically apply to mode 1, as other delegations have already remarked.

3. What approach should be adopted in respect of injury/adverse effects, and the relevant causal link between injury/adverse effects and commitments under the GATS?

In the case of emergency safeguards provided to counter injury or threat of injury, it is essential to lay down objective criteria for assessing injury, for example, impact on volume of sales, market share, profits, employment levels.

4. What measures would be taken under the emergency safeguard mechanism?

The measures would depend on the mode of supply. In any event, depending on the mode of supply, the measures should not be limited to market access measures but should also cover temporary suspension of the national treatment principle.

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S/WPGR/W/11/Add.

15 August 1997

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Working Party on GATS Rules

COMMUNICATION FROM PERU

Reply to Questionnaire on Government Procurement of Services

Addendum

The following communication is being circulated at the request of Peru to members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

1. Definition

1. **What is the definition of government procurement employed in completing this questionnaire?**

The Peruvian legislation defines government procurement as a technical supply process consisting of a combination of technical, administrative and legal measures intended to procure for the public sector entities which make up the central government the ownership or use of or access to goods and services and the execution of public works. •Non-personal services• means an activity or work carried out by an individual or corporate body not forming part of the public entity wishing to procure the services, in exchange for economic compensation, in order to meet an intangible need.

Administrative structure

2. **How are government procurement activities administered? To what extent are procurement activities centralized?**

In general, the public-sector purchasing activities of the central government are decentralized since each entity is responsible for its own institutional purchasing processes, including the procurement of goods and services and the construction of public works

(awarding public works contracts), through its corresponding Administration (Supply) Office.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

The basic legislation is as follows:

-Political Constitution, Article 76: The execution of works and the procurement of supplies using public funds or resources shall be subject to contract and public tender, as shall the purchase or disposal of goods. Services and projects on the scale and for the amounts indicated in the Budget Act are procured by public competition. The law establishes the procedure, the exceptions and the respective responsibilities;

-Law No. 26703, State Budget Management Act;

-Law No. 26706, the Public Sector Budget Act for 1997 whose Article 6 establishes the amounts applicable to public tenders, public competition based on prices, public competition based on merit, and direct allocation (1 US dollar equals approximately 2.6 soles, July 1997);

(a)Purchase of goods and services:

-Public tender, if the unit cost or total value is more than 700,000 soles;

-public competition based on prices, if the unit cost or total value is between 200,000 and 700,000 soles;

-direct allocation, if the unit cost or total value is less than 220,000 soles.

(b)Procurement of non-personal services for studies, advice, consultancy, expertise, external audits, inspection and supervision:

-Public competition based on merit, if the total cost is more than 200,000 soles;

-direct allocation, if the cost is not more than 200,000 soles.

(c)Public works procurement:

-Public tender, if the total cost is more than 1,800,000 soles;

-public competition based on prices, if the total cost is between 600,000 and 1,800,000 soles;

-direct allocation, if the unit cost or total value is less than 220,000 soles.

•Decree Law No. 25565 establishing the public tender and competition system •Tender Process Evaluation• and Supreme Decree No. 133-92-EF, establishing the corresponding regulations.

- Supreme Decree No. 065/85/PCM adopting the Single Regulations on the Procurement and Provision of Non-Personal Services (RUA).
- Law No. 23350, Article 167, Budget Act 1982, giving effect to the Single Regulations on Public Works Tenders and Contracts (RULCOP), adopted by Supreme Decree No. 034-80-VC (21/11/80).
- Law No. 26143, Article 19, adopting the Law establishing a Higher Council of Public Works Tenders and Contracts.
- Legislative Decree No. 710 regulating the award of public works contracts in public tender proceedings.

3.(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The Peruvian Government procurement regime distinguishes between:

- Procurement of goods and services;
- procurement of public works.

Procurement procedures applied

4.(a)What procedures are followed in the procurement process?

For both purchases of goods and services and the procurement of public works the following procedures are applied:

- Public tender or public competition. Procedures characterized by free competitive bidding starting from a certain monetary reference value established by the Annual Budget Act.
- Selective tender (direct allocation). An exceptional procedure under which the procuring entity invites bids from a limited number of suitable suppliers.

4.(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

On 21 June 1992, Decree Law No. 25565 established the tender and competition system known as •International Tender Process Evaluation•. Under this Law, public sector bodies and state enterprises can entrust Specialized Entities with the organization and implementation of: (a) public tenders for the procurement of goods and services and the execution of works; (b) competitions based on merit for the awarding of consultancy, supervision, expertise, study, advice and inspection contracts. These procedures are governed by the administrative documentation prepared by the procuring bodies in coordination with the Specialized Entity. They are not subject to the general rules and regulations described in the reply to question 3.

The following are Specialized Entities: (a) international organizations with agencies specialized in providing the service to which Decree Law 25565 relates, including the United Nations; (b) multilateral credit institutions and government agencies with departments specialized in providing the service to which Decree Law 25565 relates; (c)

reputable and reliable international consulting and advisory entities, public or private, which offer the services mentioned in Decree Law 25565.

4.(c) What are the time-limits for the submission of bids?

The following periods have been established for purchases of goods and services:

10 days for public competition; 15 days for public tender; 30 days for international tender.

For the procurement of public works the following periods have been established:

15 days for public competition; 15 days for public tender when equipment available on the local market is involved; 30 days for public tender when equipment and accessories must be imported; 45 days for international tender.

Publicity for inviting tenders

5.(a) How are intended procurements publicized? Are invitations to tender published? If so, where, and in what languages?

Invitations to participate in tender procedures and public competition for purchases of goods and services known as *•Avisos de Convocatoria•* are published in Spanish in the Official Journal and in a national newspaper with a large circulation on two consecutive days, in accordance with the following schedule:

-10 days before the date of receipt of bids, for public competition;

-15 days before the date of receipt of bids, for public tender;

-30 days before the date of receipt of bids, for international tender.

In the case of public works procurement, invitations in Spanish must be published on at least two consecutive days in the Official Journal and in a local newspaper with a large circulation and broadcast over the radio. The following periods are allowed for the submission of bids:

-45 calendar days for tenders with financing and/or international tenders;

-30 calendar days for tenders for works requiring the importation of equipment and accessories;

-15 calendar days for tenders involving equipment available on the local market.

5.(b) Do the extent and form of publicity differ according to tendering procedures applied and/or the value of the procurement?

Public tenders and public competitions are published in the same way, in the Official Journal and in a national newspaper with a large circulation. Only in the case of direct allocation (at least three bidders invited) is there no publicity.

5.(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The invitations to tender generally include the following information:

- The inviting entity;
- the description and identification number corresponding to each competition or tender;
- the basic characteristics of the goods or non-personal services to be purchased, or the tender system and the description of the works, as appropriate;
- where appropriate, the time and place of delivery or supply of goods or provision of services;
- the offices at which the documentation can be obtained and consulted and their address;
- the reference sum or estimate;
- the price of the documentation;
- the place and time for the receipt of bids;
- where appropriate, the financing entity.

5.(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set.

The administrative tender documents and technical specifications for purchases of goods and services, containing all the necessary information, have a cost calculated in terms of the expenses incurred by the procuring entity. The selling price may not exceed 0.2 per cent of the amount specified by law for the type of procurement in question.

Where public works procurement is concerned, the cost of the documentation varies with the contract sum.

5.(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

Not used in Peru.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

In the case of the purchase of goods and services, the supplier may be any individual or reputable corporate body operating under the law, whether established in the country or abroad. Suppliers do not have to be registered in order to participate in public-sector tender and competition procedures.

To participate in public works tender procedures and to be eligible for public works contracts, individuals or corporate bodies must be resident in Peru and previously enrolled in the national register of public works contractors administered by the Higher Council of

Public Works (CONSULCOP). It should be pointed out that public tender procedures are open to any type of bidders, whether domestic, foreign or joint.

6.(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

For suppliers to participate in public sector purchases of goods and services the following are required:

- Cover letter;
- customer portfolio;
- business record;
- letter of guarantee or unconditional, instantly payable cashier's cheque made out to the procuring public entity;
- sworn declarations to the effect that the potential supplier:
 - does not have pending any lawsuit involving the State;
 - has not been declared bankrupt;
- is not a public official or employee nor a spouse or relative up to the fourth degree of consanguinity and the second degree of relationship by marriage.

As indicated in the reply to the previous question, in the case of public works procurement, the contractor must be enrolled in the above-mentioned register. He is issued with a certificate of enrolment valid for one year, which must be regularly renewed. Individuals and corporate bodies applying for enrolment in the register must: (a) have the legal capacity to enter into a contract, (b) have at least one year's experience in carrying out public works in the country, (c) have the necessary technical skills, be credit worthy and have an adequate organization. If these requirements are satisfied, CONSULCOP will register the contractors, fixing their public works contracting capacity at an amount equivalent to 50 times their paid-up capital and free reserves expressed in millions of soles. Where capital in foreign currency is involved, its equivalent in soles is determined. CONSULCOP maintains an up-to-date file in which it records all the data relating to each of the contractors enrolled, on the basis of the documents which the latter regularly submit and those which both the procuring entities and the contracting entities are required to submit every month.

6.(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any regularly reviewed/updated?

With respect to the purchase of goods and services, Legislative Decree No. 717 (10.11.91) abolished the procedure of enrolment in a Single Register of Suppliers. The public entities annually review or update lists of disqualified suppliers.

Where public works procurement is concerned, there exists a National Register of Public Works Contractors consisting of the Register of Domestic Contractors, the Register

of Foreign Contractors and the Register of Joint Contractors. The enrolment requirements are detailed in the reply to the previous question.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers? For instance, whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account.

In the case of the purchase of goods and services, the criteria for assessing bids include technical considerations (quality, quantity) and economic considerations (price, installation costs, transport costs, tools and other operating costs, statutory taxes, discounts, and price basis where multiple deliveries are concerned). The awarding committee selects, among the acceptable bids submitted, the most advantageous for each type of goods or services. Other things being equal, the lowest bid is given preference. The bid qualification criteria and the corresponding points are indicated in the administrative tender or competition documents, so that all the potential suppliers are aware of the criteria in advance.

As regards public works procurement, the procuring entities must award the contract to the lowest bidder, taking into account, in addition to the price indicated in the bid, other factors such as the proposed completion time relative to that indicated in the documentation. The bid qualification criteria and the corresponding points are included in the administrative public tender or competition documents, so that all the potential suppliers are aware of the criteria in advance. If two or more bidders obtain the same score, the successful bidder is determined by drawing lots.

7.(b) Is procurement subject to any offset provisions, such as local content, technology transfer or counter trade requirements?

Public sector purchases are not subject to any offset provisions.

7.(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

There are no preferences.

7.(d) Do the procurement criteria differ according to sector or region of the economy?

They differ only in relation to the amounts to which public tenders, public competitions based on price and merit, and direct allocation are subject, which increase according to the region.

7.(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The purchasing entity has a margin of discretion only with respect to the allocation of points for each qualifying factor, in accordance with the product to be purchased. This procedure is described in the administrative tender documents and is known to all the bidders before they tender.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

The bidders publicly deliver their respective bids to the Chairman of the awarding committee in closed and sealed envelopes. In this same ceremony the envelopes are opened and the contents read out, so that all the bidders are aware of them.

8.(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

In the case of the purchase of goods and services, once the award has been made, the Chairman communicates the results to the participating bidders. He also notifies the successful bidder who has a maximum of 5 days to sign the corresponding contract. The results of the tender process are published, once only, in the Official Journal and in the newspaper with the largest circulation in the corresponding departmental jurisdiction, within three days of the event.

Where public works procurement is concerned, once the contract has been awarded, a notice is published in the Official Journal containing: (a) the name of the successful bidder and the amount of his bid, (b) the number of bidders who participated, and (c) the amount of the estimate.

8.(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

The legislation in force does not require the publication of the reasons why bids have been rejected. However, if a bidder (tenderer) so requests, he will be supplied with a copy of the minutes containing this information. Where public works procurement is concerned, the legislation requires the procuring entity to display, in its offices, a notice containing a list of all the bidders present, the amounts of their bids and the bids rejected.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

There are no laws, regulations, procedures or practices which accord preferential treatment to foreign goods, services, public works and/or suppliers.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Details could include:

-Institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;

-time-limits for complaints/appeals;

-type of remedy, if any, that may be granted.

In the case of purchases of goods and services, bidders may submit complaints and challenges at any time during the process. Administratively, the following proceedings are possible:

Complaints against irregularities or flaws in the proceedings. Submitted in writing to the Head of Administration of the purchasing entity. Must be dealt with within 3 (three) days. The complaint does not halt or delay the awarding of the contract and the interested party is notified of the result.

Challenges may be made against the decisions of the Awarding Committee or, in the case of direct allocation, against the decisions of the Head of the Supply Directorate. Challenges may be based on the following: (a) improper application of the laws and regulations, (b) blatant discrimination against the supplier, (c) non-compliance with the administrative tender documents or technical specifications, (d) other.

The remedies include:

Reconsideration. Must be dealt with by the Awarding Committee within 3 days.

Appeal. Must be dealt with by the second-ranking official of the purchasing entity within 5 days.

Review. Must be dealt with by the Departmental Awarding Committee responsible for the tender within 8 days.

Challenges halt only the awarding of the item or items questioned.

Where public works procurement is concerned, a challenge can only validly be made from the day following the publication of the award in the Official Journal. The remedies available are:

Reconsideration. Must be dealt with by the procuring entity within six days. If the matter is not dealt with within this period, the challenger may assume that his challenge has been denied and may initiate the review procedure.

Review. Must be dealt with by the Higher Tribunal of Public Works Tenders and Contracts, at the highest administrative level, within four days.

Apart from administrative channels, the parties may resort to arbitration or the courts. Thus, in any stage of the process, the parties may submit the dispute to arbitration. On the other hand, the decisions of the Higher Tribunal of Public Works Tenders and Contracts can only be challenged judicially before the competent division of the Higher Court of Lima within 15 working days of the notification or publication of the decision. In their turn, the decisions of this court may be challenged in the Administrative Division of the Supreme Court of the Republic.

II. MEMBERSHIP OF PLURILATERAL REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procedure? If so, please describe the relevant provisions.

No.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements:

- **on both an aggregate and sectoral basis;**
- **by origin of services and suppliers.**

In order to enhance the comparability of data provided, Members may choose to provide statistics according to the services sectoral classification in document MTN.GNS/W/120 (dated 10 July 1991) at the appropriate level of aggregation.

No statistics of this kind are available.

12.(b) Please provide statistics (if available) on the:

- **Share of services procurement in total procurement;**
- **share of procurement of each service in total domestic output of the service;**
- **share of procurement of each service in total domestic consumption of the service.**

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e., imports minus exports) of the service in question.

No statistics of this kind are available.

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23 July 1997

ORGANIZATION

(97-3213)

Original: English

Working Party on GATS Rules

COMMUNICATION FROM NEW ZEALAND

Response to the Questions to the Information Exchange Required
Under the Subsidies Negotiating Mandate

Addendum

The following communication is being circulated at the request of the delegation of New Zealand to Members of the Working Party on GATS Rules.

New Zealand submits the attached response to the questionnaire sent to Members by the Working Party on GATS Rules in document S/WPGR/W/16 of 5 February 1997. The response is submitted without prejudice to New Zealand's negotiating position within the WTO. New Zealand reserves the right to add to or to amend this response in the light of further discussion in the Working Party on conceptual issues that may clarify the scope of measures that members seek to address.

Paragraph numbers used in the responses correspond to the question numbers set out in document S/WPGR/W/16.

General

This questionnaire provides information on programmes in New Zealand: education, broadcasting, film production, land transport, air transport, business and tourism services.

9. Please indicate any subsidy disciplines already assumed in the context of regional agreements.

Export subsidies are subject to disciplines under Article 11 of the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement.

Education

1. Please identify any subsidy programmes related to trade in services, with a brief description of each programme.

The New Zealand Government provides approximately \$244 million annually to private entities involved in the provision of post-compulsory education and training (PCET), ie private tertiary education providers, second chance education, and industry training.

2. Please state the policy objectives underlying the use of each subsidy.

- a) *Tertiary Education: The provision of mainstream post-compulsory education and training is an expected role for the New Zealand Government in order to achieve employment, and other broad economic and social goals.*
- b) *Training Opportunity Programme (TOP): TOP is designed to provide second chance education. It provides a 100% tuition subsidy to educationally disadvantaged trainees, provided by private, charitable and state education providers on a highly competitive basis.*
- c) *Industry Training: Industry training is designed to encourage industry to deliver relevant portable generic skills (as opposed to firm-specific skills) to the workforce. Industry training is funded jointly by Government (approximately 35%) and industry (65%), via non-Government Industry Training Organisations. Funding subsidies are delivered through a bidding/purchase system based on national benchmarks.*

3. Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.

Funding is provided for services only.

4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).

Grant.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

Subsidies are limited to the education sector, including training services provided as an incidental activity by the manufacturing sector. For the year ended 31 December 1996, the Ministry of Education funded approximately 530 private

training establishments; 54 industry training organisations were eligible to receive money for allocation to either private or public sector organisations.

6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other conditions).

Entities are eligible if they are registered as having met baseline educational entry criteria by the New Zealand Qualifications Authority and the Ministry of Education (or the Education and Training Support Agency in the case of industry training). Educational services (courses) must also meet quality criteria specified by the New Zealand Qualifications Authority.

7. Please indicate how the subsidy is calculated (eg on production, on exports, on a fixed or fluctuating basis etc).

Subsidy is calculated on the basis of full-time student numbers or proportions thereof.

8. Please specify any time limits attached to the subsidies described above.

Monies are paid in return for the delivery of services to students/trainees. There is no limit for payment to providers although TOP trainees can accumulate only the number of credits specified for their course.

10. Where such information is available, Members may wish to indicate:

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

Approximate total annual subsidy: \$ million

Private Tertiary Education providers:	7
TOP:	186
Industry Training:	57
Total:	250

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

*Total number of trainees/students affected: 15,000 TOP trainees
2,600 private tertiary students
30,000 industry trainees*

Broadcasting

1. Please identify any subsidy programmes related to trade in services, with a brief description of each programme.

Funding is made available by the Broadcasting Commission, an independent statutory body established under the Broadcasting Act 1989, to assist with the production of radio and television programmes which:

- *reflect and develop New Zealand identity and culture;*
- *promote Maori language and Maori culture;*
- *provide for the interests of women, children, persons with disabilities and minorities in the community, including ethnic minorities.*

2. Please state the policy objectives underlying the use of each subsidy.

The policy objective is to ensure that programmes which might not be provided in a purely commercial broadcasting environment will be available to meet the needs identified in the response to question 1 above. Note that there are no content quotas for New Zealand content in broadcasting: the Broadcasting Act does not require that a specific amount of New Zealand programming be produced or broadcast.

3. Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.

The subsidy applies to the production of services.

4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).

Grant. Contractual conditions apply.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

Producers of television and radio programmes are eligible. This includes television networks and radio stations with in-house production arrangements as well as independent producers.

6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other conditions).

The Broadcasting Commission must take account of the requirements of the Broadcasting Act in relation to the type of programming funding (see response

to question 1). The Act also requires account to be taken of the likelihood that the programme will be broadcast. Within those broad criteria the Commission is free to determine more detailed criteria. There are no restrictions on the nationality of the programme provider.

7. Please indicate how the subsidy is calculated (eg on production, on exports, on a fixed or fluctuating basis etc).

The nature of the service being supported means that there is no fixed unit cost. The Broadcasting Commission determines the amount of funding to be provided on a project-by-project basis, taking into account factors such as the cost of production, the extent to which the requirements of the Broadcasting Act are met, the extent to which the programme may be able to attract funding from other sources (eg joint venture, future advertising revenue once broadcast).

8. Please specify any time limits attached to the subsidies described above.

Time limits for each project are determined by the Broadcasting Commission in negotiation with the producer and are set down in contract.

10. Where such information is available, Members may wish to indicate:

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

The source of funding dispensed by the Broadcasting Commission is the public broadcasting fee. This is a tax of NZ\$110 per annum required to be paid by any person who owns, operates or uses a television set.

The total amount of public broadcasting fee revenue collected by the Broadcasting Commission is around NZ\$87 million, net of collection costs and provision for bad debts. Of this total, about 50% is spent on television programming (the remaining funding is allocated to a number of other non-programming statutory functions (eg archiving of programmes, assistance with extending radio and television transmission coverage).

As discussed above, there is no standard unit cost.

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

Radio and television programming funded by the Broadcasting Commission is intended to meet the needs of New Zealand audiences, ie the programmes are aimed primarily at the domestic market, not for export. Relatively little programming is sold overseas. Where such sales are made, the Broadcasting Commission requires that a proportion of the funding originally provided for production be rebated to the Commission. Accordingly, the effect of Broadcasting Commission funding, where an

overseas sale is made, is relatively revenue neutral: the seller of the programme cannot therefore exploit the grant for the purposes of obtaining a more favourable export position.

Film Production

1. Please identify any subsidy programmes related to trade in services, with a brief description of each programme.

Promotion and Support of New Zealand Films. The New Zealand Government appropriates funding to the New Zealand Film Commission, a Crown entity. The New Zealand Film Commission supports the production of film through investment, marketing, industry support and other activities.

2. Please state the policy objectives underlying the use of each subsidy.

The policy objectives underlying the use of this subsidy are:

- to encourage creative and sustainable production of quality New Zealand feature films;*
- to encourage the development of creative talent, and facilitate a dynamic film environment in New Zealand;*
- to stimulate local and international market intercession, and to attract investment to, New Zealand film.*

3. Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.

The programme is identifiably for the production of films.

4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).

Grant. Funding is allocated as an annual appropriation by way of Vote: Cultural Affairs.

It should be noted that the New Zealand Film Commission also receives a further grant of 6.5% of the lottery funds available for distribution by the New Zealand Lottery Grants Board. In the 1996/97 financial year, this amounted to \$9.872 million.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

Approximately 50 film producers and writers were eligible for assistance in 1995/96.

6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other conditions.

In carrying out its functions, the Commission may not make financial assistance available in respect of a film unless it is deemed to have a significant New Zealand content as defined under Section 18(2) of the New Zealand Film Commission Act 1978. Films made pursuant to an agreement made between the New Zealand Government or the New Zealand Film Commission and the Government of another country or relevant public authority are deemed to have a significant New Zealand content. Where co-production agreements are entered into between New Zealand and other nations, the agreements generally provide for co-production films to enjoy all benefits which are or may be accorded in each country to national films.

7. Please indicate how the subsidy is calculated (eg on production, on exports, on a fixed or fluctuating basis etc).

The nature of the services being supported means that there is no fixed unit cost. The Film Commission determines the amount of funding to be provided on a project-by-project basis, taking into account funding such as the cost of production, the extent to which the requirements of the Film Commission Act are met, and the extent to which the projects may be able to attract funding from other sources such as joint ventures.

10. Where such information is available, Members may wish to indicate:

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

In the year ended 30 June 1996, the Government provided grant monies of \$1.25 million in 1996/97 financial year and the New Zealand Lottery Grants Board provided \$9.872 million.

Land Transport

1. Please identify any subsidy programmes related to trade in services, with a brief description of each programme.

Public Passenger Transport.

2. Please state the policy objectives underlying the use of each subsidy.

The policy justification for the National Roads Account providing some support for public passenger transport is as follows:

-some road users choose private transport because they are not required to bear the full costs that this form of transport imposes on the community, including externalities such as environmental, congestion and safety costs. Because of this, encouraging more people to use public transport, which has fewer such costs, may result in a net improvement in national welfare.

-public transport provides a social service to the transport disadvantaged, ie people who do not have access to private transport, for reasons such as age, infirmity and low income.

3 Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.

Funding is provided for services only.

4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).

Grant.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

Land transport sector.

6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other conditions.

Any firm may submit a tender, provided it is a licensed vehicle service operator. There is no restriction on nationality or ownership. The service must, however, be provided in the place and manner specified by the relevant Regional Council.

7. Please indicate how the subsidy is calculated (eg on production, on exports, on a fixed or fluctuating basis etc).

Transfund New Zealand allocates funds from the National Roads Account to Regional Councils to support public passenger transport. The funding for the National Roads Account comes from excise duty on petrol, road user charges and motor vehicle licensing fees. The services to be supported by the passenger transport funding provided by Transfund are identified by the regional Councils, which allocate the business to particular transport firms by competitive tender, ie the firms bid a level of subsidy that they believe will enable them to operate the services concerned commercially. The lowest tender wins the business. If a transport firm believes it can operate a particular service profitably, and consequently submits a zero subsidy bid, no subsidy will be provided.

8. Please specify any time limits attached to the subsidies described above.

The contract between the transport operator and the Regional Council will be for a specific period, usually one year. The subsidy applies for this period.

10. Where such information is available, Members may wish to indicate:

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

Annual cost is estimated at NZ\$30 million.

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

No data is available.

Air Transport

- 1. Please identify any subsidy programmes related to trade in services.**

Subsidies to Airports.

- 2. Please state the policy objectives underlying the use of each subsidy.**

There is no explicit subsidy policy. However, a small number of domestic airports which operate in deficit, are assisted to assure their continued viability. Other domestic airports and all international airports are run on a purely commercial basis, including the requirement to pay taxes and local body rates and to return a dividend to shareholders.

- 3. Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.**

Funding is provided to maintain services only.

- 4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).**

The support takes the form of deficit funding by local authorities.

- 5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.**

Air services sector. About 7 airports, out of 24, receive deficit funding.

- 6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other conditions).**

Small domestic airports that are not commercially viable receive deficit funding from local authorities.

- 7. Please indicate how the subsidy is calculated.**

The subsidy is not calculated, but is directly related to the individual airport's operating deficit.

- 8. Please specify any time limits attached to the subsidies described above.**

The role of central Government in joint airport ownership is under review.

- 10. Where such information is available, Members may wish to indicate:**

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

For the year ended 30 June 1996, total funding was \$156,000.

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

No data is available.

Business Development

1. Please identify any subsidy programmes related to trade in services, with a brief description of each programme.

The Ministry of Commerce Business Development Programme includes a grant scheme which can assist a qualifying business to:

- determine its strategic goals and objectives in such areas as business planning, quality and environmental management; and*
- develop a product or service new to its region, or introduce new technology into an existing product or service; and participate in trade fair, protect intellectual property and develop new markets.*

2. Please state the policy objectives underlying the use of each subsidy.

The programme aims to assist small to medium-sized businesses access the information and skills to compete effectively. It provides inter-linked elements; the grant element is designed to enable qualifying businesses to test and apply capabilities and skills gained in the Programme's training/educative element; and the innovation, research and development and implementation elements enable businesses to test their strategic focus.

3. Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.

The programme applies equally to businesses producing goods and services. Statistics compiled in relation to the grants make no distinction.

4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).

Grant.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

All sectors.

6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other conditions).

The Programme is open to any individual or business based in New Zealand for the purposes of tax, but applicants employing more than fifty full-time equivalent employees are not eligible to apply for grants. (Although this restriction

excludes only a small proportion of all New Zealand enterprises it excludes those enterprises which are in fact responsible for most New Zealand exports.)

To gain entry to the grant scheme applicants have to show their Business Development Board that they are at a stage where they wish to test or apply a skill that they have acquired or have had access to through either the Programme's training/educative element or through some other means.

Assistance for market development is available only where the business has not previously sold its goods/services in the proposed new market.

Target groups are Maori, Pacific Island people and women.

7. Please indicate how the subsidy is calculated (eg on production, on exports, on a fixed or fluctuating basis etc).

The maximum available is NZ\$20,000 per applicant per annum and there is an all-time maximum of NZ\$50,000 per applicant. The grants are not linked to the applicant's level of production or exports. The grants are paid as a 50% reimbursement on qualifying expenditure.

8. Please specify any time limits attached to the subsidies described above.

An application for a grant must be made before any costs have been incurred, and the applicant must then uplift the grant within twelve months of approval. Where there has been delay in completing an approved project an extension of up to three months is available.

10. Where such information is available, Members may wish to indicate:

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

From 1 July 1996 to 28 February 1997 a total of 2,657 projects were approved to a total of NZ\$8.6 million. During the same period NZ\$4.3 million was paid out in grants.

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

No data is available.

Tourism

1. Please identify any subsidy programmes related to trade in services, with a brief description of each programme.

Tourism Marketing Joint Venture Fund Projects. This allows the New Zealand Tourism Board to carry out joint marketing projects with the private sector where at least 50% of the cost is met by the private sector.

2. Please state the policy objectives underlying the use of each subsidy.

The objective is to carry out additional joint advertising, promotional and research projects which add value to the marketing of New Zealand as an international tourism destination and generate additional visitor arrivals, person nights and general tourism spending.

3. Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.

Funding is allocated to services only.

4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).

The programme does not provide any direct grants or loans. The way the subsidy works is that before a project begins its total cost is calculated and both the private sector's and the Board's contribution is determined. The Board's financial contribution is spent alongside or after the private sector's financial contribution in matching instalments.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

Tourism sector. Private sector partners may include the following types of organisations involved in marketing a tourism product overseas:

a. any company or commercial undertaking whether registered in New Zealand or overseas;

b. any state-owned enterprise;

c. any regional, local authority or regional tourism organisation;

d. any organisation that is not directly funded by the New Zealand Government.

6. Please indicate the eligibility criteria for subsidies (location, nationality, destination of output or any other conditions).

There are two types of eligible projects:

- a. offshore advertising, and/or promotion;*
- b. market research.*

The project must involve a new activity for the private sector partner - to ensure that the programme is not used as a way of diverting the partner's existing promotional funds.

7. Please indicate how the subsidy is calculated (eg on production, on exports, on a fixed or fluctuating basis etc).

The subsidy is negotiated between the Board and the private sector partner. This is based on a written contract between the Board and the partner. The rate of the subsidy is never more than 50% of the total cost of the project - the actual rate is a matter for negotiation between the Board and the partner.

8. Please specify any time limits attached to the subsidies described above.

Each contract (referred to in 7 above) must specify a time frame for expenditure, including instalment payment dates where appropriate.

10. Where such information is available, Members may wish to indicate:

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

The amount allocated to this programme for the year ended 30 June 1997 is NZ\$20 million.

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

No data is available.

Tradenz Joint Action Group (JAG) Funding

1. Please identify any subsidy programmes related to trade in services.

The programme directs funding towards collective generic activities such as industry strategic development.

2. Please state the policy objectives underlying the use of each subsidy.

The programme is designed to enhance industry positioning and the selection and targeting of foreign markets, including in the services sector.

3. Please indicate the availability in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, eg when a company produces both goods and services.

The programme applies equally to businesses producing goods and services.

4. Please indicate the form of each subsidy (eg tax concession, loan, grant etc).

Grant.

5. Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

The current focus is on the following sectors: consultancy services, publishing services, aviation services and audio-visual (film and television) services.

6. Please indicate the eligibility criteria for subsidies.

Funding is given to industry groups and not to individual companies. To be eligible an industry must have a cohesive industry unit that Tradenz can work through, particularly in generic funding. Processes are restricted to New Zealand companies which are currently or potentially earners of foreign exchange.

7. Please indicate how the subsidy is calculated.

Funding is allocated on a case-by-case basis with a maximum of 50% for approved activities.

8. Please specify any time limits attached to the subsidies described above.

There are no prescribed time limits, although all funding is dependent on annual budgetary allocations made by the Government.

10. Where such information is available, Members may wish to indicate:

a. Subsidy per unit or total annual subsidy outlay, in respect of each subsidy granted;

Total funding for the services sector for the year ended 30 June 1997 is approximately \$400,000.

b. Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

No data is available.

Other

As the conceptual scope of the questionnaire does not yet appear to be fully defined, there may be other aspects of subsidisation in need of further consideration. At this point, New Zealand would draw attention to the following points:

A number of programmes relating to scientific research are currently awaiting Cabinet approval. Until that approval is obtained, it is not feasible to provide any information, should that be necessary, on such programmes.

New Zealand maintains a number of measures of a public good nature - including animal welfare services, border inspection and quarantine, pest and disease surveillance, emergency response, pest control, research, irrigation and flood control, adverse events, erosion control and soil conservation - which are notified under the WTO Agreement on Agriculture as exempt from reduction commitments in the "General Services" category of Annex 2 (the "Green Box").

There are in addition a number of issues relating to assistance available from local authorities, such as rates relief, which could be obtained only by surveying local authorities but not in the time frame stipulated. New Zealand is willing to enter into discussions on any of the above issues should other members regard these matters as falling within the scope of the questionnaire.

*WORLD TRADE
ORGANIZATION*

RESTRICTED

S/WPGR/W/22

23 July 1997

(97-3150)

Original: English

Working Party on GATS Rules

COMMUNICATION FROM ASEAN

Emergency Safeguards

The following communication is being circulated at the request of ASEAN to Members of the Working Party on GATS Rules.

The ASEAN would like to express our support to the Chairperson's suggested approach (3 June 1997) on the subject of emergency safeguards by addressing the 4 questions.

These questions are the prime and key elements that must be first tackled, and should serve as a starting point of our proceedings on the subject.

However, due to the relatively new and rather lack of information and research on the subject, definitive answers to these questions cannot be made at this time.

As a result, the ASEAN can only provide preliminary observations on them, on the understanding that they are without prejudice to our right to come back to the questions and to amend or withdraw our positions as appropriate in the light of new information or the more elucidation on the subject which may be transpired in the course of the proceedings.

1. On whose behalf would emergency safeguard action be taken?

The emergency safeguard measures (ESMs) would be taken temporarily to protect the national industry, which is understood to mean the totality of the natural persons and/or juristic persons supplying like or directly competitive services of the Member taking the measures according to the respective definitions provided for in Article XXVIII (Definitions) of the GATS, in order to enable them to adjust to foreign competition.

2. In what circumstances would emergency safeguard action be taken and what would be the purpose of such action?

The ESMs would apply to all modes of supply, including both pre-establishment and post-establishment of commercial presence, in the case whereby, as a result of

unforeseen development and of the effect of the obligations incurred by a Member under the GATS, there is a dramatic increase in consumption of foreign services, in absolute or relative terms, to such an extent that it causes or threaten to cause disruption of the national industry producing like or directly competitive services of the Member taking the measures.

The dramatic increase in consumption of foreign services could be assigned to a fixed percentage of the average level of supply of foreign services concerned as a whole of the previous representative years, such as 100, 150 or 200 %, the threshold of which is subject to negotiation.

3. **What approach should be adopted in respect of injury/adverse effects, and the relevant casual link between injury/adverse effects and commitments under the GATS?**

The injury should be serious injury, which could be measured by employing, *mutatis mutandis*, the method of measuring serious injury provided for in Article 4.2 and 4.3 of the Agreement on Safeguards, namely:

In the investigation to determine whether the dramatic increase of consumption of foreign services has caused or are threatening to cause serious injury to the national industry producing like or directly competitive services, the competent authorities shall evaluate all the relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry; including in particular the rate and amount of increase in consumption of foreign services in absolute or relative terms; the change in level of supply of services of that industry; and the loss of profits and employment of that industry.

The determination referred to in the above paragraph shall not be made unless the investigation demonstrate, on the basis of objective evidence, the existence of the causal link between dramatic increase of consumption of foreign services and serious injury or threat thereof . When factors other than dramatic increase of consumption are causing injury to the national industry at the same time, such injury shall not be attributed to dramatic increase of consumption.

4. **What measures would be taken under the emergency safeguard mechanism? Are some measures deemed more suitable than others?**

Two measures, namely: (1) restriction on market access, which could include both regulations, taxes, quotas, and embargo; and (2) suspension of national treatment could be particularly appropriate to be used as emergency safeguard measures. These measures could be temporarily employed to all modes of supply, including both pre-establishment and post-establishment commercial presence, depending on the case involved. For instance, restriction on market access could be employed in mode 1 (cross border supply), mode 2 (consumption abroad), mode 3 (pre-establishment commercial presence), and mode 4 (movement of natural persons) of the GATS, while suspension of national treatment could be employed to mode 3 (both pre-establishment commercial presence (in case where there is no embargo on market access), and/or post-establishment commercial presence), and mode 4 (movement of natural persons). In case of post-establishment commercial presence, acquired right should be respected, namely any benefit derived from granted national treatment during the period of no ESMs should be preserved.

Suggestion

Since this subject is relatively new, and there is only a few information and research on it to help us in the process of conceptualizing and formulating provisions on the ESMs,

it should be advisable that we request the WTO Secretariat and other appropriate international organizations, such as the UNCTAD and OECD which are familiar with and expert on the subject to assist us. The assistance may be in the form of gathering information or conducting research on the subject for us.

A seminar on the subject could also be another avenue to gain knowledge on the subject.

*WORLD TRADE
ORGANIZATION*

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*WT/WGTGP/W/4
S/WPGR/W/21*

15 July 1997

(97-2954)

*Working Group on Transparency
in Government Procurement
Working Party on GATS Rules*

APEC SURVEYS ON GOVERNMENT PROCUREMENT SYSTEMS

Note by the Secretariat

1. *The Secretariat was asked to invite APEC to make available what information it could share with the WTO regarding surveys it had undertaken on the government procurement regimes of APEC economies (WT/WGTGP/M/1 and S/WPGR/M/10).*

2. *The following information has been received from the Chair of the APEC Government Procurement Experts Group. The documents listed below are available for consultation by the WTO Members in Office 3014 (Mrs. V. Kulaçoğlu, tel. 739 5187) and Office 3110 (Mr. A. Mattoo, tel. 739 5067).*

(a) APEC Member Economies• 1996 Individual Action Plan¹, Excerpts on Government Procurement compiled by the APEC Secretariat.

(b) The Government Procurement Experts Group Chair's Summary Observations on the surveys of government procurement systems and of publication arrangements for government procurement information in Member economies.

(c) The surveys have been received from the following APEC Members:

Australia

Brunei Darussalam

Canada

Chile

Malaysia

Mexico

New Zealand

Philippines

¹Available at the APEC website <http://www.apecsec.org.sg>.

China
Hong Kong, China
Indonesia
Japan
Republic of Korea

Singapore
Chinese Taipei
Thailand
United States

WORLD TRADE
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S/WPGR/W/20

7 July 1997

(97-2833)

Working Party on GATS Rules

SYNTHESIS OF THE RESPONSES TO THE QUESTIONNAIRE
ON GOVERNMENT PROCUREMENT OF SERVICES

Note by the Secretariat

This note presents a synthesis of the responses received so far to the *Questionnaire on Government Procurement of Services* (S/WPGR/W/11). Responses have been circulated as separate documents as addenda to document S/WPGR/W/11. The annex to this note gives the list of the responses received so far and the reference under which they have been circulated.

In certain cases, this synthesis refers to the responses of individual Members to illustrate specific aspects of procurement regimes. The references are selective rather than exhaustive, i.e. the references do not necessarily include all Members whose regimes have the relevant features. The references also do not imply a definitive interpretation of provisions in Members' procurement regimes. The following abbreviations are used:

EC European Communities and their Member States
HK Hong Kong
Korea Republic of Korea
NZ New Zealand
US United States

I. DEFINITION

1. What is the definition of government procurement employed in completing this questionnaire?

Several Members have stated that there is no legislative or regulatory definition of government procurement (Colombia, NZ). In most cases, government procurement is defined simply as the procurement of goods and services by the central, provincial and local governments, as well as by other public entities, which in certain cases include •utilities• - i.e. suppliers of energy, water, transport and telecommunications services (EC, India, Norway, Switzerland). While some Members have included all state procurement for the purpose of the current survey, others have limited coverage to federal government departments (Canada). One Member has taken the procurement of services covered by the GPA as its definition (Japan), while another has treated the use of public funds to finance purchases either fully or partially as the defining criterion (Poland).

Some have stated that the term •procurement• includes all stages of the process by which government agencies acquire from external sources the resources they need to fulfil their mandates (Australia). Others have indicated, explicitly or implicitly, that procurement generally does not include non-contractual agreements or any form of government assistance (Korea, US). One Member has noted that procurement includes both purchases and sales, as well as any contract concerning leasing, rental, work or supplies (Argentina).

II. ADMINISTRATIVE STRUCTURE

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

(See response to Question 3)

III. LAWS AND REGULATIONS IN FORCE

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

A dominant theme is the centralization of rule-making, and the decentralization of operational functions. In general, there are national (and sometimes provincial) legislation and/or guidelines on procurement, but the responsibility for award and execution of contracts remains with each contracting entity. In one case, the rules of the regional integration agreement apply to procurement above certain threshold values while national laws apply to procurement below the threshold values (EC). National laws themselves may only apply to procurement above specified threshold values (Norway). The national rules differ in depth, in certain cases specifying relatively detailed procedural obligations, while in other cases they contain only general guidelines. In some Members, a national public

procurement agency is responsible for monitoring and enforcement of procurement laws and the determination of procurement policy (Hungary). In a few cases, however, there are no laws or regulations relating specifically to procurement and each entity is free to determine its own procurement procedures within the general parameters set by the government's purchasing policy (NZ).

The actual procurement of services is invariably decentralized, and tends to take place close to the end-users. However, in certain cases, procurement above specified thresholds (Korea) and procurement of particular services, like construction services (Norway), takes place through a central specialized agency.

In the large majority of cases, the procurement regime does not distinguish between the procurement of goods and services (Brazil, Chile, many Member states of the EC, Japan, Korea, Mexico, Poland, Singapore, Switzerland). In some cases, even though the basic regime is the same, there may, nevertheless, be specialized additional rules that apply to specific services such as after-sales services (India), consultancy (HK), design contests (France), construction, major systems, and utilities (US).

In a limited number of cases, there is one regulation for the procurement of goods, one regulation for the procurement of services and one for the procurement of constructions and construction works (Norway, EC, Hungary) even though the differences between regulations may not be significant. The threshold values for service contracts and for goods contracts are usually the same. The threshold for construction works may be higher. If an entity wishes to purchase something which is considered partly a service and partly a good, the contract is regarded as a goods contract if the value of the goods exceeds the value of the service involved and vice versa. In order to be covered by the works regulation, the service has to bear the character of a works contract, i.e. concern work on buildings and similar projects. Services are sometimes treated as the residual category, i.e. a contract that is neither a supply nor a works contract is deemed to be a service contract.

In one case, the procurement of services is decentralized to departments and agencies while the procurement of goods is relatively centralized (Canada). In one Member, preferences are applied by state governments only to goods and related services, and not to procurement of services alone (Australia). In another case, the regime distinguishes not only between goods and services, but also between specific types of services, for instance between construction works, consultancy, professional services, execution of artistic works, telecommunication services and postal services (Colombia).

IV. PROCUREMENT PROCEDURES APPLIED

4.(a) What procedures are followed in the procurement process?

The basic range of permissible procurement procedures are the same in most Members, though there are some variations. As anticipated in the questionnaire, three broad categories of procedures are commonly distinguished: (i) public or open tendering procedures under which all interested parties may submit a tender; (ii) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (iii) limited tendering, private contract or single tender in which the awarding authority contacts suppliers individually, and sometimes only a single supplier. Some Members have specified that the terms of the contract may be determined through negotiations in the context of limited tendering (Chile, India), while others seem to allow the possibility of negotiations also in other cases (EC, Poland).

In some Members, even in open tendering procedures, only qualified suppliers are invited to participate (Brazil, Japan). One Member conducts a stratified tendering procedure (Mexico). In the first •technical• phase, only the aspects of bids pertaining to the required technical specifications of the product or service in question are examined. Those bids which meet the technical requirements set forth in the bidding conditions qualify for the second •financial phase•, where price is the dominant criterion. Several Members sometimes employ design or other •contests• in the case of service contracts (Brazil, EC). Under this procedure, the contracting authority may acquire a plan or design selected by a jury after having been put into competition with or without the award of prizes. Design contests can be organized as a part of another procedure leading to the award of a service contract, or can constitute an independent procedure on their own (EC). Other members have mentioned, without further explanation, procedures such as •two-stage tendering•, •negotiations-with-retaining-competition• (Poland), and •repeat orders• (India).

In one Member, public sector purchasers use, on a voluntary basis, the services of several private sector supply brokerage companies which specialise in servicing the purchasers through consolidated period supply contracts which are established through competitive tendering (NZ).

In one Member, it is stipulated by law that technical specifications generally be free from any restrictive requirements so as to allow maximum competition among potential suppliers (US). The order of preference for specifications is: (1) voluntary standards; (2) commercial item descriptions in the acquisition of commercial items; (3) government product descriptions stated predominantly in terms of functions to be performed or performance required; (4) government product descriptions stated predominantly in terms of material, finishing schematics, tolerances, operating characteristics, component parts and other design requirements.

(It is possible that other Members have not addressed this aspect of their procurement regimes because it was not explicitly covered in the questionnaire.)

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Even though the basic range of procurement methods are the same in most Members, there are significant differences in the conditions under which a purchasing agency can resort to different procedures. In some Members, the procuring agency has significant discretion in choosing the precise procurement procedure within the parameters of the government's purchasing policy and guidelines (NZ, Australia). In most Members, public or selective tendering procedures are the rule, and selective tenders are exceptions which may be resorted to in special circumstances. In some cases, these circumstances are specified in the plurilateral agreement to which the Member is party, while in other cases these are specified in national legislation. It is also often the case that procurers have greater discretion, and more freedom to resort to less competitive methods, if procurement is below specified thresholds - either specified in a plurilateral agreement or the national legislation.

Whether a contracting authority uses an open procedure, a selective procedure or a project competition can also depend on the type of service which is to be procured and the complexity of the procurement (US). If there are tenders for basic services that are easy to compare and contracts are awarded according to price only, an open procedure tends to be used. If evaluation of the tenders would be time consuming, entities tend to use selective

procedure to ensure that excessive time is not spent on evaluation (Norway). This is also the case when the service in question cannot be defined sufficiently precisely.

Several members permit selective tendering when only a limited number of bidders are suitable for fulfilling the contract due to the particular nature of the subject of public procurement. In one Member, in the case of a construction project above certain thresholds, a contract official may restrict qualification of a bidder on the basis of past performance of the participants (Korea). In other cases, however, selective or limited tendering are permitted only when there are at least some minimum number (sometimes three) of qualified bidders suitable for submitting a bid (EC, Korea, Hungary).

The conditions on limited tendering imposed in certain Members are based on provisions in plurilateral agreements, but even Members not party to such agreements frequently stipulate similar conditions. These include: no satisfactory offers have been obtained in the open or selective procedure; tenders submitted have been collusive; for works of art or when for reasons of protection of intellectual property there is only one supplier possible; as a result of unforeseen circumstances the procurement becomes too urgent to organise an open or selective procedure; additional deliveries by the original supplier which are intended either as parts or replacements for existing supplies; unforeseen circumstances making additional construction services necessary which cannot be separated from the initial order, etc. Some Members have also stated that limited tendering may be used when it is not in the public interest to call for tenders by advertisement (India). Others permit such methods when procurement is confidential or sensitive (Singapore). One member allows a private contract when it is pursuant to a private group contract with small and medium enterprises (Korea).

The conditions for resort to negotiations vary between Members. In some Members, these conditions are similar to those under which limited tendering is permitted (Chile, Hungary). In one Member, negotiated procedures are sometimes used in the utilities sector after the publication of calls for competition (Norway). In the same Member, state entities can also use negotiated procedures when it is extremely difficult to specify the tender documentation to such an extent that bids can be compared. In yet another Member, negotiations are undertaken in extreme urgency to meet the •emergent demand within a given time frame where sources of supplies are known• (India).

One Member has stated that contracts involving foreign assistance or credit may be subject to the regulations of the competent entities, *inter alia*, in matters relating to procurement procedures and systems (Colombia). Another Member states that international tenders shall take place only when they can be justified by the entity, subject to market research, when the resources are obtained through foreign credits, or when the contract is covered by international agreements (Mexico).

(c) What are the time limits for submission of bids?

Most Members require that suppliers submit their bids before the deadline mentioned in the notice for tenders. The actual deadline varies. Several Members have time limits which are in line with the provisions of a plurilateral agreement. Minimum limits along the following lines are frequently observed: 1) public or open tendering procedure: 40 days after publication; 2) selective tendering procedures: 25 days after publication for submission of applications for participation, and 40 days after invitation to submit for submission of bids: Some Members, who give procurers freedom in defining procedures within the parameters of general guidelines, do not stipulate precise time limits (Australia, NZ).

In some Members, time limits differ according to the entity (Chile), the value of the procurement (Korea), the complexity of the procurement (US), and the service in question (EC, Chile). One Member stipulates a longer time limit for contracts advertised both locally and overseas than for contracts advertised only locally (Singapore) while another makes a similar distinction between international and domestic tenders (Mexico). In one Member, required time limits have been recently reduced for commercial, off-the-shelf acquisitions and are to be reduced further as more procurements are conducted electronically (US).

The time limit for receipt of tenders may be fixed, in some cases, by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders (EC). One Member allows, in justified cases, the inviter of bids to extend the deadline for submitting the bids on one occasion - provided that the extension of the deadline is published in an announcement prior to the expiry of the original deadline, and the reason for extending the deadline is indicated (Hungary). In some cases, the inviter of bids may apply an accelerated procedure in the course of procurement by invitation or negotiation when this is justified by extraordinary urgency, but the circumstances must not arise from the negligence of the inviter of bids, and an accelerated procedure may not be applied in construction projects (Hungary).

V. PUBLICITY FOR INVITING TENDERS

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

In most cases, procurement opportunities are advertised in some form of official gazette and/or newspapers of wide circulation. The former is frequently obligatory, and the latter at the discretion of the procurer. Often these means are supplemented by publication in relevant trade journals or magazines, contact points on government procurement (Japan), periodic handouts (US) and notice-boards (Argentina). Some Members also require the publication of preliminary summary information or periodic indicative notices containing the essential characteristics and value of the contracts that are to be awarded over the following 12 months (US, EC). In some cases, while it is compulsory for federal entities to publicise notices, provincial and local governments may do so on a voluntary basis (Norway). Only in one Member are there no central laws, regulations, or rules for publication of notices (NZ).

There is little uniformity in language requirements. Sometimes it is only the language of the country in question, while in other cases the use of one or more foreign languages is also required.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

Predictably, invitations to tender are invariably published in the case of open or public procedures, may be published in the case of selective procedures, but are not published in the case of private contracts. In one member, the time-frame for publication differs between public and selective tendering procedures (Argentina). Publishing requirements are usually less rigorous for procurements falling below certain thresholds (EC, US). For instance, notices in the official gazette are only published in some Members for procurements above the threshold values, while notices for other procurements are publicised in local, regional or national newspapers (Norway). The thresholds may differ

according to the service in question (Canada). In one Member, invitations to tender for •non-priority services• contracts (presumably covering services deemed to be less •tradeable•) are not published, while invitations in the case of certain utilities like transport and telecommunication may not be published (EC). Some Members state that the extent and form of publicity does not depend on tendering procedures (Japan, Colombia) or on the value of procurement (Australia, India, Chile, Colombia, Japan).

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The type of information that must be made available in notices publicising procurement opportunities is similar for most Members though there are differences in the degree of detail. Most responses mention information such as name and contact address of inviting entity; clear description of the service to be provided; tender opening and closing dates; duration of contract and/or time limit for completion of the services; address of enquiry point for further information and tender documentations; deposits and guarantees required; technical standards, qualifications and any special conditions of participation in the tender; and criteria for the award of the contract. In some cases, the information required to be published differs for public works from those for other service (Argentina, Mexico).

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set.

Practice with regard to charges for obtaining tender documents varies somewhat. Some Members do not charge any fees, while others leave open the possibility of doing so. In most cases where fees are charged, however, their level has to be related to the actual cost of provision of tender documentation. In some cases, a deposit may be required for documents which are handed out free of charge but must be returned to the procuring entity (EC). In some Members, advertised tender sets are sold on payment of fees which depend on the value of the procurement (India, Argentina). In one case, the Government's purchasing guidelines state that the price charged or deposit required, if any, for tender or related documents should not be so high as to discourage *bona fide* competent contractors or producers from participating in the tendering proceedings (NZ).

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

The use of electronic means for publicising procurement opportunities is not uniform. While some Members have made a substantial investment in the development of electronic information systems, several others have only taken preliminary, experimental steps in this direction. In some cases, only tenders above certain thresholds are advertised electronically (Norway), and these threshold may differ according to the service sector concerned (EC). In other cases, information for electronic databases is still being provided voluntarily by the purchasing agencies (HK, NZ). Some agencies have •home pages• on the Internet and include tender notices at these websites (HK, US).

In one Member, it is planned to create electronic data interchange (EDI) networks which will be able to automatically update inventories, invoice customers, pay suppliers, advertise federal government requirements and perform many other tasks that are now time, labour, and paper intensive (US). It is estimated that the new electronic purchasing could cut the Member's federal procurement costs by 10 percent by 1997 and speed delivery times by a third. Another Member has created an open bidding service which is a user-friendly automated bidding system designed to give potential suppliers fast, equal access to information on government contracting opportunities (Canada). A third Member has begun work on an electronic public procurement network aiming to make the process more efficient, more reliable, less time-consuming, and ultimately more cost effective, both for procurers and suppliers (EC).

One Member has stated that its legal system does not currently permit the use of electronic means to participate in tendering procedures, but a new system is being created through which invitations to tender may be consulted electronically (Mexico). Another Member has stated that the use of electronic means to advertise government procurement opportunities is not provided for statutorily (Argentina).

VI. REQUIREMENTS LAID DOWN FOR POSSIBLE SUPPLIERS

6.(a) Are there registration, residence or other requirements for potential suppliers?

(There is significant overlap in the responses to parts (a), (b) and (c), which should be read together.)

Registration requirements

Members' procurement rules differ significantly in respect of registration requirements, which are compulsory in certain Members and do not exist in others. In certain Members (Colombia, India, Japan, Korea, Poland, Singapore) all local and foreign suppliers interested in participating in public sector tenders are required to register as government contractors or be qualified as such. Several Members state that their compulsory registration system is non-discriminatory, in that it is equally and objectively applicable to both local and overseas suppliers (Singapore). In some Members, non-registered firms could be allowed to participate only in *ad hoc* tenders for non-recurring services or works contracts (India, Singapore). In one Member, who operates a compulsory registration scheme, unregistered suppliers can only be considered if local expertise is lacking, or in cases where the local contractors are unable to execute their contracts or are unable to reach a certain high standard (Singapore). The registration system in this Member is to be reviewed with a view to eliminating any discriminatory effects.

Some Members have provided reasons for the operation of registration systems. One states that the objective of the system is to facilitate the qualification process. The system helps the procuring entity to create a readily available pool of information on each registered firm, which reduces the time needed to examine qualifications during the tender evaluation. The registered suppliers also benefit because they are not burdened by the need to provide the same information each time they participate in a public tender (Singapore). Another Member has stated that the registration system helps to reduce the risk that the designated supplier will not be able to implement the contract properly. Furthermore, once the competition is narrowed down to qualified suppliers, it is possible to evaluate bids only on the basis of price, which helps to enhance the transparency of the procurement procedures (Japan). Another Member maintains a register of small-scale industries who benefit from preferential procurement (India).

There are many Members who do not normally require registration or qualification, but nevertheless allow it in certain situations. For instance, one Member allows for lists of registered suppliers for certain services if the procurement falls below specified sectoral thresholds (Canada). Another states that in the utilities sector, contracting entities may use lists of qualified suppliers (Norway) while in another registration is essential for construction services (Argentina).

Residence requirements

Residence requirements seem to be relatively rare. In some Members, it is required that foreign natural persons without domicile in the country or foreign legal persons without a branch in the country must accredit an agent domiciled in the country who is duly empowered to submit tenders and sign contracts and also to represent them legally and in non-legal matters (HK, Colombia). In one Member, the inviters of bids may prescribe in the invitation that only bidders resident in the country may take part in the procedure (Hungary). In another Member, in order to conclude a contract with the State, a firm must normally be established in the country, but foreign firms are exempted from this requirement in the case of international tenders (Argentina). One Member has stated that the government may sometimes require the contractor to be within a certain distance of the site of contract performance where there is a legitimate need of the contracting entity to have the contractor in close proximity (US).

(For the relationship between local establishment and national treatment, see Question 9).

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

Many Members require that potential suppliers provide evidence of their ability to fulfil the contract, for instance through demonstrating financial soundness, professional and technical qualifications and experience, adequate production capacity, and meeting any necessary legal requirements. For instance, contracting state entities may require a tax declaration from suppliers to show that the supplier has met all tax obligations (Norway), statement from banks, professional risk indemnity insurance (EC), etc. In some cases, the submission of bid security, an amount to be determined in advance, may be required, and failure to make a submission may render the bid non-responsive (Canada, Hungary, Mexico). Fines and other penalties imposed on the supplier for delay or non-performance can be applied against these guarantees (Chile).

The ability of service providers to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability. The contracting authority may specify which references it wishes to receive, or the production of certificates issued by independent bodies attesting conformity of the service with certain quality assurance systems. In some cases, tenderers may be required to prove their enrolment in one of the professional or trade registers. Furthermore, legal persons may be required to indicate the names and relevant professional qualifications of the staff to be responsible for the performance of the service. In some cases, if tenders are submitted by groups of service providers, a specific legal form can be required once the contract has been awarded, even though it may not be required in order to submit the bid (EC). In some Members, tenderers have to comply with health, safety and employment equity considerations (Canada, Switzerland). Additionally, for sensitive procurements, a contractor may have to have appropriate security clearance, which may also be obtainable by foreign suppliers.

Some Members give credit for past performance (Singapore), while others only use inadequate past performance as a basis for disqualification (Mexico). One Member has put in place an •endorsed supplier arrangement•, under which suppliers of information technology and major office machine products under common use arrangements have to demonstrate a commitment to world best practice in terms of quality standards and service, and long-term value adding activities in countries party to the relevant regional integration agreement (Australia). Some Members identify the natural and legal persons who are not entitled to submit tenders. These could include persons who have family or business ties with the civil servant involved in the procurement process and persons who, individually or through the corporate group to which they belong, issue opinions, expert appraisals or assessments in connection with the settlement of disputes (Mexico). In some Members, entities have freedom to establish the objective requirements for participation which they deem necessary (Colombia, NZ).

(For reciprocity conditions in procurement, which amount to requirements to be services suppliers of particular countries, see Question 9).

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers• mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

Members do not usually make a sharp distinction between registration or qualification requirements and the maintenance of lists of approved suppliers. Some allow lists of approved suppliers to be used only in exceptional cases, and then the recourse to lists must be justified and approved (US). Certified registration in official lists by the competent bodies usually constitutes a presumption of suitability in terms of the criteria for qualitative selection (EC). The guidelines for procurement in one Member, advise organisations which purchase items specifically designed and manufactured to meet their requirements, to consider developing a list of •approved suppliers• (NZ). This process would involve potential suppliers being evaluated under appropriate criteria. It is argued that while building up an •approved supplier• network could be expensive, there could be long-term benefits in consolidating effective relationships with reliable suppliers. However, to ensure fairness, organisations are advised to be careful to avoid exclusivity, and ensure that lists are continually reviewed.

Companies or firms seeking registration or qualification are usually required to make a declaration (Colombia, Poland) and/or have their background, finances and ability to provide a satisfactory service checked by the registration authorities (Japan, Poland). In some cases, a non-refundable registration fee is charged (Singapore). Where such lists are maintained, they are valid for a certain period, are regularly updated, and interested suppliers are given adequate opportunities to be included (Colombia, India, Japan). Qualifying criteria usually have to be published annually together with the list. Suppliers may apply for admission at any time or at regular intervals. If the procuring entity refuses to accept a supplier on the list, it may be possible to challenge this decision before an independent body (Switzerland).

One member maintains •common use arrangements• (CUAs) which are standing offers with companies to supply goods and services based on pre-negotiated terms and conditions and at agreed prices (Australia). Issues such as trade terms, delivery arrangements, discount schedules and all other contract details are agreed prior to suppliers being added to the lists. CUAs cover most requirements for recurring needs across departments and are continually monitored to ensure that suppliers meet required standards.

VII. CRITERIA FOR ASSESSING BIDS AND AWARDING CONTRACTS

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

In general, contracts are awarded on the basis of criteria such as lowest price, best value for money spent or the economically most advantageous tender. The latter are based on evaluation of price, quality, technical merit, qualifications and experience, aesthetic and functional aspects, service and technical assistance, environmental impact, date of delivery, *et cetera*. In a couple of cases, it is mentioned that the procuring entity estimates a price which serves as the standard for awarding contracts (Japan, Korea).

It is invariably required that all the criteria for the award of contracts be made available in advance through publication in the tender notice or in the tender documents. In some cases it is also required that if criteria other than price are to be taken into account, their relative importance must be specified in advance where possible (Poland, EC).

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

In most cases, procurement is not subject to any offset provisions. Defence procurement may well be the most significant exception (Norway, NZ). In one Member, certain industry development programs involve offsets (Australia), while in another there is a provision in consultancy contracts which requires that government staff be trained (HK).

(Criteria which relate to local content requirements are discussed under Question 9).

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

In general, preference is not given to any particular group of enterprises. However, in some cases, preferences are given to small and medium sized enterprises. In one Member, it is required that awards of any size be set aside for small business participation when there is a reasonable expectation that offers will be obtained from at least two small businesses and awards will be made at fair market prices (US). In another Member, state entities are authorized to give preference in selection, other things being equal, to local cooperatives, micro-enterprises, foundations, communal action associations and similar entities of the place where the contract is to be implemented (Colombia). In one Member, small-scale sector bidders are entitled to a price preference of up to 15 per cent over the large scale sector, as were public sector undertakings until recently (India).

(See also Question 6)

(d) Do the procurement criteria differ according to sector or region of the economy?

In most cases, procurement criteria do not differ according to the sector or region. However, in one case, geographical location is designated in the context of a labour surplus area set-aside (US). Another Member allows for conditions in the invitation for bidding which further the objectives of job creation, the development of underdeveloped regions, the protection of the environment, as well as increasing the chances of participation for small and medium size enterprises (Hungary). In one Member, evaluation criteria in procurements that are not subject to international agreements may be used to achieve industrial and regional benefits, as long as the benefits are sought in a non-discriminatory manner with respect to regions for which there exists a general framework of regional development (Canada). In one Member, even though there is no change in the basic criteria for procurement there is a special regime for exploration and exploitation of natural resources, and for trading, industrial and marketing activities by State entities that carry out such activities (Colombia). One Member has specified that there may be a

restriction on participating in tendering by •location of principal office• for contracts below certain thresholds (Korea). In one Member, certain regions are given concessions in taxes and duties by the central/state government (India).

(For differences in preference margins associated with provincial or local procurement, see question 9).

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

In general, the purchasing authority is required to follow the pre-specified evaluation criteria and make a decision solely on the basis of these criteria. In some cases, where criteria other than price are used, discretion is reduced by recourse to stratified procedures, i.e. qualifying suppliers in advance on a non-discriminatory basis using non-price criteria, and then following straightforward price competition (Japan, Mexico). In some cases, however, the purchasing authority has some discretion in defining the criteria and/or choosing the specific procedure followed (Colombia, Hungary, Poland). One Member has mentioned that the procuring authority has the right to cancel the tender at any stage prior to the definitive award provided it has good cause to do so, or to make a preliminary award of all or part of the items.

In one case, only procurements above a certain threshold are subject to review by a state administrative authority to ensure compliance with administrative regulations (Chile). In another case, financial responsibility is delegated to Ministers or Chief Executives depending on the value of the procurement and associated payments (NZ).

(For situations in which a procurer may enter into negotiations, see Question 4)

VIII. DISCLOSURE OF BIDS RECEIVED AND CONTRACTS AWARDED

8.(a) How are tenders received, registered and opened?

Members have a lot in common concerning the basic principles of how tenders are received, registered and opened. In some cases, the principles must be in accordance with international agreements. It is frequently required that the date, time and place of opening, as well as the persons allowed to be present at the opening, must be published in the tender notice (EC, Norway, Poland). Most emphasize the importance of preserving the secrecy of bids prior to the closure of tenders, for instance through sealed envelopes or sealed tender boxes. Most Members specify that a proper record be kept of all bids, usually through a registration system or a record of proceedings at a public bid opening meeting. The record, in some cases, is required to include at least the following information: names of persons attending the opening procedure, names of tenderers, submission dates of offers, prices offered, and variety of offers (Switzerland). It is also invariably required that impartial observers be present at bid opening, e.g. more than one official must be present or the bids must be opened publicly.

In one Member, where a stratified tendering procedure is employed, tenders are received in two sealed envelopes (Mexico). The first envelope contains the documentation by which it is possible to identify and confirm the existence and participation of the bidder, and a description of the required technical specifications of the product or service in question. The second envelope contains the financial bid for the product or service together with the bid security document. During the first phase, known as the •technical phase•, all of the bids are opened in the presence of the participants, and their contents verified. Only those which meet the technical requirements set forth in the bidding conditions are qualified for their second or financial phase, where the final decision is made. Another Member has elaborated that, in negotiated procurements, prices are kept confidential until an award is made. The reason for doing so relates to the proprietary nature of the pricing information. An additional concern is that the knowledge of prices could lead to a

situation in which the incumbent contractor has an unfair advantage over its competitors which could affect the integrity of the procurement system (US).

There are also some cases in which the individual purchasing agency is free to determine its own procedures for receiving, opening and registering tenders in accordance with best practice and certain guidelines (Colombia, NZ).

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

There is similarity in post-award procedures, but there are also some variations. Most responses indicate that all bidders are informed of the award of a contract within a fixed time period individually, through public notice or in both ways (Norway). But in some cases, there is no requirement for entities to publish details of the contracts awarded or to notify unsuccessful tenderers (Chile, Korea, NZ, Singapore). In one case, unsuccessful tenderers are informed of the decision if the award was not made in a public hearing (Colombia).

In some cases, the contracts are published in summary form in the official press (Brazil). Some require that more information be published, for instance the type of procedure, the nature and quantity of services procured, name and address of the procuring entity, date of award, name and address of the winning tenderer, price of the winning award or the highest and lowest offer taken into account in the award of the contract (Japan, Switzerland). Relevant information on the contract award may, in certain cases, be withheld if this would have harmful effects on the winning firm, might prejudice fair competition between suppliers, impede law enforcement or otherwise be contrary to the public interest (EC, Switzerland). In one case, the requirement to publish depends on the value of the contract (Australia).

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

Such information is usually not published. But in most instances it is possible for unsuccessful bidders to obtain information on the reasons why their bids did not succeed and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer, either as a matter of course or on request (sometimes in writing) (EC, Norway). This requirement sometimes exists in international agreements. In some cases, the request must be received within stipulated time limits (US). One Member states that debriefings may also assist suppliers who have won contracts previously and want to know how they performed against the evaluation criteria so as to continue to enhance their performance (Australia).

In several Members, there is no legal requirement for an entity to inform unsuccessful bidders of the reasons why their bid was not selected (Poland, Singapore). In one such Member, tenderers may nevertheless learn about aspects of the tender or competition through the freedom of access to information provided by law, or by recourse to the right of petition (Colombia). In one Member, where there are no laws and regulations governing procurement, communication to unsuccessful tenderers of reasons for not being selected is nevertheless encouraged under the Government's purchasing guidelines where tenderers request this (NZ). In another Member, even though there is no legal requirement, in practice it is customary to provide the reasons for rejecting bids at the request of the interested parties (Chile). In one Member, the competent authority is required to record the reason for rejection of the bids but unsuccessful tenderers are not informed (India). In another Member, even though there is no obligation to inform, nevertheless, if an interested party contests the preliminary award, the tendering authorities must make the full proceedings of the tender available to that party for examination (Argentina).

IX. TREATMENT GRANTED TO DOMESTIC AND FOREIGN SERVICES AND/OR SUPPLIERS

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of •domestic• in relation to domestic services and suppliers.

The responses of several Members indicate that there are no laws, regulations or procedures which accord domestic services and/or suppliers preferential treatment, or discriminate in any way between the services and service suppliers of other Members (Chile, HK, India, Japan, Korea, India, NZ). In some of these Members, government entities must nevertheless ensure the participation of suppliers of domestic origin, without prejudice to the objective selection procedure (Colombia, NZ). In some cases, preference to nationals is only relevant in the case of otherwise equal bids, as a •tie-breaker• (Brazil, Colombia). In some other cases (Colombia, Hungary), it is only when foreign suppliers submit otherwise equal bids that preference is given to those who incorporate greatest local content (in terms of human resources or other components) and/or offer the best conditions of technology transfer.

Most of the Members who responded to the questionnaire grant no less favourable treatment to services/service suppliers of other Members in the context of bilateral, regional or plurilateral agreements (except Argentina, Brazil and India). The granting of national treatment on a reciprocal basis is a recurrent theme - even in the context of international agreements on procurement. Treatment of services/service suppliers of Members not party to such agreements is frequently not clearly specified. In certain Members, foreign suppliers may be refused the right to participate in international tenders if an agreement has not been concluded with their country (EC). In certain cases, there is a clear preference rule which may differ according to the category of purchases (EC, Hungary, US). In some cases, for the purpose of price comparison, the price of the good of foreign origin includes current import duties and other taxes and charges required for it to be imported by a private importer without special privileges (Argentina, Brazil).

In certain cases, the central government does not grant preferences but provincial and local governments do (Australia). In some Members, procurement below certain thresholds may be limited to domestic suppliers (Poland). Some Members apply domestic source requirements only to specific services sectors, e.g. in the transportation sector (US). Purchases for specific uses, most notably defence-related, may also require procurement from domestic sources. In some cases, a local content policy is operated provided there is adequate competition, which is usually taken to mean the existence of three or more suppliers.

The notion of domestic is defined in some cases to mean those services which are wholly or partly produced in the country in question (NZ) or in the case of certain regional integration agreements, in any member state party to the agreement (EC). In some cases, bids are considered domestic provided local content is in excess of 50 per cent (Hungary, Mexico). In certain cases, domestic services include services provided through commercial presence established in the country and companies owned or controlled by nationals of the country, as well as by nationals who are resident in the country (Japan.). In certain other countries, companies with foreign capital participation may be termed domestic for the purpose of procurement provided they are established under national law and/or their principal business takes place in the country (EC). In one case the definition of domestic in the case of construction services includes an examination of ownership, nationality of directors and place of incorporation (US).

X. PROCEDURES FOR HEARING AND REVIEWING COMPLAINTS/APPEALS

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

All Members have procedures available for potential suppliers to lodge complaints at any time throughout the procurement cycle and against the award within fixed time limits. There is usually provision in the procurement legislation for effective legal remedies. Review procedures are available in most cases to any person who has or had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement. But some responses seem to suggest that certain remedies may be available only to suppliers from countries with which the country in question has concluded an agreement on government procurement. Only a few countries have explicitly noted that the procedures are available to both domestic and foreign suppliers (US).

For aggrieved suppliers, there is usually a prescribed sequence in which different types of controlling agencies may be invoked: internal controls of the procuring entity, independent administrative control, judicial control or political control. Any supplier who claims to be unfairly treated is usually first encouraged to take up the matter directly with the entity concerned. If this does not provide satisfactory results, the formal procedure is to bring an action against the contracting entity before either an independent review body or competent national judicial court (Norway, Switzerland). In some cases, where review bodies at first instance are not judicial in character, it is required that their decision be subject to judicial review.

In one case, the Ministry of Commerce which has responsibility for the government's purchasing policy, may also investigate complaints of unfair treatment (NZ), while in other cases it is the Ministry of Finance (Singapore), Ministry of Comptrollership and Administrative Development (Mexico), auditor-general (Brazil), commissions against corruption (HK), or other organs which make up the system of internal control. In another case, there is no provision for appeal through administrative channels, but complaints may be brought before courts (Colombia). In some Members, suppliers may complain to an ombudsman (Australia). In this case, agencies are not compelled to accept a recommended remedy, but if the agency does not act upon the recommendations adequately, the ombudsman may report to the Prime Minister and then to Parliament. Some Members have also mentioned arbitration or mediation procedures which have the effect of out-of court settlements (Korea).

Review bodies frequently have, firstly, power to take interim measures at the earliest opportunity, including measures to suspend the procedure for the award of a contract or the implementation of any decision taken by the contracting entity. Secondly, they may set aside decisions taken unlawfully. Thirdly, they have the power to award damages to persons injured by the infringement. In some cases the court or independent review body is empowered to stop an ongoing procurement procedure before the contract has been awarded, but not to revoke an award (Switzerland). In other cases, for instance, in some Members in the utilities sector, procurement procedures cannot be stopped during the process, but the court may fine contracting entities who are found guilty of breaking the rules, and adjudge indemnities to the complaining enterprises (Norway). Suppliers may also challenge the cancellation of the award of a contract (US).

Parties to international agreements sometimes also have the possibility of launching complaints to surveillance authorities set up in the context of the agreement in addition to national procedures (EC).

ANNEX

Government Procurement

Current Situation of the Responses to the Questionnaire

ResponsesCountry

S/WPGR/W/11/Add.1 S/WPGR/W/11/Add.1/Corr.1	Norway
S/WPGR/W/11/Add.2	Switzerland
S/WPGR/W/11/Add.3	Brazil
S/WPGR/W/11/Add.4	New Zealand
S/WPGR/W/11/Add.5	Japan
S/WPGR/W/11/Add.6	United States
S/WPGR/W/11/Add.7	Canada
S/WPGR/W/11/Add.8	Colombia
S/WPGR/W/11/Add.9	Hong Kong
S/WPGR/W/11/Add.10	EC & their Member States
S/WPGR/W/11/Add.11	Australia
S/WPGR/W/11/Add.12	Poland
S/WPGR/W/11/Add.13 S/WPGR/W/11/Add.13/C.1	Republic of Korea
S/WPGR/W/11/Add.14	India
S/WPGR/W/11/Add.15	Chile
S/WPGR/W/11/Add.16	Singapore
S/WPGR/W/11/Add.17	Hungary
S/WPGR/W/11/Add.18	Mexico
S/WPGR/W/11/Add.19	Argentina

*WORLD TRADE
ORGANIZATION*

RESTRICTED

S/WPGR/W/19

25 June 1997

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Working Party on GATS Rules

COMMUNICATION FROM SINGAPORE

Emergency Safeguard Measures

The following communication is circulated at the request of Singapore to Members of the Working Party on GATS Rules.

Introduction

1) *The Working Party on GATS Rules (WPGR) has to date discussed extensively the desirability and feasibility relating to Emergency Safeguard Measures in Services (ESM). The WPGR deliberations, the responses to the questionnaire and the papers that have been submitted on the issue have brought a number of conceptual problems to the forefront, particularly in the commercial presence mode. The conceptual and the statistical problems in services data have underlined the difficulties involved in designing ESM.*

2) *The analytical exercise should also involve a listing of possible means to address the issue of serious injury and/or the threat of serious injury in the services trade. Besides addressing some definitional issues, this paper also examines possible measures to address such injury, viz. ESM, GATS Article XXI (modification of schedules) and WTO Article IX (waiver).*

Definition of Domestic industry

3) *The Secretariat paper (S/WPGR/W/8) and the various responses have given varying notions of the definition of domestic industry. Some responses have pointed out that the use of ESMs to safeguard national service suppliers at the expense of foreign service suppliers already established in the territory of the*

member could lead to unnecessary discrimination and harm to the economy. They have therefore suggested that the definition of domestic industry should encompass both national and foreign suppliers such as in the Safeguards Agreement of GATT 1994.

4) We are however of the view that this definition may not be sufficient in the services context. Since national treatment (GATS Article XVII) and market access (GATS Article XVI) are negotiable in the GATS, a member may be expected to make a distinction between national and foreign service suppliers and to calibrate national treatment in order to accord phased protection/favourable treatment for national service suppliers. Thus, it may be appropriate for the GATS to examine the need to have separate definitions for national service suppliers and foreign service suppliers. A problem of national ownership may arise in the case of joint ventures between national and foreign services providers. Some criteria e.g. percentage of equity may have to be agreed on national ownership for purpose of ESM.

The case for ESMs

5) A number of delegations have argued that it may not be necessary to design specific ESMs, along the lines of GATT 1994 Article XIX, since the GATS already contains a number of safety valve articles, viz., Article II (MFN Exemptions), Article XII (BOPs), Article XIV (General Exceptions), Article XIV bis (Security Exceptions), Article XVI & XVII (Scheduling of Commitments) and Article XXI (Modification of Schedules). Other delegations are however of the view that the said articles may not provide for unforeseen emergency situations. They have also argued that the provision of ESMs in the GATS would provide the incentive and comfort for developing countries to be more forthcoming with their commitments.

ESMs in the GATS

6) Conceptually, ESMs in the GATS would be different from safeguards in goods because of two reasons. First, GATT 1994 Article III (National Treatment) obligates members to accord similar treatment to domestic and imported (foreign) products. It is silent on treatment of foreign producers or production in the host country. However, GATS Article XVII (National Treatment) applies to scheduled sectors only, which could be subjected to market access and national treatment limitations. Second, in the goods sector, trade is effected through the cross-border movement of the products. Through cross-border measures, a country could effectively control the quantity of the goods that can enter its market. This is not the case in the services trade, especially in the commercial presence mode. Once foreign service supplier/s have been allowed to establish operations in a member's territory, they could continue to expand their production/supply even after border measures are applied subject to whether limitations that are specified in the country schedule.

Measures to address injury

7) *If national service supplier/s suffer serious injury or face the threat of serious injury¹, beyond what can normally be expected when schedules are submitted, the member concerned could have the following options: (a) the ESM route; (b) GATS Article XXI modification route ; or (c) the WTO Article IX waiver route.*

(i) The ESM route

8) *A temporary ESM could be effected by regulating the foreign service supplier's market share and scale of activities/operations through suspension of scheduled market access and national treatment obligations. However, the ESM should adhere to specific rules² and be subject to approval by the Council for Trade in Services (CTS) or a Safeguards Committee.*

9) *ESMs in the commercial presence mode may be applied to both the pre- and post-establishment phases. Whereas a ESM could be applied with relative ease in the pre-establishment phase, it is not the case in the post-establishment phase. Application of ESMs in the post-establishment phase may involve the reversal or suspension of national treatment and market access for companies already established. It may give rise to divestment problem. Can foreign service suppliers already established be asked to de-register or disband their operations? Would domestic laws permit this? The issue of ESM in the post-establishment phase thus needs further analysis. We agree, however, that there should be no divestment arising from ESM.*

10) *ESMs in the commercial presence mode could be effected in the following ways:*

(i) *the market access route involving the regulation of entry of new foreign suppliers into the domestic market even if the market access schedule allows for more foreign service suppliers;*

(ii) *the national treatment route involving the regulation of the scale/extent of operation of established foreign service suppliers (e.g. in the banking sector, a member could impose limits on new lending activities by foreign banks);*

¹ In ascertaining whether serious injury has taken place or a supplier faces the threat of serious injury, the concepts and tests in Article 4:2 (a) of the safeguards agreement such as drastic decline (and rate of decline) in relative market share or profitability could be utilised.

² such as digressivity, MFN application, specified duration and adequate advance notice, among others.

(iii) a combination of both the market access and national treatment routes.

Economic Welfare argument

11) The issue of economic welfare may arise in the use of ESMs. Unlike the GATT 1994 Safeguards Agreement, the use of ESMs in the GATS could reduce the overall domestic output and employment. In the goods sector, domestic output is bound to increase as a result of protection and at the expense of imports. This may also lead to a rise in domestic employment. However, the economic impact of ESMs in the GATS is uncertain. Whereas the output of national service suppliers would increase, the output of foreign service suppliers may decline due to new restrictions.

(ii) The Article XXI Modification route

12) Some delegations have suggested that subject to conditions like prior notification and compensation, the Article XXI route may be employed. This route has however three serious shortcomings. One, it is only available three years after a commitment has been made. Two, it could only be used after three months following the notification of the intention to modify schedules. (In the view of ESM advocates, both the above conditions reduce the scope for members to address unforeseen emergency situations). Three, it involves compensation. Some have argued that measures taken for legitimate emergency situations should not involve compensation. In addition, the peculiarities of the services trade (i.e. difficulty in determining unit output and market share) makes it difficult to determine the equivalent level of compensation. Nonetheless, it may be useful for the CTS to examine this route as an alternative to the ESM.

(iii) The WTO Article IX waiver route

13) Some delegations have suggested that if the conceptual and statistical problems are not clarified by end 1997 and consequently an acceptable outcome is not forthcoming by that time, the WPGR should extend the mandate of GATS Article X for, say, another two or three years. However, in order to keep the political impetus for continued liberalisation in the services sector trade, the WPGR could contemplate an interim solution. The interim solution could be the WTO Article IX waiver route. It could take the form of a multi-year waiver granted in accordance with WTO Article IX and thereafter subjected to regular annual review. As long as the two basic requirements for a waiver, i.e. "exceptional circumstances" and the "terms and conditions" are met, the waiver can be extended annually until its termination.

14) Our view is that the criteria and circumstances for the request for a waiver under Article IX would be very different from that under ESM. It would not be proper to relax waiver rules simply to accommodate a ESM situation. For example, the question of MFN may arise in the grant of a waiver for a temporary

period for the purpose of ESM. This is a systemic issue which the WPGR has to examine carefully.

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23 June 1997

ORGANIZATION

(97-2768)

Working Party on GATS Rules *Original: English*

COMMUNICATION FROM NORWAY

Response to the Questions Relevant to the Information Exchange Required
Under the Subsidies Negotiating Mandate

Addendum

The following communication is being circulated at the request of the delegation of Norway to Members of the Working Party on GATS Rules.

**NORWEGIAN SUBSIDY PROGRAMMES/SCHEMES RELATED TO
TRADE IN SERVICES**

Enclosure I covers existing subsidy programmes/schemes which contain all type of sectors (including services). Due to statistical data limitations, it is impossible to specify the subsidies paid out to these programmes.

Enclosure II covers existing subsidy programmes/schemes only related to services.

General remarks on duration and legal basis:

Support measures are generally decided by the Storting (the Parliament) each year on the basis of the Governments Budget Proposal. All budget decisions are made for a single fiscal year. In enclosure I specific additional legislations are referred to in relevant cases. Duration is stated in cases of explicitly time-limited schemes/programmes. In other cases the term •Duration has not been specified• is used.

In relation to the implementation of the Agreement on the European Economic Area (the EEA Agreement), the Norwegian Storting and the Government have adopted Act No. 117 of 27 November 1992 to State aid and Regulations concerning implementations of the provisions of the EEA Agreement relating to State aid.

ENCLOSURE I

1. RESEARCH AND DEVELOPMENT SCHEMES

1.1 Industrial R&D programmes and projects

1.1.1 Authority responsible for the subsidy:

The Ministry of Industry and Energy grants money to The Research Council of Norway (NFR). NFR administers the scheme.

1.1.2 Legislation under which it is granted:

The yearly State Budget approved by the Parliament.

The Statutes of the Research Council of Norway.

1.1.3 Policy objective of the subsidy:

Research and development.

1.1.4 Form of the subsidy:

Grants.

1.1.5 To whom and how the subsidy is paid:

All firms are eligible, regardless of branch, region or size.

Conditions applying from 01.04.95:

Cost eligible for aid are: Personnel cost, materials and supplies related to R&D, instruments and equipment, consultancy services, etc. Only costs directly related to the accomplishment of the projects are eligible. Maximum aid intensity: 50 per cent for basic industrial research and 25 per cent for applied research and development. SMEs (maximum 250 employees is one out of three criteria) may obtain an additional 10 percentage points. The Research Council of Norway has the right to publish the title of the projects, its financial contribution, a short resume and achieved results. Projects supported by other state aid schemes do not normally receive support from NFR. To the extent that this occurs, the aid ceilings referred to above apply to the combined aid.

1.1.6 Duration:

Starting date: 1991. Duration has not been specified.

1.1.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

1.2 Public Research and Development Contracts

1.2.1 Authority responsible for the subsidy:

The Ministry of Industry and Energy. The Norwegian Industrial and Regional Development Fund (SND) is responsible for the administration of this scheme.

1.2.2 Legislation under which it is granted:

The yearly State budget.

Guidelines for public R&D-contracts and Industry R&D-contracts approved by the Ministry of Industry and Energy 30.03.95.

1.2.3 Policy objective of the subsidy:

Reinforce the capabilities of Norwegian industries to satisfy the needs of public entities.

Improve the quality and effectiveness of services supplied by public entities by implementing new and improved technology.

1.2.4 Form of the subsidy:

Grants.

1.2.5 To whom and how the subsidy is paid:

A public R&D contract is an agreement between a Norwegian enterprise and a public authority that asks for the development of a new product or process. The recipient of the subsidy is the producer. The projects must represent something substantially new.

The bulk of the projects will typically be within the stage of basic industrial research and/or applied research.

Conditions applying from 01.04.95:

Costs eligible for aid are: Personal costs, overhead, current costs, consultancy and equivalent services and instrument and equipment. Only costs directly related to the accomplishment of the projects are eligible. Maximum aid intensity: 50 per cent for basic industrial research and 25 per cent for

applied research and development. SMEs (maximum 250 employees is one out of three criteria) may obtain an additional 10 percentage points.

1.2.6 Duration of the subsidy:

Starting date: 1968. Duration has not been specified.

1.2.7 Trade effects of the subsidy:

Statistical data making possible an assessment of the trade effects of the subsidy is not available.

1.3 Industrial R&D Contracts

1.3.1 Authority responsible for the subsidy:

Administered by the Norwegian Industrial and Regional Development Fund (SND) on behalf of the Ministry of Industry and Energy.

1.3.2 Legislation under which it is granted:

The yearly State Budget arrived by the Parliament.

Guidelines for public R&D-contracts and Industry R&D-contracts approved by the Ministry of Industry and Energy 30.03.95.

1.3.3 Policy objective of the subsidy:

The purpose is to stimulate industrial R&D (Product development) and business links (network).

1.3.4 Form of the subsidy:

Grants.

1.3.5 To whom and how the subsidy is paid:

The projects eligible are R&D-cooperation projects between private enterprises - a major customer and a lesser subcontractor

Conditions applying from 01.04.95:

The grants are restricted to SMEs (maximum 250 employees is one out of three criteria) as partners in new business relations. Subsidy is granted to applied research and development projects. Maximum aid intensity is 35 per cent of projects cost.

Costs eligible for aid are: personnel costs, overhead, current costs, consultancy and equivalent services and instrument and equipment. Only costs directly related to the accomplishment of the projects are eligible.

The condition is that the aid is necessary to start up and realise a project.

1.3.6 Duration of the subsidy:

Starting date: 01.01.94. Duration has not been specified.

1.3.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2. ASSISTANCE TO DISADVANTAGED REGIONS

2.1 Regional Investment Grants

2.1.1 Authority responsible for the subsidy:

The Ministry of Local Government and Labour through The Norwegian Industrial and Regional Development Fund and 15 county municipalities.

2.1.2 Legislation under which it is granted:

- Parliamentary Act No. 97 of July 1992*
- Regulation on Regional measures administered by the Norwegian Industrial and Regional Development Fund and the county municipalities of March 1995.*
- Regulation on Areas eligible of Regional Aid of March 1995.*
- The yearly State Budget.*

2.1.3 Policy objective:

Regional aid; job creation, permanent and profitable business activity in areas with special employment problems or a low level of economic activity.

2.1.4 Form of the subsidy:

Grants or loans (few cases).

2.1.5 To whom and how the subsidy is paid:

Enterprises located in assisted areas for regional policy. All sectors except primary production in agriculture, forestry and fishing. Oil extracting or refining activities are also excluded.

Conditions applying from 01.04.95:

The assisted areas are divided into 3 zones. In zone A the general aid ceiling must not exceed 35 per cent. However, SME (maximum 250 employees is one out of three criteria) may receive on top of the prevailing rate an extra 15 percentage points. In zone B the general aid ceiling must not exceed 25 per cent where SME may receive an extra 5 percentage points. In zone C the general aid ceiling must not exceed 15 per cent where SME may receive an extra 10 percentage points. If the investment grant is combined with other measures containing state aid/subsidy, the total aid must not exceed the general ceilings in the different zones.

2.1.6 Duration of the subsidy:

Starting date: 1966. Duration has not been specified.

2.1.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2.2 Regional Grants for the Development of Business and Industry

2.2.1 Authority responsible for the subsidy:

The Ministry of Local Government and Labour through The Norwegian Industrial and Regional Development Fund and 15 county municipalities.

2.2.2 Legislation under which it is granted:

Parliamentary Act No. 97 of July 1992

-Regulation on Regional measures administered by the Norwegian Industrial and Regional Development Fund and the county municipalities of March 1995.

-Regulation on Areas eligible of Regional Aid of March 1995.

-The yearly State Budget.

2.2.3 Policy objective of the subsidy:

Regional aid; job creation, permanent and profitable business activity in areas with special employment problems or a low level of economic activity.

2.2.4 Form of the subsidy:

Grants or loans (few cases).

2.2.5 To whom and how the subsidy is paid:

Enterprises located in assisted areas for regional policy. All sectors except primary production in agriculture, forestry and fishing. Oil extracting or refining activities are also excluded.

Conditions applying from 01.04.95

The subsidy covers costs eligible under the notion of •soft aid• (costs must meet one-off requirements for up-to-date knowledge in various fields or be related to establishing of network co-operation etc., no physical investment, no operating aid) and/or research and developments projects. Subsidy falling under the notion of •soft aid• must not exceed 50 per cent of eligible costs, and it is confined to SME (maximum 250 employees is one out of three criteria). In cases where the costs are covering research and development activities, larger companies may receive aid within a maximum aid ceiling of 25 per cent of eligible costs. From the same type of activities SMEs may receive a grant within a maximum aid ceiling of 40 per cent of eligible costs.

2.2.6 Duration of the subsidy and/or any time limits attached to it:

Starting date: 1983. Duration has not been specified.

2.2.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2.3 Scheme for Restructuring in Regions Dependant of a Single Industry

2.3.1 Authority responsible for the subsidy:

The Ministry of Local Government and Labour. The scheme is administered by local municipalities and The Norwegian Industrial and Regional Development Fund.

2.3.2 Legislation under which it is granted:

The yearly State budget (Ministry of Local Government and Labour, Ch. 552, post 56).

Regulation of April 1993 (H-21/93).

2.3.3 Policy objective of the subsidy:

Restructuring: job creation in regions where a main enterprise or branch reduces the employment drastically or closes down.

2.3.4 Form of the subsidy:

Grants.

2.3.5 To whom and how the subsidy is paid:

Available to enterprises in municipalities dependent on a single industry or on a single enterprise.

Other criteria for the subsidy are as for •Regional Investment Grants• and •Regional Grants for the Development of Business and Industry• administered by The Norwegian Industrial and Regional Development Fund and the county municipalities.

2.3.6 Duration of the subsidy:

Starting date: 1987. Duration has been specified.

2.3.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2.4 The Norwegian Corporation for Industrial Estates and Development (SIVA)

2.4.1 Authority responsible for the subsidy:

Ministry of Local Government and Labour through the Norwegian Corporation for Industrial Estates and Development (SIVA)

2.4.2 Legislation under which it is granted:

The State budget (Ministry of Local Government and Labour, Ch. 552, 55)

Regulation on SIVA of 27.11.92.

Letter from Ministry of Local Government and Labour to SIVA of 28.03.95 and 09.01.96.

2.4.3 Policy objective of the subsidy:

Primary objective; regional assistance. Secondary; support to small and medium-sized enterprises.

2.4.4 Form of the subsidy:

Grants.

2.4.5 To whom and how the subsidy is paid:

SMEs (Maximum 250 employees is one out of three criteria). Primarily manufacturing industry located in assisted areas.

Grants cover costs eligible under the notion of •soft aid• (costs must meet one-off requirements for up-to-date knowledge in various fields or be related to establishing of network co-operation etc., no physical investment, no operating aid).

Maximum subsidy is 50 per cent of eligible cost.

2.4.6 Duration of the subsidy:

Starting date: 1992. Duration has not been specified.

2.4.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2.5 National programmes for regional development (Ch. 552.53)

2.5.1 Authority responsible for the subsidy:

Ministry of Local Government and Labour in most of the cases through intermediate administrative bodies.

2.5.2 Legislation under which it is granted:

The yearly State budget and Circular H-11/95 from The Ministry of Local Government and Labour.

2.5.3 Policy objective of the subsidy:

Regional. An important objective is to create new structures and ways of collaboration between R&D centres and private SMEs.

2.5.4 Form of the subsidy:

Grants.

2.5.5 To whom and how the subsidy is paid:

Mainly SMEs (Maximum 250 employees is one out of three criteria) in private sector located in assisted areas. Most of the funds available are used to support R&D - infrastructure. Single enterprises may not receive support from this scheme unless they are involved in a co-operation pluriannual programme of broader national interest.

Other criteria for the subsidy to enterprises are as for •Regional Grants for the Development of Business and Industry• administered by The Norwegian Industrial and Regional Development Fund and the county municipalities.

2.5.6 Duration of the subsidy:

Starting date: 1986. Duration has not been specified.

2.5.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2.6 Funds for restructuring of the Community of Rana

2.6.1 Authority responsible for the subsidy:

The Ministry of Industry and Energy. The Norwegian industrial and regional fund has the responsibility concerning aid to private enterprises. Two local institutions also take part in the programme.

2.6.2 Legislation under which it is granted:

The Proposition to the Storting No. 113 (1987-88) •Om Rana og Norsk Jernverk A/S•.

2.6.3 Policy objective of the subsidy:

Regional restructuring; development of new industrial activity and job creation in public and private sectors. The Norwegian steel industry was restructured during 1988-89. This affected the Community of Rana in the county of Nordland and led to a considerable reduction in the employment.

2.6.4 Form of the subsidy:

Grants.

2.6.5 To whom and how the subsidy is paid:

Enterprises located in the Community of Rana.

General investments are supported on the same conditions as applying to the scheme •Regional Investment Grants• administered by The Norwegian Industrial and Regional Fund.

It is also possible to grant the process of developing new projects, and developing enterprises by using equity capital.

2.6.6 Duration of the subsidy:

Starting date: 1.1.1988.

2.6.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2.7 Funds for restructuring of the Community of Sør-Varanger

2.7.1 Authority responsible for the subsidy:

Ministry of Industry and Energy. The Norwegian Industrial and Regional Fund administers subsidies to private enterprises.

2.7.2 Legislation under which it is granted:

Proposition to the Storting No. 80 (1990-91) on the restructuring of Sør-Varanger and A/S Sydvaranger.

2.7.3 Policy objective of the subsidy:

Regional restructuring; development of new industrial activity and job creation in public and private sectors. The Norwegian iron ore/mine industry is restructured during the period 1991 -1996. This affects the Community of Sør-Varanger in the County of Finnmark and leads to a considerable reduction in the employment.

2.7.4 Form of the subsidy:

Grants.

2.7.5 To whom and how the subsidy is paid:

Available to enterprises located in Sør-Varanger, Finnmark County.

General investments and the process of developing new projects are supported on the same conditions as applying to the schemes •Regional Investment Grants• and •Regional Grants for the Development of Business and Industry• administered by the Norwegian Industrial and Regional Fund.

2.7.6 Duration of the subsidy:

Starting date: 1.1.1991.

2.7.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

2.8 Viking Business Development A/S

2.8.1 Authority responsible for the subsidy:

Ministry of Industry and Energy

2.8.2 Legislation under which it is granted:

Proposition to the Storting No. (199-92). •Omstilling i Askim•.

2.8.3 Policy objective of the subsidy:

Restructuring in an area of industrial decline.

2.8.4 Form of the subsidy:

Grants.

2.8.5 To whom and how the subsidy is paid:

Enterprises located in Askim in Østfold County and economically viable.

The venture company •Viking Business Development A/S• seeks and develops new business opportunities by placing risk capital in enterprises.

2.8.6 Duration of the subsidy:

Starting date: 01.12.91.

2.8.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

3. ASSISTANCE TO SMALL AND MEDIUM SIZED COMPANIES

3.1 Development Grants

3.1.1 Authority responsible for the subsidy:

Ministry of Industry and Energy through the Norwegian Industrial and Regional Development Fund (SND).

3.1.2 Legislation under which it is granted:

Act 3 July 1992 on SND No. 97.

•Retningslinjer for Statens noerings- og distriktsutviklingsfonds landsdekkende virkemidler. •

Letter from the Ministry on Industry and Energy to the SND of 21.02.95.

The yearly State budget.

3.1.3 Policy objective of the subsidy:

Assistance to SME. Improve the efficiency of industry.

3.1.4 Form of the subsidy:

Grant.

3.1.5 To whom and how the subsidy is paid:

Scheme is primarily intended for SME. The scheme is available for all sectors except insurance, banking and finance, shipping, oil and gas exploration, public administration and public sector commercial enterprises, but primarily

Conditions applying from 01.04.95:

Subsidy allowed to SMEs (maximum 250 employees is one out of three criteria):

- maximum 50 per cent of costs eligible under the notion of •soft aid• (costs must meet one-off requirements for up-to-date knowledge in various fields or be related to establishing of network co-operation etc., no physical investment, no operating aid)*
- maximum 35 per cent of costs eligible for applied research and development projects and*
- maximum 7,5 per cent to physical investment (maximum 15 per cent to small enterprises).*

Larger companies are only allowed a maximum aid intensity of 25 per cent to R&D projects or subsidy up to 50,000 ECU in respect of one defined category over a three year period.

3.1.6 Duration of the subsidy:

Starting date: 01.01.93. Duration has not been specified.

3.1.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

3.2 The Public Advisory System

3.2.1 Authority responsible for the subsidy:

The Norwegian Ministry of Industry and Energy.

The Subsidy is administered by the following institutions:

- The National Institute of Technology (TI);*
- The North Norwegian Institute of Technology and Innovation (VINN); and*
- The Regional Consulting Services (BRT) (a nation-wide network).*

3.2.2 Legislation under which it is granted:

Proposition to the Storting No. 86 (1986-87).

Royal Decree of 19.02.88.

Royal Decree of 22.04.88.

The yearly State budget.

3.2.3 Policy objective of the subsidy:

Transfer of competence and knowledge to SMEs.

3.2.4 Form of the subsidy:

Services free/partly free of charge.

3.2.5 To whom and how the subsidy is paid:

TI and VINN provide SMEs with technical competence and knowledge. BRT give general assistance.

The institutions only subsidy services directed towards SMEs with less than 100 employees and mainly companies with less than 20 employees. The legal

maximum aid level to a enterprise is 50,000 ECU over a 3-year period. The average level however is only NOK 10,000.

3.2.6 Duration of the subsidy:

The public advisory system was reorganised in 1988. Duration has not been specified.

3.2.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

4. EXPORT PROMOTION

4.1 *The Export Campaign, the Strategy Programme and The Programme for Export Development in SME*

4.1.1 Authority responsible for the subsidy:

Ministry of Foreign Affairs through the Norwegian Trade Council.

4.1.2 Legislation under which it is granted:

Government Decree on the Statutes for the Norwegian Trade Council.

The yearly State Budget.

4.1.3 Policy objective of the subsidy:

Business Development and export promotion.

4.1.4 Form of the subsidy:

Grants.

4.1.5 To whom and how the subsidy is paid:

Conditions applying from 01.04.95:

Available to SMEs (maximum 250 employees is one out of three criteria). Costs covered; expenditures when attending trade fairs, expenditures for market research/surveys, seminars, training, consultancy fees. Maximum aid intensity 50 per cent. Average intensity is 25 per cent.

4.1.6 Duration of the subsidy:

Starting date: 1969, 1986 and 1989 for the Export Campaign. The Programme for Export Development in SME and The Strategy Programme respectively. Duration has not been specified.

4.1.7 Trade effects of the subsidy:

Support is granted to a variety of projects and sectors. Statistical data showing the trade effects of the subsidy are not available.

5. SUBSIDIES TO THE FISHERY SECTOR

5.1 Aid to development and rationalisation in the fishing industry

5.1.1 Authority responsible for the subsidy:

The Ministry of Fisheries.

5.1.2 Legislation under which it is granted:

Regulation on aid to development and rationalisation in the fishing industry of 08.02.95.

The yearly State budget.

5.1.3 Policy objective of the subsidy:

Fields: (1) Products and processing technology; (2) integrated sea/land production; (3) develop the cultivation of new species.

5.1.4 Form of the subsidy:

Grant.

5.1.5 To whom and how the subsidy is paid:

Private persons, firms and research institutions can apply for subsidies.

Main projects demands 50 per cent economic participation from private persons and firms.

5.1.6 Duration of the subsidy:

Starting date: 1994. Duration has not been specified.

5.1.7 Trade effects of the subsidy:

Limited means, and special demands for private participation, make the trade effects very small if at all existing.

ENCLOSURE II

PROGRAMME ONLY RELATED TO TRADE IN SERVICES

1) Please identify any subsidy programmes related to trade in services, with a brief description of each programme.

Tax reimbursement scheme for seafarers; The Parliament has for 1997 allocated funding for reimbursement of taxes calculated as 20 per cent of gross salaries.

Only seafarers liable for taxation in Norway are eligible for tax reimbursements. The amounts are paid through the employers.

An additional refund of up to 50 per cent may be paid for cadets, 100 per cent for junior officers and 150 per cent for apprentices. The maximum refund for these positions may in other words reach 30 per cent, 40 per cent or 50 per cent of gross wages respectively.

The scheme contains the condition that ships can not be eligible for any other subsidy.

Another condition for the scheme has been that the shipping community contribute with cost reducing effects of an equivalent magnitude as the tax reimbursement scheme.

2) Please state the policy objectives underlying the use of each subsidy.

The main objective of the scheme is to maintain and promote the maritime community in Norway in general, and the employment of national seafarers and training of new ratings and officers in particular.

3) Please indicate the availability, in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, e.g. when a company produces both goods and services.

Not relevant.

4) Please indicate the form of each subsidy (e.g. tax concession, loan, grant etc.).

Grant.

5) Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.

Approximately 9000 seafarers employed in some 300 companies on board 500 vessels.

6) Please indicate the eligibility criteria for subsidies (location, nationality, destination of output, or any other condition).

The seafarers must pay tax to Norway, and a certain number of the crew on board the vessel must pay taxes to Norway.

7) Please indicate how the subsidy is calculated (e.g. on production, on exports, on a fixed or fluctuating basis, etc.).

As a percentage of gross salaries, see answer to question 1.

8) Please specify any time limits attached to the subsidies described above.

Duration has not been specified.

9) Please indicate any subsidy disciplines already assumed in the context of regional agreements.

The scheme has been notified to the EFTA Surveillance Authority (ESA) in accordance with state aid provisions of the EEA agreement. ESA has not had any remarks to the scheme.

10) Where such information is available, Members may wish to indicate:

a) Subsidy per unit or total annual subsidy outlays in respect of each subsidy granted;

20 per cent of gross salaries raising to 30, 40 or 50 per cent for some categories, reference question 1. The total amount will depend on the number of eligible applicants, but as an indication NOK 414 million has been set aside in the budget year 1997.

b) Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

Statistical data showing the trade effects of the subsidy are not available.

WORLD

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TRADE

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ORGANIZATION

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Working Party on GATS Rules

COMMUNICATION FROM MEXICO

Response to the Questions Relating to an Emergency
Safeguard Mechanism in GATS

Addendum

The following communication is being circulated at the request of Mexico to Members of the Working Party on GATS Rules.

The intention of this response to the questionnaire is to contribute to the discussion and analysis for evaluating the possibility of applying safeguards to trade in services.

The document does not prejudice Mexico's position on this matter and should not be interpreted as such.

1. What is the justification and purpose of an emergency mechanism under GATS?

The question of what a safeguard mechanism would be for involves the following considerations:

(a) Would an emergency safeguard for services be intended to deal with the kind of situation foreseen in Article XIX of GATT - that is, a temporary threat to a domestic industry arising from increased imports? Would it have any other objective?

If the temporary safeguard measure for services was applied in the same way, it would have the same objective as Article XIX of the GATT in relation to goods: to protect a domestic industry temporarily from international competition that might cause or threaten serious injury as a result of a significant increase in competition from foreign suppliers. The safeguard would restrict imports over a specified period of time so as to allow the domestic industry to make adjustments in order to face the foreign competition.

(b) Are existing safeguard mechanisms in GATS, notably those contained in Article XII and Article XIV, sufficient to address any difficulties governments might

encounter as a consequence of their GATS commitments? Similarly, does Article XXI provide an adequate vehicle for reversing or modifying scheduled commitments in the event of unanticipated difficulties?

Article XII (Restrictions to Safeguard the Balance of Payments) covers situations that affect the economy as a whole by allowing temporary measures of a general nature to be imposed. The mechanism is not selective and although it might resolve problems in sectors facing difficulties, it could also affect other services that may be vital for the functioning of the economy.

Articles XIV (General Exceptions) and XIV *bis* (Security Exceptions) apply under specific circumstances (to protect morals or to maintain public order; to protect human or animal life or health; compliance with laws; furnishing of confidential information for reasons of security; protection of essential security interests, etc.), which is not the same as the objective pursued when applying a safeguard in order to prevent serious injury to a domestic industry as a result of a significant increase in competition from foreign suppliers.

Article XXI (Modification of Schedules) allows a Member to modify or withdraw definitively any commitment in its schedule after three years have elapsed from the date on which the commitment entered into force. The draft procedures for modifying schedules (text of 23 May 1996) do not specify the conditions or circumstances that would allow commitments to be modified or withdrawn, so a Member modifying its schedule has a large measure of discretion when applying them. Moreover, there is no provision for utilizing this mechanism before three years have elapsed, even if unforeseen difficulties arise. There is no provision in Article XXI either allowing a Member to reinstate the level of commitment modified or withdrawn within a specified period.

(c) Does the nature of commitments undertaken in GATS - whereby Members may choose whether to schedule a sector, and may also condition market access and national treatment with respect to commitments that are made - obviate the need for safeguards? Or would it be more appropriate to think in terms of the idea that the existence of a safeguard would allow governments to be more forthcoming with respect to their scheduled commitments?

The establishment of a safeguard mechanism for services should not be a parameter to determine the level of and compliance with commitments by Members. Nevertheless, the elaboration of instruments to resolve unforeseen situations arising from an increase in imports that cause injury to a domestic industry, under certain conditions, could enhance the level of commitment of Members.

(d) What would be the economic objective of a safeguard - to protect production, investors or employment? Would it protect all domestic production, or only that part of production attributable to national suppliers? Would it aim to protect investment by nationals, or all domestically-based investments? What would be the objective of allowing departures from national treatment under modes 3 and 4? Is the distinction between establishment rights *per se* and post-establishment operations relevant in relation to possible safeguard measures under modes 3 and 4?

It is difficult a priori to determine whether the measure should protect investment, production or employment because an increase in imports directly affects all three variables. For example, when an industry faces problems caused by foreign competition, this has an impact on the sales of the services sector or subsector on the domestic market and, consequently, can have an effect on production, investment and employment.

One of the first elements to be defined in relation to mode 3 is what is meant by •domestic industry• because in many Members foreign-owned enterprises have been set up in accordance with their respective laws and are considered domestic enterprises, and therefore the whole domestic industry would have to be protected. Likewise, safeguards should not allow exceptions to the principle of national treatment.

Perhaps the only difference that could be allowed would be in relation to market access for new foreign-owned enterprises and already-established enterprises, to which safeguard measures would not apply.

(e) Would a safeguard mechanism need to contemplate special provisions for developing countries or does the concept of progressive liberalization offer adequate leeway in this respect?

The concept of progressive liberalization gives developing countries flexibility to open up their sectors according to their national interests. Nevertheless, when faced with an emergency situation and even if the country has adopted progressive liberalization commitments, a Member may not be able to move ahead with its commitments on opening up a certain sector and, consequently, a safeguard measure is necessary, which means suspending or withdrawing these commitments. This means that, despite the flexibility offered by progressive liberalization, it does not always constitute a guarantee that a country will not apply a safeguard measure.

In the case of trade in goods, experience suggests that developing countries require longer periods to adjust their markets to unforeseen circumstances. A safeguard mechanism could, therefore, include special provisions for these countries, along the lines of those established within the GATT.

(f) Is there anything intrinsic to service transactions, such as intangibility, simultaneity of production and consumption, or the need for physical proximity between the producer and the consumer, which makes (some) services transactions different from goods transaction in ways that might influence arguments as to the necessity or utility of safeguard measures in services?

Because of the different characteristics of trade in goods and trade in services it is extremely complicated to apply the elements of a safeguard for goods to trade in services. Consideration should be given, however, to those elements of safeguards for goods that could be applied both in practice and in theory to the area of services. In this connection, the mode of supply that most resembles trade in goods is cross-border supply because it is the •service• as such that •crosses• the border, so some mechanism could be established to restrict these flows in the same way as occurs for trade in goods. For the other modes of supply, however, the disciplines applying to trade in goods do not appear to be wholly applicable. Accordingly, provisions that apply more specifically to the characteristics of these three modes of supply of services would have to be developed.

(g) Is anything intrinsic to services markets, such as the role and importance of regulatory regimes, standards and certification requirements, which makes services markets different from goods markets in ways that might influence arguments as to the necessity or utility of safeguards measures in services?

As mentioned in the previous reply, one of the basic differences between trade in goods and trade in services is the variety of forms of the latter.

In the case of services, the various forms of market access are based on laws and regulations that define the characteristics of services in a particular sector. In this connection, in the hypothetical case that a safeguard were applied, irrespective of the mode of supply, this would mean that in the majority of cases changes would have to be made to the legal structure in order to remedy a situation caused by a significant increase in competition from foreign suppliers.

(h) Is anything intrinsic to the role of services in the economy, such as their important support and infrastructure role, which makes services markets different from goods markets in ways that might influence arguments as to the desirability of safeguards measures in services?

Some services sectors play a vital role in the economy, just as some goods may play a strategic role. Each Member will therefore have to assess the risks and decide whether the application of a safeguard for services could have negative effects on the rest of its economy.

(i) Do Members maintain any emergency safeguard measures in national legislation? If so, what are these measures and how are they implemented?

There are no emergency safeguard mechanisms in the services sector in our national legislation. The only safeguard measure for services is to be found in the North American Free Trade Agreement (NAFTA) and applies to the financial sector. This is an automatic measure that comes into effect when the sum of authorized capital of foreign commercial bank, affiliates reaches 25 per cent the aggregate capital of all commercial and investment banks in Mexico. Mexico may request consultations with the other NAFTA parties on the potential adverse effects arising from the presence of credit institutions of other parties on the Mexican market and the possible need for remedial action (see WTO Secretariat document S/WPGR/W/2).

2. What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

A number of questions can be identified in relation to the criteria that might apply in determining the circumstances in which emergency safeguard measures are to be used. The questions included below assume that essentially the same GATT concepts of increased imports, injury and causality would apply under an emergency safeguards mechanism in GATS.

(a) What, in terms of GATS is the equivalent of increased imports under Article XIX of GATT? In mode 1, the cross-border flow of services may be similar to the import of goods, but the situation is quite different under other modes. How should the possibility of safeguards be triggered in these circumstances?

Mode 1 (cross-border supply). This is the form of trade most similar to trade in goods. The safeguard mechanism could be triggered in a similar way to that established in the GATT, although the characteristics of the sector concerned would have to be taken into account. The mechanism would be triggered if the information available showed that the increase in imports was causing injury to an economic activity. The problem that arises is that the lack of statistics on the services sector is a constraint on triggering this mechanism.

Mode 2 (consumption abroad). For this mode of supply, it is difficult to exercise control over the entry and exit of consumers from one country to another. In general,

immigration forms show the country to which a person is going and the reason for his travel (business, tourism or other), but it would be difficult to use this as a basis for determining the person's specific activity and consumption abroad. It would therefore be virtually impossible to prove serious injury caused by flows under this mode of supply.

Mode 3 (commercial presence). As mentioned in the reply to question 1(d), once a foreign-owned enterprise has been established, it should be considered a national enterprise. The possible safeguard would, therefore, apply to market access for new enterprises. In this case as well, it is difficult to quantify the serious injury caused to existing national-owned or foreign-owned enterprises as a result of the increased share of new foreign enterprises in the market.

The foregoing also applies *pari passu* to mode 4.

(b) How should serious injury be determined? Injury to whom or what?

In the case of goods, according to the WTO Agreement on Safeguards, in order to determine whether there has been serious injury it is necessary to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profit and losses, and employment.

For services, the factors to be evaluated in order to determine the existence of serious injury could be the same as those applying to goods; however, the problem is the absence of adequate statistics for each of the factors or indicators. Serious injury would be evaluated in relation to the domestic industry concerned.

(c) What standards would be required to determine that increased competition from foreign sources caused injury to the national industry?

All the elements affecting the domestic industry should be evaluated, including factors other than competition from foreign suppliers, in order to determine whether the latter factor resulting from the commitments entered into is the only or the most important element causing the serious injury.

(d) How would the national industry be defined for the purpose of determining injury?

As mentioned above, in defining the domestic industry it must be determined whether it includes enterprises whose equity is wholly or partly foreign-owned.

(e) Should a link be established between the nature of a specific commitment in a particular sector, including in relation to limitations on market access and national treatment, and the availability of a safeguard measure? In other words, should the availability or nature of a safeguard be restricted where limitations have been inscribed?

The schedules of commitments by member States of the GATS indicate the services activities they have bound and specify the conditions for market access and national treatment for each of them. For some of these activities, binding means that several restrictions have been maintained so that market access and national treatment are considerably restricted. Even though such restrictions may be bound in the schedule of commitments, an activity might cause problems resulting from increased competition from foreign suppliers, and therefore the country in question should be able to apply a safeguard.

(f) What measurement and identification problems arise in services that might complicate the development of a safeguard instrument, and how should they be dealt with?

The major problem in the services sector is the lack of statistics. If there were a methodology and better statistics, this would be a major step forward for quantifying the flows of trade in services and, possibly, quantifying the injury that might be caused by unexpected increases in competition from foreign suppliers. The development of statistics should not only cover cross-border flows, but also statistics at the national level identifying the major elements concerning production, employment and investment, which are essential above all for mode of supply 3.

3. What form might a safeguard mechanism for services take?

If increased foreign competition and serious injury to domestic services or service suppliers have occurred, and causality between the two has been established, a question arises as to the characteristics of a safeguard measure that might be applied.

(a) What type of measure should be applied? Would taxes, foreign exchange restrictions, other quantitative limitations, or regulatory restraints be suitable as safeguard measures?

For trade in goods, the safeguard measures that can be applied are tariffs and quantitative restrictions. For trade in services, the safeguards could basically be in the form of quantitative restrictions.

Foreign-exchange restrictions would not be advisable as safeguard measures to protect a specific services sector because their use could have adverse effects on other activities, as they have a general impact on the economy as a whole.

(b) What would be the implications of different modes of supply for the kind of measures employed?

Given the characteristics of each mode of supply, it would be difficult to adopt a measure that could be applied uniformly to all of them. In principle, safeguards mechanisms would have to be developed for each mode of supply and in some cases perhaps for specific sectors.

(c) Would there be circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes at the same time?

Yes. It is possible, for example, that competition from foreign suppliers that causes serious injury and is subject to a safeguard measure applying to one particular mode of supply could then occur through another mode of supply, thus evading the safeguard measure.

(d) Should safeguards be applied on a non-discriminatory basis in all circumstances?

Yes, safeguard measures should be applied to all countries supplying the service, irrespective of which one causes the serious injury.

(e) How quickly would it be possible for a Member to take a safeguard measure? Would the notion of 'critical circumstances', as developed in the Agreement on Safeguards, apply in the services area?

No, in principle. Provisional safeguards for trade in goods are imposed because of critical circumstances that mean that any delay in their application would lead to injury it would be difficult to remedy and, in general, apply to agricultural goods, which are much more likely to involve critical circumstances because of their perishable nature. In the case of services, it is difficult to think of examples which could be subject to such circumstances.

(f) What should be the duration of any safeguard measures adopted?

The period of application of safeguard measures would depend on the time the sector required to adjust; nevertheless, the duration applicable to the services sector would have to be discussed, considering whether the time-limits laid down for trade in goods could be utilized.

(g) Would safeguard measures be made degressive during their period of application?

One could think so. The progressive reduction of the safeguard measure would facilitate readjustment of markets.

(h) Would a Member taking a safeguard action be required also to adopt adjustment measures?

Yes, so as to encourage the sectors benefiting from a safeguard measure to make the adjustments that would allow them to compete once again with foreign suppliers and to ensure that the measures do not become protectionist.

(i) Would the application of safeguard measures be accompanied by compensatory adjustments in the schedule of the Member taking the measure?

Compensation for countries subject to a safeguard measure could be decided upon, the cost to be borne by the country applying the measure, so that safeguard measures would only be used in exceptional circumstances and would not become protectionist trade-policy tools.

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20 May 1997

ORGANIZATION

(97-2137)

Working Party on GATS Rules Original: English

COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES

Response to the Questions Relating to an Emergency Safeguard Mechanism in
GATS

The following communication is being circulated at the request of the European Communities and their Member States to Members of the Working Party on GATS Rules.

At Singapore, Ministers agreed that further work should be undertaken, including more analytical work, with a view to completing the negotiations on Safeguards by the end of 1997.

It is with this objective in mind that the European Communities and their Member States are participating further in the discussions on safeguards through, answering the list of questions which has been established last year in the Working Party on GATS Rules (WTO document S/WPGR/W/15 of 12 December 1996).

The answers to the questions are therefore without prejudice to the EC's negotiating position on whether an emergency safeguard clause is desirable and or feasible with respect to trade in services. By the same token, they do not provide a reaction to the replies and papers already transmitted by other Members of the Working Party.

The thrust of the answers is to demonstrate that if an emergency safeguard action would be established, it would have to comply with strict and demanding conditions.

This submission is made to stimulate the analytical work. It is expected that other Members will have made similar contributions so that by the deadline of the end of 1997, a decision in full knowledge can be taken.

What is the justification and purpose of an emergency mechanism under GATS?

1. The question of what a safeguard mechanism would be for involves the following considerations:

a. Would an emergency safeguard for services be intended to deal with the kind of situation foreseen in Article XIX of GATT -- that is, a temporary threat to a domestic "industry" arising from increased imports? Would it have any other objective?

An emergency safeguard provision under the GATS should fulfil the same purpose as for trade in goods i.e. allow for the temporary protection of a domestic service industry in case of serious injury or threat thereof due to increased imports in a service sector in which specific commitments have been undertaken and only for such period of time as may be necessary to prevent or remedy serious injury. Any possible safeguard measure should be proportional to the nature and extent of such commitments. It should also be non-discriminatory in character. Whether there is merit in taking safeguard measures in areas where Members have not taken specific commitments needs to be examined since it is not clear if there would be a reason to justify a safeguard action in non-committed sectors.

Since the main purpose of the GATS is to bring about the liberalisation of trade in services, there should be no question, therefore, of any safeguard mechanism being used as a means of reversing the normal consequences of the market access commitments which have been undertaken.

If a safeguards measure was justified, its sole purpose would be to address an emergency situation, which was unforeseeable when the relevant commitments were made, and which involves a temporary - but seriously injurious - threat to a domestic industry arising from increased imports. It should be short-term, progressively liberalised and structured so as to provide a real incentive for the domestic industry's restructuring so as to adapt to the changed conditions in the market. In any event, an emergency mechanism should not be used or applied in such a way as to undermine the value and legal certainty of the GATS' commitments.

The requirement of "unforeseen developments" of GATT XIX should be included in the GATS safeguard definition.

b. Are existing "safeguard" mechanisms in GATS, notably those contained in Article XII and Article XIV, sufficient to address any difficulties governments might encounter as a consequence of their GATS

commitments? Similarly, does Article XXI provide an adequate vehicle for reversing or modifying scheduled commitments in the event of unanticipated difficulties?

The existing safeguards under the GATS are there for specific purposes with their own procedures and cannot or should not be used for emergency safeguard actions.

Article XII allows to take restrictive measures in the case of balance of payments difficulties which needs to be justified on these grounds and according to specific procedures in conjunction with the IMF. It does not allow to take a relief measure if, at the same time, it is not demonstrated that the Member has balance of payments difficulties.

Article XIV allows a Member to take restrictive and discriminatory measures for given reasons only and provided the Member complies with the necessity test. Injury to domestic industry is not a justification enumerated under Article XIV. The exception Article should be kept to a minimum and the exception of public order, for example, should not be interpreted in such a broad sense to cover emergency situations.

Article XXI does allow a Member to modify its commitments and in so doing be more restrictive but it has to compensate for it; there are no conditions laid down on the duration or the determination test; once a settlement has been found and is inscribed in the modified schedule of commitments, it could last for an undetermined period of time; there is no obligation to return to the original liberalisation commitment.

c. Does the nature of commitments undertaken in GATS -- whereby Members may choose whether to schedule a sector, and may also condition market access and national treatment with respect to commitments that are made -- obviate the need for safeguards? Or would it be more appropriate to think in terms of the idea that the existence of a safeguard would allow governments to be more forthcoming with respect to their scheduled commitments?

The progressive liberalisation nature of the GATS does not as such obviate the need of a safeguard clause since the latter is to redress unforeseen circumstances i.e. at the time of making commitments no emergency situation existed which would have justified not making a liberalisation commitment.

As to whether a safeguard action could play the role of a safety valve, this is difficult to demonstrate: in the absence of a safeguard clause in GATS, have Members been prevented to take up (more) liberalisation commitments?

d. What would be the economic objective of a safeguard -- to protect production, investors, or employment? Would it protect all domestic production, or only that part of production attributable to national suppliers? Would it aim to protect investment by nationals, or all domestically based investments? What would be the objective of allowing departures from national treatment under modes 3 and 4? Is the distinction between establishment rights per se and post-establishment operations relevant in relation to possible safeguard measures under modes 3 and 4?

The objective of an emergency safeguard action would be to protect the domestic service provider and or service. This could be through production, investors or employers but also consumers.

The protection should be limited in time and scope and therefore it should be granted for that part of the production attributable to the domestic suppliers only (see answer to question 2d for definition of domestic service supplier).

e. Would a safeguard mechanism need to contemplate special provisions for developing countries or does the concept of progressive liberalization offer adequate leeway in this respect?

No. The process of liberalisation itself takes into account the level of development of individual Members, both overall and in individual services sectors. Therefore there might be no additional justification to design a different or more flexible safeguard for developing countries. The only flexibility which could be considered is in the application of a safeguard clause for LLDCs.

f. Is there anything intrinsic to service transactions, such as intangibility, simultaneity of production and consumption, or the need for physical proximity between the producer and the consumer, which makes (some) services transactions different from goods transaction in ways that might influence arguments as to the necessity or utility of safeguard measures in services?

Some of the mentioned specificities of a service transaction do seriously influence the feasibility of a safeguard measure and how to enforce it. Indeed, it is understood that the use of a safeguard measure will only be acceptable when it complies with a number of strict conditions which imply quantification of injury, increased imports, domestic industry, etc. Further work on all the required conditions for applying a safeguard action is necessary before it can be decided whether this is feasible or not.

g. Is anything intrinsic to services markets, such as the role and importance of regulatory regimes, standards and certification requirements, which makes services markets different from goods markets in ways that might influence arguments as to the necessity or utility of safeguards measures in services?

The fact that the supply of a service is so much dependent on a given regulatory regime may help in applying a safeguard measure: in granting a license or certifying the requirements, control is possible on accepting or not a new service supplier in the market.

h. Is anything intrinsic to the role of services in the economy, such as their important support and infrastructure role, which makes services markets different from goods markets in ways that might influence arguments as to the desirability of safeguards measures in services?

Supply of a number of services are key vehicles for an economy (i.e. telecommunications, financial services, transport). But this is also the case for the production of a number of goods. If the provision of a service has overriding importance for the economy, a choice is to be made by the individual Member. It should not influence the rationale of creating a safeguard clause. A safeguard clause is a tool to use, not an obligation.

i. Do Members maintain any emergency safeguard measures in national legislation? If so, what are these measures and how are they implemented?

In Community legislation, Article 73f of the EC Treaty allows, in exceptional circumstances, for the possibility to take safeguard measures, for a period not exceeding six months, in the area of movement of capitals to or from third countries when this causes, or threatens to cause, serious difficulties for the operation of the economic and monetary union. In such case it will be necessary to act and react quickly. If restrictions on movement of capital from third countries would have to be taken, this may affect the specific commitments on cross-border trade and commercial presence.

In Community legislation, there is also the possibility to take safeguard measures in case of a crisis in the market for international carriage of goods by road on Community territory between Member States (see EC Regulation 3916/90 of 21/12/90 - OJ L375/10).

What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

2. A number of questions can be identified in relation to the criteria that might apply in determining the circumstances in which emergency safeguard measures are to be used. The questions included below assume that essentially the same

GATT concepts of increased imports, injury and causality would apply under an emergency safeguards mechanism in GATS.

a. What, in terms of GATS, is the equivalent of increased imports under Article XIX of GATT? In mode 1, the cross-border flow of services may be similar to the import of goods, but the situation is quite different under other modes. How should the possibility of a safeguard be triggered in these circumstances?

Strictly defined, import of services comes under mode 1 only. As to mode 2, too much consumption abroad could also cause injury to the domestic service supplier. As to mode 3: strictly speaking there is no import of a service but only of a service supplier when establishing for the first time in the territory. Therefore, any injury to a service being supplied within a Members' territory will depend on each Member's domestic legislation on incorporation / rules of origin i.e. at what stage does a foreign service supplier become a domestic supplier. As to mode 4, an increase in the number of foreign persons providing services is not as such a threat to a service. But if the amount of services provided increases injuriously or threateningly, should the importing country be able to stop this through limiting the number of new services suppliers?

b. How should serious injury be determined? Injury to whom or what?

Serious injury should be assessed on the basis of all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry, such as market share, employment, consumers' interest and profitability. The assessment should also demonstrate the existence of a causal link between the increase in value of services and the serious injury to domestic service suppliers.

As regards safeguards criteria, a question which arises is since, presumably, the greatest concern would be over relatively new, dynamic (and possibly technologically-volatile) services, over what period and against what yardstick would the data be determined, and what would be the timescale for doing the necessary investigation?

c. What standards would be required to determine that increased competition from foreign sources caused injury to the national industry?

Not "increased competition" but increase in the value of services in absolute or relative terms should be required".

d. How would the national industry be defined for the purpose of determining injury?

It appears not desirable to use the definition of a service provider of another Member as provided for in Article XXVIII (n), to define what constitutes a national industry since this may lead to unnecessary discrimination and harm to the economy in general.

In order to determine injury, concepts used under the GATT may have to be examined such as should the national industry be defined as the providers as a whole of the like or directly competing services operating within the territory of the Member, or those whose collective supply constitutes a major proportion of the total Member supply of those services?

e. Should a link be established between the nature of a specific commitment in a particular sector, including in relation to limitations on market access and national treatment, and the availability of a safeguard measure? In other words, should the availability or nature of a safeguard be restricted where limitations have been inscribed?

No sector specific need for a safeguard action has so far been established. In the absence of a general safeguard clause in the GATS, because such application could be too broad or general, it might be appropriate to examine a safeguard clause applicable to some specific sectors only. But any sectoral safeguard clause should be based on strict conditions and disciplines and not on unilateral inscriptions in the schedule of commitments. It should be noted that if a Member has already taken some limitations for market access or national treatment in the schedule, this need not necessarily mean that any safeguard action is less justifiable (see however answer under 1a).

f. What measurement and identification problems arise in services that might complicate the development of a safeguard instrument, and how should they be dealt with?

The concept of "increased imports" and the variety of factors to be analyzed for the determination of "serious injury" may prove to be difficult to assess in services. Furthermore, it might be more difficult to determine the directly competitive relationship between services.

Application of a safeguard action, in a disciplined way, requires the development of the following instruments:

- *statistics on trade in services; and*
- *classification of services in a more aggregated way.*

The above are not only necessary for safeguards. Also for the procedure on modification of schedules and disciplines on subsidy measures, for example, this will be necessary. But even with better available statistics, quantification of imports and comparison with domestic like services/service suppliers will remain very difficult.

What form might a safeguard mechanism for services take?

3. If increased foreign competition and serious injury to domestic services or service suppliers have occurred, and causality between the two has been established, a question arises as to the characteristics of a safeguard measure that might be applied.

a. What type of measure should be applied? Would taxes, foreign exchange restrictions, other quantitative limitations, or regulatory restraints be suitable as safeguard measures?

Foreign exchange restrictions and limitations to movement of capital might be an operational manner to monitor the import of services together with a quantitative limitation which could include a zero quota for a limited period of time. However, also in such case the application of emergency safeguards has to be in compliance with the IMF jurisdiction on foreign exchange restrictions.

Also through regulations the supply of a service can be controlled to the extent the services' sector is regulated : for example, only a partial licence could be granted, allowing to exercise some activities of the whole range of services activities of the sector.

b. What would be the implications of different modes of supply for the kind of measures employed?

The supply of services on a cross-border basis could be suspended on a temporary basis. As to mode 2, it could be envisaged to have a ban on expatriation of capital/deposits of money abroad. In practice, it appears that a safeguard measure could be applied to new entrants in modes 3 and 4.

c. Would there be circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes at the same time?

To regulate the supply of services into your market, so as to adjust your own, it may be necessary to take safeguard action in all modes of supply at the same time or only in a given mode of supply, depending on the sector. Applying a safeguard action in one of the modes of supply only, may lead to circumvention and therefore possibly questioning the effectiveness of a safeguard clause.

This question raises also the issue of taking a safeguard action on a mode of supply for which no commitments have been taken in the sector.

d. Should safeguards be applied on a non-discriminatory basis in all circumstances?

Yes because safeguards are not designed to offset the adverse effects of unfair trade but to give the domestic industry time to adjust to a changed or unforeseen competitive environment.

e. How quickly would it be possible for a Member to take a safeguard measure? Would the notion of 'critical circumstances,' as developed in the Agreement on Safeguards, apply in the services area?

Possibility of taking provisional safeguard measures in critical circumstances as for goods : why not ? This may be necessary to address difficulties created by exchange rate policy and which can affect the supply of several sectors and through the different modes of supply.

If provisional measures are allowed, they should be allowed only under equivalent strict conditions as set forth in Article 6 of the Agreement on Safeguards such as being based on clear evidence that increased imports have caused serious injury and for a short duration. Additionally, the form of the measure should be reversible.

f. What should be the duration of any safeguard measures adopted?

A maximum period of two/three years, with in-built review after the first year, and with a view to its withdrawal or an increase in the pace of liberalisation, with the possibility of only one prolongation of just one year.

g. Would safeguard measures be made degressive during the period of their application?

Yes.

h. Would a Member taking a safeguard action be required also to adopt adjustment measures?

Yes.

i. Would the application of safeguard measures be accompanied by compensatory adjustments in the schedule of the Member taking the measure?

Under certain conditions, compensatory adjustments exist for goods after a given period of application of safeguard measures. A system similar to Article 8 of the Agreement on Safeguards could be envisaged.

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COMMUNICATION FROM EGYPT

Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS

The following communication is being circulated at the request of Egypt to Members of the Working Party on GATS Rules.

What is the justification and purpose of an emergency mechanism under GATS?

1. The question of what a safeguard mechanism would be for involves the following considerations:

a. Would an emergency safeguard for services be intended to deal with the kind of situation foreseen in Article EXES of GATT -- that is, a temporary threat to a domestic "industry" arising from increased imports? Would it have any other objective?

The original intent behind article X of the GATS was to conduct negotiations on emergency safeguards mechanism of the kind addressed by, and to serve the same objective of article XIX of GATT. Without dismissing the possibility of using safeguard mechanism beyond article XIX, so far our focus remains on measures to provide immediate relief to domestic industry from the pressure arising from a surge of imports or a threat thereof. The possibility of going beyond article XIX could be warranted by the crucial strategic and infrastructural role of services in the economy as a whole, which thus make the impact of services more far-reaching than that of goods on the development process. It is therefore essential that in undertaking their commitments, countries reckon that they may resort to temporary safeguards if the commitments were to result in injurious effects, difficult to foresee in advance. Such a clause would even induce countries to make more ambitious commitments to liberalize.

b. Are existing "safeguard" mechanisms in GATS, notably those contained in Article XII and Article XIV, sufficient to address any difficulties governments might encounter as a consequence of their GATS commitments? Similarly, does Article XXI provide an adequate vehicle for reversing or modifying scheduled commitments in the event of unanticipated difficulties?

Article XII and XIV are not designed to address the same type of situations which an emergency safeguard mechanism analogous to that of article XIX of the GATT will address.

Article XII is meant to address balance of payments problems which are specifically defined in the text of the article itself. It is analogous to article XVIII of the GATT. There should be no confusion between those different types of problems.

Similarly article XIV (General Exceptions) is meant to provide coverage for measures inconsistent with a Member's obligations under the GATS, in order to serve a set of well-defined paramount policy objectives. This provision is analogous to article XX of the GATT.

Although conceptually these provisions could be called "safeguard mechanisms", they should not be confused with the emergency safeguard mechanism discussed under article X of the GATS, therefore the question of whether they would be sufficient to address any difficulties governments might encounter as a consequence of their GATS commitments might not be the right question to ask. Emergency safeguard mechanism should - in fact - accommodate situations which were completely unforeseen when the commitments were initially negotiated. As service markets are further liberalized, temporary emergency safeguards become all the more relevant to address difficulties governments could encounter as a consequence of their GATS commitments.

Possibility of recourse to emergency safeguards could obviate the need for economic needs test.

While those who argue against such a safeguard clause for lack of feasibility, consider article XXI as sufficient, it is worthwhile noting that this article implies a permanent modification in the commitment in addition to payment of compensation, which is not the thrust of the argument of those favouring a safeguard clause. In addition, the modification of the concession in accordance with article XXI is conditioned by a lapse of a three year period before any action can be taken by the Member concerned. Furthermore it is conceptually difficult to see article XXI mechanism as a solution to emergency situations, as it would seem to provide a solution of a permanent nature for a problem of a temporary nature.

c. Does the nature of commitments undertaken in GATS -- whereby Members may choose whether to schedule a sector, and may also condition market access and national treatment with respect to commitments that are made -- obviate the need for safeguards? Or would it be more appropriate to think in terms of the idea that the existence of a safeguard would allow governments to be more forthcoming with respect to their scheduled commitments?

The first question resembles to a large extent the previous one in terms of built-in-safeguards, which we believe do not obviate the need for emergency safeguards. On the contrary, a safeguard clause could lessen the limitations under market access and national treatment provisions. We are of the view that, designing a safeguard clause -as a longer term objective - should encourage countries to be more forthcoming with substantive offers to liberalize. Integrating a safeguard clause should also be effective for ensuring a better involvement and increased participation on the part of developing countries in more sectors in trade in services as it would make countries feel secure in their commitments. As mentioned earlier, there is a qualitative difference between the concerns that governments might have in scheduling commitments and those which may arise in emergency situations. In the former such concerns may relate predominantly to long-term considerations, while in the latter they may relate to sudden changes in trade patterns.

d. What would be the economic objective of a safeguard -- to protect production, investors, or employment? Would it protect all domestic production, or only that part of production attributable to national suppliers? Would it aim to protect investment by nationals, or all domestically based investments? What would be the objective of allowing departures from national treatment under modes 3 and 4? Is the distinction between establishment rights per se and post-establishment operations relevant in relation to possible safeguard measures under modes 3 and 4?

These are a number of very complex questions which would necessitate in our view further studies and analysis. The answers given in this context are rather of a preliminary nature. In regard to the economic objective of a safeguard and whether it would aim at protecting production, investors or employment, this will certainly vary according to the different modes of supply and different situations. In any case, those elements may not be mutually exclusive. This can be better illustrated by way of examples.

-In the cross border mode, the economic objective of a safeguard might be to protect domestic suppliers in the face of a sudden surge of imports of insurance products.

-In the consumption abroad mode, the objective might be to protect the economy against the excess of outflow of resources created by sudden surge in demand on the part of domestic consumers to consume services abroad, which would injure the domestic suppliers.

-In case of commercial presence, the objective would be in general to protect domestic industry, and to ensure minimum domestic production and control. That may relate to levels of production, employment and/or investments.

-In the case of the movement of natural persons, the objective would be to protect employment from a sudden increase in foreign labour. It could obviate the need for economic needs test.

In regard to the second and third questions, whether the safeguard would protect all domestic production or only that part attributable to national suppliers and whether it would aim to protect investment by nationals or all domestically

based investments, for the purpose of an emergency safeguard mechanism, this issue is still under consideration in Cairo, and needs to be further analyzed by the group.

In regard to their fourth question, it is difficult to perceive what is meant by allowing departures from national treatment under modes 3 and 4. As for the fifth question regarding the relevancy of making the distinction between establishment rights *per se* and post-establishment operations in relation to possible safeguard measures under modes 3 and 4, Egypt, at this stage, does not see any purpose that can be served by dis-establishment or withdrawal of licences of operating service suppliers. The aim of emergency safeguards - in our view - is to regulate import levels, limit the number of service suppliers and limit the volume or value of services operations. The key words are •regulate• and •limit• not to digress or renege on previous commitments.

e. Would a safeguard mechanism need to contemplate special provisions for developing countries or does the concept of progressive liberalization offer adequate leeway in this respect?

The concept of progressive liberalization is about undertaking national treatment and market access commitments. If the question meant to be asked is whether the element of progressivity would obviate the need of a safeguard mechanism, the answer is NO. As mentioned before in the context of replying to the question (b), there is a conceptual distinction between the scheduling and modification of commitments on the one hand and the ability to address emergency situations, on the other hand. In so far as developing countries are concerned, there may very well be good reasons for allowing developing countries to address special situations that may arise only in the case of developing economies. The exact nature and remedies for such situations is a matter that needs further detailed examination.

f. Is there anything intrinsic to service transactions, such as intangibility, simultaneity of production and consumption, or the need for physical proximity between the producer and the consumer, which makes (some) services transactions different from goods transaction in ways that might influence arguments as to the necessity or utility of safeguard measures in services?

From a policy objective point of view, there seems to be no difference between the services and goods that could affect or lessen in anyway the necessity or utility of safeguard measures in services as compared to goods. However, the differences referred to in the question may lead to different approaches in devising how a safeguard mechanism would operate in the case of services. We have also to take into account the definition of trade in services under which sales by foreign owned corporations on the domestic market are considered as •exports• of services.

What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

2. A number of questions can be identified in relation to the criteria that might apply in determining the circumstances in which emergency safeguard measures are to be used.

The questions included below assume that essentially the same GATT concepts of increased imports, injury and causality would apply under an emergency safeguards mechanism in GATS.

a. What, in terms of GATS, is the equivalent of increased imports under Article XIX of GATT? In mode 1, the cross-border flow of services may be similar to the import of goods, but the situation is quite different under other modes. How should the possibility of a safeguard be triggered in these circumstances?

Safeguard action would flow from the definition of trade in services. One can measure in terms of article XVI on market access. Increased imports could be defined in terms of value, volume, number of providers, share of the market taken by the surge in imports, level of sales, capacity utilization, etc. Thus, it might include a rapid series of takeovers of domestic firms by foreigners, a rapid expansion of the share of the domestic market by foreign owned/controlled firms. Notion of injury would also need to address the retardation in the development of domestic services.

b. How should serious injury be determined? Injury to whom or what?

The criteria for determination of injury would need to be further examined. However, a link between increased service supply (or competition) and a potential injurious effect on the domestic industry should also be drawn in this respect. It is not inconceivable that criteria might differ according to the sector or mode of supply.

c. What standards would be required to determine that increased competition from foreign sources caused injury to the national industry?

The same kind of standards as in goods in establishing the causality between serious damage or actual threat thereof and the increased imports.

d. How would the national industry be defined for the purpose of determining injury?

It is not clear for the purpose of determining injury whether a safeguard mechanism should define national or domestic industry. Our preliminary view is a safeguard mechanism should aim at protecting domestic industry which would normally encompass national suppliers as well as of foreign origin. However, as mentioned above, this matter is still under consideration.

e. Should a link be established between the nature of a specific commitment in a particular sector, including in relation to limitations on market access and national treatment, and the availability of a safeguard measure? In other words, should the availability or nature of a safeguard be restricted where limitations have been inscribed?

Logically, the need to take emergency safeguard action would not necessarily relate to whether there are limitations on market access and national treatment in relation to the sector concerned. In our view there should be no link between the two.

f. What measurement and identification problems arise in services that might complicate the development of a safeguard instrument, and how should they be dealt with?

Lack of statistical data has been mentioned as one of the main reasons for not including a clause on emergency safeguard measures. It should be noted that lack of appropriate disaggregated statistical data on production, trade and foreign direct investment affects the implementation of the GATS as a whole.

What form might a safeguard mechanism for services take?

3. If increased foreign competition and serious injury to domestic services or service suppliers have occurred, and causality between the two has been established, a question arises as to the characteristics of a safeguard measure that might be applied.

a. What type of measure should be applied? Would taxes, foreign exchange restrictions, other quantitative limitations, or regulatory restraints be suitable as safeguard measures?

All above measures could be used. Price based measure could certainly be adequate tools for safeguard measures in terms of taxes or subsidies for domestic service suppliers.

b. What would be the implications of different modes of supply for the kind of measures employed?

- For cross-border mode: restriction of supply or temporary restrictions on the supply of services;
- for consumption abroad mode: taxes;
- for commercial presence mode: limit or stop new establishments, higher taxes;
- for movement of natural persons

c. Would there be circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes at the same time?

Because of the infrastructural and economy wide role of services relating to the macro-economic policies, the possibility might arise of applying comparable safeguard measures on one or more modes at the same time.

e. How quickly would it be possible for a Member to take a safeguard measure? Would the notion of 'critical circumstances,' as developed in the Agreement on Safeguards, apply in the services area?

The answer to these questions could be rather left to the negotiations. We could think of the criteria developed in the Agreement on Textiles and Clothing, as in article VI, or apply the same criteria of the Agreement on Safeguards.

f. What should be the duration of any safeguard measures adopted?

Three to five years.

g. Would safeguard measures be made degressive during the period of their application?

It might also be left for further negotiations. Article 7.4 of the Agreement on Safeguards provides that if the safeguard measure is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application.

h. Would a Member taking a safeguard action be required also to adopt adjustment measures?

Adjustment measures in terms of compensation - No.

i. Would the application of safeguard measures be accompanied by compensatory adjustments in the schedule of the Member taking the measure?

Since a safeguard mechanism would be of a temporary nature, as a matter of principle, Members should not be asked to provide compensation.

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COMMUNICATION FROM HONG KONG

Emergency Safeguard Measures in Services: A Way Forward

The following communication is circulation at the request of Hong Kong to Members of the Working Party on GATS Rules.

Summary

1) This paper seeks to set down a practical way to take forward discussion of Emergency Safeguard Measures (ESM) in Services, in order for the Working Party (WP) to fulfil its mandate to that any results of multilateral negotiations on this subject should enter into force by 1 January 1998. The paper does not advocate that there should be ESM. It attempts to allow the WP to discuss the practical issues involved in the concept of ESM. Once this has been done systematically, the WP can consider whether the results justify any form of ESM.

Background

2. The WP has held many discussions and received many notable and detailed papers on this question. Most papers have highlighted the difficulties that would exist if there were to be ESM. Such difficulties fundamentally result from the fact that trade in services does not deal with tangible goods, and the concept - built into the GATS - of the four modes of delivery. Members will need to consider whether an ESM should extend to all four modes of delivery or whether some modes of delivery should be excluded. Moreover, Members will need to decide whether ESM remedies should be mode-specific, i.e. whether a measure restricting any of the four modes of delivery should be permitted only to remedy injury caused via the same mode.

3. Most papers have also pointed out that there are several articles in the GATS which already provide a number of safety valves and question whether more are needed, particularly bearing in mind the difficulties outlined above. The Articles involved are:

- Article II (2) (MFN exemptions)
- Article XII BOP
- Article XIV General Exceptions

- Article XIV bis security exceptions
- Article XVI & XVII: Scheduling of commitments
- Article XXI Modification of Schedules

4. On the other hand, some papers and Members have argued that ESM is necessary. This is primarily because they can see situations where none of the above safety valves would cover a legitimate emergency situation. Further they argue that an ESM would encourage better and more specific commitments because of the added comfort the ESM would give if something unexpected were to occur.

5. One point where there seems to be general agreement is that a good starting point in considering the ESM question is to look at the Agreement on Safeguards under the GATT/WTO (herein after GATT SA). Nevertheless, it is important to bear in mind the structural differences between goods and services, and the different mode of supply of services under GATS.

6. Without a detailed and thorough examination of the principles, the purpose, and the scope and operation that we would like to see in an ESM, if one were to be established, it is not possible to evaluate the pros and cons of the arguments. This paper thus proposes a logical way to examine the issues so that, at the end of the day a decision can be made in the full knowledge of all the issues.

Basic Principles Governing ESM

7. It may be possible - and it would certainly be desirable - to set out some basic principles that would be necessary in any ESM. These might cover such aspects as:

It should be clearly shown that a proposed ESM will remedy the injury identified.

- (i) initiation of an ESM should only be based on **objective and well-defined criteria**;
- (ii) an ESM should represent the **minimum measure** necessary to adopt in order to tackle the problems arising from an emergency situation;
- (iii) an ESM should be applied on an **MFN** basis;
- (iv) there should be **sufficient advance notice** to inform other Members of the proposed ESM action;
- (v) the measure to be taken under the ESM should be **clearly specified** (i.e. the remedial action to be taken);
- (vi) the relationship of the proposed ESM to the **public policy concern** which it is seeking to remedy should be spelt out;
- (vii) an ESM should be **time-bound** and should be removed as soon as circumstances return to normal;
- (viii) ESM Agreement would **be subject to Article XXIII** (dispute settlement).

Most of these will be familiar, as they are enshrined in the GATT SA. Many will be discussed in detail in the paragraphs following. Members may wish to have them in mind when considering the issues in the paper.

8. Members will also need to consider whether the ESM should be limited to mode 1, or if it is to apply to other modes, whether ESM's should be mode specific, i.e. whether restrictions on a particular mode of delivery should be allowed only if the injury is caused through an increased supply of "foreign" services supplied through that mode of delivery. Members may wish to consider which approach is most likely to contribute to the further liberalisation of services and the maintenance of an adequate level of discipline on trade in services.

Purpose, Scope and Principles of Operation

9. It is suggested that the detailed types of issues to be discussed in considering the question of how an ESM could operate are as follows:

- (a) purpose of an ESM;
- (b) conditions under which an ESM can be invoked (e.g. what constitutes "emergency" situations);
- (c) procedure for invoking an ESM;
- (d) operation of an ESM;
- (e) application of an ESM (a common ESM for all service sectors or sector specific ESMs?);
- (f) remedial measures available under the ESM.

These are discussed in detail below.

(a) Purpose of an ESM

10. In the case of goods, the purpose of the safeguard measures is to enable a Member to protect "the domestic industry" from "serious injury" due to "increased importation" of "like or directly competitive products". All the words in inverted commas are difficult to grapple with in the services context as was admirably set out in secretariat Note S/WPGR/W/8. But we should examine each to consider whether they can be defined, whether they need to be defined and whether there may be different or better ways of setting out the purpose of an ESM. In doing so, some of the other issues detailed in paragraph 7 will be touched upon.

(i) Domestic Industry

11. In the globalising economy, the concept of "domestic industry" is becoming more and more diffuse. If we were to take the lead of the GATT SA, all producers of like or directly competitive products operating in the territory of the Member before the ESM would count as "domestic industry" (Article 4(1) (c). This raises the question of whether such a definition meets the needs under the GATS and also modal issues. One could conceive that an "emergency" has arisen because market opening has occurred too quickly for the national domestic service suppliers to adapt - see Note 1. So some restrictions might need to be put on the entry of "new" (foreign) domestic suppliers: i.e. those established under Mode 3. But under the GATT SA it would not be possible to take differential action against the "newcomers".

Note 1 : National domestic service supplies is used in this paper to refer to suppliers owned, managed or controlled by nationals of the Member concerned.

12. A further problem relates to Mode 4. Under this there is a clear differentiation between own and foreign nationals. So an anomalous situation could arise where a foreign company was not affected by an ESM, but foreign nationals within the company could be.
13. Is therefore the definition of domestic industry in the GATT SA appropriate for a GATS ESM? It would seem to be a retrograde step to attempt to differentiate between foreign and “domestic” established bodies. But that is exactly what the NT column allows and is the factual position in many Members’ specific commitments (i.e. limitations in the share holdings or directorships which foreigners can hold). Do we need a separate definition, which might be related to the type of specific commitment made by Members?

(ii) Serious Injury

14. The key question here is what or whom a Member might be seeking to safeguard from serious injury. Because of the four modes of supply, there are at least three possible targets:
- service suppliers (including individuals) established in the territory irrespective of ownership/management
 - national domestic owned/managed service suppliers
 - own nationals
15. The answer would seem to depend on the emergency situation, the sector in which the Member has made a commitment and the mode of supply that is causing the injury.
16. As regards the evaluation of whether serious injury has or will take place, the concepts and tests in the GATT SA seem quite appropriate. i.e. the Member would need to examine all relevant factors including the amount or rate of increase in importation of the product concerned, the share of the domestic market taken, changes in the level of sales, production, productivity, capacity utilisation, profits and losses and employment. One can conceive of such measures being transferable to most services sectors. Reliability of some of the data would, however, be problematic - see below. Further, factors for judging serious injury will depend on the mode of delivery causing the injury. It may be necessary to consider whether it would be desirable to distinguish injury to domestic industry, injury to domestically owned industry, or injury to national service providers.

(iii) Increased importation

17. The clear question to be faced here is how to obtain reliable data to establish increased importation and to decide what “increased importation” in fact means. As pointed out in several submissions, this is likely to be highly problematic in several services sectors because the relevant statistics simply do not exist. And again the question of what constitutes “importation” is complicated by the four modes of delivery. Mode 1 is clear: it is the supply from one Member into the territory of another - one might say classic importation. But an upsurge in Mode 2 (consumption abroad) could lead to serious injury to the domestic service suppliers but has no relation to the classic definition of “importation”. Under Mode 3, the importation could apply to “new entrants” (i.e. foreign established) service suppliers who were taking business from old established domestic suppliers. Under Mode 4 the importation is clear.
18. Does this, again, show that any ESM would have to be sector and mode specific?

(iv) Like products

19. The issue here is whether it will be possible to define adequately “like products” in a number of areas. Difficulties could arise in areas such as financial services, where there is a huge diversity of products in the same area of activity (i.e. is an insurance policy which bundles life, home, car and personal insurance together, a “like product” to a policy which only covers one of these? Or is a multi-currency account a like products to a single foreign currency account?). One possible solution would be not to seek to define like products in any detailed way and to put the onus on the Member seeking to impose the ESM to justify the measure. Case law would then build up.

(b) Conditions under which an ESM can be invoked (i.e. what constitutes “emergency” situations)

20. It would seem only logical that an “emergency” situation under the GATS could only relate to specific commitments made there under, or to MFN exemptions - or the lack of them. i.e. like the GATT, the ESM would have to be product (service) specific and could not be used to combat a general economic malaise, which would be better dealt with by measures already permitted under the GATS. Under Modes 1, 2 and 3 one could envisage emergencies where the share of domestic service suppliers, whether defined as all established or only national, could suffer serious decline in total market share. One can equally see that under Mode 4 social unrest or unemployment could arise from a MA commitment. And one could conceive of situations where an influx of foreign nationals (i.e. NT area) could lead to serious unemployment in a specific sector of nationals.

21. Thus it is suggested that possible emergency situations are limited but could include:

- serious environmental or societal problems, such as pollution (due to a specific commitment on transport?), mounting and high unemployment in a particular sector or social/racial problems
- drastic reduction in or elimination of total market share held by national service providers
- national service providers undergoing (temporary) restructuring or which are newly emerging

(c) Procedures for invoking an ESM

22. The GATT SA offers some proven procedural requirements for invoking an ESM, which cover such issues as:

- prior notification (in the GATT SA this is a requirement to notify the WTO immediately upon initiation of the investigatory process, making a finding of serious injury and taking a decision to apply a safeguard measure. The exact details must be spelt out.)
- notice period (in the GATT SA it is not specified but put as “adequate opportunity for prior consultations”)
- consultation with affected parties (in the GATT SA this is a requirement)
- compensation (see below), and
- dispute settlement (this is available under the GATT SA)

Also for consideration is whether there should be scope for a provisional ESM. Given the speed at which many areas of services change and evolve, this concept should certainly be evaluated.

23. The GATT SA also has special provision for deferential treatment for developing countries in that products from such Members may not be a target of an ESM as long as certain conditions are met - see Note 2. This question should be addressed in the GATS context. Since all Members have the opportunity to assess their commitments, it is not immediately obvious why developing countries would require greater protection. But, as some papers have pointed out, such countries may be less capable, from the technical point of view, fully to assess the implications/impact of commitments made.

24. All the above concepts are readily understandable and could be discussed in turn. Two related points of interests could be born in mind:

i) Should any ESM only relate to future improvements in specific commitments and not to the (current) situation Members have already bound themselves to - willingly in the absence of an ESM? This has been postulated in a couple of papers.

ii) If i) above were to be accepted, should compensation be payable in only some or indeed no circumstances? This would clearly also depend on the general eventual scope of ESM measures.

d) Operation of an ESM

25. Of considerable importance is how the serious injury would be assessed, and what the duration and subsequent progressive liberalisation might be and the mechanisms for review.

26. As regards assessment of serious injury, this poses the most difficult question in a number of service areas. If the concepts of the GATT SA are to be borrowed, and there seems little choice, a Member seeking to impose the ESM would have to **demonstrate that there was indeed a problem** and show **causality**. But statistics and data in many service areas are acknowledged, even in developed countries, to be less than adequate. How will a Member be able to provide convincing data in such circumstances? It is suggested that this problem is not one that can be resolved by laying down guidelines or by prescription. It will resolve itself in three ways. First, by the realisation by Members that in some areas, an ESM simply cannot be taken because of a lack of means to prove the cause of the emergency. Indeed it is for consideration that if an ESM is finally agreed, one of its clauses should be a recognition by Members that ESM has only a limited place in resolving problems. Second, by case law on cases which arise. While not the best way of defining the limits of actions, it is nevertheless a common one. Third, by the advance of statistics and data on the services sector as competent authorities seek to measure this area of activity better and as it grows in importance to the economies of all Members.

27. There should clearly be limits on the duration of any ESM measure. Given the speed at which matters change in the services sector, it might be appropriate to consider shorter periods than in the GATT SA. Thus instead of four years as the maximum (subject to possible extension), perhaps two would be more appropriate.

28. The same could be argued for the progressive relaxation of the ESM and the process of review.

Note 2: Under the GATT SA, safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing

country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.

(e) Application of an ESM

29. The Chairman's note of 1 May provides valuable insights into this question, which has already been discussed above. The key question is whether it is possible or desirable to have a common ESM for all Modes or mode-specific ESMs. Many of the analyses thus far have suggested that a common ESM simply will not work in the GATS. Thus, as the Chairman succinctly put it, can we agree that it is not possible to avoid modal distinctions in possible ESMs?

30. If it is agreed that ESM should be mode-specific, we need to consider whether restrictions on a particular mode should be allowed only if the injury is caused through an increased supply of "foreign" services through that mode of delivery. In doing so, we may need to consider which approach is most likely to contribute to the further liberalisation of services and the maintenance of an adequate level of discipline in trade in services. The GATT SA seems to provide the best fit with respect to services provided through mode 1. If it is decided to allow ESMs for other modes of delivery, modifications will be necessary with respect to key elements of the GATT SA, in particular with respect to definitions of industry and serious injury. Moreover, if the ESM is not mode specific, it may be necessary to rethink the conceptual foundation of a safeguard mechanism in services.

31. The next question is how to treat new entrants and existing suppliers under an ESM. As the Chairman's Note points out, while Modes 1 and 2 do not present difficulties in this area, Modes 3 and 4 do. (Although in theory it might be possible to envisage a situation where national suppliers are suffering from loss of customers due to Mode 2 but their foreign domestic counterparts are not because they are multinationals and thus able to offer a wider spread of services than the national suppliers.) In both Modes 3 and 4 it is possible to differentiate between foreign domestic service suppliers and national service suppliers and thus to invoke the ESM to protect only national service suppliers. This could even be at the expense of foreign domestic suppliers, irrespective of when they were established.

32. As has been outlined above, some papers have expressed concern at the idea that already established foreign domestic suppliers might either be penalised by an ESM or not protected by an ESM. They have argued that such a provision could make any potential foreign investor wary about investing in a Member which had the option to take such an ESM. It would seem that limits on the reach of ESMs in Modes 3 and 4 would be desirable, perhaps, based on the notion that everything committed (in specific commitments) so far should be considered as a done deal, and that there should be no differentiation between already established domestic suppliers as regards any ESM.

33. A further question in this area is whether Mode 4 is so different from Modes 1, 2 & 3 that a different type of ESM should be considered for it. Whereas Modes 1, 2 & 3 all deal with the supply of a service, irrespective of who or what is doing the supplying, Mode 4 deals with presence of national persons. It is also, perhaps, a more sensitive area.

(f) Remedial Measures available under an ESM

34. It will be necessary to consider and to perhaps to prescribe what sort of measures can be taken under an ESM. While the GATT SA does not prescribe particular measures, in practice two kinds have been used- quantitative restrictions (such as quotas) and price based measures (e.g. tariff increases or taxes). If such measures are used, then the GATT SA sets out the limits of the measures that may be taken.

35. Both such concepts could be used in the GATS, although it would be necessary to tailor the concept to fit the four Modes of supply. Mode 1 is the same as classic importation. Mode 2 would require some measure such as a tax or a restriction on travel to place disincentives on consumption abroad. Under Mode 3 the measures could cover such areas as taxes or restrictions on investment flows. These could seek to reduce or stop new foreign commercial presence or to limit the scope of established foreign domestic suppliers. Under Mode 4 the measure could limit the physical movement of natural persons, or place limits on the stay of such persons, or impose taxes on such persons. As with Mode 3, it would be possible to differentiate between already established foreign domestic suppliers and new ones but also to limit the activities of existing established foreign domestic suppliers.

36. Two points may be worth having in mind in this. One is whether the remedial measure should be mode-specific, i.e. whether a remedial action should target the mode of delivery which led to the domestic injury. The second is to find ways to ensure that the proposed ESM will indeed remedy the injury identified.

Way Forward

37. It is hoped that the above examination of the matters that are relevant to the consideration of whether or not ESM in the GATS is viable and appropriate, will provide a method to take forward this complex and important issue.

WORLD

RESTRICTED

TRADE

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19

2 May 1997

ORGANIZATION

(97-1980)

Original: Spanish

Working Party on GATS Rules

COMMUNICATION FROM ARGENTINA

Questionnaire on Government Procurement of Services

Addendum

The following communication is circulated at the request of Argentina to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Procurement by the State Article 55 of the Decree-Law on Accounting No. 23.354/56, ratified by Law 14.487, defines as any purchase or sale on behalf of the Nation, as well as any contract concerning leasing, rental, work or supplies.

Article 1 of the Law on Public Works No. 13.064 defines national public works as any construction or work or service of an industrial nature carried out with funds of the National Treasury.

Administrative structure

2. How are government procurement activities administered? Do what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

Pursuant to Decree No. 1.545/94, the government procurement regime is based on the centralization of rule-making and the decentralization of operational functions. Thus, the National Procurement Office, part of the Department of Finance - Ministry of the Economy and Public Works and Services - is responsible for putting forward policies, establishing rules and elaborating operational management systems in this area. In turn,

each Ministry, decentralized body, official bank and State enterprise carries out its procurement through its own purchasing body.

Consequently, the procurement regime is subject to a single set of rules (see below, Laws and Regulations in force), with a distinction between goods and services on the one hand and public works on the other. As mentioned, there are also special procedures for public works concessions, which may include additional specifications depending on each particular case.

Law and regulations in force

3(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

At national level, the basic legal framework for procurement of goods and services is set out in the State procurement regime included in the Decree-Law on Accounting No. 23.354/56, and the regulations thereto in Decree No. 5.720/72 and amendments thereof.

In addition, other applicable provisions are those of Law No. 24.156 on Financial Administration and Control Systems of the National Public Sector, the decrees establishing regulations to that Law, and supplementary Decrees No. 2.662/92 on Powers to Authorize and Approve Expenditures and No. 2.380/94 and Administrative Decision No. 148/96 on Revolving Funds and Petty Cash of the Bodies of the Central Administration.

The regime in force for public works is laid down in the Law on Procurement of Public Works No. 13.064, as amended by Laws 16.798 and 17.804 and amending decrees thereto.

The regime for public works concessions is contained in Law No. 17.520, as amended by Law No. 21.691, Law No. 23.696 and its Regulatory Decree 1.105/89.

In the case of public works and concessions the procedures are primarily contained in specific legislation, while the provisions of the Law on Accounting (Articles 3 and 61, paragraph 147, of Decree 5.720/72) apply on a supplementary basis.

In accordance with Article 63 of Decree Law 23.354/56, procurement by the Armed Forces and decentralized entities in the Defence area are governed by the relevant specific provisions of their respective organic and special laws, and on a supplementary basis by the regime established by this Law and its regulatory decrees. In the specific case of the Armed Forces, the procurement regime is laid down in Law No. 20.124 and Decrees 265/73, 3.961/73, and 4.027/73.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

As mentioned above, the same regime governs the procurement of both goods and services.

Article 3 of Decree 5.720/72 establishes that procurement of supplies of materials or services for national public works shall be subject to the provisions established by the competent authority in accordance with the rules laid down in the legislation in force in

this respect (Law 13.064) or, failing such, the provisions of the regulations approved by that Decree.

Procurement procedures applied

4(a) What procedures are followed in the procurement process?

and

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Procurement procedures vary according to the different regimes in force. In all cases provision is made for public (open) and, selective (private) tendering and direct contracting, but preference is given to public tendering. The procurement methods and respective thresholds are summarized below:

	<u>Direct contract</u>	<u>Selective tender</u>	<u>Public tender</u>
<u>Goods and services</u>	up to \$100,000	up to \$1 million	over \$1 million
<u>Public works</u>	-up to \$69,000		over \$69,000
	-supplementary works for an ongoing work according to scale (limit of \$26,000 for works up to a value of \$129,500 or from 5% to 20% of the original cost for larger amounts). See Resolution 814/96 of the Ministry of the Economy and Public Works and Services.		
<u>Public works concession</u>	No threshold stipulated	No	No threshold stipulated

For procurement of goods and services, the general principle is that of public tender (Article 55 of the Law on Accounting). Selective tendering is also allowed if the amount of the transaction does not exceed the threshold (Article 56.1 of the Law on Accounting as updated by Decree 2.293/93). In the case of selective tendering at least six registered suppliers are invited, on a rotating basis, from the Register of Suppliers, including in all cases the previous winning bidder (Article 62, paragraph 8 and 9, of Decree 5.720/72). Direct contracting is allowed in the case of small amounts (Article 58.3 of the Law on Accounting and Decree 2.293/93) or where other requirements listed in that Article are fulfilled, namely, reasons of urgency, single supplier, tender declared void, scientific, technical or artistic works, need for secrecy, etc. In the case of direct contracts of less than \$100,000 or justified by reasons of urgency or void tender, three suppliers will nevertheless be requested to bid, failing which an official record will be made of the reasons that prevented doing so (Article 62, inc. 10, of Decree 5.720/72).

Procurements of goods and services by the National Administration are also subject to control by the Office of the Auditor-General (SIGEN) through the Reference Price System. This is mandatory for public tendering for over \$750,000, selective tendering for amounts of not less than \$500,000 and direct contracting for amounts of at least \$75,000. SIGEN nevertheless has the power to control any procurement, including that carried out under the public works regime (SIGEN Resolution No. 55/96).

In the case of procurement of public works, preference is again given to public tendering, but selective tendering or direct contracting is accepted when contract values do not exceed a specified threshold or in the case of works essential for an ongoing work but not provided for in the original project and which again do not exceed a specified threshold (Article 9 of Law 13.064). Other exceptions mentioned in Article 9 of the Law are: emergency work, unforeseen circumstances, State security, specific artistic or technical capability, special licences or privileges, void or unacceptable tenders.

The Law on Public Works Concessions (Law 17.520) also recognizes three alternative methods: public tendering, direct contracting with public entities or government-owned companies, and contracting with mixed-capital or private-sector companies. In the latter case, when dealing with works of public interest, the choice is between public tendering or competitions for complete projects. In the latter case, invitations are issued for the presentation of projects with a view to the submission of proposals (Law 23.696, Article 58 and Decree 1.105/89). If a more desirable bid than that of the person presenting the proposal is made, both may improve their respective proposals within a period not exceeding half of the original presentation period. The opening of the bids, and the continuation of the procedure, the award and subsequent continuation of the contract are governed by the principles laid down in the Public Works Regime (Law 13.064).

(c) What are the time-limits for the submission for bids?

In the case of procurement of goods and services, there are no mandatory time-limits for the submission of bids. Minimum time-limits for public notice and the period that must precede the opening date are set, the former being included in the latter (Articles 3 and 4 of Decree 826/88). These dates establish de facto minimum time-limits for submission of bids.

Publicity for inviting tenders

5.(a) How are intended procurements publicized? Are invitations to tender published? If so, where, and in what languages? and

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or the value of procurement?

There is no obligation to publicise procurement intentions. Notices of tenders must be published.

Goods and services: notices of public and selective tenders and direct contracting are published in the Official Bulletin and on the notice-board of the procuring body. Where it is practically impossible to do so, as duly accredited by the National Director of the Official Register, and except in the case of public tendering, publication in the Official Bulletin may be replaced by publication in two mass circulation newspapers of the Federal Capital (Article 62 of the Law on Accounting, as amended by Decrees 826/88 and 2.293/93).

When it is presumed that interest may exist abroad, publication in the relevant countries may be authorized (Article 62 of the Law on Accounting).

Publication time-limits vary according to the procurement procedure:

Public tendering: published for 8 days, 12 days in advance of the opening date, except where the amount of the procurement does not exceed \$5,000,000, in which case the time-limits are reduced to 2 and 4 days, respectively (Article 3(a) of Decree 826/88).

Selective tendering: notices are published for 2 days, 3 days in advance of the opening date (Article 3(b) of Decree 826/88).

Direct contracting: following the conclusion of the contract, for a period of one day (Article 3(c) of Decree 826/88).

These time-limits refer to working days and minimum time-periods in all cases.

Public works: Article 10 of Law 13.064 provides for the publication of notices of public tendering in the Official Bulletin, which does not prevent publishing them in private media or in any other form within the country or abroad. The publication time-limits updated by Resolution 814/96 of the Ministry of the Economy and Public Works and Services depend on the value of the budget for the work:

-Up to \$110,000: notices published for 5 days, 5 days in advance;

-from \$110,000 to \$260,000: published for 10 days, 15 days in advance;

-over \$260,000: published for 15 days, 20 days in advance.

Public Works Concessions: There are no specific provisions in Law No. 17.520, apart from the reference to the amendment of Article 4 contained in Law 23.696, which establishes the provisions for competitions for complete projects. In this case the invitation to present projects is made through notices in the Official Bulletin and in two national mass circulation newspapers for five days. These notices must give a summary of the initiative, set the date, hour and place for the submission of bids and the date, hour and place of opening. The time-period between the final publication of notices and the date of submission of bids must be at least 30 days and at most 90 days, except in carefully defined exceptional cases where the maximum time-period may be extended.

None of the above provisions contain references to the language of notices, but in some cases, as mentioned above, they envisage the possibility of publishing them abroad.

(c)What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

For procurement of goods and services, the Law on Accounting and State Procurement (Article 62, as regulated by Decree 5.720/72 and amended by Decree 826/88, Article 7) establishes that the notices must state the name of the procuring body, type and number of procurement, object of procurement, place where tender specifications may be obtained or consulted, cost of tender specifications, place for submission of bids and place, date and time of opening of bids.

In the case of Public Works, Law 13.064 provides in Article 11 that the tender notice must state the work put out to tender, site of work, procuring body, place where the auction documents may be consulted or obtained, conditions to be fulfilled by bids, official to whom bids should be sent or delivered, place, date and time at which the auction will be held and amount of the security which bidders have to lodge in order to take part. The Law on Public Works Concessions does not contain any provisions in this respect.

Consequently, the provisions of the Law on Accounting apply, except as provided for in Law 23.696 on competitions for complete projects.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Tender documents may be consulted free of charge. They may be obtained in order to take part in the bidding against payment of the amount established in the tender documents and specifications. This amount is set by the procuring body at between 0.5 per thousand and 5 per thousand of the estimated cost of the procurement (Article 61, paragraph 45.1, of Decree 5.720/72).

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

The use of electronic means to advertise government procurement opportunities is not provided for statutorily.

Requirements laid down for possible suppliers

6. (a) Are there registration, residence or other requirements for potential suppliers?

In the case of procurement of goods and services, there is no requirement of prior enrolment in a register of suppliers. Decree No. 825/88 (amending Article 61 of the Law on Accounting and Decree 5.720/72) provides that the National General Accounting Office shall keep a roster of suppliers which will include any enterprise that bids or contracts with the State; the procuring body may request that a firm register therein within five days following the opening of bids.

Decree 5.720/72, Article 61.2(c) (as amended by Decree 825/88) provides that in order to conclude a contract with the State a firm must be established in the country, but foreign firms without local branches or representatives are exempted from this requirement in the case of participation in international tenders (Article 61.3(g)).

In the case of Public works, enrolment in the National Register of Public Works Building Contractors (Article 13 of Law No. 13.064) is an essential prerequisite for the qualification and authorization of firms. The Register is regulated by Decree No. 756/81, which establishes the powers of a Council comprising bodies of the national administration for the purpose of classification and qualification of firms according to their technical (economic and production) capability and contracting capacity (Article 22) as a requirement for enrolling them in the Register. The duration of qualification is one year and six months. The regime provides for some exceptions to prior enrolment, for example, when contracting capacity required is less than the threshold periodically set by the Council. Likewise, in the case of exceptional factors affecting the execution of the work, the Council may authorize participation in the tender by non-registered local firms, once only for such firms, provided they have a verifiable record in the country or abroad which justifies considering that they have sufficient technical and financial capability.

The Council may also authorize participation in international tenders of foreign firms not included in the Register when in its opinion they have adequate technical and financial capability (Article 30 of Decree 756/81).

In the case of consortia of local and foreign firms, the contracting capability attributed to them in the Register is exclusively that of the local firms.

(b)What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

For procurement of goods and services, it is necessary to have the capacity to contract, have a place of business or manufacturing in the country, a licence to trade, furnish such reports or references as may be required and satisfy the common requirements for all those engaged in trade, including proper records of accounting operations (journal, inventory, balance sheets, etc.) set out in Articles 33 and 44 of the Trade Code. Apart from the exemption of foreign firms from these requirements when taking part in international tendering, there are other bidders who for various reasons either do not need to meet these requirements or are prohibited from contracting (Article 61, paragraph 4, of Decree 5.270).

With regard to the tender process itself, in the case of procurement of goods and services, bidders must lodge a bid performance guarantee equivalent to 5 per cent of the total value of the bid or 10 per cent of that value in the case of licences or concessions (Article 61, paragraph 33, of Decree 5.720/72). Bidders do not have to lodge this guarantee at the time of submitting a bid, but must do so at the simple request of the procuring entity (Article 61, paragraph 37).

With respect to public works, in addition to the requirements of prior qualification and before submitting a proposal the bidder must lodge in cash, securities or bonds a guarantee equivalent to 1 per cent of the value of the official budget of the work put out to tender. In the case of procurement not exceeding \$69,000 it is not necessary to lodge it in advance, but this must be done at the simple request of the procuring entity (Article 14 of Law 13.064).

With regard to the regime for concessions, any proposal submitted by private individuals for a complete project competition must be accompanied by a maintenance guarantee which may not be less than 2 per cent of the amount of the work. This guarantee is executable in the event of non-submission of the bid, but may be converted into the bid guarantee in the event of an invitation to tender or competition. Nevertheless, if the bid is made subsequently, and the guarantee proves to be less than 2 per cent - with a 30 per cent margin - the bidder will not be considered to be the author of the proposal.

Likewise, a proposal submitted by private individuals must be accompanied by an identification of the work and its nature, economic and technical feasibility studies, full particulars of the bidder and, in the case of Argentine enterprises, their registered capacity to contract.

(c)Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

See the reply to question 6(a) above concerning the National Register of Public Works Building Contractors.

Criteria for assessing bids and awarding contracts

7.(a)What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

In the case of procurement of goods and services, Decree 5.720/72, Article 61, paragraph 76, provides that the contract should be awarded to the bid that is most desirable for the procuring body, taking into account quality, price, suitability of the bidder and other conditions of the bid. Article 61, paragraph 73, stipulates that in case of equality of prices, the contract should be awarded to the bid offering elements of domestic origin, and should there still be a tie, to the bid offering better quality elements if this emerges from the specific characteristics of the bid. If the tie continues, the Decree provides for other criteria, such as an improvement in prices, preference for the bid that originally agreed to a discount for payment by instalments, and a public draw of the tied bids.

With respect to public works, Law 13.064 provides that the contract will always be awarded to the most desirable proposal, in accordance with the conditions established for the tender (Article 18).

Law 23.696 and Decree No. 1.105/89 establishing its regulations amended the Law on Public Works Concessions, by stipulating as award criteria the economic/financial equation and the scope of the prior investments to be made in each case in order to obtain a real reduction in the tariff or charge to be paid by users.

With respect to complete project competitions, the Law provides that in the case of a more desirable bid than that submitted by the person who made the initial proposal, the two may improve their respective bids. When the bids submitted are equivalent, preference will be given to the person who submitted the initial proposal.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or counter trade requirements?

There are no offset requirements.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

No such preferences exist.

(d) Do the procurement criteria differ according to sector or region of the economy?

No, procurement criteria do not differ according to sector or region of the economy.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The procuring authority must follow the evaluation criteria laid down in the legislation in force.

Prior to the definitive award, the procuring body may at any stage of the procedure cancel the tender on good cause shown, or make the preliminary award of all or part of the items put out to tender or of part of an item under certain conditions.

Disclosure of bids received and contracts awarded

8.(a) How are tender received, registered and opened?

In the case of procurement of goods and services, in accordance with Article 61, paragraph 50, of Decree 5.720/72, bids must be submitted to the procuring body by the date and time set for the opening of bids. They must be submitted in perfectly sealed envelopes bearing the identification of the tender concerned and the date and time of opening.

The opening of the bids, is carried out at the place, date and time announced and in the presence of the officials designated by the tendering body and any other persons wishing to attend. An official record of the outcome is drawn up, and is signed by the officials taking part and by any other persons present wishing to do so. Bidders may request, at their expense, a copy of the bids submitted (Article 61, paragraph 62, of the said Decree as updated by Decree 826/88).

The Law on Public Works No. 13.064 contains similar provisions (Articles 15 and 16).

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

Decree 5.720/72 provides in Article 61, paragraph 78, that the award of contracts must be announced in one or more visible places in the premises of the procuring body to which the public have access. The time-periods for such public notice vary according to the type of procurement procedure.

- Public tender: During at least 3 days.
- Selective tender: During at least 2 days.
- Direct contract: During at least 1 day.

Pursuant to Decree 826/88, Article 9, the award also has to be published for one day in the same media in which the invitations to tender were published.

The winning bidder receives official confirmation of the definitive award within seven days by means of a purchase order and, exceptionally, in some other form (Article 61, paragraph 81, of Decree 5.720/72).

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

No. Nevertheless, if after the preliminary award is announced an interested party contests it, the tendering authorities must make the full proceedings of the tender available to that party for examination (Article 61, paragraph 79, of Decree 5.720/72).

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of domestic in relation to domestic services and suppliers.

Decree 1.224/89, establishing the regulations to Law 23.697 which suspended the Buy National regime defines a good as being of domestic origin when produced or extracted in Argentina, provided the cost of the imported raw materials, inputs or materials used in its production does not exceed 50 per cent of the total cost (Article 2).

For the purposes of procurement of goods and services, Article 11 of the said Decree defines a domestic enterprise as one having its domicile and principal place of business in Argentina.

National Treatment: Economic Emergency Law 23.697 suspended the Buy National regime in force until that time for the procurement of goods and services (Article 23). Its regulatory Decree 1.224/89, as amended by Decree 2.284/91 on economic deregulation (confirmed by Article 29 of Law No. 24.307), stipulates preference for the purchase or lease of goods of domestic origin in the case of similar bids of identical quality and benefits when their price is the

same as or less than that of foreign goods (Article 3 of Decree 1.224/89 and Article 21 of Decree 2.284/91). For price comparison purposes, the price of the good of foreign origin will include current import duties and other taxes and charges required for it to be imported by a private importer without special privileges.

Article 61, paragraph 73, of Decree 5.720/72 refers to •elements of domestic origin• as an award criterion in case of a price tie.

With respect to procurement of works and services, preference will be given to local companies in case of equality of bids between a domestic and a foreign firm (Article 11 of Decree 1.224/89 and Article 21 of Decree 2.284/91).

MFN Treatment: There are no provisions of this kind in the domestic legislation.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Article 61, paragraph 79, of Decree 5.720/72 (Regulations on State Contracts) establishes a mechanism for challenging the purchase or contracting of goods and services. Those concerned may lodge a challenge when the preliminary award is announced, within a period of not less than three days from the expiry of the time-limit set for the announcement in question.

Challenges may be decided by the authority responsible for approving the contract, by a decision that cannot be subsequent to the final award decision. It should be borne in mind in this connection that the definitive award must be made within a maximum period of 30 days from the date of opening of the bids (time-limit for maintenance of bids), a period which is automatically extended by five days in the case of a challenge (Article 61, paragraph 61, of Decree 5.720/72).

With respect to public works and public works concessions, the provisions of the regulations on State contracts apply.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Argentina is not a party to any plurilateral, regional and/or bilateral agreements containing provisions on government procurement.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12(a) Please provide statistics (if available) on the number and value of services procurements

- **On both an aggregate and sectoral basis;**
- **by origin of services and suppliers.**

(b) Please provide statistics (if available) on the

- **Share of services procurement in total procurement;**
- **share of procurement of each service in total domestic output of the service;**

- **share of procurement of each service in total domestic consumption of the service.**

The Argentine statistical system does not allow for the requested breakdown.

WORLD

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ORGANIZATION

RESTRICTED

TRADE

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2 May 1997

(97-1944)

Working Party on GATS Rules

COMMUNICATION FROM POLAND

Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS

The following communication is being circulated at the request of Poland to Members of the Working Party on GATS Rules

1. What is the justification and purpose of an emergency mechanism under GATS?

a. Would an emergency safeguard for services be intended to deal with the kind of situation foreseen in Article XIX of GATT -- that is, a temporary threat to a domestic "industry" arising from increased imports? Would it have any other objective?

An emergency safeguard for services should be intended to deal with the kind of situation foreseen in Article XIX of GATT - that is, a temporary threat to a domestic industry arising from increased imports.

b. Are existing "safeguard" mechanisms in GATS, notably those contained in Article XII and Article XIV, sufficient to address any difficulties governments might encounter as a consequence of their GATS commitments? Similarly, does Article XXI provide an adequate vehicle for reversing or modifying scheduled commitments in the event of unanticipated difficulties?

The existing provisions in GATS, notably those contained in Articles XII and XIV do not offer an adequate way to deal with adverse circumstances that might arise as a result of a member's specific commitments. In particular Article XII (3) states that restrictions to safeguard the balance of payments shall not be adopted or maintained for the purpose of protecting a particular service

sector. Article XIV does not contain any provisions referring to the situation foreseen in Article XIX of GATT, that is a temporary threat to a domestic industry arising from increased imports. Article XXI does not seem to provide an adequate mechanism for reversing or modifying commitments in the event of unanticipated difficulties. The measures under this article may only be taken when some conditions are fulfilled such as waiting period, prior notification, compensatory adjustment.

c. Does the nature of commitments undertaken in GATS -- whereby Members may choose whether to schedule a sector, and may also condition market access and national treatment with respect to commitments that are made -- obviate the need for safeguards? Or would it be more appropriate to think in terms of the idea that the existence of a safeguard would allow governments to be more forthcoming with respect to their scheduled commitments?

It is necessary to develop an emergency safeguard mechanism in GATS in view to achieve the higher level of specific commitments and support progressive liberalisation of trade in services.

d. What would be the economic objective of a safeguard -- to protect production, investors, or employment? Would it protect all domestic production, or only that part of production attributable to national suppliers? Would it aim to protect investment by nationals, or all domestically based investments? What would be the objective of allowing departures from national treatment under modes 3 and 4? Is the distinction between establishment rights per se and post-establishment operations relevant in relation to possible safeguard measures under modes 3 and 4?

The economic objective of a safeguard should be to protect domestic production consisting of national services suppliers. Service providers owned or controlled by foreign persons established in a Member's territory are considered to be foreign service suppliers according to the provision of Article XXVIII of GATS. The distinction between establishment rights *per se* and post-establishment operations could be relevant in relation to possible safeguard measures under modes 3 and 4. A Member could use a safeguard measure solely in respect to new entrants i.e. it could introduce limitations on market access in mode 3 and 4.

e. Would a safeguard mechanism need to contemplate special provisions for developing countries or does the concept of progressive liberalization offer adequate leeway in this respect?

A safeguard mechanism under GATS does not need to contemplate special provisions for developing countries.

f. Is there anything intrinsic to service transactions, such as intangibility, simultaneity of production and consumption, or the need for physical proximity between the producer and the consumer, which makes (some) services transactions different from goods transaction in ways that might influence arguments as to the necessity or utility of safeguard measures in services?

There is nothing intrinsic to service transactions which makes (some) services transactions different from goods transaction in ways that might influence arguments as to the necessity or utility of safeguard measures in services.

g. Is anything intrinsic to services markets, such as the role and importance of regulatory regimes, standards and certification requirements, which makes services markets different from goods markets in ways that might influence arguments as to the necessity or utility of safeguards measures in services?

There is nothing intrinsic to services markets which makes services markets different from goods markets in ways that might influence arguments as to the necessity or utility of safeguards measures in services.

h. Is anything intrinsic to the role of services in the economy, such as their important support and infrastructure role, which makes services markets different from goods markets in ways that might influence arguments as to the desirability of safeguards measures in services?

Some service sectors, for example financial services and communication services play a very important role in the economy. Furthermore these sectors seem to be very sensible to any injury. Therefore it is desirable to be authorized to prevent or remedy injury or any threat of injury very quickly. For this purpose safeguards measures are very desirable in these sectors.

i. Do Members maintain any emergency safeguard measures in national legislation? If so, what are these measures and how are they implemented?

Poland does not maintain any emergency safeguard measures in national legislation.

2. What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

a. What, in terms of GATS, is the equivalent of increased imports under Article XIX of GATT? In mode 1, the cross-border flow of services may be similar to the import of goods, but the situation is quite different under other modes. How should the possibility of a safeguard be triggered in these circumstances?

The term increased imports could relate to cross-border service transactions under mode 1, effects on domestic industry of consumption abroad under mode 2, an investment flow in respect to mode 3, the movement of natural persons in respect to mode 4.

b. How should serious injury be determined? Injury to whom or what?

Serious injury is defined in Article 4(1) of the Safeguards Agreement. The criteria described in this Article could be translated into a services context. The term •serious injury• could mean a significant overall impairment in the position of a domestic industry consisting of national service suppliers.

c. What standards would be required to determine that increased competition from foreign sources caused injury to the national industry?

The criteria described in Article 4 of the Safeguard Agreement could in principle be developed in a services context with the appropriate change.

d. How would the national industry be defined for the purpose of determining injury?

For the purpose of determining injury the national industry shall consist of national service suppliers.

e. Should a link be established between the nature of a specific commitment in a particular sector, including in relation to limitations on market access and national treatment, and the availability of a safeguard measure? In other words, should the availability or nature of a safeguard be restricted where limitations have been inscribed?

The availability and nature of a safeguard should depend upon the nature of specific commitments.

f. What measurement and identification problems arise in services that might complicate the development of a safeguard instrument, and how should they be dealt with?

There are certain measurement and identification problems arising in services that complicate the development of a safeguard instrument, which have already been discussed in the documents circulated among the members of the Working Party on GATS Rules. Some of them are: statistical problems, definitional problems, practical difficulties. Further work is necessary to find how to deal with these problems.

3. What form might a safeguard mechanism for services take?***a. What type of measure should be applied? Would taxes, foreign exchange restrictions, other quantitative limitations, or regulatory restraints be suitable as safeguard measures?***

Measures such as taxes, foreign exchange restrictions, other quantitative limitations, or regulatory restraints can be suitable as a safeguard measures. However, it is necessary to develop the procedure for application of these measures which can be in principle based on provisions of the relevant articles of Agreement on Safeguards.

b. What would be the implications of different modes of supply for the kind of measures employed?

See answer to the question c.

c. Would there be circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes at the same time?

There could be certain circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes. It will depend on the service to be supplied and the type of commitment made by the member taking the safeguard measure. Therefore under certain circumstances safeguards to be affective shall cover all modes of supply.

d. Should safeguards be applied on a non-discriminatory basis in all circumstances?

Safeguards should be applied in principle on a non-discriminatory basis except the case where safeguards are applied by a member which is a party to economic integration recognized by Article V of GATS.

e. How quickly would it be possible for a Member to take a safeguard measure? Would the notion of •critical circumstances• as developed in the Agreement on Safeguards, apply in the services area?

The notion of •critical circumstances•, as developed in the Agreement on Safeguards, should be applied in the services area.

f. What should be the duration of any safeguard measures adopted?

Any safeguard measure shall be applied only for such period of time as may be necessary to prevent or remedy serious injury. The criteria described in the Safeguard Agreement could in principle be developed in a services context with the appropriate changes.

g. Would safeguard measures be made degressive during the period of their application?

Safeguard measures should be made degressive during the period of their application.

h. Would a Member taking a safeguard action be required also to adopt adjustment measures?

It is necessary to determine the cases where a member taking a safeguard action is required to adopt adjustment measures as well as the kind of these adjustment measures.

i. Would the application of safeguard measures be accompanied by compensatory adjustments in the schedule of the Member taking the measure?

See the answer to question h.

WORLD

RESTRICTED

TRADE

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29 April 1997

ORGANIZATION

(97-1891)

Original: English

Working Party on GATS Rules

COMMUNICATION FROM INDIA

Response to the questions relating to an emergency safeguard mechanism in GATS

The following communication is being circulated at the request of India to Members of the Working Party on GATS Rules.

1. What is the justification and purpose of an emergency mechanism under GATS?

Since the nature of trade in services is in many ways different from the nature of trade in goods, it would appear logical to state that the nature of an Emergency Safeguard Mechanism (ESM) in GATS would be different from the emergency safeguard provision in GATT. The ESM in GATS may be conceived of as a provision to address an emergency situation, which may arise in the economy of the Member, which makes it necessary for that Member to have to temporarily modify or withdraw any commitment in its Schedule. The main objective of the ESM would therefore be to provide remedy in case of such an unforeseen situation.

The existing "safeguard" mechanisms in GATS, such as those contained in Article XII and Article XIV, and even Article XIV bis, address situations such as restrictions to safeguard the balance of payments, general exceptions or security exceptions. Availability of these "safeguard" mechanisms is duly taken into account by the Member when scheduling its commitments in its Schedule. However, the provisions of Article XII, Article XIV and Article

XIV bis of GATS are not sufficient to deal with unexpected adverse developments or unforeseen emergency situations arising from the Member's obligations under the GATS. The provisions of Article XXI appear to be more applicable to non-emergency measures, especially since these apply to modification or withdrawal of commitments three years after such commitments have entered into force. The availability of the ESM as a provision of the GATS is also likely to give further confidence to the Member countries to undertake further liberalisation commitments under the GATS.

The focus of the ESM should be the specific commitment in the Schedule of the Member invoking the safeguard mechanism, rather than the nature of the commitment related, for example, to the concept of "progressive liberalisation", itself. The temporary nature of the ESM would make it different in nature from the long term nature of the commitment in the Schedule.

The economic objective of the ESM in GATS would need to be assessed in light of the emergency situation which has an impact on the commitments in the Schedule of the concerned Member.

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The ESM, while being available to all WTO Members, should have special provisions for developing countries, since the area of trade in services have been brought under the ambit of the multilateral trading system very recently with the formation of the WTO. Many developing countries do not have appropriate infrastructural systems, including the availability of necessary technology, to address unforeseen situations which may cause them to seek to modify or withdraw temporarily any commitments in their Schedules.

The experience in the operation of the trade in services sector under the provisions of the GATS and the experience in the operation of the trade in goods sector under GATT provisions would demonstrate the significant differences which are accorded to the role, transactions and markets in these two spheres of the multilateral trading system.

2. What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

The ESM should be of a temporary nature, with a specified maximum period of duration, since it is expected to address an emergency situation, which by its very definition would be of a temporary nature. Criteria to determine the justification of the ESM would need to be evolved through analysis. This exercise would have to take into account the fact that the measure has to be directly linked to the nature of trade in services, the specific commitment

being addressed, and would have to also take into account the scope of the commitment and the modes of supply involved. The ESM should be applied on MFN basis.

3. *What form might a safeguard mechanism for services take?*

The form of the ESM would be linked to the modification or withdrawal, on a temporary basis, of the concerned commitment in the Member's Schedule. It would also be related to the scope of the commitment and the modes of supply involved. There could be different mechanisms for the different modes of supply. It should be applied on a non-discriminatory basis in all circumstances. It should be available for invocation in "critical circumstances".

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ORGANIZATION

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Working Party on GATS Rules Original: English

COMMUNICATION FROM THE REPUBLIC OF HUNGARY

Response to the Questionnaire on Government Procurement of Services

Addendum

The following communication is being circulated at the request of the Republic of Hungary to Members of the Working Party on GATS Rules.

Note: Basic legal instrument on public procurement in Hungary is Act XL of 1995 on Public Procurements (the Act). These responses are made on the basis of this Act. References are made to the specific Sections and Articles of the Act relevant to the question.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

The following organizations shall come under the scope of this Act (Section 1.):

- a) the state, local governments, municipal minority local governments, local minority local governments, association of municipal local governments, central budgetary organs, budgetary organs of local governments, segregated state funds, Pension Insurance and Health Insurance self-government;
- b) public bodies and public foundations;

- c) foundations and social organizations established by or with the participation of the organizations specified in paragraphs a) and b), through contributing more than one-third of their assets, and/or non-profit companies, insurance associations, water management companies, also including their organizational units being legal entities, under the determining control of the organizations specified in paragraphs a) and b);
- d) organizations granted subsidy, not coming under the force of paragraphs a) to c), in respect of procurements realized from the subsidy, and/or irrespective of the value of guarantee, organizations for the payment obligations of which the Government undertook suretyship in accordance with Act XXXVIII of 1992 on the Central Budget (hereinafter: CBA) and ordered in the relevant Decree to apply the rules contained in this Act in respect of the procurements effected from the funds acquired in this manner;
- e) economic organizations referred to in Section 685, paragraph c) of Act IV of 1959 on the Civil Code of the Republic of Hungary (hereinafter: CC), or local government institutions referred to in Section 9, subsection (4) of Act LXV of 1990 on Local Governments, if they have exclusive licences to provide national, regional or local public services in accordance with legal rules, on the whole market affected by the procurement [the organizations contained in paragraphs a) to e) hereinafter collectively: inviters of bids].

Procurements Coming under the Scope of this Act (Section 2.)

- (1) The organizations referred to in Section 1 shall proceed in accordance with the rules of this Act in the course of their procurements of goods, as well as their building and construction projects and ordering their services (hereinafter collectively: public procurement), if their value specified in Section 4, subsection (1) reaches or exceeds the amount determined separately on commencing public procurement.
- (2) The public procurements carried out by the organizations indicated in Section 1, paragraph e) shall be exclusively interpreted as procurements directly connected with their public service providing activities.
- (3) The value limit of public procurements referred to in subsection (1) shall be determined for the year 1997 and subsequently in the annual Act on the Budget.

Section 96 of Law CXXIV of 1996 on the State Budget of the Hungarian Republic for 1997 establishes the following **threshold values**:

- HUF 12 million for procurement of goods,
 - HUF 24 million for building and construction projects,
 - HUF 6 million for technical planning for building and construction projects,
 - HUF 6 million for services,
 - HUF 240 million for pre-qualification requirement as defined in Section 42:3 of the Law on Public Procurement. (see Answer 6.(c))
- (4) The organizations specified in Section 1 are entitled to proceed in accordance with the rules of this Act in the course of their procurements of a value not reaching the value limit indicated in subsection (3).

Section 3

- (1) In respect of the central budgetary organs established by the Government or the Minister, the Government may order public procurements within the framework of a centralized procedure, defining their personal and material scope, as well as the party entitled to invite bids.
- (2) The Government shall publish its resolution providing for the centralized procedure of public procurements, which, if necessary, shall also contain the information related to the possibility of joining the procedure.
- (3) In the course of the centralized procedure of public procurements, the provisions contained in this Act shall also apply if the Government authorizes a person or organization not mentioned in Section 1 to invite bids. The detailed rules pertaining to the centralized procedure of public procurements shall be determined in a separate legal rule.

Section 6: The scope of this Act shall not apply to

- a) public procurements affecting state secrets or service secrets in respect of which the competent committee of Parliament made a preliminary decision excluding the application of this Act;
- b) procurements defined in international agreements, taking place within the framework of a separate procedure;
- c) procurements defined by international organizations, taking place on the basis of a separate procedure;
- d) procurements of the Economic Security Reserves providing for extraordinary tactical purposes, and their temporary inclusion in the inventory;
- e) procurements realized in accordance with legal rules from the Market Intervention Fund;
- f) procurements coming under the system of means of the regulation of the agricultural market;
- g) procurements of water and distributed energy sources;
- h) procurements to be carried out in the interest of preventing water damage, and/or water quality damage at the time of alert.

Section 9

- (2) The scope of this Act shall not apply to the following services:
- a) if a person or organization, defined in another legal rule, is exclusively entitled to provide a service;
 - b) if a contract may exclusively be concluded on the provision of a service under conditions defined in another legal rule;
 - c) central banking and financial institution's activities;
 - d) securities trade;

- e) development, production and joint production of programme material by broadcasters;
- f) research and development activities, unless at least fifty per cent thereof, and to the extent exceeding the value limit specified in Section 2, subsection (3), are financed by the inviter of bids, and the results thereof are also utilized by the inviter of bids;
- g) preparation of a regional and community arrangement plan, a technical, conceptional plan preceding the official permission of construction, an official plan documentation for the permission of construction, the contracting plan of a construction project, as well as preparation of plans for the regional arrangement, architectural and technical plan competition defined in a separate legal rule.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

PUBLIC PROCUREMENT COUNCIL

Legal Status of the Council (Section 11)

- (1) The Public Procurement Council (hereinafter: Council) is established for the purpose of providing for the enforcement of the objectives defined in this Act; it is only subordinated to Parliament.
- (2) The Council is a central budgetary organ under the supervision of Parliament, with independent management, which has general competence with regard to its scope of duties defined in this Act. It is based in Budapest.

Competence and Operation of the Council (Section 15)

- (1) The Council shall
 - a) monitor the enforcement of the rules of this Act, initiate with the competent party the passing and amendment of legal rules related to public procurements;
 - b) express its opinion on draft legal rules related to public procurements and the operation of the Council;
 - c) prepare recommendations promoting the execution of legal rules related to public procurements, in the framework of these legal rules;
 - d) monitor the performance of the contracts concluded on the basis of public procurement procedures, define the criteria for qualification pursuant to which it publishes the list of economic associations (hereinafter: qualified bidders) which can be requested to take part in the procedure of invitation referred to in Section 65, subsection (1), paragraph b)

annually, in its official gazette, entitled Public Procurement Bulletin;

- e)perform, through its members, the task specified in Section 51, subsection (2);
 - f)determine the number of members of the Arbitration Committee of Public Procurements;
 - g)appoint, and/or relieve the chairman of the Arbitration Committee of Public Procurements and the commissioners of public procurements;
 - h)judge matters of conflict of interest related to the commissioners of public procurements;
 - i)provide for the publishing of the Public Procurement Bulletin with a regularity defined by it, publish the announcements prepared in connection with the public procurement procedure, the resolutions of the Public Procurement Arbitration Committee, the recommendations referred to in paragraph c), furthermore, any other notices related to public procurements;
 - j)promote the education and training of those participating in the public procurement procedure;
 - k)maintain relationship with public procurement organizations of other states, and with international organizations;
 - l)approve its own organizational and operational regulations, and the other internal regulations and budgetary proposals affecting its operation, furthermore, its annual budget report.
- (2)The Council shall prepare an annual report to Parliament on its experience related to the transparency of public procurements, as well as on its activities; the report shall be also sent to the State Audit Office for information.

- (3)The report shall contain statements regarding the extent to which the rules of this Act correspond to the requirements of the rules of economic life and the state budget, and the manner consistence therewith may be provided.

Laws and regulations in force

3.(a)Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

Public procurement is regulated by Act XL of 1995 on Public Procurements.

Other relevant rules and regulations:

- Government Decree 125/1996 on detailed rules of centralised procurements of central government agencies (125/1996. (VII. 24.) Korm. rendelet a központi költségvetési szervek központosított közbeszerzéseinek részletes szabályairól)

- Government Decree 128/1995 on rules and fees of publication in •Public Procurement Bulletin, the official gazette of the Public Procurement Council• (128/1995. (X. 20.) Korm. rendelet a •Közbeszerzési Értesítő, A Közbeszerzések Tanácsának Hivatalos Lapja•-ban történő közzététel rendjéről és térítési díjáról)
- Decree No.25/1996 of the Minister of Interior on centralised procurements of the Ministry of Interior (25/1996. (X. 2.) BM rendelet a Belügyminisztérium központosított közbeszerzési feladatainak ellátásáról)
- Decree No. 1/1996 of the Minister of Environment and Regional Development on detailed regulation of the documentation of offer requests for building and construction procurements (1/1996. (II. 7.) KTM rendelet a közbeszerzés keretében megvalósuló építési beruházásra vonatkozó ajánlati felhívás dokumentációjának részletes műszaki tartalmáról)
- Government Decree 1089/1995 on tasks related to the establishment of the Public Procurement Council (1089/1995. (IX. 21.) Korm. határozat a Közbeszerzések Tanácsa létrehozásával kapcsolatos feladatokról)

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

Answer 3.(b) For the purposes of this Act, services are activities, which do not qualify as procurement of goods, or as construction projects, and are performed on the basis of a onerous contract. (Section 9.1)

The utilization of a service accompanied by goods shall also qualify as procurement of goods, if the value of the service is not in excess of the value of the goods. (Section 7.2)

Some services are not covered by the Act. (see Section 9.2 in Answer 1)

Different threshold values are applied for procurement of goods and services. See Answer 1.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Types of Procedure (Section 26)

- (1) A public procurement procedure may be an open procedure, a procedure by invitation, or negotiation. Procedures by invitation or negotiation may only take place if permitted in this Act.
- (2) Inviters of bids shall define the deadline for submitting bids, the criteria for the judgement of bids and its date in the invitation for bids in open procedures and procedures by invitation. Inviters of bids shall be bound by the conditions defined in the invitation for bids, and/or the documentation containing the detailed contractual conditions (hereinafter: documentation), while bidders are bound by their bids.
- (4) In a procedure by invitation, the parties invited by the inviter of bids may submit bids.

(5) In a procedure by negotiation, the inviter of bids shall conduct free negotiations with the parties selected by it about the conditions of the contract. In the course thereof, the parties are not bound, in the manner defined in Section 50 of this Act, by their bids pertaining to the content of the contract.

(6) The rules of open procedure shall appropriately apply to the procedures through invitation and negotiation, unless this Act provides otherwise.

It is not possible to switch from one type of procedure to another in the course of a public procurement procedure. (Section 27.1)

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

A public procurement procedure may be an open procedure, a procedure by invitation, or negotiation. Procedures by invitation or negotiation may only take place if permitted in this Act.

Procedure by Invitation (Section 65)

(1) The inviter of bids shall apply a procedure by invitation, if

- a) only a limited number of bidders is suitable for fulfilling the contract due to the particular nature of the subject of public procurement, or
- b) with consideration to the subject of public procurement, and based on the list of qualified bidders, there are at least five qualified bidders suitable for submitting a bid.

Procedure by Negotiation (Section 70)

The inviter of bids may apply the procedure by negotiation if

- a) the open procedure or the procedure by invitation was unsuccessful, with the exception of the contents of Section 60, subsection (1), paragraphs e) and f), provided that the conditions of the invitation for bidding did not change in the meantime;
- b) owing to technical peculiarities, artistic considerations or the protection of exclusive rights, the contract can only be performed by a definite person;
- c) the object concerned is exclusively produced for research, experimental, study or development purposes; this case may not apply in the event of a quantity preparing the ground for marketability and/or covering the costs of research and development;
- d) the deadlines specified with regard to the open procedure or procedure by invitation could not be observed owing to the extraordinary urgency which occurred for a reason not foreseeable by the inviter of bids; the circumstances justifying extraordinary urgency may not arise from the negligence of the inviter of bids;

- e) it is not possible to define the subject of the service with the exactitude, and/or unambiguity, which makes the selection of the most favourable bid in open procedure, or procedure by invitation possible;
- f) in the case of the partial exchange or extension of an object obtained previously, the replacement of the previous winning bidder by another would carry the consequence that different objects with differing and incongruous technical specifications should be procured, and/or procurement would result in disproportionately high operation or maintenance costs; the period of such contracts, concluded with a previous winning bidder, can, however, not exceed three years;
- g) as a result of unforeseeable circumstances, a complementary service not included in the previous contract became necessary in order to provide the service or perform the construction project, provided that the complementary service or the construction work cannot be separated technically or economically from the contract concluded previously; the value of the complementary service, and/or construction work, however, may not exceed fifty per cent of the value of the previous public procurement in any case;
- h) the favourable conditions of procurement only prevail for a short time, and the utilization of favourable conditions would fail in the case of applying a procedure of another type;
- i) procurement aims at obtaining the right of ownership, or the right of use or utilization of a real property.

(c) *What are the time limits for submission of bids?*

As the general rules for Deadline for Submitting the Bids

Section 47

- (1) The inviter of bids may not set the deadline for submitting the bids (submission deadline) as a period shorter than forty days reckoned from publishing the invitation for bidding.
- (2) In justified cases, the inviter of bids may extend the deadline for submitting the bids on one occasion. The inviter of bids shall publish the extension of the deadline in an announcement prior to the expire of the original deadline, where the reason for extending the deadline shall also be indicated.
- (3) The deadline for submitting the bids may not be shortened.

Section 48

- (1) The inviter of bids may amend the conditions specified in the invitation for bidding, and/or the documentation prior to the expire of the deadline for submitting the bids. A new announcement shall be published on the amended conditions, in which a new deadline for submitting the bids shall be established. The deadline may not be shorter in this case, either, than that contained in Section 47, subsection (1).

(2)The inviter of bids may withdraw its invitation prior to the expire of the deadline for submitting the bids, which shall be published in an announcement.

(3)If the invitation for bidding is withdrawn, in case the documentation was made available for consideration, the inviter of bids shall return the consideration, while the bidder shall return the documentation.

Time limits for Documentation and Provision of Information:

Section 37

(1)If the inviter of bids prepares the documentation required for submitting appropriate bids, the documentation shall contain the detailed contractual conditions. In the invitation for bidding, the inviter of bids shall specify the manner and deadline of making the documentation available, the place of obtaining, as well as the financial conditions thereof.

(2)The inviter of bids shall provide for making the documentation available as of the date of publishing the invitation for bidding.

Section 38

(1)Beyond the documentation, the bidder may, for the purpose of drawing up his bid, request further information from the inviter of bids in writing not later than ten days prior to the expire of the deadline for submitting the bid. The content of the information shall be made available to the bidders.

(2)The inviter of bids shall be obliged to provide the supplementary information related to the documentation not later than six days prior to the expire of the deadline for submitting the bids.

(3)The inviter of bids shall provide the information in a manner that does not favour certain bidders over others, and which does not violate the equal chances.

(4) If the documentation is of a large volume, and/or if bids may only be submitted following the on-site checking of the documentation, or the inspection of the place of performance, the inviter of bids shall set or amend the deadline for submitting the bids with consideration to the above.

Procedure by Invitation: (Section 68)

(1)The inviter of bids may not specify the deadline for participation as a period shorter than twenty-five days reckoned from publishing the announcement.

(2)The inviter of bids may not specify the deadline for submitting bids as a period shorter than forty days reckoned from the dispatch of the invitation for bidding.

Accelerated Procedure (Section 72)

(1)The inviter of bids may apply an accelerated procedure in the course of the procedures by invitation or negotiation, if it is justified by extraordinary urgency. The circumstances justifying extraordinary urgency may not arise from the negligence of the inviter of bids.

- (2) In an accelerated procedure, the deadline for submitting the application for participation may not be shorter than ten days reckoned from the date of publishing the invitation to participation, while the deadline for submitting the bids may not be shorter than fifteen days reckoned from the date of the invitation for bidding.
- (3) In an accelerated procedure, the complementary information pertaining to the documentation shall be supplied to bidders not later than four days prior to the expiry of the deadline for submitting the bids.
- (4) In an accelerated procedure, the announcement shall be forwarded via telegram, telex or telefax, which shall subsequently be sent by letter, too.
- (5) Accelerated procedure may not be applied in the course of construction projects.

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

Publishing of Announcements:

Section 29

- (1) For the purposes of this Act, the publishing of an announcement shall be interpreted as publishing in the Public Procurement Bulletin.
- (2) An announcement may be a preliminary summary information, an invitation for bidding, an invitation to participate in the pre-qualification procedure, an invitation to participation, an information about the result of the procedure, or any other announcement defined by law.
- (3) In the Public Procurement Bulletin, exclusively the announcements, notices, recommendations and decisions defined in this Act may be published.
- (4) The announcement may be forwarded to the Public Procurement Bulletin via telegram, telex or telefax. The announcement shall also be sent in the form of a letter in the latter three cases.
- (5) The Council shall publish the announcement received. The dates of dispatch and receipt of the announcement shall be indicated at the end of the announcement to be published.
- (6) The deadlines indicated in the announcement shall commence on the day following the date of publishing the Public Procurement Bulletin.
- (7) The cost of publishing shall be borne by the party obliged to publish the announcement by law.
- (8) The announcement may only be published in any other domestic newspaper following its publication in the Public Procurement Bulletin.

Section 30

- (1) If foreign-based bidders (bidders resident abroad) may take part in the procedure, the announcement may also be published in foreign newspapers. In this case, the foreign language summary of the announcement may also be published in the Public Procurement Bulletin.
- (2) If the announcement is also published in a foreign newspaper, the announcement may not be published in the Public Procurement Bulletin prior to its dispatch abroad. The place of publishing abroad and the date of dispatch shall be indicated in the announcement sent to the Public Procurement Bulletin. In respect of the same public procurement, the announcements published abroad and in the Public Procurement Bulletin may not contain conflicting or different details and facts. In the case of any difference, the Hungarian language announcement shall be governing.

Institution of the Procedure (Section 32)

- (1) The open procedure is instituted by an invitation for bidding or a pre-qualification procedure, which shall be published by the inviter of bids by way of announcement.
- (2) The inviter of bids shall publish the invitation for bidding, and/or the announcement connected with the pre-qualification procedure, in case the licences required for concluding the contract are available, when the pecuniary cover providing for the fulfilment of the contract, or the security providing for the fact that the pecuniary cover will be available to it on the date of fulfilment, are at its disposal.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

The rules for publishing announcements of Procedure by Invitation

- (2) The procedure by invitation shall commence with an invitation to participation, which shall be published by the inviter of bids through an announcement corresponding to the specimen contained in Schedule No. 8. (Section 65.2)

Section 66

- (1) In the case of Section 65, paragraph a), (see in Answer 4.(b)) the inviter of bids shall, in the announcement, indicate the parties it intends to request to submit their bids.
- (2) In addition to those indicated in the announcement, all parties may apply, on the basis of the announcement, for participating in the procedure, who are suitable for fulfilling the contract.
- (3) Following the expire of the deadline for applying for participation (deadline for participation), the inviter of bids shall simultaneously and directly request in writing all applicants for participation, qualified as suitable to submit their bids.

Section 67

- (1) In the case of Section 65, paragraph b) (see in Answer 4.(b)), bidders qualified on the basis of the publication of the announcement may apply for participating in the procedure, within the deadline for participation specified in the announcement.
- (2) The inviter of bids shall determine a limit figure for bidders in the announcement, with the proviso that invitations for bidding shall only be sent to a number of those applying for participation up to the maximum number defined by the limit figure.
- (3) The limit figure shall allow for at least five bidders. The limit figure shall be adjusted to the subject of public procurement, and shall provide for real competition under all circumstances.
- (4) The inviter of bids shall request the applicants selected in accordance with the limit figure for bidders determined in the announcement, based on their financial, economic and technical suitability, in writing, simultaneously and directly, to submit their bids.

The rules for publishing announcements of **Procedure by Negotiation** (Section 71)

- (1) The inviter of bids shall only publish an announcement of commencing the procedure by negotiation, in accordance with the specimen contained in Schedule No. 9, in the cases defined in Section 70, paragraph a) and e) (see in Answer 4.(b)). In this case, the procedure by negotiation shall be commenced by an invitation to participation.
- (2) The inviter of bids may indicate, already in the announcement, the parties it intends to invite to participate in the procedure. In addition to those indicated in the announcement, all parties may apply for participating in the procedure on the basis of the announcement, who are suitable for fulfilling the contract.
- (3) The inviter of bids shall invite the persons selected in accordance with the limit figure defined in the announcement, and based on their financial, economic and technical suitability, directly, but at least three applicants shall be invited to the negotiation, provided that it is made possible by the number of applicants qualified as suitable.
- (4) In the case of an announced procedure by invitation, the provisions contained in Section 32, subsection (2), Section 40 and Section 68, subsection (1) shall apply. (See in Answers 5.(a), 5.(c) and 4.(c) respectively)
- (5) In the course of a procedure by negotiation conducted without publishing an announcement, the inviter of bids shall directly invite the parties selected by him to the negotiation.
- (6) The contents of Section 63, subsection (1) shall appropriately apply to publishing the result of the procedure by negotiation conducted without publishing the announcement.

The rules for publishing announcements of **Accelerated Procedure** (Section 72)

(4) In an accelerated procedure, the announcement shall be forwarded via telegram, telex or telefax, which shall subsequently be sent by letter, too.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Invitation for Bidding

Section 33

(1) The content of the invitation for bidding shall be defined, in accordance with the specimen defined in Schedule No. 2, and in a manner that the bidders may submit appropriate bids with equal chances on the basis thereof.

(2) The inviter of bids may describe the certification of the financial, economic and technical suitability of the bidder exclusively in a manner defined in this Act.

(3) The inviter of bids may prescribe for bidders in the invitation for bidding to apply the method of value analysis.

Section 34

(1) The inviter of bids shall judge the bids complying with the conditions contained in the invitation for bidding, and/or in the documentation on the basis of the following criteria:

a) the consideration of the lowest amount, or

b) the most favourable bid on the whole.

(2) The inviter of bids shall define the criterion for judgement chosen by him in the invitation for bidding, with consideration to the contents of subsection (1).

(3) If the inviter of bids intends to choose the most favourable bid on the whole, he shall also define the order of importance of the criteria serving to judge thereof, which pertain to the requirements towards the subject of public procurement, the extent of the consideration and the other circumstances of performance.

Section 36

(1) It shall be indicated in the invitation for bidding whether a bidder may submit a bid in several versions or not.

Documentation and Provision of Information

Section 37

(1) If the inviter of bids prepares the documentation required for submitting appropriate bids, the documentation shall contain the detailed contractual conditions. In the invitation for bidding, the inviter of bids shall specify the manner and deadline of making the documentation available, the place of obtaining, as well as the financial conditions thereof.

- (2)The inviter of bids shall provide for making the documentation available as of the date of publishing the invitation for bidding.

Section 38

- (1)Beyond the documentation, the bidder may, for the purpose of drawing up his bid, request further information from the inviter of bids in writing not later than ten days prior to the expire of the deadline for submitting the bid. The content of the information shall be made available to the bidders.
- (2)The inviter of bids shall be obliged to provide the supplementary information related to the documentation not later than six days prior to the expire of the deadline for submitting the bids.
- (3)The inviter of bids shall provide the information in a manner that does not favour certain bidders over others, and which does not violate the equal chances.
- (4)If the documentation is of a large volume, and/or if bids may only be submitted following the on-site checking of the documentation, or the inspection of the place of performance, the inviter of bids shall set or amend the deadline for submitting the bids with consideration to the above.

Section 39

The inviter of bids may prescribe for bidders in the documentation or in the invitation for bidding to define the part of the contract in relation to which they intend to conclude contracts with third parties.

Technical Description (Section 40)

- (1)In the invitation for bidding or the documentation, the inviter of bids shall give a detailed technical description regarding the subject of public procurement (particularly in connection with the technical and quality requirements, the certification and control of adequacy, certification of the system of quality assurance).
- (2)The inviter of bids may only define the technical description with reference to a technical specification, and/or national standard contained in a legal rule or issued on the basis of a legal rule.
- (3)The inviter of bids may only depart from the contents of subsection (2), if the technical specifications and national standards
- a)are not available to it;
 - b)do not contain any description which would assure the adequacy of the subject of public procurement;
 - c)would, if applied, result in a procurement, not complying with previous procurements, and/or would cause technical difficulties or disproportionate extra costs for the inviter of bids;
 - d)do not make possible, if applied, public procurement expressly aiming at development.

- (4) If the inviter of bids fails to provide the technical description in accordance with subsection (2), the reason for the application of subsection (3) shall be indicated in the invitation for bidding or the documentation.
- (5) The inviter of bids may not define the subject of public procurement in a manner which excludes certain bidders from the opportunity of submitting their bids, or causes their unjustified and disadvantageous discrimination in any other manner. If the unambiguous definition of the subject of public procurement makes necessary any reference to an object, procedure, activity, person, and/or patent or trade mark of a definite origin and type, the description shall state that the description was only made for the purpose of the unambiguous definition of the nature of the object.

Procedure by invitation

The procedure by invitation shall commence with an invitation to participation, which shall be published by the inviter of bids through an announcement corresponding to the specimen contained in Schedule No. 8. (Section 65.2)

The inviter of bids shall, in the announcement, indicate the parties it intends to request to submit their bids. (Section 66.1)

Section 69

- (1) The provisions contained in Section 32, subsection (2) and Section 40 shall apply to the invitation to participation.
- (2) The invitation for bidding shall contain at least the following data:
- a) deadline for submitting the bids, the address to which bids shall be submitted;
 - b) reference to the invitation to participation published;
 - c) if necessary the place where the documentation was obtained, the deadline and financial conditions for its request;
 - d) conditions of the financial consideration of the inviter of bids;
 - e) date and place of opening the bids, those invited to the opening of bids by the inviter of bids;
 - f) period of binding by the bid;
 - g) indication of the certificates to be attached;
 - h) detailed criteria for judging the contracts, if not included in the invitation to participation.

Procedure by Negotiation (Section 71)

- (1) The inviter of bids shall only publish an announcement of commencing the procedure by negotiation, in accordance with the specimen contained in Schedule No. 9, in the cases defined in Section 70, paragraph a) and e). In this case, the procedure by negotiation shall be commenced by an invitation to participation.
- (4) In the case of an announced procedure by invitation, the provisions contained in Section 32, subsection (2), Section 40 and Section 68, subsection (1) shall apply.
- (6) The contents of Section 63, subsection (1) shall appropriately apply to publishing the result of the procedure by negotiation conducted without publishing the announcement.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

National treatment shall be provided for foreign-based bidders (bidders resident abroad) in respect of participation, and the chance to win the contract in the course of the procedure, in harmony with the contents of international agreements governing with regard to the Republic of Hungary. (Section 24.3)

All interested parties may submit bids in the course of an open procedure, the inviters of bids may, however, prescribe in the invitation for bids that only bidders seated (resident) in Hungary may take part in the procedure, provided that their suitability for fulfilling the contract, also with consideration to Section 59, subsection (2) and (3), is presumable. In this case, the conducting a pre-qualification procedure is compulsory. If the procedure of pre-qualification is completed without success and the inviter of bids decides on inviting a new procedure, he shall be obliged to provide for the opportunity of participation of foreign-seated bidders (bidders resident abroad). (Section 26:3)

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

Bid Collateral (Section 41)

(1) The inviter of bids may make the participation in the procedure subject to granting a bid collateral (hereinafter: collateral), which shall be made available by the bidders to the inviter of bids, simultaneously with the submission of their bids, or by the deadline set by the inviter of bids in the invitation for bidding, in the manner and to the extent defined therein. Bidders shall certify their making the collateral available to the inviter of bids.

(2) The inviter of bids may not establish the extent of the collateral in a manner which excludes certain bidders from the opportunity of submitting their bids, or causes their unjustified and disadvantageous discrimination.

(Bidders shall verify their financial, economic and technical suitability regarding the fulfilment of the contract. The relevant verifications shall be attached to the bid. (Section 43.2)

Section 44

(1) The financial and economic suitability required for fulfilling the contract may be verified by a declaration from a financial institution, and a declaration suitable for establishing the solvency of the bidder, containing the facts prescribed by the inviter of bids.

(2) The technical suitability of the bidder required for fulfilling the contract may be verified by

- a) setting forth the major supplies, construction projects and services of the previous three years;
- b) describing the technical equipment of the bidder;
- c) naming the technical specialists or technical units the bidder intends to involve in the performance, particularly presenting those who are responsible for quality control;
- d) naming the sub-contractors, and/or persons otherwise participating in performance the bidder intends to employ to an extent exceeding the value of public procurement by fifteen per cent;
- e) presenting a sample or a photo of the product or the planned project, the original nature of which shall be verified upon the request of the inviter of bids;
- f) in respect of the technical specifications required and described unambiguously, by a certificate issued by an acknowledged institution for quality verification, accredited in any national system;
- g) an examination performed by the inviter of bids or another organization, if the product is complex or serves special purposes;
- h) certifying the quality assurance systems of the own technical and economic units to be included in performance by a certifier accredited in any national system.

(3) The inviter of bids may prescribe one or more manners of certification from among those contained in subsections (1) and (2).

(4) With regard to the bidder's interests attached to business secrets, the inviter of bids shall limit the requesting of the details and facts defined in subsections (1) and (2) to the subject of the public procurement.

Section 46

(1) The following may not be bidders in public procurement procedures

- a) those who are under final accounting, or bankruptcy- and/or liquidation proceedings instituted against them are pending;
- b) those who failed to meet their payment obligations of tax, duty or social insurance contribution, as well as payment obligations towards a separated state fund, any of which expired earlier than one year ago, unless the creditor of the bidder agreed in writing to the payment of the debt at a later date;
- c) those who committed a breach of law within the scope of their business, established in a non-appealable court judgement, and/or in the non-appealable decision of the supervision of competition, made not earlier than five years previously;
- d) those who supplied false data on submitting their bids in a previous public procurement procedure conducted not earlier than five years previously, and were, as a result, excluded from the procedure;
- e) those whose violation of contractual obligations, undertaken on the basis of a previous public procurement procedure conducted not earlier than five years ago, was established in a non-appealable state administration, and/or court decision.

(2) Bidders shall attach to their bids their written declaration regarding the fact that neither they, nor the persons defined in Section 44, subsection (2), paragraph d) come under the force of subsection (1), paragraph a), furthermore,

paragraphs c) to e), as well as the certification of an authority that they do not come under the force of paragraph b).

Procedure by Invitation

In addition to those indicated in the announcement, all parties may apply, on the basis of the announcement, for participating in the procedure, who are suitable for fulfilling the contract. (Section 66.2)

The inviter of bids shall determine a limit figure for bidders in the announcement, with the proviso that invitations for bidding shall only be sent to a number of those applying for participation up to the maximum number defined by the limit figure. (Section 67.2)

Procedure by Negotiation

The inviter of bids may indicate, already in the announcement, the parties it intends to invite to participate in the procedure. In addition to those indicated in the announcement, all parties may apply for participating in the procedure on the basis of the announcement, who are suitable for fulfilling the contract. (Section 71.2)

In the course of a procedure by negotiation conducted without publishing an announcement, the inviter of bids shall directly invite the parties selected by him to the negotiation. (Section 71.5)

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

Pre-Qualification Procedure (Section 42)

- (1) The inviter of bids is entitled to conduct a pre-qualification procedure in order that only bidders suitable for the performance of public procurement from financial, economic and technical point of view take part in the next phase of the public procurement procedure. Suitability may be verified in the manner defined in Section 44. (See in Answer 6.(c))
- (2) Those coming under the force of Section 46 may not take part in the pre-qualification procedure. (See in Answer 6.(c))
- (3) It is compulsory to conduct the pre-qualification procedure in the case of a construction project which reaches or exceeds the value limit determined in the annual Act on the Budget.
- (4) The inviter of bids shall publish the invitation to the participation in the pre-qualification procedure in the announcement complying with the specimen defined in Schedule No. 3.
- (5) In the pre-qualification procedure, the inviter of bids may not set the deadline for the application for participation as a period shorter than twenty-five days reckoned from publishing the announcement.
- (6) In the course of the pre-qualification procedure, the inviter of bids may not request, and the bidder may not submit, a bid.

- (7)The inviter of bids shall publish the result of the pre-qualification procedure in the announcement complying with the specimen defined in Schedule No. 4.
- (8)The inviter of bids shall, in writing, simultaneously and directly, invite the bidders selected in the course of the pre-qualification procedure to submit their bids. The contents of Section 69, subsection (2) shall apply to the contents of the invitation for bidding. (See in Answer 5.(c))

Criteria for assessing bids and awarding contracts

A.Commonwealth Procurement

7.(a)What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

(b)Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

(c)Is preference given to any particular enterprises or group of enterprises? If so, please specify.

(d)Do the procurement criteria differ according to sector or region of the economy?

(e)What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

Answers 7.(a) to 7. (e): Section 34

- (1)The inviter of bids shall judge the bids complying with the conditions contained in the invitation for bidding, and/or in the documentation on the basis of the following criteria:
- a)the consideration of the lowest amount, or
 - b)the most favourable bid on the whole.
- (2)The inviter of bids shall define the criterion for judgement chosen by him in the invitation for bidding, with consideration to the contents of subsection (1).
- (3)If the inviter of bids intends to choose the most favourable bid on the whole, he shall also define the order of importance of the criteria serving to judge thereof, which pertain to the requirements towards the subject of public procurement, the extent of the consideration and the other circumstances of performance.

Section 35

- (1) For the purpose of enforcing the objectives of employment policy, including the stimulation of job creation, and the development of underdeveloped regions, the protection of the environment, as well as increasing the chances of participation for small and medium size enterprises, the inviter of bids may define, in addition to the conditions specified in Section 34, subsection (3), conditions promoting the enforcement of the above considerations in the invitation for bidding, even if it is not made

compulsory in this Act (Section 59) (see below). The inviter of bids shall give preference to the bids meeting the conditions when selecting the most favourable bid on the whole, or selecting one of the bids which are otherwise equal, in accordance with the contents of the invitation for bidding.

- (2)The contents of Section 59, subsections (2) to (5) constitute a part of the invitation for bidding. The attention of the bidders shall be called to this condition in the invitation for bidding.

Section 59

- (1)The winner of the procedure is the party who submitted the most favourable bid to the inviter of bids in accordance with one of the considerations for judgement defined in Section 34, subsection (1) and on the basis of the conditions specified in the invitation for bidding (and in the documentation). The inviter of bids may only conclude a contract with the winner of the bidding, or in the case of his withdrawal, if it was prescribed in the invitation for bidding, with the party qualified as the one who submitted the next most favourable bid, on announcing the result of the procedure.
- (2)In the course of judging the bids, in the case of a difference not in excess of ten per cent, the bid pertaining to the price shall also be considered of equal value, on the basis of which the value produced by domestic employees is in excess of fifty per cent of the value of the subject of the procurement of goods.
- (3)In the course of judging bids pertaining to construction projects, in the case of a difference not in excess of ten per cent, the bid pertaining to the price shall also be considered of equal value, in which the value produced by domestic employees is in excess of fifty per cent of the value of procurement of goods constituting a part of the construction project, and/or where subcontractors with domestic head-offices (places of resident) are employed to an extent exceeding fifty per cent of the value of subcontractors' contracts.
- (4)From among the bids of the contents defined in subsections (2) and (3), that bid shall be given preference on the basis of which the value produced by domestic employees is the highest.
- (5)If, based on the contents of subsections (2) to (4), the winning bid cannot be established, the following bid shall be given preference in the case of bids of equal value, in the following order:
- a)that which contains products provided with the use of environment-friendly trade mark;
 - b)when the quality assurance system of the bidder was certified by a certifier accredited in any national system.
- (6)The fact defined in subsections (2) and (3), pertaining to goods, shall be certified by the certificate of origin issued by the chambers of economy. If the above fact cannot be certified prior to the expire of the deadline for submitting the bids, the bidder shall make a relevant declaration in the bid, and certify the above fact subsequently.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

Opening the Bids (Section 51)

- (1) The closed documents containing the bids shall be opened on the date of expiry of the deadline for submitting the bids.
- (2) The inviter of bids, the bidders and the persons invited by them, the members of the Council, or persons appointed by them, furthermore, in the case of an inviter of bids who is granted central budgetary subsidy for public procurement, the organs and persons defined in a separate legal rule, may be present when bids are opened.
- (3) The names and head offices (places of residence) of the bidders, the consideration requested by them and the deadline of performance undertaken by them shall be announced in the course of opening the bids.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

The inviter of bids shall publish the information on the result of the procedure not later than within fifteen days reckoned from its announcement, in accordance with the specimen contained in Schedule No. 5. (Section 63:1)

Section 64

- (1) Upon the completion of the procedure, the inviter of bids shall prepare a written summary of the bids judged in accordance with the specimen contained in Schedule No. 6. The inviter of bids shall keep this summary for five years, and shall release it to the Council, upon request.
- (2) At the end of the budgetary year, the inviter of bids shall prepare an annual summary of annual public procurements, in accordance with the specimen contained in Schedule No. 7, which shall be sent to the Council.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

Bidders shall be informed, upon their request, within fifteen days reckoned from the receipt of the request about the reasons for their exclusion, and/or the refusal of their bids as referred to in the written summary established in Section 64, subsection (1) (see in Answer 8.(b)), and/or the reasons for their qualification as unsuitable in the pre-qualification procedure, as well as about the person of the winning bidder. (Section 63.2)

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment

is accorded. Please also specify the working definition of •domestic• in relation to domestic services and suppliers.

See: Answer 3. (a) for Laws and regulations in force.

See: Answer 6. (a) for National Treatment of potential suppliers.

See: Answer 7.(a) to (e) for criteria for assessing bids and awarding contracts, including the description how more favourable treatment to domestic services and/or suppliers is accorded and including the working definition of •domestic• in relation to domestic services and suppliers.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

LEGAL REMEDY RELATED TO PUBLIC PROCUREMENTS

Procedure of the Committee

Competence of the Committee

Section 76

(1) In the sphere of legal remedy related to public procurements, the following shall come under the competence of the Committee:

- a) conducting a procedure instituted due to the unlawful bypassing of the public procurement procedure;
- b) conducting a procedure related to the contents of Section 5, as well as in connection with the violation of the principles or rules of the public procurement procedure;
- c) judging an application submitted by any interested party against the decision of the inviter of bids.

(2) The judgement of other legal disputes related to public procurements, not mentioned in subsection (1), shall come under the jurisdiction of the courts.

Rules Applicable to Proceeding Public Procurement Commissioners

Section 77

(1) Three public procurement commissioners shall proceed in the matters defined in Section 76, subsection (1) (hereinafter: public procurement matter), appointed by the chairman of the Committee.

(2) The public procurement commissioners proceeding in a public procurement matter shall be selected in such a manner that at least one of them has passed a specialised examination of law and another has a university or college degree in the field mostly connected with the subject of the matter.

Section 78

(1)The following public procurement commissioners may not proceed in public procurement matters:

- a)those who have ownership ratio in the inviters of bids, parties performing procurement through unlawfully bypassing the public procurement procedure, bidders or in another interested organization initiating the procedure (hereinafter collectively: client-organization);
- b)those with ownership ratio in an organization which maintains regular business relations with the client-organization.

(2)Public procurement commissioner whose relative

- a)maintains employment relationship, other legal relationship aiming at work performance or membership relationship with the client-organization, and/or is senior officers thereof;
- b)has an ownership ratio in the client-organization;
- c)maintains employment relationship, other legal relationship, aiming at work performance or membership relationship with an organization - and/or are senior officers thereof, or have an ownership ratio therein - which maintains regular business relations with the client-organization;
- d)maintain legal relationship of public service with organizations, which are supervising or subordinated organizations of the client-organization, and/or which provided support, and/or exclusive licence to the client-organization may not proceed in public procurement matters.

(3)Public procurement commissioners shall report to the chairman of the Committee if a reason for conflict of interest exists or occurred with regard to their person in respect of the public procurement matter, and shall terminate their participation in the matter in progress without delay.

Rules of the Procedure of Legal Remedy

Section 79

(1)The provisions of Act IV of 1957 on the General Rules of State Administrative Procedure shall apply to the procedure of the Committee, unless this Act provides otherwise.

(2)The procedure of the Committee is instituted upon an application or ex officio.

(3)The application may be submitted by the inviter of bids, the bidder or another interested party (hereinafter: applicant) whose right or lawful interest is violated or jeopardised by the activity or omission in breach of this Act.

(4)The institution of an ex officio procedure shall be initiated by a member of the Council, if he learns of an event violating the provisions of this Act.

(5)The institution of the procedure may be applied for, and/or initiated within fifteen days reckoned from the date of coming to knowledge of the event violating the rules of this Act, but not later than within sixty days reckoned from the occurrence of the event. Not acting within the above deadlines involves the forfeiture of rights.

- (6) A fee of administrative service of thirty thousand forints shall be paid, upon commencing the procedure, for the procedure of the Committee instituted upon an application.

Section 80

- (1) The following shall be indicated in the application:

- a) name, head office (place of residence) of the applicant;
- b) name of the inviter of bids and subject of the public procurement procedure, and/or name of the party performing procurement bypassing a public procurement procedure, related to which the legal remedy is initiated;
- c) date of the event violating law, and/or the date when it came to the knowledge of the applicant;
- d) what measures of the Committee are requested by the applicant, and the reasons therefor;
- e) whether the applicant requests the Committee to take temporary measures, and the reasons therefor;
- f) names and head offices (places of residence), known to the applicant, of the parties possibly interested in the public procurement matter.

- (2) If the application does not contain the data referred to in subsection (1), the Committee requests the applicant to supply the missing parts within five days.

- (3) If the Committee establishes that the applicant does not come under the force of Section 79, subsection (3), or the fee of administrative service specified in Section 79, subsection (6) was not paid, the application shall be refused ex officio, without performing in merito examination.

Section 81

- (1) The Committee shall commence the procedure of legal remedy on the basis of an application fully meeting the contents of Section 80, subsection (1), on the date of receipt of the application.

- (2) The Committee shall inform the parties and the parties interested in the public procurement matter of commencing the procedure without delay, by sending them the application, and/or the document of initiation, and requests them to send their remarks within five days and to report whether they claim the holding of a hearing or not, it, furthermore, requests the inviter of bids of the public procurement procedure, and/or the procurer unlawfully bypassing the public procurement procedure to send all documents available in connection with the procurement without delay.

- (3) If the application is submitted by the inviter of bids, it shall be obliged to attach all available documents to the application.

Section 82

- (1) The Committee may take temporary measures, upon request or ex officio, within three days reckoned from the receipt of the application corresponding to Section 80, subsection (1), and/or the initiation of the procedure, if it can be established from the documents that the purity of public procurements was

injured owing to the violation of the rules of this Act, or the danger thereof exists.

(2)As a temporary measure, the Committee may

- a)order the suspension of the public procurement procedure;
- b)prohibit the conclusion of a contract not concluded yet;
- c)request the inviter of bids of the public procurement procedure, if the purity of public procurement may also be ensured in this way, to draw the applicant into the procedure.

Section 83

(1)If it is requested by any interested party, the Committee shall hold a hearing, where the parties or others interested may be present in person or through their representatives, may make remarks and may submit their evidence prior to the completion of the hearing.

(2)The hearing shall be public.

Section 84

The persons other than the applicant of the public procurement matter, the party of contrary interest, furthermore, their representatives and the members of the Council, may only have access to the documents of the procedure, and/or may prepare copies or notes thereof on the basis of the permission of the Committee. The Committee may only give such a permit if lawful interests of the party submitting the application therefor are attached to the knowledge of such documents, and the access to the documents does not infringe the protection of business, and/or service secrets.

Section 85

The Committee may impose a penalty from fifty thousand to five hundred thousand forints on the participants of the public procurement procedure, if

- a)they disclose wrong or false data, and/or withhold data significant from the point of view of the judgement of the matter;
- b)fail to supply information, or fail to supply information within the deadline;
- c)hinder access to documents related to economic, and/or public procurement activities.

Section 86

(1)The Committee shall make a decision within fifteen days reckoned from the receipt of the application corresponding to Section 80, subsection (1), and/or the date of initiating the procedure, if no hearing was held in the matter.

(2)If the Committee holds a hearing in the matter, it shall make a decision within thirty days reckoned from the date of receipt of the application corresponding with Section 80, subsection (1), and/or the date of initiating the procedure.

(3)In justified cases, the deadline may be extended on one occasion, by not more than ten days, and the parties shall be informed accordingly prior to the expire of the original deadline.

- (4)The Committee shall make its decision by majority voting, based on the documents obtained, and/or in the case of holding a hearing, with consideration thereto, on behalf of the Council.

Section 87

The decision shall be delivered to the parties and other interested parties, and shall be published in the Public Procurement Bulletin.

Legal Consequences

Section 88

(1)In its decision, the Committee shall

- a)refuse unfounded applications;
- b)request the party causing the violation of law to proceed in accordance with the rules of this Act prior to the completion of the public procurement procedure, and/or may make the decision to be made by the inviter of bids subject to a condition;
- c)may declare null and void the decision of the inviter of bids made in the course of the public procurement procedure, or completing the public procurement procedure, except for the case if the contract has already been concluded on the basis of this decision;
- d)in addition to indicating the violated provision of this Act, it may establish the occurrence of the violation of law;
- e)may prohibit the bidder, for not more than five years, to take part in a public procurement procedure;
- f)may impose penalty on the organization violating the rules of this Act, or on the person responsible for the violation of law and maintaining legal relationship with the organization;
- g)oblige the party violating the law to bear the fee and costs of procedure.

(2)If the application aimed at establishing the quality of violating legal rules of the public procurement procedure preceding the contract to be concluded in accordance with Section 62, subsection (2), the Committee shall establish in its decision refusing the unfounded application that the public procurement procedure did not violate legal rules.

(3)If the Committee observes circumstances referring to the violation of other legal rules in the course of the procedure, it shall signal these to the competent authority, particularly to the investigation authority, the State Audit Office or the Control Office of the Government.

(4)The penalty contained in subsection (1), paragraph f) may only be imposed if following the decision closing the public procurement procedure or following the conclusion of the public procurement contract, the Committee established the unlawful nature of the procedure, furthermore, if the bidder was prohibited from participating in the public procurement procedure in accordance with subsection (1), paragraph e). The extent of the penalty may not be more than thirty per cent of the value of the public procurement procedure, but shall be at least five hundred thousand forints.

- (5)The Committee may also apply the measures contained in subsection (1) jointly, if the conditions thereof exist.

Procedure of the Court

Legal Remedy against the Decision of the Committee

Section 89

- (1)No appeal may be lodged against the decision of the Committee. The parties whose rights or lawful interests are violated by the decision of the Committee made with regard to the merits of the case, may request the court to review the decision in the form of a statement of claim.
- (2)The Committee may also publish its decision made with regard to the merit of the case if the review of the decision by the court was requested, but this circumstance shall be contained in the announcement.
- (3)With regard to the procedure instituted on the basis of the statement of claim submitted for the purpose of reviewing the decision made in the public procurement case, the court shall apply Chapter XX of Act III of 1952 on the Code of Civil Procedure (hereinafter: CCP) with the differences contained in Sections 90 to 93 of this Act.

Section 90

- (1)The statement of claim shall be submitted to the Committee within fifteen days reckoned from the date of service of the decision. It shall also be declared in the statement of claim whether the plaintiff requests the holding of a hearing or not.
- (2)The submission of the statement of claim has no delaying effect with regard to the implementation of the decision.
- (3)The Committee shall forward the statement of claim to the court, together with the documents of the case and the declaration corresponding to Section 331 of CCP, within five days reckoned from the receipt of the statement of claim. The Committee shall disclose in its declaration whether it requests the holding of a hearing or not.

Section 91

- (1)The persons who may not proceed as public procurement commissioners in accordance with the reasons defined in Section 78, shall be excluded from settling the case and may not take part in it as judge either.
- (2)The courts shall serve the statement of claim within eight days, and shall simultaneously
- a)inform the plaintiff of the declaration of the Committee,
 - b)request the parties interested in the public procurement case, by setting a deadline, with regard to whom the decision of the Committee contains a provision, to make a declaration, and shall inform them of the possibility of intervention.

(3) If the parties fail to request the court to hold a hearing, the court will judge the case without in chambers.

(4) The court proceedings shall have priority over other cases.

(5) The court may overturn the decision of the Committee, and may take the measures referred to in Section 88, subsection (1), paragraphs b) to f).

Section 92

An appeal may be lodged against the decision of the court acting at first instance in the matter specified in Section 89, subsection (3), within eight days reckoned from the disclosure of the decision.

Section 93

No review as specified in Chapter XIV of CCP may take place against the decision of second instance of the court proceeding in the case specified in Section 89, subsection (3).

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Hungary is a signatory to following free trade agreements:

- Europe Agreement between the European Communities and their Member States and Republic of Hungary
- Free Trade Agreement between the EFTA Countries and the Republic of Hungary
- Central European Free Trade Agreement
- Free Trade Agreement between Turkey and the Republic of Hungary (not yet ratified)

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***
- ***by origin of services and suppliers.***

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

12.(a) and (b):

Law No. XL of 1995 had entered into force in its entirety only on 1. January 1996 there are no available data, as yet.

Schedule No. 2 to Act XL of 1995

COMMENCEMENT OF A PUBLIC PROCEDURE (INVITATION FOR BIDDING)

1. Name, address, telegraphic address, telephone, telex and telefax numbers of the inviter of bids:
 - 2.a) The procedure chosen:
 - b) Definition of the contract in respect of which bids were invited:
 - 3.a) Subject and quantity of the procurement:
 - b) Place of performance:
 - c) Statement whether the bidder can submit a bid for a part of the subject of the procurement:
 4. Deadline of performance:*
 - 5.a) Name and address of the organization providing the documentation:
 - b) Deadline of applying for the documentation:
 - c) Conditions of purchasing the documentation:*
 - 6.a) Deadline for submitting the bids:
 - b) Address for submitting bids:
 - c) Language of submitting bids:*
 - 7.a) Definition of the parties to be invited by the inviter of bids for opening the bids:
 - b) Date and place of opening the bids:
 8. Conditions of providing the collateral:*
 9. Conditions of financial consideration, and/or definition of the place where these can be found in detail:
 10. Requirement of establishing an economic association from the winning joint bidders:*
 11. Data and facts requested for verifying the financial, economic and technical suitability of bidders:
 12. Period of binding by the bid:
 13. Criterion for judging bids:
 14. Definition of whether it is possible to make bids of several versions:
 15. Other information:
 16. Reference to the preliminary summary information:*
 17. Dates of dispatch and receipt of the announcement:
- The items marked by* shall only be filled in if required in respect of the procurement.

Schedule No. 3 to Act XL of 1995

PRE-QUALIFICATION PROCEDURE (INVITATION TO PARTICIPATION)

1. Name, address, telegraphic address, telephone, telex and telefax numbers of the inviter of bids:
 2. a) The procedure chosen:
 - b) Reasons for the condition of applying the procedure:
 - c) Reasons for the condition of applying an accelerated procedure:*
 - d) Definition of the contract for which bids were invited:
 3. a) Subject and quantity of the procurement:
 - b) Place of performance:
 - c) Statement whether the bidder can submit a bid for a part of the subject of the procurement:
 4. Deadline of performance:*
 5. Requirement of establishing an economic association from the winning joint bidders:*
 6. a) Deadline for submitting the bids:
 - b) Address for submitting bids:
 - c) Language of submitting bids:*
 7. Deadline of dispatch of the invitation for bidding:
 8. Conditions of providing the collateral:*
 9. Data and facts requested for verifying the financial, economic and technical suitability of bidders:
 10. Criterion for judging bids:
 11. Statement whether it is possible to make bids of several versions:
 12. Other information:
 13. Reference to the preliminary summary information:*
 14. Dates of dispatch and receipt of the announcement:
- The items marked by * shall only be filled in if required in respect of the procurement.

Schedule No. 4 to Act XL of 1995

**INFORMATION REGARDING THE RESULT OF THE PRE-QUALIFICATION
PROCEDURE**

- 1.Name and address of the inviter of bids:
- 2.The procedure chosen:
- 3.Date of judgement:
- 4.Number of applicants for the procedure:
- 5.Names and addresses of applicants qualified as suitable, as well as reasons for their qualification:
- 6.Names and addresses of applicants qualified as unsuitable, as well as reasons for their qualification:
- 7.Other information:
- 8.Date of publishing the invitation to participation:
- 9.Dates of dispatch and receipt of the announcement:

Schedule No. 5 to Act XL of 1995

INFORMATION REGARDING THE RESULT OF THE PROCEDURE

- 1.Name and address of the inviter of bids:
 - 2.a)The procedure chosen:
b)Reasons for applying the procedure in the case of a procedure by negotiation without publishing an announcement:
 - 3.Date of judgement:
 - 4.Criterion for judgement:
 - 5.Name and address of the winning bidder:
 - 6.Name and address of the bidder submitting the most favourable bid after the winning bid:*
 - 7.Number of bids received:
 - 8.Name(s) and address(es) of bidder(s):
 - 9.Subject and quantity of the procurement:
 - 10.Amount of consideration:
 - 11.The part and value of the subject of the procurement in respect of which the bidder intends to conclude a contract with a third person:*
 - 12.Other information:
 - 13.Date of publishing the invitation for bidding:
 - 14.Reference to the preliminary summary information:*
 - 15.Dates of dispatch and receipt of the announcement:
- The items marked by* shall only be filled in if the case contained therein exists.

Schedule No. 6 to Act XL of 1995

SUMMARY OF THE PROCEDURE

- 1.Name and address of the inviter of bids, as well as subject and value of the procurement:
 - 2.Names of bidders selected and reasons for their selection:
 - 3.Names of bidders refused, and/or excluded, and the reasons for their refusal and exclusion:
 - 4.Name of the winning bidder and the reasons for selecting his bid:
 - 5.The part of the procurement in respect of which the winner bidder may conclude a contract with third persons:*
 - 6.Reasons for the condition of applying the procedure in the case of a procedure by negotiation:
 - 7.Price bids of bidders:
 - 8.Reference to the previous summary information:*
 - 9.Date of preparation of the information material:
- The item marked by* shall only be filled in if the case contained therein exists.

Schedule No. 7 to Act XL of 1995

ANNUAL SUMMARY

1. Number and value of the annual procurements of the inviter of bids in excess of the value limit:
 2. Details of the annual procurements of the inviter of bids in excess of the value limit, as follows:
 - a) subjects of the procurement:
 - b) types of the procedure:
 - c) number of domestic and foreign winning bidders:
 3. Details of procedures by negotiation in accordance with the cases of their application, specifying the number and value of annual procurements:
 4. Reference to the previous summary information:*
- Item marked by* shall only be filled in if the case contained therein exists.

Schedule No. 8 to Act XL of 1995

PROCEDURE BY INVITATION (INVITATION TO PARTICIPATION)

1. Name, address, telegraphic address, telephone, telex and telefax numbers of the inviter of bids:
 2. a) The procedure chosen:
 - b) Reasons for the condition of applying the procedure:
 - c) Indication of the persons intended to be invited to submit their bids:*
 - d) Reasons for the condition of applying an accelerated procedure:*
 - e) Definition of the contract for which bids were invited:
 3. a) Subject and quantity of the procurement:
 - b) Place of performance:
 - c) Statement whether the bidder can submit a bid for a part of the subject of the procurement:
 4. Deadline of performance:*
 5. Requirement of establishing an economic association from the winning joint bidders:*
 6. a) Deadline for applying for participation:
 - b) Address of the place for applying for participation:
 - c) Language of applying for participation:*
 7. Deadline of dispatch of the invitation for bidding:
 8. Conditions of providing the collateral:*
 9. Data and facts requested for verifying the financial, economic and technical suitability of bidders:
 10. Criterion for judging bids:
 11. Planned number of and limit figure for bidders intended to be invited by the inviter of bids:*
 12. Statement whether it is possible to make bids of several versions:
 13. Other information:
 14. Reference to the preliminary summary information:*
 15. Dates of dispatch and receipt of the announcement:
- The items marked by* shall only be filled in if it is required in respect of the procurement.

Schedule No. 9 to Act XL of 1995

PROCEDURE BY NEGOTIATION (INVITATION TO PARTICIPATION)

1. Name, address, telegraphic address, telephone, telex and telefax numbers of the inviter of bids:
 2. a) The procedure chosen:
b) Reasons for the condition of applying the procedure:
c) Reasons for the condition of applying an accelerated procedure:*
 - d) Definition of the contract in the interest of the conclusion of which they wish to negotiate:*
 3. a) Subject and quantity of the procurement:
b) Place of performance:
c) Statement whether the bidder can submit a bid for a part of the subject of the procurement:
 4. Deadline of performance:*
 5. Requirement of establishing an economic association from the winning joint bidders:*
 6. a) Deadline for applying for participation:
b) Address of the place for applying for participation:
c) Language of applying for participation:*
 7. Conditions of providing the collateral:*
 8. Data and facts requested for verifying the financial, economic and technical suitability of bidders:
 9. Planned number of and limit figure for bidders intended to be invited by the inviter of bids:
 10. Statement whether it is possible to make bids of several versions:*
 11. Names and addresses of the parties already selected by the inviter of bids:*
 12. Other information:
 13. Reference to the preliminary summary information:*
 14. Dates of dispatch and receipt of the announcement:
- The items marked by* shall only be filled in if it is required in respect of the procurement.

WORLD

18

ORGANIZATION

RESTRICTED

TRADE

S/WPGR/W/11/Add.

13 March 1997

(97-1186)

Working Party on GATS Rules

Original: Spanish

COMMUNICATION FROM MEXICO

Questionnaire on Government Procurement of Services

Addendum

The following communication is being circulated at the request of Mexico to members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

As defined in Article 1 of the Law on Public Procurement and Works, government procurement in Mexico refers to State expenditure on and execution, preservation, maintenance and control of goods, services and construction services contracted by Federal Government entities (including ministries and administrative departments as well as the decentralized agencies) and by government enterprises.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized?

In Mexico, each Federal Government agency and parastatal entity is responsible for planning and carrying out its own expenditures. Thus, the government procurement regime in Mexico does not operate through offices which centralize all purchases by the Federal Government.

Laws and regulations in force

3(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

- Constitution of the United Mexican States (Article 134)
- Law on Public and Procurement Works
- Regulations to the Law on Purchases, Leasing and Supply of Services Relating to Movables/Property
- Regulation to the Law on Public Works
- Free Trade Agreements concluded by Mexico with Canada and the United States; Colombia and Venezuela; Costa Rica; and Bolivia (specific chapters on government procurement).

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

No. The Law on Public and Procurement Works applies to the purchase of goods, services and construction services. Its contents are as follows:

- Chapter 1.General Provisions
- Chapter 2.Planning, Programming and Budgeting
- Chapter 3.Procedures and Contracts
 - for the purchase or rental of goods and/or services
 - for construction services
 - exceptions to the public tendering procedures
- Chapter 4.Information and Verification
- Chapter 5.Sanctions
- Chapter 6.Challenge Procedures

Procurement procedures applied

4(a) What procedures are followed in the procurement process?

Procurement procedures could differ according to the openness of the invitations to tender. At least three broad categories of procedures are commonly distinguished: (i) public or open tendering procedures under which all interested parties may submit a tender; (ii) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (iii) private contract or single tender in which the awarding authority contracts suppliers individually, and sometimes only a single supplier.

Article 28 of the Law lays down two types of procurement procedures: public tendering and restricted invitation:

(1)Public tendering: A procedure in which all interested suppliers may participate. Public tendering is the procedure generally applied for government procurement in Mexico.

(2)Restricted invitation: Under this procedure, an entity may contract suppliers individually. This method provides for two options:

- invitation of at least three suppliers;
- direct award of the contract.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Article 81 of the Law specifies the type of contracts that may be obtained through restricted invitation (invitation of at least three suppliers or contractors, or direct award of the contract). These are, *inter alia*, contracts relating to the protection of patents, copyrights or other exclusive rights; contracts in which the goods or services may be purchased from a specified person only; consulting services involving confidential information; cases where two successive calls for tenders have not produced any solvent bids; purchases made with a view to commercial resale by government-owned retail stores.

With this authority, entities may apply a restricted invitation procedure when the estimated value of the contract in question does not exceed the amounts specified on an annual basis in the federal budget of expenditures. These amounts are determined according to the budget allocated to each entity.

Article 31 of the Law stipulates that international tenders shall take place only when they can be justified by the entity, subject to market research; when the resources are obtained through foreign credits; or when the contract is covered by international agreements.

(c) What are the time-limits for submission of bids?

The time-limit with respect to international tenders (participation of domestic and foreign bidders) for purchases, leasing, services and public works, and with respect to domestic tenders (participation of domestic bidders) for public works, is no less than 40 days following the date of publication of the invitation to tender.

The time-limit for domestic tenders (participation of domestic bidders) in connection with purchases, leasing and services is at least 15 calendar days following the date of publication of the invitation to tender.

This time-limit may be reduced only in cases of urgency duly justified by the purchasing entity.

Publicity for inviting tenders

5(a) How are intended procurements publicized? Are invitations to tender published? If so, where, and in what languages?

In accordance with Article 32 of the Law, invitations to tender are published in the special section which appears every Tuesday and Thursday in the Official Journal of the Federation (nationwide distribution) as well as in a newspaper of the federative entity (state) in which the good is to be used, the service supplied or the work executed. Only

when the procurement requirement covers three or more federative entities are the invitations published in a nationwide newspaper, such publication substituting for publication in the newspaper of the federative entity.

How far in advance the invitations are published is determined according to the time-limits set forth in the reply to subparagraph 4(d) above; the language used is Spanish.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

Only public invitations to tender are published in accordance with subparagraph 5(a) above. The procedures for restricted invitation do not call for publication.

Tenders financed entirely or partly through foreign credits are published according to the guidelines of the credit institution.

No. All invitations to tender must be published in accordance with Article 32 of the Law.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Details could include a description of service to be procured, tender opening and closing dates, conditions of participation, procuring entity, enquiry point, procurement plans, procurement outcomes - contract award notices, etc.

Article 33 of the Law provides for a minimum amount of information to be included in the invitations to tender, which may concern one or more goods, services or works. As a rule, this information consists essentially of:

- I. Title or business name of the inviting agency or entity;
- II. place, date and time-table for obtaining the basic tender information and specifications and, where appropriate, the price and form of payment;
- III. date, time and place of the presentation and opening of bids;
- IV. indication of whether the tender is domestic or international, whether it is covered by a particular agreement and the languages in which bids may be submitted.

Specifically as regards purchases, leasing and services, the following additional information must be provided:

- I. General description, quantity and unit of measurement of the goods or services;
- II. place and deadline of delivery and payment conditions;
- III. indication of whether or not there is an option to buy in the case of leasing.

In the case of public works the following information must also be included:

- I. General description of the works and the site at which the work is to be carried out, and, where appropriate, mention that part of the work may be subcontracted;
- II. estimated starting and finishing dates;
- III. experience and technical and financial capacity required according to the characteristics of the works, as well as other general requirements to be met by the interested parties;
- IV. percentages to be paid as advance payments;
- V. general criteria on the basis of which the contract is to be awarded.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set.

As a rule, the bidding conditions do have a price, the sole purpose of which is to recover the cost of publication of the invitation to tender and of the documents supplied.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

According to Articles 36 and 45 of the Law in force, offers must be submitted in writing in sealed envelopes. The Mexican system does not currently permit the use of electronic means to participate in tendering procedures. However, Mexico does have a new system, •Compranet•, through which invitations to tender may be consulted electronically.

Requirements laid down for possible suppliers

6. (a) Are there registration, residence or other requirements for potential suppliers?

The Mexican procurement system does not regard registration of suppliers as a prerequisite for participating in a tender. The only requirement consists in obtaining the conditions, and they are sold without distinction or preference whatsoever as to the nationality or residence of the suppliers or as to the type of purchase. Information, documentation and other requirements must in any case be satisfactorily met by all bidders wishing to participate in the tender.

Article 33 of the Law stipulates that all of the conditions must be set forth in the invitation to tender and the bidding conditions, thereby ensuring that all suppliers are informed sufficiently in advance of the participation requirements.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

The provisions governing the lodging of financial guarantees are laid down in Article 38 of the Law, which stipulates that persons participating in tenders or concluding contracts must provide bid security and guarantees with respect to their advance payments and fulfilment of the contract. The inviting entity retains the relevant guarantees until the date of the award, at which time they are returned to the bidders, except the bidder to whom the contract was awarded, whose guarantee is retained until the contract is fulfilled.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

In Mexico there are no lists or registers of approved suppliers.

However, Article 41 of the Law on Public Procurement and Works identifies the natural and legal persons who are not entitled to submit tenders or conclude contracts in the area of government procurement. These include:

- Persons employed by or discharging a duty or a mission for the public service, and those disqualified from doing so;
- suppliers and contractors to whom penalties have been applied by the Ministry of Comptrollership and Administrative Development for cancellation of a contract by their fault, for earlier breach of contract resulting in damage, for supplying false information or for acting fraudulently or in bad faith;

- persons who have been declared bankrupt or are undergoing insolvency proceedings;
- persons who have family or business ties with the civil servant involved in the procurement process;
- persons who individually or through the corporate group to which they belong issue opinions, expert appraisals or assessments in connection with the settlement of disputes, or who will carry out previous work which could affect the tenders relating thereto.

Criteria for assessing bids and awarding contracts

7(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

For instance, whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account.

Only the criteria specified in the invitation to tender and the bidding conditions must be taken into account in the evaluation leading to the selection of tenders.

According to Article 134 of the Constitution of the United Mexican States, procurement procedures in Mexico must be based on the principles of effectiveness, efficiency and honesty in order to ensure the best possible conditions with respect to price, quality, financing, opportunity and other relevant factors. These same objectives are set forth in Article 30 of the Law.

Thus, the contract is awarded to the firm or natural person among the bidders who best meets the conditions described in the invitation to tender and the bidding conditions established by the inviting agency or entity, who provides satisfactory guarantees of fulfilment of contractual obligations and who offers the lowest price.

These criteria for the award of the contract, together with a statement to the effect that mechanisms involving scores and percentages will in no case be used for the purpose, are communicated to the potential suppliers in the invitation to tender and the bidding conditions, and cannot be modified without notifying all of the potential bidders through the same channels used to transmit the above-mentioned documents.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

No. Agencies and entities of the federal public administration are not authorized to consider, seek or impose any offsets in the qualification and selection of suppliers, products or services or in the evaluation of tenders or award of contracts.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

No. Article 33 of the Law stipulates that the requirements and conditions set forth in the bidding conditions shall be the same for all participants.

(d) Do the procurement criteria differ according to sector or region of the economy?

No. Article 33 of the Law stipulates that all of the requirements shall be specified in the bidding conditions and shall be the same for all participants.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend on?

The margin of choice or discretion could relate to (i) the relative weight/importance of each contract award criterion; (ii) margins of preference, if any, in respect of specific criteria; and (iii) threshold values, if any, above which referral to a higher level of purchasing authority is required.

The discretion allowed to the purchasing authority could vary according to whether there is (i) automatic tender, where the contract is awarded on the basis of predetermined criteria, either the simple criteria of price, or price and other criteria; (ii) discretionary tender procedures which involve acceptance of the bid which is most advantageous - the award of the contract is based on several criteria, some of which are predetermined, but which in general leave the awarding authority a certain measure of choice; and (iii) negotiated tender in which the awarding authority negotiates freely with the potential supplier or suppliers as to the conditions of the contract.

The criteria applied to the evaluation of tenders are predetermined in the invitation to tender and the bidding conditions.

Tenders are submitted in two sealed envelopes. The first envelope contains all of the required technical specifications regarding the product or service and the supplier. The second envelope contains the price of the product or service bid.

Only tenders which meet all of the specified requirements may proceed to the second stage, which involves opening the envelope containing the price bid. Through this mechanism, price constitutes the criterion which determines who is awarded the contract.

According to Article 33, entities in Mexico are not qualified to negotiate any of the provisions contained in the bidding conditions.

Disclosure of bids received and contracts awarded

8(a) How are tenders received, registered and opened?

Tenders are received in two sealed envelopes at the place, date and time indicated in the bidding conditions. The first envelope contains the documentation by which it is possible to identify and confirm the existence and participation of the bidder, and a description of the required technical specifications of the product or service in question. The second envelope contains the financial bid for the product or service together with the bid security document.

During the first phase, known as the •technical phase•, all of the bids are opened in the presence of the participants, and their contents verified. Only those which meet the technical requirements set forth in the bidding conditions are qualified for their second phase.

During the second phase, known as the •financial phase•, the envelopes containing the financial bids by the suppliers who passed the first stage are opened, also in the presence of the participants, and their contents verified. The financial envelopes of the bidders eliminated during the first phase are returned unopened.

Through this mechanism, the winner is determined and the contract awarded on the basis of the best price bid according to the evaluation criteria set forth in the bidding conditions.

The award is announced in a public meeting which bidders who participated in the presentation and opening of tenders are free to attend. The agencies and entities may also decide, in lieu of such a meeting, to communicate the award to each of the bidders in writing.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

The agencies and entities draw up the official record of the award of the contract to be signed by the bidders who attended the award proceedings, each one of whom receives a copy. Similarly, the contracting party must supply the bidders, in writing, with the award or, where applicable, with the reasons why their bid was not chosen.

Within a time-limit of 72 days following the date of the award, the contracting agency or entity must publish, in the Official Journal of the Federation, the identity and details of the enterprise or natural person to whom the contract was awarded as well as the amount, the characteristics of the product or service in question and any information considered relevant to the contract.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

The contracting party must inform the bidders in writing of the award or the reasons why their bids were not selected.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a member more favourable treatment than those of another member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

Domestic goods are defined as those which contain at least 50 per cent of domestic content. This category does not include foreign goods which are simply packaged, packed, labelled, diluted in water or any other substance which does not alter their characteristics, or which are merely assembled or put together in the country.

The term national suppliers is understood to mean any enterprises and/or natural persons that exercise their economic/productive activities in the national territory and are administratively, economically and legally constituted in accordance with domestic legislation.

Current Mexican legislation in the field of government procurement does not establish any quantitative preferences for national suppliers and goods over foreign suppliers and goods.

However, as explained above, international tenders only take place when the entities justify the need for them, subject to market investigation; when the resources are provided through foreign credits; or when the contract is covered by international agreements.

Moreover, Article 31 of the Law stipulates that foreign suppliers or contractors may be refused the right to participate in international tenders when an agreement has not been concluded with the country of which they are citizens or that country does not grant reciprocal treatment to Mexican suppliers and contractors or goods and services.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide full details.

Details could include:

- Institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;**
- time-limits for complaints/appeals;**
- **type of remedy, if any, that may be granted.**

With respect to mechanisms for challenging actions that violate the Law on Public Procurement and Works or that stem from trade agreements concluded by Mexico, the only administrative authority in Mexico empowered to review and adopt resolutions is the Ministry of Comptrollership and Administrative Development (SECODAM), through the General Directorate of Complaints, it being understood that the interested parties may draw the attention of the procuring entity's supervisory body beforehand to any irregularities which they consider to have been committed in the contract awarding procedure with a view to their being corrected.

The challenge procedure is open to both persons and companies who consider that their rights have been infringed either in respect of the award decision or at any stage of the tendering procedure from the moment at which the invitation to tender is published until the award of the contract.

The complaint must be submitted in writing to the General Directorate of Complaints within a period of not more than 10 working days following the date on which the infringement occurred; the infringing party is then informed of the alleged violation of the law. It should be noted in this connection that when the interested party decides to lodge a preliminary complaint with the supervisory body referred to above, this step does not affect the deadline for submitting the complaint to the Ministry.

The complaint of infringement must be made under oath.

The General Directorate of Complaints may issue the following resolutions: cancellation of the procedure as from the commission of the infringement(s) or as from the issuing of recommendations to the purchasing entity establishing guidelines to ensure that the procedure takes place according to the law; full cancellation of the procedure; or declaration that the challenge is not receivable.

Once the General Directorate of Complaints issued its resolution on infringement, a supplier may lodge an appeal with the Sub-Secretariat of Citizens' Affairs and Social Comptrollership of SECODAM within 15 working days following the date of notification of the resolution.

All infringements that have been brought before a court, before or after the recourse to the Ministry of Comptrollership and Administrative Development, are excluded from the Ministry's intervention.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Mexico has concluded free trade agreements with Canada and the United States (NAFTA), with Colombia and Venezuela (G-3), with Costa Rica, and with Bolivia. These agreements contain specific chapters on government procurement. Mexico is not a member of the WTO Agreement on Government Procurement.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12(a) Please provide statistics (if available) on the number and value of services procurements

- on both an aggregate and sectoral basis;
- by origin of services and suppliers.

In order to enhance the comparability of data provided, Members may choose to provide statistics according to the services sectoral classification in document MTN.GNS/W/120 (dated 10 July 1991) at the appropriate level of aggregation.

(b) Please provide statistics (if available) on the

- share of services procurement in total procurement;
- share of procurement of each service in total domestic output of the service;
- share of procurement of each service in total domestic consumption of the service.

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

The statistics available with respect to government procurement in 1990 are:

STATISTICS
(Millions of Dollars)
1990

Goods	Services	Construction services	Total
8,715	4,879	4,846	18,440

*WORLD TRADE
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13 March 1997

(97-1115)

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Working Party on GATS Rules

COMMUNICATION FROM THE UNITED STATES

Emergency Safeguards

The following communication is circulated at the request of the United States to Members of the Working Party on GATS Rules.

The purpose of safeguards provisions in trade agreements is to facilitate liberalization. Such provisions are included in trade agreements to acknowledge that as a result of undertaking trade liberalization, countries may encounter temporary, unforeseen domestic adjustment difficulties. The assumption is that these difficulties stem from, or are at least worsened by, the liberalization commitments.

One of the practical difficulties in assessing the need for a safeguards provision stems from the interpretation Members give to the degree of liberalization achieved in the Uruguay Round, in which commitments largely bound the status quo. Thus, the question is whether a safeguards provision, similar to that in the GATT 1994, is needed for future rounds, where the extent of liberalization presumably will be greater. The argument for a safeguards provision under these conditions would be that countries see a greater risk associated with a commitment that represents the abandonment of more restrictive practices. A safeguards provision can be justified largely by the incentive it provides to facilitate a greater measure of trade liberalization and act as a counterweight to the uncertainties associated with such liberalization.

Discussion in the Working Party, as well as most written submissions to date, have demonstrated the difficulty in adapting a safeguards provisions for goods that would be suitable for all forms of GATS commitments. The United

States believes that there exist important obstacles to constructing a safeguards provision applicable to all scheduled commitments. These include conceptual difficulties -- for example, definition of •like• services -- and practical difficulties -- for example, inadequacy of statistics for both •imports• and domestic production. Unless these obstacles can be overcome, attempting to include such a provision in the GATS may undermine the spirit of the agreement and the integrity of commitments associated with it.

On the other hand, participants have noted that the nature of scheduling the commitments themselves offers some scope for tailoring commitments to take account of safeguards-type concerns. This characteristic of GATS scheduling offers the opportunity to include a safeguards-type provision in a Member's schedule.

An alternative for responding to the mandate in GATS Article X therefore might be to develop rules to be followed by Members proposing to include safeguards-type provisions in their country schedules. Such provisions would adhere to specific rules. For example, these rules might address issues such as:

- inclusion in a schedule of a safeguards-type provision in a given sector must be paired with a commitment to liberalization in that sector*
- adequate advance notice must be given before invoking a safeguards-type provision*
- use of safeguards-type provisions must be temporary and with a specified maximum period of duration*
- access to a given safeguards-type provision must be limited -- for example, once during the course of a specified period of time -- and may not be reinvoked during the specified period*
- application of a safeguards-type action provision must be digressive*
- application of actions must be on an MFN basis*
- objective, identifiable criteria must be used as trigger for a safeguards-type action*
- clear specification of the action to be taken by mode and by sector or sub-sector*
- where the safeguards-type action involves temporary limits in mode 3, these limits would not allow for divestment or for the removal of existing licenses enjoyed by foreign services providers*
- if the agreed rules are followed, no payment of compensation would be required.*

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11 March 1997

ORGANIZATION

(97-1012)

Working Party on GATS Rules

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COMMUNICATION FROM THAILAND

Response to the Questions Relating to an Emergency Safeguard Mechanism in GATS

The following communication is being circulated at the request of Thailand to Members of the Working Party on GATS Rules

What is the justification and purpose of an emergency mechanism under GATS?

1. The question of what a safeguard mechanism would be for involves the following considerations:

a. Would an emergency safeguard for services be intended to deal with the kind of situation foreseen in Article XIX of GATT -- that is, a temporary threat to a domestic "industry" arising from increased imports? Would it have any other objective?

The prime element to be taken into account in answering this question is that the nature of trade in services is very much different from that of trade in goods and the scope of coverage of the former is very much larger than that of the latter. Naturally, therefore, the emergency safeguard measures (ESMs) in GATS can be different from that of the GATT. Though the ESMs in GATS can cover the situation similar to that in Article XIX of the GATT (Emergency Action on Imports of Particular Products), it can in no way be limited to that. Actually, the ESMs could be conceived of as a mechanism to correct any situation which may arise out of the obligations of the GATS by a Member of the WTO that could not be foreseen by that Member when it undertook those obligations, and which could not wait for the normal mechanism of the GATS, such as Article XXI, to solve the problem. For instance, a Member may encounter a situation whereby there is an overwhelming commercial presence of foreign banks, or foreign insurance,

transportation or telecommunication companies, or foreign professionals, etc. to such an extent that it causes or threatens to cause serious injury to the corresponding domestic companies or professions, despite its precautionary measures to prevent that situation. The situation could happen in the future taking into account the fact that Members of the WTO have an obligation to progressively liberalize higher level of their trade in services and considering the fact that the MFN exemptions provided for are only ephemeral. At a certain point in time the Members may find that they can no longer avail themselves of other safeguard mechanisms, such as Article XXI or the MFN exemptions, simply because they can not roll back their previous commitments and they can no longer resort to the MFN exemptions anymore. The ESMs can be employed in this situation to rectify the difficulties. In addition, for international trade policy purpose, the ESMs can also be a mechanism to provide incentive for a Member to liberalize its trade in services since it can at least provide an assurance to that Member that if anything which it had not conceived of when it undertook the obligations goes wrong, that Member can escape that situation through the ESMs.

b. Are existing "safeguard" mechanisms in GATS, notably those contained in Article XII and Article XIV, sufficient to address any difficulties governments might encounter as a consequence of their GATS commitments? Similarly, does Article XXI provide an adequate vehicle for reversing or modifying scheduled commitments in the event of unanticipated difficulties?

The purpose of ESMs is different from those of Articles XII, XIV, and XXI of the GATS as much as or even much more than the purpose of Article XIX of the GATT is different from those of Articles XII, XX, and XXVIII of that Agreement. Since it is established that Articles XII, XX, and XXVIII of the GATT, whose scope of coverage is very much narrower than the GATS's scope of coverage, are not enough for the handling of the emergency safeguard situations in the GATT context, and thereby Article XIX of that Agreement is provided for, *a fortiori* reason dictates that Articles XII, XIV, and XXI of the GATS, whose scope of coverage is very much wider than the GATT's scope of coverage, are not sufficient for the treatment of the emergency safeguard situations in the GATS context. It would be astonishing to hold that the GATT and other Agreements under the WTO such as Agriculture and Textiles and Clothing which cover only the trade in goods as products need a variety of means to cope with the emergency situations, but the GATS which cover almost all aspects of trade life of the Members, and many of them are essential to the economy, social, cultural and environmental life of the peoples of these Members, does not need an emergency safeguard provision at all. Consequently, Articles XII, XIV, and XXI of the GATS are not sufficient for the treatment of the emergency safeguard situations of trade in services. The implementation of commitments might result in unforeseen developments of increased service imports which cause or threaten serious injury to domestic services suppliers and which the referred mechanisms cannot remedy the difficulties. Article XXI cannot either provide an adequate vehicle to solve the unanticipated difficulties which require immediate or emergent remedy. To modify the commitment in accordance with Article XXI, governments must await the three years requirement to lapse before. Such measures may not be effective to governments to safeguard their interests due to emergency situations.

c. Does the nature of commitments undertaken in GATS -- whereby Members may choose whether to schedule a sector, and may also condition market access and national treatment with respect to commitments that are made -- obviate the need for safeguards? Or would it be more appropriate to think in terms of the idea that the existence of a safeguard would allow governments to be more forthcoming with respect to their scheduled commitments?

Article XIX of the GATS requires, *inter alia*, that “Members shall enter into successive round of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization.” Moreover, Article XVII of the GATS further requires that the Member which has granted a concession and thus inscribed that concession within its Schedule of Specific Commitments must accord national treatment to all other Members in respect of that concession. Consequently, once a Member has made a concession, the Member can not, in principle, withdraw, retract, or modify that commitment, nor refuse to accord national treatment to other Members. It is true that a Member can decide whether or not to make a concession, or to condition its national treatment, or to modify them later on in accordance with Article XXI; however, the freedom and easiness of such actions is restricted by the requirement of progressively higher level of liberalization together with the stringent requirements of negotiations, compensations, or retaliations for any modification of the concession in pursuance of that Article. In any event, the modification according to Article XXI must await the three year requirement to lapse before the Member can take any action. In the longer terms, therefore, such actions may not be effective nor useful anymore to the Member to safeguard its interests due to emergency situations. The non-existence of the ESMs may cause a Member to be very cautious, and to meticulously grant only those concessions which they consider they can cope with should an emergency situation arise, which in practice tend to be a bare minimum as we have witnessed in the past. Therefore, it would be more appropriate or even more advisable to think about the ESMs as an indispensable tool to trigger more concession and higher liberalization of trade in services.

What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

2. A number of questions can be identified in relation to the criteria that might apply in determining the circumstances in which emergency safeguard measures are to be used. The questions included below assume that essentially the same GATT concepts of increased imports, injury and causality would apply under an emergency safeguards mechanism in GATS.

b. How should serious injury be determined? Injury to whom or what?

The serious injury should be determined by a variety of factors of an objective nature having a bearing on domestic services suppliers sustaining unanticipated difficulties, such as the rate and amount of the increase in imports of services in absolute or relative terms, the share of domestic market by foreign imports; the rate and amount of increase of foreign services suppliers; the rate and amount of changes in the level of sales, profits,

production, capacity utilization, and employment of domestic service suppliers.

What form might a safeguard mechanism for services take?

3. If increased foreign competition and serious injury to domestic services or service suppliers have occurred, and causality between the two has been established, a question arises as to the characteristics of a safeguard measure that might be applied.

f. What should be the duration of any safeguard measures adopted?

The duration should be sufficient to rectify the difficulties.

g. Would safeguard measures be made degressive during the period of their application?

It would be possible. Some provisions of the Safeguard Agreement could be applied mutatis mutandis in a GATS context.

h. Would a Member taking a safeguard action be required also to adopt adjustment measures?

It would be possible. Some provisions of the Safeguard Agreement could be applied mutatis mutandis in the GATS context.

i. Would the application of safeguard measures be accompanied by compensatory adjustments in the schedule of the Member taking the measure?

It would be possible. Some provisions of the Safeguard Agreement could be applied mutatis mutandis in the GATS context.

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ORGANIZATION

(97-0903)

Working Party on GATS Rules

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COMMUNICATION FROM SINGAPORE

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of Singapore to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Government procurement is defined as procurement of goods and services by the Ministries and Departments of the Government of Singapore as well as Statutory Boards.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

The bulk of government procurement activities has been decentralised to individual Government Ministries and Departments as well as Statutory Boards, who will make their own arrangements. However, there are several centralised

government procurement functions which are performed by the following entities:

(i) Ministry of Finance (Budget Division)

-Formulate the government procurement policies and guidelines which need to be complied with by all Government Ministries and Departments as well as Statutory Boards.

(ii) Expenditure & Procurement Policies Unit of the Ministry of Finance (Budget Division)

-Perform centralised purchasing of a very limited number of products such as paper and rice for Government Ministries and Departments.

-Register the suppliers for government procurement in respect of general goods and services.

(iii) Pharmaceutical Department of the Ministry of Health

-Perform centralised purchasing of certain pharmaceutical products for Government Ministries, Departments and Statutory Boards.

-Register the suppliers for government procurement in respect of pharmaceutical products.

(iv) Construction Industry Development Board

-Register the suppliers for government procurement in respect of construction services.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

Section B of the Instruction Manual No. 3 issued by the Ministry of Finance (Budget Division) sets down the policies and guidelines in respect of government procurement. This is an administrative procedure and it applies to all Government Ministries and Departments as well as Statutory Boards.

Currently, there is only one law which is related to government procurement. It is the Government Contracts Act (Chapter 118) which provides a list of

public officers who can execute and sign contracts on behalf of Government. This Act applies to Government Ministries and Departments.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The same procurement regime is applied regardless of whether the procurements are made for goods or services.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

The Singapore Government adopts the fundamental principles of fairness, openness and competitiveness for its government procurement policies. The government procurement procedures are based on a tendering system. Tenders are invited by using the open, selective or limited tendering procedures.

(i) Open procedures are used for all tenders exceeding S\$ 30,000. An open tender requires that the tender be given the widest possible circulation to attract the largest number of tenderers. On the average, open competition accounts for about 85 per cent of the total number of tenders called or about 60 per cent of the value of tenders, when excluding defence procurement contracts.

(ii) Selective tendering is normally conducted for all tenders under S\$ 30,000. It is also used in exceptional cases where the project is confidential or sensitive. In such instances, invitations to tender are sent to selected firms.

(iii) Limited tendering is used in cases involving purchase of specialized systems and equipment from sole suppliers. It is also used in cases of emergency or when it is manifestly in the public interest. The circumstances and reasons for granting such waivers are endorsed by the senior management of the procuring entities and submitted for approval to the relevant tenders approving authority.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Please refer to the answer 4.(a) above.

(c) What are the time limits for submission of bids?

The minimum time limits for submission of bids for contracts which are advertised locally are not less than 3 or 8 weeks for conventional and design-and-build projects respectively. And if the contracts are advertised both locally and overseas, then the minimum period is not less than 12 weeks. (The existing procedures are now under review to ensure compliance with the WTO-AGP (1994 Agreement on Government Procurement under the World Trade Organization)).

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

Under the open tendering procedure, the tender is required to be given the widest possible circulation to attract the largest number of tenderers. This is done by advertising the tenders in the local or international press. Publishing in the Singapore Government Gazette may be done if it is advantageous to do so. English is the preferred language for the notices published. (The existing procedures are now under review to ensure compliance with the WTO-AGP).

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

Please refer to the answer 4.(b) above.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The advertisements on intended procurement will provide the minimum information necessary for firms to know what is required, over what period, and whether the issue of tenders is restricted to registered suppliers under specific Supply and/or Financial categories. Advertisements will ask tenderers to apply to the procuring entities for tender forms. (The existing procedures are now under review to ensure compliance with the WTO-AGP).

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Charges are normally imposed for obtaining the full set of tender documents. The charges are set based on the cost recovery basis.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

Currently, the interactive computer network •Televue, which is Singapore's own hybrid version of videotex, provides information on government procurement opportunities. However, as the participation in Televue is voluntary, not all the procurement opportunities can be found in Televue.

A more advance electronic tendering information system is now being developed. It will allow all government procurement opportunities through open tendering procedures to be published in the Internet.

The same tendering provisions are applied regardless of whether the contracts are advertised in the traditional or electronic means.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

All local and foreign suppliers interested in participating in Singapore's public sector tenders are required to register as government contractors under the appropriate Supply and Financial categories with the Expenditure & Procurement Policies Unit, Pharmaceutical Department or Construction Industry Development Board.

Companies or firms seeking registration will have their background, finances and ability to provide a satisfactory service checked by the registration authorities, and are required to pay a non-refundable registration fee. The approved registration will be valid for 3 years. Non-registered firms could be allowed to participate only in tenders for non-recurring goods, services or works where local expertise is lacking, or in cases where the local contractors are unable to execute their contracts, or are unable to reach a certain high standard.

The current compulsory registration system is non-discriminatory. It is applicable to both local and overseas suppliers. The objective of the registration system is to facilitate the qualification process. It ensures that the same objective criteria are being applied in the qualification process. The compulsory registration process means that there is a pool of information on each register firm already in the possession of the procuring entity. This reduces the time needed to examine the qualifications of a firm during the tender evaluation. The register suppliers also benefit as they need not provide the same information all over again each time they participate in a public tender.

(Taking into account the concerns expressed by some WTO-AGP members, Singapore will review its current compulsory registration system with the view to remove any unintended effects of discrimination and of limited tendering in its open tendering system that the existing registration system may have on WTO-AGP members).

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

For the first question, please refer to the answer 6.(a) above. As for the second question, the conditions of participation vary according to the type of tendering procedures as indicated in the answer 4.(a) above. These conditions are not affected by the value of the intended procurement.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

Please refer to the answer 6.(a) above. The list of approved suppliers is updated as and when a new or renewal application is approved. Interested suppliers may apply for the registration process at any time. The list is available to all the Government Ministries and Departments as well as Statutory Boards.

Criteria for assessing bids and awarding contracts

A. Commonwealth Procurement

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

Tenders are awarded to the lowest bid meeting tender specifications in full or very substantially.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

The procurement is not subject to any offset provisions.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

Singapore does not give specific preferences to domestic suppliers in government procurement except for local contractors with consistent good performance in government construction works. (The existing procedures are now under review to ensure compliance with the WTO-AGP).

(d) Do the procurement criteria differ according to sector or region of the economy?

The same procurement criteria are being used.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

Generally, no discretion is allowed as the government procuring entities are required to award tenders to the lowest bid meeting tender specifications in full or very substantially. Under exceptional circumstances, the award may be made to other than the lowest complying tender. However, such award would usually be to the most advantageous tender.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

Tenders will be received at the office of the government procuring entity issuing the tender invitation up to the stipulated time on the closing date. They are required to be deposited in designated tender boxes which will be made accessible to tenders during normal working hours and will remain locked. Every effort will also be made by the procuring entity to deposit the tenders received through the post promptly and into the correct tender box. Any tender delivered after the stipulated time, from whatever cause arising will not be considered and will be returned to the tenderer with the reason stated. The procuring entities are prohibited from opening the tender boxes before the stipulated closing dates. The tenders will be opened by a Tenders Opening Committee. (The existing procedures are now under review to ensure compliance with the WTO-AGP).

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

The government procuring entities are required to publish details of the contracts awarded. They are not required to notify the unsuccessful tenderers. (The existing procedures are under review to ensure compliance with the WTO-AGP).

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

The government procuring entities are not required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected. (The existing procedures are now under review to ensure compliance with the WTO-AGP).

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services

and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

(i) Singapore is a member of the 1977 Agreement on ASEAN (Association of South East Asian Nations) Preferential Trading Arrangement. Article 7 of the Agreement requires the ASEAN countries to accord each other a preferential margin of 2,5 per cent, which should not exceed US\$ 40,000 worth of preferences per tender, in respect of international tenders for government procurement of goods and auxiliary services from untied loans. The preferential margin should be applied on the basis of the lowest evaluated and acceptable tender.

(ii) Preferences are given to local contractors with consistent good performance in government construction works. Under Singapore's Preferential Margin Scheme for Construction Quality, local contractors which meet the eligibility criteria of obtaining an Average CONQUAS (Construction Quality Assessment System) Score of 65 for his 3 most recently completed projects, will be given a preference of 0.2 per cent for every point it scores above 65. A contractor's performance in the execution of the contract will be assessed by the procuring agency and the Construction Industry Development Board. The contractor will be awarded the contract if his tender price does not exceed the lowest tender by the computed preferential margin. The amount of premium is subject to a ceiling based on the total value of the scored projects that qualify the contractor for the premium, the maximum amount that a contractor can enjoy being 5 per cent or S\$ 5 million, whichever is lower. If a firm is given preferential margin under building works, it will not be able to use this tendering advantage for projects under civil engineering works and vice versa. (The existing procedures are now under review to ensure compliance with the WTO-AGP).

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

The Ministry of Finance (Budget Division) investigates complaints/appeals from the suppliers and initiates any remedy action if this is deemed necessary. (The existing procedures are under review to ensure compliance with the WTO-AGP).

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Memberships:

(i) Member of the 1979 Agreement on Government Procurement under the GATT (General Agreement on Tariffs and Trade);

(ii) Member of the 1977 Agreement on ASEAN Preferential Trading Arrangements;

(iii) Member of the APEC (Asia-Pacific Economic Cooperation); and

(iv) Observer to the WTO-AGP. On 20 September 1996, the Committee on Government Procurement accepted Singapore's accession to the Agreement. Singapore will have up to October 1997 to adjust its government procurement policies and procedures so as to ensure conformity with the requirements of the Agreement.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***
- ***by origin of services and suppliers.***

The government procurement statistics for the year 1995 are as follows:

<i>Contracts</i>			<i>Total S\$</i>
<i>Goods S\$</i>	<i>Services S\$</i>	<i>Construction Services S\$</i>	
<i>9.6 billion</i>	<i>3.8 billion</i>	<i>5 billion</i>	<i>18.4 billion</i>

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Information not available.

WORLD TRADE
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RESTRICTED

S/WPGR/W/16
5 February 1997

(97-0413)

Working Party on GATS Rules

QUESTIONS RELEVANT TO THE INFORMATION EXCHANGE
REQUIRED
UNDER THE SUBSIDIES NEGOTIATING MANDATE

Note by the Secretariat

The Working Party agreed that wherever possible Members would provide written replies to the questions listed below, in order to help meet the requirement under Article XV to exchange information concerning all subsidies, at any level of government, related to trade in services provided to domestic service suppliers. It is also understood that the information provided is without prejudice to the negotiating positions of governments.

The Working Party agreed that a working definition of a subsidy was necessary in order to proceed with the information exchange. For these purposes, it was agreed that the definition of subsidy contained in Article 1 of the Agreement on Subsidies and Countervailing Duties would serve as a basis for the working definition. The relevant definition is reproduced below:

•1.1 [A] subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as •government•), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)¹;

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

¹In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

or

(a)(2) *there is any form of income or price support in the sense of Article XVI of GATT 1994;*

and

(b) *a benefit is thereby conferred.*

Members may choose to vary or supplement the above definition for the present purposes. Please specify any such changes in the working definition.

QUESTIONS ON SUBSIDIES RELATED TO TRADE IN SERVICES

- 1) *Please identify any subsidy programmes related to trade in services, with a brief description of each programme.*
- 2) *Please state the policy objectives underlying the use of each subsidy.*
- 3) *Please indicate the availability, in the case of your country, of information necessary to distinguish subsidies to services from subsidies to goods, e.g. when a company produces both goods and services.*
- 4) *Please indicate the form of each subsidy (e.g. tax concession, loan, grant etc.).*
- 5) *Unless previously indicated, please state which sectors are eligible under the subsidy and/or the estimated number of enterprises which are eligible under the subsidy.*
- 6) *Please indicate the eligibility criteria for subsidies (location, nationality, destination of output, or any other condition).*
- 7) *Please indicate how the subsidy is calculated (e.g. on production, on exports, on a fixed or fluctuating basis, etc.).*
- 8) *Please specify any time limits attached to the subsidies described above.*
- 9) *Please indicate any subsidy disciplines already assumed in the context of regional agreements.*
- 10) *Where such information is available, Members may wish to indicate:*
 - a) *Subsidy per unit or total annual subsidy outlays in respect of each subsidy granted;*

b) Statistical data indicating the impact of subsidies on trade in services in the sectors or activities concerned.

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Working Party on GATS Rules

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COMMUNICATION FROM CHILE

Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of Chile to members of the Working Party on GATS Rules.

The Delegation of Chile has supplied the Secretariat with the following documents which are available for consultation:

- *Regulations of the DAE Register of Suppliers;*
- *Regulations of the General Register of Contractors, Supreme Decree No. 15, 1992, Public Works.*

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement used in completing this questionnaire?

In Chile, government procurement of services comprises contracts for services, tangible or intangible, whether for own functions or for support, between any public entity (public service, municipality or public enterprise) and a natural person or corporate body, domestic or foreign.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

(1) Chilean public sector

In Chile, the public sector, like the system of government, corresponds to that of a unitary (non-federated) State. It is based on the public services, State enterprises and municipalities.

(a) Public services: These include the ministries, the provincial and departmental authorities and the Services established to perform the administrative function.

(b) State enterprises: A concept which includes the State enterprises established by law and those organized as private corporations in which the State holds a majority interest.

(c) Municipalities (local government): These are autonomous public-law corporations, with legal personality, independent assets and their own resources, managed outside the State budget, and are responsible for the local government of the country's communes.

(2) Administration of government procurement

In Chile, there is no single government procurement system or procedure. This means that, generally speaking, the procurement process is highly decentralized. In fact, most government contracts are let at service, enterprise or municipality level. Nevertheless, the central government has two specialized government purchasing agencies, the Central Supply Agency for the National System of Health Services (Central de Abastecimiento del Sistema Nacional de Servicios de Salud - CENABASS) for the health sector and the State Supply Directorate (Dirección de Aprovechamiento del Estado - DAE) for supplying certain goods to the public services.

Government procurement can be described by reference to the systems used by the public services, State enterprises and municipalities respectively.

Public services

Independent procurement. Generally speaking, each public service makes most of its purchases of goods and services independently, a power derived from its own organization act or forming an exception to the general procurement system. Most purchases are for goods and services and the purchasing programmes are planned for one-year periods, in conjunction with the State budget.

State Supply Directorate (DAE). The DAE is a public service operating under the Ministry of Finance to which the public services turn whenever they

need to purchase goods from stocks held by the Directorate. It also provides a single central service: printing services. In general, the DAE plans its purchases for one-year periods.

Construction services. The general construction services procurement system is run by the Ministry of Public Works (bridges, airports, seaports) and the Ministry of Housing and Urban Development (basic housing, roadworks), the services being permitted to carry out minor works directly. The planning period for construction services programmes varies with the nature of the works involved (1 to 5 years).

Central Supply Agency for the National System of Health Services (CENABASS). This is a government department under the Ministry of Health which supplies goods such as drugs, equipment, instruments and other necessary inputs required by the National System of Health Services. The purchasing programmes are organized on an annual basis, like those of the health services.

State enterprises

The State enterprises are independent as far as procurement is concerned. Accordingly, they use the business management criteria commonly applied by private enterprises for these purposes, obtaining goods and services from domestic and/or foreign suppliers without distinction. In some cases, their procurement systems or procedures are regulated by supreme decree, particularly in some State enterprises established by law. In other cases they are governed by internal rules.

The mode of procurement is determined by the sums involved. Thus, it may sometimes be possible to proceed by restricted tender, but where large purchases are concerned public tendering is mandatory.

Municipalities

Each municipality enjoys autonomy as regards the organization and implementation of its procurement procedures. Nevertheless, the Chilean Association of Municipalities provides all the municipalities with procurement manuals and guidelines. Moreover, it keeps them regularly informed about domestic suppliers.

The DAE's organization act also allows municipalities to make their purchases through that department, a facility of which they make frequent use.

The procurement programmes of the municipalities generally cover a period of one year.

Laws and regulations in force

3(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their

application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

In Chile, there is no body of law dealing comprehensively with the legal regime applicable to government procurement. In general, procurement is governed by rules derived from the regulatory powers (administrative rules and regulations) specific to each public service, public enterprise or municipality.

Municipalities

In procuring the goods and services they need to function, the municipalities are subject to the rules of private or ordinary law, as confirmed by Article 22 of the law-ranking Decree (DFL) No. 789 of 1978 concerning national property. Nevertheless, the general rules of procurement which every municipality must follow are laid down in Article 6 of Law No. 18.695.

Public enterprises

All public enterprises are independent as far as procurement is concerned. The rules stem mainly from their own organization acts or internal statutes. In general, the mode of procurement is determined by the sums involved. All large purchases must be made by public tender.

Central government

In the case of central government, the questions relating to government procurement have been defined by the administrative authority (Office of the Comptroller-General of the Republic and the departments themselves) rather than by the legislative authority as in other countries. Nevertheless, there are laws, decrees and regulations specifically concerning government procurement of services which extend to the whole of government and are described in detail below:

Procurement of services

1. Personal service contracts with public-sector corporations or entities

Contracts with public-sector corporations or entities, with municipalities, with State universities and vocational colleges and with State-recognized private universities and vocational colleges are governed by:

Article 16 of Decree Law (DL) No. 1608 and its regulations Supreme Decree (DS) No. 98 of 1991 (Finance), if they involve the provision of the personal services of employees.

The provisions of Law No. 18.803 and its Regulations DS No. 21 of 1990 (Finance), if they constitute the procurement of support for the functions of a public service which does not correspond to the actual exercise of its powers.

In both cases, the laws and regulations permit contracts to be awarded directly to the entities in question since they provide exemption from calls for quotations and restricted invitations to not less than three firms. Moreover, in both cases there is exemption from the requirement of a guarantee that the entities do not have among their personnel persons who are employees of the State or have among their partners one or more persons who provide State services as employees and hold 50 per cent or more of the share capital.

2. *Service or support contracts with private-law corporations or entities*

(a) Personal service contracts. Application of Article 16 of DL 1.608 of 1976 and DS 98 (Finance) of 1991.

The following conditions must be satisfied:

(i) The services procured must be indispensable for the efficient performance of the institution's own functions;

(ii) the services cannot be provided by the institution's own human resources;

(iii) the procuring entity must have sufficient funds available to pay the fees;

(iv) the corporate bodies may not have among their partners one or more officials belonging to entities governed by D.L. No. 249 of 1974 who together represent 50 per cent or more of the equity capital or have among their workers persons who are at the same time officials of the above-mentioned entities;

(v) at least three firms must be invited to bid for a contract to be awarded.

(b) Personal service contracts. Application of Law No. 18.803 and its Regulations; DS No. 21 of 1990 (Finance).

Conditions:

(i) Must involve support for the service's functions and not the actual exercise of its powers;

(ii) the corresponding tender conditions must be approved by decision of the head of the procuring public service;

(iii) there must be an invitation to tender, public or restricted, and in the latter case at least three private-law entities must participate as bidders;

(iv) when the contracts involve the provision of the personal services of the partners or their workers, the bidding entities may not have among their partners one or more persons who provide services to the State as employees and hold 50 per cent or more of the equity capital or have among its workers persons who are also officials in the employ of the State;

(v) the private-sector tenderer must agree to provide security in rem or in the form of a deposit to guarantee the performance of the contract.

The amount of security must be specified in the corresponding tender documents.

Any fines or other penalties imposed on the service provider for delay or non-performance will be charged against these guarantees.

Depending on the activities forming the subject of the contract, other requirements laid down by the law and its regulations must also be met, as determined case by case.

3. Non-personal service contracts

3.1 Contracts with individuals or corporate bodies in accordance with Article 16 of DL 2.879 of 1979 and more specifically the following:

- Repairs to the offices and premises of the tax services;
- maintenance of the services• furniture, machines and equipment, and cleaning;
- data processing service: translation, reproduction, form design and the like, as specified by the service.

3.2 Contracts with individuals or corporate bodies in accordance with Article 84 of Law No. 18.482 relating to the leasing of data processing equipment, photocopiers and, in general, office machines of all types.

Public works procurement (construction services)

1. Decree 1340 of 1964

Regulations concerning the evaluation, contracting and execution of public works. Amendments in Supreme Decree No. 15 of 1992.

2. Supreme Decree No. 294 of 1984 (Ministry of Public Works - MPW)

Establishes the public works procurement system.

3. Supreme Decree No. 15 of 1992 (MPW)

Establishes the rules and regulations for public works contracts awarded by the Ministry of Public Works and its agencies. Also requires that, without prejudice to the cases in which such work must be done by other services in accordance with their organization acts, any planning, construction, repair or maintenance of public buildings financed from taxes should be carried out by the Architectural Directorate of the Ministry of Public Works.

4. Decree No. 48 of 1994 (MPW)

Regulations concerning the procurement of consultancy services by the Ministry of Public Works. Also regulates the hiring of contractors.

Exceptions

With respect to the legal framework described in the previous section there are exceptions for certain types of services, as indicated below:

Purchase or lease of motor vehicles

Government public services need prior authorization from the Ministry of Finance in order to purchase, on any basis, motor vehicles of any type intended for the transport of persons or goods. Services with a fixed maximum complement of motor vehicles require similar authorization to lease such vehicles (Article 12, Law No. 19.259).

•Leasing system• operations

The public bodies and services governed for budgetary purposes by DL No. 1.263 of 1975 require prior authorization from the Ministry of Finance in order to enter into commitments involving the leasing of movables with option to purchase the leased good or to enter into agreements to purchase goods when all or part of the price is to be paid in a period that exceeds the budgetary year (Article 11, Law No. 19.259).

Electronic and office machines

For leasing data processing equipment, photocopiers, duplicators and, in general, office machines of any type and for letting contracts for data processing, reproduction, form design and other similar services specified by the entity concerned, the Head of the Service is permitted to contract directly, with the authorization of the corresponding Undersecretary.

Purchase or lease of data processing equipment and contracting for computer services

Public bodies and services covered by the Budgets Act require prior authorization from the Ministry of Finance in order to purchase or lease data processing equipment and peripherals when the price or rental exceeds the amounts laid down by the Ministry (Law No. 19.430).

Similar authorization is also required in order to contract for data processing services, whether independently or as part of a broader services agreement, or for their extension or modification, when the expenditure involved exceeds the amount laid down by the Ministry in question.

The authorization of the Ministry of Finance does not need to be renewed when data processing equipment leases which it approved in previous years maintain the terms originally agreed.

These authorizations are not needed when the equipment in question forms part or is a component of an investment project or an investment study identified as required by the Budgets Act.

Direct purchase, leasing and contracting for services by public bodies and services

It is possible to proceed in this way if the payments involved do not exceed the equivalent in national currency of 2,000 •promotion units• (unidades de fomento). Under these conditions, procurement can take the form of restricted tendering with the participation of at least three bidders (Article 10, Law No. 19.259).

3(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

In Chile, the rules of government procurement do distinguish between the procurement of goods and services. The application of the rules in cases of joint procurement depends on the nature of the procurement. In general, both sets of rules are applied since there is no conflict between the rules for goods and those for the procurement of services.

Procurement procedures applied

4(a) What procedures are followed in the procurement process?

Procurement procedures could differ according to the openness of the invitations to tender. At least three broad categories of procedures are commonly distinguished: (i) public or open tendering procedures under which all interested parties may submit a tender; (ii) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (iii) private contract or single tender in which the awarding authority contracts suppliers individually, and sometimes only a single supplier.

The procurement procedures of the public services (procurement of goods, services and construction services), public enterprises and municipalities are outlined in general terms below.

Public services

I. PROCUREMENT OF GOODS AND SERVICES

In general, the procedures for procuring goods and services used by the Chilean public services can be classified in four categories, namely:

Direct quotation (enquiry among suppliers): The procurement unit sends three suppliers a simple quotation document specifying the goods or services required. A supplier is chosen on the basis of the three quotes received.

Restricted tender: The service invites a limited number of suppliers to tender. The invitation specifies the goods or services needed and, in their turn, the suppliers respond with a technical proposal (quality) and a commercial proposal (price) on the basis of which the service makes its decision.

Public tender: An invitation to tender for the supply of goods or services giving a general description of the tender procedure is published in the press. Later, the interested parties receive the specifications in a document entitled •Technical and Administrative Conditions•. The subsequent steps are similar to those of the restricted tender procedure.

Private contract: A supplier is asked to quote and awarded a contract for goods or services. This is an exceptional measure used mainly in emergencies or unforeseen circumstances.

As regards the specific aspects of the procurement procedure, despite the lack of uniformity in the regulations that govern the process in the various institutions, most public services align their procedures on those used by the State Supply Directorate (DAE) of the Ministry of Finance.

Broadly speaking, the public sector procurement system is predominantly based on public tendering, with restricted tendering and direct quotation reserved for •marginal• situations such as:

- *Urgent procurement;*
- *domestic market restricted because of the nature of the product;*
- *small amounts. Below certain thresholds procurement is by restricted tender or direct quotation.*

In general, the process is transparent and the parties well informed, considering that they receive the general and technical documentation and that the

invitations to tender and, in some cases, the outcome of the tender procedure are published in national newspapers.

Depending on the amount involved, the decision to award a contract may be taken by an individual (head of the public service in question) or by a committee (Awards Commission).

As mentioned above, most public entities use, as a procurement model, the procedure applied by the DAE. Consequently, a knowledge of the latter will give a fairly accurate picture of the procurement process throughout government. The procurement system of the DAE is described below.

The DAE procurement system

Steps in the process of procurement by public tender:

(a) *Tender documentation*

Consist of two parts: the administrative conditions and the technical specifications. The former specify the goods or services to be procured, the place and time of delivery, the terms of payment and any other tender requirements. The technical specifications describe the goods or services being put out to tender, the quality standards, minimum acceptance requirements and any other elements that will be taken into account in the appraisal (guarantees, samples, manuals, catalogues, etc.).

(b) *Invitation to tender*

While the tender documentation is being prepared, the corresponding invitation to tender is published, prominently in three national newspapers.

(c) *Issue of tender documentation and receipt of bids*

In this phase, the tender documentation is issued or sold, any queries are answered and the bids are received. A precondition for making a bid is to be listed in the DAE's Register of Suppliers.

(d) *Opening of the bids*

The bids are opened in public by a commission appointed by the DAE, the procedure being as follows:

- *Opening of the envelopes;*
- *verification of the documentation;*
- *correlative numbering of the bids;*
- *signing of the documentation by the members of the commission;*
- *taking of minutes and reading out of the bids;*

- *incorporation of comments in the minutes;*
- *signing of the minutes by the members of the commission and the bidders.*

(e) Appraisal

The procurement department of the DAE checks that the tender conditions have been satisfied and compiles a comparative table of prices bid. Subsequently, the Technical Sub-Directorate checks the extent to which the technical requirements have been met and prepares a report, the results of which are combined with the comparative table of prices.

(f) Award

The Director of the DAE analyses the information contained in the comparative table of prices and decides to whom the contract should be awarded.

If the price exceeds 7,200 UTM¹ (approx. US\$380,000), the Director passes on the information to the Board of the DAE, which takes the final decision.

(g) Formalization

The result of the tender process is formalized by means of an exempt resolution signed by the Director of the DAE, after which the corresponding purchase orders, which constitute a contract with the supplier, are issued.

If the purchase orders are for an amount in excess of 4,000 UF (about US\$120,000), they are published in the Diario Oficial (Official Journal).

II. PROCUREMENT OF CONSTRUCTION SERVICES

Most construction services contracts are let by the Ministry of Public Works and the Ministry of Housing and Urban Development. The works programmes run for periods of 1 to 5 years.

The public works procurement system of the MPW is defined in Article 86 of D.S. No. 294 (Public Works) of 1984, which specifies that the works shall be carried out under a contract awarded by public tender.

However, the same Article indicates that public works may also be carried out under a private contract or a contract awarded by direct quotation or by

¹Monthly Tax Units (*Unidades Tributarias Mensuales*).

administrative authority or delegated administrative authority, as determined by the Regulations in the cases in question.

In general, most public works procurement uses the public tender system, which consists of placing notices in the Official Journal inviting construction firms listed in the General Register of Contractors in the specialties and categories in question to submit bids for carrying out the works concerned. This notice specifies the date and the time for the opening of the bid.

Public works tendering system

(a) *Qualification of suppliers*

There is a register of contractors capable of carrying out major works, maintained centrally, and registers of smaller contractors, maintained at regional level, in which construction companies are listed by specialty, depending on their experience, and by category, depending on their economic capacity, in accordance with the provisions of the Regulations for Public Works Contracts (RCOP).

The categories in the major works register range from 3 to 1 for each specialty. This determines the contracts that can be bid for in terms of the contract sum and the type of work, whether it be roadworks, earthworks, concrete structure, etc.

(b) *Invitation to tender*

Open invitations to tender are issued by placing notices in the Official Journal and the main newspapers; a certain minimum period must elapse between the issuing of the invitation and the date of opening of the bids (Article 65 RCOP).

(c) *Selective tender procedure*

This procedure, which can be likened to restricted tender, consists in sending a written invitation to various construction companies listed in the Register of Contractors in the specialty and category in question to carry out specified works.

The letter indicates the place, date and time of opening of the bids.

The firms invited receive the plans, the general conditions, the technical specifications and the official estimate.

(d) *Time-limits for tendering and delivery*

The minimum periods of time for submitting bids, reckoned from the date of first publication of the notice in the Official Journal, are laid down in Article 65 of the Regulations for Public Works Contracts.

Nevertheless, the inviting authority may modify the periods laid down, in accordance with the relevant provisions of the above-mentioned Article 65.

(e) Tender documentation

To enable bids to be properly submitted the following documents are supplied:

- plans of the project and cubage, structures, etc.;
- general and particular administrative conditions;
- technical specifications;
- official estimate;
- tender form.

(f) Negotiation

Negotiation would be used if no contractors responded to a public invitation to tender in which case, in accordance with Article 86 of Decree No. 294 of 1984, it would be necessary to have recourse to a private contract.

(g) Submission, receipt and opening of bids and awarding of contracts

The bids are submitted, received and opened in the presence of the authorized officials at a bid opening ceremony at which the representatives of the bidders hand in their bids.

Once the bids have been opened, their values are made known in the presence of the rival bidders.

The opening proceedings are recorded in Minutes which include a description of the works, the date and time of the ceremony, the bidders present and the value of their bids.

Once the bids have been examined and checked for errors, the contract is awarded by issuing a resolution in favour of the most advantageous bid.

(h) Limited tender

Limited tender, which may be likened to private contract, is appropriate in the case of works declared urgent by Supreme Decree, when the work needs to be begun with the utmost urgency, and in the situations envisaged in the above-mentioned Article 86 of Decree No. 294.

Public enterprises

As already mentioned, Chilean State enterprises are independent as far as procurement is concerned. Therefore they use the economic management criteria

commonly applied in the private sector for such purposes, obtaining their supplies from domestic and foreign suppliers without distinction. In some cases their procurement systems or procedures are specified at supreme decree level, particularly in some statutory State enterprises; in other cases they satisfy criteria established autonomously.

The mode of procurement is determined by the amount of funds involved. Thus, restricted tendering may occasionally be used, but where larger amounts are involved public tendering is compulsory. Under the Constitution, neither the State nor its agencies may discriminate arbitrarily among bidders, whether domestic or foreign.

The Comptroller-General of the Republic is empowered to oversee the procurement procedures of State enterprises.

Municipalities

As previously mentioned, each municipality is autonomous as far as procurement is concerned. Article 60 of Law No. 18.695, the Municipality Constitutional Organization Act, obliges them to procure goods of a value exceeding 200 UTM (US\$10,275) by public tender.

The municipalities' procurement procedures comply with internal regulations and, generally speaking, the quotation system and public and restricted tendering are used.

The organization act of the State Supply Directorate also provides for procurement through that department to which the municipalities frequently have recourse since they are then able to avoid quotation or tender procedures.

The Comptroller-General of the Republic oversees the municipalities' procurement procedures.

4(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

In general, the procurement procedure employed depends on the amounts involved. Thus, if the quote is below a certain threshold, direct purchase or restricted tender is used; if it is above that threshold, the public tender procedure is followed. The threshold for determining which procedure to use varies from one entity to another. The following table illustrates the situation:

Government Procurement of Goods and Services by Value (Average)

	<i>Public tender</i>	<i>Restricted tender</i>	<i>Direct quote</i>
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Public services	• US\$150,000	• US\$150,000	• US\$10,000
Municipalities	• US\$10,000		• US\$10,000

*Values as of November 1996.

4(c) What are the time-limits for the submission of bids?

The time-limits vary according to the entity and the goods or services involved. The minimum time-limits generally employed are as follows:

Minimum Time-Limits for the Government Procurement of Goods and Services
(From the Publication of the Invitation)

Public and restricted tender:	7 calendar days
Direct quotation:	3 calendar days
International tender:	60 calendar days

Publicity for inviting tenders

5(a) How are intended procurements publicized? Are invitations to tender published? Is so, where, and in what languages?

Further to the replies to section 3 of the questionnaire, in Chile public sector procurements are published in the newspapers with the biggest national circulation: *El Mercurio*, *La Nación*, *La Época* and *La Tercera*, as well as in the financial and business press: *Estrategia* and *El Diario Financiero*. In general, the invitations are in Spanish.

Procurements are also published in the *Official Journal*, which appears daily. Moreover, depending on the type of procurement and the nature of the entity or enterprise, the latter is informed through the specialized publications of the national trade associations.

The principal public sector procurements are listed in the *Revista Licitasur*, a regional weekly (Argentina, Brazil, Paraguay and Chile) accessible by e-mail. For subscription rates and information, contact *Compania No. 1068 of. 901*, Telephone: 672 41 89 - 672 94 10, Fax: 672 41 92.

5(b) Do the extent and form of publicity differ according to tendering procedures applied and/or the value of the procurement?

Except in rare cases, direct quotation procurements are not published in the press. Public procurements are all published and in the same way for different bidding entities. There are no differences in publicity according to the value of the procurement. Procurements financed with credits from credit institutions such as

the World Bank or the Inter-American Development Bank are advertised slightly differently.

5(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Details could include a description of the service to be procured, tender opening and closing dates, conditions of participation, procuring entity, enquiry point, procurement plans, procurement outcomes - contract award notices, etc.

Public tender notices must contain the following information:

- *Procuring entity;*
- *tender number;*
- *goods or services to be procured;*
- *time-limits for submission of bids;*
- *price of tender documentation (if sold);*
- *place and hours of sale or distribution of tender documentation.*

5(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set.

The law does not require the tender documents to be sold. The public services are free to set a charge for the sale of their tender documentation. Even though there are no precise figures, it can be stated that in the case of tenders for the provision of services the documentation is mostly free of charge. Nevertheless, the power to set a charge for the tender documents is present in the institution's regulations and generally vested in the director of the service, the head of administration or a purchasing commission.

5(e) Are electronic means used to advertise procurement opportunities? What is the nature of the systems in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

In addition to the information channels previously mentioned, some public services such as the Ministry of Public Works and the State Supply Directorate use electronic means for publicizing their procurements. The information and the tendering provisions are the same as when other means are employed.

Requirements laid down for possible suppliers

6(a) Are there registration, residence or other requirements for potential suppliers?

It is not very often that in procuring services the entities use registers of suppliers. Where the procurement of construction services is concerned, such registers are very often used. This procedure, which is fully regulated, is described under 4(a).

6(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

In most public and restricted tendering, financial guarantees are required for the submission of bids and for the performance of the contract. These are retained until the tender process is complete or the service has been rendered. These guarantees do not vary with the nature of the tender process; on the contrary, a percentage of the value of the bid or the value of the purchase order is applied. The guarantee sum must be specified in the corresponding tender documents. Fines and other penalties imposed on the supplier for delay or non-performance can be applied against these guarantees.

6(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

In the case of the procurement of services in general, the public entities do not keep lists of approved suppliers. The technical or economic requirements are specified in the corresponding tender documents. Where the procurement of construction goods or services is concerned, lists of suppliers are generally used. The provisions relating to both cases are appended to this questionnaire.

Criteria for assessing bids and awarding contracts

7(a) What criteria are taken into account in the award of tenders? Are the criteria for award of contracts made available in advance to potential suppliers?

For instance, whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account.

The rules state that in awarding service contracts the following aspects should be taken into account:

- *The solvency and technical qualifications of the bidders;*
- *the specialized professional qualifications of those directly responsible for providing the service;*

- the experience of the bidders and, in particular, of those responsible for providing the service;
- the contract price;
- the time within which the service will be provided;
- the relationship between time and price;
- the manner of payment in relation to the progress of the work;
- the fines and other penalties proposed for any delay or non-performance.

7(b) Is procurement subject to any offset conditions, such as local content, technology transfer or countertrade requirements?

As distinct from other countries, Chile has no provisions of this kind in its government procurement regulations nor is any type of offsetting encountered in practice.

7(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

As distinct from other countries, Chile has no provisions of this kind in its government procurement regulations nor is any preference given in practice.

7(d) Do the procurement criteria differ according to sector or region of the economy?

The procurement criteria do not differ according to the different sectors or regions of the economy.

7(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The margin of choice or discretion could relate to (i) the relative weight/importance of each contract award criterion; (ii) margins of preference, if any, in respect of specific criteria; and (iii) threshold values, if any, above which referral to a higher level of purchasing authority is required.

The discretion allowed to the purchasing authority could vary according to whether there is (i) automatic tender, where the contract is awarded on the basis of predetermined criteria, either the simple criteria of price, or price and other criteria; (ii) discretionary tender procedures which involve acceptance of the bid which is most advantageous - the award of the contract is based on several criteria, some of which are predetermined, but which in general leave the awarding authority a certain measure of choice; and (iii) negotiated tender in which the awarding authority negotiates freely with the potential supplier or suppliers as to the conditions of the contract.

With respect to both goods and services there is a margin of discretion for the public entities in their procurement process which is related to the value of the

procurement. The procurement of goods with a value of more than 2,000 UTM (approx. US\$117,000) and services with a value of more than 1,000 UTM (US\$58,000) is subject to review by the Comptroller-General's Office (State administrative authority) which verifies compliance with its rules of competence and the administrative regulations.

Disclosure of bids received and contracts awarded

8(a) How are tenders received, registered and opened?

See reply to question 4(a).

8(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

Entities are not obliged to publish details of services contracts awarded. Neither is there a requirement to notify unsuccessful tenderers.

8(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

There is no legal requirement, but in practice it is customary to provide the reasons for rejecting bids at the request of the interested parties.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

In Chile, as distinct from other countries, neither in the legislation nor in practice is it stipulated that any particular bidder for a government procurement contract should be accorded more favourable treatment. In particular, Article 57 of the Chilean Civil Code states that the law does not recognize any distinctions between Chileans and foreigners as regards the acquisition and enjoyment of civil rights.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Details could include:

- ***Institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;***
- ***time-limits for complaints/appeal;***
- ***type of remedy, if any, that may be granted.***

In practice, the Chilean public sector has a decentralized procurement system. As explained earlier, each entity, enterprise and municipality procures its supplies directly in the markets in accordance with its own regulations and procedures. Consequently, the procedures for challenging an award vary from one entity to another. Usually, challenges are treated as follows:

- *During the opening of bids, any supplier may make any comments he considers relevant, these being recorded in the corresponding minutes;*
- *after the bids have been opened, tenderers may make any comments they consider appropriate in writing;*
- *once the contract has been awarded, any bidder who considers himself injured may request an explanation of why his bid has been rejected. If he is not satisfied with the explanation, he can seek redress from the Office of the Comptroller-General or the courts.*

Without prejudice to the above, public sector procurement processes are subject to the following checks: institutional control, government control, control by the Office of the Comptroller-General, political control by the Chamber of Deputies, judicial control.

1. *Institutional control*

This control is exercised internally by the entities themselves, in particular by the audit and internal inspection units.

2. *Government control*

In 1994, the Government began carrying out ministerial audits of all the services and enterprises of each Department. The aim of these audits is to ensure an honest and efficient civil service including, inter alia, the correct use of tender procedures for procuring goods and services.

Moreover, the Government indirectly exercises control over government procurement through the process of preparation of the national budget and its control over budget administration since government entities must justify to the Budget Directorate, a body under the authority of the Ministry of Finance, their requirements for and use of the resources allocated to them by the Budget Act.

3. *Control by the Office of the Comptroller-General*

In accordance with its organization act, the Office of the Comptroller-General of the Republic oversees the purchases made, directly or through tendering and bidding processes, by the public services (including municipalities), State enterprises and joint-stock companies in which the State has at least a 50 per cent stake. The control is legal and financial and may be carried out at any stage of the tender process.

If a fault or irregularity is detected, whether as a result of a complaint or as a direct consequence of its own investigation, the Office of the Comptroller-General informs the authority concerned in order that the fault or irregularity may be put right. If the situation so warrants, the latter may institute proceedings, administrative, civil or criminal, against the officials involved before the appropriate court or tribunal.

4. *Political control by the Chamber of Deputies*

In the exercise of its powers of oversight, the Chamber of Deputies is authorized to investigate irregularities committed by civil servants in the performance of their administrative duties.

5. *Judicial control*

The Constitution provides for the remedy of application for protection to the higher courts of justice (Courts of Appeal) when constitutional guarantees, including those relating to illegal acts of the public authorities, are infringed. The proceedings are special and summary.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. *Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.*

The Government of Chile has entered into commitments with respect to government procurement in the free-trade agreements it has signed with Mexico, Ecuador, Colombia and Venezuela and in its cooperation agreement with the European Union.

All its international agreements include the following clause:

•In the first year in which this Agreement is in force, the Administrative Commission, established by the Article in question, shall define the scope and conditions of government procurement between the signatory countries. To this end, it shall take into account the criteria laid down in the General Agreement on Tariffs and Trade (GATT) in order that the signatory countries may enjoy open, transparent, fair and competitive access where public sector procurement is concerned. •

The cooperation agreement with the European Union provides as follows:

- 1. The parties agree to cooperate to ensure, on the basis of reciprocity, open, non-discriminatory and transparent procedures in their respective government procurement processes and the procurement processes of their public service sector entities, at central, federal, regional and local levels.*
- 2. to this end, the Parties agree to examine the possibility of concluding an agreement on access to procurement in these sectors by creating conditions that are transparent, fair and subject to clearly defined challenge procedures.*
- 3. the cooperation between the Parties in this sector shall also have as one of its objectives technical assistance in matters relating to the Agreement on Government Procurement (AGP).*
- 4. the Parties are considering the possibility of holding annual consultations in this sector.*

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12(a) Please provide statistics (if available) on the number and value of services procurements

- on both an aggregate and a sectoral basis;*
- by origin of services and suppliers.*

In order to enhance the comparability of data provided, Members may choose to provide statistics according to the services sectoral classification in document MTN.GNS/W/120 (dated 10 July 1991) at the appropriate level of aggregation.

The Government of Chile does not compile central records indicating the origin of services and suppliers or the classification in document MTN.GNS/W/120. It only maintains this information for some of its departments. Nevertheless, information on government procurements for the period 1991-1994 is available. Chile would be in a position to provide such information in the future.

Procurements of the Central Government of Chile (1991-1994) *(at Current Prices in Thousands of US Dollars)*

CG-CH/MIN/ITEM 1991-94 (thousands of US dollars)

<i>Item/year</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>
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<i>Goods</i>	423,065	469,438	469,653	453,294
<i>Services</i>	454,702	557,934	596,625	649,894
<i>Construction services</i>	668,025	925,662	1,183,118	1,407,406
<i>Total</i>	1,545,792	1,953,034	2,249,396	2,510,594

12(b) Please provide statistics (if available) on the

- **share of services procurement in total procurement;**
- **share of procurement of each service in total domestic output of the service;**
- **share of procurement of each service in total domestic consumption of the service.**

Chile

Central Government Procurements 1994

Construction services 56%

[Pie Chart]

Goods 18% Services 26%

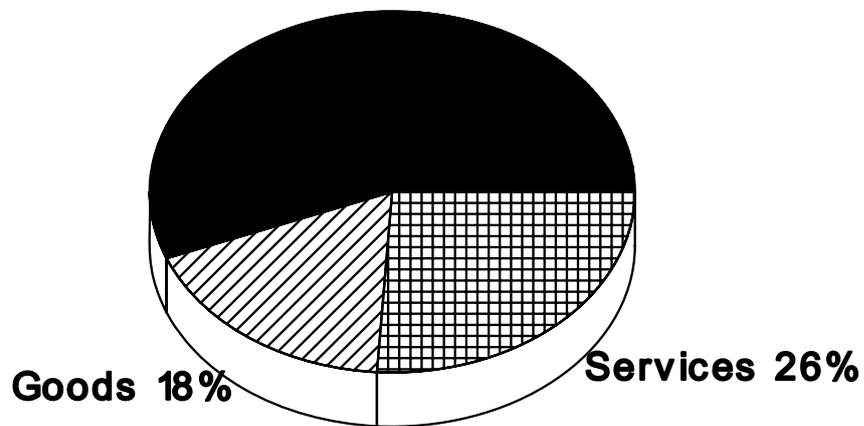
As regards the share of services procurement in domestic output and consumption, it is not possible to provide reliable information since the data on the consumption and output of services in the national accounts are classified

differently from those used for compiling government procurement data. Chile would be in a position to supply this information in the future.

Chile

Central Government Procurements 1994

Construction 56%



As regards the share of services procurement in domestic output and consumption, it is not possible to provide reliable information since the data on the consumption and output of services in the national accounts are classified differently from those used for compiling government procurement data. Chile would be in a position to supply this information in the future.

WORLD

RESTRICTED
TRADE
S/WPGR/W/11/Ad

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17 January 1997

ORGANIZATION

(97-0145)

Working Party on GATS Rules

Original: English

COMMUNICATION FROM INDIA

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of India to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Government procurement is defined as the procurement made for and on behalf of the Government. This includes Central Government, State Governments, Public Sector undertakings and Public bodies.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

Each Government Department has an administrative structure to look after their procurement activity, and assistance of an outside agency is sought whenever necessary. Purchases by the Government are decentralized, except common user items for which Rate Contracts are concluded by the Directorate General of Supplies and Disposals (DGS&D), the central purchase organisation of the Government. This organisation in addition to Rate Contracts also entertains requests from Central Government, State Governments and public bodies for procuring their ad hoc requirements.

Laws and Regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

The purchases are broadly governed by the General Financial Rules (GFRs) of India and all procurement agencies evolve their own methods and procedure in keeping with the general guidelines states in the GFRs. The legal aspects of purchase were governed by the Arbitration Act of 1940 which has since been repealed and replaced by •The Arbitration and Conciliation Ordinance, 1996 (No.8 of 1996)•. The Ordinance has come into force on 25th January, 1996. The contracts concluded by the Central Purchase Organisation are generally governed by the General Conditions of the Contract as stated in the Form DGS&D-68 (Revised) read with instructions to Tenderers in Form No. DGS&D-229.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The rules governing contracts for services are generally the same as that for goods except that certain provisions are made to take care of the after sale-service wherever required.

Procurement Procedures Applied

4.(a) What procedures are followed in the procurement process?

The essential ingredients of the objective of public procurement are considered to be

- (i) procurement of specified quantity and specified quality,

- (ii) procurement on competitive basis at the lowest reasonable price, and
- (iii) procurement with a planned timely delivery.

The methods of purchase adopted are:

1. By advertisement - open /advertised tender.
2. By direct invitation to limited number of firms - Limited Tender.
3. By invitation to one firm only - Single Tender.
4. By negotiation to one firm only - Single Tender.
5. By repeat orders.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Open Tender system i.e. Invitation to Tender by Advertisement is used as a general rule. Limited Tender system is adopted where the demand is urgent, sources of supplies are definitely known and sufficient reasons exist to indicate that it is not in the public interest to call for tenders by advertisement. A single tender is issued for proprietary items. Ab-initio negotiations are undertaken in extreme urgency to meet the emergent demand within a given time frame where sources of supplies are known.

(c) What are the time limits for submission of bids?

The time limit for submission of bids are as under:

1. Tender by Advertisement - 71 days from the date of issue of tender notice.
2. Limited tender - 30 days from the date of issue of tender.
3. Negotiation } Time is fixed keeping in view the
- } urgency of requirement
4. Single Tender }

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

All Tender Notices are published in the Indian Trade Journal, a magazine published by the Directorate General of Commercial Intelligence and

Statistics, Calcutta which is a weekly document. Copies of the Tender Notices are also sent to the known prospective suppliers. GFRs of the Government of India also provide the Tender Notices can be published in two National daily Newspapers. The publications are made in English and Hindi. The State Governments may also publish the Tender Notices in the local language papers.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

For domestic bidding, a uniform procedure is adopted for publicity irrespective of value. However, for global tendering, Tender Notices are also published/notified through Indian Embassies all over the world and copies are also given to the local representatives of Embassies/ High Commissions.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The Tender Notices normally contains the following details:

1. Name of the procurement agency.
2. Description of items.
3. Specifications applicable.
4. Quantities to be procured.
5. Price of the Tender Set.
6. Due date of opening of tender.
7. Tender sales points.
8. The last date up to which tenders are to be kept valid.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Advertised Tender sets are sold on payment of fees as per scale given below:-

Estimated value of first Tender the Tender. including accompanying	Price (Rs.) of the set schedule.
(i) Up to Rs.5,000,000	Rs.100/-
(ii) from Rs.5,000,000 to Rs.10,000,000	Rs. 250/-
(iii) from Rs.10,000,000 to Rs.50,000,000	Rs. 500/-
(iv) above Rs.50,000,000	Rs.1000/-

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

The information in Tender Notices is also transmitted through NICNET programme of the National Informatic Centres.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

DGS&D as a Central Purchase Organisation have a system of registering firms for various items. National Small Industries Corporation (NSIC) is also authorised to register small scale industries under single point registration programme. Rate Contracts are only awarded to firms registered with DGS&D/NSIC. Unregistered/untried firms are considered for ad hoc tenders. The Registration Certificate issued stipulates certain monetary limits depending upon the financial reports obtained from the bankers and their turn-over.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

Unregistered/untried firms are normally considered for placement of ad hoc orders up to 20% of the Tender Enquiry quantity. Even firms registered are considered for quantities up to twice their monetary limit. The contracts for operational demand are placed only on past supplier.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

The lists of firms registered for an item and past supplier is maintained by each purchase unit. For firms who quote against tenders, a capacity report is called for through the Inspectorate. The registration granted by the Registration Branch is permanent but is reviewed/updated after every three years.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

All Tender Enquiries issued for concluding Rate Contracts stipulate a condition that Rate Contract shall be awarded only to such firms who are registered on the date of Tender opening for the item or get themselves registered within 90 days of the date of Tender opening. A firm registered for allied items is considered as registered. Another essential requirement for award of Rate Contract is that the firms have to meet the performance level during the last three years as specified in the Tender Enquiry. For ad hoc tender, however, the criteria for award of contract is not indicated in the Tender Enquiry, except that it is stipulated that firms not registered with DGS&D or NSIC or the procurement agency are to be considered only if the bids are submitted with an earnest money as specified in the Tender Enquiry. Normal scale of seeking earnest money is 2% of the likely value of the tender.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

No.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

The main parameter of the policy relating to purchase and price preference are as under:

(i) Small Scale Sectors are entitled for a price preference up to 15% over the large scale sector. But the price preference to Small Scale Sector over Large Scale Sector is not automatic and is considered on merits of each case.

(ii) Public Sector Undertakings are entitled for purchase preference. This facility is valid up to 31.3.97.

(d) Do the procurement criteria differ according to sector or region of the economy?

Certain sectors of industry are given preference as explained against 7(a). No preference is accorded on regional basis. Certain regions depending upon the locations are given certain concessions in taxes and duties by the Central/State Governments. The procurement is decided based on the ultimate cost to the purchaser.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

Purchasing authority is expected to award contracts keeping in view the laid down policy and also the capacity of the individual firms and delivery requirements. Except this no other discretion is available to the Purchase Authority. The margin of preference is regulated by the policy of purchase/price preference as detailed against 7(a). Negotiation, if resorted to, is conducted with all the eligible tenderers.

Disclosure of bids received and contracts awarded***8.(a) How are tenders received, registered and opened?***

Tenders are received through the Tender Box in a sealed cover. These are duly registered in a separate register after taking tenders from the tender box and opened in public at the specified time.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

The unsuccessful tenderers are notified through a standard regret card. At present, there is no requirement to publish details of the contracts awarded.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

The competent authority is required to record the reason for rejection of the bids. The unsuccessful tenderers are not given the reason for rejection of their bids.

Treatment granted to domestic and foreign services and/or suppliers***9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the***

working definition of •domestic• in relation to domestic services and suppliers.

The domestic bidders are treated at par with the foreign bidders and the ultimate price available to the user department is the determining criteria.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

The unsuccessful bidders can lodge their complaints to the concerned procurement agency or to the Public Relation Officer. Whereas disputes arising out of the contracts were governed by the Arbitration Act of 1940 which has since been replaced by •The Arbitration and Conciliation Ordinance, 1996 (No.8 of 1996)• but any dispute at pre-contract stage can only be petitioned by the aggrieved party before the court.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

No.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***
- ***by origin of services and suppliers.***

Service procurements are integral part of the general procurement contracts and no separate data have been maintained.

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

In view of 12(a) above, this information cannot be furnished.

WORLD

Corr.1*

ORGANIZATION

RESTRICTED

TRADE
S/WPGR/W/11/Add.13/

3 January 1997

(97-0011)

Working Party on GATS Rules Original: English

COMMUNICATION FROM THE REPUBLIC OF KOREA

Response to the Questionnaire on Government Procurement of Services

Corrigendum

The following communication is being circulated at the request of the Republic of Korea to Members of the Working Party on GATS Rules.

Following are the corrections to document S/WPGR/W/11/Add.13 (10 December 1996):

- Page 5, question 6(a), fifth line: •..., there is no restriction...• should read: •..., there is a restriction...•.
- Page 8, question 10(2), third paragraph, first line: •... who has no objection...• should read: •...who has any objection...•.

*English only

WORLD

d.11

ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Ad

2 January 1997

(97-0112)

Working Party on GATS Rules Original: English

COMMUNICATION FROM AUSTRALIA

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of Australia to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Government procurement is the entire process by which government agencies acquire from external sources the resources they need to carry out their missions and administer their programs. This includes:

- all types of consultancies and professional services;
- construction and related services;
- training for Commonwealth personnel;
- services procured for public utilities; and

-financial and operating leasing including the leasing of equipment and real property, as well as outright purchase.

Government procurement also includes outsourcing or contracting out for goods or services that typically have previously been provided from internal sources. These services may involve program delivery such as services to lines as well as program support such as office cleaning or other property services.

Administrative structure

2.How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

Australia is a federation. In addition to the national or Commonwealth Government, there are six State Governments and two Commonwealth Territory Governments. The third tier of government is local government.

The Commonwealth Government and each of the State and Territory Governments have their own procurement legislation policies and procedures. There is no national regulation of government procurement. The Commonwealth, State and Territory governments and New Zealand are, however, parties to the Government Procurement Agreement (GPA) which commits them to:

- remove discrimination among themselves in government procurement; and
- work in a coordinated way to improve procurement practices and procedures and to introduce greater uniformity.

The principal agency for the implementation of this intergovernmental agreement is the National Supply Group (NSG), a body of senior State, Territory Commonwealth and New Zealand officials set up to consider broad strategy issues relating to public sector procurement and supply.

The NSG is responsible for reinforcing the objectives of the GPA including promoting commonality in procurement policies and practices.

A.Commonwealth Government Procurement

(i)Administrative Structure

In the Commonwealth government, the management of procurement is substantially decentralised with each agency being responsible for its own procurement within a centrally prescribed framework of procurement policy and advisory guidance on best practices and techniques. This framework is set out in the *Commonwealth Procurement Guidelines* issued by the Minister for Administrative Services under the authority of the *Audit Act 1901* and Finance Regulations.

At present, there are thirteen of these Guidelines.

1. Getting Value for Money
2. Open and Effective competition and Gazettal of Purchasing Information
3. Ethics and Fair Dealing
4. Planning Government Procurement
5. Using Staged Procurement
6. Using Specifications
7. Negotiation
8. Managing Risk in Procurement
9. Managing Performance
10. Benchmarks for Procurement Decisions
11. Know Your Market
12. Australian and New Zealand Supplies
13. Contracting for Consultancy Services

The Guidelines are currently being revised for reissue in an updated and consolidated form.

The Government also expects Government Business Enterprises (GBEs), unless specifically exempted, to operate in accordance with the Government's procurement policies, but excluding the requirements concerning gazettal of procurement matters and use of Common Use Arrangements (CUAs).

CUAs are standing offers for Information Technology and general goods and services arranged by Purchasing Australia for common use supplies to meet the needs of all Commonwealth agencies.

(ii) Central procurement entities

There are a number of entities in the Commonwealth Government with procurement responsibilities and functions as described below.

Department of Administrative Services

Under the Administrative Arrangement orders, the Department of Administrative Services (DAS) is responsible for coordination of purchasing policy and civil purchasing. Areas within DAS that have central procurement responsibilities include:

Purchasing Australia

Purchasing Australia administers the Commonwealth Government's purchasing and disposals framework and plays a major role in contributing to its development in conjunction with other government agencies. It manages the development of the *Commonwealth Procurement Guidelines* for issue by the Minister for Administrative Services.

Other services and support provided to Commonwealth buyers include:

- Common Use Arrangements (CUAs): Purchasing Australia manages CUAs for use by other agencies. These cover the supply of Information Technology (IT) and other commonly used goods and services;
- Office of Government Information and Advertising (OGIA); OGIA provides advice and assistance on advertising, market research, public relations, strategic planning, marketing, government information policy and the content and appropriateness of printed material for public use. It manages the centralised arrangements for Commonwealth advertising;
- surplus asset disposal;
- assistance with contracting;
- facilitating the implementation of electronic commerce in Commonwealth purchasing;
- buyer training and initiatives to improve the quality and availability of training; and
- publications and other advisory material on procurement matters.

Purchasing Australia also provides support to the general supplier community through the following mechanisms:

- A Supplier Development Program, which assists small to medium enterprises to access the Commonwealth marketplace by linking suppliers with buyers, providing information and facilitating skills development. The program includes Meet the Buyers Trade Fairs, which provide an opportunity for suppliers and government buyers to meet and open communication channels, and information and publications to assist suppliers in dealing with the Government, e.g. the *Guide to the Government Marketplace*, and
- Government Electronic Marketplace Service (GEMS), which provides information through the Internet about current Commonwealth and New Zealand Government request for tenders, dates for government auctions of surplus goods, a range of material about Australian government purchasing policies and special purchasing opportunities.

Public Works Policy Group

The Public Works Policy Group (PWPG) provides assistance to agencies in the application of relevant public works policies. The PWPG promotes the implementation by agencies of best practice in the procurement of construction and related services, and facilitates on-going development of best practice strategies.

The PWPG comprises an Advisory Committee, chaired by the Secretary of DAS, with special expertise drawn from government agencies, the construction

industry and trade unions, and a secretariat within the Canberra office of DAS.

Other Central Procurement Bodies

National Procurement Board

The National Procurement Board (NPD) monitors, reviews and report on the efficiency and effectiveness of the Government's buying framework and plays a key role in ensuring that the Government's policies are carried out by all agencies.

The NPB has an independent chairman and membership drawn from industry sectors, unions and government departments. It is served by a Secretariat located in the Department of Administrative Services in Canberra.

B.State and Territory Procurement Structures

Information on the administrative structure of individual State and Territory procurement regimes is not available. However, the following list identifies the central procurement organizations within State and Territory Governments.

New South Wales: The State Contracts Control Board established under the *Public Sector Management (Stores and Services) Act 1988* has responsibility for the regulation of New South Wales Government Procurement activity.

South Australia: The State Supply Board is responsible for procurement administration in South Australia.

Western Australia: Under the *State Supply Commission Act 1991* the State Supply Commission has responsibility for the conduct of the supply process across the whole of government.

Queensland: The Queensland State Purchasing Council has responsibility for the administration of government procurement within the State.

Victoria: The Victorian Government Purchasing Board is responsible for the administration of government procurement within the State.

Tasmania: The State Purchasing and Sales Division in the Department of Treasury and Finance, has responsibility for the administration of government procurement within the State.

Northern Territory: The Department of Asian Relations, Trade and Industry has responsibility for the administration of government procurement within the Northern Territory.

ACT Government: The ACT Supply and Tender Agency has responsibility for government supply (purchasing) policy within the Australian Capital Territory.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

General

The Government Procurement Agreement 1986, is an administrative agreement to which all Australian States and New Zealand are signatories. It prohibits the parties to the Agreement from applying preference schemes against each other. It also prohibits forms of discrimination between the parties to the Agreement based on the State of origin of goods and services in government procurement. The Agreement is currently under review.

A.Commonwealth Laws and Regulations

Primary legislation relating to Commonwealth Government procurement is the *Audit Act 1901*, Finance Regulations made under the *Audit Act* set the regulatory framework for procurement.

The Regulations require that those agencies involved in procurement:

- have regard to *Commonwealth Procurement Guidelines* issued by the Minister for Administrative Services;
- choose procurement methods that will promote open and effective competition;
- provide for the notification of contracts arranged and standing offers above \$2,000 in value in the *Commonwealth (Purchasing and Disposals) Gazette*; and
- not enter into procurement commitments unless satisfied that they could not obtain better value for money for the Commonwealth.

Legislation/regulations that give exemption to the normal government procurement regulation practices

The Finance Regulations provide that the Secretary to the Department that is responsible for procurement of supplies may, in writing, direct that details of contracts or standing offers that (in his or her opinion) are exempt matters under the *Freedom of Information Act, 1982* are not to be published in the *Commonwealth (Purchasing and Disposals) Gazette*.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

There are no separate regulations for the procurement of goods as opposed to services in Commonwealth government procurement.

B.State and Territory Laws and Regulations

Generally, State and Territory laws and regulations require competitive procurement practices, value for money and transparency in government procurement. The use of public tendering processes is required for procurements above certain thresholds. (See section 5B).

The following laws and regulations apply to specific Australian State and Territory procurement regimes:

New South Wales: The legislation governing New South Wales State purchasing is the *Public Sector Management (Stores and Services) Act 1988*.

South Australia: The legislation governing South Australian government purchasing is the *State Supply Act 1985*.

Western Australia: The legislation governing Western Australian State government procurement is the *State Supply Commission Act 1991*.

Queensland: The legislation governing Queensland State government procurement is the *Financial Administration and Audit Act*. Compliance with State purchasing policy is required by the Public Finance Standards issued under the Act.

Victoria: The legislation governing Victorian State government procurement is the *Financial Management (Amendment) Act 1994*.

Tasmania: The legislation governing Tasmanian State government procurement activities is the *Financial Management and Audit Act*.

Northern Territory: The legislation covering Northern Territory government procurement is the *Financial Administration and Audit Act*.

ACT Government: The legislation governing government procurement in the Australian Capital Territory is the *Australian Capital Territory Audit Ordinance 1989*.

Distinction Between the Procurement of Goods and Services

We are not aware of any separate regulations for the procurement of goods as opposed to services in State and Territory government procurement.

However, the monetary preferences applying in State and Territory purchasing as set out in the Government Procurement Agreement apply only to goods and related services and thus do not apply to procurement of services alone (see Section 9B).

Procurement procedures applied

A.Commonwealth Procurement Procedures

4.(a)What procedures are followed in the procurement process?

Commonwealth government procurement policy emphasises the achievement of value for money through open and effective competition, ethics and fair dealing, accountability and support for other government policies including industry development.

Procurement practices and procedures are directed to achieving the best available value for money in the acquisition of goods and services for government programs on the basis of a comparison of relevant benefits and cost viewed from a whole of life perspective.

Open and effective competition is the central operating principle of Commonwealth procurement, permitting a range of procurement methods. It requires transparency in the procurement process, including access to opportunities for potential suppliers and ease of entry for new and small sellers.

The general guidance provided to agencies enables them to choose open, limited or selective procurement procedures. The Commonwealth does not prescribe the procurement method to be used nor does it set minimum limits on the numbers of offers to be sought. Requirements and market conditions vary and the person responsible for deciding how supplies are to be procured must consider each case on its merits.

This decision should take into account both the characteristics of the requirement and the particular market at the time. A consideration of these factors will determine whether:

- public (or open) notification is justified;
- effective competition can be achieved through confining (or limiting) invitations to known or qualified/approved suppliers; or
- market factors require single tendering or a similar approach.

(b)Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

In general, there are no threshold values for the application of particular procurement techniques or policies. However, procurements over \$100,000 in cost or of special complexity or sensitivity are to be handled by Accredited Purchasing Units in agencies to ensure that procurement staff have the necessary levels of competence.

(c) *What are the time limits for submission of bids?*

There is no general Commonwealth policy stipulating time limits for the submission of tenders. Decisions on this issue are at the discretion of individual government agencies.

B.State and Territory Procurement Procedures

State and Territory procurement procedures generally follow those of the Commonwealth government in emphasising the achievement of value for many through open and effective competition, ethics and fair dealing and accountability. However, they tend to be more prescriptive in relation to process. All State and Territory procurement regimes retain public tender thresholds as set out in section 5B below.

There is no uniform time limit for the submission of tenders across State and Territory procurement regimes. Time limits are ordinarily left to the discretion of individual agencies but are based on an informed assessment of the necessary time required for tenderers to respond to any individual tender in view of the degree of complexity involved.

Publicity for inviting tenders

5.(a)How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

Gazettal Requirements

The *Commonwealth (Purchasing and Disposals) Gazette* must be used to advertise all publicly available procurement opportunities including, but not limited to, expressions of interest, invitations to bid, to qualify as approved suppliers, to offer proposals or the like.

In addition to meeting the gazettal requirements, agencies may advertise in other media, for example the tender columns of newspapers or trade magazines. They must use the Commonwealth's centralised advertising arrangements, that is arrange advertisements through the Commonwealth's designated advertising agent.

All gazetted invitations are also placed on the Government Electronic Marketplace Service (GEMS) by the Australian Government Publishing Service (AGPS).

English is the language used in these media.

Gazettal of opportunities is not required wherever the decision is to confine an approach, for example, to a sole source, a limited field of suppliers or to a list of approved suppliers established following a publicly notified selection process.

The requirement to use the *Commonwealth (Purchasing and Disposals) Gazette* does not apply to Government Business Enterprises and other agencies not operating on the Commonwealth Public Account.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

There is no financial threshold for the advertisement of Commonwealth government requests for tenders. The determining factor is the decision to approach the public at large.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Details of procurement opportunities to be published in the *Commonwealth (Purchasing and Disposals) Gazette* include:

Portfolio

Department or agency

Branch

Reference Number

General Description of Requirements

P&S Code (Product and Service Classification)

Document Centre from where relevant documentation and/or project information is available

Commercial Inquiries (contact name and telephone)

Technical Inquiries (contact name and telephone)

Closing Date

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Generally, tender documents are free of charge. Any decision to charge, and the amount charged, for tender documents is at the discretion of individual government agencies. Where charges are imposed these are mainly intended to cover basic costs involved in preparing and distributing tender documents.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

All opportunities notified in the *Commonwealth (Purchasing and Disposals) Gazette* are also placed on the Government Electronic Marketplace Service (GEMS). GEMS is an electronic information service which provides information through the Internet about current Commonwealth and New Zealand Government requests for tenders, dates for government auctions of surplus goods, a range of material about Australian government purchasing policies and special purchasing opportunities. Its address is: <http://www.gems.gov.au>.

GEMS also provides sample information about government contracts awarded to help suppliers with market research. Links to State Government tenders are also being developed.

GEMS provides links to State and Territory electronic services available on the Internet.

All enquiries regarding the GEMS service can be mailed to gems.das.gov.au.

B.State and Territory Governments

The following rules apply to the advertisement of procurement opportunities within Australian State and Territory jurisdictions:

New South Wales: All government tenders above a threshold of \$50,000 are advertised in the local media. The relevant publication is the *Sydney Morning Herald*.

South Australia: All government tenders above a threshold of \$10,000 for government agencies, and \$20,000 for government instrumentalities, are advertised in the local media. The relevant publication is the *Adelaide Advertiser*.

Western Australia: Public tenders are called where the estimated value of the goods or services exceeds \$50,000. All government tenders over a threshold of \$50,000 are advertised. As a minimum, public tenders are to be advertised in the appropriate section of a newspaper with state wide circulation (the *West Australian* newspaper).

Queensland: All government tenders over a threshold of \$100,000 are advertised in the *Queensland Government Procurement Gazette*.

Victoria: All government tenders over a threshold of \$50,000 are advertised in the local media. The relevant publications are *The Age* and *The Herald Sun*.

Tasmania: All government tenders over a threshold of \$50,000 are advertised in local media. The relevant publications for gazettal are *The Mercury and The Examiner*. Where appropriate, tenders are also advertised in the national newspapers.

Northern Territory: All government tenders over a threshold of \$10,000 must be gazetted. The relevant publication is the *Northern Territory Government Gazette*.

ACT Government: All government tenders over a threshold of \$50,000 are published in the local newspaper, *The Canberra Times*.

Publication in Electronic Media

The following services are provided by State/Territory procurement regimes for the publication of procurement opportunities through electronic media:

The ACT Government publishes procurement opportunities through its local electronic media system, BASIS. BASIS is an on-line tender supply program which links purchasing officers with companies from the ACT and the southern New South Wales region. This system is not linked with the Internet.

The Victorian Government publishes some procurement opportunities on its internet site, *Tenders on Line*. The relevant internet address is: <http://www.vicnet.net.au/tenders/>

General information about Victorian State procurement can be obtained from the Victorian Government Procurement Board internet site: <http://www.vgpb.vic.gov.au>

The New South Wales Government publishes procurement opportunities on its internet site, NSW Government Business Opportunities. The relevant internet address is: <http://www.dpws.nsw.gov.au/tenders/>

As noted in Section 5A, the GEMS system provides links to any relevant State and Territory services available on the Internet.

Requirements laid down for possible suppliers

A.Commonwealth Procurement

6.(a)Are there registration, residence or other requirements for potential suppliers?

The Commonwealth government has no registration or residential requirements for potential suppliers.

However, the Commonwealth has put in place an Endorsed Supplier Arrangement under which only those suppliers who can demonstrate a commitment to world best practice in terms of quality standards and service, and long term value adding activities in Australia and New Zealand are eligible to supply information technology and major office machine products under common use arrangements.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

All domestic suppliers employing more than one hundred people must comply with the *Affirmative Action (Equal Employment Opportunity for Women) Act, 1986*.

Within the broad parameters of open and effective competition, buyers must be satisfied that the supplier selected will deliver the best available value for money. Simple procurements from reputable, established suppliers would not require an assessment of their capabilities. A detailed assessment may be required, however, when buying from unknown suppliers or suppliers of complex and high-cost goods and services. The services of in-house financial and technical experts or a specialist organisation may be utilized in these circumstances to assist with supplier assessment.

Conditions of assessment vary according to the nature of the requirement and at the discretion of the buying agency. However, the general aims of supplier assessment are as follows:

- to determine the capability of suppliers to meet the specified requirements including technical competence, available capacity, relevant experience, availability of key personnel, financial stability, management competence;
- to identify potential risks to the achievement of the primary procurement objectives;
- to acquire satisfactory evidence of overall performance and reliability in undertaking similar projects in either the private or public sectors;
- to evaluate the relative strengths and weaknesses of different suppliers as part of the bid evaluation process;
- to identify areas requiring special attention by agencies in managing the procurement project including, for example, ANZ industry development where appropriate; and
- to identify for individual suppliers key issues and priorities which must be addressed in negotiating and managing the contract.

Financial Guarantees

Financial guarantees are generally set at the discretion of individual Commonwealth government agencies. They include bank guarantees and retention sums which are normally sought to secure the timely performance of the contractor.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

The Commonwealth government has put in place the following general arrangements which act as approved supplier lists:

- Common Use Arrangements (CUAs) which are standing offers with companies to supply goods and services based on pre-negotiated terms and conditions and at agreed prices. Issues such as trade terms, delivery arrangements, discount schedules and all other contract details are agreed prior to suppliers being added to the contracts. Commonwealth CUAs cover most requirements for recurring needs across departments and are continually monitored to ensure that suppliers meet required standards.
- An Endorsed Supplier Arrangement for purchases of information technology and major office machines which recognises suppliers who can demonstrate a commitment to world best practice in terms of quality, standards and service, and long-term value-adding in Australia and New Zealand. Only endorsed suppliers can supply IT and major office machine products to government agencies under CUAs. The list of Endorsed Suppliers is reviewed biennially.

B.State and Territory Procurement

State and Territory procurement regimes generally follow Commonwealth procurement practice in emphasising open and effective competition as the central principle governing the selection of suppliers.

Some preference margins apply in State/Territory procurement. These are outlined in section 9B.

Criteria for assessing bids and awarding contracts

A.Commonwealth Procurement

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

Obtaining value for money to Government is the central principle guiding Commonwealth procurement. There are no centrally prescribed contract award criteria. Agencies must decide their criteria for individual procurements in context. However, general guidance is provided on value for money.

For every procurement, Commonwealth agencies:

- evaluate the suppliers who have made offers;
- evaluate each offer seeking clarification from the bidder where necessary by applying only the evaluation criteria notified to bidders; and
- identify the bid which represents best available value for money.

The determination of relative value for money includes:

- establishing or verifying the competence, viability and capability of the prospective suppliers;
- confirming that the supplies offered comply with specified requirements including fitness for purpose and delivery;
- taking account of the benefits and costs involved on a whole of life basis;
- assessing and allowing for relevant risks; and
- ensuring avoidance of unnecessary costs.

Evaluation must be seen to be competent, fair and unbiased and Commonwealth buyers must maintain confidentiality and probity throughout the evaluation process.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

There are no local content requirements or preferences for local suppliers in general procurement. However, agencies are required to investigate Australian and New Zealand (ANZ) industry capability and provide fair opportunity for suppliers to compete.

The Government does have some industry development programs. These include the Civil Offsets Agreement and the Partnerships for Development Program as outlined below.

The Commonwealth and States/Territories became signatories to the Australian Civil Offset Agreement in 1988. The agreement's objective is to contribute to the enhancement of Australia's industrial and technological development by establishing internationally competitive industries in Australia. The

Agreement states a preference for long term offsets programs which are not linked directly to any single Government purchase but which provide maximum benefits to local industry.

The Commonwealth abolished its civil offsets policy in 1992 and the States/Territories, while maintaining signatory status to the agreement, only occasionally apply offsets. The agreement is largely inactive although it continues to provide a framework for those States that continue to operate offsets programs. It also serves as the umbrella agreement for the Partnerships for Development Program (Pfd) in the international information technology and telecommunications (IT & T) sector.

The Pfd program and the Fixed Term Arrangements (FTA), encourages IT & T companies operating in Australia to make use of Australian skills and resources. Partners are encouraged to expand their operation by undertaking industry development activities in Australia that are long term, strategic to the partnership and make sound commercial sense. Companies are encouraged to seek out Australian products, services and skills with international prospects and mutually beneficial returns.

Companies with annual IT & T sales to Australian governments over \$40 M per annum are invited to sign a Partnerships for Development (Pfd) agreement. Firms with less than \$40 M per annum which wish to have their commitment to industry recognized, can enter into a FTA. Both programs are open to Australian and overseas companies.

Companies who have entered the Pfd/FTA program and are performing satisfactorily against their agreement will be considered as having demonstrated a commitment to investment and growth in their Australian activities. Activities and investments volunteered by Partner companies should be integral to global corporate strategies. Activities recognized under R&D, export, export facilitation, technology transfer, training, strategic investment and venture capital investment. The program also recognizes investment in establishing a regional headquarters in Australia, and the export of regional headquarters services, as an industry development activity.

(c)Is preference given to any particular enterprises or group of enterprises? If so, please specify.

There are no preferences given to any particular enterprises or groups of enterprises.

(d)Do the procurement criteria differ according to sector or region of the economy?

As noted in Section B below, some differences apply with respect to local preference margins associated with State and Territory procurement. These preference margins are outlined in Section 9B below.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

As noted in Section 1 above, the management of Commonwealth procurement is substantially decentralised. Each agency has the discretion to manage its own procurement programs within a centrally prescribed framework of procurement policy and advisory/guidance on best practices and techniques.

B.State and Territory Government Procurement

State and Territory Governments have their own procurement legislation, policies and procedures. Generally speaking, these correspond with the Commonwealth in their emphasis on obtaining value for money to government through open and effective competition. However, some differences apply with respect to local preference margins associated with State and Territory procurement. (See section 9B).

Disclosure of bids received and contracts awarded

A.Commonwealth Procurement Procedures

8.(a) How are tenders received, registered and opened?

Offers received are treated as commercial in confidence with information restricted on a need-to-know basis. All offers must be kept secure and sealed until the designated opening time. Commonwealth agencies are required to have procedures in place for receiving, storing, opening, registering, handling and filing offers.

Late submission of offers is not normally admissible. There is greater scope for flexibility in the treatment of registrations of interest and like material where the risks arising from a late submission are not as serious as for a late tender or quotation.

Government buyers are not permitted to canvass offers after the closing date from suppliers who have not submitted bids.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

Commonwealth agencies are required to notify in the *Purchasing and Disposals Gazette* details of any contract arranged for supplies to be procured or used in Australia where the total estimated liability is \$2000 or more, and standing offers.

Contracts arranged can include any commitment for supplies arranged, for example an oral or written contract, lease, corporate credit card transaction or purchase order. This includes procurements against any standing offer to supply arrangement such as service orders, period orders and national or

otherwise approved supply agreements for common use supplies, as well as period contracts, service contracts and maintenance agreements.

The procurement information provided includes:

Portfolio
Department or agency
Branch
Purchase Reference
Description of Supplies
Value (\$A)
Period Contract (if applicable)
Contractor (Supplier)
P&S Code (Product and Service classification)

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

All suppliers who make an offer are entitled to a debriefing.

Typically the debriefing covers the reasons why the unsuccessful bidders were not selected. Debriefings may also assist suppliers who have won Commonwealth contracts previously and want to know how they performed against the evaluation criteria so as to continue to enhance their performance.

B.State and Territory Procurement Procedures

Generally speaking, State and Territory procurement procedures for the treatment of offers correspond with those of the Commonwealth noted above. However, some differences do apply, particularly in relation to the practices adopted in the opening of tenders in some States.

Receipt of Offers

Offers received must be treated as commercial in confidence with information restricted on a need-to-know-basis.

Offers must be kept secure and sealed until the designated opening time. State and Territory procurement agencies have procedures in place for receiving, storing, opening, registering, handling and filing offers.

Late submission of offers is not normally admissible. Government buyers are not permitted to canvass offers after the closing date from suppliers who have not submitted bids.

Opening of Tenders

The particular approach adopted in opening tenders is at the discretion of individual State and Territory procurement agencies. However, normal procedure is to convene a Tender Opening Committee consisting of not less than two members which undertakes the opening and scheduling process in a secure office. The public opening of tenders is sometimes practised in the case of higher value tenders.

Notification of Tender Outcomes

Standard procedure for State and Territory governments is to formally notify successful tenderers. However, the method for notification of outcomes to unsuccessful tenderers varies. Alternative modes of notification used by State and Territory governments include the placing of advertisements in the local media for contracts above a specified threshold, and/or the placement of tender outcomes on public notice boards within State/Territory procurement offices.

Debriefing Requirements

Normal practice is for procurement regimes to provide debriefings to unsuccessful tenderers on request. The debriefing typically covers the specific reasons why a tender was unsuccessful.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

A. Commonwealth Procurement

Open and effective competition is the central operating principle of Commonwealth procurement. There are no local content requirements or preferences for domestic suppliers in general procurement which would accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member.

B. State and Territory Procurement

Preference margins apply in Australian State/Territory procurement where one or more suppliers claim Australian or New Zealand (ANZ) content. These preference margins are applied by way of a surcharge on the non-ANZ portion of the tender.

The following preference margins are applied within individual States and Territories:

New South Wales	<p>An internal preference policy ranging from 2.5-5% applies when an offer or tender has been received from a specified NSW region and the preferred tenderer would have been from metropolitan NSW or overseas (except New Zealand).</p> <p>A 20% preference margin applies where one or more suppliers claim Australian or New Zealand content.</p>
South Australia	<p>A 20% preference margin applies where one or more suppliers claim Australian or New Zealand content.</p>
Western Australia	<p>A 10% preference margin applies to goods manufactured in WA regional areas as against the Metropolitan Statistical region up to a maximum of \$100,000.</p> <p>A 10% preference margin applies where one or more suppliers claim Australian or New Zealand content.</p>
Victoria	Nil
Queensland	<p>A 20% industry development clause applies in information technology contracts. The Queensland Government advises that this offset applies to all bidders, regardless of their State of origin and is not a preference margin as such.</p> <p>A 20% preference margin applies where one or more suppliers claim Australian or New Zealand content.</p>
Tasmania	<p>A 10% preference margin applies where one or more suppliers claim Australian or New Zealand content.</p>
Northern Territory	<p>A 10% preference margin applies where one or more suppliers claim Australian or New Zealand content.</p>
ACT Government	Nil

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

There is no special Commonwealth-wide system for dealing with procurement complaints or providing remedies for complainants. There are, however, a number of avenues of complaint available.

General Complaints

Suppliers who complain about procurement processes or decisions are entitled to receive a fair hearing from agencies. Agencies should accept complaints in the normal course of events in accordance with whatever procedures they have in place for handling complaints in general. Often buyers and suppliers can resolve them at the working level.

Any supplier may complain to the *Commonwealth Ombudsman* concerning actions or decisions by a buying agency which the supplier considers to be wrong, unjust, unlawful, discriminatory or unfair. If the Ombudsman finds a complaint to be justified, the Ombudsman may recommend a remedy, such as:

- an apology
- a reconsideration of or changes to a decision
- changes to agency rules or procedures
- compensation for losses or damages caused by the agency's decision or action, or
- changes to the law that caused the problem.

Agencies are not compelled to accept a recommended remedy, but if the agency does not act upon the recommendations adequately, the Ombudsman may report to the Prime Minister and then to Parliament.

Complaints to the Designated Body

Under the terms of the Government Procurement Agreement (GPA), a supplier may complain to the Designated Body about alleged breaches of the GPA by Commonwealth bodies. (The Department of Administrative Services (DAS) is currently the Designated Body for this purpose).

The principal review provisions of the GPA require that the parties provide non-discriminatory access to their procurement for Australian and New Zealand suppliers and products, and maximise the competitive opportunities available to them.

If the Designated Body cannot resolve the complaint satisfactorily, it will be referred to the National Supply Group (NSG). If the NSG cannot resolve the complaint, it may refer it for ministerial consideration. There is no requirement that a procurement process be suspended as a result of a complaint.

B.State and Territory Procedures

Suppliers may address complaints about individual government procurement decisions to State/Territory procurement agencies where they consider they have a grievance. Where a supplier is not satisfied with the agency's response, the complaint may be referred to the relevant State/Territory Government Minister.

A supplier may also complain to the State/Territory Ombudsman concerning actions or decisions by a Government agency which the supplier considers to be wrong, unjust, unlawful, discriminatory or unfair. The State/Territory Ombudsman's powers are generally the same as those exercised by the Commonwealth Ombudsman.

II.MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11.Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

The Australian Government is a signatory to the *Australian New Zealand Government Procurement Agreement (ANZGPA) 1991*. The objective of this agreement is to remove discrimination in government procurement among the signatory parties. Members of the agreement include the Australian Commonwealth, State and Territory governments and the New Zealand government.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a)Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***
- ***by origin of services and suppliers.***

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

The following table provides available statistics on the number and value of service procurements compared with other types of procurements undertaken by the Australian Commonwealth government for the financial years 1990 through to 1995.

ANNEX I

Commonwealth Government Purchasing by Sector*

1990-91 to 1994-95**

Year	Primary	Manufacturing	Services	Grand Total
	\$,M	\$,M	\$,M	\$,M
1990-91	49.7	4999.7	1439.2	6488.6
	0.77%	77.50%	22.18%	100%
1991-92	31.2	2576.8	1666.1	4273.3
	0.73%	60.28%	38.99%	100%
1992-93	24.9	1730.7	2420.7	4176.3
	0.60%	41.44%	57.96%	100%
1993-94	13.2	2432.6	5214.6	7660.4
	0.17%	32.09%	68.78%	100%
1994-95	13.7	3107.2	4448.3	7581.1
	0.18%	40.99%	58.68%	100%*
*This total includes unallocated codes of \$11.9M or 0.15%.				

*Table compiled by the Electronic Commerce Office, Purchasing Australia using data from the Australian Government Publishing Service Database derived from the *Commonwealth (Purchasing and Disposals) Gazette*.

**These statistics include gazettal values for both contracts arranged and standing offers. However, the figures for standing offers are estimates only of the amounts to be spent under the standing offers. The statistics presented are also subject to limitations affecting the data source. These include a minimum \$2,000 threshold for the gazettal of government procurements which excludes all purchases below this value. In addition, the percentages quoted do not include some services which have not been bought through formal contracting processes (e.g. electricity, some telecommunications, rents and postal services).

B.State and Territory Procurement Statistics

Statistical information on State and Territory services procurement is not available.

*WORLD TRADE
ORGANIZATION*

RESTRICTED

S/WPGR/W/15
12 December 1996

(96-5319)

Working Party on GATS Rules

QUESTIONS RELATING TO AN EMERGENCY
SAFEGUARD MECHANISM IN GATS

Note by the Secretariat

The Working Party on GATS Rules agreed at its eighth meeting on 8 October 1996 that the following questions relating to the establishment of an emergency safeguard mechanism under GATS would be circulated as a working document of the Working Party. The Working Party agreed that those Members wishing to do so would provide written replies to these questions.

What is the justification and purpose of an emergency mechanism under GATS?

1. The question of what a safeguard mechanism would be for involves the following considerations:
 - a. Would an emergency safeguard for services be intended to deal with the kind of situation foreseen in Article XIX of GATT -- that is, a temporary threat to a domestic "industry" arising from increased imports? Would it have any other objective?
 - b. Are existing "safeguard" mechanisms in GATS, notably those contained in Article XII and Article XIV, sufficient to address any difficulties governments might encounter as a consequence of their GATS commitments? Similarly, does Article XXI provide an adequate vehicle for reversing or modifying scheduled commitments in the event of unanticipated difficulties?
 - c. Does the nature of commitments undertaken in GATS -- whereby Members may choose whether to schedule a sector, and may also condition market access and national treatment with respect to commitments that are made -- obviate the need for safeguards? Or would it be more appropriate to think in terms of the idea that the existence of a safeguard would allow governments to be more forthcoming with respect to their scheduled commitments?
 - d. What would be the economic objective of a safeguard -- to protect production, investors, or employment? Would it protect all domestic production, or only that part of production attributable to national suppliers? Would it aim to

protect investment by nationals, or all domestically based investments? What would be the objective of allowing departures from national treatment under modes 3 and 4? Is the distinction between establishment rights *per se* and post-establishment operations relevant in relation to possible safeguard measures under modes 3 and 4?

- e. Would a safeguard mechanism need to contemplate special provisions for developing countries or does the concept of progressive liberalization offer adequate leeway in this respect?
- f. Is there anything intrinsic to service transactions, such as intangibility, simultaneity of production and consumption, or the need for physical proximity between the producer and the consumer, which makes (some) services transactions different from goods transaction in ways that might influence arguments as to the necessity or utility of safeguard measures in services?
- g. Is anything intrinsic to services markets, such as the role and importance of regulatory regimes, standards and certification requirements, which makes services markets different from goods markets in ways that might influence arguments as to the necessity or utility of safeguards measures in services?
- h. Is anything intrinsic to the role of services in the economy, such as their important support and infrastructure role, which makes services markets different from goods markets in ways that might influence arguments as to the desirability of safeguards measures in services?
- i. Do Members maintain any emergency safeguard measures in national legislation? If so, what are these measures and how are they implemented?

What criteria might be brought to bear in determining when an emergency safeguard measure may be justified?

2. A number of questions can be identified in relation to the criteria that might apply in determining the circumstances in which emergency safeguard measures are to be used. The questions included below assume that essentially the same GATT concepts of increased imports, injury and causality would apply under an emergency safeguards mechanism in GATS.

- a. What, in terms of GATS, is the equivalent of increased imports under Article XIX of GATT? In mode 1, the cross-border flow of services may be similar to the import of goods, but the situation is quite different under other modes. How should the possibility of a safeguard be triggered in these circumstances?
- b. How should serious injury be determined? Injury to whom or what?
- c. What standards would be required to determine that increased competition from foreign sources caused injury to the national industry?
- d. How would the national industry be defined for the purpose of determining injury?
- e. Should a link be established between the nature of a specific commitment in a particular sector, including in relation to limitations on market access and national

treatment, and the availability of a safeguard measure? In other words, should the availability or nature of a safeguard be restricted where limitations have been inscribed?

f. What measurement and identification problems arise in services that might complicate the development of a safeguard instrument, and how should they be dealt with?

What form might a safeguard mechanism for services take?

3. If increased foreign competition and serious injury to domestic services or service suppliers have occurred, and causality between the two has been established, a question arises as to the characteristics of a safeguard measure that might be applied.

- a. What type of measure should be applied? Would taxes, foreign exchange restrictions, other quantitative limitations, or regulatory restraints be suitable as safeguard measures?
- b. What would be the implications of different modes of supply for the kind of measures employed?
- c. Would there be circumstances in which the application of a safeguard measure in respect of one mode of supply would provoke a demand for comparable measures in relation to other modes at the same time?
- d. Should safeguards be applied on a non-discriminatory basis in all circumstances?
- e. How quickly would it be possible for a Member to take a safeguard measure? Would the notion of •critical circumstances,• as developed in the Agreement on Safeguards, apply in the services area?
- f. What should be the duration of any safeguard measures adopted?
- g. Would safeguard measures be made degressive during the period of their application?
- h. Would a Member taking a safeguard action be required also to adopt adjustment measures?
- i. Would the application of safeguard measures be accompanied by compensatory adjustments in the schedule of the Member taking the measure?

WORLD

d.12

ORGANIZATION

RESTRICTED
TRADE
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10 December 1996

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Working Party on GATS Rules Original: English

COMMUNICATION FROM THE REPUBLIC OF POLAND

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the Republic of Poland to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

•Public procurement• - means procuring construction, the delivery of goods and performing services, financed fully or partially with public funds; (Art. 2(4)) The Act of 10 June 1994 on Public Procurement). •public funds• - means the following source of funds:

- a) funds from the state budget or the budgets of self-government units that are allocated for ordinary activity and capital investment activity;
- b) funds as defined in the Budgetary Act as •extra budgetary funds•;
- c) funds guaranteed, secured or for which the cost of the credit is co-financed by the state Treasury, the local self-governments or a union of self-governments;
- d) funds granted as foreign aid under international agreements, unless the agreement requires different procedures for using the funds.

The Act applies to public procurements issued by:

- 1) state units and support services created by the state budgetary units (including the ministries and central support offices);
- 2) units of self-governments;
- 3) funds established by state earmarks;
- 4) state and municipal entities that receive any public funds and perform public utility activities;
- 5) co-operatives, foundations and associations to the extent that they dispose of public funds.

The Polish term •zamówienia publiczne• is adopted from the historic reference to public acquisitions. The literal translation is ,public orders•, but as defined in the Act on Public Procurement (Dz. U. No. 76, Item 344) it is intended to mean •public procurement•.

The definition of •public procurement• encompasses only purchasing activities. It does not include selling government-owned property or granting concessions or licenses unless, within the scope of these activities, the government is actually purchasing goods, services or construction.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

The Polish system of public procurement is a decentralized system where the procuring entities are in the very centre of the process of procurement realization.

On 1 January 1995 a central administration agency was created - the Office of Public Procurement, working directly under the Prime Minister. It is a policy making agency and does not conduct any procurements except for its own needs.

The scope of activities of the Office includes:

- approving as provided in Art. 15 the selection of a procedure for conducting a public procurement other than the unlimited tendering procedure; establishing and maintaining the list of arbiters to review the appeals filed in procurement proceedings, and publicizing the list of arbiters in the Bulletin of Public Procurement;
- presenting an annual report to the Council of Ministers concerning the functioning of the public procurement system;
- disseminating, in coordination with appropriate Ministries, the general conditions and forms of contracts for public procurements, the rules and

standard procedures for conducting procurements and information related to conducting public procurements;

- preparing drafts of Acts and regulations concerning public procurement;
- recording and maintaining the list of public procurements, and collecting information about procurement planning, signed contracts, and performance of public contracts;
- preparing training programs, and conducting and encouraging training concerning public procurements;
- cooperating with foreign entities on matters concerning public procurement;
- issuing the official Bulletin of Public Procurement.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

The main laws concerning the public procurement system in Poland include:

- The Act on Public Procurement with the implementing ordinances and orders;
- The Budgetary Act;
 - The Highest Chamber of Control Act;
- The Protection of Economic Turnover Act;
- The Fighting of Unfair Competition Act.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

There are no separate procedures for the procurement of goods and services.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Article 13 of the Act states:

Public procurements shall be conducted according to the following procedures:

- 1) unlimited tendering;
- 2) limited tendering;

- 3) two-stage tendering;
- 4) negotiations-with-retaining-competition;
- 5) request-for-quotation;
- 6) single-source procurement.

The preferred procedure for conducting public procurements is unlimited tendering (Art. 14). Procedures other than unlimited tendering can be used only under the conditions specified in the Act.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Art. 15 of the Act states:

1. In public procurements valued less than 20.000 ECU and in public procurements financed with less than 20.000 ECU in public funds, unlimited tendering procedures are not obligatory and the following requirements of this Act shall not apply: the requirements related to the publication of announcements in the Bulletin of Public Procurement, written procedures, official records of proceedings, specification of essential provision of the procurement, time periods and deadlines, tender security and protests and appeals.
2. If the amount of the procurement exceeds 200.000 ECU, the selection of a procurement procedure other than unlimited tendering requires approval by the Chairman of the Office.
3. The Council of Ministers may, by ordinance determine before 30 September of every year, the obligatory thresholds limits reference in paragraphs 1 and 2 for the coming year beginning 1 January.

To determine the appropriate procurement procedure, this Article (15) together with Art. 71, subparagraph 7 divides procurements into four groups according to the estimated value of procurement:

- 1) Procurements valued 1.000 ECU or less - single-source procedures are permitted (Art. 71).
- 2) Procurements valued more than 1.000 ECU up to 20.000 ECU - simplified proceedings of the authorized procedures are permitted, only basic activities have to be recorded (Art.26), and use of any procedure other than unlimited tendering is determined by the procuring entity according to the conditions specified in the Act.
- 3) Procurements valued more than 20.000 ECU and less than 200.000 ECU - formal procedures are required and use of a procedure other than unlimited tendering is determined by the procuring entity according to the conditions specified in the Act.

- 4) Procurements valued more than 200.000 ECU - formal procedures are required and use of a procedure other than unlimited tendering requires approval of the Chairman of the Office of Public Procurement.

(c) *What are the time limits for submission of bids?*

The deadline set by the procuring entity for submission of tenders shall not be shorter than:

1) in an unlimited tendering

-6 weeks after the announcing of the tendering;

2) in a limited tendering

-4 weeks after the date of sending the invitation for tenders.

In justified cases and on motion of the procuring entity, the Chairman of the Office of Public Procurement may agree to establish shorter deadlines.

All required minimum deadlines must be counted from the date of the official tender publication in the Bulletin of Public Procurement.

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

The announcements of public procurements governed by the Act on Public Procurement are published in the Bulletin of Public Procurement issued by the Chairman of the Office of Public Procurement. The Bulletin is published 5-6 days a week. It has been published now for 17 months. The announcements are published in Polish but in especially justified circumstances, the Chairman of the Office of Public Procurement may agree to the preparation of the tender, including the announcement in a language commonly used in international trade.

Announcements in the media are totally to the discretion of the procuring media. Such announcements may be released first after the official announcements in the Bulletin.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

Announcements of all unlimited tenders, irrespective of the value of procurement, must be posted in a public place at the site of the procuring entity. For

procurements valued over 20.000 ECU, the announcements also must be published in the Bulletin of Public Procurement.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

As stated in Art. 20 of the Act, the announcement shall contain at minimum:

- 1) the name and address of the procuring entity;
- 2) the quantity, amount and category of deliveries to be procured, or services to be supplied, or the category, range and location of construction;
- 3) the desired or required time period and deadline for performing the public procurement;
- 4) the information about conditions required of suppliers or contractors;
- 5) a statement of the applicability of national preferences;
- 6) the instructions for obtaining the documents specifying the essential provisions of the procurement and the price, if any, for these documents;
- 7) the place, the time period and the deadline for the submission of tenders;
- 8) the place and the deadline for opening deadlines;
- 9) the amount and form of the tender security;
- 10) contact person at the procuring entity.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

The price that there may be charged for the documents specifying the essential provisions of a procurement shall cover only the cost of printing and sending the documents.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

The Bulletin of Public Procurement is also accessible by the Internet at the address <http://www.urm.gov.pl/uzp/indexuzp.html>.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

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(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

To participate in a public procurement other than a proceeding conducted by request-for-quotation, every supplier or contractor has to declare that :

- 1) it has the legal capacity to enter into legal transactions according to legal requirements;
- 2) it has satisfied the legal requirements essential to perform the defined work or activities, if these legal requirements are established by an Act;
- 3) it possesses the knowledge, experience, financial resources, technical competence, personnel and all necessary capacity to perform the procurement;
- 4) it is in a financial situation to ensure performance of the procurement;
- 5) it is not excluded from the procurement proceeding under the provisions of the Act;

For procurements valued up to 20.000 ECU, the procuring entity may, but is not required to, request documentation supporting the declarations. For procurements value over 200.000 ECU, the procuring must request supporting documentation.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

No such official lists exist as of now.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

The procuring entity must determine the selection criteria appropriate for the particular procurement and consistent with the principles of the Act, generally defined in the definition of •best offer•. The criteria must be defined in the specification of the essential provisions of the procurement. Selection must be made in accordance with the announced evaluation criteria and relative importance of the criteria. Each offer is evaluated and points assigned for each evaluation factor.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

Concerning local content see answer to question 9. Otherwise no.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

No.

(d) Do the procurement criteria differ according to sector or region of the economy?

No.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

Under procurements valued under 200.000 ECU the use of a procedure other than unlimited tendering is determined by the procuring entity. The procuring entity always determines the technical specification and award criteria.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

The specification of the essential provisions of the procurement should contain a definite description of the place, the time period and the deadline for the submission of tenders. During a public procurement proceeding, the procuring entity shall prepare an official record of the procurement proceedings that shall contain information mentioned in Art. 25. The tenders shall be opened at the place and the time specified in announcement of the tendering. The offerors may be present at the opening of the tenders. The name and address of each offeror whose tender is opened, as well as the price of each tender shall be announced immediately to those persons present at the opening of the tenders and recorded immediately in the official record of the tendering proceeding

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

After the selection of an offer the procuring entity gives prompt notice of the selection to other offerors, identifying the name and seat of the successful offeror and the price of its tender. An announcement with the above information is also published in the Bulletin of Public Procurement.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

No.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

As stated in Art. 18. 1, of the Act on Public Procurement •domestic as well as foreign suppliers and contractors shall be able to participate in procurement proceedings on equal basis according to the provisions of this Act•.

The definition of •domestic suppliers and contractors• - means natural persons residing in Poland, and legal persons and entities established under Polish law without legal personality that have their site in Poland (Art. 2.6).

Under the terms of Art. 18, a company with the participation of foreign capital established under the rules of the Polish law of 14 June 1991 may also qualify as a •domestic supplier of contractor •.

These two Articles (2.6 and 18) define the eligibility requirements for national preferences when applied in a public procurement proceeding.

If the value of the procurement does not exceed the amount referred in Art. 15. 1, (see answer to question 4(b) of this questionnaire) the procuring entity may limit participation in a procurement proceeding solely to domestic suppliers and contractors, and foreign suppliers or contractors that have a branch or a representative office in Poland (Art. 18.2.).

When applying national preferences in a procurement proceeding, the procuring entity must inform the suppliers and contractors about the national preference when it starts the procurement procedure. This declaration cannot be changed thereafter.

The Chairman of the Office of Public Procurement may waive the application of national preferences.

The specific rules applying to the national preferences in public procurement proceedings are specified in the Ordinance on applying domestic preferences issued by the Council of Ministers on 28 December 1994 and it includes:

- the following price calculations is used at the moment when applying national preferences in services - 20%;
- in procurement of services it is also obligatory to apply domestic preferences by means of using at least 50% of the value of domestic raw materials and products in the performance of a procurement.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

The procedure starts at the moment the interested supplier or contractor submits a written protest to the procuring entity. Upon resolution or rejection of the

protest or in the case of failure to resolve the protest in due time (seven days from the day of filing), the interested supplier or contractor may file an appeal with the Chairman of the Office of Public Procurement.

One of the principal rules of appeals proceedings is speed (the panel of three arbiters reviews the appeal within 14 days). The costs of the appeal proceedings are to be covered by the party defined in the sentence. An appeal is reviewed by a panel of three arbiters selected from the list of arbiters maintained by the Chairman of the Office. One of the arbiters is selected by the supplier or contractor who has filed the appeal, one is selected by the procuring entity and one by the Chairman of the Office. If a party does not select an arbiter the Chairman will do so. The Chairman appoints the chairman of the panel of arbiters. The arbiters are neutral and do not represent the interests of the nominating party.

As a result of the review the panel shall uphold or reject the appeal and assess the cost of the proceedings. When upholding an appeal, the panel of arbiters may order the procuring entity to do or redo an action, or declare an action invalid except the action of signing the public procurement contract, or cancel the public procurement proceeding. The panel may not discontinue the appeal or allow an agreement between the parties. To the appeals proceedings the Acts of the conciliatory courts established in the Civil Procedure Code are applied. Both sides of the appeals procedure may, within a month from the delivery of the sentence, file a complaint to a public court for annulling the sentence of the arbitration panel.

II.MEMBERSHIP OF PLURILATERAL, REGIONAL AND BILATERAL AGREEMENTS

11.Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

A. Poland has signed the Europe Agreement establishing an association between the Republic of Poland and the European Communities.

Article 67 states:

1. The Contracting Parties consider the opening up of the award of public contracts on the basis of the non-discrimination and reciprocity, in particular in the GATT context, to be a desirable objective.
2. Polish companies as defined in Article 48, shall be granted access to contract award procedures in the Community pursuant to Community procurement rules under a treatment no less favourable than that accorded to Community companies as of entry into force of this Agreement.

Community companies as defined in Article 48 shall be granted contract award procedures in Poland under no less favourable than that accorded to

Polish companies at the latest at the end of the transitional period referred to in Article 6.

Community companies established in Poland under the provisions of Chapter II of Title IV shall have, upon entry into force of the Agreement, access to contract award procedures under a treatment no less favourable than that accorded to Polish companies.

The Association Committee shall periodically examine the possibility for Poland to introduce access to award procedures in Poland for all Community companies prior to the end of the transitional period.

3.As regards establishment, operations, supply of services between the Community and Poland, as well as employment and movement of labour linked to fulfilment of public contracts, the provisions of Articles 37 to 58 are applicable.

B.Poland is a party of the Agreement between the EFTA states and the Republic of Poland.

Article 16 states:

1. The States Parties to this Agreement consider the effective liberalization of their respective public procurement markets as a desirable and important objective of this Agreement.
2. As of the entry into force of this Agreement, the EFTA States shall grant Polish companies access to contract award procedures on their respective public procurement markets according to the Agreement on Government Procurement of 12 April 1979, as amended by a Protocol of 2 February 1987, negotiated under the auspices of the General Agreement on Tariffs and Trade. Poland shall take into account the restructuring and development process of its economy, gradually ensure that companies from the EFTA States have access on the same principles to contract award procedures on its public procurement market.
- 3.As soon as possible after the entry into force of the Agreement, the States Parties to this Agreement shall progressively develop and adjust the rules, conditions and practices governing the participation in public procurement contracts, so to ensure free access and transparency, and that there is no discrimination between the potential suppliers from the States Parties to this Agreement. After a period of decreasing asymmetry in favour of Poland in their relations, a full balance of rights and obligations between the States Parties to this Agreement shall be established not later than at the end of the transitional period.

4. The Joint Committee shall agree or recommend, as appropriate, the practical modalities for this development including, *inter alia*, scope, timetable and rules to be applied, and designation of entities awarding public procurement contracts, that is public authorities, public undertakings and private undertakings which have been granted special or executive rights.

5. The States Parties concerned shall endeavour to accede to the relevant Agreements negotiated under the auspices of the General Agreement on Tariffs and Trade.

C. Poland is a party of the Central European Free Trade Agreement.

Article 24 states:

1. The Parties consider the liberalization of their respective government procurement markets as an objective of this Agreement.

2. The Parties shall progressively develop their respective regulations for government procurement with a view to grant suppliers of other Parties by the end of the transitional period referred to Article I of this Agreement, at the latest, access to contract award procedures on their respective government procurement markets according to the provisions of the GATT Agreement on Government Procurement of 12 April 1979, as amended by a Protocol of Amendments of 2 February 1987.

3. The Joint Committee shall examine developments related to the achievement of the objectives of this Article and may recommend practical modalities of implementing the provisions of paragraph of this Article so as to ensure free access, transparency and full balance of rights and obligations.

4. During the examination referred to in paragraph 3 in this Article, the Joint Committee may consider, especially in the light of developments in this area in international relations, the possibility of extending the coverage and/or the degree of the market opening provided for in paragraph 2.

5. The Parties shall endeavour to accede to the relevant Agreements negotiated under the auspices of the GATT.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***

- ***by origin of services and suppliers.***

No such statistics have, as of now, been completed.

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

No such statistics have, as of now, been completed.

WORLD

d.13

ORGANIZATION

RESTRICTED
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COMMUNICATION FROM THE REPUBLIC OF KOREA

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the Republic of Korea to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Government procurement refers to the procurement of goods and services through contracts by the central government, local governments, or government-invested enterprises for their own use.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

Basically, each government authority is responsible for procuring goods, and services for its own use. However, goods and works exceeding a given threshold value (in the case of construction, more than 2 billion won) which a specialized agency can procure more efficiently, should be procured and

supplied through the Office of Supply of the Republic of Korea which is the sole central procuring entity for government procurement (hereinafter referred to as OSROK) on behalf of central and local government agencies (so-called end-users). Other services can be procured by the OSROK when asked.

The OSROK's end-users are classified into two categories : obligatory and voluntary. The former consists of central and local government agencies, which are required to purchase their needed goods and works above a given threshold value through the OSROK. The latter consists of government-funded or government sponsored agencies, which have options to procure goods, services and works for themselves or through the OSROK.

Even the obligatory end users, however, are allowed to purchase goods and conclude construction contracts for themselves in cases of urgent procurement needs, small purchases below a given threshold value or procurement for national defense or security.

Each central and local government agency will forecast its needs for supplies and construction services during the course of a year; determine the purchase request plan with the preparation of the budgeted funds, and submit it to OSROK before the beginning of the next fiscal year.

Upon receipt of the purchase plans from the end-users, OSROK draws up a comprehensive Acquisition Program considering the end-users procurement plan for the coming year as well as the procurement level of the previous year. It will then procure and supply in a cost-effective and timely manner.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

(1) The Act Relating to Contracts to which the State is a Party (•ARCSP•) prescribes details concerning contracts in which the state is a party, facilitates procurement proceedings and contract administration, and provides details related to government procurement contracts through international competitive bidding. It also contains provisions related to national Treatment, Non-discrimination, and the Transparency of government Procurement.

(2) The Enforcement Decree and Regulation of the ARCSP provides details delegated by the ARCSP and those necessary for the enforcement thereof. The Special Enforcement Decree will enter into force on 1 January 1997. It is established with the goal of implementing the provisions of WTO/GPA.

(3)The Local Finance Law prescribes details concerning contracts to which the sub-central government is a party. The process of procurement applies in accordance with the provisions of ARCSP.

(4)The Government Invested Enterprise Management Law prescribes the basic details concerning contracts to which the government invested enterprises is a party. The process of procurement is applied in accordance with the provisions of ARCSP.

(b)Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

There is no differences between goods and services in the government procurement except threshold value.

Procurement procedures applied

4.(a)What procedures are followed in the procurement process?

In cases where a contract official enters into a contract related to a purchase, sale and lease, or any other type of contracts, he or she shall, in principle, announce it publicly and put it to a general competition. Provided that, if it is deemed necessary in light of the object or nature of a contract, he may restrict the qualification of participants, or bring nominated participants into a competition, or enter into a private contact. The examples are as follows

-In the case of a construction project, whose estimated price is more than 2 billion Won, a contract official may restrict qualification of a bidder, considering the past manufacturing or construction work performances of the participants.

-In the case where the goals of an agreement are hard to achieve unless the contractor has special facilities or technology, and if the number of tenderers who may apply for the tender is not more than 10 persons, a contract official can put it to a nominated competition.

-Cases for private contracts are as follows :

-where it is impossible to put it to a competition due to a technique or service of a specified person, location, structure, quality, etc.;

-where there is no time to put it to a competition, due to natural calamity, armed forces movement for the operation, extraordinary disasters, and other similar cases;

-where it is pursuant to a private group contract with small and medium enterprises in accordance with the provisions of the Small and Medium Enterprise Promotion Act;

-where the presumed price for construction work is under 50 million Won (other goods and services: under 20 million Won).

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

See answer in 4(a) above.

(c) What are the time limits for submission of bids?

The deadline for filing the application documents shall be the day before the date of tender. Time limits for submissions of bids vary according to types or value of contracts. In principle, 10 days are given from the date of public notice. In case of construction work tendering, 7 days shall be given from the date of construction site explanation. The site explanation shall be carried out before the following period from the tendering date according to the size of presumed price: 10 days or more, less than 1 billion Won; 30 days or more, 1 billion or more but less than 5.5 billion Won; 45 days or more, 5.5 billion Won or more.

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

The public notice on the tendering shall be done by placing it in the daily newspaper or an official gazette (in case of a certain threshold value, such as above 300 million Won in construction work tendering) or by posting it on the notice board (when payment is in a foreign currency, the public notice can be in English). A public notice of tendering shall be given ten days immediately preceding the opening of the tendering.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

If the presumed price is not less than the amount mentioned in any of the following items, it shall be placed in the official gazette or any daily newspaper.

- i. For construction: 300 million Won.
- ii. For manufacturing of goods: 100 million Won.
- iii. For purchases of goods, services or others : 50 million Won.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The public notice shall contain the following details:

- matters assigned for tendering;
 - place, date and time for tendering and its opening;
 - place, date and time of the site explanation;
 - matters on the qualification of tendering participants;
 - matters of the security deposit for tendering and its reversion to the National Treasury;
 - place where the conditions of the contract will be disclosed;
 - matters on the nullification of tendering;
 - where tendering by mail is permitted, such indication and address to which the tendering application should be sent;
- where a joint contract is permitted, the statements indicating that it is possible and the method of performance of the joint contract, etc.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

There are charges for obtaining the full set of tender documents, which differ according to number of pages. All documents related to the procurement by the OSROK can be read, brought or copied at the Total Service Centre in the OSROK.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

GINs (Goldstar Information Network Services) is an electronic system for publicizing information related to tenders and contracts through the Value Added Network. It has functions for databases and E-mail. It covers information on the procurement of about 350 procuring entities such as OSROK, Korea Telecommunications, Korea Electric Power Organizations. GINs also covers information on procurement of foreign goods, services and facility construction contract.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

In order to efficiently administer procedures of competitive tendering, a contract official may annually set a specific period in which the registration of eligibility for participation in competitive tendering can be done. Chances for the registration can be extended one to twelve times per year. Public notice for the registration shall be placed in a daily newspaper. In case of a joint contract, there is no restriction on the place of the head office, which is supposed to expire on 31 December 1996.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical

qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

To confirm eligibility of suppliers to fulfil obligations of a contract official shall review the qualifications of a bidder. Requirements for competitive tendering are as follows:

- a participant should be owning or leasing the facilities or stores which are required for manufacturing or supplying the objects of the relevant tendering;
- when any approval, permit or license, or any qualification is required pursuant to the provisions of other laws, the relevant approval, permit or license should have been obtained or should be qualified for such approval, permit or license;
- when any inspection, such as inspection for security, is required, its results must be accepted by the relevant authority;
- a participant should have a business entity registration certificate issued in accordance with the provisions of the Value Added Tax Law.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

There is no specific list of approved suppliers.

In case of construction works prescribed by a Prime Minister's Decree, a contract official may screen the qualification of the applicants for tendering in advance and then select the qualified persons who may participate in the competitive tendering. In this case, he or she shall notify the selected person of the results of such a selection.

In the event that a contract official screens the qualifications of the participants tendering, he or she shall determine the detailed screening standards of the relevant qualification according to the screening standards as determined by the Minister of Finance and Economy.

Criteria for assessing bids and awarding contracts

A. Commonwealth Procurement

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

In case of a contract for construction with a presumed price less than 10 billion Won (in case of other services, less than 1 billion Won), a successful tender is the person with the lowest tender price under the estimated price, provided that the tender price shall not be less than the amount of 88% of the estimated price.

In case of any contract with a presumed price more than the amounts mentioned above, the successful tenderer shall be determined through reviewing the performance ability of the concerned contract in the order of the lowest tender price under the estimated price. The standard for reviewing the performance ability is publicized before the tendering date.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

There is no offset provision such as technology transfer or counter trade requirements in the government procurement.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

No preference is given to any particular group related to service procurement.

(d) Do the procurement criteria differ according to sector or region of the economy?

There is no difference in criteria according to sector or region of the economy, except a restriction on participation in tendering by the location of its principal office for a contract whose estimated price is below 2 billion Won in case of construction, and 300 million Won for services.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

A purchasing authority can use negotiation procedures under specific conditions (e.g. urgency, security, etc.). In case the lowest tender price system is applied, there is not room for a purchasing authority. In case of the performance ability test system, the authority should evaluate the performance ability of bidders on the basis of predetermined assessment criteria.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

To file the application documents for participation in tendering, a bidder shall submit them by the day before the date of tender. In principle, the application for tendering shall be submitted by the tenderer for himself/herself at the place, date and time indicated in the public notice for tendering. Provided that, if tendering by mail is permitted, the submission may be possible by mail. The opening of the tendering shall be conducted at the place, date and time indicated in the public notice of the tendering in the presence of the participating tenderers. In case a participating tenderer is not present at the opening of the tendering, a public officer not related to the opening of the tendering shall be present on behalf of such persons.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

There are no regulations required to publish details of the contracts awarded or notify unsuccessful tenderers.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

When inquired, a contract official may inform the unsuccessful bidders of pertinent reasons.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

Provisions of Non-discrimination are prescribed in the ARSCP. The related presidential decree and other regulations will be established by the end of 1996.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

(1) The scope of complaint or appeal

According to the provisions of the WTO/GPA and related domestic regulations, the Committee for International Dispute Mediation shall be established in January 1997, when the GPA takes effect.

The scope of complaint or appeal include:

- details related to the scope of the government procurement contracts in International tendering;
- details related to qualifications for the bidder, tendering procedures and awarded of contract.

(2) Procedure for complaint/Appeal

A supplier or contractor shall submit a complaint within 15 days after the occurrence of the act which is the cause of the objection or 10 days after acquiring knowledge of such an act.

The head of the relevant procuring entity shall, within 40 days of the receipt of the complaint, examine and take necessary measures such as a correction and give a prompt notice of the decision to the supplier or contractor submitting the complaint.

The supplier or contractor who has no objection to the above measure can request a review from the Committee for International Dispute mediation within 15 days after the receipt of the notice decision.

The Committee, unless there are any other specific reasons, will review and arbitrate the appeal filed within 50 days after its receipt.

(3) Type of remedy that may be granted

Suspension of tendering proceedings or awarding of contractors may be granted by the Committee, when necessary, until the arbitration (mediation) process in the Committee is completed.

The mediation shall be final unless the applicant of the appeal or the head of a procuring entity concerned has any objection to it within 15 days after the completion of mediation. It shall have the same effect as an out-of-court settlement.

Legal channels for complaints or appeals are open to any suppliers. Appeals can be raised to a civil suit.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Korea joined the Plurilateral Agreement, WTO/(GPA, in 1994.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***
- ***by origin of services and suppliers.***

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

The aggregate value of services procurement by entities pursuant to the provisions of the WTO/GPA is about 1,012 billion Won in 1995. The share of services procured of the total procurement (27,270 billion Won) was 3,7% in 1995. Detailed data on the service procurement is not available.

WORLD

d.10

ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Ad

2 December 1996

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Working Party on GATS Rules

COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the European Communities and their Member States to Members of the Working Party on GATS Rules.

Introductory Comments

1) The answers to the questionnaire on government procurement of services explain the regime which is applicable at European Community level based on the general principles of non-discrimination, as laid down in the EC Treaty and the directives taken to implement these principles at Community level (so-called secondary legislation).

2) In the answers, Member States specify the way in which they have implemented the Community regime at national level as well as explaining, to the extent relevant, the national rules that they have governing the procurement of contracts below the Community thresholds. Since not all Member States have specific or separate rules for contracts below threshold, not all Member States have responded to all questions.

3) Member States are cited by the following abbreviations:

A Austria

IRL Ireland

B	Belgium	L	Luxembourg
D	Germany	NL	The Netherlands
DK	Denmark	P	Portugal
E	Spain	S	Sweden
EL	Greece	SF	Finland
F	France	UK	United Kingdom
I	Italy		

4) No answers have been provided to the questions under point 12 due to the lack of accurate and relevant data. This is to be regretted while at the same time it is noted that many Members are in a similar situation. The lack of statistics at this stage should be seen as an incentive to engage better in this part of the work.

1. EXISTING PROCUREMENT REGIMES

Definition

1. ***What is the definition of government procurement employed in completing this questionnaire?***

Government procurement covers written contracts for pecuniary interest awarded by public authorities, semi-public bodies and the •utilities• which supply water, energy, transport and telecommunications services within the scope of the European Community legal provisions concerned.

The entities in question are subject to a common EC-wide regime for procurement above certain threshold values. There are seventeen categories of services (including construction services) are subject to all the obligations contained in the relevant legislation. The rules concerning procurement under the threshold values are defined by national law, in accordance with the general principles of law laid down in the EC Treaties.

Administrative structure

2. ***How are government procurement activities administered? To what extent are procurement activities centralised? Please specify the identity of any central procurement agencies and their respective responsibilities.***

Administration of public procurement activities varies according to the type of procurement, the contracting entity and its country of location.

-A. Procurement activities are not centralised; each of the individual government agencies is responsible for its own procurement of goods and services.

-B. Legislation on government procurement is federal, however, the responsibility of the award and execution of contracts remains on each

contracting entity, following the laws, regulations or other legal texts. Therefore, there is no specialised central agency for the award of public contracts.

-D. In principle all authorities procure in their own responsibility, so public procurement activities are basically decentralised. Central purchasing is the exception and is only executed by the procurement department of the Ministry of the Interior for the demand of the Ministry (BMI), procurement department of the army for the demand of the armed forces, procurement department of the *Land*Hesse for the demand of the *Land*Hesse.

-DK. The structure of the public procurement in the Danish system is essentially a decentralised one, both at central government, regional and local level. Within the different authorities, the degree of independence of the various subdivisions (agencies, institutions etc.) varies between a relatively high degree of independence in some instances and a relatively high degree of centralisation in other.

A 100 pct publicly owned company, •National Procurement Denmark Ltd• (*Statens og Kommunernes Indkøbsservice A/S*) offers the possibility to procure via framework contracts which have been submitted for tender. There is, however, no obligation on public institutions to procure via these framework contracts. The degree of -voluntary- use of this alternative to •direct• procurement on the basis of a contract between a public authority and a supplier varies from area to area. The •National Procurement Denmark• cannot be said to have a dominant position in any segment of the Danish public procurement market. Similar cooperation arrangements on procurement have been entered into by some regional and local authorities.

-E. Public procurement activities are administered following the rules contained in the relevant laws, regulations and administrative provisions. These activities are decentralized. Each contracting authority procures on its own. Only particular purchases declared to be of common interest by the State are centralized. The purchasing bodies of the State (*Administración General del Estado*) are: Ministerial Departments, autonomous bodies and entities ruled under Public Law (including universities). The purchasing bodies of the Regional subdivisions (*Comunidades Autónomas*) are: seventeen Regions and two towns within the same regime, which have a system similar to that of the central State: Departments (*Consejerías*), autonomous bodies and entities ruled under Public Law (including universities). The purchasing authorities at local level (*Administración local*) are: Provincial Institutions (*Diputaciones Provinciales*), Municipalities (*Ayuntamientos*), entities constituted by several municipalities, autonomous bodies and entities under public law, as long as they exist.

-EL. According to the Hellenic Administrative System, the legislation on public works contracts and designs fall into the competence of the General Secretariat of Public Works of the Ministry of Environment, Physical Planning and Public Works. The Government intends to implement

Directive n°92/50 on Public Procurement of Services and assign the relevant competence to the Ministry of National Economy. Directive 93/38, concerning telecommunications, energy, water and transports sectors has not been incorporated in the Hellenic legislation yet, due to a period of transition, ending on 1 January 1998.

- F. Contracts concluded by the State are prepared, awarded and signed by high level officials specially authorised. Empowered to award public contracts, on the one hand, are the directors of the central administrations (around 200), on the other hand, the administrative chiefs (*Préfets*) of Regions and Provinces (*Départements*). Public contracts awarded by the local entities (municipalities and groups of municipalities, around 36.000; provinces: around 150; regions: 26), or the national public establishments (around 800) or local public establishments (around 8.000) are awarded by the legal representative of the entity concerned (mayor, president, director general). Public contracts awarded by public enterprises or private ones that have special or exclusive rights (directive 93/38) are signed by the president or the director so authorised by the enterprise.

Government and Parliament adopt the relevant legislation which is applied by the territorial entities and the public establishments, without the intervention of the state officials. However, state services control the application of public procurement legislation by the contracting entities and can, if necessary, take action before the competent judge in order to finalise the alleged infringement.

- IRL. Government procurement in Ireland is mainly organised on the basis of the delegation of responsibility to each individual Contracting Authority, which can comprise of Government Departments and Offices; local authorities; autonomous public health and educational bodies and other bodies coming within the definition of the public sector by virtue of EU or national rules. Public procurement activities are not therefore centralised to any appreciable extent.

There is a small amount of centralised purchasing within a body known as the Office of Public Works (works contracts for central government agencies, parks, museums, inland waterways and certain tourist facilities). A division of this office, known as the Government Supplies Agency has a centralised procurement function for central government agencies, including the police, in respect of clothing, fuel, vehicles, printing, publishing and furniture. As paymasters to local authorities and health agencies respectively, the Departments of the Environment and Health have considerable influence over procurement in these bodies, but not a centralized procurement role.

All other procurement is carried out by the individual Contracting authorities as referred to above with the exception of occasional combined purchasing arrangements between regional and health bodies for individual contracts.

- L. Public procurement is not centralised; each contracting entity conducts its own procurement. Contracting entities are the central authorities, local authorities, intercommunale entities, public establishments or private entities (utilities). The most important contracting entity is the Ministry of Public Works, which is also competent for public procurement legislation and implementation of the EC directives.
- NL. Dutch procurement policy and activities are decentralised, i.e. each entity is responsible for its own procurement and observance of applicable regulation. There is no central legislation on procurement of services contracts other than required by the EC directives. The Ministry of Economic Affairs is responsible for transposition of international regulations into national legislation and provides information on the application thereof. Contracting entities are indicated in annexes to the GPA and to the EC-directives.
- P. Government procurement of services is not centralized by a specific entity.
- S. Every public authority, utility or enterprise, foundation, association etc. which has been specified under question 1 constitutes an individual procurer. The procurers are responsible for their own procurement and for following the prevailing rules for procurement. In Sweden there is however a certain degree of coordination of state procurement. The Swedish National Audit Office (*Riksrevisionsverket*) authorizes various public authorities to sign framework agreements for the government. These framework agreements are not binding and hence voluntary for the procurers. The possibility of subordering from these agreements is limited to authorities which legally belong to the government. Public enterprises therefore cannot use the framework agreements.

In Sweden, *Nämnden för offentlig upphandling* (NOU) is a public authority employing nine people, of whom six are legal advisors. NOU supervises all public procurement in Sweden as defined in the law on public procurement (LOU) and in the rules of GPA and GATT. NOU may collect all necessary information from the procurers to carry out its task. The information should normally be submitted in written form but may (due to the extent of the material, haste or other circumstances) also be collected through a physical visit by the authority's officials. NOU cannot impose sanctions if it finds that the procurer has violated the law on public procurement. However, it could take a decision which later could be invoked in a process on indemnity in the district court.

- SF. The Ministry of Trade and Industry has an overall responsibility for public procurement legislation in Finland. However, government procurement activities are decentralised in the sense that each contracting entity is responsible for its own procurement practices.
- UK. In the UK there is no national procurement system and prior to the implementation of the EC rules there was no UK legislation. Procurement

is conducted under value for money policy, which ensures non-discrimination. Central advice on procurement policy is provided by HM Treasury's Central Unit on Procurement, but government departments, local authorities and public sector utilities are each responsible for their own procurement. Departmental expenditure is subject to scrutiny by Parliament's Public Account Committee, through the National Audit Office. Local authorities are subject to specific legislation on their procurement and are subject to scrutiny by the Audit Commission. A significant element of departmental procurement expenditure is made through, or with the advice of, the following Central Purchasing Agencies: Her Majesty's Stationery Office (HMSO), the Central Office of Information (COI), the Buying Agency (TBA), the Government Centre for Information Systems (CCTA), but departments are free whether to use their services or not.

Laws and regulations in force

3.(a) *Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exists. Please provide a brief summary of the content of each of these measures.*

(i) At E.C. level, general public procurement rules stem from the Rome Treaty. Those rules have been completed by several Community Directives, specially with respect to procedural requirements.

The main E.C. Treaty articles having consequences for public procurement are articles 6 (non discrimination on grounds of nationality principle), 30 & seq. (the ban on quantitative restrictions on imports and all measures having equivalent effect), 52 & seq. (the right to establishment in the territory of another Member State) and 59 & seq. (freedom to provide services).

Secondary legislation applies those general principles to concrete matters. Thus, there is a group of Council Directives laying down procedures with respect to Public Procurement. These directives need implementation at national level and their purpose is to harmonize the procedures to be followed in each Member State whenever a contract is to be awarded whose value exceeds a certain threshold.

For contracts below the threshold, national rules are not bound by the EC directives, though the general rules of the Treaty still apply. This means that, below the threshold, national rules are not uniform, so each Member State has its own public procurement rules which must only respect the general principles laid down in the Treaty, in particular non-discrimination in respect of goods and services.

The directives fall into two groups, those governing the traditional areas of public procurement (Public Authorities directives or traditional sectors

directives), and those dealing with water, energy, transport and telecommunications (Utilities directives or •excluded• sectors directives). Both groups are completed by two Remedies directives. Although they differ in a number of respects, both groups apply the following principles: a ban on discrimination; open access to all EC suppliers, transparency of award procedures; a precise indication of which of the permissible award procedures has been chosen; compliance with technical requirements and transparency of the procedures of selecting contractors and awarding contracts, through the use of objective criteria which must be known beforehand.

(ii) The Public Authorities Directives: contracting authorities within the sense of those directives are the State, Regional or Local authorities, and bodies governed by public law.

- Council Directive n° 93/36, as amended, co-ordinating procedures for the award of public contracts (The Public Supplies Directive). This directive is not relevant as regards services.
- Council Directive n° 93/37, as amended, concerning the co-ordination of procedures for the award of public works contracts, (the Public Works Directive). This directive covers contracts between a contractor and a contracting authority concerning the execution or both the execution and design of works related to building or civil engineering activities, in addition to ancillary supplies and services contracts necessary for their execution.
- Council Directive n° 92/50, as amended, relating to the co-ordination of procedures for the award of public service contracts, (the Public Services Directive). This directive covers all contracts between a contracting authority and a service supplier which are not yet covered by existing other public procurement directives. Services are divided into two categories, priority services for which there is a complete set of rules, and other services for which the requirements are much lesser (see articles 8-10). Priority services are listed in Annex IA of the directive, which includes those services which are most concerned with cross-frontier trade. Annex IB lists those services which seem less susceptible of being a subject of European-wide competition. This second category is subject to a more flexible regime: only common rules on technical specifications and post-award information notices are compulsory.

However, some contracts are excluded from the scope of this directive: contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon (nevertheless, financial services contracts concluded at the

same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive); contracts for the acquisition, development, production or co-production of programme material by broadcast and contracts for broadcasting time; contracts for voice telephony, telex, radiotelephony, paging and satellite services; contracts for arbitration and conciliation services; contracts for financial services in connection with the issue, sale purchase or transfer of securities or other financial services; employment contracts; research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority (art.1). Moreover, the directive is not applicable to public service contracts awarded to an entity which is itself a contracting authority within the meaning of art. 1(b) of the Directive (art.6).

This directive applies to public service contracts awarded in the field of defence, except when they are covered by the national security clause (art. 223 of the Treaty).

-Council Directive n° 89/665, as amended, on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, and public services (the Public Remedies Directive). This directive provides for the establishment (if they do not already exists) of courts or tribunals with real powers to settle the conflicts which could arise between contracting authorities and firms, suppliers of services or individuals.

(iii)Utilities Directives: Water, energy, transport and telecommunications sectors.

-Council directive n° 93/38, as amended, co-ordinating the procurement procedures of the entities operating in the water, energy, transport and telecommunications sectors (the Utilities Directive). This directive rules those contracts stipulated by both private and public utilities operating in the so-called •former excluded sectors• of water, energy, transport and telecommunications operating in the said sectors, on the basis of special or exclusive rights granted by the competent public authority. Rules applying to those sectors are more flexible than those for the traditional public procurement sectors. In what regards services, similarly to the Services Directive, services are divided into two categories (articles 15 to 17).

-Council directive 92/13, as amended, co-ordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities

operating in the water, energy, transport and telecommunications sectors (the Remedies Utilities Directive). This directive also provides for the establishment (if they do not already exist) of courts or tribunals with real powers to settle the conflicts which could arise between contracting authorities and firms, suppliers of services or individuals in the sectors concerned.

(iv) As already stated, E.C. Directives are not applicable to minor contracts, i.e. below threshold. The thresholds are as follows (classic sectors): 5.000.000 ECU for works; 200.000 ECU for services. Regarding the former excluded sectors the thresholds may vary: 5.000.000 ECU for works, 600.000 ECU for services (in telecommunications) and 400.000 ECU for services (the other three sectors). In any case, the general provisions of the Treaty apply to minor contracts, including the non discrimination principle and the free movement of services.

(v) At Member State level, national legislation has implemented EC rules. Furthermore, national legislation applies to minor contracts not subject to the EC directives.

- A. Procurement regulations above the thresholds are in accordance with EU-directives. For Central Government Entities they are specified in the Federal Act •Bundesvergabegesetz 1993•, being revised at present. Each of Austria's 9 states (•Bundesländer•) follows its own internal procurement rules and regulations, based on the common standard •ONORM A-2050•, which correspond to the regulations of the EU-directives. Procurement regulations below the thresholds of the EC-directives at federal level are also based on the common standard •ONORM A-2050•. Equal treatment of bidders and non-discrimination are basic principles of this common standard. The revised *Bundesvergabegesetz* implements the obligatory use of •ONORM A-2050• below the thresholds. Regulations of the nine *Bundesländer* below the thresholds differ but are in most cases also based on •ONORM A-2050•.
- B. Legislation on public procurement of goods, works and services is part of the competencies of the federal authorities, which have enacted an Act and implementing regulations (*arrêtés royaux*). This legislation applies to any public contract, regardless of its value, if they have a pecuniary interest. For the contracts below the EC or GPA thresholds, rules are largely harmonized with those established in the Directives and the GPA.
- D. The basis of the German procurement law is article 57a to 57c of the *Haushaltsgrundsatzgesetz* (Budgetary principle law). Article 57a defines the groups of contracting authorities. Articles 57b and c are concerned with the review procedures used in cases of violation of procurement provisions. The contract award regulations that German contracting authorities must comply with are the following: *Verdingungsordnung für Leistungen*,

VOL/A (Code for Awarding Public Supplies Contracts including services, but excluding public works contracts); *Verdingungsordnung für Bauleistungen*, VOB/A (Code for awarding public works contracts). Each code is divided into 4 sections. VOL/A: the first section contains provisions for national awards of supplies and services contracts below the EC thresholds; the second section contains provisions which implement the regulations of the EC public supplies Directive 93/36 and in future the EC public services Directive (92/50). Contracting authorities must comply with this section if the contract exceed the EC thresholds; the third section contains provisions applicable to public contracting entities operating in the water, energy, transport and telecom sector according to the EC Utilities Directive 93/38; the fourth section contains the implementation of the EC Utilities Directive for private contracting authorities. The VOB/A is similarly divided: first section, national regulations for the awards of public works contracts below the EC thresholds; second section, regulations which implement the EC public works Directive 93/37 and therefore are relevant to contracts above the EC threshold; third section, provisions which implement the EC utilities Directive concerning public contracting authorities; fourth section, implementation of the EC utilities Directive for private contracting authorities.

- DK. The following regulations apply in Denmark also to contracts of a value inferior to the thresholds: Circular of 14 April 1989 issued by the Housing and Building Agency which prescribes that state construction contracts and construction contracts subsidized by the state shall be subject to a public tender; Circular of 1 March 1994 issued by the Ministry of Finance which imposes an obligation on central government institutions to undertake a market testing on a regular basis with a view to a possible contracting out of a given activity.
- E. Basic legislation. Law 13/1995 (18 May) of Public Procurement. Its personal scope covers the State, the Regions, the Local administration, the autonomous bodies and the entities subject to public law which has their own legal personality and linked to any Public administration which have been created to satisfy the general interest or whose activity is mostly financed by public administrations, or whose direction is controlled by public administrations, or whose direction bodies are composed in their majority by persons appointed by public administrations or other entities of public law. Royal Decree 390/1996 (1 March), implementing the Law 13/1995. Also relevant are: Law 30/1992 (26 November) on the Legal regime of the Public Administrations and on the Common administrative procedure; Law 7/1985 (2 April) on the Local administration. Furthermore, there are some specific regulations enacted by the Regions.
- EL. As concerns contracts of public works the value of which is lower than the threshold established by Directive 93/37, Greece applies Law n° 1418/84 (as modified notably by Law n° 2299/94, Law n° 2308/95, Law n° 2372/96 and by Presidential Decrees) implementing the general provisions of the Treaty. In most cases, an open or restricted tendering procedure takes place and -in

exceptional cases- a negotiated procedure. For those public works contracts equal to or exceeding ECU 5 million in value, Greece applies the Treaty and Directive 93/37 as incorporated in the Hellenic legislation through consecutive presidential Decrees (notably 23/93 and 85/95). For all contracts for design and construction of public works, tendering and monitoring is carried out at three levels: central, peripheral and local level. As regards public services contracts, a legislation of a systematic and general nature is presently absent, pending the incorporation of Directive 92/50 into the Hellenic legislation. For the public services contracts with a value lower than the threshold of ECU 200.000, Greece applies Law n°2362/95 (art. 82 & 83) which provides for public tendering. As an exception, the public procurement of services after a simpler procedure or a negotiated procedure is allowed. There also exists a special legislation for public works design contracts, which, however, has to be modified, pending the incorporation of the 92/50 Directive. The processes for public procurement of services for the entities operating in the utilities sectors, will be provided for in the forthcoming legislation incorporating Directive 93/38.

- F. Every contract awarded by the State, the territorial subdivisions and the public bodies follow the rules established by the Code on Public Procurement, which comprises all the texts concerning the award of public contracts. Those rules are similar to those of the EC directives, although some time-limits are different. The Code establishes the general principle of freedom of access for candidates to public contracts, and that of equality of treatment for both candidates and tenders. It sets out that the award of contracts is done, in general, after a call for tenders, and limits the cases in which a negotiated procedure can be used.
- I. The Italian regime in force concerning public procurement of services has been regulated by two Legislative Decrees, that is to say, two laws delegated from Parliament to Government. The first, Legislative Decree of 17 March 1995, n°157 has transposed into Italian legislation the Directive 92/50 (public procurement of services in the traditional sectors). The second, Legislative Decree of 17 March 1995, n°158 has transposed the Directives 90/531 and 93/38, concerning the so-called excluded sectors.
- IRL. There is no body of law governing public procurement in Ireland law except for that provided for under European Community; WTO and other international obligations. Ireland has implemented into law all EU public procurement Directives by means of secondary legislation, that is by way of •Statutory Instruments• which transpose the Directives directly into Irish law.

With respect to contracts below EU thresholds, there are no legally binding regulations but there are national government guidelines which public authorities are bound to follow. The national guidelines are published by the Department of Finance and were last issued in 1994. The guidelines sets out the requirements for dealing with sub-threshold and above-threshold EU contracts. The Guidelines apply to •Government Departments, local and

regional authorities and other bodies dependent on State funding, in the award of public sector contracts (including the acquisition, letting and disposal of public property)•. In addition, it is pointed out that commercial and non-commercial State bodies should comply with the broad principles of Government contracts procedures and that tax clearance procedures are obligatory in all cases. Although these guidelines do not have formal force of law, failure to apply them may obviously attract the censure of the Department of Finance, Parliament, auditors and the Media. In addition, purchasers are aware of the argument that failure to comply with the guidelines may be a breach of a representation or contractual obligation, to the effect that the purchaser will apply the proper published guidelines in consideration of the tenderer submitting his tender.

- L. The main law is the Act concerning public supply and public works contracts (04.04.1974), based on the non-discrimination principles of the Treaty of Rome. EC directives have been implemented by special Regulations: one for the classical sectors (27.01.1994, as amended 31.05.1996), and one for the utilities (02.02.1996). An Act of 21.12.1989 transposed the remedies directive, which will be amended in what refers to the utilities remedies directive.
- NL. The EC directives have been implemented in The Netherlands through the *Raamwet EEG-voorschriften aanbestedingen* of March 13, 1993 (Staatsblad 1993, 212), entry into force April 12, 1993 (Framework legislation EEC regulation). Under this framework law there are the following two decrees for the relevant sectors:
 - Bestluit aanbestedingen nutssector* (Staatsblad 1993, 305), entry into force April 21, 1993 (Decree on procurement in the sector of utilities). This decree applies to procurement in the sector of utilities.
 - Bestluit overheidsaanbestedingen* (Staatsblad 1993, 305, as amended in 1994, Staatsblad 1994, 379), entry into force July 1, 1993 (Decree on government procurement). This decree applies to procurement of products, services and construction services.

The implementation is effectuated with a reference in the national legislation to the provisions of the EC directives which have to be applied.

Additionally, the *Uniform Aanbestedingsreglement EG 1991* (UAR-EG, Staatscourant 228, 1991, as amended in 1995, Staatscourant 1995, 103) (Harmonised regulation on EC procurement) contains standard conditions and procedures for the central government with respect to construction services.

The Netherlands do not have specific national legislation on procurement for products and services under the threshold. For procurement of construction services the *Uniform Aanbestedingsreglement 1986* (UAR 1986, Staatscourant 118, 1986) (Harmonised regulation on procurement) contains

standard conditions and procedures for the central government with respect to construction services under the threshold.

The two EC directives on remedies (89/665 and 92/13) are covered by existing national legislation (Civil Code). Therefore, no specific national legislation implementing these directives was needed.

-P. Rules governing public procurement in Portugal are the Decreto-Lei n°55/95 as modified by Decreto-Lei n°80/96. The Decreto-Lei n°64/94 governs the procurement of computer-related goods and services. The Decreto-Lei n°405/92 refers to works.

-S. Sweden has incorporated the relevant EC directives in its law (1992:1528) on government procurement (*Lagen om Offentlig Upphandling, LOU*), which has been revised accordingly (1993:1468) and reprinted in the register of promulgated laws (*Svensks Författningssamling, SFS*). The law has been additionally revised through amendments 1994:614, 1995:704 and 1996:433. Sweden has also introduced national rules on government procurement below threshold values given in the directives. The national rules apply to the same procurers and the same types of procurement (goods, services and public works contracts) that are subject to Community regulation but are not as detailed. The exemptions allowed for procurement above the threshold values are valid also for procurement below these values.

-SF. Finland has fully implemented all EC public procurement directives. In addition to EC rules, which apply only to contracts exceeding a certain threshold value, Finland has completed its internal legislation by rules applying also to contracts below threshold. The act on Public Procurement (1505/92, amend. 1523/94) applies to all public procurement regardless of the value of the contract. According to the Act, principles of non-discrimination and transparency have to be applied irrespective of the value of the procurement. Procurement without competitive tendering is permissible only for particular reasons. Furthermore, provisions relating to legal remedies are included in the act.

There are also two decrees applying to procurement procedures of government entities (i.e. municipalities, other public bodies or public utilities are not covered) which cover contracts below the given EC threshold value. Some basic procedural requirements to be followed in the award procedures of these contracts are established by these decrees. The decree on Government Procurement (1416/93) applies to supply and service contracts. Certain provisions of that Decree (for example those relating to opening of tenders, publicity or guarantees) apply also to contracts awarded by government entities above the threshold value.

-UK. The EC directives have been implemented in the United Kingdom. However, there is no law covering below threshold procurement.

(b) *Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving goods and services?*

The regime, at EC level, distinguishes between the procurement of goods and services (see supra). However, differences are minimal, and at Member State level, there is often only one set of rules. For instance in France, rules are, in principle, identical for supplies and services contracts, with the only exception of design contests which are followed by the provision of services (procedure frequently used for some works contracts).

If a public contract is intended to cover both products within the meaning of the Supply Directive and services within the meaning of the Public Services Directive, it shall fall within the scope of the latter if the value of the services in question exceeds that of the products covered by the contract. In the case of works contract, a judgement of the ECJ specifies that the Works directive is not applicable if the works in question are accessory to the main object of the adjudication (Gestion Hotelera, ECR, 1994, I-1329).

Procurement procedures applied

4.(a) *What procedures are followed in the procurement process*

There are three main public procurement procedures, plus a fourth one (•design contest•), that is peculiar to the service contracts:

- Open procedure: all interested service providers may tender
- Restricted procedure: only service providers that have been invited to tender by the contracting authority may do so.
- Negotiated procedure: the contracting authority consults selected service providers and negotiates the contract terms with one or more of them (usually a minimum of three).
- Design Contest: this procedure enables the contracting authority to acquire a plan or design selected by a jury after having been put into competition with or without the award of prices. Design Contests can be organized as a part of another procedure leading to the award of a service contract, or on the contrary, they can constitute an independent procedure on their own (art. 13 of the Services Dir.).

- (b) ***Under which circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.***

(i) Traditional sectors:

According to the Public Works and Public Services Directives, Contracting Authorities are entirely free to opt between open or restricted procedures, only the option of negotiated procedures, with or without prior publication of a contract notice, is limited to particular situations (see art. 7 and 11 respectively).

(ii) Water, energy, transport and telecommunications sectors:

Contracting authorities may choose any of the procedures provided that a call for competition has been made. This prior call for competition can be avoided under some circumstances (see art. 20.2 of the Utilities directive).

- (c) ***What are the time limits for submission of bids?***

(i) Traditional sectors:

In open procedures, the deadline established by the authority for receipt of the tenders cannot be less than 52 calendar days from the date of dispatch of the notice for publication. This time limit may be reduced to 36 days in case of pre-information.

In restricted and negotiated procedures, the bid is preceded by a request of the contractor to be invited to participate in the tender. The time limit for receipt of request to participate fixed by the contracting authorities shall be no less than 37 days from the date of dispatch of the notice. The time limit for receipt of tenders may not be less than 40 days from the date of dispatch of the written invitation in the case of restricted procedures. This time limit can be reduced to 26 days in case of pre-information. In case of justified urgency, those time limits may be reduced to not less than 15 days for the receipt of request, and not less than 10 days for the receipt of tenders.

(ii) Water, energy, transport and telecommunications sectors:

In open procedures, the time limit for the receipt of tenders is the same as for the traditional sectors: 52 days (36 if pre-information).

In restricted and negotiated procedures, timing is different. The time limit for receipt of request to participate shall, as a general rule, be at least 5 weeks from the date of dispatch of the notice or invitation and shall in any case not be less than the time limit for publication (see art. 25•3) plus 10 days. The time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the

selected candidates, provided that all tenderers are given equal time to prepare and submit tenders. If that kind of agreement is not reached, the contracting entity shall fix a time limit which shall, as a general rule, be at least 3 weeks and shall in any case not be less than 10 days from the date of invitation to tender.

Publicity for inviting tenders

5(a) *How are intended procurement publicised? Are invitations to tender published? If so, where, and in what languages?*

The Directives foresee common advertising rules for the tender procedures.

(i) Traditional sectors

Contracting authorities shall make known, by means of a notice, their intention to award a contract, a work concession or a design contest. This notice shall be sent to the Office for Official Publications of the European Communities, which shall publish it not later than 12 days after its dispatch (5 days in accelerated procedures).

Notices are published in full in the Official Journal of the European Communities (supplement S) and in the TED data bank in the original language, which is the only authentic. A summary of the important elements of each notice is published in the other official languages of the Community, the original text alone being authentic. At present, the official languages of the Community are: Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish.

In addition to those invitation to tender notices, pre-information notices are published. In works contracts, Contracting authorities publish indicative notices containing the essential characteristics of the works contracts which they intend to award. This notice is published in full in all the official languages of the Community, the original text alone being authentic. In other services, contracting authorities shall make know, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement in each of the service categories listed in Annex IA of the Services Directive (the •priority services•) which they envisage awarding during the subsequent 12 months where the total estimated value is not less than ECU 750.000. Non-priority services contracts (those listed in Annex IB) are not published.

(ii) Water, Energy, Transport and Telecommunications sectors:

In these sectors, a call for competition is published in full in their original language in the O.J. of the E.C. and in the TED data bank. A summary of the important elements of each notice is published in the other official

languages of the Community, the original text alone being authentic. Notices shall be sent to the Office for Official Publications of the European Communities, which shall publish it not later than 12 days after its dispatch (5 days in accelerated procedures).

Calls for competition may adopt four different forms: a notice stating the intention to award a particular contract; a periodic indicative notice to which undertakings can express their interest (in that case, it must have been published not more than 12 months prior to the date on which the invitation to confirm the interest is sent. There is no further publication of a notice of a call for competition.); a notice on the existence of a qualification system; or a notice of call for competition in the case of design contests.

In the case of works contracts, contracting entities must make known, at least once a year, by means of a periodic indicative notice, the essential characteristics of the works contracts to be awarded which meet the threshold requirements. In the case of other service contracts, the periodic indicative notice must include the estimated total value of the service contracts in each of the categories of services listed in Annex XVI A which they intend to award over the following 12 months, if such value is equal or greater than ECU 750.000. (See arts. 21, 22, 23 and 25 of the Utilities Directive)

(iii) In addition to the publication in the Official Journal of the E.C., notices can be published in the official journals or in the press of the country of the contracting authority. However, publication cannot be made before the date of dispatch to the Office for Official Publications of the E.C. They shall not contain information other than that published in the O.J. of the E.C. Furthermore, notices for procurements below the EC threshold values are not published in the O.J.. They are usually published in the national official journals as well as in local, regional or national newspapers. See hereunder for specific information

- A. Notices below and above the thresholds are also published either in the •Wiener Zeitung• or in the •Amtlicher Lieferungsanzeiger•.
- B. Notices, regardless of the value of the contract, are also published in the •Bulletin des Adjudications•, an official body within the Belgian Official Journal (•Moniteur / Staatsblad•). Only in some cases, negotiated procedures are exempted from publication.
- D. Notices about procurement below the EC thresholds are published in the German Official Journal (•Bundesausschreibungsblatt•)
- DK. Notices on public works and construction contracts and contracts below the EC thresholds, are also published in a specialized newspaper (•Licitationen•). Furthermore, notices concerning contracts both above and below the thresholds, including notices on supplies and services contracts,

are sometimes published in national (or local) newspapers or in the specialised press, in the former case only after dispatch of the notice to the EC OJ. National publication is only mandatory for certain contracts submitted for tender by central government (state) institutions, both above and below threshold values.

- E. Contracts above the thresholds are also published in the Spanish Official Journal (*•Boletín Oficial del Estado•*), in Spanish.
- I. Contracts above the thresholds are also published in the Italian Official journal (*Gazzetta ufficiale della Repubblica italiana*), only in Italian language and summarized on at least two newspapers, one having national circulation, one at regional level. Below the thresholds contracts are published on national journals, regional and local bulletins. The annual pre-information is compulsory on the Official Journal of the EC and two newspapers.
- IRL. In general, advertising is recommended for all but the most minor contracts eg. above IR£ 10,000. The precise nature of advertising would depend on valuation and nature of the contract. For a sub-threshold contracts advertising would normally take place in at least two national newspapers, supplemented by the international press, as appropriate. Many sub-threshold contracts, funded from Community sources, are advertised voluntarily in the Official Journal of the EU.
- L. Notices are also published in Luxembourg newspapers, although information provided is less detailed.
- P. Notices are published in the third serie of the Portuguese Official Journal (*•Diário de la República•*) and in two major newspapers, in Portuguese.
- S. There is no mandatory obligation to publish invitations to tenders below the threshold values. Announcements of such procurement are however, sometimes published in Swedish newspapers for commercial reasons.
- SF. Notices concerning intended procurement of Finnish contracting entities are also published in Finnish or Swedish language in the supplement to the Finnish Official Gazette (*•Julkiset hankinnat•*). Publication of notices exceeding certain threshold values according to EC directives is mandatory but many contracting entities also voluntarily publish notices of smaller contracts.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

The length of the notice shall not be greater than one page of the Journal, or approximately 650 words (for the traditional sectors).

Invitations to tender in non-priority services contracts (those listed in Annex IB of the Services Directive) are not published.

In the case of the negotiated procedure, some contracts can be awarded without prior publication of a contract notice, provided that some requirements are met. See art. 7.3 of the Public Works directive and art. 11.3 of the Public Services directive.

In the sectors of Water, Energy, Transport and Telecommunication, a procedure without prior call for competition may be followed according to art. 20.2.

There are no common advertising rules for contracts under the threshold values. Each national legislation establishes its own rules which usually provide for publication at national level.

(c) *What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.*

Works: notices shall specify the information requested in the models set out in annexes IV, V and VI of the Works Directive.

Other Services: notices shall specify the information requested in the models set out in annexes III and IV of the Services Directive.

Water, Energy, Transport and Telecommunications sectors: the calls for competition may be made by means of a notice drawn up in accordance with Annex XII A,B or C; a periodic indicative notice drawn up in accordance with Annex XIV; or by means of a notice on the existence of a qualification system drawn up in accordance with Annex XIII. In Design Contests, the call for competition shall be made by means of a notice drawn up in accordance with Annex XVII.

Standard forms exists for use by contracting entities, but their use is not (yet) mandatory.

(d) *Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set.*

According to the directives, the contract documents and supporting documents shall be sent to the service providers by the contracting authorities or competent departments within six days of receipt of their application. Nevertheless, where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account when the appropriate time limits are fixed.

Charges for obtaining the full set of tender documents may be imposed or not, depending on the relevant national legislation.

- A. According to the •Bundesvergabegesetz• •25, charges for bidding-documents for open tendering should correspond to the cost for production of these documents plus postal charges. A deposit may be required for documents which are handed out free of charge but must be returned to the procuring entity.
- B. If charges are imposed, they cannot exceed the cost of copying and sending the documents.
- D. In open procedures the charges for obtaining the full set of tender documents must not exceed the cost of copying. In restricted and negotiated procedures there are no charges.
- DK. According to the Danish tradition, a charge (deposit) is normally required in order to obtain tender documents in the construction and work area, and the deposit will be refunded upon return of the documents in undamaged condition. As to tender documents relating to supplies and services procurement, there is no established tradition. Tender documents can in some instances be obtained free of charge, in other cases a charge (which in some, but not all, cases is subject to refund upon return of the documents) has to be paid.
- E. Charges can be imposed to obtain the tender documents. In that case, they must be specified in the call for tenders.
- EL. The charge for obtaining the full series of documents regarding the tendering corresponds to the cost of reproducing those documents.
- F. The whole set of bidding documents can be obtained free of charge from the contracting entity. Territorial entities have the possibility to ask for a refund deposit while giving the documents. Such deposit will be refunded to the candidate along with the introduction of the bid.
- I. The charges for obtaining the documents from public contracting entities correspond to the cost of reproducing those documents.
- I. The seeking of deposits for tender documents is common. However the recommended practice is that deposits should be returnable in full on receipt of a bona fide tender, not subsequently withdrawn. The amount of the deposit sought should not be excessive and should be based on the marginal costs incurred in preparing the relevant documents, i.e. the costs incurred in reproducing and issuing the documents including all overheads such as labour, materials, reproduction costs, postage, etc. The marginal costs should not include the costs of preparing the original set of tender documents. Fees or deposits cannot be used as a barrier to free competition.

- L. National legislation provides that the transmission form and the terms of reference are sent free of charge. However, if the submission documents contain maps or other pieces, the contracting authority can request bidders to pay the cost of these documents. Charges are nevertheless reimbursed to all candidates submitting a tender.
 - NL. As each entity is responsible for its own procurement, they are also free to decide on charges for tender documents. If charges are made this will in general be on cost-related basis. It is advised that charges, if made, should be set in a non-discriminatory manner.
 - P. There is a direct link between the charge to be paid and the cost of the procedure.
 - S. It is up to the individual procurer to decide, when engaged in procurement activities above and beneath the threshold levels, if it wants to collect charges for obtaining the set of tender documents as well as the size of these charges, as long as the demanded charges are not undue to certain groups of suppliers.
 - SF. There are no uniform practice relating to charges of tender documents. In principle, contracting entities may charge a reasonable price for tender documents. However, charges should be in relation to real costs caused to the contracting entity for supplying those documents.
 - UK. Public purchasers could make charges for tender documents. The advice is that such charges should not be made, but if they are, they should be based on the cost of producing extra sets of documents.
- (e) ***Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.***

Tenders Electronic Daily, known as TED, is the on-line version of the printed •Supplement S to the Official Journal of the European Communities•. Similarly to the Official Journal, TED is updated five times per week. It is produced by the Office for Official Publications of the European Communities, hosted by the European Commission Host Organisation (ECHO) and offered in many countries via Official Gateways.

At present, in addition to the former connection procedures, a user-friendly graphical interface allows users to connect to the ECHO databases using a •Windows• environment (•Windows access to Central Host). Watch-ECHO can be down-loaded from the Internet (<http://www2.echo.lu/echo/en/menuecho.html>).

Furthermore, the Commission services are currently working on a pilot project named SIMAP (Information system for public procurement) which intends to create an EU-wide electronic public procurement network aiming to

make the process more efficient, more reliable, less time-consuming, and ultimately more cost effective, both for procurers and suppliers. It is expected to be fully operative by the year 2000. The Internet Homepage can be visited at: <http://194.78.31.74:8087/>.

Requirements laid down for possible suppliers

6.(a) *Are there registration, residence or other requirements for potential suppliers?*

There are no residence requirements.

The Works and Services directives do not prejudice the application at national level of rules concerning the conditions for the pursuit of an activity or a profession, provided that they are compatible with Community law. In addition, tenderers may be requested to prove their enrolment in one of the professional or trade registers. (See article 25 of the Works directive and 30 of the Services directive)

Legal form of tenderers or candidates is not a ground for rejection of the tender as long as under the law of the Member State of establishment tenderers or candidates are entitled to carry out the relevant service activity. However, legal persons may be required to indicate the names and relevant professional qualifications of the staff to be responsible for the performance of the service. If tenders are submitted by groups of service providers, a specific legal form cannot be required in order to submit the bid, although it can be required once the contract has been awarded. (See articles 21 of the Works directive, 26 of the Services directive and 33 of the Utilities directive)

(b) *What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?*

(i) Traditional sectors

There are some conditions that allow the participation to the tender procedure; and some others that allow the exclusion from it.

Any service provider may be excluded from participation in a contract under some circumstances, such as bankruptcy (and other insolvency procedures), criminal conviction, grave professional misconduct, failure to respect the social security or tax obligations, and misrepresentation in supplying or failing to supply the information that may be required as regards qualitative criteria. (See articles 24 of the Works directive and 29 of the Services directive).

In respect to the proof of the service provider's financial and economic standing, the contracting authorities shall specify in the contract notice or in the invitation to tender the reference to be produced. The directives provide with some references *ad exemplum*: statements from banks, professional risk indemnity insurance, service provider's balance sheets or statement of the undertaking's turnover. (See articles 26 of the Works directive and 31 of the Service directive).

The ability of service providers to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability. The directives list several means according to the nature, quantity and purpose of the service to be provided in order to give evidence of the service provider's technical capability. The contracting authority shall specify which references it wishes to receive, taking into consideration the legitimate interests of the service providers as regards the protection of their technical or trade secrets. It can be required the production of certificates issued by independent bodies attesting conformity of the service with certain quality assurance systems, which must be based on European standards. (See articles 27 of the Works directive and 32-33 of the Services directive).

(ii) Utilities

Rules regarding the sectors of water, energy, transport and telecommunications are much less detailed. No equivalent rules on technical and financial suitability are included in the Utilities directive, instead, it simply provides that selection of candidates to tender (in restricted and negotiated procedures) shall be made according to objective criteria and rules which contracting entities lay down and which they shall make available to interested service providers. Those criteria may include the criteria for exclusion specified in the Works and Services directives (*supra*). In any case, the selection procedure must take account of the need to ensure adequate competition.

A similar lack of detailed rules also exists in relation to qualification systems (see *infra*). However, despite this absence of detailed rules, in practice utilities should look at the same factors and accept the same means of proof as those provided in the other directives. (See article 31 of the Utilities directive).

(c) ***Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?***

(i) Traditional sectors:

Member States can have official lists of recognized service providers, although most of them do not have. Those lists must respect the Directives provisions concerning the criteria for qualitative selection (see *supra*).

Certified registration in official lists of service providers by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability corresponding to the service provider's classification in most of the criteria for qualitative selection. (See articles 29 of the Works directive and 35 of the Services directive).

(ii) Utilities:

Contracting entities which so wish may establish and operate a system of qualification of suppliers, contractors and service providers. An informative notice is published in the Official Journal of the European Communities. The system shall operate on the basis of objective criteria and rules, making reference to European standards if appropriate. Updating of criteria and rules is possible. Refusal of qualification or bringing the qualification to an end must be reasoned and applicants or services providers should be notified.

Where a qualification system exists and a Qualification Notice is used as the sole •call for competition•, the selection of candidates for bidlists for specific contracts must derive from those suppliers or contractors qualified under the system. (See article 30 of the Utilities directive).

Criteria for assessing bids and awarding contracts.

7.(a) *What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?*

The criteria on which the contracting authority must base the award of contracts are (without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services): the lowest price or the most advantageous tender.

Criteria for award have to be made known beforehand. Moreover, where the contract is to be awarded to the economically most advantageous tender, the contracting authority shall state which award criteria it intends to apply, where possible in descending order of importance. Those criteria can be, for example: quality, technical merit, aesthetic and functional characteristics, technical assistance and after-sale service, delivery date, delivery period or period of completion, price...

(b) *Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?*

No. However, as regards utilities, there is a provision which creates a kind of Community preference, thus favorising local content. See infra question 9 (art. 36 of the utilities directive).

- (c) ***Is preference given to any particular enterprise of group of enterprises? If so, please specify.***

No.

- (d) ***Do the procurement criteria differ according to sector or region of the economy?***

No.

- (e) ***What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?***

If the criterion is the lowest price, the award shall be automatic. However, abnormally low tenders can be rejected, provided that some rules are respected.

In the case of the most advantageous tender, the criteria shall be previously fixed. Those criteria are objective in the sense that they must concern the characteristics of the provision of services or the execution modalities, but not the subjective qualities of the suppliers. In any case, contracting authorities do not have an unconditional freedom of choice.

8. Disclosure of bids received and contracts awarded

- (a) ***How are tenders received, registered and opened?***

Reception, registration and opening of bids are governed by national law. The EC only indicates that, in open procedures, the date, time and place of the opening must be published in the tender notice, as well as the persons allowed to be present at the opening.

- A. According to •Bundesvergabe-gesetz• 1993, •32 tenders have to be submitted in a sealed envelope to the procurement entity, which will keep a record of the day and exact time of receipt of tenders. Informations regarding the tenders received, especially the name of bidders and number of bids will not be disclosed. Tenders are to be stored securely until opening of bids. According to section 33 of the same Act, in open and restricted procedures, bids have to be opened at the specified time and place immediately after expiration of the bidding period as stated in the bidding documents. Opening of bids is to be carried out by a commission, consisting of at least 2 informed representatives of the procurement entity. Bidders are entitled to be represented at bid-opening; and can only be excluded for important reasons. In this case, that commission has to be composed of at least 3 informed representatives of the procurement entity. As regards the negotiated procedure, no formal opening of bids is required. According to a Government directive, the relevant regulations of •ONORM A 2050 -award of bids for services, tendering offers and award• of 1 January 1993 are to be applied for opening of bids. This also requires that certain unit-prices or

prices for certain positions, which are subject to later price-changes are to be made known at bid opening.

- B. According to the Belgian legislation, tenders must be sent by ordinary or registered mail, or handed to the contracting entity. In order to guarantee confidentiality, tenders are inserted in a second anonymous envelope. Tenders are opened in public (open procedures), or in presence of the bidders (restricted procedures) by an Opening Commission established by the Contracting Entity. When the award criteria is the lower price, prices are publicly disclosed at this time. A record of the opening, which can be consulted by the persons attending, is drawn up. No negotiation on the tenders is allowed. In negotiated procedures, there is no public opening of tenders.
- D. Offers have to be marked the day of arrival without being opened, and have to be kept closed until the day of disclosure. After the period for submitting tenders, offers can be opened by the chairman and two officials of the contracting authority without the presence of bidders. A note has to be made stating the name of the bidder, the price and, if existing, side offers. The bidder has not access to those notes. After the bids are opened and until the contract is awarded, negotiations between the bidder and the contracting authority are not allowed.
- DK. Tenders are received in the ways described in the EU procurement directives. Registration is done according to the procedures of the individual public authorities. In the field of construction and works, bidders have a legal right to be present at the opening of tenders. In the supplies and services areas, there exists no legal obligations on public institutions to allow presence of the bidders at the opening of bids. In practice, however, some authorities do allow presence of tenderers, whereas other do not admit tenderers at the opening.
- E. Bids are received in the Register Office of each entity, and are opened by a collegiate body, composed of officials.
- EL. Greek legislation is providing a full description of the process for receiving, registering and opening of the offers so as to secure publicity and transparency. Offers are submitted or sent by a registered letter in a sealed envelope, accompanied with all other relevant documents.
- F. Bids must be sent anonymously, but ensuring that the date is clear. Bids are registered and a receipt is given to the person who presented the bid. Opening is done by a Commission acting as college. With respect to the territorial entities, this Commission is composed of people designed by votation within the Assembly. Therefore, the opening is subject to the principles of plurality and representativeness.
- I. Italian legislation foresees the request of participation to tender must be sent by closed envelope. In the case of economic offer the request must be sent

by sealed envelope with sealing-wax. the envelope will be open by the Commission of valuation. These rules are in force for all contracting entities.

- IRL. Tenders are received, registered and not opened until the nominated date, when they are simultaneously opened, usually in private but with more than one official present. Late tenders are not entertained and are returned unopened.
- L. Envelopes containing the tenders should be sent closed. In open and restricted procedures, tenders are opened in presence of the bidders, at the time and date fixed for the opening. Tenders can be sent by registered mail or delivered in person.
- NL. It may vary according to the kind of service required and the procurement procedure chosen. In general, tenders are opened simultaneously and in presence of an impartial party.
- P. Bids are received and registered by the administrative services and open by the •Júri de Abertura de Propostas• (Bids Opening Jury).
- S. Tenders may, in the case of procurement above the threshold levels, only be submitted in the original within the set time limit. In the case of procurement beneath the threshold levels, the tenderer may submit tenders by telegram, telefax or any equivalent means within the time limit, if the tenderer promptly confirms the tender through a personally signed document. The procurers decide themselves how the tenders be registered before the opening of the tender. The tenders are opened with a minimum of two people designated by the procurer present. On the demand of a tenderer, a person designated by the Chamber of Commerce may also be present at the opening of the tender. The extra cost incurred is paid by the tenderer who has demanded the presence of this person.
- SF. There are no uniform rules or practices relating to receiving, registering and opening of tenders. However, according to Decree on Government Procurement, when tenders are opened, a list of all tenders received has to be drawn up. The Federation of the Finnish Municipalities has included corresponding rules in its General Procurement Guideline (1995).
- UK. In many cases the procurement of services will involve iterative procedures in which there will be a competitive tendering stage. The advice to government departments on tendering procedures is contained in the Central Unit on Procurement's Guidance n°40, The competitive tendering process as follows:

All responses to Invitations to Tender must be conducted under •sealed bid• conditions. Each bid must be submitted •sealed• and kept secure by the department until the bid opening time is reached. To preserved equity and to avoid premature disclosure of tender prices or other irregularities, all competitive tenders should be opened on the due

date, and recorded by the Tender Opening Board. (Tender opening boards should be formally constituted and comprise a Chairman who will normally be an officer serving in a Purchasing Unit, an independent member from a non-Purchasing Branch and a Secretary).

It is envisaged that where bids are made other than in writing, they will be kept safe until the due date.

(b) *Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?*

Contracting authorities or contracting entities who have awarded a contract, or have held a design contest shall make known the result by means of a post-award information notice to be published in full in the O.J. of the E.C. and in the TED data bank in the official languages of the Communities, the original text alone being authentic. In the case of utilities, publication is done only in the original language. This requirement shall be fulfilled within 48 days after the contract award.

The information to be published is not limited to the mere mention of the actual award of a contract but must contain the conditions under which the contract has been awarded (i.e. the criteria applied and the price agreed). However, relevant information on the contract award may, under certain circumstances, be omitted. This possibility is limited to that information which could have harmful effects on the winning firm or the public interest. (See art. 11.5 of the Public Works directive, art. 16 of the Public Services directive, and art. 24 of the Utilities directive).

In addition, for each contract awarded, the contracting authorities shall draw up a written report to be communicated to the Commission at its request. (See art. 8.3 of the Public Works directive; art. 12.3 of the Public Services directive)

(c) *Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?*

Contracting authorities must, within fifteen days of the date on which the request is received, inform any eliminated candidate or tenderer who so request in writing of the reasons for rejection of his application or his tender, and in the case of a tender, the name of the successful tenderer. Unsuccessful tenderers may ask for additional information to the contracting entity if they are not satisfy with the explanations. (See art. 8.1 of the Public Works directive, art. 12.1. of the Public Services directive).

Furthermore, the contracting authority shall inform candidates or tenderers who so request in writing of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to recommence the procedure. It shall also inform the Office for Official

Publications of the European Communities of that decision. (See art. 8.2 of the Public Works directive, art. 12.2. of the Public Services directive).

Treatment granted to domestic and foreign services and/or suppliers

9. ***What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.***

In E.C. law, all suppliers from any Member State of the E.C. must be equally treated. So, 'Domestic' must be understood as referring to the whole territory of the E.C.

With respect to the treatment accorded to foreign services and/or suppliers, such treatment depends on the multilateral or bilateral agreements signed by the E.U. See question 11.

Article 36 of the Utilities Directive provides for a preference rule. This article applies to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. Where two or more tenders are equivalent in the light of the award criteria (they are equivalent if the price difference does not exceed 3%), preference shall be given to the tenders where the proportion of the products originating in third countries does not exceed 50% of the total value of the products constituting the tender. Moreover, if there are no equivalent tenders, contracting entities still may reject non-Community tenders as defined. This rule applies regardless of the nationality of the tenderer.

Following the imposition of sanctions against the Community by the US under Title VII of its 1988 Trade Act, the Community took counter measures as it considered that such sanctions were unfair and unjustified. Therefore, the Council approved Regulation n°1461/93 concerning access to public contracts for tenderers from the United States of America (OJ L 146, 17.6.1993). This Regulation was subsequently completed by Regulation n°1836/95 (OJ L183/4, 2.8.1995) as a result of the enlargement of the Community. Those measures are applied without prejudice to the obligations of the Community and its Member States towards third countries, and to the obligations in respect of the GPA.

Procedures for hearing and reviewing complaints/appeals**10. *What, if any are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.***

The rule is that any potential contractor who considers that he has been injured by an unlawful decision on the part of a contracting authority may seek review. There are two levels of remedies available: national procedures and E.C. level control.

(i) Regarding national remedies, the Community has issued two directives (the so-called Remedies Directives, see *supra*) aiming to co-ordinate the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures. The objective is to ensure that everyone everywhere has the same rights concerning the review procedures.

These directives provide for the establishment in every Member State of courts or tribunals with real powers to settle the conflicts which might arise between contracting entities and firms, suppliers of services or individuals. This means that in every Member State there is some legally authorized body able to resolve conflicts in the field of public procurement. Nevertheless, jurisdiction nature may differ from one Member State to another, as well as the remedies available. Review bodies at first instance might not be necessarily judicial in character, although their decision should always be reasoned. However, in such a case, their decision must be subject to judicial review or review by another body which is a court or tribunal within the meaning of article 177 of the Treaty, and independent of both the contracting entity and the review body. This independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.

Review procedures are available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

Member States must ensure that the review bodies have a minimum number of powers. Firstly, power to take, at the earliest opportunity and by way of interlocutory procedure, interim measures, including measures to suspend or to ensure the suspension of the procedure for the award of a contract or the implementation of any decision taken by the contracting entity. Secondly, power to set aside decisions taken unlawfully. Thirdly, the power to award damages to persons injured by the infringement.

The Utilities Remedies Directive provides for a special procedure known as attestation. Contracting entities are given the possibility of having

recourse to an attestation system in which contract award procedures are periodically examined by independent bodies with a view of obtaining an attestation that, at that time, those procedures and practices are in conformity with Community law concerning the award of contracts and the national rules implementing the law.

If the Remedies directives have not been duly implemented, parties may bring a case against the Member State in question before a national court of that State, invoking the ECJ case law which states that the Member State could be liable for undue implementation of directives, provided that some requirements are met (see ECJ judgments in cases *Francovitch* and *Brasserie du Pecheur*).

There is also a mixed procedure. Any national court can raise a preliminary question before the European Court of Justice in Luxembourg in order to obtain a judgment interpreting the E.C. law provision which might be applicable to the case. During the procedure before the ECJ, the Commission is allowed to intervene and express its views. After the ruling of the European Court of Justice, the national court *•a quo•* must rule in the case in question according to the interpretation given. See article 177 of the E.C. Treaty.

(ii) In what concerns E.C. review procedures, parties can lodge complaints with the E.C. Commission, possibly at the same time as a domestic legal action, with the latter not being a necessary preliminary to the lodging of such a complaint. A complaint can be treated in confidence and does not involve any expense.

The Commission examines those complaints, and when it considers that an infringement of Community provisions in the field of procurement has been committed, it can open the procedure established in articles 169 and 170 of the Treaty, which, after prior consultations between the Commission and the Member State, can lead to the adoption of a decision by the European Court of Justice. There is a special procedure under article 3 of the Public Remedies directive and article 8 of the Remedies Utilities directive in the case that the Commission considers that an infringement has been committed prior to a contract being concluded.

The Commission can also, under articles 186 of the E.C. Treaty and 83 of the Procedure Regulation of the Court, seek, in an interlocutory procedure before the Court of Justice, to obtain the suspension of the award procedure.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. *Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.*

The European Communities and their Member States are a party to the Agreement on Government Procurement concluded within the framework of the WTO on a plurilateral basis (Tokyo Round and Uruguay Round).

Bilateral agreements to which the European Communities and their Member States are a party and which contain certain provisions relating to government procurement have been indicated in the table below.

Type of agreement	Contracting parties to the agreement	Description of the relevant provisions of the agreement
Agreement in the form of exchange of letters on government procurement	USA	The agreement lays down provisions relating to government procurement between the parties and in particular it broadens the scope of commitments of both parties under the GPA.
"Europe" Agreements	Poland, Hungary, Bulgaria, Romania, Slovakia, Czech Republic Slovenia, Estonia, Latvia & Lithuania (not yet ratified).	-The parties' objective is to open up the award of public contracts on the basis of non-discrimination and reciprocity. -It provides for progressive implementation of national treatment principle in respect to contract award procedures. -Establishment, operations, supply of services and movement of labour linked to fulfilment of public contracts are subject to general provisions which regulate movement of workers, establishment and supply of services between the parties.
EEA: Agreement on the European Economic Area	Iceland Liechtenstein Norway	The agreement lays down specific provisions and arrangements concerning application by the non-EC parties certain EC legislation regulating procurement.
ACP-EC Convention of Lomé	ACP countries: Africa, Caribbean, Pacific.	The agreement provides for preferential treatment of natural and legal persons of ACP countries in respect of award of tenders of contracts financed by European Development Fund within the scope of financing of cooperation.
Partnership and Cooperation Agreements	Russia, Ukraine.	Public procurement is being indicated as an area of cooperation aiming at developing conditions for open and competitive awards of contracts for goods and services, in particular through calls for tenders.
Euro-Mediterranean Agreement	Tunisia	The parties shall aim at a reciprocal and gradual liberalization of public procurement contracts.
Euro-Mediterranean Agreement	Israel	The parties shall take measures with a view to a mutual opening of their government procurement markets and the procurement markets of undertakings operating in the utilities sectors for purchase of goods, works and services beyond the scope of obligations under the GPA.
Procurement by telecom operators	Israel (signed, not yet ratified).	Mutual opening of their government procurement market and procurement markets of undertakings operating in the telecom sector for the purchase of goods, works and services beyond the scope of obligations under the GPA

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.

(a) Please provide statistics (if available) on the number and value of services procurements:

- on both an aggregate and sectoral basis**
- by origin of services and suppliers**

services sectoral classification in document MTN.GNS/W/120

(b) Please provide statistics (if available) on the

- share of services procurement in total procurement**
- share of procurement of each service in total domestic output of the service**
- share of procurement of each service in total domestic consumption of the service**

No accurate and relevant data available.

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ORGANIZATION

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21 October 1996

(96-4434)

Working Party on GATS Rules

COMMUNICATION FROM THE UNITED STATES

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the delegation of the United States to Members of the Working Party on GATS Rules.

Attachment II (referred to on page 11, question 12(b)) will be circulated at a later date.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Procurement is generally defined in terms of purchasing for the direct benefit and use of government entities. The Office of Federal Procurement Policy (OFPP) Act (41 USC 403) defines procurement on the following basis:

The term procurement includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

Procurement generally does not include non-contractual agreements or any form of government assistance, including cooperative agreements, grants loans, equity infusions, guarantees, fiscal incentives, and governmental provisions of goods and services to persons or governmental authorities not specifically covered under U.S. annexes to the WTO Government Procurement Agreement (GPA) and NAFTA Chapter 10.

Public sector procurement defined broadly includes purchasing by Federal, state and municipal governmental authorities. However, the U.S. procurement system is not centralized, except with respect to U.S. Federal executive agencies. The answers provided in response to this inventory generally refer to procurement by Federal executive agencies.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

See discussion of the Federal Acquisition Regulations (FAR) under Question 3(a) below. Although Federal executive agencies are covered by the same framework of laws and regulations on their procurement activities, they generally conduct procurements individually, except when procuring off General Services Administration (GSA) or Defense Logistics Agency (DLA) supply schedules.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

United States Code, Titles 10 and 41 contain the bulk of the laws upon which the FAR is based. On an annual basis, authorization and appropriation acts passed by Congress and signed by the President may provide additional authority and requirements.

The FAR System codifies and publishes uniform policies and procedures for acquisition by all U.S. executive agencies (central government entities). The FAR System consists of the FAR itself, which is the primary legal document, and agency-specific acquisition regulations that implement or supplement the FAR. The FAR does not permit agency acquisition regulations that unnecessarily repeat, paraphrase, or otherwise restate the FAR; limits agency acquisition regulations to those necessary to implement FAR policies and procedures within an agency; and provides for coordination, simplicity, and uniformity in the U.S. Federal acquisition process.

Title 41 of the U.S. Code and the FAR are available on the Internet at <http://www.findlaw.com>.

Executive agencies receive appropriations from Congress each year. These appropriations stipulate the programs that entities are authorized to fund and the dollar amounts they are authorized to spend. Executive Agencies are required in some instances to satisfy requirements for goods or services from or through centralized government supply sources. One example is obtaining goods or services from wholesale supply sources such as the GSA or the DLA. See Attachment 1 for a list of pertinent laws.

41 USC 253(c) and 10 USC 2304(c) -- Other than Full and Open Competition -- authorize, under certain conditions, contracting without providing for full and open competition. The conditions include:

- 1) only one responsible source and no other supplies or services can meet agency requirements;
- 2) unusual and compelling urgency;
- 3) industrial mobilization, engineering, developmental, or research capability, or expert services;
- 4) international agreement;
- 5) authorized or required by statute, e.g., national industries for the blind and severely handicapped; Federal prison industries (UNICOR); government printing and binding;
- 6) national security; and
- 7) public interest, which is rarely used because it requires notification to Congress not less than 30 days prior to contract award.

Additionally, the Department of Defense (DOD), in particular, has specific requirements to procure from domestic sources, as specified in annual appropriations and authorization legislation. These include items such as textiles, food, specialty metals, and hand and measuring tools, among other things, that are set forth in the Defense Federal Acquisition Regulations (DFAR) and are exempt from U.S. obligations under the WTO GPA and NAFTA Chapter 10.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The United States generally does not distinguish among procurement of goods and services in terms of competitive and transparent procedures. The same transparent procurement regulations apply to all types of contracts listed above. Please see response to Question 3.(a) above.

The United States does have some specialized rules for services, construction, major systems, utilities, purchases under \$100,000 and commercial item acquisitions, which are set forth in specific provisions of the Federal Acquisition Regulations (FAR), but even these specialized rules are still

within the general umbrella of procedures and requirements on transparency and competition.

FAR provisions generally apply to any combination of goods and services, although there may be specialized additional rules that apply to specific services, for example.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Procurement procedures could differ according to the openness of the invitations to tender. At least three broad categories of procedures are commonly distinguished: (i) public or open tendering procedures under which all interested parties may submit a tender; (ii) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (iii) private contract or single tender in which the awarding authority contracts suppliers individually, and sometimes only a single supplier.

The general rule is full and open competition, although there may be specific circumstances in which selective tendering or sole sourcing may be permissible. See the response to Question 3(b) above.

Two main procurement procedures are used based on the level of complexity of the goods or services being procured. Simplified acquisition procedures are used for procurements expected to be less than \$100,000, and sealed bid or negotiation procedures are used when the procurements are expected to be above \$100,000. Irrespective of the procedure used, the emphasis is on ensuring transparency throughout the process. Procedures are predictable. The Competition in Contracting Act (CICA) requires that criteria for award of a contract be set forth in the solicitation. If the agency changes the criteria without advising the offerors, the procurement may be protested. Bid deadlines are the same for all offerors. Where the procurement is conducted using price and other factors, the unsuccessful offerors may request, in writing, debriefings from the contracting officer. If the price is the only decision factor, the unsuccessful offeror will be notified in writing of the number of bidders, the number of proposals and the total contract price of the items in the award.

By law, technical specifications are generally to be free from any restrictive requirements so as to allow maximum competition among potential offerors. The order of preference for specifications is:

- 1) voluntary standards;
- 2) commercial item descriptions in the acquisition of commercial items;
- 3) government product descriptions stated predominantly in terms of functions to be performed or performance required;

- 4)government product descriptions stated predominantly in terms of material, finishing schematics, tolerances, operating characteristics, component parts and other design requirements.

Solicitations generally contain detailed specifications (although the trend recently has been towards commercial item acquisition), as well as contact points for obtaining more detailed information. The Commerce Business Daily (CBD), in which most Federal solicitations are published, includes initial notifications of the intent to procure certain supplies and services. Specific requirements and specification information are contained in the solicitation document itself. The CBD will only contain a brief description, along with information regarding whether a particular procurement is using a performance or design-based specification.

Additionally, in complex procurements, procuring officials may develop a draft Request for Proposal (RFP) and send it out to interested suppliers for comment. This process is open to all interested suppliers. Depending on the comments received, the RFP may be altered. If a change is made after the solicitation is issued, the change is generally transmitted through an amendment to the solicitation.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

The general principles and requirements are described in the response to Question 4(a) above. The FAR contains very detailed provisions to guide contacting officials in ensuring transparent, competitive procurement. These procedures generally apply to all procurements above \$2,500, although they are simplified with respect to procurements below \$100,000.

(c) What are the time limits for submission of bids?

The CBD notice generally must be published 15 days before issuance of the solicitation, and the solicitation must allow at least 30 days response time. However, the response time is a function of the procurement's complexity. Consequently, in some procurement cases, the response time will be greater than 30 days. Additionally, required time limits have been recently reduced for commercial, off-the-shelf (COTS) acquisitions and will be reduced in the future for procurements that are conducted electronically. As procurement methods evolve, particularly by eliminating government-specific requirements and adopting new technologies, the period of time necessary to allow for competitive procurement opportunities is likely to decrease.

Publicity for inviting tenders***5.(a)How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?***

Two statutes require public notice in the CBD: 15 USC 637 (c) and 41 USC 416. These statutes are implemented in 48 CFR 15.201, •Synopsis of Proposed Contract Actions. There are 12 exceptions to the synopsis publishing requirement. These are listed in 48 CFR 1 subpart 5.202. In addition, at the discretion of the Federal government entity, invitations to tender can be publicized through periodic handouts, announcements in newspapers, trade journals, magazines, or other mass communication media. The Federal Government is increasingly looking to the use of electronic means of publication, which promises to greatly increase commercial access to information on procurement opportunities. The Federal Acquisition Streamlining Act (FASA) of 1994 specifically requires the establishment of a government-wide electronic system. Additionally, individual agencies, such as NASA, provided their solicitations over the Internet.

(b)Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

Publishing requirements are less rigorous for procurements falling below the small acquisition threshold of \$100,000.

(c)What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Details could include a description of the good or service to be procured, tender opening and closing dates, conditions of participation, procuring entity, enquiry point, procurement plans, procurement outcomes, contract award notices, etc.

All necessary information concerning the procurement is contained in the CBD announcement and is specified in 48 CFR 5.207. Information in the CBD notice includes, but is not limited to, contracting office address, subject, proposed solicitation number, opening/closing response date, contact point/contracting officer, and description of goods or services. The description of supplies or services must be clear and concise and not unnecessarily restrictive of competition. It should allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

(d)Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Solicitations are provided free of charge to anyone who is interested in making an offer. A subscription to the CBD or account on an electronic bulletin board, however, is not free.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

Tender notices are posted on an electronic bulletin board in addition to being published as noted in the CBD. Some agencies, such as NASA, have Home Pages on the Internet and include tender notices at these websites. For example, the NASA Home Page has now been linked to the APEC Home Page.

In October 1993, President Clinton sent a memorandum to all Federal agencies directing them to streamline procurement through •electronic commerce. The central component of electronic commerce is EDI, computer-to-computer exchange of business data.

The use of EDI allows organizations to generate, receive and process data with minimum human intervention. EDI networks will be able to automatically update inventories, invoice customers, pay suppliers, advertise federal government requirements and many other tasks that are now time, labor, and paper intensive. It is estimated that the new electronic purchasing could cut federal procurement costs by 10 percent by 1997 and speed delivery times by a third.

In order to implement EDI, FASA calls for the establishment of a government-wide Federal Acquisition Network (FACNET) within five years. This network will open up the acquisition process to any business with a personal computer. Agencies have been given an incentive to implement the new system quickly because they may not use the new simplified acquisition procedures for contracts greater than \$50,000 until they have developed •interim FACNET capability. This means that, at a minimum, they must be able to provide widespread public notice of solicitations and receive responses to those solicitations and related requests for information.

After December 31, 1999, agencies may not use the simplified acquisition procedures for contracts greater than \$50,000 until they have implemented a •full FACNET capability. This means that an agency must be able to conduct 75 percent or more of its acquisitions above \$2,500 and below \$100,000 through EDI. Once there is full government-wide use of electronic commerce, the requirement to publish contract notices in the CBD will be waived for all contracts below \$250,000 that are conducted using electronic commerce.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

Generally, the United States does not have registration, residence or other requirements for potential suppliers. However, on a particular procurement the government might require the contractor to be within a certain distance of the site of contract performance. This requirement would be in the solicitation and applicable to all offerors and would only relate to a legitimate need of the contracting entity to have the contractor in close proximity. Additionally, for sensitive procurements, a contractor may have to have appropriate security clearances, which may be obtainable by foreign suppliers.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

Offerors must be determined to be “responsible” by the contracting officer. This entails a review of the contractor’s financial, technical and managerial capabilities in order to predict the probability of whether the contractor will be able to perform the terms of the contract.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers’ mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

Generally, Federal government entities do not use source lists for qualified suppliers. In exceptional cases, however, a Federal entity can establish a source list, although only after the head of the entity prepares a written justification explaining the extenuating circumstances for use of such a list. Potential foreign suppliers from designated countries under the terms of the WTO GPA may be included in source lists. Additionally, Part 9 of the FAR provides for the possibility of qualified bidders lists (QBLs), qualified manufacturers lists (QMLs) and qualified products lists (QPLs). Entities must specifically justify and document the need for establishing such lists and all interested suppliers must be provided an opportunity to be included in such lists.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

For instance, whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account.

Criteria for award, known as evaluation factors, are found in section “m” of the solicitation, as published in the CBD.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

Federal executive agencies do not apply offsets, but there are certain Buy America requirements, set asides and other restrictions. Please see the answer to (c) below.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

Local content requirements: In general, the Buy American Act of 1933 requires that domestic end products be acquired for public use. Executive Order 10582, December 17, 1954 (as amended) implements the statutory preference by stating that an offered price of a domestic product is unreasonable and that an award can be made for a foreign product if the price exceeds the price of a foreign product by six percent. Moreover, the Executive Order authorizes a Federal agency to use any factor to determine that the offered price of a domestic product is excessive. For example, a factor of 12 percent is used by many civilian agencies to determine whether a price offered by a small business firm is unreasonable. Generally, Federal agencies other than DOD use the six or 12 percent evaluation factor to determine if the offered price of a domestic product is unreasonable. DOD uses a 50 percent factor.

Procurement subject to U.S. international obligations is exempt from Buy American Act preferences by Presidential action authorized under the Trade Agreements Act (TAA) of 1979. Authority under the TAA has been used to implement obligations under the WTO GPA, NAFTA, the U.S.-Israel Free Trade Agreement and the WTO Agreement on Civil Aircraft. The President has also used the authority granted under the TAA to exempt procurement from certain other countries from Buy American Act preferences. Additionally, the Buy American Act does not apply to procurement of services or procurement by state and local governments, although many of these subfederal jurisdictions apply their own preferential procurement policies. However, specific services sectors, particularly in the transportation sector, may be subject to domestic source requirements. Examples include the Cargo Preference Act and the Fly American Act.

In addition to the Buy American Act, appropriations and authorization legislation, particularly for DOD, may require procurement from domestic sources, as discussed under Question 3(b) above.

Preferences for small and medium size enterprises: There is no preference for medium size companies. The Small Business Act requires that awards of any size shall be set aside for small business participation when there is a reasonable expectation that offers will be obtained from at least two small businesses and awards will be made at fair market prices. This is the so-called "Rule of Two" for application of set asides.

Purchasing Prohibition: The TAA requires that procurement of products from countries that the President has not exempted from application of the Buy American Act be prohibited for Federal goods contracts that are covered by the GPA. This provision is intended to provide incentive to WTO Members to join the GPA. The prohibition affects approximately \$20-\$30 billion in procurement opportunities annually. Amendments to the TAA contained in the Uruguay Round Agreements Act (URAA) of 1994 permit the President to waive the purchasing prohibition and apply Buy American preferences in its place for countries that are not signatories to the GPA but agree to apply equivalent competitive procurement procedures and effective anti-corruption measures. This authority has yet to be exercised. The purchasing prohibition does not apply to services that are covered under the GPA.

(d) Do the procurement criteria differ according to sector or region of the economy?

Generally, criteria do not differ according to sector or region of the economy. However, where there is a labor surplus area set-aside, geographical location is designated.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The margin of choice or discretion could relate to (i) the relative weight/importance of each contract award criteria; (ii) margins of preference, if any, in respect of specific criteria; and (iii) threshold values, if any, above which referral to a higher level of purchasing authority is required. The discretion allowed to the purchasing authority could vary according to whether there is (i) automatic tender, where the contract is awarded on the basis of predetermined criteria; (ii) discretionary tender procedures which involve acceptance of the bid which is most advantageous-the award of the contract is based on several criteria, some of which are predetermined, but which in general leave the awarding authority a certain measure of choice; and (iii) negotiated tender in which the awarding authority negotiates freely with the potential supplier or suppliers as to the conditions of the contract.

Contracts are always awarded on the basis of specified criteria in the solicitation. These criteria may be weighted for purposes of making best overall value awards. Preferences under the Buy America Act are described under (c) above. Negotiated procedures are generally only used to select a supplier from the competitive range.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

The responses to sealed bids are opened publicly. However, in negotiated procurements, the prices are kept confidential until an award is made. The reason for doing so relates to the proprietary nature of the pricing

information. In addition, the knowledge of prices could lead to a situation in which the incumbent contractor has an unfair advantage over its competitors. This could affect the integrity of the procurement system. Accordingly, the only time when prices are publicly disclosed is in a sealed bid situation.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

The contracting officer shall award a contract with reasonable promptness to the successful offeror by transmitting written or electronic notice of the award to that offeror. Within three days after the date of the contract award, the contracting officer shall notify, in writing or electronically, each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award. Additionally, a post-award notice must be published in the CBD.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

When a contract is awarded on the basis of competitive proposals, an offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated. However, accommodating such untimely debriefing requests does not extend the time within which suspension of performance can be required, as this accommodation is not a "required debriefing" as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after the receipt of the written request. Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method acceptable to the contracting officer.

At a minimum, the debriefing information shall include: (1) the entity's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable; (2) the overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror; (3) the overall ranking of all offerors when any ranking was developed by the agency during the source selection; (4) a summary of the rationale for award; (5) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and (6) reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed. The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

"Domestic" with respect to products is generally on the basis of the Buy American Act rule of origin, which specifies that more than 50 percent of the content must be manufactured in the United States and that the product itself must be manufactured in the United States. Although it is generally not necessary to determine "domestic" with respect to services, including public works, the Buy American Act provides a definition with respect to construction services that includes an examination of ownership, nationality of directors and place of incorporation.

Information regarding laws, regulations, procedures or practices that accord domestic goods, services, public works and/or suppliers treatment more favourable than that accorded to foreign goods, services, public works and/or suppliers is provided in the response to Question 7(c) above.

Information regarding laws, regulations, procedures or practices that accord goods, services, public works and/or suppliers of one country more favourable treatment than those of another country (e.g. through regional agreements) is provided in the response to Question 7(c) above.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Details could include:

- institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;**
- time limits for complaints/appeal;**
- type of remedy, if any, that may be granted.**

There are procedures available for potential suppliers, domestic and foreign, to lodge complaints during any step of the procurement process. These apply to all U.S. Federal executive entities. An interested party can protest: (a) a solicitation or other request by an agency for offers for a contract for the procurement of property or services; (b) the cancellation of the solicitation or other request; (c) an award or proposed award of a contract; (d) a termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

The interested party can file a protest with a Congressional agency, the General Accounting Office (GAO), which is responsible for general oversight of Federal executive agency activities. The GAO issues its recommendation on a protest within 125 days from date of filing of the protest with GAO, or within 65 days under an accelerated review procedure. The GAO can suspend the procurement process while it reviews a case to ensure that all suppliers' interests are not prejudiced.

For controversial issues that arise under a contract, the contractor and the Federal government entity are encouraged to resolve the issues through mutual agreement -- alternative dispute resolution. A contractor also has the option of filing a claim with the contracting officer and filing an appeal with the Agency Board of Contract Appeals or a suit in the Federal Court of Claims.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

The United States is a signatory to the WTO Government Procurement Agreement, NAFTA and the U.S.-Israel Free Trade Agreement.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***
- ***by origin of services and suppliers.***

In order to enhance the comparability of data provided, Members may choose to provide statistics according to the services sectoral classification in document MTN/GNS/W/120 (dated 10 July 1991) at the appropriate level of aggregation.

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

Attachment II contains summary information on U.S. Federal procurement for Fiscal Year 1995.

ATTACHMENT 1: LAWS RELATED TO PROCUREMENT

Citation	Name/Description	Applicability
Ethics		
Section 27 of the Office of Federal Procurement Policy Act (41USC 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Public Law 101-189, and section 815 of the 1991 National Defense Authorization Act, Public Law 101-510	Procurement Integrity	
18 USC 201, 10 USC 201, 10 USC 2207, 5 USC 7353, and CFR Parts 735 and 2635 -	Prohibition of the offer or acceptance of a bribe.	
18 USC 208 -	Precludes a USG employee from participating personally and substantially in any particular matter that would affect the financial interests of any person.	
18 USC 207	Post-employment restrictions. Prohibits certain activities by former USG employees, including representation of a contractor before the USG in relation to any contract on which the former employee worked while employed by the USG.	
41 USC 51-58	The Anti-Kickback Act; deters subcontractors from making payments, and contractors from accepting payments for the purpose of improperly obtaining or rewarding favourable treatment in connection with contracts.	Certain provisions do not apply to contracts under \$100,000.
10 USC 2306(b) and 41USC 254(a)	Restrictions on certain contingent fees.	Applies to contracts above \$100,000.

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Citation	Name/Description	Applicability
31 USC 1352	Prohibits a recipient of a Federal contract from using appropriated funds to pay any person for influencing or attempting to influence an employee of any agency or a Member of Congress in connection with the awarding of a Federal contract.	
Transparency/Openness		
10 USC 2304 and 41 USC 253	Full and Open Competition Requirement; with certain exceptions, USG contracting officers shall promote and provide for full and open competition in soliciting offers and awarding USG contract.	
Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41USC 426)	Electronic commerce in contracting - provides policy and procedures for the establishment and use of the Federal Acquisition Computer Network (FACNET). FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchases between \$2,500 and \$100,000.	Purchases between \$2,500 and \$100,000.
15 USC 637(e) and the Office of Federal Procurement Policy Act (41 USC 416)	Requirement for dissemination of information on any action that would result in a contract.	
Title VII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355)	Acquisition of Commercial Items - USG preference for acquisition of commercial items or nondevelopmental items when they are available to meet the needs of the agency.	
10 USC 2306(a) and 41 USC 254(b) - Truth in	Requirement and exceptions for cost or	

Negotiation Act	pricing data requirements. Also imposes restrictions on profit for different types of contracts.	
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Citation	Name/Description	Applicability
31 USC 1341	Multiyear Contracting - Specific statutory authority is needed for an agency to make financial commitments for amounts greater than those appropriated annually by the Congress.	
Socio-Economic		
Small Business Act (15 USC 631, et seq.), Armed Services Procurement Act (10 USC 2302, et seq.), the Federal Property and Administrative Services Act (41 USC 2520, and Executive Order 12138 - Small Business Programs	This is also known as the Rule of Two - Award of any size shall be set aside for small business participation when there is a reasonable expectation that offers will be obtained from at least two small businesses and awards will be made at fair market prices.	
Defense Manpower Policy No. 4B, May 23, 1980 (44 CFR 331), US Department of Labor Regulations (20 CFR 654, Subpart A), and the Small Business Act (15 USC 644(d), (e), and (f) - Labor Surplus Area Concerns	Aiding labor surplus areas in the US, its territories and possessions.	Applies to procurements above \$100,000.
18 USC 4082(c)(2) - Convict Labor	Federal prisoners authorized by the Attorney General to work at paid employment in the community under certain circumstances.	
40 USC 327-333 - Contract Work Hours and Safety Standards Act	Requires certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any work week unless paid for all such overtime hours at not less than one and one half times the basic rate of pay.	

Citation	Name/Description	Applicability
40 USC 276a-276a-7	Davis Bacon Act - Provides that contracts in excess of \$2,000 to which the USG is a party for construction, alteration, or repair of public buildings or public works within the United States shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.	Above \$2,000
41 USC 35-45	Walsh-Healy Public Contracts Act - Contracts for the manufacture or furnishing of goods in excess of \$10,000 shall be with manufacturers or regular dealers in the goods manufactured or used in performing the contract. . Certain statutory and regulatory exemptions exists, such as contracts for perishables, commercial items, and supplies manufactured outside the US.	
Executive Order 11246, as amended - Equal Employment Opportunity		

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Working Party on GATS Rules

COMMUNICATION FROM SWITZERLAND

Safeguards and Trade in Services

Characteristics of the GATS and identification of circumstances

Given the flexibility of the GATS in its present shape, it is not obvious whether circumstances can be identified under which inclusion of a specific safeguard mechanism in the GATS would be necessary. The principle of progressive liberalization of the GATS (Art. XIX), whereby specific commitments on market access and on national treatment are determined by successive negotiations, allows Members - while progressively liberalizing trade in services - to take into consideration the level of development and competitive strength of individual sectors of the domestic industry. This approach contributes to considerably reducing the later occurrence of situations that might induce Members to take measures in order to prevent undesirable effects, if they should occur, resulting from specific commitments in particular circumstances. In the area of trade in services such circumstances, if any, are mostly conceivable in relation to payments and transfers. This is obviously the case in the field of financial services, but it is also true for other services sectors, since trade in services normally involves payments and transfers, irrespective of modes of delivery. These types of difficulties, however, are already dealt with in article XII of the GATS.

Further flexibility is provided by article XXI of the GATS, allowing members to take specific action in circumstances that may require taking particular measures. While it is true that measures under article XXI may only be taken when some conditions are fulfilled (waiting period, prior notification, compensation if other Members request so), the mechanism available under article XXI lends itself to overcome difficulties arising from unforeseen effects of specific commitments. The conditions to be observed when taking recourse to article XXI prevent members from taking premature or overly burdensome measures, which might unduly modify the balance of benefits under the Agreement. Although article XXI does not make explicit reference to temporary modification of schedules, the Agreement does not exclude making use of article XXI in case a particular commitment needs to be modified on a temporary basis - if temporary modification of a commitment relating to trade in services is at all practically feasible (see below).

Engaging in negotiations on the design of a specific safeguard mechanism will only make sense if relevant circumstances not already cared for by existing provisions of the GATS

have been concretely identified. Only then will the Members be in a position to sensibly decide whether or not to engage in negotiations on the design of a specific safeguards clause under the GATS.

Conceptual and practical problems relating to characteristics of trade in services

Emergency safeguard measures under the Agreement on Safeguards of the GATT are temporary measures a Member may implement in order to limit excessively increased imports causing, or threatening to cause serious injury to its domestic industry producing like or directly competitive products. For a safeguard mechanism to function properly, key concepts like imports, domestic industry, injury, and like or directly competitive products have to be clearly defined. These terms pose a number of conceptual and practical problems resulting from specific characteristics of trade in services. In addition the implementation of any safeguard mechanism in the services area would encounter a range of practical problems related to the types of measures, to services sectoral classification, and to statistical and measurement difficulties.

Imports and domestic industry

While in the services context imports and domestic industry (and hence injury caused to the domestic industry) may be defined meaningfully in relation to modes 1 and 2, these concepts cause considerable difficulties in relation to mode 3 (and to a certain degree also in relation to mode 4). The definition of imports under mode 3 depends on the definition of domestic industry. If domestic industry includes all service providers established in a Member's territory, there are no imports (and hence no serious injury caused by increased imports) under mode 3. If, however, service providers owned or controlled by foreign persons established in a Member's territory are excluded from the definition of its domestic industry, their services - although produced (and supplied) domestically - would be deemed imports. This leads to the following dilemma: either there are no imports under mode 3 or, although established in the territory of a Member, service suppliers creating value-added and employment within the territory of that Member, would not be considered part of the domestic industry, depending on ownership or control of the established entity. If the latter approach were adopted, safeguard measures could be taken against services of suppliers established in the territory of the Member taking the measure. This would most probably increase injury to the domestic economy of the Member concerned instead of relaxing the problem, an effect, obviously, inconsistent with the purpose of any safeguard mechanism.

Like or directly competitive products

Application of the concept of like or directly competitive products might be more difficult in the field of services than in the field of goods, in particular with regard to modes of supply no. 1 and no. 2. Given the fact that services are in many cases produced and consumed at the same time and in direct contact of a supplier and a consumer, a service consumed abroad (mode 2), or supplied across the border (i.e. without the physical presence of the supplier, mode 1), is not necessarily like, or a close substitute to a similar service supplied at the location of the consumer by a producer established in the territory of the Member concerned. Even if the service, abstraction made from the location and the proximity of the supplier and the consumer, may look very similar from a technical point of view, the absence of the physical presence of the supplier, or the foreign location of the consumption respectively may make an important difference from an economic point of view, the latter being relevant for determining whether two services are like or directly competitive (i. e., in market terms, close substitutes). Due to the specific nature of services, determination of whether a service supplied cross-border is like or directly competitive to a

similar service supplied domestically will in many cases be more difficult than in the case of trade in goods, and hence could give rise to considerable implementation problems. In addition services typically are differentiated and individualized to a higher degree than goods, rendering determination of like and directly competitive products more difficult in the context of trade in services, even when not having to compare services supplied under different modes of delivery.

Domestic regulation

In contrast to liberalisation of trade in goods, which is mainly brought about by reduction of tariffs and removal of other barriers at the border, liberalisation of trade in services almost exclusively is done by modification of domestic regulation, in many cases applied to foreign and domestic suppliers alike. Tariffs and other measures applied at the border are rarely applicable to trade in services due to the intangible nature of services output. In the context of trade in services, measures taken at the border could at best relate to payments and transfers, or to movement of consumers or suppliers of services. Control of trade in services by preventing people from crossing the border would in many cases be practically difficult, and measures relating to payments and transfers are already covered by art. XII of the GATS.

Even if a limited range of border measures were available, safeguard measures in relation to trade in services would in the vast majority of cases incontestably have to rely on temporary modification of domestic regulation. However, practicability of timely and temporary modification of domestic laws and regulations is in most cases very doubtful, where indeed timely and temporary action is fundamental to any safeguard mechanism. Even if timely and temporary modification of domestic regulation were possible in some cases, it would not be desirable, because temporary change of domestic laws and regulations tends to undermine stability and foreseeability of the legal system, not only detrimental to foreign but also to domestic suppliers. Even if Members were prepared to accept resulting negative implications on the national economy, such action would still not be acceptable from the point of view of the stability of the trading system, particularly in relation to acquired rights in the context of commercial presence.

Classification of services sectors

In services, targeting safeguard measures to specific activities is considerably more difficult than in the case of trade in goods, where the harmonised system is much more detailed than the sectoral classification under which specific commitments relating to trade in services are typically inscribed. Together with the fact that safeguard measures would have to be applied, in any particular sector, in strict conformity with the principle of MFN (GATS, article X, paragraph 1), this implies a considerable risk of unravelling. A safeguard measure would almost necessarily affect a wide range of suppliers, possibly originating from a great number of Members, irrespective of the origin of the difficulty triggering the safeguard measure.

Statistical difficulties and measurement problems

Further practical difficulties related to implementation arise due to statistical and measurement problems. First, the invisibility of most services makes it difficult to measure trade flows and hence increased quantities, the proper identification of which is a necessary prerequisite for a safeguard action to be triggered (and reviewed) by objective standards. The fact that services are provided under four modes of supply makes the task even more difficult. Second, to be able to evaluate the impact of increased imports on the domestic economy, reliable and sufficiently detailed data on production and employment

are necessary. This is also true in view of proper review of any safeguard action. Statistical data need to be available on a sub-sectoral level or even on the level of single products, for four modes of supply, and on a quarterly or monthly basis. Existing statistics for trade in services do not normally fulfil these requirements. Typically, available statistics on services lack international comparability, and measurement concepts frequently are inconsistent even on the national level, e. g. between modes of supply, or between trade and domestic production. Even if a great effort were put into statistical work, it is hardly conceivable that sufficiently detailed and reliable data could be made available in the foreseeable future.

Conclusions and options for future work

Further examination clearly seems to be necessary. The question has to be answered whether, in relation to trade in services, circumstances that make a safeguard mechanism desirable can be concretely identified. Should a safeguard clause prove to be desirable, in principle, possible benefits and practicability still remain doubtful, given the present state of knowledge.

Considering that implementation problems, due to specific characteristics of trade in services, would make proper monitoring and effective review of safeguard measures difficult, the risk of undermining basic principles of the GATS is rather high. If the concepts of imports and injury may be reasonably defined for trade in services under modes 1 and 2, the application of the concept of like and directly competitive products might cause, for these two modes, considerably greater difficulties than in the context of trade in goods. On the other hand, while the concept of like and directly competitive products may reasonably be applied to modes 3 and 4, in the context of these modes this seems to be rather doubtful for the concept of imports, and hence of injury to the domestic industry. In addition, for all modes of supply, domestic regulation, measurement problems, and sectoral classification pose difficulties.

These difficulties are not merely of practical importance, but are fundamental for the effectiveness and the well functioning of any safeguard mechanism not undermining the balance under, and basic disciplines of the Agreement. If these difficulties cannot be overcome, developing a safeguard clause remains a theoretical exercise without prospect of reasonable application.

If examination of these issues should take longer than the time frame foreseen in article X, paragraph 2, extension of the deadline foreseen in article X, paragraph 3 could be considered. Allowing for sufficient time to carefully examine relevant issues would also allow to consider the question of emergency safeguard measures in the context of extended experience relating to the functioning of the still rather young GATS and to ongoing progressive liberalisation.

WORLD

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S/WPGR/W/11/Add.

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COMMUNICATION FROM HONG KONG

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the delegation of Hong Kong to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Government procurement refers to the procurement of goods and services by the various departments of the Hong Kong Government.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

The Secretary for the Treasury has the overall responsibility of ensuring that all government procurement activities are conducted in accordance with the regulations and tendering procedures issued by him. For tenders exceeding the specified limits, departments will have to seek the acceptance by the appropriate approving authority before entering into a contract with the successful tenderer. The authority for acceptance of a tender is vested in one of the subsidiary tender boards appointed by the Financial Secretary or in the case of a high value contract, in the Secretary for the Treasury who normally acts on the advice of the Central Tender Board.

For the procurement of goods, the Hong Kong Government adopts a central purchasing system using Government Supplies Department (GSD) as its agent, except for low value items which are purchased by individual departments direct. As regards services, while the majority of services (including works contracts and consultancy agreements) are obtained by individual departments, those which are procured centrally are done through GSD.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

The Stores Regulations, supplemented by Financial Circulars issued by the Secretary for the Treasury, govern the government procurement process. Stores regulations are administrative measures made under the Public Finance Ordinance and are not statutory. The procedures laid down in these regulations and circulars are consistent with the provisions set out in the Tokyo Round of Agreement on Government Procurement.

The tender procedures set out in the Stores Regulations are required to be followed by all government departments for the procurement of stores, services as well as civil and engineering works, with the exception of the following for which separate procedures shall apply -

- (i) Franchises, concessions, leases, licences, tenancies and other items procured by public auction or method laid down by statute and government regulations.
- (ii) Private treaty grants of land, land exchanges, extensions and short-term tenancies of land.
- (iii) Consultancy service agreements approved by consultant selection boards appointed by the Secretary for the Treasury.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

Apart from the procurement of consultancy services which follow different procedures, we do not make a distinction between the procurement of goods and services.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Depending on the nature of procurement, there are two kinds of procedures to be followed - tendering, and consultants selection procedures. For the purchase of goods and services, including engineering and construction works where we can specify and quantify details of tasks and performance standards with a reasonable degree of precision, the tendering procedures are followed.

Tenders for the procurement of goods and services are invited in the following ways :

- (i) Open tendering - all interested suppliers/contractors may tender;
- (ii) Single, selective or restricted tendering - invitation of tenders is limited to one or a certain number of selected suppliers/contractors; and
- (iii) Private tendering - single purchase of goods or procurement of services not exceeding a specified financial limit.

In obtaining services of consultants for problem-solving and where the quality of service is dependent on qualities which cannot be precisely specified or quantified, the consultants selection procedures are followed. Consulting firms on the long-list maintained for the purpose of obtaining a particular kind of consultancy service are first asked to indicate an interest in undertaking the study. Interested firms will then be invited to bid by submitting a technical proposal together with a separate financial proposal.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

When procuring goods, the Hong Kong Government's policy is to purchase on a worldwide basis, through open competitive tendering whenever possible. Services are procured similarly by the use of open tendering, where applicable, so as to obtain the best value for money.

Selective, restricted or single tenders are used only in approved circumstances, such as to ensure compatibility with existing equipment, or for patented or proprietary products, or where services are to be provided by utility companies or where maintenance is to be executed on patent or specialised equipment, or for term contracts where there are only a limited number of suppliers/contractors who would be reliable in meeting the requisite quality standard or delivery schedule over the term of the contract.

Goods and services below a value of HK\$0.5 million and HK\$1 million respectively may be procured direct by the user department through private tendering without recourse to a tender board. Normally for private tendering, a minimum of five quotations is obtained from qualified contractors/suppliers and the lowest quotation to specification is accepted.

The Architectural and Associated Consultants Selection Board and the Engineering and Associated Consultants Selection Board approve the award of architectural and engineering consultancy agreements respectively. The award of other consultancy agreements with a value exceeding HK\$0.5 million is subject to the approval of the Secretary for the Treasury, who normally acts on the advice of the Central Consultants Selection Board.

(c) What are the time limits for submission of bids?

A minimum of three weeks is normally provided to allow both overseas and local tenderers to prepare and submit tenders. For procurements covered by the Tokyo Round of Government Procurement Agreement, at least forty days would normally be allowed.

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

Tender notices for procurement of goods and services through opening tendering by Government departments are published both in English and Chinese in the Hong Kong Government Gazette on Friday (except when Friday is a public holiday). Where necessary, tender notices may also be advertised in the local and/or international press.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

In the case of selective tendering, tender invitations may be sent by letter to all contractors/suppliers on the relevant lists of qualified contractors/suppliers established for the purpose of selective tendering.

In the case of single or restricted tendering conducted under approved circumstances, tender invitations are sent by letter to only one or a number of contractors/suppliers approved by the appropriate authority. Services not exceeding HK\$20,000 in value may be obtained by user departments direct without recourse to tender. Services costing over HK\$20,000 but not exceeding HK\$1 million for construction and engineering works and HK\$0.5 million for consultancy and other services may be obtained by user departments by private tendering.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Information published in tender invitations covers the tender reference, the procuring entity, a description of the goods or services required, the address and telephone number of the office from which forms of tender and further particulars may be obtained, the exact location of the tender box in which tenders are to be deposited, and the closing date and time for receipt of tenders.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

There is no charge for obtaining a full set of tender documents from the procuring department.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

In addition to publishing tender notices in the Government Gazette, an outline of the tender information on procurement of goods and services by government departments is provided on the Finance Branch Home Page on the Internet (Address: <http://www.info.gov.hk/fb/tender.htm>). Updating of the tender information on the Internet will be made every Friday. In addition, a forecast of invitations to tender for civil and engineering works is published on the Works Branch Home Page on the Internet (Address: <http://www.wpelb.gov.hk/>). The tender information published on the Internet is basically the same as that provided in the tender notices published in the Government Gazette and the same tendering provisions apply.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

There is no restriction on the qualification or eligibility of tenderers wishing to tender for goods and services invited by way of open tendering. Where there is frequent need to invite tenders for services or goods but where not all contractors/suppliers in the market are capable of delivering, departments could establish a list of qualified contractors/suppliers for the purpose of restricted tendering, subject to the prior approval of the Secretary for the Treasury. Departments maintaining such lists are required to publish the up-to-date lists and the method of application and assessment in the Government Gazette annually. Interested overseas companies wishing to tender for works contracts are required either to set up a registered office in Hong Kong or to appoint a local agent who must be a person of good standing. As a general rule, the qualification criteria and assessment method should not discriminate among foreign contractors/suppliers or between domestic and foreign contractors/suppliers.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

For registration as a supplier under the appropriate category of products in the qualified list established by government departments, interested firms are required to provide company details including organisation and staff, financial resources and business activities together with supporting documents. In the case where the products require technical clearance to assess their suitability for use, the technical data should also be provided. To be accepted as an approved contractor under the appropriate category of civil engineering works or approved suppliers of materials and specialist contractors for public works, interested firms need to provide their company details, financial background, with supporting evidence on work experience. They are required to set up a registered office in Hong Kong or to appoint a local agent. In the case of an extremely complex project involving very high value or very rigid completion programme; an exercise will be conducted to prequalify a list of tenderers who are financially and technically capable of undertaking the project.

Similar conditions apply to the registration of service providers. Interested companies are required to provide company details, financial background, with supporting evidence on the provision of the relevant service, availability of adequate manpower, equipment, plants and materials.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

Government departments may establish different lists of approved suppliers/contractors for specific categories of products, services and works. Interested firms may check with the departments concerned to see whether they are suitable for inclusion in the approved lists. At present, the GSD and Works Branch of Hong Kong Government are the two main departments maintaining most of the registered/approved lists used by various government departments. While GSD maintains registered lists of suppliers for various products, the Works Branch maintains lists of approved contractors for works categories and suppliers of materials and specialist contractors for public works.

There is no time limit for interested companies to submit applications for inclusion in the approved lists of contractors/suppliers. Applications could be made any time to the government department concerned direct. Applications are checked against the approved qualification criteria and assessed in accordance with the approved assessment method. Approved lists are reviewed regularly to ensure that new applications are processed promptly.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

Tenders are generally accepted on the basis of their compliance with the tender specifications and the tendered sum. Departments select the offers that represent the best value for money, having regard to their suitability in meeting the users' requirements, competitiveness in price, maintenance and other operational costs, reliability of performance and where applicable, after-sale services. The country of origin of the goods and services is not a consideration in the award of contracts. If selection criteria are adopted for selecting the supplier/contractor for a particular contract, the criteria are outlined in the tender documents for tenderers' information.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

Generally, procurement of goods and services initiated by government departments is not subject to any offset provisions. However, for consultancy agreement, a specific commitment on the part of consultants to train government staff is required and provided for in the agreement, where appropriate.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

No preference is given to any particular enterprises or group of enterprises. Hong Kong Government operates a level playing field in procurement and ensures an open and fair competition amongst domestic and foreign suppliers.

(d) Do the procurement criteria differ according to sector or region of the economy?

The same tendering principles apply regardless of which sector or region of the economy.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

Unless the contract is to be awarded on the basis of some predetermined assessment criteria previously approved by the appropriate tender board prior to invitation of tender, selection of a tender is generally based on its compliance with the tender requirements and whether it represents the best value for money.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

Tenders are required to be deposited by the tenderers to the designated tender box before the specified tender closing time. A designated team of personnel from the relevant tender board will collect tenders from the tender box, open and register the tenders received and send the tenders to the procuring department for tender evaluation.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

Contracts awarded by tender boards are published for general information in the Government Gazette before the end of the following month. The notice contains information on the procurement entity, description of the contract awarded, name of the successful tenderer and the amount of the contract. In addition to notifying the successful tenderer of accepting his tender, the procuring department is required to inform all unsuccessful tenderers of the result of the tender exercise.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

Procuring departments are not required to publish the reasons for rejecting bids made by unsuccessful tenderers. Unsuccessful tenderers are told of the reasons why their bids have not been accepted.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

As Hong Kong Government adopts a non-discriminatory tendering system in the procurement of goods and services, we do not give preference to domestic suppliers or suppliers from any particular Member. There are therefore no laws, regulations, procedures or practices according preferential treatment to domestic or overseas services or suppliers.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Contractors/suppliers may lodge complaints about the process or result of a tender exercise to the procuring department direct or to the relevant tender board, Independent Commission Against Corruption, or the Office of the Commissioner for Administrative Complaints (COMAC). Under the Commissioner for Administrative Complaints Ordinance (Cap.397), the COMAC is empowered to investigate a complaint concerning the procedures adopted in inviting tenders, determining the qualification of persons entitled to tender and the selection of the successful tenderer.

On receipt of a complaint or the referral of a complaint from other offices, the Head of the Department responsible for the contract will deal with the complaint with a view to providing an early and substantive reply to the complainant direct or through the

referral office. An interim reply would be sent to the complainant if a substantive reply cannot be issued shortly.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

The Hong Kong Government became a party to the "GATT Agreement on Government Procurement" on 17 December 1979. Hong Kong is a Member Economy of the Asia-Pacific Economic Cooperation (APEC).

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- ***on both an aggregate and sectoral basis;***
- ***by origin of services and suppliers.***

The procurement statistics in respect of government departments for the year 1994-95 are summarised as follows -

<u>Supply of Goods Contracts</u>		<u>Service Contracts</u>		<u>Works Contracts</u>	
<u>No.</u>	<u>Value</u>	<u>No.</u>	<u>Value</u>	<u>No.</u>	<u>Value</u>
8 590	\$6, 012.2M	310	\$1,207.8M	358	\$28,388.1M

Remarks: Statistics only include procurement of goods and services of a value exceeding HK\$0.5 million and \$1 million respectively.

(b) Please provide statistics (if available) on the

- ***share of services procurement in total procurement;***
- ***share of procurement of each service in total domestic output of the service;***
- ***share of procurement of each service in total domestic consumption of the service.***

Information not available.

WORLD

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ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Ad

4 October 1996

(96-4054)

Working Party on GATS Rules Original: English

COMMUNICATION FROM CANADA

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the delegation of Canada to Members of the Working Party on GATS Rules.

The delegation has indicated that printed copies of related documents referred to in this response will shortly be submitted to the Secretariat. These documents, which will be available for reference, are:

- The Financial Administration Act;
 - Your Guide to Doing Business with PWGSC;
 - The Open Bidding Service;
 - Annual Contracting Activity Reports, fiscal years 91-92, 92-93, 93-94.
-

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Government procurement is defined as the direct acquisition on the part of Canadian federal government departments and agencies of materiel and services for the fulfilment of their mandates.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

All government procurement is decentralized to departments and agencies except the procurement of goods, which generally rests with the Department of Public Works and Government Services (PWGSC). Overall, 75 per cent of procurement over \$25,000 is handled by PWGSC while the remaining 25 per cent is carried out directly by other departments and agencies. The Treasury Board is responsible for the establishment of the procurement policy of the federal government departments and agencies. Crown corporations are generally responsible for their own set of procedures.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

Financial Administration Act

Annual Appropriation Acts

Treasury Board Contracting Policy and Guidelines

Departmental enabling legislation

Departmental policies and practices.

Each department and agency has individual spending authority. Individual departmental authorities for contracting are generally in the legislation constituting each department and conferring certain powers to its Minister. These authorities are reinforced by the Appropriation Acts passed by Parliament each year which provide funds to carry out departmental mandates. The Financial Administration Act provides for the establishment of financial limits above which Governor in Council or Treasury Board approval is required.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

Yes, the procurement of services is decentralized to departments and agencies while the procurement of goods is generally centralized with Public Works and Government Services Canada, but is subject to Treasury Board contracting policy and guidelines. A mixed procurement is deemed to be a service procurement when the service component accounts for more than 50 per cent of the total projected cost.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

The objective of federal government procurement contracting is to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people. Inherent in procuring best value is the consideration of all relevant costs over the useful life of the acquisition, not solely the initial or basic contractual cost. The standard rule is to acquire goods and services through a competitive process. However, in specific conditions such as low value purchases or when only one supplier is available, single tendering is allowed.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Federal Contracting Regulations specify that, consistent with international agreements on all procurement covered by these agreements, departments are required to conduct mandatory bids for procurements exceeding \$25,000 except where exceptions are permitted.

(c) What are the time limits for submission of bids?

Consistent with international agreements, bids are posted from 7 to 40 days, depending upon the relevant legislation or policy.

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

Procurement opportunities that are publicly advertised, are published on the Open Bidding Service (OBS) and in the Government Business Opportunities (GBO). Notices on the OBS and in the GBO appear in Canada's two official languages, French and English, and contain both intended procurement and invitations to tender.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

Lists of registered suppliers, contractors or consultants may be used to solicit competitive proposals for requirements below \$10,000 for printing, below \$25,000 for most goods and services, and below \$60,000 for realty, construction, architectural and engineering consulting, leasing and construction and maintenance services and for some requirements of greater value.

Printing services estimated at \$10,000 or above, most goods and services estimated at \$25,000 or above, and communications services worth \$50,000 or more are normally advertised on the OBS and in the GBO; as are requirements estimated at \$60,000 or above for realty, construction, architectural and engineering consulting, leasing and maintenance services.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Procurement notices include sufficient information to allow a potential bidder to make an informed decision on whether to order the bid solicitation document. Notices for procurement that are subject to NAFTA or the WTO-AGP must also include information set out in the respective agreement(s). This would include information such as the bid closing time, description of the nature and quantity of the goods or services being procured, and the name and address of the contracting authority.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Documents ordered through the OBS on-line and Bid Request Line services are priced according to a rate schedule established in the contract with the service provider. Documents costs range from roughly \$5 to \$55, depending on size and method of delivery. Most documents ordered are at the low end of the range. Subscribers have several choices of delivery methods, such as facsimile, courier and mail.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

The Open Bidding Service (OBS) is a user-friendly automated bidding system designed to give potential suppliers fast, equal access to information on government contracting opportunities. Most PWGSC bidding opportunities for goods and services valued at over \$25,000 are advertised on the OBS, as well as construction, maintenance, architecture, engineering and leasing opportunities over \$60,000, communications professional services valued at over \$50,000 and printing requirements valued at over \$10,000.

Further information on the OBS is found in the brochures *Your Guide to Doing Business with PWGSC* (refer to pages 3, 4 and 5) and *The Open Bidding Service* (provided to the Secretariat). In addition, the OBS Web site address on the Internet is <http://www.obs.ism.ca>.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

Lists of registered suppliers, contractors or consultants may be used to solicit competitive proposals for requirements below \$10,000 for printing, below \$25,000 for most goods and services, and below \$60,000 for real estate services, construction, architectural and engineering consulting, leasing and maintenance services.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

Contracting authorities have a duty to protect the financial interests of the government. When the bid solicitation requires the submission of bid security, the amount should be determined by the contracting authority in advance. When a bidder has submitted less than the financial security stipulated, the bid will generally be considered as non-responsive. Usually, other additional standards have to be met by Canadian firms, such as health and safety or employment equity considerations.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

The Canadian federal government uses source lists infrequently except for low dollar value contracts.

Criteria for assessing bids and awarding contracts**7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?**

Award of tenders is based on criteria specified in tender document, such as qualifications, follow-on service or experience, which must be specified in the tender documents.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

Some procurements are not covered by international agreements or are subject to exceptions set out in international agreements, such as set-asides for Aboriginals. For procurements not subject to international agreements, special provisions are allowed for regional and economic development purposes, and a preference may be accorded for Canadian value-added benefits.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

Generally, no preference is given to any enterprise or group of enterprises.

(d) Do the procurement criteria differ according to sector or region of the economy?

Procurements that are subject to international agreements cannot contain criteria that differ according to sector or region of the economy. For procurements over \$2 million that are not subject to international agreements, but are subject to the Agreement on Internal Trade, evaluation criteria may be used to achieve industrial and regional benefits, as long as the benefits are sought in a non-discriminatory manner with respect to regions for which there exists a general framework of regional development. Procurements over \$2 million, that are not covered by any of the trade agreements, are examined on a case-by-case basis and may include criteria according to a sector or region of the economy.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The purchasing authority is expected to make the appropriate choice among suppliers, taking into account best value for taxpayers and national and international obligations, such as trade agreements.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

Procurements subject to trade agreements are consistent with international trade obligations.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

No, entities do not have to notify unsuccessful tenders individually.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

Contract awards subject to the trade agreements are published.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

Local Content Requirements: none.

Preference for domestic suppliers: An industrial and regional benefits policy may apply for larger value procurements by all government departments, when the procurement is not covered by the international trade agreements. Under this policy, all procurements over a value of \$2 million are reviewed to assess the opportunities for achieving socio-economic benefits in Canada. However, this policy is rarely applied to contracts under \$100 million.

For procurement handled by Public Works and Government Services Canada and not covered by international trade agreements, PWGSC applies a Canadian Content Policy, which restricts a procurement opportunity to suppliers of Canadian goods and services, provided there is adequate competition, usually three or more suppliers.

Preference for small or medium-size enterprises: Canada does maintain an exception under the WTO-AGP and NAFTA for small business. However, it does not currently have in place a program providing small business with preferences.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

A bid challenge process allows any potential supplier to complain to an impartial reviewing authority, at any time throughout the procurement cycle, on how a government procurement is being handled.

The Canadian International Trade Tribunal has been designated as the independent bid challenge authority for Canadian federal government procurements that are subject to the Agreement on Internal Trade, the North American Free Trade Agreement, and the World Trade Organization - Agreement on Government Procurement.

For procurements outside the trade agreements, each purchasing department usually has its own appropriate procedures to deal with complaints.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Memberships: World Trade Organization - Agreement on Government Procurement, North American Free Trade Agreement, GATT Agreement on Government Procurement (1988) and Agreement on Internal Trade.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- *on both an aggregate and sectoral basis;*
- *by origin of services and suppliers.*

(b) Please provide statistics (if available) on the

- *share of services procurement in total procurement;*
- *share of procurement of each service in total domestic output of the service;*
- *share of procurement of each service in total domestic consumption of the service.*

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

Annual contracting activity reports showing services procurement, for fiscal years 1991-92 to 1993-94, has been provided to the Secretariat.

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WORLD

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ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Ad

4 October 1996

(96-4056)

Original: Spanish

Working Party on GATS Rules

COMMUNICATION FROM COLOMBIA

Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of Colombia to members of the Working Party on GATS Rules.

In Colombia, the government procurement rules have been unified in Law 80 of 1993, which therefore applies to all central and decentralized public bodies and entities, except in the cases provided for in that Law or other special laws.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

There is no explicit definition of government procurement. However, government procurement should be understood to mean the rules and procedures governing the purchase of goods and services, procurement of works and concession of activities of different kinds by public entities among themselves or with private individuals, in order to carry out and implement their objectives.

The above-mentioned Law 80 of 1993, which constitutes the general statute governing procurement by the public administration, establishes in Article 10 that its object is to establish the rules and principles governing contracts of state entities.

Article 32 of Law 80 establishes that •State contracts means all legal acts performed by the entities referred to in this Law giving rise to obligations which

are provided for in private law or in special provisions or derive from the exercise of free will...•

Administrative structure

2.How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

The procurement regime of the public administration in Colombia is decentralized, which means that there is no single body responsible for making contracts, but rather each competent entity can do so in accordance with its needs and requirements.

The territorial entities empowered to enter into contracts, in accordance with Article 20 of Law 80 of 1993, include the Nation, region, departments, provinces, indigenous territories, districts, municipalities, metropolitan areas and associations of municipalities, as well as public establishments, industrial and commercial enterprises and mixed-ownership companies in which the State holds more than 50 per cent of the capital stock, indirect decentralized entities and other legal persons with a majority public shareholder, however named, of all orders and levels.

At the central or national level, for example, contracts may be signed by Ministries, Administrative Departments, Supervisory Authorities, Special Administrative Units, public establishments, industrial and commercial enterprises and joint companies attached or linked to the above-mentioned central bodies. Again at the central level, contracts may be entered into by the Senate of the Republic, Chamber of Representatives, Judicial Service Commission, the Office of the Government Attorney, the Office of the Comptroller-General of the Republic, the Office of the Prosecutor General of the Nation and the Registry Office.

Apart from these entities, the Law also grants other State bodies and establishments the capacity to sign contracts.

Laws and regulations in force

3.(a)Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

Law 80 of 1993 was issued on the basis of the final indent of Article 150 of the Political Constitution, which empowers Congress to enact the general statute of government procurement and in particular procurement by the National Administration. Regulations under this Law have been enacted in various instruments, including the following:

- Decree 2681 of 1993 partially regulating public credit operations;

- Decree 94 of 1994 delegating the power to conduct, on behalf of the Nation, the transactions referred to in Decree 2681 of 1993;
- Decree 679 of 1994 regulating various aspects of Law 80, including the certification of the quality of goods and services; the establishment of requirements for participation by temporary unions or consortia in tenders and contracts; definition of open public limited companies; decentralization of contractual acts and formalities; delegation of power to sign contracts; definition of the rules applicable to State contracts; observance of the principle of reciprocity; qualification of national origin of goods and services; unpackaging of technology; definition of budgets of entities; application of positive administrative silence in connection with requests relating to contract performance; obligation to lodge the single guarantee for contractual obligations, and effects of lodging it;
- Decree 855 of 1994 establishing regulations under the statute in respect of direct contracting. This decree has been supplemented and amended by other decrees;
- Decree 856 of 1994 governing the register of potential tenderers of chambers of commerce;
- Decree 1584 of 1994 governing the classification and qualification of registered suppliers (*proponentes*), particularly in matters relating to technical and financial aspects, capital and experience;
- Decree 1985 of 1984 governing the delegation of capacity to enter into contracts;
- Decree 1898 of 1994 governing competitions for insurance intermediaries;
- Decree 229 of 1995 establishing regulations under Law 80 in respect of the postal service;
- Decree 1448 of 1995 governing the grant of concessions for some telecommunication services;
- Decree 1446 of 1995 governing the sound broadcasting service and the organization and functioning of radio networks.

In addition to the above, the following special provisions in Law 80 and in other instruments govern aspects of government procurement:

- Decree Laws 1900 and 1901 of 1990 reforming the rules and statutes regulating telecommunications and related activities and services;

- to a partial extent, Decree Law 591 of 1991 relating to specific forms of contracts to promote scientific and technological activities;
- Law 37 of 1993 regulating procedures, contracts, forms of association and award of telecommunication services;
- Laws 142 and 143 of 1994 on the regime for household public services and for electricity in the national territory, respectively. The first of these laws establishes that, with a few exceptions, contracts entered into by State entities providing household public services for the purpose of providing such services are governed by private law. The second, concerning contracts for the concession of the electricity service, establishes that the contract will be awarded through public tender to the bidder offering the best technical and economic conditions for the grantor and users, without prejudice to other viable forms of contracting;
- Decree 930 of 1992 establishing regulations under Decree Laws 1990 and 1901 of 1990 concerning the establishment of private telecommunication networks and use of the radio spectrum;
- Decree 1137 of 1996 establishing regulations under Decree No. 1900 of 1990, with respect to the allocation and management of the electro-magnetic spectrum attributed to space radiocommunications, for use by satellite networks, including the space segment and the Earth segment.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules to be determined in cases of joint procurement involving both goods and services?

The procurement of goods and the procurement of services constitute different modalities or systems, although broadly speaking the formalities and procedures are the same. Obviously, each modality of goods, services or works may involve different elements and requirements, at least in terms of its nature and purpose.

Nevertheless, the Law establishes some differences between contracts for goods and those for services, chief among which are the following:

- Article 22 of Law 80 imposes the obligation of registration with the Chambers of Commerce for natural or legal persons wishing to enter into contracts with State entities for works, consultancy and the supply and purchase of movable property. This registration implies that would-be suppliers have to classify and qualify themselves. The same Article exempts contracts for the provision of services from these requirements.

- Article 24 of Law 80 authorizes direct procurement, as will be seen below, in the case of professional services or the execution of artistic works that can only be commissioned from specific natural or legal persons, or for carrying out scientific or technological activities. It also provides for direct contracting for procurements of goods and services needed for national defence or in the case of contracts awarded by State entities for the provision of health services.
- Article 33 of the Law establishes that telecommunication services and activities will be provided through a concession granted by direct contracting or by licences issued by the competent entities in accordance with Decree 1900 of 1990 and any other provisions that replace, modify or supplement that Decree. The paragraph of the above-mentioned Article 33 provides that the procedures, contracts, forms of association and award of telecommunication services referred to in Law 37 of 1993 will continue to be governed by the provisions of the latter Law and the provisions developing or supplementing it.
- Article 34 of Law 80 establishes that the concession for the supply of national or international long-distance switched fixed basic telephone services will be granted in accordance with Decree 2122 of 1992.
- Article 35, paragraph 10 of Law 80 provides that the community sound broadcasting service is considered a telecommunication activity and granted directly by licensing, subject to fulfilment of the legal, social and technical requirements and conditions established by the national government.
- Article 37 of Law 80, referring to mail and specialized courier services, provides in paragraph 10 that the provision of specialized services will be granted directly through licensing.

Article 32, paragraph 1, of Law 80 establishes, *inter alia*, that contracts entered into by credit establishments, insurance companies and other State financial entities falling within their ordinary business activities under their by-laws are not governed by the provisions of Law 80 but by the laws and regulations applicable to such activities, that is to say civil and commercial provisions.

Joint procurement of goods, services and/or works is not expressly provided for in Law 80 of 1993. In practice, however, joint contracts are used to allow simultaneous procurement of goods, services and works.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Pursuant to Article 24 of Law 80, the choice of a contractor is always made through public tender or competition, and exceptionally by direct contracting.

The public tender or competition procedure may be assimilated to what is ordinarily called open tendering, in which all those interested in submitting bids may participate. This procedure is used to select bids for goods, services, works and consultancy. The competition procedure provided for in Colombian legislation establishes the same rules for participation by interested persons and is governed by the same formalities and procedures as the public tender procedure. It is used for the selection of bids relating to technical, intellectual or specialized studies or works. The difference lies in the fact that whereas the public tender procedure relates to the physical aspects of the goods or service to be procured, the competition procedure relates to the intellectual capacity or talent of the person carrying out the work or service. Another formal difference lies in the fact that the conditions and requirements of the public tender procedure are called •tender specifications• while those of the competition procedure are called the •terms of reference•.

The Law does not provide for selective or limited tendering, although this does arise exceptionally in some cases of direct procurement.

Direct contracting, or direct procurement, is provided for in Article 24 of Law 80 as an exception to the public tender or competition procedure in the following cases: contracts of lesser value; loan contracts; interagency contracts; contracts for the provision of professional services or performance of artistic works; leasing or purchase of real estate; cases of •manifest emergency•; where a public tender or competition procedure is declared void; where there are no bids, or no bid in keeping with the tender specifications or terms of reference; where there is an inadequate number of bids; procurement of goods and services for national defence and security; procurement of agricultural goods available in commodity exchange markets; contracts of State entities for the provision of health services; and acts and contracts relating to industrial and commercial activities of industrial and trading enterprises and mixed-ownership companies. This type of procurement is essentially regulated by Decree 855 of 1994.

Article 18 of Decree 855 establishes that for the purposes of Article 24(m) of Law 80 of 1993, acts and contracts directly relating to the commercial and industrial activities of State industrial and trading enterprises and mixed-ownership companies including the following: purchase, barter, supply and leasing of goods and services constituting the business purpose of such entities; inputs, raw materials and intermediate goods for the obtention of the goods constituting the business purpose of such entities; materials and equipment directly used for the production of such goods and services, and for the marketing of their goods and services.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Apart from the selection systems mentioned above, there are procedures under special provisions such as those mentioned in point 3(b) above. In addition, contracts relating to foreign credits with multilateral credit organizations, foreign public-law persons or international cooperation, assistance or aid agencies, may be

subject to the regulations of those entities, *inter alia*, in matters relating to procurement procedures and systems.

Article 76 of Law 80 also exempts the mining sector and state enterprises engaged in trade or industry. For example, the Colombian Petroleum Company - ECOPETROL - has a special procurement manual that provides for the following types of selection: open tendering, selective tendering, and direct procurement. Likewise, selection in the case of science and technology contracts may be carried out by any means, taking into account that such contracts are governed by private law.

(c) What are the time-limits for the selection of bids?

The time-limits, and extensions to them, for the submission of tenders depend on the terms established for the purpose for each public tender or competition procedure. In any case, in accordance with Article 30.5 of Law 80 of 1993, the time-limit for the tender or competition is the period which must elapse between the date at which bids may be submitted and the closing of the process.

Publicity for inviting tenders

5.(a) How are intended procurements publicized? Are invitations to tender published? If so, where, and in what languages?

Prior to publication of the tender or competition notices and initiation of the corresponding processes, State entities must transmit to their competent Chamber of Commerce general information on each tender or competition they wish to open. On the basis of this information the Chamber of Commerce published a monthly bulletin that acts as a channel of information for possible registered suppliers to prepare to participate, if they so wish, in the tender or competition procedures concerned. Under Article 12 of Decree 856 of 1994, the information in question must be submitted to the corresponding Chamber of Commerce within the first five working days of each month. The single bulletin is published within the first 20 days of each month. The information in question must also be transmitted to the Colombian Confederation of Chambers of Commerce (Confecámaras) for publication at national level.

Article 30, paragraph 30, of the Law provides that within 10 to 20 calendar days prior to the opening of the tendering or competition procedure, up to three notices shall be published at intervals of between two and five calendar days, in mass-circulation newspapers within the territorial jurisdiction of the entity or, failing such, in other public communication media having a similar dissemination. The notices shall contain information on the purpose and essential features of the tendering procedure or competition in question.

Some entities have recourse to publicising their invitations to tender through notices in foreign newspapers or magazines when the activities to be procured require international participation, as in the case of ECOPETROL.

Publication is in Spanish, as provided for by the Constitution, and also because Law 80 does not provide for the use of other languages.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

The Law does not provide for differences in the extent and form of publicity according to the tendering procedures applied and/or on the value of procurement.

In the case of contracts of lesser value and other contracts involving single tendering, publicity is carried out in accordance with Decree 855 of 1994, as appropriate. In this modality, the public invitation to tender is made through a notice set up in a visible place of the entity concerned for two consecutive days. Public notices in national or regional mass-circulation newspapers are also usually employed.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

In accordance with Article 30.3 of Law 80 of 1993, the notices contain information on the purpose and essential features of the tendering procedure or competition. They refer, *inter alia*, to the purpose, amount, opening date and hour, closing date and hour, date and hour of the mandatory visit to the site of the work, if appropriate; place of sale, withdrawal and consultation of the tender specifications or terms of reference; assessment and award factors; conditions of participation; and guarantees of the seriousness of tenders.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set.

Public entities establish the corresponding requirements to cover the paper costs relating to the acquisition of the tender specifications or terms of reference. Many of them usually charge the equivalent of 1 per cent of the amount roughly budgeted for the contract in question.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions to contracts advertised in this manner? If so, please describe.

There is no provision for the use of electronic means to advertise procurements and contracts, and the law does not provide for them. In any case, some entities have already implemented such a system or are in the process of doing so. A Resolution provides for furnishing information on contracts awarded through electronic means, but this provision does not extend to tendering or competitions.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

Article 22 of Law 80 of 1993 provides that any natural or legal person wishing to enter into contracts for works, consultancy, or supply and purchase of movable property with public entities must register with the Chamber of Commerce of their jurisdiction. This register of suppliers (*proponentes*), which is different from the company register, is carried out by means of a single form prepared by the Government for the purpose.

Article 22 also provides that foreign natural persons without domicile in the country or foreign legal persons without a branch in Colombia, wishing to submit tenders or enter into contracts with public entities, must register as suppliers, by accrediting their enrolment in the corresponding register of the country where they have their principle domicile. In addition, they must accredit in Colombia an agent domiciled in the country who is duly empowered to submit tenders and sign contracts and also to represent them legally and in non-legal matters.

The classification and qualification of registered suppliers is carried out by the persons themselves interested in entering into contracts with public entities, on the basis of the principle of good faith. The corresponding declarations, which are made together with enrolment in the register of suppliers, must strictly follow the regulations laid down by the Government relating to criteria of experience, financial capacity, technical capacity, organization and availability of equipment. The declarations of the suppliers are subject to verification by the contracting entity, and may also be challenged by anybody. Inaccuracy in the information provided leads to the cancellation of the registration as well as administrative and penal sanctions.

Under the Law, registered suppliers classify themselves in three categories: builders, consultants or suppliers, according to their field of specialization. Registration as such does not require the posting of a guarantee.

(b)What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

Each entity establishes as it sees fit the objective requirements for participation in tenders and the selection of bidders, one of which is the posting of a guarantee of the seriousness of the bid by the bidder. Once these requirements have been laid down definitively, the entity is bound by them.

(c)Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

The Law does not provide for lists of approved suppliers. The corresponding Chamber of Commerce assigns a registration number to each

registered supplier and opens a file for documents relating to that person's registration and performance as a contractor. The Chamber of Commerce issues the corresponding certification on the basis of the data contained in the registration file and information supplied by public entities. The review or updating of suppliers is carried out by the process of registration of suppliers, which is valid for one year, at the end of which they must renew their registration in order to continue to have the option of tendering. Registered suppliers must update the initial information or modify the terms of their registration if circumstances arise making it essential to do so.

In addition, on the basis of Article 76 of Law 80 of 1993, State entities signing contracts for the exploration and exploitation of renewable and non-renewable natural resources and for trading and industrial activities are governed by their own registration systems.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

Article 29 of Law 80 establishes that the selection of the bidder must be objective, on the basis of the most favourable bid, and without taking account of subjective feelings or interests. The most favourable bid is the one that takes account of various factors, such as implementation, experience, organization, availability of equipment, deadlines, price, and a full and detailed weighting of these factors. Preference must not be based on factors other than those established in the tender specifications or terms of reference, nor on one of them alone, such as lowest price or shortest deadline. The basic criteria and principles are established in the Law.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

No. However, Article 21 of Law 80 establishes *inter alia*, that, for foreign bidders, and all things being equal, preference will go to the tender that incorporates the most local human resources, local components and best technology transfer conditions. In the case of the implementation of investment projects, the 'unpackaging' of technology is to be provided for.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

On the basis of the criteria for the selection of contractors, the principles of equality and reciprocity, and guaranteed participation for bids of domestic origin, Law 80 does not offer preferences to specific enterprises or groups of enterprises, except as provided for in Article 16 of Decree 855 of 1994. This Article authorizes State entities to give preference in selection, in the case of the contracts covered by that Decree, that is to say direct procurement, and all things being equal, to local

cooperatives, micro-enterprises, foundations, communal action associations and in general similar entities of the place where the contract is to be implemented.

(d) Do the procurement criteria differ according to sector or region of the economy?

Law 80 of 1993 does not provide for any change in the basic criteria for procurement according to sector, region or branch of the economy. Nevertheless, while this may not be interpreted as a change in criteria, Article 76 of Law 80 provides for a special regime whereby contracts for exploration and exploitation of natural resources, and for trading, industrial and marketing activities by State entities that carry out such activities, will continue to be governed by the applicable special legislation. On the basis of this provision the Colombian Petroleum Company - ECOPETROL - for example has a special procurement regime, although it applies the general principles established in Law 80 of 1993.

In addition, Article 35, second paragraph, of Law 80 provides that the sound broadcasting service may be granted only to Colombian nationals or legal persons duly established in Colombia.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

Pursuant to Article 24, numeral 50, of Law 80 and the principles on which it is based, such as transparency, economy, responsibility and subordination to the postulates governing the administrative function, the discretionary power of public officials is quite limited. Nevertheless, some discretion may exist at the prior stage of setting the requirements for the contract and determining the tender specifications or terms of reference. In addition, under Article 30.3.4 and Article 9 of Law 80, there is also discretion in the determination of the number of public notices for the tender procedure or competition, or in the establishment of the relevant time-limits, or in the modifications which the head of the entity sees fit to make in those documents as a result of the hearing conducted to specify the content and scope, or in the extension of the relevant time-limits for the submission of tenders or award of the contract. On the other hand, there is practically no discretion once the requirements, tender specifications or terms of reference have been finally fixed.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

The Law does not establish specific procedures. Entities establish the requirements for receiving tenders, although usually this is done by the interested bidders depositing them in an urn placed for the purpose in the place specified in the tender specifications or terms of reference and in the notices publicising the tender procedure or competition. When the tender or competition period is over, the urn is opened and the deposited tenders are removed, all of which is officially recorded. It is also usual to provide for registration of receipt of the tenders submitted.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

After the bids have been examined from the technical, economic and legal standpoints, the evaluation reports are prepared and tenderers are asked for any clarifications or explanations considered essential. These evaluation reports are kept in the secretariat of the entity for bidders to submit the relevant comments. After the above-mentioned formalities have been completed, the contract is awarded, and the decision stating the reasons is notified to the selected tenderer. Unsuccessful tenderers are informed of the decision if the award was not made in a public hearing. Article 30.10 of the Law, together with Article 273 of the Political Constitution, provides for the possibility that the award be made in a public hearing, of which the corresponding official record setting out the discussions and decisions will be drawn up.

For the purposes of social control and public participation, Article 51 of Law 190 of 6 June 1995 provides that, as from its entry into force, State establishments have to publicize in a visible place of the entity concerned, once a month, in simple layman's terms, a detailed list of goods and services procured, their destination and the name of the successful bidder, as well as the tenders declared void.

Article 59 of the same Law 190 of 1995 creates the central Unified Journal of Government Procurement as an Appendix to the Official Journal, which will contain information on contracting by public entities at national level. It will indicate the contractors, purpose, value and unit values if any, time-limit and supplements or modifications to each of the contracts, and will be published in such a way as to be able to establish parameters for comparisons according to cost, time-limit and type, so as to identify significant differences in procurement by the public administration, in evaluating its efficiency. Publication of contracts will take place within three months of the payment of the fees for publication in the Official Journal.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

Law 80 does not contain any provision obliging State entities to publish or communicate the reason why rejected tenderers were not selected. Nevertheless, tenderers may learn aspects of the tender or competition through the freedom of access to information provided by the Law. It is also possible to obtain information by recourse to the right of petition.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment of another Member? Please specify how, if at all, more

favourable treatment is accorded. Please also specify the working definition of •domestic• in relation to domestic services and suppliers.

In general, national and foreign bids are subject to equal treatment. Article 20 grants equality of treatment as between domestic and foreign bids, provided the country concerned offers Colombian bids equal treatment with domestic bids. In other words, equal treatment depends on the application of the principle of reciprocity. Article 15-04.1 of the Free-Trade Agreement between Colombia, Mexico and Venezuela, approved by Law 172 of 1994, establishes national treatment as between suppliers of goods and services of another country Party and domestic suppliers.

Apart from the above and the explanations in the replies relating to the criteria for the evaluation of tenders and the award of contracts in point 7 above, Article 21 of Law 80 of 1993 establishes that State entities must guarantee the participation of suppliers of goods and services of domestic origin, under competitive conditions of quality, opportunity and price, without prejudice to the objective selection procedure, wherever supply of domestic origin exists. The same Article establishes the following rules: (i) Under equality of conditions for procurement, preference shall be given to the supply of goods and services of domestic origin; (ii) for foreign suppliers who are in a position of equality of conditions, preference shall be given to the one incorporating the most domestic human resources, the biggest local component and the best conditions of technology transfer; (iii) in the case of implementation of investment projects, provision shall be made for the unpackaging of technology.

Article 44 of Law 80 also provides that State contracts are absolutely void where ... •they have been concluded disregarding the criteria established in Article 21 on the treatment of domestic and foreign bids or in violation of the reciprocity provided for in this Law•.

With the exception of the above and what was said in the section on criteria for the evaluation of tenders and the award of contracts (point 7), there are no procurement provisions according preferential treatment to bids from one foreign country and discriminating against those of another foreign country.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

In accordance with Article 77, first paragraph, of Law 80 of 1993, there is no appeal by administrative channels against an adjudication. The award decision may be challenged by bringing an action for annulment and restoration of rights in accordance with the rules of the Administrative Litigation Code.

In this regard, Article 85 of the Administrative Litigation Code establishes that any person who believes that he has been injured in a right protected by a legal provision may request that the administrative act be annulled and his right be

restored; he may also request reparation of the injury. This action may also be brought by anyone who claims that a fiscal or other type of obligation should be changed or that an amount unduly paid be returned.

In addition, Article 36, second paragraph, of the Administrative Litigation Code provides *inter alia* that the action for the restoration of rights shall lapse after four months from the day of publication, notification or execution of the act, as the case may be.

The competent courts of administrative jurisdiction are the Administrative Courts and the Council of State.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Colombia, Mexico and Venezuela are members of the Free Trade Agreement signed on 13 June 1994 and approved in Colombia by Law 172 of 20 December 1994. Chapter XV of the Treaty refers to the government procurement regime among the three countries. The basic subject matter includes basic definitions; scope of application; observance of the principles of national treatment, non-discrimination and most-favoured-nation treatment; basic procedures for tendering, selective tendering and limited tendering, or direct procurement; procedures for the submission, reception and opening of bids and award of contracts; procedures for challenging and for dispute settlement. The Annexes to Chapter XV spell out the scope of the rules contained in the Chapter and the exceptions for which it provides. Such exceptions apply in particular between Colombia and Venezuela.

There are no government procurement provisions in the LAIA or Andean Group. Some agreements signed within the LAIA framework have provided for the adoption of government procurement provisions, but so far they have neither been proposed nor accepted.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements:

-On both an aggregate and sectoral basis;

-by origin of services and suppliers.

(b) Please provide statistics (if available) on the:

-Share of services procurement in total procurement;

-share of procurement of each service in total domestic output of the service;

-share of procurement of each service in total domestic consumption of the service.

No database exists which would make it possible to provide consolidated statistics on the total amount of procurement of services, not to mention broken down by sectors or suppliers.

In view of the importance of this aspect, the Ministry of Foreign Trade is working on the compilation of data in order to remedy the existing situation.

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COMMUNICATION FROM NEW ZEALAND

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the delegation of New Zealand to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

There is no legislative or regulatory definition of government procurement in New Zealand. For the purpose of this survey we have considered government purchasing to encompass all state sector procurement. The Ministry of Commerce has issued a booklet •Government Purchasing in New Zealand: Policy Guide for Purchasers•. These are recommended guidelines for use by government departments, statutory authorities, local authorities and other publicly-funded institutions and State-Owned Enterprises.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

There is no central control of government procurement activities. Within the parameters of the Government's purchasing policy (see paragraph 3 below), individual government organisations are responsible for their own purchasing and purchasing procedures which have also often been devolved to regions or delegated down the administrative line.

State-Owned Enterprises (SOEs) are required by the State-Owned Enterprises Act 1986 to operate as profitable and efficient businesses. They are subject to the same legal disciplines as private sector companies, and not to direct Ministerial control. Accordingly, like any company, they can determine their own purchasing policies and procedures.

Government departments and other publicly-funded agencies and institutions and SOEs are under no obligation to arrange purchases from, or through, any other government agency or from any particular private company. State sector purchasers have freedom of choice in what they buy, how they buy and from where they buy.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

There are no laws or regulations relating specifically to government procurement but the Government's purchasing policy and New Zealand's membership of the Australian Government Procurement Agreement do set the parameters for departmental purchasing decisions.

Reforms under the State Sector Act 1988 and the Public Finance Act 1989, while not including provisions for departmental purchasing, have brought about greater autonomy and accountability in departments' and agencies' financial management. They are designed to improve the efficiency and accountability of the public sector. The Government's decentralised purchasing policy, described below, operates in this context.

New Zealand's Government purchasing policy is based on the principle of best value for money through open and effective competition, including full and fair opportunity for domestic suppliers. Government purchasing decisions are seen as essentially no different from any other corporate or private purchasing decision taking place in an open deregulated and competitive marketplace. Like operators in the private sector decentralised government purchasing decisions are subject to individual corporate system guidelines and audit to ensure that decisions are based on value for money.

The purchasing guidelines do not prescribe or mandate a uniform procedure to be followed by purchasing agencies. The only specific requirement is that government departments are instructed (other purchasing agencies are requested) to require origin and local content information on all offers to supply goods and to obtain such information from any brokers before buying goods under contracts arranged by them. This requirement enables purchasing agencies to gauge whether they are giving full and fair opportunity to domestic producers and thus not overlooking any value for money advantages for the purchaser. There is no general benchmark level of local content required nor a policy of applying preferences that favour domestic industry and discriminate against foreign suppliers. Nor is there any policy of fostering and protecting specific industries through government purchasing.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The Government's purchasing policy applies to both goods and services.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

(c) What are the time limits for submission of bids?

The individual purchasing agency decides for itself the procurement procedures to be applied. As noted, government agencies are free to follow their own purchasing procedures within the parameters of the Government's purchasing policy and to apply the principles and procedures of the Government's purchasing guidelines with common sense and judgement, consistent with sound and ethical purchasing practice, as set out in Treasury's publication 'A Guide to the Management of Departmental Purchasing'.

Generally the issuing of an open and competitive tender is used particularly for large purchases. In some circumstances, where this is not practicable (such as an emergency purchasing), a selective purchase is made.

While much purchasing is done directly by departments, State-Owned Enterprises and other government agencies, several private sector supply brokerage companies (including Supplycorp which was formerly the Government Stores Board) specialise in servicing public sector purchasers, including local bodies, through consolidated period supply contracts which are established through competitive tendering. Use of these contracts by public sector purchasers is on a voluntary basis. The National Health Supply Service, a unit of Capital Coast Health Ltd, acts as agent for Crown Health Enterprises participating, on a voluntary basis, in collective purchase of a range of various supplies.

Threshold levels or price guidelines used for specific procurement channels or methods, including open tendering, selective tendering and single tendering, are determined by the individual agencies for themselves. Thresholds used by the Ministry of Commerce for specific procurement channels are contained in paragraph 8.6.3.2.4, page 14, of the attached Appendix A and are provided as an example of individual departmental practice only.

Publicity for inviting tenders

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

There are no central laws, regulations, or rules for publication of notices.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Relating to notification of opportunities and qualification of suppliers.

The main publications used for the advertising of procurement opportunities are the major daily newspapers, specialist magazines or publications such as the •Tenders Gazette•, •New Zealand Government and Local Body Tender•, •Australian Defence News• and the Australian and New Zealand annual joint defence equipment publication •The Yellow Book•.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Charges, where applied, for obtaining the full set of tender documents are set by the individual organisations themselves. The Government's purchasing guidelines state that the price charged or deposit required, if any, for tender or related documents should not be so high as to discourage *bona fide* competent contractors or producers from participating in the tendering proceedings.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

We are not aware of any use by New Zealand government agencies of electronic media to publicise their procurement requirements although it is open to them to do so, as a matter of commercial decision. At present, however, some New Zealand calls for tender are appearing on the Internet via the Australian Commonwealth's pilot Government Electronic Marketplace Service (GEMS). These are fed into GEMS by the New Zealand Industrial Supplies Office from information which is provided voluntarily by the purchasing agencies. (New Zealand has no comprehensive centralised system for the collection and dissemination of government procurement opportunities).

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

There are no government requirements on (a) and (b) above laid down for possible suppliers. Individual agencies determine such relevant requirements for themselves. In practice, multi-stage procurement procedures are often adopted for large and complex procurement projects including e.g. requests for proposals or calls for registration of procurement interest (as a basis for prequalification of potential suppliers).

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

Treasury's booklet •A Guide to the Management of Departmental Purchasing• advises as follows:

Organisations which purchase items specifically designed and manufactured to meet their requirements should consider developing a list of •approved suppliers•. This process involves potential suppliers being evaluated under appropriate criteria; for example, their financial stability, their ability to produce required items to appropriate quality standards at competitive prices, and whether they can meet required delivery schedules.

Building up an •approved supplier• network can be expensive, but there can be long-term benefits in consolidating effective relationships with reliable suppliers.

However, so that the requirements of fairness and equitability are met, organisations should be careful to avoid exclusivity, and ensure that lists are continually reviewed, and as they become known, other potential approved suppliers are evaluated.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

New Zealand's Government procurement policy is based on the ordinary commercial principle of best value for money through open and effective competition. This includes full and fair opportunity for domestic (New Zealand and Australian) suppliers to compete on a no-preference basis. The value for money criterion is taken to include considerations such as quality, price, delivery and service support, using life-cycle or similar costing techniques where appropriate.

Criteria for assessing bids and awarding contracts, used by the Ministry of Commerce, are attached as Appendix B as an example of individual departmental practice only.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

There is no mandatory requirement for offsets or counter-purchases in government procurement. An informal voluntary offsets policy is effectively inoperative outside defence purchasing.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

Under the Government's purchasing policy there is no policy of giving preference to any particular enterprises or group of enterprises.

(d) Do the procurement criteria differ according to sector or region of the economy?

The Government's purchasing policy is neutral as between sectors or regions of the economy.

***(e) What is the margin of choice or discretion allowed to the purchasing authority?
What does the extent, if any, of discretion allowed depend upon?***

For departments, there are financial delegations by Cabinet to Ministers and Chief Executives (see below).

	Chief Executives	Responsible Ministers	Cabinet or Cabinet Committees
A.CURRENT EXPENDITURE			
Publicity expenditure	100,000	Nil	N/A
Special Payments			
(i) Compensation or damages in settlement, or claims which are endorsed by the Crown Law Office or judgements of the Court (claims under \$50,000 need not be referred to the Crown Law Office if a departmental solicitor certifies that such claims are in order)	100,000	500,000	N/L
Ex Gratia payments	20,000	50,000	N/L
B.CAPITAL EXPENDITURE			
Capital purchases or projects (Total cost of project)	5,000,000	10,000,000	N/L

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

The individual purchasing agency determines its own procedures for receiving, opening and registering tenders and in accordance with best practice.

Treasury's booklet •A Guide to the Management of Departmental Purchasing• advises: •Tenders should be time and date stamped when opened and those responsible for opening them should initial the date stamp. The tenders should be numbered and entered on to a register which should also be initialled, so that a subsequent tender cannot be added without explanation. Such internal control procedures ensure that the organisation is able to

demonstrate that it has acted in a fair and equitable manner. (For this reason, it is recommended that two people should be involved in opening and registering tender documents.)

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

Entities are not required to publish details of the contracts awarded or notify unsuccessful tenderers. Communication to unsuccessful tenderers of reasons for not being selected is encouraged under the Government's purchasing guidelines where tenderers request this.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

See answer in 8(b) above.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

There are no preferential treatment laws, regulations or procedures in New Zealand Government purchasing. As stated in the Government's purchasing guidelines, it is not the intention of the policy to encourage discrimination against foreign suppliers. Having given domestic industry full and fair opportunity, agencies should buy from the best source available, according to their own assessment of all costs and benefits.

An Industrial Supplies Office has been established to facilitate efficient information flows about domestic (New Zealand and Australian) industry capabilities to meet government purchasing requirements.

'Domestic' in relation to domestic services and suppliers means those services which are wholly or partly produced in New Zealand and/or Australia.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Suppliers with grievances may contact a number of organisations including, in the first instance, the purchasing agency involved (and/or Minister responsible for the agency). The Ministry of Commerce (Tariff Policy 2) which has responsibility for the Government's purchasing policy may also investigate

complaints of unfair treatment or denial of opportunity. An organisation may be required to provide information about its purchasing decisions (possibly under the Official Information Act 1982) and the Ombudsman may be involved. The Controller and Auditor-General has powers to conduct an inquiry as set out in the Public Finance Act 1977. Complaints concerning bribery and corruption may be dealt with under the Crimes Act 1961.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

In furtherance of the objectives of Article 11 (Government Purchasing) of ANZCERTA, New Zealand in 1989 signed the Australian National Preference Agreement, now known as the Government Procurement Agreement (GPA). Under the GPA, the New Zealand Government undertakes to ensure that departments, statutory authorities and other bodies controlled by it treat Australian products, services and suppliers equally with New Zealand products and services and suppliers in all aspects of the government purchasing regime. Similar obligations are undertaken in respect of New Zealand products, services and suppliers by the Australian Commonwealth, State and Territory Governments. New Zealand also undertakes to continue its current policy of not applying a preference margin to any purchases.

State-Owned Enterprises (SOEs) are not included in the GPA definition of government procurement for New Zealand. However, the New Zealand Government has formally communicated to the SOEs its expectation that they will give all prospective Australian tenderers an equal opportunity along with any New Zealand tenderers to compete with third country suppliers for contracts; that they will be non-discriminatory in their purchasing; and that they will cooperate in any investigation under the GPA of complaints or alleged discrimination in the awarding of contracts.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- *on both an aggregate and sectoral basis;*
- *by origin of services and suppliers.*

(b) Please provide statistics (if available) on the

- *share of services procurement in total procurement;*
- *share of procurement of each service in total domestic output of the service;*

- ***share of procurement of each service in total domestic consumption of the service.***

Procurement statistics are generally not available. Government agencies are not required to (and generally do not) collect figures on purchasing. It is estimated, however, that the New Zealand Government through its government departments buys goods and services from the private sector to a total value of around \$3 billion a year. Other central government agencies spend significant additional amounts. The number and value of services procurements is not known.

APPENDIX A

NB: This is an extract from the Ministry of Commerce's purchasing manual and is provided as an example of individual departmental practice only.

8.6.3.2 Procurement Channels and Price Guidelines

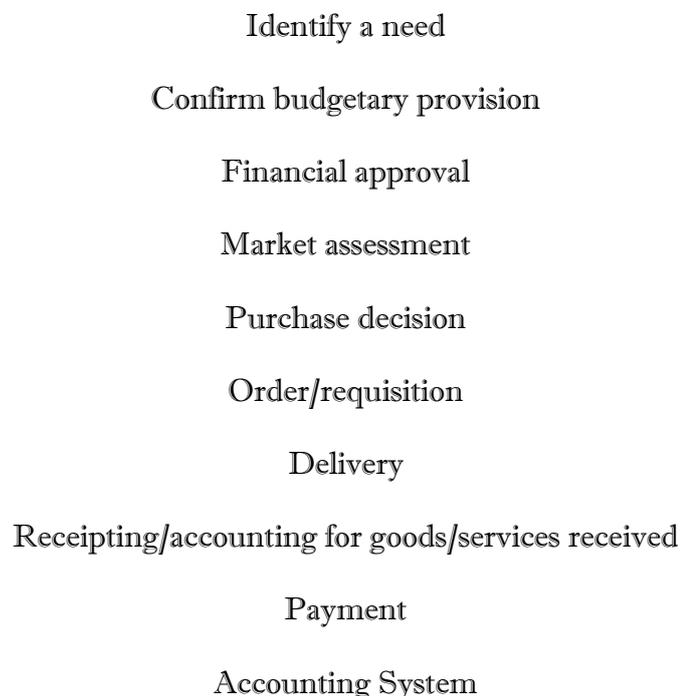
8.6.3.2.1 Why Purchase?

In deciding to buy a good or service, the Ministry must identify an unmet need, and consider the best way to meet it. Ideally, this process should take place during the annual planning and budgeting process.

If the purchase of a good or service is an option to meet an identified need, the purchase process can begin.

8.6.3.2.2 The Purchasing Process

This flowchart indicates the process of purchasing.



8.6.3.2.2.1 Defining a Need and Requisitioning

Defining a need accurately, and communicating this need to the market clearly, are essential parts of the purchasing process.

There is a tendency to oversimplify or overlook the requisition stage, but it provides a mechanism by which the purchasing officer can gain an accurate description of the goods or service required. The user may know what they need, but may not have the technical expertise to describe it correctly.

End User:•I want a hammer•

Supplier:•Certainly, sir. Claw or ball-pein? What weight? Wooden or steel shaft?
Red or blue?•

8.6.3.2.2.2.Financial Approval

All purchases are subject to budget availability, and the decision to commit expenditure must be made within an approved financial delegation limit.

8.6.3.2.2.3Market Assessment

Once the purchasing officer receives an approved requisition, a check should be made to ensure that the item is not already in stock. A market assessment should then be made, considering the following questions:

- What are the relevant price guidelines? (see below, p 13)
- Is there a competitive market for the item?
- Is the volume/value of goods required sufficient to warrant calling for quotations and tenders; and if so, should prices and other details be obtained by telephone or in writing?
- If there is no competitive market, should the sole supplier be given an immediate order, or can a lower price be negotiated?
- Is it appropriate to call for •Registrations of Interest• prior to inviting formal tenders?
- Are suitable existing contracts available?
- Is there a list of •approved suppliers• for the item, or is the establishment of an •approved suppliers• list warranted?
- Could there be scope for a bulk purchase?

8.6.3.2.3 Procurement Channels

There are many ways of making a purchase; the principal ones are set out in the following paragraphs.

8.6.3.2.3.1Period Supply Contracts

A •period contract• is a contract to supply goods over a specified period of time, which can be short (six months or less) or relatively long. When there is a steady demand for an item or a commodity group (for example stationery, hardware, timber), the best option may be to purchase by period contract.

The time-period of a contract is normally decided by factors such as:

- the cost of establishment (setting up a contract for the first time can be very time-consuming)
- the volume and time-frame of usage
- the value of the contract (it should be sufficient to encourage competition amongst suppliers)
- the risk of obsolescence (for example, model changes)
- price volatility (the contract should include clauses covering normal price rises/falls).

A period contract has many advantages. For example:

- it can be established by competitive tender, with a competitive price and agreed terms and conditions of supply;
- purchases covered by the contract can be made as and when required - with immediate or agreed time and no warehousing or stockholding costs;
- ordering is simplified - anyone can write an order, since price and terms have already been established;
- it helps the organisation to standardise where this is desirable (which can reduce training and maintenance costs).

The Ministry of Commerce has ongoing supply contracts with a number of organisations, including:

- National period supply contracts with Supplycorp;
- Local purchase contracts with SERCO;
- Ministry-specific and divisional contracts for services such as fire protection, cleaning, and postage.

Contract documents are held by the Administration Service, Corporate Services Section, Head Office, as well as the Operating Divisions and Regional Offices.

Existing contracts should not have precedence over other sources of supply; rather, they should be considered alongside other options within the principles of value-for-money, opportunities for local industry, and ethical purchasing behaviour.

8.6.3.2.3.2Competitive Purchasing

Most of the Ministry's day-to-day needs are acquired through period contract. However, there are always going to be occasions when individual purchases need to be made, or new contracts established.

In these circumstances, we want suppliers to compete with each other for the opportunity to provide the products or services we require. There are two methods of generating this competition.

Competitive Tenders

A •tender• is an offer by a supplier to deliver (•to tender•) goods and/or services. In general, tenders are called for major procurement where price is only one of the key factors in the decision to purchase.

When we invite tenders, we invite suppliers to make us a formal, structured offer, on the understanding that all offers will be compared and assessed. In detail by impartial expert staff.

An open call for tenders is the preferred method in major purchases, as it affords all potential suppliers fair and equal opportunity to compete.

Competitive Quotes

A •quote• (properly, a •quotation•) is an offer to provide goods or services at a fixed price. Quotes are less formal than tenders, but are legally binding on the supplier.

Quotes are generally requested (from three or more suppliers) for products or services where price is the main determining factor in the purchasing decision.

8.6.3.2.3 Selective Purchase

There are a few circumstances in which competitive purchasing is not practicable, and it is appropriate to make a selective purchase. A •selective purchase• is made without calling for competing quotes or tenders. An individual supplier is simply invited to provide goods and services.

Selective purchasing is the exception, not the norm. The selective purchase method should only be used in the following circumstances:

- for one-off purchases of goods or services of minor value (threshold \$5,000 plus GST) where competitive purchasing procedures would not be cost-effective, and where a period supply contract (as described in 8.6.3.2.3.1 above) is not appropriate

- when stores or services are only available from a specific source of supply (such as proprietary brands where there is no technically acceptable equivalent)
- when a supplier has unique expertise or knowledge. (Selective purchase on this basis may only be authorised by a General Manager, Chief Advisers, or specified delegates)
- where compatibility/standardisation with existing equipment (or office furniture/fittings) is required
- when acquiring spare parts or accessories for existing equipment
- for development or prototype work
- when a tender for other stores or services has recently been accepted from a supplier
- when making purchases from a public auction or from another government department, agency, or SOE.

Selective purchase may also be appropriate if a successful tenderer fails to supply. In these circumstances, it can be appropriate to approach one of the unsuccessful tenderers on a selective-purchase basis.

8.6.3.2.4 Price Guidelines for Specific Procurement Channels

All purchases are subject to budget availability, and the decision to commit expenditure must be made within approved financial delegation limits.

8.6.3.2.4.1 Purchases below \$20,000

At this level, it will generally not be cost-effective to issue a formal call for tenders. Wherever practicable, staff should seek at least three quotes. Otherwise, a selective purchase may be made within the guidelines set out in 8.6.1.3.3 above.

8.6.3.2.4.2 Purchases between \$20,000 and \$100,000

Where an open call for tenders is not practicable or cost-effective, authorised officers may call for competitive quotes (for goods or services commonly available) up to a value of \$100,000 plus GST.

Staff must seek at least three quotes. Suppliers should be asked to provide price, terms, and descriptions of the goods or services in writing.

The only exceptions will be those purchases made under existing period contracts, or in circumstances specified in the above section on Selective Purchases (8.6.1.3.3.3).

8.6.3.2.4.3 Purchases above \$100,000

In general, an open call for competitive tenders should be issued for all purchases of goods and services exceeding \$100,000 plus GST. The only exceptions will be those purchases made under existing period contracts, or purchases made in circumstances specified in the above section on Selective Purchases (8.6.3.2.3.3).

8.6.3.2.5 Choosing Suppliers

Having completed the market assessment and determined the method of purchase, the purchasing officer then decides on the supplier or suppliers. This decision must be well-documented, not only for audit purposes, but also in case there is a subsequent complaint or a request under the Official Information Act.

8.6.3.2.6 Ordering and Delivery

A Government Stores work order or an approved order form must be used when procuring goods or services. As an order form is like a blank cheque, it should be subject to the same controls and accountability as cheques. (Order forms are available from the Finance Section).

All orders should clearly state the terms of delivery. If the delivery terms and costs are the supplier's responsibility, the freight should be on a 'freight paid' basis.

APPENDIX B

NB: This is an extract from the Ministry of Commerce's purchasing manual and is provided as an example of individual departmental-Practice only.

8.6.3.4 Evaluation Tenders: Policy and Procedures

8.6-3.4.1 Policy

Where tenders meet the criteria of commercial competitiveness, technical acceptability, and conformity with the requirements set out in the tender document, the final selection will be based on value-for-money, taking into account the domestic content in the offered goods/services. and any advantage associated with sourcing from domestic production which could be looked upon favourably.

8.6.3.4.2 Practical Guidelines: Assessing Value-for-money

Value-for-money is the *key criterion* for choosing a specific product or service. It takes precedence above all other factors.

•Value• (as opposed to •cost•) is a difficult thing to assess. The components of value may be outlined as follows:

8.6.3.4.2.1 Quality

The •quality• of goods and services represents their ability to meet or, exceed the needs of the purchaser. Quality may be tangible (•How many pages-per-minute will this printer produce?•) or intangible (Ministry satisfaction that we have given New Zealand/Australian industry a fair crack of the whip).

8.6.3.4.2.2 Through-life costs

The •through-life-costs• of a product are the costs that it generates between purchase and writing-off. Classic through-life costs are consumables for photocopiers, or security guards for the Treaty of Waitangi. Maintenance costs for unreliable equipment are also •through-life• costs, as are the hours of productivity lost when a computer system crashes.

8.6.3.4.2.3 After-sales service/guarantees

In assessing these items, it's prudent to consider the stability and reputability of the supplier. All the glossy guarantees in the world are worth nothing if

the supplier goes bankrupt a week after a purchase, or if their after-sales service is conducted by clumsy, unqualified staff.

8.6.3.4.2.4 Ease of communication with the supplier

Communication factors include:

- the supplier's availability for discussions and negotiations;
- the supplier's ability to deliver the goods/services required when they are required;
- the supplier's ability to provide after-sales support promptly.

8.6.3.4.2.5 Other factors influencing value-for-money

Related factors to be considered in assessing value include:

- the relative benefits of lease versus purchase. (For more detail on this issue, refer to the Ministry of Commerce's Fixed Asset Management manual);
- versatility, life-span, upgradability, ease of repair.

8.6.3.4.3 Procedure for Evaluating Tenders

8.6.3.4.3.1 Overview

The tendering process should be transparent; that is, it should be seen to have been handled in a fair and equitable manner. If the tendering process has been followed correctly, the Ministry should be able to disclose the evaluation report which led to a specific purchase.

8.6.3.4.3.2 Evaluation

The invitation to tender must include the criteria by which the response will be evaluated. This is particularly important for complex tenders (such as those related to computer systems). The criteria for evaluation provide prospective tenderers with an insight into the requirements that the purchasers hold to be most important

In preparing the evaluation criteria, it is useful to consider:

- Who is going to evaluate the tenders.

It is important that the tender evaluators have the appropriate skills and can make a well-balanced decision. An evaluation team should contain an appropriate balance of technical, business, and management expertise, with an overall team-leader to co-ordinate and manage the evaluation process. Each team member should be formally advised:

- their role;
- their specific tasks and responsibilities;
- the time-commitment involved.

It is important to stress the importance of commercial confidentiality.

- who will receive the evaluation team's recommendations, and who will make the final decision;
- whether there's a need for external consultants to assist and advise on the purchase recommendation;
- what sort of weightings will be used for the various selection criteria during the decision-making process.

In some circumstances, a two-stage evaluation may be necessary. The first stage could evaluate selected major criteria to identify a shortlist, which will then go forward to a detailed evaluation in stage two. If formal presentations/demonstrations are to be permitted as part of the process, generally only those suppliers making the shortlist would be invited to do so.

- whether tenderers will be invited to make presentations, and, if so, how the presentation will be conducted. Is it appropriate/necessary to visit tenderers' premises or user sites?

Once any suppliers have been "knocked out" of the process, they should be advised as soon as possible. (This enables them to reallocate any resources they may have committed to the support of the proposal.)

8.6.3.4.3.3 Documenting the decision-making process

Tender evaluations must be well-documented, and care must be taken to ensure that all tenderers have been given the same opportunities, and that the requirements of fairness and equability have not been compromised. It must be remembered that the Ministry is accountable for its decision, and may be required (possibly under the Official Information Act) to provide information about the decision-making process.

8.6.3.4.3.4 Post-tender negotiations

It can often be useful to negotiate with tenderers after the tender documents have been received and assessed. Negotiations can cover issues such as:

- terms and conditions of supply;
- delivery;
- terms of payment;
- warranties;
- on-going maintenance.

However, it is important that this process be handled delicately and professionally. As Treasury puts it, "playing one tenderer off against another in a "Dutch Auction" is not a professional tender negotiation". Suppliers have little patience with this approach, and are likely to produce cagey, tentative, and ultimately useless tender documents in future.

Negotiations should be well-documented, and the parties should formally agree to the results of the negotiations. Before the tender is let, the negotiation process should be reviewed to ensure that all tenderers have been given the same opportunities, and that the requirements of fairness and equitableness have not been compromised.

8.6.3.4.4 Awarding Contracts

Many transactions will be completed by issuing an official purchase order, but contract documentation will be necessary for some purchases. This contract material may consist of a fairly simple exchange of letters, or may involve the drafting of complex legal documents. In general, if a procurement warrants the issue of a formal RFP, and the expense of a formal evaluation process, it will also require the preparation of proper contracts.

Key contract documents will be the RFP and the preferred supplier's proposal, which should always become attachments to the agreements. Any other major documents that supersede the RFP or proposal should also be attached.

A contract should address the following issues:

- the contract deliverables;
- the specification for deliverables;
- the implementation plan;
- performance and service standards;
- the purchasers responsibilities;
- purchaser and supplier project-management roles;
- acceptance procedures for goods/deliverables;
- the commercial terms, conditions, and schedule;
- issues of confidentiality, intellectual property, and liabilities;
- the consequences and remedies for both parties of default by the other.

Letters-of-intent

Developing contract documents can be quite time-consuming, and it may be appropriate to send the chosen supplier a "letter-of-intent". Such a letter states that the tender has been successful, but that a confirmed order may depend on negotiation of a satisfactory contract. The advantage of a letter-of-intent is that it allows the supplier to be sufficiently sure of securing the business to be able to begin substantive work on the contract.

It's important to seek legal advice on the wording of letters-of-intent to ensure that they do not make a binding commitment which could prejudice negotiation of the final contract.

8.6.3.4.5 Debriefing Unsuccessful Tenders

Suppliers who win contracts generally know what they are doing right. Tenderers who miss out often value the opportunity to discover what they are doing wrong; if nothing else, debriefing can help New Zealand firms enhance their ability to compete at home and abroad.

The Ministry is happy to "debrief" unsuccessful tenderers. This task should fall to the leader of the evaluation team. Wherever possible, staff should try to keep the process open, with frank and honest exchange of information. However, it is important to take into account the requirements of commercial confidentiality and the maintenance of fair competition between suppliers. To protect commercial confidentiality of all parties, staff should only advise suppliers of the relative strengths and weaknesses of their own proposals, without comparing them to the proposals of others.

The timing of debriefing is important, and (in case a chosen supplier drops out and the evaluation has to be re-opened) it should not precede the formal conclusion of negotiations and the completion of a contract.

8.6.3.4.6 Maintaining Good Post-Contact Relationships

It is important to maintain communication with the successful tenderer throughout the life of the contract; providing suppliers with feedback helps build a productive relationship. If it is appropriate suggest ways in which the performance of a supplier, or its products, can be improved.

Staff should deal with suppliers in an ethical and businesslike fashion - and should see that suppliers' accounts are paid on time!

WORLD

d.5

ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Ad

27 September 1996

(96-3863)

Working Party on GATS Rules Original: English

COMMUNICATION FROM JAPAN

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of the delegation of Japan to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

For the purpose of completing this questionnaire, government procurement is referred to as the procurement of services covered by the Agreement on Government Procurement concluded in Marrakesh on 15 April 1994 (hereinafter, •the Agreement•). It must be noted that this definition is used only in the context of this questionnaire and should not prejudice Japan's position on understanding of the scope of government procurement.

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

In Japan, government procurement is conducted on the basis of procurement contracts entered into by each procuring entity, thus in a decentralized manner. The procurement procedures are provided for in the Accounts Law and relevant regulations with regard to central government entities, in the Local Autonomy Law and relevant regulations with regard to sub-central government entities, and in accordance with the relevant procurement procedures operating under the supervision of the central government entity concerned with regard to other entities. Procurement plans of the central government are normally formulated on the basis of procurement planned by the procuring entity. A draft budget is prepared after going through the examination by the fiscal authorities, and that draft comes into force at the beginning of the following fiscal year after the approval of the Diet.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

The following is a list and outline of the major laws and regulations related to government procurement in Japan and the scope of their application.

(1) List

- (i) Accounts Law
- (ii) Cabinet Order Concerning the Budget, Auditing and Accounting
- (iii) Special Provision of the Cabinet Order Concerning the Budget, Auditing and Accounting
- (iv) Regulations on the Management of Contract Administration
- (v) Cabinet Order Stipulating Special Procedures for Government Procurement of Goods or Services
- (vi) Ministerial Ordinance Stipulating Special Procedures for Government Procurement of Goods or Services
- (vii) Local Autonomy Law
- (viii) Ordinance for Enforcement of Local Autonomy Law
- (ix) Cabinet Order Stipulating Special Procedures for Government Procurement of Goods or Services in Local Government Entities
- (x)
 - a) On the establishment of the Office of Government Procurement Review (Cabinet Decision of 1 December 1995)
 - b) Review Procedures for Complaints Concerning Government Procurement (Decision of the Office of Government Procurement Review on 14 December 1995)
 - c) Designation of Applicable Measures Concerning Government Procurement (Decision of the Head of the Office of Government Procurement Review on 14 December 1995)

(2) Outline

(i) Accounts Law

This law stipulates the basic items of the nation's accounting duties pertaining to contractual duties, contractual methods, tendering methods, contractual forms and other matters.

(ii) Cabinet Order Concerning the Budget, Auditing and Accounting, the Special Provisions for Cabinet Order Concerning the Budget, Auditing and Accounting and the Regulations on the Management of Contract Administration.

These accounting regulations stipulate the detail of the rules and procedures provided for in the Accounts Law, including the conditions for the use of selective tendering and single tendering

(iii) Cabinet Order Stipulating Special Procedures for Government Procurement of Goods or Services.

This Cabinet Order provides special rules and procedures which are necessary for implementing the Agreement in addition to the laws and regulations mentioned above in (1)(i) through (iv)

(iv) Ministerial Ordinance Stipulating Special Procedures for Government Procurement of Goods or Services

This Ministerial Ordinance is applied to the procurement contracts subject to the provisions of the Cabinet Order referred to above in (1)(v). The ordinance stipulates the details of the rules and procedures such as information to be published in the official gazette •Kanpo• on the qualification procedures, matters to be described in tender documents and information on the contract awarded.

(v) Local Autonomy Law

This Law provides a general principle concerning the organization and operation of local government bodies (including the rules on procurement contracts) and the basic relations between the central government and local governments.

(vi) Ordinance for the Enforcement of Local Autonomy Law

This Ordinance provides detailed rules and procedures for implementing the provisions of the Local Autonomy Law, including matters on procurement contracts.

(vii) Cabinet Order Stipulating Special Procedures for Government Procurement of Goods or Services in Local Government Entities

This Cabinet Order establishes the special rules and procedures needed to implement the Agreement in addition to the laws and regulations mentioned above in (1)(vii) and (viii)

(viii) On the establishment of the Office of Government Procurement Review (Cabinet Decision of 1 December 1995) (hereinafter the •OGPR•)

The OGPR was established by the Prime Minister's Office to implement the Provisions of the Agreement regarding challenge procedures. The Government Procurement Review Board (the •GPRB•), held under the OGPR, processes complaints in a fair and neutral manner with regard to procurements by the central government entities and other entities. The GPRB reviews complaints in accordance with the specific procedures set out by the OGPR by applying the provisions of the Agreement and the measures otherwise designated by the head of the OGPR.

(ix) Following the model of the procedures set out by the OGPR, the prefectural governments and the designated cities covered by the Local Autonomy Law have established their respective procedures to process complaints on procurement subject to the Agreement.

(3) Scope of the Application

The laws and regulations mentioned above in (1)(ii)(iii) and (iv) apply to all the central government entities, while those mentioned above in (1)(v) and (vi) apply to all sub-central government entities and the cabinet order mentioned above in (1)(vii) applies to all the prefectural governments and the designated cities covered by the Agreement. The above-mentioned laws and regulations have no provisions for exemptions to their application, except for the provisions accepted in the Agreement.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

There is no such distinction in our procurement regime.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

The methods followed for procurement contracts by entities covered by the Accounts Law and the Local Autonomy Law are open tendering, selective tendering, and single or limited tendering.

i) Open Tendering

Under this method, each entity publishes public notices of intended procurements in the official gazette •Kanpo• or its equivalents at the local level, and normally invites qualified suppliers to participate in tendering procedures. The procurement contract is awarded to the supplier who submitted the lowest-priced tender. This serves as the principal method for government procurement contracts in Japan.

ii) Selective Tendering

Under this method, each entity publishes public notices of intended procurements in the official gazette •Kanpo• or its equivalents at the local level to the effect that applications to qualify for participation in competitive tendering will be accepted. Among those suppliers who have been identified by each entity as qualified through its qualification procedure, the entity designates the suppliers deemed to have the capacity to fulfil the contract. The contract is awarded to the supplier who submitted the lowest-priced tender among those designated. However, the conditions in this method are defined by laws and regulations, which provide for such cases as do not necessitate the use of open tendering, for example due to the limited number of suppliers competing because of the nature or the purpose of the contract.

iii) Single or limited Tendering

This method allows entities to conclude contracts with designated suppliers without following competitive tendering procedures. The single tendering method is used only exceptionally. With regard to procurement contracts subject to the Agreement, in particular, single tendering can be used only in accordance with the conditions stipulated in the Agreement --- such as cases in which no suppliers would respond even if competitive tendering procedures were applied and cases connected with the protection of exclusive rights including patents and copyrights.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

As for the circumstances under which different procedures are used, see 4(a) above. The choice of a procedure does not depend on the value of the procurement contract concerned.

(c) What are the time limits for submission of bids?

Suppliers must submit their bids before the deadline mentioned in the notice for tenders in the gazette (the notice is published in principle 40 days in advance of the deadline.)

Publicity for inviting tenders**5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?**

A procuring entity publishes a notice in the official gazette, •Kanpo• or its equivalents at the local level, for the invitation to tender in principle 40 days in advance of the closing date of receipt for tenders. Therefore, it is very important to read notices on tenders in the gazette carefully. Information on tenders is also available through contact points on government procurement. As for the languages used for the invitations, see below 5(c)

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

With regard to procurement in Japan, the extent and form of publicity does not depend on tendering procedures or on the value of procurement.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

A notice of invitations to tender includes such information as is indicated below. In the official gazette, the nature and quantity of services to be procured, the time-limits set for the submission of tenders, and the name and department of the official in charge of the contract are described in English, i.e. one of the official languages of the WTO. Public notices on selective tendering procedures contain, in addition to such information, requirements for being designated to participate in tenders.

- Subject matter of contract;
- In cases of recurring contracts, the nature and quantity of the services to be procured under all the remaining contracts after one of the series of recurring contracts, the estimated dated of the subsequent tender notices and the date of the notices and the date of the notices inviting the first tender;
- Qualifications required for participating in the tendering procedures;
- Place and time-limits set for the submission of tenders;
- Place for indicating contract provisions;
- Place and procedures for the delivery of tender documents;
- Name and department of the official in charge of the contract;
- Place, date and time of opening tenders;

- Language and currency to be used for the contract;
- Information on tender guarantee fees and contract guarantee fees;
- Obligations of tenderers;
- Confirmation that tenders made by non-qualified suppliers and tenders violating the conditions of the tender are invalid;
- Whether a written contract is required or not, and
- Method for determining the successful tenderer;

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

Those who intend to participate in competitive tendering procedures can obtain tender documents containing detailed information on the tender from the procuring entity concerned. Sometimes when it is necessary, expenses of the tender documents have to be paid for.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

With a view to facilitating access to information about government procurement, an electronic data-base containing the information published in the official gazette, •Kanpo•, is available, either at such places as local branch offices and Business Support Centers of the Japan External Trade Organization (JETRO) and through on-line information and data base retrieval services on the Internet.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

Usually, those who wish to participate in open tendering and selective tendering procedures must receive qualifications from procuring entities and be included in the permanent list of qualified suppliers which is prepared and updated by procuring entities.

In order to ensure the transparency, openness, and efficient use of allocations in the procedures for competitive tendering, competition through price alone serves as the principle. Therefore, in cases where suppliers are asked to participate in competitions and they do not consider their ability to implement contracts in advance, there is a risk that the designated supplier will not be able to implement the contract properly. Thus, while paying attention to not reducing the level of fairness in competition, qualifications for participating in competitions are determined and suppliers applying to participate in competitions are judged based on their scale of operations, record of achievements and other factors, and, after determining their ability to implement the contract, those suppliers deemed to have the capacity to carry out the requirements are designated as the suppliers qualified to

compete. In that way the transparency of contract procedures is secured while guaranteeing that suppliers with a certain level of ability to implement contracts are selected. No requirements except those mentioned above are imposed on suppliers for participating in qualification procedures.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

For the first question, see 6(a) above. For the second question, the conditions of participation vary according to the types of procedures explained in the answer 4(a). The conditions, however do not depend on the value of the procurement.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

See 6.(a), the permanent list (hereinafter, •the list•) of qualified suppliers prepared by procuring entities is updated every one or two years in general. In addition, suppliers may apply to receive qualifications at any time. When they are identified as qualified, they will be enrolled on the list

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

In order to ensure transparency and openness or efficient use of allocations in the procedures for competitive tendering, tenders submitted are evaluated on the basis of the least-priced-method, for which a procuring entity calculates a price which serves as the standard for awarding based on objective and reasonable specifications to be required. In some major sectors such as computer and related services, however, when tenders submitted are above the threshold, an overall-greatest-value-method is used for an objective evaluation of the quality of relevant services. These criteria are described in notices on tenders and suppliers are informed in advance.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

There are no offset provisions, such as local content, technology transfer or countertrade requirements in Japanese government procurement procedures.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

Government Procurement in Japan places no restrictions on the place of origin or nationality of the supplier and is carried out on the principle of national treatment and non-discrimination. No preferential treatment is extended to specific suppliers.

(d) Do the procurement criteria differ according to sector or region of the economy?

In Government Procurement in Japan, competition through price alone serves as the principle and procurement criteria do not differ according to the sector or region of the economy.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

With regard to Government Procurement in Japan, the risk of arbitrary decisions by the officials in charge in determining the award of contracts are eliminated by qualifying suppliers in advance on a non-discriminatory basis, requiring suppliers to follow conditions on quality, specifications and other elements in a manner which do not preclude competition and making price-based competition serve as the principle.

Disclosure of bids received and contracts awarded

8.(a) How are tenders received, registered and opened?

Sealed tenders must be submitted at the time and place and specified in the notice in the official gazette •Kanpo• or its equivalents at the local level. Specifications of the services to be procured may be required to be submitted with the tenders in some cases.

Tenders are opened at the time and place specified in the notice in the official gazette, •Kanpo• or its equivalents at the local level, in the presence of tenderers or their proxies. Should no tenderers or their proxies be present, the staff of the procuring entity who are not involved in the tendering procedures are required to be witnesses.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

Each procuring entity notifies tenderers of the decision of the award of the contract in writing. Furthermore, each entity publishes a notice in the official gazette, •Kanpo• or its equivalents at the local level, containing the subject matter of the contract, date of award, name and address of winning tenderer, and value of winning award with a view to increasing opportunities for potential suppliers to participate in tendering procedures. Information on awarding of contracts is also available at contact points on each government procurement.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

The notification which each entity gives to the tenderers concerned regarding its decision on the award of the contract does not include information about the reason for not being awarded. If requested, however, information is provided promptly.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

Government procurement in Japan has no discrimination on the place of origin or nationality of supplier and the principle of national treatment and non-discrimination is secured. In Japan 'domestic services' procured by government organizations is interpreted as services provided through commercial presence established in Japan and owned or controlled by persons of Japanese nationality or the services provided by Japanese who are residents in Japan.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

The Japanese Government, pursuant to relevant provisions of the Agreement, has introduced a bid challenge system¹ which enables the suppliers interested to file complaints on the procurements covered by the Agreement and/or based on the voluntary measures which Japan has taken. With a view to processing complaints on procurement by entities other than sub-central government entities, Japan has established the Office of Government Procurement Review (OGPR) under the Prime Minister's Office based on a Cabinet Order of December 1995, and the Government Procurement Review Board held under OGPR has set out the specific procedures for reviewing complaints. The following is an outline of how to use those procedures. (Complaints on procurement by sub-central government entities can be processed in accordance with procedures which each entity concerned has established mutatis mutandis to those of the central government.)

Qualification of Complainants

Complaints may be filed by suppliers who either participated or are qualified to participate in specific and individual cases of procurement, subject to the procedures for complaint review.

Where to File Complaints

Complaints should be filed with the Secretariat of the Board in the Office for Government Procurement Challenge System (CHANS), Coordination Bureau, Economic Planning Agency.

Filing of Complaints

Complaints can be received in accordance with the form specified in Appendix 1, through a phone call, visit, mail or other means of communication.

Participation in Review Process

All suppliers that have interests in the procurement subject to the complaint may participate in the review process by attending or expressing their views at meetings of the Board. Those who wish to do so should notify the Secretariat, in accordance with the form in Appendix 2, within five days

¹ A supplier may file a complaint with the Board, if the supplier believes that the procurement has been carried out in a manner inconsistent with any provision of the Agreement or other applicable measures which Japan has taken voluntarily in order to increase access opportunities for foreign suppliers to the Japanese market.

after the public notice is given, through the official gazette •Kanpo• or the Internet.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

Japan is a party to the Agreement on Government Procurement which was reached on 15 April 1994 in Marrakesh, while remaining a party to the Agreement on Government Procurement which was reached on 12 April 1979 in Geneva and amended on 2 December 1986.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurements

- *on both an aggregate and sectoral basis;*
- *by origin of services and suppliers.*

(b) Please provide statistics (if available) on the

- *share of services procurement in total procurement;*
- *share of procurement of each service in total domestic output of the service;*
- *share of procurement of each service in total domestic consumption of the service.*

No such statistical information on procurement of services has yet been made available. (With regard to procurement of the services covered by the Agreement, the Government of Japan will begin to compile from next year the relevant information on the procurement of this year.)

APPENDIX 1**Form for Filing Complaints**Information Required for Filing a Complaint

Complainant (No anonymous requests can be accepted)	Company name (the company must have something to do with the procurement in question)
	Address, postal code
	Telephone, fax no.
	Name (in the case of a company, include the name of the representing official)
	Name of the staff in charge
Procurement which is subject to the complaint	Officially announced as tender bidding • _____ (in the Official Gazette dated D/M/Y), to be procured (procured) by _____ (name of entity)
Description of complaint	(To ensure prompt handing, please describe as specifically as possible. Please enclose as many descriptive materials as possible as well.)
Have you consulted with the procuring entity up to now?	1)Yes (when, where?) 2)No

APPENDIX 2**Form for Indicating Desire to Participate in Complaint Review Process**Information Required to Indicate Desire to Participate in Board Meeting

Person (body) wishing to attend (No anonymous requests can be accepted)	Company name (the company must have some interests in the procurement in question)
	Address, postal code
	Telephone, fax no.
	Name (in the case of a company, include the name of the representing official)
	Name of the staff in charge
Complaint Review Process in which the person wishes to participate	Public notice • _____ of the Government Procurement Review Board
Description of interest involved	(Please describe specifically your interest in question)

WORLD

Corr.1

ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Add.1/

19 September 1996

(96-3673)

Original: English

Working Party on GATS Rules

COMMUNICATION FROM NORWAY

Response to the questionnaire on Government Procurement of Services

Corrigendum

Please note the following corrections to document S/WPGR/W/11/Add.1:

- 1) **Page 3, question 4.(a), second line:**replace •reject• with •project•;
- 2) **Page 6, question 6(c), last line:**replace •supplies• with •suppliers•;
- 3) **Page 7, question 10, sixth line:**replace •former• with •formal•;
- 4) **Page 8, question 12(a):**

Under *Construction works*:

fifth paragraph, third line:replace •NOD• with •NOK•;

last paragraph, first line: replace •any• with •only•.

WORLD

d.3

ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Ad

2 September 1996

(96-3432)

Working Party on GATS Rules

COMMUNICATION FROM BRAZIL

Response to the questionnaire on government procurement of services

The following communication is being circulated at the request of Brazil to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Bidding on Governmental Contracts is a formal administrative act, practised in any sphere of the Public Administration. Its objective is to guarantee the observance of the Constitutional principal of isonomy or equality before the law to permit the selection of the most advantageous proposal for the Administration (Sole Paragraph of Article 4 combined with Article 3 of Law No. 8666 dated 21 June 1993).

Administrative Structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

The bidding process is administered directly by the public Institutions interested, obeying the legislation in force established by the Union, in accordance with that provided for in the Federal Constitution, dated 5 October 1988, which says: •It falls to the Union exclusively to legislate on: General Norms for Bidding and Contracting, in all its forms for the Public Administration, direct and indirect, including the Foundations instituted and maintained by public authority, in the various spheres of the Government and enterprises under its control•. The Ministry of the Federal Administration and State Reform - MARE, is in charge of the elaboration of the Norms and Regulations about this material.

Laws and Regulations in Force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

Oriented by the principles of legality, impersonality, morality, equality and publicity, defined by Article 37 of the Federal Constitution, Law No 8666 dated 21 June 1993, with the modifications made by Law No. 8883, dated 8 June 1994 establishes the general norms concerning this material in the context of the Federal Authority, the States, the Federal District and the Municipalities. Also subordinated to this law, besides the Organs of Direct Administration, are the Special Funds, the Autocracies, the Public Foundations, Public Enterprises, the Societies of Mixed Economy and other entities directly or indirectly controlled by the Union, States, Federal District, and Municipalities. The invitational instrument is defined and instructed by the institution interested in the bidding, serving as the public agent, constituting the normative division fundamental to the process, within the force of the law, hierarchically subordinated.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

The same legislation applies to the acquisition of goods and services, without distinction.

Procedures applying to Governmental Bidding

4.(a) What procedures are followed in the procurement process?

First of all, it should be underscored that the bidding process is a constitutional requirement, which aims to assure equal conditions to all competitors with

explicit clauses regarding payments, and with requirements for technical and economic qualification indispensable to guarantee the fulfilling of obligations (Clause XXI of Article 37 of the Federal Constitution). The bidding process is subordinated to the completion of stages with the following sequence:

- 1.basic project;
- 2.executive project;
- 3.execution of services.

In accordance with the first paragraph of Article 7 of Law No. 8666/93: •The execution of each stage shall be obligatorily preceded by the conclusion of the evaluation, by competent authority, of the work relative to the previous stages, the accomplishment of the executive project, which may be developed concomitantly with the execution of the works and services, whenever this is also authorized by the Administration. •

•Paragraph 2 - Works and Services may only be bid upon whenever:

- I - there is a basic project approved by competent authority and available for examination by the parties interested in participating in the bidding;
- II - there is a detailed budget in spreadsheet that express the composition of all the unitary costs;
- III - there is provision of budget resources that assure the payment of the obligations arising from the works and services to be executed in the fiscal year in course, according to the respective chronograph;
- IV - the product hoped for by the bidding is contemplated in the objectives established in the Multi-year Plan as treated in the Article 165 of the Federal Constitution, whenever this is the case.

Paragraph 3 of the same Article: •The inclusion in the object of the bidding, the obtainment of financial resources from whatsoever origin for its execution, is forbidden... •

Paragraph 4: •It is moreover forbidden, to include in the object of the bidding, the provision of materials and services without specifying quantities or when such quantities do not correspond to the actual projections of the basic or executive plan. •

Paragraph 5: The realization of competitive bidding whose object includes goods and services whose trademarks are not similar in characteristics and exclusive specifications is forbidden, except in the case in which it is technically justifiable, or whenever the provision of such materials and

services was made under a regime of contracted administration, foreseen and discriminated at the time of the invitational act.

The procedures for bidding on governmental services may differ in accordance with the degree of openness of the invitations:

- public: all interested parties may submit bids;
- selective: selected bidders may participate to present their offers; and
- private contract (one sole bidder); by which the authority contracts individual suppliers, and sometimes one sole supplier.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

Public bids may take place in 5 (five) different forms.

- 1.Competition
- 2.Estimate taking
- 3.Invitation
- 4.Contest and
- 5.Auction (does not apply to services)

In accordance with Article 22 of Law No. 8666/93, these modalities are defined in the following way:

- Competition is the modality of bidding among any interested parties, which in the initial phase of qualification, prove that they have the minimum necessary requirements to meet those called for in the call for bids. •
- Estimate taking is the modality of competition among interested parties duly registered or who have qualifications to be registered by the third day before the proposals are received, observing the necessary qualifications.
- Invitation is the modality of bidding among interested parties of the branch pertinent to its object, registered or not, chosen and invited with a minimum number of three by the administrative unit, which shall fix in an appropriate place a copy of the call for bids and shall extend to all other registered parties in the corresponding specialty who manifest interest within 24 hours preceding the presentation of the proposals.
- Contest is the modality of competition between any interested parties for the selection of technical scientific, or artistic services, through the establishment of prizes or remuneration of the winners, according to the criteria in the published call for contestants in the Official Gazette with a minimum antecedence of 45 (forty-five) days. •

The present modalities are determined in function of the estimated value of the contract, discriminated in the following way:

-for works and engineering services:

invitation - up to R\$ 126,658.40 (one hundred twenty-six thousand, six hundred fifty-eight reais and forty centavos);

estimate taking - up to R\$ 1,266,584.03 (one million, two hundred sixty-six thousand five hundred eighty-four reais and three centavos); and

competition - above R\$ 1,266,584.03 (one million, two hundred sixty-six thousand five hundred eighty-four reais and three centavos).

-for purchases and other services:

invitation - up to R\$ 31,664.60 (thirty-one thousand, six hundred sixty-four reais and sixty centavos);

estimate taking - up to R\$ 506,633.61 (five hundred six thousand six hundred thirty-three reais and sixty-one centavos);

competition - above R\$ 506,633.61 (five hundred six thousand six hundred thirty-three reais and sixty-one centavos).

These values are corrected automatically by the General Index of Prices of the Market (•IGPM•), with the same periodicity and proportion as this, taking as the base point the month of December 1991. The new values are published by the Executive Powers in the Federal Gazette of the Union, without considering fractions smaller than R\$ 1.00 (One Real).

For some cases, the Law dispenses the bidding process, as described in the diverse paragraphs of Article 24 of the Law No. 8666/93.

By Article 25 of the same law: •It is not necessary to require the bidding process when competition is unfeasible, especially:

I-...

II - to contract the technical services enumerated in Article 13 of this law, of a singular nature, with professionals or businesses of well known specialization, ineligibility is forbidden for services of publicity and divulgation;

III - for contracting professionals of whatever artistic sector, directly or through an exclusive agent, as long as they are consecrated by specialized critics or by public opinion.

Paragraph 1 - The professional or business of well know specialization, is considered to be such in his or her field of specialization, depending on previous performance, studies, experiences, publications, organisation, equipment, technical staff, or other requirements related to such activities, permitting inference that his/her work is essential and unquestionably the most adequate for the full satisfaction of the object of the contract.

Paragraph 2 - in the case of this Article and in any event in which there is dispensation of the call for bids, if overpricing is proved, the provider of goods or services will respond jointly for damages caused to the Federal Treasury with the public agent responsible, without prejudice to other applicable legal sanctions. •

(c) What are the time limits for submission of bids?

The second paragraph of Article 21 of Law No. 8666 defines these limits, which vary from 5 to 45 days, in accordance with the modality of the bidding.

Publication of the Call for Bids

5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

The proposed calls for bidding are made public by means of proclamations, instruments of invitation, published in the Official Gazette of the Union, of the State, or of the Federal District, and in a daily newspaper of wide circulation in the State or Municipality where there are interested parties.

Whenever the call for bids is of international ambit, the invitation is presented also in the language of the country where divulgation occurs.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

For all modalities of bidding - except invitation - a resume of the proclamation should be published. The Law does not specify the content that should make up the resume of the proclamation which is to be circulated. Nevertheless, there are six elements that should be included: (I) The modality of the call for bids (competition, estimate taking, contests or auction); (II) a synthesis of its object, defining the nucleus; (III) the regime of execution; (IV) type of bid: (lowest price, best technique, technique and price, or highest offer) (V) date and hour of the judgement session; and (VI) the location where the interested parties may obtain the entire text of the invitation and other information regarding the competition.

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

The details referred to may include a description of services, initial and final dates of the offer, conditions for participation, identification of the acquiring organs, enquiry point, plans for the call for bids, with notices regarding contracts, etc.

See the reply contained in the previous item 5(b).

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

For the qualification of bidders, there are no costs, except relative to the provision of the Proclamation, when requested, and other documents which accompany it, limited to the value of the effective cost of graphic reproduction (Paragraph 5 of Article 32).

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

The present system of divulgation does not use these electronic means. Nevertheless, there is a project being elaborated by the Ministry of Federal Administration and Reform - MARE, that foresees the implantation of a System of Electronic Divulgation of calls for bids - SIDECA.

Requirements for Potential Bidders

6.(a) Are there registration, residence or other requirements for potential suppliers?

As per Article 34 of Law No. 8666/93, the organs and entities of the Public Administration should maintain organized registers of qualified potential bidders and providers of services, according to regulations, which register shall have a maximum validity of one year. Articles 34 to 37 and their paragraphs, of the cited law treat exclusively of organized registers.

Previous registry, however is required only for the •estimate taking modality•. In an effort to improve the present system of registry, the Government, through the Ministry of Federal Administration and Reform - MARE, is implanting the Unified Registry of Suppliers (•SICAF•)

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

For a candidate to qualify for the bidding it is necessary: (Article 27)

- juridical qualification;
- technical qualification;
- economic and financial qualification; and
- to be up to date fiscally.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

This question has already been partially answered by 6(a). In addition it should be observed that the qualification of new potential candidates is always possible, as long as the legal requirements of Law No. 8666/93 are met, some of which have already been mentioned in this questionnaire.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

The criteria utilized in the evaluation of proposals are established and divulged beforehand, observing the types of bidding, constituted according to the Law No. 8666/93, which are:

1. that of the lowest price - the bidder who presents the lowest price will be the winner, if all the specifications of the proclamation of the invitation are followed;
2. that of the best technique;
3. that of best technique and price; and
4. that of the best bid, or offer (only applies to cases of transfer of goods or concession of legal right to use).

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

With respect to this, the law does not establish mechanisms with a view to obtaining compensation/correspondence between the government and third parties.

(c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.

No.

(d) Do the procurement criteria differ according to sector or region of the economy?

There is no differentiation in the criteria of government bids, in function of geographic location.

(e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The margin of choice or free will may be related as such:

- (i) the importance given to each criterion;
- (ii) the margin of preference or specific criteria; and
- (iii) value of scope, above which higher authority must intervene.

The free will of the authority may vary if:

- (i) there are automatic bids, within which the contract is signed on the basis of predetermined criteria instead of simply price or price and another criterion;
- (ii) discretionary procedures that involve the acceptance of that offer most advantageous to the approval of the contract based on numerous criteria, some of which are predetermined, but which in general, leave the authority a certain degree of choice; and
- (iii) negotiated offers, in which the authority freely negotiates the conditions of the contract.

With reference to the margin of choice in the process of judging the proposals, the Law No. 8666/93 establishes that such should be objective, carried out in conformity to the preestablished criteria in the invitation proclamation, and in accordance with factors referred to exclusively in the proclamation, in order to permit transparency and the possibility of verification, on the part of the bidders and the organs of control (Article 45 of the Law cited).

Registration of Proposals and Approved Contracts

8.(a) How are tenders received, registered and opened?

The opening of the proposals of the qualified competitors in the bidding is done by public act, previously established, the minutes of which are registered with circumstances and is signed by members of the commission and by the competitors who are present. These proposals may only be revealed after the opening of the envelopes containing the documentation relative to the qualification of the competitors and its consideration has been made. In case of disqualification, the respective proposals are returned to the interested parties in closed envelopes.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

The contracts are published in summary form in the official press, a condition indispensable for its efficiency, by the fifth day of the subsequent month after signing, no matter what its value.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

The actual judgement itself is a public act, accompanied by the interested parties without restrictions of access by the general public, without prejudice toward the formal explanations owed the competitors who were passed by.

Treatment conceded to National and Foreign Bidders for Rendering Services

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of •domestic• in relation to domestic services and suppliers.

In that which refers to the treatment dispensed to foreign competitors, Law 8666/93 in Article 42 Paragraph 4 establishes that for purposes of judgement of proposals presented by foreign competitors, the proposals will be increased by the amount of tribute which would fall only on national competitors in the final stage sale operation.

Law No 8666/93 establishes yet, that in the case of equal conditions, as criteria for giving the tie breaking vote, preference will be given to goods and services produced in the country.

Procedures for Audiences and Consideration of Appeals and Complaints

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

-institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;

-time limits for complaints or appeal;

-type of remedy, if any, that may be granted.

The Law No. 8666/93 foresees the possibility of administrative appeals against acts within the process of evaluating bids. Besides •appeals• there are also •representations•, and •solicitation for reconsideration•.

Article 109 of the cited law defines it in the following way:

•I- Appeals, within a limit of 5 (five) days counting from the summons of the act or the drafting of the act, in cases of:

a)qualification or disqualification of the bidder;

b)judgement of proposals;

c)annulment or cancelation of the bidding;

d)rejection of a request for enrolment in a registry, its alteration or cancelation;

e)cancelation of contract, that which is referred to in Clause I of Article 79 of this law;

f)application of the penalty of notification, temporary suspension, or fine;

II - representation, within the limit of 5 (five) working days from the citation of the decision related to the object of bidding or of the contract, of which there is no hierarchical appeal possible;

III - Request for reconsideration, a decision of the Minister of State, or State or Municipal Secretary, depending on the case, when Paragraph 4 of Article 87 of this Law applies, within ten working days of the summons of the act.

Paragraph 1 - The summons for the acts referred to in clause I, lines a, b, c, and e, of this Article, excluding those of notification and penalty for delay, and in Clause 111 shall be made by publication in the Official Gazette, except for the cases foreseen in lines a and b of Clause I, if the proposals of the bidders are present at the act in which the decision was adopted, when it could be made by direct communication to the interested parties and drafted in the act.

Paragraph 2 - The appeal foreseen in lines a and b of Clause I of this Article shall have effect of suspension, the competent authority being able to suspend further appeal, if there is present sufficient motive and if in the public interest to interpose such.

Paragraph 3 - Interposed, the appeal shall be communicated to the other bidders, who can contest it within 5 (five) working days.

Paragraph 4 - The appeal shall be directed to superior authority, through the one who practised the appealed act, and which may be reconsidered within 5 (five) days, or within this same time, cause it to be sent up, duly instructed, which decision shall be made within 5 (five) working days under penalty of responsibility.

Paragraph 5 - No appeal, representation, or request for consideration shall be initiated or take its course unless the documents of the process are available for viewing by the interested parties.

Paragraph 6 - When referring to bid effected in the modality of invitation, the time limits established in Clauses I and II and in Paragraph 3 of this Article shall be 2 (two) working days.

Beyond the administrative forum, any bidder, or contracted individual, or business may represent themselves before the Accounts Tribune or before the organs who make up the System of Internal Control, against any possible irregularities arising during the case in process. (Paragraph 1 of Article 113 of the cited Law.)

Besides this, the Law provides that any citizen is a legitimate party to oppose a proclamation for a bid which is irregular, and that this should occur at least five days before the date marked for the opening of the qualifying envelopes, and that the administration should judge this and respond within 3 (three) working days.

II. ADHESION TO MULTILATERAL, REGIONAL AND/OR BILATERAL TREATIES

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

No, they do not participate.

III. ECONOMIC IMPORTANCE OF THE ACQUISITION OF SERVICES

12.(a) Please provide statistics (if available) on the number and value of services procurements

- *on both an aggregate and sectoral basis;*
- *by origin of services and suppliers.*

In order to enhance the comparability of the data, use the classifications of service sectors utilized in the following document: MTN.GNS/W/120 (10.7.91) in an appropriate aggregation level.

No information available.

(b) Please provide statistics (if available) on the

- *share of services procurement in total procurement;*
- *share of procurement of each service in total domestic output of the service;*

- ***share of procurement of each service in total domestic consumption of the service.***

No information available.

WORLD

d.2

ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11.Ad

10 July 1996

(96-2832)

Working Party on GATS Rules Original: English

COMMUNICATION FROM SWITZERLAND

Response to the Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of Switzerland to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. *What is the definition of government procurement employed in completing this questionnaire?*

Government procurement is defined as purchases made by the federal, cantonal or local government as covered by federal, cantonal and local legislation, including purchases of goods, services and construction services. Government procurement also includes purchases of goods, services and construction services by public authorities or entities controlled by the federal, cantonal or local authorities as far they exercise an activity in the field of electricity, drinking water and transport.

Administrative structure

2. *How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.*

Government procurement is administered by different federal, cantonal or local entities in charge. On the federal level, procurement of goods is centralized following the principle that similar goods are procured by the same agency.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

Legislation for Government Procurement on the federal level

Horizontal Legislation

· *Law on National Budget of 6 October 1989 (SR 611.0)*

· *Ordinance on National Budget of 11 June 1990 (SR 611.01)*

Scope:

Principles for managing the budget such as legality, urgency, efficiency and economy.

· *Federal Law (SR 725.11) of 8 March 1960 and Ordinance on National Highways of 18 December 1995.*

Scope:

Principles for government procurement are laid down. Furthermore the cantonal legislation is applicable. Although the cantons are competent in this domain, they need the approbation by the Swiss Federal Highways Office (which is supervising the construction of national highways) before a contract is awarded.

Specific Legislation

· *Federal Law on Government Procurement of 16 December 1994 (SR 172.056.1) and Section 2 of the Ordinance of 11 December 1995 (SR 172.065.11).*

Scope:

Procurement of goods (i.e. supplies), services and construction services mentioned in Appendix I, Annex 4 and Annex 5 of the GPA:

By federal agencies mentioned in Appendix I, Annex 1 of the GPA with a value above the following thresholds: supplies: 263 000 Sfr., services: 263 000 Sfr., construction services: 10 070 000 Sfr. Threshold for procurement by PTT-Automobilservices in carrying out passenger transportation in Switzerland: 806 000 Sfr.

Exemptions:

The law does not apply to: (exemptions according to Article XXIII of the GPA).

Content:

The law provides for the implementation of the provisions of the WTO Agreement on Government Procurement (GPA) at the federal level. In line with these provisions, it guarantees non-discriminatory access to public procurement markets for suppliers established in Switzerland and in the signatories of the GPA or in other countries, as far as they grant reciprocity. Procurement above the thresholds has to be published and procured in an open or selective procedure. The award is given to the economically most advantageous offer, specified by objective criteria already in the publication. It furthermore provides for the possibility to challenge a procurement before an independent body for every relevant part of the procurement procedure. A tenderer whose offer has been rejected may claim damages.

*·Ordinance on Government Procurement of 11 December 1995 (SR 172.065.11),
Section 3*

Scope:

Procurement of goods, services and construction services by federal agencies mentioned in Appendix I, Annex 1 of the GPA and PTT-Automobilservices not falling under the scope of the law because they are not attaining the thresholds or for other reasons. Procurement of goods, services and construction services by all parts of PTT and SBB (Swiss Railway Company) and the group of armament regardless of the value of the procurement.

Exemptions:

The ordinance does not apply to PTT-Automobilservices, SBB and the Federal Group of Armament, if procurement is related to goods and services supplied in competition with market participants on which the GPA does not apply.

Content:

The ordinance aims at full competition for the procurement of goods, services and construction services by setting clear rules on publications, opening and treatment of offers. These rules apply to foreign suppliers only if reciprocity is granted.

Legislation for procurement by cantonal and local agencies

·Inter-Cantonal Agreement on Public Procurement of 25 November 1994¹

¹Cantons which are not parties to the Inter-Cantonal Agreement on Public Procurement of 25 November 1994 are obliged to implement the provisions of the GPA autonomously.

Scope

- Public Procurement of goods, services mentioned in Appendix I, Annex 4 and construction services mentioned in Appendix I, Annex 5 of the GPA by (a) cantonal entities mentioned in Appendix I, Annex 2 of the GPA and public enterprises where he participates; (b) communities and other corporations under public law; (c) private or public entities which are active in the field of supply of water, transport and energy or in the telecommunications sector and which are controlled by cantonal or local agencies mentioned under (a) and (b); (d) other organisations covered by GPA or by other international agreements, (d) any procurement that is subsidised to 50 per cent or more by the Swiss Federal government or by entities mentioned under a) Thresholds: 403,000 Sfr. for goods and services, 10,070,000 Sfr. for construction services, 806,000 Sfr. for procurement in the field of supply of water, energy, and transport, and telecommunication.

Exemptions:

(Same exemptions as Article XXIII of the GPA and the Federal Law on Government Procurement)

Content:

The agreement implements the provisions of the WTO Agreement on Government Procurement (GPA) on the sub-federal level. In line with these provisions, it guarantees non-discriminatory access to public procurement markets, through non-discriminatory tendering procedures, by setting clear rules on publications, opening and treatment of offers. It furthermore provides for the possibility to challenge the award of a procurement at an independent cantonal body.

·*Law on the Establishment of a Swiss Common Market of 6 October 1995*

Scope:

Persons domiciled in Switzerland in pursuit of their commercial activities, shall have, all over the Swiss territory, equal access to the market. In particular the law aims at improving professional mobility within Switzerland, strengthening the competitiveness of the Swiss economy, supporting Cantons in their efforts to harmonize conditions for market access. Concerning public procurement, Article 5 states the principle of non-discrimination and the obligation of public tendering of procurement of a •certain significance•. The law provides a challenge procedure against any restrictions of the market access.

Public procurement by cantons and local authorities outside the scope of the legislation mentioned is governed by existing relevant cantonal and municipal legislation.

(b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

No.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Procurement procedures could differ according to the openness of the invitations to tender. At least three broad categories of procedures are commonly distinguished: (i) public or open tendering procedures under which all interested parties may submit a tender; (ii) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (iii) private contract or single tender in which the awarding authority contracts suppliers individually, and sometimes only a single supplier.

Public Procurement on Federal Level

·Procurements governed by the Federal Law and Ordinance on Government Procurement

The following procedures are foreseen:

- public or open tendering procedure under which all interested suppliers may submit a tender;
- selective or restricted tender procedures: Upon public invitation all interested suppliers may submit an application for participation. Participation is limited to a certain number of selected suppliers (at least 3), and these suppliers are invited to submit a tender;
- private contract or single tender under the conditions mentioned in the GPA.
- invitation procedure (no publication, direct invitation; if possible three suppliers have to be invited); this procedure only applies to procurement under Section 3 of the Ordinance on Government Procurement which does not exceed the GPA-threshold.

Public Procurement on cantonal and local level

·Procurements governed by the Inter-Cantonal Agreement on Public Procurement

The following procedures are foreseen:

- public or open tendering procedure under which all interested suppliers may submit a tender;
- selective or restricted tender procedures: Upon public invitation all interested suppliers may submit an application for participation. Participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender;
- private contract or single tender;
- invitation procedure (no publication, direct invitation; if possible three suppliers have to be invited); this procedure only applies for procurement below the GPA-thresholds.

Public procurement by cantons and local authorities outside the scope of the legislation mentioned is governed by existing relevant cantonal and municipal legislation. Procedures chosen may vary.

(b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

·Procurements governed by the Federal Law on Government Procurement (subject to the GPA)

The procuring entity may either choose between public or selective tender procedure. The procedure of private contracting may only be used in line with the provisions set up by the GPA. In particular, one of the following conditions has to be fulfilled: a) No satisfying offers result in the open or selective procedure, b) for reasons of protection of intellectual property there is only one supplier possible, c) as a result of unforeseen circumstances the procurement becomes too urgent to organise an open or selective procedure, d) unforeseen circumstances making additional construction services necessary which cannot be separated from the initial order. The value of such additional procurement must not exceed half of the value of the initial order.

·Procurements governed by the ordinance on Government Procurement (not covered by the GPA)

Procedure	Threshold for supplies and services	Threshold for construction services
Private contracting	below Sfr. 50,000.-	below Sfr. 100,000.-
Invitation procedure	above Sfr. 50,000.-	above Sfr. 100,000.-
Open and selective procedure	above Sfr. 263,000.- SBB & PTT Sfr. 806,000.- PTT-Telecom Sfr. 1,209,000.-	above Sfr. 2 mio.

·Procurements governed by the Inter-Cantonal Agreement on Public Procurement

Same procedures as in Federal law. Same criteria for the use of private contracting.

(c) What are the time limits for submission of bids?

The time limits are in line with the provisions of the GPA. Minimum limits are:
1) public or open tendering procedure: 40 days after publication; 2) selective tendering procedures: for submission of applications for participation: 25 days after publication; for submission of bids: 40 days after invitation to submit.

Publicity for inviting tenders

5.(a) How are intended procurement publicised? Are invitations to tender published? If so, where, and in what languages?

·Procurement under the Federal Law of Government Procurement and under the Ordinance on Government Procurement:

Invitations and awards in public or selective procedure are to be published. No publication necessary in private contracting procedure. Publication in at least two (of the three) official languages (except for construction services, where at least publication in the official language of the site is required). In case there is publication in Italian and German only, a summary in French, English or Spanish is attached. Publication in *•Swiss Official Trade Gazette•* and any other publication media in line with international agreements.

·Procurement under the Inter-Cantonal Agreement on Public Procurement:

Invitation is published. Publication of public or selective tenders at least in *•the official cantonal publication•*. Publication in at least one official language (German, French or Italian). Publications in Italian or

German have to be accompanied by a summary in French, Spanish or English.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

See under (a).

(c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Details could include a description of service to be procured, tender opening and closing dates, conditions of participation, procuring entity, enquiry point, procurement plans, procurement outcomes - contract award notices, etc.

·Procurement under the Federal Law and Ordinance on Government Procurement

The following minimum set of information is required to be published: procuring entity (name, address), description of the service to be procured, delivering place and time, conditions of participation (economic and technical conditions and required financial guarantees), place and time for submission of the tender, language used in the procurement procedure, the address where to get tender documentation and the amount payable for this documentation, awarding criteria (if there is no tender documentation) whether the entity intends to make negotiations, indication on whether the procurement falls under the provisions of the GPA.

Summary in English, French or Spanish contains the following information: the service to be procured, time limits for submission of applications for participation or for submission of bids, enquiry point.

·Procurement under the Inter-Cantonal Agreement on Public Procurement

Equivalent minimum set of information required as under the federal law, following the obligations of the GPA.

If the publication is not in French, a summary in French has to contain the following information: the service to be procured, time limits for submission of applications for participation or for submission of bids, enquiry points.

(d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

There may be charges for obtaining the full set of tender documents. These charges may not exceed costs.

(e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

Three Swiss entities participate in the project of the European Community called SIMAP on a voluntary basis.

Requirements laid down for possible suppliers

6.(a) Are there registration, residence or other requirements for potential suppliers?

· Procurement under the Federal Law on Government Procurement and the Ordinance on Government on Procurement

The law is applicable to tenders of suppliers from a) member countries of the GPA, as far as these countries grant reciprocity, b) other countries, as far as there exist contracture arrangements, or the Federal Council has acknowledged reciprocal treatment of Swiss suppliers in these countries. Residence in Switzerland is not required. For procurement not falling under the GPA or an international agreement, the access to the Swiss market may be granted only if reciprocal treatment to Swiss suppliers is guaranteed.

· Procurement under the Inter-Cantonal Agreement on Public Procurement

The agreement is applicable to tenders of suppliers resident in: a) a canton being member of the agreement; b) a member country of the GPA, as far as this country grants reciprocity; c) an other country, if contractual arrangements exist.

(b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?

· Procurement under the Federal Law on Government Procurement and the Ordinance on Government Procurement

The procuring entity may require evidence regarding financial guarantees, professional and technical qualifications, extract from penal register, etc.

In addition, tenderers have to comply with working conditions and working protection regulation (if no General Employment Contract exists, local conditions are relevant), equal treatment of men and women concerning salaries.

·Procurement under the Inter-Cantonal Agreement on Government Procurement

Objective qualification criteria apply to financial, economic, professional, technical and organisational capacity.

In addition tenderers have to comply with working conditions and working protection regulation (if no General Employment Contract exists, local conditions are relevant), equal treatment of men and women.

(c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

·Federal Law on Government Procurement

Yes, there exist lists of approved suppliers. Procurement entities may put up an examination system. Qualifying criteria have to be published annually together with the list. Suppliers may apply for admission to the list at any time. If the procuring entity refuses to accept a supplier on the list, it has to deliver a contestable decision. It is possible to challenge this decision before an independent body.

·Inter-Cantonal Agreement on Public Procurement

Lists have to be published annually as well as conditions for admission and methods of examination and period of validity. If the list remains valid for three years or less, one publication at the beginning of this period is sufficient. Suppliers may apply for admission to the list at any time. If the procuring entity refuses to accept a supplier on the list, it has to deliver a contestable decision.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

For instance, whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account.

Best value for money spent. To measure the value of an offer, criteria as delivery dates, quality, price, efficiency, overhead expenses, service to clients, environmental impact are considered. Criteria taken into account awarding tenders have to be published in advance. For standardized goods the award can be based on the lowest price only.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

No.

(c) *Is preference given to any particular enterprises or group of enterprises? If so, please specify.*

No.

(d) *Do the procurement criteria differ according to sector or region of the economy?*

No.

(e) *What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?*

The margin of choice or discretion could relate to (i) the relative weight/importance of each contract award criteria; (ii) margins of preference, if any, in respect of specific criteria; and (iii) threshold values, if any, above which referral to a higher level of purchasing authority is required.

The discretion allowed to the purchasing authority could vary according to whether there is (i) automatic tender, where the contract is awarded on the basis of predetermined criteria, either the simple criteria of price, or price and other criteria; (ii) discretionary tender procedures which involve acceptance of the bid which is most advantageous - the award of the contract is based on several criteria, some of which are predetermined, but which in general leave the awarding authority a certain measure of choice; and (iii) negotiated tender in which the awarding authority negotiates freely with the potential supplier or suppliers as to the conditions of the contract.

Within the scope of the Federal Law and the Ordinance and the Inter-Cantonal Agreement, no such margin of discretion is provided.

Disclosure of bids received and contracts awarded

8.(a) *How are tenders received, registered and opened?*

·Procurement under the Federal Law on Government Procurement

At least two representatives of the procuring entity register and open the tenders. In the case of procurement of construction services, the opening procedure has to be taken down. The record includes at least the following information: names of persons attending the opening procedure, names of tenderers, submission dates of offers, prices offered, variety of offers.

·Procurement under the Inter-Cantonal Agreement on Public Procurement

At least two representatives of the procuring entity open the offers. The opening procedure has to be taken down. The record includes at least the

following information: names of persons attending the opening procedure, names of tenderers, submission of dates of offers, prices offered. All tenderers have the right to examine the records.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

· Procurement under the Federal Law on Government Procurement

The procuring entity shall publish not later than 72 days after the award was given the following information: type of procedure, the nature and quantity of products or services procured, name and address of the procuring entity, date of award, name and address of the winning tenderer, price of the winning award or the highest and lowest offer taken into account in the award of the contract.

· Procurement under the Inter-Cantonal Agreement on Public Procurement

Same as above.

(c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

· Procurement under the Federal Law on Government Procurement

The procuring entity has to provide to the bidder the reasons why his tender was not selected. At least upon request, the procuring entity has to provide him promptly the following information: the type of procedure used, name of the winning tenderer, the price of the winning award or the highest and lowest offer taken into account in the award of the contract, the main reasons why the tender of the unsuccessful tenderer in question was not selected, the characteristics and relative advantages of the tender selected.

However, a procuring entity may decide that certain information on the contract award be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

· Procurement under the Inter-Cantonal Agreement on Public Procurement

Upon request the procuring entity has to provide unsuccessful bidders the main reasons why their tender was not selected.

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of 'domestic' in relation to domestic services and suppliers.

Procurement under the Federal Law and Ordinance on Government Procurement

To the extent that reciprocity is granted domestic and foreign suppliers are treated equally.

Exception: for procurement in the framework of NEAT (*Neue Alpentransversale*, i.e. procurement in the context with the Federal Decision of 4 October 1991) all foreign and domestic suppliers are treated equally regardless of reciprocity.

Procurement under the Inter-Cantonal Agreement on Public Procurement

The provisions of the Agreement equally apply to domestic and to foreign suppliers to the extent that regulation on government procurement in the foreign home market treats Swiss enterprises in a way comparable to Swiss Regulation on Government Procurement.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Details could include:

-institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;

Federal level: Against decisions concerning a procurement falling under the scope of the Federal Law, complaint/appeal can be made to the *Federal Commission for Appeal*. This Commission is an independent authority which takes a final decision to the case.

Cantonal level: Cantonal authority (in most cases: administrative court).

-time limits for complaints/appeal;

Federal level: 20 days from publication of decision.

Cantonal level: 10 days from publication of decision

-type of remedy, if any, that may be granted.

Federal level: The Commission can take procedural decisions e.g. take precaution measures, such as giving suspensive effect to a complaint. It decides itself on the case or reverts the case for decision with binding recommendations to the contracting entity. If a contract has been already concluded, the award cannot be revoked and the Commission for appeal can only state that federal law has been violated. In case of financial damage, only expenses caused by the tender and the behaviour of the procuring entity are being reimbursed.

Cantonal level: Remedy equivalent to federal level.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

- Agreement on Government Procurement of 15 April 1994 (Marrakesh)

- Agreement on Government Procurement of 12 April 1979 (Tokyo)

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) Please provide statistics (if available) on the number and value of services procurement

- ***on both an aggregate and sectoral basis;***

Statistics not available.

- ***by origin of services and suppliers.***

Statistics not available.

In order to enhance the comparability of data provided, Members may choose to provide statistics according to the services sectoral classification in document MTN.GNS/W/120 (dated 10 July 1991) at the appropriate level of aggregation.

(b) Please provide statistics (if available) on:

- ***the share of services procurement in total procurement:***

1995: supplies approx. 8 100 million Sfr.; services approx. 450 million Sfr.

- ***the share of procurement of each service in total domestic output of the service:***

Unknown

- *share of procurement of each service in total domestic consumption of the service:*

Unknown

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

WORLD

d.1

ORGANIZATION

RESTRICTED
TRADE
S/WPGR/W/11/Ad

20 June 1996

(96-2548)

Original: English

Working Party on GATS Rules

COMMUNICATION FROM NORWAY

Questionnaire on Government Procurement of Services

The following communication is being circulated at the request of Norway to Members of the Working Party on GATS Rules.

I. EXISTING PROCUREMENT REGIMES

Definition

1. Written contracts for pecuniary interest involving purchase, with or without options between a supplier and a public contracting entity.

All central, regional and local authorities are subject to procurement regulations concerning procurements above certain threshold values, as are entities operating in the utilities sector; energy-supply, water-supply, transport and telecommunications. As regards procurement of services, only 16 out of 27 categories of services are subject to all the obligations in the Service procurement regulation.

Administrative structure

2. How are government procurement activities administrated?

This varies according to the type of procurement and the contracting authority in charge of the procurement. Often the responsible officials in procuring entities are subject to approval by the governing board. Generally most procurements are decentralised. There are approximately 20 000 persons who procure for the state. Most of these undertake small and seldom purchases. We do not know how many persons take part in procurement activities at the regional level or in the utilities sector.

To what extent are procurement activities centralised?

Traditionally procurement has been undertaken near the end users of a service or product. In the recent years economic awareness and budget restrictions have lead to an increased centralisation of procurement, especially in municipalities and counties. Many towns and large municipalities have reorganised their procurement activities and have employed specialised procurement officers in order to make procurement more cost effective. At present the central government is in charge of a 3-year programme for increasing the efficiency of public procurement. Some major state entities conduct highly centralised procurement, such as the Directorate for public construction and property and the National Roads Directorate.

Central procurement agencies and their respective responsibilities

The Directorate of public construction and property is the single most important public body for the procurement of construction works. The directorate is responsible for constructing buildings for state entities, for universities, museums and other public bodies. The directorate is also responsible for letting premises for government bodies and for maintaining these premises. In the defence sector, the Norwegian defence construction service is responsible for constructing new buildings and for maintaining existing property.

Concerning procurement of other types of services, these are of much less economic importance than construction services, and there is no single public body that procures the majority of such services. These services are procured by different municipalities, counties and government bodies.

Laws and regulations in force

3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement.

The Act of Public Procurement was adopted by Parliament on 27 November 1992. On the basis of this Act, government regulations transforming EEA (European Economic Area) directives on public procurement into Norwegian legislation became effective as the EEA Agreement entered into force on 1 January 1994. The EEA consists of the 15 EC members and the EFTA countries Norway, Iceland and Liechtenstein. On 1 January 1994 the Supplies directive (76/62/EEC) and the Works directive (71/305/EEC)

entered into force in Norway. On 1 July 1994, the Services directive (92/50/EEC) entered into force. The Utilities directive (93/38/EEC) entered into force on 1 January 1995. Norway has implemented all EEA directives on public procurement.

Norway is also a signatory to the GATT Agreement on Government Procurement, as well as the WTO Agreement on Government Procurement (GPA). The Act on Public procurement has been slightly amended to comply with the GPA.

Procurement - in principle all supplies, services and works contracts above certain threshold values - is effected under open, restricted or negotiated procedures. Negotiated tenders are only to apply in exceptional circumstances in the so called classical sector, whereas in the utilities sector, negotiations can be used freely after a call for competition has been published.

Concerning procurement below the EC/GPA threshold values, state entities are regulated by a Government Regulation on public procurement (REFSA.Regelverket for Statens anskaffelsesvirksomhet), which also covers procurement of services. This regulation was initially approved by Government on 17 March 1978, but has been amended 9 times, last time in 1994.

In the classical sector the threshold value for state entities will be 1,1 million NOK in 1996 and 1997, for regional bodies 1,65 million NOK and for the utilities sector 3,3 million NOK. In the telecommunication sector the threshold is 4,95 million NOK. All figures are excl. V.A.T.

Regarding public procurement below the threshold values in municipalities and counties, many local authorities have, on a voluntary basis, implemented Guidelines for municipal procurement (Normalinstruks for kommunal anskaffelsesvirksomhet). These guidelines are very similar to REFSA.

(b) Does the procurement regime distinguish between the procurement of goods and services, and how are the rules to be applied in cases of joint procurement involving both goods and services?

Norway has one regulation for the procurement of goods, one regulation for the procurement of services and one for the procurement of constructions and construction works. The threshold values for service contracts and for goods contracts are the same. The threshold for construction works is much higher. If an entity wishes to purchase something which is partly a service and partly a supply contract, the contract shall be regarded as a supply contract if the value of the goods exceeds the value of the service involved and vice versa. In order to be covered by the works regulation, the service has to bear the character of a works contract, i.e. concern work on buildings and similar. Services are the residual category, i.e. a contract that is neither a supply nor a works contract is deemed to be a service contract.

Procurement procedures applied

4.(a) What procedures are followed in the procurement process?

Pursuant to the EEA rules, contracting entities may choose between open tendering procedures, selective tendering procedures and reject competitions. In some exceptional cases negotiations may be conducted. In the utilities sector, negotiated procedures can always be used after the publication of calls for competition.

(b) What tendering procedures are applied?

Whether a contracting authority uses an open procedure, a selective procedure or a project competition depends on the type of service which is to be procured and the preferences of the authority. If evaluation of the tenders would be very time consuming, it can be practical for the entities to use selective procedure to ensure that the time spent on evaluation is limited. If there are tenders for basic goods that are easy to compare and for instance are awarded according to price only, it may be more convenient to use an open procedure.

(c) What are the time limits for submission of bids?

The time limits are the following:

Open procedure: 52 days from the date the tender notice was sent, i.e. at least 40 days from the day it was published in the Official Journal to the European Communities.

Selective procedure: 37 • 40 days

Negotiations: 37 days

Contract award notices: 48 days

Publicity for inviting tenders

5.(a) How are procurements publicised?

Due to the EEA-Agreement, all procurement above the EU/WTO-threshold levels must be publicised in English in the Official Journal to the European Communities. In Norway there is an official gazette - Norsk Lysningsblad - where notices for public procurement are publicised in Norwegian. It is compulsory for state entities to publicise notices in this gazette. Municipalities and counties can publicise notices in this gazette on a voluntary basis. The Ministry of Industry and Energy encourages regional and local entities to publicise notices in Norsk Lysningsblad. Calls for

tenders below the threshold values are usually publicised in newspapers or suppliers are invited on an individual basis to submit tenders.

(b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

Yes, notices in the Official Journal are usually only published for procurements above the threshold values. As stated in 5(a), notices for procurements below the threshold values are usually publicised in local, regional or national newspapers.

Tenders are awarded either on basis of lowest price or the economic most advantageous tender. Concerning the latter, different evaluation criteria must be specified in the tender documentation. Usually tenders are awarded based on price only when there are non-complex and homogeneous services/products, whereas it is more common to award according to the economic most advantageous bid when what is to be procured is complex and difficult to specify.

State entities can, according to the REFSA-regulation, use negotiated procedure for service procurement under the GPA threshold value when it is extremely difficult to specify the tender documentation to such an extent that bids can be compared.

(c) What details of the intended procurement are normally published?

According to the regulations, the contract notice for open procedures must contain the following information:

- i) Name, address, telephone, telex and fax number of the contracting authority.
- ii) Category of service and description. CPC reference number(s).
- iii) Place of delivery.
- iv) (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
(b) Reference of the law, regulation and administrative provision.
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
- v) Indication of whether service providers can tender for a part of the services concerned.
- vi) Where applicable, non-acceptance of variants.
- vii) Duration of contract or time limit for completion of the service.
- viii) (a) Name and address of the service from which the necessary documents may be requested.
(b) Final date for making such requests.
(c) Where applicable, the amount and terms of payment of any sum payable for such documents.
- ix) (a) Persons authorised to be present at the opening of tenders.

(b) Date, time and place of the opening.

x) Where applicable, any deposits and guarantees required.

xi) Main terms concerning financing and payment and/or references to the relevant provisions.

xii) Where applicable, the legal form to be taken by the grouping of service providers winning the contract.

xiii) Information concerning the service provider's own position, and information and formalities necessary for an appraisal of the minimum and technical standards required of him.

xiv) Period during which the tenderer is bound to keep open his tender.

xv) Criteria for the award of the contract and, if possible, their order of importance.

Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents.

xvi) Other information.

xvii) Date of dispatch of the notice.

xviii) Date of receipt of the notice by the Office for Official Publications of the European Communities.

(d) *Are there any charges for obtaining the full set of tender documentation?*

Contracting entities may according to • 20 No. 8 (c) (see point 5c) charge payment for sending suppliers the tender documentation. This is normally not done in Norway.

(e) *Are electronic means used to advertise procurement opportunities?*

There are some pilot projects in Norway regarding electronic tendering and electronic use of framework contracts. At present these projects are not fully operational. All Norwegian tenders above the WTO/EC threshold values are publicised in the database Tenders Electronic Daily (TED) in Luxembourg, which is the electronic version of the Official Journal to the European Communities. Suppliers can search for tenders electronically through TED.

Requirements laid down for possible suppliers

6.(a) *Are there registration, residence or other requirements for potential suppliers?*

There are no registration systems for potential suppliers. In the utilities sector contracting entities may use lists of qualified suppliers.

There are no residence requirements for service contracts in Norway.

(b) *What is the nature of any conditions for participation required from suppliers such as financial guarantees, commercial standing and technical qualifications?*

All contracting state entities require a tax declaration from suppliers. This declaration is to show whether the supplier has fulfilled all his tax obligations. According to • 8 No. 13 in the Service regulation it is also possible to ask for information concerning a service provider's own position. Contracting authorities often opt to require such documentation when undertaking complex or economic significant procurements.

(c) Do there exist lists of approved suppliers?

As mentioned under 6(a) lists of qualified suppliers are only to be used in the utilities sector. In the classical sector state entities generally publish calls for competition for procurements exceeding 150 000 NOK. Some municipalities have not implemented guidelines for procurement, and these are more free to use lists of suppliers for procurements below the EC/GPA threshold values. In some cases, tenders are publicised and potential suppliers are informed about the tender notices in order to ensure that these supplies will bid.

Criteria for assessing bids and awarding contracts

7.(a) What criteria are taken into account in the award of tenders?

As already mentioned, contracts are awarded either on the basis of lowest price or the so called economic most advantageous tender. The latter shall be based on an evaluation of criteria such as price, quality, technical value, aesthetic and functional aspects, service and technical assistance, date of delivery et cetera. If a contracting authority is to base a contract on the economic most advantageous tender, it must state the evaluation criteria either in the tender notice or in the tender documents.

(b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?

No, apart from defence procurement.

(c) Is preference given to any particular enterprises or group of enterprises?

No.

(d) Do the procurement criteria differ according to sector or region of the economy?

No.

(e) What is the margin of choice or discretion allowed to the purchasing authority?

They generally stand quite free in applying the criteria mentioned above.

Disclosure of bids received and contracts awarded*8.(a) How are tenders received, registered and opened?*

The date, time and place of opening must be published in the tender notice - see 5(c). It shall also be stated in the notice what persons are authorised to be present at the opening. Tenders are kept in closed envelopes by the persons in charge of the procurement until they are publicly opened. A tender protocol is set up at the opening, and at least two persons sign it as official witnesses.

(b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?

Entities are required to publicise within 48 days after contract award in the Official Journal of the European Communities what supplier won the contract. Each supplier shall on written request from an unsuccessful tenderer provide pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

Treatment granted to domestic and foreign services and/or suppliers*9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or award services and/or suppliers of a Member more favourable treatment than those of another Member?*

All service providers from the EEA countries and Norwegian suppliers are treated equally favourable. As regards service suppliers from the WTO/GPA - countries, these are treated as favourable as domestic service suppliers if their respective countries accord Norwegian tenderers the same rights. The latter is result of the bilateral nature of the GPA and the system of coverage lists.

Procedures for hearing and reviewing complaints/appeals*10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract?*

The Public Procurement Act provides for effective legal remedies in public procurement matter, and complaints about formal faults in a tendering procedure may be brought before the Norwegian Courts of Justice. Before it comes to this, any supplier from an EEA - or WTO/GPA - country who claims to be unfairly treated by a Norwegian contracting entity is first of all encouraged to take up the matter with the entity concerned directly. If this does not give any results, the former procedure is to bring any action against the contracting entity before the competent national Court of Justice. Service providers can both ask for interim measures in order to stop the alleged breach of the regulations, ask for the procedure to be annulled and restarted, ask for discriminatory clauses in tender documents to be changed or eliminated as well as sue for damages incurred in connection with participating in the competition for the contract in question. In cases concerning central government entities, local and regional authorities, a Norwegian Court of Justice may take interim measures that stop an ongoing procurement procedure before the contract has been awarded. In the utilities sector, procurement procedures cannot be stopped during the process, but the court may fine contracting entities who are found guilty in breaking the rules, and adjudge indemnities to the complaining enterprises.

Suppliers from Norway, Liechtenstein and Iceland have an additional possibility of launching complaints through the EFTA Surveillance Authority (ESA) in Brussels. The formal infringement procedure in ESA is divided into 5 stages; 1. Complain, 2. Formal notice, 3. Reasoned opinion, 4. Referred to the EFTA Court of Justice and 5. Court decision. There have been some complaints about infringements from Norwegian suppliers, mostly related to procurements undertaken by municipalities. Some of these have resulted in Formal notices, but so far solutions to all cases have been found without referring the cases to the EFTA Court.

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. *Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement?*

Norway is part of the European Communities• Single market for public procurement under the terms of the European Economic Area treaty.

Norway is also a signatory to the GATT Agreement on Government Procurement, as well as the WTO -Agreement on Government Procurement.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

12.(a) *Statistics on the number and value of services procurement*

Construction works

Construction works are classified as services in GATS. In Norway there is a separate Government regulation on procurement of construction works and constructions which corresponds to EC Directive 93/37/EEC.

The majority of state constructions are undertaken by the Directorate of public construction and property. The directorate is responsible for constructing and maintaining public buildings and for letting property to public bodies. At the end of 1994 the directorate was in charge of 34 ongoing construction projects that amounted to approximately 5,8 billion NOK.

The Defence Building Service is responsible for all construction works in the defence sector. In 1994 the Defence Building Service was responsible for construction projects of a total value of 1,3 billion NOK.

The value of many of the construction works undertaken by both the Directorate of public construction and property and the Defence construction service was below the threshold EC/GPA value and tenders for these contract awards were not publicised in the Official Journal.

Concerning construction works in the municipalities and counties, statistics based on published contract awards in the Official Journal show that the regional authorities awarded construction work contracts for 91 million NOD in 1994. The figure for regional construction works in 1995 is expected to be higher.

The contract awards in the Official Journal showed that any one of the construction projects was awarded to a foreign (Finnish) supplier.

Other Services

In Norway, the service directive (92/50 EEC) entered into force on July 1st 1994. All procurement of services above the 200 000 ECU threshold must be published in the Official Journal of the European Communities. Contract awards must also be published.

We have statistics of contract awards for services for the period 1.7.94 - 31.12.94. The statistics show that there were 10 contract awards concerning contract above the threshold value in this period, which amounted to a total of 75 million NOK. All the suppliers of these contracts were Norwegian companies. The figures for 1995 are expected to be significantly higher.

(b) Share of services procurement in total procurement

The Norwegian procurement statistics for 1994, which mainly are based on contract award notices in TED, show that the total number of contract awards for 1994 was 260. 76 of these contracts were works contracts and 10 service contracts. The value of the works contracts amounted to 30% of the value of all contracts whereas the value of the 10 service contracts constituted 2,5% of the value of all contracts for 1994.

WORLD TRADE
ORGANIZATION

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(96-1953)

Working Party on GATS Rules

LIMITATIONS IN MEMBERS' SCHEDULES RELATING TO SUBSIDIES

Note by the Secretariat

1) At its meeting on 28 March 1996, the Working Party on GATS Rules requested the Secretariat to extract entries in Members' schedules that provided for limitations on market access and national treatment in relation to subsidies. The attached tabulation presents the results of this exercise.

2) Two points may be made about the tabulation. First, the information contained in the table is not complete. Only those entries that made explicit reference to subsidies, grants, financial support, aid or assistance were included in the listing of measures. Many other entries that were less explicit may well involve subsidization, depending in some cases upon the definition of the term "subsidization". Second, subsidies may also be granted in cases where sectors or activities have been excluded from Members' schedules of specific commitments, or where a particular mode of supply has not been bound with respect to market access and/or national treatment.

Compilation of Subsidy Measures in GATS Schedules

Subsidy Measures	Horizontal Commitments		Sectoral Commitments
<i>Country</i>	<i>Limitations on Market Access</i>	<i>Limitations on National Treatment</i>	<i>Limitations</i>
Australia		3) Unbound for subsidies for research and development	
Austria		3) None 4) Unbound	
Brazil	1),2),3), 4) Unbound	1),2),3),4) Unbound for subsidies for Research and Development	
Canada		3) Subsidies related to Research and development - unbound	
European Union		<p>3) None, other than for branches established in a Member State by a Non-Community company. Eligibility for subsidies from the Communities or Member States may be limited to juridical persons established within the territory of a Member State or a particular geographical sub-division thereof. Unbound for subsidies on research and development. The supply of a service or its subsidisation, within the public sector is not in breach of this commitment.</p> <p>4) To the extent that any subsidies are made available to natural persons, their availability may be limited to nationals of a Member State of the Communities.</p>	<p>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than Audio-visual Services) A. <u>Entertainment Services:</u></p> <p>3) F, I: Unbound for subsidies and any other forms of direct and indirect support.</p>

Subsidy Measures	Horizontal Commitments		Sectoral Commitments
<i>Country</i>	<i>Limitations on Market Access</i>	<i>Limitations on National Treatment</i>	<i>Limitations</i>
Finland	3), 4) none	<p>3) Eligibility for subsidies may be limited to juridical persons established within the territory of Finland. Subsidies related to research and development are unbound.</p> <p>4) Subsidies available only to natural persons may be limited to Finnish citizens.</p>	
Hungary		3) Unbound with respect to subsidies	
Iceland	3), 4) none	<p>3) Eligibility for subsidies may be limited to juridical persons established within the territory of Iceland. Subsidies related to research and development are unbound.</p> <p>4) Subsidies available only to natural persons may be limited to Icelandic citizens.</p>	<p>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than Audio-visual Services)</p> <p>3) Targeted financial support to specific local, regional or national activities</p>
Israel			<p>2. COMMUNICATION SERVICES</p> <p><u>d. Audiovisual Services</u></p> <p>Israeli movies (25% Israeli investments) are entitled to a grant.</p>
Japan		3)4) Unbound for research and development subsidies.	

Subsidy Measures	Horizontal Commitments		Sectoral Commitments
<i>Country</i>	<i>Limitations on Market Access</i>	<i>Limitations on National Treatment</i>	<i>Limitations</i>
Korea		<p>3) Eligibility for subsidies including tax benefits may be limited to companies which are established in Korea according to the pertinent laws. Unbound for research and development subsidies.</p> <p>4) Eligibility for subsidies, including tax benefits, may be limited to residents according to the pertinent law.</p>	
Kuwait		<p>3), 4) National services industries and services may have some kind of incentives and assistance, like industrial land blocks, easy financial loans, market research and marketing programmes including the organization of exhibitions or facilitating its taking part in Kuwaiti pavilion in international fairs and exhibitions, with free or lowered costs, establishing of marketing centres (inside or outside the country), and/or granting discount on the prices of its advertising programmes in national TV and national advertising agencies and some other incentives alike.</p>	
Liechtenstein		1)2) Unbound for subsidies	
Mexico		<p>3) Unbound for research and development subsidies and incentives to small service enterprises owned by Mexican nationals.</p> <p>4) Subsidies granted to natural persons may be limited to Mexican citizens.</p>	
France in		1), 2), 3) Eligibility for aid by the EEC, the State, the	

Subsidy Measures	Horizontal Commitments		Sectoral Commitments
<i>Country</i>	<i>Limitations on Market Access</i>	<i>Limitations on National Treatment</i>	<i>Limitations</i>
respect of New Caledonia		territory or the provinces may be limited to companies with a legal status established in New Caledonia or in one of its geographical subdivisions. Granting of such aid is subject to decision by the competent authorities.	
New Zealand			<p>2. COMMUNICATION SERVICES</p> <p><u>d. Audiovisual Services</u></p> <p>1)3) Government assistance to the film industry through the New Zealand Film Commission is limited to New Zealand films as defined in Section 18 of the New Zealand Film Commission Act 1978.</p>
Norway	<p>1)2) Unbound</p> <p>3)4)none</p>	<p>1)2) Unbound</p> <p>3) Eligibility for subsidies may be limited to juridical persons established in Norway. Unbound for research and development subsidies.</p> <p>4) Subsidies available to natural persons may be limited to Norwegian citizens</p>	<p>5. EDUCATIONAL SERVICES</p> <p>3) Primary and secondary education are public service functions. Authorization may be given to foundations and other legal entities to offer additional parallel or specialized education on a commercial or non-commercial basis. Financial</p>

Subsidy Measures	Horizontal Commitments		Sectoral Commitments
<i>Country</i>	<i>Limitations on Market Access</i>	<i>Limitations on National Treatment</i>	<i>Limitations</i>
			assistance to educational institutions or to students only available for studies at certified establishments.
Poland	1)2)3)4) Unbound in relation to subsidies and other form of public assistance		
Slovenia		<p>3) Eligibility for subsidies from the Republic of Slovenia may be limited to juridical persons established within the territory of the Republic of Slovenia or a particular geographical sub-division thereof. Unbound for subsidies for research and development. The supply of a service, or its subsidization, with the public sector is not in breach of this commitment.</p> <p>4) To the extent that any subsidy is made available to natural persons, their availability may be limited to nationals of the Republic of Slovenia.</p>	
Sweden		<p>3) Eligibility for subsidies may be limited to juridical persons established (see Art. XXVIII (d)(i)) within the territory of Sweden or a particular geographical sub-division thereof. Subsidies related to research and development unbound.</p> <p>4) Subsidies available only to natural persons may be limited to Swedish citizens.</p>	<p>A. PROFESSIONAL SERVICES</p> <p><u>h) Medical and dental services</u></p> <p><u>i) Veterinary services</u></p> <p>3) Needs test applied to decide the number of private practices to be subsidized through the social</p>

Subsidy Measures	Horizontal Commitments		Sectoral Commitments
<i>Country</i>	<i>Limitations on Market Access</i>	<i>Limitations on National Treatment</i>	<i>Limitations</i>
			<p>security system.</p> <p>10.RECREATIONAL, CULTURAL AND SPORTING SERVICES <u>A. Entertainment services</u> <u>D. Sporting and other Recreational services</u></p> <p>3) Targeted financial support to specific local, regional or national activities.</p>
Switzerland		<p>1)2) Unbound for subsidies</p> <p>3)4) Eligibility for subsidies, tax incentives and tax credits may be limited to persons established in a particular geographical sub-division of Switzerland.</p>	
United States	<p>1)2) Unbound</p> <p>3)none</p> <p>4) Unbound except as indicated in the horizontal section</p>	<p>1)2) Unbound</p> <p>3) Unbound for research and development subsidies</p> <p>4) None</p>	<p>2.COMMUNICATION SERVICES <u>D. Audiovisual Services</u> <u>a)Motion picture & video tape production and distribution</u></p> <p>1)3) Grants from the National Endowment for the Arts are only</p>

Subsidy Measures	Horizontal Commitments		Sectoral Commitments
<i>Country</i>	<i>Limitations on Market Access</i>	<i>Limitations on National Treatment</i>	<i>Limitations</i>
			<p>available for: individuals with US citizenship or permanent resident alien status, and non-profit companies.</p> <p>EDUCATIONAL SERVICES <u>D. Adult education</u> <u>E. Other education services</u></p> <p>1), 2), 3), 4) Scholarships and grants may be limited to US citizens and/or residents of particular states and may, in some cases, only be used at certain states institutions or within certain US jurisdictions.</p>

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WORLD TRADE
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Working Party on GATS Rules

PROVISIONS ON SUBSIDIES RELATING TO TRADE IN SERVICES
IN REGIONAL TRADE AGREEMENTS

Note by the Secretariat

Background

1) At its meeting on 28 March 1996, the Working Party on GATS Rules requested the Secretariat to prepare a note describing subsidy provisions relating to trade in services that already existed in regional trade agreements. Some 137 regional arrangements have been notified to the GATT/WTO under Article XXIV, and a further 15 under the Enabling Clause. Relatively few of these agreements contain provisions specific to trade in services, and even fewer deal with subsidy practices or remedies against subsidies. Among the Agreements reviewed, the following contained explicit provisions on subsidies and remedies in the area of services: The Protocol on Trade in Services to the Australia-New Zealand Closer Economic Relations Trade Agreement, the EC Treaty, the Europe Agreements, the European Economic Area Agreement, and the Customs Union between the Czech Republic and the Slovak Republic. Many other regional arrangements have general provisions relating to subsidies and remedies against subsidies, but these provisions are phrased in a manner that makes it difficult to argue that they might apply to trade in services, even though the agreements in question cover trade in services.

Relevant provisions

2) The Protocol on Trade in Services to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). This Protocol envisages explicit obligations for new or expanded service subsidies. Article 11 of the Protocol states that •Member States shall not introduce new, or expand existing, export subsidies, export incentives and other assistance measures having a direct distorting effect on trade between them in services and shall work towards the elimination of any such measures by 30 June 1990.• These obligations are enforceable through the consultation (dispute settlement) provisions contained in Article 19 of the Protocol, and no specific remedy akin to a countervailing measure is contemplated within the framework of the ANZCERTA Services Protocol.

3) *The EC Treaty. Article 92 of the EC Treaty may be applicable to internal subsidies in the area of services. Article 92 states that unless otherwise provided, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. As in the case of ANZCERTA, no mechanism exists for countervailing state aids. Rather, Article 93 provides the Commission with the authority to instruct the Member State concerned to abolish or alter a state aid. If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice directly. It may be noted that Article 92 has been applied in certain service sectors, including air transport and banking.*

4) *The Europe Agreements. Many of the free-trade agreements between the EC and East-European countries contain a provision, similar to that of Article 90 of the EC Treaty, prohibiting aids which may distort competition, and providing the injured party with a right to impose trade measures at the border. For instance, paragraph 1 of Article 33 of the Agreement with Hungary states that any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of the Agreement. The Agreement envisages the establishment within three years of its entry into force of rules to implement provisions relating to state aids. In the meanwhile, the relevant national legislation is to apply in the event that measures are taken which are incompatible with Article 33 of the Agreement. If the Community or Hungary considers that a particular practice is incompatible with the terms of paragraph 1 of Article 33, the party concerned may, in prescribed circumstances, take appropriate measures which must be compatible with GATT or any other relevant instrument negotiated under its auspices which are applicable between the Parties. Since no rules exist yet in relation to measures that might be imposed against distorting subsidies in services, it may be safely argued that there is no question of incompatibility with international rules at the present time.*

5) *The European Economic Area (EEA) Agreement . Article 61 of the EEA Agreement states that unless otherwise provided, any aid granted by EC Member States,*

*EFTA
States or
through
State
resources
in any
form
whatsoever
which
distorts or
threatens
to distort
competition
by
favouring
certain
undertakings
or the
production
of certain
goods
shall, in so
far as it
affects
trade
between
contracting
parties,
be
incompatible
with
the
functioning
of this
Agreement
. • In the
event that
either
party to
the
Agreement
considers
that the
other is
applying
incompatible
measures,
the*

*provisions
of Article
64 will
apply.
These are
as follows:*

- 1. If one of the surveillance authorities considers that the implementation by the other surveillance authority of Article 61 is not in conformity with the maintenance of equal conditions of competition within the territory covered by this Agreement, exchange of views shall be held within two weeks*

If a commonly agreed solution has not been found by the end of this two-week period, the competent authority of the affected Contracting Party may immediately adopt appropriate interim measures in order to remedy the resulting distortion of competition.

Consultations shall then be held in the EEA Joint Committee with a view to finding a commonly acceptable solution.

If within three months the EEA Joint Committee has not been able to find such a solution, and if the practice in question causes or threatens to cause distortion of competition affecting trade between the Contracting Parties, the Interim measures may be replaced by definitive measures, strictly necessary to offset the effect of such distortion. Priority shall be given to such measures that will least disturb the functioning of the EEA.

- 6) Agreement between the Czech Republic and the Slovak Republic. This Agreement contains a provision for national treatment in the area of services and a separate section on aids (subsidies). Because of the broadness of the language concerning aids, one might argue that countervailing measures could be applied against subsidies in services. Article 19 of the Agreement states that •any aid granted by a Contracting Party or through state resources in any form whatsoever which distorts or threatens to distort economic competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Contracting Parties, be incompatible with the proper functioning of this Agreement.• The Agreement also establishes an Arbitration Commission responsible for settling disputes.*

Conclusions

- 7) It is clear from the above that relatively little has been done in regional agreements and arrangements as far as rule-making on subsidies in relation to trade in services is concerned. No examples were found of agreements that contemplate countervailing action against services traded with the benefit of a subsidy. Rather, a dispute settlement-related approach seems to be preferred, combined with substantive disciplines on the use of subsidies.*

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Original: Spanish

Working Party on GATS Rules

COMMUNICATION FROM CHILE

The Subsidies Issue

The following communication is circulated at the request of Chile to members of the Working Party on GATS Rules.

The purpose of this document is to provide input for the analysis and discussion that the Working Party on GATS Rules is to begin at its next meeting. It contains initial thoughts on the problem of subsidies in the context of trade in services, which will certainly evolve as further contributions are made on the subject within this Group.

I. Subsidies in trade in services

Subsidies in the services sector may have distorting effects on the flows of international trade in services (as well as goods, directly and indirectly), including the possible nullification or impairment of concessions.

The possible distorting effects of subsidies on trade in services may take at least three forms: firstly, they may harm the competitiveness of foreign services or foreign service suppliers in the domestic or local market. Secondly, they may impair or nullify the competitiveness of national services or national service suppliers in other markets. Lastly, subsidy policies may affect the decisions of service suppliers as to the mode of supply by which they wish to provide a service.

II. Nature of subsidies in services

The study of these subjects requires a major analytical effort. In particular, we must try to get away from trade in goods and look at the reality of trade in services.

Subsidies in the services sector do not exclusively take the form of a direct or indirect financial contribution by a government or public body, as in the definition given in the Agreement on Subsidies and Countervailing Measures. For example, they may be embodied in incentives to commercial presence contained in legislation on direct foreign investment.

We also find monopoly rights or restrictive trade practices that afford an artificial advantage facilitating exports of services at •subsidized• prices as a result of the ability to discriminate in pricing on the domestic and on the foreign markets: it would therefore be necessary to elaborate or broaden the definition of a subsidy in the case of services.

It must be recognized that some subsidies are not necessarily aimed at fostering trade in services or obtaining a competitive advantage that would not otherwise exist. For example, they may be designed to attain various goals in such areas as social advancement, acquisition of technological capacity, or even security.

Social programmes in general, and educational incentives in particular, which seek to provide more equal opportunity to the more disadvantaged sectors, are another example of the above. Nevertheless, something that is a fundamental instrument for economic development might represent, for example, an indirect incentive to the export of professional services, even though that is not its aim: this kind of subject matter should be clearly excluded from the scope of the GATS. For this purpose an illustrative list of permitted subsidies could be drawn up: subsidies linked to social programmes for which ample international experience exists.

There is another category of subsidies in the services sector that seeks to correct market imperfections. This is the case, for example, of imperfections arising out of market shortcomings, the existence of high transaction costs caused by difficulties of access and information requirements (as in the case of penetration of new markets), or owing to the existence of indivisibilities in investment decisions.

How to deal with these cases, where we are not facing programmes which are explicitly designed to confer a trade advantage with respect to a foreign supplier, but the results of which may not be neutral with respect to foreign suppliers, is a difficult issue. However, normally such subsidies should be consistent with national treatment obligations (accessible to both foreign and national suppliers) and limited in terms of their incidence on trade in services proper (in particular, as regards their export value).

We must therefore develop and establish criteria that distinguish and separate **as precisely as possible** subsidy programmes and regulations aimed at attaining legitimate economic and social development objectives from programmes aimed at obtaining an unfair trade advantage. This Working Party should focus on the latter.

We should recall that the disciplines on transparency set out in GATS Article III oblige members to notify •all relevant measures of general application which pertain to or affect the operation of this Agreement ...•.

Accordingly, to make headway in the evaluation of this subject matter we should engage in an exchange of information on existing subsidy programmes affecting trade in services, so as to be able to determine their relevance and specify how they affect trade in services. A preliminary way of making progress could be through the obligations provided for in Article 25 of the Subsidies Agreement.

III. Injury and countervailing measures

Before thinking of developing disciplines to counter the adverse effects of subsidies on trade in services, we ought to concentrate on identifying them and adopting commitments to eliminate them or limit their effects. The creation of an instrument to deal with situations of unfair competition in the services sector is enormously complicated

from the standpoint of practical application, but it may also represent the creation of a protective instrument with unpredictable future consequences.

Owing to the existence of different modes of supply, and in so far as these are mutually complementary, it is hard to define injury or threat of injury, and still more so to identify the causal relationship in the terms defined in the context of trade in goods.

Furthermore, it may be impossible to distinguish what is causing injury, whether commercial presence or the cross-border supply of the service, not to mention the difficulty of determining what mode of supply will be open to a possible countervailing measure. This is assuming that the relevant statistical information is available for carrying out a serious investigation.

Another category of problems concerns the type of •countervailing• measures to correct the injury or threat of injury caused by the existence of subsidies. The GATS identifies quantitative measures, and not tax measures (such as tariffs), as market access restrictions. Consequently, any •countervailing• measures must be consistent with the instruments provided for in the GATS.

If we confine ourselves to the provisions of GATS Article XVI, we note that the instruments favoured are non-optimal from the economic standpoint, untransparent, and by definition discriminatory.

When considering the question of countervailing measures, we may perhaps reach the conclusion, that although the problem of subsidies is significant in trade in services, it is neither possible nor desirable to redress it through trade •instruments• and that we should favour disciplines entailing their elimination or limitation depending on whether they are, *de jure* or *de facto*, aimed at obtaining an unfair trade advantage (once again, subsidies related to social programmes would be outside the scope of the GATS).

IV. Conclusions

What the above discussion shows is the enormous difficulty inherent in dealing with subsidies in the services sector, both in terms of possible disciplines and as regards countervailing measures. Nevertheless, these difficulties do not diminish the importance of making a serious effort to gauge the problem and limit its possible adverse effects.

WORLD TRADE
ORGANIZATION

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(96-1182)

Working Party on GATS Rules

QUESTIONNAIRE ON GOVERNMENT PROCUREMENT OF
SERVICES

Note by the Secretariat

At the meeting of the Working Party on GATS Rules held on 23 February 1996, the Secretariat was requested to prepare a set of questions on information relevant to the negotiations on government procurement of services.

Members may wish to obtain information in at least three different areas along the lines indicated below.

I. EXISTING PROCUREMENT REGIMES

Where a Member's procurement regime is different for central government entities, sub-central government entities, and other entities, such as public undertakings (e.g. public utilities), it would be useful if these differences were specified under each of the headings indicated below.

Definition

1. What is the definition of government procurement employed in completing this questionnaire?

Administrative structure

2. How are government procurement activities administered? To what extent are procurement activities centralized? Please specify the identity of any central procurement agencies and their respective responsibilities.

Laws and regulations in force

- 3.(a) Please specify the laws, regulations, rules, guidelines, decrees, decisions and other measures governing government procurement. What is the scope of their application? In particular, please describe any exemptions that exist. Please provide a brief summary of the content of each of these measures.

- (b) Does the procurement regime distinguish between the procurement of goods and services? If so, then how is the application of rules determined in cases of joint procurement involving both goods and services?

Procurement procedures applied

- 4.(a) What procedures are followed in the procurement process?

Procurement procedures could differ according to the openness of the invitations to tender. At least three broad categories of procedures are commonly distinguished: (i) public or open tendering procedures under which all interested parties may submit a tender; (ii) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (iii) private contract or single tender in which the awarding authority contracts suppliers individually, and sometimes only a single supplier.

- (b) Under what circumstances are different procedures used? For instance, if the method used depends on the value of the procurement, the thresholds should be given.

- (c) What are the time limits for submission of bids?

Publicity for inviting tenders

- 5.(a) How are intended procurements publicised? Are invitations to tender published? If so, where, and in what languages?

- (b) Do the extent and form of publicity differ according to tendering procedures applied and/or on the value of procurement?

- (c) What details of the intended procurement are normally published? Is there a minimum set of information that is required to be published? If so, please specify.

Details could include a description of service to be procured, tender opening and closing dates, conditions of participation, procuring entity, enquiry point, procurement plans, procurement outcomes - contract award notices, etc.

- (d) Are there any charges for obtaining the full set of tender documents? If so, please specify and describe how these charges are set?

- (e) Are electronic means used to advertise procurement opportunities? What is the nature of systems that are in place? Are different tendering provisions applied to contracts advertised in this manner? If so, please describe.

Requirements laid down for possible suppliers

- 6.(a) Are there registration, residence or other requirements for potential suppliers?
- (b) What is the nature of any conditions for participation required from suppliers - such as financial guarantees, commercial standing and technical qualifications? Do the conditions of participation vary according to the nature of the tender process and/or the value of the intended procurement?
- (c) Do there exist lists of approved suppliers? If so, what are the procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists? Are lists of approved suppliers, if any, regularly reviewed/updated?

Criteria for assessing bids and awarding contracts

- 7.(a) What criteria are taken into account in the award of tenders? Are criteria for award of contracts made available in advance to potential suppliers?

For instance, whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account.

- (b) Is procurement subject to any offset provisions, such as local content, technology transfer or countertrade requirements?
- (c) Is preference given to any particular enterprises or group of enterprises? If so, please specify.
- (d) Do the procurement criteria differ according to sector or region of the economy?
- (e) What is the margin of choice or discretion allowed to the purchasing authority? What does the extent, if any, of discretion allowed depend upon?

The margin of choice or discretion could relate to (i) the relative weight/importance of each contract award criteria; (ii) margins of preference, if any, in respect of specific criteria; and (iii) threshold values, if any, above which referral to a higher level of purchasing authority is required.

The discretion allowed to the purchasing authority could vary according to whether there is (i) automatic tender, where the contract is awarded on the basis of predetermined criteria, either the simple criteria of price, or price and other criteria; (ii) discretionary tender procedures which involve acceptance of the bid which is most advantageous - the award of the contract is based on several criteria, some of which are predetermined, but which in general leave the awarding authority a certain measure of choice; and (iii) negotiated tender in which the awarding authority negotiates freely with the potential supplier or suppliers as to the conditions of the contract.

Disclosure of bids received and contracts awarded

- 8.(a) How are tenders received, registered and opened?

- (b) Are entities required to publish details of the contracts awarded and/or notify unsuccessful tenderers?
- (c) Are entities required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected?

Treatment granted to domestic and foreign services and/or suppliers

9. What laws, regulations, procedures or practices accord domestic services and/or suppliers treatment more favourable than that accorded to foreign services and/or suppliers, or accord services and/or suppliers of a Member more favourable treatment than those of another Member? Please specify how, if at all, more favourable treatment is accorded. Please also specify the working definition of •domestic• in relation to domestic services and suppliers.

Procedures for hearing and reviewing complaints/appeals

10. What, if any, are the procedures available for parties, domestic and foreign, to lodge complaints against the award of a contract? Please provide details.

Details could include:

- institutional status: whether challenges are heard by an administrative tribunal, a court or any other review body;*
- time limits for complaints/appeal;*
- type of remedy, if any, that may be granted.*

II. MEMBERSHIP OF PLURILATERAL, REGIONAL AND/OR BILATERAL AGREEMENTS

11. Is the Member party to any plurilateral, regional and/or bilateral agreements with provisions on government procurement? If so, please describe the relevant provisions.

III. ECONOMIC IMPORTANCE OF SERVICES PROCUREMENT

- 12.(a) Please provide statistics (if available) on the number and value of services procurements
- on both an aggregate and sectoral basis;
 - by origin of services and suppliers.

In order to enhance the comparability of data provided, Members may choose to provide statistics according to the services sectoral classification in document MTN.GNS/W/120 (dated 10 July 1991) at the appropriate level of aggregation.

(b) Please provide statistics (if available) on the

- share of services procurement in total procurement;
- share of procurement of each service in total domestic output of the service;
- share of procurement of each service in total domestic consumption of the service.

Total domestic consumption is defined as the sum of public and private consumption or the sum of domestic output and net imports (i.e. imports minus exports) of the service in question.

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WORLD TRADE ORGANIZATION

(96-0815)

Working Party on GATS Rules

EMERGENCY SAFEGUARD MEASURES IN GATS: THE APPLICABILITY OF CONCEPTS APPLIED IN THE WTO AGREEMENT ON SAFEGUARDS

Note by the Secretariat

Introduction

1. At its meeting on 23 February 1996, the Working Party on GATS Rules requested the Secretariat to prepare a note on the applicability of concepts used in the WTO Safeguards Agreement to trade in services. The following note examines what appear to be the most important concepts underlying the Agreement on Safeguards, and considers ways in which these concepts might have to be modified if they were to be applied in a GATS context. The note is divided into three main sections. The first considers the conditions and criteria governing the application of safeguard measures. The subsequent section looks at the nature of measures that may be applied. The final section considers the issue of compensation, and the rights of Members affected by safeguard measures applied by another Member. The relevance of the provisions of Article XXI to the issue of the withdrawal of commitments and compensation is also taken up in this context.

2. A general consideration of relevance to the design of any safeguard instrument for services concerns information requirements for the application of safeguard measures. Not only would information requirements be greater for a safeguard instrument under GATS than they are under the Agreement on Safeguards, but the attainment of the necessary information is also more difficult. The reason why information requirements are greater in services is because GATS covers different modes of supply -- cross-border transactions, consumption abroad, commercial presence, and the presence of natural persons. Typically, governments are simply not geared to collecting the relevant data to identify transactions under each of these categories. The relative difficulty of acquiring the necessary information for the application of a safeguards instrument is a reflection of the nature of trade in services. The "invisibility" of many service transactions and the simultaneity of production and consumption typical of much services trade help to account for the absence of reliable statistics. Moreover, an accepted detailed nomenclature for classifying service sectors does not yet exist at the international level. The absence of adequate information is a factor that would need careful

attention in the design of any emergency safeguard provision under GATS. In order to avoid repetition, this point will not be referred to every time it is relevant in the discussion that follows.

Conditions for the application of safeguard measures

3. Paragraph 1 of Article 2 of the Safeguards Agreement specifies that a Member “may apply a safeguard measure to a product only if that Member has determined ... that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.” Among the concepts of interest here are: i) importation; ii) increased quantities (absolute or relative) in relation to domestic production; iii) serious injury; iv) causality; and v) like or directly competitive products.

Importation

4. The notion of a product can be applied straightforwardly either to a good or a service. But the notion of “importation” is not necessarily equivalent as between goods and services. This is because the GATS deals with establishment and establishment trade as well as cross-border trade. Thus, importation in services may refer to a product crossing the frontier under Mode 1, consumption abroad under Mode 2, the entry or establishment of a service supplier under Mode 3 and Mode 4, and post-establishment trade under Mode 3 and Mode 4. The only notion of importation under GATS that is directly comparable with the Safeguards Agreement is cross-border trade under Mode 1.

Increased quantities in relation to domestic production

5. The Safeguards Agreement contemplates the possibility of safeguard action when imports that cause or threaten to cause serious injury increase in quantity terms, absolutely or relative to domestic production. The application of this criterion under GATS would require information on the quantity of imports, however defined, as well as on domestic production (where grounds for action constitute increased imports *relative* to domestic production). It is noteworthy that increased imports must be measured in quantitative or volume terms, and not simply in value terms, which implies more stringent information requirements.

6. The notion of domestic production is straightforward under the Safeguards Agreement. The closely related concept of domestic industry is defined in the Agreement to mean “producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products” (Article 4:1(c)). This definition could be applied without modification in GATS under Mode 1 and Mode 2. Under Mode 3 and Mode 4, the situation is more complicated, as “domestic” production involves two different concepts -- in one circumstance, domestic production refers both to national and foreign suppliers, and in another it refers only to national suppliers. Thus, at the establishment or entry stage, domestic production would

logically refer to all suppliers operating within the territory of a Member, whether national or foreign. Safeguard action would be taken to protect these suppliers against newly establishing suppliers or market entrants. By contrast, in the context of post-establishment operations, the only conceivable safeguard action would have to distinguish between national and foreign suppliers, defining domestic production in terms only of national suppliers.

Serious injury

7. Serious injury and the threat of serious injury are both defined in Article 4:1 of the Safeguards Agreement. Serious injury means “significant overall impairment in the position of a domestic industry.” The threat of serious injury means “serious injury that is clearly imminent ... [A] determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.” Article 4:2(a) goes on to stipulate that an injury investigation must “evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation ... in particular the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses and employment.”

8. The obstacle of scarce information notwithstanding, these criteria would seem to translate quite straightforwardly into a services context. The focus of an injury investigation would be determined by the definition of industry, as discussed above. The determination of serious injury would centre upon cross-border service transactions under Mode 1 and upon the effects on domestic industry of consumption abroad under Mode 2. At the establishment stage under Mode 3 and Mode 4, the notion of increased “imports,” to be taken into account in assessing serious injury or threat thereof to a domestic industry, would presumably relate to an investment flow (Mode 3) or the movement of natural persons (Mode 4). If safeguard action were to be contemplated in the context of establishment trade, then the relevant consideration for the injury determination would be the situation of service suppliers of another Member in relation to service suppliers of national provenance producing like or directly competitive products.

Causality

9. According to Article 4:2(b), a determination of serious injury or threat thereof cannot be made unless an investigation “demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof.” If factors other than increased imports are also causing injury to domestic industry, this injury should not be attributed to increased imports. A causality requirement of this kind could in principle be developed in a services context, with the appropriate definitional changes to the notions of imports and domestic industry, upon which an injury determination would be made.

Application of safeguard measures

Choice of measures

10. Article 5:1 of the Safeguards Agreement states that safeguard measures are to be applied “only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment”. The Agreement does not prescribe particular measures, but in practice two kinds of measures against imports have been used -- quantitative restrictions (quotas) and tariff increases. The Agreement states that if quantitative restrictions are used, these should not reduce the quantity of imports below the average level of imports of the product concerned over the last three representative years for which statistics are available, unless it can be shown that a different level of imports is required to prevent or remedy serious injury. Where import quotas are allocated, the Agreement states that a Member may seek agreement with respect to the allocation of shares with other Members that have a substantial interest in supplying the product. If this approach is not reasonably practicable, historical import shares may be used as a basis for quota allocation, taking account of any special factors that might have affected trade in the product. In narrowly specified circumstances (Article 5:2(b)), a discriminatory quota allocation may be permitted. If a provisional safeguard measure is taken under Article 6 (see paragraph 12 below), the Agreement creates a presumption in favour of using tariffs.

11. Essentially the same choice between quantity-based and price-based safeguard measures would exist in the case of a GATS safeguard instrument. Although safeguard measures may be expressed in regulatory terms in the field of trade in services, it would seem that such regulations would be conceptually equivalent to a quantity-based limitation. A safeguard measure under GATS could not always fall on “imports.” Under Mode 1, an equivalent concept of imports to that used in the Safeguards Agreement would apply. But under Mode 2, a safeguard measure would need to be a tax, a quantitative limitation or a regulation of some kind affecting consumption abroad. If consumption abroad were to involve the physical movement of consumers, then it might be the consumer who would be taxed or restricted in some way, or a regulation might seek to ration or restrict consumption abroad of the service concerned. If the physical movement of consumers were not involved, then the transaction itself might be the target. Under Mode 3 at the establishment stage, the investment flow would be taxed or restricted. Under Mode 4 at the establishment stage, the physical movement of a natural person would be taxed or restricted. In respect of establishment trade under Mode 3 or Mode 4, output would be the most likely target of safeguard action, although measures could conceivably be applied elsewhere (e.g. on purchases of inputs).

Critical circumstances

12. The Safeguards Agreement permits the adoption of provisional safeguard measures in “critical circumstances where delay would cause damage which it would be difficult to repair ... pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury” (Article 6). Conceptually, there does not appear to be any reason why provisional safeguard measures could not apply to trade in services. The question to be considered is whether the nature of services transactions under any of the available modes of delivery is such as to warrant a “critical circumstance”

remedy. Indeed, this is part of the broader question whether the essential characteristics of services transactions are such as to necessitate the creation of a safeguard instrument, bearing in mind the existing structure of rules and commitments under GATS and the concept of progressive liberalization.

Duration, progressive liberalization, and review

13. The Safeguards Agreement contains detailed rules on the length of time for which safeguard measures might be applied, and the interval that must elapse before a new safeguard measure may be introduced on a product that has previously been the subject of safeguard action. These time limits vary according to the nature of the action, and are also different for developing countries.¹ The Agreement also requires that any safeguard measure lasting for more than one year shall be progressively relaxed over the period of its application. In addition, measures in place for more than three years must be reviewed by the mid-term of the measure, with a view to its possible removal or an accelerated pace of liberalization. It would seem that all these concepts could be applied straightforwardly in a GATS context.

Level of concessions and other obligations

14. Article 8:1 requires that a Member intending to apply a safeguard measure should “endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure.” This provision implies that Members taking measures must be prepared to compensate other Members for any adverse effects of safeguard actions. The Agreement provides for consultations on such compensatory arrangements. If consultations do not lead to a satisfactory outcome within 30 days, affected Members are entitled to suspend the application of substantially equivalent measures to the trade of the Member responsible for the safeguard action, provided the Council for Trade in Goods does not disapprove of such retaliatory action. However, this right to suspend equivalent concessions cannot be exercised during the first three years that a safeguard measure in conformity with the provisions of the Agreement is in effect, as long as the measure concerned has been taken as a result of an absolute increase in imports (as opposed to a situation in which the relative share of domestic production has declined in domestic consumption of a product). What this means, in effect, is that under the above set of circumstances, Members would be unlikely to offer to provide compensation to trading partners for any adverse effects arising from a safeguard measure during the first three years of its application.

15. It does not appear that any conceptual difficulties would arise if such provisions were to be applied to trade in services. The provisions of Article XXI of GATS, dealing with the modification of schedules, may be relevant in this context. Article XXI provides that a Member may modify or withdraw a scheduled commitment at any time after three years from the entry into force of the commitment concerned. The intention to take such action must be notified no

¹ One other element of special and differential treatment for developing countries under the Safeguards Agreement is the *de minimis* provisions exempting developing country exports below a certain threshold level of import share from safeguard action.

later than three months before the intended date of modification or withdrawal of the commitment. Consultations on compensation for affected parties are envisaged during this period, with a view to reaching agreement on any necessary compensatory adjustment. Compensatory adjustments should seek to maintain “a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments” (Article XXI:2). If consultations fail to produce a satisfactory solution within the three month period provided for such consultations, affected Members may submit the matter to arbitration. Affected Members wishing to enforce their rights must participate in arbitration. If no Member seeks arbitration, the Member intending to modify its schedule is free to act. If there is arbitration, however, schedules must be modified in accordance with the arbitrator’s findings, failing which any affected Member may modify or withdraw substantially equivalent benefits in conformity with those findings.

16. From a procedural perspective, it is noteworthy that an arbitration provision was introduced in Article XXI. This approach has no precedent in the field of goods. Providing for arbitration reflects the realization of negotiators that the rights and obligations of Members seeking to modify their schedules and of Members affected by such action, are more complicated to deal with in the field of services. This additional degree of difficulty arises both as a result of the kinds of measurement difficulties and information shortfalls referred to above, as well as from the fact that compensatory adjustments in services can take different forms, relating both to market access and national treatment commitments. Presumably, these same considerations would apply in the context of a safeguard mechanism in services that provided for compensatory adjustments for Members adversely affected by safeguard actions.

17. An issue referred to in Working Party discussions is the relationship between the existing Article XXI provisions and a possible safeguard mechanism. In addition to the broader question as to whether an Article XXI-type scenario involving the indefinite withdrawal of commitments is comparable to the temporary withdrawal of commitments that would presumably be envisioned under an emergency safeguard provision, three other points about the nature of Article XXI as it stands seem to be relevant in this context. First, Article XXI action is only available three years after a commitment has been undertaken. Second, Article XXI action cannot be taken until three months after notification of the intention to act. Third, the obligation to provide compensation for the adverse effects of the modification of a commitment exists from the outset under Article XXI procedures. These characteristics of Article XXI would have to be taken into account in any consideration of the question whether the possibilities for modifying commitments provided under Article XXI might obviate the need for a safeguard mechanism in GATS.

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Working Party on GATS Rules

SUBSIDIES AND TRADE IN SERVICES

Note by the Secretariat

I. Background

1) Article XV of the General Agreement in Trade in Services acknowledges that, in certain circumstances, subsidies may have distortive effects on trade in services, and states that Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations are also to address the appropriateness of countervailing procedures. A footnote to paragraph 1 of Article XV states that a work programme is to be established to determine how, and in what time-frame, negotiations on multilateral disciplines are to be conducted.

2) Paragraph 1 of Article XV further states that the negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. Finally, the Article XV negotiating mandate stipulates that Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

3) The present note, requested by the Council for Trade in Services at its first meeting on 1 March 1995, introduces a number of issues that may arise as Members focus on the Article XV mandate. Like previous secretariat notes presented to the Working Party, the objective of this note is to identify what appear to be salient issues, in order to stimulate discussion in the Working Party. It is not intended as an exhaustive or authoritative analysis of questions relating either to subsidies affecting trade in services or to the manner in which they might be addressed. The note does not attempt to address those aspects of the negotiating mandate dealing with the determination of a time-frame for negotiations, nor with the exchange of information among Members relating to subsidies. The note is organized under four main headings. Section II contains brief comments on the general question of subsidies affecting trade in services. Section III explores the approach to subsidy issues adopted on the goods side in the GATT, and subsequently in the WTO Agreement on Subsidies and Countervailing Measures, in order to assist Members considering how far this approach might be suitable as a model for developing disciplines under the GATS. Mention is made in Section III of how subsidies are dealt with under the Agreement on Agriculture. This section also considers countervailing procedures and other remedies against subsidy practices. This is followed in Section IV by an examination of certain provisions already contained in the General Agreement on Trade in Services that discipline subsidy practices. Finally, Section V

lists some questions that delegations may wish to examine in the context of the Article XV negotiating mandate.

II. Subsidies and trade in services

4) Past efforts to establish multilateral rules on subsidies have always attempted to define the middle ground between recognition that subsidies can distort trade in ways that undermine the objective of trade liberalization and acknowledgement that subsidies may also be an important tool of social and economic policy. This dualistic approach is explicit in the Article XV negotiating mandate. The need to define rules that address both the negative and positive aspects of subsidization has imparted considerable complexity to rule-making in this area. It has called for definitional and conceptual distinctions that are not always easy to make. A number of these difficulties are compounded in the case of trade in services, for reasons discussed below.

5) A second broad consideration relates to the element of choice which exists between emphasizing disciplines to regulate the use of subsidies and developing unilateral remedies (i.e. countervailing action) to be applied in the face of subsidization by trading partners. In the field of goods, the Uruguay Round was successful in shifting emphasis towards greater reliance on rules about the use of subsidies, but the remedy of countervailing action still plays a significant part in the overall approach. It may be the case that in light of the considerable difficulties of identification and measurement that are bound to exist even in the best of circumstances, an emphasis in GATS on rules about the acceptability or otherwise of subsidy practices, which would aim to discipline the use of subsidies *ex ante*, may be more viable than an approach which focuses on unilateral remedies.

Are subsidies commonly used in service sectors?

6) Detailed information about subsidies affecting trade in services is unavailable. Empirical work reveals, however, that the use of subsidies is commonplace in several service sectors,¹ although according to an OECD study of the incidence of subsidies in industrialized economies, some two-fifths to three-fifths of subsidies granted by governments were classified as sector-specific, and the bulk of these went to non-service industries such as steel, ship-building and mining.² A number of governments typically provide subsidies of one kind or another to certain transport sectors, utilities, health, education, entertainment services, and financial services. This listing is by no means exhaustive. In many countries, air transport services are subsidized, often with a view to supporting a national flag carrier. In the maritime sector, some governments provide operating subsidies as well as support for the non-service activity of shipbuilding. The public railway systems in many countries receive significant levels of subsidy. In the telecommunications sector, and to a degree in respect of other utilities such as water and electricity, governments may sanction or encourage cross-subsidization among product lines or categories of consumers, rather than providing direct injections of additional resources.

¹For a useful summary of some of this work, see UNCTAD, *The Impact of Subsidies on Trade in Services*, document UNCTAD/SDD/SER/3 (4 October 1993), upon which these paragraphs draw.

²Robert Ford and Wim Suyker, *Industrial Subsidies in the OECD Economies*, Department of Economics and Statistics Working Paper No. 74, OECD (January 1990), cited in a GATT Secretariat document on subsidies prepared for the Group of Negotiations on Services in the Uruguay Round (MTN.GNS/W/98, 20 April 1990).

7) Subsidies in sectors such as education and health generally underpin social objectives. On the other hand, as a recent UNCTAD study points out,³ some governments have developed export capacity in health and education services, and subsidies in these sectors may be viewed with concern from a trade perspective. Subsidies provided to entertainment services are typically predicated on cultural considerations, while subsidies in the financial sector may be justified on prudential grounds. Financial service sector subsidies have often taken the form of rescue operations designed to shore up public confidence in circumstances where a financial institution is faced with collapse. How, if at all, should subsidies of this nature be subject to multilateral disciplines? An important additional question is how far it is feasible to design general obligations relating to services. To what extent would subsidy disciplines need to be designed for specific sectors in order for them to be effective and workable?

The nature and definition of subsidies

8) Subsidies are not easy to define, as they can take many forms. It was not until the Uruguay Round that a definition of subsidies was established (see Section III below). Prior to this, the distinction between production subsidies and export subsidies had largely been relied upon to define rules governing subsidies. While subsidies may often be recognizable in terms of their effects on government revenue, either as outpayments or tax credits or exemptions of one kind or another, they can in fact take many other forms. From a services perspective, where regulatory interventions can be an important factor, regulations may have the more or less indirect effect of imparting a subsidy on services or service suppliers. An issue that Members may wish to consider, therefore, is how far the definition of subsidy should be taken into the regulatory domain. Clearly, problems associated with identifying and measuring subsidies will be greater when regulations are the source of subsidy. To some degree, a choice exists between attempting to address regulations as subsidies, and imposing disciplines on regulations *per se*, in the manner envisaged under many GATS provisions.

Particularities relating to services

9) Several references have already been made to conceptual and measurement challenges in the subsidy field. Difficulties are likely to arise in identifying subsidy practices, measuring the magnitude of subsidization, assessing the impact of foreign subsidies on domestic producers, and designing appropriate and appropriately targeted remedies. Many of these problems are likely to be more acute in the case of services than they have proved to be in goods.⁴ First, the absence of detailed statistics on trade in services greatly complicates any efforts to identify the impact of subsidies. Second, no detailed and internationally agreed nomenclature exists for service activities, which would permit a common understanding of how specific service activities are to be categorized in international services trade. Third, the “invisibility” of many service activities makes it difficult to monitor transactions. Fourth, the “customized” nature of many transactions, involving direct contact between producers and consumers, makes the identification of specific products and the unit prices of such products problematic. Assessing quality differences among “like” services is similarly difficult. More generally, the concept of likeness of products, which is essential for adequate subsidy rules, is more elusive in services than in goods. All these factors will need to be taken into account in the design of subsidy disciplines and in consideration of the possibility of developing countervailing remedies.

³UNCTAD, *op. cit.*

⁴See MTN.GNS/W/98 for a discussion of some of these problems.

10) The inseparability of the production and/or sale of some services from the production and/or sale of goods has been widely observed. A natural consequence of this “embodiment” phenomenon is that some subsidies affecting the supply of services appear, or are treated as, subsidies on goods. This may occur simply because a service is embodied in a good, as for example, the case of a compact disc on which music is recorded, or services may be inputs into the production of goods. An example of the latter is found in the illustrative list of prohibited export subsidies annexed to the Agreement on Subsidies and Countervailing Measures, which makes reference to transport and freight charges, as well as to the provision by governments of services more generally. Embodied services have often been countervailed in actions taken against goods. The embodiment of services in goods is yet another factor that may need to be taken into account when considering how to treat subsidies to trade in services.

III. Existing subsidy rules in the field of goods and available remedies

11) The earliest subsidy rules in GATT are different in important ways from what emerged in the Uruguay Round. Until the Uruguay Round, however, the essential features of the GATT subsidy rules had not evolved much since the mid-1950s. Production subsidies were exempted from the national treatment obligation by Article III:8(b) of the GATT, which states that “The provisions of this Article [national treatment] shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.” Article XVI made production subsidies the subject of consultation to discuss the possibility of limiting those subsidies found to cause or threaten serious prejudice to the interests of another party. Article XVI also entreated GATT contracting parties to seek to avoid the use of export subsidies on primary products, and required that any such subsidies should not give the subsidizing country more than an equitable share of world export trade in the product concerned. As far as export subsidies on manufactured products were concerned, these were eventually declared illegal in 1960 in an undertaking accepted by most industrial countries. Article VI of the GATT gave contracting parties the right to take countervailing action against injurious subsidies granted directly or indirectly on the manufacture, production or export of a product. The Tokyo Round Agreement on Interpretation and Application of Articles VI, XVI and XXIII fused and elaborated the substantive rules on subsidies and countervailing action into a single Agreement, and developed procedural rules relating to the conduct of countervailing investigations.

The Agreement on Subsidies and Countervailing Measures⁵

12) The Uruguay Round Agreement on Subsidies and Countervailing Measures (ASCM) changed the subsidy rules in important ways. Three aspects of these rules are particularly relevant to the present discussion. First, a definition of subsidy is provided for the first time. Second, subsidies are divided into three separate categories that specify both their legality and remedies available to parties affected by subsidies. Third, certain changes have also been made in the basis for seeking remedies. The many other changes

⁵It may be noted that the Agreement contains a number of provisions relating to special and differential treatment for developing countries (Article 27). Among the areas where these provisions are relevant are export subsidies rules, the determination of serious prejudice resulting from subsidization, and *de minimis* subsidy thresholds for the countervailability of certain subsidies. The Agreement also contains provisions for Members in the process of transformation from a centrally-planned into a market, free-enterprise economy (Article 29).

to the rules resulting from the Uruguay Round are not discussed here, as these are not relevant to the present general consideration of possible similarities of approach between current WTO subsidy disciplines and what might eventually emerge from the GATS Article XV negotiating mandate.

The definition of subsidies

13) The ASCM defines a •subsidy• and provides the conditions under which a subsidy would be deemed to be •specific•. A subsidy is defined as a financial contribution⁶ by a government or any public body within the territory of a Member, or any form of income or price support in the sense of Article XVI of GATT 1994, which confers a benefit. This approach would seem to make it easier to identify subsidies than in the previous situation, where multilateral subsidy rules were developed in the absence of a definition of subsidy. The question that arises in the GATS context, therefore, is whether it would be helpful to seek explicit definitions of what constitute subsidy measures.

14) Even when a measure is a subsidy according to the ASCM, it would not be subject to dispute settlement under the provisions of the Dispute Settlement Understanding (DSU) or countervailing measures unless it was a •specific• subsidy, i.e. unless it had been specifically provided to an enterprise or industry or group of enterprises or industries.

The classification of subsidies

15) The three-fold distinction in the ASCM between prohibited, actionable and non-actionable subsidies has also contributed to greater clarity with respect to subsidy rules. Prohibited subsidies are those contingent upon export performance or upon the use of domestic over imported goods, except as provided for in the Agreement on Agriculture. Non-actionable subsidies are those which are non-specific and those specific subsidies which, under certain conditions and limitations, are directed at industrial research and pre-competitive product development expenditures, regional development, and the adaptation of existing facilities to new environmental requirements imposed by laws or government regulations. The actionable subsidies category is defined by default to include all subsidies that are neither prohibited nor non-actionable. A question for the Working Party to consider is whether it would be worthwhile to attempt a comparable categorization of subsidies affecting trade in services. This would move disciplines in the direction of substantive rules about subsidies *per se*. It would also open up the possibility of using criteria linked to express policy objectives to place a range of subsidies beyond the reach of certain types of remedial action.

Remedies against subsidies

16) In the area of remedies, the ASCM provides for dispute settlement under the provisions of the Dispute Settlement Understanding (DSU) and countervailing action. Either of these remedies may be invoked in the case of prohibited and actionable subsidies, but non-actionable subsidies are neither subject to challenge under the DSU nor countervailable. However, if non-actionable specific subsidy programmes result in serious adverse effects to the domestic industry of a Member, such as to cause damage which would be difficult to repair, Article 9 of the ASCM provides for consultations

⁶The ASCM provides a list of the different forms of financial contribution.

between Members and remedies authorized by the Committee on Subsidies and Countervailing Measures.

17) The Agreement includes a specific definition of serious prejudice to a Member's interests which can arise as a result of adverse effects such as export displacement in the market of the subsidizing Member or in a third country market. A rebuttable presumption of serious prejudice is created where the total ad valorem subsidization of a product exceeds 5 percent, where subsidies cover operating losses,⁷ where direct debt forgiveness occurs and where grants are provided to cover debt repayment. Where serious prejudice is alleged and the matter cannot be resolved through consultations, a dispute settlement panel may be established. The ASCM also provides for recourse to the DSU in the case of adverse effects in the form of nullification or impairment of benefits accruing under GATT 1994.⁸

18) In sum, the Agreement on Subsidies and Countervailing Measures embodies a dual approach to rule-making about subsidies. On the one hand, certain subsidies are prohibited outright, and on the other, subsidies of a specified variety or value give rise to a presumption of serious prejudice and can lead directly to remedies via dispute settlement. This is a potentially powerful discipline on subsidies.

19) Countervailing action can only be taken if injury to domestic industry is caused by subsidized imports.⁹ Such duties can only be levied following a detailed investigation of the facts of the case, which include evidence of the existence of a subsidy and calculation of its value, together with evidence of actual or threatened material injury to a domestic industry, and the establishment of a causal link between subsidised imports and injury to domestic industry. The procedural and information requirements for countervailing duty investigations have become increasingly complex and detailed over the years, reflecting a perceived need to avoid, as far as possible, the misuse of this anti-subsidy remedy as a means of disguised protection. The information requirements for countervailing investigations in trade in services would be likely to prove difficult to meet, for all the reasons mentioned in paragraph 9 above.

The Agreement on Agriculture

20) The subsidy rules developed in the agricultural sector in the Uruguay Round are different from those of the subsidies agreement. In respect of both domestic support measures and export subsidies, benchmark levels of intervention have been established for Members with such subsidy levels in previous years. In the case of domestic support measures, an Aggregate Measure of Support (AMS) covering the whole sector has been established, on the basis of which Members have accepted reduction commitments from the specified benchmark level. The AMS calculation excludes certain types of subsidies whose impact on production and trade is regarded as minimal or non-existent ("green

⁷Subsidies to cover operating losses of an enterprise that are non-recurrent, one-time measures, and are given to allow time for adjustments and to avoid acute social problems are not deemed to be seriously prejudicial.

⁸The term "nullification and impairment" is used in the ASCM in the same sense as it is used in the relevant provisions of GATT 1994, and the existence of such nullification or impairment is to be established in accordance with the practice of application of these provisions.

⁹It should be borne in mind that countervailing remedies cannot provide relief in situations where subsidies cause injury with respect to sales in the export markets of a complainant (in the subsidizing country or a third country market), rather than to sales in its own market.

box” measures). Certain additional exclusions from the AMS calculation are allowed for developing countries and for measures of any country that are partially decoupled from production (blue box measures).¹⁰ The *ex ante* exclusion of certain measures is similar to the establishing of non-actionable subsidies under the ASCM. Export subsidies have been addressed in a comparable manner, and annual reduction commitments have been set, although in this case both budgetary outlay commitments and export quantity reduction commitments have been undertaken. Export subsidies are prohibited for those Members without reduction commitments (except for two measures in the case of developing countries). The domestic support and export reduction commitments extend for a six year implementation period (ten years for developing countries), beginning in 1995.

21) As far as remedies are concerned, the so-called “peace clause” contained in Article 13 of the Agreement on Agriculture determines the circumstances in which subsidies may be challenged during the implementation period. Domestic support measures falling within the “green box” are non-actionable for the purpose of countervailing action, exempt from challenge on grounds of serious prejudice (as provided for in Article XVI of GATT 1994 and the ASCM), and also exempt from non-violation nullification and impairment complaints. Domestic subsidies covered by the reduction commitment and permissible export subsidies may be subject to countervailing action, but “due restraint” must be shown in initiating countervailing duty investigations. Domestic subsidies cannot be challenged on serious prejudice or non-violation nullification and impairment grounds, unless they are applied to a specific product in excess of the level decided in the 1992 marketing year. Export subsidies fully in conformity with the provisions of the Agreement on Agriculture are exempt from actions based on Article XVI of GATT 1994 or Articles 3 (prohibition), 5 (adverse effects) and 6 (serious prejudice) of the ASCM. Any measures in excess of commitment levels may be addressed under WTO dispute settlement procedures.

22) Two aspects of the approach adopted in agriculture seem noteworthy from the perspective of possible subsidy disciplines in trade in services. First, in contrast to the ASCM, emphasis was placed on a commitment to reduce subsidy levels, in addition to establishing rules on the legal acceptability of various subsidy practices via the green box/blue box approach. Arguably, where the overall reduction commitments apply, they obviate the need to identify carefully the nature and impact of each and every subsidizing intervention -- an arduous task in the face of inadequate information. Secondly, restraints on the use of remedies against subsidies formed part of the package involving subsidy reduction commitments. It may be that subsidy disciplines structured in this manner fit well into a framework that envisages progressive liberalization, which is a defining feature of the Agreement on Agriculture. The question here is whether there might be a place for comparable step-by-step arrangements in the case of services.

¹⁰Non-exempt support levels for both Members with and without AMS reduction commitments are permitted up to a *de minimis* level of 5 percent (10 percent for developing countries).

IV. Existing subsidy and countervail disciplines in GATS

23) No systematic attempt was made to negotiate subsidy and countervail disciplines in the GATS prior to agreement on the Article XV negotiating mandate. However, the decision to postpone negotiations on this aspect of the framework of rules to govern trade in services was taken against the background of certain existing subsidy and countervail disciplines, which arose naturally from the conceptual structure of the Agreement. Before the need for additional disciplines and countervailing measures can be defined, it is necessary to develop a clear understanding of the scope of the existing disciplines. Such disciplines already exist as a result of the most-favoured-nation treatment obligation and the national treatment undertakings in the schedules of specific commitments, and under the Article VIII provisions dealing with monopolies and exclusive service suppliers. The nature of these disciplines is spelled out below.

Subsidies, most-favoured-nation treatment, and national treatment

24) Article II of the GATS requires that most-favoured-nation (MFN) treatment be extended to all services and service suppliers of any other Member in respect of all measures covered by GATS. This is a general requirement, modified only in cases where Members have inscribed MFN exemptions in their schedules. With regard to subsidies, the MFN principle plays a less important disciplining role than the national treatment principle (discussed below). However, in the absence of a national producer, and therefore, of a basis for comparison, the national treatment discipline is not operative, and hence the MFN discipline can be important in ensuring non-discrimination. The MFN discipline can also play such a role when it is possible for a foreign producer to be offered better treatment than a national producer, as, for instance, in certain investment regimes. The MFN principle significantly restricts the circumstances in which countervailing action may be applied, as is discussed in the following section.

25) When Members undertake specific commitments under Part III of GATS, they have the possibility, in accordance with Article XVII, of inscribing sectors in their schedules free of national treatment limitations under any or all modes of delivery. The national treatment obligation, as contained in Article XVII, says that •In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.• Thus national treatment commitments free of subsidy-related limitations require that any subsidies granted are non-discriminatory as between national services and service suppliers and the like services and service suppliers of other Members.¹¹ While this rule does not impose any restraint on the level of subsidies that may be granted by Members, it is nevertheless a potentially powerful discipline with respect to the non-discriminatory use of subsidies. But realization of this potential depends on the degree to which Members schedule commitments, and the extent to which those commitments are free of national treatment limitations relating to subsidies. It is noteworthy that this approach to the relation between national treatment and subsidies differs sharply from that adopted in GATT 1994. As noted above, Article III.8(b) of GATT 1994 exempts subsidies from national treatment.

¹¹Several Members have inscribed in their schedules national treatment limitations applying to all subsidies across the board. Others have done so with respect to specific modes and specific sectors.

26) The main reason for this seemingly greater degree of subsidy discipline in GATS undoubtedly lies in the fact that GATT 1994 makes national treatment a basic, non-negotiable principle of the system, whereas national treatment is negotiable via the scheduling of specific commitments under GATS. As noted above, the realization of non-discrimination as a subsidy discipline under GATS depends on the propensity of Members to schedule unencumbered specific commitments. An interesting aspect of this situation is that certain subsidy disciplines become automatically tighter under GATS with progressive liberalization -- this is not a gain that requires specific attention to subsidy rules as such.

27) In the present context, it is important to define precisely the scope of the national treatment obligation in GATS as it currently applies to subsidies, and, in particular, to clarify the implications of the modes of supply approach. The "Scheduling of Initial Commitments in Trade in Services: Explanatory Note"¹² clarifies, to an extent, the territorial scope of the national treatment obligation. Paragraph 10 of the note states that: "There is no obligation in the GATS which requires a Member to take measures outside its territorial jurisdiction. It therefore follows that the national treatment obligation in Article XVII does not require a Member to extend such treatment to a service supplier located in the territory of another Member." This would imply that a Member is not obliged to extend a subsidy provided to suppliers located in its territory to suppliers located outside its territory. It should be noted, however, that the Explanatory Note addresses specifically the treatment of suppliers and does not deal with issues that may arise in relation to the treatment of services - especially with respect to the cross-border supply of a service, when the service is supplied within the territory of a Member while the supplier is located outside it.

28) There remains a crucial question: does the national treatment obligation extend across modes of supply, or do members retain the freedom to discriminate between identical services supplied in their territory through different modes? The text of Article XVII does not suggest that the mode of supply is a consideration in defining "likeness" of a service: different modes of supply could be used to provide a "like" service. The structure of the schedules, however, implies that a Member's commitments are mode-specific, i.e. a Member making a commitment to provide national treatment, does so within a specific mode but is allowed to discriminate between the same service supplied by different modes. This is most starkly evident in commitments on market access (Article XVI), where extreme discrimination between modes is permitted, in that Members may allow the supply of a service through one mode and not through another. Nevertheless, the question remains: once a Member has allowed the delivery of a service through different modes of supply, would it be consistent with national treatment to discriminate among them?

29) If "likeness" of a service is defined independent of the mode of supply, then there is built-in protection within the Agreement for foreign suppliers of services through all modes against national subsidization in a particular mode. In effect, if a Member were to subsidize its own service or service supplier, the national treatment obligation would make it necessary to provide an "equivalent" subsidy to the services of other Members supplied within its territory, irrespective of the mode of supply. Otherwise, it could be argued that the subsidy had modified the conditions of competition in favour of services or service suppliers of the Member. On the other hand, if likeness were held to depend

¹²MTN.GNS/W/164, 3 September 1993. The document warns that "the answers should not be considered as an authoritative legal interpretation of the GATS." It is, however, the basis on which many schedules of specific commitments have been drafted.

on the mode of supply, i.e. one service is like another service only if it is supplied by the same mode, then foreign suppliers through one mode would not be protected against the national subsidization of a particular mode. In this case, there would be a gap in the current disciplines which may need to be examined.

30) These and several other issues can be illustrated with respect to certain forms of subsidies.

Production subsidies

31) Say a Member, which has bound itself to provide national treatment under all four modes, provides a production subsidy to a national services producer. For instance, the subsidy may consist of partial payment of fuel costs for transporters serving a particular domestic route. Who else could claim a right to be subsidized, given the national treatment obligation? Non-national producers of the like service located in the territory of the Member would seem to be obvious claimants. In addition, it seems clear that a subsidy provided to a supplier leads to the production of a subsidized service. Thus, any subsidy provided under modes 3 or 4, would have an impact also on competitive conditions under mode 1, because cross border suppliers would be competing against subsidized local services. Could such suppliers also claim a right to the subsidy? The answer to this question will determine whether GATS already has rules which ensure non-discriminatory conditions for suppliers through all modes.

Investment subsidies

32) These subsidies are pertinent only to mode 3, i.e. commercial presence. The national treatment obligation would seem to suggest that both national and foreign investors would qualify for any such subsidy. However, the question that arises is how recipients would be selected. Since subsidy funds are not unlimited, how could a Member legitimately choose the set of successful claimants from among the pool of current and potential investors?

Export subsidies

33) As in the case of goods, it may be possible to distinguish between production and export subsidies for services, though the empirical significance of the distinction needs to be established. Export subsidies would be those contingent on export performance. Unlike in the case of GATT, these subsidies are not prohibited in the GATS, but a Member who had committed to provide national treatment would also be obliged to provide such subsidies to all foreign producers with commercial presence in its territory. However, this obligation would not seem to affect a Member who provides a subsidy to its producer located outside its territory.

Consumption subsidies

34) Unconditional consumption subsidies respect national treatment in the widest possible sense: the consumer decision to buy is not biased towards a particular source. However, consumption subsidies contingent upon purchase from a national source would seem to violate the national treatment obligation. An interesting question arises with respect to the •consumption abroad• mode of supply. Would GATS disciplines cover conditional subsidies granted for consumption abroad - conditional, for instance, on purchase from a national supplier located abroad or conditional on purchase in a particular country? Here a tension exists between the notion of territory and wider notions of jurisdiction. There may be no obligation in the GATS which requires a Member to take measures outside its territorial jurisdiction (as paragraph 10 of the Explanatory Note states), but if a Member does take such measures, is it free to act as it chooses - or should there be an obligation to take such measures consistently with GATS principles? In the absence of such an interpretation, it is not clear what the national treatment and MFN obligations would mean with respect to consumption abroad.

Countervailing action, most-favoured-nation treatment, and national treatment

35) It should be apparent from the previous discussion that the need to develop remedies will depend on the range of the existing disciplines on subsidies in the GATS. But how much scope is there already under existing GATS rules for a Member to respond to subsidization by another Member which affects its home or export markets?

36) As GATS rules stand, it would seem that a Member would be prevented by the MFN rule from taking countervailing action against services or service suppliers of another Member, unless such action were extended on a non-discriminatory basis in respect of like services or service suppliers. It is, of course, a logical absurdity that countervailing action should be taken against all Members in response to the subsidy practices of a single Member, and the essential point is that provision for countervailing action has so far not been made under GATS. This constraint on countervailing action applies to all services, and not only in respect of those that are subject to specific commitments (unless an Article II exemption is in force). Another point to consider is whether the national legislation of Members contemplates the possibility of levying taxes or taking other restrictive measures against a subset of producers in their territory. Unless such measures were to be applied at the •frontier• like trade taxes, it may be that existing domestic legislation would have to be altered in order to apply some of the countervailing remedies that might be developed under GATS.

37) Measures which are not inconsistent with the GATS, but nullify or impair the benefits of an existing concession may give rise to a so-called •non-violation• complaint under Article XXIII:3. This Article states that •If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III [specific commitments] of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the Dispute Settlement Understanding. If the measure is determined by the Dispute Settlement Body to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI [modification of schedules], which may include modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 [compensation and the suspension of concessions] of the DSU shall apply.]

38) Most non-violation cases brought before GATT panels have involved the nullification or impairment of a negotiated tariff concession by the introduction of a subsidy. The standards for bringing a non-violation complaint may, however, be quite high: there must be a pre-existing scheduled commitment and a negation of reasonable expectations as to the value of the commitment. Two limitations are obvious: first, there would be no remedy in sectors where commitments have not been undertaken; secondly, remedies could not be sought against existing subsidies whose continuation could be reasonably expected.

39) It can be concluded that while the national treatment obligation does not impose any restraint on the level of subsidies that may be granted by Members, it is nevertheless a potentially powerful discipline with respect to the non-discriminatory use of subsidies. But realization of this potential depends, first of all, on the extent to which Members schedule commitments free of national treatment limitations relating to subsidies, and secondly, on whether the national treatment obligation is interpreted to extend across modes of supply. As far as scope for remedial action is concerned, the MFN obligation under GATS would seem to preclude countervailing action against a single Member, but there remains scope for Members to seek recourse to •non-violation• complaints if the benefits of an existing concession are nullified or impaired. In any case, there is no counterpart in the GATS to the prohibition of export subsidies in the case of goods. The importance of this gap can only be established by an assessment of the empirical significance of such subsidies.

Subsidy disciplines under the rules on monopolies and exclusive service suppliers (Article VIII)

40) Paragraph 1 of Article VIII requires Members to ensure that monopoly service suppliers do not use their monopoly power to negate the MFN commitment of Article II or to undermine any specific commitments inscribed in their schedules. Paragraph 2 states that where a monopoly competes in a sector outside the domain of its monopoly power, and the sector in question is the subject of a specific commitment, a Member must ensure that the monopolist does not abuse its monopoly position in a manner inconsistent with the scheduled commitment. Paragraph 5 makes clear that the above provisions also apply to exclusive service suppliers. Exclusive service suppliers are deemed to exist when a Member, formally or in effect authorizes or establishes a small number of service suppliers and substantially prevents competition among them within its territory. An important objective of these rules is to prevent cross-subsidization from occurring across activities or sectors. Moreover, since monopoly suppliers are defined in Article XXVIII to include both public and private monopolies, these disciplines also cover private pricing behaviour, or in other words, dumping situations involving monopolists and exclusive service suppliers. These kinds of dumping situations may differ from the more familiar GATT concept of dumping, in that the latter does not occur across activities or sectors.

V. Some issues for consideration

41) The Article XV negotiating mandate acknowledges that subsidies may distort trade, but also recognizes a positive role for subsidies and a need for flexibility, particularly for developing countries. Against this background, the present note has raised a number of issues relating to the nature of possible subsidy disciplines under GATS. In addition, the note has emphasized that difficulties relating to the identification of subsidy practices, the measurement of subsidization, the assessment of the impact of subsidies, and the design of appropriate remedies are likely to be even more acute in services than they have been in the field of goods. This is attributable, among other

factors, to the absence of adequate statistics and an agreed nomenclature of sufficient detail, the difficulty of defining unit prices for output of comparable quality for certain services, and the elusiveness of a workable concept of "likeness" among services. These kinds of problems will need to be taken into account. Some of the questions Members may wish to consider are summarized below.

- The GATT 1994 approach to subsidy disciplines defines subsidies and categorizes them in a fashion that imposes greater constraints on the use of those subsidies considered the most trade-distorting. Do Members see a role for developing rules beyond those existing already as a result of GATS disciplines on non-discrimination, which might rely on definitions and categories similar to those employed on the goods side?
- Certain aspects of subsidies in services may be quantifiable, such as the cost to the government. Do Members consider that quantitative subsidy reduction commitments of the kind applied in the agricultural sector might play a role in reducing distortions to trade in services arising from subsidies?
- If subsidies were to be defined in GATS, would Members seek to rely on a relatively narrow definition of subsidy, based on the revenue or fiscal effects of government intervention, or would Members prefer a broader definition of subsidy to take into account the subsidy-like effects of certain regulatory interventions?
- Do Members see scope for developing horizontally-based subsidy rules, or would any subsidy rules that might be developed have to be defined at the sectoral level in order to embody the desired degree of specificity and discipline?

42) The Article XV negotiating mandate talks of addressing the appropriateness of countervailing procedures, presumably with the implication that Members may or may not regard countervailing remedies as appropriate in the services context. In order for countervailing remedies to be feasible, it would be necessary to make provision for selective action, which at present would not be possible under the MFN rule (unless an MFN exemption had been taken). It is also the case that countervailing remedies cannot in any event be brought to bear when the injurious effects of a subsidy arise in respect of the exports of a complainant (i.e. in the market of the subsidizing country or of a third country).

- What role do Members see for a countervailing remedy under GATS?
- If a countervailing remedy were to be developed, how much reliance should be placed upon it in relation to the alternative approach to imposing discipline via *ex ante* control of certain subsidies, combined with multilateral enforcement through dispute settlement?

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WORLD TRADE
S/WPGR/W/7/Add. 1
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Working Party on GATS Rules

INFORMATION ON GOVERNMENT PROCUREMENT OF SERVICES

Note by the Secretariat

Addendum

Document S/WPGR/W/7 (issued on 2 February 1996) provided an illustrative list, in paragraph I.1, of the aspects of existing procurement regimes on which Members may wish to obtain information. This addendum provides a brief, and merely indicative, description of what each item on the list could include.

(i) *Laws and regulations in force*

Indication of whether there are uniform laws governing public procurement and references to relevant laws, regulations or directives.

(ii) *Procurement procedures applied*

Description of the procedures used. These could differ according to the openness of the invitations to tender, or the number of suppliers able to bid. At least three broad categories of procedures are commonly distinguished: (a) public or open tendering procedures under which all interested parties may submit a tender; (b) selective or restricted tender procedures under which participation is limited to a certain number of selected suppliers, and only these suppliers are invited to submit a tender; (c) private contract or single tender in which the awarding authority contracts suppliers individually, and sometimes only a single supplier.

A description of the circumstances in which different procedures are used. For instance, if the method used depends on the value of the procurement, the thresholds could be given.

(iii) *Publicity for inviting tenders*

Description of how intended procurements are publicised. Whether invitations to tender are published; if so, where, in what languages and the details of the intended procurement that are normally published. Whether time limits are clearly specified. Whether the extent and form of publicity differs according to tendering procedures.

(iv) *Requirements laid down for possible suppliers*

Pertains to whether there are registration, residence or similar requirements. Whether there exist lists of approved suppliers. The procedures for checking the capability of firms applying for inclusion on tenderers' mailing lists. Details on other conditions for participation required from suppliers, such as financial guarantees, commercial standing and technical qualifications. ./.

(v) *Criteria for assessing bids and awarding contracts*

Description of the criteria taken into account in the award of tenders. For instance whether obtaining the best value for money spent is the aim and whether criteria other than price are taken into account. Details of any offset provisions, such as local content, technology transfer or countertrade requirements. Whether criteria differ according to sector of the economy.

The margin of choice or discretion allowed to the purchasing authority. For instance, there could be (a) automatic tender, where the contract is awarded on the basis of predetermined criteria, either the simple criteria of price, or price and other criteria; (b) discretionary tender procedures which involve acceptance of the bid which is most advantageous - the award of the contract is based on several criteria, some of which are predetermined, but which in general leave the awarding authority a certain measure of choice; and (c) negotiated tender in which the awarding authority negotiates freely with the potential supplier or suppliers as to the conditions of the contract. The relationship between these methods and the procedures for tendering.

(vi) *Disclosure of bids received and contracts awarded*

Description of how tenders are received, registered and opened. Whether entities are required to publish details of the contracts awarded and notify unsuccessful tenderers. Whether entities are required to publish, or provide to unsuccessful bidders, pertinent reasons why their bid was rejected.

(vii) *Treatment granted to domestic and foreign products and services and/or suppliers*

Description of any law, regulation, procedure or practice through which domestic products and services and/or suppliers are accorded treatment more favourable than that accorded to foreign products and services and/or suppliers, or products and services and/or suppliers of a Member are granted more favourable treatment than those of another Member - as for instance, under the provisions of

a regional integration agreement. Whether the time limits for tendering are set so as to allow sufficient time for foreign tenderers to submit bids.

(viii) *Procedures for hearing and reviewing complaints*

Description of provisions for parties to lodge complaints against the award of a contract. Whether challenges are heard by an administrative tribunal, a court or any other review body.

WORLD TRADE ORGANIZATION

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S/WPGR/W/7
2 February 1996

(96-0387)

Working Party on GATS Rules

INFORMATION ON GOVERNMENT PROCUREMENT OF SERVICES

Note by the Secretariat

At the meeting of the Working Party on GATS Rules held on 8 December 1995, the Secretariat was requested to prepare a paper on possible approaches to collecting information relevant to the negotiations on government procurement of services. Two questions need to be addressed. First, *what* information should be collected? Secondly, *how* should the information be collected? The views expressed by Members during the meeting suggest the following possibilities.

I. What information should be collected?

Members may wish to obtain information in at least four different areas.

1. *Existing procurement regimes*

The aspects of procurement regimes which may be of interest, include:

- Laws and regulations in force;
- Procurement procedures applied;
- Publicity for inviting tenders;
- Requirements laid down for possible suppliers;
- Criteria for assessing bids and awarding contracts;
- Disclosure of bids received and contracts awarded;
- Treatment granted to domestic and foreign products and services and/or suppliers;
- Procedures for hearing and reviewing complaints.

2. *Procurement in regional and other plurilateral agreements*

The treatment of government procurement in the EU, NAFTA and other regional agreements may be reviewed.

3. *Economic importance of services procurement*

In seeking to estimate the economic importance of services procurement, several indicators may be relevant. For instance, it may be possible to obtain statistics for some countries on the share of services procurement, on both an aggregate and sectoral basis, in:

- total procurement;
- total domestic demand;
- total domestic output.

4. *Perceived obstacles to creating multilateral disciplines on services procurement*

Additional information in this area may be important in helping to identify the level of multilateral disciplines acceptable to Members. It may also be useful to obtain information on how Members view the possibility of introducing a certain degree of flexibility in the application of national treatment and other disciplines (as discussed in Section IV.1 of document S/WPGR/W/3).

II. How should the information be collected?

The appropriate method of collecting information would clearly depend on the nature of information desired. The possibilities include:

1. *A standard questionnaire*

A questionnaire would probably be best suited to collecting information on existing procurement regimes, but could also help in obtaining estimates of the economic importance of services procurement and in identifying obstacles to creating multilateral disciplines on procurement. While it is possible to obtain comprehensive and uniform information on all Members through a standard questionnaire, the process of designing such a questionnaire, obtaining responses and compiling them, would necessarily take a significant amount of time.

2. *Voluntary provision of information*

Rather than go through the process of designing and responding to a questionnaire, certain information could be provided on a voluntary basis. Members may wish to limit individual discretion on content and time of provision by reaching an agreement on both issues.

3. *Bilateral or plurilateral discussions*

Such discussions may be best suited to identifying factors affecting the creation of multilateral disciplines on procurement and to addressing some of the other questions identified in document S/WPGR/W/3.

4. *Other research*

The Secretariat could examine selected provisions affecting services procurement in regional and other plurilateral agreements.

III. Some existing sources:

1. The OECD issued volumes on Government Purchasing in 1966 and 1976 describing regulations and procedures of OECD member countries (OECD, Paris, 1966, 1976). Even though the information contained in these volumes is now out of date, they may provide some idea of what information needs to be collected and how it should be presented.
2. The Committee on Government Procurement under the Tokyo Round decided to draw up a checklist of issues which would serve as a basis for the description by each Party of the main elements of its implementing legislation (30 January 1981, GPR/4). A new checklist, based on the one contained in document GPR/4, is currently under consideration in the Committee under the new Agreement on Government Procurement in the context of a larger debate on the modalities of notifying implementing legislation.
3. APEC has recently designed a format for a survey on government procurement systems and publication arrangements for procurement opportunities in member economies.
4. Article VI:9 of the GPA that entered into force on 1 January 1981 (Article VI:10 of the 1988 revised text) required Parties to collect and provide statistical information to the Committee on Government Procurement on contracts awarded by all procurement entities under the Agreement. Article XIX:5 of the new GPA that entered into force on 1 January 1996 widens the reporting requirements to include the services contracts which are now covered by the Agreement.
5. The Trade Policy Reviews of individual countries contain a brief section on procurement laws, regulations and procedures.

WORLD TRADE ORGANIZATION

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Working Party on GATS Rules

COMMUNICATION FROM THAILAND

A Discussion Paper on GATS Emergency Safeguards

The following communication is circulated at the request of Thailand to Members of the Working Party on GATS Rules.

Rationale for GATS Emergency Safeguards

1. One of the unfinished businesses of the Uruguay Round Multilateral Negotiations is the negotiations on emergency safeguard measures.
2. Article X of the GATS provides, *inter alia*, that “there shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement”. The question in this provision is not the question of whether or not there is a need to have a provision concerning emergency safeguard measures, but the question of how best to provide a provision on emergency safeguard measures that really effective for resolving the emergency situations of trade in services on a non-discriminatory basis.
3. It is true that there are a number of safety valves provided for in the GATS; such as a Member can choose to open the service sectors that it is ready to compete with foreign companies; it can also exempt itself from applying certain advantages, favours, privileges, or immunities to all GATS Members by means of the MFN Exemption. However, it is generally agreed that the Members have the obligation to progressively liberalize their trade in services. The developing Members may have certain leniency towards such liberalization, but still they have to increase their participation in this process. The MFN Exemptions are not eternal. In principle, the MFN Exemptions must be terminated within 10 years; and in fact, they are subject to review within 5 years. In addition, once a Member opens its service sectors, the Member must extend national treatment to all other Members in relation to these service sectors without exception. Consequently, in the foreseeable future, near or far, a Member may encounter a situation in which it needs to take emergency safeguard measures to alleviate or correct the situation.

4. It may also be argued that the GATS has already contained provisions concerning restrictions to safeguard the balance of payments, general exceptions, and security exceptions; however, those safeguard provisions may not in all cases provide relieve or solution to the emergency safeguard situations.

5. In this connection, it should be mentioned that the GATT also contains the provisions concerning these matters, but yet the GATT also has the Article XIX relating to emergency action on imports of particular products. Moreover, the Agreement on Textiles and Clothing not only provides for the situations whereby normal emergency safeguard measures under the Article XIX can be invoked, it also provides for the special situations whereby special emergency safeguard measures can be applied.

6. Therefore, there should be no valid reasons for not contemplating and providing for provisions in the GATS to take care of the situations whereby the emergency safeguard measures are needed, take into account the fact that the GATS is quite new to the Members, and thereby it could not in all circumstances be envisaged to cover all of its negative impacts.

Nature of GATS Emergency Safeguards

7. In the context of trade in services, unlike the context of trade in goods whereby the goods in questions may be stopped at the borders for emergency safeguard reasons, it may be argued that the same measures as employed in the case of trade in goods cannot be undertaken. However, the measures to be employed in the context of trade in services are not necessary be similar to or the same as the measures employed in the context of trade in goods.

8. The measures in the context of the former may take the forms of a temporary freezing of the expansion of commercial presence of foreign companies in certain sector of trade in services, or a temporary suspension of the application of national treatment to the new foreign companies in that sector while recognizing the acquired rights of those who had already established their commercial presence. These are just the measures that could be conceived of as the possible measures for the emergency safeguard situations. Further researches and works must be done in order to arrive at the best possible measures.

Actions to be taken

9. If it could be of any assistance, the WTO secretariat may be asked to provide a detail study on how best to provide the said rules, and in this context, the Secretariat should undertake to explore the rules, examples and precedents on this subject not only from recent multilateral treaties, but also from the old or existing bilateral treaties, as well as national legislations on the subject. The reason for this undertaking is that the subject of trade in services on a multilateral basis may be so new and innovation that rules, examples or precedents on the subject could not be found in the recent multilateral treaties. The attempt to find the rules, examples or precedents on this subject but circumscribed it to the recent multilateral treaties may be tantamount to the attempt to find the rules, examples and precedents on this matter in the places where they may not exist. Moreover, bilateral treaties and national legislations on the subject can be treated as a reflection of practice of states on the matter, and that could be served as a starting point of the process of negotiations on the provisions on emergency safeguard measures.

10. The Secretariat may also be requested to contemplate the new appropriate rules on this matter, since the matter may be so new and has never had rules, examples nor precedents before. However that does in no way mean nor imply that the matter is not important nor necessary. On the contrary, the absence of the rules for the matter of utmost important such as this does signify that the Members of this WTO should begin the negotiations and conclude them as soon as possible with the view to providing the rules to govern the undertaking of the measures within the period provided for in the Article X of the GATS.

WORLD TRADE ORGANIZATION

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Working Party on GATS Rules

COMMUNICATION FROM AUSTRALIA

Some Conceptual Issues Concerning the Application of Safeguards to Trade in Services

The following communication is circulated at the request of Australia to Members of the Working Party on GATS Rules.

The Working Party on Rules established by the Council for Trade in Services is now considering the question of emergency safeguards in trade in services. This paper offers a preliminary consideration of some of the conceptual issues participants in the negotiations may wish to consider.

The Negotiating Mandate

The mandate for the negotiations on emergency safeguards stems from Article X.1 of the *General Agreement on Trade in Services (GATS)* which states that there shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The mandate also requires the results of these negotiations to enter into effect no later than three years from the date of the entry into force of the WTO Agreement, i.e. no later than 1 January 1998.

The Uruguay Round negotiators therefore have left it to the members of the working party to suggest rules for the imposition of emergency safeguards, subject only to the observance of the principle of non-discrimination.

The Characteristics of Services and Trade in Services

Services are intangible. For the most part, they cannot be stored. Usually there is a need for some interaction between the consumer and the producer. Many services can be traded electronically across national borders which makes the imposition of controls very difficult. Some services can only be traded through some form of commercial presence which may have an independent productive

capacity. Another way of trading services derives from the movement of people, either as consumers or as suppliers.

What all this means is that the normal border measures available under GATT Article XIX for the administration of trade in goods are available only indirectly or not at all in the case of services. It is possible also that the methods to be used would have to be fairly blunt to have any effect. The task of the working party is to determine whether alternative means to impose safeguards in trade in services are available and, indeed, practicable.

Members may also wish to consider the extent to which services are intermediate products in their economies. An inevitable effect of safeguards action is a rise in the cost of the affected product. This will give the relevant domestic industry some breathing space. However, where an imported service can serve equally as an intermediate or as a final product, and many are of this kind, an unintended result of safeguards action may be to make other industries less competitive. This is of course well understood from the experience of safeguards action in trade in goods.

Some Basic Issues

This paper accepts that countries might experience temporary import surges affecting domestic industry. It also accepts that countries might wish to have available to them a set of measures to deal with this phenomenon in order to set in train a process of domestic adjustment. This section of the paper therefore deals with some issues they will have to clarify before they can take effective safeguards action.

Emergency safeguards are temporary and selective measures designed to limit imports or limit growth in imports to enable a particular industry to adjust to heightened competition from foreign suppliers. They would require some temporary derogations from the GATS rules and commitments. In order for safeguards action to be effective, it must be relatively easy to impose, and it must have an impact within a reasonable time. Additionally, it must be applied on a non-discriminatory basis.

The *Agreement on Safeguards*, which represents the results of years of implementing and negotiating history on safeguards in the GATT for trade in goods, is the main model available to the members of the working party. It says that a country has the right to apply a safeguard measure if a product is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Clearly, if the rules of the Agreement of Safeguards were adapted to trade in services, three possible threshold issues would immediately come to mind. The first is a definition of •import in increased quantities•. The official statistics for trade in services published in most countries do not at present permit an identification of import surges in most services because of their high level of aggregation, long

interval between releases and a lack of comparability. In order to overcome this statistical problem, it could be necessary to obtain data from firms in the affected industries or from industry associations. Such an approach might lead to the production of information lacking in objectivity, particularly as the least efficient firms are most likely to initiate safeguards action. Nor is it possible to look at the statistics of the supplying countries deemed to be part of the problem, since their statistics are likely to be equally deficient.

The second issue that would have to be looked at is that of *serious* injury or threat of injury. This is related to the statistical problem, except that in this case adequate domestic production and performance statistics would have to be available for a valid demonstration that there is indeed a threat of injury. There is probably sufficient material available to assist the working party with an understanding of the meaning of injury or threatened injury. Indeed, similar issues rise in the context of anti-dumping and countervailing duties.

Third, there would have to be some agreed definition of what constitutes a like or directly competitive product. Services production can be highly differentiated because the needs of consumers vary greatly. The problem becomes immeasurably more complex when services are sold as a package of activities or as part of, for example, a piece of machinery.

Consideration of the safeguards question will also have to include another set of issues which can be raised here in a preliminary way only. First, there is, for example, the question of what constitutes domestic industry and what its standing in any safeguards action will be. Second, an analysis of how the causal link between increased imports and the difficulties experienced by the domestic industry will be assessed is necessary. Third, to what extent should it be possible for a Member to institute safeguards action, and how should any limits be defined. Fourth, the imposition of safeguards action demands a right for compensation to affected trading partners.

Two Practical Examples

The following paragraphs briefly draw attention to the kind of complexity Members can expect once they consider imposing safeguard action.

There is no doubt that in the case of airline services, it would be easy to demonstrate that an economy seat on one airline is directly competitive with an economy seat on another if they fly exactly the same route. If, however, the two airlines fly on different long-distance routes to the same or nearly the same destinations, one could argue that the seats on offer are no longer directly competitive. Aviation hard rights are, of course, not covered by the GATS, but a similar case could be made for shipping routes and capacity.

In financial services, on the other hand, product differentiation has reached a very high degree. Banks, stockbrokers, insurance companies or funds managers would agree that their products are directly competitive, but only at an aggregated level. They probably would dispute, for example, that a share trust offering access

to European shares is the same as one offering participation in Asian equities. Similarly, the prospective investor would not view them the same and would not necessarily buy the one if the opportunity to buy in the other had disappeared. Yet it is quite possible that the same firms offer them both.

Imposing Safeguards Action in Trade in Services

A fundamental question is that of how safeguards action would be taken to deal with an occurrence likely to cause or threaten serious injury. In other words, what measures would a country take in order to influence the flow of imports? In trade in goods, countries can rely in the first instance on border measures, such as the imposition of quotas or the withdrawal of a tariff concession, to achieve their aim. Such border measures would be difficult to apply to many services because of their intangible nature. It appears therefore that in services, effective border measures are likely to be limited to restrictions on the movement of consumers and suppliers.

A measure with broader applicability would be the imposition of restrictions on foreign exchange transactions. However, such a measure may not be legal under Article XI and XII of the GATS which, while allowing members to safeguard their balance of payments by adopting or maintaining restrictions on trade in services on which they have undertaken specific commitments, including on payments and transfers for transactions related to such commitments, also specifically states that such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector (Article XII.3). Safeguards actions always would entail a derogation from one or more articles contained in the GATS, and it is possible, therefore, that restrictions on foreign exchange availability could be part of legitimate safeguards action in services.

Another way to impose safeguards action would be to institute some kind of turnover tax designed to increase prices. It is doubtful in many cases, however, that the impact of such a measure could be confined to imported services.

Emergency Safeguards Action by Modes of Supply

This section of the paper attempts to identify some general issues that could arise with the application of safeguards according to the four GATS modes of supply. It does not pretend to be in any way exhaustive.

- 1) Cross-border supply: this type of supply, where there is no necessity for the exporter and the importer to meet, takes place mainly through electronic means. Although the technology might be available to influence the import of services it is unlikely that members would consider this a useful approach. It would of course be possible to issue a regulation restraining cross-border trade, but it probably could only be enforced through the foreign exchange mechanism. In this context, it is worth noting that the UNCTAD/World Bank publication *Liberalizing International Transactions in Services: A handbook* makes the point that in most cases, no sound economic case for restricting cross-border services imports by means of quantitative restrictions can be made.
- 2) Consumption abroad: this mode involves residents going abroad to purchase services. The most important of these probably are tourism services. Non-discriminatory emergency safeguards are probably easier to institute in this case. Methods used might include travel restrictions, travel taxes, a quota on new passports and a limit on the foreign exchange persons leaving the country are allowed to take with them.
- 3) Commercial presence: two distinct situations need to be considered under this mode of supply: (a) the scope for applying emergency safeguards before a commercial presence is established, and (b) the scope for doing so after establishment has occurred. In the first situation, it would be possible for a country to prevent new companies from establishing if there was a surge in foreign companies seeking to establish, and if an assessment had been made that this was causing injury or threatening to cause injury. In the second case, further action would be very difficult. It would also entail a reversal or impediment of national treatment and market access commitments for companies already established.
- 4) Presence of natural persons: it would appear that there are three distinct situations under which natural persons supply a service, as defined in Article XXVIII(b) of the GATS. The first situation is one where business visitors enter a country to explore export opportunities. The second applies to a person actually supplying or delivering a service, and the third case covers natural persons who are employees of service providers. A surge in the number of entrants in the first two cases would be relatively easy to identify and deal with, even though it is not immediately obvious why a Member would want to place restrictions on the number of persons entering for the purpose of exploring business opportunities. The remedies for this situation could involve tightening the market access limitations on the number of natural persons that may be employed in a particular service sector through a temporary change to the horizontal commitments.

The third situation covers natural persons, such as executives, senior managers, specialists and technical advisers who enter as intra-corporate transfers. Denying entry to some key personnel could certainly affect the competitiveness of a foreign supplier, but this could be very much a delayed action because it would

have to be taken when temporary entry visas expire. Visas could also be cancelled, but this may be subject to domestic appeals procedures.

Where a country decides to impose safeguards on one mode of supply only, it would of course be quite easy to circumvent the measure by supplying through the other three modes, but this would depend on the service to be supplied and the type of commitment made by the Member taking the action. To be effective, therefore, safeguards action would have to cover all modes of supply.

Conclusion

The preceding discussion does not deny that temporary import surges in services likely to cause or threaten to cause injury to domestic industry may occur. It notes, however, that the statistical backing for such a claim would not be available in most countries, bearing in mind that statistical collection and dissemination covering services production and trade needs to be improved on the whole. Safeguard action therefore would have to be based on non-transparent anecdotal evidence.

Members will have to recognise that the history of safeguards action on goods has essentially left the process in the hands of the authorities of the importing country. The results of this have often led to concerns about objectivity and fairness. The WTO *Agreement on Safeguards* has tried to codify procedural rules and to increase transparency, but matters still are largely in the hands of the investigating authorities. In the case of services, the more amorphous nature of the issues may give even greater discretion to the importing country. Some of these issues may in fact not be capable of being dealt with through rules.

The second conclusion is that the imposition of emergency safeguards in trade in services poses challenges that are even greater than those experienced in safeguard action in goods trade. This is due mainly to the fact that services are intangible, that most services cannot be stored and the ways in which services are traded.

It appears in fact that in many cases the only effective action available to GATS Members to influence trade in services would lie in a policy of allocating foreign exchange based on supporting the safeguards objective.

One aspect worth considering is whether participants in the negotiations already have domestic safeguards legislation requiring or permitting them to initiate action on the basis of criteria set out in the relevant laws. If this were the case, the working party should be able to benefit from national experience acquired in this way.

RESTRICTED

S/WPGR/W/4

24 November 1995

WORLD TRADE ORGANIZATION

(95-3741)

Working Party on GATS Rules

SAFEGUARDS PROCEDURES IN REGIONAL TRADE AGREEMENTS

Note by the Secretariat

1. At its second meeting on 18 October 1995, the Working Party requested the Secretariat to provide information available on any instances where services safeguards had been invoked, and also on procedures and criteria established under various regional trade agreements for the invocation of services safeguards. The Secretariat was unable to identify any cases where service-related safeguards had been invoked. Information on procedures and criteria for invocation of such measures under different regional agreements is presented below.

2. The information provided in this note focuses on sector-specific or industry-specific emergency safeguards in the sense of GATT Article XIX, as distinct from general safeguard provisions such as those relating to balance-of-payments measures under GATS Article XII, or safeguards of a continuing nature which constitute exceptions to general obligations in the GATS Article XIV sense. It should be emphasized, however, that these different criteria for invoking safeguards are not always treated separately, and neither are the associated procedures. The note distinguishes between the *justification* for measures, the required *procedures* for invocation, and the nature of permissible *measures*.

Procedures and Criteria Established under Regional Trade Agreements for Invoking Services Safeguards

The Convention establishing the Europe Agreement (with Poland)

Article 51 envisages that during the transitional periods, specified therein, the signatory concerned² may introduce derogating measures - including emergency safeguard measures.

Justification

¹The agreement between the EU and Poland is used as an example of the genre. Very similar agreements have been signed between the EU and a number of other East European countries.

²There is an asymmetry in the Europe Agreements, in the sense that this safeguard mechanism is not available to the European Community.

A national industry may have the right of recourse to emergency safeguards if it is:

- (i) Undergoing restructuring;
- (ii) Facing serious difficulties, particularly where these entail serious social problems;
- (iii) Facing the elimination or drastic reduction in total market share held by national companies or nationals in a given sector or industry in the importing country;
- (iv) Newly emerging.

Procedures

- (i) Prior notification to the Association Council of the concrete measures to be introduced;
- (ii) The country taking the safeguard measure must consult the Association Council;
- (iii) Measures cannot be imposed during at least 30 days following notification to the Council;
- (iv) In the case of urgency in the face of a threat of irreparable damage, measures may be imposed without prior consultations but the country taking the measure must consult the Association Council immediately after the introduction of the measure.

N.B. After the transitional periods referred to above, these measures can only be introduced by the authorization of the Association Council and under conditions determined by the latter.

Measures

The measures shall :

- (i) Be reasonable and necessary in order to remedy the situation;
- (ii) Not apply to Community companies and nationals already established in the territory of the importing signatory;
- (iii) Whenever possible, grant preferential treatment to Community companies and nationals;
- (iv) Be removed in accordance with the established transition arrangements.

The North American Free Trade Area (NAFTA)

The NAFTA contains an emergency safeguard provision relating to financial services.

Justification

(i) If the sum of the authorised capital of foreign commercial bank affiliates (as defined in the Schedule of Mexico to Annex VII), measured as a percentage of the aggregate capital of all commercial banks in Mexico, reaches 25%, Mexico may request consultations with the other parties on the potential adverse effects arising from the presence of commercial banks of the other Parties in the Mexican market.

(ii) In considering the potential adverse effects, the Parties shall take into account:

a) the risk of undue control of the Mexican payments system by non-Mexican persons;

b) the effect foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange-rate policy;

c) the adequacy of the agreement in protecting the Mexican payments system.

Procedures

(i) A request for consultations to be completed expeditiously to the parties concerned;

(ii) If the consultations fail to achieve a consensus, any party may request the establishment of an arbitral panel which would present its determination within 60 days.

Measures

No indication is provided of the nature of so-called remedial action.

Agreement on the European Economic Area (EEA)

Emergency safeguard measures are permitted under the EEA.

Justification

The criteria for triggering safeguard measures are the following:

(i) Serious economic, societal or environmental difficulties of a sectoral or regional nature that are liable to persist.

Procedures

The invoking party shall:

- (i) Notify without delay the other party through the EEA Joint Committee and provide all relevant information;
- (ii) Immediately enter into consultations in the EEA Joint Committee;
- (iii) Not take any measure until one month has elapsed after the date of notification unless consultations have been concluded earlier;
- (iv) In case of exceptional circumstances requiring immediate action excluding prior examination, protective measures strictly necessary to remedy the situation may be imposed forthwith;
- (v) Notify the measure immediately after its imposition;
- (vi) Consult on the measures every three months from the date of its adoption, with a view to its early abolition or to the limitation of its scope of application;
- (vii) The EEA Joint Committee may be asked to review such measures at any time.

Measures

- (i) Such measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation;
- (ii) Priority shall be given to such measures as will least disturb the functioning of the agreement.

The Andean Common Market

Emergency safeguard provisions are contemplated under the Cartagena Agreement.

Justification

A safeguard action may be taken if, as a result of compliance with Liberalization Program of the Agreement, a member suffers difficulties related to fiscal income.

Procedures

The member may request the Board to propose to the Commission measures to resolve the problem.

Measures

The measures are not specified, but the relative degree of economic development of the country concerned is to be taken into account.

European Community (EC)

The EEC safeguard provision under the general law of the EEC treaty encompasses a wide range of situations that might trigger safeguard action, including emergencies.

Justification

The grounds for safeguard measures are the following:

- (i) Economic difficulties resulting from commercial policy measures taken in accordance with the treaty obligations of any Member state.

Procedures

- (i) A request must be addressed to the Commission, which then decides whether or not to authorise the measure;
- (ii) In case of an emergency, during the transition period, a Member state may take the necessary measure and then notify it to affected member states and the Commission;
- (iii) The Commission is empowered to require abolition or amendment of the measure.

Measures

The types of protective measures permitted are not specified, but measures must:

- (i) Create the least possible disturbance to the functioning of the common market;
- (ii) Take into account the need to expedite, as far as possible, the introduction of the common customs tariff.

RESTRICTED

S/WPGR/W/3
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WORLD TRADE ORGANIZATION

(95-3458)

Working Party on GATS Rules

GOVERNMENT PROCUREMENT OF SERVICES

Note by the Secretariat

I. Introduction

1) The lack of multilateral rules covering government procurement has been perceived as a significant gap in the international trading system. Government procurement typically represents between 10 and 15 per cent of GNP. Procurement of services is a substantial part of this total. Currently, only the 22 signatories to the Agreement on Government Procurement (GPA) accept international disciplines on procurement in certain services sectors¹ while procurement of services in other countries is not subject to any multilateral disciplines.²

2) Article XIII:2 of the General Agreement on Trade in Services (GATS) stipulates that there shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement. Accordingly, the Secretariat was asked to prepare this note by the Council for Trade in Services at its first meeting on 1 March 1995.

3) The next section of this note describes the treatment of government procurement in the GATS. Section III examines the GPA, highlighting the disciplines relevant to procurement of services. Section IV deals with certain issues that negotiators may need to address as they take up the GATS Article XIII mandate.

II. GATS and government procurement

4) Article XIII.1 exempts laws, regulations and requirements governing government procurement from the disciplines contained in Articles II (MFN Treatment), XVII

¹There are, in fact, two Agreements on Government Procurement. The first was negotiated during the Tokyo Round of Trade Negotiations and entered into force on 1 January 1981, and the second was negotiated simultaneously with the Uruguay Round negotiations and will enter into force on 1 January 1996. The signatories to the more recent Agreement are Canada, the 15 Member States of the European Union, Israel, Japan, Korea, Norway, Switzerland and the United States. The older Agreement includes Hong Kong and Singapore but does not include Korea. This paper focuses on the more recent Agreement which is the only one of the two to cover services as such.

²The Understanding on Commitments in Financial Services, described in Section II, does create certain disciplines for Members who have subscribed to it.

(National Treatment) and XVI (Market Access). Exempted government procurement is defined in the Article to include •services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale. •

5) To an extent, Article XIII:1 of the GATS mirrors Article III:8a of the GATT which exempts government procurement of goods from the national treatment obligation.³ In both cases, the exemption reflects the continued desire of certain Members to favour local (or national) products and suppliers when awarding contracts. The MFN exemption in Article XIII of the GATS was included so that signatories to the GPA would not be obliged to extend the benefits of the national treatment and other obligations that they have agreed to under the GPA on an MFN basis to countries who have not accepted similar disciplines.⁴

³ There is no strict counterpart in the GATT for Article XVI of the GATS on Market Access, though this Article includes elements of what is contained in Articles II and XI of the GATT.

⁴Article XVII.2 of the GATT, which exempts government procurement from the provisions on state trading enterprises, states that "with respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment." The precise content of this obligation has never been tested.

6) Notwithstanding Article XIII of the Agreement, certain disciplines on procurement have already been created in the area of financial services. Section B:2 of the Understanding on Commitments in Financial Services states that •each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory.• The Understanding has been accepted as a basis for making commitments by only 27 countries (see Annex 1 of this paper). Two aspects of the Understanding are noteworthy. First, the benefits of the Understanding are also extended to Members who have not subscribed to it, and second, the coverage of the obligations has been limited only to entities established in the territory of the Member.

III. The Government Procurement Agreement and Services

7) The new GPA, to which there are 22 signatories, will enter into force on 1 January 1996. Its objective, stated in the preamble, is to contribute to the liberalization and expansion of world trade. This is to be achieved by eliminating discrimination against, and between, foreign products, services and suppliers, by enhancing the transparency of laws and practices, and by ensuring fair, prompt and effective enforcement of international provisions on government procurement. The renegotiation of the GPA during the Uruguay Round focused on expanding its coverage to services contracts, sub-central government entities and public undertakings, and on strengthening its enforcement provisions.

8) This section attempts to highlight certain aspects of the GPA which may be relevant to the negotiations on government procurement of services. It is not intended here to provide an exhaustive description of the new GPA.⁵

⁵Blank (1995), Hoekman and Mavroidis (1995), and Messerlin (1994) contain useful discussions of the GPA.

1. *Scope and coverage*

9) The Agreement applies to any law, regulation, procedure or practice regarding any procurement, above a certain threshold value, by entities which are specifically listed by each party.⁶ Furthermore, only services expressly indicated by the signatory are covered by the GPA. Thus, the GPA generally adopts a positive list approach for services in line with the approach of the GATS.⁷

10) There are three entity annexes: Annex 1 lists covered central government entities; Annex 2 lists sub-central government entities; and Annex 3 lists •all other entities that procure in accordance with the provisions of this Agreement• which is meant to include entities such as public undertakings (e.g. public utilities). Since it was not possible to arrive at a common definition of entities, particularly public undertakings, the Agreement takes the flexible approach of allowing signatories to determine their lists of entities through the exchange of specific concessions.

11) The inclusion of sub-central entities is a major feature of the new GPA. Thus, the United States Annex contains, for instance, a list of 24 States which have accepted to open their tenders to foreign competition.⁸ The Annex of the European Communities includes all sub-central entities, such as state entities in the case of federal Member states like Germany and regional entities in the case of centralised Member states like France, as well as local authorities. The Japanese Annex includes many prefectorial governments and cities covered by the Local Autonomy Law.

12) The Agreement also addresses the issue of privatization and other circumstances where governments lose influence over decisions of public entities. Article XXIV:6(b) states that •where a party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, the party shall notify the Committee.• Thus, it is the end of public control or influence rather than the change of ownership which is deemed to be the relevant consideration.

13) The coverage of services procurement in the GPA is limited by certain factors. First, as noted above, only contracts above a certain threshold value are included (see Table 1). Secondly, most Parties have excluded from their lists a range of services sectors (see Table 2). These include postal services, basic telecommunication services, audiovisual services, distribution services, educational services, health-related and social services, tourism and travel, and recreational, cultural and sporting services. The empirical significance of these exclusions is not clear. Finally, there is a range of sectoral non-application and reciprocity provisions contained in the Annexes listing the services. The most general reciprocity provisions are of the form: •a service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in Annex 4.• But there are also other specific non-application or reciprocity provisions pertaining to sectors, thresholds and the application of Article XX dealing with challenge procedures. Parties agreed with each other on the inclusion of such provisions presumably with a view to ensuring a balance of advantage in access to procurement

⁶Appendix 1 of the GPA contains five Annexes for each signatory. The first three Annexes contain lists of covered entities, the fourth an indication of covered services, and the fifth pertains to construction services.

⁷The United States is the only Party to the GPA to have included a negative list of services not covered by the Agreement.

⁸Once the main commitments in the bilateral agreement between the United States and the European Communities will have been officially notified to the signatories to the GPA and incorporated into their Annexes, the list of entities in Annex 2 of the United States will increase from 24 to 37.

opportunities (see Annex 2 of this paper for a discussion of the non-application and reciprocity provisions in the GPA).⁹

⁹These departures from the principle of MFN treatment were the reason given by Hong Kong, a signatory of the Tokyo Round procurement agreement, for declining to sign the new GPA.

2. *Basic disciplines: National Treatment and MFN*

14) Article III of the GPA states the fundamental principles of non-discrimination. National Treatment means that products, services and suppliers from other parties to the Agreement should benefit from a treatment •no less favourable• than domestic products, services and suppliers. MFN treatment prohibits discrimination between products, services and suppliers of other Parties to the Agreement. The two principles are stated both in terms of the country of origin (Article III:1) as well as in terms of the degree of foreign affiliation or ownership (Article III:2).¹⁰

15) Article III.3 states that •the provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measure affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement. •

16) This provision makes it clear that the GPA contains rules only on the government purchase of services, and does not deal with other measures affecting market access and competitive conditions for services and service suppliers. These measures remain subject to GATS rules. Thus, the benefit that may be gained from any concession on services in the context of the GPA is subject to the commitments on market access and national treatment under the GATS. It may be noted that while national treatment is a general obligation in respect of internal measures in the goods context, it is subject to all the limitations contained in a Member's schedule in the services context.

3. *Procedural disciplines: Transparency and other rules on tendering procedures*

17) In order to ensure the implementation of its basic principles, the GPA lays down detailed operational rules. There is particular emphasis on transparency at each step of the procurement process. *Ex ante* transparency requirements stipulate that adequate efforts be made to inform all interested bidders about relevant aspects of the procurement in question (Articles VII to XVII). *Ex post* transparency requirements stipulate that adequate information be provided regarding the decisions that are taken (XVIII and XIX). Article XVII specifies transparency rules vis-a-vis suppliers in countries not Parties to the Agreement on the basis of reciprocity. Article XIX lists the annual statistics that parties have to collect and provide to each other through the Committee on Government Procurement.

¹⁰Article III:1 states the principles of National Treatment and MFN in terms of the country of origin, and sets the treatment accorded to "domestic" (or local) products, services or suppliers as the standard for "National Treatment". Article III.2 prohibits discrimination within the category of "domestic" (or locally established) suppliers on the basis of foreign ownership or affiliation. The standard for "National Treatment" in Article III:2 is the treatment accorded to the "most national" of products, services or suppliers.

18) The GPA also contains an obligation to *justify* the decisions that are taken. Thus, Article XVIII:2 stipulates that each *entity* shall, if requested, provide to an unsuccessful tenderer information justifying its decision. Article XIX:2 imposes an obligation on the *procuring government* to provide, if requested by the government of an unsuccessful tenderer, information necessary •to ensure that the procurement was made fairly and impartially. •

19) Other disciplines on tendering procedure include those pertaining to: technical specifications (Article VI); qualification of suppliers (Article VIII); tender notices and their selection procedures (Article X); time-limits for tendering and delivery (Article XI); submission, receipt and opening of tenders and awarding of contracts (Article XIII);¹¹ conditions under which, and the manner in which, an entity may conduct negotiations with potential suppliers (Article XIV) and resort to limited tendering (Article XV).

4. *Enforcement mechanisms: Consultation, challenge procedures and dispute settlement*

20) Several features have been introduced in the GPA to adapt the dispute settlement rules to the specific nature of procurement - often a single event, costly to reverse, and where modifications to national rules of general application would not necessarily provide adequate guarantees of non-recurrence. One is that the signatories collectively acting as the Dispute Settlement Body may authorize consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible (Article XXII:3).

21) A second significant feature is the introduction of the challenge procedures (Article XX). Article XX:2 stipulates that •each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest. • Article XX:7(a) requires that challenge procedures must provide for rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities, which may result in suspension of the procurement process. The procedures must also provide for a correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest (Article XX:7(c)).

5. *Developing Countries: Special and differential treatment*

22) Article V of the Agreement contains special provisions on special and differential treatment of developing countries - both in terms of providing them increased opportunities to export and in imposing less stringent disciplines on them. Article V:1 obliges Parties to take into account the development, financial and trade needs of developing countries, in particular least developed countries, in the implementation and administration of the GPA. Article V:2 and V:3 state that Parties shall, both in the application of laws, regulations and procedures affecting government procurement, and in the preparation of their coverage lists, facilitate increased imports from developing countries. Article V:4 of the GPA allows developing countries to negotiate mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in their lists of entities. Article V:5 allows developing countries to request the Committee on Government Procurement to grant similar exclusions even after they have acceded to the Agreement. Articles V:4 and V:5 also allow for exclusions (presumably from the MFN rule) for developing countries participating in regional or global arrangements among developing countries. Article V also contains provisions on technical assistance for developing countries, and special provisions for least developed countries.

¹¹ It is stipulated in Article XIII:4(b) that the entity must make the award to the tenderer who is fully capable of undertaking the contract and whose tender is either the lowest or the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

23) While developed countries are forbidden the use of offsets, such as domestic content or counter-trade requirements, developing countries may continue to use them, provided they are negotiated during accession, clearly defined, and are applied non-discriminatorily (Article XVI). It is also stipulated that such offsets can only be used for qualification to participate in the procurement process and not as criteria for awarding contracts. This implies that offsets can be conditions that are specified in the tender documentation, but a firm cannot be awarded a contract on the basis of exceeding the minimum offset requirement.¹²

IV. Some issues for consideration

24) Given the GATS mandate and the existence of the GPA, a basic question to be answered is how Members would like to see the present situation regarding government procurement evolve. Would they wish to maintain the status quo, in which the GATS exemption of government procurement would coexist with the plurilateral GPA? Or is it possible to devise multilateral disciplines on government procurement within the GATS context? In the latter case, would Parties to the GPA extend its benefits on an MFN basis to all GATS Members or is a dual structure of commitments envisaged?

25) One aspect of the problem is the tension in the present context between the two fundamental principles of international trade law: national treatment and MFN. On the one hand, the elimination of the MFN exemption in Article XIII of the GATS with unchanged national treatment disciplines in countries not signatory to the GPA may not be acceptable to the GPA signatories. Even within the GPA, Parties have found it difficult to accept unconditionally an MFN obligation vis-a-vis other Parties. Most Parties have reserved the right to discriminate in particular sectors against other parties who, in their perception, have not accepted adequate disciplines. On the other hand, the countries who are not currently signatory to the GPA have generally revealed a reluctance to seek its membership.

26) Is it possible to devise disciplines on the propensity to protect in procurement which are acceptable to all countries and, at the same time, are not so weak as to prompt some to seek a derogation from the MFN principle? The next section examines alternative approaches to the question of national treatment and certain related disciplines. This is followed by a brief consideration of the extent to which these different approaches might accommodate an MFN-based set of procurement disciplines.

1. Variations on the theme of national treatment and related disciplines

¹²Israel, one of the two developing country signatories, specifies in its Annex that the maximum local content requirement is 35 per cent for the first five years of the Agreement, 30 per cent for the next four years, and 20 per cent thereafter.

27) Three possible approaches to national treatment and related disciplines for government procurement are identified below. This listing does not pretend to be exhaustive, and it should also be borne in mind that the various approaches could be combined in different ways.

(i) A basic national treatment obligation only

28) Under this scenario, Members would agree to apply national treatment in their procurement decisions. The question, then, is whether national treatment with respect to government procurement would be a general obligation for all sectors, would apply only to scheduled sectors, or would be subject to explicit limitations in scheduled sectors or with respect to certain modes of supply. Entity coverage and threshold values might also be issues needing attention.

(ii) A basic national treatment obligation reinforced by procedural and enforcement disciplines of the kind contained in the GPA

29) It has been observed that a simple national treatment requirement, as contained in Article III of the GATT, would not be enough to ensure equal treatment and non-discrimination in the area of government procurement. Signatories to the [Government Procurement] Agreement had found it necessary to develop procedural guarantees to ensure effective non-discrimination.¹³ It may, therefore, be useful to begin by asking: how do the existing GATS disciplines compare with those contained in the GPA? In other words, what would need to be added to the GATS to ensure that an elimination of the Article XIII exemption would lead to rules on procurement comparable to those in the GPA? It would seem that the GPA contains two crucial sets of disciplines: first, the procedural disciplines, which are important for making the non-discrimination obligation effective in the face of administrative discretion; and second, the enforcement mechanisms -- particularly the challenge procedures -- which are crucial for effective enforcement, given the one-shot and irreversible nature of many procurement contracts.

(iii) Diluted national treatment obligation together with acceptance of procedural and enforcement disciplines

30) Under this option the strict principle of national treatment would be temporarily sacrificed in return for increased transparency and strengthened enforcement (along the lines discussed in (ii) above). An immediate move to strictly non-discriminatory procurement may be difficult to achieve in some cases. In the present GPA, Governments are confronted with an •all or nothing• choice -- either a sector is not included at all or, if it is, procurement must be strictly non-discriminatory. If, in the GATS context, governments had the freedom to choose the degree of protection, would they be willing to include more sectors? Would other governments be willing to concede this freedom to induce greater coverage? One possibility would be for countries to maintain preference margins, but to bind them and make them subject to unilateral or negotiated reductions - in a manner analogous to tariffs.

¹³ GPA/IC/M/4

2. National treatment and MFN

31) The outcome of the discussion of procurement under the GATS Article XIII programme depends on two related questions. One concerns the level of disciplines acceptable to those Members whose procurement, in general or in specific sectors, is so far not subject to any multilateral disciplines. The second relates to the conditions under which Members who have already accepted certain disciplines under the GPA would be willing to extend MFN treatment to other Members.

32) The assumption of less stringent disciplines of the type described in the previous section may be considered by countries who have not accepted any disciplines in all or some sectors. The level of disciplines that are assumed is likely to influence the approach of Members who accept a higher standard of disciplines under the GPA. They could either extend MFN treatment towards all Members or, as is the case now, only towards those Members who accept comparable disciplines. In the former case, the outcome would be a multilateral agreement, while in the latter case, rules on procurement would retain their plurilateral character.

33) The previous discussion contains two examples of attempts to resolve the tension in the present context between national treatment and MFN. First, the GPA, in principle, already provides for the possibility of dual standards for developed and developing countries with MFN treatment for all signatories - subject, of course, to the various reciprocity provisions. Thus developing countries can negotiate mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in their lists of entities. Developing countries may also continue to use offsets, forbidden to developed countries, provided they are negotiated during accession. Secondly, in the procurement of financial services, certain Members have accepted national treatment obligations towards suppliers established in their territories. The benefits of this national treatment obligation, albeit limited, have been extended unconditionally even to Members who have not accepted any disciplines on their procurement.

34) Finally, the willingness to accept disciplines on government procurement is likely to depend on future negotiations under the GATS on measures affecting trade in services. Foreign suppliers can only effectively contest the market for government procurement if they are not unduly handicapped by restrictive trade measures. In the case of both goods and services, foreign bidders may still be obliged first to cross the hurdle of trade restricting measures (see the discussion of Article III:3 of the GPA).¹⁴ The creation of genuine international competition for procurement contracts thus depends crucially on the liberalization of trade.

3. Certain questions which the Working Party may wish to address

¹⁴One of the most important services sectors in the context of government procurement is construction. All signatories to the GPA have accepted its disciplines in this sector above a certain threshold value. Yet in the GATS, Members have usually not bound themselves to grant market access to the supply of construction services through the presence of natural persons, except for certain limited categories of intra-corporate transferees. The lack of assurance that workers can be moved to construction sites is an example of how limitations on market access may reduce the benefit of non-discriminatory government procurement.

What do Members regard as the objective of negotiations under Article XIII of the GATS? In particular, how would members like to see the present situation concerning disciplines on government procurement evolve?

What level of disciplines is acceptable to Members who have so far not assumed any international obligations on procurement?

What relationship, if any, might be envisaged between the commitments under the GPA of those Members who are Party to it, and commitments under the GATS? Under what conditions would Members who are Party to the GPA be willing to extend its benefits on an MFN basis to those who are not?

How do Members view the possibility of introducing a certain degree of flexibility in the application of national treatment and related disciplines (as discussed in Section IV.1 of this paper)? How do Members assess the relative importance of the basic national treatment obligation, on the one hand, and procedural and enforcement disciplines, on the other?

How would Members propose to define the scope of agreed obligations - i.e. in general terms, on a sectoral basis, or with specific limitations?

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**ANNEX 1: COUNTRIES WHICH HAVE BASED THEIR COMMITMENTS ON THE
•UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES •**

Aruba (Netherlands)

Australia

Austria

Belgium

Canada

Czech Republic

Denmark

Finland

France

Germany

Greece

Iceland

Ireland

Italy

Japan

Liechtenstein

Luxembourg

Netherlands

Norway

Portugal

Slovak Republic

Spain

Sweden

Switzerland

Turkey

United Kingdom

United States

ANNEX 2: THE NON-APPLICATION AND RECIPROCITY CLAUSES IN THE GPA

The reason for most of the sectoral non-application and reciprocity provisions in the Annexes of individual Parties to the GPA stems from the fact that on 15 December 1993, the time that the negotiations were concluded, certain participants, in particular the United States and the European Communities, could not reach agreement with each other on offers at the Annex 2 and Annex 3 levels (sub-central and public utilities). Moreover, the Canadians were not in a position to make, at that stage, any commitments in respect of their Provinces. The option that the negotiators were faced with was either to agree on a much smaller agreement, limited essentially to central government procurement of goods and services, or to keep on the table the rather extensive offers which countries were able to make at the Annex 2 and Annex 3 levels and to agree, at least for the time being, that countries could include in their Annexes country-specific non-application clauses and reciprocity provisions in order to provide for a mutually-agreed balance of advantage. The latter option was chosen, with the intention of using the period until the date of entry into force of the GPA, 1 January 1996, to negotiate improvements to the commitments in the Annexes that would enable a lifting of some, if not all, non-application and reciprocity clauses.

At the time of the conclusion of the GPA negotiations, on 15 December 1993, the European Communities and the United States declared their determination to expand their commitments under the GPA before 15 April 1994, and made it clear that any expansion in their respective commitments as a result of this understanding would be applied to other Parties whose offers had been accepted by them by 15 December 1993, subject to the conditions or qualifications contained in the respective Annexes of the EC and the US, and that they would not seek to rebalance the Annexes of other Parties on the strength of such expansion. As a result of further negotiations, the US and the EC negotiators reached a bilateral agreement in Marrakesh in April 1994 which was formally concluded between them in the middle of 1995. The incorporation of most of these additional commitments into the GPA, expected to take place before the entry into force of the Agreement at the beginning of next year, will mean that a substantial part, but not all, of the non-application and reciprocity provisions between these two Parties will be removed. In addition, the Canadian Annexes provided that Canada would make offers, on the basis of commitments from its Provincial Governments, to cover entities in all its Provinces within 18 months of the conclusion of the GPA. Successful negotiations between Canada and the other Members would lead to the removal, prior to the entry into force of the Agreement, of some or all non-application and reciprocity provisions between Canada and the other Members. Moreover, it should also be noted that, as a response to the use of reciprocity and non-application provisions in the Annexes, a paragraph was inserted, as Article XXIV:7(c) of the Agreement, under which the Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.

TABLE 1: THRESHOLDS IN ANNEXES 1, 2 AND 3 OF APPENDIX 1 OF THE GPA

Special Drawing Rights (SDR)
SDR 1 equals approx. \$US 1.4 (1994)

	CANADA	EC	ISRAEL	JAPAN	KOREA	NORWAY	SWITZERLAND	US
<u>ANNEX 1</u>								
Goods	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
Services except construction services	130,000	130,000	130,000	130,000	130,000	130,000	130,000	130,000
Construction services	5,000,000	5,000,000	8,500,000	4,500,000 Architectural services: 450,000	5,000,000	5,000,000	5,000,000	5,000,000
<u>ANNEX 2</u>								
Goods	355,000	200,000	250,000	200,000	200,000	200,000	200,000	355,000
Services except construction services	355,000	200,000	250,000	200,000	200,000	200,000	200,000	355,000
Construction services	5,000,000	5,000,000	8,500,000	15,000,000 Architectural services: 1,500,000	15,000,000	5,000,000	5,000,000	5,000,000
<u>ANNEX 3</u>								
Goods	355,000	400,000	355,000	130,000	450,000	400,000	400,000	400,000
Services except construction services	355,000	400,000	355,000	130,000	-	400,000	400,000	400,000
Construction services	5,000,000	5,000,000	8,500,000	15,000,000 Architectural services: 450,000	15,000,000	5,000,000	5,000,000	5,000,000

Annex 1: Central government entities

Annex 2: Sub-central government entities

Annex 3: All other entities which procure in accordance with the Agreement, which include entities such as public undertakings (e.g. public utilities).

TABLE 2: COVERAGE OF SERVICES IN THE GOVERNMENT PROCUREMENT AGREEMENT

	CANADA	EC	ISRAEL	JAPAN	KOREA	NORWAY	SWITZERLAND	US
	Exc. / Rec.	Exc. / Rec.	Exc.	Exc. / Rec.				
Business Services								
Professional	X	X	X	X	X	X	X	X
Computer	X	X	X	X	X	X	X	X
R&D	X							
Real Estate	X	X				X	X	X
Rental/Leasing	X							X
Other Business services	X	X	X	X	X	X	X	X
Communication Services								
Postal Services								
Courier Services	X	X		X		X	X	X
Basic Telecom Services								
Value Added Services	X	X		X	X	X	X	X
Audiovisual Services								X
Construction & Engineer	X	X	X	X	X	X	X	X
Distribution Services								X
Educational Services								X
Environmental Services	X	X	X	X	X	X	X	X
Financial Services	(U)	X(U)		(U)		X(U)	X(U)	X(U)
Health-Related Services								X
Tourism & Travel	X							X
Recreational, Cultural & Sport Services								X
Transport Services								
Maritime transport		X		X	X	X	X	
Internal waterways		X		X		X	X	
Air transport		X				X	X	
Space transport								
Rail transport		X			X	X	X	

Road transport		X		X	X	X	X	
Services auxiliary to all modes of transport				X	X			

X An x in a box indicates that a country has made commitments in all or part of the sector.

(u) Countries with (u) in financial services row have based their commitments in this sector on the "Understanding on Commitments in Financial Services". In addition to countries in the above table with the (u) sign, there are seven other countries with a similar commitment: Aruba, Australia, Czech Republic, Iceland, Liechtenstein, Slovak Republic, Turkey.

Exc. Countries which have exclusion clauses, limiting the scope of their commitment in GPA.

Rec. Countries which have parts or all of their commitments subject to reciprocity.

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S/WPGR/W/2

5 October 1995

WORLD TRADE ORGANIZATION

(95-2953)

Working Party on GATS Rules

SAFEGUARD PROVISIONS IN REGIONAL TRADE AGREEMENTS

Note by the Secretariat

1. At its first meeting on 17 July 1995, the Working Party on GATS Rules requested the Secretariat to examine regional trade agreements with a view to identifying examples of safeguard provisions and measures in the field of services.
2. The Secretariat has examined a sample of regional trade agreements notified to the secretariat. The kinds of safeguards provisions encountered in these agreements are summarized below. It should be noted that the list below is not intended to be exhaustive. Moreover, provisions on trade in services are currently under negotiation, or have recently been agreed, in a number of regional agreements. These include the Association of South-East Asian States Free Trade Area, the Free Trade Agreement between Colombia, Mexico and Venezuela, and the Southern Cone Common Market agreement between Argentina, Brazil, Paraguay and Uruguay.

Safeguards provisions affecting trade in services contained in regional agreements

- *The Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)* - ANZCERTA contains a protocol on Trade in Services covering both cross-border and establishment trade. The services protocol contains no safeguard measures other than general exceptions of the kind found in Article XIV of GATS.
- *The Treaty of Rome establishing the European Economic Community* - The Treaty of Rome contains a number of safeguard provisions. Article 36 allows member states to impose restrictions on imports for public policy reasons (similar to GATS Article XIV). Articles 108-109 deal with balance-of-payments safeguards (similar to GATS Article XII). Article 115 allows the Commission to authorise member states to take protective measures in cases where implementation of the common commercial policy leads to economic difficulties. Article 226 allows member states to apply for authorization to take protective measures if, during the transitional period after entry into force of the Treaty, serious economic difficulties arise for a sector or area which are likely to persist. The 1993 Union Treaty does not alter the relevant provisions in the Treaty of Rome.

It may also be noted that EU secondary law contained in directives and regulations may entertain additional safeguards.

- *The Convention establishing the European Free Trade Association* - Article 19 of the Convention contains balance-of-payments safeguards and Article 20 envisages temporary safeguards if unforeseen and serious difficulties arise or threaten to arise in a particular sector or region.
- *The North American Free Trade Agreement (NAFTA)* - NAFTA contains safeguard provisions for trade in goods in Articles 801-802, but no similar measures for trade in services. NAFTA also contains safeguard provisions relating to general and national security exceptions (Articles 2101-2102), parts of which are relevant to trade in services, and safeguards for balance-of-payments purposes (Article 2104). One safeguard measure applicable exclusively to services trade is to be found in the financial services chapter. Annex 1413.6 Section B provides that if the sum of authorized capital of foreign commercial bank affiliates reaches 25 percent of the aggregate capital of all commercial banks in Mexico, Mexico may request consultations with the other NAFTA parties on the potential adverse effects arising from the presence of commercial banks of other parties and the possible need for remedial action, including further temporary limitations on market participation.
- *The Agreement on the European Economic Area* - Chapter 4 of the Agreement (Articles 112-114) provides for safeguard measures in the event of serious economic, societal or environmental difficulties of a sectoral or regional nature that are likely to persist. The nature of permissible safeguard measures is not specified, but their application is subject to strict supervision.
- *The Europe Agreements (agreements between the EU and various East European countries)* - These Agreements contain extensive safeguard provisions in respect of the free movement of goods. In the area of establishment trade for services, the agreements contemplate the possibility of prolonging transition periods for certain sectors. The agreements also provide that during the five-year and ten-year transitional periods envisaged in the agreements, the relevant East European country may introduce safeguard measures for certain domestic sectors undergoing restructuring, facing serious difficulties, losing significant market share, or that are newly emerging. These safeguards only apply with respect to new market entrants. They may not generate any discrimination between Community companies or nationals already established in relation to the companies or nationals of the East European country concerned.
- *The Cartagena Agreement, creating the Andean Common Market* - In addition to general, balance-of-payments and goods-related safeguards, the Andean Pact contains a safeguard in Article 90 of the agreement which envisages action by member countries to resolve any problems related to fiscal income which arise as a result of liberalization commitments. Permissible measures are not specified, but this provision might affect trade in services.

- *The Free Trade Agreement between Israel and the United States* - This agreement contains a Declaration on Trade in Services, but this declaration does not contain any safeguard provisions.
- *The Free Trade Agreement between Costa Rica and Mexico* - Chapter IX of this agreement contains provisions on trade in services. A safeguard instrument has been established to protect the public interest and national security (as in Article XIV and Article XIVbis of GATS). The safeguard also covers eventualities relating to the environment, the national patrimony, and fiduciary considerations.

3. The information summarized above indicates that while virtually all regional trade agreements appear to contain a number of general safeguard provisions that might apply to trade in services, not all of them contain safeguard provisions aimed specifically at trade in services. The NAFTA provisions for Mexico in the area of financial services and the Europe Agreements contain safeguards contingent upon market opening, but relatively few agreements appear to contain such provisions. It may be noted the services-specific safeguards contained in the Europe Agreements are of limited duration in the sense of only being available during transition periods.

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WORLD TRADE ORGANIZATION

(95-1864)

Working Party on GATS Rules

EMERGENCY SAFEGUARD MEASURES UNDER ARTICLE X OF GATS

Note by the Secretariat

Background

1. Article X of the General Agreement on Trade in Services calls for negotiations on the question of emergency safeguard measures. The results of such negotiations are to take effect not later than three years from the date of entry into force of the WTO Agreement. The negotiating history of Article X suggests that the use of the phrase •negotiations on the *question* of emergency safeguard measures• (Article X.1) implies that prior to elaborating specific provisions, Members may wish to consider the broader question of whether or not it would be desirable to develop an emergency safeguard instrument in the field of trade in services.

2. The present note by the Secretariat, prepared at the request of the Council for Trade in Services at its first meeting on 1 March 1995, sets out some of the issues raised by the concept of emergency safeguards in the context of trade in services. It draws on earlier discussions that took place in the Group of Negotiations on Services, and on a previous Note by the Secretariat on this subject (MTN.GNS/W/70). This note relies heavily on comparisons with existing safeguard provisions in the field of goods. This does not imply, however, that the approach adopted in the WTO Safeguards Agreement is assumed to be the most appropriate for services, nor that comparisons will necessarily be relevant in every case.

3. The discussion of safeguards can be divided into four broad subject areas. The first relates to the objectives of safeguard action. In other words, what is it that an intervention of this kind would be designed to safeguard? Second, once the objective is clear, a definition is required of the circumstances that would constitute legal justification. This is akin to the injury test and causality determination in the Safeguards Agreement. The third question concerns the kind of measures that

might be applied, once the objectives of the action are clear and their justification has been established. In services, for example, a decision would be required as to whether specific commitments on modes of supply could be withdrawn or only modified, and whether a single safeguard action would warrant withdrawal or modification of specific commitments in more than one mode. Finally, having clarified the objectives of safeguards, established the circumstances in which safeguards may be applied, and determined the nature of safeguard measures that may be authorized, a series of questions would need to be answered about the precise modalities of safeguard action. These relate to such matters as investigations, use of provisional measures, duration, degressivity, degree of discriminatory application, compensation, and institutional provisions.

4. This note does not attempt to deal exhaustively with any of the above subject areas. Most of the discussion touches upon the first and second issues, relating to objectives and the nature of the circumstances that might call for safeguard actions. The main reason for setting aside detailed consideration of specific measures and modalities in the first instance is to avoid prejudicing prior examination of more fundamental questions relating to the rationale and feasibility of safeguard measures for trade in services. The note begins with a brief general discussion of safeguards in the services context, and then considers why and how safeguards might apply in respect of each of the four modes of supply under which specific commitments have been taken.

Safeguards in the Context of Trade in Services

5. Document MTN.GNS/W/70 discusses a very broad concept of safeguards. A distinction is made between safeguard actions that are temporary and contingent upon a particular occurrence or circumstance, and those that constitute permanent exceptions to generally applicable rules. Examples of actions falling into the first category include balance-of-payments measures, measures to counteract unfair trading practices such as dumping and subsidization, and measures to protect domestic industry from injurious foreign competition. The category of permanent safeguards includes general exceptions to address such considerations as the protection of public morals, health, safety, natural resources and national security. The GATS already contains provisions addressing a number of these matters, including Article XII (balance of payments), Article XIV (general exceptions), and Article XIV *bis* (security exceptions). In addition, Article IX of the Marrakesh Agreement provides for time-bound waivers, under exceptional circumstances, from WTO obligations, including those of the GATS.

6. It is assumed in this note that the emergency safeguard provisions envisaged in Article X would be available to service suppliers faced with unexpected adverse developments arising from Members' obligations under the GATS. It is also assumed that emergency safeguards would be temporary in nature, and that if a longer-term difficulty arose as a result of GATS commitments, these could be renegotiated under Article XXI. Defined in this manner, any Article X safeguard provisions that might be adopted would closely parallel, at least conceptually, what is contained in the Safeguards Agreement. The major difference between existing safeguards in goods and those that might be developed in services is that the latter would have to deal both with cross-border service supply and with establishment-

based service supply, whereas safeguards in the field of goods are only concerned with cross-border trade. In considering the circumstances that might give rise to a need for safeguard measures in services, it is important to note that the GATS as it stands, and pending the achievement of higher levels of liberalization, embodies considerable scope for limiting the extent of Members' obligations.

7. The GATS permits signatories to circumscribe their commitments in several ways. First, the GATS contains relatively few general obligations that apply in the absence of specific commitments. Moreover, the single most important general obligation -- the most-favoured-nation (MFN) rule of Article II -- will not apply if a Member exempts certain measures from MFN at the time of entry into force of the agreement. Secondly, specific commitments only apply if a sector has been scheduled, and all Members have omitted sectors from their positive lists of commitments. Even where a sector has been scheduled, particular modes of delivery may be excluded from any commitment, and the precise terms of commitments undertaken can be conditioned through market access limitations (Article XVI) and national treatment limitations (Article XVII). These opportunities for the *ex ante* circumscription of GATS obligations clearly influence the nature and scope of any safeguard measures that Members might wish to introduce. Indeed, it is this built-in capacity to limit the coverage of obligations that made it possible for governments to agree that their GATS obligations would enter into force before Article X safeguards became available.

8. These considerations suggest that the present discussion of safeguards is most relevant to future commitments. In other words, the desirability of a new GATS safeguard mechanism would be most appropriately assessed in the context of higher levels of commitment. Thus, the justification for designing any new safeguard mechanism would be its contribution to future market opening. The security of knowing that appropriate safeguards were available against unforeseen developments might induce higher levels of commitment than Members would otherwise be willing to assume. Viewed in this manner, it would seem essential that any safeguard measures be accessible enough to make Members confident that their commitments can be modified if extenuating circumstances so demand, but not flexible to the point where the value of the underlying commitments themselves is called into question. It should be emphasized that the argument here is not for excluding commitments already undertaken from eligibility for any safeguard remedies that Members might decide to establish, but rather to think of the design of an emergency safeguard mechanism in the context of what the GATS agreement might look like in the future.

Possible Safeguard Actions under Alternative Modes of Supply

Cross-border supply of services (Mode 1)

9. Of all the modes, cross-border supply of services is the one most analogous to the situation addressed by the Safeguards Agreement. The objective of a safeguard action under Mode 1 would be to provide relief to a domestic industry faced with competition from a like or directly competitive service supplied by an exporter from another country. Protection of a domestic industry in this fashion is

precisely what the Safeguards Agreement does in respect of goods, and similar considerations as to the desirability or otherwise of such action would apply.

10. As already noted, questions relating to injury, causality, available measures or modalities for their application will not be addressed in the present paper. Suffice it to note, however, that here, as elsewhere in services, complexities of a kind not encountered in the field of goods may arise as Members attempt to define available safeguard measures and the circumstances of their application.

Consumption abroad (Mode 2)

11. No parallel exists with the Safeguards Agreement under this mode. A government might wish to control consumption abroad in order to induce or force its consumers to purchase identical or similar services in their own countries. This would be a measure aimed at protecting a domestic industry. Among the measures that could be applied, depending on the activity involved, are quantitative controls or fiscal charges on foreign consumption, physical controls on travel, and exchange controls. The possibility of using exchange controls would, of course, be complicated by the provisions of Article XI and Members' obligations under the Articles of Agreement of the International Monetary Fund. Depending on the nature of the activity involved, Mode 2 safeguard measures could be quite direct (e.g. restricting the consumption of foreign financial services for which domestic substitutes are available). In other instances, Mode 2 safeguards would be an indirect and therefore relatively inefficient way of protecting a domestic industry (e.g. prohibiting consumption of foreign tourist services in the hope that consumers would consume domestic tourist services instead). In general, the effective implementation of safeguard measures under Mode 2 would be complex from an enforcement perspective, as transactions occur outside the jurisdiction of the Member concerned.

Commercial presence (Mode 3)

12. It is useful to consider commercial presence in terms of two separate aspects of commitments -- the commitment to allow a service supplier to enter the market and the post-establishment commitment relating to production in the territory of the host Member, for domestic consumption or export. The first part of the commercial presence commitment -- allowing foreign investment to occur or a service supplier to enter the market -- involves a cross-border transaction (i.e. a factor of production crossing the border in order to establish a local presence). If a commercial presence commitment has been made, and foreign penetration of the market occurs at a pace that creates difficulties for established service suppliers in the host country, a government might wish to apply a safeguard to slow down the entry of foreign service suppliers.

13. Commitments relating to post-establishment trade might also be attenuated by safeguard action. In this case, however, a safeguard measure would, by definition, have to distinguish between service suppliers of national origin and service suppliers of other Members. Otherwise, there would be no point in taking a safeguard measure in respect of post-establishment trade subject to commitments under GATS. The objective of such action would be to protect suppliers of national origin from competition with locally-established foreign suppliers, and the

action would introduce a departure from national treatment, or further extend such a departure already inscribed in the limitations columns of a Member's schedule of specific commitments. From the point of view of affected foreign suppliers, a basic question of profitability could arise, since a safeguard action against such suppliers would normally reduce production and eat into profitability. The prospect of being subject to such action may inhibit investors from establishing a commercial presence in the first place. A basic question to be considered, therefore, is whether it would make sense to protect national suppliers *vis a vis* established foreign suppliers operating under similar or identical conditions in the same market. Furthermore, it would be difficult to justify this kind of safeguard action on the basis of reduced employment levels or similar grounds, since the only beneficiaries would be suppliers of national origin, rather than all domestically-based suppliers (i.e. employers) in the industry concerned.

Movement of natural persons (Mode 4)

14. A safeguard action under Mode 4 would be designed to protect natural persons of national origin from competing with natural persons of another Member. The protection would apply in respect of natural persons who are employees of service suppliers as well as natural persons who are independent suppliers of services. In similar fashion to Mode 3, a distinction is useful between the authorization to establish a presence in the host country and the right to sell services once domestically located. The right of service suppliers to employ natural persons or of natural persons who are independent service suppliers to establish a presence could be circumscribed through a safeguard measure if a scheduled commitment created an unanticipated inflow of natural persons of other Members, and this were judged to cause injury to competing local service suppliers. Such action would effect the right of entry *per se* and not any rights during the temporary stay.

15. By contrast, safeguard actions affecting natural persons already residing and working in the host country would, as with the investment case under Mode 3, necessarily entail discrimination between national and foreign service suppliers. A similar question arises as to the desirability of subjecting such suppliers to restrictions of this nature, once they have established a physical presence in the territory of another Member. It may be noted, however, that in this case an argument based on employment considerations would carry more weight than under Mode 3.

Summary and Conclusions

16. This note has suggested that the discussion on safeguards might usefully be divided into different topics, as this would clarify issues and ensure that more basic questions about how to approach the subject matter were addressed prior to consideration of specific details relating to any safeguard mechanisms to be developed. A four-fold distinction was proposed:

- (i) *Objectives* -- The objective of safeguard action, or the target of relief from unforeseen circumstances arising as a result of commitments under GATS.

- (ii) *Circumstances triggering safeguard actions* -- The standards to be established for taking action, or in other words the definition of the circumstances that would trigger safeguard measures
- (iii) *Authorized measures* -- The nature and scope of authorized safeguard measures.
- (iv) *Modalities* -- The details of safeguard disciplines, including in relation to procedures.

17. Many alternative approaches to emergency safeguards for services could be envisaged. On the basis of the above distinctions, however, the present note has concentrated primarily on certain aspects of the first two categories above. Several broad questions arise from the foregoing discussion. These are summarized below.

- Most obligations under the GATS only arise in the context of specific commitments. The most significant exception to this is the general applicability of the MFN rule, but even here exemptions may be taken. Members also enjoy ample scope to limit the coverage of their specific commitments. They can omit sectors and modes within sectors from their specific commitments, and they can impose market access limitations and qualify national treatment in their schedules. Members may also renegotiate scheduled commitments under Article XXI. In view of these options, what additional safeguard mechanisms might be required in the GATS?
- If the justification for a safeguards mechanism is that it will permit Members to assume higher levels of commitment under GATS, then is it possible to conceive of a mechanism that is neither so rigid as to preclude its use, nor so flexible as to render meaningless the commitments it is designed to protect?
- Members were able to allow their GATS commitments to go into effect without having developed a safeguard mechanism. Is it valid to argue from this observation that any justification for safeguards should be predicated upon higher levels of commitment in the future?
- Is it possible to avoid distinguishing among modes of supply when contemplating a safeguard mechanism under GATS? If mode-specificity is essential, is there a risk that undesirable distortions may be introduced for service suppliers when choices are exercised among alternative modes in the application of a safeguard measure? Are safeguards less easy to justify or implement under some modes of supply than others?
- Does the case for safeguards vary depending upon the sector to which they might be applied?
- Under Modes 3 and 4, a choice must be made as to how the •domestic industry• is to be defined. The choice is between a definition encompassing both national suppliers and suppliers of other Members, or a definition covering only national suppliers. Are there circumstances in which the narrower definition might be justified?

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Government procurement: the plurilateral agreement

The Government Procurement Committee oversees the work of the Agreement on Government Procurement (GPA). The GPA is a plurilateral agreement – only some countries (members of the WTO) are parties to this agreement.

See also:

> [Transparency in government procurement](#)
> [Government procurement in services](#)

> [The starting point: How government procurement is exempt from the usual rules](#)

What is the Government Procurement Agreement?

[Brief introduction](#) (in “Understanding the WTO”, the guide to the WTO)

[What the Government Procurement Agreement says](#) – a more detailed and technical overview

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ON THIS PAGE: [Civil aircraft](#) [Government procurement](#) [Dairy and beef](#)[home](#) > [the wto](#) > [what is the wto?](#) > [understanding the wto](#) > [plurilaterals](#)**UNDERSTANDING THE WTO: THE AGREEMENTS****Plurilaterals: of minority interest**

For the most part, all WTO members subscribe to all WTO agreements. After the Uruguay Round, however, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as “plurilateral agreements”. All other Tokyo Round agreements became multilateral obligations (i.e. obligations for all WTO members) when the World Trade Organization was established in 1995. The four were:

- [trade in civil aircraft](#)
- [government procurement](#)
- [dairy products](#)
- [bovine meat](#).

The bovine meat and dairy agreements were terminated in 1997.

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Understanding the WTO

- +  Basics
- +  Agreements
- +  Settling disputes
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More introductory information> [The WTO in Brief](#)> [10 benefits](#)> [10 misunderstandings](#)**Fair trade in civil aircraft** [back to top](#)

The [Agreement on Trade in Civil Aircraft](#) entered into force on 1 January 1980. It now has 30 signatories. The agreement eliminates import duties on all aircraft, other than military aircraft, as well as on all other products covered by the agreement – civil aircraft engines and their parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components. It contains disciplines on government-directed procurement of civil aircraft and inducements to purchase, as well as on government financial support for the civil aircraft sector.

Government procurement: opening up for competition [back to top](#)

In most countries the government, and the agencies it controls, are together the biggest purchasers of goods of all kinds, ranging from basic commodities to high-technology equipment. At the same time, the political pressure to favour domestic suppliers over their foreign competitors can be very strong.

An [Agreement on Government Procurement](#) was first negotiated during the Tokyo Round and entered into force on 1 January 1981. Its purpose is to open up as much of this business as possible to international competition. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers.

The agreement has 28 members. It has two elements – general rules and obligations, and schedules of national entities in each member country whose procurement is subject to the agreement. A large part of the general rules and obligations concern tendering procedures.

The present agreement and commitments were negotiated in the Uruguay Round. These negotiations achieved a 10-fold expansion of coverage, extending international competition to include national and local government entities whose collective purchases are worth several hundred billion dollars each year. The new agreement also extends coverage to services (including construction services), procurement at the sub-central level (for example, states, provinces, departments and prefectures), and procurement by public utilities. The new agreement took effect on 1 January 1996.

It also reinforces rules guaranteeing fair and non-discriminatory conditions of international competition. For example, governments will be required to put in place domestic procedures by which aggrieved private bidders can challenge procurement decisions and obtain redress in the event such decisions were made inconsistently with the rules of the agreement.

The agreement applies to contracts worth more than specified threshold values. For central government purchases of goods and services, the threshold is SDR 130,000 (some \$185,000 in June 2003). For purchases of goods and services by sub-central government entities the threshold varies but is generally in the region of SDR 200,000. For utilities, thresholds for goods and services is generally in the area of SDR 400,000 and for construction contracts, in general the threshold value is SDR 5,000,000.

Dairy and bovine meat agreements: ended in 1997 [back to top](#)

The [International Dairy Agreement](#) and

International Bovine Meat Agreement were scrapped at the end of 1997. Countries that had signed the agreements decided that the sectors were better handled under the Agriculture and Sanitary and Phytosanitary agreements. Some aspects of their work had been handicapped by the small number of signatories. For example, some major exporters of dairy products did not sign the Dairy Agreement, and the attempt to cooperate on minimum prices therefore failed – minimum pricing was suspended in 1995.



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GOVERNMENT PROCUREMENT: THE PLURILATERAL AGREEMENT

Overview of the Agreement on Government Procurement

Procurement of products and services by government agencies for their own purposes represents an important share of total government expenditure and thus has a significant role in domestic economies.

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Procurement of products and services by government agencies for their own purposes represents an important share of total government expenditure and thus has a significant role in domestic economies. While ensuring best value for money will be secured through an open and non-discriminatory procurement regime, governments sometimes seek to achieve certain other domestic policy goals through their purchasing decisions, such as promotion of local industrial sectors or business groups. Measures to this effect may be either explicitly prescribed in national legislations, for example prohibitions against the purchase of foreign goods or services or from foreign suppliers, preference margins, set-asides and offsets, or in the form of less overt measures or practices which have the effect of denying foreign products, services and suppliers the opportunity to compete in domestic government procurement markets, including excessive use of single or selective tendering, non-open technical specification requirements and, in particular, lack of transparency in tendering procedures including contract awards. Such discriminatory government procurement procedures and practices can lead to distortions in international trade.

Government procurement has been effectively omitted from the scope of the multilateral trade rules under the WTO, in the areas of both goods and services. In the General Agreement on Tariffs and Trade, originally negotiated in 1947, government procurement was explicitly excluded from the key national treatment obligation. More recently, government procurement has been carved out of main commitments of the General Agreement on Trade in Services. Since it is estimated that government procurement typically represents 10-15% of GDP, this represents a considerable gap in the multilateral trading system.

A growing awareness of the trade-restrictive effects of discriminatory procurement policies and of the desirability of fulfilling these gaps in the trading system resulted in a first effort to bring government procurement under internationally agreed trade rules in the Tokyo Round of Trade Negotiations. As a result, the first Agreement on Government Procurement was signed in 1979 and entered into force in 1981. It was amended in 1987, with this amended version entering into force in 1988. In parallel with the Uruguay Round, Parties to the Agreement held negotiations to extend the scope and coverage of the Agreement. The Agreement on Government Procurement (1994) (GPA)

was signed in Marrakesh on 15 April 1994 — at the same time as the Agreement Establishing the WTO. The new Agreement entered into force on 1 January 1996. The GPA is one of the "plurilateral" Agreements included in Annex 4 to the Agreement Establishing the WTO, signifying that [not all WTO Members](#) are bound by it.

According to the statistics collected under the Tokyo Round Agreement, that Agreement applied annually to a total value of contracts of around US\$30 billion in 1990-94. Under the new Agreement, the value of procurement that is opened up to international competition is estimated to have increased by ten times, with the extension of rules to cover procurement of services as well as goods and to cover sub-central entities and public utilities as well.

Main features

The GPA establishes an agreed framework of rights and obligations among its Parties with respect to their national laws, regulations, procedures and practices in the area of government procurement. The cornerstone of the rules in the Agreement is non-discrimination. In respect of the procurement covered by the Agreement, governments Parties to the Agreement are required to give the products, services and suppliers of any other Party to the Agreement treatment "no less favourable" than that they give to their domestic products, services and suppliers and not to discriminate among goods, services and suppliers of other Parties (Article III:1). Furthermore, each Party is required to ensure that its entities do not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership and do not discriminate against a locally-established supplier on the basis of country of production of the good or service being supplied (Article III:2). In order to ensure that the basic principle of non-discrimination is followed and that access to procurement is available to foreign products, services and suppliers, the Agreement lays heavy emphasis on procedures for providing transparency of laws, regulations, procedures and practices regarding government procurement.

Scope and coverage [Back to top](#)

The Agreement does not apply to all government procurement of the Parties. The obligations under the Agreement apply to procurement:

- by the procuring entities that each Party has listed in its schedule in Annexes 1 to 3 of Appendix I, relating respectively to central government entities, sub-central government entities and other entities such as utilities;
- of goods; and
- all services and construction services that are specified in positive lists, found respectively, in Annexes 4 and 5 of Appendix I;
- in respect of procurement contracts above certain threshold values. Each Party indicates [the levels of minimum thresholds](#) that apply to the procurement of goods and services under Annexes 1, 2 and 3 entities (Article I:4).

The Agreement authorizes Parties to modify the mutually agreed coverage of Appendices I to IV, subject to the procedures for rectification and modification specified in Article XXIV:6. Since its signature in April 1994, the Agreement's scope has been expanded

through the incorporation in it of the results of a series of bilateral agreements between individual Parties. A loose-leaf system for Appendices to the Agreement is designed to reflect the up-to-date status of the [Appendices](#) as such changes occur.

When reading the schedules in Appendix I to ascertain whether a particular procurement contract is covered by the Agreement, it is important to check not only whether the procuring entity is covered, the threshold level and, if the contract is for a service, whether that service is covered, but also the General Notes at the end of most Parties' schedules which provide for a number of exceptions. It should be noted that exceptions from the obligations of the Agreement are also allowed for developing countries in certain situations (Article V) and for non-economic reasons, for example to protect national security interests, public morals, order or safety, human, animal or plant life or health or intellectual property, etc. (Article XXIII).

The Agreement (Article IX:11) requires that notices of invitation to participate in an intended procurement make it clear, either in the notice itself or in the publication in which it appears, whether the procurement in question is covered by the Agreement.

Tendering procedures

The Agreement contains a number of detailed procedural obligations which procuring entities have to fulfil to ensure the effective application of its basic principles (Articles VII to XVI). The purpose of these procedural requirements is to guarantee that access to covered procurement is effectively open and that an equal opportunity is given to foreign suppliers and suppliers in competing for government contracts.

The Agreement allows the use of open, selective and limited tendering procedures, provided they are consistent with the provisions laid out in Articles VII to XVI.

- Under **open procedures** all interested suppliers may submit a tender (Article VII:3(a)).
- Under **selective tendering procedures** only those suppliers invited to do so by the entity may submit a tender (Articles VII:3 (b) and X). To ensure optimum effective international competition, purchasing entities are required to invite tenders from the maximum number of foreign suppliers. Safeguards to ensure that the procedures and conditions for qualification of suppliers do not discriminate against suppliers of other Parties are set out in Article VIII. For example, any conditions for participation in tendering procedures by suppliers shall be limited to those that are essential to ensure the firm's capability to fulfil the contract and shall not have a discriminatory effect. Once a year the entities using the selective tendering method are required to publish, in a publication indicated in Appendix III to the Agreement, their lists of qualified suppliers, and to specify the period of validity of those lists and the conditions that need to be met for inclusion of interested suppliers in the lists (Article IX:9).
- Under **limited tendering procedures** the entity contacts the potential suppliers individually (Article VII:3(c)). The Agreement closely circumscribes the situations in which this method can be used, for example in the absence of tenders in response to an

open tender or selective tender or in cases of collusion, when the product or service can be supplied only by a particular supplier, or for reasons of extreme urgency brought about by events unforeseeable by the entity (Article XV).

Entities may hold **negotiations** with suppliers making tenders, provided this is indicated in the initial tender notice or it appears from the tender evaluation that no one tender is the most advantageous and subject to safeguards to ensure that such negotiations do not discriminate between suppliers (Article XIV).

The Agreement prescribes certain minimum **deadlines** that must be allowed for the preparation, submission and receipt of tenders to enable responsive tendering (Article XI:2). These must be set long enough to allow all suppliers, domestic and foreign, to prepare and submit tenders before the closing of the tendering procedures. In general the minimum shall be 40 days from the date of publication of an invitation to tender. The minimum time-limits for receipt of tenders may be reduced to 25 or even 10 days in certain well-defined circumstances.

In the **tender documentation** the purchasing entity is required to give all necessary information related to the procurement in question to enable potential suppliers to submit responsive tenders, including information required to be published in tender notices and other important information, for example economic and technical requirements, financial guarantees and the criteria for awarding the contract and procedural information such as the closing date and time for receipt of tenders (Article XII).

The objective of the procedural rules for **submission, receipt and opening** of tenders is to ensure fairness, equity and transparency in the procurement process (Article XIII:1-3). All tenders solicited under open and selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings.

Only tenders that conform to the essential requirements of the tender notice or documentation and are from a supplier which complies with the conditions for participation can be considered for **award**. Entities have the obligation to award contracts to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which is determined to be the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation. An entity that has received a tender abnormally lower than other tenders may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract (Article XIII: 4).

The modes of transmission of data foreseen under the relevant provisions of the Agreement are telex, telegram, facsimile. The Agreement recognizes the fact that its provisions do not take into account the rapidly emerging use of information technology in government procurement. In order to ensure that it does not constitute an obstacle to technical progress in this area, the Agreement calls for regular consultations in the Committee regarding developments in information technology and, if necessary, negotiation of modifications to the Agreement itself (Article XXIV:8).

Other provisions for open procurement [Back to top](#)

The use of offsets – measures to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements – are explicitly prohibited in the Agreement. Notwithstanding this, developing countries may negotiate, at the time of their accession, conditions for the use of offsets provided these are used only for the qualification to participate in the procurement process and not as criteria for awarding contracts (Article XVI).

The Agreement contains obligations on **technical specifications** in order to prevent entities from discriminating against and among foreign goods and suppliers through the technical characteristics of products and services that they specify (Article VI). Technical specifications shall be in terms of performance rather than design, and be based on international standards, where they exist, or otherwise on national technical regulations, recognized national standards, or building codes.

Prior information

Prior to the actual tendering process, Parties are required to publish an invitation to participate in the form of a **tender notice** in a publicly accessible publication indicated in Appendix II to the Agreement. The purpose is to inform all interested suppliers about the procurement opportunity and the relevant aspects of the procurement in question. Entities at central government level in Annex 1 are required to use a notice of proposed procurement, whereas other entities in Annexes 2 and 3 may use a notice of planned procurement (Article IX).

Post-award information and publication [Back to top](#)

Information must also be provided, after the award of the contract, on the award decision in the form of a notice, giving information on such matters as the nature and quantity of the products and services in the contract award, the name and address of the winning tenderer, and the value of the winning award or the highest and the lowest offer taken into account in the award of the contract (Article XVIII:1).

Moreover, in response to a request from a supplier from a Party to the Agreement, the procuring entity must provide prompt and pertinent information on: its procurement practices; an explanation of the reasons why a supplier's application to qualify was rejected; why its existing qualification to tender was brought to an end; and on the characteristics and relevant advantages of the tender selected (Article XVIII:2). However, entities are entitled to withhold certain information on grounds of confidentiality (Article XVIII:4). The Agreement provides for the protection of confidential information (Article XIX:4). In addition, the government of an unsuccessful tenderer, Party to the Agreement, may seek such additional information on the contract award as is necessary to ensure that the procurement was made fairly and impartially (Article XIX:2).

There is a general requirement to publish laws, regulations, judicial decisions, administrative rulings of general application and any procedures regarding government procurement covered by the Agreement. The relevant publications are listed in Appendix IV (Article XIX:1). As a further element of transparency under the Agreement, each government must collect and provide to the other Parties, through the Committee, statistics on its procurement covered by the Agreement (Article XIX:5).

Special rules for developing countries [Back to top](#)

The Agreement recognizes the development, financial and trade needs of developing countries, in particular least-developed countries, and allows special and differential treatment in order to meet their specific development objectives (Article V:1). Development objectives of developing countries should be taken into account in the negotiation of coverage of procurement by entities in developed and developing countries (Article V:3-7). Article V also contains provisions on: technical assistance (Article V:8-11); establishment of information centres giving information on procurement practices and procedures in developed countries (Article V:11); special treatment for least-developed countries (Article V:12 and 13); and review of the application of Article V (Article V:14 and 15).

Enforcement [Back to top](#)

Disputes between Parties under the Agreement are subject to the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) (Article XXII:1). Because of the plurilateral nature of the Agreement, Article XXII contains a number of special rules or procedures (Article XXII:3, 5 and 6). Of particular interest is the provision disallowing so-called "cross-retaliation" – the suspension of concessions or other obligations under the GPA as a result of disputes arising under the other WTO Agreements as well as suspension of concessions or other obligations under any other WTO Agreement because of any dispute arising under the GPA (Article XXII:7). Moreover, under the Agreement the DSB has the authority to authorize consultations among parties to the dispute regarding remedies when withdrawal of violating measures is not possible (Article XXII:3).

As a new and unique feature of the enforcement procedures in the WTO system, Article XX of the GPA sets out mandatory requirements for the establishment of a domestic **bid challenge system**, giving suppliers believing that a procurement has been handled inconsistently with the requirements of the GPA a right of recourse to an independent domestic tribunal. Parties may confer the authority to hear challenges by suppliers on national courts or on an impartial and independent review body. In the event that a bid challenge is heard by a review body which does not have the status of a court of law, either its decisions must be subject to judicial review or it must follow the procedures/criteria laid down in detail in the Agreement (Article XX: 6(a)-(g)). The challenge body must have the authority to order the correction of a breach of the Agreement or compensation for the loss or damages suffered by a supplier, but this may be limited to costs for tender preparation or protest. Pending the outcome of the challenge, it must be able to order rapid interim measures, including the suspension of the procurement process, to correct breaches of the Agreement and to preserve commercial opportunities (Article XX:7 (a)-(c)).

contact us : World Trade Organization, rue de Lausanne 154, CH-1211 Geneva 21, Switzerland



GOVERNMENT PROCUREMENT: THE PLURILATERAL AGREEMENT

Committee on government procurement

The committee handling the plurilateral agreement, and its observers

Parties to the agreement (committee members)

Canada, European Communities (including its 25 member States: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom), Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Netherlands with respect to Aruba, Norway, Singapore, Switzerland, United States

Negotiating accession

Albania, Bulgaria, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman, Panama, Chinese Taipei

Observer governments

Albania, Argentina, Australia, Bulgaria, Cameroon, Chile, China, Colombia, Croatia, Georgia, Jordan, Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Republic of Armenia, Sri Lanka, Chinese Taipei, Turkey

Observers – intergovernmental organizations

International Monetary Fund
Organization for Economic Cooperation and Development
United Nations Conference on Trade and Development
International Trade Centre

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Committee on Government Procurement

**REPORT OF THE COMMITTEE ON GOVERNMENT PROCUREMENT
(DECEMBER 2004 – OCTOBER 2005)**

I. GENERAL

1. This Report covers the period since the Committee's previous Annual Report¹, that is December 2004 – October 2005. It is issued pursuant to Article XXIV:7(a) of the Agreement on Government Procurement.

2. Since the last Annual Report, the Committee has held four formal meetings: on 16 December 2004, on 14 March, 21 July and 14 October 2005.² The first two of these meetings were chaired by Mr. Niklas Bergström (Sweden), and the latter two by Ambassador Tae-yul Cho (Korea).³

3. The Committee has also held a series of informal meetings, pursuing negotiations under Article XXIV:7 of the Agreement on Government Procurement, in the weeks of 14 March, 30 May, 18 July and 10 October 2005, respectively.

4. The following WTO Members are covered by the Agreement: Canada; the European Communities, including its 25 member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States.

5. Twenty WTO Members have observer status in the Committee on Government Procurement: Albania, Argentina, Armenia, Australia, Bulgaria, Cameroon, Chile, China, Colombia, Croatia, Georgia, Jordan, the Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Sri Lanka, Chinese Taipei and Turkey. Three intergovernmental organizations, IMF, OECD and UNCTAD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

A. THRESHOLDS

6. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies⁴, Korea notified its threshold figures expressed in national currencies for 2003-2004⁵, and

¹ GPA/82, dated 26 November 2004.

² GPA/M/25-27, dated 18 January, 13 April and 30 August 2005, respectively.

³ At the meeting of 14 March 2005, the Committee elected Ambassador Tae-yul Cho (Korea) as its Chairman with effect as of the end of the week of 14 March 2005 (GPA/M/26, dated 13 April 2005, para. 2).

⁴ GPA/1, dated 5 March 1996, Annex 3.

⁵ GPA/W/251, dated 18 February 2003.

Switzerland notified its threshold figures expressed in national currencies for 2004.⁶ The following Parties have provided information on their threshold figures expressed in national currencies for 2004-2005: Canada; the European Communities; Hong Kong, China; Israel; Korea; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States.⁷ Japan has notified its threshold figures expressed in national currencies for 2004-2006.⁸

B. NOTIFICATION AND REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

7. The responses to questionnaire in the Decision on Procedures for the Notification of National Implementing Legislation⁹ were submitted by the Kingdom of the Netherlands with respect to Aruba on 23 November 2004, based on its present legislation, which was being amended.¹⁰ Given that Aruba has not submitted the text of its legislation, either current or new, as yet, at its meeting of 21 July 2005 the Committee on Government Procurement agreed to postpone the review of the national implementing legislation of the Kingdom of the Netherlands with respect to Aruba until all required documents have been made available to Parties.¹¹

8. In line with Article XXIV:5(b) of the Agreement on Government Procurement, Japan notified a change in its respective national implementing legislation.¹²

C. STATISTICAL REPORTING

9. Article XIX:5 of the Agreement on Government Procurement requires Parties to collect and provide, on an annual basis, statistics on their procurements covered by the Agreement. During the period under review, Japan has reported statistics for 2001¹³ and 2002¹⁴, Norway has reported statistics for 2002¹⁵ and 2003¹⁶, Switzerland has reported statistics for 2002¹⁷ and 2003¹⁸, and Hong Kong, China has reported statistics for 2004.¹⁹

D. CONSULTATIONS AND DISPUTE SETTLEMENT

10. There were no matters raised under Article XXII of the Agreement on Government Procurement during the reporting period.

⁶ GPA/W/285/Add.7, dated 30 March 2004.

⁷ GPA/W/285, dated 18 November 2003, GPA/W/285/Add.1-4, dated 28 November 2003, 10 December 2003, 8 January 2004 and 29 January 2004, respectively, GPA/W/285/Add.6, dated 15 March 2004 and GPA/W/285/Add.8-9, dated 17 June 2004 and 8 July 2004, respectively.

⁸ GPA/W/285/Add.5, dated 4 February 2004.

⁹ GPA/1/Add.1, dated 27 June 1996.

¹⁰ GPA/81, dated 23 November 2004.

¹¹ GPA/M/27, dated 30 August 2005, para. 20.

¹² GPA/37/Add.2, dated 21 March 2005. See also GPA/M/27, dated 30 August 2005, para. 21.

¹³ GPA/70/Add.3, dated 5 July 2005.

¹⁴ GPA/76/Add.3, dated 5 July 2005.

¹⁵ GPA/76/Add.4, to be issued.

¹⁶ GPA/80/Add.2, to be issued.

¹⁷ GPA/76/Add.2, dated 9 February 2005.

¹⁸ GPA/80/Add.1, dated 9 February 2005.

¹⁹ GPA/84, dated 23 September 2005.

III. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(a) *Modification by Israel regarding Offsets*

11. In November 2004, Israel submitted a communication²⁰ with proposed modifications to its Note on offsets pursuant to Article XXIV:6(a) of the Agreement on Government Procurement. Following informal consultations between interested delegations, a draft decision was presented for adoption by the Committee. At its meeting of 16 December 2004, pursuant to Article XXIV:6(a) of the Agreement on Government Procurement, the Committee adopted²¹ that Decision.²² The Decision modifies Israel's Note to its Appendix I to the Agreement on Government Procurement: it extends by one year the original deadline of 1 January 2005 for Israel's commitment to reduce the value of offsets from a maximum of 30 per cent to a maximum of 20 per cent of procurement contracts covered by the Agreement on Government Procurement.²³ Following the adoption of the Decision, the representative of Israel stated that his delegation intended to continue the discussion on its offset rights in the course of 2005 with the objective of reaching a mutually agreed solution that would take into account the needs of Israel and all Parties with a view to reaching a new balance of rights and obligations.²⁴ Several other Parties made statements on the Decision.²⁵

12. At the meeting of the Committee on 14 March 2005, the representative of Israel made a statement²⁶ on offsets and on the Decision adopted on 16 December 2004.²⁷ At the meeting of the Committee on 21 July 2005, the representative of Israel said that the Government of Israel had decided to renew its request to make modifications in Israel's Note in Appendix I.²⁸ His delegation intended to enter into negotiations with Parties on this matter. It wished to maintain its right to require offsets at the level of 30 per cent for an additional period of time, and then to gradually reduce it to a specific, agreed upon level. His delegation understood that this could disrupt the balance of rights and obligations. Bearing this in mind and respecting the need to maintain an appropriate balance, his delegation stood ready to explore the possibility of making additional commitments in the framework of the market access negotiations of the GPA on issues such as coverage of entities, goods and services, thresholds, and on other elements subject to negotiation.²⁹ This was followed by statements by Canada and the United States.³⁰ At the Committee's meeting on 14 October 2005, Israel indicated that, following discussions with other Parties, it intended to submit a new proposal for an interim period, for the purpose of modifying, under Article XXIV:6(a) of the Agreement, its commitments regarding offsets. This proposal would be intended to serve as an interim arrangement as of 1 January 2006 and would be based on the following parameters:

- (a) the level of offsets in the proposal would not undermine the starting point of negotiations for the long-term solution in the future;

²⁰ GPA/MOD/ISR/1, dated 19 November 2004.

²¹ GPA/M/25, dated 18 January 2005, para. 3.

²² Subsequently circulated as GPA/83, dated 17 December 2004.

²³ The modification of Israel's Note on Offsets to its Appendix I to the Agreement on Government Procurement took effect on 16 December 2004, and was certified in document WT/Let/485, dated 10 January 2005.

²⁴ GPA/M/25, dated 18 January 2005, para. 5.

²⁵ GPA/M/25, dated 18 January 2005, paras. 6-10.

²⁶ GPA/M/26, dated 13 April 2005, paras. 3-6.

²⁷ GPA/83, dated 17 December 2004.

²⁸ GPA/M/27, dated 30 August 2005, paras. 23-26.

²⁹ GPA/M/27, dated 30 August 2005, para. 25.

³⁰ GPA/M/27, dated 30 August 2005, paras. 26 and 27, respectively.

- (b) the new interim regime regarding offsets would be in place either until the lapse of a transitional period of [X] number of years, or until the conclusion of the ongoing market access negotiations pursuant to Article XXIV:7, whichever would come first;
- (c) the above-mentioned period of [X] years would be longer than one year; and
- (d) it would be framed as an interim arrangement in anticipation of a long-term solution that would take into account the interests of Israel as well as of other Parties, and the need to find a balance between the two.³¹

(b) *Other Modifications*

Modifications that have been certified since the meeting of 17 November 2004

13. During the reporting period, the following modifications have been certified, given that no objections were made in the 30-day period set out in Article XXIV:6 of the Agreement on Government Procurement or because the objections that had been made have been withdrawn subsequently with regard to all or some specific entities listed in such modifications:

(i) modifications by Hong Kong, China:

- GPA/MOD/HKG/2³², effective as of 9 March 2005³³, given that no objections were made within 30 days;
- GPA/MOD/HKG/3³⁴, effective as of 15 August 2005³⁵, given that no objections were made within 30 days;

(ii) modifications by Japan:

- GPA/W/274³⁶, as regards all entities other than Japan Consumer Information Center³⁷, effective as of 7 October 2005³⁸, given that the objections by the European Communities³⁹ and the United States⁴⁰ have been withdrawn⁴¹;
- GPA/MOD/JPN/16⁴², effective as of 10 December 2004⁴³, given that no objections were made within 30 days;

³¹ GPA/M/28, to be issued.

³² Dated 7 February 2005.

³³ WT/Let/491, dated 1 April 2005.

³⁴ Dated 15 July 2005.

³⁵ WT/Let/496, dated 23 September 2005.

³⁶ Dated 23 September 2003.

³⁷ The modification concerning Japan Consumer Information Center, also proposed in document GPA/W/274, was certified as of 29 January 2004 in WT/Let/469, dated 11 May 2004.

³⁸ WT/Let/500, dated 27 October 2005.

³⁹ GPA/W/279, dated 16 October 2003 and GPA/W/279/Corr.1, dated 29 October 2003.

⁴⁰ GPA/W/280, dated 17 October 2003.

⁴¹ GPA/MOD/JPN/19, dated 3 June 2005 and GPA/MOD/JPN/22, dated 7 October 2005, respectively.

⁴² Dated 10 November 2004.

⁴³ WT/Let/486, dated 10 January 2005.

- GPA/W/276⁴⁴, effective as of 31 May 2005⁴⁵, given that the objection by the European Communities⁴⁶ has been withdrawn⁴⁷; and
 - GPA/MOD/JPN/21⁴⁸, effective as of 12 October 2005⁴⁹, given that no objections were made within 30 days; and
- (iii) modification by Korea⁵⁰, effective as of 26 May 2005⁵¹, given that the objection by Canada⁵² has been withdrawn.⁵³

Proposed modifications that remain outstanding

14. As to outstanding proposed modifications, the following developments, if any, have taken place in the reporting period:

- (i) Notifications by Japan concerning proposed modifications relating to:
- NTT⁵⁴
No developments in the reporting period.
 - East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company⁵⁵
No developments in the reporting period.
 - Railway Construction Public Corporation and Corporation for Advanced Transport and Technology⁵⁶
No developments in the reporting period.
 - National Aerospace Laboratory⁵⁷
No developments in the reporting period.

⁴⁴ Dated 8 October 2003.

⁴⁵ WT/Let/495, dated 24 June 2005.

⁴⁶ GPA/W/282, dated 7 November 2003.

⁴⁷ GPA/MOD/JPN/20, dated 3 June 2005.

⁴⁸ Dated 12 September 2005.

⁴⁹ WT/Let/501, dated 27 October 2005.

⁵⁰ GPA/W/207, dated 11 September 2002.

⁵¹ WT/Let/494, dated 24 June 2005.

⁵² GPA/W/217, dated 7 October 2002.

⁵³ GPA/MOD/KOR/8, dated 30 May 2005.

⁵⁴ GPA/W/91, dated 6 September 1999.

⁵⁵ GPA/W/144, 145 and 146, dated 29 August 2001 and GPA/W/152 and Corr.1, dated 20 September and 10 October 2001.

⁵⁶ GPA/W/272 and GPA/W/272/Rev.1, dated 23 September and 8 October 2003, respectively.

⁵⁷ GPA/W/275, dated 23 September 2003.

- Proposed modification to Annex 3 of Japan's Appendix I⁵⁸

On 3 June 2005, the European Communities posed additional questions⁵⁹ with regard to this proposed modification.

As to developments prior to the reporting period, the European Communities objected to this proposed modification and posed questions⁶⁰, which Japan responded to in September 2004.⁶¹

- (ii) Notification by the United States concerning proposed modifications to reflect changes in the administrative structure of the Federal Government⁶², as regards the Uranium Enrichment Corporation

No developments in the reporting period.

IV. ACCESSIONS

15. Nine WTO Members are in the process of acceding to the Agreement on Government Procurement: Albania, Bulgaria, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, Panama and Chinese Taipei. A further five WTO Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the Agreement on Government Procurement: Armenia, China, Croatia, the Former Yugoslav Republic of Macedonia, and Mongolia.

16. During the reporting period, the following developments have taken place with regard to accessions. Based on the approach agreed upon at the meeting of the Committee on 17 November 2004⁶³ to the accession process of Jordan to the Agreement on Government Procurement, the European Communities submitted questions and requests⁶⁴ regarding Jordan's revised market access offer⁶⁵, and the United States submitted requests for improvements⁶⁶ in Jordan's revised market access offer. Jordan responded to those submissions on 13 June 2005.⁶⁷

17. At the meeting of the Committee on 14 March 2005, Jordan made a statement reporting on developments in its accession process to the Agreement on Government Procurement.⁶⁸ Jordan noted that, in light of those developments, it had turned out to be impossible to finalize and submit Jordan's second revised offer within the agreed time-frame. Jordan looked forward to submitting the second revised offer to the Committee once the official approval of the Government and other internal procedures had taken place. As to the review of Jordan's government procurement legislation, the draft unified procurement law had been completed by the relevant committee, and had been submitted to the Government prior to undergoing the relevant constitutional procedures. Further details on Jordan's accession process are noted in the minutes of the meeting of the Committee on 21 July 2005.⁶⁹ At the Committee's meeting of 14 October 2005, Jordan made a further statement

⁵⁸ GPA/MOD/JPN/7, dated 26 July 2004.

⁵⁹ GPA/MOD/JPN/18, dated 3 June 2005.

⁶⁰ GPA/MOD/JPN/10, dated 23 August 2004.

⁶¹ GPA/MOD/JPN/14, dated 20 September 2004.

⁶² GPA/W/153, dated 25 September 2001.

⁶³ GPA/M/24, dated 8 December 2004, paras. 51-57.

⁶⁴ GPA/ACC/JOR/5, dated 20 December 2004.

⁶⁵ GPA/ACC/JOR/4, dated 30 September 2004.

⁶⁶ GPA/ACC/JOR/6, dated 20 December 2004.

⁶⁷ GPA/ACC/JOR/8, dated 13 June 2005 and GPA/ACC/JOR/7, dated 13 June 2005, respectively.

⁶⁸ GPA/M/26, dated 13 April 2005, paras. 19-22.

⁶⁹ GPA/M/27, dated 30 August 2005, paras. 15-16.

indicating that constructive bilateral discussions had been held with various Parties on its offer and legislative developments and that it hoped to present a revised offer in the coming months.⁷⁰

18. During the reporting period, no developments have been reported in relation to the respective accessions of Albania, Armenia, Bulgaria, China, Croatia, Georgia, the Kyrgyz Republic, the former Yugoslav Republic of Macedonia, Moldova, Mongolia, Oman, Panama and Chinese Taipei.

V. NEGOTIATIONS

19. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. During the reporting period, Parties pursued their negotiations at informal meetings in the weeks of 14 March, 30 May, 18 July and 10 October 2005.

20. The negotiations focused on the simplification and improvement of the non-market-access-related provisions in the text of the Agreement, based on proposals made by delegations. Following each informal meeting, proposals have been consolidated into a single revised draft text, which formed the basis of the drafting work at the subsequent meeting. During 2005, the Committee made substantial progress on the revision of the non-market-access-related provisions of the text. The main issues on which further work is needed in respect of these revisions were set out in the Chairman's statement on stocktaking and future work of 14 October 2005.⁷¹

21. As regards the work pertaining to elements 2 and 3 of the work programme, namely the extension of coverage and the elimination of discriminatory measures and practices the Committee, at its formal meeting of 16 July 2004, adopted a Decision on negotiating modalities⁷², taking into account earlier submissions and discussions on elements 2 and 3 of the work programme. In accordance with such modalities, Parties tabled their initial requests around the end of 2004.⁷³ Since the preparation of initial offers has taken longer than foreseen in the initial Modalities Decision, at its meeting of 21 July 2005 the Committee adopted a further Decision⁷⁴ (copy attached) postponing the dates for submission of initial offers. In addition, the Decision postponed the target date for the overall conclusion of the negotiations pursuant to Article XXIV:7 of the Agreement to the end of 2006.

22. At the informal meetings in the weeks of 14 March, 30 May, 18 July and 10 October 2005, delegations also conducted informal discussions on the so-called "horizontal" coverage matters that, pursuant to the original Modalities Decision, are to be discussed by the Committee as a whole. The discussions touched upon written submissions by Canada⁷⁵, Japan⁷⁶ and the United States⁷⁷ concerning certain aspects of horizontal coverage matters as well as various drafting proposals

⁷⁰ GPA/M/28, to be issued.

⁷¹ Job No. 7591, dated 18 October 2005.

⁷² GPA/79, dated 19 July 2004.

⁷³ At the end of 2004, a special document series GPA/O/... has been created for the circulation, through the Secretariat, of participants' official submissions relating to bilateral coverage negotiations, such as requests and offers. For more information on the creation and circulation of these documents, see the Committee's discussion on the circulation of requests in the bilateral coverage negotiations to participants, held at its meeting of 16 December 2005 (GPA/M/25, dated 18 January 2005, para. 18).

⁷⁴ GPA/79/Add.1, dated 22 July 2005.

⁷⁵ Job No. 3228, dated 13 May 2005.

⁷⁶ Job No. 5105 dated 15 July 2005.

⁷⁷ Job No. 3373, dated 20 May 2005

relating to market-access-related provisions in the revised draft text of the Agreement. Upon the request of delegations, the discussions have been summarized by the Secretariat.⁷⁸

23. Pursuant to the Modalities Decision, two observers, Jordan⁷⁹ and Chinese Taipei⁸⁰, have become participants in the bilateral coverage negotiations in addition to Parties to the Agreement on Government Procurement. At its meeting of 14 March 2005, the Committee discussed the issue of future work with regard to negotiations pursuant to Article XXIV:7 of the Agreement.⁸¹ At its meeting of 21 July 2005, the Committee discussed the state of play of coverage negotiations⁸² and adopted the above-mentioned revised timetable for negotiations.⁸³

⁷⁸ Job No. 2909/Rev.1 (3343), dated 19 May 2005; Job No. 4321/Rev.2 (5082), dated 15 July 2005; and Job No. 5848/Rev.1 (6177), dated 5 September 2005.

⁷⁹ GPA/O/JOR/1, dated 23 December 2004.

⁸⁰ GPA/O/TPKM/1, dated 11 March 2005.

⁸¹ GPA/M/26, dated 13 April 2005, paras. 8-18.

⁸² GPA/M/27, dated 30 August 2005, paras. 5-6.

⁸³ GPA/79/Add.1, dated 22 July 2005.

ATTACHMENT

**WORLD TRADE
ORGANIZATION**

GPA/79/Add.1
22 July 2005

(05-3317)

Committee on Government Procurement

**MODALITIES FOR THE NEGOTIATIONS ON EXTENSION OF COVERAGE AND
ELIMINATION OF DISCRIMINATORY MEASURES AND PRACTICES**

Decision of 21 July 2005

Addendum

The Committee on Government Procurement,

Noting that the preparation of initial offers as called for by the Committee's Decision on Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices (GPA/79) requires extensive research and internal consultation and, therefore, is taking longer than initially foreseen;

Reaffirming the importance it attaches to the successful completion of these negotiations;

Decides that:

- (i) each Party shall table its initial offer prior to the October meeting of the Committee (week of 10 October 2005) but not later than the Hong Kong Ministerial Conference (13-18 December 2005); and
 - (ii) the negotiations on extension of coverage and elimination of discriminatory measures as well as other aspects of the Article XXIV:7 negotiations aim to be concluded by the end of 2006.
-

Committee on Government Procurement

**REPORT (JULY 2003 – NOVEMBER 2004) OF THE
COMMITTEE ON GOVERNMENT PROCUREMENT**

I. GENERAL

1. This Report covers the period since the Committee's previous Annual Report (GPA/75), that is July 2003 – November 2004. It is issued pursuant to Article XXIV:7(a) of the Agreement on Government Procurement.

2. Since the last Annual Report, the Committee has held four formal meetings – on 22 August 2003 and on 23 April, 16 July and 17 November 2004 (GPA/M/21-24). The first of these meetings was chaired by Mr. Jan-Peter Mout (the Netherlands), and the subsequent meetings by Mr. Niklas Bergström (Sweden).

3. The Committee has also held a series of informal meetings, pursuing negotiations under Article XXIV:7 of the Agreement on Government Procurement, in August and November 2003 and in February, April, June, October and November 2004.

4. The following WTO Members are covered by the Agreement: Canada; the European Communities, including its 15 member States as well as, since 1 May 2004, its 10 new member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States.

5. Twenty WTO Members have observer status in the Committee on Government Procurement: Albania, Argentina, Armenia, Australia, Bulgaria, Cameroon, Chile, China, Colombia, Croatia, Georgia, Jordan, the Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Sri Lanka, Chinese Taipei and Turkey. Requests for observer status by Sri Lanka (GPA/W/292, dated 6 April 2004) and Armenia (GPA/W/293, dated 18 June 2004) were approved by the Committee at its meetings of 23 April (GPA/M/22, para. 3) and 16 July 2004 (GPA/M/23, paras. 7-10), respectively. Three intergovernmental organizations, IMF, OECD and UNCTAD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

A. THRESHOLDS

6. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), Korea notified its threshold figures expressed in national currencies for 2003-2004 (GPA/W/251), and Switzerland notified its threshold figures expressed in national currencies for 2004 (GPA/W/285/Add.7). Further, the following Parties have provided information on their threshold figures expressed in national currencies for 2004-2005: Canada; the European Communities; Hong Kong, China; Israel; Japan; Korea; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States (GPA/W/285, GPA/W/285/Add.1-6 and GPA/W/285/Add.8-9).

B. NOTIFICATION AND REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

7. In accordance with the Decision on Procedures for the Notification of National Implementing Legislation (GPA/1/Add.1), Hong Kong, China (GPA/27/Add.1, dated 20 August 2003) and Japan (GPA/37/Add.1, dated 7 April 2004) have notified a change in their respective national implementing legislation. The Committee addressed those notifications at its meetings of 22 August 2003 (GPA/M/21, para. 62) and 23 April 2004, (GPA/M/22, paras. 61-62), respectively.

8. As regards the Kingdom of the Netherlands with respect to Aruba, at the meeting of 22 August 2003, the Committee was informed that there were no new developments concerning the eventual submission of implementing legislation (GPA/M/21, para. 61). At the meeting of 23 April 2004, the Kingdom of the Netherlands with respect to Aruba said that the Government of Aruba had originally intended to introduce new implementing legislation and to subsequently answer the questions in GPA/1/Add.1 on the basis of such newly introduced legislation (GPA/M/22, paras. 63-64).

C. STATISTICAL REPORTING

9. Article XIX:5 of the Agreement on Government Procurement requires Parties to collect and provide, on an annual basis, statistics on their procurements covered by the Agreement. During the period under review, Hong Kong, China has reported statistics for 2002 (GPA/76, dated 30 September 2003) and for 2003 (GPA/80, dated 20 September 2004), and Korea has reported statistics for 2002 (GPA/76/Add.1, dated 7 January 2004).

D. CONSULTATIONS AND DISPUTE SETTLEMENT

10. There were no matters raised under Article XXII of the Agreement on Government Procurement during the reporting period.

E. PROCEDURAL MATTERS

11. In accordance with the revised Decision on Procedures for the Circulation and Derestriction of Documents of the Committee on Government Procurement (GPA/72, dated 23 October 2002), Parties agreed to the derestriction of the documents listed in document GPA/77 (dated 29 January 2004).

III. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

A. ENLARGEMENT OF THE EUROPEAN COMMUNITIES

12. The coverage of the Agreement on Government Procurement has been extended to the ten new member States of the European Communities (Estonia, Cyprus, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) as of 1 May 2004, the date of their accession to the European Communities. In line with the Decision made by the Committee (GPA/78, dated 4 May 2004) at its meeting of 23 April 2004 (GPA/M/22, paras. 14-28), the modification to Appendices I-IV of the European Communities (GPA/MOD/EEC/1 and Add.1) took effect as of 1 May 2004 (WT/Let/472). As a consequence, four of the ten new member States of the European Communities (Estonia, Latvia, Lithuania and Slovenia) that had submitted applications for accession (GPA/41, GPA/SPEC/5, GPA/66 and GPA/56, respectively) and had ongoing accession processes before 1 May 2004, have withdrawn their applications for accession (GPA/41/Rev.1, GPA/SPEC/5/Rev.2, GPA/66/Rev.1 and GPA/56/Rev.1, respectively).

B. OTHER MODIFICATIONS

13. Since the last annual report, the following additional modifications to Parties' respective Appendices became effective:

- (a) modification by Canada (GPA/W/203), effective as of 9 December 2003 (WT/Let/454);
- (b) modifications by Hong Kong, China:
 - (i) notification GPA/269, effective as of 6 August 2003 (WT/Let/453);
 - (ii) notification GPA/MOD/HKG/1, effective as of 5 August 2004 (WT/Let/476);
- (c) modifications by Japan:
 - (i) notification GPA/W/255, effective as of 14 October 2003 (WT/Let/452/Rev.1);
 - (ii) notification GPA/W/273 as well as, although only with respect to National Consumer Information Center of Japan, notification GPA/W/274, effective as of 29 January 2004 (WT/Let/469);
 - (iii) notification GPA/MOD/JPN/1, effective as of 4 March 2004 (WT/Let/463);
 - (iv) notification GPA/MOD/JPN/2, effective as of 14 April 2004 (WT/Let/470);
 - (v) notification GPA/MOD/JPN/3, effective as of 16 April 2004 (WT/Let/471);
 - (vi) notification GPA/MOD/JPN/4, effective as of 7 May 2004 (WT/Let/473);
 - (vii) notification GPA/MOD/JPN/5, effective as of 20 May 2004 (WT/Let/475);
 - (viii) notifications GPA/MOD/JPN/8 and GPA/MOD/JPN/9, effective as of 17 September 2004 (WT/Let/478);
 - (ix) notification GPA/MOD/JPN/11, effective as of 17 October 2004 (WT/Let/483)*;
 - (x) notification GPA/MOD/JPN/15, effective as of 20 October 2004 (WT/Let/484)*;
- (d) modifications by Korea:
 - (i) notification GPA/W/250, as regards Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd, as well as notification GPA/MOD/KOR/1, effective as of 6 October 2004 (WT/Let/481/Rev.1);
 - (ii) notification GPA/W/284, effective as of 12 December 2003 (WT/Let/455);

* Official certification document not yet circulated.

- (e) modifications by the United States:
 - (i) notification GPA/W/153, as regards all relevant entities, except for the Uranium Enrichment Corporation, effective as of 1 October 2004 (WT/Let/482/Rev.1); and
 - (ii) notification GPA/MOD/USA/1, effective as of 14 February 2004 (WT/Let/457).

14. The following proposed modifications are outstanding:

- (a) proposed modifications by Japan relating to:
 - (i) NTT (GPA/W/91, dated 6 September 1999)

No developments in the period under review.
 - (ii) East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company (GPA/W/144, 145 and 146, dated 29 August 2001, and GPA/W/152 & Corr.1, dated 20 September and 10 October 2001)

In October 2003 the European Communities submitted additional questions (GPA/W/271 and Corr.1), which Japan responded to in June 2004 (GPA/MOD/JPN/6).
 - (iii) Railway Construction Public Corporation and Corporation for Advanced Transport and Technology (GPA/W/272 and Rev.1, dated 23 September and 8 October 2003, respectively)

In October 2003 the European Communities placed an objection to the proposed deletion of both entities (GPA/W/279 and Corr.1) and raised questions thereon subsequently (GPA/W/291). The United States did not object to the deletion of Japan Railway Construction Public Corporation but it objected to the deletion of the Corporation for Advanced Transport and Technology and asked questions in that regard (GPA/W/280).
 - (iv) Japan Consumer Information Center, Water Resources Development Public Corporation, Japan Green Resources Corporation, the Japan Science and Technology Corporation, RIKEN (The Institute of Physical and Chemical Research), National Stadium and School Health Center of Japan, the Association for Welfare of the Mentally and Physically Handicapped, and National Agriculture Research Organization (GPA/W/274, dated 23 September 2003)

In October 2003 the European Communities placed an objection to all proposed modifications (GPA/W/279 and Corr.1). After further study, the European Communities did not object to the deletion of the Japan Consumer Information Center, but put questions to Japan in respect of the other entities (GPA/W/291). The United States also did not object to the deletion of the Japan Consumer Information Center, it was silent on the proposed modification concerning the National Agriculture Research Organization; however, it objected to the proposed withdrawal of the other entities and posed questions thereon (GPA/W/280). Accordingly, the modification

concerning Japan Consumer Information Center was certified as of 29 January 2004 (WT/Let/469, dated 11 May 2004).

As to the other entities, Japan responded to the questions by the European Communities and the United States in September 2004 (GPA/MOD/JPN/13).

- (v) National Aerospace Laboratory (GPA/W/275, dated 23 September 2003)

In October 2003 the European Communities objected to the proposed deletion (GPA/W/279 and Corr.1) and asked questions thereon (GPA/W/291). The United States also placed an objection and posed questions (GPA/W/280).

- (vi) Social Welfare and Medical Service Corporation and Japan Institute of Labour (GPA/W/276, dated 8 October 2003)

In November 2003 the European Communities objected to the proposed modification (GPA/W/282) and later posed questions (GPA/W/291), number 9 and 10 of which Japan answered in September 2004 (GPA/MOD/JPN/12).

- (vii) Annex 3 of Japan's Appendix I (GPA/MOD/JPN/7, dated 26 July 2004)

In August 2004 the European Communities objected to this proposed modification and posed questions thereon (GPA/MOD/JPN/10), which Japan responded to in September 2004 (GPA/MOD/JPN/14).

- (viii) National Center for Industrial Property Information and Training (GPA/MOD/JPN/16, dated 10 November 2004)

- (b) proposed modification by Korea relating to Korea Telecom (GPA/W/207, dated 11 September 2002):

The European Communities withdrew its objection to this proposed modification (GPA/W/214) in October 2003 (GPA/W/278 and Corr.1). In June 2004 the United States also withdrew (GPA/MOD/KOR/3) its objection (GPA/W/210). The objection by Canada (GPA/W/217) remains valid.

- (c) Notification by the United States concerning proposed modifications to reflect changes in the administrative structure of the Federal Government (GPA/W/153, dated 25 September 2001), as regards the Uranium Enrichment Corporation:

Canada withdrew its objection (GPA/W/167) to this proposed modification with regard to all entities concerned (GPA/MOD/USA/2). However, at the Committee meeting of 23 April 2004, the European Communities withdrew its objection (GPA/W/163) only concerning the entities in that notification other than the Uranium Enrichment Corporation (GPA/M/22, para. 40), and on 1 October 2004 Japan withdrew its objection (GPA/W/162) only concerning the entities in that notification other than the Uranium Enrichment Corporation (GPA/MOD/USA/3). Accordingly, the proposed modifications have been certified only concerning the entities in that notification other than the Uranium Enrichment Corporation (WT/Let/482), while the objections by the European Communities and Japan concerning the Uranium Enrichment Corporation remain valid.

15. With respect to items (a)(i) and (ii) of the preceding paragraph, Japan submitted to the Committee's November 2004 meeting a document relating to its pending notifications pursuant to Article XXIV:6(b) of the Agreement on Government Procurement (GPA/MOD/JPN/17, dated 15 November 2004). This document was the subject of an exchange of views at that meeting.

16. At the formal meeting of 17 November 2004, Israel raised the issue of its commitment in relation to offsets. During the discussion, Israel announced its intention to formally notify a proposed modification to the relevant Note to its Appendix I pursuant to Article XXIV:6(a) of the Agreement on Government Procurement. The Committee agreed to hold a meeting on 16 December 2004 to address that notification.

IV. ACCESSIONS

17. Nine WTO Members are in the process of acceding to the Agreement on Government Procurement: Albania, Bulgaria, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, Panama and Chinese Taipei. A further five WTO Members have provisions in their respective Protocols of Accession to the WTO regarding accession to the Agreement on Government Procurement: Armenia, China, Croatia, the Former Yugoslav Republic of Macedonia, and Mongolia.

18. The following developments have taken place with regard to accessions:

- (a) Georgia submitted its entity offer in December 2003 (GPA/SPEC/34), and in June 2004 it responded (GPA/ACC/GEO/3) to questions from the European Communities (GPA/W/232) and Japan (GPA/ACC/GEO/1) as well as to comments from Hong Kong, China on Georgia's entity offer (GPA/W/290). Hong Kong, China replied to this response in June 2004 (GPA/ACC/GEO/4). In April 2004 Korea submitted questions and comments regarding Georgia's entity offer (GPA/ACC/GEO/2, dated 21 April 2004), and the United States also posed questions regarding Georgia's entity offer in September 2004 (GPA/ACC/GEO/5). In November 2004 Japan submitted responses (GPA/ACC/GEO/6) to Georgia's replies in document GPA/ACC/GEO/3. At the meeting of the Committee on Government Procurement on 17 November 2004 the Committee agreed that the Chairman would consult with Parties about the possibility of holding plurilateral consultations on Georgia's accession process back to back with the first meeting of the Committee in 2005, scheduled for the week of 14 March 2005.
- (b) Jordan submitted its original entity offer in February 2003 (GPA/SPEC/29). The United States submitted a first set of questions thereon (GPA/SPEC/30), to which Jordan responded in August 2003 (GPA/SPEC/31). Additional questions on Jordan's original entity offer were received from Canada (GPA/ACC/JOR/2, dated 16 April 2004), the European Communities (GPA/SPEC/32, dated 27 August 2003 and GPA/SPEC/32/Corr.1, dated 29 October 2003) and the United States (GPA/SPEC/33, dated 22 October 2003). Jordan responded to those additional questions in documents GPA/ACC/JOR/3 (dated 12 August 2004), GPA/ACC/JOR/1 (dated 3 March 2004) and GPA/W/289 (dated 8 January 2004), respectively.

Two rounds of informal plurilateral consultations between Parties and Jordan took place on 23 April and 7 October 2004. The consultations in October 2004 addressed Jordan's revised entity offer (GPA/ACC/JOR/4, dated 30 September 2004). Jordan informed Parties that its new comprehensive legislation was expected to be finalized by the end of 2004 and would hopefully pass the legislative process by summer 2005. It was agreed that Parties should submit their comments on Jordan's revised offer by

15 December 2004 through the Secretariat. In turn, Jordan agreed to prepare a further revised offer by 15 February 2005. This would allow holding another round of plurilateral consultations at the first Committee meeting in 2005.

For further details on Jordan's accession process, reference is made to the minutes of the meetings of the Committee on 22 August 2003 (GPA/M/21, paras. 37-45) and on 23 April 2004 (GPA/M/22, paras. 50-56 and Annex B).

- (c) With respect to the accession of Chinese Taipei, all bilateral consultations have been successfully concluded with interested delegations on the substantive issues. However, the issue of nomenclatures remains outstanding. For further details of efforts to resolve that issue, reference is made to the minutes of the meetings of the Committee on 22 August 2003 (GPA/M/21, paras. 46-59) and on 23 April 2004 (GPA/M/22, paras. 57-60); and
- (d) Based on the commitment made in its Protocols of Accession to the WTO (WT/ACC/ARM/23, paragraph 153), Armenia submitted a request for observer status in the Committee on Government Procurement (GPA/W/293, dated 18 June 2004), which the Committee approved at its meeting of 16 July 2004 (GPA/M/23, paras. 7-10).

19. No developments have been reported in relation to the respective accessions of Albania, Bulgaria, China, Croatia, the Kyrgyz Republic, the former Yugoslav Republic of Macedonia, Moldova, Mongolia, Oman and Panama.

20. With regard to work pertaining to streamlining the accession process, at its meeting of February 2003 the Committee agreed to take up this issue within the wider context of its work on the revision of the Agreement. Further information on how this issue was addressed in the period under review is available in the minutes of the Committee meeting of 22 August 2003 (GPA/M/21, paras. 31-35) and 23 April 2004 (GPA/M/22, paras. 4-13), as well as in the versions of the revised texts of the Agreement as at the end of the various informal meetings held by the Committee during the period under review in accordance with Article XXIV:7 of the Agreement on Government Procurement.

V. NEGOTIATIONS

21. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. During the period under review, Parties pursued their negotiations at informal meetings in August and November 2003, and in February, April, June, October and November 2004.

22. This work focused primarily on simplification and improvement of the non-market-access-related provisions in the text of the Agreement, on the basis of proposals made by delegations. Since the meeting of June 2003, proposals have been consolidated after each meeting into a single revised draft text, which formed the basis of the drafting work at the subsequent meeting. The discussions at the meetings usually addressed all provisions of the revised draft text, with special attention to certain issues, such as developing countries, electronic tendering, conditions for participation, notices of intended procurement, dispute settlement and modifications and rectifications to Parties' Appendices to the Agreement.

23. As regards the work pertaining to elements 2 and 3 of the work programme, namely the extension of coverage and the elimination of discriminatory measures and practices, at its formal meeting of 16 July 2004 the Committee adopted a Decision on negotiating modalities (GPA/79, dated 19 July 2004, copy attached), taking into account earlier submissions and discussions on elements 2 and 3 of the work programme. In accordance with such modalities, Parties shall table in writing their initial requests by 30 November 2004, and their initial offers by 1 March 2005, but not later than 1 May 2005. Parties also agreed that the Committee as a whole will address the provisions in the draft revised text of the Agreement referred to as "market access issues", as well as issues relating to the presentation and structure of the appendices to the Agreement. One submission has been made in this connection (Job No. 5582, dated 26 August 2004), which was discussed at the informal sessions of 8 October and 17 November 2004.

ATTACHMENT

**WORLD TRADE
ORGANIZATION**

GPA/79
19 July 2004

(04-3073)

Committee on Government Procurement

**MODALITIES FOR THE NEGOTIATIONS ON EXTENSION OF COVERAGE AND
ELIMINATION OF DISCRIMINATORY MEASURES AND PRACTICES**

Decision of 16 July 2004

The Committee agrees on the following modalities for the negotiations on the extension of coverage and elimination of discriminatory measures and practices:

Objectives

In accordance with Article XXIV:7(b) and (c), the negotiations on these matters shall aim at:

- (i) the greatest possible extension of coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions relating to developing countries; and
- (ii) the elimination of discriminatory measures and practices which distort open procurement.

The Parties recognize the interdependence between these two objectives, as well as the need to maximize clarity with regard to coverage and any remaining discriminatory measures and practices.

Matters to be negotiated in the Committee as a whole

The Committee as a whole will address the provisions in the draft revised text of the Agreement referred to as "market access issues", as well as issues relating to the presentation and structure of the appendices to the Agreement, including:

- whether there should be further harmonization of thresholds;
- whether there should be a uniform level of coverage of the entities covered by the Agreement;
- whether Annex 1 should follow a positive or negative list approach;
- whether there should be greater harmonization of the way entities are described, in particular whether Annexes 2 and 3 should be structured on the basis of categories of

entities, for example as defined in the legislation of individual Parties or in terms of lists of individual entities;

- whether, in regard to services coverage in Annexes 4 and 5, further commonality of presentation is desirable and feasible, taking into account coverage and presentation under the GATS;
- whether the General Notes in the Annexes can be simplified and made more easily understandable;
- other issues that may be raised by delegations.

The Committee shall initiate work on the above issues in autumn 2004. Participants are invited to submit initial proposals relating to these matters by 31 August 2004.

Matters to be largely negotiated bilaterally

Negotiations on the extension of coverage of each Party's Appendix I as well as on the elimination of discriminatory measures and practices in such Appendices will be largely pursued bilaterally but subject to monitoring by the Committee as a whole.

These negotiations shall be pursued as follows:

- (i) by 30 November 2004, each Party shall table in writing its initial requests to any other Party and each Party shall aim to table its initial offer by 1 March 2005 but not later than 1 May 2005;
- (ii) provision would then be made for rounds of bilateral negotiations, leading to the presentation of revised and improved offers by the end of October 2005. These rounds of bilateral negotiations will normally be arranged to take place back-to-back with meetings of the Committee.

The basis for these negotiations shall be the existing coverage of Parties as reflected in their respective Appendix I, subject to any rectifications and modifications notified pursuant to Article XXIV:6 of the GPA. Parties concerned will make every effort to resolve pending notifications.

Parties agree on the need to ensure collective monitoring of the above bilateral negotiating process. To this end:

- (i) the Secretariat shall circulate as restricted documents to all other Parties initial official requests and offers as well as subsequent official revisions; and
- (ii) regular stocktaking and review of the bilateral process will take place in the Committee.

Any observer government which has submitted an offer with a view to participating in the revised Agreement may participate in this aspect of the negotiations and receive copies of requests and offers circulated by the Secretariat.

Conclusion of the negotiations

Parties agree that the negotiations on extension of coverage and elimination of discriminatory measures as well as other aspects of the Article XXIV:7 negotiations aim to be concluded by the beginning of 2006.

WORLD TRADE ORGANIZATION

GPA/75
15 July 2003

(03-3834)

Committee on Government Procurement

REPORT (NOVEMBER 2002 – JUNE 2003) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

I. GENERAL

1. This Report is submitted as an update to the 2002 Annual Report issued in November 2002 pursuant to Article XXIV:7(a) of the Agreement on Government Procurement. The period covered in this Report is November 2002 - June 2003.

2. Since the 2002 Annual Report, the Committee has held one formal meeting on 6 February 2003, and a series of informal meetings in February, May and June 2003. At its meeting on 6 February 2003, the Committee considered the following agenda: Modifications to the Appendices to the Agreement; Accessions; Review of National Implementing Legislation; Negotiations under Article XXIV:7; and Other Business. At the informal meetings, Parties pursued their work pertaining to the negotiations under Article XXIV:7. A further formal and informal meeting is foreseen in the week of 18-22 August 2003 to pursue this work.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications to the Appendices to the Agreement

3. Since the 2002 Report, modifications pertaining to their respective Appendices notified by Switzerland (GPA/W/225) became effective on 7 February 2003 (WT/Let/437); by the European Community, Iceland and Norway (GPA/W/226, 227 and 228, respectively) became effective on 11 January 2003 (WT/Let/438); by Hong Kong, China (GPA/W/256) became effective on 4 April 2003 (WT/Let/444); and by Japan (GPA/W/252-254) became effective on 9 May 2003 (WT/Let/446). Modifications have also been notified by Korea (GPA/W/250); Japan (GPA/W/255); Switzerland (GPA/W/268); and Hong Kong, China (GPA/W/269). In respect of Korea's modifications, the European Community (GPA/W/257) and the United States (GPA/W/258) sent communications objecting to the proposed modifications going into effect, and the United States submitted questions in GPA/W/264. With respect to Japan's proposed modifications, the European Community raised an objection in GPA/W/262.

4. With regard to the proposed modification by Japan to its Appendix I notified in GPA/W/91 pertaining to the NTT Communications Corporation, the United States had withdrawn its objection in October 2001 (GPA/W/166) and Canada in October 2002 (GPA/W/213). In a statement at the February 2003 meeting, Japan reported that, despite further consultations with the European Community, it had not been able possible for the two Parties to reach a consensus, and the European Community confirmed that it maintained its objection to the proposed modifications going into effect.

5. With regard to the proposed modifications by Japan to its Appendix I in GPA/W/144, 145 and 146 in respect of the three Japanese railway companies, namely East Japan Railway Company, Central Japan Railway Company, and West Japan Railway Company, Canada withdrew its objections in October 2002 (GPA/W/211) and February 2003 (GPA/W/246). The United States (GPA/W/151) and the European Community (GPA/W/155) continue to maintain their objections to the entry into force of the modifications. Japan's replies to follow-up questions put by the European Community in GPA/W/245 were circulated in GPA/W/263.

6. With respect to Korea's proposed modifications to its Appendix I (GPA/W/207), replies by Korea to further questions put to it by the United States (GPA/W/242) and the European Community (GPA/W/244) were circulated in GPA/W/266 and 267, respectively.

7. With respect to the proposed modifications to Annexes 1 and 3 of Appendix I by the United States (GPA/W/153), replies by the United States to further questions put by Japan (GPA/W/195) and the European Community (GPA/W/216) were circulated in GPA/W/223 and 243, respectively.

Thresholds

8. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), Korea (GPA/W/251) notified its threshold figures for 2003-2004.

Notification and review of national implementing legislation

9. The Committee completed its review of Iceland's national implementing legislation submitted in GPA/69.

Consultations and dispute settlement

10. There were no matters raised under Article XXII of the Agreement during the reporting period.

Procedural matters

11. In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add.2), Parties agreed to the derestriction of the documents listed in GPA/74, dated 13 March 2003.

III. ACCESSIONS

12. Jordan submitted its entity offer on 6 February 2003. Questions and requests for information received from the United States regarding this offer have been circulated.

13. With regard to the accession of Chinese Taipei, the Committee was informed at its February 2003 meeting that all bilateral consultations had been successfully concluded with interested delegations on the substantive issues in December 2002. The issue of nomenclatures remained outstanding.

14. Estonia reported at the February 2003 meeting that its Public Procurement Act was being reviewed, and was invited to duly communicate the changes, at the conclusion of the review, to the Committee with an explanation of their impact on its offer.

15. Latvia reported at the February 2003 meeting that bilateral consultations were ongoing with the European Community.

16. With respect to the accession of Bulgaria, Bulgaria's replies to follow-up questions put by Canada (GPA/W/219), were circulated in GPA/W/249. Bulgaria also provided further clarification in respect of a follow-up question by Canada to a reply it had previously given. Furthermore, at the February 2003 meeting, Bulgaria reiterated its request for information pertaining to export opportunities in the markets of GPA Parties for Bulgarian suppliers.
17. With respect the accession of Georgia, questions received from Canada and the European Community regarding Georgia's replies to the Checklist of Issues were circulated in GPA/W/230 and GPA/W/232, respectively. Georgia's replies to Canada's questions were circulated in GPA/W/237.
18. With regard to its accession, Slovenia reported at the February meeting that necessary changes were being drafted in order to streamline its Public Procurement Act.
19. With regard to its accession, Albania's replies to questions put by Hong Kong, China; Switzerland; and Canada were circulated in GPA/W/238-241, respectively.
20. With respect to the accession of Moldova, questions were submitted by Hong Kong, China (GPA/W/206) and the European Community (GPA/W/231).
21. The Kyrgyz Republic submitted replies (GPA/W/248) to questions put by the United States (GPA/W/201).
22. Since the October 2002 meeting, no developments have been reported in relation to the respective accessions of Oman, China, Croatia, Lithuania, Mongolia, and Panama.
23. With regard to work pertaining to streamlining the accession process, the Committee considered at its February 2003 meeting a communication circulated by Chinese Taipei (GPA/W/224) as well as a note by the Secretariat summarizing the points made at the October 2002 meeting. The Committee agreed to take up this issue within the wider context of its work on the revision of the Agreement.

IV. NEGOTIATIONS

24. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. During the period covered by this report, Parties pursued their consultations at their formal meeting in February 2003, and in further informal meetings held in February, May and June 2003, on the basis of proposals made by delegations. This work focused primarily on simplification and improvement of the Agreement, but also discussed the other two elements. An objective of the negotiations under Article XXIV:7 is the expansion of the membership of the Agreement by making it more accessible to non-Parties.
25. At its meeting in May 2003, the Group considered in detail and heard comments made by Parties on a joint submission by Canada, the European Community, Japan and the United States (Job No. 3166). It also had a preliminary discussion on a proposal by Norway dealing with conflict of interest (Job No. 7935). At its meeting in June, the Group considered a revised joint submission (Job No. 4479) by Canada, the European Community, Japan and the United States incorporating comments and feedback by other Parties. The Group further had a preliminary discussion based on submissions by the European Community on challenge procedures (Job No. 4654) and consultations and dispute settlement (Job No. 4655), and by Switzerland on accession and developing countries (Job No. 4287).

26. Following the June 2003 meeting, all the available proposals have been consolidated into a single revised draft text which is to form the basis of further consultations in the period up to the Cancun Ministerial Conference.

27. As regards the work pertaining to elements 2 and 3 of the work programme, namely the elimination of discriminatory measures and the expansion of coverage, the Group agreed at its informal meeting in May 2003 to pursue this after the Cancun Ministerial Conference.

28. The Committee has set target dates of the Cancun Ministerial Conference for provisional agreement on the revision of the provisions of the Agreement (other than coverage related issues) and of 1 January 2005 to conclude the negotiations as a whole.

REPORT (2002) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

I. GENERAL

1. This Report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform the General Council of developments during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this Report is November 2001-October 2002, but the Report also reflects, where necessary, the work of the Committee up to November 2001 (GPA/8 and Add.1, GPA/19, GPA/25, GPA/30, GPA/44 and GPA/58). The Committee on Government Procurement held three meetings in 2002 on 21 February, 31 May and 8 October 2002 (GPA/M/17, 18 and 19¹).

3. The following WTO Members are Parties to the Agreement: Canada; the European Community and its fifteen member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States. Twenty-seven WTO Members have observer status: Albania, Argentina, Australia, Bulgaria, Cameroon, Chile, China, Colombia, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Jordan, the Kyrgyz Republic, Latvia, Lithuania, Malta, Moldova, Mongolia, Oman, Panama, Poland, the Slovak Republic, Slovenia, Chinese Taipei and Turkey. Three intergovernmental organizations, IMF, OECD, and UNCTAD also have observer status; the ITC also attends Committee meetings.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications of Appendices to the Agreement

4. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article. Since the 2001 Report of the Committee, modifications relating to their respective Appendices were made by Canada (GPA/W/203); Hong Kong, China (GPA/W/198); Japan (GPA/W/186 and GPA/W/196); Korea (GPA/W/207); Singapore (GPA/W/200); and the United States (GPA/W/153, GPA/W/154 and GPA/W/208). The modifications proposed by Japan in GPA/W/186 and GPA/W/196 became effective and entered into force on 14 April 2002 (WT/Let/419) and 27 June 2002 (WT/Let/425/Rev.1) respectively; by Hong Kong, China in GPA/W/198 on 6 July 2002 (WT/Let/425/Rev.1); by Singapore in GPA/W/200 on 11 August 2002 (WT/Let/429); and by the

¹ To be circulated shortly.

United States in GPA/W/154 and GPA/W/208 on 25 October 2001 (W/Let/407) and on 16 October 2002 (WT/Let/431), respectively.

5. With regard to the proposed modifications to Annex 1 of Appendix I by Canada in GPA/W/203, Hong Kong, China made a communication seeking further clarification on the proposed changes (GPA/W/218).

6. With regard to the proposed modifications to Annexes 1 and 3 of Appendix I by the United States in GPA/W/153, dated 25 September 2001, the delegations of Canada, the European Community and Japan made communications seeking further information and objecting to the proposed modifications going into effect (circulated in GPA/W/167, GPA/W/163 and GPA/W/162, respectively). The responses by the United States to the questions raised by the three Parties have been circulated in GPA/W/183-185, respectively. Further questions were put to the United States by Japan and the European Community on 4 October 2002 (GPA/W/195 and GPA/W/216).

7. With regard to the proposed modifications to Annex 3 of Appendix I by Korea in GPA/W/207, dated 11 September 2002, the United States, the European Community and Canada made communications objecting to the entry into effect of the proposed modifications and requesting additional time to study and to seek clarification regarding the proposed changes (GPAW/210, 214 and 217, respectively).

8. With respect to the proposed modification by Japan to Annex 3 of Appendix I notified in GPA/W/91 relating to NTT, consultations were held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100, GPA/W/100/Add.1 and GPA/W/104/Add.2/Rev.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/107, GPA/W/108). Japan's responses to the additional questions from Canada were circulated in GPAW/199. The United States withdrew its objection to the modifications proposed by Japan on 19 October 2001 (GPA/W/166) and Canada on 1 October 2002 (GPAW/211).

9. With respect to the proposed modification by the delegation of Japan to its Appendix I in GPA/W/144, 145 and 146 relating to three Japanese Railway companies, namely East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company, dated 29 August 2001, communications have been received from the delegations of the United States, Canada and the European Community (GPA/W/151, 155 and 156) seeking clarification and objecting to the proposed withdrawal of the three Japanese Railway companies from the coverage of the Agreement. Communications received from Japan providing clarifications regarding the notifications in GPA/W/144 to 146 have been circulated in GPA/W/152 and Corr.1 and GPA/W/179. Additional questions received from the European Community and the United States have been circulated in GPA/W/164 and 165, respectively. Japan's responses to the latter questions have been circulated in GPA/W/180 and GPA/W/181, respectively. Since the May 2002 meeting, the delegations of the United States and the European Community have submitted further questions, circulated respectively in GPA/W/204 and GPA/W/205. An additional question received from Canada relating to Central Japan Railway Company and West Japan Railway Company has been circulated in GPA/W/212. In a communication, dated 1 October 2002, Canada withdrew its objection to the modification to Appendix I of the Agreement related to the East Japan Railway Company (GPA/W/211).

Loose-leaf system for Appendices

10. Pursuant to the Decision of the Committee of 4 June 1996, the Appendices to the Agreement have been certified in the form of a loose-leaf system (WT/Let/330). In accordance with the procedures for future changes to the loose-leaf system agreed by the Committee on 24 February 1997, subsequent modifications notified by Parties are certified and issued as replacement pages to be inserted in the loose-leaf system once they become effective in accordance with the procedures of Article XXIV:6. In addition to being made available in hard copy form, the loose-leaf system is circulated to Parties and other WTO Members in electronic form through the WTO Documents On-line database. An up-to-date copy of the loose-leaf system is also available to the general public through the government procurement site on the WTO Home Page on the Internet (http://www.wto.org/english/tratop_e/gproc_e/loose_e.htm).

Thresholds

11. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), Hong Kong, China (GPA/W/168); Singapore (GPA/W/168/Add.1); Canada (GPA/W/168/Add.2); Switzerland (GPA/W/168/Add.3); Japan (GPA/W/168/Add.4); European Community (GPA/W/168/Add.5); and the United States (GPA/W/168/Add.6) notified their threshold figures for 2002-2003.

Notification and review of national implementing legislation

12. Pursuant to the Decision on the Procedures for the Notification of National Implementing Legislation (GPA/1/Add.1), Canada; the European Community; Hong Kong, China; Iceland; Israel; Japan; Liechtenstein; Korea; Norway; Singapore; Switzerland; and the United States have notified national implementing legislation including their responses to the Checklist of Issues (GPA/13, GPA/20, GPA/27, GPA/69, GPA/34, GPA/37, GPA/46, GPA/12/Rev.1, GPA/10, GPA/39, GPA/15 and Add.1 and GPA/23, respectively). The Committee has completed the reviews of the national implementing legislation of Canada; the European Community; Hong Kong, China; Israel; Japan; Korea; Liechtenstein; Norway; Singapore; Switzerland; and the United States (GPA/51, GPA/32, GPA/54, GPA/59, GPA/61, GPA/47, GPA/60, GPA/53, GPA/52, GPA/33 and GPA/50, respectively). In accordance with the arrangements and the schedule for the review agreed by the Committee, these reviews were conducted on the basis of responses provided by the Parties being reviewed to written questions put by other Parties in advance of the review meeting at which their respective national legislation was taken up. At its first meeting in 2003, the Committee will take up the review of the implementing legislation of Iceland (GPA/69).

13. During the period under review, Japan has communicated information on modifications to Japan's regulations concerning government procurement (GPA/67).

Statistical reporting

14. Article XIX:5 requires Parties to collect and provide, on an annual basis, statistics on their procurements covered by the Agreement. During the period under review, the United States has reported statistics for 1998 (GPA/29/Add.4); Norway; Japan; and the United States for 1999 (respectively in GPA/40/Add.2, GPA/W/40/Add.3 and GPA/40/Add.4); Hong Kong, China; Norway; and Japan for 2000 (respectively in GPA/62; GPA/62/Add.1; and GPA/62/Add.2); and Hong Kong, China for 2001 (GPA/70).

Consultations and dispute settlement

15. There were no matters raised under Article XXII of the Agreement during the period under review.

Procedural matters

16. In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add.2), Parties have agreed to the derestriction of the documents listed in GPA/64 of 14 January 2002 and considered the derestriction of documents in GPA/W/221 as of 20 December 2002.

17. Furthermore, the Committee agreed to the revision of its Decision on Circulation and Derestriction of Documents (GPA/1/Add.2) in order to reflect the WTO procedures adopted on 14 May 2002 (WT/L/452). The revised decision was adopted on 8 October 2002 (GPA/72).

III. ACCESSIONS

18. Latvia applied for accession on 16 June 1999. During the period under review, bilateral consultations have been held with interested Parties regarding outstanding issues. The Committee was informed by the United States, Switzerland and Canada that they had concluded negotiations with Latvia on the terms of its accession. Latvia informed the Committee that bilateral consultations with the European Community were continuing. Following the plurilateral consultations conducted with Latvia on 8 October 2002, the Committee was informed that Latvia would be making certain adjustments to its legislation and that its consultations with a Party had not yet been completed.

19. Estonia applied for accession on 6 September 2000. During the period under review, Estonia submitted a revised offer on 12 February 2002 (GPA/SPEC/9/Rev.1). Estonia's responses to the follow-up questions put by the United States have been circulated in GPA/SPEC/24/Rev.1 and GPA/190/Rev.1. The United States has put additional questions to Estonia in GPA/W/202 regarding its replies in GPA/W/190/Rev.1. Estonia's answers thereto have been circulated in GPA/W/215. Following the plurilateral consultations held with Estonia on 8 October 2002, the Committee was informed that Estonia would need time to assess the impact of its forthcoming legislative changes on its GPA accession. Moreover, there were a number of issues that were outstanding in their bilateral consultations with a Party.

20. Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5). During the period under review, Chinese Taipei submitted a second revised offer in GPA/SPEC/1/Rev.2, dated 1 February 2002. At the February 2002 meeting a number of delegations informed the Committee that they required more time to further review the offer tabled by Chinese Taipei and that some delegations had remaining substantive concerns. At the October meeting, the Committee was informed that consultations between Chinese Taipei and interested Parties had made significant progress and were continuing on outstanding issues. At the February meeting the observer from China made a statement on the issue of nomenclatures in the offer of Chinese Taipei. Consultations are being carried out between Chinese Taipei and interested Parties.

21. Panama applied for accession to the Agreement and tabled an initial offer on 24 June 1997 (GPA/W/53). No developments have been reported with regard to Panama's accession since the 2001 report.

22. The Kyrgyz Republic applied for accession to the Agreement and tabled an initial offer on 11 May 1999 (GPA/SPEC/4). During the period under review, the Kyrgyz Republic submitted its replies to the Checklist of Issues (GPA/W/197). Further questions put by the United States have been circulated in GPA/W/201.
23. Bulgaria applied for accession on 27 September 2000. During the period under review, informal plurilateral consultations were held with Bulgaria on 21 February 2002 on the basis of Bulgaria's replies to the questions received from Hong Kong, China; Switzerland; Canada; and the United States (circulated in GPA/SPEC/22/Rev.1, GPA/SPEC/21/Rev.1, GPA/SPEC/23/Rev.1 and GPA/W/171/Rev.1). Follow-up questions and comments from the United States and Bulgaria's answers thereto have been circulated in GPA/W/189/Rev.1. Follow-up questions received from Canada have been circulated in GPA/W/219.
24. Slovenia applied for accession on 24 September 2001. During the period under review, Slovenia's answers to the questions received from the European Community, the United States and Switzerland have been circulated in GPA/SPEC/28/Rev.1, GPA/W/172/Rev.1 and GPA/W/175/Rev.1, respectively. Follow-up questions put by the United States to Slovenia have been circulated in GPA/W/192. Informal plurilateral consultations have been held between Slovenia and interested Parties on 21 February 2002.
25. Albania applied for accession on 28 September 2001. During the period under review, the European Community; Hong Kong, China; the United States; Switzerland; and Canada have submitted questions to Albania in GPA/SPEC/26, GPA/W/169, GPA/W/170, GPA/W/174 and GPA/W/178, respectively. Albania's replies to the questions submitted by the United States have been circulated in GPA/W/170/Rev.1. Additional questions put by the United States to Albania have been circulated in GPA/W/209.
26. Moldova applied for accession on 8 January 2002 (GPA/63). Moldova's replies to the Checklist of Issues have been circulated in GPA/W/177. The questions forwarded by Hong Kong, China to Moldova have been circulated in GPA/W/182 and Moldova's replies thereto in GPA/W/193. Further questions received from the United States and Hong Kong, China have been circulated respectively in GPA/W/191 and GPA/W/206.
27. Jordan applied for accession on 12 July 2000. During the period under review, Jordan reported on the work carried out at the domestic level regarding Jordan's accession. At the May 2002 meeting, the Committee was informed that Jordan anticipated submitting its initial offer before the end of 2002.
28. Lithuania applied for accession on 8 March 2002 (GPA/66).
29. Georgia applied for accession on 8 October 2002 (GPA/71). Georgia's replies to the Checklist of Issues have been circulated in GPA/W/187. Questions received from the United States and Canada regarding these replies have been circulated in GPA/W/194 and GPA/W/220, respectively. Also, Georgia has transmitted its national legislation in a communication circulated in GPA/68.
30. The Protocols of Accession to the WTO of four other countries, namely China (WT/ACC/CHN/49), Croatia (WT/ACC/HRV/59), Mongolia (WT/ACC/MNG/9) and Oman (WT/ACC/OMN/26) include commitments regarding the Agreement on Government Procurement. Over the period under review, Oman's replies to the Checklist of Issues have been circulated in GPA/W/191. Questions received from the United States, the European Community and Canada regarding these replies have been circulated in GPA/SPEC/25, GPA/SPEC/27 and GPA/W/176,

respectively. As provided for in its Protocol of Accession to the WTO, China became an observer on 21 February 2002.

31. At an informal meeting held on 8 October, the Committee addressed the question of how procedures on accessions could be improved. In 2001, the Committee had agreed to proceed with the accessions process in accordance with the Indicative Time-Frame for Accession Negotiations and Arrangements for Reporting on the Progress of Work in GPA/W/109/Rev.2. It had also adopted a checklist of issues for the provision of information by applicant governments (GPA/35). At the meeting held on 8 October, the Committee had an exchange of views on how to improve the accession procedures including modalities that could accelerate the process in the case of countries with economies in transition and developing countries. The Committee agreed to revert to a number of suggestions made in this connection at its next meeting.

32. A Workshop on Accession to the Agreement on Government Procurement was held in Geneva on 27-28 May 2002, in which more than 45 capital-based officials from acceding and other observer countries participated.

IV. NEGOTIATIONS UNDER ARTICLE XXIV:7

33. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. As stated in its 1996 Report to the General Council (GPA/8), the Committee agreed to undertake an early review which was initiated in February 1997 in informal consultations, with an examination of modalities. This review has covered, in particular, the following elements: simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology; expansion of the coverage of the Agreement; and elimination of discriminatory measures and practices which distort open procurement. During the reported period, Parties focused primarily on simplification and improvement of the Agreement and also discussed the other two elements. An objective of the negotiations under Article XXIV:7 is the expansion of the membership of the Agreement by making it more accessible to non-Parties.

34. During the period covered by this report, Parties pursued their consultations in informal meetings held in February, May and October 2002 on the basis of proposals made by delegations, including new proposals by the European Community, the United States, Japan, Korea, Norway and Chinese Taipei. These have been incorporated in successive versions of an informal note reflecting the discussions on the draft texts of the modifications to the Articles of the Agreement proposed by various Parties "Suggested Drafting Changes to the Text of the Agreement", the latest revision of which was circulated on 23 September 2002. At each of the informal meetings held during the period under review, Parties also considered the other aspects of the Article XXIV:7 negotiations, namely the elimination of discriminatory measures and the expansion of coverage.

35. At the meeting held 21 February 2002, the Committee considered a suggestion by the Chairman regarding a timetable and work programme for negotiations under Article XXIV:7 of the Agreement reflecting the outcome of the informal consultations on this matter. The Committee agreed to the way of proceeding proposed by the Chairman which is set out in the attachment to this report.

36. At the informal meeting held on 30 May 2002, the informal group had a detailed discussion of the proposed drafting changes to the Articles of the Agreement relating to basket 1 items in the work programme, namely basic principles, scope and coverage and related definitions, exceptions, developing countries, and accessions on the basis of the issues raised in the Annotated Agenda. The

group also took up briefly basket 2 items which include tendering procedures and technical specifications and related definitions.

37. At the informal meeting held on 7 October 2002, the Group had a focused discussion on basket 2 issues, relating to tendering procedures (Articles VII–XV and Article XVIII, paragraphs 1, 3, and 4), technical specifications (Article VI) and related definitions, and on basket 3 issues (enforcement, institutions, and statistical reporting) on the basis of annotated agendas circulated respectively on each of these baskets. It also reverted to the discussion of developing countries, and other issues in basket 1. The next informal meeting on Article XXIV:7 negotiations will be held in the week of 9 December 2002. At that meeting, the Group will revert to basket 1 and 2 issues on the basis of new draft texts.

38. As agreed by the group in the context of its discussion on developing countries and accessions, the Chairman of the Committee wrote a letter on 21 August 2002 to the countries with observer status in the Committee inviting them to make written contributions on how the relevant provisions and decisions could be improved. A further letter was sent by the Chairman to all WTO Members, drawing their attention, as well as the attention of governments which are in the process of acceding to the WTO, to the work carried out under Article XXIV:7 and inviting them to participate as observers in the meetings of the Committee.

39. With regard to the work on the other two elements of the Article XXIV:7 negotiations, namely the expansion of coverage and the elimination of discriminatory measures, the Work Programme agreed to at the February 2002 meeting provided for a preparatory phase in 2002, aimed at the identification and study of the areas to be negotiated, and agreeing on a detailed programme for the negotiations by the end of 2002. Delegations were invited to put forward possible approaches regarding these negotiations, including the request for tabling of offers, by 15 October 2002. Japan has put forward a paper on this matter and Canada expects to do so in the near future.

V. OTHER MATTERS

40. In response to a request from the Chairman of the Committee on Trade and Development requesting that the Committee on Trade and Development be kept informed of any discussions pertaining to special and differential treatment for developing countries, the Chairman, on behalf of the Committee, replied to the Chairman of CTD on 15 July 2002 reporting on the relevant discussions in the Committee.

ATTACHMENT

Timetable and Work Programme for the Negotiations under Article XXIV:7 of the Agreement

"Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions relating to developing countries and eliminating any remaining discriminatory measures and practices which distort open procurement.

Modalities for the negotiations

- The further negotiations under Article XXIV:7 shall be undertaken and completed as a whole on all elements (i.e. improvement of the text, expansion of coverage and elimination of discriminatory measures and practices), but there may need to be differences in modalities and timing among the elements.
- The negotiations shall be completed by 1 January 2005.
- The general view has been that the work on the revision of the coverage-related areas in the text of the Agreement and the negotiations on the other two elements are interdependent.
- Building on the work in the informal consultations that has been done since the review of the Agreement was launched in 1997, the aim is to have provisional agreement on the revised text of the Agreement by the 5th Ministerial Conference, recognizing that it may not be possible to conclude some of the elements of the text before the work on the other two aspects of the negotiations are concluded. In any event, the revised text will not take effect until all elements of Article XXIV:7 negotiations have been completed.
- The negotiations on the expansion of the coverage and the elimination of discriminatory measures and practices shall start with an exploratory phase until the end of 2002. These negotiations are to be concluded by 1 January 2005.
- The work programme could be modified in light of any new developments.
- A minimum of four informal meetings shall be foreseen for 2002 and for 2003 and, where possible, two to three days shall be allocated for each session.

Arrangements for the revision of the text

- The discussion at each of the meetings in 2002 shall focus on selected categories of issues, respectively those in basket 1 (basic principles, scope and coverage and related definitions, exceptions, developing countries and accessions), basket 2 (tendering procedures, technical specifications and related definitions), and basket 3 (enforcement, institutions, statistical reporting). All proposals relating to these issues should be tabled no later than 1 September 2002.
- Key substantive issues and drafting options shall be identified with respect to each Article or group of Articles by the end of the third meeting in 2002. Starting at the fourth meeting in 2002, the discussion shall focus on ways of bridging the remaining gaps on the basis of a text by the Chairman.

Arrangements for the other two elements

- Regarding the work on the other two elements, a preparatory phase will take place in 2002 aimed at the identification and study of the areas to be negotiated and agreeing on a detailed programme for the negotiations by the end of the year. Delegations who wish to put forward ideas on the possible approaches regarding the negotiations on the expansion of the coverage and the elimination of discriminatory measures including the procedures for tabling of offers and requests should do so by 15 October 2002.²
- The negotiations on these elements shall be initiated in 2003 with the aim of concluding them by 1 January 2005.

Note

- In 1996, the Committee agreed to undertake an early review, starting in 1997 with an examination of modalities, with a view to the implementation of Article XXIV:7(b) and (c) of the Agreement. The review will, in particular, cover the following elements: expansion of the coverage of the Agreement; elimination of discriminatory measures and practices which distort open procurement; and simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology. It was also agreed that the review shall seek the expansion of membership of the Agreement by making it more accessible to non-Parties (GPA/8)."

² Related to these aspects of the negotiations, the Group already has before it, for reference, the submissions by Canada (Job No. 6604-2001); Hong Kong, China (Job No. 5270-1998); and the United States (Job No. 3843-1998).

REPORT (2001) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

I. GENERAL

1. This Report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform the General Council of developments during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this Report is November 2000-October 2001, but the Report also reflects, where necessary, the work of the Committee up to November 2000 (GPA/8 and Add.1, GPA/19, GPA/25, GPA/30 and GPA/44). The Committee on Government Procurement held two meetings in 2001 on 3 May and 2 October 2001 (GPA/M/15 and 16¹).

3. The following WTO Members are Parties to the Agreement: Canada; the European Community and its fifteen member States; Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States. Twenty-five WTO Members have observer status: Albania, Argentina, Australia, Bulgaria, Cameroon, Chile, Colombia, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Jordan, the Kyrgyz Republic, Latvia, Lithuania, Malta, Moldova, Mongolia, Oman, Panama, Poland, the Slovak Republic, Slovenia and Turkey. One non-WTO Member, Chinese Taipei and three intergovernmental organizations, the IMF, the ITC and the OECD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications of Appendices to the Agreement

4. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article. Since the 2000 Report of the Committee, modifications relating to their respective Appendices were made by Japan (GPA/W/123, GPA/W/129, GPA/W/144, GPA/W/145 and GPA/W/146); Hong Kong, China (GPA/W/122/Rev.1); and Korea (GPA/W/128 and Corrs. 1 and 2 and GPA/W/140). The modifications proposed by Japan in GPA/W/123 and Hong Kong, China in GPA/W/122/Rev.1 entered into force on 29 December 2000 (WT/Let/367) and 6 January 2001 (WT/Let/370), respectively.

5. With respect to the notification by Japan in GPA/W/129, the United States and Canada made communications objecting to these modifications (GPA/W/132 and 134) and Hong Kong, China requesting further information (GPA/W/135 and 143). Japan's responses were circulated in document

¹ GPA/M/16 will be circulated shortly.

GPA/W/137. The United States and Canada subsequently indicated that they had withdrawn their objection to the proposed modifications (GPA/W/139 and 147) and the modifications proposed by Japan in GPA/W/129 entered into force on 5 September 2001 (WT/Let/400).

6. With respect to the notification by Korea in GPA/W/128 and Corrs. 1 and 2, Korea's responses to the clarification of the proposed modifications sought by the United States (GPA/W/133) were circulated in document GPA/W/142. The United States subsequently indicated that it had withdrawn its objection (GPA/W/150). The modifications proposed by Korea in GPA/W/128 and Corrs. 1 and 2 and additional modifications proposed by Korea to its Appendix I (GPA/W/140) entered into force on 14 September 2001 (WT/Let/401).

7. With regard to the proposed modifications notified by Japan on 6 September 1999 in document GPA/W/91, Canada, the European Community and the United States communicated their objection to the proposed modifications taking effect pending further consultations with Japan regarding the withdrawal of an entity from its Annex 3, Appendix I. Since the Committee's previous report, consultations have been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/104/Add.2/Rev.1, GPA/W/107, GPA/W/108 and GPA/W/160).

8. With regard to proposed modifications notified by Japan on 29 August 2001 in documents GPA/W/144, 145 and 146, the United States, Canada and the European Community communicated their objection to the proposed modifications taking effect upon expiration of the 30-day review period (GPA/W/151, 155 and 156).

Loose-leaf system for Appendices

9. Pursuant to the Decision of the Committee of 4 June 1996, the Appendices to the Agreement have been certified in the form of a loose-leaf system (WT/Let/330). In accordance with the procedures for future changes to the loose-leaf system agreed by the Committee on 24 February 1997, subsequent modifications notified by Parties are certified and issued as replacement pages to be inserted in the loose-leaf system once they become effective in accordance with the procedures of Article XXIV:6. In addition to being made available in hard copy form, the loose-leaf system is circulated to Parties and other WTO Members in electronic form through the WTO Documents On-line database. An up-to-date copy of the loose-leaf system is also available to the general public through the government procurement site on the WTO Home Page on the Internet (http://www.wto.org/english/tratop_e/gproc_e/loose_e.htm).

Thresholds

10. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), the United States (GPA/W/101/Add.5); Israel (GPA/W/101/Add.6); Liechtenstein (GPA/W/101/Add.7); and the Kingdom of Netherlands with respect to Aruba (GPA/W/101/Add.9) notified threshold figures in their national currency for 2000-2001 and Switzerland (GPA/W/101/Add.8) for 2001 and Korea for 2001-2002 (GPA/W/130 and Corr.1).

Notification and review of national implementing legislation

11. Pursuant to the Decision on the Procedures for the Notification of National Implementing Legislation (GPA/1/Add.1), Canada; the European Community; Hong Kong, China; Israel; Japan; Liechtenstein; Korea; Norway; Singapore; Switzerland; and the United States have notified national implementing legislation including their responses to the Checklist of Issues (GPA/13, GPA/20, GPA/27, GPA/34, GPA/37, GPA/46, GPA/12/Rev.1, GPA/10, GPA/39, GPA/15 and Add.1 and GPA/23, respectively). The Committee has completed the reviews of the national implementing legislation of Canada; the European Community; Hong Kong, China; Korea; Norway; Singapore; Switzerland; and the United States (GPA/51, GPA/32, GPA/54, GPA/47, GPA/53, GPA/52, GPA/33 and GPA/50, respectively). In accordance with the arrangements and the schedule for the review agreed by the Committee, these reviews were conducted on the basis of responses provided by the Parties being reviewed to written questions put by other Parties in advance of the review meeting at which their respective national legislation was taken up. At its meeting on 3 May 2001, the Committee continued the reviews by taking up the implementing legislation of Israel (GPA/34) on the basis of questions from Korea, the United States and Canada and Israel's answers thereto; the implementing legislation of Japan (GPA/37) on the basis of questions from Switzerland; the United States; Hong Kong, China; and Canada and Japan's replies thereto; and the implementing legislation of Liechtenstein (GPA/46) on the basis of questions from the United States and Liechtenstein's answers thereto. At its meeting on 2 October 2001, the Committee completed the review of the national legislation of Israel, Japan and Liechtenstein. At its next meeting, the Committee will take up the review of the legislation of the Kingdom of the Netherlands with respect to Aruba and Iceland.

Statistical reporting

12. Article XIX:5 requires Parties to collect and provide, on an annual basis, statistics on their procurements covered by the Agreement. During the period under review, Switzerland has reported statistics for 1998-1999 (GPA/29/Add.3 and GPA/40/Add.1). Japan will submit its statistical report for 1999 and the United States for 1996-2000 in the near future.

Consultations and dispute settlement

13. There were no matters raised under Article XXII of the Agreement during the period under review.

Procedural matters

14. In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add.2), Parties are considering a proposal for the derestriction of the documents listed in document GPA/W/159 as of 15 December 2001.

III. ACCESSIONS

15. Following the Committee Decision of 29 September 2000 providing for the accession of Iceland (GPA/43), Iceland deposited its instrument of accession on 29 March 2001. The Agreement entered into force for Iceland on 28 April 2001 (GPA/48 and WT/Let/388).

16. Latvia applied for accession on 16 June 1999. During the period under review, informal plurilateral consultations were conducted with Latvia on 31 January 2001 on the basis of Latvia's written answers to the questions received from the United States, Switzerland, and Canada. In parallel, intensive bilateral consultations have been held with interested Parties regarding the outstanding issues. In light of those consultations, Latvia will submit a revised offer in the near future. Moreover, Latvia updated, in document GPA/W/149, the information that it had previously

provided on its national legislation and procurement practices in GPA/28 and Add.1 by responding to the checklist of issues in document GPA/35.

17. Estonia applied for accession on 6 September 2000. Estonia's replies to the Checklist of Issues in document GPA/35, first circulated on 5 December 2000 (GPA/W/127), were revised on 17 August 2001 (GPA/W/127/Rev.1 and GPA/W/127/Rev.1/Add.1). Estonia also provided an English translation of the Public Procurement Act of 1 April 2001 (GPA/55). Informal plurilateral consultations were conducted with Estonia on 31 January 2001 on the basis of Estonia's replies to the questions received from Switzerland, Japan, the United States and Canada. A follow-up question received from Japan in April 2001 and Estonia's answers thereto have also been circulated. In parallel, bilateral consultations have been held with interested Parties. Estonia will submit a revised offer in the near future.

18. Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5) and submitted a draft offer which was subsequently revised on 19 March 1997. Parties have held bilateral consultations with Chinese Taipei since 1996. The legislation of Chinese Taipei of 1998 was circulated in document GPA/36. Chinese Taipei will submit a revised offer in the near future.

19. Panama applied for accession to the Agreement and tabled an initial offer on 24 June 1997 (GPA/W/53). Panama has had bilateral consultations with interested Parties since 1999 on the basis of a revised offer submitted on 10 December 1998.

20. The Kyrgyz Republic applied for accession to the Agreement and tabled an initial offer on 11 May 1999. Written questions and comments were received from the United States.

21. As for the other acceding countries, namely Jordan, Bulgaria, Oman, Slovenia and Albania, Jordan applied for accession on 12 July 2000, Bulgaria on 27 September 2000, Slovenia on 24 September 2001 and Albania on 28 September 2001. These countries have not yet tabled an initial offer. Jordan's replies to the checklist of issues in document GPA/35 were circulated on 6 December 2000 (GPA/W/124). Informal plurilateral consultations were conducted between Jordan and interested Parties on 31 January 2001 on the basis of the replies by Jordan to the written questions received from Switzerland, the United States and Canada. Jordan also replied to a number of follow-up questions forwarded subsequently by the European Community. Bulgaria's replies to the checklist of issues were circulated on 2 May 2001 (GPA/W/136). In addition, Bulgaria submitted an English translation of the Law on Government Procurement enacted on 25 June 1999 (GPA/49) as well as of two recently issued procurement regulations. Questions received from Switzerland; Hong Kong, China; and Canada to Bulgaria in September 2001 were circulated. Oman, Slovenia and Albania responded to the checklist of issues (GPA/W/141, GPA/W/158 and GPA/W/161, respectively). Moreover, the Protocols of Accession to the WTO of five countries, namely Croatia (WT/ACC/HRV/59), Georgia (WT/ACC/GEO/31), Lithuania (WT/ACC/LTU/52), Moldova (WT/ACC/MOL/37) and Mongolia (WT/ACC/MNG/9) include commitments regarding the Agreement on Government Procurement.

22. By way of streamlining the accession process, the Committee agreed to proceed with the accessions process in accordance with the Indicative Time-Frame for Accession Negotiations and Arrangements for Reporting on the Progress of Work in document GPA/W/109/Rev.2. The Committee had previously adopted a checklist of issues for provision of information by applicant governments (GPA/35).

IV. NEGOTIATIONS UNDER ARTICLE XXIV:7

23. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. As stated in its 1996 Report to the General Council (GPA/8), the Committee agreed to undertake an early review which was initiated in February 1997 in informal consultations, with an examination of modalities. This review has covered, in particular, the following elements: simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology; expansion of the coverage of the Agreement; and elimination of discriminatory measures and practices which distort open procurement. An objective of the negotiations under Article XXIV:7 is the expansion of the membership of the Agreement by making it more accessible to non-Parties. In this connection, a communication was sent in April 1997 by the Chairman of the Committee to the WTO Members, drawing their attention, as well as the attention of governments which are in the process of acceding to the WTO, to this work and inviting them to participate as observers in the meetings of the Committee (WT/L/206). During the period covered by this report, Parties pursued their consultations in three informal meetings held in January, May and October 2001 on the basis of proposals made by delegations, including new proposals by Switzerland, the European Community, Japan and the United States. These have been incorporated in successive versions of an informal note reflecting the discussions on the draft texts of the modifications to the Articles of the Agreement proposed by various Parties "Suggested Drafting Changes to the Text of the Agreement", the latest revision of which was circulated on 2 August 2001. At each of the informal meetings held during the period under review, Parties also considered the other aspects of the Article XXIV:7 negotiations, namely the elimination of discriminatory measures and the expansion of coverage. Canada submitted an informal note on Discriminatory Provisions in the Agreement at the 1 October 2001 meeting. The group also had before it a list of submissions that had been previously made by various delegations as well as the notes by the Secretariat relating to these elements. The Secretariat also made available a note on the Modalities Used in the Past for Negotiating Schedules to the Agreement.

24. At the informal meeting held on 1 October 2001, regarding the Article-by-Article review of the Agreement, delegations had available to them an explanatory note by the United States relating to its proposals for the revision of the Agreement and another submission by the United States on ""Build-Operate-Transfer" Contracts and "Concessions for Public Works" under the Agreement on Government Procurement". Detailed comments were made seeking clarification of or suggesting further drafting changes to the revised texts proposed by the United States in April 2001. The delegation of the United States indicated that it would further revise the texts of some of the proposed amendments to take account of the comments that had been made so far. It also informed the group that it was reviewing its ideas on exceptions to the Agreement. A number of other delegations expected to put forward drafting suggestions on the review of the text of the Agreement: Hong Kong, China on several articles; the European Community on tendering procedures; Canada on time-periods regarding contract award notices; and Japan on Article XXIV:6(b). With regard to the possible use of the term "measures" in defining the scope of an agreement, the Secretariat was asked to prepare a note on the use of this term in the GATT/WTO jurisprudence. Regarding the status of work on the revision of the text of the agreement, the view was expressed that the proposals on the table constituted a good basis for the negotiations on the revision of the text of the Agreement, it being understood that delegations were free to make proposals at any time. Finally, delegations had an exchange of views regarding the development of a plan of action for carrying forward work on all elements of the review. Some delegations informed the Group that intensive consultations were being pursued internally on GPA-related issues and that they needed more time before they could agree to a time-frame for further work on the negotiations under Article XXIV:7. It was also suggested that the discussion on the revision of the text at each of the future meetings would focus on a selected category of issues. Some delegations suggested that the possibility of early results in some areas

should be considered. Some delegations stressed that the elements of the review regarding the elimination of discriminatory provisions and expansion of coverage would be taken up in parallel with the work on the revision of the text.

**REPORT (2000) OF THE COMMITTEE ON
GOVERNMENT PROCUREMENT**

I. GENERAL

1. This Report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this Report is November 1999-October 2000, but the Report also reflects, where necessary, the work of the Committee up to November 1999 (GPA/8 and Add.1, GPA/19, GPA/25 and GPA/30). The Committee on Government Procurement held two meetings in 2000: on 8 March and 29 September 2000 (GPA/M/13 and 14).¹

3. The following WTO Members are Parties to the Agreement: Canada; the European Community and its fifteen member States; Hong Kong, China; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States. Eighteen WTO Members have observer status: Argentina, Australia, Bulgaria, Chile, Colombia, the Czech Republic, Estonia, Georgia, Iceland, Jordan, the Kyrgyz Republic, Latvia, Mongolia, Panama, Poland, the Slovak Republic, Slovenia and Turkey. Four non-WTO Members, Croatia, Lithuania, Chinese Taipei and Moldova and three intergovernmental organizations, the IMF, the ITC and the OECD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications of Appendices to the Agreement

4. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article. Since the 1999 Report of the Committee, modifications relating to their respective Appendices were made by Hong Kong, China (GPA/W/102, 105 and 116) with entry into force respectively on 4 February 2000 (WT/Let/328), 17 February 2000 (WT/Let/332) and 26 August 2000 (WT/Let/355) and by Japan (GPA/W/115) with entry into force on 22 August 2000 (WT/Let/354). Furthermore, Switzerland proposed modifications to its Annex 1 of Appendix I in document GPA/W/106 and Corr.1. In response to a request for clarification received from the delegation of the United States (GPA/W/111), an explanatory note was subsequently submitted by the delegation of Switzerland identifying the differences between the proposed modifications and the existing Annex 1 (GPA/W/114). The

¹ GPA/M/14 will be circulated shortly.

modifications by Switzerland entered into force with effect on 29 September 2000 (WT/Let/356). With regard to the proposed modifications notified by Japan on 6 September 1999 in document GPA/W/91, Canada, the European Community and the United States communicated their objection to the proposed modifications taking effect pending further consultations with Japan regarding the withdrawal of an entity from its Annex 3, Appendix I. Since the Committee's previous report, consultations have been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/107 and GPA/W/108).

Loose-leaf system for Appendices

5. The Appendices to the Agreement in the form of a loose-leaf system, pursuant to the Decision of the Committee of 4 June 1996, were certified on 1 March 2000 (WT/Let/330). In accordance with the procedures for future changes to the loose-leaf system agreed by the Committee on 24 February 1997, subsequent modifications notified by Parties are certified and issued as replacement pages to be inserted in the loose-leaf system once they become effective in accordance with the procedures of Article XXIV:6. In addition to being made available in hard copy form, the loose-leaf system is circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. An up-to-date copy of the loose-leaf system is also available to the general public through the government procurement site on the WTO Home Page on the Internet (<http://www.wto.org/wto/govt/loose.htm>).

Thresholds

6. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), Canada (GPA/W/101/Add.1) and Hong Kong, China (GPA/W/101) notified threshold figures in their national currency for the period 2000-2001, Japan (GPA/W/101/Add.2) for 2000-2002 and Switzerland (GPA/W/101/Add.3) and Norway (GPA/W/101/Add.4) for 2000.

Notification and review of national implementing legislation

7. Pursuant to the Decision on the Procedures for the Notification of National Implementing Legislation (GPA/1/Add.1), Canada; the European Community; Hong Kong, China; Israel; Japan; Korea; Norway; Singapore; Switzerland; and the United States have notified national implementing legislation including their responses to the Checklist of Issues (GPA/13, GPA/20, GPA/27, GPA/34, GPA/37, GPA/12/Rev.1, GPA/10, GPA/39, GPA/15 and Add.1 and GPA/23, respectively). At its meeting on 8 March 2000, the Committee continued the review of national implementing legislation, initiated in October 1998 (GPA/25), by taking up the legislation of Hong Kong, China; and Norway in addition to taking up outstanding points relating to the legislation of Canada, Korea and the United States. At its meeting on 29 September 2000, it initiated the review of Singapore as well as completing the reviews of the national implementing legislation of Canada; Hong Kong, China; Korea; and Norway. In accordance with the arrangements and the schedule for the review agreed by the Committee, these reviews were conducted on the basis of responses provided by the Parties being reviewed to written questions put by other Parties in advance of the review meeting at which their respective national legislation was taken up. At the next meeting, the Committee will revert to the outstanding points relating to the legislation of the United States and Singapore and take up the review of the legislation of Israel, Japan, Liechtenstein and the Kingdom of the Netherlands with respect to Aruba.

8. The Committee discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover sub-central government entities and enterprises in all 10 Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. Canada's stated position since the entry into force of the Agreement, linking the tabling of its schedule at the sub-central level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of market access through circumscribing the use of small business and other set-aside exceptions under the Agreement, remained unchanged. Some other Parties expressed their disappointment over the situation, they stressed the need for Canada to honour its commitments and considered that the problems raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Statistical reporting

9. Article XIX:5 requires Parties to collect and provide on an annual basis statistics their procurements covered by the Agreement. During the period under review, Switzerland provided statistics for 1997 (GPA/22/Add.3), Japan for 1997 and 1998 (GPA/22/Add.2 and GPA/29/Add.1), Norway for 1998 (GPA/29/Add.2), and Hong Kong, China for 1999 (GPA/40).

Consultations and dispute settlement

(i) United States – Measures Affecting Government Procurement

10. In July 1997, the European Communities and Japan requested, respectively, consultations with the United States pursuant to Article XXII of the Agreement on Government Procurement and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), regarding the Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (WT/DS88/1-GPA/D2/1 and WT/DS88/2; WT/DS95/1-GPA/D3/1 and WT/DS95/2). On 21 October 1998, pursuant to the requests of the European Communities (WT/DS88/3 of 8 September 1998) and Japan (WT/DS95/3 of 8 September 1998), the DSB established a single panel in accordance with Article 9 of the DSU and with standard terms of reference pursuant to Article XXII:4 of the Agreement on Government Procurement (WT/DSB/M/49). The Panel was constituted on 6 January 1999. In a communication to the Chairman of the DSB, dated 10 February 1999, the Chairman of the Panel stated that, in the context of a United States court ruling barring the implementation of the measure at issue, the European Communities and Japan had requested the Panel to suspend its work in accordance with Article 12.12 of the DSU and that the Panel had agreed to this request (WT/DS88/5 and WT/DS95/5). Since the Panel had not been requested to resume its work within 12 months, pursuant to Article 12.12 of the DSU, the authority for the establishment of the Panel lapsed as of 11 February 2000 (WT/DS88/6 and WT/DS95/6).

(ii) Korea – Measures Affecting Government Procurement

11. In a communication dated 16 February 1999, the United States requested consultations with Korea pursuant to Article 4 of the DSU and Article XXII of the GPA (WT/DS163/1 and GPA/D4/1) with respect to certain procurement practices of the Korean Airport Construction Authority and other entities concerned with the procurement of airport construction in Korea. Pursuant to the request by the United States, dated 11 May 1999 (WT/DS163/4), the DSB established a panel on 16 June 1999 in accordance with the provisions of Article 6 of the DSU and Article XXII of the Agreement, with the

standard terms of reference provided for in Article XXII:4 of the GPA (WT/DSB/M/64). The European Community participated as a third party in the Panel proceedings in relation to the complaint raised by the United States and Japan reserved its rights in this respect. The Panel was constituted on 30 August 1999 (WT/DS163/5). Its report, circulated on 1 May 2000 in document WT/DS163/R, was adopted at the meeting of the Dispute Settlement Body held on 19 June 2000 (WT/DSB/M/84).

Procedural matters

12. In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add.2), Parties are considering a proposal for the derestriction of the documents listed in document GPA/W/119 as of 15 November 2000.

III. ACCESSIONS

13. Iceland applied for accession to the Agreement on 22 June 1998. Following the bilateral consultations held between Iceland and Parties over the period 1998 to 2000, the Committee adopted, at its meeting on 29 September 2000, a Decision providing for the accession of Iceland to the Agreement on the basis of the terms attached to that Decision (GPA/43). Under that Decision, Iceland has one year to deposit its instrument of accession.

14. During the period under review, Jordan, Estonia and Bulgaria applied for accession on 12 July 2000, 4 September 2000 and 27 September 2000, respectively (GPA/38, GPA/41 and GPA/42). Estonia also submitted a draft offer on 4 September 2000 (GPA/SPEC/9).

15. Latvia applied for accession to the Agreement on 16 June 1999 and initiated bilateral consultations with interested Parties in February 2000 on the basis of its draft offer (GPA/SPEC/5). Information on Latvia's national legislation on government procurement has been made available to Parties in document GPA/28. Latvia has also provided written responses to the questions and comments that have been previously received from the United States (GPA/SPEC/8/Rev.1). At each of its meetings during the review period, the Committee took note of the status of bilateral consultations with respect to the accession of the Kyrgyz Republic, Panama and Chinese Taipei.² Informal plurilateral consultations will be held between Latvia and interested Parties in January 2001 and, if appropriate, with Jordan, Panama and Estonia.

16. During the period under review, the Committee has also carried out work on the streamlining of the accession process. This led to the adoption of a Checklist of Issues for the provision of information by applicant governments relating to accession to the Agreement (GPA/35). Work is under way on the establishment of an indicative time-frame for accession negotiations and of arrangements for reporting on the progress of work (GPA/W/109/Rev.1).

² Panama applied for accession to the Agreement and tabled an initial offer on 24 June 1997 (GPA/W/53 and GPA/SPEC/3). Panama pursued bilateral consultations with interested Parties in 1999 and 2000 on the basis of a revised offer submitted on 10 December 1998 (GPA/SPEC/3/Rev.1).

Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5) and submitted a draft offer which was subsequently revised on 19 March 1997 (GPA/SPEC/1/Rev.1). The domestic legislation of Chinese Taipei of 1998 was circulated in document GPA/36.

The Kyrgyz Republic applied for accession to the Agreement and tabled an initial offer on 11 May 1999 (GPA/SPEC/4). The written questions and comments received from the United States were circulated in GPA/SPEC/7.

IV. NEGOTIATIONS UNDER ARTICLE XXIV:7

17. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. As stated in its 1996 Report to the General Council (GPA/8), the Committee agreed to undertake an early review which was initiated in February 1997 in informal consultations, with an examination of modalities. This review has covered, in particular, the following elements: simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology; expansion of the coverage of the Agreement; and elimination of discriminatory measures and practices which distort open procurement. An objective of the negotiations under Article XXIV:7 is the expansion of the membership of the Agreement by making it more accessible to non-Parties. In this connection, a communication was sent in April 1997 by the Chairman of the Committee to the WTO Members, drawing their attention, as well as the attention of governments which are in the process of acceding to the WTO, to this work and inviting them to participate as observers in the meetings of the Committee (WT/L/206). During the period covered by this report, Parties pursued their consultations in three informal meetings held in March, June and September 2000 on the basis of proposals by delegations. These have been reflected in successive versions of an informal note reflecting the discussions on the draft texts of the modifications to the Articles of the Agreement proposed by various Parties "Suggested Drafting Changes to the Text of the Agreement" (the latest revision of which was circulated as Job No. 5749).

18. During the review period, Parties have also considered the time-frame for carrying forward the negotiations provided for under Article XXIV:7 and the overall work programme that should be envisaged within that time-frame. On the issue of time-frame, there is a general view that delegations should be guided by a target date of mid-2001 or the Fourth Ministerial Conference if that is held around that time and that intermediate time-frames should be set for the different stages of work. Based on a categorization of issues agreed to at the June 2000 meeting, Parties had extensive discussions under the Article-by-Article review relating to Articles VII-XV and XVIII, paragraphs 1, 3 and 4 (June meeting), the basic principles of the Agreement (Articles XIX:1, III, IV, XVI, XVII:1), technical specifications (Article VI), and bid review (Articles XVIII:2, XX) (September meeting). In addition, at the September meeting, Parties had a further exchange of views on the basis of the proposals put forward earlier on Articles VII-XV and Article XVIII, paragraphs 1, 3 and 4, including those presented by the United States at the June meeting (GPA/W/112 and GPA/W/113), taking into account the written questions of other Parties and the United States' answers relating to these proposals that had been circulated as Job No 5595 and Job No. 4954/Add.1. At both the June and September meetings, Parties also considered the other aspects of the Article XXIV:7 negotiations - the elimination of discriminatory measures and the expansion of coverage. It was noted that, at the next informal meeting to be held in the last week of January 2001, when issues of coverage and scope would be discussed, Parties would have a special focus on these other aspects. As agreed at the June meeting, the Parties will consider at that time, in addition to the issues of scope and coverage (Articles I, II and Annexes), exceptions (Articles XXIII, V), institutional provisions (Articles XIX:2, XIX:5, XXI, XII, XXIV, XVII:2) and statistical reporting (Article XIX:5).

REPORT (1999) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

I. GENERAL

1. This Report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this Report is November 1998-October 1999, but the Report also reflects, where necessary, the work of the Committee up to November 1998 (GPA/8 and Add.1, GPA/19 and GPA/25). The Committee on Government Procurement held two meetings in 1999: on 23 February and 5 October 1999 (GPA/M/11 and 12).¹

3. The following WTO Members are Parties to the Agreement: Canada; the European Community and its fifteen member States; Hong Kong, China; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States. Fourteen WTO Members have observer status: Argentina, Australia, Bulgaria, Chile, Colombia, Estonia², Iceland, the Kyrgyz Republic, Latvia, Mongolia, Panama, Poland, Slovenia and Turkey. Four non-WTO Members, Chinese Taipei, Croatia, Georgia and Lithuania, and three intergovernmental organizations, the IMF, the ITC and the OECD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications of Appendices to the Agreement

4. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article. Since the 1998 Report of the Committee, modifications relating to their respective Appendices, in accordance with the procedures of Article XXIV:6, were made by the European Community (GPA/W/51/Add.2) with entry into force on 8 October 1998 (WT/Let/294), by Japan (GPA/W/78, 79 and 88) with entry into force respectively on 13 November 1998 (WT/Let/274), on 27 November 1998 (WT/Let/275), and on 8 August 1999 (WT/Let/308) and by Singapore (GPA/W/82) with entry into force on 19 March 1999 (WT/Let/297). Proposals for modifications relating to Appendix I have also been notified by Japan in documents GPA/W/91, 93, 94 and 98. With regard to the proposed modifications notified by Japan in document GPA/W/91, Canada, the European Community and the United States communicated their objection to the proposed modifications taking effect pending further consultations with Japan regarding the withdrawal of an entity from its Annex 3, Appendix I. Hong Kong, China and Switzerland also asked for further clarifications from Japan with regard to the proposed modification.

¹ GPA/M/12 will be circulated shortly.

² Estonia will become a WTO Member as of 13 November 1999.

Loose-leaf system for Appendices

5. At its meeting of 4 June 1996, the Committee agreed to establish a loose-leaf system with legal effect to maintain up to date the Appendices to the Agreement. With a view to providing a starting point for the loose-leaf system, the Secretariat circulated in February 1997 a draft of the loose-leaf system of Appendices reflecting the Appendices attached to the Agreement as signed at Marrakesh and the subsequent rectifications, modifications and new concessions made under the procedures adopted by the Interim Committee and under the Agreement itself (GPA/W/35). This draft was subsequently updated incorporating all the modifications effective on 1 July 1999 (GPA/W/35/Rev.1) and circulated to Parties for comments concerning the accuracy and completeness of the consolidation of the Appendices. The loose-leaf system for Appendices to the Agreement will be certified by the Director-General in accordance with the normal procedures in respect of rectifications under WTO instruments. Subsequent modifications to the loose-leaf system will be made following the procedures agreed by the Committee (GPA/W/35/Rev.1, paragraph 4 and GPA/M/5, paragraph 20). In addition to being made available in hard copy form, the loose-leaf system was circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. An up-to-date copy of the loose-leaf system is also available to the general public through the government procurement site on the WTO Home Page on the Internet (<http://www.wto.org/wto/govt/loose.htm>). Any future new or replacement pages will be circulated in electronic as well as hard copy form.

Thresholds

6. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), during the period under review, Korea notified threshold figures in its national currency for the period 1999-2000 (GPA/W/81).

Notification and review of national implementing legislation

7. Pursuant to the Decision on the Procedures for the Notification of National Implementing Legislation and the Checklist of Issues (GPA/1/Add.1), seven delegations – Canada; the European Community; Hong Kong, China; Korea; Norway; Switzerland; and the United States - have notified their national implementing legislation including their responses to the Checklist of Issues (GPA/10, GPA/20, GPA/27, GPA/12/Rev.1, GPA/13, GPA/15 and Add.1 and GPA/23, respectively). At its meetings on 23 February and 5 October 1999, the Committee continued the review of the national implementing legislation, initiated in October 1998 (GPA/25), by taking up the legislation of Switzerland, the United States and Canada, in addition to taking up the outstanding points relating to the review of the national implementing legislation of the European Community and Korea. In accordance with the arrangements and the schedule for the review agreed by the Committee, the review was conducted on the basis of responses provided by the Parties being reviewed to written questions put by other Parties in advance of the review of the respective national legislation.

8. The Committee discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover sub-central government entities and enterprises in all ten Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. Canada's stated position since the entry into force of the Agreement, linking the tabling of its schedule at the sub-central level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of market access through circumscribing the use of small business and other set-aside exceptions under the Agreement, remained unchanged. Some other Parties expressed their disappointment over the situation, stressed the need for Canada to honour its commitments and considered that the problems raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its

coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Statistical reporting

9. Article XIX:5 requires Parties to collect and provide on an annual basis statistics on their procurements covered by the Agreement. During the period under review, Switzerland provided statistics for 1996 (GPA/21/Add.2), Norway for 1997 (GPA/22/Add.1) and Hong Kong, China for 1998 (GPA/29).

Consultations and dispute settlement

(i) United States – Measures affecting government procurement

10. In July 1997, the European Communities and Japan requested respectively consultations with the United States, pursuant to Article XXII of the Agreement on Government Procurement (GPA) and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), regarding the Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (WT/DS88/1-GPA/D2/1 and WT/DS88/2; WT/DS95/1-GPA/D3/1 and WT/DS95/2). On 21 October 1998, pursuant to the requests of the European Communities (WT/DS88/3 of 8 September 1998) and Japan (WT/DS95/3 of 8 September 1998), the DSB established a single panel in accordance with Article 9 of the DSU and with standard terms of reference pursuant to Article XXII:4 of the Agreement on Government Procurement (WT/DSB/M/49). The Panel was constituted on 6 January 1999. In a communication to the Chairman of the DSB, dated 10 February 1999, the Chairman of the Panel stated that, in the context of a United States court ruling barring the implementation of the measure at issue, the European Communities and Japan had requested the Panel to suspend its work in accordance with Article 12.12 of the DSU and that the Panel had agreed to this request (WT/DS88/5 and WT/DS95/5).

(ii) Korea – Measures affecting government procurement

11. In a communication dated 16 February 1999, the United States requested consultations with Korea pursuant to Article 4 of the DSU and Article XXII of the GPA (WT/DS163/1 and GPA/D4/1) with respect to certain procurement practices of the Korean Airport Construction Authority and other entities concerned with the procurement of airport construction in Korea. The European Community and Japan requested to join these consultations (WT/DS163/2 of 4 March 1999 and WT/DS163/3 of 9 March 1999). These requests were not accepted by Korea. Pursuant to the request by the United States, dated 11 May 1999 (WT/DS163/4), the DSB established a panel on 16 June 1999 in accordance with the provisions of Article 6 of the DSU and Article XXII of the GPA, with the standard terms of reference provided for in Article XXII:4 of the GPA (WT/DSB/M/64). The European Community participates as a third party in the Panel proceedings in relation to the complaint raised by the United States and Japan reserved its rights in this respect. The Panel was constituted on 30 August 1999 (WT/DS163/5).

Other matters raised in the Committee

12. During the period under review, the Committee considered the adoption of a declaration by Parties extending the benefits of the Agreement to all the least developed WTO Members.

Procedural matters

13. In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add.2), Parties are considering a proposal for the derestriction of the documents listed in document GPA/W/92 as of 20 November 1999.

Government procurement site at the WTO home page

14. A site on government procurement was established at the WTO home page on the Internet in order to provide information to the public at large on WTO activities relating to the area of government procurement. The section of the site on the Agreement on Government Procurement includes an overview, the text of the Agreement, an up-to-date copy of the loose-leaf system for Appendices, a list of Parties and observers, a table of thresholds of individual Parties and notifications of threshold figures as expressed in national currencies, information on the work of the Committee (decisions of the Committee on procedural matters, notifications of national implementing legislation, annual report to the General Council), statistics provided under Article XIX:5 and information on dispute settlement. Other sections on this site relate to the activities of the Working Group on Transparency in Government Procurement and of the Working Party on GATS Rules. Moreover, hyperlinks have been established with international and national websites containing information on government procurement. The site address is <http://www.wto.org/wto/govt/govt.htm>.

III. ACCESSIONS

15. Iceland applied for accession to the Agreement on 22 June 1998. During the period under review, Iceland carried out bilateral consultations with interested Parties on the basis of its draft offer (GPA/W/73). A communication received from Iceland containing responses to questions put to Iceland in connection with its accession and information on national legislation on government procurement will be made available to Parties.

16. In accordance with a commitment undertaken by Panama in the Report of the Working Party on the Accession of Panama to the WTO (WT/ACC/PAN/19, paragraphs 68 and 116 and Protocol, Part I, paragraph 2), Panama applied for accession to the Agreement and tabled an initial offer on 24 June 1997 (GPA/W/53 and GPA/SPEC/3). During the period under review, Panama pursued the bilateral consultations with interested Parties on the basis of a revised offer submitted on 10 December 1998 (GPA/SPEC/3/Rev.1).

17. Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5) and submitted a draft offer which was subsequently revised on 19 March 1997 (GPA/SPEC/1/Rev.1).

18. In accordance with a commitment undertaken by the Kyrgyz Republic in the Report of the Working Party on the Accession of the Kyrgyz Republic to the WTO (WT/ACC/KGZ/26, paragraph 120), the Kyrgyz Republic applied for accession to the Agreement and tabled an initial offer on 11 May 1999 (GPA/SPEC/4).

19. In accordance with a commitment undertaken by Latvia in the Report of the Working Party on the Accession of Latvia to the WTO (WT/ACC/LVA/32, paragraph 99), Latvia applied for accession to the Agreement and tabled an initial offer on 16 June 1999 (GPA/SPEC/5). Information on Latvia's national legislation on government procurement was made available to Parties in document GPA/28.

20. During the period under review, the Committee discussed streamlining the overall process of accessions. At its request, the Secretariat drew up, for the consideration of the Committee, a draft Checklist of Issues that the acceding countries could use in providing information on the main

features of their national legislation and procurement regimes. The Committee has requested the Secretariat to prepare a draft indicative time-frame for the accession proceedings.

IV. NEGOTIATIONS UNDER ARTICLE XXIV:7

21. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. As stated in its 1996 Report to the General Council, the Committee agreed to undertake an early review which was initiated in February 1997 in informal consultations, with an examination of modalities. This review has covered, in particular, the following elements: simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology; statistical reporting; expansion of the coverage of the Agreement; and elimination of discriminatory measures and practices which distort open procurement. An objective of the negotiations under Article XXIV:7 is the expansion of the membership of the Agreement by making it more accessible to non-Parties. In this connection, a communication was sent by the Chairman of the Committee to the WTO Members, drawing their attention, as well as the attention of governments which are in the process of acceding to the WTO, to this work and inviting them to participate as observers in the meetings of the Committee (WT/L/206). During the period covered by this report, Parties pursued their consultations in six informal meetings held between December 1998 and October 1999 on the basis of an informal Checklist of Issues (the latest revision of which was circulated as Job No. 5189) and an informal note reflecting the draft texts of the modifications to the Articles of the Agreement proposed by various Parties side-by-side with the text of the Agreement (circulated as Job No. 5713).

22. Parties have also considered the timetable for the completion of the negotiations and the overall work programme that should be envisaged within that time-frame. There is agreement that good progress has been made on improving the text of the Agreement, that the momentum of the work needs to be maintained and that all three elements need to be covered. Parties will revert to this matter at their next meeting, to be held in March 2000. At that time, Parties will also focus on: framework and similar types of contracts, statistical reporting and the Article-by-Article review of the Agreement. In addition, Parties will continue monitoring progress in the elimination of discriminatory measures.

Committee on Government Procurement

**REPORT (1998) OF THE COMMITTEE ON
GOVERNMENT PROCUREMENT**

I. GENERAL

1. This Report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this Report is November 1997 - October 1998, but the Report also reflects, where necessary, the work of the Committee up to November 1997 (GPA/8 and Add.1 and GPA/19). The Committee on Government Procurement held three meetings in 1998: on 18 February, 25 June and 7 October (GPA/M/8-10).

3. The following WTO Members are Parties to the Agreement: Canada; the European Community and its fifteen member States; Hong Kong, China; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States. Ten WTO Members have observer status: Argentina; Australia; Bulgaria; Chile; Colombia; Iceland; Panama; Poland; Slovenia; and Turkey. Four non-WTO Members, Chinese Taipei, Estonia, Latvia and Lithuania, and two intergovernmental organizations, the IMF and the OECD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications of Appendices to the Agreement

4. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article.

5. Since the 1997 Report of the Committee, Canada (GPA/W/61); Hong Kong, China (GPA/W/57 and 69); Israel (GPA/W/68); Japan (GPA/W/60, 63 and 74); Korea (GPA/W/59); and Singapore (GPA/W/70 and 72) made rectifications of a formal nature relating to their respective Appendices. In accordance with the procedures of Article XXIV:6, these rectifications were certified respectively on 5 December 1997 (WT/Let/209); 23 November 1997 and 24 April 1998 (WT/Let/206 and 218); 8 March 1998 (WT/Let/214); 23 November 1997, 31 December 1997 and 14 August 1998 (WT/Let/208, 211 and 238); 23 November 1997 (WT/Let/207); and 9 May and 15 July 1998 (WT/Let/243 and 232). Pursuant to the accession of Singapore to the Agreement on 20 October 1997, Switzerland and Norway made modifications to their respective General Notes to Appendix I reflecting the derogations from the provisions of Article III of the Agreement as regards the award of contracts by entities listed in Annex 3 with respect to suppliers and service providers from Singapore,

respectively in the electricity and water sectors (GPA/W/58) and in the electricity sector (GPA/W/62). These modifications entered into force for Switzerland on 19 November 1997 (WT/Let/205) and for Norway on 20 December 1997 (WT/Let/210). Proposals for modifications relating to Appendices 1-IV have also been notified by the European Community (GPA/W/51). Following the clarifications sought by the United States in September 1997, consultations have been held between the two Parties regarding these proposed modifications (GPA/W/51/Add.1 and Add.2). The procedures are under way for putting these modifications by the European Community into effect in accordance with Article XXIV:6.

6. During the period under review, the Committee also discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover subcentral government entities and enterprises in all ten Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. Canada's stated position since the entry into force of the Agreement, linking the tabling of its schedule at the subcentral level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of market access through circumscribing the use of small business and other set-aside exceptions under the Agreement, remained unchanged. Some other Parties expressed their disappointment over the situation, stressed the need for Canada to honour its commitments and considered that the problems raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Loose-leaf System for Appendices

7. As agreed at its meetings of 4 June 1996 and 24 February 1997, the Committee will establish a loose-leaf system with legal effect to maintain up to date the Appendices to the Agreement. Subsequent modifications to the loose-leaf system will be made in accordance with the procedures agreed to by the Committee. In addition to being made available in hard copy form, the loose-leaf system and future new or replacement pages will be circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. An up-to-date copy of the loose-leaf system will also be available to the general public through the government procurement site on the WTO Home Page on the Internet. At its meeting of 29 September 1997, the Committee agreed to postpone the first issue of the loose-leaf system until after the entry into force of the extensive modifications that had been notified by the European Community in document GPA/W/51 (c.f. paragraph 5 above and GPA/M/7, paragraphs 9-10). Meanwhile, a draft of the loose-leaf system of Appendices has been available since 15 May 1998 on the government procurement site at the WTO Home Page in order to provide information on the Appendices including the modifications that have been certified since the signature of the Agreement on 15 April 1994 (<http://www.wto.org/wto/govt/loose.htm>). The procedures agreed by the Committee concerning certification and circulation of the loose-leaf system of schedules will be carried out after the certification of the proposed modifications to the Appendices of the European Community (GPA/W/35, paragraph 4 and GPA/M/5, paragraph 20).

Accessions

8. Iceland applied for accession to the Agreement on 22 June 1998. During the period under review, Iceland initiated bilateral consultations with interested Parties on the basis of its draft offer (GPA/W/73).

9. In accordance with a commitment undertaken by Panama in the Report of the Working Party on the Accession of Panama to the WTO (WT/ACC/PAN/19, paragraphs 68 and 116 and Protocol, Part I, paragraph 2), Panama applied for accession to the Agreement and tabled an initial offer on 24 June 1997 (GPA/W/53 and GPA/SPEC/3). During the period under review, Panama pursued the bilateral consultations with interested Parties.

10. Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5). During the period under review, Chinese Taipei continued and, in some cases, completed bilateral consultations with interested Parties on the basis of its offer of March 1997 (GPA/SPEC/1/Rev.1).

Notification and Review of National Implementing Legislation

11. Pursuant to the Decision on the Procedures for the Notification of National Implementing Legislation and the Checklist of Issues (GPA/1/Add.1), as of [5 October] 1998, six delegations - Canada, the European Community, Korea, Norway, Switzerland and the United States - have notified their national implementing legislation including their responses to the Checklist of Issues (GPA/10, GPA/20, GPA/12/Rev.1, GPA/13, GPA/15 and GPA/23). At its meeting on 7 October 1998, the Committee initiated the review of national implementing legislation by taking up the legislation of the European Community and Korea. In accordance with the arrangements and the schedule for the review agreed to by the Committee at its February and June 1998 meetings, the review is being conducted on the basis of responses provided by the European Community and Korea to written questions put by other Parties in advance of the review.

Thresholds

12. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), Canada; the European Community; Hong Kong, China; Israel; Japan; Norway; Singapore; and the United States have notified threshold figures in their respective national currencies for the periods 1998-1999 (GPA/W/66 and Addenda 1-7).

Request for Information under Article XIX

13. At its February, June and October 1998 meetings, the Committee took note of statements concerning the coverage of the Korea Airport Construction Authority under the Agreement (GPA/M/8, paragraphs 27 and 28 and GPA/M/9, paragraph 16). A request for information by the United States, pursuant to paragraphs 1 and 2 of Article XIX of the Agreement and dated 11 September 1998, was circulated in document GPA/W/76.

Statistical Reporting

14. Article XIX:5 requires Parties to collect and provide on an annual basis statistics on their procurements covered by the Agreement. During the period under review, Norway and Canada have provided statistics for 1996 (GPA/21 and Add.1) and, Hong Kong, China for July-December 1997 (GPA/22).

Derestriction of Documents

15. In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add 2), the Committee agreed to derestrict the documents listed in document GPA/24 as of 10 March 1998.

Demonstrations on the Use of Information Technology in Government Procurement

16. Demonstrations of the application of information technology to the area of government procurement and panel discussions on related policy issues were held on 24 June 1998 with the participation of experts from Canada, the European Community, Finland, Japan, Mexico, Norway, Poland, Singapore and the United States.

Government Procurement Site on the WTO Home Page

17. A site on Government Procurement was established at the WTO Home Page on the Internet in order to provide information to the public at large on WTO activities relating to the area of government procurement. The section of the site on the Agreement on Government Procurement includes an overview, the text of the Agreement, an up-to-date copy of the loose-leaf system of Appendices, a list of Parties and observers, a table of thresholds of individual Parties and notifications of threshold figures as expressed in national currencies, information on the work of the Committee (decisions of the Committee on procedural matters, notifications of national implementing legislation, annual report to the General Council) and information on dispute settlement. Where appropriate, linkage is provided to WTO documents on-line. Other sections on this site relate to the activities of the Working Group on Transparency in Government Procurement and of the Working Party on GATS Rules. Links are also provided to other sites on government procurement, for instance to those providing information on procurement opportunities and contract awards. The site address is <http://www.wto.org/wto/govt/govt.htm>.

Relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement

18. At its meetings in February and June 1998, the Committee discussed the legal and procedural aspects of the relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement on the basis of a note prepared by the Secretariat in response to the Committee's request (GPA/M/8, paragraphs 5-10, GPA/M/9, paragraphs 3 and 4). The Committee took note of the following legal opinion expressed in the note by the Secretariat circulated in document GPA/W/65 while also noting that any delegation could revert to the matter at a future meeting: "It seems clear from the provisions of Article XXIV:3(c) of the 1994 Agreement on Government Procurement, which relates to the same subject-matter as the Tokyo Round Agreement (plus some additional subject-matter), that all the Parties to the Tokyo Round Agreement intend that the matters covered should be governed by the 1994 Agreement. Therefore, in the light of the provisions of Article 59.1(a) of the Vienna Convention on the Law of Treaties, 1969, it would appear that the Tokyo Round Agreement has been considered as terminated with effect from the time that all its Parties became Parties to 1994 Agreement, that is to say 20 October 1997. In the light of the above, it would not appear necessary for any specific further action to be taken, whether in the form of individual countries withdrawing from the Tokyo Round Agreement or in the form of a decision of the Committee of the Tokyo Round Agreement formally terminating its existence".

Consultations and Dispute Settlement

19. At its meetings in 1997 and February and June 1998, the Committee took note of statements concerning the legislation enacted by the State of Massachusetts regulating State contracts with companies doing business with or in Myanmar (GPA/M/5, paragraphs 47-52 and GPA/M/6, paragraphs 19-21, GPA/M/7, paragraph 26 and GPA/M/8, paragraph 29 and GPA/M/9, paragraph 17). A request for information by Japan, pursuant to paragraphs 1 and 3 of Article XIX of the Agreement and dated 10 March 1997 (GPA/W/39) was responded to by the United States on 8 August 1997 (GPA/W/52). A request for consultations by the European Community was communicated on 20 June 1997 pursuant to Article XXII of the GPA and Article 4 of the DSU

(WT/DS88/1-GPA/W/D2/1). Japan requested to join these consultations under Article 4:11 of the DSU on 27 June 1997 (WT/DS88/2). In a subsequent communication dated 18 July 1997, Japan also requested consultations regarding this matter pursuant to Article XXII of the GPA and Article 4 of the DSU (WT/DS95/1-GPA/W/D3/1). The European Communities requested to join those consultations under Article 4.11 of the DSU on 23 July 1997, (WT/DS95/2). In a communication dated 8 September 1998, the European Community requested the establishment of a panel pursuant to Article XXII of the GPA, with the terms of reference provided for in Article XXII:4 of the GPA (WT/DS88/3). In a communication dated 8 September 1998, Japan requested the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU and to Article XXII of the GPA, with the terms of reference provided for in Article XXII:4 of the GPA (WT/DS95/3).

20. At its February and May 1997 meetings, the Committee took note of statements concerning a procurement tender published by the Ministry of Transport of Japan to purchase MTSAT Satellite-based Augmentation System (MSAS) (GPA/M/5, paragraphs 53-55 and GPA/M/6, paragraph 22). A request for consultations by the European Community was communicated on 26 March 1997 pursuant to Article 4.4 of the DSU (WT/DS73/1-GPA/D1/1). The United States request of 9 April 1997 to join the consultations (WT/DS73/2) pursuant to Article 4.4 of the DSU was accepted by Japan on 14 April 1997 (WT/DS73/3). In a communication dated 31 July 1997, the European Community notified that it had found a mutually agreed solution with Japan within the meaning of Article 3.6 of the DSU (WT/DS73/4/Rev.1 and GPA/D1/2/Rev.1). In response to the request for information by the United States, the European Community, in a statement made jointly with Japan at the meeting of 18 February 1998, provided information regarding the mutually agreed solution reached between the two Parties (GPA/M/8, paragraph 31).

III. NEGOTIATIONS UNDER ARTICLE XXIV:7

21. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. As stated in its 1996 Report to the General Council, the Committee agreed to undertake an early review which was initiated in February 1997 in informal consultations, with an examination of modalities. This review has covered, in particular, the following elements: simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology; expansion of the coverage of the Agreement; and elimination of discriminatory measures and practices which distort open procurement (GPA/8 and Add.1 and GPA/19). An objective of the negotiations under Article XXIV:7 is the expansion of the membership of the Agreement by making it more accessible to non-Parties. In this connection, a communication was sent by the Chairman of the Committee to the WTO Members, drawing their attention, as well as the attention of governments which are in the process of acceding to the WTO, to this work and inviting them to participate as observers in the meetings of the Committee (WT/L/206). During the period covered by this report, Parties pursued their informal consultations in December 1997, February, June and October 1998 on the basis of an informal checklist of issues, the latest version of which is dated 8 September 1998 (circulated with footer "gpa60") and the proposals by various Parties. At the meeting on 25 June 1998, the Committee agreed to a time-frame for the negotiations under Article XXIV:7 and the overall work programme that should be envisaged within that time-frame on the basis of a proposal by the Chair, the text of which is attached to this report. In the consultations to be held in December 1998, the Committee will focus discussions on: issues of information technology, statistical reporting, monitoring and enforcement and procurement methods. It will also continue its Article-by-Article examination of the Agreement and will discuss the types of discriminatory provisions in the Appendices and coverage of services.

ATTACHMENT

Time-frame and the Work Programme for the Negotiations under Article XXIV:7

The Committee agreed to proceed in accordance with the following proposals by the Chair regarding a time-frame for the negotiations under Article XXIV:7 and the overall work programme that should be envisaged within that time-frame, the text of which incorporates suggestions by delegations agreed to by the Committee:

"I sense a widespread view that we should aim to complete the negotiations, at least in respect of the simplification and improvement of the Agreement, by the third WTO Ministerial to be held at the end of next year with a view to, in particular, increasing the attractiveness of the Agreement to new members.

"If this is to be done, we would need to reserve the whole of the fall of next year to an intensive negotiating process. This, in turn, would require that by the summer of next year there would be in existence a document, reflecting the outstanding proposals, that could constitute the basis for these negotiations. The preparation of such a document would require that all the proposals and suggestions for improvement of the text would have been thoroughly discussed and digested by that time. In order for this to be done, we might wish to set a target date of the end of April next year for the tabling of all such proposals and suggestions – without, of course, prejudice to the right of participants to put forward at a later date modified or additional proposals where necessary.

"To sum up therefore I would suggest the following key elements of a timetable and work programme:

- The tabling of suggestions and proposals no later than the end of April 1999.
- The preparation of a document reflecting all outstanding proposals and suggestions, as a basis for the final negotiating phase, no later than the summer of 1999. I would, of course, hope that in the course of the review and discussion of the proposals and suggestions that would already have been undertaken by that time a considerable measure of agreement would already have been reached on many points and that the number of outstanding points left for the final negotiating phase would be kept to a manageable minimum.
- A target of the third WTO Ministerial for the completion of the negotiations, at least on the simplification and improvement of the Agreement.

"We would in parallel continue work on the other elements of the negotiations, namely on the elimination of discriminatory measures and practices which distort open procurement and the expansion of the coverage of the Agreement. We will revert at our next meeting to the timetable and work programme for these parts of the negotiations. To the extent that the objective of the elimination of discriminatory measures could be achieved through modifications to the Agreement itself, this work would also have the target date of the third Ministerial Meeting.

"If this way of proceeding were to be acceptable to you, we would need to give some thought to the sort of meeting schedule that should be envisaged for the remainder of this year and for next year. My own suggestion would be that you might consider two meetings in the fall of this year (our October meeting already scheduled and maybe one in mid-December), and three meetings in the first part of next year (for example February, May and July). In the

autumn period of 1999, we would need to envisage a semi-continuous process of negotiation, i.e. the Group would need to be on call for the whole period.

"WTO Members, not parties to the GPA, and other observer governments to the GPA would be invited to participate fully in the work, it being understood that the final decision on the outcome would remain with Parties to the GPA."

WORLD TRADE
ORGANIZATION

GPA/19
29 October 1997

(97-4747)

Committee on Government Procurement

REPORT (1997) OF THE COMMITTEE ON GOVERNMENT
PROCUREMENT

I. GENERAL

1) This Report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments during the periods covered by such reviews.

2) The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this Report is January-September 1997, but the Report also reflects, where necessary, the work of the Committee in 1996 (GPA/8 and Add.1). The Committee on Government Procurement held three meetings in 1997: on 24 February, 21 May and 29 September (GPA/M/5-7).

3) The following WTO Members are Parties to the Agreement: Canada; the European Communities and fifteen member States; Hong Kong, China; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland and the United States. Nine WTO Members have observer status: Argentina; Australia; Bulgaria; Chile; Colombia; Iceland; Panama; Poland; and Turkey. Two non-WTO members, Chinese Taipei and Latvia, and two intergovernmental organizations, IMF and the OECD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications of Appendices to the Agreement

4) Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article.

5) Since the 1996 Report of the Committee, the European Community and the United States have notified modifications to Appendix I consequent on the enlargement of the European Communities on 1 January 1995 to include Austria, Finland and Sweden. These modifications entered into force on 16 January 1997 (WT/Let/135). Following an agreement reached between Switzerland and the United States, the General Notes to Appendices I of Switzerland and of the United States have been modified (GPA/W/41 and 42) to reflect the reciprocal extension of the scope of the Agreement. These modifications entered into force on 22 June 1997 (WT/Let/146). Israel and the European Community modified their respective Appendices I reflecting an agreement reached between the two Parties (GPA/W/54 and GPA/W/55). The modifications entered into force on 28 September 1997 (WT/Let/184) and on 29 September 1997 (WT/Let/185). Pursuant to the accession of Hong Kong to the Agreement on 19 June 1997, Norway, the European Community and Switzerland made consequential modifications to their respective General Notes to Appendix I reflecting the extension of the scope of the Agreement to Hong Kong (GPA/W/43, GPA/W/44 and GPA/W/47 and Add.1). These modifications entered into force on 29 June 1997 (WT/Let/152), on 9 July 1997 (WT/Let/162) and on 23 October 1997 (WT/Let/194). During the review period, Japan (GPA/W/27 and GPA/W/31), Switzerland (GPA/W/45), Norway (GPA/W/46) and Hong Kong, China (GPA/W/56) made rectifications of a formal nature relating to their Appendices. In accordance with the procedures of Article XXIV:6, these rectifications were certified respectively on 5 November 1996 in WT/Let/119, on 4 January 1997 in WT/Let/134, on 16 August 1997 in WT/Let/164, on 12 July 1997 in WT/Let/163, and on 5 October 1997 in WT/Let/183). Proposals for modifications relating to Appendices I-IV have also been notified by the European Community (GPA/W/51). The procedures are under way for putting these modifications into effect in accordance with Article XXIV:6.

6) The Committee also discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover sub-central government entities and enterprises in all ten Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. Canada's stated position since the entry into force of the Agreement, linking the tabling of its schedule at the sub-central level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of market access through circumscribing the use of small business and other set-aside exceptions under the Agreement, remained unchanged. Some other Parties expressed their disappointment over the situation, stressed the need for Canada to honour its commitments and considered that the problems raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Loose-leaf System for Appendices

7) *As agreed at its meeting of 4 June 1996, the Committee will establish a loose-leaf system with legal effect to maintain up to date the Appendices to the Agreement. At its meeting on 24 February 1997, the Committee agreed to the procedures for subsequent modifications to the loose-leaf system (GPA/W/35). In addition to being made available in hard-copy form, the loose-leaf system and future new or replacement pages will be circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. An up-to-date copy of the loose-leaf system will also be available to the general public through the government procurement site on the WTO Home Page on the Internet.*

Government Procurement Site on the WTO Home Page

8) *A site on Government Procurement was established at the WTO Home Page on the Internet in order to provide information to the public at large on developments relating to the Agreement on Government Procurement. The section of the site on the Agreement on Government Procurement includes an overview, the text of the Agreement, a list of Members and observers, a table of thresholds of individual Parties, information on the work of the Committee (Decisions of the Committee, Annual Report to the General Council) and information on dispute settlement. Where appropriate, linkage is provided to WTO documents on-line. An up-to-date copy of the loose-leaf system of Appendices will also be accessible on this site. Other sections on this site relate to the activities of the Working Group on Transparency in Government Procurement and of the Working Party on GATS Rules. Links are also provided to other sites on government procurement. The site address is <http://www.wto.org/wto/govt/govt.htm>.*

Accessions

9) *Pursuant to the Committee's Decision on the Accession of Hong Kong of 5 December 1996 (GPA/9), Hong Kong deposited its instrument of accession on 20 May 1997. The Agreement entered into force for Hong Kong on 19 June 1997 (GPA/14 and WT/Let/141). As foreseen in paragraph 3 of the Decision, Hong Kong will delay the application of paragraphs 2-8 of Article XX of the Agreement on challenge procedures for a period of no more than one year after the entry into force of the Agreement for Hong Kong. Before its accession to the Agreement, Hong Kong forwarded a communication to the Committee concerning a commitment with respect to procurement by two electrical utility companies which were not subject to government control in Hong Kong (GPA/11). As indicated in paragraph 5 above, the European Community, Norway and Switzerland notified modifications to the General Notes to their respective Appendices I to reflect the extension of the Agreement as regards the award of contracts in the electricity sector with respect to the suppliers and service providers in Hong Kong (GPA/W/44, GPA/W/43 and GPA/W/47 and Add.1).*

10) *Pursuant to the Committee's Decision on the Accession of Liechtenstein of 24 February 1996 (GPA/3), of which the one-year validity period was extended*

for a period of six months, i.e. until 27 August 1997 at the request of Liechtenstein (GPA/W/34 and GPA/M/5, paragraph 35), Liechtenstein deposited its instrument of accession on 19 August 1997. The Agreement entered into force for Liechtenstein on 18 September 1997 (GPA/16 and WT/Let/166).

11) Pursuant to the Committee's Decision on the Accession of Singapore of 20 September 1996, inviting Singapore to accede on the terms attached to that Decision (GPA/6), Singapore deposited its instrument of accession on 20 September 1997. The Agreement entered into force for Singapore on 20 October 1997 (GPA/18 and WT/Let/179).

12) Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5). At its May 1997 meeting, the Committee was informed of the improvements that Chinese Taipei had made in the second revision of its offer of March 1997 following bilateral consultations held with interested Parties (GPA/SPEC/1/Rev.1).

13) In accordance with a commitment undertaken by Panama in the Report of the Working Party on the Accession of Panama to the WTO (WT/ACC/PAN/19, paragraphs 68 and 116 and Protocol, Part I, paragraph 2), Panama applied for accession to the Agreement and tabled an initial offer of its entities on 24 June 1997 (GPA/W/53 and GPA/SPEC/3).

Decisions on Procedural Matters

14) In accordance with the Decision on the Procedures for the Notification of National Implementing Legislation and the Checklist of Issues (GPA/1/Add.1), Parties agreed to notify their legislation no later than 31 December 1996. As of 1 November 1997, four delegations - Canada, Korea, Norway and Switzerland - have notified their national implementing legislation including their responses to the Checklist of issues (GPA/10, GPA/12/Rev.1, GPA/13 and GPA/15).

15) In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), all Parties have notified thresholds in their respective national currencies for the periods 1996-97 (GPA/W/12 and Addenda 1-8).

16) In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add 2), the Committee agreed to derestrict the documents listed in document GPA/16 on 20 May 1997.

Statistical Reporting

17) Article XIX:5 requires Parties to collect and provide on an annual basis statistics on their procurements covered by the Agreement. No Parties have provided statistics on their procurements covered by the Agreement in 1996.

Other Matters Raised by Parties

18) *At its February and May 1997 meetings, the Committee took note of statements concerning the legislation enacted by the State of Massachusetts regulating State contracts with companies doing business with or in Myanmar (GPA/M/5, paragraphs 47-52 and GPA/M/6, paragraphs 19-21). A request for information by Japan, pursuant to paragraphs 1 and 3 of Article XIX of the Agreement and dated 10 March 1997 (GPA/W/39) was responded to by the United States on 8 August 1997 (GPA/W/52). A request for consultations by the European Communities was communicated on 20 June 1997 pursuant to Article 4.4 of the DSU (WT/DS88/1-GPA/D2/1). In a communication dated 27 June 1997, Japan requested to join those consultations under Article 4.11 of the DSU (WT/DS88/2). In a subsequent communication dated 18 July 1997, Japan also requested consultations regarding this matter (WT/DS95/1-GPA/D3/1). In a communication dated 23 July 1997, the European Communities requested to join those consultations under Article 4.11 of the DSU (WT/DS95/2).*

19) *At its February and May 1997 meetings, the Committee took note of statements concerning a procurement tender published by the Ministry of Transport of Japan to purchase MTSAT Satellite-based Augmentation System (MSAS) (GPA/M/5, paragraphs 53-55 and GPA/M/6, paragraph 22). A request for consultations by the European Communities was communicated on 26 March 1997 pursuant to Article 4.4 of the DSU (WT/DS73/1-GPA/D1/1). The United States request of 9 April 1997 to join the consultations (WT/DS73/2) pursuant to Article 4.4 of the DSU was accepted by Japan on 14 April 1997 (WT/DS73/3). In a communication dated 31 July 1997, the European Community notified that it had found a mutually agreed solution with Japan within the meaning of Article 3.6 of the DSU (WT/DS73/4/Rev.1 and GPA/D1/2/Rev.1). Pursuant to Article 3.6 of the DSU, the United States has requested information regarding the mutually agreed solution reached between the two Parties.*

20) *At its May 1997 meeting, the Committee took note of a statement concerning a recent supercomputer procurement by the United States (GPA/M/6, paragraphs 23-26).*

III. MODALITIES FOR THE REVIEW OF THE AGREEMENT

21) *Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. As stated in its 1996 Report to the General Council, the Committee agreed to undertake an early review, starting in 1997 with an examination of modalities. The review will, in particular, cover the following elements: simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology; expansion of the coverage of the Agreement; and elimination of*

discriminatory measures and practices which distort open procurement (GPA/8 and Add.1). An objective of the review is the expansion of the membership of the Agreement by making it more accessible to non-Parties. In this connection, a communication was sent by the Chairman of the Committee to the WTO Members, drawing their attention, as well as the attention of governments which are in the process of acceding to the WTO, to the review and inviting them to participate as observers in the meetings of the Committee (WT/L/206). The work was initiated in February, May and September 1997 in informal consultations and on the basis of proposals by various Parties. In the next such consultations, to be held in November 1997, the Committee will have focused discussions on: issues of non-discrimination in connection with information technology; improvements to the structure and presentation of the Agreement; and discriminatory provisions in Appendices on the basis of written proposals from Parties. The status of the discussion of the elements of the review is contained in an informal Checklist of issues which is regularly updated.

WORLD TRADE
ORGANIZATION

GPA/8/Add.1
9 December 1996

(96-5143)

Committee on Government Procurement

REPORT (1996) OF THE COMMITTEE ON GOVERNMENT
PROCUREMENT (1994 AGREEMENT)¹

Addendum

On 5 December 1996 the Committee on Government Procurement held a meeting which approved Hong Kong's application for accession to the Agreement (GPA/W/28 and Corr.1). Accordingly, after paragraph 10 of the Committee's 1996 Report, an additional paragraph should be added to take account of the Committee's Decision at that meeting. This paragraph should read:

•Hong Kong applied for accession to the Agreement by a communication dated 31 October 1996 (GPA/W/28 and Corr.1). Following bilateral consultations held between Hong Kong and Parties, the Committee adopted, at its meeting of 5 December 1996, a Decision inviting Hong Kong to accede to the Agreement on the terms attached to that Decision (GPA/9).•

¹ This report has been communicated to the General Council under the symbol WT/L/190/Add.1.

WORLD TRADE
ORGANIZATION

GPA/8
17 October 1996

(96-4316)

Committee on Government Procurement

REPORT (1996) OF THE COMMITTEE ON GOVERNMENT
PROCUREMENT (1994 AGREEMENT)¹

I. General

1) This report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments in the implementation and operation of the Agreement during the periods covered by such reviews.

2) The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this first Report is January-September 1996, but the report also reflects, where necessary, the preparatory work of the Interim Committee on Government Procurement prior to the Agreement's entry into force. The Committee on Government Procurement held three meetings in 1996: on 27 February, 4 June and 20 September (GPA/M/1-3). The Interim Committee on Government Procurement held six meetings in 1994 and 1995 (GPA/IC/M/1-6). Its report to the Committee was circulated in document GPA/IC/9.

3) The following WTO Members are Parties to the Agreement: Canada, the European Communities and fifteen Member States, Israel, Japan, Korea, Netherlands with respect to Aruba², Norway, Switzerland and the United States. Seven WTO Members have observer status: Australia, Colombia, Iceland, Liechtenstein, Singapore and Turkey. Two non-WTO members have observer status: Chinese Taipei and Latvia.

II. Implementation of the Agreement

Modifications of Appendices to the Agreement

¹ This report has been communicated to the General Council under the symbol WT/L/190.

² As of 25 October 1996

4) *Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article.*

5) *Prior to the entry into force of the Agreement, the United States and Norway made rectifications of a purely formal nature pursuant to the relevant Decision of the Interim Committee (GPA/IC/M/1, Annex 2). The United States rectification to its Appendix II regarding State Publications with effect as of 23 December 1994 was accompanied by a list of such publications (GPA/IC/W/10) and Norway's rectification with effect as of 15 December 1994 related to the change of names of entities in Appendix I, Annex 1 (GPA/IC/W/8).*

6) *At the time of the signature of the Agreement in Marrakesh in April 1994, the European Communities and the United States negotiated a bilateral agreement extending their mutual benefits under the Agreement, the relevant details of which, including the intended modifications, were circulated to the Interim Committee on 15 June 1994. At its meeting of 7 December 1995 the Interim Committee accepted that the European Communities and the United States had met the procedural requirements, in terms of the relevant Decision of the Informal Group on Negotiations (GPA/IC/3), necessary for the incorporation of modifications to the respective Annexes to Appendix I, which were subsequently submitted on 22 December 1995 (GPA/IC/10).*

7) *After the entry into force of the Agreement, Japan and the United States notified modifications to Appendix I which followed their bilateral agreement reached on the enlargement of the coverage of the Agreement (GPA/W/1 and GPA/W/2). Consequential modifications to Appendix I entered into force on 25 February 1996. Following the bilateral agreement reached between Norway and the United States, further modifications to Appendix I entered into force on 17 August 1996 (GPA/W/22 and GPA/W/23). Discussions currently being held between some other Parties may result in further expansion of the coverage of the Agreement.*

8) *The Committee also discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover sub-central government entities and enterprises in all ten Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. At the last two meetings of the Interim Committee, Canada linked the tabling of its schedule at the sub-central level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of access through circumscribing the use of small business and other set-aside exceptions under the Agreement (GPA/IC/M/5-6). Canada maintained this position at the first three meetings of the Committee held in 1996 (GPA/M/1-3). Some other Parties expressed their disappointment over the situation, stressed the need for Canada to honour its commitments and considered that the problems raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its*

commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Accession

9) At its first meeting on 27 February 1996, the Committee concluded the accession process of two additional WTO Members to the Agreement, which had been initiated prior to the entry into force of the Agreement, by adopting the Decisions on the accession of Liechtenstein and the Kingdom of the Netherlands with respect to Aruba on the basis of the reports of the Interim Committee (GPA/IC/6 and GPA/IC/7), and inviting these Members to accede to the Agreement on the terms for accession attached to the respective Decisions (GPA/2 and GPA/3). The Kingdom of the Netherlands for Aruba has deposited its instrument of accession on 25 September 1996 (WT/Let/111 and GPA/7). Liechtenstein has not yet deposited its instrument of accession.

10) Singapore applied for accession in November 1995. Following bilateral consultations held between Singapore and Parties in 1996, the Committee adopted, at its meeting on 20 September 1996, a Decision inviting Singapore to accede on the terms attached to that Decision (GPA/6). Singapore has not yet deposited its instrument of accession.

11) Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5). At its February and June 1996 meetings, the Committee was informed of the bilateral consultations held between the delegation of Chinese Taipei and Parties to the Agreement on Chinese Taipei's revised offer in view of its wish to conclude this process in the latter part of 1996. At its September meeting, the Committee was informed of further improvements that Chinese Taipei had made to its offer.

Decisions on Procedural Matters

12) At its first meeting on 27 February 1996, the Committee on Government Procurement adopted the following Decisions on procedural matters: Participation of Observers in the Committee; Accession to the Agreement; and Interim Procedures on the Circulation of and on the Derestriction of Documents, Pending Definitive Procedures (GPA/1). These Decisions, which concern, *inter alia*, possibilities for Members of the WTO not Parties to the Agreement to participate as observers in the Committee, to receive Committee documents and to accede to the Agreement, were transmitted to the General Council for the information of all Members of the WTO (WT/L/146). At its September meeting, the Committee agreed to align its procedures on circulation and derestriction of documents with those adopted by the General Council on 18 July 1996 (WT/L/160/Rev.1).

13) *At its meeting on 27 February 1996, the Committee adopted a Decision on modalities for notifying threshold figures in national currencies (GPA/1). All Parties have notified thresholds in their respective national currencies for the periods 1996-97 and the methods employed for determining them (GPA/W/12 and Addenda 1-6).*

14) *At its meeting on 4 June 1994, the Committee adopted a Decision on Procedures for the Notification of National Implementing Legislation, including responses to a checklist of issues (GPA/1/Add.1). This sets a time-limit of 31 December 1996 for such notifications.*

Establishment of a Practical Guide to the New Agreement

15) *Pursuant to its discussion on the desirability, the structure and presentation of a practical guide to the Agreement directed towards the private sector, the Interim Committee considered it appropriate to postpone active consideration of the establishment of such a guide in view of its linkages with various other outstanding issues, such as the procedures for notifying national implementing legislation and the use of information technology in procurement procedures.*

Loose-leaf System for Updating Appendices

16) *The Committee agreed, at its meeting on 4 June 1996, to establish a loose-leaf system, with legal effect, to ensure that the Appendices to the Agreement are kept up to date. The Committee requested the Secretariat to produce and distribute an updated set of Appendices, with a view to providing a starting point for the loose-leaf system. The Committee agreed to make this loose-leaf system, once established, available to the public at large through the Internet.*

Statistical Reporting

17) *Article XIX:5 requires Parties to collect and provide on an annual basis statistics on their procurements covered by the Agreement. With a view to ensuring that such statistics are comparable, Article XIX:5 requires the Committee to provide guidance on the methods to be used. The Interim Committee established a Working Group on Statistical Reporting to propose guidelines for meeting the statistical reporting requirements of Article XIX:5, in particular in respect of the adoption of uniform classification systems and methods to be used for providing statistics on the country of origin of products and services.*

18) *Based on the report of this Working Group (GPA/IC/8), the Committee agreed, at its first meeting on 27 February 1996, that the rules of origin of products used for the purposes of statistical reporting in Article XIX:5 of the Agreement should be the same as those applied under Article IV, which were those used in the normal course of trade. As for the requirement to report statistics on the origin of services, the Committee postponed application of this requirement until practicable rules for determining the origin of services had been defined. At its meeting on 4 June 1996, the Committee adopted classification systems for goods and services to be used in statistical reporting under the Agreement (GPA/4).*

Some Parties asserted that the objective of establishing statistics, i.e. to provide information and enable review as regards obligations of Parties, might be more appropriately met through alternative means.

Other Matters

19) In accordance with the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 of the WTO Agreement), the Committee notified the Dispute Settlement Body (DSB) of special or additional rules or procedures on dispute settlement in the Agreement on Government Procurement, namely Article XXII, paragraphs 2 through 7 (GPA/5).

III. Work under the Built-In Agenda

Information Technology

20) Article XXIV:8 of the Agreement calls on Parties to consult regularly in the Committee on developments in the use of information technology in government procurement and, if necessary, to negotiate modifications to the Agreement itself. In preparation for the implementation of the future responsibilities of the Committee in regard to these provisions, the Interim Committee gathered information on the use of information technology in government procurement in the various Signatories in reply to a questionnaire (GPA/IC/W/4/Rev.1) as well as through discussion in the Interim Committee (GPA/IC/M/1-6). This information raised a number of policy issues concerning, on the one hand, issues both of access to procurement opportunities on on-line databases and electronic tendering or commerce and, on the other hand, questions both of cooperation between and coordination of national systems (GPA/IC/W/18). The work on information technology has focused on the need to ensure that access to procurement opportunities through the use of information technology takes place on a non-discriminatory basis and also on considering what modifications, if any, may be necessary to the Agreement to enable the benefits of information technology to be harnessed. The United States, the European Communities and Norway submitted communications identifying a number of areas that might require examination to accommodate the developments in information technology (GPA/IC/W/36, GPA/W/13 and GPA/W/14). In addition the Secretariat prepared a compilation of issues relating to the implications of the developments of information technology which also identified options for carrying forward the work in this area (GPA/W/15). The Committee's discussion of these options at its second meeting on 4 June 1996 had the following outcome. First, the Secretariat revised the questionnaire on information technology (GPA/IC/W/4/Rev.1) as proposed in document GPA/W/15 (GPA/W/24). Second, the Secretariat prepared a factual note on the aspects of the Agreement that it had been suggested might need to be re-examined in the light of information technology, setting out the relevant provisions of the Agreement and drawing attention to any pertinent information on their negotiating history (GPA/W/25). Third, the delegation of the United States provided information on the pilot project launched in the APEC framework on

access to national databases (GPA/M/3). Fourth, the European Community, in coordination with Norway, would prepare a paper identifying, inter alia, the technical issues relating to information technology that might need to be examined by experts. The Committee is determined to pursue its work on information technology expeditiously, so as to ensure that the benefits of information technology are harnessed while at the same time protecting and, where possible, enhancing non-discriminatory access.

Three-year Review

21) Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. At the Committee's meeting on 4 June 1996, suggestions were made that, with a view to facilitating accession by the widest possible number of countries and to adjusting the Agreement to newly-emerging technologies, such negotiations should be initiated in 1997 and could include the following main elements: (i) expansion of the coverage of the Agreement, notably extending it to sectors not presently covered; (ii) increased security of market access under the Agreement; (iii) elimination of discriminatory measures and practices; and (iv) simplification and improvement of the Agreement. Some Parties expressed the view that further experience with the operation of the Agreement should be gained before initiating negotiations aimed at increased coverage.

IV. Issues to be brought to the attention of the Ministerial Conference

22) The Committee has agreed to undertake an early review, starting in 1997 with an examination of modalities, with a view to the implementation of Article XXIV:7 (b) and (c) of the Agreement. The review will, in particular, cover the following elements:

-expansion of the coverage of the Agreement;

-elimination of discriminatory measures and practices which distort open procurement; and

-simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology.

23) This review shall seek the expansion of membership of the Agreement by making it more accessible to non-Parties.

24) Members of the Committee note the work under way under the Council for Trade in Services on government procurement and the proposals for the Singapore Ministerial for a multilateral work programme on government procurement. The Parties to the Agreement on Government Procurement intend to support and

actively contribute to any multilateral work on government procurement that may be decided upon by the Ministerial Conference, without prejudice to their own efforts to improve and extend the Agreement on Government Procurement and to encourage more WTO Members to become Parties to it.

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03-0674	D	GPA/M/19 Catalogue record	Committee on Government Procurement - Minutes of the Meeting Held on 8 October 2002	03/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
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				Preview (HTML)		9 p. 63KB	9 p. 66KB	9 p. 64KB
01-0006	D	GPA/M/14 Catalogue record	Committee on Government Procurement - Minutes of the Meeting Held on 29 September 2000	03/01/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
				Preview (HTML)		9 p. 65KB	10 p. 74KB	10 p. 69KB

	00-2885	D	GPA/M/13 Catalogue record	Committee on Government Procurement - Minutes of the Meeting Held on 8 March 2000 Preview (HTML)	13/07/2000	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	8 p. 58KB	9 p. 63KB	9 p. 58KB
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Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 14 OCTOBER 2005

Chairman: Ambassador Tae-yul Cho (Korea)

1. The Chairman said that, in preparation for the meeting, delegations had received an Airgram (WTO/AIR/2678 of 4 October 2005) and an annotated agenda (Job No. 7115 of 5 October 2005). He noted that, under the last item of the proposed agenda, "Other business", Jordan would make a short statement on its accession process. In addition, he suggested that the dates for the Committee's meetings in 2006 be taken up under this item.
2. The Committee adopted the following agenda, as outlined in the Airgram:
 - A. Negotiations under Article XXIV:7
 - B. Israel's request regarding offsets
 - C. Adoption of the Committee's annual report
 - D. Other business.
- A. NEGOTIATIONS UNDER ARTICLE XXIV:7
3. The Chairman noted that the meeting had been preceded by several days of informal drafting sessions focusing on the revision of the outstanding non-market-access-related provisions in the draft revised text of the Agreement. This work had been based on:
 - (a) the updated draft revised text of the Agreement as at 21 July 2005¹;
 - (b) informal written submissions by Canada and by the United States²;
 - (c) a joint non-paper by the European Communities and the United States; and
 - (d) drafting proposals and suggestions made by delegations throughout the week.

The results of the drafting work had been introduced in the clean text, the updated version of which would be circulated by the Secretariat the following week.³

¹ Job No. 5398, 26 July 2005.

² Job Nos. 6763 and 7104, 26 September and 4 October 2005, respectively.

³ Job No. 7713, 20 October 2005.

4. Continuing, the Chairman said that, as discussed at the informal closing session earlier that afternoon, good progress had been made during the week in moving toward agreement on a number of the outstanding non-market-access-related provisions in the draft revised text of the Agreement. Nonetheless, significant further work was required in a number of other areas. To facilitate this work, the Chairman suggested that the more detailed statement that he had made during the informal closing session on stocktaking and future work be attached to the minutes of the meeting.

5. It was so agreed. Accordingly, the Chairman's statement is attached to these minutes.⁴

6. The Chairman said that further progress towards the goal of reaching provisional agreement on the non-market-access-related provisions would require, first and foremost, intensive reflection and consultations, both in capitals and between them, in regard to the issues that he had mentioned at the informal closing session and on ways to bridge the remaining gaps in participants' positions. It would also require the preparation of written proposals reflecting agreed positions and language.

7. Regarding the bilateral coverage negotiations, the Chairman reminded delegations of the revised deadline for the submission of offers that had been agreed at the formal meeting in July 2005, namely: prior to the meeting of the Committee in October 2005 but in any case not later than the Hong Kong Ministerial Conference (13-18 December 2005).⁵ To date, no offers had been received. Parties would, therefore, need to give attention to this critical aspect of the Article XXIV:7 negotiations in the next few weeks, in addition to their positions on the outstanding non-market-access-related provisions of the Agreement.

8. The representative of the European Communities requested that consideration be given to the scheduling of another meeting of the Committee before the Hong Kong Ministerial Conference, to facilitate the reaching of agreement on the remaining non-market-access-related provisions of the text. At a minimum, the possibility of such a meeting should not be excluded pending consultations with Parties.

9. The Chairman expressed his hope that delegations would further discuss this issue among themselves. He said that, through the Secretariat, he would also consult with interested delegations, and would communicate to delegations the outcome of such consultations in November.

B. ISRAEL'S REQUEST REGARDING OFFSETS

10. The Chairman noted that, in advance of the meeting, Israel had made a request to include on the agenda of the meeting an item entitled Israel's request regarding offsets. Prior developments regarding Israel's offset commitments, including at the Committee's meeting of 21 July 2005, were summarized in the annotated agenda for the meeting.⁶

11. The representative of Israel said that, as Parties would recall, in November 2004, his delegation had submitted a formal request to the Committee to modify the timetable for a gradual reduction of the level of Israel's offset rights. Due to the urgent nature of the matter and the need for more time to study Israel's request, the decision had been taken to extend Israel's right to require offsets at a level of 30 per cent for an additional one year, i.e. until 31 December 2005.⁷ As reflected in the minutes of the Committee's meeting of 16 December 2004⁸, it had been understood at the time that Israel, as well as the rest of the Parties, would use this one-year period to further explore and negotiate the issue.

⁴ This statement has also been circulated as Job No. 7591, 18 October 2005.

⁵ GPA/79/Add.1, 22 July 2005.

⁶ Job No. 7115, 5 October 2005.

⁷ GPA/83, 17 December 2004.

⁸ GPA/M/25, 18 January 2005.

12. At the Committee's meeting of 21 July 2005, his delegation had signalled its intention to renew its request regarding offsets. In addition, his delegation had submitted a non-paper summarizing an independent study on the implications and consequences of the Agreement on Government Procurement on Israel's economy and industry. The findings of that study highlighted the vital importance of offsets for the overall balance of benefits and costs arising from Israel's participation in the plurilateral Agreement on Government Procurement.

13. As had been the case in 2004, once again, his delegation wished to find a long-term solution that would redefine Israel's rights and obligations under the Agreement of the Government Procurement. For this purpose, his delegation had been ready, prior to the current meeting, to submit an initial offer in the framework of the market access negotiations. Reaching a long-term solution was the best alternative for Israel as well as for the rest of the Parties. However, following informal consultations with some other Parties earlier in the week, his delegation had understood that most Parties preferred, at this stage, to implement an appropriate short-term solution before a long-term agreement could be discussed and agreed upon. He expressed his delegation's hope that the latter would happen in the course of 2006.

14. As a result, his delegation intended to submit a new proposal for a further interim period, with the view of modifying its current commitments regarding offsets. This proposal, which would be shared with the Parties informally prior to its submission, would be intended to be effective as of 1 January 2006. The proposal would be based on the following parameters:

- (a) the level of offsets in the proposal would not undermine the starting point of negotiations for the long-term solution in the future;
- (b) the new interim regime regarding offsets would be in place either until the lapse of a transitional period of [X] number of years, or until the conclusion of the ongoing market access negotiations pursuant to Article XXIV:7, whichever would come first;
- (c) the above-mentioned period of [X] years would be longer than one year; and
- (d) it would be framed as an interim arrangement in anticipation of a long-term solution that would take into account the interests of Israel as well as of other Parties, and the need to find a balance between the two.

15. His delegation intended to submit this proposal in accordance with Article XXIV:6(a) in a timely manner, in order to allow the Committee to take a decision on the matter before the end of 2005. During the transitional period and in the context of the market access negotiations, which were expected to gain momentum in the course of next year, Israel intended to negotiate with other Parties a mutually agreeable long-term solution regarding its schedule of commitments, including the Note on offsets. This would be done with the view of reaching a new balance of Israel's rights and obligations under the Agreement on Government Procurement. In conclusion, he expressed his delegation's appreciation for the good will demonstrated by other Parties on this issue of importance to Israel. He reaffirmed his delegation's readiness to continue to work closely with other Parties in a constrictive manner and in good faith to achieve a satisfactory result.

16. The representative of the United States said that her delegation was also looking forward to finding a long-term solution to Israel's use of offsets. For her delegation, such a solution included a provision for the phase-out of the offsets. As her delegation had stated many times before, it believed that offsets were not a permanent feature but a transitional measure - a point which had also been reflected in the positions taken by her delegation in the discussions on the revision of the text of the Agreement. Her delegation was looking forward to working with the delegation of Israel in the coming weeks to find common ground for a short-term solution, which would lead to a final resolution of this matter.

17. The representative of the European Communities said that his delegation was looking forward to working with the Committee and with Israel to find a solution to the question of offsets. He was glad to see that it had been understood that in the short time remaining before the end of the year it would not be possible to reach agreement on a long-term solution. He urged the delegation of Israel to submit its request as soon as possible. The kind and duration of the extension to be granted could not be prejudged without knowing all the parameters. As in the case of the delegation of the United States, one of the parameters important for his delegation was having a phase-out of offsets. This parameter would help in finding an agreeable solution and should be one of the criteria for deciding on the level of offsets. This was also in line with the position his delegation had maintained in the context of the revision of the Article on Developing Countries in the draft revised text of the Agreement.

18. The representative of Japan said that her delegation was looking forward to working with Israel to find an appropriate solution to its concern. Given the short time remaining before the end of the year, her delegation also wished to find a short-term solution. In 2006, her delegation would work with the Committee and Israel to find a long-term solution.

19. The representative of Canada said that her delegation was prepared to work with Israel to find a short-term solution, which could lead to an appropriate long-term solution at a later stage. Her delegation's views on the role of offsets were consistent with the views that other delegations had expressed.

20. The representative of Korea said that his delegation also wished to consult with Israel to reach a long-term solution to this issue, although at this stage, there was not enough time to find such a solution. Like other delegations, his delegation would therefore work toward a short-term solution before the end of the year, and would continue working in 2006 to find a long-term solution.

21. The representative of Switzerland said that the phase-out of offsets was also important for his delegation, both in the context of free trade agreements and under the Agreement on Government Procurement.

22. The representative of Israel thanked all Parties for their comments and said that his delegation was looking forward to negotiating both a short- and a long-term solution with the other Parties in good faith and in a constructive manner.

23. As to the procedure for adopting the desired short-term solution, the Chairman noted that the Committee could follow the procedure used in 2004. At the discretion of delegations, the required formal meeting of the Committee could be handled by Geneva-based delegates.

24. The representative of the European Communities pointed out that the necessary meeting to implement the desired solution regarding Israel's use of offsets reinforced the feasibility of holding a further substantive meeting before the end of the year, which could also continue the negotiations pursuant to Article XXIV:7.

C. ADOPTION OF THE COMMITTEE'S ANNUAL REPORT

25. The Chairman noted that Article XXIV:7(a) of the Agreement on Government Procurement required the Committee to review annually the implementation and operation of the Agreement and to inform the General Council of developments during the period covered by the review. The deadline for the submission of this year's report to the General Council was 18 November 2005. A draft of the Committee's Annual Report for the period since its last report⁹ had been circulated by the Secretariat

⁹ GPA/82, 26 November 2004.

on 26 September 2005.¹⁰ As foreseen at the Committee's meeting of 21 July 2005, the Committee should now discuss and adopt the draft report with any necessary modifications.

26. The representative of the United States said that in the light of the week's work, delegations might wish to look again at the section in the draft annual report describing the negotiations pursuant to Article XXIV:7. Delegations should be given an opportunity to submit relevant suggestions or other corrections to the report. Other delegations agreed with this proposal.

27. Following discussion, the Committee agreed that drafting suggestions, if any, could be provided by delegations to the Secretariat up to 28 October, following which a revised draft of the report incorporating relevant suggestions would be circulated by the Secretariat in early November.¹¹ If no objections were made to the changes incorporated in the revised report within one week of its circulation, the revised draft report would be considered adopted and would be made available to the General Council.

D. OTHER BUSINESS

(i) *Jordan's Accession to the Agreement*

28. The representative of Jordan said that since the Committee's meeting in March 2005, Jordan had continued to work relentlessly towards resolving outstanding issues and concerns in regard to the preparation of its second revised offer and the conclusion of its accession to the Agreement. Constructive and fruitful bilateral consultations had been held with the European Communities, Japan, Canada and the United States concerning both its offer and relevant legislative developments. His delegation had had to face various difficulties in moving ahead with its accession:

- (a) One of the basic difficulties was to convince the private sector and the associations that accession to the Agreement on Government Procurement would not affect their work negatively, taking into consideration the small size and limited resources of the Jordanian economy and industry. In this regard, his delegation had embarked on a series of meetings with the private sector and other government institutions to respond to their concerns and facilitate acceptance of the Agreement. Meanwhile, the Ministry of Industry and Trade had developed a definition for small- and medium-sized enterprises, which had been submitted to the Cabinet for approval.
- (b) In regard to non-sensitive procurement by the Ministry of Defence and the Ministry of Interior, a number of joint committees were working towards coming up with responses to the questions and requests put forward by Parties.
- (c) Negotiations with the Aqaba Special Economic Zone Authority (ASEZA) were in progress, and it was hoped that a common understanding could be reached regarding the inclusion of Aqaba Special Economic Zone in Jordan's Annex II. In principle, ASEZA did not object to being covered by the Agreement on Government Procurement five years from the date of Jordan's accession, the details of which needed to be worked out in due course.

29. Continuing, he said that the work required to reform Jordan's procurement legislation had almost been completed. The final draft had been submitted to the Cabinet as a first step towards its approval through Jordan's legislative process. The draft was being translated into English in order to be reviewed by the World Bank and the UNCITRAL, upon their request. In completing the process

¹⁰ Job No. 6773, 26 September 2005.

¹¹ The requested revised draft report has subsequently been circulated as Job No. 6773/Rev.1 (8178), 2 November 2005.

of its accession to the Agreement, Jordan needed Parties' support and understanding. The accession could not be done successfully unless the particular situation of the Jordanian economy was taken into consideration. Transitional periods, a reasonable set of thresholds, grace periods and the gradual phasing out of transitional periods for a list of goods and services would help in convincing the Jordanian private sector about the merits of accession. Jordan should be an attractive model for other developing countries and small economies in joining the Agreement on Government Procurement without negative effects on different economic sectors and institutions. This could be achieved only with more tolerance and better understanding by Parties. In conclusion, preparing the second revision of the Jordan's revised offer would take some time because Jordan needed to respond to all the requests received from Parties. His delegation hoped that, in the coming months, it could present a second revised offer that would respond to all relevant requests.

30. The representatives of the United States, the European Communities, Japan, Canada and Israel thanked the representative of Jordan for the update that he had provided and the efforts that were being made to bring its accession process to a conclusion. Continuing, the representative of the United States indicated that her delegation stood ready to assist Jordan in whatever way it could, and was looking forward to seeing Jordan's second revised offer in the coming months. The representative of the European Communities expressed his delegation's appreciation for the positive developments reported by the representative of Jordan in regard to the inclusion of the Aqaba Special Economic Zone. His delegation wished to see Jordan's second revised offer brought forward as soon as possible and was ready to work closely with Jordan to help in overcoming any remaining obstacles in this regard. Successful conclusion of the accession process would also facilitate Jordan's full participation in the pending coverage negotiations. The representative of Japan said that her delegation was also ready to provide support to, and share expertise with, Jordan, if and when necessary. She agreed that Jordan could be a model for the accession of other developing countries to the Agreement on Government Procurement. The representative of Israel expressed his delegation's full support for Jordan's accession to the Agreement on Government Procurement, and called upon Parties to work closely with Jordan and to show flexibility in order to accommodate its needs and to expedite the accession process.

31. In response to an observation of the Chairman about China's participation as an observer at the meeting, the representative of China said that China had revised its government procurement law only in 2002, and had much to learn in this area. The size and complexity of the Chinese government sector and China's status as a developing country would necessitate a cautious step-by-step approach to any eventual negotiations on its accession to the Agreement on Government Procurement. The representative of the United States expressed her delegation's hope that China would also participate in future meetings and that progress would soon be forthcoming on China's accession to the Agreement on Government Procurement. Her delegation stood ready to assist China in whatever ways it could as China began its accession process. The representative of the European Communities indicated that his delegation had taken note of the special importance for China of some issues, such as the issue of developing countries, and that it, too, stood ready to work together with China on its accession to the Agreement.

(ii) *Dates of the Committee's meetings in 2006*

32. The Committee agreed to the following meeting dates for 2006:

- (a) the week of 6 February 2006;
- (b) the week of 27 March 2006;
- (c) a week to be determined in the second half of May (subsequently, the Chairman has proposed that the meeting be held in the week of 15 May);

- (d) the week of 10 July 2006; and
- (e) the week of 16 October 2006,

with the understanding that, if the number of meetings needed to be reduced, the meeting scheduled for the week of 10 July 2006 could be considered optional.

ATTACHMENT

INFORMAL CLOSING SESSION, FRIDAY, 14 OCTOBER 2005

Chairman's (Ambassador Tae-yul Cho, Korea) Statement on Stocktaking and Future Work (Made at the Informal Closing Session, 14 October 2005)¹

On Monday afternoon, we agreed to hold an informal closing session at the conclusion of our drafting work this week, in order to take stock of progress and to consider next steps in the negotiations pursuant to Article XXIV:7.

A. Stocktaking

The drafting work completed this week focused on the review of the non-market access related provisions of the Agreement. The work was based on:

- the latest draft revised text circulated by the Secretariat on 26 July (Job No. 5398);
- submissions provided by Canada and by the United States (Job Nos. 6763 and 7104, respectively);
- a joint non-paper by the European Communities and the United States; and
- proposals and suggestions by delegations during the drafting sessions.

In regard to most provisions of the text, the drafting work took a sequential approach. On Thursday, the Articles dealing with Modifications and Rectifications to Coverage, and Consultations and Dispute Settlement were discussed with the benefit of participation by some Parties' legal experts.

The discussions on all these elements of the text has led to the inclusion in the clean text of relevant written proposals and suggested wording by delegations. These will be reflected in the updated version of the draft revised text of the Agreement which will be circulated by the Secretariat early next week.

Overall, I believe it is important to recognize that, during the week's drafting work, delegations showed increased flexibility on some key issues which enabled us to streamline the text and achieve good progress in a number of areas. However, in other areas, our discussions also showed a need for significant new flexibility if we are to achieve our goal of reaching provisional agreement on the non-market-access provisions in a timely fashion. It may facilitate further progress if I mention some of these areas now. Without purporting to be exhaustive, some of the issues that come to mind are as follows:

- definitional issues, including with respect to the definitions of:
 - commercial goods and services; and
 - electronic means and electronic auctions;

(Of course, the foregoing definitions need to be considered in light of the relevant operative provisions.)

¹ Also circulated as Job No. 7591 of 18 October 2005.

- various issues relating to Article II (Scope and Coverage), including with respect to:
 - the application of the Agreement;
 - compliance; and
 - valuation;
- with regard to Article III (General Principles), issues concerning:
 - conflicts of interest; and
 - offsets;
- as regards Article V:
 - the contents of various types of notices;
 - the procedures relating to their publication; and
 - the types of entities to which the various requirements apply;
- a number of issues concerning time-periods (Article VI);
- the final wording of the provision relating to use of technical specifications to promote the conservation of natural resources and to protect the environment (Article VII:9);
- a number of substantive issues relating to Article VIII (Conditions for Participation);
- as regards limited tendering (Article X):
 - the scope of this tendering method with regard to construction and other services (paragraphs (c), (g) and (h)); and
 - the question of any reference to proprietary information;
- the language regarding the prohibition of cancellation of procurements and potentially the modification of awarded contracts (Article XI);
- the need for Article XII and the question of whether it should extend beyond electronic auctions;
- issues concerning the requirements for collection of statistics, particularly in regard to the possible use of estimates for procurement by Annex I entities;
- finalization of the Article regarding Developing Countries;
- a number of issues concerning Modifications and Rectifications to Coverage;
- a number of issues regarding Domestic Review Procedures for Supplier Challenges;
- as regards Consultations and Dispute Settlement:
 - the availability of non-violation claims;
 - the extent of specific rules for the handling of government procurement disputes as compared to reliance on the DSU; and
 - the EC proposal for special remedies.

B. Future work

I turn now to the question of how we move forward from here. It seems to me that further progress toward the goal of reaching provisional agreement on the non-market access related provisions will require, first and foremost, intensive reflection and consultations both in capitals and between them, in particular in regard to the areas that I have mentioned earlier, and on ways to bridge the remaining gaps in participants' positions. It will also require the preparation of written proposals reflecting agreed positions and language.

As has been suggested to me by a delegation, if the Committee so wishes, I am prepared to call a further meeting prior to the end of this year to finalize provisional agreement on the non-market-access-related provisions. However, given the extent of remaining divergences in viewpoints, I frankly am not sure that, without extraordinary efforts by delegations, a single meeting before the Hong Kong Ministerial Conference will be sufficient. The alternative is that we would allow the drafting work to continue into the next year – something which, of course, we all would prefer to avoid, if we can. In this context, it is for the Committee to decide how it wishes to proceed from here. In any case, as I have mentioned, further progress will depend on Parties' own efforts to identify new areas of flexibility and bridges between their respective positions.

As to the bilateral coverage negotiations, I would like to take this opportunity to remind delegations of the revised deadline for submission of offers that was agreed to at our formal meeting in July, namely prior to the October meeting of the Committee (i.e. this week) but in any case not later than the Hong Kong Ministerial Conference (13-18 December 2005). To date, no offers have been received. Parties will, therefore, need to give attention to this critical aspect of the Article XXIV:7 negotiations in addition to their positions on the outstanding non-market access related provisions of the Agreement in the coming weeks.

As to the "horizontal" coverage negotiations, it will be important to build on the progress made so far in terms of both the market-access-related provisions in the text and other horizontal coverage matters listed in the Decision on Modalities. Delegations are encouraged to come forward with additional new submissions on these matters.

Note: In the subsequent discussion, the European Communities stated its preference that a further meeting be held before the end of 2005, to carry forward the renegotiation of the non-market access related provisions of the Agreement. The Chairman indicated that he would consult with interested delegations regarding this possibility in two to three weeks' time, taking account of progress made by delegations in capitals on identifying potential areas of flexibility and ways of bridging remaining differences in positions regarding the text.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 21 JULY 2005

Chairman: Ambassador Tae-yul Cho (Korea)

1. The Committee adopted the following agenda, as outlined in Airgram WTO/AIR/2621/Rev.1 of 11 July 2005:

- A. Negotiations under Article XXIV:7
- B. Modifications to the Appendices to the Agreement
- C. Accessions
- D. Review of national implementing legislation
- E. Israel's request regarding offsets
- F. Other business.

A. NEGOTIATIONS UNDER ARTICLE XXIV:7

2. The Chairman noted that since the last formal meeting at which this item had been discussed, held on 17 November 2004, specific issues relating to the negotiations had been raised at two formal meetings. At the meeting of 16 December 2004, the Committee had discussed the status of GPA observers in the context of bilateral coverage negotiations¹ and the circulation of requests in bilateral coverage negotiations.² At the meeting of 14 March 2005, the Committee had discussed issues relating to future work with regard to negotiations pursuant to Article XXIV:7(b) and (c) of the Agreement.³ At its meetings on 17 November⁴ and 16 December 2004⁵, the Committee had agreed to hold four meetings in 2005 in order to continue negotiations pursuant to Article XXIV:7 of the Agreement: in the weeks of 14 March, 30 May, 18 July and 10 October 2005, respectively. The Chairman's statement on stocktaking and future work made at the end of the informal meeting held in the week of 30 May 2005 had been circulated on 3 June 2005⁶, and was included in the set of materials for the meeting. The results of drafting work at that meeting had been reproduced in the updated "clean"⁷ and "side-by-side"⁸ versions of the draft revised text of the Agreement. In addition,

¹ GPA/M/25, paras. 13-17.

² GPA/M/25, para. 18.

³ GPA/M/26, paras. 8-18.

⁴ GPA/M/24, paras. 99-100 and 104.

⁵ GPA/M/25, para. 12.

⁶ Job No. 3794.

⁷ Job No. 4035 of 10 June 2005.

⁸ Job No. 4297 of 20 June 2005.

based on comments by delegations on two earlier drafts, the final version of the summary of negotiations on so-called "horizontal" coverage issues had been circulated on 15 July 2005.⁹

(i) *Stocktaking and future work*

3. The Chairman said that, based on his suggestions in the fax of 12 July 2005 and on proposals by delegations, the current formal meeting had been preceded by informal negotiations held over several days on outstanding non-market-access-related provisions in the draft revised text of the Agreement, and on coverage matters pursuant to the Decision on the Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices.¹⁰ As discussed at the informal closing session of the week's negotiations which had taken place before the meeting, he suggested that his statement on stocktaking of the week's negotiations and suggestions for future work made during that session be included in the minutes of the meeting.

4. It was so agreed. Accordingly, the Chairman's statement is attached to these minutes.¹¹

(ii) *State of play of coverage negotiations and revised timetable for the negotiations*

5. The Chairman recalled that, according to the Decision on the Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices¹², initial offers had been originally scheduled to be submitted by 1 March 2005 but not later than 1 May 2005. However, no offers had been tabled thus far. Given this, and as had been discussed informally during the week, the Committee could now adopt, if deemed appropriate, the draft decision on the deadlines for the submission of offers and conclusion of the negotiations pursuant to Article XXIV:7 of the Agreement that delegations had seen and commented on earlier in the week. The draft decision would extend the deadlines both for submission of initial offers and for the overall completion of the negotiations.

6. The Committee adopted the Decision.¹³

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Modifications certified since the meeting in November 2004*

7. The Chairman noted that, since the last meeting of the Committee discussing this item, on 17 November 2004, various modifications had become effective and had been certified. Detailed information on these modifications was available in paragraph 4 of the annotated agenda for the meeting.¹⁴

(ii) *Outstanding modifications*

8. The Chairman said that the following proposed modifications remained outstanding:

- (a) a notification by *Hong Kong, China* concerning proposed modifications to its Appendix III¹⁵;

⁹ Job No. 4321/Rev.2 (5082).

¹⁰ GPA/79 of 19 July 2004.

¹¹ This statement has also been circulated as Job No. 5340 of 22 July 2005.

¹² GPA/79 of 19 July 2004.

¹³ Subsequently circulated in document GPA/79/Add.1 of 22 July 2005.

¹⁴ Job No. 5051 of 14 July 2005.

¹⁵ GPA/MOD/HKG/3 of 15 July 2005.

- (b) notifications by *Japan* concerning proposed modifications relating to:
- NTT¹⁶;
 - East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company¹⁷;
 - Railway Construction Public Corporation and Corporation for Advanced Transport and Technology¹⁸;
 - Japan Consumer Information Center, Water Resources Development Public Corporation, Japan Green Resources Corporation, the Japan Science and Technology Corporation, RIKEN (The Institute of Physical and Chemical Research), National Stadium and School Health Center of Japan, the Association for Welfare of the Mentally and Physically Handicapped, and National Agriculture Research Organization¹⁹;
 - National Aerospace Laboratory²⁰;
 - Annex 3 of Japan's Appendix I²¹; and
- (c) a notification by the *United States* concerning proposed modifications to reflect changes in the administrative structure of the Federal Government, as regards the Uranium Enrichment Corporation.²²

9. Continuing, he said that the details of notifications with regard to these outstanding modifications, as well as the developments, if any, since the meeting of the Committee in November 2004, were contained in paragraph 5 of the annotated agenda for the meeting.²³

10. The representative of Japan said that her delegation had submitted a number of notifications to the Committee. Regarding some of those notifications, questions had been received from certain Parties. Her delegation needed some time to answer to those questions, and was in the process of preparing its answers. As regards long outstanding issues, one of which concerned the three Japan Railway companies, her delegation had received a fourth set of questions from the European Communities, and her delegation had submitted its answers to those questions. She requested clarification by the European Communities of the status of its response to her delegation's answers, given that quite some time had passed since her delegation had sent its answers. She reiterated her delegation's request for the expeditious withdrawal of the European Communities' objection to this proposed modification. As regards the proposed modification concerning NTT, her delegation had submitted its answers to the European Communities' questions. She had the impression that the European Communities had reacted in a quite favourable manner to those answers. In the meantime, her delegation had submitted additional documents requested by the European Communities, and she wished to know where the European Communities stood on that issue. She asked for the expeditious withdrawal of the European Communities' objection to that proposed modification too. She noted that her delegation had submitted to the Committee a paper on its long-standing non-resolved

¹⁶ GPA/W/91 of 6 September 1999.

¹⁷ GPA/W/144, 145 and 146 of 29 August 2001, and GPA/W/152 & Corr.1 of 20 September and 10 October 2001.

¹⁸ GPA/W/272 and Rev.1 of 23 September and 8 October 2003, respectively.

¹⁹ GPA/W/274 of 23 September 2003.

²⁰ GPA/W/275 of 23 September 2003.

²¹ GPA/MOD/JPN/7 of 26 July 2004.

²² GPA/W/153 of 25 September 2001.

²³ Job No. 5051 of 14 July 2005.

modifications.²⁴ As discussed in that paper, her delegation's position was that those long-standing non-resolved notifications should not be carried over to a new agreement but should be resolved expeditiously.

11. The representative of the European Communities thanked Japan for its replies and the additional information on NTT. He asked Japan for its understanding that processing this new information, which was not older than a month, needed some more time. Accordingly, his delegation was not in a position to give a definitive response at that stage, although he said that his delegation believed that the new information submitted by Japan was going into the right direction. He said that the modification concerning the three Japan Railway companies was a long-standing issue. His delegation was ready to continue discussing it with Japan. He pointed out that his delegation had waived a number of objections against proposed modifications by Japan, and Japan had submitted a large number of modifications, which were not always easy to process. His delegation had tried to accommodate, and respond to, Japan's need to have the relevant objections waived as soon as possible. He said that, as regards several notifications by Japan, his delegation was still awaiting Japan's answers to questions some of which had been posed more than a year ago. In particular, the European Communities had not received any answers to its questions on Japan's notification concerning the National Aerospace Laboratory. He also drew Japan's attention to the new, additional question posed by his delegation concerning Japan's Urban Renaissance Agency²⁵, which his delegation believed was a particularly sensitive notification, given that there had been a transfer of activities from that entity, which could have an effect on the agreed balance of coverage. His delegation understood that this new entity did not provide any railway services and, thus, should not be subject to the derogation on operational safety contained in Appendix I of Japan. Having said that, his delegation was ready to work with Japan to resolve outstanding issues as fast as possible.

12. The representative of Japan said that her delegation had no additional information at that stage, but was making every effort to provide information and answers to the European Communities as soon as possible. She said that her delegation had received the new questions by the European Communities a month or two earlier, and needed some more time to respond to those.

C. ACCESSIONS

(i) *Developments since the meeting in November 2004*

13. The Chairman noted that since the last meeting that comprehensively addressed this item, on 17 November 2004, the following developments have occurred.

Georgia

14. The Chairman said that, at the Committee's meeting on 17 November 2004, it had been agreed that, with the assistance of the Secretariat, he would contact the delegation of Georgia to see when it might be able to respond to the questions received, and that on that basis he would further consult with Parties as to the idea of holding plurilateral consultations with Georgia.²⁶ Since no responses had been submitted by Georgia, no plurilateral consultations had been held. He recalled that Georgia had sought accession in October 2002²⁷, had replied to the GPA/35 checklist in April 2002²⁸, and submitted its entity offer in December 2003.²⁹

²⁴ GPA/MOD/JPN/17 of 15 November 2004.

²⁵ GPA/MOD/JPN/18 of 3 June 2005.

²⁶ GPA/M/24, para. 49.

²⁷ GPA/71.

²⁸ GPA/W/187.

²⁹ GPA/SPEC/34.

Jordan

15. The Chairman said that, at the meeting of the Committee on 17 November 2004, Jordan had informed Parties that its new comprehensive legislation was expected to be finalized by the end of 2004 and would hopefully pass the legislative process by summer 2005. It had been agreed that Parties should submit their comments on Jordan's revised offer by 15 December 2004 through the Secretariat. In turn, Jordan had agreed to prepare a further revised offer by 15 February 2005.³⁰ He had noted that Parties might wish to see the developments before taking a decision on holding another round of plurilateral consultations, and he had indicated that, through the Secretariat, he would consult with Parties on the relevant arrangements. Based on that agreed approach, the European Communities had submitted questions and requests regarding Jordan's revised market access offer³¹, and the United States had submitted requests for improvements in Jordan's revised entity offer.³² Jordan had responded to those submissions on 13 June 2005.³³ At the meeting of the Committee on 14 March 2005, Jordan had made a statement reporting on developments in its accession process to the Agreement on Government Procurement.³⁴ It had noted that, in light of those developments, it had turned out to be impossible to finalize and submit its second revised offer within the agreed time-frame. Jordan had indicated that it was looking forward to submitting its second revised offer to the Committee once domestic procedures, including the official approval of the Government, had taken place. As to the review of Jordan's legislation, the draft unified procurement law had been completed by the relevant committee, and had been submitted to the Government prior to undergoing the relevant constitutional procedures. The Chairman recalled that Jordan had sought accession in July 2000³⁵, had replied to the GPA/35 checklist in December 2000³⁶, had submitted its entity offer in February 2003³⁷ and its revised entity offer in September 2004.³⁸

16. The representative of Jordan said that work was taking place on the second revised offer that his delegation had promised to submit. He expressed the hope that, sometime in the course of 2005, if the relevant internal procedures had sufficiently progressed, his delegation would be able to submit its second revised offer.

(ii) *Other accession processes*

17. The Chairman noted that, in addition to the above two WTO Members, accession negotiations were under way with Albania, Bulgaria, the Kyrgyz Republic, Moldova, Oman, Panama and Chinese Taipei. However, in the case of these WTO Members, no new developments had taken place recently. Basic information on earlier developments relating to their accession processes had been included in Annex 1 of the annotated agenda for the meeting.³⁹ The following additional WTO Members had provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: Armenia, China, Croatia, the Former Yugoslav Republic of Macedonia and Mongolia. Information concerning the commitments of those WTO Members had been included in Annex 2 of the annotated agenda for the meeting.⁴⁰

³⁰ GPA/M/24, para. 51.

³¹ GPA/ACC/JOR/5 of 20 December 2004.

³² GPA/ACC/JOR/6 of 20 December 2004.

³³ GPA/ACC/JOR/8 and GPA/ACC/JOR/7, respectively.

³⁴ GPA/M/26, paras. 19-21.

³⁵ GPA/38.

³⁶ GPA/W/124.

³⁷ GPA/SPEC/29.

³⁸ GPA/ACC/JOR/4.

³⁹ Job No. 5051 of 14 July 2005.

⁴⁰ Job No. 5051 of 14 July 2005.

D. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

18. The Chairman noted that at the Committee's meeting of April 2004, the Kingdom of the Netherlands with respect to Aruba had said that the Government of Aruba had originally intended to introduce new implementing legislation and to subsequently answer the questions in GPA/1/Add.1 on the basis of such legislation. Since that would be a lengthy process, the Government of Aruba had decided to answer the questionnaire on the basis of the current legislation. The responses to the questionnaire in GPA/1/Add.1 had been submitted on 23 November 2004⁴¹; however, Aruba had not submitted the text of its legislation, either current or new, as yet. Further, as indicated by Aruba at the meeting of 17 November 2004, the answers were based on the present legislation, which was being amended.

19. The Chairman said that, in those circumstances, Parties might wish to consider whether to go ahead with the review of Aruba, based on the procedures agreed upon at the Committee meeting of February 1998⁴², or to postpone the review until Aruba had submitted all the documents required in GPA/1/Add.1.

20. The Committee agreed to postpone the review of the national implementing legislation of the Kingdom of the Netherlands with respect to Aruba until the required documents had been made available to Parties.

21. The Chairman recalled that, pursuant to Article XXIV:5(b) of the Agreement, Parties should inform the Committee of any changes in their relevant laws and regulations and in the administration of such laws and regulations. In line with that provision, Japan had submitted a notification.⁴³ He reminded Parties that had amended their laws implementing the Agreement to notify such laws in accordance with Article XXIV:5(b).

E. ISRAEL'S REQUEST REGARDING OFFSETS

22. The Chairman noted that, on 11 July 2005, Israel had submitted a request to include on the agenda of this meeting an item entitled "Israel's request regarding offsets". Accordingly, the revised Airgram for the meeting⁴⁴ had been circulated adding the proposed agenda item on this issue. On 15 July 2005, Israel had made a submission regarding its level of offset rights⁴⁵, which had been circulated on 18 July 2005. As to earlier developments on Israel's offset commitments, at its meeting of 16 December 2004⁴⁶, he recalled that the Committee had adopted a Decision pursuant to Article XXIV:6(a) of the Agreement on Government Procurement.⁴⁷ The Decision had modified Israel's Note to Appendix I to the Agreement: it had extended by one year the original deadline of 1 January 2005 for Israel's commitment to reduce the value of offsets from a maximum of 30 per cent to a maximum of 20 per cent of procurement contracts. At the meeting of the Committee on 14 March 2005, Israel had made a statement on the modification of its Appendix I and on related issues.⁴⁸ The Chairman noted that, in addition to its formal submission to the Committee, Israel had provided a room document which it had asked to have circulated to delegations participating in the meeting.

⁴¹ GPA/81.

⁴² GPA/M/8, para. 23.

⁴³ GPA/37/Add.2 of 21 March 2005.

⁴⁴ WTO/AIR/2621/Rev.1 of 11 July 2004.

⁴⁵ GPA/W/294.

⁴⁶ GPA/M/25, para. 3.

⁴⁷ GPA/83 of 17 December 2004.

⁴⁸ GPA/M/26, paras. 3-6.

23. The representative of Israel said that, as Parties might recall, in November 2004 Israel had submitted a formal request to the Committee requesting to modify the timetable for a gradual reduction of its level of offset rights. Subsequently, due to the urgent nature of the matter and the need for more time to study Israel's request, it had been decided to grant Israel an extension of one year for its rights to require offsets at the level of 30 per cent. It had been understood that Israel as well as the rest of the Parties would use this period to further explore and negotiate this issue. The Government of Israel had conducted a study of the implications of Israel's participation in the GPA on the Israeli economy and industry. The assignment had been given to a leading market research and consulting firm in Israel. The objectives and findings of the study were detailed in his delegation's two recent submissions: (i) the formal submission circulated on 18 July 2005⁴⁹; and (ii) the informal submission handed over to delegations in the room yesterday, including more details about the study and its findings. He asked delegations to keep this latter document confidential, since it contained commercial data.

24. Continuing, he indicated that the four main findings of the study were as follows:

- (a) Israel's participation in the GPA had led Israeli companies neither to greater participation, nor to win public contracts in other Parties' markets;
- (b) the Israeli public procurement market had been further opened to competition from abroad since Israel had acceded to the GPA. In fact, Israel's market had been open even before accession to the GPA; however, in the light of the need to apply the non-discrimination principles, the market had been further opened;
- (c) the offset provisions in place had neither hindered nor discouraged foreign suppliers from competing and winning public tenders in Israel;
- (d) business opportunities resulting from offset rights constituted the main, if not the only, benefit for the Israeli industry from Israel's participation in the GPA. These benefits were reflected in direct business contracts, transfer of technology, know-how, creation of long-term business relations as well as in other forms of benefits.

25. In the light of these findings, which were elaborated in detail in his delegation's submission, the Government of Israel had decided to renew its request to make modifications in Israel's Note in Appendix I. His delegation intended to enter into negotiations with Parties on this matter. It wished to maintain its right to require offsets at the level of 30 per cent for an additional period of time, and then to gradually reduce it to a specific, agreed upon level. His delegation understood that this could disrupt the balance of rights and obligations. Bearing this in mind and respecting the need to maintain an appropriate balance, his delegation stood ready to explore the possibility of making additional commitments in the framework of the market access negotiations of the GPA on issues such as coverage of entities, goods and services, thresholds, and on other elements subject to negotiation. He hoped that this mechanism would allow Parties to reach a new balance of rights and obligations for Israel. He noted that his delegation had already started to conduct bilateral meetings with a number of Parties. His delegation intended to complete the first round of bilateral meetings with the rest of the Parties within the next few weeks.

26. In conclusion, he stressed that maintaining offset rights was crucial for Israel so as to make the GPA a balanced and economically viable instrument for the Israeli industry and economy. His delegation hoped that this fact would be taken into account and accommodated in the framework of relevant discussions and negotiations. He was looking forward to working with other Parties on this matter in a constructive way.

⁴⁹ GPA/W/294.

27. The representative of the United States said that her delegation would review carefully the materials that Israel had provided and would consider Israel's request. She said that her delegation regarded offsets as a transitional measure, not as a permanent fixture to a Party's market access commitments. Her delegation would examine whatever proposals Israel would put forward in that light.

28. The representative of Canada thanked Israel for having provided the background information during the week and for having come forward in considerable time before the agreed extension deadline established in December 2004. She encouraged Israel to come forward with its specific proposal as soon as possible so that Parties had sufficient time to consider it fully. She reiterated her delegation's position expressed in December 2004 that offset provisions should be transitional in nature and that a proposal should come forward for their phase-out.

29. On the Chairman's suggestion, the Committee agreed to revert to this issue at its next meeting.

F. OTHER BUSINESS

(i) *Statistics*

30. The Chairman noted that, in line with the requirements of Article XIX:5 of the Agreement, statistics for 2001 and 2002 had been submitted by Japan⁵⁰, and that statistics for 2002 and 2003 had been submitted by Switzerland.⁵¹

(ii) *Thresholds*

31. The Chairman noted that, in accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies⁵², the following Parties had provided information on their threshold figures expressed in national currencies for the current year: Canada; the European Communities; Hong Kong, China; Israel; Japan; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; and the United States.⁵³

(iii) *Dates of meetings in 2006*

32. The Chairman suggested that, with the help of the Secretariat, he would start consulting with delegations on the dates for the Committee's meetings in 2006, and would table a proposal on this at the meetings scheduled for the week of 10 October 2005.

33. The representative of the European Communities said that he was grateful for the Chairman's proposal but that his delegation would first like to see how much progress could be achieved in the current year in order to determine at least the number of meetings in 2006.

34. The representative of the United States agreed with that point by the European Communities but said that, in order to be able to plan ahead, delegations would need to consider at least indicative dates at the meeting of October 2005.

⁵⁰ GPA/70/Add.3 and GPA/76/Add.3 of 5 July 2005, respectively.

⁵¹ GPA/76/Add.2 and GPA/80/Add.1 of 9 February 2005, respectively.

⁵² GPA/1, Annex 3.

⁵³ GPA/W/285-series.

35. The Chairman, in concluding the meeting, said that, as had been agreed at the meetings of 17 November 2004⁵⁴ and 16 December 2004⁵⁵, the Committee would hold its next meetings in the week of 10 October 2005. At that time, the Committee would have to adopt its annual report to the General Council, in which he hoped that it would be possible to record provisional agreement on the non-market-access-related portions of a revised text of the Agreement. He thanked all delegations for their contributions and for having sincerely engaged in the negotiations earlier during the week. He hoped that delegations could come to the meeting in October 2005 with clearer and more flexible positions on the remaining outstanding issues so that substantial further progress could be made at that meeting.

⁵⁴ GPA/M/24, paras. 99-100 and 104.

⁵⁵ GPA/M/25, para. 12.

ATTACHMENT

Chairman's Statement on Stocktaking and Future Work at the Informal Closing Session of 21 July 2005

At the opening session on Monday afternoon, we agreed to have an informal closing session at the conclusion of our work on negotiations this week, in order to take stock of progress and to consider next steps in the negotiations pursuant to Article XXIV:7.

A. Stocktaking

Let me now provide a brief overview of the work completed this week. We have dealt with two main items:

- (i) In regard to coverage issues, an informal meeting on Monday afternoon held a useful discussion on two subjects:
 - the state of play of the bilateral coverage negotiations and the question of a new time-frame for the submission of initial offers; and
 - so-called "horizontal" coverage matters, including the drafting of relevant provisions in the text of the Agreement.

On the state of play of the bilateral coverage negotiations and the question of a new time-frame for the submission of initial offers, it was noted that the deadlines for submission of initial offers have passed without any offers being received. Furthermore, there was a recognition that the preparation of offers has proven to be a more complex and time-consuming process than some Parties had foreseen. Recognizing this, the Secretariat was asked to prepare a draft decision amending the Committee's original decision on the modalities of coverage negotiations (GPA/79 of 19 July 2004). The draft decision would extend the deadlines both for submission of initial offers and for the overall completion of the negotiations. A first draft was circulated on Tuesday and, on Wednesday afternoon, comments were provided by delegations. On the basis of these comments, a revised draft of the decision has been circulated and will be considered for adoption in the formal meeting that will follow this informal closing session.

On horizontal coverage matters, delegations had before them a note by the Secretariat summarizing the discussion on horizontal issues held on 30 May 2005 (Job No. 4321/Rev.2(5082) of 15 July 2005). The discussion first considered a submission by Japan (Job No. 5105 of 15 July 2005) and related issues concerning thresholds and other matters that were raised by delegations. This was followed by drafting work on various market-access-related provisions throughout the revised text of the Agreement, including, but not limited to, the structure and content of Appendix I as proposed by the United States and attached to Job No. 4035, as well as certain provisions in the text of the Agreement relating to its coverage. The results of this work will be reflected in a new "clean text" which will be circulated by the Secretariat to serve as a basis of our further work.

The discussion on horizontal coverage matters was focused and showed a clear desire by delegations to make further progress in this area at our meeting in October. To facilitate this, it was agreed that the Secretariat would prepare a brief informal note summarizing the points made by delegations during the discussion.

- (ii) In regard to the second main area of focus of our work this week, namely the review of the non-market-access-related provisions of the Agreement, we have had intensive discussions over the last three days. The drafting work was based on the latest draft revised text circulated by the Secretariat (Job No. 4035 of 10 June 2005) as well as on a submission by the United States (Job No. 4948 of 11 July 2005) containing revised drafting proposals on two decisions to be adopted by the Committee pursuant to what is now Article XVI/XVII of the revised text of the Agreement (Modifications and Rectifications to Coverage). In addition, several delegations provided detailed and useful drafting proposals relating to various provisions of the Agreement, including Article VII (Information on Intended Procurements), Article XII (formerly *XIbis* on the Use of Electronic Means), and Article XVI/XVII (Modifications and Rectifications to Coverage). A number of these permitted us to eliminate brackets on portions of the text and to simplify the remaining "NBs" in the text.

In regard to most provisions of the revised draft of the Agreement, the drafting work took a sequential approach. On Wednesday afternoon, Articles XVI/XVII (Modification and Rectifications to Coverage) and Articles XVIII/XIX (Consultation and Dispute Settlement) were discussed with the benefit of participation by some Parties' legal experts.

The discussions on all these elements of the text led to the inclusion in the "clean text" of new written proposals in addition to comments and suggested wording by delegations. These developments will be reflected in the updated version of the draft revised text of the Agreement to be prepared by the Secretariat.

Overall, I believe it is important to recognize that the text has been streamlined and simplified in a number of areas, even though it is also true that our discussions seem to show in some areas the need for the input of significant new flexibility for further progress to be made. The preparatory discussions that took place between key delegations in advance of the meeting were essential to our progress.

As I have mentioned, there appear to be a number of specific provisions regarding which further flexibility will be needed if Parties are to reach an eventual agreement on the revised text. For example, and without purporting to be exhaustive, some of the specific issues concerning procurement rules and procedures where additional flexibility is needed would include:

- the way in which compliance with the Agreement or specific provisions thereof should be spelt out in Article II:6/7, including the question of whether the onus on Parties should or should not be explicitly limited to measures deemed to be reasonably available in the circumstances;
- the application of the requirement to publish a summary notice in circumstances where full information is already provided in an official WTO language (Article V:3);
- a number of points concerning the provisions on technical specifications (Article VII);

- deadlines and their reduction in various circumstances (Article VI); and
- the question of how and where issues concerning electronic procurement should be addressed in the revised agreement.

In all of these areas, I think it is important to recognize that the differences in viewpoints expressed by delegations reflect legitimate differences in their perceptions of how the Agreement should work and, in many cases, also differences in national practices. In some cases, delegations have already gone some distance to highlight the linkages between provisions in various parts of the text and to signal the ways in which changes in particular areas would make it possible to reach agreement in others.

Finally, as mentioned at the beginning of the week, delegations have had an opportunity to continue their bilateral discussions on coverage issues pursuant to the Decision on Modalities in the margins of the week's work.

B. Future work

As to the future, it will be important to continue to make further progress on all fronts of our negotiations if we are to conclude the negotiations in a timely fashion.

There seems to be a general will on the part of delegations to reach provisional agreement on the non-market-access-related provisions of the revised text of the Agreement before the Hong Kong Ministerial Conference. In this regard, I would remind delegations that only one meeting, the one scheduled for the week of 10 October, remains to meet this objective. To achieve the desired result at that meeting, it will be necessary for interested delegations to build on the progress made at this meeting and to undertake further intensive consultations in advance of the meeting, both in capitals and between them. Wherever possible, proposed solutions should be reflected in written submissions.

As regards the bilateral coverage negotiations and the submission of initial offers, at the formal meeting which will take place after this informal session, we will consider the revised version of the draft decision on relevant deadlines. This draft decision would require that "each Party shall table its initial offer prior to the October meeting of the Committee (week of 10 October 2005) but not later than the Hong Kong Ministerial Conference (13-18 December 2005)". Furthermore, it would stipulate that overall negotiations pursuant to Article XXIV:7 "aim to be concluded by the end of 2006". Assuming that the decision is adopted, it will be of vital importance to the success of the negotiations that delegations respect the new deadline for the submission of initial offers.

As to the horizontal aspects of the coverage negotiations, it will be important to build on the progress made so far in terms of both the market-access-related provisions in the text and other horizontal coverage matters listed in the Decision on Modalities. Delegations are encouraged to come forward with new submissions on these matters.

As to the organization and structure of our next meeting, which is scheduled for the week of 10 October, I would suggest that the Committee continue in a way broadly similar to that we have used so far. In particular, it would be important to have a further discussion of the horizontal coverage matters. In addition, substantial further progress is needed in the review of the outstanding non-market-access-related provisions. To achieve this, I propose that at least four full days of the week of 10 October be allocated to drafting work on the non-market-access-related provisions. Delegations should also have an opportunity for bilateral consultations on coverage issues, at least on the margins of the meeting.

With the help of the Secretariat, I will consult further with you on these matters as we get closer to the meeting and, following the usual procedure, will circulate more detailed suggestions in advance. Let me also ask delegations to submit any new proposals sufficiently in advance of our next meeting so that other delegations will have an adequate opportunity to reflect on them.

I of course stand ready to conduct consultations and take initiatives as may be appropriate, to help ensure that the text is as far advanced as possible ahead of the Hong Kong Ministerial Conference.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/26
13 April 2005

(05-1521)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 14 MARCH 2005

Chairman: Mr. Niklas Bergström (Sweden)

1. The Committee adopted the following agenda, as outlined in Airgram WTO/AIR/2519 of 25 February 2005:

A. Election of Chairman for 2005

B. Other Business.

A. ELECTION OF CHAIRMAN FOR 2005

2. The Committee elected Ambassador Tae-yul Cho (Korea) as its Chairman for 2005, with effect as of the end of the week.

B. OTHER BUSINESS

(i) *Statement by Israel*

3. The representative of Israel thanked all Parties of the GPA Committee for the constructive way in which they had dealt with the issue of offsets and Israel's needs in that regard. The Decision taken by the Committee in December 2004¹ had given all Parties extra time to reflect on their needs regarding offset requirements and how the Agreement on Government Procurement should address this issue.

4. Israel's statement to the Committee at the meeting of 17 November 2004² had outlined the main features of the structure of the Israeli economy and the fact that the vast majority of firms in Israel were small and medium-size enterprises (SMEs). Studies undertaken for the preparation of that submission had generally shown that, due to their size, Israeli SMEs were effectively excluded from the government procurement tenders of other GPA Parties. Entering into the tenth year of Israel's participation in the GPA, his delegation was under the impression that government procurement markets were dominated by large corporations and firms. Israeli authorities had recently decided to initiate a thorough research project in order to study the effects of participation in the GPA on the Israeli economy, in particular on Israel's trade balance, industry, employment and development.

¹ GPA/83 of 17 December 2004.

² GPA/M/24, paras. 65-80.

5. Similarly to other Parties, Israel recognized the importance of the GPA as an agreement securing more transparency and efficiency in procurement processes. At the same time, Israel also recognized that, when dealing with public needs and funding, all aspects and interests had to be duly addressed. An agreement on government procurement that did not reflect a balance of interests for all Parties would never be able to expand its membership. His delegation felt that the Committee should be aware of this reality and should put in place appropriate instruments that would enable Parties with economies dominated by SMEs to benefit from the Agreement. The use of limited and transparent offset requirements in government tenders was one example of such an appropriate instrument. As his delegation had explained several times, it viewed offsets as a means to facilitate industrial cooperation between world-class foreign bidders and capable local industry, to the benefit of both Parties. At the same time, his delegation did not exclude the possibility of using other instruments and mechanisms besides offsets.

6. During the process of renegotiating the provisions of the Agreement on Government Procurement, the Committee had an opportunity and an obligation to deal with the inherent imbalance in the Agreement. The Committee should not ignore the fact that membership in the Agreement had remained virtually unchanged during the years. By incorporating the appropriate measures into the Agreement, the Committee would send a positive signal to WTO Members that had hitherto not joined this important Agreement. Israel was working in this direction and was open to working together with other Parties in order to find constructive solutions to the current situation. His delegation considered it to be essential to find such solutions, and hoped that all Parties understood the urgency of this issue for Israel and the Agreement in general, and would join Israel in trying to find an acceptable way to deal with the requirements of Parties such as Israel with respect to offsets, so that a balanced Agreement could be achieved for all Parties.

7. The Committee took note of the statement made by Israel.

(ii) *Future work with regard to negotiations pursuant to Article XXIV:7(b) and (c)*

8. The representative of the European Communities said that the Committee had made much progress in the negotiations pursuant to Article XXIV:7(b) and (c) of the Agreement, and that it needed to maintain that momentum in order to finish the review of the text of the Agreement as soon as possible. Parties should aim at finishing the review of the text of the Agreement by summer 2005 but, in any event, not later than October 2005 in view of the Ministerial Conference to be held in Hong Kong, China at the end of 2005.

9. The representative of the United States agreed that Parties should aim to finish the revision of the text of the Agreement by the summer, although she noted that there were some issues that it might not be possible to resolve by that time. With regard to the overall timetable for the negotiations pursuant to Article XXIV:7, she emphasized the importance of completing the negotiations no later than the end of 2006, in line with the scheduled conclusion of the Doha Round. Accordingly, while ideally the Committee would focus on market access negotiations after it had finished revision of the text, the text work was sufficiently advanced that the two processes could proceed in parallel, if necessary.

10. The representative of Japan supported the proposals made by the representatives of the European Communities and the United States. He noted that the bilateral request/offer negotiations had now begun in earnest, and that without political impetus no progress would be achieved in that process. This was a reality of trade negotiations. A realistic view had to be taken with regard to negotiations on the Agreement on Government Procurement.

11. The representative of Israel said that he would convey the proposals of the European Communities and the United States to his authorities. His delegation had some concerns in regard to making too strong a link with the Ministerial Conference to be held in Hong Kong, China as prior to the Conference most of his delegation's resources would be focused on preparations for the Conference and on the Doha Development Round, which would accelerate towards July 2005 and in particular in the second half of 2005. While recognizing the importance of the GPA negotiations, a small delegation like his could not necessarily keep up with the proposed pace of the negotiations.

12. The representative of Korea agreed with the European Communities, the United States and Japan as to the proposed schedule of work. It was reasonable to follow the timing of the DDA negotiations even if the renegotiation of the Agreement on Government Procurement was not part of the DDA.

13. The representative of Canada agreed that Parties should strive to complete the review of the text of the Agreement by summer 2005, while recognizing that this might not mean that Parties were able to reach an agreement on every single item as there were several that were linked to the outcome of the market access negotiations. Accordingly, the Committee should have a renegotiated text by July, even if it included some issues that would need to be set aside pending the market access negotiations, as all Parties would by then have their resources focused on the upcoming Ministerial Conference. As to the market access negotiations, which by 2007 would have been under way for a decade, she noted that the current deadline was January 2006, and that the proposal by the United States constituted an extension of that timetable. If the Committee believed that such additional time was needed, her delegation was prepared to agree to that. In any event, the Committee needed to redouble its efforts to produce a result in a suitable time-frame.

14. The representative of Switzerland supported the proposals by the European Communities and the United States, and said that the proposed time-frame was reasonable.

15. The representative of the European Communities said that he was pleased to hear Parties' positive response to the proposed deadline of summer 2005 for completing the renegotiation of the text of the Agreement. In response to the concerns of Israel, he said that his delegation was willing to address any problem that Parties might raise during the renegotiation process. He added that the proposal by the United States regarding the timing of the negotiations was understandable as it might be difficult to conclude the overall negotiations pursuant to Article XXIV:7 of the Agreement by January 2006, as foreseen in the Decision on Modalities.³ However, he suggested that, for the time being, the Committee make all possible efforts to meet that agreed deadline, and that if it arrived at a point where the situation had to be reassessed, the Committee consider the proposal of the United States regarding a revised overall deadline of the end of 2006 at that stage.

16. The representative of the United States said that her delegation also continued to favour the deadline of January 2006 for the overall completion of the negotiations pursuant to Article XXIV:7 of the Agreement. However, she pointed out the need to be realistic. The Committee had failed to meet several deadlines over the years, and her delegation was of the view that all aspects of the negotiations pursuant to Article XXIV:7 of the Agreement had to be completed at the very latest by the conclusion of the Doha Round. She suggested that without a commitment to finish the negotiations by the end of the Doha Round; it was not clear when the Committee would be able to conclude the negotiations.

³ GPA/79 of 19 July 2004.

17. The representative of the European Communities said that it fully agreed with the United States that the negotiations pursuant to Article XXIV:7 had to be completed by the end of the Doha Round at the very latest, that being the ultimate deadline.

18. The Committee took note of the proposals made by the European Communities and the United States, and of the comments made by other Parties.

(iii) Jordan's statement on its accession to the Agreement

19. The representative of Jordan said that, since the last meeting of the Committee, his delegation had worked hard to complete its second revised offer, which it had intended to submit prior to the current meeting. Regrettably, his delegation had not been able to finalize that offer, although it had made good progress in that direction:

- (a) His delegation had been working on the comments and questions raised at the last plurilateral consultations, and had responded to most of these in a positive way.
- (b) In the context of the deliberations of Jordan's National Committee, the private sector, in particular the pharmaceutical industry, the Chamber of Commerce, the Chamber of Industry and various contractors had expressed serious concerns regarding the possible negative impact of the Agreement on their businesses and on the Jordanian economy. Additional discussions were necessary to address such concerns.
- (c) The issue of including in Jordan's second revised offer non-sensitive procurement by the Ministry of Defense and the Ministry of the Interior had led to some complications, given the overlap between sensitive and non-sensitive material. This question was still under consideration by the relevant ministerial committee.
- (d) The legal status of the Aqaba Special Economic Zone also was not a straightforward issue, since there were multiple organizations involved in handling business in that zone. This issue would be addressed by competent authorities and progress would be reported to the Committee.
- (e) A regional workshop on government procurement had been organized by the WTO Secretariat and the Government of Jordan in Amman. It was attended by more than 50 delegates representing 19 Arab States and others from the region. The Jordanian experience in acceding to the GPA had been presented and a number of Arab delegates had requested that workshops be held in their countries to further discuss the Jordanian experience.

20. In the light of the above developments, it had turned out to be impossible to finalize and submit Jordan's second revised offer prior to the meeting. Jordan looked forward to submitting the second revised offer to the Committee in the near future, once the official approval of the Government and other internal procedures had taken place, which his delegation hoped would occur in the coming weeks. As to the review of Jordanian government procurement legislation, he said that the draft unified procurement law had been completed by the relevant committee, and had been submitted to the Government prior to undergoing the relevant constitutional procedures.

21. He concluded by mentioning that his delegation would take advantage of its stay in Geneva to hold bilateral consultations with some interested Parties.

22. The Committee took note of the statement made by Jordan.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 16 DECEMBER 2004

Chairman: Mr. Niklas Bergström (Sweden)

1. The Committee adopted the following agenda, as outlined in Airgram WTO/AIR/2458 of 29 November 2004:

- A. Israel's Proposed Modification Pursuant to Article XXIV:6(a) (GPA/MOD/ISR/1)
- B. Other Business

A. ISRAEL'S PROPOSED MODIFICATION PURSUANT TO ARTICLE XXIV:6(a) (GPA/MOD/ISR/1)

2. The Chairman noted that Document GPA/MOD/ISR/1, dated 19 November 2004, contained a communication from Israel with proposed modifications to Israel's Note on offsets pursuant to Article XXIV:6(a). He understood that there had been informal consultations between interested delegations, leading to the presentation of a draft decision for adoption by the Committee.

3. With the Chairman's introduction, the Committee adopted the Decision.¹

4. The Chairman opened the floor for statements on the Decision.

5. The representative of Israel expressed his appreciation to all Parties for the co-operation and good will shown during this process, considering particularly the short time Parties had had to analyse Israel's notification. He thanked the Chairman and the Secretariat for their assistance and availability. He said that the decision gave a short-term relief to an immediate need of Israel and, as such, it was an important step that showed how the evolving needs of Parties were taken into account in the context of the Agreement on Government Procurement. His delegation intended to continue the discussion on its offset rights in the course of 2005 with the objective of reaching a mutually agreed solution that would take into account the needs of Israel and all Parties with a view to reaching a new balance of rights and obligations.

6. Other delegations also expressed their thanks to Israel and the other Parties for the good co-operation over the previous weeks. The representative of the United States said that his delegation, as an exceptional measure, did agree to the one-year extension of Israel's commitments to reduce its offsets from a 30 per cent level to 20 per cent level on 1 January 2005. His delegation recognized that it had the right to seeking compensatory adjustment from Israel for the one-year extension of Israel's obligation to reduce its offsets from 30 per cent to 20 per cent. However, his delegation would not seek such an adjustment at this time. He said that, with the Committee's approval of the one-year extension of Israel's offset obligation, Israel would have been allowed to maintain offsets for 15 years.

¹ Subsequently circulated as document GPA/83, dated 17 December 2004.

Thus, it was appropriate that after the end of the one-year extension Israel finally end its use of offsets. As offsets undercut core objectives of the Agreement on Government Procurement, they should be used only as transitional measures, and not as permanent fixtures of a procurement regime. An indefinite maintenance of offsets did not set a helpful precedent for other WTO Members that might accede to the Agreement on Government Procurement.

7. The representative of Canada said that his delegation was agreeing on an exceptional basis to this extension for one year, a fact which was noted in the preamble of the Decision. His delegation was looking forward to Israel coming forward sufficiently in advance of the end of 2005 with a plan to address the future of this provision, with a view to establishing a clear phase-out of the offset in accordance with the commitments in Israel's Appendix I.

8. The representative of Japan welcomed the Committee's Decision based on mutual agreement between Israel and other Parties regarding Israel's Note to Appendix I. His delegation hoped that Israel could overcome any difficulties and move towards a stable economic situation, so as to implement the agreed commitment.

9. The representative of Korea said that his delegation had determined to join the consensus for this measure, and hoped that Israel would make all efforts to conform to the Decision. He believed that this case had some implications for non-Parties to the Agreement on Government Procurement. His delegation wished to see a more positive and constructive discussion in 2005, when the Committee would consider again Israel's offset matters.

10. The representative of the European Communities said that his delegation had agreed to join this consensus on the terms set out in the Decision, which accurately reflected the state of the discussions and the state of his delegation's view of the matter. His delegation expected to be discussing this whole subject during the course of 2005, in the context of the Committee's wider discussions. He hoped that Parties could undertake these discussions in a more measured and less stressful way than had been the case. The co-operation that had taken place between Parties in the previous weeks had enabled that situation to be overcome, but this time in 2005 delegations would perhaps not be in quite the same situation.

11. The Committee took note of the statements made.

B. OTHER BUSINESS

Meetings in 2005

12. Turning to other business, the Chairman noted that at the previous meeting, the Committee had discussed the meeting dates for 2005, and had agreed on the weeks of 14 March, 30 May and 10 October 2005. However, the date of the meeting proposed for July 2005 had been left outstanding. The third meeting in 2005 was now scheduled for the week of 18 July, since consultations had confirmed that no delegation had a problem with that date.

Status of GPA observers in the context of bilateral coverage negotiations

13. Taking up the status of GPA observers in the context of bilateral coverage negotiations, the Chairman noted that, according to the Decision on Modalities, "[a]ny observer government which has submitted an offer with a view to participating in the revised Agreement may participate in this aspect

of the negotiations and receive copies of requests and offers circulated by the Secretariat.”² In light of this, it might be useful for any observer so wishing to clarify whether they wished to participate in the bilateral coverage negotiations.

14. The representative of Jordan said that his delegation was wondering about the status of WTO Members negotiating their accession to the Agreement on Government Procurement in the bilateral coverage negotiations; in particular, whether participation by GPA observers in accession to the Agreement on Government Procurement would entail the possibility of making requests to Parties or just to receive requests and offers from Parties.

15. The Chairman said that GPA observers participating in the bilateral coverage negotiations would be able to put forward requests but also receive requests.

16. The Secretariat said that it would circulate copies of the requests that were going to be submitted with regard to any observer that had opted to participate in the bilateral coverage negotiations. He was wondering whether the representative of Jordan suggested that the offer that Jordan had already submitted in the context of its accession to the Agreement on Government Procurement should be considered an offer with a view to participating in the revised Agreement, and whether, therefore, Jordan would want to be a participant in this aspect of the coverage negotiations.

17. The representative of Jordan said that the preliminary answer was in the affirmative, and he expected to be sending a note saying that Jordan would be participating in the bilateral coverage negotiations.

Circulation of requests in the bilateral coverage negotiations

18. As a related issue, the Chairman noted that requests and offers were circulated in a new document series (GPA/O/country code/number). This would facilitate access to negotiating documents in the future, as well as compliance with the Decision on Modalities, which reserved bilateral coverage negotiations to 'participants', i.e. to Parties and to only those observers that "ha[ve] submitted an offer with a view to participating in the revised Agreement."³ Further, he said that it was planned to circulate requests only in the language(s) in which they had been submitted to the Secretariat. Thus, the Secretariat was not intending to systematically translate requests into all official WTO languages. However, the Secretariat would be ready to arrange for the translation of such documents based on specific requests from any participant in the bilateral coverage negotiations.

² GPA/79, dated 19 July 2004.

³ *Id.*

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 17 NOVEMBER 2004

Chairman: Mr. Niklas Bergström (Sweden)

1. The Committee adopted the following agenda, as outlined in Airgram WTO/AIR/2427/Rev.1 of 5 November 2004:

- A. Negotiations under Article XXIV:7
- B. Modifications to the Appendices to the Agreement
- C. Accessions
- D. Review of National Implementing Legislation
- E. Israel's Commitment in Relation to Offsets
- F. Adoption of the Annual Report
- G. Other Business

A. NEGOTIATIONS UNDER ARTICLE XXIV:7

2. Summarizing work undertaken since the formal meeting of the Committee on 23 April 2004, the Chairman reported that the Committee had held two informal meetings, in June and October 2004, addressing non-market-access-related provisions in the text of the Agreement. The results of drafting work at the latter meeting were reproduced in the updated 'clean' version (Job No. 7315 of 28 October 2004) and 'side-by-side' version (Job No. 7317 of 28 October 2004) of the revised text of the Agreement. His summary of negotiations during that meeting had been circulated electronically on 8 October 2004.

3. As to elements 2 and 3 of the work programme, on 8 October 2004 the Committee had held a first session of negotiations on the extension of coverage and the elimination of discriminatory measures and practices. In accordance with the Decision on the Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices (GPA/79 of 19 July 2004), that session had taken up matters that were to be addressed in the Committee as a whole. In particular, the session had provided an opportunity to hold a preliminary discussion on a submission by Japan (Job No. 5582 of 26 August 2004). Delegates had also had before them a List of Papers Relating to the Elimination of Discriminatory Measures and Expansion of Coverage, which the Secretariat had been requested to prepare (Job No. 6685 of 7 October 2004), and which had been subsequently updated (Job No. 6685/Rev.1 (7734) of 11 November 2004). Upon the request of Parties, the Secretariat had prepared a summary of that first session (Job No. 6910/Rev.1 (7076) of 20 October 2004).

4. As indicated in the Airgram and the Chairman's communication sent to delegates by fax on 19 October 2004, the formal meeting had been preceded by a second informal session on matters that, pursuant to the Decision on Modalities, were to be addressed in the Committee as a whole. Further to the request made at the informal session, a summary of the discussions would be prepared by the Secretariat in due course. These matters would be next taken up at the first Committee meeting in 2005. The Chairman proposed that the Committee reserve sufficient time during that meeting for an in-depth discussion of those horizontal matters.

5. The representative of Japan believed that the Committee had had a good discussion on that item at the informal session earlier that day. Although there had been divergent views on some points, his delegation believed that all Parties shared the importance of the horizontal issues to be negotiated in the Committee as a whole. Those issues were essential to facilitate the upcoming bilateral negotiation process. His delegation thanked the Chairman for holding the morning informal session and the Secretariat for preparing a summary of that informal meeting, which would be helpful in sharing the discussions with capital-based experts. He hoped that after reflection on the meeting, the Committee would be able to make progress in market access negotiations as a whole.

6. He went on to emphasize three points. First, his delegation would make every effort and continue to actively participate in ongoing negotiations. Second, he reiterated that Parties concerned would need to make every effort to resolve pending notifications pursuant to Article XXIV:6, as set out in the Decision on Modalities. His delegation continued to make its best effort and urged all Parties concerned to co-operate in solving the long-pending issues as soon as possible. The matter was not merely a case of individual notification but the Committee as a whole was facing a systemic issue. Third, his delegation was looking forward to having some model format for requests and offers and appreciated that the Chairman was willing to provide an informal paper regarding possible headings of requests.

7. The representative of the United States agreed with Japan that the horizontal issues were important and he was looking forward to a discussion on them and to them being addressed by some, if not all, of the Parties in their initial requests. His delegation felt that after seeing those requests, the Committee would be in a better position to determine, not on an abstract or educational, but on a practical basis, the most effective way of addressing concerns as they arose. To reiterate a few points that he had made at the informal session, he said that, while uniform coverage would be an objective, it should not be an obligation. With respect to the structure of Annexes, he supported the notion of a common approach, but the lack of such an agreement or any guidelines at that point should not deter progress in the negotiations. He suggested that each Party use the format that would work best for it at that time, thus making it easier for Parties to submit their requests and offers on time.

8. The representative of Canada said that his delegation shared Japan's interest in the Committee addressing horizontal issues as that was going to be an important part of market access negotiations. As to the interest of Japan in getting some ideas on what other Members were doing in terms of format for their requests and offers, he noted that the Committee would have an opportunity to talk about the format of offers at future meetings. Nevertheless, it would not have that opportunity as regards requests before the deadline for submitting initial requests at the end of the month. If Japan could benefit from any assistance that the Chairman could provide them, it would certainly be welcome for Japan. His delegation's process for preparing its requests was well under way. Thus, his delegation would not be able to benefit from any proposed models or formats, which might come from the Chairman or the Secretariat, as timing would simply not allow that. That said, his delegation would be willing at any time to consult informally with Japan or any other delegation if they were seeking advice on questions as to how his delegation intended to formulate its requests. His delegation expected to submit its request by 30 November, and hoped that other Members would also; in the meantime, his delegation was more than willing to speak to any Party if they had specific questions.

9. The representative of Korea appreciated the Chairman's initiative to suggest a short informal list to be taken into account in the preparation of requests. His delegation wished to participate in the market access negotiations. Raising a few specific points to be taken into account in future negotiations, he said that, although there was no consensus on the idea of guidelines, Parties had to bear in mind that a common understanding of some points, such as a uniform level of coverage or at least some direct criteria for including local government in Annexes, was an important factor to be taken into account in negotiations. Further, to enhance transparency and to strike a balance of rights and obligations, there was a need to address the presentation of each Annex, and to have some common understanding on using a positive list approach at least in Annexes 1-3.

10. The representative of the European Communities emphasised the importance of all the horizontal issues listed in the Decision on Modalities. Her delegation was looking forward to discussing them at forthcoming Committee meetings. She stressed the need to be ambitious in the forthcoming coverage negotiations because ample room for improvement remained under the existing Agreement. Her delegation had taken this ambitious position since it had started to discuss the forthcoming coverage negotiations.

11. In conclusion, the Chairman suggested that, as the representative of Canada had pointed out, it might be perhaps too late to try to agree on some kind of a model format for requests because the deadline was coming up soon. Nevertheless, he was available as a facilitator if any delegation felt he could help. He reiterated that, if delegations had written comments on horizontal matters, those would be most welcome, so that more papers would be available for future discussions, which could take place in parallel with market access negotiations.

12. The Committee took note of the Chairman's report and of the statements made.

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Modifications certified since the meeting in April*

13. The Chairman noted that since the last meeting of the Committee discussing modifications to the Appendices to the Agreement on 23 April 2004, various modifications had become effective. Detailed information on these modifications was available in paragraphs 5 and 6 of the annotated agenda for the meeting (Job No. 7843 of 2 November 2004).

(ii) *Outstanding modifications*

14. The Chairman noted that proposed modifications by Japan remained outstanding with respect to the following entities:

- (a) NTT;
- (b) East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company;
- (c) Railway Construction Public Corporation and Corporation for Advanced Transport and Technology;
- (d) Japan Consumer Information Center, Water Resources Development Public Corporation, Japan Green Resources Corporation, the Japan Science and Technology Corporation, RIKEN (The Institute of Physical and Chemical Research), National Stadium and School Health Center of Japan, the Association for Welfare of the

Mentally and Physically Handicapped, and National Agriculture Research Organization;

- (e) National Aerospace Laboratory;
- (f) Social Welfare and Medical Service Corporation and Japan Institute of Labour; and
- (g) proposed modification to Annex 3 of Japan's Appendix I.

15. The Chairman pointed out that the details of notifications with regard to such outstanding modifications, as well as the developments, if any, since the meeting of the Committee in April 2004, were contained in the annotated agenda. He also mentioned that since the annotated agenda had been circulated, Japan had notified a further proposed modification, namely concerning the National Center for Industrial Property Information and Training (GPA/MOD/JPN/16 of 9 November 2004). He noted that Japan had submitted a paper relating to the first two of the above proposed modifications (GPA/MOD/JPN/17 of 15 November 2004).

16. Upon the request of the representative of Japan, the Committee discussed these outstanding proposed modifications by Japan item-by-item.

NTT-Communications

17. As to the proposed modification concerning NTT-Communications, the representative of Japan pointed out that his delegation had submitted the proposed modification in 1999. It was unusual that such a long-pending issue had not been resolved, and there had not been any progress since February 2003. His delegation strongly requested that the objecting Party provide updated information and withdraw its objection immediately.

18. The representative of the European Communities, in response to the request by Japan, said that the NTT-Communications file was still under consideration. She expected to have a more positive view on this file in the light of new developments in the sector but such a decision would need to be based on mutual agreement with Japan.

19. The representative of Japan thanked the European Communities for the explanation. His delegation had carefully taken note of the comments made by the European Communities, and wished to continue conducting bilateral talks with the European Communities. He noted that he would convey the points made by the European Communities to his capital-based experts and come back to this issue in the future.

East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company

20. As to Japan's proposed modification concerning the three railway companies, another representative of Japan introduced his delegation's recent submission on pending modifications (GPA/MOD/JPN/17). The Decision on Modalities adopted on 16 July 2004 stated that "Parties concerned will make every effort to resolve pending notifications." He stressed that there were long-pending notifications despite the provision of ample information to Parties concerned through the numerous questions & answers sessions and a series of oral explanations. These issues should not be carried over to the revised Agreement.

21. He noted that the proposed modifications concerning the three Japanese railway companies and NTT-Communications were typical examples in this context. He stressed that the influence of the Government of Japan on the three railway companies and NTT-Communications had already been effectively eliminated, and was considered as being at the same level as that of other private

companies. Even if it was necessary to examine the notifications carefully, too much time and effort had been spent in order to respond to endless questions and it was too much of a burden for the notifying Party.

22. His delegation believed that one reason for having such long-pending notifications was the way those were addressed in the current Agreement. Therefore, his delegation sought to establish new, speedy and effective procedures, such as arbitration procedures, in order to prevent these pending issues from arising under the revised Agreement.

23. Carrying over these pending issues to the revised Agreement was not appropriate. He stressed that his delegation had been and would be making every effort to solve these issues. Should these four long-standing notifications unfortunately not be effected by the time the revised Agreement came into force, his delegation would be obliged to understand that it would be most appropriate to consider these four pending cases as cases that had been withdrawn from the relevant Annex.

24. He reiterated the firm determination of his delegation to make its best effort to solve this issue and wished to ask other Parties to make the same effort and sought their co-operation in solving these long-pending issues.

25. As an additional specific comment on the Japanese railway companies, he mentioned that the position of his delegation was clearly stated in the paper that he had just introduced. His delegation was convinced that it had provided sufficient information in good faith to settle this matter. His delegation requested the United States and the European Communities to seek a speedy solution to this extremely long-standing issue. His delegation believed that it had been most sincere and forthcoming in answering all questions to the full – repeatedly over three years. Nevertheless, his delegation had been placed under extreme duress by not receiving appropriate responses over these three years. Especially, as regards the European Communities, although his delegation had requested it to specify the reasons for its objection, the European Communities had only reiterated questions, including ones that were not necessarily relevant to government control and influence. He noted that last June his delegation had submitted written answers to the fourth set of questions from the European Communities. Moreover, a responsible official from the relevant Ministry had visited Brussels in person to provide the European Communities with all the necessary information. Four months had passed since then, and his delegation considered that there had been already enough time for the European Communities to assess the responses and clarifications provided by Japan. His delegation expected no more questions from the European Communities and requested the European Communities to let it know the exact situation as regards its consideration of this critical matter. In order not to carry over this issue to the revised Agreement, his delegation strongly requested the European Communities and the United States to withdraw their objections expeditiously.

26. The representative of the European Communities thanked Japan for its recent submission. Her delegation shared the position expressed by Japan about the need to work as expeditiously as possible on Article XVI in the draft revised text of the Agreement and to come up with an improved Article as regards both substance and procedural guarantees. She emphasized that as long as an objection on a specific notification had not been lifted, her delegation understood that the entity in question was still included in the relevant Annex of the Party concerned.

27. Commenting on the specific case of the Japanese railway companies, she noted that her delegation had exchanged views, questions and answers with Japan on this. The European Communities had also conducted an extensive round of internal consultations. Her delegation still believed that the conditions under Article XXIV:6 of the Agreement for the withdrawal of the Japanese railway companies from the relevant Annex were not met, but it was willing to co-operate and further discuss this matter with Japan.

28. The representative of the United States also thanked Japan for its recent paper and said that his delegation was still reviewing it.

29. The representative of Japan thanked interested Parties for their explanations and clarifications. He requested the European Communities to provide concrete reasons for not withdrawing its objection to this issue. He noted that his delegation was willing to engage in further discussions or negotiations with interested Parties.

Other outstanding modifications proposed by Japan

30. As regards the other outstanding notifications, the representative of Japan mentioned that his delegation had submitted responses to the questions in September and hoped that the Parties concerned would finalize their examinations expeditiously. He was looking forward to receiving positive responses from objecting Parties, and urged Parties concerned to focus on the essential questions, should they seek further clarifications.

31. As regards other Japanese entities that had yet to submit answers to objecting Parties, his delegation was preparing responses and hoped to submit responses as soon as those were finished.

32. In any event, his delegation wished to sound the alarm that any pending notifications would be a serious problem. Therefore, his delegation urged all relevant Parties, including Japan itself, to make further efforts and co-operate towards the resolution of these pending issues. His delegation hoped that all Parties as well as the relevant experts in capitals shared this important message.

33. The representative of the European Communities thanked Japan for its answers to the questions posed by her delegation. Her delegation was examining the answers, and would come back to Japan as soon as possible. Her delegation wished to show its willingness to come up with a satisfactory solution on the overall set of notifications from Japan.

34. The representative of the United States thanked Japan for its most recent answers and said that his delegation was in the process of examining those answers.

Outstanding modifications proposed by other Parties

35. Turning to outstanding modifications proposed by other Parties, the Chairman noted that there was a proposed modification by Korea concerning Korea Telecom as well as a notification by the United States concerning proposed modifications to reflect changes in the administrative structure of the Federal Government as regards the Uranium Enrichment Corporation. The details of notifications concerning such outstanding modifications, as well as the developments, if any, since the meeting of the Committee in April 2004, were contained in the annotated agenda.

36. The representative of Japan said that the previous month his delegation had withdrawn its objections with regard to the notification by the United States concerning proposed modifications to reflect changes in the administrative structure of the Federal Government, except for the Uranium Enrichment Corporation. His capital-based experts were carefully examining the notification as regards this latter, remaining entity. As stated earlier, his delegation would try to make its best effort to conclude this matter as soon as possible.

37. The representative of the United States said, following up on Japan's comments, that his delegation was looking forward to Japan's favourable decision on this matter. Should Japan need additional information, his delegation would be happy to respond. The same applied to the European Communities, which was the other Party that was still objecting to the withdrawal of the Uranium

Enrichment Corporation. If the European Communities had additional questions, his delegation would be happy to answer those.

38. The representative of Korea, concerning the proposed modification relating to Korea Telecom, noted that since his delegation had circulated its notification in September 2002, it had conducted constructive bilateral negotiations with interested Parties, especially with the United States, the European Communities and Canada. As a result, almost all concerns had been resolved, and the United States and the European Communities had withdrawn their objections concerning Korea Telecom, which his delegation appreciated. There was still one remaining objection from Canada, which his delegation had tried to resolve on many occasions. While not wishing to reiterate the details of the process, he said that his delegation had submitted the proposed withdrawal of Korea Telecom from Appendix I on the grounds that government control and influence had been effectively eliminated. His delegation was urging Canada's early responses to that. He also noted that the General Notes to Appendix I of Korea stated that "for goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3." For this reason, his delegation believed that Canada did not have a substantial interest in the withdrawal of Korea Telecom from Annex 3 and that it was inappropriate for Canada to maintain its objection given the absence of its substantive interest in this entity. His delegation was ready to discuss this matter on every possible occasion and was looking forward to an early conclusion.

39. The representative of Canada, in response to the intervention by Korea, noted, as a point of principle, that his delegation did believe that its objection was based both on interest and on principle. This was an important issue for the Government of Canada. His delegation had received information from Korea in mid-October, and had had regular and frequent contacts with the Korean Government, as recently as the previous day, when in Ottawa a member of the Korean Embassy had come to speak to Canadian technical experts. A further meeting was scheduled for 7 December. His delegation was actively engaged with Korea on this issue and was proceeding expeditiously with the information received from Korea. The frequency of meetings was evidence of his delegation's commitment to engage with Korea to try to find a mutually satisfying resolution to this issue.

40. The representative of Korea thanked Canada for its response. He was concerned that Canada might be linking the withdrawal of Korea Telecom to the bilateral Telecommunications Equipment Procurement Agreement. His delegation appreciated Canada's constructive approach to resolving this bilateral agreement, but believed that the matter of Korea Telecom could be tackled on the grounds of the relevant provisions of Article XXIV:6(b) of the Agreement, notably whether government control and influence had been effectively eliminated. Accordingly, his delegation could not accept any kind of linkage between other bilateral agreements and this issue.

41. In response, the representative of Canada said that he did not consider it appropriate for Korea and Canada to engage in bilateral negotiations during a plurilateral meeting.

42. The Committee took note of the statements made.

C. ACCESSIONS

Georgia

43. The Chairman noted that Georgia had sought accession in October 2002 (GPA/71), had replied to the GPA/35 checklist in April 2002 (GPA/W/187), and had submitted its entity offer in December 2003 (GPA/SPEC/34). The Parties and Georgia had exchanged a number of questions and answers, the most recent of which were listed in paragraph 9 of the annotated agenda. Since the

circulation of the annotated agenda, Japan had submitted responses (GPA/ACC/GEO/6) to Georgia's replies in document GPA/ACC/GEO/3.

44. The Chairman invited comments on the accession process of Georgia and on the idea, raised at the last informal meeting of the Committee in October, of holding plurilateral consultations on Georgia's accession process at the first meeting of the Committee in 2005. He proposed that he would contact the delegation of Georgia if Parties wished to organize such plurilateral consultations.

45. In response to the Chairman's question and proposal, the representative of the United States noted that in September his delegation had submitted questions to Georgia relating to Georgia's market access offer. As far as the process was concerned, his delegation was looking forward to Georgia's response to those questions and to working with Georgia towards accession.

46. The representative of Korea noted that his delegation did not have any strong view on the process of Georgia's accession and would follow the Chairman's initiative and any consensus that might emerge among Parties on this issue. As to the process, he recalled that his delegation had submitted a special questionnaire to Georgia in April 2004 but had not yet received an answer. He was expecting Georgia to respond quickly to those questions, especially to the ones relating to General Notes 8 and 9 of Georgia's draft initial offer.

47. The representative of Japan noted that, although the delegation of Georgia was not present at the meeting, his delegation wished to express its appreciation for Georgia's prompt response to Japan's questions. Having carefully examined Georgia's reply, his delegation had just submitted new comments, hoping that Georgia would consider those positively as soon as possible. As regards the Chairman's proposal, his delegation was open to meet with the delegation of Georgia at a plurilateral session.

48. The representative of the European Communities stressed that her delegation was still waiting for Georgia's replies to some further questions posed by her delegation. As to the Chairman's suggestion, her delegation was open to meeting with Georgia on a plurilateral basis in early 2005.

49. In conclusion, the Chairman suggested that he would contact the delegation of Georgia to see when it might be able to respond to the questions received, and on that basis he would further consult with Parties as to whether the first meeting of the Committee in 2005 would be a good opportunity to hold plurilateral consultations with Georgia.

50. The Committee so agreed.

Jordan

51. With regard to Jordan, the Chairman noted that two rounds of informal plurilateral consultations between Parties and Jordan had taken place on 23 April and 7 October 2004. The consultations in October 2004 had addressed Jordan's revised market access offer (GPA/ACC/JOR/4 of 30 September 2004). Jordan had informed Parties that its new comprehensive legislation was expected to be finalized by the end of 2004 and would hopefully pass the legislative process by summer 2005. It had been agreed that Parties should submit their comments on Jordan's revised offer by 15 December 2004 through the Secretariat. In turn, Jordan had agreed to prepare a further revised offer by 15 February 2005. This would allow holding another round of plurilateral consultations at the first Committee meeting in 2005.

52. The representative of the European Communities welcomed the revised offer submitted by Jordan during the last round of negotiations in October as a significant improvement. Her delegation

would submit its questions and remarks on that revised offer, and was looking forward to meeting with Jordan in early 2005.

53. The representative of the United States expressed appreciation for Jordan's revised offer, and was looking forward to working with Jordan towards accession.

54. The representative of Japan noted that, although his delegation had not had bilateral consultations with Jordan, it was interested in Jordan's accession process; it was watching the process as a whole positively and was looking forward to hearing good news in due course.

55. The representative of Israel thanked Jordan for its revised offer and regretted that his delegation was not available during the last plurilateral consultations. His delegation welcomed the opportunity next year to discuss it with Jordan. He also reiterated his delegation's support for the offer and the quick accession of Jordan.

56. In conclusion, the Chairman said that before taking a decision on holding another round of plurilateral consultations at the first occasion in 2005, Parties may wish to see the developments first and then take a decision on holding another plurilateral round on Jordan's accession. He suggested that he would consult with Parties, possibly through the Secretariat, on the relevant arrangements.

57. The observer of Jordan noted that her delegation was making all efforts to meet the agreed deadline of 15 February 2005 for preparing the newly revised offer. She welcomed the plan to hold another round of consultations.

Chinese Taipei

58. With respect to the accession of Chinese Taipei, the Chairman noted that all bilateral consultations had been successfully concluded with interested delegations on the substantive issues. However, the issue of nomenclatures remained outstanding. He believed that there was a continued interest in resolving the last outstanding issue, and said that he remained fully committed to assisting this process as much as possible in his capacity as Chairman, and took it that his successor would do the same.

59. The representative of Japan noted that nearly two years had passed since all Parties had completed the bulk of the substantive issues. His delegation was looking forward to the day when Chinese Taipei would become Party to the Agreement. He encouraged the Chairman to contribute to the resolution of this long-pending issue.

60. The Committee took note of the statements made.

Other accession processes

61. The Chairman noted that, in addition to the above three WTO Members, accession negotiations were under way with Albania, Bulgaria, the Kyrgyz Republic, Moldova, Oman and Panama. However, in the case of these WTO Members, no new developments had taken place since the meeting of April 2004. Basic information on earlier developments on their accession processes was included in Annex 1 of the annotated agenda. Further, the following additional WTO Members had provisions in their respective Protocols of Accession to the WTO regarding accession to the GPA: Armenia, China, Croatia, the Former Yugoslav Republic of Macedonia, and Mongolia. Information concerning the commitments of those WTO Members was contained in Annex 2 of the annotated agenda.

D. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

62. The Chairman noted that at the meeting of 23 April 2004, the Kingdom of the Netherlands with respect to Aruba said that the Government of Aruba had informed it that it had originally intended to introduce new implementing legislation and to subsequently answer the questions in GPA/1/Add.1 on the basis of such newly introduced legislation. Since that would be a lengthy process, the Government of Aruba had now decided to answer the questionnaire on the basis of the current legislation. The responses had been finalized but were awaiting the final signature of the Minister of Economic Affairs of Aruba.

63. The representative of the Netherlands with respect to Aruba said that his delegation had recently received the answers to the questionnaire from Aruba and would be transmitting them to the Secretariat. These answers were based on the present legislation, which was being amended.

E. ISRAEL'S COMMITMENT IN RELATION TO OFFSETS

64. The Chairman said that on 4 November 2004 Israel had submitted a formal request to include on the agenda of the meeting an item entitled 'Israel's commitment in relation to offsets'. Accordingly, a revised Airgram had been circulated adding an agenda item on this issue. Subsequently, Israel had informed him that it had had consultations with Parties.

65. The representative of Israel thanked Parties for their attention to a matter that was of great importance to his delegation. He also thanked the Secretariat for its assistance, and expressed appreciation to all Parties for the constructive approach that had prevailed in the bilateral consultations held thus far.

66. According to his delegation's Note to its Appendix I to the Agreement, the level of offsets invoked by Israeli procuring entities should be set at 20% of the value of the contract, beginning on 1 January 2005.

67. His delegation intended to submit shortly a notification in accordance with Article XXIV:6(a) of the Agreement requesting the modification of its Note to Appendix I concerning the level of offsets, in order to maintain its current level of offsets at 30% for a defined period of time and to incorporate a gradual process to reduce the level to 20%.

68. He mentioned the following reasons behind Israel's request.

69. As an economy, highly reliant on international trade, Israel attached great importance to its integration into the global market and the multilateral trading system. In addition to the mandatory multilateral trade agreements embodied in the WTO, Israel had been participating in other plurilateral initiatives under the auspices of the WTO in recent years, such as the Information Technology Agreement and the Agreement on Government Procurement. By doing so, while ensuring its economic and industrial development needs, Israel had demonstrated its commitment to the multilateral trading system as well as to progressively liberalizing its economy.

70. Israel had been a Member of the Government Procurement Code since 1985 and had been a Party to the Agreement on Government Procurement since its entry into force on 1 January 1996.

71. In recent years, the Government of Israel had been facing severe criticism by the domestic industry concerning Israel's membership in the GPA. The domestic industry held that the GPA had failed to meet expectations in terms of its contribution to the Israeli economy. The industry claimed that, on the one hand, the GPA had not led to the expected results of increased gains for Israeli

companies in foreign public tenders, and, on the other hand, the domestic industry had lost its advantages and share of the local government procurement market.

72. He stressed that the Israeli procurement market was open and competitive. The offset provision had not at all hindered foreign enterprises from bidding and winning tenders in Israel. For instance, the two major public procuring entities in Israel, the Israel Electric Company and the Israel Railway Company, purchased an estimated 80% of their annual procurements from foreign suppliers. The procurement of the above mentioned entities was estimated to constitute more than 50% of the total procurement of Israeli public entities that were subject to the GPA.

73. At the same time, the offset provisions to which Israel was entitled under the GPA had played a major role in developing the Israeli industry in recent years. Furthermore, the offset provisions still stood to serve as a vital instrument in promoting industrial co-operation between foreign companies and Israeli small and medium-sized enterprises, which constituted a major component of the Israeli economy, in terms of contribution to both GDP and employment. Small and medium-sized enterprises (employing 1-100 workers) comprised 96% of the total number of industrial plants in Israel, employed 47% of the industrial labour force and contributed 30% to total annual industrial revenue.

74. In light of the above-mentioned structure of the Israeli industry, in which SMEs played such a major role, the vast majority of Israeli enterprises, due to their size, were incapable of bidding as prime contractors in most of the public tenders issued in Israel and in other GPA Parties.

75. At the same time, Israeli companies had proved to be successful in acting as sub-contractors in such tenders. Hence, a development-oriented instrument, such as offsets, was essential in creating the opportunities for industrial co-operation between foreign prime contractors and Israeli SMEs. Experience had shown that industrial cooperation between foreign and Israeli enterprises had led in many cases to long term business relationships for the benefit of both sides involved.

76. Israeli industry was exposed to the practices, standards and methods of leading global companies. Foreign enterprises, which were awarded government contracts in Israel, had been introduced to the capabilities and innovative technologies of Israeli industry. Several foreign enterprises that had been awarded public contracts in Israel had recognized the importance of maintaining offsets at the current level as a means to develop industrial co-operation.

77. A further important factor was that during the last couple of years the Israeli economy had been undergoing a recession and had been facing economic difficulties. This was reflected *inter alia* in an unemployment rate of almost 11%, in a decrease in the level of GDP per capita and, last but not least, in the closing down of companies. Israeli small and medium-sized companies were particularly vulnerable and they were the first to suffer in this situation, since they were often the beneficiaries of the offsets mechanism.

78. In conclusion, he pointed out that, in light of the above circumstances and at that point in time, it was of utmost importance for his delegation to maintain its level of offsets at 30% for an additional well-defined period of time, after which his delegation would be ready to incorporate a gradual process of reducing the level of offsets to 20%, as appeared in Israel's Note.

79. In order to move forward with this process, he proposed that a tentative date for a meeting be set before the end of 2004 in order to allow Parties to follow up on the process prescribed in Article XXIV:6(a) of the Agreement and to arrive at a positive conclusion.

80. His delegation stood willing to consult with interested Parties on matters concerning this issue. He thanked the Parties for having worked with his delegation in this short time and for their willingness to continue working together with his delegation in the coming weeks.

81. The representative of the United States thanked Israel for its presentation as well as for Israel agreeing with his delegation that it was premature for the Committee to make a decision in such a short time, i.e. in the two weeks since Israel had first proposed this concept for consideration. His delegation, as a Party to the Agreement, would need more time to examine Israel's request and its economic effects and other implications. His delegation appreciated Israel providing better explanation of the legal context in which Parties would be moving forward with this request, namely Article XXIV:6(a). His delegation was looking forward to receiving Israel's formal request as soon as possible and it was prepared to work with Israel and any other Party between now and the end of 2004 to address Israel's request.

82. The delegation of Korea thanked Israel for its introductory remarks. His delegation believed that the formal process of notification pursuant to Article XXIV:6(a) was an appropriate one. His delegation expected more detailed information and data for the maintenance of the present level of offsets and was closely examining this notification. His delegation was looking forward to constructive consultations and dialogue with Israel, and thus to an early conclusion of this matter. Further, while his delegation took note of all the difficulties faced by Israel, this matter concerned the exceptions to the implementation of its commitments; so his delegation preferred that a more detailed proposal be submitted, specifying a certain period of time for maintaining the 30% offset ratio and what would happen after that specific period, which would allow his delegation to consider the request in a favourable manner.

83. The representative of the European Communities thanked Israel for its presentation. She noted that her delegation had taken note of Israel's request, was reflecting on it, and understood the importance of the issue for Israel.

84. The representative of Canada said that his delegation believed that the process put forward by Israel was the right one as it allowed his delegation to consider Israel's proposal in detail. He thanked Israel for putting that idea forward. He was certain that his delegation would be in touch with the delegation of Israel over the coming weeks to discuss questions and comments once the notification was received.

85. The representative of Japan expressed his delegation's appreciation for the presentation made by a capital-based Israeli expert. Japan had experienced economic crisis in the 1990's and had faced a long recession. His delegation felt sympathy with the economic situation that Israel was facing.

86. As a general remark, he considered it reasonable to ask the Party in question for a clarification on the necessity to provide S&D measures because developing country Parties differed from economy to economy. Since the one-size-fits-all approach did not apply to Parties that needed an offset, a transitional period of offsets should be decided on a case-by-case basis, depending on the situation.

87. With specific regard to Israel's case, his delegation had appreciated clarifications from the delegation of Israel at bilateral meetings. His delegation needed more information in writing, which should be legitimate enough to convince his capital of the proposal. Further, his authorities needed more time to carefully examine the proposal because this was a matter of legal obligations. If Israel could provide his delegation with reasonable and convincing explanations, including some data concerning the government procurement market and the relevant economic situation, his delegation would be able to examine the paper expeditiously. His delegation urged Israel to provide justifiable reasons for its proposal.

88. The representative of Switzerland thanked Israel for its presentation and for its willingness to meet his delegation informally and to explain the situation that Israel was facing. His delegation found it premature to have a decision on such short notice and it needed more time for his capital-based experts to make a precise assessment of Israel's request. His delegation was looking forward to receiving Israel's request through the Article XXIV:6 process as soon possible and it would keep in close touch with the delegation of Israel to obtain the additional information his delegation needed to make its assessment. His delegation was ready to work constructively towards finding a mutually satisfactory solution by the end of 2004.

89. The representative of Israel, in response to the above comments, thanked Parties for their constructive approach to this important issue for Israel. He reiterated that his delegation was expecting to submit a notification the following morning. His delegation stood ready to continue its consultations with all interested Parties and hoped to successfully conclude such consultations before the end of 2004.

90. In conclusion, the Chairman noted that a notification on a proposed modification pursuant to Article XIIV:6(a) could be expected from Israel shortly. Article XXIV:6(a) called for the Committee to be convened promptly in such cases to try to resolve the matter. He suggested that a Committee meeting be held in the morning of Thursday, 16 December 2004.

91. The Committee so agreed.

F. ADOPTION OF THE ANNUAL REPORT

92. The Chairman noted that Article XXIV:7(a) of the Agreement required the Committee to review annually the implementation and operation of the Agreement and to inform the General Council of developments during the periods covered by such reviews. A draft of the Committee's Annual Report to the General Council for the period since the Committee last reported to the General Council in July 2003 (GPA/75 of 15 July 2003) had been circulated by the Secretariat on 5 November (Job No. 7563).

93. The Chairman proposed that the necessary modifications be made to the draft Annual Report. He suggested that the Secretariat make the necessary changes in the light of the present meeting of the Committee and circulate the updated draft Annual Report by the end of the week. Subsequently, Parties would have until Wednesday, 24 November to provide comments and to suggest any further changes.

94. The Committee so agreed.

G. OTHER BUSINESS

Statistics

95. The Chairman noted that, in line with the requirements of Article XIX:5 of the Agreement, statistics for 2003 had been submitted by Hong Kong, China (GPA/80, dated 29 September 2004).

96. The representative of Hong Kong, China said that her delegation's submission on statistics was available both in hard copy and electronically, and Parties were welcome to consult it.

Thresholds

97. The Chairman noted that, in accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), Korea had notified its threshold figures

expressed in national currencies for 2003-2004 (GPA/W/251), and Switzerland had notified its threshold figures expressed in national currencies for 2004 (GPA/W/285/Add.7). Further, the following Parties had notified their threshold figures expressed in national currencies for 2004-2005: Canada; the European Communities; Hong Kong, China; Israel; Japan; Korea; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States (GPA/W/285, GPA/W/285/Add.1-6 and GPA/W/285/Add.8-9).

Date of the meetings in 2005

98. The Chairman said that, as to the first Committee meeting in 2005, at the end of the informal meeting in October 2004 delegates had discussed the week of 14 March 2005 as a possible date. Although no objections had been made to that date, no decision had been made at that point either. In the meantime, the Secretariat had tentatively reserved a meeting room for that week. Given the heavy demand on meeting rooms, the Committee should try to agree on the date of this meeting.

99. As to the structure of the first meeting in 2005, beyond the usual items, it should elect a new Chairman. Further, as discussed at the informal meeting in October, the Committee should continue the drafting work on the text of the agreement and take up the horizontal matters that were to be discussed by the Committee as a whole according to the Decision on Modalities. Also, in line with the Decision on Modalities, the Committee could take stock of the bilateral processes relating to initial requests, which were to be submitted by the end of the month. Finally, as discussed, Parties could hold plurilateral consultations with Jordan, and possibly with Georgia, on their accession processes. In the light of the potential workload, the Chairman suggested to schedule a full week's meeting from 14 to 18 March 2005.

100. The Committee so agreed.

101. As to subsequent Committee meetings in 2005, the Chairman noted that the previous week Parties had received a fax indicating growing constraints on the availability of meeting rooms for the remainder of 2005 and suggesting the following meeting dates:

- (a) the week of 30 May 2005;
- (b) the week of 25 July 2005; and
- (c) the week of 10 October 2005.

102. In response to that fax, one delegation had pointed out that, for religious reasons, it would have difficulties attending a meeting during the month of October 2005, and had asked for rescheduling that meeting for a later date. The Chairman was, however, informed by the Secretariat that rescheduling the October meeting for sometime in the last two months of 2005 seemed virtually impossible, given the vicinity of the Hong Kong, China Ministerial Conference. Further, since the Decision on Modalities provided for the presentation of revised and improved offers by the end of October 2005, he believed that it was essential to offer another opportunity for bilateral negotiations back-to-back with a meeting of the Committee beforehand.

103. The representative of Israel said that the unavailability of rooms pointed to the heavy workload of the organization as a whole. He reiterated the concern of his small delegation with overloading the agenda. While his delegation could accept the dates put forward, it would be rather wary of adding further dates to the work programme of the Committee.

104. The Committee took note of the statement made by Israel, and agreed on the meeting dates of the weeks of 30 May and 10 October 2005.

105. As to the meeting scheduled for the week of 25 July 2005, the representative of the European Communities said that her delegation would find it easier to hold that meeting one or two weeks earlier.

106. The Chairman said that the Secretariat would explore if the week of 18 July 2005 was possible and, if yes, he would consult with Parties to see whether they had any serious problems with holding a meeting that week.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 16 JULY 2004

Chairman: Mr. Niklas Bergström (Sweden)

1. The Committee adopted the following agenda, as outlined in Airgram WTO/AIR/2356/Rev.1 of 14 July 2004:

- A. Draft Decision on Modalities for the Negotiations on Extension of Coverage and Elimination of Discriminatory Measures and Practices
- B. Request for Observer Status
- C. Other Business

A. DRAFT DECISION ON MODALITIES FOR THE NEGOTIATIONS ON EXTENSION OF COVERAGE AND ELIMINATION OF DISCRIMINATORY MEASURES AND PRACTICES

2. The Chairman noted that, at informal consultations on 13 July, delegations had had another brief exchange of views on the draft decision on modalities for the negotiations on extension of coverage and elimination of discriminatory measures and practices. In the light of these consultations, he proposed adoption of the draft decision set out in Job No. 3067/Rev.1 (4741), dated 13 July.

3. The Committee adopted the Decision.¹

4. The representative of Israel welcomed the Decision on modalities adopted by the Committee. Although his delegation was a small delegation representing a developing country with limited resources, it allocated a lot of resources to the issue of government procurement. It would have hoped to have finished negotiations on the text and the horizontal issues regarding specific commitments before entering into bilateral negotiations on the extension of coverage. This would have not only reflected a logical process but would have better enabled his delegation to manage its resource constraints. He assured the Chairman and other delegations that his delegation would continue to work with them in order to reach a successful conclusion to the negotiations.

5. The representative of the European Communities also welcomed the decision on modalities. He recalled that under the mandate provided for in Article XXIV:7(b) and (c) of the Agreement on Government Procurement, a significant increase of coverage should be achieved. All necessary efforts should be made by Parties to meet this objective rapidly. His delegation considered that the Decision on modalities adopted by the Committee should be understood as aiming at attaining this objective.

¹ Subsequently circulated as document GPA/79, dated 19 July 2004.

6. The Committee took note of the statements made.

B. REQUEST FOR OBSERVER STATUS

7. The Chairman noted that the Republic of Armenia had submitted a request for observer status (GPA/W/293, dated 18 June 2004), having regard to the commitment it had made, in the context of its accession to the WTO, to initiate negotiations on accession to the Agreement on Government Procurement.

8. The Committee approved Armenia's request for observer status.

9. The representative of the United States welcomed Armenia as an observer and looked forward to its accession to the GPA.

10. The representative of the European Communities also welcomed Armenia as an observer.

11. The Committee took note of the statements made.

C. OTHER BUSINESS

12. The Chairman noted that during its recent informal meetings the Committee had had several opportunities to look into the question of meeting dates for the second half of 2004. There was agreement on the principle of holding two meetings. As regards the precise dates of the first meeting, it looked as if all delegations' preferences could not be accommodated. However, there was a willingness to show flexibility, for which he thanked one delegation in particular. He proposed that the Committee agree on the following dates: 5 to 8 October and 16 to 19 November.

13. The Committee so agreed.

14. The representative of Israel said that his delegation would not be able to participate fully in the meeting scheduled for 5-8 October, and hoped that the meeting would be kept in a more formal mode, so that full and substantive records of the meeting would be available.

15. The Committee took note of the statement made.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 23 APRIL 2003

Chairman: Mr. Niklas Bergström (Sweden)

1. The Committee adopted the following agenda:
 - A. Request for Observer Status
 - B. Negotiations under Article XXIV:7
 - C. Modifications to the Appendices to the Agreement
 - (i) *Notification from the European Communities*
 - (ii) *Other modifications*
 - D. Accessions
 - E. Review of National Implementing Legislation
 - F. Other Business
2. The Chairman noted that the provisional agenda had been circulated in Airgram WTO/AIR/2283 of 5 April 2004, and that Parties had been sent an Annotated Agenda (Job No. 2372, dated 7 April 2004).
 - A. REQUEST FOR OBSERVER STATUS
3. As the first item, the Chairman referred to Sri Lanka's request for observer status (GPA/W/292, dated 6 April 2004). The Committee approved that request.
 - B. NEGOTIATIONS UNDER ARTICLE XXIV:7
4. Summarizing work undertaken since the previous formal meeting of the Committee in August 2003, the Chairman reported that the Informal Group of the Committee had met three times: on 26-28 November 2003, 17-20 February 2004 and 21-23 April 2004. The work consisted of two elements: (i) renegotiation of the text of the Agreement; and (ii) negotiations on the expansion of coverage and elimination of discriminatory measures/practices.
5. At all meetings, delegations had carried forward work on the non-market access-related provisions of the Agreement. Many proposals or comments from delegations had been presented in writing, but he chose not to enumerate them all, especially as they did not necessarily reflect the positions of delegations at the time of his report. The most recent consolidated draft of the revised text, reflecting positions as at the end of the meeting in February 2004, was contained in Job No. 1350 (dated 27 February 2004), and would be updated.

6. At the most recent meetings, in addition to the usual article-by-article approach, a particular focus had been given to the text relating to developing countries, modifications and rectifications of schedules, and conditions for participation in procurement. On dispute settlement, which had been discussed at some length in February 2004, the Secretariat had attempted to identify issues in the revised draft text of the GPA that were related to the review of the Dispute Settlement Understanding (Job No. 2527, dated 15 April 2004).

7. As to the work on the revision of the text undertaken earlier that week, he stated that with regard to Article XIV on Developing Countries, participants had had a detailed discussion on the basis of the consolidated text prepared by the European Communities, Switzerland and the United States (Job No. 1142, dated 20 February 2004). A large number of detailed suggestions had been made, and the three Parties had undertaken to produce a revised draft, taking into account the proposals made and views expressed. A number of other delegations had indicated their interest in being associated with this work.

8. As regards rectifications and modifications to coverage, participants had had a detailed discussion on the basis of a new proposal put forward by Japan (Job No. 2522, dated 15 April 2004), a room document presented by the United States and a note prepared by the Secretariat (Job No. 2133, dated 30 March 2004). Japan and the United States had indicated that they would work together to develop their thinking on this issue with a view to presenting a revised text to the next meeting. A number of other delegations had indicated their interest in being associated with this work.

9. Conditions for participation had been further discussed on the basis of new proposals by the European Communities (Job No. 2381, dated 7 April 2004) as well as proposals put forward earlier by Canada and other Parties, as reflected in Job No. 1350 (dated 27 February 2004). The updated version of the revised draft text of the Agreement would reflect all of these proposals.

10. With respect to the negotiations on expansion of coverage and elimination of discriminatory measures and practices, delegations had intensively discussed the modalities for how these negotiations should proceed and had requested the Secretariat to prepare a revised draft decision by 5 May 2004. Delegations had agreed to present their written comments on this by the end of May 2004, so that the Committee could take a decision on this matter at its meeting in June 2004.

11. Concluding his report, the Chairman noted that in the period since the Committee last met, further important progress had been made on the revised draft text of the Agreement and on developing modalities for the other aspects of the negotiations. A considerable number of differences had been resolved and important new ideas put forward for bridging the remaining gaps. He thanked all delegations for their constructive participation and the flexibility that they had shown. However, much work needed to be done if provisional agreement was to be reached on the non-market access-related provisions before the summer break of 2004. It was also important that a decision be taken on the modalities for the market access-related negotiations at the next meeting of the Committee.

12. The representative of Israel, commenting on the Chairman's report, pointed out that, with respect to the issue of developing countries, his delegation did not see the paper by the European Communities, Switzerland and the United States (Job No. 1142, dated 20 February 2004) as a basis. His delegation was prepared to work on a common paper on that issue, which he hoped could become the basis for the discussion and the direction that the Committee would work towards.

13. The Committee took note of the Chairman's report and agreed to the course of action outlined therein. It also took note of the statement made by Israel.

C. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Notification from the European Communities*

14. The Chairman noted that document GPA/MOD/EEC/1, dated 26 March 2004, contained a communication from the European Communities dated 22 March 2004, with proposed modifications pursuant to Article XXIV:6(a) to Appendices I, II and IV of the European Communities relating to the enlargement of the European Communities. An addendum to this document contained translated versions of Appendices II and IV in French and Spanish (GPA/MOD/EEC/1/Add.1, dated 30 March 2004).

15. On the same date as this proposed modification, communications from Estonia (GPA/41/Rev.1), Latvia (GPA/SPEC/5/Rev.2), Lithuania (GPA/66/Rev.1) and Slovenia (GPA/56/Rev.1) had been circulated, withdrawing those countries' applications for accession. The Chairman pointed out that these four communications would be addressed separately under Item D.

16. The Chairman added that intensive consultations had taken place earlier that week, leading to the preparation of a draft decision on the modification proposed by the European Communities, which had been circulated to Parties. He understood that, based on those consultations, the European Communities would make a statement to be put on the record.

17. The representative of the European Communities made the following statement to further clarify the content of its modifications made in view of its enlargement:

The European Communities clarifies that the coverage of its new member States has been organized in the same manner as the coverage of its existing member States. The European Communities considers that no central government entities of its new member States have been omitted; it stands ready to correct any omissions. All entities of the new member States that meet the criteria of the EC's offer in Annexes 2 and 3 are covered.

The European Communities clarifies that subordinate entities of the ministries of the new member States are generally covered in two ways. Subordinate entities that can be considered as part of a ministry are covered under the relevant ministry in Annex 1. Subordinate entities that may not be considered as part of a ministry, in particular because they have separate legal personality, are generally covered as a body governed by public law in Annex 2. Due to the particular administrative structure of Latvia and Lithuania, subordinate ministerial entities of those member States are explicitly included in Annex 1.

The European Communities stands ready to provide any further necessary clarification.

Finally, the European Communities would like to thank the other Parties for the constructive spirit in which they have worked with the European Communities in order to achieve the full integration of the ten new member States into the GPA.

18. With the Chairman's introduction of this modification and the statement made by the European Communities, the Committee adopted the decision.¹

¹ Subsequently circulated as document GPA/78 (dated 4 May 2004).

19. The representative of Switzerland stated that the decision on the addition of ten new countries to the Agreement on Government Procurement was a historic day for the Agreement. His delegation noted with great satisfaction that the membership of the Agreement was going to increase significantly on 1 May 2004. It very much looked forward to having the new members of the European Communities represented in the Committee and to the extended overall coverage of government procurement with those ten new members.

20. The representative of Hong Kong, China welcomed the enlargement of the European Communities and the European Communities' notification pursuant to Article XXIV:6(a) on the proposed modifications to its Appendices arising from the enlargement. Her delegation recognized that the adoption of the decision by the Committee in recognition of the enlargement and modifications would signify that the coverage of the Agreement on Government Procurement would be extended to cover the ten new countries, which would, as member States of the European Communities, form part of the European Communities for the purposes of the Agreement and were bound by the Agreement with effect from 1 May 2004. In this regard, her delegation had examined the modifications proposed by the European Communities arising from the enlargement as well as the subsequent changes proposed, and was satisfied that there was an expansion of reciprocal procurement opportunities under the Agreement. On this basis, her delegation supported the decision and welcomed with great pleasure the enlarged application of the Agreement. Her delegation appreciated the constructive approach adopted by the European Communities on this matter.

21. The representative of Japan welcomed the consensus reached among Parties. His delegation strongly supported the enlargement of the European Union as a political and economic undertaking contributing to stability and security in Europe, and looked forward to the ten new EU members joining the Committee in the near future.

22. Having said that, he noted that his delegation had been expressing its concerns over the European Communities' notification and had addressed specific questions regarding the European Communities' annexes through bilateral meetings. His delegation wished to reiterate its concern over the notification since it was still examining it and not yet fully convinced, in particular due to a lack of clarity in the European Communities' annexes, as to whether the list of entities enabled Japan enough market access.

23. With respect to his delegation's written questions submitted to the European Communities, he was expecting to receive written answers in due course. His delegation would continue its work in the most expeditious manner; however, in the course of this work his delegation would have some further questions. He expected the European Communities to give answers and necessary clarification to his delegation's concerns in an expeditious and sincere manner, and also to make an adequate modification when necessary.

24. Finally, he made reference to the last paragraph of the written statement of the European Communities, which said that "the European Communities would like to thank the other Parties for the constructive spirit in which they have worked with the European Communities". He wished also that the European Communities could work with his delegation on other issues in the same spirit.

25. The representative of the United States welcomed the ten new EU members as part of the GPA. Agreeing with the comment made by the representative of Switzerland, she noted that this was a historic date substantially increasing the number of countries covered by the Agreement. Her delegation was looking forward to working with those countries as after 1 May 2004. She commended the spirit of cooperation that the European Communities had expressed in working with her delegation to address the concerns that her delegation had had as it was reviewing the entity list. Her delegation had been back and forth with the European Communities a number of times, and was grateful for the European Communities' willingness to provide explanations, clarification and, in a couple of cases, corrections. Her delegation was satisfied that the entity list for each of the countries

that were going to be covered by the GPA was consistent with the coverage of the other member States and the other Parties. Her delegation was satisfied and welcomed the new EU members.

26. The representative of Israel welcomed the ten new EU members as part of the Agreement. His delegation also saw this as an historic date leading to the extension of the Agreement to a substantial number of countries. His delegation hoped that this was the beginning of a process whereby Parties to the Agreement would bring in more countries, and not stop at a one-time historic moment.

27. The representative of Canada welcomed the ten new EC member States to the Agreement. Her delegation was pleased to note that the ten new countries had chosen to adopt a comprehensive coverage and that they had undertaken to fully adopt open, transparent and non-discriminatory procurement. Her delegation was looking forward to working with the expanded European Communities in the future.

28. The representative of Korea welcomed the ten new members of the European Communities. He agreed with the delegations of Switzerland and the United States that this was an historic event. His delegation was certain that expansion to these ten new countries would contribute to further market access of existing Parties and would contribute to the final goal of market access of all Parties. His delegation noted the statement of the European Communities and understood that it had the same status – legally and practically – as the decision made by the Committee. His delegation wished to commit itself to close cooperation with the European Communities in moving forward.

(ii) *Other modifications*

29. The Chairman noted that details of all proposed modifications which were outstanding or new and the five that had come into force since the last meeting, were contained in the Annotated Agenda (Job No. 2372, dated 7 April 2004). Instead of reading out all those historical details, which are reproduced in Annex A to these minutes, he invited such comments as delegations might wish to make. Only notifications subject to comments are dealt with below.

- *Notification by Japan concerning proposed modifications relating to Nippon Telephone & Telegraph (GPA/W/91, dated 6 September 1999)*

30. The representative of Japan thanked Parties that had submitted questions. His delegation was still working on the response and might come up with oral responses one-by-one in the near future. He requested Parties concerned to withdraw their objections.

- *Notification by Japan concerning proposed modifications relating to East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company (GPA/W/144, 145 and 146, dated 29 August 2001 and GPA/W/152 and Corr.1, dated 20 September and 10 October 2001)*

31. The representative of Japan noted that the preceding month an official of the Government of Japan had visited Brussels with a view to expediting the process and had provided the European Communities with an elaborated clarification and explanation on this matter. His delegation's answer to the full set of questions from the European Communities (GPA/W/271 and Corr.1, dated 23 September 2003) would follow soon. It counted on the European Communities to have a good understanding of the matter and to withdraw its objection in due course, upon receipt of Japan's written answers.

32. The representative of the European Communities stated that his delegation was looking forward to receiving the written answers of Japan and would give them appropriate consideration.

- *Notification by Japan concerning proposed modifications relating to Japan Nuclear Energy Safety Organization (GPA/W/273, dated 23 September 2003)*

33. The Chairman noted that since the European Communities had placed an objection to this proposed modification, which it had subsequently withdrawn (GPA/W/291, dated 29 January 2004), the Secretariat would proceed to send this modification for certification.

- *Notification by Japan concerning proposed modifications relating to Japan Consumer Information Center, Water Resources Development Public Corporation, Japan Green Resources Corporation, the Japan Science and Technology Corporation, RIKEN (The Institute of Physical and Chemical Research), National Stadium and School Health Center of Japan, the Association for Welfare of the Mentally and Physically Handicapped, and National Agriculture Research Organization (GPA/W/274, dated 23 September 2003)*

34. The Chairman noted that there was no outstanding objection with respect to one of these entities, namely, the modification concerning Japan Consumer Information Center. The modification in its regard was therefore being sent for certification.

- *Notification by Korea concerning proposed modifications relating to Korea Telecom (GPA/W/207, dated 11 September 2002)*

35. The representative of Korea, reiterating his delegation's position, pointed out that his delegation had been conducting bilateral negotiations with Parties. It was expecting Parties concerned to expedite the review and was looking forward to their favourable consideration at the earliest possible date.

36. The representative of the United States noted that her delegation was not yet satisfied that government control and influence had been effectively eliminated and was still examining the proposed withdrawal of Korea Telecom.

37. The representative of Canada noted that her delegation was also still considering Korea's proposal to withdraw Korea Telecom and continued to carry out internal consultations on this matter.

- *Notification by Korea concerning proposed modifications relating to Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd. (GPA/W/250, dated 17 February 2003)*

38. The representative of the European Communities thanked Korea for the responses to questions put by his delegation. The European Communities had completed the first review of the notification and was further consulting internally. He hoped that his delegation would be able to have a final position the latest before the next meeting.

- *Notification by the United States to reflect changes in the administrative structure of the Federal Government (GPA/W/153, dated 25 September 2001)*

39. The representative of the United States stated that this modification had been pending for some time. A number of proposed changes to entities had been proposed in the modification, reflecting administrative restructuring. She noted that there were many entities that no Party had asked questions about and asked whether Parties that had objections could narrow such objections to the entities that they were really concerned about and withdraw their objection on the others. She would welcome any more questions on the relevant entities.

40. The representative of the European Communities specified that their objection only related to the deletion of the Uranium Enrichment Company, and that this objection was maintained. His delegation had never asked questions on the deletion of other entities and could accept their withdrawal.

41. The representative of Canada noted that her delegation still continued to analyse the proposal of the United States and thought that it was a reasonable request that her delegation be precise about the scope of its objection. Her delegation would take that request back and try to act upon it immediately.

42. The representative of Japan noted that her delegation was still working on the modifications from the United States but, as suggested, would try to narrow down its objection and try to give an answer to the United States as soon as possible.

43. The Chairman referred to five additional notifications that had been received that since the last meeting in August 2003: notifications by Japan concerning proposed modifications relating to Labour Welfare Corporation (GPA/MOD/JPN/2, dated 15 March 2004), Environment Corporation and Pollution-Related Health Damage Compensation Association (GPA/MOD/JPN/3, dated 17 March 2004), National Hospital Organization (GPA/MOD/JPN/4, dated 7 April 2004) and New Tokyo International Airport Authority and Teito Rapid Transit Authority (GPA/MOD/JPN/5, dated 20 April 2004) as well as a notification by Korea concerning proposed modifications relating to Kookmin Bank (GPA/MOD/KOR/1, dated 19 March 2004), to which the United States made an objection (GPA/MOD/KOR/2, dated 19 April 2004).

44. The Chairman noted that within the relevant 30-day deadline no objections had been submitted as regards the new modifications by Japan concerning the Labour Welfare Corporation and the Environment Corporation and Pollution-Related Health Damage Compensation Association. Accordingly, those two modifications were being sent for certification. He opened the floor on the other three new notifications.

45. The representative of Korea stated that the proposed deletion of Kookmin Bank from Annex 3 had been submitted pursuant to Article XXIV:6(b) of the Agreement. This was based on the fact that Kookmin Bank had been privatised and that the Government of Korea had completely sold all its shares in December 2003. Consequently, Kookmin Bank was a fully privatised company. His delegation expected that the United States would expedite the study and if any further clarification was necessary, his delegation stood ready to respond.

46. The representative of the United States replied that her delegation would expeditiously review this proposed withdrawal and submit questions to Korea for clarifications.

47. The Committee took note of the statements made regarding the above modifications.

D. ACCESSIONS

48. The Chairman noted that Parties had received the withdrawals of their respective applications for accession to the GPA from Estonia (GPA/41/Rev.1), Latvia (GPA/SPEC/5/Rev.2), Lithuania (GPA/66/Rev.1) and Slovenia (GPA/56/Rev.1), all documents dated 26 March 2004. He recalled that these withdrawals were to be seen in the light of these countries' accession to the European Communities on 1 May 2004 (*cf.* Item C(i) of the agenda).

49. Turning to ongoing accession negotiations, the Chairman noted that the situation with respect to these was contained in the Annotated Agenda and concerned nine WTO Members: Albania, Bulgaria, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, Panama and Chinese Taipei. In addition, the following WTO Members had provisions in their respective Protocols of Accession to

the WTO regarding accession to the GPA: Armenia, China, Croatia, the Former Yugoslav Republic of Macedonia, and Mongolia.

50. Since the preceding Committee meeting in August 2003, the only development with respect to accessions was the informal plurilateral consultations between Parties and Jordan held earlier that day. Reporting on those plurilateral consultations, the Chairman said that comments, questions and explanations had been exchanged and that delegations had generally welcomed improvements and clarifications relating to Jordan's offer, legislation and practices. Some new questions and points of clarification had been voiced and replies given. It was agreed that Parties that wished to address new or revised questions relating to the offer of Jordan should do so by 30 June 2004. Questions with respect to new legislation under way in Jordan would be taken up in due course. A plurilateral meeting was expected in conjunction with the GPA meeting in autumn 2004.

51. The observer of Jordan stated that there had been a fruitful plurilateral meeting earlier that day, and all ideas at that meeting would be of great help to his delegation to push the process further. He proposed that the opening statement of his delegation in the plurilateral meeting be reflected in the minutes. Accordingly, that statement is attached to these minutes as Annex B.

52. The representative of the United States expressed her delegation's appreciation to Jordan for the great efforts Jordan had been making to move this accession process along. The plurilateral meeting earlier that day had been very productive and her delegation stood ready to assist Jordan in whatever way it could as Jordan was moving forward in its accession process.

53. The representative of Switzerland thanked Jordan for the very useful exchange of views earlier that day. He was looking forward to the forthcoming new legislation of Jordan, so that his delegation could see in detail how it matched with the GPA. His delegation also looked forward to a revised offer by Jordan in the near future.

54. The representative of the European Communities also thanked Jordan for its constructive work in the accession process. He hoped to be able to welcome Jordan on board quickly and reiterated his delegation's willingness to take the specific needs of Jordan as a developing country into account.

55. The representative of Canada thanked Jordan for its participation in the plurilateral process and in the ongoing bilateral negotiations. Her delegation welcomed the progress made by Jordan and encouraged Jordan to work towards coming forward with a further draft of its revised offer based on the discussions held earlier that week.

56. The Committee took note of the statements made.

57. The observer of Chinese Taipei thanked and commended the Chairman for his outstanding leadership and guidance. He noted that in the course of the accession of Chinese Taipei to the WTO, his delegation had made a commitment to join the GPA. In order to honour its commitment since WTO entry in January 2002, his delegation had shown strong willingness to become a Party to the GPA. In December 2002, it had successfully completed the bilateral talks on all substantive issues. It regretted that non-economic factors continued to be the stumbling block in its efforts to join the GPA. The situation was disappointing, not only for Chinese Taipei but also for the private industries among GPA Parties, which were eagerly awaiting the further liberalization of government procurement markets. He reiterated that his delegation had demonstrated its utmost flexibility on this matter in order to bring about accession, and it looked forward to continued support from all GPA Parties in making Chinese Taipei's accession an early reality.

58. The representative of the United States noted that her delegation had worked hard on Chinese Taipei's accession to the GPA for many years, and was looking forward to the day when it could actually welcome Chinese Taipei into membership. Its accession to the GPA would bring significant commercial opportunities for US companies. Her delegation encouraged the Chairman to continue efforts to work with Chinese Taipei to bring it into the GPA.

59. The representative of Japan fully recognized that all the Parties had completed the work on the substantive matters. His delegation hoped that the remaining issue could be resolved so that Chinese Taipei could accede to the GPA soon.

60. The Committee took note of the statements made.

E. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

61. The Chairman said that Japan had notified a change in its national regulations (GPA/37/Add.1, dated 7 April 2004).

62. The representative of Japan explained that the notification was a revision to a basic policy for the promotion of eco-friendly goods and services. The content of the revision was the addition of 23 procurement items as eco-friendly goods and services. This was going to be added to Japan's Basic Policy and had been adopted as a Cabinet Decision in March 2004.

63. The Chairman recalled that, at the meeting in October 2002, the delegation of the Kingdom of the Netherlands with respect to Aruba had been invited to submit its notification of national implementing legislation. At the meeting of February 2003 there had been no new developments to report. He wondered whether there were any news at that stage.

64. The representative of the Kingdom of the Netherlands with respect to Aruba replied that the Government of Aruba had first intended to introduce new legislation and to subsequently answer the questions in GPA/1/Add.1 on the basis of such newly introduced legislation. Since that would be a lengthy process, the Government of Aruba had decided to answer the questionnaire on the basis of the current legislation. The responses had been finalized but were waiting for the final signature of the Minister of Economic Affairs of Aruba.

F. OTHER BUSINESS

- *Statistics*

65. The Chairman noted, for the information of Parties, that statistics for 2002 had been submitted by Hong Kong, China; and Korea (GPA/76 and GPA/76/Add.1, respectively). Statistics for 2001 had been submitted by Norway and Switzerland (GPA/70/Add.1 and GPA/70/Add.2, respectively). All other statistical notifications were of earlier dates.

- *Thresholds*

66. The Chairman noted that the following Parties had provided thresholds for 2004: Canada; the European Communities; Hong Kong, China; Japan; Korea; Norway; Singapore; Switzerland; and the United States (GPA/W/285-series; and GPA/W/251 for Korea).

- *Date of the next meeting*

67. The Committee exchanged views on dates of further meetings. In conclusion, it decided to meet on 21 June (p.m.) – 25 June. Those would be informal meetings and, if necessary, there could be a formal meeting at the end of that week to take decisions as necessary. Parties would also pencil in 19-20 July for further informal meetings, unless it was necessary to hold a formal meeting. The aim was to adopt a decision on modalities and to be able to conclude the article-by-article review of the text before the summer break.

68. As regards autumn 2004, the Chairman noted that depending on progress in the negotiations, there was a need for at least one meeting in autumn 2004, at the end of October or at beginning of November, but there might be a need to hold two meetings. He noted that Parties had agreed to have further plurilateral consultations on Jordan's accession that would take place during the autumn. Date(s) would be considered by Parties in June.

ANNEX A

Excerpts from the Annotated Agenda (Job No. 2372, dated 7 April 2004) concerning outstanding modifications and modifications that have come into force since the last meeting in August 2003

The following are outstanding proposed modifications to Appendix I of the GPA, and any developments in their regard since the last meeting in August 2003. [...]

(a) Notifications by Japan concerning proposed modifications relating to:

- NTT (GPA/W/91, 6 September 1999)

No developments since the last meeting.

- East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company (GPA/W/144, 145 and 146, 29 August 2001 and GPA/W/152 & Corr.1, 20 September / 10 October 2001)

Further questions from the EC on GPA/W/144-146 were circulated on 29 October 2003 (GPA/W/271 & Corr.1).

- Railway Construction Public Corporation and Corporation for Advanced Transport and Technology (GPA/W/272 & Rev.1, 23 September / 8 October 2003)

The EC placed an objection to the proposed deletion of both entities (GPA/W/279, 16 October 2003) and raised questions thereon subsequently (GPA/W/291, 29 January 2004). The United States did not object to the deletion of Japan Railway Construction Public Corporation but it objected to the deletion of the Corporation for Advanced Transport and Technology and asked questions in that regard (GPA/W/280, 17 October 2003).

- Japan Nuclear Energy Safety Organization (GPA/W/273, 23 September 2003)

The United States stated no objection (GPA/W/280, 17 October 2003). The EC placed an objection to the proposed modification (GPA/W/279, 16 October 2003), which it subsequently withdrew (GPA/W/291, 29 January 2004). Accordingly, *the modification is being sent for certification.*

- Japan Consumer Information Center, Water Resources Development Public Corporation, Japan Green Resources Corporation, the Japan Science and Technology Corporation, RIKEN (The Institute of Physical and Chemical Research), National Stadium and School Health Center of Japan, the Association for Welfare of the Mentally and Physically Handicapped, and National Agriculture Research Organization (GPA/W/274, 23 September 2003)

Originally, the EC placed an objection on all proposed modifications (GPA/W/279 & Corr.1, 16 / 29 October 2003). After further study, the EC did not object to the deletion of Japan Consumers Information Center, but put questions to Japan in respect of the other entities (GPA/W/291, 29 January 2004). The United States also did not object to the deletion of the Japan Consumer Information Center, it was silent on the proposed modification concerning the

National Agriculture Research Organization; however, it objected to the proposed withdrawal of the other entities and posed questions in GPA/W/280 (17 October 2003). Accordingly, *the modification concerning Japan Consumer Information Center is being sent for certification.*

- National Aerospace Laboratory (GPA/W/275, 23 September 2003)

The EC objected to the proposed deletion (GPA/W/279, 16 October 2003) and asked questions (GPA/W/291, 29 January 2004). The United States also asked questions (GPA/W/280, 17 October 2003).

- Social Welfare and Medical Service Corporation and Japan Institute of Labour (GPA/W/276, 8 October 2003)

The EC objected to the proposed modifications (GPA/W/282, 7 November 2003) and later put questions (GPA/W/291, 29 January 2004).

- (b) Notifications by Korea concerning proposed modifications relating to:

- Korea Telecom (GPA/W/207, 11 September 2002)

The EC withdrew their objection (GPA/W/278, 14 October 2003) originally set out in GPA/W/214, 2 October 2002. (The earlier objections by Canada (GPA/W/210, 26 September 2002) and the United States (GPA/W/217, 7 October 2002) are still in force.)

- Housing & Commercial Bank, Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd. (GPA/W/250, 17 February 2003)

The modification concerning Housing & Commercial Bank had been certified as of 18 March 2003 (WT/Let/456). As regards Korea Tobacco & Ginseng Corporation and Daehan Printing Co. Ltd, the EC presented a number of questions (GPA/W/281, 24 October 2003). Korea's responses were circulated in GPW/W/286, 28 November 2003. Following Korea's earlier replies (GPA/W/270, 28 July 2003), the United States withdrew its objections concerning Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd (GPA/W/283, 11 November 2003) originally set out in GPA/W/258, 19 March 2003.

- (c) Notification by the United States

- to reflect changes in the administrative structure of the Federal Government (GPA/W/153, 25 September 2001)

No developments since the last meeting.

Since the last meeting in August 2003, [five additional] new notifications have been received.

- (a) Notifications by Japan concerning proposed modifications relating to:

- Labour Welfare Corporation (GPA/MOD/JPN/2, 15 March 2004)
- Environment Corporation and Pollution-Related Health Damage Compensation Association (GPA/MOD/JPN/3, 17 March 2004)

- National Hospital Organization (GPA/MOD/JPN/4, 7 April 2004)
 - [New Tokyo International Airport Authority and Teito Rapid Transit Authority (GPA/MOD/JPN/5, 20 April 2004)]
- (b) Notification by Korea concerning proposed modifications relating to:
- Kookmin Bank (GPA/MOD/KOR/1, 19 March 2004).

Since the last meeting in August 2003, the following proposed modifications have been certified:

- (a) notification by Japan (GPA/W/255, 4 March 2003) certified as of 14 October 2003 (WT/Let/452/Rev.1);
- (b) notification by Canada (GPA/W/203, 12 September 2002) certified as of 9 December 2003 (WT/Let/454);
- (c) notification by Korea (GPA/W/284, 13 November 2003) certified as of 12 December 2003 (WT/Let/455);
- (d) notification by the United States (GPA/MOD/USA/1, 15 January 2004) certified as of 14 February 2004 (WT/Let/457); and
- (e) notification by Japan (GPA/MOD/JPN/1, 4 February 2004) certified as of 4 March 2004 (WT/Let/463).

ANNEX B

Opening statement by Jordan at the plurilateral consultations held on 23 April 2004

Mr. Chairman
Distinguished delegations
Ladies and Gentlemen
Good morning,

It is my pleasure to address this gathering of the members of the GPA Committee in this plurilateral meeting. This is the second meeting that we have to gather in connection with Jordan's accession to the GPA. It is my intention to provide the member states with a brief overview of the developments, and the current situation before opening the discussion and listening to questions, queries and comments. In addition to that, to shed some light on the steps that have been taken by my Government to push further the reforms in the procurement regime:

1. Based on comprehensive consultation with the World Bank, Jordan developed jointly with World Bank experts a CPAR document with special concentration on procurement legislation and reforms of our procurement regime.
2. In view of the findings of the report, an action plan was developed focusing on the following aspects:
 - (a) legal reform;
 - (b) organizational reform;
 - (c) procedural reform;
 - (d) staff development and enhancing information technology in the system.
3. In the course of implementation of the above-mentioned action plan, a governmental steering committee and a national committee comprising public and private sectors, were established. The results of the work of both Committees could be summarized as follows:
 - (a) A new unified draft procurement legislation (works, goods, services) was produced taking into consideration all the remarks mentioned by the CPAR, the requirements of the GPA and the UNCITRAL Procurement Model Law.
 - (b) The draft legislation will be presented to all concerned bodies including the Private Sector for their comments in a national workshop. It is expected to have it approved in a form of a by-law within the coming few months, after the internal legislative procedures are done.
 - (c) The organizational reform would be taking place gradually in the direction of decentralization, by raising gradually the ceiling of the tenders for the tender committees in the various governmental entities, so that reasonable percentage of the total tenders of high value will find its way to the two central procurement entities (GSD & GTD).
 - (d) The new legislation is expected to stipulate for the establishment of high procurement commission that would act as a regulatory body to procurement processes without involvement in day-to-day work of the procurement committees.

4. While the internal process of reform was taking place, Jordan submitted its initial entity offer to the GPA Committee on 6/2/2003. This offer was a result of a joint work between the Government and the private sector which took into consideration the concerns and the obligations.

5. Private sector representatives included those of Chamber of Commerce, Chamber of Industry, Engineers Association, Contractors Association, Union of Pharmaceutical Producers, Jordan Computer Society and other different entities.

6. A series of studies that cover different industrial sectors were conducted by the Government to measure the impact of the agreement on the relevant sectors.

7. During the past few months, my delegation had the opportunity to meet and discuss the details of our initial offer with interested members, also we received several sets of questions from the US and the EC, and we responded in writing to those questions, our answers were circulated to GPA members in due time. And we received a couple of days ago questions from Canada, which will be answered in writing very soon.

8. It is worth mentioning that many of the remarks and questions we received were quite valuable.

Mr. Chairman, Ladies and Gentlemen,

Here we are, fully devoted to listen to the comments of the distinguished delegates: before I conclude, let me thank you, Mr. Chairman, for your outstanding efforts and to all the distinguished delegates for the member states.

Thank you.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 22 AUGUST 2003

Chairman: Mr. Jan-Peter Mout (the Netherlands)

1. The Chairman proposed the following agenda:
 - A. Negotiations under Article XXIV:7
 - B. Modifications to the Appendices to the Agreement
 - C. Accessions:
 - (i) *Streamlining the Accession Process*
 - (ii) *Applications*
 - *Jordan*
 - *Chinese Taipei*
 - *Other Specific Accessions*
 - D. Review of National Implementing Legislation
 - E. Other Business
 - (i) *Date of Next Meeting*
 - F. Election of Chairman for the Remainder of 2003 and for 2004
2. The Chairman noted that the provisional agenda of the meeting had been circulated to Parties in Airgram WTO/AIR/2149, and Parties had been sent an Annotated Agenda for the meeting (Job No. 5700, dated 25 July 2003).
3. The Committee adopted the agenda of the meeting as set out above and in that Annotated Agenda.
 - A. NEGOTIATIONS UNDER ARTICLE XXIV:7
4. The Chairman reported on the meeting of the Informal Group of the Committee on Government Procurement that had been held on 18-21 August 2003, during which negotiations had been pursued under Article XXIV:7 of the Agreement on Government Procurement. He said that the Group had carried forward work on the revision of the text of the Agreement by taking up the revised interim draft of the Agreement dated 8 August 2003, contained in a communication received from the

delegation of the United States (Job No. 6119). That communication incorporated comments that had been received on the previous draft text of 23 July 2003 (Job No. 5693) from the European Community; Hong Kong, China; Japan; Korea; Switzerland; and the United States.

5. In addition, during the informal meeting, the Group had had available to it the following documents:

- (a) a submission by Switzerland on Article V - Accession and Treatment for Developing and Least-developed Countries: Synthesis of Positions Drafted by Switzerland as Coordinator for Article V (Job No. 6028 (4287/Rev.1));
- (b) a submission by the European Community on Switzerland's Article V submission (Job No. 6054);
- (c) a submission by Chinese Taipei on Quad Responses to Chinese Taipei's Comments on 20 June 2003 GPA Review Text (Job No. 6117);
- (d) a submission by Canada on Revision of the Agreement on Government Procurement (GPA): Comments on the Revised Interim Draft of 8 August 2003 (Job No. 6160);
- (e) a submission by Chinese Taipei: Revision of the Agreement on Government Procurement (GPA): Comments on the Revised Interim Draft of 8 August 2003 (Job No. 6247);
- (f) a submission by Japan on Article XVI: Modifications and Rectifications to Coverage (Job No. 6322); and
- (g) a submission by Israel on Article V: Accession and Treatment of Developing and Least-Developed Countries: Israel's Comments on the Submission by Switzerland (informally distributed).

6. In addition to proposals for revision of the text that had been submitted in writing, a number of proposals to amend the revised text of 8 August 2003 had been made orally during the informal meeting. These had been incorporated into the revised text.

7. In reviewing the text of the Agreement, the Group had proceeded Article-by-Article through the whole Agreement. The Group had left aside those provisions that had been identified in the revised text as market access issues on the basis that such issues would be reverted to when the related elements of the Article XXIV:7 negotiations, namely those elements relating to expansion of coverage and elimination of discriminatory measures, would be the subject of discussion.

8. Overall, the Group had made significant progress in revising the text of the Agreement. Such progress made over the previous four days was reflected in the text of 21 August 2003, which was being circulated as a Note by the Chairman entitled "Revision of the Agreement on Government Procurement (GPA) as at 21 August 2003" (Job No. 6343).

9. The Group had provisionally agreed on the basic structure and drafting style of the Agreement. The text of 21 August 2003 reflected a significant re-organisation of the current Agreement. As part of the revision, the Group had consolidated within single Articles all of the provisions on related matters, which in the current Agreement were to be found in several Articles. At its meeting earlier that week, the Group had resolved differences on a substantial number of provisions.

10. In considering the next steps, the Group had noted that significant progress had been made in revising the text since intensive work had begun in late 2002. It was clear that some additional time would be necessary to complete the work. In order to capitalize on the efforts invested by all Members, it had been agreed that the work on the text should be completed as expeditiously as possible.

11. The Group had agreed that the aim should be to have provisional agreement on a revised text by spring 2004. It had been further agreed that the Group would meet on at least two more occasions before finalizing the text, starting with a meeting in the second half of November 2003. Finally, with regard to elements 2 and 3 of the work programme, the Group had agreed that a work programme to complete negotiations in accordance with the timetable of February 2002 for the review would be developed at the meeting of November 2003 based on submissions on hand and any new submissions. In this regard, Parties were invited to submit new inputs by 31 October 2003.

12. The Committee endorsed the report of the Chairman on the progress made on the revision of the text of the Agreement undertaken pursuant to Article XXIV:7 of the Agreement during the meeting of 18–21 August 2003.

13. Following suggestions respectively by the representatives of the United States and of Canada and a subsequent brief discussion, the Committee agreed that the Secretariat would prepare a side-by-side text showing the text of the existing agreement and the corresponding (clean) text from the just issued 21 August 2003 interim draft text. This document would be circulated both electronically and in hard copy as a Note by the Chairman.

14. The representative of Switzerland said that, given that the next informal meeting was sometime away, it might be helpful for Parties to submit their comments on the revised (21 August 2003) draft text in advance, as they had done in the past - for instance, by an agreed deadline - so as to permit advance circulation and prior internal consultations by Parties before the next meeting.

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Modifications that had become effective*

15. The Chairman noted that the details of all proposed modifications to the Appendices to the Agreement were contained in Annex 2 of the Annotated Agenda circulated on 25 July 2003 (Job No. 5700). He said that since the previous meeting of the Committee, two proposed modifications had become effective:

- (a) proposed modification by Hong Kong, China to Annex 1 of Appendix I in document GPA/W/256, dated 5 March 2003, which became effective on 4 April 2003 (WT/Let/444); and
- (b) proposed modifications by Japan to Annex 3 of Appendix I in documents GPA/W/252, GPA/W/253 and GPA/W/254, all dated 25 February 2003, which became effective on 9 May 2003 (WT/Let/446).

(ii) *Outstanding Modifications*

16. With respect to outstanding proposed modifications to Parties' Appendices, the Chairman said that since the meeting of February 2003, there had been further developments in respect of the proposed modification by Korea to Annex 3 of Appendix I. However, no new communications had been made as regards other outstanding modifications. He opened the discussions on this item of the

agenda with the said proposed modification by Korea, and invited Parties to comment on any other outstanding modifications.

- *Modifications by Korea to Annex 3 of Appendix I*

17. With regard to the proposed modification by Korea to Annex 3 of its Appendix I regarding Housing & Commercial Bank, Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd. (GPA/W/250, dated 17 February 2003), the Chairman said that the United States had posed questions relating to the proposed withdrawal of Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd. (GPA/W/264 dated 30 April 2003). Korea's responses to those questions had been circulated in GPA/W/270.

18. The representative of the United States said that her delegation was reviewing those responses and anticipated completing its review as soon as possible, and to sending any follow-up questions that it might have. The representative of the European Community said that his delegation was also reviewing those responses, and anticipated putting complementary questions to Korea in September 2003.

19. The Chairman said that the Committee would revert to this item at its next meeting.

- *Modifications by Korea relating to Korea Telecom*

20. The representative of Korea said that since the last meeting, Korea had received questions from Canada, the United States and the European Community with respect to Korea's notification to withdraw Korea Telecom from Annex 3 of its Appendix I. She noted that the Annotated Agenda did not reflect the fact that her delegation had provided full responses to the questions put by the United States and the European Community – in documents GPA/W/266 and GPA/W/267, respectively. Her delegation had been satisfied with the bilateral consultations that it had had with Parties during that week, and was looking forward to the final decisions of the United States, Canada and the European Community in respect of the proposed modification.

21. The representative of Canada said that her delegation was continuing to examine, as expeditiously as possible, the helpful responses by Korea to Canada, the United States and the European Community with respect to Korea Telecom.

- *Modification by the United States to reflect changes in the administrative structure of its Federal Government*

22. The representative of the United States said that her delegation had made proposed modifications two years earlier (GPA/W/153), and was still awaiting the completion of their review by some Parties. She inquired of such Parties whether they had any indications as to when they anticipated completing their review.

23. The representative of Japan said that his delegation was continuing its review of the responses provided by the United States, and anticipated being in a position to withdraw its objections to some of the entities, about which it saw no problems, by the time of the next meeting of the Committee.

24. The representative of the European Community said that his delegation was also continuing its review, and if found necessary, it would put further complementary questions to the United States.

25. The representative of Canada said that her delegation was continuing to examine, as expeditiously as possible, the responses of the United States to her delegation's questions, and would consider the suggestion by Japan in this context.

26. The representative of the United States thanked Japan for its forward-looking response. She noted that her delegation's notification covered a number of entities, and it would be helpful if other Parties could also withdraw their objections at least to those entities with which they had no further concerns. In this process, Parties needed to make sure that – as with all modifications – they tried to focus on those that were of real concern and not hold up overall notifications if there were some entities with which they had no concerns.

- *Modifications by Japan relating to railway companies*

27. The representative of Japan noted that since 2001 his delegation had provided extensive information on its proposed modifications relating to railway companies (GPA/W/144, 145 and 146), and had conducted a series of bilateral consultations with the United States and the European Community, with a view to exploring a mutually satisfactory solution in an expeditious manner. To expedite the process, Japan had requested those Parties to present their positions as to whether they would maintain their objections and to specify their reasons, with a focus on any remaining concerns that they might have in the light of Article XXIV:6(b) of the GPA. Responding to that request, the United States had notified its position to Japan after re-examining all the information provided by his delegation. Japan was carefully reviewing that response. The European Community had submitted a third set of questions in February 2003 in document GPA/W/245. Japan's responses to those questions had been circulated in April 2003 in document GPA/W/263. In June 2003, Japan had requested the European Community again to re-examine all the relevant information submitted by Japan and to present its clear position on this matter. The European Community had notified Japan of its intention to submit another set of follow-up questions; however, the delegation of Japan had not yet received these.

28. Japan was convinced that it had already provided detailed explanations which proved that the proposed modifications were consistent with Article XXIV:6 (b) of the Agreement, and believed that the European Community had had enough time to conduct a careful review of the information provided. Japan requested the European Community to submit its final set of questions, if any, and to withdraw its objections in an expeditious manner after Japan responded to those questions. Japan also called upon the European Community to specify in writing the reasons why it wished to maintain its objections if the European Community was not in a position to withdraw its objections. Further cooperation with a view to achieving a speedy solution would be highly appreciated.

29. In response, the representative of the European Community noted that, as provisionally indicated to Japan, his delegation was preparing questions, which it would shortly submit to Japan. Those questions would be self-explanatory and would contain the reason why the European Community was continuing to maintain its objection.

30. With respect to these outstanding proposed modifications, the Chairman welcomed the positive intentions expressed by Parties to speed up their examinations of questions and answers, respectively, and their intention to submit further contributions on this issue before the next formal meeting of the Committee.

C. ACCESSIONS

(i) *Streamlining the Accession Process*

31. The Chairman recalled that, at the meeting of February 2003, Parties had agreed to take up the issue of streamlining the accession process within the wider context of the revision of the Agreement, particularly with regard to the provisions of the Agreement dealing with accessions and developing countries. Parties had earlier heard a report on this under the agenda item "Negotiations under Article XXIV:7". The Chairman added that Parties had had very interesting discussions on accessions and developing countries, including the issues of asymmetric approaches and transitional

time-frames. One of the questions that Parties had been dealing with was which items might be taken up in the context of the Agreement itself, and which issues might be dealt with in a specific accession decision of the Committee. This discussion showed the interrelation between this particular agenda item and the negotiations on the revision of the GPA.

32. The representative of Switzerland emphasized that a speedy resolution of the new Article V in the revised Agreement could prove to be extremely useful by providing guidelines for both current and future accessions. His delegation would therefore commend the drafting Group and the Committee to give a high priority to this issue as the negotiations of the revised Agreement were now extending into spring 2004. His delegation considered that there were quite a large number of acceding Members that depended on the key policy decisions that would have to be taken. Without making further progress in the revision on that particular area, it would be difficult to speed up the accession process for the benefit of acceding Members. This was one of the most important issues of the revision on which other issues depended.

33. The representative of the European Community supported the statement made by Switzerland. In reference to the communication his delegation had submitted on the current Article V on the accession and the regime to be foreseen for developing countries (Job No. 6054), he reiterated the importance his delegation attached to that Article, and hoped that that document could serve as a basis for the current negotiations.

34. The representative of the United States also supported the statement by Switzerland on the need to move forward on that Article as quickly as possible. With regard to streamlining the accession process, she suggested that that be deferred until Parties had completed the work on the Article, as that might provide important information. The United States was fully committed to finding ways in the Agreement that would assist developing countries in their accession to the Agreement. The United States appreciated the work that Switzerland and the European Community had done and the ideas that they had brought forward on this issue.

35. The Chairman echoed the statements made by the delegations of Switzerland, the European Community and the United States, with particular regard to the special importance of this issue to Members discussing accession to the Agreement.

(ii) *Applications*

36. The Chairman said that the details of the current status of all accessions could be found in the Annotated Agenda (Job No. 5700). There were two accessions on which there had been developments to report on since the February 2003 meeting: respectively those of Jordan and Chinese Taipei.

- *Jordan*

37. With respect to the accession process of Jordan, the Chairman noted that Jordan had submitted its entity offer on 6 February 2003 (GPA/SPEC/29). In a communication circulated on 30 April 2003, the United States had submitted questions and a request for information to Jordan in relation to that offer (GPA/SPEC/30). Jordan had submitted its responses to the questions and request for information from the United States in document GPA/SPEC/31.

38. The representative of Jordan made reference to the negotiations under Article XXIV:7 that had taken place in the informal meeting preceding the present meeting, at which his delegation had taken careful note of the suggestions and proposals made by, and views exchanged among, the Parties. In the view of his delegation, these had enhanced and enriched the original Agreement. They provided a helpful guide to countries whose legislation were under review to make such legislation compatible with the GPA, as in the case of Jordan. Jordan was moving towards the final stages of

modernising its legislation, and the deliberations at the informal meeting had been of great help and would be utilized whenever needed to ensure compliance of the provisions of the legislation with the Agreement.

39. Jordan had, as a developing country, sought accession to the GPA and had earlier submitted its initial offer. The negotiations with the Committee had been very encouraging as they indicated to his delegation that developed countries were taking into consideration the developmental aspects of government procurement. Any understanding supporting Jordan's offer would send a very positive signal to other developing countries to follow similar steps. He thanked all Parties that had shown interest in Jordan's offer and had asked for clarifications. He noted that his delegation had received questions on its initial offer from the United States, and had submitted replies in due time. Referring to the discussions earlier that week in the informal meeting, he thanked Parties that had recommended special and differential treatment for developing countries other than the flexibilities provided for in the current Agreement.

40. The representative of the United States thanked Jordan for its prompt responses, and said that the United States looked forward to engaging in further discussions on Jordan's offer. She encouraged all other Parties to also give close and quick consideration to Jordan's offer and its responses, and to do everything they could to move this accession process forward expeditiously.

41. The representative of the European Community said that his delegation would shortly be submitting questions to Jordan¹ and looked forward to having further discussion with Jordan and to receiving their answers thereafter. He emphasized the importance of Jordan's accession to the Agreement, and hoped that it was a step that would lead towards further accessions by other developing countries.

42. The representative of Canada thanked Jordan for its efforts and for responding promptly to the questions put to it by the United States. She said that her delegation had held discussions with, and expected to provide further feedback to, Jordan. Her delegation had found Jordan's responses to the questions put by the United States to be helpful. Her delegation would be examining those responses, and it would do its best not to duplicate the questions and answers that had already been provided.

43. The Chairman noted that, in accordance with the GPA accession timeline, a period of four months of further bilateral and plurilateral consultations was foreseen with regard to Jordan's accession. For the time being, he would not set a specific deadline for submission by Jordan of a revised offer, and invited all Parties to engage expeditiously in the consultations with Jordan.

44. The representative of the United States suggested that the Committee might consider holding a plurilateral meeting on Jordan's accession at the time of the next informal meeting of the Committee in November 2003 (see Item E, Other Business). After some discussion, the Committee accepted this suggestion. Since, however, the proposed date of the next informal meeting conflicted with the start of Ramadan, as advised by the representative of Jordan, the Chairman proposed that the Committee schedule an alternative date for the plurilateral meeting on Jordan's accession process in conjunction with the subsequent cluster of informal meetings that the Committee would decide upon.

45. The Committee agreed to proceed as the Chairman had proposed.

¹ Subsequently submitted in document GPA/SPEC/32 circulated on 27 August 2003.

- *Chinese Taipei*

46. With regard to the accession process of Chinese Taipei, the Chairman recalled that at the February 2003 meeting, the delegations of Singapore and Israel had reported that they had concluded their respective market access negotiations with Chinese Taipei; in consequence, the process of bilateral market access negotiations between Chinese Taipei and GPA Parties that had lasted for seven years had come to an end. While these negotiations had not always been easy, this positive conclusion had been made possible thanks to a strong commitment on the part of both Chinese Taipei and GPA Parties.

47. There remained, however, one outstanding issue regarding Chinese Taipei's accession, namely the issue of nomenclature used by Chinese Taipei in its Appendix I. The Chairman said that he had held intensive consultations with all delegations involved with a view to resolving this issue, both before the meeting of February 2003 and the present one. Nevertheless, he had to report that, despite his very best efforts, these consultations had not yielded a positive result. Therefore, it would not be possible to conclude the accession process of Chinese Taipei at the present meeting.

48. This situation was frustrating for all involved, not least for Chinese Taipei, given that almost eight months had elapsed since the substantive market access negotiations had been concluded. The situation was also disappointing for companies both in Chinese Taipei and in GPA Parties, which were still waiting for the mutual opening of procurement markets.

49. On a personal note, the Chairman paid tribute to the delegation of Chinese Taipei for its very active and constructive contribution to the review of the Agreement, despite the lack of progress in concluding their accession process. This, amongst other things, clearly demonstrated Chinese Taipei's strong commitment to the GPA.

50. He noted that he would no longer be able to contribute to Chinese Taipei's accession process, since he would be leaving Geneva at the end of August 2003. He had, however, discussed the matter with his designated successor (see Item G), and was pleased to indicate that his designated successor had offered his good offices to help resolve this issue. He appealed to all Parties involved to do their utmost so that the final hurdle in Chinese Taipei's accession process might be overcome.

51. The representative of Chinese Taipei thanked the Chairman for his outstanding leadership as Chair of the Committee over the previous year. He expressed his delegation's profound gratitude for the Chairman's unreserved support and great efforts in trying to complete Chinese Taipei's accession process during the period of his chairmanship. He drew attention to the preamble to the GPA, which recognised that an international framework of rights and obligations regarding government procurement would contribute to greater liberalisation and the extension of world trade. Based on his delegation's commitment to be a positive Member of the WTO, even in the knowledge that accession to the Agreement was likely to adversely affect Chinese Taipei's domestic suppliers to a certain extent, Chinese Taipei was determined to accede to the Agreement on Government Procurement in the more general framework of acceding to the WTO. Thanks to the support of the Parties involved, Chinese Taipei had successfully completed bilateral consultations on all the substantive issues and had sought to get its accession adopted in December 2002. In spite of so much good work, however, it was a non-economic issue that had prevented the conclusion of its accession at that time.

52. As further evidence of Chinese Taipei's continued determination to accede to the GPA, its responsible Minister had come to Geneva earlier that week and had been consulting very closely with the Chairman. However, despite the unreserved efforts and utmost flexibility from his delegation's side, regretfully, the non-economic issue had continued to be a stumbling-block. While expressing his delegation's great disappointment at the current stage of its GPA accession, he urged all GPA signatories to redouble their efforts so as to overcome that last outstanding hurdle as soon as possible. He took the opportunity to offer his delegation's best wishes to the Chairman in his future endeavours.

53. The representative of Japan said that his delegation looked forward to the accession of Chinese Taipei at the earliest possible date, and to that end, it would continue to work with the incoming Chairman and support his role.

54. The representative of the United States joined Japan in its statement. Her delegation had worked for many years to assist the accession of Chinese Taipei to the GPA, and had a strong interest in the commercial opportunities that this accession would bring to all Parties. The United States would welcome Chinese Taipei's accession as soon as it could be worked out. She encouraged the Chairman to continue his efforts to bring this issue to a resolution. She thanked the representative of Chinese Taipei, who had been very active in the discussions on the revision of the Agreement, and said this showed the clear commitment of Chinese Taipei to accede to the Agreement.

55. The representative of Canada joined Japan and the United States in thanking Chinese Taipei for its efforts to pursue accession and for its contribution to the review of the Agreement. Canada looked forward to the accession of Chinese Taipei at the earliest possible date, and encouraged the Chairman to continue working on finding a resolution.

56. The representative of Korea echoed the previous speakers who had supported the early resolution of the remaining issues and conclusion of the accession of Chinese Taipei as soon as possible.

57. The representative of China expressed his delegation's appreciation for the Chairman's excellent work during his chairmanship, and thanked him for his efforts in the relevant consultations to bridge differences. He noted that the Chairman's mediating efforts had helped to improve understanding among all Members concerned. The Chairman's skilfulness had enabled the exercise to be conducted in a positive way. He expressed his delegation's hope that this would continue in future consultations.

58. The Chairman stated that he had taken note of the commitments of all delegations to resolve this issue as soon as possible, and would convey to his successor the Parties' wish as regards his successor's involvement in the resolution of this issue. He proposed that the Committee revert to this issue at its next meeting, but also that the Committee could convene an additional formal meeting to deal with the issue if it had been resolved before the next scheduled formal meeting.

59. The Committee so agreed.

- *Other Accessions*

60. The Chairman noted that there were no comments by Parties with regard to the other ongoing accession processes, and said that the Committee would revert to this item at its next formal meeting.

D. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

61. The Chairman noted that at the meetings October 2002 and February 2003, the delegation of the Netherlands with respect to Aruba had been invited to submit its notification of the implementing legislation in accordance with the requirements in document GPA/1/Add.1. The representative of the Netherlands with respect to Aruba noted that there had been no new developments on that issue.

62. The Chairman said that Hong Kong, China had sent a notification concerning its national implementing legislation (GPA/27/Add.1 circulated on 20 August 2003). The representative of Hong Kong, China informed the Committee that the communication her delegation had sent concerned an updated version of Hong Kong, China's basic procurement regulations, namely the Stores and Procurement Regulations.

E. OTHER BUSINESS

(i) *Date of Next Meeting*

63. The Chairman said that there were two meeting dates that the Committee needed to deal with: (i) the date of the informal meeting, which would also be an opportunity to discuss the plurilateral meeting with respect to the accession of Jordan (see Item C); and (ii) the date of the next formal meeting.

64. Following a brief discussion, the Committee agreed to hold its next informal meeting during week commencing 24 November 2003, and further that the incoming Chairman (see Item F below) would consult with Parties to determine appropriate days in that week to hold that meeting. Some Parties pointed out that the duration of the meeting can be shortened to three days. The representative of Japan expressed that his delegation would prefer the latter half of that week to hold that meeting.

65. As regards the date for the following formal meeting, the Chairman suggested that it might be practical that this coincided with the completion of the revision of the text of the Agreement, for which the Committee had agreed a deadline of spring 2004. He suggested that his successor consult with Parties to determine an appropriate date.

66. The Committee agreed to proceed as the Chairman had proposed.

F. ELECTION OF CHAIRMAN FOR THE REMAINDER OF 2003 AND FOR 2004

67. The Chairman recalled that in a fax dated 20 January 2003 he had informed Parties that he would be leaving Geneva at the end of August 2003 and that, accordingly, the Committee would need to elect a Chairperson for the remainder of 2003 and for 2004. In consequence, he had undertaken consultations with delegations and on the basis of those consultations, he understood that there was general support for the election of Mr. Niklas Bergström from the delegation of Sweden as Chairman.

68. The Committee duly elected Mr. Niklas Bergström (Sweden) as Chairman for the remainder of 2003 and for 2004.

69. The outgoing Chairman thanked the Committee for the very good cooperation and the pleasant atmosphere in which he had been able to do his work as Chairman. He also thanked the Secretariat for its support. He wished success to his successor.

70. The incoming Chairman thanked the Committee for the confidence it had placed in him. He said that he looked forward to working with the Committee, and was confident that there would be a good working atmosphere. He noted that he would also depend on the Secretariat in carrying out his work on the Committee. He thanked his predecessor for his skill and efficiency in chairing the Committee, and wished him best of luck in his future career.

71. The representatives of Canada; China; Chinese Taipei; the European Community; Hong Kong, China; Israel; Japan; Jordan; Korea; Singapore; Switzerland; and the United States thanked the outgoing Chairman for his work and conveyed their best wishes to him for the future. They welcomed the incoming Chairman and assured him of their support for his work.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 6 FEBRUARY 2003

Chairman: Mr. Jan Peter Mout (the Netherlands)

ELECTION OF CHAIRMAN FOR 2003

1. The Committee re-elected Mr. Jan-Peter Mout of the Netherlands as Chairman for 2003 until the end of his term in Geneva.¹

2. The Chairman proposed the following agenda:

A. Modifications to the Appendices to the Agreement

B. Accessions:

(i) *Applications:*

- *Jordan*

- *Estonia*

- *Latvia*

- *Chinese Taipei*

- *Panama*

- *Bulgaria*

- *Slovenia*

- *Albania*

- *Moldova*

- *Kyrgyz Republic*

- *Georgia*

- *Lithuania*

(ii) *Other newly acceded WTO Members*

¹ By fax, dated 20 January 2003, the Chairman, Mr. Jan-Peter Mout, advised that he was to be recalled to the capital with effect from August 2003.

(iii) *Streamlining of the accession process*

- C. Review of National Implementing Legislation
- D. Negotiations under Article XXIV:7
- E. Other Business

3. On a point of order, the representative of Bulgaria reiterated the request of his delegation for information from GPA Parties pertaining to export opportunities to their markets for Bulgarian suppliers. He drew attention to the absence of a reference to this in the annotated agenda and the 2002 annual report and requested that it be reflected in the annotated agenda in future. After a brief discussion, Bulgaria confirmed that it was not seeking a separate agenda item on this issue.

4. The Chairman noted that his request would be reflected in the minutes of the present meeting. With regard to the annotated agenda, the Chairman clarified that this was issued on his own responsibility, and he would make a judgement at the appropriate time as to what was suitable for its contents.

5. The Committee adopted the agenda as proposed.

A. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Modifications by the United States to Appendix I*

6. The Chairman said that the proposed modifications to Annex 2 of Appendix I by the United States which had been circulated in GPA/W/208 had become effective on 16 October 2002 (WT/Let/431).

(ii) *Modifications by Switzerland to Appendix I*

7. The Chairman said that Switzerland had proposed modifications to Annex 2 and the General Notes of its Appendix I in GPA/W/225, dated 12 December 2002. In a document circulated on 13 January 2003, Hong Kong, China had communicated its reservations on the proposed changes (GPA/W/236).

8. The representative of Hong Kong, China said that her delegation had submitted a notification expressing reservations on the grounds that the proposed modifications had a discriminatory effect, having regard to paragraph 7(c) of Article XXIV of the Agreement on Government Procurement (GPA), as Hong Kong, China had no sub-central entities and had been maintaining a non-discriminatory government procurement regime. Following satisfactory bilateral consultations, Hong Kong, China had received written confirmation from Switzerland informing it of Switzerland's decision to grant Hong Kong, China the benefit of access to its public authorities and public bodies at the level of cities and districts; she said this decision would be confirmed by Switzerland through a written notification to the WTO Secretariat after Switzerland had gone through its relevant internal procedures by June 2003. On this basis, Hong Kong, China was pleased to lift its reservations on the proposed modifications by Switzerland.

9. The Chairman said that the objection was accordingly lifted as of 6 February 2003 and the modifications would become effective on 7 February 2003 (WT/Let/437.)

(iii) *Modifications by the European Community to Appendix I*

10. The Chairman recalled that the European Community had proposed modifications to the General Notes of its Appendix I in GPA/W/226, dated 12 December 2002. The modifications had entered into force on 11 January 2003 (WT/Let/438).

(iv) *Modifications by Iceland to Appendix I*

11. The Chairman said that Iceland had proposed modifications to the General Notes of its Appendix I in GPA/W/227, dated 12 December 2002. The modifications had entered into force on 11 January 2003 (WT/Let/438).

12. In respect of the modifications by the European Community and Iceland, the representative of Japan suggested that the two Parties also consider reviewing and updating their Annexes 1, 2 and 3 in due course.

(v) *Modifications by Norway to Appendix I*

13. The Chairman said that Norway had proposed modifications to the General Notes of its Appendix I in GPA/W/228, dated 12 December 2002. The modifications had entered into force on 11 January 2003 (WT/Let/438).

(vi) *Modifications by Canada to Appendix I*

14. The Chairman said that Canada had sent a communication proposing modifications to Annex 1 of Appendix I, dated 12 September 2002 (GPA/W/203). In a communication, dated 7 October 2002, Hong Kong, China had sought clarification and further information regarding the proposed modifications (GPA/W/218). Canada's replies to the questions from Hong Kong, China had been circulated in GPA/W/229. The representative of Hong Kong, China referred to two further follow-up questions, which had been transmitted to Canada, to which Canada's replies were awaited.

15. The representative of Canada said that her delegation anticipated providing responses in due course.

(vii) *Modifications by Korea to Appendix I*

16. The Chairman said that Korea had proposed modifications to Annex 3 of its Appendix I in GPA/W/207. The United States, the European Community and Canada had made communications objecting to the entry into force of the proposed modifications and requesting additional time to study and to seek clarification (GPA/W/210, GPA/W/214 and GPA/W/217, respectively). Korea's response to the communication from Canada had been circulated in GPA/W/222. Further questions submitted by the European Community had been circulated in GPA/W/244.

17. Referring to his delegation's statement at the October 2002 meeting, the representative of Korea reiterated the point that a private entity should not be subject to the procedural requirements of the GPA on account of its previous existence as a government entity. He said that, with the conclusion of the sale of the Government's remaining shares in May 2002, Korea Telecom was now a wholly-owned private company, which conducted its procurement solely on commercial considerations. Korea had provided specific written clarification in response to a specific question put by Canada, and would also provide responses to additional questions recently raised by the United States and the European Community in due course. With the completion of Korea Telecom's privatization in August 2002, Korea sincerely hoped that this process would be expedited and concluded as soon as possible.

18. The representative of Canada confirmed that Canada was reviewing Korea's response and was not yet in a position to make a decision regarding the status of its objections. The representatives of the United States and the European Community drew attention, respectively, to the questions they had submitted and looked forward to receiving and reviewing Korea's responses in due course.

(viii) Modifications by Japan relating to NTT

19. With respect to the proposed modification by Japan to its Appendix I notified in document GPA/W/91, the Chairman recalled that consultations had been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/107 and GPA/W/108). The United States had withdrawn its objection to the modifications proposed by Japan in October 2001 (GPA/W/166), and Canada in October 2002 (GPA/W/213). At the October 2002 meeting, the representative of the European Community had informed the Committee that his delegation wished to maintain its objection for the time being and that it would provide written confirmation of its position to Japan in this respect. On 5 February 2003, Japan had made a communication regarding the status of the consultations with the European Community (GPA/W/247).

20. The representative of Japan said that Japan had had ongoing consultations with the European Community and deeply regretted not being able to report an agreement with this Party at the present meeting, despite efforts made during consultations over the past three years. Japan realised that it would be quite difficult to solve the matter bilaterally, and was submitting this report to enable other Parties to better understand the matter at issue between it and the European Community regarding interpretation of the current Article XXIV:6. By submitting this communication to the Committee, Japan reserved its right to solve the matter through all procedures possible under the Agreement on Government Procurement.

21. Since the submission of the notification relating to NTT in September 1999, Japan had had a number of bilateral consultations with representatives of the European Community in Geneva, Brussels and Tokyo. After the withdrawal of objections to this notification by the United States in October 2001, Japan had intensified its bilateral contacts with the European Community with a view to solving the matter as soon as possible. Since October 2001 both delegations had conducted intensive consultations – three times in Geneva, and once in Tokyo. In August 2002, Japan had requested, by way of a letter from Ambassador Haraguchi to Ambassador Trojan, that the European Community present its position in writing, together with reasons for maintaining its objection, should this be the case. In October 2002, the European Community had replied, by way of a letter from Ambassador Trojan, that the European Community maintained its objections to Japan's notification for the time being. As for the reasons for its objections, the European Community had raised three issues: shareholding; NTT law; and the market situation – particularly concerning the independence of the telecommunications regulator in Japan, and on the lack of dominant carrier regulations over NTT Communications Corporation.

22. In December 2002, Japan had presented its position on the issues addressed in Ambassador Trojan's letter, and had requested the European Community to review its position and to consider withdrawing its objection. It had also called upon the European Community to present its final position by 25 January 2003. In January 2003, both parties had made additional efforts in order to explore ways for a mutually satisfactory solution. However, a deal had not proved possible due to the gap in the views regarding the level of market liberalization that should be proved by a Party wishing to withdraw an entity from its Appendix I. In the end, both Parties had recognized that neither could accept the position of the other.

23. On 30 January 2003, Japan had received a reply by way of a letter from Mr. Carl, Director General for Trade, European Commission, that the European Community was obliged for the time being to maintain its objection, seeing as the concerns raised in its letter of October 2002 had not been satisfactorily addressed, despite the additional clarifications provided by Japan in its letter of December 2002. In conclusion, Japan had proposed accordingly that the Committee consider the following issues in order to clarify and improve the procedures under the current Article XXIV:6: (a) an objecting Party should not prevent a proposed notification from becoming effective for reasons that were outside the scope of the GPA; (b) an objecting Party should not utilise its position to link the withdrawal of its objection to a solution or to progress in other trade issues; and (c) as the GPA was not a sector-specific agreement, but a general agreement on procurement, all entities notified under Article XXIV:6 should be treated equally under the Agreement and examined under equivalent criteria (for example, legal oversight, ownership of shares, voting rights, appointment of the managing board, financial support, special or exclusive rights), and, therefore, an objecting Party should not place sector-specific requirements on any entity notified under Article XXIV:6 which were not equally applicable to entities in other sectors.

24. The representative of the European Community confirmed that his delegation maintained its objection to the withdrawal of NTT Communications Corporation from the GPA. He said it was clear from the extensive discussions with Japan that the European Community and Japan had divergent views on the meaning of Article XXIV:6. The European Community maintained that its interpretation was correct, and that its concerns in respect of NTT Communications Corporation were within the scope of the GPA. The European Community was willing to continue discussions with Japan on this matter. With regard to the issues for consideration at the end of Japan's statement, the European Community viewed them to be matters of a general nature that did not affect the matter of NTT Communications Corporation.

25. The representative of Korea recalled that the current GPA Article XXIV:6 provided that a Party in exercise of its rights could withdraw an entity from Appendix I on the grounds that government control or influence over it had been effectively eliminated, and that allowance should be made for the market opening effects of the removal of government control or influence. Even though the current provision did not provide the detailed criteria regarding the elimination of government control or influence, it appeared that Japan had provided sufficient information to prove that government control and influence had been eliminated, and that there had been market opening effects from the privatisation of NTT Communications Corporation.

26. The issue of independent regulator and dominant carrier regulations raised by the European Community, however, seemed to have different characteristics from the criteria stipulated in the GPA. He said objecting Parties should not place undue burden and demands that went beyond the rights and obligations in the GPA, and it seemed more appropriate to tackle this issue in relation to the implementation of the concessions and obligations under the GATS. In addition, the privatization process of Parties should be further encouraged as a means of enhancing its market opening effects, and any burden of obligation on the process may rather impede the eager participation of other developing and newly acceded Members of the WTO to the GPA, considering that they were the ones likely to be privatizing government-owned or government-controlled entities in the future. Korea reserved its right to revert to the matter after closer examination, given the specific concerns and significance of the current situation.

(ix) *Modifications by Japan relating to railway companies*

27. With respect to the proposed modification by the delegation of Japan to its Appendix I in GPA/W/144, 145 and 146, dated 29 August 2001, the Chairman said that communications had been received from the delegations of the United States, Canada and the European Community (GPA/W/151, GPA/W/155 and GPA/W/156) seeking clarification and objecting to the proposed withdrawal of the three Japanese railway companies, namely East Japan Railway Company, Central

Japan Railway Company and West Japan Railway Company from the coverage of the GPA. Relevant notifications received from Japan had been circulated in GPA/W/152, GPA/W/152/Corr.1 and GPA/W/179. Additional questions had been received from the European Community and the United States in 2001 (circulated in GPA/W/164 and GPA/W/165, respectively). Japan's responses to these questions were contained in GPA/W/180 and GPA/W/181. In 2002, the delegations of the United States and the European Community had submitted further questions, which had been circulated in GPA/W/204 and GPA/W/205, respectively. An additional question received from Canada relating to Central Japan Railway Company and West Japan Railway Company had been circulated in GPA/W/212. Japan's responses to these questions were circulated in GPA/W/233, GPA/W/234 and GPA/W/235, respectively, dated 7 January 2003. Follow-up questions had been communicated by the European Community in GPA/W/245.

28. In a communication dated 1 October 2002, Canada had withdrawn its objection to the modification of Appendix I of the GPA related to the East Japan Railway Company (GPA/W/211) and in a further communication dated 1 February 2003, had also withdrawn its objection to the modifications related to the Central Japan Railway Company and the West Japan Railway Company (GPA/W/246).

29. The representative of Japan thanked Canada for its decision to withdraw its objection to the proposal concerning all three railway companies. She said Japan had, during the week, held bilateral meetings with the United States and the European Community, respectively. Japan believed that the remaining two Parties objecting to its notification had come to an adequate assessment of its proposal, and hoped that a mutual understanding could be reached as early as possible that the proposed withdrawal of the three railway companies was consistent with Article XXIV:6(b) of the GPA. Japan believed that it had provided the Parties concerned with extensive information on its proposal and a time long enough for them to carefully review it. To expedite this process, Japan had requested these Parties to specify in writing the reasons for their continued objection to the proposal, and expected to receive their replies in due course. Japan also hoped to be able to focus on any remaining issues of concern that an objecting Party might have in the light of Article XXIV:6(b).

30. The representative of the United States said that her delegation was carefully reviewing all the relevant material with a view to reaching a conclusion as to whether government control had been effectively eliminated, but at present wished to maintain its objection (GPA/W/151).

31. The representative of the European Community said that his delegation looked forward to receiving Japan's responses to the questions it had submitted recently, and wished to maintain its objection for the time being (GPA/W/155).

32. The representative of Canada confirmed the withdrawal of Canada's objection to the removal of the two entities West Japan Railway Company and Central Japan Railway Company from Japan's Annex 3. Canada noted that Japan had provided extensive assurances that it would not exercise control over these two companies. However, in Canada's view, Japan continued to have effective control over these companies through its 100 per cent ownership of Japan Railway Public Construction Corporation, which in turn was the single largest shareholder in the otherwise widely held West Japan Railway Company and Central Japan Railway Company. Although Japan had not undertaken to put in place legal measures to ensure that control was not exercised in the future, Canada noted, and appreciated, the assurances that Japan would not exercise control of these companies.

33. The Committee agreed to revert to this issue at its next meeting.

(x) *Modification by the United States to reflect recent changes in the administrative structure of its Federal Government*

34. The Chairman said that, with respect to the proposed modifications of Appendix I by the United States in GPAW/153, dated 25 September 2001, the delegations of Canada, the European Community and Japan had made communications seeking further information from the United States and objecting to the proposed modifications entering into force at the end of the 30-day period (circulated in GPA/W/167, GPA/W/163 and GPA/W/162, respectively). The responses by the United States to the questions raised by the three Parties had been circulated in GPA/W/183-185. Further questions had been put by Japan (GPA/W/195) and the European Community (GPA/W/216). The responses of the United States had been circulated in GPA/W/223 and 243.

35. The representative of the United States made reference to bilateral discussions that the United States had had with Japan during the week. She said her delegation hoped that its responses would satisfy the Parties but was otherwise happy to answer other questions with the view to bringing this matter to a speedy conclusion.

36. The representatives of Japan and Canada said that they were reviewing the United States' responses.

37. The Chairman said that the Committee would revert to this matter at its next meeting.

B. ACCESSIONS

(i) *Applications:*

- *Jordan*

38. The Chairman announced that Jordan had submitted its entity offer on 6 February 2003 (GPA/SPEC/29).

39. The representative of Jordan said that his country's offer had been previously approved both by the National Committee set up for the purpose and also by the Cabinet. Jordan looked forward to a quick and favourable acceptance of its offer by Parties but was nevertheless ready to provide any clarifications. Jordan had set up a team to carry out the necessary negotiations. If its offer was accepted, Jordan would be one of the very few developing countries to accede to the GPA and the first Arab country to do so.

40. The representatives of the United States, the European Community, Israel, Canada, Japan, Switzerland and Korea, congratulated Jordan for the submission of its offer and said they looked forward to giving it their careful consideration and entering into discussions with Jordan at an appropriate stage. The representative of Switzerland drew attention to certain aspects of the offer, including the fact that Jordan had broadly the indicative timetable for accession negotiations (GPA/W/109/Rev.2), and also that the offer had been approved by the Jordanian Cabinet, and hoped that on its part, Parties to the GPA would move swiftly to respond to this offer. This offer from Jordan should also provide useful background information in the context of the ongoing negotiations under Article XXIV:7 of the GPA.

41. The Chairman said that, in accordance with the indicative timetable for accession negotiations, comments on the offer should be communicated to Jordan within two months, i.e. by 20 April 2003.²

- *Estonia*

42. The representative of Estonia said that Estonia's Public Procurement Act was being reviewed and it was expected that the changes would be adopted by the end of the third quarter of 2003, following approval by the Government and debate and adoption by Parliament. These changes concerned mainly definition of contracting authority, exception procedures for procurement, and dispute settlement.

43. The Chairman invited Estonia to communicate the changes to the Committee with an explanation of their impact on Estonia's offer.

- *Latvia*

44. The representative of Latvia said that, since the October 2002 meeting, Latvia had continued to have bilateral consultations with the European Community, during which several issues had been raised. These issues involved substantial technical effort on the part of Latvia, as well as modifications to its national legislation. Following the election of a new Parliament, as previously reported, the legislative process was now gaining speed, and Latvia's capital-based experts were involved in the process of alignment of the relevant national legislation to that of the European Union. The representative assured the Committee that Latvia continued to progress all issues raised in the bilateral consultations.

- *Chinese Taipei*

45. The Chairman said that, since the October 2002 meeting, Chinese Taipei had held bilateral consultations with interested delegations. Furthermore, in his capacity as Chair, he had also held informal consultations with Chinese Taipei and interested delegations regarding the issue of nomenclatures in Chinese Taipei's draft offer. These consultations had not yet been completed.

46. The representative of Chinese Taipei said that, in order to honour its WTO accession commitment, the Government of Chinese Taipei had shown very strong readiness to accede to the GPA since its accession to the WTO. In December 2002, with the support of the Chairman and other GPA Parties, his delegation had successfully completed all the bilateral consultations on the substantive issues. Chinese Taipei regretted that the issue of nomenclature had become a barrier for completing its accession, and took the opportunity to reiterate its policy of utmost flexibility on this matter, with the view to achieving adoption of its accession decision as soon as possible. He said that this issue should not continue to be a barrier, and called on the Chairman to use his good offices – and solicit all GPA Parties to render the necessary support – so as to facilitate the satisfactory and speedy conclusion of Chinese Taipei's accession.

47. The representatives of Singapore and Israel confirmed that their delegations had completed bilateral consultations with the delegation of Chinese Taipei in December 2002. The representative of Israel expressed disappointment that Chinese Taipei's accession could not be completed at the present meeting, and hoped that this would be achieved at the next meeting.

² Questions and requests for information received subsequently from the United States have been circulated in GPA/SPEC/30.

48. The representative of China said that any concerns relating to any accession of Parties to the GPA were relevant to the process, and hoped that all such issues could be solved through the bilateral and plurilateral consultations.

49. The Chairman drew attention to the important progress achieved in this accession, leading to the satisfactory conclusion of the bilateral market access negotiations. It was unfortunate that there had not been enough progress on the issue of nomenclatures to complete this process at the present meeting. If, however, the outstanding issue was resolved, a meeting of the Committee could be convened at short notice to approve the accession of Chinese Taipei. The Chairman, on his own behalf, expressed the hope that this moment would come soon, and also echoed the views that had been made by various delegations, that all necessary efforts should be made to resolve the outstanding issue.

- *Panama*

50. The Chairman said that no developments had been reported in relation to Panama's accession process since 2001.

- *Bulgaria*

51. The Chairman said that, at the October 2002 meeting, the Committee was informed that Bulgaria expected to be able to provide additional detailed information shortly regarding amendments to the national public procurement legislation, which had been passed in April 2002. A follow-up question by Canada in respect of Bulgaria's accession had been circulated in GPA/W/219.³

52. The representative of Bulgaria reiterated the request of his delegation for relevant information from GPA Parties pertaining to export opportunities in their markets for Bulgarian suppliers. He said that, as part of its GPA accession process, Bulgaria had liberalized autonomously, aligning its procurement legislation to the requirements of the Agreement, and opening its government procurement market to foreign suppliers. By the same token, to ensure that this delivered mutual benefits, it sought, through its accession process, to gain access to the government procurement markets of Parties, and the information it was requesting was to help it to assess the benefits.

53. The representative of Switzerland, supported by the representatives of the United States and Canada, provided guidance to Bulgaria by reference to available information sources such as the statistics on government procurement reported under Article XIX:5 of the GPA, and published trade statistics. The representative of Switzerland said that the export opportunities open to Bulgaria was dependent on that country's export potential. He offered the bilateral assistance of Switzerland in providing relevant statistics pertaining to Switzerland to Bulgaria. The representative of Canada drew attention to the wealth of information available from its schedules and also offered to meet with Bulgaria on a bilateral basis to review the schedules and other data.

54. The representative of Bulgaria said that his authorities would have technical difficulties in making this assessment and sought practical assistance, for instance in the form of a technical assistance project.

55. The Chairman said the Committee would revert to this issue at its next meeting.

³ Bulgaria's answer thereto has been circulated in GPA/W/249.

56. With regard to the follow-up question by Canada to a reply previously given by Bulgaria in GPA/SPEC/23/Rev.1, dated 29 January 2002, the representative of Bulgaria clarified that Article 41(4) of the Public Procurement Law did not provide for automatic extension of preferences to SMEs participating in public procurement. Such enterprises had the same rights to participate in public procurement procedures as other Bulgarian or foreign natural or legal persons. Priority was accorded if and only if, at the evaluation stage, two or more tenders were ranked equal including in price and one of those tenderers was either an SME or had an SME as a subcontractor. He said the national statistics showed that this preference did not have substantial practical meaning and value, given that contracting authorities applied it in only 0.1 per cent of the procurement procedures conducted over the last three years.

- *Slovenia*

57. The representative of Slovenia reiterated the interest of his Government to accede to the GPA, and apologized for the delay in the process. He said that, though the national legislation was in full accord with the both the Agreement and EU Directives, it did not give a mandate to the Government to prepare the initial offer that would meet expectations of Parties in its scope – namely, that a number of entities that performed public utilities and other activities in the national interest with exclusive rights both at central government and local community levels were established in Slovenia under private law, irrespective of whether they had public or private ownership or government arrangements. The legislative changes and amendments which were deemed necessary in order to streamline the practice based on the Slovenian Public Procurement Act were being drafted and were expected to be submitted for the consideration of the Parliament shortly, and Parties would be kept abreast of subsequent developments.

- *Albania*

58. The Chairman said that Albania's responses to questions put by the European Community; Hong Kong, China; Switzerland; and Canada had been circulated in GPA/W/238-241.

- *Moldova*

59. The Chairman said that the questions received from Hong Kong, China; and the European Community had been circulated in GPA/W/206 and GPA/W/231, respectively.

- *Kyrgyz Republic*

60. The Chairman said that the replies to the Checklist of Issues had been circulated in GPA/W/197, dated 10 June 2002. Further questions raised by the delegation of the United States and the European Community had been circulated in GPA/W/201 and GPA/W/230, respectively. The replies of the Kyrgyz Republic to the questions raised in GP/W/201 had been circulated in GPA/W/248.

61. The representative of the Kyrgyz Republic said that the questions received from the European Community were under review by capital-based experts. While the Government of the Kyrgyz Republic attached due importance to the work of the Committee concerning the accession of the Kyrgyz Republic, his delegation wished to stress the need for adequate time for the necessary work to be done in order to bring its national legislation into conformity with the requirements of the GPA. On the basis of the questions posed by the United States and the European Community, as a follow-up to the Checklist of Issues, it appeared that delegations were concerned about some measures found in several articles of the Law on Government Procurement of Works and Services – especially those contained in Articles 3, 41 and 39 and 40 concerning the method of quotations and procurement from a single source. In this respect, his delegation wished to echo the statement made by its Korean counterpart that some flexibility needed to be accorded to developing countries and those economies

in transition to accommodate the necessary requirements to their national legislation so as to avoid any ambiguity between the GPA requirements and their national law.

- *Georgia*

62. The Chairman said that questions received from Canada and the European Community regarding Georgia's replies to the Checklist of Issues had been circulated in GPA/W/220 and GPA/W/232, respectively. Georgia's responses to Canada's questions had been circulated in GPA/W/237.

63. In respect of the answer to question 1 in Georgia's replies to Canada's question, Hong Kong, China noted that Georgia's law providing 15 per cent preferential privilege to Georgian suppliers constituted discriminatory treatment in favour of local goods and suppliers. Similarly, in respect of the answer to question 2, the requirement that 70 per cent of the personnel be citizens of Georgia offended against the non-discrimination principle in Article III of the Agreement and prohibition against offsets in Article XVI. Hong Kong, China considered, accordingly, that these should be rectified before Georgia's accession to the GPA, and, in that connection, was pleased to note that Georgia had confirmed its willingness to consider making appropriate amendments in the Georgian state procurement legislation if so requested during the accession process.

64. The representative of Canada said that her delegation may have additional follow-up questions. The representative of the United States said that her delegation looked forward to receiving the responses of Georgia to its questions.

- *Lithuania*

65. The Chairman said that no developments had been reported in relation to the accession of Lithuania since the May 2002 meeting.

(ii) *Other newly acceded WTO Members*

- *Oman*

66. The Chairman said that no developments had been reported in respect of Oman's accession to the GPA since the February 2002 meeting.

67. The representative of the United States said that the United States had submitted questions to Oman in GPA/SPEC/25 and looked forward to receiving responses as soon as possible.

- *Croatia*

68. The Chairman said that no developments had been reported in respect of Croatia's accession to the GPA since the February 2002 meeting.

- *China*

69. The Chairman said that no developments had been reported in respect of China's accession to the GPA since the October 2002 meeting.

- *Mongolia*

70. The Chairman said that no developments had been reported in respect of Mongolia's accession to the GPA since the September 2001 meeting.

(iii) *Streamlining of the accession process*

71. The Chairman said that informal consultations on streamlining of the accession process had been held in October 2002. For the present meeting, he drew attention to a communication circulated by Chinese Taipei (GPA/W/224) and a note by the Secretariat summarizing the points made at the October 2002 meeting (Job No. 967).

72. Referring to paragraph 5 of GPA/W/224, which read: "Any pending issues that cannot be resolved during bilateral and plurilateral consultations shall be set aside for further consultations, provided that the issues are related to a specific Party only. The acceding country's offer may be adopted by setting such pending issues aside.", the representative of China said that the proposal involved changing the GPA accession procedure as well as impacting on the overall accession procedures of the WTO, and required clarification. In the view of his delegation, there was no basis yet for changing the accession procedure in this way.

73. The representative of Chinese Taipei clarified that, as a plurilateral Agreement, some of the market access provisions were concluded on the basis of reciprocity, and this proposal was meant to deal with that.

74. The representative of the United States, supported by the representative of Switzerland, suggested that the Committee's work pertaining to the streamlining of the accession process be undertaken in the context of the revision of the Agreement, and scheduled, accordingly, as part of that ongoing work. The representative of Switzerland added that it would shortly be necessary to translate the outcome of the streamlining work into an appropriate text in the context of the revision of the Agreement, taking into account the accession of countries at different levels of economic development, given the fact that, as compared with several other WTO agreements, the Agreement had a very substantial impact on domestic legislation.

75. The Committee agreed to revert to the issue of streamlining of the accession process in the wider context of its work on the revision of the Agreement.

C. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

76. The Chairman recalled that Iceland had notified its national implementing legislation on 7 October 2002 (GPA/69). In accordance with the procedures agreed for the review of implementing legislation, the Committee had agreed at its October 2002 meeting that delegations that wished to put questions to Iceland should do so by 16 December 2002, and that Iceland should provide its answers by 16 February 2003. No questions had been put to Iceland to date.

77. The Committee agreed that the review of Iceland's implementing legislation had been completed.

78. At the October 2002 meeting, the delegation of the Kingdom of the Netherlands with respect to Aruba had been invited to submit its notification of national implementing legislation in accordance with the requirements in GPA/1/Add.1.

79. The representative of the Kingdom of the Netherlands with respect to Aruba said that there were no new developments to report.

80. The Committee agreed to revert to this matter at its next meeting.

D. NEGOTIATIONS UNDER ARTICLE XXIV:7

81. The Chairman reported on the informal meeting held on the Article XXIV:7 negotiations on 4 February 2003. The Group had carried forward the work on the revision of the text of the GPA by taking up the issues in basket 1 (basic principles, scope and coverage and related definitions, exceptions, developing countries and accessions) followed by a discussion of the issues in basket 3 (information and review as regards obligations of entities, information and review as regards obligations of Parties, enforcement, institutions, and statistical reporting) and basket 2 (tendering procedures, technical specifications and related definitions), respectively.

82. On basket 1 issues, the Group had had before it a joint submission by the European Community, the United States and Canada (Job No. 746); a proposal by Norway on the Note to Article I, paragraph 1 (Job No. 10232); and the latest revision of the Secretariat document "Suggested Drafting Changes to 1994 Agreement" (Job No. 8957), dated 7 November 2002. The group had had a detailed discussion on the Articles related to basket 1 focusing mainly on the joint proposal. A revised text for the Preamble contained in the joint proposal had also been taken up. Moreover, there had been a preliminary exchange of views on the proposal by Norway suggesting the deletion of the Note to Article I on tied aid.

83. On basket 3 issues, the discussion on each of the relevant Articles had been carried out on the basis of a draft text by the Chairman suggesting possible revised provisions relating to the issues in this basket (Job No. 341).

84. As regards basket 2, the delegation of Canada had introduced a submission commenting on the Article on negotiation procedures (Job No. 826). The Group had been informed by a number of delegations that, since the last meeting, they had been working together in order to seek to narrow the differences between the drafting proposals that had been made on basket 2 and that they would share the results of their work in the near future with other delegations.

85. The Group had also considered elements 2 and 3 of the work programme, relating to expansion of coverage and elimination of discriminatory measures. Pursuant to the requirement in the work programme on this aspect of the Article XXIV:7 negotiations (GPA/M/17, Annex), the delegations of Japan and Canada had introduced non-papers entitled "Expansion of Coverage and Elimination of Discriminatory Measures and Practices" (Job No. 8223) and "Modalities - Questions for Consideration" (Job No. 825) that they had tabled, respectively. Clarifications had been sought by a number of delegations on a number of issues covered in these papers.

86. The Group had also held an informal drafting meeting on 5 February to consider further comments of the Parties on the joint submission on basket 1 made by Canada, the European Community and the United States (Job No. 746). At the request of the Chairman, the representative of the United States provided a brief report to the Committee on this informal drafting meeting.

87. The representative of the United States said that this meeting had allowed Parties to exchange views on a number of issues and to continue to narrow their differences. Three sets of issues had been addressed in the drafting session. First, issues had been identified that Parties had concluded could only be taken up after the Cancun Ministerial Conference, and which would be considered as part of the market access discussions on elements 2 and 3 of the work programme. Those issues included references to build-operate-transfer or public concession contracts, found in both the definition in Article I and in a provision in Article II:1; a threshold proposal in Article II, labelled *Iibis*; and the definition of procurement in Article I.

88. Continuing on his report on the informal meeting, the Chairman said that a second category of issues pertained to provisions currently in basket 1 that, due to linkage, could not be resolved until those in baskets 2 and 3 had been appropriately addressed. One such area involved standards that

related to the technical specifications provisions in basket 2, whilst definitions proposed in Article I in basket 1, included international standards, standards, technical regulations, and technical specifications. A second area concerned a number of bracketed definitions of tendering procedures (selective, limited and open tendering) in the definitions section in basket 1. Other areas concerned the definition of conditions for participation in Article I, which would have to be taken up in the context of the qualification and conditions for participation provisions in basket 2; and references in Article III:1 and III:2 to procuring entities that related to the national treatment obligations of entities, and which linked back to basket 2. Finally, the current Article IV "Publication of Laws and Regulations", needed to be integrated with basket 3 issues; this was more by way of re-location, rather than a substantive issue. All of these would have to be addressed in the context of the work on basket 2.

89. A third category related to specific drafting proposals in basket 1. These included changes in several definitions, as well as in various provisions in Articles II-IV.

90. Overall, Parties had had good discussions and made progress in terms of the drafting of definitions, work on Article II in the valuation provisions, as well as some drafting in Articles III and IV. Several issues had been raised in the course of the meeting which would require further consideration in the context of the revision of the text.

91. The Chairman said that The Group had agreed to hold further informal meetings to further progress the work pertaining to this agenda item – during the periods of 5-8 May 2003, 16-18 June 2003 back-to-back with the meetings on transparency in government procurement, and in the week of 28 July 2003.⁴

92. As regards elements 2 and 3 of the work programme, the Chairman suggested that the Group revert to these at its May 2003 meeting. In addition to the papers that the delegations of Canada and Japan had already submitted, he encouraged other delegations to put forward, before the May meeting, any further ideas on possible approaches to the negotiations in these areas. Given the difficulties they would encounter in devoting adequate time to both the work on the revision of the text and to the other two elements and to undertaking substantive work on all the elements in a balanced way, the Group would need to give priority to the revision of the Agreement in the period up to the Cancun Ministerial Conference. Notwithstanding this, delegations had agreed that the Group would need to come back to these issues on a regular basis in order to maintain the momentum of work if the objectives of the negotiations on the other two elements were to be met within the time-frame of the work programme.

93. The Committee agreed to proceed as set out above.

E. OTHER BUSINESS

(i) *Date of next meeting*

94. The Committee agreed to hold its next meeting in the week of 28 July 2003.⁵

⁴ Subsequently postponed to 11 August 2003.

⁵ Subsequently postponed to the week of 11 August 2003.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 8 OCTOBER 2002

Chairman: Mr. Jan Peter Mout (the Netherlands)

1. The following agenda was adopted:
 - A. Election of Chairman for the Remainder of 2002
 - B. Modifications to the Appendices to the Agreement
 - C. Accessions:
 - (i) *Applications:*
 - *Estonia*
 - *Latvia*
 - *Chinese Taipei*
 - *Panama*
 - *Bulgaria*
 - *Slovenia*
 - *Albania*
 - *Moldova*
 - *Jordan*
 - *Kyrgyz Republic*
 - *Georgia*
 - *Lithuania*
 - (ii) *Other newly acceded WTO Members*
 - (iii) *Streamlining of the accession process*
 - D. Review of National Implementing Legislation

- E. Negotiations under Article XXIV:7
- F. Other Business:
 - (i) *Revision of the Decision on Procedures for Circulation and Derestriction of Documents*
 - (ii) *Response to the letter received from the Chairman of the Committee on Trade and Development*
 - (iii) *Letter from the Chairman of the Committee to WTO Members with observer status in the Committee*
 - (iv) *Letter from the Chairman of the Committee to WTO Members*
- G. Annual Report
- H. Date of the next meeting

A. ELECTION OF CHAIRMAN FOR THE REMAINDER OF 2002

2. Following the resignation of the Chairman for 2002, Mr. Martin Loken, with effect from 2 August 2002, the Committee elected Mr. Jan-Peter Mout of the Netherlands as Chairman for the remainder of 2002.

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Modifications by Japan to Annex 3 of Appendix I*

3. The Chairman said that the proposed modifications to Annex 3 of Appendix I by Japan in GPA/W/196 had become effective on 27 June 2002. The document containing the certification of the modifications had been circulated as WT/Let/425. That document had subsequently been revised and circulated as WT/Let/425/Rev.1 to indicate a technical error related to the effective date of the modifications.

(ii) *Modifications by Singapore to Appendices I, II, III and IV*

4. The Chairman said that the proposed modifications to Appendices I, II, III and IV by Singapore in GPA/W/200 had become effective on 11 August 2002 (WT/Let/429).

(iii) *Proposed modifications by the United States to Annex 2 of Appendix I*

5. The Chairman said that the United States had proposed modifications to Annex 2 of Appendix I which had been circulated in document GPA/W/208, dated 16 September 2002.¹

(iv) *Proposed modifications by Canada to Annex 1 of Appendix I*

6. The Chairman said that Canada had sent a communication proposing modifications to Annex 1 of Appendix I, dated 12 September 2002 (GPA/W/203). In a communication dated 7 October 2002,

¹ These modifications became effective on 16 October 2002 (WT/Let/431).

Hong Kong, China had sought clarification and further information regarding the proposed modifications (GPA/W/218).²

(v) *Proposed modifications by Korea to Annex 3 of Appendix I*

7. The Chairman said that Korea had proposed modifications to Annex 3 of Appendix I, dated 11 September 2002, to withdraw Korea Telecom (KT) from Annex 3 of Appendix I, on the grounds that the Korean Government's control or influence over KT had effectively been eliminated (GPA/W/207). The United States, the European Community and Canada had sent communications objecting to the entry into effect of the proposed modifications and requesting additional time to study and to seek clarification regarding the proposed changes (GPA/W/210, GPA/W/214 and GPA/W/217, respectively).

8. The representative of Korea said that, in August 2002, KT had announced the completion of the privatization of KT that had been carried out since 1993. KT was no longer a government invested entity, and its rights and obligations as a government invested entity had expired. With the sale of its remaining government shares in May 2002, no Korean Government or Korean Government-owned institutions held shares in KT. KT was now owned completely by the private sector, and was thus fully private from both a legal and practical point of view. KT was therefore entitled to conduct its procurement solely on commercial considerations. As a company operated purely by its private shareholders, of which 49 per cent were foreign investors, KT was not subject to any government control or influence, both in legal and practical terms. Before privatization, KT had been subject to both the Commercial Act and the Privatization Act. However, with the completion of the sale of its remaining government shares, KT had been transformed into a fully private company excluded from coverage of the Privatization Act, and only subject to the Commercial Act. Korea had recently held bilateral consultations with the United States and the European Community and was ready to further consult with them in order to expedite the modification process. Those Parties who continued to object to the proposed modifications should specify their concerns or questions in writing as soon as possible.

9. Concerning the confirmation requested by Canada (GPA/W/217) regarding the application of national treatment and MFN obligations of the GATT and the GATS to "any measures taken by the Government of Korea pertaining to purchases by KT", the representative of Korea reiterated that since it was completely privatized earlier this year, KT was free from any government control or influence in making its business decisions including purchasing decisions. The Korean Government accordingly did not have any legal or other means to intervene in KT's purchasing decisions, and it did not envisage taking any measure pertaining to purchases by KT because KT was free to make its purchasing decisions solely in accordance with commercial considerations.³

10. The representative of the United States noted that her delegation had had extensive bilateral discussions with Korea, and that Korea had provided a considerable amount of information. The United States, however, expected to have a few remaining questions to put to Korea. The representative of the European Community said that his delegation had had bilateral discussions with Korea, and that it would be submitting further questions to Korea as soon as possible.⁴

11. The representative of Korea said that the situation in which a private entity was subjected to the procedural requirements of the Agreement was not justified. The Agreement was not intended to discipline the purchasing decisions of private entities which made business decisions solely in accordance with commercial considerations and totally free from the control and influence of the government.

² Canada's replies to questions from Hong Kong, China were subsequently circulated in GPA/W/229.

³ Response subsequently circulated in writing in document GPA/W/222.

⁴ Subsequently circulated in document GPA/W/244.

(vi) *Japan's proposed modifications relating to NTT*

12. With respect to the proposed modification by Japan to its Annex 3 of Appendix I notified in GPA/W/91, the Chairman recalled that consultations had been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/107 and GPA/W/108). Japan's responses to the additional questions from Canada had been circulated in document GPAW/199. The United States had withdrawn its objection to the modifications proposed by Japan on 19 October 2001 (GPA/W/166), and Canada on 1 October 2002 (GPAW/211).

13. The representative of Canada said that Canada had withdrawn its objection based on the particular circumstances relating to NTT Communications and without prejudice to Canada's views in any other circumstances (GPA/W/213).

14. The representative of Japan said the European Community was now the only Party objecting to the withdrawal of the proposed modifications. Japan had requested the European Community to forward written comments before this meeting but that the European Community had been unable to do so due to their own internal consultations. The European Community would not lose any trade benefits accruing to it under the Agreement by the withdrawal of NTT Communications from Annex 3 of Japan's Appendix I because there was no discriminatory treatment against European Community goods and services or suppliers in actual procurement operations by NTT Communications. NTT Communications remained committed to a policy of open, fair and non-discriminatory procurement and in practice had procured telecommunications products from a number of foreign suppliers in various countries including the countries in the European Community. She therefore hoped that the European Community would withdraw its objection to the proposed modifications.

15. The representative of the European Community said that the European Community maintained its objection to the withdrawal of NTT Communications for the time being and would provide written confirmation of its position to Japan in the near future.

(vii) *Japan's proposed modifications relating to railway companies*

16. The Chairman said that, with respect to the proposed modification by the delegation of Japan to its Annex 3 of Appendix I in documents GPA/W/144, 145 and 146, dated 29 August 2001, communications had been received from the delegations of the United States, Canada and the European Community (GPA/W/151, GPA/W/155 and GPA/W/156, respectively) seeking clarification and objecting to the proposed withdrawal of the three Japanese railway companies, namely East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company from the coverage of the Agreement. Communications received from Japan providing clarifications regarding the proposed modifications had been circulated in GPA/W/152 and Corr.1 and GPA/W/179. Additional questions had been received from the European Community and the United States in 2001 (GPA/W/164 and GPA/W/165, respectively). Japan's responses to these questions were contained in GPA/W/180 and GPA/W/181, respectively. In 2002, the delegations of the United States and the European Community had submitted further questions, circulated in GPA/W/204 and GPA/W/205, respectively.⁵ An additional question received from Canada relating to Central Japan Railway Company and West Japan Railway Company had been circulated in GPA/W/212.⁶

⁵ Japan's responses thereto were subsequently circulated in documents GPA/W/233 and GPA/W/234, respectively.

⁶ Japan's responses thereto were subsequently circulated in document GPA/W/235.

17. The representative of Japan said that her delegation had held a series of bilateral meetings with the delegations of Canada, the European Community and the United States which had involved an extensive exchange of questions and answers. Japan believed that the three objecting Parties had come to an adequate assessment of the proposal. Her delegation hoped that Japan could reach a mutual understanding as soon as possible with the three Parties concerned regarding its proposed withdrawal of the three railway companies in accordance with Article XXIV:6(b) of the Agreement. Japan requested the three objecting Parties to proceed with the matter expeditiously.

18. The representative of the European Community said that the responses received from Japan were being reviewed by his delegation and that it hoped to proceed with the matter in an expeditious manner.⁷

19. The representative of the United States said that her delegation would examine closely Japan's responses to its questions. Meanwhile, the United States maintained its objection.

20. The representative of Canada said that in a communication, dated 1 October 2002, Canada had withdrawn its objection to the modification to Appendix I of the Agreement related to the East Japan Railway Company (GPA/W/211). Canada had been holding consultations with Japan with regard to West Japan Railway Company and Central Japan Railway Company respectively.

(viii) Proposed modification by the United States to reflect recent changes in the administrative structure of its Federal Government

21. The Chairman said that, with respect to the proposed modifications to Appendix I by the United States in GPA/W/153, dated 25 September 2001, the delegations of Canada, the European Community and Japan had made communications seeking further information from the United States with respect to the notification in GPA/W/153 and objecting to the proposed modifications going into effect at the end of the 30-day period (circulated in GPA/W/167, GPA/W/163 and GPA/W/162, respectively). The responses by the United States to the questions raised by the three Parties had been circulated in GPA/W/183-185, respectively. Further questions had been put by Japan (GPA/W/195) and the European Community (GPA/W/216).⁸

22. The Chairman said that the Committee would revert to this matter at its next meeting.

C. ACCESSIONS

(i) Applications:

- *Estonia*

23. The Chairman said that the questions raised by the United States regarding replies from Estonia in GPA/W/190/Rev.1 had been circulated in GPA/W/202, dated 22 August 2002. Estonia's replies thereto had been circulated in GPA/W/215. As agreed at the May 2002 meeting, further plurilateral consultations had been held between interested Parties and Estonia on 8 October 2002. At these consultations, the Parties had been informed that Estonia needed additional time to assess the impact on its accession of the forthcoming legislative changes. There also appeared to be a number of issues outstanding in their bilateral consultations with the European Community.

⁷ Follow-up questions received from the European Community have been subsequently circulated in document GPA/W/245.

⁸ The replies of the United States to the questions submitted by the European Community have been subsequently circulated in GPA/W/243.

24. The representative of Estonia said that, since the May 2002 meeting, Estonia had had bilateral consultations with the European Community and an exchange of information with Canada.

- *Latvia*

25. The Chairman said that, as agreed at the May 2002 meeting, further plurilateral consultations had been held between interested Parties and Latvia on 8 October 2002. At these consultations, the Committee had been informed that Latvia would make certain adjustments to its legislation and also that its bilateral consultations with the European Community had been continuing.

26. The representative of Latvia said that Latvia had had bilateral consultations with the European Community during which several issues had been raised relating to the adjustments in the national legislation both in the basic law and in the secondary legislation. Because of the recent elections in Latvia, it was very difficult to give any specific time-frame for the legislative changes.

- *Chinese Taipei*

27. The Chairman said that the former Chairman had held informal consultations with interested Parties in mid-July 2002 to review the status of their bilateral consultations with the delegation of Chinese Taipei regarding the outstanding points on both substance and presentational matters related to the offer of Chinese Taipei.

28. The representative of Chinese Taipei said that bilateral consultations had been concluded with the European Community and Japan. Bilateral consultations with Israel and Singapore were continuing. His delegation hoped that, through greater flexibility, Chinese Taipei's accession process could be expedited.

29. The representative of the European Community confirmed that his delegation had concluded negotiations on issues of substance, and hoped that the accession of Chinese Taipei could take place in the near future.

30. The representative of Singapore said that his delegation was pursuing the bilateral consultations with the delegation of Chinese Taipei. Singapore also wished to see the early accession of Chinese Taipei to the Agreement. At the same time, however, Parties would recognize that the concerns and considerations of different Parties also needed to be addressed in the accession process. He confirmed that there remained a couple of outstanding issues that needed to be further clarified. Singapore looked forward to a positive response from Chinese Taipei in resolving the outstanding issues.

31. The representative of Japan confirmed that Japan had finalized the bilateral consultations with Chinese Taipei on 7 October 2002. Japan hoped that Chinese Taipei would soon become a Party to the Agreement following resolution of any remaining issues with other Parties.

32. The representative of Israel said that the conclusion of bilateral negotiations between Chinese Taipei and Japan and the European Community was a positive development. In general, Israel considered the accession of new Parties to the Agreement as essential for the Agreement and as an important step for the newly acceded WTO Members. In October 2002, Israel had had substantive bilateral consultations with Chinese Taipei which could move towards a mutual agreement in the near future. He hoped that this would be an agreement that could be accepted by Israel's authorities and industries, and at the same time be supported by the Parties to the Agreement.

33. Concluding this sub-item, the Chairman noted that Parties were making good progress in their consultations with Chinese Taipei and that, though some further work needed to be done, he hoped that Chinese Taipei's accession process would be concluded shortly. He encouraged delegations which still had outstanding issues to try to make as much progress as possible in their consultations with the delegation of Chinese Taipei. He was available to consult and offer his good offices to facilitate the process.

- *Panama*

34. The Chairman recalled that the Committee had agreed at the May 2002 meeting to seek plurilateral consultations with Panama before the present meeting. The Secretariat had been informed by the delegation of Panama that it should not be included in the plurilateral consultations that were scheduled for 8 October 2002.

- *Bulgaria*

35. The representative of Bulgaria said her delegation expected to be able to provide additional detailed information shortly regarding amendments to the national public procurement legislation. At the February 2002 plurilateral meeting held on Bulgaria's accession to the Agreement, her delegation had made a request that Parties provided information pertaining to export opportunities in their markets so as to enable Bulgaria to assess its existing and potential export capabilities. This request had been made pursuant to the Marrakesh Decision on Accession to the Agreement on Government Procurement of 1994 and the Protocol of Accession of Bulgaria to the WTO. Since then, it had been reiterated in the Committee on Government Procurement, in bilateral contacts with Parties to the Agreement, in the Workshop on Accession to the Agreement on Government Procurement, and also in the context of the preparation of the Technical Assistance Plan of the Secretariat for 2003. So far, no such information had been provided by Parties. Bulgaria continued to expect the provision of this information, which would facilitate its accession to the Agreement. Her delegation was ready to work with Parties towards that objective.

36. The representative of Canada said that her delegation had one further follow-up question for Bulgaria.⁹ The representative of the United States said it had a couple of further questions which would be submitted shortly.

- *Slovenia*

37. The representative of Slovenia said that his Government considered it important that the legislative amendments be adopted by the Parliament before Slovenia submitted its offer. Among other things, the amendments would involve the definition of the entities in Slovenia. This would contribute to a clear understanding of the entities that would be listed in Slovenia's offer.

- *Albania*

38. The Chairman said that Albania had received questions from the European Community; Hong Kong, China; Switzerland; Canada; and the United States (GPA/SPEC/26, GPA/W/169, GPA/W/174, GPA/W/178 and GPA/W/209, respectively).¹⁰

⁹ Subsequently circulated in document GPA/W/219.

¹⁰ Albania's replies to the questions put by the European Community; Hong Kong, China; Switzerland; and Canada have been subsequently circulated in documents GPA/W/238-241, respectively.

- *Moldova*

39. The Chairman said that the questions received from Hong Kong, China had been circulated in GPA/W/206.

- *Jordan*

40. The representative of Jordan said that a study assessing the impact of Jordan's accession to the Agreement and using statistical data for the years 1997-2000 had been finalized in August 2002. Concurrently, the Engineers Association and the Contractors Association, both private sector institutions, had also submitted an impact assessment study, as related to their respective sectors. Both studies had been reviewed and analysed by a national committee consisting of members from both the private and public sectors. The national committee would be responsible for preparing the initial entity offer after coordination with different stakeholders. After its completion, the initial entity offer would be presented to the Prime Minister's office for final approval. Concerning modernization of procurement system, he said that the proposed public procurement legislation was to take the form of a bye-law; that the Government Tenders Directorate and the General Supplies Department would remain independent entities; and that a high-level procurement committee, linked to the Prime Minister's office, would be established.

41. The representatives of the United States, Israel, Canada, and the European Community, noted the good progress being made by Jordan in its accession process, and said they looked forward to receiving Jordan's initial entity offer before the end of 2002.

- *Kyrgyz Republic*

42. The Chairman said that the replies to the Checklist of Issues had been circulated in GPA/W/197, dated 10 June 2002. Further questions raised by the delegation of the United States had been circulated in GPA/W/201. The representative of the European Community said that his delegation would be submitting questions to the Kyrgyz Republic in the near future.

- *Georgia*

43. The Chairman said that no developments had taken place with regard to Georgia's accession since the May 2002 meeting.¹¹ The representative of Canada said that her delegation would submit questions to Georgia in the near future.¹²

- *Lithuania*

44. The Chairman said no developments had taken place with respect to the accession of Lithuania since the May 2002 meeting.

(ii) *Other newly acceded WTO Members*

- *Oman*

45. The Chairman said no developments had been reported in respect of Oman's accession to the Agreement since the February 2002 meeting.

¹¹ In a communication dated 8 October 2002, Georgia applied for accession (GPA/71).

¹² Subsequently communicated in GPA/W/220, dated 6 November 2002.

- *Croatia*

46. The Chairman said that no developments had been reported in respect of Croatia's accession to the Agreement since the February 2002 meeting.

- *China*

47. The representative of China said that new legislation on government procurement had been adopted in June 2002 and would be enacted on 1 January 2003.

- *Mongolia*

48. The Chairman said that no developments had been reported regarding the accession of Mongolia since the September 2001 meeting.

(iii) *Streamlining of accession process*

49. The Chairman said that, as agreed at the May 2002 meeting, the Committee had held informal consultations on streamlining the accession process at which Parties had an exchange of views on how to improve and accelerate the procedures for acceding countries, including those with economies in transition and developing countries. It had been agreed to revert to a number of suggestions made in this context at the next Committee meeting. The issues raised at the informal meeting could form the basis of further discussions on this matter.

50. The Committee agreed to revert to the matter of accessions at its next meeting.

D. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

51. The Chairman said that Iceland had recently notified its implementing legislation (GPA/69). In accordance with the procedures agreed for the review of implementing legislation, the Committee agreed that delegations that wished to put questions to Iceland should do so by 16 December 2002¹³, and that Iceland should provide its answers by 16 February 2003.

52. The Chairman recalled that at the May 2002 meeting, the delegation of the Kingdom of Netherlands with respect to Aruba had been invited to submit its notification of the implementing legislation in accordance with the requirements in GPA/1/Add.1. The representative of the Netherlands said that he had been informed by the Aruban authorities that no progress had been made in this respect.

E. NEGOTIATIONS UNDER ARTICLE XXIV:7

53. The Chairman reported on the informal meeting held on the Article XXIV:7 negotiations on 7 October 2002. The Group had pursued the Article-by-Article review of the Agreement on the basis of the proposals by various delegations compiled in the Secretariat note "Suggested Drafting Changes to the 1994 Agreement", dated 23 September 2002 (Job No. 7423). Delegations also had available to them a non-paper by Korea relating to amendment to Article XXIV:6(b) (Job No. 5669); a non-paper by Japan proposing amendments to a number of Articles (Job No. 6846); a non-paper by Chinese Taipei suggesting drafting changes to selected Articles of the Agreement (Job No. 7872); a non-paper by Norway on amendments to Article VII (Job No. 7935); an explanatory note by Japan relating to its proposal on Article XXIV:6(b) circulated earlier in Job No. 6846 (Job No. 7823); and an explanatory note by Japan relating to its proposal on Article I:2 concerning BOT or equivalent contracts also circulated earlier in Job No. 6846 (Job No. 7790). Furthermore, the informal Group had before it a

¹³ No questions had been put to Iceland as of the date of issue of this document.

note by the Secretariat summarizing the discussion of the issues in relation to basket 1 of the work programme (Job No. 7496); an annotated agenda relating to basket 2 issues (Job No. 7478); and annotated agenda relating to basket 3 issues (Job No. 7448). The Group had a focused discussion on basket 2 issues, relating to tendering procedures, technical specifications and related definitions, and basket 3 issues relating to information and review as regards obligations of entities, information and review as regards obligations of Parties, enforcement, institutions, and statistical reporting. It also had reverted briefly to basket 1 issues relating to basic principles, scope and coverage and related definitions, exceptions, developing countries and accessions. The Group had also considered elements 2 and 3 of its work programme, relating to expansion of coverage and elimination of discriminatory measures. It had been informed by the delegations of Canada and Japan that they expected shortly to be in a position to table ideas on possible approaches regarding the negotiations in these areas, as envisaged in the decision on timetable and work programme of February 2002.¹⁴ As regards documentation regarding the work done at this meeting, the Chairman had suggested that the Secretariat be requested, once more to update the two-column text, namely "Suggested Drafting Changes to the 1994 Agreement", in the light of the proposals recently submitted and the detailed comments made and clarifications sought at the present meeting¹⁵; update the note on the discussion of the issues in relation to basket 1 of the work programme; and prepare notes on the discussion of the issues in relation to baskets 2 and 3, based on the responses given by delegations at the present meeting to the issues raised in the annotated agendas relating to each of these baskets.¹⁶ The work programme encouraged the tabling of all proposals relating to the review of the text of the Agreement no later than 1 September 2002. The delegation of Norway had foreshadowed tabling, in the near future, a non-paper relating to the note in the Agreement on tied aid and Japan on electronic procurement. A number of delegations had reserved the right to come forward with further proposals or respond to future proposals. Regarding the next steps, the Chairman recalled that the Committee had agreed at the February 2002 meeting that it would hold four informal meetings in 2002 and suggested the week of 9 December 2002 for the fourth informal meeting in 2002.¹⁷ As regards the work on the text of the Agreement, the Chairman recalled that it had been envisaged at the February meeting that work would start at the fourth meeting of 2002 on the basis of a text by the Chairman. However, a number of delegations had indicated that it would be their intention to work intensively together in the coming weeks on issues in baskets 1 and 2 in order to seek to narrow differences. Given the very large number of proposals still on the table and the many outstanding differences, some more important than others, the Chairman had encouraged such work. It was important that delegations were in a position to share the fruits of this further work in good time before the next meeting in order to make that meeting productive. With regard to basket 3, the Chairman had said that it was his plan to seek to prepare a text for the consideration of the Group on all the elements other than that concerning Article XXIV:6, where further discussion was clearly necessary. With regard to elements 2 and 3 of the work programme the Chairman had said that in addition to the papers that the delegations of Canada and Japan had already foreshadowed, he encouraged other delegations to put forward, before the next meeting, their ideas on possible approaches to the negotiations in these areas. Finally, as regards the meeting schedule for 2003, the Chairman had suggested that it would be necessary to step up the intensity of activity and to use different formats in addition to the informal Group if the Committee was to have provisional agreement on the text by the Cancun Ministerial Conference next September, as the Committee had previously agreed. He had said delegations would have to be ready to make themselves available at relatively short notice and, at times, for extended consultations. Nonetheless, he had considered it useful if the Secretariat were to pencil in at least three meetings for the Committee prior to Cancun, to be coordinated as usual with meetings of the Working Group on Transparency in Government Procurement, and had suggested that the Committee revert to this matter at the next meeting.

¹⁴ The submission by Japan was subsequently circulated as Job No. 8223.

¹⁵ Subsequently circulated as Job No. 8957.

¹⁶ Subsequently circulated as Job Nos. 7496/Rev.1, 9018 and 9034, respectively.

¹⁷ This meeting was subsequently postponed to February 2003.

54. The representative of Korea said his delegation had no objection in principle to working intensively on the issues in baskets 1 and 2 in order to seek to narrow differences and to help to expedite work. With regard to basket 3, he sought clarification as to whether there was any plan to actually discuss Article XXIV:6 in the 2003 meetings, since further discussion on this article was clearly necessary. The Chairman said that he believed it was important that the next meeting should focus on baskets 1 and 2, as otherwise there was the risk that discussions would develop too broadly. He noted that some progress had been made at this informal meeting on the issue of Article XXIV:6, with papers tabled, for instance, by the delegations of Korea and Japan (Job Nos. 5669 and 7823, respectively). Noting that this was one of the difficult issues, he encouraged delegations to continue to work on it and to revert to it in 2003.

55. The Chairman said that at the next meeting the Group should try to put together a list of the more substantive issues that would require further discussion. He encouraged delegations to give due consideration to the issues that might appear on that list.

56. The Committee agreed to proceed as suggested by the Chairman.

F. OTHER BUSINESS

(i) *Revision of the Decision on Procedures for Circulation and Derestriction of Documents*

57. The Chairman said that at the May 2002 meeting, it was agreed that the Committee would update its Decision on Circulation and Derestriction of Documents (GPA/1/Add.2) in order to reflect the WTO procedures adopted on 14 May 2002 (WT/L/452). After a brief discussion, the Committee adopted the revised Decision on the basis of a draft text circulated by the Secretariat (GPA/72).

(ii) *Response to the letter received from the Chairman of the Committee on Trade and Development*

58. The Chairman drew attention to his response, on behalf of the Committee, to a letter that he had received from the Chairman of the Committee on Trade and Development (CTD) requesting that the CTD be kept informed of discussions or developments relating to special and differential treatment taking place in the Committee on Government Procurement.

(iii) *Letter from the Chairman of the Committee to WTO Members with observer status in the Committee*

59. The Chairman said that, as agreed by the Committee at the May 2002 meeting, he had written a letter, on behalf of the Committee, to the WTO Members with observer status in the Committee inviting them to make written contributions on how the relevant provisions and decisions on developing countries and accessions could be improved.

(iv) *Letter from the Chairman of the Committee to WTO Members*

60. The representative of Israel, supported by the representative of the European Community, suggested that the Chairman send a letter to all WTO Members informing them about the Article XXIV:7 negotiations and encouraging them to become observers to the Committee. Since the beginning of the review, the atmosphere had changed in the WTO because of the Doha Development Round and there might be more interest by other WTO Members to join in this process.

61. After a brief discussion, the Committee agreed that the Chairman would write a letter to all WTO Members, with a view to bringing them up to date on the Article XXIV:7 negotiations and inviting any contributions they might have with respect to this process.

G. ANNUAL REPORT

62. The Committee considered its report to the General Council on the basis of a draft text prepared by the Secretariat which was revised in light of comments by delegations and subsequently adopted (GPA/73).

H. DATE OF THE NEXT MEETING

63. The Committee agreed to hold its next meeting in early 2003.¹⁸

¹⁸ Subsequently scheduled for 6 February 2003.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/18
5 August 2002

(02-4312)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 31 MAY 2002

Chairman: Mr. Martin Loken (Canada)

1. The following agenda was adopted:
 - A. Application for Observer Status
 - B. Modifications to the Appendices to the Agreement
 - C. Accessions:
 - (i) *Chinese Taipei*
 - (ii) *Estonia*
 - (iii) *Latvia*
 - (iv) *Bulgaria*
 - (v) *Slovenia*
 - (vi) *Albania*
 - (vii) *Moldova*
 - (viii) *Jordan*
 - (ix) *Kyrgyz Republic*
 - (x) *Panama*
 - (xi) *Lithuania*
 - (xii) *Newly Acceded WTO Members*
 - (xiii) *Workshop on GPA Accession*
 - (xiv) *Streamlining of the Accession Process*
 - D. Review of National Implementing Legislation
 - E. Negotiations under Article XXIV:7

F. Other Business:

- (i) *Notification under Article XXIV:5*
- (ii) *Letter from the Chairman of the Committee on Trade and Development relating to the Committee's work on special and differential treatment*
- (iii) *Procedures for circulation and derestriction of documents*
- (iv) *The date of the next meeting and Chairmanship.*

A. APPLICATION FOR OBSERVER STATUS

2. The Committee agreed to grant observer status to UNCTAD in response to a request received from the UNCTAD Secretariat (GPA/W/188) and pursuant to the decision it had taken on the matter of observership (GPA/1, Annex 1).

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

- (i) *Recent modifications by Japan relating to Annex 3 of Appendix I*

3. The Chairman said that the proposed modifications to Annex 3 of Appendix I by Japan dated 15 March 2002 (GPA/W/186) had become effective on 15 April 2002 (WT/Let/419).

4. The Chairman said that Japan had proposed further modifications to Annex 3 of Appendix I circulated in document GPA/W/196 dated 28 May 2002.¹

- (ii) *Modifications by Hong Kong, China*

5. The Chairman said that Hong Kong, China has made a communication proposing changes to its Appendix II which would be circulated to Parties shortly.²

- (iii) *Japan's proposed modifications relating to NTT*

6. The Chairman said that, with respect to the proposed modification by Japan to its Annex 3 of Appendix I notified in document GPA/W/91, consultations had been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/107 and GPA/W/108). In a communication dated 19 October 2001, the delegation of the United States had withdrawn its objection to the modifications proposed by Japan (GPA/W/166).

7. The representative of Japan said that Japan's responses to the questions put by Canada during the bilateral consultations held in October 2001 had been circulated to Parties (GPA/W/199). Further bilateral consultations had recently been held with Canada and the European Community. Her delegation had responded promptly to a request for clarification by Canada and hoped that Canada would shortly be in a position to reach a decision regarding the withdrawal of its objection. The delegation of the European Community had made some new comments on the responses received from Japan, in particular concerning conditions of competition and liberalization in the Japanese telecommunications market. Discussions with Canada and the European Community had been ongoing for a considerable period of time. Her delegation was reviewing the situation seriously and expected to report its position *vis-à-vis* these Parties before the next meeting.

¹ These modifications subsequently became effective on 29 June 2002 (WT/Let/425).

² Subsequently circulated in document GPA/W/198 and became effective on 6 July 2002 (WT/Let/425).

8. The representative of the European Community said that constructive consultations had taken place with the delegation of Japan. The representatives of the European Community and Canada said that their delegations were not in a position to withdraw their objections to the proposed modifications in GPA/W/91 for the time being.

9. In concluding the discussion, the Chairman encouraged the Parties involved to continue consultations in order to resolve the issue as soon as possible and said that the Committee would revert to this matter at its next meeting.

(iv) Japan's proposed modifications relating to railway companies

10. The Chairman said that, with respect to the proposed modification by the delegation of Japan to its Annex 3 of Appendix I in documents GPA/W/144, 145 and 146, dated 29 August 2001, communications had been received from the delegations of the United States, Canada and the European Community (GPA/W/151, 155 and 156) seeking clarification and objecting to the proposed withdrawal of the three Japanese railway companies, namely East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company from the coverage of the Agreement. Relevant notifications received from Japan had been circulated in documents GPA/W/152, GPA/W/152/Corr.1 and GPA/W/179. Additional questions had been received from the European Community and the United States on 19 October 2001 (GPA/W/164 and 165, respectively). Japan's responses to these questions were contained in documents GPA/W/180 and GPA/W/181, respectively.

11. The representative of Japan said that her delegation had held a series of bilateral meetings with Canada, the European Community and the United States which had involved an extensive exchange of questions and answers. Japan believed that the three objecting Parties had had sufficient time to conduct a careful review of the proposal and come to an adequate assessment thereof. Her delegation hoped that a mutual understanding could be reached as soon as possible that Japan's proposed withdrawal of the three railway companies was consistent with Article XXIV:6(b) of the Agreement. In order to expedite the process, Japan also hoped that the Parties objecting to the entry into force of the proposed modifications could specify in writing any outstanding concerns in regard to the Japanese proposal before the next meeting. This would allow Japan to clearly understand the reasons for the objections which could then be addressed in consultations with concerned Parties.

12. The representative of the European Community thanked Japan for the information that had been provided and for the useful explanations relating to the status of Japan railway companies and the organization of the rail sector in Japan in general. His delegation expected to submit further questions before the next meeting. Regarding Japan's suggestion that delegations' specific concerns be expressed, the European Community would seek to achieve a clearer picture of the status of the market and the situation of Japanese railway companies before it could do so in writing. The representative of the United States said that her delegation was considering the matter and might have additional questions to put to Japan. Joined by the representative of Canada, she said that, for the time being, no commitments could be undertaken with respect to the suggestion by Japan that her delegation's concerns be explained in writing.

13. In concluding the discussion, the Chairman encouraged the Parties to continue consultations with a view to resolving the issue soon and said that the Committee would revert to this matter at its next meeting in the light of further developments.

(v) Proposed modification by the United States to reflect recent changes in the administrative structure of its federal Government

14. The Chairman said that, with respect to the proposed modifications to Appendix I by the United States in document GPA/W/153, dated 25 September 2001, the delegations of Canada, the

European Community and Japan had made communications seeking further information from the United States with respect to the notification in GPA/W/153 and objecting to the proposed modifications going into effect at the end of the 30-day period (respectively circulated in documents GPA/W/167 of 24 October 2001, GPA/W/163 of 19 October 2001 and GPA/W/162 of 22 October 2001). The responses by the United States to the questions raised by the three Parties had been circulated in documents GPA/W/183-185. A further set of questions had been put by Japan in document GPA/W/195.

15. The representatives of the European Community and Canada said that the responses to their questions received from the United States were currently being reviewed. The delegation of the European Community said that his delegation expected to submit further questions before the next meeting. The representative of Canada said that her delegation was not in a position to withdraw its objection to the modification at the present time.

16. The representative of the United States said that her delegation was in the process of answering the latest questions received from Japan in GPA/W/195 and would respond to the questions to be put by the European Community in due course.

17. The Chairman said that the Committee would revert to this matter at its next meeting.

C. ACCESSIONS

(i) *Chinese Taipei*

18. Reporting on the developments regarding the accession of Chinese Taipei, the Chairman said that, at the February 2002 meeting, many delegations had required more time to further review the offer of Chinese Taipei in document GPA/SPEC/1/Rev.2 and that some delegations had remaining substantive concerns. Since that meeting, he had held informal consultations with the Parties so as to review the status of their bilateral consultations with the delegation of Chinese Taipei. There had also been several bilateral meetings between the delegation of Chinese Taipei and concerned Parties but some substantive issues remained to be resolved. Moreover, a letter elaborating on the issue of nomenclatures that had been raised by the observer from China at the Committee's February 2002 meeting had been received from the delegation of China on 2 April 2002. The letter, addressed to the Chairman, had been circulated informally to Parties.

19. The representative of Singapore said that, at the February 2002 meeting, Singapore had raised a number of concerns in regard to the revised offer of Chinese Taipei. Since then, her delegation had held two bilateral meetings with the delegation of Chinese Taipei, at which no progress had been made. Among other concerns relating to the offer by Chinese Taipei, her delegation considered that the exclusion of Singapore from a list of goods such as electricity machinery and rail transport equipment and services and construction relating to the electricity sector, contained in paragraph 6 of the General Notes, constituted discrimination against Singapore; the language contained in Note 4 to Annex 3 concerning procurement by Chunghwa Telecom could be open to arbitrary interpretation and hence should be reviewed; and the word 'leased' contained in Note 3 to Annex 4 should be deleted. Singapore was not in a position to endorse Chinese Taipei's accession to the Agreement at the present meeting and expected a positive response from the delegation of Chinese Taipei in addressing its concerns. Finally, Singapore noted the commitments undertaken by Chinese Taipei to accede to the Agreement after its accession to the WTO, and urged Chinese Taipei to adopt a more forthcoming attitude in order to achieve this end expeditiously.

20. The representative of the European Community said that his delegation had a concern with regard to the Note 4 to Annex 3 concerning Chunghwa Telecom.

21. The representative of Japan said that his delegation had not yet concluded bilateral negotiations with the delegation of Chinese Taipei and had concerns similar to those raised by Singapore regarding Chunghwa Telecom.

22. Regarding the next steps in the accession of Chinese Taipei, the Chairman urged delegations who had not yet completed the bilateral consultations with Chinese Taipei to do so as soon as possible, and added that he would continue to be available to consult and use his good offices in order to facilitate final agreement. He suggested that the Committee revert to this matter at the next meeting.

(ii) *Estonia*

23. The Chairman said that the revised offer of Estonia was contained in GPA/SPEC/9/Rev.1 dated 12 February 2002. Further questions received from the United States regarding Estonia's offer and Estonia's replies thereto had been circulated in document GPA/W/190/Rev.1.

24. The representative of Estonia said that, in addition to the exchange of information with the United States, consultations had recently been held with the delegations of Canada and the European Community, in which domestic legislation and certain aspects of the revised offer from Estonia had been discussed.

25. The representative of Canada said that her delegation would continue to review the revised offer and expected to give some comments to the delegation of Estonia prior to the next meeting.

26. The representative of Israel said that Estonia's revised offer was currently under review and reserved the right to make comments to or requests of the delegation of Estonia.

27. As a means of moving the process of accession of Estonia forward, the Chairman suggested that further plurilateral consultations be held between Estonia and interested Parties before the October 2002 meeting of the Committee. The Committee so agreed.

(iii) *Latvia*

28. The representative of Latvia said that, since the previous Committee meeting, bilateral consultations had continued with the European Community, in the course of which issues that warranted further reflection had been raised. Most of these issues were very detailed in character and involved substantial technical work on behalf of Latvia. His delegation continued to work on all concerns raised in the course of bilateral consultations and would provide a report on the status of the negotiations at the next meeting.

29. The representative of Switzerland said that, despite the completion of discussions between Switzerland and Latvia, a number of issues between other delegations and Latvia that remained unresolved created uncertainty as to the future of Latvia's accession. It was not encouraging in terms of the accession process that the developments reported were the same at every meeting.

30. The Chairman said that, in order to expedite the accession of Latvia, further plurilateral consultations could be held between Latvia and interested Parties at the time of the October 2002 meeting which would, among others, address certain systemic issues related to Latvia's accession. The Committee so agreed.

(iv) *Bulgaria*

31. The Chairman said that, pursuant to the informal plurilateral consultations that had been held between Bulgaria and interested Parties on 21 February 2002, a number of follow-up questions and comments from the United States and Bulgaria's answers thereto had been circulated in document GPA/W/189/Rev.1.

32. The representative of Bulgaria said that, in April 2002, the Parliament had passed the new amendments to the Public Procurement Law, which were published in the State Gazette on 26 April 2002. In response to a question by the Chairman whether the amendments made to the Procurement Law would alter the substance of the responses of Bulgaria to the Checklist of Issues, the representative of Bulgaria said that her delegation was engaged in reviewing whether the Checklist needed to be updated in light of the recent amendments. She reiterated a request that her delegation had made at the informal plurilateral consultations held in February 2002 that Parties provide information pertaining to export opportunities in their markets so as to enable Bulgaria to assess its existing and potential export capabilities. She said that that request had been made pursuant to the Marrakesh Decision on Accession to the Agreement and the Protocol of Accession of Bulgaria to the WTO. Her delegation considered that the provision of technical assistance and information from Parties pertaining to potential export capabilities and domestic market opportunities would enable Bulgaria to make an assessment of the content of an eventual offer and the conditions under which Bulgaria would accede to the GPA. With regard to the submission of an initial offer, she said that, while intensive domestic consultations were taking place, her delegation was unable to provide a date for the submission of an offer.

(v) *Slovenia*

33. The Chairman said that, pursuant to the informal plurilateral consultations that had been held between Slovenia and interested Parties on 21 February 2002, a number of follow-up questions and comments from the United States had been circulated in GPA/W/192 dated 25 April 2002.

34. The delegation of Slovenia said that the Slovenian Public Procurement Legislation was under substantive revision in order to ensure its adherence to the rules and procedures of international agreements to which Slovenia was acceding, notably the GPA and the relevant EC Directives, and achieve fine-tuning with practices in Slovenia. Further, the amendments were also aimed at setting out criteria defining the various categories of entities that would reflect the broad coverage of the Agreement, while capturing national specificities. She said that GPA Parties would be regularly informed of progress concerning legislative harmonization which was deemed to be an essential precondition for undertaking an international commitment that required ratification by Parliament. Her delegation reiterated the importance of the process of accession to the Agreement in terms of both the development of the domestic public procurement market and the opening of opportunities for national bidders in the markets of GPA Parties.

(vi) *Albania*

35. The Chairman said that, at the last meeting Albania had been invited to reply to the questions received from the European Community; Hong Kong, China; Switzerland; and Canada (GPA/SPEC/26, GPA/W/169, GPA/W/174 and GPA/W/178, respectively). Since the February 2002 meeting, Albania had communicated additional information on its national legislation in GPA/65/Add.1 dated 17 April 2002.

(vii) *Moldova*

36. The Chairman said that Moldova's replies to the questions put to it by Hong Kong, China and questions put by the United States had been circulated in documents GPA/W/191 and GPA/W/193 respectively. The representative of the European Community said that his delegation was currently reviewing the information that had been provided, and its questions would be submitted before the next meeting.

37. The representative of Moldova said that the Ministry of Economy had undergone some structural adjustment which included strengthening of the capacity of the structure responsible for government procurement. Officials responsible for accession to the Agreement would initiate the relevant work shortly.

(viii) *Jordan*

38. Reporting on the progress of Jordan's accession, the representative of Jordan highlighted the following information. First, the national committee comprised of members from both the private and public sectors was working on the preparation of an initial entity offer. Several working groups had been formed and were currently collecting and analysing data related to procurement of works, goods, and services in order to assess the impact of accession to the Agreement on local industries. Positive progress had been made in assessing technical assistance needs in this context. Second, data regarding procurement of goods, works and services in 1997 to 2000 had been compiled and delivered to serve as a database for comprehensive studies. These studies were designed to cover eight out of a possible 14 industrial sectors which might be affected by the requirements under the GPA. Independent studies were also being carried out by the chambers of commerce and industry, and engineers' and contractors' associations. The findings of these studies would be considered in the preparation of the initial entity offer, which was anticipated to be submitted before the end of the year. Third, legislative bodies were working on the new version of the procurement legislation. Regarding the organizational structure of the procurement entities of goods, works and services, a decision had been taken by the government on 8 May 2002 to maintain the two central procurement entities in operation as two independent bodies. One entity would be specialized in the procurement of goods and services and the other specialized in the procurement of works and engineering services. Moreover, the decision advised the issuance of a by-law in order to guarantee harmonization of the procurement process between the two entities and other governmental departments.

39. The representative of the United States, joined by the representative of Canada, said that her delegation looked forward to receiving Jordan's offer, hopefully by the end of the year. With regard to the market studies under way in Jordan, the representative of Switzerland said that procurement data analysis and the studies on the impact of public procurement liberalization were very difficult to conduct, partly due to the lack of an accepted general methodology. In the experience of Switzerland, a major consequence of accession to the Agreement had been the creation of an internal market for public procurement which resulted in greater competition among local firms.

(ix) *Kyrgyz Republic*

40. The Chairman said that the Kyrgyz Republic had recently submitted its replies to the Checklist which had been circulated in document GPA/W/197. Any questions to be put to the Kyrgyz Republic, in respect of its responses to the Checklist of Issues, should be submitted by 2 August 2002.

41. The representative of the Kyrgyz Republic said that major work was currently under way in the Kyrgyz Republic aimed at bringing national legislation into conformity with the standards of international instruments including requirements pertaining to local content and bidding procedures. He said that technical assistance in the form of plurilateral or bilateral consultations with delegations,

or sharing views and experiences on the implementation of the Agreement on a bilateral basis would be welcome. His delegation anticipated fruitful and mutually beneficial negotiations, and was looking forward to receiving questions pertaining to its replies to the Checklist.

(x) *Panama*

42. The Chairman said that there had been no recent reports regarding Panama's accession to the Agreement. He suggested that plurilateral consultations could be held with Panama before the October Committee meeting in order to move the process of accession forward. The Committee so agreed.

(xi) *Lithuania*

43. The representative of Lithuania said that Lithuania had applied for accession to the Agreement on 8 March 2002 (GPA/66). His authorities were proceeding with the revision of the relevant national legislation in the field of government procurement.

44. On behalf of the Committee, the Chairman invited Lithuania to submit its replies to the Checklist as soon as possible.

(xii) *Newly Acceded WTO Members*

- *Oman*

45. The Chairman said that Oman's replies to the Checklist of Issues had been circulated in GPA/W/141. Questions put by the European Community, the United States and Canada to Oman in November and December 2001 had been circulated in documents GPA/SPEC/27, GPA/SPEC/25 and GPA/W/176, respectively. In the informal discussions he had held with the delegation of Oman, he had urged it to apply for accession formally, and hoped that this would be achieved soon.

- *Georgia*

46. The Chairman said that the replies of Georgia to the Checklist had been circulated in document GPA/W/187. The United States had put questions to Georgia in document GPA/W/194. Georgia had provided information on its national legislation in document GPA/68.

- *Croatia*

47. The Chairman said that he had been informed by the delegation of Croatia that work under way on its procurement legislation was continuing.

- *Other WTO Members with commitments in respect of the Agreement*

48. The representative of China said that the achievement of observer status in February 2002 demonstrated the willingness of China to implement commitments they had undertaken in relation to the GPA on accession to the WTO. Following the progress made over the last few years in the establishment of the government procurement legislative regime, the new government procurement legislation had entered the final stage of preparation and was expected to enter into force in the near future.

(xiii) *Workshop on Accession*

49. The Chairman said that a WTO Workshop on Accession to the Agreement had been held in Geneva on 27-28 May 2002, in which more than 45 capital-based officials from acceding and other observer countries had participated. He thought that the event had been useful to acceding countries as well as to the Parties to the Agreement. He noted the relevance of the Accessions Workshop not only to the accessions currently under way, but also to the work on the review of the Agreement in which the question of how to optimize the accession procedures, among other issues, was being dealt with.

50. The representatives of the United States, Switzerland, the European Community, Canada, the Kyrgyz Republic, China and Lithuania expressed their appreciation of the Workshop. The representative of Bulgaria said that the Workshop had been timely and useful. The representative of the Kyrgyz Republic said that officials had been trained in the course of the Workshop and had acquired some useful and fruitful knowledge. The representative of China considered that further training programmes would prove useful. The representative of Lithuania said that the Workshop constituted a valuable input into the process of accession.

51. The representative of the United States said that the Workshop had provided a good opportunity to discuss issues on a broader basis than was sometimes possible in the Committee, and that the Committee should consider the possibility of following up on the initiative through holding small group discussions with acceding countries focused on particular issues, which could take place possibly on an informal basis and in the margins of formal Committee meetings.

52. The representative of Switzerland emphasized the importance of technical assistance provided by multilateral development banks as well as Parties, such as the European Community and the United States, in relation to the ongoing accession processes. He said that the Committee should be able to draw useful lessons from the Workshop and sharpen the link between technical assistance and the process of accessions. In regard to procedures for accession, he noted the possibility that individual Parties might provide counsel and advise to individual acceding countries in preparing or modifying their offers.

53. The representative of the European Community said that a number of issues had been raised in the Workshop with regard to the accession process that warranted consideration. His delegation had noted that countries initiating the accession process had found it useful to have an exchange of information with countries at a more advanced stage in the accession process. In that regard, the European Community believed that the Committee should consider ways in which a more informal exchange of information on practical issues on accession could be organized.

(xiv) *Streamlining of the Accession Process*

54. In response to a point raised by the representative of the Kyrgyz Republic, that economies in transition that are acceding to the Agreement could be allowed certain flexibility in the process, the representative of Switzerland said that the situation of economies in transition differed substantially from that of long standing Parties to the Agreement, and therefore urged the Committee to find appropriate solutions, so that accession process was not unduly slowed down. The notion that an economy in transition must undergo a period of adaptation would suggest that there would be recurring changes in the government procurement regime. His delegation recognized that such a period of transition may take between five and eight years and structures of ownership within the government may be modified, and functions rearranged. He suggested that the Committee adopt an appropriate methodology in the light of the particular circumstances of economies in transition.

55. The European Community suggested that the Committee examine in the informal discussions on the review of the text of the Agreement the appropriateness of a definitions-based approach to the preparation of an offer. He noted that, although positive lists allowed a certain clarity, continued changes in the entity lists as a consequence of the evolution of government structures were undesirable.

56. The Chairman suggested that the Committee take up the question of how procedures on accessions could be improved at an informal meeting in October. The Committee so agreed.

D. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

57. The Chairman said he had been informed by the delegation of Iceland that the preparation of Iceland's replies to the Checklist were in progress.

58. The representative of the Kingdom of Netherlands with respect to Aruba said that Aruba was not yet in a position to submit the notification given the current revision of the major procurement regulation. The authorities in Aruba preferred to base the review of the implementing legislation on the most recent regulations and the notification of complementary legislation would be submitted upon completion of the legal process.

E. NEGOTIATIONS UNDER ARTICLE XXIV:7

59. The Chairman said that an informal meeting on Article XXIV:7 negotiations had been held on 30 May 2002. The group had pursued the Article-by-Article review of the Agreement on the basis of the proposals by various delegations compiled in the Secretariat's Note 'Suggested Drafting Changes to the 1994 Agreement', dated 1 May 2002 (Job 3576). Delegations also had available to them a non-paper by the European Community entitled 'Drafting Proposals on the Preamble and Articles I, II, III, XVI, XVII and XXIV of the Agreement' (Job 4312), a proposal by Korea on amendments to Article XXIV:6(b) of the Agreement; a communication from Japan entitled 'Japan's comments on the United States' proposals in Jobs 2667 and 1051 and the proposal by the European Community in Job 876' (Job No. 5474); and a Note by the Chairman 'Annotated Agenda on Basket 1 Issues' (Job 3893). The Group had a detailed discussion of the proposed drafting changes to the Articles of the Agreement relating to basket 1 items in the work programme, namely basic principles, scope and coverage and related definitions, exceptions, developing countries, and accessions. The main focus of discussions had been on the issues raised in the Annotated Agenda. In the context of the discussion on developing countries and accessions, the group had agreed that the Chairman would write a letter to the countries with observer status in the Committee inviting them to make written contributions on how the relevant provisions and decisions could be improved. The group had also reverted, briefly, to the basket 2 items which included tendering procedures and technical specifications and related definitions. The Secretariat would update the side-by-side document 'Suggested Drafted Changes to the 1994 Agreement' in light of the proposals recently submitted, and the detailed comments made and clarifications sought at the meeting. Delegations were reminded that the work programme discussed and agreed at the February meeting foresaw the tabling of all proposals relating to the review of the text of the Agreement no later than 1 September 2002. Regarding the next informal meeting to be held on 7 October 2002, the Chairman suggested that the Group have a focused discussion on basket 2 issues, relating to tendering procedures (Articles VII–XV and Article XVIII, paragraphs 1, 3, and 4), technical specifications (Article VI) and related definitions, and also have a focused discussion on basket 3 issues (enforcement, institutions, and statistical reporting). He proposed that, at the next informal meeting, the group revert to the discussion of developing countries and accessions. To facilitate the discussion on basket 2 and basket 3 issues, an Annotated Agenda would be circulated which would set out the issues that the group might discuss in relation to those baskets. Delegations would also have an opportunity at that time to revert to the basket 1 issues. With regard to the work on the other two elements of the Article XXIV:7 negotiations, namely the

expansion of coverage and the elimination of discriminatory measures, the Work Programme agreed to at the February 2002 meeting provided for a preparatory phase in 2002, aimed at the identification and study of the areas to be negotiated, and agreeing on a detailed programme for the negotiations by the end of 2002. In this connection, he reminded delegations that possible approaches regarding these negotiations should be put forward, including the request for tabling of offers, by 15 October 2002.

60. The Committee agreed to proceed as proposed by the Chairman.

F. OTHER BUSINESS

(i) *Notification under Article XXIV:5*

61. The representative of Japan said that information on modifications to Japan's regulations concerning government procurement had been communicated in document GPA/67 dated 15 April 2002. The new notification related to modifications notified by Japan in April 2001. Her delegation therefore considered that the basic notification had already been made, and that the new submission reflected only minor changes to the modification.

(ii) *Letter from the Chairman of the Committee on Trade and Development relating to Special and Differential Treatment*

62. The Chairman drew the attention of the Committee to a letter that had been received from the Chairman of the Committee on Trade and Development requesting that the Committee be kept informed of discussions or developments relating to special and differential treatment taking place in the Committee. The Chairman proposed to answer the letter on behalf of the Committee, drawing attention to the provisions of the Agreement relating to developing countries as well as pointing out relevant work of the group in the context of the review of the Agreement. He also suggested that it would be useful to point out that WTO Members could become observers in the Committee and therefore participate in discussions. In that regard, he said that the involvement of as wide a group of Members as possible in the review of the Agreement would be useful in terms of hearing ideas and suggestions relating to special and differential treatment provisions, and other provisions of interest to developing countries.

(iii) *Procedures for circulation and derestriction of documents*

63. The Chairman drew attention to the General Council Decision of 14 May 2002 on Procedures for the Circulation and Derestriction of WTO Documents (WT/L/452). He proposed that the Committee update its Decision on Circulation and Derestriction of Documents (GPA/1/Add.2) in order to reflect the new WTO procedures. He suggested that the Secretariat would prepare a draft decision for adoption by the Committee. It was so agreed.

(iv) *The date of the next meeting and Chairmanship*

64. The Committee agreed to hold its next meeting on 8 October 2002.

65. The Chairman said that, as he had indicated was a good possibility at the meeting in February 2002, he would indeed be returning to Ottawa in August, but was prepared to continue to serve as Chair and carry out consultations until his departure.

66. The representatives of the United States; Switzerland; Jordan; Korea; the European Community; Chinese Taipei; Japan; Canada; Bulgaria; Hong Kong, China; and Norway thanked the Chairman for his Chairmanship of the Committee. The Chairman thanked the Committee members

for the confidence they had shown in him and for their cooperation, and noted that the achievements of the Group had largely been due to its acting collectively.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 21 FEBRUARY 2002

Chairman: Mr. Martin Loken (Canada)

1. The following agenda was adopted:
 - A. Election of the Chairperson for 2002
 - B. Application for Observer Status
 - C. Modifications to the Appendices of the Agreement
 - D. Accessions:
 - (i) *Chinese Taipei*
 - (ii) *Estonia*
 - (iii) *Latvia*
 - (iv) *Bulgaria*
 - (v) *Slovenia*
 - (vi) *Albania*
 - (vii) *Moldova*
 - (viii) *Jordan*
 - (ix) *Kyrgyz Republic*
 - (x) *Panama*
 - (xi) *Lithuania*
 - (xii) *Newly Acceded Countries*
 - (xiii) *Streamlining the Process of Accessions*
 - E. Review of National Implementing Legislation
 - F. Negotiations under Article XXIV:7
 - G. Other Business

A. ELECTION OF THE CHAIRPERSON FOR 2002

2. The Committee elected Mr. Martin Loken (Canada) as Chairman for 2002. The Chairman expressed his appreciation to the Committee for re-electing him but noted that his posting to Geneva may end before the end of 2002.

B. APPLICATION FOR OBSERVER STATUS

3. The Committee agreed to grant observer status to the Government of China, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from that country (GPA/W/173).

C. MODIFICATIONS TO THE APPENDICES OF THE AGREEMENT

(i) *Modifications by the United States to reflect recent changes in the administrative structure of the Federal Government (GPA/W/153)*

4. The Chairman said that the delegations of Canada, the European Community and Japan had submitted communications seeking further information from the United States with respect to the proposed modifications by the United States to Appendix I in document GPA/W/153 dated 5 September 2001 and objecting to the proposed modifications going into effect at the end of the 30-day period. These communications had been respectively circulated in documents GPA/W/167, GPA/W/163 and GPA/W/162. The responses by the United States to the questions raised by the three Parties had been circulated in documents GPA/W/183-185.

5. The representatives of Japan and the European Community said the responses from the United States would be reviewed soon and any further questions would be indicated at a later stage. The representative of Canada said that her delegation would determine its next steps on the basis of a careful consideration of the responses received from the United States.

6. In concluding the discussion, the Chairman said that the Committee would revert to this matter at its next meeting.

(ii) *Japan's Notification Relating to NTT*

7. With respect to the proposed modification by Japan to its Appendix I notified in document GPA/W/91, the Chairman said that consultations had been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/107 and GPA/W/108). In a communication dated 19 October 2001, the delegation of the United States had withdrawn its objection to the modifications proposed by Japan (GPA/W/166). No developments had been reported by the delegations of Canada and the European Community since the October 2001 meeting.

8. The representative of Canada said that further bilateral consultations had recently been held with Japan on the matter. The representative of the European Community said that his delegation had held bilateral meetings with Japan and was currently reviewing all the information provided. The

representative of Japan said that he hoped that his delegation would be able to report positive developments on the issue at the next meeting.

9. In concluding the discussion, the Chairman said that the Committee would revert to this matter at its next meeting.

(iii) Japan's Notifications Relating to Railways

10. With respect to the proposed modification by the delegation of Japan to its Appendix I in documents GPA/W/144, 145 and 146 dated 29 August 2001, the Chairman said that communications had been received from the delegations of the United States, Canada and the European Community (GPA/W/151, 155 and 156) seeking clarification and objecting to the proposed withdrawal of the three Japanese railway companies, namely East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company from the coverage of the Agreement. Relevant notifications received from Japan had been circulated in documents GPA/W/152, GPA/W/152/Corr.1 and GPA/W/179. Additional questions received from the European Community and the United States had been circulated in documents GPA/W/164 and 165 respectively and Japan's responses in documents GPA/W/180 and GPA/W/181 respectively.

11. The representative of the United States said that his delegation was currently in the process of reviewing Japan's responses in documents GPA/W/180 and GPA/W/181. Bilateral consultations had recently been held with Japan and his delegation had followed up with some additional questions relating to the discussions. The United States continued to reserve its position and hence could not agree to the proposed modification to Appendix I taking effect. The representative of the European Community said that his delegation had met with Japan and also continued to reserve its position. It would return to the issue once a more thorough review had been carried out. The representative of Canada said that her delegation had recently held further discussions with Japan and was reviewing the responses to its questions.

12. The representative of Japan said that Japan would continue its bilateral discussions with the delegations of the United States, the European Community and Canada and hoped that a positive result could be achieved in the near future.

13. In concluding the discussion, the Chairman said that the Committee would revert to this matter at its next meeting in the light of further developments.

(iv) Modifications by the United States to Appendices II and III (WT/Let/407)

14. The Chairman said that the proposed modifications to Appendices II and III by the United States dated 25 September 2001 (GPA/W/154) had become effective on 25 October 2001 (WT/Let/407).

D. ACCESSIONS

(i) Chinese Taipei

15. Reporting on the developments regarding Chinese Taipei's accession, the Chairman said that Chinese Taipei had submitted a second revised offer which had been circulated in GPA/W/SPEC/1/Rev.2 dated 28 January 2002. The delegation of Chinese Taipei had made a further revision to this document, copies of which had been made available to delegations at the present meeting.

16. The representative of Chinese Taipei expressed the appreciation of his delegation to the Parties to the Agreement for their support for Chinese Taipei's accession to the WTO. His delegation hoped that the process of accession to the Agreement could be completed at the present Committee meeting, so that Chinese Taipei could commence the fulfilment of its commitments in this respect under the WTO. The process of application to accede to the Agreement had been initiated at the Interim Committee on Government Procurement in June 1994. The application for accession to the Agreement and the initial offer were contained in document GPA/IC/SPEC/1 dated 17 March 1995. Following the submission of the latest revised offer contained in document GPA/W/SPEC/1/Rev.2 dated 1 February 2002, several interested Parties, including Japan; the European Community; Hong Kong, China; Switzerland; Canada and Israel had raised concerns in respect of Note 4 in Annex 3 and General Note 6. Bilateral consultations with these Parties had resolved their concerns and the documents reflecting the revisions made pursuant to the consultations were being made available to Parties at the present meeting. Chinese Taipei requested that, having regard to its application for accession and the consultations held with the Parties, the Committee agree to its offer and take a decision in accordance with Article XXIV:2 of the Agreement regarding the terms of accession of Chinese Taipei based on this offer.

17. The representative of Singapore said that his delegation would require more time in order to study the second revised offer circulated on 1 February 2002 which had been recently revised. Singapore had several serious concerns. First, Chinese Taipei had proposed to exclude a list of goods such as electricity machinery and rail transport equipment and services and construction relating to the electricity sector from its commitments under the Agreement. It was also specified in the offer that these carve-outs would not apply to selected Parties. Special treatment would therefore be accorded to these Parties by allowing their suppliers exclusive access to the procurement market for the aforementioned goods and services, while not extending the same benefits to several other Parties, including Singapore. His delegation had strong reservations to such an approach which ran counter to the letter and spirit of the WTO. Second, Singapore was of the view that all goods were to be covered by the Agreement. Although Article V:4 on Special and Differential Treatment for Developing Countries permitted exclusion of certain goods, Chinese Taipei in its accession to the WTO had declared that it would not claim any right granted under the WTO agreements to developing country Members. Third, the list of services sectors from which Singapore had been excluded contained sectors of particular interest to Singapore. Fourth, Note 4 to Annex 3 provided that, with respect to procurement by one of the listed entities, Chunghwa Telecom, the Agreement shall apply only to suppliers and service providers of the Parties that provided access to their own telecommunication markets for Chinese Taipei's suppliers and service providers under the condition of reciprocity. Furthermore, this reciprocity requirement would not apply in the case where the telecommunications sector of a Party was run by its private sector without government influence or control over the procurements conducted by it. It was not clear which Parties and which entities would be covered by that provision. His delegation had concerns about the reciprocity requirement contained in the offer and requested Chinese Taipei to further clarify what the provision would entail. Singapore looked forward to receiving a positive response from Chinese Taipei in its next revised offer and hoped that these issues of concern to his delegation would be resolved.

18. The representative of the European Community said that his delegation had a continuing and strong interest in completing the accession negotiations with Chinese Taipei. It had had fruitful bilateral consultations in the course of the present week with Chinese Taipei and it appreciated the progress that had been made as a result of these consultations. His delegation needed more time for a final screening of the latest version of the offer which had just been received. A few important technical questions might need further clarification. It was not expected that those clarifications would alter the substance of the offer.

19. The representative of the United States said that his delegation appreciated the efforts made by the delegation of Chinese Taipei in the course of negotiations and the intensive effort made during

the present week to conclude the negotiations as soon as possible. The initial agreement reached between the United States and Chinese Taipei a number of years ago had recently been reconfirmed. His delegation appreciated the important commercial benefits to all Parties of concluding the negotiations for accession as soon as possible. It had hoped that a decision on the accession of Chinese Taipei could have been taken at the present Committee meeting on the basis of the understanding that negotiations had resolved issues that had been raised to date. However, given concerns raised by other Parties at the meeting, he hoped that remaining outstanding issues could be resolved very quickly. His delegation encouraged all Parties to work with Chinese Taipei to that end. It understood that there might be some technical modifications or technical corrections that might be necessary in Appendix I. With any such modifications, it expected to retain the substantive basis of the negotiations and the commercial agreements that had been reached in those negotiations. It hoped that those issues could be resolved quickly and a final offer could be circulated to the Parties within 30 days, so that the Committee could take a decision to approve the accession of Chinese Taipei at the earliest possible date.

20. The representative of Canada said that her delegation welcomed the application for accession of Chinese Taipei. Canada had had extensive, detailed and fruitful discussions with Chinese Taipei concerning its offer over the past few years. Her delegation was pleased with the efforts of Chinese Taipei to develop an offer which reflected the commercial interests of both countries. Based on the latest revised offer circulated on 21 February 2002, Canada joined others in supporting the accession of Chinese Taipei and appreciated the benefits of proceeding with this matter as expeditiously as it was feasible.

21. The representative of Switzerland said that his delegation appreciated the efforts made by the delegation of Chinese Taipei in the course of accession negotiations. Switzerland had concluded negotiations with Chinese Taipei recently and looked forward to its accession in the near future.

22. The representative of Japan said that his delegation did not have any substantive objection to the offer circulated on 21 February 2002. Her delegation hoped that the decision on accession would be taken soon.

23. The representative of Israel said that his authorities were close to finalizing consultations with Chinese Taipei. They hoped that the process could be completed soon.

24. The representative of Norway said that his delegation had reached an agreement with Chinese Taipei on the basis of some modifications to the second revision of the offer. His delegation hoped that soon Chinese Taipei would become a Party to the Agreement.

25. The representative of Hong Kong, China said that the informal discussions with the delegation of Chinese Taipei on issues of concern to his delegation had had a fruitful outcome. More time would, however, be needed in order to consult with authorities in Hong Kong, China.

26. The representative of China said that China was neither opposed to the accession of Chinese Taipei to the Agreement nor intent on delaying the process of accession. However, document GPA/SPEC/1/ Rev. 2 contained some nomenclatures which were not consistent with both the Report of the Working Party on the Accession of Chinese Taipei to the WTO and the Protocol of Accession which were the basic legal documents for the accession of Chinese Taipei as a separate customs territory. China requested that this problem be resolved before a decision were taken by the Committee on Chinese Taipei's accession to the Agreement.

27. The representative of Chinese Taipei thanked the Parties to the Agreement for their support of the accession of Chinese Taipei as expeditiously as possible. With regard to Singapore's request regarding General Note 6 and Note 4 to Annex 3 related to Chunghwa Telecom, she said that the offer

to Singapore could be adjusted through bilateral consultations under the condition of reciprocity. With regard to comments made by the observer from China, the negotiation process for accession to the Agreement which had been initiated in March 1995 was currently drawing to a close. She expressed the regret of her delegation that some non-economic issues had been raised with regard to the accession. Her delegation believed that under the rules of procedure for the participation of observers in the Committee, any request or statement made by a non-Party to the Agreement should not have an impact on the decision made by the Committee on the accession. Chinese Taipei emphasized that it would be against the interests of Parties if a *bona fide* accession case, which had involved the work of many Parties for many years, were to be turned down or affected by political elements unrelated to the substance of the Agreement. Moreover, the concern raised by China was related to the English translation of the entity list. Within the context of the Agreement, the entities listed were legal subjects for tendering purposes. Any amendment to the nomenclature of those entities would cause legal confusion and severely jeopardize legal clarity and certainty. Any legal disputes related to this matter would greatly complicate Chinese Taipei's participation in the Agreement and would ultimately hurt the commercial interests of all Parties to the Agreement. Chinese Taipei considered that a further delay caused by a problem of this nature would set a bad precedent for the accessions to the Agreement and hoped that this could be prevented.

28. The Chairman said that all decisions in the Committee, including decisions on accessions, were taken by the Parties. He noted the appreciation of Parties for the hard work and efforts of the Chinese Taipei delegation and said that it was clear from the comments made by the Parties that the accession was at a very advanced stage. It was also clear that many delegations needed more time to further review the latest revised offer and that some delegations had remaining substantive concerns. He encouraged all Parties to complete the outstanding work on the accession of Chinese Taipei and said that he hoped that the Committee would be in a position to take a decision by the time of its next meeting.

(ii) *Estonia*

29. The Chairman drew the attention of the Committee to the revised offer recently received from Estonia and circulated in GPA/SPEC/9/Rev.1 on 12 February. In addition, document GPA/SPEC/24/Rev.1 contained Estonia's replies to the follow-up questions put by the United States¹. (Further follow-up questions put by the United States were circulated in GPA/W/XXX)

30. The representatives of the United States; Japan; Canada; Switzerland; and the European Community said that the revised offer from Estonia was still under review by their respective delegations. The representative of the United States encouraged all Parties to hold consultations with Estonia and to pursue any interests they may have relating to the accession with a view to moving forward as quickly as possible.

31. The Chairman encouraged all interested Parties to intensify their bilateral contacts with Estonia so as to enable the Committee to take a decision on Estonia's accession at the next meeting.

(iii) *Latvia*

32. The representative of Latvia said that, since the last meeting, bilateral consultations had continued with interested Parties, namely the European Community and Israel. Consultations with the European Community towards the end of last year were believed to have been very fruitful, although a number of issues had been raised that warranted further reflection. As a result of its bilateral consultations, Latvian authorities had started to prepare an amended offer. However, due to reorganization of the national public procurement administration it had not been possible to complete

¹ Further follow-up questions put by the United States were circulated in GPA/W/190

the revised offer. The revised offer was expected to be circulated in the near future and subsequently consultations would be undertaken with all interested Parties.

33. The representative of the United States said that an agreement with Latvian authorities had been reached late last year on the terms of Latvia's accession. The United States looked forward to Latvia's accession as soon as possible. However, if the revised offer were found to contain significant changes, it would have to be reviewed so as to ensure consistency with the earlier bilateral agreement.

34. The representative of Switzerland said that his delegation had concluded negotiations with Latvia last year and had hoped that its accession could have been completed by the date of the present Committee meeting. His delegation was concerned about the delays to Latvia's accession. Switzerland hoped that the future revisions to Latvia's offer would not have major implications in terms of the substance covered, so that negotiations with Latvia would not have to be reinitiated.

35. The representative of Canada said that her authorities had almost concluded their bilateral consultations with Latvia. She encouraged Latvia to submit its revised offer as soon as possible, noting, however, that her authorities would need to review the revised offer before reaching a final conclusion.

36. The Chairman urged interested Parties to complete bilateral discussions with Latvia as soon as possible so that a decision on Latvia's accession could be taken by the time of the next Committee meeting.

(iv) *Bulgaria*

37. The Chairman said that information on Bulgaria's national legislation had been circulated in GPA/49 and its replies to the Checklist of Issues in GPA/W/136. Bulgaria's replies to the questions received from Hong Kong, China; Switzerland; Canada and the United States had been circulated in documents GPA/SPEC/22/Rev.1, GPA/SPEC/21/Rev.1, GPA/SPEC/23/Rev.1 and GPA/W/171/Rev.1 respectively. Any follow-up questions should be forwarded to Bulgaria by 8 April 2002 and Bulgaria should answer such questions by 24 May 2002.² Informal plurilateral consultations had been held between Bulgaria and interested Parties on 21 February 2002 which had focused mainly on the examination of Bulgaria's national legislation.

38. The representative of Bulgaria said that intensive domestic consultations had taken place regarding the preparation of an initial offer. In this regard, Bulgaria had to take into account the new situation after Doha and the work of the Committee on Article XXIV:7 negotiations, and had also to assess Bulgaria's export opportunities to markets of countries Parties to the Agreement.

39. The representative of the United States said that his delegation appreciated the work done by Bulgaria in respect of following up its commitment with regard to the Agreement and understood that domestic work was an important element of the accession process. His delegation was however disappointed that greater progress had not been made and hoped that Bulgaria could submit an offer as soon as possible.

(v) *Slovenia*

40. The Chairman said that Slovenia's replies to the Checklist of Issues had been circulated in document GPA/W/158, dated 5 October 2001. Slovenia's answers to the questions received from the European Community, the United States and Switzerland had been circulated in documents GPA/SPEC/28/Rev.1, GPA/W/172/Rev.1 and GPA/W/175/Rev.1, respectively. The Chairman said

² Follow-up questions put by the United States to Bulgaria were circulated in GPA/W/189

that any follow-up questions should be forwarded to Slovenia by 8 April 2002 and Slovenia should answer such questions by 24 May 2002.³ Informal plurilateral consultations had been held between Slovenia and interested Parties on 21 February 2002.

41. The representative of Slovenia emphasized the importance of the field of government procurement to his country. Internal consultations had been initiated in Slovenia with regard to the preparation of the offer and the Committee would be informed of any developments.

42. The representatives of the United States, supported by the representative of Switzerland, said that his delegation appreciated Slovenia's detailed responses to the Checklist and hoped that an offer would be submitted soon. The representative of the United States believed that the process for accession could proceed in parallel with internal discussions relating to revision of domestic laws and hoped that this would continue to be the case with Slovenia's preparations for accession. The representative of Switzerland said that the information on national legislation submitted by Slovenia had been reviewed by his delegation and Slovenia's procurement regime appeared to be consistent with requirements under the Agreement.

(vi) *Albania*

43. The Chairman said that Albania had submitted its replies to the Checklist of Issues in document GPA/W/161, dated 12 October 2001, and information on its national legislation in GPA/65. The European Community; Hong Kong, China; the United States; Switzerland; and Canada had submitted questions to Albania in documents GPA/SPEC/26, GPA/W/169, GPA/W/170, GPA/W/174 and GPA/W/178, respectively. Albania's replies to the questions submitted by the United States had been circulated in document GPA/W/170/Rev.1.

44. Regarding next steps, the Chairman said that Albania should submit its replies to the questions it has received from other Parties by 22 March 2002.

(vii) *Moldova*

45. The Chairman said that Moldova had applied for accession on 8 January 2002 (GPA/63). Moldova's replies to the Checklist of Issues had been circulated in GPA/W/177 dated 9 January 2002. The questions forwarded by Hong Kong, China to Moldova had been circulated in document GPA/W/182.

46. In accordance with the indicative time-table, the Chairman invited Parties to submit any questions to Moldova by 9 March 2002 and Moldova would answer any such questions by 9 May 2002.⁴

(viii) *Jordan*

47. The representative of Jordan said that a national committee comprised of members from both private and public sectors had been formed. Its tasks included developing Jordan's programme for accession; preparing the final entity offer; and forming working groups charged with collecting and analysing data related to procurement of works, goods and services in the light of the potential interest of local industries. The resulting study would serve as a guide for the preparation of the entity offer. The national committee had held several meetings during the last two months with concerned parties from the public and private sectors regarding Jordan's accession. It had also formed a working group

³ Follow-up questions put by the United States to Slovenia were circulated in GPA/W/192.

⁴ Moldova's replies to the questions put by Hong Kong, China were circulated in GPA/W/193 on 25 April 2002. The questions put by the United States were circulated in GPA/W/177.

focused on studying the status of the industrial and services sectors in order to help with the preparation of the entity offer. Private sector members of the national committee had appointed local consultants to analyse the effects of accession on specific sectors in order to identify possible offsets and threshold levels that might be included in Jordan's initial offer. Jordan expected to submit the initial entity offer prior to the end of 2002. Jordanian authorities were currently engaged in the review and updating of national procurement legislation. A decision had been taken by the Cabinet to merge the Government Tenders Directorate and the General Supplies Directorate into one entity. Bilateral consultations with the United States, the European Community and Canada had been held on 21 February 2002 in the course of which technical assistance needs had also been discussed.

48. The representative of the United States said that his delegation had held a series of consultations on the issue of Jordan's preparations for accession. The United States was looking forward to receiving an initial offer as soon as possible.

49. The representative of Canada encouraged Jordan to proceed with work on a draft offer in parallel with the work regarding the review of its procurement system and assessment of its compliance with the provisions of the Agreement.

50. The representative of the European Community encouraged Jordan to intensify work on modifying domestic legislation in order to bring it into line with the Agreement. Jordanian requests with regard to technical assistance had been taken note of and the European Community would consider appropriate action.

51. The representative of Switzerland commented that the close cooperation between private and public sectors outlined by Jordan was very important. Referring to the Jordanian studies on the impact on domestic sectors of participation in the GPA regime, he said that Switzerland had encountered great difficulty in carrying out similar studies and that therefore some limitations should be expected as to what could be achieved through sectoral impact studies.

(ix) Kyrgyz Republic

52. The Chairman said that the Kyrgyz Republic had applied for accession and had submitted its initial offer on 11 May 1999 (GPA/SPEC/4). The written questions and comments received from the United States had been circulated in document GPA/SPEC/7. The Chairman had been informed that there had been some delay in the preparation of replies to the Checklist due to technical and human resource challenges, but that they would be submitted to the Committee before the next meeting.

(x) Panama

53. The Chairman said that at the May 2001 meeting the Committee had been informed of the status of bilateral consultations with Panama (GPA/M/16, paragraph 37), but since then there had been no further developments in that respect.

(xi) Lithuania

54. The representative of Lithuania said that her Government would implement all commitments undertaken during its accession to the WTO. Lithuania fully acknowledged the importance and overall benefits of joining the Agreement on Government Procurement. The decision to join the Agreement had been recently approved by her Government and the formal application would be submitted shortly.⁵ Lithuanian authorities were currently analysing and preparing both the draft offer

⁵ Subsequently circulated in document GPA/66

and the responses to the Checklist. However, some delay may be unavoidable due to the revision of the national government procurement law currently under way in the Lithuanian Parliament.

55. The representative of the United States said that it would be useful to maintain contact and continue consultations between acceding countries and Parties to the Agreement during the development of new legislation so that acceding Parties could ensure that any revisions were consistent with the requirements of the Agreement. The United States looked forward to receiving an offer from Lithuania.

56. The representative of Switzerland said that his delegation hoped that Lithuania would soon submit its replies to the Checklist of Issues. This would be especially important in the light of the Parliamentary process which had been continuing for some time, as the Checklist would provide information on the major aspects of the Lithuanian practice.

(xii) Newly Acceded Countries

57. The Chairman said that Oman's replies to the Checklist of Issues had been circulated in GPA/W/141. Questions put by the European Community, the United States and Canada to Oman in November and December 2001 had been circulated in documents GPA/SPEC/27, GPA/SPEC/25 and GPA/W/176, respectively.

58. The representative of Oman said that a seminar on government procurement had been held in Muscat on 5 and 6 February 2002. It had been largely attended by representatives of the public and private sector and had served the purpose of making authorities aware of the intricacies of the Agreement on Government Procurement. On behalf of her authorities, she thanked the WTO Secretariat for organizing the seminar and the government of Switzerland for providing the services of an expert. Following the seminar, a governmental task force responsible for pursuing matters relating to government procurement had held its first organizational meeting. Oman would soon be applying for accession to the GPA.

59. The representative of Croatia said that a new public procurement law had entered into force at the beginning of 2000. Pursuant to the changes the new law had brought to the public procurement system Croatian authorities had started an internal consultation process in order to assess all issues and different aspects related to accession to the Agreement. They expected to be able to initiate the procedures and submit the application for accession shortly.

60. With respect to the other newly acceded countries, the Chairman recalled that China, Georgia and Mongolia had commitments regarding the Agreement on Government.

(xiii) Streamlining the Process of Accessions

61. The representative of Israel said that his delegation was concerned with a systemic issue. The process of negotiations amounted to a set of offers which was being passed from one Party to another and which then had to be taken as a de facto result, without negotiations between all Parties having effectively ever taken place. Israel believed that the Committee should consider in more general terms how an offer was built and the nature of the negotiation process, especially with regard to the participation of smaller Parties in these negotiations.

62. The Chairman said that Parties may pursue their interests bilaterally with each of the acceding countries and that the accession process would not be completed until all Parties had been satisfied. It was in the interest of all Parties that the accession process worked to the benefit of all Parties.

E. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

63. The Chairman said that, at the last meeting, the delegations of the Kingdom of the Netherlands with respect to Aruba and Iceland had been invited to submit their notification of the implementing legislation in accordance with the requirements in GPA/1/Add.1. No such submissions had been made as yet.

64. The representative of the Kingdom of the Netherlands said that he had been informed by the authorities of Aruba that work was still in progress on the notification and that a specific time-frame for submission could not be indicated. He said that the issue had the fullest attention of the authorities and hoped that the notification could be submitted as soon as possible.

F. NEGOTIATIONS UNDER ARTICLE XXIV:7

65. The Chairman said that an informal meeting on Article XXIV:7 negotiations had been held on 19-20 February 2002. The group had pursued the Article-by-Article review of the Agreement on the basis of the proposals by various delegations compiled in the Secretariat note "Suggested Drafting Changes to the 1994 Agreement", dated 14 November 2001 (Job No. 8599). Delegations also had available to them: a non-paper by the European Community "Drafting Proposals on Tendering Procedures and Technical Specifications" (Job No. 876); three communications by the United States, namely "Review of the Agreement on Government Procurement - Revised US Proposals" (Job No. 1051), "Drafting Proposals Relating to Article V" (Job No. 1235) and "Explanatory Note with Examples of Coverage of 'Build-Operate-Transfer' Contracts and 'Concessions for Public Works' Under the Agreement" (Job No. 1043); a communication by Japan "Japan's Comments on the US Proposal in Job No. 2867" (Job No. 1141); and a note by the Secretariat on "The Meaning of the Term 'measures' under GATT/WTO Jurisprudence" (Job No. 1158). The group had a detailed discussion of the proposed drafting changes to the Articles of the Agreement relating to tendering procedures (Articles VII-XV and Article XVIII, paragraphs 1, 3 and 4), technical specifications (Article VI), and developing countries (Article V), and of the proposals for new definitions related to tendering procedures, technical specifications and BOT contracts. The Secretariat would update the "Suggested Drafting Changes to the 1994 Agreement" in light of the proposals recently submitted and the detailed comments made and clarifications sought at this meeting. As agreed at the October 2001 meeting, he had had a series of informal consultations with a view to making a proposal for a timetable and work programme for all elements of the work under Article XXIV:7 at the present meeting. A draft timetable and work program reflecting the outcome of the informal consultations including an informal session held with the Parties on 19 February was contained in Job No.696/Rev.1 dated 19 February 2002. In light of these consultations, he suggested the following timetable and work programme for the negotiations under Article XXIV:7 of the Agreement:

"Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions relating to developing countries and eliminating any remaining discriminatory measures and practices which distort open procurement.

Modalities for the negotiations

- The further negotiations under Article XXIV:7 shall be undertaken and completed as a whole on all elements (i.e. improvement of the text, expansion of coverage and elimination of discriminatory measures and practices), but there may need to be differences in modalities and timing among the elements.

- The negotiations shall be completed by 1 January 2005.
- The general view has been that the work on the revision of the coverage-related areas in the text of the Agreement and the negotiations on the other two elements are interdependent.
- Building on the work in the informal consultations that has been done since the review of the Agreement was launched in 1997, the aim is to have provisional agreement on the revised text of the Agreement by the 5th Ministerial Conference, recognizing that it may not be possible to conclude some of the elements of the text before the work on the other two aspects of the negotiations are concluded. In any event, the revised text will not take effect until all elements of Article XXIV:7 negotiations have been completed.
- The negotiations on the expansion of the coverage and the elimination of discriminatory measures and practices shall start with an exploratory phase until the end of 2002. These negotiations are to be concluded by 1 January 2005.
- The work programme could be modified in light of any new developments.
- A minimum of four informal meetings shall be foreseen for 2002 and for 2003 and, where possible, two to three days shall be allocated for each session.

Arrangements for the revision of the text

- The discussion at each of the meetings in 2002 shall focus on selected categories of issues, respectively those in basket 1 (basic principles, scope and coverage and related definitions, exceptions, developing countries and accessions), basket 2 (tendering procedures, technical specifications and related definitions), and basket 3 (enforcement, institutions, statistical reporting). All proposals relating to these issues should be tabled no later than 1 September 2002.
- Key substantive issues and drafting options shall be identified with respect to each Article or group of Articles by the end of the third meeting in 2002. Starting at the fourth meeting in 2002, the discussion shall focus on ways of bridging the remaining gaps on the basis of a text by the Chairman.

Arrangements for the other two elements

- Regarding the work on the other two elements, a preparatory phase will take place in 2002 aimed at the identification and study of the areas to be negotiated and agreeing on a detailed programme for the negotiations by the end of the year. Delegations who wish to put forward ideas on the possible approaches regarding the negotiations on the expansion of the coverage and the elimination of discriminatory measures including the procedures for tabling of offers and requests should do so by 15 October 2002.⁶
- The negotiations on these elements shall be initiated in 2003 with the aim of concluding them by 1 January 2005.

⁶ Related to these aspects of the negotiations, the group already has before it, for reference, the submissions by Canada (Job No. 6604-2001), Hong Kong, China (Job No. 5270-1998) and the United States (Job No. 3843-1998).

Note

- In 1996, the Committee agreed to undertake an early review, starting in 1997 with an examination of modalities, with a view to the implementation of Article XXIV:7(b) and (c) of the Agreement. The review will, in particular, cover the following elements: expansion of the coverage of the Agreement; elimination of discriminatory measures and practices which distort open procurement; and simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology. It was also agreed that the review shall seek the expansion of membership of the Agreement by making it more accessible to non-Parties (GPA/8)."

66. With regard to the next informal meeting in May, the Chairman suggested that that the group have a focused discussion on issues in basket 1 in the work programme (basic principles, scope and coverage and related definitions, exceptions, developing countries and accessions) and that the group revert to the discussion of the issues in basket 2 (tendering procedures, technical specifications and related definitions). To facilitate the discussion of basket 1 issues, an annotated agenda would be circulated setting out some of the issues that the group might discuss in relation to this basket.

67. The Committee agreed to the way of moving forward proposed by the Chairman.

G. DATE OF THE NEXT MEETING

68. The Committee agreed to hold its next meeting on 30 May 2002⁷.

⁷ Subsequently postponed to 31 May 2002.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 2 OCTOBER 2001

Chairman: Mr. Martin Loken (Canada)

1. The following agenda was adopted:
 - A. Applications for Observer Status
 - B. Modifications to the Appendices to the Agreement
 - C. Accessions:
 - (i) *Latvia*
 - (ii) *Estonia*
 - (iii) *Chinese Taipei*
 - (iv) *Jordan*
 - (v) *Bulgaria*
 - (vi) *Slovenia*
 - (vii) *Albania*
 - (viii) *Kyrgyz Republic*
 - (ix) *Panama*
 - (x) *Oman*
 - (xi) *Other Newly Acceded Countries*
 - D. Review of National Implementing Legislation
 - E. Negotiations under Article XXIV:7
 - F. Annual Report for 2001 to the General Council
 - G. Date of the Next Meeting

A. APPLICATIONS FOR OBSERVER STATUS

2. The Committee agreed to grant observer status to the Governments of Albania and Hungary, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the requests received from those countries (GPA/W/157 and 148, respectively).

3. Welcoming the two new observers, the representatives of the United States and the European Community said that they hoped that the observers would participate in the work of the Committee in a substantive way. The representative of the United States encouraged the observers to consider their accession to the Agreement as early as possible.

4. The observer from the Slovak Republic said that, as part of the ongoing process of the approximation of its legislation with the EU Directives, the Public Procurement Law of 1 January 1994 had been improved. Also, the Office of Public Procurement, an independent central government authority, had been established on 1 January 2000.

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

5. The Chairman said that, since the May meeting, the delegation of the United States had proposed modifications to Appendix I and Appendices II and IV in documents GPAW/153¹ and 154² respectively, dated 25 September 2001; and the delegation of Japan to its Appendix I in documents GPA/W/144, 145 and 146, dated 29 August 2001. As regards the proposed modifications by Japan, communications had been received from the delegations of the United States, Canada and the European Community (GPA/W/151, 155 and 156) seeking clarification and objecting to the proposed withdrawal of the three Japanese Railway companies, namely East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company from the coverage of the Agreement. A relevant notification received from Japan had been circulated in document GPA/W/152 and Corr.1.

6. The representative of Japan said that, first, Japan was convinced that regulatory control or influence over the three Japanese Railway (JR) companies had been effectively eliminated. The three JR companies had been incorporated as a commercial company in 1987 when the Japanese National Railways services had been divided into six regional passenger services. The Government had subjected these passenger railway companies to extensive regulations concerning their management in order to ensure the smooth transition of the railway services which had previously been provided by the national railways. An amendment to the Law on Passenger Railway Companies and Japan Freight Railway Company would remove the three JR companies from the coverage of regulations provided for in that Law. The Amendment had passed in the Diet in June 2001 and would come into force on 1 December 2001. Second, government control or influence over the three JR companies through ownership was no longer in place. The shares of the three JR companies were listed and traded on the Tokyo Stock Exchange Market and a majority of the shares were already privately held. Although the Japan Railway Construction Public Corporation, a 100 per cent government-owned entity, still held a certain percentage of the shares, it held them merely to pay the annuity debt to former employees of the national railway out of their sales revenues. Therefore, it was in the interest of the Corporation to sell them as quickly as possible in order to keep up with the payment of bills. Third, the three JR companies were operating without special aid from the Government and were competing fiercely with other private operators and other modes of transportation. For these reasons, the representative of

¹ The delegations of Canada, the European Community and Japan have made communications seeking further information from the United States with respect to the notification in GPA/W/153 and objecting to the proposed modifications going into effect at the end of the 30-day period (respectively circulated in documents GPA/W/167 of 24 October 2001, GPA/W/163 of 19 October 2001 and GPA/W/162 of 22 October 2001).

² The proposed changes to Appendices II and III have become effective on 25 October 2001 (WT/Let/407).

Japan was quite confident that the three JR companies fulfilled the requirements set forth in Article XXIV:6(b) of the Agreement and said that his delegation considered that their proposed withdrawal from the Agreement should be approved.

7. The representatives of the United States; the European Community; Canada; Hong Kong, China; and Switzerland said that their respective delegations were currently studying the information that had been provided by Japan and that they intended to provide written questions to Japan regarding certain specific issues.³ The representatives of the European Community and Canada said that their delegations had held bilateral consultations with Japan regarding this issue. In concluding the discussion, the Chairman said that the Committee would revert to this matter at its next meeting in the light of discussions between Japan and interested Parties.

8. With regard to the proposed modifications notified by Japan on 6 September 1999 in document GPA/W/91, the Chairman said that consultations had been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1 and GPA/W/104/Add.2/Rev.1, GPA/W/107, GPA/W/108 and GPA/W/160).

9. The representative of Japan said that, following the submission of Japan's notification regarding the reorganization of the NTT in 1999, Japan had held consultations with Parties who had opposed the proposed modifications to Appendix I. It had become clear to Japan that certain points regarding independence, competition and volume of procurement relating to NTT should be explained further in order to convince Parties that this modification was justified under Article XXIV:6 of the GPA. First, all NTT-C stocks were owned by the NTT Holding Company, some of whose stocks were owned by the Government of Japan. This fact could lead to the assumption that the Government could exert influence on NTT-C through the NTT Holding Company. To counter any such assumptions, Japan would give the following explanation to indicate the independence of NTT-C. First, the authorization by the Government to the NTT Holding Company to release the share of NTT-C was to be abolished in December 2001 when the amendment of the NTT Law of June 2001 would come into effect. As a result of this amendment, there would be no stipulation concerning the NTT-C in the NTT Law and the autonomy of the management of the NTT-C would be more clear. Second, the ratio of NTT Holding Company stocks held by the Government had fallen to less than 50 per cent. At present, the ownership of NTT stocks by the Government was 46 per cent. As for competition, the market share related to long-distance services, which was one of the main businesses undertaken by the NTT-C, had been steadily decreasing year by year. The market share of international telephony and Internet access services for individual use provided by NTT-C was also quite small. Finally, the volume of procurement by NTT-C above the threshold under Japan's Action Programme on Government Procurement (SDR 100,000) had been nil in 2000. Given the aforementioned, the conditions for modifications to Appendix I under Article XXIV:6 should be considered as satisfied. In the past two years, the Government of Japan had responded to the questions put by interested Parties and had provided all the relevant data. Japan believed that Parties should be able to decide soon on the matter.

10. The representative of the United States asked whether Japan had plans for selling the shares of NTT-C by the NTT Holding Company or whether the NTT Holding Company would maintain all the shares of the NTT-C company. The representative of Japan said that, based on the three-year programme for promoting regulatory reform and other recommendations, the Ministry of Public Management, Home Affairs, Posts and Telecommunications requested in May 2001 that the NTT Holding Company develop and publish a voluntary action plan which would aim at providing

³ The questions received from the European Community and the United States, dated 19 October 2001, have been circulated in documents GPA/W/164 and 165, respectively.

improved management and ensuring fair competition. In that sense, maintaining NTT-C shares was a question of management by the NTT Holding Company.

11. The representatives of the European Community and Canada said that their delegations would study the information that had been provided.

12. In concluding the discussion, the Chairman said that the Committee would revert to this matter at its next meeting in the light of discussions between Japan and other Parties.⁴

13. With respect to the notification by Japan in GPA/W/129, dated 19 March 2001, the Chairman said that the United States and Canada had made communications objecting to these modifications (GPA/W/132 and 134) and Hong Kong, China had requested further information (GPA/W/135 and 143). Japan's responses had been circulated in document GPA/W/137. The United States and Canada had indicated subsequently that they had withdrawn their objection to the proposed modifications (GPA/W/139 and 147). Accordingly, the modifications proposed by Japan in GPA/W/129 had entered into force on 5 September 2001 (WT/Let/400).

14. With respect to the notification by Korea in GPA/W/128 and Corrs. 1 and 2, the Chairman said that Korea's responses to the clarification of the proposed modifications sought by the United States (GPA/W/133) had been circulated in document GPA/W/142. The United States had indicated subsequently that it had withdrawn its objection (GPA/W/150). The modifications proposed by Korea in GPA/W/128 and Corrs. 1 and 2 and additional modifications proposed by Korea to its Appendix I (GPA/W/140) had entered into force on 14 September 2001 (WT/Let/401).

C. ACCESSIONS

(i) *Latvia*

15. The Chairman said that Latvia had updated the information that it had previously provided on its government procurement regime by replying to the Checklist of Issues in document GPA/W/149, dated 13 September 2001.⁵

16. The representative of Latvia said that Latvia had concluded its bilateral consultations with Canada, Switzerland and the United States. She hoped that the ongoing bilateral consultations with the European Community and Israel would be finalized soon in order to enable the Committee to take a decision on Latvia's accession by the next meeting.

17. The representative of the European Community said that her delegation hoped to conclude its bilateral consultations with Latvia soon.

18. The representative of the United States said that the United States would be prepared to agree to the terms that had been offered by Latvia during the bilateral consultations. The representative of Canada said that her delegation looked forward to receiving Latvia's final draft offer following the conclusion of Latvia's consultations with some other delegations. The representative of Switzerland said that his delegation looked forward to Latvia's accession to the Agreement.

⁴ In a communication, dated 19 October 2001, the United States has withdrawn its objection to the modifications proposed by Japan in GPA/W/91 (GPA/W/166).

⁵ A further communication by Latvia transmitting the Law on Procurement for State or Local Government Needs was circulated on 22 November 2001 (GPA/28/Add.2).

19. The Chairman urged those delegations that had not yet completed their bilateral consultations with Latvia to do so as soon as possible. With regard to the next steps in Latvia's accession process, he suggested that Latvia should submit a revised offer as soon as possible. Parties would then have six weeks from the date of circulation of the offer to advise the Secretariat whether or not they would be able to accept the terms of the offer. If no objections had been raised within that time-period, the Secretariat would circulate a draft Decision containing the terms providing for the accession of Latvia which the Parties could consider for adoption at the next meeting. The Committee so agreed.

(ii) *Estonia*

20. Reporting on the developments regarding Estonia's accession since the meeting of the Committee held in May 2001, the Chairman said that a revised version of Estonia's replies to the Checklist of Issues had been circulated in document GPA/W/127/Rev.1 and Add.1. In addition, a copy of the Revised Public Procurement Act of 1 April 2001 was circulated in document GPA/55.

21. The representative of Estonia said that, since the May 2001 meeting, Estonia had held bilateral consultations with the delegations of the United States and Canada and a revised offer would be submitted in the near future.

22. The representative of Japan said that Estonia had replied to a follow-up question that had been put by his delegation relating to the registration and qualification of suppliers of construction services (GPA/SPEC/19/Rev.1). Japan looked forward to receiving Estonia's revised offer. The representative of the United States said that his delegation appreciated the progress that had been made in Estonia's accession process. His delegation had held bilateral consultations with Estonia and hoped that Estonia would be able to complete its accession process in the near future.⁶ The representative of Canada said that her delegation had held bilateral consultations with Estonia and looked forward to receiving Estonia's revised offer.

23. In concluding the discussion on Estonia's accession, the Chairman invited those Parties who had not yet completed the bilateral consultations with Estonia to do so in the near future. He suggested that Estonia should submit a revised offer as soon as possible. Parties would then have six weeks from the date of circulation of the offer to advise the Secretariat whether or not they would be able to accept the terms of the revised offer. The Committee so agreed.

(iii) *Chinese Taipei*

24. The representative of Japan said that her delegation had recently sought some further clarification from the delegation of Chinese Taipei. The representatives of the European Community and Switzerland said that their delegations were examining the information that had been received recently from the delegation of Chinese Taipei.

25. The representative of Chinese Taipei said that, in the process of its WTO accession negotiations, Chinese Taipei had undertaken a commitment to accede to the Agreement on Government Procurement following its accession to the WTO. Chinese Taipei had completed the bilateral negotiations with all interested Parties. Chinese Taipei's offer in document GPA/SPEC/1/Rev.1, dated 19 March 1997, would be revised pursuant to those negotiations. Chinese Taipei's WTO accession was expected to be approved at the time of the Fourth Ministerial Conference and would become effective after the completion of domestic ratification procedures and the deposit of the instrument of accession. Chinese Taipei's final offer would be submitted for the consideration and adoption of the Committee once the WTO accession process had been completed.

⁶ The questions received from the United States, dated 23 October 2001 have been circulated in document GPA/SPEC/24.

(iv) *Jordan*

26. The representative of Jordan said that her delegation had pursued bilateral consultations with the delegations of the European Community and the United States. Reporting on the domestic work under way regarding Jordan's accession to the Agreement, she said that, in cooperation with the AMIR (Access to Microfinance and Improved Implementation of Policy Reform) programme, a technical assistance project funded by the USAID (United States Agency for International Development), a comprehensive study on government procurement was being conducted for the benefit of the Jordanian government authorities. The main purpose of the study was to estimate the size of Jordan's procurement market and to assess the possible impact of the opening of Jordan's procurement market to international competition on domestic suppliers. The first stage of the study consisted of the gathering of data on the procurement of goods and services by various central and sub-central government entities over the past four years. Most government entities' procurement records were paper-based and in loosely organized files and documents which meant that the collection and organization of data took time. The second stage of the study which involved an economic analysis had been delayed until after data from the relevant government entities had been collected and compiled in a usable format. However, some initial findings, based on the available data, were expected to be presented to the Jordanian Government in the near future. The study under way was considered to be essential to the preparation of Jordan's entity offer. Turning to the basic law under preparation, she said that the relevant authorities in the public and private sectors were reviewing the draft law and that the legislative work was not expected to be completed before next year. Moreover, consultations were under way at the intergovernmental level and with the private sector regarding the restructuring of the main procuring entities.

27. The representative of the United States said that his delegation welcomed the information that the domestic preparatory work on Jordan's accession was moving forward. He hoped that Jordan would be in a position to submit an initial offer at the earliest date possible. The representative of the European Community said that her delegation had received Jordan's replies to its questions (GPA/SPEC/20/Rev.1) and had also had bilateral consultations. Her delegation was ready to consider, jointly with the delegation of Jordan, how assistance could be provided regarding the drafting of the new legislation. The representative of Switzerland said that Jordan had made substantial efforts regarding its internal consultations and the preparation of the legislation on public procurement. He looked forward to moving to the next steps in the accession process of Jordan.

(v) *Bulgaria*

28. The Chairman said that the questions related to Bulgaria's replies to the Checklist of Issues (GPA/W/136) that had been received from the delegations of Switzerland; Hong Kong, China; and Canada had been circulated in documents GPA/SPEC/21, 22 and 23, respectively. He added that, according to the indicative time-frame, Bulgaria was expected to provide its responses to those questions by 1 December 2001.

29. The representative of Switzerland said that, in light of Bulgaria's replies to the Checklist of Issues, it seemed that the public procurement regime in Bulgaria, as it stood currently, would generally meet the requirements under the Agreement.

30. With regard to the negotiation of Bulgaria's Schedules, the representative of Bulgaria referred to the ongoing work on the preparation of the initial offer and said that her delegation hoped to be able to submit the offer as soon as the internal consultations on the offer had been finalized.

31. As regards the next phase in Bulgaria's accession process, the Chairman invited the delegation of Bulgaria to submit its initial offer as soon as possible. Also, he suggested that informal plurilateral consultations could be held between Bulgaria and interested Parties in February 2002, back to back with the formal meeting. The Committee so agreed.

(vi) *Slovenia*

32. The Chairman said that Slovenia had applied for accession on 24 September 2001 (GPA/56). It had also submitted its replies to the Checklist of Issues in document GPA/W/158. He suggested that, in accordance with the indicative timetable, any Party wishing to put questions to Slovenia should do so by 1 December 2001. Slovenia should reply to these questions by 1 February 2002. Plurilateral consultations between Slovenia and interested Parties could be envisaged at the time of the next meeting provided that the exchange of questions and answers was completed in advance of the next meeting.

(vii) *Albania*

33. The Chairman said that Albania had applied for accession on 18 September 2001 (GPA/57). He had been informed that Albania would submit its replies to the Checklist of Issues in document GPA/35 in the near future.⁷ He suggested that any Parties wishing to put questions to Albania should do so by 15 December 2001. Albania should provide its responses to any such questions by 15 February 2002.

(viii) *Kyrgyz Republic*

34. The Chairman said that the Kyrgyz Republic had applied for accession and had submitted its initial offer on 11 May 1999 (GPA/SPEC/4). The written questions and comments received from the United States had been circulated in document GPA/SPEC/7.

35. The representative of the United States said that there was need for more input from the Kyrgyz Republic and that his delegation looked forward to receiving the replies to the Checklist of Issues in document GPA/35.

36. The Chairman invited the Kyrgyz Republic to respond to the Checklist of Issues in GPA/35 as soon as possible.

(ix) *Panama*

37. The representative of the United States said that, since the May 2001 meeting, his delegation had had further consultations with Panama in Panama. It had, however, been unable to resolve some of the remaining problems, the principal one of which was his delegation's request relative to the coverage of the Panama Canal Authority in Panama's offer. The United States considered that procurement by the Panama Canal Authority was an important part of the overall government procurement market in Panama. His authorities continued to encourage Panama to consider the listing of that entity in its offer. The authorities in Panama had indicated that they were still considering the matter but had not yet been able to reach an agreement. It was the United States' understanding that the procurement practices of the Panama Canal Authority were, in general, consistent with the requirements under the Agreement. His delegation had suggested to Panama that its accession to the Agreement could be a significant demonstration of that fact. He hoped that Panama would be able to reconsider its position and would be able to actually include that entity in its offer.

⁷ Subsequently circulated in document GPA/W/161, dated 12 October 2001

(x) *Oman*

38. Referring to Oman's replies to the Checklist of Issues that had been circulated in document GPA/W/141 on 12 July 2001, the Chairman said that, in accordance with the indicative time-frame, Parties were to address any questions to Oman by 12 September 2001 but, to date, no questions had been received.

39. The representative of the United States said that his delegation's questions would be submitted in the near future.⁸

40. The representatives of Canada, the European Community and Switzerland said that their delegations had held bilateral consultations with the delegation of Oman.

41. The representative of Oman said that, in order to enable her authorities to have a better understanding of the commitment that they had undertaken regarding the Agreement, her delegation had asked the Secretariat to hold a seminar for the officials of the tender board and other concerned Ministries in Muscat early next year. Oman was facing the problems that were typical of developing countries with small administrations. Because of logistical constraints, the preparation of Oman's entity offer had taken time.

42. The representative of the United States said that his delegation had taken note of the challenges that developing countries might face in acceding to the Agreement and expressed its willingness to work with the Government of Oman to address any particular issues. In his view, informal consultations between the Parties to the Agreement and the acceding countries could be the most beneficial aspect of the accession work.

(xi) *Other Newly Acceded Countries*

43. The representative of Lithuania said that Lithuania had undertaken a commitment to initiate negotiations for membership in the Agreement following its accession to the WTO (WT/ACC/LTU/52). Lithuania had become a WTO Member on 31 May 2001. Lithuania's replies to the Checklist of Issues in document GPA/35 was under preparation and would be submitted in due course. The representative of the United States said that his delegation hoped to receive the replies as soon as possible, preferably prior to the next meeting.

44. The representative of Moldova said that Moldova had undertaken a commitment to initiate negotiations for membership in the Agreement by tabling an entity offer immediately after accession. Moldova had acceded to the WTO on 26 July 2001 (WT/ACC/MOL/37). He said that Moldova had recently adopted its legislation on government procurement. His authorities were currently preparing the replies to the Checklist of Issues in document GPA/35 as well as the initial offer and hoped to be able to submit them shortly.

45. The representative of Croatia said that Croatia had undertaken a commitment that it would initiate negotiations for membership in the Agreement on Government Procurement upon accession by tabling an entity offer at that time (WT/ACC/HRV/59, paragraph 155). Croatia had acceded to the WTO on 30 November 2000. The preparation of a new legislation on public procurement was currently under discussion among different government agencies. Croatia would initiate the procedures regarding the application for accession to the Agreement after the conclusion of the legislative work and once the new law had been passed by the Cabinet and had been approved by the Parliament.

⁸ The questions submitted by the United States on 21 November 2001 have been circulated in document GPA/SPEC/25.

46. Referring to the question of whether it was necessary to complete the domestic work relating to the preparation of new or revised legislation in an acceding country before that country could move forward with the process of accession to the Agreement, the representative of the United States, joined by the representative of Canada, said that acceding countries should be encouraged to consult with the Parties to the Agreement closely and to submit any drafts of the laws in preparation for the consideration of the Parties to the Agreement prior to the conclusion of the domestic procedures. Consultations with the Parties would be beneficial in evaluating any legislation under preparation from the perspective of an acceding country's future commitments under the Agreement. He therefore encouraged Croatia to share with the Parties information on the draft legislation and to enter into informal consultations during the phase of the development of the legislation. The representative of Switzerland referred to Croatia's commitment to accede to the Agreement and said that Croatia should consider the preparation of its offer without waiting to have its domestic legislation fully in place.

47. As regards the other newly acceded countries, the Chairman said that the Protocols of Accession of two WTO Members, namely Georgia (WT/ACC/GEO/31) and Mongolia (WT/ACC/MNG/9) also included commitments regarding the Agreement on Government Procurement.

D. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

48. Taking up the review of the implementing legislation of Japan, the Chairman said that, the replies to the questions put by Canada; Hong Kong, China; Switzerland; and the United States had been circulated in Job No. 5549 and Corr.1.

49. The representatives of Canada; Hong Kong, China; and Switzerland thanked Japan for the replies received. The representative of the United States said that, although his delegation was prepared to agree to the conclusion of the review of Japan's implementing legislation, it was somewhat disappointed that Japan's responses to some of the questions of the United States had not been very detailed. In particular, his delegation had concerns relating to the existence of meaningful competition in Japan's construction market. This question was, in some ways, related to extremely low market penetration of foreign suppliers in that market.

50. The representative of Japan said that his delegation was prepared to discuss construction and related procurement matters, if necessary, on a project basis, with any interested delegation. He believed that Japan's procurement system was open and competitive.

51. As there were no outstanding points with respect to the review of the national implementing legislation of Israel and Liechtenstein on the basis of the replies received from those Parties (Job Nos. 5773, 2923 and 7113 and Job No. 4731), the Chairman suggested that the Committee consider that the review of the implementing legislation of Israel, Japan and Liechtenstein had been completed, it being understood that the Committee might revert to any matter relating to the legislation of these Parties at any time. The full record of the review of the legislation of these Parties would be circulated in the GPA/- series of documents. The Committee so agreed.

52. With regard to the two Parties whose review of the legislation had not yet been initiated, namely the Kingdom of the Netherlands with respect to Aruba and Iceland, the Chairman invited these delegations to submit notifications of their implementing legislation by responding to the Checklist of Issues in GPA/1/Add.1.

E. NEGOTIATIONS UNDER ARTICLE XXIV:7

53. Reporting on the informal consultations held on 1 October 2001 on the Article XXIV:7(b) negotiations, the Chairman said that the informal group had continued its Article-by-Article review of the Agreement on the basis of the proposals by various delegations compiled in the Secretariat note "Suggested Drafting Changes to the 1994 Agreement" (Job No. 5765). Delegations also had available to them an explanatory note by the United States relating to its proposals for the revision of the Agreement (Job No. 2867) and another submission by the United States on "'BOT' Contracts and 'Concessions for Public Works' under the GPA" (Job No. 6800). Detailed comments had been made seeking clarification of or suggesting further drafting changes to the revised texts proposed by the United States in Job No. 2867. As a way of moving forward the discussion on the proposed definitions, the delegation of the United States had been asked to provide some examples of BOT contracts and concessions for public works. Those delegations who had questions regarding the extent to which the proposed definition of "BOT" contracts covered certain types of government procurement had also been invited to forward examples of such situations. The delegation of the United States had indicated that it would further revise the texts of some of the proposed amendments in Job No. 2867 to take account of the comments that had been made so far. It also informed the Group that it was reviewing its ideas on exceptions to the Agreement. A number of other delegations expected to put forward drafting suggestions on the review of the text of the Agreement: Hong Kong, China on several Articles; the European Community on tendering procedures; Canada on time-limits regarding contract award notices; and Japan on Article XXIV:6(b). With regard to the possible use of the term "measures" in defining the scope of an agreement, the Secretariat had been asked to prepare a note on the use of this term in GATT/WTO jurisprudence. The Group had reverted also to other aspects of Article XXIV:7 negotiations, namely the elimination of discriminatory measures and the expansion of coverage. The delegation of Canada introduced a submission on Discriminatory Provisions in the Agreement (Job No. 6604). The Group also had before it a list of documents containing the submissions that had been made previously by various delegations as well as the notes by the Secretariat relating to these elements. The Secretariat had made available a note on the Modalities Used in the Past for Negotiating Schedules to the Agreement (Job No. 7055). Under this item, the view had been expressed by some delegations that coverage issues should be addressed in a broad manner. Regarding the status of work on the revision of the text of the Agreement, the view had been expressed that the proposals on the table constituted a good basis for the negotiations on the revision of the text of the Agreement, it being understood that delegations were free to make additional proposals at any time. Finally, delegations had had an exchange of views regarding the development of a plan of action for carrying forward work on all elements of the review. Some delegations had informed the Group that intensive consultations were being pursued internally on GPA-related issues and that they needed more time before they could agree to a time-frame for further work on the negotiations under Article XXIV:7. It had also been suggested that the discussion on the revision of the text at each of the future meetings would focus on selected categories of issues. Some delegations suggested that the possibility of early results in some areas should be considered. Some delegations stressed that the elements of the review regarding the elimination of discriminatory provisions and expansion of coverage would be taken up in parallel with the work on the revision of the text.

54. Regarding the next informal meeting which would be held on 20 February 2002, the Secretariat note, "Suggested Drafting Changes to the 1994 Agreement" would be revised to incorporate the comments made at the present meeting. Those delegations who expected to suggest new draft texts or amendments to earlier proposals had been invited to do so by 20 January 2002. The Group would have a focused discussion on tendering procedures (Articles VII-XV and Article XVIII, paragraphs 1, 3 and 4); technical specifications (Article VI); definitions related to these two issues (the United States proposal in Job No. 2867); and provisions on developing countries (Article V and the proposal by Switzerland in Job No. 1274). The Group would revert to the discussion of BOT contracts (the United States proposal in Job No. 2867 and Job No. 6800). The Group would continue

its discussion on how to move forward on the other elements of the negotiations. Prior to this meeting, the Chair would have informal consultations with a view to making a proposal for a timetable and work programme for all elements of the work under Article XXIV:7.

F. ANNUAL REPORT FOR 2001 TO THE GENERAL COUNCIL

55. The Committee agreed to the arrangements for the adoption of its Annual Report for 2001 to the General Council on the basis of a draft prepared by the Secretariat. The report was subsequently adopted and circulated as document GPA/58.

G. DATE OF THE NEXT MEETING

56. The Committee agreed to hold its next meeting on 21 February 2002.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/15
12 July 2001

(01-3477)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 3 MAY 2001

Chairman: Mr. Martin Loken (Canada)

1. The following agenda was adopted:
 - A. Election of the Chairman for 2001
 - B. Applications for Observer Status
 - C. Modifications to the Appendices to the Agreement
 - D. Streamlining the Accessions Process
 - E. Accessions:
 - (i) *Latvia*
 - (ii) *Estonia*
 - (iii) *Jordan*
 - (iv) *Bulgaria*
 - (v) *Panama*
 - (vi) *Chinese Taipei*
 - (vii) *Newly Acceded Countries*
 - F. Review of National Implementing Legislation
 - G. Negotiations under Article XXIV:7
 - H. Date of the Next Meeting
- A. ELECTION OF THE CHAIRMAN FOR 2001
2. The Committee elected Mr. Martin Loken (Canada) as its Chairman for 2001.
- B. APPLICATIONS FOR OBSERVER STATUS
3. The Committee agreed to grant observer status to the Governments of Cameroon, Malta and Oman, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the requests received from those countries (GPA/W/121, 139 and 126, respectively).

4. Welcoming the three new observers, the representatives of the United States, the European Community and Switzerland said that they looked forward to an active participation of observers in the Committee's work. The representative of Switzerland encouraged observers to come forward with any views on how the on-going negotiations under Article XXIV:7 could take into account the needs of developing countries, in particular in relation to the amendments to Article V on special and differential treatment. The representative of Oman said that the review of the Agreement should focus on the needs and the difficulties of developing countries acceding to the Agreement which might include provisions allowing flexibility in the implementation of the Agreement and on technical cooperation for capacity building. The representative of the European Community said that, while the general view had been that developing countries might need flexibility related to implementation, the views of developed countries as to what type of flexibility would be appropriate might not be shared by developing countries. An active contribution from developing countries to the discussion of these matters in the context of the review of the Agreement would benefit both developed and developing countries.

C. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

5. The Chairman said that, since the September 2000 meeting, Japan; Hong Kong, China; and Korea had proposed modifications to their respective Appendices I (GPA/W/123 and GPA/W/129, GPA/W/122/Rev.1 and GPA/W/128 and Corrs. 1 and 2). The modifications proposed by Japan in GPA/W/123 and Hong Kong, China in GPA/W/122/Rev.1 had entered into force on 29 December 2000 (WT/Let/367) and 6 January 2001 (WT/Let/370), respectively.

6. With respect to the notification by Japan in GPA/W/129, the Chairman said that communications had been received from the delegations of the United States; Canada; and Hong Kong, China (GPA/W/132, 134 and 135) requesting further information from Japan and objecting to the proposed changes going into effect. Japan's responses had been circulated in document GPA/W/137. The representatives of Hong Kong, China, the United States and Canada said that their authorities were currently studying Japan's responses. The representative of the United States said that her authorities had some specific concerns with respect to the proposed transfer of independent administrative units from Annex 1 to Annex 3 and a more general concern about the complexity of the changes to the list of entities in Annex 3. The representative of Japan said that Japan hoped that the information provided on the proposed modifications to Annex 1 would improve the understanding of the proposed modifications to Annex 3 so that their objections could be withdrawn in the near future.¹ In concluding the discussion, the Chairman said that the Committee would revert to this matter at its next meeting in the light of discussions between Japan and other Parties.

7. Referring to the notification by Korea in GPA/W/128 and Corrs. 1 and 2, the representative of Korea said that a communication had been received from the delegation of the United States requesting further information on the proposed changes (GPA/W/133). His authorities would respond to the questions by the United States in the near future.

8. As regards the modifications proposed to Japan's Annex 3 of Appendix I, notified in document GPA/W/91, the representative of Japan said that bilateral consultations had been held with the delegations of the United States, the European Community and Canada in early May. The representative of the United States said that, on the basis of the information that Japan had provided in the recent consultations and some additional information that the delegation of Japan would provide, the United States hoped to reach a conclusion of this matter. The representative of the European Community said that the bilateral discussions held with Japan had given his authorities a

¹ In a communication, dated 16 June 2001, the United States indicated that it has withdrawn its objection (GPA/W/139).

more clear picture of the evolution of the Japanese market and the circumstances in which the relevant entities operated. The European Community would submit a few additional questions to Japan and hoped to resolve the issue soon.

9. The Chairman said that, due to a technical error which had occurred in the preparation of the Loose-leaf System of Appendices circulated in document WT/Let/330, the proposed new entity names by Japan in GPA/W/91 in Appendix I, Annex 3 with respect to NTT had been reflected in the Appendices to the Agreement in the form of a loose-leaf system circulated in document WT/Let/330, dated 1 March 2000. Once these errors had been discovered, document WT/Let/386 had been issued on 19 March 2001 indicating the rectification that should be made to WT/Let/330. Since there had been no objections within thirty days, the corrections had been certified by a Procès-Verbal of Rectification (WT/Let/391).

D. STREAMLINING THE ACCESSIONS PROCESS

10. Referring to the note on the Establishment of an Indicative Time-Frame for Accession Negotiations and Arrangements for Reporting on the Progress of Work, the representative of the European Community said that the revised note circulated in GPA/W/109/Rev.2 would give the right signal to potential candidates for accession, to the external world as well as to the Parties to the Agreement as regards the importance that Parties attached to the accession process.

11. The representative of Canada said that it was important to recognize that time-frames were indicative. With the increasing number of acceding countries, the work on accessions had become a challenge for small delegations. In Canada's view, the time-frames outlined in the note were ambitious. For example, the period of two months provided for the receipt of questions from Parties after the submission of an acceding country's offer in the indicative timetable for negotiation of Appendices was very short for the consideration of all aspects of an offer and necessary internal consultations. Canada remained concerned that, by having such tight timetables, the Committee might be raising expectations that Members would have difficulty achieving.

12. The representative of Switzerland said that the timetables and the reporting procedures in the note would be a useful guide for the accession process. Delegations would recall that the delegation of Iceland had found that its accession process had taken far too long. It was clear that those Parties who were interested in negotiating detailed conditions of accession would need to allocate additional resources to the work in order to ensure the smooth running of the overall process. It would be regrettable if the work on the expansion of membership was slowed down because of the difficulties that Parties themselves might have in following the pace of negotiations. Joined by the representative of the United States, he said that Parties should make every effort to meet the expectations of a number of countries who had shown an interest in joining the Agreement.

13. The representative of the United States said that his delegation appreciated the amount of work that the acceding countries had undertaken notwithstanding the resource issues that they also faced. This showed their commitment to the process. While recognizing that the time-frames were indicative and that, in certain cases, it might not be possible to keep to certain specific deadlines, Parties should ensure that they had the resources available to allow them to respond promptly to the information and offers received from acceding countries.

14. The representative of the European Community said that Parties should be coherent in the message that they delivered regarding their ambitions for the enlargement of the membership of the Agreement. Parties had declared on many occasions that one of the objectives of the negotiations under Article XXIV:7 was to make the Agreement more attractive for potential candidates. It would be contradictory to try to make the Agreement more attractive but take a long time in discussing offers and procurement regimes of the acceding countries. On account of the level of ambition that Parties

had for the enlargement of the Agreement and recognizing the resource problems of applicant countries, it was worthwhile for the Parties to make the effort to try to finalize the accessions within the time-frames. What was meant by an indicative timetable was clear. There might be negotiations where 18 months might not be necessary, whereas in other situations the negotiation of an offer might require more time.

15. In concluding the discussion of this agenda item, the Chairman suggested that the Committee proceed with the accessions process in accordance with the Indicative Time-Frame for Accession Negotiations and Arrangements for Reporting on the Progress of Work in paragraphs 4 to 9 in the note in GPA/W/109/Rev.2. The indicative time-frame would be kept under review and could be revised, if necessary, in light of the experience gained with its application.

16. The Committee so agreed.

E. ACCESSIONS

(i) *Latvia*

17. Reporting on the developments regarding Latvia's accession since the meeting of the Committee held on 29 September 2000, the Chairman said that informal plurilateral consultations had been held between Latvia and interested Parties on 31 January 2001 on the basis of Latvia's written answers to the questions received from the United States (GPA/SPEC/8/Rev.1), Switzerland, (GPA/SPEC/10) and Canada (GPA/SPEC/18/Rev.1) as well as an exchange of oral questions and answers during the consultations.

18. Referring to the developments since the plurilateral meeting of 31 January 2001, the representative of Latvia said that Latvia had submitted a revised offer on 26 April 2001 (GPA/SPEC/5/Rev.1) which had been prepared in the light of the consultations that had been held on the initial offer. Moreover, translated copies of the Law on Construction Work, Supply, Leasing and Services for the Needs of Public Service Undertakings of 4 November 1999 and the Regulations relating to the Procedure of Selection of Tenderers and Application of Methods for Choice of Tenders of 31 October 2000 had been circulated in document GPA/28/Add.1. Information relating to Latvia's public administration reform and the national competition legislation had also been made available to the delegation of the United States. Latvia would soon submit a status report on the steps needed to align its procurement regime with the requirements of the Agreement which would reflect all the recent developments relating to the procurement legislation. Latvia was ready to pursue bilateral discussions with interested delegations with a view to finalizing any outstanding issues.

19. The representatives of the United States, Canada and Switzerland said that their delegations would hold further bilateral consultations with Latvia regarding the remaining outstanding issues, in particular regarding the coverage of the revised offer. The representative of the European Community said that his delegation was in the process of examining the revised offer. The representative of Israel said that his delegation had been concerned about the influence that Latvia's external obligations had on the negotiation of its accession offer and the way in which the results of certain issues relating to the offer had been known in advance of the negotiations. His delegation would continue the bilateral consultations so as to resolve the outstanding issues regarding Latvia's offer.

20. With regard to the question of the conclusion of Latvia's accession process, the representative of the United States said that his delegation hoped that Latvia would be able to accede to the Agreement before the end of the year. The representative of the European Community said that there seemed to be no main reason why Latvia could not complete its accession process before the end of the year. The representative of Switzerland said that Parties should try to complete the clarification of any outstanding issues with Latvia before the next meeting, if necessary by communicating through

fax and e-mail. The representative of Canada said that the indicative time-frame did not preclude the submission of a second revised offer, if necessary.

21. In concluding the discussion on Latvia's accession, the Chairman suggested that Parties should pursue their bilateral consultations in the coming months with a view to completing Latvia's accession process before the end of the year. Depending on the outcome of those bilateral consultations, there might be a need for the submission of a further revised offer by Latvia. Unless advised otherwise by Latvia or any other Party by 15 September 2001, the Secretariat would circulate a draft Decision on the Terms of Accession of Latvia for the consideration of Parties at the next meeting.

(ii) Estonia

22. Reporting on the developments regarding Estonia's accession since the meeting of the Committee held on 29 September 2000, the Chairman said that Estonia's replies to the Checklist of Issues had been circulated on 5 December 2000 (GPA/W/127). Informal plurilateral consultations had been held between Estonia and interested Parties on 31 January 2001 on the basis of Estonia's replies to the questions received from Switzerland (GPA/SPEC/12/Rev.2), Japan (GPA/SPEC/14/Rev.1), the United States (GPA/SPEC/15/Rev.1) and Canada (GPA/SPEC/16/Rev.1) as well as oral questions and answers exchanged during the consultations. A follow-up question received from Japan in April 2001 and Estonia's answers thereto had been circulated in document GPA/SPEC/19/Rev.1.

23. The representative of Estonia said that Estonia's replies to the Checklist of Issues circulated in document GPA/W/127 would be revised in the near future to reflect the provisions of the recently amended Law on Government Procurement which had entered into force on 1 April 2001. During the course of the current week Estonia had had bilateral consultations with Switzerland and the United States. His delegation from the capital was available for further bilateral consultations with any other interested Parties.

24. The representative of Canada said that her delegation was reviewing Estonia's offer and would be contacting Estonia in the near future.

25. On concluding the discussion on Estonia's accession, the Chairman suggested that Parties should pursue their bilateral consultations with Estonia. Should the submission of a revised offer by Estonia prove to be necessary on the basis of these consultations, Estonia should submit such an offer before the next meeting of the Committee.

(iii) Jordan

26. Reporting on developments regarding Jordan's accession since the meeting of 29 September 2000, the Chairman said that Jordan's replies to the Checklist of Issues had been circulated on 6 December 2000 (GPA/W/124). Informal plurilateral consultations had been held between Jordan and interested Parties on 31 January 2001 on the basis of oral replies by Jordan to the written questions received from Switzerland (GPA/SPEC/11), the United States (GPA/SPEC/13) and Canada (GPA/SPEC/17). Jordan's written replies to these questions had been circulated on 8 March 2001 (GPA/SPEC/11/Rev.1, GPA/SPEC/13/Rev.1 and GPA/SPEC/17/Rev.1, respectively). Further questions had been received from the European Community on 3 May 2001 (GPA/SPEC/20).

27. Referring to the domestic work on government procurement that had recently been undertaken by Jordan, the representative of Jordan said that research had been carried out recently to evaluate the impact of Jordan's accession to the Agreement on the different national economic sectors and also to assess the scope of procurement by entities subject to the procurement regime. In

cooperation with the World Bank, the Government of Jordan had prepared a draft procurement legislation which had been intensively debated with interested stakeholders in Jordan including the private sector. The new unified legislation which would incorporate all the disciplines of the Agreement on Government Procurement would contribute to the work on the finalization of Jordan's offer.

28. The representative of the United States said that the intensive work that Jordan had undertaken domestically was a good indication of its commitment to the process of accession to the Agreement. The United States had indicated bilaterally to Jordan that it was ready to consider any specific needs it might have in this respect and to provide, as appropriate, any support that the United States might be able to give to help to facilitate the accession process. He hoped that other Parties would be ready and willing to do the same. The representative of Israel congratulated Jordan on the progress that it had made regarding the process of accession. The representatives of the United States, Canada, the European Community and Switzerland said that they looked forward to the submission of an offer from Jordan as soon as possible so that the negotiation of the offer could proceed in parallel with the on-going examination of the national procurement system.

29. As regards the next steps in Jordan's accession process, the Chairman suggested that Jordan should submit its initial offer as soon as possible. In accordance with the Indicative Time-Frame for Accession Negotiations, within two months of its receipt, Parties should submit their questions to Jordan regarding the offer.

(iv) *Bulgaria*

30. The representative of Bulgaria said that Bulgaria's replies to the Checklist of Issues in document GPA/35 had been circulated on 2 May 2001 (GPA/W/136). In addition, Bulgaria had submitted an English translation of the Law on Government Procurement enacted on 25 June 1999 (GPA/49) as well as of two procurement regulations that had been issued in 2000, namely "Keeping the Public Procurement Register" and "Regulation on Awarding of Public Procurement Contracts below the Thresholds Set Out in the Law". The draft offer was at an advanced stage of preparation and would be submitted shortly.

31. Regarding the next steps in Bulgaria's accession process, the Chairman suggested that delegations should put in writing any questions they might have regarding Bulgaria's procurement regime by 1 July 2001. Bulgaria should reply to any such questions by 1 September 2001.

(v) *Panama*

32. The Chairman recalled that, in response to a suggestion that the Chair had made at the September 2000 meeting regarding the holding of informal plurilateral consultations between Panama and interested Parties in January 2001, the representative of Panama had said that he would ask for instructions from his authorities before giving a definitive answer on this point. Since subsequently the Chair had been informed by the delegation of Panama that, in its view, such consultations might be useful after an evaluation of renewed contacts with interested Parties, no plurilateral consultations had been scheduled in January 2001 regarding Panama's accession.

33. The representative of the United States said that the United States had had a number of contacts with the authorities in Panama both before and since the September 2000 meeting. His delegation considered that, pursuant to these consultations on Panama's offer, it would not be difficult to conclude the consideration of Panama's accession on the basis of a couple more decisions which his delegation hoped would be taken soon by Panama. If there was an indication of movement from Panama over the coming months with respect to the outstanding issues, plurilateral consultations could be held before the next meeting. The representative of Canada said that her delegation had one

remaining issue with Panama. The representative of the European Community said that a resolution of the United States' outstanding issues with Panama would have an important impact on the Community's consultations with Panama given that the substance of the issues was similar.

(vi) *Chinese Taipei*

34. The representative of the United States said that, following the clarification of some outstanding issues in the agreement reached between the two delegations in 1998, the bilateral discussions with Chinese Taipei had been concluded. Chinese Taipei had indicated that its offer would be revised as a result of these consultations.

35. The representative of Canada said that her delegation had had a series of discussions with the delegation of Chinese Taipei and looked forward to receiving a response to the information that Canada had provided. Her delegation looked forward to reaching a rapid solution to a few outstanding issues with respect to the offer.

36. The representative of the European Community said that his delegation had concluded the remaining issues with Chinese Taipei and looked forward to receiving a revised offer.

(vii) *Newly Acceded Countries*

37. The representative of Oman said that, in the Report of the Working Party on Accession of Oman to the WTO, Oman had confirmed that, upon accession to the WTO, it would initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer. If the results of the negotiations were satisfactory to the interests of Oman and to the Parties to the Agreement, Oman would complete its negotiations for membership in the Agreement within a year of its accession to the WTO (WT/ACC/OMN/26, paragraph 121). Oman had become a WTO Member on 9 November 2000. As a first step in its accession process, Oman had responded to the Checklist of Issues in document GPA/35 (GPA/W/141). The representative of the United States said that his delegation looked forward to receiving Oman's application for accession. The United States would be prepared to discuss any specific issues that might need to be addressed in order to facilitate Oman's accession to the Agreement.

38. Referring to Slovenia's commitment to accede to the GPA (L/7492), the representative of Slovenia said that the entry into force of the new legislation on public procurement since November 2000 would enable Slovenia to fulfil the main internal legislative requirements relating to its accession to the Agreement. Slovenia was in the process of preparing its responses to the Checklist of Issues in GPA/35 and had also initiated work on its offer. Slovenia would apply for accession in the near future.

39. As regards the other newly acceded countries, the Chairman said that the Protocols of Accession of five countries, namely Albania (WT/ACC/ALB/51), Croatia (WT/ACC/HRV/59), Georgia (WT/ACC/GEO/31), Lithuania (WT/ACC/LTU/52) and Mongolia (WT/ACC/MNG/9), included commitments regarding the Agreement on Government Procurement.

F. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

40. In accordance with the agreed procedures and the schedule for the review of national implementing legislation, the Committee initiated the review of the implementing legislation of Israel (GPA/34) on the basis of the questions put by Korea (Job No. 4434), the United States (Job No. 6051) and Israel's answers thereto (Job No. 5773 and Job No. 2923, respectively), and the questions put by Canada (Job No. 3414).

41. Taking up the implementing legislation of Japan (GPA/37), the Committee carried out the review on the basis of the questions put to Japan by Switzerland; the United States; Hong Kong, China; and Canada (Job Nos. 2244, 2877, 3033 and 3416, respectively).

42. Finally, the Committee initiated the review of the implementing legislation of Liechtenstein (GPA/46) on the basis of the questions from the United States (Job No. 2878) and Liechtenstein's answers thereto (Job No. 4371).

43. In concluding the discussion on the review of Israel, Japan and Liechtenstein, the Committee agreed that it would take up any outstanding points with respect to the legislation of these three Parties at its next meeting. In accordance with the agreed procedures for the review, any further questions should be made available by 1 August 2001 and Israel, Japan and Liechtenstein should respond to these questions by 10 September 2001.

44. Reverting to the on-going review of the legislation of the United States, the representative of Canada said that her delegation had difficulty in understanding the responses received from the United States in October 2000 regarding the two questions that had been put by Canada previously (Job No. 6053). Her delegation would pursue this issue bilaterally.

45. With regard to Singapore and the United States, the Chairman suggested that the Committee consider that the review of these two Parties had been completed, it being understood that the Committee might revert to any matter relating to the legislation of these Parties at any time. The full record of the review of the legislation of Singapore and the United States would be circulated in the GPA/- series of documents.² It was so agreed.

46. With regard to two Parties whose legislation had not yet been initiated, namely the Kingdom of the Netherlands with respect to Aruba and Iceland, the Committee took note of a statement by the representative of the Kingdom of the Netherlands with respect to Aruba that the notification of the implementing legislation of Aruba would be submitted in the near future. In addition, the Committee invited Iceland to notify its implementing legislation by responding to the Checklist of Issues in GPA/1/Add.1.

G. NEGOTIATIONS UNDER ARTICLE XXIV:7

47. Reporting on the informal consultations held on 30 January and 2-3 May 2001 on the Article XXIV:7(b) negotiations, the Chairman said that the informal group had continued its Article-by-Article review of the Agreement on the basis of the note by the Secretariat "Suggested Drafting Changes to the 1994 Agreement". At the 2-3 May meeting there had been detailed discussions on a new submission by the United States containing a comprehensive revision of the Agreement (Job No. 2867). Participants had made it clear that, given its scope, their reactions to the United States' proposal were preliminary. Delegations had been invited to submit their additional comments and questions relating to the draft articles proposed by the United States prior to the next meeting. Moreover, the United States had agreed to submit explanatory notes on its proposed changes to the existing Articles. In addition, the group had a further discussion of the existing proposals by other delegations relating to amendments to the Articles of the Agreement based on the Secretariat note "Suggested Drafting Changes to the 1994 Agreement" (Job No. 2057), in particular, a proposal by Switzerland on Article V (Job No. 1274) and the proposals and suggestions by the European Community (Job No. 443), Japan (Job Nos. 860 and 3289) and the United States (Job No. 3152) on Article XXIV:6(b). As it had appeared that some of the proposals in the side-by-side text might require further clarification and fine-tuning, delegations who had tabled such proposals had been invited to inform the group whether those proposals should be maintained in the draft text or whether

² GPA/52 and GPA/50.

they had the intention of amending them. It had been agreed that any new or amended proposals should be submitted by 30 June 2001. Regarding the future documentation for the article-by-article review of the Agreement, it was agreed that the new proposal by the United States would replace the proposals by this delegation in the document "Suggested Drafting Changes to the Text of the Agreement". Comments relating to replaced United States' proposals could be removed. The proposals by Switzerland and the United States would also be reproduced as attachments to the side-by-side text. The comments on the specific articles in the United States proposal would be incorporated either in the side-by-side text or in the relevant attachment, depending on whether the comments related to substantive or structural elements of the proposals. At its meetings of 30 January and 2-3 May 2001, the group had also considered other aspects of the Article XXIV:7 negotiations – the elimination of discriminatory measures and the expansion of coverage. At the 2-3 May meeting, in addition to a paper that Canada was expected to submit in the near future, delegations had been invited to come forward with papers expressing their views on these elements of the negotiations. A list of papers that had been made available to the group by various delegations as well as the notes by the Secretariat relating to these elements would be circulated to the group. Moreover, the Secretariat would prepare a brief note on the modalities that had been used in the past for negotiating Schedules in the GATT/WTO. Finally, the group would resume informal consultations in the autumn at which time delegations would have a further exchange of views, seek to take stock of the work on the review of the text over the past three years, and try to develop a plan for carrying forward work on all elements of the review.

H. DATE OF THE NEXT MEETING

48. The Committee agreed to hold its next meeting on 2 October 2001.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/14
3 January 2001

(01-0006)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 29 SEPTEMBER 2000

Chairman: Mr Dick Mak (Hong Kong, China)

1. The following agenda was adopted:
 - A. Applications for Observer Status
 - B. Modifications to the Appendices to the Agreement
 - C. Streamlining the Accessions Process
 - D. Accessions:
 - (i) *Iceland*
 - (ii) *Latvia*
 - (iii) *Panama*
 - (iv) *Estonia*
 - (v) *Kyrgyz Republic*
 - (vi) *Jordan*
 - (vii) *Bulgaria*
 - (viii) *Chinese Taipei*
 - (ix) *Newly Acceded Countries*
 - E. Review of National Implementing Legislation
 - F. Negotiations under Article XXIV:7
 - G. Other Business
 - H. Annual Report for 2000 to the General Council
 - I. Date of the Next Meeting

A. APPLICATIONS FOR OBSERVER STATUS

2. The Committee agreed to grant observer status to the Governments of the Czech Republic, Moldova and the Slovak Republic, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from those countries (GPA/W/115, W/120 and W/116, respectively).

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Notifications*

3. The Chairman said that, since the March 2000 meeting, Japan and Hong Kong, China had proposed modifications to their respective Appendices I (GPA/W/115 and W/116). These modifications had entered into force on 22 August 2000 (WT/Let/354) and 26 August 2000 (WT/Let/355), respectively.

4. Regarding the modifications proposed by Switzerland to Annex 1 of Appendix I, notified in documents GPA/W/106 and Corr.1 of 16 March 2000, the representative of Switzerland said that, in response to a request for clarification received from the delegation of the United States (GPA/W/111), his delegation had provided a note identifying the differences between the proposed new Annex 1 and the existing Annex 1 of Switzerland and giving the reasons for the proposed modifications (GPA/W/114). The names of various Ministries and units in Annex 1 had been altered because of certain constitutional changes. In addition, "Services du Parlement", being no longer a part of the central government, had been deleted. He confirmed that the units and entities that were listed under each of the Ministries in the modified Annex 1 continued to be the entities that were referred to in the heading of the earlier Annex 1 relating to the coverage at the Federal Government level in Switzerland. The representative of the United States said that, on the basis of the explanations that had been provided by the delegation of Switzerland and the confirmation regarding the coverage of entities in Annex 1, his delegation had no objection to the proposed modifications. The Committee agreed that the modifications by Switzerland would enter into force on 29 September 2000 (WT/Let/356).

5. Reverting to the modification proposed by Japan to its Annex 3 of Appendix I, notified in document GPA/W/91, the representative of Japan said that, since October 1999, consultations had been held with the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, W/99, W/100 and W/100/Add.1, respectively) and Japan's responses thereto (GPA/W/104 and Add.1, GPA/W/107 and 108, respectively). His delegation regretted that, in spite of these efforts, those Parties had not been able to withdraw their objections regarding the proposed modifications. As Japan had explained before, the NTT Communications Corporation was a private company that had been established in accordance with the Japanese Commercial Law and was not regulated by any special law. Therefore, according to Japan, the Government no longer had control or influence over the company and the operation of the Corporation was subject to the conditions of effective competition. His delegation considered that, as the present case had shown, the lack of adequate guidance in Article XXIV:6(b) concerning the withdrawal of an entity from Appendix I might lead to different interpretations of privatization or effective competition. He recalled that Japan had made a suggestion attempting to clarify the notion of effective elimination of government control or influence in order to avoid possible disputes over the situation of entities that were considered to be free of government control or influence (Job No. 860).

6. The Committee took note of the statements made and agreed to revert to this matter at its next meeting.

C. STREAMLINING THE ACCESSIONS PROCESS

7. The Chairman said that the Checklist of Issues for Provision of Information by Applicant Governments Relating to Accession to the Agreement had been revised in light of the comments made by delegations during and after the March meeting. It had subsequently been adopted by the Committee in accordance with the arrangements made at that meeting (GPA/35). The representatives of the United States, the European Community and Hong Kong, China said that the Checklist would

be a useful tool for improving the efficiency of the accession process. They encouraged all acceding countries to provide their responses to the Checklist as soon as possible.

8. As regards the revised note on the Establishment of an Indicative Time-frame for Accession Negotiations and of Arrangements for Reporting on the Progress of Work (GPA/W/109/Rev.1), the representative of the European Community said that his delegation could support the thrust of the procedures suggested in the note. Commenting on the specific elements of the note, the representative of the United States said that the indicative time-frame should allow for the past practice of the submission of initial offers by an acceding country at the same time as its application for accession in order to avoid the lapse of a period of six months between the two initial steps in the accession process. The initiation of the Parties' review of an applicant's offer as early as possible would contribute to the acceleration of the subsequent steps for the evaluation of the offer. The representative of Switzerland, joined by the representatives of Israel and the European Community, said that a period of two years' wait for the completion of every accession process would send the wrong message to acceding countries about the efficiency of the procedures and would not be a good incentive for joining the Agreement. The representatives of the European Community and the United States said that any agreed indicative time-frames should be treated as maxima and should recognize that certain countries might require a shorter time for the completion of their accession procedures. Also, in some cases, more than one informal plurilateral consultation might be necessary. However, Parties should not rely only on plurilateral consultations for exchange of information and the bilateral process should be pursued in parallel. The representative of the United States said that Parties to the Agreement should also be encouraged to accelerate the procedures by responding to initial offers and holding bilateral consultations with acceding countries as rapidly as possible. The representative of Panama said that the dynamics involved in bilateral and plurilateral consultations were different. Setting some parameters might be useful for the conduct of plurilateral consultations. The representative of the United States said that, while a rigid approach to consultations was not warranted, an exchange of written questions and answers between the acceding country and Parties, in advance of the consultations, might contribute to the predictability of the discussions on matters of horizontal interest.

9. The representatives of the United States and the European Community said that consultations on procurement regimes and Appendices were independent of each other and therefore each process should have a separate time-frame.

10. The representative of Switzerland said that, in his view, the designation of a facilitator to each acceding country might be one way of running the accession process more smoothly. The representative of Latvia said that a neutral facilitator might be helpful in the streamlining of the fragmented bilateral work. The representative of the European Community said that the role of a facilitator would not need to be formalized. Most delegations already played some kind of facilitator role on an informal basis in finding solutions to any problems encountered by the acceding countries. The representative of the United States said that a country representative's involvement in negotiations with the acceding country might be prejudicial to his role as a facilitator.

11. The representative of Bulgaria said that the procedures might envisage the examination of the applicable legislation before the application for accession and the submission of the initial offer. The representative of the United States said that, contrary to the presumption by some countries that had undertaken commitments to join the Agreement, it was not necessary to adopt new legislation and to complete the internal legislative work before they initiated the accession process. Sequencing the process in that order might lead to the adoption of legislation that might not be entirely consistent with the requirements of the Agreement. It might be more desirable to have the accession process in parallel with the domestic process of the preparation of necessary legislation.

12. The Committee took note of the statements made and agreed that the Secretariat would revise the note on the indicative time-frame for accession negotiations in light of the comments made at the present meeting.

D. ACCESSIONS

(i) *Iceland*

13. The representatives of the United States, Canada and Israel said that the bilateral consultations that had been held with Iceland on the basis of the offer in document GPA/W/73/Rev.2 had been concluded. Joined by the representatives of the European Community, Switzerland and Singapore, they welcomed Iceland's accession to the Agreement.

14. The Committee adopted a Decision providing for the accession of Iceland to the Agreement on the basis of the terms attached to that Decision (GPA/43). The representative of Iceland expressed the appreciation of his authorities for the Committee's Decision which had been achieved pursuant to the bilateral consultations that Iceland had held with the Parties to the Agreement over the past two years.

(ii) *Latvia*

15. The representative of Latvia said that her delegation had been engaged in bilateral discussions with the delegations of the United States, the European Community, Switzerland and Israel since the submission of the initial offer in June 1999 (GPA/SPEC/5). Although slow at the start, the accession negotiations had now entered a decisive phase. Since moving forward through bilateral consultations only had proved difficult, it might be desirable to consolidate the existing fragmented bilateral work through a plurilateral process. Moreover, the collective effort of interested delegations was the only way to proceed with the work on substantive issues, for instance the issue of how to address the changes in the structure of State institutions in Latvia and in transitional economies in general; systemic issues stemming from the reciprocity provisions in the Agreement; and certain technical issues, for instance the provision of statistical information and any legislative changes that might be required for accession.

16. Joined by the representatives of the European Community, Switzerland and Israel, the representative of the United States said that it would be more efficient for acceding countries not to have to repeat the same points with every single delegation. He said that significant progress had been made in the bilateral consultations with Latvia, but a number of issues remained outstanding. It would be useful to arrange informal plurilateral consultations between interested Parties and Latvia to discuss certain horizontal issues that had been addressed in bilateral consultations. Some issues would continue to be raised separately in bilateral consultations.

17. On concluding the discussion on Latvia's accession, the Committee agreed that informal plurilateral consultations would be held between Latvia and interested Parties in January 2001, back to back with the informal meeting on Article XXIV:7 negotiations. These consultations would be prepared in accordance with the following arrangements: (i) any Parties wishing to put questions to Latvia regarding the applicable legislation and procedures as well as Latvia's offer should provide such questions, in writing, by 30 October; (ii) Latvia should provide written answers to any such questions by 21 December; (iii) unless advised otherwise by Latvia or the Party putting the questions, any questions and answers should be circulated to all Parties in advance of the plurilateral consultations.

(iii) *Panama*

18. The representative of the United States said that his delegation had met a number of times with the delegation of Panama in their respective capitals. His delegation was disappointed with the lack of progress made in these consultations and with the substance of the responses received from Panama in respect of Panama's position on PCA (the Panama Canal Authority). He encouraged Panama to respond to various issues raised by the Parties concerning the coverage of this entity in Panama's offer.

19. The representative of Panama said that Panama had bilateral meetings with the United States in March and September 2000. The coverage of PCA had been the main topic of all the recent contacts with the delegation of the United States. While his delegation had made every effort to respond to their concerns that had been repeatedly expressed, the United States delegation might not have been satisfied with the responses received to its repeated questions because of the difference of opinion between the two delegations on this issue. In recognition of the importance attached to this issue by the Parties, the Vice-Ministry of Commerce in charge of foreign trade negotiations had undertaken a series of consultations with PCA at the highest level as well as with other relevant bodies. However, at this point in time, Panama held to its position that it would not be possible to include PCA in its offer. By way of explanation of the substance of the problem, he said that PCA had been established by a constitutional provision in December 1993 to ensure that the transfer of administration and operation of the Canal would proceed in a smooth, efficient, profitable and secure manner. This body had been accorded administrative independence in order to enable it to carry out the task of maintaining the Canal open to uninterrupted passage by ships of all countries without any discrimination and of guaranteeing the operational efficiency of the Canal in the best interest of the users. The Government of Panama and the Panamanian people had felt these measures were necessary to ensure that there would be no political interference in the work done by the Canal authorities as provided in the Constitution and international treaties as well as in other relevant legislation. Subjecting the Canal Authority to the rules of the Agreement would be a violation of the autonomous nature of this body and a limitation to its freedom of taking purchasing decisions. He added that the procedures administered by the PCA were the same as those that had been previously used by the United States. PCA authorities would most likely hold consultations with interested Parties on any changes to these procedures. Once this obstacle of the PCA had been overcome, he believed that Panama and Parties could focus on other less difficult issues.

20. The representative of the United States said that the coverage of a major procuring entity such as PCA was important for maintaining the balance of commitments under the Agreement. In another context, Panama had undertaken broad commitments on ensuring transparency and non-discrimination in government procurement. It would therefore appear odd not to include PCA within the GPA commitments. The procedures of PCA, for the most part, appeared to be consistent with the requirements of the Agreement. If that were the case, presumably no new requirements would be imposed on PCA. His delegation wondered how its coverage under the Agreement would be taken to imply political interference with the PCA. Rather, it would help to demonstrate the independence and objectiveness of the procurement process of PCA and to reinforce the message that the Government of Panama had sought to convey in this respect. His authorities would continue the consultations with the Panamanian authorities with a view to finding a way to resolve this matter of high importance to them.

21. The representative of the European Community said that, for the United States as well as for other Parties, the coverage of PCA was a major obstacle to progress in Panama's accession to the Agreement. His delegation considered that, in principle, there should not be any problems of incompatibility between the Agreement and the rules that applied to procurement for the Panama Canal. This entity had been included in Appendix I of the United States before its transfer to Panama. The constitutional difficulties that had been referred to by the representative of Panama should be addressed in a way satisfactory to all Parties.

22. In concluding the discussion on the accession of Panama, the Chairman suggested that informal plurilateral consultations could be held between Panama and interested Parties in late January 2001. The representative of Panama said that, while his delegation would like to keep open the possibility of holding informal consultations, he would have to ask instructions from his authorities before giving a definitive answer on this point.

(iv) *Estonia*

23. The representative of Estonia said that Estonia had applied for accession on 6 September 2000 (GPA/41). Estonia's initial offer was submitted on the same date (GPA/SPEC/9). Estonia had held preliminary bilateral consultations with the delegations of the European Community and the United States. The representatives of the European Community, Canada, Switzerland and the United States welcomed the application for accession by Estonia. The representative of the United States said that his delegation would provide written questions to Estonia in the near future.

24. Regarding the next steps on Estonia's accession, the Chairman suggested that informal plurilateral consultations could be held between Estonia and interested Parties in late January 2001, provided that Estonia made available its answers to the Checklist in GPA/35 well in advance of the January consultations.

(v) *Kyrgyz Republic*

25. The representative of the United States recalled that his delegation had put questions to the Kyrgyz Republic (GPA/SPEC/7) regarding its draft offer of 11 May 1999 (GPA/SPEC/4). Joined by the representative of the European Community, he said that the initial offer of the Kyrgyz Republic would require further work and encouraged the delegation of the Kyrgyz Republic to make a revised offer as soon as possible.

26. Regarding the next steps on the accession of the Kyrgyz Republic, the Committee agreed to invite the Kyrgyz Republic to provide responses to the Checklist as soon as possible.

(vi) *Jordan*

27. The representative of Jordan said that Jordan had applied for accession on 12 July 2000 (GPA/38). As part of an information-gathering exercise, his delegation had established informal contacts with the delegations of several Parties. With a view to creating public awareness on Jordan's accession, two workshops had been held in Amman on 2 and 3 June 2000 for public and private sector participants. These workshops had been organized in cooperation with the WTO Secretariat and with the assistance of USAID in Jordan. Work was currently under way for the collection of information on the Jordanian procurement regime and government procurement statistics and the responses to the Checklist were expected to be submitted by the end of October. The representatives of Canada, the European Community, Israel, Switzerland and the United States welcomed the application for accession of Jordan. In response to a question by the representative of the European Community regarding the time-frame for the submission of its initial offer, the representative of Jordan said that the internal consultations for the preparation an entity offer had been initiated but the consultations with the relevant entities were still at a preliminary stage.

28. On the matter of technical cooperation, the representative of Jordan said that his country would be seeking assistance in areas such as the upgrading of human skills for the implementation, the use of electronic procurement methods and the sharing of practical experiences of other countries. The representative of the United States said that his country had had a bilateral exchange of views with Jordan on technical assistance and capacity building in the area of government procurement. The Chairman invited Jordan to communicate to Parties, through the Secretariat, its specific needs for technical assistance relating to accession to the Agreement and its future implementation. A suitable

programme would then be formulated by the Secretariat to address Jordan's needs and to find suitable sources.

29. Regarding the next steps on Jordan's accession, the Chairman suggested that informal plurilateral consultations could be held between Jordan and interested Parties in late January 2001, provided that Jordan made available its answers to the Checklist in GPA/35 well in advance of the January consultations.

(vii) Bulgaria

30. The representative of Bulgaria said Bulgaria had applied for accession on 27 September 2000 pursuant to a decision of the Bulgarian Council of Ministers of 21 September 2000 (GPA/42). Bulgaria would submit information on its legislation and the responses to the Checklist shortly. Its offer would be submitted subsequently.

31. The representative of the United States, joined by the representative of the European Community, welcomed Bulgaria's application for accession. His delegation had been disappointed with the length of time that Bulgaria had taken before it applied for accession pursuant to its WTO commitments in this respect. He invited Bulgaria to make every effort to submit an offer before the informal plurilateral consultations in late January.

32. Regarding the next steps on Bulgaria's accession, the Committee agreed Bulgaria should provide its responses to the Checklist in document GPA/35 and submit an initial offer as soon as possible.

(viii) Chinese Taipei

33. The representative of Chinese Taipei said that bilateral consultations had been held with Canada and the European Community. Joined by the representative of Korea, he said that consultations with Korea had been concluded. The representatives of Japan, the European Community and Canada said that their delegations were in the process of considering the responses received from Chinese Taipei. The representative of the United States said that the delegation of Chinese Taipei had made efforts to clarify certain issues regarding coverage as well as procedural commitments relating to the Agreement. The representative of Switzerland said that Switzerland had received information about the structure of the Government of Chinese Taipei. His delegation was considering the whole package offered and hoped to be able to move forward soon on this matter. The Committee took note of the statements made.

(ix) Newly Acceded Countries

34. The Chairman recalled that the respective Protocols of Accession of four newly acceded countries, namely Albania (WT/ACC/ALB/51), Georgia (WT/ACC/GEO/31), Mongolia (WT/ACC/MNG/9) and Slovenia (L/7492) included commitments regarding the Agreement on Government Procurement.

E. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

35. In accordance with the agreed procedures and the schedule for the review of national implementing legislation, the Committee initiated the review of the legislation of Singapore (GPA/39 and Add.1) on the basis of the written questions put by the United States (Job No. 6052). Parties were invited to submit any further questions that they wished to put to Singapore and Israel by 15 November 2000. The delegation of Singapore would provide written responses to these questions by 15 January 2001.

36. Regarding the review of national implementing legislation of Israel (GPA/34), the Chairman said that the questions put by Korea to Israel were circulated as Job No. 4434 and Israel's answers thereto as Job No. 5773. The United States questions to Israel had been circulated as Job No 6051. Upon a request by the representative of Israel, the Committee agreed to defer the review of the national implementing legislation of Israel until the next meeting.

37. The Committee reverted to the on-going review of the national legislation of Canada; Hong Kong, China; Korea; Norway; and the United States. Written replies from Hong Kong, China to questions put by Canada (Job No. 1458) and the United States (Job No. 3825) were circulated, respectively, as Job No. 4437 and Job No. 6050. With respect to Korea, its response to a follow-up question from Canada was circulated as Job No. 4248. As for Norway, questions from Canada and the United States were circulated, respectively, as Job Nos. 4527 and 5689. Finally, the responses of the United States to follow-up questions from Canada were circulated as Job No. 6053. The Chairman suggested that the Committee consider that the review of the legislation of Canada; Hong Kong, China; Korea; and Norway had been completed, it being understood that the Committee might revert to any matter relating to the legislation of these Parties at any time. The full record of the review of the legislation of Canada; Hong Kong, China; Korea; and Norway would be circulated as addenda to documents GPA/13, GPA/27, GPA/12/Rev.1 and GPA/10, respectively. It was so agreed.

38. The Committee also agreed that, at its next meeting, it would take up any outstanding points with respect to the legislation of Singapore and the United States. It would also initiate the review of the national implementing legislation of Israel (GPA/34), Japan (GPA/37), Liechtenstein and the Kingdom of the Netherlands with respect to Aruba.¹ In accordance with the agreed procedure for the review, Parties would be invited to submit their written questions to these delegations by 15 December 2000 and copies would be made available to the Secretariat which would circulate them to other Parties.² Israel, Japan and Liechtenstein would provide written responses to these questions by 15 February 2001.

39. The representative of the European Community said that the Community had initiated a review of its internal legislation on government procurement, the objective of which was the simplification of the existing Directives. For instance the separate Directives for goods, services and works would be consolidated in a single Directive. The Committee would be notified of the outcome of this work.

F. NEGOTIATIONS UNDER ARTICLE XXIV:7

40. Reporting on the informal consultations held on 28 September 2000 on Article XXIV:7(b) negotiations, the Chairman said that Parties had taken up the Article-by-Article review relating to the basic principles of the Agreement (Articles III, IV, XVI, XVII:1, XIX:1), technical specifications (Article VI), bid review (Articles XVIII:2 and XX) and gave further consideration to Articles VII to XV and XVIII, paragraphs 1, 3 and 4. While specific comments and suggestions had been made on many of these Articles, on the basis of the Secretariat note, "Suggested Drafting Changes to the 1994 Agreement" (Job No. 5749), the new proposals that had been submitted by the United States on Articles VIII and XX and by the European Community on Article VI had been the subject of particularly extensive discussions. In addition, the group had had a further exchange of views on the basis of the proposals put forward earlier on Articles VII-XV and XVIII, including those presented by the United States at the June meeting (GPA/W/112 and GPA/W/113), taking into account the written questions of other Parties and the United States answers relating to these proposals (Job No. 5595 and Job No. 4954/Add.1). The group had also considered the other aspects of the Article XXIV:7 negotiations – the elimination of discriminatory measures and the expansion of coverage. It had noted that, at its next meeting, when it would discuss issues of coverage and scope, it would have a special

¹Responses to GPA/1/Add.1 not yet submitted by Aruba and Liechtenstein.

² Questions from Korea to Israel were circulated as Job No. 4434.

focus on these issues. As agreed at its June 2000 meeting, the group would consider at that time issues of scope and coverage (Articles I, II and Annexes); exceptions (Articles XXIII and V); institutional provisions (Articles XIX:2, XIX:5, XXI, XII, XXIV, XVII:2); and statistical reporting (Article XIX:5). Delegations intending to make proposals on these Articles had been urged to make every effort to submit them by 5 January 2001 so as to facilitate their discussion at the group's next meeting. With regard to statistical reporting, the Secretariat, as agreed at the March 2000 meeting, would circulate a paper setting out the main points of divergence. The group would also revert to the Articles that it had already considered, giving particular attention to those proposals which had been presented only shortly before the present meeting as well as earlier proposals in regard to which delegations had indicated that more study was necessary. It had been noted that the United States delegation intended to submit additional information regarding the concept of denial of benefits. The next informal meeting on Article XXIV:7 consultations would be held in late January 2001.

G. OTHER BUSINESS

41. The representative of the United States said that his delegation continued to have concerns about Canada's failure to resolve the issue of its sub-central coverage. Canada had not pursued a commitment that it had undertaken during the negotiation of the Agreement in 1994 in this respect. His delegation had raised this matter bilaterally with the delegation of Canada in different venues. Some major States in the United States that offered non-discriminatory access to Canadian suppliers to their State procurement markets unilaterally were interested in making progress on this issue as they were concerned that their suppliers were not receiving similar treatment in Canada. The representative of the European Community, sharing the concerns expressed by the United States, said that the Community would reconsider its position regarding this issue. The conditions that had been advanced by Canada to justify its position did not apply to the situation in the European Community. The representative of Switzerland said that his delegation looked forward to efforts by Canada to adhere to the commitments that it had made in the negotiations. The representative of Canada said that her delegation took note of the concerns expressed by Parties but the position that Canada maintained on this matter since the entry into force of the Agreement had not changed.

H. ANNUAL REPORT FOR 2000 TO THE GENERAL COUNCIL

42. The Committee agreed to the arrangements for the adoption of its Annual Report for 2000 to the General Council on the basis of a draft prepared by the Secretariat. The report was subsequently adopted and circulated as document GPA/44.

I. DATE OF THE NEXT MEETING

43. The Committee agreed to hold its next meeting in March 2001.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 8 MARCH 2000

Chairman: Mr Dick Mak (Hong Kong, China)

1. The following agenda was adopted:
 - A. Election of the Chairman for 2000
 - B. Application for observer status
 - C. Modifications to the Appendices to the Agreement
 - (i) *Notifications*
 - (ii) *Loose-leaf system of Appendices*
 - D. Least Developed Countries
 - E. Accessions:
 - (i) *Kyrgyz Republic*
 - (ii) *Latvia*
 - (iii) *Iceland*
 - (iv) *Chinese Taipei*
 - (v) *Panama*
 - F. Newly acceded WTO Members
 - (i) *Bulgaria*
 - (ii) *Estonia*
 - (iii) *Slovenia*
 - G. Streamlining the Accessions Process
 - H. Review of National Implementing Legislation
 - I. Negotiations under Article XXIV:7
 - J. Date of the Next Meeting
- A. ELECTION OF THE CHAIRMAN FOR 2000
2. The Committee elected Mr. Dick Mak (Hong Kong, China) as its Chairman for 2000.
3. In expressing appreciation for the Committee's confidence in him, the Chairman said that he was honoured to accept his election to the chairmanship of the Committee but wished to inform the

Parties that he could only do so on the understanding that he might have to step down in the autumn when he expected to be posted to Hong Kong, China.

B. APPLICATION FOR OBSERVER STATUS

4. The Committee agreed to grant observer status to the Government of Jordan, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from that country (GPA/W/103).

C. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Notifications*

5. The Chairman said that, since the October 1999 meeting, Hong Kong, China had proposed modifications to its Appendix I (GPA/W/102 and 105). These modifications had entered into force on 4 February 2000 (WT/Let/328) and 17 February 2000 (WT/Let/332), respectively.

6. Regarding the proposed modification by Japan to its Appendix I, notified in document GPA/W/91, the Chairman said that the delegations of the United States, the European Community and Canada had each communicated their objection to the modifications taking effect (GPA/W/95, 96 and 97, respectively). The questions put to Japan by these delegations regarding this modification (GPA/W/97, 99 and GPA/W/100 and Add.1, respectively) and Japan's responses thereto (GPA/W/104 and Add.1, GPA/W/107 and 108, respectively) had been circulated to all Parties.

7. The representative of Japan said that his delegation had held consultations with the delegations of the United States, the European Community and Canada regarding this matter.

8. The representative of the United States said that his delegation hoped to conclude the consultations on this matter once the evaluation of the answers received from Japan had been completed.

9. The Committee took note of the statements made and agreed to revert to this matter at its next meeting.

(ii) *Loose-leaf system of Appendices*

10. The Chairman said that the Loose-leaf System of Appendices had been certified on 1 March 2000 and circulated to all WTO Members (WT/Let/330). In addition, the Secretariat had circulated a note describing the procedures for future changes to the loose-leaf system (GPA/W/110).

D. LEAST DEVELOPED COUNTRIES

11. The Chairman said that, pursuant to a request by the Committee on 8 October 1999, the Secretariat had circulated a note containing a draft declaration on the treatment of least developed countries. The declaration had not been adopted as some delegations had indicated that they needed more time to consider it. In the light of the larger initiative regarding least developed countries under consideration in the context of the General Council, he suggested that the Committee could come back to this matter in the light of developments and at the request of any delegation. The Committee so agreed.

E. ACCESSIONS

(i) *Kyrgyz Republic*

12. The representative of the Kyrgyz Republic said that discussions had been held with some Parties regarding the draft offer of 11 May 1999 (GPA/SPEC/4). His delegation would provide further information relating to its offer and would also respond to questions put by the United States (GPA/SPEC/7).

(ii) *Latvia*

13. The representative of Latvia said that her delegation had received comments from two Parties since the submission of the initial offer in June 1999 (GPA/SPEC/5). Her delegation would appreciate receiving comments from other interested delegations as soon as possible.

14. The representative of the United States said that Parties' delay in responding to the offer from Latvia was disappointing and showed the need for improving the accession procedures.

15. The representatives of the European Community and Switzerland said that the Latvian offer was a good basis for initiating bilateral consultations.

(iii) *Iceland*

16. The representative of Iceland said that his delegation had held bilateral consultations with the delegation of the United States on the basis of the revised offer submitted on 18 February 2000 (GPA/W/73/Rev.1). Consultations would also be held with the delegations of Canada and Switzerland on the offer. Iceland's answers to the questions put by these delegations had been circulated in document GPA/SPEC/6.

17. The representatives of the United States and Canada said that Iceland's revised offer was a major improvement over the initial offer and that their delegations looked forward to resolving a few outstanding concerns as soon as possible.

(iv) *Chinese Taipei*

18. The representative of Chinese Taipei said that his delegation had held bilateral consultations with Korea in January 2000 and would also hold consultations with Canada in the near future. His delegation hoped that the issues pending with these Parties would be resolved in the near future.

19. The representative of Korea said that his delegation hoped to reach a conclusion on the outstanding issues as soon as possible.

20. The representative of the United States said that Chinese Taipei had recently adopted new domestic legislation. The provision of information on this legislation in a WTO language would be a useful input to the work on the accession of Chinese Taipei.¹

(v) *Panama*

21. The representative of Panama said that some delegations were still considering the responses that his delegation had provided in the context of the bilateral consultations. The bilateral consultations with some other Parties would continue on the basis of Panama's current offer (GPA/SPEC/3/Rev.1).

¹ Circulated subsequently in document GPA/36.

22. The representative of the European Community said that a number of points remained outstanding regarding sub-central level government entities, in particular, regarding the Panama Canal Authority which used to be included in the offer of the United States until it was transferred to Panama. Her delegation felt that the bilateral negotiations had progressed as far as was possible on the basis of the present offer. They expected to receive a revised offer from Panama before resuming the bilateral negotiations.

23. The representative of the United States said that his delegation had had several rounds of consultations with Panama and felt that the submission of a revised offer by Panama would be useful. His delegation looked forward to making progress on a number of issues which it had raised with Panama including the coverage of the offer relating to the Panama Canal Authority.

F. NEWLY ACCEDED WTO MEMBERS

(i) *Bulgaria*

24. The Chairman said that he had written a letter to the delegation of Bulgaria on 24 February 2000, seeking information regarding the steps envisaged by the Bulgarian authorities with a view to initiating the process of accession to the Agreement in accordance with the commitment that Bulgaria had undertaken in the context of its accession to the WTO (WT/ACC/BGR/5, paragraph 79 and Protocol, Part I, paragraph 2).

25. The representative of Bulgaria said that the recent reforms involving the drawing up of new procurement legislation and the restructuring of government administration had affected the preparation of Bulgaria's initial offer. The process of internal consultations had been initiated in early 1998 by the circulation of an initial draft entity list to the Bulgarian government agencies concerned but this process had been interrupted by legislative or governmental changes. In November 1998, a new Law on Government Administration, providing for major restructuring of the government administration, had been passed. In June 1999, a new Law on Government Procurement had been adopted, replacing the Law on Government and Municipal Procurement of 1997. As a result of legislative reforms, the number of institutions and agencies listed as primary users or recipients of budget allocations had been reduced. A major government restructuring had taken place at the end of 1999. Some ministries had been merged, their functions had been changed, readjusted or redistributed and new government agencies had been set up as subsidiary bodies to the ministries. The work on the preparation of the draft offer had been resumed in early 2000. The draft offer would be submitted to the Committee once it had been approved by the Council of Ministers.

26. The representatives of the European Community and the United States said that, while they appreciated the difficulties faced by Bulgaria in preparing a draft entity list, Bulgaria should submit its application for accession together with information on the new law on government procurement so as to initiate the accession process without further delay.

(ii) *Estonia*

27. The Chairman said that the Protocol of Accession of Estonia to the WTO included a commitment that, upon accession to the WTO, Estonia would initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer. If the results of the negotiations were satisfactory to the interests of Estonia and the Parties to the Agreement, Estonia would complete negotiations for membership in the Agreement by 31 December 2000 (WT/ACC/EST/28). Estonia became a WTO Member on 13 November 1999.

28. The representative of Estonia said that the preparations for initiating the accession negotiations, including the drafting of an offer, were in their final phase. Moreover, the new

government procurement law was currently being redrafted. Information on the legislation would be provided as soon as it had been passed by the Parliament.

(iii) *Slovenia*

29. The Chairman recalled that the Working Party on the Accession of Slovenia to GATT had taken note of a commitment by the representative of Slovenia that his Government would accede to the Agreement on Government Procurement as soon as national legislation dealing with the subject had been enacted, but not later than three years after the date of accession (L/7492). Slovenia became a Contracting Party to GATT on 30 July 1995. He had written a letter to the delegation of Slovenia seeking information on developments regarding Slovenia's accession to the Agreement.

30. The representative of Slovenia said that he reaffirmed his Government's commitment regarding the accession to the Agreement. His delegation was of the view that, in order to fulfil its commitments under the Agreement, it was necessary to bring the domestic legislation into compliance with the Agreement. A revision of the Procurement Law of 1997 was currently before the Parliament. The adoption of the new law would enable Slovenia to apply the requirements and obligations under the provisions of the Agreement. The Slovenian authorities would begin the preparatory work regarding Slovenia's accession to the Agreement immediately after the adoption of the Law. His authorities envisaged the submission of the relevant information on the procurement regime of Slovenia as well as the draft offer within the next few months.

G. STREAMLINING THE ACCESSIONS PROCESS

31. The Chairman said that, at the request of the Committee, the Secretariat had prepared two notes relating to the streamlining the accessions process, respectively on the establishment of an indicative time-frame for accession negotiations and reporting on the progress of work (GPA/W/109) and on the provision of information relating to accession to the Agreement based on a checklist of issues (Job No. 5761).

32. The representative of Latvia said the establishment of an indicative time-frame for the accession negotiations and reporting on the progress of work would be very helpful in reducing the duration of the accessions process which, as the case of Latvia had shown, could be unnecessarily long. For instance, the indication of a time-frame for the provision of comments on offers might give Parties an impetus to provide their comments more rapidly than had been the case in the past accession negotiations.

33. The representative of the United States, joined by the representatives of Canada and Switzerland, said that the present practice of accessions involved duplication of efforts and waste of time in between meetings. The procedures suggested in the two notes were an excellent starting-point for looking at the question of accession procedures from the standpoint of Parties as well as of acceding countries. They would be an important contribution in terms of both developing and implementing an agreed framework for the accession process. By agreeing on an indicative timetable, Parties would implicitly commit themselves to make an effort to move the process along according to that time-frame.

34. Regarding the overall time-period suggested in the note on an indicative time-frame (GPA/W/109), the representative of the United States, joined by the representatives of Canada, the European Community, Latvia and Switzerland, said that the suggested 15-month period for the overall process was unrealistic. The representative of the European Community, joined by the representatives of Canada and the United States, said that the time-frame would be indicative and would have to be applied with flexibility to individual accessions. Her delegation preferred a period of two years as a general rule with exceptions depending on the complexity of the accession and the size of the procurement market. The representative of Latvia said that the time-frame should take into account

the frequency of the meetings of the Committee, the main opportunity available to delegations of acceding countries to meet and discuss with Parties' experts.

35. The representative of Latvia, joined by the representative of the European Community, said that the proposed time-frame might not be sufficient for the preparation of offers on Annex 2 and 3 entities. Consultations with domestic authorities at sub-central levels, particularly in countries that had federal structures, and gathering information on their activities took time.

36. Regarding the specific points in the suggested indicative timetable, the representative of the United States, supported by the representatives of Canada, the European Community and Switzerland, said that it might be useful to have informal plurilateral consultations on the basis of the responses to the checklist of issues by the acceding country and before the tabling of its offer. The purpose of these consultations would be to share information on the scope of the initial offer, to outline the expectations of the Parties and to hear the views of the acceding country. Plurilateral consultations would also be useful in terms of assessing the needs and identifying any specific actions that should be taken by the acceding country. The representative of the European Community said that it would be useful to the acceding country to meet and discuss with all the Parties at the same time instead of having to go over the same ground individually with each of the interested Parties. The representative of Switzerland said that the holding of plurilateral consultations before the submission of the offer could give the acceding country a sense of what the Parties to the Agreement expected to see in the offer.

37. Regarding the draft checklist of issues for provision of information (Job No. 5761), the representative of the United States said that the list of suggested questions was useful. His delegation would provide its specific comments, for instance as regards the addition of an introductory paragraph on any legal or administrative actions that would need to be taken by the acceding country and any relevant technical cooperation needs.

38. The representative of Canada said that the list of questions should be shorter. The questions should be put in a way which would allow countries to provide some broad open-ended descriptions of their procurement system. While it was important to have a description of a country's actual system in sufficient detail, the focus of the questions in the checklist should be forward-looking and should be aimed at eliciting information on the action plan envisaged by a prospective party regarding the way in which it would make its procurement system consistent with the provisions of the Agreement. Her delegations comments would be provided in writing.

39. The representative of the European Community said that the approach of having a large number of detailed questions in the checklist would help in completing the preparatory work as much as possible by charting out up front the existing situation. It would not be appropriate to formulate the questions in a manner which would require acceding countries to speculate on matters on which they had not yet drawn up legislation. One of the purposes of the plurilateral discussion would be to discuss the changes that would be needed to ensure compliance with regard to the specific provisions of the Agreement.

40. The representative of the United States said that the checklist was a tool for the development of a concrete and effective work plan for the accession process and for implementing the Agreement effectively. It was therefore important for the checklist to have sufficient details and precision to allow an acceding country to understand what was required of it. In the recent accessions, individual Parties had submitted long lists of questions, sometimes repeating the same questions or putting redundant questions. The present proposal would allow an acceding country to look at a consistent set of questions, responses to which all Parties would have access. This would not add any burden to the accession process beyond what already existed and would make the process more systematic.

41. The representative of Hong Kong, China enquired whether the original Parties to the GPA had been asked to provide the detailed information as was required in the proposed checklist.

42. The representative of the European Community said that the process of review of national implementing legislation (GPA/1/Add.1) involved the provision of the same level of information from the Parties to the Agreement. The answers to the checklist would assist acceding countries to also fulfil this requirement after their accession to the Agreement.

43. With regard to technical cooperation relating to accessions, the representatives of the United States and Canada said that any needs of acceding countries and the appropriate action that would be required regarding the effective implementation of the Agreement could be identified during accession negotiations.

44. The Committee took note of the statements made and agreed to revert to the matter at its next meeting. It was also agreed that the Secretariat would revise the note on an indicative time-frame for accession negotiations in light of the comments made at the present meeting. As for the checklist of issues, Parties would have a month to submit any specific comments.² After this, the Secretariat would revise the draft checklist of issues and circulate it to delegations.³ A period would be allowed for comments by Parties and, if no comments were received by the given date, the checklist of issues would be considered as adopted by the Committee.⁴

H. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

45. In accordance with the agreed procedures and the schedule for the review of national implementing legislation, the Committee reviewed the legislation of Hong Kong, China (GPA/27); and Norway (GPA/10) on the basis of the written questions put by Canada to these Parties (Job Nos. 1458 and 1459, respectively). It was agreed that the oral replies of Norway and Hong Kong, China provided at the meeting would be circulated in writing. Parties were invited to submit any further questions that they wished to put to Hong Kong, China and Norway by 1 May 2000.⁵ The delegations of Hong Kong, China and Norway would provide written responses to these questions by 15 July 2000.⁶

46. The Committee also reverted to the on-going review of the national legislation of Canada, Korea and the United States. The written replies from Korea to questions put by Canada (Job No. 5328) were circulated as Job No. 617. It was agreed that Korea and the United States would provide replies to the follow-up questions that had been put to them by Canada (Job Nos. 1456 and 1460, respectively).⁷

47. The Committee agreed that, at its next meeting, it should take up any outstanding points with respect to the legislation of Canada; Hong Kong, China; Korea; Norway; and the United States. It would also initiate the review of the national implementing legislation of Israel (GPA/34) and Singapore.⁸ In accordance with the agreed procedure for the review, Parties would be invited to submit their written questions to these delegations by 1 July 2000 and copies would be made available

² Comments received from the delegations of the United States, the European Community and Canada were circulated as Addenda 1, 2 and 3 to Job No. 5761.

³ Circulated as Job No. 5761/Rev.1.

⁴ Issued as GPA/35.

⁵ Questions from the United States to Hong Kong, China and Norway were circulated as Job Nos. 3825 and 3824, respectively.

⁶ Replies from Hong Kong, China to questions put by Canada were circulated as Job No. 4437.

⁷ The reply from Korea to a follow-up question from Canada was circulated as Job No. 4248.

⁸ Notification of implementing legislation not yet submitted.

to the Secretariat which would circulate them to other Parties.⁹ Israel and Singapore would provide written responses to these questions by 15 August 2000.

I. NEGOTIATIONS UNDER ARTICLE XXIV:7

48. Reporting on the informal consultations held on 7 March 2000 on the Article XXIV:7(b) negotiations, the Chairman said that Parties had taken up the questions of procurement methods, statistical reporting, the Article-by-Article review of the Agreement and elimination of discriminatory measures and expansion of coverage as well as the work programme and time-frame for the completion of these negotiations. As regards the time-frame and work programme that should be established to carry forward the negotiations, the discussion had highlighted, in particular, two points. One was the need for a time-frame to guide the work which recognized that Parties had ambitious expectations of the review and the second was the need for more focus in the work. On the issue of time-frame, there had been a general view that delegations should be guided by a target date of mid-2001 or the Fourth Ministerial if that was held around that time. The point had also been made that intermediate time-frames should be set for the different stages of work, but this would depend on how the work was organized in detail. As regards organizing the work in such a way as to provide greater focus, a number of suggestions were made about the categorization of the issues before Parties. There had been a view that this matter should be discussed further on the basis of specific suggestions from delegations. It had been agreed that, at the next meeting, delegations would focus on Articles VII-XV, together with paragraphs 1, 3 and 4 of Article XVIII. It had also been agreed that the deadline of end May would be set for the submission of written suggestions on both the categorization and the specific provisions selected for focus at the next meeting. At the next informal meeting to be held in June, Parties would also attempt to map out in more detail subsequent work on the basis of the categorization discussion. In doing so, Parties would also have to address the other aspects of work – on the elimination of discriminatory measures and the expansion of coverage.

J. DATE OF THE NEXT MEETING

49. The Committee agreed to hold its next meeting in late September 2000.

⁹ Questions from Korea to Israel were circulated as Job No. 4434.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/12
31 January 2000

(00-0369)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 5 OCTOBER 1999

Chairman: Mr Dick Mak (Hong Kong, China)

1. The following agenda was adopted:
 - A. APPLICATIONS FOR OBSERVER STATUS
 - B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT
 - (i) *Notifications*
 - (ii) *Loose-leaf system*
 - C. LEAST DEVELOPED COUNTRIES
 - D. ACCESSIONS:
 - (i) *Kyrgyz Republic*
 - (ii) *Latvia*
 - (iii) *Iceland*
 - (iv) *Chinese Taipei*
 - (v) *Panama*
 - (vi) *Accession procedures*
 - E. NEWLY ACCEDED WTO MEMBERS
 - (i) *Bulgaria*
 - (ii) *Mongolia*
 - (iii) *Slovenia*
 - F. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION
 - G. NEGOTIATIONS UNDER ARTICLE XXIV:7
 - H. 1999 REPORT TO THE GENERAL COUNCIL
 - I. DATE OF THE NEXT MEETING

A. APPLICATIONS FOR OBSERVER STATUS

2. The Committee agreed to grant observer status to the Governments of the Kyrgyz Republic, Croatia and Georgia, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the requests received from these countries (GPA/W/83, 84 and 89, respectively).

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) Notifications

3. The Chairman said that, since the Committee's February 1999 meeting, Japan had notified proposed modifications to its Appendix I (GPA/W/88, 91, 94 and 98). The modifications by Japan in GPA/W/88 had entered into force on 8 August 1999 (WT/Let/308). Corrections to this notification, subsequently made by Japan, had been circulated in document GPA/W/93.¹ Regarding the notification by Japan in document GPA/W/91, the Chairman said that the delegations of the United States, the European Community and Canada had communicated their objection to the proposed modifications taking effect upon the expiration of the thirty-day period provided in Article XXIV:6 (GPA/W/95, 96 and 97, respectively).

4. The representative of Japan said the proposed modifications to Annex 3 of Appendix I followed the restructuring of the Nippon Telegraph and Telephone Co. (NTT), with effect from 1 July 1999, which had resulted in the establishment of three companies, namely, the Nippon Telegraph and Telephone East Corporation, the Nippon Telegraph and Telephone West Corporation and the NTT Communications Corporation. The Nippon Telegraph and Telephone Corporation itself had become a holding company. The Nippon Telegraph and Telephone East Corporation and the Nippon Telegraph and Telephone West Corporation would be added to the list of entities in Annex 3 of Appendix I of the Agreement. The NTT Communications Corporation had been established as a private company in accordance with the procedures stipulated in the Japanese commercial law. The NTT Law did not apply to this Corporation, which meant that the Government of Japan had no longer control or influence over it. Japan therefore considered that the NTT Communications Corporation would not need to be included in Annex 3 of Appendix 1 of the GPA. Providing some factual data on the procurement of the NTT Communications Corporation, he said that, in 1997 the total amount of its procurement above threshold was only 0.54 per cent of the whole of the former NTT procurement and 0.02 per cent of the procurement by all the entities listed in Appendix I of Japan, which meant that there was very little, if any, consequence of the change on the mutually agreed coverage provided under the Agreement pursuant to the rectification. Open tendering procedures had applied to all the procurements by the NTT Communications Corporation in that year. The Government of Japan had found that the NTT Communications Corporation had voluntarily continued to conduct its procurements in a transparent and non-discriminatory manner.

5. The representative of the United States said that, while the proposed modifications continued to include two new subdivisions of the NTT Corporation under the coverage of the Agreement, the NTT Communications Corporation was excluded. His delegation would be interested in holding consultations with the delegation of Japan under Article XXIV:6 to determine whether government control or influence over the NTT Communications Corporation had effectively been eliminated. His delegation would also provide questions to Japan regarding the implications of this modification.² The representative of the European Community said that his delegation had concerns regarding the proposed modifications and hoped to receive further information from Japan on the new entities and their future procurement activities. His delegation would also submit questions to the delegation of

¹ Modifications by Japan in GPA/W/94, 98 and 93 subsequently entered into force on 30 October 1999 (WT/Let/325), 3 November 1999 (WT/Let/326) and 29 October 1999 (WT/Let/324), respectively.

² Subsequently circulated in document GPA/W/100.

Japan.³ The representative of Canada said that her delegation's communication circulated in GPA/W/97 contained a set of questions to Japan. Her delegation reserved the right to pursue further questions or consultations in future. The representative of Hong Kong, China, joined by the representative of Switzerland, said that his delegation objected to the proposed modifications taking effect. They would need to seek more information from the delegation of Japan to ascertain whether the modifications proposed were indeed minor in nature. For the sake of transparency, Parties concerned should keep the Committee informed of progress in their consultations.

6. The Committee took note of the statements made and agreed to revert to this matter at its next meeting, subject to a mutually satisfactory solution of the issue between Japan and the Parties concerned before then.

(ii) *Loose-leaf system of Appendices*

7. The Chairman said that the revised version of the loose-leaf system had been circulated to Parties for comments on 8 July 1999 in document GPA/W/35/Rev.1. A comment period of 60 days had been given to delegations in accordance with the procedures agreed to by the Committee. Except for a few comments by Japan of a purely editorial nature, no comments had been received by the Secretariat. Accordingly, the Loose-leaf System of Appendices would be certified and circulated to all Parties as well as placed, in its certified form, on the WTO website. In accordance with the procedures agreed to by the Committee at its meeting of 24 February 1997, Parties proposing to make future rectifications and modifications to their Appendices should notify them to the Committee in the form of relevant replacement or additional pages to be inserted in the loose-leaf system, identifying the proposed changes. As before, these proposed rectifications and modifications would be circulated to Members in the GPA/W/- series. Once they had become effective and had been certified, the new or amended pages would be circulated with a cover note indicating where the insertions and/or deletions were to be made in the Loose-leaf System of Appendices.

C. LEAST DEVELOPED COUNTRIES

8. The Chairman said that, at the previous meeting, the delegation of the European Community had suggested the adoption of a decision on the extension of the benefits of the Agreement to all the least developed WTO Members (GPA/M/11, paragraph 30). The representative of the European Community, supported by the representative of Norway, said that his delegation had made that suggestion because it was important that least developed countries had improved access to open procurement markets based on the provision of Article V:12. The representative of the United States said that his country already extended the benefits under the existing coverage of the Agreement to least developed countries. The representative of Canada said that, while her country extended the benefits of the GPA to least developed countries, any action in this respect should continue to be taken through initiatives by individual Parties. On this latter point, the representative of the European Community said that, the present provisions of Article V:12 which allowed each individual Party to decide whether to extend its benefits to least developed countries should not be put into question. However, if a large majority of Parties were prepared to apply these provisions on their own initiative, a declaration in this respect, notwithstanding its non-binding effect, would give a positive political signal that Parties were willing to share the benefits of the Agreement with least developed countries. The representative of Switzerland said that it might be interesting to obtain statistics on the number of procurement contracts that had been awarded by Parties to suppliers from the least developed countries under the relevant provisions of the Agreement.

³ Subsequently circulated in document GPA/W/99.

9. The Chairman suggested that, as a way of moving forward on this matter, the Secretariat might be requested to draw up a draft declaration on the treatment of least developed countries which would be circulated to Parties for their consideration. The declaration would be considered adopted if no objections were received by the Secretariat within two weeks. It would subsequently be forwarded to the Seattle Ministerial Conference as a contribution from the Committee.

10. The representative of Switzerland said that his delegation would need to hold consultations on this matter at the internal level since, under the Swiss Federal Law, the benefits of the GPA could be extended only on the basis of reciprocity.

11. The Chairman said the draft declaration would attempt to take into account the current practices in order to accommodate different situations existing in Parties.

12. The Committee agreed to proceed as suggested by the Chairman.⁴

D. ACCESSIONS

(i) *Kyrgyz Republic*

13. The Chairman said that an application for accession to the Agreement, together with a draft offer, had been received from the Kyrgyz Republic on 11 May 1999 (GPA/SPEC/4).

(ii) *Latvia*

14. The Chairman said that an application for accession to the Agreement, together with a draft offer, had been received from Latvia on 16 June 1999 (GPA/SPEC/5). Furthermore, Latvia had circulated information on its national legislation and had provided responses to the checklist of issues in GPA/1/Add.1 (GPA/28).

(iii) *Iceland*

15. The Chairman said that an application for accession to the Agreement together with a draft offer, had been received from the delegation of Iceland on 22 June 1998 (GPA/W/73).

16. The representative of Iceland said that his delegation had been engaged in bilateral consultations with the delegations of Canada, Switzerland and the United States on the basis of its initial draft offer. During the first half of 1999 Iceland had received further requests for information regarding its offer. The responses of his delegation and the relevant legislation would be submitted in the near future.⁵

17. The Chairman said that delegations should complete their bilateral consultations with Iceland as soon as possible in order to enable the consideration of a decision on Iceland's terms of accession at the Committee's next meeting.

⁴ A note by the Secretariat containing a draft declaration on the treatment of least developed countries was circulated on 8 October 1999 with a comment period until 19 October 1999. Some delegations indicated that they needed more time to consider the draft.

⁵ Circulated subsequently in document GPA/SPEC/6.

(iv) *Chinese Taipei*

18. The representative of Chinese Taipei said that his delegation had held discussions with the delegations of Canada and Korea regarding some pending issues.

(v) *Panama*

19. The representative of Panama said that his delegation had responded to the outstanding questions from the delegations of Switzerland and the United States. The representative of Canada said that her delegation also had a few outstanding questions.

(vi) *Accession procedures*

20. Recalling the discussion on streamlining the accession procedures, the Chairman said that, at the February meeting, the Committee had heard a statement by the delegation of the European Community expressing its views on the general principles of preparation of offers by acceding countries and had invited the Community to come forward with a note. Furthermore, as agreed at that meeting, the Secretariat had drawn up, for the consideration of the Committee, a draft Checklist of Issues that acceding countries might be invited to use in providing information on the main features of their national legislation and procurement regimes (Job No. 5761, dated 5 October 1999).

21. After a brief discussion, the Chairman suggested that the Secretariat be asked to prepare a note on the establishment of an indicative time-frame for accession negotiations together with a procedure for regular reporting to each Committee meeting on progress in bilateral consultations. At the next meeting, the Committee could revert to the matter of developing a normative framework for accessions on the basis of this note, the draft Checklist of Issues prepared by the Secretariat and the note that the European Community had promised to circulate.

22. The Committee so agreed.

E. NEWLY ACCEDED WTO MEMBERS

(i) *Bulgaria*

23. The representative of Bulgaria said that the new government procurement law, fully in line with the requirements of the GPA, had been approved by the Parliament in June 1999. Moreover, his authorities were in the process of preparing Bulgaria's application for accession to the Agreement in accordance with the commitments undertaken in the Protocol of Accession of Bulgaria to the WTO (WT/ACC/BGR/5, paragraph 80).

(ii) *Mongolia*

24. The Chairman said that in its application for observer status, Mongolia had referred to the need for technical cooperation with regard to its accession to the Agreement (GPA/W/80). As agreed at the last meeting, the Secretariat had been in contact with the delegation of Mongolia in order to explore further the requirements of Mongolia in this respect.

25. Reporting on these consultations, the representative of the Secretariat said that Mongolia was in the process of developing basic legislation with the technical assistance received from the Asian Development Bank in 1999. Building on this, Mongolia would need assistance geared specifically to the work on ensuring the consistency of its laws with the Agreement. Other areas of technical assistance might relate to future negotiations of the terms of its accession, including the drawing up of schedules and the preparation of responses to requests for information from Parties. Another key

component of technical cooperation might be providing training on the administrative and institutional aspects of the Agreement to ensure Mongolia's full participation in the Committee's work. The consultations on the modalities of this technical assistance programme would be pursued with Mongolia and interested Parties.

26. The representative of Switzerland said that the World Bank and Regional Development Banks undertook projects in a number of countries for the development of basic government procurement legislation. In the context of the accession process, countries might still need to do work to ensure the necessary alignment of their existing legislation to the Agreement. The Committee might consider developing a framework programme for technical cooperation which would aim at facilitating the work of acceding countries in this respect.

27. At the suggestion of the Chairman, the Committee agreed that the issue of technical cooperation to acceding countries be taken up at the next meeting.

(iii) Slovenia

28. The Chairman said that the Working Party on the Accession of Slovenia to GATT had taken note of a commitment by the representative of Slovenia that his Government would accede to the Agreement on Government Procurement as soon as national legislation dealing with the subject had been enacted, but not later than three years after the date of accession (L/7492, dated 1 July 1994). Slovenia had become a WTO Member on 30 July 1995. The Procurement Law and relevant regulations had been enacted in 1997. Slovenia had yet to submit an application for accession.

29. After a brief discussion, the Committee agreed that the Chair should write a letter to the delegation of Slovenia seeking information on the steps taken in Slovenia regarding its accession to the Agreement.

F. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

30. In accordance with the agreed procedures and the schedule for the review of national implementing legislation, the Committee reviewed the legislation of Canada (GPA/13) on the basis of the written questions put by Hong Kong, China; the European Community; and Switzerland and the replies by Canada which had been circulated prior to the meeting (Job No. 5728). Parties were invited to submit any further questions that they wished to put to Canada by 15 November 1999.⁶ The delegation of Canada would provide written responses to these questions by 15 February 2000.

31. After reverting briefly to the ongoing review of the national legislation of the European Community, Korea, Switzerland and the United States, the Chairman suggested that the Committee consider that the review of legislation of the European Community and Switzerland had been completed, it being understood that the Committee might revert to any matter relating to the legislation of these two Parties at any time. The full record of the review of the legislation of the European Community and Switzerland would be circulated in documents GPA/32 and GPA/33, respectively.

32. The Committee also agreed that the Committee should take up, at its next meeting, any outstanding points with respect to the legislation of Korea and the United States. At that meeting, it would also initiate the review of the national implementing legislation of Hong Kong, China (GPA/27) and Norway (GPA/10). In accordance with the agreed procedures for the review, Parties would be invited to submit their written questions to these delegations by 23 December 1999 and

⁶ No questions had been submitted as of 27 January 2000.

copies would be made available to the Secretariat which would circulate them to other Parties.⁷ Hong Kong, China and Norway would provide written responses to these questions by 15 February 2000.

G. NEGOTIATIONS UNDER ARTICLE XXIV:⁷

33. Reporting on the informal consultations held in May, June, September and October 1999, the Chairman said that these consultations had been held on the basis of an informal Checklist of Issues (the latest revision of which was circulated as Job No. 5189) and an informal note reflecting the draft texts of proposed modifications to the Articles of the Agreement side-by-side with the text of the Agreement (circulated as Job No. 5713). At the informal consultations on 4 October 1999, Parties had considered the timetable for the completion of the negotiations and the overall work programme that should be envisaged within that time-frame. There was agreement that good progress had been made on improving the text of the Agreement, that the momentum of the work would need to be maintained and that all three elements would need to be covered. Parties would revert to this matter at the next meeting in early 2000. At that time, Parties would also focus on: framework and similar types of contracts, statistical reporting and the Article-by-Article review of the Agreement. In addition, Parties would continue monitoring progress in the elimination of discriminatory measures.

H. 1999 REPORT TO THE GENERAL COUNCIL

34. The Committee adopted its Annual Report for 1999 to the General Council on the basis of a draft prepared by the Secretariat which was amended in the light of the discussion at the meeting. It was subsequently circulated as document GPA/30.

I. DATE OF THE NEXT MEETING

35. The Committee agreed to hold its next meeting on 8 March 2000.

⁷ No questions had been submitted as of 27 January 2000. The questions from the European Community and Hong Kong, China put to Canada were circulated on 6 July 1999 as Job No. 3687 and on 16 June 1999 as Job No. 3423, respectively.

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 23 FEBRUARY 1999

Chairperson: Mr Dick Mak (Hong Kong, China)

1. The following agenda was adopted:
 - A. Election of the Chairman for 1999
 - B. Application for observer status
 - C. Modifications to the Appendices to the Agreement
 - D. Accessions:
 - (i) *Iceland*
 - (ii) *Chinese Taipei*
 - (iii) *Panama*
 - (iv) *Accession Procedures*
 - E. Newly acceded WTO Members
 - (i) *Bulgaria*
 - (ii) *Mongolia*
 - (iii) *Kyrgyz Republic*
 - (iv) *Latvia*
 - F. Review of national implementing legislation
 - G. Negotiations under Article XXIV:7
 - H. Other business
 - (i) *Least Developed Countries*
 - (ii) *Korea - Procurement of International Airport Construction Corporation*
 - I. Date of the next meeting.

A. ELECTION OF THE CHAIRMAN FOR 1999

2. The Committee elected Mr. Dick Mak (Hong Kong, China) as its Chairman for 1999.

B. APPLICATION FOR OBSERVER STATUS

3. The Committee agreed to grant observer status to the Government of Mongolia, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from that country (GPA/W/80).

C. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

4. The Chairman said that, since the Committee's October 1998 meeting, Japan (GPA/W/78 and 79) and Singapore (GPA/W/82) had notified proposed modifications to their respective Appendix I. Since no objections had been raised within the prescribed time-period, the modifications by Japan had entered into force, on 13 November and 27 November 1998, respectively (WT/Let/274 and 275).¹

D. ACCESSIONS

(i) *Iceland*

5. The representative of Iceland said that his delegation had engaged in bilateral consultations with the delegations of the United States, Canada and Switzerland regarding its draft offer submitted on 22 June 1998 (GPA/W/73), which would be revised in the light of these consultations. Subject to further requests for consultations from any other delegations, Iceland had the intention of completing its accession procedures before the next meeting of the Committee. The representative of the United States said that his delegation would communicate a few questions to the delegation of Iceland following the bilateral consultations held in December 1998.

(ii) *Chinese Taipei*

6. The representative of Chinese Taipei said that no further bilateral consultations had been held since the previous meeting regarding his delegations's revised offer (GPA/SPEC/1/Rev.1). At the next meeting, his delegation hoped to be able to report on more substantial progress with respect to bilateral consultations with certain Parties.

(iii) *Panama*

7. The representative of the United States said that his delegation had engaged in bilateral consultations with Panama on a range of issues with respect to the revised offer submitted on 10 December 1998 (GPA/SPEC/3/Rev.1). His delegation hoped to make progress regarding its several remaining concerns with a view to concluding Panama's accession process as soon as possible.

8. The representative of the European Community said that the delegation of Panama had been informed of the outstanding points on which Panama would need to make further progress.

9. The representative of Panama said that his authorities were working on the questions that had been received from Parties in the bilateral consultations. His delegation welcomed further comments, suggestions or requests from any other Parties.

¹ Modifications by Singapore subsequently entered into force on 19 March 1999 (WT/Let/297).

(iv) *Accession Procedures*

10. The Chairman said that a WTO Member may accede to the Agreement under Article XXIV:2 on terms to be agreed between that government and the Parties. In accordance with the Decision on Accession adopted by the Committee, consultations on accession were held between the acceding country and Parties on the terms of accession (GPA/1, Annex 2). While holding such consultations was a matter between the acceding country and individual Parties to the Agreement, the Committee could consider the ways in which it could have a rôle in facilitating the overall process of accessions.

11. The representatives of the European Community, the United States, Singapore, Canada and Switzerland said that the procedures for accessions should be streamlined. The representative of the European Community said that the accession process consisted of two parallel tracks. First, the assessment of the consistency of the national legislation and procurement practices of the applicant country with the requirements of the Agreement. Second, the negotiation of market access commitments by agreeing on the lists of entities to be covered in the schedule of the acceding country. The Committee should aim at improving the procedures involved in both tracks. The representatives of the European Community, the United States, Singapore, Canada, Switzerland, Iceland and Latvia said that, in order to accelerate the initial process of information gathering, the Committee should agree on a Checklist of Issues that acceding countries could use in providing information concerning the basic features of their national legislation and procurement regimes. The Checklist of Issues could be similar to the one adopted for notification of national implementing legislation of Parties and could incorporate certain additional elements specific to the accession process (GPA/1/Add.1). The responses of the acceding country to the Checklist of Issues would provide a common basis for the process of exchange of questions and answers between Parties and the acceding country and would help in avoiding duplication in the resources allocated by all in this phase of the accession process.

12. With regard to the negotiations of market access commitments, the representative of the European Community said that the Committee should agree to the establishment of a set of general principles that could guide an applicant country in drawing up its initial offer of entities, notwithstanding that subsequent negotiations would be conducted on a bilateral basis. The extent to which an applicant country would be expected to apply such principles would be determined by its level of development. The European Community applied a general approach to accession negotiations whereby acceding countries were expected to meet certain conditions in preparing their offers. For instance, the threshold values in the offers should be the standard thresholds in the Annexes of the majority of Parties. However, a request for higher thresholds could be considered on a case-by-case basis, provided that it was justified and a clear timetable for its reduction established. Whereas industrialized applicant countries should not provide for offset requirements, developing countries might provide for such requirement, where justified. Depending on the level of development of the acceding country, such requirements should be gradually reduced and, eventually, eliminated. Any derogations from the national treatment and non-discrimination principles, for instance in the form of preferences or set-aside schemes, should be time-limited and their existence should be justified. With regard to individual Annexes, all procurement by central government authorities should be covered in Annex 1, except for direct defence-related procurement. Non-privatized entities in the network sectors such as water, electricity and transport that were not privatized were expected to be covered under Annex 3. The coverage of Annex 4 should extend to procurement in all of the services sectors where the applicant country had made market access commitments under its GATS Schedule. All public works and construction services of CPC Division 51 should be covered in Annex 5. The representative of the European Community said that Parties should take a proactive approach to negotiations with applicant countries by providing each applicant country with an indication of what they would expect to be included in its initial offer.

13. The representative of the United States said that any acceptable package of general principles would need to have certain flexibility built into it. It would also be useful to set out an indicative timetable for the different stages of the accession process, which could be adjusted in accordance with the circumstances of each individual applicant country.

14. The representative of Japan said that, while the suggested improvements to the procedures would be valuable, they would not be adequate to ensure the efficiency of the accession process. In view of the objective of making the Agreement more universal, transparent and easily accessible to countries with different economic systems or philosophies, efforts should be made to resolve the difficulties that acceding countries faced in their negotiations with Parties. The divergence of views among Parties concerning the coverage of Annex 3 entities was one of the main difficulties in the negotiations of entity lists. In terms of Article I of the Agreement, Annex 3 contained all other entities that procured in accordance with the provisions of the Agreement. Without any reference, baseline or benchmark for the inclusion or exclusion of an entity, Parties did not have a common notion of a balanced offer as regard Annex 3 entities. An offer from an acceding country was evaluated on the basis of different standards used by Parties and any perceived significance of the sectors offered. Rather than developing the general principles for the preparation of offers, the Committee might give better guidance to acceding countries by agreeing on the meaning of the term "government procurement". The work relating to this matter in the context of the review of the Agreement currently under way would contribute to the efforts of improving the process of accessions.

15. The representative of the United States said that the relative complexity of the Agreement was not the only reason for the limited membership in the Agreement. Joined by the representative of Canada, he said that the expansion of the participation in the Agreement would also require efforts by acceding countries to improve their procurement systems as well as meeting the basic principles of the Agreement. The representative of Canada said that the matter of the clarification of the meaning of the term government procurement might be addressed more appropriately in the context of the ongoing review of the Agreement under Article XXIV:7.

16. The representative of Singapore, supported by the representative of Japan, said that the Secretariat should prepare a synopsis of the schedules in Annexes 1-3 of Parties which would allow acceding countries to make comparisons between the complex lists of commitments in various Parties' schedules. This would be a useful input for negotiations and would assist the acceding countries in the preparation of their entity offers. The representative of the European Community said that the entity lists in Annexes 1-3 were complicated. However, the non-paper by the Secretariat on discriminatory provisions circulated with footer "gpa38" on 31 October 1997 gave an adequate illustration of the coverage in Annex 3 entities. The representative of the United States said that it would be difficult to make comparisons between the schedules of Parties. For instance, each Party had a different government structure which was reflected in the Annex 1 lists of entities, and the functions of Annex 3 entities varied among Parties. Besides, a comparison of all the various ways in which the existing Parties had previously addressed certain issues in their Schedules would not be useful. Negotiations with the acceding countries were conducted bilaterally and reflected the particular priorities and interests of individual participating countries.

17. In concluding the discussion of this item, the Chairman said that the Secretariat should draw up, for the consideration of the Committee, a draft Checklist of Issues that the acceding countries could use in providing information on the main features of their national legislation and procurement regimes. The delegation of the European Community would be invited to come forward with a note on the general principles of preparation of offers by acceding countries that might be used by the Committee in its future consideration of the matter. The Committee so agreed.

E. NEWLY ACCEDED WTO MEMBERS

(i) *Bulgaria*

18. The representative of Bulgaria said that the preparatory work was being carried out in Bulgaria regarding accession to the Agreement, the preparation of the new law on public procurement and the reform of the state administration.

(ii) *Mongolia*

19. The Chairman said that the communication by Mongolia requesting observer status in the Committee also contained a request for technical assistance (GPA/W/80, paragraph 2). The representative of the European Community, supported by the representative of the United States, said that, with a view to avoiding the duplication of technical cooperation efforts of various Parties and to ensuring the optimum targeting of resources available for this purpose, the Committee should draw up a programme of technical cooperation for the benefit of Mongolia, this being without prejudice to the question of financing.

20. The Chairman said that the Secretariat should be invited to draw up, in consultation with interested delegations, an outline of a technical cooperation programme for Mongolia, identifying the specific areas of cooperation that might be needed in connection with its accession to the Agreement. It was so agreed.

(iii) *Kyrgyz Republic*

21. The Chairman said that the Working Party on the Accession of the Kyrgyz Republic had taken note of a commitment of the Kyrgyz Republic to initiate negotiations for membership in the Government Procurement Agreement upon accession to the WTO by tabling an entity offer at that time, and that, if the results of the negotiations were satisfactory to the Kyrgyz Republic and the signatories of the Agreement, the Kyrgyz Republic would complete negotiations for membership in the Agreement by 31 December 1999 (WT/ACC/KGZ/26 and 29). The Kyrgyz Republic had become a WTO Member on 20 December 1998.²

(iv) *Latvia*

22. The Chairman said that the Working Party on the Accession of Latvia had taken note of a commitment that Latvia would initiate negotiations for membership in the Government Procurement Agreement upon accession to the WTO by tabling an entity offer at that time, and that if the results of the negotiations were satisfactory to Latvia and the signatories of the Agreement, Latvia would complete negotiations for membership in the Agreement by 31 December 2000 (WT/ACC/LVA/32). Latvia had become a WTO Member on 10 February 1999 and had been an observer in the Committee since 4 June 1996.

23. The representative of Latvia said that Latvia would submit an initial offer in the near future.³

² Kyrgyz Republic subsequently applied for observer status on 26 February 1999 (GPA/W/83) and applied for accession and submitted a draft offer on 11 May 1999 (GPA/SPEC/4).

³ Latvia applied for accession to the Agreement and submitted a draft offer on 16 June 1999 (GPA/SPEC/5).

F. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

24. The Chairman said that the Committee was to take up any outstanding points relating to the review of the national implementing legislation of the European Community and Korea that had been held at the October 1998 meeting.

25. The representative of Korea said that his delegation would communicate its written responses to the questions put by the delegation of Canada as soon as possible (Job No. 5328).

26. The Chairman said that, in accordance with the agreed procedures and the schedule for the review of national implementing legislation, the Committee was to take up the legislation of Switzerland (GPA/15) and the United States (GPA/23). The written questions put by Canada, the European Community and the United States to Switzerland (with Job Nos. 763, 117 and 1040, respectively on 10 February, 13 January and 24 February 1999) and the written replies by Switzerland to the questions put by the European Community (with Job No. 858 on 18 February 1999) had been circulated prior to the meeting. The written questions put by Canada and the European Community to the United States (with Job Nos. 763 and 117, respectively on 10 February and 13 January 1999) and the written replies by the United States to the questions put by the European Community (with Job No. 1041 on 22 February 1999) had also been circulated. As it had been the case with the previous reviews, each Party could provide an introduction to the responses to the questions that had been put to it by other Parties. He would then offer the floor to other Parties for any other questions or comments.

27. The Committee carried out the review of the legislation of Switzerland and the United States on the basis of the written questions and answers and the oral statements made by the two delegations. Parties were invited to submit any further questions that they wished to put to the two delegations by 31 March 1999.⁴ The delegations of Switzerland and the United States would provide written responses to these questions by 15 May 1999. The full record of the review of the legislation of Switzerland and the United States will be circulated in the GPA/- series of documents.

28. Following the reviews, the Chairman suggested that the Committee should take up, at its next meeting, any outstanding points with respect to the legislation of the European Community, Korea, Switzerland and the United States. At that meeting, it would also initiate the review of the national implementing legislation of Canada (GPA/13). In accordance with the agreed procedures for the review, Parties would be invited to submit their written questions to Canada by 15 June 1999 and copies would be made available to the Secretariat which would circulate them to other Parties.⁵ The delegation of Canada would provide written responses to these questions by 15 September 1999. It was so agreed.

G. NEGOTIATIONS UNDER ARTICLE XXIV:7

29. The Chairman said that informal consultations had been held on 9 December 1998 and 22 February 1999 on the negotiations under Article XXIV:7 on the basis of a revised informal Checklist of Issues, the most recent version of which was dated 25 January 1999 (circulated with footer "gpa78"). In the light of those consultations, it had been agreed that a further informal meeting would be held on 10-11 May 1999 and that, at that meeting, the work would be carried forward in the following way:

- (i) Delegations would revert once more to the issues of information technology and procurement methods on the basis of the note by the Chair attempting to crystallize

⁴ No questions had been submitted as of 2 August 1999.

⁵ The questions from the European Community and Hong Kong, China put to Canada were circulated on 16 June 1999 as Job No. 3867 and on 26 June 1999 as Job No. 3423, respectively.

the state reached in the discussions and to identify the key questions that need to be pursued (Job No. 973). Canada had been requested to consider updating its proposals on information technology. On procurement methods, Parties were encouraged to submit contributions, in particular on how the various procurement methods under discussion are presently handled in their national procurement regimes. Papers from the European Community and the United States on procurement methods had been foreshadowed.

- (ii) Delegations would revert to the issue of statistical reporting, on the basis of an updated version of the note by the Chair which would record the comments made on the draft revision of the text of Article XIX:5 (Job No. 765).
- (iii) Delegations would continue the Article-by-Article review of the Agreement on the basis of an updated version of the two-column table which would reflect the proposals on individual Articles that had been made at the present meeting. Delegations were encouraged to submit concrete proposals. In this connection, Hong Kong, China had foreshadowed a revised proposal on Article XV and Japan a proposal on Article XXIV:6(b).
- (iv) With regard to the elimination of discriminatory provisions, the points made in the discussion would be recorded in a revised version of the Checklist of Issues. Furthermore, a revised version of the Secretariat note on the coverage of services would be circulated in the light of the comments submitted. Delegations were encouraged to continue efforts to remove discriminatory provisions through bilateral and plurilateral consultations and to keep the Committee informed of developments. Delegations would revert to this matter at the next informal meeting on the Article XXIV:7 negotiations.
- (v) In accordance with the agreed time-frame and the work programme which set the third WTO Ministerial as the target date for the completion of the negotiations on at least the simplification and improvement of the Agreement, two more informal consultations would be held in the first half of this year, respectively on 10-11 May and 30 June 1999. Delegations were also reminded that it was agreed that suggestions and proposals should be tabled no later than 30 April 1999, this being without prejudice to the right of participants to put forward at a later date modified or additional proposals where necessary.

H. OTHER BUSINESS

(i) *Least Developed Countries*

30. The representative of the European Community said that all WTO Members were committed to better integration of the least developed countries into the WTO system. The practical implementation of the relevant provisions of Article V:12 of the Agreement, which allowed a Party "to grant the benefits of the Agreement to suppliers in least developed countries which were not Parties, with respect to products and services originating in those countries", would enhance the participation of least developed countries in the Agreement and in procurement markets. Joined by the representatives of Japan and the United States, she suggested that the Committee should adopt a decision requiring all Parties to extend the benefits of the Agreement to all the least developed WTO Members.

31. The Committee agreed to revert to this matter at its next meeting.

(ii) *Korea - Procurement of International Airport Construction Corporation*

32. The representative of the United States said that his delegation had requested consultations with Korea on 16 February 1999 and looked forward to resolving this issue as soon as possible (WT/DS163/1 and GPA/D4/1).

33. The representative of Korea said that his Government continued to consider that the Korean Airport Construction Authority was not covered by the Agreement. His delegation would come forward with detailed arguments in this respect in the course of the WTO dispute settlement proceedings.

I. DATE OF THE NEXT MEETING

34. The Committee agreed to hold its next meeting on 5 October 1999.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/10

18 February 1999

(99-0635)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 7 OCTOBER 1998

Chairperson: Mr Dick Mak (Hong Kong, China)

1. The following agenda was adopted:
 - A. Chairpersonship of the Committee
 - B. Application for observer status
 - C. Modifications to the Appendices to the Agreement
 - D. Accessions:
 - (i) Iceland
 - (ii) Chinese Taipei
 - (iii) Panama
 - (iv) Future arrangements for accessions
 - E. Newly acceded WTO Members
 - F. Review of national implementing legislation
 - G. Negotiations under Article XXIV:7
 - H. Annual Report to the General Council
 - I. Other business
 - (i) Korea - Procurement of International Airport Construction Corporation
 - (ii) United States - Measures affecting government procurement
 - J. Date of the next meeting.
- A. CHAIRPERSONSHIP OF THE COMMITTEE
2. As Mrs. Helle Klem (Norway) was not able to continue as Chairperson of the Committee for the remainder of 1998, the Committee elected Mr. Dick Mak (Hong Kong, China) as its Chairperson.

B. APPLICATION FOR OBSERVER STATUS

3. The Committee agreed to grant observer status to the Government of Estonia, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from that country (GPA/W/77).

C. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

4. The Chairperson said that, since the Committee's June 1998 meeting, Japan had notified proposed modifications to its Appendix I (GPA/W/74). Since no objections had been raised within the prescribed time-period, the modifications by Japan had entered into force on 14 August 1998 (WT/Let/238).

5. The representative of the European Community said that his delegation had communicated an explanatory note, dated 7 October 1998, concerning the proposed modifications relating to its Appendix I that it had notified on 13 August 1997 (GPA/W/51 and Add.2). The note had been prepared in response to the questions that his delegation had received from the delegation of the United States relating to some of the items in the proposed modifications in GPA/W/51. However, there had been no further amendments to the lists that had been previously circulated in GPA/W/51. The representative of the United States said that his delegation had reviewed the modifications in GPA/W/51 and had no objections to them in the light of the consultations it had held with the European Community (GPA/W/51/Add.1) and the explanatory note in GPA/W/51/Add.2. The Chairperson suggested that the Committee accept the modifications proposed by the European Community to its Appendix I in documents GPA/W/51 and Add.2 and that those modifications become effective as of 8 October 1998 in accordance with the procedures of Article XXIV:6. The Committee so agreed.

6. In response to a question by the representative of Switzerland, the representative of the Secretariat said that, in accordance with the procedures agreed by the Committee (GPA/M/8, paragraphs 14 and 15), the draft loose-leaf schedules in document GPA/W/35 dated 5 February 1997 would be revised in order to take into account the modifications to Appendix I of the European Community which had been accepted by the Committee at the present meeting and the modifications to the Appendices of other Parties since February 1997, and then circulated to Parties. The revised loose-leaf schedule would be certified after the expiry of a comment period of 60 days.

D. ACCESSIONS

(i) *Iceland*

7. The Chairperson said that an application for accession to the Agreement together with a draft offer had been received from Iceland on 22 June 1998 (GPA/W/73).

(ii) *Chinese Taipei*

8. The representative of Japan said that his delegation had held three bilateral meetings with the delegation of Chinese Taipei since February 1996. His authorities considered that the level of offers of Chinese Taipei to Japan was sufficient.

9. The representative of Chinese Taipei said that no substantial progress had been made in the bilateral consultations held with other interested Parties since the previous meeting. His delegation would continue to hold consultations with interested Parties in order to conclude the process of bilateral consultations at an early stage.

(iii) *Panama*

10. The representative of Panama said that his delegation would hold consultations with interested Parties regarding its offer in GPA/SPEC/3 in the near future. Panama's replies to the additional questions put by one Party were still pending. On the other hand, his delegation had not received any follow-up questions or comments to the replies that it had provided to some other delegations.

11. The representative of the United States said that his delegation had received replies to some of its questions and hoped to receive an early response to its requests for statistical information and for clarification of certain points in Panama's initial offer. His delegation had held two consultations with Panama and expected to have further consultations prior to the next meeting of the Committee, by which time it hoped to have resolved any outstanding issues with regard to Panama's accession.

12. The representative of the European Community said that her delegation had held a bilateral meeting with the delegation of Panama. The European Community had suggested that Panama should improve its offer in certain respects. It might also consider the use of new technologies for the publication of information related to procurement.

13. The representative of Japan said that his delegation had held two bilateral meetings with the delegation of Panama. Panama's initial offer did not include entities at sub-central levels of government.

14. The representative of Switzerland said that her delegation had held bilateral consultations with Panama in February 1998. Her delegation's questions and comments would be communicated to Panama in writing. The bilateral consultations between the two delegations would be resumed before or at the time of the next meeting.

(iv) *Future arrangements for accessions*

15. The representative of Japan said that the process of accessions to the Agreement had lost its momentum after the accessions of Singapore and Hong Kong. Joined by the representative of the European Community, he suggested that the Committee should discuss how the procedures for accession to the Agreement might be made more operational. The Committee agreed to revert to this matter at its next meeting.

E. NEWLY ACCEDED WTO MEMBERS

16. The Chairperson said that there were no new developments to report on the accessions of Bulgaria and Mongolia to the Agreement as of 7 October 1998.¹

17. The representative of the European Community said that the negotiations on the accessions of these two countries would be held in bilateral consultations. Moreover, the accession of a newly acceded WTO Member to the Agreement on Government Procurement was a matter that related to the work in the WTO on accessions. While recognizing that accession to a plurilateral agreement might be a difficult issue, the European Community would continue to stress the importance of joining the Agreement on Government Procurement for countries newly acceding to the WTO as an important part of its efforts in the WTO accession process. The European Community had offered technical cooperation to some of the acceding countries.

¹ Mongolia applied for observer status in a communication dated 26 November 1998 (GPA/W/80).

18. The representative of Japan said that his Government would be prepared to provide technical cooperation to promote accession to the Agreement of the newly acceded countries on the basis of the requests to be formulated by them.

F. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

19. The Chairperson said that the arrangements and the schedule for the review of national implementing legislation had been agreed by the Committee at its February and June 1998 meetings (GPA/M/8, paragraph 23 and GPA/M/9, paragraph 12). In accordance with these procedures, the Committee would begin its review at the present meeting by taking up the legislation of the European Community (GPA/20) and Korea (GPA/12/Rev.1). The written questions put by the United States and Korea to the European Community (Job No. 4689) and the written replies by the European Community (Job No. 69) had been circulated respectively on 4 September and 6 October 1998. The written questions put by the United States, the European Community, Switzerland and Canada to Korea (Job Nos. 4690, 4868, 5052 and 5328) and the written replies by Korea (Job No. 5326) had been circulated on 29 August, 7 September, 21 September, 5 October and 2 October 1998 respectively. The Chairman suggested that each Party might provide an introduction to the responses to the questions that had been put to it by other Parties. He would then offer the floor to other Parties for any other questions or comments. Furthermore, Parties would be invited to submit any further questions that they wished to put to these two delegations by 5 November 1998.² The delegations of the European Community and Korea would provide written responses to these questions by 15 January 1999. The Committee would revert to any outstanding points at its next meeting.

20. The Committee agreed to these procedures and carried out the review of the legislation of the European Community and Korea on the basis of the written questions and answers and the oral statements made by the two delegations. The full record of the review of the legislation of the European Community and Korea will be circulated in the GPA/- series of documents.

21. Following the reviews, the Chairperson suggested that the Committee take up at its next meeting any outstanding points with respect to the legislation of the European Community and Korea. At that meeting it would also initiate the review of the national legislation of Switzerland (GPA/15) and the United States (GPA/23). In accordance with the agreed procedures for the review, Parties would be invited to submit their written questions to these Parties by 7 December 1998 and copies would be made available to the Secretariat which would circulate them to other Parties.³ The delegations of Switzerland and the United States would provide written responses to these questions by 31 January 1999.

22. The Committee so agreed.

G. NEGOTIATIONS UNDER ARTICLE XXIV:7

23. The Chairperson said that informal consultations had been held on 5 October 1998 on the negotiations under Article XXIV:7 on the basis of a revised informal checklist of issues, the most recent version of which was dated 8 September 1998 (circulated with footer "gpa60"), and the non-papers presented by the delegations of Hong Kong, China relating to the Articles of the Agreement (Job No. 5269) and the timetable and work programme for the elimination of discriminatory measures (Job No. 5270) and by the delegation of Singapore relating to methods of procurement (Job No. 5295). In the light of those consultations, it had been agreed that a further informal meeting

² No questions had been submitted as of 3 February 1999.

³ The questions from the European Community put to the United States and Switzerland were circulated on 13 January 1999 and the reply by Switzerland on 16 February 1999.

would be held on 9-10 December 1998 and that, at that meeting, the work would be carried forward in the following way:

- (i) delegations would revert once more to the issues of information technology, statistical reporting and enforcement and monitoring mechanisms on the basis of a note that the Chair would draw up attempting to crystallize the state reached in the discussions and to identify the key questions that needed to be pursued;
- (ii) the European Community was invited to provide any further information that it might have on its suggestions regarding the use of information and communications technology for the compilation of statistical data in the light of the questions put to that delegation at the meeting (Job No. 3869);
- (iii) delegations would revert to the issue of procurement methods on the basis of the paper presented by the delegation of Singapore (Job No. 5295) and any other papers that might be submitted;
- (iv) delegations would revert to Articles I to XV and also take up the remaining Articles of the Agreement;
- (v) with respect to the elimination of discriminatory measures, there was an agreement that this matter related to provisions that discriminated between Parties, it being understood that there was a close link between this issue and that of coverage under which issues relating to the extension of the scope of application of the national treatment principle would be taken up;
- (vi) delegations would further revert to the issue of the timetable and work programme for the negotiations on the elimination of discriminatory measures and practices and the expansion of the coverage of the Agreement having regard to the non-paper submitted by Hong Kong, China (Job No. 5270);
- (vii) delegations would discuss the issue of the coverage of services on the basis of a note to be prepared by the Secretariat listing the services presently covered in the Schedules of Parties.

H. ANNUAL REPORT (1998) TO THE GENERAL COUNCIL

24. The Committee adopted its Annual Report for 1998 to the General Council on the basis of a draft prepared by the Secretariat which was amended in the light of the discussion at the meeting and circulated in document GPA/25.

I. OTHER BUSINESS

(i) *Korea - Procurement of International Airport Construction Corporation*

25. The representative of the United States said that his delegation had submitted questions to the delegation of Korea relating to the status of the Korean Airport Construction Corporation under the Agreement (GPA/W/76). His delegation disagreed with the view held by Korea that the Korean Airport Construction Authority was not covered by the Agreement. His authorities considered that this was an important issue for the United States with respect to the balance that had been established pursuant to the negotiations leading to the conclusion of the Agreement.

26. The representative of Korea said that his delegation had not yet been able to respond to the questions put by the United States under paragraphs 1 and 2 of Article XIX due to the complexity of the questions. Korea continued to believe that the Korean Airport Construction Corporation was not subject to the GPA. If necessary, Korea would be willing to hold bilateral consultations so as to resolve the matter in a satisfactory manner.

(ii) *United States - Measures affecting government procurement*

27. The representative of Japan said that his Government had requested the establishment of a panel regarding the sub-federal measures affecting government procurement in the United States at the DSB meeting of 22 September 1998 but that no consensus had been reached at that meeting to establish a panel (WT/DS95/3 and WT/DSB/M/48).⁴

J. DATE OF THE NEXT MEETING

28. The Committee agreed to hold its next meeting on 23 February 1999.

⁴ Following the requests by the European Community (WT/DS88/3) and Japan (WT/DS95/3), a single panel was established at the DSB meeting of 21 October 1998 (WT/DSB/M/49).

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 25 JUNE 1998

Chairperson: Mrs. Helle Klem (Norway)

1. The following agenda was adopted:
 - A. Application for observer status
 - B. Relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement
 - C. Modifications to the Appendices to the Agreement
 - D. Loose-leaf system for Appendices to the Agreement
 - E. Accessions:
 - (i) Iceland
 - (ii) Chinese Taipei
 - F. Newly acceded WTO Members: Mongolia
 - G. Review of national implementing legislation
 - H. Statistical reporting
 - I. Modalities for the review of the Agreement
 - J. Other business
 - (i) Korea - Procurement of International Airport Construction Corporation
 - (ii) United States - Measures affecting government procurement
 - (iii) Canada - coverage in Annexes 2 and 3 of Appendix I
 - (iv) Demonstration of the use of information technology in government procurement
 - (v) The date of the next meeting.

A. Application for observer status

2. The Committee agreed to grant observer status to the Government of Lithuania, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from that country (GPA/W/71).

B. Relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement

3. The Chairperson said that, at its last meeting, the Committee had discussed the legal and procedural aspects of the relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement on the basis of a note prepared by the Secretariat in response to the Committee's request (GPA/M/8, paragraphs 5-10 and GPA/W/65). The representative of Canada said that, since all Parties to the Tokyo Round Agreement had become Parties to the 1994 Agreement, his delegation considered that the Tokyo Round Agreement had been superseded by the 1994 Agreement in the light of the provisions of Article XXIV:3(c) of the 1994 Agreement. Joined by the representative of Switzerland, he said that in accordance with the legal opinion in the note by the Secretariat, no formal Committee action would be required. The representative of Japan said that his authorities were still reviewing the legal issues involved in respect of this matter.

4. The Committee took note of the legal opinion expressed in the note by the Secretariat circulated in document GPA/W/65, while noting that any delegation could revert to the matter at a future meeting.

C. Modifications to the Appendices to the Agreement

5. The Chairperson said that, since the Committee's last meeting, Hong Kong, China (GPA/W/69) and Singapore (GPA/W/70 and 72) had notified proposed modifications to their respective Appendices. Since no objections had been raised within the prescribed time-periods, the modifications by Hong Kong, China had entered into force on 24 April 1998 (WT/Let/218) and the modification by Singapore in document GPA/W/70 on 9 May 1998 (WT/Let/219).¹

6. In regard to the proposed modifications relating to its Appendix I notified by the European Community on 13 August 1997, the representative of the United States said that the consultations between her delegation and the European Community regarding the modifications in document GPA/W/51 would be concluded in the near future. The representative of the European Community said that, should further modifications to Appendix I result from those consultations, his delegation would submit a note explaining them.

D. Loose-leaf system for Appendices to the Agreement

7. The Chairperson said that the Committee had agreed that the first issue of the loose-leaf system would be postponed until after the entry into force of the extensive modifications that had been notified by the European Community in document GPA/W/51 (c.f. item C above and GPA/M/7, paragraphs 9-10). Meanwhile, a draft of the loose-leaf system of Appendices had been available from 15 May 1998 on the government procurement site at the WTO Homepage in order to provide information on the Appendices including the modifications that had been certified since the signature of the Agreement on 15 April 1994 (<http://www.wto.org/wto/govt/loose.htm>). The loose-leaf system circulated on the Internet included the Appendices of the European Community that were currently in

¹ The modification by Singapore in GPA/W/72 subsequently entered into force on 15 July 1998 (WT/Let/232).

effect and a reference had been made to the modifications under consideration in documents GPA/W/51 and Add.1. As also agreed by the Committee, the procedures agreed by the Committee concerning certification and circulation of the loose-leaf system of schedules would be carried out after the procedures for the certification of the proposed modifications to the Appendices of the European Community had been completed (GPA/W/35, paragraph 4 and GPA/M/5, paragraph 20).

E. Accessions

(i) *Iceland*

8. The Chairperson said that a request for accession had been received from Iceland together with a draft offer (GPA/W/73).

9. The representative of Canada said that, without prejudice to its consideration of Iceland's offer, his delegation had noted that Canada figured prominently in the Annexes to Appendix I and in the General Notes while the respective offers of Chinese Taipei and Panama did not contain any such reference. He also drew attention to the objective of the review of the Agreement concerning the elimination of discriminatory measures.

(ii) *Chinese Taipei*

10. The representative of Chinese Taipei said that the Law on Government Procurement had been promulgated by the President on 27 May 1998 and would enter into force after one year. Chinese Taipei would continue the ongoing consultations with certain Parties on pending issues with a view to concluding its accession process as soon as possible.

F. Newly acceded WTO Members: Mongolia

11. The Chairperson said that the Secretariat had sent a reminder to the delegation of Mongolia on 12 June 1998, drawing attention to the letter by the Chairperson dated 13 November 1997 regarding the commitments undertaken by Mongolia in the Working Party on the Accession of Mongolia to the WTO (c.f. GPA/M/7, paragraph 25).

G. Review of national implementing legislation

12. The Chairperson said that, as of 25 June 1998, Canada, Korea, Norway, Switzerland, the European Community and the United States had notified their national implementing legislation and responses to the checklist of issues (GPA/10, GPA/12/Rev.1, GPA/14, GPA/15, GPA/20 and GPA/23). She drew attention to the arrangements and schedule for the review of national implementing legislation agreed by the Committee at the previous meeting (GPA/M/8, paragraph 23). Accordingly, she suggested that the Committee should initiate the review of national legislation at its next meeting by taking up the legislation of the European Community and Korea. Parties should submit their written questions to these Parties by 24 August 1998 and copies should be made available to the Secretariat which would circulate them to other Parties.² The delegations of the European Community and Korea should provide written responses to these questions before 30 September 1998. The Committee so agreed.

² A reminder was sent to delegations on 3 August in airgram WTO/AIR/897.

H. Statistical reporting

13. The Chairperson said that, as of 25 June, Norway and Hong Kong, China had provided statistics, respectively, for 1996 and July-December 1997 in accordance with Article XIX:5 of the Agreement (GPA/21 and 22).

I. Modalities for the review of the Agreement

14. The Chairperson said that informal consultations had been held on 25 June 1998 on the modalities for the three-year review on the basis of a revised informal checklist of issues, the most recent version of which was dated 25 May 1998, and the non-papers presented by the delegation of the United States relating to information technology (Job No.3842), the delegations of Norway (Job No. 3246), the European Community (Job No. 3869) and the United States (Job No. 3855) respectively on statistical reporting requirements, the delegation of the European Community on enforcement and monitoring mechanisms (Job No. 3871), the delegation of the United States on the expansion of services coverage (Job No. 3843) and the delegation of Hong Kong, China on the elimination of discriminatory measures (Job No. 3412).

15. The Chairperson said that the Committee had held informal consultations regarding a time-frame for the negotiations under Article XXIV:7 and the overall work programme that should be envisaged within that time-frame. In the light of those consultations the Committee agreed to proceed in accordance with the following proposals by the Chair, the text of which incorporates suggestions by delegations agreed to by the Committee:

"We have two sets of points on which the Group should decide. One is the time-frame for the negotiations under Article XXIV:7 and the overall work programme that should be envisaged within this time-frame and the other is the more immediate issue of the work that should be envisaged for the Group's next meeting.

"On the first of these questions, I sense a widespread view that we should aim to complete the negotiations, at least in respect of the simplification and improvement of the Agreement, by the third WTO Ministerial to be held at the end of next year with a view to, in particular, increasing the attractiveness of the Agreement to new members.

"If this is to be done, we would need to reserve the whole of the fall of next year to an intensive negotiating process. This, in turn, would require that by the summer of next year there would be in existence a document, reflecting the outstanding proposals, that could constitute the basis for these negotiations. The preparation of such a document would require that all the proposals and suggestions for improvement of the text would have been thoroughly discussed and digested by that time. In order for this to be done, we might wish to set a target date of the end of April next year for the tabling of all such proposals and suggestions – without, of course, prejudice to the right of participants to put forward at a later date modified or additional proposals where necessary.

"To sum up therefore I would suggest the following key elements of a timetable and work programme:

- The tabling of suggestions and proposals no later than the end of April 1999.
- The preparation of a document reflecting all outstanding proposals and suggestions, as a basis for the final negotiating phase, no later than the summer of 1999. I would, of course, hope that in the course of the review and discussion of the proposals and suggestions that would already have been

undertaken by that time a considerable measure of agreement would already have been reached on many points and that the number of outstanding points left for the final negotiating phase would be kept to a manageable minimum.

- A target of the third WTO Ministerial for the completion of the negotiations, at least on the simplification and improvement of the Agreement.

"We would in parallel continue work on the other elements of the negotiations, namely on the elimination of discriminatory measures and practices which distort open procurement and the expansion of the coverage of the Agreement. We will revert at our next meeting to the timetable and work programme for these parts of the negotiations. To the extent that the objective of the elimination of discriminatory measures could be achieved through modifications to the Agreement itself, this work would also have the target date of the third Ministerial Meeting.

"If this way of proceeding were to be acceptable to you, we would need to give some thought to the sort of meeting schedule that should be envisaged for the remainder of this year and for next year. My own suggestion would be that you might consider two meetings in the fall of this year (our October meeting already scheduled and maybe one in mid-December), and three meetings in the first part of next year (for example February, May and July). In the fall period of 1999, we would need to envisage a semi-continuous process of negotiation, i.e. the Group would need to be on call for the whole period.

"WTO Members, not parties to the GPA, and other observer governments to the GPA would be invited to participate fully in the work, it being understood that the final decision on the outcome would remain with Parties to the GPA.

"As regards the second issue that I mentioned, namely the specific work programme for our next meeting in October, we have already agreed:

- to revert once more to the issues of information technology and statistical reporting;
- to revert to the issue of monitoring and enforcement, on which the Community presented a paper today;
- furthermore, we have been advised to expect a paper from the Community on the issue of procurement methods;
- we have also agreed that we will continue our examination of Articles I through VI and take up Articles VII through XV. In this regard, I encourage participants to put forward drafting proposals in advance;
- using the Secretariat note on the types of discriminatory provisions in the Appendices, we will discuss the reasons for the maintenance of such provisions, any plans for their removal and what is needed for their removal;
- coverage of services.

"Of course, delegations remain free to put forward proposals or suggestions on any of the other issues before us and I would urge them to do so.

"In order to assist this further work, the Secretariat will once more update the Checklist of Issues. In addition, we will revert at the next meeting to the paper proposed by Canada for a text of the Agreement reflecting proposed changes."

J. Other business

(i) *Korea - Procurement of International Airport Construction Corporation*

16. The representative of the United States said that her delegation had held informal consultations with Korea concerning the coverage of the Korea Airport Construction Authority under the Agreement. The representative of Korea said that his authorities considered that the International Airport Construction Corporation was not subject to the obligations of the Agreement.

(ii) *United States - Measures affecting government procurement*

17. The representative of the European Community said that his delegation had been pursuing the consultations with the delegation of the United States concerning the legislation enacted by the Commonwealth of Massachusetts regulating state contracts with companies doing business with or in Myanmar (WT/DS88/1 and GPA/D2/1).

(iii) *Canada - coverage in Annexes 2 and 3 of Appendix I*

18. In response to a request for information by the representative of the European Community regarding any developments in Canada's offer, the representative of Canada said that his delegation's stated position since the entry into force of the Agreement concerning the coverage of sub-central government entities and enterprises in all ten Provinces contained in its Appendix I, Annexes 2 and 3 had remained unchanged (GPA/19, paragraph 6).

(iv) *Demonstration of the use of information technology in government procurement*

19. The Chairperson said that a demonstration of the application of information technology to the area of government procurement had been held on 24 June 1998 with the participation of experts from Canada, the European Community, Finland, Japan, Mexico, Norway, Poland, Singapore and the United States.

(v) *The date of the next meeting*

20. The Committee agreed to hold its next meeting on 7 October 1998.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/8
26 May 1998

(98-2152)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 18 FEBRUARY 1998

Chairperson: Mrs. Helle Klem (Norway)

1. The following agenda was adopted:
 - A. Election of Chairperson
 - B. Applications for observer status
 - C. Relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement
 - D. Modifications to the Appendices to the Agreement
 - E. Loose-leaf system for Appendices to the Agreement
 - F. Notification of threshold figures in national currencies
 - G. Accessions:
 - (i) Chinese Taipei
 - (ii) Panama
 - H. Newly acceding WTO Members
 - (i) Bulgaria
 - (ii) Mongolia
 - I. Notification of national implementing legislation
 - J. Statistical reporting
 - K. Modalities for the review of the Agreement
 - L. Other business
 - (i) Australia - Current developments regarding the Agreement on Government Procurement
 - (ii) Korea - Procurement of International Airport Construction Corporation

- (iii) United States - Measures affecting government procurement
- (iv) Japan - Procurement of a satellite navigation system
- (v) Demonstration on the use of information technology in government procurement
- (vi) Dates of meetings in 1998.

A. Election of Chairperson

2. The Committee re-elected Mrs. Helle Klem (Norway), as its Chairperson for 1998.

B. Applications for observer status

3. The Committee agreed to grant observer status to the Government of Slovenia, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from that country (GPA/W/67).

4. In the light of the action taken by the General Council at its meeting of 10 December 1997 (WT/GC/M/25), the Committee agreed that International Trade Centre UNCTAD/WTO would be invited to attend its meetings.

C. Relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement

5. The Chairperson said that the Secretariat had prepared a note on the legal and procedural aspects of the supersession provided under Article XXIV:3(c) in response to the Committee's request at the last meeting (GPA/W/65 and GPA/M/7, paragraph 28)

6. The representative of the United States said that her delegation had certain concerns with the approach outlined in the note by the Secretariat. Her delegation considered that Article XXIV:3(c) of the Agreement was not itself a denunciation clause but that it merely provided for supersession of the provisions of the Tokyo Round Agreement by the 1994 Agreement where a party was signatory to both Agreements. The Tokyo Round Agreement would need to be formally terminated as had been the case with the International Dairy Agreement and the International Bovine Meat Agreement. While the United States had withdrawn from the Tokyo Round Agreement in January 1996, it remained concerned that, in the possible instance where a signatory to the 1994 Agreement might withdraw from that Agreement, it might still have rights remaining under the Tokyo Round Agreement.

7. The representative of the European Community said that, in the light of the provisions of Article 59.1(a) of the Vienna Convention on the Law of Treaties (1969), her delegation did not consider that it was necessary to have a formal termination of the Tokyo Round Agreement. Given that the 1994 Agreement had superseded the Tokyo Round Agreement, there was no need for a formal Committee action. The Committee could take note of the legal opinion expressed in this respect in the note by the Secretariat circulated in document GPA/W/65.

8. The representative of Canada said that Canada held the view that it had no remaining rights and obligations vis-à-vis the Parties to the Tokyo Round Agreement as per supersession provisions in Article XXIV:3(c) of the 1994 Agreement. However, his authorities had not yet completed their domestic review of the legal issues involved in this respect.

9. The representative of Japan said that his delegation had no objection to the formal termination of the Tokyo Round Agreement even though that Agreement did not have a specific termination clause. However, it might have problems with a decision that was made effective retroactively as of 20 October 1997.

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

D. Modifications to the Appendices to the Agreement

11. The Chairperson said that Hong Kong, China (GPA/W/57), Switzerland (GPA/W/58), Korea (GPA/W/59), Japan (GPA/W/60 and 63), Canada (GPA/W/61) and Norway (GPA/W/62) had notified proposed modifications to their respective Appendices. Since no objections had been raised within the prescribed time-period, these modifications had entered into force respectively on 23 November 1997 (WT/Let/206), 19 November 1997 (WT/Let/205), 23 November 1997 (WT/Let/207), 23 November 1997 and 31 December 1997 (WT/Let/208 and 211), 5 December 1997 (WT/Let/209) and 20 December 1997 (WT/Let/210). Modifications relating to its Appendices had also been notified by Israel (GPA/W/68).¹

12. In regard to the proposed modifications relating to its Appendix I on 13 August 1997 notified by the European Community in document GPA/W/51, the representative of the United States said that her delegation had sought clarifications from the European Community in September 1997 (GPA/W/51/Add.1). The representative of the European Community said that his delegation would respond to the request for information from the United States so as to settle the matter without delay. The difficulties in completing the procedures for acceptance of the modifications proposed by the European Community illustrated the disadvantages of using a positive list approach for the coverage of entities in Appendix I, a matter that was being currently discussed in the context of the review of the Agreement. The representative of the United States said that, if the notification of the European Community had provided a proper explanation of the nature of the proposed modifications, the problem of review of GPA/W/51 by other Parties would have been avoided. Her delegation had had to object to the proposed modifications going into effect because, given the extensive nature of document GPA/W/51 and the timing of its receipt, her delegation had not been able to determine whether the proposed modifications would change the coverage of the commitments of the European Community under the Agreement.

13. The Committee took note of the statements made and, in the event that any further proposed modifications to the Appendices of the European Community were to result from its consultations with the United States regarding the proposed modifications in GPA/W/51, recalled that they should be notified to the Committee in accordance with the procedures of Article XXIV:6(a).

E. Loose-leaf system for Appendices to the Agreement

14. The Chairperson stated that the Secretariat had prepared itself so as to be able to make available a revision of the draft loose-leaf system of Appendices in GPA/W/35 which would consolidate the rectifications and modifications to the Appendices effective on 18 February 1998. At its September 1997 meeting, the Committee had noted that the first issue of the loose-leaf system

¹Entered into force on 8 March 1998 (WT/Let/214).

would be postponed until after the entry into force of the extensive modifications that had been notified by the European Community in document GPA/W/51 (c.f. item D above and GPA/M/7, paragraphs 9-10).

15. Following suggestions by the representatives of Canada and the European Community, the Committee, while noting that the delegations of the European Community and the United States would seek to reach an agreement on the proposed modifications in GPA/W/51 without delay, agreed that, in the event that agreement was not reached in the near future, the following steps would be taken: (i) the loose-leaf system for Appendices would be issued on the Internet with the proviso that it was made available in order to provide information on the Appendices including the modifications that had been certified since the signature of the Agreement in April 1994; (ii) the loose-leaf system circulated on the Internet would include the Appendices of the European Community that were currently in effect and a reference would be made to the modifications under consideration in document GPA/W/51 and Add.1; and (iii) after the procedures for the certification of the proposed modifications to the Appendices of the European Community had been completed, the procedures agreed by the Committee concerning certification and circulation would be carried out (GPA/W/35, paragraph 4 and GPA/M/5, paragraph 20).

F. Notification of threshold figures in national currencies

16. The Chairperson said that Hong Kong, China and the European Community had already notified their threshold figures in national currencies for 1998-1999 in documents GPA/W/66 and Add.1 and invited other Parties to submit their notifications in accordance with the relevant decision of the Committee without delay (GPA/1, Annex 3).²

G. Accessions

(i) *Chinese Taipei*

17. The representative of Chinese Taipei said that bilateral consultations with the United States and Switzerland had been concluded respectively in December 1997 and February 1998. His delegation had also continued bilateral consultations with Canada, the European Community, Japan and Korea in February 1998. Chinese Taipei hoped that the ongoing consultations on its offer would soon be finalized so as to facilitate the accession of Chinese Taipei to the Agreement after becoming a WTO Member. The review of a draft Government Procurement Law by its legislature was in its final stages. Work was also being carried out on the drafting of implementing rules and regulations that would supplement the basic law. Other developments relating to the reform of the government procurement regime in Chinese Taipei included the publication of a Government Procurement Gazette, the dissemination of information on tenders through the Internet, the establishment of a transitional dispute settlement mechanism on public construction and the collection of statistics on government procurement.

18. The representative of Japan said his delegation had obtained a positive and informative explanation from the delegation of Chinese Taipei concerning its offer and the expected changes in the procurement law and regulations. His delegation hoped that the negotiation process would be concluded at an early stage.

²Notifications by Japan and Canada have subsequently been circulated in documents GPA/W/66/Add.2 and 3.

(ii) *Panama*

19. The representative of Panama said that bilateral consultations had been held or would be held with interested Parties in September 1997 and February 1998 regarding Panama's initial offer of 24 June 1997 (GPA/SPEC/3). His delegation had responded in writing to some of the requests for information from these Parties and in some other cases the replies were still being prepared. Interested delegations should get in contact with his delegation if further explanation of Panama's offer or any follow-up to their questions were required. His delegation would hold further consultations with some other Parties and hoped to be able to pursue the procedures for accession of Panama as expeditiously as possible.

H. Newly acceding WTO Members

(i) *Bulgaria*

20. The Chairperson said that she had been in contact with the delegation of Bulgaria in February 1998. The representative of Bulgaria had reaffirmed his country's intention to present an offer and to initiate negotiations for accession to the Agreement. She had been informed that developments in this respect had, however, been delayed due to overburden of work in the Ministries concerned.

(ii) *Mongolia*

21. The Chairperson said that, as agreed at the last meeting, a letter had been sent to the delegation of Mongolia, drawing attention to the commitments undertaken by Mongolia in the Working Party on the Accession of Mongolia to the WTO and encouraging Mongolia to apply for observer status (c.f. GPA/M/7, paragraph 25). As of 18 February 1998, no reply had been received from Mongolia.

I. Notification of national implementing legislation

22. The Chairperson said that, at its meeting of 4 June 1996, the Committee had agreed that Parties would notify national implementing legislation, including responses to the checklist of issues, not later than 31 December 1996 (GPA/1/Add.1). A reminder had been sent to delegations in airgram WTO/AIR/480 of 1 November 1996. As of 18 February 1998, Canada, Korea, Norway, Switzerland and the European Community had notified their national implementing legislation and responses to the checklist of issues (GPA/10, GPA/12/Rev.1, GPA/14, GPA/15 and GPA/20). The representative of the United States said that her delegation would notify its national legislation in the near future.

23. Following discussion on the basis of an informal note by the Secretariat, dated 6 May 1997, describing the procedures for review of implementing legislation developed by other WTO bodies (circulated with footer "gpa28"), the Committee agreed to the following arrangements and schedule for the review of national implementing legislation:

- (i) Parties who had not yet notified their national implementing legislation, including responses to the checklist of issues in document GPA/1/Add.1, would do so by 1 April 1998;
- (ii) Parties would submit written questions to those Parties whose legislation would be reviewed, with copies to the Secretariat, at least six weeks prior to the review meeting, the questions being circulated by the Secretariat to all Parties;

- (iii) Parties would provide responses to these questions in writing at least one week before the meeting at which the review would be held;
- (iv) the Committee would initiate the review of national legislation at its October 1998 meeting, by taking up the legislation of the European Community and Korea.

J. Statistical reporting

24. The Chairperson said that, as of 18 February, no Parties had provided statistics for 1996 and 1997 in accordance with Article XIX:5 of the Agreement. The representatives of Canada, Norway³ and Switzerland said that their delegations would submit statistics for 1996 in the near future.

K. Modalities for the review of the Agreement

25. The Chairperson reported on the informal consultations on the modalities for the three-year review that had been held on the basis of a revised informal checklist of issues, the most recent version of which was dated 27 January 1998, and the non-papers presented by the delegation of the European Community relating to the simplification and improvement of the Agreement (Job No. 6435), the simplification and improvement of the structure of the Agreement (Job No. 6437) and non-discrimination and information technology (Job No. 6438) as well as on the basis of an informal note by the Secretariat on the types of discriminatory provisions in the Appendices to the Agreement, dated 31 October 1997 (circulated with footer "gpa33"). As a result of these consultations it had been agreed to hold a further informal meeting on 25 June 1998. At that meeting the work would be carried forward in the following way:

- (i) the work would proceed with the three elements of the review simultaneously;
- (ii) as regards the simplification/improvement axis of the mandate for the review, delegations would have focused discussions on specific items, starting with information technology and statistical reporting. Delegations would be invited to specify, to the extent possible, the specific drafting changes that they would wish to see made to the relevant provisions of the Agreement in these areas;
- (iii) delegations would initiate an Article-by-Article review of the Agreement with a consideration of Articles I to VI of the Agreement;
- (iv) delegations would be invited to identify any other areas where focused discussions could be taken up and to bring forward proposals, including written proposals on any other substantive provisions, for example on procurement methods and restructuring of the Agreement including its Annexes;
- (v) as regards the other two elements of the review, namely elimination of discriminatory measures and practices which distort open procurement and expansion of the coverage of the Agreement, delegations would begin focused discussion on the expansion of the coverage of the Agreement in the area of services and would be invited to present written suggestions on any other matters;
- (vi) in the light of the state of discussion at the next meeting, the Chair would draw up, for the consideration of delegations, a suggested work programme, including a schedule, for the further work under the review and negotiations foreseen in Article XXIV:7(b) and (c).

³Statistics for 1996 have subsequently been provided by Norway (GPA/21).

L. Other business

(i) *Australia - Current developments regarding the Agreement on Government Procurement*

26. The representative of Australia said that the Commonwealth Government was currently examining all aspects of its possible membership of the Agreement. A consultative group was considering the national approach to Australia's participation in the activities related to the Agreement and a number of the key issues which were relevant to the application of the Agreement in Australia including the interests of small and medium enterprises. The Australian Procurement and Construction Council (APCC) was preparing a report on the impact of the accession to the Agreement on the Australian jurisdictions which would be forwarded to a special meeting at the ministerial level on 26 March 1998. Discussion would focus on the approaches to Australia's accession to the Agreement and the use of electronic commerce in government procurement. Australia's accession process would also entail a discussion between the federal and sub-federal entities. The current trend in Australia at all levels of government was towards greater decentralization of decision-making in the area of government procurement. The government departments and agencies had adopted their own procurement systems and practices which were aligned with the systems and practices adopted by private sector companies.

(ii) *Korea - Procurement of International Airport Construction Corporation*

27. The representative of the United States asked whether Korea had the intention of notifying the modifications to its coverage under the Agreement concerning the Korea Airport Construction Authority in accordance with the procedures of Article XXIV:6(a). This entity had been established in 1994 after the conclusion of the negotiations on Korea's accession to the Agreement. It presently had the responsibility for airport construction procurement instead of the Ministry of Transportation which had that responsibility at the time of Korea's negotiations of accession to the Agreement and which had been included under Korea's coverage of the Agreement.

28. The representative of Korea said that the International Airport Construction Corporation was not among the entities included in Appendix I of Korea. This matter had been fully clarified with the Parties during the negotiations on Korea's coverage of the Agreement.

(iii) *United States - Measures affecting government procurement*

29. The representative of Japan said that Japan had held three rounds of consultations with the United States in 1997 concerning the legislation enacted by the Commonwealth of Massachusetts regulating state contracts with companies doing business with or in Myanmar (WT/DS95/1 and GPA/D3/1). His delegation had been informed that the Federal Government of the United States had had high-level contacts with the Government of Massachusetts but, because of the confidential nature of those contacts, no detailed explanation had been provided on such Federal activities or on any reasonable perspective towards finding a solution to the matter under consultation. The issue of the inconsistency of the measures enacted with the provisions of the Agreement had remained unresolved. His delegation requested the United States delegation to provide explanations or information on this matter.

30. The representative of the United States said that it would be more appropriate to provide information relating to this matter in the bilateral consultations held under the DSU.

(iv) *Japan - Procurement of a satellite navigation system*

31. In reply to the request for information made by the delegation of the United States at the Committee's last meeting regarding a mutually agreed solution reached between the European Community and Japan pursuant to Article 3.6 of the DSU (WT/DS73/4/Rev.1, GPA/D1/2/Rev.1 and GPA/M/7, paragraph 27), the representative of the European Community, in a statement made jointly with the representative of Japan, said that the European Commission and the Ministry of Transport of Japan (MoT) had reached a settlement through the establishment of cooperation between the European Tripartite Group (consisting of the European Commission, the European Space Agency and Eurocontrol) on the one hand and the MoT on the other in the field of interoperability between MTSAT Satellite-based Augmentation System (MSAS) and the European Geostationary Navigation Overlay Service (EGNOS). This cooperation was aimed at jointly contributing to the implementation of a global seamless navigation service for aeronautical end-users through the interoperability among MSAS, EGNOS and other equivalent systems. It had also been agreed that the requirements for interoperability would be mentioned in MSAS and EGNOS documentation for all future procurement in and after 1998, on condition that both sides reached the conclusion that the interoperability was feasible.

(v) *Demonstration of the use of information technology in government procurement*

32. Following a suggestion by the representatives of Canada, the European Community and Norway, the Committee noted that the Secretariat would organize, in conjunction with interested delegations, a demonstration session on the application of information technology in the area of government procurement, to be held on 24 June 1998. It also agreed that Parties interested in making presentations on the operation of the systems in their countries should contact the Secretariat.

(vi) *Dates of meetings in 1998*

33. The Committee agreed to hold its next meeting on 25 June 1998 and its autumn meeting on 7 October 1998.

RESTRICTED

GPA/M/7

1 December 1997

WORLD TRADE ORGANIZATION

(97-5268)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 29 SEPTEMBER 1997

Chairperson: Mrs. Helle Klem (Norway)

- 1) At the opening of the meeting, the Committee observed a minute of silence in memory of Mr. Harald Ernst, the Chairman of the Committee in 1996 and 1997.
- 2) The following agenda was adopted:
 - A. Election of Chairperson
 - B. Applications for observer status
 - C. Modifications to the Appendices to the Agreement
 - D. Loose-leaf system for Appendices to the Agreement
 - E. Notification of national implementing legislation
 - F. Statistical reporting
 - G. Modalities for the three-year review of the Agreement
 - H. Accessions:
 - (i) Liechtenstein
 - (ii) Singapore
 - (iii) Chinese Taipei
 - (iv) Panama
 - I. Newly acceding WTO Members
 - (i) Bulgaria
 - (ii) Mongolia
 - J. Other Business
 - (i) United States - Measures affecting government procurement

- (ii) Japan - Procurement of a navigation satellite
- (iii) Relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement

K. Annual Report (1997) to the General Council

L. Date of the next meeting

A. Election of Chairperson

3) The Committee elected Mrs. Helle Klem (Norway) as its Chairperson for the remainder of 1997.

B. Applications for observer status

4) The Committee agreed to grant observer status to the Governments of Poland, Chile and Panama, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the requests received from those countries (GPA/W/48, 49 and 53).

C. Modifications to the Appendices to the Agreement

5) The Chairperson said that the United States (GPA/W/41), Switzerland (GPA/W/42 and 45), Norway (GPA/W/43 and 46), the European Community (GPA/W/44 and 55) and Israel (GPA/W/54) had notified proposed modifications to their respective Appendices. Since no objections had been raised within the prescribed time-period, these modifications had been certified respectively on 22 June 1997 (WT/Let/146), 22 June 1997 (WT/Let/146), 16 August 1997 (WT/Let/164), 29 June 1997 (WT/Let/152), 12 July 1997 (WT/Let/163), 9 July 1997 (WT/Let/162), 27 September 1997 (WT/Let/185) and 26 September 1997 (WT/Let/184). Modifications relating to their respective Appendices had also been notified by Hong Kong, China (GPA/W/56) and Switzerland (GPA/W/47/Add.1).¹

6) The Chairperson said that the European Community had notified, on 13 August 1997, modifications to its Appendices I-IV (GPA/W/51). In a communication, dated 3 September 1997, the United States had informed the Committee that it required more time to review the proposed modifications and, therefore, the United States could not agree to their taking effect upon the expiration of the 30-day period of review (GPA/W/51/Add.1). The representative of the United States said that her authorities had sought clarifications from the European Community regarding the proposed modifications and, on account of the extensive nature of such modification, their review would take more time. The representative of the European Community said that his delegation would notify to all Parties any modifications to Appendix I that might be warranted as a result of the ongoing consultations with the United States.

¹Subsequently certified on 5 October 1997 (WT/Let/183) and on 23 October 1997 (WT/Let/194).

7) The representative of Hong Kong, China said that it was difficult to ascertain whether the proposed modifications by the European Community, which appeared to involve a major reorganization of its Annex 1 to Appendix I, were substantive. Joined by the representative of Canada, he said that Parties should identify and explain, in their notifications, each proposed modification so as to facilitate the review of such modifications by other Parties. The representative of the Secretariat said that, the Committee had agreed that in future, under the loose-leaf system of Appendices, a Party proposing to make modifications or rectifications would notify them to the Committee by identifying the proposed changes on the relevant replacement pages (c.f. GPA/W/35, paragraph 4 and GPA/M/5, paragraph 20). The operation of the loose-leaf system would thus enable Parties to identify readily the proposed changes and to consider whether they modified the rights and obligations under the Agreement. Parties could also provide a presentation of each proposed modification in the form used hitherto to facilitate their domestic procedural requirements.

8) The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

D. Loose-leaf system for Appendices to the Agreement

9) The Chairperson stated that the Secretariat had prepared a draft of the first issue of the loose-leaf system of Appendices which consolidated the rectifications and modifications to the Appendices effective on 29 September 1997. However, the Secretariat would postpone the issue of the loose-leaf system until after the entry into force of the extensive modifications that had been notified by the European Community in document GPA/W/51 (cf. paragraphs 6-7).

10) The Committee took note of the statement and agreed to revert to this agenda item at its next meeting.

E. Notification of national implementing legislation

11) The Chairperson said that, at its meeting of 4 June 1996, the Committee had agreed that Parties would notify national implementing legislation, including responses to the checklist of issues, not later than 31 December 1996 (GPA/1/Add.1). A reminder had been sent to delegations in airgram WTO/AIR/480 of 1 November 1996. As of 29 September, four delegations - Canada, Korea, Norway and Switzerland - had notified their national implementing legislation including their responses to the checklist of issues (GPA/10, GPA/12/Rev.1, GPA/13 and GPA/15).

12) The representatives of Hong Kong China, the European Community and Israel said that the notifications on their implementing legislation would be submitted in the near future.

13) The representative of Norway said that the Committee should postpone its review until more Parties had notified their implementing legislation. The representative of Switzerland said that Parties could, at least, present information

on the most important features of their legislation by responding to the checklist of questions. The representative of Canada said that the Committee should discuss the procedures for the review of implementing legislation on the basis of the note by the Secretariat, dated 6 May 1997, describing the relevant procedures which had been developed by other WTO bodies.

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

F. Statistical reporting

15) The Chairperson said that Article XIX:5 of the Agreement called on each Party to collect and provide, annually, statistics on its procurement covered by the Agreement. As of 29 September 1997, Parties had not provided statistics for 1996, the first year of the implementation of the Agreement.

16) The representative of Switzerland said that more statistical data had to be provided under the 1994 Agreement than under the earlier Agreement because of the extension of the coverage of entities. Joined by the representatives of Canada and Norway, he said that the Committee had addressed a proposal for simplification of the provisions on statistical requirements under the three-year review of the Agreement. Notwithstanding the discussion in that context, Parties should comply with the existing requirements and should submit, without any further delay, their statistical data for 1996 and 1997.

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

G. Modalities for the three-year review of the Agreement

18) The Committee pursued its informal consultations on the modalities for the three-year review on the basis of an informal checklist of the issues, dated 27 August 1997, and the submissions by the delegations of the European Community (GPA/W/50) and Norway (Job Nos. 5211 and 5212). As a result of these consultations, the Committee agreed that it would hold further informal consultations on the modalities for the review of the Agreement on 5 November 1997. At that meeting, it would have focused discussions on: (i) issues of non-discrimination in connection with information technology; (ii) improvements to the structure and presentation of the Agreement; (iii) discriminatory provisions in the Appendices. Delegations would be urged to submit written proposals concerning these elements. Delegations could raise any other matters relating to the review, including suggestions concerning the best structure for carrying the work forward. The Secretariat would prepare an informal note on types of discriminatory provisions in the Appendices, it being understood that this would be without prejudice to the views of delegations and of the Committee.

H. Accessions

(i) *Liechtenstein*

19) The Chairperson said that Liechtenstein had deposited its instrument of accession on 19 August 1997. The Agreement had entered into force for Liechtenstein on 18 September 1997 (GPA/17 and WT/Let/166).

(ii) Singapore

20) The Chairperson said that Singapore had deposited its instrument of accession on 20 September 1997. The Agreement would enter into force for Singapore on 20 October 1997 (GPA/18 and WT/Let/179).

(iii) Chinese Taipei

21) The representative of Chinese Taipei said that his delegation had held, in the past two years, intensive bilateral consultations with the Parties to the Agreement. Chinese Taipei would continue, in due course, the bilateral consultations on a few sensitive issues that remained outstanding, with a view to its accession to the Agreement.

(iv) Panama

22) The Chairperson said that Panama's request for accession had been circulated on 22 August 1997 (GPA/W/53) and its initial offer on 24 June 1997 (GPA/SPEC/3). The representative of Panama said that his delegations would hold bilateral consultations with Parties to the Agreement. Meanwhile, his delegation appreciated that it could participate as an observer in the formal and informal meetings of the Committee.

23) The representative United States and the European Community, Japan, Korea, Norway and Switzerland welcomed the offer by Panama and said that their delegations would hold bilateral consultations with Panama in the coming months.

I. Newly acceding WTO Members

(i) Bulgaria

24) The Chairperson recalled that, at its last two meetings, the Committee had been informed that Bulgaria had been preparing its offer with a view to initiating negotiations for accession to the Agreement, if possible, by the end of 1997.

(ii) Mongolia

25) At the request of the representative of the European Community, the Committee agreed that the Chairman would write to the delegation of Mongolia, drawing attention to the commitments undertaken by Mongolia in the Working Party on the Accession of Mongolia to the WTO (WT/ACC/MNG/9, paragraph 59 and Protocol, Part I, paragraph 3) and encouraging Mongolia to apply for observer status.

J. Other business

(i) *United States - Measures affecting government procurement*

26) The representative of the Japan said that the legislation enacted by the Commonwealth of Massachusetts regulating State contracts with companies doing business with or in Myanmar affected the rights of more than thirty Japanese affiliated companies in the United States. Japan considered that the measures specified in the legislation were inconsistent with the provisions of the Agreement and that the matter was related to the implementation of the Agreement by the United States in respect of Annex 2 entities. Following Japan's request for consultations with the United States in July 1997, a first round of consultations had been held in July 1997 and a second round was scheduled in the week of 29 September 1997. The representative of the United States said that it would not be appropriate to provide to the Committee details on a matter under consultations under the DSU.

(ii) *Japan - Procurement of a navigation satellite*

27) The representative of the United States said that the European Community had notified that it had found a mutually agreed solution with Japan regarding a procurement tender published by the Ministry of Transport of Japan to purchase a MTSAT Satellite-based System (WT/DS73/4/Rev.1 and GPA//D1/2/Rev.1). Pursuant to Article 3.6 of the DSU, her delegation requested parties to the dispute to provide information on the mutually agreed solution reached in the consultations. Article 3.5 of the DSU provided that all solutions to matters raised shall be consistent with the agreements under which the consultations took place. The representative of Japan said that his authorities had informed Parties of the solution reached directly to their capitals. The representative of the European Community said that the specific solution was under discussion within the European Community.

(iii) *Relationship of the Tokyo Round Agreement to the 1994 Agreement on Government Procurement*

28) The Committee took note that, with the accession of Singapore on 20 October 1997, all signatories to the Tokyo Round Agreement on Government Procurement would have acceded to the 1994 Agreement on Government Procurement and agreed that the Secretariat would prepare a note clarifying the legal and procedural aspects of the supersession provided under Article XXIV:3(c). The representative of the United States recalled that his country had withdrawn from the Tokyo Round Agreement on Government Procurement prior to the entry into force of the 1994 Agreement on Government Procurement.

K. Annual report (1997) to the General Council

29) The Committee adopted its annual report for 1997 to the General Council on the basis of a draft prepared by the Secretariat which was amended in the light of the discussion at the meeting.²

²Subsequently issued in GPA/19.

L. Date of the next meeting

30) The Committee agreed to hold its next meeting on 18 February 1998.

RESTRICTED

GPA/M/6

18 August 1997

WORLD TRADE ORGANIZATION

(97-3419)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 21 MAY 1997

Chairman: Mr. Harald Ernst (Switzerland)

- 1) The following agenda was adopted:
 - A. Modifications to the Appendices to the Agreement
 - B. Loose-leaf system for Appendices to the Agreement
 - C. Notification of national implementing legislation
 - D. Modalities for the three-year review
 - E. Accessions:
 - (i) Hong Kong
 - (ii) Chinese Taipei
 - F. Newly acceding WTO Members
 - (i) Bulgaria
 - (ii) Mongolia
 - (iii) Panama
 - G. Other Business
 - (i) United States - Measures affecting government procurement
 - (ii) Japan - Procurement of a navigation satellite
 - (iii) Procurement of supercomputers by the United States National Science Foundation
 - (iv) Date of next meeting

A. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

- 2) The representatives of the European Community¹, Norway², Switzerland³, Korea, Canada and the United States⁴ said that they would propose modifications to their respective Appendices. The relevant notifications would be submitted before 31 May 1997 in order to enable the incorporation of the modifications in the first certified copy of the loose-leaf system of Appendices.⁵
- 3) The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

B. LOOSE-LEAF SYSTEM FOR APPENDICES TO THE AGREEMENT

- 4) In response to a request for clarification, the representative of the Secretariat said that in its operation the loose-leaf system would give effect to the rectification and modification procedures under Article XXIV:6(a). It was envisaged that the Party proposing to make modifications or rectifications should notify them to the Committee by identifying the proposed changes on the relevant pages of the loose-leaf system. Certified true copies of the replacement page(s) incorporating the amendments would be circulated once the procedures under Article XXIV:6(a) had been completed (c.f. GPA/W/35, paragraph 4 and GPA/M/5, paragraph 20).
- 5) The representative of Japan sought the Committee's understanding that, under the procedures for the certification of changes to the loose-leaf system of Appendices, certification of amendments to the loose-leaf system relating to Japan's Appendices should incorporate the text that described the proposed amendments as well as the replacement page(s) of the loose-leaf system. This would facilitate the National Diet's approval of substantive modifications to Japan's Appendices, in particular those involving an increase of Japan's obligations under the Agreement.
- 6) The Committee took note of the statements and agreed to revert to this agenda item at its next meeting.

C. NOTIFICATION OF NATIONAL IMPLEMENTING LEGISLATION

¹Subsequently notified in document GPA/W/51

²Subsequently notified in document GPA/W/46

³Subsequently notified in documents GPA/W/42 and 45

⁴Subsequently notified in document GPA/W/41

⁵Postponed from 1 July to 1 October 1997

7) The Chairman said that, at its meeting of 4 June 1996, the Committee had agreed that Parties would notify national implementing legislation, including responses to the checklist of issues, not later than 31 December 1996 (GPA/1/Add.1). A reminder had been sent to delegations in airgram WTO/AIR/480 of 1 November 1996. As of 21 May, three delegations - Canada, Korea and Norway - had notified their national implementing legislation including their responses to the checklist of issues (GPA/10, GPA/12/Rev.1 and GPA/13).⁶

8) The Committee took note of the statements made and agreed to revert to this item at its next meeting and at that time to take up the question of procedures for review of implementing legislation on the basis of the informal note by the Secretariat describing such procedures developed by other WTO bodies, which had been prepared at the Committee's request.

D. MODALITIES FOR THE THREE-YEAR REVIEW

9) The Committee pursued its informal consultations on the modalities for the three-year review on the basis of the non-papers presented by the delegations of the European Community on the three-year review (Job No. 3885) and Canada on information technology (Job No. 3887). As a result of these consultations, it was agreed that: (i) the Chairman would update the informal checklist of issues of 7 March 1997; (ii) prior to its next meeting, the Committee would hold further informal consultations on this item; (iii) in those consultations delegations could come forward with further proposals concerning the elements of the review.

E. ACCESSIONS

(i) Hong Kong

10) The Chairman said that Hong Kong had deposited its instrument of accession on 20 May 1997. Hong Kong would become a Party to the Agreement on 19 June 1997 (GPA/14 and WT/Let/141).

11) The representative of Hong Kong said that Hong Kong would do its best to establish the required bid challenge procedures as soon as possible so that it could fully implement Article XX before the expiry of the transitional period of one year foreseen in the Decision on the Accession of Hong Kong.

12) The representatives of the European Community⁷ and Norway⁸ said the General Notes to their respective Appendices I would be modified to reflect the extension of the Agreement as regards the award of contracts in the electricity sector with respect to the suppliers and service providers in Hong Kong. The representative of Switzerland said that the modifications to Appendix I, Annex 3 of Switzerland would be notified to reflect the extension of benefits to Hong Kong in

⁶Switzerland subsequently notified in document GPA/15

⁷Subsequently notified in document GPA/W/44

⁸Subsequently notified in document GPA/W/43

the electricity sector. The modifications would enter into force after the completion of Switzerland's internal ratification procedures in September 1997.⁹

(ii) *Chinese Taipei*

13) The representative of Chinese Taipei said that, following the bilateral consultations held with Parties to the Agreement, Chinese Taipei had submitted a revised offer in March 1997 (GPA/SPEC/1/Rev.1). His delegation's position on the three major areas of concern raised by Parties in the consultations was as follows: first, his delegation accepted the proposal by one Party concerning General Note 14, that Chinese Taipei acceded to the Agreement within one year after its accession to the WTO. If, however, the national government procurement law was enacted prior to its accession to the WTO, Chinese Taipei would accede to the Agreement within one year after the enactment of the law or at the time it acceded to the WTO, whichever was later. Second, concerning General Note 6, Chinese Taipei would carefully review the requests of three Parties that a certain number of items that were of particular interest to their suppliers should not be excluded from the electricity and transport projects. Third, concerning Note 6 to Annex 3 of Appendix I, Chinese Taipei agreed that, under the circumstances in which a Party's telecommunication sector might be run by the private sector and its procurement was conducted without influence or control from the government, the reciprocity requirement would not apply to that Party. His delegation encouraged those Parties who had not already done so to provide their comments, in writing, as soon as possible.

14) The Committee took note of the statements made under this item.

F. NEWLY ACCEDING WTO MEMBERS

(i) *Bulgaria*

15) The representative of Bulgaria said that his delegation was in the process of preparing its offer with a view to initiating negotiations for accession to the Agreement as early as possible.

(ii) *Mongolia*

16) The Chairman said that the Working Party on the Accession of Mongolia had taken note of a commitment by the representative of Mongolia that his Government would seek observer status in the Committee on Government Procurement at the time of its accession to the WTO with a view to initiating negotiations for membership thereafter (WT/ACC/MNG/9, paragraph 59 and Protocol, Part I, paragraph 3). Mongolia had become a WTO Member on 29 January 1997.

(iii) *Panama*

⁹Communication circulated in document GPA/W/47

17) The Chairman said that the Working Party on the Accession of Panama had taken note of a commitment by the representative of Panama that his Government would notify the Committee on Government Procurement at the time of Panama's accession to the WTO of its intention to accede to the Agreement on Government Procurement, and that Panama would initiate negotiations for membership in the Agreement by tabling an entity offer prior to 30 June 1997.¹⁰ It was also confirmed that, if the results of the negotiations were satisfactory to the interests of Panama and other members of the Agreement, Panama would complete negotiations for membership in the Agreement by 31 December 1997 (WT/ACC/PAN/19, paragraphs 68 and 116 and Protocol, Part I, paragraph 2, dated 26 September 1996).

18) The Committee took note of the statements made.

G. OTHER BUSINESS

(i) United States - Measures affecting government procurement

19) The representative of the European Community said that the European Community remained deeply concerned about the legislation enacted by the Commonwealth of Massachusetts regulating State contracts with companies doing business with or in Myanmar. The European Community remained of the view that this and other similar initiatives taken by Massachusetts as well as by other sub-federal authorities were in breach of the United States obligations and that they resulted in a de facto reduction of the United States offer under the Agreement. The European Community was closely monitoring the action taken by the Government of the United States to address its concerns and, in this respect, the European Community had made informal bilateral contacts with the United States. The European Community looked forward to receiving responses of the United States to the written questions by Japan regarding this issue and reserved all its rights under the WTO agreements with respect to this matter.

20) The representative of the United States said that her delegation had taken seriously the concerns expressed by the European Community with respect to the legislation enacted by the Commonwealth of Massachusetts as well as various other pending State laws. Her authorities had recently held consultations with officials in both Massachusetts and Connecticut. The legislation in Connecticut was not expected to be voted on during this year's legislative session. Her authorities were concerned, however, that various Member States of the European Community had been encouraging State governments in the United States to enact this type of legislation, in particular, with respect to Indonesia.

¹⁰Subsequently circulated in document GPA/SPEC/3

21) The representative of Japan urged the delegation of the United States to explain how the Federal Government of the United States intended to provide a solution concerning the trade-related aspects of this issue and to respond to his delegation's request for information pursuant to Article XIX of the Agreement (GPA/W/39).

(ii) Japan - Procurement of a navigation satellite

22) The representative of the European Community said that the European Community had requested consultations with Japan pursuant to Article XXII:2 of the Agreement and Article 4.4 of the Dispute Settlement Understanding (WT/DS73/1-GPA/D1/1).

(iii) Procurement of supercomputers by the United States National Science Foundation

23) The representative of Japan said that his authorities were concerned about the intervention of the Government of the United States in a recent supercomputer procurement. In March 1995, the University Corporation for Atmospheric Research (UCAR) had released a Request for Proposal (RFP) to 14 vendors to supply supercomputers. The RFP had sought proposals to lease for a period of five years the best possible computing system that could be obtained for a price of approximately US\$35 million. On 17 May 1997, the UCAR had announced that it had selected a certain Japanese company to supply the supercomputers and that it would enter into contract negotiations with that company. The UCAR supercomputer procurement was funded by the National Science Foundation (NSF) which retained the authority to approve or to disapprove any procurement decision made by UCAR. On 20 May 1996 an official of the United States Commerce Department had sent a letter to the NSF warning that the supercomputers of the Japanese company might have been offered to the UCAR at a price below fair value and that the dumping margin was likely to be very high. That letter had also cautioned the NSF that the Commerce Department had significant concerns that the UCAR's proposed purchase would threaten the supercomputer industry in the United States with material injury. In addition, the Commerce Department official had also transmitted to the NSF a Commerce Department Predecisional Memorandum that had indicated that the company's supercomputers were to be leased at less than fair value, with estimated dumping margins ranging from 163 to 280%, depending on the number of computers and the terms of the lease arrangement ultimately reached. As a result of the Commerce Department's action, the UCAR's lease of the Japanese companies' supercomputers had been delayed. On 20 August 1996, the NSF had issued a statement stating that it would be inappropriate for the NSF to approve that procurement until the dumping issue had been resolved. The NSF was covered under the GPA, whereas the UCAR, notwithstanding that it was established and funded by the NSF, was not a covered entity. This meant that procurement by a covered entity was conducted through a non-covered entity in order to circumvent the obligations of the Agreement on non-discrimination. Japan had the intention of seeking information from the United States on this matter pursuant to Article XIX of the Agreement.

24) The representative of the United States said that Japan had raised this issue in the Committee on Anti-Dumping Practices. The procuring entity was not covered by the Agreement and, therefore, the contract in question was not subject to the obligations of the Agreement.

25) The representative of the European Community said that this issue appeared to have a certain similarity to a matter that the European Community had raised with Korea, where the European Community had considered that, the Korean Government, by procuring through a private entity which fell outside the coverage of the Agreement, had violated Article III of GATT 1994 on national treatment.

26) The Committee took note of the above statements.

(iv) Date of next meeting

27) The Committee agreed to hold its next meeting on 29 September 1997.

RESTRICTED

GPA/M/5
11 April 1997

WORLD TRADE ORGANIZATION

(97-1536)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 24 FEBRUARY 1997

Chairman: Mr. Harald Ernst (Switzerland)

- 1) The following agenda was adopted:
 - A. Election of Chairperson
 - B. Applications for observership
 - C. Modifications to Appendix I to the Agreement
 - D. Loose-leaf system of Appendices
 - E. Notification of national implementing legislation
 - F. Accessions:
 - Hong Kong
 - Liechtenstein
 - Chinese Taipei
 - G. Procedures for the circulation and derestriction of documents
 - H. Information technology
 - I. Modalities for the three-year review
 - J. Other business
 - (i) United States• sub-federal legislation on government procurement
 - (ii) Japanese Ministry of Transport procurement of satellite navigation systems
 - (iii) Newly acceding WTO Members

(iv) Dates of future meetings.

A. ELECTION OF CHAIRPERSON

2) The Committee re-elected Mr. Harald Ernst as its Chairman and agreed that, in case the Chairman was absent from any meeting or part thereof, it would elect an interim Chairperson for that meeting or part of that meeting rather than electing a Vice-Chairperson.

B. APPLICATIONS FOR OBSERVERSHIP

3) The Committee agreed to grant observer status to the Governments of Argentina, Bulgaria and Hong Kong pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the requests received from those countries (GPA/W/30, 37 and 38).

4) The Chairman said that the Committee needed to take action on the requests for observer status which it had received from the European Free Trade Association (EFTA), the Inter-American Development Bank (IADB), the International Monetary Fund (IMF) and the Organization for Economic Co-operation and Development (OECD) (GPA/W/36). The Committee's decision on the participation of observers and the relevant WTO guidelines were contained respectively in documents GPA/1, Annex 1, paragraph 5 and WT/L/161, Annex 3.

5) The Committee, noting that the IMF had been given observer status in the General Council and certain other WTO bodies by virtue of the Agreement between the IMF and the WTO (WT/L/195, Annex I), agreed to grant observer status to the IMF in accordance with the terms of paragraph 6 of that Agreement.

6) The Committee, noting that the OECD had been given observer status in the General Council (WT/GC/M/18), agreed to grant observer status to the OECD on the basis of reciprocity with respect to access to proceedings, documents and other aspects of observer status.

7) The Committee agreed to postpone its consideration of the requests for observer status by the European Free Trade Association (EFTA) and the Inter-American Development Bank (IADB) until after the WTO General Council had taken a decision on the observer status of those organizations.

C. MODIFICATIONS TO APPENDIX I TO THE AGREEMENT

8) The Chairman informed the Committee that, in documents GPA/W/27 and GPA/W/31, dated 4 October 1996 and 5 December 1996 respectively, Japan had notified proposed rectifications to Annex 3 of its Appendix I. Since no objections had been raised within the prescribed time-period, these rectifications had become effective as of 5 November 1996 and as of 4 January 1997, respectively. Certified copies had been distributed in documents WT/Let/119 and 134.

9) The Chairman also informed the Committee that the European Community and the United States had notified modifications to Appendix I consequent on the enlargement of the European Communities on 1 January 1995 to include Austria, Finland and Sweden. The relevant notification had been circulated in document GPA/W/32 of 17 December 1996. Since no objections had been raised, these modifications had become effective on 16 January 1997. Certified copies of the modifications had subsequently been circulated by the Secretariat in WT/Let/135.

10) The representative of the European Community said that certain changes warranted by developments that had taken place in the administrative organization of the governments of some Member States, including the proposed changes to Appendix I of Sweden as circulated in documents GPR/W/133 and GPR/W/139, would be notified before the next meeting of the Committee.

11) The Chairman recalled that the Canadian Schedule offered to cover entities in all ten Provinces on the basis of commitments to be received from Provincial Governments, with a final listing to be provided within 18 months after the conclusion of the Agreement. The representative of Canada said that his delegation's position as outlined in his statements at the last two meetings of the Interim Committee and the meetings of the Committee in 1996 remained unchanged. The representative of the European Community said that his delegation remained concerned that Canada had not, in the view of his delegation, honoured the commitment that it had undertaken under its Annex 2 of Appendix I regarding sub-central levels of government.

12) The representative of Switzerland said that Switzerland and the United States had recently concluded a bilateral agreement which would enable Switzerland to have access to public procurement by thirty-seven States in the United States and the United States to have access to procurement at the cantonal level in Switzerland. Furthermore, Switzerland and the United States would open their procurement markets in the areas of electricity, ports and airports. The agreement was in the process of being approved by the Swiss Parliament.

13) The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

D.LOOSE-LEAF SYSTEM FOR THE APPENDICES

14) The Chairman said that the Secretariat had prepared an updated draft set of Appendices, with a view to providing a starting point for the loose-leaf system (GPA/W/35). As agreed by the Committee and as indicated in the cover note to the document, delegations had 60 days from the date of its distribution to review the draft loose-leaf system. Those delegations wishing to make comments on the accuracy and completeness of the consolidation of the Appendices by the Secretariat were invited to do so as soon as possible. The Secretariat would bring such comments to the attention of all other Members of the Committee in corrigenda to GPA/W/35. In the event that any Member of the Committee considered that any such comments could raise points of difference that needed to be resolved in the Committee, the certification of the loose-leaf schedules might be postponed until after the Committee had discussed the matter at its subsequent meeting.

15) The Chairman also said that any further rectifications and modifications to the Appendices could only be incorporated in the first issue of the loose-leaf system if the procedures for notification and certification of such rectifications were to be completed before the expiry of the deadline for comments on the draft circulated by the Secretariat (GPA/W/35). As usual, notifications of any such rectifications and notifications would be circulated in the GPA/W/- series of documents.

16) The representative of the United States said that the notification of the bilateral agreement between Switzerland and the United States could not be submitted before April 1997 (paragraph 12). The first issue of the loose-leaf system should, therefore, be delayed until after the notification and certification of the relevant changes in the schedules of Switzerland and the United States.

17) The representative of the European Community said that the European Community would notify a number of changes to its Annex 1 in the coming months (paragraph 10). The date of issue of the first version of the loose-leaf system should therefore be postponed to 1 July 1997 in order to enable those changes to be incorporated.

18) The representative of Japan said that his authorities would notify certain rectifications relating to Annex 3 entities, so that the relevant changes could be reflected in the first issue of the loose-leaf schedule.

19) In the light of the above comments, the Committee agreed to postpone the date of certification of the first issue of the loose-leaf schedule to 1 July 1997. It also agreed that any amendments to the Appendices that were to be incorporated should be notified before 1 June 1997 in order to allow the approval and certification to be completed by 1 July 1997.

20) The Committee agreed to the procedures suggested in paragraph 4 of the note by the Secretariat (GPA/W/35) with respect to subsequent modifications to the loose-leaf system of schedules.

21) The representative of Japan said that giving the loose-leaf system of Appendices legal effect was under legal scrutiny in his country with a view to establishing that this fell within the administrative responsibility of the executive, given that the Diet had approved the original text of the Agreement with the Appendices. In response to comments from a delegation and from the Chair, he recognized the agreement reached in the Committee on this matter (GPA/M/2, paragraph 31) and that this was essentially an internal issue for his Government. This internal scrutiny would be completed before the first issue of the loose-leaf schedule.

22) The Committee took note of the statements made under this agenda item and agreed that the first certified copy of the loose-leaf system reflect the Appendices as they would stand on 1 July 1997.

E. NOTIFICATION OF NATIONAL IMPLEMENTING LEGISLATION

23) The Chairman said that, at its meeting of 4 June 1996, the Committee had agreed that Parties would notify national implementing legislation, including responses to the

checklist of issues (GPA/1/Add.1), not later than 31 December 1996. A reminder had been sent to delegations in Airgram WTO/AIR/480 of 1 November 1996. As of 24 February, only two delegations - Korea and Norway - had notified their national implementing legislation and responses to the checklist of issues (GPA/10 and GPA/12).

24) The representative of the United States said that her delegation would submit a notification of its national implementing legislation in the near future. She also said that, once a significant number of notifications had been submitted, the Committee could proceed with an examination of the implementing legislation of Parties on the basis of an exchange of written questions and answers. The representative of the European Community supported this suggestion.

25) The representative of Korea said that, notwithstanding that Korea had only been applying the Agreement since 1 January 1997, his delegation had already submitted a notification. Those other Parties who had longer experience with the implementation of the Agreement should not delay the notification of their legislation.

26) The representatives of Canada, the European Community, Israel and Switzerland said that their delegations would submit their respective notifications of implementing legislation in the near future.

27) The representative of Japan said that his authorities were preparing Japan's notification of implementing legislation. Japan had made a notification on the establishment of its independent review body before the entry into force of the Agreement (GPA/IC/W/37).

28) The representative of Norway said that, in her delegation's understanding, interested suppliers from Parties to the Agreement may resort to national bid challenge procedures also in those Parties that had not yet notified their national implementing legislation. The representative of the European Community said that the conformity of a Party's national implementing legislation with the Agreement could be questioned by other Parties even though that Party had not yet notified its implementing legislation.

29) The Committee took note of the statements made under this item. It agreed to revert to this matter at its next meeting on the basis of an informal note by the Secretariat describing the procedures for review of implementing legislation developed by other WTO bodies.

F. ACCESSIONS

- *Hong Kong*

30) The Committee took note of a written statement by Hong Kong on the electricity sector which had been circulated in GPA/11.

31) The representative of Hong Kong said that Hong Kong was in the process of completing the domestic procedures for its accession to the Agreement before the expiry of the validity period of the Committee's Decision (GPA/9). His authorities were currently examining Article XX of the Agreement with a view to establishment of a bid challenge

system in Hong Kong and had the intention of completing the necessary procedures for the application of Article XX fully before the one-year period provided in the Decision expired.

32) In response to a question by the representative of Canada, the representative of Hong Kong said that, while Hong Kong was endeavouring to complete the domestic procedures to ensure that Hong Kong acceded to the Agreement before the end of the validity period of the Decision, for the time being no set date for accession could be given.

- *Liechtenstein*

33) The Chairman said that, in terms of its paragraph 3, the Decision of the Committee of 27 February 1996 on the Accession of Liechtenstein would expire one year after the date of its adoption, i.e. on 27 February 1997, unless it had been extended by mutual consent between the Committee and Liechtenstein (GPA/3). Liechtenstein had recently requested an extension of six months, i.e. until 27 August 1997, for the depositing of its instrument of accession (GPA/W/34).

34) The representative of Liechtenstein said that Liechtenstein was not in a position to deposit its instrument of accession before the expiry of the Decision on Accession of Liechtenstein on 27 February 1997. Parliamentary elections had been held in Liechtenstein in February 1997. The Parliament, once reinstalled, would resume its debate on the new Liechtenstein Act on Public Procurement as well as the accession of Liechtenstein to the Agreement, possibly in next April or May. Following the debate in the Parliament, the people of Liechtenstein would have one month to decide whether to call a referendum. In that event, the completion of internal procedures for the accession of Liechtenstein would be extended by at least another two months. Her delegation, therefore, requested a six-month extension of the time-period for depositing Liechtenstein's instrument of accession.

35) The Committee agreed to extend the period of validity of its Decision on the Accession of Liechtenstein by six months, i.e. until 27 August 1997.

- *Application for accession by Chinese Taipei*

36) The representative of Chinese Taipei said that his delegation had submitted a second revised offer which was aimed at concluding the bilateral consultations held with various Parties in a practical manner (GPA/SPEC/1/Rev.1). In this second revision of its offer, his delegation had tried its best to respond to the requests that interested Parties had made during the past bilaterals. Major areas of progress in the present revision of the offer included a significant reduction of thresholds, the deletion of reservations for the withdrawal of a covered entity from the list of offers after privatization, the reduction of items to be excluded from the coverage of electricity and transportation projects, and the inclusion of the government-owned telecommunication company. It had not been an easy task for his authorities to move this far. They had had numerous and lengthy internal consultations with the various government authorities, procuring entities and interested groups. His delegation sincerely wished that interested Parties could conclude the bilaterals with Chinese Taipei based upon this offer. He asked any interested Party who might wish to provide further comments or specific concerns to do this in a written form and as soon as possible.

37) In addition to the revision of its offer, Chinese Taipei had made significant progress in its government procurement régime. First, as of 1 November 1996, a Government Procurement Gazette had been officially published, after a ten-month trial period, by the Public Construction Commission for publicizing tender and award notices of the procuring entities at all levels. Second, as of 1 January 1997, a transitional dispute settlement mechanism had been established in the Public Construction Commission to hear bid challenges raised by dissatisfied suppliers, and to help the suppliers and the contractors to settle contract disputes by reconciliation. An APEC seminar on bid challenge procedures would be held in Taipei from 31 March to 1 April 1997. Third, a draft Government Procurement law had been approved by the Premier's Office in December 1996, and had subsequently been sent to the legislative body on 23 January 1997. The draft Law was in conformity with the requirements of the Agreement. When it would be enacted, a transitional period of one year would be needed for training and for switching from the current system to the new system. His delegation hoped that the improvements made by Chinese Taipei to its offer would facilitate Parties' support for its accession.

38) The representative of the European Community said that his delegation had held a series of bilateral discussions with the delegation of Chinese Taipei. His delegation would provide its comments to Chinese Taipei when it was ready after examination of the revised offer.

39) The representative of Korea said that his delegation had held bilateral consultations with the delegation of Chinese Taipei but these were not yet concluded. Korea would hold further discussions with Chinese Taipei on the basis of the revised offer.

40) The representative of Switzerland said that his delegation had held bilateral consultations with the delegation of Chinese Taipei in December 1996 and would hold further consultations in February 1997.

41) In response to a question by the representative of Switzerland, the representative of Chinese Taipei confirmed that the thresholds for construction services would be reduced to SDR 5 million after two years.

42) The Committee took note of the statements made under this item.

G.PROCEDURES FOR THE CIRCULATION AND DERESTRICTION OF DOCUMENTS

43) The Committee adopted a decision on procedures on the circulation and derestriction of documents (GPA/1/Add 2) on the basis of a note by the Secretariat on the alignment of the Committee's relevant procedures with those adopted by the General Council for the WTO on 18 July 1996 (GPA/W/33 and WT/L/160/Rev.1). It requested the Secretariat to prepare and circulate a list of documents eligible for consideration for derestriction (GPA/W/39).

44) The Committee also agreed that the procedures on the circulation and derestriction of its documents would apply to those documents of the Interim Committee on Government Procurement that had not yet been derestricted. The Secretariat would also circulate a list of documents of the Interim Committee eligible for consideration for derestriction.

H & I.MODALITIES FOR THE THREE-YEAR REVIEW OF THE AGREEMENT AND INFORMATION TECHNOLOGY

45) The Committee held informal consultations pursuant to the agreement, in its Report to the Ministerial Conference of December 1996, to undertake an early review, starting in 1997 with an examination of modalities, with a view to the implementation of Article XXIV:7(b) and (c) (GPA/8, paragraph 22). In these consultations the Committee also took up item I on Information Technology. As a result of these consultations, it was agreed as follows: (i) the Chairman would draw up an informal checklist of issues that had been raised by Parties during the consultations, for circulation in good time before the Committee's next meeting; (ii) Parties would be invited to submit before the Committee's next meeting papers containing their suggestions concerning the review of the Agreement; (iii) prior to its next meeting, the Committee would hold further informal consultations on this item; (iv) in those consultations delegations could come forward with proposals concerning the issue of information technology, taking into account the Secretariat document circulated in GPA/W/25.

46) With respect to information technology, it was noted that the delegations of Canada, Korea and Norway had provided answers to the Revised Questionnaire on Information Technology circulated in document GPA/W/24 and Addenda 1-3. Other delegations were urged to submit their replies as soon as possible.

J.OTHER BUSINESS

(i) United States• sub-federal legislation on government procurement

47) The representative of the European Community said that the European Community had serious concerns about the legislation enacted on 25 June 1996 by the Commonwealth of Massachusetts Act of June 1996, i.e. the Act regulating State contracts with companies doing business with or in Myanmar. This legislation forbade Massachusetts State agencies, State authorities, the House of Representatives or the State Senate to sign new contracts or to renew existing contracts with companies doing business with or in Myanmar. The European Community was of the opinion that this legislation constituted a breach of the rules of the Agreement on Government Procurement for the following reasons. First, it violated Article VIII(b) of the Agreement, given that it imposed conditions on a tendering company which were not essential to ensure the firm's capability to fulfil the contract. Second, it infringed Article X of the Agreement because it imposed qualification criteria based on political rather than economic considerations. Third, the Act was in contradiction with Article XIII:4, to the extent that the statute provided for the award of contracts to be based on political, instead of economic, considerations.

48) When concluding the Agreement, the United States had accepted to cover the State of Massachusetts under its offer of sub-federal agencies in order to balance the European Community's offer to the United States. By limiting access of European Community suppliers to the procurement of Massachusetts State agencies, State authorities, the House of Representatives or the State Senate in Massachusetts, the United States had reduced its offer under the Agreement. The European Community was also concerned about similar legislation which was currently under consideration by the State of Massachusetts with regard to Indonesia. In addition, the European Community was concerned about similar legislation introduced recently by the State of Connecticut and similar initiatives which had been taken by other sub-federal authorities.

49) The European Community was of the opinion that this type of action reduced the United States offer under the Agreement. The European Community requested the Government of the United States to take the necessary measures in order to safeguard the interests of Community companies who might be affected by such legislation or similar actions. In addition, the European Community wished to be fully and immediately informed on the course of action that the Government of the United States had undertaken or intended to undertake in order to prevent the proliferation of such legislation and to remedy any harm caused to the interest of Community companies. The European Community fully reserved its rights under the WTO dispute settlement procedures. In addition, the European Community continued to examine the compatibility of such legislation with the GATS.

50) The representative of Japan said that the notification of laws and regulations and other administrative measures should extend to providing information on any restrictions on participation of suppliers in procuring procedures or award of contracts at all levels of government and cover such relevant factors as the degree of suppliers' foreign affiliation. Furthermore, Japan believed that central government authorities had the ultimate responsibility for the implementation of the Agreement at sub-central levels of government. In this respect, the Japanese authorities had concerns about certain specific laws and measures by which certain entities of State governments in the United States

conducted their procurement activities. Pursuant to Article XIX, paragraphs 1 and 3 of the Agreement, his authorities planned to request the United States Government to provide information on the relevant laws and measures and to explain their consistency with the relevant provisions of the Agreement.

51) The representative of the United States said that his authorities would be informed of the issues raised.

52) The Committee took note of the statements made.

(ii) Japanese Ministry of Transport procurement of satellite navigation systems

53) The representative of the European Community said that the European Community had serious concerns about the tendering procedures that had been undertaken by the Japanese Ministry of Transport in connection with MSAS, i.e. the global navigation system for air traffic management. In its tender, the Ministry of Transport had published specifications which explicitly requested interoperability with the specifications of the United States system, called the WAAS system, which were known only to the suppliers of that country. The European Global Navigation Satellite System had, therefore, been de facto excluded. The European Community believed that the MSAS procurement procedure was subject to the rules of the Agreement, given that the Ministry of Transport was covered under Japan's Annex 1 to Appendix I. The European Community was of the opinion that Japan had not fulfilled the obligations imposed by the Agreement's rules on technical specifications. Indeed, by publishing specifications with direct reference to the United States system, and thereby effectively excluding European Community suppliers, the Ministry of Transport had violated Article III of the Agreement on non-discrimination and Article VI:2. The latter Article stipulated that technical specifications prescribed by procuring entities should not be based on design or descriptive characteristics, but rather on performance. Furthermore, paragraph Article VI:3 stated that there should be no requirement or reference to a particular trademark, trade name, etc.. In addition, given that the WAAS specifications were not public, the published tender was not in line with the requirements set out in Article XII:2(g), which stipulated that the tender documentation should provide a complete description of the products and services required or of any requirements including technical specifications and conformity certification. The European Community requested that the Japanese authorities take the necessary measures with a view to re-publishing the tender in order to allow Community producers to participate in the tender procedure and that the Japanese authorities take the appropriate steps in order to ensure that, in future, tender specifications would be drafted and published in such a way that interoperability with systems offered by Community suppliers was guaranteed. The European Community fully reserved its rights under the WTO dispute settlement procedures.

54) The representative of Japan said that the Japanese authorities were reviewing the matter in his capital. His remarks should therefore be taken as preliminary ones. The Ministry of Transport - an Annex 1 entity - conducted procurement of satellite navigation systems through open tendering procedures. The contract had been awarded on 7 February 1997 to one of the two domestic suppliers which had submitted tenders. His authorities considered that the tendering process had been undertaken in a manner consistent with all the provisions of the Agreement. The Japanese delegation would be

ready to respond promptly to any additional questions of a legal or technical nature from any interested Party.

55) The Committee took note of the statements.

(iii) Newly acceding WTO Members

56) The Chairman said that the report of the Working Party on Accession of Bulgaria included a commitment by Bulgaria that, upon accession, it would notify the Committee on Government Procurement of its intention to accede to the Agreement on Government Procurement and seek observer status. It further confirmed that Bulgaria would initiate negotiations for membership in the Agreement by tabling an entity offer prior to 30 June 1997 and that, if the results of the negotiations were satisfactory to the interests of Bulgaria and the other Parties to the Agreement, Bulgaria would complete negotiations for membership in the Agreement by 31 December 1997 (WT/ACC/BGR/5, paragraph 80).

57) The representative of Bulgaria said that his authorities intended to initiate negotiations for accession to the Agreement, if possible, by the end of 1997. The Bulgarian Parliament had adopted a national law on government procurement on 16 January 1997, a translation of which would be communicated to the WTO Secretariat.

58) The Committee took note of the statements made.

(iv) Dates of the next meetings of the Committee on Government Procurement

59) The Committee agreed to schedule its next two meetings, tentatively, on 23 May and 29 September 1997, on the understanding that these dates might be modified in the light of developments in other WTO bodies• work on government procurement matters.

RESTRICTED

GPA/M/4
7 January 1997

WORLD TRADE ORGANIZATION

(97-0014)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 5 DECEMBER 1996

Chairman: Mr. Harald Ernst (Switzerland)

- 1) The following agenda was adopted:
 - A. Accession by Hong Kong
 - B. Other business

A. ACCESSION BY HONG KONG

2) The Chairman recalled that, in a communication dated 31 October 1996 and circulated in document GPA/W/28 and Corr.1, Hong Kong had applied for accession to the Agreement. Attached to this communication were an offer from the Government of Hong Kong for Appendix I and lists of relevant publications for Appendices II to IV.

3) The representative of Hong Kong said that Hong Kong had always been a staunch supporter of the multilateral trading system and the fundamental GATT principles of most-favoured-nation and national treatment. He recalled that, as a Party to the Tokyo Round Agreement on Government Procurement, Hong Kong had participated actively in the negotiations on the WTO Government Procurement Agreement. It had been with considerable regret that Hong Kong had not been able to sign the new Agreement due to its continued difficulty with the discriminatory elements introduced by many participants at the concluding stage of the negotiations. Though not a Party to the new Agreement, Hong Kong continued to maintain its open and transparent government procurement system. In bilateral contacts earlier this year with Parties to the new Agreement, Hong Kong's continuing concerns about the derogations from the non-discriminatory provisions of the Agreement had been acknowledged. For those discriminations specifically directed against it, Hong Kong had received assurances that they could be removed. In respect of those discriminatory provisions of a general nature, Hong Kong understood that the Committee had adopted a decision to conduct an early review in 1997 of the Agreement under Article XXIV, paragraph 7(b) and (c) of the Agreement, with a view to, among other things, eliminating the

discriminatory measures and practices in the Agreement. Hong Kong therefore considered that the time was ripe for it to re-engage in the new Agreement. It was on this basis that Hong Kong had expressed formally in October this year its interest in acceding to the new Agreement. Hong Kong had also submitted its terms of accession on the basis of its final offer which had been accepted by all Parties at the conclusion of the negotiation of the new Agreement. His delegation was pleased that, after several rounds of bilateral negotiations with all Parties to the Agreement, a draft decision on the terms of accession for Hong Kong had been worked out for the Committee's consideration. He expressed his delegation's gratefulness to all Parties concerned for their positive efforts which had enabled the bilateral consultations to be concluded within such a short period of time.

4) Specifically, during the bilateral negotiations, after having received assurance from Hong Kong that the Hong Kong Government neither held any interest in the electricity companies in Hong Kong nor sought to influence their procurement policy, the European Community, Norway and Switzerland had agreed to remove the discrimination against Hong Kong in the electricity sector. This, as Hong Kong understood it, would be followed up by formal notifications from all Parties concerned once the Committee had adopted the terms of accession. This was certainly a welcome move and addressed part of Hong Kong's serious concerns about the derogations from the non-discrimination provisions.

5) Separately, during the bilateral discussions, Hong Kong had also explained the need for it to delay application of most of the provisions of Article XX for a maximum period of one year in order to enable it to set up the required bid challenge procedures to cover all entities covered by the Agreement. His delegation was grateful for the understanding and flexibility on the part of all Members of the Committee. It was his delegation's intention to try its best to establish the necessary procedures as soon as possible so that Hong Kong could apply Article XX in full before the one-year period expired. Similarly, Hong Kong would do its best to complete the domestic procedures so that, if the Committee were to adopt the terms of accession, Hong Kong could accede to the Agreement before the validity period of the Committee decision expired. Hong Kong very much looked forward to participating constructively in the early review of the Agreement which it believed would contribute not only to the elimination of the derogations from the non-discrimination provisions but also to further liberalization in the area of government procurement.

6) The representatives of Canada, the European Community, Japan, Korea, Norway, Switzerland and the United States supported Hong Kong's request for accession to the Agreement. They said that accession of a new Party to the Agreement was a significant move towards further liberalization of public procurement markets. Hong Kong's accession before the Singapore Ministerial Conference would also send a welcome message to the WTO Members on the importance of government procurement for the multilateral trading system.

7) The representative of the United States said that, while recognizing the importance of the overall package offered by Hong Kong in its accession, his delegation was disappointed with the coverage of services in Hong Kong's Appendix I, Annex 4. He hoped that the early review of the Agreement could

achieve a uniformly high level of coverage of services by all Parties. Meanwhile, the reciprocity provisions included in some Parties' Schedules with respect to the coverage of services remained necessary and relevant. The representative of Canada said that his delegation shared the concerns regarding the coverage of services in Hong Kong's offer. Canada's Appendix I, General Notes, contained a reciprocity provision on services. Hopefully, the Committee would come up with a mutually agreed list of services in its early review of the Agreement, to be initiated next year. The representative of Hong Kong said that his delegation looked forward to participating in an early review which would address, among others, the extension of the coverage of services under the Agreement.

8) The representatives of Switzerland and the United States said that their delegations recognized that the legislative process necessary for the establishment of a credible bid challenge system in Hong Kong warranted a transition period of one year. Pending the implementation of the bid challenge system, they understood that a number of existing independent fora were available to review any complaints of unsatisfied suppliers regarding a decision. The representative of Norway said that her delegation felt confident that Hong Kong would make all possible endeavours to implement the provisions of paragraphs 2-8 of Article XX regarding challenge procedures as soon as possible, and no later than one year after the entry into force of the Agreement for Hong Kong. The representative of Hong Kong said that, during the transition period, his delegation would keep the Committee informed of the progress made in the establishment of a bid challenge mechanism consistent with Article XX.

9) The representative of Switzerland said that her delegation had understood from Hong Kong's explanation of the scheme governing the two private electricity companies that their procurement was not subject to government control. Hong Kong had taken a bilateral commitment towards Switzerland to ensure that these companies procured in a non-discriminatory way. Switzerland would, therefore, delete the reference to suppliers from Hong Kong in its General Note No. 1 relating to the electricity sector. Switzerland would subsequently submit a formal notification in this respect. The representative of Norway said that her delegation had expressed some concerns in the bilateral consultations regarding the two electrical utility companies operating in Hong Kong. It was her delegation's understanding that Hong Kong would forward a letter to the Chairman containing a unilateral commitment from Hong Kong, including *inter alia* a so-called 'self-denial clause', with respect to these two companies. In turn, Norway undertook to extend the Agreement to the suppliers and service providers of Hong Kong in the electricity sector under the conditions laid down in Appendix I, Annex 3 of Norway. Accordingly, Norway would remove Hong Kong from paragraph 1 (1) of the General Notes to Norway's Schedule. A notification to this effect would be made in due course. The representative of the European Community said that his delegation would notify the deletion of the reference to Hong Kong in the General Note 1, indent point (b), in the Schedule of the European Community. In this connection, the representative of Hong Kong confirmed that the self-denial commitments made by Hong Kong as a result of its bilateral negotiations with some Parties would be applied on a non-discriminatory basis.

10) The representatives of the European Community and Switzerland said that their Governments intended to withdraw from the Tokyo Round Agreement.

11) The Committee adopted a decision on the accession of Hong Kong (document GPA/9) and invited Hong Kong to accede to the Agreement on Government Procurement on the terms attached to that Decision.

12) The Committee agreed to amend the Committee's report to the Ministerial Conference to reflect Hong Kong's accession (GPA/8/Add.1). The Committee also agreed that, in the event that Hong Kong were not already a Member, it would be invited to the next meeting of the Committee as an observer.

B. OTHER BUSINESS

-Date of the next meeting of the Committee

13) The Committee agreed to hold its next meeting on 24 February 1997.

RESTRICTED

GPA/M/3
25 October 1996

WORLD TRADE ORGANIZATION

(96-4475)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 20 SEPTEMBER 1996

Chairman: Mr. Harald Ernst (Switzerland)

- 1) The following agenda was adopted:
 - A. Modifications to Appendix I of the Agreement
 - B. Accession negotiations
 - C. Establishment of a loose-leaf system for the Appendices of the Agreement
 - D. Information technology
 - E. Transparency of notices
 - F. Notification of thresholds in national currencies
 - G. Procedures for the circulation and derestriction of documents
 - H. Annual Report (1996) of the Committee to the General Council
 - I. Other business

A. MODIFICATIONS TO APPENDIX I OF THE AGREEMENT

2) The Chairman informed the Committee that, in documents GPA/W/22 and GPA/W/23, dated 17 July 1996, Norway and the United States had notified the proposed modifications to Appendix I of the Agreement which followed on from the agreement reached between these two Parties. Since no objections had been received within the prescribed time-period, these modifications had become effective on 17 August 1996. Certification of these modifications had been subsequently circulated in document WT/Let/105.

3) The representative of the European Community said that modifications to the Appendices in relation to the consequences of the accession of the three new

Member States to the European Community would be notified within the next few weeks. Certain changes warranted by developments that had taken place in the administrative organization of the governments of some Member States, including the proposed changes to Appendix I of Sweden as circulated in documents GPR/W/133 and GPR/W/139, would be notified subsequently.

4) The representative of the United States said that the deletion of the three European Community Member States from the General Note 5 to Appendix I of the United States would be notified shortly in coordination with the notification of the European Community.

5) The Chairman also recalled that the Canadian Schedule offered to cover entities in all ten provinces on the basis of commitments to be received from Provincial Governments, with a final listing to be provided within 18 months after the conclusion of the new Agreement. The representative of Canada said that his delegation's position as outlined in his statement at the last two meetings of the Interim Committee of last year remained unchanged.

6) The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

B. ACCESSION NEGOTIATIONS

- *Chinese Taipei*

7) The Chairman recalled that, at the last meeting, the delegation of Chinese Taipei had informed the Committee that it was conducting bilateral consultations on the basis of its revised offer circulated in document GPA/SPEC/1. At that meeting, the Committee had agreed to revert to this issue at its next meeting and, in view of the wish of the delegation of Chinese Taipei to conclude the process of bilateral consultations in the latter part of 1996, had urged delegations to pursue their bilateral negotiations with the delegation of Chinese Taipei.

8) The representative of Chinese Taipei said that, following the bilateral consultations that had been held with Parties to the Agreement since last June, the offer of Chinese Taipei contained in GPA/SPEC/1 dated 1 March 1996 would be improved as follows: Annex 1 would include the Ministry of National Defense where an exhaustive list of goods would apply; the threshold for construction services for the entities in Annex 1 would be lowered from SDR 15,000,000 to SDR 5,000,000; the Taiwan Railway Administration would be included in Annex 3; the services items of CPC 841- (consultancy services related to the installation of computer hardware), CPC 842- (software implementation services), and CPC 844- (database services) would be added to Annex 4; and the respective Notes to Annexes 1 to 5 as well as to the General Notes would be improved further to reflect the concerns of interested Parties. His delegation's intention was to complete the bilateral negotiations as soon as possible and it therefore hoped that interested parties would provide their comments on the revised offer at the earliest date so as to facilitate the process of accession to the Agreement. He also said that experts

responsible for Chinese Taipei's accession were currently participating in the final review of the draft Law on Government Procurement at the Premier's office.

9) The representative of Korea said that, while bilateral agreement had not yet been reached with Chinese Taipei, his delegation welcomed the indication by Chinese Taipei that it could improve the coverage of its offer.

10) The Committee took note of the statements made and agreed to revert to this issue at its next meeting.

- *Singapore*

11) The Chairman recalled that, as agreed at the last meeting, the Secretariat had drawn up and circulated on 20 June 1996 a draft Decision on Accession, to which were attached the terms of its accession submitted by Singapore on 14 June 1996, for consideration and adoption by the Committee (GPA/W/21). This Decision would have been considered adopted if no objections or requests for extension of the time-limit would have been received from Parties within 30 days of the date of the issue of the document, i.e. by 20 July 1996. On 19 July 1996 the Secretariat had been informed by some Parties that they would wish to have additional time for consideration of the Decision before its adoption (GPA/W/21/Add.1). In a communication dated 13 August 1996, the delegation of Singapore had submitted a revised offer which included an undertaking to review its current compulsory registration system (GPA/SPEC/2/Rev.1).

12) The representative of Singapore said that, following the submission of its initial offer on 7 December 1995, Singapore had held four rounds of bilateral negotiations with the Parties to the Agreement in February, June, August and September 1996. In its final offer of 15 August 1996 Singapore had taken into account the concerns of Parties to the Agreement (GPA/SPEC/2/Rev.1). The offer represented a substantial access to government procurement opportunities available in Singapore. It would subject 46 per cent of Singapore's total government procurement, in value terms, to the disciplines of the Agreement. For the calendar year 1995, the total amount of procurement by the Government of Singapore was S\$18.4 billion, of which S\$8.4 billion, equivalent to 8.1 per cent of Singapore's gross domestic product in 1995, would be covered under the Agreement. The offer under Annex 1 to Appendix I was extended comprehensively to all 23 central-government entities including all ministries and organs of State. Annex 3 covered all the 25 major statutory boards, thus subjecting 56 per cent of their total procurement, in value terms, to the disciplines of the Agreement. Singapore's services offer under Annex 4 was equivalent to its GATS commitments. The comprehensive offer under Annex 5 included all categories of construction services. The threshold levels applicable under the relevant Annexes were in line with those applied by the majority of the Parties to the Agreement. In addition, in a General Note to Appendix I Singapore had undertaken to review the current compulsory requirement for registration of firms in order to address the concerns expressed by Parties. The Singapore Government adopted the fundamental principles of fairness, openness and competitiveness for its government procurement system. The current registration system was non-discriminatory and fulfilled the national treatment requirement under the Agreement. Its objective was to facilitate the

qualification process and, being a fair system, it ensured the application of the same objective criteria in the qualification of suppliers. Through this system procuring entities kept a pool of information on each registered firm which reduced the time required to examine the qualification of a firm during tender evaluation. The registered suppliers also benefited from this system as they did not need to provide repeatedly the same information each time they participated in a public tender. The undertaking in the General Note would give Singapore time to fine-tune certain aspects of this system in order to address any misperception or uncertainty that certain Parties may have with the existing system. This General Note in no way detracted or reduced the very substantial scope of Singapore's offer and Singapore's commitments under the Agreement.

13) The representatives of Canada, the European Community, Israel, Japan, Korea, Norway, Switzerland and the United States supported Singapore's request to accede to the Agreement. They said that Singapore's accession would not only enable access to an important economy but was also a sign of interest in the existing WTO procurement regime in a dynamic part of the world economy. This was a welcome development towards extending the membership of the Agreement and for the WTO system in general before the Singapore Ministerial Conference.

14) The representative of Norway said that the General Note in Appendix I had alleviated Norway's concerns relating to the compulsory registration system. Her delegation hoped that Singapore would proceed with an early review of this system within the three-year period.

15) The representative of the European Community said that, although Singapore had made a good offer which had responded to most of its concerns, the European Community would make a modification in the General Notes and derogations from the provisions of Article III under its Appendix I which would reflect the exclusion of the electric sector in Singapore's offer. The representative of Norway said that her delegation would make modifications similar to those of the European Community in its Appendix I. The representative of Switzerland said that her delegation may also make certain modifications in its Appendix I.

16) The Committee adopted a decision on the accession of Singapore (document GPA/6), and invited Singapore to accede to the Agreement on Government Procurement on the terms attached to that Decision.

17) The representative of Singapore thanked the Committee for the adoption of the Decision on Singapore's Accession at the present meeting. It was important for all parties concerned that Singapore's accession took place before the WTO Ministerial Conference. Its accession, completed in a record period of nine months, was the result of hard work and commitment from Singapore's side and goodwill from all Parties to the Agreement. Singapore's prompt accession would create a good precedent for future accessions to the Agreement. The challenge before the Committee was to make the Agreement more attractive for non-Parties. Her delegation would work closely with other Parties towards the objective of achieving a wider membership of the Agreement and the multilateralization of the Agreement in the longer term.

- *Kingdom of the Netherlands with respect to Aruba*

18) The Chairman recalled that the Committee's Decision of 27 February 1996 on the Accession of the Kingdom of the Netherlands with respect to Aruba stated that the Decision would expire six months after the date of its adoption, i.e. on 27 August 1996, unless it was extended by mutual consent between the Committee and the Kingdom of the Netherlands with respect to Aruba (GPA/2, paragraph 3). On 23 August 1996 the Kingdom of the Netherlands with respect to Aruba had requested an extension of the deadline for depositing its instrument of accession (GPA/W/26).

19) The representative of the Netherlands with respect to Aruba said that the domestic legislative process in Aruba had been completed and that the instrument of accession would be deposited in the near future.

20) The Committee took note of this statement and agreed to extend the deadline for the deposit of the instrument of accession of the Kingdom of the Netherlands with respect to Aruba until the end of October 1996.¹

C. ESTABLISHMENT OF A LOOSE-LEAF SYSTEM FOR THE APPENDICES TO THE AGREEMENT

21) The Chairman recalled that, at the last meeting, the Committee had agreed to establish a loose-leaf system with legal effect to periodically update the Appendices to the Agreement and had asked the Secretariat to produce and distribute an updated set of Appendices, with a view to providing a starting point for the loose-leaf system. He drew attention to the modifications that the European Community intended to make to their Schedules in relation to the consequences of the accession of Austria, Finland and Sweden (GPA/M/2, paragraph 10 and item A of the present agenda). As the consequential changes, necessary to reflect the present membership of the European Community, would require a major reorganization of the Appendices as they presently stood, the Secretariat had suggested to postpone the circulation of the draft loose-leaf system until after the notification and acceptance of the relevant modifications. Once the necessary modifications from the European Community were submitted and approved, the Secretariat, as agreed at the last meeting of the Committee, would produce and distribute an updated set of Appendices to the Agreement including accepted rectifications and modifications that had been made to the originally negotiated Appendices since the signature of the Agreement, with a view to providing a starting point for the loose-leaf system. As agreed, a period of sixty days from the date of distribution of the draft of the consolidated set of Appendices would be given for delegations to review whether the agreed changes had been correctly reflected.

¹The Kingdom of the Netherlands with respect to Aruba subsequently deposited its instrument of accession on 25 September 1996 (WT/Let/111 and GPA/7).

22) The Chairman also said that, at its June meeting, the Committee had noted that the Secretariat was exploring ways to publish the Agreement, including the loose-leaf system, on the Internet and it had been suggested that the Secretariat produce in due course a note which would outline the modalities of access to these and other GPA documents through the Internet. A documentation dissemination facility through which WTO Members could obtain most WTO documents through the Internet had now become operational and document WT/L/174 contained a note on how this operated. This system did not, as yet, extend to documents with special distributions, including the GPA documents. However, it was the intention to include such documents as soon as possible and the Committee would be informed when this had been done.

23) As for the question of making unrestricted documentation available to the public at large, the Chairman said that the General Council had agreed on 18 July 1996 that the Secretariat would make available on on-line computer network the material which was accessible to the public, including derestricted documents (WT/GC/M/13, item 9(c) and WT/L/162). This would be done through the WTO Home Page on the Internet² which was already operational. Certain unrestricted documentation would be made accessible in this way in the coming weeks and this would be progressively extended in the months ahead. Furthermore, the Secretariat had the intention to establish a special site on government procurement on the WTO Home Page which would contain information relevant to the Agreement on Government Procurement and through which interested parties would be able to access relevant documentation more easily. The Secretariat would provide a note on these matters once more detailed information was available.

24) The representative of the European Community said that the site on government procurement in the WTO Home Page could establish a system of hyperlinks on the Internet to other home pages related to government procurement existing in various Parties, for example to the United States procurement jump station.

25) Members of the Committee expressed views on whether the hard-copy version of the loose-leaf system would still be necessary once the electronic version became available and, in particular, whether it could fulfil the legal requirements under the Agreement. In response, the representative of the Secretariat recalled the modalities for the operation of the loose-leaf system as set out in document GPA/W/3 on a Possible Loose-leaf System for Periodically Updating the Appendices. He also said that WTO documents would continue to be circulated in hard copy form as well as made available in electronic form through the Document Dissemination Facility (DDF) until such time a decision to the contrary was taken by Members.

26) The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

²<http://www.wto.org/>

D. INFORMATION TECHNOLOGY

27) The Chairman recalled that, at its June meeting, the Committee had continued its discussion on the issue of the implications of the development of information technology for the Agreement. On the basis of the options identified in a note by the Secretariat (GPA/W/15) for carrying forward work in this area, it had requested the Secretariat to prepare a revision of the questionnaire on information technology as proposed in document GPA/W/15 and a factual note on the aspects of the Agreement that it had been suggested might need to be re-examined in the light of information technology. The revised questionnaire was circulated in document GPA/W/24 and the factual note in document GPA/W/25. At the June meeting, the Committee had also noted that the European Community, in coordination with Norway and with the assistance of the Secretariat, would prepare a paper identifying the technical issues relating to information technology that might need to be examined by experts and that the delegation of the United States would provide information on the pilot project launched in the APEC framework on access to national databases (GPA/M/2, paragraphs 44 and 45).

28) The representative of the European Community said that his delegation was preparing a draft note identifying the technical issues relating to information technology.

29) The representative of the United States described what had been accomplished in the APEC context on access to national databases. Building from a cooperative effort associated with a demonstration project undertaken by the United States Department of Commerce for the 1995 APEC Ministerial in Osaka, the APEC Secretariat had fashioned an Internet Home Page on government procurement opportunities which served as a gateway to sources of information on procurement opportunities within the member economies or provided an actual linkage to member economies' procurement information Internet sites. In 1995, the United States Department of Commerce undertook to gather specific information from APEC member economies on contact points for information on government procurement opportunities - either names and addresses of appropriate agencies or Internet addresses where further information could be accessed. Using Internet software to create a homepage to serve as an Internet gateway to this information, Department of Commerce officials had established the site at the Department of Commerce for temporary use as a demonstration project as to its feasibility for the APEC Ministerial in Osaka. Building on the information gathered for this cooperative effort, the APEC Secretariat had since developed its own procurement homepage with identical functions which could be accessed directly or more conveniently through the APEC Home Page on the Internet (<http://www.apecsec.org.sg/gphome.html>). The quality and timeliness of the information on opportunities available from the member economies depended entirely on the efficiency with which the economies maintained their own information sites which could be accessed via the APEC homepage gateway. The main advantage of the APEC site was that it provided a useful starting point to seeking out information from numerous economies and procurement regimes.

30) The representative of Canada said the note by the Secretariat on the provisions of the Agreement which might need to be re-examined in the light of information technology (GPA/W/25) made it clear that the wording of the relevant provisions of the Agreement had been carried over from the Tokyo Round Agreement and its 1988 Revision and predated the introduction of the use of information technology in procurement. The paper pointed out the work that had to be done and gave a focused view of how quickly changes might take place in this area. At an early opportunity the Parties should make the necessary modifications to ensure that the Agreement would evolve with the field for which it set down rights and obligations.

31) The representative of the United States said that his delegation was undertaking a comprehensive review of the issues related to information technology and the Government Procurement Agreement. In so doing, it would attempt to develop approaches that reflected the balance of interest, which had sometimes been perceived as competing, of ensuring and enhancing access while permitting the accommodation of new technologies. The Agreement would require amendments to fully address the issue of information technology. Future negotiations under Article XXIV:7(b) should give priority to this issue.

32) The representative of Japan said that the note by the Secretariat on information technology made it clear that the existing Agreement had been drafted without information technology used in procurement procedures in mind. His delegation was prepared to discuss the matter in the Committee under the terms of Article XXIV:8 and, if necessary, to negotiate the necessary amendments to the Agreement in the framework of the review under Article XXIV:7(b). Such discussion should aim to establish disciplines which would allow suppliers to choose between the use of the procedures stipulated in the current Agreement and procedures based on electronic communications. From the viewpoint of ensuring consistency with the principles of national treatment and non-discrimination, the Committee should also pay attention to such issues as the treatment of foreign suppliers in the procedures based on electronic communications, the treatment of suppliers who utilize communication systems which differ from the procuring entities, and the treatment of suppliers who use electronic procedures in their procurements by entities which do not choose to utilize electronic procedures.

33) The Committee took note of the statements made agreed to revert to this item at its next meeting.

E. TRANSPARENCY OF NOTICES

34) The Chairman recalled that, in the context of endorsing the Interim Committee's recommendation that the rules of origin used for the purposes of statistical reporting in Article XIX:5 of the Agreement should be the same as those applied under Article IV, those used in the normal course of trade, the delegation of the European Community had suggested that there was merit in examining ways to establish a link between statistical information and the degree of transparency of tender notices as an effective way of monitoring the operation of the Agreement. At its last meeting, the Committee had agreed, at the request of the delegation of the European Community, to revert to this issue.

35) The representative of the European Community said that his point could be taken up as part of the future review under Article XXIV:7(b).

36) The Committee took note of this statement.

F. NOTIFICATION OF THRESHOLDS IN NATIONAL CURRENCIES

37) The Committee took note that, pursuant to its Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3) of 27 February 1996, notifications had been received from all Parties on the thresholds for the period 1996-1997 in their respective national currencies and circulated in documents GPA/W/12 and Addenda 1 to 6.

38) The representative of Switzerland said that the threshold figures for Switzerland would be valid only from 1 January 1997 as they had to be implemented through the national legislation at the central and sub-central level.

G. PROCEDURES ON THE CIRCULATION AND DERESTRICTION OF DOCUMENTS

39) The Chairman recalled that the Committee took, on 27 February 1996, two Decisions on the circulation and the derestriction of documents, respectively. These decisions were taken on an interim basis, with the understanding that they would be examined in the light of definitive measures to be adopted by the General Council (GPA/M/1, paragraph 3 and GPA/1). At its meeting on 18 July 1996, the General Council had adopted a Decision on procedures for the circulation and derestriction of WTO documents (WTO/L/160/Rev.1). In accordance with its footnote 1, a copy of this Decision had been transmitted to the Committee on Government Procurement for its consideration and appropriate action.

40) The representative of the United States, supported by the representatives of the European Community, Canada and Switzerland said that the Committee should align its procedures for circulation and derestriction of documents to those adopted for WTO documents by the General Council.

41) The Committee agreed to align its procedures with those adopted by the General Council for the WTO on 18 July 1996 and requested the Secretariat to produce a draft to this effect for examination by the Committee at its next meeting.

H. ANNUAL REPORT (1996) OF THE COMMITTEE TO THE GENERAL COUNCIL

42) The Committee considered a draft annual report to the General Council which had been circulated by the Secretariat on 23 July 1996. After discussion, the Committee adopted Sections I to III of the draft annual report as amended in the light of the discussion. The Committee also agreed that a text on Section IV of the Report on issues to be brought to the attention of the Singapore Ministerial Conference would be deemed to be adopted by the Committee if no comments were received from Parties within 20 days after its circulation, i.e. by 14 October 1996. In that case, the Report (GPA/-) would then be submitted to the General Council, incorporating any developments in the interval, of a purely factual nature, notably in regard to deposit of instruments of accession.

I. OTHER BUSINESS

-Date of the next meeting of the Committee

43) It is proposed that the next meeting of the Committee be held on 24 February 1997.

RESTRICTED

GPA/M/2
23 July 1996

WORLD TRADE ORGANIZATION

(96-2821)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 4 JUNE 1996

Chairman: Mr. Harald Ernst (Switzerland)

- 1) The following agenda was adopted:
 - A. Requests for observer status
 - B. Procedures for notifying national implementing legislation
 - C. Modifications of Appendix I to the Agreement
 - D. Accession negotiations
 - E. Establishment of a loose-leaf system for the Appendices of the Agreement
 - F. Information technology
 - G. Uniform classification systems
 - H. Transparency of notices
 - I. Requirements stemming from the inclusion of the Agreement in Annex 4 of the WTO Agreement
 - J. Preparation for the Singapore Ministerial
 - K. Notification of thresholds in national currencies
 - L. Other business
- A. REQUESTS FOR OBSERVER STATUS

2) The Chairman informed the Committee that, for reasons of transparency, he had sent a letter to the Chairman of the General Council transmitting, for the information of all Members of the WTO, the procedural decisions taken by the Committee at its first

meeting on 27 February 1996 concerning possibilities for the Members of the WTO not Parties to the new Agreement on Government Procurement to participate as observers in the Committee, to receive Committee documents and to accede to the new Agreement. The letter including its attachments had been issued as a General Council document (WT/L/146).

3) The Committee agreed to grant observer status to the Governments of Turkey, Latvia and Australia.

4) The representative of Turkey said, taking into account the contribution of plurilateral trade agreements to the global trading system, Turkey wished to participate as observer in the Committee.

5) The representative of Latvia said that his country was in the process of acceding to the WTO and, as part of its general exercise in foreign trade liberalization, attached great importance to the adoption of internationally accepted rules on government procurement. A new law on government procurement, drafted in compliance with the requirements of the Agreement, had been submitted for the approval of the Parliament. Taking into account the scarce human resources allocated to trade policy matters, Latvia could begin negotiations on accession to the Agreement only after it had completed the procedures of accession to the WTO. Meanwhile, Latvia's participation as observer in the work of the Committee would greatly facilitate the preparations for the negotiations on accession to the Agreement.

B. PROCEDURES FOR NOTIFYING NATIONAL IMPLEMENTING LEGISLATION

6) The Chairman recalled that, in response to a request of the Committee at its meeting of 27 February 1996, the Secretariat had drawn up and circulated draft procedures for the notification of national implementing legislation in an informal note dated 7 May 1996. Draft procedures were based on the discussion in the Committee at its first meeting on 27 February 1996 and on the checklist of issues that had been presented in an informal paper dated 16 February 1996.

7) The Committee adopted the Procedures for the Notification of National Implementing Legislation, as amended in the light of the comments made by the representatives of the United States, Korea, the European Communities and Canada.¹ It agreed that notifications including responses to the checklist of issues should be made as soon as possible but not later than 31 December 1996.

C. MODIFICATIONS OF APPENDIX I TO THE AGREEMENT

8) The representatives of Norway and the United States informed the Committee that Norway and the United States had agreed to mutually extend their present coverage under the Agreement to sub-central entities as well as to the electricity sector and to harbours. The coverage under the Agreement between Norway and the United States would be similar to the reciprocal coverage between the European Community and the

¹Subsequently circulated in document GPA/1/Add.1

United States. The amendments to the relevant annexes would be notified in due course.

9) The representative of the European Communities said that the European Communities had held discussions with Israel on the reciprocal extension of the coverage of the Agreement. Notification of amendments to the relevant annexes would be made in due course.

10) Reiterating his statement made at the meeting of 27 February 1996, the representative of the European Communities confirmed that the European Communities intended to make two modifications to their Schedules: modifications relating to the consequences of the accession of the three new Member States to the European Community; and certain changes warranted by developments that had taken place in the internal organization of the governments of some Member States, including the proposed changes to Appendix I of Sweden as circulated in documents GPR/W/133 and GPR/W/139.

11) Reiterating his statement made at the meeting of the Committee of 27 February 1996, the representative of the United States confirmed that the deletion of the three EC Member States from its General Note 5 would be notified at the appropriate time.

12) The Chairman also recalled that the Canadian Schedule offered to cover entities in all ten provinces on the basis of commitments to be received from Provincial Governments, with a final listing to be provided within 18 months after the conclusion of the new Agreement.

13) The representative of Canada reiterated that his delegation's position as outlined in his statements at the October and December 1995 meetings of the Interim Committee and the February 1996 meeting of the Committee had remained unchanged.

14) The representative of the European Communities once again stressed the need for Canada to honour the commitments it had undertaken by signing the Agreement in Marrakesh. He expressed the disappointment of his delegation that Canada had not been able to come up with a final listing of entities in all ten provinces or to announce a date by which such a list could be provided.

15) The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

D. ACCESSION NEGOTIATIONS

- *Application for accession by Chinese Taipei*

16) The representative of Chinese Taipei said that its offer had been revised to reflect the improvements made in the light of bilateral consultations held in February (GPA/SPEC/1). Since then they had coordinated with their government agencies on the remaining issues. They were conducting further bilateral consultations which they hoped would narrow down the list of few pending issues and would lead to the conclusion of the negotiations in the latter part of this year. He also informed the Committee that the Premier's Office was currently reviewing a draft law on government procurement, drawn up in conformity with the principles of the Agreement.

17) The Committee took note of the statements made, agreed to revert to this issue at its next meeting and, in view of the wish of the delegation of Chinese Taipei to conclude the process of bilateral consultations in the latter part of 1996, urged delegations to pursue their bilateral negotiations with this delegation.

- *Application for accession by Singapore*

18) The representative of Singapore drew attention to the replies of her delegation to the questions put by one delegation concerning the description of Singapore's procurement régime (GPA/W/10).²

19) The representative of Singapore also informed the Committee that her delegation had prepared a tentative revised offer with a view to achieving an expeditious accession to the Agreement.³ Singapore's revised offer took into account the concerns that delegations had raised during the first round of bilateral consultations regarding the initial offer submitted in December 1995 (GPA/IC/SPEC/2) and represented substantially improved access to government procurement opportunities available in Singapore. The main features of the offer were: the threshold values applicable under the relevant annexes were lowered; and the coverage of entities was extended. The coverage of central government entities under Annex 1 was now comprehensive, except for the Ministry of Defense, thus subjecting 46 per cent of the total value of their procurement to the disciplines of the Agreement. Several important purchasers in government procurement market were included - 92 per cent of the total procurement of the Ministry of Environment, 83 per cent of that of the Ministry of Health and 92 per cent of that of the Ministry of Education. The list of statutory boards in Annex 3 was expanded, subjecting twenty-five such entities that had been requested in bilateral consultations to the disciplines of the Agreement. Under the improved offer 56 per cent in value terms of the total procurement of statutory boards would be covered; for example, more than 80 per cent of the total procurement of the Civil Aviation Authority and 91 per cent of the total procurement of the Housing Development Board and 86 per cent of total procurement of the Land Transport

²Subsequently circulated as document GPA/W/19

³Subsequently circulated as document GPA/SPEC/2

Authority were covered. The threshold levels in Annex 3 were reduced to SDR 400,000 for both goods and services and to SDR 5 million for construction. The scope of the service sectors was expanded under Annex 4 to include, among others, veterinary science services, consultancy services in the installation of computer hardware, systems and software consulting services, electronic mail voice online information database retrieval, motion picture services, translation and interpretation services; and the threshold level applied to entities under this annex was reduced to SDR 400,000. The initial offer on Annex 5 was comprehensive and included all categories of construction services and the threshold level was reduced to SDR 5 million. In conclusion, she expressed her delegation's hope that Parties would facilitate an expeditious accession process with a view to its completion by the end of July 1996. Bearing in mind this time-frame, Singapore would table its final offer by mid-June.

20) The representatives of the European Communities, the United States, Canada, Korea, Norway, Japan and Switzerland welcomed the draft revised offer which appeared to have reflected significant improvements to the initial offer. They supported Singapore's efforts to conclude bilateral consultations as soon as possible.

21) The Chairman noted the general support for Singapore's efforts for an early accession process and the intention of Singapore to submit a revised offer by 14 June 1996 to the Secretariat after holding further bilateral consultations with interested Parties. He proposed that, after the submission of Singapore's revised offer, the Secretariat would draw up and circulate, in the week of 17 June 1996, a draft Decision on Accession to which would be attached the terms of accession as contained in the offer by Singapore for consideration and adoption by the Committee.⁴ This Decision would be considered adopted if no objections or requests for extension of this time-limit were received from Parties within thirty days of the date of the issue of the document.

22) The Committee so agreed.

E. ESTABLISHMENT OF A LOOSE-LEAF SYSTEM FOR THE APPENDICES OF THE AGREEMENT

23) The Chairman recalled that, at the request of the Interim Committee, the Secretariat had prepared a note outlining how a loose-leaf system to periodically update the Appendices in the Agreement might work, taking into consideration relevant experience in other areas of the WTO such as in regard to tariff schedules (GPA/W/3).

24) The representatives of the United States, Canada, the European Communities, Switzerland and Norway reiterated their support for the establishment of a loose-leaf system to regularly update the Appendices to the Agreement which would record the modifications and rectifications notified and agreed pursuant to the procedures under Article XXIV:6. They agreed, therefore, that the loose-leaf system should constitute the official legal record of national schedules.

25) Asked by the Chair to comment on the advantages of giving the loose-leaf system legal effect, the representative of the Secretariat said that the principal

⁴Subsequently circulated in document GPA/W/21

advantages would be to provide delegations with only one system to maintain up to date and a clear picture of the legal status of the Appendices - something which did not result from the present procedures. With a view to facilitating its operation, it was suggested that delegations submit proposed changes to their Appendices under the provisions of Article XXIV:6 in the form of replacement pages or additional pages to be inserted in the loose-leaf system with the proposed changes identified on those pages. Once these changes, circulated in the GPA/W/- document series, would have been adopted by the Committee and certified according to the procedures under Article XXIV:6, those replacement pages could then be circulated for insertion in the loose-leaf system, in addition to the circulation in the WT/Let/- document series.

26) The representative of Japan said that, since the Diet had approved the authenticated certified text of the Marrakesh Agreement on Government Procurement of 15 April 1994, his delegation would need to assess the implications of a loose-leaf system with legal status in the light of the approval procedures in his country. His delegation had a similar position in respect of the Schedules under GATT and GATS.

27) The representative of the European Communities said that, recognizing that the document which would record the agreed modifications to Parties' concessions would have legal effect, the Committee should limit its consideration to whether such document would be made available in a loose-leaf system or in any other version. He disagreed with the Japanese position which could imply that changes made by Parties to their respective Appendices in accordance with the procedures under the Article XXIV:6 of the Agreement could have legal effect only after the completion of the legislative approval procedures in each of the Parties.

28) The representative of the United States said that a proposed modification or rectifications to the Appendices had legal effect once it was agreed by the Committee pursuant to the procedures of Article XXIV:6. Circulation of such modifications in one consolidated text or in a series of documents was a matter of form rather than of substance.

29) The Chairman confirmed that only modifications which would have been adopted would be systematically made available as derestricted documents to the wider public under the loose-leaf system. This would, however, not preclude Parties from notifying proposed changes to their Appendices on an unrestricted basis.

30) On the question of distribution of GPA documents to Parties, Observers and WTO Members in electronic form and on the possibility of making the loose-leaf system available to the wider public, the representative of the Secretariat informed the Committee that, at the request of the General Council, the WTO Secretariat was currently working on two systems for the electronic distribution of WTO documents. One concerned the electronic distribution of restricted documents destined for use by WTO Members, possibly through the Internet, and would involve using pass words to guarantee that access was restricted only to those entitled to receive such documents. All GPA documents, including the loose-leaf system, could be distributed under this method. The second system related to making available unrestricted documents to the general public through the WTO Home Page on the Internet. The loose-leaf system could be made available to the general public by this method. Both methods were expected to be in operation before the end of 1996.

31) The Committee agreed in principle to establish a loose-leaf system with legal effect to periodically update the Appendices to the Agreement, subject to a scrutiny reserve of thirty days entered by the delegation of Japan.

32) The Chairman proposed that the Committee request the Secretariat to produce and distribute an updated set of Appendices, with a view to providing a starting point for the loose-leaf system and that a period of sixty days be foreseen from the date of distribution for delegations to review whether the agreed changes had been correctly reflected. He also noted that the Secretariat was exploring ways to publish the Agreement including the loose-leaf system on the Internet and suggested that it produce in due course a note that would outline the modalities of access to these and other GPA documents through the Internet.

33) The Committee so agreed.

F. INFORMATION TECHNOLOGY

34) The Chairman recalled that, following the request of the Committee at its meeting of 27 February 1996, the Secretariat had prepared a compilation of issues relating to the implications of the development of information technology for the Agreement and, in conjunction with the Chairman and based on inputs from delegations, had identified options for carrying forward the work in the area of information technology (GPA/W/15).

35) The representative of the United States, welcoming the compilation of issues on information technology circulated in document GPA/W/15, noted that it seemed to reflect more anxiety about the implications of information technology than was warranted.

36) The representative of the European Communities, in referring to the paper presented by his delegation (GPA/W/13), said that the use of information technology would have certain practical consequences but it should not be assumed that they necessarily created the need to make changes to the Agreement. However, some flexibility in the application of rules could be justified to the extent that this did not undermine the respect of the basic principles underlying the Agreement. In general, it was essential to secure that the new technologies did not lead to discrimination against Parties or suppliers who did not have access to their use. The paper by the United States (GPA/IC/W/36), by setting out certain practical problems related to this question, hinted at the need for certain changes to the provisions of the Agreement, for instance to allow the wider use of selective or limited tendering. New technologies would be instrumental in attracting offers from a greater number of suppliers which was to be welcomed in accordance with the principles of the Agreement. Increased use of selective tendering procedures would not be the right way of handling the possible increase in the number of offers. The system of open procedures under the Agreement provided adequate flexibility to solve any problem that could arise in this connection.

37) The representative of the European Communities also said that the respect of the principle of non-discrimination was essential as regards the setting of deadlines taking into account language differences. The use of new technologies should not lead to a

shortening of deadlines to the detriment of those suppliers who had not been able to develop facilities for retrieving information on tendering opportunities or for electronic tendering. In the multicultural environment of government procurement, shortening of deadlines could discriminate against foreign suppliers who faced difficulty in understanding tender procedures and in providing a rapid response in a different language. Furthermore, electronic tendering systems should be designed from the outset to be effectively transparent, compatible and readily accessible to all suppliers from all Parties. Relying on the market to fill the gap was not a satisfactory option and in any event would take time.

38) The representative of Norway, in referring to the paper presented by her delegation (GPA/W/14), said that information technology systems should be open and accessible to all suppliers and Parties. The principle of non-discrimination should be observed both in terms of access to systems and compatibility between different systems.

39) The representative of Canada cautioned that shortening of deadlines should not undermine increased competition in procurement markets offered by new technologies. He also said that a preliminary draft on possible solutions to some of these questions could assist the future discussion of this issue in the Committee.

40) The representative of Korea said that further discussion could give guidance to what extent databases should cover entities at the sub-central government level. Pending electronic transmission of data, hard copy publications should continue to be the principal means of transmitting information on procurement. Parties advanced in new technologies could cooperate with other Parties in developing the relevant information technology.

41) The representative of the United States said that adoption of information technology would increase the efficiency of procurement procedures and would improve access to procurement opportunities. In response to concerns expressed by the representative of the European Communities, he explained that his delegation's paper on information technology (GPA/IC/W/36) pointed out the possibility of the use of selective tendering in those situations where procuring entities adopting information technology would be faced with a considerable increase in the number of offers. While the present provisions of Article X allowed the use of selective tendering subject to certain conditions, a review of these provisions might be necessary to identify possible areas where changes might be warranted to accommodate the effects of increased use of information technology. Article X could be modified to ensure that any increased use of selective tendering would not lead to discrimination between domestic and foreign suppliers. He also said that the provisions of the Agreement relating to deadlines were based on the practice of distribution of publications in hard copy version through the postal system. These might have to be reviewed to reflect the possibilities offered by developments in the area of electronic data transmission and electronic tendering. He agreed that any amendments to the relevant provisions should take into account the difficulties resulting from different languages.

42) The representative of Japan said that Japan now provided information to suppliers worldwide, through the Internet, not only with respect to procurement by central government entities, as indicated in the Secretariat compilation (GPA/W/15,

paragraph 14) but also with respect to government-related entities in Annex 3 as well as challenge procedures. A number of Ministries and agencies in his country were examining the possibility of establishing an electronic database containing contract opportunities provided by entities under Annexes 1 and 3, to which private companies would have access, and which would also provide electronic tendering facilities. He also supported the view of the delegation of the European Communities that the non-discrimination principle was essential in securing access to contract opportunities for foreign suppliers on a fair basis. He also said that any possible amendments to the relevant provisions of the Agreement could be discussed under the review procedures of Article XXIV:7.

43) The representative of the United States said that the question of access to domestic databases by all other Parties deserved careful consideration. His delegation was concerned about the implication that a requirement for a one-way access to databases in individual Parties might have on the balance of rights and obligations between Parties under the Agreement. He also expressed his delegation's readiness to provide information on the establishment of the APEC Home Page at the request of some delegations.

44) After discussion of the options identified in the note on information technology for carrying forward work in this area (GPA/W/15, paragraphs 34 to 38), the Chairman concluded as follows. First, the Secretariat would revise the questionnaire on information technology (GPA/IC/W/4/Rev.1) as proposed in document GPA/W/15. Second, he noted that the European Communities, in coordination with Norway, would prepare a paper identifying the technical issues relating to information technology that might need to be examined by experts. Third, the Secretariat would prepare a factual note on the aspects of the Agreement that it had been suggested might need to be re-examined in the light of information technology, setting out the relevant provisions of the Agreement and drawing attention to any pertinent information on their negotiating history. Fourth, he noted that the delegation of the United States would provide information on the pilot project launched in the APEC framework on access to national databases. The representative of the European Communities suggested that the Secretariat might also assist in the preparation of the paper identifying the technical issues related to information technology.

45) The Committee so agreed.

G. UNIFORM CLASSIFICATION SYSTEMS

- *Goods*

46) The Chairman recalled that, at its meeting of 27 February 1996, the Committee had endorsed the recommendation of the Working Group on Statistical Reporting that the system of 26 product categories be used as a basis for a classification system for products. With a view to identifying the precise level of detail desirable in the system of 26 product categories, the Chairman, in cooperation with the Secretariat, had prepared a paper indicating what categories of the 26 product categories could be usefully divided into sub-headings, and, where a further breakdown had been suggested, identifying the precise product coverage of the proposed new categories (GPA/W/17).

47) The representative of Korea questioned the appropriateness of dividing category 15 into two subheadings, arguing that several Parties had excluded telecommunications apparatus and equipment from the coverage of the Agreement. In response, the representative of Japan said that his delegation had suggested the breakdown of categories 14 and 15 because of the growing volume of procurement in these categories. The representative of the United States said that, while telecommunication entities *per se* were generally not covered under the Agreement, many entities covered under the Agreement were important procurers of telecommunication equipment, which justified the division of category 15 into two subheadings.

48) The Committee adopted the product classification system of 26 product categories as proposed in Annex 1 of document GPA/W/17, subject to scrutiny reserves of thirty days entered by Canada, Korea and the United States.⁵

- *Services*

49) The Chairman recalled that, at its meeting of 27 February 1996, the Committee had endorsed the recommendation of the Working Group on Statistical Reporting that the UNCPD be used as the classification system for services. With a view to reaching conclusions on the level of detail which would be desirable, the Chairman, in cooperation with the Secretariat, had prepared a paper indicating which of the 30 UNCPD divisions should be combined and if any subdivisions would be desirable (GPA/W/17).

50) In this connection, the representatives of Canada and the United States stated that their delegations would use the NAFTA system for the purposes of statistical reporting in the area of services and that a table of concordance of classification would be provided to the Committee.

51) The Committee adopted the services classification system in Annex 2 of document GPA/W/17, as amended by merging category 71 and 73 into one category named "transport services".⁶

H. TRANSPARENCY OF NOTICES

52) The Chairman recalled that, in the context of endorsing the Interim Committee's recommendation that the rules of origin used for the purposes of statistical reporting in Article XIX:5 of the Agreement should be the same as those applied under Article IV which were those used in the normal course of trade, the delegation of the European Communities had suggested that there was merit in examining ways to establish a link between statistical information and the degree of transparency of tender notices as an effective way of monitoring the operation of the Agreement.

53) At the request of the representative of the European Communities, the Committee agreed to revert to this issue at its next meeting.

⁵Subsequently issued as document GPA/4

⁶Subsequently issued as document GPA/4

I. REQUIREMENTS STEMMING FROM THE INCLUSION OF THE AGREEMENT
IN ANNEX 4 OF THE WTO AGREEMENT

54) The Chairman recalled that, in accordance with the provisions of Article 1:2 and Appendix 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 of the WTO Agreement), the Dispute Settlement Body (DSB) should be notified of any special or additional rules or procedures on dispute settlement in the plurilateral trade agreements. As requested by the Committee at its meeting of 27 February 1996, the Secretariat had prepared and circulated informally a draft notification in the form of a letter from the Chairman to the Chairman of the Dispute Settlement Body, for the Committee's consideration and action.

55) The Committee approved the draft letter for forwarding to the Chairman of the DSB.⁷

J. PREPARATION FOR THE SINGAPORE MINISTERIAL

56) The Chairman recalled that, pursuant to the provisions of paragraph 7(a) of Article XXIV, the Committee shall annually inform the General Council of the WTO of developments in the implementation and operation of the Agreement. This year, reports of this nature by WTO bodies would subsequently be transmitted by the General Council to the Singapore Ministerial Conference. Given the schedule of meetings, as noted by the General Council at its meeting on 16 April 1996, the Committee on Government Procurement should adopt its report to the General Council at the Committee's meeting planned for 20 September 1996. The Chairman suggested that, while the Committee on Government Procurement was not a subsidiary body of the General Council, it may, with regard to format and content of its report, nevertheless wish to take account of procedures decided in the General Council in regard to those reports. The Chairman of the General Council, at its meeting on 16 April 1996, had stated that each body must decide on the format of the report which it deemed most appropriate for consideration of relevant issues. While taking this into account, he suggested that these reports include at least the following elements: (a) a section on implementation of the Agreement; (b) progress concerning work under the built-in agenda; (c) an indication as appropriate of issues and problems which had been identified and recommendations, if any. The Chairman also recalled that the Agreement on Government Procurement had its own built-in agenda, in particular in the provisions of paragraph 7(b) and (c) and paragraph 8 of Article XXIV and of paragraph 14 of Article V.

57) With reference to the section of the report on progress concerning work under the built-in agenda, the representative of Canada said that bilateral, plurilateral and multilateral discussions had made it evident that the Committee should give early consideration to certain areas of the Agreement that required improvement. He suggested that the report indicate that work would be carried out shortly pursuant to the provisions of Article XXIV:7 which provided for further negotiations. The main elements of such negotiations could include security of market access under the

⁷Subsequently circulated in document GPA/5

Agreement, extension of the Agreement to those sectors presently excluded from its coverage, elimination of discriminatory measures and simplification of its procedural requirements. This work could begin as from next year on the basis of proposals to be submitted by delegations.

58) The representative of the United States supported the suggestion for a reference to an early review under Article XXIV:7(b) in the report to the General Council. The review could address improvement of the procedural aspects of the Agreement as well as expansion of its coverage. The report could also point out to the need to accelerate the work under Article XXIV:8 in the area of information technology.

59) The representative of the European Communities endorsed the statement of the representative of the United States. His delegation would be prepared to consider any proposal that would be put forward by the delegation of Canada for an early review of the Agreement.

60) The Committee requested the Secretariat to prepare and circulate a draft report to the General Council by the end of July for its adoption at the next meeting of the Committee.

K. NOTIFICATION OF THRESHOLDS IN NATIONAL CURRENCIES

61) The Chairman recalled that, at its meeting on 27 February 1996, the Committee on Government Procurement had adopted a Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3) and reminded Parties that, pursuant to this Decision, they were to notify without delay to the Committee on Government Procurement the thresholds for the period 1996-1997 in their respective national currencies and the method employed for determining them. So far the delegations of Canada, Japan and the European Community had notified (GPA/W/12 and Addenda 1 and 2).

62) The representatives of the United States⁸, Switzerland and Norway said that their delegations would notify their applicable thresholds in the near future.

63) The Committee took note of the statements made.

L. OTHER BUSINESS

64) The next meeting of the Committee is scheduled for 20 September 1996.

⁸Subsequently notified and circulated in document GPA/W/12/Add.3

RESTRICTED

GPA/M/1
18 April 1996

WORLD TRADE ORGANIZATION

(96-1427)

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 27 FEBRUARY 1996

Chairman: Mr. Harald Ernst (Switzerland)

- 1) The following agenda was adopted:
 - A. Election of officers
 - B. Recommendations for procedural decisions by the Committee on Government Procurement
 - C. Application for observership by Chinese Taipei, Colombia, Iceland, Liechtenstein, the Kingdom of the Netherlands with respect to Aruba, and Singapore
 - D. Modifications of Appendix I to the Agreement
 - E. Accession negotiations
 - F. Establishment of a practical guide to the new Agreement
 - G. Information technology
 - H. Statistical reporting
 - I. Other business

A. ELECTION OF OFFICERS

- 2) The Committee elects Harald Ernst as its Chairman and agrees that, in case the Chairman was absent from any meeting or part thereof, it would elect an interim Chairperson for that meeting or part of that meeting rather than electing a Vice-Chairperson.

B. RECOMMENDATIONS FOR PROCEDURAL DECISIONS BY THE COMMITTEE ON GOVERNMENT PROCUREMENT

3) The Committee adopted the decisions as recommended in document GPA/IC/W/31 on Procedures on the Participation of Observers, Procedures for Accession to the Agreement and Modalities for Notifying Threshold Figures in National Currencies. It also adopted interim procedures on the circulation of documents and on the derestriction of documents, pending definitive measures.¹ It agreed to consider additional changes to the interim procedures on derestriction of documents, if it appeared that action by the General Council on the general WTO policy in this area was delayed significantly.

Notification of National Legislation

4) The Chairman recalled that, at its last meeting on 7 December 1995, the Interim Committee had discussed procedures for notifying national implementing legislation and had recommended that this Committee carry forward this discussion. It had also requested the Secretariat to distribute information on notification procedures in other areas of the WTO, which it had subsequently circulated in an Informal Note, dated 16 February 1996. At the December meeting, the Chairman had circulated an Informal Note on Notification of National Legislation, which included a checklist of issues. This Note had subsequently been revised to take account of two amendments which had been proposed during the meeting.

5) The representative of the European Communities said that a balance needed to be struck between, on the one hand, the need for useful and effective surveillance of compliance with obligations under the Agreement and, on the other hand, the administrative burden of so doing. This could best be achieved by, first, an obligation on Parties to supply the texts of essential legislation to the Secretariat in the original language, without translation into a WTO language. Second, a summary of other legislation which was of relevance should be provided. Third, it would be necessary for each Party to indicate a local contact point which could help with translations and provide access to relevant information. The legal texts adopted to build the overall framework in which purchases would take place would fall under the category of essential legislation. Less essential legislation would be specific implementing regulations, such as, for example, the Federal Acquisition Regulations in the United States. A summary of such implementing legislation, emphasizing those aspects which were important with regard to the Agreement on Government Procurement would therefore be sufficient. He emphasized that this was a preliminary position and that his delegation was flexible and open to discuss the matter further.

6) The representative of Japan said that, while he had to reserve his delegation's position for the moment, it was important that each Party make available, as soon as possible, its domestic challenge procedures, as his delegation had already done and which had been distributed to the Parties.² Challenge procedures could be notified at an early date, even before the adoption of notification procedures for national legislation in general.

¹Subsequently circulated in document GPA/1

²Distributed in document GPA/IC/W/37

7) The representative of Switzerland said that a way should be found to be transparent without overloading the system. Her delegation would favour a procedure whereby the essential legislation be notified in a national language, which would not be translated, plus a summary in a WTO language of other implementing national legislation based on the checklist of issues which the Chairman had tabled at the last meeting, which could, of course, still be amended if deemed useful. She recalled that in that checklist, under item 8, mention was made of a contact point, which seemed a necessary and useful element.

8) The representatives of Norway, Korea and Canada supported the suggestions made so far.

9) The representative of the United States agreed with previous speakers and inquired whether the next step would be the drafting of procedures for notifications, once the Committee would have agreed to broad principles on procedures for notification. He reiterated that the checklist as tabled at the last meeting was useful, in that it provided guidance on how domestic implementing actions could be summarized.

10) The Chairman concluded that there was a general desire for a flexible, efficient and balanced approach. It had been suggested that part of the legislation be notified in its entirety in the official language of the notifying government, and that other provisions be notified in summary format in a WTO language, for which the checklist of issues which was issued at the last meeting seemed a good basis. The idea of establishing a contact point had also been raised. It had also been suggested that priority be given to the notification of domestic challenge procedures. He proposed that the Committee request the Secretariat to draw up draft procedures for notification for the next meeting, based on those parameters.

11) The Committee so agreed.

C.APPLICATION FOR OBSERVERSHIP BY CHINESE TAIPEI, COLOMBIA, ICELAND, LIECHTENSTEIN, THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA AND SINGAPORE

12) The Chairman said that the Committee needed to take action on the requests for observer status which it had received from the delegations of Chinese Taipei, Colombia, Iceland, Liechtenstein, the Kingdom of the Netherlands with respect to Aruba and Singapore, pursuant to the decision it had taken on this matter (GPA/IC/W/31).

13) The Committee agreed to grant observer status to the Governments of Chinese Taipei, Colombia, Iceland, Liechtenstein, the Kingdom of the Netherlands with respect to Aruba and Singapore.

D. MODIFICATION OF APPENDIX I TO THE AGREEMENT

14) The Chairman recalled that the notification dated 22 December 1995 by the delegations of the European Communities and the United States of their bilateral

agreement which they had concluded in Marrakesh in April 1994 was circulated in document GPA/IC/10, dated 16 January 1996. The consequential modifications to their respective Appendices had therefore entered into force, pursuant to the Interim Committee's Decision of 7 December 1995. Certification of these modifications had been circulated by the Secretariat in the normal WT/Let/- series (WT/Let/57). He also recalled that, in documents GPA/W/1 and GPA/W/2 respectively, the delegations of Japan and the United States had communicated modifications to their respective Appendices which followed on from the agreement reached between these two countries and which enlarged the scope of the Agreement on Government Procurement. Since no objections had been received within the prescribed time period, these modifications had entered into force on 25 February 1996. Certification of these modifications would shortly be circulated in the WT/Let/- series.³

15) He also recalled that, at the Interim Committee's last meeting, the delegation of the European Communities had said that it still needed to communicate the modifications in relation to the consequences of the accession of three new Member States to the European Communities as well as certain other changes warranted by developments that had taken place in the internal organization of the governments of some Member States, including the proposed changes to Appendix I of Sweden as circulated in documents GPR/W/133 and GPR/W/139.

16) The representative of the European Communities confirmed that the Committee could expect two more notifications from his delegation. He was hopeful that the notification pertaining to the incorporation into the European Communities Appendices of those of the three new Member States of the European Communities could be done shortly. It would be a consolidation and did not involve any changes in the coverage of the Appendices. His delegation also intended to notify an amended version of the European Communities Appendix I in the near future, which would take into account changes which had taken place in several of the Member States in their administrative set-up. Appropriate procedures for such notification would be followed.

17) The representative of the United States said that, in the implementation of the Agreement, his authorities *de facto* already treated the three new Member States of the European Communities on exactly the same basis as the other Member States and said further that the relevant changes to United States Appendices - deletion of these three Member States from its General Note 5 - would be notified at the appropriate time.

18) The Chairman also recalled that the Canadian Schedule offered to cover entities in all ten Provinces on the basis of commitments to be received from Provincial Governments, with a final listing to be provided within 18 months after the conclusion of the new Agreement. At the October meeting, the representative of Canada had made a statement which could be found in the Minutes of that meeting (GPA/IC/M/5). At the December meeting, he had informed the Committee that his delegation had subsequently contacted a number of Parties bilaterally.

³Subsequently circulated in document WT/Let/68

19) The representative of Canada said that his Government had written to the United States authorities requesting consideration of negotiations to limit horizontal exceptions and include presently excluded sectors under the Agreement. The United States had indicated in its response that it considered these areas non-negotiable. As a consequence, the Canadian position as outlined in his statements at the October and December meetings remained unchanged.

20) The representative of the European Communities expressed his delegation's disappointment that it had not been possible for Canada to respect its obligations. While he understood that there were bilateral problems between Canada and the United States, this should not be a reason to refrain from complying with the Canadian commitment under the Agreement.

21) The representative of Japan also expressed his delegation's disappointment about Canada's position with regard to its Annexes 2 and 3, which prevented his delegation from starting negotiations with Canada with a view to withdrawing the relevant derogations in the Japanese General Notes. While his delegation shared the Canadian concerns regarding the United States small business set-asides, this problem could more appropriately be dealt with in the process of reviewing national implementing legislation, once such legislation would have been notified to the Committee.

22) The representative of Norway reiterated her country's disappointment with the Canadian position and urged this delegation to come up with a list of sub-central entities. There was no reason why this bilateral conflict should hamper the multilateral process under this Agreement.

23) The representative of Switzerland said that her delegation knew how difficult it was to make fairly autonomous sub-central entities abide by the provisions of the Agreement on Government Procurement. Nevertheless, and while she recognized the Canadian problems with specific countries, she hoped that Canada would consider coming forward with an offer in terms of its Annexes 2 and 3 as regards the other Parties.

24) The Committee took note of the statements made and agreed to revert to this issue at its next meeting.

E. ACCESSION NEGOTIATIONS

- *Application for accession by Chinese Taipei*

25) The Chairman recalled that the report by the Interim Committee to this Committee on the application for accession by the Government of Chinese Taipei had been circulated in document GPA/IC/5 with the recommendation that this Committee carry forward the accession process. At its last meeting, the Interim Committee had urged delegations to engage in bilateral consultations with Chinese Taipei, in the light of the wish expressed by that delegation to be in a position to conclude the bilateral consultations before June 1996. In the meantime, the delegation of Chinese Taipei had circulated a revised offer in an informal document dated 22 February 1996.⁴

26) The representative of Chinese Taipei said that, since the circulation of his authorities' first draft initial offer, his delegation had held consultations with Canada, the European Communities, the United States, Japan and Korea. In response to the requests raised by these delegations, his authorities had made great improvements to the draft offer. A revised offer, containing the results of such improvements, had been prepared accordingly and had been distributed by the Secretariat. Based upon the efforts made in the revision of the offer and the total value of procurement opportunities it represented, his delegation urged Committee members, which it had contacted, to evaluate the revised offer favourably and to bring the consultations to an end as soon as possible. He invited members of the Committee to respond at their earliest convenience if they had any further questions on the revised offer, preferably by way of written documents directed through Chinese Taipei's Representative's Office in Geneva. After receiving these responses, his delegation would further evaluate its offer with the objective of concluding bilateral consultations with all interested Parties sometime in the middle of this year. The potential procurement value included in the offer represented up to 3.3 per cent of the GNP of Chinese Taipei of fiscal year 1995, which was higher than that of many of the Parties to the Agreement. The potential value of procurement opportunities for construction services offered by central and sub-central entities amounted up to about 0.34 per cent for the central government and 0.4 per cent for the sub-central government respectively, which was also higher than that of many of the Parties to the Agreement. The computer database containing the latest procurement information, which was demonstrated in the Interim Committee last year, was now in full operation on the Internet. In addition, the information contained on the database was now also being published in the Government Procurement Gazette. Currently, the Gazette was published in Chinese three times a week. In the future, summary information in English would be included, after Chinese Taipei's accession to the Agreement on Government Procurement. In referring to the planned reform of the government procurement régime in Chinese Taipei, he said that the favourable support of the Parties to the Agreement to Chinese Taipei's accession was essential to the success of these reforms.

⁴Subsequently circulated as document GPA/SPEC/1

27) The representative of the European Communities welcomed the revised offer from Chinese Taipei as a good one and commended Chinese Taipei for its efforts, both as regards its revised offer and with respect to the reforms in its procurement régime. He hoped that certain preconditions surrounding Chinese Taipei's accession to the Agreement on Government Procurement could be fulfilled soon with a view to its accession at an early stage.

28) The representatives of Canada and the United States also welcomed the efforts displayed all along by Chinese Taipei in its accession process and hoped that this process could be moved along as quickly as possible.

29) The representative of Korea said that his delegation was engaged in bilateral consultations with Chinese Taipei. Since it was important to widen membership of the Agreement, he suggested that Parties support non-Parties in a number of ways, for instance through the circulation to applying governments of dispute settlement cases which had been brought before the Committee.

30) The Committee took note of the statements made, agreed to revert to this issue at its next meeting and urged delegations to engage in bilateral negotiations with the delegation of Chinese Taipei.

- *Application for accession by Liechtenstein*

31) The Chairman recalled that the report by the Interim Committee to this Committee on the application for accession by the Government of Liechtenstein, which contained a draft Decision and included the terms for its accession, had been circulated in document GPA/IC/6. In its report, the Interim Committee recommended that the Committee on Government Procurement adopt the draft Decision attached to its report and invite Liechtenstein to accede to the Agreement on Government Procurement on the terms attached to the Decision.

32) The Committee adopted the Decision contained in document GPA/IC/6, and invited Liechtenstein to accede to the Agreement on Government Procurement on the terms attached to that Decision.

- *Application for accession by the Kingdom of the Netherlands with respect to Aruba*

33) The Chairman recalled that the report by the Interim Committee to this Committee on the accession negotiations with the Government of the Kingdom of the Netherlands with respect to Aruba, which contained a draft Decision and included the terms for its accession, had been circulated in document GPA/IC/7. In its report, the Interim Committee recommended that the Committee on Government Procurement adopt the draft Decision attached to its report and invite the Kingdom of the Netherlands with respect to Aruba to accede to the Agreement on Government Procurement on the terms attached to the Decision.

34) The Committee adopted the Decision contained in document GPA/IC/7, and invited the Kingdom of the Netherlands with respect to Aruba to accede to the Agreement on Government Procurement on the terms attached to that Decision.

- *Application for accession by Singapore*

35) The Chairman recalled that the Government of Singapore had applied for accession to the new Agreement and had tabled its initial offer, contained in document GPA/IC/SPEC/2, at the Interim Committee's last meeting, in December 1995. He noted that the delegation of Singapore had just submitted to the Secretariat a description of its procurement régime.⁵ He suggested that, in conformity with the Interim Committee's recommendation, the Committee carry forward the accession process in accordance with the procedures for accession negotiations which it had adopted under agenda item B.

36) The representative of Singapore said that most Parties would be aware that her Government had adopted the fundamental principles of fairness, openness and competitiveness for its government procurement policies. In general, Singapore did not have any special government procurement programmes to achieve specific social and economic objectives, such as assistance to small- and medium-sized enterprises, or to support specific industry sectors or infant industries. Her Government believed in the benefits of open competition and getting value for money. On average, open competition accounted for about 85 per cent of the total number of tenders. Her delegation would stand ready to provide further clarification of government procurement procedures in the course of bilateral consultations. Bilateral consultations had taken place or were foreseen with Japan, the European Communities, Canada and the United States. Her delegation would welcome further bilateral consultations with other Parties as well as receiving comments on Singapore's initial offer, either through correspondence, or through bilateral consultations in the near future. She hoped to be able to conclude Singapore's accession to the Agreement expeditiously.

37) The Chairman proposed that the Committee take note of the statements made. In the event that delegations had questions concerning the description of Singapore's procurement régime, which had just been distributed, he proposed that these be submitted in writing to the delegation of Singapore with a copy to the Secretariat. A compilation of such questions received would be circulated by the Secretariat in an informal document in due course. He also urged delegations to enter into bilateral consultations with Singapore, with a view to an early accession.

38) The Committee so agreed.

⁵Subsequently circulated as document GPA/W/10

F. ESTABLISHMENT OF A PRACTICAL GUIDE TO THE NEW AGREEMENT

39) The Chairman recalled that the report of the work of the Interim Committee on this matter was contained in document GPA/IC/9, paragraph 17. At the Interim Committee's October meeting, a number of delegations, while not opposed in principle to the establishment of a new guide, had suggested postponing active consideration of it, in view of its links with various other issues which were still under consideration. At the Interim Committee's December meeting, a number of delegations supported the idea of considering the establishment of a regular process of updating the Appendices to the new Agreement on Government Procurement, in the form of loose-leaf schedules, as a complement to, but distinct from, the establishment of a practical guide. At that meeting, the Interim Committee requested the Secretariat to prepare a brief note outlining how a loose-leaf system to periodically update the Appendices in the Agreement might work, taking into consideration relevant experience in other areas of the WTO such as in regard to tariff schedules. This note had been circulated in document GPA/W/3 on 14 February 1996.

40) The representative of the United States reiterated that, while active consideration of a practical guide best be postponed in view of its links with certain outstanding issues in other areas, there was merit in considering the establishment of a loose-leaf system for periodic updating of the Appendices to the Agreement, which would be accorded legal effect. In that respect, document GPA/W/3 seemed like a promising approach and its suggestion to explore possibilities to publish such a system on the Internet merited serious consideration.

41) The representative of the European Communities emphasized the distinction that should be made between a practical guide and a system to periodically update the Appendices in the Agreement. A practical guide did not require legal status. Nonetheless, he drew the Committee's attention to a possible issue which might arise where legal status of such a guide was assumed merely because it was published by a public institution, such as the WTO. His delegation would prefer a solution whereby the market would come up with a practical guide rather than the WTO Secretariat producing one. New technologies should be put to use to establish such a guide: there was merit in exploring possibilities to put a practical guide on the Internet, for example. On the other hand, and separate from the issue of a practical guide, he appreciated the need for a system to periodically update the Appendices in the Agreement, which would require legal status.

42) The representative of Canada agreed that active consideration of the establishment of a practical guide should be postponed until such time as linked issues would have been resolved. At the same time there was a need to come up with an efficient loose-leaf system to periodically update the Appendices and, in that respect, document GPA/W/3 seemed like a good basis for further reflection.

43) The Committee took note of the statements made and agreed to revert to this issue at its next meeting.

G. INFORMATION TECHNOLOGY

44) The Chairman recalled that the report of the work of the Interim Committee on this item was contained in document GPA/IC/9, paragraph 18 and that the Interim Committee had agreed to transmit its work to the Committee for further action. Broadly speaking, attention in previous discussions had focused on two main issues: compatibility between national systems and possible modifications of the Agreement itself. At the Interim Committee's last meeting, the delegation of the United States had introduced a paper on electronic commerce, circulated in document GPA/IC/W/36. A report of the relevant discussion at the Interim Committee's December meeting was contained in document GPA/IC/M/6, paragraphs 69 through 72.

45) The representative of the European Communities welcomed the paper which had been introduced by the United States at the last meeting as a useful discussion paper. What this paper implied was that electronic tools could make the procurement system more effective. He referred to early experiences in the United States with some form of electronic commerce at the federal level, and welcomed any information on conclusions drawn from these experiences. In the European Communities similar developments to those described in the United States paper were taking place. In referring to the United States concern that the introduction of electronic tools in the procurement process might result in a significantly higher number of bids submitted, he thought that electronic tender notices appearing on private screens might sometimes give the illusion to the viewer of having privileged access to such information, hence privileged access to certain tenders. This sometimes led to situations where suppliers which normally should refrain from responding did so anyway. However, this had nothing to do with electronic commerce but rather with the way in which information about tender procedures was perceived. In a way, electronic tools were a catalyst for reflection about Parties' respective procurement régimes and the United States paper was useful in that sense in that it highlighted issues which perhaps should have been addressed earlier. He acknowledged that receiving too many offers in response to a call for tender could become a problem, but this was not an issue generated by the use of electronic tools but rather because of a problem somewhere in the system, probably in the formulation of the technical specifications or the qualification criteria. In order to avoid such situations, tender documentation should be made clearer. The United States paper addressed issues which were not directly related to electronic tendering, in particular the one in respect of an increased need for selective tendering. In considering the effects of electronic tendering, there was the narrow issue of electronic tendering *per se*: in what respect did electronic tendering force Parties to review certain rules in the Agreement, for example deadlines in the tendering process. Deadlines could only be shortened on condition that this would not lead to discrimination between suppliers and that an off-the-shelf product was procured. This led to the question whether the Agreement should be adapted to cover situations where electronic tools could be used side by side with paper-based procedures or to cover procedures which were exclusively based on electronic tools. In his view, deadlines could probably only be shortened if all Parties adopted a system based exclusively on electronic tools and this stage had not yet been reached in the European Communities.

46) The representative of Canada warned that this issue was not standing still, and that rapid solutions ought to be found. Procurement offices were coming under increasing pressure to procure more efficiently and quickly. In some cases this had led to an

increased use of exceptions in order to be able to avoid the obligations under the Agreement. It was imperative that the Committee address the issue of electronic tendering and that it do so in terms of ensuring non-discriminatory market access.

47) The representative of Korea said that his delegation agreed with the view expressed in the United States paper that electronic tendering could ensure open, non-discriminatory and efficient government procurement and with the statements made by the European Communities. While, in his country, government procurement was not currently done electronically, his authorities did intend to establish a computerized network on government procurement. However, inconsistencies between legal and institutional requirements and technical elements posed certain difficulties, which warranted more cooperation between those Parties which used electronic tendering procedures and those who did not, including non-Parties. He hoped to be able to benefit from the experience gained by the United States on this subject.

48) The representative of Norway agreed that this issue should be addressed immediately in the Committee in view of the rapid technological progress being made in this area, and that, in doing so, the main objectives of such an exercise should be ensuring non-discriminatory market access. Account should also be taken of signals which possible amendments to the Agreement could send to new members. Hence, it was probably unavoidable that parallel systems would continue to exist side by side for some time. She thanked the delegation of the United States for its paper, which served as a useful contribution to this discussion.

49) The representative of Japan said that, while he appreciated the importance of electronic tendering for government procurement, it would be difficult for his delegation to enter discussions on this matter if such discussions were aimed at a revision of the Agreement, given his country's domestic legislative process in adopting amendments to the Agreement. The process of reflection should move forward but this should be done separately from contemplating any changes to the text of the Agreement. Electronic tendering could well be one of the most important issues for the next major review of the Agreement pursuant to Article XXIV:7(b), which should take place within three years after entry into force.

50) The representative of the European Communities said that he hoped that Parties would discuss the issue of electronic tendering or commerce with an open mind, including the question of possible revisions in the text. Drawing up a list of issues seemed like a good basis for future work in this area. The United States paper contained a number of issues, but was not exhaustive. If, in addressing the various issues, well-defined reasons surfaced for amending the Agreement, the Committee should not shy away from that simply because there was an Article in the Agreement which stipulated three-yearly reviews. There was a need to act quickly. One of the conclusions which might flow from the Committee's work could be the need to be more flexible in order to allow for certain information technology to be used, which was currently not possible due to legal restrictions. However, flexibility could not exist without a safety net which should consist of a stricter definition of discrimination in this particular area than the one currently included in the Agreement. He was wondering how best to proceed procedurally. Was a separate working party needed, or should the discussion be kept in the Committee? One

could perhaps start by providing descriptions of the various existing domestic schemes; it would, for example, be very useful to have a description of the experiences gained so far in the field of electronic commerce in the United States. His delegation could provide a description of its domestic experiences. Based on such an inventory, further action could be determined including the definition of areas in the Agreement which warranted further scrutiny. His delegation would come forward with a paper for discussion at the next meeting and he hoped others would do the same. He recalled in this context that, as part of the work done in the Interim Committee on this item so far, responses to a questionnaire had been provided by all delegations in the course of the previous year but the scope of what had been discussed so far had been limited.⁶ What was needed now was to gather information on electronic commerce - doing the whole tendering process electronically rather than just having electronic access to databases of tender notices - which was a much broader area than what had been discussed so far. In practical terms what this amounted to was for delegations to update the responses provided so far to the questionnaire with new information on practices with electronic commerce.

51) The representative of the United States said that it was a hopeful sign that all countries were willing to discuss issues of substance with regard to information technology. He recalled that Article XXIV:8 placed a marker and allowed for the possibility to negotiate modifications to the Agreement if warranted by developments in the use of information technology. In the past two years, delegations had exchanged information on their respective systems by way of responses to a questionnaire and had discussed certain basic principles for approaching this issue, the most important of which was the desire for this Agreement to remain a living Agreement, while ensuring non-discriminatory market access. Adoption of information technologies should result in enhanced market access. The purpose of the United States paper had not been to put forward any proposals but rather to prompt reflection on the issue and to show a willingness on his delegation's side to review the Agreement and identify possible areas where changes might be warranted, either associated with accommodating these technologies or with strengthening the commitment to non-discriminatory market access.

52) The representative of Canada agreed that there was a need to act quickly in this Committee to avoid making this Agreement obsolete in its tendering procedures. He would be pleased to provide an update of the questionnaire and other inputs on the issue of electronic tendering. He suggested that the Secretariat might be asked to assist the Committee in identifying a number of the key issues, based on inputs from all delegations and to come forward with a fundamental issues paper which would, at the same time, provide a consolidated list of the concerns expressed by the Parties, rather than each delegation submitting an individual paper. What this Committee needed to decide on were fundamental principles, such as how to ensure non-discriminatory market access, rather than focus on the technical differences between the various domestic systems.

53) The Chairman concluded that there was a strong wish to carry this process forward. Two questions had emerged from the discussions. Did the Committee need more information about national systems in order to identify any incompatibilities? And

⁶Circulated in documents GPA/IC/W/7 plus ten Addenda

secondly, was the Committee ready to consider amendments to the Agreement? The Secretariat had been requested to draw up a fundamental issues paper which would at the same time list the concerns of the delegations, and which would be based on inputs from delegations. He requested delegations therefore to come forward by 1 April with their ideas on how to carry the process forward, identifying their concerns, and possibly also to respond to the questions he had identified. Based on this information, the Secretariat would come forward with a compilation of issues and, in conjunction with the Chairman, identify options for carrying forward the work in this area.

54) The Committee so agreed.

H. STATISTICAL REPORTING

55) The Chairman recalled that the Working Group on Statistical Reporting had communicated its report to the Interim Committee in document GPA/IC/8.

Uniform Classification Systems

(i) Goods

56) The Chairman recalled that the Working Group had agreed to use the system of 26 product categories as a working hypothesis for a classification system for products. With a view to identifying the precise level of detail desirable in the system of 26 product categories, delegations had agreed to submit their ideas on what categories of the 26 product categories could be usefully divided into sub-headings, and, where a further breakdown would be suggested, to identify the precise product coverage of the proposed new categories. So far, two submissions had been received which suggested dividing categories 14, office machinery and automatic data processing equipment, into two sub-headings, and category 15, telecommunications and sound recording and reproducing apparatus and equipment, also into two sub-headings. The responses which had been received so far did not seem a sufficient basis on which to draw any definitive conclusions. Delegations might need more time to consider. He therefore proposed 15 April as a new deadline for submission of ideas and to fix this same deadline for the submission of suggestions on the level of detail in the UNCPC classification for services, which had earlier been fixed for 15 March. On the basis of this information, he would, in cooperation with the Secretariat, come forward with a paper as a basis for discussion at the next Committee meeting.

57) The Committee so agreed.

(ii) *Services*

58) The Chairman recalled that delegations had found common ground in the UNCPC as a classification system for services. With a view to reaching some preliminary conclusions on the level of detail which would be desirable, delegations had agreed to review the 30 UNCPC divisions with a view to advising which of these divisions should be combined and if any sub-divisions would be desirable and to submit their ideas to the Secretariat by 15 April. Based on this information, he would, in cooperation with the Secretariat, come forward with a paper as a basis for discussion at the next Committee meeting.

59) The Committee so agreed.

Country of Origin of Products and Services

(i) *Origin of products*

60) The Chairman recalled that the Statistical Working Group had recommended that the rules of origin used for the purposes of statistical reporting in Article XIX:5 of the Agreement should be the same as those applied under Article IV, which were those used in the normal course of trade.

61) The Committee adopted this recommendation.

62) The Chairman also recalled that, as a separate but linked issue, the delegation of the European Communities had suggested that there was merit in examining ways to establish a link between statistical information and the degree of transparency of tender notices as an effective way of monitoring procurement. The Working Group had been of the view that this suggestion should be more appropriately addressed by the new Committee on Government Procurement.

63) The representative of the European Communities confirmed that the view of his delegation that statistics on the origin of products and services procured did not provide sufficient information in themselves to monitor market opening. In order to meet his delegation's concerns about this, other criteria needed to be included. These could include statistics on the transparency of notices published by Parties, either in official gazettes or electronically.

64) The Committee took note of the statements made and agreed to revert to this issue at its next meeting.

(ii) *Origin of services*

65) The Chairman recalled that the Working Group had agreed that, in the light of the wording of Article XIX:5, last paragraph - •to the extent that such information is available• - this Committee should consider postponing application of the requirement to report statistics on the origin of services until practicable rules for determining the origin of services had been defined and that this Committee should revert to this matter when the work in the GATS and other relevant contexts would have advanced sufficiently to warrant it.

66) The Committee so agreed.

I. OTHER BUSINESS

- *Requirements stemming from the inclusion of the Agreement in Annex 4 of the WTO Agreement*

67) The Chairman recalled that the Understanding on Rules and Procedures Governing the Settlement of Disputes stipulated that the Dispute Settlement Body (DSB) should be notified of any special or additional rules or procedures on dispute settlement in the plurilateral trade agreements (Appendix I to the Understanding). He proposed that the Committee request the Secretariat to prepare, for the next meeting, such a draft notification for subsequent transmission to the DSB.

68) The Committee so agreed.

-*Dates in 1996 of the meetings of the Committee on Government Procurement under the new Agreement*

69) It was decided that the date of the next meeting be set in consultation with delegations. Attempts would be made to coordinate with the GATS Rules Group's next meeting on government procurement of services.

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WORLD TRADE ORGANIZATION

GPA/W/295/Add.3

4 January 2006

(06-0018)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2006-2007

CANADA

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2006-2007.

The information notified by Canada is reproduced below.

Pursuant to the agreed procedures (GPA/1, Annex 3), Canada submits its notification of threshold figures in the national currency for the period 1 January 2006 to 31 December 2007 for Annex 1 of Appendix I of the Agreement on Government Procurement. This information was also published on 16 December 2005 in Contracting Policy Notice 2005-3 on the Treasury Board Canada Secretariat website at <http://www.tbs-sct.gc.ca/>.

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in Canadian Dollars
Goods	130,000	245,000
Services	130,000	245,000
Construction	5,000,000	9,400,000

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05-5833 	U	GPA/W/295/Add.1 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2006-2007 - Singapore - Addendum Preview (HTML)	08/12/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
05-5771 	U	GPA/W/295 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2006-2007 - Hong Kong, China Preview (HTML)	05/12/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
05-3202 	D	GPA/W/294 Catalogue record	Committee on Government Procurement - Israel's Level of Offset Rights - Communication from Israel Preview (HTML)	18/07/2005	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>

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WORLD TRADE ORGANIZATION

GPA/W/295/Add.2
14 December 2005

(05-5939)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2006-2007

UNITED STATES

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), the United States notifies the Committee on Government Procurement of the U.S. thresholds for the period 2006-2007. These thresholds are effective via a Federal Register notice published December 12, 2005 (70 Fed. Reg. 73510).

ANNEX 1

	Threshold Value (SDR)	Threshold Value in U.S. Dollars
1. Goods and services	130,000	193,000
2. Construction services	5,000,000	7,407,000

ANNEX 2

	Threshold Value (SDR)	Threshold Value in U.S. Dollars
1. Goods and services	355,000	526,000
2. Construction services	5,000,000	7,407,000

ANNEX 3

	Threshold Value (SDR)	Threshold Value in U.S. Dollars
1. Goods and services (except entities identified in Annex 3 to which the threshold of US\$250,000 applies)	400,000	593,000
2. Construction services	5,000,000	7,407,000

**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED
IN NATIONAL CURRENCIES FOR 2006-2007**

SINGAPORE

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2006-2007.

The information notified by Singapore is reproduced below.

1. Calculation of threshold figures in national currency

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in Singapore Dollars (rounded)
1. Goods and services other than construction services	130,000	323,800
2. Construction services	5,000,000	12,454,000

Annex 3 Entities	Threshold Value (SDR)	Threshold Value in Singapore Dollars (rounded)
1. Goods and services other than construction services	400,000	996,300
2. Construction services	5,000,000	12,454,000

2. Method of calculation

The calculation of national threshold is based on the monthly average exchange rate of SDR to Singapore Dollars over 24 months from October 2003 to September 2005.

Month	Exchange Rate of Singapore Dollars to 1 SDR	Month	Exchange Rate of Singapore Dollars to 1 SDR
October 2003	2.4863	October 2004	2.4911
November 2003	2.5006	November 2004	2.5215
December 2003	2.5273	December 2004	2.5373
January 2004	2.5212	January 2005	2.4932
February 2004	2.5209	February 2005	2.4919
March 2004	2.4858	March 2005	2.4926
April 2004	2.4736	April 2005	2.4987
May 2004	2.4958	May 2005	2.4540
June 2004	2.5165	June 2005	2.4518
July 2004	2.5136	July 2005	2.4131
August 2004	2.5022	August 2005	2.4585
September 2004	2.4838	September 2005	2.4483

Source: International Financial Statistics, IMF

The average exchange rate of SDR to Singapore Dollars is:

Singapore Dollar 59.7796 / 24 months = Singapore Dollar 2.4908

WORLD TRADE ORGANIZATION

GPA/W/295
5 December 2005

(05-5771)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2006-2007

HONG KONG, CHINA

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2006-2007.

The information notified by Hong Kong, China is reproduced below.

1. Calculation of threshold figures in Hong Kong Dollars (HKD)

Annex 1 Entities	Threshold Value in SDR	Threshold Value in HKD
1. Goods and services other than construction services	130,000	1,499,000
2. Construction services	5,000,000	57,636,000

Annex 3 Entities	Threshold Value in SDR	Threshold Value in HKD
1. Goods and services other than construction services	400,000	4,611,000
2. Construction services	5,000,000	57,636,000

2. Method of calculation

The calculation of threshold figures in HKD is based on the monthly average exchange rate of SDR to HKD over 24 months from November 2003 to October 2005.

Period (Month/Year)	Average HKD Equivalent of SDR	No. of Days	HKD Equivalent
November 2003	11.13168	30	333.95040
December 2003	11.39197	31	353.15107
January 2004	11.57831	31	358.92761
February 2004	11.63364	29	337.37556
March 2004	11.47777	31	355.81087

./.

Period (Month/Year)	Average HKD Equivalent of SDR	No. of Days	HKD Equivalent
April 2004	11.38941	30	341.68230
May 2004	11.31363	31	350.72253
June 2004	11.42621	30	342.78630
July 2004	11.48745	31	356.11095
August 2004	11.42530	31	354.18430
September 2004	11.42164	30	342.64920
October 2004	11.52297	31	357.21207
November 2004	11.76995	30	353.09850
December 2004	11.97792	31	371.31552
January 2005	11.88122	31	368.31782
February 2005	11.83529	28	331.38812
March 2005	11.89597	31	368.77507
April 2005	11.77841	30	353.35230
May 2005	11.66428	31	361.59268
June 2005	11.41035	30	342.31050
July 2005	11.27142	31	349.41402
August 2005	11.39944	31	353.38264
September 2005	11.37956	30	341.38680
October 2005	11.21052	31	347.52612
TOTAL		731	8,426.42325

HKD equivalent of SDR for the 24-month period preceding November 2005:

$$8,426.42325 \div 731 = 11.5272548$$

$$\text{that is, 1 SDR} = \text{HKD } 11.5272548$$

ISRAEL'S LEVEL OF OFFSET RIGHTS

Communication from Israel

The following communication, dated 14 July 2005, is being circulated at the request of the Delegation of Israel.

1. Israel hereby declares its intention to renew its request to modify provisions regarding offsets, contained in a note in Israel's Appendix I.

2. As Parties to the GPA may recall, in November 2004, Israel submitted a formal request to the WTO Committee on Government Procurement, requesting the modification of the timetable for a gradual reduction in the levels of its offset rights. Due to the urgent nature of the matter and the need for more time to study Israel's request more thoroughly, the decision was taken to extend Israel's right to require offsets at a level of 30 per cent for an additional one year, i.e., until 31 December 2005 (document GPA/83, dated 17 December 2004). It was then understood that Israel, as well as the rest of the membership, would use this period of one year to further explore and negotiate the issue. This understanding is reflected in the minutes of the Committee in document GPA/M/25 (paragraph 5), dated 18 January 2005.

3. In line with the above understanding, the Government of Israel has conducted a thorough study of the implications and consequences on Israel's economy and industry of Israel's participation in the GPA. In order to guarantee the objectivity of the outcome, the Government has charged this assignment to an external private leading market research and consulting firm - Business Data Israel Ltd. Specifically, the study focused on the following:

- (i) the impact of Israel's membership in the GPA on Israeli firms' access to and success in winning public contracts in GPA Parties' markets;
- (ii) the effect of Israel's membership in the GPA on foreign and domestic suppliers bidding for public tenders in Israel; and
- (iii) the impact of the offset provisions on Israel's domestic industry and their contribution to economic development.

4. The main findings of the study are as follows:

- (i) Israel's membership in the GPA has lead Israeli companies neither to participate more in public tenders nor to win public contracts in other GPA Parties' markets.

- (ii) Israel's public procurement market has been further opened to competition from abroad. In 2004, direct purchases by Israeli entities from foreign suppliers covered by the GPA accounted for 56 per cent of total procurement, while the remaining 44 per cent were purchased in Israel from either local manufacturers or importers.
- (iii) The offset provisions in place have not hindered nor discouraged foreign suppliers from competing and winning public tenders in Israel.
- (iv) Business opportunities for the Israeli industry, resulting from the offset provisions, constitute the main benefit of Israel's membership in the GPA. These benefits are observed in aspects of direct business contracts, the transfer of technology and know-how and the creation of long-term business relations. For the aforementioned reasons, offsets are an important vehicle for durable economic development.

5. In light of the above-mentioned considerations, Israel intends to renew its request to introduce amendments to its note concerning offset rights in Appendix I.

6. Israel stands ready to engage in constructive negotiations concerning its request with other GPA Parties.

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04-2641 	U	GPA/W/293 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from the Republic of Armenia Preview (HTML)	18/06/2004	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
04-2624 	U	GPA/W/168/Add.8 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2002 - 2003 - Netherlands with [...]spect to ARUBA Addendum Preview (HTML)	17/06/2004	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
04-2628 	U	GPA/W/285/Add.8 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - Netherlands With R[...]th Respect to Aruba - Addendum Preview (HTML)	17/06/2004	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
04-1566	U	GPA/W/292	Committee on Government Procurement - Request for	07/04/2004	E	F	S

		Catalogue record	Observer Status - Communication from Sri Lanka Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 36KB	1 p. 36KB	1 p. 36KB
04-1439	U	GPA/W/285/Add.7 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - Switzerland - Addendum Preview (HTML)	30/03/2004	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 p. 50KB	2 p. 50KB	2 p. 50KB
04-1132	U	GPA/W/285/Add.6 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - Norway - Addendum Preview (HTML)	15/03/2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 47KB	1 p. 47KB	1 p. 46KB
04-0403	U	GPA/W/285/Add.5 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2006 - Japan - Addendum Preview (HTML)	04/02/2004	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 p. 52KB	2 p. 47KB	2 p. 47KB
04-0316	U	GPA/W/285/Add.4 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - European Communities - Addendum Preview (HTML)	29/01/2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 44KB	1 p. 41KB	1 p. 42KB
04-0314	D	GPA/W/291 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of the Agreement on Government Procurement Proposed by Japan in GPA/W/272, GPA/W/273, GPA/[...] from the European Communities Preview (HTML)	29/01/2004	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3 p. 48KB	3 p. 47KB	3 p. 44KB
04-0063	U	GPA/W/285/Add.3 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - United States - Addendum Preview (HTML)	08/01/2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 35KB	2 p. 47KB	2 p. 52KB

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3 4 KB	04-2624	GPA/W/168/Add.8	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2002 - 2003 - Netherlands with respect to Aruba - Addendum netherlands With Re[...]spect to ARUBA Addendum	17/06/2004	1	U	T/PLURI/GPA/W168A8.doc
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5 3 KB	04-1566	GPA/W/292	Committee on Government Procurement - Request for Observer Status - Communication from Sri Lanka	07/04/2004	1	U	T/PLURI/GPA/W292.doc
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8 4 KB	04-0403	GPA/W/285/Add.5	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2006 - Japan - Addendum	04/02/2004	2	U	T/PLURI/GPA/W285A5.doc
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10 8 KB	04-0314	GPA/W/291	Committee on Government Procurement - Modifications to Appendix I of the Agreement on Government Procurement	29/01/2004	3	D	T/PLURI/GPA/W291.doc

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WORLD TRADE ORGANIZATION

GPA/W/285/Add.9
8 July 2004

(04-2954)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2004-2005

ISRAEL

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds.

The information notified by Israel for 2004-2005 is reproduced below.

1. Calculation of threshold figures in US\$

ANNEX 1

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	130,000	175,000
Services	130,000	175,000
Construction	8,500,000	11,450,000

ANNEX 2

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	250,000	337,000
Services	250,000	337,000
Construction	8,500,000	11,450,000

ANNEX 3

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	355,000	478,000
Services	355,000	478,000
Construction	8,500,000	11,450,000

2. Method of calculation

The calculation of the thresholds of the WTO Agreement, expressed in US\$ has been based on the average monthly SDR to US\$ exchange rate over 24 months from 1 January 2002 to 1 January 2004 (1 SDR = 1.347 US\$).

WORLD TRADE ORGANIZATION

GPA/W/293
18 June 2004

(04-2641)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from the Republic of Armenia

The following communication, dated 10 June 2004, is being circulated at the request of the Delegation of the Republic of Armenia.

Taking into consideration the commitment to initiate negotiations to become a Party to the Agreement on Government Procurement, undertaken by the Republic of Armenia in the Working Party Report on the Accession of the Republic of Armenia to the WTO, we have the honour to ask the Committee on Government Procurement to grant the Republic of Armenia the status of an observer country.

WORLD TRADE ORGANIZATION

GPA/W/168/Add.8

17 June 2004

(04-2624)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2002-2003

NETHERLANDS WITH RESPECT TO ARUBA

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds.

The information notified by the Netherlands with respect to Aruba for 2002-2003 is reproduced below.

ANNEX 1

	SDRs	US\$	AWG ¹
Supplies	130,000	169,000	304,200
Services	130,000	169,000	304,200
Works	5,000,000	6,481,000	11,665,800

ANNEX 3

	SDRs	US\$	AWG ¹
Supplies	400,000	518,000	932,400
Services	400,000	518,000	932,400
Works	5,000,000	6,481,000	11,665,800

¹ AWG = Aruban Guilders.

WORLD TRADE ORGANIZATION

GPA/W/285/Add.8

17 June 2004

(04-2628)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2004-2005

NETHERLANDS WITH RESPECT TO ARUBA

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds.

The information notified by the Netherlands with respect to Aruba for 2004-2005 is reproduced below.

ANNEX 1

	SDRs	US\$	AWG ¹
Supplies	130,000	175,000	315,000
Services	130,000	175,000	315,000
Works	5,000,000	6,725,000	12,105,000

ANNEX 3

	SDRs	US\$	AWG ¹
Supplies	400,000	538,000	968,400
Services	400,000	538,000	968,400
Works	5,000,000	6,725,000	12,105,000

¹ AWG = Aruban Guilders.

WORLD TRADE ORGANIZATION

GPA/W/292
7 April 2004

(04-1566)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Sri Lanka

The following communication, dated 2 April 2004, is being circulated at the request of the Delegation of Sri Lanka.

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office and other International Organizations in Switzerland presents its compliments to the Director-General of the World Trade Organization and has the honour to request observer status in the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

GPA/W/285/Add.7
30 March 2004

(04-1439)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2004

SWITZERLAND

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds.

The information notified by Switzerland for 2004 is reproduced below.

THRESHOLD VALUES FOR THE YEAR 2004¹

Annex 1 Entities

	SDRs	Converted to Sw F
Goods	130,000	248,950
Services	130,000	248,950
Construction	5,000,000	9,575,000

Annex 2 Entities

	SDRs	Converted to Sw F
Goods	200,000	383,000
Services	200,000	383,000
Construction	5,000,000	9,575,000

¹ SDR 1.0 = Sw F (Swiss Francs) 1.987. The average monthly value of the SDR in Swiss Francs from September 2001 through August 2003 (24 months) was Sw F 1.987. This calculation is based on data published by the Swiss National Bank. The monthly average is 3.7% higher than the basis (from Sw F 1.915, average Oct. 1993-Sept. 1995). Despite having the factual basis to modify the value in Swiss francs (increase in this case), Switzerland follows a policy aimed at maintaining the Swiss franc value: (a) to facilitate the implementation of the Agreement by the thousands of purchasing entities; and (b) to avoid regular modifications linked with the fluctuations of the Swiss franc/SDR value which have tended over the past few years to offset each other. The value of the thresholds in Sw F has been expressed without the value-added tax (VAT) because Switzerland excludes VAT when calculating the value of contracts.

Annex 3 Entities

	SDRs	Converted to Sw F
Goods	400,000	766,000
Services	400,000	766,000
Construction	5,000,000	9,575,000

WORLD TRADE ORGANIZATION

GPA/W/285/Add.6

15 March 2004

(04-1132)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2004-2005

NORWAY

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds.

The information notified by Norway for the period 2004-2005 is reproduced below.

The calculation of the threshold values of the Agreement on Government Procurement in Nkr has been based on the average daily exchange rates of SDR to Nkr and EURO to Nkr over 24 months from September 2001 through August 2003.

The thresholds are effective from 9 February 2004.

Annex 1

	Threshold in GPA in SDR	Threshold in GPA in Nkr
1. Goods and services	130,000	1,187,448
2. Construction services	5,000,000	45,671,141

Annex 2

	Threshold in GPA in SDR	Threshold in GPA in Nkr
1. Goods and services	200,000	1,826,846
2. Construction services	5,000,000	45,671,141

Annex 3

	Threshold in GPA in SDR	Threshold in GPA in Nkr
1. Goods and services	400,000	3,653,692
2. Construction services	5,000,000	45,671,141

WORLD TRADE ORGANIZATION

GPA/W/285/Add.5
4 February 2004

(04-0403)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2004-2006

JAPAN

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds.

The information notified by Japan for the period 2004-2006 is reproduced below.

The thresholds listed below will be effective for the period from 1 April 2004 (the beginning of FY 2004) until 31 March 2006 (the end of FY 2005).

Annex 1 (Central Government Entities)

	SDRs	YEN
1. Products	130,000	21,000,000
2. Services other than 3 and 4	130,000	21,000,000
3. Architectural, Engineering and Other Technical Services related to 4	450,000	73,000,000
4. Construction Services	4,500,000	730,000,000

Annex 2 (Sub-Central Government Entities)

	SDRs	YEN
1. Products	200,000	32,000,000
2. Services other than 3 and 4	200,000	32,000,000
3. Architectural, Engineering and Other Technical Services related to 4	1,500,000	240,000,000
4. Construction Services	15,000,000	2,430,000,000

Annex 3 (All Other Entities)

	SDRs	YEN
1. Products	130,000	21,000,000
2. Services other than 3 and 4	130,000	21,000,000
3. Architectural, Engineering and Other Technical Services related to 4	450,000	73,000,000
4. Construction Services for Entities in Group A except Japan Post	15,000,000	2,430,000,000
5. Construction Services for Japan Post and Entities in Group B	4,500,000	730,000,000

WORLD TRADE ORGANIZATION

GPA/W/285/Add.4
29 January 2004

(04-0316)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2004-2005

EUROPEAN COMMUNITIES

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2004-2005.

The information notified by the European Communities is reproduced below.

THRESHOLDS FOR THE PERIOD 2004-2005¹

SDR	130,000	200,000	400,000	5,000,000
EUR	154,014	236,945	473,890	5,923,624
Dansk krone	1,144,617	1,760,949	3,521,898	44,023,723
Svensk krona	1,421,076	2,186,270	4,372,541	54,656,757
Pound sterling	99,695	153,376	306,753	3,834,411

¹ The calculation of the thresholds of the Agreement on Government Procurement, expressed in EUR and in national currencies, has been based on the average monthly SDR to EUR exchange rate over 24 months from September 2001 through August 2003 (1 EUR = 0,746972 SDR).

The value of the thresholds in EUR and in national currencies has been expressed without the value-added tax (VAT) because the Community excludes VAT when calculating the value of contracts.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/291
29 January 2004

(04-0314)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF THE AGREEMENT ON GOVERNMENT PROCUREMENT PROPOSED BY JAPAN IN GPA/W/272, GPA/W/273, GPA/W/274, GPA/W/275 AND GPA/W/276

Communication from the European Communities

The following communication, dated 27 January 2004, is being circulated at the request of the Delegation of the European Communities.

Further to its communications of 16 October 2003 (GPA/W/279) and 7 November 2003 (GPA/W/282), the EC has carried out a first review of the modifications to Appendix I of the Agreement on Government Procurement (GPA) proposed by Japan in GPA/W/272, GPA/W/273, GPA/W/274, GPA/W/275 and GPA/W/276. To assist the EC in its assessment, the EC would appreciate Japan's answers to the following questions.

GPA/W/272

In the current Appendix I, procurement by Japan Railway Construction Public Corporation is subject to Notes 4(a) and 4(d). As a result of the proposed modification, all procurement by the new entity - Japan Railway Construction, Transport and Technology Agency - would be subject to Notes 4(a), 4(d) and 4(e). This implies that procurement relating to the activities that were in the past carried out by Japan Railway Construction Public Corporation would be made subject to a new restriction, i.e. that of Note 4(e).

1. Please explain the reason for applying Note 4(e) to procurement by Japan Railway Construction, Transport and Technology Agency relating to the activities that were in the past carried out by Japan Railway Construction Public Corporation.
2. Please explain the effect of this new restriction on the mutually agreed level of coverage.

In the current Appendix I, procurement by Corporation for Advanced Transport and Technology is subject to Note 4(e), whereas in the proposed new Appendix I all procurement by Japan Railway Construction, Transport and Technology Agency would be subject to Note 4(a), 4(b) and 4(e). This implies that procurement relating to the activities that were in the past carried by the Corporation for Advanced Transport and Technology would be made subject to two new restrictions, i.e. those of Note 4(a) and 4(b).

3. Please explain the reason for applying Notes 4(a) and 4(b) to procurement by Japan Railway Construction, Transport and Technology Agency relating to the activities that used to be carried out by Corporation for Advanced Transport and Technology.
4. Please explain the effect of these new restrictions on the mutually agreed level of coverage.

GPA/W/273

After further analysis of this notification, the EC withdraws its objection, based upon the statement of Japan that this modification does not alter the level of mutually agreed coverage provided in the Agreement.

GPA/W/274

The EC does not question the deletion of Japan Consumers Information Center. In respect of the other seven entities (Water Resource Development Public Corporation, Japan Green Resources Corporation, Japan Science and Technology Corporation, RIKEN (The Institute of Physical and Chemical Research), National Stadium and School Health Center of Japan, Association for Welfare of the Mentally and Physically Handicapped and National Agriculture Research Organization) the EC would appreciate responses to the following questions:

5. Please indicate for each of these entities which activities are continued and which activities are discontinued. Will some of the functions of these entities be taken over by entities not listed in the notification, and if so, by which entities?
6. Please explain the effect of the proposed modifications on the mutually agreed level of coverage.

GPA/W/275

The EC understands that part of the activities of the National Aerospace Laboratory of Japan have been assigned to another public entity, Japan Aerospace Exploration Agency, which is not listed in Appendix I. In this respect, the EC would appreciate Japan's answer to the following questions.

7. Please confirm whether it is correct that activities of the National Aerospace Laboratory of Japan have been assigned to Japan Aerospace Exploration Agency. Have all or only part of the activities been transferred? Will some of the functions of National Aerospace Laboratory of Japan be taken over by other entities than Japan Aerospace Exploration Agency. If so, please identify these entities.
8. Please explain the effect of the withdrawal of the National Aerospace Laboratory of Japan on the mutually agreed level of coverage.

GPA/W/276

9. Please indicate which activities of Social Welfare and Medical Service Corporation and Japan Institute of Labour are continued and which activities are discontinued. Will some of the functions of these entities be taken over by entities not listed in the notification, and if so, by which entities?

10. Please explain the effect of the proposed modifications on the mutually agreed level of coverage.

The EC reserves the right to ask additional questions and to seek additional information through informal consultations with the Government of Japan.

WORLD TRADE ORGANIZATION

GPA/W/285/Add.3
8 January 2004

(04-0063)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2004-2005

UNITED STATES

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2004-2005.

The information notified by the United States is reproduced below.

In pursuance of the agreed procedures (GPA/1, Annex 3), the United States notifies the Committee on Government Procurement of the US thresholds for the period 2004-2005. These thresholds are effective via a Federal Register notice published 19 December 2003 (68 Fed. Reg. 70861).

ANNEX 1

	Threshold Value (SDR)	Threshold Value in US Dollars
1. Goods and services	130,000	175,000
2. Construction services	5,000,000	6,725,000

ANNEX 2

	Threshold Value (SDR)	Threshold Value in US Dollars
1. Goods and services	355,000	477,000
2. Construction services	5,000,000	6,725,000

ANNEX 3

	Threshold Value (SDR)	Threshold Value in US Dollars
1. Goods and services (except entities identified in Annex 3 to which the threshold of US\$250,000 applies)	400,000	538,000
2. Construction services	5,000,000	6,725,000

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03-6531 	U	GPA/W/285/Add.2 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - Canada - Addendum Preview (HTML)	10/12/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
03-6522 	D	GPA/W/287 Catalogue record	Committee on Government Procurement - Modifications to its Annex 1 of the Agreement on Government Procurement proposed by Canada in GPA/W/203 [...]nication from Hong Kong, China Preview (HTML)	10/12/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
03-6333 	U	GPA/W/285/Add.1 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - Hong Kong, China - Addendum Preview (HTML)	28/11/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
03-6339	D	GPA/W/286 Catalogue record	Committee on Government Procurement - Responses to Questions from the European Communities (GPA/W/281)	28/11/2003	E	F	S

				Regarding the Notification from Korea (GPA/W/250) und [...]ion from the Republic of Korea Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	80 p. 359KB	80 p. 561KB	80 p. 555KB
03-6166	U	GPA/W/285 Catalogue record		Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - Singapore Preview (HTML)	18/11/2003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 35KB	2 p. 34KB	2 p. 32KB
03-6088	U	GPA/W/284 Catalogue record		Committee on Government Procurement - Proposed Modifications to Appendices II, III and IV of the Republic of Korea - Notification from the Republic of Korea[...] Article XXIV:6(a) of the GPA Preview (HTML)	13/11/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	20 p. 100KB	20 p. 99KB	20 p. 100KB
03-6038	D	GPA/W/283 Catalogue record		Committee on Government Procurement - Korea's Proposed Withdrawal of Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co., Ltd (GPA/W/...)ication from the United States Preview (HTML)	11/11/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 30KB	1 p. 42KB	1 p. 26KB
03-5810	D	GPA/W/229/Corr.1 Catalogue record		Committee on Government Procurement - Communication from Canada - Responses from Canada to Questions from Hong Kong, China (GPA/W/218) Regarding Proposed Mo [...]ix I (GPA/W/203) - Corrigendum Preview (HTML)	31/10/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 31KB	1 p. 26KB	1 p. 26KB
03-5753	D	GPA/W/277/Corr.1 Catalogue record		Committee on Government Procurement - Modifications to Appendix I of the Agreement on Government Procurement Relating to Japan Post Proposed by Japan in GPA[...]pean Communities - Corrigendum Preview (HTML)	29/10/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 31KB	1 p. 31KB	1 p. 31KB
03-5632	D	GPA/W/281 Catalogue record		Committee on Government Procurement - Questions to the Republic of Korea Relating to the Proposed Withdrawal of Korea Tobacco & Ginseng Corporation and Daeh[...] from the European Communities Preview (HTML)	24/10/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 35KB	2 p. 31KB	2 p. 30KB
03-5443	D	GPA/W/277 Catalogue record		Committee on Government Procurement - Modifications to Appendix I of the Agreement on Government Procurement Relating to Japan Post Proposed by Japan in GPA[...]on from the European Community Preview (HTML)	14/10/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 27KB	1 p. 26KB	1 p. 27KB
03-5024	D	GPA/W/273 Catalogue record		Committee on Government Procurement - Proposed Modification to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA Preview (HTML)	23/09/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12 p. 97KB	12 p. 110KB	12 p. 97KB
03-5029	D	GPA/W/274 Catalogue record		Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA Preview (HTML)	23/09/2003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13 p. 105KB	13 p. 108KB	3 p. 33KB
03-3993	D	GPA/W/270		Committee on Government Procurement - Responses to	28/07/2003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			

		Catalogue record	questions from the United States Relating to Korea Tobacco & Ginseng Corporation and Daehan Printing and [...] Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	54 p. 240KB	54 p. 262KB	55 p. 241KB
03-3614	D	GPA/W/269 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6 (a) Preview (HTML)	07/07/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 p. 59KB	6 p. 64KB	6 p. 45KB
03-3450	D	GPA/W/268 Catalogue record	Committee on Government Procurement - Modification to Appendix I of Switzerland - Notification from Switzerland under Article XXIV:6(a) of the GPA Preview (HTML)	30/06/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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03-3066	D	GPA/W/266 Catalogue record	Committee on Government Procurement - Responses to Questions from the United States Relating to Korea Telecom (KT) - Communication from the Republic of Korea Preview (HTML)	13/06/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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03-2504	D	GPA/W/265 Catalogue record	Committee on Government Procurement - Notifications from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/252, GPA/W/253, GPA/W/[...]) Preview (HTML)	12/05/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 25KB	1 p. 26KB	1 p. 26KB
03-2304	D	GPA/W/264 Catalogue record	Committee on Government Procurement - Questions to the Republic of Korea Relating to the Proposed Withdrawal of Korea Tobacco & Ginseng Corporation and Daeh[...] Preview (HTML)	30/04/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 29KB	2 p. 29KB	2 p. 29KB
03-1866	D	GPA/W/262 Catalogue record	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/255) - Communication fr[...] Preview (HTML)	04/04/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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03-1751	D	GPA/W/259 Catalogue record	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/252) - Communication fr[...] Preview (HTML)	27/03/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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03-1748	D	GPA/W/260 Catalogue record	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/253) - Communication fr[...] Preview (HTML)	27/03/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 27KB	1 p. 27KB	1 p. 26KB
03-1750	D	GPA/W/261 Catalogue record	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/254) - Communication fr[...] Preview (HTML)	27/03/2003	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 27KB	1 p. 26KB	1 p. 26KB

 03-1597	D	GPA/W/258 Catalogue record	Committee on Government Procurement - Notification from the Republic of Korea under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/250) - [...]. Notification from the United States Preview (HTML)	19/03/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 26KB	1 p. 28KB	1 p. 27KB
 03-1564	D	GPA/W/257 Catalogue record	Committee on Government Procurement - Notification from the Republic of Korea under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/250) - [...]. Notification from the European Community Preview (HTML)	17/03/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 26KB	1 p. 28KB	1 p. 27KB
 03-1280	D	GPA/W/256 Catalogue record	Committee on Government Procurement - Proposed Modification to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6 (a) Preview (HTML)	05/03/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	5 p. 61KB	5 p. 53KB	6 p. 83KB
 03-1254	D	GPA/W/255 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA Preview (HTML)	04/03/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	12 p. 83KB	12 p. 82KB	12 p. 82KB
 03-1150	D	GPA/W/252 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA Preview (HTML)	25/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	13 p. 109KB	13 p. 118KB	13 p. 118KB
 03-1152	D	GPA/W/253 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA Preview (HTML)	25/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	13 p. 105KB	13 p. 115KB	13 p. 122KB
 03-1151	D	GPA/W/254 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA Preview (HTML)	25/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	13 p. 109KB	13 p. 99KB	13 p. 94KB
 03-1008	U	GPA/W/251 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2003 - 2004 - Republic of Korea Preview (HTML)	18/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 32KB	1 p. 28KB	1 p. 29KB
 03-0988	D	GPA/W/250 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I of the Republic of Korea - Notification from the Republic of Korea under Article XXIV:6 of the GPA Preview (HTML)	17/02/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	10 p. 61KB	10 p. 56KB	10 p. 56KB
 03-0151	D	GPA/W/236 Catalogue record	Committee on Government Procurement - Switzerland's Notification under Article XXIV:6(a) (GPA/W/225) - Communication from Hong Kong, China Preview (HTML)	13/01/2003	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 26KB	1 p. 26KB	1 p. 26KB

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3 3 KB	03-6522	GPA/W/287	Committee on Government Procurement - Modifications to its Annex 1 of Appendix I of the Agreement on Government Procurement proposed by Canada in GPA/W/203 - Communication from Hong Kong, China	10/12/2003	1	D	T/PLURI/GPA/W287.doc
4 6 KB	03-6333	GPA/W/285/Add.1	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - Hong Kong, China - Addendum	28/11/2003	2	U	T/PLURI/GPA/W285A1.doc
5 235 KB	03-6339	GPA/W/286	Committee on Government Procurement - Responses to Questions from the European Communities (GPA/W/281) Regarding the Notification from Korea (GPA/W/250) under Article XXIV:6 - Communication from the Republic of Korea	28/11/2003	80	D	T/PLURI/GPA/W286.doc
6 5 KB	03-6166	GPA/W/285	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2004 - 2005 - Singapore	18/11/2003	2	U	T/PLURI/GPA/W285.doc
7 27 KB	03-6088	GPA/W/284	Committee on Government Procurement - Proposed Modifications to Appendices II, III and IV of the Republic of Korea - Notification from the Republic of Korea under Article XXIV:6(a) of the GPA	13/11/2003	20	U	T/PLURI/GPA/W284.doc
8 4 KB	03-6038	GPA/W/283	Committee on Government Procurement - Korea's Proposed Withdrawal of Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co., Ltd (GPA/W/250) - Communication from the United States	11/11/2003	1	D	T/PLURI/GPA/W283.doc
9 4 KB	03-5810	GPA/W/229/Corr.1	Committee on Government Procurement - Communication from Canada - Responses from Canada to Questions from Hong Kong, China (GPA/W/218) Regarding Proposed Modifications to Canada's Annex 1 of Appendix I (GPA/W/203) - Corrigendum	31/10/2003	1	D	T/PLURI/GPA/W229C1.doc
10 4 KB	03-5753	GPA/W/277/Corr.1	Committee on Government Procurement - Modifications to Appendix I of the	29/10/2003	1	D	T/PLURI/GPA/W277C1.doc

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11 7 KB	03-5632	GPA/W/281	Committee on Government Procurement - Questions to the Republic of Korea Relating to the Proposed Withdrawal of Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd - Communication/.../ from the European Communities	24/10/2003	2	D	T/PLURI/GPA/W281.doc
12 4 KB	03-5443	GPA/W/277	Committee on Government Procurement - Modifications to Appendix I of the Agreement on Government Procurement Relating to Japan Post Proposed by Japan in GPA/W/255, Dated 4 March 2003 - Communication from the European Community	14/10/2003	1	D	T/PLURI/GPA/W277.doc
13 41 KB	03-5024	GPA/W/273	Committee on Government Procurement - Proposed Modification to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA	23/09/2003	12	D	T/PLURI/GPA/W273.doc
14 43 KB	03-5029	GPA/W/274	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA	23/09/2003	13	D	T/PLURI/GPA/W274.doc
15 159 KB	03-3993	GPA/W/270	Committee on Government Procurement - Responses to questions from the United States Relating to Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd - Communication from the Republic of Korea	28/07/2003	54	D	T/PLURI/GPA/W270.doc
16 14 KB	03-3614	GPA/W/269	Committee on Government Procurement - Proposed Modifications to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	07/07/2003	6	D	T/PLURI/GPA/W269.doc
17 18 KB	03-3450	GPA/W/268	Committee on Government Procurement - Modification to Appendix I of Switzerland - Notification from Switzerland under Article XXIV:6(a) of the GPA	30/06/2003	7	D	T/PLURI/GPA/W268.doc
18 54 KB	03-3066	GPA/W/266	Committee on Government Procurement - Responses to Questions from the United States Relating to Korea Telecom (KT) - Communication from the Republic of Korea	13/06/2003	21	D	T/PLURI/GPA/W266.doc
19 4 KB	03-2504	GPA/W/265	Committee on Government Procurement - Notifications from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/252, GPA/W/253, GPA/W/254) - Communication from the European Community	12/05/2003	1	D	T/PLURI/GPA/W265.doc
20	03-2304	GPA/W/264	Committee on Government Procurement -	30/04/2003	2	D	T/PLURI/GPA/W264.doc

6 KB			Questions to the Republic of Korea Relating to the Proposed Withdrawal of Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd - Communication from the United States				
21 4 KB	03-1866	GPA/W/262	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/255) - Communication from the European Community	04/04/2003	1	D	T/PLURI/GPA/W262.doc
22 4 KB	03-1751	GPA/W/259	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/252) - Communication from the European Community	27/03/2003	1	D	T/PLURI/GPA/W259.doc
23 4 KB	03-1748	GPA/W/260	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/253) - Communication from the European Community	27/03/2003	1	D	T/PLURI/GPA/W260.doc
24 4 KB	03-1750	GPA/W/261	Committee on Government Procurement - Notification from Japan under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/254) - Communication from the European Community	27/03/2003	1	D	T/PLURI/GPA/W261.doc
25 5 KB	03-1597	GPA/W/258	Committee on Government Procurement - Notification from the Republic of Korea under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/250) - Communication from the United States	19/03/2003	1	D	T/PLURI/GPA/W258.doc
26 4 KB	03-1564	GPA/W/257	Committee on Government Procurement - Notification from the Republic of Korea under Article XXIV:6 of the Agreement on Government Procurement (GPA/W/250) - Communication from the European Community	17/03/2003	1	D	T/PLURI/GPA/W257.doc
27 12 KB	03-1280	GPA/W/256	Committee on Government Procurement - Proposed Modification to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	05/03/2003	5	D	T/PLURI/GPA/W256.doc
28 27 KB	03-1254	GPA/W/255	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA	04/03/2003	12	D	T/PLURI/GPA/W255.doc
29 43 KB	03-1150	GPA/W/252	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA	25/02/2003	13	D	T/PLURI/GPA/W252.doc

30 42 KB	03-1152	GPA/W/253	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA	25/02/2003	13	D	T/PLURI/GPA/W253.doc
31 43 KB	03-1151	GPA/W/254	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) of the GPA	25/02/2003	13	D	T/PLURI/GPA/W254.doc
32 4 KB	03-1008	GPA/W/251	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2003 - 2004 - Republic of Korea	18/02/2003	1	U	T/PLURI/GPA/W251.doc
33 20 KB	03-0988	GPA/W/250	Committee on Government Procurement - Proposed Modifications to Appendix I of the Republic of Korea - Notification from the Republic of Korea under Article XXIV:6 of the GPA	17/02/2003	10	D	T/PLURI/GPA/W250.doc
34 4 KB	03-0151	GPA/W/236	Committee on Government Procurement - Switzerland's Notification under Article XXIV:6(a) (GPA/W/225) - Communication from Hong Kong, China	13/01/2003	1	D	T/PLURI/GPA/W236.doc
((@meta_Symbol GPA/W/*) and (@Doc_Date >= 2003/01/01 00:00:00) and (@Doc_Date <= 2003/12/31 23:59:59)) DOC_DATE [d], meta_Ordered_SYMBOL, meta_split_part[A], meta_serial_num							
Result of the search: 102 (for 34 distinct downloaded document(s))							
In 'File' column, the first letter indicates the language (T = English, U = French, V = Spanish)							

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1. In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on 8 October 2002 (GPA/72), the following documents circulated as restricted prior to that Decision are proposed for derestriction on 23 January 2004.

GPA/W/-series

GPA/W/12/Add.8
GPA/W/29
GPA/W/35/Rev.1
GPA/W/36
GPA/W/51, GPA/W/51/Add.1, GPA/W/51/Add.2
GPA/W/52
GPA/W/73, GPA/W/73/Rev.1, GPA/W/73/Rev.2
GPA/W/101/Add.4 to 9
GPA/W/106, GPA/W/106/Corr.1
GPA/W/109, GPA/W/109/Rev.1, GPA/W/109/Rev.2
GPA/W/114
GPA/W/140
GPA/W/142
GPA/W/143
GPA/W/147
GPA/W/148
GPA/W/150
GPA/W/154
GPA/W/157
GPA/W/203

2. The lists of documents circulated prior to the said Decision and which have been previously derestricted are contained in documents GPA/24, GPA/26, GPA/31, GPA/45, GPA/64 and GPA/74.

**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED
IN NATIONAL CURRENCIES FOR 2004-2005**

CANADA

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2004-2005.

The information notified by Canada is reproduced below.

Pursuant to the agreed procedures (GPA/1, Annex 3), Canada submits its notification of threshold figures in the national currency for the period 1 January 2004 to 31 December 2005 for Annex 1 of Appendix I of the Agreement on Government Procurement. This information was also published on 3 December 2003 in Contracting Policy Notice 2003-6 on the Treasury Board Canada Secretariat website at <http://www.tbs-sct.gc.ca/>.

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in Canadian Dollars
Goods	130,000	261,300
Services	130,000	261,300
Construction	5,000,000	10,000,000

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/287

10 December 2003

(03-6522)

Committee on Government Procurement

Original: English

MODIFICATIONS TO ITS ANNEX 1 OF APPENDIX I OF THE AGREEMENT ON GOVERNMENT PROCUREMENT PROPOSED BY CANADA IN GPA/W/203

Communication from Hong Kong, China

The following communication, dated 9 December 2003, is being circulated at the request of the Delegation of Hong Kong, China.

Based upon Canada's clarifications in documents GPA/W/229 and GPA/W/229/Corr.1, Hong Kong, China hereby withdraws its reservations (GPA/W/218) on Canada's proposed modifications to Annex 1 of Appendix I as outlined in document GPA/W/203.

**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED
IN NATIONAL CURRENCIES FOR 2004-2005**

HONG KONG, CHINA

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2004-2005.

The information notified by Hong Kong, China is reproduced below.

1. Calculation of threshold figures in national currency

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in Hong Kong Dollars
1. Goods and services other than construction services	130,000	1,351,000
2. Construction services	5,000,000	51,951,000

Annex 3 Entities	Threshold Value (SDR)	Threshold Value in Hong Kong Dollars
1. Goods and services other than construction services	400,000	4,156,000
2. Construction services	5,000,000	51,951,000

2. Method of calculation

The calculation of national threshold is based on the monthly average exchange rate of SDR to Hong Kong Dollars (HKD) over 24 months from November 2001 to October 2003.

Period (Month/Year)	Average HKD Equivalent of SDR	No. of Days	HKD Equivalent
November 2001	9.89266	30	296.77980
December 2001	9.84739	31	305.26909
January 2002	9.76918	31	302.84458
February 2002	9.70819	28	271.82932
March 2002	9.74945	31	302.23295
April 2002	9.80108	30	294.03240
May 2002	9.96041	31	308.77271
June 2002	10.14424	30	304.32720
July 2002	10.37548	31	321.63988
August 2002	10.30638	31	319.49778
September 2002	10.30778	30	309.23340
October 2002	10.27635	31	318.56685
November 2002	10.38125	30	311.43750
December 2002	10.44987	31	323.94597
January 2003	10.64860	31	330.10660
February 2003	10.68814	28	299.26792
March 2003	10.68388	31	331.20028
April 2003	10.67753	30	320.32590
May 2003	10.96336	31	339.86416
June 2003	11.03284	30	330.98520
July 2003	10.90418	31	338.02958
August 2003	10.80000	31	334.80000
September 2003	10.87090	30	326.12700
October 2003	11.08790	31	343.72490
TOTAL		730	7,584.84097

HKD equivalent of SDR for the 24-month period preceding November 2003:

$$7,584.84097 \div 730 = 10.39019311$$

$$\text{that is, 1 SDR} = \text{HKD } 10.39019$$

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/286

28 November 2003

(03-6339)

Committee on Government Procurement

Original: English

**RESPONSES TO QUESTIONS FROM THE EUROPEAN COMMUNITIES (GPA/W/281)
REGARDING THE NOTIFICATION FROM KOREA (GPA/W/250)
UNDER ARTICLE XXIV:6**

Communication from the Republic of Korea

The following communication, dated 24 November 2003, is being circulated at the request of the Delegation of the Republic of Korea.

Please find below Korea's responses to questions from the European Communities (GPA/W/281) regarding Korea's notifications to the Committee on Government Procurement on the withdrawal of Korea Tobacco & Ginseng Corporation (KT&G) and Daehan Printing and Publishing Co. Ltd. (Daehan) from Annex 3 of Appendix I of the Agreement on Government Procurement (GPA) (GPA/W/250).

KT&G

1. *Please indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, de jure or de facto, influence the appointment of the directors of KT&G.*

The Government of Korea does not, *de jure* or *de facto*, influence the appointment of the directors of KT&G.

As the Government of Korea already mentioned in the Notification (GPA/W/250), the Government of Korea disposed its entire stocks of the Korea Tobacco & Ginseng Cooperation (hereinafter referred to as "KT&G") in October 2002, and since then KT&G has been a private company. The Act on Corporate Governance Improvement and Privatization of Government Invested Enterprise (hereinafter referred to as "Privatization Act") which is attached to the Notification (GPA/W/270) clearly indicates the legal status of KT&G. The Article 3 of the Privatization Act stipulates that the KT&G is no longer considered as a government invested institution. Accordingly, KT&G is now a private company subject to the Korean Commercial Law, and the Government of Korea does not have any means to control or influence the appointment of the directors of KT&G.

In addition, the Incorporation of KT&G (Attachment A) stipulates that the President and the executive directors of KT&G shall be appointed at the shareholders' meeting by shareholders with voting rights present at the meeting under the provision of Articles 20 and 26.

For reference, hereby attached is the Incorporation of KT&G (Attachment A).

2. *Please describe all financing, including grants, guarantees and loans, that KT&G may have obtained from the Government of Korea, other Korean public entities or publicly-owned companies.*

As mentioned above in the response to question 1, KT&G is a private company like any other private companies. Thus, KT&G does not receive any financial privileges from the Government of Korea, other Korean public entities or publicly-owned companies.

3. *Please indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, de jure or de facto, influence management decisions of KT&G.*

The Government of Korea and other public entities or publicly-owned companies do not, *de jure* or *de facto*, influence the management decisions in the KT&G. The Board of Directors resolves important matters in respect to the operations of KT&G and the President and the directors of KT&G manage the overall operations of the KT&G.

The above-mentioned facts are stipulated in the Articles 28 and 34 of the Incorporation of KT&G (Attachment A).

4. *Please describe the main features of the laws, regulations and measures that apply specifically to tobacco manufacturing companies.*

To ensure the sound development of the tobacco industry, the Tobacco Business Act and its Presidential Decree apply specially to tobacco manufacturing companies, including KT&G, Phillip Morris (hereinafter referred to as "PM") and British American Tobacco (hereinafter referred to as "BAT"). They prescribe matters concerning the production and distribution of tobacco such as licensing, disqualification of license, registration and some penal and fine provisions.

For reference, hereby attached is the Tobacco Business Act (Attachment B) and its Presidential Decree (Attachment C).

5. *Please provide the full text of Article 25 of the Tobacco Business Act and all measures giving effect to this provision, and explain what kind of assistance could be required. Has this provision ever been used, and if so, please describe how and under which circumstances?*

Article 25 of the Tobacco Business Act prescribes the obligation of the tobacco manufacturer. Articles 25 through 25-4 of the Tobacco Business Act prescribe "Indication of Warning Words and Restriction on Advertisement on Tobacco (Article 25)", "Indication of Tobacco Ingredients (Article 25-2)", "Participation of Manufacturer, etc. in Public Activities (Article 25-3)", "Prohibition of Money Providing, etc. for Promotion of Tobacco Sales(Article 25-4)".

Regarding assistance requirement for tobacco manufacturers, which is stipulated in section 3 of Article 25 (Participation of Manufacturers in Public Activities) in the Tobacco Business Act, a tobacco manufacturer is required to contribute 10 won per every 20 pieces of tobacco. The provision of contribution is in effect since 1 January 2002. In the early days of enforcement, only KT&G was subject to the Act. However, BAT and PM are also subject to the provision for their tobacco products manufactured in Korea since November 2002 and December 2002 respectively upon their establishment in Korea.

The Korean Government has successfully established the "Tobacco Production Stability Fund" based on the contribution from tobacco manufacturers for the purpose of assisting tobacco-producing farms to create a self-supporting agricultural sector.

The following data are forecasts on the receipts from the contributions made by KT&G, BAT and PM and the expected profits in the Tobacco Production Stability Fund.

CONTRIBUTION RECEIPTS

(Unit: 100 million won)

	'02	'03.9	Total
KT&G	336.6	258.6	595.2
BAT	1.3	12.1	13.4
PM	5.8	37.6	43.4
Total	343.7	308.3	652

EXPECTED PROFIT OF THE TOBACCO PRODUCTION STABILITY FUND

(Unit: 100 million won)

	2002	2003	2004	2005	2006	2007	2008
Founder's Contribution	0.1						
Manufacturers' Contribution	330	370	370	360	360	350	277
KT&G Contribution						1,100	
Interest Revenue	9	32	56	81	108	136	161
Subtotal	339	402	426	441	468	1,586	438
Total	339	741	1,167	1,608	2,076	3,662	4,100

6. Please describe the conditions that apply for obtaining a licence to manufacture tobacco, the customs tariffs that apply to the import of cigarettes and leaf tobacco, and the market shares of all tobacco manufacturers.

The Minister of Finance and Economy may grant a licence for tobacco manufacturing business on the following conditions:

- (1) equity capital: to be in excess of 30 billion won;
- (2) facility standards: to install the facilities capable of manufacturing tobacco in excess of five billion pieces per annum (based on 16-hour operation daily), which are equipped with an assembly line from raw material processing to cigarette manufacturing and product packing: *Provided*, That the processing facilities of raw material may not be installed not later than the time when the tobacco of 10 billion pieces per annum is manufactured;
- (3) technical manpower: to have the specialized technology manpower of not less than five persons who have the career for not less than three years in the field of tobacco manufacturing and quality control; and
- (4) R&D of tobacco manufacturing technology and quality control for national health protection: to be equipped with the testing equipment capable of analysing the function and quality of products (temperature-resistant and humidity-resistant equipment, measuring apparatus of smoky ingredients, measuring apparatus of

air-dilution rate, measuring apparatus of suction-resistance), and to provide the standards and guidances of quality control.

The relevant provisions are Articles 11 through 11-4 of the Tobacco Business Act and the Articles 2 through 4 of the Presidential Decree of the Tobacco Business Act.

The customs tariffs that applies to the import of cigarettes is 30 per cent of the CIF price (the customs tariffs will be changed into 40 per cent since 1 July 2004).

The customs tariffs that applies to the import of leaf tobacco is 20 per cent of the CIF price.

BREAKDOWN OF THE TOBACCO MANUFACTURERS' MARKET SHARES

(January - September 2003)

	KT&G	BAT	PM	JT	Others	Total
Ratio(%)	76.8	12.8	6.4	3.9	0.1	100

Daehan

7. *Please indicate if the Government of Korea, other Korean public agencies or publicly-owned companies own or used to own shares in Daehan. If yes, please provide details on these shareholdings, including the number of these shares, voting rights attached to these shares, and indicate when such shares were sold to private parties.*

No. The Government of Korea, other Korean public entities or publicly-owned companies have never owned shares of Daehan Printing and Publishing Co. Ltd. (hereafter referred to as "Daehan"). Since its establishment in 1948, Daehan has been a pure private company. A specific list on Daehan's shareholding is as below:

BREAKDOWN OF DAEHAN'S SHAREHOLDERS

	Government of Korea	Public Entity	Domestic Shareholders	Foreign Shareholders	Total
Ratio (%)	0	0	100	0	100

A SPECIFIC LIST OF DOMESTIC SHAREHOLDERS

	Number of Shareholders	Number of Shares	Ratio(%)
Individual Shareholders	479	2,637,438	61.40
Private School Foundations	43	184,920	4.30
Scholarship Foundations	16	268,780	6.26
Private Corporations	2	1,204,322	28.04
Total	540	4,295,460	100.00

8. *Please indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, de jure or de facto, influence the appointment of the directors of Daehan.*

The Government of Korea, other Korean public entities or publicly-owned companies do not, *de jure* or *de facto*, influence the appointment of the directors of Daehan.

The majority of shareholders with voting right appoint the directors of Daehan at the shareholders' meeting.

For reference, the relevant provision of the Incorporation of Daehan is as below:

"Article 32 (The Appointment of Directors)

1. The Directors of Daehan shall be appointed at the shareholders' meeting.
2. The Director of Daehan shall be appointed by a majority vote of shareholders, provided that the vote is over a quarter of its issuing stocks.

Article 36 (The Duties of Directors)

1. The President of Daehan shall represent and control the overall operation of company.
2. The Vice-President and other executive directors shall assist the President.

Article 38 (Organization and Convocation of Board of Directors)

1. The Board of Directors shall be composed of the President and the directors, and it shall resolve important matters relating to the operations of the company.

2.3. <omitted>"

9. *Please describe all financing, including grants, guarantees and loans, that Daehan may have obtained from the Government of Korea, other Korean public entities or publicly-owned companies.*

None. Daehan hasn't received any financial preferential treatment from the Government of Korea, other Korean public entities or publicly-owned companies.

10. *Indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, de jure or de facto, influence management decisions of Daehan.*

No. The Government of Korea, other Korean public entities or publicly-owned companies do not, *de jure* or *de facto*, influence management decisions of Daehan.

11. *Please describe and provide a copy of the Special Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party for specific procurement (Presidential Decree 15187) and the Accounting Regulation for Government Invested Enterprises (Minister of Finance and Economy Decree 107). Please indicate if there are other instruments that apply to Daehan and not to other printing or publishing companies.*

The purpose of "the Special Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party" (hereinafter referred to as "Special Regulation") is to regulate

international tendering applicable to the WTO Agreement on Government Procurement which was signed in Marrakesh on 15 April 1994.

The Special Regulation covers matters, such as Application (Article 3), Principle of Contract (Article 4), Method of Contract (Article 7), Qualification of Participant (Article 9) and other relevant procurement and contract methods. Hereby attached is a copy of the Special Regulation (Attachment D).

The purpose of "the Accounting Regulation for Government Invested Enterprises" (hereinafter referred to as "Accounting Regulation") is to regulate matters concerning the accounting and contracting standards and procedures applicable to government invested institutions, and qualification of bidders to participate in the tender. Hereby attached is a copy of the Accounting Regulation (Attachment E).

As mentioned above in the Notification (GPA/W/250), Daehan is a private company. Thus, no particular privilege is applied to Daehan exclusively from the other printing or publishing companies.

12. Please indicate if the Regulations referred to in question 11 are applicable to National Textbook Ltd.

No. Special Regulation and Accounting Regulation are not applicable to National Textbook Ltd., because National textbook Ltd. was extinguished at its merger with Daehan in 1999.

13. Please explain why the purchase of National Textbook Ltd. – a company not included in Annex 3 of Appendix I - justifies the withdrawal of Daehan from this Annex 3.

National Textbook Ltd. had been listed in Annex 3 of the WTO Agreement on Government Procurement since its effective day, until before Daehan was listed in Annex 3. As described in question 12, the National Textbook Ltd. was merged with Daehan in 1999. As a result, the Government of Korea modified its list in Annex 3 of the GPA by replacing "the National Textbook Ltd." by "Daehan Printing and Publishing Co. Ltd." (GPA/W/128).

14. Please set out on which markets Daehan and its subsidiaries, if any, operate, and indicate to what extent these markets have been liberalized. Please describe the structure of the Korean market for textbooks.

The textbook markets in Korea are usually composed of three categories, covering elementary and secondary school curriculum.

The first category deals with the textbooks issued by the Ministry of Education and Human Resources Development (hereafter referred to as "the Ministry") that reserves their copyrights. The Deliberation Committee for Publication of Textbooks under the Ministry every three or five years grants the copyrights of these textbooks to private printing and publishing companies selected through a performance evaluation of their capabilities of printing, bookbinding and publication. Currently, the selected companies are Daehan, Hyangwoo Industry Co., Doo-San Co., Kyo-Hak Sa Co., Choong-Ang Education Co., Chi-Hak Sa Co., Chun-Jae Education Co.

The second category concerns the textbooks that are published by private printing and publishing companies with the authorization by the Ministry to use them for the curriculum. This system relates to the fact that the school curriculum in Korea has been revised periodically (about every five years). At each revision, the Ministry has granted the authorization to private printing and

publication companies to publish textbooks for the curriculum. As of 2003, there are 84 printing and publishing companies who publish officially authorized textbooks, including Daehan.

The third and last category is the market relating to the books the Ministry recognizes as curriculum textbooks by accepting an application by a relevant school to use them for its curriculum. The authority to select printing and publishing companies for the recognized textbooks is, for the most part, delegated to the metropolitan/provincial offices of education.

BREAKDOWN OF KOREAN TEXTBOOK MARKET

(Unit: million)

		2001		2002		2003	
		Volume	Ratio (%)	Volume	Ratio (%)	Volume	Ratio (%)
Gov't-issued textbook	Daehan	99,526	58.65	108,647	56.22	108,529	46.81
	HYANGWO	693	0.41	477	0.25	295	0.13
	Doo-San			5,764	2.96	7,294	3.15
	Kyo-Hak Sa			877	0.46	5,865	2.53
	Choong-Ang			1,988	1.03	3,238	1.40
	Chi-Hak Sa			1,212	0.63	2,806	1.21
	Chun-Jae			124	0.06	452	0.19
	Sub-Total	100,219		119,059	61.61	128,479	55.42
Gov't-authorized textbook	Korean Authorized Textbook Association	69,470	40.94	74,186	38.39	103,336	44.58
Total		169,689	100.00	193,245	100.00	231,815	100.00

Statistics of recognized textbooks not available.

ATTACHMENT A¹
INCORPORATION OF KT&G

KT&G Corporation

Articles of Incorporation

Amended: 1 April 1989
Amended: 26 February 1993
Amended: 22 March 1995
Amended: 1 October 1997
Amended: 9 October 1998
Amended: 17 November 1998
Amended: 2 September 1999
Amended: 29 March 2000
Amended: 27 December 2000
Amended: 23 March 2001
Amended: 15 March 2002
Amended: 27 December 2002
Amended: 14 March 2003

Chapter 1 General Provisions

Article 1 (Incorporation and Name)

The company shall be called "CHUSIKHOESA KT&G" and, in English, "KT&G CORPORATION" (hereinafter the "Company").

Article 2 (Purposes)

1. The object of the Company shall be to engage in the following businesses:
 - A. Tobacco manufacturing and sales;
 - B. Red ginseng and red ginseng products manufacturing and sales;
 - C. Beverages manufacturing and sales;
 - D. Pharmaceutical and non-pharmaceutical products manufacturing and sales (amended on 15 March 2002);
 - E. Tobacco business related materials manufacturing and sales;
 - F. Trading business (amended on 27 December 2002);
 - G. Distribution business (amended on 27 December 2002);
 - H. Broadcasting business (amended on 27 December 2002);
 - I. Real estate business (amended on 27 December 2002);
 - J. Leaf tobacco cultivation education;

¹ Attachments A to E are in English only.

- K. Activities concerning test, inspection or examination designated or entrusted by the Korean government; and
- L. Research activity relating to the above items(amended on 27 December 2002).

2. Furthermore, the Company may engage in investment, contribution, loan, support, or any other ancillary businesses necessary in engaging in the above listed businesses.

Article 3 (Location of Offices)

The Company shall have its head office in the city of "Taejeon" and, by the resolution of the Board of Directors, the Company may have branches, subsidiaries or representative offices within or without Korea.

Article 4 (Public Notices)

The Company shall make all its public notices in the Korea Daily News published in Seoul. However, if it is deemed impossible to give such notices through the Korea Daily News due to any *force majeure* event, such notices shall be given by publication in any other daily newspaper published in Seoul, Korea.

Chapter 2 Shares

Article 5 (Total Number of Shares to be Issued and Par Value)

The total number of shares that the Company may issue shall be 8 hundred million shares and the par value per share issued by the Company shall be KRW 5,000 per share.

Article 6 (Total Number of Shares to be Issued at the Time of Establishment)

The total number of shares that the Company may issue at the time of its establishment is 274,566,387 shares.

Article 7 (Types of Shares and Share Certificates)

The shares to be issued by the Company shall be common shares, preferred shares or convertible preferred shares, all of which are in non-bearer form. The share certificates of the Company shall be in eight denominations of one, five, ten, fifty, one hundred, five hundred, one thousand and ten thousand share(s) per certificate (amended on 15 March 2002).

Article 7-2 (Number and Characteristics of Preferred Shares)

1. Preferred shares to be issued by the Company shall be non-voting, and the number thereof shall not exceed the limit prescribed in the Korean laws.

2. Dividend ratio of the preferred shares in Paragraph 1 above shall not be less than nine per cent (9%) per annum of the par value of the shares as determined by the Board of Directors at the time of issuance.

3. Notwithstanding the provision of Paragraph 2 above, in case the possible amount of dividends that can be paid is less than the minimum aggregate amount of dividends for preferred shares, dividends may not be paid.

4. If dividends on preferred shares under Paragraph 2 above are not paid, the preferred shares shall have voting rights for a period starting from the general meeting of shareholders following the general meeting at which the resolution not to pay dividends on preferred shares is adopted to the end of the general meeting of shareholders at which a resolution to pay dividends for such preferred shares is adopted.

5. Duration of the preferred shares shall be ten (10) years beginning on the issuance date of such shares and the preferred shares shall be converted into common shares at the end of such period. Provided, however, that in case the dividends set forth in Paragraph 2 above are not paid during such period, such duration shall be extended until the distribution of such dividends is completed. With respect to dividends on the shares issued upon the conversion, Paragraph 4 of Article 8 of this Articles of Incorporation shall apply *mutatis mutandis*.

[This Article was newly established on 15 March 2002.]

Article 7-3 (Number and Characteristics of Convertible Preferred Shares)

1. Convertible preferred shares to be issued by the Company shall be non-voting, and the number thereof shall not exceed the limit prescribed in the Korean laws.

2. Dividend ratio of the convertible preferred shares shall not be less than nine per cent (9%) per annum of the par value of the shares as determined by the Board of Directors at the time of issuance. With respect to the dividends on the convertible preferred shares to be issued upon conversion, Paragraph 4 of Article 8 of this Articles of Incorporation shall apply *mutatis mutandis*.

3. Convertible preferred shares shall, upon request of holders of such convertible preferred shares, be converted to common shares at the conversion rate of one convertible preferred share to one common share. The conversion period for convertible preferred shares shall be three (3) years from the date immediately following the date of issuance thereof. Such period may be adjusted by a resolution of the Board of Directors before the issuance within the period; *provided, however*, that in the case of split or consolidation of common shares or other events of change in the shareholding ratio of convertible preferred shares (the shareholding ratio premised upon the conversion to common shares), the adjustment of the conversion ratio shall be determined at the time of issuance of convertible preferred shares by a resolution of the Board of Directors.

4. In case the conversion right on the convertible preferred shares is not exercised within the conversion period, such shares shall be converted into common shares on the date immediately following the final date of the conversion period; in this case, with respect to the dividends on the shares to be issued by the exercise of the conversion right, Paragraph 4 of Article 8 of this Articles of Incorporation shall apply *mutatis mutandis*.

5. Notwithstanding Paragraph 2 above, in case the possible amount of dividends that can be paid is less than the minimum amount of dividends for convertible preferred shares, dividends may not be paid.

6. The convertible preferred shares may have additional rights and characteristics to the extent that the relevant laws permit prior to issuance of such shares as determined by the Board of Directors.

7. In case of the convertible preferred shares, Paragraph 4 of Article 7-2 shall apply *mutatis mutandis*.

[This Article was newly established on 15 March 2002.]

Article 8 (Pre-emptive Right and Record Date for Dividends on New Shares)

1. The Company's shareholders shall have the pre-emptive right to subscribe for new shares in accordance with their respective shareholding ratio. In case the Company issues new shares by rights issue or bonus issue, then the new shares issued with respect to the preferred shares or the convertible preferred shares shall be common shares in the case of rights issue and shall be the shares of same class in the case of bonus issue. However, where a shareholder waives or loses his/her pre-emptive right, or where fractional shares result from allocation of new shares, the shares which have not been allocated and/or subscribed shall be disposed of in accordance with a resolution of the Board of Directors (amended on 15 March 2002).

2. Notwithstanding Paragraph 1 above, new shares may be allocated to persons other than existing shareholders of the Company by a resolution of the Board of Directors in the following cases:

- A. Issuance of new shares by public offering;
- B. Issuance of new shares to the members of the Employees Stock Holding Association (the "ESHA");
- C. Where the Company issues new shares to attain its managerial objectives including, without limitation, introduction of new technologies, improvement of corporate financial structure(amended on December 27, 2002); and
- D. Where prescribed by pertinent acts and regulations of Korea.

3. Where the Company issues new shares for value, the Company may make initial issuance of the new shares to the members of the ESHA as set forth in B of the above Paragraph within the limit prescribed in the Securities and Exchange Act (the "SEA").

4. Where the Company issues new shares by right issue, bonus issue or stock dividend, such new shares shall be regarded as having been issued at the end of the fiscal year immediately preceding the fiscal year during which the new shares are issued for the sake of dividends on the shares. Provided, however, that in case of interim dividends on the shares issued by right issue, bonus issue or stock dividend after the record date for interim dividends as set forth in Paragraph 3 of Article 43, of this Articles of Incorporation, the new shares shall be deemed to have been issued immediately after such record date (amended on 15 March 2002).

Article 9 (Stock Option)

1. Stock options for the shares of the Company within the limit of twenty per cent (20%) of the total number of shares issued by the Company may be awarded in accordance with the Enforcement Decree of the SEA, and pursuant to a special resolution of the shareholders' meeting to those officers and employees of the Company who have contributed or is capable of contributing to improve the management and the technical innovation of the Company, except for officers or employees in any of the following cases; provided, however, the Company may grant stock options by a resolution of the Board of Directors, to an extent not exceeding ten per cent (10%) of the total number of issued and outstanding shares in accordance with the Enforcement Decree of the SEA.

- A. The largest shareholder (as defined in Article 54-5, Paragraph 4, Subparagraph 2 of the SEA) of the Company and those who are specially related to the largest shareholder ("Specially related persons" is defined in Article 10-3, Paragraph 2 of the SEA. Hereinafter, referred to as "Specially Related Persons"). Provided, however, persons who became specially related persons only due to the fact that they were elected as officers of the Company shall be excluded.
 - B. Major shareholders of the Company (as defined in Article 188, Paragraph 1 of the SEA) and Specially related persons who are specially related to the major shareholders of the Company. Provided, however, persons who became specially related persons only due to the fact that they were elected as officers of the Company shall be excluded.
 - C. Persons who, upon exercising the stock option, would become the major shareholder.
2. Shares to be issued by the Company upon exercising the stock option shall be common shares, preferred shares or convertible preferred shares, all of which are in non-bearer form (and these shares shall be used to calculate the difference between the exercise price and the market price where the Company pays cash or deliver treasury shares for such difference) (amended on 15 March 2002).
 3. The number of officers and employees to whom the stock option will be awarded shall not exceed 99/100 of the total number of officers and employees in office of the Company, and the stock options to be granted to an officer or employee shall not exceed 10/100 of the total number of shares issued by the Company.
 4. The purchase price per share to be acquired by the exercise of the stock options shall not be less than the price prescribed in the SEA.
 5. The stock options may be exercised, during the period prescribed by a separate agreement, within seven (7) years from the date when two (2) years have elapsed from the date of the special resolution of the shareholders' meeting or the resolution of the Board of Director that granted such stock options.
 6. The officers and employees of the Company who are granted stock options must remain in the office or must have been employed for at least two years since the date of the special resolution of shareholders' meeting or the resolution of the Board of Directors prior to exercising the stock option awarded to them. However, where the officer or employee of the Company who are granted stock options dies or retires or resigns due to age limit or any other cause not attributable to him/her, the stock options may be exercised by such officer, employee or their heirs/heiresses during its exercise period.
 7. In the following cases, the stock options may be cancelled by a resolution of the Board of Directors:
 - A. where the officer or employee has retired or resigned from his/her office voluntarily after being awarded the stock options;
 - B. where the officer or employee has been released or dismissed from his/her office as a result of his/her wilful misconduct or gross negligence causing significant injury to the Company; and

C. where any other events for cancellation stipulated in the stock option agreement occurs.

Article 10 (Deleted on 27 December 2002)

Article 11 (Transfer Agent)

1. The Company shall have transfer agent.
2. The transfer agent, the place where its services are to be rendered and the scope of its duties must be decided by a resolution of the Board of Directors and must be publicly announced.
3. The shareholders registry or a duplicate thereof must be kept at the office where the transfer agent renders its services, and the activities of making entries in the shareholders registry, pledge registration and cancellation, trust indication and cancellation, issuance of share certificate, receipt of reports files, and all other administrative matters relating to the shares must be conducted by the transfer agent.
4. All procedures relating to the administrative matters stipulated in Paragraph 3 of this Article shall be performed according to the Regulation on Securities Transfer Agents, etc.

Article 12 (Reporting the Name, Address, Registered Seal and Signature of Shareholders)

1. Each shareholder and registered pledgee of the Company shall register his/her name, address and registered seal signature with the Company, and any changes thereof shall also be reported to the Company.
2. Shareholders and the registered pledgees residing in a foreign country must designate an address and an agent in Korea to receive reports and report to the Company thereof.
3. Paragraphs 1 and 2 shall apply even if a change in matters described therein.

Article 13 (Suspension of Alternation of Shareholders' Register and Record Date)

1. The Company shall suspend any entry into the shareholders' register with regard to shareholders' rights during the period starting from the day following the last day of the preceding fiscal period until the close date of the ordinary shareholders' meeting convened for such preceding fiscal period.
2. The Company shall recognize the shareholders registered on the shareholders' register as of the last day of each fiscal period as the shareholders who may exercise the shareholder's rights in the ordinary shareholders' meeting.
3. In case of an extraordinary shareholders' meeting being called or if needed for certain other cases, the Company may suspend any entry into the shareholders' register for a period not exceeding three months by a resolution of the Board of Directors or recognize the shareholders registered on the shareholders' register as of a fixed day determined by a resolution of the Board of Directors as the shareholders to exercise the shareholder rights. In addition, the Company may arrange both a suspension of any entry into the contents in the shareholders' register and designation of a record date if the Board of Directors finds that the two measures are necessary. The Company must publicly notify all such measures no less than two weeks prior to the intended date of the shareholders' meeting.

Chapter 3 Bonds

Article 14 (Issuance of Convertible Bonds)

1. By a resolution of the Board of Directors, the Company may issue convertible bonds to those other than the shareholders if such issuance of convertible bonds falls under any of the categories set forth below; provided, that the total face value of such convertible bonds does not exceed KRW 500 billion:

- A. where the issuance is in the form of a general public offering in accordance with the provisions of the Securities and Exchange Act ("SEA");
- B. where the Company issues convertible bonds to alliance companies for introduction of technology or other purposes;
- C. where the issuance is for the purpose of soliciting foreign investment necessary for the management of the Company in accordance with the Foreign Investment Promotion Act;
- D. where the Company issues convertible bonds to domestic or international financial institutions for urgent funding;
- E. where the issuance is performed overseas in accordance with Article 192 of the SEA; or
- F. where the Board of Directors reasonably decides that the issuance is necessary for achievement of management purpose of the Company.

2. The Board of Directors may issue the convertible bonds in Paragraph 1 above with the condition that only a portion of the bonds issued shall be attributed with conversion right.

3. The classes of shares issued upon conversion shall be common shares, preferred shares or convertible preferred shares, which shall be determined by the Board of Directors at the time of issuance of bonds. The conversion price shall be decided by the Board of Directors at the time of issuance of the relevant bonds, and must not be less than the face value of each share (amended on 15 March 2002).

4. The period during which request for conversion may be made shall be determined by the meeting of the Board of Directors within the period from the date when one (1) month has elapsed after issuance of the relevant convertible bonds to the date immediately preceding the redemption date for such bonds.

5. Distribution of dividend or interest on the shares issued upon conversion shall be made in accordance with Paragraph 4 of Article 8; *provided*, however, that with respect to the interim dividends on the shares to be issued upon conversion after the record date for such dividends as set forth in Paragraph 3 of Article 43, the shares shall be deemed to have been issued immediately after the record date for such interim dividends (amended on 15 March 2002).

Article 15 (Issuance of Bonds with Warrants)

1. By a resolution of the Board of Directors, the Company may issue bonds with warrants to those other than the shareholders if such issuance of bonds with warrants falls under any of the categories provided in Article 14, Paragraph (1); *provided* that the total face value of such warrant does not exceed KRW 500 billion.
2. The aggregate price of new shares, which may be subscribed for by the holders of warrants, shall be decided by the Board of Directors, and must not exceed the total face value of the bonds with warrants.
3. The classes of shares to be issued by exercising the warrant shall be common shares, preferred shares and convertible preferred shares, which shall be determined by the Board of Directors at the time of issuance of warrants. The issuing price shall be decided by the Board of Directors at the time of issuance of the relevant warrants, and shall be equal to the face value or an amount exceeding the face value.
4. The period during which request for the exercise of the warrant may be made shall be determined by the meeting of the Board of Directors within the period from the date when one (1) month has elapsed after issuance of the relevant warrants to the date immediately preceding the redemption date for such warrants.
5. Distribution of dividend or interest on the shares issued by exercising the warrant shall be done in accordance with Paragraph 4 of Article 8; *provided*, however, that with respect to the interim dividends on the shares to be issued by exercising the warrant after the record date for such dividends as set forth in Paragraph 3 of Article 43, the shares shall be deemed to have been issued immediately after the record date for such interim dividends (amended on 15 March 2002).

Article 16 (Applicable Provisions regarding the Issuance of Bonds)

Articles 11 through 13 shall apply *mutatis mutandis* to the issuance of bonds.

Chapter 4 Shareholders Meeting

Article 17 (Convocation of Shareholders' Meeting)

1. Shareholders' meetings shall be of two categories, ordinary and extraordinary. The ordinary shareholders' meeting shall be convened within three months after the close of each fiscal year; the extraordinary shareholders' meeting may be convened at any time when deemed necessary by the Board of Directors or pursuant to any other relevant laws and regulations.
2. Resolutions of the shareholders' meeting shall be limited to the agenda stated in the meeting notice only.
3. The shareholders' meeting shall be held either at the place where the head office of the Company is located or in Seoul. However, the shareholders' meeting may be held at a nearby place as determined by a resolution of the Board of Directors when necessary.
4. The President shall convene the shareholders' meeting. Where the President is unable to convene due to an unavoidable reason, Paragraph 2 of Article 28, shall apply *mutatis mutandis*.

Article 18 (Notice and Public Notice of Convocation of Shareholders General Meeting)

1. In convening a shareholders' general meeting, the notice stating the time, date, place and purposes of the meeting shall be sent, in writing, to individual shareholders two weeks prior to the scheduled date of the meeting.
2. Notices of the meeting to the shareholders owning less than 1/100 of the total number of shares may be made by with two or more public notices in the Korean Daily News published in Seoul, or the Taejeon Times published in Taejeon.

Article 19 (Chairman of Shareholders' Meeting)

The President shall act as the Chairman at the shareholders' meetings. However, where the President is unable to do so due to an unavoidable reason, Paragraph 2 of Article 28, shall apply *mutatis mutandis*.

Article 20 (Resolution of Shareholders' Meeting)

1. Unless otherwise stipulated in the applicable laws and regulations, the resolution of the shareholder's meeting shall be adopted by the shareholders representing the majority of shareholders with voting right present at the meeting and holding no less than one fourth of the total number of shares issued.
2. Notwithstanding the provision of Article 385, Paragraph (1) of the Commercial Code, the dismissal of the directors shall be adopted by at least two third (2/3) votes of shareholders present at the meeting and such votes shall represent at least one half (1/2) of total number of issued and outstanding shares of the Company; provided, that the dismissal as set forth in Article 26, Paragraph (2) and Article 32-2, Paragraph (4) shall be adopted by a resolution pursuant to Article 434 of the Commercial Code.
3. In case of any amendment to the first sentence of Paragraph (2), notwithstanding Article 434 of the Commercial Code, such amendment shall be adopted by at least two third (2/3) votes of shareholders present at the meeting and such votes shall represent at least one half (1/2) of total number of issued and outstanding shares of the Company.
4. Each share shall be given one voting right.

Article 21 (Exercise of Voting Rights by Proxy)

1. Shareholders may cause their proxy holders to exercise their voting rights.
2. Prior to the shareholders' meeting, proxy holders in Paragraph 1 above must submit to the Company a proof of their proxy rights.

Article 22 (Chairman's Right to Maintain Order)

1. The Chairman may suspend or, cancel a persons' right to speak or order such person to be removed from the meeting if such person speaks or acts in such manner as to intentionally interrupt the proceedings or disturb the order of the shareholders' meeting.
2. The Chairman may restrict the allotted time and the number of opportunity allowed for each shareholder to speak if deemed necessary for the orderly proceeding of the shareholders' meeting.

[This Article was amended on 27 December 2002.]

Article 23 (Minutes of Shareholders' Meeting)

The proceedings and resolutions of the shareholders' meeting shall be recorded in the minutes and shall be signed by the Chairman and all officers of the Company present at the meeting, and must be kept in custody of the Company.

Article 24 (Shareholders' Committee)

1. The Company may have the Shareholders' Committee consisting not more than fifteen shareholders' representatives for the purpose of effective operation of the Shareholders' Meeting.
2. The following persons shall be the members of the Shareholders' Committee, and the institutional shareholders shall not be more than five members. If two or more members are included in the scope of the specially related persons, the next specially related person in order cannot be the member of the Shareholders' Committee.
 - A. the largest fourteen shareholders as of the beginning date of the suspension of alteration of the shareholders' register or the record date;
 - B. one representative of the ESHA.
3. Any person in competition with the Company or the specially related persons of such person cannot be the member of the Shareholders' Committee.
4. The Shareholders' Committee shall perform the following functions:
 - A. to recommend the outside director;
 - B. to submit the opinion regarding the agenda of the General Meeting of Shareholders, which was presented to the Shareholders' Committee for its review by the Board of Directors; and
 - C. to provide mutual cooperation among the members of the Shareholders' Committee for the stabilization of management right of the Company.
5. After the resolution of the Board of Directors regarding the agenda of the General Meeting of Shareholders, the President shall convene the meeting of the Shareholders' Committee prior to the date set for the Shareholders' Meeting.
6. After the composition of the Shareholders' Committee, the chairman of the Shareholders' Committee shall be appointed from among its members.
7. The matters referred to in Subparagraph 2 of Paragraph 4 shall be adopted by the presence of a majority of all members and by the affirmative votes of a majority of the members present of the Committee. Each member shall have one vote regardless of the number of shares held by him.
8. The Company shall report to the Shareholders' Committee the matters deemed by the Board of Directors necessary to be reported from among those related to the interests of the shareholders.

Chapter 5 Directors and Board of Directors

Article 25 (Number of Directors)

The Company shall have one President and not more than fourteen directors. Provided that, the number of the executive directors, including the President, shall be less than six and 1/2 of the total number of directors (amended on 27 December 2002).

Article 26 (Appointment of President and Directors, etc)

1. The President shall be appointed at the Shareholders' Meeting among the persons recommended by the President Candidate Recommendation Committee according to Article 32 hereof (amended on 27 December 2002).

2. The executive directors shall be appointed among the persons recommended by the President with the consent of the Board of Directors at the Shareholders' Meeting. Upon occurrence of any of the events set forth below, the President may propose dismissal of an executive director to the Shareholders' Meeting with consent of the Board of Directors. The executive directors shall not participate in the resolution of the Board of Directors:

- A. where an executive director contracts a physical or mental disease which may make such executive director incapable of performance of his/her duties at least one (1) year; or
- B. where an executive director's achievement is severely unsatisfactory due to significant deficiency in his/her ability to perform duties.

3. Notwithstanding Paragraph 2 above, if the President Candidate Recommendation Committee recommends a candidate for president, such candidate shall recommend executive director candidates with the consent of the Board of Directors. In such case, the candidates recommended to become executive directors may not participate in the resolution of the Board of Director. Provided that, if the president candidate fails to be appointed as the President at the General Meeting of Shareholders, the president candidate's recommendation for executive director candidates shall be void.

4. Members of the Audit Committee who are not outside directors pursuant to Article 34-3 shall meet the requirements set forth in Paragraph 3 of Article 54-6 of the SEA. In case of appointing or dismissing, pursuant to Article 191-11 of the SEA, if the aggregate voting shares owned by the largest shareholder and its Specially Related Persons and other persons as prescribed by the Presidential Decree exceeds 3/100 of the total voting shares issued by the Company, the shareholders may not exercise voting rights for such shares in excess of the above percentage (amended on 27 December 2002).

5. Outside directors shall be recommended by the Outside Director Candidates Recommendation Committee after its examination of qualification of those recommended by the Outside Director Candidates Recommendation Committee, the shareholders who exercise the right under Article 191-14, Paragraph (1) of the SEA and the Shareholders' Committee, and shall be appointed at the General Meeting of Shareholders in accordance with Article 34-5 hereof.

Article 27 (Terms of Directors)

1. The term of the directors shall be determined at the General Meeting of Shareholders not exceeding three years and the term of a director who is newly appointed as a result of vacancy of an outside director shall be the remaining term of the predecessor; provided, however, that if the term of the directors expire after the last date of the last fiscal year during such term but prior to the close of the ordinary shareholders' meeting for the approval of the settlement of accounts for such last fiscal year, the term shall be extended until the end of the ordinary Shareholders' Meeting (amended on 27 December 2002).

2. (Deleted on 29 March 2000.)

Article 28 (Duties of the President and Executive Directors)

1. The President shall represent the Company and control the overall operations of the Company.

2. The directors shall assist the President. In case where the President is absent, the directors shall act for the President in the order stipulated in the Organization Regulation of the Company.

Article 29 (Deleted on 29 March 2000)

Article 30 (Remuneration for Directors)

1. The remuneration of executive directors including the President shall be determined by the Board of Directors within the scope set forth by a resolution of the Shareholders' Meeting. In such case, the President and the executive directors shall not participate in the resolution of the Board of Directors (amended on 27 December 2002).

2. (Deleted on 27 December 2002.)

3. The Company may compensate actual costs and expenses for outside directors by the resolution of the Board of Directors.

Article 31 (Retirement Allowances for Directors)

The retirement allowance for the President and executive directors shall be paid in accordance with the Directors Retirement Allowance Provisions provided by the resolution of the Shareholders' Meeting (amended on 27 December 2002).

Article 31-2 (Deleted on 27 December 2002)

Article 32 (President Candidate Recommendation Committee)

1. By a resolution of the Board of Directors, the Company shall have a President Candidate Recommendation Committee, a temporary committee of the Board of Directors, which is composed of not more than seven members in the following order. In such case, the President and the executive directors shall not participate in the resolution of the Board of Directors (amended on 27 December 2002):

A. No more than six outside directors selected by the Board of Directors;

- B. The incumbent President; provided, however, that where the incumbent President wishes to become a candidate for the president or where the President is not available for the committee temporarily, then the Board of Director only consisting of outside directors shall appoint one outside director as a candidate. Any one who is appointed as a member of the Committee may not become a candidate for the President;
 - C. (Deleted on 23 March 2001.)
2. The Chairman of the Committee shall be appointed by the resolution of the Committee.
 3. The President Candidate Recommendation Committee shall resolve all issues with the majority votes of the members present.
 4. The President Candidate Recommendation Committee shall be established by the resolution of the Board of Directors within sixty days prior to the expiration date of the President's term and shall be deemed dissolved upon the resolution of the Shareholders' Meeting to approve the candidate for the presidency recommended by the President Candidate Recommendation Committee. However, if a new President is appointed before the full term of the President expires due to dismissal or vacancy due to any other reason, the Recommendation Committee must be re-established within 30 days from the date of dismissal or vacancy.
 5. After identifying the candidates, the President Candidate Recommendation Committee shall consider the following factors as the examination standard for evaluating the presidential candidates in a meeting of the Board of Directors composed of outside directors and shall recommend the candidate to the General Meeting of Shareholders. Provided that, the Committee shall report the results of consideration to the Board of Directors prior to the recommendation to the General Meeting of Shareholders:
 - A. Factors such as experience and academic record, etc. that allow an objective examination on the knowledge of the candidate regarding business administration and economics economy;
 - B. Factors that allow for an objective examination of the individual's business experiences, such as past business achievements and the period length of the relevant experiences; and
 - C. Other factors that allow for an examination on the individual's qualification and capabilities as a CEO.
 6. The details regarding the operation, etc. of the President Candidate Recommendation Committee shall be determined by the resolution of the Board of Directors.

Article 32-2 (Contract with President)

1. The President Candidate Recommendation Committee shall consult with the person to be recommended as the candidate for president about terms and conditions of a contract on the management targets as determined by the Board of Directors, and may change the terms and conditions of such contract determined by the Board of Directors if deemed necessary in the course of such consultation; *provided that*, the President shall not participate in the resolution of the Board of Directors at which the management targets to the terms and conditions of the contract are determined.

2. The President Candidate Recommendation Committee shall recommend the candidate for president at the General Meeting of Shareholders pending the results of the consultations as provided under Paragraph 1 above.

3. In case that the candidate for president is appointed as the President at the General Meeting of Shareholders under Paragraph 2 above, the Chairman of the President Candidate Recommendation Committee in such capacity as the representative of the Company shall enter into a management agreement with the President.

4. The Board of Directors may evaluate the performance of the management agreement with the President under Paragraph 3 above or request an independent evaluation agency for such evaluation. If the Board of Directors deems the performance of the President to be unsatisfactory upon considering the results of the performance evaluation as compared to the management targets, the Board of Directors may suggest the dismissal of the President at the General Meeting of Shareholders. In such case, the President and the executive directors shall not participate in the resolution of the Board of Directors.

[This Article was newly established on 27 December 2002.]

Article 33 (Qualification of Outside Director)

Every outside director must be an independent expert or experienced person in the field of economics, business management, law, or relevant technology. The person falling under one of the following individual category may not become an outside director and shall lose his/her office as an outside director if he/she falls under one of the following category after becoming an outside director.

1. A person who falls under Subparagraphs 1 through 9 of Paragraph (4) of Article 54-5 of the SEA;
2. An individual or an employee or executive of a company who receives support from the Company, or a former employee or executive who have worked at such company within the past two years;
3. A government official (excluding educational officials - hereinafter the same) under the relevant laws or a person who has had been an official within last two years; and
4. (Deleted on 27 December 2002.)

Article 34 (Organization and Convocation of Board of Directors)

1. The Board of Directors shall be composed of the President and the directors, and it shall resolve important matters relating to the operations of the Company.

2. Notwithstanding Paragraph 1 above, the Board of Directors will be composed of directors, after excluding the President or the executive directors if this Articles of Incorporation prohibits the President or executive directors from participating in the resolution of the Board of Directors.

3. The President may convene the Board of Directors' meeting if any director requests such a meeting, and if the President is not present, Paragraph 2 of Article 28 hereof shall apply *mutatis mutandis*. Provided, that if the President refuses to convene the meeting of the Board of Directors without justifiable reason, another director may convene such meeting (amended on 27 December 2002).

4. When convening a Board of Directors' meeting, notice shall be given to the members of the Board of Directors three days prior to the meeting; provided, if where all the members of the Board of Directors agree, the procedure for convocation may be omitted.

Article 34-2 (Committee in the Board of Directors)

1. The Company shall establish an Audit Committee and Outside Director Candidate Recommendation Committee as internal committees of the Board of Directors, and if deemed necessary, the Company may establish any other committee by a resolution of the Board of Directors. Each Committee shall appoint their respective representative by a resolution thereof.

2. Details regarding the organization, authority, and operation of the internal committees of the Board of Directors shall be decided by the resolution of the Board of Directors.

Article 34-3 (Audit Committee)

1. The Audit Committee shall be composed of at least three directors, and no more than 2/3 of the members shall be outside directors.

2. The Audit Committee shall designate its representative by its resolution. The Audit Committee may designate several co-representatives.

Article 34-4 (Duty of the Audit Committee)

1. The Audit Committee shall audit the accounting matters and the operation of the Company.

2. After reviewing the agenda and documents to be submitted to the Shareholders' Meeting, the Audit Committee shall present to the Shareholders' Meeting its opinion as to whether such agenda and documents violate any relevant laws or this Articles of Incorporation, or include any other substantially unreasonable matters.

3. The Audit Committee may request for convocation of the extraordinary Shareholders' Meeting by submitting a letter stating the reasons and agenda for such meeting.

4. The Audit Committee may handle any other matters entrusted to it by the Board of Directors.

Article 34-5 (Outside Director Candidate Recommendation Committee)

1. The Outside Director Candidate Recommendation Committee shall be composed of no more than three members, more than one half of which shall be the outside directors.

2. The Outside Director Candidate Recommendation Committee shall perform the following duties:

- A. Examination of qualification and recommendation of the outside director candidates; and
- B. Other matters delegated by the Board of Directors.

Article 35 (Chairman of the Board of Directors)

1. The President shall be the Chairman of the Board of Directors. If the President is absent, Paragraph 2, Article 28 hereof shall apply *mutatis mutandis*.
2. In case where the President cannot participate in the resolution of the Board of Directors pursuant to this Articles of Incorporation, the Chairman of the Board of Directors shall be determined by the seniority of the outside directors.

Article 36 (Resolution of Board of Directors)

1. The Board of Directors shall be convened by the presence of a majority of the directors and the resolutions of the Board of Directors shall be adopted by a majority of votes of the members present of the Board of Directors. However, resolutions on dismissal of the President and the executive directors shall be adopted by affirmative votes of 2/3 of the outside directors.
2. The regulations on the Board of Directors shall apply to matters that are subject to review and resolution by the Board of Directors and matters in connection with operations of the Board of Directors.

Article 37 (Minutes of the Board of Directors)

With respect to the proceedings of meetings of the Board of Directors, the agenda for the meeting, course of the proceedings and the results thereof, and the person who opposed thereto and the reason of such opposition shall be recorded in the minutes to the Meeting of the Board of Directors which the Chairman and the directors present shall affix their names and seals or signatures (amended on 27 December 2002).

Article 38 (Managerial Officers)

1. The Company may have managerial officers for the purpose of efficient performance of the business of the Company.
2. The executive officers in Paragraph 1 shall be appointed by the President and the terms of such executive officers shall be no more than three years.
3. Remuneration and bonus for managerial officers shall be determined pursuant to the separate regulations established by the Board of Directors, and the retirement allowance for the executive officers shall be paid in accordance with the Executive Officers Retirement Allowance Provisions as adopted pursuant to the resolution of the Shareholders' Meeting.

(Deleted on 27 December 2002.)

[This Article was amended on 27 December 2002.]

Article 38-2 (In-house Advisors)

In order to obtain the advice for the material matters related to the business operation of the Company, the President may appoint as in-house advisors certain persons who were former Presidents, executive directors and managerial officers having sufficient experiences in the management of the Company or the persons who are necessary to establish the policy of the management of the Company.

[This Article was newly established on 27 December 2002.]

Article 39 (Management Committee)

1. The Company may have a Management Committee to review and resolve the matters entrusted to it there with by the Board of Directors.
2. (Deleted on 15 March 2002.)

Chapter 6 Accounting

Article 40 (Fiscal Year)

The fiscal year of the Company shall be from 1 January to 31 December of each year. The last day of the fiscal year shall be the financial settlement date.

Article 41 (Submission, Approval and Announcement of Financial Statements)

1. The President shall settle accounts at the end of each fiscal year and shall prepare the balance sheet, statement of profit and loss, statement of appropriation of retained earnings (hereinafter referred to as "Financial Statements"), the supporting statements and the business report. The President shall, after acquiring the approval of the Board of Directors on the above documents, submit such documents to the Audit Committee six weeks prior to the starting date of the ordinary Shareholders' Meeting.
2. The Audit Committee, after receipt of the documents set forth in Paragraph 1 above, shall prepare and submit an audit report within four weeks to the President.
3. The President shall submit the Financial Statements to an ordinary Shareholders' Meeting for approval and report the contents of the business report to the Shareholders' Meeting.
4. The President shall, immediately after the approval provided in Paragraph 3 above, notify to the public of the balance sheets and the independent auditor's opinion.
5. The President shall keep the Financial Statements, the business report and the audit report at it's the head office of the Company for five years and copies of each document at the branch offices of the Company three years commencing from date one week before the Shareholders' Meeting.

Article 41-2 (Public Notice of Management Information)

The Company shall publicly announce certain items necessary for the purpose of the transparency of the operation of the Company.

Article 42 (Appropriation of Earnings)

The Company shall dispose of the unappropriated retained earnings in the following order; provided, however, other items that the following may be disposed by a resolution of the Shareholders' General Meeting:

- A. Legal reserves (legal reserves under the Commercial Code);

- B. Other statutory reserves;
- C. Dividends
- D. Discretionary reserves;
- E. Other appropriation of retained earnings; and
- F. Unappropriated retained earnings to be carried forward to the subsequent year.

Article 43 (Dividends)

1. Dividends shall be paid in cash or in stocks.
2. In case the dividends are distributed in shares and the Company has issued several classes of shares, such distribution may be made through shares of different classes by a resolution of a Shareholders' Meeting (newly established on 15 March 2002).
3. Once a year, the Company may distribute interim dividends in cash with the record date set as 30 June by a resolution of the Board of Directors (newly established on 15 March 2002).
4. When distributing interim dividends, the same dividend ratio as that of the common shares of the Company shall be applied to the preferred shares set forth in Article 7-2 and the convertible preferred shares set forth in Article 7-3 (newly established on 15 March 2002).
5. Dividends in Paragraph 1 above shall be paid to the shareholders or the pledgees registered on the shareholders' register as of the end of each fiscal year; dividends in Paragraph 3 above shall be paid to the shareholders or the pledgees registered on the shareholders register of the Company as of the record date for mid-year dividends; provided, the interest on dividends shall not be paid (amended on 15 March 2002).

Article 43-2 (Redemption of Shares)

1. The Company may redeem the shares within the scope of profits attributable to the shareholders, by the resolution of the Board of Directors.
2. In order to redeem the shares pursuant to Paragraph 1, the Board of Directors shall adopt the following resolutions:
 - A. Types and the total number of shares to be redeemed;
 - B. The total amount of shares to be acquired for redemption; and
 - C. Acquisition period (the acquisition period shall be before the Ordinary General Meeting of Shareholders to be held first after the resolution of such redemption).
3. In case of acquisition of treasury shares for the purpose of redemption pursuant to Paragraph 1, the acquisition shall be made in accordance with the following criteria:
 - A. To be made in accordance with the method referred to in any of Subparagraphs of Paragraph 1 of Article 189-2 of the SEA. In case by the method referred to in the said Subparagraph 1, the acquisition period and method should be in compliance with the criteria set forth by the Enforcement Decree of the SEA.
 - B. The total amount of shares to be acquired for redemption shall not exceed the amount set forth by the Enforcement Decree of the SEA within the scope of profits

attributable to the shareholders as of the end of the relevant fiscal year pursuant to Paragraph 1 of Article 462 of the Commercial Code.

4. When the shares are redeemed pursuant to Paragraph 1, the matters referred to in each Subparagraph of Paragraph 2 and the purpose of redemption shall be reported to the Ordinary General Meeting of Shareholders to be held first after the resolution of such redemption.

Article 44 (Extinctive Prescription of the Claim for Dividend)

1. The claim for payment of dividends shall expire when it is not exercised for five years.
2. Dividends not paid until the completion of the extinctive prescription period provided in Paragraph 1 above shall belong to the Company.

ADDENDA (1 April 1989)

Article 1 Enforcement Date

This Articles of Incorporation shall be effective on the date of establishment of the Company.

Article 2 Interim Measure Concerning Government Investment

Any amount invested in the Korea Government Monopoly Corporation ("KGMC") by the Government before the execution of this Articles of Incorporation shall be deemed investment in the Company.

Article 3 Interim Measure Concerning Fiscal Year

The first fiscal year of the Company shall count in the fiscal year of the KGMC and shall end on the last day of the fiscal year of the Korean government.

Article 4 Interim Measure Concerning Budget

During the period of enforcement of this Articles of Incorporation, any budget, which has not been used by the KGMC during the fiscal year of 1989, shall be assigned to the Company's budget for the year 1989.

Article 5 Interim Measure Concerning Hiring Employees

1. The employees of the KGMC at the time of execution of this Articles of Incorporation shall become the employees of the Company.
2. The retirement age of the employees of the Company pursuant to Paragraph 1 above shall be determined in accordance with the rules for the retirement age of the KGMC. However, where the retirement age of the Company is greater than that of the KGMC, these rules shall not apply.

Article 6 Interim Measure Concerning Terms of the Executive Officers

The terms of the executive officers of the Company as of the execution of this Articles of Incorporation shall be calculated by adding the periods during which they have worked for KGMC in accordance with the previous rules.

Article 7 Expenses for Establishment

1. The expenses for the establishment of the Company shall not exceed KRW 150,000,000, and this amount shall be paid by KGMC.
2. The expenses in Paragraph 1 above shall include incorporation (establishment) registration fee, printing fee, other operational expenses, and expenses for the preparation of the operation of the Company including the initial cost of business.

Article 8 Names and Addresses of the Establishing Members

1. The names and addresses of the promoters of the Company are as follows.
2. The promoters, having created this Articles of Incorporation pursuant to Article 4 of the Addenda of the Korea Tobacco & Ginseng Corporation Act, hereby affix their signatures and seals.

(Promoters)

Address: 100-3 Banpo-2dong, Seocho-ku, Seoul
Name: Doo Pyo Hong

Address: Woosung Apt. #20-905, Chamsil-1dong, Songpa-ku, Seoul
Name: Jong Suk Park

Address: Samick Apt. #D-211, Yeoido-dong, Youngdeungpo-ku, Seoul
Name: Young Jeong Park

Address: 6-39 Hwasoo-dong, Mapo-ku, Seoul
Name: Soo Am Lee

Address: Shinbanpo 3 Apt #25-104, Banpo-1-1 dong, Seocho-ku, Seoul
Name: Yoon Mok Won

ADDENDUM (26 April 1993)

This Articles of Incorporation shall be effective from the date of the approval of the Minister of Finance and Economy.

ADDENDUM (22 March 1995)

This Articles of Incorporation shall be effective from the date of the approval of the Minister of Finance and Economy.

ADDENDA (1 October 1997)

Article 1 Enforcement Date

This Articles of Incorporation shall be effective as of 1 October 1997.

Article 2 Relationship with the Relevant Laws

The Special Act, the Korea Tobacco & Ginseng Corporation Abolition Act and the Commercial Code shall apply to matters not provided in this Articles of Incorporation.

Article 3 Exceptions for Restriction of Acquisition of Shares

Paragraph 1, Article 10 hereof shall not apply to a person holding shares of the Company in excess of the limitation at the time when this Articles of Incorporation became effective.

Article 4 Exception for Appointment of the First Non-Executive Directors

The first outside directors shall be appointed at the Shareholders' General Meeting by the recommendation of the temporary outside directors recommendation committee pursuant to Article 3 of the Addenda of the Special Act.

Article 5 Exceptions for Extension of the Terms of the First President and the Directors

Notwithstanding Paragraph 1, Article 27 hereof, the term of the President and the directors elected for the first time since the enforcement of this Articles of Incorporation shall be extended until the last date of the Shareholders' Meeting, which was convened for the first time after the expiration of their terms.

ADDENDUM (9 October 1998)

This Article of Incorporation shall be effective from the date of resolution by the Shareholders' Meeting.

ADDENDUM (17 November 1998)

This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting.

ADDENDUM (2 September 1999)

This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting.

ADDENDUM (29 March 2000)

1. (Enforcement Date) This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting. However, amended rules of Articles 25, 26 (excluding Paragraph 4), 27, 29, 30, 31, 34, 34-2(1) (Establishment of the Audit Committee), 34-3, 34-4, 37, and 41 shall come into force from the day following the expiration date of the terms of the auditors designated under the previous rules or from the day following the date when the auditors resigned for certain reasons.

2. (Interim Measures) Terms, duties, remunerations for the auditors designated pursuant to the previous articles shall be governed by the previous articles.

ADDENDUM (27 December 2000)

This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting.

ADDENDA (23 March 2001)

Article 1 Enforcement Date

This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting. However, amended rules of Articles 9 (1), (5) and (6) and 43-2 shall come into force from the time when the SEA (law no. 6176) is amended and becomes effective; amended rules of Article 26 (4) shall come into force from the date of the General Meeting of Shareholders to be held first after this amendment; and amended rules of Articles 26 (1) and (5), 32, 34 (2) and 34-2 (1) concerning the establishment of the Outside Director Candidate Recommendation Committee, and amended rules of Articles 34-5 and 35(2) shall come into force from the date when the Company is excluded from the companies subject on the provisions of the Law Regarding the Management Structure Enhancement and Privatization of Public Enterprises.

Article 2 Interim Measure Concerning Outside Directors

Outside directors herein shall be deemed the non-executive directors under the Law Regarding the Management Structure Enhancement and Privatization of Public Enterprises until the Company is excluded from the companies subject on the provisions of the same Law.

Article 3 Interim Measure Concerning Functions of Shareholders' Committee

The provisions of Article 24 (4) 1 of this Articles of Incorporation shall not apply if the Company is excluded from the companies subject on the provisions of the Law Regarding the Management Structure Enhancement and Privatization of Public Enterprises.

Article 4 Exceptions for Terms of the Executive Officers

The executive officers of the Company to be appointed at the 14th Ordinary Shareholders' Meeting shall be grouped by the 1st, 2nd and 3rd groups. Notwithstanding the provisions of Article 27(1), the term of the executive officers in the 1st group shall be up to the Ordinary General Meeting of Shareholders to be held first after their appointment, that for the 2nd group shall be up to the Ordinary General Meeting of Shareholders to be held second after their appointment, and that for the 3rd group shall be up to the Ordinary General Meeting of Shareholders to be held third after their appointment. The number of executive officers of each group should be properly adjusted so as that such numbers are equal.

Article 5 Interim Measure Concerning Appointment of the Outside Directors

If the outside directors shall be appointed or re-appointed pursuant to the amendment of Article 25, the number of outside officers to be appointed each year should be properly adjusted so as that the ends of terms of the outside directors are equally allotted through three years.

ADDENDUM (15 March 2002)

This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting.

ADDENDUM (27 December 2002)

This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting.

ADDENDUM (14 March 2003)

This Articles of Incorporation shall be effective from the date of resolution of the Shareholders' Meeting.

ATTACHMENT B
TOBACCO BUSINESS ACT

Act No. 4065, 31 December 1988
Amended by Act No. 4682, 31 December 1993
Act No. 5453, 13 December 1997
Act No. 5454, 13 December 1997
Act No. 6078, 31 December 1999
Act No. 6460, 7 April 2001
Act No. 6625, 26 January 2002

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to ensure the sound development of the tobacco industry and contribute to the national economy, by prescribing matters concerning the production and distribution, etc. of tobacco. *<Amended by Act No. 6460, 7 April 2001>*

Article 2 (Definitions)

For the purpose of this Act, the term "tobacco" means what is manufactured in a state suitable for smoking, chewing, or smelling by using the leaves of the tobacco plant as principal raw materials. *[This Article Wholly Amended by Act No. 6460, 7 April 2001.]*

CHAPTER II Deleted.

Articles 3 through 10 Deleted. *<by Act No. 6460, 7 April 2001>*

CHAPTER III MANUFACTURE, SALE, EXPORT AND IMPORT

Article 11 (License for Tobacco Manufacturing Business)

(1) A person who intends to operate the tobacco manufacturing business shall obtain a license of the Minister of Finance and Economy under the conditions as prescribed by the Presidential Decree. The same shall apply to the case where intending to alter any principal matters as prescribed by the Presidential Decree from among the licensed matters.

(2) The Minister of Finance and Economy shall grant the license in case where any person who intends to obtain the license for tobacco manufacturing business under paragraph (1) (hereinafter referring to the "tobacco manufacturing business license") satisfies the criteria for equity capital, facility standards, technological manpower, research and development of tobacco manufacturing technology, and quality control for the protection of national health, etc.

[This Article Wholly Amended by Act No. 6460, 7 April 2001.]

Article 11-2 (Disqualification for Tobacco Manufacturing Business License)

Any person falling under one of the following subparagraphs shall be prohibited from obtaining the tobacco manufacturing business license:

1. A person of incompetency, quasi-incompetency or minor;
2. A person who has been sentenced to a bankruptcy and not reinstated as yet;
3. A person who has been consigned to an unsuspended sentence of imprisonment for violating this Act, and for whom not more than one year has passed after the completion (including the case of deeming to be completed) of or exemption from its execution;
4. A person who is under a grace period after having been consigned to a suspended sentence of imprisonment for violating this Act;
5. A person for whom two years have not elapsed since a cancellation of the tobacco manufacturing business license under Article 11-4; and
6. A corporation whose representative falls under one of subparagraphs 1 through 5.

[This Article Newly Inserted by Act No. 6460, 7 April 2001.]

Article 11-3 (Transfer or Takeover, etc. of Tobacco Manufacturing Business)

(1) A person who has obtained a tobacco manufacturing business license (hereinafter referred to as the "manufacturer") shall, where he intends to transfer the tobacco manufacturing business or merge with another corporation, file a report thereon with the Minister of Finance and Economy under the conditions as determined by the Ordinance of the Ministry of Finance and Economy.

(2) Where there exists a report on transfer under paragraph (1), a person who has taken over the tobacco manufacturing business shall succeed to the manufacturer's status of the transferor of tobacco manufacturing business, and where there exists a report on merger of corporations, a corporation to be established or to survive by such merger shall succeed to the manufacturer's status of a corporation to be extinguished by such merger.

(3) In case where a manufacturer has died, if an heir intends to continue the tobacco manufacturing business, he shall file a report thereon with the Minister of Finance and Economy within 30 days after the date on which the decedent has died, under the conditions as determined by the Ordinance of the Ministry of Finance and Economy.

(4) In case where an heir has filed a report on succession under paragraph (3), the tobacco manufacturing business license for the decedent shall be deemed the tobacco manufacturing business license for the heir in the period from the date on which the decedent has died to the date of such report.

(5) An heir who has filed a report on succession under paragraph (3) shall succeed to the manufacturer's status of the decedent.

(6) The provisions of Article 11-2 shall apply *mutatis mutandis* to the report under paragraphs (1) and (3). [This Article Newly Inserted by Act No. 6460, 7 April 2001.]

Article 11-4 (Cancellation, etc. of Tobacco Manufacturing Business)

The Minister of Finance and Economy may, where a manufacturer falls under one of the following subparagraphs, either cancel the tobacco manufacturing business license or order the suspension of such business by fixing the period of less than one year: *Provided*, That where falling under subparagraphs 1 and 3, he shall cancel such license:

1. Where he has obtained the tobacco manufacturing business license by illegal means;
2. Where he falls short of the criteria for equity capital, facility standards, technological manpower, research and development of tobacco manufacturing technology, and quality control for the protection of national health, etc. under Article 11 (2);

3. Where he falls under disqualification of each subparagraph of Article 11-2: *Provided*, That it shall not apply to the case where the representative of a corporation falls under such causes, and he is replaced within six months; and
4. Where he violates this Act or the orders issued under this Act.

[*This Article Newly Inserted by Act No. 6460, 7 April 2001.*]

Article 12 (Sale of Tobacco)

(1) Tobacco manufactured by a manufacturer shall be sold by such manufacturer, and tobacco imported from foreign countries shall be sold by such import and sale business operator (referring to the person who has registered for a tobacco import and sale business under Article 13 (1); hereinafter the same shall apply) to wholesalers (referring to persons who have registered for a wholesale business under Article 13 (1); hereinafter the same shall apply) or retailers (referring to persons who are designated as retailers under Article 16 (1); hereinafter the same shall apply). <Amended by Act No. 6460, 7 April 2001>

(2) No person other than a retailer may sell any tobacco to the consumers.
<Amended by Act No. 6460, 7 April 2001>

Article 13 (Registration of Tobacco Sale Business)

(1) Any person who intends to run the business of importing and selling tobacco shall register his business with the Minister of Finance and Economy, and any person who intends to do the business of wholesaling tobacco (referring to the business of selling tobacco to other wholesalers or retailers; hereinafter the same shall apply) shall register his business with the Seoul Metropolitan City Mayor, Metropolitan City Mayor or *Do* governor (hereinafter referred to as the "Mayor/*Do* governor") having jurisdiction over the location of his head office or his principal office. The same shall also apply to the case in which he intends to change important matters prescribed by the Ordinance of the Ministry of Finance and Economy from among registered matters. <Amended by Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(2) Any person who intends to register his business in accordance with the provisions of paragraph (1) shall meet requirements prescribed by the Presidential Decree.

Article 14 (Disqualifications for Registration of Tobacco Sale Business)

Any person falling under one of the following subparagraphs shall be prohibited from registering the business of importing and selling tobacco or the business of wholesaling tobacco under Article 13 (1): <Amended by Act No. 6460, 7 April 2001>

1. A person of incompetency, quasi-incompetency or minor;
2. A person who has been sentenced to a bankruptcy and not reinstated as yet;
3. A person who has been consigned to an unsuspended sentence of imprisonment for violating this Act, and for whom not more than one year has passed after the completion (including the case of deeming to be completed) of or exemption from its execution;
4. A person who is under a grace period after having been consigned to a suspended sentence of imprisonment for violating this Act;
5. A person for whom two years have not elapsed since a cancellation of the registration under Article 15(1); and
6. A corporation whose representative falls under one of subparagraphs 1 through 5.

[*This Article Wholly Amended by Act No. 6078, 31 December 1999.*]

Article 15 (Cancellation, etc. of Registration of Tobacco Sale Business)

(1) The Minister of Finance and Economy or the Mayor/*Do* governor shall, where any import and sale business operator or any wholesaler falls under any case of the following subparagraphs, cancel his business registration: *<Amended by Act No. 6460, 7 April 2001>*

1. Where he has registered his business in an illegal manner;
2. Where he falls under any subparagraph of Article 14;
3. Where a person who has been subjected to a disposition taken to suspend his business twice for the recent five years falls again under any subparagraph of paragraph (3); and
4. Where he is in the business during a period for which his business is suspended.

(2) The provisions of paragraph (1) shall not apply where a juristic person replaces its representative within 6 months from the date on which such juristic person falls under subparagraph 6 of Article 14 or by the date on which 6 months have elapsed since the date on which a successor who inherited the status of an import and sale business operator or a wholesaler falls under any of subparagraphs 1 through 5 of Article 14. *<Amended by Act No. 6460, 7 April 2001>*

(3) The Minister of Finance and Economy or the Mayor/*Do* governor may, where any import and sale business operator or any wholesaler falls under any of the following subparagraphs, order him to suspend his business for a fixed period not exceeding one year: *<Amended by Act No. 6460, 7 April 2001>*

1. Where he sells tobacco to any consumer in contravention of Article 12 (2);
2. Where a person importing and selling manufactured tobacco fails to report sale prices in accordance with the provisions of Article 18 (2);
3. Where he commits a violation of the provisions of Article 20 (1);
4. Where he continues to suspend his business for not less than 6 months without filing a report thereof in accordance with the provisions of Article 22-2 (1);
5. Where he commits a violation of the provisions of Article 25; and
6. Where he commits a violation of this Act or orders given under this Act.

[This Article Wholly Amended by Act No. 6078, 31 December 1999.]

Article 16 (Designation of Retailer)

(1) Any person who intends to do a tobacco retail business (referring to the business of selling directly to consumers) shall obtain a designation as a retailer of tobacco from the head of *Si/Gun*/autonomous *Gu* (hereinafter referred to as the "head of *Si/Gun/Gu*") having jurisdiction over the location of the business place concerned. *<Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>*

(2) Any person falling under any of the following subparagraphs shall be prohibited from being designated as a retailer of tobacco: *<Amended by Act No. 6078, 31 December 1999>*

1. A person of incompetency, quasi-incompetency or minor;
2. A person who has been sentenced to a bankruptcy and not reinstated as yet;
3. A person who has been consigned to an unsuspended sentence of imprisonment for violating this Act, and for whom not more than one year has passed since the completion (including the case of deeming to be completed) of or exemption from its execution;
4. A person who is under a grace period after having been consigned to a suspended sentence of imprisonment for violating this Act;

5. A person for whom two years have not elapsed since a cancellation of the designation under Article 17 (1); and
6. A corporation whose representative falls under one of subparagraphs 1 through 5.

(3) With respect to a person who intends to sell tobacco at a place which is feared to damage the quality of tobacco or is deemed inappropriate for the business of selling tobacco, the head of *Si/Gun/Gu* may refrain from designating a retailer. <Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(4) Standards and procedures for the designation of retailers and other matters necessary for the designation shall be determined by the Ordinance of the Ministry of Finance and Economy. <Amended by Act No. 4682, 31 December 1993; Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999>

Article 17 (Cancellation, etc. of Retailer Designation)

(1) The head of *Si/Gun/Gu* shall, if any retailer of tobacco falls under any case of the following subparagraphs, cancel the designation of his retail business: <Amended by Act No. 6460, 7 April 2001>

1. Where he obtains a designation of his retail business in an illegal manner;
2. Where he falls under any subparagraph of Article 16 (2): *Provided*, That the same shall not apply to the case in which a representative of a juristic person falling under such cause is replaced within 6 months;
3. Where a person who has been subjected to a disposition taken to suspend his business twice for the recent five years falls again under any subparagraph of paragraph (2);
4. Where he continues his business during a period for which his business is suspended; and
5. Where he has failed to do business for not less than 60 days without making any report on discontinuance or suspension of business.

(2) The head of *Si/Gun/Gu* may, where any retailer of tobacco falls under any of the following subparagraphs, order him to suspend his business for a fixed period not exceeding one year: <Amended by Act No. 6460, 7 April 2001>

1. Where he commits a violation of the provisions of Article 18 (4);
2. Where he commits a violation of the provisions of Article 20;
3. Where he fails to implement any corrective order or measure such as the removal of advertisements under the provisions of Article 25(3);
4. Where he fails to continuously purchase or sell tobacco without any justifiable reasons during a period prescribed by the Ordinance of the Ministry of Finance and Economy; and
5. Where he commits a violation of this Act or orders given under this Act.

(3) Matters necessary for the standards and procedures, etc. for the disposition of business suspension under paragraph (2) shall be determined by the Ordinance of the Ministry of Finance and Economy. <Newly Inserted by Act No. 6460, 7 April 2001>
[This Article Wholly Amended by Act No. 6078, 31 December 1999.]

Article 18 (Selling Price of Tobacco)

(1) The selling price of tobacco made by a manufacturer shall be determined by the manufacturer under the conditions as prescribed by the Presidential Decree. *<Amended by Act No. 6460, 7 April 2001>*

(2) Any import and sale business operator who imports tobacco from foreign countries shall report to the Minister of Finance and Economy on the selling price of such tobacco under the conditions as prescribed by the Presidential Decree. This provisions shall also apply if he desires to change the reported selling price. *<Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>*

(3) When a manufacturer or import-distributor has determined or reported the selling price as referred to in paragraph (1) or (2), he shall announce it publicly under the conditions as prescribed by the Ordinance of the Ministry of Finance and Economy. *<Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>*

(4) A retailer shall sell tobacco at the selling price as announced publicly under paragraph (3). *<Amended by Act No. 6460, 7 April 2001>*

Article 19 (Tobacco for Special Use)

(1) A manufacturer may manufacture and sell the tobacco for special use as prescribed by the Presidential Decree. *<Amended by Act No. 6460, 7 April 2001>*

(2) No tobacco for special use as referred to in paragraph (1) shall be sold for any purpose other than its proper use. *<Amended by Act No. 6460, 7 April 2001>*

Article 20 (Prohibition of Sale and Restriction on Purchase)

(1) No person shall sell tobacco with its packing and contents changed. *<Amended by Act No. 6460, 7 April 2001>*

(2) Deleted. *<by Act No. 6460, 7 April 2001>*

Articles 21 and 22 Deleted. *<by Act No. 6460, 7 April 2001>*

Article 22-2 (Suspension or Discontinuance of Tobacco Sale Business, etc.)

(1) Where any person importing and selling tobacco, any wholesaler of tobacco or any retailer of tobacco intends to suspend or discontinue his business for a period exceeding what is prescribed by the Ordinance of the Ministry of Finance and Economy, such person importing and selling tobacco shall file a report thereof to the Minister of Finance and Economy, such wholesaler of tobacco to the Mayor/Do governor and such retailer of tobacco to the head of *Si/Gun/Gu*, respectively. *<Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999>*

(2) Upon filing a report as referred to in paragraph (1), the period of business suspension, procedure of report, and other matters necessary for the report on a suspension or discontinuance of business shall be determined by the Ordinance of the Ministry of Finance and Economy. *<Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999>*
[This Article Newly Inserted by Act No. 4682, 31 December 1993.]

Article 22-3 (Hearing)

The Minister of Finance and Economy, the Mayor/*Do* governor, or the head of *Si/Gun/Gu* shall, where he intends to take a disposition falling under any of the following subparagraphs, hold hearings: <Amended by Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

1. Cancellation of the license for manufacturing tobacco under Article 11-4;
- 1-2. Cancellation of the registration for tobacco import and sale business, or of the registration for tobacco wholesale business; and
2. Cancellation of the designation of a retailer under Article 17 (1).

[*This Article Wholly Amended by Act No. 5453, 13 December 1997.*]

CHAPTER IV SUPPLEMENTARY PROVISIONS

Article 23 (Substitute for Tobacco)

Anything which is in a similar form to tobacco and usable for smoking shall be considered as tobacco and subject to the provisions of Article 11: *Provided*, That any smoking products manufactured, without using tobacco leaves, for the purpose of quitting smoking shall be excluded. <Amended by Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

Article 24 (Report and Confirmation of Related Books, etc.)

(1) The Minister of Finance and Economy may, when deemed necessary to enforce this Act, have a manufacturer and import and sale business operator, the Mayor/*Do* governor may have a wholesaler, and the head of *Si/Gun/Gu* may have a retailer, respectively, file a report on his business. <Amended by Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(2) The Minister of Finance and Economy, the Mayor/*Do* governor, or the head of *Si/Gun/Gu* may have his officials confirm or examine related books or documents, etc. of the manufacturer and import and sale business operator, wholesaler, or retailer, respectively. <Amended by Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(3) Any official who carries out the confirmation or perusal under paragraph (2) shall carry with him a certificate indicating his competence and show it to interested parties.

Article 25 (Indication of Warning Words and Restriction on Advertisement on Tobacco)

(1) The warning words clearly expressing the effect that smoking is harmful to health shall be indicated on the wrapping paper of a tobacco case and in the advertisement as prescribed by the Presidential Decree (including sales promotion activities; hereinafter the same shall apply). <Amended by Act No. 6460, 7 April 2001>

(2) The Minister of Finance and Economy may prohibit or restrict any advertisement on tobacco under the conditions as pre-scribed by the Presidential Decree. <Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(3) In case where no words of warning under paragraph (1) are in existence or the prohibition of or restrictions on ads under paragraph (2) are violated, the Minister of Finance and Economy, the Mayor/*Do* governor or the head of *Si/Gun/Gu* may order a tobacco manufacturer and import and sale business operator, wholesaler, or retailer, respectively, to restrict the imports or sales of relevant tobacco, or to issue orders or to take measures which are required for the corrections such as the removal of ads, etc. <Amended by Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(4) The Minister of Finance and Economy shall determine the words of warning referred to in paragraph (1) after consulting with the Minister of Health and Welfare and the Chairman of the Juvenile Protection Committee. <Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999>

Article 25-2 (Indication of Tobacco Ingredients)

(1) A manufacturer and an import and sale business operator shall indicate the major ingredients and their contents in the smoke of one cigarette on the wrapping paper of tobacco packs and the advertisements as prescribed by the Presidential Decree.

(2) Kinds of ingredients, criteria for measurement, designation of measuring agency, method of indication, scope of allowable errors, omission of indication of ingredients, which are to be indicated under paragraph (1), and other matters necessary for indication of ingredients, shall be prescribed by the Presidential Decree.

(3) The provisions of Article 25 (3) shall apply *mutatis mutandis* to a case where there exists no indication of ingredients and their contents under paragraph (1), and where the contents of indicated ingredients are in excess of the scope of allowable errors.

[This Article Newly Inserted by Act No. 6625, 26 January 2002.]

Article 25-3 (Participation of Manufacturers, etc. in Public Activities)

(1) The Minister of Finance and Economy may have a manufacturer carry out directly public activities, such as public health, medical care, protection of environment, etc., and projects such as the support for tobacco cultivation, within a limit of 20 won per 20 cigarettes which he sells, under the conditions as determined by the Ordinance of the Ministry of Finance and Economy, or make a contribution to those carrying out such projects. <Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(2) Any import and sale business operator may carry out directly such public activities as referred to in paragraph (1), or make any contribution to those who carry out such activities. In this case, the provisions of paragraph (1) shall apply *mutatis mutandis*.

(3) The Minister of Finance and Economy shall consult with the heads of related central administrative agencies about fundamental matters concerning the activities carried out by a manufacturer or an import and sale business operator under paragraphs (1) and (2). <Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>

(4) A person who intends to run the business directly supporting the development of agricultural technology of tobacco cultivators with the contribution from manufacturers under paragraph (1) shall establish a corporation by obtaining an approval of the Minister of Finance and Economy. <Newly Inserted by Act No. 6460, 7 April 2001>

(5) The provisions concerning the foundation in the Civil Act shall apply *mutatis mutandis* to the establishment and operation of the corporation under paragraph (4) except for those as otherwise provided in this Act. <Newly Inserted by Act No. 6460, 7 April 2001>
[This Article Newly Inserted by Act No. 4682, 31 December 1993.]

Article 25-4 (Prohibition of Money Providing, etc. for Promotion of Tobacco Sales)

The manufacturers, import and sale business operators and wholesalers shall be prohibited from providing money and other similar activities as prescribed by the Presidential Decree, to the retailers in order to promote their tobacco sales.

[This Article Newly Inserted by Act No. 6460, 7 April 2001.]

Article 26 (Delegation of Authority)

Part of the authority of the Minister of Finance and Economy as prescribed by this Act may be delegated to the head of the local government under the conditions as prescribed by the Presidential Decree. *<Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999; Act No. 6460, 7 April 2001>*

CHAPTER V PENAL PROVISIONS

Article 27 (Penal Provisions)

(1) Any person who has manufactured tobacco without obtaining a license for tobacco manufacturing business in contravention of Article 11 shall be punished by imprisonment for not more than 3 years, or a fine not exceeding 20 million won.

(2) Any attempted crime under paragraph (1) shall be punished.

(3) In cases of paragraphs (1) and (2), the punishment of imprisonment and fine may be concurrently imposed. *[This Article Wholly Amended by Act No. 6460, 7 April 2001.]*

Article 27-2 (Penal Provisions)

Any person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than one year, or a fine not exceeding ten million won: *<Amended by Act No. 6625, 26 January 2002>*

1. A person who has failed to file a report on transfer, takeover, etc. of tobacco manufacturing business in contravention of Article 11-3 (1) or (3);
2. A person who has manufactured a substitute for tobacco in contravention of Article 23;
3. A person who has manufactured or imported tobacco on which the words of warning under Article 25(1) are not indicated, or such words as violating thereof are indicated;
4. A person who has made any advertisement on tobacco in contravention of Article 25(2); and
5. A person who has manufactured or imported tobacco on which the ingredients and their contents under Article 25-2(1) are not indicated, or the content of each ingredient is falsely indicated.

[This Article Newly Inserted by Act No. 6460, 7 April 2001.]

Article 27-3 (Penal Provisions)

Any person who falls under any of the following subparagraphs shall be punished by a fine not exceeding five million won: *<Amended by Act No. 6625, 26 January 2002>*

1. A person who has sold tobacco to consumers without obtaining a designation of retailer in contravention of Article 12(2);

2. A person who has run tobacco import and sale business or tobacco wholesaler business without making a registration in contravention of Article 13(1);
3. A person who has failed to comply with the orders or measures required for correction, such as the removal of advertising materials under Article 25(3);
- 3-2. A person who has failed to comply with the orders or measures required for correction, such as restrictions, etc. on the import or sale of tobacco under Article 25-2(3); and
4. A person who has committed the acts of providing money, etc. in contravention of Article 25-4.

[This Article Newly Inserted by Act No. 6460, 7 April 2001.]

Article 28 (Fine for Negligence)

(1) Any person who fails to make a report on the selling price (including the report on any change) in violation of the provisions of Article 18(2) shall be punished by a fine for negligence not exceeding two million won. *<Newly Inserted by Act No. 4682, 31 December 1993>*

(2) Any person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding one million won: *<Amended by Act No. 4862, 31 December 1993; Act No. 6460, 7 April 2001>*

1. A retailer who sells tobacco in violation of the provisions of Article 18 (4);
2. Deleted; and *<by Act No. 6460, 7 April 2001>*
3. A retailer who has suspended his business in excess of the suspension period as prescribed by Article 22-2(2).

(3) Any person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding 500 thousand won: *<Amended by Act No. 6460, 7 April 2001>*

1. Deleted; *<by Act No. 6460, 7 April 2001>*
2. A person who has sold tobacco for special use for a different purpose, in violation of the provisions of Article 19(2); and
3. A person who has sold tobacco after changing the packing and contents thereof in violation of the provisions of Article 20(1).

Article 29 (Procedures for Imposition of Fine for Negligence)

(1) The Minister of Finance and Economy, the Mayor/*Do* governor or the head of *Si/Gun/Gu* (hereafter referred to as the "imposition right holder" in this Article) shall impose and collect a fine for negligence under the provisions of Article 28 according to their respective jurisdiction under the conditions as prescribed by the Presidential Decree. *<Amended by Act No. 6078, 31 December 1999>*

(2) Any person who is dissatisfied with a disposition of a fine for negligence as referred to in paragraph (1) may raise an objection to an imposition right holder within thirty days from the date when he is aware of it. In this case, the imposition right holder shall notify without delay the competent court thereof, which shall, upon receiving the notification, bring the case of a fine for negligence to a trial under the non-contentious case litigation procedures. *<Amended by Act No. 5454, 13 December 1997; Act No. 6078, 31 December 1999>*

(3) If a fine for negligence is not paid without raising an objection within the period as referred to in paragraph (2), it shall be collected according to the examples of taking a disposition to collect national or local taxes in arrears. *<Amended by Act No. 6078, 31 December 1999>*

Article 30 (Confiscation and Additional Collection)

- (1) Any leaf tobacco and tobacco involved in the crime under Articles 27, 27-2 and 27-3 shall be confiscated. *<Amended by Act No. 6460, 7 April 2001>*
- (2) If it is impossible to confiscate those items as referred to in paragraph (1), the value thereof shall be collected additionally.
- (3) Deleted. *<by Act No. 6460, 7 April 2001>*

Article 31 (Restriction on Application of Criminal Act)

With respect to those who have committed any crime as prescribed by this Act, the provisions of Articles 9, 10(2), 11, 16, 32(2), 38(1)2 of the Criminal Act concerning the restriction or aggravation of the concurrence of fines, and those of Article 53 of the said Act shall not be applied: *Provided*, That this provisions shall not apply to imprisonment in a case where the criminal is to be punished by imprisonment or by both an imprisonment and fine.

Article 32 (Joint Penal Provisions)

If a representative of a juristic person, or an agent, employer, or other employee of a juristic person or an individual commits an offense as provided in Articles 27, 27-2 and 27-3 with respect to affairs of the juristic person or the individual, the fine as provided in the said respective Article shall also be imposed on such a juristic person or individual, in addition to punishment of the offender. *<Amended by Act No. 6460, 7 April 2001>*

ADDENDA

Article 1 (Enforcement Date)

This Act shall enter into force on 1 January 1989.

Article 2 (Repeal of Other Acts)

The Tobacco Monopoly Act shall hereby be repealed.

Article 3 (Amendment, etc. of Other Acts)

- (1) and (2) Omitted.
- (3) Any citation of the Tobacco Monopoly Act in other Acts and subordinate statutes at the time when this Act enters into force shall be considered to have cited this Act, and that of the provisions of the Tobacco Monopoly Act shall be considered to have cited the provisions of this Act if they are the corresponding provisions in this Act.

Article 4 (General Transitional Measures)

- (1) What was enforceable under the previous Tobacco Monopoly Act at the time when this Act enters into force shall be considered to be in force, pursuant to the corresponding provisions of this Act.

(2) Any disposition or other acts taken by the Minister of Finance and Economy under the previous Tobacco Monopoly Act before the enforcement of this Act, shall be considered as that or those taken pursuant to the corresponding provisions of this Act.

(3) Any public notice or other acts taken by the Korea Monopoly Corporation, or any application filed with or other acts taken by the said Corporation, under the previous Tobacco Monopoly Act before the enforcement of this Act, shall be considered as that or those taken by or for the Corporation pursuant to the corresponding provisions of this Act.

Article 5 (Transitional Measures concerning Cultivation of Tobacco Plant and Purchase of Leaf Tobacco)

Notwithstanding the provisions of Chapter 2 of this Act, the provisions of the previous Tobacco Monopoly Act shall apply to the first cultivation of tobacco plants and the first purchase of leaf tobacco for raw materials of manufactured tobacco after this Act enters into force.

Article 6 (Transitional Measures concerning Designation of Manufactured Tobacco Retailer)

Any person who is designated as a manufactured tobacco retailer by the Korea Monopoly Corporation under the previous Tobacco Monopoly Act, before the enforcement of this Act, shall be considered to have been designated by the Minister of Finance and Economy under this Act.

Article 7 (Transitional Measures concerning Operation of Corporation)

Operations of the Corporation as prescribed by this Act shall be carried out by the Korea Monopoly Corporation under the Korea Monopoly Corporation Act until the Korea Tobacco and Ginseng Corporation Act is enacted and enforced.

Article 8 (Transitional Measures concerning Application of Penal Provisions)

Application of the penal provisions to any act committed before this Act enters into force, shall be subject to the provisions of the previous Tobacco Monopoly Act.

ADDENDA <Act No. 4682, 31 December 1993>

(1) (Enforcement Date) This Act shall enter into force on 1 January 1994.

(2) (Transitional Measures concerning Application of Penal Provisions) The application of the penal provisions to any act committed before this Act enters into force, shall be governed by the previous provisions.

ADDENDA <Act No. 5453, 13 December 1997>

Article 1 (Enforcement Date)

This Act shall enter into force on 1 January 1998. (Proviso Omitted.)

Article 2 Omitted.

ADDENDUM <Act No. 5454, 13 December 1997>

This Act shall enter into force on 1 January 1998. (Proviso Omitted.)

ADDENDA <Act No. 6078, 31 December 1999>

- (1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.
- (2) (Transitional Measures concerning Disqualifications) Any person who has his import and sale business of manufactured tobacco or his wholesale business of manufactured tobacco registered, or his retail business of manufactured tobacco designated under the previous provisions at the time that this Act is enforced, where he falls under disqualifications as described in the amended provisions of Article 14 or 16 (2) due to unavoidable reasons that occurred prior to the enforcement of this Act, shall be dealt with according to the previous provisions notwithstanding the amended provisions.
- (3) (Transitional Measures concerning Registration of Sale Business of Manufactured Tobacco) Any person who has his wholesale business of manufactured tobacco registered under the previous provisions at the time that this Act is enforced shall be deemed to register his business in accordance with the amended provisions of Article 13(1).
- (4) (Transitional Measures concerning Designation of Retail Business of Manufactured Tobacco) Any person who has his retail business of manufactured tobacco designated under the previous provisions at the time that this Act is enforced shall be deemed to have his business designated in accordance with the amended provisions of Article 16(1).

ADDENDA <Act No. 6460, 7 April 2001>

Article 1 (Enforcement Date)

This Act shall enter into force on 1 July 2001.

Article 2 (Transitional Measures Following Abolition of Systems of Tobacco Cultivation and Leaf Tobacco Purchase)

The Korea Tobacco and Ginseng Corporation (hereinafter referred to as the "Corporation") under subparagraph 1 of Article 2 of the Act on the Improvement of Managerial Structure and Privatization of Public Enterprises, which has run tobacco manufacturing business under the previous provisions at the time of enforcement of this Act, may conclude a contract with the tobacco cultivators on the tobacco cultivation, purchase of leaf tobacco as for raw materials of tobacco, and support to tobacco cultivators, and perform it.

Article 3 (Transitional Measures concerning Existing Manufacturers)

The Corporation which has run the tobacco manufacturing business under the previous provisions at the time of enforcement of this Act shall be considered to have obtained a license for tobacco manufacturing under the amended provisions of Article 11.

Article 4 Omitted.

ADDENDA <Act No. 6625, 26 January 2002>

- (1) (Enforcement Date) This Act shall enter into force on 1 January 2003.
- (2) (Application Example) This Act shall apply from the portion of carrying out from the manufacturing place or bonded area or of advertisement for the first time since the enforcement of this Act.
- (3) Omitted.

ATTACHMENT C

ENFORCEMENT DECREE OF THE TOBACCO BUSINESS ACT

Wholly Amended by Presidential Decree No. 17267, 30 June 2001
Amended by Presidential Decree No. 17761, 23 October 2002

Article 1 (Purpose)

The purpose of this Decree is to prescribe for matters delegated by the Tobacco Business Act and those necessary for the enforcement thereof.

Article 2 (License for Tobacco Manufacturing Business)

(1) Any person who intends to obtain a license for tobacco manufacturing business under the former part of Article 11 (1) of the Tobacco Business Act (hereinafter referred to as the "Act") (hereinafter referred to as the "license for tobacco manufacturing business") shall submit an application for license for tobacco manufacturing business stating the matters falling under any of the following subparagraphs to the Minister of Finance and Economy along with the documents as determined by the Ordinance of the Ministry of Finance and Economy:

1. Personal details of an applicant;
2. Location of principal office and manufacturing place;
3. Equity capital;
4. Types of tobacco to be manufactured; and
5. Annual manufacturing scale.

(2) The Minister of Finance and Economy may, upon receipt of an application for a license for tobacco manufacturing business under paragraph (1), and where an applicant for a license for tobacco manufacturing business possesses the equity capital under Article 4(1)1, grant a license for tobacco manufacturing business on condition that he is to be equipped with the manufacturing facilities, technical manpower, testing equipment under subparagraphs 2 through 4 of the same paragraph within 3 years: *Provided*, That the Minister of Finance and Economy may extend such period within the limit of one year if it is deemed that there exists an inevitable reason.

Article 3 (Alterations in Licensed Matters)

(1) The term "principal matters as prescribed by the Presidential Decree from among the licensed matters" in the latter part of Article 11(1) of the Act means the alterations in the matters provided in Article 2(1)3 and 5 (including the case where the processing facilities of raw materials are required to be additionally installed as he becomes not to fall under the proviso of Article 4(1)2).

(2) Any person who intends to obtain a modified license under the latter part of Article 11(1) of the Act shall submit an application for modified license for tobacco manufacturing business to the Minister of Finance and Economy along with the documents as determined by the Ordinance of the Ministry of Finance and Economy. In this case, if he intends to additionally install the processing facilities of raw materials as he becomes not to fall under the proviso of Article 4(1)2, he shall submit the same application within 6 months from the date on which he becomes not to fall under the same provisions.

(3) Any person who has obtained a modified license for tobacco manufacturing business under the latter part of paragraph (2) shall install the processing facilities of raw materials within 3 years from the date on which a modified license has been received: *Provided*, That the Minister of Finance and Economy may extend such period within the limit of one year if it is deemed that there exists an inevitable reason.

Article 4 (Criteria for License for Tobacco Manufacturing Business)

(1) The criteria for the equity capital, facility standards, technical man-power, research and development of tobacco manufacturing technology and the quality control for national health protection, etc. under Article 11(2) of the Act shall be as follows:

1. Equity capital: to be in excess of 30 billion won;
2. Facility standards: to install the facilities capable of manufacturing tobacco in excess of 5 billion pieces per annum (based on 16-hour operation daily), which are equipped with as assembly line from the raw material processing to the cigarette manufacturing and product packing: *Provided*, That the processing facilities of raw materials may not be installed not later than the time when the tobacco of 10 billion pieces per annum is manufactured;
3. Technical manpower: to have the specialized technology manpower of not less than 5 persons who have the career for not less than 3 years in the field of tobacco manufacturing and quality control; and
4. Research and development of tobacco manufacturing technology and the quality control for national health protection: to be equipped with the testing equipment capable of analysing the function and quality of products (temperature-resistant and humidity-resistant equipment, measuring apparatus of smoky ingredients, measuring apparatus of air-dilution rate, measuring apparatus of suction-resistance), and to provide the standards, and guidances of quality control.

(2) In computing the quantity of annual tobacco manufactured by manufacturers under the proviso of paragraph (1) 2, such computation shall be done by summing up both the annual manufacturing volume of the relevant manufacturer and annual import quantity of tobacco produced by the affiliate firms under subparagraph 3 of Article 2 of the Monopoly Regulation and Fair Trade Act (in case where the manufacturer is a domestic business place of a foreign corporation, referring to the relevant foreign corporation).

Article 5 (Requirements for Registration of Tobacco Sale Business)

(1) Any person who intends to register for the business of importing and selling tobacco under Article 13 of the Act shall conclude a contract for tobacco supply with a foreign tobacco manufacturer.

(2) Any person who intends to register for the wholesale business of tobacco under Article 13 of the Act shall satisfy the requirements falling under any of the following subparagraphs:

1. To install the storage facilities of tobacco; and
2. To conclude a contract for tobacco supply with a manufacturer, tobacco import-distributor (hereinafter referred to as the "import-distributor") or another tobacco wholesaler (hereinafter referred to as the "wholesaler").

Article 6 (Selling Price of Tobacco)

(1) In case where a manufacturer determines the selling prices of tobacco to the consumers, that are manufactured by him, under Article 18(1) of the Act, he shall make a report thereon by item to the Min sales. The same shall apply in a case of altering the selling prices that are already reported.

(2) In case where an import-distributor makes a report on the selling prices of imported tobacco to the consumers under Article 18(2) of the Act, he shall do so by item 6 days prior to the commencement of their sales.

Article 7 (Tobacco for Special Use)

(1) Tobacco for special use under Article 19 (1) of the Act shall be as follows:

1. Tobacco to be used by the Head of State as a gift to the members of diplomatic mission and other persons;
2. Tobacco supplied to the armed forces, members of riot police units, guards or warders of correctional institutions, or persons of distinguished service to the State and their bereaved families accommodated in the institutions for the aged under Article 63 of the Act on the Honorable Treatment and Support of Persons, etc. of Distinguished Services to the State, which is operated by the Korea Veterans Welfare and Health Care Corporation;
3. Tobacco supplied to navy cadets and servicemen on board warships participating in overseas training;
4. Tobacco supplied to workers in overseas employment and personnel of diplomatic missions abroad;
5. Tobacco sold at a bonded area;
6. Tobacco sold to the crew of an ocean-going ship or deep-sea fishing vessel;
7. Tobacco sold to passengers of aircraft or passenger ships operating on international lines; and
8. Tobacco sold in the competent area of foreign armed forces in the Republic of Korea.

(2) The scope of tobacco supply under paragraph (1) and other matters necessary for supply shall be determined by the Ordinance of the Ministry of Finance and Economy.

(3) The tobacco for special use under paragraph (1) shall be marked separately from the tobacco sold under Article 12 of the Act. In this case, matters necessary for the separate marking of the tobacco for special use shall be determined by the Ordinance of the Ministry of Finance and Economy.

Article 8 (Criteria for Indication of Smoking Warning Words)

The smoking warning words shall be indicated in Korean, in the following articles under Article 25(1) of the Act:

1. Front and back of packing paper of a tobacco case;
2. Advertisement by stickers or posters posted in the business place of retailers; and
3. Advertisement in the magazines under Article 9(1)2.

Article 9 (Advertisement on Tobacco)

(1) Any advertisement of tobacco under Article 25(2) of the Act may be made only by the following means:

1. Act of displaying or posting the advertising materials as provided in the Ordinance of the Ministry of Finance and Economy within the retailer's business place: *Provided*, That any displaying or posting, whose contents are visible from outside of business place, shall be excluded;
2. Act of inserting an advertisement by variety group 60 or less times per annum (within 2 pages each time) in magazines [referring to the bound periodicals registered under the Registration, etc. of Periodicals Act, and published periodically once or less a week, and foreign periodicals under the Import and Distribution of Foreign Publications Act which is regularly published once or more per annum under the same title (hereinafter referred to as the "foreign periodicals"), but excluding those intended for women or juveniles]: *Provided*, That if the foreign periodicals are sold domestically in the number of copies less than those as determined by the Ordinance of the Ministry of Finance and Economy and written only in a foreign language, they shall be exempted from the restriction of carrying advertisements;
3. Act of sponsoring the social, cultural, musical, sports events, etc. (excluding those intended for women or juveniles). In this case, any product advertisement other than the use of sponsor's title shall not be made; and
4. Advertisement made in an airplane and passenger ship operating on an international line, and other places prescribed by the Ordinance of the Ministry of Finance and Economy.

(2) A manufacturer or import-distributor may have a wholesaler or retailer conduct the advertisement under paragraph (1). In this case, any advertisement made by the wholesaler or retailer shall be deemed to have been done by the manufacturer or import-distributor.

(3) Any advertisement under paragraph (1) 1, 2 and 4 or advertising materials used therefore shall not exceed an extent of informing the smokers of the name, kind and features of tobacco, and it shall not directly or indirectly encourage or induce non-smokers to smoke, or depict the figures of women or juveniles, or include the contents or form contrary to the details and purports of the smoking warning words indicated under Article 25(1) of the Act.

(4) A manufacturer or import-distributor shall have the advertisement on tobacco so regulated autonomously as not to violate the provisions of paragraphs (1) through (3).

(5) The Minister of Finance and Economy may request the Minister of Culture and Tourism to take corrective measures against the importers of foreign periodicals carrying the advertisements without any indication of the smoking warning words under Article 25(1) of the Act, or those violating the prohibition or restriction of advertisement under Article 25(2) of the Act.

Article 9-2 (Indication Criteria for Tobacco Ingredients)

Pursuant to the provisions of Article 25-2(1) of the Act, the major ingredients and their contents in the smoke of one cigarette shall be indicated on what are listed in any of the following subparagraphs:

1. One of both sides of the wrapping paper of tobacco pack;
2. Advertisements by stickers or posters to be posted in the business places of retailers; and
3. Advertisements in the magazines under Article 9(1)2.

[This Article Newly Inserted by Presidential Decree No. 17761, 23 October 2002.]

Article 9-3 (Types of Indicated Ingredients and Their Indication Methods)

(1) Types of ingredients to be indicated under the provisions of Article 25-2(2) of the Act shall be tar and nicotine.

(2) Matters necessary for the indication methods of tobacco ingredients under the provisions of paragraph (1) shall be stipulated by the Ordinance of the Ministry of Finance and Economy.
[This Article Newly Inserted by Presidential Decree No. 17761, 23 October 2002.]

Article 9-4 (Criteria for Measurement, etc. of Tobacco Ingredients)

(1) The criteria for measurement under the provisions of Article 25-2(2) of the Act means the dependence on the test methods of tobacco smoke ingredients as determined by the International Organization for Standardization (ISO), and its definite measurement criteria shall be stipulated by the Ordinance of the Ministry of Finance and Economy.

(2) Measurement cycles of tobacco ingredients under the provisions of paragraph (1), sample extraction methods for measurements, and other matters necessary for measurements shall be stipulated by the Ordinance of the Ministry of Finance and Economy.
[This Article Newly Inserted by Presidential Decree No. 17761, 23 October 2002.]

Article 9-5 (Designation of Measuring Agency)

(1) Any measuring agency under the provisions of Article 25-2(2) of the Act may be designated by the Minister of Finance and Economy from among the persons authorized as the test or inspection agency for the field of tobacco smoke ingredients by the Korean Agency for Technology and Standards designated as the authorizing organization under the provisions of Article 23(2) of the Framework Act on National Standards and of Article 16(2) of the Enforcement Decree of the same Act.

(2) Matters necessary for the designation of measuring agency under the provisions of paragraph (1) shall be stipulated by the Ordinance of the Ministry of Finance and Economy.
[This Article Newly Inserted by Presidential Decree No. 17761, 23 October 2002.]

Article 9-6 (Scope of Allowable Errors)

(1) The scope of allowable errors in the indicated values of tobacco smoke ingredients under the provisions of Article 25-2(2) of the Act shall be as follows:

1. Tar:
In the case of over 5 milligrams: \pm within 20%
In the case of under 5 milligrams: \pm within 1 milligram
2. Nicotine:
In the case of over 0.5 milligrams: \pm within 20%
In the case of under 0.5 milligrams: \pm within 0.1 milligram

(2) Whether or not exceeding the scope of allowable errors under the provisions of paragraph (1) shall be determined on the basis of values obtained by an arithmetic mean of each measured value which has been obtained by 4 consecutive measurements: *Provided*, That when the contents indicated under the provisions of Articles 9-2 and 9-3 are altered before the measurements over 4 occasions have been achieved, it shall be determined on the basis of values obtained by an arithmetic mean of each measured value before such alterations.

[This Article Newly Inserted by Presidential Decree No. 17761, 23 October 2002.]

Article 9-7 (Omission of Tobacco Ingredient Indications)

The case where an indication of tobacco smoke ingredients may be omitted under the provisions of Article 25-2(2) of the Act shall be limited to the cigars, pipe tobaccos, cut tobaccos, chewing tobaccos, and smelling tobaccos.

[This Article Newly Inserted by Presidential Decree No. 17761, 23 October 2002.]

Article 10 (Prohibition of Providing of Money or Goods, etc. for Promotion of Tobacco Sales)

The term "providing money and other similar activities as prescribed by the Presidential Decree" in Article 25-4 of the Act means the acts of providing the bounty for tobacco sales, premiums, merchandise coupons and other money or goods: *Provided*, That the acts of providing the goods which are determined by the Ordinance of the Ministry of Finance and Economy and which are necessary for the tobacco retail business shall be excluded. *<Amended by Presidential Decree No. 17761, 23 October 2002>*

Article 11 (Procedure for Imposition and Collection of Fine for Negligence)

(1) In case where a fine for negligence is imposed under Article 29(1) of the Act, a person subject to a disposition of such a fine for negligence shall be notified to pay such fine for negligence in writing clarifying the fact of offense and the amount of fine for negligence, etc. after investigating and verifying the relevant offense.

(2) An imposition right holder under Article 29(1) of the Act shall, where he intends to impose a fine for negligence under paragraph (1), provide a person subject to a disposition of fine for negligence with an opportunity to state his opinion orally or in writing by fixing a period of not less than ten days. In this case, if he fails to state his opinion by the designated date, he shall be considered to have no opinions.

(3) An imposition right holder under Article 29 (1) of the Act shall, in determining the amount of fine for negligence, take into consideration the motive and consequences therefrom, etc.

(4) The procedure to collect a fine for negligence shall be prescribed by the Ordinance of the Ministry of Finance and Economy.

ADDENDA

Article 1 (Enforcement Date)

This Decree shall enter into force on 1 July 2001.

Article 2 Omitted.

ADDENDA *<Presidential Decree No. 17761, 23 October 2002>*

(1) (Enforcement Date) This Decree shall enter into force on 1 January 2003.
(Application Example to First Measurement) The first measurement of tobacco ingredients shall be performed beginning from the quarter next to that wherein the measuring agency has been first designated under the amended provisions of Article 9-5.

ATTACHMENT D

SPECIAL REGULATION OF THE ENFORCEMENT DECREE OF THE ACT RELATING TO CONTRACTS TO WHICH THE STATE IS A PARTY FOR SPECIFIC PROCUREMENT

Presidential Decree 15,187 (1996.12.31)

Article 1 (Purpose)

The purpose of these Regulation is to provide for special regulations, with respect to the Enforcement Decree of the Act relating to Contracts to which the State is a Party(hereinafter referred to as "Enforcement Decree"), in conducting international tendering under Article 4 of the Act relating to Contracts to which the State is a Party(hereinafter referred to as "Act"), which is to perform the Agreement on Government Procurement(hereinafter referred to as "Agreement") executed at Marrakesh on 15 April 1994.

Article 2 (Definition)

The terms as used in these Regulations shall be defined as follows:

"International tendering" means the tendering in which the participants are national/foreigners and is conducted in order to procure the goods, construction works and services, including private contracts.

"Special procurement contract" means a contract which is executed in accordance with the Act, the Enforcement Decree and these Regulations, in order for the state to procure the goods, construction works and services through international tendering as provided in Article 4, paragraph (1) and (2) of the Act.

"Ordering Agency" which executes a contract in order to procure the goods, construction works and services in accordance with the Act, the Enforcement Decree and these Regulations.

"General competitive tendering" means a tendering in which all qualified persons intending to participate in tendering for a specific procurement contract may submit tendering documents.

"Selective tendering" means a tendering in which a person designated by the ordering agency for a specific procurement contract may submit tendering documents.

"Private contract" means a contract where the ordering agency determines the other party in relation to a specific procurement contract, not through competitive tendering.

"List of qualified persons" means a list which consists of the persons qualified. Such qualification for participation of tendering on goods, construction works and services for the specific procurement contracts is determined in advance.

Article 3 (Scope of Application)

(1) These Regulations shall be applied to the specific procurement contract which the State executes.

(2) "The case as prescribed by the Presidential Decree, "referred to in Article 4, Paragraph(1), Item 4 of the Act, shall mean the case falling under any Item of the following:

1. When necessary to protect the benefit of important national security in procurement of arms, ammunition or warfare materials, or procurement in relation to the performance of the purpose of national safety or national defense;
2. When necessary to maintain the public order and stability, or maintain life and health of human beings, animals or plants, or intellectual property rights;
3. When procuring goods and services, etc., manufactured by charitable organizations, the disabled and prisoners;
4. When manufacturing and procuring artificial satellites in accordance with the Aviation and Space Industry Development Promotion Act; or
5. When executing a private contract in accordance with the proviso of Article 7 of the Act and Article 26 of the Enforcement Decree.

(3) The government agency and the scope of goods, construction works and services as prescribed in Article 4, Paragraph (2) of the Act shall be as described in Attachments 1 and 2, However, the Minister of Finance and Economy ("MOFE") may notify the matters regarding the member states of the Agreement and those states restricted from executing a specific procurement contract, as provided in the Agreement.

(4) In any of the following cases, the head of each central agency or the public official in charge of the contract may secure procurement through the international tendering process, as provided in Article 4, Paragraph (3) of the Act:

1. When deemed necessary to prevent improper construction work;
2. When it is impossible to achieve the purpose of procurement through the domestic tendering process due to difficulty in domestic manufacturing; or
3. When deemed efficient from the viewpoint of the purpose and nature of the relevant contract to secure procurement through the international tendering process.

(5) In the case of procurement through the international tendering process, as provided in Paragraph (4), these Regulations shall be applied *mutatis mutandis* to the extent not contrary to the nature thereof. In this case, the words "specific procurement contract" shall be read as "international tendering under the provision of Paragraph(4)".

Article 4 (Principles of Specific Procurement Contract)

(1) The head of each central agency or the public official in charge of the contract shall fairly select the other party of the specific procurement contract, and shall not provide the information related to governmental procurement with discrimination.

(2) The head of each central agency or the public official in charge of the contract shall comply with the following, in connection with the specific procurement contract:

1. He/she shall not select the calculation method of the Estimated price or make a partial ordering for the purpose of avoiding the application of the Agreement; and
2. He/she shall not apply the provisions on the country of origin other than those under the Foreign Trade Law and the Customs Tax Law, which are applied during the ordinary transaction process, to goods, construction works and services procured from the other party of the contract from the member states of the Agreement; and
3. He/she shall not take measures restricting the participation of tendering or the conditions of procurement of the tendering participants of the member state of the Agreement through the designation of the ratio of localization of parts, etc., technology transfer and counter purchase during the course of screening of the

qualification for participation of tendering, the evaluation of tendering documents or the determination of a successful tenderer.

Article 5 (Preferential Treatment Measures to a Developing Country)

(1) The head of each central agency or the public official in charge of the contract may take preferential measures, as provided for in the Agreement, on the goods, construction works and services procured from the supplier of a developing country in relation to a specific procurement contract.

(2) The MOFE may determine the states and objects subject to Paragraph(1) and make a public notice thereof.

Article 6 (Exception of the Preparation of Standard price)

The head of each central agency or the public official in charge of the contract is not required to prepare the standard price under Article 7-2, Paragraph (1) of the Enforcement Decree, in the cases as shall be provided by the Prime Ministerial Decree, including the case that it is difficult to prepare the standard price in the specific procurement contract of goods and services due to a lack of an actual example of a transaction price.

Article 7 (Method of Contract)

The method of the specific procurement contract shall be classified into general competitive tendering, designated competitive tendering, or private contract.

Article 8 (Language to be Used)

(1) In principle, the language to be used in the specific procurement contract shall be Korean. However, if deemed inevitable to use foreign languages, such as the supplier of goods to be procured being limited to a specific area, any one language among the language of the specific state, English, French and Spanish may be chosen.

(2) If the head of each central agency or the public official in charge of the contract desires to give public notice on tendering of a specific procurement contract, he/she shall describe the following in any language chosen from among English, French and Spanish at the tail end of the public notice:

1. Object of contract;
2. Deadline for tendering documents and the application for tendering; and
3. Name and address of the ordering agency(the agency which delivers the documents concerning tendering).

(3) If the head of each central agency or the public official in charge of the contract permits the use of multiple languages in the preparation of tendering documents for a specific procurement contract, he/she shall include one or more languages from among English, French and Spanish.

(4) If the matters described in the foreign language, in accordance with Paragraphs (2) and (3), differ from those described in Korean, the matters described in Korean shall prevail.

Article 9 (Qualification of Participants in General Competitive Tendering and Screening thereof)

(1) If the head of each central agency or the public official in charge of the contract deems it necessary for a specific procurement contract, he/she may, in consideration of the type and size of the contract, determine on the qualification, which are required for the participants of general competitive tendering, with respect to previous contracts of the same type as that of the relevant contract, the contract ceiling amount, construction capacity, the technological ability and the management status, in addition to the qualifications under Article 12, Items 1 through 3 of the Enforcement Decree.

(2) Upon application by a person intending to participate in general competitive tendering head of each central agency or the public official in charge of the contract shall screen the applicant's qualification for the participation of tendering as provided in Paragraph (1), and notify the applicant of the result.

(3) The head of each central agency or the public official in charge of the contract is not required to conduct a screening provided for in Paragraph (2), with respect of the persons listed in a list of qualified persons.

(4) If a person not having been screened in accordance with Article 10, Paragraph (1), applies for the participation of tendering, the head of each central agency or the public official in charge of the contract shall immediately commence the screening of qualification. If it is determined that there is enough time to complete the screening by the day preceding the deadline of submitting the tendering documents, the head of each central agency or the public official in charge of the contract shall allow the tendering documents to be submitted.

Article 10 (List of Qualified Persons)

(1) The head of each central agency or the public official in charge of the contract may notify the standard of qualification for participating in tendering provided in Article 9, Paragraph (1), in the gazette, at the beginning of each fiscal year and, from time to time, screen the qualification of the applicants who wish to participate in general competitive tendering. Based on the results of such screening, he/she may prepare a list of qualified persons and allow for any applicant to have access to the list.

(2) After the public notice on tendering, the head of each central agency or the public official in charge of the contract shall notify the applicants of the results of screening, whether or not the relevant applicant satisfies the qualification for participation of the tendering under the provision of Paragraph (1). If the effective period of the list of qualified persons expires or if any person is deregistered from the list, such expiration or deregistration shall be notified to the relevant person.

Article 11 (Public Notice on Tendering)

(1) With respect to a specific procurement contract to be entered into by means of general competitive tendering, the head of each central agency or the public official in charge of the contract shall notify the matters set forth in Article 12 in the gazette.

(2) The public notice on tendering under Paragraph (1) shall be given before forty (40) days immediately preceding the deadline of filing tendering documents.

(3) Notwithstanding the provision of Paragraph (2), if it is deemed that the object of the contract cannot be procured in time, as in such cases of the following items, the tendering may be publicly notified ten (10) days before the deadline of filling tendering documents:

1. In emergent cases; or
2. In the case of re-notification under the provision of Article 20, Paragraph (2) of the Enforcement Decree.

(4) If any matters concerning tendering are required to be corrected after the public notice has been given as provided in Paragraphs (1) and (2), the public notice of such correction shall be given during the period of the remaining days out of the initial period set forth in Paragraph (2) plus an additional ten (10) or more days.

(5) Notwithstanding the provision of Paragraph (2), in each of the following cases, the public notice on tendering may be given 24 days immediately preceding the deadline of filing tendering documents:

1. When a public notice was separately given for a period of 40 days within the past 12 months, which contains the matters set forth in Article 13, Paragraph 2; or
2. With respect to the contract in which an individual requirement of procurement is made in multiple cases or in instalments (hereinafter, "repeating contract"), when the public notice on tendering for such contract is given after the initial public notice.

Article 12 (Contents of Public Notice on Tendering)

When the head of each central agency or the public official in charge of the contract gives a public notice on tendering as provided in Article 11, he/she shall include the following matters in addition to those set forth in Article 36 of the Enforcement Decree:

1. Conditions of any additional procurement which are required in connection with the relevant procurement, and an expected date of public notice for any subsequent tendering of any repeating contract;
2. Method of general competitive tendering or selective tendering and whether or not negotiation procedure is included;
3. Method of procurement by the ordering agency such as purchase, lease, purchase in instalments, etc.;
4. Address to be used for filing the application for screening of qualification for participation in tendering, an application for tendering and tendering documents, the deadline for filing them and the language to be used therein; and
5. Whether or not the relevant tendering is subject to the Agreement.

Article 13 (Public Notice of Procurement Plan)

(1) The head of each central agency or the public official in charge of the contract may notify in the gazette, the plan for procurement of goods, construction works and services to be supplied under specific procurement contracts during each fiscal year.

(2) The public notice on procurement plan shall contain the statements set forth in each Item of Article 8, Paragraph(2), and those set forth in each Item of Article 12 are recommended to be stated in the said public notice to the most possible extent.

Article 14 (Technical Specification)

(1) The head of each central agency or the public official in charge of the contract shall prepare the technical specifications concerning quality, function, etc., in consideration of the function as important element. Unless there are any inevitable reasons, the technical specifications shall be

prepared on the basis of the relevant international standard, if any, and if there is no applicable international standard, relevant Korean laws and regulations or domestic criteria shall be applicable thereto.

(2) If no international standard is applicable as provided in Paragraph (1), the head of each central agency or the public official in charge of the contract may set up the technical specifications through the test of quality or function.

(3) If it is difficult to sufficiently explain the goods or services to be procured without presenting a specific trademark/specification thereof, and such trademark/specification is designated in the documents concerning tendering provided in Article 15, the head of each central agency or the public official in charge of the contract shall include the statement in the public notice on the tendering to the effect that any goods or services of equal or higher level of such specific trademark/specification are put up in the tendering.

(4) In the case of Paragraph (3) above, the applicant of the tendering shall evidence the fact that the specification, quality, etc., of the goods or services to be supplied, correspond to such specific conditions or are at a higher level.

(5) In preparing the specifications, the head of each central agency or the public official in charge of the contract shall not request or accept any advice, to or from any person who has commercial interest which may be used to restrict the competition.

(6) If it is deemed to be necessary for fair competition, the head of each central agency or the public official in charge of the contract may disclose the technical specifications to the participants of the tendering and make them accessible before the tendering, and allow the participants to present their opinion thereto.

Article 15 (Delivery of Documents concerning Tendering)

With respect to the specific procurement contracts to be entered into by means of general competitive tendering, the head of each central agency or the public official in charge of the contract, at the request of the relevant applicants, shall deliver the tendering related documents as provided in Article 14, Paragraph(1) of the Enforcement Decree (hereinafter, "tendering related documents"), and shall address any inquiries regarding the tendering related documents without delay.

Article 16 (Filing and Acceptance of Tendering Documents)

(1) With respect to any specific procurement contract, the head of each central agency or the public official in charge of the contract shall permit the submission of tendering documents by mail.

(2) The head of each central agency or the public official in charge of the contract may, if it is deemed to be necessary, allow the applicants to submit the tendering documents and other related documents by cable, telegraph and fax transmission.

(3) When the tendering documents are filed as provided in Paragraph (2), the head of each central agency or the public official in charge of the contract shall cause the relevant participant to submit the copy thereof, with his/her signature for the purpose of confirmation. In this case, if there is any discrepancy between the tendering documents submitted by cable, etc., and the copy thereof, with the signature provided after the deadline for filing for confirmation, the tendering documents submitted by cable, etc., shall prevail.

(4) When the head of each central agency or the public official in charge of the contract accepts the tendering documents by mail as provided in Paragraph(1), he/she shall state the date of acceptance and affix the seal of confirmation on the envelope of the relevant tendering documents and keep it closed until the opening of tendering. If the tendering documents are delivered to the relevant department after the date designated in the tendering related documents, due to any reason attributable to the ordering agency, the relevant participant shall not be adversely affected therefrom.

Article 17 (Public Notice of Successful Tenderer and Disclosure of Information)

(1) When the head of each central agency or the public official in charge of the contract selects a successful tenderer for any specific procurement contract, or decides who the other party of the private contract shall be as provided in Article 23, he/she shall publicly notify the matters provided in the Prime Ministerial Decree, in the gazette, within 72 days from the date of such selection or decision.

(2) When the participants of the tendering requires the head of each central agency or the public official in charge of the contract to provide any information concerning the relevant tendering, he/she shall meet such demand if there are no special reasons to avoid such request.

(3) In connection with the provisions of Paragraphs (1) and (2), the matters concerning the scope of disclosure, and an exceptional case of disclosure, of information relating to successful tendering, shall be in accordance with the provision of the Prime Ministerial Decree.

Article 18 (Selective Tendering)

When the head of each central agency or the public official in charge of the contract intends to put up the designated competitive tendering as provided in Article 7 of the Act, for a specific procurement contract, he/she shall, in consideration of the matters provided in Article 9, establish the qualification required of the participants of the selective tendering and the standard for designation.

Article 19 (Designation of Participants of Designated Competitive Tendering and Notice thereof)

(1) When the head of each central agency or the public official in charge of the contract intends to put up the designated competitive tendering for a specific procurement contract, he/she shall designate a person having the qualification provided in Article 18, who is deemed to be appropriate with regard to the standard for designation, and at the same time, give notice stating the matters concerning public notice of tendering as provided in Article 12 hereof and Article 36 of the Enforcement Decree, to such designated person.

(2) The notice provided in Paragraph (1) shall be given at the date of public notice under the provision for Article 20, Paragraph (1).

Article 20 (Public Notice of Selective Tendering)

If the head of each central agency or the public official in charge of the contract intends to put up designated competitive tendering for a specific procurement contract, he/she shall give public notice thereof, in accordance with the provisions of Article 11 and Article 12.

(2) Notwithstanding the provision of Paragraph(1), in the case of selective tendering without using the list of qualified persons, the period for submission of the application for participation in the selective tendering shall be set up for 25 days or more from the date of public notice as provided in Paragraph (1).

Article 21 (Screening of Qualification for Participants of Selective Tendering)

(1) If the head of each central agency or the public official in charge of the contract receives any applications for screening of qualification for participation in designated competitive tendering after the public notice thereof, as provided in Article 20, he/she shall, without delay, commence the screening of qualification as set forth in Article 18. However, if it appears that the screening cannot be completed until the deadline for the filing of the application, he/she shall give notice of such matter in advance to the applicants.

(2) If it is deemed to be necessary, the head of each central agency or the public official in charge of the contract shall designate the screening period for the application of screening of qualification for participation as provided in Paragraph (1), and he/she may publicly notify the period, together with any other matters as provided in Article 20.

(3) If the head of each central agency or the public official in charge of the contract intends to prepare the list of qualified persons for selective tendering, he/she shall give public notice of the matters concerning the qualification for participation of the designated competitive tendering as provided in the Prime Ministerial Decree, in the gazette, each year.

(4) The provision of Article 10 shall apply *mutatis mutandis* to the preparation of the list of qualified persons under the provision of Paragraph (3).

Article 22 (Application of Provision Concerning General Competitive Tendering)

The provisions of Article 9 through Article 17 shall apply *mutatis mutandis* to the selective tendering.

Article 23 (Private Contract)

The specific procurement contracts which may be entered into by means of a private contract shall be as follows:

1. When there is no participant of the competitive tendering, collaborative tendering documents are filed, or no tendering documents satisfy the conditions required in the public notice of the relevant tendering;
2. When the relevant goods may be procured only from a specific supplier such as works of art with no substitutes thereof, or other goods which are related to any exclusive rights, including patent rights or publication rights, or which require special technology;
3. If the procurement cannot be made within the required period by competitive tendering due to any urgent cause;
4. If the procurement is made for an change of the components of already procured goods or an expansion of any of the facilities (only if the manufacture and supply of the relevant goods by others than those which are originally manufactured and supplied causes lack of compatibility);
5. If the prototype developed by the request of the ordering agency is procured (except if the relevant goods continue to be procured after completion of fulfilment of the relevant contract);

6. If nay additional construction for the construction work for which a contract has been already executed is required, due to any unexpected circumstances, and an amount equivalent to the standard price of the additional construction is 50/100 or less of the contract amount of the immediately previous construction, and if there is a need to execute a contract with the person performing the relevant work since it is difficult to separate the additional construction work technically and economically, or such separation causes considerable inconvenience to the ordering agency;
7. If the new construction work is a repeat of similar construction works according to the basic plan, and the initial contract was executed as a specific procurement contract, and the public notice on tendering for the initial contract specifies that the new construction can be made by a private contract;
8. If any goods are purchased in raw materials market(commodity exchange);
9. If any goods are procured in remarkably profitable conditions due to any causes including asset disposition of any corporation subject to bankruptcy or corporate reorganization; and
10. If any contract is executed with the person winning the prize in the design contest as specified in the Prime Ministerial Decree.

Article 24 (Records concerning Contract)

When the head of each central agency or the public official in charge of the contract determines the successful tenderer in the specific procurement contract by competition, he/she shall keep and maintain the documents concerning the tendering and the contract, and the documents recording any of the following for five (5) years:

1. Names of participants in the tendering and any person participating in the opening of the tendering;
2. Name of successful tenderer, amount of successful tendering and reason of determination of the successful tenderer;
3. In the event any tendering becomes null and void, details of the relevant tendering and reason for such nullity;
4. In the event the notice as prescribed by Article 9, Paragraph 2 is given, matters concerning the notice;
5. Country of origin of goods; and
6. Other matters as determined by the Prime Ministerial Decree.

(2) When the head of each central agency or the public official in charge of the contract executes a private contract for a specific procurement, he/she shall keep and maintain any documents concerning the contract and the documents recording any of the following for five (5) years:

1. Purpose of the contract;
2. Name of item, size, quantity, unit price, amount, etc., of the goods;
3. Provisions of any applicable laws and specific reason for the application;

4. Name (trade name) and address of the other party in the contract;
5. Contract amount and reason of determination of the other party of the contract;
6. Country of origin of goods; and
7. Other matters as determined by the Prime Ministerial Decree.

Article 25 (Report on Result of the Contract)

(1) The head of each central agency shall prepare the report on the results of the contract, consisting of such contents as required by the Prime Ministerial Decree and submit it to the MOFE within 60 days from the end of the relevant year.

(2) The report on the results of the contract concluded by a government invested institution, which is subject to the Agreement, shall be submitted by the relevant Minister according to Paragraph 1 above.

Article 26 (Subject to Submitting Objection)

"Other matters as determined by the Presidential Decree" as set forth in Article 28, Paragraph 1, Item 5 of the Act shall mean the matters breaching the provisions of the Agreement as not specified in Article 28, Paragraph 1, Item 1 of the Act.

Article 27 (Application for Mediation)

(1) The person("applicant") who intends to apply for a review in accordance with Article 28, Paragraph 4 of the Act ("application for mediation") shall sign or affix seals to the application as determined by the MOFE and then submit it to the International Contract Dispute Mediation Committee as prescribed by Article 28, together with evidencing documents and any related documents.

(2) Matters concerning any necessary procedures in connection with the application for mediation, except for the provision of Paragraph 1 above, shall be determined by the MOFE.

Article 28 (Organization of International Contract Dispute Mediation Committee)

(1) The International Contract Dispute Mediation Committee("Committee") as set forth in Article 29 of the Act, shall consist of 15 or less members, including the Chairman.

(2) The Chairman of the Committee shall be the Deputy-Minister of Finance and Economy. The members of the Committee shall be the public officials of the central administrative agency as determined by the Prime Ministerial Decree who shall be designated by the head of the relevant agency and the persons appointed by the MOFE among the persons falling under any of the following:

1. The person who has held for five (5) years or more, the position as a deputy professor or a higher level of law, finance, trade or accounting at the university as prescribed by the Education Law;
2. The person qualified as a lawyer who has engaged in legal works for ten (10) years or more; and
3. The person who has much knowledge and experience concerning accounting and procurement contract affairs of the government.

(3) The term of the member who is not the public official shall be two (2) years and shall be eligible for re-election. The term of any substitute shall be the remaining term of the predecessor.

(4) The member who is not the public official may not be involuntarily removed during the term of office, except when he is sentenced to imprisonment or more severe punishment, or when he may not perform his duties due to long-term mental and physical weakness.

Article 29 (Function of the Committee)

When the Committee receives the application for mediation as set forth in Article 27, Paragraph 1, it shall notify the head of the relevant central agency of the contents of the application, and then examine and mediate the application.

Article 30 (Suspension of Contract Tendering Procedures)

(1) When the Committee orders a postponement of the tendering procedure or a suspension on the conclusion of the contract to the relevant central agency, in accordance with Article 30, Paragraph 2 of the Act, the Committee shall make such order in writing within seven (7) days from receipt of the opinion pursuant to Article 33 unless there is any special cause.

(2) When, in accordance with the provisions of the Agreement, the Committee determines not to order the suspension of the contract as provided in Paragraph 1 above because it threatens to cause any disadvantageous effect to public interest or the relevant interested party, it shall notify, in writing, the reason therefore to the applicant and the head of the relevant central agency.

Article 31 (Duties of Chairman of the Committee)

(1) The Chairman of the Committee shall generally coordinate business affairs of the Committee and represent the Committee.

(2) When the Chairman of the Committee is unable to perform his duties due to unavoidable causes, the member designated by the MOFE shall act for the Chairman.

Article 32 (Meeting of the Committee)

(1) The meeting of the Committee shall be convened by the Chairman.

(2) A resolution of the meeting of the Committee shall be adopted by the presence of the majority of all members and then by affirmative vote of the majority of the members present thereat.

(3) The Committee shall have one(1) secretary for its conduction of business.

Article 33 (Investigation)

(1) The head of the central agency to whom the details of the application for mediation according to Article 29 are notified, in accordance with Article 29, shall submit to the Committee, its opinion, in writing, within fourteen (14) days from receipt of the notice.

(2) If necessary for examination and mediation, the Committee may demand the applicant and the head of the relevant central agency to submit the documents relating to the matters subject to the application for mediation, and may request the relevant professional institution to conduct an appraisal, a diagnosis and a test.

(3) The Committee shall give the party, or its representative, an opportunity to state his/her opinion prior to the completion of the mediation. If necessary, the Committee may cause the applicant, the head of the relevant central agency, its representative, witness or the relevant specialist, to be present at the Committee, to state their opinion.

Article 34 (Suspension of Mediation)

If litigation, with respect to the matter which is the same as the matter subject to the application of mediation with the Committee, is pending at the Court, the Committee may suspend the examination/mediation. In such a case, the Committee shall notify the party, who has filed an application for mediation, of the cause for the suspension.

Article 35 (Mediation)

(1) The Committee shall prepare a mediation plan stating the results of the examination and then notify the party of the results.

(2) When preparing the mediation plan as set forth in Paragraph (1), if the Committee considers that the applicant has sustained any disadvantage due to any of the acts as set forth in Article 28, Paragraph (1) of the Act, the mediation plan shall include revocation or correction of the acts of the head of the central agency concerned of the public official in charge of the contract, and compensation for the damage of loss therefrom.

(3) The compensation for the damage or loss as set forth in Paragraph (2) may be restricted to the expenses incurred in the course of preparation of tendering and application for mediation.

Article 36 (Compensation)

The Committee shall pay compensation to the Committee member and the relevant specialist who are present at the Committee, within the extent of the budget.

Article 37 (Expenses)

(1) Expenses incurred in connection with the examination/mediation of the application for mediation shall be borne by the applicant. However, if there is any agreement between the parties in connection with the expenses, the expenses shall be borne as agreed in the agreement.

(2) Details on expenses in connection with the application for mediation shall be as set forth in the Prime Ministerial Decree.

Article 38 (Operation of Committee)

Matters necessary for the operation of the Committee which has not been provided in these Regulations, shall be set forth in the Prime Ministerial Decree.

Article 39 (Relations with the Enforcement Decree)

In a specific procurement contract, provisions of the Enforcement Decree shall apply to any matter which has not been specifically provided in the Regulations. However, Articles 21 and 22, and Article 72, Paragraph (3) of the Enforcement Decree shall not apply to the matters in connection with a specific procurement contract.

Article 40 (Application of International Trade Customs)

If, in the case of specific procurement contracts, it is unavoidable to the performance of procedures for procurement such as currency, type and period for payment of security deposit, method of payment of consideration through a letter of credit, and inspection, etc., the head of each central agency or the public official in charge of the contract may, notwithstanding Article 39, be subject to the international trade customs within the extent which is not contrary to the provisions and nature of Agreement and these Regulations.

If, in the case of specific procurement contracts of goods and services, it is judged to be difficult to perform procedures for procurement without complying with the international trade customs with respect to the adjustment of the contract amount due to price fluctuation, the head of each central agency or the public official in charge of the contract shall, notwithstanding Article 64, Paragraph (1) of the Enforcement Decree, be subject to the international trade customs within the extent which is not contrary to the provisions and nature of the Agreement and these Regulations.

ADDENDA

Article 1 Enforcement Date

These Regulations shall enter into force from 1 January 1997.

Article 2 Validity Period of Application of these Regulations to the Contract for Manufacture and Purchase of Artificial Satellite

The effect of the provision of Article 3, Paragraph (2), Item 4 shall be maintained until 31 December 2001.

Article 3 Repeal and Amendment of Other Laws and Regulations

The Regulations on the Contract for Foreign Capital Purchase shall be repealed.

Special Regulations of the Enforcement Decree of the Act Relating to the Contract to Which the State is a Party for the Procurement of Specific Goods shall be amended as follows: Article 12 shall be deleted.

Article 14, Paragraph (2) shall be amended as follows:

Any person who objects to the measures taken by the head of each central body as referred to Paragraph(1), may request a review for mediation to the International Contract Dispute Mediation Committee as Prescribed in Article 28 of the Special Regulations of the Enforcement Decree of the Act Relating to the Contract to Which the State is a Party for Specific Procurement, within fifteen (15) days after the head of each central body takes the measures or he/she is aware that such measures have been taken.

Articles 15 and 16 shall be deleted, respectively.

In Article 17, the "regulations on the contract for Foreign Capital Purchase" shall be amended as the "Special Regulations of the Enforcement Decree of the Act Relating to the Contract to Which the State is a Party for Specific Procurement".

Article 4 Interim Measures for Execution of Contract for Foreign Capital Purchase, etc.

The tendering, determination of a successful tenderer and execution of the contract which will occur after the enforcement date of these regulations and with regard to which a public notice for tendering was made before the enforcement date of these Regulations in accordance with the Regulations on the Contract for Foreign Capital Purchase, and the contract which is to be executed after the enforcement date of these Regulations and with regard to which a tendering was determined before the enforcement date of these Regulations, shall be governed by the previous provisions.

ATTACHMENT E

THE ACCOUNTING REGULATION FOR GOVERNMENT INVESTED ENTERPRISES

[Enacted on 21 October 1999 as Decree No. 00107, Ministry of Finance and Economy]

Article 1 (Purpose)

These Regulations (hereinafter referred to as "Regulation") is to regulate the necessary matters concerning the accounting and contracting standards and procedures applicable to government-invested institutions and bidders' qualifications for participating in the tender, as mandated by subsection 3 of Article 20 of the Framework Act on the Management of Government-invested Institutions (hereinafter referred to as "Framework Act").

Article 2 (Relations with Other Laws)

(1) Unless otherwise provided in other laws or ordinances, these Regulations shall apply to the accounting practices of the government-invested institutions (hereinafter referred to as "Invested Institutions") under Article 2 of the Framework Act.

(2) The matters that are not provided in these Regulations concerning contracts entered into by an Invested Institution shall be subject to the Act on Contracts to which the State is a party, *mutatis mutandis*, in such case "state", "government" and "national treasury" in the aforesaid Act shall be deemed to be an "Invested Institution", "head of any office of the central government" and "public servant in charge of contract-related affairs" shall be deemed to be "president of an Invested Institution" and the "Contracting Officer", respectively.

Article 3 (Accounting Officers)

(1) The president of an Invested Institution shall appoint the accounting officers to take charge of accounting for each accounting unit, as follows:

1. An officer in charge of the revenue-related affairs;
2. An officer in charge of the expenditure-related affairs;
3. An officer in charge of the contract-related affairs;
4. An officer in charge of the cause-of-expenditure-related affairs;
5. An officer in charge of the routine-expense-related affairs;
6. An officer in charge of the securities management related affairs;
7. An officer in charge of the supplies management related affairs, and
8. An officer in charge of the affairs relating to the management of inventories, fixed assets and other assets.

(2) Among the accounting officers under subsection (1) above, there shall be no holding currently the post of a revenue officer and an expenditure officer, an expenditure officer and a contracting officer or a cause-of-expenditure officer; provided, however, that the foregoing provisions shall not apply to an office overseas or when inevitable, due to the number of personnel far less than required.

(3) The president of an Invested Institution may appoint one of its employees to mandate the duties of the accounting officers under subsection (1) above, in whole or in part, if deemed necessary.

Article 4 (Consolidated Financial Statements)

The Minister of Finance and Economy (hereinafter referred to as "Minister") may direct the President of an Invested Institution to prepare consolidated financial statements, if it is deemed necessary in order to ensure proper accounting.

Article 5 (Payment of Expenditure)

(1) Expenditure shall be paid by crediting related payment to the savings account in the financial institution or a mail transfer account in the post office (for the purpose of this article, hereinafter referred to as "Crediting to Creditor's Account"), as designated by the relevant creditor (including the subcontractors appointed by the creditor, in case a subcontracts has been entered into in the course of performing a construction, manufacture or purchase contract); provided, however, that expenditure may be paid otherwise than by Crediting to Creditor's Account, in the event of:

1. Payment of personnel expenses, travelling expenses or routine expenses;
2. Payment in an amount less than W100,000 per transaction;
3. Payment made by an Invested Institution located in a "Myeon"; or
4. If payment by Crediting to Creditor's Account is deemed particularly inappropriate.

(2) The expenditure in accordance with subsection (1) above shall be effected by check, except where specific circumstances require payment in cash.

Article 6 (Payment of Routine Expenses)

(1) The President of an Invested Institution may make payment of the necessary expenses that are likely to adversely affect the Invested Institution's ordinary activities considering its nature, if not paid in cash as routine expenses.

(2) The scope of routine expenses referred to in subsection (1) above shall be as follows:

1. Expenses to be paid in foreign countries;
2. Expenses required for operation and/or repair of vessels;
3. Expenses to be paid in the area where proper transportation and/or communication is not available;
4. Expenses routinely spent in the office and travelling expenses that do not exceed W5 million;
5. Expenses incurred by each office to purchase miscellaneous food and related materials;
6. Expenses incurred by the office whose place of payment is not fixed;
7. Expenses incurred by the office whose expenditure officer is not appointed;
8. Expenses for construction, manufacture or afforestation carried out directly by each office that do not exceed W20 million;
9. Business promotion expenses;
10. Expenses to be paid to witnesses or surveyors;
11. Salaries to be paid to its officers and employees of an Invested Institution;
12. Various allowances and honorariums;
13. Bonuses; and
14. Expenses for purchasing samples and fees for test and research pursuant to the provisions of applicable laws and ordinances.

(3) The funds for the expenses under subsection (1) above shall be paid in compliance with the following requirements:

1. The routine expenses of the office shall be paid within the estimated budget of expenses for one month; provided, however, that the expenses to be paid in foreign countries or in the area where proper transportation and/or communication is not available, or incurred by an office whose place of payment is not fixed, may be paid within the budget of expenses for three months.
2. The extraordinary expenses incurred from time to time shall be paid in instalments as many as possible, to the extent of not affecting normal business and on the basis of the expenditure plan reflecting the fund required for such expenses.

Article 7 (Payment in Advance)

(1) The President of an Invested Institution may pay in advance freight, chartreuse, travelling expenses, considerations for a construction, manufacturing or service contract, etc., that may likely adversely affect the Invested Institution's ordinary activities or business considering its nature, if not paid in advance.

(2) The scope of expenses to be paid in advance pursuant to the provisions of subsection (1) above shall be as follows:

1. Payment for the machinery, books, samples, or testing materials purchased directly from foreign countries;
2. Payment for periodicals;
3. Rental of land/buildings or chartreuse;
4. Freight;
5. Wages and salaries to be paid to those who will be transferred or going on business trip, participating in an emergency drill or manoeuvre, or going on leave on the date of record for wages and salaries;
6. Expenses to be paid to the state, a local government or other Invested Institution;
7. Expenses to be paid to those who are engaged in research or survey in foreign countries;
8. Wages and salaries to be paid to those working in the area where proper transportation is not available or the crew of vessels, or wages and salaries to be credited to financial institutions for the purpose of payment thereof through the savings accounts in financial institutions;
9. Expenses required to entrust certain activities, etc.;
10. Subsidies or contributions;
11. Honorariums;
12. Consideration of or compensation for, or transfer cost of the land or objects on it purchased or expropriated by the Invested Institution;
13. Any amount not exceeding 70/100 of the contract price under a construction or manufacturing contract with its contract price of W30 million or more, or a service contract with its contract price of W5 million or more; or
14. Expenses to be paid in Korea to a foreign nationals invited by the Invested Institution.

(3) The wages and salaries to be credited to financial institutions for the purpose of payment thereof through the savings accounts in financial institutions pursuant to the provision of item 8, subsection (2) above may be so credited within three days prior to the date of record.

(4) In paying in advance the expenses under item 13 of subsection (2) above, such expenses shall be paid within 14 days from the date of request for payment from the other party of relevant contract after execution thereof; provided, however, that the foregoing provision shall not apply, if the party liable to pay such expenses has been prevented from payment thereof inevitably and when the said party has notified the other party thereof in writing.

Article 8 (Payment by Estimation)

(1) The president of an Invested Institution may pay by estimation freight, charterage, travelling expenses, considerations for a construction, manufacturing or service contract, etc., that may likely adversely affect the Invested Institution's ordinary activities or business considering its nature, if not so paid.

(2) The scope of expenses to be paid by estimation pursuant to the provisions of subsection (1) above shall be as follows:

1. Travelling expenses, business promotion expenses or office operation expenses;
2. Expenses to be paid to the state;
3. Subsidies or contributions;
4. Medical care expenses to be paid pursuant to the provisions of Industrial Accident Compensation Insurance Act; and
5. Expenses required for disaster rehabilitation and relief activities.

Article 9 (Accounting for Claims as Bad Debt Expenses)

(1) If anyone of the following events occur, the President of the Invested Institution concerned shall account for the claims affected thereby as bad debt expenses, even before conclusion of relevant extinctive prescription:

1. When a corporate entity (debtor) is dissolved or has suspended its business and deemed unlikely to resume its business and the sum of expenses required for enforcement and other priority claims to be reimbursed out of the expected revenue from such enforcement exceeds the value of the properties available for attachment;
2. When claims against a corporate entity (debtor) are concluded to be non-collectable, as the reorganization plan concerning such claims has been approved pursuant to the provisions of Corporation Reorganization Act;
3. When a debtor is dead and if the sum of expenses required for enforcement and other priority claims to be reimbursed out of the expected revenue from such enforcement exceeds the value of inherited properties; and
4. When the estimated expenses required for collecting certain claims exceed the value thereof.

(2) If there exists a third parties other than the debtor, such as a joint debtor or guarantor, who is obliged to perform such obligations, the provisions of items 1 through 3 of subsection (1) above shall not apply.

Article 10 (Accumulation of Allowance for Bad Debts)

The President of an Invested Institution shall accumulate allowance for bad debts on accounts receivable, notes receivable, other receivables, accrued income and claims similar thereto, long-term trade receivables. In such case, the amount of claims against the state, a local government or other Invested Institutions, if any, shall be excluded from the subject on which the estimated bad debt losses are to be calculated.

Article 11 (Scope of Procurement Contract by an Invested Institution based on International Tender)

(1) The procurement contract entered into by an Invested Institution shall be through an international tender, if the contract price is same as or higher than the amount specified and notified by the Minister in accordance with the Agreement on Government Procurement executed in Marrakesh, Morocco on 15 April 1994 (hereinafter referred to as "Agreement on Government Procurement") and other international regulations based thereon. Notwithstanding the foregoing provisions, any procurement contract falling into anyone of the category as described below shall be excluded from the subject of an international tender:

1. Procurement of the goods and services for resale or required for the manufacture of products for sale;
2. Manufacture and/or purchase of products of small and medium enterprises pursuant to the provisions of the Act on Promotion of Small & Medium Enterprises and Encouragement of Purchase of Their Products;
3. Purchase of agricultural, fishery or livestock products pursuant to the provisions of Grain Management Act, Act on Distribution and Price Stabilization of Agricultural, Fishery Products and Livestock Industry Act;
4. Purchase by Korea Electric Power Corporation of certain heavy electric products (HS 8504, 8535, 8537 and 8544) pursuant to the provisions of Korea Electric Power Corporation Act; or
5. A procurement contract entered into, as a private free contract, pursuant to the provisions of Article 15 hereof.

(2) If a procurement contract is entered into through an international tender, the matters not provided for in these Regulations concerning the method and procedures of executing such contract shall be in compliance, *mutatis mutandis*, with the Provisions of Special Cases of the Enforcement Decree of the Act on Contracts for the specifically designated procurement to which the State is a party and the Rules of Special Cases of the Detailed Enforcement Regulations of the aforesaid act.

(3) The matters to be announced in course of such an international tender shall be announced publicly by posting them in the publications as set forth in the Agreement on Government Procurement.

(4) The president of an Invested Institution or the person taking charge of the contract-related affairs by mandate or entrustment pursuant to the provisions of Article 14 hereof (hereinafter referred to as "Contracting Officer") may procure through an international tender an item not falling within the subject of an international tender under subsection (1) above, if it is deemed necessary to do so, taking into account the purpose and nature of relevant contract.

Article 12 (Principles of Entering into a Contract)

(1) The contract to be entered into an Invested Institution shall be based on mutual agreement between the parties thereto, as independent and equal contractors, and each party shall perform such contract in good faith.

(2) In entering into a contract, the President or Contracting Officer of the Invested Institution concerned shall ensure that such contract will not contain any of special terms or conditions that may unreasonably limit the other party's contractual interests under these Regulations or applicable laws and ordinances.

Article 13 (Method of Entering into a Contract)

(1) When entering into a contract, the President or Contracting Officer of the Invested Institution concerned shall publicly notify the details of the proposed tender and then put the tender in public competition; provided, however, that such a contract may be entered into through a competitive bidding by qualified or designated bidders or as a private free contract, if it is deemed necessary, taking into account its purpose, nature and scope.

(2) If such a contract falls within anyone of the following category, the provisions of subsection (2) above may not apply, if:

1. If an Invested Institution participates in the competitive bidding or public sale;
2. If a transaction involving securities is executed in the manner as stipulated in Securities Exchange Act; or
3. If, in case of a contract for purchase or lease of real estate, there exists a specific circumstance preventing a competitive bidding.

Article 14 (Mandate & Entrustment of Contract-related Matters)

(1) The President of an Invested Institution may mandate contract-related affairs to one of its employees, or entrust the same to an agency of the state or an agency of a local government, or the president or one of the employees of other Invested Institution (including Korea Asset Management Corporation established pursuant to the provisions of Article 6 of the Act on Efficient Disposal of Financial Institutions' Non-performing Assets of Financial Institutions and the Establishment of Korean Asset Management Corporation, in the case of selling non-business real estate).

(2) In the event of entrusting contract-related affairs pursuant to the provisions of subsection (1) above, the conditions and fees of such entrustment and other necessary matters related thereto shall be clearly prescribed.

Article 15 (Private Free Contract)

The President or Contracting Officer of an Invested Institution may enter into a contract, as a private free contract, if:

1. The contract is entered into with the state, a local government or other Invested Institution; or
2. The Invested Institution enters into the contract falling within the category as described below, with one of its subsidiaries (a "**Subsidiary**" means a corporation, the 50/100 or more whose outstanding shares or equity interests is held by the Invested Institution, and this definition shall apply to these regulations hereafter) or affiliated companies (a "**Affiliated Company**" means a corporation the sum of the

shares or equity interests is held by the Invested Institution, other Invested Institutions or Korea Development Bank is 50/100 or more and this definition shall apply to these Regulations hereafter:

- a. If the Invested Institution concerned entrusts its activities to a third party or has a third party perform its activities on its behalf, in compliance with the government's policy for management innovation;
 - b. If it is required to do so for the purpose of maintaining the installations and equipment owned by the Invested Institution concerned or the installations of Type I under subsection 2 of Article 2 of the Special Act on the Safety Control of Installations;
 - c. If it is required to do so for the purpose of protection and promotion of the specific technologies recognized by the minister concerned;
 - d. If the minister concerned deem indispensable, in the course of restructuring the Invested Institution's Subsidiaries or Affiliated Companies for their management innovation;
3. If the office located abroad purchases from a local source supplies for its own use;
 4. If the contract is required to be entered into on a confidential basis;
 5. If, in order to promote localization, the President of an Invested Institution manufactures or purchases the product he/she has selected as the item for development, within 2 years after the manufacturer has completed the development;
 6. In addition to the contract described in items 1 through 5 above, if the purpose or nature of relevant contract requires it to be executed as a private free contract, or such is allowed under subsection (1) of Article 26 of the Enforcement Decree of the Act on Contracts to which the State is a party.

Article 16 (Competition by Designated Bidders)

The President or Contracting Officer of an Invested Institution may enter into a contract through a competitive bidding by designated bidders, if the contract falls within the category as described in subsection (1) of Article 23 of the Enforcement Decree of the Act on Contracts to which the State is a party and also in Article 15 of these Regulations.

Article 17 (Incidental Tender)

(1) In putting in tender a construction work specified in subsection (2) of Article 23 of the Enforcement Decree of the Act on Contracts to which the State is a party, the President or Contracting Officer of the Invested Institution shall ensure that bidders will describe mention of their bidding price the details of the proposed subcontracts, including the portion of the work to be subcontracted, subcontract price, subcontractors; provided, however, that the foregoing shall not apply, if the contract falls within the category as enumerated in the provision of subsection (1) of Article 19 of the Enforcement Decree of the Act on Contracts to which the State is a party.

(2) In mentioning the details of such subcontracts pursuant to the provisions of subsection (1) above, such details of a long-term construction work shall be stated on the basis of the total bidding price for the whole work; provided, however, that they may be stated on the basis of the bidding price

for the portion of the work to be implemented in the first year, if it is deemed necessary considering the duration of such construction.

(3) The necessary matters concerning the procedures of the incidental tender under subsection (2) above shall be provided for separately by the President of the Invested Institution concerned.

Article 18 (Exemption from Bid Bond, etc.)

(1) The President or Contracting Officer of an Invested Institution may allow exemption from the bid bond, if:

1. A Subsidiary of the Invested Institution participates in the tender;
2. An Affiliated Company of the Invested Institution participates in the tender; and
3. Any person who is exempted from the bid bond in whole or in part pursuant to the provisions of subsection (3) of Article 37 of the Enforcement Decree of the Act on Contracts to which the State is a party participates in the tender.

(2) The provisions of subsection (1) above shall also apply, *mutatis mutandis*, to the exemption from performance bond.

Article 19 (Interests on Bid Bond, etc.)

The President of an Invested Institution shall pay the interest on the amount of the bonds deposited in cash by bidders participating in the tender and/or the other parties of the contract to which the said Invested Institution is a party, including bid bonds, performance bonds, maintenance bonds etc., as calculated by applying the interest rate applicable to deposits as stipulated by the Minister pursuant to the provisions of Article 16 of Government Deposit Management Regulations; provided, however, that the foregoing shall not apply to any of the aforementioned bonds that is returned within 10 days from the date of deposit thereof.

Article 20 (Establishment of Standards for Screening Eligibility)

In connection with reviewing bidders' capability to perform the relevant contract, the President of the Invested Institution concerned may establish detailed standards for screening eligibility of the participants in the tender in accordance with the standards for screening eligibility stipulated by the Minister pursuant to the provisions of subsection (2), Article 42 of the Enforcement Decree of the Act on Contracts to which the State is a party. Notwithstanding the foregoing, the President of the Invested Institution concerned may establish a standard for screening eligibility, separately from those standards referred to in this Article, if it is deemed necessary taking into account the characteristics of the applicable construction work or goods for which the contract is entered into.

Article 21 (Payment of Consideration prior to Inspection)

The President or Contracting Officer of an Invested Institution may pay the consideration of a contract prior to inspection, if it is deemed inevitable as described below:

1. The other party of the contract is the State, a local government or other Invested Institution;
2. The other party of the contract is a Subsidiary of the Invested Institution;
3. The other party of the contract is an Affiliated Company of the Invested Institution;
4. It is recognized that there exists an inevitable circumstance requiring so, such as international practices, etc.

Article 22 (Receipt of Consideration)

(1) In the case of the contract constituting a source of revenue such as the sale or loan of assets, provision of services or otherwise, the President or Contracting Officer of the Invested Institution concerned shall ensure that the other parties of the contract will deposit the consideration thereof in advance, except where:

1. The other party of the contract is the State, a local government or other Invested Institution;
2. The other party of the contract is a Subsidiary of the Invested Institution;
3. The other party of the contract is an Affiliated Company of the Invested Institution;
4. The other party of the contract has submitted a letter of guarantee issued by a bank or a performance guarantee insurance policy in an amount equal to or more than the sum of consideration thereof plus the compensation for the actual cost and expenses incurred; or
5. An export contract has been executed on deferred payment basis or on the basis of payment by remittance after export.

(2) With respect to the contract for sale of assets, the President of the Invested Institution may allow the purchaser thereof to pay for such assets in instalments over the period not exceeding 5 years after execution of the contract, together with the interests thereon calculated at the rate equal to the interest rate applicable to loans from general resources that are offered by financial institutions, if:

1. The other party of the contract is the State, a local government or other Invested Institution, purchasing the said asset for public use; or
2. It is deemed impossible to enter into the contract on the terms of payment requiring the consideration thereof to be deposited in advance, or it is deemed considerably more profitable to the said Invested Institution concerned to allow the other party to make payment in instalments.

(3) The President or Contracting Officer of the Invested Institution concerned may not apply the main text of subsection (1) above and the provisions of subsection (2) above to the merchandises (being the real estate) among inventories.

(4) When the other party of the contract constituting a source of revenue has delayed payment in advance of the consideration thereof and if the contract is not cancelled or terminated by the Invested Institution, the Invested Institution shall ensure that the other party will pay the consideration thereof, together with the interests thereon, as calculated by applying the default interest rate applicable to loans from general resources that are offered by financial institutions.

Article 23 (Limitation of Unfaithful Bidders' Qualifications for Participating in Tender)

(1) The President of an Invested Institution shall restrict the qualifications for participating in the tender for the period more than one month but not longer than 2 years, for the other party of a contract or a bidder participating in the tender (including the representative, manager or other servant of the aforesaid other party or bidder) that is likely to affect a fair execution of competition or due performance of the contract, or deemed not appropriate to participate in the tender, and further that falls within the category described below:

1. The person who has been unfaithful, rude or unreasonable in performing a contract or committed unjust acts;

2. The person who has subcontracted in violation of the provisions limiting subcontracts under the Framework Act on the Construction Industry, Electrical Construction Business Act, Information and Communication Work Business Act or other laws or ordinances (excluding violation of the obligation to give notice of subcontracts) and who has subcontracted without the approval of the Invested Institution concerned or modified the conditions of subcontract already approved by the Invested Institution concerned;
3. The person who has violated the Monopoly Regulation and Fair Trade Act and Fair Transactions in Subcontracting Act and whose qualifications for participating in the tender Fair Trade Commission has requested to be restricted;
4. The person who, in the case of a contract for research design services or cost calculation services, has failed to properly calculate the estimated amount for research design or the estimated cost by wilful acts or gross negligence;
5. The person who, in the case of construction work or manufacturing products, has caused harm to the public by neglecting to take necessary safety measures or caused critical injury, including death, to employees in the workplace by neglecting to take necessary safety or health measures under the Industrial Safety and Health Act;
6. The person who has not entered into or performed the contract (including the matters concerning incidental tenders under Article 17 hereof and the matters concerning joint contracts under Article 72 of the Enforcement Decree of the Act on Contracts to which the State is a party), without justification;
7. The person who, in a competitive bidding, has pre-concerted bidding prices by agreement among bidders or colluded to have a specific person become the successful bidder. The person who has counterfeited or forged, or used in an unjust manner any of the documents related to the tender or contract, or submitted false documents;
8. The person who has wilfully submitted an invalid tender;
9. The person who has bribed officer(s) or employee(s) of the Invested Institution, in relation to the bidding, being awarded the contract, or execution or performance of the contract;
10. The person who has submitted an application for or a letter of consent to participation in the tender but has not participated in the tender thrice or more in the then current fiscal year;
11. The person who has prevented others from participating in the tender or interfered with the successful bidder's executing or performing the contract;
12. The person who, during supervision or inspection, has interfered with performance of such activities; or
13. The person who has failed to submit the documents, in whole or in part, as needed for reviewing bidders' capability to perform relevant contract without justification;

(2) In the case of a joint contract by a group of bidders, the provisions of subsection (1) above shall apply to the person who has directly caused the restriction of the group's qualifications for participating in the tender.

(3) If the person whose qualifications for participating in the tender is restricted is a corporation or other entity, the provisions of subsection (1) above shall also apply to its representative; in the case of Korea Federation of Small Business, the aforesaid provisions shall also apply to its member who has directly caused the restriction of its qualification. Notwithstanding the foregoing provisions, the provisions of subsection (1) above shall not apply to other representative(s) of the aforesaid corporation or other entity who has not dealt with the affairs related to the said tender or contract, if there are more than one representative in the abovementioned corporation or other entity.

(4) If a corporation or other entity has appointed as representative a person whose qualifications for participating in the tender is restricted and the said representative is involved with the tender, then the provisions of subsection (1) above shall also apply to the representative.

(5) When placing restriction on qualifications for participating in the tender, the President of the Invested Institution shall clearly specify the information mentioned in each item below and notify the same to the head of each office of the central government, mayor of Seoul Metropolitan Government, mayor of each of provincial cities, provincial governors and president of each Invested Institution and shall also post the same on the official gazette:

1. Company name (trade name), address, name (representative's name, if a corporation), resident registration number (representative's resident registration number, if a corporation), corporate registration number (only in the case of a corporation), business registration number and license or registration number under applicable laws and ordinances;
2. Duration of restriction placed on qualifications for participating in the tender; and
3. Cause of restriction placed on qualifications for participating in the tender.

(6) If the President of an Invested Institution has been informed of the fact that a person's qualifications for participating in the tender is restricted pursuant to the provisions of subsection (5) above or such fact has been posted in the official gazette, the president of the Invested Institution shall ensure that the person whose qualifications are so restricted can not participate in any tender invited by the said Invested Institution during the duration of such restriction placed.

(7) The President of an Invested Institution shall verify the respective bidders' resident registration number (representative's resident registration number, if a corporation), corporate registration number (only in the case of a corporation), business registration number and license or registration number under applicable laws and ordinances, in order to prevent any person with such restricted qualifications from participating in the tender during the duration of such restriction placed, by changing trade name and/or replacing the representative.

(8) Unless circumstances require, the President or Contracting Officer of an Invested Institution shall not enter into any private free contract with a person whose qualifications for participating in the tender are restricted (including a person whose qualifications are restricted by other Invested Institutions).

(9) A person whose qualifications for participating in the tender are restricted may apply to the President of the Invested Institution concerned for cancellation or alteration of such restriction, if the person has any objection to such restriction placed.

(10) If the President of an Invested Institution may also prohibit from participating in any tender a person whose restricted qualifications for participating in the tender have been notified or posted on the official gazette under the Act on Contracts to which the State is a party and Local Finance Act; provided, however, that measures shall be taken by all means to ensure that a person whose

qualifications for participating in the tender due to the reason as referred to in items 1 through 5, item 7 and item 8, can not participate in any tender invited by the said Invested Institution at all.

(11) The provisions of subsection (5) above shall apply, *mutatis mutandis*, where, as a result of reviewing the objection raised under subsection (9) above, the decision on the restriction placed on the qualifications for participating in the tender is cancelled or the duration of such restriction placed is altered.

Article 24 (Procedures for Hearing and Review)

(1) When intending to place restriction on any person's qualifications for participating in the tender pursuant to the provisions of subsection (1) of Article 23 hereof, the president of the Invested Institution concerned shall allow the said person or his/her representative an opportunity to represent his/her opinion in advance and shall hear the opinion from the interested parties, if it is deemed necessary; provided, however, that the foregoing provisions shall not apply where the subject of such intended restriction or its representative has not responded thereto, without justification, or such an opportunity to represent such opinion cannot be allowed due to the person's whereabouts unknown.

(2) If intending to hear such opinion pursuant to the provisions of subsection (1) above, the President of the Invested Institution concerned shall give notice to the persons or his/her representative in writing of the time, date and place of such hearing, together with the reason for such hearing.

(3) The persons or his/her representative who has been notified of such hearing under subsection (2) above may be present at such time on such date as designated and represent his/her opinion, or submit a written statement.

(4) The notice to be given under subsection (2) above shall clearly state that any failure to respond to such notice without justification shall constitute a waiver of the opportunity to represent such opinion.

(5) If the subject of the intended restriction represents its opinion pursuant to the provisions of subsection (3) above, the person in charge of such affairs in the Invested Institution shall keep the record of the opinion so represented in writing and have the person present verify and sign the same.

Article 25 (Administrative Protest)

(1) The person (for the purpose of this Article, hereinafter referred to as "Protester") who has suffered any unfavourable treatment from the President or Contracting Officer of an Invested Institution, due to the matters as described below, in the course of a procurement contract through an international tender may lodge a protest with the President of the Invested Institution concerned, requesting cancellation or correction of such treatment:

1. Matters related to the scope of the procurement contract to be entered into by the Invested Institution through an international tender;
2. Matters related to qualifications for participating in the tender;
3. Matters related to the tender announcement;
4. Matters related to selecting the successful bidder.

(2) The Protester under subsection (1) above shall lodge a protest with the President of the Invested Institution concerned, within 15 days from the date when the action constituting the cause of such administrative protest has occurred or within 10 days after the Protester becomes aware of such action.

(3) Within 10 days after receipt of such protest as mentioned in subsection (1) above, the President of the Invested Institution concerned shall examine it and notify the Protester of the result thereof.

(4) The person having an objection to the result under subsection (3) above may file a petition for review (hereinafter referred to as "Petition for Review") with the Commission on Mediation of Disputes over the International Contracts by a Government-invested Institutions, within 15 days from the date of receipt of such notice.

Article 26 (Commission on Mediation of Disputes over the International Contract by a Government-invested Institutions)

(1) The Commission on Mediation of Disputes over the International Contract by a Government-invested Institution (hereinafter referred to as "Commission") shall be established, within the Ministry of Finance and Economy, for the purpose of reviewing and mediating Petitions for Review.

(2) The Commission shall have the right to review the Petition for Review filed with it, through an administrative protest, by the person having suffered any unfavourable treatment due to the matters as described in subsection (1) of Article 25 hereof, in the course of a procurement contract to be entered into by an Invested Institution through an international tender conducted pursuant to the provisions of the Agreement on Government Procurement and a bilateral agreement by any organization other than an Invested Institution among those listed in Schedule 3, Appendix I of the Agreement on Government Procurement.

Article 27 (Composition of Commission)

(1) The Commission shall consist of not more than 15 members, including the chairman.

(2) The Deputy Minister of Finance and Economy shall be chairman and other members of the Commission shall be appointed as follows;

1. The persons nominated by the head of the respective organization concerned among the public servants of Level 2 or 3 recognized as candidates for the Commission member by the Ministries of Finance and Economy, Defense, Government Administration and Home Affairs, Commerce, Industry and Energy, Information and Communication, and Construction and Transportation, Public Procurement Office and the Minister;
2. The persons commissioned by the Minister to be a Commission member, among those satisfying the following requirements:
 - a. Having been in office as associate professor or higher level specialized in law, finance, foreign trade or accounting at a college under relevant Education Act for a period of 5 years or more;
 - b. Having the lawyer's license and the experience of being engaged in legal services for a period of 10 years or more; or
 - c. Having sufficient knowledge of and experience in the government's accounting and procurement activities.

(3) The term of office of a Commission member who is not a public servant shall be 2 years and such a member may be reappointed, provided that the term of office of a member appointed to fill a vacancy shall be the remainder of the term of office of his/her predecessor.

(4) A Commission member who is not a public servant shall not be discharged from the Commission membership against his/her own will, unless sentenced to imprisonment or heavier punishment or unable to fulfil the duty as a Commission member due to psychosomatic breakdown continuing for a long period.

Article 28 (The Role of Commission)

Upon receipt of a Petition for Review, the Commission shall notify the Invested Institution concerned thereof and shall review and mediate the subject of such Petition for Review.

Article 29 (Suspension of Contracting Procedures)

(1) The Commission has the right to direct the Invested Institution concerned to suspend the applicable procedures for the tender at issue or stop executing the contract at issue until completion of mediation concerning the Petition for Review, when it is deems necessary, taking into account the opinion of the president of the Invested Institution concerned. In such a case, the aforementioned suspension or stopping shall be directed in writing by the Commission within 7 days after receipt of the opinion under Article 32 hereof, unless circumstances require otherwise.

(2) In the event that, in accordance with the terms of the Agreement on Government Procurement, the Commission elects not to direct suspension of the procedures for the tender to be suspended or execution of the contract under subsection (1) above since it may be likely to adversely affect the public interest or the interest of parties concerned the Commission shall notify the Protester and the Invested Institution concerned in reason in writing.

Article 30 (Chairman's Responsibilities)

(1) The Chairman shall be responsible for overall management of the Commission's activities and represent the Commission.

(2) If the Chairman is unable to perform his/her duties as chairman due to a cause beyond his/her reasonable control, the member nominated by the Minister shall act on his/her behalf.

Article 31 (The Commission's Meeting)

(1) The Commission's meeting shall be convened by the Chairman.

(2) A quorum for holding the Commission's meeting shall be the majority of all members in office. All resolutions of the Commission shall be adopted by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

(3) The Commission shall appoint an executive secretary to deal with the affairs of the Commission.

Article 32 (Review)

(1) Upon receipt of the notice as to the content of the Petition for Review under the provisions of Article 28 hereof, the president of the Invested Institution concerned shall submit to the Commission in writing his/her opinion about such Petition for Review within 14 days from the date of receipt of the notice mentioned above.

(2) If it is deemed necessary, the Commission may request the Protester, the President of the Invested Institution concerned to submit to the Commission the necessary documents related to the subject of such Petition for Review and also request appropriate professional organizations to appraise, diagnose or test the same.

(3) Prior to completion of mediation as to the Petition for Review, the Commission shall allow the Protester or his/her representative an opportunity to represent his/her opinion and may the Protester, the President of the Invested Institution, witnesses, appropriate experts attend the Commission's meeting to hear their opinions.

Article 33 (Suspension of Mediation)

If a lawsuit concerning the matter that is identical to the subject of such Petition for Review as filed with the Commission is under way in court, the Commission may suspend review and mediation thereof, in which case the Commission shall notify the Protester of the reason for such suspension.

Article 34 (Mediation)

(1) The Commission shall prepare a mediation statement based upon the result of having reviewed the Petition for Review and notify the same to the Protester.

(2) If, in preparing the mediation statement as referred to in subsection (1) above, the Commission is of an opinion that the Protester has suffered any unfavourable treatment due to the matters as described in subsection (1) of Article 25 hereof, the Commission shall include in such mediation statement necessary measures for cancelling or correcting such actions of the President or Contracting Officer of the Invested Institution concerned, or damages or indemnities for loss resulting therefrom.

(3) The damages or indemnities for loss under subsection (2) above may be limited to the expenses incurred in the course of preparing for the tender and filing a Petition for Review.

Article 35 (Allowances)

The Commission may pay allowances, within the budget, to the Commission members and appropriate experts present at the Commission's meetings.

Article 36 (Related Expenses)

The expenses incurred in relation to the review and mediation of a Petition for Review shall be borne by the Protester, unless otherwise agreed by the parties to such petition.

Article 37 (Detailed Enforcement Regulations)

(1) The necessary matters concerning enforcement of these Regulations shall be prescribed and notified by the Minister.

(2) The President of an Invested Institution may set forth the necessary detailed matters concerning enforcement of these Regulations, within the limit of the notification by the Minister under subsection (1) above.

ADDENDA <No. 107, dated 21 October 1999>

- (1) (Effective Date) These Regulations shall come into effect on the date of promulgation hereof.
 - (2) (Validity) The provisions of Article 17 hereof shall remain valid until 31 December 2000.
 - (3) (Exception in Applying Payment of Interests on Bid Bond, etc.) The provisions of Article 19 hereof shall not apply to any bid bond received on or before 6 July 1995.
 - (4) (Transitional Measure concerning the Actions done in compliance with previous Notifications) All the activities done in accordance with the notification prescribed by the Minister pursuant to the provisions of subsection (3), Article 20 of the previous Framework Act on the Management of Government-invested Institutions (meaning Legislation No. 5812 "Framework Act on the Management of Government-invested Institutions" before revised by an amendment thereto.) shall be deemed to have been done in compliance with these Regulations.
-

**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED
IN NATIONAL CURRENCIES FOR 2004-2005**

SINGAPORE

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2004-2005.

The information notified by Singapore is reproduced below. Other submissions will be compiled in addenda to this document.

1. Calculation of threshold figures in national currency

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in Singapore Dollars (rounded)
1. Goods and services other than construction services	130,000	307,200
2. Construction services	5,000,000	11,817,000

Annex 3 Entities	Threshold Value (SDR)	Threshold Value in Singapore Dollars (rounded)
1. Goods and services other than construction services	400,000	945,300
2. Construction services	5,000,000	11,817,000

2. Method of calculation

The calculation of national threshold is based on the monthly average exchange rate of SDR to Singapore Dollars over 24 months from October 2001 to September 2003.

Month	Exchange Rate of Singapore Dollars to 1 SDR	Month	Exchange Rate of Singapore Dollars to 1 SDR
October 2001	2.3305	October 2002	2.3337
November 2001	2.3179	November 2002	2.3402
December 2001	2.3262	December 2002	2.3608
January 2002	2.2754	January 2003	2.3920
February 2002	2.2777	February 2003	2.3821
March 2002	2.2972	March 2003	2.4255
April 2002	2.2936	April 2003	2.4552
May 2002	2.3044	May 2003	2.4563
June 2002	2.3476	June 2003	2.4608
July 2002	2.3324	July 2003	2.4495
August 2002	2.3211	August 2003	2.4202
September 2002	2.3504	September 2003	2.4714

Source: International Financial Statistics, IMF

The average exchange rate of SDR to Singapore Dollars is:

Singapore Dollar 56.7221 / 24 months = Singapore Dollar 2.3634

**PROPOSED MODIFICATIONS TO APPENDICES II, III AND IV OF
THE REPUBLIC OF KOREA**

Notification from the Republic of Korea under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of the Republic of Korea was received on 10 November 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement (1994), the Republic of Korea wishes to notify the Committee on Government Procurement of the following modifications to Appendices II to IV of the GPA.

- (a) Appendix II - Publications Utilized by Parties for the Publication of Notices of Intended Procurements – Paragraph 1 of Article IX, and of Post-Award Notices – Paragraph 1 of Article XVIII

Delete:

"Kwanbo (The Korean Government's Official Gazette)
The Seoul Shinmun"

Replace with:

"The Korean e-Procurement System: G2B (<http://www.g2b.go.kr>)
and
Daily Press (if necessary)

For Entities Listed in Annex 2, The Korean e-Procurement System (G2B)
and
Internet Home Page of Each Entity"

¹ Article XXIV, 6(a) provides that "if the rectification, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

- (b) Appendix III - Publications Utilized by Parties for the Publication Annually of Information on Permanent Lists of Qualified Suppliers in the Case of Selective Tendering Procedures – Paragraph 9 of Article IX

Delete:

"Kwanbo (The Korean Government's Official Gazette)"

Replace with:

"The Korean e-Procurement System: G2B (<http://www.g2b.go.kr>)"

- (c) Appendix IV - Publications Utilized by Parties for the Publication of Laws, Regulations, Judicial Decisions, Administrative Rulings of General Application and Any Procedure regarding Government Procurement Covered by This Agreement – Paragraph 1 of Article XIX

Delete:

"Kwanbo (The Korean Government's Official Gazette)"

Replace with:

"Kwanbo (The Korean Government's Official Gazette)
and/or

The Korean e-Procurement System: G2B (<http://www.g2b.go.kr>)"

Accordingly, page 3/4 of Appendix II (English, French and Spanish); page 2/4 of Appendix III (English, French and Spanish); page 4/5 of Appendix IV (English, French and Spanish) should be modified as in Attachment A to this document (redlined version). Attachment B shows the relevant pages of the loose-leaf system after certification by the WTO Secretariat.

ATTACHMENT A

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

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or their equivalents

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The Korean e-Procurement System: G2B (<http://www.g2b.go.kr>)
and
Daily Press (if necessary)

For Entities Listed in Annex 2, The Korean e-Procurement System (G2B)
and
Internet Home Page of Each Entity

Deleted: Kwanbo (The Korean Government's Official Gazette)¶
The Seoul Shinmun

LIECHTENSTEIN

Daily Press: "Liechtensteiner Volksblatt", "Liechtensteiner Vaterland"

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

The Aruba Gazette "Landscourant" as well as in local newspapers

Deleted: 11 August 2002
(WT/Let/429)

ISRAËL

The Jerusalem Post
International Herald Tribune - Ha'aretz

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RÉPUBLIQUE DE CORÉE

Système coréen de passation électronique des marchés: G2B (<http://www.g2b.go.kr>)

et

Presse quotidienne (si nécessaire)

Pour les entités énumérées à l'Annexe 2,
Système coréen de passation électronique des marchés (G2B)

et

Page d'accueil Internet de chaque entité

Deleted: Kwanbo (Journal officiel du gouvernement coréen)¶
The Seoul Shinmun¶

LIECHTENSTEIN

Presse quotidienne: "Liechtensteiner Volksblatt", "Liechtensteiner Vaterland"

LE ROYAUME DES PAYS-BAS POUR LE COMPTE D'ARUBA

"Landscourant", Journal officiel d'Aruba, ainsi que la presse locale

NORVÈGE

Journal officiel des Communautés européennes

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ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

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REPÚBLICA DE COREA

Sistema de Contratación Electrónica de Corea: G2B (<http://www.g2b.go.kr>)

∨

Prensa diaria (si fuese necesario)

Con respecto a las entidades enumeradas en el Anexo 2,
el Sistema de Contratación Electrónica de Corea (G2B)

∨

la página de cada entidad en Internet

Deleted: Kwanbo (Diario Oficial del Gobierno de Corea)¶
The Seoul Shinmun¶

LIECHTENSTEIN

Prensa diaria: "Liechtensteiner Volksblatt", "Liechtensteiner Vaterland"

EL REINO DE LOS PAÍSES BAJOS RESPECTO DE ARUBA

El Boletín de Aruba "Landscourant" y periódicos locales

NORUEGA

Diario Oficial de las Comunidades Europeas

Deleted: 11 August 2002
(WT/Let/429)

Airport Authority

- Daily Press
- Home Page on the Internet
(<http://www.hkairport.com>)

ICELAND

Official Journal of the European Communities:
(Currently no such list exists)

ISRAEL

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International Herald Tribune Ha'aretz

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[The Korean e-Procurement System: G2B \(http://www.g2b.go.kr\)](http://www.g2b.go.kr)

Deleted: Kwanbo (The Korean Government's Official Gazette)¶

Deleted: 11 August 2002
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Direction de l'aéroport

- Presse quotidienne
- Home Page on the Internet
(<http://www.kcrc.com>)

ISLANDE

Journal officiel des Communautés européennes:
(Il n'y a pas de liste pour le moment)

ISRAËL

The Jerusalem Post
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Deleted: Kwanbo (Journal officiel du gouvernement coréen)[¶]

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Administración de Aeropuertos - Prensa diaria
- Home Page on the Internet
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ISLANDIA

Diario Oficial de las Comunidades Europeas
(Actualmente no existe esa lista)

ISRAEL

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International herald Tribune - Ha'aretz

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REPÚBLICA DE COREA

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Deleted: Kwanbo (Diario Oficial del Gobierno de Corea)

Deleted: 11 August 2002 (WT/Let/429)

Annex 3

Kanpō
and/or
Hōreizensho

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)
and/or

The Korean e-Procurement System: G2B (<http://www.g2b.go.kr>)

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LIECHTENSTEIN

Landesgesetzblatt

Liechtensteinische Entscheidsammlung

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The Republic of Singapore Government Gazette or
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SWITZERLAND

Compendium of Federal laws
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Kanpō et/ou Hōreizensho

RÉPUBLIQUE DE CORÉE

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et/ou

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Deleted: Kwanbo (Journal officiel du gouvernement coréen)¶

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Deleted: 11 August 2002
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ATTACHMENT B

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and/or
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Decisions of the Swiss Federal Court
Jurisprudence of the administrative authorities of the Confederation and every Canton (26)
Compendiums of Cantonal laws (26)

| [... 2003 \(WT/Let/...\)](#)

Annexe 3

Kanpō et/ou Hōreizensho

RÉPUBLIQUE DE CORÉE

Kwanbo (Journal officiel du gouvernement coréen)
et/ou

Système coréen de passation électronique des marchés: G2B (<http://www.g2b.go.kr>)

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Landesgesetzblatt

Liechtensteinische Entscheidsammlung

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SINGAPOUR

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The Government Electronic Business (GeBIZ)

... 2003 (WT/Let/...)

Anexo 3

Kanpō y/o Hōreizensho

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

y/o

Sistema de Contratación Electrónica de Corea: G2B (<http://www.g2b.go.kr>)

LIECHTENSTEIN

Landesgesetzblatt

Liechtensteinische Entscheidsammlung

(Se pueden obtener las leyes, decisiones judiciales, resoluciones administrativas y procedimientos para la adjudicación de los contratos públicos de las entidades enumeradas en los anexos 2 y 3 del apéndice I, mediante la consulta de las publicaciones locales pertinentes o solicitando directamente la información a las entidades incluidas en esos anexos.)

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NORUEGA

Norsk Lovtidend (Gaceta Oficial de Noruega)

SINGAPUR

Gaceta Oficial de la República de Singapur o
The Government Electronic Business (GeBIZ)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/283

11 November 2003

(03-6038)

Committee on Government Procurement

Original: English

KOREA'S PROPOSED WITHDRAWAL OF KOREA TOBACCO & GINSENG CORPORATION AND DAEHAN PRINTING AND PUBLISHING CO., LTD (GPA/W/250)

Communication from the United States

The following communication, dated 8 November 2003, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

Based upon Korea's responses in document GPA/W/270 to questions of the United States in document GPA/W/264, the United States hereby withdraws its objections set out in document GPA/W/258 to the proposed withdrawal of Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd from Annex 3 of Appendix I of the Agreement on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/229/Corr.1

31 October 2003

(03-5810)

Committee on Government Procurement

Original: English

COMMUNICATION FROM CANADA

Responses from Canada to Questions from Hong Kong, China (GPA/W/218)
Regarding Proposed Modifications to Canada's Annex 1
of Appendix I (GPA/W/203)

Corrigendum

In GPA/W/229 "Responses from Canada to Questions from Hong Kong, China (GPA/W/218) Regarding Proposed Modifications to Canada's Annex 1 of Appendix I (GPA/W/203)", on page 4, in the "Side-by-Side Comparison", under item 17, the following phrase should be inserted immediately following "Department of Fisheries and Oceans" in the right-hand column: "*(Not including procurements respecting FSCs 36, 70 and 74.)*". This statement, including brackets, should appear immediately prior to the bracketed statement that begins "*(For purposes...)*".

This phrase, "*(Not including procurements respecting FSCs 36, 70 and 74.)*", appears correctly in the right-hand column under item 17 of Canada's original submission in GPA/W/203 (Attachment 1) in both the English and French versions.

Committee on Government Procurement

Original: English/
anglais/
inglés

**MODIFICATIONS TO APPENDIX I OF THE AGREEMENT ON GOVERNMENT
PROCUREMENT RELATING TO JAPAN POST PROPOSED
BY JAPAN IN GPA/W/255, DATED 4 MARCH 2003**

Communication from the European Communities

Corrigendum

The expression "European Community" should be replaced by "European Communities" throughout this submission.

Comité des marchés publics

**MODIFICATIONS DE L'APPENDICE I DE L'ACCORD SUR LES MARCHÉS
PUBLICS CONCERNANT LA POSTE JAPONAISE PROPOSÉES PAR LE
JAPON DANS LE DOCUMENT GPA/W/255, DATE DU 4 MARS 2003**

Communication des Communautés européennes

Corrigendum

L'expression "Communauté européenne" doit être remplacée par "Communautés européennes" dans toute cette communication.

Comité de Contratación Pública

**MODIFICACIONES AL APÉNDICE I DEL ACUERDO SOBRE CONTRATACIÓN
PÚBLICA EN RELACIÓN CON LA ENTIDAD JAPAN POST PROPUESTAS
POR EL JAPÓN EN EL DOCUMENTO GPA/W/255,
DE FECHA 4 DE MARZO DE 2003**

Comunicación de las Comunidades Europeas

Corrigendum

Sustitúyase la expresión "Comunidad Europea" por "Comunidades Europeas" en toda la comunicación.

**QUESTIONS TO THE REPUBLIC OF KOREA RELATING TO THE PROPOSED
WITHDRAWAL OF KOREA TOBACCO & GINSENG CORPORATION
AND DAEHAN PRINTING AND PUBLISHING CO. LTD**

Communication from the European Communities

The following communication, dated 23 October 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

The European Communities would appreciate the Republic of Korea's responses to the following questions relating to its proposed withdrawal of Korea Tobacco & Ginseng Corporation (KT&G) and Daehan Printing and Publishing Co. Ltd. (Daehan) from Annex 3 of Appendix I of the Agreement on Government Procurement (GPA/W/250).

KT&G

1. Please indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, *de jure* or de facto, influence the appointment of the directors of KT&G.
2. Please describe all financing, including grants, guarantees and loans, that KT&G may have obtained from the Government of Korea, other Korean public entities or publicly-owned companies.
3. Please indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, *de jure* or de facto, influence management decisions of KT&G.
4. Please describe the main features of the laws, regulations and measures that apply specifically to tobacco manufacturing companies.
5. Please provide the full text of Article 25 of the Tobacco Business Act and all measures giving effect to this provision, and explain what kind of assistance could be required. Has this provision ever been used, and if so, please describe how and under which circumstances?
6. Please describe the conditions that apply for obtaining a licence to manufacture tobacco, the customs tariffs that apply to the import of cigarettes and leaf tobacco, and the market shares of all tobacco manufacturers.

Daehan

7. Please indicate if the Government of Korea, other Korean public agencies or publicly-owned companies own or used to own shares in Daehan. If yes, please provide details on these shareholdings, including the number of these shares, voting rights attached to these shares, and indicate when such shares were sold to private parties.
 8. Please indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, *de jure* or de facto, influence the appointment of the directors of Daehan.
 9. Please describe all financing, including grants, guarantees and loans, that Daehan may have obtained from the Government of Korea, other Korean public entities or publicly-owned companies.
 10. indicate to what extent the Government of Korea, other Korean public entities or publicly-owned companies may, *de jure* or de facto, influence management decisions of Daehan.
 11. Please describe and provide a copy of the Special Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party for specific procurement (Presidential Decree 15187) and the Accounting Regulation for Government Invested Enterprises (Minister of Finance and Economy Decree 107). Please indicate if there are other instruments that apply to Daehan and not to other printing or publishing companies.
 12. Please indicate if the Regulations referred to in question 11 are applicable to National Textbook Ltd.
 13. Please explain why the purchase of National Textbook Ltd. – a company not included in Annex 3 of Appendix I - justifies the withdrawal of Daehan from this Annex 3.
 14. Please set out on which markets Daehan and its subsidiaries, if any, operate, and indicate to what extent these markets have been liberalized. Please describe the structure of the Korean market for textbooks.
-

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/277

14 October 2003

(03-5443)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF THE AGREEMENT ON GOVERNMENT PROCUREMENT RELATING TO JAPAN POST PROPOSED BY JAPAN IN GPA/W/255, DATED 4 MARCH 2003

Communication from the European Community

The following communication, dated 13 October 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

The European Community (EC) hereby withdraws its objections contained in GPA/W/262, dated 4 April 2003, against the modifications of Appendix I of the WTO Agreement on Government Procurement proposed by Japan in GPA/W/255, dated 4 March 2003, relating to Japan Post.

The EC understands that the notification results from Japan Post becoming legally independent from the competent ministry, and agrees that such entities should be covered under Annex 3 rather than Annex 1 of Appendix I of the Agreement. In this respect, the EC notes that, pursuant to general note 3 to Annex 3 of Appendix I of Japan, the Agreement does not apply to contracts which entities in Group A of Annex 3 award for the purpose of "their" daily profit-making activities which are exposed to competitive forces in the market. The present acceptance of the proposed modifications is without prejudice to the question which activities, if any, of Japan Post are directly exposed to competition on markets to which access is not restricted.

Furthermore, the EC notes Japan's unilateral engagement to maintain the Annex 1 threshold.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/273

23 September 2003

(03-5024)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATION TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of Japan was received on 12 September 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

1. Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement (GPA), the Government of Japan wishes to notify the Committee on Government Procurement of the following modification of a purely formal nature relating to Annex 3 of Appendix I of the GPA (cf. WT/Let/446):

- add "- Japan Nuclear Energy Safety Organization" after "- National Printing Bureau" in Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4".

2. The above modification is the result of the following organizational change relating to a central government entity in Annex 1. It does not alter the level of the mutually agreed coverage provided in the Agreement:

- (1) Through Japan's central government reform process, part of the undertakings, which have been operated by internal sub-divisions of the Nuclear and Industrial Safety Agency (an independent organization of the Ministry of Economics, Trade and Industry in Annex 1) are to be conducted by the Japan Nuclear Energy Safety Organization. Under the Law Concerning the Japan Nuclear Energy Safety Organization (Law No. 179 of 18 December 2002) and the relevant ordinances, this organizational change shall be implemented as of 1 October 2003. The Japan

¹ Article XXIV:6(a) reads as follows: "Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII."

Nuclear Energy Safety Organization shall be established as an Independent Administrative Institution (IAI), legally independent from the government, to perform transferred undertakings efficiently and effectively.

- (2) Since this new Organization does not fall within the central government entities covered by the Accounts Law, and is not provided for in the National Government Organization Law, nor in the Law establishing the Cabinet Office, Japan has decided to add this entity to Annex 3 regarding both supplies and services (under Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4"). In this way, the Agreement will apply to the Japan Nuclear Energy Safety Organization, with the same thresholds and conditions as stipulated in Annex 1 for central government entities.
- (3) This entity will have accounting rules as of 1 October 2003 to implement the relevant thresholds and procedures under the Agreement. Challenge procedures, as provided for in Article XX of the Agreement, will apply to procurement conducted by this entity, which will fall under the control of the Ministry of Economics, Trade and Industry.

3. Attachment A² contains the proposed modification to Annex 3 of Appendix I in red-line/strikeout form. Attachment B² indicates how Annex 3 of Appendix I would appear after the proposed modification has been made.

² Attachments A and B are in English only.

ATTACHMENT A

JAPAN

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation

Deleted: 9 May 2003
(WT/Let/446)

Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

APPENDIX I	JAPAN	ANNEX 3	Page 3/5
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Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
 - National Maritime Research Institute
 - Port and Airport Research Institute
 - Electronic Navigation Research Institute
 - Civil Engineering Research Institute of Hokkaido
 - Marine Technical College
 - National Institute for Sea Training
 - Schools for Seafarers Training
 - Civil Aviation College
 - National Institute for Environmental Studies
 - Labor Management Organization for USFJ Employees
 - National Agency for Vehicle Inspection
 - National Statistics Center
 - Japan Mint
 - National Printing Bureau
 - Japan Nuclear Energy Safety Organization
- New Tokyo International Airport Authority
 - Japan Highway Public Corporation
 - Metropolitan Expressway Public Corporation
 - Hanshin Expressway Public Corporation
 - Honshu-Shikoku Bridge Authority
 - Urban Development Corporation (a)
 - Japan Science and Technology Corporation
 - Japan Nuclear Cycle Development Institute (b)
 - Japan Environmental Corporation
 - Japan International Cooperation Agency
 - Social Welfare and Medical Service Corporation
 - Government Pension Investment Fund
 - Agriculture and Livestock Industries Corporation
 - Metal Mining Agency of Japan (c)
 - Japan Small and Medium Enterprise Corporation
 - Postal Life Insurance Welfare Corporation
 - Labour Welfare Corporation
 - Employment and Human Resources Development Organization of Japan
 - Okinawa Development Finance Corporation
 - National Life Finance Corporation
 - Agriculture, Forestry and Fisheries Finance Corporation
 - Japan Finance Corporation for Small Business
 - Housing Loan Corporation
 - Japan Finance Corporation for Municipal Enterprises
 - Development Bank of Japan
 - Japan Bank for International Cooperation
 - Teito Rapid Transit Authority (a)
 - Japan Tobacco Inc. (g)
 - Hokkaido Railway Company (a)(g)
 - East Japan Railway Company (a)(g)
 - Central Japan Railway Company (a)(g)
 - West Japan Railway Company (a)(g)
 - Shikoku Railway Company (a)(g)
 - Kyushu Railway Company (a)(g)
 - Japan Freight Railway Company (a)(g)
 - Nippon Telegraph and Telephone Co. (f)(g)
 - Northern Territories Issue Association
 - Japan Consumers Information Center

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)

Deleted: 9 May 2003
(WT/Let/446)

Services (cont'd)

- Japan Atomic Energy Research Institute (b)
 - RIKEN (The Institute of Physical and Chemical Research) (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
 - Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
- National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center
- Japan Mint
- National Printing Bureau
- Japan Nuclear Energy Safety Organization

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

Deleted: 9 May 2003
(WT/Let/446)

ATTACHMENT B

JAPAN

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a)(d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation

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Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

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Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center
- Japan Mint
- National Printing Bureau
- Japan Nuclear Energy Safety Organization

- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a)(d)

APPENDIX I	JAPAN	ANNEX 3	Page 4/5
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Services (cont'd)

- Japan Atomic Energy Research Institute (b)
 - RIKEN (The Institute of Physical and Chemical Research) (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
 - Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
- National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center
- Japan Mint
- National Printing Bureau
- Japan Nuclear Energy Safety Organization

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/274

23 September 2003

(03-5029)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of Japan was received on 12 September 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

1. Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement (GPA), the Government of Japan wishes to notify the Committee on Government Procurement of the following modifications of a purely formal nature relating to Annex 3 of Appendix I of the GPA:

- (a) Delete the following from the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4":

Group A:

- Water Resource Development Public Corporation
- Japan Green Resources Corporation
- Japan Science and Technology Corporation
- Japan Consumers Information Center
- RIKEN (The Institute of Physical and Chemical Research)
- National Stadium and School Health Center of Japan
- Association for Welfare of the Mentally and Physically Handicapped

¹ Article XXIV:6(a) reads as follows: "Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII."

Group B:

- National Agriculture Research Organization.

- (b) Add the following to the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4":

Group A:

- Japan Water Agency
- Japan Green Resources Agency
- Japan Science and Technology Agency
- National Consumer Affairs Center of Japan
- RIKEN
- National Agency for the Advancement of Sports and Health
- National Center for Persons with Severe Intellectual Disabilities, Nozominosono

Group B:

- National Agriculture and Bio-oriented Research Organization.

2. The above modifications are the results of the following organizational changes relating to entities listed in Annex 3:

- (a) "Water Resources Development Public Corporation" is to be abolished on 1 October 2003 and its remaining functions are to be assigned to "Japan Water Agency".
- (b) "Japan Green Resources Corporation" is to be abolished on 1 October 2003 and its remaining functions are to be assigned to "Japan Green Resources Agency".
- (c) "Japan Science and Technology Corporation" is to be abolished on 1 October 2003 and its remaining functions are to be assigned to "Japan Science and Technology Agency".
- (d) "Japan Consumers Information Center" has been renamed "National Consumer Affairs Center of Japan" as of 1 October 2003.
- (e) "RIKEN (The Institute of Physical and Chemical Research)" is to be abolished on 1 October 2003 and its remaining functions are to be assigned to "RIKEN".
- (f) "National Stadium and School Health Center of Japan" is to be abolished on 1 October 2003 and its remaining functions are to be assigned to "National Agency for the Advancement of Sports and Health".
- (g) "Association for Welfare of the Mentally and Physically Handicapped" is to be abolished on 1 October 2003 and its remaining functions are to be assigned to "National Center for Persons with Severe Intellectual Disabilities, Nozominosono".
- (h) "National Agricultural Research Organization" is to be abolished on 1 October 2003 and its functions are to be assigned to "National Agriculture and Bio-oriented Research Organization".

3. Attachment A² contains the proposed modification to Annex 3 of Appendix I in red-line/strikeout form. Attachment B² indicates how Annex 3 of Appendix I would appear after the proposed modifications have been made.

² Attachments A and B are in English only.

ATTACHMENT A

JAPAN

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- | | |
|---|---|
| <ul style="list-style-type: none"> - <u>Japan Water Agency</u> - Japan Regional Development Corporation - Japan Green Resources <u>Agency</u> - Japan National Oil Corporation (c) - Japan Railway Construction Public Corporation (a) (d) - New Tokyo International Airport Authority - Japan Highway Public Corporation - Metropolitan Expressway Public Corporation - Hanshin Expressway Public Corporation - Honshu-Shikoku Bridge Authority - Urban Development Corporation (a) - Japan Science and Technology <u>Agency</u> - Japan Nuclear Cycle Development Institute (b) - Japan Environment Corporation - Japan International Cooperation Agency - Social Welfare and Medical Service Corporation - Government Pension Investment Fund - Agriculture and Livestock Industries Corporation - Metal Mining Agency of Japan (c) - Japan Small and Medium Enterprise Corporation - Postal Life Insurance Welfare Corporation - Labour Welfare Corporation | <ul style="list-style-type: none"> - Employment and Human Resources Development Organization of Japan - Okinawa Development Finance Corporation - National Life Finance Corporation - Agriculture, Forestry and Fisheries Finance Corporation - Japan Finance Corporation for Small Business - Housing Loan Corporation - Japan Finance Corporation for Municipal Enterprises - Development Bank of Japan - Japan Bank for International Cooperation - Teito Rapid Transit Authority (a) - Japan Tobacco Inc. - Hokkaido Railway Company (a) - East Japan Railway Company (a) - Central Japan Railway Company (a) - West Japan Railway Company (a) - Shikoku Railway Company (a) - Kyushu Railway Company (a) - Japan Freight Railway Company (a) - Nippon Telegraph and Telephone Co. (f) - Northern Territories Issue Association - <u>National Consumer Affairs Center of Japan</u> - Japan Atomic Energy Research Institute (b) - RIKEN (b) - Pollution-Related Health Damage Compensation Association - Fund for the Promotion and Development of the Amami Islands - Japan Foundation - The Japan Scholarship Foundation |
|---|---|

Deleted: Water Resources Development Public Corporation

Deleted: Corporation

Deleted: Corporation

Deleted: Japan Consumers Information Center

Deleted: (The Institute of Physical and Chemical Research)

Deleted: 9 May 2003 (WT/Let/446)

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Supplies (cont'd)

- | | |
|--|--|
| <ul style="list-style-type: none"> - Japan Arts Council - Japan Society for the Promotion of Science - University of the Air Foundation - <u>National Agency for the Advancement of Sports and Health</u> - Social Insurance Medical Fee Payment Fund - <u>National Center for Persons with Severe Intellectual Disabilities, Nozominosono</u> - Japan Racing Association - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel - The National Association of Racing - Farmers' Pension Fund - Japan Keirin Association - Japan External Trade Organization - Japan Motorcycle Racing Organization - New Energy and Industrial Technology Development Organization - Japan National Tourist Organization - Japan Institute of Labour - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen - Corporation for Advanced Transport and Technology (e) - The Promotion and Mutual Aid Corporation for Private Schools of Japan - Organization for Workers' Retirement Allowance Mutual Aid | <ul style="list-style-type: none"> - National Science Museum - National Institute for Materials Science - National Research Institute for Earth Science and Disaster Prevention - National Aerospace Laboratory of Japan - National Institute of Radiological Sciences - National Museum of Art - National Museum - National Research Institute for Cultural Properties - National Center for Teachers' Development - National Institute of Health and Nutrition - National Institute of Industrial Safety - National Institute of Industrial Health - Center for Food Quality, Labeling and Consumer Services - National Center for Seeds and Seedlings - National Livestock Breeding Center - Fertilizer and Feed Inspection Station - Agricultural Chemicals Inspection Station - National Farmers Academy - Forest Tree Breeding Center - National Salmon Resources Center - National Fisheries University - <u>National Agriculture and Bio-oriented Research Organization</u> - National Institute of Agrobiological Sciences - National Institute for Agro-Environmental Sciences - National Institute for Rural Engineering - National Food Research Institute - Japan International Research Center for Agricultural Sciences - Forestry and Forest Products Research Institute - Fisheries Research Agency - Research Institute of Economy, Trade and Industry - National Center for Industrial Property Information - Nippon Export and Investment Insurance - National Institute of Advanced Industrial Science and Technology - National Institute of Technology and Evaluation - Public Works Research Institute - Building Research Institute |
|--|--|

2. Group B

- National Archives of Japan
- Communications Research Laboratory
- National Research Institute of Fire and Disaster
- National Research Institute of Brewing
- National Center for University Entrance Examinations
- National Institute of Special Education
- National Olympics Memorial Youth Center
- National Women's Education Center
- National Youth Houses
- National Children's Centers
- The National Institute for Japanese Language

Deleted: National Stadium and School Health Center of Japan

Deleted: Association for Welfare of the Mentally and Physically Handicapped

Deleted: National Agricultural Research Organization

Deleted: 9 May 2003 (WT/Let/446)

Supplies (cont'd)

- | | |
|--|---|
| <ul style="list-style-type: none"> - National Traffic Safety and Environment Laboratory - National Maritime Research Institute - Port and Airport Research Institute - Electronic Navigation Research Institute - Civil Engineering Research Institute of Hokkaido - Marine Technical College - National Institute for Sea Training - Schools for Seafarers Training - Civil Aviation College - National Institute for Environmental Studies - Labor Management Organization for USFJ Employees - National Agency for Vehicle Inspection - National Statistics Center - Japan Mint - National Printing Bureau | <ul style="list-style-type: none"> - New Tokyo International Airport Authority - Japan Highway Public Corporation - Metropolitan Expressway Public Corporation - Hanshin Expressway Public Corporation - Honshu-Shikoku Bridge Authority - Urban Development Corporation (a) - Japan Science and Technology <u>Agency</u> - Japan Nuclear Cycle Development Institute (b) - Japan Environmental Corporation - Japan International Cooperation Agency - Social Welfare and Medical Service Corporation - Government Pension Investment Fund - Agriculture and Livestock Industries Corporation - Metal Mining Agency of Japan (c) - Japan Small and Medium Enterprise Corporation - Postal Life Insurance Welfare Corporation - Labour Welfare Corporation - Employment and Human Resources Development Organization of Japan - Okinawa Development Finance Corporation - National Life Finance Corporation - Agriculture, Forestry and Fisheries Finance Corporation - Japan Finance Corporation for Small Business - Housing Loan Corporation - Japan Finance Corporation for Municipal Enterprises - Development Bank of Japan - Japan Bank for International Cooperation - Teito Rapid Transit Authority (a) - Japan Tobacco Inc. (g) - Hokkaido Railway Company (a)(g) - East Japan Railway Company (a)(g) - Central Japan Railway Company (a)(g) - West Japan Railway Company (a)(g) - Shikoku Railway Company (a)(g) - Kyushu Railway Company (a)(g) - Japan Freight Railway Company (a)(g) - Nippon Telegraph and Telephone Co. (f)(g) - Northern Territories Issue Association - <u>Natioanl Consumer Affairs Center of Japan</u> |
|--|---|

Deleted: Corporation

Services

Threshold:

Construction services:
15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Japan Water Agency
- Japan Regional Development Corporation
- Japan Green Resources Agency
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)

Deleted: Japan Consumers Information Center

Deleted: Water Resources Development Public Corporation

Deleted: Corporation

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Services (cont'd)

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> - Japan Atomic Energy Research Institute (b) - RIKEN (b) - Pollution-Related Health Damage Compensation Association - Fund for the Promotion and Development of the Amami Islands - Japan Foundation - The Japan Scholarship Foundation - Japan Arts Council - Japan Society for the Promotion of Science - University of the Air Foundation - <u>National Agency for the Advancement of Sports and Health</u> - Social Insurance Medical Fee Payment Fund - <u>National Center for Persons with Severe Intellectual Disabilities, Nozominosono</u> - Japan Racing Association - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel - The National Association of Racing - Farmers' Pension Fund - Japan Keirin Association - Japan External Trade Organization - Japan Motorcycle Racing Organization - New Energy and Industrial Technology Development Organization - Japan National Tourist Organization - Japan Institute of Labour - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen - Corporation for Advanced Transport and Technology (e) - The Promotion and Mutual Aid Corporation for Private Schools of Japan - Organization for Workers' Retirement Allowance Mutual Aid | <ul style="list-style-type: none"> - National Center for University Entrance Examinations - National Institute of Special Education - National Olympics Memorial Youth Center - National Women's Education Center - National Youth Houses - National Children's Centers - The National Institute for Japanese Language - National Science Museum - National Institute for Materials Science - National Research Institute for Earth Science and Disaster Prevention - National Aerospace Laboratory of Japan - National Institute of Radiological Sciences - National Museum of Art - National Museum - National Research Institute for Cultural Properties - National Center for Teachers' Development - National Institute of Health and Nutrition - National Institute of Industrial Safety - National Institute of Industrial Health - Center for Food Quality, Labeling and Consumer Services - National Center for Seeds and Seedlings - National Livestock Breeding Center - Fertilizer and Feed Inspection Station - Agricultural Chemicals Inspection Station - National Farmers Academy - Forest Tree Breeding Center - National Salmon Resources Center - National Fisheries University - <u>National Agriculture and Bio-oriented Research Organization</u> - National Institute of Agrobiological Sciences - National Institute for Agro-Environmental Sciences - National Institute for Rural Engineering - National Food Research Institute - Japan International Research Center for Agricultural Sciences - Forestry and Forest Products Research Institute | <ul style="list-style-type: none"> - Deleted: (The Institute of Physical and Chemical Research) - Deleted: National Stadium and School Health Center of Japan - Deleted: Association for Welfare of the Mentally and Physically Handicapped - Deleted: National Agricultural Research Organization |
|--|---|--|
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing

Deleted: 9 May 2003 (WT/Let/446)

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center
- Japan Mint
- National Printing Bureau

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

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(WT/Let/446)

ATTACHMENT B

JAPAN

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Japan Water Agency
- Japan Regional Development Corporation
- Japan Green Resources Agency
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a)(d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Agency
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- National Consumer Affairs Center of Japan
- Japan Atomic Energy Research Institute (b)
- RIKEN (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation

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Supplies (cont'd)

- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Agency for the Advancement of Sports and Health
- Social Insurance Medical Fee Payment Fund
- National Center for Persons with Severe Intellectual Disabilities, Nozominosono
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology (e)
- The Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B
 - National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agriculture and Bio-oriented Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center
- Japan Mint
- National Printing Bureau
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Agency
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation

Services**Threshold:****Construction services:**

15,000 thousand SDR for entities in Group A

4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Japan Water Agency
- Japan Regional Development Corporation
- Japan Green Resources Agency
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a)(d)

- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- National Consumer Affairs Center of Japan

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Services (cont'd)

- Japan Atomic Energy Research Institute (b)
 - RIKEN (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
 - Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Agency for the Advancement of Sports and Health
 - Social Insurance Medical Fee Payment Fund
 - National Center for Persons with Severe Intellectual Disabilities, Nozominosono
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agriculture and Bio-oriented Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center
- Japan Mint
- National Printing Bureau

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

**RESPONSES TO QUESTIONS FROM THE UNITED STATES RELATING TO
KOREA TOBACCO & GINSENG CORPORATION AND
DAEHAN PRINTING AND PUBLISHING CO. LTD**

Communication from the Republic of Korea

Please find below Korea's responses to questions from the United States (GPA/W/264) regarding Korea's notification to the Committee on Government Procurement on the withdrawal of Korea Tobacco & Ginseng Corporation (KT&G) and Daehan Printing and Publishing Co. Ltd. (Daehan) from Annex 3 of Appendix I of the Agreement on Government Procurement (GPA) (GPA/W/250).

KT&G

1. *With respect to KT&G, please provide a copy of the laws, regulations and other measures that authorized the Korean Government's sale of its shares in KT&G, that transformed KT&G from a government enterprise into a private entity and that demonstrate that KT&G is no longer subject to laws, regulations or other measures that apply to government enterprises.*

The Korea Tobacco & Ginseng Corporation was privatized in accordance with the following law:

- The Act on Corporate Governance Improvement and Privatization of Government-Invested Enterprises.¹

2. *Please describe all laws, regulations and other measures that Korea enacted or adopted to ensure that KT&G's procurement is consistent with the GPA. What measures would be required to alter such regulation of KT&G's procurement if it were withdrawn from GPA coverage?*

The Korean Government enacted the Special Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party for specific procurement (Presidential Decree 15187), the Special Administrative Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party for specific procurement (Prime Minister's Decree 603) and the Accounting Regulation for Government Invested Enterprises (Minister of Finance and Economy's Decree 107) to ensure that the procurement of entities listed in the GPA Annex 3 is consistent with the GPA. They are also applied to the KT&G.

¹ For the details, please refer to Attachment 1 to this document.

In the event that KT&G is withdrawn from the GPA coverage, no special measures will be required to alter the regulation of KT&G's procurement. In this case, KT&G will be excluded automatically from the scope of application of above-described regulations.

The following are the relevant provisions in the Accounting Regulation for Government Invested Enterprises:

< The Accounting Regulation for Government Invested Enterprises >

Article 11 (Scope of Government Invested Enterprise's Procurement Contracts subject to International Tendering)

(1) The government invested enterprise's procurement contracts subject to international tendering are defined as contracts that exceed the amount determined and publicly announced by the Minister of Finance and Economy pursuant to the Government Procurement Agreement, signed on 15 April 1994 in Marrakesh (hereafter referred to as the "Government Procurement Agreement") and relevant international rules based on the Government Procurement Agreement. However, the following cases are excluded from the scope of application of the Government Procurement Agreement:

1. In case of procuring products and services necessary to resale or to use in the production of goods or provision of services for sale.
2. In case of manufacturing and/or purchasing any goods produced by small and medium enterprises pursuant to the Small and Medium Enterprises Products Promotion Act.
3. In case of purchasing any agricultural, fishery or livestock products according to the Foodgrains Management Law and the Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products, or the Livestock Law.
4. In case the Korean Electric Power Corporation purchases certain heavy electronic equipment (HS 8504,8535,8537,8544) based on the Korea Electric Power Corporation Act.
5. In case of contracts by single tendering pursuant to the Provision of Article 15.

(2) In case of contracts by international tendering stipulated in the Paragraph (1), the Special Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party for specific procurement and the Special Administrative Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party for specific procurement shall apply *mutatis mutandis* to the contract methods and procedures except as otherwise provided by this regulation.

3. *Are there any laws, regulations or other measures that restrict KT&G from hiring former Korean Government employees? If so, please provide a copy.*

Under Article 17 of the Public Service Ethics Act, the Korean Government restricts retired public officials from filling a position in related private enterprises.

Pursuant to the provisions of Clause 2, Article 17 of the Act, KT&G has been publicly notified by the Ministry of Government Administration and Home Affairs as a private company subject to the employment restriction in 2003.

Thus, retired public officials of Grade IV (Director level) or higher are not allowed to work for private companies including KT&G for two years after their retirement.

The following are the relevant provisions in the Public Service Ethics Act (Act 6494), the Enforcement Decree of the Public Service Ethics Act (Presidential Decree 17538), and the Notification of the Ministry of Government Administration and Home Affairs.

< Public Service Ethics Act >²

Article 3 (Persons Liable for Registration)

(1) Any public official who falls under any of the following subparagraphs (hereinafter referred to as the "person liable for registration") shall register property under the provisions of this Act:

1. National and local public officials of Grade IV or higher in general service, and public officials in special service, who receive remuneration equivalent thereto;

Article 17 (Restriction on Employment of Retired Public Officials in Related Private Enterprises, etc.)

No public official or officers or employee of a public service-related organization who was engaged in a grade of position or field of duties as prescribed by the Presidential Decree may be employed in a profit-making private enterprise larger than a specified size (hereinafter referred to as the "profit-making private enterprise") connected closely with the duties which he performed at the competent department within three years immediately before his retirement, for a period of two years immediately after his retirement, or the organization established for the joint profits and mutual cooperation, etc. of private enterprises (hereinafter referred to as the "association").

< Enforcement Decree of the Public Service Ethics Act >³

Article 31 (Persons whose Employment is Restricted)

Public officials and officers and employees of public service-related organizations whose employment is restricted under Article 17(1) of the Act shall be those liable for registration as provided in Article 3 of the Act.

< Notification No. 2002-23 of the Ministry of Government Administration and Home Affairs >

Pursuant to the provisions of Clause 2, Article 17 of the Public Service Ethics Act and Clause 3, Article 33 of the Enforcement Decree of the Public Service Ethics Act, the Ministry of Government Administration and Home Affairs hereby notifies private enterprises subject to the employment restriction in 2003:

No.	Corporate Name	Type of Industry	Location
2074	Korea Tobacco & Ginseng Corporation	Manufacturing	Daejeon Daedeok Pyungchon 100

² For the details, please refer to Attachment 2 to this document.

³ For the details, please refer to Attachment 3 to this document.

4. *Please describe all financing, including direct grants, guarantees and loans at preferential rates, that KT&G may have obtained prior to the Korean Government's sale of its shares in KT&G.*

None.

5. *Please describe any special conditions attendant to the Korean Government's sale of its shares in KT&G, such as no election of new directors until "X" years after the sale.*

None.

Daehan Printing and Publishing

6. *Please explain the change in circumstances that justify Daehan's withdrawal from Annex 3 at this time.*

As part of privatization, a policy tool that enhances efficiency and transparency of both the government and the private sectors, the Korean Government sought to privatize National Textbook Ltd.(hereafter referred to as "National Textbook") which was a state enterprise. As a result, in December 1998, Daehan Printing and Publishing Co. Ltd. (hereafter referred to as "Daehan") purchased the entire government-owned share of National Textbook through an open tendering procedure. In May 1999, the merger of National Textbook with Daehan was completed. Daehan as a private entity since its establishment in 1948 has been only subject to the Commercial Act or other measures that apply to all private companies, before and after its merger with National Textbook.

7. *Has Daehan ever been subject to laws, regulations or measures, other than the Commercial Act or other measures that apply to all private companies? If so, please describe and provide a copy of such laws, regulations or other measures.*

Please refer to the reply to question 6 above.

8. *Please describe all laws, regulations and other measures that Korea enacted or adopted to ensure that the Daehan's procurement is consistent with the GPA. What measures would be required to alter such regulation of Daehan procurement if it were withdrawn from GPA coverage?*

The Korean Government enacted the Special Regulation of the Enforcement Decree of the Act relating to Contracts to which the State is a party for specific procurement (Presidential Decree 15187) and the Accounting Regulation for Government Invested Enterprises (Minister of Finance and Economy' Decree 107) to ensure that the procurement of entities listed in the GPA Annex 3 is consistent with the GPA. They are also applied to Daehan.

In the event that Daehan is withdrawn from the GPA coverage, no special measures will be required to alter the regulation of Daehan's procurement. In this case, Daehan will be excluded automatically from the scope of application of above-described regulations.⁴

9. *Has Korea named or selected any directors of Daehan's Board of Directors? If so, do any such directors remain on Daehan's Board?*

No, Daehan's directors have been appointed at the general meeting of shareholders without any control or influence from the Korean Government.

⁴ For the details, please refer to the reply to question 2 above.

10. *According to the information provided with regard to Daehan, Daehan has no foreign ownership. Are there any restrictions that preclude foreign ownership of any shares of Daehan? If so, please provide a copy.*

No, there is no restriction that precludes foreign ownership of any shares of Daehan, stocks of which are unlisted.

ATTACHMENT 1*

**THE ACT ON CORPORATE GOVERNANCE IMPROVEMENT AND PRIVATIZATION OF
GOVERNMENT-INVESTED ENTERPRISES**

ACT NO. 6607

Article 1 Purpose

The purpose of this Act is to contribute to the creation of sound corporate culture and the balanced development of national economy, by introducing a management system run by specialized executives and to hold the management accountable for its performance, thereby enhancing management efficiency and facilitating privatization, while preventing the concentration of economic power in the process.

Article 2 Applicable Enterprises

This Act shall apply to those corporations falling into any of the following subparagraphs (hereinafter referred to as "Applicable Enterprises") <Amended 26 January 1999, 14 January 2002>:

1. Korea Tobacco and Ginseng Corporation transformed into a joint stock company subject to the Commercial Law, pursuant to the Act on the Abolishment of Korea Tobacco and Ginseng Corporation Act.
2. Korea Telecommunication Corporation transformed into a joint stock company subject to the Commercial Law, pursuant to the Act on the Abolishment of Korea Telecommunication Corporation Act.
3. Korea Gas Corporation established pursuant to the Korea Gas Corporation Act.
4. HANJUNG (Korea Heavy Industry Incorporated).
5. Incheon International Airport Corporation established pursuant to the Incheon International Airport Corporation Act.
6. Korea Aerospace Corporation established pursuant to the Korea Aerospace Corporation Act.

Article 3 Relationship with Other Laws and Regulations

(1) This Act shall supersede other laws and regulations concerning the organization, shareholder rights, and the equity sale for privatization of Applicable Enterprises.

(2) Applicable Enterprises pursuant to Article 2, Paragraph 1 through 3, Paragraph 5, and Paragraph 6 shall not be considered as government Investment Institutions subject to the Framework Act on the Management of Government-Invested Institutions <Amended 26 January 1999, 14 January 2002>.

* Attachments 1-3 are in English only.

(3) Matters concerning Applicable Enterprises (with the exception of Korea Gas Corporation) other than those provided for herein shall be stipulated by the Commercial Law provisions concerning joint stock company.

(4) Matters concerning Korea Gas Corporation other than those provided for herein shall be stipulated by the Korea Gas Corporation Act.

Article 4 President

(1) The president shall be appointed at the shareholders' general meeting.

(2) The term of the president shall be three (3) years, and cannot be dismissed without due reason except in the case set forth in Article 13, Paragraph 3.

(3) The president, in applying the Commercial Law, shall be deemed the chairman of the board of directors.

Article 5 Directors

(1) Directors shall be classified into standing directors and non-standing directors, and shall be appointed at the shareholders' general meeting.

(2) The quorum of standing directors including the president shall account for less than 50 per cent (%) of the total quorum of directors.

(3) The term of directors shall be three (3) years. The term of successors to a vacant non-standing director's seat shall be the remaining term of the predecessor.

(4) One-third of the quorum of non-standing directors shall be appointed annually.

Article 6 Board of Directors

(1) The president shall convene a board of directors meeting ex officio or upon request by more than one quarter (1/4) of registered directors, and shall be the chairman.

(2) In case the president cannot participate in the resolution of the board of directors pursuant to this Act, or cannot perform the duty of the chairman of board of directors due to compelling reasons, the director as stipulated by the Articles of Incorporation shall act on the president's behalf.

Article 7 Remuneration of the President and Standing Directors

(1) The board of directors shall determine, upon its resolution, the criteria and payment method of the remuneration of the president and standing directors, and report to the shareholders' general meeting.

(2) The criteria of remuneration as set forth in Paragraph 1 shall be formulated in such a way as to reflect the management performance of Applicable Enterprise to the determination of remuneration.

(3) The president and standing directors cannot participate in the resolution of board of directors pursuant to Paragraph 1.

Article 8 Recommendation of the Director Candidate

- (1) In case the president recommends the standing director candidate, the recommendation shall be approved by the board of directors. In this case, standing directors except the president cannot participate in the board of directors' resolution.
- (2) Non-standing director candidates shall be recommended by either a shareholder or shareholder association, pursuant to the Articles of Incorporation.

Article 9 Qualifications for Non-Standing Director

- (1) Candidates eligible for non-standing director shall be those with specialized knowledge or experiences in economics, business management, law, or relevant technology.
- (2) Notwithstanding Paragraph 1, those with material interest in the Applicable Enterprise cannot be a non-standing director.
- (3) The scope of those with material interest pursuant to provision set forth in Paragraph 2 shall be stipulated by the Articles of Incorporation.

Article 10 Non-Standing Director's Rights to Demand Materials

A non-standing director can request the president for the provision of materials required for performing duties. In this case, the president shall respond to the demand unless there are special circumstances.

Article 11 President Recommendation Committee

- (1) For the purpose of recommending candidates for president, each Applicable Enterprise shall establish its respective President Recommendation Committee (hereinafter referred to as "Committee").
- (2) The Committee shall be composed of a few non-standing directors, one of former or incumbent presidents pursuant to the Articles of Incorporation, and a few non-official members entrusted by the Committee (with the exception of the employees of Applicable Enterprise in question and government officials). In this case, the quorum of Committee members who are non-standing directors shall account for the majority of the total quorum of members.
- (3) The number of non-standing directors entrusted with the Committee membership pursuant to Paragraph 2 shall be less than one half (1/2) of the total quorum of non-standing directors.
- (4) The Committee chairman shall be appointed among non-standing directors by the board of directors. In this case, the president and standing directors cannot take part in the board of directors' resolution.
- (5) The Committee shall make decisions, with the agreement of majority of registered Committee members, excluding the Committee chairman. In this case, the Committee chairman does not have voting rights.
- (6) Necessary matters concerning the composition and operation of the Committee other than those provided for herein shall be stipulated by the Presidential Decree.

Article 12 Appointment of President

- (1) The president shall be appointed among those who are qualified for a chief executive officer, with extensive knowledge on business management and economics or with extensive management experiences.
- (2) Applicable Enterprise shall post a public notice on recruitment of president candidates on major daily newspapers, and can separately investigate candidates for president who are deemed appropriate for the post, or request a specialized agency for investigation.
- (3) Committee shall examine those recruited pursuant to Paragraph 2, according to the Presidential Candidate Examination Criteria as determined by the board of directors.
- (4) In selecting the president candidates, the Committee shall consult with those to be recommended as candidates on the terms and conditions of contract on management target determined by the board of directors, and where it is deemed necessary in the process of consultation, can modify the contract terms and conditions determined by the board of directors.
- (5) In accordance with the results of examination pursuant to Paragraph 3 and consultation pursuant to Paragraph 4, the Committee shall both recommend the presidential candidates and submit draft contract to the shareholders' general meeting.
- (6) Standing directors including the president, cannot attend the board of directors' meeting held for the purpose of determining the Presidential Candidate Examination Criteria pursuant to Paragraph 3, and the president cannot attend the board of directors' meeting held for the purpose of determining the terms and conditions of the contract on management target pursuant to Paragraph 4. In this case, the chairman of the board of directors shall be the Committee chairman.

Article 13 Contract with the President

- (1) Upon the approval by shareholders' general meeting of the draft contract submitted pursuant to Article 12 Paragraph 5, the Applicable Enterprise shall sign the contract with the president. In this case, the Committee chairman shall sign the contract as the representative of the Applicable Enterprise.
- (2) Pursuant to Paragraph 1, the board of directors can evaluate the performance of contract signed with the president, or request a specialized agency for the evaluation. In this case, the president and standing directors cannot participate in the resolution of board of directors.
- (3) In case the evaluation results pursuant to Paragraph 2 leads to a determination that the president's performance falls short of management target, the board of directors can propose the president's dismissal to the shareholders' general meeting. In this case, the president and standing directors cannot participate in the board of directors' resolution.

Article 14 Establishment of Shareholders Association

- (1) Where it is deemed necessary for the effective operation of shareholders' general meeting, as stipulated in the Presidential Decree, the Applicable Enterprise can establish and operate a shareholders association composed of some shareholders.
- (2) Necessary matters concerning the qualifications for the shareholders association membership and its operation shall be stipulated by the Articles of Incorporation.

Article 15 Provisions on Special Cases Concerning Audit by the Board of Audit and Inspection

Inspection of Applicable Enterprises pursuant to Article 24 Paragraph 1 Subparagraph 3 of the Board of Audit and Inspection Act shall not be carried out unless there is an accident or a concrete evidence of the occurrence of accident.

Article 16 Exercise of Shareholder's Right by the Government

(1) The shareholder's right of Applicable Enterprise's shares held by the government shall be exercised by competent minister, upon consultation with the Minister of Finance and Economy.

(2) Necessary matters concerning the consultation pursuant to Paragraph 1 shall be stipulated by the Presidential Decree.

Article 17 Exercise of Minority Shareholder's Right

The provisions set forth in the Securities Transactions Act Article 191 Paragraph 13 and Article 191 Paragraph 14 shall be applied to the exercise of minority shareholder's right and shareholder proposal right, even when the Applicable Enterprise's shares are not listed on the securities market.

Article 18 Single Person Stock Ownership Ceiling

(1) One (1) shareholder and the person in special relationship with that shareholder as stipulated by the Presidential Decree (hereinafter referred to as "Single Person") shall neither own stocks exceeding the ratio stipulated by the Article of Incorporation within 15 per cent (%) of total number of issued stocks with voting rights, nor de facto control the Applicable Enterprise <Amended 29 January 1999>.

(2) In case a single person owns stocks above the ceiling stipulated in Paragraph 1 or de facto controls Applicable Enterprise, the single person shall immediately dispose of the exceeding amount of stocks. In this case, even before the disposal of exceeding amount, the scope of single person's voting rights exercise shall be restricted to the ceiling stipulated in Paragraph 1.

(3) Single person's ownership or de facto control as stipulated in Paragraph 1 and Paragraph 2 means a single person exercising voting rights by owning stocks under its own or borrowed name, or by collusion.

Article 19 Foreign Stock Ownership Ceiling

(1) Acquisition of the Applicable Enterprise's stocks by foreigner or foreign corporation can be separately restricted pursuant to the Article of Incorporation, in addition to the restriction pursuant to Article 18 Paragraph 1.

(2) The provisions set forth in Article 18 Paragraph 2 shall be applied *mutatis mutandis* to those foreigners or foreign corporations owning stocks above the ceiling or de facto controlling Applicable Enterprise, as stipulated in the Articles of Incorporation pursuant to Paragraph 1 <Inserted 29 January 1999>.

Article 20 Equity Sale Method

(1) The stocks held by the government, government-invested institution, or Korea Development Bank established pursuant to the Korea Development Bank Act (hereinafter referred to as

"Government-equivalent") can be sold on consignment or assignment to agencies stipulated by the Presidential Decree, including but not limited to financial institution and securities firm.

(2) In selling stocks held by government-equivalent, where it is deemed necessary for alleviating the repercussions on stock market, widely diversifying stocks, and enhancing international competitiveness of the Applicable Enterprise, the Minister of Finance and Economy can restrict the qualifications for the buyer of stocks in question or the amount of stocks available for purchase <Amended 29 January 1999>.

(3) Upon the request of an employee stockholders association member, government-equivalent can sell, with priority, the stocks to the employee stockholders association of the corporation in question within the ceiling as stipulated in Article 18 Paragraph 1.

(4) In case of selling stocks pursuant to Paragraph 3, matters including but not limited to the allocation of stocks to the employee stockholders association members, and the disposal of that stock shall be stipulated by the Securities Transactions Act Article 191 Paragraph 3.

(5) Notwithstanding the Budget and Accounting Act, the cost for selling government held stocks pursuant to Paragraph 1 can be disbursed from the proceeds from equity sale.

Article 21 Preclusion from Application

(1) Once an Applicable Enterprise falling into any of the Article 2 Subparagraphs 1 through 3 fulfills any of the requirements set forth in the following Subparagraphs, this Act shall not apply to that enterprise from the date of shareholders' general meeting first convened thereafter:

1. The ratio of voting stocks held by government-equivalent is within the ceiling set forth in Article 18 Paragraph 1.
2. The ratio of voting stocks held by single person other than government-equivalent is larger than that held by government-equivalent.

(2) Among the stocks of Korea Heavy Industry Incorporated, Article 18 and Article 19 shall not apply to the person who acquires the stocks held by government-equivalent through the tendering for equity sale, and once the ratio of the stocks with voting rights held by single person and person falling into any of the following Subparagraphs exceeds 51 per cent (%) of the total issued stocks with voting rights, this Act shall not be applied from the date of shareholders' general meeting first convened thereafter:

1. Person who aims at joint capital participation and management pursuant to contract.
2. The person pursuant to Subparagraph 1 and person who is in special interest with the person as stipulated by the Presidential Decree pursuant to Article 18 Paragraph 1.

(3) In case the government made investment in-kind in Korea Development Bank, The Export-Import Bank of Korea, and Industrial Bank of Korea pursuant to the Act on the Investment In-kind of State Properties, Article 18 shall not be applied <Inserted 29 January 1999>.

ANNEX <NO. 5379, 28 AUGUST 1997>

Article 1 Effective Date

This Act shall take effect as of 1 October 1997.

Article 2

<Deleted 29 January 1999>.

Article 3 Recommendation of the First Non-Standing Director

(1) For the purpose of selecting the person to recommend as the first non-standing director (hereinafter referred to as the "Non-Standing Director Designee"), an Ad-hoc Committee on Non-Standing Director Recommendation shall be established under relevant department in Applicable Enterprises.

(2) The members of the Ad-hoc Committee on Non-Standing Director Recommendation pursuant to Paragraph 1 shall be composed of shareholder representative, non-official member with specialized knowledge in area relevant to Applicable Enterprise, and public official from relevant central government agency.

(3) Necessary matters concerning the composition and operation of the Ad-hoc Committee on Non-Standing Director Recommendation shall be stipulated by the Presidential Decree.

(4) The Ad-hoc Committee on Non-Standing Director Recommendation shall recommend the non-standing director designee to shareholders' general meeting as a non-standing director candidate.

(5) In recommending non-standing director designee as a non-standing director candidate pursuant to Paragraph 4, the Ad-hoc Committee on Non-Standing Director Recommendation, notwithstanding Article 5 Paragraph 3, shall equally divide the quorum of non-standing directors by three (3), and separately recommend non-standing directors with respective terms of one (1) year, two (2) years, and three (3) years. In case the quorum of non-standing directors cannot be equally divided by three (3), the recommended candidates for the longer-term directors shall be more than shorter-term director candidates.

Article 4 Appointment of the First President

(1) For the purpose of recommending candidate for the first president to be appointed at the shareholders' general meeting after the enactment of this Act, an Ad-hoc Committee on President Recommendation shall be established.

(2) Provisions of Article 11 and Article 12 shall be applied *mutatis mutandis* to the composition and operation of the Ac-hoc Committee on President Recommendation pursuant to Paragraph 1 and the appointment of the first president. In this case, "non-standing director" shall be interpreted as "non-standing director designee", and "board of directors" as "non-standing director designees' meeting".

Article 5 Provisions on Special Cases Concerning Incumbent Executives of Applicable Enterprises

(1) The term of incumbent chief director of Applicable Enterprise at the time of enforcement of this Act shall be deemed terminated at the point this Act is enforced.

(2) The president, directors, and auditor of Applicable Enterprise at the time of enforcement of this Act shall be deemed president, directors, and auditor pursuant to this Act, provided that their term is effective until new president, directors, and auditor are appointed at the shareholders' general meeting pursuant to this Act.

ATTACHMENT 2
PUBLIC SERVICE ETHICS ACT
ACT NO.6494

CHAPTER I - GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to prescribe matters including, but not limited to, the institutionalized registration and disclosure of the property of public officials and candidates for public offices, the regulation of property acquisition, reporting of gifts by public officials who take advantage of their public office, and restriction of employment of retired public officials, all intended to thereby prevent them from accumulating unlawful property while securing the fairness in the execution of their official duties in order to establish the ethics of public officials as servants of the people.

[This Article Wholly Amended by Act No. 4566, 11 June 1993]

Article 2 (Livelihood Guarantee, etc.)

The State shall guarantee the livelihood of public officials so as to enable them to devote themselves to public service, and shall strive for establishing ethics in public service.

CHAPTER II - REGISTRATION AND DISCLOSURE OF PROPERTY

Article 3 (Persons Liable for Registration)

(1) Any public official who falls under any of the following subparagraphs (hereinafter referred to as the person liable for registration) shall register property under the provisions of this Act: *<Amended by Act No. 4566, 11 June 1993; Act No. 5454, 13 December 1997; Act No. 5491, 31 December 1997; Act No. 5681, 21 January 1999; Act No. 6087, 31 December 1999; Act No. 6306, 29 December 2000; Act No. 6388, 26 January 2001>*

1. National public officials in political service, such as the President, the Prime Minister, members of the State Council, and members of the National Assembly.
2. Public officials in Political Service of local governments, such as the heads of local governments, and local councilmen.
3. National and local public officials of Grade IV or higher in general service, and public officials in special service, who receive remuneration equivalent thereto.
4. Public officials in foreign service prescribed by the Presidential Decree, Grade IV or higher staff members of the National Intelligence Service, and public officials in security service of equivalent grade of the Presidential Security Service.
5. Judges and public prosecutors.

6. Military officers with the rank of colonel or higher, and civilian employees with the equivalent rank.
7. Presidents and vice-presidents of universities, presidents of graduate schools, deans (including deans of universities), deans of junior colleges and heads of various schools equivalent to colleges, and the superintendents of boards of education, directors of district educational offices and members of educational committee of the Special Metropolitan City, Metropolitan Cities and *Dos* among public officials in the educational service.
8. Police officers with the rank of police superintendent or higher, and public officials in fire-fighting service with the rank of national and local fire-fighting superintendents or higher.
- 8-2. Public officials in contractual service appointed to the positions to be appointed by public officials under subparagraphs 3 through 6 and 8, or to the positions equivalent thereto.
9. Heads, deputies and permanent auditors of government-invested institutions, governor, deputy governor and auditor of the Bank of Korea, governor, deputy governor and auditor of the Financial Supervisory Service, presidents and permanent auditors of National Agricultural Cooperatives Federation and National Federation of Fisheries Cooperatives.
10. Officers of such institutions and organizations of those falling under any of the following items as are prescribed by the Presidential Decree (hereinafter referred to as the public service-related organizations):
 - (a) government-invested institutions, the Bank of Korea, government-contributed or subsidized institutions and organizations, and other institutions and organizations conducting governmental tasks under the entrustment of the Government;
 - (b) local government-invested public corporations and local government public corporations established under the Local Public Corporations Act, local government-contributed or subsidized institutions and organizations, and other institutions and organizations carrying out local governmental tasks under the entrustment of local governments; and
 - (c) institutions and organizations, the appointment of whose officers is required to be approved, or the officers of which are appointed by the head of the central administrative agency or the head of the local government.
11. Other public officials and personnel of public service-related organizations working in specified fields as prescribed by the National Assembly Regulations, the Supreme Court Regulations and the Presidential Decree.

(2) Deleted <by Act No. 4566, 11 June 1993>

Article 4 (Property to be Registered)

(1) The property to be registered by a person liable for registration shall be the property of the person falling under any of the following subparagraphs (including the property in *de facto* possession, regardless of the name of its owner, property contributed to a nonprofit corporation, and

property located in a foreign country; hereinafter the same shall apply): <Amended by Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994>

1. person liable for registration;
2. spouse (including any person having a *de facto* matrimonial relation; hereinafter the same shall apply); and
3. lineal ascendants and descendants of the person liable for registration: *Provided*, That married daughters, maternal grandparents and children of daughters are excluded, and if the person liable for registration has entered his name in her husband's or his wife's family register by marriage, the lineal ascendants and descendants of his spouse.

(2) The property to be registered by the person liable for registration shall be as follows: <Amended by Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994>

1. The ownership, superficies and rights of lease on a deposit basis pertaining to real estate.
2. Mining rights, fishery rights and other rights to which the provisions concerning real estate shall apply *mutatis mutandis*.
3. Movables, securities, claims, obligations and intangible property rights falling under one of the following items:
 - (a) cash (including checks) not less than ten million won in total by the owner;
 - (b) deposits not less than ten million won in total by the owner;
 - (c) securities such as stocks, national and public bonds, debentures not less than ten million won in total by the owner;
 - (d) claims not less than ten million won in total by the owner;
 - (e) obligation not less than ten million won in total by the owner;
 - (f) gold and platinum (including gold and platinum products) not less than five million won in total by the owner;
 - (g) precious stones not less than five million won by item;
 - (h) curios and artistic works not less than five million won by item;
 - (i) memberships not less than five million won by membership;
 - (j) intangible property rights yielding returns not less than ten million won per annum by the owner; and
 - (k) automobiles, construction machines, vessels and aircraft.
4. Shares of investment in unlimited and limited partnerships and the limited liability corporations.

(3) The methods of calculation and indications of value by category of property to be registered under paragraph (1) shall be as follows: <Amended by Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994; Act No. 5108, 29 December 1995; Act No. 6388, 26 January 2001>

1. In case of land, the publicly assessed individual land price under the Public Notice of Values and Appraisal of Lands, etc. Act (if there exist no publicly assessed individual land prices of the pertinent land, it refers to the amount calculated on the basis of the publicly assessed land prices under Article 10 of said Act).

2. In case of an apartment house, such as an apartment or tenement house, the standard market price as prescribed by the Income Tax Act.
3. In case of houses other than apartment houses as referred to in subparagraph 2, commercial quarters, buildings, officetels and other real estate, the aggregate amount of the value of the building sites calculated by the publicly assessed individual land prices under the Public Notice of Values and Appraisal of Lands, etc. Act (if there exist no publicly assessed individual land prices of the pertinent land it refers to the amount calculated on the basis of the publicly assessed land prices under Article 10 of the said Act) and the value of buildings calculated by the highest price out of the official value notified publicly by the State or the local governments (in a case where there is any acquisition value, such value shall also be included).
4. In case of rights to which the provisions concerning real estate shall apply *mutatis mutandis*, particulars of kinds, quantities, contents of such rights (in a case where there is any acquisition value, such value shall be included).
5. In case of cash, deposits, claims and obligations, the amounts thereof.
6. In case of securities, such as national and public bonds or debentures, the face value thereof.
7. Stocks traded in the means similar to the securities markets from among those listed on the Korea Stock Exchange, those registered with the Korea Securities Dealers Association, and those traded over-the-counter under Article 194 of the Securities and Exchange Act, the final prices quoted on the base day of property registration (if the Stock Exchange is closed prior to the base day of property registration, the final prices on such closing day: *Provided*, That in the case of stocks traded in the means similar to the securities markets from among those traded over-the-counter under Article 194 of the Securities and Exchange Act, referring to the traded price prescribed by the Presidential Decree), and in the case of other stocks than these, the face value thereof.
8. In case of investment shares in unlimited partnerships, limited partnerships and limited liability corporations, the ratio of shares and the annual revenues of such entities in recent business years.
9. In case of gold and platinum (including gold and platinum products), the kind, contents and weight thereof.
10. In case of precious stones, the specifications of, *inter alia*, the kinds, size, color tone thereof.
11. In case of curios and artistic works, the specifications of works, such as kinds, sizes, authors, and production years.
12. In case of memberships, the acquisition value: *Provided*, That in case of golf memberships it shall be the standard market price as prescribed by the Income Tax Act.
13. In case of automobiles, construction machines, vessels and aircraft, the specifications of, *inter alia*, their kinds, manufacture year and manufacturers, and registration numbers.

(4) The methods of value calculation and indication of any property to be registered, other than that as referred to in paragraph (3), and other matters necessary for registration shall be prescribed by the Presidential Decree. <Newly Inserted by Act No. 4566, 11 June 1993>

(5) With respect to such property as referred to in paragraph (2), information such as the date and particulars of acquisition and the source of income of such property or any explanations included thereof may be mentioned or appended by the owner. <Newly Inserted by Act No. 4566, 11 June 1993>

(6) Out of the property to be registered under paragraph (1), property contributed to a nonprofit corporation shall be indicated separately from other property to be registered, and the position of the person liable for registration in the corporation statute shall be specified. <Newly Inserted by Act No. 4566, 11 June 1993>

Article 5 (Registration Agency and Time for Registration of Property)

(1) Any public official shall register the property as of the day on which he becomes liable for registration with any of the following agencies (hereinafter referred to as the registration agency) within one month from the date of his liability for registration: *Provided*, That this shall not apply to the case where the liability for registration is exempted within one month from the date of becoming a person liable for registration, if a person who is exempted from the liability for registration due to, *inter alia*, a transfer, demotion or retirement, again becomes liable for registration within three years (in case of retirement, one year), the registration may be substituted only by making a report on any change after the transfer, demotion or retirement, or a report on change in property as referred to in Article 11 (1): <Amended by Act No. 4017, 5 August 1988; Act No. 4408, 30 November 1991; Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994; Act No. 5454, 13 December 1997; Act No. 5681, 21 January 1999; Act No. 6388, 26 January 2001>

1. In case of a member of the National Assembly or other public officials under the control of the National Assembly, the National Assembly Secretariat.
2. In case of judges or other public officials under the control of courts, the Office of Court Administration.
3. In case of the president, justices or public officials under the control of the Constitutional Court, the Secretariat of the Constitutional Court.
4. In case of public officials under the control of the National Election Commission or other election commissions, the Secretariat of the National Election Commission.
5. In case of public officials under the control of the Ministries and Administrations of the Government (including the administrative agencies such as the committees prescribed by the Presidential Decree; hereinafter the same shall apply), the pertinent Ministries and Administrations.
6. In case of public officials under the control of the Board of Audit and Inspection, the Secretariat of the Board of Audit and Inspection.
7. In case of public officials under the control of the National Intelligence Service, the National Intelligence Service.
8. In case of public officials under the jurisdiction of local governments, the pertinent local government.

9. In case of councilmen or public officials under the control of local councils, the pertinent local council.
10. In case of public officials under the control of educational offices of the Special Metropolitan City, Metropolitan Cities and *Dos*, educational offices of the Special Metropolitan City, Metropolitan Cities and *Dos*, as applicable.
11. In case of members of educational committees of the Special Metropolitan City, Metropolitan Cities and *Dos*, and public officials belonging to them, the educational committees, as applicable.
12. In case of officers or employees of public service-related organizations, the Ministry, and Administration exercising supervision over such organizations: *Provided*, That in case of officers or employees of public service-related organizations under the supervision of the Special Metropolitan City, Metropolitan Cities, *Dos*, and *Si/Gun/Gu* (limited to the autonomous *Gu*; hereinafter the same shall apply), the Special Metropolitan City, Metropolitan Cities, *Dos* and *Si/Gun/Gu* as applicable.
13. In case of persons liable for registration, other than those referred to in subparagraphs 1 through 12, and public officials under the supervision of the Ministries, and Administrations of the Government, the Board of Audit and Inspection, the National Intelligence Service, and officers of public service-related organizations for whom matters concerning property registration are open to the public under Article 10 (1), notwithstanding the provisions of subparagraphs 5 through 7 and the text of subparagraph 12, the Ministry of Government Administration.

(2) In the case as referred to in the provisions of paragraph (1), if the then-pertinent registrar is different from the previous one, the head of the previous registrar shall transfer documents pertaining to the property registration to the head of the new registrar within one month after a person who is exempted from liability for registration due to, *inter alia*, a transfer, again becomes liable for registration. This provision shall also apply in a case where the registration agency is changed without the person liable for registration being exempted from liability for registration due to, *inter alia*, such transfer.

(3) In case of a registration agency out of those as referred to in paragraph (1) 5, which has any difficulty in effecting the registration because there are so many persons liable for registration of property, part of its subordinate organizations may be designated as registration agency under the provisions of the Presidential Decree. <Newly Inserted by Act No. 4853, 31 December 1994>

Article 6 (Report on Changed Matters)

(1) Any person liable for registration shall report to the registration agency matters concerning any change in property which has taken place between January 1 and December 31 in each year by the end of January of the next year: *Provided*, That in a report on changed matters, made first after the first registration or the report as prescribed in the provisions of Article 5 (1), matters changed up until December 31 of the current year from the day on which he becomes liable for registration shall be reported to the registration agency. <Amended by Act No. 4566, 11 June 1993>

(2) If a person liable for registration retires from his office, he shall make a report to the registration agency having jurisdiction over him at the time of his retirement regarding any changed matters in his property between January 1 of the current year (if he becomes liable for registration after 1 January, the day on which he becomes liable for registration) and the retirement day, within one month after his retirement: *Provided*, That if he again becomes liable for registration within one month after his retirement, the report on changed matters as referred to in paragraph (1) shall

supersede the above report. *<Newly Inserted by Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994>*

(3) If a person becomes liable for registration during December, changed matters in his property between the day on which he becomes liable for registration and December 31 of the current year may be reported, including the changed matters of the following year, or the changed matters relating to the retired person as referred to in paragraph (2), and if the person liable for registration retires from his office during January, the changed matters, as referred to in paragraph (1), may be reported, including the changed matters relating to the retired person as referred to in paragraph (2). *<Newly Inserted by Act No. 4853, 31 December 1994>*

(4) The provisions of paragraph (2) shall apply *mutatis mutandis* to such person out of those who are liable for registration as provided in Article 3 (1) 9 through 11 and is exempted from the liability for registration because the agency or organization to which he belongs is excluded from the public services-related organizations. *<Newly Inserted by Act No. 4853, 31 December 1994>*

(5) In a case where a report as referred to in paragraphs (1) and (2) is made, any materials to explain and justify clearly the cause of increase or decrease, such as a sales contract or receipts (including copies thereof), shall be attached, or the reason for such increase or decrease shall be specified. *<Amended by Act No. 4566, 11 June 1993>*

(6) The scope and contents of changed matters in property to be reported under paragraphs (1) and (2) shall be prescribed by the Presidential Decree. *<Amended by Act No. 4566, 11 June 1993>*

Article 6-2 (Report on Detail of Stock Trade)

(1) Persons liable for registration corresponding to those subject to the opening to the public under each subparagraph of Article 10 (1) shall report to the registrar on the details of stock trades pertaining to acquisition or transfer of stocks by those falling under any of the subparagraphs of Article 4 (1), at the time of reporting on the changes in property under Article 6 or 11 (1).

(2) Matters necessary for the scope of stock trade subject to report and the method of report at the time of reporting on the details of stock trade under paragraph (1), shall be prescribed by the Presidential Decree.

(3) The content of report on the details of stock trade under paragraph (1) shall not be open to the public.

(4) The provisions of Articles 8, 8-2, 12 through 14 and 14-3 shall be applicable to the report under paragraph (1) and the examination and management of reported matters.
[This Article Wholly Amended by Act No. 6388, 26 January 2001]

Article 6-3 (Deferment of Report on Modified Matters)

(1) The head of the registrar may, in case where the persons liable for registration apply for the deferment of report on modified matters as they come to fall under one of the following subparagraphs, defer the report on modified matters under Article 6 (1) or 11 (1) for the relevant period within the limit of 3 years:

1. where to be sent to a foreign country for dispatched services under the provisions of Acts and subordinate statutes;
2. where to be suspended from duty under the provisions of Acts and subordinate statutes;

3. where to serve at the overseas mission or the office stationed overseas; and
4. where to fall under other reasons prescribed under the Presidential Decree.

(2) Persons liable for registration who are granted a deferment of report on modified matters under paragraph (1) shall make a report on modified matters on property after the final property registration or the report on modified matters within one month from the extinction of relevant causes for deferment.

[This Article Wholly Amended by Act No. 6388, 26 January 2001]

Article 7 (Extension of Registration Period)

In case where a person liable for registration (including retired public officials as prescribed in Article 6(2); hereinafter the same shall apply to Articles 8, 10, 12, 13 and 24) requests an extension of the period for the property registration (including the report; hereinafter the same shall also apply) for any unavoidable reason, if the reason is deemed appropriate, the head of the registrar extend the registration period for all or part of the property. In this case, the person liable for registration shall make the registration within the extended period. *<Amended by Act No. 4566, 11 June 1993>*

Article 8 (Examination of Registered Matters)

(1) The public service ethics committee as provided in Article 9 (1) shall examine registered matters.

(2) If a person liable for registration is deemed to have omitted by negligence, *inter alia*, a part of the property to be registered, or there are errors in writing in the sum of the values, the public service ethics committee may order the person liable for registration to supplement the property registration papers within a specified period of time.

(3) If it is deemed necessary for the examination, as referred to in paragraph (1), the public service ethics committee may demand any person liable for registration to present materials, ask any question in writing, or conduct any investigation for confirmation of facts. In this case, the public service ethics committee shall give the person liable for registration an opportunity to present materials for explanation or vindication.

(4) The public service ethics committee may demand the head of government agencies, local governments, public service-related organizations, or other public institutions to make any report or present materials, necessary for the examination as referred to in paragraph (1). In this case, the head of such agency, institution or organization may not refuse such report or presentation of materials notwithstanding the provisions of other Acts. *<Amended by Act No. 4853, 31 December 1994>*

(5) Notwithstanding the provisions of Article 4 of the Act on Real Name Financial Transactions and Guarantee of Secrecy, if it is deemed necessary to confirm the details of any financial transaction for the examination as referred to in paragraph (1), the public service ethics committee may demand that the head of any financial institution present materials on the details of financial transactions. Such demand shall be made by a document specifying the personal matters in compliance with such criteria as prescribed by the National Assembly Regulations, the Supreme Court Regulations, the Constitutional Court Regulations, the National Election Commission Regulations, or the Presidential Decree, and any person who is engaged in the financial institution concerned shall not refuse such demand. *<Newly Inserted by Act No. 4853, 31 December 1994; Act No. 5493, 31 December 1997>*

(6) The public service ethics committee may demand attendance of any person liable for registration and his spouse, lineal ascendants and descendants, and other interested parties in matters of property registration, and may ask them to make statements.

(7) With respect to any person liable for registration under a considerable suspicion of false registration or of an acquisition of property or profits from assets by utilizing the secrets obtained on duty as a result of the examination under paragraph (1), the public service ethics committee shall, by appending the relevant verifying documents, request that the Minister of Justice (in case of military or military civilian employees, the Minister of National Defense) conduct an investigation with fixing the period. <Amended by Act No. 6388, 26 January 2001>

(8) The Minister of Justice or Minister of National Defense, as applicable, shall, upon receiving the request for investigation under paragraph (7), cause any public prosecutor or prosecuting attorney to conduct an investigation without delay, and notify the public service ethics committee of the result of such investigation. <Amended by Act No. 4853, 31 December 1994>

(9) Such provisions of Acts and subordinate statutes relating to criminal lawsuits (including the Military Court Act) as pertaining to criminal investigations shall apply *mutatis mutandis* to the investigation conducted by a public prosecutor or prosecuting attorney under paragraph (8): *Provided*, That this shall not apply to the provisions concerning the restraint of personal liberty. <Amended by Act No. 4853, 31 December 1994>

(10) The public service ethics committee shall complete the examination of all public officials who are subject to the disclosure of property within three months after the registered matters as provided in Article 5(1) or after the changed matters reported under Article 6 are made open to the public under Article 10(1): *Provided*, That the public service ethics committee may, in case where deemed necessary, extend the period of examination under its resolution within the limit of 3 months. <Amended by Act No. 6388, 26 January 2001>

(11) The public service ethics committee may entrust the head of the registrar or other related agency with the examination of registered matters of persons liable for registration other than those subject to the disclosure of property, and the head of the entrusted agency shall report the results of examination to the competent public service ethics committee.

(12) The provisions of paragraphs (2) through (9) shall apply *mutatis mutandis* in the case of entrustment as referred to in paragraph (11). In such case, if any person wishes to request presentation of materials concerning the details of financial transactions as referred to in paragraph (5), or to entrust any examination as referred to in paragraph (7), he shall obtain the approval from the competent public service ethics committee. <Amended by Act No. 4853, 31 December 1994>
[This Article Wholly Amended by Act No. 4566, 11 June 1993]

Article 8-2 (Transaction of Results of Examination)

(1) If it is deemed, as a result of the examination of registered matters under Article 8, that any property to be registered is recorded falsely, or omitted or erroneously reported through gross negligence, or that any property or profits from assets are acquired by utilizing the secrets obtained on duty, the public service ethics committee as provided in Article 9 (1) shall take measures which fall under one of the following subparagraphs: <Amended by Act No. 4853, 31 December 1994; Act No. 6388, 26 January 2001>

1. warning and corrective measures;
2. imposition of a fine for negligence under Article 30;

3. publication of falsely registered matters in advertisement column of daily newspapers; and
4. request for decision on dismissal or discipline (including removal from office).

(2) The public service ethics committee may take measures as referred to in subparagraph 3 among those as referred to in paragraph (1) together with other measures.

(3) The public service ethics committee shall, upon taking measures as referred to in paragraph (1), notify the heads of the registrar and other related organizations thereof. *<Newly Inserted by Act No. 4853, 31 December 1994>*
[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 9 (Public Service Ethics Committee)

(1) In order to examine and decide the matters falling under one of the following subparagraphs, the public service ethics committees shall be established in the National Assembly, the Supreme Court, the Constitutional Court, the National Election Commission, the Government, local governments, and educational offices of the Special Metropolitan City, Metropolitan Cities and *Dos*, respectively: *<Amended by Act No. 4408, 30 November 1991; Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994; Act No. 5454, 13 December 1997>*

1. examination of registered matters concerning property, and measures taken from the results thereof;
2. approval as provided in the latter part of Article 8 (12);
3. approval as provided in the provisions of Article 17 (1) (proviso); and
4. other matters as provided by the power of the public service ethics committee under this Act or other Acts and subordinate statutes.

(2) Each public service ethics committee shall exercise jurisdiction over the matters which fall under one of the following subparagraphs: *<Amended by Act No. 4408, 30 November 1991; Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994; Act No. 5454, 13 December 1997>*

1. the public service ethics committee in the National Assembly shall preside over matters concerning the members of the National Assembly, other public officials under the control of the National Assembly, and retired public officials of the National Assembly;
2. the public service ethics committee in the Supreme Court shall preside over matters concerning judges, other public officials under the control of the courts, and retired public officials of the courts;
3. the public service ethics committee in the Constitutional Court shall preside over matters concerning justices of the Constitutional Court, other public officials under the control of the Constitutional Court, and retired public officials of the Constitutional Court;
4. the public service ethics committee in the National Election Commission shall preside over matters concerning public officials under the control of the National Election Commission and other election commissions, and retired public officials of election commissions;

5. the public service ethics committees in the Special Metropolitan City, Metropolitan Cities and *Dos* shall preside over matters concerning public officials under the control of the Special Metropolitan City, Metropolitan Cities and *Dos*, respectively, officers and employees of the competent public service-related organizations, members of the Special Metropolitan City Council, Metropolitan City councils and *Do* councils and public officials under their control, and retired public officials thereof respectively;
6. the public service ethics committees in the *Si/Gun/Gu* shall preside over matters concerning public officials under the control of the *Si/ Gun/Gu*, respectively, officers and employees of the competent public service related organizations, members of the *Si/Gun/Gu* councils and public officials under their control, and retired public officials thereof respectively;
7. the public service ethics committees in the Special Metropolitan City, Metropolitan Cities and *Dos* educational offices shall preside over matters concerning public officials under the control of the Special Metropolitan City, Metropolitan Cities and *Dos* educational offices, respectively, members of educational committees and public officials under the control of educational committees, and retired public officials thereof respectively; and
8. the public service ethics committee in the Government shall preside over matters concerning public officials other than those as referred to in subparagraphs 1 through 7, and retired public officials thereof.

(3) The public service ethics committee shall be composed of nine members including a chairman and a vice-chairman, and five of them, including the chairman, shall be appointed from among judges, educators, other persons of learning and high moral character, or persons recommended by the citizens' organization (referring to the nonprofit non-governmental organization under Article 2 of the Assistance for Nonprofit Non-Governmental Organizations Act; hereinafter the same shall apply): *Provided*, That the *Si/Gun/Gu* public service ethics committees shall each be composed of five members including a chairman and a vice-chairman, and three of them, including the chairman, shall be appointed from among judges, educators, other learned and reputable persons, or persons recommended by the citizens' organization. <Amended by Act No. 4566, 11 June 1993; Act No. 6388, 26 January 2001>

(4) The term and appointment of members of the public service ethics committees, the procedures of examination and other necessary matters shall be determined by the provisions which fall under one of the following subparagraphs: <Newly Inserted by Act No. 4566, 11 June 1993; Act No. 5454, 13 December 1997>

1. in case of the public service ethics committee in the National Assembly, the National Assembly Regulations;
2. in case of the public service ethics committee in the Supreme Court, the Supreme Court Regulations;
3. in case of the public service ethics committee in the Constitutional Court, the Constitutional Court Regulations;
4. in case of the public service ethics committee in the National Election Commission, the National Election Commission Regulations;

5. in case of the public service ethics committee in the Government, the Presidential Decree; and
6. in case of the public service ethics committees in Special Metropolitan City, Metropolitan Cities and *Dos* and the public service ethics committees in the *Si/Gun/Gu* and the public service ethics committees in the educational offices of Special Metropolitan City, Metropolitan Cities and *Dos*, the Municipal Ordinances of the relevant local governments.

(5) The public service ethics committees may make rules relating to the operation thereof within the scope of the Regulations, the Presidential Decree and the Municipal Ordinance prescribed by this Act and respective subparagraphs of paragraph (4). *<Newly Inserted by Act No. 4566, 11 June 1993>*

Article 10 (Opening of Registered Property to Public)

(1) The public service ethics committee shall open to the public the registered matters concerning the property of such public officials out of those liable for registration under its jurisdiction falling under any of the following subparagraphs, as well as the property of such officials spouses and lineal ascendants and descendants, as well as the contents of the report on the changed matters as provided in Article 6, by inserting them in the Gazette or public bulletins, within one month after the period of registration or report expires: *<Amended by Act No. 4566, 11 June 1993; Act No. 5454, 13 December 1997; Act No. 5491, 31 December 1997; Act No. 5681, 21 January 1999; Act No. 6306, 29 December 2000; Act No. 6388, 26 January 2001>*

1. national public officials in political service, such as the President, the Prime Minister, members of the State Council, members of the National Assembly, Director General and Directors of the National Intelligence Service;
2. public officials in Political Service of local governments, such as the heads of local governments, and local councilmen;
3. national and local public officials of Grade I in general service, and public officials in special service, who receive remuneration equivalent to that of the former;
4. public officials in foreign service prescribed by the Presidential Decree, and chief of the Planning and Coordination Office of the National Intelligence Service;
5. judges higher than the chief judge of the High Court, public prosecutors higher than chief of the public prosecutor's office, and public prosecutors who are the heads of public prosecutor's branch offices to which deputy chief public prosecutors are assigned;
6. officers higher than the lieutenant general;
7. presidents and deputy presidents of universities, deans of colleges (excluding deans of universities), deans of junior colleges and heads of various schools equivalent to universities and colleges, superintendents of educational boards and members of educational committees of the Special Metropolitan City, Metropolitan Cities and *Dos*;
8. police officials higher than senior superintendent general, and directors of local police administration in the Special Metropolitan City, Metropolitan Cities and *Dos*;

9. directors of the District Tax Office, and superintendents of customhouses who are public officials of Grade II or III;
- 9-2. public officials in contractual service appointed to positions the positions to be appointed by public officials under subparagraphs 3 through 6, 8 and 9 or to the positions equivalent thereto: *Provided*, That with respect to positions designated from among subparagraphs 4, 5, 8 and 9, limited to the public officials in contractual service appointed to the relevant positions;
10. directors, deputy directors and permanent auditors of government-invested institutions, the governor, deputy governor and auditor of the Bank of Korea, governor, deputy governor and auditor of the Financial Supervisory Service, presidents and permanent auditors of the National Agricultural Cooperatives Federation and National Fisheries Cooperatives Federation and officers of public service-related organizations as prescribed by the Presidential Decree;
11. other public officials of the Government, who are prescribed by the Presidential Decree; and
12. persons who are retired from the offices as referred to in subparagraphs 1 through 11 (limited only to the case as provided in Article 6 (2)).

(2) If a person liable for registration becomes, after the registration, one who is subject to the opening of his property to the public under paragraph (1), due to, *inter alia*, a promotion or transfer, he shall re-register the property as of the day on which he becomes one who is subject to the opening of property to the public with the registrar under the text of Article 5 (1), within one month after he becomes such person, and the public service ethics committee shall open it to the public under paragraph (1): *Provided*, That if the person concerned was transferred to a position which is not subject to the opening of property to the public, and thereafter becomes a person who is subject to the opening of property to the public within three years, he shall open to the public only the matters changed after the last opening is made. <Newly Inserted by Act No. 4853, 31 December 1994>

(3) No person shall inspect or reproduce registered matters concerning the property of any person liable for registration, or have another person do so, without obtaining permission of the head of the public service ethics committee or registration agency, except in cases falling under paragraphs (1) and (2). <Amended by Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994>

(4) The head of the public service ethics committee or registration agency may not grant any permission as referred to in paragraph (3), except cases falling under one of the following subparagraphs: <Amended by Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994>

1. where it is required for investigation of crime or misconduct against a person liable for registration, or for a trial relevant to it;
2. where a member of the National Assembly demands materials of the inspection and investigation of the state administration under Article 128 (1) of the National Assembly Act, Article 10 (1) of the Act on Inspection and Investigation of State Administration, and Article 4 of the Act on Testimony, Appraisal, etc. before the National Assembly, or it is required for investigation as to whether any activity of a specified public official is connected to a concrete misconduct. In this case, the head of the public service ethics committee or the registration agency is not permitted to disclose externally the details of registered matters concerning the property;

3. where it is required to judge for the head of any government agency, local government or public service-related organization, if a public official under his control is connected to any misconduct; and
4. where a person who is or was liable for registration requests an inspection or reproduction of registered matters concerning himself.

Article 10-2 (Opening of Property of Candidates for Election of Public Officials to Public)

(1) When a person who wishes to be a candidate for the President, a member of the National Assembly, a head of the local government or the local council makes a registration for such candidacy, he shall submit a report, as provided in Article 4, regarding the property to be registered as of the 31st of December of the preceding year, to the competent election commission, and the commission shall make public the reported matters concerning the property of the candidate at the time the registration of candidate is announced publicly: *Provided*, That if the person who wishes to be a candidate opens the property to be registered on and after the 31st of December of the preceding year under Article 10 (1) prior to the registration of candidates for such election, this provision shall not apply, but the candidate shall submit to the competent election commission exercising the jurisdiction over the constituency concerned the documents to confirm the opening of such property as provided in Article 49 (4) of the Act on the Election of Public Officials and the Prevention of Election Malpractices. *<Amended by Act No. 4739, 16 March 1994; Act No. 4853, 13 December 1994>*

(2) When a proposal of approval on appointment of a public official whose appointment is required to be approved by the National Assembly, such as the Chief Justice of the Supreme Court, President of the Constitutional Court, Prime Minister, Chairman of the Board of Audit and Inspection, justices of the Supreme Court, secretary-general of the National Assembly Secretariat, or a proposal of election of public officials who are elected by the National Assembly, such as judges of the Constitutional Court or members of the National Election Commission, is submitted, a report on the property to be registered under Article 4 concerning the candidate for public office shall be submitted to the National Assembly, and the Speaker of the National Assembly shall open without delay to the public the reported matters concerning the property of the candidate for public office: *Provided*, That if the candidate for public office opens, under Article 10 (1) the property to be registered on and after December 31 of the preceding year to the public prior to the time the proposal of the approval on appointment or of the election is filed, this provision shall not apply, but the documents to confirm the opening of such property to the public shall be submitted to the National Assembly. *<Amended by Act No. 4853, 31 December 1994; Act No. 5454, 13 December 1997>*

(3) The public service ethics committees in the National Election Commission and the National Assembly shall examine the reported matters concerning the property as referred to in paragraph (1) or (2), and may open the results of the examination to the public.

(4) The provisions of Article 8 (2) through (6) shall apply *mutatis mutandis* to the examination as referred to in paragraph (3). *<Amended by Act No. 4853, 31 December 1994>*

(5) The forms of the report as referred to in paragraphs (1) and (2), the methods of opening to the public, and other necessary matters shall be prescribed by the National Assembly Regulations or the National Election Commission Regulations.

[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 11 (Report on Property of Transferred Person)

(1) If a person liable for registration is exempted from the liability for registration due to, *inter alia*, a transfer, retaining the status as a public official or an officer or an employee of a public service-related organization (including the case where he becomes a public official or an officer or an employee of a public service-related organization within one month after retirement), he shall report to the previous registration agency the changed matters concerning the property until the day on which, e. g., the transfer is made after the 1st of January of the year in which he is transferred (if he becomes a person liable for registration after the 1st of January, the day on which he becomes liable therefor) within one month after his transfer, and thereafter make a report each year for two years on the changed matters in the property during the preceding year in the month the cause of such transfer has occurred: *Provided*, That if he retires from his office during the period in which he is liable for reporting on the changed matters in the property, the provisions of Article 6 (2) shall apply *mutatis mutandis*. <Amended by Act No. 4853, 31 December 1994>

(2) With respect to the report as referred to in paragraph (1) and the control of such reported matters, the provisions of Articles 6 through 8, 8-2, 10, 12 through 14 and 14-3 shall apply *mutatis mutandis*. <Amended by Act No. 4853, 31 December 1994; Act No. 6388, 26 January 2001>

Article 12 (Liability for Truthful Registration)

(1) No person liable for registration shall make a false entry of the property to be registered under Article 4 in the property registration papers, or of the value, acquisition date and details of acquisition of the property, and the sources of his income. <Amended by Act No. 4566, 11 June 1993>

(2) Any person liable for registration shall faithfully comply with any examination of the public service ethics committee, etc. on the registered matters. <Amended by Act No. 4566, 11 June 1993>

(3) Any person as provided in Article 4 (2) 2 or 3 shall comply faithfully with the registration of property by a person liable for registration or the examination on the reported matters by the public service ethics committee. <Amended by Act No. 4566, 11 June 1993>

(4) Notwithstanding the provisions of paragraph (3), such a person out of those referred to in Article 4(1) 3, as is not a dependent of a person liable for registration may refuse to report on the matters concerning the registration of his property, and in this case, the person liable for registration shall designate so on the property registration papers. <Amended by Act No. 4566, 11 June 1993>

Article 13 (Prohibition of Use of Registered Matters Concerning Property for Different Purposes and Related Matters)

Any person liable for registration shall not be subject to any disadvantageous treatment or disposition for reasons of registered matters except in case of false registration or other causes as prescribed by this Act, and no person shall use the registered matters concerning the property for any purpose other than those as prescribed by this Act. <Amended by Act No. 4566, 11 June 1993>

Article 14 (Keeping of Secrets)

No person who is or was engaged in affairs of property registration, or no other person who has learned of such matters in the course of performing his duties shall disclose them to other persons.

Article 14-2 (Prohibition of Property Acquisition by Taking Advantage of Secrets in Respect of One Duties)

No person liable for registration shall acquire any property or property interest taking advantage of secrets which he has learned in the course of performing his duties.

[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 14-3 (Prohibition of Furnishing and Disclosure of Materials on Financial Transactions)

No person who has materials concerning the details of financial transactions furnished under Article 8 (5) shall furnish or disclose them to another person, or use them for any purpose other than proper ones.

[This Article Newly Inserted by Act No. 4853, 31 December 1994]

CHAPTER III - REPORT ON GIFTS

Article 15 (Report on Receipt of Gifts from Foreign Governments, etc.)

(1) If a public official (including members of local councils and educational committees; hereinafter the same shall apply in Articles 22 and 23 (1)) or an officer or an employee of any public service-related organization has received any gift from a foreign country or a foreigner in connection with his duties (including foreign organizations; hereinafter the same shall apply), he shall report it without delay to the head of the agency or organization to which he belongs, and hand over such gift thereto. This provision shall also apply in case where his family receives any gift from a foreign country or a foreigner in connection with the duties of such officials, or officers or employees of public service-related organizations. *<Amended by Act No. 4566, 11 June 1993; Act No. 4853, 31 December 1994>*

(2) The value of the gift to be reported under paragraph (1) shall be prescribed by the Presidential Decree.

Article 16 (Reversion, etc. of Gift to National Treasury)

(1) Any gift reported under Article 15 (1) shall be reverted to the National Treasury immediately after it is reported.

(2) Matters concerning, *inter alia*, the management or maintenance of reported gifts shall be prescribed by the Presidential Decree.

CHAPTER IV – RESTRICTION ON EMPLOYMENT OF RETIRED PUBLIC OFFICIALS

Article 17 (Restriction on Employment of Retired Public Officials in Related Private Enterprises, etc.)

(1) No public official or officer or employee of a public service-related organization who was engaged in a grade of position or field of duties as prescribed by the Presidential Decree may be employed in a profit-making private enterprise larger than a specified size (hereinafter referred to as the profit-making private enterprise) connected closely with the duties which he performed at the competent department within three years immediately before his retirement, for a period of two years immediately after his retirement, or the organization established for the joint profits and mutual cooperation, etc. of private enterprises (hereinafter referred to as the association): *Provided*, That this shall not apply if such employment is approved by the competent public service ethics committee. *<Amended by Act No. 6388, 26 January 2001>*

(2) In the case as referred to in paragraph (1), the scope of close connection between the duties at the competent department performed by the retired public official and the profit-making private enterprise, and the size of such private enterprise and the scope of related associations shall be prescribed by the National Assembly Regulations, the Supreme Court Regulations, the Constitutional Court Regulations, the Central Election Management Commission Regulations or the Presidential Decree. *<Amended by Act No. 4408, 30 November 1991; Act No. 4566, 11 June 1993; Act No. 6388, 26 January 2001>*

(3) In determining and applying the scope of duties at the competent department in the case of paragraph (2), the due consideration shall be paid so as not to unlawfully infringe on the freedom and rights of the retired public officials. *<Newly Inserted by Act No. 6388, 26 January 2001>*

Article 18 (Request for Approval of Employment)

Any retired public official who wishes to obtain approval of employment under the proviso of Article 17 (1) shall make a request for approval of employment to the competent public service ethics committee through the head of the agency to which he belonged, under the provisions of the National Assembly Regulations, the Supreme Court Regulations, the Constitutional Court Regulations, the Central Election Management Commission Regulations or the Presidential Decree. *<Amended by Act No. 4408, 30 November 1991; Act No. 4566, 11 June 1993>*

Article 19 (Demand, etc. for Dismissal of Employee)

(1) If a person who has held an office in a government agency, the local government or a public service-related organization (in case of the chairman of the public service ethics committee, whose employment is restricted under Article 17 (1)) is employed in violation of the provisions of Article 17 (1), the chairman of the public service ethics committee and the head of the government agency, the local government or public service-related organization shall request the head of the pertinent central administrative agency (in case of the National Assembly, the Secretary-General of the National Assembly; in case of the Supreme Court, the director of the Office of Court Administration; in case of the Constitutional Court, the Secretary-General of the Secretariat of the Constitutional Court; and in case of the Central Election Management Commission, the Secretary-General of the Central Election Management Commission; hereinafter the same shall apply) to take measures for the dismissal of the person concerned from the employment, and the head of the relevant central administrative agency shall, upon receiving such request, demand a dismissal of such employee to the head of the profit-making private enterprise or the association in which the person in question is employed. *<Amended by Act No. 4408, 30 November 1991; Act No. 4566, 11 June 1993; Act No. 6388, 26 January 2001>*

(2) The head of the profit-making private enterprise or the association who receives a request for the dismissal under paragraph (1) shall comply with such request without delay. *<Amended by Act No. 6388, 26 January 2001>*

CHAPTER V - SUPPLEMENTARY PROVISIONS

Article 20 (Agency in Charge of Planning and General Affairs)

The Minister of Government Administration and Home Affairs shall preside over the planning and general affairs concerning the registration of property and opening thereof to the public, the report of gifts and the restriction on employment of retired public officials under this Act. *<Amended by Act No. 4566, 11 June 1993; Act No. 6388, 26 January 2001>*

Article 20-2 (Report to National Assembly)

(1) The public service ethics committees in the National Assembly, the Supreme Court, the Constitutional Court, the Central Election Management Commission and the Government shall submit each year to the plenary session of the National Assembly an annual report on the actual conditions of, and control over, the registration of property, report of gifts and restriction on employment of retired public officials and other activities in the preceding year.

(2) Matters necessary for preparing the annual report as referred to in paragraph (1) shall be prescribed by the Presidential Decree.

[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 21 (Delegated Provisions)

Matters necessary for the enforcement of this Act shall be prescribed by the National Assembly Regulations, the Supreme Court Regulations, the Constitutional Court Regulations, the Central Election Management Commission Regulations, the Presidential Decree or the Municipal Ordinance of the local government. *<Amended by Act No. 4408, 30 November 1991; Act No. 4566, 11 June 1993>*

CHAPTER VI – DISCIPLINARY ACTION AND PENAL PROVISIONS

Article 22 (Disciplinary Action, etc.)

If a public official or an officer or an employee of a public service-related organization falls under any of the following subparagraphs, the public service ethics committee concerned may demand a resolution on dismissal or discipline for such reason: *<Amended by Act No. 4853, 31 December 1994; Act No. 6388, 26 January, 2001>*

1. where he fails to register his property in violation of the provisions of Article 5 (1);
2. where he fails to make a report on the changed matters or the report on the details of stock trade, or to attach explanatory materials, in violation of the provisions of Article 6 (1) (including the provisions of Article 6 (3) concerning the report on the changed matters in case where he becomes liable for registration in December) and Articles 6 (5), 6-2 and 11 (1);
3. where he inspects or reproduces registered matters or has another person do so, without permission, in violation of the provisions of Article 10 (3) (including the case where it is applied *mutatis mutandis* under Article 11(2));
4. where he has in bad faith registered his property, such as making a false registration, etc., in violation of the provisions of Article 12 (1) (including the cases of application *mutatis mutandis* in Articles 6-2 (4) and 11 (2));
5. where he fails to comply with an examination of, *inter alia*, the public service ethics committee, etc. on the registered matters, in violation of the provisions of Article 12 (2) (including the cases of application *mutatis mutandis* in Articles 6-2 (4) and 11 (2));
6. where he uses matters regarding the property registration for any purpose other than that as prescribed by this Act, in violation of the provisions of the latter part of Article 13 (including the case where it is applied *mutatis mutandis* under Articles 6-2 (4) and 11(2));

7. where he discloses matters regarding the property registration to another person in violation of the provisions of Article 14 (including the case where it shall apply *mutatis mutandis* under Articles 6-2 (4) and 11 (2)); and
8. where he fails to report or hand over any gift received from a foreign country or a foreigner in violation of the provisions of Article 15.

[This Article Wholly Amended by Act No. 4566, 11 June 1993]

Article 23 Deleted. <by Act No. 6494, 24 July 2001>

Article 24 (Crime of Refusal of Property Registration)

(1) Any person liable for registration who refuses to register the property without any justifiable reason shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won.

(2) Any candidate for an election public office as provided in Article 10-2 (1) and (2), who fails to submit a report on any property to be registered without any justifiable reason shall be punished by imprisonment for not more than six months or by a fine not exceeding five million won.

[This Article Wholly Amended by Act No. 4566, 11 June 1993]

Article 25 (Crime of Submission, etc. of False Materials)

If the head of each agency or organization which is required to submit a report or materials as provided in Article 8 (4) and (5) (including the cases of applications *mutatis mutandis* in Articles 6-2 (4) and 11 (2)) by the public service ethics committee (including the head of a registration agency who is delegated the authority on matters regarding the property registration by the public service ethics committee under Article 8 (11); hereinafter the same shall apply in Article 26) submits a false report or materials, or refuses to submit the report or materials, without any justifiable reason, he shall be punished by imprisonment for not more than one year or a fine not exceeding ten million won.

<Amended by Act No. 4853, 31 December 1994; Act No. 6388, 26 January 2001>

[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 26 (Crime of Refusal of Attendance)

Any person who has received the demand from the public service ethics committee under Article 8 (6) (including the cases of applications *mutatis mutandis* in Articles 6-2 (4) and 11 (2)) to appear before the committee, but fails to comply with such demand without any justifiable reason shall be punished by imprisonment for not more than six months or by a fine not exceeding five million won. <Amended by Act No. 4853, 31 December 1994; Act No. 6388, 26 January 2001>

[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 27 (Crime of Inspection and Reproduction without Permission)

Any person who inspects or reproduces matters regarding the property registration or makes another person do it, without permission, in violation of the provisions of Article 10 (3) (including the cases of applications *mutatis mutandis* in Article 11 (2)), shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won. <Amended by Act No. 4853, 31 December 1994; Act No. 6388, 26 January 2001>

[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 28 (Crime of Disclosure of Secret)

(1) If a person who is or was engaged in the property registration affairs, or other person who has learned of matters regarding any property registration in the course of performing his duties, discloses the matters regarding property registration other than those which are made open to the public, without any justifiable reason in violation of the provisions of Article 14 (including the cases of applications *mutatis mutandis* in Articles 6-2 (4) and 11 (2)), he shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won. <Amended by Act No. 6388, 26 January 2001>

(2) If a person who has materials concerning the details of financial transactions, furnishes or discloses such materials or details to another person, or uses them for a purpose in violation of the provisions of Article 14-3 (including the cases of applications *mutatis mutandis* in Articles 6-2 (4) and 11 (2)), he shall be punished by imprisonment for not more than three years, or by a fine not exceeding twenty million won. <Newly Inserted by Act No. 4853, 13 December 1994; Act No. 6388, 26 January 2001>

(3) The imprisonment and the fine as referred to in paragraph (2) may be imposed concurrently. <Newly Inserted by Act No. 4853, 31 December 1994>
[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 29 (Crime of Violation against Restriction on Employment)

Any retired public official who is employed in a profit-making private enterprise or the association in violation of the provisions of Article 17 (1) shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won. <Amended by Act No. 6388, 26 January 2001>
[This Article Newly Inserted by Act No. 4566, 11 June 1993]

Article 30 (Fine for Negligence)

(1) Any person who is determined by the public service ethics committee as a person on whom the fine for negligence is to be imposed, under of Article 8-2 (1) 2 (including the cases of applications *mutatis mutandis* in Articles 6-2 (4) and 11 (2)), shall be punished by a fine not exceeding twenty million won. <Amended by Act No. 6388, 26 January 2001>

(2) The public service ethics committee shall notify the court of the offense of the person who is subject to a fine for negligence under paragraph (1) for a trial on the fine for negligence under the Non-Contentious Case Litigation Procedure Act.
[This Article Newly Inserted by Act No. 4566, 11 June 1993]

ADDENDUM

This Act shall enter into force on 1 January 1983.

ADDENDA <Act No. 3993, 4 December 1987>

Article 1 (Enforcement Date)

This Act shall enter into force on 25 February 1988.

Articles 2 through 4 Omitted.

ADDENDA <Act No. 4017, 5 August 1988>

Article 1 (Enforcement Date)

This Act shall enter into force on 1 September 1988. (Proviso Omitted.)

Articles 2 through 8 Omitted.

ADDENDA <Act No. 4408, 30 November 1991>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 and 3 Omitted.

ADDENDA <Act No. 4566, 11 June 1993>

Article 1 (Enforcement Date)

This Act shall enter into force one month after its promulgation: *Provided*, That the provisions regarding the property registration and opening of registered matters to the public with respect to the heads of local government, local councilmen, members of educational committees, public officials under the control of local government and officers and employees of competent public service-related organizations under the control of local government shall enter into force two months after its promulgation.

Article 2 (Transitional Measures)

(1) Any person liable for registration at the time when this Act enters into force shall register his property existing on the enforcement date of this Act with the registration agency within one month after the enforcement date of this Act.

(2) With respect to public officials whose property is to be made open to the public at the time when this Act enters into force, the competent public service ethics committee shall open to the public such registered matters as referred to in paragraph (1) by inserting them in the official Gazette or public bulletins within one month after the expiration of the registration period.

(3) With respect to matters registered by a public official whose property is to be made open to the public at the time when this Act enters into force, the competent public service ethics committee shall complete the examination as provided in Article 8 within three months after such opening of materials to the public as referred to in paragraph (2).

(4) Documents concerning the public official property registration submitted to the registration agency under the previous provisions at the time when this Act enters into force shall be repealed on the enforcement date of this Act.

ADDENDA <Act No. 4739, 16 March 1994>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 through 11 Omitted.

ADDENDUM <Act No. 4853, 31 December 1994>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 5108, 29 December 1995>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Articles 2 through 8 Omitted.

ADDENDUM <Act No. 5454, 13 December 1997>

This Act shall enter into force on 1 January 1998. (Proviso Omitted.)

ADDENDA <Act No. 5491, 31 December 1997>

Article 1 (Enforcement Date)

This Act shall enter into force on 1 April 1998.

Articles 2 through 8 Omitted.

ADDENDA <Act No. 5493, 31 December 1997>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 through 14 Omitted.

ADDENDA <Act No. 5681, 21 January 1999>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Articles 2 through 4 Omitted.

ADDENDA <Act No. 6087, 31 December 1999>

Article 1 (Enforcement Date)

This Act shall enter into force on 1 January 2000.

Articles 2 through 4 Omitted.

ADDENDA <Act No. 6306, 29 December 2000>

Article 1 (Enforcement Date)

This Act shall enter into force on 1 July 2001.

Articles 2 through 12 Omitted.

ADDENDA <Act No. 6388, 26 January 2001>

Article 1 (Enforcement Date)

This Act shall enter into force three months after the date of its promulgation.

Article 2 (Application Example)

The amendments to Article 6-2 shall be applicable to the stock trade performed after the enforcement date of this Act, and those to Article 17 to the persons retired after the enforcement date of this Act.

Article 3 Omitted.

ADDENDA <Act No. 6494, 24 July 2001>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Article 2 Omitted.

ATTACHMENT 3

ENFORCEMENT DECREE OF THE PUBLIC SERVICE ETHICS ACT

PRESIDENTIAL DECREE NO. 17538

Article 1 (Purpose)

The purpose of this Decree is to prescribe matters delegated by the Public Service Ethics Act (hereinafter referred to as the "Act") and those matters necessary for its enforcement.

Article 2 (Scope, etc. of Public Service-Related Organizations)

(1) The public service-related organizations as provided in subparagraph 10 of Article 3 of the Act (hereinafter referred to as "public service-related organizations") shall be specified in the attached Table 1.

(2) For the purpose of subparagraph 10 of Article 3 of the Act, the term "officers" means permanent officers with a rank not lower than directors and auditors (including those in charge of duties equivalent thereto, regardless of their titles).

Article 3 (Persons Liable for Registration)

(1) The term "public officials in foreign service prescribed by the Presidential Decree" in subparagraph 4 of Article 3 of the Act means public officials whose duty grade ranks Grade VI or higher under the provision of Article 51 of Rules on Remuneration of Public Officials. *<Newly Inserted by Presidential Decree No. 17275, 30 June 2001>*

(2) The term "civilian employees with the equivalent rank" in subparagraph 6 of Article 3 of the Act means civilian employees of Grade II or higher.

(3) Public officials and employees of public service-related organizations working in specific fields, who are liable for registration of property under subparagraph 11 of Article 3 of the Act shall be as follows: *<Amended by Presidential Decree No. 14441, 23 December 1994; Presidential Decree No. 14498, 31 December 1994; Presidential Decree No. 16608, 7 December 1999; Presidential Decree No. 16784, 18 April 2000; Presidential Decree No. 17213, 27 April 2001; Presidential Decree No. 17420, 29 November 2001>*

1. public officials in research service as provided in subparagraph 1 (a) through (c), 2 (a) and (b), and 3 (a) of the attached Table 2 of the Rules of the Appointment, etc. of Public Officials Engaged in Research and Technical Advice Service, and those in technical advice service as provided in subparagraph 1 (a) and (b), 2 (a) and (b), and 3 (a) of the attached Table 2-2, who are officials in research and technical advice service equivalent to Grade IV or higher in general government service;
2. supervisory officials and educational research officials who are assigned to positions equivalent to public officials of Grade IV or higher in general government service;
3. professors and associate professors who are assigned to positions of department chiefs or office chiefs of universities and colleges (including various schools equivalent to universities and colleges);

4. public officials of Grade V or lower to Grade VII or higher under the control of the Board of Audit and Inspection, who are appointed for general government service and equivalent special government service;
- 4-2. public officials of Grade V or lower to Grade VII or higher under the control of the Korea Independent Commission Against Corruption, who are appointed for general government service and equivalent special government service;
5. captains, inspectors, lieutenants and sergeants among police officials;
6. fire-fighting superintendents, inspectors, lieutenants and sergeants and local fire-fighting superintendents, inspectors, lieutenants and sergeants among fire-fighting officials;
7. public officials of Grade V or lower to Grade VII or higher under the control of the National Tax Administration and the Korea Customs Service, who are appointed for general government service and equivalent special service;
8. public officials of Grade V or lower to Grade VII or higher under the control of the Ministry of Justice and the Public Prosecution Administration, who are appointed for prosecutory service and narcotics investigation service;
9. of public officials under the control of central administrative agencies (including the subordinate organizations; hereafter the same in this Article shall apply) and local governments (excluding those under the jurisdiction of the *Eup/Myeon/Dong*; hereinafter the same shall apply), those who are working in specified service, those who are appointed for Grade V or lower to Grade VII or higher in general government service and equivalent special service, and their senior supervisors, who are assigned to the positions whose principal function is to conduct inspection activities (in case of the central administrative agency, it refers to the smallest unit of auxiliary organ and the position to which a person of Grade equivalent thereto is assigned, under the Government Organization Act, and in case of a local government, it refers to the minimum unit of auxiliary agency and the position to which a person of Grade equivalent thereto is assigned, under the Municipal Ordinance or Municipal Rule; hereafter the same in this Article shall apply);
- 9-2. public officials of Grade V or lower to Grade VII or higher who are appointed for general government service, specific government service, special government service and their senior supervisors in charge of the certification and licensing, approval, investigation, supervision and guidance-control involving civil petitions in the areas of construction, civil engineering, environment and food sanitation from among public officials belonging to central administrative agencies or local governments;
10. of public officials under the control of the local government, those of Grade V or lower to Grade VII or higher in general government service and equivalent special service, and their senior supervisors, who are assigned to positions in charge of affairs concerning the imposition, collection, investigation and examination of taxes;
11. temporary public officials who are appointed to posts and positions or equivalent posts and positions that make it possible to appoint them as the public officials provided for in subparagraphs 1, 2, and 4 through 10; and
12. the employees of Grade II or higher working for the Financial Supervisory Commission.

(4) The posts and positions referred in paragraph (3) 9-2 shall be prescribed by the head of the relevant registration agency (excluding the head of the registration agency as prescribed in Article 5 (3) of the Act). *<Newly Inserted by Presidential Decree No. 17213, 27 April 2001; Presidential Decree No. 17275, 30 June 2001>*

Article 4 (Methods of Indicating Property to be Registered)

(1) Deleted. *<by Presidential Decree No. 14498, 31 December 1994>*

(2) Any intangible property right to be registered under Article 4 (2) 3 (j) of the Act shall be indicated by specifying the kinds, content, duration, other specifications of such right, annual amount of income derived from such right, and how the income is generated.

(3) The property contributed to a nonprofit corporation to be registered under Article 4 (1) and (6) of the Act shall be indicated by specifying the details of such property, the name of the nonprofit corporation, seat of its principal office, its representative, its projects to be accomplished, other specifications of the nonprofit corporation, and the position of the person liable for registration in the nonprofit corporation.

(4) The term "transaction price prescribed by the Presidential Decree" in Article 4 (3) 7 of the Act means the base price as of the basic date of property registration (referring to the weighted average value of transaction volume; hereafter the same shall apply): *Provided*, that in the event that the transaction closes prior to the basic date of property registration, the closing date shall be the basic date. *<Newly Inserted by Presidential Decree No. 17213, 27 April 2001>*

Article 4-2 (Registration Agency)

(1) The term "administrative agencies such as the committees prescribed by the Presidential Decree" in Article 5 (1) 5 of the Act means the administrative agencies falling under any of the following subparagraphs: *<Amended by Presidential Decree No. 17420, 29 November 2001>*

1. the Fair Trade Commission;
2. the Financial Supervisory Commission; and
3. the Korea Independent Commission Against Corruption.

(2) The registration agency as prescribed in Article 5 (3) of the Act shall be as follows:

1. for public officials belonging to any local environmental office prescribed by the Minister of Environment, the relevant local environmental office;
2. for public officials belonging to any office prescribed by the Minister of Construction and Transportation, the relevant office;
3. for public officials belonging to any regional tax office prescribed by the Commissioner of the National Tax Service, the relevant regional tax office; and
4. for public officials belonging to any local police agency prescribed by the Commissioner of the National Police Agency, the relevant local police agency.

[This Article Wholly Amended by Presidential Decree No. 17213, 27 April 2001]

Article 5 (Scope and Contents of Report on Changed Matters)

The scope and contents of changed matters concerning the property to be reported under Article 6 (1) and (2) of the Act shall be as follows: <Amended by Presidential Decree No. 14498, 31 December 1994>

1. matters changed due to, *inter alia*, sale, donation, etc. (excluding any case where only the value is changed) of the property falling under Article 4 (2) 1 and 2 of the Act;
2. changed matters concerning increases or decreases in, *inter alia*, items, quantities or amounts of the property falling under Article 4 (2) 3 of the Act: *Provided*, That in case of the property as provided in Article 4 (2) 3 (c), (f) through (i) and (k) of the Act, if only the value thereof is changed, it needs be excluded; and
3. in case of the property contributed to a nonprofit corporation under Article 4 (1) and (6) of the Act, changed matters in those categories as provided in Article 4 (3).

Article 5-2 (Scope and Method of Reporting Details of Stock Transaction)

(1) The stock, details of whose transaction are required to file a report thereon under Article 6-2 (1) of the Act shall be as follows:

1. the stock listed on the Korea Stock Exchange;
2. the stock listed on the Korea Securities Dealers Association; and
3. the stock that is traded in a manner similar to that on the valuable securities market from among stocks traded on the over-the-counter market under Article 194 of the Securities and Exchange Act.

(2) The scope of stock transaction required to be reported shall be all stocks traded during a period in which traded stocks are required to be reported under paragraph (1).

(3) The report on details of stock transaction shall be accompanied by a report on change in stock appended by a statement detailing the number of commission accounts issued by a financial institution, the date of stock transaction, items, quantity and the amount of actual transaction, etc., or a copy of the commission account ledger.

[This Article Newly Inserted by Presidential Decree No. 17213, 27 April 2001]

Article 5-3 (Permission for Deferring Report on Changed Matters)

(1) The head of any registration agency shall, when any person liable for registration applies for deferring the report on changed matters in accordance with Article 6-3 (1) of the Act, notify without delay such person liable for registration of whether he grants or denies the requested deferment.

(2) Any person liable for registration may, in the event the period of deferment as prescribed in each subparagraph of Article 6-3 (1) of the Act exceed 3 years, apply again to the head of the registration agency for deferring the report on change in stock within the limit of 3 years after filing the report on changed matters under Article 6-3 (2) of the Act.

[This Article Newly Inserted by Presidential Decree No. 17213, 27 April 2001]

Article 6 (Notification of Matters concerning Change of Person Liable for Registration)

If any public official of a government agency or an officer or an employee of a public service-related organization becomes liable for registration or is relieved from such liability due to, *inter alia*, a new appointment, promotion, transfer of position, change of occupation or retirement the head of such agency or organization shall report without delay the official announcement of such personnel affairs to the pertinent registrars as provided in Articles 5 (1) and (3) and 6 (2) of the Act at the same time as the official announcement thereof is made. <Amended by Presidential Decree No. 14498, 31 December 1994>

Article 7 (Permission for Extension of Property Registration Period)

When a person liable for registration requests an extension of the property registration period under Article 7 of the Act, the head of the registration agency (referring to registration agency as provided in Article 5 (1) 5 through 7, main text of 12, and (3) of the Act; hereinafter the same shall apply) shall notify without delay the person as to whether such period may be extended. In this case, the extension of the property registration period shall not exceed 20 days for any discloser of his property under Article 10 (1) and (2) of the Act and 30 days for any other person liable for the registration of his property (for any person who is on a sick leave, in overseas stay or under arrest in excess of 30 days, the relevant period). <Amended by Presidential Decree No. 14498, 31 December 1994; Presidential Decree No. 17213, 27 April 2001>

Article 8 (Report on Current Status of Property Registration)

The head of the registration agency shall report the current status of the property registration conducted until the last month to the government public service ethics committee (hereinafter referred to as the "committee") by the 10th day of each month: *Provided*, That the head of the registration agency as provided in Article 5 (1) 5 of the Act shall make a comprehensive report on the current status of the property registration with the registration agency in accordance with Article 4-2. <Amended by Presidential Decree No. 14498, 31 December 1994>

Article 9 (Transfer of Property Registration Papers)

When the committee demands the head of the registration agency to transfer the property registration papers necessary for examining registered matters, the head of the registration agency shall transfer without delay such papers which he has received and has in his custody.

Article 10 (Supplement of Property Registration Papers and Submission, etc. of Materials)

(1) Any person liable for registration who receives an order to supplement his property registration papers under Article 8 (2) or 8-2 (1) of the Act shall file a supplementary report within twenty days from the date on which he is ordered unless there exists any special ground. <Newly Inserted by Presidential Decree No. 17213, 27 April 2001>

(2) Any person liable for registration who receives a demand for submission of materials or a question in writing from the committee under Article 8 (3) of the Act shall submit such materials or a written answer within twenty days after he receives such demand or question, unless there exists any special reason.

(3) The head of the government agency, local government, public service-related organization, other public institution or financial institution which receives a demand for a report or submission of materials from the competent public service ethics committee under Article 8 (4) and (5) of the Act shall file such a report or submit such materials within twenty days after he receives such demand,

unless there exists any special reason. *<Amended by Presidential Decree No. 14498, 31 December 1994>*

Article 10-2 (Submission, etc. of Materials on Financial Transactions)

If the committee wishes to demand that the head of a financial institution submit materials on details of any financial transactions under Article 8 (5) of the Act, it may make such demand only in cases falling under one of the following cases within the scope of the minimum limit necessary for the purpose of examination:

1. where it is deemed, in light of the details of the registered property, that the financial property is not registered truthfully;
 2. where a person liable for registration has caused a social criticism with respect to whether or not his property is acquired by lawful means;
 3. where the property shows an excessive increase or decrease in value without any special reason; and
 4. where there is a suspicion of omission in matters concerning the property registration.
- [This Article Newly Inserted by Presidential Decree No. 14498, 31 December 1994]*

Article 11 (Demand for Attendance of Person Liable for Registration, Person Concerned, etc.)

- (1) If the committee demands any attendance under Article 8 (6) of the Act, it shall be done by a written demand for attendance. *<Amended by Presidential Decree No. 14498, 31 December 1994>*
- (2) Any person liable for registration, his spouse, lineal ascendant or descendant, or other person concerned in matters concerning the property registration who receives the demand for attendance as referred to in paragraph (1) shall attend the committee at the designated date and time.
- (3) If a person who has received on two or more occasions a demand for attendance under paragraph (1) refuses to comply with a written demand for attendance or fails to attend without any justifiable reason, the committee shall lodge a complaint against him with the competent public prosecution administration.

Article 12 (Hearing on Statement, etc.)

- (1) The committee may ask the person liable for registration, etc. who is present pursuant to Article 8 (6) of the Act, any question on matters concerning the property registration. In this case, it shall give the person present an opportunity to make a sufficient statement. *<Amended by Presidential Decree No. 14498, 31 December 1994>*
- (2) Any person liable for registration, etc. as referred to in paragraph (1) may request the attendance of any witness. In this case, the committee shall decide whether it will accept such request.

Article 13 (Report on Results of Examination of Delegated Agency on Registered Matters)

- (1) The head of the agency delegated with the examination of registered matters under Article 8 (11) of the Act shall report the results of examination to the committee within one month after completion of the examination. In this case, the provisions of Article 8 shall apply *mutatis mutandis* to the report. *<Amended by Presidential Decree No. 14498, 31 December 1994>*

(2) The report on the results of the examination as referred to in paragraph (1) shall include the following matters:

1. current status of property registration with the delegated agency;
2. summary of examination;
3. results of examination (including the opinion on measures to be taken); and
4. other matters necessary for preparing an annual report as provided in Article 36.

Article 14 (Supervision and Inspection over Delegated Agency)

(1) The committee may supervise or inspect the management of delegated affairs of the agency which has been delegated with the examination of registered matters under Article 8 (11) of the Act.

(2) The Minister of Environment, the Minister of Construction and Transportation, the Commissioner of the National Tax Service or the Commissioner of the National Police Agency shall, when they designate government offices under their control as registration agencies under Article 4-2 (2), supervise or inspect their delegated registration affairs. *<Amended by Presidential Decree No. 17213, 27 April 2001>*

[This Article Wholly Amended by Presidential Decree No. 14498, 31 December 1994]

Article 14-2 (Method of Examination of Registered Property)

In acknowledging, as a result of the examination of the registered matters, the fact that any property to be registered is omitted or erroneously stated by a gross negligence, the committee shall take into consideration as a whole factor such as the registered property, the scope, kinds and value of the omitted property, and the circumstances leading to such omission, etc.

[This Article Newly Inserted by Presidential Decree No. 14498, 31 December 1994]

Article 15 (Notification on Result of Measures Taken against Request for Decision on Disciplinary Action)

The head of the agency or public service-related organization to which a public official or an officer or an employee against whom a request for dismissal or demand for decision on disciplinary action is made under Articles 8-2 (1) 4 and 22 of the Act shall notify the committee of the result of measures taken thereby.

Article 16 (Method of Composition and Appointment of Government Public Service Ethics Committees)

The president shall commission and appoint five members of the committee, including the chairman, from among the persons falling under the main sentence of Article 9 (3) of the Act and four members including the vice-chairman from among public officials under the control of the Government. *<Amended by Presidential Decree No. 17213, 27 April 2001>*

Article 17 (Term of Chairman and Members)

(1) The term of the chairman and members shall be two years, and they may be reappointed only once.

(2) Notwithstanding the provisions of paragraph (1), the term of members who are appointed from among public officials under the control of the Government shall be the period of their service in the position at the time of their appointment.

Article 18 (Duties of Chairman and Vice-Chairman)

(1) The chairman shall represent the committee and exercise a general supervision and control over the affairs of the committee.

(2) If the chairman is unable to perform his duties by any accident, the vice-chairman shall act as chairman on his behalf.

Article 19 (Meeting, etc. of Committee)

(1) The chairman shall convene a meeting of the committee and preside over it.

(2) The meeting of the committee shall commence with the attendance of a majority of all registered members, and shall make decisions by an affirmative vote of a majority of members present: *Provided*, That the following matters shall be decided by an affirmative vote of not less than two-thirds of all registered members: *<Amended by Presidential Decree No. 14498, 31 December 1994>*

1. request and approval on a request for examination under Article 8 (7) and (12) of the Act;
2. measures taken under Article 8-2 of the Act;
3. demand for a dismissal or disciplinary action under Article 22 of the Act; and
4. accusation against those who fall under Articles 23 through 29 of the Act.

(3) No member shall participate in any examination or decision of the committee with respect to the following matters:

1. matters related directly to the member himself;
2. matters related to a person who has or has had a familial relation with the member himself; and
3. matters with respect to which the member himself is a witness or an expert.

(4) Members who are not permitted to participate in an examination or decision of the committee under paragraph (3) shall be excluded from the calculation of the number of registered members as referred to in paragraph (2).

Article 20 (Executive Secretary, etc. of Committee)

(1) In order to manage the affairs of the committee and conduct an examination of facts, etc., several executive secretaries and clerks shall be assigned to the committee.

(2) The executive secretaries shall be appointed by the Minister of Government Administration and Home Affairs from among officials who belong to the Ministry of Government Administration and Home Affairs. *<Amended by Presidential Decree No. 16608, 7 December 1999>*

Article 21 (Allowance, etc.)

The chairman, vice-chairman and members of the committee may receive allowance, travel expenses and other necessary expenses within the limit of the budget.

Article 22 (Operational Rules of Committee)

Matters other than those as prescribed by this Decree, which are necessary for the operation of the committee, shall be prescribed by the rules of the committee.

Article 23 (Designation of Person in Charge)

The head of the registration agency shall designate a person in charge of affairs concerning the property registration, report on gifts and restriction on employment of retired public officials, from among the employees under his control and notify the committee thereof.

Article 24 (Persons whose Property is Subject to Opening to Public)

(1) "Public officials in foreign service prescribed by the Presidential Decree" in Article 10 (1) 4 of the Act means public officials in foreign service whose duty grade ranks in between Grades VII and XIV under the provision of Article 51 of the Rules on Remuneration of Public Officials. <Newly Inserted by Presidential Decree No. 17275, 30 June 2001>

(2) The officers of public service-related organizations whose property is to be made open to the public under Article 10 (1) 10 of the Act shall be specified in the attached Table 2.

(3) The public officials of the Government whose property is to be made open to the public under Article 10 (1) 11 of the Act shall be as follows: <Amended by Presidential Decree No. 16784, 18 April 2000; Presidential Decree No. 17213, 27 April 2001>

1. research officials, guidance officials, supervisory officials and educational research officials who are assigned to positions equivalent to those of public officials of Grade I in general government service; and
2. temporary public officials who are appointed to the posts that make it eligible for them to be appointed as the public officials of paragraph (1).

Article 25 (Submission of List of Property to be Made Open to Public)

Those whose property is to be made open to the public under Article 10 (1) and (2) of the Act shall prepare a list of registered property to be made open to the public, and submit such list to the registration agency at the time when they register the property or report the changed matters under Articles 5 and 6 of the Act. <Amended by Presidential Decree No. 14498, 31 December 1994>

Article 26 (Permission for Inspection and Reproduction of Registered Matters)

The persons who are entitled to permit the inspection and reproduction as provided in Article 10 (3) of the Act shall be as follows: <Amended by Presidential Decree No. 14498, 31 December 1994>

1. for permission regarding the inspection and reproduction falling under Article 10 (4) 1 through 3 of the Act, the committee [if the authority on examination is delegated to the head of the registration agency under Article 8 (10) of the Act, then the head of

the registration agency concerned (limited to the case falling under Article 10 (4) 3 of the Act)]; and

2. for permission regarding the inspection and reproduction falling under Article 10 (4) 4 of the Act, the head of the registration agency (if the property registration documents are transferred to the committee under Article 9, then the committee).

Article 27 (Refusal, etc. of Notification of Matters concerning Property Registration)

(1) If a lineal ascendant or descendant of the person liable for registration who is not a dependent of such person refuses a notification of matters concerning property registration under Article 12 (4) of the Act, the person liable for registration shall state such fact on the property registration documents and submit a written justification for such refusal.

(2) For the purpose of Article 12 (4) of the Act, the term "dependent" means any ascendant or descendant who has no income or a low income, and who is therefore unable to maintain an independent livelihood, and is supported by the person liable for registration.

Article 28 (Value of Gift)

Gifts to be reported under Article 15 (1) of the Act shall be those which amount to one hundred US dollars or more at the market price in the donating country or the country to which the foreign donator belongs, or one hundred thousand won or more at the domestic market price at the time the gifts are received.

Article 29 (Management and Maintenance of Gifts)

(1) If the head of the agency or public service-related organization has received a report on gifts under Article 15 (1) of the Act, he shall transfer such gifts to the head of the registration agency as provided in Article 5 (1) of the Act within thirty days after he receives the report under the provisions of the Ordinance of the Ministry of Government Administration and Home Affairs: *Provided*, That the heads of the registration agencies of the Government and public service-related organizations under the control of the Government ministries and administrations shall transfer such gifts to the Minister of Government Administration and Home Affairs (in case of military personnel and military service officials, to the Minister of National Defense). *<Amended by Presidential Decree No. 16608, 7 December 1999>*

(2) The head of the agency or organization which has gifts transferred under paragraph (1) shall manage and maintain them, but those gifts which have any cultural or artistic merit and are required to be preserved permanently shall be transferred to the Minister of Culture and Tourism, and those gifts deemed more to be efficiently managed and maintained by other agencies, to the head of such agency, as applicable. *<Amended by Presidential Decree No. 16608, 7 December 1999>*

Article 30 (Disposal of Gifts)

(1) The head of the agency to which gifts are transferred under Article 29 may transfer any such gifts which are deemed unnecessary to be managed and maintained continuously as national property to the Administrator of the Office of Supply to dispose of such gifts through consultation with the Minister of Foreign Affairs and Trade. *<Amended by Presidential Decree No. 16608, 7 December 1999>*

(2) In disposing of any gift, if the person who reported the receipt thereof wishes to purchase it, the Administrator of the Office of Supply shall allow the reporting person to purchase such gift on a

priority basis at the price appraised by a specialized institution which is entrusted by the Administrator.

Article 31 (Persons whose Employment is Restricted)

Public officials and officers and employees of public service-related organizations whose employment is restricted under Article 17 (1) of the Act shall be those liable for registration as provided in Article 3 of the Act.

Article 32 (Scope of Connection with Profit-Making Private Enterprise in which Employment is Restricted)

(1) The term "duties of an office which he performed" in the main sentence of Article 17 (1) of the Act means the duties of a division (including any office equivalent to the division) for the chief of the relevant division and public officials under his control, and the duties of an office with respect of the service regulations, the articles of incorporation, rules or controlling and supervising the duties for any public official higher than the chief of the division in his rank. In this case, with respect to any official seconded, his duties shall be determined based on the duties of an office in an institution or an organization to which he is seconded. *<Amended by Presidential Decree No. 17213, 27 April 2001>*

(2) The scope of close connection between the affairs of an office to which a retired public official belongs and a profit-making private enterprise as provided in Article 17 (2) of the Act shall refer to any case where a person liable for registration has been in charge of affairs falling under any of the following subparagraphs within 3 years before his retirement: *<Amended by Presidential Decree No. 17213, 27 April 2001>*

1. affairs for providing any financial assistance, such as allocating and granting, directly or indirectly, any subsidy, bounty or grant-in-aid;
2. affairs related directly to any, *inter alia*, authorization, permission, license, patent, or approval;
3. affairs related directly to any inspection or audit of, *inter alia*, production methods, standards, or accounting methods;
4. affairs related directly to a survey, imposition and collection of taxes;
5. affairs related directly to any contract, inspection and examination concerning a public project work or purchase of goods;
6. affairs for exercising direct control under Acts and subordinate statutes; and
7. other affairs deemed to have a direct and considerable influence on any property right of enterprises depending on the method of handling affairs.

Article 33 (Size of Profit-Making Private Enterprise and Association where Employment is Restricted)

(1) The size of a profit-making private enterprise as provided in Article 17 (2) of the Act shall be an enterprise whose capital amounts to not less than 5 billion won and annual turnover amounts to not less than 15 billion won. *<Amended by Presidential Decree No. 17213, 27 April 2001>*

(2) The scope of the related association under Article 17 (2) of the Act shall be an association with which any profit-making private enterprise whose employment is restricted under Article 17 (1) of the Act is affiliated: *Provided*, that the association falling under any of the following subparagraphs shall be excluded: *<Newly Inserted by Presidential Decree No. 17213, 27 April 2001>*

1. an association entrusted with the administrative affairs of the State of a local government; and
2. any association whose officers are appointed by the State or a local government or their selections and appointments are subject to the approval of the State or a local government.

(3) The Minister of Government Administration and Home Affairs shall make a definite determination as profit-making private enterprises as referred to in paragraph (1), and make a public notice thereof through the Gazette in December of each year. *<Amended by Presidential Decree No. 16608, 7 December 1999>*

(4) The Commissioner of the National Tax Service shall prepare, as a digital file for determining the profit-making private enterprises as referred to in paragraph (3), a statement of profit-making private enterprises whose capital amounts to not less than 5 billion won and annual turnover amounts to not less than 15 billion won on the basis of the taxable period or the end of the fiscal year of each profit-making private enterprise in the preceding year, and notify the Minister of Government Administration and Home Affairs thereof not later than the 31st of October of each year. *<Amended by Presidential Decree No. 16608, 7 December 1999; Presidential Decree No. 17213, 27 April 2001>*

Article 33-2 (Request for Confirming whether Employment is Restricted)

Any person who is subject to the restrictions of employment under Article 31 shall, if he intends to take up an employment in a profit-making private enterprise published under Article 33 (3) or an association published under Article 33 (2) within 2 years from his retirement, file a request with the head of a relevant central administrative agency or the head of a relevant local government through the head of the agency or the public service-related organization to which he belonged at the time of his retirement (if such agency or organization has since been abolished, then to the head of the agency or public service-related organization which has succeeded the duties thereof; hereinafter the same shall apply), to confirm whether such profit-making private enterprise or such association is subject to the restrictions of his employment.

[This Article Newly Inserted by Presidential Decree No. 17213, 27 April 2001]

Article 33-3 (Confirmation of Whether Employment is Restricted)

(1) The head of the relevant agency or the head of the relevant public service-related organization shall, upon receiving a request for confirming whether the employment is restricted under Article 33-2, check and confirm the matters falling under each of the following subparagraphs and submit the results of such check and confirmation, accompanied with his opinion, to the head of the relevant central administrative agency or the head of the relevant local government:

1. whether the private enterprise in which he intends to take up an employment falls under a profit-making private enterprise that is published under Article 33 (3);
2. whether the duties of an office, which the person who has asked to confirm whether his employment is restricted performed three years prior to his retirement had a close link as prescribed in Article 32 to the profit-making private enterprise in which he intends to take an employment; and

3. whether the association in which he intends to take an employment falls under the association as prescribed in Article 33 (2).

(2) The head of the relevant central administrative agency or the head of the relevant local government shall examine the confirmation request filed and notify the person who has asked for the confirmation of whether his employment is restricted in the profit-making enterprise or the association under the main sentence of Article 17 (1) of the Act through the head of the relevant agency or the head of the relevant public service-related organization. In this case, if his employment is restricted, a notice thereon shall be served on the person who has asked for his employment confirmation and if his employment is approved by the competent public service ethics committee, a notice shall be served on him that his employment is possible.

[This Article Newly Inserted by Presidential Decree No. 17213, 27 April 2001]

Article 34 (Approval for Employment)

(1) Any retired public official who intends to obtain approval for his employment under the proviso of Article 17 (1) of the Act shall file an application for his employment with the competent public service ethics committee 15 days prior to the commencement of his employment through the head of an agency or the head of a public service-related organization, or the head of a central administrative agency or the head of a local government to which he belonged at the time of his retirement.

(2) The head of the central administrative agency or the head of the local government to which the employment applicant belonged at the time of his retirement shall append his opinion (if the employment applicant falls under each subparagraph of paragraph (3), the grounds thereof shall be included) to the application for approving the employment after examining the matters of each subparagraph of Article 33-3 (1).

(3) The competent public service ethics committee may, if it recognizes the existence of the special grounds falling under each of the following subparagraphs taking into account the opinion of paragraph (2), the job performance of the employment applicant prior to his retirement and his potential of exerting influence after his employment, etc., gives approval for his employment under the proviso of Article 17 (1) of the Act and the competent public service ethics committee shall, when he falls under subparagraph 2, give approval for his employment unless the special grounds exist that make it impossible for it to do so:

1. where the applicant's employment is needed for national security or bolstering the national competitiveness and enhancing the public interest;
2. where the applicant is dismissed regardless of his will due to the abolishment of posts or excessive staffing following the revision of the service regulations and the number or budget cuts, etc.;
3. where the management of a profit-making enterprise invested by the State or a local government needs to be improved;
4. where a qualification holder in the technical field under the National Technical Qualifications Act (including any civil qualification holder that is officially recognized by the State under the Framework Act on Qualifications) who is judged to make contributions to the development of the relevant industrial area and the promotion of science and technologies;

5. where the applicant is selected and appointed as a manager, an officer or an employee of the relevant profit-making enterprise or the relevant association in compliance with a decision made by the court or under the provisions of the Acts and subordinate statutes; and
6. where a close link does not exist between the duties that the retired public official was in charge and the profit-making enterprise, and the possibility of his exerting influence after his employment is extremely slim.

[This Article Wholly Amended by Presidential Decree No. 17213, 27 April 2001]

Article 35 (Confirmation of Employment, etc.)

(1) If a person whose employment is restricted under Article 31 retires from his office, the head of the government agency, a local government or public service-related organization shall confirm whether the person is employed in the relevant profit-making private enterprise and the relevant association through a direct inquiry or an inquiry to agencies concerned about him as provided in Article 17 of the Act for two years after retirement, and make at least once each year a report on the results of such examination to the competent public service ethics committee. *<Amended by Presidential Decree No. 17213, 27 April 2001>*

(2) The head of an agency, the head of a public service-related organization, the head of a central administrative agency or the competent public service ethics committee may, if it is necessary to confirm whether the employment is restricted or to give approval for the employment under Articles 33-3, 34 (2) and (3) and 35 (1), ask the head of agency concerned and the head of organization concerned to furnish relevant materials, and the head of such agency and the head of such organization shall, upon receiving such request, promptly furnish such materials except as specially provided for in other Acts and subordinate statutes. *<Newly Inserted by Presidential Decree No. 17213, 27 April 2001>*

Article 36 (Preparation, etc. of Annual Report)

- (1) The annual report as provided in Article 20-2 of the Act shall include the following matters:
 1. actual and operational situations of the property registration, report on gifts and the restriction on employment of retired public officials during the preceding year;
 2. examination of matters concerning property registration and the measures taken for the results thereof during the preceding year, as well as the supervision thereof;
 3. matters concerning the opening of matters concerning property registration to the public during the preceding year; and
 4. other matters concerning activities of the public service ethics committees.

(2) The head of the registration agency as provided in Article 5 (1) of the Act and the head of the agency which is delegated with the examination of registered matters under Article 8 (11) of the Act shall report to the competent public service ethics committee the actual situation of, *inter alia*, or activities, etc. pertaining to the property registration, report on gifts and restriction on employment of retired public officials during the preceding year, which are necessary for preparing the annual report as referred to in paragraph (1), not later than the 31st of March of each year. In this case, the provisions of the proviso of Article 8 shall apply *mutatis mutandis* to the submission. *<Amended by Presidential Decree No. 14498, 31 December 1994>*

Article 36-2 (Computerization of Affairs of Property Registration)

The head of the Public Service Ethics Committee or registration agency or the head of agency entrusted the examination of registered matters under the provisions of Article 8 (11) of the Act may provide the data input in a diskette or a disk or through computer networks, in case where falling under any of the following subparagraphs:

1. in case where persons liable for registration of the properties or make a report on changed matters or provide the data, etc.; and
2. in case where the heads of government agencies, local governments, public service-related organizations, other public institutions and financial institutions under the provisions of Article 8 (4), (5) and (12) of the Act make a report or provide the data.

[This Article Newly Inserted by Presidential Decree No. 16608, 7 December 1999]

Article 37 (Method of Entering Secret Matters)

Matters included in the report or list as provided in Articles 8, 13, 25 and 36, which are classified as secrets pursuant to the related Acts and subordinate statutes may be entered by such methods as not to disclose the detailed contents.

Article 38 (Enforcement Regulations)

Matters necessary for the enforcement of this Decree shall be prescribed by the Ordinance of the Ministry of Government Administration and Home Affairs. *<Amended by Presidential Decree No. 16608, 7 December 1999>*

ADDENDA

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Article 2 (Transitional Measures)

Any person liable for registration at the time when this Decree enters into force shall register the property on the enforcement date of this Decree with the registration agency within one month after this Decree enters into force.

ADDENDA <Presidential Decree No. 14441, 23 December 1994>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation: *Provided*, That Article 4 (1) through (4) of the Addenda shall enter into force on 1 January 1988. *<Amended by Presidential Decree No. 14925, 22 February 1996>*

Articles 2 through 4 Omitted.

ADDENDA <Presidential Decree No. 14498, 31 December 1994>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Article 2 (Transitional Measures concerning Those Liable for Registration Who become Subject to Registration for the First Time)

Any person liable for registration who becomes subject to registration for the first time after this Decree enters into force, shall register with the registration agency the property subject to registration as of the enforcement date of this Decree within two months after this Decree enters into force.

ADDENDUM <Presidential Decree No. 15243, 31 December 1996>

This Decree shall enter into force on 31 December 1996.

ADDENDUM <Presidential Decree No. 15596, 31 December 1997>

This Decree shall enter into force on 31 December 1997.

ADDENDUM <Presidential Decree No. 16031, 31 December 1998>

This Decree shall enter into force on 31 December 1998.

ADDENDA <Presidential Decree No. 16094, 1 February 1999>

Article 1 (Enforcement Date)

This Decree shall enter into force on 1 February 1999.

Articles 2 and 3 Omitted.

ADDENDA <Presidential Decree No. 16574, 11 October 1999>

Article 1 (Enforcement Date)

This Decree shall enter into force on 16 October 1999.

Articles 2 and 3 Omitted.

ADDENDUM <Presidential Decree No. 16608, 7 December 1999>

This Decree shall enter into force on 31 December 1999.

ADDENDA <Presidential Decree No. 16709, 14 February 2000>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Article 2 Omitted.

ADDENDA <Presidential Decree No. 16752, 13 March 2000>

Article 1 Enforcement Date)

This Decree shall enter into force on 13 March 2000.

Articles 2 through 5 Omitted.

ADDENDA <Presidential Decree No. 16784, 18 April 2000>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 through 4 Omitted.

ADDENDA <Presidential Decree No. 17213, 27 April 2001>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation: *Provided*, that the amended provisions of Article 3 (2) 9-2 and 12 shall enter into force on 31 May 2001.

Article 2 (Application Example)

The previous provisions of Article 33 (1) and (2) shall be applied until the Minister of Government Administration and Home Affairs publishes profit-making enterprises in which the employment is restricted under the amended provisions of Article 33 (1) and (3).

ADDENDA <Presidential Decree No. 17227, 24 May 2001>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Article 2 Omitted.

ADDENDA <Presidential Decree No. 17275, 30 June 2001>

Article 1 (Enforcement Date)

This Decree shall enter into force on 1 July 2001.

Articles 2 and 3 Omitted.

ADDENDA <Presidential Decree No. 17420, 29 November 2001>

Article 1 (Enforcement Date)

This Decree shall enter into force on 25 January 2002.

Article 2 Omitted.

ADDENDA <Presidential Decree No. 17538, 2 March 2002>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 through 4 Omitted.

PROPOSED MODIFICATIONS TO APPENDIX I OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)¹

The following notification from the Hong Kong Economic and Trade Office was received on 1 July 2003, with the request that it be circulated to the Parties to the Agreement on Government Procurement.

1. Pursuant to paragraph 6(a) of Article XXIV of the Agreement on Government Procurement (1994), Hong Kong, China hereby notifies the Committee on Government Procurement of the following modifications of a purely formal or minor nature relating to Annex 1 of Appendix I of the Agreement:

(a) add the following to Annex 1:

- Government Logistics Department
- Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service

(b) delete the following from Annex 1:

- Government Land Transport Agency
- Government Supplies Department
- Management Services Agency
- Official Languages Agency
- Printing Department
- Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service
- Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

2. The above modifications arise from the following re-organizations:
 - (a) the Government Land Transport Agency, the Government Supplies Department and the Printing Department were merged to form the Government Logistics Department on 1 July 2003. All procurement functions of the former three entities have been taken up by the Government Logistics Department;
 - (b) the Official Languages Agency was merged with the Civil Service Bureau of the Government Secretariat on 1 July 2003. All procurement functions of the Official Languages Agency have been taken up by the Government Secretariat which is already listed in Annex 1 of Appendix I of the Agreement;
 - (c) the Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service and the Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service were merged to form the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service on 1 December 2001. All procurement functions of the former two entities have been taken up by the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service;
 - (d) the Management Services Agency was merged with the Efficiency Unit of the Government Secretariat on 22 July 2002. All procurement functions of the Management Services Agency have been taken up by the Government Secretariat which is already listed in Annex 1 of Appendix I of the Agreement.
3. All the above modifications do not alter the level of mutually agreed coverage provided in the Agreement.
4. Accordingly, pages 1/2 and 2/2 of Annex 1 to Appendix I of Hong Kong, China should be modified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modification.²

² The Attachments are in English only.

ATTACHMENT A

HONG KONG, CHINA

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR for goods and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Agriculture, Fisheries and Conservation Department
2. Architectural Services Department
3. Audit Commission
4. Auxiliary Medical Services
5. Buildings Department
6. Census and Statistics Department
7. Civil Aid Services
8. Civil Aviation Department
9. Civil Engineering Department
10. Civil Service Training and Development Institute
11. Companies Registry
12. Correctional Services Department
13. Customs and Excise Department
14. Department of Health
15. Department of Justice
16. Drainage Services Department
17. Electrical and Mechanical Services Department
18. Environmental Protection Department
19. Fire Services Department
20. Food and Environmental Hygiene Department
21. Government Flying Service
22. Government Laboratory
23. Government Logistics Department
24. Government Property Agency
25. Government Secretariat
26. Highways Department
27. Home Affairs Department
28. Hong Kong Monetary Authority
29. Hong Kong Observatory
30. Hong Kong Police Force (including Hong Kong Auxiliary Police Force)
31. Hospital Services Department
32. Immigration Department

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- 33. Independent Commission Against Corruption
- 34. Information Services Department
- 35. Information Technology Services Department
- 36. Inland Revenue Department
- 37. Intellectual Property Department
- 38. Invest Hong Kong
- 39. Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service
- 40. Judiciary
- 41. Labour Department
- 42. Land Registry
- 43. Lands Department
- 44. Legal Aid Department
- 45. Leisure and Cultural Services Department
- 46. Marine Department
- 47. Office of the Ombudsman
- 48. Office of the Telecommunications Authority
- 49. Official Receiver's Office
- 50. Planning Department
- 51. Post Office
- 52. Public Service Commission
- 53. Radio Television Hong Kong
- 54. Rating and Valuation Department
- 55. Registration and Electoral Office
- 56. Secretariat, Independent Police Complaints Council
- 57. Secretariat, University Grants Committee
- 58. Social Welfare Department
- 59. Student Financial Assistance Agency
- 60. Technical Education and Industrial Training Department
- 61. Television and Entertainment Licensing Authority
- 62. Territory Development Department
- 63. Trade and Industry Department
- 64. Transport Department
- 65. Treasury
- 66. Water Supplies Department

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<#>Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service¶

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ATTACHMENT B

HONG KONG, CHINA

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR for goods and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Agriculture, Fisheries and Conservation Department
2. Architectural Services Department
3. Audit Commission
4. Auxiliary Medical Services
5. Buildings Department
6. Census and Statistics Department
7. Civil Aid Services
8. Civil Aviation Department
9. Civil Engineering Department
10. Civil Service Training and Development Institute
11. Companies Registry
12. Correctional Services Department
13. Customs and Excise Department
14. Department of Health
15. Department of Justice
16. Drainage Services Department
17. Electrical and Mechanical Services Department
18. Environmental Protection Department
19. Fire Services Department
20. Food and Environmental Hygiene Department
21. Government Flying Service
22. Government Laboratory
23. Government Logistics Department
24. Government Property Agency
25. Government Secretariat
26. Highways Department
27. Home Affairs Department
28. Hong Kong Monetary Authority
29. Hong Kong Observatory
30. Hong Kong Police Force (including Hong Kong Auxiliary Police Force)
31. Hospital Services Department

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32. Immigration Department
 33. Independent Commission Against Corruption
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 35. Information Technology Services Department
 36. Inland Revenue Department
 37. Intellectual Property Department
 38. Invest Hong Kong
 39. Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service
 40. Judiciary
 41. Labour Department
 42. Land Registry
 43. Lands Department
 44. Legal Aid Department
 45. Leisure and Cultural Services Department
 46. Marine Department
 47. Office of the Ombudsman
 48. Office of the Telecommunications Authority
 49. Official Receiver's Office
 50. Planning Department
 51. Post Office
 52. Public Service Commission
 53. Radio Television Hong Kong
 54. Rating and Valuation Department
 55. Registration and Electoral Office
 56. Secretariat, Independent Police Complaints Council
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 65. Treasury
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Committee on Government Procurement

Original: English/
French

MODIFICATION TO APPENDIX I OF SWITZERLAND

Notification from Switzerland under Article XXIV:6(a)¹ of the GPA

The following communication from the Permanent Mission of Switzerland was received on 23 June 2003, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning a modification to Appendix I of the Agreement on Government Procurement (GPA), which follows the results of consultations between Hong Kong, China and Switzerland. Article XXIV of the GPA contains the provisions on its entry into force and it is in conformity with paragraph 6(a) of Article XXIV that I hereby inform you of a modification to the Swiss General Notes in Appendix I of the GPA.

The proposed modification is based on the results of consultations between Hong Kong, China and the Swiss Confederation referring to procurement of public authorities and public bodies at the level of the cities and districts.

On 6 December 2002, Switzerland transmitted to the Secretariat a notification under Article XXIV:6(a) of the GPA referring to Switzerland's agreement to liberalize procurement of public authorities and public bodies at the level of the cities and districts with the European Community, Norway, Iceland and Liechtenstein by adding in the GPA a new point 3 in Annex 2 of Appendix I under the list of entities. Switzerland has also added a new alinea under General Note 1 as the new point 3 in Annex 2 of Appendix I does not apply to other Members.

On 10 January 2003, Hong Kong, China transmitted to the Secretariat a communication registering reservations on the Swiss notification.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

On the basis of bilateral consultations and as discussed at the meeting of the Committee on Government Procurement on 6 February 2003, Switzerland has accepted, after compliance of internal procedures, to extend the liberalization of procurement of public authorities and public bodies at the level of the cities and districts to Hong Kong, China and Hong Kong, China has, on this basis, lifted reservations on the Swiss notification of 12 December 2002. Accordingly, Switzerland proposes deleting the reference to "Hong Kong, China" from the second alinea under General Note 1 of Appendix I.

Attachment A to this document contains the proposed modification to the General Notes in red-line/strikeout form and Attachment B contains the revised General Notes after acceptance of the proposed modifications.²

² Both attachments are in the original language only.

ANNEX

**MODIFICATION TO SWITZERLAND'S APPENDIX I TO THE
AGREEMENT ON GOVERNMENT PROCUREMENT**

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Switzerland submits to the Committee on Government Procurement the following modification to the Swiss General Notes in Appendix I of the Agreement:

- delete the reference to "Hong Kong, China" from the second alinea in the Swiss General Note 1. After deletion, the alinea will read:

"en ce qui concerne les marchés passés par les entités mentionnées au chiffre 3 de l'Annexe 2 aux fournisseurs de produits et de services des Etats-Unis d'Amérique; d'Israël; du Japon; de la Corée; de Singapour; et d'Aruba".

ATTACHMENT A

NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS
DE L'ARTICLE III

1. La Suisse n'étendra pas le bénéfice des dispositions du présent accord:
- en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs de produits et de services du Canada;
 - en ce qui concerne les marchés passés par les entités mentionnées au chiffre 3 de l'Annexe 2 aux fournisseurs de produits et de services des Etats-Unis d'Amérique; d'Israël; du Japon; de la Corée; ~~de Singapour; et d'Aruba;~~
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 3 dans les secteurs suivants:
 - eau: aux fournisseurs de produits et de services du Canada, des Etats-Unis d'Amérique et du Singapour;
 - électricité: aux fournisseurs de produits et de services du Canada, du Japon et du Singapour;
 - aéroports: aux fournisseurs de produits et de services du Canada, de la Corée et des Etats-Unis d'Amérique;
 - ports: aux fournisseurs de produits et de services du Canada;
 - transports urbains: aux fournisseurs de produits et de services du Canada, d'Israël, du Japon, de la Corée et des Etats-Unis d'Amérique;
- tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises suisses un accès comparable et effectif aux marchés considérés;
- aux fournisseurs de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.
2. Les dispositions de l'Article XX ne sont pas applicables aux fournisseurs de produits et de services des pays suivants:
- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication de marchés par les organismes mentionnés à l'Annexe 2, chiffre 2, tant que la Suisse n'a pas constaté que ces pays ont complété la liste des entités des gouvernements sous-centraux;
 - Japon, Corée et Etats-Unis d'Amérique en ce qui concerne les recours intentés contre l'adjudication de marchés à un fournisseur de produits ou de services d'autres Parties au

Deleted: de Hong Kong, Chine;

7 February 2003 (WT/Let/437)

présent accord, lorsque ledit fournisseur est une entreprise petite ou moyenne au sens du droit suisse, tant que la Suisse n'aura pas constaté que ces pays n'appliquent plus de mesures discriminatoires pour favoriser certaines petites entreprises nationales ou certaines entreprises nationales détenues par les minorités;

- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication par des entités suisses de marchés dont la valeur est inférieure au seuil appliqué à la même catégorie de marchés par lesdites Parties.

3. Tant que la Suisse n'aura pas constaté que les Parties concernées assurent l'accès de leurs marchés aux fournisseurs suisses de produits et de services suisses, elle n'étendra pas le bénéfice des dispositions du présent accord aux fournisseurs de produits et de services des pays suivants:

- Canada, en ce qui concerne les marchés portant sur les produits relevant des n° 36, 70 et 74 de la FSC (machines industrielles spéciales; matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données); machines de bureau, matériel de bureautique et d'informatique de bureau;
- Canada, en ce qui concerne les marchés portant sur les produits relevant du n° 58 de la FSC (matériel de communications, matériel de détection des radiations et d'émission de rayonnement cohérent) et Etats-Unis d'Amérique en ce qui concerne les équipements de contrôle du trafic aérien;
- Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'Annexe 3, chiffre 2 pour les produits relevant des n° 8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); Israël, en ce qui concerne les produits relevant des n° 8501, 8536 et 902830 du SH;
- Canada et Etats-Unis d'Amérique en ce qui concerne les marchés de fournitures et de services entrant dans le cadre de marchés qui, tout en étant passés par une entité relevant du champ d'application du présent accord, ne sont pas eux-mêmes soumis à ce dernier.

4. Le présent accord n'est pas applicable aux marchés passés en vertu:

- d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage par les Etats signataires;
- de la procédure spécifique d'une organisation internationale.

5. Le présent accord n'est pas applicable aux marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire.

6. Les engagements pris par la Suisse dans le domaine des services au titre du présent accord sont limités aux engagements initiaux spécifiés dans l'offre finale suisse présentée dans le cadre de l'Accord général sur le commerce des services.

7 February 2003 (WT/Let/437)

7 February 2003 (WT/Let/437)

ATTACHMENT B

NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS DE L'ARTICLE III

1. La Suisse n'étendra pas le bénéfice des dispositions du présent accord:
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs de produits et de services du Canada;
 - en ce qui concerne les marchés passés par les entités mentionnées au chiffre 3 de l'Annexe 2 aux fournisseurs de produits et de services des Etats-Unis d'Amérique; d'Israël; du Japon; de la Corée; de Singapour; et d'Aruba;
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 3 dans les secteurs suivants:
 - eau: aux fournisseurs de produits et de services du Canada, des Etats-Unis d'Amérique et du Singapour;
 - électricité: aux fournisseurs de produits et de services du Canada, du Japon et du Singapour;
 - aéroports: aux fournisseurs de produits et de services du Canada, de la Corée et des Etats-Unis d'Amérique;
 - ports: aux fournisseurs de produits et de services du Canada;
 - transports urbains: aux fournisseurs de produits et de services du Canada, d'Israël, du Japon, de la Corée et des Etats-Unis d'Amérique;

tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises suisses un accès comparable et effectif aux marchés considérés;

 - aux fournisseurs de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.

2. Les dispositions de l'Article XX ne sont pas applicables aux fournisseurs de produits et de services des pays suivants:
 - Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication de marchés par les organismes mentionnés à l'Annexe 2, chiffre 2, tant que la Suisse n'a pas constaté que ces pays ont complété la liste des entités des gouvernements sous-centraux;
 - Japon, Corée et Etats-Unis d'Amérique en ce qui concerne les recours intentés contre l'adjudication de marchés à un fournisseur de produits ou de services d'autres Parties au

... 2003 (WT/Let/...)

- présent accord, lorsque ledit fournisseur est une entreprise petite ou moyenne au sens du droit suisse, tant que la Suisse n'aura pas constaté que ces pays n'appliquent plus de mesures discriminatoires pour favoriser certaines petites entreprises nationales ou certaines entreprises nationales détenues par les minorités;
- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication par des entités suisses de marchés dont la valeur est inférieure au seuil appliqué à la même catégorie de marchés par lesdites Parties.
3. Tant que la Suisse n'aura pas constaté que les Parties concernées assurent l'accès de leurs marchés aux fournisseurs suisses de produits et de services suisses, elle n'étendra pas le bénéfice des dispositions du présent accord aux fournisseurs de produits et de services des pays suivants:
- Canada, en ce qui concerne les marchés portant sur les produits relevant des n° 36, 70 et 74 de la FSC (machines industrielles spéciales; matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données); machines de bureau, matériel de bureautique et d'informatique de bureau;
 - Canada, en ce qui concerne les marchés portant sur les produits relevant du n° 58 de la FSC (matériel de communications, matériel de détection des radiations et d'émission de rayonnement cohérent) et Etats-Unis d'Amérique en ce qui concerne les équipements de contrôle du trafic aérien;
 - Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'Annexe 3, chiffre 2 pour les produits relevant des n° 8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); Israël, en ce qui concerne les produits relevant des n° 8501, 8536 et 902830 du SH;
 - Canada et Etats-Unis d'Amérique en ce qui concerne les marchés de fournitures et de services entrant dans le cadre de marchés qui, tout en étant passés par une entité relevant du champ d'application du présent accord, ne sont pas eux-mêmes soumis à ce dernier.
4. Le présent accord n'est pas applicable aux marchés passés en vertu:
- d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage par les Etats signataires;
 - de la procédure spécifique d'une organisation internationale.
5. Le présent accord n'est pas applicable aux marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire.
6. Les engagements pris par la Suisse dans le domaine des services au titre du présent accord sont limités aux engagements initiaux spécifiés dans l'offre finale suisse présentée dans le cadre de l'Accord général sur le commerce des services.

**RESPONSES TO QUESTIONS FROM THE UNITED STATES
RELATING TO KOREA TELECOM (KT)**

Communication from the Republic of Korea

Please find below Korea's responses to questions from the United States (GPA/W/242) regarding Korea's notification to the Committee on Government Procurement on the withdrawal of Korea Telecom (KT Corporation) from Annex 3 of Appendix I of the GPA (GPA/W/207).

1. *Please provide a copy of the law(s) or other measures that authorized the ROKG to sell its shares in KT and that transformed KT from a government entity into a private entity.*

As explained during the bilateral consultations with the United States, KT was privatized in accordance with the following law:

- Act on Restructuring and Privatization of State Enterprises (hereinafter referred to as Privatization Act).*

2. *Please describe all laws, regulations and other measures that the ROKG enacted or adopted to ensure that KT's procurement is consistent with the Agreement. What measures would be required to alter such regulation of KT's procurement if it is withdrawn from GPA coverage? Please provide a copy of the procurement procedures that KT used before and after the ROKG sold its shares in KT.*

ROKG adopted "the Special Rule on Procurement Contracts of Specific Items (Prime Minister's Decree 603, hereinafter referred to as Special Rules)" to ensure that KT's procurement is consistent with the GPA. For that purpose, KT also adopted "KT Special Rules on International Contracts (hereinafter referred to as Contract Rules)":

- (i) The Special Rules stipulate special procedures related to the government procurement of specific telecommunications items (including communication network equipments and other communication devices) conceded by mutual agreement with foreign countries.
- (ii) The Contract Rules stipulate what procedures KT should take when it procures items covered by the GPA.**

* For details, please refer to Attachment 1 of this document.

** For details, please refer to Attachment 2 of this document.

In the event that KT is withdrawn from GPA coverage, the next step will be simply to exclude KT from the list of "entities that procure specific items in accordance with special procurement contracts" of the Special Rules.

With regard to the procurement procedures of KT, since the enactment of the Privatization Act in 1997, KT, as a commercial corporation identical with other private companies, has independently made its accounting and procurement decisions free from any government control or influence. And such a procurement procedure hasn't changed at all even after the government completely sold off its shares in KT.

3. *In the three years prior to the ROKG's sale of its shares in KT, what percentage of KT's purchases were from foreign suppliers? Please provide details on the size of these procurements and the goods and services procured.*

Before ROKG fully sold off its shares in KT, KT's purchases from foreign suppliers represented 9.8 per cent in 1999, 4.9 per cent in 2000, 1.8 per cent in 2001 and 2.1 per cent in 2002. The complete replacement of switching system and the global slowdown in the IT sector have contributed to the decline. Major foreign items procured are as follows:

- Y2K Solution from Lucent Technologies, Sagem SA, Ericsson Telecom AB;
- Wide Band Digital Equipment from Marconi Communications;
- Digital Circuit Multiplication from ECT Telecom Ltd.;
- DSR from General Instrument.

4. *It is our understanding that KT is regulated by the Ministry of Information and Communications. Does the Ministry review the corporate plans of KT or require or encourage KT to consult with it before making any business decisions?*

Since the establishment of the Privatization Act in 1997, KT has been as much independent as other private companies in devising business plans and making other business decisions without the Government's intervention.

The Ministry of Information and Communication (MIC) does not request KT, a private company, to consult with the MIC in reviewing or making a decision on its business plans. Furthermore, the Ministry neither has such a right nor has ever done so to KT.

5. *Since the sale of the remainder of the ROKG's shares in KT, is KT subject to any formal or informal regulations or other measures that are different from its private sector competitors in the telecommunications sector?*

KT is subject to regulations imposed generally on a dominant operator in the fixed-line market. However, the regulation is equivalent to the one SK Telecom, a dominant operator in the wireless telecom market, is subject to. Thus, there are no formal or informal regulations exclusively applied to KT.

6. *Are there any laws or regulations that restrict KT from hiring former ROKG employees? If so, please provide a copy.*

1. After Privatization:

- (i) Under Article 17 of the Public Service Ethics Act, the ROKG restricts retired public officials from filling a position in related private enterprises. The Act is applied to public servants required to register their property, or officers or employees of public service-related organizations.

- (ii) With its full privatization on 21 May 2002, KT has been publicly notified as a private company subject to the Public Service Ethics Act.
- (iii) Thus, retired MIC officials of Grade IV (director level) or higher are not allowed to work for private telecommunication companies including KT for two years after their retirement.
- (iv) The following are the relevant provisions in the Public Service Ethics Act, Enforcement Ordinance of the Public Service Ethics Act, and the Notification of the Ministry of Government Administration and Home Affairs.

< Public Service Ethics Act >

Article 3 (Persons Liable for Registration)

(1) Any public official who falls under any of the following subparagraphs (hereinafter referred to as the "person liable for registration") shall register property under the provisions of this Act:

- 3. National and local public officials of Grade IV or higher in general service, and public officials in special service, who receive remuneration equivalent thereto;

Article 17 (Restriction on Employment of Retired Public Officials in Related Private Enterprises, etc.)

(1) No public official or officers or employee of a public service-related organization who was engaged in a grade of position or field of duties as prescribed by the Presidential Decree may be employed in a profit-making private enterprise larger than a specified size (hereinafter referred to as the "profit-making private enterprise") connected closely with the duties which he performed at the competent department within three years immediately before his retirement, for a period of two years immediately after his retirement, or the organization established for the joint profits and mutual cooperation, etc. of private enterprises (hereinafter referred to as the "association").

< Enforcement Ordinance of the Public Service Ethics Act >

Article 31 (Persons whose Employment is Restricted)

Public officials and officers and employees of public service-related organizations whose employment is restricted under Article 17(1) of the Act shall be those liable for registration as provided in Article 3 of the Act.

< Notification No. 2002-23 of the Ministry of Government Administration and Home Affairs >

Pursuant to the provisions of Clause 2, Article 17 of the Public Service Ethics Act and Clause 3, Article 33 of the Enforcement Decree of the Public Service Ethics Act, the Ministry of Government Administration and Home Affairs hereby notifies private enterprises subject to the employment restriction in 2003:

No.	Corporate Name	Type of Industry	Location
1823	KT Corporation	Telecommunication	206, Jeongja-dong, Bundang-gu, Seongnam, Kyunggi Province

2. Before Privatization:

Pursuant to the Privatization Act effective as of October 1997, *ex officio* directorship of the government was abolished. Instead, KT ensured a completely independent human resources management, including the appointment of president and directors through shareholders' general meeting:

- (i) More specifically, KT's president is appointed at the shareholders' general meeting among president candidates recruited through public notice and recommended by the Corporate President Recommendation Committee. The Corporate President Recommendation Committee is composed of outside directors and members selected from private sectors, which makes government officials ineligible for committee membership.
- (ii) Standing directors, outside directors and auditors are also appointed at the shareholders general meeting. Any person who served as a government official over the recent two (2) years is not eligible for the position of outside director.

7. *Please list all former KT employees who are currently senior officials (with over 15 years combined employment in supervisory positions) in the Ministry of Information and Communications (MOIC), the Electronics and Telecommunications Research Institute (ETRI), the Telecommunications Technology Association (TTA) or similar telecommunications organizations with ties to the ROKG.*

None.

8. *Please list all current senior KT officials who were previously employed by MOIC, ETRI, TTA or similar telecommunications organizations with ties to the ROKG and their current and past positions in these organizations.*

None.

9. *Please describe the extent of financial and other support that KT provided to ETRI and similar organizations with ties to the ROKG prior to the commencement of the ROKG's sale of its shares in KT. Please indicate whether, and if so indicate how, such support has changed since ROKG completed its sale of KT shares.*

No financial support has been provided to organizations with ties to the Government since KT was subject to the Privatization Act in 1997.

10. *Has the ROKG ever encouraged KT and other Korean entities to purchase goods and services from foreign suppliers? If so, please provide details and documentation.*

None.

11. *Please describe all financing, including direct grants, guarantees and loans at preferential rates that KT may have obtained prior to ROKG's sale of its KT shares.*

None.

12. *Please describe all financing that KT received from private sources, but that it obtained on preferential terms due to the ownership interest of ROKG.*

None.

13. *Do any KT directors, named by ROKG, remain on KT's Board of Directors?*

None.

14. *Please describe any unusual conditions attendant to ROKG's sale of its shares (e.g., no election of new directors until X years after sale).*

None.

ATTACHMENT 1*

ACT ON RESTRUCTURING AND PRIVATIZATION OF STATE ENTERPRISES ACT NO. 6607

Article 1 – Purpose

The purpose of this Act is to contribute to the creation of sound corporate culture and the balanced development of national economy, by introducing a management system run by specialized executives and to hold the management accountable for its performance, thereby enhancing management efficiency and facilitating privatization, while preventing the concentration of economic power in the process.

Article 2 - Applicable Enterprises

This Act shall apply to those corporations falling into any of the following Subparagraphs (hereinafter referred to as "Applicable Enterprises"). <Amended 26 January 1999, 14 January 2002>:

1. **Korea Tobacco and Ginseng Corporation** transformed into a joint stock company subject to the **Commercial Law**, pursuant to the **Act on the Abolishment of Korea Tobacco and Ginseng Corporation Act**
2. **Korea Telecommunication Corporation** transformed into a joint stock company subject to the **Commercial Law**, pursuant to the **Act on the Abolishment of Korea Telecommunication Corporation Act**
3. **Korea Gas Corporation** established pursuant to the **Korea Gas Corporation Act**.
4. HANJUNG (Korea Heavy Industry Incorporated)
5. **Incheon International Airport Corporation** established pursuant to the **Incheon International Airport Corporation Act**
6. **Korea Aerospace Corporation** established pursuant to the **Korea Aerospace Corporation Act**

Article 3 - Relationship with Other Laws and Regulations

- (1) This Act shall supersede other laws and regulations concerning the organization, shareholder rights, and the equity sale for privatization of Applicable Enterprises.
- (2) Applicable Enterprises pursuant to Article 2 Paragraph 1 through 3, Paragraph 5, and Paragraph 6 shall not be considered as government Investment Institutions subject to the **Framework Act on the Management of Government-Invested Institutions** <Amended 26 January 1999, 14 January 2002>
- (3) Matters concerning Applicable Enterprises (with the exception of **Korea Gas Corporation**) other than those provided for herein shall be stipulated by the **Commercial Law** provisions concerning joint stock company.

* English only.

- (4) Matters concerning **Korea Gas Corporation** other than those provided for herein shall be stipulated by the **Korea Gas Corporation Act**.

Article 4 - President

- (1) The president shall be appointed at the shareholders' general meeting.
- (2) The term of the president shall be three (3) years, and cannot be dismissed without due reason except in the case set forth in Article 13, Paragraph 3.
- (3) The president, in applying the **Commercial Law**, shall be deemed the chairman of Board of Directors.

Article 5 - Directors

- (1) Directors shall be classified into standing directors and non-standing directors, and shall be appointed at the shareholders' general meeting.
- (2) The quorum of standing directors including president shall account for less than 50 per cent (%) of the total quorum of directors.
- (3) The term directors shall be three (3) years. The term of successor to a vacant non-standing director's seat shall be the remaining term of the predecessor.
- (4) One-third of the quorum of non-standing directors shall be appointed annually.

Article 6 – Board of Directors

- (1) The president shall convene a board of directors meeting *ex officio* or upon request by more than one quarter (1/4) of registered directors, and shall be the chairman.
- (2) In case the president cannot participate in the resolution of the board of directors pursuant to this Act, or cannot perform the duty of the chairman of board of directors due to compelling reasons, the director as stipulated by the Articles of Incorporation shall act on the president's behalf.

Article 7 – Remuneration of the President and Standing Directors

- (1) The board of directors shall determine, upon its resolution, the criteria and payment method of the remuneration of the president and standing directors, and report to the shareholders' general meeting.
- (2) The criteria of remuneration as set forth in Paragraph 1 shall be formulated in such a way as to reflect the management performance of Applicable Enterprise to the determination of remuneration.
- (3) The president and standing directors cannot participate in the resolution of board of directors pursuant to Paragraph 1.

Article 8 - Recommendation of the Director Candidate

- (1) In case the president recommends the standing director candidate, the recommendation shall be approved by the board of directors. In this case, standing directors except the president cannot participate in the board of directors' resolution.
- (2) Non-standing director candidates shall be recommended by either a shareholder or shareholder association, pursuant to the Articles of Incorporation.

Article 9 - Qualifications for Non-Standing Director

- (1) Candidates eligible for non-standing director shall be those with specialized knowledge or experiences in economics, business management, law, or relevant technology.
- (2) Notwithstanding Paragraph 1, those with material interest in the Applicable Enterprise cannot be a non-standing director.
- (3) The scope of those with material interest pursuant to provision set forth in Paragraph 2 shall be stipulated by the Articles of Incorporation.

Article 10 - Non-Standing Director's Rights to Demand Materials

A non-standing director can request the president for the provision of materials required for performing duties. In this case, the president shall respond to the demand unless there are special circumstances.

Article 11 – President Recommendation Committee

- (1) For the purpose of recommending candidates for president, each Applicable Enterprise shall establish its respective President Recommendation Committee (hereinafter referred to as "Committee").
- (2) The Committee shall be composed of a few non-standing directors, one of former or incumbent presidents pursuant to the Articles of Incorporation, and a few non-official members entrusted by the Committee (with the exception of the employees of Applicable Enterprise in question and government officials). In this case, the quorum of Committee members who are non-standing directors shall account for the majority of the total quorum of members.
- (3) The number of non-standing directors entrusted with the Committee membership pursuant to Paragraph 2 shall be less than one half (1/2) of the total quorum of non-standing directors.
- (4) The Committee chairman shall be appointed among non-standing directors by the board of directors. In this case, the president and standing directors cannot take part in the board of directors' resolution.
- (5) The Committee shall make decisions, with the agreement of majority of registered Committee members, excluding the Committee chairman. In this case, the Committee chairman does not have voting rights.
- (6) Necessary matters concerning the composition and operation of the Committee other than those provided for herein shall be stipulated by the Presidential Decree.

Article 12 - Appointment of President

- (1) The president shall be appointed among those who are qualified for a chief executive officer, with extensive knowledge on business management and economics or with extensive management experiences.
- (2) Applicable Enterprise shall post a public notice on recruitment of president candidates on major daily newspapers, and can separately investigate candidates for president who are deemed appropriate for the post, or request a specialized agency for investigation.
- (3) Committee shall examine those recruited pursuant to Paragraph 2, according to the Presidential Candidate Examination Criteria as determined by the board of directors.
- (4) In selecting the president candidates, the Committee shall consult with those to be recommended as candidates on the terms and conditions of contract on management target determined by the board of directors, and where it is deemed necessary in the process of consultation, can modify the contract terms and conditions determined by the board of directors.
- (5) In accordance with the results of examination pursuant to Paragraph 3 and consultation pursuant to Paragraph 4, the Committee shall both recommend the presidential candidates and submit draft contract to the shareholders' general meeting.
- (6) Standing directors including the president, cannot attend the board of directors' meeting held for the purpose of determining the Presidential Candidate Examination Criteria pursuant to Paragraph 3, and the president cannot attend the board of directors' meeting held for the purpose of determining the terms and conditions of the contract on management target pursuant to Paragraph 4. In this case, the chairman of the board of directors shall be the Committee chairman.

Article 13 - Contract with the President

- (1) Upon the approval by shareholders' general meeting of the draft contract submitted pursuant to Article 12 Paragraph 5, the Applicable Enterprise shall sign the contract with the president. In this case, the Committee chairman shall sign the contract as the representative of the Applicable Enterprise.
- (2) Pursuant to Paragraph 1, the board of directors can evaluate the performance of contract signed with the president, or request a specialized agency for the evaluation. In this case, the president and standing directors cannot participate in the resolution of board of directors.
- (3) In case the evaluation results pursuant to Paragraph 2 leads to a determination that the president's performance falls short of management target, the board of directors can propose the president's dismissal to the shareholders' general meeting. In this case, the president and standing directors cannot participate in the board of directors' resolution.

Article 14 - Establishment of Shareholders Association

- (1) Where it is deemed necessary for the effective operation of shareholders' general meeting, as stipulated in the Presidential Decree, the Applicable Enterprise can establish and operate a shareholders association composed of some shareholders.
- (2) Necessary matters concerning the qualifications for the shareholders association membership and its operation shall be stipulated by the Articles of Incorporation.

Article 15 - Provisions on Special Cases Concerning Audit by the Board of Audit and Inspection

Inspection of Applicable Enterprises pursuant to Article 24 Paragraph 1 Sub-paragraph 3 of the **Board of Audit and Inspection Act** shall not be carried out unless there is an accident or a concrete evidence of the occurrence of accident.

Article 16 - Exercise of Shareholder's Right by the Government

- (1) The shareholder's right of Applicable Enterprise's shares held by the government shall be exercised by competent minister, upon consultation with the Minister of Finance and Economy.
- (2) Necessary matters concerning the consultation pursuant to Paragraph 1 shall be stipulated by the Presidential Decree.

Article 17 - Exercise of Minority Shareholder's Right

The provisions set forth in the **Securities Transactions Act** Article 191 Paragraph 13 and Article 191 Paragraph 14 shall be applied to the exercise of minority shareholder's right and shareholder proposal right, even when the Applicable Enterprise's shares are not listed on the securities market.

Article 18 - Single Person Stock Ownership Ceiling

- (1) One (1) shareholder and the person in special relationship with that shareholder as stipulated by the Presidential Decree (hereinafter referred to as "Single Person") shall neither own stocks exceeding the ratio stipulated by the Article of Incorporation within 15 per cent (%) of total number of issued stocks with voting rights, nor *de facto* control the Applicable Enterprise. <Amended 29 January 1999>
- (2) In case a single person owns stocks above the ceiling stipulated in Paragraph 1 or *de facto* controls Applicable Enterprise, the single person shall immediately dispose of the exceeding amount of stocks. In this case, even before the disposal of exceeding amount, the scope of single person's voting rights exercise shall be restricted to the ceiling stipulated in Paragraph 1.
- (3) Single person's ownership or *de facto* control as stipulated in Paragraph 1 and Paragraph 2 means a single person exercising voting rights by owning stocks under its own or borrowed name, or by collusion.

Article 19 - Foreign Stock Ownership Ceiling

- (1) Acquisition of the Applicable Enterprise's stocks by foreigner or foreign corporation can be separately restricted pursuant to the Article of Incorporation, in addition to the restriction pursuant to Article 18 Paragraph 1.
- (2) The provisions set forth in Article 18 Paragraph 2 shall be applied *mutatis mutandis* to those foreigners or foreign corporations owning stocks above the ceiling or *de facto* controlling Applicable Enterprise, as stipulated in the Articles of Incorporation pursuant to Paragraph 1. <Inserted 29 January 1999>

Article 20 - Equity Sale Method

- (1) The stocks held by the government, government-invested institution, or *Korea Development Bank* established pursuant to the **Korea Development Bank Act** (hereinafter referred to as "Government-equivalent") can be sold on consignment or assignment to agencies stipulated by the Presidential Decree, including but not limited to financial institution and securities firm.
- (2) In selling stocks held by government-equivalent, where it is deemed necessary for alleviating the repercussions on stock market, widely diversifying stocks, and enhancing international competitiveness of the Applicable Enterprise, the Minister of Finance and Economy can restrict the qualifications for the buyer of stocks in question or the amount of stocks available for purchase. <Amended 29 January 1999>
- (3) Upon the request of an employee stockholders association member, government-equivalent can sell, with priority, the stocks to the employee stockholders association of the corporation in question within the ceiling as stipulated in Article 18 Paragraph 1.
- (4) In case of selling stocks pursuant to Paragraph 3, matters including but not limited to the allocation of stocks to the employee stockholders association members, and the disposal of that stock shall be stipulated by the **Securities Transactions Act** Article 191 Paragraph 3.
- (5) Notwithstanding the **Budget and Accounting Act**, the cost for selling government held stocks pursuant to Paragraph 1 can be disbursed from the proceeds from equity sale.

Article 21 - Preclusion from Application

- (1) Once an Applicable Enterprise falling into any of the Article 2 Subparagraphs 1 through 3 fulfills any of the requirements set forth in the following Subparagraphs, this Act shall not apply to that enterprise from the date of shareholders' general meeting first convened thereafter.
 1. The ratio of voting stocks held by government-equivalent is within the ceiling set forth in Article 18 Paragraph 1.
 2. The ratio of voting stocks held by single person other than government-equivalent is larger than that held by government-equivalent.
- (2) Among the stocks of **Korea Heavy Industry Incorporated**, Article 18 and Article 19 shall not apply to the person who acquires the stocks held by government-equivalent through the tendering for equity sale, and once the ratio of the stocks with voting rights held by single person and person falling into any of the following Subparagraphs exceeds 51 per cent (%) of the total issued stocks with voting rights, this Act shall not be applied from the date of shareholders' general meeting first convened thereafter.
 1. Person who aims at joint capital participation and management pursuant to contract.
 2. The person pursuant to Subparagraph 1 and person who is in special interest with the person as stipulated by the Presidential Decree pursuant to Article 18 Paragraph 1.
- (3) In case the government made investment in-kind in **Korea Development Bank, The Export-Import Bank of Korea, and Industrial Bank of Korea** pursuant to the **Act on the Investment In-kind of State Properties**, Article 18 shall not be applied. <Inserted 29 January 1999>

ANNEX <NO. 5379, 28 AUGUST 1997>

Article 1 - Effective Date

This Act shall take effect as of 1 October 1997.

Article 2 - Deleted <29 January 1999>

Article 3 - Recommendation of the First Non-Standing Director

- (1) For the purpose of selecting the person to recommend as the first non-standing director (hereinafter referred to as the "Non-Standing Director Designee"), an Ad-hoc Committee on Non-Standing Director Recommendation shall be established under relevant department in Applicable Enterprises.
- (2) The members of the Ad-hoc Committee on Non-Standing Director Recommendation pursuant to Paragraph 1 shall be composed of shareholder representative, non-official member with specialized knowledge in area relevant to Applicable Enterprise, and public official from relevant central government agency.
- (3) Necessary matters concerning the composition and operation of the Ad-hoc Committee on Non-Standing Director Recommendation shall be stipulated by the Presidential Decree.
- (4) The Ad-hoc Committee on Non-Standing Director Recommendation shall recommend the non-standing director designee to shareholders' general meeting as a non-standing director candidate.
- (5) In recommending non-standing director designee as a non-standing director candidate pursuant to Paragraph 4, the Ad-hoc Committee on Non-Standing Director Recommendation, notwithstanding Article 5 Paragraph 3, shall equally divide the quorum of non-standing directors by three (3), and separately recommend non-standing directors with respective terms of one (1) year, two (2) years, and three (3) years. In case the quorum of non-standing directors cannot be equally divided by three (3), the recommended candidates for the longer-term directors shall be more than shorter-term director candidates.

Article 4 - Appointment of the First President

- (1) For the purpose of recommending candidate for the first president to be appointed at the shareholders' general meeting after the enactment of this Act, an Ad-hoc Committee on President Recommendation shall be established.
- (2) Provisions of Article 11 and Article 12 shall be applied *mutatis mutandis* to the composition and operation of the Ad-hoc Committee on President Recommendation pursuant to Paragraph 1 and the appointment of the first president. In this case, "non-standing director" shall be interpreted as "non-standing director designee", and "board of directors" as "non-standing director designees' meeting".

Article 5 - Provisions on Special Cases Concerning Incumbent Executives of Applicable Enterprises

- (1) The term of incumbent chief director of Applicable Enterprise at the time of enforcement of this Act shall be deemed terminated at the point this Act is enforced.
- (2) The president, directors, and auditor of Applicable Enterprise at the time of enforcement of this Act shall be deemed president, directors, and auditor pursuant to this Act, provided that their term is effective until new president, directors, and auditor are appointed at the shareholders' general meeting pursuant to this Act.

ATTACHMENT 2**

KT'S CORPORATE REGULATION

SPECIAL REGULATIONS ON INTERNATIONAL CONTRACTS

Regulation No. 538 (30 December 2000)

Article 1 - (Purpose)

The purpose of these Regulations is to define principles, procedures, etc. related to international tendering and contracts for Korea Telecom (hereinafter referred to as "the Company"), pursuant to the provisions of Article 87 of the Contract Regulations.

Article 2 - (Definitions)

As used in these Regulations, the term:

1. "International tendering" shall mean a tendering procedure for contracts to be entered into with domestic and foreign entities or foreign entities only, to supply goods, construction, or services, and the contracts shall include a contract through limited tendering.
2. "International contract" shall mean the signing of a contract after an international tendering, as provided in these Regulations.
3. "List of Qualified Suppliers" shall mean a list of prospective suppliers (hereinafter referred to as "qualified suppliers") whose proposals have been evaluated pursuant to the provisions of Article 16 of the Company's Procurement Regulations, and found to be advantageous to the Company, in overall consideration of the characteristics of the project, the price, quality level of the proposed goods, convenience of the contract, stable supply, quality attainment, conditions of maintenance and repair, etc.
4. "Telecommunications goods" shall mean telecommunication network equipment and other telecommunication facilities, as well as incidental services and related software (programs and plans, technical specifications, and other documents used for programming).

Article 3 - (Scope of Application)

- (1) Any of the following cases shall be subject to international contracts:
 1. manufacturing or purchase of goods, the cost of which is estimated to exceed 450,000 SDR. Provided, however, that in the case of telecommunications items, the cost of which is estimated to exceed 130,000 SDR;
 2. construction, the cost of which is estimated to exceed 15 million SDR; or
 3. if it is deemed favorable to the Company's interests to procure under an international contract.

** English only.

- (2) Notwithstanding the provisions of Subparagraphs 1 and 2 of Paragraph (1), the following cases may not be subject to international contracts:
 1. if a contract through limited tendering is to be signed, pursuant to the provisions of Subparagraphs 2 through 8 of Article 37 of the Contract Regulations;
 2. if an emergency contract is to be executed, pursuant to the provisions of Article 56 of the Contract Regulations; and
 3. if it is barred from international tendering by other related laws and regulations.
- (3) Calculation of estimated costs, stated in Paragraph (1), and the exchange rate of SDR to the Korean currency shall be as provided elsewhere.

Article 4 - (Principles of International Contracts)

The official in charge of the contract shall select the other party to an international contract in an impartial manner, not provide contract-related information in a discriminatory manner, and abide by the following requirements:

1. the method of calculating the estimated price shall not be manipulated or a split order shall not be placed for the purpose of avoiding an international contract;
2. any rules of origin, which are different from the provisions of the Overseas Trade Act and the Customs Act, shall not be applied; and
3. a fixed ratio of localized parts, technology transfer, offsets, etc. shall not be called for in the process of evaluating the eligibility of prospective suppliers, evaluation of proposals, and award of contracts, with a view to restricting entries or contract conditions thereof.

Article 5 - (Method of Contract)

International contracts may be concluded through open tendering, selective tendering, or limited tendering.

Article 6 - (Language)

- (1) The language used for international contracts shall, in principle, be Korean. Provided, however, that if contracting parties operate primarily in a particular region and it is deemed inevitable to use a foreign language, the language used in the region, or one language among English, French and Spanish may be used.
- (2) In the case of announcing an international tendering, the official in charge of the contract shall state the following matters at the bottom of the tendering announcement in English, French or Spanish:
 1. object of the contract;
 2. deadline for presentation of tender and application for tendering; and
 3. name and address of the organization in charge of execution.

- (3) If multiple languages are allowed to be used in preparing the tender for an international tendering, the official in charge of contract shall include one or more languages among English, French and Spanish.
- (4) If any provision written in a foreign language, pursuant to the provisions of Paragraphs (2) and (3), is different from what is stated in Korean, the Korean text shall prevail.

Article 7 - (Eligibility and Review of Applicants for Open Tendering)

- (1) The official in charge of the contract may establish the requirements for eligibility of applicants for open tendering, with regard to performance of a similar kinds of contracts, performing capability, technological capability, status of management, and other necessary matters, depending on the type and scale of the contract, in addition to the requirements stated in Subparagraphs 1 through 3 and 5 of Article 13 of the Contract Regulations, as deemed necessary for a successful concluding of an international contract.
- (2) Upon request by a prospective applicant for open tendering, the official in charge of contract shall review the eligibility thereof, pursuant to the provisions of the above Paragraph (1), and notify the prospective applicant of the result.
- (3) The official in charge of the contract may not conduct a review, as provided in Paragraph (2), of those registered in the List of Qualified Suppliers.
- (4) The official in charge of the contract shall promptly take steps to review the eligibility, if any one who has not been through the eligibility review pursuant to the provisions of Paragraph (1) of Article 8, requests to participate in the tendering. If it is deemed that there is sufficient time for completing the eligibility review by the day before the deadline for tender submission, the official in charge shall allow him to submit the tender.

Article 8 - (List of Qualified Suppliers)

- (1) The official in charge of the contract may prepare and display the List of Qualified Suppliers in such a manner that all participants in the tendering may have ready access.
- (2) In the event the List of Qualified Suppliers has expired or any party is removed from the List, the official in charge of the contract shall notify the parties concerned to that effect.

Article 9 - (Public Notice)

- (1) Tendering shall be announced 40 days prior to the day before the deadline for tender submission.
- (2) Notwithstanding the provisions of Paragraph (1), if the tendering falls under any of the following circumstances and it is deemed impossible to procure the intended object under the contract under the normal schedule, tendering may be announced 10 days prior to the day before the deadline for tender submission:
 1. if it is urgent; or
 2. if tendering is to be announced again, pursuant to the provisions of Article 38 of the Contract Regulations.
- (3) When public notice has been announced and the content thereof is revised or corrected, a correction notice shall be made with the submission deadline extended by at least 10 days.

- (4) Notwithstanding the provisions of Paragraph (1), public notice of tendering may be made 25 days prior to the day before the deadline for tender submission, if it falls under any of the following cases:
1. if a separate 40-day pre-announcement has been made within the past 12 months; or
 2. if individual requests for supply are made in a certain grouping or instalments under the contract (hereinafter referred to as "recurring contract"), and the notice is a follow-up to a previous one.
- (5) The provision of Paragraph (1) of Article 17 of the Contract Regulations shall apply to any public notice of tendering, pursuant to the provisions of Paragraphs (1) through (4), as necessary.

Article 10 - (Content of Public Notice)

If a public notice, pursuant to the provisions of Article 9, is to be made, the official in charge of the contract shall include the following matters, in addition to those set forth in the provisions of Article 18 of the Contract Regulations, in said public notice:

1. matters concerning any additional procurement conditions in regard to the said contract, and the scheduled date of public notice of a subsequent tendering in the case of a recurring contract;
2. method of open tendering or selective tendering, and whether negotiation procedures are included;
3. type of contract to be used by the organization that placed the order—purchase, lease, instalment purchase, etc.;
4. address, deadline for submission, and required language for the application for review of the eligibility for tendering, the application for tendering, tender, etc.; and
5. applicability of the GPA.

Article 11 - (Submission and Receipt of Tender)

- (1) The official in charge of the contract may receive tenders and related documents submitted by telegraph, telegram, fax, etc., as necessary.
- (2) In the event tenders, etc. are submitted pursuant to the provisions of the above Paragraph (1), the applicant shall be requested to immediately submit hard copies thereof with signature for confirmation. In such case, if there are any discrepancies in the content between what is sent by telegraph, etc. and the signed hard copy submitted after the deadline, the copy sent earlier by telegraph, etc. shall prevail.

Article 12 - (Determination of the Successful Applicant)

- (1) The official in charge of the contract shall determine the successful applicants for open tendering by examining the applicants' capability of executing the relevant contract in the order of the lowest tender under the ceiling.

- (2) The examination, stated in the above Paragraph (1), shall be made to determine the eligibility, considering the applicant's performance record, technological capability, financial status, faithful execution of previous contracts, etc., pursuant to a separate set of examination criteria.
- (3) Notwithstanding the provisions of Paragraph (1), the capability of executing the relevant contract may not be reviewed in any of the following cases:
 1. if the tendering is pursuant to the provisions of Subparagraph 3 of Paragraph (2) of Article 3;
 2. if any party registered on the List of Qualified Suppliers, as stated in the provisions of Article 8, submits the lowest tender; or
 3. if a party who has during the past three years supplied items equal to or higher than the level of the contract object to the Company or public organizations, as listed in Article 2 of the Act on Promotion of Small- and Medium-Sized Companies and Purchase of Products, submits the lowest tender.

Article 13 - (Release of Information, etc.)

- (1) When the official in charge of the contract selects the successful applicant or the party to international contract (hereinafter referred to as "successful applicant"), the following matters shall be announced within seven (7) days of the selection of the successful applicant:
 1. object, amount and price of the successful tender or the intended procurement through limited tendering;
 2. name and address of the successful applicant or party to the contract through limited tendering;
 3. address of the organization that placed the order;
 4. procedures that were followed in determining the successful applicant or party to the contract through limited tendering;
 5. procedures of public notice in the case of open tendering;
 6. in the case of limited tendering, the reason for adopting the method of limited tendering; and
 7. other matters regarding the determination of the successful applicant.
- (2) If applicants for tendering request information related to the said tendering, the official in charge shall release the following information:
 1. procurement practices and procedures of the organization that placed the order;
 2. reasons for rejection of an application for review of eligibility for tendering, suspension of any existing eligibility, and not being designated as eligible; and
 3. reasons for non-selection as the successful applicant, name of the successful applicant, characteristics and strengths of the successful tender.

- (3) Notwithstanding the provisions of Paragraph (2), information about the successful tender may not be released in any of the following circumstances:
1. if release of the information, etc. is feared to undermine public interest;
 2. if release of the information, etc. is feared to undermine due commercial interests of a particular company or adversely affect fair competition; or
 3. if release of the information, etc. is feared to cause an inadvertent disclosure of the Company's commercial or corporate secrets.

Article 14 - (Selective Tendering)

In the case of a selective tendering pursuant to the provisions of Article 34 of the Contract Regulations, the official in charge of the contract shall establish the eligibility of applicants for the selective tendering and standards of invitation, in consideration of the matters provided in Article 8 and characteristics of the subject matter of the contract, etc.

Article 15 - (Designation and Notification of Applicants for Selective Tendering)

- (1) If the official in charge of the contract deems it desirable to execute a selective tendering, he shall designate the eligible applicants who meet the invitation standards pursuant to Article 14, and at the same time notify the designated applicants of matters regarding the public notice of tendering, as set forth in Article 10.
- (2) The provisions of Article 9 shall apply to the notification pursuant to the above Paragraph (1), as necessary. In the case of a selective tendering for which the List of Qualified Suppliers is not to be used, the deadline for submission of the application for selective tendering shall be at least 25 days prior to the day before the date of tendering announcement.

Article 16 - (Application of Provisions on Open Tendering, as necessary)

The provisions of Articles 7 through 13 shall apply to selective tendering, as necessary.

Article 17 - (Contract through Limited Tendering)

International contracts may be concluded through limited tendering in any of the following cases:

1. when an open tendering attracts no applicant; if tender by mutual consent is submitted; or, no tender meets the conditions required in the public notice of tendering, etc.;
2. if it is related to art works, patent rights, publishing rights and other proprietary rights for which there is no proper substitute or alternative, or if procurement must be made from a particular supplier for technical reasons;
3. if procurement cannot be made through open tendering within a given period, for reasons of extreme urgency;
4. if procurement is for replacement of parts of already supplied objects or expansion of facilities (this shall apply only to such case where manufacturing or supply of items by those other than the existing manufacturer/supplier of the said items may cause problems related to compatibility or interoperability);

5. if prototypes, etc. developed at the request of the organization that placed the order are to be procured (This shall not apply to the case where the subsequent items, not prototypes, are to be procured after such contract is fulfilled);
6. if additional construction services which were not included in the initial contract become necessary, through unforeseeable circumstances, and the organization that placed the order needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the organization. However, the total value of contracts awarded for the additional construction services shall not exceed 50 percent of the amount of the main contract;
7. if it is new construction service consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded through international tendering and for which the organization that placed the order indicated in the notice of intended procurement concerning the initial construction service that limited tendering procedures might be used in awarding contracts for such new construction services;
8. if goods are to be purchased from the raw materials market (commodity market, etc.);
9. if a contract is to be signed with the winner of a design contest; or
10. if procurement of items from a particular company is significantly more advantageous to the Company.

Article 18 - (Filing of Objections, etc.)

Matters and specific procedures related to the formation, operation, etc. of a committee in charge of reviewing or resolution of objections to international contracts shall be based on "The Guide to Dispute Settlement Regarding International Procurement".

Article 19 - (Relationship with the Contract Regulations)

The Contract Regulations shall apply to matters that are not specifically provided for in these Regulations. Provided, however, that this shall not apply to the provisions of Articles 30 through 33 and Paragraph (2) of Article 47 of the Contract Regulations.

Article 20 - (Application of International Commercial Practices)

Notwithstanding the provisions of Article 19, the official in charge of the contract may execute international contracts, pursuant to international commercial practices, if it is unavoidable due to the currency, type and period of security payment, method of payment with L/C, inspection, and execution of other contract procedures.

Article 21 - (Establishment of the Guide, etc.)

- (1) The official in charge of the contract may establish and enforce a guide for the sake of the enforcement of these Regulations.
- (2) If a guide is to be established pursuant to the provisions of the above Paragraph (1), approval of the Director of the Finance Office shall be obtained.

ADDENDA

These Regulations shall become effective on the date of promulgation.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/265
12 May 2003

(03-2504)

Committee on Government Procurement

Original: English

**NOTIFICATIONS FROM JAPAN UNDER ARTICLE XXIV:6 OF THE
AGREEMENT ON GOVERNMENT PROCUREMENT
(GPA/W/252, GPA/W/253, GPA/W/254)**

Communication from the European Community

The following communication, dated 8 May 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

The European Community hereby withdraws its objections, contained in documents GPA/W/259, GPA/W/260 and GPA/W/261, to the modifications proposed by Japan in documents GPA/W/252, GPA/W/253 and GPA/W/254 concerning the National Statistics Center, Japan Mint and the National Printing Bureau, respectively.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/264
30 April 2003

(03-2304)

Committee on Government Procurement

Original: English

QUESTIONS TO THE REPUBLIC OF KOREA RELATING TO THE PROPOSED WITHDRAWAL OF KOREA TOBACCO & GINSENG CORPORATION AND DAEHAN PRINTING AND PUBLISHING CO. LTD

Communication from the United States

The United States would appreciate the Republic of Korea's responses to the following questions relating to its proposed withdrawal of Korea Tobacco & Ginseng Corporation (KT&G) and Daehan Printing and Publishing Co. Ltd. (Daehan) from Annex 3 of Appendix I of the Agreement on Government Procurement (GPA) (GPA/W/250).

KT&G

1. With respect to KT&G, please provide a copy of the laws, regulations and other measures that authorized the Korean Government's sale of its shares in KT&G, that transformed KT&G from a government enterprise into a private entity and that demonstrate that KT&G is no longer subject to laws, regulations or other measures that apply to government enterprises.
2. Please describe all laws, regulations and other measures that Korea enacted or adopted to ensure that KT&G's procurement is consistent with the GPA. What measures would be required to alter such regulation of KT&G's procurement if it were withdrawn from GPA coverage?
3. Are there any laws, regulations or other measures that restrict KT&G from hiring former Korean Government employees? If so, please provide a copy.
4. Please describe all financing, including direct grants, guarantees and loans at preferential rates, that KT&G may have obtained prior to the Korean Government's sale of its shares in KT&G.
5. Please describe any special conditions attendant to the Korean Government's sale of its shares in KT&G, such as no election of new directors until "X" years after the sale.

Daehan Printing and Publishing

6. Please explain the change in circumstances that justify Daehan's withdrawal from Annex 3 at this time.
7. Has Daehan ever been subject to laws, regulations or measures, other than the Commercial Act or other measures that apply to all private companies? If so, please describe and provide a copy of such laws, regulations or other measures.
8. Please describe all laws, regulations and other measures that Korea enacted or adopted to ensure that the Daehan's procurement is consistent with the GPA. What measures would be required to alter such regulation of Daehan procurement if it were withdrawn from GPA coverage?

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9. Has Korea named or selected any directors of Daehan's Board of Directors? If so, do any such directors remain on Daehan's Board?

10. According to the information provided with regard to Daehan, Daehan has no foreign ownership. Are there any restrictions that preclude foreign ownership of any shares of Daehan? If so, please provide a copy.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/262

4 April 2003

(03-1866)

Committee on Government Procurement

Original: English

NOTIFICATION FROM JAPAN UNDER ARTICLE XXIV:6 OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA/W/255)

Communication from the European Community

The following communication, dated 1 April 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

We refer to the recent notification of Japan, dated 3 March 2003, proposing modifications to Annexes 3 and 5 and the General Notes of its Appendix I of the Agreement on Government Procurement relating to Japan Post (GPA/W/255).

The European Community objects to this proposed modification pursuant to Article XXIV.6 of the Agreement on Government Procurement. The European Community requires additional time to study this matter and to seek additional information through consultations with the Government of Japan.

The European Community will conduct a review of the notification in the light of Article XXIV.6 of the Agreement in an expeditious manner, and will keep the Committee advised of its progress and of the outcome of its review.

The European Community reserves all rights in respect of Japan's notification.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/259
27 March 2003

(03-1751)

Committee on Government Procurement

Original: English

NOTIFICATION FROM JAPAN UNDER ARTICLE XXIV:6 OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA/W/252)

Communication from the European Community

The following communication, dated 25 March 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

We refer to the recent notification of Japan, dated 25 February 2003, proposing the addition of "National Statistics Center" to Annexes 3 and 4 of Appendix I of the Agreement on Government Procurement (GPA/W/252).

The European Community objects to this proposed modification pursuant to Article XXIV.6 of the Agreement on Government Procurement. The European Community requires additional time to study this matter and to seek additional information through consultations with the Government of Japan.

The European Community will conduct a review of the notification in the light of Article XXIV.6 of the Agreement in an expeditious manner, and will keep the Committee advised of its progress and of the outcome of its review.

The European Community reserves all rights in respect of Japan's notification.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/260
27 March 2003

(03-1748)

Committee on Government Procurement

Original: English

NOTIFICATION FROM JAPAN UNDER ARTICLE XXIV:6 OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA/W/253)

Communication from the European Community

The following communication, dated 25 March 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

We refer to the recent notification of Japan, dated 25 February 2003, proposing the addition of "Japan Mint" to Annexes 3 and 4 of Appendix I of the Agreement on Government Procurement (GPA/W/253).

The European Community objects to this proposed modification pursuant to Article XXIV.6 of the Agreement on Government Procurement. The European Community requires additional time to study this matter and to seek additional information through consultations with the Government of Japan.

The European Community will conduct a review of the notification in the light of Article XXIV.6 of the Agreement in an expeditious manner, and will keep the Committee advised of its progress and of the outcome of its review.

The European Community reserves all rights in respect of Japan's notification.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/261
27 March 2003

(03-1750)

Committee on Government Procurement

Original: English

NOTIFICATION FROM JAPAN UNDER ARTICLE XXIV:6 OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA/W/254)

Communication from the European Community

The following communication, dated 25 March 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

We refer to the recent notification of Japan, dated 25 February 2003, proposing the addition of "National Printing Bureau" to Annexes 3 and 4 of Appendix I of the Agreement on Government Procurement (GPA/W/254).

The European Community objects to this proposed modification pursuant to Article XXIV.6 of the Agreement on Government Procurement. The European Community requires additional time to study this matter and to seek additional information through consultations with the Government of Japan.

The European Community will conduct a review of the notification in the light of Article XXIV.6 of the Agreement in an expeditious manner, and will keep the Committee advised of its progress and of the outcome of its review.

The European Community reserves all rights in respect of Japan's notification.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/258
19 March 2003

(03-1597)

Committee on Government Procurement

Original: English

NOTIFICATION FROM THE REPUBLIC OF KOREA UNDER ARTICLE XXIV:6 OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA/W/250)

Communication from the United States

The following communication, dated 15 March 2003, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

The Republic of Korea has notified three proposed modifications to Annex 3 of Appendix I of the Agreement on Government Procurement (GPA). This notification was circulated by the Secretariat on 17 February 2003 (GPA/W/250), providing 30 days for other Parties to object prior to the modifications becoming effective.

The United States has no objection to the proposed deletion of the Housing & Commercial Bank, based on its merger with the Kookmin Bank, which is listed in Annex 3 of Appendix I of the GPA, and the representation of the Government of Korea that it will have an "inconsequential" effect on GPA coverage. However, the United States requires additional time to study and to seek clarification through consultations with the Government of Korea in order to determine whether, pursuant to Article XXIV:6(b), "government control or influence" over Korea Tobacco & Ginseng Corporation (KT&G) and Daehan Printing and Publishing Co. Ltd "has been effectively eliminated". For these reasons, the United States objects to these two proposed modifications taking effect upon expiration of the 30-day review period. The United States will endeavour to conduct the necessary study and consultations as expeditiously as possible, and will keep the Committee advised of the progress and outcome of this review.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/257
17 March 2003

(03-1564)

Committee on Government Procurement

Original: English

NOTIFICATION FROM THE REPUBLIC OF KOREA UNDER ARTICLE XXIV:6 OF THE AGREEMENT ON GOVERNMENT PROCUREMENT (GPA/W/250)

Communication from the European Community

The following communication, dated 14 March 2003, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Committee on Government Procurement.

We refer to the recent notification of the Republic of Korea, dated 17 February 2003, proposing the withdrawal of Housing & Commercial Bank, Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd. from Annex 3 of Appendix I of the Agreement on Government Procurement (GPA/W/250).

The European Community objects to the proposed modification pursuant to Article XXIV:6 of the Agreement on Government Procurement, as regards the withdrawal of Korea Tobacco & Ginseng Corporation and Daehan Printing and Publishing Co. Ltd. from Annex 3 of Appendix I. The European Community requires additional time to study this matter and to seek additional information through consultations with the Government of the Republic of Korea.

The European Community will conduct a review of the notification in the light of Article XXIV:6 of the Agreement on Government Procurement in an expeditious manner, and will keep the Committee advised of its progress and of the outcome of its review.

The European Community reserves all rights in respect of the Republic of Korea's notification.

PROPOSED MODIFICATION TO APPENDIX I OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)¹

The following notification from the Hong Kong Economic and Trade Office was received on 3 March 2003, with the request that it be circulated to the Parties to the Agreement on Government Procurement.

1. Pursuant to paragraph 6(a) of Article XXIV of the Agreement on Government Procurement (1994), Hong Kong, China hereby notifies the Committee on Government Procurement of the following modification of a minor nature relating to Annex 1 of Appendix I of the Agreement:

- Delete "Education Department".

2. Arising from a re-organization, the Education Department was merged with the Education and Manpower Bureau of the Government Secretariat on 28 February 2003. All procurement functions originally carried out by the Education Department are taken up by the Government Secretariat. As the Government Secretariat is already listed in Annex 1 of Appendix I of the Agreement, the above modification does not alter the level of mutually agreed coverage provided in the Agreement.

3. Accordingly, pages 1/2 and 2/2 of Annex 1 to Appendix I of Hong Kong, China should be modified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modification.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² The Attachments are in English only.

ATTACHMENT A

HONG KONG, CHINA

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR for goods and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Agriculture, Fisheries and Conservation Department
2. Architectural Services Department
3. Audit Commission
4. Auxiliary Medical Services
5. Buildings Department
6. Census and Statistics Department
7. Civil Aid Services
8. Civil Aviation Department
9. Civil Engineering Department
10. Civil Service Training and Development Institute
11. Companies Registry
12. Correctional Services Department
13. Customs and Excise Department
14. Department of Health
15. Department of Justice
16. Drainage Services Department
17. ~~Electrical and Mechanical Services Department~~
18. Environmental Protection Department
19. Fire Services Department
20. Food and Environmental Hygiene Department
21. Government Flying Service
22. Government Laboratory
23. Government Land Transport Agency
24. Government Property Agency
25. Government Secretariat
26. Government Supplies Department
27. Highways Department
28. Home Affairs Department
29. Hong Kong Monetary Authority
30. Hong Kong Observatory

Deleted: <#>Education Department¶

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31. Hong Kong Police Force (including Hong Kong Auxiliary Police Force)
32. Hospital Services Department
33. Immigration Department
34. Independent Commission Against Corruption
35. Information Services Department
36. Information Technology Services Department
37. Inland Revenue Department
38. Intellectual Property Department
39. Invest Hong Kong
40. Judiciary
41. Labour Department
42. Land Registry
43. Lands Department
44. Legal Aid Department
45. Leisure and Cultural Services Department
46. Management Services Agency
47. Marine Department
48. Office of the Ombudsman
49. Office of the Telecommunications Authority
50. Official Languages Agency
51. Official Receiver's Office
52. Planning Department
53. Post Office
54. Printing Department
55. Public Service Commission
56. Radio Television Hong Kong
57. Rating and Valuation Department
58. Registration and Electoral Office
59. Secretariat, Independent Police Complaints Council
60. Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service
61. Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service
62. Secretariat, University Grants Committee
63. Social Welfare Department
64. Student Financial Assistance Agency
65. Technical Education and Industrial Training Department
66. Television and Entertainment Licensing Authority
67. Territory Development Department
68. Trade and Industry Department
69. Transport Department
70. Treasury
71. Water Supplies Department

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ATTACHMENT B

HONG KONG, CHINA

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR for goods and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Agriculture, Fisheries and Conservation Department
2. Architectural Services Department
3. Audit Commission
4. Auxiliary Medical Services
5. Buildings Department
6. Census and Statistics Department
7. Civil Aid Services
8. Civil Aviation Department
9. Civil Engineering Department
10. Civil Service Training and Development Institute
11. Companies Registry
12. Correctional Services Department
13. Customs and Excise Department
14. Department of Health
15. Department of Justice
16. Drainage Services Department
17. Electrical and Mechanical Services Department
18. Environmental Protection Department
19. Fire Services Department
20. Food and Environmental Hygiene Department
21. Government Flying Service
22. Government Laboratory
23. Government Land Transport Agency
24. Government Property Agency
25. Government Secretariat
26. Government Supplies Department
27. Highways Department
28. Home Affairs Department
29. Hong Kong Monetary Authority
30. Hong Kong Observatory

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31. Hong Kong Police Force (including Hong Kong Auxiliary Police Force)
32. Hospital Services Department
33. Immigration Department
34. Independent Commission Against Corruption
35. Information Services Department
36. Information Technology Services Department
37. Inland Revenue Department
38. Intellectual Property Department
39. Invest Hong Kong
40. Judiciary
41. Labour Department
42. Land Registry
43. Lands Department
44. Legal Aid Department
45. Leisure and Cultural Services Department
46. Management Services Agency
47. Marine Department
48. Office of the Ombudsman
49. Office of the Telecommunications Authority
50. Official Languages Agency
51. Official Receiver's Office
52. Planning Department
53. Post Office
54. Printing Department
55. Public Service Commission
56. Radio Television Hong Kong
57. Rating and Valuation Department
58. Registration and Electoral Office
59. Secretariat, Independent Police Complaints Council
60. Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service
61. Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service
62. Secretariat, University Grants Committee
63. Social Welfare Department
64. Student Financial Assistance Agency
65. Technical Education and Industrial Training Department
66. Television and Entertainment Licensing Authority
67. Territory Development Department
68. Trade and Industry Department
69. Transport Department
70. Treasury
71. Water Supplies Department

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WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/255
4 March 2003

(03-1254)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of Japan was received on 3 March 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement (GPA), the Government of Japan wishes to notify the Committee on Government Procurement of the following rectifications of a purely formal nature with regard to Annexes 3 and 5 and the General Notes of Appendix I of the Agreement (cf. WT/Let/400 and WT/Let/425/Rev.1):

- delete "- Postal Life Insurance Welfare Corporation" in Group A in the "List of Entities" in Annex 3;
- add "- Japan Post" in Group A in the "List of Entities" in Annex 3;
- modify the relevant thresholds for construction services in Annex 3 as follows:

"Construction services:

4,500 thousand SDR for Japan Post in Group A

15,000 thousand SDR for **all other** entities in Group A

4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR";

¹ Article XXIV:6(a) reads as follows: "Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII."

- delete "- Postal Life Insurance Welfare Corporation" in Group A in the "List of Entities which procure the services, specified in Annex 4" in Annex 3;
- add "- Japan Post" in Group A in the " List of Entities which procure the services, specified in Annex 4" in Annex 3;
- modify the relevant thresholds in Annex 5 as follows:

"4,500 thousand SDR for entities set out in ANNEX 1;
15,000 thousand SDR for those in ANNEX 2;
4,500 thousand SDR for Japan Post in Group A in ANNEX 3;
15,000 thousand SDR for **all other entities** in Group A in ANNEX 3; and
4,500 thousand SDR for **entities** in Group B in ANNEX 3";
- modify paragraph 1 of "GENERAL NOTES" as follows:

"1. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 (except for **Japan Post in Group A and the entities** in Group B set out in Annex 3)."

The above rectifications are the result of the following organizational changes relating to a central government entity listed in Annex 1 and an entity in Annex 3:

- (1) In the reform process of Japan's central government and public corporations, the following two organs are to be abolished:
 - the Postal Service Agency, an independent organ of the Ministry of Public Management, Home Affairs, Posts and Telecommunications in Annex 1, and
 - the Postal Life Insurance Welfare Corporation in Group A of Annex 3.

The undertakings, which have been in the past carried out by the above-mentioned two organs, are now to be conducted by Japan Post. Under the Law Concerning Japan Post (Law No. 97 of 31 July 2002) and the relevant ordinances, this organization change will be implemented as of 1 April 2003. Japan Post will be established as a public corporation, legally independent from the government, and will perform transferred undertakings efficiently and effectively. (The outline of this entity is contained in Attachment A hereto.)

- (2) Since this new organization does not fall within the central government entities covered by the Accounts Law, and is not provided for in the National Government Organization Law, nor in the Law establishing the Cabinet Office, Japan has decided to add this entity to Annex 3 regarding both supplies and services (under Group A in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4") with the following thresholds and conditions, in order to maintain a balance of rights and obligations and a comparable level of mutually agreed coverage in this Agreement prior to this notification.

Although the threshold of 15,000 thousand SDR for construction services has been applied to the Postal Life Insurance Welfare Corporation in Group A of Annex 3, the new entity (Japan Post) shall have a threshold of 4,500 thousand SDR for construction services, which is the figure currently applied to the Postal Service Agency of the Ministry of Public Management, Home Affairs, Posts and Telecommunications in Annex 1.

- (3) The new entity will implement accounting rules as of 1 April 2003 to apply the relevant thresholds and procedures under the Agreement. The challenge procedures, as provided for in Article XX of the Agreement, will apply to procurement conducted by this entity, which will fall under the control of the Ministry of Public Management, Home Affairs, Posts and Telecommunications.

Attachment B² provides a summary of the modifications proposed by Japan to pages 1 and 3 of Annex 3, Annex 5 and the General Notes of Appendix I. Attachment C² indicates how Annexes 3 and 5 and the General Notes of Appendix I would appear after the proposed modifications have been made.

² Attachments B and C are in English only.

ATTACHMENT A
OUTLINE OF JAPAN POST
(TO BE ESTABLISHED AS OF 1 APRIL 2003)

A. PURPOSE

To comprehensively and efficiently carry out the work related to postal services, postal savings, postal money orders, postal transfers, postal life insurance, etc. as a government-owned public corporation, but which is financially self sufficient.

B. SCOPE OF THE WORK

- (1) Work related to postal services, postal savings, postal money orders, postal transfers and postal life insurance.
- (2) The sale of revenue stamps and the issuance of pensions and other treasury funds through entrustment from the State.
- (3) Other services (e.g. the invitation of subscriptions to government bonds, foreign currency exchange, the treatment of traveller's cheques).

C. ORGANIZATION

Head Office: Tokyo
Other Post Offices: 24,700 offices nationwide

D. RELATIONS WITH THE CENTRAL GOVERNMENT

The competent ministry for this organization is the Ministry of Public Management, Home Affairs, Posts and Telecommunications.

ATTACHMENT B

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- ~~Japan Post~~
- Labour Welfare Corporation

Deleted: - Postal Life Insurance Welfare Corporation¶

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Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection

- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation

Japan Post

- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Deleted: - Postal Life Insurance Welfare Corporation¶

Services

Threshold:

Construction services:

- 4,500 thousand SDR for Japan Post in Group A
- 15,000 thousand SDR for all other entities in Group A
- 4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)

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ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All services listed in Division 51.

Threshold: 4,500 thousand SDR for entities set out in ANNEX 1;
15,000 thousand SDR for those in ANNEX 2;
4,500 thousand SDR for Japan Post in Group A in ANNEX 3;
15,000 thousand SDR for all other entities in Group A in ANNEX 3; and
4,500 thousand SDR for entities in Group B in ANNEX 3.

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GENERAL NOTES

1. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 (except for Japan Post in Group A and the entities in Group B set out in Annex 3).

Deleted: those listed

2. In case Parties do not apply Article XX to suppliers or service providers of Japan in contesting the award of contract by entities, Japan may not apply the Article to suppliers or service providers of the Parties in contesting the award of contracts by the same kind of entities.

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ATTACHMENT C

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Japan Post
- Labour Welfare Corporation

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Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Printing Bureau

Services

Threshold:

Construction services:

- 4,500 thousand SDR for Japan Post in Group A
- 15,000 thousand SDR for all other entities in Group A
- 4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)

- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Japan Post
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All services listed in Division 51.

Threshold: 4,500 thousand SDR for entities set out in ANNEX 1;
15,000 thousand SDR for those in ANNEX 2;
4,500 thousand SDR for Japan Post in Group A in ANNEX 3;
15,000 thousand SDR for all other entities in Group A in ANNEX 3; and
4,500 thousand SDR for entities in Group B in ANNEX 3.

GENERAL NOTES

1. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 (except for Japan Post in Group A and the entities in Group B set out in Annex 3).
2. In case Parties do not apply Article XX to suppliers or service providers of Japan in contesting the award of contract by entities, Japan may not apply the Article to suppliers or service providers of the Parties in contesting the award of contracts by the same kind of entities.

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WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/252

25 February 2003

(03-1150)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of Japan was received on 22 February 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement (GPA), the Government of Japan wishes to notify the Committee on Government Procurement of the following rectifications of a purely formal nature with regard to Annex 3 of Appendix I of the Agreement (cf. WT/Let/425/Rev.1):

- to add "- National Statistics Center" after "- National Agency for Vehicle Inspection" in Group B in the "List of Entities"; and
- to add "- National Statistics Center" after "- National Agency for Vehicle Inspection" in Group B in the "List of Entities which procure the services, specified in Annex 4".

The above rectifications are the result of the following organizational changes relating to a central government entity listed in Annex 1. Such rectifications do not alter the level of the mutually agreed coverage provided in the Agreement:

- (1) Through Japan's central government reform process, a part of the undertakings, which have been carried out by an auxiliary organization of the Ministry of Public Management, Home Affairs, Posts and Telecommunications in Annex 1, are to be conducted by the National Statistics Center. In accordance with the Law Concerning the National Statistics Center (Law No. 219 of 22 December 1999) and its relevant ordinances, this organizational change will be implemented as of 1 April 2003. The

¹ Article XXIV:6(a) reads as follows: "Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII."

National Statistics Center will be established as an Independent Administrative Institution, which shall be legally independent from the government, to perform transferred undertakings efficiently and effectively. (The outline of this entity is contained in Attachment A hereto.)

- (2) Since this new organization does not fall within the central government entities covered by the Accounts Law, and is not provided for in the National Government Organization Law, nor in the Law establishing the Cabinet Office, Japan has decided to add this entity to Annex 3 regarding both supplies and services (under Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4"). In this way, the Agreement will apply to the National Statistics Center, with the same thresholds and conditions as stipulated in Annex 1 for central government entities.
- (3) This entity will have accounting rules as of 1 April 2003 to implement the relevant thresholds and procedures under the Agreement. Challenge procedures, as provided for in Article XX of the Agreement, will apply to procurement conducted by this entity, which will fall under the control of the Ministry of Public Management, Home Affairs, Posts and Telecommunications.
- (4) The above-mentioned rectifications are consistent with the relevant notification from Japan (GPA/W/129, dated 19 March 2001), which became effective on 5 September 2001 (WT/Let/400).

Attachment B² provides a summary of the modifications proposed by Japan to Annex 3 of Appendix I. Attachment C² indicates how Annex 3 of Appendix I would appear after the proposed modifications have been made.

² Attachments B and C are in English only.

ATTACHMENT A

**OUTLINE OF THE NATIONAL STATISTICS CENTER
(TO BE ESTABLISHED AS OF 1 APRIL 2003)**

A. PURPOSE

The purpose of the National Statistics Center is to tabulate the data from censuses and surveys concerning the fundamental issues of the nation, for example a population census, and to make an integral research on statistical techniques with the aim of contributing to securing the truth behind statistics and to improving statistical techniques as a whole.

B. SCOPE OF THE WORK

- (1) To tabulate the data form censuses and surveys, for example a population census, with regard to the fundamental issues of the nation.
- (2) To tabulate the data from surveys through entrustment from the administrative bodies of the nation and the local governments.
- (3) To accumulate and process the necessary data concerning the compilation and utilization of statistics.
- (4) To do research on statistical techniques and other related affairs with regard to items (1) to (3) above.

C. ORGANIZATION

Head Office: Tokyo
Branch Offices: None

D. RELATIONS WITH THE CENTRAL GOVERNMENT

The competent ministry for this organization is the Ministry of Public Management, Home Affairs, Posts and Telecommunications.

ATTACHMENT B

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation

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Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

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Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center

- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)

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Services (cont'd)

- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology (e)
- The Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B
 - National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

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Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

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ATTACHMENT C

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation

Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Services (cont'd)

- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology (e)
- The Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B
 - National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
- National Center for University Entrance Examinations
- National Institute of Special Education
- National Olympics Memorial Youth Center
- National Women's Education Center
- National Youth Houses
- National Children's Centers
- The National Institute for Japanese Language
- National Science Museum
- National Institute for Materials Science
- National Research Institute for Earth Science and Disaster Prevention
- National Aerospace Laboratory of Japan
- National Institute of Radiological Sciences
- National Museum of Art
- National Museum
- National Research Institute for Cultural Properties
- National Center for Teachers' Development
- National Institute of Health and Nutrition
- National Institute of Industrial Safety
- National Institute of Industrial Health
- Center for Food Quality, Labeling and Consumer Services
- National Center for Seeds and Seedlings
- National Livestock Breeding Center
- Fertilizer and Feed Inspection Station
- Agricultural Chemicals Inspection Station
- National Farmers Academy
- Forest Tree Breeding Center
- National Salmon Resources Center
- National Fisheries University
- National Agricultural Research Organization
- National Institute of Agrobiological Sciences
- National Institute for Agro-Environmental Sciences
- National Institute for Rural Engineering
- National Food Research Institute
- Japan International Research Center for Agricultural Sciences
- Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Statistics Center

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/253

25 February 2003

(03-1152)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of Japan was received on 22 February 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement (GPA), the Government of Japan wishes to notify the Committee on Government Procurement of the following rectifications of a purely formal nature with regard to Annex 3 of Appendix I of the Agreement (cf. WT/Let/425/Rev.1):

- to add "- Japan Mint" after "- National Agency for Vehicle Inspection" in Group B in the "List of Entities"; and
- to add "- Japan Mint" after "- National Agency for Vehicle Inspection" in Group B in the "List of Entities which procure the services, specified in Annex 4".

The above rectifications are the result of the following organizational changes relating to a central government entity listed in Annex 1. Such rectifications do not alter the level of the mutually agreed coverage provided in the Agreement:

- (1) Through Japan's central government reform process, a part of the undertakings, which have been carried out by the Mint Bureau, an attached organization to the Ministry of Finance in Annex 1, are to be conducted by the Japan Mint. In accordance with the Law Concerning the Japan Mint (Law No. 40 of 10 May 2002) and its relevant ordinances, this organizational change will be implemented as of 1 April 2003. The Japan Mint will be established as an Independent Administrative Institution, which

¹ Article XXIV:6(a) reads as follows: "Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII."

shall be legally independent from the government, to perform transferred undertakings efficiently and effectively. (The outline of this entity is contained in Attachment A hereto.)

- (2) Since this new organization does not fall within the central government entities covered by the Accounts Law, and is not provided for in the National Government Organization Law, nor in the Law establishing the Cabinet Office, Japan has decided to add this entity to Annex 3 regarding both supplies and services (under Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4"). In such a manner, the Agreement can be applied to the Japan Mint, with the same thresholds and conditions as stipulated in Annex 1 for central government entities.
- (3) This entity will have accounting rules as of 1 April 2003 to implement the relevant thresholds and procedures under the Agreement. Challenge procedures, as provided for in Article XX of the Agreement, will apply to procurement conducted by this entity, which will fall under the control of the Ministry of Finance.
- (4) The above-mentioned rectifications are consistent with the relevant notification from Japan (GPA/W/129, dated 19 March 2001), which became effective on 5 September 2001 (WT/Let/400).

Attachment B² provides a summary of the modifications proposed by Japan to Annex 3 of Appendix I. Attachment C² indicates how Annex 3 of Appendix I would appear after the proposed modifications have been made.

² Attachments B and C are in English only.

ATTACHMENT A
OUTLINE OF THE JAPAN MINT
(TO BE ESTABLISHED AS OF 1 APRIL 2003)

A. PURPOSE

- (1) To contribute to the stability of the nation's Currency System by manufacturing coins and implementing other measures.
- (2) To provide products and services, such as orders of merit, metallic art objects and hallmarks, for the purpose of public interest.

B. SCOPE OF THE WORK

- (1) Manufacturing and selling coins.
- (2) Producing orders of merit, medals of honour and metallic art objects.
- (3) Other services (e.g. hallmarking).

C. ORGANIZATION

Head Office: Osaka
Branch Offices: Tokyo, Hiroshima

D. RELATIONS WITH THE CENTRAL GOVERNMENT

The competent ministry for this organization is the Ministry of Finance.

ATTACHMENT B

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation

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Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

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Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
 - National Maritime Research Institute
 - Port and Airport Research Institute
 - Electronic Navigation Research Institute
 - Civil Engineering Research Institute of Hokkaido
 - Marine Technical College
 - National Institute for Sea Training
 - Schools for Seafarers Training
 - Civil Aviation College
 - National Institute for Environmental Studies
 - Labor Management Organization for USFJ Employees
 - National Agency for Vehicle Inspection
 - Japan Mint
- New Tokyo International Airport Authority
 - Japan Highway Public Corporation
 - Metropolitan Expressway Public Corporation
 - Hanshin Expressway Public Corporation
 - Honshu-Shikoku Bridge Authority
 - Urban Development Corporation (a)
 - Japan Science and Technology Corporation
 - Japan Nuclear Cycle Development Institute (b)
 - Japan Environmental Corporation
 - Japan International Cooperation Agency
 - Social Welfare and Medical Service Corporation
 - Government Pension Investment Fund
 - Agriculture and Livestock Industries Corporation
 - Metal Mining Agency of Japan (c)
 - Japan Small and Medium Enterprise Corporation
 - Postal Life Insurance Welfare Corporation
 - Labour Welfare Corporation
 - Employment and Human Resources Development Organization of Japan
 - Okinawa Development Finance Corporation
 - National Life Finance Corporation
 - Agriculture, Forestry and Fisheries Finance Corporation
 - Japan Finance Corporation for Small Business
 - Housing Loan Corporation
 - Japan Finance Corporation for Municipal Enterprises
 - Development Bank of Japan
 - Japan Bank for International Cooperation
 - Teito Rapid Transit Authority (a)
 - Japan Tobacco Inc. (g)
 - Hokkaido Railway Company (a)(g)
 - East Japan Railway Company (a)(g)
 - Central Japan Railway Company (a)(g)
 - West Japan Railway Company (a)(g)
 - Shikoku Railway Company (a)(g)
 - Kyushu Railway Company (a)(g)
 - Japan Freight Railway Company (a)(g)
 - Nippon Telegraph and Telephone Co. (f)(g)
 - Northern Territories Issue Association
 - Japan Consumers Information Center

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)

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Services (cont'd)

- Japan Atomic Energy Research Institute (b)
 - RIKEN (The Institute of Physical and Chemical Research) (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
 - Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
- National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

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Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- Japan Mint

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

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ATTACHMENT C

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation

Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- Japan Mint
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan

Services**Threshold:****Construction services:**

15,000 thousand SDR for entities in Group A

4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:

450 thousand SDR

Other services: 130 thousand SDR**List of Entities which procure the services, specified in Annex 4:**

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Services (cont'd)

- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology (e)
- The Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B
 - National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
- National Center for University Entrance Examinations
- National Institute of Special Education
- National Olympics Memorial Youth Center
- National Women's Education Center
- National Youth Houses
- National Children's Centers
- The National Institute for Japanese Language
- National Science Museum
- National Institute for Materials Science
- National Research Institute for Earth Science and Disaster Prevention
- National Aerospace Laboratory of Japan
- National Institute of Radiological Sciences
- National Museum of Art
- National Museum
- National Research Institute for Cultural Properties
- National Center for Teachers' Development
- National Institute of Health and Nutrition
- National Institute of Industrial Safety
- National Institute of Industrial Health
- Center for Food Quality, Labeling and Consumer Services
- National Center for Seeds and Seedlings
- National Livestock Breeding Center
- Fertilizer and Feed Inspection Station
- Agricultural Chemicals Inspection Station
- National Farmers Academy
- Forest Tree Breeding Center
- National Salmon Resources Center
- National Fisheries University
- National Agricultural Research Organization
- National Institute of Agrobiological Sciences
- National Institute for Agro-Environmental Sciences
- National Institute for Rural Engineering
- National Food Research Institute
- Japan International Research Center for Agricultural Sciences
- Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- Japan Mint

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/254

25 February 2003

(03-1151)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of Japan was received on 22 February 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement (GPA), the Government of Japan wishes to notify the Committee on Government Procurement of the following rectifications of a purely formal nature with regard to Annex 3 of Appendix I of the Agreement (cf. WT/Let/425/Rev.1):

- to add "- National Printing Bureau" after "- National Agency for Vehicle Inspection" in Group B in the "List of Entities"; and
- to add "- National Printing Bureau" after "- National Agency for Vehicle Inspection" in Group B in the "List of Entities which procure the services, specified in Annex 4".

The above rectifications are the result of the following organizational changes relating to a central government entity listed in Annex 1. Such rectifications do not alter the level of the mutually agreed coverage provided in the Agreement:

- (1) Through Japan's central government reform process, a part of the undertakings, which have been carried out by the Printing Bureau, an attached organization to the Ministry of Finance in Annex 1, are to be conducted by the National Printing Bureau. In accordance with the Law Concerning the National Printing Bureau (Law No. 41 of 10 May 2002) and its relevant ordinances, this organizational change will be implemented as of 1 April 2003. The National Printing Bureau will be established as

¹ Article XXIV:6(a) reads as follows: "Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII."

an Independent Administrative Institution, which shall be legally independent from the government, to perform transferred undertakings efficiently and effectively. (The outline of this entity is contained in Attachment A hereto.)

- (2) Since this new organization does not fall within the central government entities covered by the Accounts Law, and is not provided for in the National Government Organization Law, nor in the Law establishing the Cabinet Office, Japan has decided to add this entity to Annex 3 regarding both supplies and services (under Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4"). In such a manner, the Agreement can be applied to the National Printing Bureau, with the same thresholds and conditions as stipulated in Annex 1 for central government entities.
- (3) This entity will have accounting rules as of 1 April 2003 to implement the relevant thresholds and procedures under the Agreement. Challenge procedures, as provided for in Article XX of the Agreement, will apply to procurement conducted by this entity, which will fall under the control of the Ministry of Finance.
- (4) The above-mentioned rectifications are consistent with the relevant notification from Japan (GPA/W/129, dated 19 March 2001), which became effective on 5 September 2001 (WT/Let/400).

Attachment B² provides a summary of the modifications proposed by Japan to Annex 3 of Appendix I. Attachment C² indicates how Annex 3 of Appendix I would appear after the proposed modifications have been made.

² Attachments B and C are in English only.

ATTACHMENT A

**OUTLINE OF THE NATIONAL PRINTING BUREAU
(TO BE ESTABLISHED AS OF 1 APRIL 2003)**

A. PURPOSE

- (1) To contribute to the stability of the nation's Currency System by printing Bank of Japan notes and by implementing other measures.
- (2) To provide information beneficial to the public (Official Gazette, etc.).
- (3) To print government bonds and other printed material destined to the public (e.g. revenue stamps, postal stamps).

B. SCOPE OF THE WORK

- (1) Printing of Bank of Japan notes, government bonds, revenue stamps, postal stamps, etc.
- (2) Editing, printing and distributing the Official Gazette and other publications.

C. ORGANIZATION

Head Office: Tokyo
Branch Offices: 10 nationwide

D. RELATIONS WITH THE CENTRAL GOVERNMENT

The competent ministry for this organization is the Ministry of Finance.

ATTACHMENT B

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation

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Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

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Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Printing Bureau

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)

- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

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Services (cont'd)

- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology (e)
- The Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B
 - National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

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Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Printing Bureau

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

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ATTACHMENT C

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation

Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Printing Bureau
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan

Services**Threshold:****Construction services:**

15,000 thousand SDR for entities in Group A

4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:

450 thousand SDR

Other services: 130 thousand SDR**List of Entities which procure the services, specified in Annex 4:**

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Services (cont'd)

- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology (e)
- The Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B
 - National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
- National Center for University Entrance Examinations
- National Institute of Special Education
- National Olympics Memorial Youth Center
- National Women's Education Center
- National Youth Houses
- National Children's Centers
- The National Institute for Japanese Language
- National Science Museum
- National Institute for Materials Science
- National Research Institute for Earth Science and Disaster Prevention
- National Aerospace Laboratory of Japan
- National Institute of Radiological Sciences
- National Museum of Art
- National Museum
- National Research Institute for Cultural Properties
- National Center for Teachers' Development
- National Institute of Health and Nutrition
- National Institute of Industrial Safety
- National Institute of Industrial Health
- Center for Food Quality, Labeling and Consumer Services
- National Center for Seeds and Seedlings
- National Livestock Breeding Center
- Fertilizer and Feed Inspection Station
- Agricultural Chemicals Inspection Station
- National Farmers Academy
- Forest Tree Breeding Center
- National Salmon Resources Center
- National Fisheries University
- National Agricultural Research Organization
- National Institute of Agrobiological Sciences
- National Institute for Agro-Environmental Sciences
- National Institute for Rural Engineering
- National Food Research Institute
- Japan International Research Center for Agricultural Sciences
- Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees
- National Agency for Vehicle Inspection
- National Printing Bureau

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED
IN NATIONAL CURRENCIES FOR 2003-2004**

REPUBLIC OF KOREA

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2003-2004.

The information notified by the Republic of Korea is reproduced below. Other submissions will be compiled in addenda to this document.

1. Calculation of threshold figures in national currency

Classification		Threshold Value (SDR)	Threshold Value in National Currency (Won)
Annex 1 Entities	Supplies and services	130,000	210,000,000
	Construction services	5,000,000	8,100,000,000
Annex 2 Entities	Supplies and services	200,000	320,000,000
	Construction services	15,000,000	24,400,000,000
Annex 3 Entities	Supplies	450,000	730,000,000
	Construction services	15,000,000	24,400,000,000

2. Method of calculation

It is the average of monthly rate of the national currency in terms of the SDR over the two-year period from November 2000 to October 2002. The conversion rates published by the IMF in its monthly "International Fiscal Statistics" was used for this calculation.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/250

17 February 2003

(03-0988)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF THE REPUBLIC OF KOREA

Notification from the Republic of Korea under Article XXIV:6¹ of the GPA

The following notification from the Permanent Mission of the Republic of Korea was received on 12 February 2003 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

I. INTRODUCTION

Pursuant to Article XXIV:6 of the Agreement on Government Procurement (GPA), the Republic of Korea wishes to notify the Committee on Government Procurement of the following modifications relating to Annex 3 of Appendix I of the GPA.

These proposed modifications reflect the ongoing economic restructuring and privatization efforts of the Korean Government.

II. PROPOSED MODIFICATIONS

Modifications are proposed to the Annex 3 list of "All Other Entities which Procure in Accordance With the Provisions of this Agreement":

¹ Article XXIV:6(a) reads as follows: "Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII."

Article XXIV:6(b) reads as follows: "Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than 30 days from the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence."

- (1) Delete "Housing & Commercial Bank" (H&CB):
 - (a) Pursuant to Article XXIV:6(a) of the GPA, the Republic of Korea wishes to notify the Committee on Government Procurement of the modification relating to Annex 3 of Appendix I of the GPA.
 - (b) This modification is based on the fact that H&CB merged with the Kookmin Bank, 1 November 2001, which is already listed in Annex 3 of Appendix I of the GPA.
 - (c) Accordingly, the Government of Korea considers this change to be inconsequential with regard to the mutually agreed coverage provided in the GPA.
 - (d) Attachment C² provides a summary of modifications proposed by Korea to Annex 3 of Appendix I. Attachment D² indicates how Annex 3 of Appendix I would appear after the proposed modifications have been made.

- (2) Withdraw "Korea Tobacco & Ginseng Corporation" (KT&G):
 - (a) Pursuant to Article XXIV:6(b) of the GPA, the Republic of Korea wishes to notify the Committee on Government Procurement of the modification relating to Annex 3 of Appendix I of the GPA.
 - (b) This modification is based on the fact that the Korea Tobacco & Ginseng Corporation (KT&G, henceforth) has been privatized, the Government having sold the last of its stocks in October 2002. KT&G announced the completion of the privatization process at a shareholders meeting held on 27 December 2002.
 - (c) It should be noted that KT&G is now a private company in accordance with the Korean Commercial Law. The Government of Korea has no legal means to influence procurement decisions of KT&G. Therefore, KT&G should be deleted from Annex 3 of Appendix I of the GPA.
 - (d) Attachment A provides further details concerning the privatization of KT&G. Attachment C provides a summary of modifications proposed by Korea to Annex 3 of Appendix I. Attachment D indicates how Annex 3 of Appendix I would appear after the proposed modifications have been made.

- (3) Withdraw "Daehan Printing and Publishing Co. Ltd":
 - (a) Pursuant to Article XXIV:6 of the GPA, the Government of Korea wishes to notify the Committee on Government Procurement of the modification relating to Annex 3 of Appendix I of the GPA.
 - (b) The National Textbook Ltd., which had been listed in Annex 3 of Appendix I in 1996, was purchased by the Daehan Printing and Publishing Co. Ltd. on 3 May 1999.
 - (c) The Daehan Printing and Publishing Co. Ltd. was established as a private company in 1948. It is completely free of government influence in its management decisions, including those on purchases.

² Attachments C and D are in English only.

- (d) Further details regarding the Daehan Printing and Publishing Co. Ltd. are provided in Attachment B. Attachment C provides a summary of modifications proposed by Korea to Annex 3 of Appendix I. Attachment D indicates how Annex 3 of Appendix I would appear after the proposed modifications have been made.

ATTACHMENT A

KOREA TOBACCO & GINSENG CORPORATION (KT&G)

1. Introduction

As part of its plan to privatize state enterprises, the Government of Korea sought to convert Korea Tobacco & Ginseng Corporation (KT&G, henceforth) from a government-invested enterprise to a private company. The Government of Korea began selling its shares in KT&G in September 1999, and completed the sale of its stock in the company in October 2002.

KT&G, as a government-invested enterprise, was subject to both the "Commercial Act" and the "Act on Corporate Governance Improvement and Privatization of State Enterprises" (Privatization Act, henceforth). With the sale of all remaining government owned shares, however, KT&G has been transformed into a fully private company free from the coverage of the Privatization Act, and subject only to the Commercial Act as is the case with other private entities.

As such, KT&G, a fully private company both from legal and practical viewpoint, conducts procurement solely on the basis of commercial considerations. It is, therefore, reasonable to delete KT&G from the WTO GPA concession list.

2. Current Shareholder Status

Table 1 shows the composition of KT&G shareholders as of 21 November 2002. As indicated, the Government of Korea does not have a stake in KT&G anymore.

Table 1
Breakdown of Current Shareholders

(%)	Gov't	Foreign Issued Exchangeable Bond (EB)	Domestic Shareholder	Foreign Shareholder	Treasury Stock etc.*	Total
Shares	0	19,510,480	51,166,784	48,808,030	61,957,203	181,442,497
%	0.0	10.7	28.2	26.9	34.2	100.0

* This includes EBs to be open to domestic (15.2%) as well as foreign buyers (8.4%).

3. Current Legal Status

Before privatization was completed, KT&G had been subject to the Privatization Act. Since KT&G completed its privatization process, it can be excluded from further coverage of the Privatization Act pursuant to the provisions set out in Article 21 of the said Act.

Thus, KT&G is no longer subject to laws or regulations that cover government-invested enterprise. The legal rights and obligations of KT&G are now identical to those of other private companies. KT&G is now only subject to the Commercial Act as is the case with other private firms.

Thus, the Government of Korea no longer has any control over the management decisions of KT&G, including those related with procurement.

4. Management and Legal Independence

According to the Privatization Act of October 1997, the Government of Korea insured independence of KT&G in every respect, including human resource management and financial affairs, despite the fact that it still owned a substantial portion of KT&G stock. The recent sale of the remaining government-owned KT&G shares, and the resulting exclusion of KT&G from the coverage of the Privatization Act, mean that the Government of Korea no longer has any means or legal grounds to intervene in KT&G's management decisions, in particular purchasing decisions.

Thus, KT&G is now an entirely private company from a legal and a practical viewpoint, and is therefore entitled to base its procurement practices on commercial considerations. Having taken all these considerations into account, Korea would like to delete KT&G from Annex 3 of Appendix I of the GPA.

ATTACHMENT B

DAEHAN PRINTING AND PUBLISHING CO. LTD.

1. Introduction

As part of its plan to privatize state enterprises, the Government of Korea sought to convert National Textbook Ltd. from a government-invested enterprise to a private company. The Government of Korea and Korea Development Bank began selling their shares, 40% and 46.5% respectively, from 10 December 1998 and 26 December 1998. When the sale of government shares was completed, however, National Textbook Ltd. was bought up by Daehan Printing and Publishing Co. Ltd. (Daehan, henceforth). Consequently, National Textbook Ltd. as a legal entity was extinguished.

Daehan was established as a private company in 1948. The Government of Korea has ensured the independence of Daehan in every respect, including human resource management and financial affairs. As such, Daehan is an entirely private company both from a legal and practical viewpoint, in that its procurement is based entirely on commercial considerations. Therefore, Korea wishes to delete Daehan from the WTO GPA concession list.

2. Current Shareholder Status

Table 1 shows the composition of Daehan shareholders as of December 2002. As indicated, the Korean Government or government-owned institutions no longer have a stake in Daehan. Daehan is owned completely by private shareholders.

Table 1
Breakdown of Current Shareholders (%)

Government and Public Agencies	Securities firms	Other Domestic Shareholders	Foreign Shares	Total
0.0	0.0	100.0	0.0	100.0

3. Current Legal Status

The status of Daehan as an entirely private company signifies it is not subject to any law or regulation that covers government-invested enterprise and state enterprises. The legal rights and obligations of Daehan are identical to those of other private companies in every respect. Daehan is only subject to the Commercial Act as is the case with other private firms. Thus, the Korean Government has no means of control over Daehan management decisions.

ATTACHMENT C

KOREA

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 450,000 SDR

List of Entities:

- Korea Development Bank
- Industrial Bank of Korea
- Kookmin Bank
- Korea Minting and Security Printing Corporation
- Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
- Korea Coal Corporation
- Korea Resources Corporation
- Korea National Oil Corporation
- Korea General Chemical Corporation
- Korea Trade-Investment Promotion Agency
- Korea Highway Corporation
- Korea National Housing Corporation
- Korea Water Resources Corporation
- Korea Land Corporation
- Korea Agriculture and Rural Infrastructure Corporation
- Agricultural and Fishery Marketing Corporation
- ³ - Korea National Tourism Organization
- Korea Labor Welfare Corporation
- Korea Gas Corporation

Deleted: - Housing and Commercial Bank (H&CB)¶
- Korea Tobacco & Ginseng Corporation¶

Deleted: - Korea Telecom (except purchases of common telecommunications commodity products and telecommunications network equipment)

Deleted: ¶

Deleted: - Daehan Printing and Publishing Co. Ltd.¶

Construction Services

Threshold: 15,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 3

³ Notified in GPA/W/207, dated 11 September 2002.

Deleted: 14 September 2001 (WT/Let/401)

1. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
2. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Government Invested Enterprise Management Law and Accounting Regulations on Government Invested Enterprise.
3. This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.

Deleted: 14 September 2001
(WT/Let/401)

ATTACHMENT D

KOREA

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 450,000 SDR

List of Entities:

- Korea Development Bank
- Industrial Bank of Korea
- Kookmin Bank
- Korea Minting and Security Printing Corporation
- Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
- Korea Coal Corporation
- Korea Resources Corporation
- Korea National Oil Corporation
- Korea General Chemical Corporation
- Korea Trade-Investment Promotion Agency
- Korea Highway Corporation
- Korea National Housing Corporation
- Korea Water Resources Corporation
- Korea Land Corporation
- Korea Agriculture and Rural Infrastructure Corporation
- Agricultural and Fishery Marketing Corporation
- Korea Telecom (except purchases of common telecommunications commodity products and telecommunications network equipment)
- Korea National Tourism Organization
- Korea Labor Welfare Corporation
- Korea Gas Corporation

Construction Services

Threshold: 15,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

... 2001 (WT/Let/...)

Notes to Annex 3

1. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
2. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Government Invested Enterprise Management Law and Accounting Regulations on Government Invested Enterprise.
3. This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/236
13 January 2003

(03-0151)

Committee on Government Procurement

Original: English

SWITZERLAND'S NOTIFICATION UNDER ARTICLE XXIV:6(a) (GPA/W/225)

Communication from Hong Kong, China

The following communication, dated 10 January 2003, has been received from the Hong Kong Economic and Trade Office with the request that it be circulated to the Committee on Government Procurement.

On 12 December 2002, Switzerland notified certain proposed modifications to its Appendix I to the Agreement on Government Procurement (GPA) in GPA/W/225. The proposed modifications include the addition of a new point 3 in Annex 2 to Appendix I and a new point under paragraph 1 of the General Notes in Appendix I.

Hong Kong, China is concerned that the proposed modifications are not of a purely formal or minor nature as referred to in Article XXIV:6(a) of the GPA.

Hong Kong, China has reservations on proposed modifications that have discriminatory effect having regard to Article XXIV:7(c) of the GPA. Hong Kong, China will respond positively to requests for consultations with any party concerned with a view to resolving this matter satisfactorily.

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02-6866	D	GPA/W/227 Catalogue record		Committee on Government Procurement - Modification to Appendix I of Iceland - Notification from Iceland under Article XXIV:6(a) of the GPA Preview (HTML)	12/12/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E	F	S
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02-6868	D	GPA/W/228 Catalogue record		Committee on Government Procurement - Modification to Appendix I of Norway - Notification from Norway under Article XXIV:6(a) of the GPA Preview (HTML)	12/12/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E	F	S
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02-6433	U	GPA/W/224 Catalogue record		Committee on Government Procurement - Improvement of Accession Procedures - Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu Preview (HTML)	20/11/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E	F	S
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02-4897	U	GPA/W/208 Catalogue record		Committee on Government Procurement - Proposed Modifications to Annex 2 of Appendix I of the Agreement on Government Procurement - Notification from the United States Preview (HTML)	16/09/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E	F	S
						<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	13 p. 77KB	13 p. 70KB	13 p. 85KB
02-4822	D	GPA/W/203 Catalogue record		Committee on Government Procurement - Proposed Modifications to Canada's Annex 1 of Appendix I - Notification from Canada under Article XXIV:6(a) Preview (HTML)	12/09/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E	F	S
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02-4633	U	GPA/W/204 Catalogue record		Committee on Government Procurement - Questions to Japan Relating to Japan Railway Companies - Communication from the United States Preview (HTML)	30/08/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E	F	S
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02-4536	U	GPA/W/201 Catalogue record		Committee on Government Procurement - Accession of the Kyrgyz Republic to the Agreement on Government Procurement	22/08/2002	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E	F	S
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02-4537	U	GPA/W/202 Catalogue record		Committee on Government Procurement - Accession of Estonia to the Agreement on Government Procurement - Questions from the United States Regarding Estonia's[...]. Questions in GPA/W/190/Rev.1 Preview (HTML)	22/08/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-4295	U	GPA/W/168/Add.6 Catalogue record		Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2002 - 2003 - United States - Addendum Preview (HTML)	05/08/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-3885	D	GPA/W/200 Catalogue record		Committee on Government Procurement - Proposed Modification to Appendices I, II, III and IV of Singapore - Notification from Singapore under Article XXIV:6(a) Preview (HTML)	12/07/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-3299	U	GPA/W/168/Add.5 Catalogue record		Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2002/03 - European Community - Addendum Preview (HTML)	13/06/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-3188	U	GPA/W/197 Catalogue record		Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Co[...]ation from the Kyrgyz Republic Preview (HTML)	10/06/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-3139	D	GPA/W/198 Catalogue record		Committee on Government Procurement - Proposed Modification to Appendix II of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6 (a) Preview (HTML)	06/06/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-2917	D	GPA/W/196 Catalogue record		Committee on Government Procurement - Notifications from Japan under Article XXIV:6(a) Preview (HTML)	28/05/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-2640	U	GPA/W/194 Catalogue record		Committee on Government Procurement - Accession of Georgia to the Agreement on Government Procurement - Questions from the United States Regarding Georgia's[...] obtained in Document GPA/W/187 Preview (HTML)	13/05/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-2378	U	GPA/W/188 Catalogue record		Committee on Government Procurement - Request for Observer Status Preview (HTML)	25/04/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
02-1344	D	GPA/W/186 Catalogue record		Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notifications from	15/03/2002	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>

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6 10 KB	02-6866	GPA/W/227	Committee on Government Procurement - Modification to Appendix I of Iceland - Notification from Iceland under Article XXIV:6(a) of the GPA	12/12/2002	4	D	T/PLURI/GPA/W227.doc
7 11 KB	02-6868	GPA/W/228	Committee on Government Procurement - Modification to Appendix I of Norway - Notification from Norway under Article XXIV:6(a) of the GPA	12/12/2002	4	D	T/PLURI/GPA/W228.doc
8 4 KB	02-6433	GPA/W/224	Committee on Government Procurement - Improvement of Accession Procedures - Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	20/11/2002	1	U	T/PLURI/GPA/W224.doc
9 7 KB	02-5482	GPA/W/218	Committee on Government Procurement - Communication from Hong Kong, China	10/10/2002	2	D	T/PLURI/GPA/W218.doc
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11 5 KB	02-5103	GPA/W/209	Committee on Government Procurement - Accession of Albania to the Agreement on Government Procurement - Questions from	23/09/2002	1	U	T/PLURI/GPA/W209.doc

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13 63 KB	02-4822	GPA/W/203	Committee on Government Procurement - Proposed Modifications to Canada's Annex I of Appendix I - Notification from Canada under Article XXIV:6(a)	12/09/2002	31	D	T/PLURI/GPA/W203.doc
14 4 KB	02-4633	GPA/W/204	Committee on Government Procurement - Questions to Japan Relating to Japan Railway Companies - Communication from the United States	30/08/2002	1	U	T/PLURI/GPA/W204.doc
15 6 KB	02-4536	GPA/W/201	Committee on Government Procurement - Accession of the Kyrgyz Republic to the Agreement on Government Procurement - Questions from the United States Regarding the Kyrgyz Republic's Responses to the Checklist/.../urement in Document GPA/W/197	22/08/2002	2	U	T/PLURI/GPA/W201.doc
16 4 KB	02-4537	GPA/W/202	Committee on Government Procurement - Accession of Estonia to the Agreement on Government Procurement - Questions from the United States Regarding Estonia's Replies to U.S. Questions in GPA/W/190/Rev.1	22/08/2002	1	U	T/PLURI/GPA/W202.doc
17 4 KB	02-4295	GPA/W/168/Add.6	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2002 - 2003 - United States - Addendum	05/08/2002	1	U	T/PLURI/GPA/W168A6.doc
18 36 KB	02-3885	GPA/W/200	Committee on Government Procurement - Proposed Modification to Appendices I, II, III and IV of Singapore - Notification from Singapore under Article XXIV:6(a)	12/07/2002	25	D	T/PLURI/GPA/W200.doc
19 4 KB	02-3299	GPA/W/168/Add.5	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2002/03 - European Community - Addendum	13/06/2002	1	U	T/PLURI/GPA/W168A5.doc
20 57 KB	02-3188	GPA/W/197	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Communication from the Kyrgyz Republic	10/06/2002	18	U	T/PLURI/GPA/W197.doc
21 7 KB	02-3139	GPA/W/198	Committee on Government Procurement - Proposed Modification to Appendix II of Hong Kong, China - Notification from	06/06/2002	3	D	T/PLURI/GPA/W198.doc

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24 4 KB	02-2378	GPA/W/188	Committee on Government Procurement - Request for Observer Status	25/04/2002	1	U	T/PLURI/GPA/W188.doc
25 40 KB	02-1344	GPA/W/186	Committee on Government Procurement - Proposed Modifications to Appendix I of Japan - Notifications from Japan under Article XXIV:6(a)	15/03/2002	13	D	T/PLURI/GPA/W186.doc
26 5 KB	02-0873	GPA/W/184	Committee on Government Procurement - Responses to Questions from Canada Regarding the Proposed Modifications to Appendix I of the United States in Document GPA/W/153 - Communication from the United States	20/02/2002	2	U	T/PLURI/GPA/W184.doc
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28 11 KB	02-0855	GPA/W/183	Committee on Government Procurement - Response to Request from Japan in Document GPA/W/162 Regarding the Proposed Modifications to Appendix I of the United States in Document GPA/W/153 - Communication from the United States	19/02/2002	4	U	T/PLURI/GPA/W183.doc
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WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/221

23 December 2002

(02-7053)

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1. In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on Government Procurement on 24 February 1997 (GPA/1/Add.2), the following documents circulated as restricted are proposed for derestriction on 25 January 2003.

GPA/M/- series

GPA/M/16-18

GPA/W/- series

GPA/W/159

GPA/W/173

GPA/W/186

GPA/W/188

GPA/W/196

GPA/W/198

GPA/W/200

GPA/W/208

2. The lists of documents which have been previously derestricted are contained in documents GPA/24, GPA/26, GPA/31, GPA/45 and GPA/64.

COMMUNICATION FROM CANADA

Responses from Canada to Questions from Hong Kong, China (GPA/W/218)
Regarding Proposed Modifications to Canada's Annex 1
of Appendix I (GPA/W/203)

1. According to GPA/W/203, the proposed modifications arise from a restructuring of government operations, in which government organizations were renamed, combined, or their functions were moved to other organizations. We should be grateful if Canada could advise when the restructuring took place and whether it is a one-off reorganization exercise. We would also appreciate it if Canada could provide more details about such restructuring of government operations.

In 1993, an announcement was made by the government of the day of plans to restructure and reorganize many government organizations. Before the 1993 modifications had been fully realized, in 1996, the Federal Government announced a significant downsizing and restructuring. Government departments were streamlined and reduced in number. It took some years for all of the relevant legislation to be passed by Parliament and proclaimed. As a result of restructuring of government operations, government organizations were either renamed, renamed and combined, or their functions were moved to other government organizations. Some organizations were dissolved or ended (see question 2). Some subsequent minor changes that occurred in 1999 and 2000 are also included in Canada's submission. Although this reorganization was unusual in its scale and depth, it is the prerogative of the government to make such changes. Any further modifications, whether extensive or minor, will be notified as soon as possible after all the relevant internal measures have been completed.

2. We note that the following entities were either dissolved or ended:

Dissolved:

- (a) Science Council of Canada (item 21);
- (b) Canadian Sentencing Commission (item 53);
- (c) Economic Council of Canada (item 77); and
- (d) Agricultural Stabilization Board (item 89).

Ended:

- (a) Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario (item 55);
- (b) Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance (item 56);
- (c) Royal Commission on Electoral Reform and Party Financing (item 83);
- (d) Royal Commission on National Passenger Transportation (item 84);
- (e) Royal Commission on New Reproductive Technologies (item 85); and
- (f) Royal Commission on the Future of the Toronto Waterfront (item 86).

We would like to know whether there is any difference between "dissolved" and "ended", and how the functions of the original entities are being carried out after they have been dissolved or ended. We should be grateful if Canada could provide a list of the relevant entities, if any, that have taken up the procurement activities of those dissolved or ended.

Entities which are "dissolved" no longer exist. The functions of the dissolved entities and enterprises listed in the side-by-side have ceased to be performed by, or on behalf of the Federal Government. Minor residual functions, if any, were absorbed by the Department reporting to the Minister to which these entities reported. Therefore, any procurement relating to any minor residual functions is covered as part of the procurement of those departments.

Commissions of inquiry and royal commissions have "ended" once they have completed their mandate. Royal commissions, or commissions or inquiry, are appointed by the Cabinet under the terms of the Inquiries Act in order to carry out full and impartial investigations of specific national problems. The terms of reference for the commission and the powers and the names of the commissioners are officially stated by an Order-in-Council. When the investigation is complete, the findings of the commission are reported to the Cabinet and the Prime Minister for appropriate action. Therefore, the commission's mandate and activities have ended, and their functions are no longer performed.

3. *We should also be grateful for Canada's clarification on whether the proposed modifications will alter the level of the mutually agreed coverage provided in the Agreement.*

The overall coverage remains in accordance with Canada's obligations under the WTO Agreement on Government Procurement. All previously covered functions remain covered in their new location as described in the side-by-side comparison.

4. *We have the following specific observations and questions on individual entities:*

(a) *The description of the Department of Fisheries and Oceans in Attachment 2 (item 15) is different from that in Attachment 1 (item 17). Specifically, the phrase "other than the functions of the Canadian Coast Guard" is missing from the description in Attachment 1. We should also be grateful if Canada could confirm which description is correct.*

The phrase "other than the functions of the Canadian Coast Guard" seems to have been inadvertently lost from Attachment 1, Item 17 of GPA/W/203 in the English version during the transcription from one word processing format to another. Attachment 1 is amended as shown below.

(b) *We note that the application of national security considerations to the Canadian Coast Guard is not mentioned in the original description of the Department of Fisheries and Ocean, whereas similar application is specified in the original and revised descriptions of the Department of Transport (item 43). We should be grateful for Canada's clarification.*

On 28 March 1995, an order (SI/95-46) under the *Public Service Rearrangement and Transfer of Duties Act* transferred from the Department of Transport to the Department of Fisheries and Oceans the control and supervision of the Canadian Coast Guard with the exception of the Harbours and Ports Directorate and the Regional Harbours and Ports Branches, the Marine Regulatory Directorate, and the Ship Inspection Directorate and the Regional Ship Inspection Branches. The latter remained with the Department of Transport. Therefore, national security considerations are equally applicable to functions of the Canadian Coast Guard retained by the Department of Transport and those adopted by the Department of Fisheries and Oceans.

- (c) *The names of the following entities in Attachment 1 are different from those in the existing Annex 1 of Appendix I of Canada:*
- *Item 6: "Canada Employment and Immigration Commission" appears as "Employment and Immigration Commission" in the existing Annex 1 of Appendix I;*
 - *Item 44: "Treasury Board Secretariat and the Office of the Comptroller General" appears as "Treasury Board Secretariat and the Office of the Controller General" in the existing Annex 1 of Appendix I;*
 - *Item 78: "Public Service Staff Relations Office" appears as "Public Service Staff Relations Board" in the existing Annex 1 of Appendix I; and*
 - *Item 91: "Canadian Centre for Occupational Health and Safety Board" appears as "Canadian Centre for Occupational Health and Safety" in the existing Annex 1 of Appendix I.*
- (d) *Item 64 in Attachment 1 ("Officers of the Information and Privacy Commissioners of Canada") is different from item 55 in Attachment 2 ("Offices of the Information and Privacy Commissioners of Canada").*

Canada would like to thank Hong Kong, China for its detailed review of these name changes. In each of the cases identified in (c), a minor error occurred in our transcription of Canada's current English list in Annex 1. In the case identified in (d), a typographical error occurs in the English of the second column of Attachment 1. For each item listed above, the English version of Attachment 1 is modified as indicated below, and, for Item 91, Attachment 2 (the new list) is modified in English only. In French, only the second column of Attachment 1, for Item 78 is modified. No change is needed to the French version of Attachment 2 (the new list).

The following is a list of modifications to be made to Canada's Attachments 1 and 2 to its submission *in the English version* and to Attachment 1 of *the French version*. Deletions are in ~~strikeout~~ and additions in ***bold italic***. Attached is a complete new version of Attachment 2, Canada's new list of Annex 1 Entities *in English only, as no change is needed in the French version*.

MODIFICATIONS TO ATTACHMENT 1 IN ENGLISH*

Side-by-Side Comparison of Existing and New List of Canadian Entities in Annex 1 of Appendix I

ANNEX 1

Federal Government Entities

Existing List	Becomes on New List
6. Canada —Employment and Immigration Commission	Canada Employment Insurance Commission
17. Department of Fisheries and Oceans (Not including procurements respecting FSCs 36, 70 and 74)	Department of Fisheries and Oceans (For purposes of Article XXIII, the national security considerations applicable to the Department of National Defence are equally applicable to the Canadian Coast Guard <i>other than the functions of the Canadian Coast Guard</i> retained by the Department of Transport pursuant to Order under the <i>Public Service Rearrangement and Transfer of Duties Act</i> published in the Canada Gazette, Part II, as SI/95-46, namely the Harbours and Ports Directorate, the regional Harbours and Ports Branches, the Marine Regulatory Directorate, the Ship Inspection Directorate and the regional Ship Inspection Branches of the Canadian Coast Guard.)
44. Treasury Board Secretariat and the Office of the Comptroller <i>controller</i> General	Treasury Board Secretariat
64. Information and Privacy Commission	Officers <i>Offices</i> of the Information and Privacy Commissioners of Canada
78. Public Service Staff Relations Office <i>Board</i>	Public Service Staff Relations Board <i>Same</i>
91. Canadian Centre for Occupational Health and Safety Board	Same

* English only.

MODIFICATIONS TO ATTACHMENT 2 IN ENGLISH*

CANADA

(Authentic in the English and French languages)

ANNEX 1

Federal Government Entities

72. Canadian Centre for Occupational Health and Safety-~~Board~~

MODIFICATIONS À PIÈCE JOINTE 1 (FRANÇAIS)**

Accord sur les marchés publics de l'OMC: mise en parallèle des noms figurant sur la liste actuelle et sur la nouvelle liste des entités canadiennes

Entités du gouvernement fédéral (annexe 1)

Liste actuelle	Nouvelle liste
78. Commission des relations de travail dans la fonction publique	Commission des relations de travail dans la fonction publique <i>Pas de changement</i>

* English only.

** Français seulement.

ATTACHMENT 2*

WTO – AGREEMENT ON GOVERNMENT PROCUREMENT: REVISED LIST OF ENTITIES

CANADA

(Authentic in the English and French languages)

ANNEX 1

Federal Government Entities

<i>Thresholds:</i>	130,000 SDRs	-	Goods
	130,000 SDRs	-	Services covered in Annex 4
	5,000,000 SDRs	-	Construction covered in Annex 5

List of entities:

1. Department of Agriculture and Agri-Food
2. Canadian Food Inspection Agency (Not including procurements respecting FSCs 36, 70 and 74 in respect of the administration and enforcement of the *Fish Inspection Act*.)
3. Department of Canadian Heritage (Not including procurements respecting FSCs 36, 70 and 74 in respect of those functions that were formerly the responsibility of the Department of Communications.)
4. Office of the Coordinator, Status of Women
5. Parks Canada Agency
6. Department of Citizenship and Immigration
7. Immigration and Refugee Board
8. Department of the Environment
9. Department of Foreign Affairs and International Trade
10. Canadian International Development Agency (on its own account)
11. Department of Finance
12. Canadian International Trade Tribunal
13. Municipal Development and Loan Board
14. Office of the Superintendent of Financial Institutions
15. Department of Fisheries and Oceans (Not including procurements respecting FSCs 36, 70 and 74.) (For purposes of Article XXIII, the national security considerations applicable to the Department of National Defence are equally applicable to the Canadian Coast Guard other than the functions of the Canadian Coast Guard retained by the Department of Transport pursuant to Order under the *Public Service Rearrangement and Transfer of Duties Act* published in the Canada Gazette, Part II, as SI/95-46, namely the Harbours and Ports Directorate, the regional Harbours and Ports Branches, the Marine Regulatory Directorate, the Ship Inspection Directorate and the regional Ship Inspection Branches of the Canadian Coast Guard.)
16. Department of Health
17. Medical Research Council
18. Department of Human Resources Development
19. Canada Employment Insurance Commission
20. Canada Labour Relations Board
21. Department of Indian Affairs and Northern Development

* English only.

22. Department of Industry (Not including procurements respecting FSCs 36, 70 and 74 in respect of telecommunications, except in relation to (a) planning and coordination of telecommunication services for departments, boards and agencies of the Government of Canada, and (b) broadcasting, other than in relation to spectrum management and the technical aspects of broadcasting.)
23. National Research Council of Canada
24. Natural Sciences and Engineering Research Council of Canada
25. Social Sciences and Humanities Research Council
26. Department of Justice
27. Canadian Human Rights Commission
28. Statute Revision Commission
29. Supreme Court of Canada
30. Canada Customs and Revenue Agency
31. Department of Natural Resources
32. Canadian Nuclear Safety Commission
33. National Energy Board (on its own account)
34. Department of Public Works and Government Services (on its own account) (Not including procurements respecting FSCs 36, 70 and 74 in respect of the Government Telecommunications Agency.)
35. Public Service Commission
36. Department of the Solicitor General
37. Correctional Service of Canada
38. National Parole Board
39. Department of Transport (Not including procurements respecting FSCs 36, 70 and 74) (For purposes of Article XXIII, the national security considerations applicable to the Department of National Defence are equally applicable to the functions of the Canadian Coast Guard retained by the Department of Transport pursuant to Order under the *Public Service Rearrangement and Transfer of Duties Act* published in the Canada Gazette, Part II, as SI/95-46, namely the Harbours and Ports Directorate, the regional Harbours and Ports Branches, the Marine Regulatory Directorate, the Ship Inspection Directorate and the regional Ship Inspection Branches of the Canadian Coast Guard.)
40. Treasury Board Secretariat
41. Department of Veterans Affairs
42. Department of Western Economic Diversification (on its own account)
43. Atlantic Canada Opportunities Agency (on its own account)
44. Office of the Auditor General
45. Canada Economic Development for the Regions of Quebec
46. Canadian Centre for Management Development
47. Canadian Radio-television and Telecommunications Commission (on its own account)
48. Civil Aviation Tribunal
49. Commissioner for Federal Judicial Affairs
50. Registry of the Competition Tribunal
51. Copyright Board
52. Registry of the Federal Court of Canada
53. Office of the Grain Transportation Agency Administrator (on its own account)
54. Hazardous Materials Information Review Commission
55. Offices of the Information and Privacy Commissioners of Canada
56. The National Archives of Canada
57. National Farm Products Council
58. The National Library
59. Canada Transportation Agency (on its own account)
60. Northern Pipeline Agency (on its own account)
61. Patented Medicine Prices Review Board
62. Petroleum Monitoring Agency

63. Privy Council Office
64. Canadian Intergovernmental Conference Secretariat
65. Office of the Commissioner of Official Languages
66. Public Service Staff Relations Board
67. Office of the Governor General's Secretary
68. Office of the Chief Electoral Officer
69. Federal-Provincial Relations Office
70. Statistics Canada
71. Registry of the Tax Court of Canada
72. Canadian Centre for Occupational Health and Safety
73. Canadian Transportation Accident Investigation and Safety Board
74. Director of Soldier Settlement
75. Director, The Veterans' Land Act
76. Fisheries Prices Support Board
77. National Battlefields Commission
78. Royal Canadian Mounted Police
79. Royal Canadian Mounted Police External Review Committee
80. Royal Canadian Mounted Police Public Complaints Commission
81. Department of National Defence

THE FOLLOWING PRODUCTS PURCHASED BY THE DEPARTMENT OF NATIONAL DEFENCE, COAST GUARD AND THE RCMP ARE INCLUDED IN THE COVERAGE OF THIS AGREEMENT SUBJECT TO THE PROVISIONS OF ARTICLE XXIII. (NUMBERS REFER TO THE FEDERAL SUPPLY CLASSIFICATION CODE)

22. Railway Equipment
23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24. Tractors
25. Vehicular equipment components
26. Tires and tubes
29. Engine accessories
30. Mechanical power transmission equipment
32. Woodworking machinery and equipment
34. Metal working equipment
35. Service and trade equipment
36. Special industry machinery
37. Agricultural machinery and equipment
38. Construction, mining, excavating and highway maintenance equipment
39. Materials handling equipment
40. Rope, cable, chain and fittings
41. Refrigeration and air conditioning equipment
42. Fire fighting, rescue and safety equipment (except 4220 Marine Life-saving and diving equipment, 4230 Decontaminating and impregnating equipment)
43. Pumps and compressors
44. Furnace, steam plant, drying equipment and nuclear reactors
45. Plumbing, heating and sanitation equipment
46. Water purification and sewage treatment equipment
47. Pipe, tubing, hose and fittings
48. Valves
49. Maintenance and repair shop equipment
52. Measuring tools
53. Hardware and abrasives

54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials
61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, dental and veterinary equipment and supplies
66. Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components 6665: Hazard-detecting instruments and apparatus)
67. Photographic equipment
68. Chemicals and chemical products
69. Training aids and devices
70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations)
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment
74. Office machines, visible record equipment and automatic data processing equipment
75. Office supplies and devices
76. Books, maps and other publications - (except 7650 drawings and specifications)
77. Musical instruments, phonographs and home-type radios
78. Recreational and athletic equipment
79. Cleaning equipment and supplies
80. Brushes, paints, sealers and adhesives
81. Containers, packaging and packing supplies
85. Toiletries
87. Agricultural supplies
88. Live animals
91. Fuels, lubricants, oils and waxes
93. Non-metallic fabricated materials
94. Non-metallic crude materials
96. Ores, minerals and their primary products
99. Miscellaneous

Note to Annex 1

The General Notes apply to this Annex.

WORLD TRADE ORGANIZATION

GPA/W/168/Add.7
19 December 2002

(02-7012)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2002-2003

NORWAY

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2002-2003.

The information notified by Norway is reproduced below.

THRESHOLD CALCULATIONS – FOR 2002-2003

The calculation of the threshold values of the WTO Agreement in Nkr has been based on the average daily exchange rates of SDR to Nkr and EURO to Nkr over 24 months from September 1999 through August 2001.

Threshold values:

	Annex 1 Entities	Annex 2 Entities	Annex 3 Entities	Works all entities
Threshold in GPA in SDR	130,000	200,000	400,000	5,000,000
Threshold in GPA in Nkr	1,317,462	2,026,860	4,053,720	50,671,534
Threshold in EEA in EURO	200,000	200,000	400,000	5,000,000
Threshold in EEA in Nkr	1,623,560	1,623,560	3,247,120	40,589,000
Threshold in Norway in Nkr	1,300,000	1,600,000	3,200,000	40,500,000

MODIFICATIONS TO APPENDIX I OF SWITZERLAND

Notification from Switzerland under Article XXIV:6(a)¹ of the GPA

The following communication from the Permanent Mission of Switzerland was received on 6 December 2002, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning the modifications to Appendix I of the Agreement on Government Procurement (GPA), which follow on from the agreement reached between Switzerland and the European Community, Iceland and Norway. Article XXIV of the GPA contains the provisions on its entry into force and it is in conformity with paragraph 6(a) of Article XXIV that I hereby inform you of modifications to the Swiss Annex 2 and General Notes in Appendix I of the GPA.

The proposed modifications are based on the Agreement between the European Community and the Swiss Confederation on certain aspects related to public procurement and the revision of the Convention of the European Free Trade Association which both entered in force on 1 June 2002.

In this context, Switzerland has agreed to liberalize procurement of public authorities and public bodies at the level of the cities and districts with the European Community, Norway, Iceland and Liechtenstein by adding in the GPA a new point 3 in Annex 2 of Appendix I under the list of entities. Switzerland has also added a new alinea under General Note 1 as the new point 3 in Annex 2 of Appendix I will not apply to other Members.

In turn, the European Community, Norway and Iceland have agreed to delete Switzerland from their General Note 2 in Appendix I to the GPA referring to the non-application of Article XX of the GPA to Swiss suppliers and service providers in contesting the award of contracts by entities listed under their Annex 2, paragraph 2 (bodies governed by public law).

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

In accordance with our understanding with the delegation of the European Community and the Governments of Iceland and Norway, a parallel communication will be submitted by the delegations of the European Community, Iceland and Norway.

Attachment A to this document contains the proposed modifications to Annex 2 and the General Notes in red-line/strikeout form and Attachment B contains the revised Annex 2 and the General Notes after acceptance of the proposed modifications.²

² Both attachments are in the original language only.

ANNEX

**MODIFICATIONS TO SWITZERLAND'S APPENDIX I TO THE
AGREEMENT ON GOVERNMENT PROCUREMENT**

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Switzerland submits to the Committee on Government Procurement the following modification to the Swiss Annex 2 and General Notes in Appendix I of the Agreement:

1. Insert in Annex 2, under the "liste des entités", the following point after point 2:

"3. Les autorités et organismes publics du niveau des districts et des communes."
2. Insert a new alinea after the first alinea in the Swiss General Note 1 with the following content:

"en ce qui concerne les marchés passés par les entités mentionnées au chiffre 3 de l'Annexe 2 aux fournisseurs de produits et de services des États-Unis d'Amérique; d'Israël; du Japon; de la Corée; de Hong Kong, Chine; de Singapour; et d'Aruba".

ATTACHMENT A

ANNEXE 2

Entités des gouvernements sous-centraux¹ qui passent des marchés conformément aux dispositions du présent accord

Fournitures	<i>Valeur de seuil:</i> 200 000 DTS
Services (spécifiés à l'Annexe 4)	<i>Valeur de seuil:</i> 200 000 DTS
Services de construction (spécifiés à l'Annexe 5)	<i>Valeur de seuil:</i> 5 000 000 DTS

Liste des entités²

1. Les autorités publiques cantonales
2. Les organismes de droit public établis au niveau cantonal n'ayant pas un caractère commercial ou industriel
3. Les autorités et organismes publics du niveau des districts et des communes

Liste des cantons suisses:

Appenzell (Rhodes Intérieures/Extérieures)

Argovie

Bâle (Ville/Campagne)

Berne

Fribourg

Glaris

Genève

Grisons

Jura

Neuchâtel

¹ C'est-à-dire les gouvernements cantonaux selon la terminologie suisse

² Pour autant que les cantons passent des marchés de produits de défense dans le cadre d'une délégation de compétence du Département militaire fédéral: voir liste des matériels civils de la défense et de la protection civile en annexe

Deleted: 1 March 2000
(WT/Let/330)

Lucerne

Schaffhouse

Schwyz

Soleure

St Gall

Tessin

Thurgovie

Vaud

Valais

Unterwald (Nidwald/Obwald)

Uri

Zoug

Zurich

Note relative à l'Annexe 2

Le présent accord ne s'applique pas aux marchés passés par des entités mentionnées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

Deleted: 1 March 2000
(WT/Let/330)

NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS
DE L'ARTICLE III

1. La Suisse n'étendra pas le bénéfice des dispositions du présent accord:
- en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs de produits et de services du Canada;
 - ~~en ce qui concerne les marchés passés par les entités mentionnées au chiffre 3 de l'Annexe 2 aux fournisseurs de produits et de services des Etats-Unis d'Amérique; d'Israël; du Japon; de la Corée; de Hong Kong, Chine; de Singapour; et d'Aruba;~~
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 3 dans les secteurs suivants:
 - eau: aux fournisseurs de produits et de services du Canada, des Etats-Unis d'Amérique et du Singapour;
 - électricité: aux fournisseurs de produits et de services du Canada, du Japon et du Singapour;
 - aéroports: aux fournisseurs de produits et de services du Canada, de la Corée et des Etats-Unis d'Amérique;
 - ports: aux fournisseurs de produits et de services du Canada;
 - transports urbains: aux fournisseurs de produits et de services du Canada, d'Israël, du Japon, de la Corée et des Etats-Unis d'Amérique;
- tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises suisses un accès comparable et effectif aux marchés considérés;
- aux fournisseurs de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.
2. Les dispositions de l'Article XX ne sont pas applicables aux fournisseurs de produits et de services des pays suivants:
- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication de marchés par les organismes mentionnés à l'Annexe 2, chiffre 2, tant que la Suisse n'a pas constaté que ces pays ont complété la liste des entités des gouvernements sous-centraux;
 - Japon, Corée et Etats-Unis d'Amérique en ce qui concerne les recours intentés contre l'adjudication de marchés à un fournisseur de produits ou de services d'autres Parties au présent accord, lorsque ledit fournisseur est une entreprise petite ou moyenne au sens

Deleted: 1 March 2000
(WT/Let/330)

du droit suisse, tant que la Suisse n'aura pas constaté que ces pays n'appliquent plus de mesures discriminatoires pour favoriser certaines petites entreprises nationales ou certaines entreprises nationales détenues par les minorités;

- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication par des entités suisses de marchés dont la valeur est inférieure au seuil appliqué à la même catégorie de marchés par lesdites Parties.

3. Tant que la Suisse n'aura pas constaté que les Parties concernées assurent l'accès de leurs marchés aux fournisseurs suisses de produits et de services suisses, elle n'étendra pas le bénéfice des dispositions du présent accord aux fournisseurs de produits et de services des pays suivants:

- Canada, en ce qui concerne les marchés portant sur les produits relevant des n° 36, 70 et 74 de la FSC (machines industrielles spéciales; matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données); machines de bureau, matériel de bureautique et d'informatique de bureau;
- Canada, en ce qui concerne les marchés portant sur les produits relevant du n° 58 de la FSC (matériel de communications, matériel de détection des radiations et d'émission de rayonnement cohérent) et Etats-Unis d'Amérique en ce qui concerne les équipements de contrôle du trafic aérien;
- Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'Annexe 3, chiffre 2 pour les produits relevant des n° 8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); Israël, en ce qui concerne les produits relevant des n° 8501, 8536 et 902830 du SH;
- Canada et Etats-Unis d'Amérique en ce qui concerne les marchés de fournitures et de services entrant dans le cadre de marchés qui, tout en étant passés par une entité relevant du champ d'application du présent accord, ne sont pas eux-mêmes soumis à ce dernier.

4. Le présent accord n'est pas applicable aux marchés passés en vertu:

- d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage par les Etats signataires;
- de la procédure spécifique d'une organisation internationale.

5. Le présent accord n'est pas applicable aux marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire.

6. Les engagements pris par la Suisse dans le domaine des services au titre du présent accord sont limités aux engagements initiaux spécifiés dans l'offre finale suisse présentée dans le cadre de l'Accord général sur le commerce des services.

Deleted: 1 March 2000
(WT/Let/330)

ATTACHMENT B

ANNEXE 2

Entités des gouvernements sous-centraux¹ qui passent des marchés conformément aux dispositions du présent accord

Fournitures	<i>Valeur de seuil:</i> 200 000 DTS
Services (spécifiés à l'Annexe 4)	<i>Valeur de seuil:</i> 200 000 DTS
Services de construction (spécifiés à l'Annexe 5)	<i>Valeur de seuil:</i> 5 000 000 DTS

Liste des entités²

1. Les autorités publiques cantonales
2. Les organismes de droit public établis au niveau cantonal n'ayant pas un caractère commercial ou industriel
3. Les autorités et organismes publics du niveau des districts et des communes

Liste des cantons suisses:

Appenzell (Rhodes Intérieures/Extérieures)

Argovie

Bâle (Ville/Campagne)

Berne

Fribourg

Glaris

Genève

Grisons

Jura

Neuchâtel

¹ C'est-à-dire les gouvernements cantonaux selon la terminologie suisse

² Pour autant que les cantons passent des marchés de produits de défense dans le cadre d'une délégation de compétence du Département militaire fédéral: voir liste des matériels civils de la défense et de la protection civile en annexe

Lucerne

Schaffhouse

Schwyz

Soleure

St Gall

Tessin

Thurgovie

Vaud

Valais

Unterwald (Nidwald/Obwald)

Uri

Zoug

Zurich

Note relative à l'Annexe 2

Le présent accord ne s'applique pas aux marchés passés par des entités mentionnées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS
DE L'ARTICLE III

1. La Suisse n'étendra pas le bénéfice des dispositions du présent accord:
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs de produits et de services du Canada;
 - en ce qui concerne les marchés passés par les entités mentionnées au chiffre 3 de l'Annexe 2 aux fournisseurs de produits et de services des Etats-Unis d'Amérique; d'Israël; du Japon; de la Corée; de Hong Kong, Chine; de Singapour; et d'Aruba;
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 3 dans les secteurs suivants:
 - eau: aux fournisseurs de produits et de services du Canada, des Etats-Unis d'Amérique et du Singapour;
 - électricité: aux fournisseurs de produits et de services du Canada, du Japon et du Singapour;
 - aéroports: aux fournisseurs de produits et de services du Canada, de la Corée et des Etats-Unis d'Amérique;
 - ports: aux fournisseurs de produits et de services du Canada;
 - transports urbains: aux fournisseurs de produits et de services du Canada, d'Israël, du Japon, de la Corée et des Etats-Unis d'Amérique;
- tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises suisses un accès comparable et effectif aux marchés considérés;
- aux fournisseurs de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.
2. Les dispositions de l'Article XX ne sont pas applicables aux fournisseurs de produits et de services des pays suivants:
 - Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication de marchés par les organismes mentionnés à l'Annexe 2, chiffre 2, tant que la Suisse n'a pas constaté que ces pays ont complété la liste des entités des gouvernements sous-centraux;
 - Japon, Corée et Etats-Unis d'Amérique en ce qui concerne les recours intentés contre l'adjudication de marchés à un fournisseur de produits ou de services d'autres Parties au présent accord, lorsque ledit fournisseur est une entreprise petite ou moyenne au sens

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du droit suisse, tant que la Suisse n'aura pas constaté que ces pays n'appliquent plus de mesures discriminatoires pour favoriser certaines petites entreprises nationales ou certaines entreprises nationales détenues par les minorités;

- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication par des entités suisses de marchés dont la valeur est inférieure au seuil appliqué à la même catégorie de marchés par lesdites Parties.

3. Tant que la Suisse n'aura pas constaté que les Parties concernées assurent l'accès de leurs marchés aux fournisseurs suisses de produits et de services suisses, elle n'étendra pas le bénéfice des dispositions du présent accord aux fournisseurs de produits et de services des pays suivants:

- Canada, en ce qui concerne les marchés portant sur les produits relevant des n° 36, 70 et 74 de la FSC (machines industrielles spéciales; matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données); machines de bureau, matériel de bureautique et d'informatique de bureau;
- Canada, en ce qui concerne les marchés portant sur les produits relevant du n° 58 de la FSC (matériel de communications, matériel de détection des radiations et d'émission de rayonnement cohérent) et Etats-Unis d'Amérique en ce qui concerne les équipements de contrôle du trafic aérien;
- Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'Annexe 3, chiffre 2 pour les produits relevant des n° 8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); Israël, en ce qui concerne les produits relevant des n° 8501, 8536 et 902830 du SH;
- Canada et Etats-Unis d'Amérique en ce qui concerne les marchés de fournitures et de services entrant dans le cadre de marchés qui, tout en étant passés par une entité relevant du champ d'application du présent accord, ne sont pas eux-mêmes soumis à ce dernier.

4. Le présent accord n'est pas applicable aux marchés passés en vertu:

- d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage par les Etats signataires;
- de la procédure spécifique d'une organisation internationale.

5. Le présent accord n'est pas applicable aux marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire.

6. Les engagements pris par la Suisse dans le domaine des services au titre du présent accord sont limités aux engagements initiaux spécifiés dans l'offre finale suisse présentée dans le cadre de l'Accord général sur le commerce des services.

Committee on Government Procurement

Original: English/
French/
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MODIFICATION TO APPENDIX I OF THE EUROPEAN COMMUNITY

Notification from the European Community under Article XXIV:6(a)¹ of the GPA

The following communication from the Permanent Delegation of the European Commission was received on 6 December 2002, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV.6(a) of the Agreement on Government Procurement (GPA), the European Community (EC) hereby notifies a modification to its General Notes in Appendix I to the GPA. This modification implements what was agreed in the Agreement between the EC and the Swiss Confederation on certain aspects of government procurement of 21 June 1999 and will mean that Swiss suppliers and service providers will now be entitled to challenge, pursuant to Article XX of the GPA, the award of contracts by EC entities listed in Annex 2, paragraph 2 of the GPA.

In accordance with our understanding with the Government of Switzerland, a parallel communication will be submitted to the Committee by the Swiss delegation to the WTO reflecting the fact that it has agreed to provide access for the EC to procurement of public authorities and public bodies at the level of the cities and districts.

Attachment A to this document contains the proposed modifications to the General Notes in red-line/strikeout form and Attachment B contains the revised General Notes after acceptance of the proposed modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both attachments are in the original language only.

ANNEX

**MODIFICATION TO THE EUROPEAN COMMUNITY'S APPENDIX I TO THE
AGREEMENT ON GOVERNMENT PROCUREMENT**

Pursuant to Article XXIV.6(a) of the Agreement on Government Procurement, the European Community submits to the Committee on Government Procurement the following modification of a minor nature to the European Community's General Notes in Appendix I to the Agreement:

In the first indent of General Note 2, delete the word "Switzerland".

ATTACHMENT A

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III OF
APPENDIX I OF THE EC

General Notes and Derogations from the Provisions of Article III

1. The EC will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (a) (water) to the suppliers and service providers of Canada and the USA,
 - (b) (electricity) to the suppliers and service providers of Canada, and Japan,
 - (c) (airports) to the suppliers and service providers of Canada, Korea and the USA,
 - (d) (ports) to the suppliers and service providers of Canada,
 - (e) (urban transport) to the suppliers and service providers of Canada, Japan, Korea and the USA; to the suppliers and service providers of Israel, as regards bus services,until such time as the EC has accepted that the Parties concerned give comparable and effective access for EC undertakings to the relevant markets;
 - to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Israel, Japan, ~~and Korea~~, in contesting the award of contracts by entities listed under Annex 2 paragraph 2, until such time as the EC accepts that they have completed coverage of sub-central entities; Deleted: ,
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 - Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EC law, until such time as the EC accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses; Deleted: 1 March 2000 (WT/Let/330)

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NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS DE L'ARTICLE III DE
L'APPENDICE I DE LA CE

Notes générales et dérogations aux dispositions de l'article III

1. La CE n'étendra pas le bénéfice des dispositions de cet accord:

- en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs et aux prestataires de services du Canada;
- en ce qui concerne les marchés passés, à l'exception des fournitures, énumérés à l'annexe 2 aux fournisseurs et aux prestataires de services des États-Unis;
- en ce qui concerne les marchés passés par les entités énumérées à l'annexe 3 paragraphes
 - (a) (eau), aux fournisseurs et aux prestataires de services du Canada et des États-Unis,
 - (b) (électricité), aux fournisseurs et aux prestataires de services du Canada, et du Japon,
 - (c) (aéroports), aux fournisseurs et aux prestataires de services du Canada, de la Corée et des États-Unis,
 - (d) (ports), aux fournisseurs et aux prestataires de services du Canada,
 - (e) (transport urbain), aux fournisseurs et aux prestataires de services du Canada, du Japon, de la Corée et des États-Unis d'Amérique; aux producteurs et fournisseurs de service d'Israël, pour ce qui est des services de transport de voyageurs par autobus,

tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises de la CE un accès comparable et effectif aux marchés considérés;

- aux prestataires de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.

2. Les dispositions de l'article XX ne sont pas applicables aux fournisseurs et aux prestataires de services des pays suivants:

- Israël, Japon, ~~et Corée~~, en ce qui concerne les recours intentés contre l'adjudication de marchés par les entités mentionnées à l'annexe 2 paragraphe 2, tant que la CE n'a pas constaté que ces pays ont complété la liste des entités sous-centrales;

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NOTAS Y DEROGACIONES GENERALES DE LO PREVISTO EN EL ARTÍCULO III DEL
APÉNDICE I DE LA CE

Notas y derogaciones generales de lo previsto en el artículo III

1. La CE no concederá los beneficios de este Acuerdo:

- por lo que se refiere a la adjudicación de los contratos por las entidades enumeradas en el anexo 2 a los proveedores y a los prestadores de servicios de Canadá;
- por lo que se refiere a la adjudicación de los contratos, con excepción de contratos de suministros, enumerados en el anexo 2 a los proveedores y a los prestadores de servicios de los EE.UU.;
- por lo que se refiere a la adjudicación de los contratos por entidades enumeradas en el anexo 3 párrafos
 - (a) (agua), a los proveedores y a los prestadores de servicios de Canadá y de los EE.UU.,
 - (b) (electricidad), a los proveedores y a los prestadores de servicios de Canadá y Japón,
 - (c) (aeropuertos), a los proveedores y a los prestadores de servicios de Canadá, Corea y los EE.UU.,
 - (d) (puertos), a los proveedores y a los prestadores de servicios de Canadá,
 - (e) (transporte urbano), a los proveedores y a los prestadores de servicios de Canadá, Japón, Corea y los EE.UU.; a los proveedores en general y a los proveedores de servicios de Israel, respecto de los servicios de autobús,

hasta que la CE haya aceptado que las partes afectadas garantizan un acceso comparable y efectivo de empresas de la Comunidad a los mercados pertinentes;

- a los prestadores de servicios de las Partes que no incluyen los contratos de servicio adjudicados por las entidades enumeradas en anexos 1 a 3 y la categoría pertinente de servicio conforme a los anexos 4 y 5 en su propia cobertura.

2. Lo previsto en el artículo XX no se aplicará a los proveedores y a los prestadores de servicios de los siguiente países:

- Israel, Japón, ~~y Corea~~ por lo que se refiere a la impugnación de la adjudicación de contratos por las entidades enumeradas en el anexo 2 párrafo 2º, hasta que la CE acepte que estos países han completado su cobertura de entidades subcentrales;
- Japón, Corea y los EE.UU. por lo que se refiere a la impugnación de la adjudicación de los contratos a un proveedor o a un prestador de servicios de las otras Partes, que sean empresas pequeñas o medianas conforme a las disposiciones pertinentes del

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ATTACHMENT B

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III OF
APPENDIX I OF THE EC

General Notes and Derogations from the Provisions of Article III

1. The EC will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (a) (water) to the suppliers and service providers of Canada and the USA,
 - (b) (electricity) to the suppliers and service providers of Canada, and Japan,
 - (c) (airports) to the suppliers and service providers of Canada, Korea and the USA,
 - (d) (ports) to the suppliers and service providers of Canada,
 - (e) (urban transport) to the suppliers and service providers of Canada, Japan, Korea and the USA; to the suppliers and service providers of Israel, as regards bus services,until such time as the EC has accepted that the Parties concerned give comparable and effective access for EC undertakings to the relevant markets;
 - to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Israel, Japan and Korea in contesting the award of contracts by entities listed under Annex 2 paragraph 2, until such time as the EC accepts that they have completed coverage of sub-central entities;
 - Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EC law, until such time as the EC accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;

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NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS DE L'ARTICLE III DE
L'APPENDICE I DE LA CE

Notes générales et dérogations aux dispositions de l'article III

1. La CE n'étendra pas le bénéfice des dispositions de cet accord:
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs et aux prestataires de services du Canada;
 - en ce qui concerne les marchés passés, à l'exception des fournitures, énumérés à l'annexe 2 aux fournisseurs et aux prestataires de services des États-Unis;
 - en ce qui concerne les marchés passés par les entités énumérées à l'annexe 3 paragraphes
 - (a) (eau), aux fournisseurs et aux prestataires de services du Canada et des États-Unis,
 - (b) (électricité), aux fournisseurs et aux prestataires de services du Canada, et du Japon,
 - (c) (aéroports), aux fournisseurs et aux prestataires de services du Canada, de la Corée et des États-Unis,
 - (d) (ports), aux fournisseurs et aux prestataires de services du Canada,
 - (e) (transport urbain), aux fournisseurs et aux prestataires de services du Canada, du Japon, de la Corée et des États-Unis d'Amérique; aux producteurs et fournisseurs de service d'Israël, pour ce qui est des services de transport de voyageurs par autobus,

tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises de la CE un accès comparable et effectif aux marchés considérés;

 - aux prestataires de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.
2. Les dispositions de l'article XX ne sont pas applicables aux fournisseurs et aux prestataires de services des pays suivants:
 - Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication de marchés par les entités mentionnées à l'annexe 2 paragraphe 2, tant que la CE n'a pas constaté que ces pays ont complété la liste des entités sous-centrales;

NOTAS Y DEROGACIONES GENERALES DE LO PREVISTO EN EL ARTÍCULO III DEL
APÉNDICE I DE LA CE
Notas y derogaciones generales de lo previsto en el artículo III

1. La CE no concederá los beneficios de este Acuerdo:
 - por lo que se refiere a la adjudicación de los contratos por las entidades enumeradas en el anexo 2 a los proveedores y a los prestadores de servicios de Canadá;
 - por lo que se refiere a la adjudicación de los contratos, con excepción de contratos de suministros, enumerados en el anexo 2 a los proveedores y a los prestadores de servicios de los EE.UU.;
 - por lo que se refiere a la adjudicación de los contratos por entidades enumeradas en el anexo 3 párrafos
 - (a) (agua), a los proveedores y a los prestadores de servicios de Canadá y de los EE.UU.,
 - (b) (electricidad), a los proveedores y a los prestadores de servicios de Canadá y Japón,
 - (c) (aeropuertos), a los proveedores y a los prestadores de servicios de Canadá, Corea y los EE.UU.,
 - (d) (puertos), a los proveedores y a los prestadores de servicios de Canadá,
 - (e) (transporte urbano), a los proveedores y a los prestadores de servicios de Canadá, Japón, Corea y los EE.UU.; a los proveedores en general y a los proveedores de servicios de Israel, respecto de los servicios de autobús,hasta que la CE haya aceptado que las partes afectadas garantizan un acceso comparable y efectivo de empresas de la Comunidad a los mercados pertinentes;
 - a los prestadores de servicios de las Partes que no incluyen los contratos de servicio adjudicados por las entidades enumeradas en anexos 1 a 3 y la categoría pertinente de servicio conforme a los anexos 4 y 5 en su propia cobertura.
2. Lo previsto en el artículo XX no se aplicará a los proveedores y a los prestadores de servicios de los siguiente países:
 - Israel, Japón y Corea por lo que se refiere a la impugnación de la adjudicación de contratos por las entidades enumeradas en el anexo 2 párrafo 2º, hasta que la CE acepte que estos países han completado su cobertura de entidades subcentrales;
 - Japón, Corea y los EE.UU. por lo que se refiere a la impugnación de la adjudicación de los contratos a un proveedor o a un prestador de servicios de las otras Partes, que sean empresas pequeñas o medianas conforme a las disposiciones pertinentes del

APPENDIX I	EUROPEAN COMMUNITY	GENERAL NOTES	<i>Spanish</i>	Page 1/3
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MODIFICATION TO APPENDIX I OF ICELAND

Notification from Iceland under Article XXIV:6(a)¹ of the GPA

The following communication from the Permanent Mission of Iceland was received on 6 December 2002, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV.6(a) of the Agreement on Government Procurement (GPA), Iceland hereby notifies a modification to its General Notes in Appendix I to the GPA.

In accordance with our understanding with the Government of Switzerland, a parallel communication will be submitted by the Swiss delegation to the WTO.

Attachment A to this document contains the proposed modifications to the General Notes in red-line/strikeout form and Attachment B contains the revised General Notes after acceptance of the proposed modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both attachments are in the original language only.

ANNEX

**MODIFICATION TO ICELAND'S APPENDIX I TO THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Pursuant to Article XXIV.6(a) of the Agreement on Government Procurement, Iceland submits to the Committee on Government Procurement the following modification of a minor nature to Iceland's General Notes in Appendix I to the Agreement:

In the first indent of General Note 2, delete the word "Switzerland".

ATTACHMENT A

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Iceland will not extend the benefits of this Agreement:

- as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
- as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
- as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Iceland has accepted that the Parties concerned give comparable and effective access for Icelandic undertakings to the relevant markets;

- to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.

2. The provisions of Article XX shall not apply to suppliers and service providers of:

- Japan ~~and Korea~~ in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Iceland accepts that they have completed coverage of sub-central entities;
- Japan and Korea in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Iceland, until such time as Iceland accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
- Israel, Japan and Korea in contesting the award of contracts by Icelandic entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

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ATTACHMENT B

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Iceland will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Iceland has accepted that the Parties concerned give comparable and effective access for Icelandic undertakings to the relevant markets;

 - to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Japan and Korea in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Iceland accepts that they have completed coverage of sub-central entities;
 - Japan and Korea in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Iceland, until such time as Iceland accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
 - Israel, Japan and Korea in contesting the award of contracts by Icelandic entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

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MODIFICATION TO APPENDIX I OF NORWAY

Notification from Norway under Article XXIV:6(a)¹ of the GPA

The following communication from the Permanent Mission of Norway was received on 6 December 2002, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV.6(a) of the Agreement on Government Procurement (GPA), Norway hereby notifies a modification of a minor nature to its General Notes in Appendix I to the GPA.

In the context of the revision of the Convention of the European Free Trade Association, which entered into force on 1 June 2002, Switzerland has agreed to liberalize procurement of public authorities and public bodies at the level of the cities and districts with Iceland, Liechtenstein and Norway. Consequently, the reservation in Norway's General Notes in Appendix I to the GPA as regards Switzerland should be deleted.

In accordance with our understanding with the Government of Switzerland, a parallel communication will be submitted by the Swiss delegation to the WTO.

Attachment A to this document contains the proposed modifications to the General Notes in red-line/strikeout form and Attachment B contains the revised General Notes after acceptance of the proposed modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both attachments are in the original language only.

ANNEX

**MODIFICATION TO NORWAY'S APPENDIX I TO THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Pursuant to Article XXIV.6(a) of the Agreement on Government Procurement, Norway submits to the Committee on Government Procurement the following modification of a minor nature to Norway's General Notes in Appendix I to the Agreement:

In the first indent of General Note 2, delete the word "Switzerland".

ATTACHMENT A

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Norway will not extend the benefits of this Agreement:
- as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Norway has accepted that the Parties concerned give comparable and effective access for Norwegian undertakings to the relevant markets;

- to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:

- Israel, Japan, ~~and Korea~~, in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Norway accepts that they have completed coverage of sub-central entities;
- Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Norway, until such time as Norway accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
- Israel, Japan and Korea in contesting the award of contracts by Norwegian entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

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Deleted: and Switzerland

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ATTACHMENT B

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Norway will not extend the benefits of this Agreement:
- as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Norway has accepted that the Parties concerned give comparable and effective access for Norwegian undertakings to the relevant markets;

- to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
- Israel, Japan and Korea in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Norway accepts that they have completed coverage of sub-central entities;
 - Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Norway, until such time as Norway accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
 - Israel, Japan and Korea in contesting the award of contracts by Norwegian entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

Deleted: 1 March 2000
(WT/Let/330)

IMPROVEMENT OF ACCESSION PROCEDURES

Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 13 November 2002, has been received from the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu with the request that it be circulated to the Committee on Government Procurement.

-
1. GPA Parties shall treat the offers provided by acceding countries fairly and reasonably. Where an acceding country prepares its offer as that of any GPA Party, the GPA Parties shall not take advantage of the consultation procedures to object the offer or block the accession procedures.
 2. A GPA Party shall not request any acceding countries to make offers which exceed those of most of the existing GPA Parties.
 3. There shall be a time-limit for interested GPA Parties to follow with respect to submission of their written requests to an offer provided by an acceding country. The written requests should clearly indicate which part of the offer is requested to be improved. After the time-limit, any Party not having done so shall be deemed as waiver of its rights. Moreover, it shall not be permitted by merely indicating in the request that more time is needed for study in case of a lapse of a reasonable period of time.
 4. There shall be a time-limit for interested GPA Parties to follow with respect to conclusion of bilateral consultations. After the time-limit, pending issues of bilateral consultations shall be taken over by plurilateral consultations. GPA Parties shall not take advantage of the plurilateral consultations to raise new issues.
 5. Any pending issues that cannot be resolved during bilateral and plurilateral consultations shall be set aside for further consultations, provided that the issues are related to a specific Party only. The acceding country's offer may be adopted by setting such pending issues aside.
 6. Review of procurement regime and negotiation of appendices may be proceeded simultaneously.
 7. Bilateral consultations may be held either in Geneva or capitals of requesting Parties and acceding countries.
-

COMMUNICATION FROM HONG KONG, CHINA

The following communication, dated 7 October 2002, has been received from the Hong Kong Economic and Trade Office with the request that it be circulated to the Committee on Government Procurement.

With reference to the proposed modifications to Annex 1 of Appendix I by Canada as circulated in GPA/W/203 on 12 September 2002, Hong Kong, China would like to seek the following clarification and information.

1. According to GPA/W/203, the proposed modifications arise from a restructuring of government operations, in which government organizations were renamed, combined, or their functions were moved to other organizations. We should be grateful if Canada could advise when the restructuring took place and whether it is a one-off reorganization exercise. We would also appreciate it if Canada could provide more details about such restructuring of government operations.
2. We note that the following entities were either dissolved or ended:

Dissolved:

- (a) Science Council of Canada (item 21);
- (b) Canadian Sentencing Commission (item 53);
- (c) Economic Council of Canada (item 77); and
- (d) Agricultural Stabilization Board (item 89).

Ended:

- (a) Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario (item 55);
- (b) Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance (item 56);
- (c) Royal Commission on Electoral Reform and Party Financing (item 83);
- (d) Royal Commission on National Passenger Transportation (item 84);
- (e) Royal Commission on New Reproductive Technologies (item 85); and
- (f) Royal Commission on the Future of the Toronto Waterfront (item 86).

We would like to know whether there is any difference between "dissolved" and "ended", and how the functions of the original entities are being carried out after they have been dissolved or ended. We should be grateful if Canada could provide a list of the relevant entities, if any, that have taken up the procurement activities of those dissolved or ended.

3. We should also be grateful for Canada's clarification on whether the proposed modifications will alter the level of the mutually agreed coverage provided in the Agreement.

4. We have the following specific observations and questions on individual entities:

(a) The description of the Department of Fisheries and Oceans in Attachment 2 (item 15) is different from that in Attachment 1 (item 17). Specifically, the phrase "other than the functions of the Canadian Coast Guard" is missing from the description in Attachment 1. We should also be grateful if Canada could confirm which description is correct.

(b) We note that the application of national security considerations to the Canadian Coast Guard is not mentioned in the original description of the Department of Fisheries and Ocean, whereas similar application is specified in the original and revised descriptions of the Department of Transport (item 43). We should be grateful for Canada's clarification.

(c) The names of the following entities in Attachment 1 are different from those in the existing Annex 1 of Appendix I of Canada:

- Item 6: "Canada Employment and Immigration Commission" appears as "Employment and Immigration Commission" in the existing Annex 1 of Appendix I;
- Item 44: "Treasury Board Secretariat and the Office of the Comptroller General" appears as "Treasury Board Secretariat and the Office of the Controller General" in the existing Annex 1 of Appendix I;
- Item 78: "Public Service Staff Relations Office" appears as "Public Service Staff Relations Board" in the existing Annex 1 of Appendix I; and
- Item 91: "Canadian Centre for Occupational Health and Safety Board" appears as "Canadian Centre for Occupational Health and Safety" in the existing Annex 1 of Appendix I.

(d) Item 64 in Attachment 1 ("Officers of the Information and Privacy Commissioners of Canada") is different from item 55 in Attachment 2 ("Offices of the Information and Privacy Commissioners of Canada").

We should be most grateful if Canada could provide clarification and information as requested above to facilitate the consideration of the proposed modifications by other Parties.

ACCESSION OF ESTONIA TO THE AGREEMENT ON GOVERNMENT PROCUREMENT

Replies from Estonia to Questions from the United States in GPA/W/202 Regarding Estonia's Replies to US Questions in GPA/W/190/Rev.1

1. *The United States appreciates that Estonia has listed the "public authorities under supervision and control of the ministries" in Section 9 of its Annex 1. Could Estonia provide a list that indicates which ministry listed in Section 8 of its Annex 1 has responsibility for each of the public authorities?*

Ministries and state offices:

- **Ministry of Education**
- The Language Inspectorate
- **Ministry of Justice**
- Prosecutor's Office
- **Ministry of Defence**
- The Information Board
- **Ministry of Environment**
- Land Board
- Environmental Inspectorate
- Centre of Forest Protection and Silviculture
- **Ministry of Culture**
- The Heritage Conservation Inspectorate
- **Ministry of Economic Affairs**
- Patent Office
- The Technical Inspectorate
- The Energy Market Inspectorate
- The Consumer Protection Board
- Public Procurement Office
- Estonian Patent Library
- **Ministry of Agriculture**
- The Plant Production Inspectorate
- Animal Breeding Inspectorate
- Agricultural Registers and Information Board
- The Veterinary and Food Board
- **Ministry of Finance**
- The Competition Board
- Tax Board
- Statistical Office
- Customs Board
- Insurance Supervisory Authority
- Securities Inspectorate

- Assay Office
- **Ministry of Internal Affairs**
- Citizenship and Migration Board
- The Border Guard Administration
- The Police Board
- Centre of Forensic Science and Criminalistic
- Central Criminal Police
- The Rescue Board
- The Data Protection Inspectorate
- **Ministry of Social Affairs**
- Agency of Medicines
- Social Insurance Board
- Labour Market Board
- Health Care Board
- Health Protection Inspectorate
- Labour Inspectorate
- **Ministry of Transport and Communications**
- Civil Aviation Administration
- Road Administration
- Communications Board
- Maritime Administration
- Estonian Railway Administration
- **Ministry of Foreign Affairs**

2. *In its response in GPA/W/190/Rev.1 to US Question 4 regarding modifications of coverage, Estonia states that "if the majority of shares of the entities mentioned are privatized or transferred to another entity, this entity will no longer be subject to GPA".*

- (a) *Please explain how Estonia's plans to remove entities from GPA coverage will be consistent with the standard in GPA Article XXIV:6(b) for withdrawal of entities "on the grounds that government control or influence over it has been effectively eliminated"?*

In case Estonia wishes to exercise its right to withdraw an entity from the Annexes on the grounds that government control or influence over it has been effectively eliminated, the procedure stipulated by Article XXIV:6(b) of the GPA will be followed.

- (b) *If a majority of shares of an entity are transferred to an entity that is covered by the GPA, will the transferred entity's procurement continue to be covered by the GPA?*

If the majority of shares of an entity are transferred to an entity that is covered by the GPA, the transferred entity's procurement continues to be covered by the GPA.

**ACCESSION OF ALBANIA TO THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Questions from the United States to Albania Regarding Albania's Responses
in GPA/W/170/Rev.1 to Earlier Questions from the United States

The United States appreciates the thorough nature of Albania's responses to questions from the United States regarding the Checklist of Issues (GPA/W/170/Rev.1). The United States also thanks Albania for providing copies of its public procurement laws and regulations (GPA/65 and GPA/65/Add.1). Having reviewed Albania's most recent submissions, the United States would like to raise several follow-up questions:

1. With regard to permanent lists of suppliers, Albania states in its response to Question 6 in GPA/W/170/Rev.1 that: "The permanent list that the procurement entities use for the procurement procedures contains the names of successful candidates in the procedures that the procurement entity had done. The procurement entity must accept offers from those candidates who want to participate in a procurement procedure, giving to all participants equal possibilities in the competition procedures." Does the reference to giving equal possibilities apply only to suppliers already on the permanent list, or to any supplier that wishes to participate in a procurement?
2. Please describe how Albania plans to implement GPA Article IX:9, which requires the annual publication of a notice with information on permanent lists?
3. Albania indicated in its response to Question 21 of the Checklist of Issues that its procurement regulations specify that the period for tendering in the case of "open tendering" is no less than 20 days. Please explain how Albania intends to comply with GPA Article XI:2(a), which requires that the period for receipt of tenders in open procedures must be no less than 40 days from the date of publication of the invitation to participate in an intended procurement?
4. Albania states in its response to Question 8 in GPA/W/170/Rev.1 that: "The supplier must send its complaint...within five days after the announcement of the final classification of the bidders." Please explain how Albania intends to comply with the requirement in GPA Article XX:5 that a period of not less than "10 days" must be provided for the filing of bid challenges.

**PROPOSED MODIFICATIONS TO ANNEX 2 OF APPENDIX I OF
THE AGREEMENT ON GOVERNMENT PROCUREMENT**

Notification from the United States under Article XXIV:6(a)¹ of the GPA

The following notification from the Permanent Mission of the United States was received on 9 September 2002, with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV:6(a) of the Agreement on Government Procurement (GPA), the United States proposes the following modifications to Annex 2 of Appendix I of the GPA:

- Delete the General Services Commission as an entity listed under the State of Texas and insert in its place the Texas Building and Procurement Commission.

The reason for these modifications is that, on 26 February 2002, pursuant to Section 1.18 of S.B. 311 (77th Leg. Reg. Session) and Chapter 2152 of the Texas Government Code, the Texas Building and Procurement Commission was established and assumed all of the rights, duties and powers of the General Services Commission, which was abolished as of that date. As the Texas Building and Procurement Commission assumed the procurement responsibilities of the General Services Commission, U.S. coverage with respect to the State of Texas under Annex 2 will remain the same.

Attachment A to this document contains the proposed modifications to Annex 2 in red-line/strikeout form and Attachment B contains the revised Annex 2 after proposed modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both attachments are in English only.

ATTACHMENT A

UNITED STATES

(Authentic in the English language only)

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 355,000 SDRs for supplies and services
5 million SDRs for construction

List of Entities:

Arizona

Executive branch agencies

Arkansas

Executive branch agencies, including universities but excluding the Office of Fish and Game and construction services

California

Executive branch agencies

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services
Connecticut Department of Transportation
Connecticut Department of Public Works
Constituent Units of Higher Education

Delaware*

Administrative Services (Central Procurement Agency)
State Universities
State Colleges

Florida*

Executive branch agencies

Deleted: 1 March 2000
(WT/Let/330)

Hawaii

Department of Accounting and General Services (with the exception of procurements of software developed in the state and construction)

Idaho

Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Illinois*

Department of Central Management Services

Iowa*

Department of General Services
Department of Transportation
Board of Regents' Institutions (universities)

Kansas

Executive branch agencies, excluding construction services, automobiles and aircraft

Kentucky

Division of Purchases, Finance and Administration Cabinet, excluding construction projects

Louisiana

Executive branch agencies

Maine*

Department of Administrative and Financial Services
Bureau of General Services (covering state government agencies and school construction)
Maine Department of Transportation

Maryland*

Office of the Treasury
Department of the Environment
Department of General Services
Department of Housing and Community Development
Department of Human Resources
Department of Licensing and Regulation
Department of Natural Resources
Department of Public Safety and Correctional Services
Department of Personnel
Department of Transportation

Deleted: 1 March 2000
(WT/Let/330)

Massachusetts

Executive Office for Administration and Finance
Executive Office of Communities and Development
Executive Office of Consumer Affairs
Executive Office of Economic Affairs
Executive Office of Education
Executive Office of Elder Affairs
Executive Office of Environmental Affairs
Executive Office of Health and Human Service
Executive Office of Labor
Executive Office of Public Safety
Executive Office of Transportation and Construction

Michigan*

Department of Management and Budget

Minnesota

Executive branch agencies

Mississippi

Department of Finance and Administration (does not include services)

Missouri

Office of Administration
Division of Purchasing and Materials Management

Montana

Executive branch agencies (only for services and construction)

New York*

State agencies
State university system
Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates

In addition to the exceptions noted at the end of this annex, transit cars, buses and related equipment are not covered.

Nebraska

Central Procurement Agency

New Hampshire*

Central Procurement Agency

Deleted: 1 March 2000
(WT/Let/330)

Oklahoma*

Office of Public Affairs and all state agencies and departments subject to the Oklahoma Central Purchasing Act, excluding construction services.

Oregon

Department of Administrative Services

Pennsylvania*

Executive branch agencies, including:

Governor's Office
Department of the Auditor General
Treasury Department
Department of Agriculture
Department of Banking
Pennsylvania Securities Commission
Department of Health
Department of Transportation
Insurance Department
Department of Aging
Department of Correction
Department of Labor and Industry
Department of Military Affairs
Office of Attorney General
Department of General Services
Department of Education
Public Utility Commission
Department of Revenue
Department of State
Pennsylvania State Police
Department of Public Welfare
Fish Commission
Game Commission
Department of Commerce
Board of Probation and Parole
Liquor Control Board
Milk Marketing Board
Lieutenant Governor's Office
Department of Community Affairs
Pennsylvania Historical and Museum Commission
Pennsylvania Emergency Management Agency
State Civil Service Commission
Pennsylvania Public Television Network
Department of Environmental Resources
State Tax Equalization Board
Department of Public Welfare
State Employees' Retirement System
Pennsylvania Municipal Retirement Board

Deleted: 1 March 2000
(WT/Let/330)

Public School Employees' Retirement System
Pennsylvania Crime Commission
Executive Offices

Rhode Island

Executive branch agencies, excluding boats, automobiles, buses and related equipment

South Dakota

Central Procuring Agency (including universities and penal institutions)

In addition to the exceptions noted at the end of this annex, procurements of beef are not covered.

Tennessee

Executive branch agencies (excluding services and construction)

Texas

Texas Building and Procurement Commission

Deleted: General Services
Commission

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:

General Administration
Department of Transportation
State Universities

In addition to the exceptions noted at the end of this annex, procurements of fuel, paper products, boats, ships and vessels are not covered.

Wisconsin

Executive branch agencies, including

Department of Administration
State Correctional Institutions
Department of Development
Educational Communications Board
Department of Employment Relations
State Historical Society
Department of Health and Social Services

Deleted: 1 March 2000
(WT/Let/330)

Insurance Commissioner
Department of Justice
Lottery Board
Department of Natural Resources
Administration for Public Instruction
Racing Board
Department of Revenue
State Fair Park Board
Department of Transportation
State University System

Wyoming*

Procurement Services Division
Wyoming Department of Transportation
University of Wyoming

Notes to Annex 2

In addition to the conditions specified in the General Notes, the following conditions apply:

1. For those states marked by an asterisk with pre-existing restrictions, the Agreement does not apply to procurement of construction-grade steel (including requirements on subcontracts), motor vehicles and coal.
2. The Agreement shall not apply to preferences or restrictions associated with programs promoting the development of distressed areas and businesses owned by minorities, disabled veterans and women.
3. Nothing in this annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. The Agreement shall not apply to any procurement made by a covered entity on behalf of non-covered entities at a different level of government.
5. The Agreement shall not apply to restrictions attached to Federal funds for mass transit and highway projects.

[NOTE: The remainder of Annex 2 remains unchanged by the proposed modifications.]

Deleted: 1 March 2000
(WT/Let/330)

ATTACHMENT B

UNITED STATES

(Authentic in the English language only)

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 355,000 SDRs for supplies and services
5 million SDRs for construction

List of Entities:

Arizona

Executive branch agencies

Arkansas

Executive branch agencies, including universities but excluding the Office of Fish and Game and construction services

California

Executive branch agencies

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services
Connecticut Department of Transportation
Connecticut Department of Public Works
Constituent Units of Higher Education

Delaware*

Administrative Services (Central Procurement Agency)
State Universities
State Colleges

Florida*

Executive branch agencies

Hawaii

Department of Accounting and General Services (with the exception of procurements of software developed in the state and construction)

Idaho

Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Illinois*

Department of Central Management Services

Iowa*

Department of General Services
Department of Transportation
Board of Regents' Institutions (universities)

Kansas

Executive branch agencies, excluding construction services, automobiles and aircraft

Kentucky

Division of Purchases, Finance and Administration Cabinet, excluding construction projects

Louisiana

Executive branch agencies

Maine*

Department of Administrative and Financial Services
Bureau of General Services (covering state government agencies
and school construction)
Maine Department of Transportation

Maryland*

Office of the Treasury
Department of the Environment
Department of General Services
Department of Housing and Community Development
Department of Human Resources
Department of Licensing and Regulation
Department of Natural Resources
Department of Public Safety and Correctional Services
Department of Personnel
Department of Transportation

Massachusetts

Executive Office for Administration and Finance
Executive Office of Communities and Development
Executive Office of Consumer Affairs
Executive Office of Economic Affairs
Executive Office of Education
Executive Office of Elder Affairs
Executive Office of Environmental Affairs
Executive Office of Health and Human Service
Executive Office of Labor
Executive Office of Public Safety
Executive Office of Transportation and Construction

Michigan*

Department of Management and Budget

Minnesota

Executive branch agencies

Mississippi

Department of Finance and Administration (does not include services)

Missouri

Office of Administration
Division of Purchasing and Materials Management

Montana

Executive branch agencies (only for services and construction)

New York*

State agencies
State university system
Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates

In addition to the exceptions noted at the end of this annex, transit cars, buses and related equipment are not covered.

Nebraska

Central Procurement Agency

New Hampshire*

Central Procurement Agency

Oklahoma*

Office of Public Affairs and all state agencies and departments subject to the Oklahoma Central Purchasing Act, excluding construction services.

Oregon

Department of Administrative Services

Pennsylvania*

Executive branch agencies, including:

Governor's Office
Department of the Auditor General
Treasury Department
Department of Agriculture
Department of Banking
Pennsylvania Securities Commission
Department of Health
Department of Transportation
Insurance Department
Department of Aging
Department of Correction
Department of Labor and Industry
Department of Military Affairs
Office of Attorney General
Department of General Services
Department of Education
Public Utility Commission
Department of Revenue
Department of State
Pennsylvania State Police
Department of Public Welfare
Fish Commission
Game Commission
Department of Commerce
Board of Probation and Parole
Liquor Control Board
Milk Marketing Board
Lieutenant Governor's Office
Department of Community Affairs
Pennsylvania Historical and Museum Commission
Pennsylvania Emergency Management Agency
State Civil Service Commission
Pennsylvania Public Television Network
Department of Environmental Resources
State Tax Equalization Board
Department of Public Welfare
State Employees' Retirement System
Pennsylvania Municipal Retirement Board

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Public School Employees' Retirement System
Pennsylvania Crime Commission
Executive Offices

Rhode Island

Executive branch agencies, excluding boats, automobiles, buses and related equipment

South Dakota

Central Procuring Agency (including universities and penal institutions)

In addition to the exceptions noted at the end of this annex, procurements of beef are not covered.

Tennessee

Executive branch agencies (excluding services and construction)

Texas

Texas Building and Procurement Commission

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:

General Administration
Department of Transportation
State Universities

In addition to the exceptions noted at the end of this annex, procurements of fuel, paper products, boats, ships and vessels are not covered.

Wisconsin

Executive branch agencies, including

Department of Administration
State Correctional Institutions
Department of Development
Educational Communications Board
Department of Employment Relations
State Historical Society
Department of Health and Social Services

Insurance Commissioner
Department of Justice
Lottery Board
Department of Natural Resources
Administration for Public Instruction
Racing Board
Department of Revenue
State Fair Park Board
Department of Transportation
State University System

Wyoming*

Procurement Services Division
Wyoming Department of Transportation
University of Wyoming

Notes to Annex 2

In addition to the conditions specified in the General Notes, the following conditions apply:

1. For those states marked by an asterisk with pre-existing restrictions, the Agreement does not apply to procurement of construction-grade steel (including requirements on subcontracts), motor vehicles and coal.
2. The Agreement shall not apply to preferences or restrictions associated with programs promoting the development of distressed areas and businesses owned by minorities, disabled veterans and women.
3. Nothing in this annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. The Agreement shall not apply to any procurement made by a covered entity on behalf of non-covered entities at a different level of government.
5. The Agreement shall not apply to restrictions attached to Federal funds for mass transit and highway projects.

[NOTE: The remainder of Annex 2 remains unchanged by the proposed modifications.]

Committee on Government Procurement

Original: English/French
anglais/français

PROPOSED MODIFICATIONS TO CANADA'S ANNEX 1 OF APPENDIX I

Notification from Canada under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Canada was received on 8 August 2002 with the request that it be circulated to the Parties of the Agreement on Government Procurement.

Comité des marchés publics

**PROPOSITION DE MODIFICATIONS DE L'ANNEXE 1 DE
L'APPENDICE I CONCERNANT LE CANADA**

Notification du Canada au titre de l'article XXIV:6 a)¹

Le Secrétariat a reçu, le 8 août 2002, la notification ci-après de la Mission permanente du Canada, qui lui a demandé de la distribuer aux Parties à l'Accord sur les marchés publics.

Comité de Contratación Pública

PROPUESTA DE ENMIENDAS DEL ANEXO 1 DEL APÉNDICE I DEL CANADÁ

Notificación del Canadá de conformidad con el apartado a) del párrafo 6 del artículo XXIV¹

El 8 de agosto de 2002 se recibió la siguiente notificación de la Misión Permanente del Canadá, con la petición de que se distribuyera a las Partes en el Acuerdo sobre Contratación Pública.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

L'article XXIV:6 a) dispose ce qui suit: "S'ils sont de pure forme ou mineurs, les rectifications, transferts ou autres modifications prendront effet à la condition qu'aucune objection n'y ait été faite dans un délai de 30 jours. Dans les autres cas, le Président du Comité convoquera le Comité dans les moindres délais. Le Comité examinera la proposition et toute demande d'ajustements compensatoires, afin de préserver l'équilibre des droits et des obligations et de maintenir le champ d'application mutuellement convenu du présent accord à un niveau comparable à son niveau antérieur à la notification. S'il n'est pas possible d'arriver à un accord, la question pourra être traitée ensuite selon les dispositions de l'article XXII."

El apartado a) del párrafo 6 del artículo XXIV dispone que: "Las rectificaciones, transferencias o enmiendas de otro tipo de carácter puramente formal o menores surtirán efecto a condición de que en un plazo de 30 días no se presente objeción a ellas. De no ser así, el Presidente del Comité convocará prontamente una reunión del Comité. El Comité examinará la propuesta y las posibles demandas de arreglos compensatorios, con el fin de mantener un equilibrio de derechos y obligaciones y un nivel comparable del alcance mutuamente convenido previsto en el presente Acuerdo antes de la notificación de que se trate. En caso de que no se llegue a un acuerdo, podrá llevarse adelante la cuestión con arreglo a las disposiciones del artículo XXII."

In accordance with Article XXIV:6 of the WTO Agreement on Government Procurement (GPA), Canada proposes the following modifications to Annex 1 of Appendix I of the GPA.

Attachment 1 (Provided in English and French for convenience) is a side-by-side comparison of the existing list and the new list of covered entities under Annex 1 of the GPA for Canada. Column 1 is the existing list. Column 2 is the new list and provides an explanation of the modifications corresponding to the organization listed in Column 1. Where functions have been moved, the second column lists all organizations to which the functions were moved.

As a result of restructuring of government operations, government organizations were either renamed, renamed and combined, or their functions were moved to another government organization. Attachment 1 also reflects organizations which have been dissolved or have completed their mandate and ended. All proposed modifications are in accordance with the provisions of the GPA.

Attachment 2 (Authentic in English and French) is the revised GPA Annex 1 for Canada, Federal Government Entities.²

Conformément à l'article XXIV:6 de l'Accord sur les marchés publics (AMP) de l'OMC, le Canada propose les modifications suivantes à l'annexe 1 de l'appendice 1 de l'AMP.

La pièce jointe 1 met en parallèle les noms figurant sur la liste actuelle et sur la nouvelle liste des entités canadiennes régies par l'annexe 1 de l'AMP. La colonne 1 donne les noms de la liste actuelle alors que la colonne 2 donne ceux de la nouvelle liste avec, au besoin, une explication des modifications des fonctions par rapport à celles de l'organisme correspondant de la colonne 1. Dans les cas où les fonctions d'un organisme de la colonne 1 ont été réparties entre plusieurs organismes, la colonne 2 donne les noms de toutes les organisations assumant dorénavant ces fonctions.

À la suite de la réorganisation des activités gouvernementales, les organismes ont parfois changé de nom, été scindés ou fusionnés et leurs fonctions ont parfois été transférées à d'autres organismes gouvernementaux. La pièce jointe 1 indique aussi les organismes dont les fonctions ont cessé d'être assumées par ou au nom du gouvernement fédéral, et qui de ce fait ont cessé d'exister. Toutes les modifications proposées sont conformes aux dispositions de l'AMP. Elles traduisent les modifications intervenues au gouvernement fédéral du Canada au 31 décembre 2000.

La pièce jointe 2 est la version révisée de l'annexe 1 de l'AMP, soit la liste des entités du gouvernement fédéral qui sont régies par cet accord.

De conformidad con el párrafo 6 del artículo XXIV del Acuerdo sobre Contratación Pública (ACP) de la OMC, el Canadá propone las siguientes enmiendas del Anexo 1 del Apéndice I de dicho Acuerdo.

En el apéndice 1 del presente documento (que se ha presentado para facilitar su consulta en francés y en inglés) figuran en paralelo la lista actual y la nueva lista de entidades canadienses comprendidas en el Anexo 1 del ACP. En la columna 1 figura la lista actual mientras que en la columna 2 figura la nueva lista, con una explicación de las modificaciones introducidas con respecto al organismo de la columna 1. En los casos en que las funciones de un organismo de la columna 1 se han repartido entre varios organismos, la columna 2 indica el nombre de todas las entidades que se encargan ahora de esas funciones.

A raíz de la reestructuración de las actividades gubernamentales, algunas entidades públicas han cambiado de nombre y/o se han combinado o en algunos casos sus funciones se han transferido a otros organismos gubernamentales. El apéndice 1 del presente documento indica también los organismos que se han disuelto o que han concluido su mandato y, por tanto, han dejado de existir. Todas las enmiendas propuestas son conformes a las disposiciones del ACP.

El apéndice 2 del presente documento (auténtico en francés y en inglés) es la versión revisada del Anexo 1 del ACP para el Canadá, a saber la lista de entidades del Gobierno Federal.²

² The attachments are in English and French only./Les pièces jointes sont en anglais et en français seulement./Los apéndices figuran en francés e inglés solamente.

ATTACHMENT 1*

Side-by-side Comparison of Existing and New List of
Canadian Entities in Annex 1 of Appendix I

ANNEX 1

Federal Government Entities

<u>Existing List</u>	<u>Becomes on New List</u>
1. Department of Agriculture	Department of Agriculture and Agri-Food Canadian Food Inspection Agency.
2. Department of Communications (Not including procurements respecting FSCs 36,70 and 74)	Department of Industry (Not including procurements respecting FSCs 36, 70 and 74 in respect of telecommunications, except in relation to (a) the planning and coordination of telecommunications services for departments, boards and agencies of the Government of Canada, and (b) broadcasting, other than in relation to spectrum management and the technical aspects of broadcasting). Department of Canadian Heritage (Not including procurements respecting FSCs 36, 70 and 74 in respect of those functions that were formerly the responsibility of the Department of Communications and became the responsibility of the Department of Canadian Heritage.) Department of Public Works and Government Services (on its own account) (Not including procurements respecting FSCs 36, 70 and 74 in respect of the Government Telecommunications Agency.)
3. Department of Consumer and Corporate Affairs	Department of Industry
4. Department of Employment and Immigration	Department of Citizenship and Immigration Department of Human Resources Development
5. Immigration and Refugee Board	Same

* In English

6.	Canada Employment and Immigration Commission	Canada Employment Insurance Commission
7.	Department of Energy, Mines and Resources	Department of Natural Resources
8.	Atomic Energy Control Board	Canadian Nuclear Safety Commission
9.	National Energy Board (on its own account)	Same
10.	Department of the Environment	Same
11.	Department of External Affairs	Department of Foreign Affairs and International Trade
12.	Canadian International Development Agency (on its own account)	Same
13.	Department of Finance	Same
14.	Office of the Superintendent of Financial Institutions	Same
15.	Canadian International Trade Tribunal	Same
16.	Municipal Development and Loan Board	Same
17.	Departments of Fisheries and Oceans (not including procurements respecting FSCs 36, 70 and 74)	<p>Department of Fisheries and Oceans (Not including procurements respecting FSCs 36, 70 and 74) (For purposes of Article XXIII, the national security considerations applicable to the Department of National Defence are equally applicable to the Canadian Coast Guard retained by the Department of Transport pursuant to Order under the <i>Public Service Rearrangement and Transfer of Duties Act</i> published in the Canada Gazette, Part II, as SI/95-46, namely the Harbours and Ports Directorate, the regional Harbours and Ports Branches, the Marine Regulatory Directorate, the Ship Inspection Directorate and the regional Ship Inspection Branches of the Canadian Coast Guard.)</p> <p>Canadian Food Inspection Agency (Not including procurements respecting FSCs 36,70 and 74 in respect of the administration and enforcement of the <i>Fish Inspection Act</i>.)</p>
18.	Department of Forestry	Department of Natural Resources
19.	Department of Indian Affairs and Northern	Same

Development

20.	Department of Industry, Science and Technology	Department of Industry
21.	Science Council of Canada	Dissolved
22.	National Research Council of Canada	Same
23.	Natural Sciences and Engineering Research Council of Canada	Same
24.	Department of Justice	Same
25.	Canadian Human Rights Commission	Same
26.	Statute Revision Commission	Same
27.	Supreme Court of Canada	Same
28.	Department of Labour	Department of Human Resources Development
29.	Canada Labour Relations Board	Same
30.	Department of National Health and Welfare	Department of Health Department of Human Resources Development Canadian Food Inspection Agency
31.	Medical Research Council	Same
32.	Department of National Revenue	Canada Customs and Revenue Agency
33.	Department of Public Works	Department of Public Works and Government Services (on its own account)
34.	Department of Secretary of State of Canada	Department of Canadian Heritage Parks Canada Agency
35.	Social Sciences and Humanities Research Council	Same
36.	Office of the Coordinator, Status of Women	Same
37.	Public Service Commission	Same
38.	Department of the Solicitor General	Same
39.	Correctional Service of Canada	Same

40.	National Parole Board	Same
41.	Department of Supply and Services (on its own account)	Department of Public Works and Government Services (on its own account)
42.	Canadian General Standards Board	Department of Public Works and Government Services (on its own account)
43.	Department of Transport (not including procurements respecting FSCs 36, 70 and 74. For purposes of Article XXIII the national security considerations applicable to The Department of National Defence are equally applicable to the Canadian Coast Guard).	Department of Transport (not including procurements respecting FSCs 36, 70 and 74) (For purposes of Article XXIII, the national security considerations applicable to the Department of National Defence are equally applicable to the functions of the Canadian Coast Guard retained by the Department of Transport pursuant to Order under the <i>Public Services Rearrangement and Transfer of Duties Act</i> published in the Canada Gazette, Part II, as SI/95-46, namely the Harbours and Ports Directorate, the regional Harbours and Ports Branches, the Marine Regulatory Directorate, the Ship Inspection Directorate and the regional Ship Inspection Branches of the Canadian Coast Guard.)
44.	Treasury Board Secretariat and the Office of the Comptroller General	Treasury Board Secretariat
45.	Department of Veterans Affairs	Same
46.	Veterans Land Administration	Director, The Veterans' Land Act
47.	Department of Western Economic Diversification (on its own account)	Same
48.	Atlantic Canada Opportunities Agency (on its own account)	Same
49.	Auditor General of Canada	Office of the Auditor General
50.	Federal Office of Regional Development (Quebec) (on its own account)	Canada Economic Development for the Regions of Quebec
51.	Canadian Centre for Management Development	Same
52.	Canadian Radio-television and Telecommunications Commission (on its own account)	Same
53.	Canadian Sentencing Commission	Dissolved

54.	Civil Aviation Tribunal	Same
55.	Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario	Ended
56.	Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance	Ended
57.	Commissioner for Federal Judicial Affairs	Same
58.	Competition Tribunal Registry	Registry of the Competition Tribunal
59.	Copyright Board	Same
60.	Emergency Preparedness Canada	Department of National Defence
61.	Federal Court of Canada	Registry of the Federal Court of Canada
62.	Grain Transportation Agency (on its own account)	Office of the Grain Transportation Agency Administrator (on its own account)
63.	Hazardous Materials Information Review Commission	Same
64.	Information and Privacy Commission	Officers of the Information and Privacy Commissioners of Canada
65.	Investment Canada	Department of Industry Department of Foreign Affairs and International Trade
66.	Department of Multiculturalism and Citizenship	Department of Canadian Heritage Department of Citizenship and Immigration
67.	The National Archives of Canada	Same
68.	National Farm Products Marketing Council	National Farm Products Council
69.	The National Library	Same
70.	National Transportation Agency (on its own account)	Canada Transportation Agency (on its own account)
71.	Northern Pipeline Agency (on its own account)	Same
72.	Patented Medicine Prices Review Board	Same
73.	Petroleum Monitoring Agency	Same

74.	Privy Council Office	Same
75.	Canadian Intergovernmental Conference Secretariat	Same
76.	Commissioner of Official Languages	Office of the Commissioner of Official Languages
77.	Economic Council of Canada	Dissolved
78.	Public Service Staff Relations Office	Public Service Staff Relations Board
79.	Office of the Secretary to the Governor General	Office of the Governor General's Secretary
80.	Office of the Chief Electoral Officer	Same
81.	Federal Provincial Relations Office	Federal Provincial Relations Office
82.	Procurement Review Board	Canadian International Trade Tribunal
83.	Royal Commission on Electoral Reform and Party Financing	Ended
84.	Royal Commission on National Passenger Transportation	Ended
85.	Royal Commission on New Reproductive Technologies	Ended
86.	Royal Commission on the Future of the Toronto Waterfront	Ended
87.	Statistics Canada	Same
88.	Tax Court of Canada, Registry of the	Registry of the Tax Court of Canada
89.	Agricultural Stabilization Board	Dissolved
90.	Canadian Aviation Safety Board	Canadian Transportation Accident Investigation and Safety Board
91.	Canadian Centre for Occupational Health and Safety Board	Same
92.	Canadian Transportation Accident Investigation and Safety Board	Same
93.	Director of Soldier Settlement	Same
94.	Director, The Veterans' Land Act	Same

95.	Fisheries Prices Support Board	Same
96.	National Battlefields Commission	Same
97.	Royal Canadian Mounted Police	Same
98.	Royal Canadian Mounted Police External Review Committee	Same
99.	Royal Canadian Mounted Police Public Complaints Commission	Same
100.	Department of National Defence	Same

PIÈCE JOINTE 1*

Mise en parallèle des noms figurant
sur la liste actuelle et sur la nouvelle liste des entités canadiennes

ANNEX 1

Entités du gouvernement fédéral

<u>Liste actuelle</u>	<u>Nouvelle liste</u>
1. Ministère de l'Agriculture	Ministère de l'Agriculture et de l'Agroalimentaire Agence canadienne d'inspection des aliments
2. Ministère des Communications (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC))	Ministère de l'Industrie (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) en matière de télécommunications, sauf en ce qui concerne a) la planification et la coordination des services de télécommunications pour les ministères et les organismes du gouvernement du Canada, et b) la radiodiffusion, sauf en ce qui concerne la gestion du spectre et les volets techniques de la radiodiffusion.) Ministère du Patrimoine canadien (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) concernant les fonctions qui relevaient auparavant du ministère des Communications et qui incombent maintenant au ministère du Patrimoine canadien.) Ministère des Travaux publics et des Services gouvernementaux (pour son propre compte) (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) concernant l'Agence des télécommunications gouvernementales.)

* En français

3.	Ministère de la Consommation et des Affaires commerciales	Ministère de l'Industrie
4.	Ministère de l'Emploi et de l'Immigration	Ministère de la Citoyenneté et de l'Immigration Ministère du Développement des ressources humaines
5.	Commission de l'Immigration et du statut de réfugié	Pas de changement
6.	Commission de l'emploi et de l'immigration	Commission de l'assurance-emploi du Canada
7.	Ministère de l'Énergie, des Mines et des Ressources	Ministère des Ressources naturelles
8.	Commission de contrôle de l'énergie atomique	Commission canadienne de sûreté nucléaire
9.	Office national de l'énergie (pour son propre compte)	Pas de changement
10.	Ministère de l'Environnement	Pas de changement
11.	Ministère des Affaires extérieures	Ministère des Affaires étrangères et du Commerce international
12.	Agence canadienne de développement international (pour son propre compte)	Pas de changement
13.	Ministère des Finances	Pas de changement
14.	Bureau du surintendant des institutions financières	Pas de changement
15.	Tribunal canadien du commerce extérieur	Pas de changement
16.	Office du développement municipal et des prêts aux municipalités	Pas de changement

- | | | |
|-----|--|---|
| 17. | Ministère des Pêches et des Océans (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC)) | Ministère des Pêches et des Océans (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC)) (Aux fins de l'article XXIII, les considérations de sécurité nationale qui valent pour le ministère de la Défense nationale s'appliquent également à la Garde côtière canadienne sauf pour les fonctions de la Garde côtière canadienne conservées par le ministère des Transports conformément à l'arrêté pris en vertu de la <i>Loi sur les restructurations et les transferts d'attributions dans l'administration publique</i> publié dans la Gazette du Canada, Partie I, sous la référence SI/95-46, soit celles de la Direction des havres et des ports et des divisions régionales des havres et des ports, de la Direction de la réglementation maritime, de la Direction des inspections de navires et les divisions régionales des inspections des navires de la Garde côtière canadienne.) |
| | | Agence canadienne d'inspection des aliments (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) et de l'application de la <i>Loi sur l'inspection du poisson</i>) |
| 18. | Ministère des Forêts | Ministère des Ressources naturelles |
| 19. | Ministère des Affaires indiennes et du Nord canadien | Pas de changement |
| 20. | Ministère de l'Industrie, des Sciences et de la Technologie | Ministère de l'Industrie |
| 21. | Conseil des sciences du Canada | Dissous |
| 22. | Conseil national de recherches du Canada | Pas de changement |
| 23. | Conseil de recherches en sciences naturelles et en génie du Canada | Pas de changement |
| 24. | Ministère de la Justice | Pas de changement |
| 25. | Commission canadienne des droits de la personne | Pas de changement |

26.	Commission de révision des lois	Pas de changement
27.	Cour suprême du Canada	Pas de changement
28.	Ministère du Travail	Ministère du Développement des ressources humaines
29.	Conseil canadien des relations du travail	Pas de changement
30.	Ministère de la Santé nationale et du Bien-être social	Ministère de la Santé Ministère du Développement des ressources humaines Agence canadienne d'inspection des aliments
31.	Conseil de recherches médicales	Pas de changement
32.	Ministère du Revenu national	Agence des douanes et du revenu du Canada
33.	Ministère des Travaux publics	Ministère des Travaux publics et des Services gouvernementaux (pour son propre compte)
34.	Secrétariat d'État du Canada	Ministère du Patrimoine canadien Agence Parcs Canada
35.	Conseil de recherches en sciences humaines	Pas de changement
36.	Bureau de la coordonnatrice, Situation de la femme	Pas de changement
37.	Commission de la fonction publique	Pas de changement
38.	Ministère du Solliciteur général	Pas de changement
39.	Service correctionnel du Canada	Pas de changement
40.	Commission nationale des libérations conditionnelles	Pas de changement
41.	Ministère des Approvisionnements et Services (pour son propre compte)	Ministère des Travaux publics et des Services gouvernementaux (pour son propre compte)
42.	Office des normes générales du Canada	Ministère des Travaux publics et des Services gouvernementaux (pour son propre compte)

43.	Ministère des Transports (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC). Aux fins de l'article XXIII, les considérations de sécurité nationale qui valent pour le ministère de la Défense nationale s'appliquent également à la Garde côtière canadienne).	Ministère des Transports (à l'exclusion des marchés portant sur les produits repris aux n ^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC)) (Aux fins de l'article XXIII, les considérations de sécurité nationale qui valent pour le ministère de la Défense nationale s'appliquent également à la Garde côtière canadienne sauf pour les fonctions de la Garde côtière canadienne conservées par le ministère des Transports conformément à l'arrêté pris en vertu de la <i>Loi sur les restructurations et les transferts d'attributions dans l'administration publique</i> publié dans la Gazette du Canada, Partie I, sous la référence SI/95-46, soit celles de la Direction des havres et des ports et des divisions régionales des havres et des ports, de la Direction de la réglementation maritime, de la Direction des inspections de navires et les divisions régionales des inspections des navires de la Garde côtière canadienne.)
44.	Secrétariat du Conseil du Trésor et Bureau du Contrôleur général	Secrétariat du Conseil du Trésor
45.	Ministère des Anciens combattants	Pas de changement
46.	Office de l'établissement agricole des anciens combattants	Directeur, Loi sur les terres destinées aux anciens combattants
47.	Ministère de la Diversification de l'économie de l'Ouest (pour son propre compte)	Pas de changement
48.	Agence de promotion économique du Canada atlantique (pour son propre compte)	Pas de changement
49.	Vérificateur général du Canada	Bureau du vérificateur général
50.	Bureau fédéral de développement régional (Québec) (pour son propre compte)	Développement économique Canada pour les régions du Québec
51.	Centre canadien de gestion	Pas de changement
52.	Conseil de la radiodiffusion et des télécommunications canadiennes (pour son propre compte)	Pas de changement

53.	Commission canadienne sur la détermination de la peine	Dissous
54.	Tribunal de l'aviation civile	Pas de changement
55.	Commission d'enquête sur l'écrasement d'un avion d'Air Ontario à Dryden (Ontario)	Terminée
56.	Commission d'enquête sur le recours aux drogues et aux pratiques interdites pour améliorer la performance athlétique	Terminée
57.	Commissaire à la magistrature fédérale	Pas de changement
58.	Greffe du Tribunal de la concurrence	Greffe du Tribunal de la concurrence
59.	Commission du droit d'auteur	Pas de changement
60.	Protection civile Canada	Ministère de la Défense nationale
61.	Cour fédérale du Canada	Greffe de la Cour fédérale du Canada
62.	Office du transport du grain (pour son propre compte)	Bureau de l'Administrateur de l'Office du transport du grain (pour son propre compte)
63.	Conseil de contrôle des renseignements relatifs aux matières dangereuses	Pas de changement
64.	Commissariats à l'information et à la protection de la vie privée	Bureaux des commissaires du Canada à l'information et à la protection de la vie privée
65.	Investissement Canada	Ministère de l'Industrie Ministère des Affaires étrangères et du Commerce international
66.	Ministère du Multiculturalisme et de la Citoyenneté	Ministère du Patrimoine canadien Ministère de la Citoyenneté et de l'Immigration
67.	Archives nationales du Canada	Pas de changement
68.	Conseil national de commercialisation des produits agricoles	Conseil national des produits agricoles
69.	Bibliothèque nationale	Pas de changement
70.	Office national des transports (pour son propre compte)	Office des transports du Canada (pour son propre compte)

71.	Administration du pipeline du Nord (pour son propre compte)	Pas de changement
72.	Conseil d'examen du prix des médicaments brevetés	Pas de changement
73.	Agence de surveillance du secteur pétrolier	Pas de changement
74.	Bureau du Conseil privé	Pas de changement
75.	Secrétariat des conférences intergouvernementales canadiennes	Pas de changement
76.	Commissaire aux langues officielles	Commissariat aux langues officielles
77.	Conseil économique du Canada	Dissous
78.	Commission des relations de travail dans la fonction publique	Commission des relations de travail dans la fonction publique
79.	Bureau du chef de Cabinet du Gouverneur général	Bureau du chef de Cabinet du Gouverneur général
80.	Bureau du Directeur général des élections	Pas de changement
81.	Bureau des relations fédérales-provinciales	Secrétariat des relations fédérales-provinciales
82.	Commission de révision des marchés publics	Tribunal canadien du commerce extérieur
83.	Commission royale sur la réforme électorale et le financement des partis	Terminée
84.	Commission royale sur le transport des voyageurs au Canada	Terminée
85.	Commission royale sur les nouvelles techniques de reproduction	Terminée
86.	Commission royale sur l'avenir du secteur riverain de Toronto	Terminée
87.	Statistique Canada	Pas de changement
88.	Greffe de la Cour canadienne de l'impôt	Greffe de la Cour canadienne de l'impôt
89.	Office de stabilisation des prix agricoles	Dissous
90.	Bureau canadien de la sécurité aérienne	Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports

91.	Centre canadien d'hygiène et de sécurité au travail	Pas de changement
92.	Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports	Pas de changement
93.	Directeur de l'établissement des soldats	Pas de changement
94.	Directeur, Loi sur les terres destinées aux anciens combattants	Pas de changement
95.	Commission de soutien des prix des produits de la pêche	Pas de changement
96.	Commission des champs de bataille nationaux	Pas de changement
97.	Gendarmerie royale du Canada	Pas de changement
98.	Comité externe d'examen de la Gendarmerie royale du Canada	Pas de changement
99.	Commission des plaintes du public contre la Gendarmerie royale du Canada	Pas de changement
100.	Ministère de la Défense nationale	Pas de changement

Attachment 2*

CANADA

(Authentic in the English and French languages)

ANNEX 1

Federal Government Entities

Thresholds

130,000 SDRs
130,000 SDRs
5,000,000 SDRs

-Goods
-Services covered in Annex 4
-Construction covered in Annex 5

1. Department of Agriculture and Agri-Food
2. Canadian Food Inspection Agency (Not including procurements respecting FSCs 36, 70 and 74 in respect of the administration and enforcement of the *Fish Inspection Act*.)
3. Department of Canadian Heritage (Not including procurements respecting FSCs 36, 70 and 74 in respect of those functions that were formerly the responsibility of the Department of Communications.)
4. Office of the Coordinator, Status of Women
5. Parks Canada Agency
6. Department of Citizenship and Immigration
7. Immigration and Refugee Board
8. Department of the Environment
9. Department of Foreign Affairs and International Trade
10. Canadian International Development Agency (on its own account)
11. Department of Finance
12. Canadian International Trade Tribunal
13. Municipal Development and Loan Board
14. Office of the Superintendent of Financial Institutions

* In English

15. Department of Fisheries and Oceans
(Not including procurements respecting FSCs 36, 70 and 74.)(For purposes of Article XXIII, the national security considerations applicable to the Department of National Defence are equally applicable to the Canadian Coast Guard other than the functions of the Canadian Coast Guard retained by the Department of Transport pursuant to Order under the *Public Service Rearrangement and Transfer of Duties Act* published in the Canada Gazette, Part II, as SI/95-46, namely the Harbours and Ports Directorate, the regional Harbours and Ports Branches, the Marine Regulatory Directorate, the Ship Inspection Directorate and the regional Ship Inspection Branches of the Canadian Coast Guard.)
16. Department of Health
17. Medical Research Council
18. Department of Human Resources Development
19. Canada Employment Insurance Commission
20. Canada Labour Relations Board
21. Department of Indian Affairs and Northern Development
22. Department of Industry (Not including procurements respecting FSCs 36, 70 and 74 in respect of telecommunications, except in relation to (a) planning and coordination of telecommunication services for departments, boards and agencies of the Government of Canada, and (b) broadcasting, other than in relation to spectrum management and the technical aspects of broadcasting.)
23. National Research Council of Canada
24. Natural Sciences and Engineering Research Council of Canada
25. Social Sciences and Humanities Research Council
26. Department of Justice
27. Canadian Human Rights Commission
28. Statute Revision Commission
29. Supreme Court of Canada
30. Canada Customs and Revenue Agency
31. Department of Natural Resources
32. Canadian Nuclear Safety Commission
33. National Energy Board (on its own account)

34. Department of Public Works and Government Services (on its own account) (Not including procurements respecting FSCs 36, 70 and 74 in respect of the Government Telecommunications Agency.)
35. Public Service Commission
36. Department of the Solicitor General
37. Correctional Service of Canada
38. National Parole Board
39. Department of Transport
(Not including procurements respecting FSCs 36, 70 and 74) (For purposes of Article XXIII, the national security considerations applicable to the Department of National Defence are equally applicable to the functions of the Canadian Coast Guard retained by the Department of Transport pursuant to Order under the *Public Service Rearrangement and Transfer of Duties Act* published in the Canada Gazette, Part II, as SI/95-46, namely the Harbours and Ports Directorate, the regional Harbours and Ports Branches, the Marine Regulatory Directorate, the Ship Inspection Directorate and the regional Ship Inspection Branches of the Canadian Coast Guard.)
40. Treasury Board Secretariat
41. Department of Veterans Affairs
42. Department of Western Economic Diversification (on its own account)
43. Atlantic Canada Opportunities Agency (on its own account)
44. Office of the Auditor General
45. Canada Economic Development for the Regions of Quebec
46. Canadian Centre for Management Development
47. Canadian Radio-television and Telecommunications Commission (on its own account)
48. Civil Aviation Tribunal
49. Commissioner for Federal Judicial Affairs
50. Registry of the Competition Tribunal
51. Copyright Board
52. Registry of the Federal Court of Canada
53. Office of the Grain Transportation Agency Administrator (on its own account)
54. Hazardous Materials Information Review Commission

55. Offices of the Information and Privacy Commissioners of Canada
56. The National Archives of Canada
57. National Farm Products Council
58. The National Library
59. Canada Transportation Agency (on its own account)
60. Northern Pipeline Agency (on its own account)
61. Patented Medicine Prices Review Board
62. Petroleum Monitoring Agency
63. Privy Council Office
64. Canadian Intergovernmental Conference Secretariat
65. Office of the Commissioner of Official Languages
66. Public Service Staff Relations Board
67. Office of the Governor General's Secretary
68. Office of the Chief Electoral Officer
69. Federal-Provincial Relations Office
70. Statistics Canada
71. Registry of the Tax Court of Canada
72. Canadian Centre for Occupational Health and Safety Board
73. Canadian Transportation Accident Investigation and Safety Board
74. Director of Soldier Settlement
75. Director, The Veterans' Land Act
76. Fisheries Prices Support Board
77. National Battlefields Commission
78. Royal Canadian Mounted Police
79. Royal Canadian Mounted Police External Review Committee

- 80. Royal Canadian Mounted Police Public Complaints Commission
- 81. Department of National Defence

THE FOLLOWING PRODUCTS PURCHASED BY THE DEPARTMENT OF NATIONAL DEFENCE, COAST GUARD AND THE RCMP ARE INCLUDED IN THE COVERAGE OF THIS AGREEMENT SUBJECT TO THE PROVISIONS OF ARTICLE XXIII. (NUMBERS REFER TO THE FEDERAL SUPPLY CLASSIFICATION CODE)

- 22. Railway Equipment
- 23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
- 24. Tractors
- 25. Vehicular equipment components
- 26. Tires and tubes
- 29. Engine accessories
- 30. Mechanical power transmission equipment
- 32. Woodworking machinery and equipment
- 34. Metal working equipment
- 35. Service and trade equipment
- 36. Special industry machinery
- 37. Agricultural machinery and equipment
- 38. Construction, mining, excavating and highway maintenance equipment
- 39. Materials handling equipment
- 40. Rope, cable, chain and fittings
- 41. Refrigeration and air conditioning equipment
- 42. Fire fighting, rescue and safety equipment (except 4220 Marine Life-saving and diving equipment, 4230 Decontaminating and impregnating equipment)
- 43. Pumps and compressors
- 44. Furnace, steam plant, drying equipment and nuclear reactors

45. Plumbing, heating and sanitation equipment
46. Water purification and sewage treatment equipment
47. Pipe, tubing, hose and fittings
48. Valves
49. Maintenance and repair shop equipment
52. Measuring tools
53. Hardware and abrasives
54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials
61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, dental and veterinary equipment and supplies
66. Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components 6665: Hazard-detecting instruments and apparatus)
67. Photographic equipment
68. Chemicals and chemical products
69. Training aids and devices
70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations)
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment
74. Office machines, visible record equipment and automatic data processing equipment
75. Office supplies and devices

- 76. Books, maps and other publications - (except 7650 drawings and specifications)
- 77. Musical instruments, phonographs and home-type radios
- 78. Recreational and athletic equipment
- 79. Cleaning equipment and supplies
- 80. Brushes, paints, sealers and adhesives
- 81. Containers, packaging and packing supplies
- 85. Toiletries
- 87. Agricultural supplies
- 88. Live animals
- 91. Fuels, lubricants, oils and waxes
- 93. Non-metallic fabricated materials
- 94. Non-metallic crude materials
- 96. Ores, minerals and their primary products
- 99. Miscellaneous

Note to Annex 1

The General Notes apply to this Annex.

PIÈCE JOINTE 2*

CANADA

(Les versions française et anglaise font foi)

ANNEXE 1

Entités du gouvernement fédéral

<i>Valeurs de seuil :</i>	130 000 DTS	- Produits
	130 000 DTS	- Services visés à l'annexe 4
	5 000 000 DTS	- Travaux visés à l'annexe 5

1. Ministère de l'Agriculture et de l'Agroalimentaire
2. Agence canadienne d'inspection des aliments (à l'exclusion des marchés portant sur les produits repris aux n^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) et de l'application de la *Loi sur l'inspection du poisson*)
3. Ministère du Patrimoine canadien (à l'exclusion des marchés portant sur les produits repris aux n^{os} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) concernant les fonctions qui relevaient auparavant du ministère des Communications.)
4. Bureau de la coordonnatrice, Situation de la femme
5. Agence Parcs Canada
6. Ministère de la Citoyenneté et de l'Immigration
7. Commission de l'Immigration et du statut de réfugié
8. Ministère de l'Environnement
9. Ministère des Affaires étrangères et du Commerce international
10. Agence canadienne de développement international (pour son propre compte)
11. Ministère des Finances
12. Tribunal canadien du commerce extérieur
13. Office du développement municipal et des prêts aux municipalités

* En français

14. Bureau du surintendant des institutions financières
15. Ministère des Pêches et des Océans
(à l'exclusion des marchés portant sur les produits repris aux n^{OS} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC)) (Aux fins de l'article XXIII, les considérations de sécurité nationale qui valent pour le ministère de la Défense nationale s'appliquent également à la Garde côtière canadienne sauf pour les fonctions de la Garde côtière canadienne conservées par le ministère des Transports conformément à l'arrêté pris en vertu de la *Loi sur les restructurations et les transferts d'attributions dans l'administration publique* publié dans la Gazette du Canada, Partie I, sous la référence SI/95-46, soit celles de la Direction des havres et des ports et des divisions régionales des havres et des ports, de la Direction de la réglementation maritime, de la Direction des inspections de navires et les divisions régionales des inspections des navires de la Garde côtière canadienne.)
16. Ministère de la Santé
17. Conseil de recherches médicales
18. Ministère du Développement des ressources humaines
19. Commission de l'assurance-emploi du Canada
20. Conseil canadien des relations du travail
21. Ministère des Affaires indiennes et du Nord canadien
22. Ministère de l'Industrie (à l'exclusion des marchés portant sur les produits repris aux n^{OS} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) en matière de télécommunications, sauf en ce qui concerne a) la planification et la coordination des services de télécommunications pour les ministères, les conseils et les organismes du gouvernement du Canada, et b) la radiodiffusion, sauf en ce qui concerne la gestion du spectre et les volets techniques de la radiodiffusion.)
23. Conseil national de recherches du Canada
24. Conseil de recherches en sciences naturelles et en génie du Canada
25. Conseil de recherches en sciences humaines
26. Ministère de la Justice
27. Commission canadienne des droits de la personne
28. Commission de révision des lois
29. Cour suprême du Canada
30. Agence des douanes et du revenu du Canada

31. Ministère des Ressources naturelles
32. Commission canadienne de sûreté nucléaire
33. Office national de l'énergie (pour son propre compte)
34. Ministère des Travaux publics et des Services gouvernementaux (pour son propre compte) (à l'exclusion des marchés portant sur les produits repris aux n^{OS} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC) concernant l'Agence des télécommunications gouvernementales.)
35. Commission de la fonction publique
36. Ministère du Solliciteur général
37. Service correctionnel du Canada
38. Commission nationale des libérations conditionnelles
39. Ministère des Transports
(à l'exclusion des marchés portant sur les produits repris aux n^{OS} 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC)) (Aux fins de l'article XXIII, les considérations de sécurité nationale qui valent pour le ministère de la Défense nationale s'appliquent également à la Garde côtière canadienne conservées par le ministère des Transports conformément à l'arrêté pris en vertu de la *Loi sur les restructurations et les transferts d'attributions dans l'administration publique* publié dans la Gazette du Canada, Partie I, sous la référence SI/95-46, soit celles de la Direction des havres et des ports et des divisions régionales des havres et des ports, de la Direction de la réglementation maritime, de la Direction des inspections de navires et les divisions régionales des inspections des navires de la Garde côtière canadienne.)
40. Secrétariat du Conseil du Trésor
41. Ministère des Anciens combattants
42. Ministère de la Diversification de l'économie de l'Ouest (pour son propre compte)
43. Agence de promotion économique du Canada atlantique (pour son propre compte)
44. Bureau du vérificateur général
45. Développement économique Canada pour les régions du Québec
46. Centre canadien de gestion
47. Conseil de la radiodiffusion et des télécommunications canadiennes (pour son propre compte)
48. Tribunal de l'aviation civile
49. Commissaire à la magistrature fédérale

50. Greffe du Tribunal de la concurrence
51. Commission du droit d'auteur
52. Greffe de la Cour fédérale du Canada
53. Bureau de l'Administrateur de l'Office du transport du grain (pour son propre compte)
54. Conseil de contrôle des renseignements relatifs aux matières dangereuses
55. Bureaux des commissaires du Canada à l'information et à la protection de la vie privée
56. Archives nationales du Canada
57. Conseil national des produits agricoles
58. Bibliothèque nationale
59. Office des transports du Canada (pour son propre compte)
60. Administration du pipeline du Nord (pour son propre compte)
61. Conseil d'examen du prix des médicaments brevetés
62. Agence de surveillance du secteur pétrolier
63. Bureau du Conseil privé
64. Secrétariat des conférences intergouvernementales canadiennes
65. Commissariat aux langues officielles
66. Commission des relations de travail dans la fonction publique
67. Bureau du chef de Cabinet du Gouverneur général
68. Bureau du Directeur général des élections
69. Secrétariat des relations fédérales-provinciales
70. Statistique Canada
71. Greffe de la Cour canadienne de l'impôt
72. Centre canadien d'hygiène et de sécurité au travail
73. Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports
74. Directeur de l'établissement des soldats

75. Directeur, Loi sur les terres destinées aux anciens combattants
76. Commission de soutien des prix des produits de la pêche
77. Commission des champs de bataille nationaux
78. Gendarmerie royale du Canada
79. Comité externe d'examen de la Gendarmerie royale du Canada
80. Commission des plaintes du public contre la Gendarmerie royale du Canada
81. Ministère de la Défense nationale

LES PRODUITS SUIVANTS ACHETÉS PAR LE MINISTÈRE DE LA DÉFENSE NATIONALE, LA GARDE CÔTIÈRE ET LA GENDARMERIE ROYALE DU CANADA FONT PARTIE DU CHAMP D'APPLICATION DU PRÉSENT ACCORD, SOUS RÉSERVE DES DISPOSITIONS DE L'ARTICLE XXIII. (LES NUMÉROS SONT CEUX DE LA CLASSIFICATION FÉDÉRALE DES APPROVISIONNEMENTS.)

22. Matériel ferroviaire
23. Véhicules automobiles, remorques et cycles (sauf les autobus compris dans 2310, les camions et remorques militaires compris dans 2320 et 2330, et les véhicules chenillés de combat, d'attaque et de tactique compris dans 2350)
24. Tracteurs
25. Pièces de véhicules
26. Enveloppes et chambres à air
29. Accessoires de moteurs
30. Matériel de transmission de l'énergie mécanique
32. Machines et matériel pour le travail du bois
34. Machines pour le travail des métaux
35. Matériel de service et de commerce
36. Machines industrielles spéciales
37. Machines et matériel agricoles
38. Matériel de construction, d'extraction, d'excavation et d'entretien routier
39. Matériel de manutention des matériaux

40. Cordages, câbles, chaînes et accessoires
41. Matériel de réfrigération et de climatisation
42. Matériel de lutte contre l'incendie, de sauvetage et de sécurité (sauf 4220 : Équipement de plongée et de sauvetage en mer, 4230 : Équipement d'imprégnation et de décontamination)
43. Pompes et compresseurs
44. Matériel de fours, de générateurs de vapeur, de séchage, et réacteurs nucléaires
45. Matériel de plomberie, de chauffage et sanitaire
46. Matériel d'épuration de l'eau et de traitement des eaux usées
47. Éléments de canalisation, tuyaux et accessoires
48. Robinets-vannes
49. Matériel d'ateliers d'entretien et de réparation
52. Instruments de mesure
53. Articles de quincaillerie et abrasifs
54. Éléments de construction préfabriqués et éléments d'échafaudages
55. Bois de construction, sciages, contreplaqués et bois de placage
56. Matériaux de construction
61. Fils électriques, matériel de production et de distribution d'énergie
62. Lampes et accessoires d'éclairage
63. Systèmes d'alarme et de signalisation
65. Fournitures et matériel médicaux, dentaires et vétérinaires
66. Instruments, matériel de laboratoire (sauf 6615 : Mécanismes de pilotage automatique et éléments de gyroscopes d'aéronefs, 6665 : Instruments et appareils de détection des dangers)
67. Matériel photographique
68. Substances et produits chimiques
69. Matériels et appareils d'enseignement

- 70. Matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010 : Configurations d'équipement de traitement automatique des données)
- 71. Meubles
- 72. Articles et appareils pour l'équipement des ménages et des lieux publics
- 73. Matériel de cuisine et de table
- 74. Machines de bureau, matériel de bureautique et d'informatique de bureau
- 75. Fournitures et appareils de bureau
- 76. Livres, cartes et publications diverses (sauf 7650 : Plans et spécifications)
- 77. Instruments de musique, phonographes et récepteurs radiophoniques domestiques
- 78. Matériel de plaisance et d'athlétisme
- 79. Matériel et fournitures de nettoyage
- 80. Pinceaux, peinture, produits d'obturation et adhésifs
- 81. Conteneurs, matériaux et fournitures d'emballage
- 85. Articles de toilette
- 87. Fournitures pour l'agriculture
- 88. Animaux vivants
- 91. Combustibles, lubrifiants, huiles et cires
- 93. Fabrications non métalliques
- 94. Matières brutes non métalliques
- 96. Minerais, minéraux et leurs dérivés primaires
- 99. Divers

Note relative à l'Annexe 1

Les Notes générales s'appliquent à la présente annexe.

WORLD TRADE ORGANIZATION

GPA/W/204
30 August 2002

(02-4633)

Committee on Government Procurement

Original: English

QUESTIONS TO JAPAN RELATING TO JAPAN RAILWAY COMPANIES

Communication from the United States

Please find below an additional set of questions from the United States regarding Japan's proposed modifications to its Appendix I (GPA/W144, GPA/W/145, GPA/W/146) related to the East Japan Railway Company, the Central Japan Railway Company and the West Japan Railway Company.

1. In its response to an earlier U.S. question (GPA/W/180), Japan noted that private railway companies are not subject to the *Guidelines Regarding Matters that New Companies Should Consider for the Time Being in the Conduct of their Business (Guidelines)*, but rather to similar requirements in other laws. If private companies are subject to provisions similar to the *Guidelines*, please explain why the separate *Guidelines* are necessary for the Japan Railway Companies.
2. Since the completion of the Government of Japan's sale of its shares in JR East, is JR East still subject to the *Guidelines*? If so, please explain why it is not treated like other private railway companies that are not subject to the *Guidelines*. Does Japan have any plans to remove JR East from the authority of the *Guidelines*?
3. How does the Government's authority and oversight over JR East differ from its authority and oversight over JR West and JR Central, in which it continues to hold shares?
4. If JR East were removed from Appendix I, would it continue to coordinate common procurement for other Japan Railway Companies? If so, would such procurement be conducted in accordance with the Agreement on Government Procurement?

**ACCESSION OF THE KYRGYZ REPUBLIC TO THE AGREEMENT
ON GOVERNMENT PROCUREMENT**

Questions from the United States Regarding the Kyrgyz Republic's Responses to the
Checklist of Issues for Provision of Information Relating to Accession to the
Agreement on Government Procurement in Document GPA/W/197

The United States has reviewed the responses of the Kyrgyz Republic to the Checklist of Issues (GPA/W/197) and appreciates the Kyrgyz Republic's thorough responses. The United States would also appreciate the Kyrgyz Republic's responses to the following questions and requests for clarification:

1. Could the Kyrgyz Republic provide a copy of *The Law of the Kyrgyz Republic on Government Procurement of Goods, Construction and Services of May 13, 1997*, as well as other relevant measures, in particular the following items listed in its response to Question 2 of the Checklist of Issues: *Resolution No. 29, "Regulations on tender commission . . .;"* and *"Regulations on application of restrictions based on the nationality feature . . ."*?
2. The United States notes that the central government entities listed in the response to Question 5 in GPA/W/197 differs significantly from the ministries and institutions listed in the Kyrgyz Republic's accession offer of May 1999 (GPA/SPEC/4). If the entities listed in GPA/W/197 are the only central government entities procuring goods, services and construction services, please provide an explanation for the longer list contained in GPA/SPEC/4.
3. Could the Kyrgyz Republic provide a list of those entities and enterprises described in its response to Questions 6 and 7?
4. In its response to Question 12, the Kyrgyz Republic noted a number of restrictions on foreign suppliers' ability to participate in tendering proceedings? Does Article 3(5) of the Law override or provide for waivers from restrictions for procurement covered by the Agreement?
5. One of the restrictions that the Kyrgyz Republic noted in its response to Question 12 is where "there are enough bidders to deliver goods, or perform constructions or render services in the territory of the Kyrgyz Republic." How do entities determine whether there are "enough bidders"? Is that information made publicly available at the commencement of the procurement?
6. The Kyrgyz Republic has noted in its response to Question 16 that the Request for Quotations method is used when entities are procuring goods and services with "fixed quality standards." Could the Kyrgyz Republic provide an illustrative list of goods and services considered to have fixed quality standards that are procured with this procurement method?
7. With respect to the response to Question 31, does the Kyrgyz Republic provide information to unsuccessful tenders and to suppliers whose applications for qualification are rejected, as anticipated by Article XVIII:2 of the Agreement?

8. The response to Question 34(iv) provides that a procurement process can be suspended for up to 10 days. Are such suspensions imposed when the complaint is filed? Why is the suspension limited to 10 days?

**ACCESSION OF ESTONIA TO THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Questions from the United States Regarding Estonia's
Replies to U.S. Questions in GPA/W/190/Rev.1

The United States continues to appreciate the diligent efforts that Estonia is making to meet the requirements for accession to the Agreement. As Estonia completes its governmental organization, the United States looks forward to the finalization of the list of entities in Estonia's offer. In addition, the United States would appreciate responses to the following questions:

1. The United States appreciates that Estonia has listed the "public authorities under supervision and control of the ministries" in Section 9 of its Annex 1. Could Estonia provide a list that indicates which ministry listed in Section 8 of its Annex 1 has responsibility for each of the public authorities?
2. In its response in GPA/W/190/Rev.1 to U.S. Question 4 regarding modifications of coverage, Estonia states that "if the majority of shares of the entities mentioned are privatized or transferred to another entity, this entity will no longer be subject to GPA."
 - (a) Please explain how Estonia's plans to remove entities from GPA coverage will be consistent with the standard in GPA Article XXIV:6(b) for withdrawal of entities "on the grounds that government control or influence over it has been effectively eliminated"?
 - (b) If a majority of shares of an entity are transferred to an entity that is covered by the GPA, will the transferred entity's procurement continue to be covered by the GPA?

WORLD TRADE ORGANIZATION

GPA/W/168/Add.6
5 August 2002

(02-4295)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2002-2003

UNITED STATES

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), the United States notifies the Government Procurement Committee of the U.S. national thresholds for the period 2002-2003. These thresholds are effective via a Federal Register notice published March 27, 2002.

Threshold calculations for the period 2002-2003 of the United States

ANNEX 1

	SDRs	US\$
1. Supplies and services	130,000	169,000
2. Construction	5,000,000	6,481,000

ANNEX 2

	SDRs	US\$
1. Supplies and services	355,000	460,000
2. Construction	5,000,000	6,481,000

ANNEX 3

	SDRs	US\$
1. Supplies and services (except entities identified in Annex 3 to which threshold of US\$250,000 applies)	400,000	518,000
2. Construction	5,000,000	6,481,000

**PROPOSED MODIFICATION TO APPENDICES I, II, III
AND IV OF SINGAPORE**

Notification from Singapore under Article XXIV:6(a)¹

The following communication from the Permanent Mission of Singapore was received on 5 June 2002 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement (1994), the Government of Singapore wishes to notify the Committee on Government Procurement of the following rectifications of a purely minor nature to the Lists in Annexes 1 and 3 of Appendix I, and Appendices II to IV for Singapore of the Agreement on Government Procurement (1994).²

(a) List in Annex 1 of Appendix I

Delete "Ministry of Communications"

Replace with "Ministry of Transport"

Delete "Ministry of Community Development"

Replace with "Ministry of Community Development and Sports"

Delete "Ministry of Information and the Arts"

Replace with "Ministry of Information, Communications and the Arts "

(b) List in Annex 3 of Appendix I

Delete "National Computer Board" and "Telecommunication Authority of Singapore"

Replace with "Info-communications Development Authority of Singapore"

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² The Attachments are in English only.

The above changes reflect the amalgamation of the National Computer Board and Telecommunication Authority of Singapore into a single entity called the Info-communications Development Authority of Singapore.

Delete "National Science & Technology Board"

Replace with "Agency for Science, Technology and Research"

Delete "Singapore Productivity and Standards Board"

Replace with "Standards, Productivity and Innovation Board"

Delete "Trade Development Board"

Replace with "International Enterprise Singapore"

The above rectifications are necessary to reflect the renamed and re-structured entities. These rectifications are minor in nature and do not alter the coverage of the GPA with respect to Singapore.

(c) Appendix II - Publications Utilised by Parties for the Publication of Notices of Intended Procurements – Paragraph 1 of Article IX, and of Post-Award Notices – Paragraph 1 of Article XVIII

Delete "The Republic of Singapore Government Gazette or The Government Internet Tendering Information System (GITIS)"

Replace with "The Republic of Singapore Government Gazette or The Government Electronic Business (GeBIZ)"

(d) Appendix III - Publications Utilised by Parties for the Publication Annually of Information on Permanent Lists of Qualified Suppliers in the case of Selective Tendering Procedures – Paragraph 9 of Article IX

Delete "The Republic of Singapore Government Gazette or The Government Internet Tendering Information System (GITIS)"

Replace with "The Republic of Singapore Government Gazette or The Government Electronic Business (GeBIZ)"

(e) Appendix IV - Publications Utilised by Parties for the Publication of Laws, Regulations, Judicial Decisions, Administrative Rulings of General Application and any procedure regarding Government Procurement Covered by This Agreement – Paragraph 1 of Article XIX

Delete "The Republic of Singapore Government Gazette or The Government Internet Tendering Information System (GITIS)"

Replace with "The Republic of Singapore Government Gazette or The Government Electronic Business (GeBIZ)"

The above rectifications are necessary to reflect the renaming of the electronic publication from GITIS to GeBIZ.

Accordingly, Page 1/3 of Appendix I, Annex I, Page 1/1 of Appendix I, Annex 3; Page 4/4 of Appendix II (English, French and Spanish); Page 3 / 4 of Appendix III (English, French and Spanish); Page 4 / 5 of Appendix IV (English, French, Spanish) should be modified as in Attachment A to this document (redlined version). Attachment B shows the relevant pages of the loose-leaf system after certification by the WTO Secretariat.

ATTACHMENT A

APPENDIX I

SINGAPORE

ANNEX 1

Page 1/3

SINGAPORE

ANNEX 1

*Central Government Entities which Procure in Accordance with
the Provisions of this Agreement*

Goods	<i>Threshold:</i>	SDR 130,000
Services (specified in Annex 4)	<i>Threshold:</i>	SDR 130,000
Construction (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Auditor-General's Office
Attorney-General's Office
Cabinet Office
Istana
Judicature
Ministry of ~~Communications~~ Transport
Ministry of Community Development and Sports
Ministry of Education
Ministry of Environment
Ministry of Finance
Ministry of Foreign Affairs
Ministry of Health
Ministry of Home Affairs
Ministry of Information ~~and the Arts~~, Communications and the Arts
Ministry of Manpower
Ministry of Law
Ministry of National Development
Ministry of Trade and Industry
Parliament
Presidential Councils
Prime Minister's Office
Public Service Commission
Ministry of Defence

This Agreement will generally apply to purchases by the Singapore Ministry of Defence of the following FSC categories (others being excluded) subject to the Government of Singapore's determinations under the provision of Article XXIII, paragraph 1.

1 March 2000 (WT/Let/330)

ANNEX 3

*All other Entities which Procure in Accordance
with the Provisions of this Agreement*

Goods	<i>Threshold:</i>	SDR 400,000
Services (specified in Annex 4)	<i>Threshold:</i>	SDR 400,000
Construction (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Agency for Science, Technology and Research
 Board of Architects
 Civil Aviation Authority of Singapore
 Building and Construction Authority
 Economic Development Board
 Housing and Development Board
Info – communications Development Authority of Singapore
 Inland Revenue Authority of Singapore
International Enterprise Singapore
 Land Transport Authority of Singapore
 Jurong Town Corporation
 Maritime and Port Authority of Singapore
 Monetary Authority of Singapore
~~National Computer Board~~
~~National Science & Technology Board~~
 Nanyang Technological University
 National Parks Board
 National University of Singapore
 Preservation of Monuments Board
 Professional Engineers Board
 Public Transport Council
 Sentosa Development Corporation
 Singapore Broadcasting Authority
~~Singapore Productivity and Standards Board~~
 Singapore Tourism Board
~~Telecommunication Authority of Singapore~~
Standards, Productivity and Innovation Board
~~Trade Development Board~~
 Urban Redevelopment Authority

Note to Annex 3:

1. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

NORWAY

Official Journal of the European Communities

SINGAPORE

The Republic of Singapore Government Gazette or
The Government ~~Internet Tendering Information System ("GITIS")~~ Electronic Business (GeBIZ)

SWITZERLAND

Annex 1

Swiss Official Trade Gazette

Annex 2

Official publications of every Swiss Canton (26)

Annex 3

Swiss Official Trade Gazette
Official publications of every Swiss Canton (26)

UNITED STATES

The Commerce Business Daily

For entities listed in Annex 2 and relevant subcentral entities listed in Annex 3, publications utilized by state governments, such as the New York Contract Reporter

~~28 April 2001 (WT/Let/396)~~

SINGAPOUR

The Republic of Singapore Government Gazette (Journal officiel de Singapour) ou
The Government ~~Internet Tendering Information System ("GITIS")~~ Electronic Business (GeBIZ)

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ETATS-UNIS

The Commerce Business Daily

Pour les entités énumérées à l'Annexe 2 et les entités des gouvernements sous-centraux
pertinentes énumérées à l'Annexe 3, publications utilisées par les gouvernements
des Etats, comme le New York Contract Reporter

28 April 2001 (WT/Let/396)

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Official Journal of the European Communities (after the entry into force of
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Kanpō
and/or
Hōreizensho

REPUBLIC OF KOREA

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APPENDIX IV

French

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Kanpō et/ou Hōreizensho

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

LIECHTENSTEIN

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~~28 April 2001 (WT/Let/396)~~

ATTACHMENT B

APPENDIX I

SINGAPORE

ANNEX 1

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SINGAPORE

ANNEX 1

*Central Government Entities which Procure in Accordance with
the Provisions of this Agreement*

Goods	<i>Threshold:</i>	SDR 130,000
Services (specified in Annex 4)	<i>Threshold:</i>	SDR 130,000
Construction (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Auditor-General's Office
Attorney-General's Office
Cabinet Office
Istana
Judicature
Ministry of Transport
Ministry of Community Development and Sports
Ministry of Education
Ministry of Environment
Ministry of Finance
Ministry of Foreign Affairs
Ministry of Health
Ministry of Home Affairs
Ministry of Information, Communications and the Arts
Ministry of Manpower
Ministry of Law
Ministry of National Development
Ministry of Trade and Industry
Parliament
Presidential Councils
Prime Minister's Office
Public Service Commission
Ministry of Defence

This Agreement will generally apply to purchases by the Singapore Ministry of Defence of the following FSC categories (others being excluded) subject to the Government of Singapore's determinations under the provision of Article XXIII, paragraph 1.

... 2002 (WT/Let/...)

ANNEX 3

*All other Entities which Procure in Accordance
with the Provisions of this Agreement*

Goods	<i>Threshold:</i>	SDR 400,000
Services (specified in Annex 4)	<i>Threshold:</i>	SDR 400,000
Construction (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Agency for Science, Technology and Research
Board of Architects
Civil Aviation Authority of Singapore
Building and Construction Authority
Economic Development Board
Housing and Development Board
Info-communications Development Authority of Singapore
Inland Revenue Authority of Singapore
International Enterprise Singapore
Land Transport Authority of Singapore
Jurong Town Corporation
Maritime and Port Authority of Singapore
Monetary Authority of Singapore
Nanyang Technological University
National Parks Board
National University of Singapore
Preservation of Monuments Board
Professional Engineers Board
Public Transport Council
Sentosa Development Corporation
Singapore Broadcasting Authority
Singapore Productivity and Standards Board
Singapore Tourism Board
Standards, Productivity and Innovation Board
Urban Redevelopment Authority

Note to Annex 3:

1. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

... 2002 (WT/Let/...)

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UNITED STATES

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by state governments, such as the New York Contract Reporter

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SINGAPUR

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... 2002 (WT/Let/...)

WORLD TRADE ORGANIZATION

GPA/W/168/Add.5
13 June 2002

(02-3299)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2002/03

EUROPEAN COMMUNITY

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2002 - 2003.

The information notified in response by the European Community is attached.

Threshold¹ calculations - for period 2002 - 2003

SDR	130,000	200,000	400,000	5,000,000
EUR	162,293	249,681	499,362	6,242,028
Dansk krone	1,209,390	1,860,600	3,721,201	46,515,012
Svensk krona	1,413,053	2,173,927	4,347,855	54,348,187
Pound sterling	100,410	154,477	308,955	3,861,932

¹The calculation of the thresholds of the WTO Agreement, expressed in EUR and in national currencies, has been based on the average monthly SDR to EUR exchange rate over 24 months from September 1999 through August 2001 (1 EUR = 0.708869 SDR).

The value of the thresholds in EUR and in national currencies has been expressed without the value-added tax (VAT) because the Community excludes VAT when calculating the value of contracts.

The value of thresholds in national currencies will not change during the reference period.

**CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO
ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT**

Communication from the Kyrgyz Republic

I. LEGAL FRAMEWORK

1. Is there a single central law on procurement? If so, please, specify?

There is a single Law of the Kyrgyz Republic On government procurement of goods, construction and services of May 13, 1997 (as amended by the Law of November 28, 1998) (hereinafter referred to as the Law), which regulates relations emerging in the area of state procurement of goods, construction and services.

2. What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.

The Law of the Kyrgyz Republic On government procurement of goods, construction and services of May 13, 1997 (as amended by the Law of November 28, 1998), regulations, decisions and other normative and legal documents shall be implemented in the same manner throughout the whole Kyrgyz Republic territory at both the central and the sub-central levels. The sub-central level includes decisions adopted at the level of heads of oblast and rayon administrations. Decisions adopted at the level of heads of oblast and rayon levels shall be implemented only on the territory of those oblasts and rayons. It shall not be in conflict with centrally adopted acts.

- The Decree No. 31 of the President of the Kyrgyz Republic On establishment of State Procurement Agency of the Government of the Kyrgyz Republic of January 29, 1997;
- Resolution No. 29 of the Government of the Kyrgyz Republic On additional measures on saving of state funds and increasing of effectiveness of government procurement activities of January 20, 1999. This Resolution is aimed at streamlining of government procurement proceedings taking into account various conditions; specification of norms and requirements and general optimization and ensuring consistency of the government procurement system. The approved forms for government procurement plans allow to determine not only essential needs of procuring entities in goods, construction and services but allow to conduct supervision over propriety of conducting procurement of goods, construction and services in a certain period of time;
- Resolution No. 327 of the Government of the Kyrgyz Republic On approval of threshold amounts for conducting government procurement of July 9, 2001. In accordance with the Resolution the minimum threshold amount directed for procurement of goods and services

shall be 50 000 Soms and for the procurement of services it is 100 000 Soms.¹ Threshold amounts can be changed depending on inflation and other economic processes;

- Resolution No. 398 of the Government of the Kyrgyz Republic On approval of the proceedings for procuring goods, construction and services related to national defence, national security, protection of state secret and liquidation of consequences of natural disasters of July 1, 1998 (as amended by the Resolution No. 529 of the Government of the Kyrgyz Republic of September 5, 2001);
- Regulations on State commission of the Government of the Kyrgyz Republic on government procurement and material reserves, approved by the Resolution No. 101 of the Government of the Kyrgyz Republic of March 15, 2001 sets forth authority of the State Commission within the government procurement system when conducting its activities;
- Regulations on maintenance of a database of unreliable (dishonest) suppliers and proceedings for its utilization, approved by Order No. 94 of the Director of the State Procurement Agency of the Government of the Kyrgyz Republic of December 11, 1998;
- Regulations on tender commission, defining procedure for forming, functions and rules for the tender commission of the procuring entity when conducting government procurement (of goods, construction and services), funded from state funds, approved by the Order No. 5 of the State Agency on Government Procurement of the Government of the Kyrgyz Republic of September 23, 1997;
- Regulations on application of restrictions based on the nationality feature provides for criteria and proceedings for application of restrictions based on the nationality feature, approved by the Order No. 5 of the State Agency on Government Procurement of the Government of the Kyrgyz Republic of September 23, 1997. In the event a decision on limitation of participation based on nationality is adopted, all obligations of the Kyrgyz Republic set forth in international treaties shall be followed;
- Regulations on approval of standard tender documents, approved by the Order No. 5 of the State Agency on Government Procurement of September 23, 1997;
- Regulations on the procedure of consideration of administrative infringements and imposition of administrative punishment for infringement of legislation on government procurement of goods, construction and services, approved by the Order No. 6 of the State Agency on Government Procurement of the Government of the Kyrgyz Republic of November 6, 1998;
- Articles 413 and 533 of the Code of the Kyrgyz Republic on Administrative Liability regulate relations emerging in the process of application of administrative liability for infringement of legislation concerning government procurement of goods, construction and services.

3. *To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.*

The Law is based on the model of the UNCITRAL Model Law on Procurement of Goods, Construction and Services. Generally, the Law does not contain provisions that are in conflict with

¹ The national currency exchange rate is 1 USD = 49,7 Soms as of May 13, 2002

the Agreement on Government Procurement. Nevertheless, Article 52 of the Law provides for priority of international law over provisions of the domestic Law in case of conflict between them.

II. SCOPE AND COVERAGE

4. Please summarize the organization of the government in your country at each level.

Organization responsible for implementation of the governmental policy in the area of government procurement of goods, construction and services consists of the State Commission of the Government of the Kyrgyz Republic on Government Procurement and Material Reserves, its 7 regional departments in each oblast (Chui regional department, Naryn regional department, Issyk-Kul regional department, Jalal-Abad regional department, Osh regional department Talas regional department, Batken regional department) and one in the City of Bishkek.

5. Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services).

Ministry of Defence,
Ministry of Healthcare,
Ministry of Ecology and Emergency Situations,
Financial and Economic Department of the Ministry of Internal Affairs,
Chief Department on Execution of Punishments of the Ministry of Internal Affairs,
Academy of the Ministry of Internal Affairs,
Headquarters of Interior Forces,
National Guards.

6. *What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?*

Oblast divisions of ministries and agencies of the Kyrgyz Republic as well as local self-government bodies and local administrations conduct procurement of goods, construction and services at sub-central level.

7. *Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type entities) owned and controlled by the government that engage in procurement? Specify.*

In accordance with the Law any governmental bodies of the Kyrgyz Republic, having a legal entity status, as well as organizations established with state funds and Joint-Stock Companies with state share of two thirds can be procuring entities.

8. *Do entities listed in response to questions 5, 6, and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will your government ensure the implementation of the Agreement by such entities below the central/federal government level?*

All the above-mentioned entities and organizations located on the territory of the Kyrgyz Republic apply the Law of the Kyrgyz Republic On government procurement of goods, construction and services of May 13, 1997 (as amended by the Law of November 28, 1998) when conducting government procurement of goods, construction and services. Exceptions concern procurement related to national defence or security.

9. *Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defence or security reasons? Please provide details.*

The Law in accordance with paragraph 2 of the Article 2 does not provide for procurement related to national defence, national security, protection of state secret and liquidation of consequences of natural disasters. The Resolution No. 398 of the Government of the Kyrgyz Republic of July 1, 1998 (as amended by the Resolution of the Government of the Kyrgyz Republic of September 5, 2001) provides for principles of conducting procurement of goods, construction and services in the above-mentioned areas.

10. *Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.*

Please, see Annex 1.

III. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. *Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

The procuring organization cannot discriminate against or exclude various foreign suppliers of goods, construction and services on the nationality basis if foreign suppliers are included into the tender procedure. In accordance with the paragraph 6 of Article 3 of the Law, if foreign suppliers are allowed to take part in the tender procedure, their tender applications shall be considered with the same conditions as tender applications from domestic suppliers.

12. *Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favorable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favorable treatment than those of any other country.*

Article 3(1) of the Law allows procuring entity to restrict participation of foreign suppliers in tender proceedings if there are enough bidders to deliver goods, or perform constructions or render services on the territory of the Kyrgyz Republic. Also if the subject of procurement is services or construction on the territory of the Kyrgyz Republic, the procuring entity may require that all of the services or construction be performed by domestic entities, and with domestic raw materials and products. Article 3(5) of the Law provides that in the event a decision on limitation of participants based on nationality is adopted, all obligations of the Kyrgyz Republic set forth in international treaties shall be followed.

13. *Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favorably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of country of production of the good or service being supplied.*

The legislation currently in force does not contain any provisions restricting status of locally established suppliers.

14. *Please specify to what extent, if at all, more favorable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.*

National legislation does not provide for any favorable regime for economy sectors, regions or specific categories of suppliers of supplies.

15. *Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.*

Legislation currently in force does not provide for such requirements in the qualification or selection of suppliers.

IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. *Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.*

Article 18 of the Law defines five government procurement methods:

- tender with unlimited participation;
- tender with limited participation;
- two-stage tender;
- request for quotations;
- procurement from single-source.

Tender with unlimited participation is the main method of government procurement. When conducting tender with unlimited participation, the suppliers who want to participate in the procurement proceeding have the right to submit tender applications without limitation.

Tender with limited participation is conducted if:

- the expenses required to review and evaluate a large quantity of tender applications are incommensurable with the value of goods, construction, or services to be procured. In such a case tender commission shall choose a sufficient number of suppliers to ensure competition but no less than two;
- the goods, construction or services with regard to the level of their technical complexity or specialized nature have only a limited circle of suppliers. The tender commission of the procuring entity shall solicit tender applications from all suppliers (contractors) which can supply the procured goods, construction or services.

Two-stage tender in accordance with Article 34 of the Law, shall be applied only if:

- the tender commission of the procuring entity cannot determine in advance the specific technical characteristics and quality features of the procured goods, construction or services;

- it is necessary to conduct negotiations with suppliers because of the special nature of the procured goods, construction or services;
- the subject matter of the procurement is a research, an experiment, preparation of a scientific opinion or performance of any other specialized services.

In the first stage of two-staged proceedings tender commission solicits tender applications without indication of price. In this stage the tender commission of the procuring entity solicits proposals relating to the technical, quality or other characteristics of the goods, construction or services, contract terms for their delivery, and when necessary, professional and technical competence and qualifications of the suppliers.

In the second stage the procuring entity shall invite suppliers whose tenders have not been rejected to submit final tenders with an indication of the price. In this stage the tender commission can exclude or change any initially set aspect of technical or qualitative features of procured goods, works or services as well as any primarily set criterion for evaluation and comparison of tender applications and defining the winning tender application and/or add new characteristics in accordance with the law currently in force.

Request for quotations is a procurement procedure in which the tender commission of the procuring entity solicits quotations for goods, construction or services from such a number of suppliers, that ensures competition and selection of the best offer, but no less than three.

The Law provides for an option when request can be forwarded to two suppliers provided there is approval from the State Procurement Commission. Request for quotations method is used when procuring goods and services with fixed quality standards. Each supplier has right to provide only one price quotation and cannot change it. There shall be no negotiations concerning the price quotation between the tender commission and the supplier. The procuring entity shall sign a procurement contract with a supplier, who submitted the lowest price quotation meeting the needs of the procuring entity.

Procurement from single source is a procurement procedure in which the procuring entity signs a procurement contract after negotiating with only one supplier. The procuring entity, with the consent of the State Procurement Commission, may adopt a decision on conducting single source procurement in the following circumstances:

- if it is conducting additional orders within 6 month since the conclusion of the contract, not exceeding 15% of the value of the previous procurement, and maintains the same norms, parameters and standards;
- signing of a contract for research, experiments or preparation of a scientific opinion;
- if the specific types of goods, construction or services are available only from a particular supplier or if some supplier possesses exceptional rights with respect to such goods, construction or services;
- if the procuring entity is conducting a state procurement for a creative work or for creative activity in the area of arts or culture;
- if the procurement can only be obtained from one supplier due to limitation based on nationality in compliance with legislation;

- if an immediate necessity arises to conduct procurement in connection with circumstances which the procuring entity could not foresee;
- if the tender commission received only one tender application as a result of tendering proceedings with mass media notification and repeated proceedings will not lead to conclusion of a procurement contract;
- if the cost of the procurement is less than the minimum threshold amount.

17. *Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII and selection of suppliers in terms of Article X. Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?*

Article 8 (5) of the Law provides that the tender commission of the procuring entity shall not establish criteria, requirements or procedures which discriminate against suppliers on the basis of nationality, or which are not objectively justifiable, except for cases described in Article 3 of the Law (please see the response to question 11).

In accordance with Article 3(6) of the Law if foreign suppliers were admitted to the tendering proceedings, their tender applications shall be considered on the same conditions as those of domestic suppliers.

18. *In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent list of suppliers?*

Tender commission of the procuring entity in accordance with Article 9(1) of the Law has right to conduct pre-qualification proceeding for suppliers before announcement on tendering proceedings or before inviting them to participate in government procurement proceedings. In this case the tender commission can conduct qualification selection of suppliers for further participation in the procurement proceedings only on the basis of conditions, determined in pre-qualification or tender documentation. Only those suppliers, who passed pre-qualification selection, are eligible to participate in further procurement proceedings.

The database of suppliers is formed in the state procurement body and is maintained by the Organizational department for procurement of goods, construction and services.

19. *What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?*

Limited tendering, in accordance with Article 19(2) of the Law is conducted if:

- the expenses required to review and evaluate a large quantity of tender applications are incommensurable with the value of goods, construction, or services to be procured. In such a case tender commission shall choose a sufficient number of suppliers to ensure competition but no less than two;
- the goods, construction or services with regard to the level of their technical complexity or specialized nature have only a limited circle of suppliers (contractors). The tender

commission of the procuring entity shall solicit tender applications from all suppliers (contractors) which can supply the procured goods, construction or services.

Article 3(1) of the Law allows procuring entity to restrict participation of foreign suppliers in tender proceedings if there are enough bidders to deliver goods, or perform constructions or render services on the territory of the Kyrgyz Republic. Also if the subject of procurement is services or construction on the territory of the Kyrgyz Republic, the procuring entity may require that all of the services or construction be performed by domestic entities, and with domestic raw materials and products. Article 3(5) provides that in the event a decision on limitation of participants based on nationality is adopted, all obligations of the Kyrgyz Republic set forth in international treaties shall be followed.

20. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

In light of the Article XIV of the Agreement the Law provides for only one case when the tender commission of the procuring entity can conduct negotiations with a supplier. In the first stage of two-staged tender the tender commission of the procuring entity has a right to conduct negotiations with any supplier, provided if his tender application wasn't rejected. Still, the Law does not contain provisions clarifying procedure for conducting such negotiations.

21. *Article XI sets out minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.*

In accordance with the Article 24 of the Law the tender commission shall define the exact deadline (date and time), taking into account the amount of procured goods, construction and services. Deadline for tender applications shall be:

- when conducting tender with unlimited participation – no less than 6 weeks from the announcement date;
- when conducting limited tender – no less than 4 weeks from the date of sending invitations for participation in tender.

Still these time-periods can be reduced if the participation is limited to domestic suppliers. Decision on reduce of the time-period shall be adopted by the tender commission of the procuring entity.

22. *Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?*

Tender application shall be submitted in written form and in a sealed envelope (Article 24 (3) of the Law). Still, the Law provides that the tender application can be submitted in any other form, determined in tender documentation. It is necessary that form clearly stated the name of the applicant. The tender applications shall be submitted in time-periods defined by the tender commission of the procuring entity. Tender application received after the deadline for submission of tender applications shall not be opened and shall be returned to the supplier who submitted it.

The procuring entity shall send tender documentation no later than one week from the moment of receipt of the request. When conducting limited tender, tender documentation, including specifications, shall be sent along with invitation.

After publication of the tender announcement or invitation to participate in tender, the secretary of tender commission shall register all candidates who obtained tender documentation in a specialized register. The same register shall contain suppliers, having submitted tender applications. Such a double registration is necessary for ensuring that participants to be could obtain tender documentation only from the tender commission in order to avoid its copying.

Supplier has the right to obtain clarification of tender documentation from the tender commission of the procuring entity. The tender commission of the procuring entity within 3 business days shall provide clarification for all suppliers, who obtained tender documentation without mentioning the source of request. In special cases the tender commission of the procuring entity can change tender documentation before the deadline for submission of tender applications. All those changes shall be made known to all suppliers and shall be obligatory for them.

In case if clarification meetings re tender documentation are conducted, minutes of the meeting containing requests for clarification, as well as responses without mentioning the source of requests shall be put together. Those minutes shall be immediately sent to all suppliers who received tender documentation.

Tender applications shall be opened in time and in a certain place, indicated in tender documentation (Article 27(1) of the Law). The time for opening tender application shall coincide with the deadline for submission of tender applications. Public opening of tender applications with participation of all interested candidates is a guarantee of conscientious and fair treatment of all participants.

Information concerning applicant whose application has been opened as well as the price of tender application shall be immediately announced to all those present and shall be put into the report on tendering proceedings. Those who were not present at the opening ceremony can obtain information concerning candidates and tender application prices upon their request.

23. *Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.*

Please, see the response to question 24.

24. *Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.*

Evaluation process starts from the moment of opening of the tender applications. Time for opening of tender applications shall coincide with the deadline for submission of tender applications. The tender commission of the procuring entity can ask for clarification of tender applications from suppliers during evaluation process. The Law currently in force does not allow any changes in essence of tender applications, including change of price. There shall be no negotiations between the tender commission of the procuring entity and candidate concerning the submitted tender application. Cut of winner's tender application price is possible upon his consent. The minutes shall contain note on cut of tender application price. The winner has the right to refuse to cut price and this shall not be considered as a basis for its rejection (Article 28 (3) of the Law).

Tender application can be rejected in two cases: 1) when it does not meet the requirements provided for in the Law on government procurement, other normative and legal acts regulating

government procurement and requirements, provided in tender documentation; 2) when candidate does not agree with correction of obvious mistakes in his tender application.

Winning tender application is considered to be an application meeting requirements of tender documentation and having the lowest price.

Written notice that its tender application has been selected as the winning application shall be sent to the supplier who submitted it within 3 days of the selection.

The contract between the procuring entity and the supplier shall be signed in time no more than 7 days from the day when he received the written notice. In the event that the selected supplier does not sign a contract or fails to provide required security of performance of the procurement contract, a new selection shall be made from the already submitted tender applications. Exception can be made if other tender applications were rejected or the time-period for amendment or withdrawal of tender applications expired and the right for repayment of security of performance was not lost.

B. V. INFORMATION

25. *Article XIX:1 of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the relevant publication(s) and indicate the media used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.*

Article 12(2) of the Law foresees that normative legal acts shall be published in official media and Government procurement bulletin. In accordance with Article 2 of the Law No. 9 of the Kyrgyz Republic On procedure for publication of Laws of the Kyrgyz Republic of February 14, 1997 official publication is a publication of laws and other normative and legal acts in the Erkin-Too newspaper, Kyrgyz Republic Statute Book, Bulletin of Zhogorku Kenesh² of the Kyrgyz Republic and Collection of Laws and Acts of the President of the Kyrgyz Republic.

State Commission has no Internet site. Legislation mentioned in responses to questions 1 and 2 can be found on the Internet website of legal information system Toktom: www.toktom.kg.

26. *Article IX:1 of the Agreement foresees the publication invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

Invitations to participate for all cases of intended procurement are published in the following newspapers only: Slovo Kyrgyzstana, Kyrgyz Tuusu and Erkin-Too. State Commission has no Internet site.

27. *Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions of your legislation.*

Invitation to participate in a tender in accordance with Article 20 of the Law shall contain the following information:

² Parliament

- the name and legal address of the procuring entity;
- the nature, quantity, and place of delivery of goods to be procured;
- the nature and location of the construction to be done, or the nature and location of the services to be rendered;
- the desired or required time for delivery of the goods or for the completion of the construction, or the timetable for rendering services;
- conditions required of suppliers (contractors);
- a statement that suppliers may participate in the procurement proceeding regardless of nationality in accordance with the requirements established in Article 3 of the Law;
- the methods and location to receive the tender documentation and any payment for it to the procuring entity (if payment is required);
- the place and deadline for submission of tender applications;
- the place and deadline for opening tender applications.

The Director of the State Procurement Commission in regulations may determine a form for announcement on tenders.

An announcement on tender may contain additional requirements that can be determined by the Director of the State Procurement Commission.

28. *Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the relevant publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such lists are published.*

Database with the list of suppliers is not published in mass media. The list is kept by the State commission on government procurement of goods, construction and services of the Government of the Kyrgyz Republic.

State commission also keeps a list of unreliable (careless) suppliers with the purpose of removal from participation in tendering proceedings. Decision on input of a supplier into this database is to be adopted by the Head of the State Procurement Commission. This database shall be published only in the Government Procurement Bulletin on a regular basis.

29. *Article XVIII:1 of the Agreement foresees the publication of details of contract award notices by entities. Please give name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.*

The tender commission of the procuring entity shall publish such announcements on contract awards in the same mass media or Bulletin of Government Procurement where the tender announcement was published earlier.

30. *Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.*

Notice of contract awards shall contain the following information in accordance with Article 31(2) of the Law:

- name and address of the winning tenderer;
- price of the submitted tender application.

Article 31(4) of the Law foresees that the Director of the State Procurement Commission has right to determine additional information to be included into such notice.

31. *Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2, the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.*

An announcement about concluding procurement contract with the name and address of the supplier with whom the contract was signed, and the price of the contract, shall be presented within 7 days of signing to all suppliers who took part in the procurement proceeding in accordance with Article 42(2) of the Law.

VI. BID CHALLENGE PROCEDURES

32. *Please provide information on existing challenge procedures.*

Disputes can be considered by Arbitration court, still appeal to court system is possible after application of all administrative measures. The following issues cannot be subject of appeal:

- selection of a procurement method;
- selection of proceedings for conducting procurement;
- limitation of the procurement proceedings on nationality basis;
- decision of the procuring entity to reject all applications, suggestions and quotations;
- refusal of the procuring entity to respond to the expression of interest in participation in proceedings of request for offers;
- absence of references to laws and regulations in tender documents.

33. *Are there specific provisions enabling access of foreign suppliers to challenge procedures?*

There are no such provisions foreseen.

34. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:*

- (i) *The time-limit to launch a complaint contained in the Agreement is “not less than 10 days” from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in your domestic legislation?*

Tenderers can appeal against any decision of the tender commission to the procuring entity within 10 days from the time when the supplier came to know or should have come to know about the

basis of the complaint. Upon expiration of such period, appeals submitted by suppliers to the procuring entity are not to be reviewed.

The decision of the procurement entity can be appealed against in the State Commission on Procurement of the Government of the Kyrgyz Republic within 15 days of the time when the basis of the complaint is known or reasonably should have been known or from the date of signing of the procurement contract. After this time-period has passed, complaint shall be launched within a judicial proceeding.

(ii) *What body is responsible for the challenge procedures? Is this a “court” or an “impartial and independent review body”?* *If the latter:*

- *How are its members selected?*
- *Are its decisions subject to judicial review?*
- *If not, how will the requirements of paragraph 6 of Article XX be taken into account?*

The following bodies are responsible for the appeal proceedings:

- procuring entity;
- State Commission on Procurement and Material Reserves of the Government of the Kyrgyz Republic;
- Arbitration Court.

If the supplier having submitted an appeal to the procuring entity is not satisfied with its results, he has right to appeal against this decision to the State Commission on Procurement.

All disputes between suppliers and the procuring entity emerging during the procurement proceedings as well as decisions of the procuring entity and State Commission can be subject to appeal to court.

Arbitration courts settle economic disputes arising in the economic sphere between business entities based on different forms of ownership (Article 84(2) of the Constitution of the Kyrgyz Republic). Arbitration judicial system consists of the Supreme Arbitration Court and arbitration courts of oblasts and the City of Bishkek. Judges of the Supreme Arbitration Court are elected by the upper chamber of the Parliament of the Kyrgyz Republic upon nomination by the President of the Kyrgyz Republic. The President of the Kyrgyz Republic appoints judges of oblast arbitration courts and that of the City of Bishkek. In accordance with Article 84(3) of the Kyrgyz Republic Constitution the Supreme Arbitration Court of the Kyrgyz Republic oversees judicial activities of arbitration courts in oblasts and in the City of Bishkek.

(iii) *What is the applicable law by reference to which the challenge body will examine complaints?*

The Law of the Kyrgyz Republic On government procurement of goods, construction and services of May 13, 1997 (Chapter 7 Protests and Appeals), Code of Administrative Liability and Arbitration Code make the main legislative basis for the process of consideration of an appeal.

- (iv) *Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?*
- *Do these measures include the possibility to suspend the procurement process? On what conditions?*

Government procurement law foresees that timely appeal in accordance with the provisions of the Law, can suspend the procurement process up to 10 days. An appeal shall be well-grounded and shall contain facts, confirming that the supplier will suffer damage in the absence of such a suspension, or it is probable that the complaint will succeed, provided that the suspension will not cause substantial damage to the procuring entity and to other suppliers.

If the contract has been already signed, submission of timely and well-grounded appeal meeting the requirements of the Law shall suspend implementation of such a contract up to 10 days.

- (v) *How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?*

State Commission on Procurement in the event if the appeal was not rejected has right to:

- forbid the tender commission from carrying out illegal actions, adopting illegal decisions, or using illegal procedures;
- fully or partially revoke an illegal decision of the tender commission of the procuring entity;
- revoke an illegal decision of a tender commission or a procuring entity which violates procurement procedures;
- make a decision to terminate a procurement proceeding.

State Commission on Procurement can obligate the procuring entity to refund expenditures taken by the supplier as a result of an illegal action or decision of a procuring entity or use of an illegal procedure, if the supplier filed a complaint with respect to the procurement proceedings. Still, there is no refund of loss and damages provided for.

- (vi) *Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.*

The procuring entity shall consider the filed complaint within 7 days from the time of its submission. In the event if the procuring entity didn't adopt any decision within that time-period, or the supplier is not satisfied with the adopted decision he has right to further appeal to the State Commission or the court.

The State Commission will not consider complaints filed after 15 days from the time when the basis of the complaint is known or reasonably should have been known to the supplier or after signing the procurement contract. In this case the complaint shall be submitted to court.

The State Commission shall adopt a well-grounded decision within 10 days.

- (vii) *What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?*

The legislation currently in effect does not provide for fee for filing a complaint and procedure of its consideration. The procuring entity and the State Commission shall consider a complaint free of charge. Fee for submission of a complaint to the Arbitration court is 10 minimum monthly wages.³

VII. OTHER MATTERS

35. *To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.*

Though there is a certain technical provision, still there is no practice of publishing tender notices and/or notices of contract awards electronically.

36. *Is there a contact point in your country for responding to enquires from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.*

There are no contact points for responding to enquires from suppliers in the Kyrgyz Republic.

³ one minimum monthly wage is 100 Soms

ANNEX I

Government Procurement Plan for 2002 by Major Foodstuff Items

№п/п	Ministries and Administrative Bodies	First rate bread	2-nd rate q-ty bread	First rate flour	2-nd rate q-ty flour	Beef	Canned fish	Canned meat and vegetables	Canned meat	Beet	Cabbage
1	Ministry of Defence	672	834	1382	1633	400		82	51	62	311
2	Chief Department on Execution of Punishments		3208		27	525				149	816
3	Headquarters of Interior Forces	573				140	28		24	10	40
4	Academy of the Ministry of Internal Affairs					30	2		1		
5	National Guards	217		2		51			51	8	38
6	Ministry of Healthcare	347		44		79				21	92
7	Financial and Economic Department of the Ministry of Internal Affairs										
	Total for Ministries	1809	4042	1428	1660	1225	30	82	127	250	1297
8	Bishkek Regional Department	749		265		264				34	72
9	Chui Regional Department	552		262		102	2			10	50
10	Naryn Regional Department	125				35					24
11	Issyk-Kul Regional Department										
12	Jalal-Abad Regional Department	810	977	560		56					31
13	Osh Regional Department	1860	730	196	20	846	19		24		643
14	Talas Regional Department	25		138		65					33
15	Batken Regional Department			60	80	35					98
	Total for Oblasts	4121	1707	1481	100	1403	21		24	44	951
	Total for the Republic	5930	5749	2909	1760	2628	51	82	151	294	2248

ANNEX I

Government Procurement Plan for 2002 by Major Foodstuff Items (continued)

№/п	Ministries and Administrative Bodies	Onion	Carrot	Potato	Rice	Various Cereals	Sugar	Salt	Vegetable oil	Butter	Milk
1	Ministry of Defence	104	104	1245	112	224	224	84	112	85	
2	Chief Department on Execution of Punishments	184	149	3000		582	180	104	108	45	541
3	Headquarters of Interior Forces	16	35	447			30	17	15	25	77
4	Academy of the Ministry of Internal Affairs	10		40	6	10	6	8	3		20
5	National Guards	13	13	153		30	20	8	5	8	
6	Ministry of Healthcare	65	50	666	43	45	28	15	30	57	345
7	Financial and Economic Department of the Ministry of Internal Affairs	1		2	1	1.6	2		0.6	0.2	4
	Total for Ministries	393	351	5553	162	892.6	490	236	273.6	220.2	987
8	Bishkek Regional Department	24	32	665	43	173	164	15	69	72	880
9	Chui Regional Department	118	112	755	21	88	138	22	39	7	375
10	Naryn Regional Department	19	26	12	13	16	20	4	11	4	25
11	Issyk-Kul Regional Department										
12	Jalal-Abad Regional Department	70	70	1300	209	173	73	36	110	0.4	618
13	Osh Regional Department	279		1837	208	872	268	109	243	103	945
14	Talas Regional Department	3827	21	98	63	18	19	3	13	2	96
15	Batken Regional Department	190	105	200	10		19	5	25		60
	Total for Oblasts	4527	366	4867	567	1340	701	194	510	188.4	2999
	Total for the Republic	4920	717	10420	729	2232.6	1191	430	783.6	408.6	3986

ANNEX II

Information on Procurement Plan provided by the State Procurement commission of the Government of the Kyrgyz Republic on government procurement and material reserves for 2002 in accordance with the State Budget (including special accounts)

						(thousand Soms)
№ п/п	Article Name	Provided in the budget	Provided by procurement plan	in %	Difference	Notes
1.	1321.Machinery and materials	203,972	123,337	60.5	80,635	
2.	1322. Medical Supplies	120,127	111,931	94	8,196	1 218 small amounts
3.	1323. Foodstuff	487,979	435,285	90	52,694	
4.	1324. Clothing and ammunition	60,525	40,664	67	19,861	
5.	1333. Transportation expenses	234,162	144,972	62	89,190	
6.	1341. Other services	838,664	549,118	65	289,546	
7.	3111. Subsidies for state-owned enterprises	327,800	327,800	100	-	
8.	4001. Capital Investments	560,293	338,359	60	221,934	
8.	4004. Major repairs	333,114	330,384	99	2,730	
	Total:	3,166,636	2,401,850	76	764,786	

PROPOSED MODIFICATION TO APPENDIX II OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)¹

The following communication from the Hong Kong Economic and Trade Office was received on 27 May 2002 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

1. Pursuant to paragraph 6(a) of Article XXIV of the Agreement on Government Procurement (1994) (the "Agreement"), Hong Kong, China hereby notifies the Committee on Government Procurement of the following modification to the Appendix II of the Agreement:

In Annex 3, with regard to the publication listed opposite "Hospital Authority", adding "Any of the following" before "Daily Press" and "Home Page on the Internet" (order reversed) to become:

"Any of the following:

- Daily Press
- Home Page on the Internet (<http://www.ha.org.hk>)".

2. The above reflects the plan of the Hospital Authority to change its publication arrangements. Accordingly, page 2/4 of Appendix II should be modified as in Attachment A to this document (redlined version). Attachment B shows the relevant page of the loose-leaf system after certification by WTO Secretariat.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² The Attachments are in English only.

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

Hospital Authority	- <u>Any of the following:</u> - <u>Daily Press</u> - Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	- The Government of the Hong Kong Special Administrative Region Gazette Daily Press
Kowloon-Canton Railway Corporation	- Any of the following: - The Government of the Hong Kong Special Administrative Region Gazette - Daily Press - Home Page on the Internet (http://www.kcrc.com)
MTR Corporation Limited	- Any of the following: - Daily Press - Home Page on the Internet (http://www.mtr.com.hk)
Airport Authority	- Any of the following: - Daily Press - Home Page on the Internet (http://www.hkairport.com)

Deleted: - Daily Press

ICELAND

Icelandic newspapers:

Morgunbladid
Dagbladid
Dagur

Other:

Official Journal of the European Communities

25 October 2001 (WT/Let/407)

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

Hospital Authority	- Any of the following: - Daily Press - Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	- The Government of the Hong Kong Special Administrative Region Gazette - Daily Press
Kowloon-Canton Railway Corporation	- Any of the following: - The Government of the Hong Kong Special Administrative Region Gazette - Daily Press - Home Page on the Internet (http://www.kcrc.com)
MTR Corporation Limited	- Any of the following: - Daily Press - Home Page on the Internet (http://www.mtr.com.hk)
Airport Authority	- Any of the following: - Daily Press - Home Page on the Internet (http://www.hkairport.com)

ICELAND

Icelandic newspapers:

Morgunbladid
Dagbladid
Dagur

Other:

Official Journal of the European Communities

(...../WTLET/.....)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/196
28 May 2002

(02-2917)

Committee on Government Procurement

Original: English

NOTIFICATIONS FROM JAPAN UNDER ARTICLE XXIV: 6(a)

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement of the following rectifications of a purely formal nature with regard to Annex 3 of Appendix I of the Agreement:

- add "- National Agency for Vehicle Inspection" after "- Labor Management Organization for USFJ Employees" in Group B in the "List of Entities"; and
- add "- National Agency for Vehicle Inspection " after "- Labor Management Organization for USFJ Employees " in Group B in the "List of Entities which procure the services, specified in Annex 4".

The above rectifications are the result of the following organizational change relating to a central government entity in Annex 1. They do not alter the level of the mutually agreed coverage provided in the Agreement.

- (1) In the process of Japan's central government reform (cf. GPA/W/129 and GPA/W/137), part of the undertakings, which have been carried out by local branch offices of the Ministry of Land, Infrastructure and Transport in Annex 1 are to be conducted by the National Agency for Vehicle Inspection. Under the Law Concerning the National Agency for Vehicle Inspection (Law No. 218 of 22 December 1999) and the relevant ordinances, this organizational change shall be implemented as of 1 July 2002. The National Agency for Vehicle Inspection shall be established as an Independent Administrative Institution (IAI), which will be legally independent from the government, and will perform transferred undertakings efficiently and effectively. (The outline of this entity is attached hereto.)
- (2) Since this new organization does not fall under the central government entities covered by the Accounts Law and is not provided for in the National Government Organization Law and the Law establishing the Cabinet Office, Japan has decided to add this entity to Annex 3 regarding both supplies and services (under Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4" of Annex 3). In this way, the Agreement can be applied to it with the same thresholds and conditions as stipulated in Annex 1 for central government entities.
- (3) This entity will have accounting rules with which to implement the relevant thresholds and procedures under the Agreement. These accounting rules will apply as of 1 July 2002. Challenge procedures, as provided for in Article XX in the Agreement, will apply to the procurement conducted by this entity, which will fall under the control of the Ministry of Land, Infrastructure and Transport.

- (4) The above-mentioned rectifications are consistent with the relevant rectification notification from Japan (GPA/W/129, dated 19 March 2001), which became effective on 5 September 2001 (WT/Let/400)¹.

¹ Japan will notify the Committee of similar rectifications to Annex 3 concerning another IAI, which is to be established in April 2003.

Attachment

Outline of the National Agency for Vehicle Inspection

(to be established as of 1 July 2002)

a. Purpose

To secure the safety of road vehicle and to prevent pollution caused by road vehicles.

b. Scope of the Work

Inspections to be carried out in order to determine whether or not road vehicles conform to the safety regulations designed for them.

c. Organization

Head Office: Tokyo
Branch Offices: 93 offices nationwide

d. Relations with the central government

The competent ministry for this organization is the Ministry of Land, Infrastructure and Transport.

**ACCESSION OF GEORGIA TO THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Questions from the United States Regarding Georgia's Replies to the
Checklist of Issues Contained in Document GPA/W/187

The following communication, dated 23 April 2002, has been received from the delegation of the United States with the request that it be circulated to the Committee on Government Procurement.

The United States has reviewed the replies of Georgia to the Committee's Checklist of Issues relating to accession to the Government Procurement Agreement (GPA/W/187). The United States submits the following questions and requests for clarification regarding Georgia's replies:

1. The United States notes that several of Georgia's responses refer to a preferential evaluation privilege that applies to tenders when a Georgian supplier is competing against a foreign supplier, and a requirement that 70% of engineer-technical personnel and workers participating in construction contracts must be citizens of Georgia. Will these requirements be waived for contracts covered by the GPA in order to comply with GPA Article III?
2. In response to Question No.7 of the Checklist, Georgia stated that "Public legal entities are obliged to carry out procurement according to this Law, despite the source of financing of procurement." Please clarify whether state-owned enterprises and entities in which the Georgian government owns shares are considered "public legal entities" that are subject to the Georgian Law "On State Procurement".
3. With respect to Georgia's response to question No. 15, please indicate how Georgia will ensure compliance with GPA Article XVI.
4. Please describe how Georgian procurement law and regulations will permit suppliers to become qualified to participate in a tender process that is already underway in cases where a register is used and also where a register is not used.
5. Is the United States correct in understanding from Georgia's reply to Question No. 19 that Georgia allows the use of limited tendering in only two cases: 1) where the procurement falls within the thresholds noted in Georgia's response and 2) where there are less than three tenders? With regard to the later condition, please indicate how it complies with GPA Article XV:1(a). Also, please describe any other cases in which limited tendering may be used.

6. At the end of its response to Question No. 16, Georgia indicates that in two-staged tenders, negotiations may be conducted. Please clarify whether such negotiations would comply with GPA Article XIV. Also, please indicate whether negotiations may be used in any other cases.
7. Please describe the type of information that suppliers are required to submit when they seek qualification to participate in a tendering process.
8. The United States notes that the maximum period for the delivery of tenders in Georgia is 30 days, as is indicated in the response to question #21. Please indicate how Georgia intends to implement GPA Article XI:2(a) that requires a minimum time period of 40 days between the publication of the notice of procurement and the deadline for the receipt of tenders in cases of open tendering.
9. The United States notes that, Georgia has stated in response to Question No. 22, that award of tenders in Georgia may take into account the following criteria: “compliance of the tender offers with the interests of the whole country and regional and immediately on the procuring organizations [impact on the state of tax balance and official currency reserves of the country; international agreements of the country; factor of use of home components (use of local labour resources, enterprise capacities and raw materials, etc.); prospects of economical development of the country; transfer of modern technologies, know-how; training of managerial, scientific and enterprise staff; interests of environment protection, defense and national security and other effects].”

Please indicate how the use of such criteria will comply with GPA Article XVI.

10. Please indicate to the extent possible when Georgia’s procurement laws and regulations will be available in English for review.
11. To follow up Georgia’s response to question No. 27, please indicate the types of information that must be included in notices of invitation to tender and in tender documentation.
12. GPA Article IX:6 sets forth the information that is required to be included in notices of proposed procurement covered by the Agreement. Please indicate which of the items listed in Article IX are currently included in tender notices by Georgian procuring entities. For those items listed in Article IX:6 that are not currently included in procurement notices, please indicate when, and in what manner, the inclusion of such information will be made mandatory.
13. In response to Question No. 30, Georgia states that “the information on conclusion of agreement on the state procurement shall be published” please indicate the specific information that must be published, and whether it includes all of the information specified in GPA Article XVIII:1. Please indicate whether Georgia provides the information set out in GPA Article XVIII:2.

WORLD TRADE ORGANIZATION

GPA/W/188
25 April 2002

(02-2378)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

The following communication, dated 15 April 2002, has been received from the Secretariat of the United Nations Conference on Trade and Development (UNCTAD).

I have pleasure in reiterating that UNCTAD lends its full support to the work carried out within the Committee on Government Procurement (1994 Agreement) and in particular to the WTO Working Group on Transparency in Government Procurement, in which UNCTAD has had observer status practically from its inception.

As regards the Committee on Government Procurement, we have considered up to now that, in view of limited participation of the developing countries, an application by UNCTAD for observer status in that Committee was not necessary. This situation is now rapidly changing in view of the increasing number of new WTO Members (developing countries and economies in transition) that have requested observer status in the Committee and have shown interest in becoming Parties of the Agreement on Government Procurement.

UNCTAD's involvement in this area stems from the importance of government procurement in the trade of developing countries, as shown by the technical work undertaken by UNCTAD in the framework of the "positive agenda" during the preparation for the Third Ministerial Conference on the Least Developed Countries. UNCTAD's work in the area of government procurement aims at improving the capacity of developing countries and countries in transition to make the appropriate policy choices, and promoting understanding of the related and emerging issues.

In the light of the above considerations, I should be grateful if the Committee on Government Procurement could consider granting observer status to UNCTAD.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/186
15 March 2002

(02-1344)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV: 6(a)

The following notification from the Permanent Mission of Japan was received on 4 March 2002, with the request that it be circulated to the Parties of the Agreement on Government Procurement.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement of the following rectification of a purely formal nature with regard to Annex 3 of Appendix I of the Agreement:

- add "- Labor Management Organization for USFJ¹ Employees" after "- National Institute for Environmental Studies" in Group B in the "List of Entities"; and

- add "- Labor Management Organization for USFJ Employees " after "- National Institute for Environmental Studies" in Group B in the "List of Entities which procure the services, specified in Annex 4".

The above rectification is the result of the following organizational change relating to a central government entity in Annex 1. It does not alter the level of the mutually agreed coverage provided in the Agreement.

1. In the process of Japan's central government reform (cf. GPA/W/129 and GPA/W/137), part of the undertakings which have been operated by internal sub-divisions of the Defense Facilities Administrative Agency (an independent organization of the Defense Agency in Annex 1) are to be conducted by the Labor Management Organization for USFJ Employees. Under the Law Concerning the Labor Management Organization for USFJ Employees (Law No. 217 of 12 December 1999) and the relevant ordinances, this organizational change shall be implemented as of 1 April 2002. The Labor Management Organization for USFJ Employees shall be established as an Independent Administrative Institution (IAI), legally independent from the government, to perform transferred undertakings efficiently and effectively. (The outline of this entity is attached hereto.)

¹ US Forces, Japan

2. Since this new organization does not fall under the central government entities covered by the Accounts Law and is not provided for in the National Government Organization Law and the Law establishing the Cabinet Office, Japan has decided to add this entity to Annex 3 regarding both supplies and services (under Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4" of Annex 3). In this way, the Agreement can apply to it with the same thresholds and conditions as stipulated in Annex 1 for central government entities. In light of the work assigned to it, this entity is unlikely to procure munitions. Hence, Japan has decided not to apply the same limitation as that provided in Note 4 to Annex 1.

3. This entity will have its accounting rules to implement the relevant thresholds and procedures under the Agreement. These accounting rules will apply as of 1 April 2002. The challenge procedures, as provided for in Article XX in the Agreement, will apply to the procurement conducted by this entity, which will fall under the control of the Cabinet Office.

4. The above-mentioned rectification is consistent with the relevant rectification notified by Japan (GPA/W/129, dated 19 March 2001), which became effective on 5 September 2001 (WT/Let/400).²

² Japan will notify the Committee of similar rectifications to Annex 3 concerning the other two IAIs, which are to be established in July 2002 and April 2003 respectively.

Attachment

**Outline of the Labor Management Organization for USFJ Employees
(to be established as of 1 April 2002)**

(a) Purpose

To secure the workforce necessary for USFJ (US Forces, Japan) by performing work relating to hiring, furnishing, labor management, wage and the welfare of USFJ employees.

(b) Scope of the Work

- (1) Work relating to the implementation of hiring, furnishing, etc.;
- (2) Work relating to the payment of wages;
- (3) Work relating to the welfare of employees; and
- (4) Works entrusted to this organization by the central government (medical examination, vocational training, etc.).

(c) Organization

Head Office: Tokyo

Branch Offices: Misawa, Yokota, Yokosuka, Zama, Fuji, Kure, Iwakuni, Sasebo, Naha and Koza

(d) Relations with the central government

The competent ministry for this organization is the Cabinet Office.

The organization carries out its work in coordination with the Defense Facilities Administrative Agency (an independent organization of the Defense Agency).

ATTACHMENT A

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation

- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation

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Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation

- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

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Services (cont'd)

- Japan Atomic Energy Research Institute (b)
 - RIKEN (The Institute of Physical and Chemical Research) (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
 - Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
- National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

ATTACHMENT B

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environment Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation

... 2002 (WT/Let/...)

Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

Supplies (cont'd)

- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A
4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation

- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Services (cont'd)

- Japan Atomic Energy Research Institute (b)
- RIKEN (The Institute of Physical and Chemical Research) (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology (e)
- The Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B
 - National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies
- Labor Management Organization for USFJ Employees

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

WORLD TRADE ORGANIZATION

GPA/W/184
20 February 2002

(02-0873)

Committee on Government Procurement

Original: English

RESPONSES TO QUESTIONS FROM CANADA REGARDING THE PROPOSED MODIFICATIONS TO APPENDIX I OF THE UNITED STATES IN DOCUMENT GPA/W/153

Communication from the United States

The following communication, dated 12 February 2002, has been received from the delegation of the United States with the request that it be circulated to the Committee on Government Procurement.

Question 1: *GPA/W/153 notes that the organization "came under private sector control on 23 July 1998, when it issued 100 million public shares on the New York Stock Exchange". It is not clear from this statement that all of the shares of the company were sold. Therefore, we would appreciate it if you could confirm that all the shares have been sold and the US Government does not retain any ownership in the new company.*

The US Government sold all of its shares and does not retain any ownership of the Uranium Enrichment Corporation.

Question 2: *We also noted from a reviews of relevant internet web sites that a governmental body called the "Enrichment Oversight Committee" was created. Is this a successor organization and should it be included in Annex I.*

The "Enrichment Oversight Committee" is not a successor organization. It is a committee of US Government officials established by Executive Order 13085 primarily to oversee the full implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated 18 February 1993. *See* 42 USC. §2297h note. The President abolished the committee 1 March 2001 by National Security Presidential Directive Number 1 of 13 February 2001.

Question 3: *We understand that the Alaska Power Administration was divided into several parts and sold to Alaska state governments or municipalities or their agencies. We also understand that some or all of these agencies received United States Federal Government funding to carry out the former Alaska Power Administration functions. Therefore, would you please advise the basis on which the removal of the Alaska Power Administration from Annex 3 is consistent with Article XXIV:6 of the WTO Agreement on Government Procurement?*

In 1998, the Alaska Power Administration (APA) completed formal divestiture of all assets, which were sold to Alaska municipal and privately owned energy cooperatives, as required by the Alaska Power Administration Asset Sale and Termination Act (Public Law 104-58, 22 November 1995). APA was subsequently terminated as required by the Act. At this time, the Federal Government does not provide any funding to, or maintain any oversight responsibilities for, the former APA assets.

WORLD TRADE ORGANIZATION

GPA/W/185
20 February 2002

(02-0874)

Committee on Government Procurement

Original: English

RESPONSES TO QUESTIONS FROM THE EUROPEAN COMMUNITY IN DOCUMENT GPA/W/163 REGARDING THE PROPOSED MODIFICATIONS TO APPENDIX I OF THE UNITED STATES WITH RESPECT TO THE URANIUM ENRICHMENT CORPORATION IN GPA/W/153

Communication from the United States

The following communication, dated 12 February 2002, has been received from the delegation of the United States with the request that it be circulated to the Committee on Government Procurement.

The United States provides the following response to the questions from the European Community regarding the proposed modification of Appendix I with respect to the Uranium Enrichment Corporation.

I. COMPANY STRUCTURE

Question 1: *Please explain who are the present shareholders of the "Uranium Enrichment Corporation", specifying if there are public entities among them.*

The "Uranium Enrichment Corporation" listed in Annex 1 of Appendix I refers to the "United States Enrichment Corporation" ("USEC"), which was created pursuant to the provisions of the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (codified at 42 USC. 2201 *et seq.*). USEC was a wholly owned US Government corporation until July 1998, when pursuant to the USEC Privatization Act, Pub. L. No. 104-134, §§3101-3117, 110 Stat. 1321, 1335-1350 (codified at 42 USC. §2297h *et seq.*), the US Government sold its entire interest in the company by means of a public offering of stock. Pursuant to this transaction, USEC was merged into a private corporation, also named United States Enrichment Corporation ("Enrichment Corporation"), and USEC ceased to exist.

Today, the Enrichment Corporation is a wholly owned subsidiary of USEC Inc., a publicly traded company whose shares are listed on the New York Stock Exchange. USEC Inc.'s stock is owned by approximately 29,000 beneficial holders as of 15 August 2001. The USEC Privatization Act explicitly states that the Enrichment Corporation is not "an agency, instrumentality, or establishment of the United States, a government corporation, or a government-controlled corporation". *See* 42 USC. §2297h-3(b)(1).

Question 2: *Is there any relationship between the "United States Government" and the "Uranium Enrichment Corporation" in terms of appointment and removal of managers, representation on the executive level and on other company bodies?*

No.

Question 3: *Does the United States Government exert any control or influence over the activities carried out by the "Enrichment Corporation"?*

The US Government does not exert any control or influence over the activities carried out by USEC, Inc. However, as with other publicly traded companies in the nuclear industry, various US Government agencies have regulatory functions or responsibilities related to activities of USEC, Inc. These agencies include the US Nuclear Regulatory Commission ("NRC"), the US Environmental Protection Agency, the US Department of Transportation, the US Securities and Exchange Commission, the US Occupational Safety and Health Administration and the US Department of Energy ("DOE").

II. ACTIVITIES OF THE COMPANY AND MARKET SHARE

Question 1: *Please clarify what the activities of the "Uranium Enrichment Corporation" are.*

USEC, Inc. supplies enriched uranium fuel for commercial nuclear power plants around the world. More specific information about USEC, Inc. can be found at its website, www.usec.com.

Question 2: *Does the "Uranium Enrichment Corporation" have any special or exclusive rights as regards any of these activities?*

USEC, Inc. serves as the executive agent for the US Government in implementing an Executive Agent agreement under which USEC, Inc. purchases low enriched uranium (LEU) derived from highly enriched uranium from the Russian Federation under the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated 18 February 1993. USEC, Inc. can be replaced as the US Government's executive agent at any time.

Question 3: *Are there any other corporations/entities performing the same types of activity in the United States?*

USEC, Inc. is the only company in the United States that enriches uranium for commercial use.

BWX Technologies (BWXT), in Lynchburg, Virginia, produces LEU through downblending of US Government weapons material. Currently, BWXT is downblending material supplied by USEC, Inc. from an inventory transferred to USEC, Inc. under the USEC Privatization Act of 1996.

Several companies sell foreign-produced LEU in competition with USEC, Inc. in the United States. The two largest companies that sell LEU in the United States are Urenco Inc., the US subsidiary of Urenco, Ltd. of the United Kingdom and Cogema Inc., the US subsidiary of Compagnie Generale des Matieres Nucleares ("COGEMA"), of France.

Question 4: *Please describe the general state of competition in this sector, and specify the legal conditions which a company must meet before it starts up an activity similar to that of the "Uranium Enrichment Corporation". Please also clarify the basic rules which are given the sector relating to the treatment, use and trade of uranium.*

LEU Production: Only entities licensed by the NRC may produce LEU in the United States. Federal regulations that apply to obtaining such licenses are published in the US Government's Code of Federal Regulations, Title 10, Part 2.

LEU Resale: There is no specific US Government approval required to resell LEU. However, the transportation of LEU requires a licence as does the importation/exportation of LEU. All such licences are issued by the NRC or, in the case of domestic transportation of nuclear material, the US Department of Transportation.

State of Competition: As described in response to Question 3, there is significant competition in this sector.

**RESPONSE TO REQUEST FROM JAPAN IN DOCUMENT GPA/W/162
REGARDING THE PROPOSED MODIFICATIONS TO APPENDIX I
OF THE UNITED STATES IN DOCUMENT GPA/W/153**

Communication from the United States

The following communication, dated 12 February 2002, has been received from the delegation of the United States with the request that it be circulated to the Committee on Government Procurement.

Question 1: *Please clarify, for each of the proposed modifications to Annex 1 and Annex 3 of Appendix I, under which of Article XXIV:6(a) or Article XXIV:6(b) the notification has been made.*

Response 1.1: The following modifications to Annex 1 and Annex 3 of Appendix I are based on Article XXIV:6(a):

Annex 1

- Broadcasting Board of Governors
- The Corporation for National and Community Service
- United States Information Agency
- ACTION
- Arms Control and Disarmament Agency
- The Interstate Commerce Commission
- Administrative Conference of the United States
- Board for International Broadcasting
- Resolution Trust Corporation Oversight Board

Annex 3

- Rural Utilities Service Financing
- Rural Electrification Administration Financing

Response 1.2: The following modifications to Annex 1 and Annex 3 of Appendix I are based on Article XXIV:6(b):

Annex 1

- Panama Canal Commission
- Uranium Enrichment Corporation

Annex 3

- Alaska Power Administration

Question 2: *Regarding those modifications falling under Article XXIV:6(b) (e.g. the proposed deletion of the "Uranium Enrichment Corporation" from Annex 1, as this would seemingly be the case), please explain that government control or influence over the entities concerned has been effectively eliminated in light of the following items:*

the existence of a legal nexus between the entity and the government;

direct or indirect ownership by the government;

the overall composition and concentration of shareholders in the company;

the existence and degree of government support or subsidization for the entity, and whether such support represents a one-time public investment or continuous operating subsidies;

formal or informal government oversight or supervision of the entity's business decisions, beyond the normal regulatory oversight for all suppliers in a particular industry;

personal linkages between the entity and the government;

whether the entity is exclusively engaged in the provision of goods or services in commercial market subject to genuine competition, or whether it has mixed government and commercial functions;

whether the government has granted special or exclusive legal or economic rights or benefits which may alter the competitiveness of the entity's products in a commercial market or otherwise influence the entity's business decisions.

Panama Canal Commission

As indicated in GPA/W/153, the Panama Canal Commission no longer exists. All of its procurement functions have been assumed by the Panama Canal Authority, which is a governmental organization of the Republic of Panama.

Alaska Power Administration

In 1998, the Alaska Power Administration (APA) completed formal divestiture of all assets, which were sold to Alaska municipal and privately owned energy cooperatives, as required by the Alaska Power Administration Asset Sale and Termination Act [Public Law 104-58, 22 November 1995]. APA was subsequently terminated as required by the Act. At this time, the Federal government does not provide any funding to, or maintain any oversight responsibilities for, the former APA assets.

Uranium Enrichment Corporation

(1) Nexus with, or ownership by, the US Government/Composition of Shareholders

The "Uranium Enrichment Corporation" listed in Annex 1 of Appendix I refers to the "United States Enrichment Corporation" ("USEC"), which was created pursuant to the provisions of the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (codified at 42 U.S.C. 2201 *et seq.*). USEC was a wholly owned US Government corporation until July 1998, when pursuant to the USEC Privatization Act, Pub. L. No. 104-134, §§3101-3117, 110 Stat. 1321, 1335-1350 (codified at 42 U.S.C. §2297h *et seq.*), the US Government sold its entire interest in the company by means of a public offering of stock. Pursuant to this transaction, USEC was merged into a private corporation, also named United States Enrichment Corporation ("Enrichment Corporation"), and USEC ceased to exist.

Today, the Enrichment Corporation is a wholly owned subsidiary of USEC Inc., a publicly traded company whose shares are listed on the New York Stock Exchange. USEC Inc.'s stock is owned by approximately 29,000 beneficial holders as of 15 August 2001. The USEC Privatization Act explicitly states that the Enrichment Corporation is not "an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation". See 42 U.S.C. §2297h-3(b)(1).

(2) US Government Support/Subsidization of USEC

USEC does not receive any subsidies from the US Government.

(3) US Government Oversight or Supervision of USEC's Business Decisions (other than normal regulation)

The US Government does not exert any control or influence over the activities carried out by USEC, Inc. As with other publicly traded companies in the nuclear industry, various US Government agencies have regulatory functions or responsibilities related to activities of USEC, Inc. These agencies include the US Nuclear Regulatory Commission ("NRC"), the US Environmental Protection Agency, the US Department of Transportation, the US Securities and Exchange Commission, the US Occupational Safety and Health Administration and the US Department of Energy ("DOE").

(4) Personal Linkages Between the US Government and USEC

There are no personal or personnel linkages between USEC and the US Government.

(5) Commercial Nature of the Market

Market Description and Market Participants: USEC, Inc. is the only company in the United States that enriches uranium for commercial use.

BWX Technologies (BWXT), in Lynchburg, Virginia, produces low enriched uranium (LEU) through downblending of US Government weapons material. Currently, BWXT is downblending material supplied by USEC, Inc. from an inventory transferred to USEC, Inc. under the USEC Privatization Act of 1996.

Several companies sell foreign-produced LEU in competition with USEC, Inc. in the United States. The two largest companies that sell LEU in the United States are Urenco Inc., the US subsidiary of Urenco, Ltd. of the United Kingdom and Cogema Inc., the US subsidiary of Compagnie Générale des Matières Nucléaires ("COGEMA"), of France.

LEU Production: Only entities licensed by the NRC may produce LEU in the United States. Federal regulations that apply to obtaining such licences are published in the US Government's Code of Federal Regulations, Title 10, Part 2.

LEU Resale: There is no specific US Government approval required to resell LEU. However, the transportation of LEU requires a licence as does the importation/exportation of LEU. All such licences are issued by the NRC or, in the case of domestic transportation of nuclear material, the US Department of Transportation.

State of Competition: As described in the section on Market Description and Market Participants, there is significant competition in this sector.

(6) Special or Exclusive Rights Granted to USEC

USEC, Inc. serves as the executive agent for the US Government in implementing an Executive Agent agreement under which USEC, Inc. purchases LEU derived from highly enriched uranium from the Russian Federation under the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated 18 February 1993. USEC, Inc. can be replaced as the US Government's executive agent at any time.

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01-5230 	U	GPA/W/165 Catalogue record	Committee on Government Procurement - Questions Relating to the Notifications by Japan (GPA/W/144, GPA/W/145 and GPA/W/146) - Communication from the United States Preview (HTML)	25/10/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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01-5225 	U	GPA/W/166 Catalogue record	Committee on Government Procurement - Communication from the United States Preview (HTML)	25/10/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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01-4991 	D	GPA/W/159 Catalogue record	Committee on Government Procurement - Derestriction of Documents Preview (HTML)	12/10/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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01-4690	D	GPA/W/157 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Albania	02/10/2001	E	F	S

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01-4671	D	GPA/W/127/Rev.1/Add.1 Catalogue record	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Re[...]	01/10/2001	E	E	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 p. 71KB	6 p. 47KB	5 p. 41KB
			Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 30KB	1 p. 28KB	1 p. 27KB			
01-4557	D	GPA/W/154 Catalogue record	Committee on Government Procurement - Modifications to Publications Listed in Appendix II and Appendix III of the Agreement on Government Procurement - Com[...]	25/09/2001	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 30KB	1 p. 28KB	1 p. 27KB
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01-4416	D	GPA/W/127/Rev.1 Catalogue record	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Re[...]	18/09/2001	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 26KB	1 p. 26KB	1 p. 26KB
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01-4369	D	GPA/W/150 Catalogue record	Committee on Government Procurement - Communication from the United States	17/09/2001	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 29KB	1 p. 25KB	1 p. 26KB
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01-4254	D	GPA/W/147 Catalogue record	Committee on Government Procurement - Communication from Canada	11/09/2001	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 26KB	1 p. 26KB	1 p. 25KB
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01-4258	D	GPA/W/148 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Hungary	11/09/2001	E	E	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 29KB	1 p. 25KB	1 p. 26KB
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01-3907	D	GPA/W/143 Catalogue record	Committee on Government Procurement - Communication from Hong Kong, China	07/08/2001	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 26KB	1 p. 26KB	1 p. 26KB
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01-3444	D	GPA/W/142 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I to the Agreement - Communication from Korea	12/07/2001	E	E	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5 p. 48KB	5 p. 47KB	6 p. 52KB
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01-3204	D	GPA/W/140 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Korea - Notification from Korea under Article XXIV:6(a)	27/06/2001	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5 p. 48KB	5 p. 47KB	6 p. 52KB
			Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5 p. 48KB	5 p. 47KB	6 p. 52KB			
01-3009	D	GPA/W/139 Catalogue record	Committee on Government Procurement - Communication from the United States	18/06/2001	E	F	S	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
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				Preview (HTML)		1 p. 25KB	1 p. 26KB	1 p. 25KB
01-2541	D	GPA/W/128/Corr.2 Catalogue record	Committee on Government Procurement - Proposed Modifications to Appendix I of Korea - Notification from Korea under Article XXIV:6(a) - Corrigendum	18/05/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	--	
01-2251	D	GPA/W/101/Add.9 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2000/2001 - Netherlands with Res[...] Respect to Aruba - Addendum	02/05/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-2171	D	GPA/W/136 Catalogue record	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Replies by Bulgaria	02/05/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-2249	D	GPA/W/137 Catalogue record	Committee on Government Procurement - Japan's Responses to Questions from the United States (GPA/W/132), Canada (GPA/W/134) and Hong Kong, China (GPA/W/135)[...]icle XXIV:6(a) (GPA/W/129)	02/05/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-2250	D	GPA/W/138 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Malta	02/05/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-2130	D	GPA/W/135 Catalogue record	Committee on Government Procurement - Communication from Hong Kong, China	27/04/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-2048	D	GPA/W/134 Catalogue record	Committee on Government Procurement - Communication from Canada	24/04/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-2014	D	GPA/W/132 Catalogue record	Committee on Government Procurement - Communication from the United States	23/04/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-2015	D	GPA/W/133 Catalogue record	Committee on Government Procurement - Communication from the United States	23/04/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	
01-1865	D	GPA/W/131 Catalogue record	Committee on Government Procurement - The Law Concerning the Promotion of Eco-Friendly Goods and Services by the State and Other Entities (The Law on Prom[...] Promoting Green Purchasing)	11/04/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	

	01-1331	D	GPA/W/129 Catalogue record	Preview (HTML) Committee on Government Procurement - Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a) Preview (HTML)	19/03/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	68KB 16 p. 113KB	69KB 16 p. 105KB	81KB 16 p. 106KB
	01-1334	D	GPA/W/130/Corr.1 Catalogue record	Preview (HTML) Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2001 - 2002 - Korea - Corrigendum Preview (HTML)	19/03/2001	E <input checked="" type="checkbox"/>	--	--	1 p. 28KB	--	--
	01-1279	D	GPA/W/130 Catalogue record	Preview (HTML) Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2001 - 2002 - Korea Preview (HTML)	15/03/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 31KB	1 p. 27KB	1 p. 28KB
	01-1239	D	GPA/W/128/Corr.1 Catalogue record	Preview (HTML) Committee on Government Procurement - Proposed Modifications to Appendix I of Korea - Notification from Korea under Article XXIV:6(a) - Corrigendum Preview (HTML)	13/03/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	--	1 p. 30KB	1 p. 27KB	--
	01-1092	D	GPA/W/128 Catalogue record	Preview (HTML) Committee on Government Procurement - Modifications to Appendix I of Korea - Notification from Korea under Article XXIV:6(a) Preview (HTML)	06/03/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	7 p. 56KB	7 p. 53KB	7 p. 53KB
	01-0344	D	GPA/W/101/Add.8 Catalogue record	Preview (HTML) Committee on Government Procurement - The Thresholds in Appendices I and II of the Agreement as Expressed in National Currencies for 2001 - Switzerland - Addendum Preview (HTML)	23/01/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 32KB	1 p. 33KB	1 p. 29KB
	01-0123	D	GPA/W/127 Catalogue record	Preview (HTML) Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Government Procurement - Replies by Estonia Preview (HTML)	11/01/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	39 p. 189KB	40 p. 219KB	41 p. 193KB
	01-0022	D	GPA/W/126 Catalogue record	Preview (HTML) Committee on Government Procurement - Request for Observer Status - Communication from the Sultanate of Oman Preview (HTML)	04/01/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 29KB	1 p. 30KB	1 p. 28KB
	01-0009	D	GPA/W/109/Rev.2 Catalogue record	Preview (HTML) Committee on Government Procurement - Indicative Time-frame for Accession Negotiations and Reporting on the Progress of Work - Note by the Secretariat - Revision Preview (HTML)	03/01/2001	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	4 p. 50KB	4 p. 45KB	5 p. 44KB

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Number of hits per page 100 

Search results							
Submitted: 09/01/2006 8:58:27 PM							
Rec#	Doc#	Symbol	Title - HTML format	Date	Pages	Access	File
1 3 KB	01-6385	GPA/W/173	Committee on Government Procurement - Request for Observer Status - Communication from China	19/12/2001	1	D	T/PLURI/GPA/W173.doc
2 6 KB	01-5230	GPA/W/165	Committee on Government Procurement - Questions Relating to the Notifications by Japan (GPA/W/144, GPA/W/145 and GPA/W/146) - Communication from the United States	25/10/2001	2	U	T/PLURI/GPA/W165.doc
3 4 KB	01-5225	GPA/W/166	Committee on Government Procurement - Communication from the United States	25/10/2001	1	U	T/PLURI/GPA/W166.doc
4 3 KB	01-4991	GPA/W/159	Committee on Government Procurement - Derestriction of Documents	12/10/2001	1	D	T/PLURI/GPA/W159.doc
5 3 KB	01-4690	GPA/W/157	Committee on Government Procurement - Request for Observer Status - Communication from Albania	02/10/2001	1	D	T/PLURI/GPA/W157.doc
6 18 KB	01-4671	GPA/W/127/Rev.1/Add.1	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Replies by Estonia - Addendum	01/10/2001	6	D	T/PLURI/GPA/W127R1A1.doc
7 4 KB	01-4557	GPA/W/154	Committee on Government Procurement - Modifications to Publications Listed in Appendix II and Appendix III of the Agreement on Government Procurement - Communication from the United States	25/09/2001	1	D	T/PLURI/GPA/W154.doc
8 142 KB	01-4416	GPA/W/127/Rev.1	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Replies by Estonia - Revision	18/09/2001	49	D	T/PLURI/GPA/W127R1.doc
9 3 KB	01-4369	GPA/W/150	Committee on Government Procurement - Communication from the United States	17/09/2001	1	D	T/PLURI/GPA/W150.doc
10 3 KB	01-4254	GPA/W/147	Committee on Government Procurement - Communication from Canada	11/09/2001	1	D	T/PLURI/GPA/W147.doc
11 3 KB	01-4258	GPA/W/148	Committee on Government Procurement - Request for Observer Status - Communication from Hungary	11/09/2001	1	D	T/PLURI/GPA/W148.doc
12 3 KB	01-3907	GPA/W/143	Committee on Government Procurement - Communication from Hong Kong, China	07/08/2001	1	D	T/PLURI/GPA/W143.doc
13 5 KB	01-3444	GPA/W/142	Committee on Government Procurement - Proposed Modifications to Appendix I to the Agreement - Communication from Korea	12/07/2001	2	D	T/PLURI/GPA/W142.doc
14 14 KB	01-3204	GPA/W/140	Committee on Government Procurement - Modifications to Appendix I of Korea -	27/06/2001	5	D	T/PLURI/GPA/W140.doc

			Notification from Korea under Article XXIV:6(a)				
15 3 KB	01-3009	GPA/W/139	Committee on Government Procurement - Communication from the United States	18/06/2001	1	D	T/PLURI/GPA/W139.doc
16 4 KB	01-2541	GPA/W/128/Corr.2	Committee on Government Procurement - Proposed Modifications to Appendix I of Korea - Notification from Korea under Article XXIV:6(a) - Corrigendum	18/05/2001	1	D	T/PLURI/GPA/W128C2.doc
17 4 KB	01-2251	GPA/W/101/Add.9	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2000/2001 - Netherlands with Respect to Aruba - Addendum	02/05/2001	1	D	T/PLURI/GPA/W101A9.doc
18 68 KB	01-2171	GPA/W/136	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Agreement on Government Procurement - Replies by Bulgaria	02/05/2001	23	D	T/PLURI/GPA/W136.doc
19 20 KB	01-2249	GPA/W/137	Committee on Government Procurement - Japan's Responses to Questions from the United States (GPA/W/132), Canada (GPA/W/134) and Hong Kong, China (GPA/W/135) Regarding the Notification from Japan under Article XXIV:6(a) (GPA/W/129)	02/05/2001	8	D	T/PLURI/GPA/W137.doc
20 3 KB	01-2250	GPA/W/138	Committee on Government Procurement - Request for Observer Status - Communication from Malta	02/05/2001	1	D	T/PLURI/GPA/W138.doc
21 4 KB	01-2130	GPA/W/135	Committee on Government Procurement - Communication from Hong Kong, China	27/04/2001	1	D	T/PLURI/GPA/W135.doc
22 4 KB	01-2048	GPA/W/134	Committee on Government Procurement - Communication from Canada	24/04/2001	1	D	T/PLURI/GPA/W134.doc
23 6 KB	01-2014	GPA/W/132	Committee on Government Procurement - Communication from the United States	23/04/2001	2	D	T/PLURI/GPA/W132.doc
24 4 KB	01-2015	GPA/W/133	Committee on Government Procurement - Communication from the United States	23/04/2001	1	D	T/PLURI/GPA/W133.doc
25 32 KB	01-1865	GPA/W/131	Committee on Government Procurement - The Law Concerning the Promotion of Eco-Friendly Goods and Services by the State and Other Entities (The Law on Promoting Green Purchasing)	11/04/2001	13	D	T/PLURI/GPA/W131.doc
26 45 KB	01-1331	GPA/W/129	Committee on Government Procurement - Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a)	19/03/2001	16	D	T/PLURI/GPA/W129.doc
27 3 KB	01-1334	GPA/W/130/Corr.1	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2001 - 2002 - Korea - Corrigendum	19/03/2001	1	D	T/PLURI/GPA/W130C1.doc
28	01-1279	GPA/W/130	Committee on Government Procurement -	15/03/2001	1	D	T/PLURI/GPA/W130.doc

4 KB			The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2001 - 2002 - Korea				
29 4 KB	01-1239	GPA/W/128/Corr.1	Committee on Government Procurement - Proposed Modifications to Appendix I of Korea - Notification from Korea under Article XXIV:6(a) - Corrigendum	13/03/2001	1	D	T/PLURI/GPA/W128C1.doc
30 18 KB	01-1092	GPA/W/128	Committee on Government Procurement - Modifications to Appendix I of Korea - Notification from Korea under Article XXIV:6(a)	06/03/2001	7	D	T/PLURI/GPA/W128.doc
31 4 KB	01-0344	GPA/W/101/Add.8	Committee on Government Procurement - The Thresholds in Appendices I and II of the Agreement as Expressed in National Currencies for 2001 - Switzerland - Addendum	23/01/2001	1	D	T/PLURI/GPA/W101A8.doc
32 114 KB	01-0123	GPA/W/127	Committee on Government Procurement - Checklist of Issues for Provision of Information Relating to Accession to the Government Procurement - Replies by Estonia	11/01/2001	39	D	T/PLURI/GPA/W127.doc
33 3 KB	01-0022	GPA/W/126	Committee on Government Procurement - Request for Observer Status - Communication from the Sultanate of Oman	04/01/2001	1	D	T/PLURI/GPA/W126.doc
34 18 KB	01-0009	GPA/W/109/Rev.2	Committee on Government Procurement - Indicative Time-frame for Accession Negotiations and Reporting on the Progress of Work - Note by the Secretariat - Revision	03/01/2001	4	D	T/PLURI/GPA/W109R2.doc
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WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/173

19 December 2001

(01-6385)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from China

The following communication, dated 12 December 2001, has been received from the Permanent Mission of the People's Republic of China with the request that it be circulated to the Committee on Government Procurement.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Director-General of the World Trade Organization and has the honour to request for China's observer status in the Committee on Government Procurement.

**QUESTIONS RELATING TO THE NOTIFICATIONS BY JAPAN
(GPA/W/144, GPA/W/145 AND GPA/W/146)**

Communication from the United States

The following communication, dated 19 October 2001, has been received from the delegation of the United States with the request that it be circulated to the Committee on Government Procurement.

Following Japan's proposed modifications to its Appendix I (GPA/W/144, GPA/W/145, GPA/W/146) related to the Japan railway companies and the US objection thereto (GPA/W/151), as well as the helpful additional material that Japan provided on 20 September and 10 October 2001 (GPA/W/152 and Corr.1), the United States would appreciate Japan's responses to the questions set out below. Japan's responses will assist the United States in determining whether, pursuant to Article XXIV:6 of the Agreement on Government Procurement, the Japanese Government's "control or influence over [the three Honshu Companies] will be effectively eliminated" and whether "a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement" will be maintained, after the Amendment to the Law concerning Passenger Railway Companies and Japan Freight Railway Company (Amendment Law) enters into effect:

1. The Supplemental Provisions to the Amendment Law, set out in GPA/W/152, describe the Guidelines that the Minister of Land, Infrastructure and Transport (MLIT) is required to issue regarding matters that the three Honshu Companies (JR East, JR West and JR Central) are to consider "for the time being in the conduct of their business". Please provide an English translation of the Guidelines as soon as they are prepared.
2. With regard to each of the three categories of items that the Guidelines will address, please indicate whether private railway companies are subject to the same guidance or direction that will be set out in the Guidelines. If so, please specify the type of guidance or regulation and the legal authority for it.
3. Does the Government's regulation of the rates and fares of the three Honshu Companies differ from its regulation of the rates and fares of private railway companies? If so, please describe the differences, including the differences in legal authority.
4. Will the rates and fares of the three Honshu Companies be set at the same rates and fares as the other four JR companies?
5. What is the role of the Transport Council with regard to the issuance by MLIT of a recommendation or order, under Article 4 of the Amendment Law?

6. Are there any representative directors or statutory auditors of the three Honshu Companies who are NOT former employees of either a JR company or the central Government? Please provide a list of the current representative directors and statutory auditors of the three Honshu Companies and their prior employment affiliations.
 7. Does the Japanese Government have any plans to privatize the Japan Railway Construction Public Corporation, which owns shares of the three Honshu Companies?
 8. Other than the Japan Railway Construction Public Corporation, are there any other governmental entities, including public corporations, that own shares of the three Honshu Companies?
 9. Japan indicated in GPA/W/152 that the Public Corporation plans to sell its shares in three Honshu Companies "on a step-by-step basis", taking into account market conditions. If possible, please elaborate upon those plans.
 10. Will the JR companies, including the three Honshu Companies, conduct any common procurement?
 11. Will the JR companies, including the three Honshu Companies, be subject to common specifications in their procurement?
 12. What is the central Government's authority over procurement by the JR companies?
-

WORLD TRADE ORGANIZATION

GPA/W/166
25 October 2001

(01-5225)

Committee on Government Procurement

Original: English

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 19 October 2001, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

Pursuant to Article XXIV:6, and on the basis of information provided by Japan, the United States hereby withdraws its objection, communicated in GPA/W/95, to the modification to Appendix I of the Agreement on Government Procurement that had been proposed by Japan in GPA/W/91, dated 6 September 1999, relating to NTT Communications Corporation. The United States would like to thank the Government of Japan for its thorough responses to questions that the United States posed in GPA/W100 and GPA/W100/Add.1, as well as for engaging in extensive bilateral discussions on this issue.

The United States notes that withdrawal of this objection is based on a detailed evaluation of the particular circumstances relating to NTT Communications Corporation and is without prejudice to US views on any other proposal for potential modification of GPA coverage.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/159
12 October 2001

(01-4991)

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1. In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on Government Procurement on 24 February 1997 (GPA/1/Add.2), the following documents circulated as restricted are proposed for derestriction on 15 December 2001.

GPA/- series

GPA/13

GPA/M/- series

GPA/M/12-15

GPA/W/- series

GPA/W/119-139
GPA/W/122/Rev.1
GPA/W/127/Rev.1
GPA/W/127/Rev.1/Add.1
GPA/W/128/Corr.1 and Corr.2
GPA/W/130/Corr.1

2. The lists of documents which have been previously derestricted are contained in documents GPA/24, GPA/26, GPA/31 and GPA/45.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/157
2 October 2001

(01-4690)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Albania

The following communication, dated 28 September 2001, has been received from the Permanent Mission of the Republic of Albania with the request that it be circulated to the Committee on Government Procurement.

The Permanent Mission of the Republic of Albania to the United Nations and other International Organizations in Geneva presents its compliments to the Director-General of the World Trade Organization and has the honour to apply for observer status in the Committee on Government Procurement.

**CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO
ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT**

Replies by Estonia

Addendum

The following communication, dated 28 September 2001, has been received from the Permanent Mission of Estonia with the request that it be circulated to Parties.

Estonia would hereby like to supplement the submission of 17 August 2001 (document GPA/W/127/Rev.1, dated 18 September 2001) with the following information.

The current answer to question 2 should be supplemented with a list of the following legal acts:

2. *What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.*

- Regulation of the Minister of Economic Affairs "Requirements to the Web Application of the Web Site and the Order of Compliance Assessment Related to Such Requirements" (entered into force 22 July 2001, published in RT L 2001, 85, 1183);
- Regulation of the Minister of Economic Affairs "The Order of Work of the Committee Deciding the Entry into the *National Register of Undertakings Operating in Areas of Activity Subject to Special Requirements* of an Undertaking Wishing to Operate as a Administrator of a Web Site for Government Procurement" (entered into force 2 August 2001, published in RT L 2001, 92, 1271);
- Regulation of the Government "Amendments to the Government Regulation of 29 March 2001 No. 116 "Establishment of the National Government Procurement Register and the Statutes of the Register" (entered into force 19 April 2001, published in RT I 2001, 37, 214);
- Regulation of the Government "The Approved List of Objects of Government Procurement in the Case of Which Consolidated Government Procurement is Applied and the Bodies Organizing Tendering Procedures for Such Government Procurement" (entered into force 1 January 2002, published in RT I 2001, 68, 411);
- Regulation of the Minister of Economic Affairs "The Instructions for Organization of government Procurement for Construction and Projects of Buildings" (entered into force 10 April 2001, published in RT L 2001, 44, 629);

- Regulation of the Government "Establishment of the National Government Procurement Register and the Statutes of the Register" (entered into force 1 March 2001, published in RT I 2001, 20, 111).

The current answer to question 5 should be supplemented for further clarity with the following indicative list of government entities:

5. *Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.*

1. The State Chancellery
2. The National Archives of Estonia
3. Ministry of Education
4. The Language Inspectorate
5. Ministry of Justice
6. Prosecutor's Office
7. Ministry of Defense
8. The Information Board
9. Ministry of Environment
10. Land Board
11. Environmental Inspectorate
12. Centre of Forest Protection and Silviculture
13. Ministry of Culture
14. The Heritage Conservation Inspectorate
15. Ministry of Economic Affairs
16. Patent Office
17. The Technical Inspectorate
18. The Energy Market Inspectorate
19. The Consumer Protection Board
20. Public Procurement Office
21. Estonian Patent Library
22. Ministry of Agriculture
23. The Plant Production Inspectorate
24. Animal Breeding Inspectorate
25. Agricultural Registers and Information Board
26. The Veterinary and Food Board
27. Ministry of Finance
28. The Competition Board
29. Tax Board
30. Statistical Office
31. Customs Board
32. Insurance Supervisory Authority
33. Securities Inspectorate
34. Assay Office
35. Ministry of Internal Affairs
36. The Security Police Board
37. Citizenship and Migration Board
38. The Border Guard Administration
39. The Police Board
40. Centre of Forensic Science and Criminalistic
41. Central Criminal Police
42. The Rescue Board

43. The Data Protection Inspectorate
44. Ministry of Social Affairs
45. Agency of Medicines
46. Social Insurance Board
47. Labour Market Board
48. Health Care Board
49. Health Protection Inspectorate
50. Labour Inspectorate
51. Ministry of Transport and Communications
52. Civil Aviation Administration
53. Road Administration
54. Communications Board
55. Maritime Administration
56. Estonian Railway Administration
57. Ministry of Foreign Affairs
58. Government of Harju County
59. Government of Hiiu County
60. Government of Ida-Viru County
61. Government of Jõgeva County
62. Government of Järva County
63. Government of Lääne County
64. Government of Lääne-Viru County
65. Government of Põlva County
66. Government of Pärnu County
67. Government of Rapla County
68. Government of Saare County
69. Government of Tartu County
70. Government of Valga County
71. Government of Viljandi County
72. Government of Võru County

The answer to question 18 should read as follows:

18. *In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?*

The Public Procurement Act sets the qualification and the use of permanent lists of suppliers through the following provisions:

§30. Qualification of tenderers or applicants

/.../

(2) Upon verification of the qualifications of an applicant in the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the qualification requirements prescribed for tenderers shall be applied to the applicant.

(3) In the case of an open tendering procedure, the contracting authority shall verify the qualifications of the tenderers before reviewing the contents of the tenders.

(4) In the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall verify the qualifications of an applicant

before submission of the tender documents. A tenderer may be subsequently disqualified only if the contracting authority becomes aware of new circumstances.

(5) In the case of a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall verify the qualifications of tenderers either before or after submission of tender documents upon purchasing of goods or contracting for services and before submission of tender documents upon contracting for construction work.

§37. System for qualifying tenderers

(1) Contracting authorities specified in clause 5 (1) 6) of this Act may use a qualifying system for tenderers both in the case of public procurements the estimated value of which is lower than an international threshold and public procurements the value of which equals or exceeds an international value threshold. Contracting authorities specified in clauses 5 (1) 1)–5) of this Act may use a qualifying system for tenderers in the case of a negotiated tendering procedure without prior publication of a tender notice and in the case of a public procurement the estimated value of which is lower than an international value threshold.

(2) A contracting authority may establish a system for qualifying tenderers, based on objective criteria and the provisions of this Act.

(3) Contracting authorities who establish a system for qualifying tenderers based on qualification criteria and rules shall ensure that it is possible, at all times, for interested persons to:

- 1) access the criteria and rules for qualifying tenderers, whereas interested persons shall be notified of amendments to such criteria or rules;
- 2) apply for qualification.

(4) A contracting authority may use lists of qualified tenderers compiled by other persons on the condition that the qualification systems used are in accordance with the requirements of the contracting authority and the provisions of this Act. In such case, the contracting authority shall notify interested persons of the names of the persons who compiled the lists of qualified tenderers.

(5) A contracting authority shall inform applicants of the decision concerning qualification. If the decision concerning qualification cannot be made within two months, the contracting authority shall inform applicants of the reasons for the delay and notify them of the date on which the decision is to be made within two weeks after submission of the applications.

(6) Applicants who are disqualified shall be informed of the corresponding decision and grounds for disqualification. The grounds for disqualification shall be based on the criteria for qualifying tenderers, specified in subsection (2) of this section.

(7) A contracting authority shall not require tenderers to submit documents which duplicate documents already submitted to such contracting authority by the corresponding tenderer.

(8) Written records shall be kept of qualified tenderers. The corresponding list may be subdivided into categories according to the object of public procurement to which the qualification applies.

(9) Contracting authorities may disqualify of a tenderer only on grounds arising from criteria for qualification specified in subsection (2) of this section. A tenderer shall be notified of disqualification and the reason thereof shall be indicated.

(10) A contracting authority shall submit a notice concerning the establishment of a system for qualifying tenderers to the register and the notice shall contain at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the time of establishing the criteria and rules for qualifying tenderers;
- 3) the place and time for accessing the criteria and rules for qualifying tenderers.

The answer to question 28 should read as follows:

28. *Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

The lists of qualified suppliers are not published, but a contracting entity shall publish electronically a notice concerning the establishment of a system for qualifying tenderers. The Internet address for such electronic publications is: <http://www.rha.gov.ee>

§37. System for qualifying tenderers

(1) Contracting authorities specified in clause 5 (1) 6) of this Act may use a qualifying system for tenderers both in the case of public procurements the estimated value of which is lower than an international threshold and public procurements the value of which equals or exceeds an international value threshold. Contracting authorities specified in clauses 5 (1) 1)–5) of this Act may use a qualifying system for tenderers in the case of a negotiated tendering procedure without prior publication of a tender notice and in the case of a public procurement the estimated value of which is lower than an international value threshold.

(2) A contracting authority may establish a system for qualifying tenderers, based on objective criteria and the provisions of this Act.

(3) Contracting authorities who establish a system for qualifying tenderers based on qualification criteria and rules shall ensure that it is possible, at all times, for interested persons to:

- 1) access the criteria and rules for qualifying tenderers, whereas interested persons shall be notified of amendments to such criteria or rules;
- 2) apply for qualification.

(4) A contracting authority may use lists of qualified tenderers compiled by other persons on the condition that the qualification systems used are in accordance with the requirements of the contracting authority and the provisions of this Act. In such case, the contracting authority shall notify interested persons of the names of the persons who compiled the lists of qualified tenderers.

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- 2) the time of establishing the criteria and rules for qualifying tenderers;
- 3) the place and time for accessing the criteria and rules for qualifying tenderers.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/154

25 September 2001

(01-4557)

Committee on Government Procurement

Original: English

MODIFICATIONS TO PUBLICATIONS LISTED IN APPENDIX II AND APPENDIX III OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

Communication from the United States

The following communication from the Permanent Mission of the United States was received on 19 September 2001, with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to recent changes in US Federal regulations for publishing information relating to procurement by Federal agencies, the United States wishes to inform the Committee that the references to the "Commerce Business Daily" in Appendix II and Appendix III of the Agreement on Government Procurement (GPA) should be deleted and replaced with the new Federal "single point of entry" web site:

"Federal Business Opportunities (<http://www.fedbizopps.gov>)"

Effective 1 October 2001, Federal regulations require that all Federal agencies publish notices of intended procurements (Article IX:1 of the GPA), post-award notices (Article XVIII:1 of the GPA), and any notices relating to permanent lists of qualified suppliers (Article XI:9 of the GPA) in this publication. The regulations allow, but do not require Federal entities to continue to publish notices in the Commerce Business Daily and other electronic or paper publications.

This change in the publication of information on procurement by US Federal agencies does not affect the references in Appendix II and Appendix III to publications used by Annex 2 and Annex 3 entities.

**CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO
ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT**

Replies by Estonia

Revision

The following communication, dated 17 August 2001, has been received from the Permanent Mission of Estonia with the request that it be circulated to Parties.

Due to the new legislation (Public Procurement Act which entered into force on 1 April 2001, and the regulations adopted on the basis of it), Estonia hereby submits revised replies to the checklist of issues.

I. LEGAL FRAMEWORK

1. *Is there a single central law on procurement? If so, please specify?*

The present Public Procurement Act serves as a single central law on procurement.

2. *What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.*

Current legal acts on government procurement in the Republic of Estonia are as follows:

1. Public Procurement Act (entered into force on 1 April 2001, published in RT I 2001, 40, 224);
2. Regulation of the Government "Establishment of register and the statutes for the maintenance of the register" (entered into force on 19 April 2001, published in RT I 2001, 37, 214);
3. Regulation of the Ministry of Economic Affairs "The formal requirements for prior notices and the procedure for submission of prior notices" (entered into force on 8 April 2001, published in RT L 2001, 44, 623);
4. Regulation of the Ministry of Economic Affairs "The formal requirements for tender documents and the procedure for submission of tender documents" (entered into force on 8 April 2001, published in RT L 2001, 44, 625);

5. Regulation of the Ministry of Economic Affairs "The rules for organizing public procurement of construction work or construction design" (entered into force on 8 April 2001, published in RT L 2001, 44, 629);
6. Regulation of the Ministry of Economic Affairs "The formal requirements for notices concerning negotiated tendering procedures without prior publication of a tender notice and the procedure for submission" (entered into force on 8 April 2001, published in RT L 2001, 44, 622);
7. Regulation of the Ministry of Economic Affairs "The formal requirements for declarations and the procedure for submission" (entered into force on 8 April 2001, published in RT L 2001, 44, 618);
8. Regulation of the Ministry of Economic Affairs "The formal requirements for notices announcing a design contest and the procedure for submission" (entered into force on 8 April 2001, published in RT L 2001, 44, 624);
9. Regulation of the Ministry of Economic Affairs "The formal requirements for design contest declarations and the procedure for submission" (entered into force on 8 April 2001, published in RT L 2001, 44, 620);
10. Regulation of the Ministry of Economic Affairs "The formal requirements for public procurement reports and the procedure for submission" (entered into force on 8 April 2001, published in RT L 2001, 44, 619);
11. Regulation of the Ministry of Economic Affairs "The formal requirements for system for qualifying tenderers and the procedure for submission" (entered into force on 8 April 2001, published in RT L 2001, 44,621);
12. Regulation of the Ministry of Economic Affairs "The standard classification of objects of public procurements" (entered into force on 1 April 2001, published in RT L 2001, 42, 595);
13. Competition Act (entered into force on 1 October 1998, published in RT I 1998, 30, 410);
14. *Riigi Teataja* Act (entered into force on 1 March 2000, published in RT I 1999, 10, 155; 1999, 57, 594);
15. Code of Administrative Court Procedure (entered into force on 1 January 2000, published in RT I 1999, 31, 425; 1999, 96, 846).

3. *To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.*

The Agreement on Government Procurement has to be ratified by the Parliament before it becomes a part of Estonia's law.

In the case of conflicting provisions of a domestic law and an international agreement ratified by Parliament, according to Article 123 of the Constitution of the Republic of Estonia, the provisions of the international agreement have supremacy over the domestic law provisions.

II. SCOPE AND COVERAGE

4. *Please summarize the organization of the government in your country at each level.*

The Government of Estonia represents a type of a government of a unitary state and it has the administrative authority all over the territory of the state in the framework of the existing law. There are also local municipalities, which have authority to organize local life in local issues on their respective territories according to the existing law. The right to conclude international agreements as well as the responsibility for their fulfilment rests solely with the Government of the Republic of Estonia.

5. *Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.*

The Public Procurement Act defines the contracting authority as follows:

§5. Contracting authority

(1) For the purposes of this Act, a contracting authority is:

- 1) a state agency, city or local government, or a local government agency;
- 2) a legal person in public law or a body of a legal person in public law;
- 3) a legal person in private law which is not a company and all the founders or members of which are, jointly or separately, the state, a local government and/or a legal person in public law;
- 4) a legal person in private law which is not a company and which, to the extent of more than 50 per cent, is financed or more than one-half of the members of the supervisory board or management board of which are appointed jointly or separately by the state, a local government and/or a legal person in public law;
- 5) an undertaking if it has received a construction work concession from the state, a local government or a person specified in clauses 2)–4) of this subsection and enters into procurement contracts for construction work on the basis of such concession, or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately finance the actual or all of the activities of the undertaking to the extent of more than 50 per cent, or if the state and a local government jointly or separately hold a majority of the votes or more than 50 per cent of the shares in the undertaking either directly or through other persons;
- 6) an undertaking if the state or a local government has granted a special or exclusive right to the undertaking pursuant to the Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 21, 232) and if the purchasing of goods or contracting for services or construction work is necessary for the exercise of the special or exclusive right, or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately hold a majority of votes or more than 50 per cent of the shares in the undertaking directly or through other persons and if the area of activity of the undertaking is either the construction or operation of permanent networks with the intention to provide services relating to the production, transportation, transmission or distribution of water, gas, electricity or thermal energy

to the public, or the use of a geographic area in order to prospect for or extract fuels or enable air or water transport undertakings to use an airport, port or other terminal structure, or the operation of networks enabling the public to use services relating to railway, tramway, trolleybus or bus transport, automatic systems or cable distribution, or the construction or operation of public telecommunications networks for ensuring one or more telecommunications services.

(2) Production, transportation, transmission or distribution of water, gas, electricity or thermal energy by an undertaking to networks servicing the public is not deemed to be an activity specified in clause (1) 6) of this section if consumption of water or electricity is necessary for activities other than those specified in clause (1) 6) of this section, or if the supply of the public network depends solely on consumption by the undertaking and does not exceed 30 per cent of the average overall production of water or electricity by the undertaking during the last three years, or if production of gas or thermal energy by the undertaking results inevitably from activities other those specified in clause (1) 6) of this section, or if the public network is supplied with a surplus of gas or thermal energy for the purposes of the economic use thereof and such surplus does not exceed 20 per cent of the average turnover of the undertaking during the last three years.

The organization of the Government of the Republic of Estonia is regulated by the Government of the Republic Act.

There are 12 ministries in Estonia, the State Chancellery and 15 county governments, as well as executive agencies and inspectorates, and their regional offices with the authority to exercise executive power.

The Republic of Estonia has the following ministries:

- (1) Ministry of Education;
- (2) Ministry of Justice;
- (3) Ministry of Defence;
- (4) Ministry of the Environment;
- (5) Ministry of Culture;
- (6) Ministry of Economic Affairs;
- (7) Ministry of Agriculture;
- (8) Ministry of Finance;
- (9) Ministry of Internal Affairs;
- (10) Ministry of Social Affairs;
- (11) Ministry of Transport and Communications;
- (12) Ministry of Foreign Affairs.

6. *What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?*

At the sub-central level, the local municipalities procure goods and services.

7. *Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type of entities) owned and controlled by the government that engage in procurement? Specify.*

As for the purpose of government procurement, Estonia does not operate any lists of such entities. Instead, the issue is regulated through the notion of government procurement in Estonia's law. In any concrete case, it will follow the rules set out in the Public Procurement Act.

The Public Procurement Act defines entities that are subject to the rules of government procurement as follows:

§5. Contracting authority

(1) /.../

- 3) a legal person in private law which is not a company and all the founders or members of which are, jointly or separately, the state, a local government and/or a legal person in public law;
- 4) a legal person in private law which is not a company and which, to the extent of more than 50 per cent, is financed or more than one-half of the members of the supervisory board or management board of which are appointed jointly or separately by the state, a local government and/or a legal person in public law;
- 5) an undertaking if it has received a construction work concession from the state, a local government or a person specified in clauses 2)–4) of this subsection and enters into procurement contracts for construction work on the basis of such concession, or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately finance the actual or all of the activities of the undertaking to the extent of more than 50 per cent, or if the state and a local government jointly or separately hold a majority of the votes or more than 50 per cent of the shares in the undertaking either directly or through other persons;
- 6) an undertaking if the state or a local government has granted a special or exclusive right to the undertaking pursuant to the Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 21, 232) and if the purchasing of goods or contracting for services or construction work is necessary for the exercise of the special or exclusive right, or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately hold a majority of votes or more than 50 per cent of the shares in the undertaking directly or through other persons and if the area of activity of the undertaking is either the construction or operation of permanent networks with the intention to provide services relating to the production, transportation, transmission or distribution of water, gas, electricity or thermal energy to the public, or the use of a geographic area in order to prospect for or extract fuels or enable air or water transport undertakings to use an airport, port or other terminal structure, or the operation of networks enabling the public to use services relating to railway, tramway, trolleybus or bus transport, automatic systems or cable distribution, or the construction or operation of public telecommunications networks for ensuring one or more telecommunications services.

8. *Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central level of government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will you government ensure the implementation of the Agreement by such entities below the central/federal government level?*

All entities at all levels follow the Public Procurement Act and regulations adopted on the basis of the Act.

Entities at the sub-central level of government are not autonomous from the Government of the Republic of Estonia in implementing any international agreements.

9. *Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defense or security reasons? Please provide details.*

The Public Procurement Act sets the exceptions from application of procurement rules as follows:

§4. Exceptions

(1) A contracting authority is not required to apply the procedure provided for in this Act to the following:

- 1) public procurements in the case of which adherence to the procedure provided for in this Act results in the disclosure of a state secret;
- 2) contracting for water, electricity, gas, thermal energy, cable distribution and telecommunications services, if such services can be provided by only one person;
- 3) purchasing of weapons, ammunition, battle equipment and training equipment related thereto, and contracting for the related services;
- 4) contracting for arbitration or conciliation services;
- 5) contracting for financial services relating to the issue, sale, purchasing or assignment of securities or other financial instruments, or contracting for services provided by the Bank of Estonia; similarly, the Bank of Estonia is not required to apply the procedure provided for in this Act upon purchasing of goods or contracting for services the purpose of which is to ensure the security of the Bank or compliance with the confidentiality requirements established with regard to information not subject to disclosure;
- 6) contracting for scientific research unless the results of the research are used by the contracting authority in its own interests and for the purposes of its activities;
- 7) purchasing of immovables, existing structures or parts thereof as movables, or of rights relating thereto;
- 8) contracting for services by broadcasting organizations for the acquisition, development, production or co-production of a programme or a part thereof, and contracting for broadcasting time;
- 9) entry into an employment contract;
- 10) services which a contracting authority specified in clause 5 (1) 6) of this Act contracts from an affiliated undertaking;
- 11) purchasing of goods or contracting for construction work or services, if the procurement contract is entered into by the construction work concessionaire and the affiliated undertaking whom the concessionaire has entered in the list annexed to the tender submitted in order to obtain the construction work concession;

- 12) purchasing of museum objects, records, data media or licences for the use of data media, the estimated value of which is lower than the international value threshold provided for in §16 of this Act, if the purchaser is a museum, archives or library;
- 13) contracting for the performance of special audits for the purposes of exercising state supervision, if the right of the state supervision authority to order such special audits has been provided by law;
- 14) public procurements in the case of which the procurement contract is entered into according to a mandatory special procedure of an international organization;
- 15) contracting for telecommunications services provided by a person engaged in creation or operation of public telecommunications networks specified in clause 5 (1) 6) of this Act, if other persons are free to provide the same services in the same geographical area and under similar conditions;
- 16) purchasing of goods if the contracting authority specified in clause 5 (1) 6) of this Act purchases the goods in order to sell or lease them to third persons and the contracting authority enjoys no special or exclusive right for selling or leasing the goods and other persons have the right to sell or lease such goods under the same conditions as the contracting authority;
- 17) purchasing, by an energy undertaking, of electricity or fuel necessary for the production of electricity.

10. *Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.*

Available statistics on government procurement for 1998-2000 is attached as an annex to this document.

III. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. *Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

There are no specific provisions in the legislation, which directly reflect the national treatment and non-discrimination commitments of Article III of the Agreement. However, the Public Procurement Act does not contain any provisions that limit the rights of the foreign tenderers in comparison to the domestic tenderers.

The above statement is corroborated by the principle provided for in §6 of the Public Procurement Act.

§6. Equal treatment of persons

A contracting authority shall treat all persons participating in a public procurement tendering procedure (hereinafter tenderers) equally.

12. *Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.*

There are no such provisions in the Public Procurement Act.

13. *Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or services being supplied.*

There are no such provisions in the Public Procurement Act.

14. *Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.*

There are no provisions granting more favourable treatment to any sectors of economy, regions or specific categories of suppliers or supplies.

15. *Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.*

There are no provisions requiring or allowing the use of offsets or measures with similar effect.

IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. *Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.*

The procurement methods and procedures set by the Public Procurement Act are the following:

§54. Open tendering procedure

(1) Contracting authorities shall use open tendering procedures. The use of other tendering procedures is permitted only in the cases provided for in this Act.

(2) A contracting authority shall invite all interested persons to participate in an open tendering procedure by publishing an invitation to tender.

(3) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of tender documents and the tenderer's need to contact the contracting authority in order to access the supporting documents or the construction site.

(4) A contracting authority shall issue tender documents to persons interested in participating in an open tendering procedure during the period between publication of the invitation to tender and the first due date for submission of tenders, within three working days after receipt of the corresponding application.

§55. Restricted tendering procedure

(1) A contracting authority may use a restricted tendering procedure if:

- 1) the contracting authority has approved objective selection criteria for the tenderers; and
- 2) it is economically expedient to verify the qualifications of applicants before submission of the tender documents.

(2) In a restricted tendering procedure, the contracting authority shall, on the basis of the financial status and technical capacity of the applicants, select the persons to whom tender documents shall be submitted concurrently.

(3) A contracting authority may predetermine the number of tenderers participating in a restricted tendering procedure on the condition that:

- 1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than five and the maximum not more than 20;
- 2) the number of tenderers is determined on the basis of the nature of the goods to be purchased or construction work or services to be contracted for;
- 3) the number of tenderers participating in the tendering procedure is determined in the invitation to tender;
- 4) in the case of procurement contracts the value of which is lower than an international value threshold, the minimum number of tenderers is not less than three.

(4) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of tender documents and the tenderers' need to access the supporting documents or the construction site.

§56. Negotiated tendering procedure with prior publication of tender notice

(1) A contracting authority may use a negotiated tendering procedure with prior publication of a tender notice if:

- 1) all tenders were rejected in an open tendering procedure or restricted tendering procedure on the grounds provided for in subsection 43 (4) or 44 (1) of this Act or if such tendering procedure was terminated pursuant to clause 8 (2) 4) or 5) of this Act and the initial terms and conditions of the public procurement were not substantially altered;
- 2) due to the nature of the construction work or services or the possible risks involved in contracting for construction work or services, it is not possible to estimate the value of the public procurement in advance;

- 3) due to the nature of the services to be contracted, especially services concerning intellectual property and insurance or banking and investment services, it is not possible to determine the specific terms and conditions of the public procurement with sufficient accuracy in order to find a successful tender in an open tendering procedure or restricted tendering procedure;
- 4) the construction work or services contracted for are necessary only for the purposes of scientific research, development or testing and the expenses of the research and development work are not covered from the costs of the construction work or services;
- 5) the object of the public procurement is a construction work concession.

(2) In a negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall, on the basis of the financial status and technical capacity of the applicants, select the persons to whom tender documents shall be submitted concurrently.

(3) A contracting authority may predetermine the number of tenderers participating in a negotiated tendering procedure with prior publication of a tender notice on the condition that:

- 1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than three;
- 2) the number of tenderers participating in the tendering procedure is sufficient for ensuring competition.

§57. Negotiated tendering procedure without prior publication of a tender notice

(1) Contracting authorities may use a negotiated tendering procedure without prior publication of a tender notice if:

- 1) rapid completion of the public procurement is necessary due to unforeseeable events in order to save the life or health of a person or property of substantial value or prevent damaging human life or health or property of substantial value or spread of environmental damage, or it is necessary due to national defence reasons, and the use of other tendering procedures is not possible due to time constraints;
- 2) additional goods are purchased from the initial tenderer in order to either partially replace or supplement the goods purchased previously and a change of tenderer would entail the purchasing of goods which are technically incompatible with the goods purchased previously or the use of which would cause disproportionate additional costs, whereas such additional goods may be purchased during three years after the end of the initial open tendering procedure or restricted tendering procedure;
- 3) the construction work or services to be additionally contracted for were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional procurement contract is entered into with the same tenderer and due to technical or financial reasons such additional construction work or services cannot be separated from the initial procurement without causing disproportionate costs to the parties to the procurement contract and the additional construction work or services are directly necessary for performing the procurement contract and the total value of the contracts for additional construction work or services equals or exceeds an international value threshold and does not exceed 50 per cent of the total value of the initial public procurement;

- 4) the construction work or services to be additionally contracted for were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional procurement contract is entered into with the same tenderer and due to technical or financial reasons such additional construction work or services cannot be separated from the initial procurement without causing disproportionate costs to the parties to the procurement contract and the additional construction work or services are directly necessary for performing the procurement contract and the total value of the contracts for additional construction work or services is lower than an international value threshold and does not exceed 20 per cent of the total value of the initial public procurement;
- 5) in the absence of a suitable alternative or substitute, goods can be purchased or services or construction work contracted for only from one particular tenderer due to artistic reasons or reasons connected with the protection of exclusive rights like patents or copyrights or, in the absence of competition, due to technical reasons;
- 6) new construction work is contracted for which repeats similar construction work performed on the basis of a procurement contract entered into by the same contracting parties as a result of an open tendering procedure conducted earlier, on the condition that such construction work complies with the initial building design on the basis of which the procurement contract was entered into and the total value of the construction work is equal to or exceeds an international value threshold;
- 7) new construction work is contracted for which repeats similar construction work performed on the basis of a procurement contract entered into by the same contracting parties as a result of an open tendering procedure conducted earlier, on the condition that such construction work complies with the initial building design on the basis of which the procurement contract was entered into and the total value of the construction work is lower than an international value threshold and not more than one year has passed from the expiry of the initial procurement contract;
- 8) goods are purchased under especially favourable conditions if such conditions are available only for a very limited period of time, e.g. in the case of a liquidation or bankruptcy proceeding, and such conditions allow for purchasing the goods for a price which is at least 50 per cent lower than the usual market price;
- 9) goods are purchased on the commodity exchange;
- 10) the procurement contract is entered into with the winner of a design contest conducted pursuant to the provisions concerning open tendering procedure or restricted tendering procedure provided for in this Act;
- 11) no tenders in compliance with the requirements were submitted in an opening tendering procedure, restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice and on the condition that the initial tendering conditions have not been substantially altered;
- 12) goods are purchased or services contracted for only for conducting investigations or experiments or for scientific or development purposes and not in order to receive benefits therefrom, or for covering the corresponding expenses, on the condition that such purchasing of goods or contracting for services does not prejudice competition in the conclusion of subsequent contracts for similar purposes;

- 13) the estimated value of the public procurement together with the value-added tax is up to EEK 200,000 per year in the case of purchasing of goods or contracting for services or up to one million kroons per year in the case of contracting for construction work.
- (2) In a negotiated tendering procedure without prior publication of a tender notice, the contracting authority may negotiate with as many tenderers as the contracting authority considers necessary.
- (3) In the case of a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall select the persons to whom tender documents shall be submitted concurrently.
- (4) In the case of a negotiated tendering procedure without prior publication of a tender notice, contracting authorities are not required to comply with the requirements provided for in §§18, 19, 25 and 38, subsections 39 (2)-(5), §§40 and 42, subsections 43 (2)-(5) and §§44-46, 48-50, 52 and 53 of this Act.
- (5) In a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall send a notice concerning the negotiated tendering procedure without prior publication of a tender notice to the register before the commencement of the negotiations and the notice shall set out at least the following information:
 - 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
 - 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible;
 - 3) the name, position and details of the person responsible for the public procurement;
 - 4) the estimated value of the public procurement;
 - 5) the due date for the performance of the procurement contract;
 - 6) the names, addresses and other details of the tenderers selected by the contracting authority, and the registry codes of the tenderers if they have a registry code;
 - 7) the grounds for the selection of the tendering procedure on the basis of subsection (1) of this section.
- (6) The formal requirements for notices concerning negotiated tendering procedures without prior publication of a tender notice and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§58. Special rules

- (1) Contracting authorities specified in clause 5 (1) 6) of this Act may use a negotiated tendering procedure with prior publication of a tender notice instead of an open tendering procedure or restricted tendering procedure.

(2) In addition to the cases provided for in §57 of this Act, a contracting authority specified in clause 5 (1) 6) of this Act may use a negotiated tendering procedure without prior publication of a tender notice if the contracting authority:

- 1) selects the tenderers from among tenderers qualified pursuant to the qualification system provided for in §37 of this Act; and
- 2) has published an invitation to tender in an open tendering procedure, restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice but there are no tenderers or applicants or no qualified tenderers or applicants, and the initial tendering conditions have not been substantially altered.

The Public Procurement Act also includes provisions for design contest and electronic procurement (Sections 59 and 60).

17. *Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII and selection of suppliers in terms of Article X. Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?*

The Public Procurement Act sets the non-discriminatory qualification and selection procedures through the following provisions:

§30. Qualification of tenderers or applicants

- (1) Contracting authorities are required to verify the qualifications of tenderers and applicants.
- (2) Upon verification of the qualifications of an applicant in the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the qualification requirements prescribed for tenderers shall be applied to the applicant.
- (3) In the case of an open tendering procedure, the contracting authority shall verify the qualifications of the tenderers before reviewing the contents of the tenders.
- (4) In the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall verify the qualifications of an applicant before submission of the tender documents. A tenderer may be subsequently disqualified only if the contracting authority becomes aware of new circumstances.
- (5) In the case of a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall verify the qualifications of tenderers either before or after submission of tender documents upon purchasing of goods or contracting for services and before submission of tender documents upon contracting for construction work.
- (6) The qualifications of tenderers who submit a joint tender shall be verified separately, whereas:
 - 1) the indicators resulting from adding the corresponding indicators of the tenderers shall comply with the requirements set out in the tender documents;
 - 2) in the case of a joint tender submitted upon contracting for construction work with the estimated value of more than three million kroons, the corresponding indicators of one tenderer shall, in addition to the provisions of clause 1) of this subsection,

comply with at least 40 per cent of the requirements specified in the tender documents.

§31. Verification of qualifications of tenderers

(1) Upon verification of the qualifications of a tenderer, the contracting authority shall verify whether:

- 1) the financial status and technical competence of the tenderer comply with the specified requirements;
- 2) the tenderer is solvent, the tenderer's assets are not sequestered, and no liquidation proceeding has been initiated and no bankruptcy order has been issued with respect to the tenderer;
- 3) the tenderer has performed all the obligations thereof with respect to state and local taxes, has submitted information to the contracting authority concerning the amount of social tax paid by the tenderer on the remuneration paid to the employees thereof during the last three calendar years or concerning the amount of social security charge applicable in the home country of the tenderer and has granted written consent to submission of a corresponding inquiry to the Tax Board or other competent institution;
- 4) the tenderer has, during the last three years, performed all public procurement contracts as required.

(2) A contracting authority may require a tenderer to submit only the information necessary for verifying the qualifications of the tenderer, and shall take into consideration the legitimate interests of the tenderer relating to the protection of the business secrets thereof.

§32. Entry of tenderer in commercial or professional register

(1) A contracting authority may require a tenderer to prove that the tenderer is entered in a commercial or professional register according to the laws of the home country of the tenderer, or to submit confirmation that the tenderer has taken a corresponding oath of office.

(2) If a tenderer is required to hold an activity licence or be a member of a corresponding organization in order to perform a public procurement in the home country of the tenderer or in Estonia, the contracting authority may require the tenderer to submit proof concerning such activity licence or membership.

§33. Financial status of tenderer

(1) In order to verify whether the financial status of a tenderer meets the requirements set by the contracting authority, the contracting authority shall, taking into account the nature, amount and purpose of the goods to be purchased or construction work or services to be contracted for, require submission of one or several of the following documents:

- 1) the annual report or an extract from the annual report, if publication of the annual report is required under the law of the home country of the tenderer;
- 2) an extract indicating the net turnover of the tenderer during the last three financial years as concerns the object of the public procurement in question;

- 3) in the case of contracting for services, confirmation concerning the corresponding professional liability insurance.

(2) If submission of the documents specified in subsection (1) of this section is not possible, the contracting authority may require the tenderer to submit other data and documents necessary for assessing the financial status of the tenderer.

(3) If, for good reason, a tenderer is unable to submit the documents required by the contracting authority, the tenderer may prove its financial status by any other documents accepted by the contracting authority.

§34. Technical competence of tenderers

(1) In order to assess the technical competence of a tenderer, the contracting authority shall, depending on the nature, amount and purpose of the goods to be purchased or construction work or services to be contracted for, require submission of one or several of the documents listed in subsections (2)–(4) of this section.

(2) In the case of purchasing of goods, the contracting authority may require a tenderer to submit:

- 1) a list of similar transactions for the purchase and sale of goods in which the tenderer has participated during the last three years, together with the values, due dates and indication of contracting authorities;
- 2) a description of the technical capacity, measures for ensuring quality, and research and scientific capacity of the tenderer, accompanied, if necessary, by proof;
- 3) information concerning the technical staff or technical units whom the tenderer intends to use in the performance of the public procurement contract;
- 4) samples, descriptions or photographs of the goods being purchased, whereas the authenticity thereof shall be proved if the contracting authority so requires;
- 5) documents to prove that the goods comply with specific regulations or standards.

(3) In the case of contracting for construction work, the contracting authority may require a tenderer to submit:

- 1) proof of the professional qualifications of the tenderer's specialists and persons responsible for performing the construction work;
- 2) a list of similar construction work, if any, performed during the last three years and information concerning the value, time, site and the authorities contracting of the construction work and confirmation that the construction work was performed properly and according to good building practice;
- 3) a statement that the tenderer has the tools, equipment and machinery necessary to perform the construction work;
- 4) a statement of the average number of employees of the tenderer during the last three years;
- 5) information concerning the technical staff or technical units whom the tenderer intends to use in the performance of the construction work;

- 6) a statement of the measures for ensuring quality, used by the tenderer;
 - 7) data concerning the subcontractors which the tenderer intends to use in the performance of the procurement contract.
- (4) In the case of contracting for services, the contracting authority may require a tenderer to submit:
- 1) proof of the professional qualifications of the tenderer's specialists and persons responsible for providing the services;
 - 2) a list of similar services, if any, provided during the last three years, and documents indicating the value, time of provision and the authorities contracting for the services;
 - 3) information concerning the technical staff or technical units whom the tenderer intends to use in the provision of the services;
 - 4) a statement of the average number of employees of the tenderer during the last three years;
 - 5) a statement that the tenderer has the tools, equipment and machinery necessary to provide the services;
 - 6) a description of the technical capacity, measures for ensuring quality, and research and scientific capacity of the tenderer, accompanied, if necessary, by proof;
 - 7) data concerning the subcontractors which the tenderer intends to use in the performance of the procurement contract.

§35. Removal of tenderer from tender

- (1) A contracting authority is required to exclude a tenderer from a tender at any time if it becomes evident that the tenderer has submitted false information or falsified documents.
- (2) A tenderer is disqualified if:
 - 1) the tenderer is bankrupt or undergoing liquidation, the business activities thereof are suspended or it is in any other similar situation pursuant to the law of the home country of the tenderer;
 - 2) compulsory liquidation or other similar proceedings have been initiated with regard to the tenderer pursuant to the law of the home country of the tenderer;
 - 3) the tenderer has not performed the obligations thereof regarding payment of state or local taxes;
 - 4) a court judgment which has entered into force proves that the tenderer has, during the last three years, failed to perform as required a procurement contract entered into with the tenderer as a result of a tendering procedure;
 - 5) the tenderer has failed to submit the data or documents required by the contracting authority on the basis of this Act;

6) the tenderer does not meet the requirements prescribed by legislation for operating in the corresponding field of activity or the financial status or technical competence of the tenderer is not in compliance with the requirements set by the contracting authority.

(3) In the cases listed in clauses (2) 1)–4) of this section, documents issued by a competent authority are considered as acceptable proof.

(4) If the home country of a tenderer does not issue the relevant documents, they may be replaced by a declaration made by the person concerned before a notary or other such competent official of the home country of the tenderer.

§36. Registration of tenderers

(1) A tenderer whose seat is within a State Party to the European Economic Area Agreement, may, in order to prove the qualifications of the tenderer according to the requirements provided for in clauses 31 (1) 1) and 2) and §32 of this Act, provide the contracting authority with a registration certificate issued by a competent body of the home country of the tenderer concerning the entry of the tenderer in the official list of tenderers. A registration certificate shall contain references to the basis for registration and the classification of the tenderer.

(2) A contracting authority may require all tenderers registered in an official list to submit additional confirmation concerning payment of social tax in addition to the registration certificate specified in subsection (1) of this section.

§37. System for qualifying tenderers

(1) Contracting authorities specified in clause 5 (1) 6) of this Act may use a qualifying system for tenderers both in the case of public procurements the estimated value of which is lower than an international threshold and public procurements the value of which equals or exceeds an international value threshold. Contracting authorities specified in clauses 5 (1) 1)-5) of this Act may use a qualifying system for tenderers in the case of a negotiated tendering procedure without prior publication of a tender notice and in the case of a public procurement the estimated value of which is lower than an international value threshold.

(2) A contracting authority may establish a system for qualifying tenderers, based on objective criteria and the provisions of this Act.

(3) Contracting authorities who establish a system for qualifying tenderers based on qualification criteria and rules shall ensure that it is possible, at all times, for interested persons to:

- 1) access the criteria and rules for qualifying tenderers, whereas interested persons shall be notified of amendments to such criteria or rules;
- 2) apply for qualification.

(4) A contracting authority may use lists of qualified tenderers compiled by other persons on the condition that the qualification systems used are in accordance with the requirements of the contracting authority and the provisions of this Act. In such case, the contracting authority shall notify interested persons of the names of the persons who compiled the lists of qualified tenderers.

(5) A contracting authority shall inform applicants of the decision concerning qualification. If the decision concerning qualification cannot be made within two months, the contracting authority

shall inform applicants of the reasons for the delay and notify them of the date on which the decision is to be made within two weeks after submission of the applications.

(6) Applicants who were disqualified shall be informed of the corresponding decision and grounds for disqualification. The grounds for disqualification shall be based on the criteria for qualifying tenderers, specified in subsection (2) of this section.

(7) A contracting authority shall not require tenderers to submit documents which duplicate documents already submitted to such contracting authority by the corresponding tenderer.

(8) Written records shall be kept of qualified tenderers. The corresponding list may be subdivided into categories according to the object of public procurement to which the qualification applies.

(9) Contracting authorities may disqualify of a tenderer only on grounds arising from criteria for qualification specified in subsection (2) of this section. A tenderer shall be notified of disqualification and the reason therefore shall be indicated.

(10) A contracting authority shall submit a notice concerning the establishment of a system for qualifying tenderers to the register and the notice shall contain at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the time of establishing the criteria and rules for qualifying tenderers;
- 3) the place and time for accessing the criteria and rules for qualifying tenderers.

(11) The formal requirements for the notice specified in subsection (10) of this section and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

18. *In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?*

There are no provisions regulating the use of permanent lists of suppliers or the selection of suppliers on a contract-by-contract basis in the current Public Procurement Act.

19. *What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign suppliers/suppliers or in favour of domestic supplies/suppliers?*

The Public Procurement Act sets conditions of use and the procedure of restricted tendering as follows:

§55. Restricted tendering procedure

(1) A contracting authority may use a restricted tendering procedure if:

- 1) the contracting authority has approved objective selection criteria for the tenderers;
and

- 2) it is economically expedient to verify the qualifications of applicants before submission of the tender documents.
- (2) In a restricted tendering procedure, the contracting authority shall, on the basis of the financial status and technical capacity of the applicants, select the persons to whom tender documents shall be submitted concurrently.
 - (3) A contracting authority may predetermine the number of tenderers participating in a restricted tendering procedure on the condition that:
 - 1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than five and the maximum not more than 20;
 - 2) the number of tenderers is determined on the basis of the nature of the goods to be purchased or construction work or services to be contracted for;
 - 3) the number of tenderers participating in the tendering procedure is determined in the invitation to tender;
 - 4) in the case of procurement contracts the value of which is lower than an international value threshold, the minimum number of tenderers is not less than three.
 - (4) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of tender documents and the tenderers' need to access the supporting documents or the construction site.

20. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

The relevant provisions concerning negotiations are the following:

§51. Negotiations

- (1) In negotiated tendering procedures with prior publication of a tender notice or negotiated tendering procedures without prior publication of a tender notice, the contracting authority has the right to decide whether and to which extent to negotiate with the tenderers.
- (2) Negotiations are prohibited in open tendering procedures and restricted tendering procedures.
- (3) If negotiations are held, the contracting authority shall notify tenderers of the procedure for the negotiations before the commencement of the negotiations.
- (4) Contracting authorities shall not forward information received during negotiations to other tenderers.

§9. Confidentiality

- (1) Unless otherwise provided by this Act, a contracting authority shall not disclose information received from tenderers or from persons applying for participation in a tendering procedure (hereinafter applicant) concerning their business activities, nor the content of the tenders or negotiations, and tenderers and applicants shall not disclose information received from a contracting authority concerning the business activities thereof, nor the content of the tenders or negotiations.

(2) Notices, decisions and other documents which are referred to in this Act shall be prepared in a format ensuring full preservation of their content and shall be preserved by the contracting authority pursuant to law.

21. *Article XI sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.*

The Public Procurement Act provides for the rules and practices regarding time-periods as follows:

§40. Term for submission of tenders and applications for participation in tendering procedure

(1) In open tendering procedures, the period of time between the publication of an invitation to tender and the due date for submission of tenders shall be, in the case of procurement contracts the value of which:

- 1) is lower than an international value threshold, not less than 14 days upon purchasing of goods or contracting for services, and not less than 30 days upon contracting for construction work;
- 2) equals or exceeds an international value threshold, generally not less than 52 days or not less than 36 days, whereas due to time constraints or in simpler cases not less than 22 days, if the contracting authority has, in the prior notice, indicated all necessary information concerning the open tendering procedure which is known at the time, on the condition that the prior notice was published at least 52 days but not more than 12 months before publication of the invitation to tender.

(2) In restricted tendering procedures, the period of time between the publication of the invitation to tender and the due date for submission of applications for participation in the tendering procedure shall be, in the case of procurement contracts the value of which:

- 1) is lower than an international value threshold, not less than 14 days;
- 2) equals or exceeds an international value threshold, generally not less than 37 days or not less than 15 days in cases where time constraints render compliance with the requirement of 37 days impossible.

(3) In negotiated tendering procedures with prior publication of a tender notice, the period of time between the publication of the invitation to tender and the due date for submission of applications for participation in the tendering procedure shall be, in the case of procurement contracts the estimated value of which:

- 1) is lower than an international value threshold, not less than 14 days;
- 2) equals or exceeds an international value threshold, generally not less than 37 days or not less than 15 days in cases where time constraints render compliance with the requirement of 37 days impossible, or not less than 52 days if the procurement contract to be negotiated is a construction work concession contract.

(4) In restricted tendering procedures, the period of time between the issue of the tender documents and the due date for submission of tenders shall be, in the case of procurement contracts the estimated value of which:

- 1) is lower than an international value threshold, not less than 14 days upon purchasing of goods or contracting for services, and not less than 30 days upon contracting for construction work;
- 2) equals or exceeds an international value threshold, not less than 40 days, or not less than 26 days if the contracting authority has, in the prior notice, indicated all information necessary for the restricted tendering procedure which is known at the time, on the condition that the prior notice was published at least 52 days but not more than 12 months before the notice of the restricted tendering procedure, or not less than 10 days in cases where time constraints render compliance with the requirement of 40 or 26 days impossible, or not less than 24 days in the case of contracting authorities specified in clause 5 (1) 6) of this Act if the contracting authority does not reach an agreement with the selected tenderers concerning a shorter time-limit, on the condition that all tenderers are afforded the same amount of time for the preparation and submission of tenders.

(5) In negotiated tendering procedures with prior publication of a tender notice, the period of time between the issue of the tender documents and the due date for the submission of tenders shall be not less than 14 days upon purchasing of goods or contracting for services, and not less than 30 days upon contracting for construction work.

(6) A contracting authority may extend the time-limit for submission of tenders. Upon extension of the time-limit for submission of tenders in the case of an open tendering procedure, the contracting authority shall amend the invitation to tender and the tender documents. Upon extension of the time-limit for submission of tenders in the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall amend the tender documents. Upon amendment of an invitation to tender, the contracting authority shall notify the register of extension of the time-limit. Upon amendment of tender documents, the contracting authority shall take into account the provisions of §25 of this Act.

(7) A contracting authority may extend the time-limit for submission of applications for participation in a tendering procedure. Upon extension of the time-limit for submission of applications for participation in a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall amend the invitation to tender. Upon amendment of an invitation to tender, the contracting authority shall notify the register of extension of the time-limit.

22. Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?

The procedures set by the Public Procurement Act for submission, opening and acceptance of tenders are the following:

§39. Submission, amendment and withdrawal of tenders

- (1) A tender shall comply with the requirements set out in the tender documents and shall be in no way misleading.
- (2) A tender shall be submitted in writing and in a sealed envelope containing a separate sealed and marked envelope with the value of the tender.

- (3) The contracting authority shall provide a tenderer with a certificate concerning receipt of a tender and the date and time of receipt of the tender shall be indicated in the certificate.
- (4) Tenderers may submit a joint tender if such opportunity is prescribed in the tender documents.
- (5) A tenderer may amend a tender by submitting a new tender or withdraw a tender, whereas the corresponding written notice shall be submitted to the contracting authority before the due date for submission of tenders.

§42. Opening of tenders

- (1) Tenders shall be opened at the place and time specified in the tender documents or, in the case of extension of the tender validity period, at the time specified by the contracting authority.
- (2) All tenderers have the right to participate in the opening of tenders personally or through their authorized representatives.
- (3) At the opening of tenders, the names and registry codes of the tenderers shall be made known and the conformity of the submitted documents with the requirements set out in the tender documents shall be verified. Envelopes containing the values of the tenders shall not be opened and the contracting authority shall ensure that the envelopes remain sealed until opening of the values of tenders. A report on the opening of the tenders shall be prepared.
- (4) A copy of a report on the opening of tenders shall be sent to the tenderers within three working days after the date of opening the tenders.
- (5) In the case of rejection of a tender pursuant to subsection 43 (4) or 44 (1) of this Act, the envelope containing the value of the tender shall not be opened and shall be returned to the tenderer on the date following the expiry of the tender validity period.
- (6) The contracting authority shall notify tenderers of the place, date and time of opening the values of the tenders at the opening of the tenders or together with the notice announcing the declaration of conformity or rejection of the tenders.

§43. Declaration of conformity of tenders and rejection of tenders

- (1) Contracting authorities shall verify the compliance of submitted tenders with the requirements set out in the tender documents.
- (2) A tender shall be declared to be in conformity if it complies with all the requirements set out in the tender documents.
- (3) A tender may be declared to be in conformity if it contains no substantive deviations from the conditions set out in the tender documents.
- (4) A contracting authority shall reject a tender if:
 - 1) the tenderer is not qualified pursuant to the provisions of this Act;
 - 2) the tender does not comply with the requirements set out in the tender documents.

(5) A notice concerning declaration of tenders as being in conformity or rejection of tenders, and the reasons therefor shall be sent to the tenderer in writing within three working days after the making of the corresponding decision.

§44. Rejection of all tenders

(1) A contracting authority may reject all tenders before entry into a procurement contract if the tender documents prescribe such possibility and the grounds therefor.

(2) A contracting authority shall immediately send a notice concerning rejection of all tenders to all tenderers to whom tender documents were issued.

(3) At the request of a tenderer, the contracting authority shall notify the tenderer of the grounds for rejection of all tenders.

(4) Upon rejection of all tenders, the contracting authority shall refund the fee charged from tenderers for the tender documents.

§45. Comparison and evaluation of tenders

(1) A contracting authority shall compare and evaluate all tenders which have not been rejected. In the comparison and evaluation of tenders, only the criteria set out in the tender documents shall be considered.

(2) The successful tender is a tender which, in terms of the evaluation criteria set out in the tender documents, is the most advantageous among the tenders declared suitable, whereas the success of the tender shall be objectively justifiable.

(3) The economically most advantageous tender shall be determined on the basis of the value points or other evaluation results ascribed according to the evaluation criteria to tenders declared to be in conformity. Value points or other evaluation results shall be ascribed according to the evaluation criteria as follows:

- 1) before opening the values of the tenders, the tenders shall be ranked according to the evaluation criteria, except for the value, set out in the tender documents or on the basis of the value points or other evaluation results ascribed to the tenders;
- 2) immediately after opening the values of the tenders, the value points or other evaluation results ascribed according to the value of a tender shall be added to the value points or other evaluation results ascribed to the tender according to clause 1) of this subsection.

(4) All tenderers have the right to attend, either personally or through an authorized representative, the opening of the values of the tenders and performance of the act specified in clause(3) 2) of this section.

(5) Upon opening the values of tenders, the intactness of the seals of the envelopes with the values of the tenders shall be verified and thereafter the names and registry codes of the tenderers and the values of the tenders submitted by the tenderers shall be announced. A corresponding report on the opening of the values of the tenders shall be prepared.

(6) A report on the opening of the values of tenders shall be sent to the tenderers within three working days after the opening of the values of the tenders.

(7) A contracting authority which has divided a public procurement into parts shall evaluate tenders according to the parts and as a whole if at least one of the tenders declared suitable concerns the entire object of the public procurement. The contracting authority shall declare successful the most advantageous tender for each part as the successful tender if declaring one tender as successful for all of the parts is not in compliance with the conditions specified in subsection (1) of this section.

(8) Persons who are or have been in a relationship with a tenderer which may give rise to justified doubts as to the persons' objectivity shall not participate in evaluation of tenders.

§46. Acceptance of tenders

(1) A successful tender is deemed to be accepted after 14 days as of declaration of the tender as successful.

(2) A written notice concerning declaration of a tender as successful shall be sent to all tenderers within three working days after the corresponding decision is made. The notice sent to the tenderers shall set out the name of the tenderer who submitted the successful tender and an explanation concerning the advantages of the successful tender over the other tenders.

23. Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.

§26. Technical specification

(1) A technical specification is a list of characteristics or a description of the process affecting the characteristics of goods purchased or construction work or services contracted for by way of public procurement. In the case of contracting for construction work, the technical specification consists in building design documentation containing corresponding drawings, explanations, qualification requirements and other necessary documents to the extent permitting contracting for construction work.

(2) A technical specification shall not create advantages to certain tenderers over their competitors and give rise to barriers to international trade.

(3) In the preparation of a technical specification, the contracting authority shall not use the advice of persons who may have business interests with regard to the public procurement.

§27. Preparation of technical specification

(1) A technical specification may be prepared on the basis of a technical regulation or standard.

(2) Goods of a specific make or obtainable from a specific source or through a specific process, which would favour or eliminate the participation of certain tenderers may be listed in a technical specification only if such specification is unavoidable due to the special character of the object of the public procurement.

(3) Information concerning specific origins or methods of production, types, trademarks or patents shall be listed or referred to in a technical specification only if such list or reference is accompanied by the words "or equivalent" or if the characteristics of the object of the public procurement are otherwise not sufficiently precise and intelligible to all parties.

§28. Standards

(1) A technical specification may refer to international standards if these have not been introduced as Estonian standards.

(2) Contracting authorities may derogate from the requirements provided for in subsection 27 (1) of this Act and subsection (1) of this section if:

- 1) the object of the public procurement does not conform to the specified standards;
- 2) the use of such standards would oblige the contracting authority to purchase goods which are not compatible with the goods already in use or would entail disproportionate additional costs or technical difficulties;
- 3) such standards are not suitable for the application in question and do not take into consideration the technical innovations which have occurred after the introduction of the standards;
- 4) the object of the public procurement is of a genuinely innovative nature and therefore the application of existing standards is not possible;
- 5) the technical regulations or standards contradict each other.

(3) On the basis of a corresponding request, a contracting authority shall provide tenderers with the opportunity to access the technical regulations or standards which referred to in the tender documents or which the contracting authority intends to use for the public procurement referred to in the prior notice. If a technical specification is based on documents accessible by the tenderers, a reference to such documents is sufficient.

24. Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.

The relevant provisions in the Public Procurement Act concerning evaluation are the following:

§24. Invitation-to-tender documents

(1) Invitation-to-tender documents shall contain at least the following information:

/.../

- 3) the evaluation criteria which will be used for selecting successful tenders and which may be either the lowest price only or the economically most advantageous tender which, depending on the specific object of the public procurement, may be determined on the basis of different criteria allowing for objective evaluation, and of their relative proportion in per cents or value points;

§45. Comparison and evaluation of tenders

(1) A contracting authority shall compare and evaluate all tenders which have not been rejected. In the comparison and evaluation of tenders, only the criteria set out in the tender documents shall be considered.

(2) The successful tender is a tender which, in terms of the evaluation criteria set out in the tender documents, is the most advantageous among the tenders declared suitable, whereas the success of the tender shall be objectively justifiable.

(3) The economically most advantageous tender shall be determined on the basis of the value points or other evaluation results ascribed according to the evaluation criteria to tenders declared to be in conformity. Value points or other evaluation results shall be ascribed according to the evaluation criteria as follows:

- 1) before opening the values of the tenders, the tenders shall be ranked according to the evaluation criteria, except for the value, set out in the tender documents or on the basis of the value points or other evaluation results ascribed to the tenders;
- 2) immediately after opening the values of the tenders, the value points or other evaluation results ascribed according to the value of a tender shall be added to the value points or other evaluation results ascribed to the tender according to clause 1) of this subsection.

(4) All tenderers have the right to attend, either personally or through an authorized representative, the opening of the values of the tenders and performance of the act specified in clause (3) 2) of this section.

(5) Upon opening the values of tenders, the intactness of the seals of the envelopes with the values of the tenders shall be verified and thereafter the names and registry codes of the tenderers and the values of the tenders submitted by the tenderers shall be announced. A corresponding report on the opening of the values of the tenders shall be prepared.

(6) A report on the opening of the values of tenders shall be sent to the tenderers within three working days after the opening of the values of the tenders.

(7) A contracting authority which has divided a public procurement into parts shall evaluate tenders according to the parts and as a whole if at least one of the tenders declared suitable concerns the entire object of the public procurement. The contracting authority shall declare the most advantageous tender for each part as the successful tender if declaring one tender as successful for all of the parts is not in compliance with the conditions specified in subsection (1) of this section.

(8) Persons who are or have been in a relationship with a tenderer which may give rise to justified doubts as to the persons' objectivity shall not participate in the evaluation of tenders.

V. INFORMATION

25. Article XIX:1 of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.

The official bulletin containing the publication of all legislation of the Republic of Estonia is the *Riigi Teataja* (State Gazette), according to the *Riigi Teataja* Act.

§1. Scope of application of Act

This Act provides the procedure for publication in the *Riigi Teataja* of legislation and international agreements of the Republic of Estonia, reasoned decisions of the Supreme Court of the Republic of Estonia, notices and other documents, and for access thereto.

The legislation referred to in questions 1 and 2 can be found on the website of Estonian Legal Translation Centre, available at: www.legaltext.ee.

26. *Article IX:1 of the Agreement foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

The official source of information on government procurement is the electronic procurement register. The Public Procurement Office is the chief and authorized processor of the public register, available at www.rha.gov.ee.

27. *Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions in your legislation.*

The Public Procurement Act sets the information requirements for notices of invitations to tender and tender documentation as follows:

§18. Prior notices

(1) If the estimated value of a public procurement in the case of purchasing of goods or contracting for services is 750,000 euros or more or, in the case of contracting for construction work, five million euros or more, and the contracting authority intends to organize the public procurement during the forthcoming 12 months, the contracting authority shall communicate the following by means of a prior notice submitted at the beginning of the financial year:

- 1) in the case of purchasing of goods, the estimated value of the public procurement, broken down by the types of the goods;
- 2) in the case of contracting for services, the estimated value of the public procurement, broken down by the types of the services;
- 3) in the case of contracting for construction work, the estimated value and essential characteristics of the public procurement.

(2) A contracting authority shall submit a prior notice to the register in Estonian and shall add a translation of the notice into English.

(3) A prior notice shall contain the information provided for in clauses (1) 1), 2) or 3) of this section and 19 (1) 1), 2) and 3) of this Act.

(4) The formal requirements for prior notices and the procedure for submission of prior notices shall be established by the Minister of Economic Affairs.

§19. Notice of invitation to tender

(1) In the case of a public procurement by open tendering procedure, restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall submit an invitation to tender to the register for publication and the notice shall contain at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible;
- 3) the type of the tendering procedure;
- 4) the name, official title and details of the person responsible for the public procurement;
- 5) the due date for the performance of the public procurement;
- 6) in the case of an open tendering procedure, the place and conditions of issuing the tender documents;
- 7) in the case of an open tendering procedure, the minimum qualification requirements for the economic and technical conditions of the tenderers;
- 8) whether a tender security is required and the amount thereof;
- 9) the amount to be paid for the tender documents;
- 10) in the case of an open tendering procedure, the place, due date and time for the submission of tenders;
- 11) in the case of a restricted tendering procedure or a negotiated tendering procedure with prior publication of a tender notice, the place, due date and time for submission of written applications for participation in the tendering procedure;
- 12) in the case of a restricted tendering procedure or a negotiated tendering procedure with prior publication of a tender notice, the qualification requirements for the applicants and a notation indicating the information and documents to be annexed to a written application for participation in the tendering procedure for the purposes of evaluation of the qualifications of the tenderers;
- 13) in the case of a restricted tendering procedure, objective selection criteria for the tenderers.

(2) Invitations to tender shall be published in Estonian.

(3) In the case of a public procurement the value of which equals or exceeds an international value threshold, the contracting authority shall submit a translation of the invitation to tender into English, in other cases a summary of the invitation in English may be annexed. A summary of an invitation to tender in English shall contain at least the information provided for in clauses (1) 1), 2) and 6) and 10) or 11) and 12) of this section.

(4) In the case of an open tendering procedure, restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall not make the invitation to tender public before the invitation has been entered in the register. If an invitation to tender is amended, the name of the object and characteristics of the public procurement and, in the case of an open tendering procedure, the minimum qualification requirements for the economic and technical conditions of the tenderers, and the requirement for a tender security and the amount thereof shall not be changed.

(5) If a code of the standard classification of objects of public procurements is allocated to an object of public procurement, such allocation shall be effected pursuant to the subdivision of the standard classification of objects of public procurements which corresponds to the object of public procurement as precisely as possible.

(6) The standard classification of objects of public procurements shall be approved by the Minister of Economic Affairs.

(7) The formal requirements for invitations to tender and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§24. Tender documents

(1) Tender documents shall contain at least the following information:

- 1) the due date for the performance of the procurement contract;
- 2) the technical specification;
- 3) the evaluation criteria which will be used for selecting successful tenders and which may be either the lowest price only or the economically most advantageous tender which, depending on the specific object of the public procurement, may be determined on the basis of different criteria allowing for objective evaluation, and of their relative proportion in per cents or value points;
- 4) the terms and conditions of the procurement contract to the extent that the contracting authority is able to submit at the moment;
- 5) the conditions of payment;
- 6) the amount of tender security if the contracting authority demands submission of tender security;
- 7) the language or languages in which the tender is to be submitted;
- 8) the currency unit or units in which the value of the tenders is to be submitted;
- 9) the address to which the tenders are to be sent or delivered;
- 10) instructions for the marking of the envelope in which the tenders are to be submitted;
- 11) the due date and time for the submission of tenders;
- 12) the address from which additional information concerning the public procurement and the content of the tender documents can be obtained, and other details;

- 13) the tender validity period;
- 14) the place, date and time of opening the tenders;
- 15) in the case of open tendering, the qualification requirements for tenderers and a notation indicating the information and documents to be annexed to the tender for the purposes of evaluating the qualifications of the tenderers;
- 16) if the contracting authority prescribes the possibility of rejecting all tenders, a notice concerning the conditions under which the contracting authority reserves the right to do so;
- 17) the possibility of and the procedure for submitting a joint tender if the contracting authority prescribes such possibility;
- 18) the structure of the tender.

(2) In tender documents, the contracting authority may require the tenderers to indicate in their tenders the share of the contract which they intend to perform themselves and the share of the contract which they intend to subcontract to third parties, whereas subcontracts shall not reduce the liability of the tenderer.

(3) A contracting authority may charge a fee for tender documents if the amount of the fee has been indicated in the invitation to tender. The amount of the fee shall not exceed the cost for the photocopying and delivery of the tender documents.

(4) If an invitation to tender prescribes a fee for the tender documents, the contracting authority shall issue the tender documents after payment of the fee indicated in the invitation.

(5) A contracting authority shall enable persons interested in participation in a tendering procedure to access tender documents at the contracting authority without charge.

(6) In the case of a negotiated tendering procedure with prior publication of a tender notice or negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall submit the information specified in subsection (1) of this section in the tender documents to the extent it considers necessary.

§25. Amendments to tender documents

A contracting authority may make amendments to tender documents on the condition that such amendments be sent during one and the same day of the first half of the term for submission of tenders to all tenderers who received the tender documents. If a protest or appeal is filed, the contracting authority may extend the term for submission of tenders.

28. *Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

There are no provisions in the Public Procurement Act on the lists of qualified suppliers since the Public Procurement Act does not foresee maintaining of any such lists by the entities subject to the government procurement procedures.

29. *Article XVIII:1 of the Agreement foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.*

The official source of information on government procurement is the electronic procurement register. The Public Procurement Office is the chief and authorized processor of the public register, available at www.rha.gov.ee.

30. *Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.*

The Public Procurement Act sets the information requirements for notices of contract awards as follows:

§20. Declarations

(1) Within 10 days after the end of a tendering procedure, the contracting authority shall submit a public procurement declaration (hereinafter declaration) to the register.

(2) Within 10 days after deciding the winner of a design contest, the contracting authority shall submit a corresponding declaration to the register.

(3) Declarations submitted by contracting authorities specified in clause 5 (1) 6) of this Act shall not contain information the disclosure of which may be contrary to the public interest or damage the lawful business interests of other persons or free competition.

(4) A declaration shall set out:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible;
- 3) the type of the tendering procedure;
- 4) the name, official title and details of the person responsible for the public procurement;
- 5) the names, addresses and other details of the tenderers who submitted tenders, and the registry codes thereof if they have a registry code;
- 6) the names, addresses and other details of the qualified tenderers, and the registry codes thereof if they have a registry code;
- 7) the due date for entry into the procurement contract, the value of the procurement contract and other essential conditions;
- 8) the values of all tenders declared to be in conformity or, in the case several evaluation criteria are applied, the values of all tenders declared to be in conformity and the value points attained according to the evaluation criteria or other evaluation results

and the names and registry codes (if they exist) of the tenderers who submitted the corresponding tenders;

- 9) information concerning appeals filed with a court in the course of the tendering procedure;
 - 10) in the case of cancellation of the tendering procedure or rejection of all tenders, the reasons why and the basis on which this was done;
 - 11) if open tendering is not used, the grounds for the selection of the tendering procedure.
- (5) A declaration of a design contest shall set out:
- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
 - 2) the subject and characteristics of the design contest;
 - 3) the names and addresses of the participants in the design contest;
 - 4) the name and address of the person who submitted the award-winning project;
 - 5) information concerning the qualifications required of the participants in the design contest or confirming the lack thereof;
 - 6) the total value of the design contest awards and other amounts payable to the participants in the contest;
 - 7) a summary of the evaluation and comparison of the projects.
- (6) The formal requirements for declarations and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§21. Public procurement report

- (1) Within 10 days after the date of expiry of a procurement contract, the contracting authority shall prepare a written public procurement report which shall set out:
- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
 - 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible, and the total value of the public procurement;
 - 3) amendments to the essential conditions of the procurement contract;
 - 4) complaints filed in the course of performance of the procurement contract.
- (2) A public procurement report shall be preserved until the end of the fourth year following expiry of the public procurement.

(3) A contracting authority shall submit a public procurement report to the register promptly after completion of the report.

(4) The formal requirements for public procurement reports and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§22. Register

(1) Information concerning prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and protests shall be entered in the register.

(2) The register shall be established and the statutes for the maintenance of the register shall be approved by the Government of the Republic.

(3) The Office is the chief and authorized processor of the register.

(4) The register shall be maintained in the form of a computer database.

(5) Prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and information concerning protests shall be submitted to the register in electronic form.

(6) The main functions of the register are:

- 1) entry of information concerning prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and protests in the register;
- 2) processing of information concerning prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and protests entered in the register.

(7) Contracting authorities, except for those specified in clause 5 (1) 1) of this Act, shall pay a state fee for entry of information concerning a prior notice, invitation to tender or design contest notice in the register.

(8) Persons who submit information to the register shall be responsible for the correctness of such information.

§23. Disclosure of information entered in register

(1) The register shall be public.

(2) Information concerning the following items in the register shall be published on the web site of the register:

- 1) prior notices;
- 2) notices;
- 3) invitations to tender;
- 4) design contest notices
- 5) declarations;

- 6) public procurements reports;
- 7) tenderers.

(3) The register shall ensure access to information entered in the register for five years after expiry of the corresponding procurement contract or end of the corresponding design contest.

31. Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2, the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.

The Public Procurement Act foresees the provision of the information to tenderers as follows:

§49. Notification of tenderers

(1) A contracting authority shall, within three working days after making the corresponding decision, inform each applicant who was disqualified from participation in a tendering procedure in writing of the grounds for disqualification.

(2) A contracting authority may decide that the advantages specified in subsection 46 (2) of this Act of a tender declared to be successful shall not be disclosed if this may:

- 1) be contrary to the public interests;
- 2) prejudice the legitimate business interests of the tenderers;
- 3) prejudice free competition between tenderers.

(3) If an invitation to tender or tender documents are revoked or a decision made by the contracting authority with regard to a tendering procedure is annulled or the tendering procedure is cancelled, the contracting authority shall, within three working days, notify tenderers who received tender documents or persons who were previously qualified by the contracting authority of the corresponding decision in writing.

§50. Explanations

(1) Applicants and tenderers have the right to obtain explanations concerning the contents of invitations to tender and tender documents. The contracting authority shall provide explanations within three working days after receipt of the corresponding request and shall send the explanations concurrently also to other applicants or tenderers.

(2) In open or restricted tendering procedures, contracting authorities may request tenderers to submit reasoned and relevant explanations concerning inaccuracies or ambiguities contained in tenders. Requests and explanations shall be prepared in writing.

(3) If a tenderer fails to submit within three working days the explanations requested from the tenderer by the contracting authority on justified grounds, the tender may be rejected.

§44. Rejection of all tenders

(1) A contracting authority may reject all tenders before entry into a procurement contract if the tender documents prescribe such possibility and the grounds therefor.

- (2) A contracting authority shall immediately send a notice concerning rejection of all tenders to all tenderers to whom tender documents were issued.
- (3) At the request of a tenderer, the contracting authority shall notify the tenderer of the grounds for rejection of all tenders.
- (4) Upon rejection of all tenders, the contracting authority shall refund the fee charged from tenderers for the tender documents.

VI. BID CHALLENGE PROCEDURES

32. *Please provide information on existing challenge procedures.*

The system of challenge procedure according to the Public Procurement Act is the following:

§61. Contestation of activities of contracting authority

A tenderer or a person interested in participating in a tendering procedure who finds that the contracting authority has violated the tenderer's rights or damaged the tenderer's interests by violating the provisions of this Act in the course of the tendering procedure may file a protest against the activities of the contracting authority.

§62. Submission of protests

- (1) Protests concerning invitations to tender, tender documents or decisions of contracting authorities concerning qualification of applicants, refusal to qualify applicants, qualification of tenderers or refusal to qualify tenderers, declaration of a tender to be in conformity, rejection of a tender, rejection of all tenders or declaration of a tender as successful shall be filed with the Office.
- (2) Protests shall be filed within seven working days after the date the person filing the protest becomes or should have become aware of the violation of the rights or damage to the interests of the person, but not after the contracting authority has accepted the successful tender. A protest concerning tender documents shall be filed before the contracting authority opens the tenders.
- (3) A protest shall be filed in writing and shall set out:
 - 1) the name, address and other details of the person filing the protest;
 - 2) the name, address and other details of the contracting authority;
 - 3) the content of the invitation to tender, tender documents or decision against which the protest is filed and the reasons why the person filing the protest considers this to be a violation of the rights or damage to the interests of the person;
 - 4) the clearly expressed request of the person filing the protest;
 - 5) a list of documents annexed to the protest.
- (4) The person filing a protest shall annex to the protest information at his or her disposal concerning the tendering procedure which is the subject of the protest, and a document certifying payment of the state fee.

§63. Organization of review of protests

- (1) The Office has the right to require a contracting authority to submit all documents necessary for the review of a protest.
- (2) The contracting authority shall submit the required documents to the Office within two working days after the receipt of the corresponding request from the Office.
- (3) Before the review of a protest, the Office has the right to require the contracting authority to submit a written statement concerning the content of the protested invitation to tender, tender documents or decision and the contracting authority shall submit the statement to the Office within two working days after the receipt of the corresponding request from the Office.
- (4) The Office shall refuse to hear a protest and shall make a corresponding decision if:
 - 1) the protest is not filed within the specified term;
 - 2) the protest fails to comply with the requirements provided for in subsection 62 (3) of this Act or a document certifying payment of the state fee has not been annexed to the protest;
 - 3) the protest is not filed against an invitation to tender, tender documents or a decision specified in subsection 62 (1) of this Act;
 - 4) a decision or precept specified in subsection 70 (1) of this Act has been made or issued.
- (5) If the Office finds that a protest filed does not comply with the requirements provided for in subsection 62 (3) of this Act or a document certifying payment of the state fee has not been annexed to the protest, it shall return the protest to the person who filed it and set a term of two working days for eliminating the deficiencies. If the person who filed the protest fails to eliminate the deficiencies within the specified term, the Office shall refuse to review the protest.
- (6) The Office has the right to involve experts in the review of a protest. An expert may submit his or her opinion in writing or at a public session. The expenses relating to the submission of a protest, consisting of the state fee and the certified expenses relating to the involvement of experts, including expert's fees, shall be borne by the person submitting the protest if the review of the protest terminates on the basis of clause 65 (6) 1) or 3) of this Act or by the contracting authority if the review of the protest terminates on the basis of clause 65 (6) 2), 4) or 5) of this Act. The amount of expenses relating to the submission of a protest shall be determined by a decision of the Office.
- (7) Expert's fees shall be determined on the basis of the amount equalling three times the hourly wage corresponding to the salary rate at the highest level of the salary scale for state public servants.
- (8) Information concerning protests shall be entered in the register.

§64. Suspension of tendering procedure

- (1) Upon receiving a protest concerning which there are no grounds provided for in subsection 63 (4) for refusing to review the protest, the Office is required to notify the contracting authority of submission of a protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest to the contracting authority.

(2) If the Office sets a term for elimination of deficiencies contained in a protest, the Office shall notify the contracting authority of submission of a protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest received by the Office after elimination of the deficiencies to the contracting authority. If the person filing the protest fails to eliminate the deficiencies within the specified term, the Office shall immediately notify the contracting authority of such failure.

(3) Upon receiving a notice from the Office concerning submission of a protest, the contracting authority is required to suspend the tendering procedure.

(4) If a contracting authority continues a tendering procedure after receiving a notice concerning submission of a protest from the Office, all subsequent acts performed in the course of the tendering procedure are void. Procurement contracts entered into after receiving a notice concerning submission of a protest from the Office are also void.

§65. Review of protests

(1) The Office shall review a protest within ten working days as of the date of submission of the protest to the Office. The contracting authority shall decide to review a protest either by a written proceeding on the basis of the documents submitted or shall organize the review of the protest at a public session (hereinafter public session) where at least the representative of the Office, the person who submitted the protest and the contracting authority shall participate.

(2) A public session shall be held if a protest is reviewed with the participation of the representative of the Office, the person who submitted the protest, the contracting authority or, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender. If necessary, the Office has the right to decide to hold an additional session. Notice of an additional session shall be given either at the previous session or pursuant to the procedure prescribed in subsection (3) of this section.

(3) The Office shall notify the person who submitted the protest, the contracting authority and, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender of the time of the public session. The contracting authority shall notify all other tenderers or applicants of the time of the public session. The failure of a contracting authority to inform tenderers or applicants of the opportunity to participate in the public session or the failure of the tenderers or applicants to appear at the session shall not hinder the review of the protest.

(4) Participants in a proceeding for the review of a protest are the person who submitted the protest, the contracting authority and, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender. Parties to a proceeding for the review of a protest are the person who submitted the protest and the contracting authority.

(5) If one or both of the parties to a proceeding for the review of a protest fail to appear at the public session, the Office shall review the protest in accordance with subsection (2) of this section by a written proceeding on the basis of the documents submitted.

(6) The review of a protest is terminated if:

- 1) the person who submitted the protest withdraws the protest;
- 2) the contracting authority declares the protest to be justified;

- 3) the Office decides to dismiss the protest;
- 4) the Office decides to satisfy the protest and annul the decision relating to a tendering procedure made by a contracting authority specified in subsection 5 (1) 1) of this Act which was in violation of this Act or issue a precept to a contracting authority specified in clauses 5 (1) 2)–6) of this Act to annul a decision relating to a tendering procedure made in violation of this Act or require the contracting authority to bring the invitation to tender or the tender documents into conformity with the requirements prescribed by legislation;
- 5) the Office makes a decision or issues a precept specified in subsection 70 (1) of this Act.

(7) Termination of the review of a protest pursuant to the provisions of clause (6) 1) or 2) of this section shall be documented in a written report signed by the representative of the Office, the person who submitted the protest and the contracting authority.

(8) Termination of the review of a protest pursuant to the provisions of clause (6) 3) or 4) of this section shall be documented in a reasoned decision of the Office.

§66. Filing of appeals with administrative court

In order to resolve a protest concerning which a decision specified in subsection 63 (4) or clause 65 (6) 3) of this Act has been made, an appeal may be filed with an administrative court against a decision made by a contracting authority in relation to a tendering procedure, against an invitation to tender or tender documents or against a decision or precept of the Office specified in clause 65 (6) 4).

§67. Resumption of tendering procedure

(1) A contracting authority may resume a suspended tendering procedure after:

- 1) receiving the notice provided for in subsection 64 (2) of this Act from the Office, or
- 2) the person who submitted the protest has withdrawn the protest;
- 3) receiving a written notice from the person who filed the protest that the person will not file an appeal pursuant to the procedure provided for in §66 of this Act against decisions made by the contracting authority in relation to the tendering procedure or against the invitation to tender or the tender documents, or
- 4) 10 days have passed from the making of a decision of the Office specified in clause 65 (6) 3) of this Act, or
- 5) expiry of the term for suspension of the tendering procedure specified by an administrative court.

(2) If a protest is declared to be justified pursuant to clause 65 (6) 2) of this Act or if the Office makes a decision pursuant to clause 65 (6) 4) of this Act, the tendering procedure shall be resumed after annulment of the protested decision relating to the tendering procedure or after the contracting authority has complied with the precept.

33. *Are there specific provisions enabling access of foreign suppliers to challenge procedures?*

There are no specific provisions enabling access of foreign suppliers to challenge procedures, the access is equally provided to all suppliers.

34. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:*

(i) *The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in domestic legislation?*

Protests shall be filed within seven days after the date the person filing the protest becomes or should have become aware of the violation of the rights or damage to the interests of the person, but not after the contracting authority has accepted the successful tender.

(ii) *What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:*

- *How are its members selected?*

- *Are its decisions subject to judicial review?*

- *If not, how will the requirements of paragraph 6 of Article XX be taken into account?*

§62. Submission of protests

(1) Protests concerning invitations to tender, tender documents or decisions of contracting authorities concerning qualification of applicants, refusal to qualify applicants, qualification of tenderers or refusal to qualify tenderers, declaration of a tender to be in conformity, rejection of a tender, rejection of all tenders or declaration of a tender as successful shall be filed with the Office.

(2) Protests shall be filed within seven working days after the date the person filing the protest becomes or should have become aware of the violation of the rights or damage to the interests of the person, but not after the contracting authority has accepted the successful tender. A protest concerning tender documents shall be filed before the contracting authority opens the tenders.

(3) A protest shall be filed in writing and shall set out:

1) the name, address and other details of the person filing the protest;

2) the name, address and other details of the contracting authority;

3) the content of the invitation to tender, tender documents or decision against which the protest is filed and the reasons why the person filing the protest considers this to be a violation of the rights or damage to the interests of the person;

4) the clearly expressed request of the person filing the protest;

5) a list of the documents annexed to the protest.

(4) The person filing a protest shall annex to the protest information at his or her disposal concerning the tendering procedure which is the subject of the protest, and a document certifying payment of the state fee.

§66. Filing of appeals with administrative court

In order to resolve a protest concerning which a decision specified in subsection 63 (4) or clause 65 (6) 3) of this Act has been made, an appeal may be filed with an administrative court against a decision made by a contracting authority in relation to a tendering procedure, against an invitation to tender or tender documents or against a decision or precept of the Office specified in clause 65 (6) 4).

(iii) *What is the applicable law by reference to which the challenge body will examine complaints?*

The applicable law is the Public Procurement Act.

(iv) *Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?*

- *Do these measures include the possibility to suspend the procurement process? On what conditions?*

§64. Suspension of tendering procedure

(1) Upon receiving a protest concerning which there are no grounds provided for in subsection 63 (4) for refusing to review the protest, the Office is required to notify the contracting authority of submission of a protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest to the contracting authority.

(2) If the Office sets a term for elimination of deficiencies contained in a protest, the Office shall notify the contracting authority of submission of a protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest received by the Office after elimination of the deficiencies to the contracting authority. If the person filing a protest fails to eliminate deficiencies within the specified term, the Office shall immediately notify the contracting authority of such failure.

(3) Upon receiving a notice from the Office concerning submission of a protest, the contracting authority is required to suspend the tendering procedure.

(4) If a contracting authority continues a tendering procedure after receiving a notice concerning submission of a protest from the Office, all subsequent acts performed in the course of the tendering procedure are void. Procurement contracts entered into after receiving a notice concerning submission of a protest from the Office are also void.

§70. Decision of precept of Office

(1) At any time before entry into a procurement contract, the Office shall, by a decision, either cancel the tendering procedure of a contracting authority specified in clause 5 (1) 1) of this Act or issue a precept requiring a contracting authority specified in clauses 5 (1) 2)–6) of this Act to cancel a tendering procedure if the contracting authority:

1) fails to present the evaluation criteria to be used to decide on the success of the tenders or the relative importance of the criteria in the tender documents;

- 2) has not notified all tenderers of amendments of the tender documents, declaration of tenders to be in conformity, rejection of a tender or declaration of a tender as successful;
- 3) violates the procedure for opening tenders or the values of tenders;
- 4) in the comparison and evaluation of tenders, uses, as a representative or expert, a person whose relationship with a tenderer may give rise to justified doubts as to the person's objectivity;
- 5) conducts negotiations with one or several tenderers in an open or restricted tendering procedure.

(2) If a tendering procedure is cancelled, all decisions and acts relating to the tendering procedure are void regardless of whether they were performed before or after the decision concerning cancellation was made. Procurement contracts entered into after the making of a decision concerning cancellation of a tendering procedure or annulment of a decision made by the contracting authority in relation to the tendering procedure are also void.

(3) Before making a decision concerning cancellation of a tendering procedure or issue of a precept, the Office shall grant an opportunity to the contracting authority to submit objections within the term specified by the Office which shall not exceed three working days.

(4) A decision or precept of the Office shall contain at least the following information:

- 1) the date and place of making the decision or issuing the precept;
 - 2) the content of the decision or precept;
 - 3) the given name, surname and official title of the official who made the decision or issued the precept.
- (v) *How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?*

Any decision about compensation for loss or damages suffered can be made by the administrative court.

- (vi) *Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.*

§63. Organization of review of protests

(1) The Office has the right to require a contracting authority to submit all documents necessary for the review of a protest.

(2) The contracting authority shall submit the required documents to the Office within two working days after the receipt of the corresponding request from the Office.

(3) Before the review of a protest, the Office has the right to require the contracting authority to submit a written statement concerning the content of the protested invitation to tender, tender documents or decision and the contracting authority shall submit the statement to the Office within two working days after the receipt of the corresponding request from the Office.

- (4) The Office shall refuse to review a protest and shall make a corresponding decision if:
- 1) the protest is not filed within the specified term;
 - 2) the protest fails to comply with the requirements provided for in subsection 62 (3) of this Act or a document certifying payment of the estate fee has not been annexed to the protest;
 - 3) the protest is filed against an invitation to tender, tender documents or a decision specified in subsection 62 (1) of this Act;
 - 4) a decision or precept specified in subsection 70 (1) of this Act has been made or issued.

(5) If the Office finds that a protest filed does not comply with the requirements provided for in subsection 62 (3) of this Act or a document certifying payment of the state fee has not been annexed to the protest, it shall return the protest to the person who filed it and set a term of two working days for eliminating the deficiencies. If the person who filed the protest fails to eliminate the deficiencies within the specified term, the Office shall refuse to review the protest.

(6) The Office has the right to involve experts in the review of a protest. An expert may submit his or her opinion in writing or at a public session. The expenses relating to the submission of a protest, consisting of the state fee and the certified expenses relating to the involvement of experts, including expert's fees, shall be borne by the person submitting the protest if the review of the protest terminates on the basis of clause 65 (6) 1) or 3) of this Act or by the contracting authority if the review of the protest terminates on the basis of clause 65 (6) 2), 4) or 5) of this Act. The amount of expenses relating to the submission of a protest shall be determined by a decision of the Office.

(7) Expert's fees shall be determined on the basis of the amount equalling three times the hourly wage corresponding to the salary rate at the highest level of the salary scale for state public servants.

(8) Information concerning protests shall be entered in the register.

§65. Review of protest

(1) The Office shall review a protest within 10 working days as of the date of submission of the protest to the Office. The contracting authority shall decide to review a protest either by a written proceeding on the basis of the documents submitted or shall organize the review of the protest at a public session (hereinafter public session) where at least the representative of the Office, the person who submitted the protest and the contracting authority shall participate.

(2) A public session shall be held if a protest is reviewed with the participation of the representative of the Office, the person who submitted the protest, the contracting authority or, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender. If necessary, the Office has the right to decide to hold an additional session. Notice of an additional session shall be given either at the previous session or pursuant to the procedure prescribed in subsection (3) of this section.

(3) The Office shall notify the person who submitted the protest, the contracting authority and, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender of the time of the public session. The contracting authority shall notify all other tenderers or applicants of the time of the public session. The failure of a contracting authority to inform tenderers or applicants of the opportunity to

participate in the public session or the failure of the tenderers or applicants to appear at the session shall not hinder the review of the protest.

(4) Participants in a proceeding for the review of a protest are the person who submitted the protest, the contracting authority and, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender. Parties to a proceeding for the review of a protest are the person who submitted the protest and the contracting authority.

(5) If one or both of the parties to a proceeding for the review of a protest fail to appear at the public session, the Office shall review the protest in accordance with subsection (2) of this section by a written proceeding on the basis of the documents submitted.

(6) The review of a protest is terminated if:

- 1) the person who submitted the protest withdraws the protest;
- 2) the contracting authority declares the protest to be justified;
- 3) the Office decides to dismiss the protest;
- 4) the Office decides to satisfy the protest and annul the decision relating to a tendering procedure made by a contracting authority specified in subsection 5 (1) 1) of this Act which was in violation of this Act or issue a precept to a contracting authority specified in clauses 5 (1) 2)–6) of this Act to annul a decision relating to a tendering procedure made in violation of this Act or require the contracting authority to bring the invitation to tender or the tender documents into conformity with the requirements prescribed by legislation;
- 5) the Office makes a decision or issues a precept specified in subsection 70 (1) of this Act.

(7) Termination of the review of a protest pursuant to the provisions of clause (6) 1) or 2) of this section shall be documented in a written report signed by the representative of the Office, the person who submitted the protest and the contracting authority.

(8) Termination of the review of a protest pursuant to the provisions of clause (6) 3) or 4) of this section shall be documented in a reasoned decision of the Office.

(vii) What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?

Submission of protest to Office costs 100 kroons¹ (the state fee). In the case the protest filed after a declaration of a tender successful the cost is 3,000 kroons. There are no possibilities foreseen to do so free of charge.

The state fee for turning to the administrative court is 10 kroons.

¹ 1 USD = 17,482290000 EEK (calculated by the exchange rate of Bank of Estonia in 14.08.01).

VII. OTHER MATTERS

35. *To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.*

Estonian authorities consider bringing the modern means of information processing to the daily operations of national agencies as a key factor for facilitating the fluent exercise of any government functions. The notices of invitations to tender and/or notices of contract awards are published electronically. The internet address for such electronic publications is: <http://www.rha.gov.ee>.

The Public Procurement Act also provides for carrying out the whole procurement process via the Internet. The required technical specifications and legislative basis shall be prepared by the Ministry of Economic Affairs during the second half of 2001.

36. *Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.*

There is no official contact point for responding to enquiries. However, should relevant issues get raised, the questions should be sent to the Ministry of Economic Affairs of the Republic of Estonia, Department of Trade:

Ministry of Economic Affairs
Department of Trade
Harju Street 11
15072 Tallinn
ESTONIA
Fax: (372) 6313660
Email: kantselei@mineco.ee

Information can also be obtained from the Public Procurement Office:

Public Procurement Office
Kiriku Street 2/4
10310 Tallinn
ESTONIA
Email: info@rha.gov.ee

ANNEX

STATISTICS ON GOVERNMENT PROCUREMENT (1998-2000)

Table 1. Public procurements by contracting authority in 1998 – 2000

		Public procurements		
		number	value (EEK)	value (USD)*
Total of all public procurements in 1998	100,00%	1,684	4,392,987,047	251,282,129
State agencies	54,00%	910	1,489,776,555	85,216,328
Local governments	35,00%	590	1,067,165,048	61,042,635
Companies	6,20%	105	1,774,311,965	101,491,965
Legal persons in public law	4,70%	79	61,733,479	3,531,201
Total of all public procurements in 1999	100,00%	1852	4,580,566,112	262,011,791
State agencies	40,80%	755	1,329,679,539	76,058,659
Local governments	27,00%	500	1,403,409,491	80,276,067
Companies	29,40%	545	1,800,248,906	102,975,577
Legal persons in public law	2,80%	52	47,228,176	2,701,487
Total of all public procurements in 2000	100,00%	1,805	4,729,996,129	270,559,299
State agencies	45,80%	827	1,915,960,040	109,594,340
Local governments	23,20%	418	1,795,960,661	102,730,287
Companies	28,80%	520	982,225,711	56,184,042
Legal persons in public law	2,20%	40	35,849,717	2,050,630

* calculated by the exchange rate of Bank of Estonia in 14.08.2001 (1 USD = 17,482290000 EEK)

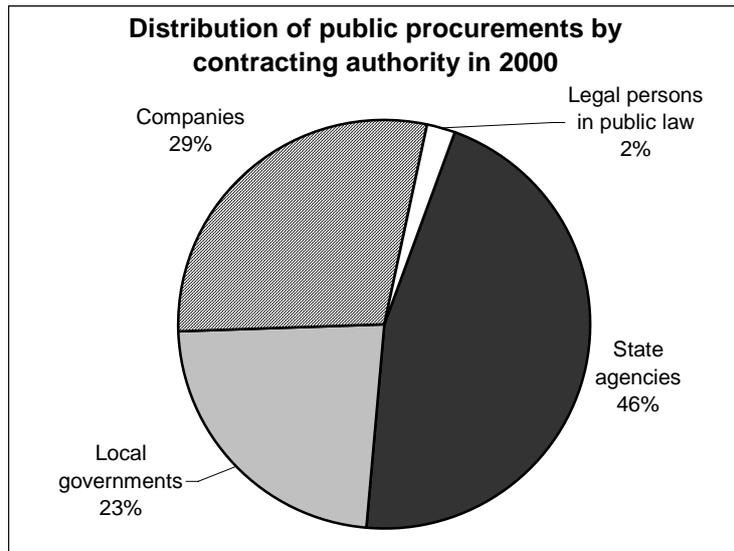


Table 2. Public procurements by object in 1998 - 2000

		Public procurements		
		number	value (EEK)	value (USD)*
Total of all public procurements in 1998	100,00%	1,684	4,392,987,047	251,282,129
Purchasing of goods	40,80%	687	2,247,662,866	128,567,989
Contracting for services	27,00%	455	848,872,131	48,556,118
Contracting for construction work	32,20%	542	1,296,452,050	74,158,022
Total of all public procurements in 1999	100,00%	1,852	4,892,117,338	279,832,753
Purchasing of goods	46,20%	855	1,465,656,922	83,836,667
Contracting for services	23,60%	437	1,018,243,497	58,244,286
Contracting for construction work	30,20%	560	2,408,216,919	137,751,800
Total of all public procurements in 2000	100,00%	1,805	4,729,996,129	270,559,299
Purchasing of goods	46,90%	846	1,926,001,555	110,168,722
Contracting for services	28,90%	522	1,418,920,144	81,163,288
Contracting for construction work	24,20%	437	1,385,074,430	79,227,288

* calculated by the exchange rate of Bank of Estonia in 14.08.2001 (1 USD = 17,482290000 EEK)

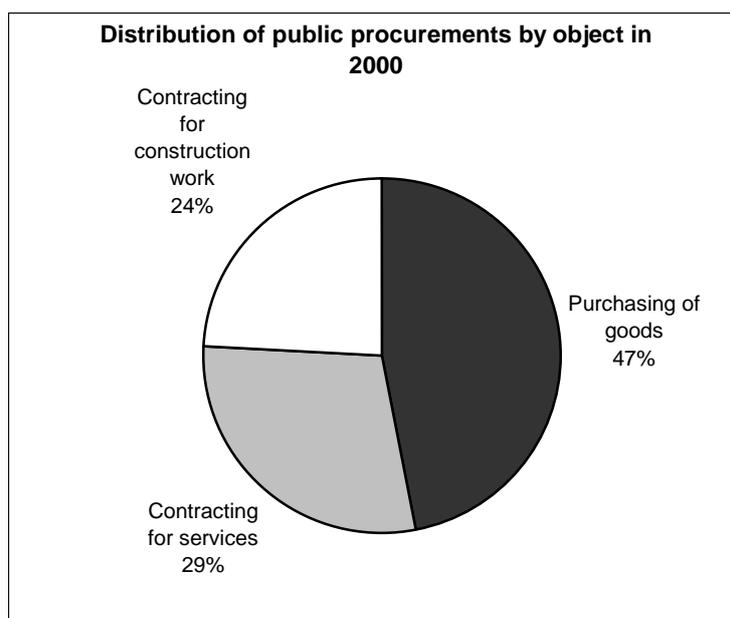
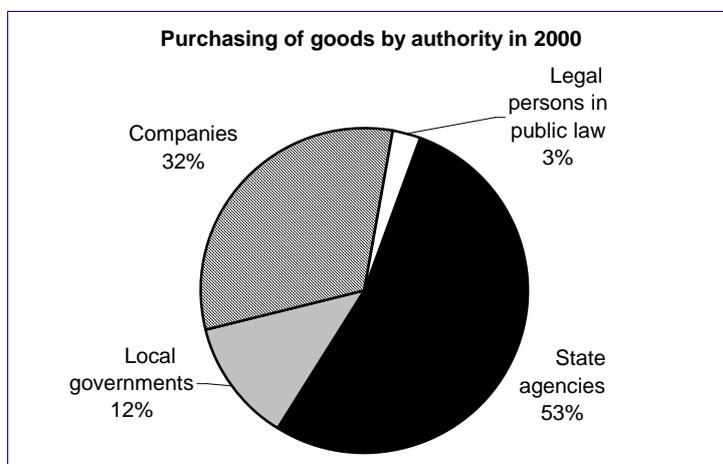
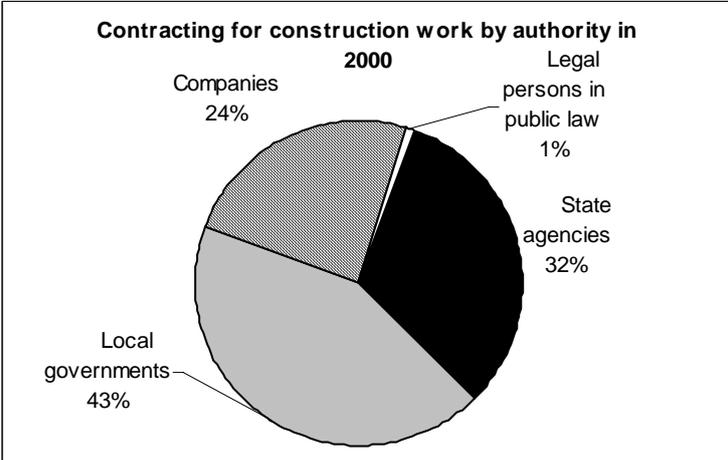
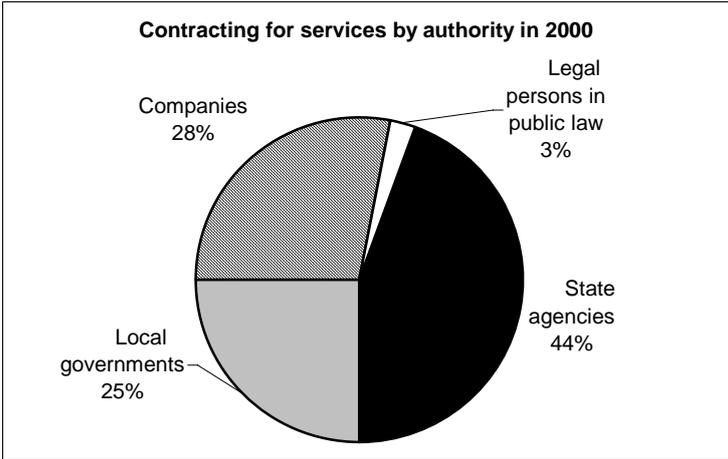


Table 3. Distribution of public procurements by object and contracting authority in 2000

			Public procurements		
			number	value (EEK)	value (USD)*
Total of all public procurements	100,00%		1,852	4,874,110,672	278,802,758
Purchasing of goods	45,70%	100,00%	846	1,926,001,555	110,168,722
State agencies		53,30%	451	795,411,209	45,498,113
Local governments		12,20%	103	630,883,081	36,086,982
Companies		31,80%	269	471,089,569	26,946,674
Legal persons in public law		2,70%	23	28,617,696	1,636,954
Contracting for services	28,20%	100,00%	522	1,418,920,144	81,163,288
State agencies		44,40%	232	483,723,687	27,669,355
Local governments		25,10%	131	714,296,228	40,858,276
Companies		28,00%	146	215,417,055	12,322,016
Legal persons in public law		2,50%	13	5,483,174	313,642
Contracting for construction work	23,60%	100,00%	437	1,385,074,430	79,227,288
State agencies		31,80%	139	624,270,544	35,708,740
Local governments		43,20%	189	463,335,952	26,503,161
Companies		24,00%	105	295,719,087	16,915,352
Legal persons in public law		0,90%	4	1,748,847	100,035

* calculated by the exchange rate of Bank of Estonia in 14.08.2001 (1 USD = 17,482290000 EEK)





WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/150

17 September 2001

(01-4369)

Committee on Government Procurement

Original: English

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 14 September 2001, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

Pursuant to Article XXIV:6(a), the United States hereby withdraws its objection set forth in GPA/W/133, dated 23 April 2001, to the notifications by Korea regarding modifications in its schedule contained in GPA/W/128, dated 6 March 2001, GPA/W/128/Corr.1, dated 13 March 2001 and GPA/W/128/Corr.2, dated 18 May 2001. The United States would like to thank the Government of Korea for its responses to questions in this regard contained in GPA/W/142, dated 12 July 2001.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/147

11 September 2001

(01-4254)

Committee on Government Procurement

Original: English

COMMUNICATION FROM CANADA

The following communication, dated 5 September 2001, has been received from the delegation of Canada with the request that it be circulated to the Committee on Government Procurement.

Canada would like to thank Japan for its comprehensive and detailed replies to the questions posed by Canada. In view of Japan's assurance in GPA/W/137 that the rectification will not "...in any way alter the existing level of mutually agreed coverage...", Canada is withdrawing its objections to the rectification in GPA/W/129.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/148

11 September 2001

(01-4258)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Hungary

The following communication, dated 2 September 2001, has been received from the Permanent Mission of Hungary with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Permanent Mission of Hungary to the World Trade Organization in Geneva presents its compliments to the Director-General of the World Trade Organization and has the honour to request observer status in the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/143
7 August 2001

(01-3907)

Committee on Government Procurement

Original: English

COMMUNICATION FROM HONG KONG, CHINA

The following communication, dated 6 August 2001, has been received from the Hong Kong Economic and Trade Office with the request that it be circulated to the Committee on Government Procurement.

Hong Kong, China is grateful for Japan's clarification in GPA/W/137 of the questions raised by us in GPA/W/135 as well as by other delegations. With the said clarification, Hong Kong, China has no problem with the modifications to Appendix I of the Agreement on Government Procurement that were proposed by Japan in GPA/W/129.

PROPOSED MODIFICATIONS TO APPENDIX I TO THE AGREEMENT

Communication from Korea

The following communication, dated 9 July 2001, has been received from the Permanent Mission of the Republic of Korea with the request that it be circulated to the Committee on Government Procurement.

Please find reproduced below Korea's replies to the questions put by the United States (GPA/W/133 of 23 April 2001) with regard to the proposed modifications to Appendix I of the Agreement on Government Procurement circulated in document GPA/W/128 and corrigenda.

1. *In introducing the proposed modifications, Korea states that the changes in the names of a number of covered Annex 1 and Annex 3 entities are "purely formal in nature". At the same time, Korea notes that those changes are "the outcome of efforts by Korea to re-organize its governmental structure and other bodies".*

For each currently listed entity, does the re-organization of Korea's governmental structure involve the transfer of procurement functions from that entity to any entity other than the directly corresponding re-named entity listed in GPA/W/128?

If there is any such transfer of procurement functions, please provide a concordance table listing the entity that currently performs such functions and the entity that would be responsible for such functions under the proposed modifications.

Most of the changes in the names of the entities contained in Annex 1 and Annex 3 are purely formal in nature. Some of the changes in names reflect the results of the re-organization of the Government's structure. For those entities, the procurement function was transferred to the newly established entities, which were notified through the Secretariat on 27 June 2001 (GPA/W/140). Therefore, the scope and level of Korea's commitments remain unchanged.

2. *With respect to the proposed deletion of the First Minister of Political Affairs from Annex 1, please indicate which entity would now conduct the procurement activities previously conducted by the First Minister of Political Affairs. If the procurement activities have not been transferred to another entity, please provide an explanation why.*

The Office for the First Minister of Political Affairs, which had the mandate of handling political affairs in communications with the National Assembly and political parties, was abolished as a result of the governmental re-organization. The duties of the Office for the First Minister of Political Affairs, including the procurement function, were not transferred to any other entity. Besides, the Office for the First Minister of Political Affairs did not have any substantial procurement activities.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/140

27 June 2001

(01-3204)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF KOREA

Notification from Korea under Article XXIV:6(a)¹

The following notification from the Permanent Mission of the Republic of Korea was received on 26 June 2001 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV paragraph 6(a) of the Agreement on Government Procurement, Korea hereby wishes to notify the Committee on Government Procurement of the additions of entities and a change in the name of an entity covered by the Agreement.

Please note that these additions are the outcome of reorganization of the Korean governmental structure and involve the transfer of some functions from existing entities to newly established ones. A change in the name of an entity, Office of the Prime Minister, is purely formal in nature.

In accordance with the procedures for future changes to the loose-leaf system for Appendices to the Agreement (GPA/W/110), pages 1/4 and 2/4 of Annex 1 to Appendix I of Korea in WT/Let/330 of 1 March 2000 should be rectified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both Attachments are in English only.

ATTACHMENT A

KOREA

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR

List of Entities:

- Board of Audit and Inspection
- Office of the Prime Minister
- Office for Government Policy Coordination
- Ministry of Gender Equality
- Ministry of Finance and Economy
- Ministry of Planning and Budget
- Financial Supervisory Commission
- Ministry of Unification
- Ministry of Government Administration and Home Affairs
- Civil Service Commission
- Ministry of Science and Technology
- Government Information Agency
- Government Legislation Agency
- Patriots and Veterans Administration Agency
- Ministry of Foreign Affairs and Trade
- Ministry of Justice
- Ministry of National Defense
- Ministry of Education and Human Resources Development
- Ministry of Culture and Tourism
- Cultural Properties Administration
- Ministry of Agriculture and Forestry
- Ministry of Commerce, Industry and Energy
- Ministry of Health and Welfare
- Food and Drug Administration
- Ministry of Labor
- Ministry of Construction and Transportation
- Ministry of Maritime Affairs and Fisheries
- Ministry of Information and Communications
- Ministry of Environment
- Public Procurement Service (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)

Deleted: Prime Minister's Secretariat

Deleted: 1 March 2000 (WT/Let/330)

- National Tax Service
- Customs Service
- National Statistical Office
- Korea Meteorological Administration
- National Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code.)
- Supreme Public Prosecutors' Office
- Military Manpower Administration
- Rural Development Administration
- Forest Service
- Korean Intellectual Property Office
- Small and Medium Business Administration
- Korea National Railroad Administration (The Korean Government plans to change the NRA into a public corporation in 1996, in which case the Korean Government has the right to transfer the NRA from Annex 1 to Annex 3 without any consultation and/or compensatory measures.)
- National Maritime Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Agreement.)

Services

Threshold: 130,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as "Supplies" section

Construction Services

Threshold: 5,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 1

1. The above central government entities include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in the Government Organization Act of the Republic of Korea.
2. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
3. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Act Relating to Contracts to which the State is a Party and its Presidential Decree, and the procurement of agricultural, fishery and livestock products according to the Foodgrain Management Law, the Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products, and the Livestock Law.

Deleted: 1 March 2000
(WT/Let/330)

ATTACHMENT B

KOREA

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR

List of Entities:

- Board of Audit and Inspection
- Office of the Prime Minister
- Office for Government Policy Coordination
- Ministry of Gender Equality
- Ministry of Finance and Economy
- Ministry of Planning and Budget
- Financial Supervisory Commission
- Ministry of Unification
- Ministry of Government Administration and Home Affairs
- Civil Service Commission
- Ministry of Science and Technology
- Government Information Agency
- Government Legislation Agency
- Patriots and Veterans Administration Agency
- Ministry of Foreign Affairs and Trade
- Ministry of Justice
- Ministry of National Defense
- Ministry of Education and Human Resources Development
- Ministry of Culture and Tourism
- Cultural Properties Administration
- Ministry of Agriculture and Forestry
- Ministry of Commerce, Industry and Energy
- Ministry of Health and Welfare
- Food and Drug Administration
- Ministry of Labor
- Ministry of Construction and Transportation
- Ministry of Maritime Affairs and Fisheries
- Ministry of Information and Communications
- Ministry of Environment
- Public Procurement Service (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)

... 2001 (WT/Let/...)

- National Tax Service
- Customs Service
- National Statistical Office
- Korea Meteorological Administration
- National Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code.)
- Supreme Public Prosecutors' Office
- Military Manpower Administration
- Rural Development Administration
- Forest Service
- Korean Intellectual Property Office
- Small and Medium Business Administration
- Korea National Railroad Administration (The Korean Government plans to change the NRA into a public corporation in 1996, in which case the Korean Government has the right to transfer the NRA from Annex 1 to Annex 3 without any consultation and/or compensatory measures.)
- National Maritime Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Agreement.)

Services

Threshold: 130,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as "Supplies" section

Construction Services

Threshold: 5,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 1

1. The above central government entities include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in the Government Organization Act of the Republic of Korea.
2. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
3. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Act Relating to Contracts to which the State is a Party and its Presidential Decree, and the procurement of agricultural, fishery and livestock products according to the Foodgrain Management Law, the Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products, and the Livestock Law.

... 2001 (WT/Let/...)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/139
18 June 2001

(01-3009)

Committee on Government Procurement

Original: English

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 15 June 2001, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

On the basis of information provided by Japan, the United States of America withdraws its objection, communicated in GPA/W/132, to the modifications to Appendix I of the Agreement on Government Procurement that had been proposed by Japan in GPA/W/129. The United States appreciates Japan's thorough responses to the questions that had been posed by the United States and other delegations, in relation to these modifications.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/128/Corr.2*

18 May 2001

(01-2541)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF KOREA

Notification from Korea under Article XXIV:6(a)

Corrigendum

Due to a clerical error, the notification from Korea under Article XXIV:6(a) circulated as document GPA/W/128 on 6 March 2001 should be amended as follows: In Appendix I, Annex 1 of Korea page 1/4 (pages 2 and 5 of GPA/W/128), "Ministry of Government Administration and Home Affairs" should be deleted, i.e. the thirteenth indent as this entity is already listed in the seventh indent above.

In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.[†]

* In English and French only.

[†] Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.9

2 May 2001

(01-2251)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000/2001

NETHERLANDS WITH RESPECT TO ARUBA

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2000/2001.

The information notified by the Netherlands with respect to Aruba is reproduced below.

THRESHOLD CALCULATIONS

Annex 1

	SDRs	US\$	AWG ¹
Supplies	130,000	177,000	318,600
Services	130,000	177,000	318,600
Works	5,000,000	6,806,000	12,256,800

Annex 3

	SDRs	US\$	AWG ¹
Supplies	400,000	545,000	981,000
Services	400,000	545,000	981,000
Works	5,000,000	6,806,000	12,256,800

¹ AWG = Aruban Guilders.

**CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO
ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT**

Replies by Bulgaria

The following communication, dated 28 April 2001, has been received from the Permanent Mission of Bulgaria with the request that it be circulated to Parties.

I. LEGAL FRAMEWORK

1. Is there a single central law on procurement? If so, please specify?

There is a single central law on procurement in Bulgaria – the Public Procurement Law, adopted by the Parliament on 9 June 1999, published in State Gazette (SG) No. 56 of 22 June 1999, in force as of 25 June 1999. This Law lays down the rules and procedures for awarding of public procurement contracts above the thresholds specified in it.

Rules for awarding of public procurement contracts in Bulgaria were introduced as early as in 1921 by the Law on Budget, Accountancy and Undertakings, which was amended in 1934 and abolished by the Law on Budget and Budget Accountancy in 1948. Later on, a new Law on Supplies and Carrying out Work at the Expense of the State was adopted and subsequently abolished in 1952.

During the totalitarian period in Bulgaria, under the central economy, public procurement contracts have been awarded directly to state enterprises due to the lack of private sector and market mechanism.

Certain competitive conditions in the awarding of public procurement construction contracts above specified thresholds were set in the beginning of 90's, with the adoption of a Regulation on Carrying out of Construction Tenders.

Major changes to the national public procurement system were introduced for the first time with the adoption in 1997 of the Law on Awarding State and Municipality Procurements, repealed by the current Public Procurement Law.

2. What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.

The main laws and regulations governing as a whole or certain aspects of the process of awarding public procurement contracts and the performance of such contracts are as follows:

1. Public Procurement Law;
2. Regulation on Awarding of Public Procurement Contracts below the Thresholds set out in Article 7.1 of the Public Procurement Law;
3. Regulation on Keeping the Public Procurement Register;
4. Law on Obligations and Contracts;
5. Commercial Law;
6. Law on Administrative Procedures;
7. Law on Administrative Infringements and Penalties.

These legal instruments are applicable to the entities at central and sub-central levels of government in the Republic of Bulgaria, as well as to the other types of entities under the Public Procurement Law.

1) **Public Procurement Law**

The **subject areas** dealt with are as follows:

1. Construction works, including:
 - (a) engineering;
 - (b) performance of individual or complex construction or assembly work;
 - (c) horizontal or vertical extension, raising of superstructures; rehabilitation and reconstruction of buildings;
 - (d) delivery, assembly and disassembly of technological equipment carried out in the construction process.
2. Supplies in the form of:
 - (a) purchase of products;
 - (b) purchase, rental or hire or leasing of machines, facilities and complex equipment.
3. Provision of the following services:
 - (a) maintenance, running and extensive repairs of buildings, machines or equipment;
 - (b) activities related to getting constructions into exploitation;
 - (c) demolition of buildings and construction facilities;
 - (d) transport by land, by air and by water;
 - (e) telecommunications;
 - (f) insurance;
 - (g) design and installation of hardware or software;
 - (h) accounting and auditing;
 - (i) scientific and research activities;
 - (j) management consultant services and related services;

- (k) planning at all phases including urban and geodesic planning, preliminary surveys and construction plans;
- (l) market research, advertising and public opinion polling;
- (m) real estate management and maintenance;
- (n) publishing, distribution and printing services, including the printing of securities, standard documents and registered forms bearing serial numbers or such as may be used in the collection of state revenue or such as contain tax related information or have nominal value;
- (o) legal services;
- (p) household waste disposal, refuse disposal and similar services, planting, grassing and other development services in residential areas;
- (q) training and retraining;
- (r) security and security systems;
- (s) financial services, except those provided by the Bulgarian National Bank and those related to the national debt management.

Procuring entities are:

1. State authorities, mayors of municipalities, higher schools, as well as other authorities and organisations disposing of funds from the consolidated state budget, including:
 - (a) Health insurance and pension funds;
 - (b) Non-profit legal organizations;
2. Non-profit organizations established by one or several state authorities and/or local authorities;
3. Public undertakings exercising one or several of the activities as stated in the answer to question 7 below.

Contractors

Any Bulgarian or foreign natural person or legal entity, as well as their joint ventures, may apply for contractors under public procurement contracts. The provisions of the Law require that they be registered as commercial entities under the Commercial Law, or exercise a liberal profession.

Thresholds

The provisions of the Law apply to public contracts, the estimated value of which, without VAT, at the date of announcing the procedure is as follows:

1. for construction work contracts - exceeding 600,000 BGL¹;
2. for supply contracts - exceeding 50,000 BGL;
3. for services contracts - exceeding 30,000 BGL.

When the public contract is intended to cover both supplies of products and services, the provisions of the Law apply to the total estimated value of the products and the services in the amounts defined for supply contracts.

¹ Bulgarian Lev (BGL) = 1 German Mark (DM).

The rules and procedures for awarding public procurement contracts below the above thresholds are laid down in the Regulation on Awarding Public Procurement Contracts below the thresholds set out in Article 7.1 of the Public Procurement Law.

Principles and Procedures

Public procurement contracts are awarded by three types of procedures: open, restricted or negotiated procedure, in accordance with the following principles:

1. ensuring publicity of the procedures and transparency;
2. free and fair competition;
3. providing equal opportunities for participation of all interested suppliers;
4. ensuring the keeping of trade secrets of interested suppliers and their tenders.

Organs

The provisions of Article 54 of the Public Procurement Law delegates to the Minister of State Administration functions related to the issuing of a Regulation on keeping the public procurement register; provision of methodological guidance on the application of the Law; co-ordination among procuring entities with regard to the application of the Law, etc. The Minister may notify the authorities competent for the control on the application of the Law. He represents the Republic of Bulgaria in international organizations in the field of public procurement. In the performance of such functions the Minister of State Administration is assisted by a specialized unit within the administration of the Council of Ministers (the Public Procurement Directorate).

Tenderers participating in public procurement procedures under the Law may launch complaints against non-compliance with the requirements for carrying out of public procurement procedures, in accordance with the provisions of the Law on Administrative Procedures.

The control on the implementation of the Law is performed by the National Audit Office and the organs of the Agency for State Internal Financial Control.

Administrative Penal Provisions

The finding of breaches, as well as the issue, appeal and execution of penal injunctions is undertaken in accordance to the provisions of the Law on Administrative Infringements and Penalties.

2) The **Regulation on Awarding of Public Procurement Contracts below the Thresholds set out in Article 7.1 of the Public Procurement Law** (SG No, 36 of 2 May 2000, in force as of 5 May 2000) stipulates the rules and procedures for awarding of public procurement contracts below the thresholds set in the Public Procurement Law (the so called "small public procurement").

Small public procurement contracts are awarded through the following types of procedures: open tender; restricted tender; design contest; and negotiation procedure. These procedures are identical to the procedures set out in the Public Procurement Law. The Regulation provides for more favourable terms related to the time-limits for conducting the procedures; a special procedure for awarding design contract; additional cases in which negotiation procedure could be used. For small public procurement contracts with a value up to 10,000 BGL the provisions of the Regulation allow the procuring entity not to apply the public procurement procedure and not to conclude a contract in writing, as business transactions may be proved by primary payment documents.

The following suppliers are eligible for participation in small public procurement award procedures: (1) Bulgarian or foreign natural persons or legal entities, including their joint-ventures;

and (2) scientific organizations and institutions. In the decision for initiation of a procedure the procuring entity may stipulate a requirement for the successful tenderer to be a commercial entity within the meaning of the Commercial Law, except where the contractor exercises a liberal profession.

The award and performance of small public procurement contracts, as well as the launch of complaints against non-compliance with the requirements for conducting of public procurement procedures are carried out in accordance with the legal acts provided for in the Public Procurement Law. The provisions for control over the implementation of the Regulation, breaches and finding of breaches are identical.

3) The **Regulation on Keeping the Public Procurement Register** (SG No. 89 of 31 October 2000, in force as of 1 November 2000) lays down the rules and procedures for keeping, maintenance and use of the Public Procurement Register, defines the content and structure and the terms of gathering of information in the Register, as well as access to it.

4) The **Law on Obligations and Contracts** (SG No. 275 of 22 November 1950, as last amended SG No. 34 of 25 April 2000) is a common law setting out the main rules for conclusion of contracts, including public procurement contracts.

5) The **Commercial Law** (SG No. 48 of 18 June 1991, as last amended SG No. 84 of 13 October 2000) is a special law setting out the rules for conclusion of commercial contracts. The Law is a main legal act governing thoroughly commercial juridical relations. It defines commercial entities, contractual relations among them and procedures for declaring bankruptcy.

6) The **Law on Administrative Procedures** (SG No. 90 of 13 November 1979, as last amended SG No. 95 of 2 November 1999) lays down procedures for issue, appeal and execution of individual administrative acts, as far as no specific rules are envisaged in other law or decree.

Within the meaning of the Law, individual administrative acts are acts issued by heads of state institutions, mayors of municipalities, regional governors and other organs of the local executive authority, as well as other duly authorized bodies, by which acts rights and obligations arise, or rights and legal interests of citizens and organizations are impaired, as well as the refusal for issue of such acts.

According to Article 45 of the Public Procurement Law the decisions of procuring entities are individual administrative acts within the meaning of the Law on Administrative Procedures and are subject to appeal under the provisions of the latter.

7) The **Law on Administrative Infringements and Penalties** (SG No. 92 of 28 November 1969, as last amended SG No. 92 of 10 November 2000) stipulates general rules for administrative infringements and penalties, procedures for statement of administrative infringements, imposition and execution of administrative penalties and provides the necessary guarantees for protection of rights and legal interests of citizens and organizations.

Administrative infringement in the awarding of public procurement contracts is any act (action or non-action), infringing the established order of state management, has been done guiltily and has been declared as liable to punishment with administrative penalty imposed under administrative procedure. Administrative penalties are imposed with the purpose to alert the infringers to obey the set legal system.

Finding of breaches, as well as issue and appeal under the Public Procurement Law, and execution of penal injunctions is undertaken in accordance to the provisions of the Law on Administrative Infringements and Penalties.

3. *To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.*

Pursuant to Article 5 of the Constitution of the Republic of Bulgaria international treaties or agreements, ratified by law under the constitutional procedure, published in State Gazette and entered into force, become part of the national legislation.

When the Agreement on Government Procurements is signed, ratified by law and published in State Gazette, its provisions will become part of the national legislation and will prevail over the conflicting provisions of the domestic legislation.

II. SCOPE AND COVERAGE

4. *Please summarize the organization of the government in your country at each level.*

According to the Constitution of the Republic of Bulgaria and the Law on Administration the executive authority is divided into central and territorial.

Central executive authorities are the Council of Ministers, ministries, state agencies, state commissions, executive agencies and other structures, established by law or regulation of the Council of Ministers.

The Council of Ministers performs the internal and foreign policy, ensures public order and national security and performs general management of state administration and military forces.

The ministries perform government's policy in the relevant field of public life.

State agencies are directly subordinated to the Council of Ministers and are established to fulfil activities that are not performed by a ministry. State commissions are established at the Council of Ministers or at a relevant minister to fulfil functions related to supervision (control), registration and licensing.

Executive agencies are established at a relevant minister to perform administrative services and related activities thereof.

Other bodies may also be established at the Council of Ministers or at a relevant minister by law or regulation of the Council of Ministers.

The Constitution provides for two levels of local public authority - within the districts and within the municipalities. In districts, a management at a regional level is performed and a compliance with the national and local interests in the conduct of regional policy is ensured. Each district consists of municipalities. In the municipalities activities related to the local government and competences of the central level of administration, delegated by a legislation, are carried out.

Please, see the organizational chart attached.

5. *Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.*

Central government entities procuring goods, services and construction services are the Council of Ministers, ministries, state agencies, state commissions, executive agencies, commissions

and other bodies established at the Council of Ministers or at a relevant minister under the provisions of law or regulation of the Council of Ministers (see the organizational chart referred to in the answer to question 4 above).

6. *What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?*

Entities at the sub-central level of government that may procure goods and services, including construction works are the districts and the municipalities (see the organizational chart referred to in the answer to question 4 above).

7. *Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type of entities) owned and controlled by the government that engage in procurement? Specify.*

The rules of the Public Procurement Law that apply to the central government procuring entities also apply to public undertakings (regardless of the ownership) exercising one or several of the following activities, including on the basis of concession or licence:

- (a) operation of fixed public service networks for production, transport or distribution of drinking water, electricity, gas or thermal energy, as well as their supply to such networks;
- (b) exploitation of oil and gas fields, coal or other solid fuels;
- (c) operation of airports, harbours or other terminal facilities for carriers;
- (d) operation of public transportation networks;
- (e) operation of telecommunication networks or provision of telecommunication and postal services, as well as automated systems for public services.

8. *Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central level of government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will you government ensure the implementation of the Agreement by such entities below the central/federal government level?*

The Republic of Bulgaria is an unitary state and therefore the Public Procurement Law applies to all procuring entities, referred to in the answers to questions 5, 6 and 7 above.

9. *Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defense or security reasons? Please provide details.*

The Public Procurement Law does not apply to public procurement:

1. related to national defence and security, that are subject to state secret, or whose execution involves special security arrangements in accordance with national legislation in force;

2. governed by procedural rules and awarded in accordance with international agreements;
3. awarded pursuant to special procedure of an international organization;
4. if the supplier is a procuring entity within the meaning of the Public Procurement Law, when the procuring entity is a public undertaking (see the answer to question 7 above).

10. Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.

As of 6 November 2000 the Public Procurement Directorate at the Council of Ministers is keeping a public procurement register, the first of its kind in Bulgaria. The Regulation on Keeping the Public Procurement Register envisages that the information on public procurement from the date of entry into force of the Public Procurement Law (25 June 1999) until 31 December 2000 be brought into compliance with the requirements of the Regulation by 30 June 2001.

For the period from the entry into force of the Law until 1 January 2001, the following information on the number of initiated public procurement procedures is available:

<i>No.</i>	<i>Criteria</i>	<i>Number of initiated procedures</i>
1.	Type of procuring entity:	
1.1.	State authorities, higher education institutions and other organizations, disposing of funds from the consolidated state budget	1282
1.2.	Municipalities' mayors	1019
1.3.	Health insurance and pension funds	49
1.4.	Non-profit legal organisations, established by one or several state authorities and/or local government authorities	5
1.5.	Public undertakings operating networks for drinking water, electricity, gas or thermal energy	863
1.6.	Public undertakings exploiting oil and gas fields, coal or other solid fuels	232
1.7.	Public undertakings operating airports, harbours or other terminal facilities for carriers	14
1.8.	Public undertakings operating public transportation networks	181
1.9.	Public undertakings operating telecommunication networks or providing telecommunication and postal services, as well as automated systems for public services	238
2.	Type of public procurement:	
2.1.	services	1385
2.2.	supplies	2246
2.3.	construction works	252
3.	Type of procedure:	
3.1.	open procedure	3005
3.2.	restricted procedure	507
3.3.	negotiation procedure	371

III. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. *Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

According to the Public Procurement Law, any Bulgarian and foreign natural person or legal entity, as well as their joint-ventures, may apply for contractors in the public procurement procedures. The contractor has to be registered as commercial entity within the meaning of the Commercial Law, except when he exercises a liberal profession.

12. *Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.*

There are no such provisions in the Bulgarian legislation.

13. *Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or services being supplied.*

There are no such provisions in the Bulgarian legislation.

14. *Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.*

As a general rule the Public Procurement Law does not grant more favourable treatment to any sectors of economy, regions or specific categories of suppliers or supplies. The only exception relates to small and medium-sized enterprises and disabled people, its aim being to support social policy performance. The relevant provisions envisage the following:

- (1) In the evaluation of tenders in open or restricted procedure, under equal other conditions, a preference is given to suppliers that are small or medium-sized enterprises or that have hired such enterprises as sub-contractors;
- (2) In an open or restricted procedure, in the evaluation of a tender submitted by a supplier meeting the requirements laid down in Article 21.3 of the Law on Protection, Rehabilitation and Social Integration of Disabled People², his price offer is deemed to be the lowest offer, provided that it does not exceed the lowest price offered by another supplier by more than 10 per cent. According to the Public Procurement Law, the lowest price offered can be one of the main criteria for evaluation of tenders.

² Article 21.3 of the Law on Protection, Rehabilitation and Social Integration of Disabled People provides that in the specialized undertakings, cooperations and separate production units the relative share of the labour readjusted people in the total staff number is not less than 50 per cent for disabled people suffering any type of disease and not less than 30 per cent - for blind people or people with weak sight.

15. *Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.*

Pursuant to Article 22 paragraph 2 of the Public Procurement Law, the procuring entity has the right to include in its decision for initiation of a procedure additional requirements to contract performance, such as:

1. conditions relating to the solution of environmental issues, unemployment, job creation for disabled workers, use of local resources and raw materials in certain regions;
2. requirements relating to the protection of the national security, defence and public order;
3. conditions relating to stimulating the participation of small and medium-sized enterprises as sub-contractors.

Article 28.3 of the Public Procurement Law allows that the share of the contract to be entrusted to a sub-contractor may be up to 50 per cent of the total tender price if the tenderer is a foreign natural or legal person or consortium, provided that the sub-contractors are Bulgarian natural or legal persons.

IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. *Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.*

Types of procedures under the Public Procurement Law:

Public procurement contracts above the thresholds specified in the Law are awarded by three types of procedures: open, restricted and negotiation procedure.

In open public procurement procedures, the procuring entity sends invitations to all interested suppliers to submit tenders.

In restricted procedures, tenders may be submitted only by those suppliers who on the basis of a pre-qualification procedure have been invited in writing by the procuring entity.

In the negotiation procedure, the procuring entity awards a public procurement contract following negotiations with one or more suppliers previously selected by him.

The passing over from one type of procedure to another is allowed only when the initially announced procedure has been terminated without the conclusion of a contract.

The procuring entity takes a decision to initiate an **open procedure** for awarding a public procurement contract in all cases, unless otherwise is provided for in the Law.

Restricted procedures may be carried out only when:

1. due to the specific character of the procurement, the contract can be performed only by limited number of suppliers;
2. due to the complex technical nature of the procurement, in the course of contract performance subsequent technical and technological clarifications need to be made;
3. the open procedure initially announced has been cancelled or terminated without the conclusion of a contract.

A **negotiation procedure** may be carried out only when:

1. the procurement is related to scientific research, experiment or studies. The results of such procurement may not be used for mass production or the establishment of the product's commercial viability;
2. there is a need for prevention of accidents or elimination of after-effects from accidents or natural calamities, or there is a risk of damage on a large scale, or when people's health and safety are at risk;
3. in case of additional deliveries by the same supplier, but not later than six months from awarding of the initial contract, provided that the following conditions are met simultaneously:
 - (a) the initial contract has been awarded by open or restricted procedure and the procuring entity had stated the possibility of additional deliveries in its invitation to tender;
 - (b) the change of supplier would entail the purchase of materials of different technical characteristics that might result in a lack of compatibility or in technical difficulties in operation or maintenance;
 - (c) for the purposes of such additional deliveries, the unit prices remain the same as under the main contract and adjustment in line with official rate of inflation is allowed;
 - (d) the total value of such additional procurement does not exceed 20 per cent of the value of the main contract;
4. the procurement is for a repetition of a service supplied, or for an additional services by the same contractor not later than 1 year from the award of the main contract, provided that the following requirements are met simultaneously:
 - (a) the main contract has been awarded by open or restricted procedure and the procuring entity had stated the possibility of additional procurement in its invitation to tender;
 - (b) for the purposes of such additional procurement, the unit prices remain the same as under the main contract and adjustment in line with official rate of inflation is allowed;
 - (c) the total value of such additional procurement does not exceed 20 per cent of the value of the main contract;

5. awarding the contract to another supplier would result in infringement of copyright or other intellectual property rights;
6. the public procurement contract for supply is to be concluded with public undertaking that is bankrupt, or is subject of proceedings for declarations of bankruptcy, or it is being wound up;
7. the products and services are included in a list approved by the Council of Ministers in accordance with Article 22 (1) of the Law on Protection, Rehabilitation and Social Integration of Disabled People³;
8. the open and restricted procedures have terminated without the conclusion of a contract.

Description of tendering procedures

The three types of procedures for awarding public procurement contracts begin with procuring entity's decision for initiation of a procedure.

(1) The invitation for participation in an **open procedure** for awarding public procurement contract is being sent simultaneously to State Gazette for publication in the Public Procurement Bulletin and to the Public Procurement Register not later than 45 calendar days before the date specified for tendering. The State Gazette publishes the invitation for participation not later than 5 calendar days after its receipt. The procuring entity also sends the invitation for publishing in one local or national daily newspaper.

The invitation is addressed to all interested suppliers. If no tender or less than three tenders have been submitted within the specified time-limit, the procuring entity may extend the time-limit for submission of tenders by no more than 30 days. The potential tenderers buy the tender documentation and if interested, they prepare and submit their tenders.

For the purpose of conducting the open procedure, the procuring entity appoints a special commission. The commission receives from the procuring entity the list of tenderers, examines and assesses the submitted tenders in accordance with the preliminary announced criteria. The three tenderers whose tenders meet to the greatest extent the conditions announced by the procuring entity are ranked. The commission records the examination, evaluation and ranking of the tenders in properly signed minutes and terminates its work by handling the minutes to the procuring entity.

The procuring entity announces by a decision the top three rankings and awards the contract to the tenderer ranked first not later than three working days after the completion of the commission's work.

(2) The **restricted procedure** has two stages: pre-qualification of suppliers and restricted procedure with the selected tenderers.

The invitation for participation in the pre-qualification stage is sent to State Gazette for publication in the Public Procurement Bulletin and to the Public Procurement Register not later than 15 calendar days before the specified pre-qualification date. The State Gazette publishes the invitation for participation in the pre-qualification not later than five calendar days after its receipt. The procuring entity sends the invitation for publishing in one local or national daily newspaper.

³ Pursuant to Article 22 of the Law on Protection, Rehabilitation and Social Integration of Disabled People, the Council of Ministers has to adopt a list of goods and services, the production of which is awarded to specialized undertakings and cooperations through public procurement.

The aim of the pre-qualification stage is to invite for participation in the restricted procedure only suppliers with the necessary economic and technical capabilities of performing the contract. All suppliers interested in the procurement have the right to submit applications to be invited to the pre-qualification stage. If no request or less than three applications have been submitted within the specified time-limit, the procuring entity may extend the deadline for submission of applications by not more than 30 days.

The selection of suppliers is carried out by a commission appointed by the procuring entity. The commission assesses the applications for participation submitted and recommends that the procuring entity invite only those suppliers who fulfill to the greatest extent the pre-announced requirements.

The procuring entity selects the suppliers that will be invited to participate in the restricted procedure and sends simultaneously to all selected suppliers invitations for participation. Within seven days from the receipt of the invitation each supplier confirms in writing its intention to participate in the restricted procedure. A lack of confirmation is deemed to be a refusal to participate in the procedure. The procuring entity proceeds to the restricted procedure provided that at least three suppliers confirm their intention to participate. Otherwise, the procuring entity terminates the procedure and informs the suppliers in writing. The evaluation of tenders is carried out by the commission according to the proceedings provided for evaluation under open procedures. The procuring entity announces by a decision the top three rankings and awards the contract to the tenderer ranked first.

(3) The invitation for participation in a **negotiation procedure** for awarding public procurement contract is addressed to one or more suppliers selected by the procuring entity. The invitation is sent for publication in the Public Procurement Register.

The suppliers submit tenders within the time-limit specified by the procuring entity that is not less than 15 calendar days before the date specified for carrying out the procedure. The procuring entity proceeds in its own best interest in the negotiations.

There are no limitations of legal nature for the application of the different types of procedures by procuring entities at each level of government.

17. Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII and selection of suppliers in terms of Article X. Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?

There are no provisions in the Bulgarian legislation requiring the qualification of suppliers. Each procuring entity carries out market research and elaborates lists of the suppliers in the relevant industries on a case-by-case basis.

Though there are no explicit provisions in the Public Procurement Law, the principle of non-discrimination as provided in Article VIII and Article X of Agreement of Government Procurements, is applied to qualification and selection of suppliers.

18. In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?

There are no explicit provisions in the Bulgarian legislation for the maintenance of permanent list of suppliers.

It is foreseen that after 30 June 2001 the Public Procurement Register will include annual rankings of the best traders in the relevant industries. Proposals for such rankings are to be made by professional associations and organizations in the relevant industries.

19. *What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?*

According to the provisions of the Public Procurement Law, public procurement contracts may be awarded under limited procedure within the meaning of Article XV of the Agreement on Government Procurement (in the Bulgarian law it is referred to as "negotiation procedure"). This type of procedure may be applied only in specified cases (see the answer to question 16 above), and in a manner not allowing its use with a view to avoiding maximum possible competition or which would constitute a means of discriminating among foreign supplies/suppliers, or in favour of domestic supplies/suppliers.

20. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

According to the provisions of the Public Procurement Law, the procuring entity is not allowed to proceed to negotiations under the open and restricted procedures. Only under the negotiated procedure the procuring entity may negotiate the terms of the contract in its own best interest.

21. *Article XI sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.*

The Public Procurement Law sets out the following minimum time-periods for submission of tenders for tendering and delivery:

In the **open procedure**: The time-period for submission of tenders is at least 45 calendar days after the invitation has been sent for publication in State Gazette. The State Gazette publishes the invitation in the Public Procurement Bulletin not later than five calendar days after its receipt. This time-period may be reduced to 30 calendar days if the procuring entity has included this public procurement in its information about intended annual public procurement at the beginning of the current year (i.e. by the end of January).

In the **restricted procedure**: The pre-qualification of the candidates is carried out at least 15 calendar days after the invitation for participation in the pre-qualification has been sent for publication in State Gazette. The time-period for submission of tenders is at least 20 calendar days after the receipt of the invitation for participation in the restricted procedure. This time-period may be reduced to 10 calendar days if the procuring entity has included the particular procurement in its information of planned procurement for the current year or in case of unforeseen circumstances which require urgent action on procurement.

In the **negotiation procedure**: The time-period for submission of tenders is at least 15 calendar days after the date the invitation has been sent to the candidate or candidates selected by the procuring entity.

Only the time-periods for the restricted procedure under the Public Procurement Law are shorter than those specified in the Agreement on Government Procurement.

22. *Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?*

The procedures for the submission, receipt and opening of tenders are identical for all types of public procurement envisaged in the Bulgarian legislation. The conditions for awarding of contracts are equal too.

The tender is put in a sealed non-transparent envelope and delivered by the tenderer or by his duly authorised representative by hand against acknowledgement of receipt or submitted by registered mail with proof of receipt. The sequence, date and hour of receipt are entered on the envelope and in a special register. Tenders received after the deadline are rejected and returned to the tenderer. Tenders received in unsealed envelopes are also rejected. Such tenders are immediately returned to the tenderer. By the deadline for submission of tenders every tenderer may modify, supplement or withdraw its tender. The procuring entity may request that the price proposal be submitted in a separate sealed envelope bearing the words "Price Offer".

A commission appointed by the procuring entity opens the envelopes in the sequence of their receipt and examines their compliance with the preliminary announced terms and conditions. The commission has the right at any time to verify the facts and data submitted by the tenderers as well as to request supplementary evidence of facts and data provided in the tender within a specified period. The commission may exclude from participation in the procedure any tenderer whose tender is incomplete or not in conformity with the pre-announced requirements. The decision of the commission to accept a written justification or to reject the tender is announced to the tenderer without delay.

The procuring entity **concludes a public procurement contract** with the successful tenderer. The contract includes all terms proposed by the tenderer to whom the contract is awarded. The procuring entity concludes the contract within one month of announcing the award decision.

The procuring entity **does not conclude a public procurement contract** when:

1. the time-limit specified for complaints against the procuring entity's award decision has not expired;
2. a complaint has been filed against the procuring entity's award decision – by the time when a decision on such a complaint has been taken;
3. the successful tenderer fails to present, before concluding the contract, an evidence of registration under the Commercial Law.

The procuring entity is responsible for preparing and conducting the procedure for awarding of public procurement contract, as well as for the acceptance and keeping the tenders. The procuring entity is obliged to keep the entire documentation related to each public procurement procedure for a period of three years after the completion of each contract.

The procedures for awarding public procurement contracts under the Public Procurement Law and the requirements described above are applied in conformity with the provisions for non-discrimination according to the Agreement on Government Procurements.

23. *Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.*

§ According to the provisions of Article 41 paragraphs 2 of the Public Procurement Law, main criteria for evaluation of tenders are the most economically advantageous tender or the lowest price proposed. Within the meaning of the Law "most economically advantageous tender" is the tender that meets to the greatest extent the preliminary announced conditions as regards quality; technical, aesthetic and functional characteristics; technical support or warranty service; term of performance; price and method of payment.

24. *Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.*

There are explicit provisions in the Public Procurement Law that ensure the awarding of public procurement contracts in conformity with the criteria for assessment and the main requirements in the tender documentation:

- ◆ Article 39 paragraph 3 stipulates that the commission carrying out open or restricted procedure opens the envelopes in the sequence of their receipt and assesses their compliance with the preliminary announced terms and conditions;
- ◆ Under Article 40 paragraph 1(3), the commission has the right to exclude from participation in the procedure any tenderer whose tender is incomplete or not in conformity with the requirements laid down in the tender documentation;
- ◆ According to Article 41 paragraph 1, after examination of the tenders the commission evaluates them according to the preliminary announced criteria;
- ◆ Under Article 43 the commission ranks the three tenderers whose tenders meet to the greatest extent the terms and conditions specified in the tender documentation.

Article 21 paragraph 1, point 1 provides for the right of the procuring entity to terminate a public procurement procedure in case when all the tenders do not meet the terms and conditions pre-announced in the tender documentation.

V. INFORMATION

25. *Article XIX:1 of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.*

All laws, regulations and administrative rulings regarding public procurements are published in the State Gazette.

The Public Procurement Law, the Regulation on Awarding Public Procurement Contracts below the thresholds set out in Article 7.1 of the Public Procurement Law and the Regulation on Keeping the Public Procurement Register are published in the Bulgarian language in the website of

the Public Procurement Register (<http://www1.government.bg/rop/>). Their publication in the English language is pending.

26. *Article IX:1 of the Agreement foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

The invitations for participation in public procurement procedures are published in the Public Procurement Bulletin, in the unofficial section of the State Gazette and in the Public Procurement Register. The procuring entity also publishes the invitation in one local or national daily newspaper.

The Public Procurement Register is accessible through the Internet website of the Government as mentioned in the answer to question 25 above. For the time being, the information in the Register is available only in Bulgarian.

27. *Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions in your legislation.*

According to Article 34 paragraph 1 and Article 52 paragraph 2 of the Public Procurement Law the **invitations for participation in open and negotiated procedures** for awarding public procurement contracts contains the following information:

1. the name, address and telephone number of the procuring entity;
2. the procuring entity's decision for initiation of a procedure, which according to Article 22 paragraph 1 of the Public Procurement Law includes:
 - the subject of public procurement;
 - the legal and actual grounds for initiating the procedure;
 - the type of procedure;
 - the term and place of performance;
 - restrictions for contract performance, if any;
 - qualification requirements to tenderers;
 - quality requirements;
 - the terms concerning tender price formation and payment;
 - the period of tender validity;
 - the type and amount of tender guarantee;
 - the criteria for evaluation of tenders and the method of determining their weight in the complex tender evaluation;
 - the place, date and time for examination and evaluation of tenders;
3. the place where tender documentation can be obtained, the time-limit, the price and the method of payment for the tender documentation;
4. the place and time-limit for submission of tenders.

According to Article 47 paragraph 1 of the Public Procurement Law an **invitation for participation in the pre-qualification of tenderers in the restricted procedure** contains the

information described in (1) and (2) above, as well as information on the place and time-limit for submission of applications for participation and the pre-qualification criteria.

Under Article 49 paragraph 4 of the Public Procurement Law, an **invitation for participation in a restricted procedure** contains the following information:

- (1) the place for submission of tenders;
- (2) the time-limit for submission of tenders;
- (3) the price and the method of payment for tender documentation.

According to Article 36 of the Public Procurement Law, the **tender documentation** contains all data, instructions and requirements necessary for the preparation of tenders:

1. the decision for initiation of a procedure;
2. a full description of the subject of public procurement;
3. technical performance requirements; such requirements may not stipulate requirements or reference to undertakings, products, materials or services related to particular undertakings, patents, utility models, trademarks and designation of origin;
4. plans and other documentation necessary for the preparation of tenders in the case of construction works;
5. a standard tender form;
6. a draft public procurement contract.

28. *Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

Please, see the answers to questions 17 and 18 above.

29. *Article XVIII:1 of the Agreement foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.*

Information on the awarded public procurement contracts is published in the Public Procurement Register. The Internet address of the Register's website is given in the answer to question 25 above.

30. *Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.*

Under Article 15 of the Regulation on Keeping the Public Procurement Register, the information of the awarded public procurement contracts includes:

1. the number of contract and date of award;

2. the code under BULSTAT for commercial entities and the personal identification number for natural persons;
3. the subject matter of the contract;
4. the time-limit for delivery;
5. the total value of the contract without VAT;
6. the value of the part of a contract to be performed by sub-contractors, if any;
7. the terms of payment.

When the value of a contract is expressed in a foreign currency, the information referred to above shall contain the type of the currency and its equivalent in Bulgarian Leva on the exchange rate of the Bulgaria National Bank on the date of award.

When the value of recurring contracts can not be determined on the date of award, the procuring entity shall send information about the contract performance on a six-months basis.

In case of any amendments to the contract terms or of contract termination, the procuring entities shall send information on the relevant circumstances.

The procuring entity sends quarterly to the Register information for the small public procurement contracts awarded.

31. Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2, the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.

Currently, there are no specific provisions in the national legislation enabling the provision of information to other Parties to the Agreement.

According to Article 45 paragraph 1 of the Public Procurement Law any tenderer in open or restricted procedure for awarding public procurement contract has the right to request and to obtain access to the minutes of the tender evaluation commission. The minutes contains all the circumstances related to the examination and evaluation of the tenders, as well as the reasons why a tenderer has not been selected as contractor.

The procuring entity may not refuse access to the minutes of the commission.

VI. BID CHALLENGE PROCEDURES

32. Please provide information on existing challenge procedures.

Tenderers participating in public procurement procedures may launch complaints against non-compliance with the requirements for carrying out of public procurement procedures under the provisions of the Law on Administrative Procedures with the following authorities:

- (a) the upper administrative body within 7 days time after the decision of the procuring entity on the awarding of the contract has been announced;
- (b) the court (in case the possibility to appeal under the administrative procedure has been exhausted or the time limit has expired) within 14 days after the decision on the appeal of the upper administrative body has been announced, respectively after the time limit for appeal under the administrative procedure has expired, or after the decision of the upper administrative body has been issued.

33. *Are there specific provisions enabling access of foreign suppliers to challenge procedures?*

According to the Public Procurement Law tenderers, whether or not Bulgarian or foreign persons, may launch complaints for non-compliance with the requirements for carrying out public procurement procedures.

34. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:*

(i) *The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in domestic legislation?*

The time-limit to launch of complaint is 7 days after the decision of the procuring entity on the awarding of the public procurement contract has been announced.

(ii) *What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:*

- *How are its members selected?*
- *Are its decisions subject to judicial review?*
- *If not, how will the requirements of paragraph 6 of Article XX be taken into account?*

For appeal under the civil legal proceedings responsible body is the court and for appeal under the administrative procedure the responsible body is the upper administrative body.

(iii) *What is the applicable law by reference to which the challenge body will examine complaints?*

The court examines the complaints in accordance with the provisions of the Law on Administrative Procedures and for the matters not dealt with therein the provisions of the Civil Procedures Code are applied.

(iv) *Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?*

- *Do these measures include the possibility to suspend the procurement process? On what conditions?*

The Bulgarian legislation does not provide for rapid interim measures to correct breaches of the Agreement.

(v) *How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?*

Please, see the answer to (iv) above.

(vi) *Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.*

According to the Law on Administrative Procedures the upper administrative body takes its decision on the complaint within 14 days after the launch of the complaint, or within 30 days - if the administrative body is collective.

In case of appeal in the court the time limit for the taking of the decision is 30 days after the session in which the review of the matter has terminated.

(vii) *What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?*

Under the administrative challenge procedure no fees are collected.

According to Tariff No.1 on State Fees collected by the courts for the conduction of challenge procedure a fee in the following amounts is paid by the claimant:

- (a) in case the claimant is a non-profit legal entity or natural person, excluding traders - 10 BGL;
- (b) for legal entities, excluding those under "a" and natural persons which are traders within the meaning of the Commercial Law – 50 BGL;
- (c) for claims of appeal the above fees are paid in half of the stated amount.

VII. OTHER MATTERS

35. *To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.*

The first stage of introducing the information technology in the process of public procurement in Bulgaria is the establishment of the Public Procurement Register that ensures access to the following information in Bulgarian:

- 1. decisions for initiation of procedures for awarding public procurement contracts;
- 2. invitations for participation in open or negotiated procedures for awarding public procurement contracts;
- 3. invitations for participation in the pre-qualification stage of restricted procedures;
- 4. decisions of the procuring entity referred to the lists of tenderers selected to be invited to participate in restricted procedures;
- 5. decisions on any amendments to the tender conditions, as well as decisions on cancellation of procedures for awarding public procurement contracts;
- 6. statistical data about the number of tenders submitted, eligible tenders and rejected tenders;
- 7. information for the awarded contracts;
- 8. lists of external experts that the procuring entity may use in the procedures;
- 9. any practice of the implementation of the Public Procurement Law.

The invitations for participation in open procedures and pre-qualification in restricted procedures are sent electronically by the State Gazette to the Public Procurement Register. This provides their publication on the same date both in the Public Procurement Bulletin and in the Register.

36. *Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.*

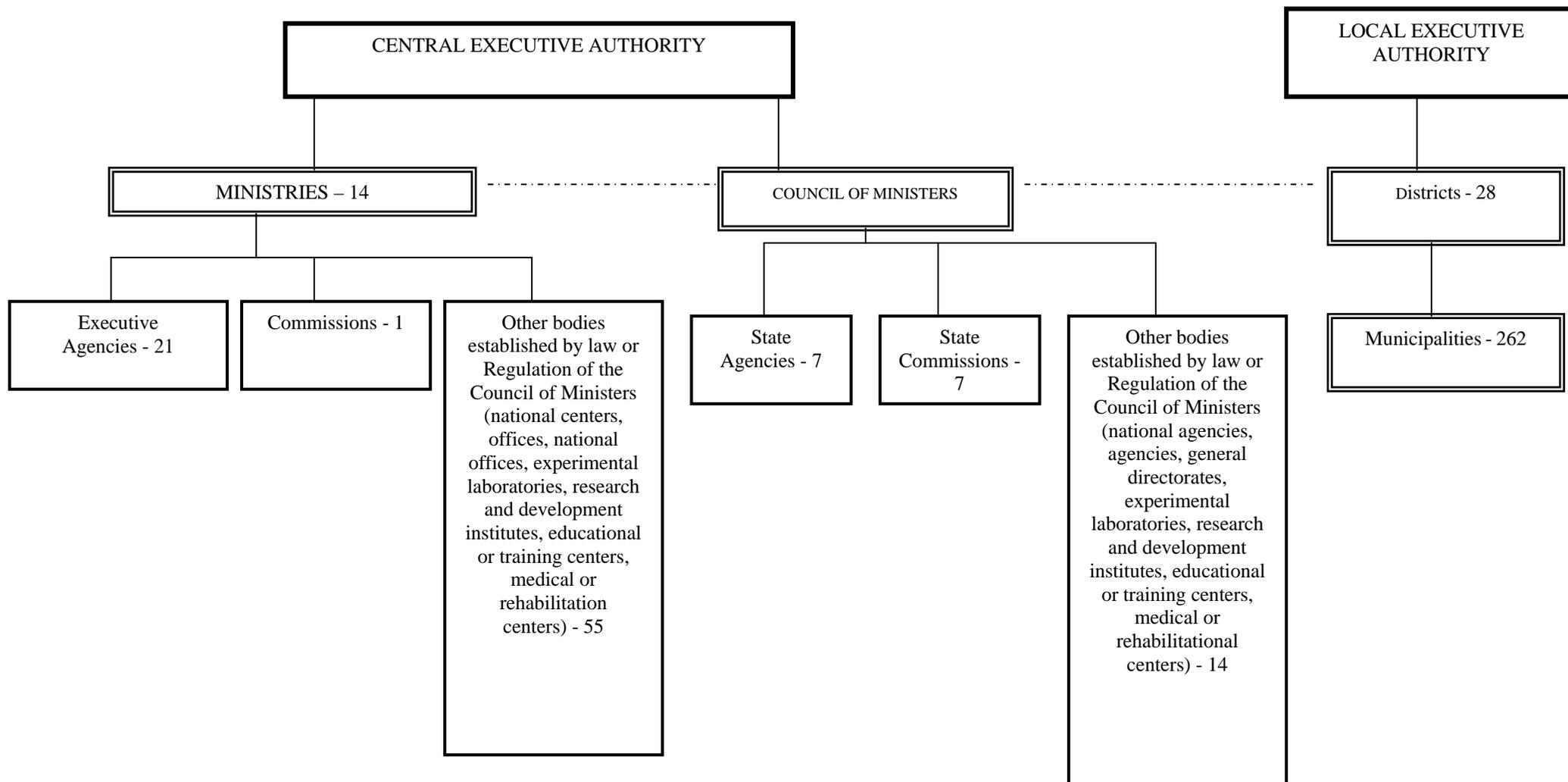
Such contact point has not been established in Bulgaria. Taking into account its functions related to the assistance of the Minister of State Administration in fulfilling his rights and obligations under the Public Procurement Law, the Public Procurement Directorate at the Council of Ministers is responsible for responding to such enquiries.

The address of the Public Procurement Directorate is as follows:

Republic of Bulgaria
1000 Sofia
1, Dondukov Blv.
Council of Ministers
Public Procurement Directorate

Director
Mr. Plamen Nemchev
tel. (+359 2) 940 26 45; 940 24 76
fax: (+359 2) 940 21 90
e-mail: P.Nemchev@government.bg

ORGANIZATIONAL CHART OF THE EXECUTIVE AUTHORITY IN THE REPUBLIC OF BULGARIA



WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/137
2 May 2001

(01-2249)

Committee on Government Procurement

Original: English

JAPAN'S RESPONSES TO QUESTIONS FROM THE UNITED STATES (GPA/W/132), CANADA (GPA/W/134) AND HONG KONG, CHINA (GPA/W/135) REGARDING THE NOTIFICATION FROM JAPAN UNDER ARTICLE XXIV:6(a) (GPA/W/129)

I. QUESTIONS FROM THE UNITED STATES

1. *What is the reason for seeking to move the IAIs from Annex 1 to Annex 3? Please explain why the new IAIs cannot simply be added to Annex 1, rather than creating a complex two-tier list of entities in Annex 3.*

Until the end of last March, undertakings conducted by the 57 IAIs (Independent Administrative Institutions) which we propose to add to Annex 3, used to perform part of the responsibilities of certain central government entities in Annex 1. Starting from 1 April this year, those undertakings fall – in the context of the organizational reform of the central government - under the responsibilities of the 57 IAIs each of which forms an independent legal entity from the central government. The National Accounts Law and National Government Organization Law do not apply to those IAIs, which were established as entities to be governed by the general law on IAIs and respective laws establishing IAIs (i.e., 57 laws that stipulate the name, purpose, functions, executives and the Ministers in charge of the IAIs, etc.). Accordingly, the 57 IAIs, under domestic legislation, are not classified as central government entities mentioned in Annex 1; and we have therefore decided to add those IAIs to Annex 3.

2. *For each IAI that Japan proposes to add to Annex 3, what was the central government entity that was previously responsible for the procurement that the IAI will now conduct? Please provide a concordance table similar to the one provided by Switzerland in GPA/W/114.*

Please see Attachment 1 to this document.

3. *Do any of the IAIs have internal sub-divisions, independent organs, attached organizations, other organizations or local branch offices, as those terms are used in Note 1 to Japan's Annex 1? If so, how does Japan intend to maintain the coverage of such entities?*

All of the 57 IAIs have internal sub-divisions; and the National Youth Houses, National Children's Centres, National Agricultural Research Organization, and Fisheries Research Agency, etc., have local branch offices. Although Japan has not included in its Annex 3 such a note as Note 1 to Annex 1 since the Agreement on Government Procurement took effect, we have honestly implemented the Agreement with respect to Annex 3, by interpreting that the Agreement applies to all of the organizations related to the existing Annex 3 entities - i.e., headquarters as well as internal sub-divisions, local branch offices and others. Also, we undertake the fact that we will implement the Agreement in the same manner with respect to those IAIs to be listed in Annex 3. Thus, it is the official view of the Government of Japan that all of the relevant organizations of those IAIs are to be subject to the disciplines of the Agreement on Government Procurement, even if we would not use in Annex 3 a similar language to Note 1 to Annex 1.

4. *What specific authority does the central government have over the conduct of procurements by IAIs? Does the central government have the same degree of authority over Annex 3 entities as over Annex 1 entities?*

5. *Will a central government entity listed on Annex 1 be responsible for overseeing the procurement of each IAI? If so, please provide a list of the entities responsible for each IAI.*

Answer to Questions 4 and 5: As IAIs are legally independent from the central government, IAIs autonomously engage in internal decision-making and actual conduct of government procurement. The ministries responsible for each IAI, therefore, do not instruct nor oversee individual procurements of the IAI every time those are conducted. On the other hand, the ministries requests from the relevant IAIs the preparation of necessary accounting rules to implement the Agreement on Government Procurement, and receive, based on legislation, the report on the prepared rules (see attached the relevant provisions of the general law on IAIs). As for the list of the ministries responsible for each IAI, please refer to the attached table.

6. *What is the legal authority that would require the new IAIs to comply with the Agreement on Government Procurement?*

As IAIs are not subject to national legislation such as the Accounts Law, based on which central government entities implement the GPA, the consistency with the Agreement is ensured through each IAI setting accounting rules that provide for relevant thresholds and procedures as specified in the Agreement.

II. QUESTIONS FROM CANADA

1. *What is the reason for seeking to move the newly formed IAIs from Annex 1 to Annex 3? Please explain why the new IAIs would not be added to Annex 1 since they are successor entities for entities covered in Annex 1.*

Please refer to the answer given to the US Question 1 above.

2. *Does the Accounts Law referred to in Note 1 in the Notes to Japan's Annex 1 apply to any of the covered central government organizations that were previously performing the functions of the IAIs?*

The Accounts Law does apply to all of the central government entities listed in Annex 1. The IAIs performing - as from 1 April this year - the part of undertakings previously conducted by certain central government entities, however, are not subjected to the law.

3. *Would Japan please confirm that the revision to the General Note 3 would, if the IAIs were moved to Annex 3, result in the maintenance of the current concessions provided by Japan to Canada?*

We can confirm that this revision is to ensure the maintenance of the existing level of concessions provided by Japan to Canada, if the IAIs were listed in Annex 3.

III. QUESTIONS FROM HONG KONG, CHINA

1. *Hong Kong, China would like to request Japan to provide to the Committee more information relating to the organizational changes as well as further clarification from Japan on the obligations of those entities proposed to be added to Annex 3 vis-à-vis the obligations of the 90 undertakings originally operated by central government entities.*

Please refer to the answers given to the US questions, in particular those to Questions 1 and 2.

2. *In particular, we would welcome clarification of the obligations of those affected entities under various Articles of the Agreement on Government Procurement, including for example Articles IX, XI and XIX.*

As IAIs are not subject to national legislation such as the Accounts Law, based on which central government entities implement the Agreement on Government Procurement, the consistency with the Agreement is ensured through each IAI setting accounting rules that provide for relevant thresholds and procedures as specified in the Agreement. This arrangement applies to all of the obligations under the Agreement, including those related to Article IX, XI and XIX.

IV. CONCLUDING REMARKS

As explained above, the inclusion of the 57 IAIs in Annex 3 is based on the changes in relevant domestic legislation, which is made in the context of the organizational reform of the central government in Japan. Furthermore, we have made in our notification necessary modifications with regard to Annexes 3 and 5 and the General Notes, so that the thresholds and conditions set for central government entities in Annex 1 may be applied to the IAIs to be added to Annex 3. This rectification shall, thus, not in any way alter the existing level of mutually agreed coverage provided in the Agreement on Government Procurement. Also, all the 57 IAIs are supposed to put in place the necessary accounting rules to implement the modified thresholds and procedures that we propose under the Agreement; and needless to say, the challenge procedures as provided for in Article 20 applies to the procurement to be conducted by the IAIs.

Japan hopes that all the above clarifications will be of help for the United States, Canada and Hong Kong, China to deepen their understanding about the recent notification regarding the proposed rectification to Japan's Appendix I in relation to the treatment of the IAIs, leading to those countries' early withdrawal of their objections to the rectification.

ATTACHMENT 1

THE LIST OF THE INDEPENDENT ADMINISTRATIVE INSTITUTIONS (IAIs) AND THE CENTRAL GOVERNMENT ENTITIES IN CHARGE OF IAIs (AS OF 1 APRIL 2001)

Note:

(1) The underlined entities (1.-9. below) are the central government entities which previously performed the procurement that those IAIs as listed under their names are performing from 1 April 2001. These entities are in charge of those IAIs as listed under their names based on the respective laws establishing the respective IAIs.

(2) The information in parenthesis after the name of each IAI indicates: (a) the name(s) of the central government unit(s) which previously performed the functions of that IAI; and (b) the kind of the unit(s) under the National Government Organization Law.

(3) do.(ditto) means that the above-mentioned central government unit(s) had the same name as the corresponding IAI has now.

(4) (a), (b), (c) and (d) indicate the kind of the above-mentioned central government unit(s) according to the National Government Organization Law: (a) internal sub-divisions; (b) independent organs; (c) attached organizations and other organizations; and (d) local branch offices.

1. Cabinet Office

National Archives of Japan (do. (c))

2. Ministry of Public Management, Home Affairs, Posts and Telecommunications

Communications Research Laboratory (do. (c))

National Research Institute of Fire and Disaster (do. (c))

3. Ministry of Finance

National Research Institute of Brewing (do. (b))

4. Ministry of Education, Culture, Sports, Science and Technology

National Center For University Entrance Examinations (do. (c))

National Institute of Special Education (do. (c))

National Olympics Memorial Youth Center (do. (c))

National Women's Education Center (do. (a))

National Youth Houses (National Youth Houses in 13 prefectures: (a))

National Children's Centers (National Children's Centers in 14 prefectures: (a))

The National Institute for Japanese Language (do. (c))

National Science Museum (do. (c))

National Institute for Materials Science (National Research Institute for Metals, National Institute for Research in Inorganic Materials: (c))

National Research Institute for Earth Science and Disaster Prevention (do. (c))
National Aerospace Laboratory of Japan (do. (c))
National Institute of Radiological Sciences (do. (c))
National Museum of Art (National Museums of Modern Art (Tokyo, Kyoto), The National Museum of Western Art, The National Museum of Art : (c))
National Museum (National Museums in Tokyo, Kyoto and Nara: (c))
National Research Institute for Cultural Properties (National Research Institute for Cultural Properties in Tokyo: (a), National Research Institute for Cultural Properties in Nara: (c))
National Center for Teachers' Development (new : (a))

5. Ministry of Health, Labour and Welfare

National Institute of Health and Nutrition (do. (c))
National Institute of Industrial Safety (do. (c))
National Institute of Industrial Health (do. (c))

6. Ministry of Agriculture, Forestry and Fisheries

Center for Food Quality, Labeling and Consumer Services (do. (c))
National Center for Seeds and Seedlings (do. (c))
National Livestock Breeding Center (do. (c))
Fertilizer and Feed Inspection Station (do. (c))
Agricultural Chemicals Inspection Station (do. (c))
National Farmers Academy (do. (c))
Forest Tree Breeding Center (do. (c))
National Salmon Resources Center (do. (c))
National Fisheries University (do. (c))
National Agricultural Research Organization (cf. attachment: (c))
National Institute of Agrobiological Sciences (do. (c))
National Institute for Agro-Environmental Sciences (do. (c))
National Institute for Rural Engineering (do. (c))
National Food Research Institute (do. (c))
Japan International Research Center for Agricultural Sciences (do. (c))
Forestry and Forest Products Research Institute (do. (c))
Fisheries Research Agency (cf. attachment: (c))

7. Ministry of Economy, Trade and Industry

Research Institute of Economy, Trade and Industry (do. (c))
National Center for Industrial Property Information (do. (b))
Nippon Export and Investment Insurance (Trade Insurance Division, Trade and Economic Cooperation Bureau: (a))
National Institute of Advanced Industrial Science and Technology (do. (c))
National Institute of Technology and Evaluation (do. (c))

8. Ministry of Land, Infrastructure and Transport

Public Works Research Institute (do. (c))
Building Research Institute (do. (c))
National Traffic Safety and Environment Laboratory (Traffic Safety Nuisance Research Institute: (c))
National Maritime Research Institute (Ship Research Institute : (c))
Port and Airport Research Institute (Port and Harbour Research Institute : (c))
Electronic Navigation Research Institute (do. (c))

Civil Engineering Research Institute of Hokkaido (Civil Engineering Research Institute: (d))
Marine Technical College (do. (c))
National Institute for Sea Training (do. (c))
Schools for Seafarers Training (do. (c))
Civil Aviation College (do. (c))

9. Ministry of the Environment

National Institute for Environmental Studies (do. (c))

ATTACHMENT 2

National Agricultural Research Organization
(National Agriculture Research Center,
National Research Institute of Vegetables, Ornamental Plants and Tea,
National Institute of Fruit Tree Science,
National Institute of Animal Industry,
National Grassland Research Institute,
National Institute of Animal Health,
Hokkaido National Agriculture Experiment Station,
Tohoku National Agriculture Experiment Station,
Hokuriku National Agriculture Experiment Station,
Chugoku National Agriculture Experiment Station
Shikoku National Agriculture Experiment Station
Kyushu National Agriculture Experiment Station)

Fisheries Research Agency
(Hokkaido National Fisheries Research Institute,
Tohoku National Fisheries Research Institute,
National Research Institute of Fisheries Science,
Japan Sea National Fisheries Research Institute,
National Research Institute of Far Seas Fisheries,
National Research Institute of Fisheries and Environment Inland Sea,
Seikai National Fisheries Research Institute,
National Research Institute of Aquaculture,
National Research Institute of Fisheries Engineering)

ATTACHMENT 3
GENERAL LAW ON IAIs (EXCERPT)

Contents:

- Chapter I: General Rules
 - Section 1: General provisions (Article 111)
 - Section 2: Appraisal Committee on IAIs activities (Article 12)
 - Section 3: Establishment (Article 1317)
- Chapter II: Executives and Staff (Article 1826)
- Chapter III: Operations
 - Section 1: Operations (Article 27 and 28)
 - Section 2: Mid-term operational target (Article 2935)
- Chapter IV: Financial Affairs and Accounts (Article 3650)
- Chapter V: Personnel Management
 - Section 1: Designated IAIs (Article 5160)
 - Section 2: Other IAIs (Article 6163)
- Chapter VI: Miscellaneous (Article 6468)
- Chapter VII: Penalties (Article 6972)
- Annex

(Provision on Accounts)

Article 49: IAIs shall, when starting their operations, stipulate internal rules related to their accounts, and report them to the relevant Minister responsible for each IAI. This provision also applies when the rules are modified.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/138

2 May 2001

(01-2250)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Malta

The following communication, dated 1 May 2001, has been received from the Permanent Mission of Malta with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Permanent Mission of Malta to the United Nations Office in Geneva and Other Specialized Organizations presents its compliments to the Director-General of the World Trade Organization and has the honour to request observer status in the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/135
27 April 2001

(01-2130)

Committee on Government Procurement

Original: English

COMMUNICATION FROM HONG KONG, CHINA

The following communication, dated 24 April 2001, has been received from the Hong Kong Economic and Trade Office with the request that it be circulated to the Committee on Government Procurement.

On 19 March 2001, Japan notified a rectification of its Appendix I to the Agreement on Government Procurement (GPA). According to Japan, the rectification is necessary due to an organizational change of certain entities covered in Annexes 1 and 3, whereby 90 undertakings currently operated by central government entities will be operated by 60 Independent Administrative Institutions (IAIs). Japan proposed in the rectification to, amongst others, add 57 of the 60 IAIs to Annex 3 of Appendix I.

Hong Kong, China is concerned that the proposed rectification may go beyond rectifications, transfers or other modifications of a purely formal and minor nature as referred to in Article XXIV:6(a) of the GPA.

Hong Kong, China would like to request Japan to provide to the Committee more information relating to the organizational changes as well as further clarification from Japan on the obligations of those entities proposed to be added to Annex 3 vis-à-vis the obligations of the 90 undertakings originally operated by central government entities. In particular, we would welcome clarification of the obligations of those affected entities under various Articles of the GPA, including for example Articles IX, XI and XIX.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/134
24 April 2001

(01-2048)

Committee on Government Procurement

Original: English

COMMUNICATION FROM CANADA

The following communication, dated 18 April 2001, has been received from the Permanent Mission of Canada, with the request that it be circulated to the Committee on Government Procurement.

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This is a response to the document GPA/W/129, dated 19 March 2001, which contains a notification from the Permanent Mission of Japan, received by the Secretariat on 9 March 2001, concerning proposed changes to Japan's Annex 3 of the Agreement on Government Procurement.

Article XXIV:6 of the Agreement on Government Procurement provides 30 days for other Parties to object to the notification. Canada considers that further information is required to assess the basis for and effect of the proposed changes.

Specifically:

1. What is the reason for seeking to move the newly formed Independent Administrative Agencies (IAIs) from Annex 1 to Annex 3? Please explain why the new IAIs would not be added to Annex 1 since they are successor entities for entities covered in Annex 1.
2. Does the Accounts Law referred to in Note 1 in the Notes to Japan's Annex 1 apply to any of the covered central government organizations that were previously performing the functions of the IAIs?
3. Would Japan please confirm that the revision to General Note 3 would, if the IAIs were moved to Annex 3, result in the maintenance of the current concessions provided by Japan to Canada?

Canada, therefore, objects to the proposed changes going into effect at the end of the 30-day period. We would appreciate Japan's response to these questions. We will review the responses and seek further clarification as required. Canada reserves the right to request consultations. We will continue to inform the Committee regarding the progress of the matter.

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WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/132
23 April 2001

(01-2014)

Committee on Government Procurement

Original: English

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 9 April 2001, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

I am writing regarding the recent communication from the Permanent Mission of Japan regarding modifications to Appendix I of the Agreement on Government Procurement. This communication was circulated by the Secretariat on 19 March 2001 (GPA/W/129), providing 30 days for other parties to object prior to the modifications becoming effective.

The United States has no objection to the deletion of the National Education Center from the "List of Entities" for Annex 3 in Appendix I, on the basis of our understanding that the functions of this entity have been eliminated. The United States also has no objection to the addition of the "Government Pension Investment Fund" to the "List of Entities" for Annex 3. Further, the United States has no objection to the deletion of the "Pension Welfare Service Public Corporation" from the "List of Entities" for Annex 3, with the understanding that all of its functions have been transferred to the Government Pension Investment Fund.

However, with regard to the proposed addition of 57 Independent Administrative Institutions (IAIs) to the "List of Entities" for Annex 3 in Appendix I, the United States requires additional time to study and to seek clarification of this proposed modification.

The United States understands that these IAIs (together with three other IAIs that we understand will be created in 2002) have been assigned "90 undertakings of the government which are now operated by central government entities" that are listed in Annex 1 of Appendix I. To assist our assessment of the implications of the proposed modification, the United States requests that Japan provide responses to the following questions and requests for information:

1. What is the reason for seeking to move the IAIs from Annex 1 to Annex 3? Please explain why the new IAIs cannot simply be added to Annex 1, rather than creating a complex two-tier list of entities in Annex 3.
2. For each IAI that Japan proposes to add to Annex 3, what was the central government entity that was previously responsible for the procurement that the IAI will now conduct? Please provide a concordance table similar to the one provided by Switzerland in GPA/W/114.
3. Do any of the IAIs have internal sub-divisions, independent organs, attached organizations, other organizations or local branch offices, as those terms are used in Note 1 to Japan's Annex 1? If so, how does Japan intend to maintain the coverage of such entities?

./.

4. What specific authority does the central government have over the conduct of procurements by IAIs? Does the central government have the same degree of authority over Annex 3 entities as over Annex 1 entities?

5. Will a central government entity listed on Annex 1 be responsible for overseeing the procurement of each IAI? If so, please provide a list of the entities responsible for each IAI.

6. What is the legal authority that would require the new IAIs to comply with the GPA?

Until we have had an opportunity to review Japan's responses to these questions, the United States will be unable to agree to the proposed modification with respect to the treatment of the IAIs. Thus, the United States must object to the proposed modification taking effect upon expiration of the 30-day review period. This is, of course, without prejudice to any conclusions the United States may reach on the basis of Japan's explanations. The United States will endeavour to conduct the necessary study and consultations as expeditiously as possible, and will keep the Committee apprised as to the progress and outcome of this review.

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 10 April 2001, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

I am writing in response to the recent communications from the Permanent Mission of Korea regarding proposed modifications to Appendix I of the Agreement on Government Procurement. These communications were circulated by the Secretariat on 6 March 2001 (GPA/W/128) and 13 March 2001 (GPA/W/128/Corr.1).

The United States requires additional time to study and seek clarification of these proposed modifications. To facilitate our assessment, we request that Korea provide responses to the following questions and requests for information.

1. In introducing the proposed modifications, Korea states that the changes in the names of a number of covered Annex 1 and Annex 3 entities are “purely formal in nature”. At the same time, Korea notes that those changes are “the outcome of efforts by Korea to re-organize its governmental structure and other bodies”.

For each currently listed entity, does the re-organization of Korea’s governmental structure involve the transfer of procurement functions from that entity to any entity other than the directly corresponding re-named entity listed in GPA/W/128?

If there is any such transfer of procurement functions, please provide a concordance table listing the entity that currently performs such functions and the entity that would be responsible for such functions under the proposed modifications.

2. With respect to the proposed deletion of the First Minister of Political Affairs from Annex 1, please indicate which entity would now conduct the procurement activities previously conducted by the First Minister of Political Affairs. If the procurement activities have not been transferred to another entity, please provide an explanation why.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/131
11 April 2001

(01-1865)

Committee on Government Procurement

Original: English

THE LAW CONCERNING THE PROMOTION OF ECO-FRIENDLY GOODS AND SERVICES BY THE STATE AND OTHER ENTITIES (THE LAW ON PROMOTING GREEN PURCHASING)

Notification from Japan under Article XXIV:5(b) of the GPA

The following notification from the Permanent Mission of Japan was received on 30 March 2001, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:5(b), "each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations".

Pursuant to Article XXIV, paragraph 5(b) of the WTO Agreement on Government Procurement, the Government of Japan wishes to inform the Committee on Government Procurement of the law concerning government procurement in Attachment 1.

ATTACHMENT

The Law Concerning the Promotion of Procurement of Eco-friendly Goods and Services by the State and Other Entities (The Law on Promoting Green Purchasing)

1. Agency responsible:

Ministry of the Environment

2. Description of the law:

Based on the Law Concerning the Promotion of Procurement of Eco-friendly Goods and Services by the State and Other Entities (hereinafter referred to as “the Law”), which entered into force on 6 January 2001, and the Basic Policy for the Promotion of Procurement of Eco-friendly Goods and Services (hereinafter referred to as “the Basic Policy”) adopted by the cabinet decision in February 2001, central government entities and other entities (cf. 3. below) shall draw up and publish a policy for the promotion of procurement of eco-friendly goods and services (hereinafter referred to as “procurement policy”) every fiscal year from 1 April 2001. These entities shall procure goods and services based on their procurement policy and publish the summary of the procurement track record after every fiscal year-end and submit it to the Minister of the Environment.

3. Entities which shall draw up a procurement policy

(1) State (all central government entities):

House of Representatives, House of Councillors, National Diet Library, Supreme Court, Board of Audit, Cabinet, National Personnel Authority, Cabinet Office, Imperial Household Agency, National Public Safety Commission (National Police Agency), Defense Agency, Financial Services Agency, Ministry of Public Management, Home Affairs, Posts and Telecommunications, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labour and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, Ministry of Land, Infrastructure and Transport and Ministry of the Environment.

(2) Other entities (57 independent administrative institutions and 57 special legal entities):

The entities listed in the government ordinance determining the legal entities stipulated under Article 2, paragraph 2 of the Law as subsequently amended (cf. attached list of the entities as of 1 April 2001).

4. Contents of the said procurement policy drawn up by the entities under 3. above:

(1) Procurement targets for the designated procurement goods and services for each fiscal year

(note: “designated procurement goods and services” mean those which meet the kinds and evaluation criteria of eco-friendly goods and services for which the State and other entities under 3. above should put an emphasis on procuring. The Appendix of the Basic Policy provides 101 designated procurement items and evaluation criteria (cf. attached summary of the Basic Policy and its Appendix)

- (2) Other eco-friendly goods and services for which procurement is to be promoted in each fiscal year as well as procurement targets for those goods and services
 - (3) Other matters on the promotion of procurement of eco-friendly goods and services
5. Starting date of the procurement based on the procurement policy under 4. above:
1 April 2001

6. Treatment for local governments:

Prefectures, cities, towns and villages shall endeavour to draw up a procurement policy every fiscal year and procure goods and service based on it.

7. Compliance with the WTO Agreement on Government Procurement

The Basic Policy (mentioned in 2. above) includes the following paragraph:

“Additionally, when promoting the procurement of eco-friendly goods, etc., each entity shall give due consideration to the compliance with the WTO Agreement on Government Procurement (particularly with Article 6 (Technical Specifications)) and note that it will not create unnecessary obstacles to international trade.”

8. Legal texts

Japanese original texts of the Law, the Government Ordinance and the Basic Policy are available at the web site of the Ministry of the Environment (<http://www.env.go.jp/policy/green/index.html>)

Provisional English translations of the Law and the summary of the Basic Policy are attached hereto.

9. Inquiry point

Environment and Economy Division, Integrated Environmental Policy Bureau, Ministry of the Environment
Telephone : +(81 3) 5521 – 8230 Fax: + (81-3) 3580-9568

The list of the entities listed in the government ordinance determining the legal entities stipulated under Article 2, paragraph 2 of the Law Concerning the Promotion of Procurement of Eco-friendly Goods and Services by the State and Other Entities, as subsequently amended
(as of April 1, 2001)

(Independent administrative institutions)

1. National Archives of Japan, Communications Research Laboratory, National Research Institute of Fire and Disaster, National Research Institute of Brewing, National Center For University Entrance Examinations, National Institute of Special Education, National Olympics Memorial Youth Center, National Women's Education Center, National Youth Houses, National Children's Centers, The National Institute for Japanese Language, National Science Museum, National Institute for Materials Science, National Research Institute for Earth Science and Disaster Prevention, National Aerospace Laboratory of Japan, National Institute of Radiological Sciences, National Museum of Art, National Museum, National Research Institute for Cultural Properties, National Center for Teachers' Development, National Institute of Health and Nutrition, National Institute of Industrial Safety, National Institute of Industrial Health, Center for Food Quality, Labeling and Consumer Services, National Center for Seeds and Seedlings, National Livestock Breeding Center, Fertilizer and Feed Inspection Station, Agricultural Chemicals Inspection Station, National Farmers Academy, Forest Tree Breeding Center, National Salmon Resources Center, National Fisheries University, National Agricultural Research Organization, National Institute of Agrobiological Sciences, National Institute for Agro-Environmental Sciences, National Institute for Rural Engineering, National Food Research Institute, Japan International Research Center for Agricultural Sciences, Forestry and Forest Products Research Institute, Fisheries Research Agency, Research Institute of Economy, Trade and Industry, National Center for Industrial Property Information, Nippon Export and Investment Insurance, National Institute of Advanced Industrial Science and Technology, National Institute of Technology and Evaluation, Public Works Research Institute, Building Research Institute, National Traffic Safety and Environment Laboratory, National Maritime Research Institute, Port and Airport Research Institute, Electronic Navigation Research Institute, Civil Engineering Research Institute of Hokkaido, Marine Technical College, National Institute for Sea Training, Schools for Seafarers Training, Civil Aviation College, National Institute for Environmental Studies

(Special legal entities)

2. Metropolitan Expressway Public Corporation, New Tokyo International Airport Authority, Japan National Oil Corporation, Japan Regional Development Corporation, Urban Development Corporation, Japan Railway Construction Public Corporation, Japan Highway Public Corporation, Hanshin Expressway Public Corporation, Honshu-Shikoku Bridge Authority, Water Resources Development Public Corporation and Japan Green Resources Corporation

3. National Space Development Agency of Japan, Corporation for Advanced Transport and Technology, Japan Science and Technology Corporation, Postal Life Insurance Welfare Corporation, Japan Environmental Corporation, Metal Mining Agency of Japan, Japan International Cooperation Agency, Social Welfare and Medical Service Corporation, Japan Small and Medium Enterprise Corporation, The Promotion and Mutual Aid Corporation for Private Schools of Japan, Agriculture and Livestock Industries Corporation and Labour Welfare Corporation

4. Okinawa Development Finance Corporation, Japan Finance Corporation for Municipal Enterprises, National Life Finance Corporation, Housing Loan Corporation, Japan Finance Corporation for Small Business and Agriculture, Forestry and Fisheries Finance Corporation
5. Japan Bank for International Cooperation and Development Bank of Japan
6. The Shoko Chukin Bank
7. Teito Rapid Transit Authority
8. Fund for the Promotion and Development of the Amami Islands, Japan Nuclear Cycle Development Institute, Organization for Workers' Retirement Allowance Mutual Aid, Pollution-Related Health Damage Compensation Association, Japan National Tourist Organization, Japan Foundation, Japan Consumers Information Center, Employment and Human Resources Development Organization of Japan, Social Insurance Medical Fee Payment Fund, New Energy and Industrial Technology Development Organization, Association for Welfare of the Mentally and Physically Handicapped, The Japan Scholarship Foundation, Japan Society for the Promotion of Science, Japan Arts Council, Japan Atomic Energy Research Institute, National Stadium and School Health Center of Japan, Japan Racing Association, Japan External Trade Organization, Japan Institute of Labour, Government Pension Investment Fund, Farmers' Pension Fund, University of the Air Foundation, Northern Territories Issue Association and RIKEN(The Institute of Physical and Chemical Research)

(Provisional Translation)

Overview of the Basic Policy for the Promotion of Procurement
of Eco-Friendly Goods and Services

Basic Philosophy

1. Viewpoint of environmental conservation must be added to price and quality
2. Make selection based on diverse viewpoints, including formation of socio-economic system with environmentally sound material cycle and combating global warming
3. Give consideration to reducing environmental impact throughout the product lifecycle, from manufacture to disposal.
4. Commit to long-term use, correct utilization, and sorted disposal of procured goods, etc

Designated Procurement Items and Evaluation Criteria

1. As a rule, clear numerical criteria shall be used for selecting designated procurement items
2. Even in the case that clear numerical criteria cannot be established at the present time, however, factors that have importance with respect to reducing environmental impact shall be defined as “factors for consideration”
3. These standards shall be revised as appropriate, in response to improvements in the state of development or our scientific understanding of goods, etc.

Note – See attached summary of the Appendix for designated procurement items and evaluation criteria.

Other Important Matters

1. Central government entities and special legal entities shall establish systems for promoting procurement of eco-friendly goods, etc.
2. As a rule, the procurement policy for the promotion of procurement of eco-friendly goods and services drawn up by each entity shall be applied to all internal organizations of the entity in question
3. Each entity shall publish its procurement policy and a summary of its procurement track record (every fiscal year)
4. Establishment of a contact group for related government agencies, etc.
5. Staff training and other educational activities for promoting procurement of eco-friendly goods, etc.
6. Provision of pertinent information by the central government

APPENDIX

Designated Procurement Items and Evaluation Criteria
(Summary)

Category	Designated Procurement Items (Total 101 Items)	Evaluation Criteria
Paper	Computer paper, printing paper, hygienic paper (toilet paper)	Recycled paper content, bleaching, etc.
Purchased printed material	Purchased printed material	
Stationery	49 items, including mechanical pencils, ball-point pens, scissors, glue, files and binders	Use of recycled materials (e.g. recycled plastic, thinning wood), etc.
Office furniture	8 items, including chairs, desks, shelves, and blackboards	
Office automation machines	7 items, including copiers, computers, printers, and facsimiles	Energy consumption efficiency, etc.
Home electronic appliances	6 items, including refrigerators, air conditioners, televisions, and VTRs	
Lighting	Fluorescent lighting equipment and fluorescent light bulbs	
Vehicles	Low emission vehicles (natural gas vehicles, hybrid vehicles, etc.), and other vehicles	Exhaust emission, fuel efficiency, etc.
Uniforms and work clothes	Uniforms and work clothes	Use of polyester made from recycled materials from PET bottles, etc.
Interior fixtures and bedding	Carpets, curtains, blankets	
Work gloves	Work gloves	
Facilities	Solar power generation systems, fuel cells, solar heating systems	Use of solar energy, etc.
Public-works projects	Public-works projects: 1. Recycled materials (e.g. reconstituted wood boards, tiles, and blended cement), etc. 2. Construction machines (low emission machines, low-noise machines)	Recycled material content , emission, noise, etc.
Services	Energy conservation diagnosis	Qualification of service providers, content of diagnosis, etc

(Provisional Translation)

Law Concerning the Promotion of Procurement of Eco-friendly
Goods and Services by the State and Other Entities

(Objective)

Article 1

(1) The objective of this law shall be:

- to establish the necessary provisions (a) to encourage the State, independent administrative institutions, etc. and local governments to procure eco-friendly goods, etc.; (b) to provide information on eco-friendly goods, etc.; and (c) to encourage a shift in demand towards eco-friendly goods, etc.;
- to establish society which can enjoy sustainable development with a lower environmental impact; and
- to contribute to a sound and cultural lifestyle for citizens today and in the future.

(Definitions)

Article 2

(1) The “eco-friendly goods, etc.” mentioned in this law shall mean the goods or services which satisfy any one of the following criteria:

- (a) Recycled resources including materials or parts/components which contribute to the reduction of “environmental impact” (as provided in Article 2 (1) of the Basic Environmental Law (Law No. 91, 1993); the same shall apply hereinafter)
- (b) Products which contribute to the reduction of environmental impact on one of the following grounds:
 - materials or parts/components used in the aforementioned goods contribute to the reduction of environmental impact;
 - greenhouse gas, etc. emitted as a result of the use of the aforementioned goods do not cause a large environmental impact;
 - the whole or part of the aforementioned goods can be easily reused or recycled, so that generation of waste can be limited; and
 - others.
- (c) Services which contribute to the reduction of environmental impact, for example, services provided by utilizing products that contribute to the reduction of environmental impact.

(2) The “independent administrative institutions, etc.” mentioned in this law shall mean legal entities which meet the following criteria and determined by the government ordinance(s) for this law:

- independent administrative institutions (as provided in Article 2 (1) of [the Law for the General Rules on Independent Administrative Institutions](#) (Law No. 103, 1999) or special legal entities (legal entities that are established according to laws or with special purposes of establishment according to special laws and are subject to Article 4 (15) of the [Law for the Establishment of the Ministry of Public Management, Home Affairs, Posts and Telecommunications](#) (Law No. 91, 1999); the same shall apply hereinafter); and
- those capitals are entirely or mostly provided by the State or those expenses needed for the operation of business are derived mainly from grants or subsidies by the State.

(3) “The head of each ministry or agency” mentioned in this law shall mean the head of each ministry or agency as provided in Article 20(2) of the Public Finance Law (Law No. 34, 1947).

(Duties of the State and independent administrative institutions, etc.)

Article 3

(1) As for the procurement of goods and services (referred to as “goods, etc.” hereinafter), in order to encourage a shift in demand towards eco-friendly goods, etc., the State and independent administrative institutions, etc. shall endeavour to choose eco-friendly goods, etc. while giving consideration to the appropriate use of the budget.

(2) The State shall, through educational and public relations activities, etc., encourage businesses and citizens to deepen their understanding of the significance of a shift in demand towards eco-friendly goods, etc., and also take the necessary measures to expedite cooperation between the State, local governments, businesses and citizens to convert demand toward eco-friendly goods, etc.

(Duty of local governments)

Article 4

(1) Local governments shall endeavour to take the necessary measures to convert demand toward eco-friendly goods, etc. in accordance with the natural and social conditions of each area.

(Duties of businesses and citizens)

Article 5

(1) Businesses and citizens shall endeavour to choose eco-friendly goods, etc. as much as possible when buying or renting goods or receiving services.

(Basic policy for the procurement of eco-friendly goods, etc.)

Article 6

(1) In order to comprehensively and systematically promote the procurement of eco-friendly goods, etc. by the State and independent administrative institutions, etc., the State shall determine the

basic policy for the promotion of procurement of eco-friendly goods, etc. (referred to as “the basic policy” hereinafter).

- (2) The basic policy shall stipulate the following:
 - (a) a basic direction to be followed for the promotion of procurement of eco-friendly goods, etc. by the State and independent administrative institutions, etc;
 - (b) basic matters with regard to “ the kinds of eco-friendly goods, etc., for which the State and independent administrative institutions, etc. should put an emphasis on procuring” (referred to as “designated procurement items” hereinafter); the evaluation criteria for the designated procurement items; and the promotion of “procurement of goods, etc. that meet the said criteria”(referred to as “designated procurement goods, etc” hereinafter); and
 - (c) other important matters on the promotion of procurement of eco-friendly goods, etc.
- (3) The Minister of the Environment shall discuss with the head of each ministry or agency ,etc. (the head of each ministry or agency in the case of the State, the competent minister in the case of independent administrative institutions, etc.; the same shall apply hereinafter) in advance of drafting the basic policy, and obtain an approval of the cabinet decision.
- (4) With regard to the criteria for the designated procurement items, in light of the necessity of considering the trends, etc. of technology and demand relating to the manufacture of goods, etc. that correspond to the said designated procurement items, the Minister of the Environment shall discuss with the head of each ministry or agency, etc. as provided in the preceding paragraph, based on the draft which the Minister of the Environment has drawn up in cooperation with the minister(s) in charge of businesses, including manufacture, import and sale, etc., of the said designated procurement items.
- (5) When an approval of the cabinet decision was obtained as mentioned in paragraph (3) of this Article, the Minister of the Environment shall publish the basic policy without delay.
- (6) The provisions of the preceding three paragraphs shall be applied mutatis mutandis to revisions of the basic policy.

(Procurement policy for eco-friendly goods, etc.)

Article 7

- (1) The head of each ministry or agency and the head of each independent administrative institution, etc. (or the representative in the case of a special legal entity; the same shall apply hereinafter) shall draw up every fiscal year a policy for the promotion of procurement of eco-friendly goods, etc. in relation to the procurement of goods, etc., while taking into account the budget, activities and planned projects for the fiscal year concerned.
- (2) The policy mentioned in the preceding paragraph shall stipulate the following:
 - (a) procurement targets of the designated procurement goods, etc. for the said fiscal year
 - (b) eco-friendly goods, etc. (other than the designated procurement goods, etc.) for which procurement is to be promoted in the said fiscal year, as well as those procurement targets
 - (c) other matters on the promotion of procurement of eco-friendly goods, etc.

(3) When the policy mentioned in paragraph (1) of this Article is drawn up, the head of each ministry or agency and the head of each independent administrative institution, etc. shall publish it without delay.

(4) Based on the policy mentioned in paragraph (1) of this Article, the head of each ministry or agency and the head of each independent administrative institution, etc. shall procure goods, etc. during the fiscal year concerned.

(Publication, etc. of the summary of procurement track record)

Article 8

(1) The head of each ministry and agency and the head of each independent administrative institution, etc. shall prepare and publish, without delay after every fiscal or business year ends, a summary of its procurement track record of eco-friendly goods, etc. and submit it to the Minister of the Environment.

(2) The head of an independent administrative institution, etc. shall submit a summary of its procurement track record to the Minister of Environment as provided in the preceding paragraph, via the competent minister for the said independent administrative institution, etc.

(Request of the Minister of the Environment)

Article 9

(1) The Minister of the Environment may request the head of each ministry or agency, etc. to take measures which are deemed particularly necessary to promote the procurement of eco-friendly goods, etc.

(Promotion of the procurement of eco-friendly goods, etc. by local governments)

Article 10

(1) With regard to the procurement of goods, etc., prefectures, cities, towns and villages shall endeavour to draw up a policy every year for the promotion of procurement of eco-friendly goods, etc., while taking into account the budget, activities and planned projects, etc. for the fiscal year concerned of the said prefectures, cities, towns and villages.

(2) The policy mentioned in the preceding paragraph shall, in accordance with the natural and social conditions of the areas of the said prefectures, cities, towns and villages, provide for the eco-friendly goods, etc. for which procurement should be promoted in the fiscal year concerned, as well as those procurement targets. In this case, the necessary efforts shall be made to include the goods, etc. that are designated procurement items in the eco-friendly goods, etc. for which procurement should be promoted.

(3) When the policy mentioned in paragraph (1) of this Article is drawn up, prefectures, cities, towns and villages shall procure goods, etc. based on it during the fiscal year concerned.

(Considerations to be given when promoting the procurement of eco-friendly goods, etc.)

Article 11

(1) The State, independent administrative institutions, etc., prefectures, cities, towns and villages shall make efforts for the proper and reasonable use of even eco-friendly goods, etc., and also give due consideration so as not to increase the procurement amount of goods, etc. because of promotion of the procurement of eco-friendly goods, etc. based on this law.

(Provision of information on eco-friendly goods, etc.)

Article 12

Those who engage in the manufacture, import or sale of goods or provision of services shall endeavour to provide, in an appropriate manner, the necessary information to understand the environmental impact in relation to the said goods, etc., to those who purchase or otherwise acquire the said goods, etc.

Article 13

Those who provide the information on eco-friendly goods, etc., for example, by means of granting an authorization to the effect that the goods manufactured, imported or sold or services provided by other businesses could contribute to the reduction of environmental impact, or indicating the information of environmental impact in relation to the aforementioned goods or services, shall endeavour to provide effective and appropriate information which could contribute to convert the demand toward eco-friendly goods, etc., based on the scientific knowledge and also by paying attention to conformity with international agreements.

(Consolidation, etc. of information by the State)

Article 14

In order to contribute to the conversion of demand toward eco-friendly goods, etc., the State shall consolidate and analyse the conditions in relation to the information provided by the persons stipulated in the preceding two Articles, and subsequently provide the results.

(Provisional measures)

Article 15

In the case where an order is issued, amended or abolished in accordance with the provisions of this law, the necessary provisional measures may be determined to the extent that such measures are deemed reasonably necessary as a result of the issuance, revision or abolishment of the said order.

Supplementary Provisions

(Enforcement date)

1. This law shall take effect from 6 January 2001, provided, however, that the provisions of Articles 7, 8 and 10 shall be effective from 1 April of the same year.

(Consideration)

2. From the aspect of promoting the conversion of demand toward eco-friendly goods, etc., the government shall, while respecting the content and method of provision of the information on eco-friendly goods, etc., and also the autonomy of those who provide the information on eco-friendly goods, etc., give due consideration to the necessary measures to ensure the provision of appropriate information, as well as the ideal status of information provision system on eco-friendly goods, etc., and subsequently, take the necessary measures based on the results of these considerations.

MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Japan was received on 9 March 2001, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement of the following rectification of a purely formal nature relating to Japan's Appendix I of the Agreement.

The above-mentioned rectification is necessary as a result of the following organizational changes of central government entities in Annex 1 and two entities in Annex 3. It does not alter the level of mutually agreed coverage provided in the Agreement.

- (1) As a part of Japan's central government reform, 90 undertakings of the government which are now operated by central government entities in Annex 1 will be conducted by 60 Independent Administrative Institutions (IAIs). Under the new 60 laws establishing an individual IAI, they will be legally independent from the central government to perform their undertakings (e.g. operation of national museums, research institutes and inspection centers) more effectively, efficiently and transparently. (cf. [English website] http://www.mofa.go.jp/about/hq/central_gov/gist.html; [Japanese website] <http://www.kantei.go.jp/jp/chuo-syochu/>).

Since 57 out of 60 IAIs* are to be established and start operating on 1 April 2001, we decided to add these entities in Annex 3 regarding both supplies and services (cf. 57 underlined entities under Group B in the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4" of Annex 3 of Attachment A to this document) so that the Agreement can be applied to them with the same thresholds and conditions as stipulated in Annex 1 for central government entities.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

* The remaining three IAIs will be established after 1 April 2002. In future, Japan will notify the Committee of similar rectifications of Annex 3 relating to these IAIs.

Accordingly, the necessary modifications shall be made with regard to the threshold for construction services and Note 3 in Annex 3 as well as to Annex 5 and General Notes as a result of inclusion of 57 IAIs in Annex 3 (cf. the underlined parts of the relevant pages in Attachment A).

- (2) "National Education Center" listed in Annex 3 is to be abolished on 1 April 2001 and no entity is to be established to replace it. Consequently, "National Education Center" shall be deleted from the "List of Entities" and the "List of Entities which procure the services, specified in Annex 4" of Annex 3.
- (3) "Pension Welfare Service Public Corporation" listed in Annex 3 is to be abolished on 1 April 2001 and its function is to be transferred to the "Government Pension Investment Fund". Consequently, "Pension Welfare Service Public Corporation" shall be replaced by "Government Pension Investment Fund" in the "List of Entities" and "List of Entities which procure the services, specified in Annex 4" of Annex 3.

Accordingly, pages 1/4 to 4/4 of Annex 3; page 1/1 of Annex 5; and page 1/1 of the General Notes to Appendix I of Japan in WT/Let/330 of 1 March 2000 should be rectified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the present modifications.²

² Both Attachments are in English only.

ATTACHMENT A

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- | | |
|---|---|
| <ul style="list-style-type: none"> - Water Resources Development Public Corporation - Japan Regional Development Corporation - Japan Green Resources Corporation - Japan National Oil Corporation (c) - Japan Railway Construction Public Corporation (a) (d) - New Tokyo International Airport Authority - Japan Highway Public Corporation - Metropolitan Expressway Public Corporation - Hanshin Expressway Public Corporation - Honshu-Shikoku Bridge Authority - Urban Development Corporation (a) - Japan Science and Technology Corporation - Japan Nuclear Cycle Development Institute (b) - Japan Environment Corporation - Japan International Cooperation Agency - Social Welfare and Medical Service Corporation - <u>Government Pension Investment Fund</u> - Agriculture and Livestock Industries Corporation - Metal Mining Agency of Japan (c) - Japan Small and Medium Enterprise Corporation - Postal Life Insurance Welfare Corporation - Labour Welfare Corporation | <ul style="list-style-type: none"> - Employment and Human Resources Development Organization of Japan - Okinawa Development Finance Corporation - National Life Finance Corporation - Agriculture, Forestry and Fisheries Finance Corporation - Japan Finance Corporation for Small Business - Housing Loan Corporation - Japan Finance Corporation for Municipal Enterprises - Development Bank of Japan - Japan Bank for International Cooperation - Teito Rapid Transit Authority (a) - Japan Tobacco Inc. - Hokkaido Railway Company (a) - East Japan Railway Company (a) - Central Japan Railway Company (a) - West Japan Railway Company (a) - Shikoku Railway Company (a) - Kyushu Railway Company (a) - Japan Freight Railway Company (a) - Nippon Telegraph and Telephone Co. (f) - Northern Territories Issue Association - Japan Consumers Information Center - Japan Atomic Energy Research Institute (b) - RIKEN (The Institute of Physical and Chemical Research) (b) - Pollution-Related Health Damage Compensation Association - Fund for the Promotion and Development of the Amami Islands - Japan Foundation - The Japan Scholarship Foundation |
|---|---|

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Deleted: - Nippon Telegraph and Telephone West Co. (f)

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Deleted: - Pension Welfare Service Public Corporation¶

Supplies (cont'd)

¹ Note by the Secretariat: Please note that this modification is not part of the present notification by Japan. It reflects the rectification circulated by the Secretariat in WT/Let/386, dated 16 March 2001.

Deleted: 1 March 2000 (WT/Let/330)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
- 2. Group B**
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language

- National Science Museum
- National Institute for Materials Science
- National Research Institute for Earth Science and Disaster Prevention
- National Aerospace Laboratory of Japan
- National Institute of Radiological Sciences
- National Museum of Art
- National Museum
- National Research Institute for Cultural Properties
- National Center for Teachers' Development
- National Institute of Health and Nutrition
- National Institute of Industrial Safety
- National Institute of Industrial Health
- Center for Food Quality, Labeling and Consumer Services
- National Center for Seeds and Seedlings
- National Livestock Breeding Center
- Fertilizer and Feed Inspection Station
- Agricultural Chemicals Inspection Station
- National Farmers Academy
- Forest Tree Breeding Center
- National Salmon Resources Center
- National Fisheries University
- National Agricultural Research Organization
- National Institute of Agrobiological Sciences
- National Institute for Agro-Environmental Sciences
- National Institute for Rural Engineering
- National Food Research Institute
- Japan International Research Center for Agricultural Sciences
- Forestry and Forest Products Research Institute
- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute

Deleted: - National Education Center

- Supplies (cont'd)**
- National Traffic Safety and Environment Laboratory
 - National Maritime Research Institute
 - Port and Airport Research Institute
 - Electronic Navigation Research Institute
 - Civil Engineering Research Institute of

- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency

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APPENDIX I	JAPAN	ANNEX 3	Page 3/5
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- Hokkaido
- Marine Technical College
 - National Institute for Sea Training
 - Schools for Seafarers Training
 - Civil Aviation College
 - National Institute for Environmental Studies

Services

Threshold:

Construction services:

15,000 thousand SDR for entities in Group A

4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Japan Green Resources Corporation
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation

- Social Welfare and Medical Service Corporation
- Government Pension Investment Fund
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small and Medium Enterprise Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment and Human Resources Development Organization of Japan
- Okinawa Development Finance Corporation
- National Life Finance Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- 11
- Japan Finance Corporation for Small Business
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Development Bank of Japan
- Japan Bank for International Cooperation
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- Japan Consumers Information Center

Deleted: - Pension Welfare Service Public Corporation¶

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Deleted: - Nippon Telegraph and Telephone East Co. (f)(g)

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- Nippon Telegraph and Telephone West Co. (f)(g)

¹ Note by the Secretariat: Please note that this modification is not part of the present notification by Japan. It reflects the rectification circulated by the Secretariat in WT/Let/386, dated 16 March 2001.

¹ Note by the Secretariat: Please note that this modification is not part of the present notification by Japan. It reflects the rectification circulated by the Secretariat in WT/Let/386, dated 16 March 2001.

Deleted: 1 March 2000 (WT/Let/330)

Services (cont'd)

- Japan Atomic Energy Research Institute (b)
 - RIKEN (The Institute of Physical and Chemical Research) (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
 - Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
- National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute

2. Group B

- National Archives of Japan
- Communications Research Laboratory
- National Research Institute of Fire and Disaster
- National Research Institute of Brewing

Deleted: - National Education Center¶

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Deleted: 1 March 2000 (WT/Let/330)

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

Deleted: 1 March 2000
(WT/Let/330)

ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All services listed in Division 51.

Threshold: 4,500 thousand SDR for entities set out in ANNEX 1;
15,000 thousand SDR for those in ANNEX 2; and
15,000 thousand SDR for those in Group A in ANNEX 3; and
4,500 thousand SDR for those in Group B in ANNEX 3.

GENERAL NOTES

1. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 (except for those listed in Group B set out in Annex 3).
2. In case Parties do not apply Article XX to suppliers or service providers of Japan in contesting the award of contract by entities, Japan may not apply the Article to suppliers or service providers of the Parties in contesting the award of contracts by the same kind of entities.

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(WT/Let/330)

ATTACHMENT B

JAPAN

(Authentic in the English language only)

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

1. Group A

- Employment and Human Resources Development Organization of Japan
 - Okinawa Development Finance Corporation
 - National Life Finance Corporation
 - Agriculture, Forestry and Fisheries Finance Corporation
 - Japan Finance Corporation for Small Business
 - Housing Loan Corporation
 - Japan Finance Corporation for Municipal Enterprises
 - Development Bank of Japan
 - Japan Bank for International Cooperation
 - Teito Rapid Transit Authority (a)
 - Japan Tobacco Inc.
 - Hokkaido Railway Company (a)
 - East Japan Railway Company (a)
 - Central Japan Railway Company (a)
 - West Japan Railway Company (a)
 - Shikoku Railway Company (a)
 - Kyushu Railway Company (a)
 - Japan Freight Railway Company (a)
 - Nippon Telegraph and Telephone Co. (f)
 - Northern Territories Issue Association
 - Japan Consumers Information Center
 - Japan Atomic Energy Research Institute (b)
 - RIKEN (The Institute of Physical and Chemical Research) (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
- Water Resources Development Public Corporation
 - Japan Regional Development Corporation
 - Japan Green Resources Corporation
 - Japan National Oil Corporation (c)
 - Japan Railway Construction Public Corporation (a) (d)
 - New Tokyo International Airport Authority
 - Japan Highway Public Corporation
 - Metropolitan Expressway Public Corporation
 - Hanshin Expressway Public Corporation
 - Honshu-Shikoku Bridge Authority
 - Urban Development Corporation (a)
 - Japan Science and Technology Corporation
 - Japan Nuclear Cycle Development Institute (b)
 - Japan Environment Corporation
 - Japan International Cooperation Agency
 - Social Welfare and Medical Service Corporation
 - Government Pension Investment Fund
 - Agriculture and Livestock Industries Corporation
 - Metal Mining Agency of Japan (c)
 - Japan Small and Medium Enterprise Corporation
 - Postal Life Insurance Welfare Corporation
 - Labour Welfare Corporation

Deleted: East

Deleted: - Nippon Telegraph and Telephone West Co. (f)

¹ Note by the Secretariat: Please note that this modification is not part of the present notification by Japan. It reflects the rectification circulated by the Secretariat in WT/Let/386, dated 16 March 2001.

Supplies (cont'd)

- Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
 - Fisheries Research Agency
 - Research Institute of Economy, Trade and Industry
 - National Center for Industrial Property Information
 - Nippon Export and Investment Insurance
 - National Institute of Advanced Industrial Science and Technology
 - National Institute of Technology and Evaluation
 - Public Works Research Institute
 - Building Research Institute

... 2001 (WT/Let/...)

Supplies (cont'd)

- | | |
|--|--|
| <ul style="list-style-type: none"> - National Traffic Safety and Environment Laboratory - National Maritime Research Institute - Port and Airport Research Institute - Electronic Navigation Research Institute - Civil Engineering Research Institute of Hokkaido - Marine Technical College - National Institute for Sea Training - Schools for Seafarers Training - Civil Aviation College - National Institute for Environmental Studies | <ul style="list-style-type: none"> - Hanshin Expressway Public Corporation - Honshu-Shikoku Bridge Authority - Urban Development Corporation (a) - Japan Science and Technology Corporation - Japan Nuclear Cycle Development Institute (b) - Japan Environmental Corporation - Japan International Cooperation Agency - Social Welfare and Medical Service Corporation - Government Pension Investment Fund - Agriculture and Livestock Industries Corporation - Metal Mining Agency of Japan (c) - Japan Small and Medium Enterprise Corporation - Postal Life Insurance Welfare Corporation - Labour Welfare Corporation - Employment and Human Resources Development Organization of Japan - Okinawa Development Finance Corporation - National Life Finance Corporation - Agriculture, Forestry and Fisheries Finance Corporation |
|--|--|

Services

Threshold:

Construction services:

- 15,000 thousand SDR for entities in Group A
- 4,500 thousand SDR for entities in Group B

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

1. Group A

- | | |
|---|--|
| <ul style="list-style-type: none"> - Water Resources Development Public Corporation - Japan Regional Development Corporation - Japan Green Resources Corporation - Japan National Oil Corporation (c) - Japan Railway Construction Public Corporation (a) (d) - New Tokyo International Airport Authority - Japan Highway Public Corporation - Metropolitan Expressway Public Corporation | <ul style="list-style-type: none"> - Japan Finance Corporation for Small Business - Housing Loan Corporation - Japan Finance Corporation for Municipal Enterprises - Development Bank of Japan - Japan Bank for International Cooperation - Teito Rapid Transit Authority (a) - Japan Tobacco Inc. (g) - Hokkaido Railway Company (a)(g) - East Japan Railway Company (a)(g) - Central Japan Railway Company (a)(g) - West Japan Railway Company (a)(g) - Shikoku Railway Company (a)(g) - Kyushu Railway Company (a)(g) - Japan Freight Railway Company (a)(g) - Nippon Telegraph and Telephone Co. (f)(g) - Northern Territories Issue Association - Japan Consumers Information Center |
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Deleted: - Nippon Telegraph and Telephone West Co. (f)(g)

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¹ Note by the Secretariat: Please note that this modification is not part of the present notification by Japan. It reflects the rectification circulated by the Secretariat in WT/Let/386, dated 16 March 2001.

Services (cont'd)

- Japan Atomic Energy Research Institute (b)
 - RIKEN (The Institute of Physical and Chemical Research) (b)
 - Pollution-Related Health Damage Compensation Association
 - Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
 - Japan Arts Council
 - Japan Society for the Promotion of Science
 - University of the Air Foundation
 - National Stadium and School Health Center of Japan
 - Social Insurance Medical Fee Payment Fund
 - Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
 - Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
 - Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Japan Motorcycle Racing Organization
 - New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
 - Japan Institute of Labour
 - Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
 - Corporation for Advanced Transport and Technology (e)
 - The Promotion and Mutual Aid Corporation for Private Schools of Japan
 - Organization for Workers' Retirement Allowance Mutual Aid
 - National Center for University Entrance Examinations
 - National Institute of Special Education
 - National Olympics Memorial Youth Center
 - National Women's Education Center
 - National Youth Houses
 - National Children's Centers
 - The National Institute for Japanese Language
 - National Science Museum
 - National Institute for Materials Science
 - National Research Institute for Earth Science and Disaster Prevention
 - National Aerospace Laboratory of Japan
 - National Institute of Radiological Sciences
 - National Museum of Art
 - National Museum
 - National Research Institute for Cultural Properties
 - National Center for Teachers' Development
 - National Institute of Health and Nutrition
 - National Institute of Industrial Safety
 - National Institute of Industrial Health
 - Center for Food Quality, Labeling and Consumer Services
 - National Center for Seeds and Seedlings
 - National Livestock Breeding Center
 - Fertilizer and Feed Inspection Station
 - Agricultural Chemicals Inspection Station
 - National Farmers Academy
 - Forest Tree Breeding Center
 - National Salmon Resources Center
 - National Fisheries University
 - National Agricultural Research Organization
 - National Institute of Agrobiological Sciences
 - National Institute for Agro-Environmental Sciences
 - National Institute for Rural Engineering
 - National Food Research Institute
 - Japan International Research Center for Agricultural Sciences
 - Forestry and Forest Products Research Institute
2. Group B
- National Archives of Japan
 - Communications Research Laboratory
 - National Research Institute of Fire and Disaster
 - National Research Institute of Brewing

... 2001 (WT/Let/...)

Services (cont'd)

- Fisheries Research Agency
- Research Institute of Economy, Trade and Industry
- National Center for Industrial Property Information
- Nippon Export and Investment Insurance
- National Institute of Advanced Industrial Science and Technology
- National Institute of Technology and Evaluation
- Public Works Research Institute
- Building Research Institute
- National Traffic Safety and Environment Laboratory
- National Maritime Research Institute
- Port and Airport Research Institute
- Electronic Navigation Research Institute
- Civil Engineering Research Institute of Hokkaido
- Marine Technical College
- National Institute for Sea Training
- Schools for Seafarers Training
- Civil Aviation College
- National Institute for Environmental Studies

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities in Group A award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

... 2001 (WT/Let/...)

ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All services listed in Division 51.

Threshold: 4,500 thousand SDR for entities set out in ANNEX 1;
15,000 thousand SDR for those in ANNEX 2; and
15,000 thousand SDR for those in Group A in ANNEX 3; and
4,500 thousand SDR for those in Group B in ANNEX 3.

... 2001 (WT/Let/...)

GENERAL NOTES

1. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 (except for those listed in Group B set out in Annex 3).
2. In case Parties do not apply Article XX to suppliers or service providers of Japan in contesting the award of contract by entities, Japan may not apply the Article to suppliers or service providers of the Parties in contesting the award of contracts by the same kind of entities.

... 2001 (WT/Let/...)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/130/Corr.1*
19 March 2001

(01-1334)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2001-2002

KOREA

Corrigendum

Due to a clerical error in the table on page 1 of document GPA/W/130, please note that the amount for both supplies and services under Annex 1 in the Korean currency should be 200,000,000 WON.

* In English only

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/130
15 March 2001

(01-1279)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2001-2002

KOREA

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2001-2002.

The information notified by the Republic of Korea is reproduced below. Other submissions will be compiled in addenda to this document.

KOREA'S THRESHOLD CALCULATIONS IN ITS NATIONAL CURRENCY – FOR THE PERIOD 1 JANUARY 2001 TO 31 DECEMBER 2002

	Annex 1	Annex 2	Annex 3
Supplies	130,000 SDR 2000,000,000 WON	200,000 SDR 310,000,000 WON	450,000 SDR 700,000,000 WON
Services	130,000 SDR 2000,000,000 WON	200,000 SDR 310,000,000 WON	
Construction Services	5,000,000 SDR 7,800,000,000 WON	15,000,000 SDR 23,500,000,000 WON	15,000,000 SDR 23,500,000,000 WON

Method of calculation

It is the average of the monthly rate of the national currency in terms of the SDR over the two-year period from November 1998 to October 2000. The conversion rates published by the IMF in its monthly "International Fiscal Statistics" were used for this calculation.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/128/Corr.1*

13 March 2001

(01-1239)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF KOREA

Notification from Korea under Article XXIV:6(a)

Corrigendum

Due to a clerical error, the notification from Korea under Article XXIV:6(a) circulated as document GPA/W/128 on 6 March 2001 should be amended as follows: In Appendix I, Annex 1 of Korea page 2/4 (pages 3 and 6 of GPA/W/128), "National Police Agency" should replace the words "National Policy Agency".

In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

* In English and French only

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/128
6 March 2001

(01-1092)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF KOREA

Notification from Korea under Article XXIV:6(a)¹

The following notification from the Permanent Mission of the Republic of Korea was received on 2 March 2001 with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Pursuant to Article XXIV paragraph 6(a) of the Agreement on Government Procurement, I hereby wish to notify changes in the names of entities covered by the Agreement.

Please note that these changes in names affect in no way the balance of rights and obligations nor do they alter the level of mutually agreed coverage provided in the Agreement. Such changes are purely formal in nature, as they are the outcome of efforts by Korea to re-organize its governmental structure and other bodies.

In accordance with the procedures for future changes to the loose-leaf system for Appendices to the Agreement (GPA/W/110), pages 1/4 and 2/4 of Annex 1 and page 1/2 of Annex 3 to Appendix I of Korea in WT/Let/330 of 1 March 2000 should be rectified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both Attachments are in English only.

ATTACHMENT A

KOREA

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR

List of Entities:

- Board of Audit and Inspection
- Prime Minister's Secretariat
- Office for Government Policy Coordination
- ~~[Deleted – Entity no longer exists]~~ Ministry of Gender Equality
- Ministry of Finance and Economy
- Ministry of Unification
- Ministry of Government Administration and Home Affairs
- Ministry of Science and Technology
- Government Information Agency
- Government Legislation Agency
- Patriots and Veterans Administration Agency
- Ministry of Foreign Affairs and Trade
- Ministry of Government Administration and Home Affairs
- Ministry of Justice
- Ministry of National Defense
- Ministry of Education and Human Resources Development
- Ministry of Culture and Tourism
- Ministry of Agriculture and Forestry
- Ministry of Commerce, Industry and Energy
- Ministry of Health and Welfare
- Ministry of Labor
- Ministry of Construction and Transportation
- Ministry of Maritime Affairs and Fisheries
- Ministry of Information and Communications
- Ministry of Environment
- Public Procurement Service (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)
- National Tax Service
- Customs Service
- National Statistical Office
- Korea Meteorological Administration

- Deleted:** Office of Administrative Coordination
- Deleted:** - First Minister of Political Affairs
- Deleted:** ¶
- Deleted:** Second Minister of Political Affairs
- Deleted:** National Unification Board
- Deleted:** Ministry of Government Administration
- Deleted:** Ministry of Information
- Deleted:** Patriots and Veterans Affairs Agency
- Deleted:** Ministry of Foreign Affairs
- Deleted:** Ministry of Home Affairs
- Deleted:** Ministry of Education
- Deleted:** Ministry of Culture and Sports
- Deleted:** Ministry of Trade, Industry and Energy
- Deleted:** Office of Supply (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)
- Deleted:** National Tax Administration
- Deleted:** Customs Administration
- Deleted:** 1 March 2000 (WT/Let/330)

- ~~National Policy Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code)~~
- Supreme Public Prosecutors' Office
- Military Manpower Administration
- Rural Development Administration
- ~~Forest Service~~
- ~~Korean Intellectual Property Office~~
- Small and Medium Business Administration
- Korea National Railroad Administration (The Korean Government plans to change the NRA into a public corporation in 1996, in which case the Korean Government has the right to transfer the NRA from Annex 1 to Annex 3 without any consultation and/or compensatory measures.)
- National Maritime Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Agreement)

Deleted: National Police Administration (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code)

Deleted: Forestry Administration

Deleted: Korea Industrial Property Office

Services

Threshold: 130,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as "Supplies" section

Construction Services

Threshold: 5,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 1

1. The above central government entities include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in the Government Organization Act of the Republic of Korea.
2. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
3. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Act Relating to Contracts to which the State is a Party and its Presidential Decree, and the procurement of agricultural, fishery and livestock products according to the Foodgrain Management Law, the Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products, and the Livestock Law.

Deleted: 1 March 2000 (WT/Let/330)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 450,000 SDR

List of Entities:

- Korea Development Bank
- Industrial Bank of Korea Deleted: Small and Medium Industry Bank
- Kookmin Bank Deleted: Citizens National Bank
- Housing and Commercial Bank (H&CB) Deleted: Korea Housing Bank
- Korea Tobacco & Ginseng Corporation
- Korea Minting and Security Printing Corporation Deleted: Korea Security Printing and Minting Corporation
- Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
- Korea Coal Corporation Deleted: Dai Han Coal Corporation
- Korea Resources Corporation Deleted: Korea Mining Promotion Corporation
- Korea National Oil Corporation Deleted: Korea Petroleum Development Corporation
- Korea General Chemical Corporation
- Korea Trade-Investment Promotion Agency Deleted: Korea Trade Promotion Corporation
- Korea Highway Corporation
- Korea National Housing Corporation
- Korea Water Resources Corporation
- Korea Land Corporation Deleted: Korea Land Development Corporation
- Korea Agriculture and Rural Infrastructure Corporation Deleted: Rural Development Corporation
- Agricultural and Fishery Marketing Corporation
- Korea Telecom (except purchases of common telecommunications commodity products and telecommunications network equipment)
- Korea National Tourism Organization Deleted: Korea National Tourism Corporation
- Daehan Printing and Publishing Co. Ltd. Deleted: National Textbook Ltd.
- Korea Labor Welfare Corporation
- Korea Gas Corporation

Construction Services

Threshold: 15,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Deleted: 1 March 2000
(WT/Let/330)

ATTACHMENT B

KOREA

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR

List of Entities:

- Board of Audit and Inspection
- Prime Minister's Secretariat
- Office for Government Policy Coordination
- Ministry of Gender Equality
- Ministry of Finance and Economy
- Ministry of Unification
- Ministry of Government Administration and Home Affairs
- Ministry of Science and Technology
- Government Information Agency
- Government Legislation Agency
- Patriots and Veterans Administration Agency
- Ministry of Foreign Affairs and Trade
- Ministry of Government Administration and Home Affairs
- Ministry of Justice
- Ministry of National Defense
- Ministry of Education and Human Resources Development
- Ministry of Culture and Tourism
- Ministry of Agriculture and Forestry
- Ministry of Commerce, Industry and Energy
- Ministry of Health and Welfare
- Ministry of Labor
- Ministry of Construction and Transportation
- Ministry of Maritime Affairs and Fisheries
- Ministry of Information and Communications
- Ministry of Environment
- Public Procurement Service (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)
- National Tax Service
- Customs Service

... 2000 (WT/Let/...)

- National Statistical Office
- Korea Meteorological Administration
- National Policy Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code)
- Supreme Public Prosecutors' Office
- Military Manpower Administration
- Rural Development Administration
- Forest Service
- Korean Intellectual Property Office
- Small and Medium Business Administration
- Korea National Railroad Administration (The Korean Government plans to change the NRA into a public corporation in 1996, in which case the Korean Government has the right to transfer the NRA from Annex 1 to Annex 3 without any consultation and/or compensatory measures.)
- National Maritime Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Agreement)

Services

Threshold: 130,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as "Supplies" section

Construction Services

Threshold: 5,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 1

1. The above central government entities include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in the Government Organization Act of the Republic of Korea.
2. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
3. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Act Relating to Contracts to which the State is a Party and its Presidential Decree, and the procurement of agricultural, fishery and livestock products according to the Foodgrain Management Law, the Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products, and the Livestock Law.

... 2001 (WT/Let/...)

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 450,000 SDR

List of Entities:

- Korea Development Bank
- Industrial Bank of Korea
- Kookmin Bank
- Housing and Commercial Bank (H&CB)
- Korea Tobacco & Ginseng Corporation
- Korea Minting and Security Printing Corporation
- Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
- Korea Coal Corporation
- Korea Resources Corporation
- Korea National Oil Corporation
- Korea General Chemical Corporation
- Korea Trade-Investment Promotion Agency
- Korea Highway Corporation
- Korea National Housing Corporation
- Korea Water Resources Corporation
- Korea Land Corporation
- Korea Agriculture and Rural Infrastructure Corporation
- Agricultural and Fishery Marketing Corporation
- Korea Telecom (except purchases of common telecommunications commodity products and telecommunications network equipment)
- Korea National Tourism Organization
- Daehan Printing and Publishing Co. Ltd.
- Korea Labor Welfare Corporation
- Korea Gas Corporation

Construction Services

Threshold: 15,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

... 2001 (WT/Let/...)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.8

23 January 2001

(01-0344)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDICES I AND II OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2001

SWITZERLAND

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the year 2001.

The information notified by Switzerland is reproduced below.

THRESHOLD¹ CALCULATIONS – FOR THE YEAR 2001

Annex 1

	SDRs	Converted to Sw F
Goods	130,000	248,950
Services	130,000	248,950
Construction	5,000,000	9,575,000

Annex 2

	SDRs	Converted to Sw F
Goods	200,000	383,000
Services	200,000	383,000
Construction	5,000,000	9,575,000

Annex 3

	SDRs	Converted to Sw F
Goods	400,000	766,000
Services	400,000	766,000
Construction	5,000,000	9,575,000

¹ SDR 1.0 = Sw F (Swiss francs) 2.097. The average monthly SDR to Sw F for 24 months from October 1998 through September 2000 was Sw F 2.097. This calculation is based on data published by the Swiss National Bank. The result is an increase of about 9.5 per cent (from Sw F 1.915 in 1993/94). Despite having the factual basis to do so, Switzerland considers not to increase its thresholds in Sw F for the time being. The value of the thresholds in Sw F has been expressed without value-added tax (VAT) because Switzerland excludes VAT when calculating the value of contracts.

**CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO
ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT**

Replies by Estonia

The following communication, dated 9 January 2001, has been received from the Permanent Mission of Estonia with the request that it be circulated to Parties.

I. LEGAL FRAMEWORK

1. *Is there a single central law on procurement? If so, please specify?*

The present Public Procurement Act serves as a single central law on procurement.

2. *What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.*

Current legal acts on government procurement in the Republic of Estonia are as follows:

1. Public Procurement Act (RT I 2000, 57, 374);
2. Regulation of the Government "Establishment of deadline for submitting bids for public procurements" (RT I 1998, 60, 958);
3. Regulation of the Government "Organization of bidding procedures for authorization of public procurements" (RT I 1998, 60, 957);
4. Government Order "Public procurement of information technology" (RT I 1997, 11, 131);
5. Regulation of the Minister of Economic Affairs "Approval of procedure and forms of invitations to tender for public procurement" (RT I 1998, 199-201, 804);
6. Regulation of Minister of Economic Affairs "Approval of the form and submission procedure of declaration for public procurement" (RT I 1998, 199-201, 805);
7. Decree of Minister of Economic Affairs "Approval of the statute of arbitration court" (RTL 1997, 40, 212);

8. Decree of Minister of Economic Affairs "Approval of the list of arbiters" (as of 6 August 1999);
9. Regulation of the Government "Public Procurement of Construction Design and Construction Works" (RT I 1997, 58, 982);
10. Competition Act (RT I 1998, 30, 410);
11. *Riigi Teataja* Act (RT I 1999, 10, 155; 1999, 57, 594);
12. Code of Administrative Court Procedure (RT I 1999, 31, 425; 1999, 96, 846).

3. *To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.*

In the case of conflicting provisions of a domestic law and an international agreement ratified by Estonia's Parliament, according to Article 123 of the Constitution of the Republic of Estonia, the provisions of the international agreement have supremacy over the domestic law provisions.

II. SCOPE AND COVERAGE

4. *Please summarize the organization of the government in your country at each level.*

The Government of Estonia represents a type of a government of a unitary state and it has the administrative authority all over the territory of the state in the framework of the existing law. There are also local municipalities, which have authority to organize local life in local issues on their respective territories according to the existing law. The right to conclude international agreements as well as the responsibility for their fulfilment rests solely with the Government of the Republic of Estonia.

5. *Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.*

§5. Contracting authority

(1) For the purposes of this Act, a contracting authority is:

- 1) a state agency, a profit-making state agency, a city or local government, or a local government agency;
- 2) a legal person in public law or a body of a legal person in public law;
- 3) a legal person in private law which is not a company and all the founders or members of which are jointly or separately the state, a local government and/or a legal person in public law;
- 4) a legal person in private law which is not a company and which, to the extent of more than 50 per cent, is financed or more than one-half of the members of the supervisory board or management board of which are appointed jointly or separately by the state, a local government and/or a legal person in public law;

- 5) an undertaking if it has received a construction work concession from a person specified in clauses 1)–4) of this subsection and enters into procurement contracts for construction work on the basis of such concession or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately finance the activities of the undertaking to the extent of more than 50 per cent, whereas holdings in the company are not deemed to be financing;
- 6) an undertaking if the state or a local government has granted a special or exclusive right to the undertaking pursuant to the Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 21, 232) and if the purchasing of things or contracting for services or construction work is necessary for the exercise of the special or exclusive right, or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately hold a majority of votes or more than 50 per cent of the shares in the undertaking directly or through other persons and if the area of activity of the undertaking is either the creation or operation of permanent networks with the intention to provide services relating to the production, transportation, transmission or distribution of water, gas, electricity or thermal energy to the public, or the use of a geographic area in order to prospect for or extract fuels or enable air or water transport undertakings to use an airport, port or other terminal structure, or the operation of networks enabling the public to use services relating to railway, tramway, trolleybus or bus transport, automatic systems or cable distribution, or the creation or operation of public telecommunications networks for ensuring one or more telecommunication services.

(2) Production, transportation, transmission or distribution of water, gas, electricity or thermal energy by an undertaking to networks servicing the public is not deemed to be an activity specified in clause (1) 6) of this section if consumption of water or electricity is necessary for activities other than those specified in clause (1) 6) of this section, or if the supply of the public network depends solely on consumption by the undertaking and does not exceed 30 per cent of the average overall production of water or electricity by the undertaking during the last three years, or if production of gas or thermal energy by the undertaking results inevitably from activities other than those specified in clause (1) 6) of this section, or if the public network is supplied with a surplus of gas or thermal energy for the purposes of the economic use thereof and such surplus does not exceed 20 per cent of the average turnover of the undertaking during the last three years.

The organization of the Government of the Republic of Estonia is regulated by the Government of the Republic Act.

There are 12 ministries in Estonia, the State Chancellery and 15 county governments, as well as executive agencies and inspectorates, and their regional offices with the authority to exercise executive power.

The Republic of Estonia has the following ministries:

- (1) Ministry of Education;
- (2) Ministry of Justice;
- (3) Ministry of Defence;
- (4) Ministry of the Environment;
- (5) Ministry of Culture;
- (6) Ministry of Economic Affairs;
- (7) Ministry of Agriculture;
- (8) Ministry of Finance;
- (9) Ministry of Internal Affairs;
- (10) Ministry of Social Affairs;

- (11) Ministry of Transport and Communications;
- (12) Ministry of Foreign Affairs.

6. *What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?*

At the sub-central level, the local municipalities procure goods and services.

7. *Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type of entities) owned and controlled by the government that engage in procurement? Specify.*

Any entities at the sub-central level of government would not be autonomous from the Government of the Republic of Estonia in implementation by them of any international agreements. The Agreement on Government Procurement has to be ratified by the *Riigikogu* before it becomes a part of Estonia's law.

8. *Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central level of government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will you government ensure the implementation of the Agreement by such entities below the central/federal government level?*

As for the purpose of government procurement, Estonia does not operate any lists of such entities. Instead, the issue is regulated through the notion of government procurement in Estonia's law. In any particular case, it will follow the rules set out in the Public Procurement Act.

9. *Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defense or security reasons? Please provide details.*

§4. Exceptions

(1) A contracting authority is not required to apply the procedure provided for in this Act to the following:

- 1) public procurements in the case of which adherence to the procedure provided for in this Act results in the disclosure of a state secret;
- 2) contracting for water, electricity, gas, heat energy, cable distribution and telecommunications services, if such services can be provided by only one person;
- 3) purchasing of weapons, ammunition, battle equipment and training equipment related thereto, and contracting for the relating services;
- 4) contracting for arbitration or conciliation services;
- 5) contracting for financial services relating to the issue, sale, purchasing or assignment of securities or other financial documents, or contracting for services provided by the Bank of Estonia; similarly, the Bank of Estonia is not required to apply the procedure provided for in this Act to transactions the objective of which is the issue of currency, operations with the reserves of precious metals or monetary reserves administered by

the Bank of Estonia, carried out in the performance of the lawful functions of the Bank of Estonia, or procurement of things or services the main purpose of which is ensuring the security of the Bank or compliance with the confidentiality requirements established with regard to information not subject to disclosure;

- 6) contracting for scientific research unless the results of the research are used by the contracting authority in its own interests and for the purposes of its activities;
- 7) purchasing or commercial leasing of immovables, existing structures or parts thereof as movables, or rights relating thereto;
- 8) contracting for services by broadcasting organizations for the acquisition, development, production or co-production of a programme or a part thereof, and contracting for broadcasting time;
- 9) entry into an employment contract;
- 10) services which a contracting authority specified in clause 5 (1) 6) of this Act contracts from an affiliated undertaking;
- 11) purchasing of things or contracting for construction work or services, if the procurement contract is entered into by the concessionaire and the affiliated undertaking whom the concessionaire has entered in the list annexed to the tender submitted in order to obtain the concession;
- 12) purchasing of museum objects, records, data media, the rights of use thereof, services and things related thereto or information services the main purpose of which is preservation of cultural property or ensuring access to information, and the purchaser or seller of which is a library, museum or archives.

10. *Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.*

Statistics on government procurement will be available by 2002.

III. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. *Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

There are no specific provisions in the legislation, which directly reflect the national treatment and non-discrimination commitments of Article III of the Agreement. However, the Public Procurement Act does not contain any provisions that limit the rights of the foreign tenderers in comparison to the domestic tenderers.

The above statement is corroborated by the principle provided for in §6 of the Public Procurement Act.

§6. Equal treatment of persons

A contracting authority shall treat all persons participating in a public procurement tendering procedure (hereinafter tenderers) equally.

12. *Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.*

There are no provisions in the legislation according the domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies and suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.

13. *Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or services being supplied.*

There are no provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or service being supplied.

14. *Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.*

There are no provisions granting more favourable treatment to any sectors of economy, regions or specific categories of suppliers or supplies.

15. *Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.*

There are no provisions requiring or allowing the use of offsets, such as domestic content, licensing of technology, investment, counter trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.

IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. *Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.*

§54. Open tendering procedure

(1) Contracting authorities shall use open tendering procedures. The use of other tendering procedures is permitted only in the cases provided for in this Act.

(2) A contracting authority shall invite all interested persons to participate in an open tendering procedure by publishing an invitation to tender.

(3) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of invitation-to-tender documents and the tenderer's need to contact the contracting authority in order to access the supporting documents or the construction site.

(4) A contracting authority shall issue invitation-to-tender documents to persons interested in participating in an open tendering procedure during the period between publication of the invitation to tender and the first due date for submission of tenders, within three working days after receipt of the corresponding application.

§55. Restricted tendering procedure

(1) Contracting authorities may use restricted tendering procedures instead of an open tendering procedure.

(2) In a restricted tendering procedure, the contracting authority shall select qualified tenderers on the basis of the financial status and technical capacity of the applicants, and submit invitation-to-tender documents simultaneously to all qualified tenderers.

(3) A contracting authority may predetermine the number of tenderers participating in a restricted tendering procedure on the condition that:

- 1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than five and the maximum not more than 20;
- 2) the number of tenderers is determined on the basis of the nature of the things to be purchased or construction work or services to be contracted for;
- 3) the number of tenderers participating in the tendering procedure is determined in the invitation to tender;
- 4) the number of tenderers participating in the tendering procedure is sufficient for ensuring competition.

(4) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of invitation-to-tender documents and the tenderers' need to access the supporting documents or the construction site.

§56. Negotiated tendering procedure with public notice

(1) A contracting authority may use a negotiated tendering procedure with public notice if:

- 1) all tenders were rejected in an open tendering procedure or restricted tendering procedure on the grounds provided for in subsection 43 (4) or 44 (1) of this Act or if such tendering procedure was terminated pursuant to clause 8 4) or 5) of this Act and the initial terms and conditions of the public procurement were not substantially altered;
- 2) due to the nature of the public procurement or the possible risks involved, it is not possible to determine the estimated value of the public procurement in advance;
- 3) due to the nature of the services to be contracted, especially services concerning intellectual property and insurance or banking and investment services, it is not possible to determine the specific terms and conditions of the public procurement with sufficient accuracy in order to find a successful tender in an open tendering procedure or restricted tendering procedure;

- 4) the things to be purchased or services to be contracted shall be used purely for purposes of scientific research, experimental study or development;
- 5) the object of the public procurement is a construction work concession.

(2) In a negotiated tendering procedure with public notice, the contracting authority shall select qualified tenderers on the basis of the financial status and technical capacity of the applicants, and submit invitation-to-tender documents simultaneously to all qualified tenderers.

(3) A contracting authority may predetermine the number of tenderers participating in a negotiated tendering procedure with public notice on the condition that:

- 1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than three;
- 2) the number of tenderers participating in the tendering procedure is sufficient for ensuring competition.

§57. Negotiated tendering procedure without public notice

(1) Contracting authorities may use restricted tendering procedures without public notice if:

- 1) rapid completion of the public procurement is necessary due to unforeseeable events in order to save the life or health of a person or property of substantial value or prevent damaging human life or health or property of substantial value or spread of environmental damage, or it is necessary due to national defence reasons, and the use of other tendering procedures is not possible due to time constraints;
- 2) additional things the value of which equals or exceeds an international value threshold are purchased from the initial tenderer in order to either partially replace or supplement the things purchased previously and a change of tenderer would entail the purchasing of things which are technically incompatible with the things purchased earlier or the use of which would cause disproportionate additional costs;
- 3) additional things the value of which is lower than an international value threshold are purchased from the initial tenderer in order to either partially replace or supplement the things purchased previously and a change of tenderer would entail the purchasing of things which are technically incompatible with the things purchased earlier or the use of which would cause disproportionate additional costs, whereas such additional things may be purchased during three years after the end of the initial tendering procedure;
- 4) the construction work or services to be additionally contracted were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional procurement contract is entered into with the same tenderer and due to technical or financial reasons such additional construction work or services cannot be separated from the initial procurement without causing disproportionate costs to the parties to the procurement contract and the additional construction work or services are directly necessary in the later stages of performing the procurement contract and the total value of the contracts for additional construction work or services equals or exceeds an international value threshold and does not exceed 50 per cent of the total value of the initial public procurement;

- 5) the construction work or services to be additionally contracted were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional procurement contract is entered into with the same tenderer and due to technical or financial reasons such additional construction work or services cannot be separated from the initial procurement without causing disproportionate costs to the parties to the procurement contract and the additional construction work or services are directly necessary in the later stages of performing the procurement contract and the total value of the contracts for additional construction work or services is lower than an international value threshold and does not exceed 20 per cent of the total value of the initial public procurement;
 - 6) in the absence of a suitable alternative or substitute, things can be purchased or services or construction work contracted for only from one particular tenderer due to artistic reasons or reasons connected with the protection of exclusive rights like patents or copyrights or, in the absence of competition, due to technical reasons;
 - 7) new construction work is contracted for which consists in repeating similar construction work performed on the basis of a procurement contract entered into by the same contracting parties as a result of an open tendering procedure conducted earlier, on the condition that such construction work complies with the initial project on the basis of which the procurement contract was entered into;
 - 8) things are purchased or services are contracted for under especially favourable conditions if such conditions are available only for a very limited period of time and if such conditions allow for purchasing of things or contracting for construction work for a price which is substantially lower than the usual market price;
 - 9) things are purchased on the commodity exchange;
 - 10) the procurement contract is entered into with the winner of a competition for ideas conducted pursuant to the provisions concerning open tendering procedures provided for in this Act;
 - 11) no suitable tenders were submitted in an opening tendering procedure, restricted tendering procedure or negotiated tendering procedure with public notice, on the condition that the initial tendering conditions have not been substantially altered;
 - 12) things are purchased or services contracted for only for conducting investigations or experiments or for scientific or development purposes and not in order to receive benefits therefrom, or for covering the corresponding expenses, on the condition that such purchasing of things or contracting for services does not prejudice competition in the conclusion of subsequent contracts for similar purposes;
 - 13) the estimated value of the public procurement is up to EEK 200,000 in the case of purchasing of things or contracting for services or up to one million kroons in the case of contracting for construction work.
- (2) In a negotiated tendering procedure without public notice, the contracting authority may negotiate with as many tenderers as the contracting authority considers necessary.
- (3) In a negotiated tendering procedure without public notice, the contracting authority shall send invitations to tender or invitation-to-tender documents simultaneously to all selected tenderers.

(4) In a negotiated tendering procedure without public notice, the contracting authority shall send a notice concerning the negotiated tendering procedure without public notice to the register and the notice shall set out at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if a registry code exists;
- 2) the subject of the public procurement according to the standard classification of public procurements, and the characteristics of the public procurement;
- 3) the name, position and details of the person responsible for the public procurement;
- 4) the estimated value of the public procurement;
- 5) the due date for the completion of the public procurement;
- 6) the names, addresses and other details of the tenderers participating in the negotiated tendering procedure without public notice, and the registry codes thereof if the registry codes exist.

(5) The formal requirements for notices concerning negotiated tendering procedures without public notice and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§58. Special rules

(1) Contracting authorities specified in clause 5 (1) 6) of this Act may use a negotiated tendering procedure with public notice instead of an open tendering procedure or restricted tendering procedure.

(2) In the case of procurement contracts the estimated value of which equals or exceeds an international value threshold, the contracting authorities specified in clause 5 (1) 6) of this Act may use a negotiated tendering procedure without public notice if:

- 1) the contracting authority selects the tenderers from among tenderers qualified pursuant to the qualification system provided for in §37 of this Act; and
- 2) the contracting authority has published a prior notice for purchasing of things or contracting for construction work or services and has indicated in the notice that in the case of a restricted tendering procedure or negotiated tendering procedure with public notice the procurement contract will be entered into without the publication of a further invitation to tender and persons are invited to submit written notices concerning their interest towards participation in the tendering procedure and no applications for participation in the tendering procedure have been submitted.

§59. Competition for ideas

(1) Contracting authorities shall organize competitions for ideas pursuant to the provisions concerning open tendering procedure or restricted tendering procedure provided for in this Act.

(2) Legal persons in private law, legal persons in public law and natural persons may participate in competitions for ideas.

- (3) A notice announcing a competition for ideas shall contain at least the following information:
- 1) the name, address and other details of the contracting authority, and the registry code thereof if a registry code exists;
 - 2) the names of the members of the committee;
 - 3) the subject and characteristics of the competition for ideas;
 - 4) the requirements for participants in the competition for ideas;
 - 5) the awards of the competition for ideas;
 - 6) the requirements for the projects;
 - 7) the evaluation criteria for the projects;
 - 8) the place, due date and time for the submission of projects.
- (4) A contracting authority may restrict the number of participants in a competition for ideas on the basis of explicit and non-discriminatory criteria. A contracting authority shall determine the number of participants in a competition for ideas pursuant to the requirement of sufficient competition.
- (5) The committee of a competition for ideas shall consist of persons independent of the participants in the competition. If certain professional qualifications are required from participants in a competition for ideas, at least one-third of the members of the committee of the competition must have the same or similar qualifications.
- (6) A contracting authority shall authorize the committee of a competition for ideas to organize the competition and ascertain the winners.
- (7) The committee of a competition for ideas shall be independent in its decisions and opinions. Decisions and opinions concerning anonymous projects shall be made only on the basis of the criteria set out in the notice announcing the competition for ideas.
- (8) The formal requirements for a notice announcing a competition for ideas and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§60. Electronic public procurement

- (1) Contracting authorities have the right to conduct public procurement through the corresponding websites.
- (2) Requirements for the websites specified in subsection (1) of this section and the list of the websites shall be established by the Minister of Economic Affairs.

17. *Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII and selection of suppliers in terms of Article X. Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?*

§12. Removal of tenderer from tender

A contracting authority has the right to remove a tenderer from a tender at any time if it becomes evident that the information submitted about the qualifications of the tenderer is false or inaccurate.

§30. Qualification of tenderers

- (1) Contracting authorities are required to verify the qualifications of the tenderers.
- (2) In the case of an open tendering procedure, the contracting authority shall verify the qualifications of the tenderers before reviewing the contents of the tenders.
- (3) In the case of a restricted tendering procedure or negotiated tendering procedure with public notice, the contracting authority shall verify the qualifications of an applicant before issuing the invitation-to-tender documents to the tenderer. A tenderer who has submitted a tender may be subsequently disqualified only if the contracting authority becomes aware of new circumstances.
- (4) In the case of a negotiated tendering procedure without public notice, the contracting authority shall verify the qualifications of a tenderer before or after submitting the invitation to tender.
- (5) The qualifications of tenderers who submit a joint tender shall be verified separately, whereas:
 - 1) the indicators resulting from adding the corresponding indicators of the tenderers shall comply with the requirements set out in the invitation-to-tender documents;
 - 2) in the case of a joint tender submitted upon contracting for construction work with the estimated value of more than three million kroons, the corresponding indicators of one tenderer shall, in addition to the provisions of clause 1) of this subsection, comply with at least 40 per cent of the requirements specified in the invitation-to-tender documents.

§31. Verification of qualifications of tenderers

- (1) In order to verify the qualifications of a tenderer, the contracting authority is required to request submission of documents confirming that:
 - 1) the financial status and technical competence of the tenderer comply with the specified requirements;
 - 2) the tenderer is solvent, the tenderer's assets are not sequestered, and no liquidation or bankruptcy proceeding has been initiated with respect to the tenderer;
 - 3) the tenderer has performed all of the tenderer's obligations regarding state and local taxes and compensation for damage caused by pollution;
 - 4) the tenderer has, during the last three years, performed all public procurement contracts as required.

(2) A contracting authority may only require a tenderer to submit information necessary for verifying the qualifications of the tenderer, and shall take into consideration the legitimate interests of the tenderer relating to the protection of the business secrets thereof.

§32. Enrolment of tenderer in commercial or professional register

(1) A contracting authority may require a tenderer to prove that the tenderer is entered in a commercial or professional register according to the laws of the home country of the tenderer, or to submit confirmation that the tenderer has taken a corresponding oath of office.

(2) If a tenderer is required to hold an activity licence or be a member of a corresponding organization in order to perform a public procurement in the home country of the tenderer or in Estonia, the contracting authority may require the tenderer to submit proof concerning such activity licence or membership.

§33. Financial status of tenderer

(1) In order to verify whether the financial status of a tenderer meets the requirements set by the contracting authority, the latter may require submission of one or several of the following documents:

- 1) the balance sheet or an extract from the balance sheet, if publication of the balance sheet is required under the law of the home country of the tenderer;
- 2) data concerning the total turnover of the tenderer during the last three financial years;
- 3) data concerning the turnover of the tenderer during the last three financial years as concerns the object of the public procurement in question;
- 4) data concerning the social tax paid by the tenderer during the last three financial years;
- 5) in the case of contracting for services, confirmation concerning the corresponding professional liability insurance.

(2) If submission of documents specified in subsection (1) of this section is not possible, the contracting authority may require the tenderer to submit other data and documents necessary for assessing the financial status of the tenderer.

(3) If, for good reason, a tenderer is unable to submit the documents required by the contracting authority, the tenderer may prove the financial status thereof by any other documents accepted by the contracting authority.

§34. Technical competence of tenderers

(1) In order to assess the technical competence of a tenderer, the contracting authority shall, depending on the nature, amount and purpose of the things to be purchased or construction work or services to be contracted, require submission of one or several of the documents listed in subsections (2)–(4) of this section.

(2) In the case of purchasing of things, the contracting authority may require a tenderer to submit:

- 1) a list of procurement contracts, if any, performed during the last three years, together with the values, due dates and indication of contracting authorities;

- 2) a description of the technical capacity, measures for ensuring quality, and research and scientific capacity of the tenderer, accompanied, if necessary, by proof;
- 3) information concerning the technicians or technical units whom the tenderer intends to use in the performance of the public procurement contract;
- 4) samples, descriptions or photographs of the things being purchased, whereas the authenticity thereof shall be proved if the contracting authority so requires;
- 5) documents to prove that the things comply with specific regulations or standards.

(3) In the case of contracting for construction work, the contracting authority may require a tenderer to submit:

- 1) proof of the professional qualifications of the tenderer's specialists and persons responsible for performing the construction work;
- 2) a list of construction work, if any, performed during the last three years and data concerning the value, time, site and contracting authorities of the construction work and confirmation that the construction work was performed properly and according to good building practice;
- 3) the tenderer's statement of the tools, equipment and machinery necessary for performing the construction work;
- 4) a statement of the average number of employees of the tenderer during the last three years;
- 5) information concerning the technicians or technical units whom the tenderer intends to use in the performance of the construction work;
- 6) a statement of the measures for ensuring quality, used by the tenderer;
- 7) data concerning the subcontractors which the tenderer intends to use in the performance of the procurement contract.

(4) In the case of contracting for services, the contracting authority may require a tenderer to submit:

- 1) proof of the professional qualifications of the tenderer's specialists and persons responsible for providing the services;
- 2) a list of the main services, if any, provided during the last three years, and documents indicating the value, time of provision and the contracting authorities of the services;
- 3) information concerning the technicians or technical units whom the tenderer intends to use in the provision of the services;
- 4) a statement of the average number of employees of the tenderer during the last three years;
- 5) a statement of the tools, equipment and machinery necessary for the provision of the services;

- 6) a description of the technical capacity, measures for ensuring quality, and research and scientific capacity of the tenderer, accompanied, if necessary, by proof;
- 7) data concerning the subcontractors which the tenderer intends to use in the performance of the procurement contract.

§35. Removal of tenderer from tender

(1) A contracting authority is required to exclude a tenderer from a tender at any time if it becomes evident that the tenderer has submitted false information or falsified documents.

(2) A tenderer is disqualified if:

- 1) the tenderer is bankrupt or undergoing liquidation, the business activities thereof are suspended or it is in any other similar situation arising from the law of the corresponding state;
- 2) bankruptcy proceedings, compulsory liquidation or other similar proceedings arising from the laws of the corresponding state have been initiated with regard to the tenderer;
- 3) the tenderer has not performed the obligations regarding state or local taxes or compensation for damage caused by pollution;
- 4) according to a court judgment which has entered into force, the tenderer has, during the last three years, failed to perform as required a procurement contract entered into with the tenderer as a result of a tendering procedure;
- 5) the tenderer has failed to submit the data or documents required by the contracting authority on the basis of this Act.

(3) In the cases listed in clauses (2) 1)–4) of this section, documents issued by a competent institution are considered as acceptable proof.

(4) If the home country of a tenderer does not issue the relevant documents, they may be replaced by a declaration made by the person concerned before a notary or other such competent official of the home country of the tenderer.

§36. Registration of tenderers

(1) A tenderer whose seat is within a State Party to the European Economic Area Agreement, may, in order to prove the qualifications of the tenderer according to the requirements provided for in clauses 31 (1) 1) and 2) and §32 of this Act, provide the contracting authority with a registration certificate issued by a competent body of the home country of the tenderer concerning the enrolment of the tenderer in the official list of tenderers. A registration certificate shall contain references to the basis for registration and the classification of the tenderer.

(2) A contracting authority may require all tenderers registered in an official list to submit additional confirmation concerning payment of social tax in addition to the registration certificate specified in subsection (1) of this section.

§37. System for qualifying tenderers

- (1) A contracting authority may establish a system for qualifying tenderers, based on objective criteria and the provisions of this Act.
- (2) Contracting authorities who establish a system for qualifying tenderers based on qualification criteria and rules shall ensure that it is possible, at all times, for interested persons to:
 - 1) access the criteria and rules for qualifying tenderers, whereas interested persons shall be notified of amendments to such criteria or rules;
 - 2) apply for qualification.
- (3) A contracting authority may use lists of qualified tenderers compiled by other persons, on the condition that the qualification systems used are in accordance with the requirements of the contracting authority and the provisions of this Act. In such case, the contracting authority shall notify interested persons of the names of the persons who compiled the lists of qualified tenderers.
- (4) A contracting authority shall inform applicants of the decision concerning qualification. If the decision concerning qualification cannot be made within two months, the contracting authority shall inform applicants within two weeks after submission of the applications of the reasons for delay and notify the applicants of the date on which the decision is to be made.
- (5) Tenderers or applicants who were disqualified shall be informed of the corresponding decision and grounds for disqualification. Grounds for disqualification shall be based on criteria for qualifying tenderers, specified in subsection (2) of this section.
- (6) A contracting authority shall not require tenderers to submit documents or certificates which duplicate documents already submitted to such contracting authority.
- (7) Written records shall be kept of qualified tenderers. The corresponding list may be subdivided into categories according to the object of public procurement to which the qualification applies.
- (8) Contracting authorities may disqualify of a tenderer only on grounds arising from criteria for qualification specified in subsection (2) of this section. A tenderer shall be notified of disqualification and the reason therefor shall be indicated.
- (9) A contracting authority shall submit a notice concerning establishment of a system for qualifying tenderers to the register and the notice shall contain at least the following information:
 - 1) the name, address and other details of the contracting authority, and the registry code thereof if a registry code exists;
 - 2) the time of establishing the criteria and rules for qualifying tenderers;
 - 3) the place and time for accessing the criteria and rules for qualifying tenderers.
- (10) The formal requirements for the notice specified in subsection (9) of this section and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

18. *In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?*

There are no provisions regulating the use of permanent lists of suppliers or the selection of suppliers on a contract-by-contract basis in the current Public Procurement Act.

19. *What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?*

§55. Restricted tendering procedure

(1) Contracting authorities may use restricted tendering procedures instead of an open tendering procedure.

(2) In a restricted tendering procedure, the contracting authority shall select qualified tenderers on the basis of the financial status and technical capacity of the applicants, and submit invitation-to-tender documents simultaneously to all qualified tenderers.

(3) A contracting authority may predetermine the number of tenderers participating in a restricted tendering procedure on the condition that:

- 1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than five and the maximum not more than 20;
- 2) the number of tenderers is determined on the basis of the nature of the things to be purchased or construction work or services to be contracted for;
- 3) the number of tenderers participating in the tendering procedure is determined in the invitation to tender;
- 4) the number of tenderers participating in the tendering procedure is sufficient for ensuring competition.

(4) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of invitation-to-tender documents and the tenderers' need to access the supporting documents or the construction site.

20. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

§9. Confidentiality

(1) A contracting authority shall not disclose information received from tenderers or from persons applying for participation in a tendering procedure (hereinafter applicant) concerning their business activities, nor the contents of the tenders or negotiations unless otherwise provided by this Act.

§51. Negotiations

(1) In negotiated tendering procedures with public notice or negotiated tendering procedures without public notice, the contracting authority has the right to decide whether and to which extent to negotiate with the tenderers.

(2) Negotiations are prohibited in open tendering procedures and restricted tendering procedures. Contracting authorities shall not forward information received in negotiations to other tenderers.

21. Article XI sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.

§40. Term for submission of tenders and applications for participation in tendering procedure

(1) In open tendering procedures, the period of time between the publication of an invitation to tender and the due date for submission of tenders shall be, in the case of procurement contracts the value of which:

- 1) is lower than an international value threshold, not less than 30 days;
- 2) equals or exceeds an international value threshold, generally not less than 52 days or not less than 36 days, whereas due to time constraints or in simpler cases not less than 22 days, if the contracting authority has, in the prior notice, indicated all necessary information concerning the open tendering procedure which is known at the time, on the condition that the prior notice was published at least 52 days but not more than 12 months before publication of the invitation to tender.

(2) In restricted tendering procedures, the period of time between the publication of the invitation to tender and the due date for submission of applications for participation in the tendering procedure shall be, in the case of procurement contracts the value of which:

- 1) is lower than an international value threshold, not less than 30 days;
- 2) equals or exceeds an international value threshold, generally not less than 37 days or not less than 15 days in cases where time constraints render compliance with the requirement of 37 days impossible.

(3) In negotiated tendering procedures with public notice, the period of time between the publication of the invitation to tender and the due date for submission of applications for participation in the tendering procedure shall be, in the case of procurement contracts the estimated value of which:

- 1) is lower than an international value threshold, not less than 30 days;
- 2) equals or exceeds an international value threshold, generally not less than 37 days or not less than 15 days in cases where time constraints render compliance with the requirement of 37 days impossible, or not less than 52 days if the procurement contract to be negotiated is a construction work concession contract.

(4) In restricted tendering procedures, the period of time between the issue of the invitation-to-tender documents and the due date for submission of tenders shall be, in the case of procurement contracts the estimated value of which:

- 1) is lower than an international value threshold, not less than 30 days;
- 2) equals or exceeds an international value threshold, not less than 40 days, or not less than 26 days if the contracting authority has, in the prior notice, indicated all information necessary for the restricted tendering procedure which is known at the time, on the condition that the prior notice was published at least 52 days but not more than 12 months before the notice of the restricted tendering procedure, or not less than 10 days in cases where time constraints render compliance with the requirement of 40 or 26 days impossible, or not less than 24 days in the case of contracting authorities specified in clause 5 (1) 6) of this Act if the contracting authority does not reach an agreement with the selected tenderers concerning a shorter time limit, on the condition that all tenderers are afforded the same amount of time for the preparation and submission of tenders.

(5) A contracting authority may extend the term for submission of tenders or applications for participation in a tendering procedure and change the date of opening the tenders. A contracting authority shall send a notice concerning extension of a term or a change in the date of opening of tenders to all persons who received an invitation to tender or invitation-to-tender documents.

22. *Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?*

§39. Submission, amendment and withdrawal of tenders

- (1) A tender shall comply with the requirements set out in the invitation-to-tender documents and shall be in no way misleading.
- (2) A tender shall be submitted in writing and in a sealed envelope.
- (3) The contracting authority shall provide a tenderer with a certificate concerning receipt of a tender and the date and time of receipt of the tender shall be indicated in the certificate.
- (4) Tenderers may submit a joint tender if such opportunity is prescribed in the invitation-to-tender documents.
- (5) A tenderer may amend a tender by submitting a new tender or withdraw a tender, whereas the corresponding written notice shall be submitted to the contracting authority before the due date for submission of tenders.

§42. Opening of tenders

- (1) Tenders shall be opened at the place and time specified in the invitation-to-tender documents or, in the case of extension of the tender validity period, at the time specified by the contracting authority.
- (2) All tenderers have the right to participate in the opening of tenders personally or through their authorized representatives.
- (3) The names and addresses of the tenderers and the tender prices shall be made known at the opening of the tenders. A corresponding report on the opening of the tenders shall be prepared.

(4) A report on the opening of tenders shall be sent to the tenderers within three working days after the opening of the tenders.

§43. Declaration of suitability of tenders and rejection of tenders

(1) Contracting authorities shall verify the compliance of submitted tenders with the requirements set out in the invitation-to-tender documents.

(2) A tender shall be declared suitable if it complies with all the requirements set out in the invitation-to-tender documents.

(3) A tender may be declared suitable if it contains no substantive deviations from the conditions set out in the invitation-to-tender documents.

(4) A contracting authority shall reject a tender if:

- 1) the tenderer is not qualified pursuant to the provisions of this Act;
- 2) the tender does not comply with the requirements set out in the invitation-to-tender documents.

(5) A notice concerning declaration of a tender as suitable or rejection of a tender, and the reasons therefor shall be sent to the tenderer in writing within three working days after the making of the corresponding decision.

§44. Rejection of all tenders

(1) A contracting authority may reject all tenders before entry into a procurement contract if the invitation-to-tender documents prescribe such possibility and the grounds therefor.

(2) A contracting authority shall immediately send a notice concerning rejection of all tenders to all tenderers to whom invitation-to-tender documents were issued.

(3) At the request of a tenderer, the contracting authority shall notify the tenderer of the grounds for rejection of all tenders.

(4) Upon rejection of all tenders, the contracting authority shall refund the fee charged from tenderers for the invitation-to-tender documents.

§45. Comparison and evaluation of tenders

(1) A contracting authority shall compare and evaluate all tenders which have not been rejected. In the comparison and evaluation of tenders, only the criteria set out in the invitation-to-tender documents shall be considered.

(2) The successful tender is a tender which, in terms of the evaluation criteria set out in the invitation-to-tender documents, is the most advantageous among the tenders declared suitable, whereas the success of the tender shall be objectively justifiable.

(3) A contracting authority which has divided a public procurement into parts shall evaluate tenders according to the parts and as a whole if at least one of the tenders declared suitable concerns the entire object of the public procurement. The contracting authority shall declare successful the most advantageous tender for each part if declaring one tender as successful for all of the parts is not in compliance with the conditions specified in subsection (1) of this section.

(4) Persons who are or have been in a relationship with a tenderer which may give rise to justified doubts as to the persons' objectivity shall not participate in evaluation of tenders.

§46. Acceptance of tenders

(1) A successful tender is deemed to be accepted after fourteen days as of declaration of the tender as successful.

(2) A written notice concerning declaration of a tender as successful shall be sent to all tenderers within three working days after the corresponding decision is made. The notice sent to the tenderers shall set out the name of the tenderer who submitted the successful tender and an explanation concerning the advantages of the successful tender over the other tenders.

23. *Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.*

§26. Technical specification

(1) A technical specification is a list of characteristics or a description of the process affecting the characteristics of things purchased or construction work or services contracted for by way of public procurement. In the case of contracting for construction work, the technical specification consists in building design documentation containing corresponding drawings, explanations, qualification requirements and other necessary documents to the extent permitting contracting for construction work.

(2) A technical specification shall not create advantages to certain tenderers over their competitors and give rise to barriers to international trade.

(3) In the preparation of a technical specification, the contracting authority shall not use the advice of persons who may have business interests with regard to the public procurement.

§27. Preparation of technical specification

(1) A technical specification may be prepared on the basis of a technical regulation or standard.

(2) Things of a specific make or obtainable from a specific source or through a specific process, which would favour or eliminate the participation of certain tenderers may be listed in a technical specification only if such specification is unavoidable due to the special character of the object of the public procurement.

(3) Information concerning specific origins or methods of production, types, trade marks or patents shall be listed or referred to in a technical specification only if such list or reference is accompanied by the words "or equivalent" or if the characteristics of the object of the public procurement are otherwise not sufficiently precise and intelligible to all parties.

§28. Standards

(1) A technical specification may refer to international standards if these have not been introduced as Estonian standards.

(2) Contracting authorities may derogate from the requirements provided for in subsection 27 (1) of this Act and subsection (1) of this section if:

- 1) the object of the public procurement does not conform to the specified standards;
- 2) the use of such standards would oblige the contracting authority to purchase things which are not compatible with the things already in use or would entail disproportionate additional costs or technical difficulties;
- 3) such standards are not suitable for the application in question and do not take into consideration the technical innovations which have occurred after the introduction of the standards;
- 4) the object of the public procurement is of a genuinely innovative nature and therefore the application of existing standards is not possible;
- 5) the technical regulations or standards contradict each other.

(3) On the basis of a corresponding request, a contracting authority shall provide tenderers with the opportunity to access the technical regulations or standards which referred to in the invitation-to-tender documents or which the contracting authority intends to use for the public procurement referred to in the prior notice. If a technical specification is based on documents accessible by the tenderers, a reference to such documents is sufficient.

24. Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.

§24. Invitation-to-tender documents

- (1) Invitation-to-tender documents shall contain at least the following information:
 - 3) the evaluation criteria which will be used for selecting successful tenders and which may be either the lowest price only or the economically most advantageous tender which, depending on the specific object of the public procurement, may be determined on the basis of different criteria allowing for objective evaluation, and of their relative proportion in per cents or value points;

§45. Comparison and evaluation of tenders

(1) A contracting authority shall compare and evaluate all tenders which have not been rejected. In the comparison and evaluation of tenders, only the criteria set out in the invitation-to-tender documents shall be considered.

(2) The successful tender is a tender which, in terms of the evaluation criteria set out in the invitation-to-tender documents, is the most advantageous among the tenders declared suitable, whereas the success of the tender shall be objectively justifiable.

V. INFORMATION

25. *Article XIX:1 of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.*

The official bulletin containing the publication of all legislation of the Republic of Estonia is the *Riigi Teataja*.

The Riigi Teataja Act

§1. Scope of application of Act

This Act provides the procedure for publication in the *Riigi Teataja* of legislation and international agreements of the Republic of Estonia, reasoned decisions of the Supreme Court of the Republic of Estonia, notices and other documents, and for access thereto.

The legislation referred to in questions 1 and 2 can be found on the website of Estonian Legal Translation Centre, available at: www.legaltext.ee. *Mis Sa arvad, kas võiks selle lause sisse panna??? Muidu ei vasta me ju üldse esitatud küsimusele?*

26. *Article IX:1 of the Agreement foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

The official source of information on government procurement is the *Riigihangete Bülletään*, issued by the Public Procurement Office, available at www.rha.gov.ee.

27. *Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions in your legislation.*

§18. Prior notices

(1) Concerning a public procurement the estimated value of which in the case of purchasing of things or contracting for services equals or exceeds 750,000 euros or, in the case of contracting for construction work, five million euros and which the contracting authority intends to organize during the forthcoming 12 months, the following shall be communicated by the contracting authority by means of a prior notice submitted after the beginning of the financial year:

- 1) in the case of purchasing of things, the estimated value of each public procurement, broken down by the types of the things;
- 2) in the case of contracting for services, the estimated value of each public procurement, broken down by the types of the services;
- 3) in the case of contracting for construction work, the estimated value and essential characteristics of each public procurement.

(2) A contracting authority shall submit a prior notice to the register in Estonian and shall add a translation of the notice into English.

(3) A contracting authority shall not publish a prior notice or inform the tenderers of the content thereof before the notice is entered in the register, whereas the prior notice shall contain the information provided for in clauses 19 (1) 1)–11). In the case of amending a prior notice, the subject and characteristics of the public procurement according to the standard classification of public procurements shall not be changed.

(4) The formal requirements for prior notices and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§19. Notice of invitation to tender

(1) In the case of a public procurement by an open tendering procedure, restricted tendering procedure or negotiated tendering procedure with public notice, the contracting authority shall submit an invitation to tender to the register for publication and the notice shall contain at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if a registry code exists;
- 2) the subject of the public procurement according to the standard classification of public procurements, and the characteristics of the public procurement;
- 3) the type of the tendering procedure;
- 4) the name, official title and details of the person responsible for the public procurement;
- 5) the due date for the completion of the public procurement;
- 6) the place and conditions of issue of invitation-to-tender documents;
- 7) the minimum qualification requirements for the economic and technical conditions of the tenderers;
- 8) whether a tender security is required and the amount thereof;
- 9) the amount to be paid for the invitation-to-tender documents;
- 10) in the case of an open tendering procedure, the place, due date and time for the submission of tenders;
- 11) in the case of a restricted tendering procedure or a negotiated tendering procedure with public notice, the place, due date and time for submission of written applications for participation in the tendering procedure.

(2) An invitation to tender shall be published in Estonian whereas in the case of a public procurement the value of which equals or exceeds an international value threshold, the contracting authority shall submit a translation of the invitation into English, in other cases a summary of the invitation in English may be annexed.

(3) A summary of an invitation to tender in English shall contain at least the information provided for in clauses (1) 1), 2) and 10) or 11) of this section.

(4) In the case of an open tendering procedure, restricted tendering procedure or negotiated tendering procedure with public notice, the contracting authority shall not publish the invitation to tender or inform the tenderers of the content thereof before the invitation has been entered in the register. If an invitation to tender is amended, the subject and characteristics of the public procurement according to the standard classification of public procurements, the minimum qualification requirements for the economic and technical conditions of the tenderers, and the requirement for tender security and the amount thereof shall not be changed.

(5) The standard classification of public procurements shall be approved by the Minister of Economic Affairs.

(6) The formal requirements for invitations to tender and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§24. Invitation-to-tender documents

(1) Invitation-to-tender documents shall contain at least the following information:

- 1) the due date for the completion of the public procurement;
- 2) the technical specification;
- 3) the evaluation criteria which will be used for selecting successful tenders and which may be either the lowest price only or the economically most advantageous tender which, depending on the specific object of the public procurement, may be determined on the basis of different criteria allowing for objective evaluation, and of their relative proportion in per cents or value points;
- 4) the terms and conditions of the procurement contract to the extent that the contracting authority is able to submit at the moment;
- 5) the conditions of payment;
- 6) the amount of tender security if the contracting authority demands submission of tender security;
- 7) the language or languages in which the tenders are to be prepared, whereas, if the tenders are to be prepared in another language besides Estonian, at least one of the languages in addition to the Estonian shall be an official working language of the World Trade Organization;
- 8) the currency unit or units in which the value of the tenders is to be submitted;
- 9) the address to which the tenders are to be sent;
- 10) instructions for the marking of the envelope in which the tenders are to be submitted;
- 11) the due date and time for the submission of tenders;

- 12) the address from which additional information concerning the public procurement and the content of the invitation-to-tender documents can be obtained, and other details;
- 13) the tender validity period;
- 14) the place, date and time of opening the tenders;
- 15) the conditions and requirements for the qualification of the tenderers, a notice concerning the information and documents which are to be annexed to a tender in order to allow evaluation of the qualifications of the tenderers, and the earliest possible date of issue of the required documents;
- 16) if the contracting authority prescribes the possibility of rejecting all tenders, a notice concerning the conditions under which the contracting authority reserves the right to do so;
- 17) the possibility of and the procedure for submitting a joint tender if the contracting authority prescribes such possibility.

(2) In invitation-to-tender documents, the contracting authority may require the tenderers to indicate in their tenders the share of the contract which they intend to perform themselves and the share of the contract which they intend to subcontract to third parties, whereas subcontracts shall not reduce the liability of the tenderer.

(3) A contracting authority may charge a fee for invitation-to-tender documents if the amount of the fee has been indicated in the invitation to tender. The amount of the fee shall not exceed the expenditure for the photocopying and delivery of the invitation-to-tender documents.

(4) If an invitation to tender prescribes a fee for the invitation-to-tender documents, the contracting authority shall issue the invitation-to-tender documents after payment of the fee indicated in the invitation.

(5) A contracting authority shall enable tenderers to access invitation-to-tender documents at the contracting authority without charge.

(6) In the case of a negotiated tendering procedure with public notice or negotiated tendering procedure without public notice, the contracting authority shall submit the information specified subsection (1) of this section in the invitation-to-tender documents to the extent it considers necessary.

§25. Amendments to invitation-to-tender documents

A contracting authority may make amendments to invitation-to-tender documents on the condition that such amendments be sent during one and the same day of the first half of the term for submission of tenders to all tenderers who received the invitation-to-tender documents. If a protest or appeal is filed, the contracting authority may extend the term for submission of tenders.

28. *Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

There are no provisions in the Public Procurement Act on the lists of qualified suppliers since the Public Procurement Act does not foresee maintaining of any such lists by the entities subject to the government procurement procedures.

29. *Article XVIII:1 of the Agreement foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.*

The official source of information on government procurement is the *Riigihangete Bülletään*, issued by the Public Procurement Office, available at www.rha.gov.ee.

30. *Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.*

The Public Procurement Act sets the information requirements for notices of contract awards as follows.

§20. Declarations

(1) Within 10 days after termination of a public procurement tendering procedure, the contracting authority shall submit a public procurement declaration (hereinafter declaration) to the register and a copy of the procurement contract to the Office unless the submission thereof is contrary to law.

(2) Within 10 days after deciding the winner of a competition for ideas, the contracting authority shall submit a corresponding declaration to the register.

(3) Declarations submitted by contracting authorities specified in clause 5 (1) 6) of this Act shall not contain information the disclosure of which may be contrary to the public interest, damage the lawful business interests of other persons or free competition.

(4) A declaration shall set out:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if a registry code exists;
- 2) the subject of the public procurement according to the standard classification of public procurements, and the characteristics of the public procurement;
- 3) the type of the tendering procedure;
- 4) the name, official title and details of the person responsible for the public procurement;
- 5) the names, addresses and other details of the tenderers who submitted tenders, and the registry codes thereof if the registry codes exist;
- 6) the names, addresses and other details of the qualified tenderers, and the registry codes thereof if the registry codes exist;

- 7) the date of entry into, value and other essential conditions of the procurement contract, including the names, addresses and registry codes of subcontractors if these exist;
 - 8) the prices of the tenders submitted by qualified tenderers or, in the case of an economically most advantageous tender, the percentage or value points attained by all qualified tenderers according to the evaluation criteria;
 - 9) information concerning appeals filed with a court in the course of the tendering procedure;
 - 10) in the case of cancellation of the tendering procedure or rejection of all tenders, the reasons why and the basis on which this was done;
 - 11) if an open tendering procedure or restricted tendering procedure is not used, the grounds for the selection of the tendering procedure.
- (5) A declaration of a competition for ideas shall set out:
- 1) the name, address and other details of the contracting authority, and the registry code thereof if a registry code exists;
 - 2) the subject and characteristics of the competition for ideas;
 - 3) the names and addresses of the participants;
 - 4) the name and address of the person who submitted the award-winning project;
 - 5) information concerning the qualifications required of the participants or confirming the lack thereof;
 - 6) the total value of the awards of the competition for ideas;
 - 7) a summary of the evaluation and comparison of the projects.
- (6) The formal requirements for declarations and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§21. Public procurement report

- (1) Within 10 days after the date of completion of a public procurement, the contracting authority shall prepare a written public procurement report which shall set out:
- 1) the name, address and other details of the contracting authority, and the registry code thereof if a registry code exists;
 - 2) the subject of the public procurement according to the standard classification of public procurements, and the characteristics and total value of the public procurement;
 - 3) amendments to the essential conditions of the procurement contract;
 - 4) complaints filed in the course of performance of the procurement contract.

(2) A public procurement report shall be preserved until the end of the fourth year following the completion of the public procurement.

(3) A contracting authority shall submit a public procurement report to the register and copies of amendments to the procurement contract, including copies of the annexes to the contract, to the Office immediately after preparing the public procurement report.

(4) The formal requirements for public procurement reports and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§22. Register

(1) Information concerning prior notices, notices, invitations to tender, declarations, procurement contracts, public procurement reports and tenderers shall be entered in the register.

(2) The register shall be established and the statutes for the maintenance of the register shall be approved by the Government of the Republic.

(3) The Office is the chief and authorised processor of the register.

(4) The register shall be maintained in the form of a computer database.

(5) The main functions of the register are:

- 1) entry of information concerning prior notices, notices, invitations to tender, declarations, procurement contracts, public procurement reports and tenderers in the register;
- 2) processing of information concerning prior notices, notices, invitations to tender, declarations, procurement contracts, public procurement reports and tenderers entered in the register.

(6) Contracting authorities, except for those specified in clause 5 (1) 1) of this Act, shall pay a state fee for entry of information concerning a prior notice, notice or invitation to tender in the register.

(7) A contracting authority shall be responsible for the correctness of the information submitted by the authority to the register.

§23. Publication of data entered in register

(1) The register shall be public.

(2) Information concerning the following items in the register shall be published on the Internet homepage of the register:

- 1) prior notices;
- 2) notices;
- 3) invitations to tender;
- 4) declarations;

- 5) public procurements reports;
- 6) tenderers.

(3) Information concerning a public procurement shall be publicly available in the register for one year after completion of the public procurement.

31. *Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2, the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.*

§44. Rejection of all tenders

(1) A contracting authority may reject all tenders before entry into a procurement contract if the invitation-to-tender documents prescribe such possibility and the grounds therefor.

(2) A contracting authority shall immediately send a notice concerning rejection of all tenders to all tenderers to whom invitation-to-tender documents were issued.

(3) At the request of a tenderer, the contracting authority shall notify the tenderer of the grounds for rejection of all tenders.

(4) Upon rejection of all tenders, the contracting authority shall refund the fee charged from tenderers for the invitation-to-tender documents.

VI. BID CHALLENGE PROCEDURES

32. *Please provide information on existing challenge procedures.*

§61. Contestation of acts or decisions of contracting authority

A tenderer or a person interested in participating in a tendering procedure who finds that the contracting authority has violated the tenderer's rights or damaged the tenderer's interests by violating the provisions of this Act in the course of the tendering procedure may file a protest against the activities of the contracting authority.

§62. Submission of protests

(1) Protests against the acts or decisions made by a contracting authority in a tendering procedure shall be filed with the Office.

(2) Protests shall be filed within five working days after the date the person filing the protest becomes or should have become aware of the violation of the rights or damage to the interests of the person, but not after the contracting authority has accepted the successful tender.

(3) A protest shall be filed in writing and shall set out:

- 1) the name, address and other details of the person filing the protest;
- 2) the name, address and other details of the contracting authority;

- 3) the content of the act or decision against which the protest is filed and the reasons why the person filing the protest considers this to be a violation of the rights or damage to the interests of the person;
- 4) the clearly expressed request of the person filing the protest;
- 5) a list of documents annexed to the protest.

(4) The person filing a protest shall annex to the protest information at his or her disposal concerning the tendering procedure which is the subject of the protest.

§63. Organization of hearings of protests

(1) The Office has the right to require a contracting authority to submit all documents necessary for hearing a protest.

(2) The contracting authority shall submit the required documents to the Office within two working days after the receipt of the corresponding request from the Office.

(3) Before hearing a protest, the Office has the right to require the contracting authority to submit a written statement concerning the content of the protested act or decision and the contracting authority shall submit the statement to the Office within two working days after the receipt of the corresponding request from the Office.

(4) The Office shall refuse to hear a protest and shall make a corresponding decision if:

- 1) the protest is not filed within the specified term;
- 2) the protest fails to comply with the requirements specified in subsection 62 (3) of this Act;
- 3) the protest is filed against an act or decision of a contracting authority concerning which it is not possible to restore the situation which existed before violation of the provisions of this Act in the tendering procedure;
- 4) a decision specified in subsection 70 (1) or (2) has been made.

(5) If the Office finds that a protest filed does not comply with the requirements provided for in subsection 62 (3) of this Act, it shall return the protest to the person who filed it and set a term of two working days for eliminating the deficiencies. If the person who filed the protest fails to eliminate the deficiencies within the specified term, the Office shall refuse to hear the protest.

§64. Suspension of tendering procedure

(1) Upon receiving a protest concerning which there are no grounds provided for in subsection 63 (4) for refusing to hear the protest, the Office is required to notify the contracting authority of the filing of the protest against the activities of the contracting authority in the tendering procedure and to send a copy of the protest to the contracting authority.

(2) If the Office sets a term for elimination of deficiencies contained in a protest, the Office shall notify the contracting authority of the filing of the protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest received by the Office after elimination of the deficiencies to the contracting authority. If the person filing a protest fails to

eliminate deficiencies within the specified term, the Office shall immediately notify the contracting authority of such failure.

(3) Upon receiving a notice from the Office concerning the filing of a protest, the contracting authority is required to suspend the tendering procedure.

(4) If a contracting authority continues a tendering procedure after receiving a notice concerning the filing of a protest from the Office, all subsequent acts performed in the course of the tendering procedure are void. Procurement contracts entered into after receiving a notice concerning the filing of a protest from the Office are also void.

§65. Hearing of protest

(1) The Office shall organize the hearing of a protest within seven working days after receiving the protest, whereas at least the representative of the Office, the person filing the protest and the contracting authority shall participate in the hearing of the protest.

(2) A contracting authority shall inform all tenderers or applicants of the hearing of a protest and they have the right to participate in the hearing. The failure of a contracting authority to inform tenderers or applicants of the opportunity to participate in the hearing of a protest or the failure of the tenderers or applicants to appear at the hearing shall not hinder the hearing of the protest.

(3) A protest shall be resolved on the basis of a mutual agreement between the person who filed the protest and the contracting authority and a corresponding report shall be prepared concerning the agreement.

(4) If the person who filed a protest or the contracting authority fails to appear at the hearing of the protest, or the protest cannot be resolved during the hearing on the basis of a mutual agreement, the Office shall make a decision concerning termination of the hearing of the protest.

§66. Filing of appeals with administrative court

In order to resolve a protest concerning which a decision specified in subsection 63 (4) or 65 (5) of this Act has been made, an appeal may be filed with an administrative court against an act or decision made by a contracting authority in a tendering procedure.

§67. Resumption of tendering procedure

A contracting authority may resume a suspended tendering procedure after:

- 1) receiving the notice provided for in subsection 64 (2) of this Act from the Office, or
- 2) receiving the document provided for in subsection 65 (3) of this Act, or
- 3) receiving a written notice from the person who filed the protest that the person will not file an appeal pursuant to the procedure provided for in §66 of this Act against an act or decision made by the contracting authority in the course of the tendering procedure, or
- 4) 10 days have passed from the end of the hearing of a protest, or
- 5) expiry of the term for suspension of the tendering procedure specified by an administrative court.

33. *Are there specific provisions enabling access of foreign suppliers to challenge procedures?*

There are no specific provisions enabling access of foreign suppliers to challenge procedures.

34. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:*

(i) *The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in domestic legislation?*

Protests shall be filed within five working days after the date the person filing the protest becomes or should have become aware of the violation of the rights or damage to the interests of the person, but not after the contracting authority has accepted the successful tender.

(ii) *What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:*

- *How are its members selected?*

- *Are its decisions subject to judicial review?*

- *If not, how will the requirements of paragraph 6 of Article XX be taken into account?*

§62. Submission of protests

(1) Protests against the acts or decisions made by a contracting authority in a tendering procedure shall be filed with the Office.

(2) Protests shall be filed within five working days after the date the person filing the protest becomes or should have become aware of the violation of the rights or damage to the interests of the person, but not after the contracting authority has accepted the successful tender.

(3) A protest shall be filed in writing and shall set out:

1) the name, address and other details of the person filing the protest;

2) the name, address and other details of the contracting authority;

3) the content of the act or decision against which the protest is filed and the reasons why the person filing the protest considers this to be a violation of the rights or damage to the interests of the person;

4) the clearly expressed request of the person filing the protest;

5) a list of documents annexed to the protest.

(4) The person filing a protest shall annex to the protest information at his or her disposal concerning the tendering procedure which is the subject of the protest.

§63. Organization of hearings of protests

- (1) The Office has the right to require a contracting authority to submit all documents necessary for hearing a protest.
- (2) The contracting authority shall submit the required documents to the Office within two working days after the receipt of the corresponding request from the Office.
- (3) Before hearing a protest, the Office has the right to require the contracting authority to submit a written statement concerning the content of the protested act or decision and the contracting authority shall submit the statement to the Office within two working days after the receipt of the corresponding request from the Office.
- (4) The Office shall refuse to hear a protest and shall make a corresponding decision if:
 - 1) the protest is not filed within the specified term;
 - 2) the protest fails to comply with the requirements specified in subsection 62 (3) of this Act;
 - 3) the protest is filed against an act or decision of a contracting authority concerning which it is not possible to restore the situation which existed before violation of the provisions of this Act in the tendering procedure;
 - 4) a decision specified in subsection 70 (1) or (2) has been made.
- (5) If the Office finds that a protest filed does not comply with the requirements provided for in subsection 62 (3) of this Act, it shall return the protest to the person who filed it and set a term of two working days for eliminating the deficiencies. If the person who filed the protest fails to eliminate the deficiencies within the specified term, the Office shall refuse to hear the protest.

§64. Suspension of tendering procedure

- (1) Upon receiving a protest concerning which there are no grounds provided for in subsection 63 (4) for refusing to hear the protest, the Office is required to notify the contracting authority of the filing of the protest against the activities of the contracting authority in the tendering procedure and to send a copy of the protest to the contracting authority.
- (2) If the Office sets a term for elimination of deficiencies contained in a protest, the Office shall notify the contracting authority of the filing of the protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest received by the Office after elimination of the deficiencies to the contracting authority. If the person filing a protest fails to eliminate deficiencies within the specified term, the Office shall immediately notify the contracting authority of such failure.
- (3) Upon receiving a notice from the Office concerning the filing of a protest, the contracting authority is required to suspend the tendering procedure.
- (4) If a contracting authority continues a tendering procedure after receiving a notice concerning the filing of a protest from the Office, all subsequent acts performed in the course of the tendering procedure are void. Procurement contracts entered into after receiving a notice concerning the filing of a protest from the Office are also void.

§65. Hearing of protest

(1) The Office shall organize the hearing of a protest within seven working days after receiving the protest, whereas at least the representative of the Office, the person filing the protest and the contracting authority shall participate in the hearing of the protest.

(2) A contracting authority shall inform all tenderers or applicants of the hearing of a protest and they have the right to participate in the hearing. The failure of a contracting authority to inform tenderers or applicants of the opportunity to participate in the hearing of a protest or the failure of the tenderers or applicants to appear at the hearing shall not hinder the hearing of the protest.

(3) A protest shall be resolved on the basis of a mutual agreement between the person who filed the protest and the contracting authority and a corresponding report shall be prepared concerning the agreement.

(4) If the person who filed a protest or the contracting authority fails to appear at the hearing of the protest, or the protest cannot be resolved during the hearing on the basis of a mutual agreement, the Office shall make a decision concerning termination of the hearing of the protest.

§66. Filing of appeals with administrative court

In order to resolve a protest concerning which a decision specified in subsection 63 (4) or 65 (5) of this Act has been made, an appeal may be filed with an administrative court against an act or decision made by a contracting authority in a tendering procedure.

(iii) *What is the applicable law by reference to which the challenge body will examine complaints?*

The applicable law is the Public Procurement Act.

(iv) *Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?*

- *Do these measures include the possibility to suspend the procurement process? On what conditions?*

§64. Suspension of tendering procedure

(1) Upon receiving a protest concerning which there are no grounds provided for in subsection 63 (4) for refusing to hear the protest, the Office is required to notify the contracting authority of the filing of the protest against the activities of the contracting authority in the tendering procedure and to send a copy of the protest to the contracting authority.

(2) If the Office sets a term for elimination of deficiencies contained in a protest, the Office shall notify the contracting authority of the filing of the protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest received by the Office after elimination of the deficiencies to the contracting authority. If the person filing a protest fails to eliminate deficiencies within the specified term, the Office shall immediately notify the contracting authority of such failure.

(3) Upon receiving a notice from the Office concerning the filing of a protest, the contracting authority is required to suspend the tendering procedure.

(4) If a contracting authority continues a tendering procedure after receiving a notice concerning the filing of a protest from the Office, all subsequent acts performed in the course of the tendering procedure are void. Procurement contracts entered into after receiving a notice concerning the filing of a protest from the Office are also void.

§70. Decision of Office on cancellation of tendering procedure or annulment of decision made by contracting authority in tendering procedure

(1) The Office is required to cancel a tendering procedure by a decision at any time before entry into the procurement contract if the contracting authority:

- 1) fails to present the evaluation criteria to be used to decide on the success of the tenders or the relative importance of the criteria in the invitation-to-tender documents;
- 2) fails to notify all tenderers of amendments to the invitation-to-tender documents;
- 3) violates the procedure for opening tenders;
- 4) in the comparison and evaluation of tenders, uses as a representative or expert a person whose relationship with a tenderer may give rise to justified doubts as to the person's objectivity;
- 5) conducts negotiations with one or several tenderers in an open or restricted tendering procedure.

(2) At any time before entry into a procurement contract, the Office has the right to annul, by a decision thereof, a decision made by the contracting authority in the course of the tendering procedure if the contracting authority has violated the provisions of this Act in the course of the tendering procedure and such violation is not listed in subsection (1) of this section.

(3) If a tendering procedure is cancelled, all acts performed in the course thereof are void regardless of whether they were performed before or after the decision concerning cancellation was made. Procurement contracts entered into after the making of a decision concerning cancellation of a tendering procedure or annulment of a decision made by the contracting authority in the course of the tendering procedure are also void.

(4) Before making a decision concerning cancellation of a tendering procedure or annulment of a decision made by the contracting authority in the course thereof, the Office shall grant an opportunity to the contracting authority to submit objections within a term specified by the Office which shall not exceed three working days.

(5) Legal disputes between a state agency or profit-making state agency and the Office shall be resolved pursuant to the provisions of subsections 101 (1)–(3) of the Government of the Republic Act (RT I 1995, 94, 1628; 1996, 49, 953; 88, 1560; 1997, 29, 447; 40, 622; 52, 833; 73, 1200; 81, 1361 and 1362; 87, 1468; 1998, 28, 356; 36/37, 552; 40, 614; 107, 1762; 111, 1833; 1999, 10, 155; 16, 271 and 274; 27, 391; 29, 398 and 401; 58, 608; 95, 843 and 845; 2000, 49, 302; 51, 319 and 320; 54, 352; 58, 378).

(6) A decision of the Office shall contain at least the following information:

- 1) the date and place of making the decision;
- 2) the name and address of the agency in whose name the decision is made;

- 3) the given name, surname and official title of the official making the decision;
- 4) the content of the decision.
- (v) *How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?*

Any decision about compensation for loss or damages suffered can be made by the administrative court.

- (vi) *Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.*

§63. Organization of hearings of protests

- (1) The Office has the right to require a contracting authority to submit all documents necessary for hearing a protest.
- (2) The contracting authority shall submit the required documents to the Office within two working days after the receipt of the corresponding request from the Office.
- (3) Before hearing a protest, the Office has the right to require the contracting authority to submit a written statement concerning the content of the protested act or decision and the contracting authority shall submit the statement to the Office within two working days after the receipt of the corresponding request from the Office.
- (4) The Office shall refuse to hear a protest and shall make a corresponding decision if:
 - 1) the protest is not filed within the specified term;
 - 2) the protest fails to comply with the requirements specified in subsection 62 (3) of this Act;
 - 3) the protest is filed against an act or decision of a contracting authority concerning which it is not possible to restore the situation which existed before violation of the provisions of this Act in the tendering procedure;
 - 4) a decision specified in subsection 70 (1) or (2) has been made.
- (5) If the Office finds that a protest filed does not comply with the requirements provided for in subsection 62 (3) of this Act, it shall return the protest to the person who filed it and set a term of two working days for eliminating the deficiencies. If the person who filed the protest fails to eliminate the deficiencies within the specified term, the Office shall refuse to hear the protest.

§65. Hearing of protest

- (1) The Office shall organize the hearing of a protest within seven working days after receiving the protest, whereas at least the representative of the Office, the person filing the protest and the contracting authority shall participate in the hearing of the protest.
- (2) A contracting authority shall inform all tenderers or applicants of the hearing of a protest and they have the right to participate in the hearing. The failure of a contracting authority to inform tenderers or applicants of the opportunity to participate in the hearing of a protest or the failure of the tenderers or applicants to appear at the hearing shall not hinder the hearing of the protest.

(3) A protest shall be resolved on the basis of a mutual agreement between the person who filed the protest and the contracting authority and a corresponding report shall be prepared concerning the agreement.

(4) If the person who filed a protest or the contracting authority fails to appear at the hearing of the protest, or the protest cannot be resolved during the hearing on the basis of a mutual agreement, the Office shall make a decision concerning termination of the hearing of the protest.

(vii) *What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?*

The usual costs to conduct a challenge procedure are 1,000 ECU in arbitral tribunal. There are no possibilities foreseen to do so free of charge. *Kas selle lause võtame siis maha???*

The state fee for turning to the administrative court is 10 Estonian kroons. (EEK 10 = DM 1.25)

VII. OTHER MATTERS

35. *To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.*

Estonian authorities consider bringing the modern means of information processing to the daily operations of national agencies as a key factor for facilitating the fluent exercise of any government functions. The notices of invitations to tender and/or notices of contract awards are published electronically. The internet address for such electronic publications is: <http://www.rha.gov.ee>.

36. *Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.*

There is no official contact point for responding to enquiries. However, should relevant issues get raised, the questions should be sent to the Ministry of Economic Affairs of the Republic of Estonia, Department of Trade:

Ministry of Economic Affairs
Department of Trade
Harju Street 11
15072 Tallinn
ESTONIA
Fax: (372) 6313660
Email: services@mineco.ee

Information can also be obtained from the Public Procurement Office:

Public Procurement Office
Kiriku Street 2/4
10310 Tallinn
ESTONIA
Email: info@rha.gov.ee

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/126
4 January 2001

(01-0022)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from the Sultanate of Oman

The following communication, dated 3 January 2001, has been received from the Ministry of Commerce and Industry with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Sultanate of Oman has recently acceded to the WTO and consequent upon that would initiate negotiations for membership of the Agreement on Government Procurement. In order to acquaint itself with that Agreement, the Sultanate of Oman requests for grant of observer status in the Committee on Government Procurement.

Committee on Government Procurement

**INDICATIVE TIME-FRAME FOR ACCESSION NEGOTIATIONS
AND REPORTING ON THE PROGRESS OF WORK**

Note by the Secretariat

Revision

1. In the context of its discussion regarding the improvement of the procedures for accession under Article XXIV:2, the Committee has addressed the establishment of an indicative time-frame for accession negotiations together with a procedure for regular reporting to each Committee meeting on progress in bilateral consultations on the basis of an earlier version of this note. The present revision takes into account the comments made by Parties at the March and September 2000 meetings.

2. Certain basic procedures for accession negotiations have already been adopted by the Committee in its Decision of February 1996 on the Procedures for Accession under Article XXIV:2 of the Agreement (GPA/1, Annex 2). This Decision reads as follows:

"1. In accordance with paragraph 2 of Article XXIV of the Agreement on Government Procurement (1994), any government which is a Member of the WTO may accede to this Agreement on terms to be agreed between that government and the Parties.

"2. To this effect, a government interested in accession shall communicate its interest to the Director-General of the WTO and, through him, to the Committee on Government Procurement and shall submit relevant information including an offer by way of appropriate Appendices containing lists of entities and services which would be covered by the Agreement, as well as lists of relevant publications, having regard to the provisions of the Agreement, in particular Article I and, where appropriate, Article V.

"3. The government interested in accession shall hold consultations with the Parties to the Agreement on the terms for its accession to the Agreement.

"4. With a view to facilitating accession, the Committee on Government Procurement shall establish a working party if the applicant government, or any Party to the Agreement, so requests. The working party should examine: (i) the coverage offer made by the applicant government; and (ii) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant government and export opportunities for the Parties in the market of the applicant government.

"5. Upon a decision by the Committee on Government Procurement agreeing to the terms of accession including the lists of entities and services as well as of relevant publications of the applicant government, the applicant government shall deposit with the Director-General of the WTO an instrument of accession which

states the terms so agreed. The applicant government's lists of entities, services and publications in their authentic WTO language(s) shall be appended to the Agreement."

3. Attached is a suggested indicative timetable for accession negotiations. It will be noted that the table does not specifically include the option of establishing a working party, as provided for under paragraph 4 of the above Decision. The reason is that, in practice, this option has not been availed of so far. However, should an applicant government or any Party to the Agreement request the establishment of such a working party, consequential modifications would need to be made to the suggested indicative timetable.

4. The suggested indicative timetable seeks to take into account the fact that accession negotiations have two main aspects and involve basically two mechanisms. The first aspect is the negotiation of an agreed coverage to be reflected in Appendices containing lists of entities and services as well as lists of relevant publications. The second is ensuring the consistency of the applicable national legislation with the provisions of the Agreement. The two main mechanisms used for these purposes are bilateral consultations between an acceding country and interested Parties and plurilateral consultations. The negotiations on commitments to be included in the Appendices are more focused on bilateral consultations whereas the other aspect of the negotiations is largely conducted through the plurilateral mechanism. These two aspects and mechanisms overlap to some extent and should proceed in parallel. As the Committee has already indicated, it is important that there should be a regular plurilateral review of the bilateral parts of the accession process and, of course, the results of both aspects of the negotiations must come together at the plurilateral level in the preparation and adoption of a decision setting out the terms of accession.

5. It will be noted that although paragraph 2 of the Committee Decision of February 1996 would not seem to necessarily require acceding countries to submit their initial offer together with their application for accession, applicant countries have, on the whole, done so. While the suggested procedures are sufficiently flexible to allow for the possibility of an initial round of plurilateral and bilateral discussions before the submission of the initial offer, they should also allow an applicant country to submit its initial offer at the same time as its application if it is in a position to do so. The submission of initial offers might be envisaged at any time during the first six months after the application but should not be any later.

6. With regard to the largely plurilateral process of provision by the applicant country of information on its procurement regime, the Committee has already adopted a Checklist of Issues to act as a guide to applicant countries in submitting such information (GPA/35). It is suggested in the attached indicative timetable that, following the circulation of the responses to the Checklist and other relevant data, provision might be made for Parties to seek further clarification of the applicable legislation and procedures through informal plurilateral consultations including a written question and answer procedure. The questions put and answers provided would be circulated to all Parties. If necessary, provision could also be made for follow-up questions and answers and further informal consultations at a later stage in the process. It is suggested that the timetable for the review of a procurement regime runs from the date of application for accession and, for the negotiation of Appendices, from the date of the submission of the applicant's initial offer. Every effort would be made to align bilateral/plurilateral consultations that are envisaged in each of the timetables and the timetables would be applied with the necessary flexibility to facilitate this.

7. The suggested indicative timetable for general accession process envisages that the process, from the date of the application to the adoption of the decision containing the terms of accession, should normally be completed within 18 months. It would, of course, have to be understood that a certain degree of flexibility would be necessary to take account of such factors as the state of preparation of the acceding country, the complexity of its procurement regime and government structure and the timing of Committee meetings. On the other hand, not all the stages envisaged may

be necessary in some accession negotiations and some of the steps in the timetable, for instance exchange of follow-up written questions and replies, submission of a revised offer or further plurilateral consultations, could be omitted which would have the effect of reducing the overall time-frame by approximately six months.

8. In its request for the preparation of this note, the Secretariat was asked to consider the question of a procedure for regular reporting to each Committee meeting on progress in the bilateral consultations. Hitherto, the Committee's overview of accession negotiations has mainly consisted of the acceding country or interested Parties reporting orally to the Committee at its meetings on an ad hoc basis. To provide a more systematic basis for the Committee's overview of the accession process and to improve transparency, consideration might be given to providing to the Committee a brief note outlining the state of play in the accession process of each applicant. This might be done, for example, through the annotated provisional agenda, which is circulated by the Secretariat prior to each Committee meeting. The information contained therein could be updated at the meeting, where necessary, by the Chair, the applicant country and parties. Based on this, the Committee might take stock of the progress of each accession process and, where appropriate, the Chair might seek to draw conclusions about moving to the next stage of the indicative timetable.

9. The work involved in the provision of relevant information on national procurement regimes, any amendments to such regimes required and the preparation of offers by an acceding developing country may require technical cooperation, for example in the form of advice and assistance from Parties and the Secretariat, country visits and training. At the outset of the accession process, the Secretariat might enter into contact with the applicant country with a view to drawing up a technical cooperation programme for that country, taking into account its specific needs and circumstances. Parties should be ready to make resources available bilaterally and/or through the Secretariat for this purpose.

ATTACHMENT

SUGGESTED INDICATIVE TIMETABLE FOR THE ACCESSION PROCESS

The timetable that follows is intended to be purely indicative in nature and sets out what is considered to be the normal time-frame for the accession process. Not all the stages envisaged may be necessary in some accession negotiations and that it may be possible to complete the process more rapidly, while in some other cases additional time may be required due to special factors.

The suggested timetable for the accession process is in two parts, that relating to the negotiation of Appendices and that relating to other aspects, in particular the applicant country's procurement regime and its consistency with the Agreement. The timetable for the latter process runs from the date of application for accession and for the former process from the date of the submission of the applicant's initial offer, which should be within six months from the date of application. Every effort would be made to align bilateral/plurilateral consultations that are envisaged in each of the timetables and the timetables would be applied with the necessary flexibility to facilitate this. Both aspects of the timetable should normally be completed to permit the decision on accession to be taken within 18 months of the date of application.

Indicative Timetable for General Accession Process and Review of Procurement Regime (Timetable to run from application for accession)

0 months	Application for Accession
2 months	Receipt of replies to the Checklist in GPA/35
4 months	Receipt of written questions from Parties
6 months	First round of informal bilateral/plurilateral consultations, including responses to written questions
8 months	Receipt of any follow-up questions
10 months	Further informal bilateral/plurilateral consultations
12 months	Follow-up written questions and replies, if necessary
14 months	Report by the acceding country on status of any steps needed to align its procurement regime with the requirements of the GPA
16 months	Further informal bilateral/plurilateral consultations, if necessary
18 months	Circulation and review of the draft decision on terms of accession including the final offer and adoption of the Committee Decision

Indicative Timetable for Negotiation of Appendices

(Timetable to run from submission of initial offer – sometime within six months of application for accession)

	(Bilateral/plurilateral consultations on possible content of initial offer)
0 months	Submission of initial offer
2 months	Receipt of written questions from Parties
4 months	Informal bilateral/plurilateral consultations, including responses to written questions
7 months	Submission of revised offer, if necessary
9 months	Further informal bilateral/plurilateral consultations, if necessary
11 months	Submission of second revised offer, if necessary

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13 2 KB	00-3293	GPA/W/117	Committee on Government Procurement - Request for Observer Status - Communication from the Czech Republic	14/08/2000	1	D	T/PLURI/GPA/W117.DOC
14 2 KB	00-3295	GPA/W/118	Committee on Government Procurement - Request for Observer Status - Communication from the Slovak Republic	14/08/2000	1	D	T/PLURI/GPA/W118.DOC
15 18 KB	00-3144	GPA/W/73/Rev.2	Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement of Iceland - Communication from Iceland - Revision	01/08/2000	11	D	T/PLURI/GPA/W73R2.doc
16 49 KB	00-3063	GPA/W/116	Committee on Government Procurement - Proposed Modifications to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	25/07/2000	27	D	T/PLURI/GPA/W116.DOC
17 16 KB	00-3019	GPA/W/115	Committee on Government Procurement - Modifications to Appendix I of Japan - Notifications from Japan under Article XXIV:6(a)	21/07/2000	5	D	T/PLURI/GPA/w115.doc
18 13 KB	00-2587	GPA/W/109/Rev.1	Committee on Government Procurement - Indicative Time-Frame for Accession Negotiations and Reporting on the Progress of Work - Note by the Secretariat - Revision	26/06/2000	4	D	T/PLURI/GPA/W109R1.DOC
19 24 KB	00-2150	GPA/W/114	Committee on Government Procurement - Explanations to the Proposed Modifications to Appendix I (GPA/W/106) - Communication from Switzerland	26/05/2000	11	D	T/PLURI/GPA/W114.doc
20 11 KB	00-2101	GPA/W/112	Committee on Government Procurement - Review of the Agreement on Government Procurement - Streamlining the Provisions of Articles XIII and XVIII Relating to the Receipt and Opening of Tenders, the Awarding [...]ubmission by the United States	24/05/2000	4	U	T/PLURI/GPA/W112.doc
21 35 KB	00-2102	GPA/W/113	Committee on Government Procurement - Review of the Agreement on Government Procurement - Streamlining the Provisions of Articles VII, IX, X, XI, and XV Relating to the Definition and Use of Tendering Proce[...]ubmission by the United States	24/05/2000	10	U	T/PLURI/GPA/W113.doc
22 4 KB	00-1554	GPA/W/111	Committee on Government Procurement - Communication from the United States	18/04/2000	1	U	T/PLURI/GPA/W111.DOC
23 3 KB	00-1316	GPA/W/106/Corr.1	Committee on Government Procurement - Proposed Modifications to Appendix I of Switzerland - Notification from Switzerland under Article XXIV:6(a)- Corrigendum	30/03/2000	1	D	T/PLURI/GPA/W106C1.DOC
24 20 KB	00-1084	GPA/W/106	Committee on Government Procurement - Proposed Modifications to Appendix I of	16/03/2000	11	D	T/PLURI/GPA/W106.DOC

			Switzerland - Notification from Switzerland under Article XXIV:6(a)				
25 4 KB	00-0902	GPA/W/101/Add.3	Committee on Government Procurement - The Thresholds in Appendices I and II of the Agreement as Expressed in National Currencies for 2000 - Switzerland - Addendum	09/03/2000	1	D	T/PLURI/GPA/W101A3.DOC
26 5 KB	00-0867	GPA/W/110	Committee on Government Procurement - Procedures for Future Changes to the Loose-Leaf System for Appendices to the Agreement - Note by the Secretariat	07/03/2000	1	U	T/PLURI/GPA/W110.DOC
27 4 KB	00-0788	GPA/W/101/Add.2	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2000 - 2002 - Japan - Addendum	02/03/2000	2	D	T/PLURI/GPA/W101A2.doc
28 12 KB	00-0733	GPA/W/109	Committee on Government Procurement - Indicative Time-Frame for Accession Negotiations and Reporting on the Progress of Work - Note by the Secretariat	28/02/2000	4	D	T/PLURI/GPA/W109.DOC
29 20 KB	00-0659	GPA/W/73/Rev.1	Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement of Iceland - Revised Offer	22/02/2000	11	D	T/PLURI/GPA/w73r1.doc
30 4 KB	00-0486	GPA/W/101/Add.1	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2000 - 2001 - Canada - Addendum	09/02/2000	1	D	T/PLURI/GPA/W101A1.DOC
31 4 KB	00-0199	GPA/W/105	Committee on Government Procurement - Proposed Modifications to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	18/01/2000	1	D	T/PLURI/GPA/W105.DOC
32 6 KB	00-0027	GPA/W/101	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 2000-2001 - Hong Kong, China	05/01/2000	2	D	T/PLURI/GPA/W101.DOC
33 5 KB	00-0011	GPA/W/102	Committee on Government Procurement - Proposed Modifications to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	05/01/2000	1	D	T/PLURI/GPA/W102.DOC
34 3 KB	00-0026	GPA/W/103	Committee on Government Procurement - Request for Observer Status - Communication from Jordan	05/01/2000	1	D	T/PLURI/GPA/W103.DOC
((@meta_Symbol GPA/W/*) and (@Doc_Date >= 2000/01/01 00:00:00) and (@Doc_Date <= 2000/12/31 23:59:59)) DOC_DATE [d], meta_Ordered_SYMBOL, meta_split_part[A], meta_serial_num							
Result of the search: 102 (for 34 distinct downloaded document(s))							
In 'File' column, the first letter indicates the language (T = English, U = French, V = Spanish)							

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.7

19 December 2000

(00-5539)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000-2001

LIECHTENSTEIN

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2000-2001.

The information notified by Liechtenstein is reproduced below.

1. Threshold Calculations¹

ANNEX 1

	SDRs	Converted to Sw F
Supplies	130,000	248,950
Services	130,000	248,950
Construction	5,000,000	9,575,000

ANNEX 2

	SDRs	Converted to Sw F
Supplies	200,000	383,000
Services	200,000	383,000
Construction	5,000,000	9,575,000

ANNEX 3

	SDRs	Converted to Sw F
Supplies	400,000	766,000
Services	400,000	766,000
Construction	5,000,000	9,575,000

¹ SDR 1.0 = Sw F (Swiss francs) 1.992. This calculation is based on data published by the Swiss National Bank.

These thresholds have been published in the Liechtenstein Law Gazette, LGBl. 2000 No. 196 of 30 October 2000. The threshold values in Swiss francs are reviewed and published every two years.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/125

14 December 2000

(00-5466)

Committee on Government Procurement

Original: English

CHANGES IN THE ADMINISTRATION OF QUALIFICATION PROCEDURES OF JAPAN

Notification from Japan under Article XXIV:5(b) of the GPA

The following notification from the Permanent Mission of Japan was received on 12 December 2000, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:5(b), "each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations".

Pursuant to Article XXIV, paragraph 5(b) of the WTO Agreement on Government Procurement, the Government of Japan wishes to inform the Committee on Government Procurement of changes in the administration of qualification procedures.

This notification is based on the fact that Japan will introduce unified qualification procedures for registered suppliers and establish a unified list of registered suppliers regarding procurement of goods and services by central government entities, except for public works, to be effective on and after 1 April 2001.

Unified enforcement of the verification of qualifications for participation in competitive contracts and documentation of a list of parties who meet the qualifications.

15 December 2000

Director of Accounts Division of the General Affairs Department of the House of Representatives
Takuseki Okumura

Director of Accounts Division of the General Affairs Department of the House of Councillors
Asao Suzuki

Chief of Accounts Division of the Administrative Department of the National Diet Library
Kazunari Matsuo

Director of Financial Bureau of the General Secretariat of the Supreme Court
Hironobu Takesaki

Director of Accounts Division, Secretariat, Board of Audit
Haruo Morosawa

Director of Accounts Division, Minister's Secretariat, Prime Minister's Office
Shunichi Uchida

Chief of Finance Division of the Minister's Secretariat, Ministry of Justice
Tetsuo Ito

Director of Financial Affairs Division of the Minister's Secretariat, Ministry for Foreign Affairs
Masato Kitera

Chief of Accounts Division of the Minister's Secretariat, Ministry of Finance
Junichi Naito

Chief of Budget and Accounts Division of the Minister's Secretariat, Ministry for Education
Tamotsu Tokunaga

Chief of Accounts Division of the Minister's Secretariat, Ministry for Health and Welfare
Shinji Asonuma

Chief of Accounting Division of the Minister's Secretariat, Ministry for Agriculture, Forestry and Fisheries
Mitsuhiro Yokoyama

Chief of Budget and Account Division of the Minister's Secretariat, Ministry for International Trade and Industry
Makoto Nakajima

Director of Budget and Accounts Division of the Minister's Secretariat, Ministry of Transport
Kenichirou Hirata

Director-General of Finance Department of the Minister's Secretariat, Ministry of Posts and Telecommunications
Hideo Shimizu

Chief of Finance Division of the Minister's Secretariat, Ministry for Labour
Akira Oishi

Director of Budget and Accounts Division of the Minister's Secretariat, Ministry of Construction
Takahiro Shibata

Director of Financial Affairs Division of the Minister's Secretariat, Ministry of Home Affairs
Satoshi Yoshida

With regard to the verification of qualifications for participation in competitions currently executed by each ministry or agency, qualifications for participation in open tendering (selective tendering) for contracts that are not for public works (e.g. manufacture and sale of goods) and a list of parties who meet the qualifications shall be as follows for the qualifications which will be effective on 1 April 2001. Such is an attempt to lighten the burden to the parties wishing to participate in the competitions and to make the administrative affairs simple and effective.

1. Qualifications for participation in open tendering (selective tendering) as prescribed by the chief of each ministry or agency

The qualification requirements for participation in open tendering (selective tendering) are those which are commonly effective to each ministry or agency (hereinafter referred to as "unified qualifications") concerning the standard and ranking, etc. in the verification at each ministry or agency indicated in 6 below (hereinafter referred to as "each ministry or agency").

2. List of parties who meet the unified qualifications

A list of parties who meet the unified qualification shall be the unified list, which is common to each ministry or agency.

3. Applications of parties wishing to participate in competitions executed by each ministry or agency

Applications can be filed by hand, by mail or via the Internet, and applicants should submit the application forms to one of the places where applications are received by one of those methods.

4. Types of contracts on which the unified qualifications will be effective

Each qualification for each contract of "manufacture of product", "sale of product", "offer of services, etc." or "purchase of product".

5. Effective date of the unified qualifications

It applies to qualifications that will be effective on 1 April 2001.

6. Ministries and agencies in which the unified qualifications will be effective (names of ministries and agencies after the realignment of central ministries and agencies in January 2001)

The House of Representatives, the House of Councillors, the National Diet Library, the Supreme Court, the Board of Audit, the Cabinet, the National Personnel Authority, the Cabinet Office, the Imperial Household Agency, the National Public Safety Commission (National Police Agency), the Defense Agency, the Financial Services Agency, the Ministry of Public Management, Home Affairs, Posts and Telecommunications, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Education, Culture, Sports, Science and Technology,

the Ministry of Health, Labour and Welfare, the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Economy, Trade and Industry, the Ministry of Land, Infrastructure and Transport and the Ministry of Environment. Also included are external bureaus and attached organizations and other organizations and local branches or bureaus.

7. Others

With regard to the method for filing applications for verification of qualifications, etc. based on this case, "a notice on the qualifications for participation in competitions" shall be published in the separate Kanpō.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.6

13 December 2000

(00-5401)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000-2001

ISRAEL

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2000-2001.

The information notified by Israel is reproduced below.

1. Calculation of threshold figures in US\$

ANNEX 1

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	130,000	177,000
Services	130,000	177,000
Construction	8,500,000	11,560,000

ANNEX 2

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	250,000	340,000
Services	250,000	340,000
Construction	8,500,000	11,560,000

ANNEX 3

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	355,000	483,000
Services	355,000	483,000
Construction	8,500,000	11,560,000

2. Method of calculation

The calculation of the thresholds of the WTO Agreement, expressed in US\$ has been based on the average monthly SDR to US\$ exchange rate over 24 months from September 1997 through August 1999 (1 SDR = 1.36 US\$).

PROPOSED MODIFICATIONS TO APPENDICES I-IV OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

Revision

Due to a clerical error, the notification from Hong Kong, China under Article XXIV:6(a) circulated as document GPA/W/122 on 13 November 2000 has to be revised as follows. In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

1. Pursuant to paragraph 6(a) of Article XXIV of the Agreement on Government Procurement (1994) (the "Agreement"), Hong Kong, China hereby notifies the Committee on Government Procurement of the following modifications to the Appendices of the Agreement:

- (a) In Annex 3 of Appendix I:
 - rename "Mass Transit Railway Corporation" as "MTR Corporation Limited".
- (b) In Annex 3 of Appendices II, III and IV:
 - rename "Mass Transit Railway Corporation" as "MTR Corporation Limited".
- (c) In Annex 3 of Appendix II, with regard to the publication listed opposite "MTR Corporation Limited", replace "Daily Press" by:
 - "Any of the following:
 - Daily Press
 - Home Page on the Internet (<http://www.mtr.com.hk>)".

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

2. The modifications in (a) and (b) above are necessary as a result of the privatization of the Mass Transit Railway Corporation (MTRC). Under the Mass Transit Railway Ordinance enacted in March 2000, all assets and liabilities of the MTRC were vested into a new limited company formed under the Companies Ordinance, the MTR Corporation Limited (MTRCL), on 30 June 2000. Such modifications do not alter the level of mutually agreed coverage provided in the Agreement. The modification in (c) above reflects the latest publication arrangements of an Annex 3 entity.

3. In accordance with the latest procedures for future changes to the loose-leaf system for appendices to the Agreement (GPA/W/110), the updated version of Annex 3 of Appendices I-IV with modifications highlighted are attached at Attachment A, a clean version is at Attachment B.

4. Accordingly, page 1/1 of Annex 3 to Appendix I of Hong Kong China; page 2/4 (English, French and Spanish) of Appendix II; page 1/3 (English, French and Spanish) of Appendix III; page 3/4 (English) and page 3/5 (French and Spanish) of Appendix IV should be modified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modifications.²

² The Attachments are in the original language only.

ATTACHMENT A

HONG KONG, CHINA

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDR for supplies and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Housing Authority and Housing Department
2. Hospital Authority
3. Airport Authority
4. [MTR Corporation Limited](#)
5. Kowloon-Canton Railway Corporation

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(WT/Let/330)

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HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

- | | | |
|--|---|---|
| Hospital Authority | - | Home Page on the Internet
(http://www.ha.org.hk) |
| | - | Daily Press |
| Housing Authority | - | The Government of the Hong Kong Special
Administrative Region Gazette |
| | - | Daily Press |
| Kowloon-Canton Railway Corporation | - | Any of the following: |
| | - | The Government of the Hong Kong Special
Administrative Region Gazette |
| | - | Daily Press |
| | - | Home Page on the Internet
(http://www.kcrc.com) |
| <u>MTR Corporation Limited</u> | - | <u>Any of the following:</u> |
| | - | Daily Press |
| | - | <u>Home Page on the Internet</u>
(http://www.mtr.com.hk) |
| Airport Authority | - | Any of the following: |
| | - | Daily Press |
| | - | Home Page on the Internet
(http://www.hkairport.com) |

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ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPAN

Annex 1

Kanpō

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(WT/Let/355)

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region Gazette
Presse quotidienne

Annexe 3

Direction des hôpitaux	-	Page d'accueil sur Internet (http://www.ha.org.hk)
	-	Presse quotidienne
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
Société du chemin de fer Kowloon-Canton	-	L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
	-	Page d'accueil sur Internet (http://www.kcrc.com)
		<u>L'un ou l'autre des documents suivants:</u>
<u>MTR S.A.</u>	-	Presse quotidienne
	-	Page d'accueil sur Internet (http://www.mtr.com.hk)
Direction de l'aéroport	-	L'un ou l'autre des documents suivants: Presse quotidienne
	-	Page d'accueil sur Internet (http://www.hkairport.com)

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commun

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ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPON

Annexe 1

Kanpō

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HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region Gazette
Prensa diaria

Anexo 3

- | | | |
|--|---|---|
| Administración Hospitalaria | - | Página web en Internet
(http://www.ha.org.hk) |
| Servicio de la Vivienda | - | Prensa diaria
The Government of the Hong Kong Special
Administrative Region Gazette |
| Sociedad del Ferrocarril
Kowloon-Canton | - | Prensa diaria
Cualquiera de los documentos siguientes:
The Government of the Hong Kong Special
Administrative Region Gazette |
| | - | Prensa diaria |
| | - | Página web en Internet
(http://www.kcrc.com) |
| | - | <u>Cualquiera de los documentos siguientes:</u> |
| <u>MTR S.A.</u> | - | Prensa diaria |
| | - | <u>Página web en Internet</u>
(http://www.mtr.com.hk) |
| Administración de Aeropuertos | - | Cualquiera de los documentos siguientes:
Prensa diaria |
| | - | Página web en Internet
(http://www.hkairport.com) |

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Trenes

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ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPÓN

Anexo 1

Kanpō

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APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF
INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF
SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

CANADA

Government Business Opportunities (GBO)
MERX, Cebra Inc.

EUROPEAN COMMUNITIES

Member States do not normally operate permanent lists of suppliers and service providers. In the few cases that such lists exist, this will be published in the Official Journal of the European Communities

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 3

- | | | |
|------------------------------------|---|--|
| Hospital Authority | - | Home Page on the Internet
(http://www.ha.org.hk) |
| Housing Authority | - | The Government of the Hong Kong Special
Administrative Region Gazette |
| Kowloon-Canton Railway Corporation | - | Any of the following:
- The Government of the Hong Kong Special
Administrative Region Gazette
- Daily Press
- Home Page on the Internet
(http://www.kcrc.com) |

[MTR Corporation Limited](#) - Not applicable

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APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

CANADA

Marchés publics (GBO)
MERX, Cebra Inc.

COMMUNAUTES EUROPEENNES

Les Etats membres ne tiennent pas normalement de listes permanentes de fournisseurs
de produits et de services. Dans les rares cas où de telles listes existent, elles sont
publiées au Journal officiel des Communautés européennes

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region

Annexe 3

- | | | |
|--|---|---|
| Direction des hôpitaux | - | Page d'accueil sur Internet
(http://www.ha.org.hk) |
| Direction du logement | - | The Government of the Hong Kong Special
Administrative Region Gazette |
| Société du chemin de fer
Kowloon-Canton | - | L'un ou l'autre des documents suivants:
The Government of the Hong Kong Special
Administrative Region Gazette |
| | - | Presse quotidienne |
| | - | Page d'accueil sur Internet
(http://www.kcrc.com) |

- non applicable

[MTR S.A.](#)

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commun

Deleted: par chemin de fer

Deleted: 26 August 2000
(WT/Let/355)

APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS - PÁRRAFO 9 DEL ARTÍCULO IX.

CANADÁ

Government Business Opportunities (GBO)
MERX, Cebra Inc.

COMUNIDADES EUROPEAS

Los Estados miembros normalmente no establecen listas permanentes de proveedores de bienes y servicios. En los pocos casos en que existe tal lista, se publicará en el Diario Oficial de las Comunidades Europeas

HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region

Anexo 3

Administración Hospitalaria	-	Página web en Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
	-	Página web en Internet (http://www.kcrc.com)

[MTR S.A.](#) - no aplicable

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Trenes Colectivos

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Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
MTR Corporation Limited	-	provided to potential suppliers upon issuance of invitations to participate
Airport Authority	-	provided to potential suppliers upon issuance of invitations to participate

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ISRAEL

The Official Gazette

JAPAN

Annex 1

Kanpō
and/or
Hōreizensho

Annex 2

Kenpō
Shihō
or their equivalents,
or Kanpō
and/or
Hōreizensho

Annex 3

Kanpō
and/or
Hōreizensho

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

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(WT/Let/355)

Annexe 3

Direction des hôpitaux	-	Home Page on the Internet (http://www.ha.org.hk)
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
<u>MTR S.A.</u>	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Direction de l'aéroport	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

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ISRAEL

The Official Gazette

JAPON

Annexe 1

Kanpō et/ou Hōreizensho

Annexe 2

Kenpō, Shihō ou leurs équivalents, ou Kanpō
et/ou Hōreizensho

Annexe 3

Kanpō et/ou Hōreizensho

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

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Anexo 3

Administración Hospitalaria	-	Home Page on the Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	se suministra a los proveedores potenciales con las invitaciones a participar
<u>MTR S.A.</u>	-	se suministra a los proveedores potenciales con las invitaciones a participar
Administración de Aeropuertos	-	se suministra a los proveedores potenciales con las invitaciones a participar

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Trenes Colectivos

Inserted:

ISRAEL

The Official Gazette

JAPÓN

Anexo 1

Kanpō y/o Hōreizensho

Anexo 2

Kenpō, Shihō o sus equivalentes, o Kanpō
y/o Hōreizensho

Anexo 3

Kanpō y/o Hōreizensho

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

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(WT/Let/355)

ATTACHMENT B

HONG KONG, CHINA

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDR for supplies and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Housing Authority and Housing Department
2. Hospital Authority
3. Airport Authority
4. MTR Corporation Limited
5. Kowloon-Canton Railway Corporation

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HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
	-	Daily Press
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
Kowloon-Canton Railway Corporation	-	Any of the following:
	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
	-	Home Page on the Internet (http://www.kcrc.com)
MTR Corporation Limited	-	Any of the following:
	-	Daily Press
	-	Home Page on the Internet (http://www.mtr.com.hk)
Airport Authority	-	Any of the following:
	-	Daily Press
	-	Home Page on the Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPAN

Annex 1

Kanpō

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region Gazette
Presse quotidienne

Annexe 3

Direction des hôpitaux	-	Page d'accueil sur Internet (http://www.ha.org.hk)
	-	Presse quotidienne
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
Société du chemin de fer Kowloon-Canton	-	L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
	-	Page d'accueil sur Internet (http://www.kcrc.com)
MTR S.A.	-	L'un ou l'autre des documents suivants: Presse quotidienne
	-	Page d'accueil sur Internet (http://www.mtr.com.hk)
Direction de l'aéroport	-	L'un ou l'autre des documents suivants: Presse quotidienne
	-	Page d'accueil sur Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPON

Annexe 1

Kanpō

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HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region Gazette
Prensa diaria

Anexo 3

Administración Hospitalaria	-	Página web en Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	Prensa diaria The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	Prensa diaria Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
	-	Página web en Internet (http://www.kcrc.com)
MTR S.A.	-	Cualquiera de los documentos siguientes: Prensa diaria
	-	Página web en Internet (http://www.mtr.com.hk)
Administración de Aeropuertos	-	Cualquiera de los documentos siguientes: Prensa diaria
	-	Página web en Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPÓN

Anexo 1

Kanpō

APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

CANADA

Government Business Opportunities (GBO)
MERX, Cebra Inc.

EUROPEAN COMMUNITIES

Member States do not normally operate permanent lists of suppliers and service providers. In the few cases that such lists exist, this will be published in the Official Journal of the European Communities

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	Any of the following: - The Government of the Hong Kong Special Administrative Region Gazette - Daily Press - Home Page on the Internet (http://www.kcrc.com)
MTR Corporation Limited	-	Not applicable

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APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

CANADA

Marchés publics (GBO)
MERX, Cebra Inc.

COMMUNAUTES EUROPEENNES

Les Etats membres ne tiennent pas normalement de listes permanentes de fournisseurs de produits et de services. Dans les rares cas où de telles listes existent, elles sont publiées au Journal officiel des Communautés européennes

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region

Annexe 3

Direction des hôpitaux	-	Page d'accueil sur Internet (http://www.ha.org.hk)
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
	-	Page d'accueil sur Internet (http://www.kcrc.com)
MTR S.A.	-	non applicable

[... 2000 \(WT/Let/...\)](#)

APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS - PÁRRAFO 9 DEL ARTÍCULO IX.

CANADÁ

Government Business Opportunities (GBO)
MERX, Cebra Inc.

COMUNIDADES EUROPEAS

Los Estados miembros normalmente no establecen listas permanentes de proveedores de bienes y servicios. En los pocos casos en que existe tal lista, se publicará en el Diario Oficial de las Comunidades Europeas

HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region

Anexo 3

Administración Hospitalaria	-	Página web en Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
	-	Página web en Internet (http://www.kcrc.com)
MTR S.A.	-	no aplicable

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Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
MTR Corporation Limited	-	provided to potential suppliers upon issuance of invitations to participate
Airport Authority	-	provided to potential suppliers upon issuance of invitations to participate

ISRAEL

The Official Gazette

JAPAN

Annex 1

Kanpō
and/or
Hōreizensho

Annex 2

Kenpō
Shihō
or their equivalents,
or Kanpō
and/or
Hōreizensho

Annex 3

Kanpō
and/or
Hōreizensho

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

| [... 2000 \(WT/Let/...\)](#)

Annexe 3

Direction des hôpitaux	-	Page d'accueil sur Internet (http://www.ha.org.hk)
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
MTR S.A.	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Direction de l'aéroport	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

ISRAEL

The Official Gazette

JAPON

Annexe 1

Kanpō et/ou Hōreizensho

Annexe 2

Kenpō, Shihō ou leurs équivalents, ou Kanpō
et/ou Hōreizensho

Annexe 3

Kanpō et/ou Hōreizensho

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

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Anexo 3

Administración Hospitalaria	-	Página web en Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	se suministra a los proveedores potenciales con las invitaciones a participar
MTR S.A.	-	se suministra a los proveedores potenciales con las invitaciones a participar
Administración de Aeropuertos	-	se suministra a los proveedores potenciales con las invitaciones a participar

ISRAEL

The Official Gazette

JAPÓN

Anexo 1

Kanpō y/o Hōreizensho

Anexo 2

Kenpō, Shihō o sus equivalentes, o Kanpō
y/o Hōreizensho

Anexo 3

Kanpō y/o Hōreizensho

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/124

5 December 2000

(00-5272)

Committee on Government Procurement

Original: English

CHECKLIST OF ISSUES FOR PROVISION OF INFORMATION RELATING TO ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT

Replies by Jordan

The following communication, dated 23 November 2000, has been received from the Permanent Mission of the Hashemite Kingdom of Jordan with the request that it be circulated to Parties.

Introduction

1. The Government Procurement Regime in Jordan is governed primarily by two Main Legislation: The Government Works Regulation No. 71 of 1986, issued pursuant to Articles 114 and 120 of the Constitution and the Supplies Regulation No. 32 of 1993, issued pursuant to Article 114 of the Constitution, and the instructions issued pursuant thereto, hereinafter referred to as "National Procurement Legislation". The two central procuring entities implementing these regulations are the Government Tenders Directorate (GTD) of the Ministry of Public Works and Housing and the General Supplies Department (GSD) of the Ministry of Finance.

2. The two regulations are the default authority for all government procurement of construction and engineering (technical) services and supplies respectively. Article 3 of Supplies Regulation provides that "this Regulation shall apply to all government entities whose budget is part of the Central Government Budget, and to all government entities which do not have a special supplies regulation, as well as to all government entities the Cabinet deems to be subject to this legislation". Article 31 of the Government Works Regulation provides that: "the provisions of this Regulation shall apply to all entities except: the Armed Forces, Public Security Department, Amman Municipality, Municipalities and Rural Councils, and Jordanian universities".

3. At present, many government entities whose budgets are part of the General Budget, such as municipalities and government departments and directorates, have their own procurement regulations. Procurement by municipalities and rural councils is governed by Municipalities and Rural Council Supplies and Works Regulation No. 55 of 1989, issued pursuant to Article 59 of the Municipalities Law No. 29 of 1955, and the Administration of Rural Council's Law No. 5 of 1924. Amman Municipality, however, has its own procurement regulation.

4. Moreover, some government departments and directorates have their own special procurement legislation. Many of the government corporations (which enjoy financial and administrative autonomy) self refer in their laws to the Main procurement legislation, while a few such entities have special legislation governing their own procurement. As an exception to the general tendency for government entities to refer to the main regulations in the absence of special

legislation, some entities such as state universities refer to the procurement legislation of a similar key institution, i.e., the university of Jordan, rather than central government procurement regulation.

5. Although the government procurement regime in Jordan is not governed by a single general legislation, government procurement methods and principals contained in the various procurement legislation are to a large extent uniform. As this Checklist will point out, there are no major substantial inconsistencies between the provisions in the Main two government regulations and the procurement provisions in special procurement regulations. Although not mandated by law, in practice the Main procurement regulations have served as model legislation for special procurement legislation adopted by various departments and entities. This conclusion is based on an examination of the content of the special legislation in comparison with the Main procurement legislation.

6. For the purposes of this Checklist, the majority of the questions are answered in accordance with the two Main regulations for the reasons indicated above. Nonetheless, the differences, if any, are indicated when necessary and referred to other applicable legislation in accordance with each question. The scope of supplies covered by the Supplies Regulation No. 32 of 1993 covers both supplies of goods and services except engineering consultancy services (technical services) that are covered by the Government Works Regulation No. 71 of 1986 that also covers works (constructions).

7. With respect to the need for training or other capacity-building efforts relating to the items of the Checklist, Jordan will be submitting its needs for technical assistance at a later stage.

I. LEGAL FRAMEWORK

1. *Is there a single central law on procurement? If so, please specify?*

The government procurement regime in Jordan is not governed by a single central law.

2. *What are the other laws, regulations, decrees, administrative rulings, decisions, policy guidelines and other instruments governing government procurement? Please provide a summary of the subject areas dealt with by each of these instruments. Please also explain the main differences (if any) that exist between their application at the central and sub-central levels of government and at other types of entities.*

Schedule (1) Central and Sub-Central Level

Title	Number and Date	Description
Property Lease for Government Purposes Regulation	No. 70 for the year 1973	Regulates property leasing by ministries, governmental agencies and public establishments.
Government Works Regulation	No. 71 for the year 1986	<ol style="list-style-type: none"> 1. Regulates governmental works and engineering (technical) services. 2. Sets out the jurisdiction and competence of the Government Tenders Directorate. 3. This regulation entitles the Government Tenders Directorate to follow up on the classification and qualification of contractors and qualification of consultants in coordination with the competent entities and maintain information pertaining to such and to their activities. <p style="text-align: center;">This regulation applies to all governmental entities except the armed forces, public security department, Amman's municipality, local government councils, and public universities.</p>
Construction Contractors Law	No. 13 for the year 1987	<ol style="list-style-type: none"> 1. Sets out Contractor's registration requirements of the Contractors' Association. 2. Regulates the Construction Contractors' Association.
Standard Works Contract – Part (1) General Rules, Part (2) Special Rules		Standardized contract for all works projects.
Qualification Instructions for Engineering/ Architectural Firms and Consulting Firms	For the year 1996	<ol style="list-style-type: none"> 1. Sets out types of qualification and qualification procedures thereof. 2. Sets out the qualification basis which include: specialties of these firms, expertise, technical staff, and its equipment according to special appendices prepared for this purpose.

Title	Number and Date	Description
Classification Instructions for Construction Contractors	For the year 2000	<ol style="list-style-type: none"> 1. Sets out classification rules, requirements and procedures including the jurisdiction and competence of the Classification Committee. 2. Entitles the Minister of Public Works and Housing to specify the various rules that apply to each class of contractors such as limitations on the amount and or the number of projects that each class can participate in at the same time.
Amman's Municipality Supplies and Works Regulation	No. 12 for the year 1988	<ol style="list-style-type: none"> 1. Regulates supplies and works procurement procedures including rules of tendering, receiving, paying, and selling of supplies. 2. Regulates works procedures, e.g. direct execution and tendering procedures.
General Instructions for Amman's Municipality Works and Supplies Tendering		Regulates documentation of tenders including invitation notices, submission, receipt, opening, consideration and awarding of contracts.
Public Security Consumer's Cooperative Regulation	No. 84 for the year 1974	<ol style="list-style-type: none"> 1. Aims to enable the beneficiaries (Public Security Employees) to procure food and other supplies at a convenient rate. It creates a special Board empowered to decide the types and methods of procuring these supplies. 2. Procuring is governed by a Supplies Regulation and is executed through Tenders Committees or Procuring Committees. 3. The Cooperative may procure these supplies from domestic as well as foreign suppliers.
Public Security Supplies Instructions	No. 1 for the year 1996	<ol style="list-style-type: none"> 1. Sets out the general conditions for entering into a tender and contracting with Contractors, e.g., bid bonds, performance guarantees. 2. Sets out tender procedures, i.e., invitation, opening, receiving and awarding of tenders, in addition to penal conditions.
Municipalities and Rural Councils' Supplies and Works Regulation	No. 25 for the year 1989	<ol style="list-style-type: none"> 1. Regulates local government councils' procurement procedures, e.g., supplies' procurement, receiving, distributing, selling... 2. Regulates works procurement, e.g., formation of tenders committees.

Title	Number and Date	Description
Supplies Regulation	No. 32 for the year 1993	<ol style="list-style-type: none"> 1. Sets out the scope of application of its rules. It applies to all governmental entities covered under the General Budget and to all entities that do not have its own supplies regulations and to any other entity as stipulated by the Ministers' Council. 2. Defines the General Supplies Department jurisdiction and responsibilities and specifies the general rules for supplies' procurement including procuring from a foreign supplier. 3. Sets out the rules for creating the various tender committees under this regulation, e.g., Central Committee, Local Committee and Special Committee. 4. Sets out tender procedures and rules, e.g., receiving, warehousing...
Instructions of Tender Procedures and Conditions of Participation and its amendments	No. 1 for the year 1994	<ol style="list-style-type: none"> 1. Sets out tendering procedures, e.g., invitation notices as well as identifies the general conditions for participation in governmental tenders, i.e., bonds and guarantees, invitation notices, submission, opening, selecting and awarding of contracts. 2. Specifies the contractors' liabilities and <i>force majeure</i>. 3. Sets out sampling and testing procedures as well as supplies' receiving procedures.
Instructions for Preparation of the Departments Supplies Requirements Lists and Organization of the Purchasing Requests Related Thereto	No. 2 for the year 1994	Sets out the mechanism for preparing the annual supplies requirement lists and the preparation of the procurement orders thereof.
Instructions for Administration and Organization of Government Warehouses and Stock Control	No. 5 for the year 1994	<ol style="list-style-type: none"> 1. Regulates government warehouses management and warehousing procedures, e.g., inventory testing and receiving. 2. Regulates inventory control and inspection procedures.
Instructions for Ministries and Governmental Agencies Supplies Procurement through Ways other than Tendering	No. 1 for the year 1995	Regulates the entities' ability to procure supplies through ways other than tendering, provided that the value of these supplies does not exceed JD 5000.

Title	Number and Date	Description
Fiscal Regulation	No. 3 for the year 1994	Regulates the Government expenditures including payments due as a result of a tender awarding and sets out the prerequisites of making any such payments thereof.
Fiscal Affairs Implementation Instructions	No. 1 for the year 1995	Specifies in detail the process of implementing the rules included in the Fiscal Regulation.
Municipalities Fiscal Regulation	No. 4 for the year 1955	Regulates the municipalities expenditures rules including payments due as a result of a procurement.
Municipalities and Rural Councils' Supplies and Works Regulation	No. 55 for the year 1989	Sets out the rules for supplies and services and works procurement including procurement procedures.
Rural Councils' Fiscal Regulation	No. 34 for the year 1985	Asserts the implementation of the Municipalities Fiscal Regulation rules on townships as well.
Government Works Tendering Instructions	No. 71 for the year 1987	Sets out the tendering procedures and participation conditions, e.g., invitation notices, time-limits, tenders submission and opening, and awarding of contractors rules, as well as contractors qualifications conditions.
High Committee for Procurement Regulation	No. 50 for the year 1994	Provides for establishing a High Committee for procurement entitled to oversee procurement procedures of the various entities. This regulation is not implemented as such Committee is not yet established.

Schedule (2)
Public Corporations

Name of Corporation	Procurement Legislation	Notes
Public Transport Corporation	<ul style="list-style-type: none"> - Supplies Regulation No. 21 for the year 1980. - No Constructions Regulation. 	<ul style="list-style-type: none"> - The Supplies Regulation is issued in accordance with Article 16 of the Public Transport Corp Law No. 21 of 1975, which was repealed. - Article 16 of the Public Transport Corp. Law No. 16 for the year 1985 requires the issuance of a constructions reg. It has not been issued up to this date.

Name of Corporation	Procurement Legislation	Notes
Central Bank of Jordan	<ul style="list-style-type: none"> - Supplies Regulation for the Central Bank of Jordan No. 8 of 1970 issued pursuant to the Central Bank of Jordan Law No. 93 of 1966. - No regulations for construction services. 	<ul style="list-style-type: none"> - Procurement of supplies is conducted in accordance with the Supplies Reg. for the CBJ. - Construction services are conducted in accordance with the Government Constructions Regulation No. 71 of 1986.
The Ports Corporation	Regulation for the Ports Corp. Supplies and Works No. 77 of 1981	<ul style="list-style-type: none"> - Issued pursuant to Article 15 of The Ports Corp. Law No. 28 of 1978. This Law has been repealed. - Article 15 of the new Law No. 36 of 1985 provides that the MC may issue regulations to regulate procurement procedures. No such regulations have been issued up to this date. - Supplies Reg. and the Govt. Works Reg. apply pursuant to Articles 3 and 31 respectively (default provisions).
<ul style="list-style-type: none"> - Jordan Securities Commission - Depository Center - Amman Stock Exchange 	<ul style="list-style-type: none"> - No construction services regulation. - Supplies Regulation No. 93 of 1998. 	<ul style="list-style-type: none"> - Article 81 of the Securities Law No. 23 of 1997 provides that the MC may issue regulations to regulate procurement procedures. No such regulations have been issued up to this date. - Construction services procurement is conducted in accordance with the Government Works Regulation No. 71 of 1986.
Jordan University Supplies and Works Regulation	No. 21 for the year 1987 [each public university has its own regulations concerning supplies and works procurement]	Sets out the supplies and works rules and procedures.
Jordan University Supplies and Works Regulation Implementing Instructions		Specifies in detail the rules pertaining to supplies and works procurement set out in the Reg.

- **The main differences that exist between their application at the central and sub-central levels of government and at other types of entities.**

Procurement procedures for municipalities and rural councils are governed by special regulations, the Municipalities and Rural Councils Supplies and Works Regulation No. 55 for the year 1989. The main differences between these procedures and the procedures followed by the central government entities pursuant to the Supplies Regulation and the Government Works Regulation are:

- (a) One regulation governs the sub-central entities' procurement procedures in both supplies and works. Moreover, this regulation is issued pursuant to the Municipalities Law whereas the Supplies Regulation and the Government Works Regulation are issued pursuant to Articles 114, 120 of the Constitution respectively.
- (b) Municipalities and rural councils follow the same procurement methods as central government entities, i.e., open tendering, selective tendering, and limited tendering. Nonetheless, the Supplies Regulation provided four circumstances where selective tendering may be used and nine circumstances where limited tendering may be used. On the other hand, the Municipalities Regulation provided nine circumstances where selective tendering may be used and four circumstances where limited tendering may be used.
- (c) There are some variances in relation to the amounts and the jurisdiction of procurement committees thereof.

In conclusion, there are no substantial differences between procurement regulations at the central and sub-central levels of government.

3. *To what extent will the provisions of the Agreement be applied directly or need to be transposed into the relevant law? In the event of direct application of the Agreement over conflicting provisions of domestic law, please indicate the relevant legal basis.*

The most common practice is that after signing and acceding to an Agreement, the Government of Jordan would refer such Agreement to the Parliament for ratification. When ratified by the Parliament, an Agreement passes as a Law. Thereafter, the Parliament refers it to the King for endorsement. (Article 31 of the Constitution.)

In the event that the Agreement is passed as a Law, it shall be directly applicable and binding to all entities that are subject to the Agreement. Accordingly, the Government of Jordan will issue a legislation that reflects Jordan's obligations under the Agreement on Government Procurement.

II. SCOPE AND COVERAGE

4. *Please summarize the organization of the government in your country at each level.*

Under the Jordanian Constitution H.M. the King is the head of all authorities: the Executive Authority, the Legislative Authority and the Judicial Authority.

The Executive Authority consists of the Prime Minister, the Council of Ministers and the various Ministries and Government Departments (Central Government). At the sub-central level, it consists of the various municipalities and rural councils.

The Legislative Authority consists of the Senate and the House of Deputies. The Judicial Authority consists of Religious, Special and Civil Courts.

5. *Please list all central government entities (ministries, departments, agencies, etc.) procuring goods, services and construction services.*

1. Ministry of Defense
2. Ministry of Interior
 - Public Security Department
 - Civil Defense Department
 - Civil Status and Passports Department
3. Ministry of Justice
4. Ministry of Health
5. Ministry of Foreign Affairs
6. Ministry of Industry and Trade
7. Ministry of Planning
 - Statistics Department
8. Ministry of Municipal and Rural Affairs and the Environment
9. Ministry of Information
 - Jordan News Agency
 - Press and Publication Department
10. Ministry of Youth
11. Ministry of Tourism and Antiquities
 - Antiquities Department
12. Ministry of Finance
 - Customs Department
 - Income Tax Department
 - Budget Department
 - Lands and Surveys Department
 - General Supplies Department
13. Ministry of Awqaf Islamic Affairs and Holy Places
14. Energy and Mineral Resources Ministry
15. Ministry of Culture
 - National Library
16. Ministry of Agriculture
17. Ministry of Public Works and Housing
 - Government Tenders Directorate
18. Ministry of Education
19. Ministry of Labor
20. Ministry of Social Development
21. Ministry of Water and Irrigation
22. Ministry of Post and Telecommunication
23. Ministry of Transport
 - Meteorological Department

6. *What entities at the sub-central level of government (states, provinces, municipalities, etc.) procure goods and services?*

In Jordan the main sub-central entities are municipalities and rural councils. These entities procure goods and supplies in accordance with the Municipalities and Rural Councils' Supplies and Works Regulation No. 25 of 1989, except for Amman Municipality which has its own supplies and constructions regulations.

7. Which are the enterprises owned or controlled by the government that are subject to the rules on government procurement? Which are the other entities or categories of entities (Annex 3-type of entities) owned and controlled by the government that engage in procurement? Specify.

Public corporations that have a special law which accords them financial and administrative autonomy, such as:

- The Central Bank of Jordan
- Hedjaz Jordan Railway
- Social Security Corporation
- Telecommunications Regulatory Commission
- Jordan's Securities Commission
- Postal Saving Fund
- Institute of Public Administration.

8. Do entities listed in response to questions 5, 6 and 7 apply in their procurement the main law (if one exists), other legislation provided by the federal or central level of government or are they autonomous from federal or central level of government in their procurement rules and practices? Where any of these entities are not subject to the main procurement law, please list the entities concerned and indicate which laws, regulations, etc., they are subject to. How will you government ensure the implementation of the Agreement by such entities below the central/federal government level?

Please see *Schedules 1 and 2* in question 2 above. Entities that are listed in question 7 above and not listed in *Schedule 2* in question 2 apply the National Procurement Legislation.

Entities below the central level of government are not autonomous from central state level government in the implementation of the Agreement. Once the Agreement is passed as a Law, it shall be directly applicable and binding to all government entities that are subject to the Agreement.

9. Are there any general exceptions from the scope of application of the national procurement rules, for instance for essential national defense or security reasons? Please provide details.

Article 12(b) of the Military Supplies Regulation No. 3 for the year 1995 provides that the Prime Minister, pursuant to a recommendation from the Chief of Staff may, in exceptional or expeditious circumstances, form a special committee from at least three senior officers which may procure supplies without applying the rules of the said Regulation.

Article 2 of the General Intelligence Department Supplies Regulation No. 84 for the year 1966 provides that all supplies' procurements for the Department shall be executed by committees formed from the Intelligence Department and one representative from the Audit Bureau, except "covert procurements" which shall be executed through the Intelligence Department officers only. The General Intelligence Director decides whether procurements are covert or not and sets out the procedures thereof, provided such procedures are accepted by the Prime Minister.

10. Please provide available statistics on the procurement by government entities in your country in the last two years, including, to the extent available, a breakdown by entity and by categories of products and services.

Please see attached Schedules 1, 2 and 3.

**Schedule No. 1: Volume of Procurements of Goods and Services Procured by the Central Procuring Entity (GSD)
Classified According to Types of Items**

[Values in Million JD]

Year	Medical Supplies and Their Accessories	Medical Laboratories Equipment	Medical Prescriptions	VACCINATION	Agricultural Veterinary Supplies	Stationary Publications & Stamps	Furniture & Utensils	Clothing & textile	Cleaning & Hospitality Services	Insurance Services	Maintenance & Internal Transportation Services	Batteries & Oil & Greases	Telecommunication Equipment	Computers & Accessories	Vehicles Machines & Tires	Office Equipment	Supply & Primary Materials	TOTAL
1995	7.000	5.500	12.900	0.620	0.400	3.700	1.700	0.270	7.900	2.750	0.714	0.495	8.00	2.440	5.870	5.490	5.640	71.380
1996	6.070	2.460	14.540	0.240	0.251	2.080	1.400	0.343	2.470	1.615	0.281	0.443	3.855	0.463	5.217	3.900	3.950	53.779
1997	2.562	4.970	21.030	0.550	0.750	2.131	2.540	0.737	9.625	1.016	0.710	0.807	5.117	1.882	4.466	3.466	3.469	65.828
1998	2.400	4.790	17.360	0.741	0.700	4.893	2.261	0.584	5.050	1.283	0.283	0.197	0.733	0.922	7.230	4.760	3.831	61.000
1999	4.170	5.069	19.499	0.267	0.247	1.819	1.755	0.672	7.302	0.972	0.236	0.197	2.515	1.249	2.905	2.858	3.439	55.541

**Schedule No. 2: Volume of Procurements of Works and Engineering (Technical) Services Procured by the Central Procuring Entity (GTD)
in Different Fields of Works**

[Values in Million JD]

Year	Fields of Works						
	Roads	Buildings	Water Pipes and Sewage	Electromechanics	Infrastructure	Other Works	Total
1995	66.7	57.8	48.7	11.5	-	0.9	186
1996	11.4	40.4	48.5	12.7	-	3.1	116
1997	7.2	47.0	25.7	0.3	13.5	1.6	95
1998	7.0	77.0	89.6	0.6	0.4	1.8	176
1999	15.4	41.9	2.3	-	-	2.7	62

**Schedule No. 2 [Volume of Procurements of Works and Engineering (Technical) Services Procured by the Central Procuring Entity (GTD)
in Different Developmental Areas]**

[Values in Million JD]

Year	Developmental Areas									
	Transport	Education	Water Pipes and Sewage	Health	Energy	Housing	Telecommunications and Media	Defense and Security	Others	Total
1995	68.3	11.9	53.9	1.6	0.6	7.5	13.7	0.0	28.2	186
1996	21.5	7.0	49.3	16.8	0.3	2.1	0.1	0.0	19.1	116
1997	13.8	30.1	35.7	2.2	2.4	1.8	0.7	0.0	0,8	95
1998	13.9	24.8	90.0	24.8	1.0	9.2	0.4	0.0	13.1	176
1999	35.7	5.3	7.3	1.3	-	0.2	2.8	0.3	9.3	62

III. NATIONAL TREATMENT AND NON-DISCRIMINATION

11. *Identify the specific provisions in the legislation which reflect the national treatment and non-discrimination commitments of Article III of the Agreement.*

There are no explicit provisions in the National Procurement Legislation that reflect the national treatment and non-discrimination commitments of Article III of the Government Procurement Agreement.

12. *Please provide details of any provisions in national legislation according domestic supplies and suppliers treatment more favourable than that accorded to foreign supplies or suppliers or according supplies or suppliers of any country more favourable treatment than those of any other country.*

Supplies:

Under the Supplies Regulation No. 32 for the year 1993:

Article 12 provides that if specifications, quality degree, criteria and other conditions in the supplies offered and required for purchasing, become equal, the concerned authority of purchasing should consider:

- (a) Giving priority to the supplies produced in Jordan, provided that their prices should be calculated according to the preferential differential prices decided by the Cabinet.
- (b) Giving priority to the supplies offered by the bidder residing in Jordan permanently.

Article 13 grants preference to suppliers from countries that have signed special protocols and/or agreements with Jordan.

Works and Engineering (Technical) Services:

Regarding government works and engineering services according to the Government Works Regulation No. 71 for the year 1986 and amendments thereof:

Article 6(d) of the Government Works Regulation No. 71 for the year 1986 stipulates that when tendering for works and/or engineering services, only Jordanian contractors and consultants may carry out any construction project and/or render engineering services thereto, provided they satisfy the conditions stipulated in the tender. However, if it was necessary to invite foreign contractors and/or consultants, or if the project is financed by a foreign development loan, then the rules of Construction Contractors Law and the rules of the Jordan Engineers Association shall apply.

Article 16(a)(1) of the Construction Contractors Law No. 13 for the year 1987 provides that only Jordanian contractors may carry out any construction project. In case of special-nature projects however, it is permitted for foreign contractors to participate in executing these projects in joint venture or consortia with their Jordanian counterparts.

Article 16(a)(2) permit the Diplomatic missions in Jordan to construct and/or maintain their official buildings through local or foreign contractors provided Jordanian missions are granted reciprocal treatment.

Article 16(b) regulates the creation of a technical committee entitled to decide whether or not a certain project is of "special-nature" and sets out the basis for foreign participation and the form of such participation, and make recommendations to the Ministers' Council for final decision.

Article 16(c) permits foreign contractors to participate in executing projects financed by foreign development loans in association with their local counterparts or individually if necessary.

Article 6(e) of the Government Works Regulation No. 71 for the year 1986 indicates that all tenders shall provide for the usage of domestic products in all works, and stipulates however, that such products shall meet the required standards, and that the Jordanian Standards Rules shall be used to compare between the various products.

13. *Please provide details of any provisions in national legislation allowing a locally established supplier to be treated less favourably than another locally established supplier on the basis of its degree of foreign affiliation or ownership or discriminating against locally established suppliers on the basis of the country of production of the good or services being supplied.*

Supplies:

There are no provisions in the Supplies Regulation No. 32 of the year 1993 that accord a locally established supplier less favourable treatment based on the degree of foreign affiliation or ownership in selecting or awarding contracts to such suppliers.

Works and Engineering (Technical) Services:

Article 17 of Contractors Classification Instructions of 1992 sets out the conditions for the classification of Jordanian constructions companies affiliated with foreign companies. It provides that a Jordanian construction company affiliated with a foreign partner may only be classified upon meeting the following requirements:

- (1) The Jordanian partner shall meet at least 60 per cent of the classification conditions.
- (2) The classification conditions for the foreign partner shall be three-times those of the Jordanian companies' requirements. The foreign partner shall meet these conditions as a prerequisite for classification.
- (3) The company shall meet the classification requirements regarding the availability of certain technical, administrative and financial capability in accordance with the Instructions. And that the foreign partner's tools and equipment shall be continuously and actually located in Jordan throughout the term of classification as well as the foreign partner's engineers shall be registered with the Jordan Engineering Association.
- (4) The foreign partner shall transfer its share of the company's capital in hard currency to Jordan.

14. *Please specify to what extent, if at all, more favourable treatment is granted to any sectors of the economy, regions or specific categories of suppliers or supplies.*

There are no provisions in the National Procurement Legislation that award any sectors of the economy or regions or specific categories of suppliers any favourable treatment in the selection of tenders.

15. *Please specify any provisions requiring or allowing the use of offsets or measures with similar effect, such as domestic content, licensing of technology, investment, counter-trade or similar requirements in the qualification or selection of suppliers, products or services or in the evaluation of tenders and award of contracts.*

Supplies:

Article 18 of the Tenders Instructions No. 1 of 1994 issued in accordance with the Supplies Regulation No. 32 of the year 1993 requires any tenderer to submit a vocational licence/professions practicing permit that entitles the supplier to practice or deal with manufacturing, selling or supplying the required supplies; and a commercial register that details all the conditions stipulated by the Ministry of Industry and Trade, as a pre-requisite to participate in any tender. Accordingly, foreign suppliers may only participate through local presence as a local agent, regional office or an established Jordanian juridical entity.

Under Article 12 of the Supplies Regulation No. 32 of the year 1993 priority is given to supplies produced in Jordan provided that their prices should be calculated according to the preferential differential prices decided by the Cabinet.

Article 13 of the Supplies Regulation No. 32 for the year 1993 provides that in accordance with the rules of this Regulation, the procuring entity may procure goods and/or services in accordance with the Commercial Protocols and Agreements signed between Jordan and other Arab or foreign countries or entities.

Works and Engineering (Technical) Services:

Under the Investment Promotion Regulation No. 1 of 1996 and the Jordanian Engineers Association Law No. 15 of 1972 there is a 50 per cent foreign equity limitation in the construction and engineering services sectors. Any non-Jordanian contractor or engineering consultant willing to establish a Jordanian entity may not own more than (50 per cent) in such entity.

However, Article 16(c) of the Construction Contractors Law No. 13 for the year 1987 and the Jordanian Engineers Association Law No. 15 of 1972 provide that foreign contractors/engineering firms may undertake projects in Jordan only through a joint venture or consortia with a Jordanian firm. Foreign engineering firms may participate only in projects which demand expertise and knowledge not found in a Jordanian firm. Foreign contractors may participate only in projects of a special nature or in projects financed by foreign development loans. Foreign contractors may undertake projects financed by foreign development loans individually if so dictated by public interest.

IV. ELEMENTS SPECIFIC TO PROCUREMENT PROCEDURES

16. *Please provide a general description of your existing procurement methods and procedures, including the main procurement methods used and a brief description of each method, and the extent to which qualification of suppliers and open, selective and limited tendering for each level of government is used.*

Supplies:

According to the Supplies Regulation No. 32 for the year 1993:

Article 15 provides that the main procurement method shall be open tendering. Yet it permitted the following methods as well:

- (A) Selective tendering in any of the following cases:
- (1) In case of urgent emergency need for supplies difficult to expect or predict where tender invitation is not possible.
 - (2) In case the number of sellers, producers or suppliers of such supplies did not exceed three.
 - (3) If the value of the supplies required does not exceed (5,000) five thousand dinar.
 - (4) If the number of offers is not sufficient or suitable, and the authority invited for the tender is satisfied that it is necessary to purchase the supplies through requesting of proposals.
- (B) Limited tendering (direct purchasing of supplies by negotiation with sellers, producers and suppliers) in any of the following cases:
- (1) If the required supplies prices were determined by the official authorities.
 - (2) If the required supplies are needed to meet an emergency case that it is not possible to conduct tender invitation or requesting of proposals according to the request of the concerned minister.
 - (3) If it is not possible to obtain the supplies except from one source only.
 - (4) If the supplies required to be purchased are spare parts, or complementary parts or tools that are not available in more than one source, with the same degree of efficiency according to a technical report from specialists and experts.
 - (5) Purchasing scientific materials such as films and manuscripts and as such.
 - (6) If the purpose of the supplies required is to unified the item in the department, or to reduce variation therein, or to save possessing spare parts according to the concerned Minister request.
 - (7) Purchasing services including maintenance, repair, replacement or testing provided that the work volume shall not be known at the time of purchasing.
 - (8) If adequate offers can not be obtained through tender, requesting of proposal, the prices are not reasonable, or the complete quantity of the supplies required can not be obtained.
 - (9) If there is a legal text or international agreement stating that the supplies should be purchased directly.

Article 14 permits purchasing supplies from abroad directly in the following two cases, provided that the concerned authority in purchasing should justify its decision:

- (1) If the required supplies are not available in Jordan, and it is not possible to purchase them through correspondence.
- (2) If the concerned authority in purchasing decided that purchasing such supplies directly from abroad is to the interest of the Government.

Article 13 permits procurement pursuant to commercial protocols and/or agreements between Jordan and other countries and/or entities.

Works and Engineering (Technical) Services:

According to the Government Works Regulation No. 71 for the year 1986:

Article 5 provides that the main procurement methods shall be: (1) Open tendering; (2) Selective tendering; (3) Limited tendering; and (4) Direct execution.

Article 6 seems to suggest that the main procurement method shall be tendering, provided however, that no invitations shall be made unless the funds for any project are already allocated. It also provides that the general policy shall be ensuring competition and providing a fair opportunity for all qualified contractors.

Article 19 provides that in the event a tender was announced and no reasonable number of suppliers applied, or the prices submitted were not reasonable, or the submitted tenders were conditional or incomplete, the Tender Committee shall furnish a report in that regard to the competent entity. The competent entity may decide to re-announce the tender or seek limited tendering.

Article 20 sets out the circumstances where limited tendering may be utilised. These circumstances include the following:

- (a) In case of exceptional and/or expeditious circumstances where tendering would not be feasible.
- (b) In case of unifying tools and equipment or reducing the variances of such, or in case of reducing the obtainment of spare parts, or in case of curtailing the need of expertise in utilising such tools and/or equipment.
- (c) In case of procuring spare parts or accessories or machines or tools or supplies that are not available at more than one supplier at the same quality standards.
- (d) In case of contracting on engineering services or providing scientific or specialized professional services.
- (e) In case of performing the works outside Jordan.
- (f) If the supplier is a governmental entity or a scientific entity, or the prices were fixed by the government, provided that a reasonable number of suppliers shall be invited if possible.

17. *Identify the provision in your country's legislation requiring non-discrimination as regards the qualification of suppliers in terms of Article VIII and selection of suppliers in terms of Article X. Indicate any exception to this requirement. What are the provisions ensuring non-discriminatory access of new suppliers to existing qualification lists?*

Supplies:

There are no pre-qualification requirements in the Supplies Regulation No. 32 of 1993. However, post-qualification is used in services tenders and some goods tenders such as computer and communication systems.

Works and Engineering (Technical) Services:

Qualification measures are governed by the Government Works Regulation No. 71 for the year 1986.

Article 4 requires the Government Tenders Directorate to oversee contractors and consultants qualification process in coordination with other relevant entities.

Article 23(e) requires the Minister to issue construction contractors classification schedules and publish them in the Official Gazette.

In addition, the Constructions Contractors Law No. 13 for the year 1987 regulates the registration requirements for contractors.

Article 3 requires all contractors to be licensed by the Ministry in order to be able to practice in Jordan. After fulfilling the licensure requirements, contractors must register their companies, firms or offices at the Ministry of Industry and Trade and the Contractors' Association. Article 4 provides that contractors may not be classified until after licensure and registration with the Ministry and the Association.

Construction Contractors Licensing Instructions for the year 1996 regulate the licensing procedures.

Article 3 provides that contractors shall not practice their profession pursuant to licensing until after fulfilling the classification procedures in accordance with the Constructions Contractors Association Law.

Article 6 requires the applicant to meet the following qualifications as a pre-requisite for licensure: The applicant shall be:

- (a) an Engineer registered in the Jordan Engineers Association; or
- (b) must have a community college degree in the works field and have practiced in this field for at least five years; or
- (c) a full-time partner who has previously worked in a classified constructions company and was a founding partner for over two years before quitting.

The Engineering Offices and Consulting Companies Qualification Instructions for the year 1996 regulate qualification procedures for consulting offices. Article 4 sets out these procedures as follows:

- (a) The Government Tenders Directorate shall announce in the newspapers for all interested consultants to apply for qualification.
- (b) Qualification shall be on a yearly basis.
- (c) When examining the qualification applications, previous performance and changes that have occurred on the situation of the consultants must be taken into account. Consultants must notify the Directorate with any changes that occurs in their situation within one month from the date of the change.
- (d) Qualification decisions shall be posted at the bulletin board located in the Directorate. Consultants may challenge these decisions within 30 days of the date of posting them.

- (e) The Directorate may at any time ensure that the consultants still meet the requirements. The Directorate may review its decision in the event that a consultant no longer fulfils these requirements.

There are different conditions and requirements for classification of Jordanian construction companies with foreign affiliation as explained in question 13 above.

18. *In situations where qualification procedures and selective tendering may be used, to what extent do entities allow suppliers to become qualified during the procurement process? To what extent do entities maintain permanent lists of suppliers?*

Supplies:

Although no qualification procedures are used, generally the central procuring entity (GSD) maintains a list of suppliers who meet the requirements set out in Articles 18 and 24 of the Tenders Instructions No. 1 of the year 1994 (i.e. vocational licence, required data and documents that show the bidder's experience and technical and financial capability, and a commercial register). Nevertheless, post qualification is used in services tenders and some goods tenders as mentioned in question 17 above.

Works and Engineering (Technical) Services:

According to the Government Works Regulation No. 71 for the year 1986:

Article 23 requires all entities to abide with the classification schedules in all government works. It further provided that:

- (a) All contractors in all types of works shall be classified into categories or classes according to their financial, technical, and managerial qualifications, as well as their equipment and expertise in executing works. The Ministers' Council shall pass Instructions to regulate the classification rules and conditions.
- (b) The Council of Ministers shall form a committee to study the classification applications of contractors for the various types of works.
- (c) The Minister shall publish the contractors classification schedules in the Official Gazette. He may amend such schedules by adding, omitting contractors or by amending their classification.
- (d) Contractors classification schedules shall be acknowledged in all government works in the Kingdom.

Article 4 of the Government Works Regulation entrusted the Government Tenders Directorate with the authority to follow up on the classification process of contractors.

Article 7(c) of the Government Works Tenders Instructions provides that any tender invitation shall include the categories and classes of contractors and/or consultants permitted to participate in this tender.

Article 17(c) of the same Instructions requires all Committees to abide with the contractors and consultants classification and qualification instructions whether they are Jordanian or non-Jordanian.

The Engineering Offices and Consulting Companies Qualification Instructions of 1996 issued pursuant to Article 4 of the Government Works Regulation defines "qualification" as the general qualification in each specialty according to the basis and instructions issued by the Government Tenders Directorate for the purposes of participating in engineering services tenders.

Accordingly, only classified local contractors and qualified local consultants may participate in government works and engineering (technical) services tenders that are funded by the General Budget. Classification is required only for local contractors, while qualification applies to both local and foreign contractors. Foreign contractors are required to be qualified for participation in a specific tender. Lists are only maintained for local qualified consultants and local classified contractors. Contractors and consultants are not permitted to be classified during the procurement process since only contractors and consultants who are classified are permitted to apply for tenders.

19. *What are the conditions and circumstances foreseen in your legislation allowing the use of the limited tendering method under Article XV of the Agreement? What measures exist in order to ensure that this method is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discriminating among foreign supplies/suppliers or in favour of domestic supplies/suppliers?*

Supplies:

Article 15(b) of the Supplies Regulation No. 32 for the year 1993 identifies the circumstances where an entity may utilise the limited tendering method as explained in question 16 above. All procuring entities are obliged to abide with the provisions set out in Article 15 of the Supplies Regulation No. 32 for the year 1993 as in question 16 above.

Works and Engineering (Technical) Services:

The Government Works Regulation No. 71 for the year 1986 specifies the circumstances where an entity may pursue limited tendering for works procurement as opposed to the main method which is open tendering, as explained in question 16 above.

20. *Article XIV of the Agreement allows for negotiation under certain conditions. Are entities allowed to proceed to negotiations? If so, which categories and what are the conditions imposed?*

Supplies:

Negotiations are not allowed in the course of any tender. However, in practice negotiations are carried out in very limited cases mainly where the most successful bid price is substantially above the market or budget levels.

Works and Engineering (Technical) Services:

Negotiations are not allowed in the course of any tender.

21. *Article XI sets out the minimum time-periods for tendering and delivery. What are the rules and practices regarding time-periods in your legislation? Does the legislation reflect the various minimum time-periods as set out in the Agreement? If not, give information on any different time-periods which have been established in your national legislation.*

Supplies:

Article 7 of the Tenders Instructions No. 1 for the year 1994 regulates tenders announcing as follows:

- (a) The director general or secretary general should announce tenders serially numbered on an annual basis, in not less than three local newspapers, for more than one day, in addition to the other media that he may find appropriate.
- (b) The announcement should include details about tender's number, kind of supplies, the closing date for purchasing tender's invitation, the deadline for submitting offers, the price of the tender's invitation, and, any other matters that the director general or secretary general may find indispensable for announcement.
- (c) Upon the request of more than one bidder, or upon a certain necessity, the director general or secretary general may extend the date of submitting offers for an appropriate period. Whereas he may announce that in the same media used for announcing for the tender previously.
- (d) The director general or secretary general should announce the tender that has been decided to be re-invited for.

Time-limits for tendering and delivery specified in Article XI of the Agreement on Government Procurement are generally similar to a certain extent to those practiced in Jordan. In practice, tendering time for tenders funded from the General Budget is a minimum of 30 days. Tendering time for international tenders is a minimum of 40 days. However, these time-limits may change according to the nature of the tender.

Works and Engineering (Technical) Services:

According to the Government Works Regulation No. 71 for the year 1986:

Article 7(a) provides that the procuring entities shall give a sufficient time-limit for contractors and consultants to consider the tender's documents and submit their tenders.

Furthermore, Article 8(b) of the Government Works Tenders Instructions No. 71 for the year 1987 provides that there shall be a sufficient time-limit between the date of announcing the tender invitation and the date of submitting the tenders to enable the tenderers to consider and prepare their tenders. Stipulated that the time for distributing the tender invitations shall not be less than seven days and there shall be at least seven days between the last date of selling the tender invitation and documents and the last date for submitting the tenders.

Article 8(d) permits the Head of the Committee to extend the last date of submitting the tenders provided that such extensions are announced in the newspapers or notified to the participants.

Article 17(a) provides that in the event where the tender invitation and documents do not specify a time-limit for the tenderer to abide by his offer, the time-limit shall be 90 days from the date of submitting the tender.

22. *Briefly describe the procedures for the submission, receipt and opening of tenders and awarding of contracts, in particular the procedures and conditions guaranteeing regularity of the openings and consistency with the non-discrimination provisions of the Agreement. How is the information on the proceedings related to the receipt, opening and evaluation of tenders maintained by entities?*

Supplies:

These procedures are governed by the Supplies Regulation No. 32 for the year 1993.

Article 23 of this Regulation decrees the issuance of Instructions to regulate these procedures. Accordingly, all these procedures are governed by the Tenders Instructions No. 1 for the year 1994 and amendments thereof.

Articles 18-39 of the Instructions regulate the purchase of tender invitation, preparation and submission of the offers by bidders.

Article 18:

- (a) The bidder who wishes to purchase the invitation, should submit a certified copy of a valid professions practicing permit, that entitles him to practice manufacturing, selling, or supplying the required supplies, or deal therewith, he also should submit the extract of the commercial register that details all the conditions stipulated by the Ministry of Industry and Trade, to be entered in the commercial register, whereas the concerned employee should request these documents at the time of selling any tender's invitation, or once or more a year.
- (b) The bidder, who participates for the first time in department's tenders, is obliged to enclose a certified copy of the professions practicing permit and the extract of commercial register, with his offer.

Article 19: The bidder should pay the specified (non-refundable) fees for purchasing the tender's invitation with all documents and enclosures, against a duly issued receipt.

Article 20: The bidder should prepare his offer according to the documents of invitation after thoroughly reading and understanding the contents thereof. In case that the documents package is incomplete, or the bidder found missing documents therein, he should apply for the missing documents from the department which invited for the tender; the bidder should be responsible for all consequences for not checking and completing documents properly.

Article 21: When the invitation contains an indication that the supplies to be purchased should conform to the sample(s) available in the department or in any place specified by the invitation, the bidder should have to view and thoroughly examine the sample before submitting his offer; provided that the bidder's claim of not viewing and performing the required matching or examination should not constitute and excuse to elude from responsibility; and sample viewing should be already implied.

Article 22: The bidder should prepare his offer and prices based upon the enclosed schedules and forms to the invitation, and should seal and sign all of the tender's documents, submitting them enclosed in full with his offer. The bidder is entitled to add any documents or information that might be in-dispensable to clarify his offer, he should also state his complete and precise address in his offer including the post office box number, telephone, facsimile and telex to be used for correspondence purposes with respect to the tender. The bidder should notify the department in writing about any change to update his address, whereas all correspondences that used the last available address and sent by mail should be considered as if they have been delivered actually on time.

Article 23: The offer should be submitted in duplicate (the original and the duplicate copy) handwritten or printed legibly without erasure, altering, dropping or addition. If such editing is necessary, the bidder should sign in red ink next to this erasure, altering, dropping or addition, taking into consideration writing the prices in figures and words. The bidder should, also, quote the unit price and total price for every item in addition to the offer's total value (for the total of applied items). The prices should be considered inclusive for packing and wrapping; otherwise the tenders committee should be entitled to disregard the offer.

Article 24: The bidder should submit the required data and documents that show his experience and technical and financial capability, and the level of his services, as well as any other necessary requirements, when required, to prove his ability to meet his obligations and requirements of the tender, as per a certain form prepared for this purpose, for tenders require that.

Article 25: The bidder should submit the offer on two separate identical copies with the bid bond in one sealed envelope, unless otherwise requested in the tender's invitation with the name of the department who has invited for the tender thereon, in addition to the department's address: P.O. Box, the name and permanent address of the bidder, in addition to tender's reference number in a legible script, and, the closing date. Otherwise, the tenders committee may disregard the offer.

Article 26: The offer should be deposited by the bidder in the tenders' box at the department that has invited for the tender, before the expiration of the specified period, preferably, well ahead of the closing date to avoid any emergency. Every offer that should not be deposited before the closing date should be denied returned closed to its source. In case of not writing the sender's address or adequate information concerning the tender, the department may open that envelope to examine the contents and address if any, to be returned.

Article 27: Offers that are sent directly to the department by means of cable, facsimile, telex or telephone are not acceptable, unless otherwise explicitly stated in the invitation.

Article 28: Offers that are not duly signed and sealed or submitted incomplete and ambiguous in a manner that impedes awarding, should be disregarded.

Article 29: The bidder should enclose original copies or any catalogues, bulletins, know-how or statistical information that introduce the supplies either in Arabic or English, to his offer. The committee should disregard the offer in case of not enclosing the said materials; and the bidder should not be entitled to submit objection thereon.

Article 30: The bidder should submit the required samples in his offer, in case samples were immovable, he should specify the place and time for viewing them; otherwise, tenders committee may disregard the offer.

Article 32: The bidder is obliged to keep his offer valid and irrevocable for a period of (...) days from the closing date, unless otherwise explicitly stated.

Article 33: Offers should be accepted to supply quantities in whole or in part of the required supplies, an item, or more, unless otherwise stipulated in the tenders invitation.

Article 34: When the supplies delivery date was not specified in the tenders invitation, the bidder should exactly specify the delivery date. In case that the delivery date was not specified in either cases, it should be considered an immediate delivery (immediate is understood to be within one week from the date of signing the purchase order "the agreement").

Article 35: The bidder should state in his offer the country of origin for the quoted supplies, name of the manufacturing company, brand, trade name model and catalogue number or the brochure concerning the quoted supplies.

Article 36:

- (a) Enclosed with his offer, the bidder should submit a separate table of the spare parts recommended by the manufacturing company to be used for (...) years in normal conditions, indicating the item number as it is stocked in the manufacturing company, the quantity, and unit price. The total pricing should be binding to the bidder for the

specified period, and the department should be completely free to purchase them within this period in the pricing stated in the aforesaid table, while these spare parts should be brand new and original 100 per cent.

- (b) The bidder should be obliged to provide workshops and spare parts for the supplies that require so, for a minimum of 8 eight years or for the average operating life, unless otherwise stated in the invitation, the bidder should, also be obliged to enclose with his offer the escalation clause for the spare parts pricing, after the expiration of the period set forth in subparagraph (a) hereof, as it is in the county of origin.

Article 38: The bidder's offer should be considered a confirmation that he has not submitted his offer according to his relation with another bidder who applied for an item quoted in his offer, in all cases one bidder is not entitled to submit two separate independent offers for the same supplies either in his name or in his partnership's name, in this case both offers should be disregarded, and the bidder should have to resubmit one specified offer; the bidder could also, enclose some alternative choices in separate documents with his offer, provided that the value of the bid bond should be proportional to the offer's value or the substitute choice whichever the highest.

Article 39:

- (a) The bidder's offer should constitute, with the approved tender's documents after getting notified with awarding, and after the purchase order has been issued by the department, a legally binding agreement unless otherwise stated in the awarding decision and purchase order.
- (b) The bidder's offer should guarantee that the supplied items are brand new (100 per cent) and free of manufacturing or material defects and of up-to-date model, and its production is still continuous, unless otherwise explicitly stated in the contract.

Articles 40-43 of the Instructions regulates *opening of tenders*.

Article 40: Offers should be opened publicly in the place, date and hour specified in the tenders' announcement and in the presence of all the committee's members as for the supplies of common usage, and in the presence of the majority of the committee's members or four of them including its head, for the supplies of special usage, whereas every offer must be signed thereby. The tender's committee is also entitled to recite the total prices for each offer, whereas every bidder or his representative may attend the process of offers opening.

Article 41: A schedule (offers opening minutes) should be prepared by the secretary in which he registers the name of all bidders who participated in the tender with serial numbers. The bid bond value and its kind should also, be registered for every offer with any information the head of tenders committee might consider suitable. Minutes should be signed immediately after opening all offers in addition to stating the number of bidders that have participated in the tender in words, whereas any modifications therein, should be justified in writing, and consolidated by the signature of the tenders committee.

Article 42: Offers or any modifications thereon should not be accepted after the specified date and time of the closing date.

Article 43:

- (a) If the tenders' committee found that the participating bidders are less than the expected number, the committee should decide to extend the period of offers submission (re-tendering), or to change the tender into purchase by requesting for

proposals, in this case offers should be returned closed to bidders who submitted them against their or their representatives signature.

- (b) Upon the conviction of tenders committee of the uselessness of extension it may open the so far submitted offers, and make the necessary study and awarding, in case of finding the offered prices and supplies suitable.

Articles 44-51 regulate the *studying and evaluating of offers* procedures.

Article 44: Submitted offers should be conveyed to special tables therefore.

Article 45: Tenders committee or director general should specify the persons or parties that constitute the technical committee, which should study offers with respect to necessary technical, financial and legal affairs; and then submit its proper recommendation for the tenders committee.

Article 46: Any offer that is not consolidated by the bid bond should be rejected.

Article 47: Offers (Bids) submitted for the invitation should be studied into ascending price order according to the following:

- (a) Offers should be studied with respect of technical aspects in such a way that technical standards, should be specified according to the required supplies specifications on a table prepared for this purpose, and all offers should be subjected to the same criteria, with respect to bidder's commitment (in his offer) with the specifications and conditions of tenders invitation.
- (b) Bidders financial and technical competency to fulfil the tender's obligations should be considered.
- (c) Study of the offers should start with the lowest price offer and graduate into ascending order until finishing up the study of all the submitted offers.
- (d) In case that the offer has fulfilled all conditions, specifications and quality, the technical committee should recommend to award the tender on the tenderer submitted lowest prices.
- (e) Prices of the required supplies stated in the invitation should be compared to specify the lowest congruent, provided that the value of any appendages or spare parts that are not required to be priced in the invitation should be disregarded. Whereas, tenders committee should be entitled to accept appendages and spare parts in the winner offer after awarding it.
- (f) In the case that the requirements were not available in the lowest price offer, the study should go to the offer follows it in price, till it reaches to the suitable offer for awarding, provided that reasons of disregarding (offers with low prices) should be stated explicitly.
- (g) When defects or non-conformity is found in all offers (bids), it should be possible to purchase the offered supplies that satisfy the requirements of the beneficiary department that enjoy quality and suitable prices (the optimal offer).
- (h) Continuation of spare parts and maintenance availability and any other matters required by Supplies Act and the applied instructions should be considered.

- (i) The privileged price granted to national products should be considered in the studying process.

Article 48: In the case that a mistake was found in the offer concerning the total price, the unit price should be considered, and if more than one price for the unit price was found, the problem should be submitted to tenders committee to be settled down according to the implying evidences. The committee could disregard the offer in case of the evidence absence, and in case that there was a difference between the total price stated in figures and total price stated in words, the lowest price should be considered, unless otherwise tenders committee found sufficient evidences to approve the highest option.

Article 49: In the case that specifications, prices, conditions, and quality were all the same, the preference should be given to the bidder whose offer includes additional advantages, then the offer provides national products, then the offer of the bidder permanently resides in the Hashemite Kingdom of Jordan, then the shortest delivery time in the case it serves the interests of the beneficiary department.

Article 50: The Tenders' Committee is entitled to disregard the offer of the bidder who breaches his obligations before concluding the agreement, or the contracts already concluded with him, or who should not abide by the contract's terms, elude or cheat, and provided that violations have been committed in more than one agreement, or more than two times in a single agreement; and the committee should be entitled to deprive him from participating in tenders for the period it specifies.

Article 51: Before awarding the tender, tenders committee should consider the competency and experience of the bidder in the field of providing the required supplies, his goodwill, facilities provided by him or the service that he provides, spare parts, workshops, and solvency; whereas the committee could disregard his offer upon the absence of these requirements either wholly or partially.

Articles 52-64 regulate the procedures pertaining to *awarding* the tender.

Article 52: Tenders should be awarded to winners, with stating reasons according to the following:

- (a) The lowest conformity: If the lowest conformity offer includes the quality in the required supplies and conforming to the specifications and terms in the invitation.
- (b) The lower conformity: If there were some inconsistent offers and some conforming offers, the awarding should be assigned to the lower conforming.
- (c) The optimal: In the case of finding inconsistency in all of the submitted offers, tenders committee might choose the optimal offers with respect to quality, pricing, kind, and conditions that satisfy the required purpose only if the committee finds that up to the beneficiary's departments interest.
- (d) Any other reason that cope with the provisions of Supplies Act, provided that they are sufficiently justified.

Article 53: The tenders committee should reserve the right to disregard any offer that is insufficiently clear to be awarded or implying more than one interpretation.

Article 54: With respect to any offer, the tenders committee is entitled to award from any offer an item or more or any part thereof, unless otherwise the bidder has stipulated, moreover the committee may reject all the offers submitted thereto.

Article 55: The tenders committee may decrease or increase the required quantities invited for before awarding, without referring to the bidder, or after awarding, by the approval of the contractor, provided that the total increase or decrease should not exceed (25 per cent) twenty-five per cent either before or after awarding.

Article 56: The tenders committee may disregard any offer submitted by a bidder who had previously proven to be incapable or failed to satisfy obligations or had impersonated the capacity of representing an establishment or corporation, or claimed that he is the agent in sales affairs, or had hidden his agency on its behalf; either the representation was in favour of a Jordanian or a foreign establishment or corporation.

Article 57: The tenders committee should disregard the offer that did not abide by the specifications, general conditions and instructions, special conditions as well as the applied provisions of Supplies Act; or if its applicant was not efficient, qualified, nor had been stated to be deprived from participating in tenders for the period specified by tenders committee.

Article 58: If a contradiction or conflict occurs between regulations and general conditions and between special conditions, special condition should be considered.

Article 59: Specifications stated in the invitation or the awarding decision should constitute the minimum acceptable limit, and the specifications of the submitted samples should not cancel the specifications stated in the invitation or the awarding decision, unless otherwise the specifications of samples were of superior specifications in comparison.

Article 60: In the case that the tenders committee find that the offered prices were high, it should re-invite for the tender or, purchase by requesting for proposals or by direct purchasing, in accordance with the provision of Supplies Act, the committee is also entitled to disregard the purchasing process wholly or partially; meanwhile on re-tendering, the bidder who purchased the tender's invitation previously could obtain it free of charge.

Article 61: The Secretariat of the tenders committee should have to announce the name of winning bidders by affixing them on a special announcing board, or following the method devised by the director general or secretary general to be accessible for a period of four working days for any objections submitted by any participant bidder. In some exceptional cases, the tenders committee may shorten the period of objection to a minimum period of not less than forty-eight hours.

Article 62: The tenders committee should consider the objections forwarded to it, and should issue decisions concerning them, then it should submit the awarding decision for approval by the concerned authority.

Article 63:

- (a) The director general or secretary general should formulate, through the employees of the department, the decisions of the tenders committee, as well as numbering them with an annually classified serial reference. Having approved these decisions, they should be further formulated into agreements (purchase orders) signed by both parties, whereas copies of these agreements (purchase orders) and decisions should be circulated on the concerned authorities to execute them.
- (b) A copy of the tenders committee's decisions should be circulated on General Supplies Department/Central Register Section.

Article 64: The tenders committee is entitled to cancel any invitation any time, or during any phase without mentioning reasons, it is also entitled to disregard all or some submitted offers, provided that no bidder should have the right to claim any consequent loss or harm, as a result of submitting his offer; furthermore, no financial or non-financial liabilities should be imposed on the committee thereunder.

In practice, offers are opened by the Central Tender Committee every Monday and Wednesday at a fixed time throughout the year. During the evaluation and study process, the Central Tender Committee may contact tenderers for further clarification on technical issues that are to be submitted in writing by the tenderer, provided that such clarifications do not affect the substance of the offer. All tender documents including tender's number, offers, technical committees' reports, minutes of meetings, correspondence with tenderers, bonds and performance guarantees, ..., etc., are maintained in the tender file.

Works and Engineering (Technical) Services:

Governmental works and engineering services are governed by the Government Works Regulation No. 71 for the year 1986. Article 16 of this Regulation decreed the issuance of Instructions to regulate the procedures thereof. Accordingly, these procedures are governed by the Government Works Tenders' Instructions No. 71 for the year 1987.

Purchase of tender documents and the preparation and submission of the tenders:

Article 6 of these Instructions requires the head of the Committee to ensure that all the requirements for announcing a tender as specified in these Instructions, and all the tender documents are available before announcing any tender invitation.

Article 7 requires any tender invitation to include the subject-matter and location of the project in addition to summary description of the project; the price of the tender documents; the category of contractors and/or consultants permitted to participate; the last date on which a contractor can purchase the tender documents and the date, time and location for submitting the tenders; and the amount and source of financing in case of [foreign] financed projects.

Article 8 provides that a tender invitation shall be announced in Arabic in two daily newspapers. However, it may be announced in English in addition to Arabic in case of inviting foreign contractors and consultants to participate.

In case of special invitation tenders, the invitation may be mailed by certified mail or by hand. Moreover, it requires that there shall be a sufficient time between the date of announcing the tender and the date of submission, provided that the time of distributing the copies of the tender documents shall not be less than seven days. In addition, there shall be at least seven days between the last date of selling the tender's documents and the date of submission. The head of the Committee may extend the date of submission, provided that such extension shall be announced in the newspapers or notified to the participants.

Article 10 provides that each supplier shall sign its tender and submit the required copies in a sealed and stamped envelope. All tenders shall be deposited within the time limit in the Tenders' Chest designated for this purpose. The supplier may submit any amendments to its tender or a new tender before the last date of submission as well. In case the envelopes were too big to be deposited in the chest, the supplier may submit it to the Secretary of the Committee. In case a tender was submitted by mail, it shall be by certified mail only.

Article 10 requires foreign suppliers to include in their tender the name of their Jordanian partner, or representative or the license certificate of its registered office in Jordan.

Article 11 provides that there shall be a special chest for tenders. Such chest must carry three different locks, the Head of the Committee keeps one key, the Secretary one key, and another member keeps the third key.

Article 12 regulates the procedures pertaining to *opening* the tenders.

It asserts that the Tender Chest shall be opened at the date and time specified in the invitation in a public session. All participant suppliers may attend this session if they opt to.

Article 13(a) provides that the Committee shall dismiss any tender in the following events:

- (a) If such tender did not include any required bond(s).
- (b) Any tender that has reservations or conditions that contradict with the underlying tender conditions.
- (c) In case there is any scraps or additions or omissions so as to render the tender ambiguous.

Article 13(b) specifies the instances where the Committee may dismiss a tender. This include:

- (a) In case a tenderer did not sign its tender.
- (b) In case a tenderer did not write the unit's prices in words in addition to numbers.

Article 14 regulates the tender's committee procedures in the studying and evaluation of offers as follows:

- (a) The Committee shall follow the following procedures when examining and evaluating offers.
 - (1) Organize minutes for each of its sessions. Such minutes shall be signed by the members of the Committee.
 - (2) Preliminary examine the offers to ensure compliance of the tenderer with the conditions of the tender invitation in terms of his classification, completion of his offer and the non-existence of any conditions that contradict with conditions of the tender invitation.
 - (3) Whenever necessary, refer the offers to a technical committee to study them and prepare a report within the specified time-period.
- (b) When evaluating offers, the Committee shall verify the tenderer's qualification, financial capability and compliance of his offer to the tender invitation conditions and his capability in fulfilling the obligations incurred by the new tender in addition to the volume of his previous obligations in terms of the grade of his classification.
- (c) The Committee may reject any offer if its prices were largely below cost price or the current prices or prices estimated by the relevant entity provided grounds for rejection shall be stated in detail.

- (d) The Committee may summon any tenderer to request any information or analysis for items prices stated in his offer without prejudice to rights of other tenderers. The Committee shall record the results of such discussions in the session's minutes.
- (e) Where the study proves that certain tenderers are not eligible to be awarded the tender, the Chairman of the Committee may decide to return guarantees for such tenderers.

Article 15 regulates the *awarding* procedures.

It asserts that the Committee shall award the tender to the tenderer with the best offer. The award decision, following certification, shall be notified to the entity and the entity notifies the supplier. An award decision shall not be amended unless by a subsequent decision from the same Committee.

23. *Please identify the provisions in your legislation setting the parameters for the prescription of technical specifications by entities as part of the evaluation criteria.*

Supplies:

Article 4 of the Tenders Instructions No. 1 for the year 1994 provides that the beneficiary department should verify the existence of actual need to purchase the required supplies. The said beneficiary department should also verify that the required supplies are not available in the Central Procuring Entity (GSD), excluding the cases of emergency that do not permit such procedures before sending the purchase order to GSD that is concerned with inviting for the tender. The said GSD should proceed as follows:

- (a) review the specifications of supplies requested to be purchased, to assure their generality, precision and unambiguity. For this purpose, GSD may consult experts, technicians or any other body to make sure of that.

Article 37 of the Tenders Instructions No. 1 for the year 1994 provide that in case tenders invitation included a trademark or certain specifications for any supplies, the bidder should not be bound to these specifications or trademarks which merely serve as a guideline to the specifications, characteristics and usage of the required supplies. The bidder could, also, submit the substitutes that have the same equivalent advantages, characteristics and applications that lead to making use of them in the same manner that the nominated materials may act. In this case the required specifications should be considered to be general specifications, to get the required results with respect to the procuring entity.

The following articles regulate the set out of technical committees:

Article 22 of the Supplies Regulation No. 32 for the year 1993:

- (a) Central Tenders Committee or the special tenders committee formed according to this act, may ask for assistance from experts and technicians from government employees or other personnel to make use of their expertise in considering the bids introduced to it, and all departments are required to cooperate completely with these committees in this respect.
- (b) The minister based on the director general's submission may grant the experts, technicians and the technical committee members financial bonuses suitable for the works assigned to them by the central tenders committee.

Tenders Instructions No. 1 for the year 1994 and its amendments:

Article 3 refers to definition of the technical committee as the committee constituted by tenders committee of experts and technicians either by personal names or by representatives of other departments and authorities.

Article 45 stipulates the following:

The tenders committee or the director general should specify the persons or parties that constitute the technical committee, which should study offers with respect to necessary technical, financial and legal affairs; and then submit its proper recommendation for the tenders committee.

Article 47 provides for the following:

Offers (Bids) submitted for the invitation should be studied into ascending price order according to the following:

- (a) Offers should be studied with respect of technical aspects in such a way that technical standards, should be specified according to the required supplies specifications on a table prepared for this purpose, and all offers should be subjected to the same criteria, with respect to bidder's commitment (in his offer) with the specifications and conditions of tenders invitation.
- (b) Bidders financial and technical competency to fulfil the tender's obligations should be considered.
- (c) Study of the offers should start with the lowest price offer and graduate into ascending order until finishing up the study of all the submitted offers.
- (d) In case that the offer has fulfilled all conditions, specifications and quality, the technical committee should recommend to award the tender on the tenderer submitted lowest prices.
- (e) Prices of the required supplies stated in the invitation should be compared to specify the lowest congruent, provided that the value of any appendages or spare parts that are not required to be priced in the invitation should be disregarded. Whereas, tenders committee should be entitled to accept appendages and spare parts in the winner offer after awarding it.
- (f) In case that the requirements were not available in the lowest price offer, the study should go to the offer follows it in price, till it reaches to the suitable offer for awarding, provided that reasons of disregarding (offers with low prices) should be stated explicitly.
- (g) When defects or non-conformity is found in all offers (bids), it should be possible to purchase the offered supplies that satisfy the requirements of the beneficiary department that enjoy quality and suitable prices (the optimal offer).
- (h) Continuation of spare parts and maintenance availability and any other matters required by Supplies Act and the applied instructions should be considered.
- (i) The privileged price granted to national products should be considered in the studying process.

Article 51 stipulates the following:

Before awarding the tender, tenders committee should consider the competency and experience of the bidder in the field of providing the required supplies, his goodwill, facilities provided by him or the service that he provides, spare parts, workshops, and solvency; whereas the committee could disregard his offer upon the absence of these requirements either wholly or partially.

Works and Engineering (Technical) Services:

According to the Government Works Regulation No. 71 for the year 1986:

Article 23 provides the following:

- (a) Construction contractors of all types of constructions shall be classified within graded classes in accordance with financial, technical and administrative qualifications, procurement and expertise in undertaking the constructions. The Minister's Council shall issue instructions for this purpose specifying in which requirements, conditions and classes of classification.
- (b) The Minister's Council shall, upon recommendation of the Minister, form one committee or more to examine applications of classifying construction contractors for all types of constructions, and the classes and grades thereof.
- (c) The Minister shall define, upon recommendation of the competent classification committees, classes and fields of competence in which contractors are classified. This classification shall be reviewed in light of actual practice of the contractor, and of change in the basis upon which such contractor was classified in accordance with the recommendation of the competent classification committees.
- (d) The Minister shall issue schedules of construction contractors' classification and competence and such schedules are to be published in the Official Gazette. The Minister may, however, amend such schedules every now and then by adding names of new contractors, abolishing names of existing ones, or amending the classes or the classes or the fields of work thereof.

According to Government Works' Tendering Instructions:

Article 7(a)(3) provides that the advertising of tendering should include the contractors classes allowed to subscribe in constructions tenders, or the classes and qualification of the consultants allowed to participate in engineering services' tenders as the case may be.

Article 14 provides that the committee should adopt the following procedures when examining and evaluating contracts:

- Transferring tenders offers to a technical committee to examine them whenever needed.
- When evaluating offers, the committee shall verify the legal capacity and the financial ability of the tenderer, and that his/her tender conforms with the terms of the invitation, and his capability to fulfil his obligation under the tender in addition to his previous obligations in light of his classification.

24. *Identify the measures in national legislation ensuring that awards are made in accordance with the evaluation criteria and essential requirements specified in the tender documentation.*

Supplies:

See Article 47 of the Tenders Instructions No. 1 for the year 1994 in question 23 above.

Works and Engineering (Technical) Services:

Article 14 of the Government Works Regulation No. 71 for the year 1986 requires the Committee when considering the tenders to ensure the tenderer's capacity and financial competence as well as the compliance of its tender with the requirements specified in the tender documents.

V. INFORMATION

25. *Article XIX:1 of the Agreement foresees the publication of laws, regulations, judicial decisions, administrative rulings of general application and procedures regarding government procurement. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where the legislation referred to in questions 1 and 2 can be found.*

All laws and regulations in the Kingdom are published in the Official Gazette upon the completion of all constitutional procedures and Royal Assent. Moreover, government procurement requires government budget allocations for each tender. The General Budget Law which regulates such allocations is published in the Official Gazette as well.

As for Instructions, they are issued pursuant to Regulations related to government procurement, they shall be published in the Official Gazette so as to allow public access, such as the Tendering Instructions No. 1 for the year 1994 and amendments thereof, and the Government Works Tendering Instructions No. 71 for the year 1987.

There are in general no legal instruments that regulate the publishing of Administrative or Ministerial Decisions. This is also related to government procurement. However, such Decisions are published in the Official Gazette if it so provided in these decisions. In cases where there is no such provision, the governmental entity may publish them in the manner they deem appropriate, like attaching them to a billboard or publishing them in daily local newspapers or through other media.

Judicial Decisions of the Court of Cassation and the High Court of Justice on the other hand are usually published in specialized journals such as the monthly journal of the Jordanian Bar Association and the specialized magazine issued by the Judicial Institution. Public daily newspapers often, but not regularly publish laws and regulations and instructions and decisions as well.

It is also noted that some governmental entities follow in disseminating legislation in the Kingdom a certain method, i.e. it collects all pieces of legislation related to their work and places them in books available for access of entities concerned with such legislation. For example, the General Supplies Department publishes manuals that contain relevant laws, regulations, instructions and decisions, as well as forms related to the mechanism of purchasing and administrating general supplies. This also applies to the Ministry of Public Works and Housing/General Tenders Directorate concerning works and engineering (technical) services.

Website addresses:

- General Supplies Department (GSD): <http://www.gsd.gov.jo>
- General Tenders Department (GTD): <http://www.gtd.gov.jo>

26. *Article IX:1 of the Agreement foresees the publication of invitations to participate for all cases of intended procurement by entities. Please give the name of the relevant publication(s) and indicate the media to be used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

Supplies:

According to the Supplies Regulation No. 32 for the year 1993:

Article 24 stipulates the following:

The director general or the secretary general invites for tenders, as the case requires, and determines the price of the tender's documents proportional to the printing and preparation expenses of the invitation and the documents attached thereto as well as the tender's value. However, he is allowed to distribute the invitation free of charge to the Arab and foreign commercial attaché and the companies not residing in Jordan and the bodies associated to the Government, and parties he deems that it is to the treasury interest to address the tender invitation thereto.

According to Tendering Instructions No. 1 for the year 1994:

Article 7 deals with the invitation for tenders as follows:

- (a) The director general or the secretary general should announce tenders serially numbered on an annual basis, in not less than three local newspapers, for more than one day, in addition to the other media that he may find appropriate. Currently, tender invitations are published in the daily newspapers: Al-Rai (<http://www.alrai.com>), Addustour (<http://www.addustour.com.jo>), and Al-aswaq, and in Alam Al-Ghad weekly newspaper.
- (b) The announcement should include details about tender's number, kind of supplies, the closing date for purchasing tender's invitation, the deadline for submitting offers, the price of the tender's invitation, and, any other matters that the director general or secretary general may find indispensable for announcement.
- (c) Upon the request of more than one bidder, or upon a certain necessity, the director general or secretary general may extend the date of submitting offers for an appropriate period. Whereas he may announce that in the same media used for announcing for the tender previously.
- (d) The director general or the secretary general should announce the tender that has been decided to be re-invited for.

Works and Engineering (Technical) Services:

According to the Government Works Tendering Instructions No. 71 for the year 1987:

Article 8(a): Tenderers are invited to submit their offers by publishing a tender invitation notice once or more in Arabic in at least two local newspapers. However, a notice in English may be published in addition to Arabic when inviting contractors or foreign councils to participate in a tender.

Currently, tender invitations are published in the daily news papers Al-Rai(<http://www.alrai.com>) and Addustour (<http://www.addustour.com.jo>), and in Alam Al-Ghad weekly newspaper. Tenders invitations and tenders documents for engineering (technical) services tenders are provided through the General Tenders Directorate website also.

Article 8(b): Special invitations' tenders may be transmitted through registered mail or delivered by hand to contractors or councils that the entrepreneur approves to invite to a tender upon recommendation of the Chairman of the Committee.

27. *Please specify the types of information that your legislation requires to be included in notices of invitation to tender or in tender documentation, and identify the relevant provisions in your legislation.*

Supplies:

The Instructions of the Tenders Procedures and Participation Conditions No. 1 for the year 1994 issued pursuant to Article 23 of the Supplies Regulation No. 32 for the year 1993 and amended by Instructions No. 3 for the year 1999 govern the tender invitations requirements.

Article 3 of these Instructions stipulates the following:

Any invitation for a tender shall include the following standard documentation:

- Invitation for tendering, including various standard forms.
- Technical specifications of the required supplies (including forms, charts, drawings and any other details).
- Tender's general conditions and instructions.
- Special conditions (if any).
- Bidders' pre-qualifications (upon request).

Article 7(b): The announcement should include details about tender's number, kind of supplies, the closing date for purchasing tender's invitation, the deadline for submitting offers, the price of the tender's invitation, and, any other matters that the director general or secretary general may find indispensable for announcement.

Works and Engineering (Technical) Services:

According to Government Works Tendering Instructions No. 71 for the year 1987:

Article 4/A. Documents of technical service tenders shall contain the following information and data in addition to any other requirements set by the entity in the tendering invitation.

- (1) General description of the project attached therewith a schedule of the requirements of the department and the purpose of the project's design as well as defining different stages of work in the project.
- (2) Blueprints of lands and of buildings' projects, and general blueprints for other projects as well as eminent domain decisions and any other relevant requirements.
- (3) Limits of the costs within which a contractor must work in terms of the costs for the project intended to be designed.
- (4) Terms of contract and the contract's draft and the method of submitting tenders.

- (5) Means of defining the time limits of execution of work, consideration and the amount of required bonds.

Article 4/B: Documents of tenders shall contain the following data and requirements in addition to any other requirements set by the entity in the tendering invitation.

- (1) Description of the project: provided it contains basic information of the nature, size and location of the project for any type of the following required works:
- Buildings Projects: defining the number and size of the buildings and floors or any other annexed complexes, and also the works and services of the site.
 - Roads Projects: defining the type, length, width, number of lines, starting and ending points of the road as well as sewerage works, bridges and intersections.
 - Other Projects: defining information related to the project according to its nature.
- (2) Instructions of the contract: including guidelines and conditions by which contractors and tenderers abide relating to submission of tenders, the amount of bid bonds, basic information about the contractor and qualification thereof, information and documents or other data to be attached to the offer.
- (3) General conditions of the contracting contract: those are the conditions specified in the construction contract's text issued by the Ministry and by which all departments and councils shall abide to.
- (4) Special conditions of the construction contract: the conditions complementary to the general conditions and any amendments thereof, and any other additional conditions required by the contract including conditions related to financing, the mechanism of execution and stages of the project as well as the right of the entity to divide it.
- (5) Blueprints: they are the detailed blueprints necessary to execute a project as well as the blueprints of the site and land and the regulatory blueprints.
- (6) Technical specification and schedules of quantities and prices: including the general and specific technical specifications related to a project, and schedules of quantities and prices titled in parts of infrastructure, site, skeleton and finishings.
- (7) Contract forms and bonds.
- (8) Any other annexes to the tenders' documents.

Article 7/A. A tender invitation shall contain the following:

- (1) Subject-matter of the tender, site map with a brief description of the project.
- (2) The price of tender documents.
- (3) The categories of contractors allowed to participate in construction tenders, or the categories and qualifications of the consultants permitted to participate in engineering services tenders as the case may be.

- (4) The time-limits at which the contractor is allowed to buy a copy of the tender, and the exact date and hour for submitting the offers and the place of submission.
- (5) The amount and sources of finance and its source for financed projects as well.

28. *Article IX:1 of the Agreement foresees publication of permanent lists of qualified suppliers by entities maintaining such lists. Please give the name of the publication(s) and indicate the means used for this purpose. Please also provide, where available, the address of an Internet website where such invitations are published.*

Supplies:

See answers to questions 17 and 18.

Works and Engineering (Technical) Services:

The Government Works Regulation No. 71 for the year 1986 regulates the publication of such lists.

Article 23 provides that the Minister of Public Works and Housing shall issue schedules pertaining to the classification of constructions contractors and their specialties and publish these schedules in the Official Gazette.

In addition to publishing these schedules in the Official Gazette the Constructions Contractors Association publishes special publications on contractor's classification. The Engineers' Association publishes special publications on consultants' classification as well. Lists of qualified local consultants and classified local contractors are also published on the Government Tenders Directorate website.

Website addresses:

- General Supplies Department (GSD): <http://www.gsd.gov.jo>
- General Tenders Department (GTD): <http://www.gtd.gov.jo>

29. *Article XVIII:1 of the Agreement foresees the publication of details of contract award notices by entities. Please give the name of the relevant publication(s) and indicate the means to be used for this purpose. Please also provide, where available, the address of an Internet website where such notices are published.*

Supplies:

Article 61 of the Tenders Instructions No. 1 of the year 1994 requires the secretariat of the tenders committee to announce the name of winning bidders by affixing them on a special announcing board, or following the method devised by the director general or secretary general to be accessible for a period of four working days for any objections submitted by any participant bidder. In some exceptional cases, tenders committee may shorten the period of objection to a minimum period of not less than forty-eight hours.

In practice, the only method used by the government is posting such notices on a board located in the entity's location. All participants are notified of the result by telephone and the winner bidder is provided by a copy of the award decision.

Works and Engineering (Technical) Services:

Article 15(b) of the Government Works Tenders Instructions No. 71 for the year 1987 provides that the Committee shall notify the entity with the award notices, which on its part shall notify it to the selected supplier.

There is no publication requirement under these Instructions. However, in practice the result of award is announced on the notice board at the premises of the Government Tenders Directorate and is also announced through GTD's internet website.

30. *Please specify the types of information that notices of contract awards should contain in your country and identify the relevant provisions in your legislation.*

Supplies:

Article 63 of the Tenders Instructions No. 1 for the year 1994 and Article 25 of the Supplies Regulation No. 32 for the year 1993 regulate this issue. The General Supplies Department issues certain forms, which became some sort of a de facto requirements followed by most entities. These forms include:

(a) Preliminary Contract Award Summary Notice

Includes the following information: the tender's number, supplier's name and address, a schedule of the required supplies which shows the item's number, name, model, unit, quantity, unit price, total price, delivery period, country of origin, manufacturer, and reason for awarding. It also includes the signature of the technical committee members and the Central Tender Committee members.

(b) Contract Award Decision

Includes, *inter alia*, the tender's number, the number of tenders submitted, the total amount, itemization of the procured supplies with the name of each selected supplier for each item, place of delivery, the selected supplier obligations, such as bonds, taxes, method of payment, and the Central Tender Committee members signatures.

(c) Notification of Award

Includes the following: selected supplier's name and address, award decision number and tender number, total amount, instructions to the supplier to be present at the entity's location to pay the fees and submit the performance guarantee within seven days of receipt of this notice, a schedule of fees and taxes due as a result of the award decision.

(d) Purchase Order

Includes the following: purchase order number and date, supplier's name and address, contract award decision to which a schedule of the required items and their prices is attached, a signed pledge by the supplier to perform its obligations under the purchase order, and the signature of the authorized person of the procuring entity.

Works and Engineering (Technical) Services:

The Government Tenders Directorate sends an award notice to the successful tenderer informing him that he was awarded the tender and requesting him to be present at the entity's location to pay the fees within 10 days as receipt of the notice, and submit the performance guarantee within 14 days of receipt of notice and sign the contract accordingly.

31. *Please specify the relevant provisions in your legislation enabling, as foreseen in Article XVIII:2, the provision of information to other Parties and unsuccessful tenderers regarding the reasons why a tender was not selected.*

Supplies:

There is nothing in the Tenders' Procedures and Participation Conditions Instructions No. 1 for the year 1994 that requires the technical committee to provide such information.

Nevertheless, Article 47 of the above Instructions requires the technical committee to start the selection process with the offer with the lowest price then move to the next lowest one until it makes its decision according to compliance with technical specifications and conditions. It also requires the technical committee to identify the reasons for dismissing the unsuccessful offers.

In practice, unsuccessful tenderers are granted access to the technical committee's report which include the reasons for dismissal.

Works and Engineering (Technical) Services:

The Government Works Regulation and the instructions issued pursuant to this Regulation do not regulate this matter. The instructions only specify the circumstances where the Committee shall dismiss a tender and the circumstances where it may dismiss a tender. Nothing in these instructions requires the Committee to identify the reasons for dismissing any tender or to enable unsuccessful tenderers to look at the reasons of dismissal.

VI. BID CHALLENGE PROCEDURES

32. *Please provide information on existing challenge procedures.*

33. *Are there specific provisions enabling access of foreign suppliers to challenge procedures?*

34. *To the extent that this information does not fully respond to the following points, please provide the supplementary information necessary to do so:*

(i) *The time-limit to launch a complaint contained in the Agreement is "not less than 10 days" from the time when the basis of the complaint is known or reasonably should have been known. What are the limits in domestic legislation?*

(ii) *What body is responsible for the challenge procedures? Is this a "court" or an "impartial and independent review body"? If the latter:*

- *How are its members selected?*

- *Are its decisions subject to judicial review?*

- *If not, how will the requirements of paragraph 6 of Article XX be taken into account?*

- (iii) *What is the applicable law by reference to which the challenge body will examine complaints?*
- (iv) *Which rapid interim measures are provided to correct breaches of the Agreement and to preserve commercial opportunities?*
 - *Do these measures include the possibility to suspend the procurement process? On what conditions?*
- (v) *How do challenge procedures provide for correction of the Agreement? What types of compensation for loss or damages suffered can the challenge body order?*
- (vi) *Give any available information on the time-periods for the stages of the challenge process, including to obtain interim measures and a final decision.*
- (vii) *What are the usual costs to conduct a challenge procedure? Are there possibilities foreseen to do so free of charge?*

As a general rule, contract award decisions are considered "administrative decisions", therefore, they are subject to the general rules applicable to administrative decisions, and they fall within the jurisdiction of the High Court of Justice.

The High Court of Justice Law No. 12 for the year 1992 regulates the challenge procedures for all administrative decisions. Article 9 specifies the Court's jurisdiction.

In the case of contract award decisions, a case may be filed against the entity that issued the award decision. Administrative decisions can only be challenged for one or more of the following basis:

- (a) The issuing entity's lack of jurisdiction.
- (b) Violation of the Constitution, Laws, Regulations or misapplication or misinterpretation of such.
- (c) If the decision was defective or the procedures of issuing the decisions were effective.
- (d) Arbitrary and Capricious decisions.

A case must be filed within 60 days of the date of notification. However, before challenging the decision in the Court, the plaintiff must exhaust all the administrative challenging methods available. Article 18 of the Government Works Regulation required the Committee to refer its decision to the entity authorized to endorse such decision within seven days of the date of issuing the decision. This entity shall endorse the decision within 30 days from the date of receipt. A tenderer who is willing to challenge an award decision must challenge that decision at the issuing entity prior to the endorsement of that decision.

Supplies:

The Tenders' Procedures and Participation Conditions Instructions No. 1 for the year 1994 sets out the challenge procedures available under these Instructions.

Article 61 requires the Secretariat of the Committee to post the award decision on a bulletin board prepared specially for this purpose for four working days so as to enable unsuccessful tenderers to challenge such decision. This period can be reduced to forty-eight hours in exceptional circumstances.

Article 62 states that the Committee shall examine the challenges and issue its final decision thereupon then refers the decision to the entity authorized to endorse it. This entity on its part must endorse the decision within 15 days from the date of receipt or it shall be considered certified by virtue of the law. (Article 21 of the Supplies' Regulation.)

Works and Engineering (Technical) Services:

The Government Works Tenders' Instructions No. 71 for the year 1987 does not provide any challenge procedures. Nonetheless, it does not prohibit such challenge.

We can conclude from Article 15 of these Instructions that an unsuccessful tenderer may challenge an award decision in the period between the issuance of the decision and the certification of this decision.

- Under Article 9(B) of the High Court of Justice Law The Court shall have jurisdiction in all compensation claims resulting from administrative decisions and procedures.
- The applicable law by which the Court examines complaints is the relevant applicable Jordanian Law. This can be the Supplies Regulation, the Government Works Regulation or any other legislation depending on the procuring entity.
- As for interim measures, under Article 20 of the High Court of Justice Law, the court, upon the request of the any party to the proceeding, may take any preliminary decisions it deems appropriate upon filing the case or during the proceedings including temporarily suspending the administrative decision. The Court may require the party requesting such measures to post a monetary guarantee as it deems appropriate as a surety against any damages in case the party requesting such measures was proven not rightful in his claim.
- Article 26(B) of the High Court of Justice Law provides that the Court's ruling shall be final and may not be challenged before any entity. If the Court revokes the administrative decision, all procedures, legal and administrative acts performed as a result of the revoked decision shall be deemed void as of the date of issuing the decision.
- As for the costs, Article 16 of the High Court of Justice Law provides that fees for filing any case with the High Court of Justice shall be charged in accordance with the fees stipulated in the Courts Fees Regulation. Article 25 of the Courts Fees Regulation provides that fees for cases filed with the High Court of Justice shall be determined by the Chief of the High Court of Justice provided that such fee is no less than fifty Jordanian Dinars and no more than two-hundred Jordanian Dinars. As for compensation claims, the fee shall be the same as in civil cases.
- There are no specific time-periods for judicial proceedings.

VII. OTHER MATTERS

35. *To what extent is information technology being used in the process of government procurement? Are notices of invitations to tender and/or notices of contract awards published electronically? Please provide the address of such electronic publications.*

Supplies:

The General Supplies Department's website is still under construction.

Works and Engineering (Technical) Services:

The Government Tenders Directorate's website provides information on some tenders. Tenders invitations and tender documents for engineering consultancy services are provided through the website.

36. *Is there a contact point in your country for responding to enquiries from suppliers, other governments and the wider public relating to laws, regulations and procedures and practices regarding government procurement at the central and/or sub-central level? Please provide the address.*

Contact points:

Supplies:

General Supplies Department (GSD)
P.O. Box 7696
Amman 11118, Jordan

Tel.: + (9626) 5153491/6
Fax: + (9626) 5151211

e-mail: gsd@gsd.gov.jo

Works and Engineering (Technical) Services:

Government Tenders Directorate
P.O. Box 1220
Amman 11118, Jordan

Tel.: + (9626) 5858311, 5858314
Fax: + (9626) 5857583, 5857839

e-mail: gtd@gtd.gov.jo

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/123

29 November 2000

(00-5153)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Japan was received on 11 November 2000, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Japan's Annex 1 of Appendix I of the Agreement.

This rectification is necessary as a result of re-organization of Japan's central government to be effective on 6 January 2001, which is shown below. This rectification does not alter the level of mutually agreed coverage provided in the Agreement.

Accordingly, pages 1/3 and 2/3 of Annex 1 to Appendix I of Japan in WT/Let/354 of 22 August 2000 should be rectified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both Attachments are in English only.

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Imperial Household Agency
- National Public Safety Commission (National Policy Agency)
- Financial Services Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Ministry of Agriculture and Fisheries

- ~~Defence~~ Defense Agency (Rename)
- Ministry of ~~International~~ Economy, Trade and Industry (Rename)

- Environment Agency →● Ministry of Environment (Upgrade)

- Prime Minister's Office
- Okinawa Development Agency
- Economic Planning Agency
- Cabinet Office

- Environment Disputes Co-ordination Commission
- Management and Coordination Agency
- Fair Trade Commission
- Ministry of Home Affairs
- Ministry of Posts and Telecommunications
- Ministry of Public Management, Home Affairs, Posts and Telecommunications

- Ministry of Education
- Science and Technology Agency
- Ministry of Education, Culture, Science and Technology

- Ministry of Health and Welfare
- Ministry of Labour
- Ministry of Health, Labour and Welfare

- Hokkaido Development Agency
- National Land Agency
- Ministry of Transport
- Ministry of Construction
- Ministry of Land, Infrastructure and Transport

**ATTACHMENT A
JAPAN**

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority

~~- Cabinet Office~~

~~- Imperial Household Agency~~

- National Public Safety Commission
(National Police Agency)

~~- Defense Agency~~

~~- Financial Services Agency~~

~~- Ministry of Public Management, Home Affairs,
Posts and Telecommunications~~

~~- Ministry of Justice~~

- Ministry of Foreign Affairs

- Ministry of Finance

- Ministry of Education, Culture, Sports, Science and Technology

- Ministry of Health, Labour and Welfare

- Ministry of Agriculture, Forestry and Fisheries

- Ministry of Economy, Trade and Industry

~~- Ministry of Land, Infrastructure and Transport~~

~~- Ministry of Environment~~

Services

Threshold:

Construction services: 4,500 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

*List of Entities which procure the services,
specified in Annex 4:*

All entities covered by the Accounts Law as follows:

- House of Representatives

- House of Councillors

- Supreme Court

- Board of Audit

- Cabinet

- National Personnel Authority

~~- Cabinet Office~~

~~- Imperial Household Agency~~

- National Public Safety Commission
(National Police Agency)

Deleted: International

Deleted: - Ministry of Transport¶
- Ministry of Posts and Telecommunications¶
- Ministry of Labour¶
- Ministry of Construction¶
- Ministry of Home Affairs¶

Deleted: - Prime Minister's Office¶

Deleted: - Fair Trade Commission ¶

Deleted: - Environmental Disputes Co-ordination¶
Commission¶

Deleted: - Imperial Household Agency¶
- Management and Co-ordination Agency¶

Deleted: - Hokkaido Development Agency¶
- Defence Agency¶
- Economic Planning Agency¶
- Science and Technology Agency¶
- Environment Agency¶
- Okinawa Development Agency¶
- National Land Agency¶

Deleted: - Financial Services Agency

Deleted: - Prime Minister's Office¶

Deleted: - Fair Trade Commission¶

Deleted: 22 August 2000
(WT/Let/354)

Services (cont'd)

- ~~Defense Agency~~
- ~~Financial Services Agency~~
- ~~Ministry of Public Management, Home Affairs, Posts and Telecommunications~~
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- ~~Ministry of Education, Culture, Sports, Science and Technology~~
- Ministry of Health, Labour and Welfare
- Ministry of Agriculture, Forestry and Fisheries
- Ministry of Economy, Trade and Industry
- ~~Ministry of Land, Infrastructure and Transport~~
- ~~Ministry of Environment~~

3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

4. This Agreement will generally apply to procurement by the Defence Agency of the following Federal Supply Classification (FSC) categories subject to the Japanese Government determinations under the provisions of Article XXIII, paragraph 1:

FSC Description

- 22 Railway Equipment
- 24 Tractors
- 32 Woodworking Machinery and Equipment
- 34 Metalworking Machinery
- 35 Service and Trade Equipment
- 36 Special Industry Machinery
- 37 Agricultural Machinery and Equipment
- 38 Construction, Mining, Excavating, and Highway Maintenance Equipment
- 39 Materials Handling Equipment
- 40 Rope, Cable, Chain, and Fittings
- 41 Refrigeration, Air Conditioning, and Air Circulating Equipment
- 43 Pumps and Compressors
- 45 Plumbing, Heating and Sanitation Equipment
- 46 Water Purification and Sewage Treatment Equipment
- 47 Pipe, Tubing, Hose, and Fittings
- 48 Valves
- 51 Hand Tools
- 52 Measuring Tools
- 55 Lumber, Millwork, Plywood and Veneer
- 61 Electric Wire, and Power and Distribution Equipment
- 62 Lighting Fixtures and Lamps
- 65 Medical, Dental, and Veterinary Equipment and Supplies
- 6630 Chemical Analysis Instruments
- 6635 Physical Properties Testing Equipment
- 6640 Laboratory Equipment and Supplies
- 6645 Time Measuring Instruments
- 6650 Optical Instruments
- 6655 Geophysical and Astronomical Instruments

Notes to Annex 1

1. Entities covered by the Accounts Law include all their internal sub-divisions, independent organs, attached organizations and other organizations and local branch offices provided for in the National Government Organization Law and the Law establishing the Cabinet Office.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.

- Deleted:** - Environmental Disputes Co-ordination Commission¶
- Deleted:** - Imperial Household Agency¶
- Management and Co-ordination Agency¶
- Deleted:** - Hokkaido Development Agency¶
- Defence Agency¶
- Economic Planning Agency¶
- Science and Technology Agency¶
- Environment Agency¶
- Okinawa Development Agency¶
- National Land Agency¶
- Deleted:** - Financial Services Agency¶
- Deleted:** International
- Deleted:** - Ministry of Transport¶
- Ministry of Posts and Telecommunications¶
- Ministry of Labour¶
- Ministry of Construction¶
- Ministry of Home Affairs¶

Deleted: 22 August 2000 (WT/Let/354)

ATTACHMENT B

JAPAN

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Cabinet Office
- Imperial Household Agency
- National Public Safety Commission (National Police Agency)
- Defense Agency
- Financial Services Agency
- Ministry of Public Management, Home Affairs, Posts and Telecommunications
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Ministry of Education, Culture, Sports, Science and Technology
- Ministry of Health, Labour and Welfare

- Ministry of Agriculture, Forestry and Fisheries
- Ministry of Economy, Trade and Industry
- Ministry of Land, Infrastructure and Transport
- Ministry of Environment

Services

Threshold:

Construction services: 4,500 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

*List of Entities which procure the services,
specified in Annex 4:*

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Cabinet Office
- Imperial Household Agency
- National Public Safety Commission (National Police Agency)

... 2000 (WT/Let/...)

APPENDIX 1	JAPAN	ANNEX 1	Page 2/3
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Services (cont'd)

<ul style="list-style-type: none"> - Defense Agency - Financial Services Agency - Ministry of Public Management, Home Affairs, Posts and Telecommunications - Ministry of Justice - Ministry of Foreign Affairs - Ministry of Finance - Ministry of Education, Culture, Sports, Science and Technology - Ministry of Health, Labour and Welfare - Ministry of Agriculture, Forestry and Fisheries - Ministry of Economy, Trade and Industry - Ministry of Land, Infrastructure and Transport - Ministry of Environment 	<table border="0"> <tr> <td style="vertical-align: top;"> <p><i>FSC</i></p> <p>22</p> <p>24</p> <p>32</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>43</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>51</p> <p>52</p> <p>55</p> <p>61</p> <p>62</p> <p>65</p> <p>6630</p> <p>6635</p> <p>6640</p> <p>6645</p> <p>6650</p> <p>6655</p> </td> <td style="vertical-align: top; padding-left: 10px;"> <p><i>Description</i></p> <p>Railway Equipment</p> <p>Tractors</p> <p>Woodworking Machinery and Equipment</p> <p>Metalworking Machinery</p> <p>Service and Trade Equipment</p> <p>Special Industry Machinery</p> <p>Agricultural Machinery and Equipment</p> <p>Construction, Mining, Excavating, and Highway Maintenance Equipment</p> <p>Materials Handling Equipment</p> <p>Rope, Cable, Chain, and Fittings</p> <p>Refrigeration, Air Conditioning, and Air Circulating Equipment</p> <p>Pumps and Compressors</p> <p>Plumbing, Heating and Sanitation Equipment</p> <p>Water Purification and Sewage Treatment Equipment</p> <p>Pipe, Tubing, Hose, and Fittings</p> <p>Valves</p> <p>Hand Tools</p> <p>Measuring Tools</p> <p>Lumber, Millwork, Plywood and Veneer</p> <p>Electric Wire, and Power and Distribution Equipment</p> <p>Lighting Fixtures and Lamps</p> <p>Medical, Dental, and Veterinary Equipment and Supplies</p> <p>Chemical Analysis Instruments</p> <p>Physical Properties Testing Equipment</p> <p>Laboratory Equipment and Supplies</p> <p>Time Measuring Instruments</p> <p>Optical Instruments</p> <p>Geophysical and Astronomical Instruments</p> </td> </tr> </table>	<p><i>FSC</i></p> <p>22</p> <p>24</p> <p>32</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>43</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>51</p> <p>52</p> <p>55</p> <p>61</p> <p>62</p> <p>65</p> <p>6630</p> <p>6635</p> <p>6640</p> <p>6645</p> <p>6650</p> <p>6655</p>	<p><i>Description</i></p> <p>Railway Equipment</p> <p>Tractors</p> <p>Woodworking Machinery and Equipment</p> <p>Metalworking Machinery</p> <p>Service and Trade Equipment</p> <p>Special Industry Machinery</p> <p>Agricultural Machinery and Equipment</p> <p>Construction, Mining, Excavating, and Highway Maintenance Equipment</p> <p>Materials Handling Equipment</p> <p>Rope, Cable, Chain, and Fittings</p> <p>Refrigeration, Air Conditioning, and Air Circulating Equipment</p> <p>Pumps and Compressors</p> <p>Plumbing, Heating and Sanitation Equipment</p> <p>Water Purification and Sewage Treatment Equipment</p> <p>Pipe, Tubing, Hose, and Fittings</p> <p>Valves</p> <p>Hand Tools</p> <p>Measuring Tools</p> <p>Lumber, Millwork, Plywood and Veneer</p> <p>Electric Wire, and Power and Distribution Equipment</p> <p>Lighting Fixtures and Lamps</p> <p>Medical, Dental, and Veterinary Equipment and Supplies</p> <p>Chemical Analysis Instruments</p> <p>Physical Properties Testing Equipment</p> <p>Laboratory Equipment and Supplies</p> <p>Time Measuring Instruments</p> <p>Optical Instruments</p> <p>Geophysical and Astronomical Instruments</p>
<p><i>FSC</i></p> <p>22</p> <p>24</p> <p>32</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>43</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>51</p> <p>52</p> <p>55</p> <p>61</p> <p>62</p> <p>65</p> <p>6630</p> <p>6635</p> <p>6640</p> <p>6645</p> <p>6650</p> <p>6655</p>	<p><i>Description</i></p> <p>Railway Equipment</p> <p>Tractors</p> <p>Woodworking Machinery and Equipment</p> <p>Metalworking Machinery</p> <p>Service and Trade Equipment</p> <p>Special Industry Machinery</p> <p>Agricultural Machinery and Equipment</p> <p>Construction, Mining, Excavating, and Highway Maintenance Equipment</p> <p>Materials Handling Equipment</p> <p>Rope, Cable, Chain, and Fittings</p> <p>Refrigeration, Air Conditioning, and Air Circulating Equipment</p> <p>Pumps and Compressors</p> <p>Plumbing, Heating and Sanitation Equipment</p> <p>Water Purification and Sewage Treatment Equipment</p> <p>Pipe, Tubing, Hose, and Fittings</p> <p>Valves</p> <p>Hand Tools</p> <p>Measuring Tools</p> <p>Lumber, Millwork, Plywood and Veneer</p> <p>Electric Wire, and Power and Distribution Equipment</p> <p>Lighting Fixtures and Lamps</p> <p>Medical, Dental, and Veterinary Equipment and Supplies</p> <p>Chemical Analysis Instruments</p> <p>Physical Properties Testing Equipment</p> <p>Laboratory Equipment and Supplies</p> <p>Time Measuring Instruments</p> <p>Optical Instruments</p> <p>Geophysical and Astronomical Instruments</p>		

Notes to Annex I

1. Entities covered by the Accounts Law include all their internal sub-divisions, independent organs, attached organizations and other organizations and local branch offices provided for in the National Government Organization Law and the Law establishing the Cabinet Office.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
4. This Agreement will generally apply to procurement by the Defence Agency of the following Federal Supply Classification (FSC) categories subject to the Japanese Government determinations under the provisions of Article XXIII, paragraph 1:

... 2000 (WT/Let/...)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.5

15 November 2000

(00-4847)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000-2001

UNITED STATES

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2000-2001.

The information notified by the United States is reproduced below.

THRESHOLD CALCULATIONS FOR THE PERIOD 2000-2001 OF THE UNITED STATES

ANNEX 1

	SDRs	US\$
1. Supplies and services	130,000	177,000
2. Construction	5,000,000	6,806,000

ANNEX 2

	SDRs	US\$
1. Supplies and services	355,000	483,000
2. Construction	5,000,000	6,806,000

ANNEX 3

	SDRs	US\$
1. Supplies and services (except entities identified in Annex 3 to which threshold of US\$250,000 applies)	400,000	545,000
2. Construction	5,000,000	6,806,000

PROPOSED MODIFICATIONS TO APPENDICES I-IV OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

The following notification from the Hong Kong Economic and Trade Office was received on 27 October 2000, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

1. Pursuant to paragraph 6(a) of Article XXIV of the Agreement on Government Procurement (1994) (the "Agreement"), Hong Kong, China hereby notifies the Committee on Government Procurement of the following modifications to the Appendices of the Agreement:

- (a) In Annex 3 of Appendix I:
 - rename "Mass Transit Railway Corporation" as "Mass Transit Railway Corporation Limited".
- (b) In Annex 3 of Appendices II, III and IV:
 - rename "Mass Transit Railway Corporation" as "Mass Transit Railway Corporation Limited".
- (c) In Annex 3 of Appendix II, with regard to the publication listed opposite "Mass Transit Railway Corporation Limited", replace "Daily Press" by:
 - "Any of the following:
 - Daily Press
 - Home Page on the Internet (<http://www.mtr.com.hk>).

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

2. The modifications in (a) and (b) above are necessary as a result of the privatization of the Mass Transit Railway Corporation (MTRC). Under the Mass Transit Railway Ordinance enacted in March 2000, all assets and liabilities of the MTRC were vested into a new limited company formed under the Companies Ordinance, the Mass Transit Railway Corporation Limited (MTRCL), on 30 June 2000. Such modifications do not alter the level of mutually agreed coverage provided in the Agreement. The modification in (c) above reflects the latest publication arrangements of an Annex 3 entity.

3. In accordance with the latest procedures for future changes to the loose-leaf system for appendices to the Agreement (GPA/W/110), the updated version of Annex 3 of Appendices I-IV with modifications highlighted are attached at Attachment A, a clean version is at Attachment B.

4. Accordingly, page 1/1 of Annex 3 to Appendix I of Hong Kong China; page 2/4 (English, French and Spanish) of Appendix II; page 1/3 (English, French and Spanish) of Appendix III; page 3/4 (English) and page 3/5 (French and Spanish) of Appendix IV should be modified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modifications.²

² The Attachments are in the original language only.

ATTACHMENT A

HONG KONG, CHINA

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDR for supplies and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Housing Authority and Housing Department
2. Hospital Authority
3. Airport Authority
4. Mass Transit Railway Corporation [Limited](#)
5. Kowloon-Canton Railway Corporation

Deleted: 1 March 2000
(WT/Let/330)
Formatted

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
	-	Daily Press
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
Kowloon-Canton Railway Corporation	-	Any of the following: The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
	-	Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation <u>Limited</u>	-	<u>Any of the following:</u>
	-	Daily Press
	-	<u>Home Page on the Internet</u> (http://www.mtr.com.hk)
Airport Authority	-	Any of the following: Daily Press
	-	Home Page on the Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

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(WT/Let/355)

HONG KONG, CHINE

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Presse quotidienne

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Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
Société du chemin de fer Kowloon-Canton	-	L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
	-	Page d'accueil sur Internet (http://www.kcrc.com)
Société de transports en commun par chemin de fer S.A.	-	L'un ou l'autre des documents suivants:
	-	Presse quotidienne
	-	Page d'accueil sur Internet (http://www.mtr.com.hk)
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Prensa diaria

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Sociedad del Ferrocarril Kowloon-Canton	-	Prensa diaria Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
	-	Página web en Internet (http://www.kcrc.com)
Compañía de los Trenes Colectivos <u>S.A.</u>	-	<u>Cualquiera de los documentos siguientes:</u> - Prensa diaria
	-	<u>Página web en Internet</u> (http://www.mtr.com.hk)
Administración de Aeropuertos	-	Cualquiera de los documentos siguientes: Prensa diaria
	-	Página web en Internet (http://www.hkairport.com)

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APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF
INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF
SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

CANADA

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EUROPEAN COMMUNITIES

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Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	Any of the following: - The Government of the Hong Kong Special Administrative Region Gazette - Daily Press - Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation <u>Limited</u>	-	Not applicable

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APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

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	-	Presse quotidienne
	-	Page d'accueil sur Internet (http://www.kcrc.com)
Société de transports en commun par chemin de fer S.A.	-	non applicable

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APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE
INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES
CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS -
PÁRRAFO 9 DEL ARTÍCULO IX.

CANADÁ

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Administración Hospitalaria	-	Página web en Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
	-	Página web en Internet (http://www.kcrc.com)
Compañía de los Trenes Colectivos S.A.	-	no aplicable

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Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
Mass Transit Railway Corporation Limited	-	provided to potential suppliers upon issuance of invitations to participate
Airport Authority	-	provided to potential suppliers upon issuance of invitations to participate

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JAPAN

Annex 1

Kanpō
and/or
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Annex 2

Kenpō
Shihō
or their equivalents,
or Kanpō
and/or
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Direction des hôpitaux	-	Home Page on the Internet (http://www.ha.org.hk)
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Société de transports en commun par chemin de fer S.A.	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Direction de l'aéroport	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

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Administración Hospitalaria	-	Home Page on the Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	se suministra a los proveedores potenciales con las invitaciones a participar
Compañía de los Trenes Colectivos S.A.	-	se suministra a los proveedores potenciales con las invitaciones a participar
Administración de Aeropuertos	-	se suministra a los proveedores potenciales con las invitaciones a participar

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Kwanbo (Diario Oficial del Gobierno de Corea)

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ATTACHMENT B

HONG KONG, CHINA

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDR for supplies and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Housing Authority and Housing Department
2. Hospital Authority
3. Airport Authority
4. Mass Transit Railway Corporation Limited
5. Kowloon-Canton Railway Corporation

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Daily Press

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Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	Daily Press
	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	Daily Press
	-	Any of the following:
	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
Mass Transit Railway Corporation Limited	-	Home Page on the Internet (http://www.kcrc.com)
	-	Any of the following:
	-	Daily Press
Airport Authority	-	Home Page on the Internet (http://www.mtr.com.hk)
	-	Any of the following:
	-	Daily Press
	-	Home Page on the Internet (http://www.hkairport.com)

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| Sociedad del Ferrocarril
Kowloon-Canton | - | The Government of the Hong Kong Special
Administrative Region Gazette |
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| | - | Cualquiera de los documentos siguientes:
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| | - | Prensa diaria |
| | - | Página web en Internet
(http://www.kcrc.com) |
| Compañía de los Trenes
Colectivos S.A. | - | Cualquiera de los documentos siguientes:
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| | - | Página web en Internet
(http://www.mtr.com.hk) |
| Administración de Aeropuertos | - | Cualquiera de los documentos siguientes:
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| | - | Página web en Internet
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APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

CANADA

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	-	Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation Limited	-	Not applicable

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APPENDICE III

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Société de transports en commun par chemin de fer S.A.	-	non applicable

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Compañía de los Trenes Colectivos S.A.	-	no aplicable

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REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/121
17 October 2000

(00-4292)

Committee on Government Procurement

Original: French

REQUEST FOR OBSERVER STATUS

Communication from Cameroon

The following communication, dated 11 October 2000, has been received from the Permanent Mission of Cameroon with the request that it be circulated to the Parties to the Agreement on Government Procurement.

I have the honour to request you to admit Cameroon as an observer in the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.4

21 September 2000

(00-3782)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000

NORWAY

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the year 2000.

The information notified by Norway is reproduced below.

THRESHOLD CALCULATIONS – FOR THE YEAR 2000

The calculation of the threshold values of the WTO Agreement in Nkr has been based on the average daily exchange rates for SDR to Nkr and EURO to Nkr over 24 months from September 1998 through August 2000. The average exchange rates are:

1 SDR = Nkr 10,9067

1 ECU = Nkr 8,3335

These exchange rates give the following threshold values:

	Annex 1 Entities	Annex 2 Entities	Annex 3 Entities	Works all entities
Threshold in GPA in SDR	130,000	200,000	400,000	5,000,000
Threshold in GPA in Nkr	1,417,871	2,181,340	4,362,680	54,533,500
Threshold in EEA in EURO	200,000	200,000	400,000	5,000,000
Threshold in EEA in Nkr	1,666,700	1,666,700	3,333,400	41,667,500
Threshold in Norway in Nkr	1,400,000	1,600,000	3,300,000	41,000,000

./.

The value of SDR in Nkr has on average been higher than the value of EURO in Nkr in the 24 months on which the calculation is based. This gives a higher GPA threshold compared to the EEA/EU thresholds, except for Annex 1 entities. In order to comply with both the WTO Agreement on Government Procurement and the EEA Agreement with a single set of threshold values, Norway has determined to set a rounded threshold based on the lowest threshold values for Annex 2 and Annex 3 entities and for works contracts.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/120

14 September 2000

(00-3584)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Moldova

The following communication, dated 13 September 2000, has been received from the Permanent Mission of Moldova with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Taking into consideration the commitment to initiate negotiations to become a Party to the Agreement on Government Procurement, undertaken by Moldova in the Working Party Report on the Accession of Moldova to the WTO, we have the honour to ask the Committee on Government Procurement to grant Moldova the status of an observer country.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/119

13 September 2000

(00-3578)

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1. In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on Government Procurement on 24 February 1997 (GPA/1/Add.2), the following documents circulated as restricted are proposed for derestriction on 15 November 2000.

GPA/W/- series

GPA/W/39
GPA/W/76
GPA/W/87
GPA/W/92-94
GPA/W/98
GPA/W/100 and addenda 1-3
GPA/W/102-103
GPA/W/105
GPA/W/115-118

2. The lists of documents which have been previously derestricted are contained in documents GPA/24, GPA/26 and GPA/31.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/117
14 August 2000

(00-3293)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from the Czech Republic

The following communication, dated 10 August 2000, has been received from the Permanent Mission of the Czech Republic with the request that it be circulated to the Parties to the Agreement on Government Procurement.

I have the honour to convey to you the request of the Czech Republic for observer status in the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/118
14 August 2000

(00-3295)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from the Slovak Republic

The following communication, dated 11 August 2000, has been received from the Permanent Mission of the Slovak Republic with the request that it be circulated to the Parties to the Agreement on Government Procurement.

I have the honour to address to you the request of the Slovak Republic for observer status in the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/73/Rev.2

1 August 2000

(00-3144)

Committee on Government Procurement

Original: English

APPLICATION FOR ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT OF ICELAND

Communication from Iceland

Revision

The attached communication, dated 25 July 2000, has been received from the Permanent Mission of Iceland with the request that it be circulated to the Parties to the Agreement on Government Procurement.

ATTACHMENT

FINAL OFFER

ICELAND

APPENDIX I

ANNEX 1

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 130,000

Services (specified in Annex 4)

Threshold: SDR 130,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

The following central government entities including:

Central purchasing entities not having an industrial or commercial character governed by Act no. 63/1970 on the arrangement of public works contracts, and Act no. 52/1987, on government procurement, as amended.

The entities in charge of government procurement are the following bodies:

Ríkiskaup (State Trading Center)

Framkvæmdasýslan (Government Construction Contracts)

Vegagerð ríkisins (Public Road Administration)

Siglingastofnun (Icelandic Maritime Administration)

ANNEX 2

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 200,000

Services (specified in Annex 4)

Threshold: SDR 200,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

1. Contracting local public authorities, including all municipalities.
2. Public bodies at the local level not having an industrial or commercial character.

ANNEX 3

*Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 400,000

Services (specified in Annex 4)*

Threshold: SDR 400,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Sectors:

1. *The electricity sector:*

Landvirkjun (The National Power Company), *lög nr. 42/1983.*

Rafmagnsveitur ríkisins (The State Electric Power Works), *orkulög nr. 58/1967*

Orkuveita Reykjavíkur (Reykjavík Energy).

Orkubú Vestfjarða (Vestfjord Power Company), *lög nr. 66/1976.*

Other entities producing, transporting or distributing electricity pursuant to *orkulög nr. 58/1967.*

2. *Urban transport:*

Strætisvagnar Reykjavíkur (The Reykjavík Municipal Bus Service).

Almenningsvagnar bs.

Other Municipal bus services.

3. *Airports:*

Flugmálastjórn (Directorate of Civil Aviation)

4. *Ports:*

Siglingastofnun, (Icelandic Maritime Administration).

Other entities operating pursuant to *Hafnalög nr. 23/1994.*

5. *Water supply:***

Public entities producing or distributing drinking water pursuant to *lög nr 81/1991, um vatnsveitur sveitarfélaga.*

Notes to Annex 3

* This Agreement shall not apply to service contracts which:

- (a) a contracting entity awards to an affiliated undertaking;
- (b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of paragraphs 1-5 of this Annex to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities;

Provided that at least 80 per cent of the average turnover of that undertaking with respect to services arising within the EEA for the three preceding years derives from the provision of such services to undertakings with which it is affiliated. When more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

** The supply of drinking water and electricity to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraphs 1 and 5 of Annex 3 where:

- the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraphs 1 and 5 of this Annex; and
- supply to the public network depends only on the entity's own consumption and has not exceeded 30 per cent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:*

<i>Subject</i>	<i>CPC Reference N</i>
Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752** (except 7524, 7525, 7526)
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services***	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866****
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical consulting services; technical testing and analysis services	867
Advertising services	871
Building-cleaning services and property management services	874, 82201-82206

<i>Subject</i>	<i>CPC Reference N</i>
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

Notes to Annex 4

- * except for services which entities have to procure from another entity pursuant to an exclusive right established by a published law, regulation or administrative provision
- ** except voice telephony, telex, radiotelephony, paging and satellite services
- *** except contracts for financial services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, and central bank services
- **** except arbitrations and conciliation services

ANNEX 5

Construction Services

Definition:

A construction service contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All public works/construction services of Division 51.

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Iceland will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Iceland has accepted that the Parties concerned give comparable and effective access for Icelandic undertakings to the relevant markets;

 - to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Iceland accepts that they have completed coverage of sub-central entities;
 - Japan and Korea in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Iceland, until such time as Iceland accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
 - Israel, Japan and Korea in contesting the award of contracts by Icelandic entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.
3. Until such time as Iceland has accepted that the Parties concerned provide access for Icelandic suppliers and service providers to their own markets, Iceland will not extend the benefits of this Agreement to suppliers and service providers of:

- Canada as regards procurement of FSC 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment;
 - Israel and Korea as regards procurement by entities listed in Annex 3, paragraph 1, as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;
 - Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.
4. Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.
5. With regard to Annex 3, this Agreement shall not apply to the following contracts:
- contracts which the contracting entities under paragraph 5 award for the purchase of water;
 - contracts which the contracting entities under paragraph 1 award for the supply of energy or of fuels for the production of energy;
 - contracts which the contracting entities award for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-EEA country;
 - contracts awarded for purposes of re-sale or hire to third parties provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and that other entities are free to sell or hire it under the same conditions as the contracting entity;
 - contracting entities exercising activities in the bus transportation sector where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.
6. With regard to Annex 4, this Agreement shall not apply to the following:
- contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;
 - contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
 - contracts awarded to an entity which is itself a contracting authority within the meaning of the Public Procurement Act: "Lög um opinber innkaup (52/1997) and Regulation (302/1996) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;
 - contracts of employment.

7. The Agreement shall not apply to contracts awarded under:
- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
 - an international agreement relating to the stationing of troops;
 - the particular procedure of an international organization.
8. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
-

PROPOSED MODIFICATIONS TO APPENDIX I OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

The following notification from the Hong Kong Economic and Trade Office was received on 10 July 2000, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

1. Pursuant to paragraph 6(a) of Article XXIV of the Agreement on Government Procurement (1994) (the "Agreement"), Hong Kong, China hereby notifies the Committee on Government Procurement of the following modifications to the Appendices of the Agreement:

- (a) In Annex 1 of Appendix I:
 - (i) delete "Industry Department";
 - (ii) rename "Trade Department" as "Trade and Industry Department"; and
 - (iii) add "Invest Hong Kong".
- (b) In Appendices II, III and IV:
 - (i) in Annex 2, delete the heading "Annex 2" and all publications listed under that heading; and
 - (ii) in Annex 3, with regard to the publication listed opposite to "Hospital Authority", replace "The Government of the Hong Kong Special Administrative Region Gazette" by "Home Page on the Internet (<http://www.ha.org.hk>)".

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

- (c) In Appendix II, Annex 3, with regard to the publication listed opposite "Airport Authority", replace "Daily Press" with:

"Any of the following:

- Daily Press
- Home Page on the Internet (<http://www.hkairport.com>)".

2. The modifications in (a) above are necessary as a result of a re-organization of certain government departments to be effective on 1 July 2000. Such modifications do not alter the level of mutually agreed coverage provided in the Agreement. The modifications in (b)(i) above are necessary consequent to the deletion of all Annex 2 entities from Appendix I, and those in (b)(ii) and (c) above reflect the latest publication arrangements of two Annex 3 entities.

3. Accordingly, pages 1/2 and 2/2 of Annex 1 to Appendix I of Hong Kong, China; page 2/4 (English, French and Spanish) of Appendix II; page 1/3 (English, French and Spanish) of Appendix III; pages 2/4 and 3/4 of Appendix IV (English); pages 3/5 of Appendix IV (French) and pages 2/5 and 3/5 of Appendix IV (Spanish) should be modified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modifications.²

² The Attachments are in English only.

ATTACHMENT A

HONG KONG, CHINA

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR for goods and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Agriculture, Fisheries and Conservation Department
2. Architectural Services Department
3. Audit Commission
4. Auxiliary Medical Services
5. Buildings Department
6. Census and Statistics Department
7. Civil Aid Services
8. Civil Aviation Department
9. Civil Engineering Department
10. Civil Service Training and Development Institute
11. Companies Registry
12. Correctional Services Department
13. Customs and Excise Department
14. Department of Health
15. Drainage Services Department
16. Education Department
17. Electrical and Mechanical Services Department
18. Environmental Protection Department
19. Fire Services Department
20. Government Flying Service
21. Government Laboratory
22. Government Land Transport Agency
23. Government Property Agency
24. Government Secretariat
25. Government Supplies Department
26. Highways Department
27. Home Affairs Department
28. Hong Kong Monetary Authority
29. Hospital Services Department
30. Immigration Department

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(WT/Let/330)

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31. Independent Commission Against Corruption
33. Information Services Department
34. Information Technology Services Department
35. Inland Revenue Department
36. Intellectual Property Department
37. Judiciary
38. Labour Department
39. Lands Department
40. Land Registry
41. Department of Justice
42. Legal Aid Department
43. Marine Department
44. Office of the Ombudsman
45. Office of the Telecommunications Authority
46. Official Receiver's Office
47. Planning Department
48. Post Office
49. Printing Department
50. Public Service Commission
51. Radio Television Hong Kong
52. Rating and Valuation Department
53. Hong Kong Police Force (including Hong Kong Auxiliary Police Force)
54. Hong Kong Observatory
55. Social Welfare Department
56. Secretariat, Independent Police Complaints Council
57. Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service
58. Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service
59. Student Financial Assistance Agency
60. Technical Education and Industrial Training Department
61. Television and Entertainment Licensing Authority
62. Territory Development Department
63. Trade and Industry Department
64. Transport Department
65. Treasury
66. Secretariat, University Grants Committee
67. Water Supplies Department
68. Management Services Agency
69. Official Languages Agency
70. Registration and Electoral Office
71. Food and Environmental Hygiene Department
72. Leisure and Cultural Services Department
73. Invest Hong Kong

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HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

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<hr/>		
	<i>Annex 3</i>	
Hospital Authority	<hr/> <ul style="list-style-type: none">- Home Page on the Internet (http://www.ha.org.hk)- Daily Press	Deleted: - The Government of the Hong Kong Special Administrative Region Gazette
Housing Authority	<hr/> <ul style="list-style-type: none">- The Government of the Hong Kong Special Administrative Region Gazette- Daily Press	
Kowloon-Canton Railway Corporation	<hr/> <ul style="list-style-type: none">- Any of the following:- The Government of the Hong Kong Special Administrative Region Gazette- Daily Press- Home Page on the Internet (http://www.kcrc.com)	
Mass Transit Railway Corporation	<hr/> <ul style="list-style-type: none">- Daily Press	
Airport Authority	<hr/> <ul style="list-style-type: none">- Any of the following:- Daily Press- Home Page on the Internet (http://www.hkairport.com)	

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPAN

Annex 1

Kanpō

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HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region Gazette
Presse quotidienne

Annexe 3

Direction des hôpitaux	-	Home Page on the Internet http://www.ha.org.hk
Direction du logement	-	Presse quotidienne The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	Presse quotidienne L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette
Société de transports en commun par chemin de fer	-	Presse quotidienne Home Page on the Internet (http://www.kcrc.com)
Direction de l'aéroport	-	Presse quotidienne Any of the following: Home Page on the Internet (http://www.hkairport.com)

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¶ The Government of the Hong
Kong Special Administrative
Region Gazette¶
Presse quotidienne¶

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the Hong Kong Special¶**
. Administrative
Region Gazette

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPON

Annexe 1

Kanpō

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HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region Gazette
Prensa diaria

Anexo 3

Administración Hospitalaria	-	Home Page on the Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	Prensa diaria The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	Prensa diaria Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
Compañía de los Trenes Colectivos	-	Prensa diaria Home Page on the Internet (http://www.kcrc.com)
Administración de Aeropuertos	-	Any of the following: Prensa diaria Home Page on the Internet (http://www.hkairport.com)

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¶
The Government of the Hong
Kong Special Administrative
Region Gazette¶
Prensa diaria¶

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the Hong Kong Special
Administrative Region Gazette

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPÓN

Anexo 1

Kanpō

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APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

CANADA

Government Business Opportunities (GBO)
MERX, Cebra Inc.

EUROPEAN COMMUNITIES

Member States do not normally operate permanent lists of suppliers and service providers. In the few cases that such lists exist, this will be published in the Official Journal of the European Communities

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	Any of the following: - The Government of the Hong Kong Special Administrative Region Gazette - Daily Press - Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation	-	Not applicable

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The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

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APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

CANADA

Marchés publics (GBO)
MERX, Cebra Inc.

COMMUNAUTES EUROPEENNES

Les Etats membres ne tiennent pas normalement de listes permanentes de fournisseurs
de produits et de services. Dans les rares cas où de telles listes existent, elles sont
publiées au Journal officiel des Communautés européennes

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region

<i>Annexe 3</i>		Deleted: Annexe 2 The Government of the Hong Kong Special Administrative Region Presse quotidienne
Direction des hôpitaux	- Home Page on the Internet (http://www.ha.org.hk)	
Direction du logement	- The Government of the Hong Kong Special Administrative Region Gazette	Deleted: - The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	- L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette Presse quotidienne Home Page on the Internet (http://www.kcrc.com)	
Société de transports en commun par chemin de fer	- non applicable	Deleted: 1 March 2000 (WT/Let/330) Formatted

APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS - PÁRRAFO 9 DEL ARTÍCULO IX.

CANADÁ

Government Business Opportunities (GBO)
MERX, Cebra Inc.

COMUNIDADES EUROPEAS

Los Estados miembros normalmente no establecen listas permanentes de proveedores de bienes y servicios. En los pocos casos en que existe tal lista, se publicará en el Diario Oficial de las Comunidades Europeas

HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region

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The Government of the Hong Kong Special Administrative Region
Prensa diaria

Anexo 3

Administración Hospitalaria

- [Home Page on the Internet
\(http://www.ha.org.hk\)](http://www.ha.org.hk)

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Servicio de la Vivienda

- The Government of the Hong Kong Special Administrative Region Gazette

Sociedad del Ferrocarril Kowloon-Canton

- Cualquiera de los documentos siguientes:
The Government of the Hong Kong Special Administrative Region Gazette

- Prensa diaria

- Home Page on the Internet
(http://www.kcrc.com)

Compañía de los Trenes Colectivos

- no aplicable

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Germany	- <i>Legislation and regulations</i> - Bundesanzeiger - <i>Herausgeber</i> : der Bundesminister der Justiz Verlag : Bundesanzeiger Bundesanzeiger Postfach 108006 5000 Köln - <i>Judicial Decisions</i> : Entscheidungsammlungen des: Bundesverfassungsgerichts; Bundesgerichtshofs; Bundesverwaltungsgerichts Bundesfinanzhofs sowie der Oberlandesgerichte
Spain	- <i>Legislation</i> - Boletín Oficial del Estado - <i>Judicial rulings</i> - no official publication
France	- <i>Legislation</i> - Journal Officiel de la République française - <i>Jurisprudence</i> - Recueil des arrêts du Conseil d'Etat - Revue des marchés publics
Greece	- Government Gazette of Greece - epishmh efhmerida eurwpaikwn koinothtwn
Ireland	- <i>Legislation and regulations</i> - Iris Oifigiuil (Official Gazette of the Irish Government)
Italy	- <i>Legislation</i> - Gazzetta Ufficiale - <i>Jurisprudence</i> - no official publication
Luxembourg	- <i>Legislation</i> - Memorial - <i>Jurisprudence</i> - Pasicrisie
Netherlands	- <i>Legislation</i> - Nederlandse Staatscourant and/or Staatsblad - <i>Jurisprudence</i> - no official publication
Portugal	- <i>Legislation</i> - Diário da República Portuguesa 1a Série A e 2a série - <i>Judicial Publications</i> : Boletim do Ministério da Justiça - Colectânea de Acordos do SupremoTribunal Administrativo; Colectânea de Jurisprudencia Das Relações
Finland	- Suomen Säädoskokoelma - Finlands Författningssamling (The Collection of the Statutes of Finland)
Sweden	- Svensk Författningssamling (Swedish Code of Statutes)
United Kingdom	- <i>Legislation</i> - HM Stationery Office - <i>Jurisprudence</i> - Law Reports - " <i>Public Bodies</i> " - HM Stationery Office

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

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The Government of the Hong
Kong Special Administrative
Region Gazette¶

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Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
Mass Transit Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
Airport Authority	-	provided to potential suppliers upon issuance of invitations to participate

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ISRAEL

The Official Gazette

JAPAN

Annex 1

Kanpō
and/or
Hōreizensho

Annex 2

Kenpō
Shihō
or their equivalents,
or Kanpō
and/or
Hōreizensho

Annex 3

Kanpō
and/or
Hōreizensho

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

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Annexe 3

Direction des hôpitaux

- [Home Page on the Internet
\(http://www.ha.org.hk\)](http://www.ha.org.hk)

Direction du logement

- The Government of the Hong Kong Special Administrative Region Gazette

Société du chemin de fer Kowloon-Canton

- Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

Société de transports en commun par chemin de fer

- Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

Direction de l'aéroport

- Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

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ISRAEL

The Official Gazette

JAPON

Annexe 1

Kanpō et/ou Hōreizensho

Annexe 2

Kenpō, Shihō ou leurs équivalents, ou Kanpō et/ou Hōreizensho

Annexe 3

Kanpō et/ou Hōreizensho

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

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	-	<i>Decisiones de la Junta de Apelación de la Contratación Pública –</i> Konkurrenz raaded Dokumentation
Alemania	-	<i>Leyes y reglamentos</i> - Bundesanzeiger
	-	<i>Herausgeber</i> : der Bundesminister der Justiz Verlag : Bundesanzeiger Bundesanzeiger Postfach 108006 5000 Köln
	-	<i>Decisiones Judiciales</i> : Entscheidungsammlungen des Bundesverfassungsgerichts; Bundesgerichtshofs; Bundesverwaltungsgerichts; Bundesfinanzhofs sowie der Oberlandesgerichte
España	-	<i>Legislación</i> - Boletín Oficial del Estado
	-	<i>Decisiones judiciales</i> - no existe publicación oficial
Francia	-	<i>Legislación</i> - Journal Officiel de la République française
	-	<i>Jurisprudencia</i> - Recueil des arrêts du Conseil d'Etat Revue des marchés publics
Grecia	-	Diario Oficial de Grecia - epishmh efhmerida eurwpaikwn koinothwn
Irlanda	-	<i>Leyes y reglamentos</i> - Iris Oifigiuil (Diario Oficial del Gobierno de Irlanda)
Italia	-	<i>Legislación</i> - Gazzetta Ufficiale
	-	<i>Jurisprudencia</i> - no existe publicación oficial
Luxemburgo	-	<i>Legislación</i> - Memorial
	-	<i>Jurisprudencia</i> - Pasicrisie
Países Bajos	-	<i>Legislación</i> - Nederlandse Staatscourant y/o Staatsblad
	-	<i>Jurisprudencia</i> - no existe publicación oficial
Portugal	-	<i>Legislación</i> - Diário da República Portuguesa, 1a serie A y 2a serie
	-	<i>Publicaciones Judiciales</i> : Boletim do Ministério da Justiça; Colectânea de Acordos do Supremo Tribunal Administrativo; Colectânea de Jurisprudencia Das Relações
Finlandia	-	Suomen Säädoskokoelma - Finlands Författningssamling (Colección de leyes de Finlandia)
Suecia	-	Svensk Författningssamling (Colección Legislativa de Suecia)
Reino Unido	-	<i>Legislación</i> - HM Stationery Office
	-	<i>Jurisprudencia</i> - Law Reports
	-	"Organismos Públicos" - HM Stationery Office

HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region Gazette

Anexo 3

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The Government of the Hong
Kong Special Administrative
Region Gazette¶

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Administración Hospitalaria	-	Home Page on the Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	se suministra a los proveedores potenciales con las invitaciones a participar
Compañía de los Trenes Colectivos	-	se suministra a los proveedores potenciales con las invitaciones a participar
Administración de Aeropuertos	-	se suministra a los proveedores potenciales con las invitaciones a participar

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ISRAEL

The Official Gazette

JAPÓN

Anexo 1

Kanpō y/o Hōreizensho

Anexo 2

Kenpō, Shihō o sus equivalentes, o Kanpō y/o Hōreizensho

Anexo 3

Kanpō y/o Hōreizensho

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

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ATTACHMENT B

HONG KONG, CHINA

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR for goods and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Agriculture, Fisheries and Conservation Department
2. Architectural Services Department
3. Audit Commission
4. Auxiliary Medical Services
5. Buildings Department
6. Census and Statistics Department
7. Civil Aid Services
8. Civil Aviation Department
9. Civil Engineering Department
10. Civil Service Training and Development Institute
11. Companies Registry
12. Correctional Services Department
13. Customs and Excise Department
14. Department of Health
15. Department of Justice
16. Drainage Services Department
17. Education Department
18. Electrical and Mechanical Services Department
19. Environmental Protection Department
20. Fire Services Department
21. Food and Environmental Hygiene Department
22. Government Flying Service
23. Government Laboratory
24. Government Land Transport Agency
25. Government Property Agency
26. Government Secretariat
27. Government Supplies Department
28. Highways Department
29. Home Affairs Department
30. Hong Kong Monetary Authority

[... 2000 \(WT/Let/330\)](#)

31. Hong Kong Observatory
32. Hong Kong Police Force (including Hong Kong Auxiliary Police Force)
33. Hospital Services Department
34. Immigration Department
35. Independent Commission Against Corruption
36. Information Services Department
37. Information Technology Services Department
38. Inland Revenue Department
39. Intellectual Property Department
40. Invest Hong Kong
41. Judiciary
42. Labour Department
43. Land Registry
44. Lands Department
45. Legal Aid Department
46. Leisure and Cultural Services Department
47. Management Services Agency
48. Marine Department
49. Office of the Ombudsman
50. Office of the Telecommunications Authority
51. Official Languages Agency
52. Official Receiver's Office
53. Planning Department
54. Post Office
55. Printing Department
56. Public Service Commission
57. Radio Television Hong Kong
58. Rating and Valuation Department
59. Registration and Electoral Office
60. Secretariat, Independent Police Complaints Council
61. Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service
62. Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service
63. Secretariat, University Grants Committee
64. Social Welfare Department
65. Student Financial Assistance Agency
66. Technical Education and Industrial Training Department
67. Television and Entertainment Licensing Authority
68. Territory Development Department
69. Trade and Industry Department
70. Transport Department
71. Treasury
72. Water Supplies Department

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HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
	-	Daily Press
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
Kowloon-Canton Railway Corporation	-	Any of the following:
	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
	-	Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation	-	Daily Press
Airport Authority	-	Any of the following:
	-	Daily Press
	-	Home Page on the Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPAN

Annex 1

Kanpō

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region Gazette
Presse quotidienne

Annexe 3

Direction des hôpitaux	-	Home Page on the Internet (http://www.ha.org.hk)
	-	Presse quotidienne
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
Société du chemin de fer Kowloon-Canton	-	L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
	-	Home Page on the Internet (http://www.kcrc.com)
Société de transports en commun par chemin de fer	-	Presse quotidienne
Direction de l'aéroport	-	Any of the following: - Presse quotidienne - Home Page on the Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPON

Annexe 1

Kanpō

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HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region Gazette
Prensa diaria

Anexo 3

Administración Hospitalaria	-	Home Page on the Internet (http://www.ha.org.hk)
	-	Prensa diaria
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
Sociedad del Ferrocarril Kowloon-Canton	-	Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
	-	Home Page on the Internet (http://www.kcrc.com)
Compañía de los Trenes Colectivos	-	Prensa diaria
Administración de Aeropuertos	-	Any of the following: - Prensa diaria - Home Page on the Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPÓN

Anexo 1

Kanpō

APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF
INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF
SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

CANADA

Government Business Opportunities (GBO)
MERX, Cebra Inc.

EUROPEAN COMMUNITIES

Member States do not normally operate permanent lists of suppliers and service providers. In the few cases that such lists exist, this will be published in the Official Journal of the European Communities

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	Any of the following: The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
	-	Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation	-	Not applicable

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APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

CANADA

Marchés publics (GBO)
MERX, Cebra Inc.

COMMUNAUTES EUROPEENNES

Les Etats membres ne tiennent pas normalement de listes permanentes de fournisseurs de produits et de services. Dans les rares cas où de telles listes existent, elles sont publiées au Journal officiel des Communautés européennes

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region

Annexe 3

Direction des hôpitaux	-	Home Page on the Internet (http://www.ha.org.hk)
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	L'un ou l'autre des documents suivants: The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
	-	Home Page on the Internet (http://www.kcrc.com)
Société de transports en commun par chemin de fer	-	non applicable

APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS - PÁRRAFO 9 DEL ARTÍCULO IX.

CANADÁ

Government Business Opportunities (GBO)
MERX, Cebra Inc.

COMUNIDADES EUROPEAS

Los Estados miembros normalmente no establecen listas permanentes de proveedores de bienes y servicios. En los pocos casos en que existe tal lista, se publicará en el Diario Oficial de las Comunidades Europeas

HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region

Anexo 3

Administración Hospitalaria	-	Home Page on the Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	Cualquiera de los documentos siguientes: The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
	-	Home Page on the Internet (http://www.kcrc.com)
Compañía de los Trenes Colectivos	-	no aplicable

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APPENDIX IV	English	Page 2/4
Germany	- <i>Legislation and regulations</i> - Bundesanzeiger - <i>Herausgeber</i> : der Bundesminister der Justiz Verlag : Bundesanzeiger Bundesanzeiger Postfach 108006 5000 Köln - <i>Judicial Decisions</i> : Entscheidungsammlungen des: Bundesverfassungsgerichts; Bundesgerichtshofs; Bundesverwaltungsgerichts Bundesfinanzhofs sowie der Oberlandesgerichte	
Spain	- <i>Legislation</i> - Boletín Oficial del Estado - <i>Judicial rulings</i> - no official publication	
France	- <i>Legislation</i> - Journal Officiel de la République française - <i>Jurisprudence</i> - Recueil des arrêts du Conseil d'Etat - Revue des marchés publics	
Greece	- Government Gazette of Greece - epishmh efhmerida eurwpaikwn koinothwn	
Ireland	- <i>Legislation and regulations</i> - Iris Oifigiuil (Official Gazette of the Irish Government)	
Italy	- <i>Legislation</i> - Gazzetta Ufficiale - <i>Jurisprudence</i> - no official publication	
Luxembourg	- <i>Legislation</i> - Memorial - <i>Jurisprudence</i> - Pasicrisie	
Netherlands	- <i>Legislation</i> - Nederlandse Staatscourant and/or Staatsblad - <i>Jurisprudence</i> - no official publication	
Portugal	- <i>Legislation</i> - Diário da República Portuguesa 1a Série A e 2a série - <i>Judicial Publications</i> : Boletim do Ministério da Justiça - Colectânea de Acordos do Supremo Tribunal Administrativo; - Colectânea de Jurisprudencia Das Relações	
Finland	- Suomen Säädoskokoelma - Finlands Författningssamling (The Collection of the Statutes of Finland)	
Sweden	- Svensk Författningssamling (Swedish Code of Statutes)	
United Kingdom	- <i>Legislation</i> - HM Stationery Office - <i>Jurisprudence</i> - Law Reports - " <i>Public Bodies</i> " - HM Stationery Office	

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 3

Hospital Authority	-	Home Page on the Internet (http://www.ha.org.hk)
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
Mass Transit Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
Airport Authority	-	provided to potential suppliers upon issuance of invitations to participate

ISRAEL

The Official Gazette

JAPAN

Annex 1

Kanpō
and/or
Hōreizensho

Annex 2

Kenpō
Shihō
or their equivalents,
or Kanpō
and/or
Hōreizensho

Annex 3

Kanpō
and/or
Hōreizensho

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

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Annexe 3

Direction des hôpitaux	-	Home Page on the Internet (http://www.ha.org.hk)
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Société de transports en commun par chemin de fer	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Direction de l'aéroport	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

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The Official Gazette

JAPON

Annexe 1

Kanpō et/ou Hōreizensho

Annexe 2

Kenpō, Shihō ou leurs équivalents, ou Kanpō
et/ou Hōreizensho

Annexe 3

Kanpō et/ou Hōreizensho

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

Alemania	-	<i>Decisiones de la Junta de Apelación de la Contratación Pública –</i> Konkurrenz raaded Dokumentation
	-	<i>Leyes y reglamentos</i> - Bundesanzeiger
	-	<i>Herausgeber</i> : der Bundesminister der Justiz Verlag : Bundesanzeiger Bundesanzeiger Postfach 108006 5000 Köln
	-	<i>Decisiones Judiciales</i> : Entscheidungsammlungen des Bundesverfassungsgerichts; Bundesgerichtshofs; Bundesverwaltungsgerichts; Bundesfinanzhofs sowie der Oberlandesgerichte
España	-	<i>Legislación</i> - Boletín Oficial del Estado
	-	<i>Decisiones judiciales</i> - no existe publicación oficial
Francia	-	<i>Legislación</i> - Journal Officiel de la République française
	-	<i>Jurisprudencia</i> - Recueil des arrêts du Conseil d'Etat Revue des marchés publics
Grecia	-	Diario Oficial de Grecia - epishmh efhmerida eurwpaikwn koinothwn
Irlanda	-	<i>Leyes y reglamentos</i> - Iris Oifigiuil (Diario Oficial del Gobierno de Irlanda)
Italia	-	<i>Legislación</i> - Gazzetta Ufficiale
	-	<i>Jurisprudencia</i> - no existe publicación oficial
Luxemburgo	-	<i>Legislación</i> - Memorial
	-	<i>Jurisprudencia</i> - Pasicrisie
Países Bajos	-	<i>Legislación</i> - Nederlandse Staatscourant y/o Staatsblad
	-	<i>Jurisprudencia</i> - no existe publicación oficial
Portugal	-	<i>Legislación</i> - Diário da República Portuguesa, 1a serie A y 2a serie
	-	<i>Publicaciones Judiciales</i> : Boletim do Ministério da Justiça; Colectânea de Acordos do Supremo Tribunal Administrativo; Colectânea de Jurisprudencia Das Relações
Finlandia	-	Suomen Säädoskokoelma - Finlands Författningssamling (Colección de leyes de Finlandia)
Suecia	-	Svensk Författningssamling (Colección Legislativa de Suecia)
Reino Unido	-	<i>Legislación</i> - HM Stationery Office
	-	<i>Jurisprudencia</i> - Law Reports
	-	"Organismos Públicos" - HM Stationery Office

HONG KONG, CHINA

Anexo I

The Government of the Hong Kong Special Administrative Region Gazette

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Anexo 3

Administración Hospitalaria	-	Home Page on the Internet (http://www.ha.org.hk)
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	se suministra a los proveedores potenciales con las invitaciones a participar
Compañía de los Trenes Colectivos	-	se suministra a los proveedores potenciales con las invitaciones a participar
Administración de Aeropuertos	-	se suministra a los proveedores potenciales con las invitaciones a participar

ISRAEL

The Official Gazette

JAPÓN

Anexo 1

Kanpō y/o Hōreizensho

Anexo 2

Kenpō, Shihō o sus equivalentes, o Kanpō
y/o Hōreizensho

Anexo 3

Kanpō y/o Hōreizensho

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Japan was received on 12 July 2000, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 1 of Appendix I of the Agreement:

- Delete "Financial Supervisory Agency"; and
- add "Financial Services Agency".

This rectification is based on the fact that on 1 July 2000, the "Financial Supervisory Agency" was re-organized as the "Financial Services Agency". This rectification does not alter the level of mutually agreed coverage provided in this Agreement.

Accordingly, pages 1/3 and 2/3 of Annex 1 to Appendix I of Japan in the Loose-Leaf System of Appendices should be modified as in Attachment A to this document (red-lined version). Attachment B shows the relevant pages of the loose-leaf system as they would look after the acceptance of the modifications.²

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

² Both Attachments are in English only.

ATTACHMENT A

JAPAN

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission (National Police Agency)
- Environmental Disputes Co-ordination Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Financial [Services Agency](#)
- Ministry of Education
- Ministry of Health and Welfare

- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

Services

Threshold:

Construction services: 4,500 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission (National Police Agency)

Deleted: Supervisory

Deleted: 1 March 2000
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Services (cont'd)

- Environmental Disputes Co-ordination Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Financial Services Agency
- Ministry of Education
- Ministry of Health and Welfare
- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

4. This Agreement will generally apply to procurement by the Defence Agency of the following Federal Supply Classification (FSC) categories subject to the Japanese Government determinations under the provisions of Article XXIII, paragraph 1:

FSC Description

- 22 Railway Equipment
- 24 Tractors
- 32 Woodworking Machinery and Equipment
- 34 Metalworking Machinery
- 35 Service and Trade Equipment
- 36 Special Industry Machinery
- 37 Agricultural Machinery and Equipment
- 38 Construction, Mining, Excavating, and Highway Maintenance Equipment
- 39 Materials Handling Equipment
- 40 Rope, Cable, Chain, and Fittings
- 41 Refrigeration, Air Conditioning, and Air Circulating Equipment
- 43 Pumps and Compressors
- 45 Plumbing, Heating and Sanitation Equipment
- 46 Water Purification and Sewage Treatment Equipment
- 47 Pipe, Tubing, Hose, and Fittings
- 48 Valves
- 51 Hand Tools
- 52 Measuring Tools
- 55 Lumber, Millwork, Plywood and Veneer
- 61 Electric Wire, and Power and Distribution Equipment
- 62 Lighting Fixtures and Lamps
- 65 Medical, Dental, and Veterinary Equipment and Supplies
- 6630 Chemical Analysis Instruments
- 6635 Physical Properties Testing Equipment
- 6640 Laboratory Equipment and Supplies
- 6645 Time Measuring Instruments
- 6650 Optical Instruments
- 6655 Geophysical and Astronomical Instruments

Deleted: Supervisory

Notes to Annex 1

1. Entities covered by the Accounts Law include all their internal sub-divisions, independent organs, attached organizations and other organizations and local branch offices provided for in the National Government Organization Law.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

Deleted: 1 March 2000
(WT/Let/330)

ATTACHMENT B

JAPAN

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies

Threshold:

130 thousand SDR

List of Entities:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission (National Police Agency)
- Environmental Disputes Co-ordination Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Financial Services Agency
- Ministry of Education
- Ministry of Health and Welfare

- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

Services

Threshold:

Construction services: 4,500 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission (National Police Agency)

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Services (cont'd)

- Environmental Disputes Co-ordination Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Financial Services Agency
- Ministry of Education
- Ministry of Health and Welfare
- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

4. This Agreement will generally apply to procurement by the Defence Agency of the following Federal Supply Classification (FSC) categories subject to the Japanese Government determinations under the provisions of Article XXIII, paragraph 1:

FSC Description

- 22 Railway Equipment
- 24 Tractors
- 32 Woodworking Machinery and Equipment
- 34 Metalworking Machinery
- 35 Service and Trade Equipment
- 36 Special Industry Machinery
- 37 Agricultural Machinery and Equipment
- 38 Construction, Mining, Excavating, and Highway Maintenance Equipment
- 39 Materials Handling Equipment
- 40 Rope, Cable, Chain, and Fittings
- 41 Refrigeration, Air Conditioning, and Air Circulating Equipment
- 43 Pumps and Compressors
- 45 Plumbing, Heating and Sanitation Equipment
- 46 Water Purification and Sewage Treatment Equipment
- 47 Pipe, Tubing, Hose, and Fittings
- 48 Valves
- 51 Hand Tools
- 52 Measuring Tools
- 55 Lumber, Millwork, Plywood and Veneer
- 61 Electric Wire, and Power and Distribution Equipment
- 62 Lighting Fixtures and Lamps
- 65 Medical, Dental, and Veterinary Equipment and Supplies
- 6630 Chemical Analysis Instruments
- 6635 Physical Properties Testing Equipment
- 6640 Laboratory Equipment and Supplies
- 6645 Time Measuring Instruments
- 6650 Optical Instruments
- 6655 Geophysical and Astronomical Instruments

Notes to Annex 1

1. Entities covered by the Accounts Law include all their internal sub-divisions, independent organs, attached organizations and other organizations and local branch offices provided for in the National Government Organization Law.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

Committee on Government Procurement

**INDICATIVE TIME-FRAME FOR ACCESSION NEGOTIATIONS
AND REPORTING ON THE PROGRESS OF WORK**

Note by the Secretariat

Revision

1. In the context of its discussion regarding the improvement of the procedures for accession under Article XXIV:2, the Committee agreed at its October 1999 meeting that the Secretariat would prepare a note on the establishment of an indicative time-frame for accession negotiations together with a procedure for regular reporting to each Committee meeting on progress in bilateral consultations (GPA/M/12, paragraph 21). A note was prepared in response to this request and discussed at the March 2000 Committee meeting (GPA/W/109). This revised version takes into account the comments made by Parties at that meeting.

2. Certain basic procedures for accession negotiations have already been adopted by the Committee in its Decision of February 1996 on the Procedures for Accession under Article XXIV:2 of the Agreement (GPA/1, Annex 2). This Decision reads as follows:

"1. In accordance with paragraph 2 of Article XXIV of the Agreement on Government Procurement (1994), any government which is a Member of the WTO may accede to this Agreement on terms to be agreed between that government and the Parties.

"2. To this effect, a government interested in accession shall communicate its interest to the Director-General of the WTO and, through him, to the Committee on Government Procurement and shall submit relevant information including an offer by way of appropriate Appendices containing lists of entities and services which would be covered by the Agreement, as well as lists of relevant publications, having regard to the provisions of the Agreement, in particular Article I and, where appropriate, Article V.

"3. The government interested in accession shall hold consultations with the Parties to the Agreement on the terms for its accession to the Agreement.

"4. With a view to facilitating accession, the Committee on Government Procurement shall establish a working party if the applicant government, or any Party to the Agreement, so requests. The working party should examine: (i) the coverage offer made by the applicant government; and (ii) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant government and export opportunities for the Parties in the market of the applicant government.

"5. Upon a decision by the Committee on Government Procurement agreeing to the terms of accession including the lists of entities and services as well as of relevant publications of the applicant government, the applicant government shall deposit with the Director-General of the WTO an instrument of accession which states the terms so agreed. The applicant government's lists of entities, services and publications in their authentic WTO language(s) shall be appended to the Agreement."

3. Attached is a table setting out a suggested indicative timetable for accession negotiations. It will be noted that the table does not specifically include the option of establishing a working party, as provided for under paragraph 4 of the above Decision. The reason is that, in practice, this option has not been availed of so far. However, should an applicant government or any Party to the Agreement request the establishment of such a working party, consequential modifications would need to be made to the suggested indicative timetable.

4. The suggested indicative timetable seeks to take into account the fact that accession negotiations have two main aspects and involve basically two mechanisms. The first aspect is the negotiation of an agreed coverage to be reflected in Appendices containing lists of entities and services as well as lists of relevant publications. The second is ensuring the consistency of the applicable national legislation with the provisions of the Agreement. The two main mechanisms used for these purposes are bilateral consultations between an acceding country and interested Parties and plurilateral consultations. The negotiations on commitments to be included in the Appendices are more focused on bilateral consultations whereas the other aspect of the negotiations is largely conducted through the plurilateral mechanism. These two aspects and mechanisms overlap to some extent and should proceed in parallel. As the Committee has already indicated, it is important that there should be a regular plurilateral review of the bilateral parts of the accession process and, of course, the results of both aspects of the negotiations must come together at the plurilateral level in the preparation and adoption of a decision setting out the terms of accession.

5. It will be noted that it is not suggested that an applicant country should necessarily be required to submit its initial offer on coverage at the same time as its application for accession. On the whole, in the accessions so far, applicant countries have submitted their initial offer together with their application for accession, but paragraph 2 of the Committee Decision of February 1996 would not seem to necessarily require this. There may be merit in providing for the possibility of an initial round of plurilateral and bilateral discussions before requiring the applicant to submit an initial offer, without of course preventing a country from submitting an initial offer at the same time as its application if it is in a position to do so.

6. With regard to the largely plurilateral process of provision by the applicant country of information on its procurement regime, the Committee has already adopted a Checklist of Issues to act as a guide to applicant countries in submitting such information (GPA/35). It is suggested in the attached indicative timetable that, following the circulation of the responses to the Checklist and other relevant data, provision might be made for Parties to seek further clarification of the applicable legislation and procedures through informal plurilateral consultations including a question and answer procedure. The questions put and answers provided would be circulated to all Parties. If necessary, provision could also be made for follow-up questions and answers.

7. In its request for the preparation of this note, the Secretariat was asked to consider the question of a procedure for regular reporting to each Committee meeting on progress in the bilateral consultations. Hitherto, the Committee's overview of accession negotiations has mainly consisted of the acceding country or interested Parties reporting orally to the Committee at its meetings on an ad hoc basis. To provide a more systematic basis for the Committee's overview of the accession process and to improve transparency, consideration might be given to providing to the Committee, prior to each of its meetings, a brief note outlining the state of play in the accession process of each applicant. This might be done, for example, through the annotated provisional agenda, which is circulated by the Secretariat prior to each Committee meeting. The information contained therein could be updated at the meeting, where necessary, by the Chair, the applicant country and parties. Based on this, the Committee might take stock of the progress of each accession process and, where appropriate, the Chair might seek to draw conclusions about moving to the next stage of the indicative timetable.

8. The suggested indicative timetable envisages that the accession process, from the date of the application to the adoption of the decision containing the terms of accession, should normally be completed within 24 months. It would, of course, have to be understood that a certain degree of flexibility would be necessary to take account of such matters as the state of preparation of the acceding country, the complexity of its procurement regime and government structure and the timing of Committee meetings.

9. The work involved in the provision of relevant information on national procurement regimes, any amendments to such regimes required and the preparation of offers by an acceding developing country may require technical cooperation, for example in the form of advice and assistance from Parties and the Secretariat, country visits and training. At the outset of the accession process, the Secretariat might enter into contact with the applicant country with a view to drawing up a technical cooperation programme for that country, taking into account its specific needs and circumstances. Parties should be ready to make resources available bilaterally and/or through the Secretariat for this purpose.

ATTACHMENT

SUGGESTED INDICATIVE TIMETABLE FOR THE ACCESSION PROCESS

Indicative timetable	Consultations on Procurement Regime	Consultations on Appendices
0	Application for accession	
4 months	Receipt of replies to the Checklist by the acceding country	
5 months	Informal plurilateral consultations including on possible scope of initial offer	
6 months	Receipt of written questions from Parties	Submission of initial offer
8 months	Receipt of written responses by the acceding country. Clarification of outstanding issues, including follow-up written questions and replies, if necessary	Bilateral consultations
15 months	Report by the acceding country on status of any steps needed to align its procurement regime with the requirements of the GPA	Submission of revised offer, if necessary. Further bilateral consultations, if necessary
18 months		Submission of second revised offer, if necessary
21 months	Circulation and review of the draft decision on terms of accession including the final offer	
24 months	Adoption of decision containing the terms of accession	

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**EXPLANATIONS TO THE PROPOSED MODIFICATIONS TO
APPENDIX I (GPA/W/106)**

Communication from Switzerland

The following communication, dated 23 May 2000, has been received from the Permanent Mission of Switzerland with the request that it be circulated to the Committee on Government Procurement.

A notification from Switzerland under Article XXIV:6(a) was circulated to the Parties to the Agreement on Government Procurement (1994) on 16 March 2000 (GPA/W/106). This notification covered a new layout for Annex 1 of the Agreement on Government Procurement (1994) as well as some modifications.

The aim of this communication is to provide an explanation of the differences between the new Annex 1 (GPA/W/106) and the existing Annex 1 (GPA/W/45). Switzerland takes the opportunity to answer the request for clarification from the United States of 18 April 2000 (GPA/W/111) and to inform, at the same time, the other Parties to the Agreement on Government Procurement (1994).

1. Switzerland's proposed modifications of Annex 1 to the Agreement on Government Procurement (1994) are based on reforms implemented recently by the Swiss federal government regarding the structure of the federal administration as well as new constitutional provisions, which have entered into force on 1 January 2000.

2. The proposed modifications of Annex 1 to the Agreement on Government Procurement (1994) fall under the following categories:

(a) Merger and incorporation of administration units into newly-established or existing units:

(1) The former "*Office fédéral de l'industrie, des arts et métiers et du travail*" and the former "*Office fédéral des affaires économiques extérieures*" were merged into the newly-established "*Secrétariat d'Etat à l'économie*".

(2) The former "*Office des constructions fédérales*" and the former "*Office fédéral des imprimés et du matériel*" were merged into the newly-established "*Office fédéral des constructions et de la logistique*".

(3) The former "*Ecole fédérale de sport de Macolin*" has been incorporated into the newly-established "*Office fédéral du Sport*".

- (4) The "*Office fédéral des questions conjoncturelles*" was dismantled and incorporated in other existing offices submitted to the GPA (*Secrétariat d'Etat à l'économie* and *Office fédéral de la formation professionnelle et de la technologie*).
- (5) The "*Office central de la défense*" was incorporated into the "*Secrétariat Général du Département fédéral de la défense, de la protection de la population et des sports*" which has been newly submitted to the Agreement on Government Procurement (1994).
- (b) Change of names: "La Poste" and several entities of the Federal Department of Defense, Protection of the Population and Sport have undergone a change of name (new terms added: in italics in the concordance table annexed to this communication).
- (c) Deletion from the list: According to Article 55 of the revised Constitution of the Swiss Confederation which entered into force on 1 January 2000 the Parliamentary Services are no longer part of the central government but of the Parliamentary Assembly; the "*Services du Parlement*", (submitted to the GPA with the modification of Annex 1 communicated in GPA/W/45, 1997) have therefore been deleted from Annex 1.
- (d) Expansion of the list: Inclusion of the "*Secrétariat Général*" of the seven Ministerial Departments of the central government and of the following entities covered by the Swiss Federal Law of 21 March 1997 on the Organization and Administration:
1. Chancellerie fédérale.
 2. Préposé fédéral à la protection des données.
 3. Secrétariat d'Etat du Département fédéral des affaires étrangères.
 4. Bureau de l'égalité entre femmes et hommes.
 5. Conseil des écoles polytechniques fédérales.
 6. Groupement de la science et de la recherche.
 7. Institut de droit comparé.
 8. Institut suisse de la propriété intellectuelle.
 9. Etat major général.
 10. Groupe de l'état-major général.
 11. Groupe de la promotion de la paix et de la coopération en matière de sécurité.
 12. Office fédéral de la formation professionnelle et de la technologie.
 13. Surveillance des prix.
 14. Commission fédérale de la communication.
3. The layout of Annex 1 - i.e. the order in which the central governmental procuring entities are listed - has also been modified; each entity is presented under its respective Ministerial Department thereby increasing clarity and transparency.
4. A concordance table establishing the link between GPA/W/45 and the new list of GPA/W/106 is annexed to this communication.

ANNEX*

CONCORDANCE TABLE GPA/W/106 – GPA/W/45

SUISSE

ANNEXE 1

*Entités du gouvernement fédéral qui passent des marchés
conformément aux dispositions du présent accord*

Fournitures	<i>Valeur de seuil:</i>	130 000 DTS
Services (spécifiés à l'annexe 4)	<i>Valeur de seuil:</i>	130 000 DTS
Services de construction (spécifiés à l'annexe 5)	<i>Valeur de seuil:</i>	5 000 000 DTS

Liste des entités couvrant tous les Départements fédéraux suisses: **Concordance with
GPA/W/45¹**

1. Chancellerie fédérale (CF):

Chancellerie fédérale	<i>NEW</i>
Bibliothèque centrale du Parlement et de l'Administration fédérale	6
Préposé fédéral à la protection des données	<i>NEW</i>

2. Département fédéral des affaires étrangères (DFAE):

Secrétariat général du Département fédéral des affaires étrangères	<i>NEW</i>
Direction du <i>développement et de la coopération</i>	14 <i>Name changed</i>
Direction du droit international public	15
Direction politique	16
Secrétariat d'État du Département fédéral des affaires étrangères	<i>NEW</i>

3. Département fédéral de l'intérieur (DFI):

Secrétariat général du Département fédéral de l'intérieur	<i>NEW</i>
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* En français seulement .

¹ Each number refers to a procuring entity listed in GPA/W/45 according to the Appendix attached to this concordance table.

Archives fédérales	5
Bureau fédéral de l'égalité entre femmes et hommes	<i>NEW</i>
Conseil des écoles polytechniques fédérales	<i>NEW</i>
Écoles polytechniques fédérales et établissements annexes	18
Groupement de la science et de la recherche	<i>NEW</i>
Institut fédéral de recherches sur la forêt, la neige et le paysage	32
Institut fédéral pour l'aménagement, l'épuration et la protection des eaux	31
Institut Paul Scherrer	33
Institut suisse de météorologie	34
Laboratoire fédéral d'essai des matériaux et de recherches	35
Office fédéral de l'assurance militaire ¹	46
Office fédéral de l'éducation et de la science	54
Office fédéral de la culture	52
Office fédéral de la santé publique	74
Office fédéral de la statistique	75
Office fédéral des assurances sociales	48

4. Département fédéral de la justice et police (DFJP):

Secrétariat général du Département fédéral de la justice et police	<i>NEW</i>
Institut suisse de droit comparé	<i>NEW</i>
Institut suisse de la propriété intellectuelle	<i>NEW</i>
Ministère public de la Confédération	36
Office fédéral de la justice	64
Office fédéral de la police	69
Office fédéral de l'aménagement du territoire	41

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Office fédéral de métrologie	67
Office fédéral des assurances privées	47
Office fédéral des étrangers	57
Office fédéral des réfugiés	72

5. **Département fédéral de la défense, de la protection de la population et des sports DDPS):**

Secrétariat général du Département fédéral de la défense, de la protection de la population et des sports ¹	<i>NEW (i.a. 81)</i>
Administration centrale du groupement de l'armement ¹	1
Commandement des écoles d'état-major et de commandants ¹	9
Commandement du Corps des gardes fortification ¹	8
État-Major de l'instruction <i>opérative</i> ¹	20 <i>Name changed</i>
État-Major général ¹	<i>NEW</i>
Groupe de l'état-major général ¹	<i>NEW</i>
Groupe <i>de la logistique de l'état-major général</i> ¹	24 <i>Name changed</i>
<i>Groupe de la promotion de la paix et de la coopération en matière de sécurité</i> ¹	12 <i>Name changed</i>
Groupe de la Direction de l'instruction <i>des forces terrestres</i> ¹	23 <i>Name changed</i>
Groupe <i>de la planification de l'état-major général</i> ¹	29 <i>Name changed</i>
Groupe de l'aide au commandement <i>de l'état-major général</i> ¹	22 <i>Name changed</i>
Groupe des affaires sanitaires <i>de l'état-major général</i> ¹	21 <i>Name changed</i>
Groupe des opérations <i>de l'état-major général</i> ¹	25 <i>Name changed</i>
Groupe des opérations des forces aériennes ¹	26
Groupe du personnel de l'armée <i>de l'état-major général</i> ¹	27 <i>Name changed</i>
Groupe du personnel enseignant <i>des forces terrestres</i> ¹	28 <i>Name changed</i>

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Groupe des renseignements de l'état-major général ¹	30	<i>Name changed</i>
Office de l'auditeur en chef ¹	38	
Office des exploitations des forces terrestres ¹	59	
Office fédéral de la protection civile ¹	70	
Office fédéral de la topographie	78	
Office fédéral de l'instruction des forces aérienne ¹	63	
Office fédéral des armes de combat ¹	43	
Office fédéral des armes et des services d'appui ¹	44	
Office fédéral des armes et des services de la logistique ¹	45	
Office fédéral des exploitations des forces aériennes ¹	58	
Office fédéral des systèmes d'armes des forces aériennes et des systèmes de commandement ¹	76	
Office fédéral des systèmes d'armes et des munitions ¹	77	
Office fédéral du matériel d'armée et des constructions ¹	66	
Office fédéral du sport		<i>NEW (with i.a. 17)</i>
Services centraux de l'état-major général ¹	83	
Services centraux des forces aériennes ¹	84	
Services centraux des forces terrestres ¹	85	

6. Département fédéral des finances (DFF):

Secrétariat général du Département fédéral des finances		<i>NEW</i>
Administration fédérale des contributions	2	
Administration fédérale des douane ¹	3	
Administration fédérale des finances	4	
Caisse fédérale d'assurance	7	
Commission fédérale des banques	11	

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Contrôle fédéral des finances	13
Monnaie officielle de la Confédération suisse	37 <i>Name changed</i>
Office fédéral de l'informatique	62
Office fédéral des constructions et de la logistique	<i>MERGER (51, 60)</i>
Office fédéral du personnel	68
Régie fédérale des alcools	82
7. <u>Département fédéral de l'économie (DFE):</u>	
Secrétariat général du Département fédéral de l'économie	<i>NEW</i>
Commission de la concurrence	10
Office fédéral de l'agriculture	40
Office fédéral de la formation professionnelle et de la technologie	<i>NEW (with i.a. 71 ,61)</i>
Office fédéral du logement	65
Office fédéral pour l'approvisionnement économique du pays	42
Office vétérinaire fédéral	80
Secrétariat d'État à l'économie	<i>MERGER (39, 61)</i>
Surveillance des prix	<i>NEW</i>
8. <u>Département fédéral de l'environnement, des transports, de l'énergie et de la communication (DETEC):</u>	
Secrétariat général du Département fédéral de l'environnement, des transports, de l'énergie et de la communication	<i>NEW</i>
Commission fédérale de la communication	<i>NEW</i>
<i>La Poste</i> ²	19 <i>Name changed</i>
Office fédéral de la communication	50
Office fédéral de l'aviation civile	49

² Pour autant que l'entité ne soit pas en concurrence avec des entreprises auxquelles le présent accord n'est pas applicable.

Office fédéral de l'économie des eaux	53
Office fédéral de l'énergie	55
Office fédéral de l'environnement, des forêts et du paysage	56
Office fédéral des routes	73
Office fédéral des transports	79

APPENDIX³ TO CONCORDANCE TABLE

SUISSE

(La version française fait foi)

ANNEXE 1

Entités du gouvernement fédéral qui passent des marchés conformément aux dispositions du présent accord

Fournitures	Valeur de seuil: 130 000 DTS
Services (spécifiés à l'annexe 4)	Valeur de seuil: 130 000 DTS
Services de construction (spécifiés à l'annexe 5)	Valeur de seuil: 5 000 000 DTS

Liste des entités couvrant tous les Départements fédéraux suisses:

No. entité

1. Administration centrale du Groupement de l'armement¹
2. Administration fédérale des contributions
3. Administration fédérale des douanes¹
4. Administration fédérale des finances
5. Archives fédérales
6. Bibliothèque centrale du Parlement et de l'administration fédéral
7. Caisse fédérale d'assurance
8. Commandement du Corps des gardes fortification¹
9. Commandement des écoles d'état-major et de commandants¹
10. Commission de la concurrence
11. Commission fédérale des banques
12. Contrôle de l'armement et la sauvegarde de la paix¹
13. Contrôle fédéral des finances
14. Direction de la coopération au développement, de l'aide humanitaire et de la coopération technique avec l'Europe centrale et orientale
15. Direction du droit international public
16. Direction politique
17. Ecole fédérale de sport de Macolin
18. Ecoles polytechniques fédérales et établissements annexes
19. Entreprises des postes²
20. Etat-major de l'instruction¹
21. Groupe des affaires sanitaires¹

³ **This Appendix (French only) is identical to GPA/W/45 (Swiss Annex 1 to the Agreement on Government Procurement (1994)) except for the numbering of the entities.**

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

² Pour autant que l'entité ne soit pas en concurrence avec des entreprises auxquelles le présent accord n'est pas applicable.

22. Groupe de l'aide au commandement¹
23. Groupe de la direction de l'instruction¹
24. Groupe logistique¹
25. Groupe des opérations¹
26. Groupe des opérations des Forces aériennes¹
27. Groupe du personnel de l'armée¹
28. Groupe du personnel enseignant¹
29. Groupe planification¹
30. Groupe renseignements¹
31. Institut fédéral pour l'aménagement, l'épuration et la protection des eaux
32. Institut fédéral de recherches sur la forêt, la neige et le paysage
33. Institut Paul Scherrer
34. Institut suisse de météorologie
35. Laboratoire fédéral d'essai des matériaux et de recherches
36. Ministère public de la Confédération
37. Monnaie
38. Office de l'auditeur en chef¹
39. Office fédéral des affaires économiques extérieures
40. Office fédéral de l'agriculture
41. Office fédéral de l'aménagement du territoire
42. Office fédéral pour l'approvisionnement économique du pays
43. Office fédéral des armes de combat¹
44. Office fédéral des armes et des services d'appui¹
45. Office fédéral des armes et des services de la logistique¹
46. Office fédéral de l'assurance militaire¹
47. Office fédéral des assurances privées
48. Office fédéral des assurances sociales
49. Office fédéral de l'aviation civile
50. Office fédéral de la communication
51. Office des constructions fédérales
52. Office fédéral de la culture
53. Office fédéral de l'économie des eaux
54. Office fédéral de l'éducation et de la science
55. Office fédéral de l'énergie
56. Office fédéral de l'environnement, des forêts et du paysage
57. Office fédéral des étrangers
58. Office fédéral des exploitations des Forces aériennes¹
59. Office des exploitations des Forces terrestres¹
60. Office central fédéral des imprimés et du matériel
61. Office fédéral de l'industrie, des arts et métiers et du travail
62. Office fédéral de l'informatique
63. Office fédéral de l'instruction des Forces aériennes¹
64. Office fédéral de la justice
65. Office fédéral du logement
66. Office fédéral du matériel d'armée et des constructions¹
67. Office fédéral de métrologie
68. Office fédéral du personnel
69. Office fédéral de la police
70. Office fédéral de la protection civile¹

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

71. Office fédéral des questions conjoncturelles
72. Office fédéral des réfugiés
73. Office fédéral des routes
74. Office fédéral de la santé publique
75. Office fédéral de la statistique
76. Office fédéral des systèmes d'armes des Forces aériennes et des systèmes de commandement¹
77. Office fédéral des systèmes d'armes et des munitions¹
78. Office fédéral de la topographie
79. Office fédéral des transports
80. Office vétérinaire fédéral
81. Office central de la défense¹
82. Régie fédérale des alcools
83. Services centraux de l'état-major général¹
84. Services centraux des Forces aériennes¹
85. Services centraux des Forces terrestres¹
86. Services du Parlement

Note relative à l'annexe 1

Le présent accord ne s'applique pas aux marchés passés par des entités énumérées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

REVIEW OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

**STREAMLINING THE PROVISIONS OF ARTICLES XIII AND XVIII RELATING
TO THE RECEIPT AND OPENING OF TENDERS, THE AWARDING OF CONTRACTS,
AND THE DISCLOSURE OF INFORMATION ON CONTRACT AWARDS**

Submission by the United States

The following communication, dated 19 May 2000, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

Introduction

As noted in the Chairman's report on the Committee's informal meeting on 7 March 2000 (Job No. 1454, dated 9 March 2000), the Committee has agreed that its ongoing work under Article XXIV:7(b) will focus in its next meeting on Articles VII-XV and paragraphs 1, 3 and 4 of Article XVIII. In order to facilitate progress, the United States is submitting the following drafting proposal relating to Articles XIII and XVIII of the Agreement's current text. The drafting proposals are followed by a point-by-point explanation of the changes being proposed.

The United States welcomes other delegations' comments on these proposals and hopes that delegations will consider them to be a useful basis for progress. We reserve the right to amend this submission or to propose additional text on these issues in the light of the Committee's discussions and ongoing domestic consultations.

Proposed Text

Receipt and Opening of Tenders

1. Procuring entities shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.
2. Procuring entities shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is caused solely by the entity.
3. When procuring entities provide suppliers with opportunities to correct unintentional errors of form between the opening of tenders and the awarding of the contract, they shall provide the same opportunities to all participating suppliers.

Awarding of Contracts

1. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation, including any specified time-periods. Parties shall ensure that entities base contract award decisions solely on the requirements and evaluation criteria that have been specified in the notices or tender documentation provided in advance to all participating suppliers.
2. Procuring entities shall award each contract to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest tender or the tender which is determined to be the most advantageous in terms of the requirements and evaluation criteria set forth in the notices or tender documentation.
3. Procuring entities shall not cancel a procurement process, or terminate or modify awarded contracts in a manner which circumvents the objectives and requirements of this Agreement.

Announcement of Post-Award Information

1. Procuring entities shall promptly inform suppliers that have submitted tenders of the procurement award decisions and provide opportunities for losing bidders to obtain an explanation of the reasons for not being selected and the relative advantages of the successful supplier.
2. Not later than 90 calendar days after the award of a procurement covered by this Agreement, the responsible procuring entity shall publish a notice in the appropriate publication designated in Appendix II of this Agreement which includes at least the following information about that contract:
 - (a) the name of the procuring entity;
 - (b) a description of the goods or services procured;
 - (c) the name of the winning tenderer;
 - (d) the value of the winning award; and
 - (e) the type of procurement procedure used, and in cases where limited tendering procedures are used, a description of the circumstances justifying the use of such procedures.

Other Post-Award Information

1. Each Party shall provide detailed information regarding procurement by covered entities and their individual contract awards to any other Party upon request. This information may include such additional information on the award of a contract as may be necessary to determine whether the procurement was conducted fairly and impartially, including information on the characteristics and relative advantage of the winning tender.
2. Parties shall ensure that their procuring entities maintain and make available upon request by any other Party, records of tendering procedures relating to procurements subject to this Agreement. Procuring entities shall maintain such records for a period of at least three years.

Non-Disclosure of Information

1. Nothing in this Agreement shall prevent Parties from withholding the release of information where release would impede law enforcement, or prejudice fair competition between suppliers or the

legitimate commercial interests of particular suppliers, including the protection of their intellectual property.

Section 2: Discussion

Receipt and Opening of Tenders

In this draft, the United States seeks to streamline the existing text of Article XIII without reducing its operational effectiveness. We have excluded paragraph 1(a) of the existing Article because it appears to be overly prescriptive, somewhat outdated, and in some respects redundant.

1. Draft paragraph 1 is a streamlined version of the existing Article XIII:3. The second and third sentences of the existing paragraph either appear to be unnecessary or are addressed elsewhere in this proposal.
2. Draft paragraph 2 corresponds to the first sentence of existing Article XIII:2. In our view, the second sentence of the existing paragraph is unnecessary.
3. Draft paragraph 3 corresponds to subparagraph (b) of the existing Article XIII:1.

The United States believes that these general rules for the receipt and opening of tenders are flexible enough to apply to open, "qualified open", selective, and limited tendering situations.

Awarding of Contracts

1. Draft paragraph 1 corresponds to subparagraphs 4(a) and 4(c) of existing Article XIII. However, the second sentence of existing subparagraph 4(a) does not appear to be necessary, and has been dropped. We also propose making specific reference to time-periods as a condition for participation, in order to ensure that only those contracts conforming to the time-periods set out in notices or tender documentation are considered for participation.
2. Draft paragraph 2 corresponds to subparagraph 4(b) of existing Article XIII.
3. Based on recent experiences of US suppliers, we propose the addition of a new provision, in draft paragraph 3, to ensure that the cancellation of procurement procedures, or the termination or modification of awarded contracts, does not circumvent the objectives and requirements of this Agreement.

Due to possible similarities and overlapping issues, it may be appropriate to incorporate provisions on *decisions on qualification of suppliers* in this section as well.

Announcement of Post-Award Information

1. Draft paragraph 1 corresponds to paragraphs 2 and 3 of existing Article XVIII.
2. Draft paragraph 2 slightly streamlines existing Article XVIII:1, and provides additional flexibility by extending the time-period in which a post-award notice must be published from 72 days to 90 days.

Other Post-Award Information

1. Draft paragraph 1 streamlines existing Article XIX:2.
2. Draft paragraph 2 corresponds to existing Article XX:4.

Non-Disclosure of Information

1. This paragraph corresponds to existing Article XIX:4, but has been slightly re-worded for clarity.

REVIEW OF THE AGREEMENT ON GOVERNMENT PROCUREMENT
**STREAMLINING THE PROVISIONS OF ARTICLES VII, IX, X, XI, AND XV RELATING
TO THE DEFINITION AND USE OF TENDERING PROCEDURES, INVITATIONS TO
PARTICIPATE, AND TIME-PERIODS FOR TENDERING**

Submission by the United States

The following communication, dated 19 May 2000, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

Introduction

As noted in the Chairman's report on the Committee's informal meeting on 7 March 2000 (Job No. 1454, dated 9 March 2000), the Committee has agreed that its ongoing work under Article XXIV:7(b) will focus in its next meeting on Articles VII-XV and paragraphs 1, 3 and 4 of Article XVIII. In order to facilitate progress, the United States is submitting the following drafting proposals relating to Articles VII, XI, X, XI, XIV and XV of the Agreement's current text. The United States believes that the combined approach to these Articles is appropriate, given the close interrelationships between them. The drafting proposals are followed by a point-by-point explanation of the changes being proposed.

The United States welcomes other delegations' comments on these proposals and hopes that delegations will consider them to be a useful basis for progress. We reserve the right to amend this submission or to propose additional text on these issues in the light of the Committee's discussions and ongoing domestic consultations.

Proposed Text

Article A: General Provisions Relating to Tendering Procedures

1. The Parties shall ensure that their procuring entities, in conducting procurement subject to this Agreement, use tendering procedures that are in accordance with the provisions of Article B (open tendering and qualified open tendering), Article C (Selective Tendering) or Article E (Limited Tendering).
2. The Parties shall ensure that their procuring entities use open tendering or qualified open tendering procedures to conduct procurement subject to this Agreement, except:
 - (a) where selective tendering procedures are appropriate because most potential suppliers of the goods or services being procured may have difficulty meeting government requirements which are unusual or more demanding than the requirements of typical private sector buyers, and the efficient conduct of the procurement requires that

competition be limited to a closed list of suppliers whose qualifications have been established in advance; or

- (b) in the specific circumstances identified in Article E of this Agreement for the use of limited tendering.

General Provisions Relating to Time-Periods for Suppliers' Responses to Notifications

3. Except in the exceptional circumstances identified in Article D:1(d) and Article E:4(g) of this Agreement, any prescribed time-periods for the tendering process shall be adequate to allow participating suppliers of all Parties to this Agreement to prepare and submit responsive tenders.¹

4. Procuring entities shall apply the same time-periods for all suppliers.

5. If, as a result of a need to amend information provided to suppliers during the procurement process, a procuring entity must extend the time-period for the tendering procedures, such entity shall permit all participating suppliers to submit final tenders in accordance with a common deadline.

General Provisions For the Dissemination of Information Relating to Specific Tendering Procedures

6. Procuring entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.

7. If it becomes necessary to amend information provided to suppliers during the procurement process, procuring entities shall provide the amended information:

- (a) to all of the suppliers that are participating at the time the information is amended; and
- (b) in adequate time to allow such suppliers to modify and re-submit their initial tenders, as appropriate.

Article B: Procedures for Open Tendering and Qualified Open Tendering

Definitions

1. For the purposes of this Agreement:

- (a) "open tendering" procedures are those procedures in which the procuring entity permits all interested suppliers to participate in a procurement competition; and
- (b) "qualified open tendering" procedures are those procedures in which the procuring entity:
 - (1) requires each supplier to be qualified before such supplier may participate in the tendering process; and
 - (2) permits interested suppliers to apply for qualification while the tendering process is under way.

¹ In determining the adequacy of such time-periods, entities should, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders from foreign as well as domestic points.

2. Procuring entities using open tendering and qualified open tendering procedures shall publish a notice of intended procurement for each contract to be awarded. The notice shall be published in the appropriate publication listed in Appendix II. Such publications shall be in an electronic or paper media which is widely disseminated and readily accessible to the general public.

3. Procuring entities shall include the following information in each notice of intended procurement:

- (a) a description of the intended procurement, including the nature and quantity of the goods or services to be procured;
- (b) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the contract;
- (c) the procurement method that will be used and whether it will involve negotiation;
- (d) the time-limits set for the submission of tenders and, if qualified open tendering procedures are used, the time-limits for the submission of applications to qualify for participation in the intended procurement;
- (e) the amount and terms of payment of any sum payable for the tender documentation; and
- (f) an indication that the procurement is covered by the Agreement.

Time-Periods for Suppliers' Responses to Notifications Under Open Tendering and Qualified Open Tendering Procedures

4. Except as provided for in Article D of this Agreement:

- (a) A procuring entity using open tendering or qualified open tendering procedures shall provide no less than 40 calendar days between the date on which a notice of intended procurement is published and the date on which the tendering procedures relating to that notice are closed.
- (b) A procuring entity using qualified open tendering procedures shall provide no less than 25 calendar days, beginning on the date on which the notice of intended procurement is published, for interested suppliers to submit their applications for qualification.

Article C: Procedures for Selective Tendering

Definition

1. For the purposes of this Agreement, "selective tendering" procedures are those procedures in which a procuring entity:

- (a) requires each supplier to be included on a closed list of qualified suppliers before such supplier may participate in the tendering process; and
- (b) does not provide an opportunity for interested suppliers to apply for inclusion on the relevant closed list of qualified suppliers while the tendering process is under way.

Notification of Procurement Opportunities Under Selective Tendering Procedures

2. Procuring entities using selective tendering procedures shall distribute a notice of each intended procurement to each of the suppliers on the entity's closed list of qualified suppliers for that procurement. Such entities may choose, when they deem it appropriate, not to publish such notice in one of the publications listed in Appendix II.

3. At least 60 days before establishing a closed list of qualified suppliers for the purposes of conducting a selective tendering procedure, procuring entities shall publish, in one of the publications listed in Appendix II, a notice of the opportunity for interested suppliers to apply for inclusion in that list. Such notice shall contain the following information:

- (a) a description, in as much detail as is available, of the goods or services to be procured from suppliers included on that list;
- (b) the conditions to be fulfilled by suppliers in order to be included on that list;
- (c) the period of validity of the list; and
- (d) a statement that the notice constitutes a notice of the opportunity to apply for qualification to be included on the list.

4. For as long as a procuring entity maintains a closed list of qualified suppliers, such entity shall publish a notice of the opportunity for interested suppliers to apply for inclusion on that list, in accordance with the requirements of paragraph 3 above, at least once each year.

5. Procuring entities maintaining such closed lists shall, on request, provide additional information in a timely manner which allows all suppliers who have expressed an interest to have a meaningful opportunity to assess their interest and, if they choose, apply for inclusion on a closed list of qualified suppliers. This information shall include the information contained in the notices referred to in Article B:3 of this Agreement, to the extent available.

Time-Periods for Suppliers' Responses to Notifications Under Selective Tendering Procedures

6. Except as provided for in Article D of this Agreement, procuring entities using selective tendering procedures shall provide no less than 40 calendar days between the date on which a notice of intended procurement is distributed to participating suppliers and the date on which the tendering procedures relating to that notice is closed.

Article D: Provisions for Shorter Time-Periods in Open Tendering, Qualified Open Tendering, and Selective Tendering Procedures

1. Under the following circumstances, procuring entities may replace the time-periods referred to in Articles B:4 and C:6 with a period which is sufficiently long to enable suppliers to submit responsive tenders, but which in no case shall be less than 10 calendar days from the date on which the notice of intended procurement is published:

- (a) if a separate notice has been published at least 40 calendar days and not more than 12 months in advance, and the notice contains: a description of the subject-matter of the procurement; the time-limits for the submission of tenders or, when appropriate, applications for qualification; and the address from which documents relating to the procurement may be requested;

- (b) in the case of the second or subsequent publications dealing with contracts of a recurring nature;
- (c) in the case of procurement of commercial goods and services which are sold or offered for sale to and customarily purchased and used by non-governmental buyers for non-governmental purposes, except that a procuring entity shall not reduce time-periods for this reason if the entity uses qualified open tendering procedures or selective tendering procedures; and
- (d) when, for duly substantiated reasons of extreme urgency brought about by events unforeseeable by the entity, the adherence to the time-periods referred to in Articles B:4 and C:6 would result in serious injury to the entity or the relevant Party; however, concerns relating to the amount of funds available to an entity within a particular period of time shall not be considered to be a reason of extreme urgency for these purposes.

2. When a procuring entity publishes a notice of intended procurement in accordance with Articles B, C and D of this Agreement in an electronic media listed in Appendix II, the entity may reduce the time-periods provided for in this Agreement by up to five calendar days. The use of this provision, however, shall in no case result in the reduction of those time-periods to less than 10 calendar days from the date on which the notice of intended procurement is published.

Article E: Limited Tendering

Definition

1. For the purposes of this Agreement, "limited tendering procedures" are procedures in which a procuring entity invites tenders only from a supplier or suppliers that the entity identifies through an internal, non-competitive selection process.

Provisions on the Use of Limited Tendering Procedures

2. When a procuring entity uses a limited tendering procedure, it may choose not to publish or distribute a notice of intended procurement prior to the award of the procurement contract.

3. Procuring entities shall not use limited tendering procedures for the purpose of avoiding competition among suppliers or in a manner that constitutes a means of discrimination between suppliers of the other Parties or protection of domestic suppliers. Notwithstanding any of the provisions of Article E:4, below, entities shall not use limited tendering because of a lack of advance planning by the requiring activity or concerns relating to the amount of funds available to an entity within a particular period of time.

4. Procuring entities may use limited tendering procedures in the following circumstances and subject to the following conditions, as applicable:

- (a) in the absence of tenders that conform to the essential requirements in the tender documentation provided in a prior open, qualified open, or selective tendering procedure, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded;
- (b) in the absence of tenders from suppliers which meet qualification requirements established for a prior open qualified or selective tendering procedure;

- (c) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents, copyrights or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (d) for additional deliveries by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the entity to procure products or services not meeting requirements of interchangeability with existing equipment, software, services, or installations;
- (e) for goods purchased on a commodity market;
- (f) where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.
- (g) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures and the use of such procedures would result in serious injury to the entity, the entity's programme responsibilities, or the responsible Party;

5. Procuring entities shall prepare a report in writing on each contract awarded under paragraph 4. Each such report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 4 that justified the use of limited tendering. Entities shall retain each such report for a minimum of three years.

Section 2: Discussion

A:1. The current text of the GPA is neutral with respect to the choice of procurement methods. While the GPA must continue to provide the flexibility to use different methods, as appropriate to the circumstances, the United States believes it would be appropriate to establish a presumption in favour of open (i.e., fully transparent) tendering procedures. Therefore, this Article proposes specific rules for the use of different procurement procedures.

This proposal also defines a new type of procedure, "qualified open tendering", which corresponds to a subset of the procedures defined in the current GPA as "selective tendering", i.e., "selective tendering" procedures in which qualification is continuously open to interested suppliers. This also requires modification of the current definition of "selective tendering" (see below). The United States believes that re-defining tendering procedures in this way is desirable in order to emphasize that tendering procedures involving a qualification requirement need not be less transparent or competitive than "normal" open tendering procedures.

In the view of the United States, each of these categories of procurement procedures should be considered to be broad, with each one potentially encompassing a range of detailed tendering practices – some of which may be complex, and some very simple. The basic rules proposed for each category, then, should be flexible enough to be applied to the full range of procedures that may be used under each category. Draft Article A:1 would ensure that each procurement covered by the GPA would be subject to the provisions for one of the four categories of tendering procedures proposed in this draft.

A:2. This paragraph reflects the view, noted above, that use of open tendering procedures should be the preferred procurement method. Draft subparagraphs (a) and (b) specifically define the circumstances in which other than open tendering procedures could be used.

Draft subparagraph A:2(a) defines the circumstances in which the United States believes it may be appropriate to limit competition for a contract covered by the GPA to a closed list of potential suppliers that have been pre-qualified to participate in that procurement. This category of procurement methods is referred to as "selective tendering" in this proposal (see also the discussion of draft Article C, below). The United States believes that the use of such procedures is only appropriate in circumstances where the use of "open tendering" or "qualified open tendering" procedures may be inefficient and excessively burdensome to the procuring entity because most suppliers that have not been pre-qualified would not be capable of meeting government requirements that are unusual or more demanding than is typical in private sector markets.

Similarly, draft subparagraph A:2(b) would limit the use of "limited tendering procedures" to the specific circumstances identified in draft Article E. We call delegations' attention to the streamlining of the specific justifications for the use of "limited tendering proposed in this draft (see below).

A:3. Draft paragraphs A:3, 4 and 5 set out some general principles relating to time-periods used in tendering procedures subject to the GPA. Draft paragraph A:3 notes that there are certain exceptional circumstances in which entities should be able to reduce standard tendering time-periods. Draft Article D proposes other opportunities to reduce the normal time-periods, including when electronic communications are used and when entities are procuring commercial items (see below). However, except for emergency situations, the draft proposes that procuring entities' tendering procedures must in any case provide sufficient time for interested suppliers of all Parties to "prepare and submit responsive tenders".

A:4-5. Draft paragraph A:4 is intended to ensure non-discrimination in the application of tendering and qualification time-periods. This issue is most likely to arise in situations in which a procuring entity decides to extend a previously notified time-period. Frequently, such extensions may be announced in order to allow entities to negotiate with a small group of suppliers who have been determined, through competitive tendering, to have offered the most attractive tenders. Draft paragraph A:5, therefore, is based on the current text of Article XIV:4(d).

A:6-7. These provisions, which are drawn from Article VII:2 and Article IX:10 of the existing GPA text, help to ensure non-discrimination in the exchange of information between procuring entities and potential suppliers. It is important to recognize that these provisions do not necessarily require procuring entities to provide all interested suppliers with exactly the same amount of information on a particular procurement. In some circumstances, some suppliers may not seek as much information as others, and the procuring entities' responses to more detailed requests from some suppliers would not necessarily preclude effective competition. In tendering procedures where entities choose to negotiate with a small group of suppliers who have been determined, through competitive tendering, to have offered the most attractive tenders, it may not be appropriate to provide the same amount of information to suppliers whose tenders have been eliminated as to those that continue to participate in the negotiated competition.

It is not uncommon for entities, after publishing an initial invitation to tender, to have to revise the information provided in that invitation. In order to ensure effective competition and non-discrimination among GPA Parties' suppliers, it is important to ensure that such information be provided in sufficient time for all interested suppliers to respond and, if necessary, to modify their tenders. In these circumstances, it may be appropriate for the entity to extend the time-period for tendering, as discussed above.

B:1. Article B of this proposal establishes basic requirements for the use of "open tendering" and "qualified open tendering" (newly defined in this paper). So that the Parties and their procuring entities can more clearly understand which requirements of this draft would apply in which circumstances, we have re-arranged the current text of the GPA so that each article begins by defining the categories of procurement procedures to which the provisions of that article apply.

The procedures that would fall within the newly-defined category of "qualified open tendering" are very similar to the existing procedures for "open tendering", in that an entity using such procedures publishes an advance notice of the procurement and invites all interested parties to participate in the tendering competition. The principal difference is that the category of "qualified open tendering" includes a qualification requirement. The United States believes that the existence of a qualification requirement does not, in itself, indicate that the procurement process should be less transparent or competitive than "normal" open tendering procedures.

The key difference in this proposal between "selective tendering" and "qualified open tendering" is that entities using "qualified open tendering" procedures are able to process applications for qualification while the tendering procedures are under way. By contrast, entities using selective tendering procedures, as defined in this proposal, will only allow suppliers who have been included in a pre-existing "closed list" of qualified suppliers to participate in tendering for those procurements. Under this proposal, "selective tendering" procedures would only be used in the circumstances identified in draft paragraph A:2(a). If those circumstances do not exist, an entity that uses qualification requirements would do so in accordance with the provisions for qualified open tendering in draft Article B.

B:2. This paragraph would require publication of a notice of intended procurement for each covered contract that is awarded through the use of "open tendering" or "qualified open tendering" procedures. The United States believes that entities should have the choice of publishing such notices in either paper or electronic media (or both), provided that such media are widely disseminated and readily accessible to the general public.

B:3. This paragraph would require that each notice of intended procurement subject to this chapter include certain basic information about the procurement. The information requirements included in this proposal are less detailed than those applying to Annex 1 entities in current Article IX, but would slightly increase the amount of information required of Annex 2 and Annex 3 entities using open tendering or qualified open tendering procedures (i.e., the information provided by Annex 2 and Annex 3 entities using such procedures would include information on the procurement procedure to be used and on the cost of the tendering). The United States believes that the information that would be required under this draft paragraph is the minimal amount of information that is needed for suppliers to make informed decisions as to whether they may have an interest in a notified procurement.

B:4. This paragraph would maintain the minimum time-period of 40 days for tendering and, where "qualified open tendering" procedures are used, would maintain the minimum time-period of 25 days for the submission of suppliers' applications for qualification. However, under circumstances outlined in draft Article D, such time-periods could be reduced to 10 days (see below). The United States believes that these provisions would, in normal circumstances, provide suppliers with adequate time to submit tenders and applications for qualification. At the same time, they would provide sufficient flexibility for entities to reduce the normal time-periods in a manner that improves efficiency without significantly affecting suppliers' ability to participate effectively in tendering procedures.

It is important to stress that these time-periods are minimum requirements. For procurements with extremely complicated and detailed requirements, it may be appropriate to allow more than 40 days for suppliers to prepare and submit their tenders.

C:1. We call delegations' attention to the fact that, in this proposal, the definition of "selective tendering" is narrower than the definition of that term in the current text. The United States suggests that any deviations from the normal notification requirements for open and qualified open tendering should be limited to situations in which entities restrict competition to closed lists of qualified suppliers (defined in this proposal as "selective tendering") or where they use "limited tendering".

C:2. This paragraph is intended to ensure that all suppliers included on a permanent list of qualified suppliers are treated equally in the distribution of invitations to participate in a procurement being conducted on the basis of that list. It also permits entities to choose not to publish such invitations, when appropriate.

C:3-4. These paragraphs are based closely on the existing Article IX:9.

C:5. In the periods between Parties' invitations for applications to be included in a closed list, draft paragraph 5 would allow interested suppliers to obtain information on how to establish their qualifications when the opportunity arises. The existing text does not include this provision.

C:6. This paragraph would maintain the minimum time-period for selective tendering procedures in the existing text, subject to the possibilities for flexibility in reducing those time-periods provided for in draft Article D (see below).

D:1. This paragraph sets out circumstances in which entities conducting procurements subject to the GPA could reduce the normal time-periods for tendering and, when appropriate, the submission of applications, to a minimum of 10 calendar days. Draft subparagraphs (a) and (b) correspond to the existing GPA Article XI:3(a) and (b).

Draft subparagraph (c) would provide new flexibility for entities to reduce time-periods when they purchase commercial items which are normally bought and sold in the private sector. The United States believes that, in such circumstances, the Parties can be assured that suppliers will enjoy non-discriminatory competitive opportunities in shorter time-periods than would normally apply under this Agreement. At the same time, we do not believe it would be appropriate to allow such shorter time-periods when entities use qualification requirements, since the use of such requirements indicates that the procurement need is sufficiently complex to warrant a longer time-period.

Draft subparagraph (d), which corresponds to the existing Article XI:3(c), provides the flexibility to reduce time-periods in urgent situations that are beyond the control of the procuring entity. However, the United States believes that a lack of planning or concerns about the availability of budgeted funds within a particular time-period should not be considered to be situations of "extreme urgency brought about by events unforeseeable by the entity".

D:2. The United States believes it is appropriate to provide the flexibility for entities to reduce all time-periods by five calendar days when they publish a notification of intended procurement in an appropriate electronic media. The use of such media typically allows interested suppliers to obtain the information more quickly than is the case when notifications must be transferred by the entity to a publisher, published in paper format, and distributed by mail. In situations where entities publish in an electronic media and one or more of the circumstances described in paragraph D:1 apply, however, the United States does not believe it is appropriate to allow the minimum time-periods to be reduced to less than 10 calendar days.

E:1. This paragraph offers a slightly more detailed definition than the existing Article VII:3(c).

E:2. This paragraph simply clarifies entities' right to award contracts under limited tendering procedures without publishing an advance notice or invitation for tenders.

E:3-4. As in the existing text, these paragraphs set out the conditions in which the use of limited tendering procedures is appropriate. However, this draft departs in two significant ways from the existing text. First, draft paragraph 3 would specify that a lack of planning and foreseeable fiscal constraints would not, in themselves, constitute an appropriate justification for the use of limited tendering. This, of course, would not prevent the use of limited tendering if one of the conditions listed in draft paragraph 4 also applied.

Second, the list of conditions for the use of limited tendering in draft paragraph 4 excludes a number of conditions currently provided for in Article XV of the existing text. The elements of Article XV:1 that are excluded are:

- in subparagraph (a), the reference to situations in which "the tenders submitted have been collusive";
- (e), relating to the procurement of "prototypes";
- (f), relating to the procurement of "additional construction services";
- (g), relating to the procurement of "new construction services consisting of the repetition of similar construction services which conform to a basic plan";
- (i), relating to procurement "under exceptionally advantageous conditions"; and
- (j), relating to design contests.

Because unnecessary use of limited tendering procedures may have serious implications for the achievement of the Parties objectives under this Agreement, the United States believes it is appropriate, in the context of the Article XXIV:7(b) mandate, for the Parties to review the appropriateness of the above provisions. From our perspective, it is not clear why more open and transparent procurement procedures would not be appropriate in the circumstances described in these provisions.

E:5. This draft paragraph streamlines the existing text of Article XV:2.

WORLD TRADE ORGANIZATION

GPA/W/111
18 April 2000

(00-1554)

Committee on Government Procurement

Original: English

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 14 April 2000, has been received from the Permanent Mission of the United States with the request that it be circulated to the Committee on Government Procurement.

A communication from the Permanent Mission of Switzerland regarding modifications to Annex 1 of the Agreement on Government Procurement was circulated on 16 March 2000 (GPA/W/106), providing 30 days for other parties to object prior to the modifications becoming effective. GPA/W/106/Corr.1, dated 30 March 2000, indicated that the time-period for comments has been extended to 30 April 2000.

Switzerland's proposed modifications have been presented in the form of a new Annex 1, without identifying the specific changes that Switzerland proposes to make to the existing Annex. The United States is experiencing difficulty in assessing the implications of this proposal in this format. In order to complete our assessment, the United States Government requests that Switzerland provide an explanation of this proposal which specifically identifies the differences between the proposed new Annex 1 and the existing Annex 1 and the reasons for each proposed modification.

Until we have had an opportunity to review such an explanation, the United States will be unable to agree to the proposed modifications. This is, of course, without prejudice to any conclusions the United States may reach on the basis of Switzerland's explanation.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/106/Corr.1
30 March 2000

(00-1316)

Committee on Government Procurement

Original: English/
French

PROPOSED MODIFICATIONS TO APPENDIX I OF SWITZERLAND

Notification from Switzerland under Article XXIV:6(a)

Corrigendum

Due to a technical problem in the processing of document GPA/W/106, a misprint occurred on page 2. In Annex 1, under the heading:

"Liste des entités couvrant tous les Départements fédéraux suisses:

1. Chancellerie fédérale (CF)",

the words "Services du Parlement" should be deleted.

In order to allow sufficient time for the consideration of the present correction, the deadline for notification of any objection to the proposed changes in document GPA/W/106, in accordance with Article XXIV:6(a), is extended until 30 April 2000.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/106
16 March 2000

(00-1084)

Committee on Government Procurement

Original: French

PROPOSED MODIFICATIONS TO APPENDIX I OF SWITZERLAND

Notification from Switzerland under Article XXIV:6(a)*

The following notification from the Permanent Mission of Switzerland was received on 15 March 2000, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Please find attached Appendix I of Annex 1 to the WTO Agreement on Government Procurement containing rectifications of a purely formal nature pursuant to the modifications of the Swiss Federal Law of 21 March 1997 on the Organization of the Government and Administration (LOGA). Accordingly, it does not modify the mutually agreed coverage in any respect.

* French only

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

SUISSE

(La version française fait foi)

ANNEXE 1

*Entités du gouvernement fédéral qui passent des marchés
conformément aux dispositions du présent accord*

Fournitures	<i>Valeur de seuil:</i>	130 000 DTS
Services (spécifiés à l'annexe 4)	<i>Valeur de seuil:</i>	130 000 DTS
Services de construction (spécifiés à l'annexe 5)	<i>Valeur de seuil:</i>	5 000 000 DTS

Liste des entités couvrant tous les Départements fédéraux suisses:

1. Chancellerie fédérale (CF):

Chancellerie fédérale

Bibliothèque centrale du Parlement et de l'Administration fédérale

Préposé fédéral à la protection des données

Services du Parlement

2. Département fédéral des affaires étrangères (DFAE):

Secrétariat général du Département fédéral des affaires étrangères

Direction du développement et de la coopération

Direction du droit international public

Direction politique

Secrétariat d'État du Département fédéral des affaires étrangères

3. Département fédéral de l'intérieur (DFI):

Secrétariat général du Département fédéral de l'intérieur

Archives fédérales

Bureau fédéral de l'égalité entre femmes et hommes

Conseil des écoles polytechniques fédérales
Écoles polytechniques fédérales et établissements annexes
Groupement de la science et de la recherche
Institut fédéral de recherches sur la forêt, la neige et le paysage
Institut fédéral pour l'aménagement, l'épuration et la protection des eaux
Institut Paul Scherrer
Institut suisse de météorologie
Laboratoire fédéral d'essai des matériaux et de recherches
Office fédéral de l'assurance militaire¹
Office fédéral de l'éducation et de la science
Office fédéral de la culture
Office fédéral de la santé publique
Office fédéral de la statistique
Office fédéral des assurances sociales

4. Département fédéral de la justice et police (DFJP):

Secrétariat général du Département fédéral de la justice et police
Institut suisse de droit comparé
Institut suisse de la propriété intellectuelle
Ministère public de la Confédération
Office fédéral de la justice
Office fédéral de la police
Office fédéral de l'aménagement du territoire
Office fédéral de métrologie
Office fédéral des assurances privées
Office fédéral des étrangers
Office fédéral des réfugiés

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

5. Département fédéral de la défense, de la protection de la population et des sports (DDPS):

Secrétariat général du Département fédéral de la défense, de la protection de la population et des sports¹

Administration centrale du groupement de l'armement¹

Commandement des écoles d'état-major et de commandants¹

Commandement du Corps des gardes fortification¹

État-Major de l'instruction opérative¹

État-Major général¹

Groupe de l'état-major général¹

Groupe de la logistique de l'état-major général¹

Groupe de la promotion de la paix et de la coopération en matière de sécurité¹

Groupe de la Direction de l'instruction des forces terrestres¹

Groupe de la planification de l'état-major général¹

Groupe de l'aide au commandement de l'état-major général¹

Groupe des affaires sanitaires de l'état-major général¹

Groupe des opérations de l'état-major général¹

Groupe des opérations des forces aériennes¹

Groupe du personnel de l'armée de l'état-major général¹

Groupe du personnel enseignant des forces terrestres¹

Groupe des renseignements de l'état-major général¹

Office de l'auditeur en chef¹

Office des exploitations des forces terrestres¹

Office fédéral de la protection civile¹

Office fédéral de la topographie

Office fédéral de l'instruction des forces aériennes¹

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Office fédéral des armes de combat¹
Office fédéral des armes et des services d'appui¹
Office fédéral des armes et des services de la logistique¹
Office fédéral des exploitations des forces aériennes¹
Office fédéral des systèmes d'armes des forces aériennes et des systèmes de commandement¹
Office fédéral des systèmes d'armes et des munitions¹
Office fédéral du matériel d'armée et des constructions¹
Office fédéral du sport
Services centraux de l'état-major général¹
Services centraux des forces aériennes¹
Services centraux des forces terrestres¹

6. Département fédéral des finances (DFF):

Secrétariat général du Département fédéral des finances
Administration fédérale des contributions
Administration fédérale des douanes¹
Administration fédérale des finances
Caisse fédérale d'assurance
Commission fédérale des banques
Contrôle fédéral des finances
Monnaie officielle de la Confédération suisse
Office fédéral de l'informatique
Office fédéral des constructions et de la logistique
Office fédéral du personnel
Régie fédérale des alcools

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

7. Département fédéral de l'économie (DFE):

Secrétariat général du Département fédéral de l'économie

Commission de la concurrence

Office fédéral de l'agriculture

Office fédéral de la formation professionnelle et de la technologie

Office fédéral du logement

Office fédéral pour l'approvisionnement économique du pays

Office vétérinaire fédéral

Secrétariat d'État à l'économie

Surveillance des prix

8. Département fédéral de l'environnement, des transports, de l'énergie et de la communication (DETEC):

Secrétariat général du Département fédéral de l'environnement, des transports, de l'énergie et de la communication

Commission fédérale de la communication

La Poste²

Office fédéral de la communication

Office fédéral de l'aviation civile

Office fédéral de l'économie des eaux

Office fédéral de l'énergie

Office fédéral de l'environnement, des forêts et du paysage

Office fédéral des routes

Office fédéral des transports

² Pour autant que l'entité ne soit pas en concurrence avec des entreprises auxquelles le présent accord n'est pas applicable.

Note relative à l'annexe 1

Le présent accord ne s'applique pas aux marchés passés par des entités énumérées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

Liste des matériels civils de la défense et de la protection civile soumis à l'Accord

- Chapitre 25:* Sel; soufre; terres et pierres; plâtres; chaux et ciments
- Chapitre 26:* Minerais métallurgiques, scories et cendres
- Chapitre 27:* Combustibles minéraux, huiles minérales et produits de leur distillation; matières bitumineuses; cires minérales
- Chapitre 28:* Produits chimiques inorganiques; composés inorganiques ou organiques de métaux précieux, d'éléments radioactifs, de métaux des terres rares et d'isotopes
- à l'exception de:*
- ex 28.09: explosifs
 - ex 28.13: explosifs
 - ex 28.14: gaz lacrymogènes
 - ex 28.28: explosifs
 - ex 28.32: explosifs
 - ex 28.39: explosifs
 - ex 28.50: produits toxicologiques
 - ex 28.51: produits toxicologiques
 - ex 28.54: explosifs
- Chapitre 29:* Produits chimiques organiques
- à l'exception de:*
- ex 29.03: explosifs
 - ex 29.04: explosifs
 - ex 29.07: explosifs
 - ex 29.08: explosifs
 - ex 29.11: explosifs
 - ex 29.12: explosifs
 - ex 29.13: produits toxicologiques
 - ex 29.14: produits toxicologiques
 - ex 29.15: produits toxicologiques
 - ex 29.21: produits toxicologiques
 - ex 29.22: produits toxicologiques
 - ex 29.23: produits toxicologiques
 - ex 29.26: explosifs
 - ex 29.27: produits toxicologiques
 - ex 29.29: explosifs

- Chapitre 30:* Produits pharmaceutiques
- Chapitre 31:* Engrais
- Chapitre 32:* Extraits tannants ou tinctoriaux; tanins et leurs dérivés; matières colorantes, couleurs, peintures, vernis et teintures, mastics, encres
- Chapitre 33:* Huiles essentielles et résinoïdes; produits de parfumerie ou de toilette et cosmétiques
- Chapitre 34:* Savons, produits organiques tensio-actifs, préparations pour lessives, préparations lubrifiantes, cires artificielles, cires préparées, produits d'entretien, bougies et articles similaires, pâtes à modeler et "cires pour l'art dentaire"
- Chapitre 35:* Matières albuminoïdes; colles, enzymes
- Chapitre 36:* Poudres et explosifs; articles de pyrotechnie; allumettes; alliages pyrophoriques; matières inflammables
- à l'exception de:*
- ex 36.01: poudres
ex 36.02: explosifs préparés
ex 36.04: détonateurs
ex 36.08: explosifs
- Chapitre 37:* Produits photographiques et cinématographiques
- Chapitre 38:* Produits divers des industries chimiques
- à l'exception de:*
- ex 38.19: produits toxicologiques
- Chapitre 39:* Matières plastiques artificielles, éthers et esters de la cellulose, résines artificielles et ouvrages en ces matières
- à l'exception de:*
- ex 39.03: explosifs
- Chapitre 40:* Caoutchouc naturel ou synthétique, factice pour caoutchouc et ouvrages en caoutchouc
- à l'exception de:*
- ex 40.11: pneus
- Chapitre 43:* Pelleteries et fourrures, pelleteries factices
- Chapitre 44:* Bois, charbon de bois et ouvrages en bois
- Chapitre 45:* Liège et ouvrages en liège

<i>Chapitre 46:</i>	Ouvrages de sparterie et de vannerie
<i>Chapitre 47:</i>	Matières servant à la fabrication du papier
<i>Chapitre 48:</i>	Papiers et cartons; ouvrages en pâte de cellulose, en papier et en carton
<i>Chapitre 49:</i>	Articles de librairie et produits des arts graphiques
<i>Chapitre 65:</i>	Coiffures et parties de coiffures
<i>Chapitre 66:</i>	Parapluies, parasols, cannes, fouets, cravaches et leurs parties
<i>Chapitre 67:</i>	Plumes et duvet apprêtés et articles en plumes ou en duvet; fleurs artificielles; ouvrages en cheveux
<i>Chapitre 68:</i>	Ouvrages en pierres, plâtre, ciment, amiante, mica et matières analogues
<i>Chapitre 69:</i>	Produits céramiques
<i>Chapitre 70:</i>	Verre et ouvrages en verre
<i>Chapitre 71:</i>	Perles fines, pierres gemmes et similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie
<i>Chapitre 73:</i>	Fonte, fer et acier
<i>Chapitre 74:</i>	Cuivre
<i>Chapitre 75:</i>	Nickel
<i>Chapitre 76:</i>	Aluminium
<i>Chapitre 77:</i>	Magnésium, béryllium (glucinium)
<i>Chapitre 78:</i>	Plomb
<i>Chapitre 79:</i>	Zinc
<i>Chapitre 80:</i>	Étain
<i>Chapitre 81:</i>	Autres métaux communs
<i>Chapitre 82:</i>	Outillage; articles de coutellerie et couverts de table, en métaux communs
<i>Chapitre 83:</i>	Ouvrages divers en métaux communs
<i>Chapitre 84:</i>	Chaudières, machines, appareils et engins mécaniques
<i>Chapitre 85:</i>	Machines et appareils électriques et objets servant à des usages électrotechniques

à l'exception de:

- ex 85.03: Piles électriques
- ex 85.13: Télécommunications
- ex 85.15: Appareils de transmission

Chapitre 86: Véhicules et matériaux pour voies ferrées; appareils de signalisation non électriques pour voies de communication

à l'exception de:

ex 86.02: Locomotives blindées

ex 86.03: autres locoblindées

ex 86.05: Wagons blindés

ex 86.06: Wagons ateliers

ex 86.07: Wagons

Chapitre 87: Voitures automobiles, tracteurs, cycles et autres véhicules terrestres

à l'exception de:

87.08: Cars et automobiles blindés

ex 87.02: Camions lourds

ex 87.09: Motocycles

ex 87.14: Remorques

Chapitre 88: Navigation aérienne

à l'exception de:

ex 88.02: Avions

Chapitre 89: Navigation maritime et fluviale

Chapitre 90: Instruments et appareils d'optique, de photographie et de cinématographie, de mesure, de vérification, de précision; instruments et appareils médico-chirurgicaux

à l'exception de:

ex 90.05: Jumelles

ex 90.13: Instruments divers, lasers

ex 90.14: Télémètres

ex 90.28: Instruments de mesure électriques ou électroniques

Chapitre 91: Horlogerie

Chapitre 92: Instruments de musique; appareils d'enregistrement ou de reproduction du son; appareils d'enregistrement ou de reproduction des images et du son en télévision; parties et accessoires de ces instruments et appareils

Chapitre 93: Armes et munitions

à l'exception de:

ex 93.01: Armes blanches

ex 93.02: Pistolets

ex 93.03: Armes de guerre

ex 93.04: Armes à feu

ex 93.05: Autres armes

ex 93.07: Projectiles et munitions

- Chapitre 94:* Meubles; mobilier médico-chirurgical; articles de literie et similaires
- Chapitre 95:* Matières à tailler et à mouler, à l'état travaillé (y compris les ouvrages)
- Chapitre 96:* Ouvrages de broserie et pinceaux, balais, houppes et articles de tamiserie
- Chapitre 98:* Ouvrages divers
-

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.3

9 March 2000

(00-0902)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDICES I AND II OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000

SWITZERLAND

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the year 2000.

The information notified by Switzerland is reproduced below.

THRESHOLD¹ CALCULATIONS – FOR THE YEAR 2000

Annex 1

	SDRs	Converted to Sw F
Goods	130,000	248,950
Services	130,000	248,950
Construction	5,000,000	9,575,000

Annex 2

	SDRs	Converted to Sw F
Goods	200,000	383,000
Services	200,000	383,000
Construction	5,000,000	9,575,000

Annex 3

	SDRs	Converted to Sw F
Goods	400,000	766,000
Services	400,000	766,000
Construction	5,000,000	9,575,000

¹ SDR 1.0 = Sw F (Swiss francs) 1.992. The average monthly SDR to Sw F for 24 months from November 1997 through October 1999 was Sw F 1.992. This calculation is based on data published by the Swiss National Bank. The result is an increase of about 4 per cent (from Sw F 1.915 in 1993/94). Despite having the factual basis to do so, Switzerland considers not to increase its thresholds in Sw F for the time being. The value of the thresholds in Sw F has been expressed without value-added tax (VAT) because Switzerland excludes VAT when calculating the value of contracts.

Committee on Government Procurement

**PROCEDURES FOR FUTURE CHANGES TO THE LOOSE-LEAF SYSTEM
FOR APPENDICES TO THE AGREEMENT**

Note by the Secretariat

The Appendices to the Agreement in the form of a loose-leaf system established pursuant to the Decision of the Committee, of 4 June 1996, were certified on 1 March 2000 (WT/Let/330). In accordance with the procedures agreed by the Committee at its meeting of 24 February 1997, Parties proposing to make future rectifications and modifications to their Appendices pursuant to the provisions of Article XXIV:6 should notify them to the Committee in the form of relevant replacement or additional pages to be inserted in the loose-leaf system, identifying the proposed changes (GPA/M/5).

It is suggested that Parties notify pages showing changes by using the conventional bold/red-line system to indicate additions/deletions. To avoid confusion, Parties might also notify clean pages as they would look after acceptance of the rectifications or modifications in question. In addition to the above, Parties are also free, if they so wish, to continue to describe the changes in accordance with past practice.

As hitherto, the proposed rectifications and modifications will be circulated to Members in the GPA/W/- series. Once they have become effective pursuant to the procedures under Article XXIV:6, the new or amended pages will be certified. Certified true copies of these replacement or additional pages will be circulated in the WT/Let/- series of documents with a cover note indicating where the insertions (and/or deletions) are to be made in the loose-leaf system. At the foot of each new or replacement page will be indicated its date, which will be that on which the changes recorded in it became effective and the symbol of the document with which the certifications was transmitted (WT/Let/...). In the initial version of the loose-leaf system, all pages bear the date that the loose-leaf system became effective (1 March 2000).

In addition to being made available in hard-copy form, the loose-leaf system is circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. A copy of the loose-leaf system for the Appendices is also being made available to the general public through the government procurement site on the WTO Home Page on the Internet.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.2

2 March 2000

(00-0788)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000-2002

JAPAN

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2000-2002.

The information notified by Japan is reproduced below.

The thresholds listed below will be effective for the period from 1 April 2000 (the beginning of FY 2000) until 31 March 2002 (the end of FY 2001).

Annex 1 (Central Government Entities)

	SDRs	YEN
1. Products	130,000	21,000,000
2. Services other than 3. and 4.	130,000	21,000,000
3. Architectural, Engineering & Other Technical Services related to 4.	450,000	75,000,000
4. Construction Services	4,500,000	750,000,000

Annex 2 (Sub-Central Government Entities)

	SDRs	YEN
1. Products	200,000	33,000,000
2. Services other than 3. and 4.	200,000	33,000,000
3. Architectural, Engineering & Other Technical Services related to 4.	1,500,000	250,000,000
4. Construction Services	15,000,000	2,500,000,000

Annex 3 (All Other Entities)

	SDRs	YEN
1. Products	130,000	21,000,000
2. Services other than 3. and 4.	130,000	21,000,000
3. Architectural, Engineering & Other Technical Services related to 4.	450,000	75,000,000
4. Construction Services	15,000,000	2,500,000,000

Committee on Government Procurement

**INDICATIVE TIME-FRAME FOR ACCESSION NEGOTIATIONS
AND REPORTING ON THE PROGRESS OF WORK**

Note by the Secretariat

1. In the context of its discussion regarding the improvement of the procedures for accession under Article XXIV:2, the Committee agreed at its October 1999 meeting that the Secretariat would prepare a note on the establishment of an indicative time-frame for accession negotiations together with a procedure for regular reporting to each Committee meeting on progress in bilateral consultations (GPA/M/12, paragraph 21). This note has been prepared in response to this request.

2. Certain basic procedures for accession negotiations have already been adopted by the Committee in its Decision of February 1996 on the Procedures for Accession under Article XXIV:2 of the Agreement (GPA/1, Annex 2). This Decision reads as follows:

"1. In accordance with paragraph 2 of Article XXIV of the Agreement on Government Procurement (1994), any government which is a Member of the WTO may accede to this Agreement on terms to be agreed between that government and the Parties.

"2. To this effect, a government interested in accession shall communicate its interest to the Director-General of the WTO and, through him, to the Committee on Government Procurement and shall submit relevant information including an offer by way of appropriate Appendices containing lists of entities and services which would be covered by the Agreement, as well as lists of relevant publications, having regard to the provisions of the Agreement, in particular Article I and, where appropriate, Article V.

"3. The government interested in accession shall hold consultations with the Parties to the Agreement on the terms for its accession to the Agreement.

"4. With a view to facilitating accession, the Committee on Government Procurement shall establish a working party if the applicant government, or any Party to the Agreement, so requests. The working party should examine: (i) the coverage offer made by the applicant government; and (ii) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant government and export opportunities for the Parties in the market of the applicant government.

"5. Upon a decision by the Committee on Government Procurement agreeing to the terms of accession including the lists of entities and services as well as of relevant publications of the applicant government, the applicant government shall deposit with the Director-General of the WTO an instrument of accession which states the terms so agreed. The applicant government's lists of entities, services and publications in their authentic WTO language(s) shall be appended to the Agreement."

3. Attached is a table setting out a suggested indicative timetable for accession negotiations. It will be noted that the table does not specifically include the option of establishing a working party, as provided for under paragraph 4 of the above Decision. The reason is that, in practice, this option has not been availed of so far. However, should an applicant government or any Party to the Agreement request the establishment of such a working party, consequential modifications would need to be made to the suggested indicative timetable.

4. The suggested indicative timetable seeks to take into account the fact that accession negotiations have two main aspects and involve basically two mechanisms. The first aspect is the negotiation of an agreed coverage to be reflected in Appendices containing lists of entities and services as well as lists of relevant publications. The second is ensuring the consistency of the applicable national legislation with the provisions of the Agreement. The two main mechanisms used for these purposes are bilateral consultations between an acceding country and interested Parties and plurilateral consultations. The negotiations on commitments to be included in the Appendices are more focused on bilateral consultations whereas the other aspect of the negotiations is largely conducted through the plurilateral mechanism. These two aspects and mechanisms overlap to some extent and should proceed in parallel. As the Committee has already indicated, it is important that there should be a regular plurilateral review of the bilateral parts of the accession process and, of course, the results of both aspects of the negotiations must come together at the plurilateral level in the preparation and adoption of a decision setting out the terms of accession.

5. It will be noted that it is not suggested that an applicant country should necessarily be required to submit its initial offer on coverage at the same time as its application for accession. On the whole, in the accessions so far, applicant countries have submitted their initial offer together with their application for accession, but paragraph 2 of the Committee Decision of February 1996 would not seem to necessarily require this. There may be merit in providing for the possibility of an initial round of plurilateral and bilateral discussions before requiring the applicant to submit an initial offer, without of course preventing a country from submitting an initial offer at the same time as its application if it is in a position to do so.

6. With regard to the largely plurilateral process of provision by the applicant country of information on its procurement regime, the Committee already has before it a Checklist of Issues that has been prepared by the Secretariat, at the request of the Committee, to act as a guide to applicant countries in submitting such information (Job No. 5761). This draft Checklist is awaiting action by the Committee. It is suggested in the attached indicative timetable that, following the circulation of the responses to the Checklist and other relevant data, provision might be made for Parties to seek further clarification of the applicable legislation and procedures through a question and answer procedure. The questions put and answers provided would be circulated to all Parties. If necessary, provision could also be made for follow-up questions and answers.

7. In its request for the preparation of this note, the Secretariat was asked to consider the question of a procedure for regular reporting to each Committee meeting on progress in the bilateral consultations. Hitherto, the Committee's overview of accession negotiations has mainly consisted of the acceding country or interested Parties reporting orally to the Committee at its meetings on an ad hoc basis. To provide a more systematic basis for the Committee's overview of the accession process and to improve transparency, consideration might be given to providing to the Committee, prior to each of its meetings, a brief note outlining the state of play in the accession process of each applicant. This might be done, for example, through the annotated provisional agenda, which is circulated by the Secretariat prior to each Committee meeting. The information contained therein could be updated at the meeting, where necessary, by the Chair, the applicant country and parties. Based on this, the Committee might take stock of the progress of each accession process and, where appropriate, the Chair might seek to draw conclusions about moving to the next stage of the indicative timetable.

8. The suggested indicative timetable envisages that the accession process, from the date of the application to the adoption of the decision containing the terms of accession, should normally be completed within 15 months. Parties are invited to consider whether this is an appropriate time-frame to set as a goal as well as the appropriateness of the time-frames envisaged for the various steps within it. It would, of course, have to be understood that a certain degree of flexibility would be necessary to take account of such matters as the state of preparation of the acceding country, the complexity of its procurement regime and government structure and the timing of Committee meetings.

9. The work involved in the provision of relevant information on national procurement regimes, any amendments to such regimes required and the preparation of offers by an acceding developing country may require technical cooperation, for example in the form of advice and assistance from Parties and the Secretariat, country visits and training. At the outset of the accession process, the Secretariat might enter into contact with the applicant country with a view to drawing up a technical cooperation programme for that country, taking into account its specific needs and circumstances. Parties should be ready to make resources available bilaterally and/or through the Secretariat for this purpose.

Suggested Indicative Timetable for the Accession Process

Indicative timetable	Consultations on Procurement Regime	Consultations on Appendices
0	Application for accession	
1½ months	Receipt of replies to the Checklist by the acceding country	Bilateral consultations including on possible scope of initial offer
3 months	Receipt of written questions from Parties	
4½ months	Receipt of written responses by the acceding country. Clarification of outstanding issues, including follow-up written questions and replies, if necessary	Submission of initial offer and bilateral consultations on it
12 months		Submission of revised offer, if necessary. Further bilateral consultations, if necessary
14 months	Circulation and review of the draft decision on terms of accession including the final offer	
15 months	Adoption of decision containing the terms of accession	

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**APPLICATION FOR ACCESSION TO THE AGREEMENT ON GOVERNMENT
PROCUREMENT OF ICELAND**

Revised Offer

The following communication, dated 18 February 2000, has been received from the Permanent Mission of Iceland with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Iceland discussed the offer in GPA/W/73 with Canada, Switzerland and the United States.

Please find attached the revised offer from Iceland.

It has been decided to delete the last three derogations from the general notes, which read:

"9. The thresholds in the Annexes will be applied so as to conform with the public procurement thresholds of the EEA Agreement.

10. This Agreement does not apply to procurement subject to secrecy or other particular restrictions with regard to the safety of the country.

11. When a specific procurement may impair important national policy objectives, the Icelandic Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at the Icelandic Cabinet level."

In Annex 3, the list of sectors was corrected. Under 1, electricity the entities Rafmagnsveita Reykjavíkur and Hitaveita Reykjavíkur were replaced by Orkuveita Reykjavíkur since these two entities have been merged into a new entity called Orkuveita Reykjavíkur or Reykjavik Energy. The Icelandic names of The National Power Company and The State Electric Works have also been included in the list. No other changes to the draft offer submitted on 22 June 1998 were made.

ATTACHMENT

REVISED DRAFT OFFER

ICELAND

APPENDIX I

ANNEX 1

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 130,000

Services (specified in Annex 4)

Threshold: SDR 130,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

The following central government entities including:

Central purchasing entities not having an industrial or commercial character governed by Act no. 63/1970 on the arrangement of public works contracts, and Act no. 52/1987, on government procurement, as amended.

The entities in charge of government procurement are the following bodies:

Ríkiskaup (State Trading Center)

Framkvæmdasýslan (Government Construction Contracts)

Vegagerð ríkisins (Public Road Administration)

Siglingastofnun (Icelandic Maritime Administration)

ANNEX 2

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 200,000

Services (specified in Annex 4)

Threshold: SDR 200,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

1. Contracting local public authorities, including all municipalities.
2. Public bodies at the local level not having an industrial or commercial character.

ANNEX 3

*Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 400,000

Services (specified in Annex 4)*

Threshold: SDR 400,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Sectors:

1. *The electricity sector:*

Landvirkjun (The National Power Company), *lög nr. 42/1983.*

Rafmagnsveitur ríkisins (The State Electric Power Works), *orkulög nr. 58/1967*

Orkuveita Reykjavíkur (Reykjavík Energy).

Orkubú Vestfjarða (Vestfjord Power Company), *lög nr. 66/1976.*

Other entities producing, transporting or distributing electricity pursuant to *orkulög nr. 58/1967.*

2. *Urban transport:*

Strætisvagnar Reykjavíkur (The Reykjavík Municipal Bus Service).

Almenningsvagnar bs.

Other Municipal bus services.

3. *Airports:*

Flugmálastjórn (Directorate of Civil Aviation)

4. *Ports:*

Siglingastofnun, (Icelandic Maritime Administration).

Other entities operating pursuant to *Hafnalög nr. 23/1994.*

5. *Water supply:***

Public entities producing or distributing drinking water pursuant to *lög nr 81/1991, um vatnsveitur sveitarfélaga.*

Notes to Annex 3

* This Agreement shall not apply to service contracts which:

- (a) a contracting entity awards to an affiliated undertaking;
- (b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of paragraphs 1-5 of this Annex to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities;

Provided that at least 80 per cent of the average turnover of that undertaking with respect to services arising within the EEA for the three preceding years derives from the provision of such services to undertakings with which it is affiliated. When more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

** The supply of drinking water and electricity to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraphs 1 and 5 of Annex 3 where:

- the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraphs 1 and 5 of this Annex; and
- supply to the public network depends only on the entity's own consumption and has not exceeded 30 per cent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:*

<i>Subject</i>	<i>CPC Reference N</i>
Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752** (except 7524, 7525, 7526)
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services***	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866****
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical consulting services; technical testing and analysis services	867
Advertising services	871
Building-cleaning services and property management services	874, 82201-82206

<i>Subject</i>	<i>CPC Reference N</i>
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

Notes to Annex 4

- * except for services which entities have to procure from another entity pursuant to an exclusive right established by a published law, regulation or administrative provision
- ** except voice telephony, telex, radiotelephony, paging and satellite services
- *** except contracts for financial services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, and central bank services
- **** except arbitrations and conciliation services

ANNEX 5

Construction Services

Definition:

A construction service contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All public works/construction services of Division 51.

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Iceland will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Iceland has accepted that the Parties concerned give comparable and effective access for Icelandic undertakings to the relevant markets;

 - to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Iceland accepts that they have completed coverage of sub-central entities;
 - Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Iceland, until such time as Iceland accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
 - Israel, Japan and Korea in contesting the award of contracts by Icelandic entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.
3. Until such time as Iceland has accepted that the Parties concerned provide access for Icelandic suppliers and service providers to their own markets, Iceland will not extend the benefits of this Agreement to suppliers and service providers of:

- Canada as regards procurement of FSC 36, 70 and 74 (special industry machinery; general purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations); office machines, visible record equipment and ADP equipment);
 - Canada as regards procurement of FSC 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment.
 - Israel and Korea as regards procurement by entities listed in Annex 3, paragraph 1, as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;
 - Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.
4. Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.
5. With regard to Annex 3, this Agreement shall not apply to the following contracts:
- contracts which the contracting entities under paragraph 5 award for the purchase of water;
 - contracts which the contracting entities under paragraph 1 award for the supply of energy or of fuels for the production of energy;
 - contracts which the contracting entities award for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-EEA country;
 - contracts awarded for purposes of re-sale or hire to third parties provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and that other entities are free to sell or hire it under the same conditions as the contracting entity;
 - contracting entities exercising activities in the bus transportation sector where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.
6. With regard to Annex 4, this Agreement shall not apply to the following:
- contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;
 - contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;

- contracts awarded to an entity which is itself a contracting authority within the meaning of the Public Procurement Act: "Lög um opinber innkaup (52/1997) and Regulation (302/1996) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;
 - contracts of employment.
7. The Agreement shall not apply to contracts awarded under:
- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
 - an international agreement relating to the stationing of troops;
 - the particular procedure of an international organization.
8. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
-

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101/Add.1

9 February 2000

(00-0486)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000-2001

CANADA

Addendum

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2000-2001.

The information notified by Canada is reproduced below.

Pursuant to the agreed procedures (GPA/1, Annex 3) Canada submits its notification of threshold figures in the national currency for the period 1 January 2000 to 31 December 2001. This information was also published on 23 December 1999 in Contracting Policy Notice 1999-9 on the Treasury Board Canada Secretariat website at <http://tbs-sct.gc.ca/>.

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in Canadian Dollars
Goods	130,000	261,200
Services	130,000	261,200
Construction	5,000,000	10,000,000

PROPOSED MODIFICATIONS TO APPENDIX I OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

The following notification from the Hong Kong Economic and Trade Office was received on 17 January 2000, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

1. Pursuant to paragraph 6(a) of Article XXIV of the WTO Agreement on Government Procurement (1994) (the "Agreement"), Hong Kong, China hereby notifies the Committee on Government Procurement of the following modifications to Annex 1 of Appendix I of the Agreement:

- (a) delete "Agriculture and Fisheries Department"; and
- (b) add "Agriculture, Fisheries and Conservation Department".

2. The above modifications are necessary as "Agriculture and Fisheries Department" was renamed as "Agriculture, Fisheries and Conservation Department" on 1 January 2000. Such modifications do not alter the level of mutually agreed coverage provided in this Agreement.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/101
5 January 2000

(00-0027)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 2000-2001

HONG KONG, CHINA

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 2000-2001.

The information notified by Hong Kong, China is reproduced below. Other submissions will be compiled in addenda to this document.

1. Calculation of threshold figures in national currency

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in HK Dollar
1. Goods and services other than construction services	130,000	1,371,000
2. Construction services	5,000,000	52,741,000

Annex 2 Entities	Threshold Value (SDR)	Threshold Value in HK Dollar
1. Goods and services other than construction services	200,000	2,110,000
2. Construction services	5,000,000	52,741,000

Annex 3 Entities	Threshold Value (SDR)	Threshold Value in HK Dollar
1. Goods and services other than construction services	400,000	4,219,000
2. Construction services	5,000,000	52,741,000

2. Method of calculation

The calculation of national threshold is based on the monthly average exchange rate of SDR to Hong Kong Dollar over 24 months from November 1997 to October 1999.

Period (Month/Year)	Average HKD Equivalent of SDR	No. of Days	HKD Equivalent
November 1997	10.62612	30	318.78360
December 1997	10.48685	31	325.09235
January 1998	10.39844	31	322.35164
February 1998	10.44993	28	292.59804
March 1998	10.41233	31	322.78223
April 1998	10.40799	30	312.23970
May 1998	10.41318	31	322.80858
June 1998	10.33101	30	309.93030
July 1998	10.30931	31	319.58861
August 1998	10.27787	31	318.61397
September 1998	10.57182	30	317.15460
October 1998	10.89110	31	337.62410
November 1998	10.77702	30	323.31060
December 1998	10.85957	31	336.64667
January 1999	10.88182	31	337.33642
February 1999	10.69828	28	299.55184
March 1999	10.55789	31	327.29459
April 1999	10.49738	30	314.92140
May 1999	10.45641	31	324.14871
June 1999	10.39209	30	311.76270
July 1999	10.39370	31	322.20470
August 1999	10.58861	31	328.24691
September 1999	10.68684	30	320.60520
October 1999	10.79178	31	334.54518
TOTAL		730	7700.14264

HKD equivalent of SDR for the 24-month period preceding November 1999:

$$7700.14264 \div 730 = 10.54814060$$

that is, 1 SDR = HKD 10.54814

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/102
5 January 2000

(00-0011)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

The following notification from the Hong Kong Economic and Trade Office was received on 20 December 1999, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

1. Pursuant to paragraph 6(a) of Article XXIV of the WTO Agreement on Government Procurement (1994) (the "Agreement"), Hong Kong, China hereby notifies the Committee on Government Procurement that due to the abolition of the sub-central entities in Annex 2 of Appendix I and reallocation of their functions to certain central government entities, the following modifications should be made to Annexes 1 and 2 of Appendix I of the Agreement:

- (a) in Annex 1, add "Food and Environmental Hygiene Department" and "Leisure and Cultural Services Department"; and
- (b) in Annex 2, delete "Provisional Urban Council and Urban Services Department" and "Provisional Regional Council and Regional Services Department".

2. The sub-central entities named in paragraph (b) above will be abolished with effect from 1 January 2000. All procurement functions currently carried out by these entities will be transferred to the two new central government entities named in paragraph (a) above and other central government entities already named in Annex 1 of Appendix I of the Agreement.

3. The threshold applicable to central government entities included in Annex 1 of Appendix I is lower than that applicable to sub-central entities included in Annex 2 in respect of the procurement of goods and services other than construction services. Therefore, the transfer of procurement functions from sub-central entities to central government entities, which is the subject-matter of this notification, will result in more government procurement being made subject to the discipline of the Agreement by Hong Kong, China.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/103
5 January 2000

(00-0026)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Jordan

The following communication, dated 28 December 1999, has been received from the Permanent Representative of the Hashemite Kingdom of Jordan with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The accession of the Hashemite Kingdom of Jordan to the WTO has been recently approved by the WTO Community. This fact reflects Jordan's belief in the effective role of the multilateral system in light of globalization.

As a result of Jordan's commitment to become a party to the WTO Agreement on Government Procurement, we request that Jordan be granted observer status to the Committee on Government Procurement.

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16 5 KB	99-0536	GPA/W/81	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1999/2000 - Korea	11/02/1999	2	D	T/PLURI/GPA/W81.DOC
17 6 KB	99-0119	GPA/W/12/Add.7/Rev.1	Committee on Government Procurement - The Threshold in Appendix I of the Agreement as Expressed in National Currencies for 1997/1998 - Republic of Korea - Revision	18/01/1999	2	D	T/PLURI/GPA/W12A7R1.DOC
((@meta_Symbol GPA/W/*) and (@Doc_Date >= 1999/01/01 00:00:00) and (@Doc_Date <= 1999/12/31 23:59:59)) DOC_DATE [d], meta_Ordered_SYMBOL, meta_split_part[A], meta_serial_num							
Result of the search: 51 (for 17 distinct downloaded document(s))							
In 'File' column, the first letter indicates the language (T = English, U = French, V = Spanish)							

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Japan was received on 1 October 1999, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

1. Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 3 of Appendix I of the Agreement:

- (1) Delete "- Export-Import Bank of Japan" and "- The Overseas Economic Cooperation Fund" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

Add "- Japan Bank for International Cooperation" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

- (2) Delete "- People's Finance Corporation" and "- Environmental Sanitation Business Financing Corporation" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

Add "- National Life Finance Corporation" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

- (3) Delete "- Japan Development Bank" and "- Hokkaido-Tohoku Development Finance Public Corporation" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

Add "- Development Bank of Japan" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

- (4) Delete "- Housing and Urban Development Corporation (a)" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

Add "- Urban Development Corporation (a)" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

2. This rectification is based on the fact that on 1 October 1999, (1) the Export-Import Bank of Japan and the Overseas Economic Cooperation Fund will merge to form the Japan Bank for International Cooperation, (2) the People's Finance Corporation and the Environmental Sanitation Business Financing Corporation will merge to form the National Life Finance Corporation, (3) the Japan Development Bank and the Hokkaido-Tohoku Development Finance Public Corporation will reorganize as the Development Bank of Japan, (4) the Housing and Urban Development Corporation will reorganize as the Urban Development Corporation, respectively. This rectification does not alter the level of mutually agreed coverage provided in this Agreement.

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Japan was received on 28 September 1999, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

1. Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 3 of Appendix I of the Agreement:

- (1) Delete "- Employment Promotion Corporation" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

Add "- Employment and Human Resources Development Organization of Japan" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

- (2) Delete "- Forest Development Corporation" and "- Japan Agricultural Land Development Agency" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

Add "- Japan Green Resources Corporation" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

2. This rectification is based on the fact that the "Employment Promotion Corporation" will reorganize as the "Employment and Human Resources Development Organization of Japan", and the "Forest Development Corporation" and the "Japan Agricultural Land Development Agency" will merge to form the "Japan Green Resources Corporation" on 1 October 1999, respectively. This rectification does not alter the level of mutually agreed coverage provided in this Agreement.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/93

29 September 1999

(99-4020)

Committee on Government Procurement

Original: English

PROPOSED MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Japan was received on 24 September 1999, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

The notification by Japan regarding proposed modifications to its Appendix I that was previously circulated in document GPA/W/88, dated 9 July 1999, and certified in WT/Let/308, dated 31 August 1999, should be amended as indicated below.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 3 of Appendix I of the Agreement:

- Delete "- Japan Small Business Corporation" and "- ~~Japan Finance Corporation for Small Business~~ Small Business Credit Insurance Corporation" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".
- Add "- Japan Small and Medium Enterprise Corporation" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

This rectification is based on the fact that the "Japan Small Business Corporation" and the "~~Japan Finance Corporation for Small Business~~ Small Business Credit Insurance Corporation" were merged to form the "Japan Small and Medium Enterprise Corporation" on 1 July 1999. This rectification does not alter the level of mutually agreed coverage provided in this Agreement.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/92

15 September 1999

(99-3777)

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1. In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on Government Procurement on 24 February 1997 (GPA/1/Add.2), the following documents circulated as restricted are proposed for derestriction on 20 November 1999.

(a) GPA/M/- series

GPA/M/9-11

(b) GPA/W/- series

GPA/W/12/Add.6-7, GPA/W/12/Add.7/Rev.1-2

GPA/W/24/Add.7

GPA/W/74-75

GPA/W/77-84

GPA/W/88-89

2. The lists of documents which have been previously derestricted are contained in documents GPA/24 and GPA/26.

**REVIEW PROCEDURES FOR COMPLAINTS CONCERNING
GOVERNMENT PROCUREMENT IN JAPAN**

Communication from Japan

The communication reproduced below regarding the revision of complaint review procedures was received from the delegation of Japan on 3 August 1999 with the request that it be circulated to the Committee on Government Procurement.

**REVISION OF THE "REVIEW PROCEDURES FOR COMPLAINTS CONCERNING
GOVERNMENT PROCUREMENT" AND INTRODUCTION OF "CODE OF
SCHEDULES FOR REVIEW PROCEDURES FOR COMPLAINTS"
CONCERNING GOVERNMENT PROCUREMENT**

As a treaty Party to the Government Procurement Agreement, Japan has applied the principles of national treatment and non-discriminatory treatment in the government procurement of goods and services. It has also operated the Government Procurement Challenge System (CHANS) to review complaints concerning government procurement.

Recently, the Office of Government Procurement Review revamped its complaint review procedures to make the CHANS system easier to use. It will contribute to improve the transparency, fairness, competitiveness and openness of government procurement in Japan.

The main points of revision are as follows:

- Before revision, when the procuring entity insists that the procurement at issue falls under an exception to the coverage of the Government Procurement Agreement, pursuant to Article 23, the Review Board will not accept the complaints. However, after revision, the Review Board itself will judge whether the case should be dismissed because of Article 23.
- Detailed rules for procedures are introduced, including the methods of counting days, the methods of withdrawal and mandates of agents and assistants.
- After revision, a complainant can choose the way that his/her name is treated as anonymous to the public.

REVIEW PROCEDURES FOR COMPLAINTS CONCERNING GOVERNMENT PROCUREMENT

(Provisional Translation)

14 December 1995

Amended: 11 January 1999

Decision by the Office of Government Procurement Review

According to the Cabinet decision of 1 December 1995 on the establishment of the Office of Government Procurement Review (OGPR), we adopt the Review Procedures for Complaints Concerning Government Procurement (hereafter referred to as "the Procedures") as follows.

1. The Government Procurement Review Board

- (1) The Government Procurement Review Board (hereafter referred to as "the Board") shall, upon the receipt of written complaints, conduct investigations of facts relating to any aspects of relevant procurement process, and make necessary recommendations for procuring entities.
- (2) No member of the Board may participate in the review of a complaint when he or she is deemed to have interests in it.
- (3) The Board, when necessary, may establish subcommittees for specific product or service areas.
- (4) The Chairperson of the Board appoints those persons who chair the subcommittees.

2. Filing of Complaints

- (1) The "suppliers" referred to in the Procedures are defined as follows:
 - i. In the case of government procurement other than public works: persons who supplied or who were capable of supplying the product or service when the procuring entity procured the same.
 - ii. In the case of government procurement of construction services pertaining to public works:
 - a. When a complaint concerns registration for qualified participants, persons who have applied for the registration.
 - b. When open tendering is used:
 - (i) If a complaint concerns confirmation of qualification to participate in the competition, persons who have applied for the confirmation.
 - (ii) If a complaint concerns tendering procedures other than a. and b.(i) above, persons who have received confirmation of qualification to participate in the competition.
 - (iii) If a complaint concerns the results of tendering, persons who have submitted tenders.

- c. When procurement procedures other than b. above are used, persons who are registered as qualified participants in relation to the procurement. (When single tendering is used, persons who have interests in relation to the procurement.)
 - iii. In the case of government procurement of design and consulting services pertaining to public works:
 - a. When a complaint concerns the registration for qualified participants, persons who have applied for the registration.
 - b. When the Public Invitation Proposal Procedures or the Public Invitation Competitive Bidding Procedures are used:
 - (i) If a complaint concerns the selection of applicants to be invited to submit proposals (in case of the Public Invitation Proposal Procedures) or the selection of applicants to participate in the competition (in case of the Invitation Competitive Bidding Procedures), persons who have expressed interests in the procurement.
 - (ii) If a complaint concerns procurement procedures other than iii.a. and iii.b.(i) above, persons who have been permitted to submit proposals (in case of the Public Invitation Proposal Procedures) or persons who have been permitted as participants in the competition (in case of the Public Invitation Competitive Bidding Procedures).
 - (iii) If a complaint concerns the selection of the best proposal (in case of the Public Invitation Proposal Procedures), persons who have submitted proposals; if a complaint concerns the results of tendering (in case of the Public Invitation Competitive Bidding Procedures), persons who have submitted tenders.
 - c. When procurement procedures other than iii.b. are used, persons who are registered as qualified participants in relation to the procurement. (When single tendering is used, persons who have interests in relation to the procurement.)
- (2) A supplier may file a complaint with the Board, when he or she suspects breaches of any provision of the Agreement on Government Procurement or other applicable Measures designated by the Head of the OGPR (hereafter referred to as "the Agreement or other Measures"). The supplier, however, is encouraged to initially seek resolution through consultation with the procuring entity.
- (3) When a supplier suspecting of breaches of the Agreement or other Measures requests consultation with the procuring entity, the entity shall promptly enter into consultations and make efforts to resolve the complaint.

3. Calculation of Time in the Procedures

- (1) A day shall be a calendar day unless otherwise specified.
- (2) A working day shall be any day which is not a Japanese government agency holiday.

- (3) The first day of a period shall not be counted.
- (4) If the final day of a period falls on a Japanese government agency holiday, the period shall be extended to the next day.

4. Participants

- (1) When a complaint is filed, all suppliers who have interests in the procurement at issue may participate in the complaint review process.
- (2) When a complaint is filed, the entity which carried out the procurement at issue (hereafter referred to as "the Procuring Entity") shall participate in the complaint review process.
- (3) When a complaint is filed, suppliers who have interests in the procurement at issue and who wish to participate in the complaint review process shall notify the Board of their intent to participate in the same within 5 days of receiving the public notice stipulated in 5.(5) below, whereupon suppliers who have provided such notification (hereafter referred to as "the Participants") shall be subject to the Procedures.
- (4) The Participants may withdraw their notification in (3) above at any time.

5. Complaint Review Process

- (1) When a supplier suspects breaches of any provision of the Agreement or other Measures, he or she may file a complaint in writing with the Board at any time during the procurement process, but no later than 10 days from when the basis of the complaint is known or should reasonably have been known to the supplier. Immediately upon the filing of the complaint, the Board shall send a copy of the complaint to the OGPR and the Procuring Entity.
- (2) In principle, the Board shall review a complaint within 7 working days of its filing, and may, in writing and providing reasons therefor, dismiss any complaint found to be:
 - i. not submitted in a timely manner;
 - ii. unrelated to the Agreement or other Measures;
 - iii. frivolous or trivial;
 - iv. not submitted by a supplier; or
 - v. inappropriate otherwise for review by the Board.
- (3) If the Procuring Entity believes that the complaint should be dismissed, it may, in writing and providing reasons therefor, express such opinion to the Board.
- (4) The Board may receive and consider a complaint that is not timely filed, if it finds that reasonable cause is shown.
- (5) If the Board determines that a complaint has been properly filed and receives the complaint for consideration, the Board shall immediately notify the supplier who filed the complaint (hereafter referred to as "the Complainant"), the OGPR, and the Procuring Entity of its decision in writing. Also it shall publicly announce its decision in a form to be determined by the Chairperson of the Board.

(6) Suspension of Contract Execution and Performance

- i. In the case of a complaint prior to contract execution, the Board shall, in principle, promptly issue a written request to the Procuring Entity within 10 days of the filing that contract execution should be suspended pending resolution of the complaint.
- ii. In the case of a post-execution complaint filed within 10 days of the contract execution, the Board shall, in principle, promptly issue a written request to the Procuring Entity that contract performance should be suspended pending resolution of the complaint.
- iii. When the Board determines that urgent and compelling circumstances do not allow it to issue such request to the Procuring Entity that the execution or performance of the contract should be suspended, the Board shall immediately provide written notification of its decision with reasons therefor to the Complainant and the OGPR.
- iv. The Procuring Entity shall suspend the execution or performance of the contract immediately upon receiving the Board's request. If, however, the head of the Procuring Entity determines that he or she cannot obey the request due to urgent and compelling circumstances, the Procuring Entity may fail to suspend the same but shall immediately provide written notification of its decision with reasons therefor to the Board.
- v. In the event that the proviso of paragraph iv. above applies, the Board shall immediately send a copy of the notification to the Complainant and the OGPR.

(7) Review

- i. The Board shall conduct review of a complaint based on briefs, pleas, or other documentation which it shall request the Complainant and the Procuring Entity to file.
- ii. The Procuring Entity shall not refuse to submit such briefs, pleas, or other documentation, unless the submission would harm public interest or threaten to significantly impede it from executing its official duties.
- iii. When the Board determines that it is necessary to evaluate whether the submission of briefs, pleas, or other documentation would harm public interest or threaten to significantly impede the Procuring Entity from executing its official duties, the Board may have the Procuring Entity submit the same. In this case, the Board shall not disclose the same to anyone.
- iv. The Board shall conduct review of a complaint based on the Procedures even in case where a lawsuit has been filed before a Court relating to the procurement that is the subject of the complaint.
- v. The Complainant, the Participants, and the Procuring Entity may attend and give their views at meetings of the Board before the Board makes its findings.
- vi. The Complainant, the Participants, and the Procuring Entity may be represented by lawyers, or by other agents approved by the Board.
- vii. The Board may avoid the approval in vi. above at any time.

- viii. The power and mandate of agents shall be manifested in writing.
 - ix. If there are two or more agents, each shall represent the principal.
 - x. The Complainant, the Participants, the Procuring Entity and their agents may be accompanied by assistants, if the Board so approves.
 - xi. The Board may avoid the approval in x. above at any time.
 - xii. The Complainant, the Participants, and the Procuring Entity may hear each other's statement at meetings of the Board held in connection with the complaint, unless the Board determines that such attendance is inappropriate.
 - xiii. The Board may, at the request of the Complainant, the Participants or the Procuring Entity, or on the Board's own initiative, have witnesses testify at meetings of the Board.
 - xiv. The Complainant, the Participants, and the Procuring Entity may demand to publicly disclose the statements of views or reports which they have made at meetings of the Board.
 - xv. The Board may, at the request of either the Complainant or the Procuring Entity, or on the Board's own initiative, hold public hearings concerning the merits of the complaint.
 - xvi. The Board may, if necessary, hear the views of technical experts and others with knowledge or experience relating to the procurement under review. In no case may the technical experts and others have any substantive interest in the procurement.
- (8) The Complainant may withdraw its complaint at any time.
- (9) Reports from the Procuring Entity
- i. When a duly filed complaint is received for consideration by the Board, the Procuring Entity shall submit to the Board within 14 days from the date when the copy of the complaint was sent to it by the Board, a written report concerning the procurement subject to the complaint, to include:
 - a. relevant documentation for tendering, including the specifications or portions thereof, relevant to the complaint;
 - b. a statement that sets out all relevant facts, findings, actions and recommendations of the Procuring Entity, and that responds fully to all allegations in the complaint;
 - c. any additional evidence or information that may be necessary in order to resolve the complaint.
 - ii. The Board shall, immediately after receiving the report referred to in i. above, send a copy of the report to the Complainant, the Participants, and the OGPR. The Board shall also give the Complainant and the Participants an opportunity to make comments to the Board or to request that the complaint be reviewed by the Board on the basis of the report within 7 days of receiving the copy of the report, respectively.

The Board shall, immediately upon receiving such comments or request, send copies of the same to the Procuring Entity.

- iii. The Board shall not disclose to third parties any trade secrets, manufacturing processes, or intellectual property of the supplier, or any other confidential commercial information, furnished by the supplier, except with the supplier's consent.

6. Findings of the Review and Recommendations

- (1) The Board shall make a written report of its findings of the review, within 90 days (or 50 days in the case of a complaint pertaining to public works) of the filing of a complaint. In its report, the Board shall set forth the basis for its findings of the review and shall indicate whether or not the complaint was found warranted either in full or in part. It shall also indicate whether or not the procurement breached specific provisions of the Agreement or other Measures.
- (2) Where the Board finds that any provision of the Agreement or other Measures were not followed, the Board shall accompany the report with written recommendations concerning appropriate remedies, which may include one or more of the following:
 - i. that new procurement procedures be conducted;
 - ii. that re-procurement be conducted without changing conditions for procurement;
 - iii. that the procurement be reevaluated;
 - iv. that the contract be executed with a different supplier;
 - v. that the contract be terminated.
- (3) In making its findings of the review and recommendations, the Board shall consider the circumstances surrounding the procurement process under review, including the seriousness of deficiency in the procurement process, the degree of prejudice to all or any suppliers, the extent of impediment to the integrity and effectiveness of the Agreement or other Measures, the good faith of the Complainant and the Procuring Entity, the extent of performance of the contract relating to the procurement, the cost of the recommendations to the Government of Japan, the urgency of the procurement, and the impact of the recommendations on the operations of the Procuring Entity.
- (4) The Board shall send its report and recommendations to the Complainant, the Participants, the Procuring Entity, and the OGPR immediately after the completion of the report and recommendations.
- (5) The Procuring Entity shall, in principle, and as its own decision, duly follow the recommendations of the Board on any complaints brought appropriately before the Board. If the Procuring Entity has decided not to comply with the recommendations, it shall report to the Board with the reasons therefor within 10 days (or within 60 days in the case of a complaint pertaining to public works) of receiving the Board's recommendations. The Board shall send a copy of the reasons to the OGPR immediately upon receiving such report.
- (6) The Board shall respond to external inquiries concerning its findings of the review and recommendations.

- (7) Whenever the Board, in conducting review of a complaint, finds evidence of misconduct or actions or behaviour contrary to the law relating to the procurement that is the subject of the complaint, it shall refer the matter to the appropriate enforcement authorities for action.

7. Expedited Review Option

- (1) When the Complainant or the Procuring Entity requests in writing an expeditious handling of a complaint, the Board shall consider the feasibility of applying the procedure set out in this section, referred to herein as the "expedited review option".
- (2) The Board shall determine whether to apply expedited review option immediately upon receiving a request for the same, and shall notify the Complainant, the Procuring Entity, the Participants, and the OGPR as to whether this option is to be applied.
- (3) When the expedited review option is applied, the time limits and procedures are set forth as follows:
- i. The Procuring Entity shall, within 6 working days of receiving notification from the Board that the expedited review option is to be applied, submit a written report on the complaint as specified in 5.(9) above to the Board. The Board shall send a copy of the report to the Complainant and the Participants immediately upon receiving the same. The Board shall give the Complainant and the Participants an opportunity to comment to the Board or to request that the case be decided on the basis of the report within 5 days of receiving this copy, respectively. The Board shall, immediately upon receiving the comments or requests, send a copy to the Procuring Entity.
 - ii. The Board shall make a report of its findings of the review and any recommendations within 45 days (or 25 days in the case of a complaint filed with respect to public works, telecommunications products and services, and medical technology products and services) from the date when the complaint was filed.

8. Public Release of Status of Receipt and Review of Complaints

The OGPR shall periodically release to the public summaries of the status of receipt and review of complaints with respect to government procurement.

9. Document Retention

In order to contribute to the complaint review process, each procuring entity shall maintain complete documentation on the procurement that falls under the Agreement or other Measures at least for 3 years (or 5 years in the case of public works, telecommunications products and services, and medical technology products and services) from the date of the contract execution.

10. Application

- (1) The Procedures above shall apply to complaints filed on or after 1 January 1996.
- (2) In the event that the Procedures should conflict with those provided for in "Revised Procedures to introduce Supercomputers (adopted by the Committee for Drawing Up and Promoting the Action Program, on 19 April 1990)", in "Procedures for the Procurement of Non-R&D Satellites (adopted by the Committee for Drawing Up and Promoting the Action Program, on 14 June 1990)", or in "Measures Related to Japanese Public Sector Procurement of Computer Products and Services (adopted by the Committee for Drawing Up and Promoting the Action Program, on 20 January 1992)", the procedures set forth in the quoted documents shall prevail.

**CODE OF SCHEDULES FOR REVIEW PROCEDURES FOR COMPLAINTS
CONCERNING GOVERNMENT PROCUREMENT**

(Provisional Translation)

11 January 1999

Decision by the Office of Government Procurement Review

We adopt the Code of Schedules for Review Procedures for Complaints Concerning Government Procurement as follows.

1. Filing of Complaints

(1) Definition of "persons who were capable of supplying the product or service"

"Persons who were capable of supplying the product or service" in the Procedures 2.(1)i. should be those who have or had an interest in the procurement, and include the following.

- i. Those who participated in tendering:
 - a. Those who participated in open tendering.
 - b. Those who participated in selective tendering.
 - c. Those who made any response to single tendering.
- ii. Those who did not participate in tendering despite had planned to:
 - a. Those who did not participate in tendering due to breaches in the procurement procedures.
 - b. Those who could not participate in tendering due to selective tendering or single tendering.
 - c. Those who were not allowed to participate in tendering.
- iii. Those who indirectly participate in tendering (including single tendering).

(2) Termination of Consultations

Either the supplier or the procuring entity may terminate the consultation under the Procedures 2.(2) at any time.

(3) Counting the days during consultation

If a complaint is not settled by the consultation under the Procedures 2.(2), the period for filing a complaint will toll for the period of consultation.

2. Calculation of Time in the Procedures

(1) Definition of "a Japanese government agency holiday"

"A Japanese government agency holiday" means days defined in "Government Holiday Law, article 1.1."

3. Participants

(1) Notification of participation

The intent to participate under the Procedures 4.(3) shall, in writing and providing reasons therefor, be notified to the Board.

(2) Withdrawal of participation

- i. Withdrawal of participation under the Procedures 4.(4) shall be notified in writing.
- ii. The Board shall promptly notify the withdrawal of participation under the Procedures 4.(4) to the parties in writing.

4. Complaint Review Process

(1) Period in the case of filing complaint by mail

If a complaint in the Procedures 5.(1) is sent by mail, the complaint is regarded as having been filed on the day the mail was postmarked. (When the mail is not postmarked or not postmarked clearly, the complaint shall be regarded as having been filed on the day determined in consideration of the period which the mail usually requires to be delivered.)

(2) Understanding of "7 working days"

It sometimes requires more than 7 working days to determine whether a complaint should be dismissed by the Procedures 5.(2). Thus, although a complaint shall be dismissed in principle within 7 working days after it was filed, some complaints may be dismissed exceptionally beyond 7 working days.

(3) Remedy for misleading guidance

If the Procuring Entity or the Secretariat of the Board indicates to a Complainant a longer period for filing a complaint than the proper period, and a complaint is filed during the indicated period, the complaint shall be regarded as being filed timely.

(4) Public announcement of filing Complainant

Public announcement under the Procedures 5.(5) shall be published in "The Method of Public Announcement when a Complaint is Filed" (the decision of the Chairperson of the Government Procurement Review Board, 26 December 1995).

(5) Definition of procuring entities

Procuring entities include central government agencies. They are all agencies which are subject to "The Accounts Law" (they include internal bureaus, external bureaus, attached

agencies, other agencies and local branches defined in "National Administration Organization Law") and the government related agencies (the entities in the Agreement on Government Procurement Appendix I, Annex 3, and the agencies which are subject to "Measures Related to Japanese Public Sector Procurement of Computer Products and Services (adopted by the Committee for Drawing Up and Promoting the Action Program, on 20 January 1992)").

(6) Definition of the head of procuring entities

The head of procuring entities is the head of the ministries and agencies defined by "The Finance Law, article 20.2" and the head of the government related agencies.

- i. As far as ministries and agencies are concerned, if the budget expenditure authority is delegated to the budget expenditure officer under "Accounting Law, article 13", the budget expenditure officer may be regarded as the head of the procuring entities.
- ii. As far as government related agencies are concerned, if the budget expenditure authority is delegated to an officer by regulations, the officer may be regarded as the head of the procuring entities.

(7) Request for approval of agents

- i. When the Complainant requests a lawyer as an agent, the name and address of the lawyer's office and the name of lawyer association which the lawyer belongs to shall be manifested in a writing which shall also manifest the power and mandate of the agent in the Procedures 5.(7)viii.
- ii. When the Complainant requests an agent other than a lawyer under the Procedures 5.(7)vi., the name, occupation, relations with the Complainant, and any other information enough to judge whether the agent is suitable as a representative shall be manifested in writing.
- iii. The writing which manifests the mandate of the agent under the Procedures 5.(7)viii. shall be attached to the writing in ii. above.

(8) Requests for approval of assistants

When the Complainant requests an assistant under the Procedures 5.(7)x., the name, occupation, relationship with the Complainant, and any other information enough to judge whether the designated person is suitable as an assistant, shall be manifested in writing.

(9) Definition of "any substantive interest"

Technical experts and others who have "any substantive interest" in the Procedures 5.(7)xiv. are defined as either persons who were concerned in the procurement process under review, including engineers, advisors, and architects, or persons who have an employment relationship with the Complainant, including, but not necessarily limited to, relatives of the Complainant.

(10) Withdrawal of complainants

- i. Withdrawal of the complaint under the Procedures 5.(8) shall be manifested in writing.

- ii. When the Board receives withdrawal of complaint in the Procedures 5.(8), the Board shall promptly notify it to the parties in writing.

(11) Non-disclosure of the "report from the Procuring Entity"

The Board requests the Complainant and the Participants not to disclose the "Report from the Procuring Entity" in the Procedures 5.(9)i. except to the parties.

(12) Definition of "commercial information"

The "commercial information" in the Procedures 5.(9)i. means the useful technical or trade information for the business activities which is not disclosed.

5. Findings of the Review and Recommendations

(1) Attachment of the report concerning minor opinions

When the Board makes report in the Procedures 6.(1), if one or more members of the Board request to write the minor opinions, the Board may attach the minor opinions to the report.

(2) Public release of "findings of the review and recommendations"

The Board will decide the form in which "findings of the review and recommendations" in the Procedures 6.(1) and 6.(2) will be publicly released.

6. Public Release of Status of Receipt and Review of Complaints

Public release under the Procedures 8. shall be published in "The Method of Public Release of Status of Receipt and Review of Complaints (the decision by the Head of the Office of Government Procurement Review, 30 July 1996)".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/87
15 July 1999

(99-2924)

Committee on Government Procurement

Original: English

PROPOSAL FOR THE AMENDMENT OF THE GOVERNMENT PROCUREMENT AGREEMENT (1994)

Submission by the European Community

The following communication, dated 30 June 1999, has been received from the Permanent Delegation of the European Commission with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Proposal for the Amendment of the Government Procurement Agreement (1994) by the European Union

(At this stage no amendments to the structure of the Agreement are suggested)

Government Procurement Agreement (1994) Suggested amendments indicated	Amendments Draft new text (where different from old text)	Remarks
ARTICLE I	ARTICLE I	ARTICLE I
<i>Scope and Coverage</i>		
<p>1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement <u>falling within the scope of Article III, paragraph 8 of the GATT and Article XIII, paragraph 1 of GATS</u> by entities covered by this Agreement, as specified in Appendix I.</p>	<p>1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement falling within the scope of Article III, paragraph 8 of the GATT and Article XIII, paragraph 1 of GATS by entities covered by this Agreement, as specified in Appendix I.</p>	
<p>2. This Agreement applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.</p>		
<p>3. Where entities, in the context of procurement covered under this Agreement, require enterprises not included in Appendix I to award contracts in accordance with particular requirements, Article III shall apply <i>mutatis mutandis</i> to such requirements.</p>		

<p>4. <u>Without prejudice to Article XXIII, this Agreement applies to any procurement contract:</u></p> <p>(a) <u>of central government entities of a value of not less than the relevant threshold specified in Appendix I.</u></p> <ul style="list-style-type: none"> - <u>130,000 SDR for contracts for supply of products and services</u> - <u>5,000,000 SDR for contracts for public works</u> <p>(b) <u>of sub-central government entities of a value of not less than</u></p> <ul style="list-style-type: none"> - <u>200,000 SDR for contracts for supply of products and services</u> - <u>5,000,000 SDR for contracts for public works</u> <p>(c) <u>of entities according to Appendix I, Annex 3 of a value of not less than</u></p> <ul style="list-style-type: none"> - <u>400,000 SDR for contracts for supply of products and services</u> - <u>5,000,000 SDR for contracts for public works</u> 	<p>4. Without prejudice to Article XXIII, this Agreement applies to any procurement contract:</p> <p>(a) of central government entities of a value of not less than</p> <ul style="list-style-type: none"> - 130,000 SDR for contracts for supply of products and services - 5,000,000 SDR for contracts for public works <p>(b) of sub-central government entities of a value of not less than</p> <ul style="list-style-type: none"> - 200,000 SDR for contracts for supply of products and services - 5,000,000 SDR for contracts for public works <p>(c) of entities according to Appendix I, Annex 3 of a value of not less than</p> <ul style="list-style-type: none"> - 400,000 SDR for contracts for supply of products and services - 5,000,000 SDR for contracts for public works 	<p>A definition of central government entities will be presented at a later stage.</p>
<p>ARTICLE II</p>	<p>ARTICLE II</p>	<p>ARTICLE II</p>
<p><i>Valuation of Contracts</i></p>		
<p>1. The following provisions shall apply in determining the value of contracts for purposes of implementing this Agreement.</p>		
<p>2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.</p>		
<p>3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.</p>		

<p>4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:</p> <ul style="list-style-type: none">(a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.		
<p>5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:</p> <ul style="list-style-type: none">(a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;(b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48. <p>If there is any doubt, the second basis for valuation, namely (b), is to be used.</p>		
<p>6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.</p>		

ARTICLE III	ARTICLE III	ARTICLE III
<i>National Treatment and Non-discrimination – Principal obligations</i>	<i>Principal obligations</i>	
<p>0. Each Party shall ensure that the procurement of its covered entities takes place in a transparent, reasonable and non-discriminatory manner, treating any supplier of any Party equally, and ensuring the principle of open and effective competition.</p>	<p>0. Each Party shall ensure that the procurement of its covered entities takes place in a transparent, reasonable and non-discriminatory manner, treating any supplier of any Party equally, and ensuring the principle of open and effective competition.</p>	<p>This paragraph sets out the general principles that govern government procurement. The European Union intends to specify at a later stage in the GPA the specific obligations resulting for Parties from these principles.</p>
<p>1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:</p> <ul style="list-style-type: none"> (a) that accorded to domestic products, services and suppliers; and (b) that accorded to products, services and suppliers of any other Party. 		
<p>2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:</p> <ul style="list-style-type: none"> (a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and (b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV. 		

<p>3. The provisions of paragraphs 1 and 2 <u>This Article</u> shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.</p>	<p>3. This Article shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.</p>	
<p>ARTICLE IV <i>Rules of Origin</i></p>	<p>ARTICLE IV</p>	<p>ARTICLE IV</p>
<p>1. A Party shall not apply rules of origin to products or services imported or supplied for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same products or services from the same Parties.</p>		
<p>2. Following the conclusion of the work programme for the harmonization of rules of origin for goods to be undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement") and negotiations regarding trade in services, Parties shall take the results of that work programme and those negotiations into account in amending paragraph 1 as appropriate.</p>		

ARTICLE V	ARTICLE V	ARTICLE V
<p>Special and Differential Treatment for Developing Countries</p> <p><u>Upon accession to the GPA, a developing country shall enjoy all the benefits of the Agreement.</u> <u>It shall be obliged to comply with the obligations under this Agreement:</u></p> <ul style="list-style-type: none"> - <u>at central government level X years after accession</u> - <u>at sub-central government level Y years after accession</u> - <u>as far as entities under Appendix I, Annex 3 are concerned Z years after accession.</u> 	<p>Developing Countries</p> <p>Upon accession to the GPA, a developing country shall enjoy all the benefits of the Agreement. It shall be obliged to comply with the obligations under this Agreement:</p> <ul style="list-style-type: none"> - at central government level X years after accession - at sub-central government level Y years after accession - as far as entities under Appendix I, Annex 3 are concerned Z years after accession. 	<p>The remainder of Article V may be included in a separate protocol.</p>
<p><u>Objectives</u></p> <p>1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular least developed countries, in their need to:</p> <ul style="list-style-type: none"> (a) safeguard their balance of payments position and ensure a level of reserves adequate for the implementation of programmes of economic development; (b) promote the establishment or development of domestic industries including the development of small scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy; 		

<p>(e) support industrial units so long as they are wholly or substantially dependent on government procurement; and</p> <p>(d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the World Trade Organization (hereinafter referred to as the "WTO") and not disapproved by it.</p>		
<p>2. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of least developed countries and of those countries at low stages of economic development.</p>		
<p><u>Coverage</u></p>		
<p>3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 shall be duly taken into account in the course of negotiations with respect to the procurement of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their coverage lists under the provisions of this Agreement, shall endeavour to include entities procuring products and services of export interest to developing countries.</p>		

<u>Agreed Exclusions</u>		
<p>4. A developing country may negotiate with other participants in negotiations under this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in subparagraphs 1(a) through 1(c) shall be duly taken into account. A developing country participating in regional or global arrangements among developing countries referred to in subparagraph 1(d) may also negotiate exclusions to its lists, having regard to the particular circumstances of each case, taking into account, <i>inter alia</i>, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be subject to common industrial development programmes.</p>		

<p>5. After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to its development, financial and trade needs, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c). After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.</p>		
<p>6. Paragraphs 4 and 5 shall apply <i>mutatis mutandis</i> to developing countries acceding to this Agreement after its entry into force.</p>		
<p>7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 shall be subject to review in accordance with the provisions of paragraph 14 below.</p>		

<u>Technical Assistance for Developing Country Parties</u>		
<p>8. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.</p>		
<p>9. This assistance, which shall be provided on the basis of non discrimination among developing country Parties, shall relate, <i>inter alia</i>, to:</p> <ul style="list-style-type: none"> —— the solution of particular technical problems relating to the award of a specific contract; and —— any other problem which the Party making the request and another Party agree to deal with in the context of this assistance. 		
<p>10. Technical assistance referred to in paragraphs 8 and 9 would include translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO designated by the entity, unless developed country Parties deem translation to be burdensome, and in that case explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.</p>		

<p><u>Information Centres</u></p>		
<p>11. Developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, <i>inter alia</i>, laws, regulations, procedures and practices regarding government procurement, notices about intended procurements which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.</p>		
<p><u>Special Treatment for Least Developed Countries</u></p>		
<p>12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES to GATT 1947 of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203-205), special treatment shall be granted to least developed country Parties and to the suppliers in those Parties with respect to products or services originating in those Parties, in the context of any general or specific measures in favour of developing country Parties. A Party may also grant the benefits of this Agreement to suppliers in least developed countries which are not Parties, with respect to products or services originating in those countries.</p>		
<p>13. Each developed country Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers in least developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers in least developed countries, and likewise assist them to comply with technical regulations and standards relating to products or services which are the subject of the intended procurement.</p>		

<u>Review</u>		
<p>14. The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended.</p>		
<p>15. In the course of further rounds of negotiations in accordance with the provisions of paragraph 7 of Article XXIV, each developing country Party shall give consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.</p>		
<p>ARTICLE VI</p>	<p>ARTICLE VI</p>	<p>ARTICLE VI</p>
<p><i>Technical Specifications</i></p>		
<p>1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, <u>shall comply with the principles laid down in Article III, paragraph 0 and in particular ensure the principle of open and effective competition and shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.</u></p>	<p>1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall comply with the principles laid down in Article III, paragraph 0 and in particular ensure the principle of open and effective competition and shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.</p>	<p>This text reverses the current situation. Indeed, currently contracting entities shall, where appropriate, base their technical specifications on international standards, where such exist.</p> <p>The new text allows contracting entities to lay down technical specifications in accordance with their needs, provided they comply with the principles lay down in Article III, paragraph 0 and in particular ensure the principle of open and effective competition. Thus, within the limits just referred to, contracting entities may take into account the fact that their project is of a genuinely innovative nature or the need to ensure compatibility with equipment already in use.</p>

<p><u>This means that at least the following will apply:</u></p> <p>(a) <u>technical specifications shall be formulated, where possible in terms of performance requirements rather than design or descriptive characteristics;</u></p> <p>(b) <u>in all cases procuring entities shall not be able to exclude bids which include products, services or works which comply with appropriate international standards for reasons relating to the non-compliance with technical requirements covered by those standards;</u></p> <p><u>procuring entities shall not reject bids which do not comply with the standard, regulation or code to which the technical specifications refer, but do meet the essential requirements thereof and are fit for the purpose intended.</u></p>	<p>This means that at least the following will apply:</p> <p>(a) technical specifications shall be formulated, where possible in terms of performance requirements rather than design or descriptive characteristics;</p> <p>(b) in all cases procuring entities shall not be able to exclude bids which include products, services or works which comply with appropriate international standards for reasons relating to the non-compliance with technical requirements covered by those standards;</p> <p>procuring entities shall not reject bids which do not comply with the standard, regulation or code to which the technical specifications refer, but do meet the essential requirements thereof and are fit for the purpose intended.</p>	<p>If a product (service or work) complies with an appropriate international standard the contracting entity cannot <i>exclude</i> this product (service or work) for reasons covered by that standard. It is obvious, however, that other aspects, not covered by the standard will still have to be assessed on the basis of other information on the product (service or work). In addition, the conformity with the international standard needs to be clear or made clear by the supplier, which also means that the technical means to verify such conformity must be available.</p>
<p>2. Technical specifications prescribed by procuring entities shall, where appropriate:</p> <p>(a) be in terms of performance rather than design or descriptive characteristics; and</p> <p>(b) be based on international standards, where such exist; otherwise, on national technical regulations, recognized national standards, or building codes.</p> <p><u>Where tender documents lay down technical specifications by way of a reference, the following provisions shall apply:</u></p>	<p>2. Where tender documents lay down technical specifications by way of reference, the following provisions shall apply:</p>	

<p>(a) <u>the procuring entity shall base the technical specifications or part of those on international standards, where they exist; otherwise on national technical regulations, recognized national standards or building codes and the tender documents must include information on where and how the regulations, standards or codes can be obtained without prejudice to legally binding national technical regulations in so far as these are compatible with WTO requirements;</u></p> <p>(b) <u>where the procuring entity has a choice between various non-international standards, the technical specifications shall be based on standards which ensure open and effective competition.</u></p>	<p>(a) the procuring entity shall base the technical specifications or part of those on international standards, where they exist; otherwise on national technical regulations, recognized national standards or building codes and the tender documents must include information on where and how the regulations, standards or codes can be obtained without prejudice to legally binding national technical regulations in so far as these are compatible with WTO requirements;</p> <p>(b) where the procuring entity has a choice between various non-international standards, the technical specifications shall be based on standards which ensure open and effective competition.</p>	
<p>3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.</p>		
<p>4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.</p>		

ARTICLE VII	ARTICLE VII	ARTICLE VII
<i>Tendering Procedures</i>		
<p>1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.</p>		
<p>2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.</p>		
<p>3. For the purposes of this Agreement:</p> <ul style="list-style-type: none"> (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender. (b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender. (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV. 		

ARTICLE VIII	ARTICLE VIII	ARTICLE VIII
<i>Qualification of Suppliers</i>		
<p>1. In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following:</p> <ul style="list-style-type: none"> (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures; (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations; 		

- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;
- (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;
- (f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;

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| <p>(g) each Party shall ensure that:</p> <ul style="list-style-type: none">(i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and(ii) efforts be made to minimize differences in qualification procedures between entities. <p>(h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.</p> | | |
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ARTICLE IX	ARTICLE IX	ARTICLE IX
<i>Invitation to Participate Regarding Intended Procurement</i>		
<p>1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II. <u>The notice shall be published through means which offer the widest possible and non-discriminatory access to interested suppliers and service providers from all Parties to this Agreement; these means shall be accessible free of charge through a single point of access.</u> <u>Each Party shall notify to the other Parties this single point of access.</u></p>	<p>1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published through means which offer the widest possible and non-discriminatory access to interested suppliers and service providers from all Parties to this Agreement; these means shall be accessible free of charge through a single point of access. Each Party shall notify to the other Parties this single point of access.</p>	
<p>2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.</p>		
<p>3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.</p>		
<p>4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.</p>		

<p>5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.</p>		
<p>6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:</p> <ul style="list-style-type: none"> (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured; (b) whether the procedure is open or selective or will involve negotiation; (c) any date for starting delivery or completion of delivery of goods or services; (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted; 		

<ul style="list-style-type: none"> (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents; (f) any economic and technical requirements, financial guarantees and information required from suppliers; (g) the amount and terms of payment of any sum payable for the tender documentation; and (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods. 		
<p>7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:</p> <ul style="list-style-type: none"> (a) a statement that interested suppliers should express their interest in the procurement to the entity; (b) a contact point with the entity from which further information may be obtained. 		
<p>8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:</p> <ul style="list-style-type: none"> (a) the subject-matter of the contract, <u>including the relevant CPV code</u>; (b) the time-limits set for the submission of tenders or an application to be invited to tender; and (c) the addresses from which documents relating to the contracts may be requested. 	<p>8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:</p> <ul style="list-style-type: none"> (a) the subject-matter of the contract, including the relevant CPV code; (b) the time-limits set for the submission of tenders or an application to be invited to tender; and (c) the addresses from which documents relating to the contracts may be requested. 	

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

- (d) the nature of the products or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

<p>10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.</p>		
<p>11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.</p>		
<p>ARTICLE X</p>	<p>ARTICLE X</p>	<p>ARTICLE X</p>
<p><i>Selection Procedures</i></p>		
<p>1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.</p>		
<p>2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.</p>		

<p>3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.</p>		
<p>4. Requests to participate in selective tendering procedures may be submitted in writing including electronic means telex, telegram or facsimile. <u>The term "writing" as used in this Agreement is to be understood to include any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information. "Electronic means" means using electronic equipment for the processing (including digital compression) and storage of data, and entirely using transmission, conveyance and reception by wire, by radio, by optical means or by other electromagnetic means.</u></p>	<p>4. Requests to participate in selective tendering procedures may be submitted in writing including electronic means. The term "writing" as used in this Agreement is to be understood to include any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information. "Electronic means" means using electronic equipment for the processing (including digital compression) and storage of data, and entirely using transmission, conveyance and reception by wire, by radio, by optical means or by other electromagnetic means.</p>	<p>The proposed amendment is required in order to allow for electronic procurement. The proposed wording of the definitions follows a proposal submitted to the WTO and the draft wording of the electronic commerce Directive.</p>
<p>ARTICLE XI</p>	<p>ARTICLE XI</p>	<p>ARTICLE XI</p>
<p><i>Time-limits for Tendering and Delivery</i></p>		
<p><u>General</u></p>		
<p>1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail in writing from foreign as well as domestic points.</p>	<p>1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders in writing from foreign as well as domestic points.</p>	<p>The deletion of "by mail" will allow for transmission by other means, i.e. electronic means.</p>

<p>(b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.</p>	<p>(b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.</p>	
<p><u>Deadlines</u></p>		
<p>2. Except insofar as provided in paragraphs 3 and 4, (a) in open procedures, the period for the receipt of tenders shall not be less than <u>430</u> days from the date of publication referred to in paragraph 1 of Article IX; (b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than <u>215</u> days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than <u>430</u> days from the date of issuance of the invitation to tender; (c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than <u>430</u> days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article IX.</p>	<p>2. Except insofar as provided in paragraphs 3 and 4, (a) in open procedures, the period for the receipt of tenders shall not be less than 30 days from the date of publication; (b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 15 days from the date of publication; the period for receipt of tenders shall in no case be less than 30 days from the date of issuance of the invitation to tender; (c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 30 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication.</p>	<p>The reference to Article IX appears to be redundant. Deadlines can be reduced, in particular when electronic means of "publication" are used.</p>

<p>3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:</p> <p>(a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:</p> <p>(i) as much of the information referred to in paragraph 6 of Article IX as is available;</p> <p>(ii) the information referred to in paragraph 8 of Article IX;</p> <p>(iii) a statement that interested suppliers should express their interest in the procurement to the entity; and</p> <p>(iv) a contact point with the entity from which further information may be obtained, the 40 day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;</p> <p>(b)(a) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 430-day limit for receipt of tenders may be reduced to not less than 24 days; or</p> <p>(e)(b) in the case where the procuring entity procures off-the-shelf products or services, the period referred to in paragraph 2(c) may be reduced to 15 days.</p>	<p>3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:</p> <p>(a) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 30-day limit for receipt of tenders may be reduced to 24 days; or</p> <p>(b) in the case where the procuring entity procures off-the-shelf products or services, the period referred to in paragraph 2(c) may be reduced to 15 days.</p>	<p>The duplication of minimum periods appears to be too complicated and not justified.</p> <p>Where electronic procurement is applied there could be room for further derogations from the general 40-day period. It may be considered necessary to determine more precisely what is considered to be electronic procurement.</p> <p>The term off-the-shelf will be defined at a later stage.</p>
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<p>(e) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article IX; or</p> <p>(d) the period referred to in paragraph 2(e) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.</p>		
<p><u>4. In cases where the procuring entity offers simultaneously free and direct access via the single point of access referred to in Article IX to the complete call for tenders including all annexes both the deadlines of 30 and 15 days may be further reduced by 5 days.</u></p>	<p>4. In cases where the procuring entity offers simultaneously free and direct access via the single point of access referred to in Article IX to the complete call for tenders including all annexes both the deadlines of 30 and 15 days may be further reduced by 5 days.</p>	
<p><u>4.5.</u> Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.</p>		
<p>ARTICLE XII <i>Tender Documentation</i></p>	<p>ARTICLE XII</p>	<p>ARTICLE XII</p>
<p>1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.</p>		

2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article IX, and the following:

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;
- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;
- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
- (g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes and currency of payment;

<ul style="list-style-type: none"> (i) the terms of payment; (j) any other terms or conditions; (k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained. 		
<u>Forwarding of Tender Documentation by the Entities</u>		
<p>3.</p> <ul style="list-style-type: none"> (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto. (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto. (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract. 		
ARTICLE XIII	ARTICLE XIII	ARTICLE XIII
<i>Submission, Receipt and Opening of Tenders and Awarding of Contracts</i>		
<p>1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:</p> <ul style="list-style-type: none"> (a) tenders shall normally be submitted in writing directly or by mail; 	<p>1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:</p> <ul style="list-style-type: none"> (a) tenders shall be submitted in writing; 	<p>The reference to electronic means would facilitate electronic procurement.</p>

<p>(b) integrity of data and confidentiality of tenders must be preserved. Tenders shall not be opened until after the deadline set by the contracting entity for receipt of tenders; If tenders by telex, telegram or faesimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particulare definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or faesimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or faesimile shall prevail where there is a difference or conflict between that content and any documentation received after the time limitand</p> <p>(c) whatever means of communication or exchange of information chosen they shall not cause a discrimination and be consistent with the principles laid down in Article 3 hereof; and</p> <p>(b)(d) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.</p>	<p>(b) integrity of data and confidentiality of tenders must be preserved. Tenders shall not be opened until after the deadline set by the contracting entity for receipt of tenders;</p> <p>(c) whatever means of communication or exchange of information chosen they shall not cause a discrimination and be consistent with the principles laid down in Article 3 hereof; and</p> <p>(d) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.</p>	<p>The means of information does not affect the contents. Therefore, the content of a submission should not be regulated with reference to the means of communication.</p> <p>An obligation of confirmation appears to be redundant.</p>
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<p><u>Receipt of Tenders</u></p>		
<p>2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.</p>		
<p><u>Opening of Tenders</u></p>		
<p>3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.</p>		
<p><u>Award of Contracts</u></p>		
<p>4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.</p>		

<p>(b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.</p> <p>(c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.</p>		
<p><u>Option Clauses</u></p>		
<p>5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.</p>		
<p>ARTICLE XIV</p>	<p>ARTICLE XIV</p>	<p>ARTICLE XIV</p>
<p><i>Negotiation</i></p>		
<p>1. A Party may provide for entities to conduct negotiations:</p> <p>(a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article IX (the invitation to suppliers to participate in the procedure for the proposed procurement); or</p> <p>(b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.</p>		

<p>2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.</p>		
<p>3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.</p>		
<p>4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:</p> <ul style="list-style-type: none"> (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation; (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations; (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline. 		
<p>ARTICLE XV</p>	<p>ARTICLE XV</p>	<p>ARTICLE XV</p>
<p><i>Limited Tendering</i></p>		
<p>1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:</p>		

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| <ul style="list-style-type: none"> (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded; (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists; (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures; (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services; | | |
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- (e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV;
- (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;
- (g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;
- (h) for products purchased on a commodity market;

<p>(i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;</p> <p>(j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.</p>		
<p>2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.</p>		
<p>ARTICLE XVI</p>	<p>ARTICLE XVI</p>	<p>ARTICLE XVI</p>
<p><i>Offsets</i></p>		
<p>1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.</p>		

<p>2. Nevertheless, having regard to general policy considerations, including those relating to development, a developing country may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in the country's Appendix I and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the Committee and included in the notice of intended procurement and other documentation.</p>		
<p>ARTICLE XVII</p>	<p>ARTICLE XVII</p>	<p>ARTICLE XVII</p>
<p><i>Transparency</i></p>		
<p>1. Each Party shall encourage entities to indicate the terms and conditions, including any deviations from competitive tendering procedures or access to challenge procedures, under which tenders will be entertained from suppliers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:</p> <ul style="list-style-type: none"> (a) specify their contracts in accordance with Article VI (technical specifications); (b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of the notice of intended procurement) which is published in an official language of the WTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers situated in countries Parties to this Agreement; 	<p>1. Each Party shall encourage entities to indicate the terms and conditions, including any deviations from competitive tendering procedures or access to challenge procedures, under which tenders will be entertained from suppliers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:</p> <ul style="list-style-type: none"> (a) specify their contracts in accordance with Article VI (technical specifications); (b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of the notice of intended procurement) which is published in an official language of the WTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers situated in countries Parties to this Agreement; 	<p>A single forum where notices can easily be accessed should be promoted.</p>

<p>(c) are willing to ensure that their procurement regulations shall not normally change during a procurement and, in the event that such change proves avoidable, to ensure the availability of a satisfactory means of redress.</p> <p><u>Each Party shall encourage entities to publish their technical specifications through a single point of access, accessible free of charge. Where such publication is provided, contracting entities shall be encouraged to mention the address of the single point of access in the tender notice.</u></p>	<p>(c) are willing to ensure that their procurement regulations shall not normally change during a procurement and, in the event that such change proves avoidable, to ensure the availability of a satisfactory means of redress.</p> <p>Each Party shall encourage entities to publish their technical specifications on the internet through a single point of access, accessible free of charge. Where such publication is provided, contracting entities shall be encouraged to mention the address of the single point of access in the tender notice.</p>	
<p>2. Governments not Parties to the Agreement which comply with the conditions specified in paragraphs 1(a) through 1(c), shall be entitled if they so inform the Parties to participate in the Committee as observers.</p>		
<p>ARTICLE XVIII</p>	<p>ARTICLE XVIII</p>	<p>ARTICLE XVIII</p>
<p><i>Information and Review as Regards Obligations of Entities</i></p>		
<p>1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain <u>at least</u>:</p> <ul style="list-style-type: none"> (a) the nature and quantity of products or services in the contract award <u>by referring to the relevant CPV code</u>; (b) the name and address of the entity awarding the contract; (c) the date of award; (d) the name and address of winning tenderer; 	<p>1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain at least:</p> <ul style="list-style-type: none"> (a) the nature and quantity of products or services in the contract award by referring to the relevant CPV code; (b) the name and address of the entity awarding the contract; (c) the date of award; (d) the name and address of winning tenderer; 	

<ul style="list-style-type: none"> (e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract; (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and (g) the type of procedure used. 	<ul style="list-style-type: none"> (e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract; (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and (g) the type of procedure used. 	
<p>2. Each entity shall, on request from a supplier of a Party, promptly provide:</p> <ul style="list-style-type: none"> (a) an explanation of its procurement practices and procedures; (b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and (c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer. 		
<p>3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.</p>		
<p>4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.</p>		

ARTICLE XIX	ARTICLE XIX	ARTICLE XIX
<i>Information and Review as Regards Obligations of Parties</i>		
<p>1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.</p>		
<p>2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.</p>		
<p>3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.</p>		

<p>4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.</p>		
<p><u>5.(new) Contracting Parties shall ensure that contract award notices (referred to in Article XVIII) are routinely published for the vast majority of published notices and made easily available on a permanent basis in an official GPA language through a single point of access, accessible free of charge.</u></p>	<p>5.(new) Contracting Parties shall ensure that contract award notices (referred to in Article XVIII) are routinely published for the vast majority of published notices and made easily available on a permanent basis in an official GPA language through a single point of access, accessible free of charge.</p>	
<p>5-6. <u>Each</u> Where a Party does not comply with paragraph 5, it shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded, above the applicable threshold value, by all procurement entities covered under this Agreement:</p>	<p>6. Where a Party does not comply with paragraph 5, it shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded, above the applicable threshold value, by all procurement entities covered under this Agreement:</p>	<p>The suggested amendments for paragraph 5 correspond with the paper on statistical reporting that the EC submitted to the WTO in June 1998 in order to reduce the reporting requirements.</p> <p>For the time being statistical reporting within the GPA framework does not function. Either we receive nothing at all or at best information about a small fraction of public procurement contracts. We have the choice between abandoning statistical reporting (at least for practical purposes) or taking a proactive approach cutting down on our requirements but insisting on as correct information as possible.</p> <p>We would like to have a better picture of public procurement opportunities among the GPA members. Asking for estimates of total public procurement in case the reported information is incomplete (which it always is) will give us a possibility to make a very public comparison between the figures reported by the Member States and the figures calculated by us. This might lead to a serious discussion of the quality of the reports and hopefully better quality information in the future.</p>

<p>(a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;</p> <p>(b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;</p> <p>(c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV in all cases where limited tendering is used; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV in all cases where limited tendering is used; and</p>	<p>(a) for entities in Annex 1, statistics on the estimated value of contracts awarded on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts on a global basis and broken down by categories of entities;</p> <p>(b) for entities in Annex 1, statistics on the number and total value of contracts awarded, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded broken down by categories of entities and categories of products and services;</p> <p>(c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded in all cases where limited tendering is used; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value in all cases where limited tendering is used.</p>	
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<p>(d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.</p>		
<p>6. To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.</p>		
<p><u>7.(new) Where any party has reason to believe that any of the statistics it provides are incomplete it shall also provide its best estimate of the true total numbers or value of the information required in paragraph 5.</u></p>	<p>7.(new) Where any party has reason to believe that any of the statistics it provides are incomplete it shall also provide its best estimate of the true total numbers or value of the information required in paragraph 5.</p>	

ARTICLE XX	ARTICLE XX	ARTICLE XX
<i>Challenge Procedures</i>		
<u>Consultations</u>		
<p>1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek solution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system. <u>Such encouragement may take place in particular through the designation of one or more bodies which can offer their good advice in trying to solve the situation.</u></p>	<p>1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek solution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system. Such encouragement may take place in particular through the designation of one or more bodies which can offer their good advice in trying to solve the situation.</p>	
<u>Challenge</u>		
<p>2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.</p>		
<p>3. Each Party shall provide its challenge procedures in writing and make them generally available.</p>		
<p>4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.</p>		
<p>5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than ten days.</p>		

<p>6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:</p> <ul style="list-style-type: none">(a) participants can be heard before an opinion is given or a decision is reached;(b) participants can be represented and accompanied;(c) participants shall have access to all proceedings;(d) proceedings can take place in public;(e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;(f) witnesses can be presented;(g) documents are disclosed to the review body.		
<p>7. Challenge procedures shall provide for:</p> <ul style="list-style-type: none">(a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;(b) an assessment and a possibility for a decision on the justification of the challenge;		

<p>(c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.</p>		
<p>8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.</p>		
<p><u>9. The Parties undertake to designate or establish an independent body with a view to solve informally problems encountered in gaining access to contracts.</u></p>	<p>9. The Parties undertake to designate or establish an independent body with a view to solve informally problems encountered in gaining access to contracts.</p>	<p>The Community will specify at a later stage the content of such proposal.</p>
<p>ARTICLE XXI</p>	<p>ARTICLE XXI</p>	<p>ARTICLE XXI</p>
<p><i>Institutions</i></p>		
<p>1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.</p>		
<p>2. The Committee may establish working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.</p>		

ARTICLE XXII	ARTICLE XXII	ARTICLE XXII
<i>Consultations and Dispute Settlement</i>		
<p>1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise specifically provided below.</p>		
<p>2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as "DSB"), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.</p>		
<p>3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.</p>		

<p>4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:</p> <p>"To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this Agreement."</p> <p>In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.</p>		
<p>5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.</p>		

<p>6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by two months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the Dispute Settlement Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.</p>		
<p>7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.</p>		
<p>ARTICLE XXIII <i>Exceptions to the Agreement</i></p>	<p>ARTICLE XXIII</p>	<p>ARTICLE XXIII</p>
<p>1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.</p>		

<p>2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.</p>		
ARTICLE XXIV	ARTICLE XXIV	ARTICLE XXIV
<i>Final Provisions</i>		
1. <u>Acceptance and Entry into Force</u>		
<p>This Agreement shall enter into force on 1 January 1996 for those governments whose agreed coverage is contained in Annexes 1 through 5 of Appendix I of this Agreement and which have, by signature, accepted the Agreement on 15 April 1994 or have, by that date, signed the Agreement subject to ratification and subsequently ratified the Agreement before 1 January 1996.</p>		
2. <u>Accession</u>		
<p>Any government which is a Member of the WTO, or prior to the date of entry into force of the WTO Agreement which is a CONTRACTING PARTY to GATT 1947, and which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession which states the terms so agreed. The Agreement shall enter into force for an acceding government on the 30th day following the date of its accession to the Agreement.</p>		

3. <u>Transitional Arrangements</u>		
<p>(a) Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date of their application of the provisions, if prior to 1 January 1997, shall be notified to the Director-General of the WTO 30 days in advance.</p> <p>(b) During the period between the date of entry into force of this Agreement and the date of its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which were on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive provisions of the 1988 Agreement, including its Annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996.</p> <p>(c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.</p>		

<p>(d) Article XXII shall not enter into force until the date of entry into force of the WTO Agreement. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.</p> <p>(e) Prior to the date of entry into force of the WTO Agreement, references to WTO bodies shall be construed as referring to the corresponding GATT body and references to the Director-General of the WTO and to the WTO Secretariat shall be construed as references to, respectively, the Director-General to the CONTRACTING PARTIES to GATT 1947 and to the GATT Secretariat.</p>		
<p>4. <u>Reservations</u></p>		
<p>Reservations may not be entered in respect of any of the provisions of this Agreement.</p>		
<p>5. <u>National Legislation</u></p>		
<p>(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.</p>		

<p>(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.</p>		
<p>6. <u>Rectifications or Modifications</u></p>		
<p>(a) Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.</p>		

<p>(b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than 30 days from the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.</p>		
<p>7. <u>Reviews, Negotiations and Future Work</u></p>		
<p>(a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the WTO of developments during the periods covered by such reviews.</p>		

<p>(b) Not later than the end of the third year from the date of entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.</p> <p>(c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.</p>		
<p>8. <u>Information Technology</u></p>		
<p>With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement and shall, if necessary, negotiate modifications to the Agreement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.</p>		

9. <u>Amendments</u>		
<p>Parties may amend this Agreement having regard, <i>inter alia</i>, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.</p>		
10. <u>Withdrawal</u>		
<p>(a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General of the WTO. Any Party may upon such notification request an immediate meeting of the Committee.</p> <p>(b) If a Party to this Agreement does not become a Member of the WTO within one year of the date of entry into force of the WTO Agreement or ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.</p>		
11. <u>Non-application of this Agreement between Particular Parties</u>		
<p>This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.</p>		
12. <u>Notes, Appendices and Annexes</u>		
<p>The Notes, Appendices and Annexes to this Agreement constitute an integral part thereof.</p>		

13. <u>Secretariat</u>		
<p>This Agreement shall be serviced by the WTO Secretariat.</p>		
14. <u>Deposit</u>		
<p>This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article.</p>		
15. <u>Registration</u>		
<p>This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.</p> <p>Done at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.</p>		

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/89
15 July 1999

(99-2925)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Georgia

The following communication, dated 9 July 1999, has been received from the Permanent Mission of Georgia with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Taking into consideration the commitment undertaken by Georgia in the Working Party on the Accession of Georgia to the WTO to initiate negotiations for becoming a Party to the Agreement on Government Procurement, I have the honour to ask the Committee to grant Georgia observer status.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/88

9 July 1999

(99-2859)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)¹

The following notification from the Permanent Mission of Japan was received on 6 July 1999, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 3 of Appendix I of the Agreement:

- Delete "- Japan Small Business Corporation" and "- Japan Finance Corporation for Small Business" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".
- Add "- Japan Small and Medium Enterprise Corporation" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

This rectification is based on the fact that the "Japan Small Business Corporation" and the "Japan Finance Corporation for Small Business" were merged to form the "Japan Small and Medium Enterprise Corporation" on 1 July 1999. This rectification does not alter the level of mutually agreed coverage provided in this Agreement.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

Committee on Government Procurement

GPA/W/35/Rev.1

Because of the size and ephemeral nature of this document, only two copies are being supplied to each Party.

Committee on Government Procurement

LOOSE-LEAF SYSTEM FOR THE APPENDICES TO THE AGREEMENT

Note by the Secretariat

Revision

1. At its meeting of 4 June 1996, the Committee agreed to establish a loose-leaf system with legal effect to maintain up to date the Appendices to the Agreement. With a view to providing a starting point for the loose-leaf system, the Secretariat circulated in document GPA/W/35 a draft set of Appendices that reflected the Appendices attached to the Agreement as signed at Marrakesh and the subsequent rectifications, modifications and new concessions made under the procedures adopted by the Interim Committee and under the Agreement itself. At its meeting of 29 September 1997, the Committee agreed to postpone the first issue of the loose-leaf system until after the entry into force of the extensive modifications that had been notified by the European Community in document GPA/W/51 and Add.2.
2. The draft loose-leaf set of Appendices attached to this note is an updated version of GPA/W/35 incorporating all changes effective on 1 July 1999. Delegations are invited to communicate to the Secretariat (Mrs. Vesile Kulacoglu, Tel. 739 5187, Fax. 739 5790) any points concerning the accuracy and completeness of the consolidation of the Appendices within 60 days from the date on this document. The Secretariat will bring such comments to the attention of all other Parties in corrigenda to this document. In the event that any member of the Committee considers that any such comments could raise points of difference that need to be resolved in the Committee, the certification of the loose-leaf schedules may be postponed until after the Committee has discussed the matter at its following meeting. To facilitate the review of the draft by delegations, the annex to this covering note contains a synoptic table which identifies, in its column 4, the source of the material incorporated in respect of each element of the draft loose-leaf schedules. Given that the loose-leaf system will be the authoritative record of the legal status of the Appendices to the Agreement, it will be certified by the Director-General in accordance with normal procedures in respect of rectifications under WTO instruments, after the expiry of the 60-day period (provided, of course, there is no unresolved point of difference).
3. The Appendix I of a Party is only authentic in the language or languages in which it was submitted. Accordingly, Appendix I of the loose-leaf system is only in that language or those languages. Appendices II, III and IV are authentic in all three official WTO languages and are therefore reproduced in the loose-leaf system in the three languages.
4. In accordance with the procedures agreed by the Committee at its meeting of 24 February 1997, Parties proposing to make future rectifications and modifications to their Appendices pursuant to the provisions of Article XXIV:6 should notify them to the Committee in the form of relevant replacement or additional pages to be inserted in the loose-leaf system, identifying the proposed changes. As hitherto, these proposed rectifications and modifications will be circulated to Members in the GPA/W/- series. Once they have become effective and been certified pursuant to the procedures under Article XXIV:6, the new or amended pages will be circulated with a cover note indicating where the insertions (and/or deletions) are to be made in the loose-leaf system. Certified true copies of these replacement or additional pages will also be circulated in the WTO/Let/- series of

documents. At the foot of each new or replacement page will be indicated its date, which will be that on which the changes recorded in it became effective. Initially, all pages will bear the date that the loose-leaf system becomes effective (e.g. 1 July 1999).

5. In addition to being made available in hard-copy form, the loose-leaf system and future new or replacement pages will be circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. An up to date copy of the loose-leaf system is also being made available to the general public through the government procurement site on the WTO Home Page on the Internet.

ANNEX

Notifications of Rectifications and Modifications to Appendices under Article XXIV:6 of the Agreement on Government Procurement

Party	Appendix	Notification	Entry into force	
			Date	Certification Document
Canada	II-IV	GPA/W/61	5 December 1997	WT/Let/209
European Community	I	GPA/IC/10	1 January 1996	WT/Let/57
	I	GPA/W/32	16 January 1997	WT/Let/135
	I	GPA/W/44	9 July 1997	WT/Let/162
	I-IV	GPA/W/51 and Add.2	8 October 1998	WT/Let/294
	I	GPA/W/55	27 Sept. 1997	WT/Let/185
Hong Kong, China	I-IV	GPA/14	19 June 1997	WT/Let/141
	I	GPA/W/56	5 October 1997	WT/Let/183
	II-IV	GPA/W/57	23 Nov. 1997	WT/Let/206
	II-III	GPA/W/69	24 April 1998	WT/Let/218
Israel	I	GPA/W/54	26 Sept. 1997	WT/Let/184
	II-IV	GPA/W/68	8 March 1998	WT/Let/214
Japan	I	GPA/W/1	25 February 1996	WT/Let/68
	I	GPA/W/27	5 November 1996	WT/Let/119
	I	GPA/W/31	4 January 1997	WT/Let/134
	I	GPA/W/60	23 Nov. 1997	WT/Let/208
	I	GPA/W/63	31 Dec. 1997	WT/Let/211
	I	GPA/W/74	14 August 1998	WT/Let/238
	I	GPA/W/78	13 Nov. 1998	WT/Let/274
	I	GPA/W/79	27 Nov. 1998	WT/Let/275
Korea	I	GPA/W/59	23 Nov. 1997	WT/Let/207
Liechtenstein	I-IV	GPA/17	19 August 1997	WT/Let/166
Norway	I	GPA/W/22	16 August 1996	WT/Let/105
	I	GPA/W/43	29 June 1997	WT/Let/152
	I	GPA/W/46	12 July 1997	WT/Let/163
	I	GPA/W/62	20 Dec. 1007	WT/Let/210
Singapore	I-IV	GPA/18	20 October 1997	WT/Let/179
	II-IV	GPA/W/70	9 May 1998	WT/Let/243
	I	GPA/W/72	15 July 1998	WT/Let/232
	I	GPA/W/82	19 March 1999	WT/Let/297
Switzerland	I	GPA/W/42	22 June 1997	WT/Let/146
	I	GPA/W/45	16 August 1997	WT/Let/164
	I	GPA/W/47/Add.1	23 October 1997	WT/Let/194
	I	GPA/W/58	19 Nov. 1997	WT/Let/205
United States	I	GPA/IC/3	1 January 1996	WT/Let/57
	I	GPA/W/2	25 February 1996	WT/Let/68
	I	GPA/W/23	16 August 1996	WT/Let/105
	I	GPA/W/32	16 January 1997	WT/Let/135
	I	GPA/W/41	22 June 1997	WT/Let/146

ATTACHMENT

Draft Loose-Leaf Appendices to the Agreement on Government Procurement

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APPENDIX I

APPENDIX I

Annexes 1 through 5 setting out the scope of this Agreement:

Annex 1	Central Government Entities
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Annex 3	All Other Entities that Procure in Accordance with the Provisions of this Agreement
Annex 4	Services
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APPENDICE I

Annexes 1 à 5 définissant la portée du présent accord:

Annexe 1	Entités du gouvernement central
Annexe 2	Entités des gouvernements sous-centraux
Annexe 3	Toutes les autres entités qui passent des marchés conformément aux dispositions du présent accord
Annexe 4	Services
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APÉNDICE I

Anexos 1 a 5, en los que se establece el alcance del presente Acuerdo:

Anexo 1	Entidades de los gobiernos centrales
Anexo 2	Entidades de los gobiernos subcentrales
Anexo 3	Demás entidades que se rigen en sus contratos por las disposiciones del presente Acuerdo
Anexo 4	Servicios
Anexo 5	Servicios de construcción

CANADA

(Authentic in the English and French languages)

ANNEX 1

Federal Government Entities

<i>Thresholds:</i>	130,000 SDRs	-	Goods
	130,000 SDRs	-	Services covered in Annex 4
	5,000,000 SDRs	-	Construction covered in Annex 5

List of Entities:

1. Department of Agriculture
2. Department of Communications (not including procurements respecting FSCs 36, 70 and 74)
3. Department of Consumer and Corporate Affairs
4. Department of Employment and Immigration
5. Immigration and Refugee Board
6. Employment and Immigration Commission
7. Department of Energy, Mines and Resources
8. Atomic Energy Control Board
9. National Energy Board (on its own account)
10. Department of the Environment
11. Department of External Affairs
12. Canadian International Development Agency (on its own account)
13. Department of Finance
14. Office of the Superintendent of Financial Institutions
15. Canadian International Trade Tribunal
16. Municipal Development and Loan Board
17. Department of Fisheries and Oceans (not including procurements respecting FSCs 36, 70 and 74)
18. Department of Forestry
19. Department of Indian Affairs and Northern Development
20. Department of Industry, Science and Technology
21. Science Council of Canada
22. National Research Council of Canada
23. Natural Sciences and Engineering Research Council of Canada
24. Department of Justice
25. Canadian Human Rights Commission
26. Statute Revision Commission
27. Supreme Court of Canada
28. Department of Labour
29. Canada Labour Relations Board
30. Department of National Health and Welfare
31. Medical Research Council
32. Department of National Revenue

33. Department of Public Works
34. Department of Secretary of State of Canada
35. Social Science and Humanities Research Council
36. Office of the Coordinator, Status of Women
37. Public Service Commission
38. Department of the Solicitor General
39. Correctional Service of Canada
40. National Parole Board
41. Department of Supply and Services (on its own account)
42. Canadian General Standards Board
43. Department of Transport (not including procurements respecting FSCs 36, 70 and 74. For purposes of Article XXIII the national security considerations applicable to The Department of National Defence are equally applicable to the Canadian Coast Guard.)
44. Treasury Board Secretariat and the Office of the Controller General
45. Department of Veterans Affairs
46. Veterans Land Administration
47. Department of Western Economic Diversification (on its own account)
48. Atlantic Canada Opportunities Agency (on its own account)
49. Auditor General of Canada
50. Federal Office of Regional Development (Quebec)(on its own account)
51. Canadian Centre for Management Development
52. Canadian Radio-television and Telecommunications Commission (on its own account)
53. Canadian Sentencing Commission
54. Civil Aviation Tribunal
55. Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario
56. Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance
57. Commissioner for Federal Judicial Affairs
58. Competition Tribunal Registry
59. Copyright Board
60. Emergency Preparedness Canada
61. Federal Court of Canada
62. Grain Transportation Agency (on its own account)
63. Hazardous Materials Information Review Commission
64. Information and Privacy Commissioners
65. Investment Canada
66. Department of Multiculturalism and Citizenship
67. The National Archives of Canada
68. National Farm Products Marketing Council
69. The National Library
70. National Transportation Agency (on its own account)
71. Northern Pipeline Agency (on its own account)
72. Patented Medicine Prices Review Board
73. Petroleum Monitoring Agency
74. Privy Council Office
75. Canadian Intergovernmental Conference Secretariat
76. Commissioner of Official Languages
77. Economic Council of Canada
78. Public Service Staff Relations Board

79. Office of the Secretary to the Governor General
80. Office of the Chief Electoral Officer
81. Federal Provincial Relations Office
82. Procurement Review Board
83. Royal Commission on Electoral Reform and Party Financing
84. Royal Commission on National Passenger Transportation
85. Royal Commission on New Reproductive Technologies
86. Royal Commission on the Future of the Toronto Waterfront
87. Statistics Canada
88. Tax Court of Canada, Registry of the
89. Agricultural Stabilization Board
90. Canadian Aviation Safety Board
91. Canadian Centre for Occupational Health and Safety
92. Canadian Transportation Accident Investigation and Safety Board
93. Director of Soldier Settlement
94. Director, The Veterans' Land Act
95. Fisheries Prices Support Board
96. National Battlefields Commission
97. Royal Canadian Mounted Police
98. Royal Canadian Mounted Police External Review Committee
99. Royal Canadian Mounted Police Public Complaints Commission
100. Department of National Defence

THE FOLLOWING PRODUCTS PURCHASED BY THE DEPARTMENT OF NATIONAL DEFENCE, COAST GUARD AND THE RCMP ARE INCLUDED IN THE COVERAGE OF THIS AGREEMENT SUBJECT TO THE PROVISIONS OF ARTICLE XXIII. (NUMBERS REFER TO THE FEDERAL SUPPLY CLASSIFICATION CODE)

22. Railway Equipment
23. Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)
24. Tractors
25. Vehicular equipment components
26. Tires and tubes
29. Engine accessories
30. Mechanical power transmission equipment
32. Woodworking machinery and equipment
34. Metal working equipment
35. Service and trade equipment
36. Special industry machinery
37. Agricultural machinery and equipment
38. Construction, mining, excavating and highway maintenance equipment
39. Materials handling equipment
40. Rope, cable, chain and fittings
41. Refrigeration and air conditioning equipment
42. Fire fighting, rescue and safety equipment (except 4220 Marine Life-saving and diving equipment, 4230 Decontaminating and impregnating equipment)
43. Pumps and compressors
44. Furnace, steam plant, drying equipment and nuclear reactors

45. Plumbing, heating and sanitation equipment
46. Water purification and sewage treatment equipment
47. Pipe, tubing, hose and fittings
48. Valves
49. Maintenance and repair shop equipment
52. Measuring tools
53. Hardware and abrasives
54. Prefabricated structures and scaffolding
55. Lumber, millwork, plywood and veneer
56. Construction and building materials
61. Electric wire and power and distribution equipment
62. Lighting fixtures and lamps
63. Alarm and signal systems
65. Medical, dental and veterinary equipment and supplies
66. Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components 6665: Hazard-detecting instruments and apparatus)
67. Photographic equipment
68. Chemicals and chemical products
69. Training aids and devices
70. General purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations)
71. Furniture
72. Household and commercial furnishings and appliances
73. Food preparation and serving equipment
74. Office machines, visible record equipment and automatic data processing equipment
75. Office supplies and devices
76. Books, maps and other publications - (except 7650 drawings and specifications)
77. Musical instruments, phonographs and home-type radios
78. Recreational and athletic equipment
79. Cleaning equipment and supplies
80. Brushes, paints, sealers and adhesives
81. Containers, packaging and packing supplies
85. Toiletries
87. Agricultural supplies
88. Live animals
91. Fuels, lubricants, oils and waxes
93. Non-metallic fabricated materials
94. Non-metallic crude materials
96. Ores, minerals and their primary products
99. Miscellaneous

Note to Annex 1

The General Notes apply to this Annex.

ANNEX 2

Sub-Central Government Entities

<i>Thresholds:</i>	355,000 SDRs	-	Goods
	355,000 SDRs	-	Services to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.
	5,000,000 SDRs	-	Construction Services to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.

List of Entities:

The Canadian Government offers to cover entities in all ten provinces on the basis of commitments obtained from provincial governments. The initial provincial entities list will be specified on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.

Notes to Annex 2

1. Exceptions for all Provinces: steel, motor vehicles and coal

Province-specific exceptions: in addition, a limited number of individual provincial exceptions may be specified at a later date in accordance with commitments received from such provinces.

2. Nothing in this offer shall be construed to prevent any provincial entity from applying restrictions that promote the general environmental quality in that province, as long as such restrictions are not disguised barriers to international trade.

3. This offer shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

4. The General Notes apply to this Annex.

ANNEX 3

Government Enterprises

<i>Thresholds:</i>	355,000 SDRs	-	Goods
	355,000 SDRs	-	Services covered in Annex 4
	5,000,000 SDRs	-	Construction covered in Annex 5

Federal Enterprises

1. Canada Post Corporation
2. National Capital Commission
3. St. Lawrence Seaway Authority (For greater certainty, Article XIX:4 applies to procurements by St. Lawrence Seaway Authority respecting the protection of the commercial confidentiality of information provided.)
4. Royal Canadian Mint (not including procurement by or on behalf of the Royal Canadian Mint of direct inputs for use in minting anything other than Canadian legal tender. For greater certainty, Article XIX:4 applies to procurements by the Royal Canadian Mint respecting the protection of the commercial confidentiality of information provided.)
5. Canadian Museum of Civilization
6. Canadian Museum of Nature
7. National Gallery of Canada
8. National Museum of Science and Technology
9. Defence Construction (1951) Ltd.

Sub-central Enterprises

Coverage of Sub-central Enterprises for Goods, Services and Construction Services is to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.

Note to Annex 3

The General Notes apply to this Annex.

ANNEX 4

Services

Canada offers to include in this "Services" Annex Federal entities listed under Annex 1 and Federal enterprises listed under Annex 3. The inclusion of "Services" for sub-central entities under Annex 2 and sub-central enterprises under Annex 3 are to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement. With respect to the terms of this Agreement, those services to be included are as identified within the document MTN.GNS/W/120. Domestically, Canada will be utilizing the "Common Classification System" for purposes of implementing this Agreement. This list of services may be revised following further technical work among the Parties and adjustments, as appropriate, to establish equitable coverage.

Canada offers to cover the following services with respect to the CPC services classification system:

- | | |
|------|--|
| 861 | Legal Services (advisory services on foreign and international law only) |
| 862 | Accounting, auditing and book-keeping services |
| 863 | Taxation Services (excluding legal services) |
| 8671 | Architectural services |
| 8672 | Engineering services |
| 8673 | Integrated engineering services (excluding 86731 Integrated engineering services for transportation infrastructure turnkey projects) |
| 8674 | Urban planning and landscape architectural services |
| 841 | Consultancy services related to the installation of computer hardware |
| 842 | Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services |
| 843 | Data processing services, including processing, tabulation and facilities management services |
| 844 | Data base services |
| 845 | Maintenance and repair services of office machinery and equipment including computers |
| 849 | Other computer services |
| 821 | Real estate services involving own or leased property |
| 822 | Real estate services on a fee or contract basis |

83106 to 83109 only	Leasing or rental services concerning machinery and equipment without operator
83203 to 83209 only	Leasing or rental services concerning personal and household goods
86501	General management consulting services
86503	Marketing management consulting services
86504	Human resources management consulting services
86505	Production management consulting services
8660	Services related to management consulting (except 86602 Arbitration and conciliation services)
8676	Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment)
8814	Services incidental to forestry and logging, including forest management
883	Services incidental to mining, including drilling and field services
633	Repair services of personal and household goods
8861 to 8864, and 8866	Repair services incidental to metal products, machinery and equipment
874	Building-cleaning services
876	Packaging services
7512	Commercial courier services (including multi-modal)
7523	Electronic mail
7523	Voice mail
7523	On-line information and data base retrieval
7523	Electronic data interchange (EDI)
7523	Enhanced/value-added facsimile services, including store and forward, store and retrieve

	Code and protocol conversion
843	On-line information and/or data processing (including transaction processing)
940	Sewage and refuse disposal, sanitation and similar services
641	Hotel and similar accommodation services
642/3	Food and beverage serving services
7471	Travel agency and tour operator services

Notes to Annex 4

1. The General Notes apply to this Annex.
2. This offer is subject to the terms and conditions set out in the Canadian offer on trade in services.
3. Canada's offer in telecommunications is limited to enhanced or value added services for the supply of which the underlying telecommunications facilities are leased from providers of public telecommunications transport networks.
4. The Canadian offer does **not** include the following:
 - * management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development;
 - * coin minting;
 - * public utilities;
 - * architectural and engineering related to airfield, communications and missile facilities;
 - * shipbuilding and repair and related architectural and engineering services;
 - * all services, with reference to those goods purchased by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard which are not identified as subject to coverage by this agreement;
 - * services procured in support of military forces located overseas;
 - * printing and publishing services; and,
 - * procurement of transportation services that form a part of, or are incidental to, a procurement contract.

ANNEX 5

Construction Services

Canada offers to include in this "Construction Services" Annex, Federal entities listed under Annex 1 and Federal enterprises listed under Annex 3. The inclusion of "Construction Services" for sub-central entities under Annex 2 and sub-central enterprises under Annex 3 are to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new government procurement agreement.

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

All services contained in Division 51 CPC.

Notes to Annex 5

1. Notwithstanding anything in this Agreement, this Agreement does not apply to procurements in respect of:
 - (a) Dredging; and
 - (b) Construction contracts tendered on behalf of the Departments of Transport.
2. The General Notes apply to this Annex.

GENERAL NOTES

1. Notwithstanding anything in these Annexes, the Agreement does not apply to procurements in respect of:
 - (a) shipbuilding and repair;
 - (b) urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;
 - (c) contracts respecting FSC 58 (communications, detection and coherent radiation equipment);
 - (d) set-asides for small and minority businesses;
 - (e) agricultural products made in furtherance of agricultural support programs or human feeding programs;
 - (f) national security exemptions include oil purchases related to any strategic reserve requirements; and,
 - (g) national security exceptions including procurements made in support of safeguarding nuclear materials or technology.
2. Procurement in terms of Canadian coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. The procurement process is the process that begins after an entity has decided on its requirement and continues through to and including contract award. It does not include non-contractual agreements or any form of government assistance, including but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services, given to individuals, firms, private institutions, and sub-central governments. It does not include procurements made with a view to commercial resale or made by one entity or enterprise from another entity or enterprise of Canada.
3. Any exclusion that is related either specifically or generally to Federal or sub-central entities or enterprises in Annex 1, Annex 2 or Annex 3 will also apply to any successor entity or entities, enterprise or enterprises, in such a manner as to maintain the value of this offer.
4. Until such time as there is a mutually agreed list of services to be covered by all Parties, a service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has provided reciprocal access to that service.
5. Where a contract to be awarded by an entity is not covered by this Agreement, this Agreement shall not be construed to cover any good or service component of that contract.
6. The offer by Canada, with respect to goods and services (including construction) in Annexes 2 and 3, is subject to negotiation of mutually acceptable commitments (including

thresholds) with other Parties, with initial commitments to be specified on or before 15 April 1994 and specific commitments to be confirmed within eighteen months after the conclusion of the new Government Procurement Agreement.

7. The Agreement shall not apply to contracts under an international agreement and intended for the joint implementation or exploitation of a project.
8. For the European Union, Canada's offer excludes procurements of FSC 70, 74 and 36 until such time as reciprocal access is provided.
9. For the European Union, this Agreement shall not apply to contracts awarded by entities in Annexes 1 and 2 in connection with activities in the field of drinking water, energy, transport or telecommunications.

CANADA

(Les versions française et anglaise font foi)

ANNEXE 1

Entités du gouvernement fédéral

<i>Valeurs de seuil:</i>	130 000 DTS	-	Produits
	130 000 DTS	-	Services visés à l'Annexe 4
	5 000 000 DTS	-	Travaux visés à l'Annexe 5

Liste des entités:

1. Ministère de l'agriculture
2. Ministère des communications (à l'exclusion des marchés portant sur les produits repris aux n^os 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC))
3. Ministère de la consommation et des affaires commerciales
4. Ministère de l'emploi et de l'immigration
5. Commission de l'immigration et du statut de réfugié
6. Commission de l'emploi et de l'immigration
7. Ministère de l'énergie, des mines et des ressources
8. Commission de contrôle de l'énergie atomique
9. Office national de l'énergie (pour son propre compte)
10. Ministère de l'environnement
11. Ministère des affaires extérieures
12. Agence canadienne de développement international (pour son propre compte)
13. Ministère des finances
14. Bureau du surintendant des institutions financières
15. Tribunal canadien du commerce extérieur
16. Office du développement municipal et des prêts aux municipalités
17. Ministère des pêches et des océans (à l'exclusion des marchés portant sur les produits repris aux n^os 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC))
18. Ministère des forêts
19. Ministère des affaires indiennes et du Nord canadien
20. Ministère de l'industrie, des sciences et de la technologie
21. Conseil des sciences du Canada
22. Conseil national de recherches du Canada
23. Conseil de recherches en sciences naturelles et en génie du Canada
24. Ministère de la justice
25. Commission canadienne des droits de la personne
26. Commission de révision des lois
27. Cour suprême du Canada
28. Ministère du travail
29. Conseil canadien des relations du travail
30. Ministère de la santé nationale et du bien-être social
31. Conseil de recherches médicales
32. Ministère du revenu national
33. Ministère des travaux publics

34. Secrétariat d'Etat du Canada
35. Conseil de recherches en sciences humaines
36. Bureau de la coordonnatrice, Situation de la femme
37. Commission de la fonction publique
38. Ministère du Solliciteur général
39. Service correctionnel du Canada
40. Commission nationale des libérations conditionnelles
41. Ministère des approvisionnements et services (pour son propre compte)
42. Office des normes générales du Canada
43. Ministère des transports (à l'exclusion des marchés portant sur les produits repris aux n° 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC). Aux fins de l'article XXIII, les considérations de sécurité nationale qui valent pour le Ministère de la défense nationale s'appliquent également à la Garde côtière canadienne).
44. Secrétariat du Conseil du Trésor et Bureau du Contrôleur général
45. Ministère des affaires des anciens combattants
46. Office de l'établissement agricole des anciens combattants
47. Ministère de la diversification de l'économie de l'Ouest (pour son propre compte)
48. Agence de promotion économique du Canada atlantique (pour son propre compte)
49. Vérificateur général du Canada
50. Bureau fédéral de développement régional (Québec) (pour son propre compte)
51. Centre canadien de gestion
52. Conseil de la radiodiffusion et des télécommunications canadiennes (pour son propre compte)
53. Commission canadienne sur la détermination de la peine
54. Tribunal de l'aviation civile
55. Commission d'enquête sur l'écrasement d'un avion d'Air Ontario à Dryden (Ontario)
56. Commission d'enquête sur le recours aux drogues et aux pratiques interdites pour améliorer la performance athlétique
57. Commissaire à la magistrature fédérale
58. Greffe du Tribunal de la concurrence
59. Commission du droit d'auteur
60. Protection civile Canada
61. Cour fédérale du Canada
62. Office du transport du grain (pour son propre compte)
63. Conseil de contrôle des renseignements relatifs aux matières dangereuses
64. Commissariats à l'information et à la protection de la vie privée
65. Investissement Canada
66. Ministère du multiculturalisme et de la citoyenneté
67. Archives nationales du Canada
68. Conseil national de commercialisation des produits agricoles
69. Bibliothèque nationale
70. Office national des transports (pour son propre compte)
71. Administration du pipeline du Nord (pour son propre compte)
72. Conseil d'examen du prix des médicaments brevetés
73. Agence de surveillance du secteur pétrolier
74. Bureau du Conseil privé
75. Secrétariat des conférences intergouvernementales canadiennes
76. Commissaire aux langues officielles
77. Conseil économique du Canada
78. Commission des relations de travail dans la fonction publique
79. Bureau du chef de Cabinet du Gouverneur général

80. Bureau du Directeur général des élections
81. Bureau des relations fédérales-provinciales
82. Commission de révision des marchés publics
83. Commission royale sur la réforme électorale et le financement des partis
84. Commission royale sur le transport des voyageurs au Canada
85. Commission royale sur les nouvelles techniques de reproduction
86. Commission royale sur l'avenir du secteur riverain de Toronto
87. Statistique Canada
88. Greffe de la Cour canadienne de l'impôt
89. Office de stabilisation des prix agricoles
90. Bureau canadien de la sécurité aérienne
91. Centre canadien d'hygiène et de sécurité au travail
92. Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports
93. Directeur de l'établissement des soldats
94. Directeur, Loi sur les terres destinées aux anciens combattants
95. Commission de soutien des prix des produits de la pêche
96. Commission des champs de bataille nationaux
97. Gendarmerie royale du Canada
98. Comité externe d'examen de la Gendarmerie royale du Canada
99. Commission des plaintes du public contre la Gendarmerie royale du Canada
100. Ministère de la défense nationale

LES PRODUITS SUIVANTS ACHETES PAR LE MINISTERE DE LA DEFENSE NATIONALE, LA GARDE COTIERE ET LA GENDARMERIE ROYALE DU CANADA FONT PARTIE DU CHAMP D'APPLICATION DU PRESENT ACCORD, SOUS RESERVE DES DISPOSITIONS DE L'ARTICLE XXIII. (LES NUMEROS SONT CEUX DE LA CLASSIFICATION FEDERALE DES APPROVISIONNEMENTS.)

22. Matériel ferroviaire
23. Véhicules automobiles, remorques et cycles (sauf les autobus compris dans 2310, les camions et remorques militaires compris dans 2320 et 2330, et les véhicules chenillés de combat, d'attaque et de tactique compris dans 2350)
24. Tracteurs
25. Pièces de véhicules
26. Enveloppes et chambres à air
29. Accessoires de moteurs
30. Matériel de transmission de l'énergie mécanique
32. Machines et matériel pour le travail du bois
34. Machines pour le travail des métaux
35. Matériel de service et de commerce
36. Machines industrielles spéciales
37. Machines et matériel agricoles
38. Matériel de construction, d'extraction, d'excavation et d'entretien routier
39. Matériel de manutention des matériaux
40. Cordages, câbles, chaînes et accessoires
41. Matériel de réfrigération et de climatisation
42. Matériel de lutte contre l'incendie, de sauvetage et de sécurité (sauf 4220: Equipement de plongée et de sauvetage en mer, 4230: Equipement d'imprégnation et de décontamination)
43. Pompes et compresseurs

44. Matériel de fours, de générateurs de vapeur, de séchage, et réacteurs nucléaires
45. Matériel de plomberie, de chauffage et sanitaire
46. Matériel d'épuration de l'eau et de traitement des eaux usées
47. Eléments de canalisation, tuyaux et accessoires
48. Robinets-vannes
49. Matériel d'ateliers d'entretien et de réparation
52. Instruments de mesure
53. Articles de quincaillerie et abrasifs
54. Eléments de construction préfabriqués et éléments d'échafaudages
55. Bois de construction, sciages, contreplaqués et bois de placage
56. Matériaux de construction
61. Fils électriques, matériel de production et de distribution d'énergie
62. Lampes et accessoires d'éclairage
63. Systèmes d'alarme et de signalisation
65. Fournitures et matériel médicaux, dentaires et vétérinaires
66. Instruments, matériel de laboratoire (sauf 6615: Mécanismes de pilotage automatique et éléments de gyroscopes d'aéronefs, 6665: Instruments et appareils de détection des dangers)
67. Matériel photographique
68. Substances et produits chimiques
69. Matériels et appareils d'enseignement
70. Matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données)
71. Meubles
72. Articles et appareils pour l'équipement des ménages et des lieux publics
73. Matériel de cuisine et de table
74. Machines de bureau, matériel de bureautique et d'informatique de bureau
75. Fournitures et appareils de bureau
76. Livres, cartes et publications diverses (sauf 7650: Plans et spécifications)
77. Instruments de musique, phonographes et récepteurs radiophoniques domestiques
78. Matériel de plaisance et d'athlétisme
79. Matériel et fournitures de nettoyage
80. Pinceaux, peinture, produits d'obturation et adhésifs
81. Conteneurs, matériaux et fournitures d'emballage
85. Articles de toilette
87. Fournitures pour l'agriculture
88. Animaux vivants
91. Combustibles, lubrifiants, huiles et cires
93. Fabrications non métalliques
94. Matières brutes non métalliques
96. Minerais, minéraux et leurs dérivés primaires
99. Divers

Note relative à l'Annexe I

Les Notes générales s'appliquent à la présente annexe.

ANNEXE 2

Entités des gouvernements sous-centraux

<i>Valeurs de seuil:</i>	355 000 DTS	-	Produits
	355 000 DTS	-	Services dont la liste initiale sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel accord sur les marchés publics.
	5 000 000 DTS	-	Services de construction dont la liste initiale sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel accord sur les marchés publics.

Liste des entités:

Le gouvernement canadien offre d'inclure des entités des dix provinces sur la base des engagements obtenus des gouvernements provinciaux. La liste initiale des entités provinciales sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.

Notes relatives à l'Annexe 2

1. Exceptions valables pour toutes les provinces: acier, véhicules automobiles et charbon.

Exceptions propres à certaines provinces: en outre, un nombre limité d'exceptions concernant les différentes provinces pourront être spécifiées à une date ultérieure, conformément aux engagements reçus des provinces.
2. Rien dans la présente offre ne sera interprété comme empêchant une entité d'une province d'appliquer des restrictions visant à promouvoir la qualité générale de l'environnement dans cette province, pour autant que ces restrictions ne constituent pas des obstacles déguisés au commerce international.
3. La présente offre ne s'applique pas aux marchés passés par une entité visée pour le compte d'une entité non visée.
4. Les Notes générales s'appliquent à la présente annexe.

ANNEXE 3

Entreprises publiques

<i>Valeurs de seuil:</i>	355 000 DTS	-	Produits
	355 000 DTS	-	Services visés à l'Annexe 4
	5 000 000 DTS	-	Travaux visés à l'Annexe 5

Entreprises fédérales

1. Société canadienne des postes
2. Commission de la capitale nationale
3. Administration de la voie maritime du Saint-Laurent. (Pour plus de précision, les dispositions du paragraphe 4 de l'article XIX s'appliquent aux marchés passés par l'Administration de la voie maritime du Saint-Laurent, aux fins de la protection des renseignements commerciaux communiqués à titre confidentiel.)
4. Monnaie royale canadienne (à l'exclusion des marchés passés par la Monnaie royale canadienne, ou en son nom, pour l'achat de matières premières destinées à être utilisées directement pour frapper de la monnaie n'ayant pas cours légal au Canada. Pour plus de précision, les dispositions du paragraphe 4 de l'article XIX s'appliquent aux marchés passés par la Monnaie royale canadienne aux fins de la protection des renseignements commerciaux communiqués à titre confidentiel).
5. Musée canadien des civilisations
6. Musée canadien de la nature
7. Musée des beaux-arts du Canada
8. Musée national des sciences et de la technologie
9. Construction de Défense (1951) Limitée.

Entreprises sous-centrales

La liste initiale des entreprises sous-centrales qui entrent dans le champ d'application de l'accord pour ce qui est des produits, des services et des services de construction sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.

Note relative à l'Annexe 3

Les Notes générales s'appliquent à la présente annexe.

ANNEXE 4

Services

Le Canada offre d'inclure dans la présente annexe relative aux "Services" les entités fédérales énumérées à l'Annexe 1 et les entreprises fédérales énumérées à l'Annexe 3. Pour ce qui est des entités sous-centrales visées à l'Annexe 2 et des entreprises sous-centrales visées à l'Annexe 3, la liste initiale des services entrant dans le champ d'application de l'accord sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics. S'agissant des termes du présent accord, les services qui seront inclus sont ceux qui sont indiqués dans le document MTN.GNS/W/120. Sur le plan intérieur, le Canada utilisera le "Système commun de classification" aux fins de la mise en oeuvre du présent accord. La présente liste de services pourra être révisée à la suite d'autres travaux techniques entre les Parties et des ajustements pourront y être apportés, selon qu'il sera approprié, afin que le contenu en soit équitable.

Le Canada offre d'inclure les services suivants classés selon le système de classification des services de la CPC:

- | | |
|------|---|
| 861 | Services juridiques (conseils juridiques en matière de droit international et de droit étranger uniquement) |
| 862 | Services comptables, d'audit et de tenue de livres |
| 863 | Services de conseil fiscal (à l'exclusion des services juridiques) |
| 8671 | Services d'architecture |
| 8672 | Services d'ingénierie |
| 8673 | Services intégrés d'ingénierie (sauf 86731: Services intégrés d'ingénierie pour les projets de construction clés en main d'infrastructures de transport) |
| 8674 | Services d'aménagement urbain et d'architecture paysagère |
| 841 | Services de consultations en matière d'installation des matériels informatiques |
| 842 | Services de réalisation de logiciels, y compris les services de consultations en matière de systèmes et de logiciels, ainsi que les services d'analyse de systèmes, de conception, de programmation et de maintenance |
| 843 | Services de traitement de données, y compris les services de traitement, de tabulation et de gestion des installations |
| 844 | Services de base de données |
| 845 | Services d'entretien et de réparation de machines et de matériel de bureau, y compris les ordinateurs |

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849			Autres services informatiques	
821			Services immobiliers se rapportant à des biens propres ou loués	
822			Services immobiliers à forfait ou sous contrat	
83106 à 83109 uniquement			Services de location simple ou en crédit-bail de machines et de matériel, sans opérateurs	
83203 à 83209 uniquement			Services de location simple ou en crédit-bail d'articles personnels et domestiques	
86501			Services de consultations en matière de gestion générale	
86503			Services de consultations en matière de gestion de la commercialisation	
86504			Services de consultations en matière de gestion des ressources humaines	
86505			Services de consultations en matière de gestion de la production	
8660			Services connexes aux services de consultations en matière de gestion (sauf 86602: Services d'arbitrage et de conciliation)	
8676			Services d'essais et d'analyses techniques, y compris d'inspection et de contrôle de la qualité (à l'exclusion du matériel de transport et du numéro 58 de la FSC)	
8814			Services annexes à la sylviculture et à l'exploitation forestière, y compris la gestion des forêts	
883			Services annexes aux industries extractives, y compris les services d'exploration et de forage	
633			Services de réparation d'articles personnels et domestiques	
8861 à 8864 et 8866			Services de réparation annexes à la fabrication de produits en métaux, de machines et de matériel	
874			Services de nettoyage de bâtiments	
876			Services de conditionnement	
7512			Services commerciaux de courrier (y compris les services de courrier multimodaux)	
7523			Services de courrier électronique	
7523			Services d'audiomessagerie téléphonique	

APPENDIX I	CANADA	ANNEX 4	French	Page 3/4
7523			Services directs de recherche d'informations permanente et de serveur de base de données	
7523			Services d'échange électronique de données	
7523			Services améliorés/à valeur ajoutée de télécopie, y compris enregistrements et retransmission et enregistrement et recherche	
			Services de conversion de codes et de protocoles	
843			Services de traitement en direct de l'information et/ou de données (y compris traitement de transactions)	
940			Services d'assainissement et d'enlèvement des ordures, services de voirie et services analogues	
641			Services d'hôtellerie et services d'hébergement analogues	
642-643			Services de restauration et de vente de boissons	
7471			Services d'agences de voyages et d'organismes touristiques	

Notes relatives à l'Annexe 4

1. Les Notes générales s'appliquent à la présente annexe.
2. La présente offre est faite sous réserve des conditions énoncées dans l'offre du Canada relative au commerce des services.
3. Dans le domaine des télécommunications, l'offre du Canada se limite aux services améliorés ou à valeur ajoutée qui sont fournis au moyen d'installations de télécommunications de base louées à des fournisseurs de réseaux publics de transport des télécommunications.
4. L'offre du Canada ne comprend **pas** ce qui suit:
 - * les contrats de gestion et d'exploitation de certaines installations publiques ou privées utilisées à des fins publiques, y compris la recherche-développement financée par le gouvernement fédéral;
 - * la frappe de la monnaie;
 - * les services d'utilité publique;
 - * les services d'architecture et d'ingénierie se rapportant à des aéroports ainsi qu'à des installations de communications ou de missiles;
 - * la construction navale et la réparation de navires ainsi que les services d'architecture et d'ingénierie s'y rapportant;

- * s'agissant des produits achetés par le Ministère de la défense nationale, la Gendarmerie royale du Canada et la Garde côtière canadienne, tous les services qui ne sont pas indiqués comme entrant dans le champ d'application du présent accord;
- * les services achetés pour appuyer les forces militaires se trouvant à l'étranger;
- * les services d'imprimerie et d'édition; et
- * les marchés de services de transport qui font partie d'un marché ou qui y sont accessoires.

ANNEXE 5

Services de construction

Le Canada offre d'inclure dans la présente annexe relative aux "Services de construction" les entités fédérales énumérées à l'Annexe 1 et les entreprises fédérales énumérées à l'Annexe 3. Pour ce qui est des entités sous-centrales visées à l'Annexe 2 et des entreprises sous-centrales visées à l'Annexe 3, la liste initiale des services de construction entrant dans le champ d'application de l'accord sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.

Définition:

Un contrat de services de construction est un contrat qui a pour objectif la réalisation, par quelque moyen que ce soit, de travaux de construction d'ouvrages de génie civil ou de bâtiments, au sens de la division 51 de la Classification centrale de produits (CPC).

Liste de services relevant de la division 51 de la CPC:

Tous les services énumérés dans la division 51 de la CPC.

Notes relatives à l'Annexe 5

1. Nonobstant les dispositions du présent accord, celui-ci ne s'applique pas:
 - a) aux marchés portant sur des travaux de dragage; ni
 - b) aux marchés de travaux passés pour le compte des ministères des transports.
2. Les Notes générales s'appliquent à la présente annexe.

NOTES GENERALES

1. Nonobstant les présentes annexes, l'accord n'est pas applicable dans les cas suivants:
 - a) construction navale et réparation de navires;
 - b) chemins de fer urbains et matériel de transport urbain, systèmes, composants et matériaux entrant dans leur fabrication, ainsi que tout le matériel en fer ou en acier destiné à des ouvrages;
 - c) marchés portant sur les produits relevant du n° 58 de la Classification fédérale des approvisionnements (matériel de communication, matériel de détection des radiations et d'émission de rayonnement cohérent);
 - d) marchés réservés aux petites entreprises et aux entreprises détenues par des minorités;
 - e) marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire;
 - f) exemptions pour des raisons de sécurité nationale, visant notamment les achats de pétrole nécessaires au maintien de réserves stratégiques;
 - g) exceptions pour des raisons de sécurité nationale, visant notamment les marchés passés aux fins du contrôle des matières ou des technologies nucléaires.
2. Pour le Canada, les marchés entrant dans le champ d'application s'entendent de transactions contractuelles visant l'acquisition de biens ou de services devant bénéficier directement au gouvernement ou être utilisés directement par celui-ci. Le processus de passation d'un marché débute après qu'une entité a défini ses besoins et se poursuit jusqu'à et y compris l'adjudication. Ne sont pas compris les accords non contractuels et toute forme d'aide publique, y compris, mais pas uniquement, les accords de coopération, les subventions, les prêts, les apports en capital, les garanties, les incitations fiscales et la fourniture par le gouvernement fédéral de produits et de services à des particuliers, des entreprises, des institutions privées et des gouvernements sous-centraux. Ne sont pas compris non plus les achats réalisés à des fins de revente commerciale ou effectués par une entité ou une entreprise auprès d'une autre entité ou d'une autre entreprise du Canada.
3. Toute exclusion liée expressément ou d'une manière générale à des entités ou à des entreprises fédérales ou sous-centrales énumérées à l'Annexe 1, à l'Annexe 2 ou à l'Annexe 3 s'appliquera également à toute entité ou entreprise qui pourrait leur succéder, afin de maintenir la valeur de la présente offre.
4. Tant que toutes les Parties ne seront pas convenues d'un commun accord d'une liste des services entrant dans le champ d'application, un service énuméré à l'Annexe 4 ne sera visé pour ce qui concerne une Partie donnée que dans la mesure où cette Partie aura accordé un accès réciproque au service considéré.
5. Dans le cas où une entité adjudgera un marché qui n'est pas visé par le présent accord, celui-ci ne sera pas interprété comme s'appliquant à tout produit ou service entrant dans ce marché.

6. S'agissant des produits et des services (y compris les travaux) énumérés aux Annexes 2 et 3, l'offre du Canada est subordonnée à la négociation avec les autres Parties d'engagements mutuellement acceptables (y compris de seuils), les engagements initiaux devant être spécifiés au plus tard pour le 15 avril 1994 et les engagements spécifiques confirmés dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.
7. L'accord ne s'applique pas aux marchés passés en vertu d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage.
8. En ce qui concerne l'Union européenne, le Canada exclut de son offre les marchés portant sur les produits relevant des n° 70, 74 et 36 de la FSC tant qu'un accès réciproque ne lui aura pas été accordé.
9. En ce qui concerne l'Union européenne, le présent accord ne s'applique pas aux marchés passés par les entités visées aux Annexes 1 et 2 et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports et des télécommunications.

**EUROPEAN COMMUNITIES
COMMUNAUTÉS EUROPEENNES
COMUNIDADES EUROPEAS**

ANNEX 1- ANNEXE 1 - ANEXO 1

*Entities which Procure in Accordance with the Provisions of this Agreement
Entités qui passent des marchés conformément aux dispositions du présent accord
Entidades que se rigen en sus contratos por las disposiciones del presente acuerdo*

SUPPLIES / FOURNITURES / SUMINISTROS

Thresholds: SDR 130,000
Valeurs de seuil: DTS 130 000
Valores de umbral: DEG 130.000

SERVICES / SERVICES / SERVICIOS

specified in Annex 4 / spécifiés dans l'Annexe 4 / detallados en el Anexo 4

Thresholds: SDR 130,000
Valeurs de seuil: DTS 130 000
Valores de umbral: DEG 130.000

WORKS / TRAVAUX / OBRAS

specified in Annex 5 / spécifiés dans l'Annexe 5 / detalladas en el Anexo 5

Thresholds: SDR 5,000,000
Valeurs de seuil: DTS 5 000 000
Valores de umbral: DEG 5.000.000

LIST OF ENTITIES / LISTE DES ENTITÉS / LISTA DE LAS ENTIDADES:

1. EUROPEAN COMMUNITIES ENTITIES ENTITÉS DE LA COMMUNAUTÉ EUROPÉENNE ENTIDADES DE LA COMUNIDAD EUROPEA:
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1. THE COUNCIL OF THE EUROPEAN UNION / LE CONSEIL DE L'UNION EUROPÉENNE / EL CONSEJO DE LA UNIÓN EUROPEA.
2. THE EUROPEAN COMMISSION / LA COMMISSION EUROPÉENNE / LA COMISIÓN EUROPEA.

2. THE FOLLOWING CONTRACTING AUTHORITIES OF THE STATE LES POUVOIRS ADJUDICATEURS DE L'ÉTAT QUI SUIVENT LOS SIGUIENTES PODERES ADJUDICADORES DEL ESTADO:
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AUSTRIA - AUTRICHE - AUSTRIA

(Authentic in the English language only)

(A) Present coverage of entities:

1.	Federal Chancellery	Bundeskanzleramt
2.	Federal Ministry for Foreign Affairs	Bundesministerium für auswärtige Angelegenheiten
3.	Federal Ministry of Labour, health and social affairs	Bundesministerium für arbeit, Gesundheit und soziales
4.	Federal Ministry of Finance	Bundesministerium für Finanzen
	(a) Procurement Office	Amtswirtschaftsstelle
	(b) Division III/1 (procurement of technical appliances, equipments and goods for the customs guard)	Abteilung III/1 (Beschaffung von technischen Geräten, Einrichtungen und Sachgütern für die Zollwache)
	(c) Federal EDP-Office (procurement of the Federal Ministry of Finance and of the Federal Office of Accounts)	Bundesrechenamt (EDV-Bereich des Bundesministeriums für Finanzen und des Bundesrechenamtes)
5.	Federal Ministry for Environment, Youth and Family – Procurement Office	Bundesministerium für Umwelt, Jugend und Familie, Amtswirtschaftsstelle
6.	Federal Ministry for Economic Affairs	Bundesministerium für wirtschaftliche Angelegenheiten, Amtswirtschaftsstelle
7.	Federal Ministry of Internal Affairs	Bundesministerium für Inneres
	(a) Division I/5 (Procurement Office)	Abteilung I/5 (Amtswirtschaftsstelle)
	(b) Division I/6 [procurement of goods (other than those procured by Division II/3) for the Federal Police]	Abteilung I/6 (Beschaffung aller Sachgüter für die Bundespolizei soweit sie nicht von der Abteilung II/3 beschafft werden)
	(c) EDP-Centre (procurement of electronical data processing machines (hardware))	EDV-Zentrale (Beschaffung von EDV- "Hardware")
	(d) Division II/3 (procurement of technical appliances and equipments for the Federal Police)	Abteilung II/3 (Beschaffung von technischen Geräten und Einrichtungen für die Bundespolizei)
	(e) Division II/5 (procurement of technical appliances and equipment for the Federal Provincial Police)	Abteilung II/5 (Beschaffung von technischenGeräten und Einrichtungen für die Bundesgendarmerie)

APPENDIX I	EUROPEAN COMMUNITY: AUSTRIA	ANNEX 1	Page 3/70
(f)	Division II/19 (procurement of equipment for supervision of road traffic)	Abteilung II/19 (Beschaffung von Einrichtungen zur Überwachung des Straßenverkehrs)	
(g)	Division II/21 (procurement of aircraft)	Abteilung II/21 (Beschaffung von Flugzeugen)	
8.	Federal Ministry for Justice – Procurement Office	Bundesministerium für Justiz, Amtswirtschaftsstelle	
9.	Federal Ministry of Defence ¹	Bundesministerium für Landesverteidigung (Nichtkriegsmaterial wie in Annex I, Teil 3 angeführt)	
10.	Federal Ministry of Agriculture and Forestry	Bundesministerium für Land- und Forstwirtschaft	
11.	Federal Ministry of Education and Cultural Affairs	Bundesministerium für Unterricht und kulturelle Angelegenheiten	
12.	Federal Ministry for Science and Transport	Bundesministerium für Wissenschaft und Verkehr	
13.	Austrian Central Statistical Office	Österreichisches Statistisches Zentralamt	
14.	Austrian Federal Academy of Public Administration	Verwaltungsakademie des Bundes	
15.	Federal Office of Metrology and Surveying	Bundesamt für Eich- und Vermessungswesen	
16.	Federal Institute for Testing and Research, Arsenal (BVFA)	Bundesforschungs- und Prüfzentrum Arsenal	
17.	Austro control GES. M.B.H. - Austrian office for civil aviation	Austro Control GES. M.B.H. - Österreichische Gesellschaft für Zivilluftfahrt	
18.	Federal Institute for Testing of Motor Vehicles	Bundesprüfanstalt für Kraftfahrzeuge	
19.	Post and Telecom Austria	Post und Telecom Austria Aktiengesellschaft	

(B) All other central public authorities including their regional and local sub-divisions provided that they do not have an industrial or commercial character.

¹ Non-warlike materials contained in Part (3) of this Annex

BELGIUM - BELGIQUE - BÉLGICA

(La version française fait foi)

(A) L'État fédéral:

1. Services du Premier Ministre
2. Ministère des Affaires économiques
3. Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au développement
4. Ministère des Affaires sociales, de la Santé publique et de l'Environnement
5. Ministère des Classes moyennes et de l'Agriculture
6. Ministère des Communications et de l'Infrastructure
7. Ministère de la Défense nationale²
8. Ministère de l'Emploi et du Travail
9. Ministère des Finances
10. Ministère de la Fonction publique
11. Ministère de l'Intérieur
12. Ministère de la Justice

(B) Autres:

1. la Poste³
2. la Régie des Bâtiments
3. L'Office national de Sécurité Sociale
4. L'Institut national d'Assurances sociales pour Travailleurs indépendants
5. L'Institut national d'Assurance Maladie-Invalidité
6. L'Office national des Pensions
7. La Caisse auxiliaire d'Assurance Maladie-Invalidité
8. Le Fonds des Maladies professionnelles
9. L'Office national de l'Emploi

² Matériel non militaire figurant dans la partie (3) de la présente annexe

³ Activités postales visées par la loi du 24 décembre 1993

DENMARK - DANEMARK - DINAMARCA

(Authentic in the English language only)

- | | | | |
|-----|---|---|--|
| 1. | (Parliament) - (Auditor General of Denmark) | | Folketinget - Rigsrevisionen |
| 2. | Prime Minister's Office | | |
| 3. | Ministry of Foreign Affairs | - | 2 departments |
| 4. | Ministry of Labour | - | 5 agencies and institutions |
| 5. | Ministry of Housing and Urban Affairs | - | 7 agencies and institutions |
| 6. | Ministry of Industry and Trade | - | 7 agencies and institutions |
| 7. | Ministry of Finance | - | 3 agencies and institutions |
| 8. | Ministry of Research | - | 1 agency |
| 9. | Ministry of Defence ⁴ (1) | - | Several institutions |
| 10. | Ministry of the Interior | - | 2 agencies |
| 11. | Ministry of Justice | - | 2 directorates and several police offices and courts |
| 12. | Ministry of Ecclesiastical Affairs | - | 10 diocesan authorities |
| 13. | Ministry of Cultural Affairs | - | 3 institutions and several state-owned museums and higher education institutions |
| 14. | Ministry of Agriculture and Fisheries | - | 23 directorates and institutions |
| 15. | Ministry of Environment and Energy | - | 6 agencies and research establishment "Risø" |
| 16. | Ministry of Taxes and Duties | - | 1 agency |
| 17. | Ministry of Social Affairs | - | 4 agencies and institutions |
| 18. | Ministry of Health | - | Several institutions including the State Serum Institute |
| 19. | Ministry of Education | - | 6 directorates and 12 universities and other higher education institutions |
| 20. | Ministry of Economic Affairs | - | Statistical bureau (Statistics Denmark) |
| 21. | Ministry of Transport | | |

⁴ Non-warlike materials contained in Part (3) of this Annex

GERMANY - ALLEMAGNE - ALEMANIA

(Authentic in the English language only)

1.	Federal Foreign Office	Auswärtiges Amt
2.	Federal Chancellery	Bundeskanzleramt
3.	Federal Ministry of Labour and Social Affairs	Bundesministerium für Arbeit und Sozialordnung
4.	Federal Ministry of Education, Science, Research and Technology	Bundesministerium für Bildung, Wissenschaft, Forschung und Technologie
5.	Federal Ministry for Food, Agriculture and Forestry	Bundesministerium für Ernährung, Landwirtschaft und Forsten
6.	Federal Ministry of Finance	Bundesministerium der Finanzen
7.	Federal Ministry of the Interior (civil goods only)	Bundesministerium des Innern
8.	Federal Ministry of Health	Bundesministerium für Gesundheit
9.	Federal Ministry for Family Affairs, Senior Citizens, Women and Youth	Bundesministerium für Familie, Senioren, Frauen und Jugend
10.	Federal Ministry of Justice	Bundesministerium der Justiz
11.	Federal Ministry for Regional Planning, Building and Urban Development	Bundesministerium für Raumordnung, Bauwesen und Städtebau
12.	Federal Ministry of Post and Telecommunications ⁵	Bundesministerium für Post- und Telekommunikation
13.	Federal Ministry of Transport	Bundesministerium für Verkehr
14.	Federal Ministry of Economic Affairs	Bundesministerium für Wirtschaft
15.	Federal Ministry for Economic Co-operation	Bundesministerium für wirtschaftliche Zusammenarbeit
16.	Federal Ministry of Defence ⁶	Bundesministerium der Verteidigung
17.	Federal Ministry of Environment, Nature Conservation and Reactor Safety	Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit

⁵ Except telecommunication equipment⁶ Non-warlike materials contained in Part (3) of this Annex

Note

According to existing national obligations, the entities contained in this list must, in conformity with special procedures, award contracts to certain groups in order to remove difficulties caused by the last war.

SPAIN - ESPAGNE - ESPAÑA

(Esta lista es auténtica en la versión española)

1. Ministerio de Asuntos Exteriores
2. Ministerio de Justicia
3. Ministerio de Defensa⁷
4. Ministerio de Economía y Hacienda
5. Ministerio del Interior
6. Ministerio de Fomento
7. Ministerio de Educación y Cultura
8. Ministerio de Trabajo y Asuntos Sociales
9. Ministerio de Industria y Energía
10. Ministerio de Agricultura, Pesca y Alimentación
11. Ministerio de la Presidencia
12. Ministerio para las Administraciones Públicas
13. Ministerio de Sanidad y Consumo
14. Ministerio de Medio Ambiente

⁷ Material no militar incluido en la parte (3) de este Anexo

FINLAND - FINLANDE - FINLANDIA

(Authentic in the English language only)

- | | | |
|----|---|--------------------------------|
| 1. | OFFICE OF THE CHANCELLOR OF JUSTICE | OIKEUSKANSLERINVIRASTO |
| 2. | MINISTRY OF TRADE AND INDUSTRY | KAUPPA-JA TEOLLISUUSMINISTERIÖ |
| | National Consumer Administration | Kuluttajavirasto |
| | National Food Administration | Elintarvikevirasto |
| | Office of Free Competition | Kilpailuvirasto |
| | Council of Free Competition | Kilpailuneuvosto |
| | Office of the Consumer Ombudsman | Kuluttaja-asiamiehen toimisto |
| | Consumer Complaint Board | Kuluttajavalituslautakunta |
| | National Board of Patents and Registration | Patentti- ja rekisterihallitus |
| 3. | MINISTRY OF TRANSPORT AND COMMUNICATIONS | LIIKENNEMINISTERIÖ |
| | Telecommunications Administration Centre | Telehallintokeskus |
| 4. | MINISTRY OF AGRICULTURE AND FORESTRY | MAA- JA METSÄTALOUSMINISTERIÖ |
| | National Land Survey of Finland | Maanmittauslaitos |
| 5. | MINISTRY OF JUSTICE | OIKEUSMINISTERIÖ |
| | The Office of the Data Protection Ombudsman | Tietosuojavaltuutetun toimisto |
| | Courts of Law | Tuomioistuinlaitos |
| | | – Korkein oikeus |
| | | – Korkein hallinto-oikeus |
| | | – Hovioikeudet |
| | | – Käräjäoikeudet |
| | | – Läänioikeudet |
| | | – Markkinatuomioistuin |
| | | – Työtuomioistuin |
| | | – Vakuutus oikeus |
| | | – Vesioikeudet |
| | Prison Administration | Vankeinhoitolaitos |
| 6. | MINISTRY OF EDUCATION | OPETUSMINISTERIÖ |
| | National Board of Education | Opetushallitus |
| | National Office of Film Censorship | Valtion elokuvatarkastamo |

APPENDIX I	EUROPEAN COMMUNITY: FINLAND	ANNEX 1	Page 10/70
7.	MINISTRY OF DEFENCE ⁸ Defence Forces	PUOLUSTUSMINISTERIÖ Puolustusvoimat	
8.	MINISTRY OF THE INTERIOR Population Register Centre Central Criminal Police Mobile Police Frontier Guard	SISÄASIAINMINISTERIÖ Väestörekisterikeskus Keskusrikospoliisi Liikkuva poliisi Rajavartiolaitos	
9.	MINISTRY OF SOCIAL AFFAIRS AND HEALTH Unemployment Appeal Board Appeal Tribunal National Agency for Medicines National Board of Medicolegal Affairs State Accident Office Finnish Centre for Radiation and Nuclear Safety Reception Centres for Asylum Seekers	SOSIAALI- JA TERVEYSMINISTERIÖ Työttömyysturvalautakunta Tarkastuslautakunta Lääkelaitos Terveystieteiden tutkimuskeskus Tapaturmavirasto Säteilyturvakeskus Valtion turvapaikan hakijoiden vastaanotto-keskukset	
10.	MINISTRY OF LABOUR National Conciliators' Office Labour Council	TYÖMINISTERIÖ Valtakunnansovittelijain toimisto Työneuvosto	
11.	MINISTRY FOR FOREIGN AFFAIRS	ULKOASIAINMINISTERIÖ	
12.	MINISTRY OF FINANCE State Economy Controller's Office State Treasury Office	VALTIOVARAINMINISTERIÖ Valtiontalouden tarkastusvirasto Valtiokonttori Valtion työmarkkinalaitos Verohallinto Tullihallinto Valtion vakuusrahasto	
13.	MINISTRY OF ENVIRONMENT National Board of Waters and Environment	YMPÄRISTÖMINISTERIÖ Vesi- ja ympäristöhallitus	

⁸ Non-warlike materials contained in Part (3) of this Annex

FRANCE - FRANCE - FRANCIA

(La version française fait foi)

- (A) Principales entités acheteuses
- (a) *Budget général*
1. Services du Premier Ministre
 2. Ministère des Affaires Sociales, de la Santé et de la Ville
 3. Ministère de l'Intérieur et de l'Aménagement du Territoire
 4. Ministère de la Justice
 5. Ministère de la Défense
 6. Ministère des Affaires Etrangères
 7. Ministère de l'Education Nationale
 8. Ministère de l'Economie
 9. Ministère de l'Industrie, des Postes et Télécommunications et du Commerce Extérieur
 10. Ministère de l'Équipement, des Transports et du Tourisme
 11. Ministère des Entreprises et du Développement Economique, chargé des Petites et Moyennes Entreprises et du Commerce et de l'Artisanat
 12. Ministère du Travail, de l'Emploi et de la Formation Professionnelle
 13. Ministère de la Culture et de la Francophonie
 14. Ministère du Budget
 15. Ministère de l'Agriculture et de la Pêche
 16. Ministère de l'Enseignement Supérieur et de la Recherche
 17. Ministère de l'Environnement
 18. Ministère de la Fonction Publique
 19. Ministère du Logement
 20. Ministère de la Coopération
 21. Ministère des Départements et Territoires d'Outre-Mer
 22. Ministère de la Jeunesse et des Sports
 23. Ministère de la Communication
 24. Ministère des anciens Combattants et Victimes de Guerre

(b) *Budget annexe*

On peut notamment signaler:

1. Imprimerie Nationale

(c) *Comptes spéciaux du Trésor*

On peut notamment signaler:

1. Fonds forestiers national;
2. Soutien financier de l'industrie cinématographique et de l'industrie des programmes audio-visuels;
3. Fonds national d'aménagement foncier et d'urbanisme;
4. Caisse autonome de la reconstruction.

(B) Etablissements publics nationaux à caractère administratif

1. Académie de France à Rome;
2. Académie de Marine;
3. Académie des Sciences d'Outre-Mer;
4. Agence Centrale des Organismes de Sécurité Sociale (A.C.O.S.S.);
5. Agences Financières de Bassins;
6. Agence Nationale pour l'Amélioration des Conditions de Travail (A.N.A.C.T.);
7. Agence Nationale pour l'Amélioration de l'Habitat (A.N.A.H.);
8. Agence Nationale pour l'Emploi (A.N.P.E.);
9. Agence Nationale pour l'Indemnisation des Français d'Outre-Mer (A.N.I.F.O.M.);
10. Assemblée Permanente des Chambres d'Agriculture (A.P.C.A.);
11. Bibliothèque Nationale;
12. Bibliothèque Nationale et Universitaire de Strasbourg;
13. Bureau d'Etudes des Postes et Télécommunications d'Outre-Mer (B.E.P.T.O.M.);
14. Caisse des Dépôts et Consignations;
15. Caisse Nationale des Allocations Familiales (C.N.A.F.);
16. Caisse Nationale d'Assurance Maladie des Travailleurs Salariés (C.N.A.M.);
17. Caisse Nationale d'Assurance-Vieillesse des Travailleurs Salariés (C.N.A.V.T.S.);
18. Caisse Nationale des Autoroutes (C.N.A.);
19. Caisse Nationale Militaire de Sécurité Sociale (C.N.M.S.S.);

20. Caisse Nationale des Monuments Historiques et des Sites;
21. Caisse Nationale des Télécommunications⁹;
22. Caisse de Garantie du Logement Social;
23. Casa de Velasquez;
24. Centre d'Enseignement Zootechnique de Rambouillet;
25. Centre d'Etudes du Milieu et de Pédagogie Appliquée du Ministère de l'Agriculture;
26. Centre d'Etudes Supérieures de Sécurité Sociale;
27. Centres de Formation Professionnelle Agricole;
28. Centre National d'Art et de Culture Georges Pompidou;
29. Centre National de la Cinématographie Française;
30. Centre National d'Etudes et de Formation pour l'Enfance Inadaptée;
31. Centre National d'Etudes et d'Expérimentation du Machinisme Agricole, du Génie Rural, des Eaux et des Forêts;
32. Centre National de Formation pour l'Adaptation Scolaire et l'Education Spécialisée (C.N.E.F.A.S.E.S.);
33. Centre National de Formation et de Perfectionnement des Professeurs d'Enseignement Ménager Agricole;
34. Centre National des Lettres;
35. Centre National de Documentation Pédagogique;
36. Centre National des Oeuvres Universitaires et Scolaires (C.N.O.U.S.);
37. Centre National d'Ophthalmologie des Quinze-Vingts;
38. Centre National de Préparation au Professorat de Travaux Manuels Éducatifs et d'Enseignement Ménager;
39. Centre National de Promotion Rurale de Marmilhat;
40. Centre National de la Recherche Scientifique (C.N.R.S.);
41. Centre Régional d'Education Populaire d'Ile de France;
42. Centres d'Education Populaire et de Sport (C.R.E.P.S.);
43. Centres Régionaux des Oeuvres Universitaires (C.R.O.U.S.);
44. Centres Régionaux de la Propriété Forestière;
45. Centre de Sécurité Sociale des Travailleurs Migrants;
46. Chancelleries des Universités;
47. Collège de France

⁹ Postes seulement

48. Commission des Opérations de Bourse;
49. Conseil Supérieur de la Pêche;
50. Conservatoire de l'Espace Littoral et des Rivages Lacustres;
51. Conservatoire National des Arts et Métiers;
52. Conservatoire National Supérieur de Musique;
53. Conservatoire National Supérieur d'Art Dramatique;
54. Domaine de Pompadour;
55. Ecole Centrale - Lyon;
56. Ecole Centrale des Arts et Manufactures;
57. Ecole Française d'Archéologie d'Athènes;
58. Ecole Française d'Extrême-Orient;
59. Ecole Française de Rome;
60. Ecole des Hautes Études en Sciences Sociales;
61. Ecole Nationale d'Administration;
62. Ecole Nationale de l'Aviation Civile (E.N.A.C.);
63. Ecole Nationale des Chartes;
64. Ecole Nationale d'Equitation;
65. Ecole Nationale du Génie Rural des Eaux et des Forêts (E.N.G.R.E.F.);
66. Ecoles Nationales d'Ingénieurs;
67. Ecole Nationale d'Ingénieurs des Industries des Techniques Agricoles et Alimentaires;
68. Ecoles Nationales d'Ingénieurs des Travaux Agricoles;
69. Ecole Nationale des Ingénieurs des Travaux Ruraux et des Techniques Sanitaires;
70. Ecole Nationale des Ingénieurs des Travaux des Eaux et Forêts (E.N.I.T.E.F.);
71. Ecole Nationale de la Magistrature;
72. Ecoles Nationales de la Marine Marchande;
73. Ecole Nationale de la Santé Publique (E.N.S.P.);
74. Ecole Nationale de Ski et d'Alpinisme;
75. Ecole Nationale Supérieure Agronomique - Montpellier;
76. Ecole Nationale Supérieure Agronomique - Rennes;
77. Ecole Nationale Supérieure des Arts Décoratifs;
78. Ecole Nationale Supérieure des Arts et Industries - Strasbourg;
79. Ecole Nationale Supérieure des Arts et Industries Textiles - Roubaix;

80. Ecoles Nationales Supérieures d'Arts et Métiers;
81. Ecole Nationale Supérieure des Beaux-Arts;
82. Ecole Nationale Supérieure des Bibliothécaires;
83. Ecole Nationale Supérieure de Céramique Industrielle;
84. Ecole Nationale Supérieure de l'Electronique et de ses Applications (E.N.S.E.A.);
85. Ecole Nationale Supérieure d'Horticulture;
86. Ecole Nationale Supérieure des Industries Agricoles Alimentaires;
87. Ecole Nationale Supérieure du Paysage (Rattachée à l'Ecole Nationale Supérieure d'Horticulture);
88. Ecole Nationale Supérieure des Sciences Agronomiques Appliquées (E.N.S.S.A.);
89. Ecoles Nationales Vétérinaires;
90. Ecole Nationale de Voile;
91. Ecoles Normales d'Instituteurs et d'Institutrices;
92. Ecoles Normales Nationales d'Apprentissage;
93. Ecoles Normales Supérieures;
94. Ecole Polytechnique;
95. Ecole Technique Professionnelle Agricole et Forestière de Meymac (Corrèze)
96. Ecole de Sylviculture - Croigny (Aube);
97. Ecole de Viticulture et d'Oenologie de la Tour Blanche (Gironde);
98. Ecole de Viticulture - Avize (Marne);
99. Etablissement National de Convalescents de Saint-Maurice;
100. Etablissement National des Invalides de la Marine (E.N.I.M.);
101. Etablissement National de Bienfaisance Koenigs-Wazter;
102. Fondation Carnegie;
103. Fondation Singer-Polignac;
104. Fonds d'Action Sociale pour les Travailleurs Immigrés et leurs Familles;
105. Hôpital-Hospice National Dufresne-Sommeiller;
106. Institut de l'Elevage et de Médecine Vétérinaire des Pays Tropicaux (I.E.M.V.P.T.)
107. Institut Français d'Archéologie Orientale du Caire;
108. Institut Géographique National;
109. Institut Industriel du Nord;
110. Institut International d'Administration Publique (I.I.A.P.);

111. Institut National Agronomique de Paris-Grignon;
112. Institut National des Appellations d'Origine des Vins et Eux-de-Vie (I.N.A.O.V.E.V.);
113. Institut National d'Astronomie et de Géophysique (I.N.A.G.);
114. Institut National de la Consommation (I.N.C.);
115. Institut National d'Education Populaire (I.N.E.P.);
116. Institut National d'Etudes Démographiques (I.N.E.D.);
117. Institut National des Jeunes Aveugles - Paris;
118. Institut National des Jeunes Sourdes - Bordeaux;
119. Institut National des Jeunes Sourds - Chambéry;
120. Institut National des Jeunes Sourds - Metz;
121. Institut National des Jeunes Sourds - Paris;
122. Institut National de Physique Nucléaire et de Physique des Particules (I.N.P.N.P.P.);
123. Institut National de Promotion Supérieure Agricole;
124. Institut National de la Propriété Industrielle;
125. Institut National de la Recherche Agronomique (I.N.R.A.);
126. Institut National de Recherche Pédagogique (I.N.R.P.);
127. Institut National de la Santé et de la Recherche Médicale (I.N.S.E.R.M.);
128. Institut National des Sports;
129. Instituts Nationaux Polytechniques;
130. Instituts Nationaux des Sciences Appliquées;
131. Instituts National Supérieur de Chimie Industrielle de Rouen;
132. Institut National de Recherche en Informatique et en Automatique (I.N.R.I.A.);
133. Institut National de Recherche sur les Transports et leur Sécurité (I.N.R.T.S.);
134. Instituts Régionaux d'Administration;
135. Institut Supérieur des Matériaux et de la Construction Mécanique de Saint-Ouen
136. Musée de l'Armée;
137. Musée Gustave Moreau;
138. Musée de la Marine;
139. Musée National J.J. Henner;
140. Musée National de la Légion d'Honneur;
141. Musée de la Poste;
142. Muséum National d'Histoire Naturelle;

143. Musée Augustre Rodin;
 144. Observatoire de Paris;
 145. Office de Coopération et d'Accueil Universitaire;
 146. Office Français de Protection des Réfugiés et Apatrides;
 147. Office National des Anciens Combattants;
 148. Office National de la Chasse;
 149. Office National d'Information sur les Enseignements et les Professions (O.N.I.E.P.);
 150. Office National d'Immigration (O.N.I.);
 151. O.R.S.T.O.M. – Institut Français de Recherche Scientifique pour le Développement en Coopération;
 152. Office Universitaire et Culturel Français pour l'Algérie;
 153. Palais de la Découverte;
 154. Parcs Nationaux;
 155. Réunion des Musées Nationaux;
 156. Syndicat des Transports Parisiens;
 157. Thermes Nationaux - Aix-les-Bains;
 158. Universités.
- (C) Autre organisme public national
1. Union des Groupements d'Achats Publics (U.G.A.P.).

GREECE - GRÈCE - GRECIA

(Authentic in the English language only)

List of entities

1. Ministry of the Interior, Public Administration and Decentralization
2. Ministry of Foreign Affairs
3. Ministry of National Economy
4. Ministry of Finance
5. Ministry of Development
6. Ministry of Environment, Planning and Public Works
7. Ministry of Education and Religion
8. Ministry of Agriculture
9. Ministry of Labour and Social security
10. Ministry of Health and Social Selfare
11. Ministry of Justice
12. Ministry of Culture
13. Ministry of Merchant Marine
14. Ministry of Macedonia and Thrace
15. Ministry of the Aegean
16. Ministry of Transport and Communications
17. Ministry for Press and Media
18. Ministry to the Prime Minister
19. Army General Staff
20. Navy General Staff
21. Airforce General Staff
22. General Secretariat for Equality
23. General Secretariat for Greeks Living Abroad
24. General Secretariat for Commerce
25. General Secretariat for Research and Technology
26. General Secretariat for Industry

27. General Secretariat for Public Works
28. General Secretariat for Youth
29. General Secretariat for Further Education
30. General Secretariat for Social Security
31. General Secretariat for Sports
32. General State Laboratory
33. National Centre of Public Administration
34. National Printing Office
35. National Statistical Service
36. National Welfare Organisation
37. University of Athens
38. University of Thessaloniki
39. University of Patras
40. University of Ioannina
41. University of Thrace
42. University of Macedonia
43. University of the Aegean
44. Polytechnic School of Crete
45. Sivitaniidios Technical School
46. Eginitio Hospital
47. Areteio Hospital
48. Greek Atomic Energy Commission
49. Greek Highway Fund
50. Hellenic Post (EL. TA.)
51. Workers' Housing Organisation
52. Farmers' Insurance Organisation
53. Public Material Management Organisation
54. School Building Organisation

IRELAND - IRLANDE - IRLANDA

(Authentic in the English language only)

(A) Main purchasing entities

1. Office of Public Works

(B) Other Departments

1. President's Establishment;
2. Houses of the Oireachtas (Parliament);
3. Department of the Taoiseach (Prime Minister);
4. Office of the Tánaiste (Deputy Prime Minister);
5. Central Statistics Office;
6. Department of Arts, Culture and the Gaeltacht;
7. National Gallery of Ireland;
8. Department of Finance;
9. State Laboratory;
10. Office of the Comptroller and Auditor General;
11. Office of the Attorney General;
12. Office of the Director of Public Prosecutions;
13. Valuation Office;
14. Civil Service Commission;
15. Office of the Ombudsman;
16. Office of the Revenue Commissioners;
17. Department of Justice;

18. Commissioners of Charitable Donations and Bequests for Ireland;
19. Department of the Environment;
20. Department of Education;
21. Department of the Marine;
22. Department of Agriculture, Food and Forestry;
23. Department of Enterprise and Employment
24. Department of Tourism and Trade
25. Department of Defence¹⁰;
26. Department of Foreign Affairs;
27. Department of Social Welfare;
28. Department of Health;
29. Department of Transport, Energy and Communications

¹⁰ Non-warlike materials contained in Part (3) of this Annex

ITALY - ITALIE – ITALIA

(Authentic in the English language only)

Purchasing Entities

1.	Presidency of the Council of Ministers with Ministry of Cultural Affairs	Presidenza del Consiglio dei Ministri con il Ministero del Beni Culturali
2.	Ministry of Foreign Affairs	Ministero degli affari esteri
3.	Ministry of the Interior	Ministero dell'Interno
4.	Ministry of Justice	Ministero di Grazia e Giustizia
5.	Ministry of the Treasury ¹¹	Ministero del Tesoro
6.	Ministry of Finance ¹²	Ministero delle Finanze
7.	Ministry of Defence ¹³	Ministero della Difesa
8.	Ministry of Industry, Trade, Handicraft and Tourism	Ministero dell'Industria, del Commercio e Dell'artigianato
9.	Ministry of Public Works	Ministero del Lavori Pubblici
10.	Ministry of Transports	Ministero del Trasporti
11.	Ministry of Posts and Telecommunications ¹⁴	Ministero delle Poste e Telecomunicazioni
12.	Ministry of Health	Ministero della Sanità
13.	Ministry of Education, University, Scientific and Technological Research	Ministero della Pubblica Istruzione, dell'Università e della ricerca scientifica e tecnologica
14.	Ministry of Employment and Social Security	Ministero del Lavoro e della Previdenza Sociale
15.	Ministry of Environment	Ministero dell'Ambiente
16.	Ministry of Foreign Trade	Ministero del Commercio con l'Estero
17.	Ministry of Agriculture resources	Ministero delle Risorse Agricole, Alimentari e Forestali

¹¹ Acting as the central purchasing entity for most of the other Ministries or entities

¹² Not including purchases made by the tobacco and salt monopolies

¹³ Non-warlike materials contained in Part (3) of this Annex

¹⁴ Postal business only

LUXEMBOURG - LUXEMBOURG - LUXEMBURGO

(La version française fait foi)

1. Ministère du Budget: Service Central des Imprimés et des Fournitures de l'Etat;
2. Ministère de l'Agriculture: Administration des Services Techniques de l'Agriculture;
3. Ministère de l'Education Nationale: Lycées d'Enseignement Secondaire et d'Enseignement Secondaire Technique;
4. Ministère de la Famille et de la Solidarité Sociale: Maisons de Retraite;
5. Ministère de la Force Publique: Armée ¹⁵ - Gendarmerie - Police;
6. Ministère de la Justice: Etablissements Pénitentiaires;
7. Ministère de la Santé Publique: Hôpital Neuropsychiatrique;
8. Ministère des Travaux Publics: Bâtiments Publics - Ponts et Chaussées;
9. Ministère des Communications: Centre Informatique de l'Etat
10. Ministère de l'Environnement: Administration de l'Environnement.

¹⁵ Matériel non-militaire figurant dans la partie (3) de la présente annexe

NETHERLANDS - PAYS BAS - PAÍSES BAJOS

(Authentic in the English Language only)

*List of Entities**Ministries and Central Governmental Bodies*

1.	<p>MINISTRY OF GENERAL AFFAIRS</p> <p>Advisory Council on Government Policy</p> <p>National Information Office</p>	<p>MINISTERIE VAN ALGEMENE ZAKEN</p> <p>Bureau van de Wetenschappelijke Raad voor het Regeringsbeleid</p> <p>Rijksvoorlichtingsdienst (Directie voorlichting, RVD-DV; Directie toepassing communicatietechniek, RVD-DTC)</p>
2.	<p>MINISTRY OF THE INTERIOR</p> <p>Government Personnel Information System Service</p> <p>Public Servants Medical Expenses Agency</p> <p>Central Archives</p> <p>Netherlands Institute for Firemen and Combatting Calamities</p> <p>Netherlands Bureau for Exams of Firemen</p> <p>National Institute for Selection and Education of Policemen</p> <p>25 Individual Police Regions</p> <p>National Police Forces</p>	<p>MINISTERIE VAN BINNENLANDSE ZAKEN</p> <p>Dienst Informatievoorziening Overheidspersoneel</p> <p>Dienst Ziektelastvoorziening Overheidspersoneel</p> <p>Centrale Archiefselectiedienst</p> <p>Binnenlandse Veiligheidsdienst (BVD)</p> <p>Nederlands Instituut voor Brandweer en Rampenbestrijding (NIBRA)</p> <p>Nederlands Bureau Brandweer Examens (NBBE)</p> <p>Landelijk Selectie en Opleidingsinstituut Politie (LSOP)</p> <p>25 Afzonderlijke politieregio's</p> <p>Korps Landelijke Politiediensten</p>
3.	<p>MINISTRY OF FOREIGN AFFAIRS</p> <p>SNV Organisation for Development Cooperation and Awareness</p> <p>CBI, Centre for promotion of import from developing countries</p>	<p>MINISTERIE VAN BUITENLANDSE ZAKEN</p> <p>SNV, Organisatie voor Ontwikkelingssamenwerking en Bewustwording</p> <p>CBI, Centrum tot Bevordering van de Import uit Ontwikkelingslanden</p>

4.	<p>MINISTRY OF DEFENCE¹⁶</p> <p>Central Organisation, Ministry of Defense</p> <p>Staff, Defense Interservice Command</p> <p>Defense telematics Agency (establishment of this new service is expected to take place on 1 September 1997)</p> <p>Duyverman Computer Centre (This service will be part of DTO and will consequently loose, as from 1 January 1998, its status as independent procurement service)</p> <p>Central Directorate, Defense Infrastructure Agency</p> <p>The individual regional directorates of the Defence Infrastructure Agency</p> <p>Directorate of material Royal Netherlands Navy</p> <p>Directorate of material Royal Netherlands Army</p> <p>Information Technology Support Centre, Royal Netherlands Army</p> <p>Directorate of material Royal Netherlands Airforce</p> <p>Defense Pipeline Organisation</p>	<p>MINISTERIE VAN DEFENSIE</p> <p>Centrale organisatie van het ministerie van Defensie</p> <p>Staf Defensie Interservice Commando (DICO)</p> <p>Defensie telematica Organisatie (DTO)</p> <p>Duyverman Computer Centrum (DCC)</p> <p>Centrale directie van de Dienst Gebouwen, Werken en Terreinen</p> <p>De afzonderlijke regionale directies van de Dienst Gebouwen, Werken en Terreinen</p> <p>Directie materieel Koninklijke Marine</p> <p>Directie materieel Koninklijke Landmacht</p> <p>Dienstcentrum Automatisering Koninklijke Landmacht</p> <p>Directie materieel Koninklijke Luchtmacht</p> <p>Defensie Pijpleiding Organisatie</p>
5.	<p>MINISTRY OF ECONOMIC AFFAIRS</p> <p>Economic Investigation Agency</p> <p>Central Plan Bureau</p> <p>Netherlands Central Bureau of Statistics Senter</p> <p>Industrial Property Office</p> <p>Central Licensing Office for Import and Export</p> <p>State Supervision of Mines</p>	<p>MINISTERIE VAN ECONOMISCHE ZAKEN</p> <p>Economische Controledienst</p> <p>Centraal Planbureau</p> <p>Centraal Bureau voor de Statistiek Senter</p> <p>Bureau voor de Industriële Eigendom</p> <p>Centrale Dienst voor de In- en Uitvoer</p> <p>Staatstoezicht op de Mijnen</p>
6.	<p>MINISTRY OF FINANCE</p> <p>Directorates of the State Tax Department</p>	<p>MINISTERIE VAN FINANCIËN</p> <p>Directies der Rijksbelastingen</p>

¹⁶ Non-warlike materials contained in Part (3) of this Annex

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	State Tax Department/Fiscal Intelligence and Information Department	Belastingdienst/FIOD	
	State Tax Department/Computer Centre	Belastingdienst/Automatiseringscentrum	
	State Tax Department/Training	Belastingdienst/Opleidingen	
7.	MINISTRY OF JUSTICE	MINISTERIE VAN JUSTITIE	
	Service for judicial institutions	Dienst justitiële inrichtingen	
	Service prevention, Youth protection and rehabilitation	Dienst preventie, Jeugd bescherming en reclassering	
	Service Administration of justice	Dienst rechtspleging	
	Central Debt Collection Agency of the Ministry of Justice	Centraal Justitie Incassobureau	
	National Police Services Force	Korps Landelijke Politiediensten	
	Immigration and Naturalisation Service	Immigratie- en Naturalisatiedienst	
	Public Prosecutor	Openbaar Ministerie	
8.	MINISTRY OF AGRICULTURE, NATURE MANAGEMENT AND FISHERIES	MINISTERIE VAN LANDBOUW, NATUURBEHEER EN VISSERIJ	
		Dienst Landelijke Service bij Regelingen (LASER)	
	Game Fund	Jachtfonds	
	National Inspection Service for Animals and Animal Protection	Rijksdienst voor de Keuring van Vee en Vlees (RVV)	
	Plant Protection Service	Plantenziektenkundige Dienst (PD)	
	National Forest Service	Staatsbosbeheer (SBB)	
	General Inspection Service	Algemene Inspectiedienst (AID)	
		Dienst Landinrichting Beheer Landbouwgronden (LBL)	
	Agricultural Research Service	Dienst Landbouwkundig Onderzoek (DLO)	
	National Fisheries Research Institute	Rijksinstituut voor Visserijonderzoek (RIVO-DLO)	
	Government Institute for Quality Control of Agricultural Products	Rijkskwaliteit Instituut voor Land- en Tuinbouwprodukten (RILJIT-DLO)	
	National Institute for Nature Management	Instituut voor Bos- en Natuuronderzoek	
		De afzonderlijke Regionale Beleidsdirecties	
9.	MINISTRY OF EDUCATION, CULTURE AND SCIENCE	MINISTERIE VAN ONDERWIJS, CULTUUR EN WETENSCHAPPEN	
	Netherlands State Institute for War Documentation	Rijksinstituut voor Oorlogsdocumentatie	

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	Public Record Office	Rijksarchiefdienst	
	Council for Education	Onderwijsraad	
	Advisory Council for Science and Technology Policy	Adviesraad voor het Wetenschap en Technologiebeleid	
	Central Financial Entities	Centrale Financiën Instellingen	
	Inspection of Education	Onderwijsinspectie	
	National Institute for Ancient Monuments	Rijksdienst voor de Monumentenzorg	
	National Institute for Archeological Soil Exploration	Rijksdienst Oudheidkundig Bodemonderzoek	
	Council for Cultural Heritage	Raad voor Cultuur	
10.	MINISTRY OF SOCIAL AFFAIRS AND EMPLOYMENT	MINISTERIE VAN SOCIALE ZAKEN EN WERKGELEGENHEID	
11.	MINISTRY OF TRANSPORT, PUBLIC WORKS AND WATER MANAGEMENT	MINISTERIE VAN VERKEER EN WATERSTAAT	
	Directorate-General for Civil Aviation	Directoraat-Generaal Rijksluchtvaartdienst	
	Directorate-General for Navigation and Maritime Affairs	Directoraat-Generaal Scheepvaart en Maritieme Zaken	
	Directorate-General for Transport	Directoraat-Generaal Vervoer	
	Directorate-General for Public Works and Water Management	Directoraat-Generaal Rijkswaterstaat	
	Telecommunications and Post Department	Hoofddirectie Telecommunicatie en Post	
	Royal Netherlands Meteorological Institute	Koninklijk Nederlands Meteorologisch Instituut	
	Central Services	Centrale Diensten	
	The individual regional directories of Water Management	De afzonderlijke regionale directies van Rijkswaterstaat	
	The individual specialised services of Water Management	De afzonderlijke specialistische diensten van Rijkswaterstaat	
	Service for Construction	Bouwdienst	
	Geometric Service	Meetkundige dienst	
	Advisory Council for Traffic and Transport	Adviesdienst Verkeer en Vervoer	
	National Institute for Coastal and Marine Management	Rijksinstituut voor Kust en Zee	
	National Institute for Sweet Water Management and Waste Water Treatment	Rijksinstituut voor Integraal Zoetwaterbeheer en Afvalwaterbehandeling	

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12.	MINISTRY OF HOUSING, PHYSICAL PLANNING AND ENVIRONMENT	MINISTERIE VAN VOLKSHUISVESTING, RUIMTELIJKE ORDENING EN MILIEUBEHEER	
	Directorate-General for Environment Management	Directoraat-Generaal Milieubeheer	
	Directorate-General for Public Housing	Directoraat-Generaal van de Volkshuisvesting	
	Government Buildings Agency	Rijksgebouwendienst	
	National Physical Planning Agency	Rijksplanologische Dienst	
13.	MINISTRY OF WELFARE, HEALTH AND CULTURAL AFFAIRS	MINISTERIE VAN VOLKSGEZONDHEID, WELZIJN EN SPORT	
	Inspection Health Protection	Inspectie Gezondheidsbescherming	
	Inspection Public Health	Inspectie Gezondheidszorg	
	Veterinary Inspection	Veterinaire Inspectie	
	Inspectorate for Child and Youth Care and Protection Services	Inspectie Jeugdhulpverlening en Jeugdbescherming	
	National Institute of Public Health and Environmental Protection	Rijksinstituut voor de Volksgezondheid en Milieuhygiëne (RIVM)	
	Social and Cultural Planning Office	Sociaal en Cultureel Planbureau	
	Agency to the College for Assessment of Pharmaceuticals	Agentschap t.b.v. het College ter Beoordeling van Geneesmiddelen	
14.	SECOND CHAMBER OF THE STATES GENERAL	TWEEDE KAMER DER STATEN-GENERAAL	
15.	FIRST CHAMBER OF THE STATES GENERAL	EERSTE KAMER DER STATEN-GENERAAL	
16.	CABINET FOR NETHERLANDS ANTILLEAN AND ARUBAN AFFAIRS	KABINET VOOR NEDERLANDS- ANTILLIAANSE EN ARUBAANSE ZAKEN	
17.	COUNCIL OF STATE	RAAD VAN STATE	
18.	NETHERLANDS COURT OF AUDIT	ALGEMENE REKENKAMER	
19.	NATIONAL OMBUDSMAN	NATIONALE OMBUDSMAN	
20.	CHANCELLERY OF THE NETHERLANDS ORDER	KANSELARIJ DER NEDERLANDSE ORDEN	
21.	THE QUEEN'S CABINET	KABINET DER KONINGIN	

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(Authentic in the English language only)

1.	<p>PRIME MINISTER'S OFFICE</p> <p>Secretariat-General, Prime Minister's Office</p> <p>High Commissioner for Immigration and Ethnic Minorities</p> <p>High Commissioner for the Questions on Equality Promotion and Family</p> <p>Legal Centre</p> <p>Government Computer Network Management Centre</p> <p>Commission for Equality and Women's Rights</p> <p>Economic and Social Council</p> <p>High Council on Administration and Civil Service</p> <p>Ministerial Department on Planning, Studies and Support</p> <p>Ministerial Department with Special Responsibility for Macao</p> <p>Ministerial Department responsible for Community Service by Conscientious Objectors</p> <p>Ministerial Department for European Affairs</p> <p>Secretariat for Administrative Modernization</p> <p>High Council on Sports</p>	<p>PRESIDÊNCIA DO CONSELHO DE MINISTROS</p> <p>Secretaria-Geral da Presidência do Conselho de Ministros</p> <p>Alto Comissário para a Imigração e Minorias Étnicas</p> <p>Alto Comissário para as Questões da Promoção da Igualdade e da Família</p> <p>Centro Juridico-CEJUR</p> <p>Centro de Gestão da Rede Informática do Governo</p> <p>Comissão para a Igualdade e para os Direitos das Mulheres</p> <p>Conselho Económico e Social</p> <p>Conselho Superior da Administração e da Função Pública</p> <p>Gabinete de Apoio, Estudos e Planeamento</p> <p>Gabinete de Macau</p> <p>Gabinete do Serviço Cívico e dos Objectores de Consciência</p> <p>Gabinete dos Assuntos Europeus</p> <p>Secretariado para a Modernização Administrativa</p> <p>Conselho Superior do Desporto</p>
2.	<p>MINISTRY OF HOME AFFAIRS</p> <p>Secretariat-General</p> <p>Legal Service</p> <p>Directorate-General for Roads</p> <p>Ministerial Department responsible for Studies and Planning</p>	<p>MINISTÉRIO DA ADMINISTRAÇÃO INTERNA</p> <p>Secretaria-Geral</p> <p>Auditoria Jurídica</p> <p>Direcção-Geral de Viação</p> <p>Gabinete de Estudos e Planeamento de Instalações</p>

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	Ministerial Department for European Affairs	Gabinete dos Assuntos Europeus	
	National Fire Service	Gabinete Nacional Sirene	
	Republican National Guard	Guarda Nacional Republicana	
	Civilian Administrations	Governos Civis	
	Police	Polícia de Segurança Pública	
	General Inspectorate on Internal Administration	Inspecção-Geral da Administração Interna	
	Technical Secretariat for Electoral Matters	Secretariado técnico dos Assuntos para e Processo Eleitoral	
	Customs and Immigration Department	Serviço de Estrangeiros e Fronteiras	
	Intelligence and Security Department	Serviço de Informações de Segurança	
3.	MINISTRY OF AGRICULTURE, OF RURAL DEVELOPMENT AND FISHERIES	MINISTÉRIO DA AGRICULTURA, DO DESENVOLVIMENTO RURAL E DAS PESCAS	
	Secretariat-General	Secretaria-Geral	
	Legal Service	Auditoria Jurídica	
	Environment Audit Office	Auditor do Ambiente	
	National Council of Agriculture, Rural Development and Fisheries	Conselho Nacional da Agricultura, do Desenvolvimento Rural et das Pescas	
	Directorate-General for Forests	Direcção-Geral das Florestas	
	Directorate-General for Fisheries and Agriculture	Direcção-Geral das Pescas e Agricultura	
	Directorate-General for Rural Development	Direcção-Geral do Desenvolvimento Rural	
	Directorate-General for Control of Food Quality	Direcção-Geral de Fiscalização e Controlo da Qualidade Alimentar	
	Institute for Hydraulic questions, Rural Engineering and Environment	Instituto de Hidráulica, Engenharia Rural e Ambiente	
	Directorate-General for Culture Protection	Direcção-Geral de Protecção das Culturas	
	Directorate-General of Veterinary	Direcção-Geral de Veterinária	
	Regional Directorates for Agriculture (7)	Direcções Regionais de Agricultura (7)	
	Ministerial Department for Planning and Agri-food Policy	Gabinete de Planeamento e Política Agroalimentar	
	General Inspectorate and Audit Office (Management Audits)	Inspecção-Geral e Auditoria de Gestão	
	General Inspectorate for fisheries	Inspecção-Geral das Pescas	
	Equestrian National Service	Serviço Nacional Coudêlico	

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	National Laboratory for Veterinary Research	Laboratório Nacional de Investigação Veterinária	
4.	<p>MINISTRY OF THE ENVIRONMENT</p> <p>Secretariat-General</p> <p>Directorate-General for Environment</p> <p>Regional Directorates for Environment (5)</p>	<p>MINISTÉRIO DO AMBIENTE</p> <p>Secretaria-Geral</p> <p>Direcção-Geral do Ambiente</p> <p>Direcções Regionais do Ambiente (5)</p>	
5.	<p>MINISTRY OF SCIENCE AND TECHNOLOGY</p> <p>Secretariat-General</p> <p>Legal Service</p> <p>High Council for Science and Technology</p> <p>Ministerial Department for Scientific Policy and Technology</p>	<p>MINISTÉRIO DA CIÊNCIA E DA TECNOLOGIA</p> <p>Secretaria-Geral</p> <p>Auditoria Jurídica</p> <p>Conselho Superior da Ciência e Tecnologia</p> <p>Gabinete coordenador da Política Científica e Tecnologia</p>	
6.	<p>MINISTRY OF CULTURE</p> <p>Secretariat-General</p> <p>Regional Directorates for Culture (6)</p> <p>Ministerial Department for International Relations</p> <p>Ministerial Department for Copyright</p> <p>General Inspectorate for Cultural Activities</p>	<p>MINISTÉRIO DA CULTURA</p> <p>Secretaria-Geral</p> <p>Delegações Regionais da Cultura (6)</p> <p>Gabinete das Relações Internacionais</p> <p>Gabinete do Direito de Autor</p> <p>Inspecção-Geral das Actividades Culturais</p>	
7.	<p>MINISTRY OF DEFENCE</p> <p>Secretariat-General of the Ministry of Defence</p> <p>Legal Service</p> <p>Directorate-General for the Navy</p> <p>Directorate-General for Armaments and Defence Equipments</p> <p>Directorate-General for Infrastructure</p> <p>Directorate-General for Personnel</p> <p>Directorate-General for National Defence Policy</p> <p>National Security Authority</p> <p>General-Inspectorate of Armed Forces</p> <p>National Defence Institute</p>	<p>MINISTÉRIO DA DEFESA NACIONAL</p> <p>Secretaria-Geral do Ministério da Defesa Nacional</p> <p>Auditoria Jurídica</p> <p>Direcção-Geral da Marinha</p> <p>Direcção-Geral de Armamento e Equipamento de Defesa</p> <p>Direcção-Geral de Infra-Estruturas</p> <p>Direcção-Geral de Pessoal</p> <p>Direcção-Geral de Política de Defesa Nacional</p> <p>Autoridade Nacional de Segurança</p> <p>Inspecção-Geral das Forças Armadas</p> <p>Instituto da Defesa Nacional</p>	

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	Council of Defence Science and Technology	Conselho de Ciência et Tecnologia da Defesa	
	Council of Chiefs of Staff	Conselho da Chefes de Estado Maior	
	Military Police	Polícia Judiciária Militar	
	Maritime Authority System	Sistema de Autoridade Marítima	
	Hydrographic Institute	Instituto Hidrográfico	
	Alfeite Arsenal	Arsenal do Alfeite	
	Chief of Staff of the Armed Forces	Estado Maior General das Forças Armadas	
	Chief of Staff of the Army	Estado Maior do Exército	
	Chief of Staff of the Navy	Estado Maior da Armada	
	Chief of Staff of the Air Force	Estado Maior da Força Aérea	
	Commission on International Law of the Sea	Comissão do Direito Marítimo Internacional	
	Defence and Military Information Service	Serviço de Informações de Defesa e Militares	
	Portuguese Commission of Military History	Comissão Portuguesa da História Militar	
8.	MINISTRY OF ECONOMY	MINISTÉRIO DA ECONOMIA	
	Secretariat-General	Secretaria-Geral	
	Commission for the Imposition of Sanctions in Advertising Matters	Comissão de Aplicação de Coimas em Matéria de Publicidade	
	Commission for Emergency Energy Planning	Comissão de Planeamento Energético de Emergência	
	Commission for Emergency Industrial Planning	Comissão de Planeamento Industrial de Emergência	
	Council of Competition	Conselho da Concorrência	
	Council of Financial Securities	Conselho de Garantias Financeiras	
	Sectoral Councils for Industry, Construction, Energy, Trade and Tourism	Conselhos Sectoriais da Indústria, da Construção, da Energia, do Comércio e do Turismo	
	National Council of Quality	Conselho Nacional da Qualidade	
	Directorate-General for Trade and Competition	Direcção-Geral do Comércio e da Concorrência	
	Directorate-General for Energy	Direcção-Geral da Energia	
	Directorate-General for Industry	Direcção-Geral da Indústria	
	Directorate-General for Tourism	Direcção-Geral do Turismo	
	Regional Delegations	Delegações Regionais	
	Ministerial Department for Studies and Economic Prospective	Gabinete de Estudos e Prospectiva Económica	
	Directorate-General for International Economic Relations	Direcção-Geral das Relações Económicas Internacionais	

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	General Inspectorate for Economic Activities	Inspeção-Geral das Actividades Económicas	
	General Inspectorate for Gambling	Inspeção-Geral de Jogos	
	Council for the Economic Development	Conselho para o Desenvolvimento Económico	
9.	MINISTRY OF EDUCATION	MINISTÉRIO DA EDUCAÇÃO	
	Secretariat-General	Secretaria-Geral	
	Social Security Fund	Caixa da Previdência	
	Education National Council	Conselho Nacional de Educação	
	Council of Directors-General	Conselho de Directores Gerais	
	Department for Primary Education	Departamento de Educação Básica	
	Department for Educational Resources Management	Departamento de Gestão dos Recursos Educativos	
	Department for Secondary Education	Departamento do Ensino Secundário	
	Department for Higher Education	Departamento do Ensino Superior	
	Regional Directorates for Education (5)	Direcções Regionais de Educação (5)	
	University Stadium of Lisbon	Estádio Universitário de Lisboa	
	Nursery, Primary and Secondary Education Establishments	Estabelecimentos de Educação Pré-Escolar e dos Ensinos Básico e Secundário	
	Ministerial Department of Scholar Sport	Gabinete Coordenador do Desporto Escolar	
	Ministerial Department of European Affairs and International Relations	Gabinete dos Assuntos Europeus e Relações Internacionais	
	General Inspectorate of Education	Inspeção-Geral da Educação	
	Ministerial Department for Financial Management	Gabinete de Gestão Financeira	
	Ministerial Department for Prospective and Planning	Departamento de Avaliação, Prospectiva e Planeamento	
10.	MINISTRY OF EQUIPMENT, PLANNING, AND TERRITORIAL ADMINISTRATION	MINISTÉRIO DO EQUIPAMENTO, DO PLANEAMENTO E DA ADMINISTRAÇÃO DO TERRITÓRIO	
	Secretariat-General	Secretaria-Geral	
	Legal Service	Auditoria Jurídica	
	Environment Service	Auditoria Ambiental	
	Commission for Support to Rehabilitation of the Territorial Administration	Comissão de Apoio à Reestruturação da Administração do Território	
	Regional Coordination Committees	Comissões de Coordenação Regional	
	Commission for Planning of Emergency Maritime Transport	Comissão de Planeamento do Transporte Marítimo de Emergência	

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	<p>Council for Public and Particular Works Contracts</p> <p>High Council for Telecommunications</p> <p>Department for Prospective and Planning</p> <p>Directorate General for Autarquic Administration</p> <p>Directorate General for Civil Aviation</p> <p>Directorate General for Ports, Navigation and Maritime Transport</p> <p>Directorate General for Regional Development</p> <p>Directorate General for Territorial Planning and Urban Development</p> <p>Directorate General for National Buildings and Monuments</p> <p>Directorate General for Land Transport</p> <p>Ministerial Department for Investment Coordination</p> <p>Ministerial Department for European Issues and External Relations</p> <p>General Inspectorate of the Ministry of Equipment, Planning and Territorial Administration</p> <p>High Council for Public Works and Transport</p>	<p>Conselho de Mercados de Obras Públicas e Particulares</p> <p>Conselho Superior de Telecomunicações</p> <p>Departamento de Prospectiva e Planeamento</p> <p>Direcção-Geral da Administração Autárquica</p> <p>Direcção-Geral da Aviação Civil</p> <p>Direcção-Geral de Portos, Navegação e Transportes Marítimos</p> <p>Direcção-Geral do Desenvolvimento Regional</p> <p>Direcção-Geral do Ordenamento do território e do Desenvolvimento Urbano</p> <p>Direcção-Geral dos Edifícios e Monumentos Nacionais</p> <p>Direcção-Geral dos Transportes Terrestres</p> <p>Gabinete de Coordenação dos Investimentos e do Financiamento</p> <p>Gabinete para os Assuntos Europeus e Relações Externas</p> <p>Inspecção-Geral do Ministério do Equipamento, do Planeamento e da Administração do Território</p> <p>Conselho Superior de Obras Públicas e Transportes</p>	
11.	<p>MINISTRY OF FINANCE</p> <p>Secretariat-General</p> <p>Directorate-General for Customs and Special Taxes on Consumption</p> <p>Directorate-General for European Studies and International Relations</p> <p>Directorate-General for Studies</p> <p>Directorate-General for Informatics and Support to Taxation and Customs Services</p> <p>Directorate-General for the Protection of Civil Servants-ADSE</p> <p>Directorate-General for the Budget</p> <p>Directorate-General of Patrimony</p> <p>Directorate-General for the Treasury</p>	<p>MINISTÉRIO DAS FINANÇAS</p> <p>Secretaria-Geral</p> <p>Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o consumo</p> <p>Direcção-Geral de Assuntos Europeus e Relações Internacionais</p> <p>Direcção-Geral de Estudos e Previsão</p> <p>Direcção-Geral de Informática e Apoio aos Serviços Tributários e Aduaneiros</p> <p>Direcção-Geral de Protecção Social aos Funcionários e Agentes de Administração Pública-ADSE</p> <p>Direcção-Geral do Orçamento</p> <p>Direcção-Geral do Património</p> <p>Direcção-Geral do Tesouro</p>	

Directorate-General for Taxation	Direcção-Geral dos Impostos
General Inspectorate for Finance	Inspeção-Geral de Finanças
Institute for Information Technology	Instituto de Informática
Customs Stabilization Fund	Fundo de Estabilização Aduaneiro
Taxation Stabilization Fund	Fundo de Estabilização Tributário
Public Debt Regularization Fund	Fundo de Regularização da Dívida Pública
12. MINISTRY OF JUSTICE	MINISTÉRIO DA JUSTIÇA
Secretariat-General	Secretaria-Geral
Legal Service	Auditoria Jurídica
Directorate-General for Fighting Against Corruption, Fraud and Economic-Financial Infractions	Direcção Central para o Combate à Corrupção, Fraudes e Infracções Económico-Financeiras
Directorate-General for Registers and Other Official Documents	Direcção-Geral dos Registos e Notariado
Directorate-General for Computerized Services	Direcção-Geral dos Serviços de Informática
Directorate-General for Judiciary Services	Direcção-Geral dos Serviços Judiciários
Directorate-General for the Prison Service	Direcção-Geral dos Serviços Prisionais
Directorate-General for the Protection and Care of Minors Prison Establishments	Direcção-Geral dos Serviços Tutelares de Menores
Ministerial Department responsible for European Law	Gabinete de Direito Europeu
Ministerial Department responsible for Documentation and Comparative Law	Gabinete de Documentação e Direito Comparado
Ministerial Department responsible for Studies and Planning	Gabinete de Estudos e Planeamento
Ministerial Department responsible for Financial Management	Gabinete de Gestão Financeira
Ministerial Department responsible for Planning and Coordinating Drug Control	Gabinete de Planeamento e Coordenação do Combate à Droga
Criminal Investigation Department	Polícia Judiciária
Social Services	Serviços Sociais
National Police and Forensic Science Institute	Instituto Nacional de Polícia e Ciências Criminais
Forensic Medicine Institutes	Serviços Médico-Legais
Legal Courts	Tribunais Judiciais
The High Council of the Judiciary	Conselho Superior de Magistratura
Public Prosecutor office	Ministério Público

APPENDIX I	EUROPEAN COMMUNITY: PORTUGAL	ANNEX 1	Page 36/70
13.	<p>MINISTRY OF FOREIGN AFFAIRS</p> <p>Secretariat-General</p> <p>Legal Affairs Department</p> <p>Interministerial Commission for Cooperation</p> <p>Interministerial Commission for Community Affairs</p> <p>Interministerial Commission for Migration and Portuguese Communities</p> <p>Council of Portuguese Communities</p> <p>Directorate-General for Bilateral Relations</p> <p>Directorate-General for Foreign Policy</p> <p>Directorate-General for Community Affairs</p> <p>Directorate-General for Consular Affairs and Portuguese Communities</p> <p>Directorate-General for Multilateral Affairs</p> <p>Ministerial Department for Information and Press</p> <p>Diplomatic and Consular Inspectorate</p> <p>Diplomatic Institute</p>	<p>MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS</p> <p>Secretaria-Geral</p> <p>Departamento dos Assuntos Jurídicos</p> <p>Comissão Interministerial para a cooperação</p> <p>Comissão Interministerial para os Assuntos Comunitários</p> <p>Comissão Interministerial as Migrações e Comunidades Portuguesas</p> <p>Conselho das Comunidades Portuguesas</p> <p>Direcção-Geral das Relações Bilaterais</p> <p>Direcção-Geral de Política Externa</p> <p>Direcção-Geral dos Assuntos Comunitários</p> <p>Direcção-Geral dos Assuntos Consulares e Comunidades Portuguesas</p> <p>Direcção-Geral dos Assuntos Multilaterais</p> <p>Gabinete de Informação e Imprensa</p> <p>Inspecção Diplomática e Consular</p> <p>Instituto Diplomático</p>	
14.	<p>MINISTRY FOR QUALIFICATION AND EMPLOYMENT</p> <p>Secretariat-General</p> <p>Interministerial Commission for Employment</p> <p>National Council for Health and Safety in the workplace</p> <p>Statistics Department</p> <p>Studies and Planning Department</p> <p>European Social Fund Department</p> <p>Department of European Affairs and External Relations</p> <p>Directorate-General for Employment and Vocational Training</p>	<p>MINISTÉRIO PARA A QUALIFICAÇÃO E O EMPREGO</p> <p>Secretaria-Geral</p> <p>Comissão Interministerial para o Emprego</p> <p>Conselho Nacional de Higiene e Segurança no Trabalho</p> <p>Departamento de Estatística</p> <p>Departamento de Estudos e Planeamento</p> <p>Departamento para os Assuntos do Fundo Social Europeu</p> <p>Departamento para os Assuntos Europeus e Relações Externas</p> <p>Direcção-Geral do Emprego e Formação Profissional</p>	

	Directorate-General for Labour Conditions Legal Department Centre for Scientific and Technical Information	Direcção-Geral das Condições de Trabalho Gabinete Jurídico Centro de Informação Científica e Técnica
15.	MINISTRY OF HEALTH Secretariat-General Department for Studies and Health Planning Health Human Resource Department Directorate-General for Health Installations & Equipment Directorate-General for Health General Inspectorate of Health Institutes of General Clinics National Health Council	MINISTÉRIO DA SAÚDE Secretaria-Geral Departamento de Estudos e Planeamento da Saúde Departamento de Recursos Humanos da Saúde Direcção-Geral das instalações e Equipamentos da Saúde Direcção-Geral da Saúde Inspeção-Geral da Saúde Institutos de Clínica Geral Conselho Nacional de Saúde
16.	MINISTRY OF SOLIDARITY AND SOCIAL SECURITY Secretariat-General National Council for Social Economy National Council for third-age policy National Council for Rehabilitation and Integration of Dissable People Department of Statistics, Studies and Planning Ministerial Department for European Affairs and International Relations Directorate-General for Social Works Directorate-General for Social Security Schemes General Inspectorate for Social Security Social Observatory	MINISTÉRIO DA SOLIDARIEDADE E SEGURANÇA SOCIAL Secretaria-Geral Conselho Nacional para a Economia Social Conselho Nacional para a Política de Terceira Idade Conselho nacional para a Reabilitação e Integração das pessoas com Deficiência Departamento de Estatística, Estudos e Planeamento Gabinete de Assuntos Europeus e de Relações Internacionais Direcção-Geral da Acção Social Direcção-Geral dos Regimes de Segurança Social Inspeção-Geral da Segurança Social Observatório Social
17.	PRESIDENCY OF THE REPUBLIC Secretariat-General of the Presidency of the Republic	PRESIDÊNCIA DA REPÚBLICA Secretaria-Geral da Presidência da República

- | | | |
|-----|--|--|
| 18. | CONSTITUTIONAL COURT | TRIBUNAL CONSTITUCIONAL |
| 19. | COURT OF AUDITORS
Directorate-General of the Court of
Auditors | TRIBUNAL DE CONTAS
Direcção-Geral do Tribunal de Contas |
| 20. | OMBUDSMAN | PROVEDORIA DE JUSTIÇA |

SWEDEN - SUÈDE -SUECIA

(Authentic in the English language only)

Royal Academy of Fine Arts	Akademien för de fria konsterna
Public Law-Service Offices (26)	Allmänna advokatbyråerna (26)
National Board for Consumer Complaints	Allmänna reklamationsnämnden
National Board of Occupational Safety and Health	Arbetskyddsstyrelsen
Labour Court	Arbetsdomstolen
National Agency for Government Employers	Arbetsgivarverket
National Institute for Working Life	Arbetslivsinstitutet
National Labour Market Board	Arbetsmarknadsstyrelsen
Board of Occupational Safety and Health for Government Employees	Arbetsmiljönämnd, statliga sektorns
Museum of Architecture	Arkitekturmuseet
National Archive of Recorded Sound and Moving Images	Arkivet för ljud och bild
The Office of the Childrens' Ombudsman	Barnombudsmannen
Swedish Council on Technology Assessment in Health Care	Beredning för utvärdering av medicinsk metodik, statens
Royal Library	Biblioteket, Kungliga
National Board of Film Censors	Biografbyrå, statens
Dictionary of Swedish Biography	Biografiskt lexikon, svenskt
Swedish Accounting Standards Board	Bokföringsnämnden
National Housing Credit Guarantee Board	Bostadskreditnämnd, statens (BKN)
National Housing Board	Boverket
National Council for Crime Prevention	Brottsförebyggande rådet
Criminal Victim Compensation and Support Authority	Brottsoffermyndigheten
Council for Building Research	Byggforskningsrådet
Central Committee for Laboratory Animals	Centrala försöksdjursnämnden
National Board of Student Aid	Centrala studiestödsnämnden
Data Inspection Board	Datainspektionen
Ministries (Government Departments)	Departementen
National Courts Administration	Domstolsverket

APPENDIX I	EUROPEAN COMMUNITY: SWEDEN	ANNEX 1	Page 40/70
National Electrical Safety Board		Elsäkerhetsverket	
Export Credits Guarantee Board		Exportkreditnämnden	
Financial Supervisory Authority		Finansinspektionen	
National Board of Fisheries		Fiskeriverket	
Aeronautical Research Institute		Flygtekniska försöksanstalten	
National Institute of Public Health		Folkhälsoinstitutet	
Council for Planning and Co-ordination of Research		Forskningsrådsnämnden	
National Fortifications Administration		Fortifikationsverket	
		Förhandlare (K 1996:01) för statens köp av färjetrafik till och från Gotland	
National Conciliators' Office		Förlikningsmännaexpedition, statens	
National Defence Research Establishment		Försvarets forskningsanstalt	
Defence Material Administration		Försvarets materielverk	
National Defence Radio Institute		Försvarets radioanstalt	
Swedish Museums of Military History		Förvarshistoriska museer, statens	
National Defence College		Förvarshögskolan	
The Swedish Armed Forces		Förvarsmakten	
Social Insurance Offices		Försäkringskassorna	
Geological Survey of Sweden		Geologiska undersökning, Sveriges	
Geotechnical Institute		Geotekniska institut, statens	
The National Rural Development Agency		Glesbygdsverket	
Graphic Institute and the Graduate School of Communications		Grafiska institutet och institutet för högre kommunikations- och reklamutbildning	
The Swedish Broadcasting Commission		Granskningsnämnden för Radio och TV	
Swedish Government Seamen's Service		Handelsflottans kultur- och fritidsråd	
Ombudsman for the Disabled		Handikappombudsmannen	
Board of Accident Investigation		Haverikommission, statens	
Courts of Appeal (6)		Hovrätterna (6)	
Council for Research in the Humanities and Social Sciences		Humanistisk-samhällsvetenskapliga forskningsrådet	
Regional Rent and Tenancies Tribunals (12)		Hyres- och arendenämnder (12)	
Remand Prisons (28)		Häkterna (28)	
Committee on Medical Responsibility		Hälso- och sjukvårdens ansvarsnämnd	
National Agency for Higher Education		Högskoleverket	
Supreme Court		Högsta domstolen	

Register Authority for Floating Charges	Inskrivningsmyndigheten för företagsinteckningar
National Institute for Psycho-Social Factors and Health	Institut för psykosocial miljömedicin, statens
National Institute for Regional Studies	Institut för regionalforskning, statens
Swedish Institute of Space Physics	Institutet för rymdfysik
Swedish Immigration Board	Invandrarverk, statens
Swedish Board of Agriculture	Jordbruksverk, statens
Office of the Chancellor of Justice	Justitiekanslern
Office of the Equal Opportunities Ombudsman	Jämställdhetsombudsmannen
National Judicial Board of Public Lands and Funds	Kammarkollegiet
Administrative Courts of Appeal (4)	Kammarrätterna (4)
National Chemicals Inspectorate	Kemikalieinspektionen
National Board of Trade	Kommerskollegium
Swedish Transport and Communications Research Board	Kommunikationsforskningsberedningen
National Franchise Board for Environment Protection	Koncessionsnämnden för miljöskydd
National Institute of Economic Research	Konjunkturinstitutet
Swedish Competition Authority	Konkurrensverket
College of Arts, Crafts and Design	Konstfack
College of Fine Arts	Konsthögskolan
National Art Museums	Konstmuseer, statens
Arts Grants Committee	Konstnärnsnämnden
National Art Council	Konstråd, statens
National Board for Consumer Policies	Konsumentverket
Armed Forces Archives	Krigsarkivet
National Laboratory of Forensic Science	Kriminaltekniska laboratorium, statens
Correctional Regional Offices (6)	Kriminalvårdens regionkanslier (6)
National/Local Institutions (68)	Kriminalvårdsanstalterna (68)
National Paroles Board	Kriminalvårdsnämnden
National Prison and Probation Administration	Kriminalvårdsstyrelsen
Enforcement Services (24)	Kronofogdemyndigheterna (24)
National Council for Cultural Affairs	Kulturråd, statens
Swedish Coast Guard	Kustbevakningen
Nuclear-Power Inspectorate	Kärnkraftsinspektion, statens

APPENDIX I	EUROPEAN COMMUNITY: SWEDEN	ANNEX 1	Page 42/70
National Land Survey		Lantmäteriverket	
Royal Armoury		Livrustkammaren/Skoklosters slott/ Hallwylska museet	
National Food Administration		Livsmedelsverk, statens	
The National Gaming Board		Lotteriinspektionen	
Medical Products Agency		Läkemedelsverket	
County Labour Boards (24)		Länsarbetsnämnderna (24)	
County Administrative Courts (24)		Länsrätterna (24)	
County Administrative Boards (24)		Länsstyrelserna (24)	
National Government Employee Salaries and Pensions Board		Löne- och pensionsverk, statens	
Market Court		Marknadsdomstolen	
Medical Research Council		Medicinska forskningsrådet	
Swedish Meteorological and Hydrological Institute		Meteorologiska och hydrologiska institut, Sveriges	
Armed Forces Staff and War College		Militärhögskolan	
Swedish National Collections of Music		Musiksamlingar, statens	
Museum of Natural History		Naturhistoriska riksmuseet	
Natural Science Research Council		Naturvetenskapliga forskningsrådet	
National Environmental Protection Agency		Naturvårdsverket	
Scandinavian Institute of African Studies		Nordiska Afrikainstitutet	
Nordic School of Public Health		Nordiska hälsovårdshögskolan	
Nordic Institute for Studies in Urban and Regional Planning		Nordiska institutet för samhällsplanering	
Nordic Museum		Nordiska museet, stiftelsen	
Swedish Delegation of the Nordic Council		Nordiska rådets svenska delegation	
Recorders Committee		Notariennämnden	
National Board for Intra Country Adoptions		Nämnden för internationella adoptionsfrågor	
National Board for Public Procurement		Nämnden för offentlig upphandling	
National Fund for Administrative Development		Statens förnyelsefond	
Swedish National Committee for Contemporary Art Exhibitions Abroad		Nämnden för utställning av nutida svensk konst i utlandet	
National Board for Industrial and Technical Development		Närings- och teknikutvecklingsverket (NUTEK)	

Office of the Ethnic Discrimination Ombudsman; Advisory Committee on Questions Concerning Ethnic Discrimination	Ombudsmannen mot etnisk diskriminering; nämnden mot etnisk diskriminering
Court of Patent Appeals	Patentbesvärsrätten
Patents and Registration Office	Patent- och registreringsverket
Co-ordinated Population and Address Register	Person- och adressregisternämnd, statens
Swedish Polar Research Secretariat	Polarforskningssekretariatet
Press Subsidies Council	Presstödsnämnden
National Library for Psychology and Education	Psykologisk-pedagogiska bibliotek, statens
The Swedish Radio and TV Authority	Radio- och TV-verket
Governmental Central Services Office	Regeringskansliets förvaltningsavdelning
Supreme Administrative Court	Regeringsrätten
Central Board of National Antiquities and National Historical Museums	Riksantikvarieämbetet och statens historiska museer
National Archives	Riksarkivet
Bank of Sweden	Riksbanken
Administration Department of the Swedish Parliament	Riksdagens förvaltningskontor
The Parliamentary Ombudsmen	Riksdagens ombudsmän, JO
The Parliamentary Auditors	Riksdagens revisorer
National Social Insurance Board	Riksförsäkringsverket
National Debt Office	Riksgäldskontoret
National Police Board	Rikspolisstyrelsen
National Audit Bureau	Riksrevisionsverket
National Tax Board	Riksskatteverket
Travelling Exhibitions Service	Riksutställningar, Stiftelsen
Office of the Prosecutor-General	Riksåklagaren
National Space Board	Rymdstyrelsen
Council for Working Life Research	Rådet för arbetslivsforskning
National Rescue Services Board	Räddningsverk, statens
Regional Legal-aid Authority	Rättshjälpsmyndigheten
National Board of Forensic Medicine	Rättsmedicinalverket
Sami (Lapp) School Board	Sameskolstyrelsen och sameskolor
Sami (Lapp) Schools	
National Maritime Administration	Sjöfartsverket

APPENDIX I	EUROPEAN COMMUNITY: SWEDEN	ANNEX 1	Page 44/70
National Maritime Museums		Sjöhistoriska museer, statens	
Local Tax Offices (24)		Skattemyndigheterna (24)	
Swedish Council for Forestry and Agricultural Research		Skogs- och jordbrukets forskningsråd, SJFR	
National Board of Forestry		Skogsstyrelsen	
National Agency for Education		Skolverk, statens	
Swedish Institute for Infectious Disease Control		Smittskyddsinstitutet	
National Board of Health and Welfare		Socialstyrelsen	
Swedish Council for Social Research		Socialvetenskapliga forskningsrådet	
National Inspectorate of Explosives and Flammables		Sprängämnesinspektionen	
Statistics Sweden		Statistiska centralbyrån	
Agency for Administrative Development		Statskontoret	
National Institute of Radiation Protection		Strålskyddsinstitut, statens	
Swedish International Development Cooperation Authority		Styrelsen för internationellt utvecklings-samarbete, SIDA	
National Board of Psychological Defence and Conformity Assessment		Styrelsen för psykologiskt försvar	
Swedish Board for Accreditation		Styrelsen för ackreditering och teknisk kontroll	
Swedish Institute		Svenska Institutet, stiftelsen	
Library of Talking Books and Braille Publications		Talboks- och punktskriftsbiblioteket	
Swedish Research Council for Engineering Sciences		Teknikvetenskapliga forskningsrådet	
National Museum of Science and Technology		Tekniska museet, stiftelsen	
District and City Courts (97)		Tingsrätterna (97)	
Judges Nomination Proposal Committee		Tjänsteförslagsnämnden för domstolsväsendet	
Armed Forces' Enrolment Board		Totalförsvarets pliktverk	
Swedish Board of Customs		Tullverket	
Swedish Tourist Authority		Turistdelegationen	
The National Board of Youth Affairs		Ungdomsstyrelsen	
Universities and University Colleges		Universitet och högskolor	
Aliens Appeals Board		Utlänningsnämnden	
National Seed Testing and Certification Institute		Utsädeskontroll, statens	
National Water Supply and Sewage Tribunal		Vatten- och avloppsnämnd, statens	

National Agency for Higher Education	Verket för högskoleservice (VHS)
National Veterinary Institute	Veterinärmedicinska anstalt, statens
Swedish National Road and Transport Research Institute	Väg- och transportforskningsinstitut, statens
National Plant Variety Board	Växsortnämnd, statens
Labour Inspectorate	Yrkesinspektionen
Public Prosecution Authorities incl. County Public Prosecution Authority and District Prosecution Authority	Åklagarmyndigheterna inkl. läns- och distriktsåklagarmyndigheterna
National Board of Civil Emergency Preparedness	Överstyrelsen för civil beredskap

UNITED KINGDOM - ROYAUME-UNI - REINO UNIDO

(Authentic in the English language only)

1. CABINET OFFICE
Civil Service College
Office of Public Services
The Buying Agency
Parliamentary Counsel Office
Central Comuter and Telecommunications Agency (CCTA)
2. CENTRAL OFFICE OF INFORMATION
3. CHARITY COMMISSION
4. CROWN PROSECUTION SERVICE
5. CROWN ESTATE COMMISSIONERS (VOTE EXPENDITURE ONLY)
6. CUSTOMS AND EXCISE DEPARTMENT
7. DEPARTMENT FOR INTERNATIONAL DEVELOPMENT
8. DEPARTMENT FOR NATIONAL SAVINGS
9. DEPARTMENT FOR EDUCATION AND EMPLOYMENT
Higher Education Funding Council for England
Office of Manpower Economics
10. DEPARTMENT OF HEALTH
Central Council for Education and Training in Social Work
Dental Practice Board
English National Board for Nursing, Midwifery and Health Visitors
National Health Service Authorities and Trusts
Prescription Pricing Authority
Public Health Laboratory Service Board
U.K. Central Council for Nursing, Midwifery and Health Visiting
11. DEPARTMENT OF NATIONAL HERITAGE
British Library
British Museum

Historic Buildings and Monuments Commission for England (English Heritage)
 Imperial War Museum
 Museums and Galleries Commission
 National Gallery
 National Maritime Museum
 National Portrait Gallery
 Natural History Museum
 Royal Commission on Historical Manuscripts
 Royal Commission on Historical Monuments of England
 Royal Fine Art Commission (England)
 Science Museum
 Tate Gallery
 Victoria and Albert Museum
 Wallace Collection

12. DEPARTMENT OF SOCIAL SECURITY

Medical Boards and Examining Medical Officers (War Pensions)
 Regional Medical Service
 Independent Tribunal Service
 Disability Living Allowance Advisory Board
 Occupational Pensions Board
 Social Security Advisory Committee

13. DEPARTMENT OF THE ENVIRONMENT

Building Research Establishment Agency
 Commons Commission
 Countryside Commission
 Valuation tribunal
 Rent Assessment Panels
 Royal Commission on Environmental Pollution

14. DEPARTMENT OF THE PROCURATOR GENERAL AND TREASURY SOLICITOR

Legal Secretariat to the Law Officers

15. DEPARTMENT OF TRADE AND INDUSTRY

National Weights and Measures Laboratory
 Domestic Coal Consumers' Council
 Electricity Committees
 Gas Consumers' Council
 Central Transport Consultative Committees

- Monopolies and Mergers Commission
Patent Office
Employment Appeal Tribunal
Industrial Tribunals
16. DEPARTMENT OF TRANSPORT
Coastguard Services
17. EXPORT CREDITS GUARANTEE DEPARTMENT
18. FOREIGN AND COMMONWEALTH OFFICE
Wilton Park Conference Centre
19. GOVERNMENT ACTUARY'S DEPARTMENT
20. GOVERNMENT COMMUNICATIONS HEADQUARTERS
21. HOME OFFICE
Boundary Commission for England
Gaming Board for Great Britain
Inspectors of Constabulary
Parole Board and Local Review Committees
22. HOUSE OF COMMONS
23. HOUSE OF LORDS
24. INLAND REVENUE, BOARD OF
25. INTERVENTION BOARD FOR AGRICULTURAL PRODUCE
26. LORD CHANCELLOR'S DEPARTMENT
Combined Tax Tribunal
Council on Tribunals
Immigration Appellate Authorities
Immigration Adjudicators
Immigration Appeal Tribunal
Lands Tribunal
Law Commission
Legal Aid Fund (England and Wales)
Pensions Appeal Tribunals
Public Trust Office
Office of the Social Security Commissioners

- Supreme Court Group (England and Wales)
 Court of Appeal – Criminal
 Circuit Offices and Crown, County and Combined Courts (England & Wales)
 Transport Tribunal
27. **MINISTRY OF AGRICULTURE, FISHERIES AND FOOD**
 Agricultural Dwelling House Advisory Committees
 Agricultural Land Tribunals
 Agricultural Wages Board and Committees
 Cattle Breeding Centre
 Plant Variety Rights Office
 Royal Botanic Gardens, Kew
28. **MINISTRY OF DEFENCE¹⁷**
 Meteorological Office
 Procurement Executive
29. **NATIONAL AUDIT OFFICE**
30. **NATIONAL INVESTMENT AND LOANS OFFICE**
31. **NORTHERN IRELAND COURT SERVICE**
 Coroners Courts
 County Courts
 Court of Appeal and High Court of Justice in Northern Ireland
 Crown Court
 Enforcement of Judgements Office
 Legal Aid Fund
 Magistrates Court
 Pensions Appeals Tribunals
32. **NORTHERN IRELAND, DEPARTMENT OF AGRICULTURE**
33. **NORTHERN IRELAND, DEPARTMENT OF ECONOMIC DEVELOPMENT**
34. **NORTHERN IRELAND, DEPARTMENT OF EDUCATION**
35. **NORTHERN IRELAND, DEPARTMENT OF THE ENVIRONMENT**
36. **NORTHERN IRELAND, DEPARTMENT OF FINANCE AND PERSONNEL**

¹⁷ Non-warlike materials contained in Part (3) of this annex

37. NORTHERN IRELAND, DEPARTMENT OF HEALTH AND SOCIAL SERVICES
38. NORTHERN IRELAND OFFICE
 - Crown Solicitor's Office
 - Department of the Director of Public Prosecutions for Northern Ireland
 - Northern Ireland Forensic Science Laboratory
 - Office of Chief Electoral Officer for Northern Ireland
 - Police Authority for Northern Ireland
 - Probation Board for Northern Ireland
 - State Pathologist Service
39. OFFICE OF FAIR TRADING
40. OFFICE FOR NATIONAL STATISTICS
 - National Health Service Central Register
41. OFFICE OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION AND HEALTH SERVICE COMMISSIONERS
42. PAYMASTER GENERAL'S OFFICE
43. POSTAL BUSINESS OF THE POST OFFICE
44. PRIVY COUNCIL OFFICE
45. PUBLIC RECORD OFFICE
46. REGISTRY OF FRIENDLY SOCIETIES
47. ROYAL COMMISSION ON HISTORICAL MANUSCRIPTS
48. ROYAL HOSPITAL, CHELSEA
49. ROYAL MINT
50. SCOTLAND, CROWN OFFICE AND PROCURATOR
 - Fiscal Service
51. SCOTLAND, REGISTERS OF SCOTLAND
52. SCOTLAND, GENERAL REGISTER OFFICE
53. SCOTLAND, LORD ADVOCATE'S DEPARTMENT
54. SCOTLAND, QUEEN'S AND LORD TREASURER'S REMEMBRANCER

55. SCOTTISH COURTS ADMINISTRATION
 Accountant of Court's Office
 Court of Justiciary
 Court of Session
 Lands Tribunal for Scotland
 Pensions Appeal Tribunals
 Scottish Land Court
 Scottish Law Commission
 Sheriff Courts
 Social Security Commissioners' Office
56. THE SCOTTISH OFFICE CENTRAL SERVICES
57. THE SCOTTISH OFFICE AGRICULTURE AND FISHERIES DEPARTMENT:
 Crofters Commission
 Red Deer Commission
 Royal Botanic Garden, Edinburgh
58. THE SCOTTISH OFFICE INDUSTRY DEPARTMENT
59. THE SCOTTISH OFFICE EDUCATION DEPARTMENT
 National Galleries of Scotland
 National Library of Scotland
 National Museums of Scotland
 Scottish Higher Education Funding Council
60. THE SCOTTISH OFFICE ENVIRONMENT DEPARTMENT
 Rent Assessment Panel and Committees
 Royal Commission on the Ancient and Historical Monuments of Scotland
 Royal Fine Art Commission for Scotland
61. THE SCOTTISH OFFICE HOME AND HEALTH DEPARTMENTS
 HM Inspectorate of Constabulary
 Local Health Councils
 National Board for Nursing, Midwifery and Health Visiting for Scotland
 Parole Board for Scotland and Local Review Committees
 Scottish Council for Postgraduate Medical Education
 Scottish Crime Squad
 Scottish Criminal Record Office
 Scottish Fire Service Training School

Scottish National Health Service Authorities and Trusts
Scottish Police College

62. SCOTTISH RECORD OFFICE

63. HM TREASURY

64. WELSH OFFICE

Royal Commission of Ancient and Historical Monuments in Wales
Welsh National Board for Nursing, Midwifery and Health Visiting
Local Government Boundary Commission for Wales
Valuation Tribunals (Wales)
Welsh Higher Education Finding Council
Welsh National Health Service Authorities and Trusts
Welsh Rent Assessment Panels

3.	LIST OF SUPPLIES AND EQUIPMENT PURCHASED BY MINISTRIES OF DEFENCE IN AUSTRIA, BELGIUM, DENMARK, THE FEDERAL REPUBLIC OF GERMANY, SPAIN, FINLAND, FRANCE, GREECE, IRELAND, ITALY, LUXEMBOURG, THE NETHERLANDS, PORTUGAL, SWEDEN AND THE UNITED KINGDOM THAT ARE COVERED BY THE AGREEMENT
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- Chapter 25: Salt, sulphur, earths and stone, plastering materials, lime and cement
- Chapter 26: Metallic ores, slag and ash
- Chapter 27: Mineral fuels, mineral oils and products of their distillation, bituminous substances, mineral waxes
- except:
ex 27.10: special engine fuels (except Austria)
heating and engine fuels (only Austria)
- Chapter 28: Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radio-active elements and isotopes
- except:
ex 28.09: explosives
ex 28.13: explosives
ex 28.14: tear gas
ex 28.28: explosives
ex 28.32: explosives
ex 28.39: explosives
ex 28.50: toxic products
ex 28.51: toxic products
ex 28.54: explosives
- Chapter 29: Organic chemicals
- except:
ex 29.03: explosives
ex 29.04: explosives
ex 29.07: explosives
ex 29.08: explosives
ex 29.11: explosives
ex 29.12: explosives
ex 29.13: toxic products
ex 29.14: toxic products
ex 29.15: toxic products
ex 29.21: toxic products
ex 29.22: toxic products
ex 29.23: toxic products
ex 29.26: explosives

	ex 29.27: toxic products ex 29.29: explosives
Chapter 30:	Pharmaceutical products
Chapter 31:	Fertilizers
Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks
Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations
Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
Chapter 36	Explosives, pyrotechnic products, matches, pyrophoric alloys, certain combustible preparations (only Austria and Sweden) except (only Austria) ex 36.01: propellant powders ex 36.02: prepared explosives ex 36.04: detonators ex 36.08: explosives
Chapter 35:	Albuminoidal substances, glues, enzymes
Chapter 37:	Photographic and cinematographic goods
Chapter 38:	Miscellaneous chemical products except: ex 38.19: toxic products (Not for Sweden)
Chapter 39:	Artificial resins and plastic materials, cellulose esters and ethers, articles thereof except: ex 39.03: explosives (Not for Sweden)
Chapter 40:	Rubber, synthetic rubber, factice, and articles thereof except: ex 40.11: bullet-proof tyres (Not for Sweden)
Chapter 41:	Raw hides and skins (other than furskins) and leather: (Not for Austria)

- Chapter 42: Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silk-worm gut): (Not for Austria)
- Chapter 43: Furskins and artificial fur, manufactures thereof
- Chapter 44: Wood and articles of wood, wood charcoal: (Not for Austria)
- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard, articles of paper pulp, of paper or of paperboard: (Not for Austria)
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans: (Not for Austria)
- Chapter 65: Headgear and parts thereof
except (only Austria):
ex 65.05: military headgear
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware
- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- Chapter 72: Coins (only Austria and Sweden)
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof

- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal, parts thereof
except:
ex 82.05: tools (Not for Austria)
ex 82.07: tools, parts
ex 82.08: hand tools (only Austria)
- Chapter 83: Miscellaneous articles of base metal
- Chapter 84: Boilers, machinery and mechanical appliances, parts thereof
except:
ex 84.06: engines
ex 84.08: other engines
ex 84.45: machinery
ex 84.53: automatic data-processing machines (Not for Austria)
ex 84.55: parts of machines under heading No 84.53 (Not for Austria and Sweden)
ex 84.59: nuclear reactors (Not for Austria and Sweden)
- Chapter 85: Electrical machinery and equipment, parts thereof
except:
ex 85.03: electric cells and batteries (only Austria)
ex 85.13: telecommunication equipment
ex 85.15: transmission apparatus
- Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered)
except:
ex 86.02: armoured locomotives, electric
ex 86.03: other armoured locomotives
ex 86.05: armoured wagons

- ex 86.06: repair wagons
ex 86.07: wagons
- Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof
- except:
ex 87.08: tanks and other armoured vehicles
ex 87.01: tractors
ex 87.02: military vehicles
ex 87.03: breakdown lorries
ex 87.09: motorcycles
ex 87.14: trailers
- Chapter 88: Aircraft and parts thereof (only Austria)
- Chapter 89: Ships, boats and floating structures
- except:
ex 89.01: warships (only Austria)
ex 89.01 A: warships (except Austria)
ex 89.03: floating structures (only Austria)
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof
- except:
ex 90.05: binoculars
ex 90.13: miscellaneous instruments, lasers
ex 90.14: telemeters
ex 90.28: electrical and electronic measuring instruments
ex 90.11: microscopes (Not for Sweden and Austria)
ex 90.17: medical instruments (Not for Sweden and Austria)
ex 90.18: mechano-therapy appliances (Not for Sweden and Austria)
ex 90.19: orthopaedic appliances (Not for Sweden and Austria)
ex 90.20: X-ray apparatus (Not for Sweden and Austria)
- Chapter 91: Clocks and watches and parts thereof
- Chapter 92: Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
- Chapter 94: Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings
- except:
ex 94.01 A: aircraft seats (Not for Austria)
- Chapter 95: Articles and manufactures of carving or moulding material

- Chapter 96: Brooms, brushes, powder-puffs and sieves
- Chapter 97: Toys, games and sport requisites, parts thereof (only Austria and Sweden)
- Chapter 98: Miscellaneous manufactured articles

3.	LISTE DES MATÉRIELS ACHETÉS PAR LES MINISTÈRES DE LA DÉFENSE DE L'AUTRICHE, BELGIQUE, DANEMARK, LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE, ESPAGNE, FINLANDE, FRANCE, GRÈCE, IRLANDE, ITALIE, LUXEMBOURG, PAYS-BAS, PORTUGAL, SUÈDE ET ROYAUME-UNI, ET SOUMIS À L'ACCORD
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Chapitre 25: Sel, soufre, terres et pierres, plâtres, chaux et ciments

Chapitre 26: Minerais métallurgiques, scories et cendres

Chapitre 27: Combustibles minéraux, huiles minérales et produits de leur distillation, matières bitumineuses, cires minérales

à l'exception de:

ex 27.10: carburant spéciaux (sauf pour l'Autriche)

fuel-oils de chauffage et carburants (seulement pour l'Autriche)

Chapitre 28: Produits chimiques inorganiques, composés inorganiques ou organiques de métaux précieux, d'éléments radio-actifs, de métaux des terres rares et d'isotopes

à l'exception de:

ex 28.09: explosifs

ex 28.13: explosifs

ex 28.14: gaz lacrymogènes

ex 28.28: explosifs

ex 28.32: explosifs

ex 28.39: explosifs

ex 28.50: produits toxicologiques

ex 28.51: produits toxicologiques

ex 28.54: explosifs

Chapitre 29: Produits chimiques organiques

à l'exception de:

ex 29.03: explosifs

ex 29.04: explosifs

ex 29.07: explosifs

ex 29.08: explosifs

ex 29.11: explosifs

ex 29.12: explosifs

ex 29.13: produits toxicologiques

ex 29.14: produits toxicologiques

ex 29.15: produits toxicologiques

ex 29.21: produits toxicologiques

ex 29.22: produits toxicologiques

ex 29.23: produits toxicologiques

- ex 29.26: explosifs
ex 29.27: produits toxicologiques
ex 29.29: explosifs
- Chapitre 30: Produits pharmaceutiques
- Chapitre 31: Engrais
- Chapitre 32: Extraits tannants et tinctoriaux, tanins et leur dérivés, matières colorantes, couleurs, peintures, vernis et teintures, mastics, encres
- Chapitre 33: Huiles essentielles et sésinoïdes, produits de parfumerie ou de toilette et cosmétiques
- Chapitre 34: Savons, produits organiques tensio-actifs, préparations pour lessives, préparations lubrifiantes, cires artificielles, cires préparées, produits d'entretien, bougies et articles similaires, pâtes à modeler et "cires pour l'art dentaire"
- Chapitre 35: Matières albuminoïdes, colles, enzymes
- Chapitre 36 Poudres et explosifs, articles de pyrotechnie, allumettes, alliages pyrophoriques, matières inflammables (seulement pour l'Autriche and Suède)
- à l'exception de (seulement pour l'Autriche)
ex 36.01: poudres à tirer
ex 36.02: explosifs préparés
ex 36.04: détonateurs
ex 36.08: explosifs
- Chapitre 37: Produits photographiques et cinématographiques
- Chapitre 38: Produits divers des industries chimiques
- à l'exception de:
ex 38.19: produits toxicologiques (sauf pour la Suède)
- Chapitre 39: Matières plastiques artificielles, éthers et esters de la cellulose, résines artificielles et ouvrages en ces matières
- à l'exception de:
ex 39.03: explosifs (sauf pour la Suède)
- Chapitre 40: Caoutchouc naturel ou synthétique, factice pour caoutchouc et ouvrages en caoutchouc
- à l'exception de:
ex 40.11: pneus pour automobiles (sauf pour la Suède)

- Chapitre 41: Peaux and cuirs: (sauf pour l'Autriche)
- Chapitre 42: Ouvrages en cuir, articles de bourrellerie et de sellerie, articles de voyage, sacs à main et contenants similaires, ouvrages en boyaux: (sauf pour l'Autriche)
- Chapitre 43: Pelleteries et fourrures, pelleteries factices
- Chapitre 44: Bois, charbon de bois et ouvrages en bois: (sauf pour l'Autriche)
- Chapitre 45: Liège et ouvrages en liège
- Chapitre 46: Ouvrages de sparterie et de vannerie
- Chapitre 47: Matières servant à la fabrication du papier
- Chapitre 48: Papier et cartons, ouvrages en pâte de cellulose, en papier et en carton: (sauf pour l'Autriche)
- Chapitre 49: Articles de librairie et produits des arts graphiques: (sauf pour l'Autriche)
- Chapitre 65: Coiffures et parties de coiffures
à l'exception de (seulement pour l'Autriche):
ex 65.05: coiffures militaires
- Chapitre 66: Parapluies, parasols, cannes, fouets, cravaches et leurs parties
- Chapitre 67: Plumes et duvet apprêtés et articles en plumes ou en duvet, fleurs artificielles, ouvrages en cheveux
- Chapitre 68: Ouvrages en pierres, plâtre, ciment, amiante, mica et matières analogues
- Chapitre 69: Produits céramiques
- Chapitre 70: Verres et ouvrages en verre
- Chapitre 71: Perles fines, pierres gemmes et similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie
- Chapitre 72: Monnaies (seulement pour l'Autriche et la Suède)
- Chapitre 73: Fonte, fer et acier
- Chapitre 74: Cuivre

- Chapitre 75: Nickel
- Chapitre 76: Aluminium
- Chapitre 77: Magnésium, béryllium
- Chapitre 78: Plomb
- Chapitre 79: Zinc
- Chapitre 80: Etain
- Chapitre 81: Autres métaux communs
- Chapitre 82: Outillage, articles de coutellerie et couverts de table, en métaux communs
- à l'exception de:
ex 82.05: outillage (sauf Autriche)
ex 82.07: pièces d'outillage
ex 82.08: outillage à main (seulement pour l'Autriche)
- Chapitre 83: Ouvrages divers en métaux communs
- Chapitre 84: Chaudières, machines, appareils et engins mécaniques
- à l'exception de:
ex 84.06: moteurs
ex 84.08: autres propulseurs
ex 84.45: machines
ex 84.53: machines automatiques de traitement de l'information (sauf pour l'Autriche)
ex 84.55: pièces No 84.53 (sauf pour l'Autriche et la Suède)
ex 84.59: réacteurs nucléaires (sauf pour l'Autriche et la Suède)
- Chapitre 85: Machines et appareils électriques et objets servant à des usages électrotechniques
- à l'exception de:
ex 85.03: piles électriques (seulement pour l'Autriche)
ex 85.13: télécommunication
ex 85.15: appareils de transmission
- Chapitre 86: Véhicules et matériel pour voies ferrées, appareils de signalisation non électriques pour voies de communication
- à l'exception de:
ex 86.02: locomotives blindées
ex 86.03: autres locoblindés
ex 86.05: wagons blindés

- ex 86.06: wagons ateliers
ex 86.07: wagons
- Chapitre 87: Voitures automobiles, tracteurs, cycles et autres véhicules terrestres
- à l'exception de:
ex 87.08: chars et automobiles blindés
ex 87.01: tracteurs
ex 87.02: véhicules militaires
ex 87.03: voitures de dépannage
ex 87.09: motocycles
ex 87.14: remorques
- Chapitre 88: Navigation aérienne (seulement pour l'Autriche)
- Chapitre 89: Navigation maritime et fluviale
- à l'exception de:
ex 89.01: bateaux de guerre (seulement pour l'Autriche)
ex 89.01A: bateaux de guerre (sauf pour l'Autriche)
ex 89.03: engins flottants (seulement pour l'Autriche)
- Chapitre 90: Instruments et appareils d'optique, de photographie et de cinématographie, de mesure, de vérification, de précision, instruments et appareils médico-chirurgicaux
- à l'exception de:
ex 90.05: jumelles
ex 90.13: instruments divers, lasers
ex 90.14: télémètres
ex 90.28: instruments de mesures électriques ou électroniques
ex 90.11: microscopes (sauf pour l'Autriche et la Suède)
ex 90.17: instruments médicaux (sauf pour l'Autriche et la Suède)
ex 90.18: appareils de mécanothérapie (sauf pour l'Autriche et la Suède)
ex 90.19: appareils d'orthopédie (sauf pour l'Autriche et la Suède)
ex 90.20: appareils rayon X (sauf pour l'Autriche et la Suède)
- Chapitre 91: Horlogerie
- Chapitre 92: Instruments de musique, appareils d'enregistrement ou de reproduction du son; appareils d'entregistrement ou de reproduction des images et du son en télévision, parties et accessoires de ces instruments et appareils
- Chapitre 94: Meubles, mobilier médico-chirurgical, articles de literie et similaires
- à l'exception de:
ex 94.01A: sièges d'aérodynes (sauf pour l'Autriche)

- Chapitre 95: Matières à tailler et à mouler, à l'état travaillé (y compris les ouvrages)
- Chapitre 96: Ouvrages de broserie et pinceaux, balais, houppes et articles de tamiserie
- Chapitre 97: Jouets, jeux, articles pour divertissements et pour sports (seulement pour l'Autriche and Suède)
- Chapitre 98: Ouvrages divers

3. LISTA DE MATERIALES COMPRADOS POR LOS MINISTERIOS DE DEFENSA DE AUSTRIA, BELGICA, DINAMARCA, ALEMANIA, ESPAÑA, FINLANDIA, FRANCIA, GRECIA, IRLANDA, ITALIA, LUXEMBURGO, PAÍSES BAJOS, PORTUGAL, SUECIA Y EL REINO UNIDO, Y SUJETOS AL ACUERDO

- Capítulo 25: Sal, azufre, tierras y piedras, yesos, cales y cementos
- Capítulo 26: Minerales metalúrgicos, escorias, cenizas
- Capítulo 27: Combustibles minerales, aceites minerales y productos de su destilación, materias bituminosas, ceras minerales
- excepto:
ex 27.10: carburantes especiales (salvo Austria)
combustibles para calefacción y carburantes (solamente Austria)
- Capítulo 28: Productos químicos inorgánicos, compuestos inorgánicos u orgánicos de metales preciosos, de elementos radioactivos, de metales de las tierras raras y de isótopos
- excepto:
ex 28.09: explosivos
ex 28.13: explosivos
ex 28.14: gases lacrimógenos
ex 28.28: explosivos
ex 28.32: explosivos
ex 28.39: explosivos
ex 28.50: productos tóxicos
ex 28.51: productos tóxicos
ex 28.54: explosivos
- Capítulo 29: Productos químicos orgánicos
- excepto:
ex 29.03: explosivos
ex 29.04: explosivos
ex 29.07: explosivos
ex 29.08: explosivos
ex 29.11: explosivos
ex 29.12: explosivos
ex 29.13: productos tóxicos
ex 29.14: productos tóxicos
ex 29.15: productos tóxicos
ex 29.21: productos tóxicos
ex 29.22: productos tóxicos
ex 29.23: productos tóxicos

- ex 29.26: explosivos
ex 29.27: productos tóxicos
ex 29.29: explosivos
- Capítulo 30: Productos farmacéuticos
- Capítulo 31: Abonos
- Capítulo 32: Extractos curtientes y tintóreos, taninos y sus derivados, materias colorantes, colores, pinturas, barnices y tintes, mástiques, tintas
- Capítulo 33: Aceites esenciales y resinoides, productos de perfumería o de tocador y cosméticos
- Capítulo 34: Jabones, productos orgánicos tensoactivos, preparaciones para lavar, preparaciones lubricantes, ceras artificiales, ceras preparadas, productos para lustrar y pulir, bujías y artículos análogos, pastas para modelar, y "ceras para el arte dental"
- Capítulo 35: Materias albuminoides y colas, enzimas
- Capítulo 36: Pólvoras y explosivos, artículos de pirotecnia, fósforos, aleaciones pirofóricas, materias inflamables (solamente Austria y Suecia)
- excepto (solamente Austria)
ex 36.01: pólvoras de proyección
ex 36.02: explosivos preparados
ex 36.04: detonadores
ex 36.08: explosivos
- Capítulo 37: Productos fotográficos y cinematográficos
- Capítulo 38: Productos diversos de las industrias químicas
- excepto:
ex 38.19: productos tóxicos (salvo Suecia)
- Capítulo 39: Materias plásticas artificiales, éteres y ésteres de la celulosa, resinas artificiales y manufacturas de estas materias
- excepto:
ex 39.03: explosivos (salvo Suecia)
- Capítulo 40: Caucho natural o sintético, caucho facticio y manufacturas de caucho
- excepto:
ex 40.11: neumáticos a prueba de bala (salvo Suecia)

- Capítulo 41: Pieles y cuero: (salvo Austria)
- Capítulo 42: Manufacturas de cuero, artículos de guarnicionería y talabartería, artículos de viaje, bolsos de mano y continentes similares, manufacturas de tripas: (salvo Austria)
- Capítulo 43: Peletería y confecciones de peletería, peletería facticia
- Capítulo 44: Madera, carbón vegetal y manufacturas de madera: (salvo Austria)
- Capítulo 45: Corcho y sus manufacturas
- Capítulo 46: Manufacturas de espartería y cestería
- Capítulo 47: Materias utilizadas en la fabricación de papel
- Capítulo 48: Papel y cartón, manufacturas de pasta de celulosa, de papel y de cartón: (salvo Austria)
- Capítulo 49: Artículos de librería y productos de las artes gráficas: (salvo Austria)
- Capítulo 65: Sombreros y demás tocados y sus partes componentes
excepto (solamente Austria):
ex 65.05: sombreros, gorras y demás tocados militares
- Capítulo 66: Paraguas, quitasoles, bastones, látigos, fustas y sus partes componentes
- Capítulo 67: Plumás y plumón preparados y artículos de pluma o de plumón, flores artificiales, manufacturas de cabellos
- Capítulo 68: Manufacturas de piedra, yeso, cemento, amianto, mica y materias análogas
- Capítulo 69: Productos cerámicos
- Capítulo 70: Vidrio y manufactura de vidrio
- Capítulo 71: Perlas finas, piedras preciosas y semipreciosas y similares, metales preciosos, chapados de metales preciosos y manufacturas de estas materias, bisutería de fantasía
- Capítulo 72: Monedas (solamente Austria y Suecia)
- Capítulo 73: Fundición, hierro y acero
- Capítulo 74: Cobre
- Capítulo 75: Níquel

- Capítulo 76: Aluminio
- Capítulo 77: Magnesio, berilio (glucinio)
- Capítulo 78: Plomo
- Capítulo 79: Zinc
- Capítulo 80: Estaño
- Capítulo 81: Otros metales comunes
- Capítulo 82: Herramientas, artículos de cuchillería y cubiertos de mesa, de metales comunes
- excepto:
- ex 82.05: herramientas (salvo Austria)
- ex 82.07: piezas de herramientas
- ex 82.08: herramientas de mano (solamente Austria)
- Capítulo 83: Manufacturas diversas de metales comunes
- Capítulo 84: Calderas, máquinas, aparatos y artefactos mecánicos
- excepto:
- ex 84.06: motores
- ex 84.08: otros propulsores
- ex 84.45: máquinas
- ex 84.53: máquinas automáticas para tratamiento de la información (salvo Austria)
- ex 84.55: piezas de las máquinas de la partida 84.53 (salvo Austria y Suecia)
- ex 84.59: reactores nucleares (salvo Austria y Suecia)
- Capítulo 85: Máquinas y aparatos eléctricos y objetos destinados a usos electrotécnicos
- excepto:
- ex 85.03: pilas eléctricas (solamente Austria)
- ex 85.13: telecomunicaciones
- ex 85.15: aparatos transmisores
- Capítulo 86: Vehículos y material para vías férreas, aparatos non eléctricos de señalización para vías de comunicación
- excepto:
- ex 86.02: locomotoras blindadas
- ex 86.03: las demás locomotoras de maniobra blindadas
- ex 86.05: vagones blindados
- ex 86.06: vagones talleres

- ex 86.07: vagones
- Capítulo 87: Vehículos automóviles, tractores, velocípedos y otros vehículos terrestres
- excepto:
 ex 87.08: carros y automóviles blindados
 ex 87.01: tractores
 ex 87.02: vehículos militares
 ex 87.03: coches para arreglo de averías
 ex 87.09: motocicletas
 ex 87.14: remolques
- Capítulo 88: Navegación aérea (solamente Austria)
- Capítulo 89: Navegación marítima y fluvial
- excepto:
 ex 89.01: buques de guerra (solamente Austria)
 ex 89.01 A: buques de guerra (salvo Austria)
 ex 89.03: artefactos flotantes (solamente Austria)
- Capítulo 90: Instrumentos y aparatos de óptica, de fotografía y de cinematografía, de medida, de comprobación y de precisión, instrumentos y aparatos médico-quirúrgicos,
- excepto:
 ex 90.05: gemelos
 ex 90.13: instrumentos diversos, lasers
 ex 90.14: telémetros
 ex 90.28: instrumentos de medida eléctricos o electrónicos
 ex 90.11: microscopios (salvo Austria y Suecia)
 ex 90.17: instrumentos de medicina (salvo Austria y Suecia)
 ex 90.18: aparatos de mecanoterapia (salvo Austria y Suecia)
 ex 90.19: aparatos de ortopedia (salvo Austria y Suecia)
 ex 90.20: aparatos de rayos X (salvo Austria y Suecia)
- Capítulo 91: Relojería
- Capítulo 92: Instrumentos de música, aparatos para el registro y la reproducción del sonido o para el registro y reproducción en televisión de imágenes y sonido, partes y accesorios de esos instrumentos y aparatos
- Capítulo 94: Muebles, mobiliario médico-quirúrgico, artículos de cama y similares
- excepto:
 ex 94.01 A: asientos para aeronaves (salvo Austria)
- Capítulo 95: Materias para talla y moldeo, labradas (incluidas las manufacturas)

- Capítulo 96: Manufacturas de cepillería, pinceles, escobas, plumeros, borlas y cedazos
- Capítulo 97: Juguetes, juegos, artículos para recreo y para deportes (salvo Austria y Suecia)
- Capítulo 98: Manufacturas diversas

**EUROPEAN COMMUNITIES
COMMUNAUTÉS EUROPEENNES
COMUNIDADES EUROPEAS**

ANNEX 2- ANNEXE 2 - ANEXO 2

*Entities which Procure in Accordance with the Provisions of this Agreement
Entités qui passent des marchés conformément aux dispositions du présent accord
Entidades que se rigen en sus contratos por las disposiciones del presente acuerdo*

SUPPLIES / FOURNITURES / SUMINISTROS

Thresholds: SDR 200,000
Valeurs de seuil: DTS 200 000
Valores de umbral: DEG 200.000

SERVICES / SERVICES / SERVICIOS

specified in Annex 4 / spécifiés dans l'Annexe 4 / detallados en el Anexo 4

Thresholds: SDR 200,000
Valeurs de seuil: DTS 200 000
Valores de umbral: DEG 200.000

WORKS / TRAVAUX / OBRAS

specified in Annex 5 / spécifiés dans l'Annexe 5 / detalladas en el Anexo 5

Thresholds: SDR 5,000,000
Valeurs de seuil: DTS 5 000 000
Valores de umbral: DEG 5.000.000

LIST OF ENTITIES / LISTE DES ENTITÉS / LISTA DE LAS ENTIDADES:

**1. CONTRACTING AUTHORITIES OF THE REGIONAL OR LOCAL PUBLIC AUTHORITIES;
POUVOIRS ADJUDICATEURS DES COLLECTIVITÉES TERRITORIALES;
PODERES ADJUDICADORES DE LOS ENTES PÚBLICOS TERRITORIALES:**

**2. BODIES GOVERNED BY PUBLIC LAW AS DEFINED IN DIRECTIVE 93/37;
LES ORGANISMES DE DROIT PUBLIC TELS QUE DÉFINIS PAR LA DIRECTIVE 93/37;
LOS ORGANISMOS DE DERECHO PÚBLICO SEGÚN LA DEFINICIÓN DE LA DIRECTIVA
93/37:**

- A "body governed by public law" means any body

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
- having legal personality, and
- financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law, or subject to management supervision by those bodies, or having an administrative, managerial or supervisory board; more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The lists of bodies and categories of bodies governed by public law which fulfill the criteria referred to are set out in Annex I to Directive 93/37. These lists are indicative only (see Official Journal of the European Communities n° L 199/56, 09.08.1993 and n° C 241/228, 29.08.1994).

- On entend par "**organisme de droit public**" tout organisme:
 - créé pour satisfaire spécifiquement des besoins d'intérêt général ayant un caractère autre qu'industriel ou commercial, et
 - doté de la personnalité juridique, et
 - dont l'activité et financée majoritairement par l'Etat, les collectivités territoriales ou d'autres organismes de droit public, soit la gestion est soumise à un contrôle par ces derniers, soit l'organe d'administration, de direction ou de surveillance est composé de membres dont plus de la moitié est désignée par l'Etat, les collectivités territoriales ou d'autres organismes de droit public.

Les listes des organismes et des catégories d'organismes de droit public qui remplissent les ces critères figurent à l'annexe I de la Directive 93/37. Ces listes sont uniquement indicatives (voir Journal officiel des Communautés Européennes n° L 199/54, 09.08.1993 et n° C 241/228, 29.08.1994).

- "**Organismo de derecho público**" cualquier organismo:
 - creado para satisfacer específicamente necesidades de interés general que no tengan carácter industrial o mercantil, y
 - dotado de personalidad jurídica, y
 - cuya actividad esté mayoritariamente financiada por el Estado, los entes territoriales u otros organismos de derecho público, o bien, cuya gestión se halle sometida a un control por parte de estos últimos, o bien, cuyo órgano de administración, de dirección o de vigilancia esté compuesto por miembros de los cuales más de la mitad sean nombrados por el Estado los entes territoriales u otros organismos de derecho público.

En el Anexo I a la Directiva 93/37 figuran las listas de los organismos y de las categorías de organismos de derecho público que reúnen estos criterios. Estas listas son únicamente indicativas (véase Diario Oficial de las Comunidades Europeas Official n° L 199/56, 09.08.1993 y n° C 241/228, 29.08.1994).

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ANNEX 3- ANNEXE 3 - ANEXO 3

*Entities which Procure in Accordance with the Provisions of this Agreement
Entités qui passent des marchés conformément aux dispositions du présent accord
Entidades que se rigen en sus contratos por las disposiciones del presente acuerdo*

SUPPLIES / FOURNITURES / SUMINISTROS

*Thresholds: SDR 400,000
Valeurs de seuil: DTS 400 000
Valores de umbral: DEG 400.000*

SERVICES / SERVICES / SERVICIOS

specified in Annex 4 / spécifiés dans l'Annexe 4 / detallados en el Anexo 4

*Thresholds: SDR 400,000
Valeurs de seuil: DTS 400 000
Valores de umbral: DEG 400.000*

WORKS / TRAVAUX / OBRAS

specified in Annex 5 / spécifiés dans l'Annexe 5 / detalladas en el Anexo 5

*Thresholds: SDR 5,000,000
Valeurs de seuil: DTS 5 000 000
Valores de umbral: DEG 5.000.000*

List of Entities / Liste des entités / Lista de las entidades:

The contracting entities within the meaning of Article 2 of Directive 93/38/EEC which are public authorities or public undertakings and which have as one of their activities any of those referred to below or any combination thereof:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such networks;
- (b) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks;
- (c) the provision of airport or other terminal facilities to carriers by air;
- (d) the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway;
- (e) the operation of networks providing a service to the public in the field of urban transport by railway¹, automated systems, tramway, trolley bus, bus or cable in accordance with Directive 93/38/EEC.

The public authorities or public undertakings listed in Annex I (production, transport or distribution of drinking water), Annex II (production, transport or distribution of electricity), Annex VII (contracting entities in the field of urban railway, tramway, trolley bus or bus services), Annex VIII (contracting entities in the field of airport facilities) and Annex IX (contracting entities in the field of maritime or inland port or other terminal facilities) of Directive 93/38/EEC fulfill the criteria set out above. Those lists are indicative only (see Official Journal of the European Communities n° L 199/84, 09.08.1993 and n° C 241/228, 29.08.1994).

List of Entities / Liste des entités / Lista de las entidades:

Les autorités adjudicatrices au sens de l'article 2 de la directive 93/38/CEE qui sont des pouvoirs publics ou des entreprises publiques et qui exercent une des activités visées ci-dessous ou plusieurs de ces activités:

- (a) la mise à disposition ou l'exploitation de réseaux fixes destinés à fournir un service au public dans le domaine de la production, du transport ou de la distribution d'eau potable ou l'alimentation de ces réseaux en eau potable;

¹ Not including the entities listed in Annex VI of Directive 93/38/EEC (copy attached)

- (b) la mise à disposition ou l'exploitation de réseaux fixes destinés à fournir un service au public dans le domaine de la production, du transport ou de la distribution d'électricité ou l'alimentation de ces réseaux en électricité;
- (c) la mise à disposition des transporteurs aériens des aéroports ou d'autres terminaux de transport;
- (d) la mise à disposition des transporteurs maritimes ou fluviaux des ports maritimes ou intérieurs ou d'autres terminaux de transport;
- (e) la exploitation de réseaux destinés à fournir un service au public dans le domaine du transport urbain par chemin de fer², systèmes automatiques, tramway, trolleybus ou autobus ou câble, en accord avec la directive 93/38/CEE.

Les pouvoirs publics ou autorités publiques énumérées aux annexes I (production, transport ou distribution d'eau potable), II (production, transport ou distribution d'électricité), VII (entités adjudicatrices dans le domaine des services de chemin de fer), VIII (entités adjudicatrices dans le domaine des installations aéroportuaires) et IX (entités adjudicatrices dans le domaine des installations portuaires maritimes ou intérieures ou autres terminaux) de la directive 93/38 répondent aux critères énoncés ci-dessus. Ces listes sont uniquement indicatives (voir Journal officiel des Communautés Européennes n° L 199/54, 09.08.1993 et n° C 241/228, 29.08.1994).

<i>List of Entities / Liste des entités / Lista de las entidades:</i>

Las entidades contractantes según el sentido del artículo 2 de la directiva 93/38/CEE que sean poderes públicos o empresas públicas y que realicen alguna de la actividades contempladas en los párrafos siguientes o varias de estas actividades:

- (a) la puesta a disposición o la explotación de redes fijas que presten un servicio al público en relación con la producción, transporte o distribución de agua potable o el suministro de agua potable a dichas redes;
- (b) la puesta a disposición o la explotación de redes fijas que presten un servicio al público en relación con la producción, transporte o distribución de electricidad o el suministro de electricidad a dichas redes;
- (c) la puesta a disposición de los transportistas aéreos de los aeropuertos o de otras terminales de transporte;
- (d) la puesta a disposición de los transportistas marítimos o fluviales de los puertos marítimos o interiores o de otras terminales de transporte;

² Ne sont pas inclus les entités énumérées dans l'annexe VI de la directive 93/38/CEE (copie annexée)

- (e) la explotación de redes que presten un servicio público en el campo del transporte urbano por ferrocarril³, sistemas automáticos, tranvía, trolebús, autobús o cable.

Las entidades contractantes enumeradas en los anexos I (producción, transporte o distribución de agua potable), II (producción, transporte o distribución de electricidad), VII (entidades contractantes del sector de los servicios de ferrocarriles urbanos, tranvías, trolebuses o autobuses), VIII (entidades contractantes del sector de los aeropuertos) y IX (entidades contractantes del sector de los puertos marítimos o fluviales u otras terminales) de la directiva 93/38/CEE reúnen los criterios enunciados anteriormente. Estas listas son únicamente indicativas (véase Diario Oficial de las Comunidades Europeas Official n° L 199/56, 09.08.1993 y n° C 241/228, 29.08.1994).

³ No se incluyen las entidades enumeradas en el anexo VI de la directiva 93/38/CEE (copia anexa)

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ANNEX 4- ANNEXE 4 - ANEXO 4

Services / Services / Servicios

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

<i>Subject</i>	<i>CPC Reference No.</i>
Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752* (except 7524, 7525, 7526)
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investments services**	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866***
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
Advertising services	871
Building-cleaning services and property management services	874, 82201 - 82206
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

Notes to Annex 4

- * except voice telephony, telex, radiotelephony, paging and satellite services.
- ** except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. In Finland payments from governmental entities (expenses) shall be transacted through a certain credit institution (Postipankki Ltd) or through the Finnish Postal Giro System. In Sweden, payments to and from governmental agencies shall be transacted through the Swedish Postal Giro System (Postgiro).
- *** except arbitration and conciliation services.

De la Liste universelle des services contenue dans le document MTN.GNS/W/120, les services suivants sont inclus:

<i>Désignation des services</i>	<i>Numéro de référence CPC</i>
Services d'entretien et de réparation	6112, 6122, 633, 886
Services de transport terrestre, y compris les services de véhicules blindés et les services de courrier, à l'exclusion des transports de courrier	712 (except 71235), 7512, 87304
Services de transports aériens: transport de voyageurs et de marchandises, à l'exclusion des transports de courrier	73 (except 7321)
Transport de courrier par transport terrestre, à l'exclusion du transport ferroviaire, et par air	71235, 7321
Services de télécommunications	752* (except 7524, 7525, 7526)
Services financiers	ex 81
(a) Services d'assurance	812, 814
(b) Services bancaires et d'investissement**	
Services informatiques et services connexes	84
Services comptables, d'audit et de tenue de livres	862
Services d'études de marché et de sondages	864
Services de conseil en gestion et services connexes	865, 866***
Services d'architecture; services d'ingénierie et services intégrés d'ingénierie; services d'aménagement urbain et d'architecture paysagère; services connexes de consultations scientifiques et techniques; services d'essais et d'analyses techniques	867
Services de publicité	871
Services de nettoyage de bâtiments et services de gestion de propriétés	874, 82201 - 82206
Services de publication et d'impression sur la base d'une redevance ou sur une base contractuelle	88442
Services de voirie et d'enlèvement des ordures: services d'assainissement et services analogues	94

Notes de l'Annexe 4

- * à l'exclusion des services de téléphonie vocale, de télex, de radiotéléphonie, d'appel unilatéral sans transmission de parole, ainsi que des services de transmission par satellite.
- ** à l'exclusion des marchés des services financiers relatifs à l'émission, à l'achat, à la vente et au transfert de titres ou d'autres instruments financiers, ainsi que des services prestés par des banques centrales. In Finland payments from governmental entities (expenses) shall be transacted through a certain credit institution (Postipankki Ltd) or through the Finnish Postal Giro System. In Sweden, payments to and from governmental agencies shall be transacted through the Swedish Postal Giro System (Postgiro).
- *** à l'exclusion des services d'arbitrage et de conciliation.

De la Lista universal de servicios contenida en el documento MTN.GNS/W/120, se incluyen los servicios siguientes:

<i>Servicios</i>	<i>Número de referencia CCP</i>
Servicios de mantenimiento y de reparación	6112, 6122, 633, 886
Servicios de transporte por vía terrestre, incluidos servicios de furgones blindados y servicios de mensajería, excepto transporte de correo	712 (except 71235), 7512, 87304
Servicios de transporte aéreo de pasajeros y carga, excepto transporte de correo	73 (except 7321)
Transporte de correo por vía terrestre, excepto transporte por ferrocarril, y por vía aérea	71235, 7321
Servicios de telecomunicación	752* (except 7524, 7525, 7526)
Servicios financieros	ex 81
(a) Servicios de seguros	812, 814
(b) Servicios bancarios y de inversiones**	
Servicios informáticos y servicios conexos	84
Servicios de contabilidad, auditoría et teneduría de libros	862
Servicios de investigación de estudios y encuestas de opinión pública	864
Servicios de consultores de dirección y servicios conexos	865, 866***
Servicios de arquitectura; servicios de ingeniería y servicios integrados de ingeniería; servicios de planificación urbana y servicios de arquitectura paisajista; servicios conexos de consultores en ciencia y tecnología; servicios de ensayos y análisis técnicos	867
Servicios de publicidad	871
Servicios de limpieza de edificios y servicios de administración de bienes raíces	874, 82201 - 82206
Servicios editoriales y de imprenta, por tarifa o por contrato	88442

<i>Servicios</i>	<i>Número de referencia CCP</i>
Alcantarillado y eliminación de desperdicios: servicios de saneamiento y servicios similares	94

Notas del Anexo 4

- * exceptuando los servicios de telefonía vocal, de télex, de radiotelefonía, de llamada unilateral sin transmisión de palabra, así como los servicios de transmisión por satélite.
- ** exceptuando los contratos de servicios financieros relativos a la emisión, compra, venta y transferencia de títulos u otros instrumentos financieros, y los servicios prestados por los bancos centrales. In Finland payments from governmental entities (expenses) shall be transacted through a certain credit institution (Postipankki Ltd) or through the Finnish Postal Giro System. In Sweden, payments to and from governmental agencies shall be transacted through the Swedish Postal Giro System (Postgiro).
- *** exceptuando los servicios de arbitraje y conciliación.

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ANNEX 5- ANNEXE 5 - ANEXO 5

Construction Services / Services de construction / Servicios de construcción

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

Définition:

Un marché de services de construction est un marché qui a pour objet la réalisation, par quelque moyen que ce soit, des travaux de bâtiment ou génie civil, au sens de la Division 51 de la Classification centrale de produits.

Definición:

Un contrato de servicios de construcción es un contrato que tiene por objeto la realización, por cualquier medio, de una obra de construcción de edificios e ingeniería civil, en el sentido de la División 51 de la Clasificación Central de Productos.

<i>List of Division 51, CPC / Liste de la division 51, CPC / Lista de la división 51, CCP</i>

Group	Class	Subclass	Title	Corresponding ISCI
SECTION 5			CONSTRUCTION WORK AND CONSTRUCTIONS: LAND	
DIVISION 51			CONSTRUCTION WORK	
511			Pre-erection work at construction sites	
	5111	51110	Site investigation work	4510
	5112	51120	Demolition work	4510
	5113	51130	Site formation and clearance work	4510
	5114	51140	Excavating and earthmoving work	4510
	5115	51150	Site preparation work for mining	4510
	5116	51160	Scaffolding work	4520
512			Construction work for buildings	
	5121	51210	For one- and two-dwelling buildings	4520
	5122	51220	For multi-dwelling buildings	4520
	5123	51230	For warehouses and industrial buildings	4520
	5124	51240	For commercial buildings	4520
	5125	51250	For public entertainment buildings	4520
	5126	51260	For hotel, restaurant and similar buildings	4520
	5127	51270	For educational buildings	4520
	5128	51280	For health buildings	4520
	5129	51290	For other buildings	4520
513			Construction work for civil engineering	

Group	Class	Subclass	Title	Corresponding ISCI
	5131	51310	For highways (except elevated highways), street, roads, railways and airfield runways	4520
	5132	51320	For bridges, elevated highways, tunnels and subways	4520
	5133	51330	For waterways, harbours, dams and other water works	4520
	5134	51340	For long distance pipelines, communication and power lines (cables)	4520
	5135	51350	For local pipelines and cables; ancillary works	4520
	5136	51360	For constructions for mining and manufacturing	4520
	5137		For constructions for sport and recreation	
		51371	For stadia and sports grounds	4520
		51372	For other sport and recreation installations (e.g. swimming pools, tennis courts, golf courses)	4520
	5139	51390	For engineering works n.e.c.	4520
514	5140	51400	Assembly and erection of prefabricated constructions	4520
515			Special trade construction work	
	5151	51510	Foundation work, including pile driving	4520
	5152	51520	Water well drilling	4520
	5153	51530	Roofing and water proofing	4520
	5154	51540	Concrete work	4520
	5155	51550	Steel bending and erection (including welding)	4520
	5156	51560	Masonry work	4520

Group	Class	Subclass	Title	Corresponding ISCI
	5159	51590	Other special trade construction work	4520
516			Installation work	
	5161	51610	Heating, ventilation and air conditioning work	4530
	5162	51620	Water plumbing and drain laying work	4530
	5163	51630	Gas fitting construction work	4530
	5164		Electrical work	
		51641	Electrical wiring and fitting work	4530
		51642	Fire alarm construction work	4530
		51643	Burglar alarm system construction work	4530
		51644	Residential antenna construction work	4530
		51649	Other electrical construction work	4530
	5165	51650	Insulation work (electrical wiring, water,heat, sound)	4530
	5166	51660	Fencing and railing construction work	4530
	5169		Other installation work	
		51691	Lift and escalator construction work	4530
		51699	Other installation work n.e.c.	4530
517			Building completion and finishing work	
	5171	51710	Glazing work and window glass installation work	4540
	5172	51720	Plastering work	4540
	5173	51730	Painting work	4540
	5174	51740	Floor and wall tiling work	4540

Group	Class	Subclass	Title	Corresponding ISCI
	5175	51750	Other floor laying, wall covering and wall papering work	4540
	5176	51760	Wood and metal joinery and carpentry work	4540
	5177	51770	Interior fitting decoration work	4540
	5178	51780	Ornamentation fitting work	4540
	5179	51790	Other building completion and finishing work	4540
518	5180	51800	Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator	4550

<i>List of Division 51, CPC / Liste de la division 51, CPC / Lista de la división 51, CCP</i>

Groupe	Classe	Sous-classe	Titre	Correspondance ISCI
SECTION 5				
DIVISION 51			TRAVAUX DE CONSTRUCTION	
511			Travaux de préparation des sites et chantiers de construction	
512			Travaux d'entreprises générales de construction de bâtiments	
513			Travaux d'entreprises générales de construction d'ouvrages de génie civil	
514			Assemblage et construction d'ouvrages préfabriqués	
515			Travaux d'entreprises de construction spécialisées	
516			Travaux de pose d'installations et de montage	
517			Travaux d'achèvement et de finition des bâtiments	
518			Autres services	

<i>List of Division 51, CPC / Liste de la division 51, CPC / Lista de la división 51, CCP</i>

Grupo	Clase	Subclase	Titulo	Corresponden-cia ISCI
SECTION 5				
DIVISION 51			TRABAJOS DE CONSTRUCCION	
511			Preparación de solares de construcción	
512			Construcción de inmuebles	
513			Obras de ingeniería civil	
514			Ensamblaje y construcción de obras prefabricadas	
515			Obras de empresas de construcción especializadas	
516			Obras de instalación y de montaje	
517			Obras de decoración y acabado	
518			Otros servicios	

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Directive 93/37

As mentioned in Appendix I - Annex 2 of
the GPA

ANNEX I

LISTS OF BODIES AND CATEGORIES OF BODIES GOVERNED BY PUBLIC LAW
REFERRED TO IN ARTICLE 1(b)

I. BELGIUM

Bodies

- Archives générales du Royaume et Archives de l'État dans les Provinces - Algemeen Rijksarchief en Rijksarchief in de Provinciën,
- Conseil autonome de l'enseignement communautaire - Autonome Raad van het Gemeenschapsonderwijs,
- Radio et télévision belges, émissions néerlandaises - Belgische Radio en Televisie, Nederlandse uitzendingen,
- Belgisches Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft (Centre de radio et télévision belge de la Communauté de langue allemande - Centrum voor Belgische Radio en Televisie voor de Duitstalige Gemeenschap),
- Bibliothèque royale Albert Ier - Koninklijke Bibliotheek Albert I,
- Caisse auxiliaire de paiement des allocations de chômage - Hulpkas voor Werkloosheidsuitkeringen,
- Caisse auxiliaire d'assurance maladie-invalidité - Hulpkas voor Ziekte- en Invaliditeitsverzekeringen,
- Caisse nationale des pensions de retraite et de survie - Rijkskas voor Rust- en Overlevingspensioenen,
- Caisse de secours et de prévoyance en faveur des marins naviguant sous pavillon belge - Hulp- en Voorzorgskas voor -Zeevarenden onder Belgische Vlag,
- Caisse nationale des calamités - Nationale Kas voor de Rampenschade,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie diamantaire - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders der Diamantnijverheid,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie du bois - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders in de Houtnijverheid,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de batellerie - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders der Ondernemingen voor Binnenscheepvaart,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de chargement, déchargement et manutention de marchandises dans les ports débarcadères, entrepôts et stations (appelée habituellement «Caisse spéciale de compensation pour allocations familiales des régions maritimes») - Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders gebezigd door Ladings- en Lossingsondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd: Bijzondere Compensatiekas voor kindertoeslagen van de zeevaartgewesten),
- Centre informatique pour la Région bruxelloise - Centrum voor Informatica voor het Brusselse Gewest,

- Commissariat général de la Communauté flamande pour la coopération internationale - Commissariaat-generaal voor Internationale Samenwerking van de Vlaamse Gemeenschap,
- Commissariat général pour les relations internationales de la Communauté française de Belgique - Commissariaat-generaal bij de Internationale Betrekkingen van de Franse Gemeenschap van België,
- Conseil central de l'économie - Centrale Raad voor het Bedrijfsleven,
- Conseil économique et social de la Région wallonne - Sociaal-economische Raad van het Waals Gewest,
- Conseil national du travail - Nationale Arbeidsraad,
- Conseil supérieur des classes moyennes - Hoge Raad voor de Middenstand,
- Office pour les travaux d'infrastructure de l'enseignement subsidié - Dienst voor Infrastructuurwerken van het Gesubsidieerd Onderwijs,
- Fondation royale - Koninklijke Schenking,
- Fonds communautaire de garantie des bâtiments scolaires - Gemeenschappelijk Waarborgfonds voor Schoolgebouwen,
- Fonds d'aide médicale urgente - Fonds voor Dringende Geneeskundige Hulp,
- Fonds des accidents du travail - Fonds voor Arbeidsongevallen,
- Fonds des maladies professionnelles - Fonds voor Beroepsziekten,
- Fonds des routes - Wegenfonds,
- Fonds d'indemnisation des travailleurs licenciés en cas de fermeture d'entreprises - Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen Ontslagen Werknemers,
- Fonds national de garantie pour la réparation des dégâts houillers - Nationaal Waarborgfonds inzake Kolenmijnschade,
- Fonds national de retraite des ouvriers mineurs - Nationaal Pensioenfonds voor Mijnwerkers,
- Fonds pour le financement des prêts à des États étrangers - Fonds voor Financiering van de Leningen aan Vreemde Staten,
- Fonds pour la rémunération des mousses enrôlés à bord des bâtiments de pêche - Fonds voor Scheepsjongens aan Boord van Vissersvaartuigen,
- Fonds wallon d'avances pour la réparation des dommages provoqués par des pompages et des prises d'eau souterraine - Waals Fonds van Voorschotten voor het Herstel van de Schade veroorzaakt door Grondwaterzuiveringen en Afpompingen,
- Institut d'aéronomie spatiale - Instituut voor Ruimte-aëronomie,
- Institut belge de normalisation - Belgisch Instituut voor Normalisatie,
- Institut bruxellois de l'environnement - Brussels Instituut voor Milieubeheer,
- Institut d'expertise vétérinaire - Instituut voor Veterinaire Keuring,
- Institut économique et social des classes moyennes - Economisch en Sociaal Instituut voor de Middenstand,
- Institut d'hygiène et d'épidémiologie - Instituut voor Hygiëne en Epidemiologie,
- Institut francophone pour la formation permanente des classes moyennes - Franstalig Instituut voor Permanente Vorming voor de Middenstand,
- Institut géographique national - Nationaal Geografisch Instituut,
- Institut géotechnique de l'État - Rijksinstituut voor Grondmechanica,
- Institut national d'assurance maladie-invalidité - Rijksinstituut voor Ziekte- en Invaliditeitsverzekering,
- Institut national d'assurances sociales pour travailleurs indépendants - Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen,
- Institut national des industries extractives - Nationaal Instituut voor de Extractiebedrijven,

- Institut national des invalides de guerre, anciens combattants et victimes de guerre - Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers,
- Institut pour l'amélioration des conditions de travail - Instituut voor Verbetering van de Arbeidsvoorwaarden,
- Institut pour l'encouragement de la recherche scientifique dans l'industrie et l'agriculture - Instituut tot Aanmoediging van het Wetenschappelijk Onderzoek in Nijverheid en Landbouw,
- Institut royal belge des sciences naturelles - Koninklijk Belgisch Instituut voor Natuurwetenschappen,
- Institut royal belge du patrimoine artistique - Koninklijk Belgisch Instituut voor het Kunstpatrimonium,
- Institut royal de météorologie - Koninklijk Meteorologisch Instituut,
- Enfance et famille - Kind en Gezin,
- Compagnie des installations maritimes de Bruges - Maatschappij der Brugse Zeevaartinrichtingen,
- Mémorial national du fort de Breendonck - Nationaal Gedenkteken van het Fort van Breendonck,
- Musée royal de l'Afrique centrale - Koninklijk Museum voor Midden-Afrika,
- Musées royaux d'art et d'histoire - Koninklijke Musea voor Kunst en Geschiedenis,
- Musées royaux des beaux-arts de Belgique - Koninklijke Musea voor Schone Kunsten van België,
- Observatoire royal de Belgique - Koninklijke Sterrenwacht van België,
- Office belge de l'économie et de l'agriculture - Belgische Dienst voor Bedrijfsleven en Landbouw,
- Office belge du commerce extérieur - Belgische Dienst voor Buitenlandse Handel,
- Office central d'action sociale et culturelle au profit des membres de la communauté militaire - Centrale Dienst voor Sociale en Culturele Actie ten behoeve van de Leden van de Militaire Gemeenschap,
- Office de la naissance et de l'enfance - Dienst voor Borelingen en Kinderen,
- Office de la navigation - Dienst voor de Scheepvaart,
- Office de promotion du tourisme de la Communauté française - Dienst voor de Promotie van het Toerisme van de Franse Gemeenschap,
- Office de renseignements et d'aide aux familles des militaires - Hulp- en Informatiebureau voor Gezinnen van Militairen,
- Office de sécurité sociale d'outre-mer - Dienst voor Overzeese Sociale Zekerheid,
- Office national d'allocations familiales pour travailleurs salariés - Rijksdienst voor Kinderbijslag voor Werknemers,
- Office national de l'emploi - Rijksdienst voor de Arbeidsvoorziening,
- Office national des débouchés agricoles et horticoles - Nationale Dienst voor Afzet van Land- en Tuinbouwprodukten,
- Office national de sécurité sociale - Rijksdienst voor Sociale Zekerheid,
- Office national de sécurité sociale des administrations provinciales et locales - Rijksdienst voor Sociale Zekerheid van de Provinciale en Plaatselijke Overheidsdiensten,
- Office national des pensions - Rijksdienst voor Pensioenen,
- Office national des vacances annuelles - Rijksdienst voor de Jaarlijkse Vakantie,
- Office national du lait - Nationale Zuiveldienst,
- Office régional bruxellois de l'emploi - Brusselse Gewestelijke Dienst voor Arbeidsbemiddeling,

- Office régional et communautaire de l'emploi et de la formation - Gewestelijke en Gemeenschappelijke Dienst voor Arbeidsvoorziening en Vorming,
- Office régulateur de la navigation intérieure - Dienst voor Regeling der Binnenvaart,
- Société publique des déchets pour la Région flamande - Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest,
- Orchestre national de Belgique - Nationaal Orkest van België,
- Organisme national des déchets radioactifs et des matières fissiles - Nationale Instelling voor Radioactief Afval en -Splijststoffen,
- Palais des beaux-arts - Paleis voor Schone Kunsten,
- Pool des marins de la marine marchande - Pool van de Zeelieden ter Koopvaardij,
- Port autonome de Charleroi - Autonome Haven van Charleroi,
- Port autonome de Liège - Autonome Haven van Luik,
- Port autonome de Namur - Autonome Haven van Namen,
- Radio et télévision belges de la Communauté française - Belgische Radio en Televisie van de Franse Gemeenschap,
- Régie des bâtiments - Regie der Gebouwen,
- Régie des voies aériennes - Regie der Luchtwegen,
- Régie des postes - Regie der Posterijen,
- Régie des télégraphes et des téléphones - Regie van Telegraaf en Telefoon,
- Conseil économique et social pour la Flandre - Sociaal-economische Raad voor Vlaanderen,
- Société anonyme du canal et des installations maritimes de Bruxelles - Naamloze Vennootschap Zeekanaal en-Haveninrichtingen van Brussel,
- Société du logement de la Région bruxelloise et sociétés agréées - Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen,
- Société nationale terrienne - Nationale Landmaatschappij,
- Théâtre royal de la Monnaie - De Koninklijke Muntchouwburg,
- Universités relevant de la Communauté flamande - Universiteiten afhankelijk van de Vlaamse Gemeenschap,
- Universités relevant de la Communauté française - Universiteiten afhankelijk van de Franse Gemeenschap,
- Office flamand de l'emploi et de la formation professionnelle - Vlaamse Dienst voor Arbeidsvoorziening en Beroepsopleiding,
- Fonds flamand de construction d'institutions hospitalières et médico-sociales - Vlaams Fonds voor de Bouw van Ziekenhuizen en Medisch-Sociale Instellingen,
- Société flamande du logement et sociétés agréées - Vlaamse Huisvestingsmaatschappij en erkende maatschappijen,
- Société régionale wallonne du logement et sociétés agréées - Waalse Gewestelijke Maatschappij voor de Huisvesting en erkende maatschappijen,
- Société flamande d'épuration des eaux - Vlaamse Maatschappij voor Waterzuivering,
- Fonds flamand du logement des familles nombreuses - Vlaams Woningfonds van de Grote Gezinnen.

Categories

- les centres publics d'aide sociale,
- les fabriques d'église (church councils).

II. DENMARK

Bodies

- Københavns Havn,
- Danmarks Radio,
- TV 2/Danmark,
- TV2 Reklame A/S,
- Danmarks Nationalbank,
- A/S Storebæltsforbindelsen,
- A/S Øresundsforbindelsen (alene tilslutningsanlæg i Danmark),
- Københavns Lufthavn A/S,
- Byfornyelsesselskabet København,
- Tele Danmark A/S with subsidiaries:
- Fyns Telefon A/S,
- Jydsk Telefon Aktieselskab A/S,
- Kjøbenhavns Telefon Aktieselskab,
- Tele Sønderjylland A/S,
- Telecom A/S,
- Tele Danmark Mobil A/S.

Categories

- De kommunale havne (municipal ports),
- Andre Forvaltningssubjekter (other public administrative bodies).

III. GERMANY

1. Legal persons governed by public law

Authorities, establishments and foundations governed by public law and created by federal, State or local authorities in particular in the following sectors:

1.1. Authorities

- Wissenschaftliche Hochschulen und verfaßte Studentenschaften (universities and established student bodies),
- berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) (professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists),
- Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) (business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftsmen's guilds, tradesmen's associations),
- Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) (social security institutions: health, accident and pension insurance funds), kassenärztliche Vereinigungen (associations of panel doctors),

- Genossenschaften und Verbände (cooperatives and other associations).

1.2. Establishments and foundations

Non-industrial and non-commercial establishments subject to state control and operating in the general interest, particularly in the following fields:

- Rechtsfähige Bundesanstalten (federal institutions having legal capacity),
- Versorgungsanstalten und Studentenwerke (pension organizations and students' unions),
- Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations).

2. Legal persons governed by private law

Non-industrial and non-commercial establishments subject to State control and operating in the general interest (including kommunale Versorgungsunternehmen, municipal utilities), particularly in the following fields:

- Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische Forschungseinrichtungen, Untersuchungs- und Tierkörperbeseitigungsanstalten) (health: hospitals, health resort establishments, medical research institutes, testing and carcass-disposal establishments),
- Kultur (öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und botanische Gärten) (culture: public theatres, orchestras, museums, libraries, archives, zoological and botanical gardens),
- Soziales (Kindergärten, Kindertagesheime, Erholungseinrichtungen, Kinder- und Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser, Frauenhäuser, Altersheime, Obdachlosenunterkünfte) (social welfare: nursery schools, children's playschools, rest-homes, children's homes, hostels for young people, leisure centres, community and civic centres, homes for battered wives, old people's homes, accommodation for the homeless),
- Sport (Schwimmbäder, Sportanlagen und -einrichtungen) (sport: swimming baths, sports facilities),
- Sicherheit (Feuerwehren, Rettungsdienste) (safety: fire brigades, other emergency services),
- Bildung (Umschulungs-, Aus-, Fort- und Weiterbildungseinrichtungen, Volkshochschulen) (education: training, further training and retraining establishments, adult evening classes),
- Wissenschaft, Forschung und Entwicklung (Großforschungseinrichtungen, wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung) (science, research and development: large-scale research institutes, scientific societies and associations, bodies promoting science),
- Entsorgung (Straßenreinigung, Abfall- und Abwasserbeseitigung) (refuse and garbage disposal services: street cleaning, waste and sewage disposal),
- Bauwesen und Wohnungswirtschaft (Stadtplanung, Stadtentwicklung, Wohnungsunternehmen, Wohnraumvermittlung) (building, civil engineering and housing: town planning, urban development, housing enterprises, housing agency services),
- Wirtschaft (Wirtschaftsförderungsgesellschaften) (economy: organizations promoting economic development),
- Friedhofs- und Bestattungswesen (cemeteries and burial services),

- Zusammenarbeit mit den Entwicklungsländern (Finanzierung, technische Zusammenarbeit, Entwicklungshilfe, Ausbildung) (cooperation with developing countries: financing, technical cooperation, development aid, training).

IV. GREECE

Categories

Other legal persons governed by public law whose public works contracts are subject to State control.

V. SPAIN

Categories

- Entidades Gestoras y Servicios Comunes de la Seguridad Social (administrative entities and common services of the health and social services)
- Organismos Autónomos de la Administración del Estado (independent bodies of the national administration)
- Organismos Autónomos de las Comunidades Autónomas (independent bodies of the autonomous communities)
- Organismos Autónomos de las Entidades Locales (independent bodies of local authorities)
- Otras entidades sometidas a la legislación de contratos del Estado español (other entities subject to Spanish State legislation on procurement).

VI. FRANCE

Bodies

1. National public bodies:

1.1. with scientific, cultural and professional character:

- Collège de France,
- Conservatoire national des arts et métiers,
- Observatoire de Paris.

1.2. Scientific and technological:

- Centre national de la recherche scientifique (CNRS),
- Institut national de la recherche agronomique,
- Institut national de la santé et de la recherche médicale,
- Institut français de recherche scientifique pour le développement en coopération (ORSTOM).

1.3. with administrative character:

- Agence nationale pour l'emploi,
- Caisse nationale des allocations familiales,

- Caisse nationale d'assurance maladie des travailleurs salariés,
- Caisse nationale d'assurance vieillesse des travailleurs salariés,
- Office national des anciens combattants et victimes de la guerre,
- Agences financières de bassins.

Categories

1. National public bodies:

- universités (universities),
- écoles normales d'instituteurs (teacher training colleges).

2. Administrative public bodies at regional, departmental and local level:

- collèges (secondary schools),
- lycées (secondary schools),
- établissements publics hospitaliers (public hospitals),
- offices publics d'habitations à loyer modéré (OPHLM) (public offices for low-cost housing).

3. Groupings of territorial authorities:

- syndicats de communes (associations of local authorities),
- districts (districts),
- communautés urbaines (municipalities),
- institutions interdépartementales et interrégionales (institutions common to more than one Département and interregional institutions).

VII. IRELAND

Bodies

- Shannon Free Airport Development Company Ltd,
- Local Government Computer Services Board,
- Local Government Staff Negotiations Board,
- Córas Tráchtála (Irish Export Board),
- Industrial Development Authority,
- Irish Goods Council (Promotion of Irish Goods),
- Córas Beostoic agus Feola (CBF) (Irish Meat Board),
- Bord Fáilte Éireann (Irish Tourism Board),
- Údarás na Gaeltachta (Development Authority for Gaeltacht Regions),
- An Bord Pleanála (Irish Planning Board).

Categories

- Third level Educational Bodies of a Public Character,
- National Training, Cultural or Research Agencies,
- Hospital Boards of a Public Character,
- National Health & Social Agencies of a Public Character,

- Central & Regional Fishery Boards.

VIII. ITALY

Bodies

- Agenzia per la promozione dello sviluppo nel Mezzogiorno.

Categories

- Enti portuali e aeroportuali (port and airport authorities),
- Consorzi per le opere idrauliche (consortia for water engineering works),
- Le università statali, gli istituti universitari statali, i consorzi per i lavori interessanti le università (State universities, State university institutes, consortia for university development work),
- Gli istituti superiori scientifici e culturali, gli osservatori astronomici, astrofisici, geofisici o vulcanologici (higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observations),
- Enti di ricerca e sperimentazione (organizations conducting research and experimental work),
- Le istituzioni pubbliche di assistenza e di beneficenza (public welfare and benevolent institutions),
- Enti che gestiscono forme obbligatorie di previdenza e di assistenza (agencies administering compulsory social security and welfare schemes),
- Consorzi di bonifica (land reclamation consortia),
- Enti di sviluppo o di irrigazione (development or irrigation agencies),
- Consorzi per le aree industriali (associations for industrial areas),
- Comunità montane (groupings of municipalities in mountain areas),
- Enti preposti a servizi di pubblico interesse (organizations providing services in the public interest),
- Enti pubblici preposti ad attività di spettacolo, sportive, turistiche e del tempo libero (public bodies engaged in -entertainment, sport, tourism and leisure activities),
- Enti culturali e di promozione artistica (organizations promoting culture and artistic activities).

IX. LUXEMBOURG

Categories

- Les établissements publics de l'État placés sous la surveillance d'un membre du gouvernement (public establishments of the State placed under the supervision of a member of the Government),
- Les établissements publics placés sous la surveillance des communes (public establishments placed under the supervision of the communes),
- Les syndicats de communes créés en vertu de la loi du 14 février 1900 telle qu'elle a été modifiée par la suite (associations of communes created under the law of 14 February 1900 as subsequently modified).

X. THE NETHERLANDS

Bodies

- De Nederlandse Centrale Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek (TNO) en de daaronder ressorterende organisaties.

Categories

- De waterschappen (administration of water engineering works),
- De instellingen van wetenschappelijk onderwijs vermeld in artikel 8 van de Wet op het Wetenschappelijk Onderwijs (1985), de academische ziekenhuizen (Institutions for scientific education, as listed in Article 8 of the Scientific Education Act (1985)) wet op het Wetenschappelijk Onderwijs (1985) (teaching hospitals).

XI. PORTUGAL

Categories

- Estabelecimentos públicos de ensino investigação científica e saúde (public establishments for education, scientific research and health),
- Institutos públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character),
- Fundações públicas (public foundations),
- Administrações gerais e juntas autónomas (general administration bodies and independent councils).

XII. THE UNITED KINGDOM

Bodies

- Central Blood Laboratories Authority,
- Design Council,
- Health and Safety Executive,
- National Research Development Corporation,
- Public Health Laboratory Services Board,
- Advisory, Conciliation and Arbitration Service,
- Commission for the New Towns,
- Development Board For Rural Wales,
- English Industrial Estates Corporation,
- National Rivers Authority,
- Northern Ireland Housing Executive,
- Scottish Enterprise,
- Scottish Homes,
- Welsh Development Agency.

Categories

- Universities and polytechnics, maintained schools and colleges,
- National Museums and Galleries,
- Research Councils,
- Fire Authorities,
- National Health Service Authorities,
- Police Authorities,
- New Town Development Corporations,
- Urban Development Corporations.

The following is added to Annex I 'Lists of bodies and categories of bodies governed by public law referred to in Article 1 (b)':

XIII. Austria

All bodies subject to budgetary supervision by the 'Rechnungshof' (audit authority) not having an industrial or commercial character.

XIV. Finland

Public or publicly controlled entities or undertakings not having an industrial or commercial character.

XVI. Sweden

All non-commercial bodies whose procurement is subject to supervision by the National Board for Public Procurement.

In addition to the entities listed in Annex I of Directive 93/37/EEC, the following entities shall be regarded as bodies governed by public law within the sense of such Directive:

Austria: "Austrian State Printing Office"

Denmark: "Copenhagen Hospital Corporation" ("Hovedstandens Sygehusfaellesskab")

Ireland: "Forbas"; "Forbairt"

Luxembourg: "L'entreprise des Postes et Télécommunications (Postal business only)"

Portugal:

"INGA (National Agricultural Intervention and Guarantee Institute/Instituto Nacional de Intervenção e Garantia Agrícola)"

"Institute for the Consumer / Instituto do Consumidor"

"Institute for Meteorology / Instituto de Meteorologia"

"Institute for Natural Conservation / Instituto da Conservação da Natureza"

"Water Institute / Instituto da Agua"

"ICEP / Instituto de Comércio Externo de Portugal"

"Portuguese Blood Institute / Instituto do Sangue"

United Kingdom: "Ordnance Survey"

**EUROPEAN COMMUNITIES
COMMUNAUTES EUROPEENNES
COMUNIDADES EUROPEAS**

Directive 93/38

**As mentioned in Appendix I - Annex 3 of
the GPA**

ANNEX I

PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

BELGIUM

Entity set up pursuant to the décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau.

Entity set up pursuant to the arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau.

Entity set up pursuant to the arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau.

Entities producing or distributing water and set up pursuant to the loi relative aux intercommunales du 22 décembre 1986.

Entities producing or distributing water set up pursuant to the code communal, article 47 *bis*, *ter* et *quater* sur les régies communales.

DENMARK

Entities producing or distributing water referred to in Article 3, paragraph 3 of lovbekendtgøelse om vandforsyning m.v. af 4 juli 1985.

GERMANY

Entities producing or distributing water pursuant to the Eigenbetriebsverordnungen or Eigenbetriebsgesetze of the Länder (Kommunale Eigenbetriebe).

Entities producing or distributing water pursuant to the Gesetze Huber die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit of the Länder.

Entities producing water pursuant to the Gesetz über Wasser- und Bodenverbände vom 10 Februar 1937 and the erste Verordnung über Wasser- und Bodenverbände vom 3 September 1937.

(Regiebetriebe) producing or distributing water pursuant to the Kommunalgesetze and notably with the Gemeindeordnungen der Länder.

Entities set up pursuant to the Aktiengesetz vom 6 September 1965, zuletzt geändert am 19 Dezember 1985 or GmbH-Gesetz vom 20 Mai 1898, zuletzt geändert am 15 Mai 1986, or having the legal status of a Kommanditgesellschaft, producing or distributing water on the basis of a special contract with regional or local authorities.

GREECE

The Water Company of Athens / *Εταιρεία Ύδρευσης – Αποχέτευσης Πρωτευούσης* (Etaireia Ydrefsis Apochetefsis Protevoysis) set up pursuant to Law 1068/80 of 23 August 1980.

The Water Company of Salonica / *Οργανισμός Ύδρευσης Θεσσαλονίκης* (Organismos Ydrefsis Thessalonikis) operating pursuant to Presidential Decree 61/1988.

The Water Company of Voios / *Εταιρεία Ύδρευσης Βόλου* (Etaireia Ydrefsis Voloy) operating pursuant to Law 890/1979.

Municipal companies / *Δημοτικές Επιχειρήσεις ύδρευσης - αποχέτευσης* (Dimotikes Epicheiriseis ydrefsis apochetefsis) producing or distributing water and set up pursuant to Law 1059/80 of 23 August 1980.

Associations of local authorities / *Σύνδεσμοι ύδρευσης* (Syndesmoi ydrevsys) operating pursuant to the Code of local authorities *Κώδικας Δήμων και Κοινοτήτων* (Kodikas Dimon Kai Koinotiton) implemented by Presidential Decree 76/1985.

SPAIN

- Entities producing or distributing water pursuant to *Ley no 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local* and to *Decreto Real no 781/1986 Texto Refundido Régimen local*.
- Canal de Isabel II. *Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984*.
- Mancomunidad de los Canales de Taibilla, *Ley de 27 de abril de 1946*.

FRANCE

Entities producing or distributing water pursuant to the:

dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies); or

code des communes L 323-8 R 323-4 [régies directes (ou de fait)]; or

décret-loi du 28 décembre 1926, règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière); or

code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or

code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or

jurisprudence administrative, circulaire intérieure du 13 décembre 1975 (gérance); or

code des communes R 324-6, circulaire intérieure du 13 décembre 1975 (régie intéressée); or

circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or

décret du 20 mai 1955, loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or

code des communes L 322-1 À L 322-6, R 322-1 À R 322-4 (dispositions communes aux régies, concessions et affermages).

IRELAND

Entities producing or distributing water pursuant to the Local Government (Sanitary Services) Act 1878 to 1964.

ITALY

Entities producing or distributing water pursuant to the *Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578 and to Decreto del P.R. n. 902 del 4 ottobre 1986.*

Ente Autonomo Acquedotto Pugliese set up pursuant to *RDL 19 ottobre 1919, n. 2060.*

Ente Acquedotti Siciliani set up pursuant to *leggi regionali 4 settembre 1979, n. 2/2 e 9 agosto 1980, n. 81.*

Ente Sardo Acquedotti e Fognature set up pursuant to *legge 5 luglio 1963 n. 9.*

LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the *loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la loi du 23 décembre 1958 et par la loi du 29 juillet 1981* and pursuant to the *loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre.*

NETHERLANDS

Entities producing or distributing water pursuant to the *Waterleidingwet van 6 april 1957, amended by the wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986.*

PORTUGAL

Empresa Pública das Águas Livres producing or distributing water pursuant to the *Decreto-Lei no 190/81 de 4 de Julho de 1981*.

Local authorities producing or distributing water.

UNITED KINGDOM

Water companies producing or distributing water pursuant to *the Water Acts 1945 and 1989*.

The Central Scotland Water Development Board producing water and the water authorities producing or distributing water pursuant to the *Water (Scotland) Act 1980*.

The Department of the Environment for Northern Ireland responsible for producing and distributing water pursuant to the *Water and Sewerage (Northern Ireland) Order 1973*.

ANNEX II

PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

BELGIUM

Entities producing, transporting or distributing electricity pursuant to *article 5: Des régies communales et intercommunales of the loi du 10 mars 1925 sur les distributions d'énergie électrique.*

Entities transporting or distributing electricity pursuant to *the loi relative aux intercommunales du 22 décembre 1986.*

EBES, Intercom, Unerg and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to *article 8 - les concessions communales et intercommunales of the loi du 10 mars 1952 sur les distributions d'énergie électrique.*

The Société publique de production d'électricité (SPÉ).

DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to §3, *stk. 1, of the lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde.*

Entities distributing electricity as defined in §3, *stk. 2, of the lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde* and on the basis of authorizations for expropriation pursuant to *Articles 10 to 15 of the lov om elektriske stærkstrømsanlæg, jf. lovbekendtgørelse nr. 669 af 28. december 1977.*

GERMANY

Entities producing, transporting or distributing electricity as defined in §2 *Absatz 2 of the Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) of 13 December 1935. Last modified by the Gesetz of 19 December 1977, and auto-production of electricity so far as this is covered by the field of application of the Directive pursuant to Article 2, paragraph 5.*

GREECE

Δημόσια Επιχείρηση Ηλεκτρισμού (Dimosia Epicheirisi Ilektrismoy) (Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950 *Περί ιδρύσεως Δημοσίας Επιχειρήσεως Ηλεκτρισμού (Peri idryseos Dimosias Epicheiriseos Ilektrismoy)*, and operating pursuant to *the law 57/85: Δομή ρόλος και τρόπος διοίκησης και λειτουργίας της κοινωνικοποιημένης Δημόσιας Επιχείρησης Ηλεκτρισμού (Domi, rolos kai tropos dioksis kai leitoyrgias tis koinonikopoiimenis Dimosias Epicheiriseos Ilektrismoy).*

SPAIN

Entities producing, transporting or distributing electricity pursuant to *Article 1 of the Decreto de 12 de marzo de 1954, approving the Reglamento de verificaciones eléctricas y regularidad en el suministro de energía and pursuant to Decreto 2617/1966, de 20 de octubre, sobre autorización administrativa en materia le instalaciones eléctricas.*

Red Eléctrica de España SA, set up pursuant to *Real Decreto 91/1985 de 23 de enero.*

FRANCE

Électricité de France, set up and operating pursuant to *the loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.*

Entities (sociétés d'économie mixte or régies) distributing electricity and referred to in *article 23 of the loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.*

Compagnie nationale du Rhône.

IRELAND

The Electricity Supply Board (ESB) set up and operating pursuant to *the Electricity Supply Act 1927.*

ITALY

Ente nazionale per l'energia elettrica set up pursuant to *legge n.. 1643, 6 dicembre 1962 approvato con Decreto n.1720, 21 dicembre 1965.*

Entities operating on the basis of a concession pursuant to *article 4, n.5 or 8 of legge 6 dicembre 1962, n.1643 - Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche.*

Entities operating on the basis of concession pursuant to *article 20 of Decreto del Presidente delle Repubblica 18 marzo 1965, n. 342 norme integrative della legge 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'energia elettrica.*

LUXEMBOURG

Compagnie grand-ducale d'électricité de Luxembourg, producing or distributing electricity pursuant to *the convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché du Luxembourg approuvée par la loi du 4 janvier 1928.*

Société électrique de l'Our (SEO).

Syndicat de Communes SIDOR.

NETHERLANDS

Elektriciteitsproductie Oost-Nederland.

Elektriciteitsbedrijf Utrecht-Noord-Holland-Amsterdam (UNA).

Elektriciteitsbedrijf Zuid-Holland (EZH)

Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ).

Provinciale Zeeuwse Energie Maatschappij (PZEM).

Samenwerkende Elektriciteitsbedrijven (SEP).

Entities distributing electricity on the basis of a licence (vergunning) granted by the provincial authorities pursuant to the Provinciewet.

PORTUGAL

Electricidade de Portugal (EDP) , set up pursuant to the *Decreto-Lei no 502/76 de 30 de Junho de 1976*.

Entities distributing electricity pursuant to *artigo 1o do Decreto-Lei no 344-B/82 de 1 de Setembro de 1982, amended by Decreto-Lei no 297/86 de 19 de Setembro de 1986*. Entities producing electricity pursuant to *Decreto Lei no 189/88 de 27 de Maio de 1988*.

Independent producers of electricity pursuant to *Decreto Lei n o 189/88 de 27 de Maio de 1988*.

Empresa de Electricidade dos Açores - EDA, EP, created pursuant to the *Decreto Regional no 16/80 de 21 de Agosto de 1980*.

Empresa de Electricidade da Madeira, EP, created pursuant to the *Decreto-Lei no 12/74 de 17 de Janeiro de 1974 and regionalized pursuant to the Decreto-Lei no 31/79 de 24 de Fevereiro de 1979, Decreto-Lei no 91/79 de 19 de Abril de 1979*.

UNITED KINGDOM

Central Electricity Generating (CEGB), and the Areas Electricity Boards producing, transporting or distributing electricity pursuant to the Electricity Act 1947 and the Electricity Act 1957.

The North of Scotland Hydro-Electricity Board (NSHB), producing, transporting and distributing electricity pursuant to the Electricity (Scotland) Act 1979.

The South of Scotland Electricity Board (SSEB) producing, transporting and distributing electricity pursuant to the Electricity (Scotland) Act 1979.

The Northern Ireland Electricity Service (NIES), set up pursuant to the Electricity Supply (Northern Ireland) Order 1972.

ANNEX VII

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY,
TROLLEYBUS OR BUS SERVICES

BELGIUM

Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB)

Entities providing transport services to the public on the basis of a contract granted by SNCV pursuant to *Articles 16 and 21 of the arrêté du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars.*

Société des transports intercommunaux de Bruxelles (STIB),

Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA),

Maatschappij van het Intercommunaal Vervoer te Gent (MIVG),

Société des transports intercommunaux de Charleroi (STIC),

Société des transports intercommunaux de la région liégeoise (STIL),

Société des transports intercommunaux de l'agglomération verviétoise (STIAV), and other entities set up pursuant to *the loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer of 22 February 1962.*

Entities providing transport services to the public on the basis of a contract with STIB pursuant to *Article 10* or with other transport entities pursuant to *Article 11 of the arrêté royal 140 du 30 décembre 1982 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications.*

DENMARK

Danske Statsbaner (DSB)

Entities providing bus services to the public (almindelig rutekørsel) on the basis of an authorization pursuant to *lov nr. 115 af 29 marts 1978 om buskørsel.*

GERMANY

Entities providing, on the basis of an authorization, short-distance transport services to the public (Öffentlichen Personennahverkehr) pursuant to *the Personenbeförderungsgesetz vom 21 März 1961, as last amended on 25 July 1989.*

GREECE

Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών-Πειραιώς (Ilektrokinita Leoforeia Periochis Athinon-Peiraios, Electric buses of the Athens - Piraeus area) operating pursuant to *decree 768/1970 and law 588/1977*.

Ηλεκτρικοί Σιδηρόδρομοι Αθηνών-Πειραιώς (Ilektrikoi Sidorodromoi Athinon-Peiraios, Athen-Piraeus electric railways) operating pursuant to *laws 352/1976 and 588/1977*.

Επιχείρηση Αστικών Συγκοινωνιών Epicheirisi Ostikon Sygkoinion. (Enterprise of urban transport) operating pursuant to *law 588/1977*.

Κοινό Ταμείο Εισπράξεως Λεωφορείω Κοινό (Tameio Eisprazeos Leoforeion, Joint receipts fund of buses) operating pursuant to *decree 102/1973*.

ΡΟΔΑ (Δημοτική Επιχείρηση Λεωφορείων Ρόδου) (Diomtiki Epicheirisi Leoforeion) Roda: Municipal bus enterprise in Rhodes.

Οργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης Organismos Astikon Sygkoinion Thessalonikis. (Urban transport organization of Thessaloniki) operating pursuant to *decree 3721/1957 and law 716/1980*.

SPAIN

Entities providing transport services to the public pursuant to the *Ley de Régimen local*.

Corporación metropolitana de Madrid.

Corporación metropolitana de Barcelona.

Entities providing urban or inter-urban bus services to the public pursuant to *Articles 113 to 118 of the Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987*.

Entities providing bus services to the public, pursuant to Article 71 of *the Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987*.

FEVE, RENFE (or Empresa Nacional de Transportes de Viajeros por Carretera) providing bus services to the public pursuant to *the Disposiciones adicionales. Primera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957*.

Entities providing bus services to the public pursuant to *Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957*.

FRANCE

Entities providing transport services to the public pursuant to article 7-11 of *the loi no 82-1153 du 30 décembre 1982, transports intérieurs, orientation*.

Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTR, and other entities providing transport services to the public on the basis of an *authorization granted by the syndicat des transports parisiens pursuant to the ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne*.

IRELAND

Iarnrod Éiréann (Irish Rail).

Bus Éireann (Irish Bus).

Bus Átha Cliath (Dublin Bus).

Entities providing transport services to the public pursuant to the amended Road Transport Act 1932.

ITALY

Entities providing transport services of a concession pursuant to *Legge 28 settembre 1939, n. 1822 - Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) - Article 1 as modified by Article 45 of Decreto del Presidente della Repubblica 28 giugno 1955, n. 771*.

Entities providing transport services to the public pursuant to *Article 1 (15) of Regio Decreto 15 ottobre 1925, n. 2578 - Approvazione del Testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province*.

Entities operating on the basis of a concession pursuant to *Article 242 or 255 of Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili*.

Entities or local authorities operating on the basis of a concession pursuant to *Article 4 of Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione*.

Entities operating on the basis of a concession pursuant to *Article 14 of Legge 2 agosto 1952, n. 1221 - Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione*.

LUXEMBOURG

Chemins de fer du Luxembourg (CFL).

Service communal des autobus municipaux de la ville de Luxembourg.

Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).

Bus service undertakings operating pursuant to the reglement grand-ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées.

NETHERLANDS

Entities providing transport services to the public pursuant to *Chapter II (Openbaar vervoer) of the Wet Personenvervoer van 12 maart 1987*.

PORTUGAL

Rodoviaria Nacional, EP.

Companhia Carris de ferro de Lisboa.

Metropolitano de Lisboa, EP.

Serviços de Transportes Colectivos do Porto.

Serviços Municipalizados de Transporte do Barreiro.

Serviços Municipalizados de Transporte de Aveiro.

Serviços Municipalizados de Transporte de Braga.

Serviços Municipalizados de Transporte de Coimbra.

Serviços Municipalizados de Transporte de Portalegre.

UNITED KINGDOM

Entities providing bus services to the public pursuant to the London Regional Transport Act 1984.

Glasgow Underground.

Greater Manchester Rapid Transit Company.

Docklands Light Railway.

London Underground Ltd.

British Railways Board.

Tyne and Wear Metro.

ANNEX VIII

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

BELGIUM

Régie des voies aériennes set up pursuant to the *arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes amended by arrCetBe royal du 5 octobre 1970 portant refonte du statut de la régie des voies aériennes.*

DENMARK

Airports operating on the basis of an authorization pursuant to § 55, *stk. 1, lov om luftfart, jf. lovbekendtgørelse nr. 408 af 11. september 1985.*

GERMANY

Airports as defined in *Article 38 Absatz 2 no of the Luftverkehrszulassungsordnung vom 19 März 1979, as last amended by the Verordnung vom 21 Juli 1986.*

GREECE

Airports operating pursuant to law 517/1931 setting up the civil aviation service Υπηρεσία Πολιτικής Αεροπορίας(ΥΠΙΑ)(Ypiresia Politikis Aeroporias (YPA)).

International airports operating pursuant to *presidential decree 647/981.*

SPAIN

Airports managed by Aeropuertos Nacionales operating pursuant to *the Real Decreto 278/1982 de 15 de octubre de 1982.*

FRANCE

Aéroports de Paris operating pursuant to *titre V, articles L 251-1 à 252-1 du code de l'aviation civile.*

Aéroport de Bâle - Mulhouse, set up pursuant to *the convention franco-suisse du 4 juillet 1949.*

Airports as defined in *article L 270-1, code de l'aviation civile.*

Airports operating pursuant to *the cahier de charges type d'une concession d'aéroport, décret du 6 mai 1955.*

Airports operating on the basis of a convention d'exploitation pursuant to *article L/221, code de l'aviation civile.*

IRELAND

Airports of Dublin, Cork and Shannon managed by Aer Rianta - Irish Airports.

Airports operating on the basis of a Public use License granted, pursuant to *the Air Navigation and Transport Act No 23 1936, the Transport Fuel and Power Transfer of Departmental, Administration and Ministerial Functions Order 1959 (SI No 125 of 1959) and the Air Navigation (Aerodromes and Visual Ground Aids) Order 1970 (SI No 291 of 1970)*.

ITALY

Civil Stat. airports (aerodromo civili istituiti dallo Stato referred to in *Article 692 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*.

Entities operating airport facilities on the basis of a concession granted pursuant to *Article 694 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*.

LUXEMBOURG

Aéroport de Findel.

NETHERLANDS

Airports operating pursuant to Articles 18 and following of *the Luchtvaartwet of 15 January 1958, amended on 7 June 1978*.

PORTUGAL

Airports managed by Aeroportos de Navegação Aérea (ANA), EP pursuant to *Decreto-Lei no 246/79*.

Aeroporto do Funchal and Aeroporto de Porto Santo, regionalized pursuant to the *Decreto-Lei no 284/81*.

UNITED KINGDOM

Airports managed by British Airports Authority plc.

Airports which are public limited companies (plc) pursuant to the Airports Act 1986.

ANNEX IX

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT OR OTHER
TERMINAL FACILITIES

BELGIUM

- Société anonyme du canal et des installations maritimes de Bruxelles.
- Port autonome de Liège.
- Port autonome de Namur.
- Port autonome de Charleroi.
- Port de la ville de Gand.
- La Compagnie des installations maritimes de Bruges - Maatschappij der Brugse haveninrichtingen.
- Société intercommunale de la rive gauche de l'Escaut - Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).
- Port de Nieuwport.
- Port d'Ostende.

DENMARK

- Ports as defined in *Article 1, I to III of the bekendtgørelse nr. 604 af 16 december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12 maj 1976 om trafikhavne.*

GERMANY

- Seaports owned totally or partially by territorial authorities (Länder, Kreise, Gemeinden).
- Inland ports subject to *the Hafenordnung pursuant to the Wassergesetze der Länder.*

GREECE

- Οργανισμός Λιμένος Πειραιώς Piraeus port (Organismos Limenos Peiraios) set up pursuant to *Emergency Law 1559/1950 and Law 1630/1951.*
- Οργανισμός Λιμένος Θεσσαλονίκης Thessaloniki port (Organismos Limenos Thessalonikis) set up pursuant to *decree N.A. 2251/1953.*

- Other ports governed by presidential *decree 649/1977 (NA. 649/1977) Εποπτεία, οργάνωση λειτουργίας, διοικητικός έλεγχος λιμένων (Eropteia, organosi leitoyrgias dioktitikos elenchos limeron, supervision, organization of functioning and administrative control).*

SPAIN

- Puerto de Huelva set up pursuant to *the Decreto de 2 de octubre de 1969, no 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*
- Puerto de Barcelona set up pursuant to *the Decreto de 25 de agosto de 1978, no 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.*
- Puerto de Bilbao set up pursuant to *the Decreto de 25 de agosto de 1978, no 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.*
- Puerto de Valencia set up pursuant to *the Decreto de 25 de agosto de 1978, no 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.*
- Juntas de Puertos operating pursuant to *the Lei 27/68 de 20 de junio de 1968 &; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía and to the Decreto de 9 de abril de 1970, no 1350/70. Juntas de Puertos. Reglamento.*
- Ports managed by the Comisión Administrativa de Grupos de Puertos, operating pursuant to *the Ley 27/68 de 20 de junio de 1968, Decreto 1958/78 de 23 de junio de 1978 and Decreto 571/81 de 6 de mayo de 1981.*
- Ports listed in the *Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.*

FRANCE

- Port autonome de Paris set up pursuant to *loi 68/917 du 24 octobre 1968 relative au port autonome de Paris.*
- Port autonome de Strasbourg set up pursuant to *the convention du 20 mai 1923 entre l'BEtat et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port, approved by the loi du 26 avril 1924.*
- Other inland waterway ports set up or managed pursuant to *article 6 (navigation intérieure) of the décret 69-140 du 6 février 1969 relatif aux concessions d'outillage public dans les ports maritimes.*
- Ports autonomes operating pursuant to *articles L 111-1 et suivants of the code des ports maritimes.*
- Ports non autonomes operating pursuant to *articles R 121-1 et suivants of the code des ports maritimes.*

- Ports managed by regional authorities (départements) or operating pursuant to a concession granted by the regional authorities (départements) pursuant to *article 6 of the loi 86-663 du 22 juillet 1983 complétant la loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, départements et l'Etat.*

IRELAND

- Ports operating pursuant to *the Harbour Acts 1946 to 1976.*
- Port of Dun Laoghaire operating pursuant to *the State Harbours Act 1924.*
- Port of Rosslare Harbour operating pursuant to *the Finguard and Rosslare Railways and Harbours Act 1899.*

ITALY

- State ports and other ports managed by the Capitaneria di Porto pursuant to *the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 32.*
- Autonomous ports (enti portuali) set up by special laws pursuant to *Article 19 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.*

LUXEMBOURG

Port de Mertert set up and operating pursuant to *loi du 22 juillet 1963 relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle.*

NETHERLANDS

Havenbedrijven, set up and operating pursuant to *the Gemeentewet van 29 juni 1851.*

Havenschap Vlissingen, set up by *the wet van 10 september 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen.*

Havenschap Terneuzen, set up by *the wet van 8 april 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen.*

Havenschap Delfzijl, set up by *the wet van 31 juli 1957 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl.*

Industrie- en havenschap Moerdijk, set up by *gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk van 23 oktober 1970, approved by Koninklijke Besluit nr. 23 van 4 maart 1972.*

PORTUGAL

Porto do Lisboa set up pursuant to *Decreto Real do 18 de Fevereiro de 1907 and operating pursuant to Decreto-Lei no 36976 de 20 de Julho de 1948.*

Porto do Douro e Leixões set up pursuant to *Decreto-Lei n o 36977 de 20 de Julho de 1948.*

Porto de Sines set up pursuant to *Decreto-Lei no 508/77 de 14 de Dezembro de 1977.*

Portos de Setúbal, Aveiro, Figueira de Foz, Viana do Castelo, Portimão e Faro operating pursuant to *the Decreto-Lei no 37754 de 18 de Fevereiro de 1950.*

UNITED KINGDOM

Harbour Authorities within the meaning of *Section 57 of the Harbours Act 1964 providing port facilities to carriers by sea or inland waterway.*

3. 393 L 0038: Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 199, 9.8.1993, p. 84).

(a) The following is added to Annex I 'PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER':

'AUSTRIA

Entities of local authorities (Gemeinden) and associations of local authorities (Gemeindeverbände) producing, transporting or distributing drinking water pursuant to *the Wasserversorgungsgesetze of the nine Länder.*

FINLAND

Entities producing, transporting or distributing drinking water pursuant to *Article 1 of Laki yleisistä vesi- ja viemärilaitoksista (982/77) of 23 December 1977.*

SWEDEN

Local authorities and municipal companies which produce, transport or distribute drinking water pursuant to *lagen (1970:244) om allmänna vatten- och avloppsanläggningar.*';

- (b) the following is added to Annex II 'PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY':

'AUSTRIA

Entities producing, transporting or distributing electricity pursuant to *the second Verstaatlichungsgesetz (BGBl. Nr. 81/1947), and the Elektrizitätswirtschaftsgesetz (BGBl. Nr. 260/1975), including the Elektrizitätswirtschaftsgesetze of the nine Länder.*

FINLAND

Entities producing, transporting or distributing electricity on the basis of a concession pursuant to *Article 27 of Sähkölaki (319/79) of 16 March 1979.*

SWEDEN

Entities which transport or distribute electricity on the basis of a concession pursuant to *lagen (1902:71 s. 1) innefattande vissa bestämmelser om elektriska anläggningar.*

- (g) the following is added to Annex VII 'CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEY BUS OR BUS SERVICES':

'AUSTRIA

Entities providing transport services pursuant to *the Eisenbahngesetz 1957 (BGBl. Nr. 60/1957) and the Kraftfahrliniengesetz 1952 (BGBl. Nr. 84/1952).*

FINLAND

Public or private entities operating bus services according to *"Laki (343/91) luvanvaraisesta henkilöliikenteestä tiellä"* and *Helsingin kaupungin liikennelaitos/Helsingfors stads trafikverk (Helsinki Transport Board)*, which provides metro and tramway services to the public.

SWEDEN

Entities operating urban railway or tramway services according to *lagen (1978:438) om huvudmannskap för viss kollektiv persontrafik and lagen (1990:1157) om jaernvägssäkerhet.* Public or private entities operating a trolley bus or bus service in accordance with the *lagen (1978:438) om huvudmannskap för viss kollektiv persontrafik and lagen (1983:293) om yrkestrafik.*

- (h) the following is added to Annex VIII 'CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES':

'AUSTRIA

Austro Control GmbH

Entities as defined in *Articles 60 to 80 of the Luftfahrtgesetz 1957 (BGBl. Nr. 253/1957).*

FINLAND

Airports managed by "Ilmailulaitos/Luftfartsverket" pursuant to *Ilmailulaki (595/64)*.

SWEDEN

Publicly owned and operated airports in accordance with *lagen (1957:297) om luftfart*.

Privately owned and operated airports with an exploitation permit under the act, where this permit corresponds to the criteria of Article 2 (3) of the Directive.;

- (i) the following is added to Annex IX 'CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT OR OTHER TERMINAL FACILITIES':

'AUSTRIA

Inland ports owned totally or partially by Länder and/or Gemeinden.

FINLAND

Ports operating pursuant to *Laki kunnallisista satamajärjestyksistä ja liikennemaksuista (955/76)*.

Saimaa Canal (Saimaan kanavan hoitokunta).

SWEDEN

Ports and terminal facilities according to *lagen (1983:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn, the förordningen (1983:744) om trafiken paa Göta kanal*.

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III OF
APPENDIX I OF THE EC

General Notes and Derogations from the Provisions of Article III

1. The EC will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (a) (water) to the suppliers and service providers of Canada and the USA,
 - (b) (electricity) to the suppliers and service providers of Canada, and Japan,
 - (c) (airports) to the suppliers and service providers of Canada, Korea and the USA,
 - (d) (ports) to the suppliers and service providers of Canada,
 - (e) (urban transport) to the suppliers and service providers of Canada, Japan, Korea and the USA; to the suppliers and service providers of Israel, as regards bus services,

until such time as the EC has accepted that the Parties concerned give comparable and effective access for EC undertakings to the relevant markets;
 - to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.

2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2 paragraph 2, until such time as the EC accepts that they have completed coverage of sub-central entities;
 - Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EC law, until such time as the EC accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;

- Israel, Japan and Korea in contesting that award of contracts by EC entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

3. Until such time as the EC has accepted that the Parties concerned provide access for EC suppliers and service providers to their own markets, the EC will not extend the benefits of this Agreement to suppliers and service providers of:

- Canada, as regards procurement of FSC 36, 70 and 74 (special industry machinery, general purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations), office machines, visible record equipment and ADP equipment);
- Canada, as regards procurement of FSG 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment;
- Korea and Israel as regards procurement by entities listed in Annex 3 paragraph (b), as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos. 8501, 8536 and 902830;
- the USA, as regards procurement by entities listed in Annex 3 paragraph (d), as regards procurement of dredging services and procurement related to shipbuilding;
- Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.

4. The Agreement shall not apply to contracts awarded under:

- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
- an international agreement relating to the stationing of troops;
- the particular procedure of an international organization.

5. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.

6. Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.

7. This Agreement shall not apply to contracts awarded by entities in Annex 3:

- for the purchase of water and for the supply of energy or of fuels for the production of energy;

- for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-member country;
 - for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.
8. This Agreement shall not be applicable to contracts:
- for the acquisition or rental of land, existing buildings, or other immovable property or concerning rights thereon;
 - for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.
9. This Agreement shall not be applicable to the award of service contracts by Spanish entities listed in Annex 3 before 1 January 1997 or to the award of contracts by Greek or Portuguese entities listed in Annex 3 before 1 January 1998.
10. The provision of services, including construction services, in the context of procurement procedures according to this Agreement is subject to the conditions and qualifications for market access and national treatment as will be required by Austria in conformity with her commitments under the GATS.
11. This Agreement shall not apply to contracts awarded to an entity in Finland which itself is a contracting authority within the meaning of the Public Procurement Act: "Laki julkisista hankinnoista" (1505/92), or in Sweden within the meaning of the "Lag om offentlig upphandling" (1992:1528), on the basis of an exclusive right which it enjoys pursuant to a law, regulation or administrative provision or to contracts of employment in Finland and Sweden.
12. When a specific procurement may impair important national policy objectives, the Finnish or Swedish Governments may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at Cabinet level. Finland also reserves its position with regard to the application of this Agreement to the Åland Islands (Ahvenanmaa).

NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS DE L'ARTICLE III DE
L'APPENDICE I DE LA CE

Notes générales et dérogations aux dispositions de l'article III

1. La CE n'étendra pas le bénéfice des dispositions de cet accord:

- en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs et aux prestataires de services du Canada;
- en ce qui concerne les marchés passés, à l'exception des fournitures, énumérés à l'annexe 2 aux fournisseurs et aux prestataires de services des États-Unis;
- en ce qui concerne les marchés passés par les entités énumérées à l'annexe 3 paragraphes
 - (a) (eau), aux fournisseurs et aux prestataires de services du Canada et des États-Unis,
 - (b) (électricité), aux fournisseurs et aux prestataires de services du Canada, et du Japon,
 - (c) (aéroports), aux fournisseurs et aux prestataires de services du Canada, de la Corée et des États-Unis,
 - (d) (ports), aux fournisseurs et aux prestataires de services du Canada,
 - (e) (transport urbain), aux fournisseurs et aux prestataires de services du Canada, du Japon, de la Corée et des États-Unis d'Amérique; aux producteurs et fournisseurs de service d'Israël, pour ce qui est des services de transport de voyageurs par autobus,

tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises de la CE un accès comparable et effectif aux marchés considérés;

- aux prestataires de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.

2. Les dispositions de l'article XX ne sont pas applicables aux fournisseurs et aux prestataires de services des pays suivants:

- Israël, Japon, Corée et Suisse en ce qui concerne les recours intentés contre l'adjudication de marchés par les entités mentionnées à l'annexe 2 paragraphe 2, tant que la CE n'a pas constaté que ces pays ont complété la liste des entités sous-centrales;

- Japon, Corée et États-Unis en ce qui concerne les recours intentés contre l'adjudication de marchés à un fournisseur ou à un prestataire de services d'autres parties, lorsque ledit fournisseur est une entreprise petite ou moyenne au sens du droit communautaire, tant que la CE n'aura pas constaté que ces pays n'appliquent plus de mesures discriminatoires pour favoriser certaines petites entreprises nationales ou certaines entreprises nationales détenues par les minorités;
- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication par des entités de la CE de marchés dont la valeur est inférieure au seuil appliqué à la même catégorie de marchés par lesdites Parties.

3. Tant que la CE n'aura pas constaté que les Parties concernées assurent l'accès de leurs marchés aux fournisseurs et aux prestataires de services de la CE, elle n'étendra pas le bénéfice des dispositions du présent accord aux fournisseurs et aux prestataires de services des pays suivants:

- Canada, en ce qui les marchés portant sur les produits relevant des n° 36, 70 et 74 de la FSC (machines industrielles spéciales, matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010 configurations d'équipement de traitement automatique des données), machines de bureau, matériel de bureautique et d'informatique de bureau;
- Canada, en ce qui concerne les marchés portant sur les produits relevant du FSG 58 (matériel de communications, matériel de détection des radiations et d'émission de rayonnement cohérent) et États-Unis en ce qui concerne les équipements de contrôle du trafic aérien;
- Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'annexe 3 paragraphe (b), pour les produits relevant des n° 8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); et Israël en ce qui concerne les produits relevant des n° 8501, 8536 et 902830 du SH;
- États-Unis, en ce qui concerne les marchés passés par les entités énumérées à l'annexe 3 paragraphe (d), en ce qui concerne l'acquisition des services de dragage et l'acquisition relative à la construction navale;
- Canada et États-Unis en ce qui concerne les marchés de fournitures et de services entrant dans le cadre de marchés qui, tout en étant passés par une entité relevant du champ d'application du présent accord, ne sont pas eux-mêmes soumis à ce dernier.

4. Le présent accord n'est pas applicable aux marchés passés en vertu:

- d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage par les Etats signataires;
- d'un accord international conclu en relation avec le stationnement des troupes;
- de la procédure spécifique d'une organisation internationale.

5. Le présent accord n'est pas applicable aux marchés des produits agricoles passés en application des programmes de soutien à l'agriculture ou de programmes d'aide alimentaire.

6. Les marchés passés par les entités mentionnées aux annexes 1 et 2 dans les secteurs de l'eau potable, de l'énergie, du transport ou des télécommunications, ne sont pas inclus.

7. Le présent accord n'est pas applicable aux marchés passés par les entités mentionnées à l'annexe 3:

- pour l'acquisition d'eau et la fourniture d'énergie ou de combustibles destinés à la production d'énergie;
- à des fins autres que la poursuite de leurs activités selon la description donnée dans cette annexe ou pour la poursuite de ces activités dans un pays tiers;
- à des fins de revente ou de location à des tiers, lorsque l'entité adjudicatrice ne bénéficie d'aucun droit spécial ou exclusif pour vendre ou louer l'objet de ces marchés et lorsque d'autres entités peuvent librement le vendre ou le louer dans les mêmes conditions que l'entité adjudicatrice.

8. Le présent accord n'est pas applicable aux marchés passés:

- pour l'acquisition ou la location de terrains, de bâtiments existants, ou d'autres biens immeubles ou qui concernent des droits sur ces biens;
- pour l'acquisition, le développement, la production ou la coproduction du matériel destiné à la radiodiffusion et la télédiffusion et des contrats de temps d'émission.

9. Le présent accord n'est pas applicable à la passation des marchés de service par les entités espagnoles énumérées à l'annexe 3 avant le 1er janvier 1997 ou à la passation des marchés par les entités grecques ou portugaises énumérées à l'annexe 3 avant le 1er janvier 1998.

10. La prestation des services, y compris les services de construction, dans le contexte des procédures de passation de marchés en vertu cet accord est soumise aux conditions et aux qualifications pour l'accès au marché et le traitement national exigées par l'Autriche conformément à ses engagements sous l'AGCS.

11. Cet accord n'est pas applicable aux marchés attribués à une entité en Finlande qui est elle-même un pouvoir adjudicateur au sens de la loi sur les marchés publics: "Laki julkisista hankinnoista" (1505/92), ou en Suède au sens de la "Lag om offentlig upphandling" (1992:1528), sur la base d'un droit exclusif dont elle bénéficie en vertu des dispositions législatives, réglementaires ou administratives ou en vertu des contrats de travail en Finlande ou Suède.

12. Lorsqu'une acquisition spécifique peut altérer des objectifs politiques nationaux importants, les gouvernements finlandais et suédois pourront considérer nécessaire de s'écarter du principe de traitement national de l'Accord dans des cas particuliers. Une telle décision sera prise au niveau du Cabinet. La Finlande réserve également sa position en ce qui concerne l'application de cet accord aux îles Åland (Ahvenanmaa).

NOTAS Y DEROGACIONES GENERALES DE LO PREVISTO EN EL ARTÍCULO III DEL
APÉNDICE I DE LA CENotas y derogaciones generales de lo previsto en el artículo III

1. La CE no concederá los beneficios de este Acuerdo:

- por lo que se refiere a la adjudicación de los contratos por las entidades enumeradas en el anexo 2 a los proveedores y a los prestadores de servicios de Canadá;
 - por lo que se refiere a la adjudicación de los contratos, con excepción de contratos de suministros, enumerados en el anexo 2 a los proveedores y a los prestadores de servicios de los EE.UU.;
 - por lo que se refiere a la adjudicación de los contratos por entidades enumeradas en el anexo 3 párrafos
 - (a) (agua), a los proveedores y a los prestadores de servicios de Canadá y de los EE.UU.,
 - (b) (electricidad), a los proveedores y a los prestadores de servicios de Canadá y Japón,
 - (c) (aeropuertos), a los proveedores y a los prestadores de servicios de Canadá, Corea y los EE.UU.,
 - (d) (puertos), a los proveedores y a los prestadores de servicios de Canadá,
 - (e) (transporte urbano), a los proveedores y a los prestadores de servicios de Canadá, Japón, Corea y los EE.UU.; a los proveedores en general y a los proveedores de servicios de Israel, respecto de los servicios de autobús,
- hasta que la CE haya aceptado que las partes afectadas garantizan un acceso comparable y efectivo de empresas de la Comunidad a los mercados pertinentes;
- a los prestadores de servicios de las Partes que no incluyen los contratos de servicio adjudicados por las entidades enumeradas en anexos 1 a 3 y la categoría pertinente de servicio conforme a los anexos 4 y 5 en su propia cobertura.

2. Lo previsto en el artículo XX no se aplicará a los proveedores y a los prestadores de servicios de los siguiente países:

- Israel, Japón, Corea y Suiza por lo que se refiere a la impugnación de la adjudicación de contratos por las entidades enumeradas en el anexo 2 párrafo 2º, hasta que la CE acepte que estos países han completado su cobertura de entidades subcentrales;
- Japón, Corea y los EE.UU. por lo que se refiere a la impugnación de la adjudicación de los contratos a un proveedor o a un prestador de servicios de las otras Partes, que sean empresas pequeñas o medianas conforme a las disposiciones pertinentes del

derecho comunitario, hasta que la CE acepte que ya no aplican medidas discriminatorias a favor de ciertas pequeñas empresas y ciertas empresas de minoría;

- Israel, Japón y Corea por lo que se refiere a la impugnación de la adjudicación de los contratos por las entidades de la CE cuyo valor es inferior al umbral aplicable en la misma categoría de contratos por estas partes.

3. Hasta que la CE haya aceptado que las partes afectadas proporcionan el acceso de los proveedores y los prestadores de servicios de la CE a sus propios mercados, la CE no concederá los beneficios de este Acuerdo a los proveedores y a los prestadores de servicios de los países siguientes:

- Canadá, por lo que se refiere a la adquisición de FSC 36, 70 y 74 (maquinaria industrial especial, material general de proceso de datos automáticos, soporte lógico, suministros y material auxiliar (excepto 7010 configuraciones ADPE), máquinas de oficina, material de ofimática y de informática de oficina);
- Canadá, por lo que se refiere a la adquisición de FSG 58 (material de comunicaciones, material de detección de radiaciones y de emisión de radiación coherente) y los EE.UU. por lo que se refiere al material de control de tráfico aéreo;
- Corea e Israel por lo que se refiere a la adquisición por entidades enumeradas en el anexo 3 párrafo (b), por lo que se refiere a la adquisición de nos. 8504, 8535, 8537 y 8544 HS (transformadores eléctricos, enchufes, interruptores y cables aislantes); y para Israel, nos. 8501, 8536 y 902830 HS;
- los EE.UU., por lo que se refiere a la adquisición por entidades enumeradas en el anexo 3 párrafo (d), por lo que se refiere a la adquisición de servicios de dragado y a la adquisición relacionada con la construcción naval;
- Canadá y los EE.UU. por lo que se refiere a los contratos de bienes o de servicios componentes de contratos que, aunque sean concedidos por una entidad cubierta por este Acuerdo, no están ellos mismos sujetos a este Acuerdo.

4. El presente Acuerdo no se aplicará a los contratos adjudicados en virtud de:

- un acuerdo internacional destinado a la ejecución o explotación conjunta de un proyecto por los Estados signatarios;
- un acuerdo internacional relativo al estacionamiento de tropas;
- un procedimiento específico de una organización internacional.

5. El presente Acuerdo no se aplicará a la adquisición de productos agrícolas hecha en aplicación de programas de ayuda a la agricultura y de programas de ayuda alimentaria.

6. Los contratos adjudicados por las entidades en los anexos 1 y 2 con respecto a actividades en los sectores del agua potable, la energía, el transporte o las telecomunicaciones, no están incluidos.

7. El presente Acuerdo no se aplicará a los contratos que las entidades enumeradas en el anexo 3 adjudiquen:

- para la compra de agua y para el suministro de energía o de combustibles destinados a la producción de energía;
- para fines distintos de la prosecución de sus actividades según lo descrito en este anexo o para la prosecución de tales actividades en un país tercero;
- a efectos de reventa o arrendamiento a terceros siempre y cuando la entidad contratante no goce de derechos especiales o exclusivos de venta o arrendamiento del objeto de dichos contratos, y existan otras entidades que puedan venderlos o arrendarlos libremente en las mismas condiciones que la entidad contratante.

8. El presente Acuerdo no será aplicable a contratos:

- para la adquisición o el arrendamiento de terrenos, edificios ya existentes, u otros bienes inmuebles o relativos a derechos sobre estos bienes;
- para la adquisición, el desarrollo, la producción o coproducción de material de programa por emisores de ondas y contratos de tiempo de emisión.

9. El presente Acuerdo no será aplicable a la adjudicación de contratos de servicio por entidades españolas enumeradas en el anexo 3 antes del 1 de enero de 1997 o a la adjudicación de los contratos por entidades griegas o portuguesas enumeradas en el anexo 3 antes del 1 de enero de 1998.

10. La prestación de servicios, incluidos los servicios de construcción, en el contexto de los procedimientos de contratación en virtud este Acuerdo está sujeta a las condiciones y calificaciones para el acceso al mercado y el trato nacional requeridas por Austria de conformidad con sus compromisos bajo el ACCS.

11. Este Acuerdo no se aplicará a los contratos adjudicados a una entidad en Finlandia que sea a su vez una entidad adjudicadora en el sentido de la Ley de Contratación Pública: "Hankinnoista de julkisista Laki" (1505/92), o en Suecia en el sentido del "Lag om offentlig upphandling" (1992:1528), basándose en un derecho exclusivo del que goce en virtud de disposiciones legales, reglamentarias o administrativas, o en virtud de un contrato laboral en Finlandia y Suecia.

12. Cuando una adquisición específica puede alterar objetivos importantes de política nacional, los gobiernos finés o sueco podrán considerar necesario desviarse en casos concretos del principio del trato nacional del Acuerdo. Decisiones de este tipo se tomarán a nivel de gabinete. Finlandia también se reserva su posición por lo que se refiere a la aplicación de este Acuerdo a las islas Aland (Ahvenanmaa).

HONG KONG, CHINA

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement****Supplies***

Threshold: 130,000 SDR for goods and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Agriculture and Fisheries Department
2. Architectural Services Department
3. Audit Commission
4. Auxiliary Medical Services
5. Buildings Department
6. Census and Statistics Department
7. Civil Aid Services
8. Civil Aviation Department
9. Civil Engineering Department
10. Civil Service Training and Development Institute
11. Companies Registry
12. Correctional Services Department
13. Customs and Excise Department
14. Department of Health
15. Drainage Services Department
16. Education Department
17. Electrical and Mechanical Services Department
18. Environmental Protection Department
19. Fire Services Department
20. Government Flying Service
21. Government Laboratory
22. Government Land Transport Agency
23. Government Property Agency
24. Government Secretariat
25. Government Supplies Department
26. Highways Department
27. Home Affairs Department
28. Hong Kong Monetary Authority
29. Hospital Services Department
30. Immigration Department
31. Independent Commission Against Corruption
32. Industry Department

33. Information Services Department
34. Information Technology Services Department
35. Inland Revenue Department
36. Intellectual Property Department
37. Judiciary
38. Labour Department
39. Lands Department
40. Land Registry
41. Department of Justice
42. Legal Aid Department
43. Marine Department
44. Office of the Ombudsman
45. Office of the Telecommunications Authority
46. Official Receiver's Office
47. Planning Department
48. Post Office
49. Printing Department
50. Public Service Commission
51. Radio Television Hong Kong
52. Rating and Valuation Department
53. Hong Kong Police Force (including Hong Kong Auxiliary Police Force)
54. Hong Kong Observatory
55. Social Welfare Department
56. Secretariat, Independent Police Complaints Council
57. Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service
58. Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service
59. Student Financial Assistance Agency
60. Technical Education and Industrial Training Department
61. Television and Entertainment Licensing Authority
62. Territory Development Department
63. Trade Department
64. Transport Department
65. Treasury
66. Secretariat, University Grants Committee
67. Water Supplies Department
68. Management Services Agency
69. Official Languages Agency
70. Registration and Electoral Office

ANNEX 2

*Sub-Central Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 200,000 SDR for goods and services other than construction services
 5,000,000 SDR for construction services

List of Entities:

1. Provisional Urban Council and Urban Services Department
2. Provisional Regional Council and Regional Services Department

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDR for supplies and services other than construction services
5,000,000 SDR for construction services

List of Entities:

1. Housing Authority and Housing Department
2. Hospital Authority
3. Airport Authority
4. Mass Transit Railway Corporation
5. Kowloon-Canton Railway Corporation

ANNEX 4

Services

The following services, classified according to the United Nations Central Product Classification (CPC) Code on Goods and Services, will be covered:

CPC1. *Computer and Related Services*

- | | | |
|---|--|---------|
| - | Data base and processing services | 843+844 |
| - | Maintenance and repair service of office machinery and equipment including computers | 845 |
| - | Other Computer Services | 849 |

2. *Rental/Leasing Services Without Operators*

- | | | |
|---|---|-------------------|
| - | Relating to ships | 83103 |
| - | Relating to aircraft | 83104 |
| - | Relating to other transport equipment | 83101+83102+83105 |
| - | Relating to other machinery and equipment | 83106+83109 |

3. *Other Business Services*

Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+8861-8866
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Market Research & Public Opinion Polling Services	864
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Security Services	87304
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Building-Cleaning Services	874
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Advertising Services	871
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4. *Courier Services*5. *Telecommunications Services*

(Provisions of certain types of service may require licensing under the Telecommunication Ordinance)

Value-added telecommunications services	7523, 843
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Basic telecommunications services	7521, 7529
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Telecommunications-related services	754
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6. *Environmental Services*

- Sewage services 9401
- Refuse disposal services 9402

7. *Financial Services*

ex 81

- All Insurance and Insurance-Related Services (exceptions are set out in paragraph 5 of General Conditions)
- Banking and other financial services

8. *Transport Services*

- Air transportation services (excluding transportation of mail) 731, 732, 734
- Road transport services 712, 6112, 8867

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51 CPC

All services of Division 51 of the CPC

Threshold: 5,000,000 SDR

GENERAL CONDITIONS APPLICABLE TO ENTITIES AND SERVICES
SPECIFIED IN ANNEXES 1 TO 5

1. Notwithstanding anything in the Annexes 1-5, the Agreement shall not apply to:
 - All consultancy and franchise arrangements
 - Transportation of mail by air
 - Statutory insurances including third party liability in respect of vehicles and vessels and employer's liability insurance in respect of employees
 - Purchase of office or residential accommodation by the Government Property Agency.

2. Hong Kong's commitments on telecommunications services are subject to the terms of the licence held by Hong Kong Telecommunications International Ltd. (HKTI) until 30 September 2006 for the exclusive provision of external telecommunications circuits and certain external telecommunications services. The exclusive services covered by the licence are listed below.
 - (a) Circuits by radio for the provision of external public telecommunications services.
 - (b) The operation of circuits by submarine cable for the provision of external public telecommunications services.
 - (c) External and internal Public Telegram Service.
 - (d) External and internal Public Telex Service.
 - (e) External public telephone services to subscribers to the Public Switched Telephone Network by radio, submarine cable and such overland cables as are authorized.
 - (f) External dedicated and leased telephone circuit services by radio, submarine cable and such overland cables as are authorized.
 - (g) External dedicated and leased circuits for -
 - telegraph
 - data
 - facsimile.
 - (h) Hong Kong coast stations and coast earth stations of the Maritime Mobile service and Maritime Mobile - Satellite Service.
 - (i) Hong Kong Aeronautical Stations of the Aeronautical Mobile Service and Aeronautical Mobile - Satellite Service for radio communications services between aircraft operating agencies and their aircraft in flight.

- (j) International telecommunications services routed in transit via Hong Kong.
- (k) Except to the extent that the Governor-in-Council may from time to time otherwise in writing direct, external television and voice programme transmission services to and from Hong Kong.
3. Operators of telecommunications services may require licensing under the Telecommunication Ordinance. Operators applying for the licences are required to be established in Hong Kong under the Companies Ordinance.
4. Hong Kong Government shall not be obliged to permit the supply of such services cross-border, or through commercial presence or the presence of natural persons.
5. The following services are excluded from the Financial Services under Annex 4
1. *CPC 81402*
Insurance and pension consultancy services
 2. *CPC 81339*
Money broking
 3. *CPC 8119+81323*
Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services.
 4. *CPC 81339 or 81319*
Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments.
 5. *CPC 8131 or 8133*
Advisory and other auxiliary financial services on all the activities listed in subparagraphs 5(a)(v) to (xvi) in the Annex on Financial Services in the General Agreement on Trade in Services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
 6. *CPC 81339+81333+81321*
Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- money market instruments (cheques, bills, certificate of deposits, etc.)
- foreign exchange
- derivative products including, but not limited to futures and options
- exchange rate and interest rate instruments, including products such as swaps, forward rate agreement, etc.
- transferable securities
- other negotiable instruments and financial assets, including bullion.

ISRAEL

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies	<i>Threshold:</i>	130,000 SDR
Services (specified in Annex 4)	<i>Threshold:</i>	130,000 SDR
Construction (specified in Annex 5)	<i>Threshold:</i>	8,500,000 SDR

List of Entities:

House of Representatives (the Knesset)
 Prime Minister's Office
 Ministry of Agriculture
 Ministry of Communications and Culture
 Ministry of Construction and Housing
 Ministry of Economics and Planning
 Ministry of Education
 Ministry of Energy and Infrastructure excluding Fuel Authority
 Ministry of the Environment
 Ministry of Finance
 Civil Service Commissioner
 Ministry of Foreign Affairs
 Ministry of Health (1)
 Ministry of Immigrants Absorption
 Ministry of Industry and Trade
 Ministry of the Interior
 Ministry of Justice
 Ministry of Labour and Social Affairs
 Israel Productivity Institute
 Ministry of Religious Affairs
 Ministry of Science and Technology
 Ministry of Tourism
 Ministry of Transport
 The State Controller's office

Note to Annex 1(1) *Ministry of Health - Excepted Products*

- Insulin and infusion pumps
- Audiometers
- Medical dressings (bandages, adhesive tapes excluding gauze bandages and gauze pads)
- Intravenous solution
- Administration sets for transfusions
- Scalp vein sets
- Hemi-dialysis and blood lines
- Blood packs
- Syringe needles

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

<i>Supplies</i>	<i>Threshold:</i>	250,000 SDR
<i>Services</i> (specified in Annex 4)	<i>Threshold:</i>	250,000 SDR
<i>Construction</i> (specified in Annex 5)	<i>Threshold:</i>	8,500,000 SDR

List of Entities:

Municipalities of Jerusalem, Tel-Aviv and Haifa

The company for economy and management of the Center of Local Government

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies	<i>Threshold:</i>	355,000 SDR
Services (specified in Annex 4)	<i>Threshold:</i>	355,000 SDR
Construction (specified in Annex 5)	<i>Threshold:</i>	8,500,000 SDR

List of Entities:

Israel Airports Authority
 Israel Ports and Railways Authority (1)
 Israel Broadcasting Authority
 Israel Educational Television
 Postal Authority
 Bezek (Israel Communication Company) (1) (2)
 Israel Electricity Company (2a)
 Mekoroth Water Resources Ltd.
 Sports' Gambling Arrangement Board
 Israel Standards Institute
 National Insurance Institute
 All entities operating in the field of urban transport, except those operating in the field of bus services (2b)

Notes to Annex 3

- (1) Procurement of cables is excluded.
- (2) With regard to procurement by Bezek, this Agreement shall apply only to goods and services of the US.

Israel is willing to negotiate the opening of its telecommunication sector also to other Code members under the condition of reciprocity.

- (2a) Excluded products: cables (H.S. 8544), electro-mechanic meters (ex. H.S. 9028), transformers (H.S. 8504), disconnectors and switchers (H.S. 8535-8537), electric motors (H.S. 8501).
- (2b) With regard to procurement by entities operating in the field of urban transport, except those operating in the field of bus services, this Agreement shall apply only to goods and services, including construction services, of the European Community.

Israel is willing to negotiate the opening of procurement by entities operating in the field of urban transport, except those operating in the field of bus services, to other Parties to the Agreement under the condition of reciprocity.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

<i>CPC</i>	<i>Description</i>
6112, 6122, 633, 886	Maintenance and repair services
8672-3	Architectural services
8671	Engineering services
8674	Urban planning
841-3	Computer and related services
871	Advertising services
864	Market research and public opinion
865-6	Management consulting
874, 82201-82206	Building-cleaning services and property management services
88442	Publishing and printing services on a fee or contract basis
9401-5	Environmental services

Note to Annex 4

The offer regarding services (including construction) is subject to the limitation and conditions specified in Israel's offer under the GATS negotiation.

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

Threshold: 8,500,000 SDR

List of construction services offered

<i>CPC</i>	<i>Description</i>
511	Pre-erection work at construction sites
512	Construction work for buildings
513	Construction work for civil engineering
514	Assembly and erection of prefabricated construction
515	Special trade construction work
516	Installation work
517	Building completion and finishing work
518	Renting services related to equipment for construction

GENERAL NOTES

- (1) The Agreement shall not apply to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.
- (2) The Agreement shall not apply to contracts for the purchase of water and for the supply of energy and of fuels for the production of energy.
- (3) The Agreement shall not apply to the acquisition or rental of land, buildings or other immovable property, or concerning rights thereon.

NOTE

Offset

1. Having regard to Article XVI and to general policy considerations regarding development, Israel may operate provisions which require the limited incorporation of domestic content, offset procurement or transfer of technology, in the form of objective and clearly defined conditions for participation in procedures for the award of contracts, which do not discriminate between other Parties.

This shall be done under the following terms:

- (a) Israel shall ensure that its entities indicate the existence of such conditions in their tender notices and specify them clearly in the contract documents.
 - (b) Suppliers will not be required to purchase goods that are not offered on competitive terms, including price and quality, or to take any action which is not justified from a commercial standpoint.
 - (c) Offsets in any form may be required up to 35 per cent of the contract going down to 30 per cent after five years and 20 per cent after nine years, beginning from the date Israel implements the Agreement.
2.
 - (a) At the end of each period of five and four years Israel will submit a report concerning the implementation of this Note.
 - (b) When the level of the offset has reached 20 per cent, Israel will consult with the Parties to this Agreement on the level of the use of offset by Israel. The review shall take into consideration *inter alia* general and economic developments in Israel, its trade balance, the actual performance within the framework of this Agreement and the views of the other Parties.

JAPAN

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies*Threshold:*

130 thousand SDR

List of Entities:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission
(National Police Agency)
- Environmental Disputes Co-ordination
Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Financial Supervisory Agency
- Ministry of Education
- Ministry of Health and Welfare

- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

Services*Threshold:*

Construction services: 4,500 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

*List of Entities which procure the services,
specified in Annex 4:*

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission
(National Police Agency)

Services (cont'd)

- Environmental Disputes Co-ordination Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Financial Supervisory Agency
- Ministry of Education
- Ministry of Health and Welfare
- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

Notes to Annex 1

1. Entities covered by the Accounts Law include all their internal sub-divisions, independent organs, attached organizations and other organizations and local branch offices provided for in the National Government Organization Law.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

4. This Agreement will generally apply to procurement by the Defence Agency of the following Federal Supply Classification (FSC) categories subject to the Japanese Government determinations under the provisions of Article XXIII, paragraph 1:

FSC Description

22	Railway Equipment
24	Tractors
32	Woodworking Machinery and Equipment
34	Metalworking Machinery
35	Service and Trade Equipment
36	Special Industry Machinery
37	Agricultural Machinery and Equipment
38	Construction, Mining, Excavating, and Highway Maintenance Equipment
39	Materials Handling Equipment
40	Rope, Cable, Chain, and Fittings
41	Refrigeration, Air Conditioning, and Air Circulating Equipment
43	Pumps and Compressors
45	Plumbing, Heating and Sanitation Equipment
46	Water Purification and Sewage Treatment Equipment
47	Pipe, Tubing, Hose, and Fittings
48	Valves
51	Hand Tools
52	Measuring Tools
55	Lumber, Millwork, Plywood and Veneer
61	Electric Wire, and Power and Distribution Equipment
62	Lighting Fixtures and Lamps
65	Medical, Dental, and Veterinary Equipment and Supplies
6630	Chemical Analysis Instruments
6635	Physical Properties Testing Equipment
6640	Laboratory Equipment and Supplies
6645	Time Measuring Instruments
6650	Optical Instruments
6655	Geophysical and Astronomical Instruments

FSC Description (cont'd)

6660	Meteorological Instruments and Apparatus
6670	Scales and Balances
6675	Drafting, Surveying, and Mapping Instruments
6680	Liquid and Gas Flow, Liquid Level, and Mechanical Motion Measuring Instruments
6685	Pressure, Temperature, and Humidity Measuring and Controlling Instruments
6695	Combination and Miscellaneous Instruments
67	Photographic Equipment
68	Chemicals and Chemical Products
71	Furniture
72	Household and Commercial Furnishings and Appliances
73	Food Preparation and Serving Equipment
74	Office Machines and Visible Record Equipment
75	Office Supplies and Devices
76	Books, Maps, and Other Publications
77	Musical Instruments, Phonographs, and Home-type Radios
79	Cleaning Equipment and Supplies
80	Brushes, Paints, Sealers, and Adhesives
8110	Drums and Cans
8115	Boxes, Cartons, and Crates
8125	Bottles and Jars
8130	Reels and Spools
8135	Packaging and Packing Bulk Materials
85	Toiletries
87	Agricultural Supplies
93	Non-metallic Fabricated Materials
94	Non-metallic Crude Materials
99	Miscellaneous

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies*Threshold:*

200 thousand SDR

List of Entities:

All prefectural governments entitled "To", "Do", "Fu" and "Ken", and all designated cities entitled "Shitei-toshi", covered by the Local Autonomy Law as follows:

- Hokkaido
- Aomori-ken
- Iwate-ken
- Miyagi-ken
- Akita-ken
- Yamagata-ken
- Fukushima-ken
- Ibaraki-ken
- Tochigi-ken
- Gunma-ken
- Saitama-ken
- Chiba-ken
- Tokyo-to
- Kanagawa-ken
- Niigata-ken
- Toyama-ken
- Ishikawa-ken
- Fukui-ken
- Yamanashi-ken
- Nagano-ken
- Gifu-ken
- Shizuoka-ken
- Aichi-ken
- Mie-ken
- Shiga-ken
- Kyoto-fu
- Osaka-fu
- Hyogo-ken
- Nara-ken

- Wakayama-ken
- Tottori-ken
- Shimane-ken
- Okayama-ken
- Hiroshima-ken
- Yamaguchi-ken
- Tokushima-ken
- Kagawa-ken
- Ehime-ken
- Kochi-ken
- Fukuoka-ken
- Saga-ken
- Nagasaki-ken
- Kumamoto-ken
- Oita-ken
- Miyazaki-ken
- Kagoshima-ken
- Okinawa-ken
- Osaka-shi
- Nagoya-shi
- Kyoto-shi
- Yokohama-shi
- Kobe-shi
- Kitakyushu-shi
- Sapporo-shi
- Kawasaki-shi
- Fukuoka-shi
- Hiroshima-shi
- Sendai-shi
- Chiba-shi

Services*Threshold:***Construction services:** 15,000 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
1,500 thousand SDR

Other services: 200 thousand SDR

Services (cont'd)

List of Entities which procure the services, specified in Annex 4:

All prefectural governments entitled "To", "Do", "Fu" and "Ken", and all designated cities entitled "Shitei-toshi", covered by the Local Autonomy Law as follows:

- Hokkaido
- Aomori-ken
- Iwate-ken
- Miyagi-ken
- Akita-ken
- Yamagata-ken
- Fukushima-ken
- Ibaraki-ken
- Tochigi-ken
- Gunma-ken
- Saitama-ken
- Chiba-ken
- Tokyo-to
- Kanagawa-ken
- Niigata-ken
- Toyama-ken
- Ishikawa-ken
- Fukui-ken
- Yamanashi-ken
- Nagano-ken
- Gifu-ken
- Shizuoka-ken
- Aichi-ken
- Mie-ken
- Shiga-ken
- Kyoto-fu
- Osaka-fu
- Hyogo-ken
- Nara-ken
- Wakayama-ken
- Tottori-ken
- Shimane-ken
- Okayama-ken
- Hiroshima-ken
- Yamaguchi-ken
- Tokushima-ken
- Kagawa-ken
- Ehime-ken
- Kochi-ken
- Fukuoka-ken
- Saga-ken
- Nagasaki-ken
- Kumamoto-ken
- Oita-ken
- Miyazaki-ken
- Kagoshima-ken
- Okinawa-ken
- Osaka-shi
- Nagoya-shi
- Kyoto-shi
- Yokohama-shi
- Kobe-shi
- Kitakyushu-shi
- Sapporo-shi
- Kawasaki-shi
- Fukuoka-shi
- Hiroshima-shi
- Sendai-shi
- Chiba-shi

Notes to Annex 2

1. "To", "Do", "Fu", "Ken" and "Shitei-toshi" covered by the Local Autonomy Law include all internal subdivisions, attached organizations and branch offices of all their governors or mayors, committees and other organizations provided for in the Local Autonomy Law.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
4. This Agreement shall not apply to contracts which the entities award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.
5. Procurement related to operational safety of transportation is not included.
6. Procurement related to the production, transport or distribution of electricity is not included.

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies*Threshold:*

130 thousand SDR

List of Entities:

- Employment Promotion Corporation
- Hokkaido-Tohoku Development Finance Public Corporation
- Okinawa Development Finance Corporation
- People's Finance Corporation
- Environmental Sanitation Business Financing Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Small Business Credit Insurance Corporation
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Japan Development Bank
- Export-Import Bank of Japan
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- The Overseas Economic Cooperation Fund
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- Institute of Physical and Chemical Research (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Forest Development Corporation
- Japan Agricultural Land Development Agency
- Japan National Oil Corporation (c)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Housing and Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Pension Welfare Service Public Corporation
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small Business Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation

Supplies (cont'd)

- National Education Center
- Japan Arts Council
- Japan Society for the Promotion of Science
- Japan Private School Promotion Foundation
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Rail Development Fund
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology
- Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid

*Services**Threshold:*

Construction services: 15,000 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Forest Development Corporation
- Japan Agricultural Land Development Agency
- Japan National Oil Corporation (c)
- Maritime Credit Corporation (e)
- Japan Railway Construction Public Corporation (a) (d)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Housing and Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Japan Nuclear Cycle Development Institute (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Pension Welfare Service Public Corporation
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small Business Corporation
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Employment Promotion Corporation
- Hokkaido-Tohoku Development Finance Public Corporation
- Okinawa Development Finance Corporation
- People's Finance Corporation
- Environmental Sanitation Business Financing Corporation
- Agriculture, Forestry and Fisheries Finance Corporation

Services (cont'd)

- Japan Finance Corporation for Small Business
- Small Business Credit Insurance Corporation
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Japan Development Bank
- Export-Import Bank of Japan
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc. (g)
- Hokkaido Railway Company (a)(g)
- East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
- West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
- Kyushu Railway Company (a)(g)
- Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
- Northern Territories Issue Association
- The Overseas Economic Cooperation Fund
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- Institute of Physical and Chemical Research (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Mutual Aid Association of Private School Personnel
- National Education Center
- Japan Arts Council
- Japan Society for the Promotion of Science
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
- Japan Institute of Labour
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen
- Corporation for Advanced Transport and Technology
- Promotion and Mutual Aid Corporation for Private Schools of Japan
- Organization for Workers' Retirement Allowance Mutual Aid

Notes to Annex 3

1. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
2. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
3. This Agreement shall not apply to contracts which the entities award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

Notes to Annex 3 (cont'd)

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

(Provisional Central
Product Classification
(CPC), 1991)

- 51 Construction work
- 6112 Maintenance and repair services of motor vehicles^{Note 1}
- 6122 Maintenance and repair services of motorcycles and snowmobiles^{Note 1}
- 712 Other land transport services (except 71235 Mail transportation by land)
- 7213 Rental services of sea-going vessels with operator
- 7223 Rental services of non-sea-going vessels with operator
- 73 Air transport services (except 73210 Mail transportation by air)
- 748 Freight transport agency services
- 7512 Courier services^{Note 2}
- Telecommunications services
- MTN.GNS/W/120
 - Corresponding CPC
 - 2.C.h. - 7523 Electronic mail;
 - 2.C.i. - 7521 Voice mail;
 - 2.C.j. - 7523 On-line information and data base retrieval;
 - 2.C.k. - 7523 Electronic data interchange (EDI);
 - 2.C.l. - 7529 Enhanced facsimile services;
 - 2.C.m. - 7523 Code and protocol conversion; and
 - 2.C.n. - 7523 On-line information and/or data processing (including transaction processing)
- 84 Computer and related services
- 864 Market research and public opinion polling services
- 867 Architectural, engineering and other technical services^{Note 3}
- 871 Advertising services
- 87304 Armoured car services
- 874 Building-cleaning services
- 88442 Publishing and printing services^{Note 4}
- 886 Repair services incidental to metal products, machinery and equipment
- 94 Sewage and refuse disposal, sanitation and other environmental protection services

Notes to Annex 4

1. Maintenance and repair services are not included with respect to those motor vehicles, motorcycles and snowmobiles which are specifically modified and inspected to meet regulations of the entities.
2. Courier services are not included with respect to letters.
3. Architectural, engineering and other technical services related to construction services, with the exception of the following services when procured independently, are included:
 - Final design services of CPC 86712 Architectural design services;
 - CPC 86713 Contract administration services;
 - Design services consisting of one or a combination of final plans, specifications and cost estimates of either CPC 86722 Engineering design services for the construction of foundations and building structures, or CPC 86723 Engineering design services for mechanical and electrical installations for buildings, or CPC 86724 Engineering design services for the construction of civil engineering works; and
 - CPC 86727 Other engineering services during the construction and installation phase.
4. Publishing and printing services are not included with respect to materials containing confidential information.

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All services listed in Division 51.

Threshold: 4,500 thousand SDR for entities set out in ANNEX 1;
15,000 thousand SDR for those in ANNEX 2; and
15,000 thousand SDR for those in ANNEX 3.

GENERAL NOTES

1. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3.
2. In case Parties do not apply Article XX to suppliers or service providers of Japan in contesting the award of contract by entities, Japan may not apply the Article to suppliers or service providers of the Parties in contesting the award of contracts by the same kind of entities.

KOREA

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR

List of Entities:

- Board of Audit and Inspection
- Prime Minister's Secretariat
- Office of Administrative Coordination
- First Minister of Political Affairs
- Second Minister of Political Affairs
- Ministry of Finance and Economy
- National Unification Board
- Ministry of Government Administration
- Ministry of Science and Technology
- Ministry of Information
- Government Legislation Agency
- Patriots and Veterans Affairs Agency
- Ministry of Foreign Affairs
- Ministry of Home Affairs
- Ministry of Justice
- Ministry of National Defense
- Ministry of Education
- Ministry of Culture and Sports
- Ministry of Agriculture and Forestry
- Ministry of Trade, Industry and Energy
- Ministry of Health and Welfare
- Ministry of Labor
- Ministry of Construction and Transportation
- Ministry of Maritime Affairs and Fisheries
- Ministry of Information and Communications
- Ministry of Environment
- Office of Supply (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)
- National Tax Administration
- Customs Administration
- National Statistical Office

- Korea Meteorological Administration
- National Police Administration (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code)
- Supreme Public Prosecutors' Office
- Military Manpower Administration
- Rural Development Administration
- Forestry Administration
- Korea Industrial Property Office
- Small and Medium Business Administration
- Korea National Railroad Administration (The Korean Government plans to change the NRA into a public corporation in 1996, in which case the Korean Government has the right to transfer the NRA from Annex 1 to Annex 3 without any consultation and/or compensatory measures.)
- National Maritime Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Agreement)

Services

Threshold: 130,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as "Supplies" section

Construction Services

Threshold: 5,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 1

1. The above central government entities include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in the Government Organization Act of the Republic of Korea.
2. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
3. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Act Relating to Contracts to which the State is a Party and its Presidential Decree, and the procurement of agricultural, fishery and livestock products according to the Foodgrain Management Law, the Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products, and the Livestock Law.

4. This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.
5. The Defense Logistics Agency shall be considered as part of the Ministry of National Defense. Subject to the decision of the Korean Government under the provisions of paragraph 1, Article XXIII, for MND purchases, this Agreement will generally apply to the following FSC categories only, and for services and construction services listed in Annex 4 and Annex 5, it will apply only to those areas which are not related to national security and defense.

<i>FSC</i>	<i>Description</i>
2510	Vehicular cab, body, and frame structural components
2520	Vehicular power transmission components
2540	Vehicular furniture and accessories
2590	Miscellaneous vehicular components
2610	Tires and tubes, pneumatic, nonaircraft
2910	Engine fuel system components, nonaircraft
2920	Engine electrical system components, nonaircraft
2930	Engine cooling system components, nonaircraft
2940	Engine air and oil filters, strainers and cleaners, nonaircraft
2990	Miscellaneous engine accessories, nonaircraft
3020	Gears, pulleys, sprockets and transmission chain
3416	Lathes
3417	Milling machines
3510	Laundry and dry cleaning equipment
4110	Refrigeration equipment
4230	Decontaminating and impregnating equipment
4520	Space heating equipment and domestic water heaters
4940	Miscellaneous maintenance and repair shop specialized equipment
5120	Hand tools, nonedged, nonpowered
5410	Prefabricated and portable buildings
5530	Plywood and veneer
5660	Fencing, fences and gates
5945	Relays and solenoids
5965	Headsets, handsets, microphones and speakers
5985	Antennae, waveguide, and related equipment
5995	Cable, cord, and wire assemblies: communication equipment
6505	Drugs and biologicals
6220	Electric vehicular lights and fixtures
6840	Pest control agents disinfectants
6850	Miscellaneous chemical, specialties
7310	Food cooking, baking, and serving equipment
7320	Kitchen equipment and appliances
7330	Kitchen hand tools and utensils
7350	Table ware
7360	Sets, kits, outfits, and modules food preparation and serving
7530	Stationery and record forms

7920	Brooms, brushes, mops, and sponges
7930	Cleaning and polishing compounds and preparations
8110	Drums and cans
9150	Oils and greases: cutting, lubricating, and hydraulic
9310	Paper and paperboard

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 200,000 SDR

List of Entities:

- Seoul Metropolitan Government
- City of Pusan
- City of Taegu
- City of Incheon
- City of Kwangju
- City of Taejon
- Kyonggi-do
- Kang-won-do
- Chungchongbuk-do
- Chungchongnam-do
- Kyongsangbuk-do
- Kyongsangnam-do
- Chollabuk-do
- Chollanam-do
- Cheju-do

Services

Threshold: 200,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as "Supplies" section

Construction Services

Threshold: SDR 15,000,000

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 2

1. The above sub-central administrative government entities include their subordinate organizations under direct control and offices as prescribed in the Local Autonomy Law of the Republic of Korea.
2. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
3. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Local Finance Law and its Presidential Decree.
4. This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 450,000 SDR

List of Entities:

- Korea Development Bank
- Small and Medium Industry Bank
- Citizens National Bank
- Korea Housing Bank
- Korea Tobacco & Ginseng Corporation
- Korea Security Printing and Minting Corporation
- Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
- Dai Han Coal Corporation
- Korea Mining Promotion Corporation
- Korea Petroleum Development Corporation
- Korea General Chemical Corporation
- Korea Trade Promotion Corporation
- Korea Highway Corporation
- Korea National Housing Corporation
- Korea Water Resources Corporation
- Korea Land Development Corporation
- Rural Development Corporation
- Agricultural and Fishery Marketing Corporation
- Korea Telecom (except purchases of common telecommunications commodity products and telecommunications network equipment)
- Korea National Tourism Corporation
- National Textbook Ltd.
- Korea Labor Welfare Corporation
- Korea Gas Corporation

Construction Services

Threshold: 15,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as "Supplies" section

Notes to Annex 3

1. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.
2. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Government Invested Enterprise Management Law and Accounting Regulations on Government Invested Enterprise.
3. This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included (others being excluded):

<i>GNS/W/120</i>	<i>CPC</i>	<i>Description</i>
1.A.b.	862	Accounting, auditing and bookkeeping services
1.A.c.	863	Taxation services
1.A.d.	8671	Architectural services
1.A.e.	8672	Engineering services
1.A.f.	8673	Integrated engineering services
1.A.g.	8674	Urban planning and landscape architectural services
1.B.a.	841	Consultancy services related to the installation of computer hardware
1.B.b.	842	Software implementation services
1.B.c.	843	Data processing services
1.B.d.	844	Data base services
1.B.e.	845	Maintenance and repair services of office machinery and equipment (including computers)
1.E.a.	83013	Rental/leasing services without operators relating to ships
1.E.b.	83104	Rental/leasing services without operators relating to aircraft
1.E.c.	83101, 83105*	Rental/leasing services without operators relating to other transport equipment (only passenger vehicles for less than fifteen passengers)
1.E.d.	83106, 83108, 83109	Rental/leasing services without operators relating to other machinery and equipment
	87107	Rental/leasing services without operator relating to construction machinery and equipment
1.F.a.	8711, 8719	Advertising agency services
1.F.b.	864	Market research and public opinion polling services
1.F.c.	865	Management consulting services
1.F.d.	86601	Project management services
1.F.e.	86761*	Composition and purity testing and analysis services (only inspection, testing and analysis services of air, water, noise level and vibration level)

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<i>GNS/W/120</i>	<i>CPC</i>		<i>Description</i>	
		86764	Technical inspection services	
1.F.f.		8811*, 8812*	Consulting services relating to agriculture and animal husbandry	
		8814*	Services incidental to forestry (excluding aerial fire fighting and disinfection)	
1.F.g.		882*	Consulting services relating to fishing	
1.F.h.		883*	Consulting services relating to mining	
1.F.m.		86751, 86752	Related scientific and technical consulting services	
1.F.n.		633, 8861	Maintenance and repair of equipment	
		8862, 8863		
		8864, 8865		
		8866		
1.F.p.		875	Photographic services	
1.F.q.		876	Packaging services	
1.F.r.		88442*	Printing (screen printing, gravure printing, and services relating to printing)	
1.F.s.		87909*	- Stenography services - Convention agency services	
1.F.t.		87905	Translation and interpretation services	
2.C.j.		7523*	On-line information and data-base retrieval	
2.C.k.		7523*	Electronic data interchange	
2.C.l.		7523*	Enhanced/value-added facsimile services including store and forward, store and retrieve	
2.C.m.		-	Code and protocol conversion	
2.C.n.		843*	On-line information and/or data processing (including transaction processing)	
2.D.a.		96112*, 96113*	Motion picture and video tape production and distribution services (excluding those services for cable TV broadcasting)	
2.D.e.		-	Record production and distribution services (sound recording)	
6.A.		9401*	Refuse water disposal services (only collection and treatment services of industrial waste water)	
6.B.		9402*	Industrial refuse disposal services (only collection, transport, and disposal services of industrial refuse)	
6.D.		9404*, 9405*	Cleaning services of exhaust gases and noise abatement	

<i>GNS/W/120</i>	<i>CPC</i>	<i>Description</i>
		services (services other than construction work services)
	9406*, 9409*	Environmental testing and assessment services (only environmental impact assessment services)
11.A.b.	7212*	International transport, excluding cabotage
11.A.d.	8868*	Maintenance and repair of vessels
11.F.b.	71233*	Transportation of containerized freight, excluding cabotage
11.H.c	748*	Freight transport agency services <ul style="list-style-type: none"> - Maritime agency services - Maritime freight forwarding services - Shipping brokerage services - Air cargo transport agency services - Customs clearance services
11.I.	-	Freight forwarding for rail transport

Note to Annex 4

Asterisks (*) designate "part of" as described in detail in the Revised Conditional Offer of the Republic of Korea Concerning Initial Commitments on Trade in Services.

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

Threshold: 5,000,000 SDR for entities set out in Annex 1
 15,000,000 SDR for entities set out in Annex 2
 15,000,000 SDR for entities set out in Annex 3

List of construction services offered:

<i>CPC</i>	<i>Description</i>
511	Pre-erection work at construction sites
512	Construction work for buildings
513	Construction work for civil engineering
514	Assembly and erection of prefabricated construction
515	Special trade construction work
516	Installation work
517	Building completion and finishing work

GENERAL NOTES

1. Korea will not extend the benefits of this Agreement
 - (a) as regards the award of contracts by the National Railroad Administration,
 - (b) as regards procurement for airports by the entities listed in Annex 1,
 - (c) as regards procurement for urban transportation (including subways) by the entities listed in Annexes 1 and 2

to the suppliers and service providers of member States of the European Communities, Austria, Norway, Sweden, Finland and Switzerland, until such time as Korea has accepted that those countries give comparable and effective access for Korean undertakings to their relevant markets.
2. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3. Korea is prepared to amend this note at such time as coverage with respect to these Annexes can be resolved with Canada.
3. A service listed in Annex 4 is covered with respect to a particular party only to the extent that such party has included that service in its Annex 4.

LIECHTENSTEIN

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance With
the Provisions of this Agreement*

<i>Supplies</i>	<i>Threshold:</i>	SDR 130,000
<i>Services</i> (specified in Annex 4)	<i>Threshold:</i>	SDR 130,000
<i>Construction services</i> (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Government of the Principality of Liechtenstein

Note to Annex 1

The Agreement shall not apply to contracts awarded by contracting authorities in the field of drinking water, energy, transport or telecommunications.

ANNEX 2

*Sub-Central Entities which Procure in Accordance With
the Provisions of this Agreement*

<i>Supplies</i>	<i>Threshold:</i>	SDR 200,000
<i>Services</i> (specified in Annex 4)	<i>Threshold:</i>	SDR 200,000
<i>Construction services</i> (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

1. Public Authorities at local level
2. Bodies governed by public law and not having an industrial or commercial character at the local level.

Note to Annex 2

The Agreement shall not apply to contracts awarded by contracting authorities in connection with activities in the field of drinking water, energy, transport or telecommunications.

ANNEX 3

*All Other Entities which Procure in Accordance With
the Provisions of this Agreement*

Supplies	<i>Threshold:</i>	SDR 400,000
Services	<i>Threshold:</i>	SDR 400,000
Works (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

The contracting entities which are public authorities¹ or public undertakings² and which have as at least one of their activities any of those referred to below:

1. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such networks (as specified under title I);
2. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks (as specified under title II);
3. the operation of fixed networks providing a service to the public in the field of transport by urban railway, automated systems, tramway, trolleybus, bus or cable (as specified under title III);

¹ Public authorities means the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law. A body is considered to be governed by public law where it:

- is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature;
- has legal personality; and
- is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law.

² Public undertakings means any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- hold the majority of the undertaking's subscribed capital; or
- control the majority of the votes attaching to shares issued by the undertaking; or
- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

4. the exploitation of a geographical area for the purpose of the provision of airport or other terminal facilities to carriers by air (as specified under title IV);
5. the exploitation of a geographical area for the purpose of the provision of inland port or other terminal facilities to carriers by sea or inland waterway (as specified under title V).

I. Production, transport or distribution of drinking water

Public authorities and public undertakings producing, transporting and distributing drinking water. Such public authorities and public undertakings are operating under local legislation or under individual agreements based thereupon.

- Gruppenwasserversorgung Liechtensteiner Oberland
- Gruppenwasserversorgung Liechtensteiner Unterland

II. Production, transport or distribution of electricity

Public authorities and public undertakings for the production, transport and distribution of electricity operating on the basis of authorizations for expropriation pursuant to the "Gesetz vom 16. Juni 1947 betreffend die "Liechtensteinischen Kraftwerke" (LKWG)".

- Liechtensteinische Kraftwerke

III. Contracting entities in the field of urban railway, automated systems, tramway, trolley bus, bus or cable services

Liechtensteinische Post-, Telefon- und Telegrafienbetriebe (PTT)

according to "Vertrag vom 9. Januar 1978 zwischen dem Fürstentum Liechtenstein und der Schweizerischen Eidgenossenschaft über die Besorgung der Post- und Fernmeldedienste im Fürstentum Liechtenstein durch die Schweizerischen Post-, Telefon- und Telegrafienbetriebe (PTT).

IV. Contracting entities in the field of airport facilities

None

Notes to Annex 3

This Agreement shall not apply:

1. to contracts which the contracting entity awards for purposes other than the pursuit of their activities as described in this Annex.
2. to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.
3. to contracts for the purchase of water.
4. to contracts of contracting entities other than a public authority exercising the supply of drinking water or electricity to networks which provide a service to the public, if they produce these services by themselves and consume them for the purpose of carrying out other activities than those described under this Annex under I and II and provided that the supply to the public network depends only on the entity's own consumption and does not exceed 30 per cent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years.
5. to contracts for the supply of energy or of fuels for the production of energy.
6. to contracts awarded by contracting entities providing a bus service if other entities are free to offer the same service either in general or in a specific geographical area and under the same conditions.

ANNEX 4

Services

The following services from the services sectoral classification list contained in document MTN.GNS/W/120 are included:

Subject

Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752 ¹
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services ²	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866 ³
Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867

¹ Except voice telephony, telex, radiotelephony, paging and satellite services

² Except contracts for financial services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, and central bank services

³ Except arbitration and conciliation services

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Advertising services	871
Building-cleaning services and property management services	874, 82201-82206
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

Notes to Annex 4

The Agreement shall not apply to:

1. service contracts awarded to an entity which is itself a procuring entity listed in Annex 1 or 2 on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision.
2. service contracts which a contracting entity awards to an affiliated undertaking or which are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out an activity within the meaning of Annex 3 or to an undertaking which is affiliated with one of these contracting entities. At least 80 per cent of the average turnover of that undertaking for the preceding three years has to derive from the provision of such services to undertakings with which it is affiliated. Where more than one undertaking affiliated with the contracting entity provides the same service, the total turnover deriving from the provision of services by those undertakings shall be taken into account.
3. contracts for the acquisition or rental, by whatever means, of land, existing buildings, or other immovable property or concerning rights thereon.
4. to contracts of employment.
5. for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

General construction work for buildings	512
General construction work for civil engineering	513
Installation and assembly work	514 + 516
Building completion and finishing work	517
Other	511 + 515 + 518

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. The Principality of Liechtenstein will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada and the United States of America,
 - as regards the award of contracts by entities listed in Annex 3 in the following sectors:
 - water: to the suppliers and service providers of Canada and the United States of America;
 - electricity: to the suppliers and service providers of Canada, Japan and the United States of America;
 - urban transport: to the suppliers and service providers of Canada, Israel, Japan, Korea and the United States of America

until such time as the Principality of Liechtenstein has accepted that the Parties concerned give comparable and effective access for undertakings of the Principality of Liechtenstein to the relevant markets;

 - to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Israel, Japan and Korea in contesting the award of contracts by bodies governed by public law and not having an industrial or commercial character listed in Annex 2, paragraph 2, until such time as the Principality of Liechtenstein accepts that they have completed coverage of sub-central entities;
 - Canada, Japan, Korea and the United States of America in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small- or medium-sized enterprises under the relevant provisions of the law of Liechtenstein until such time as the Principality of Liechtenstein accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
 - Israel, Japan and Korea in contesting the award of contracts by entities of the Principality of Liechtenstein, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

3. Until such time as the Principality of Liechtenstein has accepted that the Parties concerned provide access for suppliers and service providers to their own markets, the Principality of Liechtenstein will not extend the benefits of this Agreement to suppliers and service providers of:
 - Canada, as regards procurement of FSC 36, 70 and 74 (special industry machinery; general purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations); office machines, visible record equipment and ADP equipment);
 - Canada, as regards procurement of FSC 58 (communications, protection and coherent radiation equipment) and the United States of America as regards air traffic control equipment;
 - Korea and Israel as regards procurement by entities listed in Annex 3, paragraph (B) as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;
 - Canada and the United States of America as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.
4. The Agreement shall not apply to contracts awarded under:
 - an international agreement and intended for the joint implementation or exploitation of a project by signatory States;
 - the particular procedure of an international organization.
5. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
6. The provision of services, including construction services, in the context of procurement procedures according to this Agreement is subject to the conditions and qualifications for market access and national treatment as will be required by the Principality of Liechtenstein in conformity with its commitments under the GATS.

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

<i>Supplies</i>	<i>Threshold:</i>	SDR 130,000
<i>Services</i>	<i>Threshold:</i>	SDR 130,000
<i>Works</i>	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Ministry of General Affairs;
Ministry of Public Works and Health;
Ministry of Transport and Communication;
Ministry of Welfare;
Ministry of Justice and Sport;
Ministry of Finance;
Ministry of Economic Affairs.

ANNEX 2

*Sub-Central Entities which Procure in Accordance
with the Provisions of this Agreement*

Non-applicable for Aruba (Aruba does not have any Sub-central Governments).

ANNEX 3

*Other Entities which Procure in Accordance
with the Provisions of this Agreement*

<i>Supplies</i>	<i>Threshold:</i>	SDR 400,000
<i>Services</i>	<i>Threshold:</i>	SDR 400,000
<i>Works</i>	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Water en Energiebedrijf N.V. (Water and Energy Company);
Aruba Ports Authority N.V.;
Arubus N.V. (Public Transport Company);
Setar (Telecommunications Company);
Airport Authority N.V.;
Fundacion Caspa Comunidad Arubano (Public Housing).

ANNEX 4

Services

<i>List of Services</i>	<i>CPC</i>
Legal services	861
Accountancy	862
Taxation services	863
Engineering services	8672
Computer services	841
Management consulting services	865
Franchising	8929
Insurance	812, 814
Banking and securities trade	811, 813
Hotel lodging services	6411
Entertainment services	9619
Recreation park and beach services	96491
Sporting services	9641
Shipping (freight and passenger transport)	72
Maritime auxiliary services: cargo handling	74
Freight transport: agency services/freight forwarding	74
Maritime auxiliary services: storage/warehousing	74
Road transport	71231, 71234, 71239

ANNEX 5

*Construction Services**List of Construction Services*

CPC

Construction work for buildings

512

NORWAY

(Authentic in the English language only)

ANNEX 1*Entities which Procure in Accordance
With the Provisions of this Agreement***Supplies***Threshold:* SDR 130,000**Services** (specified in Annex 4)*Threshold:* SDR 130,000**Works** (specified in Annex 5)*Threshold:* SDR 5,000,000*List of Entities:*

The following central government entities including:

Statsministerens kontor**Barne - og familiedepartementet**Barneombudet
Forbrukerombudet
Forbrukerrådet
Likestillingsombudet
Likestillingsrådet
Statens Adopsjonskontor
Statens Institutt for Forbruksforskning**Finans- og tolldepartementet**Kredittilsynet
Skattedirektoratet
Oljeskattekontoret
Toll- og avgiftsdirektoratet**Fiskeridepartementet**

Fiskeridirektoratet

Office of the Prime Minister**Ministry of Children and Family Affairs**Commissioner for Children
Consumer Ombudsman
Consumer Council
Equal Status Ombud
Equal Status Council
Government Adoption Office
National Institute for Consumer Research**Ministry of Finance**The Banking, Insurance and Securities
Commission of Norway
Directorate of Taxes
Petroleum Tax Office
Directorate of Customs and Excise**Ministry of Fisheries**

Directorate of Fisheries

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Havforskningsinstituttet Kystdirektoratet		Institute of Marine Research Coast Directorate	
Forsvarsdepartementet*		Ministry of Defence*	
Forsvarets bygningstjeneste Forsvarets Forskningsinstitutt*		Norwegian Defence Construction Service Norwegian Defence Research Establishment*	
Forsvarets Overkommando* Forsvarets tele- og datatjeneste		Headquarters Defence Command Norway* Norwegian Defence Communications and Data Services Administration	
Haerens Forsyningskommando* Luftforsvarets Forsyningskommando* Sjøforsvarets Forsyningskommando* Forsvarets Sanitet*		Army Material Command* Airforce Material Command* Navy Material Command* Norwegian Defence Medical Service*	
Justis- og politidepartementet		Ministry of Justice (and the Police)	
Brønnøysundregisterene Datatilsynet Direktoratet for sivilt beredskap		The Brønnøysund Register Centre The Data Inspectorate The Directorate for Civil Defence and Emergency Planning	
Riksadvokaten Statsadvokatembetene Politiet		Director General of Public Prosecutions Offices of the District Public Prosecutor Police Services	
Kirke,- utdannings- og forskningsdepartementet		Ministry of Education, Research and Church Affairs	
Bispedømmerådet Det norske meteorologiske institutt Kirkerådet Lærerutdanningsrådet Nidarosdomens restaureringsarbeider		Diocesan Council Norwegian Meteorological Institute National Council of the Church of Norway Teacher Training Council The Restoration Workshop of Nidaros Cathedral	
Norsk Utenrikspolitisk Institutt Norsk Voksenpedagogisk Forskningsinstitutt Riksbibliotekstjenesten		Norwegian Institute of International Affairs Norwegian Institute of Adult Education National Office for Research and Special Libraries	
Samisk Utdanningsråd		Sami Education Council	
Kommunal- og arbeidsdepartementet		Ministry of Local Government and Labour	
Arbeidsdirektoratet Arbeidsforskningsinstituttet		Directorate of Labour Work Research Institute	

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Direktoratet for arbeidstilsynet Direktoratet for Brann og Eksplosjonsvern		Norwegian Directorate of Labour Inspection Directorate for Fire and Explosion Prevention	
Produkt- og elektrisitetstilsynet Electrical Safety Produktregisteret Statens Bygningstekniske Etat		The Norwegian Directorate for Product and The Product Register National Office of Building Technology and Administration Directorate of Immigration	
Utlendingsdirektoratet			
Kulturdepartementet		Ministry of Cultural Affairs	
Norsk Filminstitutt Norsk Kulturråd Norsk Språkråd Riksarkivet Statsarkivene Rikskonsertene		National Film Board Norwegian Cultural Council Norwegian Language Council National Archives of Norway National Archives Norwegian State Foundation for National Promotion of Music Norwegian Directorate of Public and School Libraries National Board of Film Censors National Film Board	
Statens Bibliotektilsyn			
Statens Filmkontroll Statens Filmsentral			
Landbruksdepartementet		Ministry of Agriculture	
Reindriftsadministrasjonen Statens dyrehelsetilsyn Statens forskningsstasjoner i Landbruk		Directorate for Reindeer Husbandry Norwegian Animal Health Authority Norwegian State Agricultural Research Stations Norwegian Agricultural Inspection Service The Norwegian Food Control Authority National Veterinary Institute	
Statens landbrukstilsyn Statens Næringsmiddeltilsyn Veterinærinstituttet			
Miljøverndepartementet		Ministry of the Environment	
Direktoratet for Naturforvaltning Norsk Polarinstitutt Riksantikvaren Statens Forurensingstilsyn Statens Kartverk		Directorate of Nature Management Norwegian Polar Research Institute Directorate for Cultural Heritage State Pollution Control Authority Norwegian Mapping Authority	

Nærings-og handelsdepartementet

Bergvesenet
 Justervesenet
 Service
 Norges Geologiske Undersøkelse
 Statens Veiledningskontor for oppfinnere

 Sjøfartsdirektoratet
 Skipsregistrene
 Styret for det industrielle rettsvern

Ministry of Trade and Industry

Directorate of Mining
 Norwegian Metrology and Accreditation

 Geological Survey of Norway
 Norwegian Government Consultative
 Office for Inventors
 Norwegian Maritime Directorate
 Norwegian International Ship Register
 Norwegian Patent Office

Olje- og energidepartementet Ministry of Oil and Energy

Norges vassdrags- og energiverk
 Administration
 Oljedirektoratet

Norwegian Water Resources and Energy

 Norwegian Petroleum Directorate

Planleggings- og samordningsdepartementet

Fylkesmannsembetene
 Konkurransetilsynet
 Prisdirektoratet
 Statens Forvaltningstjeneste
 Statens Informasjonstjeneste
 Statsbygg
 Property
 Statskonsult

Ministry of National Planning and Coordination

The County Governors
 Norwegian Competition Authority
 The Price Directorate
 Government Administration Services
 Norwegian Central Information Service
 The Directorate of Public Construction and

 Directorate of Public Management

Samferdselsdepartementet

Postdirektoratet
 Statens teleforvaltning
 Statens vegvesen

Ministry of Transport and Communication

Norway Post
 Norwegian Telecommunications Authority
 Public Roads Administration

Sosialdepartementet

Statens helsetilsyn
 Statens Institutt for Folkehelse
 Radiumhospitalet
 Rikshospitalet
 Rikstrygdeverket
 Rusmiddeldirektoratet

 Statens Helseundersøkelser

Ministry of Health and Social Affairs

Norwegian Board of Health
 National Institute of Public Health
 Norwegian Radium Hospital
 National Hospital
 National Insurance Administration
 Directorate for the Prevention of
 Alcohol and Drug Problems
 National Health Screening Service

Statens Institutt for alkohol- og
narkotikaforskning
Statens Legemiddelkontroll
Statens Strålevern
Statens Tobakkskaderåd

Utenriksdepartementet

Direktoratet for utviklingshjelp

Stortinget

Stortingets ombudsmann for
forvaltningen - Sivilombudsmannen

Riksrevisjonen

Domstolene

National Institute for Alcohol and Drug
Research
Norwegian Medicines Control Authority
Norwegian Radiation Protection Authority
National Council on Smoking and Health

Ministry of Foreign Affairs

Directorate for Development Cooperation

The Storting

Stortingets Ombudsman for Public
Administration

Office of the Auditor General

Courts of Law

Note to Annex 1

Procurement by defence entities (marked with an "**") covers products falling under the CCCN chapters specified in the General Notes.

ANNEX 2

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 200,000

Services (specified in Annex 4)

Threshold: SDR 200,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

1. Contracting authorities of the regional or local public authorities (all counties (19) and municipalities (435)).
2. Bodies governed by public law, or associations formed by one or more such authorities or bodies governed by public law¹, including:

Norsk Rikskringkastning
Norges Bank
Statistisk Sentralbyrå
Norges Forskningsråd
Statens Pensjonskasse

The Norwegian Broadcasting Corporation
Norges Bank
Statistics Norway
Research Council of Norway
Norwegian Public Service Pension Fund

¹ A body is considered to be governed by public law when it:

- is established for the specific purpose of meeting needs in the general interest, not being of a commercial or industrial nature, and
- has legal personality, and
- is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law.

Garanti-instituttet for Eksportkreditt

Norwegian Guarantee Institute for
Export Credit

Categories:

- *Statsbanker (State Banks)*
- *Universiteter og Høyskoler etter lov av 16. juni 1989 nr. 77 (Universities and Colleges)*
- *Publicly owned and operated museums*

ANNEX 3

*Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 400,000

Services

(specified in Annex 4)*

Threshold: SDR 400,000

Works

(specified in Annex 5)

Threshold: SDR 5,000,000

*List of Sectors:*1. *The electricity sector:***

Public entities producing, transporting or distributing electricity pursuant to Lov om bygging og drift av elektriske anlegg (LOV 1969-06-19), Lov om erverv av vannfall, bergverk og annen fast eiendom m.v., Kap. I, jf. kap. V (LOV 19-17-24 16, kap. I), or Vassdragsreguleringsloven (LOV 1917-12-14 17) or Energiloven (LOV 1990-06-29 50).

2. *Urban transport:*

Public entities which have as one of their activities the operation of networks providing a service to the public in the field of transport by automated systems, urban railway, tramway, trolley bus, bus or cable according to Lov om anlegg og drift av jernbane, herunder sporvei, tunellbane og forstadsbane m.m. (LOV 1993-06-11 100), or Lov om samferdsel (LOV 1976-06-04 63) or Lov om anlegg av taugbaner og løipestrenger (LOV 1912-06-14 1).

3. *Airports:*

Public entities providing airport facilities pursuant to Lov om luftfart (LOV 1960-12-16 1).

Luftfartsverket

National Civil Aviation Administration

4. *Ports:*

Public entities operating pursuant to Havneloven (LOV 1984-06-08 51).

5. *Water supply:***

Public entities producing or distributing water pursuant to Forskrift om Drikkevann og Vannforsyning (FOR 1951 - 09-28).

Notes to Annex 3

* This Agreement shall not apply to service contracts which:

- (a) a contracting entity awards to an affiliated undertaking;
- (b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of paragraphs 1-5 of this Annex to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities;

provided that at least 80 per cent of the average turnover of that undertaking with respect to services arising within the EEA for the three preceding years derives from the provision of such services to undertakings with which it is affiliated. When more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

** The supply of drinking water and electricity to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraphs 1 and 5 of Annex 3 where:

- the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraphs 1 and 5 of this Annex, and
- supply to the public network depends only on the entity's own consumption and has not exceeded 30 per cent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:*

<i>Subject</i>	<i>CPC Reference N</i>
Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 712235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752** (except 7524, 7525, 7526)
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services***	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866****
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical consulting services; technical testing and analysis services	867
Advertising services	871
Building-cleaning services and property management services	874, 82201-82206

<i>Subject</i>	<i>CPC Reference N</i>
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

Notes to Annex 4

- * except for services which entities have to procure from another entity pursuant to an exclusive right established by a published law, regulation or administrative provision
- ** except voice telephony, telex, radiotelephony, paging and satellite services
- *** except contracts for financial services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, and central bank services
- **** except arbitrations and conciliation services

ANNEX 5

*Construction Services**Definition:*

A construction service contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All public works/construction services of Division 51.

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Norway will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Norway has accepted that the Parties concerned give comparable and effective access for Norwegian undertakings to the relevant markets;

 - to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Norway accepts that they have completed coverage of sub-central entities;
 - Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Norway, until such time as Norway accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
 - Israel, Japan and Korea in contesting the award of contracts by Norwegian entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

3. Until such time as Norway has accepted that the Parties concerned provide access for Norwegian suppliers and service providers to their own markets, Norway will not extend the benefits of this Agreement to suppliers and service providers of:
 - Canada as regards procurement of FSC 36, 70 and 74 (special industry machinery; general purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations); office machines, visible record equipment and ADP equipment);
 - Canada as regards procurement of FSC 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment.
 - Israel and Korea as regards procurement by entities listed in Annex 3, paragraph 1, as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;
 - Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.
4. Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.
5. With regard to Annex 3, this Agreement shall not apply to the following contracts:
 - contracts which the contracting entities under paragraph 5 award for the purchase of water;
 - contracts which the contracting entities under paragraph 1 award for the supply of energy or of fuels for the production of energy;
 - contracts which the contracting entities award for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-EEA country;
 - contracts awarded for purposes of re-sale or hire to third parties provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and that other entities are free to sell or hire it under the same conditions as the contracting entity;
 - contracting entities exercising activities in the bus transportation sector where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

6. With regard to Annex 4, this Agreement shall not apply to the following:
- contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;
 - contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
 - contracts awarded to an entity which is itself a contracting authority within the meaning of the Public Procurement Act: "Lov om offentlige anskaffelser m.v." (LOV 1992-11-27 116) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;
 - contracts of employment.
7. The Agreement shall not apply to contracts awarded under:
- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
 - an international agreement relating to the stationing of troops;
 - the particular procedure of an international organization.
8. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
9. The thresholds in the Annexes will be applied so as to conform with the public procurement thresholds of the EEA agreement.
10. This Agreement does not apply to procurement subject to secrecy or other particular restrictions with regard to the safety of the realm.
11. When a specific procurement may impair important national policy objectives, the Norwegian Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at the Norwegian Cabinet level.
12. Norway reserves its position with regard to the application of this Agreement to Svalbard, Jan Mayen Island and Norway's Antarctic possessions.

Defence Entities:

Procurement by defence entities (marked with an "*" in Annex 1) covers the following:

- Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement
Chapter 26: Metallic ores, slag and ash

APPENDIX I	NORWAY	GENERAL NOTES	Page 4/6
Chapter 27:	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes		
	except:		
	ex 27.10 special engine fuels		
Chapter 28:	Inorganic chemicals; organic and inorganic compounds of precious metals, of rare earth metals, of radio-active elements and of isotopes		
	except:		
	ex 28.09 explosives		
	ex 28.13 explosives		
	ex 28.14 tear gas		
	ex 28.28 explosives		
	ex 28.32 explosives		
	ex 28.39 explosives		
	ex 28.50 toxic products		
	ex 28.51 toxic products		
	ex 28.54 explosives		
Chapter 29:	Organic chemicals		
	except:		
	ex 29.03 explosives		
	ex 29.04 explosives		
	ex 29.07 explosives		
	ex 29.08 explosives		
	ex 29.11 explosives		
	ex 29.12 explosives		
	ex 29.13 toxic products		
	ex 29.14 toxic products		
	ex 29.15 toxic products		
	ex 29.21 toxic products		
	ex 29.22 toxic products		
	ex 29.23 toxic products		
	ex 29.26 explosives		
	ex 29.27 toxic products		
	ex 29.29 explosives		
Chapter 30:	Pharmaceutical products		
Chapter 31:	Fertilizers		
Chapter 32:	Tanning and dyeing extracts; tannins and their derivatives; dyes, colours, paints and varnishes, putty, fillers and stoppings, inks		
Chapter 33:	Essential oils and resinoids; perfumery, cosmetics and toilet preparations		
Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and "dental waxes"		
Chapter 35:	Albuminoidal substances; glues; enzymes		
Chapter 37:	Photographic and cinematographic goods		
Chapter 38:	Miscellaneous chemical products		
	except:		
	ex 38.19 toxic products		

- Chapter 39: Artificial resins and plastic materials, cellulose esters and ethers, articles thereof
except:
ex 39.03 explosives
- Chapter 40: Rubber, synthetic rubber, factice, and articles thereof
except:
ex 40.11 bullet-proof tyres
- Chapter 41: Raw hides and skins (other than furskins) and leather
- Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers;
articles of animal gut (other than silk-worm gut)
- Chapter 43: Furskins and artificial fur; manufactures thereof
- Chapter 44: Wood and articles of wood; wood charcoal
- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials; basketware and
wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry;
manuscripts, typescripts and plans
- Chapter 65: Headgear and parts thereof
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers;
articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware
- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and
articles thereof; imitation jewellery
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof
except:
ex 82.05 tools
ex 82.07 tools, parts
- Chapter 83: Miscellaneous articles of base metal
- Chapter 84: Boilers, machinery and mechanical appliances; parts thereof
except:
ex 84.06 engines
ex 84.08 other engines
ex 84.45 machinery

APPENDIX I	NORWAY	GENERAL NOTES	Page 6/6
	ex 84.53	automatic data-processing machines	
	ex 84.55	parts of machines under heading 84.53	
	ex 84.59	nuclear reactors	
Chapter 85:		Electrical machinery and equipment; parts thereof except:	
	ex 85.13	telecommunication equipment	
	ex 85.15	transmission apparatus	
Chapter 86:		Railway and tramway locomotives, rolling-stock and parts thereof except:	
	ex 86.02	armoured locomotives, electric	
	ex 86.03	other armoured locomotives	
	ex 86.05	armoured wagons	
	ex 86.06	repair wagons	
	ex 86.07	wagons	
Chapter 87:		Vehicles, other than railway or tramway rolling-stock, and parts thereof except:	
	ex 87.01	tractors	
	ex 87.02	military vehicles	
	ex 87.03	breakdown lorries	
	ex 87.08	tanks and other armoured vehicles	
	ex 87.09	motorcycles	
	ex 87.14	trailers	
Chapter 89:		Ships, boats and floating structures except:	
	ex 89.01A	warships	
Chapter 90:		Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof except:	
	ex 90.05	binoculars	
	ex 90.13	miscellaneous instruments, lasers	
	ex 90.14	telemeters	
	ex 90.28	electrical and electronic measuring instruments	
	ex 90.11	microscopes	
	ex 90.17	medical instruments	
	ex 90.18	mechano-therapy appliances	
	ex 90.19	orthopaedic appliances	
	ex 90.20	X-ray apparatus	
Chapter 91:		Clocks and watches and parts thereof	
Chapter 92:		Musical instruments; sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles	
Chapter 94:		Furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings except:	
	ex 94.01A	aircraft seats	
Chapter 95:		Articles and manufactures of carving or moulding material	
Chapter 96:		Brooms, brushes, powder-puffs and sieves	
Chapter 98:		Miscellaneous manufactured articles	

SINGAPORE

ANNEX 1

*Central Government Entities which Procure in Accordance with
the Provisions of this Agreement*

Goods	<i>Threshold:</i>	SDR 130,000
Services (specified in Annex 4)	<i>Threshold:</i>	SDR 130,000
Construction (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Auditor-General's Office
 Attorney-General's Office
 Cabinet Office
 Istana
 Judicature
 Ministry of Communications
 Ministry of Community Development
 Ministry of Education
 Ministry of Environment
 Ministry of Finance
 Ministry of Foreign Affairs
 Ministry of Health
 Ministry of Home Affairs
 Ministry of Information and the Arts
 Ministry of Manpower
 Ministry of Law
 Ministry of National Development
 Ministry of Trade and Industry
 Parliament
 Presidential Councils
 Prime Minister's Office
 Public Service Commission
 Ministry of Defence

This Agreement will generally apply to purchases by the Singapore Ministry of Defence of the following FSC categories (others being excluded) subject to the Government of Singapore's determinations under the provision of Article XXIII, paragraph 1.

<i>FSC</i>	<i>Description</i>
22	Railway Equipment
23	Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles
24	Tractors
25	Vehicular Equipment Components
26	Tires and Tubes
29	Engine Accessories
30	Mechanical Power Transmission Equipment
31	Bearings
32	Woodworking Machinery and Equipment
34	Metalworking Machinery
35	Service and Trade Equipment
36	Special Industry Machinery
37	Agricultural Machinery and Equipment
38	Construction, Mining, Excavating and Highway Maintenance Equipment
39	Materials Handling Equipment
40	Rope, Cable, Chain and Fittings
41	Refrigeration, Air Conditioning and Air Circulating Equipment
42	Fire Fighting, Rescue and Safety Equipment
43	Pumps and Compressors
44	Furnace, Steam Plant and Drying Equipment
45	Plumbing, Heating and Sanitation Equipment
46	Water Purification and Sewage Treatment Equipment
47	Pipe, Tubing, Hose and Fittings
48	Valves
51	Handtools
52	Measuring Tools
53	Hardware and Abrasives
54	Prefabricated Structures and Scaffolding
55	Lumber, Millwork, Plywood and Veneer
56	Construction and Building Materials
61	Electric Wire, and Power and Distribution Equipment
62	Lighting, Fixtures and Lamps
63	Alarm, Signal and Security Detection Systems
65	Medical, Dental and Veterinary Equipment and Supplies
67	Photographic Equipment
68	Chemicals and Chemical Products
69	Training Aids and Devices
70	General Purpose Automatic Data Processing Equipment, Software, Supplies and Support Equipment
71	Furniture
72	Household and Commercial Furnishings and Appliances
73	Food Preparation and Serving Equipment
74	Office Machines, Text Processing Systems and Visible Record Equipment
75	Office Supplies and Devices
76	Books, Maps and other Publications
77	Musical Instruments, Phonographs and Home-Type Radios

78	Recreational and Athletic Equipment
79	Cleaning Equipment and Supplies
80	Brushes, Paints, Sealers and Adhesives
81	Containers, Packaging and Packing Supplies
83	Textiles, Leather, Furs, Apparel and Shoe Findings, Tents and Flags
84	Clothing, Individual Equipment, and Insignia
85	Toiletries
87	Agricultural Supplies
88	Live Animals
89	Subsistence
91	Fuels, Lubricants, Oils and Waxes
93	Non-metallic Fabricated Materials
94	Non-metallic Crude Materials
95	Metal Bars, Sheets and Shapes
96	Ores, Minerals, and their Primary Products
99	Miscellaneous

Notes to Annex 1:

1. The Agreement shall not apply to any procurement in respect of:
 - (a) construction contracts for chanceries abroad and headquarters buildings made by the Ministry of Foreign Affairs; and
 - (b) contracts made by the Internal Security Department, Criminal Investigation Department, Security Branch and Central Narcotics Bureau of the Ministry of Home Affairs as well as procurement that have security considerations made by the Ministry.
2. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

ANNEX 2

*Sub-Central Entities which Procure in Accordance
with the Provisions of the Agreement*

Non-applicable for Singapore (Singapore does not have any Sub-central Governments).

ANNEX 3

*All other Entities which Procure in Accordance
with the Provisions of this Agreement*

Goods	<i>Threshold:</i>	SDR 400,000
Services (specified in Annex 4)	<i>Threshold:</i>	SDR 400,000
Construction (specified in Annex 5)	<i>Threshold:</i>	SDR 5,000,000

List of Entities:

Board of Architects
Civil Aviation Authority of Singapore
Building and Construction Authority
Economic Development Board
Housing and Development Board
Inland Revenue Authority of Singapore
Land Transport Authority of Singapore
Jurong Town Corporation
Maritime and Port Authority of Singapore
Monetary Authority of Singapore
National Computer Board
National Science & Technology Board
Nanyang Technological University
National Parks Board
National University of Singapore
Preservation of Monuments Board
Professional Engineers Board
Public Transport Council
Sentosa Development Corporation
Singapore Broadcasting Authority
Singapore Productivity and Standards Board
Singapore Tourism Board
Telecommunication Authority of Singapore
Trade Development Board
Urban Redevelopment Authority

Note to Annex 3:

1. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

ANNEX 4

Services

The following services as contained in document MTN.GNS/W/120 are offered (others being excluded):

Threshold: SDR 130,000 for entities as set out in Annex 1
SDR 400,000 for entities as set out in Annex 3

<i>CPC</i>	<i>Description</i>
862	Accounting, Auditing and Book-keeping Services
8671	Architectural Services
865	Management Consulting Services
874	Building-Cleaning Services
641-643	Hotels and Restaurants (incl. catering)
74710	Travel Agencies and Tour Operators
7472	Tourist Guide Services
843	Data Processing Services
844	Database Services
932	Veterinary Services
84100	Consultancy Services Related to the Installation of Computer Hardware
84210	Systems and Software Consulting Services
87905	Translation and Interpretation Services
7523	Electronic Mail
7523	Voice Mail
7523	On-Line Information and Database Retrieval
7523	Electronic Data Interchange
96112	Motion Picture or Video Tape Production Services
96113	Motion Picture or Video Tape Distribution Services
96121	Motion Picture Projection Services
96122	Video Tape Projection Services
96311	Library Services
8672	Engineering Services
7512	Courier Services
-	Biotechnology Services
-	Exhibition Services
-	Commercial Market Research
-	Interior Design Services, Excluding Architecture
-	Professional, Advisory and Consulting Services Relating to Agriculture, Forestry, Fishing and Mining, Including Oilfield Services

Notes to Annex 4:

1. The offer regarding services is subject to the limitations and conditions specified in the Government of Singapore's offer under the GATS negotiations.
2. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

ANNEX 5

Construction Services

The following construction services in the sense of Division 51 of the Central Product Classification as contained in document MTN.GNS/W/120 are offered (others being excluded):

Threshold: SDR 5,000,000 for entities as set out in Annex 1
 SDR 5,000,000 for entities as set out in Annex 3

List of construction services offered:

<i>CPC</i>	<i>Description</i>
512	General construction work for buildings
513	General construction work for civil engineering
514, 516	Installation and assembly work
517	Building completion and finishing work
511, 515, 518	Others

Notes to Annex 5:

1. The offer regarding construction services is subject to the limitations and conditions specified in the Government of Singapore's offer under the GATS negotiations.
2. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

GENERAL NOTE:

1. Taking into account the concerns expressed by GPA Members, Singapore will review its current compulsory registration system with the view to removing any unintended effects of discrimination and of limited tendering in its open tender system that the existing registration system may have on GPA Members within a period of three years after its accession.

SUISSE

(La version française fait foi)

ANNEXE 1

*Entités du gouvernement fédéral qui passent des marchés
conformément aux dispositions du présent accord*

Fournitures	<i>Valeur de seuil:</i>	130 000 DTS
Services (spécifiés à l'Annexe 4)	<i>Valeur de seuil:</i>	130 000 DTS
Services de construction (spécifiés à l'Annexe 5)	<i>Valeur de seuil:</i>	5 000 000 DTS

*Liste des entités couvrant tous les Départements
fédéraux suisses:*

Administration centrale du Groupement de l'armement¹

Administration fédérale des contributions

Administration fédérale des douanes¹

Administration fédérale des finances

Archives fédérales

Bibliothèque centrale du Parlement et de l'administration fédérale

Caisse fédérale d'assurance

Commandement du Corps des gardes fortification¹

Commandement des écoles d'état-major et de commandants¹

Commission de la concurrence

Commission fédérale des banques

Contrôle de l'armement et la sauvegarde de la paix¹

Contrôle fédéral des finances

¹ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Direction de la coopération au développement, de l'aide humanitaire et de la coopération technique avec l'Europe centrale et orientale

Direction du droit international public

Direction politique

Ecole fédérale de sport de Macolin

Ecoles polytechniques fédérales et établissements annexes

Entreprises des postes

Etat-major de l'instruction²

Groupe des affaires sanitaires¹

Groupe de l'aide au commandement¹

Groupe de la direction de l'instruction¹

Groupe logistique¹

Groupe des opérations¹

Groupe des opérations des Forces aériennes¹

Groupe du personnel de l'armée¹

Groupe du personnel enseignant¹

Groupe planification¹

Groupe renseignements¹

Institut fédéral pour l'aménagement, l'épuration et la protection des eaux

Institut fédéral de recherches sur la forêt, la neige et le paysage

Institut Paul Scherrer

Institut suisse de météorologie

Laboratoire fédéral d'essai des matériaux et de recherches

Ministère public de la Confédération

² Pour autant que l'entité ne soit pas en concurrence avec des entreprises auxquelles le présent accord n'est pas applicable.

Monnaie

Office de l'auditeur en chef¹

Office fédéral des affaires économiques extérieures

Office fédéral de l'agriculture

Office fédéral de l'aménagement du territoire

Office fédéral pour l'approvisionnement économique du pays

Office fédéral des armes de combat

Office fédéral des armes et des services d'appui¹

Office fédéral des armes et des services de la logistique¹

Office fédéral de l'assurance militaire¹

Office fédéral des assurances privées

Office fédéral des assurances sociales

Office fédéral de l'aviation civile

Office fédéral de la communication

Office des constructions fédérales

Office fédéral de la culture

Office fédéral de l'économie des eaux

Office fédéral de l'éducation et de la science

Office fédéral de l'énergie

Office fédéral de l'environnement, des forêts et du paysage

Office fédéral des étrangers

Office fédéral des exploitations des Forces aériennes¹

Office des exploitations des Forces terrestres¹

Office central fédéral des imprimés et du matériel

Office fédéral de l'industrie, des arts et métiers et du travail

Office fédéral de l'informatique

Office fédéral de l'instruction des Forces aériennes¹

Office fédéral de la justice

Office fédéral du logement

Office fédéral du matériel d'armée et des constructions¹

Office fédéral de métrologie

Office fédéral du personnel

Office fédéral de la police

Office fédéral de la protection civile¹

Office fédéral des questions conjoncturelles

Office fédéral des réfugiés

Office fédéral des routes

Office fédéral de la santé publique

Office fédéral de la statistique

Office fédéral des systèmes d'armes des Forces aériennes et des systèmes de commandement¹

Office fédéral des systèmes d'armes et des munitions¹

Office fédéral de la topographie

Office fédéral des transports

Office vétérinaire fédéral

Office central de la défense¹

Régie fédérale des alcools

Services centraux de l'état-major général¹

Services centraux des Forces aériennes¹

Services centraux des Forces terrestres¹

Services du Parlement

Note relative à l'annexe 1

Le présent accord ne s'applique pas aux marchés passés par des entités énumérées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

Liste des matériels civils de la défense et de la protection civile soumis à l'accord

- Chapitre 25:* Sel; soufre; terres et pierres; plâtres; chaux et ciments
- Chapitre 26:* Minerais métallurgiques, scories et cendres
- Chapitre 27:* Combustibles minéraux, huiles minérales et produits de leur distillation; matières bitumineuses; cires minérales
- Chapitre 28:* Produits chimiques inorganiques; composés inorganiques ou organiques de métaux précieux, d'éléments radioactifs, de métaux des terres rares et d'isotopes
- à l'exception de:*
- ex 28.09 : explosifs
 - ex 28.13 : explosifs
 - ex 28.14 : gaz lacrymogènes
 - ex 28.28 : explosifs
 - ex 28.32 : explosifs
 - ex 28.39 : explosifs
 - ex 28.50 : produits toxicologiques
 - ex 28.51 : produits toxicologiques
 - ex 28.54 : explosifs
- Chapitre 29:* Produits chimiques organiques
- à l'exception de:*
- ex 29.03 : explosifs
 - ex 29.04 : explosifs
 - ex 29.07 : explosifs
 - ex 29.08 : explosifs
 - ex 29.11 : explosifs
 - ex 29.12 : explosifs
 - ex 29.13 : produits toxicologiques
 - ex 29.14 : produits toxicologiques
 - ex 29.15 : produits toxicologiques
 - ex 29.21 : produits toxicologiques
 - ex 29.22 : produits toxicologiques
 - ex 29.23 : produits toxicologiques
 - ex 29.26 : explosifs
 - ex 29.27 : produits toxicologiques
 - ex 29.29 : explosifs

<i>Chapitre 30:</i>	Produits pharmaceutiques
<i>Chapitre 31:</i>	Engrais
<i>Chapitre 32:</i>	Extraits tannants ou tinctoriaux; tanins et leurs dérivés; matières colorantes, couleurs, peintures, vernis et teintures, mastics, encres
<i>Chapitre 33:</i>	Huiles essentielles et résinoïdes; produits de parfumerie ou de toilette et cosmétiques
<i>Chapitre 34:</i>	Savons, produits organiques tensio-actifs, préparations pour lessives, préparations lubrifiantes, cires artificielles, cires préparées, produits d'entretien, bougies et articles similaires, pâtes à modeler et "cires pour l'art dentaire"
<i>Chapitre 35:</i>	Matières albuminoïdes; colles, enzymes
<i>Chapitre 36:</i>	Poudres et explosifs; articles de pyrotechnie; allumettes; alliages pyrophoriques; matières inflammables <i>à l'exception de:</i> ex 36.01 : poudres ex 36.02 : explosifs préparés ex 36.04 : détonateurs ex 36.08 : explosifs
<i>Chapitre 37:</i>	Produits photographiques et cinématographiques
<i>Chapitre 38:</i>	Produits divers des industries chimiques <i>à l'exception de:</i> ex 38.19 : produits toxicologiques
<i>Chapitre 39:</i>	Matières plastiques artificielles, éthers et esters de la cellulose, résines artificielles et ouvrages en ces matières <i>à l'exception de:</i> ex 39.03 : explosifs
<i>Chapitre 40:</i>	Caoutchouc naturel ou synthétique, factice pour caoutchouc et ouvrages en caoutchouc <i>à l'exception de:</i> ex 40.11 : pneus
<i>Chapitre 43:</i>	Pelleteries et fourrures, pelleteries factices

<i>Chapitre 44:</i>	Bois, charbon de bois et ouvrages en bois
<i>Chapitre 45:</i>	Liège et ouvrages en liège
<i>Chapitre 46:</i>	Ouvrages de sparterie et de vannerie
<i>Chapitre 47:</i>	Matières servant à la fabrication du papier
<i>Chapitre 48:</i>	Papiers et cartons; ouvrages en pâte de cellulose, en papier et en carton
<i>Chapitre 49:</i>	Articles de librairie et produits des arts graphiques
<i>Chapitre 65:</i>	Coiffures et parties de coiffures
<i>Chapitre 66:</i>	Parapluies, parasols, cannes, fouets, cravaches et leurs parties
<i>Chapitre 67:</i>	Plumes et duvet apprêtés et articles en plumes ou en duvet; fleurs artificielles; ouvrages en cheveux
<i>Chapitre 68:</i>	Ouvrages en pierres, plâtre, ciment, amiante, mica et matières analogues
<i>Chapitre 69:</i>	Produits céramiques
<i>Chapitre 70:</i>	Verre et ouvrages en verre
<i>Chapitre 71:</i>	Perles fines, pierres gemmes et similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie
<i>Chapitre 73:</i>	Fonte, fer et acier
<i>Chapitre 74:</i>	Cuivre
<i>Chapitre 75:</i>	Nickel
<i>Chapitre 76:</i>	Aluminium
<i>Chapitre 77:</i>	Magnésium, beryllium (glucinium)
<i>Chapitre 78:</i>	Plomb
<i>Chapitre 79:</i>	Zinc
<i>Chapitre 80:</i>	Etain
<i>Chapitre 81:</i>	Autres métaux communs
<i>Chapitre 82:</i>	Outillage; articles de coutellerie et couverts de table, en métaux communs
<i>Chapitre 83:</i>	Ouvrages divers en métaux communs

- Chapitre 84:* Chaudières, machines, appareils et engins mécaniques
- Chapitre 85:* Machines et appareils électriques et objets servant à des usages électrotechniques
- à l'exception de:*
- ex 85.03 : Piles électriques
 - ex 85.13 : Télécommunications
 - ex 85.15 : Appareils de transmission
- Chapitre 86:* Véhicules et matériaux pour voies ferrées; appareils de signalisation non électriques pour voies de communication
- à l'exception de:*
- ex 86.02 : Locomotives blindées
 - ex 86.03 : autres locoblindées

 - ex 86.05 : Wagons blindés
 - ex 86.06 : Wagons ateliers
 - ex 86.07 : Wagons
- Chapitre 87:* Voitures automobiles, tracteurs, cycles et autres véhicules terrestres
- à l'exception de:*
- 87.08 : Cars et automobiles blindés
 - ex 87.02 : Camions lourds
 - ex 87.09 : Motocycles
 - ex 87.14 : Remorques
- Chapitre 88:* Navigation aérienne
- à l'exception de:*
- ex 88.02 : Avions
- Chapitre 89:* Navigation maritime et fluviale
- Chapitre 90:* Instruments et appareils d'optique, de photographie et de cinématographie, de mesure, de vérification, de précision; instruments et appareils médico-chirurgicaux
- à l'exception de:*
- ex 90.05 : Jumelles
 - ex 90.13 : Instruments divers, lasers
 - ex 90.14 : Télémètres
 - ex 90.28 : Instruments de mesure électriques ou électroniques
- Chapitre 91:* Horlogerie

- Chapitre 92:* Instruments de musique; appareils d'enregistrement ou de reproduction du son; appareils d'enregistrement ou de reproduction des images et du son en télévision; parties et accessoires de ces instruments et appareils
- Chapitre 93:* Armes et munitions
- à l'exception de:*
- ex 93.01 : Armes blanches
 - ex 93.02 : Pistolets
 - ex 93.03 : Armes de guerre
 - ex 93.04 : Armes à feu
 - ex 93.05 : Autres armes
 - ex 93.07 : Projectiles et munitions
- Chapitre 94:* Meubles; mobilier médico-chirurgical; articles de literie et similaires
- Chapitre 95:* Matières à tailler et à mouler, à l'état travaillé (y compris les ouvrages)
- Chapitre 96:* Ouvrages de broserie et pinceaux, balais, houppes et articles de tamiserie
- Chapitre 98:* Ouvrages divers

ANNEXE 2

Entités des gouvernements sous-centraux¹ qui passent des marchés conformément aux dispositions du présent accord

Fournitures	<i>Valeur de seuil:</i>	200 000 DTS
Services (spécifiés à l'Annexe 4)	<i>Valeur de seuil:</i>	200 000 DTS
Services de construction (spécifiés à l'Annexe 5)	<i>Valeur de seuil:</i>	5 000 000 DTS

Liste des entités²

1. Les autorités publiques cantonales
2. Les organismes de droit public établis au niveau cantonal n'ayant pas un caractère commercial ou industriel

Liste des cantons suisses:

Appenzell (Rhodes Intérieures/Extérieures)

Argovie

Bâle (Ville/Campagne)

Berne

Fribourg

Glaris

Genève

Grisons

Jura

Neuchâtel

Lucerne

Schaffhouse

¹ C'est-à-dire les gouvernements cantonaux selon la terminologie suisse

² Pour autant que les cantons passent des marchés de produits de défense dans le cadre d'une délégation de compétence du Département militaire fédéral: voir liste des matériels civils de la défense et de la protection civile en annexe

Schwyz

Soleure

St Gall

Tessin

Thurgovie

Vaud

Valais

Unterwald (Nidwald/Obwald)

Uri

Zoug

Zurich

Note relative à l'Annexe 2

Le présent accord ne s'applique pas aux marchés passés par des entités mentionnées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

ANNEXE 3

Toutes les autres entités qui passent des marchés conformément aux dispositions du présent accord

Fournitures	<i>Valeur de seuil:</i>	400 000 DTS
Services (spécifiés à l'Annexe 4)	<i>Valeur de seuil:</i>	400 000 DTS
Services de construction (spécifiés à l'Annexe 5)	<i>Valeur de seuil:</i>	5 000 000 DTS

Liste des entités:

Les entités adjudicatrices qui sont des pouvoirs publics¹ ou des entreprises publiques² et qui exercent au moins une des activités suivantes:

1. la mise à disposition ou l'exploitation de réseaux fixes destinés à fournir un service au public dans le domaine de la production, du transport ou de la distribution d'eau potable ou l'alimentation de ces réseaux en eau potable (spécifiés sous titre I);
2. la mise à disposition ou l'exploitation de réseaux fixes destinés à fournir un service au public dans le domaine de la production, du transport ou de la distribution d'électricité ou l'alimentation de ces réseaux en électricité (spécifiés sous titre II);
3. l'exploitation de réseaux destinés à fournir un service au public dans le domaine du transport par chemin de fer urbain, systèmes automatiques, tramway, trolleybus, autobus ou câble (spécifiés sous titre III);

¹ Pouvoir public: L'Etat, les collectivités territoriales, les organismes de droit public, les associations formées par une ou plusieurs de ces collectivités ou de ces organismes de droit public. Est considéré comme un organisme de droit public tout organisme:

- créé pour satisfaire spécifiquement des besoins d'intérêt général ayant un caractère autre qu'industriel ou commercial,
- doté d'une personnalité juridique et
- dont soit l'activité est financée majoritairement par l'Etat, les collectivités territoriales ou d'autres organismes de droit public, soit la gestion est soumise à un contrôle par ces derniers, soit l'organe d'administration, de direction ou de surveillance est composé de membres dont plus de la moitié est désignée par l'Etat, les collectivités territoriales ou d'autres organismes de droit public.

² Entreprise publique: toute entreprise sur laquelle les pouvoirs publics peuvent exercer directement ou indirectement une influence dominante du fait de la propriété, de la participation financière ou des règles qui la régissent. L'influence dominante est présumée lorsque les pouvoirs publics, directement ou indirectement, à l'égard de l'entreprise:

- détiennent la majorité du capital souscrit de l'entreprise ou
- disposent de la majorité des voix attachées aux parts émises par l'entreprise ou
- peuvent désigner plus de la moitié des membres de l'organe d'administration, de direction ou de surveillance de l'entreprise.

4. l'exploitation d'une aire géographique dans le but de mettre à la disposition des transporteurs aériens des aéroports ou d'autres terminaux de transport (spécifiés sous titre IV);
5. l'exploitation d'une aire géographique dans le but de mettre à la disposition des transporteurs fluviaux des ports intérieurs ou d'autres terminaux de transport (spécifiés sous titre V).

I. Production, transport ou distribution d'eau potable

Pouvoirs publics ou entreprises publiques de production, de transport et de distribution d'eau potable. Ces pouvoirs publics et entreprises publiques opèrent conformément à la législation cantonale ou locale, ou encore par le biais d'accords individuels respectant ladite législation.

Par exemple:

- Wasserverbund Regio Bern AG
- Hardwasser AG
- Gruppenwasserversorgung Liechtensteiner Oberland
- Gruppenwasserversorgung Liechtensteiner Unterland

II. Production, transport ou distribution d'électricité

Pouvoirs publics ou entreprises publiques de transport et de distribution d'électricité auxquels le droit d'expropriation peut être accordé conformément à la "loi fédérale du 24 juin 1902 concernant les installations électriques à faible et à fort courant".

Pouvoirs publics ou entreprises publiques de production d'électricité conformément à la "loi fédérale du 22 décembre 1916 sur l'utilisation des forces hydrauliques" et à la "loi fédérale du 23 décembre 1959 sur l'utilisation pacifique de l'énergie atomique et la protection contre les radiations".

Par exemple:

- Bernische Kraftwerke AG
- Nordostschweizerische Kraftwerke AG
- Liechtensteinische Kraftwerke

III. Transport par chemin de fer urbain, tramway, systèmes automatiques, trolleybus, autobus ou câble

Pouvoirs publics ou entreprises publiques exploitant des tramways au sens de l'article 2, 1er alinéa, de la "loi fédérale du 20 décembre 1957 sur les chemins de fer".

Pouvoirs publics ou entreprises publiques offrant des services de transport public au sens de l'article 4, 1er alinéa, de la "loi fédérale du 29 mars 1950 sur les entreprises de trolleybus".

Entreprise suisse des postes, téléphones et télégraphes (PTT) au sens de l'article 2 de la "loi fédérale du 18 juin 1993 sur le transport de voyageurs et les entreprises de transport par route".

Pouvoirs publics ou entreprises publiques qui, à titre professionnel, effectuent des courses régulières de transport de personnes selon un horaire, au sens de l'article 4 de la "loi fédérale du 18 juin 1993 sur le transport de voyageurs et les entreprises de transport par route".

Par exemple:

- Transports publics genevois
- Verkehrsbetriebe Zürich

IV. Aéroports

Pouvoirs publics ou entreprises publiques exploitant des aéroports en vertu d'une concession au sens de l'article 37 de la "loi fédérale du 21 décembre 1948 sur la navigation aérienne".

Par exemple:

- Flughafen Zürich-Kloten
- Aéroport de Genève-Cointrin
- Aérodrome civil de Sion

V. Ports intérieurs

Ports fluviaux des deux Bâle: pour le canton de Bâle-Ville, est déterminante la "loi du 13 novembre 1919 concernant l'administration des installations portuaires rhénanes de la ville de Bâle"; pour le canton de Bâle-Campagne est déterminante la "loi du 26 octobre 1936 sur la mise en place d'installations portuaires, de voies ferroviaires et de routes sur le "Sternenfeld" à Birsfelden, et dans l'"Au" à "Muttenz".

Notes relatives à l'Annexe 3

Le présent accord ne s'applique pas:

1. Aux marchés que les entités adjudicatrices passent à des fins autres que la poursuite de leurs activités décrites dans cette Annexe ou pour la poursuite de ces activités en dehors de Suisse.
2. Aux marchés passés à des fins de revente ou de location à des tiers, lorsque l'entité adjudicatrice ne bénéficie d'aucun droit spécial ou exclusif pour vendre ou louer l'objet de ces marchés et

lorsque d'autres entités peuvent librement le vendre ou le louer dans les mêmes conditions que l'entité adjudicatrice.

3. Aux marchés passés pour l'achat d'eau.
4. Aux marchés passés par une entité adjudicatrice autre que les pouvoirs publics, qui assure l'alimentation en eau potable ou en électricité des réseaux destinés à fournir un service au public, lorsque la production d'eau potable ou d'électricité par l'entité concernée a lieu parce que sa consommation est nécessaire à l'exercice d'une activité autre que celle visée dans cette Annexe sous chiffre I et II et lorsque l'alimentation du réseau public ne dépend que de la consommation propre de l'entité et n'a pas dépassé 30% de la production totale d'eau potable ou d'énergie de l'entité prenant en considération la moyenne des trois dernières années, y compris l'année en cours.
5. Aux marchés passés pour la fourniture d'énergie ou de combustibles destinés à la production d'énergie.
6. Aux marchés passés par les entités adjudicatrices assurant au public un service de transport par autobus, lorsque d'autres entités peuvent librement fournir ce service, soit d'une manière générale, soit dans une aire géographique spécifique, dans les mêmes conditions que les entités adjudicatrices.

ANNEXE 4

Services

Les services suivants qui figurent dans la Classification sectorielle des services reproduite dans le document MTN.GNS/W/120 sont inclus:

<i>Objet</i>	<i>Numéros de référence CPC (Classification centrale des produits)</i>
Services d'entretien et de réparation	6112, 6122, 633, 886
Services de transport terrestre, y compris les services de véhicules blindés et les services de courrier, à l'exclusion des transports de courrier	712 (sauf 71235) 7512, 87304
Services de transport aérien: transport de voyageurs et de marchandises, à l'exclusion des transports de courrier	73 (sauf 7321)
Transport de courrier par transport terrestre (à l'exclusion des services de transport ferroviaire) et par air	71235, 7321
Services de télécommunications	752 ¹ (sauf 7524, 7525, 7526)
Services financiers:	ex 81
a) services d'assurances	812, 814
b) services bancaires et d'investissement ²	
Services informatiques et services connexes	84
Services comptables, d'audit et de tenue de livres	862
Services d'études de marché et de sondages	864
Services de conseil en gestion et services connexes	865, 866 ³

¹ A l'exclusion des services de téléphonie vocale, de télex, de radiotéléphonie, de radiomessagerie et de télécommunication par satellite

² A l'exclusion des marchés des services financiers relatifs à l'émission, à l'achat, à la vente et au transfert de titres ou d'autres instruments financiers, ainsi que des services fournis par des banques centrales

³ A l'exclusion des services d'arbitrage et de conciliation

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Services d'architecture; services d'ingénierie et services intégrés d'ingénierie; services d'aménagement urbain et d'architecture paysagère; services connexes de consultations scientifiques et techniques; services d'essais et d'analyses techniques	867
Services de publicité	871
Services de nettoyage de bâtiments et services de gestion de propriétés	874, 82201-82206
Services de publication et d'impression sur la base d'une redevance ou sur une base contractuelle	88442
Services de voirie et d'enlèvement des ordures: services d'assainissement et services analogues	94

Notes relatives à l'Annexe 4

Le présent accord ne s'applique pas:

1. Aux marchés de services attribués à une entité qui est elle-même un pouvoir adjudicateur au sens de l'Annexe 1, 2 ou 3 sur la base d'un droit exclusif dont elle bénéficie en vertu de dispositions législatives, réglementaires ou administratives publiées.
2. Aux marchés de services qu'une entité adjudicatrice passe auprès d'une entreprise liée ou passés par une coentreprise, constituée de plusieurs entités adjudicatrices aux fins de la poursuite des activités au sens de l'Annexe 3, auprès d'une de ces entités adjudicatrices ou d'une entreprise liée à une de ces entités adjudicatrices, pour autant que 80% au moins du chiffre d'affaires moyen que cette entreprise a réalisé au cours des trois dernières années en matière de services provienne de la fourniture de ces services aux entreprises auxquelles elle est liée. Lorsque le même service ou des services similaires sont fournis par plus d'une entreprise liée à l'entité adjudicatrice, il doit être tenu compte du chiffre d'affaires total résultant de la fourniture de services par ces entreprises.
3. Aux marchés de services qui ont pour objet l'acquisition ou la location, quelles qu'en soient les modalités financières, de terrains, de bâtiments existants ou d'autres biens immeubles ou qui concernent des droits sur ces biens.
4. Aux marchés de l'emploi.
5. Aux marchés visant l'achat, le développement, la production ou la coproduction d'éléments de programmes par des organismes de radiodiffusion et aux marchés concernant les temps de diffusion.

ANNEXE 5

*Services de Construction**Définition:*

Un contrat de services de construction est un contrat qui a pour objectif la réalisation, par quelque moyen que ce soit, de travaux de construction d'ouvrages de génie civil ou de bâtiments, au sens de la division 51 de la Classification centrale de produits (CPC).

Liste de services relevant de la division 51 de la CPC

Travaux de préparation des sites et chantiers de construction	511
Travaux de construction de bâtiments	512
Travaux de construction d'ouvrages de génie civil	513
Assemblage et construction d'ouvrages préfabriqués	514
Travaux d'entreprises de construction spécialisées	515
Travaux de pose d'installations	516
Travaux d'achèvement et de finition des bâtiments	517
Autres services	518

Valeur de seuil: 5 000 000 DTS

NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS
DE L'ARTICLE III

1. La Suisse n'étendra pas le bénéfice des dispositions du présent accord:
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs de produits et de services du Canada;
 - en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 3 dans les secteurs suivants:
 - eau: aux fournisseurs de produits et de services du Canada, des Etats-Unis d'Amérique et du Singapour;
 - électricité: aux fournisseurs de produits et de services du Canada, du Japon et du Singapour;
 - aéroports: aux fournisseurs de produits et de services du Canada, de la Corée et des Etats-Unis d'Amérique;
 - ports: aux fournisseurs de produits et de services du Canada;
 - transports urbains: aux fournisseurs de produits et de services du Canada, d'Israël, du Japon, de la Corée et des Etats-Unis d'Amérique;

tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises suisses un accès comparable et effectif aux marchés considérés;

 - aux fournisseurs de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.
2. Les dispositions de l'Article XX ne sont pas applicables aux fournisseurs de produits et de services des pays suivants:
 - Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication de marchés par les organismes mentionnés à l'Annexe 2, chiffre 2, tant que la Suisse n'a pas constaté que ces pays ont complété la liste des entités des gouvernements sous-centraux;
 - Japon, Corée et Etats-Unis d'Amérique en ce qui concerne les recours intentés contre l'adjudication de marchés à un fournisseur de produits ou de services d'autres Parties au présent accord, lorsque ledit fournisseur est une entreprise petite ou moyenne au sens du droit suisse, tant que la Suisse n'aura pas constaté que ces pays n'appliquent plus de mesures discriminatoires pour favoriser certaines petites entreprises nationales ou certaines entreprises nationales détenues par les minorités;

- Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication par des entités suisses de marchés dont la valeur est inférieure au seuil appliqué à la même catégorie de marchés par lesdites Parties.
3. Tant que la Suisse n'aura pas constaté que les Parties concernées assurent l'accès de leurs marchés aux fournisseurs suisses de produits et de services suisses, elle n'étendra pas le bénéfice des dispositions du présent accord aux fournisseurs de produits et de services des pays suivants:
- Canada, en ce qui concerne les marchés portant sur les produits relevant des n° 36, 70 et 74 de la FSC (machines industrielles spéciales; matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données); machines de bureau, matériel de bureautique et d'informatique de bureau;
 - Canada, en ce qui concerne les marchés portant sur les produits relevant du n° 58 de la FSC (matériel de communications, matériel de détection des radiations et d'émission de rayonnement cohérent) et Etats-Unis d'Amérique en ce qui concerne les équipements de contrôle du trafic aérien;
 - Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'Annexe 3, chiffre 2 pour les produits relevant des n° 8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); Israël, en ce qui concerne les produits relevant des n° 8501, 8536 et 902830 du SH;
 - Canada et Etats-Unis d'Amérique en ce qui concerne les marchés de fournitures et de services entrant dans le cadre de marchés qui, tout en étant passés par une entité relevant du champ d'application du présent accord, ne sont pas eux-mêmes soumis à ce dernier.
4. Le présent accord n'est pas applicable aux marchés passés en vertu:
- d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage par les Etats signataires;
 - de la procédure spécifique d'une organisation internationale.
5. Le présent accord n'est pas applicable aux marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire.
6. Les engagements pris par la Suisse dans le domaine des services au titre du présent accord sont limités aux engagements initiaux spécifiés dans l'offre finale suisse présentée dans le cadre de l'Accord général sur le commerce des services.

UNITED STATES

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 130,000 SDRs for supplies and services
5 million SDRs for construction

List of Entities:

1. Department of Agriculture (not including procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes)
2. Department of Commerce (not including shipbuilding activities of NOAA, as excluded in Annex 4)
3. Department of Education
4. Department of Health and Human Services
5. Department of Housing and Urban Development
6. Department of the Interior (including the Bureau of Reclamation)
7. Department of Justice
8. Department of Labor
9. Department of State
10. United States Agency for International Development (not including procurement for the direct purpose of providing foreign assistance)
11. Department of the Treasury
12. Department of Transportation (not including procurement by the Federal Aviation Administration, and pursuant to Article XXIII, the national security considerations applicable to the Department of Defense are equally applicable to the Coast Guard, a military unit of the United States)
13. Department of Energy (pursuant to Article XXIII, national security exceptions include procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act, and oil purchases related to the Strategic Petroleum Reserve)
14. General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
15. National Aeronautics and Space Administration
16. The Department of Veterans Affairs
17. Environmental Protection Agency
18. United States Information Agency
19. National Science Foundation
20. Panama Canal Commission
21. Executive Office of the President
22. Farm Credit Administration

23. National Credit Union Administration
24. Merit Systems Protection Board
25. ACTION
26. United States Arms Control and Disarmament Agency
27. Office of Thrift Supervision
28. Federal Housing Finance Board
29. National Labor Relations Board
30. National Mediation Board
31. Railroad Retirement Board
32. American Battle Monuments Commission
33. Federal Communications Commission
34. Federal Trade Commission
35. Interstate Commerce Commission
36. Securities and Exchange Commission
37. Office of Personnel Management
38. United States International Trade Commission
39. Export-Import Bank of the United States
40. Federal Mediation and Conciliation Service
41. Selective Service System
42. Smithsonian Institution
43. Federal Deposit Insurance Corporation
44. Consumer Product Safety Commission
45. Equal Employment Opportunity Commission
46. Federal Maritime Commission
47. National Transportation Safety Board
48. Nuclear Regulatory Commission
49. Overseas Private Investment Corporation
50. Administrative Conference of the United States
51. Board for International Broadcasting
52. Commission on Civil Rights
53. Commodity Futures Trading Commission
54. Peace Corps
55. National Archives and Records Administration
56. Advisory Commission on Intergovernmental Relations
57. African Development Foundation
58. Alaska Natural Gas Transportation System
59. Appalachian Regional Commission
60. Commission of Fine Arts
61. Delaware River Basin Commission
62. Federal Election Commission
63. Federal Emergency Management Agency
64. Federal Home Loan Mortgage Corporation
65. Federal Maritime Commission
66. Federal Mine Safety and Health Review Commission
67. Federal Reserve System
68. Federal Retirement Thrift Investment Board
69. Holocaust Memorial Council
70. Inter-American Foundation
71. National Capital Planning Commission

72. National Commission on Libraries and Information Science
73. National Council on Disability
74. National Foundation on the Arts and the Humanities
75. Occupational Safety and Health Review Commission
76. Office of Government Ethics
77. Office of the Nuclear Waste Negotiator
78. Office of Special Counsel
79. Resolution Trust Corporation Oversight Board
80. Small Business Administration
81. Susquehanna River Basin Commission
82. Pennsylvania Avenue Development Corporation
83. Federal Crop Insurance Corporation
84. Federal Prison Industries, Inc.
85. Government National Mortgage Association
86. Uranium Enrichment Corporation
87. Department of Defense, including the Corps of Army Engineers

This Agreement will not apply to the following purchases of the Department of Defense:

- (a) Federal Supply Classification (FSC) 83 - all elements of this classification other than pins, needles, sewing kits, flagstuffs, flagpoles, and flagstaff trucks;
- (b) FSC 84 - all elements other than sub-class 8460 (luggage);
- (c) FSC 89 - all elements other than sub-class 8975 (tobacco products);
- (d) FSC 2310 - (buses only);
- (e) Speciality metals, defined as steels melted in steelmanufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by DOD: (1) manganese, 1.65 per cent; silicon, 0.60 per cent; or copper, 0.06 per cent; or which contains more than 0.25 per cent of any of the following elements: aluminium, chromium, cobalt, columbium, olybdenum, nickel, titanium, tungsten, or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or (4) zirconium base alloys;
- (f) FSC 19 and 20 - that part of these classifications defined as naval vessels or major components of the hull or superstructure thereof;
- (g) FSC 51 and 52;
- (h) Following FSC categories are not generally covered due to application of Article XXIII, paragraph 1: 10, 12, 13, 14, 15, 16, 17, 19, 20, 28, 31, 58, 59, 95.

This Agreement will generally apply to purchases of the following FSC categories subject to United States Government determinations under the provisions of Article XXIII, paragraph 1.

FSC	22	Railway Equipment
	23	Motor Vehicles, Trailers, and Cycles (except buses in 2310)
	24	Tractors
	25	Vehicular Equipment Components
	26	Tyres and Tubes
	29	Engine Accessories
	30	Mechanical Power Transmission Equipment
	32	Woodworking Machinery and Equipment
	34	Metalworking Machinery
	35	Service and Trade Equipment
	36	Special Industry Machinery
	37	Agricultural Machinery and Equipment
	38	Construction, Mining, Excavating, and Highway Maintenance Equipment
	39	Materials Handling Equipment
	40	Rope, Cable, Chain and Fittings
	41	Refrigeration and Air Conditioning Equipment
	42	Fire Fighting, Rescue and Safety Equipment
	43	Pumps and Compressors
	44	Furnace, Steam Plant, Drying Equipment and Nuclear Reactors
	45	Plumbing, Heating and Sanitation Equipment
	46	Water Purification and Sewage Treatment Equipment
	47	Pipe, Tubing, Hose and Fittings
	48	Valves
	49	Maintenance and Repair Shop Equipment
	53	Hardware and Abrasives
	54	Prefabricated Structures and Scaffolding
	55	Lumber, Millwork, Plywood and Veneer
	56	Construction and Building Materials
	61	Electric Wire, and Power and Distribution Equipment
	62	Lighting Fixtures and Lamps
	63	Alarm and Signal Systems
	65	Medical, Dental, and Veterinary Equipment and Supplies
	66	Instruments and Laboratory Equipment
	67	Photographic Equipment
	68	Chemicals and Chemical Products
	69	Training Aids and Devices
	70	General Purpose ADPE, Software, Supplies and Support Equipment
	71	Furniture
	72	Household and Commercial Furnishings and Appliances
	73	Food Preparation and Serving Equipment
	74	Office Machines, Visible Record Equipment and ADP Equipment
	75	Office Supplies and Devices
	76	Books, Maps and Other Publications
	77	Musical Instruments, Phonographs, and Home Type Radios
	78	Recreational and Athletic Equipment
	79	Cleaning Equipment and Supplies
	80	Brushes, Paints, Sealers and Adhesives
	81	Containers, Packaging and Packing Supplies
	85	Toiletries

87	Agricultural Supplies
88	Live Animals
91	Fuels, Lubricants, Oils and Waxes
93	Non-metallic Fabricated Materials
94	Non-metallic Crude Materials
96	Ores, Minerals and their Primary Products
99	Miscellaneous

Note to Annex 1

The conditions specified in the General Notes apply to this Annex.

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 355,000 SDRs for supplies and services
5 million SDRs for construction

*List of Entities:*Arizona

Executive branch agencies

Arkansas

Executive branch agencies, including universities but excluding the Office of Fish and Game and construction services

California

Executive branch agencies

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services
Connecticut Department of Transportation
Connecticut Department of Public Works
Constituent Units of Higher Education

Delaware*

Administrative Services (Central Procurement Agency)
State Universities
State Colleges

Florida*

Executive branch agencies

Hawaii

Department of Accounting and General Services (with the exception of procurements of software developed in the state and construction)

Idaho

Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Illinois*

Department of Central Management Services

Iowa*

Department of General Services
Department of Transportation
Board of Regents' Institutions (universities)

Kansas

Executive branch agencies, excluding construction services, automobiles and aircraft

Kentucky

Division of Purchases, Finance and Administration Cabinet, excluding construction projects

Louisiana

Executive branch agencies

Maine*

Department of Administrative and Financial Services
Bureau of General Services (covering state government agencies
and school construction)
Maine Department of Transportation

Maryland*

Office of the Treasury
Department of the Environment
Department of General Services
Department of Housing and Community Development
Department of Human Resources
Department of Licensing and Regulation
Department of Natural Resources
Department of Public Safety and Correctional Services
Department of Personnel
Department of Transportation

Massachusetts

Executive Office for Administration and Finance
Executive Office of Communities and Development
Executive Office of Consumer Affairs
Executive Office of Economic Affairs
Executive Office of Education
Executive Office of Elder Affairs
Executive Office of Environmental Affairs
Executive Office of Health and Human Service
Executive Office of Labor
Executive Office of Public Safety
Executive Office of Transportation and Construction

Michigan*

Department of Management and Budget

Minnesota

Executive branch agencies

Mississippi

Department of Finance and Administration (does not include services)

Missouri

Office of Administration
Division of Purchasing and Materials Management

Montana

Executive branch agencies (only for services and construction)

New York*

State agencies
State university system
Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates

In addition to the exceptions noted at the end of this annex, transit cars, buses and related equipment are not covered.

Nebraska

Central Procurement Agency

New Hampshire*

Central Procurement Agency

Oklahoma*

Office of Public Affairs and all state agencies and departments subject to the Oklahoma Central Purchasing Act, excluding construction services.

Oregon

Department of Administrative Services

Pennsylvania*

Executive branch agencies, including:

Governor's Office
Department of the Auditor General
Treasury Department
Department of Agriculture
Department of Banking
Pennsylvania Securities Commission
Department of Health
Department of Transportation
Insurance Department
Department of Aging
Department of Correction
Department of Labor and Industry
Department of Military Affairs
Office of Attorney General
Department of General Services
Department of Education
Public Utility Commission
Department of Revenue
Department of State
Pennsylvania State Police
Department of Public Welfare
Fish Commission
Game Commission
Department of Commerce
Board of Probation and Parole
Liquor Control Board
Milk Marketing Board
Lieutenant Governor's Office
Department of Community Affairs
Pennsylvania Historical and Museum Commission
Pennsylvania Emergency Management Agency
State Civil Service Commission

Pennsylvania Public Television Network
 Department of Environmental Resources
 State Tax Equalization Board
 Department of Public Welfare
 State Employees' Retirement System
 Pennsylvania Municipal Retirement Board
 Public School Employees' Retirement System
 Pennsylvania Crime Commission
 Executive Offices

Rhode Island

Executive branch agencies, excluding boats, automobiles, buses and related equipment

South Dakota

Central Procuring Agency (including universities and penal institutions)

In addition to the exceptions noted at the end of this annex, procurements of beef are not covered.

Tennessee

Executive branch agencies (excluding services and construction)

Texas

General Services Commission

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:

General Administration
 Department of Transportation
 State Universities

In addition to the exceptions noted at the end of this annex, procurements of fuel, paper products, boats, ships and vessels are not covered.

Wisconsin

Executive branch agencies, including

Department of Administration
State Correctional Institutions
Department of Development
Educational Communications Board
Department of Employment Relations
State Historical Society
Department of Health and Social Services
Insurance Commissioner
Department of Justice
Lottery Board
Department of Natural Resources
Administration for Public Instruction
Racing Board
Department of Revenue
State Fair Park Board
Department of Transportation
State University System

Wyoming*

Procurement Services Division
Wyoming Department of Transportation
University of Wyoming

Notes to Annex 2

In addition to the conditions specified in the General Notes, the following conditions apply:

1. For those states marked by an asterisk with pre-existing restrictions, the Agreement does not apply to procurement of construction-grade steel (including requirements on subcontracts), motor vehicles and coal.
2. The Agreement shall not apply to preferences or restrictions associated with programs promoting the development of distressed areas and businesses owned by minorities, disabled veterans and women.
3. Nothing in this annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. The Agreement shall not apply to any procurement made by a covered entity on behalf of non-covered entities at a different level of government.
5. The Agreement shall not apply to restrictions attached to Federal funds for mass transit and highway projects.

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDRs for supplies and services (except as specified below)
5 million SDRs for construction

List of Entities:

The following entities at the SDR equivalent of \$250,000 for supplies and services:

Tennessee Valley Authority

Power Marketing Administrations of the Department of Energy

- Bonneville Power Administration
- Western Area Power Administration
- Southeastern Power Administration
- Southwestern Power Administration
- Alaska Power Administration
- St. Lawrence Seaway Development Corporation

The following entities are 400,000 SDRs for supplies and services:

The Port Authority of New York and New Jersey with the following exceptions:

- Maintenance, repair and operating materials and supplies (e.g., hardware, tools, lamps/lighting, plumbing);
- In exceptional cases, individual procurements may require certain regional production of goods if authorized by the Board of Directors;
- Procurements pursuant to multi-jurisdictional agreement (i.e., for contracts which have initially been awarded by other jurisdictions).

The Port of Baltimore (subject to the conditions specified for the state of New York in Annex 2)

The New York Power Authority (subject to the conditions specified for the state of New York in Annex 2)

Rural Electrification Administration Financing:

- (1) waiver of Buy American restriction on financing for all power generation projects (restrictions on financing for telecommunication projects are excluded from the Agreement);
- (2) application of Code-equivalent procurement procedures and national treatment to funded projects exceeding the thresholds specified above.

Notes to Annex 3

1. With respect to these entities, the Agreement shall not apply to restrictions attached to Federal funds for airport projects.
2. The conditions specified in the General Notes apply to this Annex.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are excluded:

1. All transportation services, including Launching Services (CPC Categories 71, 72, 73, 74, 8859, 8868).

Note: Transportation services, where incidental to a contract for the procurement of supplies, are not subject to this Agreement.

2. Dredging.
3. All services purchased in support of military forces located overseas.
4. Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers (FFRDCs).
5. Public utilities services, including telecommunications and ADP-related telecommunications services except enhanced (i.e., value-added) telecommunications services.
6. Research and Development.
7. Printing Services (for Annex 2 entities only).

Note to Annex 4

The conditions specified in the General Notes also apply to this Annex.

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

All services listed in Division 51.

Note to Annex 5

The conditions specified in the General Notes apply to this Annex.

GENERAL NOTES

1. Notwithstanding the above, this Agreement will not apply to set asides on behalf of small and minority businesses.
2. Except as specified otherwise in this Appendix, procurement in terms of U.S. coverage does not include non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of goods and services to persons or governmental authorities not specifically covered under U.S. annexes to this agreement.
3. Procurement does not include the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.
4. Where a contract to be awarded by an entity is not covered by this Agreement, this Agreement shall not be construed to cover any good or service component of that contract.
5. For goods and services (including construction) of the following countries and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 or the waiver described in Annex 3:

Canada

The United States is prepared to amend this note at such time as coverage with respect to these annexes can be resolved with a Party listed above.

6. For construction services of the Republic of Korea and suppliers of such services, this Agreement applies only to procurement of the entities listed in Annexes 2 and 3 above a threshold of 15 million SDRs.
7. For goods and services (including construction) of Japan and suppliers of such goods and services, this Agreement does not apply to procurement by the National Aeronautics and Space Administration.
8. A service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in its Annex 4.
9. The United States will not extend the benefits of this Agreement to Japan as regards the award of contracts by entities listed in Annex 3 that are responsible for the generation or distribution of electricity.

APPENDIX II

APPENDIX II

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
OF NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH 1 OF ARTICLE XVIII

APPENDICE II

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
DES AVIS DE MARCHES ENVISAGES - PARAGRAPHE 1 DE L'ARTICLE IX,
ET DES AVIS POSTERIEURS A L'ADJUDICATION DES
MARCHES - PARAGRAPHE 1 DE L'ARTICLE XVIII

APÉNDICE II

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LOS
ANUNCIOS DE LOS CONTRATOS PREVISTOS - PÁRRAFO 1 DEL
ARTÍCULO IX - Y LOS ANUNCIOS DE LAS ADJUDICACIONES -
PÁRRAFO 1 DEL ARTÍCULO XVIII.

APPENDIX II

**PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
OF NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH 1 OF ARTICLE XVIII**

CANADA

Government Business Opportunities (GBO)
MERX, Cebra Inc.

EUROPEAN COMMUNITIES

Austria	-	Official Journal of the European Communities
	-	Amtsblatt zur Wiener Zeitung
Belgium	-	Official Journal of the European Communities
	-	Le Bulletin des Adjudications
	-	Other publications in the specialized press
Denmark	-	Official Journal of the European Communities
Germany	-	Official Journal of the European Communities
Spain	-	Official Journal of the European Communities
France	-	Official Journal of the European Communities
	-	Bulletin officiel des annonces des marchés publics
Greece	-	Official Journal of the European Communities
	-	Publication in the daily, financial, regional and specialized press
Ireland	-	Official Journal of the European Communities
	-	Daily Press: "Irish Independent", "Irish Times", "Irish Press", "Cork Examiner"
Italy	-	Official Journal of the European Communities
Luxembourg	-	Official Journal of the European Communities
	-	Daily Press
Netherlands	-	Official Journal of the European Communities
Portugal	-	Official Journal of the European Communities
Finland	-	Official Journal of the European Communities
	-	Julkiset hankinnat Suomessa ja ETA-alueella, Virallisen lehden liite (Public Procurement in Finland and at the EEA-area, Supplement to the Official Gazette of Finland)
Sweden	-	Official Journal of the European Communities
United Kingdom	-	Official Journal of the European Communities

HONG KONG, CHINA*Annex 1*

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 2

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

Hospital Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Daily Press
Kowloon-Canton Railway Corporation	-	Daily Press
	-	Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation	-	Daily Press
Airport Authority	-	Daily Press

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPAN*Annex 1*

Kanpö

Annex 2

Kepÿ
Shihÿ
or their equivalents

Annex 3

Kanpÿ

THE REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)
The Seoul Shinmun

LIECHTENSTEIN

Daily Press: "Liechtensteiner Volksblatt", "Liechtensteiner Vaterland"

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

The Aruba Gazette "Landscourant" as well as in local newspapers

NORWAY

Official Journal of the European Communities

SINGAPORE

The Republic of Singapore Government Gazette or
The Government Internet Tendering Information System ("GITIS")

SWITZERLAND

Annex 1

Swiss Official Trade Gazette

Annex 2

Official publications of every Swiss Canton (26)

Annex 3

Swiss Official Trade Gazette
Official publications of every Swiss Canton (26)

UNITED STATES

The Commerce Business Daily

For entities listed in Annex 2 and relevant subcentral entities listed in Annex 3, publications utilized by state governments, such as the New York Contract Reporter

APPENDICE II

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
DES AVIS DE MARCHES ENVISAGES - PARAGRAPHE 1 DE L'ARTICLE IX,
ET DES AVIS POSTERIEURS A L'ADJUDICATION DES
MARCHES - PARAGRAPHE 1 DE L'ARTICLE XVIII

CANADA

Marchés publics (GBO)
MERX, Cebra Inc.

COMMUNAUTES EUROPEENNES

Autriche	-	Journal officiel des Communautés européennes
	-	Amtsblatt zur Wiener Zeitung
Belgique	-	Journal officiel des Communautés européennes
	-	Le Bulletin des Adjudications
	-	Autres publications de la presse spécialisée
Danemark	-	Journal officiel des Communautés européennes
Allemagne	-	Journal officiel des Communautés européennes
Espagne	-	Journal officiel des Communautés européennes
France	-	Journal officiel des Communautés européennes
	-	Bulletin officiel des annonces des marchés publics
Grèce	-	Journal officiel des Communautés européennes
	-	Publication dans la presse quotidienne, financière, régionale et spécialisée
Irlande	-	Journal officiel des Communautés européennes
	-	Presse quotidienne: "Irish Independent", "Irish Times", "Irish Press", "Cork Examiner"
Italie	-	Journal officiel des Communautés européennes
Luxembourg	-	Journal officiel des Communautés européennes
	-	Presse quotidienne
Pays-Bas	-	Journal officiel des Communautés européennes
Portugal	-	Journal officiel des Communautés européennes
Finlande	-	Journal officiel des Communautés européennes
	-	Julkiset hankinnat Suomessa ja ETA-alueella, Virallisen lehden liite (Marchés publics en Finlande et dans l'EEE, Supplément au Journal officiel de la Finlande)
Suède	-	Journal officiel des Communautés européennes
Royaume-Uni	-	Journal officiel des Communautés européennes

HONG KONG, CHINE*Annexe 1*

The Government of the Hong Kong Special Administrative Region Gazette
Presse quotidienne

Annexe 2

The Government of the Hong Kong Special Administrative Region Gazette
Presse quotidienne

Annexe 3

Direction des hôpitaux	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Presse quotidienne
Société du chemin de fer Kowloon-Canton	-	Presse quotidienne
	-	Home Page on the Internet (http://www.kcrc.com)
Société de transports en commun par chemin de fer	-	Presse quotidienne
Direction de l'aéroport	-	Presse quotidienne

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPON*Annexe 1*

Kanpÿ

Annexe 2

Kenpÿ, Shihÿ
ou leurs équivalents

Annexe 3

Kanpy

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)
The Seoul Shinmun

LIECHTENSTEIN

Presse quotidienne: "Liechtensteiner Volksblatt", "Liechtensteiner Vaterland"

LE ROYAUME DES PAYS-BAS POUR LE COMPTE D'ARUBA

"Landscourant", Journal officiel d'Aruba, ainsi que la presse locale

NORVEGE

Journal officiel des Communautés européennes

SINGAPOUR

The Republic of Singapore Government Gazette (Journal officiel de Singapour) ou
The Government Internet Tendering Information System ("GITIS")

SUISSE

Annexe 1

Feuille officielle suisse du commerce

Annexe 2

Organe de publications officielles de chaque canton suisse (26)

Annexe 3

Feuille officielle suisse du commerce
Organe de publications officielles de chaque canton suisse (26)

ETATS-UNIS

The Commerce Business Daily

Pour les entités énumérées à l'Annexe 2 et les entités des gouvernements sous-centraux pertinentes énumérées à l'Annexe 3, publications utilisées par les gouvernements des Etats, comme le New York Contract Reporter

APÉNDICE II

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LOS ANUNCIOS DE LOS CONTRATOS PREVISTOS - PÁRRAFO 1 DEL ARTÍCULO IX - Y LOS ANUNCIOS DE LAS ADJUDICACIONES - PÁRRAFO 1 DEL ARTÍCULO XVIII.

CANADÁ

Government Business Opportunities (GBO)
MERX, Cebra Inc.

COMUNIDADES EUROPEAS

Austria	-	Diario Oficial de las Comunidades Europeas
	-	Amtsblatt zur Wiener Zeitung
Bélgica	-	Diario Oficial de las Comunidades Europeas
	-	Le Bulletin des Adjudications
	-	Otras publicaciones de la prensa especializada
Dinamarca	-	Diario Oficial de las Comunidades Europeas
Alemania	-	Diario Oficial de las Comunidades Europeas
España	-	Diario Oficial de las Comunidades Europeas
Francia	-	Diario Oficial de las Comunidades Europeas
	-	Bulletin officiel des annonces des marchés publics
Grecia	-	Diario Oficial de las Comunidades Europeas
	-	Publicación en la prensa diaria, financiera, regional y especializada
Irlanda	-	Diario Oficial de las Comunidades Europeas
	-	Prensa diaria: "Irish Independent", "Irish Times", "Irish Press", "Cork Examiner"
Italia	-	Diario Oficial de las Comunidades Europeas
Luxemburgo	-	Diario Oficial de las Comunidades Europeas
	-	Prensa diaria
Países Bajos	-	Diario Oficial de las Comunidades Europeas
Portugal	-	Diario Oficial de las Comunidades Europeas
Finlandia	-	Diario Oficial de las Comunidades Europeas
	-	Julkiset hankinnat Suomessa ja ETA-alueella, Virallisen lehden liite (Contratación pública en Finlandia y el EEE, Suplemento de la Gaceta Oficial de Finlandia)
Suecia	-	Diario Oficial de las Comunidades Europeas
Reino Unido	-	Diario Oficial de las Comunidades Europeas

HONG KONG, CHINA*Anexo 1*

The Government of the Hong Kong Special Administrative Region Gazette
Prensa diaria

Anexo 2

The Government of the Hong Kong Special Administrative Region Gazette
Prensa diaria

Anexo 3

Administración Hospitalaria	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
	-	Prensa diaria
Sociedad del Ferrocarril	-	Prensa diaria
Kowloon-Canton	-	Home Page on the Internet (http://www.kcrc.com)
Compañía de los Trenes Colectivos	-	Prensa diaria
Administración de Aeropuertos	-	Prensa diaria

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPÓN*Anexo 1*

Kanpÿ

Anexo 2

Kenpÿ, Shihÿ, o sus equivalentes

Anexo 3

Kanpy

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)
The Seoul Shinmun

LIECHTENSTEIN

Prensa diaria: "Liechtensteiner Volksblatt", "Liechtensteiner Vaterland"

EL REINO DE LOS PAÍSES BAJOS RESPECTO DE ARUBA

El Boletín de Aruba "Landscourant" y periódicos locales

NORUEGA

Diario Oficial de las Comunidades Europeas

SINGAPUR

Gaceta Oficial de la República de Singapur o
The Government Internet Tendering Information System ("GITIS")

SUIZA

Anexo 1

Feuille officielle suisse du commerce

Anexo 2

Órganos oficiales de publicación de cada cantón suizo (26)

Anexo 3

Feuille officielle suisse du commerce
Órganos oficiales de publicación de cada cantón suizo (26)

ESTADOS UNIDOS

The Commerce Business Daily

Con respecto a las entidades indicadas en el Anexo 2 y a las entidades pertinentes a nivel subcentral enumeradas en el Anexo 3, las publicaciones utilizadas por los gobiernos de los Estados, tales como "New York Contract Reporter"

APPENDIX III

APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF
INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF
SELECTIVE TENDERING PROCEDURES – PARAGRAPH 9 OF ARTICLE IX

APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE
INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES
CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS -
PÁRRAFO 9 DEL ARTÍCULO IX.

APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

CANADA

Government Business Opportunities (GBO)
MERX, Cebra Inc.

EUROPEAN COMMUNITIES

Member States do not normally operate permanent lists of suppliers and service providers. In the few cases that such lists exist, this will be published in the Official Journal of the European Communities

HONG KONG, CHINA*Annex 1*

The Government of the Hong Kong Special Administrative Region Gazette

Annex 2

The Government of the Hong Kong Special Administrative Region Gazette
Daily Press

Annex 3

Hospital Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	Daily Press
	-	Home Page on the Internet (http://www.kcrc.com)
Mass Transit Railway Corporation Airport Authority	-	Not applicable
	-	Daily Press
	-	Home Page on the Internet (http://www.hkairport.com)

ISRAEL

The Jerusalem Post
International Herald Tribune Ha'aretz

JAPAN

Annex 1

Kanpö

Annex 2

Kenpö
Shihö
or their equivalents

Annex 3

Kanpö

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

LIECHTENSTEIN

Official Journal of the European Communities (after the entry into force of
the EEA Agreement for Liechtenstein)

(Currently no such lists exist)

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

Non-applicable for Aruba: Aruba does not operate permanent lists
of suppliers and service providers

NORWAY

Official Journal of the European Communities

SINGAPORE

The Republic of Singapore Government Gazette or
The Government Internet Tendering Information System ("GITIS")

SWITZERLAND*Annex 1*

Swiss Official Trade Gazette

Annex 2

Official publications of every Swiss Canton (26)

Annex 3

Swiss Official Trade Gazette
Official publications of every Swiss Canton (26)

UNITED STATES

The Commerce Business Daily

Entities in Annexes 2 and 3 of Appendix I, as an alternative to publication in the Commerce Business Daily, may provide such information directly to interested suppliers through inquiries to contact points listed in notices regarding invitations to participate

APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

CANADA

Marchés publics (GBO)
MERX, Cebra Inc.

COMMUNAUTES EUROPEENNES

Les Etats membres ne tiennent pas normalement de listes permanentes de fournisseurs
de produits et de services. Dans les rares cas où de telles listes existent, elles sont
publiées au Journal officiel des Communautés européennes

HONG KONG, CHINE*Annexe 1*

The Government of the Hong Kong Special Administrative Region

Annexe 2

The Government of the Hong Kong Special Administrative Region
Presse quotidienne

Annexe 3

Direction des hôpitaux	-	The Government of the Hong Kong Special Administrative Region
Direction du logement	-	The Government of the Hong Kong Special Administrative Region
Société du chemin de fer Kowloon-Canton	-	Presse quotidienne
	-	Home Page on the Internet (http://www.kcrc.com)
Société de transports en commun par chemin de fer	-	non applicable
Direction de l'aéroport	-	Presse quotidienne
	-	Home Page on the Internet (http://www.kcrc.com)

ISRAEL

The Jerusalem Post
International Herald Tribune - Ha'aretz

JAPON

Annexe 1

Kanpÿ

Annexe 2

Kenpÿ, Shihÿ
ou leurs équivalents

Annexe 3

Kanpÿ

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

LIECHTENSTEIN

Journal officiel des Communautés européennes (à compter de l'entrée en vigueur
de l'Accord sur l'EEE pour le Liechtenstein)

(Il n'existe pas actuellement de listes de cette nature)

LE ROYAUME DES PAYS-BAS POUR LE COMPTE D'ARUBA

Sans objet pour Aruba, qui n'a pas de listes permanentes de fournisseurs de services

NORVEGE

Journal officiel des Communautés européennes

SINGAPOUR

The Republic of Singapore Government Gazette (Journal officiel de Singapour) ou
The Government Internet Tendering Information System ("GITIS")

SUISSE*Annexe 1*

Feuille officielle suisse du commerce

Annexe 2

Organe de publications officielles de chaque canton suisse (26)

Annexe 3

Feuille officielle suisse du commerce
Organe de publications officielles de chaque canton suisse (26)

ETATS-UNIS

The Commerce Business Daily

Au lieu de les faire paraître dans le Commerce Business Daily, les entités énumérées aux Annexes 2 et 3 de l'Appendice I peuvent communiquer directement ces renseignements aux fournisseurs intéressés, sur demande adressée aux services chargés des contacts désignés dans les avis utilisés pour les invitations à soumissionner

APÉNDICE III

**MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE
INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES
CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS -
PÁRRAFO 9 DEL ARTÍCULO IX.**

CANADÁ

Government Business Opportunities (GBO)
MERX, Cebra Inc.

COMUNIDADES EUROPEAS

Los Estados miembros normalmente no establecen listas permanentes de proveedores de bienes y servicios. En los pocos casos en que existe tal lista, se publicará en el Diario Oficial de las Comunidades Europeas

HONG KONG, CHINA*Anexo 1*

The Government of the Hong Kong Special Administrative Region

Anexo 2

The Government of the Hong Kong Special Administrative Region
Prensa diaria

Anexo 3

Administración Hospitalaria	-	The Government of the Hong Kong Special Administrative Region
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region
Sociedad del Ferrocarril Kowloon-Canton	-	Prensa diaria
	-	Home Page on the Internet (http://www.kcrc.com)
Compañía de los Trenes Colectivos	-	no aplicable
Administración de Aeropuertos	-	Prensa diaria
	-	Home Page on the Internet (http://www.kcrc.com)

ISRAEL

The Jerusalem Post
International herald Tribune - Ha'aretz

JAPÓN

Anexo 1

Kanpy

Anexo 2

Kenpy, Shihy, o sus equivalentes

Anexo 3

Kanpy

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

LIECHTENSTEIN

Diario Oficial de las Comunidades Europeas (después de la entrada
en vigor del Acuerdo de la EEE para Liechtenstein)

(Actualmente no existe tal lista)

EL REINO DE LOS PAÍSES BAJOS RESPECTO DE ARUBA

No se aplica a Aruba: Aruba no mantiene listas permanentes de proveedores calificados

NORUEGA

Diario Oficial de las Comunidades Europeas

SINGAPUR

Gaceta Oficial de la República de Singapur o
The Government Internet Tendering Information System ("GITIS")

SUIZA*Anexo 1*

Feuille officielle suisse du commerce

Anexo 2

Órganos oficiales de publicación de cada cantón suizo (26)

Anexo 3

Feuille officielle suisse du commerce
Órganos oficiales de publicación de cada cantón suizo (26)

ESTADOS UNIDOS

The Commerce Business Daily

Las entidades incluidas en los Anexos 2 y 3 del Apéndice I, como alternativa a la publicación en el Commerce Business Daily, pueden facilitar esa información directamente a los proveedores interesados, quienes deberán dirigirse a los centros de información que se indican en los anuncios de invitaciones a participar

APPENDIX IV

APPENDIX IV

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF LAWS,
REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS OF GENERAL
APPLICATION AND ANY PROCEDURE REGARDING GOVERNMENT PROCUREMENT
COVERED BY THIS AGREEMENT - PARAGRAPH 1 OF ARTICLE XIX

APPENDICE IV

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION,
DANS LES MOINDRES DELAIS, DES LOIS, REGLEMENTS, DECISIONS
JUDICIAIRES, DECISIONS ADMINISTRATIVES D'APPLICATION
GENERALE ET PROCEDURES, RELATIFS AUX MARCHES PUBLICS
VISES PAR LE PRESENT ACCORD - PARAGRAPHE 1
DE L'ARTICLE XIX

APÉNDICE IV

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LEYES,
REGLAMENTOS, DECISIONES JUDICIALES Y RESOLUCIONES
ADMINISTRATIVAS DE APLICACIÓN GENERAL, ASÍ COMO
DE LOS PROCEDIMIENTOS PARA LA ADJUDICACIÓN DE
LOS CONTRATOS PÚBLICOS COMPRENDIDOS EN
EL ÁMBITO DEL PRESENTE ACUERDO
- PÁRRAFO 1 DEL ARTÍCULO XIX.

APPENDIX IV

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF LAWS, REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS OF GENERAL APPLICATION AND ANY PROCEDURE REGARDING GOVERNMENT PROCUREMENT COVERED BY THIS AGREEMENT - PARAGRAPH 1 OF ARTICLE XIX

CANADA*Laws and Regulations*

Statutes of Canada
Canada Gazette

Judicial Decisions

Dominion Law Reports
Supreme Court Reports
Federal Court Reports
National Reporter

Administrative Rulings and Procedures

Government Business Opportunities
Canada Gazette
MERX, Cebra Inc.

EUROPEAN COMMUNITIES

- | | | |
|---------|---|---|
| Austria | - | Österreichisches Bundesgesetzblatt Amtsblatt zur Wiener Zeitung
Sammlung von Entscheidungen des Verfassungsgerichtshofes
Sammlung der Entscheidungen des Verwaltungsgerichtshofes –
administrativrechtlicher und finanzrechtlicher Teil Amtliche
Sammlung der Entscheidungen des OGH in Zivilsachen |
| Belgium | - | <i>Laws, royal regulations, ministerial regulations, ministerial
circulars</i> - le Moniteur Belge |
| Denmark | - | <i>Jurisprudence</i> - Pasiricisie |
| | - | <i>Laws and regulations</i> - Lovtidende |
| | - | <i>Judicial decisions</i> - Ugeskrift for Retsvaesen |
| | - | <i>Administrative rulings and procedures</i> - Ministerialtidende |
| | - | <i>Rulings by the Appeal Board for Public Procurement</i> – Konkurrence
raaded Dokumentation |

Germany	-	<i>Legislation and regulations</i> - Bundesanzeiger <i>Herausgeber</i> : der Bundesminister der Justiz Verlag : Bundesanzeiger Bundesanzeiger Postfach 108006 5000 Köln - <i>Judicial Decisions</i> : Entscheidungssammlungen des: Bundesverfassungsgerichts; Bundesgerichtshofs; Bundesverwaltungsgerichts Bundesfinanzhofs sowie der Oberlandesgerichte
Spain	-	<i>Legislation</i> - Boletín Oficial del Estado - <i>Judicial rulings</i> - no official publication
France	-	<i>Legislation</i> - Journal Officiel de la République française - <i>Jurisprudence</i> - Recueil des arrêts du Conseil d'Etat - Revue des marchés publics
Greece	-	Government Gazette of Greece - epishmh efhmerida eurwpaikwn koinothtw
Ireland	-	<i>Legislation and regulations</i> - Iris Oifigiuil (Official Gazette of the Irish Government)
Italy	-	<i>Legislation</i> - Gazzetta Ufficiale - <i>Jurisprudence</i> - no official publication
Luxembourg	-	<i>Legislation</i> - Memorial - <i>Jurisprudence</i> - Pasirisie
Netherlands	-	<i>Legislation</i> - Nederlandse Staatscourant and/or Staatsblad - <i>Jurisprudence</i> - no official publication
Portugal	-	<i>Legislation</i> - Diário da República Portuguesa 1a Série A e 2a série - <i>Judicial Publications</i> : Boletim do Ministério da Justiça - Colectânea de Acordos do Supremo Tribunal Administrativo; - Colectânea de Jurisprudencia Das Relações
Finland	-	Suomen Sääädöskokoelma - Finlands Författningssamling (The Collection of the Statutes of Finland)
Sweden	-	Svensk Författningssamling (Swedish Code of Statutes)
United Kingdom	-	<i>Legislation</i> - HM Stationery Office - <i>Jurisprudence</i> - Law Reports - " <i>Public Bodies</i> " - HM Stationery Office

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 2

The Government of the Hong Kong Special Administrative Region Gazette

Annex 3

Hospital Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Housing Authority	-	The Government of the Hong Kong Special Administrative Region Gazette
Kowloon-Canton Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
Mass Transit Railway Corporation	-	provided to potential suppliers upon issuance of invitations to participate
Airport Authority	-	provided to potential suppliers upon issuance of invitations to participate

ISRAEL

The Official Gazette

JAPAN*Annex 1*

Kanpö
and/or
Hÿreizensho

Annex 2

Kenpö
Shihÿ
or their equivalents,
or Kanpö
and/or
Hÿreizensho

Annex 3

Kanpö
and/or
Hÿreizensho

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

LIECHTENSTEIN

Landesgesetzblatt

Liechtensteinische Entscheidsammlung

(Laws, judicial decisions, administrative rulings and procedures regarding government procurement for entities listed in Annexes 2 and 3 of Appendix I are available either through relevant local publications or directly from the listed entities.)

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

Aruban laws and legislations are published in the Aruban Gazette "Landscourant"

NORWAY

Norsk Lovtidend (Norwegian Law Gazette)

SINGAPORE

The Republic of Singapore Government Gazette or
The Government Internet Tendering Information System ("GITIS")

SWITZERLAND

Compendium of Federal laws
Decisions of the Swiss Federal Court
Jurisprudence of the administrative authorities of the Confederation and every Canton (26)
Compendiums of Cantonal laws (26)

UNITED STATES

Laws, judicial decisions, administrative rulings and procedures regarding government procurement for entities listed in Annex 1 of Appendix I are published in the Federal Acquisition Regulations (FAR) as part of the US Code of Federal Regulations (CFR), Title 48, Chapter 1

Laws, judicial decisions, administrative rulings and procedures regarding government procurement for entities listed in Annexes 2 and 3 of Appendix I are available either through relevant state and local publications or directly from the listed entities

APPENDICE IV

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION,
DANS LES MOINDRES DELAIS, DES LOIS, REGLEMENTS, DECISIONS
JUDICIAIRES, DECISIONS ADMINISTRATIVES D'APPLICATION
GENERALE ET PROCEDURES, RELATIFS AUX MARCHES PUBLICS
VISES PAR LE PRESENT ACCORD - PARAGRAPHE 1
DE L'ARTICLE XIX

CANADA*Lois et règlements*

Lois du Canada
Gazette du Canada

Décisions judiciaires

Dominion Law Reports
Recueil des arrêts de la Cour suprême
Recueil des arrêts de la Cour fédérale
National Reporter

Décisions administratives et procédures

Marchés publics (GBO)
Gazette du Canada
MERX, Cebra Inc.

COMMUNAUTES EUROPEENNES

- | | | |
|----------|---|---|
| Autriche | - | Österreichisches Bundesgesetzblatt Amtsblatt zur Wiener Zeitung
Sammlung von Entscheidungen des Verfassungsgerichtshofes
Sammlung der Entscheidungen des Verwaltungsgerichtshofes –
administrativrechtlicher und finanzrechtlicher Teil Amtliche
Sammlung der Entscheidungen des OGH in Zivilsachen |
| Belgique | - | <i>Lois, arrêtés royaux, arrêtés ministériels, circulaires ministérielles</i> –
Le Moniteur belge |
| Danemark | - | <i>Jurisprudence</i> - Pasicrisie |
| | - | <i>Lois et arrêtés</i> - Lovtidende |
| | - | <i>Décisions judiciaires</i> - Ugeskrift for Retsvaesen |

	-	<i>Décisions et procédures administratives</i> - Ministerialtidende
	-	<i>Décisions de la Commission de recours en matière de marchés publics</i> - Konkurrence raaded Dokumentation
Allemagne	-	<i>Législation et règlements</i> - Bundesanzeiger Editeur: der Bundesminister der Justiz Verlag : Bundesanzeiger Bundesanzeiger Postfach 108006 5000 Cologne
	-	<i>Décisions judiciaires</i> : Entscheidungsammlungen des: Bundesverfassungsgerichts; Bundesgerichtshofs Bundesverwaltungsgerichts; Bundesfinanzhofs sowie der Oberlandesgerichte
Espagne	-	<i>Législation</i> - Boletín Oficial des Estado
	-	<i>Décisions judiciaires</i> - pas de publication officielle
France	-	<i>Législation</i> - Journal officiel de la République française
	-	<i>Jurisprudence</i> - Recueil des arrêts du Conseil d'Etat
	-	Revue des marchés publics
Grèce	-	Journal officiel de la Grèce - epishmh efhmerida eurwpaikwn koinothwn
Irlande	-	<i>Législation et règlements</i> - Iris Oifigiuil (Journal officiel du gouvernement irlandais)
Italie	-	<i>Législation</i> - Gazzetta Ufficiale
	-	<i>Jurisprudence</i> - pas de publication officielle
Luxembourg	-	<i>Législation</i> - Memorial
	-	<i>Jurisprudence</i> - Pasicrisie
Pays-Bas	-	<i>Législation</i> - Nederlandse Staatscourant et/ou Staatsblad
	-	<i>Jurisprudence</i> - pas de publication officielle
Portugal	-	<i>Législation</i> - Diário da República Portuguesa 1a série A e 2a série
	-	<i>Publications judiciaires</i> : Boletim do Ministério da Justiça; Colectânea de Acordos do Supremo Tribunal Administrativo; Colectânea de Jurisprudencia Das Relações
Finlande	-	Suomen Säädoskokoelma - Finlands Författningssamling (Recueil des lois et règlements de la Finlande))
Suède	-	Svensk Författningssamling (Bulletin national des lois suédoises)
Royaume-Uni	-	<i>Législation</i> - HM Stationery Office (Office des publications de Sa Majesté)
	-	<i>Jurisprudence</i> - Law Reports
	-	<i>Organismes publics ("Public bodies")</i> - HM Stationery Office (Office des publications de Sa Majesté)

HONG KONG, CHINE

Annexe 1

The Government of the Hong Kong Special Administrative Region Gazette

Annexe 2

The Government of the Hong Kong Special Administrative Region Gazette

Annexe 3

Direction des hôpitaux	-	The Government of the Hong Kong Special Administrative Region Gazette
Direction du logement	-	The Government of the Hong Kong Special Administrative Region Gazette
Société du chemin de fer Kowloon-Canton	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Société de transports en commun par chemin de fer	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer
Direction de l'aéroport	-	Communiquée aux fournisseurs potentiels dès la parution des invitations à participer

ISRAEL

The Official Gazette

JAPON*Annexe 1*

Kanpÿ et/ou Hÿreizensho

Annexe 2

Kenpÿ, Shihÿ ou leurs équivalents, ou Kanpÿ et/ou Hÿreizensho

Annexe 3

Kanpÿ et/ou Hÿreizensho

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

LIECHTENSTEIN

Landesgesetzblatt

Liechtensteinische Entscheidsammlung

(Les lois, décisions judiciaires, décisions administratives et procédures relatives aux marchés publics passés par les entités mentionnées aux Annexes 2 et 3 de l'Appendice I sont accessibles, soit dans les publications locales y relatives, soit directement auprès desdites entités)

LE ROYAUME DES PAYS-BAS POUR LE COMPTE D'ARUBA

Les lois et dispositions législatives sont publiées au Journal officiel d'Aruba, "Landscourant"

NORVEGE

Norsk Lovtidend (Bulletin des lois de la Norvège)

SINGAPOUR

The Republic of Singapore Government Gazette (Journal officiel de Singapour) ou
The Government Internet Tendering Information System ("GITIS")

SUISSE

Recueil des lois fédérales
Arrêts du Tribunal fédéral suisse
Jurisprudence des autorités administratives de la Confédération et de chaque canton (26)
Recueils des lois cantonales (26)

ETATS-UNIS

Les lois, décisions judiciaires, décisions administratives et procédures relatives aux marchés publics passés par les entités énumérées à l'Annexe 1 de l'Appendice I sont publiées dans les règlements relatifs aux achats fédéraux (Federal Acquisition Regulations (FAR)), qui figurent au Titre 48, Chapitre premier, du Code des règlements fédéraux (United States Code of Federal Regulations (CFR))

Les lois, décisions judiciaires, décisions administratives et procédures relatives aux marchés publics passés par les entités mentionnées aux Annexes 2 et 3 de l'Appendice I sont accessibles soit dans les publications y relatives des Etats et des collectivités locales soit directement auprès desdites entités

APÉNDICE IV

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LEYES,
 REGLAMENTOS, DECISIONES JUDICIALES Y RESOLUCIONES
 ADMINISTRATIVAS DE APLICACIÓN GENERAL, ASÍ COMO
 DE LOS PROCEDIMIENTOS PARA LA ADJUDICACIÓN DE
 LOS CONTRATOS PÚBLICOS COMPRENDIDOS EN
 EL ÁMBITO DEL PRESENTE ACUERDO
 - PÁRRAFO 1 DEL ARTÍCULO XIX.

CANADÁ*Leyes y reglamentos*

Statutes of Canada
 Canada Gazette

Decisiones judiciales

Dominion Law Reports
 Supreme Court Reports
 Federal Court Reports
 National Reporter

Resoluciones y procedimientos administrativos

Government Business Opportunities
 Canada Gazette
 MERX, Cebra Inc.

COMUNIDADES EUROPEAS

- | | | |
|-----------|---|---|
| Austria | - | Österreichisches Bundesgesetzblatt Amtsblatt zur Wiener Zeitung
Sammlung von Entscheidungen des Verfassungsgerichtshofes
Sammlung der Entscheidungen des Verwaltungsgerichtshofes –
administrativrechtlicher und finanzrechtlicher Teil Amtliche
Sammlung der Entscheidungen des OGH in Zivilsachen |
| Bélgica | - | <i>Leyes, disposiciones reales, disposiciones ministeriales, circulares
 administrativas</i> - le Moniteur Belge |
| Dinamarca | - | <i>Jurisprudencia</i> - Pasicrisie |
| | - | <i>Leyes y reglamentos</i> - Lovtidende |
| | - | <i>Decisiones judiciales</i> - Ugeskrift for Retsvaesen |
| | - | <i>Resoluciones y procedimientos administrativos</i> - Ministerialtidende |
| | - | <i>Decisiones de la Junta de Apelación de la Contratación Pública</i> – |

		Konkurrenz raaded Dokumentation
Alemania	-	<i>Leyes y reglamentos</i> - Bundesanzeiger
	-	<i>Herausgeber</i> : der Bundesminister der Justiz
		Verlag : Bundesanzeiger
		Bundesanzeiger
		Postfach 108006
		5000 Köln
	-	<i>Decisiones Judiciales</i> : Entscheidungsammlungen des
		Bundesverfassungsgerichts; Bundesgerichtshofs;
		Bundesverwaltungsgerichts; Bundesfinanzhofs sowie der
		Oberlandesgerichte
España	-	<i>Legislación</i> - Boletín Oficial del Estado
	-	<i>Decisiones judiciales</i> - no existe publicación oficial
Francia	-	<i>Legislación</i> - Journal Officiel de la République française
	-	<i>Jurisprudencia</i> - Recueil des arrêts du Conseil d'Etat
	-	Revue des marchés publics
Grecia	-	Diario Oficial de Grecia - epishmh efhmerida eurwpaikwn
		koinothtw
Irlanda	-	<i>Leyes y reglamentos</i> - Iris Oifigiuil (Diario Oficial del Gobierno de
		Irlanda)
Italia	-	<i>Legislación</i> - Gazzetta Ufficiale
	-	<i>Jurisprudencia</i> - no existe publicación oficial
Luxemburgo	-	<i>Legislación</i> - Memorial
	-	<i>Jurisprudencia</i> - Pasicrisie
Países Bajos	-	<i>Legislación</i> - Nederlandse Staatscourant y/o Staatsblad
	-	<i>Jurisprudencia</i> - no existe publicación oficial
Portugal	-	<i>Legislación</i> - Diário da República Portuguesa, 1a serie A y 2a serie
	-	<i>Publicaciones Judiciales</i> : Boletim do Ministério da Justiça;
		Colectânea de Acordos do Supremo Tribunal Administrativo;
		Colectânea de Jurisprudencia Das Relações
Finlandia	-	Suomen Säädoskokoelma - Finlands Författningssamling (Colección
		de leyes de Finlandia)
Suecia	-	Svensk Författningssamling (Colección Legislativa de Suecia)
Reino Unido	-	<i>Legislación</i> - HM Stationery Office
	-	<i>Jurisprudencia</i> - Law Reports
	-	"Organismos Públicos" - HM Stationery Office

HONG KONG, CHINA

Anexo 1

The Government of the Hong Kong Special Administrative Region Gazette

Anexo 2

The Government of the Hong Kong Special Administrative Region Gazette

Anexo 3

Administración Hospitalaria	-	The Government of the Hong Kong Special Administrative Region Gazette
Servicio de la Vivienda	-	The Government of the Hong Kong Special Administrative Region Gazette
Sociedad del Ferrocarril Kowloon-Canton	-	se suministra a los proveedores potenciales con las invitaciones a participar
Compañía de los Trenes Colectivos	-	se suministra a los proveedores potenciales con las invitaciones a participar
Administración de Aeropuertos	-	se suministra a los proveedores potenciales con las invitaciones a participar

ISRAEL

The Official Gazette

JAPÓN*Anexo 1*

Kanpÿ y/o Hÿreizensho

Anexo 2

Kenpÿ, Shihÿ o sus equivalentes, o Kanpÿ y/o Hÿreizensho

Anexo 3

Kanpÿ y/o Hÿreizensho

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

LIECHTENSTEIN

Landesgesetzblatt

Liechtensteinische Entscheidsammlung

(Se pueden obtener las leyes, decisiones judiciales, resoluciones administrativas y procedimientos para la adjudicación de los contratos públicos de las entidades enumeradas en los anexos 2 y 3 del apéndice I, mediante la consulta de las publicaciones locales pertinentes o solicitando directamente la información a las entidades incluidas en esos anexos.)

EL REINO DE LOS PAÍSES BAJOS RESPECTO DE ARUBA

La legislación de Aruba se publica en el Boletín de Aruba "Landscourant"

NORUEGA

Norsk Lovtidend (Gaceta Oficial de Noruega)

SINGAPUR

Gaceta Oficial de la República de Singapur o
The Government Internet Tendering Information System ("GITIS")

SUIZA

Recueil des lois fédérales
Arrêts du Tribunal fédéral suisse
Jurisprudencia de las autoridades administrativas de la Confederación y de cada cantón (26)
Colecciones legislativas cantonales (26)

ESTADOS UNIDOS

Las leyes, decisiones judiciales, resoluciones administrativas y procedimientos referentes a los contratos públicos de entidades incluidas en el Anexo 1 del Apéndice I se publican en el Federal Acquisition Regulations (FAR), como parte del Code of Federal Regulations (CFR) de los Estados Unidos, título 48, capítulo 1

Las leyes, decisiones judiciales, resoluciones administrativas y procedimientos referentes a los contratos públicos de entidades incluidas en los Anexos 2 y 3 del Apéndice I se pueden obtener o bien consultando las publicaciones estatales y locales pertinentes o bien solicitando la información directamente a las entidades incluidas en dichos Anexos

REVIEW OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

Revision of Article IX

Submission by the United States

Introduction

1. As we have noted in previous informal consultations, the United States believes that Article IX of the GPA is excessively complicated and difficult to understand. We believe that revision of this Article would contribute significantly to the Committee's work to simplify and improve the Agreement.

2. In our view, problems with Article IX as currently drafted include the following:

- The Article uses many closely related but undefined terms to describe various types of procurement notifications. In particular, it does not define the terms "intended procurement", "proposed procurement", and "planned procurement".
- The lists of information to be included in some of these types of procurement notifications are redundant and, in some cases, unnecessarily burdensome.
- There are an excessive number of confusing cross-references to other paragraphs and Articles.

Discussion

3. Attachment A provides suggestions for simplifying Article IX, for the Committee's consideration in the GPA review process. To facilitate comparison, a reprint of the current text of Article IX is also attached.

4. It is important to note that the changes suggested in Attachment A will likely have an effect on other Articles in the Agreement which the Committee will need to consider. For example, modifications to Article IX may have an impact on Article XI:3(a), which provides for the reduction in the deadlines for the receipt of tenders if a separate advance notice has been published. Article XI:3(a) refers to information contained in paragraph 8 of Article IX, which has been deleted from the proposed modifications.

5. The suggested modifications are to streamline the Article in the following ways:

- By streamlining the requirements that must be included in a notice of intended procurement, thus eliminating the need for different notice requirements among Annex 1, and Annexes 2-3 entities, except with respect to the notice requirements

relating to the use of permanent lists of qualified suppliers in selective tendering procedures.

- By eliminating the terms "notice of proposed procurement" and "notice of planned procurement" from the Agreement, instead referring to all procurement opportunity notices as "notices of intended procurement".
- By moving the paragraph relating to annual publication requirements for permanent lists of qualified suppliers from Article IX:9 to Article VIII, where it is better suited.

6. The United States welcomes the views and comments of other delegations, and hopes that this paper will contribute to the Committee's discussion of the improvement and simplification of the Agreement.

Attachment A

PROPOSED MODIFICATIONS TO THE WTO GPA

Article IX

Invitation to Participate Regarding Intended Procurement

1. Except as provided for in Article XV (provisions for the use of limited tendering procedures) and paragraph 3 of this Article (provisions for the use of selective tendering procedures by Annexes 2 and 3 entities), entities shall publish a notice of intended procurement for each contract to be awarded. The notice shall be published in the appropriate publication listed in Appendix II.
2. Each notice of intended procurement shall contain the following information:
 - (a) a description of the intended procurement, including the nature and quantity of the goods or services to be procured;
 - (b) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the contract;
 - (c) the procurement method that will used;
 - (d) the time-limits set for the submission of tenders and, if applicable, the time-limits for the submission of applications to qualify for participation in the intended procurement or for inclusion on a permanent list of qualified suppliers from which the tenders will be accepted;
 - (e) the amount and terms of payment of any sum payable for the tender documentation;
 - (f) an indication that the procurement is covered by the Agreement; and
 - (g) s summary of the notice in one of the official languages of the WTO, containing at least the following information:
 - (i) the subject-matter of the contract;
 - (ii) the time-limits set for the submission of tenders or an application to be invited to tender; and
 - (iii) the addresses from which documents relating to the contracts may be requested.
3. Except as provided for in Article XV, Annexes 2 and 3 entities that maintain permanent lists of qualified suppliers for selective tendering procedures will be considered to have met the notice requirements of paragraphs 1 and 2 of this Article, if they:
 - (a) publish annually in one of the publications listed in Appendix III a notice which contains the following information:

- (i) an enumeration of all permanent lists of qualified suppliers from which such procurements are made, including a description in as much detail as is available, of the good or service to be procured;
 - (ii) the conditions to be fulfilled by suppliers in order to be included on those lists;
 - (iii) the period of validity of those lists; and
 - (iv) a statement that the notice constitutes a notice of intended procurement; and
- (b) provide additional information in a timely manner which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraph 2, to the extent available.

4. If it becomes necessary to amend or re-issue the notice during the procurement process, the amendment or the re-issued notice shall be given the same circulation as the original notice upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers that have expressed interest in that procurement in adequate time to permit those suppliers to consider such information and to respond to it.

Add the following to the list of requirements for qualification procedures under Article VIII:

Entities maintaining permanent lists of qualified suppliers with a duration of more than three years shall publish annually in one of the publications listed in Appendix III a notice containing the information referred to in sections (i) through (iii) of Article IX:3.

Attachment B

AGREEMENT ON GOVERNMENT PROCUREMENT (1994)
(CURRENT TEXT)

Article IX

Invitation to Participate Regarding Intended Procurement

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.
2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.
3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.
4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.
5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.
6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:
 - (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;
 - (b) whether the procedure is open or selective or will involve negotiation;
 - (c) any date for starting delivery or completion of delivery of goods or services;
 - (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
 - (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;

- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation; and
- (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

- (a) a statement that interested suppliers should express their interest in the procurement to the entity;
- (b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

- (a) the subject-matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

- (d) the nature of the products or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be

published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.

REVIEW OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

Statistical Reporting Requirements under Article XIX:5

Submission by the United States

Introduction

1. Discussions in the Committee on potential revision to the statistical reporting requirements under Article XIX:5 are well advanced. There appears to be general agreement among GPA Members that the current statistical reporting requirements are overly burdensome and in need of revision. The work of the Chair and the Secretariat in collecting Members' views and presenting them in the form of draft revisions of the text of Article XIX:5 has helped advance the Committee's work in this area.

2. The purpose of this informal submission is to contribute to the Committee's discussion of revising the statistical reporting requirements of Article XIX:5 by seeking to better clarify how the revised statistical reporting requirements would be actually implemented. This submission presents "sample tables" of how we perceive the modifications to the statistical reporting requirements proposed to date might look in terms of a statistical report. Discussion of these samples may be of assistance in considering whether any further modifications of the draft text may be appropriate.

3. This submission also suggests another potential modification to the Chairman's revised text (discussed below), for consideration by the Committee.

Potential modification to the Chairman's revised text of Article XIX:5

Reporting the value of above-threshold contracts awarded to foreign suppliers

4. The GPA currently requires Parties to report on the country of origin of products and services purchased by its entities "[t]o the extent that such information is available". Due to the difficulty in accurately obtaining country of origin information, the United States supports proposals by other Members to eliminate this requirement. However, in order to assess the market access benefits of the GPA, it may be useful to Members to have information on the value of contracts that each Party awards to domestic suppliers and to the suppliers of other Parties, at least on an aggregate basis. While it would still be possible without such information to determine the level of opportunities offered by GPA membership, it would be more difficult to assess the level of market access Parties actually achieve.

5. To address this issue, the Parties might consider adding the following statement to the revised text of Article XIX:5(a), provided in the Chair's Note of 13 April 1999 (Job 2108):

"To the extent that such information is available, the above statistics should be broken down by the estimated value of contracts awarded to suppliers of GPA participants."

If such information were provided, together with the value of all contracts awarded, the Parties would have a tool for assessing the extent to which GPA participants' suppliers participate in a reporting Party's procurement markets.

6. If this suggestion were included in the Chairman's revised text, the new Article XIX:5 would read (with the modification indicated in italicized text):

"5. Each Party shall collect and provide to the Committee statistics on its procurements covered by this Agreement. Their reports shall contain the following information with respect to contracts awarded, above the applicable threshold values, by all procurement entities covered under the Agreement:

(a) statistics on the estimated value of contracts awarded:

- (i) for entities in Annexes 1, 2 and 3, on a global basis; and
- (ii) for entities in Annex 1, broken down by entity;

To the extent that such information is available, the above statistics should be broken down by the estimated value of contracts awarded to suppliers of GPA participants.

(b) (i) for entities in Annex 1, statistics on the number and total value of contracts awarded, broken down by entities and by categories of products and services according to uniform classification systems;

(ii) for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded broken down by categories of entities and by categories of products and services;

(c) statistics on the use of Article XV:

- (i) for entities in Annex 1, on the number and total value of contracts awarded, broken down by entity and categories of products and services;
- (ii) for categories of entities in Annexes 2 and 3, the total value of contracts awarded."

Model statistical tables

7. Attached are model statistical tables which reflect our understanding of the current proposed modifications to Article XIX:5, and include the additional suggested modifications outlined above. We welcome the views of other delegations to help reach a common understanding of the implications of the proposed modifications to the GPA's statistical reporting requirements.

WTO AGREEMENT ON GOVERNMENT PROCUREMENT
1998 STATISTICAL REPORT
ARTICLE XIX:5(a)

Federal Government Entities (Annex 1)	Value of Above-Threshold Contracts Awarded	Value of Above-Threshold Contracts Awarded to other GPA Suppliers
Department of Agriculture		
Department of Education		
Department of Health and Human Services		
Department of Housing and Urban Development		
Department of the Interior		
Department of Justice		
...		
TOTAL FOR ANNEX 1		

Categories of Entities (Annex 2)	Value of Above-Threshold Contracts Awarded	Value of Above-Threshold Contracts Awarded to other GPA Suppliers
[Category 1]		
[Category 2]		
...		
TOTAL FOR ANNEX 2		

Categories of Entities (Annex 3)	Value of Above-Threshold Contracts Awarded	Value of Above-Threshold Contracts Awarded to other GPA Suppliers
[Category 1]		
[Category 2]		
...		
TOTAL FOR ANNEX 3		

**WTO AGREEMENT ON GOVERNMENT PROCUREMENT
1998 STATISTICAL REPORT
ARTICLE XIX:5(b)**

(Annex 1 Number and Estimated Value of Above-Threshold Contracts by Entity and Categories of Products and Services)

	Dept of Agriculture		Dept of Education		Dept Health Human Serv		Housing & Urbn Dvlpt		Dept of the Interior		Dept of Justice		Dept of Labor		...	
	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value
[goods/service category 1]																
[goods/service category 2]																
[goods/service category 3]																
...																

(Annex 2 Above-Threshold by Category of Entity and Categories of Products and Services)

Annex 2	Category of Entity 1	Category of Entity 2	Category of Entity 3	...
Category of goods/services 1				
Category of goods/services 2				
...				

(Annex 3 Above-Threshold by Category of Entity and Categories of Products and Services)

Annex 3	Category of Entity 1	Category of Entity 2	Category of Entity 3	...
Category of goods/services 1				
Category of goods/services 2				
...				

**WTO AGREEMENT ON GOVERNMENT PROCUREMENT
1998 STATISTICAL REPORT
ARTICLE XIX:5(c)**

(Annex 1 Above-Threshold by Entity on Total Number and Value of Contracts Awarded under Article XV)

	Dept of Agriculture		Dept of Education		Dept Health Human Serv		Housing & Urbn Dvlpt		Dept of the Interior		Dept of Justice		Dept of Labor		...	
	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value	Number	Value
goods/services category 1																
goods/services category 2																
...																

(Annex 2 Above-Threshold by Category of Entity on Total Number and Value of Contracts Awarded under Article XV)

	Category 1	Category 2	Category 3	Category 4	Category 5	...
Total Value Article XV						
Total Number of Contracts Article XV						

(Annex 3 Above-Threshold by Category of Entity on Total Number and Value of Contracts Awarded under Article XV)

	Category 1	Category 2	Category 3	Category 4	Category 5	...
Total Value Article XV						
Total Number of Contracts Article XV						

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/84
16 June 1999

(99-2420)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from the Republic of Croatia

The following communication, dated 14 June 1999, has been received from the Permanent Mission of the Republic of Croatia with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Government of the Republic of Croatia hereby expresses the intention of Croatia to become an observer in the Committee on Government Procurement.

I would be grateful if this application for observership could be dealt with during the next meeting of the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/83
2 March 1999

(99-0790)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from the Kyrgyz Republic

The following communication, dated 26 February 1999, has been received from the Permanent Mission of the Kyrgyz Republic with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Permanent Mission of the Kyrgyz Republic to the UN Office and other international organizations at Geneva presents its compliments to the Secretariat of the World Trade Organization and has the honour to request observer status for the Kyrgyz Republic in the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/82

17 February 1999

(99-0623)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF SINGAPORE

Notification from Singapore under Article XXIV:6(a)

The following notification from the Permanent Mission of the Republic of Singapore was received on 15 February 1999, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement (1994), the Government of Singapore wishes to notify the Committee on Government Procurement of the following rectifications of a purely minor nature to the Lists in Annexes 1 and 3 of Appendix I for Singapore of the Agreement on Government Procurement (1994).

List in Annex 1

Delete "Includes Public Works Department" under footnote 1 of Annex 1

List in Annex 3

Delete "Construction Industry Development Board" under Annex 3

Replace with "Building and Construction Authority" under Annex 3

The rectifications are minor in nature and do not alter the coverage of the GPA with respect to Singapore.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED
IN NATIONAL CURRENCIES FOR 1997/1998**

REPUBLIC OF KOREA

Revision

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective thresholds expressed in national currencies and fixed for two years.

The information notified in response by the Republic of Korea is reproduced below.

1. Calculation of threshold figures in national currency

Annex 1 Entities	Threshold value (SDR)	Threshold value in national currency (won)
1. Supplies and services	130,000	151,000,000
2. Construction services	5,000,000	5,830,000,000

Annex 2 Entities	Threshold value (SDR)	Threshold value in national currency (won)
1. Supplies and services	200,000	233,000,000
2. Construction services	15,000,000	17,490,000,000

Annex 3 Entities	Threshold value (SDR)	Threshold value in national currency (won)
1. Supplies	450,000	524,000,000
2. Construction services	15,000,000	17,490,000,000

2. Method of calculation

It is the average of monthly rate of the national currency in terms of the SDR over the two-year period from November 1994 to October 1996. The conversion rates published by the IMF in its monthly "International Fiscal Statistics" was used for this calculation. The example of this calculation is attached.

3. Example of calculation

Period	Exchange rate (Unit: won/SDR)	Period	Exchange rate (Unit: won/SDR)
November 1994	1,157.1	November 1995	1,143.1
December 1994	1,151.4	December 1995	1,151.6
January 1995	1,161.7	January 1996	1,138.6
February 1995	1,174.6	February 1996	1,146.6
March 1995	1,203.9	March 1996	1,143.7
April 1995	1,198.3	April 1996	1,129.2
May 1995	1,197.8	May 1996	1,136.3
June 1995	1,189.3	June 1996	1,170.0
July 1995	1,179.8	July 1996	1,191.9
August 1995	1,150.9	August 1996	1,194.4
September 1995	1,157.5	September 1996	1,182.0
October 1995	1,144.1	October 1996	1,200.4

- The exchange rates are quoted from the IFS. It is the rate at the end of each month.
 - Example of calculation:
 - The average exchange rate of won in terms of SDR

$$27,994.2 \text{ won}/24 \text{ months} = 1,166.425 \text{ won}$$

$$130,000 \text{ (SDR)} * 1,166.425 \text{ won} = 151,635,250 \text{ won}$$
 - The final conversion rate: 151,000,000 won
- (*The figures under million won are deleted for simplicity of implementation.)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/81

11 February 1999

(99-0536)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 1999/2000

KOREA

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1999-2000.

The information notified by Korea is reproduced below. Other submissions will be compiled in addenda to this document.

THRESHOLD FIGURE IN NATIONAL CURRENCY (WON)

1. Result of classification

Classification		Threshold Value (SDR)	Threshold Value in National Currency (WON)
Entities in Annex 1	Supplies and services	130,000	200,000,000
	Construction services	5,000,000	7,800,000,000
Entities in Annex 2	Supplies and services	200,000	310,000,000
	Construction services	15,000,000	23,400,000,000
Entities in Annex 3	Supplies	450,000	700,000,000
	Construction services	15,000,000	23,400,000,000

2. Method of calculation

It is the average of the monthly rate of the national currency in terms of the SDR over the two-year period from November 1996 to October 1998. The conversion rates published by the IMF in its monthly "International Fiscal Statistics" were used for this calculation. An example of this calculation is to be found below.

3. Example of calculation

Time	Exchange rate (Unit: WON/SDR)	Time	Exchange rate (Unit: WON/SDR)
November 1996	1,197.16	November 1997	1,584.91
December 1996	1,213.93	December 1997	2,286.98
January 1997	1,201.22	January 1998	2,051.67
February 1997	1,196.45	February 1998	2,204.93
March 1997	1,244.18	March 1998	1,847.54
April 1997	1,218.19	April 1998	1,799.14
May 1997	1,241.20	May 1998	1,878.85
June 1997	1,232.81	June 1998	1,828.20
July 1997	1,211.89	July 1998	1,635.27
August 1997	1,229.95	August 1998	1,812.00
September 1997	1,248.89	September 1998	1,883.65
October 1997	1,335.33	October 1998	1,857.61

- The exchange rates are quoted from the IFS. It is the rate at the end of each month.
 - Example of calculation:
 - The average exchange rate of won in terms of SDR
$$37,441.95 \text{ won}/24 \text{ months} = 1,560.08 \text{ won}$$
$$130,000 \text{ (SDR)} * 1,560.08 \text{ won} = 202,810,400 \text{ won}$$
 - The final conversion rate: 200,000,000 won
- (*The figures under one million won are deleted for simplicity of implementation.)

**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED
IN NATIONAL CURRENCIES FOR 1997/1998**

REPUBLIC OF KOREA

Revision

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective thresholds expressed in national currencies and fixed for two years.

The information notified in response by the Republic of Korea is reproduced below.

1. Calculation of threshold figures in national currency

Annex 1 Entities	Threshold value (SDR)	Threshold value in national currency (won)
1. Supplies and services	130,000	151,000,000
2. Construction services	5,000,000	5,830,000,000

Annex 2 Entities	Threshold value (SDR)	Threshold value in national currency (won)
1. Supplies and services	200,000	233,000,000
2. Construction services	15,000,000	17,490,000,000

Annex 3 Entities	Threshold value (SDR)	Threshold value in national currency (won)
1. Supplies and services	450,000	524,000,000
2. Construction services	15,000,000	17,490,000,000

2. Method of calculation

It is the average of monthly rate of the national currency in terms of the SDR over the two-year period from November 1994 to October 1996. The conversion rates published by the IMF in its monthly "International Fiscal Statistics" was used for this calculation. The example of this calculation is attached.

3. Example of calculation

Period	Exchange rate (Unit: won/SDR)	Period	Exchange rate (Unit: won/SDR)
November 1994	1,157.1	November 1995	1,143.1
December 1994	1,151.4	December 1995	1,151.6
January 1995	1,161.7	January 1996	1,138.6
February 1995	1,174.6	February 1996	1,146.6
March 1995	1,203.9	March 1996	1,143.7
April 1995	1,198.3	April 1996	1,129.2
May 1995	1,197.8	May 1996	1,136.3
June 1995	1,189.3	June 1996	1,170.0
July 1995	1,179.8	July 1996	1,191.9
August 1995	1,150.9	August 1996	1,194.4
September 1995	1,157.5	September 1996	1,182.0
October 1995	1,144.1	October 1996	1,200.4

- The exchange rates are quoted from the IFS. It is the rate at the end of each month.
 - Example of calculation:
 - The average exchange rate of won in terms of SDR

$$27,994.2 \text{ won}/24 \text{ months} = 1,166.425 \text{ won}$$

$$130,000 \text{ (SDR)} * 1,166.425 \text{ won} = 151,635,250 \text{ won}$$
 - The final conversion rate: 151,000,000 won
- (*The figures under million won are deleted for simplicity of implementation.)

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			Response by Singapore - Addendum Preview (HTML)		4 p. 39KB	4 p. 41KB	5 p. 38KB
98-3840	D	GPA/W/77 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Estonia Preview (HTML)	05/10/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					1 p. 28KB	1 p. 28KB	1 p. 26KB
98-3594	D	GPA/W/75 Catalogue record	Committee on Government Procurement - Derestriction of Documents Preview (HTML)	18/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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98-3584	D	GPA/W/76 Catalogue record	Committee on Government Procurement - Request for Information Pursuant to Paragraphs 1 and 2 of Article XIX of the Agreement on Government Procurement - Communication from the United States Preview (HTML)	18/09/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					4 p. 37KB	4 p. 39KB	4 p. 36KB
98-3288	D	GPA/W/66/Add.7 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Israel Preview (HTML)	21/08/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					1 p. 31KB	2 p. 31KB	1 p. 29KB
98-2801	D	GPA/W/24/Add.5 Catalogue record	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by the European Community - Addendum Preview (HTML)	15/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					5 p. 42KB	6 p. 46KB	6 p. 42KB
98-2798	D	GPA/W/24/Add.6 Catalogue record	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by the United States - Addendum Preview (HTML)	15/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					6 p. 46KB	7 p. 50KB	7 p. 48KB
98-2790	D	GPA/W/66/Add.5 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - United States Preview (HTML)	15/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					1 p. 31KB	1 p. 30KB	1 p. 30KB
98-2800	D	GPA/W/66/Add.6 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Norway Preview (HTML)	15/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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98-2794	D	GPA/W/73 Catalogue record	Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement of Iceland Preview (HTML)	15/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					14 p. 53KB	14 p. 55KB	14 p. 52KB
98-2795	D	GPA/W/74 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Japan - Notifications from Japan under Article XXIV:6(a) Preview (HTML)	15/07/1998	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
					2 p. 32KB	2 p. 32KB	2 p. 31KB

98-2455	D	GPA/W/66/Add.4 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Singapore Preview (HTML)	17/06/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 34KB	2 p. 34KB	2 p. 33KB
98-2415	D	GPA/W/72 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Singapore - Notification from Singapore under Article XXIV:6(a) Preview (HTML)	15/06/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 29KB	1 p. 30KB	1 p. 28KB
98-1622	D	GPA/W/66/Add.3 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Canada Preview (HTML)	22/04/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 23KB	1 p. 22KB	1 p. 22KB
98-1517	D	GPA/W/71 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Lithuania Preview (HTML)	16/04/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 22KB	1 p. 21KB	1 p. 23KB
98-1428	D	GPA/W/70 Catalogue record	Committee on Government Procurement - Modifications to Appendices II, III and IV of Singapore - Notification from Singapore under Article XXIV:6(a) Preview (HTML)	09/04/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 95KB	2 p. 68KB	2 p. 96KB
98-1180	D	GPA/W/66/Add.2 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Japan Preview (HTML)	25/03/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 25KB	2 p. 26KB	2 p. 29KB
98-1179	D	GPA/W/69 Catalogue record	Committee on Government Procurement - Modifications to Appendices II and III of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a) Preview (HTML)	25/03/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 71KB	3 p. 29KB	3 p. 71KB
98-0557	D	GPA/W/66/Add.1 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - European Community Preview (HTML)	17/02/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 28KB	2 p. 31KB	2 p. 29KB
98-0444	D	GPA/W/68 Catalogue record	Committee on Government Procurement - Modifications to Appendices II, III and IV of Israel - Notification from Israel under Article XXIV:6(a) Preview (HTML)	06/02/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 67KB	1 p. 69KB	1 p. 67KB
98-0323	D	GPA/W/67 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Slovenia Preview (HTML)	29/01/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 22KB	1 p. 21KB	1 p. 21KB
98-0054	D	GPA/W/65 Catalogue record	Committee on Government Procurement - Relationship of the Tokyo Round Agreement on Government Procurement	09/01/1998	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>			

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98-0006	D	GPA/W/64 Catalogue record	Committee on Government Procurement - Derestriction of Documents Preview (HTML)	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>
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8 10 KB	98-3584	GPA/W/76	Committee on Government Procurement - Request for Information Pursuant to Paragraphs 1 and 2 of Article XIX of the Agreement on Government Procurement - Communication from the United States	18/09/1998	4	D	T/PLURI/GPA/W76.DOC
9 4 KB	98-3288	GPA/W/66/Add.7	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Israel	21/08/1998	1	D	T/PLURI/GPA/W66A7.DOC
10 13 KB	98-2801	GPA/W/24/Add.5	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by the European Community - Addendum	15/07/1998	5	D	T/PLURI/GPA/W24A5.DOC
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13 4 KB	98-2800	GPA/W/66/Add.6	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Norway	15/07/1998	1	D	T/PLURI/GPA/W66A6.DOC
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15 6 KB	98-2795	GPA/W/74	Committee on Government Procurement - Modifications to Appendix I of Japan - Notifications from Japan under Article XXIV:6(a)	15/07/1998	2	D	T/PLURI/GPA/W74.DOC
16 5 KB	98-2455	GPA/W/66/Add.4	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Singapore	17/06/1998	2	D	T/PLURI/GPA/W66A4.DOC
17 4 KB	98-2415	GPA/W/72	Committee on Government Procurement - Modifications to Appendix I of Singapore - Notification from Singapore under Article XXIV:6(a)	15/06/1998	1	D	T/PLURI/GPA/W72.DOC
18 4 KB	98-1622	GPA/W/66/Add.3	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Canada	22/04/1998	1	D	T/PLURI/GPA/W66A3.WPF
19 3 KB	98-1517	GPA/W/71	Committee on Government Procurement - Request for Observer Status - Communication from Lithuania	16/04/1998	1	D	T/PLURI/GPA/W71.WPF
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21 4 KB	98-1180	GPA/W/66/Add.2	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - Japan	25/03/1998	2	D	T/PLURI/GPA/W66A2.WPF
22 6 KB	98-1179	GPA/W/69	Committee on Government Procurement - Modifications to Appendices II and III of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	25/03/1998	3	D	T/PLURI/GPA/W69.WPF
23 5 KB	98-0557	GPA/W/66/Add.1	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Addendum - European Community	17/02/1998	2	D	T/PLURI/GPA/W66A1.WPF
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25	98-0323	GPA/W/67	Committee on Government Procurement -	29/01/1998	1	D	T/PLURI/GPA/W67.WPF

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26 8 KB	98-0054	GPA/W/65	Committee on Government Procurement - Relationship of the Tokyo Round Agreement on Government Procurement to the 1994 Agreement on Government Procurement - Note by the Secretariat	09/01/1998	2	D	T/PLURI/GPA/W65.WPF
27 6 KB	98-0053	GPA/W/66	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1998/1999 - Hong Kong, China	09/01/1998	3	D	T/PLURI/GPA/W66.WPF
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WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/80

14 December 1998

(98-5034)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Mongolia

The following communication, dated 26 November 1998, has been received from the Permanent Mission of Mongolia with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Permanent Mission of Mongolia to the United Nations' Office at Geneva and other International Organizations presents its compliments to the Committee on Government Procurement of the World Trade Organization and has the honour to inform the latter that the Government of Mongolia wishes to seek observer status in the Committee.

With a view to initiating negotiations for membership thereafter Mongolia needs technical assistance in drafting a national legislation on government procurement, training of Mongolian nationals, particularly a negotiating team, and in preparation of market access commitments.

The Permanent Mission would highly appreciate the cooperation of the Committee on the matter.

The Permanent Mission of Mongolia avails itself of this opportunity to renew to the Committee on Government Procurement of the WTO the assurances of its highest consideration.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/79

28 October 1998

(98-4211)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)

The following notification from the Permanent Mission of Japan was received on 27 October 1998, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 3 of Appendix I of the Agreement on Government Procurement:

- Delete "- JNR Settlement Corporation (d)" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".
- Add a "(d)" to "Japan Railway Construction Public Corporation (a)" of "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

This rectification is based on the fact that, as of 22 October 1998, "JNR Settlement Corporation" was merged with "Japan Railway Construction Public Corporation", which is already listed in Annex 3 of Appendix I of this Agreement. Therefore, this rectification does not alter the level of mutually agreed coverage provided in this Agreement.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

Committee on Government Procurement

Original: English/
Anglais/
Inglés

MODIFICATIONS TO APPENDICES I-IV OF THE EUROPEAN COMMUNITY

Addendum

The following communication, dated 7 October 1998, has been received from the Permanent Delegation of the European Community with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Concerning the updating of Appendices I to IV of the Government Procurement Agreement for the European Communities, as presented in document GPA/W/51, the EC is pleased to present herewith an explanatory note to this document.

Comité des marchés publics

**MODIFICATIONS DES APPENDICES I A IV CONCERNANT
LA COMMUNAUTE EUROPEENNE**

Addendum

La Délégation permanente de la Commission européenne a fait parvenir au Secrétariat la communication suivante, datée du 7 octobre 1998, en lui demandant de la distribuer aux Parties à l'Accord sur les marchés publics.

La Communauté européenne a l'honneur de vous communiquer ci-joint une note explicative relative à la mise à jour des Appendices I à IV de l'Accord sur les marchés publics concernant les Communautés européennes, présentée dans le document GPA/W/51.

Comité de Contratación Pública

**ENMIENDAS A LOS APÉNDICES I A IV DE
LA COMUNIDAD EUROPEA**

Addendum

Se ha recibido de la Delegación Permanente de la Comunidad Europea la siguiente comunicación, de fecha 7 de octubre de 1998, con la petición de que se distribuya a las Partes en el Acuerdo sobre Contratación Pública.

En relación con la actualización de los Apéndices I a IV de las Comunidades Europeas al Acuerdo sobre Contratación Pública, como figura en el documento GPA/W/51, complace a la CE presentar adjunta una nota explicativa a este documento.

APPENDIX I

ANNEX 1

2. Contracting Authorities of the State

- Denmark (p. 10)

The "Ministry of Transport" should be included in the list.

The "Ministry of Housing" should be replaced by "Ministry of Housing and Urban Affairs".

- Sweden (p. 51)

"National Fund for Administrative Development and Training for Government Employees" (p. 44) should be replaced by: "National Fund for Administrative Development" ("Statens Förnyelsefond").

"Central Services Office for the Ministries" (p. 45) should be replaced by "Governmental Central Services Office" ("Regeringskansliets förvaltningsavdelning").

3. List of Supplies and equipment purchased by Ministries of Defence (...) that are covered by the Agreement (p. 55)

- The words "Not for Sweden" should be inserted after the products (p. 55):

- ex 38.19
- ex 39.03
- ex 40.11

- L'expression "sauf pour la Suède" doit figurer après la mention des produits suivants (p. 61):

- ex 38.19
- ex 39.03
- ex 40.11

- La expresión "salvo Suecia" debe figurar después de la mención de los productos siguientes (p. 67):

- ex 38.19
- ex 39.03
- ex 40.11

APPENDIX I

ANNEX 2

In addition to the entities listed in Annex I of Directive 93/37/EEC (pages 92-101 of document GPA/W/51), the following entities shall be regarded as bodies governed by public law within the sense of such Directive:

Austria: "Austrian State Printing Office"

Denmark: "Copenhagen Hospital Corporation" ("Hovedstandens Sygehusfaellesskab")

Ireland: "Forbas"; "Forbairt"

Luxembourg: "L'entreprise des Postes et Télécommunications (Postal business only)"

Portugal:

"INGA (National Agricultural Intervention and Guarantee Institute/Instituto Nacional de Intervenção e Garantia Agrícola)"

"Institute for the Consumer / Instituto do Consumidor"

"Institute for Meteorology / Instituto de Meteorologia"

"Institute for Natural Conservation / Instituto da Conservação da Natureza"

"Water Institute / Instituto da Agua"

"ICEP / Instituto de Comércio Externo de Portugal"

"Portuguese Blood Institute / Instituto do Sangue"

United Kingdom: "Ordnance Survey"

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/78

14 October 1998

(98-3943)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)

The following notification from the Permanent Mission of Japan was received on 6 October 1998, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 3 of Appendix I of the Agreement on Government Procurement:

- Delete "- Power Reactor and Nuclear Fuel Development Corporation (b)" from "List of Entities" and "List of Entities which procure the services, specified in Annex 4".
- Add "- Japan Nuclear Cycle Development Institute (b)" to "List of Entities" and "List of Entities which procure the services, specified in Annex 4".

This rectification is based on the fact that, as of 1 October 1998, "Power Reactor and Nuclear Fuel Development Corporation" was reorganized as "Japan Nuclear Cycle Development Institute". This rectification does not alter the level of mutually agreed coverage provided in this Agreement.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/24/Add.7

5 October 1998

(98-3837)

Committee on Government Procurement

Original: English

QUESTIONNAIRE ON INFORMATION TECHNOLOGY IN GOVERNMENT PROCUREMENT

Response by Singapore

Addendum

The attached communication contains the replies from Singapore to the questionnaire on Information Technology in Government Procurement contained in document GPA/W/24, dated 22 August 1996.

QUESTIONNAIRE ON INFORMATION TECHNOLOGY

1. *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government? In the event that delegations are not considering introducing information technology into public procurement, could they explain the reasons?*

The Government Internet Tendering Information System (GITIS) was introduced in May 1997 to enable all government agencies to post tender information on the Internet. The system provides information on procurement tender opportunities and notices of tenders received and tenders awarded. GITIS covers both GPA and non-GPA contracts. GITIS can be accessed at <http://wwwdb1.gov.sg/gitis/index.html>.

In April 1998, the Mindef Internet Procurement System (MIPS) was launched. MIPS is an Internet e-commerce system that supports secured electronic transactions between the Singapore Ministry of Defence and suppliers. The system allows suppliers to submit bids electronically using smart-card technology. Suppliers who are not smart-card enabled can view the procurement opportunities available and submit bids through traditional means. MIPS can be accessed at <http://mips.mindef.gov.sg>.

There are hot-links between GITIS and MIPS. Hence any interested suppliers would only need to access a single web site to access all procurement opportunities, both GPA and non-GPA, with any government agency in Singapore.

2. *What function(s) would information technology serve in such systems and who will be the users?*

Information technology is a very powerful tool to make procurement information available to anyone anywhere anytime. The users are the Government Procurement Entities, suppliers and the public at large.

3. *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

GITIS is built on a Windows NT hardware environment using Oracle 7.3 as the database management system. The development tool is Oracle PL/SQL and Active Server Pages (ASP).

MIPS is built on a Unix hardware environment using Oracle as the database management system. The development tool is Java.

4. *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?*

GITIS and MIPS are accessible globally. Feedback indicates that foreign suppliers enthusiastically welcome the system, as it is a more convenient mode of access compared to newspaper or other media. IT has helped to reduce the information gap between local and foreign suppliers tremendously. Foreign suppliers now obtain the same information as local suppliers and at the same time.

5. *For those Parties who use databases which list government procurement opportunities:*

(i) *What are the names of their databases?*

The names of the databases are Government Internet Tendering Information System (GITIS) and Mindef Internet Procurement System (MIPS).

(ii) *How long have the databases been operational and how many suppliers use the databases?*

GITIS was first introduced in May 1997. As the system is accessible to anyone, it is not possible to determine the supplier population.

MIPS was introduced in April 1998. Since the system is accessible to anyone, it is not possible to determine the number of suppliers who use the system.

(iii) *Is a fee charged to suppliers using the systems? If so, how much, and what is included in the fee?*

There is no charge for access to GITIS and MIPS. The charges for suppliers who wish to transact electronically are for the cost of the smart-card and related administrative charges, which amount to less than S\$100.00.

(iv) *Can suppliers obtain tender documentation electronically? If so, how?*

GITIS and MIPS provide for downloading of tender documents. Standard terms and conditions of tender and contract information can also be downloaded from the web page. Most downloadable documents are in Word format.

(v) *How is information on the databases organized?*

Information in the databases is stored in defined fields and text format. Both GITIS and MIPS provide pre-defined as well as user-definable search criteria for displaying the information.

(vi) *Do the databases offer any other features?*

GITIS provides links to other governments and international procurement web sites, such as the WTO and APEC home pages.

(vii) *What is the approximate number of procurement opportunities listed on the databases annually?*

The number of tenders and procurement opportunities is roughly 4,000, which covers all government tenders, both GPA and non-GPA covered.

(viii) *Are the systems managed by the government or a private company?*

The systems are managed by the overnment.

(ix) *Can Parties' databases be interrogated using international standards, such as SQL Standard Query Language?*

The database can be queried using SQL Standard Query Language.

- (x) *Are all notices which are required to be published under Articles IX and XVIII:1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?*

GITIS and MIPS are designed to capture as much procurement information as possible, including all the minimum information required to be published under Articles IX and XVIII:1; as well as non-GPA covered procurement information.

- (xi) *How are Agreement-covered notices identified?*

Every procurement notice includes a line indicating the applicability of the GPA.

- (xii) *To what extent does each type of notice contained in databases conform to a standard structure?*

The input forms used to post tender information are centrally maintained. Hence, all tender notices follow the stipulated format and structure.

- (xiii) *Is any particular classification used in such notices to describe purchases and, if so, which classification?*

Product and services classification follow international classifications such as ISO standards, where possible and practical.

- (xiv) *Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?*

All notices and information are provided in English.

6. *For those Parties who are involved in action in the area of electronic commerce:*

- (i) *Please provide full information on projects and plans with regard to electronic commerce.*

See point 1 above.

- (ii) *Could those parties who have experience with electronic commerce provide information on such experiences.*

N.A.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/77
5 October 1998

(98-3840)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Estonia

The following communication, dated 1 October 1998, has been received from the Permanent Mission of Estonia with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Acting upon instructions from my authorities, I hereby express the intention of Estonia to become an observer in the Committee on Government Procurement in order to be better prepared for the ultimate accession to the Agreement on Government Procurement as described in Article XXIV:2 thereof.

I would be grateful if this application for observership could be dealt with during the next meeting of the Committee on Government Procurement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/75

18 September 1998

(98-3594)

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1. In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on Government Procurement on 24 February 1997 (GPA/1/Add.2), the following documents circulated as restricted are proposed for derestriction on 1 December 1998.

(a) GPA/M/- series

GPA/M/7-8

(b) GPA/W/- series

GPA/W/24/Add.4-6

GPA/W/64-65

GPA/W/66 and Addenda 1-7

GPA/W/67-72

2. The list of documents which have been previously derestricted is contained in document GPA/24.

**REQUEST FOR INFORMATION PURSUANT TO PARAGRAPHS 1 AND 2
OF ARTICLE XIX OF THE AGREEMENT ON
GOVERNMENT PROCUREMENT**

Communication from the United States

The following communication, dated 11 September 1998, has been received from the delegation of the United States with the request that it be distributed to the Members of the Committee on Government Procurement.

During the last two years, the United States has repeatedly raised its concerns with the procurement practices of the Korea Airport Construction Authority (KOACA). As we indicated in the 25 June 1998 meeting of the WTO Government Procurement Committee, the United States remains disturbed by Korea's repeated assertion that its commitments under the Agreement on Government Procurement (GPA) do not apply to KOACA. This assertion has serious implications for United States commercial interests and for the bilateral balance of rights and obligations established under the GPA. The United States urges Korea to reflect on this issue and to affirm, on that basis, that procurement conducted by KOACA is subject to and will be implemented in accordance with the provisions of the GPA.

Pursuant to paragraphs 1 and 2 of Article XIX of the GPA and in order to expedite the resolution of this important issue, the United States requests that Korea respond in writing to the attached list of questions relating to KOACA and its procurement practices. This information is requested without prejudice to the United States' rights under Articles XXII and XXIV of the GPA and any other relevant provisions of the WTO.

ATTACHMENT

1.
 - (a) Please explain the legal and operational relationship between the Korea Airport Construction Authority (KOACA) and the Ministry of Construction and Transportation.
 - (b) Please describe the extent to which the Ministry of Construction and Transportation has legal responsibility for managerial oversight of KOACA.
 - (c) In what way does the Ministry of Construction and Transportation exercise that responsibility?
 - (d) How are KOACA's president and other senior officials chosen? What approvals are required for each appointment?
 - (e) Please describe the extent to which the Ministry of Construction and Transportation or any other entity of the Korean government has legal authority to approve KOACA's budget and management plans.
 - (f) Please cite and provide copies of the legal or administrative authorities governing these issues.
2.
 - (a) What percentage of KOACA's annual budget is accounted for by appropriations from the Ministry of Construction and Transportation or other Korean government entities?
 - (b) What percentage of KOACA's annual budget is provided by sales of Korean public assets?
 - (c) What percentage of KOACA bonds or other debt, if any, is directly held or underwritten by the Korean government?
 - (d) What percentage of KOACA's budget is funded from private sector investments or other contributions?
 - (e) To what extent do any other Korean government entities have legal or budgetary authority over KOACA?
3. Please explain the relationship between KOACA and the "New Airport Development Group under the Ministry of Transportation", referred to in Korea's July 1991 written response to United States questions regarding government procurement for airport construction.
4. Please explain the relationship between KOACA and the "airport construction division of the Korea Airport Authority", referred to on KOACA's Internet web site at <http://www.airport.or.kr>.
5. Please explain the relationship between the "New Airport Development Group under the Ministry of Transportation", referred to in Korea's July 1991 response to United States questions regarding government procurement for airport construction, and the former airport construction division of the Korea Airport Authority, referred to on KOACA's Internet web site.

6.
 - (a) At the time bilateral negotiations between the United States and Korea relating to Korea's participation in the GPA were concluded (1993), to what extent was the "New Airport Development Group under the Ministry of Transportation" responsible for airport construction projects in Korea?
 - (b) Please identify all government entities that were responsible for airport construction projects at that time and the relationship of those entities to KOACA, which was established subsequently.
7.
 - (a) Is KOACA responsible for all airport construction projects currently being planned or implemented by government entities in Korea?
 - (b) If not, what other Korean government entities are responsible for planning and implementing airport construction projects?
 - (c) Please provide information on the estimated budgets of these entities.
8. Recent KOACA tender announcements include the requirement that "foreign firms should participate in the bid with local Firms (leading or prime company) as consortium members or subcontractors".
 - (a) What is the intent of this provision?
 - (b) Are there any circumstances in which United States or other non-Korean firms may qualify independently (i.e., as a "leading or prime company") to participate in this and similar KOACA procurement opportunities, or is partnership with a Korean firm a mandatory condition for qualification?
 - (c) Under what legal authority does KOACA have the authority to impose this requirement?
9. In recent KOACA tender announcements, all suppliers have been required to hold licenses and registration for manufacturing operations in Korea in order to qualify to participate.
 - (a) What is the purpose of this requirement?
 - (b) Does this preclude suppliers that have not established manufacturing facilities in Korea from qualifying as a prime contractor?
 - (c) For suppliers that do not have manufacturing facilities in Korea, can possession of appropriate manufacturing licenses issued by United States or other non-Korean authorities satisfy this requirement? If so, under what circumstances?
 - (d) Under what domestic law does KOACA have the authority to impose this requirement?
 - (e) Does KOACA require that equipment supplied under these contracts be produced in Korea?

10. The United States requests that Korea provide complete copies of the following documents (in English, if available):
 1. The Korean Airport Authority Act, and any related implementing or enforcement decrees.
 2. The IIA Construction Promotion Law, promulgated or announced on or around 31 May 1991, and any other related laws and implementing or enforcement decrees affecting what has become known as the Incheon International Airport.
 3. The Seoul Metropolitan Area New International Airport Construction Corporation Act, and any related implementing or enforcement decrees.
 4. The General Construction Basic Law, and any related implementing or enforcement decrees.
 5. The Electrical Construction Law, and any related implementing or enforcement decrees.
 6. Regulations of the Ministry of Construction and Transportation or other entities pertaining to the creation, purpose and functions of the "Corps of the New International Airport Construction Project".
 7. The Government Organization Act of the Republic of Korea.
-

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/66/Add.7

21 August 1998

(98-3288)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 1998/1999

Addendum

ISRAEL

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified by Israel is reproduced below.

1. Calculation of threshold figures in US\$

ANNEX 1

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	130,000	186,000
Services	130,000	186,000
Construction	8,500,000	12,189,000

ANNEX 2

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	250,000	358,000
Services	250,000	358,000
Construction	8,500,000	12,189,000

ANNEX 3

	Threshold Value (SDR)	Threshold Value in US\$
Supplies	355,000	509,000
Services	355,000	509,000
Construction	8,500,000	12,189,000

2. Method of calculation

The calculation of the thresholds of the WTO Agreement, expressed in US\$ has been based on the average monthly SDR to US\$ exchange rate over 24 months from September 1995 through August 1997 (1 SDR = 1.434 US\$).

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/24/Add.5

15 July 1998

(98-2801)

Committee on Government Procurement

Original: English

QUESTIONNAIRE ON INFORMATION TECHNOLOGY IN GOVERNMENT PROCUREMENT

Response by the European Community

Addendum

The attached communication contains the replies from the European Community to the questionnaire on Information Technology in Government Procurement contained in document GPA/W/24, dated 22 August 1996.

QUESTIONNAIRE ON INFORMATION TECHNOLOGY

1. *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government? In the event that delegations are not considering introducing information technology into public procurement, could they explain the reasons?*

Currently, at EU level, the TED (Tenders Electronic Daily) database, which is the electronic version of the OJ/S, contains all procurement opportunities and notices on contracts awarded covered by the EU directives on public procurement, and therefore the EC's Appendix I of the GPA. All levels of government are covered.

Under the EU SIMAP (Système d'Informations Marchés Publics) project, the following developments are under way or have been accomplished:

- (a) an Internet-based as well as PC-based software with graphical user interface and contextual on-line help for the controlled data entry of information contained on standard public procurement notices - so-called "electronic forms";
- (b) development of EDIFACT messages, according to which the data contained on the "electronic forms" are structured, ready to be transmitted to the designated receiving system - the SIMAP Central Unit;
- (c) development of email and SMTP service for transmission of the EDIFACT electronic forms to the SIMAP Central Unit;
- (d) a software running on the SIMAP Central Unit, for the central processing of the data contained on the electronic forms and automatic publication;
- (e) a search and retrieval mechanism (SRM) to be used as user-friendly "link through" software for accessing public procurement notices published in the OJ/S and the database TED, as well as in other databases available on the Internet without cost and containing procurement notices by contracting entities in the Community and elsewhere. This SRM will also be able to search and retrieve information from "purchasers profiles" published on the Web;
- (f) a tool to enable contracting entities in the Community to design and create "purchaser profiles" and to maintain links to such profiles as they are created;
- (g) a Web-based tool to permit the searching, indexing and translating terms of notices in all the EU official languages with the help of the Common Procurement Vocabulary (CPV);
- (h) a facility to identify and maintain links with URL or electronic mail addresses in order to allow interested suppliers to obtain further information and/or full tender documentation from contracting entities;
- (i) the generalized use of the system outlined above by all concerned entities at EU level.

2. *What function(s) would information technology serve in such systems and who will be the users?*

The main function of the existing TED database is to allow suppliers to become aware of procurement opportunities in a format other than paper-based. The system is also used for market analysis although it is not principally geared for these purposes and therefore does not at present lend itself easily to such use.

SIMAP's objectives/functions are to promote the use of ICT in public procurement. Through the SIMAP notification project, contracting entities are able to use electronic forms software to publish their contract notices and contract award notices. The dissemination project facilitates the access of procurement-related information. In the future, it will also be used for market monitoring and analysis. Additionally, subproject 4 of SIMAP intends to promote the exchange of information between purchasers and suppliers, i.e. exchange of tender documents.

Users include contracting entities, information brokers, suppliers and supervisory authorities.

3. *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

SIMAP is built on a DEC and a SUN hardware using Oracle version 7 as its database management system.

TED is built on Siemens hardware using DIMDI.

4. *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?*

Potential access to the TED system is worldwide. There are no real limitations to access but efficient use of the system is clearly dependent upon familiarity with query commands and search strategies. (A user manual is available to subscribers.)

The Web interface, with its query forms and on-line help, greatly simplifies the use of the system.

Suppliers (or information brokers), both domestic and foreign, can access the TED database via the public switched network (X25) connecting to a Network User Address. SIMAP can be reached at the Internet address <http://simap.eu.int>.

5. *For those Parties who use databases which list government procurement opportunities:*

(i) *What are the names of their databases?*

The name of the database is Tenders Electronic Daily (TED).

(ii) *How long have the databases been operational and how many suppliers use the databases?*

TED has been operational since 1988 and has approximately 11,000 subscribers. These include suppliers, information brokers and our network of European Information Centres (EICs). The final information-user population is therefore difficult to quantify.

The SIMAP Web site has been running since October 1996 and has more than 400,000 hits.

(iii) Is a fee charged to suppliers using the systems? If so, how much, and what is included in the fee?

Currently, there is a charge for using the TED database. The subscription to the TED database, including unlimited usage, is done at a fee of 1,080 ECU/year (approximately SDR 1,050). Customers interested in searching TED on a pay-per-view basis may still display, print or download data at a price of 1,20 ECU per full document (or 0,60 ECU per "extra"-format). From 1 January 1999, TED will be available free of charge. A CD-ROM edition up-dated five times a week at the subscription price of 1,080 ECU/year will be available from 1 July 1998. The current, twice-weekly CD-ROM edition will be maintained at the price of 600 ECU/year (approximately SDR 580). Access to the SIMAP Web site is free of charge.

(iv) Can suppliers obtain tender documentation electronically? If so, how?

No, suppliers cannot obtain tender documentation electronically from TED. In the near future, the TED database will offer hyperlinks to so-called "purchaser profiles" run by or on behalf of contracting entities. These purchasers profiles should provide online access to the full tender documents.

(v) How is information on the databases organized?

The information on each notice is held on the database in text format. However, a large amount of key information for each notice is held in separately searchable fields. This allows, among others, definition of search strategies broken down by type of contract (supplies/construction/services), by "product", by type of purchasing entity (central, utilities, etc.), according to whether it is GPA/non-GPA covered, by geographical location, by name of contracting entity, by submission deadlines; by publication date. Having narrowed a search using some of the above strategies, the entire text of the notices selected can also be submitted to a keyword search, full or truncated.

(vi) Do the databases offer any other features?

See point (iv) above. In addition, the SIMAP Web site contains information on standards, best practices and guidelines, terminology, national legislation, resources on electronic procurement and electronic commerce, training initiatives, etc. A discussion forum on public procurement issues is also available. In addition, the SIMAP Web site also offers links to other countries' and international organizations' web sites that contain information on procurement, including in some cases, procurement opportunities.

(vii) What is the approximate number of procurement opportunities listed on the databases annually?

There were approximately 150,000 procurement opportunities listed in 1997 in TED and this figure is growing annually.

(viii) Are the systems managed by the government or a private company?

TED is managed by the Publications Office of the European Communities.

SIMAP project is managed by the European Commission (DG XV).

- (ix) *Can Parties' databases be interrogated using international standards, such as SQL Standard Query Language?*

TED database can be interrogated using CCL. Data contained in SIMAP can be interrogated by SQL.

- (x) *Are all notices which are required to be published under Articles IX and XVIII: 1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?*

Yes. The TED system covers all contracts coming under the terms of the EU's Directives on public procurement, therefore covers all levels of government. Information contained complies with the requirements set out by the EU Directives and the WTO Agreement on Government Procurement.

- (xi) *How are Agreement-covered notices identified?*

Replied above in point (v).

- (xii) *To what extent does each type of notice contained in databases conform to a standard structure?*

All notices are structured in accordance with the EU's Directives on Public Procurement.

- (xiii) *Is any particular classification used in such notices to describe purchases and, if so, which classification?*

The classification used is Common Procurement Vocabulary (CPV).

- (xiv) *Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?*

The full text of the notices is provided in the original language. Summarized information is provided in all EU official languages (including English, French and Spanish).

6. *For those Parties who are involved in action in the area of electronic commerce:*

- (i) *Please provide full information on projects and plans with regard to electronic commerce.*

See response to question 1 above.

- (ii) *Could those parties who have experience with electronic commerce provide information on such experiences?*

N.A.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/24/Add.6

15 July 1998

(98-2798)

Committee on Government Procurement

Original: English

QUESTIONNAIRE ON INFORMATION TECHNOLOGY IN GOVERNMENT PROCUREMENT

Response by the United States

Addendum

The attached communication contains the replies from the United States to the questionnaire on Information Technology in Government Procurement contained in document GPA/W/24, dated 22 August 1996.

QUESTIONNAIRE ON INFORMATION TECHNOLOGY

1. *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government? In the event that delegations are not considering introducing information technology into public procurement, could they explain the reasons?*

The United States is undertaking an ambitious and far-reaching initiative to utilize Electronic commerce (EC) to enhance the public procurement process. There have been several executive-level memoranda and legislative initiatives that have reinforced the high priority of EC. To help foster government EC partnerships, the President's Management Council (PMC) - comprised of cabinet agency chief operating officers - provides a forum for coordinating EC development activity across the federal acquisition, finance, and information technology communities. The PMC has created the Electronic Processes Initiatives Committee (EPIC), a functionally integrated, inter-agency body, to coordinate EC development activity across the federal acquisition, finance, and information technology communities. In March 1998, EPIC submitted to Congress a strategic plan for integrating procurement and payment functions with the latest developments in EC technology and business practice.

It is anticipated that all departments and agencies will eventually utilize electronic commerce for purchases as appropriate. Initially, the specific focus will be on high-volume, low-dollar purchasing.

2. *What function(s) would information technology serve in such systems and who will be the users?*

Our vision is that all federal agencies will support their programs by making available customer-friendly electronic purchasing tools integrated with end-to-end commercial electronic processing of payment, accounting, and performance reporting information as appropriate. An EC toolkit is being developed in such a manner as to permit the exchange of procurement information electronically for various phases of the procurement process. This includes: improving market research, providing notice of contract opportunities through a single point of entry for opportunities valued at or above US\$25,000, providing notice of contract award, and making payment.

Buyers, sellers, financial and information technology providers, and reviewing authorities are all interested stakeholders. The needs of each stakeholder must be identified and addressed in order to successfully make the transition from paper to electronics. For example, sellers - small and large, selling domestically and from abroad - need easy, effective, and inexpensive ways to find customers and market their products. Sellers competing from abroad need to be able to learn as quickly as possible about contracting opportunities and communicate as efficiently as possible using internationally-recognized standards that ease the electronic interchange of information. The strategic plan provides policy principles that reflect the varying needs of buyers and sellers to guide the government's EC investment decisions.

3. *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

Agencies are using commercial off-the-shelf software. Electronic Data Interchange (EDI) is being utilized, especially with major vendors on a one-to-one basis. Agencies are starting to focus on the Internet for low-cost, reliable delivery of procurement information to a broad audience. Purchase card use has grown dramatically; purchase cards were used for more than ten million transactions worth in excess of US\$5 billion in 1997. The purchase card reduces the administrative time and cost

associated with micro-purchases (purchases below US\$2,500). Agency buyers are increasingly using electronic catalogues. Electronic catalogues can help to shorten order-cycle times. In addition, agency personnel can use electronic catalogues to gain greater awareness of the products and services available under contract and more easily make informed comparisons.

An Electronic Posting System pilot using Internet is presently being conducted to provide sellers with: full text search of all solicitation documents government-wide; indexed search of solicitations government-wide; download of solicitation documents for local printing and editing; and automated query of contract opportunity databases by federal supply code, date, or location, and the ability to sign up for mailing lists that automatically send notices of new solicitations. In addition, the pilot is intended to provide important increased functionality to buyers, including: direct upload of solicitation documents to the Internet including requests for information, draft requests for proposals, questions and answers, engineering drawings, bidder lists, and award notices and the ability to use a bidders list to provide directed notification to vendors of solicitation actions for buys between US\$2,500 and US\$25,000 where they wish to find new sources or alternative sources.

4. *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?*

As there is more movement to Internet, there are concerns about security and authentication of users. At present, there are major efforts under way to research and resolve these issues.

EC will help promote greater access for the foreign and domestic suppliers to the United States procurement system. Rather than restricting access by foreign suppliers, EC will reduce many of the disadvantages experienced by foreign suppliers due to their distance from the procuring entity, by providing faster notification. Using the Internet, for example, sellers worldwide can access CBDnet to learn about contracting opportunities.

5. *For those Parties who use databases which list government procurement opportunities:*

(i) *What are the names of their databases?*

The Commerce Business Daily (CBD), the publication which provides information on contracting opportunities, is available online. CBDNet provides advertizers and users with better access and support.

(ii) *How long have the databases been operational and how many suppliers use the databases?*

CBDNet has been operational since 1 November 1996. CBDNet has, on the average, 79,000 hits a day.

(iii) *Is a fee charged to suppliers using the systems? If so, how much, and what is included in the fee?*

No fee is charged to the vendor.

(iv) *Can suppliers obtain tender documentation electronically? If so, how?*

CBDNet allows federal government agencies who are advertizing contract opportunities to instantaneously submit procurement notices by Internet email and permits users to find, select, and

display synopsis information using text or classification code searches. It also provides for agencies to establish hot links between the CBD notice and the actual solicitation.

(v) *How is information on the databases organized?*

Information can be accessed by date, location, key word or phrase, contracting officer name and address, agency, standard industrial classification code, URL, award notice, and email address.

(vi) *Do the databases offer any other features?*

Other features include: email link, three search engines, a help section, a live help desk, and a URL link.

(vii) *What is the approximate number of procurement opportunities listed on the databases annually?*

137,000 procurement opportunities were listed last year.

(viii) *Are the systems managed by the government or a private company?*

The United States Government manages CBDNet.

(ix) *Can Parties' databases be interrogated using international standards, such as SQL Standard Query Language?*

Currently, CBDNet can not accept SQL. In an effort to provide acquisition-related information to industry more quickly and cheaply, CBDNet will be enhanced. The enhancement of CBDNet will use SQL.

(x) *Are all notices which are required to be published under Articles IX and XVIII: 1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?*

Currently, all open market contract opportunities above US\$25,000 are published electronically and available through a convenient, universally accessible, Government-wide, single point of entry, called CBDNet. Synopses of contract awards that are currently published in the CBD (e.g., because the award is subject to the Trade Agreements Act or is over US\$25,000 and is likely to result in the award of any subcontracts) may also be found on CBDNet.

(xi) *How are Agreement-covered notices identified?*

On CBDNet, they are identified by a numbered note, number 12.

(xii) *To what extent does each type of notice contained in databases conform to a standard structure?*

The notice conforms to the standard specified in Part 5 of the Federal Acquisition Regulation (FAR).

- (xiii) *Is any particular classification used in such notices to describe purchases and, if so, which classification?*

There is no special classification code. The CBDNet classification code covers types of supplies and services.

- (xiv) *Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?*

The CBDNet information and notices are presented in the English language.

6. *For those Parties who are involved in action in the area of electronic commerce:*

- (i) *Please provide full information on projects and plans with regard to electronic commerce.*
- (ii) *Could those parties who have experience with electronic commerce provide information on such experiences.*

A strategic plan for procurement was transmitted to Congress on 1 March 1998. The plan, *Electronic Commerce for Buyers and Sellers*, presents our vision of how EC-related technology can improve government acquisition and related processes. The plan provides a strategy - not a "one size fits all" solution - for expanding use of EC. The plan presumes that agencies will rely on commercial products, services, and practices whenever possible. Moreover, the plan recognizes that technology and the market-place are dynamic and accordingly anticipates change. A brief discussion of some of the current initiatives follows:

A. PROMOTING EASY, USER-FRIENDLY INTERACTIONS BETWEEN BUYERS AND SELLERS

Easy interaction in an electronic environment begins with information. To this end, the National Partnership for Reinventing Government, the Office of Federal Procurement Policy, and the General Services Administration (GSA) created the Acquisition Reform Network (ARNet) to serve as a central location on the Internet for both government and industry for quick access to a wide variety of information relating to government contracting. ARNet includes a reference library of government laws, regulations, policies, best practices and training packages. Most government agencies have developed their own Internet websites (or homepages) and linked them to ARNet to provide sellers with additional agency-specific information on contracting, including, in some cases, long-range forecasts of agency needs, draft requests for proposals (RFPs), and solicitations.

Improving access to open market contracting opportunities through the use of EC has long been, and remains, a key government initiative. As discussed above, CBDNet serves as the single, government-wide point of entry through which sellers may obtain, free-of-charge, notices of all open market purchases above US\$25,000. Sellers looking for contract opportunities may search CBDNet by text, fields, or classification codes. Future enhancements will permit buyers to post solicitations and other pertinent information, in addition to notices, directly to the Internet, thus giving sellers access to this information through a single, government-wide point of entry.

The Small Business Administration (SBA) recently implemented PRONet, a free-of-charge, Internet-based online search engine providing access to the profiles of more than 170,000 small businesses, including disadvantaged, 8(a) certified women-owned firms. PRONet contains company profiles with products and services, history, references, and other information. It also provides contractors with assistance in locating small business contractors and subcontractors as well as teaming opportunities with small businesses.

B. USING EC TO FACILITATE SMALLER DOLLAR PURCHASES

Purchase cards (i.e., credit cards for business) are revolutionizing the way the government buys and pays for small dollar purchases. In 1997, purchase cards were used for more than ten million transactions worth in excess of US\$5 billion. According to a study, the purchase card helps agencies reduce administrative transaction costs producing cost savings of greater than 50 per cent, or US\$54 per transaction on average, when compared to purchase order processing. In February 1998, the GSA awarded a government-wide multiple award task order contract for the next generation of purchase cards. This contract (which takes effect in November 1998) will allow agencies to select a service provider to help re-engineer and integrate business practices related to purchase, travel-related payment services and fleet services.

Agencies are creating electronic catalogues. These are web-based electronic systems involving contracts with pre-established business arrangements that government buyers can browse and place orders under electronically. Agencies report that electronic catalogues help them to: (1) shorten order-cycle times; (2) reduce the resources required to fulfill needs; and (3) gain greater awareness of the products and services available under contract.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/66/Add.5

15 July 1998

(98-2790)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 1998/1999

Addendum

UNITED STATES

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified by the United States is reproduced below.

United States

Threshold calculations for the period 1998-1999.

ANNEX 1

	SDRs	US\$
1. Supplies and services	130,000	186,000
2. Construction	5,000,000	7,143,000

ANNEX 2

	SDRs	US\$
1. Supplies and services	355,000	507,000
2. Construction	5,000,000	7,143,000

ANNEX 3

	SDRs	US\$
1. Supplies and services (except entities identified in Annex 3 to which threshold of US\$250,000 applies)	400,000	571,000
2. Construction	5,000,000	7,143,000

WORLD TRADE ORGANIZATION

RESTRICTED

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Committee on Government Procurement

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THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 1998/1999

Addendum

NORWAY

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified by Norway is reproduced below.

The calculation of the threshold values of the WTO Agreement in NOK has been based on the average daily exchange rates for SDR to ECU and ECU to NOK over 24 months from September 1995 through August 1997. The average exchange rates are:

1 SDR = 1.03011 ECU
1 ECU = 8.14790 NOK
thus, 1 SDR = 8.39322 NOK

These exchange rates give the following threshold values:

	Supplies and Services Annex 1 entities	Supplies and services Annex 2 entities	Supplies and services Annex 3 entities	Works All entities
Threshold in GPA in SDR	130,000	200,000	400,000	5,000,000
Threshold in GPA in NOK	1,091,118	1,678,643	3,357,286	41,966,072
Threshold in EEA in ECU	200,000	200,000	400,000	5,000,000
Threshold in EEA in NOK	1,629,580	1,629,580	3,259,160	40,739,500
Threshold in Norway in NOK	1,000,000	1,600,000	3,200,000	40,000,000

The value of SDR in NOK has on average been higher than the value of ECU in NOK in the 24 months on which the calculation is based, making the GPA threshold higher than the thresholds for the EEA/EU; except for Annex 1 entities, which have a comparably lower threshold by the GPA than by EEA. In order to comply with both the WTO-GPA and the EEA Agreement with a single set of threshold values, Norway has determined to set rounded thresholds based on the lowest threshold values for Annex 2 and Annex 3 entities and for works contracts.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/73
15 July 1998

(98-2794)

Committee on Government Procurement

Original: English

APPLICATION FOR ACCESSION TO THE AGREEMENT ON GOVERNMENT PROCUREMENT OF ICELAND

The following communication, dated 22 June 1998, has been received from the Permanent Mission of Iceland with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Permanent Mission of Iceland has the honour to inform that the Government of Iceland has decided to apply for accession to the Agreement on Government Procurement.

Iceland is prepared to enter into negotiations with the Signatories to the GPA on the basis of the enclosed draft offer, containing a list of all the relevant procurement entities in the areas of construction, goods and services (five Annexes plus General Notes and Derogations from Article III of the GPA). Annex 1 contains public entities at the state level, Annex 2 municipalities and public bodies at the local level not having commercial or industrial character and Annex 3 entities in the fields of electricity, urban transport, airports, ports and water supply. Annexes 4 and 5 stipulate services coverage.

As a member of the EEA Agreement, Iceland maintains a government procurement regime with which Signatories to the GPA should be familiar. Iceland has amended its legislation in accordance with the Public Procurement Directives of the EEA.

The Government of Iceland reserves the right to make technical changes to its draft offer and to correct any errors, omissions or inaccuracies.

DRAFT OFFER

ICELAND

APPENDIX I

ANNEX 1

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 130,000

Services (specified in Annex 4)

Threshold: SDR 130,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

The following central government entities including:

Central purchasing entities not having an industrial or commercial character governed by (Act no. 63/1970 on the arrangement of public works contracts, and Act no. 52/1987, on government procurement, as amended.)

The entities in charge of government procurement are the following bodies:

Ríkiskaup (State Trading Center)

Framkvæmdasýslan (Government Construction Contracts)

Vegagerð ríkisins (Public Road Administration)

Siglingastofnun (Icelandic Maritime Administration)

ANNEX 2

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 200,000

Services (specified in Annex 4)

Threshold: SDR 200,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

1. Contracting local public authorities, including all municipalities.
2. Public bodies at the local level not having an industrial or commercial character.

ANNEX 3

*Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 400,000

Services (specified in Annex 4)*

Threshold: SDR 400,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Sectors:

1. *The electricity sector:*

The National Power Company, *lög nr. 42/1983*.

The State Electric Power Works, *orkulög nr. 58/1967*

Rafmagnsveita Reykjavíkur (Reykjavík Municipal Electric Works).

Hitaveita Reykjavíkur (Reykjavík Municipal District Heating), *lög nr. 100/1974*.

Orkubú Vestfjarða (Vestfjord Power Company), *lög nr. 66/1976*.

Other entities producing, transporting or distributing electricity pursuant to *orkulög nr. 58/1967*.

2. *Urban transport:*

Strætisvagnar Reykjavíkur (The Reykjavík Municipal Bus Service).

Almenningsvagnar bs.

Other Municipal bus services.

3. *Airports:*

Flugmálastjórn (Directorate of Civil Aviation)

4. *Ports:*

Siglingastofnun, (Icelandic Maritime Administration).

Other entities operating pursuant to *Hafnalög nr. 23/1994*.

5. *Water supply:***

Public entities producing or distributing drinking water pursuant to *lög nr 81/1991, um vatnsveitur sveitarfélaga*.

Notes to Annex 3

* This Agreement shall not apply to service contracts which:

- (a) a contracting entity awards to an affiliated undertaking;
- (b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of paragraphs 1-5 of this Annex to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities;

Provided that at least 80 per cent of the average turnover of that undertaking with respect to services arising within the EEA for the three preceding years derives from the provision of such services to undertakings with which it is affiliated. When more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

** The supply of drinking water and electricity to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraphs 1 and 5 of Annex 3 where:

- the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraphs 1 and 5 of this Annex; and
- supply to the public network depends only on the entity's own consumption and has not exceeded 30 per cent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:*

<i>Subject</i>	<i>CPC Reference N</i>
Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services	752** (except 7524, 7525, 7526)
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services***	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866****
Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical consulting services; technical testing and analysis services	867
Advertising services	871
Building-cleaning services and property management services	874, 82201-82206

<i>Subject</i>	<i>CPC Reference N</i>
Publishing and printing services on a fee or contract basis	88442
Sewage and refuse disposal; sanitation and similar services	94

Notes to Annex 4

- * except for services which entities have to procure from another entity pursuant to an exclusive right established by a published law, regulation or administrative provision
- ** except voice telephony, telex, radiotelephony, paging and satellite services
- *** except contracts for financial services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, and central bank services
- **** except arbitrations and conciliation services

ANNEX 5

Construction Services

Definition:

A construction service contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All public works/construction services of Division 51.

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Iceland will not extend the benefits of this Agreement:
 - as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;
 - as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;
 - as regards the award of contracts by entities listed in Annex 3 paragraph
 - (1) (electricity), to the suppliers and service providers of Canada, Singapore and Japan;
 - (2) (urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA;
 - (3) (airports), to the suppliers and service providers of Canada, Korea and the USA;
 - (4) (ports), to the suppliers and service providers of Canada;
 - (5) (water), to the suppliers and service providers of Canada and the USA;

until such time as Iceland has accepted that the Parties concerned give comparable and effective access for Icelandic undertakings to the relevant markets;

 - to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.
2. The provisions of Article XX shall not apply to suppliers and service providers of:
 - Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Iceland accepts that they have completed coverage of sub-central entities;
 - Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium-sized enterprises under the relevant provisions in Iceland, until such time as Iceland accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;
 - Israel, Japan and Korea in contesting the award of contracts by Icelandic entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.
3. Until such time as Iceland has accepted that the Parties concerned provide access for Icelandic suppliers and service providers to their own markets, Iceland will not extend the benefits of this Agreement to suppliers and service providers of:

- Canada as regards procurement of FSC 36, 70 and 74 (special industry machinery; general purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations); office machines, visible record equipment and ADP equipment);
 - Canada as regards procurement of FSC 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment.
 - Israel and Korea as regards procurement by entities listed in Annex 3, paragraph 1, as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;
 - Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.
4. Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.
5. With regard to Annex 3, this Agreement shall not apply to the following contracts:
- contracts which the contracting entities under paragraph 5 award for the purchase of water;
 - contracts which the contracting entities under paragraph 1 award for the supply of energy or of fuels for the production of energy;
 - contracts which the contracting entities award for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-EEA country;
 - contracts awarded for purposes of re-sale or hire to third parties provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and that other entities are free to sell or hire it under the same conditions as the contracting entity;
 - contracting entities exercising activities in the bus transportation sector where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.
6. With regard to Annex 4, this Agreement shall not apply to the following:
- contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;
 - contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;

- contracts awarded to an entity which is itself a contracting authority within the meaning of the Public Procurement Act: "Lög um opinber innkaup (52/1997) and Regulation (302/1996) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;
 - contracts of employment.
7. The Agreement shall not apply to contracts awarded under:
- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
 - an international agreement relating to the stationing of troops;
 - the particular procedure of an international organization.
8. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
9. The thresholds in the Annexes will be applied so as to conform with the public procurement thresholds of the EEA agreement.
10. This Agreement does not apply to procurement subject to secrecy or other particular restrictions with regard to the safety of the country.
11. When a specific procurement may impair important national policy objectives, the Icelandic Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at the Icelandic Cabinet level.

APPENDIX II

Publications utilised by Parties for the publication of notices of intended procurements, paragraph 1 of Article IX and of post-award notices (paragraph 1 of Article XVIII).

Icelandic newspapers:

Morgunbladid

Dagbladid

Dagur

Other:

Official Journal of the European Communities.

APPENDIX III

Publications utilised by Parties for the publication annually of information on permanent lists of qualified suppliers in the case of selective tendering procedures (paragraph 9 of Article IX).

Official Journal of the European Communities:
(Currently no such list exists)

APPENDIX IV

Publications utilised by Parties for the publication of laws, regulations, judicial decisions, administrative rulings of general application and any procedure regarding government procurement governed by this Agreement (paragraph 1 of Article XIX).

Laws, regulations and rules:
Stjórnartíðindi (The Government Gazette)

Judicial decisions and administrative rulings:
Hæstaréttardómar (Supreme Court Report)

(District courts do not issue a Court Report, but any interested party can obtain a transcript of a particular case. Administrative rulings are not reported but can be obtained from the relevant authority)

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/74
15 July 1998

(98-2795)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF JAPAN

Notifications from Japan under Article XXIV:6(a)

The following notifications from the Permanent Mission of Japan were received on 29 June and 7 July respectively, with the request that they be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government procurement the rectifications of a purely formal or minor nature mentioned below to the Lists in Annexes 1 and 3 of Appendix I for Japan of the Agreement on Government Procurement.

Lists in Annex 1:

Add "- Financial Supervisory Agency".

This rectification is based on the fact that "Financial Supervisory Agency" was founded on 22 June 1998 by separating certain functions of the Ministry of Finance, thereby in effect not altering the coverage provided in this Agreement.

Lists in Annex 3:

Delete "- Small Enterprise Retirement Allowance Mutual Aid Corporation" and "- Construction, the Sake Brewing Industry and Forestry Retirement Allowance Mutual Aid Association".

Add "- Organization for Workers' Retirement Allowance Mutual Aid".

This rectification is based on the fact that "Small Enterprise Retirement Allowance Mutual Aid Corporation" and "Construction, the Sake Brewing Industry and Forestry Retirement Allowance Mutual Aid Association" were merged to form "Organization for Workers' Retirement Allowance Mutual Aid" on 4 June 1998. This does not in effect alter the coverage provided in this Agreement.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectification of a purely formal nature relating to Annex 3 in Appendix I of the WTO Agreement on Government Procurement.

Lists in Annex 3:

Delete "- Institute of Developing Economics" from "List of Entities" regarding supplies and "List of Entities which procure the services, specified in Annex 4".

This rectification is based on the fact that, as of 1 July 1998, "Institute of Developing Economics" was merged to "Japan External Trade Organization", which is already listed in Annex 3 in Appendix I of this Agreement. Therefore, this rectification does not alter the level of mutually agreed coverage provided in this Agreement.

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/66/Add.4

17 June 1998

(98-2455)

Committee on Government Procurement

Original: English

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 1998/1999

Addendum

Singapore

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified by Singapore is reproduced below.

1. Calculation of Threshold Figures in National Currency

Annex 1 Entities	Threshold Value (SDR)	Threshold Value in Singapore Dollars (rounded up)
1. Goods and services other than construction services	130,000	264,900
2. Construction services	5,000,000	10,188,500

Annex 3 Entities	Threshold Value (SDR)	Threshold Value in Singapore Dollars (rounded up)
1. Goods and services other than construction services	400,000	815,100
2. Construction services	5,000,000	10,188,500

2. Method of Calculation

The calculation of national threshold is based on the monthly average exchange rate of SDR to Singapore Dollars over 24 months from October 1995 to September 1997.

Month	Exchange Rate of Singapore Dollars to 1 SDR	Month	Exchange Rate of Singapore Dollars to 1 SDR
October 1995	2.1163	October 1996	2.0382
November 1995	2.0990	November 1996	2.0261
December 1995	2.1023	December 1996	2.0129
January 1996	2.0610	January 1997	1.9644
February 1996	2.0738	February 1997	1.9733
March 1996	2.0574	March 1997	2.0042
April 1996	2.0395	April 1997	1.9725
May 1996	2.0331	May 1997	1.9903
June 1996	2.0350	June 1997	1.9850
July 1996	2.0717	July 1997	1.9989
August 1996	2.0514	August 1997	2.0842
September 1996	2.0266	September 1997	2.0881

Source: International Financial Statistics, December 1996, IMF
International Financial Statistics, November 1997, IMF

The average exchange rate of SDR to Singapore Dollars is:

Singapore Dollars 48.9052/24 months = Singapore Dollars 2.0377

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/72
15 June 1998

(98-2415)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF SINGAPORE

Notification from Singapore under Article XXIV:6(a)

The following notification from the Permanent Mission of the Republic of Singapore was received on 25 May 1998, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement (1994), Singapore would like to amend the names of two entities listed in its Annexes 1 and 3 schedules respectively. The amendments are as follows:

Annex 1

"Ministry of Labour" amended to "Ministry of Manpower"

Annex 3

"Singapore Tourist
Promotion Board" amended to "Singapore Tourism Board"

The amendments are minor in nature and do not alter the coverage of the GPA with respect to Singapore.

¹ Article XXIV:6(a) provides that "if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII".

RESTRICTED

GPA/W/66/Add.3

22 April 1998

**WORLD TRADE
ORGANIZATION**

(98-1622)

Original: English

Committee on Government Procurement

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED

IN NATIONAL CURRENCIES FOR 1998/1999

Addendum

Canada

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified by Canada is reproduced below.

Pursuant to the agreed procedures (GPA/1, Annex 3), Canada submits its notification of threshold figures in the national currency for the period 1 January 1998 through 31 December 1999. This information was also published on 29 December 1997 in Contracting Policy Notice 1997-1999 on the Treasury Board of Canada Secretariat website at <http://www.tbs-sct.gc.ca>.

Calculation of Threshold Figures in National Currency

<u>Annex 1 Entities</u>	<u>Threshold Value (SDR)</u>	<u>Threshold Value in Canadian Dollars</u>
Goods	130,000	254,100
Services	130,000	254,100

<i>Construction</i>	<i>5,000,000</i>	<i>9,700,000</i>
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RESTRICTED

GPA/W/71
16 April 1998

WORLD TRADE
ORGANIZATION

(98-1517)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Lithuania

The following communication, dated 27 March 1998, has been received from the Ministry of Foreign Affairs of the Republic of Lithuania with the request that it be circulated to the Parties to the Agreement on Government Procurement.

The Ministry of Foreign Affairs of the Republic of Lithuania presents its compliments to the World Trade Organization and, with reference to the decision of the Committee on Government Procurement of 27 February 1996 (GPA/1, Annex 1), has the honour to apply for observer status in the Committee on Government Procurement.

RESTRICTED

GPA/W/70
9 April 1998

WORLD TRADE
ORGANIZATION

(98-1428)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDICES II, III AND IV OF SINGAPORE

Notification from Singapore under Article XXIV:6(a)

The attached notification from the Permanent Mission of Singapore was received on 6 April 1998, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Singapore would like to amend Appendices II, III and IV of its GPA offer to include the option of posting notices, publication of permanent list of suppliers, laws, regulations, administrative rulings, etc. on its Government Internet Tendering Information Systems.

¹Article XXIV:6(a) provides that if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

APPENDIX II

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
OF NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH 1 OF ARTICLE XVIII*

SINGAPORE

*The Republic of Singapore Government Gazette or
The Government Internet Tendering Information System (•GITIS•)*

APPENDIX III

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED
SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES -
PARAGRAPH 9 OF ARTICLE IX*

SINGAPORE

*The Republic of Singapore Government Gazette or
The Government Internet Tendering Information System (•GITIS•)*

APPENDIX IV

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF
LAWS, REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE
RULINGS OF GENERAL APPLICATION AND ANY PROCEDURE
REGARDING GOVERNMENT PROCUREMENT COVERED BY THIS
AGREEMENT - PARAGRAPH 1 OF ARTICLE XIX*

SINGAPORE

*The Republic of Singapore Government Gazette or
The Government Internet Tendering Information System (•GITIS•)*

RESTRICTED

*WORLD TRADE
ORGANIZATION*

*GPA/W/66/Add.2
25 March 1998*

(98-1180)

Original: English

Committee on Government Procurement

*THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED*

IN NATIONAL CURRENCIES FOR 1998/1999

Addendum

Japan

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified by Japan is reproduced below.

The thresholds listed below will be effective for the period from 1 April 1998 (the beginning of FY 1998) until 31 March 2000 (the end of FY 1999).

Annex 1

	<i>SDRs</i>	<i>YEN</i>
<i>Supplies and services (Note 1)</i>	<i>130,000</i>	<i>21,000,000</i>
<i>Technical services (Note 2)</i>	<i>450,000</i>	<i>72,000,000</i>
<i>Construction services</i>	<i>4,500,000</i>	<i>720,000,000</i>

Annex 2

	<i>SDRs</i>	<i>YEN</i>
<i>Supplies and services (Note 1)</i>	<i>200,000</i>	<i>32,000,000</i>
<i>Technical services (Note 2)</i>	<i>1,500,000</i>	<i>240,000,000</i>
<i>Construction services</i>	<i>15,000,000</i>	<i>2,430,000,000</i>

Annex 3

	<i>SDRs</i>	<i>YEN</i>
<i>Supplies and services (Note 1)</i>	<i>130,000</i>	<i>21,000,000</i>
<i>Technical services (Note 2)</i>	<i>450,000</i>	<i>72,000,000</i>
<i>Construction services</i>	<i>15,000,000</i>	<i>2,430,000,000</i>

Note 1: *Services* refer to the services specified in Japan's Annex 4 except for *technical services* and *construction services*.

Note 2: *Technical services* refer to the architectural, engineering and other technical services related to construction services specified in Japan's Annex 4.

RESTRICTED

GPA/W/69
25 March 1998

WORLD TRADE
ORGANIZATION

(98-1179)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDICES II AND III OF HONG KONG,
CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

The attached notification from the Hong Kong Economic and Trade Office was received on 20 March 1998, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹*

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement (1994), I have the honour to submit to the Committee on Government Procurement updated versions of Appendices II and III of Hong Kong, China, reflecting changes regarding the Kowloon-Canton Railway Corporation.

*English only

¹Article XXIV:6(a) provides that if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

APPENDIX II

HONG KONG, CHINA

Annex 1

*The Government of the Hong Kong Special Administrative Region Gazette
Daily Press*

Annex 2

*The Government of the Hong Kong Special Administrative Region Gazette
Daily Press*

Annex 3

*Hospital Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

- *Daily Press*

*Housing Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

- *Daily Press*

Kowloon-Canton Railway Corporation *Any one of the following:*

-*The Government of the Hong Kong Special Administrative Region Gazette*

-*Daily Press*

-*Home Page on the Internet (<http://www.kcrc.com>)*

Mass Transit Railway Corporation - *Daily Press*

Airport Authority - *Daily Press*

APPENDIX III

HONG KONG, CHINA

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 2

*The Government of the Hong Kong Special Administrative Region Gazette
Daily Press*

Annex 3

*Hospital Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

*Housing Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

Kowloon-Canton Railway Corporation Any one of the following:

-The Government of the Hong Kong Special Administrative Region Gazette

- Daily Press

-Home Page on the Internet (<http://www.kcrc.com>)

Mass Transit Railway Corporation - Not applicable

Airport Authority - Daily Press

-Home Page on the Internet (<http://www.hkairport.com>)

*WORLD TRADE
ORGANIZATION*

RESTRICTED

GPA/W/66/Add.1

17 February 1998

(98-0557)

Original: English

Committee on Government Procurement

*THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED*

IN NATIONAL CURRENCIES FOR 1998/1999

Addendum

European Community

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified in response by the European Community is attached.

Threshold¹ calculations - for period 1998-1999

SDR	130,000	200,000	400,000	5,000,000
ECU	133,914	206,022	412,044	5,150,548
Franc belge/ Franc luxembourgeois	5,299,053	8,152,389	16,304,778	203,809,721
Dansk krone	988,777	1,521,195	3,042,389	38,029,866
Deutsche Mark	257,285	395,823	791,646	9,895,573
Drachmi	41,121,407	63,263,704	126,527,407	1,581,592,592
Peseta	21,752,164	33,464,867	66,929,735	836,621,683
Franc français	874,914	1,346,021	2,692,042	33,650,525
Irish pound	104,545	160,839	321,678	4,020,974
Lira italiana	264,123,457	406,343,780	812,687,561	10,158,594,510
Nederlandse gulden	288,643	444,067	888,133	11,101,666
Oester. schilling	1,810,303	2,785,082	5,570,164	69,627,055
Escudo	26,310,387	40,477,518	80,955,036	1,011,937,953
Markka	777,622	1,196,342	2,392,684	29,908,547
Svensk krona	1,157,410	1,780,631	3,561,262	44,515,771
Pound sterling	104,435	160,670	321,340	4.016.744

¹The calculation of the thresholds of the WTO Agreement, expressed in ECU and in national currencies, has been based on the average monthly SDR to ECU exchange rate over 24 months from September 1995 through August 1997 (1 ECU • 0.859089 SDR).

The value of the thresholds in ECU and in national currencies has been expressed without the value-added tax (VAT) because the Community excludes VAT when calculating the value of contracts.

As regards the impact of the changeover to the Euro on Community policies, it shall be specified that:

- as from 1 January 1999, thresholds expressed in ECU will be expressed in Euros;
- the value of thresholds in national currencies will not change during the reference period.

RESTRICTED

GPA/W/68
6 February 1998

WORLD TRADE
ORGANIZATION

(98-0444)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDICES II, III AND IV OF ISRAEL

Notification from Israel under Article XXIV:6(a)

The notification reproduced below was received from the Permanent Mission of Israel on 5 February 1998, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

In conformity with paragraph 6(a) of Article XXIV, I hereby inform you of the following modifications to Israel's schedule:

1) *Appendices II and III: Amend Israel's schedule to include an additional publication as follows:*

*The Jerusalem Post
International Herald Tribune-Haaretz.*

2) *Appendix IV: Replace The Jerusalem Post with The Official Gazette.*

¹Article XXIV:6(a) provides that if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

RESTRICTED

GPA/W/67
29 January 1998

WORLD TRADE
ORGANIZATION

(98-0323)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Slovenia

The following communication, dated 28 January 1998, has been received from the Permanent Mission of the Republic of Slovenia with the request that it be circulated to the Parties to the Agreement on Government Procurement.

Referring to your communication in document WT/L/206 and the Decision (GPA/1) inviting Members of the World Trade Organization (WTO), not Parties to the Agreement on Government Procurement (GPA 1994), to participate as observers in the discussions on the review of the Government Procurement Agreement (GPA 1994), in accordance with Article XXIV:7 of that Agreement, the Government of Slovenia wishes to request to be allowed to participate as an observer in the work of the Committee on Government Procurement.

RESTRICTED

GPA/W/65
9 January 1998

WORLD TRADE
ORGANIZATION

(98-0054)

Committee on Government Procurement

RELATIONSHIP OF THE TOKYO ROUND AGREEMENT ON
GOVERNMENT PROCUREMENT TO THE 1994 AGREEMENT ON
GOVERNMENT PROCUREMENT

Note by the Secretariat

1) The present note has been prepared in response to the Committee's request at its meeting on 29 September 1997 (GPA/M/7, paragraph 28). It aims to clarify the legal and procedural aspects of the supersession of the Agreement on Government Procurement done on 12 April 1979, as revised by a Protocol of Amendments done on 2 February 1987 which entered into force on 14 February 1988, (hereinafter referred to as •the Tokyo Round Agreement•) by the Agreement on Government Procurement done in Marrakesh on 15 April 1994 (hereafter referred to as •the 1994 Agreement•). It describes the status of acceptances under the two Agreements and discusses the modalities of the supersession of the Tokyo Round Agreement by the 1994 Agreement for the consideration of the Committee established under the 1994 Agreement.

2) The following GATT Contracting Parties were Parties to the Tokyo Round Agreement on Government Procurement: Austria, Canada, Finland, Hong Kong, Israel, Japan, Norway, Singapore, Sweden, Switzerland, the United Kingdom, the United States and the European Community. The United States withdrew from the Tokyo Round Agreement on 10 November 1995, with effect from 9 January 1996 (Let/1981), and Austria on 15 September 1997, with effect from 14 November 1997 (WT/Let/170).

3) The 1994 Agreement on Government Procurement has been accepted by Belgium, the European Community, Canada, Finland, France, Greece, Israel, Japan, Korea, Luxembourg, Norway, Spain, Sweden, Switzerland and the United States (WT/Let/51). Since its entry into force on 1 January 1996, the Kingdom of the Netherlands with respect to Aruba acceded to the 1994 Agreement on 25 October 1996 (WT/Let/111), Hong Kong on 19 June 1997 (WT/Let/141), Liechtenstein on 18 September 1997 (WT/Let/166) and Singapore on 20 October 1997 (WT/Let/179).

4) *With the accession of Singapore to the 1994 Agreement on 20 October 1997, all Parties to the Tokyo Round Agreement have now accepted the 1994 Agreement.*

5) *Article XXIV:3(c) of the 1994 Agreement on Government Procurement provides that:*

•3.(c)Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement. •

It seems clear from this provision of the 1994 Agreement, which relates to the same subject-matter as the Tokyo Round Agreement (plus some additional subject-matter), that all the Parties to the Tokyo Round Agreement intend that the matters covered should be governed by the 1994 Agreement. Therefore, in the light of the provisions of Article 59.1(a) of the Vienna Convention on the Law of Treaties, 1969,² it would appear that the Tokyo Round Agreement has been considered as terminated with effect from the time that all its Parties became Parties to 1994 Agreement, that is to say 20 October 1997. In the light of the above, it would not appear necessary for any specific further action to be taken, whether in the form of individual countries withdrawing from the Tokyo Round Agreement or in the form of a decision of the Committee of the Tokyo Round Agreement formally terminating its existence.³ However, the Committee of the 1994 Agreement may wish to take note of the legal opinion expressed in this note at a future meeting.

¹Article 59.1(a) of the Vienna Convention on the Law of Treaties (1969) deals with the termination or suspension of the operation of a treaty implied by conclusion of a later treaty. It states that:

•1.A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(a)it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty;•

²In the light of Article 3.2 of the DSU which recognizes that the DSU serves to preserve the rights and obligations of Members under the covered agreements and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law and given that such rules have been considered by WTO panels and the Appellate Body to include, in particular, those provided in the Vienna Convention, it is relevant to examine the relevant provisions of the Vienna Convention in this connection.

³Decisions of this nature were taken by Committees of the Tokyo Round Agreements on Customs Valuation (VAL/M/36 and VAL/57), Import Licensing (LIC/M/37, LIC/25) and Technical Barriers to Trade (TBT/M/50, TBT/40) in the light of the Decision of 8 December 1994 adopted by the Preparatory Committee to terminate GATT 1947 (PC/12, L/7583). However, the WTO agreements replacing these agreements did not contain provisions concerning the supersession of the former agreement by the latter agreements.

RESTRICTED

GPA/W/66
9 January 1998

*WORLD TRADE
ORGANIZATION*

(98-0053)

Original: English

Committee on Government Procurement

*THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED*

IN NATIONAL CURRENCIES FOR 1998/1999

Hong Kong, China

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1998-1999.

The information notified by Hong Kong, China is reproduced below. Other submissions will be compiled in addenda to this document.

1) Calculation of Threshold Figures in National Currency

<i>Annex 1 Entities</i>	<i>Threshold value (SDR)</i>	<i>Threshold value in HK Dollar</i>
<i>1. Goods and services other than construction services</i>	<i>130,000</i>	<i>1,433,000</i>
<i>2. Construction services</i>	<i>5,000,000</i>	<i>55,109,000</i>

<i>Annex 2 Entities</i>	<i>Threshold value (SDR)</i>	<i>Threshold value in HK Dollar</i>
--------------------------------	---	--

<i>1. Goods and services other than construction services</i>	<i>200,000</i>	<i>2,204,000</i>
<i>2. Construction services</i>	<i>5,000,000</i>	<i>55,109,000</i>

<i>Annex 3 Entities</i>	<i>Threshold value (SDR)</i>	<i>Threshold value in HK Dollar</i>
1. <i>Goods and services other than construction services</i>	400,000	4,409,000
2. <i>Construction services</i>	5,000,000	55,109,000

2) Method of Calculation

The calculation of national threshold is based on the monthly average exchange rate of SDR to Hong Kong Dollar over 24 months from November 1995 to October 1997.

<i>Period (Month/Year)</i>	<i>Average HKD Equivalent of SDR</i>	<i>No. of Days</i>	<i>HKD Equivalent</i>
November 1995	11.55831	30	346.7493
December 1995	11.48895	31	356.15745
January 1996	11.33689	31	351.44359
February 1996	11.33411	29	328.68919
March 1996	11.30279	31	350.38649
April 1996	11.22103	30	336.6309
May 1996	11.17581	31	346.45011
June 1996	11.16668	30	335.0004
July 1996	11.22289	31	347.90959
August 1996	11.27849	31	349.63319
September 1996	11.19506	30	335.8518
October 1996	11.13161	31	345.07991
November 1996	11.24094	30	337.2282
December 1996	11.12592	31	344.90352
January 1997	10.95726	31	339.67506
February 1997	10.72673	28	300.34844
March 1997	10.67492	31	330.92252
April 1997	10.62654	30	318.7962
May 1997	10.72189	31	332.37859

<i>Period (Month/Year)</i>	<i>Average HKD Equivalent of SDR</i>	<i>No. of Days</i>	<i>HKD Equivalent</i>
<i>June 1997</i>	<i>10.76533</i>	<i>30</i>	<i>322.9599</i>
<i>July 1997</i>	<i>10.66086</i>	<i>31</i>	<i>330.48666</i>
<i>August 1997</i>	<i>10.48379</i>	<i>31</i>	<i>324.99749</i>
<i>September 1997</i>	<i>10.52769</i>	<i>30</i>	<i>315.8307</i>
<i>October 1997</i>	<i>10.59618</i>	<i>31</i>	<i>328.48158</i>
<i>TOTAL</i>		<i>731</i>	<i>8056.99078</i>

HKD Equivalent of SDR for the 24 months period preceding November 1997:

$$8056.99078/731 \cdot 11.02187521$$

that is,

$$\mathbf{1\ SDR \cdot HKD\ 11.02188}$$

RESTRICTED

GPA/W/64
6 January 1998

WORLD TRADE
ORGANIZATION

(98-0006)

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1) *In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on Government Procurement on 24 February 1997 (GPA/1/Add.2), the following documents circulated as restricted are proposed for derestriction on 10 March 1998.*

(i) GPA/M/- series

GPA/M/4-6

(ii) GPA/W/- series

GPA/W/24 and Addenda 1-3

GPA/W/35

GPA/W/38

GPA/W/40-46

GPA/W/47 and Add.1

GPA/W/48-50

GPA/W/53-63

(iii) GPA/SPEC/- series

GPA/SPEC/2 and Rev.1

2) *The list of documents which have been previously derestricted is contained in document GPA/W/40.*

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97-5105 	D	GPA/W/62 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Norway - Communication from Norway Preview (HTML)	20/11/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
97-4840 	D	GPA/W/61 Catalogue record	Committee on Government Procurement - Rectifications or Modifications Regarding Publications in Appendices II, III and IV of the Agreement on Government Pro[...] Pursuant to Article XXIV:6(a) Preview (HTML)	05/11/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
97-4664 	D	GPA/W/57 Catalogue record	Committee on Government Procurement - Modifications to Appendices II, III and IV of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a) Preview (HTML)	24/10/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
97-4661	D	GPA/W/59 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Korea - Notification from the Republic of	24/10/1997	E	F	S

				Korea under Article XXIV:6(a) Preview (HTML)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4 p. 75KB	4 p. 77KB	4 p. 85KB
97-4662	D	GPA/W/60 Catalogue record		Committee on Government Procurement - Modifications to 24/10/1997 Appendix I of Japan - Notification from Japan under Article XXIV:6(a) Preview (HTML)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1 p. 68KB	1 p. 27KB	1 p. 28KB
				Committee on Government Procurement - Modifications to 20/10/1997 Appendix I of Switzerland - Communication from Switzerland Preview (HTML)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2 p. 68KB	2 p. 28KB	2 p. 68KB
97-4665	D	GPA/W/58 Catalogue record		Committee on Government Procurement - Questionnaire 08/10/1997 on Information Technology in Government Procurement - Response by Hong Kong, China - Addendum Preview (HTML)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5 p. 74KB	5 p. 42KB	5 p. 80KB
				Committee on Government Procurement - Modifications to 23/09/1997 Appendix I of Switzerland - Communication from Switzerland - Addendum Preview (HTML)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1 p. 23KB	1 p. 23KB	1 p. 22KB
97-3933	D	GPA/W/47/Add.1 Catalogue record		Committee on Government Procurement - Modifications to 16/09/1997 Appendices I-IV of the European Community - Addendum Preview (HTML)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1 p. 23KB	1 p. 21KB	1 p. 21KB
				Committee on Government Procurement - Modifications to 05/09/1997 Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a) Preview (HTML)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	3 p. 24KB	3 p. 25KB	3 p. 24KB
97-3704	D	GPA/W/51/Add.1 Catalogue record		Committee on Government Procurement - Modifications to 28/08/1997 Appendix I of the European Community - Notification from the European Community under Article XXIV:6(a) Preview (HTML)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 p. 27KB	2 p. 28KB	2 p. 28KB
				Committee on Government Procurement - Modifications to 27/08/1997 Appendix I of Israel - Notification from Israel under Article XXIV:6(a) Preview (HTML)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1 p. 24KB	2 p. 24KB	2 p. 25KB
97-3510	D	GPA/W/55 Catalogue record		Committee on Government Procurement - Responses to 22/08/1997 the Request for Information Pursuant to Paragraphs 1 and 3 of Article XIX of the Agreement on Government [...] Preview (HTML) ication from the United States	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	24 p. 38KB	24 p. 48KB	24 p. 113KB
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97-3497	D	GPA/W/54 Catalogue record								
										
97-3456	D	GPA/W/52 Catalogue record								
										
97-3464	D	GPA/W/53 Catalogue record								

			overnment Procurement - Panama		20KB	23KB	21KB
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97-3373	D	GPA/W/51 Catalogue record	Committee on Government Procurement - Modifications to 13/08/1997 Appendices I-IV of the European Community - Communication from the European Community.		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		133 p. 71KB	133 p. 70KB	133 p. 69KB
97-3364	D	GPA/W/50 Catalogue record	Committee on Government Procurement - Information 08/08/1997 Technology and Public Procurement - Contribution from the European Community		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		3 p. 33KB	3 p. 37KB	3 p. 36KB
97-3241	D	GPA/W/12/Add.8 Catalogue record	Committee on Government Procurement - The Threshold 30/07/1997 in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 - Hong Kong, China		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		2 p. 28KB	2 p. 29KB	2 p. 29KB
97-3035	D	GPA/W/45 Catalogue record	Committee on Government Procurement - Modifications to 17/07/1997 Appendix I of Switzerland - Notification from Switzerland under Article XXIV:6(a)		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		5 p. 42KB	5 p. 42KB	5 p. 42KB
97-2758	D	GPA/W/49 Catalogue record	Committee on Government Procurement - Request for 30/06/1997 Observer Status - Communication from Chile		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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97-2581	D	GPA/W/48 Catalogue record	Committee on Government Procurement - Request for 23/06/1997 Observer Status - Communication from Poland		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		1 p. 22KB	1 p. 23KB	1 p. 22KB
97-2425	D	GPA/W/46 Catalogue record	Committee on Government Procurement - Modifications to 12/06/1997 Appendix I of Norway - Notification from Norway under Article XXIV:6(a)		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		7 p. 34KB	7 p. 41KB	8 p. 38KB
97-2374	D	GPA/W/44 Catalogue record	Committee on Government Procurement - Modifications to 09/06/1997 Appendix I of the European Community - Communication from the European Community		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
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97-2375	D	GPA/W/47 Catalogue record	Committee on Government Procurement - Modifications to 09/06/1997 Appendix I of Switzerland - Communication from Switzerland		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		1 p. 23KB	1 p. 22KB	1 p. 23KB
97-2264	D	GPA/W/43 Catalogue record	Committee on Government Procurement - Modifications to 30/05/1997 Appendix I of Norway - Communication from Norway		E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
			Preview (HTML)		1 p. 20KB	1 p. 23KB	1 p. 24KB

97-2179 	D	GPA/W/41 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of the United States - Communication from the United States Preview (HTML)	23/05/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 21KB	3 p. 25KB	3 p. 23KB
97-2180 	D	GPA/W/42 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Switzerland - Communication from Switzerland Preview (HTML)	23/05/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 21KB	2 p. 24KB	2 p. 25KB
97-1060 	D	GPA/W/39 Catalogue record	Committee on Government Procurement - Request for Information pursuant to Paragraphs 1 and 3 of Article XIX of the Agreement on Government Procurement - Communication from Japan Preview (HTML)	17/03/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	3 p. 29KB	3 p. 31KB	3 p. 33KB
97-1067 	D	GPA/W/40 Catalogue record	Committee on Government Procurement - Derestriction of Documents Preview (HTML)	17/03/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 22KB	1 p. 23KB	1 p. 25KB
97-0729 	D	GPA/W/38 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Bulgaria Preview (HTML)	21/02/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 22KB	1 p. 21KB	1 p. 23KB
97-0352 	D	GPA/W/35 Catalogue record	Committee on Government Procurement - Loose-Leaf System for the Appendices to the Agreement - Note by the Secretariat Preview (HTML)	05/02/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	342 p. 828KB	342 p. 847KB	342 p. 853KB
97-0257 	D	GPA/W/36 Catalogue record	Committee on Government Procurement - International Intergovernmental Organizations - Requests for Observer Status in the Committee on Government Procurement Preview (HTML)	31/01/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 25KB	1 p. 25KB	1 p. 26KB
97-0328 	D	GPA/W/12/Add.7 Catalogue record	Committee on Government Procurement - The Threshold in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 - Republic of Korea Preview (HTML)	30/01/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	2 p. 29KB	2 p. 30KB	2 p. 30KB
97-0278 	D	GPA/W/37 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Hong Kong Preview (HTML)	27/01/1997	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	1 p. 22KB	1 p. 22KB	1 p. 23KB

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97-0031 	D	GPA/W/33 Catalogue record	Committee on Government Procurement - Circulation and Derestriction of Documents - Note by the Secretariat Preview (HTML)	10/01/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>
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97-0022 	D	GPA/W/34 Catalogue record	Committee on Government Procurement - Accession of Liechtenstein - Communication from Liechtenstein Preview (HTML)	08/01/1997	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>
					1 p. 20KB	1 p. 25KB	1 p. 24KB

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1 5 KB	97-5272	GPA/W/63	Committee on Government Procurement - Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a)	01/12/1997	1	D	T/PLURI/GPA/W63.WPF
2 4 KB	97-5105	GPA/W/62	Committee on Government Procurement - Modifications to Appendix I of Norway - Communication from Norway	20/11/1997	2	D	T/PLURI/GPA/W62.WPF
3 6 KB	97-4840	GPA/W/61	Committee on Government Procurement - Rectifications or Modifications Regarding Publications in Appendices II, III and IV of the Agreement on Government Procurement (1994) - Notification from Canada Pursuant to Article XXIV:6(a)	05/11/1997	2	D	T/PLURI/GPA/W61.WPF
4 7 KB	97-4664	GPA/W/57	Committee on Government Procurement - Modifications to Appendices II, III and IV of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	24/10/1997	4	D	T/PLURI/GPA/W57.WPF
5 10 KB	97-4661	GPA/W/59	Committee on Government Procurement - Modifications to Appendix I of Korea - Notification from the Republic of Korea under Article XXIV:6(a)	24/10/1997	4	D	T/PLURI/GPA/W59.WPF
6 4 KB	97-4662	GPA/W/60	Committee on Government Procurement - Modifications to Appendix I of Japan - Notification from Japan under Article XXIV:6(a)	24/10/1997	1	D	T/PLURI/GPA/W60.WPF
7 4 KB	97-4665	GPA/W/58	Committee on Government Procurement - Modifications to Appendix I of Switzerland - Communication from Switzerland	20/10/1997	2	D	T/PLURI/GPA/W58.WPF
8 11 KB	97-4250	GPA/W/24/Add.4	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by Hong Kong, China - Addendum	08/10/1997	5	D	T/PLURI/GPA/W24A4.WPF
9 3 KB	97-3933	GPA/W/47/Add.1	Committee on Government Procurement - Modifications to Appendix I of Switzerland - Communication from Switzerland - Addendum	23/09/1997	1	D	T/PLURI/GPA/W47A1.WPF
10 3 KB	97-3704	GPA/W/51/Add.1	Committee on Government Procurement - Modifications to Appendices I-IV of the European Community - Addendum	16/09/1997	1	D	T/PLURI/GPA/W51A1.WPF
11 4 KB	97-3581	GPA/W/56	Committee on Government Procurement - Modifications to Appendix I of Hong Kong, China - Notification from Hong Kong, China under Article XXIV:6(a)	05/09/1997	3	D	T/PLURI/GPA/W56.WPF
12 5 KB	97-3510	GPA/W/55	Committee on Government Procurement - Modifications to Appendix I of the European Community - Notification from	28/08/1997	2	D	T/PLURI/GPA/W55.WPF

			the European Community under Article XXIV:6(a)				
13 5 KB	97-3497	GPA/W/54	Committee on Government Procurement - Modifications to Appendix I of Israel - Notification from Israel under Article XXIV:6(a)	27/08/1997	1	D	T/PLURI/GPA/W54.WPF
14 14 KB	97-3456	GPA/W/52	Committee on Government Procurement - Responses to the Request for Information Pursuant to Paragraphs 1 and 3 of Article XIX of the Agreement on Government Procurement - Communication from the United States	22/08/1997	24	D	T/PLURI/GPA/W52.WPF
15 3 KB	97-3464	GPA/W/53	Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement and Request for Observer Status in the Committee on Government Procurement - Panama	22/08/1997	1	D	T/PLURI/GPA/W53.WPF
16 9 KB	97-3373	GPA/W/51	Committee on Government Procurement - Modifications to Appendices I-IV of the European Community - Communication from the European Community.	13/08/1997	133	D	T/PLURI/GPA/W51.WPF
17 12 KB	97-3364	GPA/W/50	Committee on Government Procurement - Information Technology and Public Procurement - Contribution from the European Community	08/08/1997	3	D	T/PLURI/GPA/W50.WPF
18 5 KB	97-3241	GPA/W/12/Add.8	Committee on Government Procurement - The Threshold in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 - Hong Kong, China	30/07/1997	2	D	T/PLURI/GPA/W12A8.WPF
19 11 KB	97-3035	GPA/W/45	Committee on Government Procurement - Modifications to Appendix I of Switzerland - Notification from Switzerland under Article XXIV:6(a)	17/07/1997	5	D	T/PLURI/GPA/W45.WPF
20 2 KB	97-2758	GPA/W/49	Committee on Government Procurement - Request for Observer Status - Communication from Chile	30/06/1997	1	D	T/PLURI/GPA/W49.WPF
21 2 KB	97-2581	GPA/W/48	Committee on Government Procurement - Request for Observer Status - Communication from Poland	23/06/1997	1	D	T/PLURI/GPA/W48.WPF
22 10 KB	97-2425	GPA/W/46	Committee on Government Procurement - Modifications to Appendix I of Norway - Notification from Norway under Article XXIV:6(a)	12/06/1997	7	D	T/PLURI/GPA/W46.WPF
23 4 KB	97-2374	GPA/W/44	Committee on Government Procurement - Modifications to Appendix I of the European Community - Communication from the European Community	09/06/1997	1	D	T/PLURI/GPA/W44.WPF
24 3 KB	97-2375	GPA/W/47	Committee on Government Procurement - Modifications to Appendix I of Switzerland - Communication from Switzerland	09/06/1997	1	D	T/PLURI/GPA/W47.WPF

25 3 KB	97-2264	GPA/W/43	Committee on Government Procurement - Modifications to Appendix I of Norway - Communication from Norway	30/05/1997	1	D	T/PLURI/GPA/W43.WPF
26 4 KB	97-2179	GPA/W/41	Committee on Government Procurement - Modifications to Appendix I of the United States - Communication from the United States	23/05/1997	3	D	T/PLURI/GPA/W41.WPF
27 4 KB	97-2180	GPA/W/42	Committee on Government Procurement - Modifications to Appendix I of Switzerland - Communication from Switzerland	23/05/1997	2	D	T/PLURI/GPA/W42.WPF
28 8 KB	97-1060	GPA/W/39	Committee on Government Procurement - Request for Information pursuant to Paragraphs 1 and 3 of Article XIX of the Agreement on Government Procurement - Communication from Japan	17/03/1997	3	D	T/PLURI/GPA/W39.WPF
29 3 KB	97-1067	GPA/W/40	Committee on Government Procurement - Derestriction of Documents	17/03/1997	1	D	T/PLURI/GPA/W40.WPF
30 2 KB	97-0729	GPA/W/38	Committee on Government Procurement - Request for Observer Status - Communication from Bulgaria	21/02/1997	1	D	T/PLURI/GPA/W38.WPF
31 473 KB	97-0352	GPA/W/35	Committee on Government Procurement - Loose-Leaf System for the Appendices to the Agreement - Note by the Secretariat	05/02/1997	342	D	T/PLURI/GPA/W35.WPF
32 4 KB	97-0257	GPA/W/36	Committee on Government Procurement - International Intergovernmental Organizations - Requests for Observer Status in the Committee on Government Procurement	31/01/1997	1	D	T/PLURI/GPA/W36.WPF
33 6 KB	97-0328	GPA/W/12/Add.7	Committee on Government Procurement - The Threshold in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 - Republic of Korea	30/01/1997	2	D	T/PLURI/GPA/W12A7.WPF
34 2 KB	97-0278	GPA/W/37	Committee on Government Procurement - Request for Observer Status - Communication from Hong Kong	27/01/1997	1	D	T/PLURI/GPA/W37.WPF
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2 3 KB	97-0022	GPA/W/34	Committee on Government Procurement - Accession of Liechtenstein - Communication from Liechtenstein	08/01/1997	1	D	T/PLURI/GPA/W34.WPF
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GPA/W/63

1 December 1997

WORLD TRADE
ORGANIZATION

(97-5272)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)

The following notification from the Permanent Mission of Japan was received on 26 November 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement of the following rectification of a purely formal or minor nature to the Lists in Annex 3, Appendix I for Japan of the Agreement on Government Procurement:

Delete: • Mutual Aid Association of Private School Personnel • and • Japan Private School Promotion Foundation • from • List of Entities • and • List of Entities which procure the services, specified in Annex 4 • respectively.

Add: • Promotion and Mutual Aid Corporation for Private Schools of Japan • to each of the lists mentioned above.

¹Article XXIV:6(a) provides that •if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII•.

This rectification is based on the fact that the •Mutual Aid Association of Private School Personnel• and •Japan Private School Promotion Foundation• are scheduled to be merged to form the •Promotion and Mutual Aid Corporation for Private Schools of Japan• on 1 January 1998 and it will not alter the current coverage of the Agreement on Government Procurement with respect to Japan.

RESTRICTED

GPA/W/62
20 November 1997

WORLD TRADE
ORGANIZATION

(97-5105)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF NORWAY

Communication from Norway

The following communication from the Permanent Mission of Norway was received on 18 November 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

On the occasion of the deposit of the instruments of accession by the Government of Singapore to the Agreement on Government Procurement on 20 September 1997, Norway hereby notifies the WTO that Norway's General Note 1 of its Appendix I should be amended as follows: •Singapore• should be added as regards the award of contracts by entities listed in Annex 3, with respect to the suppliers and service providers in the electricity sector. We kindly ask you to inform the Members of the Committee on Government Procurement that Norway's General Note 1 should be amended accordingly (see Annex).

¹Article XXIV:6(a) provides that •if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII•.

ANNEX

Norway

*GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF
ARTICLE III*

Paragraph 1: (1) (electricity) include •Singapore•

RESTRICTED

GPA/W/61

5 November 1997

WORLD TRADE
ORGANIZATION

(97-4840)

Original: English

Committee on Government Procurement

RECTIFICATIONS OR MODIFICATIONS REGARDING
PUBLICATIONS
IN APPENDICES II, III AND IV OF THE AGREEMENT ON
GOVERNMENT PROCUREMENT (1994)

Notification from Canada pursuant to Article XXIV:6(a)

The following notification from the Permanent Mission of Canada was received on 31 October 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to the provisions set out in Article XXIV:6(a) - Rectifications or Modifications, Canada hereby notifies the Committee on Government Procurement of its intention to modify information regarding publications in Appendices II, III and IV of the Agreement on Government Procurement (1994).

As stated at the meeting of the Committee on 21 May 1997, a new contractor has been selected to operate the Government's national electronic tendering service. The new contractor, Cebra Inc., took over from Information Systems Management (ISM) Corporation on 27 October 1997. The name of the national electronic tendering service has changed from •Open Bidding Service• to

¹Article XXIV:6(a) provides that •if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII•.

•MEXX•. MEXX is a coined name, the initials do not stand for anything and the name is spelled the same in any language.

Accordingly, Canada intends to modify information regarding publications in Appendices II, III and IV of the Agreement on Government Procurement (1994) as set out below:

- for Appendix II, concerning publications used for the publication of notices of intended procurements and of post-award notices, the reference •Open Bidding Service, ISM Publishing• should be deleted and replaced by •MEXX, Cebra Inc.;*
- for Appendix III, concerning publications used for the publication annually of information on permanent lists of qualified suppliers in the case of selective tendering procedures, the reference •Open Bidding Service, ISM Publishing• should be deleted and replaced by •MEXX, Cebra Inc.; and*
- for Appendix IV, concerning publications used for the publication of administrative rulings and procedures, the reference •Open Bidding Service, ISM Publishing• should be deleted and replaced by •MEXX, Cebra Inc..*

RESTRICTED

GPA/W/57
24 October 1997

WORLD TRADE
ORGANIZATION

(97-4664)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDICES II, III AND IV OF HONG KONG,
CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

The attached notification from the Hong Kong Economic and Trade Office was received on 7 October 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹*

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement (1994), I have the honour to submit to the Committee on Government Procurement the updated versions of Appendices II, III and IV of Hong Kong, China, reflecting additional information and a change in the name of the Government Gazette.

*English only

¹Article XXIV:6(a) provides that if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

APPENDIX II

HONG KONG

Annex 1

*The Government of the Hong Kong Special Administrative Region Gazette
Daily Press*

Annex 2

*The Government of the Hong Kong Special Administrative Region Gazette
Daily Press*

Annex 3

*Hospital Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

- *Daily Press*

*Housing Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

- *Daily Press*

Kowloon-Canton Railway Corporation - Daily Press

-Home Page on the Internet (<http://www.kcrc.com>)

Mass Transit Railway Corporation - Daily Press

Airport Authority - Daily Press

APPENDIX III

HONG KONG

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 2

*The Government of the Hong Kong Special Administrative Region Gazette
Daily Press*

Annex 3

*Hospital Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

*Housing Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

Kowloon-Canton Railway Corporation - Daily Press

-Home Page on the Internet (<http://www.kcrc.com>)

Mass Transit Railway Corporation - Not applicable

Airport Authority - Daily Press

-Home Page on the Internet (<http://www.hkairport.com>)

APPENDIX IV

HONG KONG

Annex 1

The Government of the Hong Kong Special Administrative Region Gazette

Annex 2

The Government of the Hong Kong Special Administrative Region Gazette

Annex 3

*Hospital Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

*Housing Authority-The Government of the Hong Kong Special Administrative
Region Gazette*

*Kowloon-Canton Railway Corporation-provided to potential suppliers upon
issuance of invitations to
participate*

*Mass Transit Railway Corporation-provided to potential suppliers upon issuance
of invitations to participate*

*Airport Authority-provided to potential suppliers upon issuance of invitations to
participate*

RESTRICTED

GPA/W/59
24 October 1997

WORLD TRADE
ORGANIZATION

(97-4661)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF KOREA

Notification from the Republic of Korea under Article XXIV:6(a)

The attached notification from the Permanent Mission of the Republic of Korea was received on 16 October 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹*

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the reorganization of Korean government agencies and revision of the relevant law.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of the Republic of Korea wishes to notify the Committee on Government Procurement of the following rectifications of a purely formal nature relating to Annex 1 in Appendix I of the WTO Agreement on Government Procurement. As is clear from the following

*English only

¹Article XXIV:6(a) provides that if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

explanation, none of these rectifications alters the coverage which has mutually been agreed upon.

1) *Delete •Economic Planning Board• and •Ministry of Finance•. Add •Ministry of Finance and Economy•, instead. This rectification is based on the fact that the •Economic Planning Board• and the •Ministry of Finance• have been merged to form the •Ministry of Finance and Economy•.*

2) *Delete •Ministry of Agriculture, Forestry and Fisheries•, •Fisheries Administration• and •Korea Maritime and Port Administration•. Add •Ministry of Agriculture and Forestry• and •Ministry of Maritime Affairs and Fisheries•, instead, respectively. These rectifications are based on the fact that the •Fisheries Administration•, the •Korea Maritime and Port Administration• and the Bureau of Fisheries of the •Ministry of Agriculture, Forestry and Fisheries• have been merged to form the •Ministry of Maritime Affairs and Fisheries• and that the remaining parts of the •Ministry of Agriculture, Forestry and Fisheries• have been replaced by the •Ministry of Agriculture and Forestry•.*

3) *Delete •Ministry of Construction• and •Ministry of Transportation•. Add •Ministry of Construction and Transportation•, instead. This rectification is based on the fact that the •Ministry of Construction• and the •Ministry of Transportation• have been merged to form the •Ministry of Construction and Transportation•.*

4) *Delete •Industrial Advancement Administration•. Add •Small and Medium Business Administration•, instead. This rectification is based on the fact that the •Industrial Advancement Administration• has been replaced by the •Small and Medium Business Administration•.*

5) *Add •National Maritime Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code)•. This rectification is based on the fact that the •National Maritime Police Agency• has been separated from the •National Police Administration•.*

6) *Delete •Ministry of Health and Social Affairs•. Add •Ministry of Health and Welfare•. This rectification is based on the fact that the •Ministry of Health and Social Affairs• has been renamed as the •Ministry of Health and Welfare•.*

7) *Korea newly enacted •the Act Relating to Contracts to which the State is a Party•, in line with the GPA, as the basis regulation for government procurement. Thus the Budget and Account Law shall be replaced by •the Act Relating to Contracts to which the State is a Party• in Note 3 to Annex 1.*

ATTACHMENT

Korea's New List of Central Government Entities (Annex 1)

- Board of Audit and Inspection
- Prime Minister's Secretariat
- Office of Administrative Coordination
- First Minister of Political Affairs
- Second Minister of Political Affairs
- **Economic Planning Board (delete)**
- **Ministry of Finance and Economy (add)**
 - National Unification Board
 - Ministry of Government Administration
 - Ministry of Science and Technology
 - Ministry of Information
 - Government Legislation Agency
 - Patriots and Veterans Affairs Agency
 - Ministry of Foreign Affairs
 - Ministry of Home Affairs
- **Ministry of Finance (delete)**
 - Ministry of Justice
 - Ministry of National Defense
 - Ministry of Education
 - Ministry of Culture and Sports
- **Ministry of Agriculture, Forestry and Fisheries (delete)**
 - **Ministry of Agriculture and Forestry (add)**
 - Ministry of Trade, Industry and Energy
- **Ministry of Information and Communication (rename)**
 - **Ministry of Construction (delete)**
 - Ministry of Environment (relocate)
 - **Ministry of Health and Welfare (rename)**
 - Ministry of Labor
 - **Ministry of Transportation (delete)**
- **Ministry of Construction and Transportation (add)**
- **Ministry of Maritime Affairs and Fisheries (add)**
 - Office of Supply (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)
- National Tax Administration (relocate)
- Customs Administration (relocate)
 - National Statistical Office
 - Korea Meteorological Administration
- National Police Administration (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code)
 - Supreme Public Prosecutors' Office
 - Military Manpower Administration
 - Rural Development Administration

- *Forestry Administration*
- ***Fisheries Administration (delete)***
- ***Industrial Advancement Administration (delete)***
- ***Small and Medium Business Administration (add)***
- *Korea Industrial Property Office*
- ***Korea Maritime and Port Administration (delete)***
- *Korea National Railroad Administration (The Korean Government plans to change the NRA into a public corporation in 1996, in which case the Korean Government has the right to transfer the NRA from Annex 1 to Annex 3 without any consultation and/or compensatory measures.)*
- ***Small and Medium Business Administration (add)***
- ***National Maritime Police Agency (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code) (add)***

RESTRICTED

GPA/W/60
24 October 1997

WORLD TRADE
ORGANIZATION

(97-4662)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF JAPAN

Notification from Japan under Article XXIV:6(a)

The following notification from the Permanent Mission of Japan was received on 20 October 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement of the following rectification of a purely formal or minor nature to the Lists in Annex 3, Appendix I for Japan of the Agreement on Government Procurement:

*Delete:•Maritime Credit Corporation (e)• and
•Rail Development Fund• from •List of Entities• and •List of Entities which
procure the services, specified in Annex 4•,
respectively.*

*Add:•Corporation for Advanced Transport & Technology (e)• to each of
the lists mentioned above.*

¹Article XXIV:6(a) provides that •if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII•.

This rectification is based on the fact that the •Maritime Credit Corporation• and the •Rail Development Fund• have been merged to form the •Corporation for Advanced Transport & Technology• since 1 October 1997 and it does not alter the coverage which has been agreed upon among the Parties to the Agreement on Government Procurement.

RESTRICTED

GPA/W/58
20 October 1997

WORLD TRADE
ORGANIZATION

(97-4665)

Original:

English/French

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF SWITZERLAND

Communication from Switzerland

The following communication from the Permanent Mission of Switzerland was received on 14 October 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:6(a), any Party with an objection to the proposed changes is invited to notify the Secretariat within 30 days from the date of issue of this document.¹

On the occasion of the deposit of the instruments of accession by the Government of Singapore to the Agreement on Government Procurement on 20 September 1997, Switzerland hereby notifies the WTO that Switzerland's General Note 1 of its Appendix I should be amended in the following way: Singapore should be added as regards the award of contracts by entities listed in Annex 3, with respect to the suppliers and service providers in the water and electricity sectors. We kindly ask you to inform the Members of the Committee on Government Procurement before 20 October 1997 that Switzerland's General Note 1 should be amended accordingly (see Annex).

¹Article XXIV:6(a) provides that if the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

ANNEX*

Switzerland

NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS DE
L'ARTICLE III

Paragraphe 1: eau: inclure •Singapour•
 électricité: inclure •Singapour•

*French only

*WORLD TRADE
ORGANIZATION*

RESTRICTED

GPA/W/24/Add.4

8 October 1997

(97-4250)

Original: English

Committee on Government Procurement

*QUESTIONNAIRE ON INFORMATION TECHNOLOGY
IN GOVERNMENT PROCUREMENT*

Response by Hong Kong, China

Addendum

The attached communication contains the replies from the Hong Kong Economic and Trade Office to the questionnaire on Information Technology in Government Procurement contained in document GPA/W/24, dated 22 August 1996.

REPLIES BY HONG KONG, CHINA TO THE QUESTIONNAIRE ON
INFORMATION TECHNOLOGY

1) *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government? In the event that delegations are not considering introducing information technology into public procurement, could they explain the reasons?*

The Government of the HKSAR has established several Internet homepages to provide information on procurements conducted by all central and subcentral entities. Information provided includes forecast of public works tenders, tender notices, procurement procedures and contract awards. The Hong Kong Housing Authority, an Annex 3 entity, also maintains an Internet website for the dissemination of tender notices and for the collection of bids relating to procurement of computers. Most of the tenders covered by the WTO GPA are publicized in these homepages.

2) *What function(s) would information technology serve in such systems and who will be the users?*

Information technology is currently being used mainly for notification of tender invitation and dissemination of tender information. Entities are considering the feasibility to extend the use of information technology to functions such as dissemination of tender documents, submission of tenders, communication of clarifications on the tender documents, etc.

All Internet subscribers can access the information through the Internet. All interested suppliers could contact the officers stated in tender notices for a set of the tender documents and any additional information on the tenders.

3) *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

The homepages are accessible by computers of configuration 386 or above through modems. Connection software is provided by Internet Service Providers (ISP).

4) *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?*

The access to the homepages is open to suppliers all over the world, regardless of whether they are from signatories of the WTO GPA or not.

5) For those Parties who use databases which list government procurement opportunities:

(i) What are the names of their databases?

Names of the Internet homepages are:

Finance Bureau (FB) Homepage
(<http://www.info.gov.hk/fb>)

Works Bureau (WB) Homepage
(<http://www.wb.wpelb.gov.hk>)

Government Supplies Department (GSD) Homepage
(<http://www.info.gov.hk/gsd/tender.htm>)

Printing Department (PD) Homepage
(<http://www.info.gov.hk/pd>)

Urban Services Department (USD) Homepage
(<http://www.usd.gov.hk>)

Regional Services Department (RSD) Homepage
(<http://www.info.gov.hk/rsd/index.htm>)

Housing Authority (HA) Homepage
(<http://www.info.gov.hk/hd/index.htm>)

Kowloon-Canton Railway (KCRC) Homepage
(<http://www.kcrc.com>)

(ii) How long have the databases been operational and how many suppliers use the databases?

The GSD Homepage has been in operation since December 1995 with approximately 6,000 accesses to the database per month.

The FB Homepage, WB Homepage, PD Homepage have been in operation since 1996. No statistics on the number of accesses to these Homepages has been kept.

(iii) Is a fee charged to suppliers using the system? If so, how much, and what is included in the fee?

Access to these Homepages is free of charge.

(iv) Can suppliers obtain tender documentation electronically? If so, how?

Tender documentation in electronic format is not yet available. Interested suppliers can, however, request for hard copies of tender documents by email or by fax. In some cases, tender specification in CD-ROM will be issued to consultants, contractors and tenderers on a project basis. A special team is now working on the feasibility of using the Internet and related technologies for the dissemination of tender documentation and receipt of bids.

(v) How is information on the databases organized?

The tender information is grouped according to the respective closing dates and procuring entities. A brief outline of the procurement information would be listed out for selection by suppliers.

(vi) Do the databases offer any other features?

No.

(vii) What is the approximate number of procurement opportunities listed on the databases annually?

Approximately 800 procurement opportunities are listed annually on GSD's Homepage. No statistics were kept on the number of procurement opportunities published in other homepages.

(viii) Are the systems managed by the government or a private company?

The Homepages are managed and updated by the respective bureaux and departments of the HKSAR Government.

(ix) Can Parties' databases be interrogated using international standards, such as SQL - Standard Query Language?

Not at the moment.

(x) Are all notices which are required to be published under Articles IX and XVIII:1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?

Tender notices and tender awards publicized on the Internet contain all the information required to be published under Articles IX and XVIII:1 of the Agreement.

(xi) How are Agreement-covered notices identified?

For those purchases that are covered by the Agreement, the tender information will include a remark stating that the tender is covered by the Agreement.

(xii) To what extent does each type of notice contained in databases conform to a standard structure?

Standard formats are being used as far as possible so as to ensure that all necessary information is included.

(xiii) Is any particular classification used in such notices to describe purchases and, if so, what classification?

No.

(xiv) Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?

The Homepages are in English which is one of the official languages of the WTO.

6) For those Parties who are involved in action in the area of electronic commerce:

(i) Please provide full information on projects and plans with regard to electronic commerce.

The Government Supplies Department (GSD) which is the central procurement agent for the Government of the HKSAR is currently conducting a feasibility study on electronic commerce. A Project Team was set up in May 1997 to conduct an Internet Pilot study on GSD's procurement processes. Objectives of the study are:

-to identify means of improving service delivery and information exchange between GSD, its suppliers and government departments using Internet and related technologies;

-to enhance the efficiency of GSD's procurement process; and

-to build the foundation for broader development of Internet usage within Government.

The Works Bureau which oversees the public works projects is planning to make use of information technology to facilitate tenders for works contracts. The trial project will include four phases:

(1) All tender notices and awards on works contracts of the HKSAR will be publicized on the WB Homepage;

(2)contract documents now in hard copies will be converted into the appropriate software format;

(3)trial on computerization of tender processing will be conducted;

(4)a study on tendering through the Internet will be conducted.

(ii)Could those Parties who have experience with electronic commerce provide information on such experiences?

N.A.

*WORLD TRADE
ORGANIZATION*

RESTRICTED

GPA/W/47/Add.1

23 September 1997

(97-3933)

Original: English

Committee on Government Procurement

MODIFICATION TO APPENDIX I OF SWITZERLAND

Communication from Switzerland

Addendum

The following communication from the Permanent Mission of Switzerland was received on 15 September 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:6(a), the modifications relating to Appendix I will become effective provided there is no objection within 30 days from the date of issue of this document.

Referring to our letter of 4 June 1997, we can inform you that the ratification procedures in relation with the accession of Hong Kong to the WTO Agreement on Government Procurement (GPA) have been completed. Switzerland therefore wishes to modify Appendix I accordingly (see attachment).

./.

ATTACHMENT

Switzerland

Modification to Appendix I

*GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF
ARTICLE III*

Paragraph 1: delete •Hong Kong•.

*WORLD TRADE
ORGANIZATION*

RESTRICTED

GPA/W/51/Add.1

16 September 1997

(97-3704)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDICES I-IV OF THE EUROPEAN
COMMUNITY

Addendum

The following communication, dated 3 September 1997, has been received from the Permanent Mission of the United States to the WTO with the request that it be circulated to the Parties to the Agreement on Government Procurement.

I write to you regarding the recent communication from the European Community regarding modifications to its Appendices I-IV of the Agreement on Government Procurement. This communication was circulated by the Secretariat on 13 August 1997 (GPA/W/51), providing 30 days for other Parties to object prior to the modifications becoming effective. The United States requires more time to review these detailed modifications and, therefore, cannot agree to their taking effect upon expiration of the 30-day review period. We will endeavour to complete our review prior to the next meeting of the Committee on Government Procurement on 29 September 1997.

RESTRICTED

GPA/W/56
5 September 1997

WORLD TRADE
ORGANIZATION

(97-3581)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF HONG KONG, CHINA

Notification from Hong Kong, China under Article XXIV:6(a)

The attached notification from the Hong Kong Economic and Trade Office was received on 4 September 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), the modifications relating to Appendix I will become effective provided there is no objection within 30 days from the date of issue of this document.

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement (1994), I have the honour to submit to the Committee on Government Procurement the enclosed modifications to Appendix I of Hong Kong, China. The reason for the modifications is that the names of the entities concerned have recently been changed.

ANNEX 1

<u><i>Existing Name of Entities in Appendix I, Annex 1</i></u>	<u><i>New Name of Entities in Appendix I, Annex 1</i></u>
<i>Audit Department</i>	<i>Audit Commission</i>
<i>Legal Department</i>	<i>Department of Justice</i>
<i>Office of the Commissioner for Administrative Complaints</i>	<i>Office of the Ombudsman</i>
<i>Royal Hong Kong Police Force (including Royal Hong Kong Auxiliary Police Force)</i>	<i>Hong Kong Police Force (including Hong Kong Auxiliary Police Force)</i>
<i>Royal Observatory</i>	<i>Hong Kong Observatory</i>

ANNEX 2

<u>Existing Name of Entities in Appendix I, Annex 2</u>	<u>New Name of Entities in Appendix I, Annex 2</u>
<i>Urban Council and Urban Services Department</i>	<i>Provisional Urban Council and Urban Services Department</i>
<i>Regional Council and Regional Services Department</i>	<i>Provisional Regional Council and Regional Services Department</i>

RESTRICTED

GPA/W/55
28 August 1997

WORLD TRADE
ORGANIZATION

(97-3510)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF THE EUROPEAN COMMUNITY

Notification from the European Community under Article XXIV:6(a)

The attached notification from the Permanent Delegation of the European Community was received on 27 August 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), the modifications relating to Appendix I will become effective provided there is no objection within 30 days from the date of issue of this document.

I am writing to you concerning modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between the European Community and the State of Israel which came into force on 1 August 1997.¹ Article XXIV of the Agreement contains the provisions on its entry into force and it is in conformity with paragraph 6(a) of Article XXIV that I hereby inform you of modifications to the EC General Notes in Appendix I of the Agreement.

In accordance with our understanding with the Government of the State of Israel you should receive a parallel communication from the Delegation of the State of Israel. The enclosed communication should be circulated to the Parties of the Committee on Government Procurement in a document dated 28 August 1997 so that the modification will become effective 30 days from that date provided there is no objection.

¹Published in the Official Journal of the European Communities L202/85 of 30 July 1997.

ANNEX

Communication from the European Community with Respect to Modifications to
Appendix I
of the Agreement on Government Procurement

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the European Community submits to the Committee on Government Procurement the following modification to the EC General Notes in Appendix I of the Agreement:

In General Note 1, second indent, letter (e) to read:

- (urban transport) to the suppliers and service providers of Canada, Japan, Korea and the USA; to the suppliers and service providers of Israel, as regards bus services•.*

RESTRICTED

GPA/W/54
27 August 1997

WORLD TRADE
ORGANIZATION

(97-3497)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF ISRAEL

Notification from Israel under Article XXIV:6(a)

The following notification from the Permanent Mission of Israel was received on 25 August 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement. In accordance with Article XXIV:6(a), the modifications relating to Appendix I will become effective provided there is no objection within 30 days from the date of issue of this document.

I am writing to you concerning certain modifications to Appendix I of the Government Procurement Agreement, which follow from an agreement reached between Israel and the European Community. In conformity with paragraph 6(a) of Article XXIV, I hereby inform you of the following modifications to Israel's Annexes 1, 3 and 4 in Appendix I of the Agreement.

1) *Amend Note to Annex 1 regarding medical dressings as follows:*

Medical dressings (bandages, adhesive tapes excluding gauze bandage and gauze pads).

2) *In Annex 3, relabel Note (3) as Note (2a).*

3) *Add to the List of Entities in Annex 3:*

All entities operating in the field of urban transport, except those operating in the field of bus services (2b).

4) *Add Note (2b) to Annex 3 as follows:*

With regard to procurement by entities operating in the field of urban transport, except those operating in the field of bus services, this Agreement shall apply only to goods and services, including construction services, of the European Community.

Israel is willing to negotiate the opening of procurement by entities operating in the field of urban transport, except those operating in the field of bus services, to other Parties to the Agreement under the condition of reciprocity.

5) *Add the following services to the list of Annex 4:*

6112, 6122, 633, 886 Maintenance and repair services

874, 82201-82206 Building-cleaning services and property management services

88442 Publishing and printing services on a fee or contract basis

RESTRICTED

GPA/W/52
22 August 1997

WORLD TRADE
ORGANIZATION

(97-3456)

Original: English

Committee on Government Procurement

RESPONSES TO THE REQUEST FOR INFORMATION PURSUANT TO
PARAGRAPHS 1 AND 3 OF ARTICLE XIX OF THE
AGREEMENT ON GOVERNMENT PROCUREMENT

Communication from the United States

The following responses to the request for information by the Government of Japan pursuant to paragraphs 1 and 3 of Article XIX of the Agreement on Government Procurement, dated 8 August 1997, have been received from the Permanent Mission of the United States with the request that they be distributed to the Members of the Committee on Government Procurement.¹

The Government of the United States provides the following responses to the questions posed by the Government of Japan in its request for information pursuant to paragraphs 1 and 3 of Article XIX of the Agreement on Government Procurement (document GPA/W/39).

The Government of Japan, pursuant to paragraphs 1 and 3 of Article XIX of the GPA, hereby requests the Government of the United States to provide the following information. This information is needed to determine whether the relevant provisions of the Act are consistent with the requirements of the GPA.

1.A copy of the full text of •An Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar)• enacted on 25 June 1996 by the State of Massachusetts and a copy of the latest restricted purchase list issued by the State.

¹A copy of the Guide for State Procurement Officials• Application of the WTO Agreement on Government Procurement, a list of frequently asked questions by state governments on the implementation of the WTO Agreement on Government Procurement and answers to these are available for consultation in Office 3014.

A copy of the text of the Act is attached.

2.Information on a method of publication of the Act as required by paragraph 1 of Article XIX of the GPA.

Article XIX of the Government Procurement Agreement (GPA) requires that each Party promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them.

Accordingly, the United States has specified in Appendix IV to the GPA that laws, judicial decisions, administrative rulings and procedures regarding government procurement for entities listed in United States Annexes 2 and 3 are available through relevant state and local publications or directly from the listed entities. The laws and regulations governing procurement by the Commonwealth of Massachusetts are contained in Chapters 7 and 29 of the Massachusetts General Laws and the Code of Massachusetts Regulations (801 CMR 21.00). In addition, the Executive Office for Administration and Finance for the Commonwealth of Massachusetts publishes a Policies and Procedures Handbook.

The law enacted by the Commonwealth of Massachusetts (Act Regulating State Contracts with Companies Doing Business with or in Burma [Myanmar]) is codified in section 22 of Chapter 7 of the Massachusetts General Laws. In addition, a summary of the subject law as well as the restricted purchase list established pursuant to the law are published on the internet site for the Commonwealth of Massachusetts Executive Office for Administration and Finance, Operational Services Division. Please refer to the Operational Services Division's internet Home Page at <http://www.magnet.state.ma.us/osd>. Furthermore, a copy of the text of the Act may be obtained at the State House Book Store located at the Massachusetts State House, Boston, Massachusetts 02133. The telephone number for the book store is (617) 722-2834.

3.Information on procedures for renewing the restricted purchase list and the method of publication of this list as required by paragraph 1 of Article XIX of the GPA.

Article XIX of the GPA requires that each Party be prepared, upon request, to explain to any other Party its government procurement procedures.

The restricted purchase list (attached) is divided into four categories: US Companies, non-US companies, the subsidiaries of US companies and the subsidiaries of non-US companies. The restricted purchase list is published on the internet site for the Commonwealth of Massachusetts Executive Office for Administration and Finance, Operational Services Division. Please refer to the Operational Services Division's internet Home Page at

<http://www.magnet.state.ma.us/osd>. The list was updated on 7 March 1997 and will be updated periodically.

4. Information on any communication or guidance between the United States federal agencies and the state agencies of Massachusetts regarding the adoption of procurement procedures and a restricted purchase list as stipulated in the Act.

The United States Government worked closely with state governments throughout the negotiations on the Government Procurement Agreement (GPA) and continues to provide guidance on implementation of the GPA. The United States Government produced and provided to the 37 states listed in the United States Annex 2 a guide for state government procurement officials to application of the GPA. In addition, representatives of the United States Government regularly conduct briefings for state government officials, including the National Governors' Association, the National Conference of State Legislators and the National Association of Attorneys General, and regularly attend conferences held by the National Association of State Procurement Officials.

5. Information on bid challenge procedures available regarding procurement by the executive offices of the State of Massachusetts.

With respect to procurements by Massachusetts executive offices, all suppliers and potential suppliers have access to the court system to challenge procurement procedures or decisions. In addition, suppliers may be given the opportunity for a debriefing during which they may discuss strengths and weaknesses of their proposal with the procuring department.

6. An example of tender documentation stipulating, in accordance with paragraph 2(h) of Article XII of the GPA, the criteria for awarding the contracts to be used in government procurement covered by the Act.

Information forthcoming.

7. An example of a case, if any, in which any tenderer on the restricted purchase list has actually been excluded from consideration for the award of a contract based on Section 22H(a) of the Act, or has been awarded a contract in spite of the legislation.

We are not aware of any cases where a supplier has been excluded from consideration for the award of a contract based on Section 22H(a) of the Act.

8. Information on an explanation concerning the consistency of the requirements under the Act with the following provisions of the GPA:

(a) Article III, paragraph 1

Under the Act, is a supplier of a foreign country which is a Party to the GPA on the restricted purchase list, in terms of requirements for qualifications and

award of the contracts, given a treatment less favourable than that accorded to non-listed suppliers either of the United States or of another party to the GPA?

(b) Article III, paragraph 2(a)

Under the Act, is a locally-established supplier on the restricted purchase list, who is the majority-owned subsidiary of a person whose principal place of business is Myanmar, subject to a less favourable treatment?

(c) Article VIII, paragraph (b)

Does the Act impose on a tendering company conditions which are not essential to ensure the suppliers' capability to fulfil the contract in question?

(d) Article X, paragraph 3

Does the Act virtually limit the number of suppliers qualified to participate in procurement for the reasons other than the efficient operation of the procurement system?

(e) Article XIII, paragraph 4(b)

Pursuant to Sections 22G and 22H(d) of the Act, may the entity not award the contract to the supplier on that list who submitted the lowest bid if there is a responsive and responsible bid which is no more than 10 per cent greater than that lowest bid?

At the request of Japan and the European Community, the United States participated in consultations on 22 July under the Government Procurement Agreement (GPA) and the Understanding on Rules and Procedures Governing the Settlement of Disputes regarding the Massachusetts law. During the consultations, the delegation of Japan incorporated by reference the questions submitted by Japan under Article XIX of the GPA. Because the Massachusetts law is currently the subject of dispute settlement consultations, the United States is presently reviewing these issues and is not in a position to provide responses to these questions at this time.

9. Information on what specific action, if any, the United States Federal Government has taken, or intends to take, in response to:

(a) the current legislation;

(b) a case, if any, in which the United States Federal Government identifies inconsistency with any provision of the GPA.

The United States regrets that Japan and the European Community took the action of requesting dispute settlement consultations regarding the Massachusetts law. Given the shared concerns of Japan, the European Community and the United States regarding the flagrant disregard for human

rights demonstrated by the Burmese regime and our shared interest in encouraging democracy there, we were very disappointed that this action was taken. The United States continues to believe that only by taking unified action to reinforce the international community's message that human rights reform in Burma is imperative will we accomplish our shared objective of encouraging representative government in Burma.

Nevertheless, because the concerns of Japan and the European Community have been brought to the attention of the United States, we are continuing to work with Massachusetts officials to address such concerns. Representatives of the United States Government have had frequent consultations with Massachusetts officials in the Governor's Office, the Massachusetts Attorney General's Office as well as with key Massachusetts legislators.

10. Updated information on similar state laws and regulations enacted or drafted in any other states, or any state legislation to be applied to suppliers doing business with or in any country other than Myanmar.

We are not aware of any laws that have been enacted by state governments other than the Commonwealth of Massachusetts regarding procurement from suppliers doing business with or in Burma.

WORLD TRADE
ORGANIZATION

RESTRICTED

GPA/W/53
22 August 1997

(97-3464)

Original: Spanish

Committee on Government Procurement

APPLICATION FOR ACCESSION TO THE AGREEMENT ON
GOVERNMENT

PROCUREMENT AND REQUEST FOR OBSERVER STATUS IN THE
COMMITTEE ON GOVERNMENT PROCUREMENT

Panama

The following communication, dated 15 August 1997, has been received from the Permanent Mission of the Republic of Panama.

The Permanent Mission of the Republic of Panama to the WTO presents its compliments to the Secretariat of the World Trade Organization and has the honour to communicate the interest of the Government of the Republic of Panama in acceding to the Agreement on Government Procurement (1994), and in participating in the work of the Committee on Government Procurement.

With a view to the negotiations to be held between the Government of the Republic of Panama and the signatories to the aforementioned Agreement, the Government of the Republic of Panama requests the members of the Committee on Government Procurement to grant it observer status in the Committee.

The Government of the Republic of Panama's initial offer was submitted in document GPA/SPEC/3.

RESTRICTED

GPA/W/51
13 August 1997

WORLD TRADE
ORGANIZATION

(97-3373)

Original:

English/French/Spanish
Committee on Government Procurement

MODIFICATIONS TO APPENDICES I-IV OF THE EUROPEAN
COMMUNITY

Communication from the European Community

The attached modifications were communicated by the Permanent Delegation of the European Commission on 3 July and 30 July 1997 with the request that they be circulated to the Parties to the Agreement on Government Procurement (1994).

In accordance with Article XXIV:6(a), these modifications relating to Appendices I-IV will become effective provided there is no objection within 30 days from the date of issue of this document.

I am writing to you concerning the updating of Appendices I to IV of the Government Procurement Agreement for the European Communities, as agreed by the Committee on Government Procurement at its meeting on 24 February 1997 (GPA/M/5 of 11 April 1997).

I have the honour to notify to you herewith the updated versions of these documents.

Explanatory Note

Subject: Appendices of the European Community to the Agreement on Government Procurement.

1. General presentation of all the Appendices in three languages (English, French, Spanish) as the three official languages of WTO are also official languages of the EC.

2. No substantive change in Appendices II to IV. The publications from Austria, Finland and Sweden, however, have been integrated into the Community Appendices, which had not been done in document GPA/W/32.

3. Appendix I, Annex I

-European Community entities: list unchanged.

-State entities: the changes made are the result of ministerial reorganization in certain member States. This does not extend or diminish the European Community's offer.

Austria: bilingual presentation. Changes due to ministerial reorganization.

Belgium: changes due to ministerial reorganization.

Denmark: changes due to ministerial reorganization.

Germany: bilingual presentation. Changes due to ministerial reorganization.

Spain: changes due to ministerial reorganization.

Finland: no changes.

France: no changes.

Greece: bilingual presentation.¹ Changes due to ministerial reorganization.

Ireland: no changes.

Italy: bilingual presentation. Changes due to ministerial reorganization.

Luxembourg: changes due to ministerial reorganization.

Netherlands: bilingual presentation. Changes due to ministerial reorganization.

¹(European Community submission did not allow this.)

Portugal: bilingual presentation. Changes due to ministerial reorganization.

Sweden: changes due to ministerial reorganization.

United Kingdom: changes due to ministerial reorganization and privatization.

The list of equipment purchased by Ministries of Defence has been adapted in order to take account of the Austrian and Swedish lists. It is presented in three languages.

4. *Appendix I, Annex 2*

The definition of a public law body within the meaning of Directive 93|37 of the European Community is included (in comparison with document GPA|W|32, which does not include this definition).

The orientation list attached to the previous version of the annexes can be found in Annex I to this Directive. A copy of the Annex to the Directive is attached. Nevertheless, the list is for guidance. What counts is the definition of a public law body.

If the Annex to this Directive is amended or modified, the Community will notify the changes in due time.

5. *Appendix I, Annex 3*

Paragraph (e) of the list of entities has been amended in order to clarify coverage. This paragraph only covered urban transport (in reference to Annex VII of EC Directive 93|38), but the former wording could be misleading. The new wording proposed clarifies this point.

The relevant annexes to Directive 93|38 are attached for information. These lists are however only for guidance and the definitions that count are those in Annex 3. If the Annexes to this Directive are amended or modified, the Community will notify the changes in due time.

6. *Appendix I, Annex 4*

Version in three languages. The substance remains unchanged.

7. *Appendix I, Annex 5*

The French and Spanish versions only reflect the titles of groups in Division 51, CPC. In any event, the offer does not change.

***APPENDICES TO THE AGREEMENT ON GOVERNMENT
PROCUREMENT***

APPENDICES À L'ACCORD SUR LES MARCHÉS PUBLICS

APÉNDICES AL ACUERDO SOBRE CONTRATACIÓN PÚBLICA

APPENDIX I

Annexes 1 through 5 setting out the scope of this Agreement:

- Annex 1 Central Government Entities*
- Annex 2 Sub-Central Government Entities*
- Annex 3 All Other Entities that Procure in Accordance with the Provisions of this Agreement*
- Annex 4 Services*
- Annex 5 Construction Services*

APPENDICE I

Annexes 1 à 5 définissant la portée du présent accord:

- Annexe 1 Entités du gouvernement central*
- Annexe 2 Entités des gouvernements sous-centraux*
- Annexe 3 Toutes les autres entités qui passent des marchés conformément aux dispositions du présent accord*
- Annexe 4 Services*
- Annexe 5 Services de construction*

APÉNDICE I

Anexos 1 a 5, en los que se establece el alcance del presente Acuerdo:

- Anexo 1 Entidades de los gobiernos centrales*
- Anexo 2 Entidades de los gobiernos subcentrales*
- Anexo 3 Demás entidades que se rigen en sus contratos por las disposiciones del presente Acuerdo*

Anexo 4 Servicios

Anexo 5 Servicios de construcción
PAGES 6-133 OFFSET

RESTRICTED

GPA/W/50

8 August 1997

WORLD TRADE
ORGANIZATION

(97-3364)

Original: English

Committee on Government Procurement

INFORMATION TECHNOLOGY AND PUBLIC PROCUREMENT

Contribution from the European Community

The following communication from the Permanent Delegation of the European Commission, dated 30 July 1997, has been received with the request that it be distributed to the members of the Committee.

1) Introduction

This document presents the EC views on some aspects of information technology linked to public procurement in order to contribute to the Committee's debate on this issue. It builds on the papers previously tabled by the Community and other delegations, as well as the Secretariat and seeks to stimulate debate on certain issues which to date have been less fully addressed.

In particular, the paper will focus on two aspects. It is true that the use of information technology advances can help to improve the present procurement system and that the present rules do not take sufficient account of those advances. However, the debate does not necessarily end at that point. A wider use of electronic tools could put into question the traditional approach of government purchasing, and reflection on this issue is also needed. Finally, one cannot forget that non-discrimination is a fundamental principle of the GPA, and its respect should be ensured.

2) Use of electronic tools to improve the current government procurement system

Today's information technology advances could provide the tools to create significant improvements in providing relevant information about procurement opportunities to potential suppliers.

Advertising opportunities and the transmission of documents between bidders and purchasers are generally considered as the main areas in which information technology can play a role. However, it is also widely recognized that the various legal frameworks are not yet adapted to the use of information technology. As regards the GPA, this has been already highlighted by the Secretariat's paper of 22 August 1996 and the Canadian non-paper recently distributed. It should also be noted that the full benefit of this technology could only be achieved if agreement on harmonized standards for coded information can be reached. This would facilitate the use of search devices to browse through the information contained in the different databases. Furthermore, the EC would like to suggest the use of a harmonized multilingual procurement vocabulary system to describe the purchases, as has been done at EC level with the CPV. Security of data transmission also needs to be ensured.

Two of the categories defined in the Secretariat's paper are of particular interest. They relate to the wider use of selective tendering and the implications of information technology for the deadlines laid down in the Agreement. As regards the use of selective tendering, information technology could put into question the present scheme. This issue will be dealt with in the following section.

It has been stated that deadlines could be shortened to take account of the increasing use of information technology. As it is recognized by Article XI of the GPA, any prescribed time-limit shall be adequate to allow suppliers to prepare and submit tenders. Information technology advances certainly help to shorten the time for submission, publication and dissemination of tenders. However, the time needed to prepare tenders is likely to remain the same in most cases. As long as submission by normal mail and electronic tools coexists, it could be discussed if entities using electronic transmission should be offered the advantage of shorter deadlines.

3) New schemes of government purchasing as a result of wide use of electronic tools

Information technology could also revolutionize the whole way of doing business between purchasing entities and suppliers. This path opens the way to full electronic tendering or electronic commerce systems. It is not only in the context of relations between purchasers and suppliers that changes are to be expected. In addition, new electronic tools provide opportunities for purchasing bodies to cooperate via the exchange of information, ideas and experiences. This option would require further consideration on security aspects, interoperability of systems, as well as on legal questions such as the acceptance of digital signatures.

The extent to which classic rules of public procurement are able to face these new challenges needs discussion. Some examples are provided below which show that the traditional behaviour of contracting entities inviting suppliers to tender could be put into question by new technological opportunities. These examples could serve as the basis for debate in the Committee.

The traditional view of public procurement is a procedure in which the purchasing entity advertises a particular contract and waits for bids to be submitted, in other words, the potential supplier searches for a purchaser. However, information technology could also facilitate the reverse approach, whereby the purchasing entity searches actively for suitable suppliers in order to increase competition. This is particularly linked to qualification systems. In the traditional approach, qualification systems are demand-driven, at the request of contracting entities or public authorities. However, the use of information technology for qualification could facilitate the development of different approaches. On the one hand, lists of selected suppliers could be made accessible to other contracting entities, leading to the establishment of effective and efficient harmonized systems. On the other hand, one should also not exclude the possibility that suppliers themselves may wish to create a sort of private qualification system providing a quality label and competing among themselves. Therefore, information technology allows contracting entities to increase competition among qualified suppliers or among different systems of qualification. In that sense, a key issue for debate should be the mutual-recognition principle if discrimination is to be avoided.

Not only could information technology help contracting entities to identify suitable suppliers, it could also facilitate contracting entities' direct purchases. Similarly to normal markets, virtual procurement markets could be imagined. In such a framework, entities would actually directly purchase in an electronic market where the system would identify, based on supplier information available on the World Wide Web, the best offer. Information technology could help to identify opportunities and where to find the best value for money. This kind of virtual market could be quite efficient for purchases of off-the-shelf products, where price is the major criterion for the award of the contract and the contract value is low.

4) Ensuring non-discrimination

A key issue for the Committee's debate on the use of information technology systems in public procurement remains how to ensure the transition to a streamlined, less cumbersome and more focused procurement process in such a way that all players, whether purchasers or suppliers, will benefit from the use of new electronic tools in government procurement. In particular, the use of information technology should promote the aims of open, non-discriminatory and efficient government procurement.

As it is stated in the GPA Secretariat's paper of 10 May 1996 (GPA|W|15), the increased flow of information, if not properly handled, could put foreign suppliers at a disadvantage, even where formally applied on a non-discriminatory basis.

At present, non-discrimination should address at least the questions of the ease of access to information sources (including establishing links between databases and ensuring interoperability) and the ease of use of information tools (including search devices, common nomenclatures ...).

There is another element which has to be taken into account in the use of advanced information technology tools. Indeed, one should avoid that it creates or widens the gap between entities and suppliers in particular SMEs, which can effectively operate in the information age, and those which cannot, thus creating a competitive advantage in favour of the former group. This gap also appears at international level given that not all countries are at the same level of social and technological development with respect to the information society. Therefore, consideration would have to be given as to how to take account of the differing levels to which GPA members make use of information technology, as well as the potential needs of newly acceding members in the future.

5) Conclusions

The European Community is convinced that a political discussion on the role information technology should play in the review process of the Agreement is necessary before the Committee considers specific changes to existing articles of the Agreement. This debate will have to focus on ensuring non-discrimination.

The choices made at this stage will determine the extent to which the aim of simplifying the Agreement in order to make it more attractive to signatory candidates will be attained.

This paper mentions the major technical and legal questions arising with the use of information technology in government procurement. The European Community requests that the Committee deal with these points in its discussions on these issues. The EC will at that stage table concrete solutions for these questions.

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**WORLD TRADE
ORGANIZATION**

GPA/W/12/Add.8
30 July 1997

(97-3241)

Original: English

Committee on Government Procurement

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED

IN NATIONAL CURRENCIES FOR 1996/1997

Hong Kong, China

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The information notified by Hong Kong, China is reproduced below.

1) Calculation of Threshold Figures in National Currency

Annex 1 Entities	Threshold value (SDR)	Threshold value in HK Dollar
1. Goods and services other than construction services	130,000	1,474,000
2. Construction services	5,000,000	56,678,000

Annex 2 Entities	Threshold value (SDR)	Threshold value in HK Dollar
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<i>1. Goods and services other than construction services</i>	<i>200,000</i>	<i>2,267,000</i>
<i>2. Construction services</i>	<i>5,000,000</i>	<i>56,678,000</i>

<i>Annex 3 Entities</i>	<i>Threshold value (SDR)</i>	<i>Threshold value in HK Dollars</i>
1. <i>Goods and services other than construction services</i>	400,000	4,534,000
2. <i>Construction services</i>	5,000,000	56,678,000

2) Method of Calculation

The calculation of national threshold is based on the monthly average exchange rate of SDR to Hong Kong Dollar over 24 months from November 1993 to October 1995.

<i>Month</i>	<i>Exchange rate of HKD to SDR</i>	<i>Month</i>	<i>Exchange rate of HKD to SDR</i>
November 1993	10.73370	November 1994	11.37700
December 1993	10.69354	December 1994	11.23536
January 1994	10.60903	January 1995	11.35223
February 1994	10.72622	February 1995	11.42914
March 1994	10.83267	March 1995	11.87715
April 1994	10.84973	April 1995	12.18996
May 1994	10.93143	May 1995	12.04796
June 1994	11.03316	June 1995	12.09522
July 1994	11.25841	July 1995	12.05310
August 1994	11.23786	August 1995	11.69739
September 1994	11.31104	September 1995	11.48186
October 1994	11.41540	October 1995	11.58648

The average exchange rate of HKD to SDR is: HK\$272.05504/24 months • HK\$11.33563.

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GPA/W/4

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17 July

1997

ORGANIZACIÓN MUNDIAL DEL COMERCIO

(97-3035)

Original:
French/**Committee on Government Procurement**

français/

francés

MODIFICATIONS TO APPENDIX I OF SWITZERLAND*Notification from Switzerland under Article XXIV:6(a)

The attached notification from the Permanent Mission of Switzerland was received on 30 May 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), the modifications relating to Appendix I will become effective provided there is no objection within 30 days from the date of issue of this document.

Comité des marchés publicsMODIFICATIONS DE L'APPENDICE I CONCERNANT LA SUISSE*Notification de la Suisse au titre de l'article XXIV:6 a)

Le Secrétariat a reçu le 30 mai 1997 la notification ci-jointe de la Mission permanente de la Suisse, qui lui a demandé de la distribuer aux Parties à l'Accord

*French only/français seulement/solamente en francés.

sur les marchés publics (1994). Conformément à l'article XXIV:6 a), les modifications concernant l'Appendice I prendront effet à la condition qu'aucune objection n'ait été faite dans un délai de 30 jours à compter de la date de distribution du présent document.

Comité de Contratación Pública

ENMIENDAS AL APÉNDICE I DE SUIZA*

Notificación de Suiza de conformidad con
el párrafo 6 a) del artículo XXIV

El 30 de mayo de 1997 se recibió de la Misión Permanente de Suiza la notificación adjunta, con la petición de que se distribuyera a las Partes en el Acuerdo sobre Contratación Pública (1994). De conformidad con el párrafo 6 a) del artículo XXIV, las enmiendas que afecten al Apéndice I surtirán efecto a condición de que en un plazo de 30 días contados a partir de la fecha de publicación de este documento no se presente objeción a ellas.

SUISSE*(La version française fait foi)*ANNEXE 1Entités du gouvernement fédéral qui passent des marchés
conformément aux dispositions du présent accord

<i>Fournitures DTS</i>	<i>Valeur de seuil: 130 000</i>
<i>Services (spécifiés à l'annexe 4) 130 000 DTS</i>	<i>Valeur de seuil:</i>
<i>Services de construction (spécifiés à l'annexe 5) 5 000 000 DTS</i>	<i>Valeur de seuil:</i>

*Liste des entités couvrant tous les Départements fédéraux suisses:**Administration centrale du Groupement de l'armement¹**Administration fédérale des contributions**Administration fédérale des douanes¹**Administration fédérale des finances**Archives fédérales**Bibliothèque centrale du Parlement et de l'administration fédérale**Caisse fédérale d'assurance**Commandement du Corps des gardes fortification¹**Commandement des écoles d'état-major et de commandants¹**Commission de la concurrence*

¹Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Commission fédérale des banques

Contrôle de l'armement et la sauvegarde de la paix¹

Contrôle fédéral des finances

Direction de la coopération au développement, de l'aide humanitaire et de la coopération technique avec l'Europe centrale et orientale

Direction du droit international public

Direction politique

Ecole fédérale de sport de Macolin

Ecoles polytechniques fédérales et établissements annexes

Entreprises des postes²

Etat-major de l'instruction³

Groupe des affaires sanitaires¹

Groupe de l'aide au commandement¹

Groupe de la direction de l'instruction¹

Groupe logistique¹

Groupe des opérations¹

Groupe des opérations des Forces aériennes¹

Groupe du personnel de l'armée¹

Groupe du personnel enseignant¹

Groupe planification¹

¹Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

²Pour autant que l'entité ne soit pas en concurrence avec des entreprises auxquelles le présent accord n'est pas applicable.

Groupe renseignements¹

Institut fédéral pour l'aménagement, l'épuration et la protection des eaux

Institut fédéral de recherches sur la forêt, la neige et le paysage

Institut Paul Scherrer

Institut suisse de météorologie

Laboratoire fédéral d'essai des matériaux et de recherches

Ministère public de la Confédération

Monnaie

Office de l'auditeur en chef¹

Office fédéral des affaires économiques extérieures

Office fédéral de l'agriculture

Office fédéral de l'aménagement du territoire

Office fédéral pour l'approvisionnement économique du pays

Office fédéral des armes de combat¹

Office fédéral des armes et des services d'appui¹

Office fédéral des armes et des services de la logistique¹

Office fédéral de l'assurance militaire¹

Office fédéral des assurances privées

Office fédéral des assurances sociales

Office fédéral de l'aviation civile

Office fédéral de la communication

¹Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Office des constructions fédérales

Office fédéral de la culture

Office fédéral de l'économie des eaux

Office fédéral de l'éducation et de la science

Office fédéral de l'énergie

Office fédéral de l'environnement, des forêts et du paysage

Office fédéral des étrangers

Office fédéral des exploitations des Forces aériennes¹

Office des exploitations des Forces terrestres¹

Office central fédéral des imprimés et du matériel

Office fédéral de l'industrie, des arts et métiers et du travail

Office fédéral de l'informatique

Office fédéral de l'instruction des Forces aériennes¹

Office fédéral de la justice

Office fédéral du logement

Office fédéral du matériel d'armée et des constructions⁵

Office fédéral de métrologie

Office fédéral du personnel

Office fédéral de la police

Office fédéral de la protection civile¹

Office fédéral des questions conjoncturelles

¹Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes frontière et des douaniers.)

Office fédéral des réfugiés

Office fédéral des routes

Office fédéral de la santé publique

Office fédéral de la statistique

Office fédéral des systèmes d'armes des Forces aériennes et des systèmes de commandement¹

Office fédéral des systèmes d'armes et des munitions¹

Office fédéral de la topographie

Office fédéral des transports

Office vétérinaire fédéral

Office central de la défense¹

Régie fédérale des alcools

Services centraux de l'état-major général¹

Services centraux des Forces aériennes¹

Services centraux des Forces terrestres¹

Services du Parlement

Note relative à l'annexe 1

Le présent accord ne s'applique pas aux marchés passés par des entités énumérées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

RESTRICTED

GPA/W/49
30 June 1997

WORLD TRADE
ORGANIZATION

(97-2758)

Original: Spanish

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Chile

The following communication, dated 24 June 1997, has been received from the Permanent Mission of Chile.

I refer to your communication in document WT/L/206 and the Decision (GPA/1) inviting Members of the World Trade Organization (WTO) not Parties to the Agreement on Government Procurement (GPA 1994) to participate as observers in the discussions on revision of the GPA (1994) in accordance with Article XXIV.7.

In this regard the Government of Chile wishes to request to be allowed to participate as an observer in the work of the Committee.

N

RESTRICTED

GPA/W/48
23 June 1997

WORLD TRADE
ORGANIZATION

(97-2581)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Poland

The following communication, dated 13 June 1997, has been received from the Permanent Representative of the Republic of Poland.

With reference to document WT/L/206, indicating the readiness of Parties to the Agreement on Government Procurement (GPA) to welcome other WTO Members to follow the work of the Committee on Government Procurement, I have the honour to inform you that Poland wishes to have observer status in the Committee.

RESTRICTED

GPA/W/46
12 June 1997

WORLD TRADE
ORGANIZATION

(97-2425)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF NORWAY

Notification from Norway under Article XXIV:6(a)

The following notification from the Permanent Representative of Norway was received on 5 June 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). In accordance with Article XXIV:6(a), the modifications relating to Appendix I will become effective provided there is no objection within 30 days from the date of issue of this document.

With reference to Appendix I, Annexes 1-3 of Norway, please find enclosed a list of changes in the Norwegian entity list.

Under •List of Entities• the present wording •The following contracting authorities of the State• should be changed to read: •Central government entities including:•.

The main reason for the adjustments is the reorganizing of Norwegian governmental agencies. Some agencies have closed down; some new ones have been established and some were left out in the previous notification due to an oversight. The list is still not complete and we have therefore made the above-mentioned amendment of the heading.

ANNEX 1

•The following contracting authorities of the State• under •List of Entities• shall be altered to •Central government entities including•:

Changes in the entity list:

Existing name in Norwegian in Appendix I, Annex 1	Existing name in Norwegian in Appendix I, Annex 1 shall be changed to	English name
Administrasjonsdepartementet	Planleggings- og samordningsdepartementet	Ministry of National Planning and Coordination
Pristilsynet	Konkurransetilsynet	Norwegian Competition Authority
New entity, not listed in Appendix I, Annex 1	Fylkesmannsembetene	The County Governors
Statsbygg, shall be listed here, not in the end		The Directorate of Public Construction and Property
Forsvarsdepartementet		Ministry of Defence
New entity, not listed in Appendix I, Annex 1	Forsvarets bygningstjeneste	Norwegian Defence Construction Service
New entity, not listed in Appendix I, Annex 1	Forsvarets tele- og datatjeneste	Norwegian Defence Communications and Data Services Administration
Justis- og politidepartementet		Ministry of Justice (and the Police)
Statsadvokatembetene:	Statsadvokatembetene	Offices of the District Public Prosecutor
Eidsivating		
Vestfold og Telemark		

Existing name in Norwegian in Appendix I, Annex 1	Existing name in Norwegian in Appendix I, Annex 1 shall be changed to	English name
Agder		
Rogaland		
Hordaland		
Møre og Romsdal, Sogn og Fjordane		
Trondheim		
Nordland og Finnmark		
Kirke- utdannings- og forskningsdepartementet		Ministry of Education, Research and Church Affairs
Mellomkirkelig råd	None - does no longer exist	None - does no longer exist
New entity, not listed in Appendix I, Annex 1	Bispedømmerådet	Diocesan Council
New entity, not listed in Appendix I, Annex 1	Nidarosdomens restaureringsarbeider	The Restoration Workshop of Nidaros Cathedral
Kommunal- og arbeidsdepartementet		Ministry of Local Government and Labour
Arbeidstilsynet	Direktoratet for arbeidstilsynet	Norwegian Directorate of Labour Inspection
New entity, not listed in Appendix I, Annex 1	Produkt- og elektrisitetstilsynet	The Norwegian Directorate for Product and Electrical Safety

Existing name in Norwegian in Appendix I, Annex 1	Existing name in Norwegian in Appendix I, Annex 1 shall be changed to	English name
Kulturdepartementet		Ministry of Cultural Affairs
Statsarkivene i:	Statsarkivene	National Archives
Oslo		
Hamar		
Kongsberg		
Kristiansand		
Stavanger		
Bergen		
Trondheim		
Tromsø		
Landbruksdepartementet		Ministry of Agriculture
Norsk institutt for skogforskning	None - is not an entity any longer	None - is not an entity any longer
Statens forskningsstasjoner for landbruket	None - is not an entity any longer	None - is not an entity any longer
Statens tilsynsinstitusjoner for landbruket	Statens landbrukstilsyn	Norwegian Agricultural Inspection Service
Statens naturskadefond	None - is not an entity	None - is not an entity
New entity, not listed in Appendix I, Annex 1	Statens dyrehelsetilsyn	Norwegian Animal Health Authority
Nærings- og energidepartementet	Nærings- og handelsdepartementet	Ministry of Trade and Industry

Existing name in Norwegian in Appendix I, Annex 1	Existing name in Norwegian in Appendix I, Annex 1 shall be changed to	English name
Direktoratet for måleteknikk	Justervesenet	Norwegian Metrology and Accreditation Service
Norges vassdrags- og energiverk	Shall be listed under Ministry of Oil and Energy	
Oljedirektoratet	Shall be listed under Ministry of Oil and Energy	
New entity, not listed in Appendix I, Annex 1	Bergvesenet	Directorate of Mining
New entity, not listed in Appendix I, Annex 1	Skipsregistrene	Norwegian International Ship Register
Sjøfartsdirektoratet	Shall be listed here, not under the Ministry of Foreign Affairs	Norwegian Maritime Directorate
Olje- og energidepartementet	New ministry, not listed in Appendix I, Annex 1	Ministry of Oil and Energy
Norges vassdrags- og energiverk		Norwegian Water Resources and Energy Administration
Oljedirektoratet		Norwegian Petroleum Directorate
Samferdselsdepartementet		Ministry of Transport and Communication
Vegdirektoratet	Statens vegvesen	Public Roads Administration
New entity, not listed in Appendix I, Annex 1	Statens teleforvaltning	Norwegian Telecommunications Authority

Existing name in Norwegian in Appendix I, Annex 1	Existing name in Norwegian in Appendix I, Annex 1 shall be changed to	English name
Sosialdepartementet		Ministry of Health and Social Affairs
Helsedirektoratet	Statens helsetilsyn	Norwegian Board of Health
New entity, not listed in Appendix I, Annex 1	Radiumhospitalet	Norwegian Radium Hospital
Utenriksdepartementet		Ministry of Foreign Affairs
Norimpod	None - does not exist anymore	None - does not exist anymore
Sjøfartsdirektoratet	Shall now be listed under the Ministry of Trade and Industry	Norwegian Maritime Directorate
Høyesterett	Domstolene	Courts of law

ANNEX 2

Under categories a number of state banks are listed up. Due to frequent reorganizations of these banks, omit the names of the individual banks and just keep the heading: statsbanker (State Banks).

ANNEX 3

The title •List of Entities• should be changed to •List of Sectors•.

The asterisk () following the title Annex 3* and the note referring to Parliamentary approval of additional EEA-legislation is no longer valid and must be removed.*

RESTRICTED

GPA/W/44
9 June 1997

WORLD TRADE
ORGANIZATION

(97-2374)

Original: English

Committee on Government Procurement

MODIFICATION TO APPENDIX I OF THE EUROPEAN COMMUNITY

Communication from the European Community

The following communication from the Permanent Delegation of the European Community was received on 2 June 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I have the honour to inform you that the European Communities have taken note of the information circulated in WTO document GPA/14 of 23 May 1997 that the Government of Hong Kong has deposited its instrument of accession to the Agreement on Government Procurement with the WTO (WT/Let/141) and that the Agreement will enter into force for Hong Kong on 19 June 1997.

In the light of this situation, I am writing to you concerning a consequential modification to the General Notes in Appendix I of the European Communities to the Government Procurement Agreement according to Article XXIV of the Agreement which contains the provisions on modifications to the Appendices. This communication is to be considered a formal notification under sub-paragraph (a) of paragraph 6 of Article XXIV of the Agreement.

The modification which the European Communities hereby notify is that the words: •Hong Kong• be deleted from the European Communities General Note 1 in Appendix I, third indent, point (b).

RESTRICTED

GPA/W/47
9 June 1997

WORLD TRADE
ORGANIZATION

(97-2375)

Original: English

Committee on Government Procurement

MODIFICATION TO APPENDIX I OF SWITZERLAND

Communication from Switzerland

The following communication from the Permanent Mission of Switzerland was received on 6 June 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Switzerland has taken notice of the instrument of accession to the WTO Agreement on Government Procurement (GPA) deposited by the Government of Hong Kong with the Director-General of the WTO on 20 May 1997, and hereby notifies that it will extend the benefits of the GPA to the suppliers and service providers of Hong Kong with regard to the award of contracts by entities in the electricity sector under the conditions laid down in the Swiss Appendix I. The extension of these benefits will enter into force as soon as the internal ratification procedures will be completed. These ratification procedures are expected to be completed by September 1997.

RESTRICTED

GPA/W/43
30 May 1997

WORLD TRADE
ORGANIZATION

(97-2264)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF NORWAY

Communication from Norway

The following communication from the Permanent Representative of Norway was received on 28 May 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

On the occasion of the deposit of the instrument of accession by the Government of Hong Kong to the Agreement on Government Procurement on 20 May 1997, the Norwegian Government hereby notifies the WTO that the reference to Hong Kong regarding the derogation from Article III as stated in General Note no. 1 of Appendix I is no longer applicable as of the date when the agreement enters into force for Hong Kong, i.e. 19 June 1997.

The WTO is kindly asked to inform Members of the Committee on Government Procurement that in General Note 1, •Hong Kong• should be deleted as regards the award of contracts by entities listed in Annex 3, paragraph 1 with respect to the suppliers and service providers in the electricity sector.

RESTRICTED

GPA/W/41
23 May 1997

WORLD TRADE
ORGANIZATION

(97-2179)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF THE UNITED STATES

Communication from the United States

The following communication from the Permanent Representative of the United States to the WTO was received on 23 May 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between the United States of America and Switzerland. Article XXIV of the Agreement contains the provisions on its entry into force and it is in conformity with paragraph 6(a) of Article XXIV that I hereby inform you of modifications to the United States General Notes in Appendix I of the Agreement.

In accordance with our understanding with the Government of Switzerland, you should today receive a parallel communication from the Swiss Delegation.

The enclosed communication should be circulated to Members of the Committee on Government Procurement in a document dated 23 May 1997 so that the modification will become effective 30 days from that date provided there is no objection.

ANNEX

COMMUNICATION FROM THE UNITED STATES WITH RESPECT TO
MODIFICATIONS TO APPENDIX I OF THE AGREEMENT ON
GOVERNMENT PROCUREMENT

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of the United States of America submits to the Committee on Government Procurement the following modification of a minor nature to the United States General Notes in Appendix I of the Agreement:

In General Note 5, delete •Switzerland•.

ATTACHMENT

AMENDMENTS TO THE SWISS APPENDIX I
WTO GOVERNMENT PROCUREMENT AGREEMENT

- 1. In General Note 1, delete •United States• with respect to entities in Annex 2 and entities in the electricity and port sectors.*

RESTRICTED

GPA/W/42
23 May 1997

WORLD TRADE
ORGANIZATION

(97-2180)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF SWITZERLAND

Communication from Switzerland

The following communication from the Permanent Mission of Switzerland was received on 23 May 1997, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between Switzerland and the United States of America. Article XXIV of the Agreement contains the provisions on its entry into force and it is in conformity with paragraph 6(a) of Article XXIV that I hereby inform you of modifications to the Swiss General Notes in Appendix I of the Agreement.

In accordance with our understanding with the Government of the United States of America, you should today receive a parallel communication from the Delegation of the United States of America.

The enclosed communication should be circulated to Members of the Committee on Government Procurement in a document dated 23 May 1997 so that the modification will become effective 30 days from that date provided there is no objection.

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ANNEX

COMMUNICATION FROM SWITZERLAND WITH RESPECT TO
MODIFICATIONS
TO APPENDIX I OF THE AGREEMENT ON GOVERNMENT
PROCUREMENT

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Switzerland submits to the Committee on Government Procurement the following modification to the Swiss General Notes in Appendix I of the Agreement:

In General Note 1, delete •United States• with respect to entities in Annex 2 and entities in the electricity and port sectors.

RESTRICTED

GPA/W/39
17 March 1997

WORLD TRADE
ORGANIZATION

(97-1060)

Original: English

Committee on Government Procurement

REQUEST FOR INFORMATION PURSUANT TO PARAGRAPHS 1
AND 3 OF ARTICLE XIX OF THE AGREEMENT
ON GOVERNMENT PROCUREMENT

Communication from Japan

The following communication, dated 10 March 1997, has been received from the delegation of Japan with the request that it be distributed to the Members of the Committee on Government Procurement.

The Government of Japan (GOJ) reiterates its concern about consistency with the WTO Agreement on Government Procurement (GPA) of the application and implementation of the •Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar)• (hereinafter referred to as the •Act•) enacted on 25 June 1996 by the State of Massachusetts.

The Act effectively restricts state agencies of Massachusetts including all the executive offices to procure any goods or services from any person on the restricted purchase list established and maintained by the State.

It is the GOJ's understanding that all of the eleven executive offices in Massachusetts covered under the United States commitment specified in Annex 2 in Appendix I of the GPA are currently subject to the Act, and that listed entities include more than thirty Japanese-owned companies.

The GOJ, pursuant to paragraphs 1 and 3 of Article XIX of the GPA, hereby requests the Government of the United States to provide the following information. This information is needed to determine whether the relevant provisions of the Act are consistent with the requirements of the GPA.

- (1) *A copy of the full text of •An Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar)• enacted on 25 June 1996 by the State of Massachusetts and a copy of the latest restricted purchase list issued by the State.*
- (2) *Information on a method of publication of the Act as required by paragraph 1 of Article XIX of the GPA.*
- (3) *Information on procedures for renewing the restricted purchase list and the method of publication of this list as required by paragraph 1 of Article XIX of the GPA.*
- (4) *Information on any communication or guidance between the United States federal agencies and the state agencies of Massachusetts regarding the adoption of procurement procedures and a restricted purchase list as stipulated in the Act.*
- (5) *Information on bid challenge procedures available regarding procurement by the executive offices of the State of Massachusetts.*
- (6) *An example of tender documentation stipulating, in accordance with paragraph 2(h) of Article XII of the GPA, the criteria for awarding the contracts to be used in government procurement covered by the Act.*
- (7) *An example of a case, if any, in which any tenderer on the restricted purchase list has actually been excluded from consideration for the award of a contract based on Section 22H(a) of the Act, or has been awarded a contract in spite of the legislation.*
- (8) *Information on an explanation concerning the consistency of the requirements under the Act with the following provisions of the GPA:*

(a) Article III, paragraph 1

Under the Act, is a supplier of a foreign country which is a Party to the GPA on the restricted purchase list, in terms of requirements for qualifications and award of the contracts, given a treatment less favourable than that accorded to non-listed suppliers either of the United States or of another party to the GPA?

(b) Article III, paragraph 2(a)

Under the Act, is a locally-established supplier on the restricted purchase list, who is the majority-owned subsidiary of a person whose principal place of business is Myanmar, subject to a less favourable treatment?

(c) Article VIII, paragraph (b)

Does the Act impose on a tendering company conditions which are not essential to ensure the suppliers' capability to fulfil the contract in question?

(d) Article X, paragraph 3

Does the Act virtually limit the number of suppliers qualified to participate in procurement for the reasons other than the efficient operation of the procurement system?

(e) Article XIII, paragraph 4(b)

Pursuant to Sections 22G and 22H(d) of the Act, may the entity not award the contract to the supplier on that list who submitted the lowest bid if there is a responsive and responsible bid which is no more than 10 per cent greater than that lowest bid?

(9) Information on what specific action, if any, the United States Federal Government has taken, or intends to take, in response to:

(a) the current legislation;

(b) a case, if any, in which the United States Federal Government identifies inconsistency with any provision of the GPA.

(10) Updated information on similar state laws and regulations enacted or drafted in any other states, or any state legislation to be applied to suppliers doing business with or in any country other than Myanmar.

If any of the documents or information provided involves confidentiality, the GOJ undertakes to respect such confidentiality and to use such documents and information for the sole purpose of determining whether the relevant provisions of the Act are consistent with the requirements of the GPA. As provided for under paragraph 2 of Article XIX of the GPA, if release of the documents and information would prejudice competition in future procurement, the GOJ will consult with the United States Government prior to release.

RESTRICTED

GPA/W/40
17 March 1997

WORLD TRADE
ORGANIZATION

(97-1067)

Committee on Government Procurement

DERESTRICTION OF DOCUMENTS

1) *In accordance with the Decision on the procedures for the circulation and derestriction of documents adopted by the Committee on Government Procurement on 24 February 1997 (GPA/1/Add.2), the following documents circulated as restricted from 1 January 1996 to 19 March 1997 are proposed for derestriction on 20 May 1997.*

(i) GPA/M/- series

GPA/M/1-3

(ii) GPA/W/- series

GPA/W/1-23

GPA/W/25-27

GPA/W/28 and Corr.1

GPA/W/30-34

GPA/W/37

2. *In pursuance of the above-mentioned Decision on the circulation and derestriction of documents, the following documents are to be considered as unrestricted.*

(i) GPA/- series

GPA/1/ and Addenda 1 and 2

GPA/2-7

GPA/8 and Add.1

GPA/9-12

RESTRICTED

GPA/W/38
21 February 1997

WORLD TRADE
ORGANIZATION

(97-0729)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Bulgaria

The following communication, dated 20 February 1997, has been received from the Permanent Mission of Bulgaria.

This is to bring to your knowledge, with reference to the decision of the Committee on Government Procurement of 27 February 1996 (GPA/1, Annex 1), that the Republic of Bulgaria is interested in participating in an observer capacity in this Committee's work.

I would appreciate it if you would make the necessary arrangements with a view to obtaining observer status for the delegation of the Republic of Bulgaria.

RESTRICTED

GPA/W/35
5 February 1997

WORLD TRADE
ORGANIZATION

(97-0352)

Committee on Government Procurement

LOOSE-LEAF SYSTEM FOR THE APPENDICES TO THE AGREEMENT

Note by the Secretariat

I. At its meeting of 4 June 1996, the Committee agreed to establish a loose-leaf system with legal effect to maintain up to date the Appendices to the Agreement. With a view to providing a starting point for the loose-leaf system, the Committee requested the Secretariat to prepare a draft set of Appendices that would reflect the Appendices attached to the Agreement as signed at Marrakesh and the subsequent rectifications, modifications and new concessions made under the procedures adopted by the Interim Committee and under the Agreement itself. The Committee agreed that a period of 60 days would be provided from the date of distribution of the draft for delegations to review whether the rectifications, modifications and new concessions had been accurately incorporated and whether the draft reflected fully the present legal state of the Appendices.

II. The attachment to this note contains such a draft loose-leaf set of Appendices, incorporating all changes effective on 30 January 1997. Delegations are invited to communicate to the Secretariat (Mrs. Vesile Kulacoglu, tel. 739 5187, fax. 739 5790) any points concerning the accuracy and completeness of the consolidation of the Appendices within 60 days from the date on this document. To facilitate the review of the draft by delegations, the annex to this covering note contains a synoptic table which identifies, in its column 4, the source of the material incorporated in respect of each element of the draft loose-leaf schedules. Given that the loose-leaf system will be the authoritative record of the legal status of the Appendices to the Agreement, it will be certified by the Director-General in accordance with normal procedures in respect of rectifications under WTO instruments, after the expiry of the 60-day period (provided, of course, there is no unresolved point of difference).

III. The Appendix I of a Party is only authentic in the language or languages in which it was submitted. Accordingly, Appendix I of the loose-leaf system is only in that language or those languages. Appendices II, III and IV are authentic in all three official WTO languages and are therefore reproduced in the loose-leaf system in the three languages.

IV. As suggested in document GPA/W/3, it is proposed that the Committee agree that Parties wishing to make future rectifications and modifications to their Appendices pursuant to the provisions of Article XXIV:6 should notify them to the Committee in the form of relevant replacement or additional pages to be inserted in the loose-leaf system, identifying the proposed changes. As hitherto, these proposed rectifications and modifications will be circulated to Members in the GPA/W/- series. Once they have become effective and been certified pursuant to the procedures under Article XXIV:6, the new or amended pages will be circulated with a cover note indicating where the insertions (and/or deletions) are to be made in the loose-leaf system. Certified true copies of these replacement or additional pages will also be circulated in the WTO/Let/- series of documents. At the foot of each new or replacement page will be indicated its date, which will be that on which the changes recorded in it became effective. Initially, all pages will bear the date that the loose-leaf system becomes effective (e.g. 1 April 1997).

V. In addition to being made available in hard-copy form, the loose-leaf system and future new or replacement pages will be circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. An up to date copy of the loose-leaf system will also be available to the general public through a government procurement site on the WTO Home Page on the Internet.

ANNEXSummary of Status of Appendices to the Agreement as of 30 January 1997

<i>APPENDIX</i> <i>X</i>	<i>PARTY</i>	<i>ANNEX</i>	<i>SOURCE</i>		
<i>I</i>	<i>CANADA</i>	<i>1</i>	<i>Marrakesh Agreement</i>		
		<i>2</i>	<i>- English</i>		
		<i>3</i>			
		<i>4</i>			
		<i>5</i>			
		<i>General Notes</i>			
		<i>1</i>	<i>Marrakesh Agreement</i>		
		<i>2</i>	<i>- French</i>		
		<i>3</i>			
		<i>4</i>			
		<i>5</i>			
		<i>General Notes</i>			
		<i>I</i>	<i>EUROPEAN COMMUNITY</i>	<i>1</i>	<i>GPA/W/32</i>
			<i>AUSTRIA</i>		
<i>BELGIUM</i>					
<i>DENMARK</i>					
<i>GERMANY</i>					
<i>ESPAÑA</i>					
<i>FINLAND</i>					
<i>FRANCE</i>					

<i>GREECE</i>	
<i>IRELAND</i>	
<i>ITALY</i>	
<i>LUXEMBOURG</i>	
<i>NETHERLANDS</i>	
<i>PORTUGAL</i>	
<i>SWEDEN</i>	
<i>UNITED KINGDOM</i>	
<i>PURCHASES BY DEFENCE MINISTRIES OR AGENCIES OF MEMBER STATES</i>	

<i>APPENDI X</i>	<i>PARTY</i>	<i>ANNEX</i>	<i>SOURCE</i>
<i>I</i>	<i>EUROPEAN COMMUNITY</i>	<i>2</i>	<i>GPA/W/32</i>
	<i>AUSTRIA</i>		
	<i>BELGIUM</i>		
	<i>DENMARK</i>		
	<i>GERMANY</i>		
	<i>ESPAÑA</i>		
	<i>FINLAND</i>		
	<i>FRANCE</i>		
	<i>GREECE</i>		
	<i>IRELAND</i>		
	<i>ITALY</i>		
	<i>LUXEMBOURG</i>		
	<i>NETHERLANDS</i>		
	<i>PORTUGAL</i>		
<i>SWEDEN</i>			
<i>UNITED KINGDOM</i>			
<i>I</i>	<i>EUROPEAN COMMUNITY</i>	<i>3</i>	<i>GPA/W/32</i>
<i>I</i>	<i>EUROPEAN COMMUNITY</i>	<i>4</i>	<i>GPA/W/32</i>
<i>I</i>	<i>EUROPEAN COMMUNITY</i>	<i>5</i>	<i>GPA/W/32</i>
<i>I</i>	<i>EUROPEAN COMMUNITY</i>	<i>3 - Annexes I-II</i>	<i>GPA/W/32</i>
		<i>3 - Annexes VI-IX</i>	
	<i>EUROPEAN COMMUNITY</i>	<i>General Notes and Derogations from the Provisions of Article III</i>	<i>GPA/W/32</i>

<i>APPENDI X</i>	<i>PARTY</i>	<i>ANNEX</i>	<i>SOURCE</i>
<i>I</i>	<i>ISRAEL</i>	<i>1</i>	<i>Marrakesh Agreement</i>
		<i>2</i>	
		<i>3</i>	
		<i>4</i>	
		<i>5</i>	
		<i>General Notes</i>	
		<i>Note</i>	
<i>I</i>	<i>JAPAN</i>	<i>1</i>	<i>Marrakesh Agreement</i>
		<i>2</i>	<i>Marrakesh Agreement</i>
		<i>3</i>	<i>Marrakesh Agreement GPA/W/27 and GPA/W/31</i>
		<i>4</i>	<i>Marrakesh Agreement</i>
		<i>5</i>	
		<i>General Notes</i>	<i>Marrakesh Agreement and GPA/W/1</i>
<i>I</i>	<i>KOREA</i>	<i>1</i>	<i>Marrakesh Agreement</i>
		<i>2</i>	
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APPENDIX I

APPENDIX I

Annexes 1 through 5 setting out the scope of this Agreement:

- Annex 1 Central Government Entities*
- Annex 2 Sub-Central Government Entities*
- Annex 3 All Other Entities that Procure in Accordance
with the Provisions of this Agreement*
- Annex 4 Services*
- Annex 5 Construction Services*

APPENDICE I

Annexes 1 à 5 définissant la portée du présent accord:

- Annexe 1 Entités du gouvernement central*
- Annexe 2 Entités des gouvernements sous-centraux*
- Annexe 3 Toutes les autres entités qui passent des
marchés conformément aux dispositions du
présent accord*
- Annexe 4 Services*
- Annexe 5 Services de construction*

APÉNDICE I

Anexos 1 a 5, en los que se establece el alcance del presente Acuerdo:

- Anexo 1 Entidades de los gobiernos centrales*
- Anexo 2 Entidades de los gobiernos subcentrales*
- Anexo 3 Demás entidades que se rigen en sus contratos
por las disposiciones del presente Acuerdo*
- Anexo 4 Servicios*
- Anexo 5 Servicios de construcción*

CANADA*(Authentic in the English and French languages)***ANNEX 1***Federal Government Entities*

<i>Thresholds:</i>	<i>130,000 SDRs</i>	-	Goods
	<i>130,000 SDRs</i>	-	Services covered in Annex 4
	<i>5,000,000 SDRs</i>	-	Construction covered in Annex 5

List of entities:

1. *Department of Agriculture*
2. *Department of Communications (not including procurements respecting FSCs 36, 70 and 74)*
3. *Department of Consumer and Corporate Affairs*
4. *Department of Employment and Immigration*
5. *Immigration and Refugee Board*
6. *Employment and Immigration Commission*
7. *Department of Energy, Mines and Resources*
8. *Atomic Energy Control Board*
9. *National Energy Board (on its own account)*
10. *Department of the Environment*
11. *Department of External Affairs*
12. *Canadian International Development Agency (on its own account)*
13. *Department of Finance*
14. *Office of the Superintendent of Financial Institutions*
15. *Canadian International Trade Tribunal*
16. *Municipal Development and Loan Board*
17. *Department of Fisheries and Oceans (not including procurements respecting FSCs 36, 70 and 74)*
18. *Department of Forestry*
19. *Department of Indian Affairs and Northern Development*
20. *Department of Industry, Science and Technology*
21. *Science Council of Canada*
22. *National Research Council of Canada*
23. *Natural Sciences and Engineering Research Council of Canada*
24. *Department of Justice*
25. *Canadian Human Rights Commission*
26. *Statute Revision Commission*

27. *Supreme Court of Canada*
28. *Department of Labour*

29. *Canada Labour Relations Board*
30. *Department of National Health and Welfare*
31. *Medical Research Council*
32. *Department of National Revenue*
33. *Department of Public Works*
34. *Department of Secretary of State of Canada*
35. *Social Science and Humanities Research Council*
36. *Office of the Coordinator, Status of Women*
37. *Public Service Commission*
38. *Department of the Solicitor General*
39. *Correctional Service of Canada*
40. *National Parole Board*
41. *Department of Supply and Services (on its own account)*
42. *Canadian General Standards Board*
43. *Department of Transport (not including procurements respecting FSCs 36, 70 and 74. For purposes of Article XXIII the national security considerations applicable to The Department of National Defence are equally applicable to the Canadian Coast Guard.)*
44. *Treasury Board Secretariat and the Office of the Controller General*
45. *Department of Veterans Affairs*
46. *Veterans Land Administration*
47. *Department of Western Economic Diversification (on its own account)*
48. *Atlantic Canada Opportunities Agency (on its own account)*
49. *Auditor General of Canada*
50. *Federal Office of Regional Development (Quebec)(on its own account)*
51. *Canadian Centre for Management Development*
52. *Canadian Radio-television and Telecommunications Commission (on its own account)*
53. *Canadian Sentencing Commission*
54. *Civil Aviation Tribunal*
55. *Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario*
56. *Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance*
57. *Commissioner for Federal Judicial Affairs*
58. *Competition Tribunal Registry*
59. *Copyright Board*
60. *Emergency Preparedness Canada*
61. *Federal Court of Canada*
62. *Grain Transportation Agency (on its own account)*
63. *Hazardous Materials Information Review Commission*
64. *Information and Privacy Commissioners*
65. *Investment Canada*
66. *Department of Multiculturalism and Citizenship*
67. *The National Archives of Canada*
68. *National Farm Products Marketing Council*
69. *The National Library*

70. *National Transportation Agency (on its own account)*
71. *Northern Pipeline Agency (on its own account)*
72. *Patented Medicine Prices Review Board*
73. *Petroleum Monitoring Agency*

74. *Privy Council Office*
75. *Canadian Intergovernmental Conference Secretariat*
76. *Commissioner of Official Languages*
77. *Economic Council of Canada*
78. *Public Service Staff Relations Board*
79. *Office of the Secretary to the Governor General*
80. *Office of the Chief Electoral Officer*
81. *Federal Provincial Relations Office*
82. *Procurement Review Board*
83. *Royal Commission on Electoral Reform and Party Financing*
84. *Royal Commission on National Passenger Transportation*
85. *Royal Commission on New Reproductive Technologies*
86. *Royal Commission on the Future of the Toronto Waterfront*
87. *Statistics Canada*
88. *Tax Court of Canada, Registry of the*
89. *Agricultural Stabilization Board*
90. *Canadian Aviation Safety Board*
91. *Canadian Centre for Occupational Health and Safety*
92. *Canadian Transportation Accident Investigation and Safety Board*
93. *Director of Soldier Settlement*
94. *Director, The Veterans• Land Act*
95. *Fisheries Prices Support Board*
96. *National Battlefields Commission*
97. *Royal Canadian Mounted Police*
98. *Royal Canadian Mounted Police External Review Committee*
99. *Royal Canadian Mounted Police Public Complaints Commission*
100. *Department of National Defence*

THE FOLLOWING PRODUCTS PURCHASED BY THE DEPARTMENT OF NATIONAL DEFENCE, COAST GUARD AND THE RCMP ARE INCLUDED IN THE COVERAGE OF THIS AGREEMENT SUBJECT TO THE PROVISIONS OF ARTICLE XXIII. (NUMBERS REFER TO THE FEDERAL SUPPLY CLASSIFICATION CODE)

22. *Railway Equipment*
23. *Motor vehicles, trailers and cycles (except buses in 2310, military trucks and trailers in 2320 and 2330 and tracked combat, assault and tactical vehicles in 2350)*
24. *Tractors*
25. *Vehicular equipment components*
26. *Tires and tubes*
29. *Engine accessories*
30. *Mechanical power transmission equipment*
32. *Woodworking machinery and equipment*
34. *Metal working equipment*
35. *Service and trade equipment*

- 36. *Special industry machinery*
- 37. *Agricultural machinery and equipment*
- 38. *Construction, mining, excavating and highway maintenance equipment*
- 39. *Materials handling equipment*
- 40. *Rope, cable, chain and fittings*
- 41. *Refrigeration and air conditioning equipment*
- 42. *Fire fighting, rescue and safety equipment (except 4220 Marine Life-saving and diving equipment, 4230 Decontaminating and impregnating equipment)*
- 43. *Pumps and compressors*
- 44. *Furnace, steam plant, drying equipment and nuclear reactors*
- 45. *Plumbing, heating and sanitation equipment*
- 46. *Water purification and sewage treatment equipment*
- 47. *Pipe, tubing, hose and fittings*
- 48. *Valves*
- 49. *Maintenance and repair shop equipment*
- 52. *Measuring tools*
- 53. *Hardware and abrasives*
- 54. *Prefabricated structures and scaffolding*
- 55. *Lumber, millwork, plywood and veneer*
- 56. *Construction and building materials*
- 61. *Electric wire and power and distribution equipment*
- 62. *Lighting fixtures and lamps*
- 63. *Alarm and signal systems*
- 65. *Medical, dental and veterinary equipment and supplies*
- 66. *Instruments and laboratory equipment (except 6615: Automatic pilot mechanisms and airborne Gyro components 6665: Hazard-detecting instruments and apparatus)*
- 67. *Photographic equipment*
- 68. *Chemicals and chemical products*
- 69. *Training aids and devices*
- 70. *General purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations)*
- 71. *Furniture*
- 72. *Household and commercial furnishings and appliances*
- 73. *Food preparation and serving equipment*
- 74. *Office machines, visible record equipment and automatic data processing equipment*
- 75. *Office supplies and devices*
- 76. *Books, maps and other publications - (except 7650 drawings and specifications)*
- 77. *Musical instruments, phonographs and home-type radios*
- 78. *Recreational and athletic equipment*
- 79. *Cleaning equipment and supplies*
- 80. *Brushes, paints, sealers and adhesives*
- 81. *Containers, packaging and packing supplies*
- 85. *Toiletries*
- 87. *Agricultural supplies*
- 88. *Live animals*

- 91. Fuels, lubricants, oils and waxes*
- 93. Non-metallic fabricated materials*
- 94. Non-metallic crude materials*
- 96. Ores, minerals and their primary products*
- 99. Miscellaneous*

Note to Annex 1

The General Notes apply to this Annex.

ANNEX 2

Sub-Central Government Entities

*Thresholds: 355,000 SDRs
355,000 SDRs*

- Goods

-Services to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.

5,000,000 SDRs

-Construction Services to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.

List of Entities:

The Canadian Government offers to cover entities in all ten provinces on the basis of commitments obtained from provincial governments. The initial provincial entities list will be specified on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.

Notes to Annex 2

1. *Exceptions for all Provinces: steel, motor vehicles and coal*

Province-specific exceptions: in addition, a limited number of individual provincial exceptions may be specified at a later date in accordance with commitments received from such provinces.

2. *Nothing in this offer shall be construed to prevent any provincial entity from applying restrictions that promote the general environmental quality in that province, as long as such restrictions are not disguised barriers to international trade.*

3. *This offer shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.*

4. *The General Notes apply to this Annex.*

ANNEX 3

Government Enterprises

<i>Thresholds:</i>	355,000 SDRs	-	Goods
	355,000 SDRs	-	Services covered in Annex 4
	5,000,000 SDRs	-	Construction covered in Annex 5

Federal Enterprises

1. *Canada Post Corporation*
2. *National Capital Commission*
3. *St. Lawrence Seaway Authority (For greater certainty, Article XIX:4 applies to procurements by St. Lawrence Seaway Authority respecting the protection of the commercial confidentiality of information provided.)*
4. *Royal Canadian Mint (not including procurement by or on behalf of the Royal Canadian Mint of direct inputs for use in minting anything other than Canadian legal tender. For greater certainty, Article XIX:4 applies to procurements by the Royal Canadian Mint respecting the protection of the commercial confidentiality of information provided.)*
5. *Canadian Museum of Civilization*
6. *Canadian Museum of Nature*
7. *National Gallery of Canada*
8. *National Museum of Science and Technology*
9. *Defence Construction (1951) Ltd.*

Sub-central Enterprises

Coverage of Sub-central Enterprises for Goods, Services and Construction Services is to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement.

Note to Annex 3

The General Notes apply to this Annex.

ANNEX 4

Services

Canada offers to include in this •Services• Annex Federal entities listed under Annex 1 and Federal enterprises listed under Annex 3. The inclusion of •Services• for sub-central entities under Annex 2 and sub-central enterprises under Annex 3 are to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new Government Procurement Agreement. With respect to the terms of this Agreement, those services to be included are as identified within the document MTN.GNS/W/120. Domestically, Canada will be utilizing the •Common Classification System• for purposes of implementing this Agreement. This list of services may be revised following further technical work among the Parties and adjustments, as appropriate, to establish equitable coverage.

Canada offers to cover the following services with respect to the CPC services classification system:

861 Legal Services (advisory services on foreign and international law only)

862 Accounting, auditing and book-keeping services

863 Taxation Services (excluding legal services)

8671 Architectural services

8672 Engineering services

8673 Integrated engineering services (excluding 86731 Integrated engineering services for transportation infrastructure turnkey projects)

8674 Urban planning and landscape architectural services

841 Consultancy services related to the installation of computer hardware

842 Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

843 Data processing services, including processing, tabulation and facilities management services

844 Data base services

845 Maintenance and repair services of office machinery and equipment including computers

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849 *Other computer services*

821 *Real estate services involving own or leased property*

822 *Real estate services on a fee or contract basis*

83106

to 83109

only Leasing or rental services concerning machinery and equipment without operator

83203

to 83209

only Leasing or rental services concerning personal and household goods

86501 *General management consulting services*

86503 *Marketing management consulting services*

86504 *Human resources management consulting services*

86505 *Production management consulting services*

8660 *Services related to management consulting (except 86602 Arbitration and conciliation services)*

8676 *Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment)*

8814 *Services incidental to forestry and logging, including forest management*

883 *Services incidental to mining, including drilling and field services*

633 *Repair services of personal and household goods*

8861

to 8864,

and 8866 *Repair services incidental to metal products, machinery and equipment*

874 *Building-cleaning services*

876 *Packaging services*

7512 *Commercial courier services (including multi-modal)*

7523 *Electronic mail*

7523 *Voice mail*

7523 *On-line information and data base retrieval*

7523 *Electronic data interchange (EDI)*

7523 *Enhanced/value-added facsimile services, including store and forward, store and retrieve*

Code and protocol conversion

843 *On-line information and/or data processing (including transaction processing)*

940 *Sewage and refuse disposal, sanitation and similar services*

641 *Hotel and similar accommodation services*

642/3 *Food and beverage serving services*

7471 *Travel agency and tour operator services*

Notes to Annex 4

1. *The General Notes apply to this Annex.*

2. *This offer is subject to the terms and conditions set out in the Canadian offer on trade in services.*

3. *Canada's offer in telecommunications is limited to enhanced or value added services for the supply of which the underlying telecommunications facilities are leased from providers of public telecommunications transport networks.*

4. *The Canadian offer does **not** include the following:*

**management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development;*

**coin minting;*

**public utilities;*

**architectural and engineering related to airfield, communications and missile facilities;*

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**shipbuilding and repair and related architectural and engineering services;*

**all services, with reference to those goods purchased by the Department of National Defence, the Royal Canadian Mounted Police and the Canadian Coast Guard which are not identified as subject to coverage by this agreement;*

**services procured in support of military forces located overseas;*

**printing and publishing services; and,*

**procurement of transportation services that form a part of, or are incidental to, a procurement contract.*

*ANNEX 5**Construction Services*

Canada offers to include in this •Construction Services• Annex, Federal entities listed under Annex 1 and Federal enterprises listed under Annex 3. The inclusion of •Construction Services• for sub-central entities under Annex 2 and sub-central enterprises under Annex 3 are to be specified initially on or before 15 April 1994 with the final list to be provided within eighteen months after the conclusion of the new government procurement agreement.

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

All services contained in Division 51 CPC.

Notes to Annex 5

1. Notwithstanding anything in this Agreement, this Agreement does not apply to procurements in respect of:

(a) Dredging; and

(b) Construction contracts tendered on behalf of the Departments of Transport.

2. The General Notes apply to this Annex.

GENERAL NOTES

1. Notwithstanding anything in these Annexes, the Agreement does not apply to procurements in respect of:

(a) shipbuilding and repair;

(b) urban rail and urban transportation equipment, systems, components and materials incorporated therein as well as all project related materials of iron or steel;

(c) contracts respecting FSC 58 (communications, detection and coherent radiation equipment);

(d) set-asides for small and minority businesses;

(e) agricultural products made in furtherance of agricultural support programs or human feeding programs;

(f) national security exemptions include oil purchases related to any strategic reserve requirements; and,

(g) national security exceptions including procurements made in support of safeguarding nuclear materials or technology.

2. Procurement in terms of Canadian coverage is defined as contractual transactions to acquire property or services for the direct benefit or use of the government. The procurement process is the process that begins after an entity has decided on its requirement and continues through to and including contract award. It does not include non-contractual agreements or any form of government assistance, including but not limited to, cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and government provision of goods and services, given to individuals, firms, private institutions, and sub-central governments. It does not include procurements made with a view to commercial resale or made by one entity or enterprise from another entity or enterprise of Canada.

3. Any exclusion that is related either specifically or generally to Federal or sub-central entities or enterprises in Annex 1, Annex 2 or Annex 3 will also apply to any successor entity or entities, enterprise or enterprises, in such a manner as to maintain the value of this offer.

4. Until such time as there is a mutually agreed list of services to be covered by all Parties, a service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has provided reciprocal access to that service.

5. *Where a contract to be awarded by an entity is not covered by this Agreement, this Agreement shall not be construed to cover any good or service component of that contract.*
6. *The offer by Canada, with respect to goods and services (including construction) in Annexes 2 and 3, is subject to negotiation of mutually acceptable commitments (including thresholds) with other Parties, with initial commitments to be specified on or before 15 April 1994 and specific commitments to be confirmed within eighteen months after the conclusion of the new Government Procurement Agreement.*
7. *The Agreement shall not apply to contracts under an international agreement and intended for the joint implementation or exploitation of a project.*
8. *For the European Union, Canada's offer excludes procurements of FSC 70, 74 and 36 until such time as reciprocal access is provided.*
9. *For the European Union, this Agreement shall not apply to contracts awarded by entities in Annexes 1 and 2 in connection with activities in the field of drinking water, energy, transport or telecommunications.*

CANADA*(Les versions française et anglaise font foi)***ANNEXE 1***Entités du gouvernement fédéral*

<i>Valeurs de seuil:</i>	<i>130 000 DTS</i>	-	Produits
	<i>130 000 DTS</i>	-	Services visés à l'Annexe 4
	<i>5 000 000 DTS</i>	-	Travaux visés à l'Annexe 5

Liste des entités:

1. *Ministère de l'agriculture*
2. *Ministère des communications (à l'exclusion des marchés portant sur les produits repris aux n° 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC))*
3. *Ministère de la consommation et des affaires commerciales*
4. *Ministère de l'emploi et de l'immigration*
5. *Commission de l'immigration et du statut de réfugié*
6. *Commission de l'emploi et de l'immigration*
7. *Ministère de l'énergie, des mines et des ressources*
8. *Commission de contrôle de l'énergie atomique*
9. *Office national de l'énergie (pour son propre compte)*
10. *Ministère de l'environnement*
11. *Ministère des affaires extérieures*
12. *Agence canadienne de développement international (pour son propre compte)*
13. *Ministère des finances*
14. *Bureau du surintendant des institutions financières*
15. *Tribunal canadien du commerce extérieur*
16. *Office du développement municipal et des prêts aux municipalités*
17. *Ministère des pêches et des océans (à l'exclusion des marchés portant sur les produits repris aux n° 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC))*
18. *Ministère des forêts*
19. *Ministère des affaires indiennes et du Nord canadien*
20. *Ministère de l'industrie, des sciences et de la technologie*
21. *Conseil des sciences du Canada*
22. *Conseil national de recherches du Canada*
23. *Conseil de recherches en sciences naturelles et en génie du Canada*
24. *Ministère de la justice*
25. *Commission canadienne des droits de la personne*
26. *Commission de révision des lois*

27. *Cour suprême du Canada*
28. *Ministère du travail*
29. *Conseil canadien des relations du travail*
30. *Ministère de la santé nationale et du bien-être social*
31. *Conseil de recherches médicales*
32. *Ministère du revenu national*
33. *Ministère des travaux publics*
34. *Secrétariat d'Etat du Canada*
35. *Conseil de recherches en sciences humaines*
36. *Bureau de la coordonnatrice, Situation de la femme*
37. *Commission de la fonction publique*
38. *Ministère du Solliciteur général*
39. *Service correctionnel du Canada*
40. *Commission nationale des libérations conditionnelles*
41. *Ministère des approvisionnements et services (pour son propre compte)*
42. *Office des normes générales du Canada*
43. *Ministère des transports (à l'exclusion des marchés portant sur les produits repris aux n° 36, 70 et 74 de la Classification fédérale des approvisionnements (FSC). Aux fins de l'article XXIII, les considérations de sécurité nationale qui valent pour le Ministère de la défense nationale s'appliquent également à la Garde côtière canadienne).*
44. *Secrétariat du Conseil du Trésor et Bureau du Contrôleur général*
45. *Ministère des affaires des anciens combattants*
46. *Office de l'établissement agricole des anciens combattants*
47. *Ministère de la diversification de l'économie de l'Ouest (pour son propre compte)*
48. *Agence de promotion économique du Canada atlantique (pour son propre compte)*
49. *Vérificateur général du Canada*
50. *Bureau fédéral de développement régional (Québec) (pour son propre compte)*
51. *Centre canadien de gestion*
52. *Conseil de la radiodiffusion et des télécommunications canadiennes (pour son propre compte)*
53. *Commission canadienne sur la détermination de la peine*
54. *Tribunal de l'aviation civile*
55. *Commission d'enquête sur l'écrasement d'un avion d'Air Ontario à Dryden (Ontario)*
56. *Commission d'enquête sur le recours aux drogues et aux pratiques interdites pour améliorer la performance athlétique*
57. *Commissaire à la magistrature fédérale*
58. *Greffe du Tribunal de la concurrence*
59. *Commission du droit d'auteur*
60. *Protection civile Canada*
61. *Cour fédérale du Canada*
62. *Office du transport du grain (pour son propre compte)*
63. *Conseil de contrôle des renseignements relatifs aux matières dangereuses*
64. *Commissariats à l'information et à la protection de la vie privée*

65. *Investissement Canada*
66. *Ministère du multiculturalisme et de la citoyenneté*
67. *Archives nationales du Canada*
68. *Conseil national de commercialisation des produits agricoles*
69. *Bibliothèque nationale*
70. *Office national des transports (pour son propre compte)*
71. *Administration du pipeline du Nord (pour son propre compte)*
72. *Conseil d'examen du prix des médicaments brevetés*
73. *Agence de surveillance du secteur pétrolier*
74. *Bureau du Conseil privé*
75. *Secrétariat des conférences intergouvernementales canadiennes*
76. *Commissaire aux langues officielles*
77. *Conseil économique du Canada*
78. *Commission des relations de travail dans la fonction publique*
79. *Bureau du chef de Cabinet du Gouverneur général*
80. *Bureau du Directeur général des élections*
81. *Bureau des relations fédérales-provinciales*
82. *Commission de révision des marchés publics*
83. *Commission royale sur la réforme électorale et le financement des partis*
84. *Commission royale sur le transport des voyageurs au Canada*
85. *Commission royale sur les nouvelles techniques de reproduction*
86. *Commission royale sur l'avenir du secteur riverain de Toronto*
87. *Statistique Canada*
88. *Greffe de la Cour canadienne de l'impôt*
89. *Office de stabilisation des prix agricoles*
90. *Bureau canadien de la sécurité aérienne*
91. *Centre canadien d'hygiène et de sécurité au travail*
92. *Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports*
93. *Directeur de l'établissement des soldats*
94. *Directeur, Loi sur les terres destinées aux anciens combattants*
95. *Commission de soutien des prix des produits de la pêche*
96. *Commission des champs de bataille nationaux*
97. *Gendarmerie royale du Canada*
98. *Comité externe d'examen de la Gendarmerie royale du Canada*
99. *Commission des plaintes du public contre la Gendarmerie royale du Canada*
100. *Ministère de la défense nationale*

LES PRODUITS SUIVANTS ACHETES PAR LE MINISTERE DE LA DEFENSE NATIONALE, LA GARDE COTIERE ET LA GENDARMERIE ROYALE DU CANADA FONT PARTIE DU CHAMP D'APPLICATION DU PRESENT ACCORD, SOUS RESERVE DES DISPOSITIONS DE L'ARTICLE XXIII. (LES NUMEROS SONT CEUX DE LA CLASSIFICATION FEDERALE DES APPROVISIONNEMENTS.)

22. *Matériel ferroviaire*
23. *Véhicules automobiles, remorques et cycles (sauf les autobus compris dans 2310, les camions et remorques militaires compris dans 2320 et 2330, et les véhicules chenillés de combat, d'attaque et de tactique compris dans 2350)*
24. *Tracteurs*
25. *Pièces de véhicules*
26. *Enveloppes et chambres à air*
29. *Accessoires de moteurs*
30. *Matériel de transmission de l'énergie mécanique*
32. *Machines et matériel pour le travail du bois*
34. *Machines pour le travail des métaux*
35. *Matériel de service et de commerce*
36. *Machines industrielles spéciales*
37. *Machines et matériel agricoles*
38. *Matériel de construction, d'extraction, d'excavation et d'entretien routier*
39. *Matériel de manutention des matériaux*
40. *Cordages, câbles, chaînes et accessoires*
41. *Matériel de réfrigération et de climatisation*
42. *Matériel de lutte contre l'incendie, de sauvetage et de sécurité (sauf 4220: Equipement de plongée et de sauvetage en mer, 4230: Equipement d'imprégnation et de décontamination)*
43. *Pompes et compresseurs*
44. *Matériel de fours, de générateurs de vapeur, de séchage, et réacteurs nucléaires*
45. *Matériel de plomberie, de chauffage et sanitaire*
46. *Matériel d'épuration de l'eau et de traitement des eaux usées*
47. *Eléments de canalisation, tuyaux et accessoires*
48. *Robinets-vannes*
49. *Matériel d'ateliers d'entretien et de réparation*
52. *Instruments de mesure*
53. *Articles de quincaillerie et abrasifs*
54. *Eléments de construction préfabriqués et éléments d'échafaudages*
55. *Bois de construction, sciages, contreplaqués et bois de placage*
56. *Matériaux de construction*
61. *Fils électriques, matériel de production et de distribution d'énergie*
62. *Lampes et accessoires d'éclairage*
63. *Systèmes d'alarme et de signalisation*
65. *Fournitures et matériel médicaux, dentaires et vétérinaires*
66. *Instruments, matériel de laboratoire (sauf 6615: Mécanismes de pilotage automatique et éléments de gyroscopes d'aéronefs, 6665: Instruments et appareils de détection des dangers)*
67. *Matériel photographique*
68. *Substances et produits chimiques*
69. *Matériels et appareils d'enseignement*
70. *Matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données)*
71. *Meubles*

72. *Articles et appareils pour l'équipement des ménages et des lieux publics*
73. *Matériel de cuisine et de table*
74. *Machines de bureau, matériel de bureautique et d'informatique de bureau*
75. *Fournitures et appareils de bureau*
76. *Livres, cartes et publications diverses (sauf 7650: Plans et spécifications)*
77. *Instruments de musique, phonographes et récepteurs radiophoniques domestiques*
78. *Matériel de plaisance et d'athlétisme*
79. *Matériel et fournitures de nettoyage*
80. *Pinceaux, peinture, produits d'obturation et adhésifs*
81. *Conteneurs, matériaux et fournitures d'emballage*
85. *Articles de toilette*
87. *Fournitures pour l'agriculture*
88. *Animaux vivants*
91. *Combustibles, lubrifiants, huiles et cires*
93. *Fabrications non métalliques*
94. *Matières brutes non métalliques*
96. *Minerais, minéraux et leurs dérivés primaires*
99. *Divers*

Note relative à l'Annexe 1

Les Notes générales s'appliquent à la présente annexe.

ANNEXE 2

Entités des gouvernements sous-centraux

- Valeurs de seuil:* 355 000 DTS - **Produits**
 355 000 DTS-**Services** dont la liste initiale sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel accord sur les marchés publics.
- 5 000 000 DTS-**Services de construction** dont la liste initiale sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel accord sur les marchés publics.

Liste des entités:

Le gouvernement canadien offre d'inclure des entités des dix provinces sur la base des engagements obtenus des gouvernements provinciaux. La liste initiale des entités provinciales sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.

Notes relatives à l'Annexe 2

1. *Exceptions valables pour toutes les provinces: acier, véhicules automobiles et charbon.*

Exceptions propres à certaines provinces: en outre, un nombre limité d'exceptions concernant les différentes provinces pourront être spécifiées à une date ultérieure, conformément aux engagements reçus des provinces.

2. *Rien dans la présente offre ne sera interprété comme empêchant une entité d'une province d'appliquer des restrictions visant à promouvoir la qualité générale de l'environnement dans cette province, pour autant que ces restrictions ne constituent pas des obstacles déguisés au commerce international.*

3. *La présente offre ne s'applique pas aux marchés passés par une entité visée pour le compte d'une entité non visée.*

4. *Les Notes générales s'appliquent à la présente annexe.*

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ANNEXE 3

Entreprises publiques

<i>Valeurs de seuil:</i>	355 000 DTS	-	Produits
	355 000 DTS	-	Services visés à l'Annexe 4
	5 000 000 DTS	-	Travaux visés à l'Annexe 5

Entreprises fédérales

1. *Société canadienne des postes*
2. *Commission de la capitale nationale*
3. *Administration de la voie maritime du Saint-Laurent. (Pour plus de précision, les dispositions du paragraphe 4 de l'article XIX s'appliquent aux marchés passés par l'Administration de la voie maritime du Saint-Laurent, aux fins de la protection des renseignements commerciaux communiqués à titre confidentiel.)*
4. *Monnaie royale canadienne (à l'exclusion des marchés passés par la Monnaie royale canadienne, ou en son nom, pour l'achat de matières premières destinées à être utilisées directement pour frapper de la monnaie n'ayant pas cours légal au Canada. Pour plus de précision, les dispositions du paragraphe 4 de l'article XIX s'appliquent aux marchés passés par la Monnaie royale canadienne aux fins de la protection des renseignements commerciaux communiqués à titre confidentiel).*
5. *Musée canadien des civilisations*
6. *Musée canadien de la nature*
7. *Musée des beaux-arts du Canada*
8. *Musée national des sciences et de la technologie*
9. *Construction de Défense (1951) Limitée.*

Entreprises sous-centrales

La liste initiale des entreprises sous-centrales qui entrent dans le champ d'application de l'accord pour ce qui est des produits, des services et des services de construction sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.

Note relative à l'Annexe 3

Les Notes générales s'appliquent à la présente annexe.

ANNEXE 4

Services

Le Canada offre d'inclure dans la présente annexe relative aux Services les entités fédérales énumérées à l'Annexe 1 et les entreprises fédérales énumérées à l'Annexe 3. Pour ce qui est des entités sous-centrales visées à l'Annexe 2 et des entreprises sous-centrales visées à l'Annexe 3, la liste initiale des services entrant dans le champ d'application de l'accord sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics. S'agissant des termes du présent accord, les services qui seront inclus sont ceux qui sont indiqués dans le document MTN.GNS/W/120. Sur le plan intérieur, le Canada utilisera le Système commun de classification aux fins de la mise en oeuvre du présent accord. La présente liste de services pourra être révisée à la suite d'autres travaux techniques entre les Parties et des ajustements pourront y être apportés, selon qu'il sera approprié, afin que le contenu en soit équitable.

Le Canada offre d'inclure les services suivants classés selon le système de classification des services de la CPC:

861 Services juridiques (conseils juridiques en matière de droit international et de droit étranger uniquement)

862 Services comptables, d'audit et de tenue de livres

863 Services de conseil fiscal (à l'exclusion des services juridiques)

8671 Services d'architecture

8672 Services d'ingénierie

8673 Services intégrés d'ingénierie (sauf 86731: Services intégrés d'ingénierie pour les projets de construction clés en main d'infrastructures de transport)

8674 Services d'aménagement urbain et d'architecture paysagère

841 Services de consultations en matière d'installation des matériels informatiques

842 Services de réalisation de logiciels, y compris les services de consultations en matière de systèmes et de logiciels, ainsi que les services d'analyse de systèmes, de conception, de programmation et de maintenance

843 Services de traitement de données, y compris les services de traitement, de tabulation et de gestion des installations

844 Services de base de données

845 Services d'entretien et de réparation de machines et de matériel de bureau, y compris les ordinateurs

849 Autres services informatiques

821 Services immobiliers se rapportant à des biens propres ou loués

822 Services immobiliers à forfait ou sous contrat

83106 à Services de location simple ou en crédit-bail de machines et de matériel, sans
83109 opérateurs
uniquement

83203 à Services de location simple ou en crédit-bail d'articles personnels et
83209 domestiques
uniquement

86501 Services de consultations en matière de gestion générale

86503 Services de consultations en matière de gestion de la commercialisation

86504 Services de consultations en matière de gestion des ressources humaines

86505 Services de consultations en matière de gestion de la production

8660 Services connexes aux services de consultations en matière de gestion
(sauf 86602: Services d'arbitrage et de conciliation)

8676 Services d'essais et d'analyses techniques, y compris d'inspection et de contrôle de la qualité (à l'exclusion du matériel de transport et du numéro 58 de la FSC)

8814 Services annexes à la sylviculture et à l'exploitation forestière, y compris la gestion des forêts

883 Services annexes aux industries extractives, y compris les services d'exploration et de forage

633 Services de réparation d'articles personnels et domestiques

8861 à Services de réparation annexes à la fabrication de produits en métaux, de machines
8864 et de matériel
et 8866

874 Services de nettoyage de bâtiments

876 Services de conditionnement

7512 Services commerciaux de courrier (y compris les services de courrier multimodaux)

7523 Services de courrier électronique

7523 Services d'audiomessagerie téléphonique

7523 Services directs de recherche d'informations permanente et de serveur de base de données

7523 Services d'échange électronique de données

7523 Services améliorés/à valeur ajoutée de télécopie, y compris enregistrements et retransmission et enregistrement et recherche

Services de conversion de codes et de protocoles

843 Services de traitement en direct de l'information et/ou de données (y compris traitement de transactions)

940 Services d'assainissement et d'enlèvement des ordures, services de voirie et services analogues

641 Services d'hôtellerie et services d'hébergement analogues

642-643 Services de restauration et de vente de boissons

7471 Services d'agences de voyages et d'organismes touristiques

Notes relatives à l'Annexe 4

1. Les Notes générales s'appliquent à la présente annexe.

2. La présente offre est faite sous réserve des conditions énoncées dans l'offre du Canada relative au commerce des services.

3. Dans le domaine des télécommunications, l'offre du Canada se limite aux services améliorés ou à valeur ajoutée qui sont fournis au moyen d'installations de télécommunications de base louées à des fournisseurs de réseaux publics de transport des télécommunications.

4. L'offre du Canada ne comprend **pas** ce qui suit:

*les contrats de gestion et d'exploitation de certaines installations publiques ou privées utilisées à des fins publiques, y compris la recherche-développement financée par le gouvernement fédéral;

*la frappe de la monnaie;

*les services d'utilité publique;

*les services d'architecture et d'ingénierie se rapportant à des aéroports ainsi qu'à des installations de communications ou de missiles;

*la construction navale et la réparation de navires ainsi que les services d'architecture et d'ingénierie s'y rapportant;

*s'agissant des produits achetés par le Ministère de la défense nationale, la Gendarmerie royale du Canada et la Garde côtière canadienne, tous les services qui ne sont pas indiqués comme entrant dans le champ d'application du présent accord;

*les services achetés pour appuyer les forces militaires se trouvant à l'étranger;

*les services d'imprimerie et d'édition; et

*les marchés de services de transport qui font partie d'un marché ou qui y sont accessoires.

*ANNEXE 5**Services de construction*

Le Canada offre d'inclure dans la présente annexe relative aux Services de construction les entités fédérales énumérées à l'Annexe 1 et les entreprises fédérales énumérées à l'Annexe 3. Pour ce qui est des entités sous-centrales visées à l'Annexe 2 et des entreprises sous-centrales visées à l'Annexe 3, la liste initiale des services de construction entrant dans le champ d'application de l'accord sera établie au plus tard pour le 15 avril 1994, la liste définitive devant être communiquée dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.

Définition:

Un contrat de services de construction est un contrat qui a pour objectif la réalisation, par quelque moyen que ce soit, de travaux de construction d'ouvrages de génie civil ou de bâtiments, au sens de la division 51 de la Classification centrale de produits (CPC).

Liste de services relevant de la division 51 de la CPC:

Tous les services énumérés dans la division 51 de la CPC.

Notes relatives à l'Annexe 5

1. Nonobstant les dispositions du présent accord, celui-ci ne s'applique pas:

a) aux marchés portant sur des travaux de dragage; ni

b) aux marchés de travaux passés pour le compte des ministères des transports.

2. Les Notes générales s'appliquent à la présente annexe.

NOTES GENERALES

1. Nonobstant les présentes annexes, l'accord n'est pas applicable dans les cas suivants:

a) construction navale et réparation de navires;

b) chemins de fer urbains et matériel de transport urbain, systèmes, composants et matériaux entrant dans leur fabrication, ainsi que tout le matériel en fer ou en acier destiné à des ouvrages;

c) marchés portant sur les produits relevant du n° 58 de la Classification fédérale des approvisionnements (matériel de communication, matériel de détection des radiations et d'émission de rayonnement cohérent);

d) marchés réservés aux petites entreprises et aux entreprises détenues par des minorités;

e) marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire;

f) exemptions pour des raisons de sécurité nationale, visant notamment les achats de pétrole nécessaires au maintien de réserves stratégiques;

g) exceptions pour des raisons de sécurité nationale, visant notamment les marchés passés aux fins du contrôle des matières ou des technologies nucléaires.

2. Pour le Canada, les marchés entrant dans le champ d'application s'entendent de transactions contractuelles visant l'acquisition de biens ou de services devant bénéficier directement au gouvernement ou être utilisés directement par celui-ci. Le processus de passation d'un marché débute après qu'une entité a défini ses besoins et se poursuit jusques et y compris l'adjudication. Ne sont pas compris les accords non contractuels et toute forme d'aide publique, y compris, mais pas uniquement, les accords de coopération, les subventions, les prêts, les apports en capital, les garanties, les incitations fiscales et la fourniture par le gouvernement fédéral de produits et de services à des particuliers, des entreprises, des institutions privées et des gouvernements sous-centraux. Ne sont pas compris non plus les achats réalisés à des fins de revente commerciale ou effectués par une entité ou une entreprise auprès d'une autre entité ou d'une autre entreprise du Canada.

3. Toute exclusion liée expressément ou d'une manière générale à des entités ou à des entreprises fédérales ou sous-centrales énumérées à l'Annexe 1, à l'Annexe 2 ou à l'Annexe 3 s'appliquera également à toute entité ou entreprise qui pourrait leur succéder, afin de maintenir la valeur de la présente offre.

4. *Tant que toutes les Parties ne seront pas convenues d'un commun accord d'une liste des services entrant dans le champ d'application, un service énuméré à l'Annexe 4 ne sera visé pour ce qui concerne une Partie donnée que dans la mesure où cette Partie aura accordé un accès réciproque au service considéré.*
5. *Dans le cas où une entité adjudgera un marché qui n'est pas visé par le présent accord, celui-ci ne sera pas interprété comme s'appliquant à tout produit ou service entrant dans ce marché.*
6. *S'agissant des produits et des services (y compris les travaux) énumérés aux Annexes 2 et 3, l'offre du Canada est subordonnée à la négociation avec les autres Parties d'engagements mutuellement acceptables (y compris de seuils), les engagements initiaux devant être spécifiés au plus tard pour le 15 avril 1994 et les engagements spécifiques confirmés dans un délai de 18 mois après la conclusion du nouvel Accord sur les marchés publics.*
7. *L'accord ne s'applique pas aux marchés passés en vertu d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage.*
8. *En ce qui concerne l'Union européenne, le Canada exclut de son offre les marchés portant sur les produits relevant des n° 70, 74 et 36 de la FSC tant qu'un accès réciproque ne lui aura pas été accordé.*
9. *En ce qui concerne l'Union européenne, le présent accord ne s'applique pas aux marchés passés par les entités visées aux Annexes 1 et 2 et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports et des télécommunications.*

EUROPEAN COMMUNITY

ANNEX 1

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Services specified in Annex 4

Thresholds: SDR 130,000

Works specified in Annex 5

Threshold: SDR 5,000,000

List of Entities:

1. *European Communities entities:*
 - *The Council of the European Union;*
 - *The European Commission.*

2. *The following contracting authorities of the State:*

AUSTRIA*(Authentic in the English language only)**(A) Present coverage of entities:*

1. *Federal Chancellery - Procurement Office*
2. *Federal Ministry for Foreign Affairs*
3. *Federal Ministry of Health, Sports and Consumer Protection*
4. *Federal Ministry of Finance*
 - (a) *Procurement Office*
 - (b) *Division VI/5 (EDP procurement of the Federal Ministry of Finance and of the Federal Office of Accounts)*
 - (c) *Division III/1 (procurement of technical appliances, equipments and goods for the customs guard)*
5. *Federal Ministry for Youth and Family, Procurement Office*
6. *Federal Ministry for Economic Affairs*
7. *Federal Ministry of the Interior*
 - (a) *Division I/5 (Procurement Office)*
 - (b) *EDP-Centre (procurement of electronical data processing machines (hardware))*
 - (c) *Division II/3 (procurement of technical appliances and equipments for the Federal Police)*
 - (d) *Division I/6 [procurement of goods (other than those procured by Division II/3) for the Federal Police]*
 - (e) *Division IV/8 (procurement of aircraft)*
8. *Federal Ministry for Justice, Procurement Office*
9. *Federal Ministry of Defence (non-warlike materials) - contained in Annex I, Part II, Austria, of the Agreement on Government Procurement*
10. *Federal Ministry of Agriculture and Forestry*
11. *Federal Ministry of Labour and Social Affairs, Procurement Office*

12. *Federal Ministry of Education and Cultural Affairs*
 13. *Federal Ministry for Public Economy and Transport*
 14. *Federal Ministry of Science and Research and Fine Arts*
 15. *Austrian Central Statistical Office*
 16. *Austrian State Printing Office*
 17. *Federal Office of Metrology and Surveying*
 18. *Federal Institute for Testing and Research, Arsenal (BVFA)*
 19. *Federal Workshops for Artificial Limbs*
 20. *AUSTRO CONTROL Ges.m.b.H - Austrian Office for Civil Aviation*
 21. *Federal Institute for Testing of Motor Vehicles*
 22. *Headquarters of the Postal and Telegraph Administration (postal business only)*
 23. *Federal Ministry for Environment, Procurement Office*
- (B) *All other central public authorities including their regional and local sub-divisions provided that they do not have an industrial or commercial character.*

BELGIQUE

(La version française fait foi)

- A. - *L•Etat Fédéral:*
- *Services du Premier Ministre*
 - *Ministère des Affaires économiques*
 - *Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement*
 - *Ministère de l•Agriculture*
 - *Ministère des Classes moyennes*
 - *Ministère des Communications et de l•Infrastructure*
 - *Ministère de la Défense nationale¹*
 - *Ministère de l•Emploi et du Travail*
 - *Ministère des Finances*
 - *Ministère de l•Intérieur et de la Fonction publique*
 - *Ministère de la Justice*
 - *Ministère de la Santé publique et de l•Environnement*
 - *la Poste²;*
 - *la Régie des Bâtiments;*
 - *le Fonds des Routes;*
- B. - *L•Office national de Sécurité Sociale;*
- *L•Institut national d•Assurances sociales pour Travailleurs indépendants;*
 - *L•Institut national d•Assurance Maladie-Invalidité;*
 - *L•Office national des Pensions;*
 - *La Caisse auxiliaire d•Assurance Maladie-Invalidité;*
 - *Le Fonds des Maladies professionnelles;*
 - *L•Office national de l•Emploi.*

¹*Matériel non militaire figurant dans la partie I (3) de la présente annexe*

²*Activités postales visées par la loi du 24 décembre 1993*

DENMARK*(Authentic in the English language only)*

- | | | | |
|-----|--|---|---|
| 1. | <i>Prime Minister's Office</i> | - | <i>two departments;</i> |
| 2. | <i>Ministry of Labour</i> | - | <i>five directorates and institutions;</i> |
| 3. | <i>Ministry of Foreign Affairs</i>
<i>(three departments);</i> | | |
| 4. | <i>Ministry of Housing</i> | - | <i>five directorates and institutions;</i> |
| 5. | <i>Ministry of Energy</i>
<i>Establishment</i> | - | <i>one directorate and Research</i>
<i>•Risoe•</i> |
| 6. | <i>Ministry of Finance</i>
<i>including</i>
<i>(two departments)</i> | - | <i>four directorates and institutions</i>

<i>the Directorate for Government</i>
<i>Procurement</i>

<i>five other institutions;</i> |
| 7. | <i>Ministry of Taxes and Duties</i>
<i>institutions;</i>
<i>(two departments)</i> | - | <i>five directorates and</i> |
| 8. | <i>Ministry of Fisheries</i> | - | <i>four institutions;</i> |
| 9. | <i>Ministry of Industry</i>
<i>(Full name: Ministry of Industry, Trade, Handicraft and Shipping);</i> | - | <i>nine directorates and institutions</i> |
| 10. | <i>Ministry of the Interior</i>
<i>Directorate</i> | - | <i>Danish National Civil Defence</i>

<i>one directorate;</i> |
| 11. | <i>Ministry of Justice</i> | - | <i>Office of the Chief of Danish Police</i>
<i>five other directorates and institutions;</i> |
| 12. | <i>Ministry of Ecclesiastical Affairs</i> | | |
| 13. | <i>Ministry of Agriculture</i> | - | <i>nineteen directorates and institutions;</i> |
| 14. | <i>Ministry of Environment</i> | - | <i>five directorates;</i> |
| 15. | <i>Ministry of Cultural Affairs</i>
<i>owned</i>
<i>institutions;</i> | - | <i>three directorates and several state-</i>
<i>museums and higher education</i> |
| 16. | <i>Ministry of Social Affairs</i> | - | <i>four directorates</i> |
| 17. | <i>Ministry of Education</i> | - | <i>six directorates</i>

<i>twelve universities and other higher</i>
<i>education institutions;</i> |
| 18. | <i>Ministry of Economic Affairs</i>
<i>(three departments);</i> | | |
| 19. | <i>Ministry of Defence³</i> | | |

³Non-warlike materials contained in Part I (3) of this Annex

20. Ministry of Health - several institutions including State Serum Institut and University Hospital of Copenhagen;
21. Ministry for Research & Technology
22. Ministry of Transport - 25 directorates, departments and Institutions;
23. Ministry for Communication⁴ and Tourism
24. Ministry for Business Policies Coordination
25. Folketinget (Parliament)

⁴ With the exception of the Telecommunications services of the postal- and telegraphic service.

FEDERAL REPUBLIC OF GERMANY

(Authentic in the English language only)

List of central purchasing entities

1. Federal Foreign Office
2. Federal Ministry of Labour and Social Affairs
3. Federal Ministry of Education and Science
4. Federal Ministry for Food, Agriculture and Forestry
5. Federal Ministry of Finance
6. Federal Ministry for Research and Technology
7. Federal Ministry of the Interior (civil goods only)
8. Federal Ministry of Health
9. Federal Ministry for Women and Youth
10. Federal Ministry for Family Affairs and Senior Citizens
11. Federal Ministry of Justice
12. Federal Ministry for Regional Planning, Building and Urban Development
13. Federal Ministry of Post and Telecommunications⁵
14. Federal Ministry of Economic Affairs
15. Federal Ministry for Economic Co-operation
16. Federal Ministry of Defence⁶
17. Federal Ministry of Environment, Nature Conservation and Reactor Safety

Note

According to existing national obligations, the entities contained in this list must, in conformity with special procedures, award contracts to certain groups in order to remove difficulties caused by the last war.

⁵*Except telecommunication equipment*

⁶*Non-warlike materials contained in Part I (3) of this Annex*

ESPAÑA

(Esta lista es auténtica en la versión española)

Lista de entidades

1. Ministerio de Asuntos Exteriores
2. Ministerio de Justicia
3. Ministerio de Defensa⁶
4. Ministerio de Economía y Hacienda
5. Ministerio del Interior
6. Ministerio de Obras Públicas, Transportes y Medio Ambiente
7. Ministerio de Educación y Ciencia
8. Ministerio de Trabajo y Seguridad Social
9. Ministerio de Industria y Energía
10. Ministerio de Agricultura, Pesca y Alimentación
11. Ministerio de la Presidencia
12. Ministerio para las Administraciones Públicas
13. Ministerio de Cultura
14. Ministerio de Comercio y Turismo
15. Ministerio de Sanidad y Consumo
16. Ministerio de Asuntos Sociales

1 April 1997

FINLAND

(Authentic in the English language only)

The following contracting authorities of State:

OIKEUSKANSLERINVIRASTO

OFFICE OF THE CHANCELLOR OF
JUSTICE

KAUPPA- JA TEOLLISUUSMINISTERIÖ

MINISTRY OF TRADE AND
INDUSTRYKuluttajavirasto
Administration

National Consumer

Elintarvikevirasto

National Food Administration

Kilpailuvirasto

Office of Free Competition

Kilpailuneuvosto

Council of Free Competition

Kuluttaja-asiamiehen toimisto
Ombudsman

Office of the Consumer

Kuluttajavalituslautakunta

Consumer Complaint Board

Patentti- ja rekisterihallitusNational Board of Patents and

Registration

LIIKENNEMINISTERIÖMINISTRY OF TRANSPORT AND

COMMUNICATIONS

TelehallintokeskusTelecommunications Administration Centre

MAA- JA METSÄTALOUSMINISTERIÖMINISTRY OF AGRICULTURE AND
FORESTRY

MaanmittauslaitosNational Land Survey of Finland

1 April 1997

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OIKEUSMINISTERIÖ

MINISTRY OF JUSTICE

Tietosuojavaltuutetun toimisto The Office of the Data Protection Ombudsman
 Tuomioistuinlaitos Courts of Law

- Korkein oikeus
- Korkein hallinto-oikeus
- Hovioikeudet
- Käräjäoikeudet
- Lääninoikeudet
- Markkinatuomioistuin
- Työtuomioistuin
- Vakuutusosasto
- Vesioikeudet
- Vankeinhoitolaitos

Prison Administration

OPETUSMINISTERIÖ

MINISTRY OF EDUCATION

Opetushallitus
 Valtion elokuvatarkastamo
 Censorship

National Board of Education
 National Office of Film

PUOLUSTUSMINISTERIÖ

MINISTRY OF DEFENCE

Puolustusvoimat

Defence Forces

SISÄASIAINMINISTERIÖ

MINISTRY OF THE INTERIOR

Väestörekisterikeskus	Population Register Centre
Keskusrikospoliisi	Central Criminal Police
Liikkuva poliisi	Mobile Police
Rajavartiolaitos	Frontier Guard

SOSIAALI- JA TERVEYSMINISTERIÖ MINISTRY OF SOCIAL AFFAIRS AND HEALTH

Työttömyysturvalautakunta Unemployment Appeal Board

1 April 1997

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Tarkastuslautakunta Appeal Tribunal
 Lääkelaitos National Agency for Medicines
 Terveydenhuollon oikeusturvakeskus National Board of Medicolegal Affairs
 Tapaturmavirasto State Accident Office
 Säteilyturvakeskus Finnish Centre for Radiation and Nuclear Safety
 Valtion turvapaikan hakijoiden vastaanotto-Reception Centres for Asylum Seekers
 keskuskeskukset

TYÖMINISTERIÖ

MINISTRY OF LABOUR

Valtakunnansovittelijain toimisto National Conciliators' Office
 Työneuvosto Labour Council

ULKOASIAINMINISTERIÖ
AFFAIRS

MINISTRY FOR FOREIGN

VALTIOVARAINMINISTERIÖ

MINISTRY OF FINANCE

Valtiontalouden tarkastusvirasto State Economy Controller's
 Office
 Valtiokonttori State Treasury Office
 Valtion työmarkkinalaitos
 Verohallinto
 Tullihallinto
 Valtion vakuusrahasto

YMPÄRISTÖMINISTERIÖ

MINISTRY OF ENVIRONMENT

Vesi- ja ympäristöhallitus National Board of Waters and
 Environment

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FRANCE

(La version française fait foi)

1. Principales entités acheteuses

A. Budget général

- Services du Premier Ministre
- Ministère des Affaires Sociales, de la Santé et de la Ville
- Ministère de l'Intérieur et de l'Aménagement du Territoire
- Ministère de la Justice
- Ministère de la Défense
- Ministère des Affaires Etrangères
- Ministère de l'Education Nationale
- Ministère de l'Economie
- Ministère de l'Industrie, des Postes et Télécommunications et du Commerce
Extérieur
- Ministère de l'Equipement, des Transports et du Tourisme
- Ministère des Entreprises et du Développement Economique, chargé des Petites et
Moyennes Entreprises et du Commerce et de l'Artisanat
- Ministère du Travail, de l'Emploi et de la Formation Professionnelle
- Ministère de la Culture et de la Francophonie
- Ministère du Budget
- Ministère de l'Agriculture et de la Pêche
- Ministère de l'Enseignement Supérieur et de la Recherche
- Ministère de l'Environnement
- Ministère de la Fonction Publique
- Ministère du Logement
- Ministère de la Coopération
- Ministère des Départements et Territoires d'Outre-Mer
- Ministère de la Jeunesse et des Sports
- Ministère de la Communication
- Ministère des anciens Combattants et Victimes de Guerre

B. Budget annexe

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On peut notamment signaler:

- Imprimerie Nationale;

C. *Comptes spéciaux du Trésor*

On peut notamment signaler:

- Fonds forestiers national;
- Soutien financier de l'industrie cinématographique et de l'industrie des programmes audio-visuels;
- Fonds national d'aménagement foncier et d'urbanisme;
- Caisse autonome de la reconstruction.

2. *Etablissements publics nationaux à caractère administratif*

- Académie de France à Rome;
- Académie de marine;
- Académie des sciences d'Outre-Mer;
- Agence centrale des organismes de sécurité sociale (A.C.O.S.S.);
- Agences financières de bassins;
- Agence nationale pour l'amélioration des conditions de travail (A.N.A.C.T.);
- Agence nationale pour l'amélioration de l'habitat (A.N.A.H.);
- Agence nationale pour l'emploi (A.N.P.E.);
- Agence nationale pour l'indemnisation des français d'Outre-Mer (A.N.I.F.O.M.);
- Assemblée permanente des chambres d'agriculture (A.P.C.A.);
- Bibliothèque nationale;
- Bibliothèque nationale et universitaire de Strasbourg;
- Bureau d'études des postes et télécommunications d'Outre-Mer (B.E.P.T.O.M.);
- Caisse des dépôts et consignations;
- Caisse nationale des allocations familiales (C.N.A.F.);
- Caisse nationale d'assurance maladie des travailleurs salariés (C.N.A.M.);
- Caisse nationale d'assurance-vieillesse des travailleurs salariés (C.N.A.V.T.S.);
- Caisse nationale des autoroutes (C.N.A.);
- Caisse nationale militaire de sécurité sociale (C.N.M.S.S.);
- Caisse nationale des monuments historiques et des sites;

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- Caisse nationale des télécommunications⁷;
- Caisse de garantie du logement social;
- Casa de Velasquez;
- Centre d'enseignement zootechnique de Rambouillet;
- Centre d'études du milieu et de pédagogie appliquée du Ministère de l'Agriculture;
- Centre d'études supérieures de sécurité sociale;
- Centres de formation professionnelle agricole;
- Centre national d'art et de culture Georges Pompidou;
- Centre national de la cinématographie française;
- Centre national d'études et de formation pour l'enfance inadaptée;
- Centre national d'études et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts;
- Centre national et de formation pour l'adaptation scolaire et l'éducation spécialisée (C.N.E.F.A.S.E.S.);
- Centre national de formation et de perfectionnement des professeurs d'enseignement ménager agricole;
- Centre national des lettres;
- Centre national de documentation pédagogique;
- Centre national des oeuvres universitaires et scolaires (C.N.O.U.S.);
- Centre national d'ophtalmologie des quinze-vingts;
- Centre national de préparation au professorat de travaux manuels éducatifs et d'enseignement ménager;
- Centre national de promotion rurale de Marmilhat;
- Centre national de la recherche scientifique (C.N.R.S.);
- Centre régional d'éducation populaire d'Ile de France;
- Centres d'éducation populaire et de sport (C.R.E.P.S.);
- Centres régionaux des oeuvres universitaires (C.R.O.U.S.);
- Centres régionaux de la propriété forestière;
- Centre de sécurité sociale des travailleurs migrants;
- Chancelleries des universités;
- Collège de France
- Commission des opérations de bourse;
- Conseil supérieur de la pêche;
- Conservatoire de l'espace littoral et des rivages lacustres;
- Conservatoire national des arts et métiers;

⁷Postes seulement

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- Conservatoire national supérieur de musique;
- Conservatoire national supérieur d'art dramatique;
- Domaine de Pompadour;
- Ecole centrale - Lyon;
- Ecole centrale des arts et manufactures;
- Ecole française d'archéologie d'Athènes;
- Ecole française d'Extrême-Orient;
- Ecole française de Rome;
- Ecole des hautes études en sciences sociales;
- Ecole nationale d'administration;
- Ecole nationale de l'aviation civile (E.N.A.C.);
- Ecole nationale des Chartes;
- Ecole nationale d'équitation;
- Ecole nationale du génie rural des eaux et des forêts (E.N.G.R.E.F.);
- Ecoles nationales d'ingénieurs;
- Ecole nationale d'ingénieurs des industries des techniques agricoles et alimentaires;
- Ecoles nationales d'ingénieurs des travaux agricoles;
- Ecole nationale des ingénieurs des travaux ruraux et des techniques sanitaires;
- Ecole nationale des ingénieurs des travaux des eaux et forêts (E.N.I.T.E.F.);
- Ecole nationale de la magistrature;
- Ecoles nationales de la marine marchande;
- Ecole nationale de la santé publique (E.N.S.P.);
- Ecole nationale de ski et d'alpinisme;
- Ecole nationale supérieure agronomique - Montpellier;
- Ecole nationale supérieure agronomique - Rennes;
- Ecole nationale supérieure des arts décoratifs;
- Ecole nationale supérieure des arts et industries - Strasbourg;
- Ecole nationale supérieure des arts et industries textiles - Roubaix;
- Ecoles nationales supérieures d'arts et métiers;
- Ecole nationale supérieure des beaux-arts;
- Ecole nationale supérieure des bibliothécaires;
- Ecole nationale supérieure de céramique industrielle;
- Ecole nationale supérieure de l'électronique et de ses applications (E.N.S.E.A.);
- Ecole nationale supérieure d'horticulture;
- Ecole nationale supérieure des industries agricoles alimentaires;
- Ecole nationale supérieure du paysage (rattachée à l'école nationale supérieure d'horticulture);
- Ecole nationale supérieure des sciences agronomiques appliquées (E.N.S.S.A.);

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- Ecoles nationales vétérinaires;
- Ecole nationale de voile;
- Ecoles normales d'instituteurs et d'institutrices;
- Ecoles normales nationales d'apprentissage;
- Ecoles normales supérieures;
- Ecole polytechnique;
- Ecole technique professionnelle agricole et forestière de Meymac (Corrèze)
- Ecole de sylviculture - Croigny (Aube);
- Ecole de viticulture et d'oenologie de la Tour Blanche (Gironde);
- Ecole de viticulture - Avize (Marne);
- Etablissement national de convalescents de Saint-Maurice;
- Etablissement national des invalides de la marine (E.N.I.M.);
- Etablissement national de bienfaisance Koenigs-Wazter;
- Fondation Carnegie;
- Fondation Singer-Polignac;
- Fonds d'action sociale pour les travailleurs immigrés et leurs familles;
- Hôpital-hospice national Dufresne-Sommeiller;
- Institut de l'élevage et de médecine vétérinaire des pays tropicaux (I.E.M.V.P.T.)
- Institut français d'archéologie orientale du Caire;
- Institut géographique national;
- Institut industriel du Nord;
- Institut international d'administration publique (I.I.A.P.);
- Institut national agronomique de Paris-Grignon;
- Institut national des appellations d'origine des vins et eaux-de-vie (I.N.A.O.V.E.V.);
- Institut national d'astronomie et de géophysique (I.N.A.G.);
- Institut national de la consommation (I.N.C.);
- Institut national d'éducation populaire (I.N.E.P.);
- Institut national d'études démographiques (I.N.E.D.);
- Institut national des jeunes aveugles - Paris;
- Institut national des jeunes sourdes - Bordeaux;
- Institut national des jeunes sourds - Chambéry;
- Institut national des jeunes sourds - Metz;
- Institut national des jeunes sourds - Paris;
- Institut national de physique nucléaire et de physique des particules (I.N2.P3);
- Institut national de promotion supérieure agricole;
- Institut national de la propriété industrielle;
- Institut national de la recherche agronomique (I.N.R.A.);
- Institut national de recherche pédagogique (I.N.R.P.);
- Institut national de la santé et de la recherche médicale (I.N.S.E.R.M.);

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- Institut national des sports;
- Instituts nationaux polytechniques;
- Instituts nationaux des sciences appliquées;
- Instituts national supérieur de chimie industrielle de Rouen;
- Institut national de recherche en informatique et en automatique (I.N.R.I.A.);
- Institut national de recherche sur les transports et leur sécurité (I.N.R.E.T.S.);
- Instituts régionaux d'administration;
- Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen
- Musée de l'armée;
- Musée Gustave Moreau;
- Musée de la marine;
- Musée national J.J. Henner;
- Musée national de la Légion d'Honneur;
- Musée de la poste;
- Muséum national d'histoire naturelle;
- Musée Auguste Rodin;
- Observatoire de Paris;
- Office de coopération et d'accueil universitaire;
- Office français de protection des réfugiés et apatrides;
- Office national des anciens combattants;
- Office national de la chasse;
- Office national d'information sur les enseignements et les professions (O.N.I.S.E.P.);
- Office national d'immigration (O.N.I.);
- O.R.S.T.O.M. - Institut français de recherche scientifique pour le développement en coopération;
- Office universitaire et culturel français pour l'Algérie;
- Palais de la découverte;
- Parcs nationaux;
- Réunion des musées nationaux;
- Syndicat des transports parisiens;
- Thermes nationaux - Aix-les-Bains;
- Universités.

3. Autre organisme public national

- Union des groupements d'achats publics (U.G.A.P.).

1 April 1997

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GREECE

(Authentic in the English language only)

List of entities

1. Ministry of National Economy
2. Ministry of Education and Religion
3. Ministry of Commerce
4. Ministry of Industry, Energy and Technology
5. Ministry of Merchant Marine
6. Ministry to the Prime Minister
7. Ministry of the Aegean
8. Ministry of Foreign Affairs
9. Ministry of Justice
10. Ministry of the Interior
11. Ministry of Labour
12. Ministry of Culture and Sciences
13. Ministry of Environment, Planning and Public Works
14. Ministry of Finance
15. Ministry of Transport and Communications
16. Ministry of Health and Social Security
17. Ministry of Macedonia and Thrace
18. Army General Staff
19. Navy General Staff
20. Airforce General Staff
21. Ministry of Agriculture
22. General Secretariat for Press and Information
23. General Secretariat for Youth
24. General State Laboratory
25. General Secretariat for Further Education
26. General Secretariat of Equality
27. General Secretariat for Social Security
28. General Secretariat for Greeks Living Abroad
29. General Secretariat for Industry
30. General Secretariat for Research and Technology
31. General Secretariat for Sports
32. General Secretariat for Public Works

1 April 1997

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33. National Statistical Service
34. National Welfare Organisation
35. Workers' Housing Organisation
36. National Printing Office
37. Greek Atomic Energy Commission
38. Greek Highway Fund
39. University of Athens
40. University of the Aegean
41. University of Thessaloniki
42. University of Thrace
43. University of Ioannina
44. University of Patras
45. Polytechnic School of Crete
46. Sivitanidios Technical School
47. University of Macedonia
48. Eginitio Hospital
49. Areteio Hospital
50. National Centre of Public Administration
51. Hellenic Post (EL. TA.)
52. Public Material Management Organisation
53. Farmers' Insurance Organisation
54. School Building Organisation

IRELAND

(Authentic in the English language only)

1. *Main purchasing entities*

Office of Public Works

2. *Other departments*

- President's Establishment;
- Houses of the Oireachtas (Parliament);
- Department of the Taoiseach (Prime Minister);
- Office of the Tanaiste (Deputy Prime Minister)
- Central Statistics Office;
- Department of Arts, Culture and the Gaeltacht
- National Gallery of Ireland;
- Department of Finance;
- State Laboratory;
- Office of the Comptroller and Auditor General;
- Office of the Attorney General;
- Office of the Director of Public Prosecutions;
- Valuation Office;
- Civil Service Commission;
- Office of the Ombudsman;
- Office of the Revenue Commissioners;
- Department of Justice;
- Commissioners of Charitable Donations and Bequests for Ireland;
- Department of the Environment;
- Department of Education;
- Department of the Marine;
- Department of Agriculture, Food and Forestry;
- Department of Enterprise and Employment
- Department of Trade and Tourism;
- Department of Defence⁸;

⁸*Non-warlike materials contained in Part I (3) of this Annex*

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- Department of Foreign Affairs;
- Department of Social Welfare;
- Department of Health;
- Department of Transport, Energy and Communications.

ITALY

(Authentic in the English language only)

Purchasing Entities

1. Ministry of the Treasury⁹
2. Ministry of Finance¹⁰
3. Ministry of Justice
4. Ministry of Foreign Affairs
5. Ministry of Education
6. Ministry of the Interior
7. Ministry of Public Works
8. Ministry for Co-ordination (International Relations and EC Agricultural Policies)
9. Ministry of Industry, Trade and Craft Trades
10. Ministry of Employment and Social Security
11. Ministry of Health
12. Ministry of Cultural Affairs and the Environment
13. Ministry of Defence¹¹
14. Budget and Economic Planning Ministry
15. Ministry of Foreign Trade
16. Ministry of Posts and Telecommunications¹²
17. Ministry of the Environment
18. Ministry of University and Scientifical and Technological Research

⁹*Acting as the central purchasing entity for most of the other Ministries or entities*

¹⁰*Not including purchases made by the tobacco and salt monopolies*

¹¹*Non-warlike materials contained in Part I (3) of this Annex*

¹²*Postal business only*

LUXEMBOURG

(La version française fait foi)

1. Ministère d'Etat: Service central des imprimés et des fournitures de l'Etat;
2. Ministère de l'agriculture: Administration des Services techniques de l'Agriculture;
3. Ministère de l'éducation nationale: Lycées d'enseignement secondaire et d'enseignement secondaire technique;
4. Ministère de la famille et de la solidarité sociale: Maisons de retraite;
5. Ministère de la force publique: Armée ¹³ - Gendarmerie - Police;
6. Ministère de la justice: Etablissements pénitentiaires;
7. Ministère de la santé publique: Hôpital neuropsychiatrique;
8. Ministère des travaux publics: Bâtiments publics - Ponts et Chaussées;
9. Ministère des Communications: Centre informatique de l'Etat
10. Ministère de l'environnement: Commissariat général à la Protection des Eaux.

¹³Matériel non-militaire figurant dans la partie I (3) de la présente annexe

THE NETHERLANDS

(Authentic in the English language only)

*List of entities**Ministries and central governmental bodies*

1. Ministry of General Affairs - Ministerie van Algemene Zaken
 - Advisory Council on Government Policy - Bureau van de Wetenschappelijke Raad voor het Regeringsbeleid
 - National Information Office - Rijksvoorlichtingsdienst
2. Ministry of the Interior - Ministerie van Binnenlandse Zaken
 - Government Personnel Information System Service - Dienst Informatievoorziening Overheidspersoneel
 - Redundancy Payment and Benefits Agency - Dienst Uitvoering Ontslaguitkeringsregelingen
 - Public Servants Medical Expenses Agency - Dienst Ziektekostenvoorziening Overheidspersoneel
 - RPD Advisory Service - RPD Advies
 - Central Archives and Interdepartmental Text Processing - CAS/ITW
3. Ministry of Foreign Affairs + Directorate-General for Development Cooperation of the Ministry of Foreign Affairs - Ministerie van Buitenlandse Zaken + Ministerie voor Ontwikkelingssamenwerking
4. Ministry of Defence - Ministerie van Defensie¹⁴
 - Directorate of material Royal Netherlands Navy - Directie materieel Koninklijke Marine
 - Directorate of material Royal Netherlands Army - Directie materieel Koninklijke Landmacht
 - Directorate of material Royal Netherlands Airforce - Directie materieel Koninklijke Luchtmacht
5. Ministry of Economic Affairs - Ministerie van Economische Zaken
 - Economic Investigation Agency - Economische Controledienst
 - Central Plan Bureau - Centraal Planbureau
 - Netherlands Central Bureau of Statistics - Centraal Bureau voor de Statistiek
 - Senter - Senter

¹⁴Non-warlike materials contained in Part I (3) of this Annex

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- Industrial Property Office - Bureau voor de Industriële Eigendom
- Central Licensing Office for Import and Export - Centrale Dienst voor de In- en Uitvoer
- State Supervision of Mines - Staatstoezicht op de Mijnen
- Geological Survey of the Netherlands - Rijks Geologische Dienst
- 6. Ministry of Finance - Ministerie van Financiën
 - State Property Department - Dienst der Domeinen
 - Directorates of the State Tax Department - Directies der Rijksbelastingen
 - State Tax Department/Fiscal Intelligence and Information Department - Belastingdienst/FIOD
 - State Tax Department/Computer Centre - Belastingdienst/Automatiseringscentrum
 - State Tax Department/Training - Belastingdienst/Opleidingen
- 7. Ministry of Justice - Ministerie van Justitie
 - Education and Training Organization, Directorate General for the Protection of Young People and the care of Offenders - Opleidings- en vormingsorganisatie Directoraat-Generaal Jeugdbescherming en Delinquentenzorg
 - Child Care and Protection Board - Raden voor de Kinderbescherming in de provincies
 - State Institutions for Child care and Protection - Rijksinrichtingen voor de Kinderbescherming in de provincies
 - Prisons - Penitentiare inrichtingen in de provincie
 - State Institutions for Persons Placed under Hospital Order - Rijksinrichtingen voor T.B.S.- verpleging in de provincies
 - Internal Facilities Service of the Directorate for Young Offenders and Young Peoples Institute - Dienst Facilitaire Zaken van de Directie Delinquentenzorg en Jeugdinstellingen
 - Legal Aid Department - Dienst Gerechtelijke Ondersteuning in de arrondissementen
 - Central Collection Office for the Courts - Centraal Ontvangstkantoor der Gerechten
 - Central Debt Collection Agency of the Ministry of Justice - Centraal Justitie Incassobureau
 - National Criminal Investigation Department - Rijksrecherche
 - Forensic Laboratory - Gerechtelijk Laboratorium
 - National Police Services Force - Korps Landelijke Politiediensten
 - District offices of the Immigration and Naturalisation Service - Districtskantoren Immigratie- en Naturalisatiedienst
- 8. Ministry of Agriculture, Nature Management and Fisheries - Ministerie van Landbouw, Natuurbeheer en Visserij

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- National Forest Service - Staatsbosbeheer
 - Agricultural Research Service - Dienst Landbouwkundig Onderzoek
 - Agricultural Extension Service - Dienst Landbouwvoorlichting
 - Land Development Service - Landinrichtingsdienst
 - National Inspection Service for Animals and Animal Protection - Rijksdienst voor de Keuring van Vee en Vlees
 - Plant Protection Service - Plantenziektenkundige Dienst
 - General Inspection Service - Algemene Inspectiedienst
 - National Fisheries Research Institute - Rijksinstituut voor Visserijonderzoek
 - Government Institute for Quality Control of Agricultural Products - Rijkskwaliteit Instituut voor Land- en Tuinbouwprodukten
 - National Institute for Nature Management - Instituut voor Bos- en Natuuronderzoek
 - Game Fund - Jachtfonds
9. Ministry of Education and Science - Ministerie van Onderwijs en Wetenschappen
- Royal Library - Koninklijke Bibliotheek
 - Institute for Netherlands History - Instituut voor Nederlandse Geschiedenis
 - Netherlands State Institute for War Documentation - Rijksinstituut voor Oorlogsdocumentatie
 - Institute for Educational Research - Instituut voor Onderzoek van het Onderwijs
 - National Institute for Curriculum Development - Instituut voor de Leerplan Ontwikkeling
10. Ministry of Social Affairs and Employment - Ministerie van Sociale Zaken en Werkgelegenheid
- Wages Inspection Service - Loontechnische dienst
 - Inspectorate for Social Affairs and Employment - Inspectie en Informatie Sociale Zaken en Werkgelegenheid
 - National Social Assistance Consultancies Services - Rijksconsulentschappen Sociale Zekerheid
 - Steam Equipment Supervision Service - Dienst voor het Stoomwezen
 - Conscientious Objectors Employment Department - Tewerkstelling erkend gewetensbezwaarden militaire dienst
 - Directorate for Equal Opportunities - Directie Emancipatie
11. Ministry of Transport, Public Works and Water Management - Ministerie van Verkeer en Waterstaat
- Directorate-General for Transport - Directoraat-Generaal Vervoer
 - Directorate-General for Public Works and Water Management - Directoraat-Generaal Rijkswaterstaat
 - Directorate-General for Civil Aviation - Directoraat-Generaal Rijksluchtvaartdienst

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- Telecommunications and Post Department - Hoofddirectie
Telecommunicatie en Post
- Regional Offices of the Directorates-General and General Management,
Inland Waterway Navigation Service - De regionale organisatie van de
directoraten generaal en de hoofddirectie Vaarwegmarkeringsdienst
- 12. Ministry of Housing, Physical Planning and Environment - Ministerie van
Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer
 - Directorate-General for Environment Management - Directoraat-Generaal
Milieubeheer
 - Directorate-General for Public Housing - Directoraat-Generaal van de
Volkshuisvesting
 - Government Buildings Agency - Rijksgebouwendienst
 - National Physical Planning Agency - Rijksplanologische Dienst
- 13. Ministry of Welfare, Health and Cultural Affairs - Ministerie van Welzijn,
Volksgezondheid en Cultuur
 - Social and Cultural Planning Office - Sociaal en Cultureel Planbureau
 - Inspectorate for Child and Youth Care and Protection Services - Inspectie
Jeugdhulpverlening en Jeugdbescherming
 - Medical Inspectorate of Health Care - Inspecties van het Staatstoezicht op de
Volksgezondheid
 - Cultural Castle Council - Rijksdienst Kastelenbeheer
 - National Archives Department - Rijksarchiefdienst
 - Department for the Conservation of Historic Buildings and Sites -
Rijksdienst voor de Monumentenzorg
 - National Institute of Public Health and Environmental Protection -
Rijksinstituut voor Milieuhygiëne
 - National Archeological Field Survey Commission - Rijksdienst voor het
Oudheidkundig Bodemonderzoek
 - Netherlands Office for Fine Arts - Rijksdienst Beeldende Kunst
- 14. Cabinet for Netherlands Antillean and Aruban Affairs - Kabinet voor
Nederlands-Antilliaanse en Arubaanse zaken
- 15. Higher Colleges of State - Hogere Colleges van Staat
- 16. Council of State - Raad van State
- 17. Netherlands Court of Audit - Algemene Rekenkamer
- 18. National Ombudsman - Nationale Ombudsman

PORTUGAL

(Authentic in the English language only)

Prime Minister's Office

Legal Centre

Centre for Studies and Training (Local Government)

Government Computer Network Management Centre

National Council for Civil Defence Planning

Permanent Council for Industrial Conciliation

Department for Vocational and Advanced Training

Ministerial Department with special responsibility for Macao

Ministerial Department responsible for Community Service by Conscientious Objectors

Institute for Youth

National Administration Institute

Secretariat-General, Prime Minister's Office

Secretariat for Administrative Modernization

Social Services, Prime Minister's Office

Ministry of Home Affairs

Directorate-General for Roads

Ministerial Department responsible for Studies and Planning

Civilian administrations

Customs Police

Republican National Guard

Police

Secretariat-General

Technical Secretariat for Electoral Matters

Customs and Immigration Department

Intelligence and Security Department

National Fire Service

Ministry of Agriculture

1 April 1997

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Control Agency for Community Aid to Olive Oil Production
Regional Directorate for Agriculture (Beira Interior)
Regional Directorate for Agriculture (Beira Litoral)
Regional Directorate for Agriculture (Entre Douro e Minho)
Regional Directorate for Agriculture (Trás-os-Montes)
Regional Directorate for Agriculture (Alentejo)
Regional Directorate for Agriculture (Algarve)
Regional Directorate for Agriculture (Ribatejo e Oeste)
General Inspectorate and Audit Office (Management Audits)
Viticulture Institute
National Agricultural Research Institute
Institute for the Regulation and Guidance of Agricultural Markets
Institute for Agricultural Structures and Rural Development
Institute for Protection of Agri-food Production
Institute for Forests
Institute for Agricultural Markets and Agri-Foods Industry
Secretariat-General
IFADAP (Financial Institute for the Development of Agriculture and Fishing) *(a)*
INGA (*National Agricultural Intervention and Guarantee Institute*) *(a)*

(a) Authority under joint Ministry of Finance and Ministry of Agriculture control

Ministry of the Environment and Natural Resources

Directorate-General for Environment
Institute for Environmental Promotion
Institute for the Consumer
Institute for Meteorology
Secretariat-General
Institute for Natural Conservancy
Ministerial Department for the Improvement of the Estoril Coast
Regional Directorates for Environment and Natural Resources
Water Institute

Ministry of Trade and Tourism

Commission responsible for the Application of Economic Penalties
Directorate-General for Competition and Prices
Directorate-General for Inspection (Economic Affairs)

1 April 1997

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Directorate-General for Tourism
Directorate-General for Trade
Tourism Fund
Ministerial Department responsible for Community Affairs
ICEP (Portuguese Foreign Trade Institute)
General Inspectorate for Gambling
National Institute for Training in Tourism
Regional Tourist Boards
Secretariat-General
ENATUR (National Tourism Enterprise) - Public enterprise (a)

(a) Authority under joint Ministry of Trade and Tourism and Ministry of Finance control

Ministry of Defence¹⁵

National Security Authority
National Council for Emergency Civil Planning
Directorate-General for Armaments and Defence Equipments
Directorate-General for Infrastructure
Directorate-General for Personnel
Directorate-General for National Defence Policy
Secretariat-General

Office of the Chief of Staff of the Armed Forces¹⁶

Administrative Council of the Office of the Chief of Staff of the Armed Forces
Commission of Maintenance of NATO Infrastructure
Executive Commission of NATO Infrastructure
Social Works of the Armed Forces

Office of the Chief of Staff, Air Force¹⁶

Air Force Logistics and Administrative Commando
General Workshop for Aeronautical Equipment

¹⁵Non-warlike materials contained in Part I (3) of this Annex

¹⁶Non-warlike materials contained in Part I (3) of this Annex

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Office of the Chief of Staff, Army¹⁶

Logistics Department

Directorate for Army Engineering

Directorate for Army Communications

Service Directorate for Fortifications and Army Works

Service Directorate for the Army Physical Education

Service Directorate Responsible for the Army Computer

Service Directorate for Intendancy

Service Directorate for Equipment

Service Directorate for Health

Directorate for Transports

Main Army Hospital

General Workshop of Uniforms and Equipment

General Workshop of Engineering Equipment

Bakery

Army Laboratory for Chemical and Pharmaceutical Products

Office of the Chief of Staff, Navy¹⁶

Directorate for Naval Facilities

Directorate-General for Naval Equipment

Directorate for Instruction and Training

Directorate of the Service of Naval Health

The Navy Hospital

Directorate for Supplies

Directorate for Transport

Directorate of the Service of Maintenance

Armed Computer Service

Continent Naval Commando

Açores Naval Commando

Madeira Naval Commando

Commando of Lisbon Naval Station

Army Centre for Physical Education

Administrative Council of Central Navy Administration

Naval War Height Institute

Directorate-General for the Navy

Directorate-General for Lighthouses and School for Lighthouse Keepers

The Hydrographic Institute

Vasco da Gama Aquarium

The Alfeite Arsenal

*Ministry of Education**Secretariat-General**Department for Planning and Financial Management**Department for Higher Education**Department for Secondary Education**Department for Basic Education**Department for Educational Resources Management**General Inspectorate of Education**Bureau for the Launching and Coordination of the School Year**Regional Directorate for Education (North)**Regional Directorate for Education (Centra)**Regional Directorate for Education (Lisbon)**Regional Directorate for Education (Alentejo)**Regional Directorate for Education (Algarve)**Camões Institute**Institute for Innovation in Education Antonio Aurélio da Costa Ferreira**Institute for Sports**Department of European Affairs**Ministry of Education Press**Ministry of Employment and Social Security**National Insurance and Occupational Health Fund**Institute for Development and Inspection of Labour Conditions**Social Welfare Funds**Casa Pia de Lisboa (a)**National Centre for Pensions**Regional Social Security centres**Commission on Equal Opportunity and Rights for Women**Statistics Department**Studies and Planning Department**Department of International Relations and Social Security Agreements**European Social Fund Department**Department of European Affairs and External Relations**Directorate-General for Social Works**Directorate-General for the Family**Directorate-General for Technical Support to Management**Directorate-General for Employment and Vocational Training**Directorate-General for Social Security Schemes*

Social Security Financial Stabilization Fund
General Inspectorate for Social Security
Social Security Financial Management Institute
Employment and Vocational Training Institute
National Institute for Workers' Leisure Time
Secretariat-General
National Secretariat for Rehabilitation
Social Services
Santa Casa de Misericordia de Lisboa (a)

(a) Authority under joint control of the Ministry of Employment and Social Security and the Ministry of Health Control

Ministry of Finance

ADSE (Directorate-General for the Protection of Civil Servants)
Legal Affairs Office
Directorate-General for Public Administration
Directorate-General for Public Accounts and General Budget Supervision
Directorate-General for the State Loans Board
Directorate-General for the Customs Service
Directorate-General for Taxation
Directorate-General for State Assets
Directorate-General for the Treasury
Ministerial Department responsible for Economic Studies
Ministerial Department responsible for European Affairs
GAFEEP (Ministerial Department responsible for Studies on the Funding of the State and Public Enterprises)
General Inspectorate for Finance
Institute for Information Technology
State Loans Board
Secretariat-General
SOFE (Social Services of the Ministry of Finance)

Ministry of Industry and Energy

Regional Delegation for Industry and Energy (Lisbon and Tagus Valley)
Regional Delegation for Industry and Energy (Alentejo)
Regional Delegation for Industry and Energy (Algarve)
Regional Delegation for Industry and Energy (Centre)
Regional Delegation for Industry and Energy (North)

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Directorate-General for Industry
Directorate-General for Energy
Geological and Mining Institute
Ministerial Department responsible for Studies and Planning
Ministerial Department responsible for Oil Exploration and Production
Ministerial Department responsible for Community Affairs
National Industrial Property Institute
Portuguese Institute for Quality
INETI (National Institute for Industrial Engineering and Technology)
Secretariat-General
PEDIP Managers Department
Legal Affairs Office
Commission for Emergency Industrial Planning
Commission for Emergency Energy Planning
IAPMEI (Institute for Support of Small and Medium-sized enterprises and Investments)

Ministry of Justice

Centre for Legal Studies
Social Action and Observation Centres
The High Council of the Judiciary (Conselho Superior de Magistratura)
Central Registry
Directorate-General for Registers and Other Official Documents
Directorate-General for Computerized Services
Directorate-General for Legal Services
Directorate-General for the Prison Service
Directorate-General for the Protection and Care of Minors Prison Establishments
Ministerial Department responsible for European Law
Ministerial Department responsible for Documentation and Comparative Law
Ministerial Department responsible for Studies and Planning
Ministerial Department responsible for Financial Management
Ministerial Department responsible for Planning and Coordinating Drug Control
São João Deus Prison Hospital
Corpus Christi Institute
Guarda Institute
Institute for the Rehabilitation of Offenders
São Domingos Benfica Institute
National Police and Forensic Science Institute
Navarro Paiva Institute
Padre António Oliveira Institute

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São Fiel Institute
São José Institute
Vila Fernando Institute
Criminology Institutes
Forensic Medicine Institutes
Criminal Investigation Department
Secretariat-General
Social Services

Ministry of Public Works, Transport and Communications

Council for Public and Private Works Markets
Directorate-General for Civil Aviation
Directorate-General for National Buildings and Monuments
Directorate-General for Road and Rail Transport
Ministerial Department responsible for River Crossings (Tagus)
Ministerial Department for Investment Coordination
Ministerial Department responsible for the Lisbon Railway Junction
Ministerial Department responsible for the Oporto Railway Junction
Ministerial Department responsible for Navigation on the Douro
Ministerial Department responsible for the European Communities
General Inspectorate for Public Works, Transport and Communications
Independent Executive for Roads
National Civil Engineering Laboratory
Social Works Department of the Ministry of Public Works, Transport and Communications
Secretariat-General
Institute for Management and Sales of State Housing
CTT - Post & Telecommunications of Portugal SA¹⁷

Ministry of Foreign Affairs

Directorate-General for Consular Affairs and for Financial Administration
Directorate-General for the European Communities
Directorate-General for Cooperation
Institute for Portuguese Emigrants and Portuguese Communities Abroad
Institute for Economic Cooperation

¹⁷ *Postal Business only*

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Secretariat-General

Ministry of Territorial Planning and Management

Academy of Science

Legal Affairs Office

National Centre for Geographical Data

Regional Coordination Committee (Centre)

Regional Coordination Committee (Lisbon and Tagus Valley)

Regional Coordination Committee (Alentejo)

Regional Coordination Committee (Algarve)

Regional Coordination Committee (North)

Central Planning Department

Ministerial Department for European Issues and External Relations

Directorate-General for Local Government

Directorate-General for Regional Development

Directorate-General for Town and Country Planning

Ministerial Department responsible for Coordination of the Alqueva Project

General Inspectorate for Territorial Administration

National Statistical Institute

António Sergio Cooperative Institute

Institute for Scientific and Tropical Research

Geographical and Land Register Institute

National Scientific and Technological Research Board

Secretariat-General

Ministry of the Sea

Directorate General for Fishing

Directorate General for Ports, Navigation and Maritime Transport

Portuguese Institute for Maritime Exploration

Maritime Administration for North, Centre & South

National Institute for Port Pilotage

Institute for Port Labour

Port Administration of Douro and Leixões

Port Administration of Lisbon

Port Administration of Setúbal and Sesimbra

Port Administration of Sines

Independent Executive for Ports

Infante D Henrique Nautical School

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*Portugues Fishing School and School of Sailing and Marine Craft
Secretariat General*

Ministry of Health

Regional Health Administrations

Health Centres

Mental Health Centres

Histocompatibility Centres

Regional Alcoholism Centres

Department for Studies and Health Planning

Health Human Resource Department

Directorate-General for Health

Directorate-General for Health Installations & Equipment

National Institute for Chemistry and Medicament

Supporting Centers for Drug Addicts

Institute for Computer and Finacial Management of Health Services

Infirmary Technical Schools

Health Service Technical Colleges

Central Hospitals

District Hospitals

General Inspectorate of Health

National Institute of Emergency Care

Dr Ricardo Jorge National Health Institute

Dr Jacinto De Magalhaes Institute of Genetic Medicine

Dr Gama Pinto Institute of Ophthalmology

Portuguese Blood institute

General Practitioners Institutes

Secretariat-General

Service for Prevention and Treatment of Drug Dependence

Social Services, Ministry of Health

SWEDEN*(Authentic in the English language only)**The following contracting authorities of the State:*A

<i>Akademien för de fria konsterna</i>	<i>Royal Academy of Fine Arts</i>
<i>Allmänna advokatbyråerna (28)</i>	<i>Public Law-Service Offices (28)</i>
<i>Allmänna reklamationsnämnden</i>	<i>National Board for Consumer Complaints</i>
<i>Arbetskyddsstyrelsen</i>	<i>National Board of Occupational Safety and Health</i>
<i>Arbetsdomstolen</i>	<i>Labour Court</i>
<i>Arbetsgivarverk, statens</i>	<i>National Agency for Government Employers</i>
<i>Arbetslivscentrum</i>	<i>Centre for Working Life</i>
<i>Arbetslivsfonden</i>	<i>Working Lives Fund</i>
<i>Arbetsmarknadsstyrelsen</i>	<i>National Labour Market Board</i>
<i>Arbetsmiljöfonden</i>	<i>Work Environment Fund</i>
<i>Arbetsmiljöinstitutet</i>	<i>National Institute of Occupational Health</i>
<i>Arbetsmiljönämnd, statens</i>	<i>Board of Occupational Safety and Health for Government Employees</i>
<i>Arkitekturmuseet</i>	<i>Museum of Architecture</i>
<i>Arkivet för ljud och bild</i>	<i>National Archive of Recorded Sound and Moving Images</i>
<i>Arrendenämnder (12)</i>	<i>Regional Tenancies Tribunals (12)</i>

1 April 1997

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B

Barnmiljörådet *National Child Environment Council*

*Beredning för utvärdering av
Assessment medicinsk metodik, statens* *Swedish Council on Technology
in Health Care*

*Beredningen för internationellt
tekniskt-ekonomiskt samarbete* *Agency for International Technical and
Economic Co-operation*

Besvärnämnden för rättshjälp *Legal Aid Appeals Commission*

Biblioteket, Kungl. *Royal Library*

Biografbyrå, statens *National Board of Film Censors*

Biografiskt lexikon, svenskt *Dictionary of Swedish Biography*

Bokföringsnämnden *Swedish Accounting Standards Board*

Bostadsdomstolen *Housing Appeal Court*

Bostadskreditnämnd, statens (BKN) *National Housing Credit Guarantee
Board*

Boverket *National Housing Board*

Brottsförebyggande rådet *National Council for Crime Prevention*

Brottsskadenämnden *Criminal Injuries Compensation Board*

C

Centrala försöksdjursnämnden *Central Committee for Laboratory Animals*

Centrala studiestödsnämnden *National Board of Student Aid*

Centralnämnden för fastighetsdata *Central Board for Real-Estate Data*

D

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Datainspektionen Data Inspection Board

Departementen Ministries (Government Departments)

Domstolsverket National Courts Administration

E

Elsäkerhetsverket National Electrical Safety Board

Expertgruppen för forskning om regional utveckling Expert Group on Regional Studies

Exportkreditnämnden Export Credits Guarantee Board

F

Fideikommissnämnden Entailed Estates Council

Finansinspektionen Financial Supervisory Authority

Fiskeriverket National Board of Fisheries

Flygtekniska försöksanstalten Aeronautical Research Institute

Folkhälsoinstitutet National Institute of Public Health

Forskningsrådsnämnden Council for Planning and Co-ordination of Research

Fortifikationsförvaltningen Fortifications Administration

Frivårdens behandlingscentral Probation Treatment Centre

Förläkningsmännaexpedition, statens National Conciliators• Office

Försvarets civilförvaltning Civil Administration of the Defence Forces

Försvarets datacenter Defence Data-Processing Centre

Försvarets forskningsanstalt National Defence Research Establishment

Försvarets förvaltningsskola Defence Forces• Administration School

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Försvarets materielverk Defence Material Administration

Försvarets radioanstalt National Defence Radio Institute

Försvarets sjukvårdsstyrelse Medical Board of the Defence Forces

Försvärshistoriska museer, statens Swedish Museums of Military History

Försvärshögskolan National Defence College

Försäkringskassorna Social Insurance Offices

Försäkringsdomstolarna Social Insurance Courts

Försäkringsöverdomstolen Supreme Social Insurance Court

G

Geologiska undersökning, Sveriges Geological Survey of Sweden

Geotekniska institut, statens Geotechnical Institute

Glesbygdsmyndigheten National Rural Area Development Authority

*Grafiska institutet och institutet för högre Graphic Institute and the Graduate School of
kommunikations-och reklamutbildning Communications*

H

Handelsflottans kultur-och fritidsråd Swedish Government Seamen's Service

Handelsflottans pensionsanstalt Merchant Pensions Institute

Handikappråd, statens National Council for the Disabled

Haverikommission, statens Board of Accident Investigation

Hovrätterna (6) Courts of Appeal (6)

*Humanistisk-samhällsvetenskapliga Council for Research in the Humanities and Social
forskningsrådet Sciences*

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Hysesnämnder (12) Regional Rent Tribunals (12)

Häktena (30) Remand Prisons (30)

Hälso-och sjukvårdens ansvarsnämnd Committee on Medical Responsibility

Högsta domstolen Supreme Court

I

*Inskrivningsmyndigheten för Register Authority for Floating Charges
företagsinteckningar*

Institut för byggnadsforskning, statens Council for Building Research

*Institut för psykosocial National Institute for Psycho-Social Factors
miljömedicin, statens and Health*

Institutet för rymdfysik Swedish Institute of Space Physics

Invandrarverk, statens Swedish Immigration Board

I

Jordbruksverk, statens Swedish Board of Agriculture

Justitiekanslern Office of the Chancellor of Justice

*Jämställdhetsombudsmannen och Office of the Equal Opportunities
Ombudsman and jämställdhetsdelegationen the Equal Opportunities
Commission*

K

*Kabelnämnden/Närradionämnden Swedish Cable Authority/Swedish Community Radio
Authority*

Kammarkollegiet National Judicial Board of Public Lands and Funds

Kammarrätterna (4) Administrative Courts of Appeal (4)

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<i>Kemikalieinspektionen</i>	<i>National Chemicals Inspectorate</i>
<i>Kommerskollegium</i>	<i>National Board of Trade</i>
<i>Koncessionsnämnden för miljö- skydd</i>	<i>National Franchise Board for Environment Protection</i>
<i>Konjunkturinstitutet</i>	<i>National Institute of Economic Research</i>
<i>Konkurrensverket</i>	<i>Swedish Competition Authority</i>
<i>Konstfackskolan</i>	<i>College of Arts, Crafts and Design</i>
<i>Konsthögskolan</i>	<i>College of Fine Arts</i>
<i>Konstmuseer, statens</i>	<i>National Art Museums</i>
<i>Konstnärsnämnden</i>	<i>Arts Grants Committee</i>
<i>Konstråd, statens</i>	<i>National Art Council</i>
<i>Konsumentverket</i>	<i>National Board for Consumer Policies</i>
<i>Krigsarkivet</i>	<i>Armed Forces Archives</i>
<i>Kriminaltekniska laboratorium, statens</i>	<i>National Laboratory of Forensic Science</i>
<i>Kriminalvårdens regionkanslier (7)</i>	<i>Correctional Region Offices (7)</i>
<i>Kriminalvårdsanstalterna (78)</i>	<i>National/Local Institutions (78)</i>
<i>Kriminalvårdsnämnden</i>	<i>National Paroles Board</i>
<i>Kriminalvårdsstyrelsen</i>	<i>National Prison and Probation Administration</i>
<i>Kronofogdemyndigheterna (24)</i>	<i>Enforcement Services (24)</i>
<i>Kulturråd, statens</i>	<i>National Council for Cultural Affairs</i>
<i>Kustbevakningen</i>	<i>Swedish Coast Guard</i>
<i>Kärnkraftinspektion, statens</i>	<i>Nuclear-Power Inspectorate</i>

L

Lantmäteriverk, statens *Central Office of the National Land Survey*

*Livruskammaren/Skoklosters
slott/Hallwylska museet* *Royal Armoury*

Livsmedelsverk, statens *National Food Administration*

Lotterinämnden *Gaming Board*

Läkemedelsverket *Medical Products Agency*

*Läns- och distriktsåklagar-
myndigheterna* *County Public Prosecution Authority and
District Prosecution Authority*

Länsarbetsnämnderna (24) *County Labour Boards (24)*

Länsrätterna (25) *County Administrative Courts (25)*

Länsstyrelserna (24) *County Administrative Boards (24)*

Löne- och pensionsverk, statens *National Government Employee Salaries and
Pensions Board*

M

Marknadsdomstolen *Market Court*

Maskinprovningar, statens *National Machinery Testing Institute*

Medicinska forskningsrådet *Medical Research Council*

*Meteorologiska och hydrologiska
institut, Sveriges* *Swedish Meteorological and Hydrological
Institute*

Militärhögskolan *Armed Forces Staff and War College*

Musiksamlingar, statens *Swedish National Collections of Music*

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N

Naturhistoriska riksmuseet *Museum of Natural History*

Naturvetenskapliga forsknings- rådet *Natural Science Research Council*

Naturvårdsverk, statens *National Environmental Protection Agency*

Nordiska Afrikainstitutet *Scandinavian Institute of African Studies*
Nordiska hälsovårdshögskolan *Nordic School of Public Health*

Nordiska institutet för samhällsplanering *Nordic Institute for Studies in Urban and Regional Planning*

Nordiska museet, stiftelsen *Nordic Museum*

Nordiska rådets svenska delegation *Swedish Delegation of the Nordic Council*

Notarienämnden *Recorders Committee*

Nämnden för internationella adoptionsfrågor *National Board for Intra Country Adoptions*

Nämnden för offentlig upphandling *National Board for Public Procurement*

Nämnden för statens gruvegendom *State Mining Property Commission*

Nämnden för statliga förnyelse- fonder *National Fund for Administrative Development*
och utbildning för myndighets- och tjänstemän *and Training for Government Employees*

Nämnden för utställning av nutida svensk konst i utlandet *Swedish National Committee for Contemporary Art Exhibitions Abroad*

Närings- och teknikutvecklings- verket *National Board for Industrial and Technical Development*

O

Ombudsmannen mot etnisk diskriminering och nämnden mot etnisk diskriminering *Office of the Ethnic Discrimination Ombudsman Advisory Committee on Questions Concerning Ethnic Discrimination*

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P

Patentbesvärsrätten Court of Patent Appeals

Patent- och registreringsverket Patents and Registration Office

Person- och adressregisternämnd, statens Co-ordinated Population and Address Register

Polarforskningssekretariatet Swedish Polar Research Secretariat

Presstödsnämnden Press Subsidies Council

Psykologisk-pedagogiska bibliotek, statens National Library for Psychology and Education

R

Radionämnden Broadcasting Commission

Regeringskansliets förvaltningskontor Central Services Office for the Ministries

Regeringsrätten Supreme Administrative Court

Riksantikvarieämbetet och statens historiska museer Central Board of National Antiquities and Historical Museums

Riksarkivet National Archives

Riksbanken Bank of Sweden

Riksdagens förvaltningskontor Administration Department of the Swedish Parliament

Riksdagens ombudsmän, JO The Parliamentary Ombudsmen

Riksdagens revisorer The Parliamentary Auditors

Riksförsäkringsverket National Social Insurance Board

Riksgäldskontoret National Debt Office

<i>Rikspolisstyrelsen</i>	<i>National Police Board</i>
<i>Riksrevisionsverket</i>	<i>National Audit Bureau</i>
<i>Riksskatteverket</i>	<i>National Tax Board</i>
<i>Riksutställningar, Stiftelsen</i>	<i>Travelling Exhibitions Service</i>
<i>Riksåklagaren</i>	<i>Office of the Prosecutor-General</i>
<i>Rymdstyrelsen</i>	<i>National Space Board</i>
<i>Råd för byggnadsforskning, statens</i>	<i>Council for Building Research</i>
<i>Rådet för grundläggande högskoleutbildning</i>	<i>Council for Renewal of Undergraduate Education</i>
<i>Räddningsverk, statens</i>	<i>National Rescue Services Board</i>
<i>Rättshjälpsnämnden</i>	<i>Regional Legal-aid Commission</i>
<i>Rättsmedicinalverket</i>	<i>National Board of Forensic Medicine</i>
<u>S</u>	
<i>Sameskolstyrelsen och sameskolor</i>	<i>Sami (Lapp) School Board Sami (Lapp) Schools</i>
<i>Sjöfartsverket</i>	<i>National Maritime Administration</i>
<i>Sjöhistoriska museer, statens</i>	<i>National Maritime Museums</i>
<i>Skattemyndigheterna (24)</i>	<i>Local Tax Offices (24)</i>
<i>Skogs- och jordbrukets forskningsråd</i>	<i>Swedish Council for Forestry and Agricultural Research</i>
<i>Skogsstyrelsen</i>	<i>National Board of Forestry</i>
<i>Skolverk, statens</i>	<i>National Agency for Education</i>
<i>Smittskyddsinstitutet</i>	<i>Swedish Institute for Infectious Disease Control</i>

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Socialstyrelsen *National Board of Health and Welfare*

Socialvetenskapliga forskningsrådet *Swedish Council for Social Research*

Sprängämnesinspektionen *National Inspectorate of Explosives and Flammables*

Statistiska centralbyrån *Statistics Sweden*

Statskontoret *Agency for Administrative Development*

Stiftelsen WHO *Collaborating Centre on International Drug Monitoring*

Strålskyddsinstitut, statens *National Institute of Radiation Protection*

Styrelsen för internationell utveckling, SIDA *Swedish International Development Authority*

Styrelsen för Internationellt *Swedish International Enterprise*
Development Näringslivsbistånd, SWEDECORP

Styrelsen för psykologiskt försvar *National Board of Psychological Defence*

Styrelsen för Sverigebilden *Image Sweden*

Styrelsen för teknisk ackreditering *Swedish Board for Technical Accreditation*

Styrelsen för u-landsforskning, *Swedish Agency for Research Cooperation with*
SAREC *Developing Countries*

Svenska institutet, stiftelsen *Swedish Institute*

T

Talboks- och punktskrifts- *Library of Talking Books and Braille Publications*
biblioteket

Teknikvetenskapliga forskningsrådet *Swedish Research Council for Engineering Sciences*

Tekniska museet, stiftelsen *National Museum of Science and Technology*

Tingsrätterna (97) *District and City Courts (97)*

Tjänsteförslagsnämnden för domstolsväsendet *Judges Nomination Proposal*
Committee

Transportforskningsberedningen *Transport Research Board*

Transportrådet *Board of Transport*

Tullverket *Swedish Board of Customs*

U

Ungdomsråd, statens *State Youth Council*

Universitet och högskolor *Universities and University Colleges*

Utlänningsnämnden *Aliens Appeals Board*

Utsädeskontroll, statens *National Seed Testing and Certification Institute*

V

Vatten- och avloppsnämnd, statens *National Water Supply and Sewage Tribunal*

Vattenöverdomstolen *Water Rights Court of Appeal*

Verket för högskoleservice (VHS) *National Agency for Higher Education*

Veterinärmedicinska anstalt, statens *National Veterinary Institute*

Väg- och trafikinstitut, statens *Road and Traffic Research Institute*

Värnpliktsverket *Armed Forces• Enrolment Board*

Växsortsnämnd, statens *National Plant Variety Board*

Y

Yrkesinspektionen *Labour Inspectorate*

Å

Åklagarmyndigheterna *Public Prosecution Authorities*

Ö

Överbefälhavaren Supreme Commander of the Armed Forces

Överstyrelsen för civil beredskap National Board of Civil Emergency Preparedness

UNITED KINGDOM*(Authentic in the English language only)**Cabinet office**Chessington Computer Centre**Civil Service College**Recruitment and Assessment Service**Civil Service Occupational Health Service**Office of Public Services and Science**Parliamentary Counsel Office**The Government Centre on Information Systems (CCTA)**Central Office of Information**Charity Commission**Crown Prosecution Service**Crown Estate Commissioners (Vote Expenditure only)**Customs and Excise Department**Department for National Savings**Department for Education**Higher Education Funding Council for England**Department of Employment**Employment Appeal Tribunal**Industrial Tribunals**Office of Manpower Economics**Department of Health**Central Council for Education and Training in Social Work**Dental Practice Board**English National Board for Nursing, Midwifery and Health
Visitors**National Health Service Authorities and Trusts**Prescription Pricing Authority**Public Health Laboratory Service Board**U.K. Central Council for Nursing, Midwifery and Health Visiting**Department of National Heritage**British Library**British Museum**Historic Buildings and Monuments Commission for England (English Heritage)**Imperial War Museum**Museums and Galleries Commission**National Gallery**National Maritime Museum*

National Portrait Gallery
Natural History Museum
Royal Commission on Historical Manuscripts
Royal Commission on Historical Monuments of England
Royal Fine Art Commission (England)
Science Museum
Tate Gallery
Victoria and Albert Museum
Wallace Collection
Department of Social Security
Medical Boards and Examining Medical Officers (War Pensions)
Regional Medical Service
Independent Tribunal Service
Disability Living Allowance Advisory Board
Occupational Pensions Board
Social Security Advisory Committee
Department of the Environment
Building Research Establishment Agency
Commons Commission
Countryside Commission
Valuation tribunal
Rent Assessment Panels
Royal Commission on Environmental Pollution
The Buying Agency
Department of the Procurator General and Treasury Solicitor
Legal Secretariat to the Law Officers
Department of Trade and Industry
Laboratory of the Government Chemist
National Engineering Laboratory
National Physical Laboratory
National Weights and Measures Laboratory
Domestic Coal Consumers' Council
Electricity Committees
Gas Consumers' Council
Central Transport Consultative Committees
Monopolies and Mergers Commission
Patent Office
Department of Transport
Coastguard Services
Transport Research Laboratory
Export Credits Guarantee Department
Foreign and Commonwealth Office
Wilton Park Conference Centre
Government Actuary's Department

*Government Communications Headquarters
Home Office*

*Boundary Commission for England
Gaming Board for Great Britain
Inspectors of Constabulary
Parole Board and Local Review Committees*

House of Commons

House of Lords

Inland Revenue, Board of

Intervention Board for Agricultural Produce

Lord Chancellor's Department

Combined Tax Tribunal

Council on Tribunals

Immigration Appellate Authorities

Immigration Adjudicators

Immigration Appeal Tribunal

Lands Tribunal

Law Commission

Legal Aid Fund (England and Wales)

Pensions Appeal Tribunals

Public Trust Office

Office of the Social Security Commissioners

Supreme Court Group (England and Wales)

Court of Appeal - Criminal

Circuit Offices and Crown, County and Combined Courts (England & Wales)

Transport Tribunal

Ministry of Agriculture, Fisheries and Food

Agricultural Development and Advisory Service

Agricultural Dwelling House Advisory Committees

Agricultural Land Tribunals

Agricultural Wages Board and Committees

Cattle Breeding Centre

Plant Variety Rights Office

Royal Botanic Gardens, Kew

Ministry of Defence¹⁸

Meteorological Office

Procurement Executive

National Audit Office

National Investment and Loans Office

Northern Ireland Court Service

Coroners Courts

¹⁸Non-warlike materials contained in Part I (3) of this Annex

County Courts
Court of Appeal and High Court of Justice in Northern Ireland
Crown Court
Enforcement of Judgements Office
Legal Aid Fund
Magistrates Court
Pensions Appeals Tribunals
Northern Ireland, Department of Agriculture
Northern Ireland, Department of Economic Development
Northern Ireland, Department of Education
Northern Ireland, Department of the Environment
Northern Ireland, Department of Finance and Personnel
Northern Ireland, Department of Health and Social Services
Northern Ireland Office
Crown Solicitors Office
Department of the Director of Public Prosecutions for Northern Ireland
Northern Ireland Forensic Science Laboratory
Office of Chief Electoral Officer for Northern Ireland
Police Authority for Northern Ireland
Probation Board for Northern Ireland
State Pathologist Service
Office of Fair Trading
Office of Population Censuses and Surveys
National Health Service Central Register
Office of the Parliamentary Commissioner for Administration and Health Service Commissioners
Ordnance Survey
Overseas Development Administration
Natural Resources Institute
Paymaster General's Office
Postal Business of the Post Office
Privy Council Office
Public Record Office
Registry of Friendly Societies
Royal Commission on Historical Manuscripts
Royal Hospital, Chelsea
Royal Mint
Scotland, Crown Office and Procurator Fiscal Service
Scotland, Registers of Scotland
Scotland, General Register Office
Scotland, Lord Advocate's Department
Scotland, Queen's and Lord Treasurers' Remembrancer
Scottish Courts Administration

Accountant of Court's Office
Court of Justiciary
Court of Session
Lands Tribunal for Scotland
Pensions Appeal Tribunals
Scottish Land Court
Scottish Law Commission
Sheriff Courts
Social Security Commissioners' Office
The Scottish Office Central Services
The Scottish Office Agriculture and Fisheries Department:
 Crofters Commission
 Red Deer Commission
 Royal Botanic Garden, Edinburgh
The Scottish Office Industry Department
The Scottish Office Education Department
 National Galleries of Scotland
 National Library of Scotland
 National Museums of Scotland
 Scottish Higher Education Funding Council
The Scottish Office Environment Department
 Rent Assessment Panel and Committees
 Royal Commission on the Ancient and Historical Monuments of Scotland
 Royal Fine Art Commission for Scotland
The Scottish Office Home and Health Departments
 HM Inspectorate of Constabulary
 Local Health Councils
 National Board for Nursing, Midwifery and Health Visiting for Scotland
 Parole Board for Scotland and Local Review Committees
 Scottish Council for Postgraduate Medical Education
 Scottish Crime Squad
 Scottish Criminal Record Office
 Scottish Fire Service Training School
 Scottish National Health Service Authorities and Trusts
 Scottish Police College
Scottish Record Office
HM Stationery Office (HMSO)
HM Treasury
 Forward
Welsh Office
 Royal Commission of Ancient and Historical Monuments in Wales
 Welsh National Board for Nursing, Midwifery and Health Visiting
 Local Government Boundary Commission for Wales
 Valuation Tribunals (Wales)

APPENDIX I

***EUROPEAN
COMMUNITY:
UNITED
KINGDOM***

ANNEX 1

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*Welsh Higher Education Funding Council
Welsh National Health Service Authorities and Trusts
Welsh Rent Assessment Panels*

3. List of supplies and equipment purchased by **Ministries of Defence in Belgium, Denmark, the Federal Republic of Germany, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom** that are covered by the Agreement:

Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement.

Chapter 26: Metallic ores, slag and ash

Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

except:

ex 27.10: special engine fuels

Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare-earth metals, of radio-active elements and isotopes

except:

ex 28.09: explosives

ex 28.13: explosives

ex 28.14: tear gas

ex 28.28: explosives

ex 28.32: explosives

ex 28.39: explosives

ex 28.50: toxic products

ex 28.51: toxic products

ex 28.54: explosives

Chapter 29: Organic chemicals

except:

ex 29.03: explosives

ex 29.04: explosives

ex 29.07: explosives

ex 29.08: explosives

ex 29.11: explosives

ex 29.12: explosives

ex 29.13: toxic products

ex 29.14: toxic products

ex 29.15: toxic products

ex 29.21: toxic products

ex 29.22: toxic products

ex 29.23: toxic products

ex 29.26: explosives

ex 29.27: toxic products

ex 29.29: explosives

Chapter 30: Pharmaceutical products

Chapter 31: Fertilizers

Chapter 32: Tanning and dyeing extracts; tannings and their derivatives; dyes, colours, paints and varnishes; putty, fillers and stoppings; inks

Chapter 33: Essential oils and resinoids; perfumery, cosmetic or toilet preparations

Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes polishing and scouring preparations, candles and similar articles, modelling pastes and dental waxes

Chapter 35: Albuminoidal substances; glues; enzymes

Chapter 37: Photographic and cinematographic goods

Chapter 38: Miscellaneous chemical products

except:

ex 38.19: toxic products

Chapter 39: Artificial resins and plastic materials, cellulose esters and ethers; articles thereof

except:

ex 39.03: explosives

Chapter 40: Rubber, synthetic rubber, factice, and articles thereof

except:

ex 40.11: bullet-proof tyres

Chapter 41: Raw hides and skins (other than furskins) and leather

Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)

- Chapter 43: Furskins and artificial fur; manufactures thereof*
- Chapter 44: Wood and articles of wood; wood charcoal*
- Chapter 45: Cork and articles of cork*
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials; basketware and wickerwork*
- Chapter 47: Paper-making material*
- Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard*
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans*
- Chapter 65: Headgear and parts thereof*
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof*
- Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair*
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials*
- Chapter 69: Ceramic products*
- Chapter 70: Glass and glassware*
- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery*
- Chapter 73: Iron and steel and articles thereof*
- Chapter 74: Copper and articles thereof*
- Chapter 75: Nickel and articles thereof*
- Chapter 76: Aluminium and articles thereof*
- Chapter 77: Magnesium and beryllium and articles thereof*

Chapter 78: Lead and articles thereof

Chapter 79: Zinc and articles thereof

Chapter 80: Tin and articles thereof

Chapter 81: Other base metals employed in metallurgy and articles thereof

Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof

except:

ex 82.05: tools

ex 82.07: tools, parts

Chapter 83: Miscellaneous articles of base metal

Chapter 84: Boilers, machinery and mechanical appliances; parts thereof

except:

ex 84.06: engines

ex 84.08: other engines

ex 84.45: machinery

ex 84.53: automatic data-processing machines

ex 84.55: parts of machines under heading No 84.53

ex 84.59: nuclear reactors

Chapter 85: Electrical machinery and equipment; parts thereof

except:

ex 85.13: telecommunication equipment

ex 85.15: transmission apparatus

Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway tracks fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)

except:

ex 86.02: armoured locomotives, electric

ex 86.03: other armoured locomotives

ex 86.05: armoured wagons

ex 86.06: repair wagons

ex 86.07: wagons

Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof

except:

87.08: tanks and other armoured vehicles

ex 87.01: tractors

ex 87.02: military vehicles

ex 87.03: breakdown lorries

ex 87.09: motorcycles

ex 87.14: trailers

Chapter 89: Ships, boats and floating structures

except:

89.01 A: warships

Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof

except:

ex 90.05: binoculars

ex 90.13: miscellaneous instruments, lasers

ex 90.14: telemeters

ex 90.28: electrical and electronic measuring instruments

ex 90.11: microscopes

ex 90.17: medical instruments

ex 90.18: mechano-therapy appliances

ex 90.19: orthopaedic appliances

ex 90.20: X-ray apparatus

Chapter 91: Clocks and watches and parts thereof

Chapter 92: Musical instruments; sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles

Chapter 94: Furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings

except:

ex 94.01 A: aircraft seats

Chapter 95: Articles and manufactures of carving or moulding material

Chapter 96: Brooms, brushes, powder-puffs and sieves

Chapter 98: Miscellaneous manufactured articles

4. List of supplies and equipment purchased by defence agencies in **Austria** are those contained in Annex I, Part II, Austria of the Agreement on Government Procurement.

5. List of supplies and equipment purchased by defence agencies in **Sweden**:

CCCN Chapter

Except:

25-26

27

28

ex 27.10 special engine fuels

ex 28.09 explosives

ex 28.13 explosives

ex 28.14 tear gas

ex 28.28 explosives

ex 28.32 explosives

ex 28.39 explosives

ex 28.50 toxic products

ex 28.51 toxic products

ex 28.54 explosives

29

ex 29.03 explosives

ex 29.04 explosives

ex 29.07 explosives

ex 29.08 explosives

ex 29.11 explosives

ex 29.12 explosives

ex 29.13 toxic products

ex 29.14 toxic products

ex 29.15 toxic products

ex 29.21 toxic products

ex 29.22 toxic products

ex 29.23 toxic products

ex 29.26 explosives

ex 29.27 toxic products

ex 29.29 explosives

30-49

65-81

82	<i>ex 82.05 tools</i>
	<i>ex 82.07 tools, parts</i>
83	
84	<i>ex 84.06 engines</i>
	<i>ex 84.08 other engines</i>
	<i>ex 84.45 machinery</i>
	<i>ex 84.53 ADP-machines</i>
85	<i>ex 85.13 telecommunication equipment</i>
	<i>ex 85.15 transmission apparatus</i>
86	<i>ex 86.02 armoured locomotives, electric</i>
	<i>86.03 other armoured locomotives</i>
	<i>86.05 armoured wagons</i>
	<i>86.06 repair wagons</i>
	<i>86.07 wagons</i>
87	<i>87.08 tanks and armoured vehicles</i>
	<i>ex 87.01 tractors</i>
	<i>ex 87.02 military vehicles</i>
	<i>ex 87.03 breakdown lorries</i>
	<i>ex 87.09 motor cycles</i>
	<i>ex 87.14 trailers</i>
89	<i>ex 89.01 warships</i>
90	<i>ex 90.05 binoculars</i>
	<i>ex 90.13 miscellaneous instruments, lasers</i>
	<i>ex 90.14 telemeters</i>
	<i>ex 90.28 electric and electronic measurements</i>
	<i>instruments</i>
91-92	
94	<i>ex 94.01 aerodynamic seats</i>
95-98	

ANNEX 2

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Services specified in Annex 4

Thresholds: SDR 200,000

Works specified in Annex 5

Threshold: SDR 5,000,000

List of Entities:

1. *Contracting authorities of the regional or local public authorities*
2. *Bodies governed by public law as defined in Directive 93/37/EEC.
The following bodies fulfil these criteria:*

AUSTRIA

All regional and local public authorities and bodies governed by public law not having a commercial or industrial character established at the state, district and municipal level in the States of:

*Lower Austria,
Upper Austria,
Styria,
Salzburg,
the Burgenland,
the Tirol,
Vorarlberg,
Vienna,
Carinthia.*

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BELGIQUE*(La version française fait foi)**Organismes*

- Archives générales du Royaume et Archives de l'État dans les Provinces -
Algemeen Rijksarchief en Rijksarchief in de Provinciën.
- Conseil autonome de l'Enseignement communautaire - *Autonome Raad van het
Gemeenschapsonderwijs.*
- Radio et Télévision belge, émissions néerlandaises - *Belgische Radio en Televisie,
Nederlandse uitzendingen.*
- Belgisches Rundfunk-und Fernsehzentrum der Deutschsprachigen Gemeinschaft
*(Centre de Radio et Télévision belge de la Communauté de Langue
allemande - Centrum voor Belgische Radio en Televisie voor de Duitstalige
Gemeenschap).*
- Bibliothèque royale Albert 1er - *Koninklijke Bibliotheek Albert I.*
- Bureau d'Intervention et de Restitution belge.
- Caisse auxiliaire de Paiement des Allocations de Chômage - *Hulpkas voor
Werkloosheidsuitkeringen.*
- Caisse nationale des Pensions de Retraite et de Survie - *Rijkskas voor Rust- en
Overlevingspensioenen.*
- Caisse de Secours et de Prévoyance en Faveur des Marins naviguant sous Pavillon belge
-Hulp- en Voorzorgskas voor Zeevarenden onder Belgische Vlag.
- Caisse nationale des Calamités - *Nationale Kas voor de Rampenschade.*
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs
de l'Industrie diamantaire - *Bijzondere Verrekenkas voor
Gezinsvergoedingen ten Bate van de Arbeiders der Diamantnijverheid.*
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs
de l'Industrie du Bois - *Bijzondere Verrekenkas voor Gezinsvergoedingen
ten Bate van Arbeiders in de Houtnijverheid.*
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs
occupés dans les Entreprises de Batellerie - *Bijzondere Verrekenkas voor
Gezinsvergoedingen ten Bate van Arbeiders der Ondernemingen voor
Binnenscheepvaart.*
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs
occupés dans les Entreprises de Chargement, Déchargement et
Manutention de Marchandises dans les Ports Débarcadères, Entrepôts et
Stations (appelée habituellement •Caisse spéciale de Compensation pour
Allocations familiales des Régions maritimes• -*Bijzondere Verrekenkas*

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- voor Gezinsvergoedingen ten Bate van de Arbeiders gebezigd door Ladings- en Lossingsondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd: •Bijzondere Compensatiekas voor kindertoeslagen van de zeevaartgewesten•).*
- *Centre informatique pour la Région bruxelloise - Centrum voor Informatica voor het Brusselse Gewest.*
 - *Commissariat général de la Communauté flamande pour la Coopération internationale Commissariaat-Generaal voor Internationale Samenwerking van de Vlaamse Gemeenschap.*
 - *Commissariat général pour les Relations internationales de la Communauté française de Belgique Commissariaat-Generaal bij de Internationale Betrekkingen van de Franse Gemeenschap van België.*
 - *Conseil central de l'Economie - Centrale Raad voor het Bedrijfsleven.*
 - *Conseil économique et social de la Région Wallonne - Sociaal economische Raad van het Waals Gewest.*
 - *Conseil national du Travail - Nationale Arbeidsraad.*
 - *Conseil supérieur des Classes moyennes - Hoge Raad voor de Middenstand.*
 - *Office pour les Travaux d'infrastructure de l'Enseignement subsidié - Dienst voor Infrastructuurwerken van het gesubsidieerd Onderwijs.*
 - *Fondation royale - Koninklijke Schenking.*
 - *Fonds d'aide médicale urgente - Fonds voor dringende geneeskundige Hulp.*
 - *Fonds des Accidents du Travail - Fonds voor Arbeidsongevallen.*
 - *Fonds d'Indemnisation des Travailleurs licenciés en Cas de fermeture d'Entreprises - Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen ontslagen Werknemers.*
 - *Fonds national de Garantie pour la Réparation des Dégats houillers - Nationaal Waarborgfonds inzake Kolenmijnschade.*
 - *Fonds national de Retraite des Ouvriers Mineurs - Nationaal Pensioenfonds voor Mijnwerkers.*
 - *Fonds pour le Financement des Prêts à des États étrangers - Fonds voor Financiering van de Leningen aan vreemde Staten.*
 - *Fonds pour la Rémunération des Mousses enrôlés à Bord des Bâtiments de Pêche - Fonds voor Scheepsjongens aan Boord van Vissersvaartuigen.*
 - *Fonds wallon d'Avances pour la Réparation des Dommages provoqués par des Pompes et des Prises d'Eau souterraine - Waals Fonds van Voorschotten voor het Herstel van de Schade veroorzaakt door Grondwaterzuiveringen en Afpompingen.*
 - *Institut d'Aéronomie spatiale - Instituut voor Ruimte-aëronomie*
 - *Institut belge de normalisation - Belgisch Instituut voor Normalisatie.*
 - *Institut bruxellois de l'Environnement - Brussels Instituut voor Milieubeheer.*
 - *Institut d'Expertise vétérinaire - Instituut voor veterinaire Keuring.*

<i>APPENDIX I</i>	EUROPEAN COMMUNITY: BELGIUM	<i>ANNEX 2</i>	<i>French</i>	<i>Page 5/22</i>
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- *Institut économique et social des Classes moyennes - Economisch en sociaal Instituut voor de Middenstand.*
- *Institut d'Hygiène et d'Epidémiologie - Instituut voor Hygiëne en Epidemologie.* -
Institut francophone pour la Formation permanente des Classes moyennes
- *Franstalig Instituut voor Permanente Vorming voor de Middenstand.*
- *Institut géographique national - Nationaal Geografisch Instituut*
- *Institut géotechnique de l'État - Rijksinstituut voor Grondmechanica.*
- *Institut national des Industries extractives - Nationale Instituut voor de Extractiebedrijven.*
- *Institut national des Invalides de Guerre, anciens Combattants et Victimes de Guerre - Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers.*
- *Institut pour l'Amélioration des Conditions de Travail - Instituut voor verbetering van de Arbeidsvoorwaarden.*
- *Institut royal belge des Sciences naturelles - Koninklijk Belgisch Instituut voor Natuurwetenschappen.*
- *Institut royal belge du Patrimoine artistique - Koninklijk Instituut voor het Kunstpatrimonium.*
- *Institut royal de Météorologie - Koninklijk meteorologisch Instituut.*
- *Enfance et Famille - Kind en Gezin.*
- *Mémorial national du Fort de Breendonck - Nationaal Gedenkteken van het Fort van Breendonck.*
- *Musée royal de l'Afrique centrale - Koninklijk Museum voor Midden-Afrika.*
- *Musées royaux d'Art et d'Histoire - Koninklijke Musea voor Kunst en Geschiedenis.*
- *Musées royaux des Beaux-Arts de Belgique - Koninklijke Musea voor Schone Kunsten van België.*
- *Observatoire royal de Belgique - Koninklijke Sterrenwacht van België.*
- *Office belge du Commerce extérieur - Belgische Dienst voor Buitenlandse Handel.*
- *Office central d'Action sociale et culturelle au Profit des Membres de la Communauté militaire Centrale Dienst voor sociale en culturele Actie ten behoeve van de Leden van de militaire Gemeenschap.*
- *Office de la Naissance et de l'Enfance - Dienst voor Borelingen en Kinderen.*
- *Office de la Navigation - Dienst voor de Scheepvaart.*
- *Office de Promotion du Tourisme de la Communauté française - Dienst voor de Promotie van het Toerisme van de Franse Gemeenschap.*
- *Office de Renseignements et d'Aide aux Familles des Militaires - Hulp- en Informatiebureau voor Gezinnen van Militairen.*
- *Office de Sécurité sociale d'Outre-Mer - Dienst voor overzeese sociale Zekerheid.*
- *Office national d'Allocations familiales pour Travailleurs salariés - Rijksdienst voor Kinderbijslag voor Werknemers.*

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- Office national de Sécurité sociale des Administrations provinciales et locales - Rijksdienst voor sociale Zekerheid van de provinciale en plaatselijke Overheidsdiensten.
- Office national des Vacances annuelles - Rijksdienst voor de jaarlijkse Vakantie.
- Office régional bruxellois de l'Emploi - Brusselse Gewestelijke Dienst voor Arbeidsbemiddeling.
- Office régional et communautaire de l'emploi et de la Formation - Gewestelijke en Gemeenschappelijke Dienst voor Arbeidsvoorziening en Vorming.
- Office régulateur de la Navigation intérieure - Dienst voor Regeling der Binnenvaart.
- Société publique des déchets pour la Région flamande - Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest.
- Orchestre national de Belgique - Nationaal Orkest van België.
- Organisme national des Déchets radioactifs et des Matières fissiles - Nationale Instelling voor radioactief afval en Splijtstoffen.
- Palais des Beaux-Arts - Paleis voor Schone Kunsten.
- Pool des Marins de la marine marchande - Pool van de Zeelieden ter Koopvaardij.
- Radio et Télévision belge de la Communauté française - Belgische Radio en Televisie van de Franse Gemeenschap.
- Conseil économique et social pour la Flandre - Sociaal economische Raad voor Vlaanderen.
- Société du Logement de la région bruxelloise et sociétés agréées - Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen.
- Théâtre royal de la Monnaie - De Koninklijke Muntscouwburg.
- Universités relevant de la Communauté flamande - Universiteiten afhankelijk van de Vlaamse Gemeenschap.
- Universités relevant de la Communauté française - Universiteiten afhankelijk van de Franse Gemeenschap.
- Office flamand de l'Emploi et de la Formation professionnelle - Vlaamse Dienst voor Arbeidsvoorziening en Beroepsopleiding.
- Fonds flamand de Construction d'Institutions hospitalières et médico-sociales - Vlaams Fonds voor de Bouw van Ziekenhuizen en medisch-sociale Instellingen.
- Société flamande du Logement et sociétés agréées - Vlaamse Huisvestingsmaatschappij en erkende maatschappijen.
- Société régionale wallonne du Logement et sociétés agréées - Waalse Gewestelijke Maatschappij voor de Huisvesting en erkende maatschappijen.
- Société flamande d'Épuration des eaux - Vlaamse Maatschappij voor Waterzuivering.
- Fonds flamand du Logement des Familles nombreuses - Vlaams Woningfonds van de grote Gezinnen.
- Aqualin.
- Berlaymont 2000.
- Bruxelles-propreté.

- Fonds Communautaire pour l'Intégration sociale et professionnelle des personnes handicapées.
- Fonds de Construction des Institutions hospitalières et médico-sociales de la Communauté française
- Fonds de Garantie des Bâtiments scolaires de la Communauté germanophone - Garantiefonds der Deutschsprachigen Gemeinschaft für Schulbauten.
- Fonds des bâtiments scolaires de l'Enseignement officiel subventionné
- Fonds flamand de Constructions hospitalières et médico-sociales - Vlaams Fond voor de Bouw van ziekenhuizen en medisch-sociale Inrichtingen.
- Fonds national de Reclassement des Handicapés.
- Institut belge des Services postaux et de Télécommunications.
- Institut flamand pour l'Entreprise indépendante - Vlaams Instituut voor het Zelfstandig ondernemen.
- Institut national pour la Criminalistique
- Institut pour la Formation permanente et continue des Classes moyennes et des petites et moyennes Entreprises - Institut für ständige Aus- und Weiterbildung Mittelstand sowie für die mittleren und kleinen Unternehmen.
- Institut scientifique de Service public en Région wallone.
- Office de Contrôle des Assurances.
- Office de la Communauté germanophone pour les Personnes ayant un Handicap et pour l'Aide sociale spéciale - Dienststelle der Deutschsprachigen Gemeinschaft für Personen mit einer Behinderung sowie für die besondere soziale Fürsorge.
- Office flamand du Commerce extérieur - Vlaamse Dienst voor buitenlandse Handel.
- Office wallon de Développement rural.
- Société flamande pour l'Environnement - Vlaamse milieumaatschappij.
- Société flamande terrienne - Vlaamse Landmaatschappij
- Société publique des Déchets pour la Région flamande - Openbare Vlaamse Afvalstofmaatschappij.
- Société wallone terrienne.
- Sofribru.
- Société publique d'Aide à la Qualité de l'Environnement.

Catégories

- Les sociétés de développement régional
- les centres publics d'aide sociale
- les fabriques d'église et les organismes chargés de la gestion du temporel des cultes reconnus
- les polders et wateringues
- les comités de remembrement des biens ruraux.

DENMARK

(Authentic in the English language only)

Bodies

- *Danmarks Radio*
- *Det Landsdækkende Fjernsyn TV 2*
- *Danmarks Nationalbank*
- *Storebæltsforbindelsen A/S*
- *Byfornyelsesselskabet København*

Categories

- *Andre Forvaltningssubjekter (other public administrative bodies)*

GERMANY*(Authentic in the English language only)**Categories**1. Legal persons governed by public law**Authorities, establishments and foundations governed by public law and created by federal, State or local authorities in particular in the following sectors:**1.1 Authorities*

- wissenschaftliche Hochschulen und verfaßte Studentenschaften (universities and established student bodies)*
- berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) (professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists)*
- Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) (business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftsmen's guilds, tradesmen's associations)*
- Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) (social security institutions: health, accident and pension insurance funds)*
- kassenärztliche Vereinigungen (associations of panel doctors)*
- Genossenschaften und Verbände (cooperatives and other associations)*

*1.2 Establishments and foundations**Non-industrial and non-commercial establishments subject to state control and operating in the general interest, particularly in the following fields:*

- rechtsfähige Bundesanstalten (Federal institutions having legal capacity)*
- Versorgungsanstalten und Studentenwerke (pension organizations and students' unions)*
- Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations)*

*2. Legal persons governed by private law**Non-industrial and non-commercial establishments subject to state control and operating in the general interest (including •kommunale Versorgungsunternehmen• - municipal utilities), particularly in the following fields:*

<i>APPENDIX I</i>	EUROPEAN COMMUNITY: GERMANY	<i>ANNEX 2</i>	<i>Page 10/22</i>
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- Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische
Forschungseinrichtungen, Untersuchungs- und
Tierkörperbeseitigungsanstalten) (health: hospitals, health resort
establishments, medical research institutes, testing and carcass disposal
establishments)*
- Kultur (öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und
botanische Gärten) (culture: public theatres, orchestras, museums,
libraries, archives, zoological and botanical gardens)*
- Soziales (Kindergärten, Kindertagesheime, Erholungseinrichtungen, Kinder- und
Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser,
Frauenhäuser, Altersheime, Obdachlosenunterkünfte) (social welfare:
nursery schools, children's play schools, resthomes, children's homes,
hostels for young people, leisure centres, community and civic centres,
homes for battered wives, old people's homes, accommodation for the
homeless)*
- Sport (Schwimmbäder, Sportanlagen und einrichtungen) (sport: swimming baths, sports
facilities)*
- Sicherheit (Feuerwehren, Rettungsdienste) (safety: firebrigades, other emergency
services)*
- Bildung (Umschulungs-, Aus-, Fort- und Weiterbildungs-einrichtungen,
Volkhochschulen) (education: training, further training and retraining
establishments, adult evening classes)*
- Wissenschaft, Forschung und Entwicklung (Großforschungseinrichtungen,
wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung)
(science, research and development: largescale research institutes, scientific
societies and associations, bodies promoting science)*
- Entsorgung (Straßenreinigung, Abfall- und Abwasserbeseitigung) (refuse and garbage
disposal services: street cleaning, waste and sewage disposal)*
- Bauwesen und Wohnungswirtschaft (Stadtplanung, Stadtentwicklung,
Wohnungsunternehmen, Wohnraumvermittlung) (building, civil
engineering and housing: town planning, urban development, housing
enterprises, housing agency services)*
- Wirtschaft (Wirtschaftsförderungsgesellschaften) (economy: organizations promoting
economic development)*
- Friedhofs- und Bestattungswesen (cemeteries and burial services)*
- Zusammenarbeit mit den Entwicklungsländern (Finanzierung, technische
Zusammenarbeit, Entwicklungshilfe, Ausbildung) (cooperation with
developing countries: financing, technical cooperation, development aid,
training).*

ESPAÑA

(Esta lista es auténtica en la versión española)

Categorías

- *Entidades Gestoras y Servicios Comunes de la Seguridad Social*
- *Organismos Autonomos de la Administracion del Estado*
- *Organismos Autonomos de las Comunidades Autonomas*
- *Organismos Autonomos de las Entidades Locales*
- *Otras entidades sometidas a la legislacion de contratos del Estado español*

FINLAND1. *Contracting authorities of the regional and local public authorities, including all (455) municipalities and*

<i>Lääninhallitukset</i>	<i>Provincial Governments</i>
- <i>Hämeen lääni</i>	
- <i>Keski-Suomen lääni</i>	
- <i>Kuopion lääni</i>	
- <i>Kymen lääni</i>	
- <i>Lapin lääni</i>	
- <i>Mikkelin lääni</i>	
- <i>Oulun lääni</i>	
- <i>Pohjois-Karjalan lääni</i>	
- <i>Turun ja Porin lääni</i>	
- <i>Uudenmaan lääni</i>	
- <i>Vaasan lääni</i>	

2. *Bodies governed by public law, not having a commercial or industrial character, pursuant to Article 2 of •Laki julkisista hankinnoista (1505/92)• (Public Procurement Act), including:*

<i>Kuluttajatutkimuskeskus</i>	<i>National Consumer Research Centre</i>
<i>Matkailun edistämiskeskus</i>	<i>Finnish Tourist Board</i>
<i>Teknillinen tarkastuskeskus</i>	<i>Technical Inspection Centre</i>
<i>Mittatekniikan keskus</i>	<i>Centre for Metrology and</i>
<i>Accreditation</i>	
<i>Geologian tutkimuskeskus</i>	<i>Geological Survey of Finland</i>
<i>Valtion teknillinen tutkimuskeskus</i>	<i>Technical Research Centre of Finland</i>
<i>Teknologian kehittämiskeskus</i>	<i>Technology Development</i>
<i>Centre</i>	
<i>Valtiontakuu keskus</i>	<i>Finnish Guarantee Board</i>
<i>Tielaitos</i>	<i>Road Administration</i>
<i>Merenkululaitos</i>	<i>Navigation Administration</i>
<i>Merentutkimuslaitos</i>	<i>Marine Research Institute</i>
<i>Ilmatieteen laitos</i>	<i>Meteorological Institute</i>
<i>Karttakeskus</i>	<i>Map Centre</i>
<i>Geodeettinen laitos</i>	<i>Finnish Geodetic Institute</i>
<i>Valtion viljavarasto</i>	<i>Finnish Grain Board</i>
<i>Maatalouden taloudellinen tutkimuslaitos</i>	<i>Agricultural Economics Research</i>
<i>Institute</i>	
<i>Maatalouden tutkimuskeskus</i>	<i>Agricultural Research Centre</i>
<i>Kasvintuotannon tarkastuskeskus</i>	<i>Plant Production Inspection Centre</i>
<i>Metsähallitus</i>	<i>Forest and Park Service</i>

<i>APPENDIX I</i>	EUROPEAN COMMUNITY: FINLAND	<i>ANNEX 2</i>	<i>Page</i> 13/22
	<i>Metsäntutkimuslaitos</i>	<i>Forest Research Institute</i>	
<i>Research</i>	<i>Riista- ja kalatalouden tutkimuslaitos</i>	<i>Finnish Game and Fisheries</i>	
	<i>Institute</i>		
<i>Research</i>	<i>Eläinlääkintä- ja elintarvikelaitos</i>	<i>National Veterinary and Food</i>	
	<i>Institute</i>		
<i>Policy</i>	<i>Oikeuspoliittinen tutkimuslaitos</i>	<i>National Research Institute of Legal</i>	
<i>Prevention</i>	<i>Helsingin kriminaalipoliittinen instituutti</i>	<i>Helsinki Institute for Crime</i>	
		<i>and Control</i>	
	<i>Valtion audiovisuaalinen keskus</i>	<i>State Audiovisual Centre</i>	
<i>Board</i>	<i>Ylioppilastutkintolautakunta</i>	<i>Matriculation Examination</i>	
<i>Education and the</i>	<i>Yliopistot, korkeakoulut ja kuvataideakatemia</i>	<i>Institutions of Higher</i>	
		<i>Academy of Fine Arts</i>	
	<i>Suomen Akatemia</i>	<i>Academy of Finland</i>	
	<i>Rauhan- ja konfliktitutkimuslaitos</i>	<i>Peace Research Institute</i>	
<i>Languages</i>	<i>Kotimaisten kielten tutkimuskeskus</i>	<i>Research Centre for Domestic</i>	
<i>Provincial Archives</i>	<i>Kansallisarkisto ja maakunta-arkistot</i>	<i>National Archives and</i>	
	<i>Taiteen keskustoimikunta</i>	<i>Arts Council of Finland</i>	
	<i>Valtion taidetoimikunnat</i>	<i>National Art Committees</i>	
	<i>Läänien taidetoimikunnat</i>	<i>Regional Art Councils</i>	
	<i>Näkövammaisten kirjasto</i>	<i>Library of the Visually Handicapped</i>	
	<i>Museovirasto</i>	<i>National Board of Antiquities and</i>	
		<i>Historical Monuments</i>	
	- <i>Rakennustaiteen museo</i>	- <i>Museum of Architecture</i>	
	- <i>Kansallismuseo</i>	- <i>National Museum</i>	
	<i>Valtion taidemuseo</i>	<i>National Gallery</i>	
	<i>Suomenlinnan hoitokunta</i>	<i>Administration of Suomenlinna</i>	
	<i>Suomen elokuva-arkisto</i>	<i>Finnish Film Archives</i>	
	<i>Valtion liikuntaneuvosto</i>	<i>National Sports Council</i>	
	<i>Valtion nuorisoneuvosto</i>	<i>National Youth Council</i>	
	<i>Valtion opintotukikeskus</i>	<i>National Centre for Student Aid</i>	
<i>Mobility</i>	<i>Kansainvälisen henkilövaihdon keskus</i>	<i>Finnish Centre for International</i>	
	<i>(CIMO)</i>	<i>and Exchange Programmes (CIMO)</i>	
	<i>Poliisiopisto</i>	<i>Police Academy</i>	
	<i>Poliisikoulu</i>	<i>Police School</i>	
	<i>Poliisikoiralaitos</i>	<i>Police Dog Training Center</i>	
	<i>Poliisivarikko</i>	<i>Police Material Depot</i>	

<i>APPENDIX I</i>	<i>EUROPEAN COMMUNITY: FINLAND</i>	<i>ANNEX 2</i>	<i>Page 14/22</i>
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<i>Valtion pelastusopisto</i>		<i>State Rescue Institute</i>
<i>Valtion pelastuskoulu</i>		<i>State Rescue School</i>
<i>Sosiaali- ja terveysalan tutkimus- ja Development kehittämiskeskus</i>		<i>National Research and Centre for Welfare and Health</i>
<i>Kansanterveyslaitos</i>		<i>National Public Health Institute</i>
<i>Merimiespalvelutoimisto</i>		<i>Seamen's Service</i>
<i>Työvoimaopisto</i>		<i>Labour Institute</i>
<i>Valtion taloudellinen tutkimuskeskus</i>		<i>State's Economic Research Centre</i>
<i>SITRA</i>		
<i>Valtionhallinnon kehittämiskeskus</i>		
<i>Tilastokeskus</i>	<i>Central Statistical Office</i>	
<i>Suomen pankki</i>	<i>Bank of Finland</i>	
<i>Valtion hankintakeskus</i>		<i>Government Purchasing Centre</i>

FRANCE

(La version française fait foi)

Catégories

Les établissements publics régionaux, départementaux ou locaux à caractère administratif:

- collèges*
- lycées*
- établissements publics hospitaliers*
- offices publics d'habitation à loyer modéré (OPHLM)*

Les groupements de collectivités territoriales:

- syndicats de communes*
- districts*
- communautés urbaines*
- institutions interdépartementales et interrégionales*
- les communautés de communes et les communautés de villes.*

GREECE

(Authentic in the English language only)

Categories

Other legal persons governed by public law whose public contracts are subject to State control.

IRELAND*(Authentic in the English language only)**Bodies*

- Local Government Computer Services Board
- Local Government Staff Negotiations Board
- An Bord Trachtála (Irish Export Board)
- Forfas
- Forbairt
- I.D.A. (Ire) Ltd
- Irish Goods Council (Promotion of Irish Goods)
- Córas Beostoic agus Feola (CBF) (Irish Meat Board)
- Bord Fáilte Éireann (Irish Tourism Board)
- Údarás na Gaeltachta (Development Authority for Gaeltacht Regions)
- An Bord Pleanála (Irish Planning Board)

Categories

- Third Level Educational Bodies of a public character
- National Training, Cultural or Research Agencies

- Hospital Boards of a public character
- National Health & Social Agencies of a public character

- Central & Regional Fishery Boards.

ITALY*(Authentic in the English language only)**Categories*

*-consorzi per le opere idrauliche
(consortia for water engineering works)*

*-le universita• statali, gli istituti universitari statali, i consorzi per i lavori
interessanti le universita•
(State universities, State university institutes, consortia for university development
work)*

*-gli istituti superiori scientifici e culturali, gli osservatori astronomici, astrofisici,
geofisici o vulcanologici
(higher scientific and cultural institutes, astronomical, astrophysical, geophysical or
vulcanological observatories)*

*-enti di ricerca e sperimentazione
(organizations conducting research and experimental work)*

*-le istituzioni pubbliche di assistenza e di beneficenza
(public welfare and benevolent institutions)*

*-enti che gestiscono forme obbligatorie di previdenza ed assistenza
(agencies administering compulsory social security and welfare schemes)*

*-consorzi di bonifica
(land reclamation consortia)*

*-enti di sviluppo o di irrigazione
(development or irrigation agencies)*

*-consorzi per le aree industriali
(associations for industrial areas)*

*-comunita• montane
(groupings of municipalities in mountain areas)*

*-enti preposti a servizi di pubblico interesse
(organizations providing services in the public interest)*

*-enti pubblici proposti ad attivita• di spettacolo, sportivo, turistiche e del tempo
libero*

(public bodies engaged in entertainment, sport, tourism and leisure activities)

*-enti culturali e di promozione artistica
(organizations promoting culture and artistic activities).*

LUXEMBOURG

(La version française fait foi)

Organismes

-L'entreprise des Postes et Télécommunications¹⁹

Catégories

- Les établissements publics de l'Etat placés sous la surveillance d'un membre du Gouvernement*
- Les établissements publics placés sous la surveillance des communes*
- Les syndicats de communes créés en vertu de la loi du 14 février 1900 telle qu'elle a été modifiée à la suite.*

¹⁹Postal business only

THE NETHERLANDS

(Authentic in the English language only)

Bodies

-de Nederlandse Centrale Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek (TNO) en de daaronder ressorterende organisaties

Categories

-de waterschappen (administration of water engineering works)

-de instellingen van wetenschappelijk onderwijs vermeld in artikel 8 van de Wet op het Wetenschappelijk Onderwijs (1985), de academische ziekenhuizen institutions for scientific education, as listed in Article 8 of the Scientific Education Act (1985) (Wet op het Wetenschappelijk Onderwijs (1985)), teaching hospitals).

PORTUGAL

(Authentic in the English language only)

Categories

- Estabelecimentos Públicos de Ensino, Investigação Científica e Saúde (public establishments for education, scientific research and health)*
- Institutos Públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character)*
- Fundações Públicas (public foundations)*
- Administrações Gerais e Juntas Autónomas (general administration bodies and independent councils).*

<i>APPENDIX I</i>	EUROPEAN COMMUNITY: SWEDEN	<i>ANNEX 2</i>	<i>Page 22/22</i>
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SWEDEN

1. *Regional and local public authorities including all County Councils (23) and all Municipalities (286).*

2. *Procuring entities including companies, associations and foundations established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character and subject to certain other criteria²⁰ pursuant to the Public Procurement Act: •Lag om offentlig upphandling• (1992:1528).*

²⁰ - *Financed for the most part by the State, a regional or a local authority, an ecclesiastical body; or*
 - *Subject to supervision of the procurement by the State, a local authority; or*
 - *Having a supervisory board whose members are appointed by the State, a regional or local authority or an ecclesiastical body; or*
 - *Having a supervisory board, of which more than half of the members are appointed by the State, a regional or a local authority.*

<i>APPENDIX I</i>	EUROPEAN COMMUNITY: UNITED KINGDOM	<i>ANNEX 2</i>	<i>Page 23/22</i>
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UNITED KINGDOM

(Authentic in the English language only)

Bodies

- *Central Blood Laboratory Authority*
- *Design Council*
- *Health and Safety Executive*
- *National Research Development Corporation*
- *Advisory, Conciliation and Arbitration Service*

- *Commission for the New Towns*
 - *Development Board For Rural Wales*
- *English Industrial Estates Corporation*
- *National Rivers Authority*
 - *Nothern Ireland Housing Executive*
 - *Scottish Enterprises*
 - *Scottish Homes*
 - *Welsh Development Agency.*

Categories

- *Universities and polytechnics, maintained schools and colleges*
 - *Fire Authorities*
 - *Police Authorities*
 - *Other Non-Departmental Public Bodies*, including*
 - *Research Councils*
 - *New Town Corporations*
 - *Urban Development Corporation*
- falling within the definition at Article 1(b) of Directive 93/37/EEC*

**See •public Bodies• published annually by HM Stationery Office*

ANNEX 3**Other Entities that Procure in Accordance
With the Provisions of this Agreement****Supplies****Services** specified in Annex 4²¹*Thresholds: SDR 400,000***Works** specified in Annex 5*Threshold: SDR 5,000,000**Entities in the water, electricity, urban transport, port and airport sectors:***1. List of Entities for Belgium, Denmark, the Federal Republic of Germany, Spain, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom:***The contracting entities within the meaning of Article 2 of Directive 93/38/EEC which are public authorities or public undertakings and which have as one of their activities any of those referred to below or any combination thereof:*

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such networks;*
- (b) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks;*
- (c) the provision of airport or other terminal facilities to carriers by air;*
- (d) the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway;*

²¹ Under the conditions provided for in Directive 93/38/EEC

(e) the operation of networks providing a service to the public in the field of transport by railway²², automated systems, tramway, trolley bus, bus or cable in accordance with Directive 93/38/EEC.

The public authorities or public undertakings listed in Annex I (production, transport or distribution of drinking water), Annex II (production, transport or distribution of electricity), Annex VII (contracting entities in the field of urban railway, tramway, trolley bus or bus services), Annex VIII (contracting entities in the field of airport facilities) and Annex IX (contracting entities in the field of maritime or inland port or other terminal facilities) of Directive 93/38/EEC fulfil the criteria set out above (copies attached).

2. List of Entities for Austria:

2.1 Entities in the water and energy sector

The covered entities are those which exercise as a principal activity, the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport and distribution of drinking water, and electricity.

2.2 Entities in the transport sector

The covered entities are those which exercise as a principal activity:

(i) the operation of networks providing a service to the public in the field of transport by trolley bus, bus or cable;

(ii) the exploitation of a geographical area for the purpose of the provision of inland port or other terminal facilities to carrier by inland waterway or the provision of airports or other terminal facilities by air.

3. List of Entities for Finland:

Public entities and activities as specified in Article 2 of •Laki julkisista hankinnoista (1505/92)• (Public Procurement Act) and in Articles 1-4 of •Asetus Euroopan talousalueesta tehdyss ä sopimuksessa tarkoitetuista vesi- ja energiahuollon, liikenteen ja teletoiminnan alalla toimivien yksiköiden hankinnoista• (1351/93) (Decree concerning utilities) under the conditions provided for in Directive 90/531/EEC in the sectors of:

3.1 Urban transport:

²²Not including the entities listed in Annex VI of Directive 93/38/EEC (copy attached)

The operation of networks providing a service to the public in the field of transport by tramway, metro or bus by public entities according to •Laki (343/91) luvanvaraisesta henkilöliikenteestä tiellä• and Helsingin kaupungin liikennelaitos (Helsinki Transport Board), which provides metro and tramway services to the public.

3.2 Airports:

The provision of airport or other terminal facilities to carriers operated by •Ilmailulaitos• (National Aviation Agency) pursuant to •Ilmailulaki (595/64)•, inter alia

- *Helsinki-Vantaa Airport*
- *Ivalo Airport*
- *Joensuu Airport*
- *Jyväskylä Airport*
- *Kemi Airport*
- *Kittilä Airport*
- *Kuopio Airport*
- *Lappeenranta Airport*
- *Oulu Airport*
- *Rovaniemi Airport*
- *Vaasa Airport*

3.3 Ports:

The provision of maritime or inland ports or other terminal facilities to carriers by sea or inland waterways by municipal authorities pursuant to •Laki kunnallisista satamajärjestyksistä ja liikennemaksuista (955/76)•, inter alia

- *Port of Hamina*
- *Port of Hanko*
- *Port of Helsinki*
- *Port of Kotka*
- *Port of Naantali*
- *Port of Turku*
- *Port of Vaasa*

3.4 Water:

The provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such network by public entities pursuant to Article 1 of •Laki yleisistä vesi- ja viemärlaitoksista (982/77)• of December 1977, inter alia

- Helsinki Water Board
(Helsingin kaupungin vesilaitos)
- Turku Water Board
(Turun kaupungin vesilaitos)
- Tampere Water Board
(Tampereen kaupungin vesilaitos)

3.5 Electricity:

The provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks where municipal entities operate on the basis of a special or an exclusive right or on the basis of a concession pursuant to Article 27 of •Sähkölaki (319/79)• of 16 March 1979, inter alia

- Helsinki Energy Board
(Helsingin kaupungin energialaitos)
- Tampere Energy Board
(Tampereen kaupungin sähkölaitos)
- Turku Energy Board
(Turun kaupungin sähkölaitos)

4. List of Entities for Sweden:

4.1 Electricity

Entities which have as one of their activities the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport, distribution or the supply of electricity on the basis of a concession pursuant to •Lag (1902:71) innefattande vissa bestämmelser om elektriska anläggningar•, inter alia;

Vattenfall AB
Stockholm Energi Produktion AB
Swedish International Grid
Sydkraft AB
Trollhätte kanalverk

4.2 Urban transport

Entities which have as one of their activities the operation of networks providing a service to the public in the field of transport by automated systems, urban railway, tramway, trolley bus, bus or cable according to •Lag (1978:438) om huvudmannaskap för viss kollektiv persontrafik•, for urban railway or tramway services pursuant to •Lag

(1990:1157) om järnvägssäkerhet• and for trolley bus or bus services in accordance with •Lag (1988:263) om yrkestrafik•, inter alia;

Storstockholms Lokaltrafik AB, SL

4.3 Airports

Entities which have as one of their activities the exploitation of a geographical area for the purpose of the provision of airport facilities e.g. publicly owned and operated airports in accordance with •Lag (1957:297) om luftfart• having as their result the reservation for one or more entities of the exploitation of the activities described, inter alia;

Civil Aviation Administration

4.4 Ports

Entities which have as one of their activities the exploitation of a geographical area for the purpose of the provision of port facilities e.g. publicly owned and/or operated ports and terminal facilities according to •Lag (1988:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn•, •Förordning (1983:744) om trafiken på Göta kanal•, inter alia;

Gävle port

Göteborg port

Luleå port

Stockholm port

Trelleborg port

Uddevalla port

4.5 Water

Local authorities and municipal companies which have as one of their activities the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water according to •Lag (1970:244) om allmänna vatten- och avloppsanläggningar•.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

<i>Subject</i>	<i>CPC Reference No</i>
<i>Maintenance and repair services</i>	<i>6112, 6122, 633, 886</i>
<i>Land transport services, including armoured car services, and 71235), 7512, 87304 courier services, except transport of mail</i>	<i>712 (except</i>
<i>Air transport services of passengers and freight, except transport of mail</i>	<i>73 (except 7321)</i>
<i>Transport of mail by land, except rail, and by air</i>	<i>71235, 7321</i>
<i>Telecommunications services 7524, 7525, 7526)</i>	<i>752* (except</i>
<i>Financial services</i>	<i>ex 81</i>
<i>(a) Insurance services</i>	<i>812, 814</i>
<i>(b) Banking and investments services**</i>	
<i>Computer and related services</i>	<i>84</i>
<i>Accounting, auditing and bookkeeping services</i>	<i>862</i>
<i>Market research and public opinion polling services</i>	<i>864</i>
<i>Management consulting services and related services</i>	<i>865, 866***</i>
<i>Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services</i>	<i>867</i>
<i>Advertising services</i>	<i>871</i>

<i>Building-cleaning services and property management services</i>	874, 82201 -
<i>82206</i>	
<i>Publishing and printing services on a fee or contract basis</i>	88442
<i>Sewage and refuse disposal; sanitation and similar services</i>	94

Notes to Annex 4

* *except voice telephony, telex, radiotelephony, paging and satellite services*

***except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. In Finland, payments from governmental entities (expenses) shall be transacted through a certain credit institution (Postipankki Ltd) or through the Finnish Postal Giro System. In Sweden, payments to and from governmental agencies shall be transacted through the Swedish Postal Giro System (Postgiro).*

*** *except arbitration and conciliation services*

ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

(annexed)

<i>Group Class</i>	<i>Subclass</i>	<i>Title</i>	<i>Corresponding ISIC</i>
<i>SECTION 5</i>		<i>CONSTRUCTION WORK AND CONSTRUCTIONS: LAND</i>	
<i>DIVISION 51</i>		<i>CONSTRUCTION WORK</i>	
<i>511</i>		<i>Pre-erection work at construction sites</i>	
<i>5111</i>	<i>51110</i>	<i>Site investigation work</i>	<i>4510</i>
<i>5112</i>	<i>51120</i>	<i>Demolition work</i>	<i>4510</i>
<i>5113</i>	<i>51130</i>	<i>Site formation and clearance work</i>	<i>4510</i>
<i>5114</i>	<i>51140</i>	<i>Excavating and earthmoving work</i>	<i>4510</i>
<i>5115</i>	<i>51150</i>	<i>Site preparation work for mining</i>	<i>4510</i>
<i>5116</i>	<i>51160</i>	<i>Scaffolding work</i>	<i>4520</i>
<i>512</i>		<i>Construction work for buildings</i>	
<i>5121</i>	<i>51210</i>	<i>For one- and two-dwelling buildings</i>	<i>4520</i>
<i>5122</i>	<i>51220</i>	<i>For multi-dwelling buildings</i>	<i>4520</i>
<i>5123</i>	<i>51230</i>	<i>For warehouses and industrial buildings</i>	<i>4520</i>
<i>5124</i>	<i>51240</i>	<i>For commercial buildings</i>	<i>4520</i>
<i>5125</i>	<i>51250</i>	<i>For public entertainment buildings</i>	<i>4520</i>
<i>5126</i>	<i>51260</i>	<i>For hotel, restaurant and similar buildings</i>	<i>4520</i>
<i>5127</i>	<i>51270</i>	<i>For educational buildings</i>	<i>4520</i>
<i>5128</i>	<i>51280</i>	<i>For health buildings</i>	<i>4520</i>
<i>5129</i>	<i>51290</i>	<i>For other buildings</i>	<i>4520</i>
<i>513</i>		<i>Construction work for civil engineering</i>	
<i>5131</i>	<i>51310</i>	<i>For highways (except elevated highways), street, roads, railways and airfield runways</i>	<i>4520</i>
<i>5132</i>	<i>51320</i>	<i>For bridges, elevated highways, tunnels and subways</i>	<i>4520</i>
<i>5133</i>	<i>51330</i>	<i>For waterways, harbours, dams and other water works</i>	<i>4520</i>
<i>5134</i>	<i>51340</i>	<i>For long distance pipelines, communication and power lines (cables)</i>	<i>4520</i>
<i>5135</i>	<i>51350</i>	<i>For local pipelines and cables; ancillary works</i>	<i>4520</i>

5136	51360	For constructions for mining and manufacturing	4520
5137		For constructions for sport and recreation	
	51371	For stadia and sports grounds	4520
	51372	For other sport and recreation installations (e.g. swimming pools, tennis courts, golf courses)	4520

<i>Group Class</i>	<i>Subclass</i>	<i>Title</i>	<i>Corresponding ISIC</i>	
	5139	51390	<i>For engineering works n.e.c.</i>	4520514
514	5140	51400	<i>Assembly and erection of prefabricated constructions</i>	4520
515			<i>Special trade construction work</i>	
	5151	51510	<i>Foundation work, including pile driving</i>	4520
	5152	51520	<i>Water well drilling</i>	4520
	5153	51530	<i>Roofing and water proofing</i>	4520
	5154	51540	<i>Concrete work</i>	4520
	5155	51550	<i>Steel bending and erection (including welding)</i>	4520
	5156	51560	<i>Masonry work</i>	4520
	5159	51590	<i>Other special trade construction work</i>	4520
516			<i>Installation work</i>	
	5161	51610	<i>Heating, ventilation and air conditioning work</i>	4530
	5162	51620	<i>Water plumbing and drain laying work</i>	4530
	5163	51630	<i>Gas fitting construction work</i>	4530
	5164		<i>Electrical work</i>	
		51641	<i>Electrical wiring and fitting work</i>	4530
		51642	<i>Fire alarm construction work</i>	4530
		51643	<i>Burglar alarm system construction work</i>	4530
		51644	<i>Residential antenna construction work</i>	4530
		51649	<i>Other electrical construction work</i>	4530
	5165	51650	<i>Insulation work (electrical wiring, water, heat, sound)</i>	4530
	5166	51660	<i>Fencing and railing construction work</i>	4530
	5169		<i>Other installation work</i>	
		51691	<i>Lift and escalator construction work</i>	4530
		51699	<i>Other installation work n.e.c.</i>	4530
517			<i>Building completion and finishing work</i>	

5171	51710	Glazing work and window glass installation work	4540
5172	51720	Plastering work	4540
5173	51730	Painting work	4540
5174	51740	Floor and wall tiling work	4540

<i>Group Class</i>	<i>Subclass</i>	<i>Title</i>	<i>Corresponding ISIC</i>
5175	51750	Other floor laying, wall covering and wall papering work	4540
5176	51760	Wood and metal joinery and carpentry work	4540
5177	51770	Interior fitting decoration work	4540
5178	51780	Ornamentation fitting work	4540
5179	51790	Other building completion and finishing work	4540
518	5180	51800 Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator	4550

ANNEX I

PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

BELGIUM

Entity set up pursuant to the décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau.

Entity set up pursuant to the arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau.

Entity set up pursuant to the arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau.

Entities producing or distributing water and set up pursuant to the loi relative aux intercommunales du 22 décembre 1986.

Entities producing or distributing water set up pursuant to the code communal, article 47 bis, ter et quater sur les régies communales.

DENMARK

Entities producing or distributing water referred to in Article 3, paragraph 3 of lovbekendtgørelse om vandforsyning m.v. af 4. juli 1985.

GERMANY

Entities producing or distributing water pursuant to the Eigenbetriebsverordnungen or Eigenbetriebsgesetze of the Länder (Kommunale Eigenbetriebe).

Entities producing or distributing water pursuant to the Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit of the Länder.

Entities producing water pursuant to the Gesetz über Wasser- und Bodenverbände vom 10. Februar 1937 and the erste Verordnung über Wasser- und Bodenverbände vom 3. September 1937.

(Regiebetriebe) producing or distributing water pursuant to the Kommunalgesetze and notably with the Gemeindeordnungen der Länder.

Entities set up pursuant to the Aktiengesetz vom 6. September 1965, zuletzt geändert am 19. Dezember 1985 or GmbH-Gesetz vom 20. Mai 1898, zuletzt geändert am 15. Mai

1 April 1997

1986, or having the legal status of a *Kommanditgesellschaft*, producing or distributing water on the basis of a special contract with regional or local authorities.

GREECE

The Water Company of Athens set up pursuant to Law 1068/80 of 23 August 1980.

The Water Company of Salonica operating pursuant to Presidential Decree 61/1988.

The Water Company of Voios operating pursuant to Law 890/1979.

Municipal companies producing or distributing water and set up pursuant to Law 1059/80 of 23 August 1980.

Associations of local authorities operating pursuant to the Code of local authorities implemented by Presidential Decree 76/1985.

SPAIN

-Entities producing or distributing water pursuant to Ley no 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local and to Decreto Real no 781/1986 Texto Refundido Régimen local.

-Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984.

-Mancomunidad de los Canales de Taibilla, Ley de 27 de abril de 1946.

FRANCE

Entities producing or distributing water pursuant to the:

dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies); or

code des communes L 323-8 R 323-4 [régies directes (ou de fait)]; or

décret-loi du 28 décembre 1926, règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière); or

code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or

code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or

jurisprudence administrative, circulaire intérieure du 13 décembre 1975 (gérance); or

code des communes R 324-6, circulaire intérieure du 13 décembre 1975 (régie intéressée); or

circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or

décret du 20 mai 1955, loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or

code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermages).

IRELAND

Entities producing or distributing water pursuant to the Local Government (Sanitary Services) Act 1878 to 1964.

ITALY

Entities producing or distributing water pursuant to the Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578 and to Decreto del P.R. n. 902 del 4 ottobre 1986.

Ente Autonomo Acquedotto Pugliese set up pursuant to RDL 19 ottobre 1919, n. 2060.

Ente Acquedotti Siciliani set up pursuant to leggi regionali 4 settembre 1979, n. 2/2 e 9 agosto 1980, n. 81.

Ente Sardo Acquedotti e Fognature set up pursuant to legge 5 luglio 1963 n. 9.

LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la loi du 23 décembre 1958 et par la loi du 29 juillet 1981 and pursuant to the loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre.

NETHERLANDS

Entities producing or distributing water pursuant to the Waterleidingwet van 6 april 1957, amended by the wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986.

PORTUGAL

Empresa Pública das Águas Livres producing or distributing water pursuant to the Decreto-Lei n 190/81 de 4 de Julho de 1981.

Local authorities producing or distributing water.

UNITED KINGDOM

Water companies producing or distributing water pursuant to the Water Acts 1945 and 1989.

The Central Scotland Water Development Board producing water and the water authorities producing or distributing water pursuant to the Water (Scotland) Act 1980.

The Department of the Environment for Northern Ireland responsible for producing and distributing water pursuant to the Water and Sewerage (Northern Ireland) Order 1973.

ANNEX II

PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

BELGIUM

Entities producing, transporting or distributing electricity pursuant to article 5: Des régions communales et intercommunales of the loi du 10 mars 1925 sur les distributions d'énergie électrique.

Entities transporting or distributing electricity pursuant to the loi relative aux intercommunales du 22 décembre 1986.

EBES, Intercom, Unerg and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to article 8 - les concessions communales et intercommunales of the loi du 10 mars 1952 sur les distributions d'énergie électrique.

The Société publique de production d'électricité (SPÉ).

DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to • 3, stk. 1, of the lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde.

Entities distributing electricity as defined in • 3, stk. 2, of the lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde and on the basis of authorizations for expropriation pursuant to Articles 10 to 15 of the lov om elektriske stærktstrømsanlæg, jf. lovbekendtgørelse nr. 669 af 28. december 1977.

GERMANY

Entities producing, transporting or distributing electricity as defined in • 2 Absatz 2 of the Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) of 13 December 1935. Last modified by the Gesetz of 19 December 1977, and auto-production of electricity so far as this is covered by the field of application of the directive pursuant to Article 2, paragraph 5.

GREECE

1 April 1997

(Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950 and operating pursuant to the law 57/85.

SPAIN

Entities producing, transporting or distributing electricity pursuant to Article 1 of the Decreto de 12 de marzo de 1954, approving the Reglamento de verificaciones eléctricas y regularidad en el suministro de energía and pursuant to Decreto 2617/1966, de 20 de octubre, sobre autorización administrativa en materia de instalaciones eléctricas.

Red Eléctrica de España SA, set up pursuant to Real Decreto 91/1985 de 23 de enero.

FRANCE

Électricité de France, set up and operating pursuant to the loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.

Entities (sociétés d'économie mixte or régies) distributing electricity and referred to in article 23 of the loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.

Compagnie nationale du Rhône.

IRELAND

The Electricity Supply Board (ESB) set up and operating pursuant to the Electricity Supply Act 1927.

ITALY

Ente nazionale per l'energia elettrica set up pursuant to legge n. 1643, 6 dicembre 1962 approvato con Decreto n. 1720, 21 dicembre 1965.

Entities operating on the basis of a concession pursuant to article 4, n. 5 or 8 of legge 6 dicembre 1962, n. 1643 - Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche.

Entities operating on the basis of concession pursuant to article 20 of Decreto del Presidente della Repubblica 18 marzo 1965, n. 342 norme integrative della legge 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'energia elettrica.

1 April 1997

LUXEMBOURG

Compagnie grand-ducale d'électricité de Luxembourg, producing or distributing electricity pursuant to the convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché du Luxembourg approuvée par la loi du 4 janvier 1928.

Société électrique de l'Our (SEO).

Syndicat de Communes SIDOR.

NETHERLANDS

Elektriciteitsproduktie Oost-Nederland.

Elektriciteitsbedrijf Utrecht-Noord-Holland-Amsterdam (UNA).

Elektriciteitsbedrijf Zuid-Holland (EZH)

Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ).

Provinciale Zeeuwse Energie Maatschappij (PZEM).

Samenwerkende Elektriciteitsbedrijven (SEP).

Entities distributing electricity on the basis of a licence (vergunning) granted by the provincial authorities pursuant to the Provinciewet.

PORTUGAL

Electricidade de Portugal (EDP) , set up pursuant to the Decreto-Lei n 502/76 de 30 de Junho de 1976.

*Entities distributing electricity pursuant to artigo 1 do Decreto-Lei n 344-B/82 de 1 de Setembro de 1982, amended by Decreto-Lei n 297/86 de 19 de Setembro de 1986.
Entities producing electricity pursuant to Decreto Lei n 189/88 de 27 de Maio de 1988.*

Independant producers of electricity pursuant to Decreto Lei n 189/88 de 27 de Maio de 1988.

Empresa de Electricidade dos Açores EDA, EP, created pursuant to the Decreto Regional n 16/80 de 21 de Agosto de 1980.

Empresa de Electricidade da Madeira, EP, created pursuant to the Decreto-Lei n 12/74 de 17 de Janeiro de 1974 and regionalized pursuant to the Decreto-Lei n 31/79 de 24 de Fevereiro de 1979, Decreto-Lei n 91/79 de 19 de Abril de 1979.

UNITED KINGDOM

Central Electricity Generating (CEGB), and the Areas Electricity Boards producing, transporting or distributing electricity pursuant to the Electricity Act 1947 and the Electricity Act 1957.

The North of Scotland Hydro-Electricity Board (NSHB), producing, transporting and distributing electricity pursuant to the Electricity (Scotland) Act 1979.

The South of Scotland Electricity Board (SSEB) producing, transporting and distributing electricity pursuant to the Electricity (Scotland) Act 1979.

The Northern Ireland Electricity Service (NIES), set up pursuant to the Electricity Supply (Northern Ireland) Order 1972.

ANNEX VI

CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

BELGIUM

Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.

DENMARK

Danske Statsbaner (DSB)

Entities operating set up pursuant to lov nr. 295 af 6. juni 1984 om privatbanerne, jf. lov nr. 245 af 6. august 1977.

GERMANY

Deutsche Bundesbahn

Other entities providing railway services to the public as defined in paragraph 2 Abs. 1 of Allgemeines Eisenbahngesetz of 29 March 1951.

GREECE

Organization of Railways in Greece (OSE).

SPAIN

Red Nacional de Los Ferrocarriles Españoles.

Ferrocarriles de Vía Estrecha (FEVE).

Ferrocarrils de la Generalitat de Catalunya (FGC).

Eusko Trenbideak (Bilbao).

Ferrocarriles de la Generalitat Valenciana (FGV).

FRANCE

1 April 1997

Société nationale des chemins de fer français and other réseaux ferroviaires ouverts au public referred to in the loi d'orientation des transports intérieurs du 30 décembre 1982, titre II, chapitre 1er du transport ferroviaire.

IRELAND

Iarnrod Éireann (Irish Rail).

ITALY

Ferrovie dello Stato

Entities providing railway services on the basis of a concession pursuant to Article 10 of Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'Industria privata, le tramvie a trazione meccanica e gli automobili.

Entities operating on the basis of a concession granted, pursuant to special laws, as referred to in Titolo XI, Capo II, Sezione Ia del Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.

Entities providing railway services on the basis of a concession pursuant to Article 4 of Legge 14 giugno 1949, n. 410 - Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.

Entities or local authorities providing railway services on the basis of a concession pursuant to Article 14 of Legge 2 agosto 1952, n. 1221 - Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.

LUXEMBOURG

Chemins de fer luxembourgeois (CFL).

NETHERLANDS

Nederlandse Spoorwegen NV.

PORTUGAL

Caminhos de Ferro Portugueses.

UNITED KINGDOM

British Railways Boards.

Northern Ireland Railways.

1 April 1997

ANNEX VII

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY,
TRAMWAY, TROLLEYBUS OR BUS SERVICES

BELGIUM

Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB)

Entities providing transport services to the public on the basis of a contract granted by SNCV pursuant to Articles 16 and 21 of the arrêté du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars.

Société des transports intercommunaux de Bruxelles (STIB),

Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA),

Maatschappij van het Intercommunaal Vervoer te Gent (MIVG),

Société des transports intercommunaux de Charleroi (STIC),

Société des transports intercommunaux de la région liégeoise (STIL),

Société des transports intercommunaux de l'agglomération verviétoise (STIAV), and other entities set up pursuant to the loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer of 22 February 1962.

Entities providing transport services to the public on the basis of a contract with STIB pursuant to Article 10 or with other transport entities pursuant to Article 11 of the arrêté royal 140 du 30 décembre 1982 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications.

DENMARK

Danske Statsbaner (DSB)

Entities providing bus services to the public (almindelig rutekørsel) on the basis of an authorization pursuant to lov nr. 115 af 29. marts 1978 om buskørsel.

1 April 1997

GERMANY

Entities providing, on the basis of an authorization, short-distance transport services to the public (Öffentlichen Personennahverkehr) pursuant of the Personenbeförderungsgesetz vom 21. März 1961, as last amended on 25 July 1989.

GREECE

(Electric Buses of the Athens - Piraeus Area) operating pursuant to decree 768/1970 and law 588/1977.

(Athens-Piraeus Electric Railways) operating pursuant to laws 352/1976 and 588/1977.

(Enterprise of Urban Transport) operating pursuant to law 588/1977.

(Joint receipts Fund of Buses) operating pursuant to decree 102/1973.

Roda: Municipal bus enterprise in Rhodes.

(Urban Transport Organization of Thessaloniki) operating pursuant to decree 3721/1957 and law 716/1980.

SPAIN

Entities providing transport services to the public pursuant to the Ley de Régimen local.

Corporación metropolitana de Madrid.

Corporación metropolitana de Barcelona.

Entities providing urban or inter-urban bus services to the public pursuant to Articles 113 to 118 of the Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987.

Entities providing bus services to the public, pursuant to Article 71 of the Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987.

FEVE, RENFE (or Empresa Nacional de Transportes de Viajeros por Carretera) providing bus services to the public pursuant to the Disposiciones adicionales. Primera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.

Entities providing bus services to the public pursuant to Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.

1 April 1997

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FRANCE

Entities providing transport services to the public pursuant to article 7-11 of the loi n° 82-1153 du 30 décembre 1982, transports intérieurs, orientation).

Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTR, and other entities providing transport services to the public on the basis of an authorization granted by the syndicat des transports parisiens pursuant to the ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne.

IRELAND

Iarnrod Éireann (Irish Rail).

Bus Éireann (Irish Bus).

Bus Átha Cliath (Dublin Bus).

Entities providing transport services to the public pursuant to the amended Road Transport Act 1932.

ITALY

Entities providing transport services of a concession pursuant to Legge 28 settembre 1939, n. 1822 - Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) - Article 1 as modified by Article 45 of Decreto del Presidente della Repubblica 28 giugno 1955, n. 771.

Entities providing transport services to the public pursuant to Article 1, n. 4 or n. 15 of Regio Decreto 15 ottobre 1925, n. 2578 - Approvazione del Testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province.

Entities operating on the basis of a concession pursuant to Article 242 or 255 of Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.

Entities or local authorities operating on the basis of a concession pursuant to Article 4 of Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.

1 April 1997

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Entities operating on the basis of a concession pursuant to Article 14 of Legge 2 agosto 1952, n. 1221 - Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.

LUXEMBOURG

Chemins de fer du Luxembourg (CFL).

Service communal des autobus municipaux de la ville de Luxembourg.

Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).

Bus service undertakings operating pursuant to the règlement grand-ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées.

NETHERLANDS

Entities providing transport services to the public pursuant to chapter II (Openbaar vervoer) of the Wet Personenvervoer van 12 maart 1987.

PORTUGAL

Rodoviaria Nacional, EP.

Companhia Carris de ferro de Lisboa.

Metropolitano de Lisboa, EP.

Serviços de Transportes Colectivos do Porto.

Serviços Municipalizados de Transporte do Barreiro.

Serviços Municipalizados de Transporte de Aveiro.

Serviços Municipalizados de Transporte de Braga.

Serviços Municipalizados de Transporte de Coimbra.

Serviços Municipalizados de Transporte de Portalegre.

UNITED KINGDOM

Entities providing bus services to the public pursuant to the London Regional Transport Act 1984.

Glasgow Underground.

Greater Manchester Rapid Transit Company.

Docklands Light Railway.

London Underground Ltd.

British Railways Board.

Tyne and Wear Metro.

ANNEX VIII

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

BELGIUM

Régie des voies aériennes set up pursuant to the arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes amended by arrêté royal du 5 octobre 1970 portant refonte du statut de la régie des voies aériennes.

DENMARK

Airports operating on the basis of an authorization pursuant to • 55, stk. 1, lov om luftfart, jf. lovbekendtgørelse nr. 408 af 11. september 1985.

GERMANY

Airports as defined in Article 38 Absatz 2 no of the Luftverkehrszulassungsordnung vom 19. März 1979, amended last by the Verordnung vom 21. Juli 1986.

GREECE

Airports operating pursuant to law 517/1931 setting up the civil aviation service.

International airports operating pursuant to presidential decree 647/981.

SPAIN

Airports managed by Aeropuertos Nacionales operating pursuant to the Real Decreto 278/1982 de 15 de octubre de 1982.

FRANCE

Aéroports de Paris operating pursuant to titre V, articles L 251-1 à 252-1 du code de l'aviation civile.

Aéroport de Bâle - Mulhouse, set up pursuant to the convention franco-suisse du 4 juillet 1949.

Airports as defined in article L 270-1, code de l'aviation civile.

1 April 1997

Airports operating pursuant to the cahier de charges type d'une concession d'aéroport, décret du 6 mai 1955.

Airports operating on the basis of a convention d'exploitation pursuant to article L/221, code de l'aviation civile.

IRELAND

Airports of Dublin, Cork and Shannon managed by Aer Rianta - Irish Airports.

Airports operating on the basis of a Public use License granted, pursuant to the Air Navigation and Transport Act No 23 1936, the Transport Fuel and Power Transfer of Departmental, Administration and Ministerial Functions Order 1959 (SI No 125 of 1959) and the Air Navigation (Aerodromes and Visual Ground Aids) Order 1970 (SI No 291 of 1970).

ITALY

Civil Stat. airports (aerodromo civili istituiti dallo Stato referred to in Article 692 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.

Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.

LUXEMBOURG

Aéroport de Findel.

NETHERLANDS

Airports operating pursuant to articles 18 and following of the Luchtvaartwet of 15 January 1958, amended on 7 June 1978.

PORTUGAL

Airports managed by Aeroportos de Navegação Aérea (ANA), EP pursuant to Decreto-Lei n 246/79.

Aeroporto do Funchal and Aeroporto de Porto Santo, regionalized pursuant to the Decreto-Lei n 284/81.

UNITED KINGDOM

Airports managed by British Airports Authority plc.

Airports which are public limited companies (plc) pursuant to the Airports Act 1986.

ANNEX IX

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT
OR OTHER TERMINAL FACILITIES

BELGIUM

Société anonyme du canal et des installations maritimes de Bruxelles.

Port autonome de Liège.

Port autonome de Namur.

Port autonome de Charleroi.

Port de la ville de Gand.

La Compagnie des installations maritimes de Bruges - Maatschappij der Brugse haveninrichtingen.

Société intercommunale de la rive gauche de l'Escaut - Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).

Port de Nieuwport.

Port d'Ostende.

DENMARK

Ports as defined in Article 1, I to III of the bekendtgørelse nr. 604 af 16. december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12. maj 1976 om trafikhavne.

GERMANY

Seaports owned totally or partially by territorial authorities (Länder, Kreise, Gemeinden).

Inland ports subject to the Hafenordnung pursuant to the Wassergesetze der Länder.

GREECE

1 April 1997

Piraeus port set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.

Thessaloniki port set up pursuant to decree N.A. 2251/1953.

Other ports governed by presidential decree 649/1977 (NA. 649/1977) (supervision, organization of functioning and administrative control).

SPAIN

Puerto de Huelva set up pursuant to the Decreto de 2 de octubre de 1969, no 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.

Puerto de Barcelona set up pursuant to the Decreto de 25 de agosto de 1978, no 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.

Puerto de Bilbao set up pursuant to the Decreto de 25 de agosto de 1978, no 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.

Puerto de Valencia set up pursuant to the Decreto de 25 de agosto de 1978, no 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.

Juntas de Puertos operating pursuant to the Lei 27/68 de 20 de junio de 1968 ; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía and to the Decreto de 9 de abril de 1970, no 1350/70. Juntas de Puertos. Reglamento.

Ports managed by the Comisión Administrativa de Grupos de Puertos, operating pursuant to the Ley 27/68 de 20 de junio de 1968, Decreto 1958/78 de 23 de junio de 1978 and Decreto 571/81 de 6 de mayo de 1981.

Ports listed in the Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.

FRANCE

Port autonome de Paris set up pursuant to loi 68/917 du 24 octobre 1968 relative au port autonome de Paris.

Port autonome de Strasbourg set up pursuant to the convention du 20 mai 1923 entre l'État et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port, approved by the loi du 26 avril 1924.

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Other inland waterway ports set up or managed pursuant to article 6 (navigation intérieure) of the décret 69-140 du 6 février 1969 relatif aux concessions d'outillage public dans les ports maritimes.

Ports autonomes operating pursuant to articles L 111-1 et suivants of the code des ports maritimes.

Ports non autonomes operating pursuant articles R 121-1 et suivants of the code des ports maritimes.

Ports managed by regional authorities (départements) or operating pursuant to a concession granted by the regional authorities (départements) pursuant to article 6 of the loi 86-663 du 22 juillet 1983 complétant la loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, départements et l'État.

IRELAND

Ports operating pursuant to the Harbour Acts 1946 to 1976.

Port of Dun Laoghaire operating pursuant to the State Harbours Act 1924.

Port of Rosslare Harbour operating pursuant to the Finguard and Rosslare Railways and Harbours Act 1899.

ITALY

State ports and other ports managed by the Capitaneria di Porto pursuant to the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 32.

Autonomous ports (enti portuali) set up by special laws pursuant to Article 19 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.

LUXEMBOURG

Port de Merttert set up and operating pursuant to loi du 22 juillet 1963 relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle.

NETHERLANDS

Havenbedrijven, set up and operating pursuant to the Gemeentewet van 29 juni 1851.

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Havenschap Vlissingen, set up by the wet van 10 september 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen.

Havenschap Terneuzen, set up by the wet van 8 april 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen.

Havenschap Delfzijl, set up by the wet van 31 juli 1957 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl.

Industrie- en havenschap Moerdijk, set up by gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk van 23 oktober 1970, approved by Koninklijke Besluit nr. 23 van 4 maart 1972.

PORTUGAL

Porto do Lisboa set up pursuant to Decreto Real do 18 de Fevereiro de 1907 and operating pursuant to Decreto-Lei n 36976 de 20 de Julho de 1948.

Porto do Douro e Leixões set up pursuant to Decreto-Lei n 36977 de 20 de Julho de 1948.

Porto de Sines set up pursuant to Decreto-Lei n 508/77 de 14 de Dezembro de 1977.

Portos de Setúbal, Aveiro, Figueira de Foz, Viana do Castelo, Portimão e Faro operating pursuant to the Decreto-Lei n 37754 de 18 de Fevereiro de 1950.

UNITED KINGDOM

Harbour Authorities within the meaning of section 57 of the Harbours Act 1964 providing port facilities to carriers by sea or inland water way.

*GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF
ARTICLE III*

1. The EC will not extend the benefits of this Agreement:

-as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;

-as regards the award of contracts, other than for suppliers, listed in Annex 2 to the suppliers and service providers of the USA;

-as regards the award of contracts by entities listed in Annex 3 paragraph

(a)(water), to the suppliers and service providers of Canada and the USA;

(b)(electricity), to the suppliers and service providers of Canada, Hong Kong and Japan;

(c)(airports), to the suppliers and service providers of Canada, Korea and the USA;

(d) (ports), to the suppliers and service providers of Canada;

(e)(urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA

until such time as the EC has accepted that the Parties concerned give comparable and effective access for EC undertakings to the relevant markets;

-to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.

2. The provisions of Article XX shall not apply to suppliers and service providers of:

-Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2 paragraph 2, until such time as the EC accepts that they have completed coverage of sub-central entities;

-Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EC law, until such time as

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the EC accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;

-Israel, Japan and Korea in contesting the award of contracts by EC entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

3. *Until such time as the EC has accepted that the Parties concerned provide access for EC suppliers and service providers to their own markets the EC will not extend the benefits of this Agreement to suppliers and service providers of:*

-Canada, as regards procurement of FSC 36,70 and 74 (special industry machinery, general purpose automatic data processing equipment, software supplies and support equipment (except 7010 ADPE configurations), office machines, visible record equipment and ADP equipment);

-Canada, as regards procurement of FSG 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment;

-Korea and Israel as regards procurement by entities listed in Annex 3 paragraph (b), as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;

-the USA as regards procurement by entities listed in Annex 3 paragraph (d), as regards procurement of dredging services and procurement related to shipbuilding;

-Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.

4. *The Agreement shall not apply to contracts awarded under:*

-an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;

-an international agreement relating to the stationing of troops;

-the particular procedure of an international organization.

5. *The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.*
6. *Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications are not included.*
7. *This Agreement shall not apply to contracts awarded by entities in Annex 3:*
- for the purchase of water and for the supply of energy or of fuels for the production of energy;*
 - for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-member country;*
 - for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.*
8. *This Agreement shall not be applicable to contracts:*
- for the acquisition or rental of land, existing buildings or other immovable property or concerning rights thereon;*
 - for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.*
9. *This Agreement shall not be applicable to the award of service contracts by Spanish entities listed in Annex 3 before 1 January 1997 or to the award of contracts by Greek or Portuguese entities listed in Annex 3 before 1 January 1998.*
10. *The provision of services, including construction services, in the context of procurement procedures according to this Agreement is subject to the conditions and qualifications for market access and national treatment as will be required by Austria in conformity with her commitments under the GATS.*
11. *This Agreement shall not apply to contracts awarded to an entity in Finland which itself is a contracting authority within the meaning of the Public Procurement Act: •Laki julkisista hankinnoista• (1505/92), or in Sweden within the meaning of the •Lag om offentlig upphandling• (1992:1528), on the basis of an exclusive right which it enjoys pursuant to a law, regulation or administrative provision or to contracts of employment in Finland and Sweden.*

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12. When a specific procurement may impair important national policy objectives, the Finnish or Swedish Governments may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at Cabinet level. Finland also reserves its position with regard to the application of this Agreement to the Åland Islands (Ahvenanmaa).

ISRAEL*(Authentic in the English language only)***ANNEX 1***Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies	<i>Threshold:</i>	<i>130,000 SDR</i>
Services <i>(specified in Annex 4)</i>	<i>Threshold:</i>	<i>130,000 SDR</i>
Construction <i>(specified in Annex 5)</i>	<i>Threshold:</i>	<i>8,500,000 SDR</i>

List of Entities:

House of Representatives (the Knesset)
Prime Minister's Office
Ministry of Agriculture
Ministry of Communications and Culture
Ministry of Construction and Housing
Ministry of Economics and Planning
Ministry of Education
Ministry of Energy and Infrastructure excluding Fuel Authority
Ministry of the Environment
Ministry of Finance
Civil Service Commissioner
Ministry of Foreign Affairs
Ministry of Health (1)
Ministry of Immigrants Absorption
Ministry of Industry and Trade
Ministry of the Interior
Ministry of Justice
Ministry of Labour and Social Affairs
Israel Productivity Institute
Ministry of Religious Affairs
Ministry of Science and Technology
Ministry of Tourism

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*Ministry of Transport
The State Controller's office*

Note to Annex 1

(1) Ministry of Health - Excepted Products

- *Insulin and infusion pumps*
- *Audiometers*
- *Medical dressings (bandages, adhesive tapes and gauze)*
- *Intravenous solution*
- *Administration sets for transfusions*
- *Scalp vein sets*
- *Hemi-dialysis and blood lines*
- *Blood packs*
- *Syringe needles*

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ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies	<i>Threshold:</i>	<i>250,000 SDR</i>
Services (specified in Annex 4)	<i>Threshold:</i>	<i>250,000 SDR</i>
Construction (specified in Annex 5)	<i>Threshold:</i>	<i>8,500,000 SDR</i>

List of Entities:

Municipalities of Jerusalem, Tel-Aviv and Haifa

The company for economy and management of the Center of Local Government

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ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies	<i>Threshold:</i>	<i>355,000 SDR</i>
Services (specified in Annex 4)	<i>Threshold:</i>	<i>355,000 SDR</i>
Construction (specified in Annex 5)	<i>Threshold:</i>	<i>8,500,000 SDR</i>

List of Entities:

Israel Airports Authority
Israel Ports and Railways Authority (1)
Israel Broadcasting Authority
Israel Educational Television
Postal Authority
Bezek (Israel Communication Company) (1) (2)
Israel Electricity Company (3)
Mekoroth Water Resources Ltd.
Sports• Gambling Arrangement Board
Israel Standards Institute
National Insurance Institute

Notes to Annex 3

(1) *Procurement of cables is excluded.*

(2) *With regard to procurement by Bezek, this Agreement shall apply only to goods and services of the US.*

Israel is willing to negotiate the opening of its telecommunication sector also to other Code members under the condition of reciprocity.

(3) *Excluded products: cables (H.S. 8544), electro-mechanic meters (ex. H.S. 9028), transformers (H.S. 8504), disconnectors and switchers (H.S. 8535-8537), electric motors (H.S. 8501).*

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*ANNEX 4**Services*

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

<i>CPC</i>	<i>Description</i>
<i>8672-3</i>	<i>Architectural services</i>
<i>8671</i>	<i>Engineering services</i>
<i>8674</i>	<i>Urban planning</i>
<i>841-3</i>	<i>Computer and related services</i>
<i>871</i>	<i>Advertising services</i>
<i>864</i>	<i>Market research and public opinion</i>
<i>865-6</i>	<i>Management consulting</i>
<i>9401-5</i>	<i>Environmental services</i>

Note to Annex 4

The offer regarding services (including construction) is subject to the limitation and conditions specified in Israel's offer under the GATS negotiation.

*ANNEX 5**Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

Threshold: 8,500,000 SDR

List of construction services offered

<i>CPC</i>	<i>Description</i>
<i>511</i>	<i>Pre-erection work at construction sites</i>
<i>512</i>	<i>Construction work for buildings</i>
<i>513</i>	<i>Construction work for civil engineering</i>
<i>514</i>	<i>Assembly and erection of prefabricated construction</i>
<i>515</i>	<i>Special trade construction work</i>
<i>516</i>	<i>Installation work</i>
<i>517</i>	<i>Building completion and finishing work</i>
<i>518</i>	<i>Renting services related to equipment for construction</i>

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GENERAL NOTES

- (1) The Agreement shall not apply to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.*
- (2) The Agreement shall not apply to contracts for the purchase of water and for the supply of energy and of fuels for the production of energy.*
- (3) The Agreement shall not apply to the acquisition or rental of land, buildings or other immovable property, or concerning rights thereon.*

*NOTE**Offset*

1. Having regard to Article XVI and to general policy considerations regarding development, Israel may operate provisions which require the limited incorporation of domestic content, offset procurement or transfer of technology, in the form of objective and clearly defined conditions for participation in procedures for the award of contracts, which do not discriminate between other Parties.

This shall be done under the following terms:

(a) Israel shall ensure that its entities indicate the existence of such conditions in their tender notices and specify them clearly in the contract documents.

(b) Suppliers will not be required to purchase goods that are not offered on competitive terms, including price and quality, or to take any action which is not justified from a commercial standpoint.

(c) Offsets in any form may be required up to 35 per cent of the contract going down to 30 per cent after five years and 20 per cent after nine years, beginning from the date Israel implements the Agreement.

2. (a) At the end of each period of five and four years Israel will submit a report concerning the implementation of this Note.

(b) When the level of the offset has reached 20 per cent, Israel will consult with the Parties to this Agreement on the level of the use of offset by Israel. The review shall take into consideration inter alia general and economic developments in Israel, its trade balance, the actual performance within the framework of this Agreement and the views of the other Parties.

JAPAN*(Authentic in the English language only)***ANNEX 1****Central Government Entities which Procure in Accordance
with the Provisions of this Agreement****Supplies***Threshold:*

130 thousand SDR

List of Entities:

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission (National Police Agency)
- Environmental Disputes Co-ordination Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Ministry of Education
- Ministry of Health and Welfare

- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

Services*Threshold:***Construction services:** 4,500 thousand SDRArchitectural, engineering and other technical services covered by this Agreement:
450 thousand SDR**Other services:** 130 thousand SDR*List of Entities which procure the services,
specified in Annex 4:*

All entities covered by the Accounts Law as follows:

- House of Representatives
- House of Councillors
- Supreme Court
- Board of Audit
- Cabinet
- National Personnel Authority
- Prime Minister's Office
- Fair Trade Commission
- National Public Safety Commission (National Police Agency)

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Services (cont'd)

- Environmental Disputes Co-ordination Commission
- Imperial Household Agency
- Management and Co-ordination Agency
- Hokkaido Development Agency
- Defence Agency
- Economic Planning Agency
- Science and Technology Agency
- Environment Agency
- Okinawa Development Agency
- National Land Agency
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Ministry of Education
- Ministry of Health and Welfare
- Ministry of Agriculture, Forestry and Fisheries
- Ministry of International Trade and Industry
- Ministry of Transport
- Ministry of Posts and Telecommunications
- Ministry of Labour
- Ministry of Construction
- Ministry of Home Affairs

Notes to Annex 1

1. Entities covered by the Accounts Law include all their internal sub-divisions, independent organs, attached organizations and other organizations and local branch offices provided for in the National Government Organization Law.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.

4. This Agreement will generally apply to procurement by the Defence Agency of the following Federal Supply Classification (FSC) categories subject to the Japanese Government determinations under the provisions of Article XXIII, paragraph 1:

FSC Description

- 22 Railway Equipment
- 24 Tractors
- 32 Woodworking Machinery and
- 34 Metalworking Machinery
- 35 Service and Trade Equipment
- 36 Special Industry Machinery
- 37 Agricultural Machinery and Equipment
- 38 Construction, Mining, Excavating, and Highway Maintenance Equipment
- 39 Materials Handling Equipment
- 40 Rope, Cable, Chain, and Fittings
- 41 Refrigeration, Air Conditioning, and Air Circulating Equipment
- 43 Pumps and Compressors
- 45 Plumbing, Heating and Sanitation
- 46 Water Purification and Sewage
- 47 Pipe, Tubing, Hose, and Fittings
- 48 Valves
- 51 Hand Tools
- 52 Measuring Tools
- 55 Lumber, Millwork, Plywood and Veneer
- 61 Electric Wire, and Power and Distribution Equipment
- 62 Lighting Fixtures and Lamps
- 65 Medical, Dental, and Veterinary Equipment and Supplies
- 6630 Chemical Analysis Instruments
- 6635 Physical Properties Testing Equipment
- 6640 Laboratory Equipment and Supplies
- 6645 Time Measuring Instruments
- 6650 Optical Instruments
- 6655 Geophysical and Astronomical Instruments

FSC Description (cont•d)

6660 Meteorological Instruments and Apparatus
6670 Scales and Balances
6675 Drafting, Surveying, and Mapping
Instruments
6680 Liquid and Gas Flow, Liquid Level, and
Mechanical Motion Measuring
Instruments
6685 Pressure, Temperature, and Humidity
Measuring and Controlling Instruments
6695 Combination and Miscellaneous
Instruments
67 Photographic Equipment
68 Chemicals and Chemical Products
71 Furniture
72 Household and Commercial Furnishings and
Appliances
73 Food Preparation and Serving Equipment
74 Office Machines and Visible Record
Equipment
75 Office Supplies and Devices
76 Books, Maps, and Other Publications
77 Musical Instruments, Phonographs, and
Home-type Radios
79 Cleaning Equipment and Supplies
80 Brushes, Paints, Sealers, and Adhesives
8110 Drums and Cans
8115 Boxes, Cartons, and Crates
8125 Bottles and Jars
8130 Reels and Spools
8135 Packaging and Packing Bulk Materials
85 Toiletries
87 Agricultural Supplies
93 Non-metallic Fabricated Materials
94 Non-metallic Crude Materials
99 Miscellaneous

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies*Threshold:*

200 thousand SDR

List of Entities:

All prefectural governments entitled •To•, •Do•, •Fu• and •Ken•, and all designated cities entitled •Shitei-toshi•, covered by the Local Autonomy Law as follows:

- Hokkaido
- Aomori-ken
- Iwate-ken
- Miyagi-ken
- Akita-ken
- Yamagata-ken
- Fukushima-ken
- Ibaraki-ken
- Tochigi-ken
- Gunma-ken
- Saitama-ken
- Chiba-ken
- Tokyo-to
- Kanagawa-ken
- Niigata-ken
- Toyama-ken
- Ishikawa-ken
- Fukui-ken
- Yamanashi-ken
- Nagano-ken
- Gifu-ken
- Shizuoka-ken
- Aichi-ken
- Mie-ken
- Shiga-ken
- Kyoto-fu
- Osaka-fu
- Hyogo-ken
- Nara-ken

- Wakayama-ken
- Tottori-ken
- Shimane-ken
- Okayama-ken
- Hiroshima-ken
- Yamaguchi-ken
- Tokushima-ken
- Kagawa-ken
- Ehime-ken
- Kochi-ken
- Fukuoka-ken
- Saga-ken
- Nagasaki-ken
- Kumamoto-ken
- Oita-ken
- Miyazaki-ken
- Kagoshima-ken
- Okinawa-ken
- Osaka-shi
- Nagoya-shi
- Kyoto-shi
- Yokohama-shi
- Kobe-shi
- Kitakyushu-shi
- Sapporo-shi
- Kawasaki-shi
- Fukuoka-shi
- Hiroshima-shi
- Sendai-shi
- Chiba-shi

Services*Threshold:***Construction services:** 15,000 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
1,500 thousand SDR

Other services: 200 thousand SDR

Services (cont'd)

List of Entities which procure the services, specified in Annex 4:

All prefectural governments entitled **•To•**, **•Do•**, **•Fu•** and **•Ken•**, and all designated cities entitled **•Shitei-toshi•**, covered by the Local Autonomy Law as follows:

- Hokkaido
- Aomori-ken
- Iwate-ken
- Miyagi-ken
- Akita-ken
- Yamagata-ken
- Fukushima-ken
- Ibaraki-ken
- Tochigi-ken
- Gunma-ken
- Saitama-ken
- Chiba-ken
- Tokyo-to
- Kanagawa-ken
- Niigata-ken
- Toyama-ken
- Ishikawa-ken
- Fukui-ken
- Yamanashi-ken
- Nagano-ken
- Gifu-ken
- Shizuoka-ken
- Aichi-ken
- Mie-ken
- Shiga-ken
- Kyoto-fu
- Osaka-fu
- Hyogo-ken
- Nara-ken
- Wakayama-ken
- Tottori-ken
- Shimane-ken
- Okayama-ken
- Hiroshima-ken
- Yamaguchi-ken
- Tokushima-ken
- Kagawa-ken
- Ehime-ken
- Kochi-ken
- Fukuoka-ken
- Saga-ken
- Nagasaki-ken

- Kumamoto-ken
- Oita-ken
- Miyazaki-ken
- Kagoshima-ken
- Okinawa-ken
- Osaka-shi
- Nagoya-shi
- Kyoto-shi
- Yokohama-shi
- Kobe-shi
- Kitakyushu-shi
- Sapporo-shi
- Kawasaki-shi
- Fukuoka-shi
- Hiroshima-shi
- Sendai-shi
- Chiba-shi

Notes to Annex 2

1. **•To•**, **•Do•**, **•Fu•**, **•Ken•** and **•Shitei-toshi•** covered by the Local Autonomy Law include all internal subdivisions, attached organizations and branch offices of all their governors or mayors, committees and other organizations provided for in the Local Autonomy Law.
2. Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
3. This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
4. This Agreement shall not apply to contracts which the entities award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.
5. Procurement related to operational safety of transportation is not included.
6. Procurement related to the production, transport or distribution of electricity is not included.

ANNEX 3

*All Other Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies*Threshold:*

130 thousand SDR

List of Entities:

- Water Resources Development Public Corporation
- Japan Regional Development Corporation
- Forest Development Corporation
- Japan Agricultural Land Development Agency
- Japan National Oil Corporation (c)
- Maritime Credit Corporation (e)
- Japan Railway Construction Public Corporation (a)
- New Tokyo International Airport Authority
- Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
- Hanshin Expressway Public Corporation
- Honshu-Shikoku Bridge Authority
- Housing and Urban Development Corporation (a)
- Japan Science and Technology Corporation
- Power Reactor and Nuclear Fuel Development Corporation (b)
- Japan Environmental Corporation
- Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Pension Welfare Service Public Corporation
- Agriculture and Livestock Industries Corporation
- Metal Mining Agency of Japan (c)
- Japan Small Business Corporation
- JNR Settlement Corporation (d)
- Postal Life Insurance Welfare Corporation
- Labour Welfare Corporation
- Small Enterprise Retirement Allowance Mutual Aid Corporation
- Employment Promotion Corporation
- Hokkaido-Tohoku Development Finance Public Corporation
- Okinawa Development Finance Corporation
- People's Finance Corporation
- Environmental Sanitation Business Financing Corporation
- Agriculture, Forestry and Fisheries Finance Corporation
- Japan Finance Corporation for Small Business
- Small Business Credit Insurance Corporation
- Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
- Japan Development Bank
- Export-Import Bank of Japan
- Teito Rapid Transit Authority (a)
- Japan Tobacco Inc.
- Hokkaido Railway Company (a)
- East Japan Railway Company (a)
- Central Japan Railway Company (a)
- West Japan Railway Company (a)
- Shikoku Railway Company (a)
- Kyushu Railway Company (a)
- Japan Freight Railway Company (a)
- Nippon Telegraph and Telephone Co. (f)
- Northern Territories Issue Association
- The Overseas Economic Cooperation Fund
- Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- Institute of Physical and Chemical Research (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
- Japan Foundation
- The Japan Scholarship Foundation
- Mutual Aid Association of Private School Personnel

Supplies (cont•d)

- National Education Center
- Japan Arts Council
- Japan Society for the Promotion of Science
- Japan Private School Promotion Foundation
- University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
 - Japan Racing Association
- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
- The National Association of Racing
- Farmers' Pension Fund
 - Japan Keirin Association
 - Japan External Trade Organization
 - Institute of Developing Economies
 - Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
 - Japan National Tourist Organization
- Rail Development Fund
 - Japan Institute of Labour
- Construction, the Sake Brewing Industry and Forestry Retirement Allowance Mutual Aid Association
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen

Services*Threshold:*

Construction services: 15,000 thousand SDR

Architectural, engineering and other technical services covered by this Agreement:
450 thousand SDR

Other services: 130 thousand SDR

List of Entities which procure the services, specified in Annex 4:

- Water Resources Development Public Corporation
 - Japan Regional Development Corporation
 - Forest Development Corporation
- Japan Agricultural Land Development Agency
 - Japan National Oil Corporation (c)
 - Maritime Credit Corporation (e)
- Japan Railway Construction Public Corporation (a)
 - New Tokyo International Airport Authority
 - Japan Highway Public Corporation
- Metropolitan Expressway Public Corporation
 - Hanshin Expressway Public Corporation
 - Honshu-Shikoku Bridge Authority
- Housing and Urban Development Corporation (a)
 - Japan Science and Technology Corporation
- Power Reactor and Nuclear Fuel Development Corporation (b)
 - Japan Environmental Corporation
 - Japan International Cooperation Agency
- Social Welfare and Medical Service Corporation
- Pension Welfare Service Public Corporation
 - Agriculture and Livestock Industries Corporation
 - Metal Mining Agency of Japan (c)
 - Japan Small Business Corporation
 - JNR Settlement Corporation (d)
- Postal Life Insurance Welfare Corporation
 - Labour Welfare Corporation
- Small Enterprise Retirement Allowance Mutual Aid Corporation
 - Employment Promotion Corporation
- Hokkaido-Tohoku Development Finance Public Corporation
 - Okinawa Development Finance Corporation
 - People's Finance Corporation
- Environmental Sanitation Business Financing Corporation
 - Agriculture, Forestry and Fisheries Finance Corporation

Services (cont'd)

- Japan Finance Corporation for Small Business
- Small Business Credit Insurance Corporation
 - Housing Loan Corporation
- Japan Finance Corporation for Municipal Enterprises
 - Japan Development Bank
 - Export-Import Bank of Japan
- Teito Rapid Transit Authority (a)
 - Japan Tobacco Inc. (g)
 - Hokkaido Railway Company (a)(g)
 - East Japan Railway Company (a)(g)
- Central Japan Railway Company (a)(g)
 - West Japan Railway Company (a)(g)
- Shikoku Railway Company (a)(g)
 - Kyushu Railway Company (a)(g)
 - Japan Freight Railway Company (a)(g)
- Nippon Telegraph and Telephone Co. (f)(g)
 - Northern Territories Issue Association
 - The Overseas Economic Cooperation Fund
 - Japan Consumers Information Center
- Japan Atomic Energy Research Institute (b)
- Institute of Physical and Chemical Research (b)
- Pollution-Related Health Damage Compensation Association
- Fund for the Promotion and Development of the Amami Islands
 - Japan Foundation
 - The Japan Scholarship Foundation
- Mutual Aid Association of Private School Personnel
- National Education Center
- Japan Arts Council
- Japan Society for the Promotion of Science
- Japan Private School Promotion Foundation
 - University of the Air Foundation
- National Stadium and School Health Center of Japan
- Social Insurance Medical Fee Payment Fund
- Association for Welfare of the Mentally and Physically Handicapped
- Japan Racing Association

- Mutual Aid Association of Agriculture, Forestry and Fishery Corporation Personnel
 - The National Association of Racing
- Farmers• Pension Fund
- Japan Keirin Association
- Japan External Trade Organization
- Institute of Developing Economies
- Japan Motorcycle Racing Organization
- New Energy and Industrial Technology Development Organization
- Japan National Tourist Organization
 - Rail Development Fund
- Japan Institute of Labour
- Construction, the Sake Brewing Industry and Forestry Retirement Allowance Mutual Aid Association
- Mutual Aid Fund for Official Casualties and Retirement of Volunteer Firemen

Notes to Annex 3

- 1.Products and services procured with a view to resale or with a view to use in the production of goods for sale are not included.
- 2.This Agreement shall not apply to contracts to be awarded to co-operatives or associations in accordance with laws and regulations existing at the time of the entry into force of this Agreement for Japan.
- 3.This Agreement shall not apply to contracts which the entities award for purposes of their daily profit-making activities which are exposed to competitive forces in markets. This note shall not be used in a manner which circumvents the provisions of this Agreement.

Notes to Annex 3 (cont'd)

4. Notes to specific entities:

- (a) Procurement related to operational safety of transportation is not included.
- (b) Procurement which could lead to the disclosure of information incompatible with the purpose of the Treaty on the Non-Proliferation of Nuclear Weapons or with international agreements on intellectual property rights is not included. Procurement for safety-related activities aiming at utilization and management of radioactive materials and responding to emergencies of nuclear installation is not included.
- (c) Procurement related to geological and geophysical survey is not included.
- (d) Procurement of advertising services, construction services and real estate services is not included.
- (e) Procurement of ships to be jointly owned with private companies is not included.
- (f) Procurement of public electrical telecommunications equipment and of services related to operational safety of telecommunications is not included.
- (g) Procurement of the services specified in Annex 4, other than construction services, is not included.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

(Provisional Central
Product Classification
(CPC), 1991)

- 51 Construction work
- 6112 Maintenance and repair services of motor vehicles^{Note 1}
- 6122 Maintenance and repair services of motorcycles and snowmobiles^{Note 1}
- 712 Other land transport services (except 71235 Mail transportation by land)
- 7213 Rental services of sea-going vessels with operator
- 7223 Rental services of non-sea-going vessels with operator
- 73 Air transport services (except 73210 Mail transportation by air)
- 748 Freight transport agency services
- 7512 Courier services^{Note 2}
- Telecommunications services
 - MTN.GNS/W/120
 - Corresponding CPC
 - 2.C.h. - 7523 Electronic mail;
 - 2.C.i. - 7521 Voice mail;
 - 2.C.j. - 7523 On-line information and data base retrieval;
 - 2.C.k. - 7523 Electronic data interchange (EDI);
 - 2.C.l. - 7529 Enhanced facsimile services;
 - 2.C.m.- 7523 Code and protocol conversion; and
 - 2.C.n. - 7523 On-line information and/or data processing (including transaction processing)
- 84 Computer and related services
- 864 Market research and public opinion polling services
- 867 Architectural, engineering and other technical services^{Note 3}
- 871 Advertising services
- 87304 Armoured car services
- 874 Building-cleaning services
- 88442 Publishing and printing services^{Note 4}
- 886 Repair services incidental to metal products, machinery and equipment
- 94 Sewage and refuse disposal, sanitation and other environmental protection services

Notes to Annex 4

1. *Maintenance and repair services are not included with respect to those motor vehicles, motorcycles and snowmobiles which are specifically modified and inspected to meet regulations of the entities.*
2. *Courier services are not included with respect to letters.*
3. *Architectural, engineering and other technical services related to construction services, with the exception of the following services when procured independently, are included:*
 - *Final design services of CPC 86712 Architectural design services;*
 - *CPC 86713 Contract administration services;*
 - *Design services consisting of one or a combination of final plans, specifications and cost estimates of either CPC 86722 Engineering design services for the construction of foundations and building structures, or CPC 86723 Engineering design services for mechanical and electrical installations for buildings, or CPC 86724 Engineering design services for the construction of civil engineering works; and*
 - *CPC 86727 Other engineering services during the construction and installation phase.*
4. *Publishing and printing services are not included with respect to materials containing confidential information.*

*ANNEX 5**Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All services listed in Division 51.

*Threshold: 4,500 thousand SDR for entities set out in ANNEX 1;
15,000 thousand SDR for those in ANNEX 2; and
15,000 thousand SDR for those in ANNEX 3.*

GENERAL NOTES

1. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3.

2. In case Parties do not apply Article XX to suppliers or service providers of Japan in contesting the award of contract by entities, Japan may not apply the Article to suppliers or service providers of the Parties in contesting the award of contracts by the same kind of entities.

KOREA

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR

List of Entities:

- *Board of Audit and Inspection*
- *Prime Minister's Secretariat*
- *Office of Administrative Coordination*
- *First Minister of Political Affairs*
- *Second Minister of Political Affairs*
- *Economic Planning Board*
- *National Unification Board*
- *Ministry of Government Administration*
- *Ministry of Science and Technology*
- *Ministry of Environment*
- *Ministry of Information*
- *Government Legislation Agency*
- *Patriots and Veterans Affairs Agency*
- *Ministry of Foreign Affairs*
- *Ministry of Home Affairs*
- *Ministry of Finance*
- *Ministry of Justice*
- *Ministry of National Defense*
- *Ministry of Education*
- *Ministry of Culture and Sports*
- *Ministry of Agriculture, Forestry and Fisheries*
- *Ministry of Trade, Industry and Energy*
- *Ministry of Construction*
- *Ministry of Health and Social Affairs*
- *Ministry of Labor*
- *Ministry of Transportation*

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- *Ministry of Communications*
- *Office of Supply (limited to purchases for entities in this list only. Regarding procurement for entities in Annex 2 and Annex 3 in this list, the coverages and thresholds for such entities thereunder shall be applied.)*
- *National Statistical Office*
- *Korea Meteorological Administration*
- *National Police Administration (except purchases for the purpose of maintaining public order, as provided in Article XXIII of the Code)*
- *National Tax Administration*
- *Customs Administration*
- *Supreme Public Prosecutors' Office*
- *Military Manpower Administration*
- *Rural Development Administration*
- *Forestry Administration*
- *Fisheries Administration*
- *Industrial Advancement Administration*
- *Korea Industrial Property Office*
- *Korea Maritime and Port Administration*
- *Korea National Railroad Administration (The Korean Government plans to change the NRA into a public corporation in 1996, in which case the Korean Government has the right to transfer the NRA from Annex 1 to Annex 3 without any consultation and/or compensatory measures.)*

Services

Threshold: 130,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as 'Supplies' section

Construction Services

Threshold: 5,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

Same as 'Supplies' section

Notes to Annex 1

1. *The above central government entities include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in the Government Organization Act of the Republic of Korea.*
2. *This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.*
3. *This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Budget & Account Law and its Presidential Decree, and the procurement of agricultural, fishery and livestock products according to the Foodgrain Management Law, the Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products, and the Livestock Law.*
4. *This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.*
5. *The Defense Logistics Agency shall be considered as part of the Ministry of National Defense. Subject to the decision of the Korean Government under the provisions of paragraph 1, Article XXIII, for MND purchases, this Agreement will generally apply to the following FSC categories only, and for services and construction services listed in Annex 4 and Annex 5, it will apply only to those areas which are not related to national security and defense.*

<i>FSC</i>	<i>Description</i>
------------	--------------------

<i>2510</i>	<i>Vehicular cab, body, and frame structural components</i>
<i>2520</i>	<i>Vehicular power transmission components</i>
<i>2540</i>	<i>Vehicular furniture and accessories</i>
<i>2590</i>	<i>Miscellaneous vehicular components</i>
<i>2610</i>	<i>Tires and tubes, pneumatic, nonaircraft</i>
<i>2910</i>	<i>Engine fuel system components, nonaircraft</i>
<i>2920</i>	<i>Engine electrical system components, nonaircraft</i>
<i>2930</i>	<i>Engine cooling system components, nonaircraft</i>
<i>2940</i>	<i>Engine air and oil filters, strainers and cleaners, nonaircraft</i>
<i>2990</i>	<i>Miscellaneous engine accessories, nonaircraft</i>
<i>3020</i>	<i>Gears, pulleys, sprockets and transmission chain</i>
<i>3416</i>	<i>Lathes</i>
<i>3417</i>	<i>Milling machines</i>

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3510 *Laundry and dry cleaning equipment*
4110 *Refrigeration equipment*
4230 *Decontaminating and impregnating equipment*
4520 *Space heating equipment and domestic water heaters*
4940 *Miscellaneous maintenance and repair shop specialized equipment*
5120 *Hand tools, nonedged, nonpowered*
5410 *Prefabricated and portable buildings*
5530 *Plywood and veneer*
5660 *Fencing, fences and gates*
5945 *Relays and solenoids*
5965 *Headsets, handsets, microphones and speakers*
5985 *Antennae, waveguide, and related equipment*
5995 *Cable, cord, and wire assemblies: communication equipment*
6505 *Drugs and biologicals*
6220 *Electric vehicular lights and fixtures*
6840 *Pest control agents disinfectants*

6850 *Miscellaneous chemical, specialties*
7310 *Food cooking, baking, and serving equipment*
7320 *Kitchen equipment and appliances*
7330 *Kitchen hand tools and utensils*
7350 *Table ware*
7360 *Sets, kits, outfits, and modules food preparation and serving*
7530 *Stationery and record forms*
7920 *Brooms, brushes, mops, and sponges*
7930 *Cleaning and polishing compounds and preparations*
8110 *Drums and cans*
9150 *Oils and greases: cutting, lubricating, and hydraulic*
9310 *Paper and paperboard*

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 200,000 SDR

List of Entities:

- *Seoul Metropolitan Government*
- *City of Pusan*
- *City of Taegu*
- *City of Incheon*
- *City of Kwangju*
- *City of Taejon*
- *Kyonggi-do*
- *Kang-won-do*
- *Chungchongbuk-do*
- *Chungchongnam-do*
- *Kyongsangbuk-do*
- *Kyongsangnam-do*
- *Chollabuk-do*
- *Chollanam-do*
- *Cheju-do*

Services

Threshold: 200,000 SDR

List of Entities which Procure Services Specified in Annex 4:

Same as •Supplies• section

Construction Services

Threshold: SDR 15,000,000

List of Entities which Procure Services Specified in Annex 5:

Same as •Supplies• section

Notes to Annex 2

- 1. The above sub-central administrative government entities include their subordinate organizations under direct control and offices as prescribed in the Local Autonomy Law of the Republic of Korea.*
- 2. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.*
- 3. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Local Finance Law and its Presidential Decree.*
- 4. This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.*

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 450,000 SDR

List of Entities:

- Korea Development Bank
- Small and Medium Industry Bank
- Citizens National Bank
- Korea Housing Bank
- Korea Tobacco & Ginseng Corporation
- Korea Security Printing and Minting Corporation
- Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
- Dai Han Coal Corporation
- Korea Mining Promotion Corporation
- Korea Petroleum Development Corporation
- Korea General Chemical Corporation
- Korea Trade Promotion Corporation
- Korea Highway Corporation
- Korea National Housing Corporation
- Korea Water Resources Corporation
- Korea Land Development Corporation
- Rural Development Corporation
- Agricultural and Fishery Marketing Corporation
- Korea Telecom (except purchases of common telecommunications commodity products and telecommunications network equipment)
- Korea National Tourism Corporation
- National Textbook Ltd.
- Korea Labor Welfare Corporation
- Korea Gas Corporation

Construction Services

Threshold: 15,000,000 SDR

List of Entities which Procure Services Specified in Annex 5:

1 April 1997

Same as •Supplies• section

Notes to Annex 3

- 1. This Agreement does not apply to the products and services procured with a view to resale or to use in the production of goods or provision of services for sale.*
- 2. This Agreement does not apply to the single tendering procurement including set-asides for small- and medium-sized businesses according to the Government Invested Enterprise Management Law and Accounting Regulations on Government Invested Enterprise.*
- 3. This Agreement does not apply to the procurement of satellites according to the Aviation and Space Industry Development Promotion Law for five years from its entry into force for Korea.*

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included (others being excluded):

<i>GNS/W/120</i>	<i>CPC</i>	<i>Description</i>
<i>1.A.b.</i>	<i>862</i>	<i>Accounting, auditing and bookkeeping services</i>
<i>1.A.c.</i>	<i>863</i>	<i>Taxation services</i>
<i>1.A.d.</i>	<i>8671</i>	<i>Architectural services</i>
<i>1.A.e.</i>	<i>8672</i>	<i>Engineering services</i>
<i>1.A.f.</i>	<i>8673</i>	<i>Integrated engineering services</i>
<i>1.A.g.</i>	<i>8674</i>	<i>Urban planning and landscape architectural services</i>
<i>1.B.a.</i>	<i>841</i>	<i>Consultancy services related to the installation of computer hardware</i>
<i>1.B.b.</i>	<i>842</i>	<i>Software implementation services</i>
<i>1.B.c.</i>	<i>843</i>	<i>Data processing services</i>
<i>1.B.d.</i>	<i>844</i>	<i>Data base services</i>
<i>1.B.e.</i>	<i>845</i>	<i>Maintenance and repair services of office machinery and equipment (including computers)</i>
<i>1.E.a.</i>	<i>83013</i>	<i>Rental/leasing services without operators relating to ships</i>
<i>1.E.b.</i>	<i>83104</i>	<i>Rental/leasing services without operators relating to aircraft</i>
<i>1.E.c.</i>	<i>83101, 83105*</i>	<i>Rental/leasing services without operators relating to other transport equipment (only passenger vehicles for less than fifteen passengers)</i>
<i>1.E.d.</i>	<i>83106, 83108, 83109</i>	<i>Rental/leasing services without operators relating to other machinery and equipment</i>

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87107Rental/leasing services without operator relating to construction machinery and equipment

<i>GNS/W/120</i>	<i>CPC</i>	<i>Description</i>
<i>1.F.a.</i>	<i>8711, 8719</i>	<i>Advertising agency services</i>
<i>1.F.b.</i>	<i>864</i>	<i>Market research and public opinion polling services</i>
<i>1.F.c.</i>	<i>865</i>	<i>Management consulting services</i>
<i>1.F.d.</i>	<i>86601</i>	<i>Project management services</i>
<i>1.F.e.</i>	<i>86761*</i>	<i>Composition and purity testing and analysis services (only inspection, testing and analysis services of air, water, noise level and vibration level)</i>
	<i>86764</i>	<i>Technical inspection services</i>
<i>1.F.f.</i>	<i>8811*, 8812*</i>	<i>Consulting services relating to agriculture and animal husbandry</i>
		<i>8814*Services incidental to forestry (excluding aerial fire fighting and disinfection)</i>
<i>1.F.g.</i>	<i>882*</i>	<i>Consulting services relating to fishing</i>
<i>1.F.h.</i>	<i>883*</i>	<i>Consulting services relating to mining</i>
<i>1.F.m.</i>	<i>86751, 86752</i>	<i>Related scientific and technical consulting services</i>
<i>1.F.n.</i>	<i>633, 8861</i> <i>8862, 8863</i> <i>8864, 8865</i> <i>8866</i>	<i>Maintenance and repair of equipment</i>
<i>1.F.p.</i>	<i>875</i>	<i>Photographic services</i>
<i>1.F.q.</i>	<i>876</i>	<i>Packaging services</i>
<i>1.F.r.</i>	<i>88442*</i>	<i>Printing (screen printing, gravure printing, and services relating to printing)</i>

1.F.s.	87909*- Stenography services - Convention agency services	
1.F.t.	87905 Translation and interpretation services	
2.C.h.	7523* Electronic mail	
2.C.i.	7523* Voice mail	
GNS/W/120	CPC	Description
2.C.j.	7523* On-line information and data-base retrieval	
2.C.k.	7523* Electronic data interchange	
2.C.l.	7523* Enhanced/value-added facsimile services including store and forward, store and retrieve	
2.C.m.	- Code and protocol conversion	
2.C.n.	843* On-line information and/or data processing (including transaction processing)	
2.D.a.	96112*, 96113* Motion picture and video tape production and distribution services (excluding those services for cable TV broadcasting)	
2.D.e.	- Record production and distribution services (sound recording)	
6.A.	9401* Refuse water disposal services (only collection and treatment services of industrial waste water)	
6.B.	9402* Industrial refuse disposal services (only collection, transport, and disposal services of industrial refuse)	
6.D.	9404*, 9405* Cleaning services of exhaust gases and noise abatement services (services other than construction work services)	
	9406*, 9409* Environmental testing and assessment services (only environmental impact assessment services)	
11.A.b.	7212* International transport, excluding cabotage	

- 11.A.d. 8868**Maintenance and repair of vessels*
- 11.F.b. 71233**Transportation of containerized freight, excluding cabotage*
- 11.H.a. 741*- *Maritime cargo handling services*
 - *Container station services*
 (provided in port areas)
- 11.H.b. 742**Storage and warehouse services other than those in ports (excluding services for agricultural, fishery and livestock products)*
- GNS/W/120 CPC Description**
- 11.H.c 748**Freight transport agency services*
- *Maritime agency services*
 - *Maritime freight forwarding services*
 - *Shipping brokerage services*
 - *Air cargo transport agency services*
 - *Customs clearance services*
- 11.I. -*Freight forwarding for rail transport*

Note to Annex 4

Asterisks () designate part of as described in detail in the Revised Conditional Offer of the Republic of Korea Concerning Initial Commitments on Trade in Services.*

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

*Threshold: 5,000,000 SDR for entities set out in Annex 1
15,000,000 SDR for entities set out in Annex 2
15,000,000 SDR for entities set out in Annex 3*

List of construction services offered:

<i>CPC</i>	<i>Description</i>
<i>511</i>	<i>Pre-erection work at construction sites</i>
<i>512</i>	<i>Construction work for buildings</i>
<i>513</i>	<i>Construction work for civil engineering</i>
<i>514</i>	<i>Assembly and erection of prefabricated construction</i>
<i>515</i>	<i>Special trade construction work</i>
<i>516</i>	<i>Installation work</i>
<i>517</i>	<i>Building completion and finishing work</i>

GENERAL NOTES

1. *Korea will not extend the benefits of this Agreement*

(a) as regards the award of contracts by the National Railroad Administration,

(b) as regards procurement for airports by the entities listed in Annex 1,

(c) as regards procurement for urban transportation (including subways) by the entities listed in Annexes 1 and 2

to the suppliers and service providers of member States of the European Communities, Austria, Norway, Sweden, Finland and Switzerland, until such time as Korea has accepted that those countries give comparable and effective access for Korean undertakings to their relevant markets.

2. For goods and services (including construction services) of Canada and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3. Korea is prepared to amend this note at such time as coverage with respect to these Annexes can be resolved with Canada.

3. A service listed in Annex 4 is covered with respect to a particular party only to the extent that such party has included that service in its Annex 4.

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA**APPENDIX I****ANNEX 1**

*Central Government Entities which Procure in Accordance
with the Provisions of this Agreement*

Supplies	<i>Threshold: SDR 130,000</i>
Services	<i>Threshold: SDR 130,000</i>
Works	<i>Threshold: SDR 5,000,000</i>

List of Entities:

*Ministry of General Affairs;
Ministry of Public Works and Health;
Ministry of Transport and Communication;
Ministry of Welfare;
Ministry of Justice and Sport;
Ministry of Finance;
Ministry of Economic Affairs.*

ANNEX 2

*Sub-Central Entities which Procure in Accordance
with the Provisions of this Agreement*

Non-applicable for Aruba (Aruba does not have any Sub-central Governments).

ANNEX 3

*Other Entities which Procure in Accordance
with the Provisions of this Agreement*

<i>Supplies</i>	<i>Threshold: SDR 400,000</i>
<i>Services</i>	<i>Threshold: SDR 400,000</i>
<i>Works</i>	<i>Threshold: SDR 5,000,000</i>

List of Entities:

*Water en Energiebedrijf N.V. (Water and Energy Company);
Aruba Ports Authority N.V.;
Arubus N.V. (Public Transport Company);
Setar (Telecommunications Company);
Airport Authority N.V.;
Fundacion Cas pa Comunidad Arubano (Public Housing).*

ANNEX 4

Services

<i>List of Services</i>	<i>CPC</i>
<i>Legal services</i>	861
<i>Accountancy</i>	862
<i>Taxation services</i>	863
<i>Engineering services</i>	8672
<i>Computer services</i>	841
<i>Management consulting services</i>	865
<i>Franchising</i>	8929
<i>Insurance</i>	812, 814
<i>Banking and securities trade</i>	811, 813
<i>Hotel lodging services</i>	6411
<i>Entertainment services</i>	9619
<i>Recreation park and beach services</i>	96491
<i>Sporting services</i>	9641
<i>Shipping (freight and passenger transport)</i>	72
<i>Maritime auxiliary services: cargo handling</i>	74
<i>Freight transport: agency services/freight forwarding</i>	74
<i>Maritime auxiliary services: storage/warehousing</i>	74
<i>Road transport</i>	71231, 71234, 71239

ANNEX 5

Construction Services

List of Construction Services

CPC

Construction work for buildings

512

NORWAY*(Authentic in the English language only)*

ANNEX 1

*Entities which Procure in Accordance
With the Provisions of this Agreement***Supplies***Threshold:* SDR 130,000**Services** (specified in Annex 4)*Threshold:* SDR 130,000**Works** (specified in Annex 5)*Threshold:* SDR 5,000,000*List of Entities:*

The following contracting authorities of the State:

Statsministerens kontor**Office of the Prime Minister****Administrasjonsdepartementet
Administration****Ministry of Government**Prisdirektoratet
Statens Forvaltningstjeneste
ServicesThe Price Directorate
Government AdministrationStatens Informasjonstjeneste
Information Service

Norwegian Central

Statskonsult

Directorate of Public Management

**Barne - og familiedepartementet
Affairs****Ministry of Children and Family**Barneombudet
ForbrukerombudetCommissioner for Children
Consumer Ombudsman***1 April 1997***

Forbrukerrådet
 Likestillingsombudet
 Likestillingsrådet
 Statens Adopsjonskontor
 Statens Institutt for Forbruksforskning
 Consumer Research

Consumer Council
 Equal Status Ombud
 Equal Status Council
 Government Adoption Office
 National Institute for

Finans- og tolldepartementet

Ministry of Finance

Kredittilsynet
 Securities
 Skattedirektoratet
 Oljeskattekontoret
 Toll- og avgiftsdirektoratet

The Banking, Insurance and
 Commission of Norway
 Directorate of Taxes
 Petroleum Tax Office
 Directorate of Customs and Excise

Fiskeridepartementet

Ministry of Fisheries

Fiskeridirektoratet
 Havforskningsinstituttet
 Kystdirektoratet

Directorate of Fisheries
 Institute of Marine Research
 Coast Directorate

Forsvarsdepartementet*

Ministry of Defence*

Forsvarets Forskningsinstitutt*
 Forsvarets Overkommando*
 Command Norway*
 Haerens Forsyningskommando*
 Luftforsvarets Forsyningskommando*
 Sjøforsvarets Forsyningskommando*
 Forsvarets Sanitet*

Norwegian Defence Research
 Establishment*
 Headquarters Defence
 Army Material Command*
 Airforce Material Command*
 Navy Material Command*
 Norwegian Defence Medical Service*

Justis- og politidepartementet

Ministry of Justice (and the Police)

Brønnøysundregisterene
 Datatilsynet
 Direktoratet for sivilt beredskap
 Riksadvokaten
 Prosecutions

The Brønnøysund Register Centre
 The Data Inspectorate
 The Directorate for Civil Defence and
 Emergency Planning
 Director General of Public

Statsadvokatembetene: in:	Office of the Public Prosecutor
- Eidsivating	
- Vestfold og Telemark	
- Agder	
- Rogaland	
- Hordaland	
- Møre og Romsdal, Sogn og Fjordane	
- Trondheim	
- Nordland	
- Troms og Finnmark	
Politiet	Police Services
Kirke,- utdannings- og forskningsdepartementet	Ministry of Education, Research and Church Affairs
Det norske meteorologiske institutt	Norwegian Meteorological
Institute	
Kirkerådet	National Council of the Church of
Norway	
Lærerutdanningsrådet	Teacher Training Council
Mellomkirkelig råd	Church of Norway Council on
Foreign	Relations
Norsk Utenrikspolitisk Institutt	Norwegian Institute of International
Affairs	
Norsk Voksenpedagogisk	Norwegian Institute of Adult
Education	
Forskningsinstitutt	
Riksbibliotekjenesten	National Office for Research
and Special	
	Libraries
Samisk Utdanningsråd	Sami Education Council
Kommunal- og arbeidsdepartementet	Ministry of Local Government and Labour
Arbeidsdirektoratet	Directorate of Labour
Arbeidsforskningsinstituttet	Work Research Institute
Arbeidstilsynet	Directorate of Labour
Inspection	
Direktoratet for Brann og	Directorate for Fire and Explosion

Ekspløsjonsvern
 Produktregisteret
 Statens Bygningstekniske Etat
 Technology
 Utlendingsdirektoratet

Kulturdepartementet

Norsk Filminstitutt
 Norsk Kulturråd
 Norsk Språkråd
 Riksarkivet
 Statsarkivene i :

- Oslo
- Hamar
- Kongsberg
- Kristiansand
- Stavanger
- Bergen
- Trondheim
- Tromsø

Rikskonsertene
 for National

Statens Bibliotektilsyn
 Public and

Statens Filmkontroll
 Statens Filmsentral

Landbruksdepartementet

Norsk Institutt for
 Skogforskning
 Reindriftsadministrasjonen
 Husbandry
 Statens forskningsstasjoner i Landbruk
 Research
 Statens Naturskadefond

Prevention

The Product Register
 National Office of Building
 and Administration
 Directorate of Immigration

Ministry of Cultural Affairs

National Film Board
 Norwegian Cultural Council
 Norwegian Language Council
 National Archives of Norway
 National Archives in:

Norwegian State Foundation

Promotion of Music
 Norwegian Directorate of

School Libraries
 National Board of Film Censors
 National Film Board

Ministry of Agriculture

Norwegian Forest Research Institute

Directorate for Reindeer

Norwegian State Agricultural
 Stations

National Fund for Natural Disaster
 Assistance

Statens Næringsmiddeltilsyn Authority	The Norwegian Food Control
Statens Tilsynsinstitusjoner for Services	National Agricultural Inspection
Landbruket	
Veterinærinstituttet	National Veterinary Institute
Miljøverndepartementet	Ministry of the Environment
Direktoratet for Naturforvaltning Management	Directorate of Nature
Norsk Polarinstitut	Norwegian Polar Research Institute
Riksantikvaren Heritage	Directorate for Cultural
Statens Forurensingstilsyn	State Pollution Control Authority
Statens Kartverk	Norwegian Mapping Authority
Nærings-og energidepartementet Energy	Ministry of Industry and
Direktoratet for Måleteknikk Service of Legal	Directorate of National Metrology
Norges Geologiske Undersøkelse	Geological Survey of Norway
Norges Vassdrags- og Energiverk Energy	Norwegian Water Resources and Administration
Oljedirektoratet	Norwegian Petroleum Directorate
Statens Veiledningskontor for oppfinnere Consultative	Norwegian Government Office for
Inventors	
Styret for det industrielle rettsvern	Norwegian Patent Office
Samferdselsdepartementet	Ministry of Transport and Communication
Postdirektoratet	Norway Post
Vegdirektoratet	Public Roads Administration

**Sosialdepartementet
Affairs**

Statens Institutt for Folkehelse
Helsedirektoratet
Rikshospitalet
Rikstrygdeverket
Rusmiddeldirektoratet
of

Statens Helseundersøkelser
Service

Statens Institutt for alkohol- og
Drug narkotikaforskning

Statens Legemiddelkontroll
Authority

Statens Strålevern
Authority

Statens Tobakkskaderåd
Health

Utenriksdepartementet

Direktoratet for utviklingshjelp
Cooperation

Norimpod
for

Sjøfartsdirektoratet

Stortinget

Stortingets ombudsmann for
Public
forvaltningen - Sivilombudsmannen

Riksrevisjonen

Høyesterett

Statsbygg The Directorate of Public Construction and Property

Ministry of Health and Social

National Institute of Public Health
Directorate of Health
National Hospital
National Insurance Administration
Directorate for the Prevention

Alcohol and Drug Problems
National Health Screening

National Institute for Alcohol and
Research
Norwegian Medicines Control

Norwegian Radiation Protection

National Council on Smoking and

Ministry of Foreign Affairs

Directorate for Development

Norwegian Import Promotion Office
Products from Developing Countries
Norwegian Maritime Directorate

The Storting

Stortingets Ombudsman for
Administration

Office of the Auditor General

Supreme Court

Note to Annex 1

Procurement by defence entities (marked with an "*") covers products falling under the CCCN chapters specified in the General Notes.

ANNEX 2

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 200,000

Services (specified in Annex 4)

Threshold: SDR 200,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

List of Entities:

1. Contracting authorities of the regional or local public authorities (all counties (19) and municipalities (435)).
2. Bodies governed by public law, or associations formed by one or more such authorities or bodies governed by public law²³, including:

Norsk Rikskringkasting

The Norwegian Broadcasting Corporation

Norges Bank

Norges Bank

Statistisk Sentralbyrå

Statistics Norway

²³A body is considered to be governed by public law when it:

- is established for the specific purpose of meeting needs in the general interest, not being of a commercial or industrial nature, and
- has legal personality, and
- is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law.

Norges Forskningsråd	Research Council of
Norway	
Statens Pensjonskasse	Norwegian Public Service Pension Fund
Garanti-instituttet for Eksportkreditt	Norwegian Guarantee Institute for
	Export
	Credit

Categories:

- *Statsbanker (State Banks):*

Statens Landbruksbank	State Bank of Agriculture
Statens Fiskarbank	National Fishery Bank of
Norway	
Statens Nærings- og	Norwegian Industrial and Regional
Distriktsutviklingsfond	Development Fund
Den norske stats Husbank	The Norwegian State Housing
Bank	
Norges Kommunalbank	The Norwegian Municipalities Bank
Statens Lånekasse for	State Loan Fund for Newspapers
aviser	
Statens Lånekasse for	State Educational Loan Fund
Utdanning	

- *Universiteter og Høyskoler etter lov av 16. juni 1989 nr. 77 (Universities and Colleges)*

- *Publicly owned and operated museums*

ANNEX 3*

*Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: SDR 400,000

Services (specified in Annex 4)**

Threshold: SDR 400,000

Works (specified in Annex 5)

Threshold: SDR 5,000,000

*List of Entities:*1. *The electricity sector:****

Public entities producing, transporting or distributing electricity pursuant to Lov om bygging og drift av elektriske anlegg (LOV 1969-06-19), Lov om erverv av vannfall, bergverk og annen fast eiendom m.v., Kap. I, jf. kap. V (LOV 19-17-24 16, kap. I), or Vassdragsreguleringsloven (LOV 1917-12-14 17) or Energiloven (LOV 1990-06-29 50).

2. *Urban transport:*

Public entities which have as one of their activities the operation of networks providing a service to the public in the field of transport by automated systems, urban railway, tramway, trolley bus, bus or cable according to Lov om anlegg og drift av jernbane, herunder sporvei, tunellbane og forstadsbane m.m. (LOV 1993-06-11 100), or Lov om samferdsel (LOV 1976-06-04 63) or Lov om anlegg av taugbaner og løipestrenger (LOV 1912-06-14 1).

3. *Airports:*

Public entities providing airport facilities pursuant to Lov om luftfart (LOV 1960-12-16 1).

Luftfartsverket
Administration

National

Civil

Aviation

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4. *Ports:*

Public entities operating pursuant to Havneloven (LOV 1984-06-08 51).

5. *Water supply:****

Public entities producing or distributing water pursuant to Forskrift om Drikkevann og Vannforsyning (FOR 1951 - 09-28).

Notes to Annex 3

* Annex 3 is subject to Parliamentary approval of additional EEA-legislation in this field.

** This Agreement shall not apply to service contracts which:

- (a) a contracting entity awards to an affiliated undertaking;
- (b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of paragraphs 1-5 of this Annex to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities;

provided that at least 80 per cent of the average turnover of that undertaking with respect to services arising within the EEA for the three preceding years derives from the provision of such services to undertakings with which it is affiliated. When more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

***The supply of drinking water and electricity to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraphs 1 and 5 of Annex 3 where:

-the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraphs 1 and 5 of this Annex, and

-supply to the public network depends only on the entity's own consumption and has not exceeded 30 per cent of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:*

<i>Subject</i>	<i>CPC Reference N</i>
Maintenance and repair services	6112, 6122, 633, 886
Land transport services, including armoured car 7512, 87304 services, and courier services, except transport of mail	712 (except 712235),
Air transport services of passengers and freight, except transport of mail	73 (except 7321)
Transport of mail by land, except rail, and by air	71235, 7321
Telecommunications services 7525, 7526)	752** (except 7524,
Financial services	ex 81
(a) Insurance services	812, 814
(b) Banking and investment services***	
Computer and related services	84
Accounting, auditing and bookkeeping services	862
Market research and public opinion polling services	864
Management consulting services and related services	865, 866****
Architectural services; engineering services and integrated engineering services, urban planning	867

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and landscape architectural services; related scientific and technical consulting services; technical consulting services; technical testing and analysis services

Advertising services

871

Building-cleaning services and property management services

874, 82201-82206

Subject

CPC Reference N

Publishing and printing services on a fee or contract basis

88442

Sewage and refuse disposal; sanitation and similar services

94

Notes to Annex 4

*except for services which entities have to procure from another entity pursuant to an exclusive right established by a published law, regulation or administrative provision

**except voice telephony, telex, radiotelephony, paging and satellite services

***except contracts for financial services in connection with the issue, sale, purchase, or transfer of securities or other financial instruments, and central bank services

****except arbitrations and conciliation services

ANNEX 5

*Construction Services**Definition:*

A construction service contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51, CPC:

All public works/construction services of Division 51.

GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF ARTICLE III

1. Norway will not extend the benefits of this Agreement:

-as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;

-as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA;

- as regards the award of contracts by entities listed in Annex 3 paragraph

(1)(electricity), to the suppliers and service providers of Canada, Hong Kong and Japan;

(2)(urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA;

(3)(airports), to the suppliers and service providers of Canada, Korea and the USA;

(4)(ports), to the suppliers and service providers of Canada;

(5)(water), to the suppliers and service providers of Canada and the USA;

until such time as Norway has accepted that the Parties concerned give comparable and effective access for Norwegian undertakings to the relevant markets;

-to service providers of Parties which do not include the relevant service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.

2. The provisions of Article XX shall not apply to suppliers and service providers of:

-Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2, paragraph 2, until such time as Norway accepts that they have completed coverage of sub-central entities;

-Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or

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medium-sized enterprises under the relevant provisions in Norway, until such time as Norway accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;

-Israel, Japan and Korea in contesting the award of contracts by Norwegian entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

3. Until such time as Norway has accepted that the Parties concerned provide access for Norwegian suppliers and service providers to their own markets, Norway will not extend the benefits of this Agreement to suppliers and service providers of:

-Canada as regards procurement of FSC 36, 70 and 74 (special industry machinery; general purpose automatic data processing equipment, software, supplies and support equipment (except 7010 ADPE configurations); office machines, visible record equipment and ADP equipment);

-Canada as regards procurement of FSC 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment.

-Israel and Korea as regards procurement by entities listed in Annex 3, paragraph 1, as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;

-Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.

4. Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications, are not included.

5. With regard to Annex 3, this Agreement shall not apply to the following contracts:

-contracts which the contracting entities under paragraph 5 award for the purchase of water;

- contracts which the contracting entities under paragraph 1 award for the supply of energy or of fuels for the production of energy;
- contracts which the contracting entities award for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-EEA country;
- contracts awarded for purposes of re-sale or hire to third parties provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and that other entities are free to sell or hire it under the same conditions as the contracting entity;
- contracting entities exercising activities in the bus transportation sector where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

6. With regard to Annex 4, this Agreement shall not apply to the following:

- contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon;
- contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
- contracts awarded to an entity which is itself a contracting authority within the meaning of the Public Procurement Act: "Lov om offentlige anskaffelser m.v." (LOV 1992-11-27 116) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision;
- contracts of employment.

7. The Agreement shall not apply to contracts awarded under:

- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;
- an international agreement relating to the stationing of troops;
- the particular procedure of an international organization.

8. The Agreement shall not apply to procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes.
9. The thresholds in the Annexes will be applied so as to conform with the public procurement thresholds of the EEA agreement.
10. This Agreement does not apply to procurement subject to secrecy or other particular restrictions with regard to the safety of the realm.
11. When a specific procurement may impair important national policy objectives, the Norwegian Government may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at the Norwegian Cabinet level.
12. Norway reserves its position with regard to the application of this Agreement to Svalbard, Jan Mayen Island and Norway's Antarctic possessions.

Defence Entities:

Procurement by defence entities (marked with an "*" in Annex 1) covers the following:

Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement

Chapter 26: Metallic ores, slag and ash

Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

except:

ex 27.10 special engine fuels

Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare earth metals, of radio-active elements and of isotopes

except:

ex 28.09 explosives

ex 28.13 explosives

ex 28.14 tear gas

ex 28.28 explosives

ex 28.32 explosives

ex 28.39 explosives

ex 28.50 toxic products

ex 28.51 toxic products

ex 28.54 explosives

Chapter 29: Organic chemicals

except:

ex 29.03 explosives

ex 29.04 explosives

ex 29.07 explosives

ex 29.08 explosives

ex 29.11 explosives

ex 29.12 explosives

ex 29.13 toxic products

ex 29.14 toxic products

ex 29.15 toxic products

ex 29.21 toxic products

ex 29.22 toxic products

ex 29.23 toxic products

ex 29.26 explosives

ex 29.27 toxic products

ex 29.29 explosives

Chapter 30: Pharmaceutical products

Chapter 31: Fertilizers

Chapter 32: Tanning and dyeing extracts; tannins and their derivatives; dyes, colours, paints and varnishes, putty, fillers and stoppings, inks

Chapter 33: Essential oils and resinoids; perfumery, cosmetics and toilet preparations

Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and "dental waxes"

Chapter 35: Albuminoidal substances; glues; enzymes

Chapter 37: Photographic and cinematographic goods

Chapter 38: Miscellaneous chemical products

except:

ex 38.19 toxic products

Chapter 39: Artificial resins and plastic materials, cellulose esters and ethers, articles thereof

except:

ex 39.03 explosives

Chapter 40: Rubber, synthetic rubber, factice, and articles thereof

except:

ex 40.11 bullet-proof tyres

Chapter 41: Raw hides and skins (other than furskins) and leather

Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)

Chapter 43: Furskins and artificial fur; manufactures thereof

Chapter 44: Wood and articles of wood; wood charcoal

- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials; basketware and wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
- Chapter 65: Headgear and parts thereof
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware
- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof
- except:
- ex 82.05 tools
- ex 82.07 tools, parts
- Chapter 83: Miscellaneous articles of base metal
- Chapter 84: Boilers, machinery and mechanical appliances; parts thereof
- except:
- ex 84.06 engines
- ex 84.08 other engines
- ex 84.45 machinery
- ex 84.53 automatic data-processing machines
- ex 84.55 parts of machines under heading 84.53
- ex 84.59 nuclear reactors
- Chapter 85: Electrical machinery and equipment; parts thereof

- except:
 ex 85.13 telecommunication equipment
 ex 85.15 transmission apparatus
- Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof
 except:
 ex 86.02 armoured locomotives, electric
 ex 86.03 other armoured locomotives
 ex 86.05 armoured wagons
 ex 86.06 repair wagons
 ex 86.07 wagons
- Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof
 except:
 ex 87.01 tractors
 ex 87.02 military vehicles
 ex 87.03 breakdown lorries
 ex 87.08 tanks and other armoured vehicles
 ex 87.09 motorcycles
 ex 87.14 trailers
- Chapter 89: Ships, boats and floating structures
 except:
 ex 89.01A warships
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof
 except:
 ex 90.05 binoculars
 ex 90.13 miscellaneous instruments, lasers
 ex 90.14 telemeters
 ex 90.28 electrical and electronic measuring instruments
 ex 90.11 microscopes
 ex 90.17 medical instruments
 ex 90.18 mechano-therapy appliances
 ex 90.19 orthopaedic appliances
 ex 90.20 X-ray apparatus
- Chapter 91: Clocks and watches and parts thereof
- Chapter 92: Musical instruments; sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles
- Chapter 94: Furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings
 except:
 ex 94.01A aircraft seats
- Chapter 95: Articles and manufactures of carving or moulding material

Chapter 96: Brooms, brushes, powder-puffs and sieves

Chapter 98: Miscellaneous manufactured articles

SUISSE

(La version française fait foi)

ANNEXE 1

*Entités du gouvernement fédéral qui passent des marchés
conformément aux dispositions du présent accord*

Fournitures

Valeur de seuil: 130 000 DTS

Services (spécifiés à l'Annexe 4)

Valeur de seuil: 130 000 DTS

Services de construction (spécifiés à l'Annexe 5) *Valeur de seuil: 5 000 000 DTS*

*Liste des entités couvrant tous les Départements
fédéraux suisses:*

Office central fédéral des imprimés et du matériel

Bibliothèque centrale du Parlement et de
l'administration fédérale

Office des constructions fédérales

Ecole polytechnique fédérale Zurich

Ecole polytechnique fédérale Lausanne

Institut Paul Scherrer

Institut fédéral de recherches forestières

Institut fédéral pour l'étude de la neige et des
avalanches

Institut suisse de météorologie

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Institut fédéral pour l'aménagement,
l'épuration et la protection des eaux

Office fédéral de la santé publique

Bibliothèque nationale suisse

Office fédéral de la protection civile²⁴

Administration fédérale des douanes³⁵

Régie fédérale des alcools

Monnaie

Office fédéral de métrologie

Office fédéral de l'agriculture

Office fédéral de l'aviation civile

Office fédéral de l'économie des eaux

Groupement de l'armement³⁵

Entreprise des postes²⁵

Office fédéral de l'environnement, des forêts
et du paysage

Laboratoire fédéral d'essai des matériaux
et de recherche

²⁴ Pour les marchés passés par les offices du Département militaire fédéral mentionnés, voir liste des matériels civils de la défense et de la protection civile en annexe. (Il en est de même de l'Administration fédérale des douanes en ce qui concerne l'équipement des gardes-frontières et des douaniers.)

²⁵ Pour autant que l'entité ne soit pas en concurrence avec des entreprises auxquelles le présent accord n'est pas applicable

Office fédéral de génie et des fortifications³⁵

Office fédéral des troupes de transmission³⁵

Office fédéral des affaires sanitaires de l'armée³⁵

Commissariat central des guerres³⁵

Etat major du groupement de l'instruction³⁵

Intendance du matériel de guerre³⁵

Office fédéral de la topographie

Ecole fédérale de sport, Macolin

Office fédéral des aérodromes militaires, Dübendorf³⁵

Office vétérinaire fédéral

Gouvernement de la Principauté du Liechtenstein

Note relative à l'Annexe 1

Le présent accord ne s'applique pas aux marchés passés par des entités énumérées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

ANNEXE 2

Entités des gouvernements sous-centraux²⁶ qui passent des marchés conformément aux dispositions du présent accord

Fournitures

Valeur de seuil: 200 000 DTS

Services (spécifiés à l'Annexe 4)

Valeur de seuil: 200 000 DTS

Services de construction (spécifiés à l'Annexe 5)

Valeur de seuil: 5 000 000 DTS

Liste des entités²⁷

1. Les autorités publiques cantonales
2. Les organismes de droit public établis au niveau cantonal n'ayant pas un caractère commercial ou industriel

Liste des cantons suisses:

Appenzell (Rhodes Intérieures/Extérieures)

Argovie

Bâle (Ville/Campagne)

Berne

Fribourg

Glaris

²⁶ C'est-à-dire les gouvernements cantonaux selon la terminologie suisse

²⁷ Pour autant que les cantons passent des marchés de produits de défense dans le cadre d'une délégation de compétence du Département militaire fédéral: voir liste des matériels civils de la défense et de la protection civile en annexe

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Genève

Grisons

Jura

Neuchâtel

Lucerne

Schaffhouse

Schwyz

Soleure

St Gall

Tessin

Thurgovie

Vaud

Valais

Unterwald (Nidwald/Obwald)

Uri

Zoug

Zurich

Note relative à l'Annexe 2

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Le présent accord ne s'applique pas aux marchés passés par des entités mentionnées dans cette annexe et portant sur des activités dans les secteurs de l'eau potable, de l'énergie, des transports ou des télécommunications.

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ANNEXE 3

Toutes les autres entités qui passent des marchés conformément aux dispositions du présent accord

Fournitures

Valeur de seuil: 400 000 DTS

Services (spécifiés à l'Annexe 4)

Valeur de seuil: 400 000 DTS

Services de construction (spécifiés à l'Annexe 5)

Valeur de seuil: 5 000 000 DTS

Liste des entités:

Les entités adjudicatrices qui sont des pouvoirs publics²⁸ ou des entreprises publiques²⁹ et qui exercent au moins une des activités suivantes:

1. la mise à disposition ou l'exploitation de réseaux fixes destinés à fournir un service au public dans le domaine de la production, du transport ou de la distribution

²⁸ *Pouvoir public: L'Etat, les collectivités territoriales, les organismes de droit public, les associations formées par une ou plusieurs de ces collectivités ou de ces organismes de droit public. Est considéré comme un organisme de droit public tout organisme:*

- *créé pour satisfaire spécifiquement des besoins d'intérêt général ayant un caractère autre qu'industriel ou commercial,*
- *doté d'une personnalité juridique et*

-dont soit l'activité est financée majoritairement par l'Etat, les collectivités territoriales ou d'autres organismes de droit public, soit la gestion est soumise à un contrôle par ces derniers, soit l'organe d'administration, de direction ou de surveillance est composé de membres dont plus de la moitié est désignée par l'Etat, les collectivités territoriales ou d'autres organismes de droit public.

²⁹ *Entreprise publique: toute entreprise sur laquelle les pouvoirs publics peuvent exercer directement ou indirectement une influence dominante du fait de la propriété, de la participation financière ou des règles qui la régissent. L'influence dominante est présumée lorsque les pouvoirs publics, directement ou indirectement, à l'égard de l'entreprise:*

- *détiennent la majorité du capital souscrit de l'entreprise ou*
- *disposent de la majorité des voix attachées aux parts émises par l'entreprise ou*
- *peuvent désigner plus de la moitié des membres de l'organe d'administration, de direction ou de surveillance de l'entreprise.*

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d'eau potable ou l'alimentation de ces réseaux en eau potable (spécifiés sous titre I);

2.la mise à disposition ou l'exploitation de réseaux fixes destinés à fournir un service au public dans le domaine de la production, du transport ou de la distribution d'électricité ou l'alimentation de ces réseaux en électricité (spécifiés sous titre II);

3.l'exploitation de réseaux destinés à fournir un service au public dans le domaine du transport par chemin de fer urbain, systèmes automatiques, tramway, trolleybus, autobus ou câble (spécifiés sous titre III);

4.l'exploitation d'une aire géographique dans le but de mettre à la disposition des transporteurs aériens des aéroports ou d'autres terminaux de transport (spécifiés sous titre IV);

5.l'exploitation d'une aire géographique dans le but de mettre à la disposition des transporteurs fluviaux des ports intérieurs ou d'autres terminaux de transport (spécifiés sous titre V).

I. Production, transport ou distribution d'eau potable

Pouvoirs publics ou entreprises publiques de production, de transport et de distribution d'eau potable. Ces pouvoirs publics et entreprises publiques opèrent conformément à la législation cantonale ou locale, ou encore par le biais d'accords individuels respectant ladite législation.

Par exemple:

- Wasserverbund Regio Bern AG
- Hardwasser AG
- Gruppenwasserversorgung Liechtensteiner Oberland
- Gruppenwasserversorgung Liechtensteiner Unterland

II. Production, transport ou distribution d'électricité

Pouvoirs publics ou entreprises publiques de transport et de distribution d'électricité auxquels le droit d'expropriation peut être accordé conformément à la "loi fédérale du 24 juin 1902 concernant les installations électriques à faible et à fort courant".

Pouvoirs publics ou entreprises publiques de production d'électricité conformément à la "loi fédérale du 22 décembre 1916 sur l'utilisation des forces hydrauliques" et à la "loi fédérale du 23 décembre 1959 sur l'utilisation pacifique de l'énergie atomique et la protection contre les radiations".

Par exemple:

- Bernische Kraftwerke AG
- Nordostschweizerische Kraftwerke AG
- Liechtensteinische Kraftwerke

III. Transport par chemin de fer urbain, tramway, systèmes automatiques, trolleybus, autobus ou câble

Pouvoirs publics ou entreprises publiques exploitant des tramways au sens de l'article 2, 1er alinéa, de la "loi fédérale du 20 décembre 1957 sur les chemins de fer".

Pouvoirs publics ou entreprises publiques offrant des services de transport public au sens de l'article 4, 1er alinéa, de la "loi fédérale du 29 mars 1950 sur les entreprises de trolleybus".

Entreprise suisse des postes, téléphones et télégraphes (PTT) au sens de l'article 2 de la "loi fédérale du 18 juin 1993 sur le transport de voyageurs et les entreprises de transport par route".

Pouvoirs publics ou entreprises publiques qui, à titre professionnel, effectuent des courses régulières de transport de personnes selon un horaire, au sens de l'article 4 de la "loi fédérale du 18 juin 1993 sur le transport de voyageurs et les entreprises de transport par route".

Par exemple:

- Transports publics genevois

- Verkehrsbetriebe Zürich

IV. Aéroports

Pouvoirs publics ou entreprises publiques exploitant des aéroports en vertu d'une concession au sens de l'article 37 de la "loi fédérale du 21 décembre 1948 sur la navigation aérienne".

Par exemple:

- Flughafen Zürich-Kloten
- Aéroport de Genève-Cointrin
- Aérodrome civil de Sion

V. Ports intérieurs

Ports fluviaux des deux Bâle: pour le canton de Bâle-Ville, est déterminante la "loi du 13 novembre 1919 concernant l'administration des installations portuaires rhénanes de la ville de Bâle"; pour le canton de Bâle-Campagne est déterminante la "loi du 26 octobre 1936 sur la mise en place d'installations portuaires, de voies ferroviaires et de routes sur le "Sternenfeld" à Birsfelden, et dans l'"Au" à "Muttenz".

Notes relatives à l'Annexe 3

Le présent accord ne s'applique pas:

1. Aux marchés que les entités adjudicatrices passent à des fins autres que la poursuite de leurs activités décrites dans cette Annexe ou pour la poursuite de ces activités en dehors de Suisse.
2. Aux marchés passés à des fins de revente ou de location à des tiers, lorsque l'entité adjudicatrice ne bénéficie d'aucun droit spécial ou exclusif pour vendre ou louer l'objet de ces marchés et lorsque d'autres entités peuvent librement le vendre ou le louer dans les mêmes conditions que l'entité adjudicatrice.

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3. Aux marchés passés pour l'achat d'eau.
4. Aux marchés passés par une entité adjudicatrice autre que les pouvoirs publics, qui assure l'alimentation en eau potable ou en électricité des réseaux destinés à fournir un service au public, lorsque la production d'eau potable ou d'électricité par l'entité concernée a lieu parce que sa consommation est nécessaire à l'exercice d'une activité autre que celle visée dans cette Annexe sous chiffre I et II et lorsque l'alimentation du réseau public ne dépend que de la consommation propre de l'entité et n'a pas dépassé 30% de la production totale d'eau potable ou d'énergie de l'entité prenant en considération la moyenne des trois dernières années, y compris l'année en cours.
5. Aux marchés passés pour la fourniture d'énergie ou de combustibles destinés à la production d'énergie.
6. Aux marchés passés par les entités adjudicatrices assurant au public un service de transport par autobus, lorsque d'autres entités peuvent librement fournir ce service, soit d'une manière générale, soit dans une aire géographique spécifique, dans les mêmes conditions que les entités adjudicatrices.

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ANNEXE 4

Services

Les services suivants qui figurent dans la Classification sectorielle des services reproduite dans le document MTN.GNS/W/120 sont inclus:

Objet Numéros de référence CPC (Classification centrale des produits)

Services d'entretien et de réparation	6112, 6122, 633, 886
Services de transport terrestre, y compris les services de véhicules blindés et les services de courrier, à l'exclusion des transports de courrier	712 (sauf 71235) 7512, 87304
Services de transport aérien: transport de voyageurs et de marchandises, à l'exclusion des transports de courrier	73 (sauf 7321)
Transport de courrier par transport terrestre (à l'exclusion des services de transport ferroviaire) et par air	71235, 7321
Services de télécommunications	752 ³⁰ (sauf 7524, 7525, 7526)
Services financiers:	ex 81
a) services d'assurances	812, 814
b) services bancaires et d'investissement ³¹	
Services informatiques et services connexes	84
Services comptables, d'audit et de tenue de livres	862

³⁰A l'exclusion des services de téléphonie vocale, de télex, de radiotéléphonie, de radiomessagerie et de télécommunication par satellite

³¹A l'exclusion des marchés des services financiers relatifs à l'émission, à l'achat, à la vente et au transfert de titres ou d'autres instruments financiers, ainsi que des services fournis par des banques centrales

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Services d'études de marché et de sondages	864
Services de conseil en gestion et services connexes	865, 866 ³²
Services d'architecture; services d'ingénierie et services intégrés d'ingénierie; services d'aménagement urbain et d'architecture paysagère; services connexes de consultations scientifiques et techniques; services d'essais et d'analyses techniques	867
Services de publicité	871
Services de nettoyage de bâtiments et services de gestion de propriétés	874, 82201-82206
Services de publication et d'impression sur la base d'une redevance ou sur une base contractuelle	88442
Services de voirie et d'enlèvement des ordures: services d'assainissement et services analogues	94

Notes relatives à l'Annexe 4

Le présent accord ne s'applique pas:

1. Aux marchés de services attribués à une entité qui est elle-même un pouvoir adjudicateur au sens de l'Annexe 1, 2 ou 3 sur la base d'un droit exclusif dont elle bénéficie en vertu de dispositions législatives, réglementaires ou administratives publiées.
2. Aux marchés de services qu'une entité adjudicatrice passe auprès d'une entreprise liée ou passés par une coentreprise, constituée de plusieurs entités adjudicatrices aux fins de la poursuite des activités au sens de l'Annexe 3, auprès d'une de ces entités adjudicatrices ou d'une entreprise liée à une de ces entités adjudicatrices, pour autant que 80% au moins du chiffre d'affaires moyen que cette entreprise a réalisé au cours des trois dernières années en matière de services provienne de la

³²A l'exclusion des services d'arbitrage et de conciliation

fourniture de ces services aux entreprises auxquelles elle est liée. Lorsque le même service ou des services similaires sont fournis par plus d'une entreprise liée à l'entité adjudicatrice, il doit être tenu compte du chiffre d'affaires total résultant de la fourniture de services par ces entreprises.

3. Aux marchés de services qui ont pour objet l'acquisition ou la location, quelles qu'en soient les modalités financières, de terrains, de bâtiments existants ou d'autres biens immeubles ou qui concernent des droits sur ces biens.
4. Aux marchés de l'emploi.
5. Aux marchés visant l'achat, le développement, la production ou la coproduction d'éléments de programmes par des organismes de radiodiffusion et aux marchés concernant les temps de diffusion.

ANNEXE 5

*Services de Construction**Définition:*

Un contrat de services de construction est un contrat qui a pour objectif la réalisation, par quelque moyen que ce soit, de travaux de construction d'ouvrages de génie civil ou de bâtiments, au sens de la division 51 de la Classification centrale de produits (CPC).

Liste de services relevant de la division 51 de la CPC

Travaux de préparation des sites et chantiers de construction	511
Travaux de construction de bâtiments	512
Travaux de construction d'ouvrages de génie civil	513
Assemblage et construction d'ouvrages préfabriqués	514
Travaux d'entreprises de construction spécialisées	515
Travaux de pose d'installations	516
Travaux d'achèvement et de finition des bâtiments	517
Autres services	518

Valeur de seuil: 5 000 000 DTS

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Liste des matériels civils de la défense et de la protection civile soumis à l'accord

Chapitre 25: Sel; soufre; terres et pierres; plâtres; chaux et ciments

Chapitre 26: Minerais métallurgiques, scories et cendres

Chapitre 27: Combustibles minéraux, huiles minérales et produits de leur distillation; matières bitumineuses; cires minérales

Chapitre 28: Produits chimiques inorganiques; composés inorganiques ou organiques de métaux précieux, d'éléments radioactifs, de métaux des terres rares et d'isotopes

à l'exception de:

ex 28.09 : explosifs

ex 28.13 : explosifs

ex 28.14 : gaz lacrymogènes

ex 28.28 : explosifs

ex 28.32 : explosifs

ex 28.39 : explosifs

ex 28.50 : produits toxicologiques

ex 28.51 : produits toxicologiques

ex 28.54 : explosifs

Chapitre 29: Produits chimiques organiques

à l'exception de:

ex 29.03 : explosifs

ex 29.04 : explosifs

ex 29.07 : explosifs

ex 29.08 : explosifs

ex 29.11 : explosifs

ex 29.12 : explosifs

ex 29.13 : produits toxicologiques

ex 29.14 : produits toxicologiques

ex 29.15 : produits toxicologiques

ex 29.21 : produits toxicologiques

ex 29.22 : produits toxicologiques
 ex 29.23 : produits toxicologiques
 ex 29.26 : explosifs
 ex 29.27 : produits toxicologiques
 ex 29.29 : explosifs

Chapitre 30: Produits pharmaceutiques

Chapitre 31: Engrais

Chapitre 32: Extraits tannants ou tinctoriaux; tanins et leurs dérivés; matières colorantes, couleurs, peintures, vernis et teintures, mastics, encres

Chapitre 33: Huiles essentielles et résinoïdes; produits de parfumerie ou de toilette et cosmétiques

Chapitre 34: Savons, produits organiques tensio-actifs, préparations pour lessives, préparations lubrifiantes, cires artificielles, cires préparées, produits d'entretien, bougies et articles similaires, pâtes à modeler et "cires pour l'art dentaire"

Chapitre 35: Matières albuminoïdes; colles, enzymes

Chapitre 36: Poudres et explosifs; articles de pyrotechnie; allumettes; alliages pyrophoriques; matières inflammables

à l'exception de:

ex 36.01 : poudres
 ex 36.02 : explosifs préparés
 ex 36.04 : détonateurs
 ex 36.08 : explosifs

Chapitre 37: Produits photographiques et cinématographiques

Chapitre 38: Produits divers des industries chimiques

à l'exception de:

ex 38.19 : produits toxicologiques

Chapitre 39: Matières plastiques artificielles, éthers et esters de la cellulose, résines artificielles et ouvrages en ces matières

à l'exception de:

ex 39.03 : explosifs

Chapitre 40: Caoutchouc naturel ou synthétique, factice pour caoutchouc et ouvrages en caoutchouc

à l'exception de:

ex 40.11 : pneus

Chapitre 43: Pelleteries et fourrures, pelleteries factices

Chapitre 44: Bois, charbon de bois et ouvrages en bois

Chapitre 45: Liège et ouvrages en liège

Chapitre 46: Ouvrages de sparterie et de vannerie

Chapitre 47: Matières servant à la fabrication du papier

Chapitre 48: Papiers et cartons; ouvrages en pâte de cellulose, en papier et en carton

Chapitre 49: Articles de librairie et produits des arts graphiques

Chapitre 65: Coiffures et parties de coiffures

Chapitre 66: Parapluies, parasols, cannes, fouets, cravaches et leurs parties

Chapitre 67: Plumes et duvet apprêtés et articles en plumes ou en duvet; fleurs artificielles; ouvrages en cheveux

Chapitre 68: Ouvrages en pierres, plâtre, ciment, amiante, mica et matières analogues

Chapitre 69: Produits céramiques

Chapitre 70: Verre et ouvrages en verre

Chapitre 71: Perles fines, pierres gemmes et similaires, métaux précieux, plaqués ou doublés de métaux précieux et ouvrages en ces matières; bijouterie de fantaisie

Chapitre 73: Fonte, fer et acier

Chapitre 74: Cuivre

Chapitre 75: Nickel

Chapitre 76: Aluminium

Chapitre 77: Magnésium, beryllium (glucinium)

Chapitre 78: Plomb

Chapitre 79: Zinc

Chapitre 80: Etain

Chapitre 81: Autres métaux communs

Chapitre 82: Outillage; articles de coutellerie et couverts de table, en métaux communs

Chapitre 83: Ouvrages divers en métaux communs

Chapitre 84: Chaudières, machines, appareils et engins mécaniques

Chapitre 85: Machines et appareils électriques et objets servant à des usages électrotechniques

à l'exception de:

ex 85.03 : Piles électriques

ex 85.13 : Télécommunications

ex 85.15 : Appareils de transmission

Chapitre 86: Véhicules et matériaux pour voies ferrées; appareils de signalisation non électriques pour voies de communication

à l'exception de:

ex 86.02 : Locomotives blindées

ex 86.03 : autres locoblindées

ex 86.05 : Wagons blindés

ex 86.06 : Wagons ateliers

ex 86.07 : Wagons

Chapitre 87: Voitures automobiles, tracteurs, cycles et autres véhicules terrestres

à l'exception de:

87.08 : Cars et automobiles blindés

ex 87.02 : Camions lourds

ex 87.09 : Motocycles

ex 87.14 : Remorques

Chapitre 88: Navigation aérienne

à l'exception de:

ex 88.02 : Avions

Chapitre 89: Navigation maritime et fluviale

Chapitre 90: Instruments et appareils d'optique, de photographie et de cinématographie, de mesure, de vérification, de précision; instruments et appareils médico-chirurgicaux

à l'exception de:

ex 90.05 : Jumelles

ex 90.13 : Instruments divers, lasers

ex 90.14 : Télémètres

ex 90.28 : Instruments de mesure électriques ou électroniques

Chapitre 91: Horlogerie

Chapitre 92: Instruments de musique; appareils d'enregistrement ou de reproduction du son; appareils d'enregistrement ou de reproduction des images et du son en télévision; parties et accessoires de ces instruments et appareils

Chapitre 93: Armes et munitions

à l'exception de:

ex 93.01 : Armes blanches

ex 93.02 : Pistolets

ex 93.03 : Armes de guerre

ex 93.04 : Armes à feu

ex 93.05 : Autres armes

ex 93.07 : Projectiles et munitions

Chapitre 94: Meubles; mobilier médico-chirurgical; articles de literie et similaires

Chapitre 95: Matières à tailler et à mouler, à l'état travaillé (y compris les ouvrages)

Chapitre 96: Ouvrages de broserie et pinceaux, balais, houppes et articles de tamiserie

Chapitre 98: Ouvrages divers

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NOTES GENERALES ET DEROGATIONS AUX DISPOSITIONS
DE L'ARTICLE III

1. La Suisse n'étendra pas le bénéfice des dispositions du présent accord:

-en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 2 aux fournisseurs de produits et de services du Canada et des Etats-Unis d'Amérique;

-en ce qui concerne les marchés passés par les entités mentionnées à l'Annexe 3 dans les secteurs suivants;

-eau: aux fournisseurs de produits et de services du Canada et des Etats-Unis d'Amérique;

-électricité: aux fournisseurs de produits et de services du Canada, de Hong Kong, du Japon et des Etats-Unis d'Amérique;

-aéroports: aux fournisseurs de produits et de services du Canada, de la Corée et des Etats-Unis d'Amérique;

-ports: aux fournisseurs de produits et de services du Canada et des Etats-Unis d'Amérique;

-transports urbains: aux fournisseurs de produits et de services du Canada, d'Israël, du Japon, de la Corée et des Etats-Unis d'Amérique;

tant qu'elle n'aura pas constaté que les Parties concernées assurent aux entreprises suisses un accès comparable et effectif aux marchés considérés;

-aux fournisseurs de services des Parties qui n'incluent pas, dans leurs propres listes, les marchés de services passés par les entités mentionnées aux Annexes 1 à 3 et concernant les catégories de services visées aux Annexes 4 et 5.

2. Les dispositions de l'Article XX ne sont pas applicables aux fournisseurs de produits et de services des pays suivants:

-Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication de marchés par les organismes mentionnés à l'Annexe 2, chiffre 2, tant que

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la Suisse n'a pas constaté que ces pays ont complété la liste des entités des gouvernements sous-centraux;

-Japon, Corée et Etats-Unis d'Amérique en ce qui concerne les recours intentés contre l'adjudication de marchés à un fournisseur de produits ou de services d'autres Parties au présent accord, lorsque ledit fournisseur est une entreprise petite ou moyenne au sens du droit suisse, tant que la Suisse n'aura pas constaté que ces pays n'appliquent plus de mesures discriminatoires pour favoriser certaines petites entreprises nationales ou certaines entreprises nationales détenues par les minorités;

-Israël, Japon et Corée en ce qui concerne les recours intentés contre l'adjudication par des entités suisses de marchés dont la valeur est inférieure au seuil appliqué à la même catégorie de marchés par lesdites Parties.

3. Tant que la Suisse n'aura pas constaté que les Parties concernées assurent l'accès de leurs marchés aux fournisseurs suisses de produits et de services suisses, elle n'étendra pas le bénéfice des dispositions du présent accord aux fournisseurs de produits et de services des pays suivants:

-Canada, en ce qui concerne les marchés portant sur les produits relevant des n° 36, 70 et 74 de la FSC (machines industrielles spéciales; matériel d'informatique général, logiciel, fournitures et matériel auxiliaire (sauf 7010: Configurations d'équipement de traitement automatique des données); machines de bureau, matériel de bureautique et d'informatique de bureau;

-Canada, en ce qui concerne les marchés portant sur les produits relevant du n° 58 de la FSC (matériel de communications, matériel de détection des radiations et d'émission de rayonnement cohérent) et Etats-Unis d'Amérique en ce qui concerne les équipements de contrôle du trafic aérien;

-Corée et Israël en ce qui concerne les marchés passés par les entités énumérées à l'Annexe 3, chiffre 2 pour les produits relevant des n° 8504, 8535, 8537 et 8544 du SH (transformateurs électriques, prises de courant, interrupteurs et câbles isolés); Israël, en ce qui concerne les produits relevant des n° 8501, 8536 et 902830 du SH;

-Canada et Etats-Unis d'Amérique en ce qui concerne les marchés de fournitures et de services entrant dans le cadre de marchés qui, tout en étant passés par

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une entité relevant du champ d'application du présent accord, ne sont pas eux-mêmes soumis à ce dernier.

4. Le présent accord n'est pas applicable aux marchés passés en vertu:
 - d'un accord international et portant sur la réalisation ou l'exploitation en commun d'un ouvrage par les Etats signataires;
 - de la procédure spécifique d'une organisation internationale.
5. Le présent accord n'est pas applicable aux marchés de produits agricoles passés en application de programmes de soutien à l'agriculture ou de programmes d'aide alimentaire.
6. Les engagements pris par la Suisse dans le domaine des services au titre du présent accord sont limités aux engagements initiaux spécifiés dans l'offre finale suisse présentée dans le cadre de l'Accord général sur le commerce des services.

UNITED STATES

(Authentic in the English language only)

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 130,000 SDRs for supplies and services
5 million SDRs for construction

List of Entities:

1. Department of Agriculture (not including procurement of agricultural products made in furtherance of agricultural support programmes or human feeding programmes)
2. Department of Commerce (not including shipbuilding activities of NOAA, as excluded in Annex 4)
3. Department of Education
4. Department of Health and Human Services
5. Department of Housing and Urban Development
6. Department of the Interior (including the Bureau of Reclamation)
7. Department of Justice
8. Department of Labor
9. Department of State
10. United States Agency for International Development (not including procurement for the direct purpose of providing foreign assistance)
11. Department of the Treasury
12. Department of Transportation (not including procurement by the Federal Aviation Administration, and pursuant to Article XXIII, the national security considerations applicable to the Department of Defense are equally applicable to the Coast Guard, a military unit of the United States)
13. Department of Energy (pursuant to Article XXIII, national security exceptions include procurements made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act, and oil purchases related to the Strategic Petroleum Reserve)

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14. General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
15. National Aeronautics and Space Administration
16. The Department of Veterans Affairs
17. Environmental Protection Agency
18. United States Information Agency
19. National Science Foundation
20. Panama Canal Commission
21. Executive Office of the President
22. Farm Credit Administration
23. National Credit Union Administration
24. Merit Systems Protection Board
25. ACTION
26. United States Arms Control and Disarmament Agency
27. Office of Thrift Supervision
28. Federal Housing Finance Board
29. National Labor Relations Board
30. National Mediation Board
31. Railroad Retirement Board
32. American Battle Monuments Commission
33. Federal Communications Commission
34. Federal Trade Commission
35. Interstate Commerce Commission
36. Securities and Exchange Commission
37. Office of Personnel Management
38. United States International Trade Commission
39. Export-Import Bank of the United States
40. Federal Mediation and Conciliation Service
41. Selective Service System
42. Smithsonian Institution
43. Federal Deposit Insurance Corporation
44. Consumer Product Safety Commission
45. Equal Employment Opportunity Commission
46. Federal Maritime Commission
47. National Transportation Safety Board
48. Nuclear Regulatory Commission
49. Overseas Private Investment Corporation
50. Administrative Conference of the United States
51. Board for International Broadcasting
52. Commission on Civil Rights
53. Commodity Futures Trading Commission
54. Peace Corps

55. National Archives and Records Administration
56. Advisory Commission on Intergovernmental Relations
57. African Development Foundation
58. Alaska Natural Gas Transportation System
59. Appalachian Regional Commission
60. Commission of Fine Arts
61. Delaware River Basin Commission
62. Federal Election Commission
63. Federal Emergency Management Agency
64. Federal Home Loan Mortgage Corporation
65. Federal Maritime Commission
66. Federal Mine Safety and Health Review Commission
67. Federal Reserve System
68. Federal Retirement Thrift Investment Board
69. Holocaust Memorial Council
70. Inter-American Foundation
71. National Capital Planning Commission
72. National Commission on Libraries and Information Science
73. National Council on Disability
74. National Foundation on the Arts and the Humanities
75. Occupational Safety and Health Review Commission
76. Office of Government Ethics
77. Office of the Nuclear Waste Negotiator
78. Office of Special Counsel
79. Resolution Trust Corporation Oversight Board
80. Small Business Administration
81. Susquehanna River Basin Commission
82. Pennsylvania Avenue Development Corporation
83. Federal Crop Insurance Corporation
84. Federal Prison Industries, Inc.
85. Government National Mortgage Association
86. Uranium Enrichment Corporation
87. Department of Defense, including the Corps of Army Engineers

This Agreement will not apply to the following purchases of the Department of Defense:

- (a) Federal Supply Classification (FSC) 83 - all elements of this classification other than pins, needles, sewing kits, flagstuffs, flagpoles, and flagstaff trucks;
- (b) FSC 84 - all elements other than sub-class 8460 (luggage);
- (c) FSC 89 - all elements other than sub-class 8975 (tobacco products);
- (d) FSC 2310 - (buses only);

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- (e) Speciality metals, defined as steels melted in steelmanufacturing facilities located in the United States or its possessions, where the maximum alloy content exceeds one or more of the following limits, must be used in products purchased by DOD: (1) manganese, 1.65 per cent; silicon, 0.60 per cent; or copper, 0.06 per cent; or which contains more than 0.25 per cent of any of the following elements: aluminium, chromium, cobalt, columbium, olybdenum, nickel, titanium, tungsten, or vanadium; (2) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent; (3) titanium and titanium alloys; or (4) zirconium base alloys;
- (f) FSC 19 and 20 - that part of these classifications defined as naval vessels or major components of the hull or superstructure thereof;
- (g) FSC 51 and 52;
- (h) Following FSC categories are not generally covered due to application of Article XXIII, paragraph 1: 10, 12, 13, 14, 15, 16, 17, 19, 20, 28, 31, 58, 59, 95.

This Agreement will generally apply to purchases of the following FSC categories subject to United States Government determinations under the provisions of Article XXIII, paragraph 1.

- FSC 22 Railway Equipment
- 23 Motor Vehicles, Trailers, and Cycles (except buses in 2310)
- 24 Tractors
- 25 Vehicular Equipment Components
- 26 Tyres and Tubes
- 29 Engine Accessories
- 30 Mechanical Power Transmission Equipment
- 32 Woodworking Machinery and Equipment
- 34 Metalworking Machinery
- 35 Service and Trade Equipment
- 36 Special Industry Machinery
- 37 Agricultural Machinery and Equipment
- 38 Construction, Mining, Excavating, and Highway Maintenance Equipment
- 39 Materials Handling Equipment
- 40 Rope, Cable, Chain and Fittings
- 41 Refrigeration and Air Conditioning Equipment
- 42 Fire Fighting, Rescue and Safety Equipment
- 43 Pumps and Compressors
- 44 Furnace, Steam Plant, Drying Equipment and Nuclear Reactors
- 45 Plumbing, Heating and Sanitation Equipment
- 46 Water Purification and Sewage Treatment Equipment
- 47 Pipe, Tubing, Hose and Fittings

48Valves
49Maintenance and Repair Shop Equipment
53Hardware and Abrasives
54Prefabricated Structures and Scaffolding
55Lumber, Millwork, Plywood and Veneer
56Construction and Building Materials
61Electric Wire, and Power and Distribution Equipment
62Lighting Fixtures and Lamps
63Alarm and Signal Systems
65Medical, Dental, and Veterinary Equipment and Supplies
66Instruments and Laboratory Equipment
67Photographic Equipment
68Chemicals and Chemical Products
69Training Aids and Devices
70General Purpose ADPE, Software, Supplies and Support Equipment
71Furniture
72Household and Commercial Furnishings and Appliances
73Food Preparation and Serving Equipment
74Office Machines, Visible Record Equipment and ADP Equipment
75Office Supplies and Devices
76Books, Maps and Other Publications
77Musical Instruments, Phonographs, and Home Type Radios
78Recreational and Athletic Equipment
79Cleaning Equipment and Supplies
80Brushes, Paints, Sealers and Adhesives
81Containers, Packaging and Packing Supplies
85Toiletries
87Agricultural Supplies
88Live Animals
91Fuels, Lubricants, Oils and Waxes
93Non-metallic Fabricated Materials
94Non-metallic Crude Materials
96Ores, Minerals and their Primary Products
99Miscellaneous

Note to Annex 1

The conditions specified in the General Notes apply to this Annex.

1 April 1997

ANNEX 2

*Sub-Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 355,000 SDRs for supplies and services
5 million SDRs for construction

List of Entities:

Arizona

Executive branch agencies

Arkansas

Executive branch agencies, including universities but excluding the Office of Fish and Game and construction services

California

Executive branch agencies

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services
Connecticut Department of Transportation
Connecticut Department of Public Works
Constituent Units of Higher Education

Delaware*

Administrative Services (Central Procurement Agency)
State Universities
State Colleges

1 April 1997

Florida*

Executive branch agencies

Hawaii

Department of Accounting and General Services (with the exception of procurements of software developed in the state and construction)

Idaho

Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Illinois*

Department of Central Management Services

Iowa*

Department of General Services
Department of Transportation
Board of Regents' Institutions (universities)

Kansas

Executive branch agencies, excluding construction services, automobiles and aircraft

Kentucky

Division of Purchases, Finance and Administration Cabinet, excluding construction projects

Louisiana

Executive branch agencies

Maine*

Department of Administrative and Financial Services
Bureau of General Services (covering state government agencies)

and school construction)
Maine Department of Transportation

Maryland*

Office of the Treasury
Department of the Environment
Department of General Services
Department of Housing and Community Development
Department of Human Resources
Department of Licensing and Regulation
Department of Natural Resources
Department of Public Safety and Correctional Services
Department of Personnel
Department of Transportation

Massachusetts

Executive Office for Administration and Finance
Executive Office of Communities and Development
Executive Office of Consumer Affairs
Executive Office of Economic Affairs
Executive Office of Education
Executive Office of Elder Affairs
Executive Office of Environmental Affairs
Executive Office of Health and Human Service
Executive Office of Labor
Executive Office of Public Safety
Executive Office of Transportation and Construction

Michigan*

Department of Management and Budget

Minnesota

Executive branch agencies

Mississippi

Department of Finance and Administration (does not include services)

Missouri

Office of Administration
Division of Purchasing and Materials Management

Montana

Executive branch agencies (only for services and construction)

New York*

State agencies
State university system
Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates

In addition to the exceptions noted at the end of this annex, transit cars, buses and related equipment are not covered.

Nebraska

Central Procurement Agency

New Hampshire*

Central Procurement Agency

Oklahoma*

Office of Public Affairs and all state agencies and departments subject to the Oklahoma Central Purchasing Act, excluding construction services.

Oregon

Department of Administrative Services

Pennsylvania*

Executive branch agencies, including:

Governor's Office
Department of the Auditor General

Treasury Department
Department of Agriculture
Department of Banking
Pennsylvania Securities Commission
Department of Health
Department of Transportation
Insurance Department
Department of Aging
Department of Correction
Department of Labor and Industry
Department of Military Affairs
Office of Attorney General
Department of General Services
Department of Education
Public Utility Commission
Department of Revenue
Department of State
Pennsylvania State Police
Department of Public Welfare
Fish Commission
Game Commission
Department of Commerce
Board of Probation and Parole
Liquor Control Board
Milk Marketing Board
Lieutenant Governor's Office
Department of Community Affairs
Pennsylvania Historical and Museum Commission
Pennsylvania Emergency Management Agency
State Civil Service Commission
Pennsylvania Public Television Network
Department of Environmental Resources
State Tax Equalization Board
Department of Public Welfare
State Employees' Retirement System
Pennsylvania Municipal Retirement Board
Public School Employees' Retirement System
Pennsylvania Crime Commission
Executive Offices

Rhode Island

Executive branch agencies, excluding boats, automobiles, buses and related equipment

South Dakota

Central Procuring Agency (including universities and penal institutions)

In addition to the exceptions noted at the end of this annex, procurements of beef are not covered.

Tennessee

Executive branch agencies (excluding services and construction)

Texas

General Services Commission

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:

General Administration

Department of Transportation

State Universities

In addition to the exceptions noted at the end of this annex, procurements of fuel, paper products, boats, ships and vessels are not covered.

Wisconsin

Executive branch agencies, including

Department of Administration

State Correctional Institutions
Department of Development
Educational Communications Board
Department of Employment Relations
State Historical Society
Department of Health and Social Services
Insurance Commissioner
Department of Justice
Lottery Board
Department of Natural Resources
Administration for Public Instruction
Racing Board
Department of Revenue
State Fair Park Board
Department of Transportation
State University System

Wyoming*

Procurement Services Division
Wyoming Department of Transportation
University of Wyoming

Notes to Annex 2

In addition to the conditions specified in the General Notes, the following conditions apply:

1. For those states marked by an asterisk with pre-existing restrictions, the Agreement does not apply to procurement of construction-grade steel (including requirements on subcontracts), motor vehicles and coal.
2. The Agreement shall not apply to preferences or restrictions associated with programs promoting the development of distressed areas and businesses owned by minorities, disabled veterans and women.
3. Nothing in this annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. The Agreement shall not apply to any procurement made by a covered entity on behalf of non-covered entities at a different level of government.
5. The Agreement shall not apply to restrictions attached to Federal funds for mass transit and highway projects.

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDRs for supplies and services (except as specified below)
5 million SDRs for construction

List of Entities:

The following entities at the SDR equivalent of \$250,000 for supplies and services:

Tennessee Valley Authority
Power Marketing Administrations of the Department of Energy
-Bonneville Power Administration
-Western Area Power Administration
-Southeastern Power Administration
-Southwestern Power Administration
-Alaska Power Administration
-St. Lawrence Seaway Development Corporation

The following entities are 400,000 SDRs for supplies and services:

The Port Authority of New York and New Jersey with the following exceptions:

- Maintenance, repair and operating materials and supplies (e.g., hardware, tools, lamps/lighting, plumbing);
- In exceptional cases, individual procurements may require certain regional production of goods if authorized by the Board of Directors;
- Procurements pursuant to multi-jurisdictional agreement (i.e., for contracts which have initially been awarded by other jurisdictions).

The Port of Baltimore (subject to the conditions specified for the state of New York in Annex 2)

The New York Power Authority (subject to the conditions specified for the state of New York in Annex 2)

1 April 1997

Rural Electrification Administration Financing:

- (1)waiver of Buy American restriction on financing for all power generation projects (restrictions on financing for telecommunication projects are excluded from the Agreement);
- (2)application of Code-equivalent procurement procedures and national treatment to funded projects exceeding the thresholds specified above.

Notes to Annex 3

- 1.With respect to these entities, the Agreement shall not apply to restrictions attached to Federal funds for airport projects.
- 2.The conditions specified in the General Notes apply to this Annex.

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are excluded:

1. All transportation services, including Launching Services (CPC Categories 71, 72, 73, 74, 8859, 8868).

Note: Transportation services, where incidental to a contract for the procurement of supplies, are not subject to this Agreement.

2. Dredging.

3. All services purchased in support of military forces located overseas.

4. Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers (FFRDCs).

5. Public utilities services, including telecommunications and ADP-related telecommunications services except enhanced (i.e., value-added) telecommunications services.

6. Research and Development.

7. Printing Services (for Annex 2 entities only).

Note to Annex 4

The conditions specified in the General Notes also apply to this Annex.

ANNEX 5

*Construction Services**Definition:*

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

All services listed in Division 51.

Note to Annex 5

The conditions specified in the General Notes apply to this Annex.

GENERAL NOTES

1. Notwithstanding the above, this Agreement will not apply to set asides on behalf of small and minority businesses.
2. Except as specified otherwise in this Appendix, procurement in terms of U.S. coverage does not include non-contractual agreements or any form of government assistance, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and governmental provision of goods and services to persons or governmental authorities not specifically covered under U.S. annexes to this agreement.
3. Procurement does not include the acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.
4. Where a contract to be awarded by an entity is not covered by this Agreement, this Agreement shall not be construed to cover any good or service component of that contract.
5. For goods and services (including construction) of the following countries and suppliers of such goods and services, this Agreement does not apply to procurement by the entities listed in Annexes 2 and 3 or the waiver described in Annex 3:

Canada
Switzerland

The United States is prepared to amend this note at such time as coverage with respect to these annexes can be resolved with a Party listed above.
6. For construction services of the Republic of Korea and suppliers of such services, this Agreement applies only to procurement of the entities listed in Annexes 2 and 3 above a threshold of 15 million SDRs.
7. For goods and services (including construction) of Japan and suppliers of such goods and services, this Agreement does not apply to procurement by the National Aeronautics and Space Administration.
8. A service listed in Annex 4 is covered with respect to a particular Party only to the extent that such Party has included that service in its Annex 4.

1 April 1997

9. The United States will not extend the benefits of this Agreement to Japan as regards the award of contracts by entities listed in Annex 3 that are responsible for the generation or distribution of electricity.

APPENDIX II

APPENDIX II

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
OF NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH 1 OF ARTICLE XVIII

APPENDICE II

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
DES AVIS DE MARCHES ENVISAGES - PARAGRAPHE 1 DE L'ARTICLE IX,
ET DES AVIS POSTERIEURS A L'ADJUDICATION DES
MARCHES - PARAGRAPHE 1 DE L'ARTICLE XVIII

APÉNDICE II

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LOS
ANUNCIOS DE LOS CONTRATOS PREVISTOS - PÁRRAFO 1 DEL
ARTÍCULO IX - Y LOS ANUNCIOS DE LAS ADJUDICACIONES -
PÁRRAFO 1 DEL ARTÍCULO XVIII.

 APPENDIX II

APPENDIX II

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
OF NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH 1 OF ARTICLE XVIII

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADA

Government Business Opportunities (GBO)
Open Bidding Service, ISM Publishing

EUROPEAN COMMUNITIES

- | | |
|---------------------------------|--|
| Belgium | - Official Journal of the European Communities
- Le Bulletin des Adjudications
- Other publications in the specialized press |
| Denmark | - Official Journal of the European Communities |
| Germany, Federal
Republic of | - Official Journal of the European Communities |
| Spain | - Official Journal of the European Communities |
| France | - Official Journal of the European Communities
- Bulletin officiel des annonces des marchés publics |
| Greece | - Official Journal of the European Communities
- Publication in the daily, financial, regional and specialized
press |
| Ireland | - Official Journal of the European Communities
- Daily Press: "Irish Independent", "Irish Times", "Irish Press",
"Cork Examiner" |

1 April 1997

APPENDIX II

Italy	- Official Journal of the European Communities
Luxembourg	- Official Journal of the European Communities
	- Daily Press
Netherlands	- Official Journal of the European Communities
Portugal	- Official Journal of the European Communities
United Kingdom	- Official Journal of the European Communities

FINLAND

Julkiset hankinnat Suomessa ja ETA-alueella, Virallisen lehden liite
(Public Procurement in Finland and at the EEA-area,
Supplement to the Official Gazette of Finland)
Official Journal of the European Communities (as long as the cost
of the publication is free of charge)

ISRAEL

The Jerusalem Post

JAPAN

Annex 1

Kanp_

Annex 2

Kenp_

Shih_

or their equivalents

Annex 3

Kanp_

1 April 1997

APPENDIX II

APPENDIX II

THE REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)
The Seoul Shinmun

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

The Aruba Gazette "Landscourant" as well as in local newspapers

NORWAY

Official Journal of the European Communities

APPENDIX II

SWEDEN

Europeiska Gemenskapernas Tidning (Official Journal
of the European Communities)

SWITZERLAND

Annex 1

Swiss Official Trade Gazette

Annex 2

Official publications of every Swiss Canton (26)

Annex 3

Swiss Official Trade Gazette
Official publications of every Swiss Canton (26)

UNITED STATES

The Commerce Business Daily

For entities listed in Annex 2 and relevant subcentral entities listed in Annex 3,
publications utilized by state governments, such as the New York Contract Reporter

APPENDICE II

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
DES AVIS DE MARCHES ENVISAGES - PARAGRAPHE 1 DE L'ARTICLE IX,
ET DES AVIS POSTERIEURS A L'ADJUDICATION DES
MARCHES - PARAGRAPHE 1 DE L'ARTICLE XVIII

AUTRICHE

Amtsblatt zur Wiener Zeitung

CANADA

Marchés publics (GBO)
Service des invitations ouvertes à soumissionner, ISM Publishing

COMMUNAUTES EUROPEENNES

Belgique	-	Journal officiel des Communautés européennes
	-	Le Bulletin des Adjudications
	-	Autres publications de la presse spécialisée
Danemark	-	Journal officiel des Communautés européennes
France	-	Journal officiel des Communautés européennes
	-	Bulletin officiel des annonces des marchés publics
Allemagne, République fédérale	-	Journal officiel des Communautés européennes
Grèce	-	Journal officiel des Communautés européennes
	-	Publication dans la presse quotidienne, financière, régionale et spécialisée
Irlande	-	Journal officiel des Communautés européennes
	-	Presse quotidienne: "Irish Independent", "Irish Times", "Irish Press", "Cork Examiner"
Italie	-	Journal officiel des Communautés européennes

1 April 1997

Luxembourg	-	Journal officiel des Communautés européennes
	-	Presse quotidienne
Pays-Bas	-	Journal officiel des Communautés européennes
Portugal	-	Journal officiel des Communautés européennes
Espagne	-	Journal officiel des Communautés européennes
Royaume-Uni	-	Journal officiel des Communautés européennes

FINLANDE

Julkiset hankinnat Suomessa ja ETA - alucella, Viralhisen lehden hite
 (Marchés publics en Finlande et dans l'EEE, Supplément
 au Journal officiel de la Finlande)
 Journal officiel des Communautés européennes (tant que la publication
 des avis est gratuite)

ISRAEL

The Jerusalem Post

JAPON

Annexe 1

Kanp_

Annexe 2

Kenp_, Shih_
 ou leurs équivalents

Annexe 3

Kanp_

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)
The Seoul Shinmun

LE ROYAUME DES PAYS-BAS POUR LE COMPTE D'ARUBA

"Landscourant", Journal officiel d'Aruba, ainsi que la presse locale

NORVEGE

Journal officiel des Communautés européennes

SUEDE

Europeiska Gemenskapernas Tidning (Journal officiel des
Communautés européennes)

SUISSE

Annexe 1

Feuille officielle suisse du commerce

Annexe 2

Organe de publications officielles de chaque canton suisse (26)

Annexe 3

Feuille officielle suisse du commerce
Organe de publications officielles de chaque canton suisse (26)

ETATS-UNIS

The Commerce Business Daily

Pour les entités énumérées à l'Annexe 2 et les entités des gouvernements
sous-centraux
pertinentes énumérées à l'Annexe 3, publications utilisées par les gouvernements
des Etats, comme le New York Contract Reporter

APÉNDICE II

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LOS ANUNCIOS DE LOS CONTRATOS PREVISTOS - PÁRRAFO 1 DEL ARTÍCULO IX - Y LOS ANUNCIOS DE LAS ADJUDICACIONES - PÁRRAFO 1 DEL ARTÍCULO XVIII.

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADÁ

Government Business Opportunities (GBO)
Servicio de Licitaciones Públicas, ISM Publishing

COMUNIDADES EUROPEAS

Bélgica-Diario Oficial de las Comunidades Europeas
-Le Bulletin des Adjudications
-Otras publicaciones de la prensa especializada
Dinamarca-Diario Oficial de las Comunidades Europeas
Alemania, Rep.
Fed. de-Diario Oficial de las Comunidades Europeas
España - Diario Oficial de las Comunidades Europeas
Francia-Diario Oficial de las Comunidades Europeas
-Bulletin officiel des annonces des marchés publics
Grecia-Diario Oficial de las Comunidades Europeas
-Publicación en la prensa diaria, financiera, regional y especializada
Irlanda-Diario Oficial de las Comunidades Europeas
-Prensa diaria: "Irish Independent", "Irish Times", "Irish Press", "Cork Examiner"
Italia - Diario Oficial de las Comunidades Europeas
Luxemburgo - Diario Oficial de las Comunidades Europeas

1 April 1997

	-	Prensa diaria
Países Bajos	-	Diario Oficial de las Comunidades Europeas
Portugal	-	Diario Oficial de las Comunidades Europeas
Reino Unido	-	Diario Oficial de las Comunidades Europeas

FINLANDIA

Julkiset hankinnat Suomessa ja ETA - alucella, Viralhisen lehden hite (Contratación pública en Finlandia y en el EEE, Suplemento de la Gaceta Oficial de Finlandia)
Diario Oficial de las Comunidades Europeas (en la medida en que la publicación sea gratuita)

ISRAEL

The Jerusalem Post

JAPÓN

Anexo 1

Kanp_

Anexo 2

Kanp_, Shih_, o sus equivalentes

Anexo 3

Kanp_

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)
The Seoul Shinmun

EL REINO DE LOS PAÍSES BAJOS RESPECTO DE ARUBA

El Boletín de Aruba "Landscourant" y periódicos locales

NORUEGA

Diario Oficial de las Comunidades Europeas

SUECIA

Europeiska Gemenskapernas Tidning (Diario Oficial de las Comunidades Europeas)

SUIZA

Anexo 1

Feuille officielle suisse du commerce

Anexo 2

Órganos oficiales de publicación de cada cantón suizo (26)

Anexo 3

Feuille officielle suisse du commerce

Órganos oficiales de publicación de cada cantón suizo (26)

ESTADOS UNIDOS

The Commerce Business Daily

Con respecto a las entidades indicadas en el Anexo 2 y a las entidades pertinentes a nivel subcentral enumeradas en el Anexo 3, las publicaciones utilizadas por los gobiernos de los Estados, tales como "New York Contract Reporter"

APPENDIX III

APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS - PÁRRAFO 9 DEL ARTÍCULO IX.

APPENDIX III

APPENDIX III

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION ANNUALLY OF INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF ARTICLE IX

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADA

Government Business Opportunities (GBO)
Open Bidding Service, ISM Publishing

EUROPEAN COMMUNITIES

Member States do not normally operate permanent lists of suppliers and service providers. In the few cases that such lists exist, this will be published in the Official Journal of the European Communities

FINLAND

Official Journal of the European Communities
(currently no list exists)

1 April 1997

APPENDIX III

ISRAEL

The Jerusalem Post

JAPAN

Annex 1

Kanp_

Annex 2

Kenp_

Shih_

or their equivalents

Annex 3

Kanp_

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

Non-applicable for Aruba: Aruba does not operate permanent lists
of suppliers and service providers

1 April 1997

APPENDIX III

NORWAY

Official Journal of the European Communities

SWEDEN

Europeiska Gemenskapernas Tidning (Official Journal
of the European Communities)

SWITZERLAND

Annex 1

Swiss Official Trade Gazette

Annex 2

Official publications of every Swiss Canton (26)

Annex 3

Swiss Official Trade Gazette
Official publications of every Swiss Canton (26)

UNITED STATES

The Commerce Business Daily
Entities in Annexes 2 and 3 of Appendix I, as an alternative to publication in the
Commerce
Business Daily, may provide such information directly to interested suppliers
through
inquiries to contact points listed in notices regarding invitations to participate

1 April 1997

APPENDICE III

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX

AUTRICHE

Amtsblatt zur Wiener Zeitung

CANADA

Marchés publics (GBO)
Service des invitations ouvertes à soumissionner, ISM Publishing

COMMUNAUTES EUROPEENNES

Les Etats membres ne tiennent pas normalement de listes permanentes de
fournisseurs
de produits et de services. Dans les rares cas où de telles listes existent, elles sont
publiées au Journal officiel des Communautés européennes

FINLANDE

Journal officiel des Communautés européennes
(Il n'existe pas de liste actuellement)

1 April 1997

ISRAEL

The Jerusalem Post

JAPON

Annexe 1

Kanp_

Annexe 2

Kenp_ Shih_
ou leurs équivalents

Annexe 3

Kanp_

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

LE ROYAUME DES PAYS-BAS POUR LE COMPTE D'ARUBA

Sans objet pour Aruba, qui n'a pas de listes permanentes de fournisseurs de services

NORVEGE

Journal officiel des Communautés européennes

SUEDE

Europeiska Gemenskapernas Tidning (Journal officiel des Communautés européennes)

SUISSE

Annexe 1

Feuille officielle suisse du commerce

Annexe 2

Organe de publications officielles de chaque canton suisse (26)

Annexe 3

Feuille officielle suisse du commerce
Organe de publications officielles de chaque canton suisse (26)

ETATS-UNIS

The Commerce Business Daily

1 April 1997

Au lieu de les faire paraître dans le Commerce Business Daily, les entités énumérées aux Annexes 2 et 3 de l'Appendice I peuvent communiquer directement ces renseignements aux fournisseurs intéressés, sur demande adressée aux services chargés des contacts désignés dans les avis utilisés pour les invitations à soumissionner

APÉNDICE III

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN ANUAL DE
INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE PROVEEDORES
CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS -
PÁRRAFO 9 DEL ARTÍCULO IX.

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADÁ

Government Business Opportunities (GBO)
Servicio de Licitaciones Públicas, ISM Publishing

COMUNIDADES EUROPEAS

Los Estados miembros normalmente no establecen listas permanentes de
proveedores
de bienes y servicios. En los pocos casos en que existe tal lista, se publicará
en el Diario Oficial de las Comunidades Europeas

FINLANDIA

Diario Oficial de las Comunidades Europeas
(actualmente no existe lista)

1 April 1997

ISRAEL

The Jerusalem Post

JAPÓN

Anexo 1

Kanp_

Anexo 2

Kenp_, Shih_, o sus equivalentes

Anexo 3

Kanp_

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

EL REINO DE LOS PAÍSES BAJOS RESPECTO DE ARUBA

No se aplica a Aruba: Aruba no mantiene listas permanentes de proveedores calificados

NORUEGA

Diario Oficial de las Comunidades Europeas

SUECIA

Europeiska Gemenskapernas Tidning (Diario Oficial de las Comunidades Europeas)

SUIZA

Anexo 1

Feuille officielle suisse du commerce

Anexo 2

Órganos oficiales de publicación de cada cantón suizo (26)

Anexo 3

Feuille officielle suisse du commerce
Órganos oficiales de publicación de cada cantón suizo (26)

ESTADOS UNIDOS

The Commerce Business Daily

1 April 1997

Las entidades incluidas en los Anexos 2 y 3 del Apéndice I, como alternativa a la publicación en el Commerce Business Daily, pueden facilitar esa información directamente a los proveedores interesados, quienes deberán dirigirse a los centros de información que se indican en los anuncios de invitaciones a participar

APPENDIX IV

APPENDIX IV

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF LAWS,
REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS OF
GENERAL APPLICATION AND ANY PROCEDURE REGARDING
GOVERNMENT PROCUREMENT COVERED BY THIS AGREEMENT -
PARAGRAPH 1 OF ARTICLE XIX

APPENDICE IV

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION,
DANS LES MOINDRES DELAIS, DES LOIS, REGLEMENTS, DECISIONS
JUDICIAIRES, DECISIONS ADMINISTRATIVES D'APPLICATION
GENERALE ET PROCEDURES, RELATIFS AUX MARCHES PUBLICS
VISES PAR LE PRESENT ACCORD - PARAGRAPHE 1
DE L'ARTICLE XIX

APÉNDICE IV

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LEYES,
REGLAMENTOS, DECISIONES JUDICIALES Y RESOLUCIONES
ADMINISTRATIVAS DE APLICACIÓN GENERAL, ASÍ COMO
DE LOS PROCEDIMIENTOS PARA LA ADJUDICACIÓN DE
LOS CONTRATOS PÚBLICOS COMPRENDIDOS EN
EL ÁMBITO DEL PRESENTE ACUERDO
- PÁRRAFO 1 DEL ARTÍCULO XIX.

1 April 1997

APPENDIX IV

APPENDIX IV

PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF LAWS,
REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS OF
GENERAL APPLICATION AND ANY PROCEDURE REGARDING
GOVERNMENT PROCUREMENT COVERED BY THIS AGREEMENT -
PARAGRAPH 1 OF ARTICLE XIX

AUSTRIA

Österreichisches Bundesgesetzblatt
Amtsblatt zur Wiener Zeitung
Sammlung von Entscheidungen des Verfassungsgerichtshofes
Sammlung der Entscheidungen des Verwaltungsgerichtshofes -
administrativrechtlicher und finanzrechtlicher Teil
Amtliche Sammlung der Entscheidungen des OGH in Zivilsachen

CANADA

Laws and Regulations

Statutes of Canada
Canada Gazette

Judicial Decisions

Dominion Law Reports
Supreme Court Reports
Federal Court Reports
National Reporter

Administrative Rulings and Procedures

1 April 1997

 APPENDIX IV

Government Business Opportunities
 Canada Gazette
 Open Bidding Service, ISM Publishing

EUROPEAN COMMUNITIES

- | | | |
|---------------------------------|---|--|
| Belgium | - | <i>Laws, royal regulations, ministerial regulations, ministerial circulars - le Moniteur Belge</i> |
| | - | <i>Jurisprudence - Pasicrisie</i> |
| Denmark | - | <i>Laws and regulations - Lovtidende</i> |
| | - | <i>Judicial decisions - Ugeskrift for Retsvaesen</i> |
| | - | <i>Administrative rulings and procedures - Ministerialtidende</i> |
| | - | <i>Rulings by the Appeal Board for Public Procurement - Konkurrence raaded Dokumentation</i> |
| Germany, Federal Republic of | - | <i>Legislation and regulations - Bundesanzeiger</i> |
| | - | <i>Herausgeber : der Bundesminister der Justiz</i> |
| | | Verlag : Bundesanzeiger |
| | | Bundesanzeiger |
| | | Postfach 108006 |
| | | 5000 Köln |
| | - | <i>Judicial Decisions :</i> |
| Entscheidungsammlungen des | | |
| Bundesverfassungsgerichts | - | |
| | - | Bundesgerichtshofs |
| | - | |
| Bundesverwaltungsgerichts | | |
| | - | Bundesfinanzhofs |
| sowie der
Oberlandesgerichte | | |
| Spain | - | <i>Legislation - Boletin Oficial des Estado</i> |
| | - | <i>Judicial rulings - no official publication</i> |
| France
République | - | <i>Legislation - Journal Officiel de la française</i> |
| | - | <i>Jurisprudence - Recueil des arrêts du Conseil d'Etat</i> |
| | - | <i>Revue des marchés publics</i> |

1 April 1997

APPENDIX IV

Greece επισημη κοινοτητων	-	Government Gazette of Greece - εφημεριδα ευρωπαϊκων
Ireland Oifigiuil (Official Government) Italy	-	<i>Legislation and regulations</i> - Iris Gazette of the Irish
Luxembourg	-	<i>Legislation</i> - Gazzetta Ufficiale
	-	<i>Jurisprudence</i> - no official publication
Netherlands and/or	-	<i>Legislation</i> - Memorial
	-	<i>Jurisprudence</i> - Pasicrisie
Portugal 1 ^a	-	<i>Legislation</i> - Nederlandse Staatscourant Staatsblad
	-	<i>Jurisprudence</i> - no official publication
Justiça	-	<i>Legislation</i> - Diário da República Portuguesa série A e 2 ^a série
Das	-	<i>Judicial Publications</i> : - Boletim do Ministério da - Colectânea de Acordos do Supremo Tribunal Administrativo - Colectânea de Jurisprudencia Relações
United Kingdom	-	<i>Legislation</i> - HM Stationery Office
	-	<i>Jurisprudence</i> - Law Reports
	-	"Public Bodies" - HM Stationery Office

FINLAND

Suomen Säädoskokoelma - Finlands Författningssamling
(The Collection of the Statutes of Finland)

ISRAEL

The Jerusalem Post

APPENDIX IV

JAPAN

Annex 1

Kanp_
and/or
H_reizensho

Annex 2

Kenp_
Shih_
or their equivalents,
or Kanp_
and/or
H_reizensho

Annex 3

Kanp_
and/or
H_reizensho

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

Aruban laws and legislations are published in the Aruban Gazette "Landscourant"

APPENDIX IV

NORWAY

Norsk Lovtidend (Norwegian Law Gazette)

SWEDEN

Svensk Författningssamling (Swedish Code of Statutes)

SWITZERLAND

Compendium of Federal laws
Decisions of the Swiss Federal Court
Jurisprudence of the administrative authorities of the Confederation and every Canton
(26)
Compendiums of Cantonal laws (26)

UNITED STATES

Laws, judicial decisions, administrative rulings and procedures regarding
government procurement
for entities listed in Annex 1 of Appendix I are published in the Federal Acquisition
Regulations (FAR) as part of the US Code of Federal Regulations (CFR), Title 48,
Chapter 1

Laws, judicial decisions, administrative rulings and procedures regarding
government procurement for entities listed in Annexes 2 and 3 of Appendix I are
available either through relevant state
and local publications or directly from the listed entities

APPENDICE IV

PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA PUBLICATION,
DANS LES MOINDRES DELAIS, DES LOIS, REGLEMENTS, DECISIONS
JUDICIAIRES, DECISIONS ADMINISTRATIVES D'APPLICATION
GENERALE ET PROCEDURES, RELATIFS AUX MARCHES PUBLICS
VISES PAR LE PRESENT ACCORD - PARAGRAPHE 1
DE L'ARTICLE XIX

AUTRICHE

Österreichisches Bundesgesetzblatt
Amtsblatt zur Wiener Zeitung
Sammlung von Entscheidungen des Verfassungsgerichtshofes
Sammlung der Entscheidungen des Verwaltungsgerichtshofes -
administrativrechtlicher und
finanzrechtlicher Teil
Amtliche Sammlung der Entscheidungen des OGH in Zivilsachen

CANADA

Lois et règlements

Lois du Canada
Gazette du Canada

Décisions judiciaires

Dominion Law Reports
Recueil des arrêts de la Cour suprême
Recueil des arrêts de la Cour fédérale
National Reporter

Décisions administratives et procédures

Marchés publics (GBO)

Gazette du Canada

Service des invitations ouvertes à soumissionner, ISM Publishing

COMMUNAUTÉS EUROPÉENNES

- Belgique - *Lois, arrêtés royaux, arrêtés ministériels, circulaires ministérielles* - Le Moniteur belge
- *Jurisprudence* - Pasirisie
- Danemark - *Lois et arrêtés* - Lovtidende
- *Décisions judiciaires* - Ugeskrift for Retsvaesen
- *Décisions et procédures administratives* - Ministerialtidende
- *Décisions de la Commission de recours en matière de marchés publics* - Konkurrence raaded Dokumentation
- France - *Législation* - Journal officiel de la République française
- *Jurisprudence* - Recueil des arrêts du Conseil d'Etat
- Revue des marchés publics
- Allemagne, République - *Législation et règlements* - Bundesanzeiger fédérale
- *Editeur: der Bundesminister der Justiz*
Verlag : Bundesanzeiger
Bundesanzeiger
Postfach 108006
5000 Cologne
- *Décisions judiciaires: Entscheidungssammlungen des*
- Bundesverfassungsgerichts
- Bundesgerichtshofs
- Bundesverwaltungsgerichts
- Bundesfinanzhofs sowie der Oberlandesgerichte
- Grèce - Journal officiel de la Grèce - επίσημη εφημερίδα ευρωπαϊκών κοινοτήτων
- Irlande - *Législation et règlements* - Iris Oifigiuil (Journal officiel du gouvernement irlandais)
- Italie - *Législation* - Gazzetta Ufficiale
- *Jurisprudence* - pas de publication officielle
- Luxembourg - *Législation* - Memorial

APPENDIX IV	<i>French</i>	Page 3/4
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	<i>Jurisprudence</i> - Pasicrisie
Pays-Bas	- <i>Législation</i> - Nederlandse Staatscourant et/ou Staatsblad <i>Jurisprudence</i> - pas de publication officielle
Portugal	- <i>Législation</i> - Diário da República Portuguesa 1 ^a série A e 2 ^a série - <i>Publications judiciaires</i> : -Boletim do Ministério da Justiça -Colectânea de Acordos do Supremo Tribunal Administrativo -Colectânea de Jurisprudencia Das Relaç_es
Espagne	- <i>Législation</i> - Boletín Oficial des Estado - <i>Décisions judiciaires</i> - pas de publication officielle
Royaume-Uni	- <i>Législation</i> - HM Stationery Office (Office des publications de Sa Majesté) - <i>Jurisprudence</i> - Law Reports - <i>Organismes publics</i> ("Public bodies") - HM Stationery Office (Office des publications de Sa Majesté)

FINLANDE

Suomen Sääädöskokoelma - Finlands Författningssamling
(Recueil des lois et règlements de la Finlande)

ISRAEL

The Jerusalem Post

JAPON

Annexe 1

Kanp_ et/ou H_reizensho

Annexe 2

Kenp_ Shih_ ou leurs équivalents, ou Kanp_

et/ou H_reizensho

Annexe 3

Kanp_ et/ou H_reizensho

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

LE ROYAUME DES PAYS-BAS POUR LE COMPTE D'ARUBA

Les lois et dispositions législatives sont publiées au Journal officiel d'Aruba, "Landscourant"

NORVEGE

Norsk Lovtidend (Bulletin des lois de la Norvège)

SUEDE

Svensk Författningssamling (Bulletin national des lois suédoises)

SUISSE

Recueil des lois fédérales

Arrêts du Tribunal fédéral suisse

Jurisprudence des autorités administratives de la Confédération et de chaque canton
(26)

Recueils des lois cantonales (26)

ETATS-UNIS

Les lois, décisions judiciaires, décisions administratives et procédures relatives aux
marchés

publics passés par les entités énumérées à l'Annexe 1 de l'Appendice I sont publiées
dans

les règlements relatifs aux achats fédéraux (Federal Acquisition Regulations (FAR)),
qui figurent au Titre 48, Chapitre premier, du Code des règlements fédéraux
(United States Code of Federal Regulations (CFR))

Les lois, décisions judiciaires, décisions administratives et procédures relatives aux
marchés

publics passés par les entités mentionnées aux Annexes 2 et 3 de l'Appendice I sont
accessibles soit dans les publications y relatives des Etats et des collectivités
locales soit directement auprès desdites entités

APÉNDICE IV

MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE LEYES,
REGLAMENTOS, DECISIONES JUDICIALES Y RESOLUCIONES
ADMINISTRATIVAS DE APLICACIÓN GENERAL, ASÍ COMO
DE LOS PROCEDIMIENTOS PARA LA ADJUDICACIÓN DE
LOS CONTRATOS PÚBLICOS COMPRENDIDOS EN
EL ÁMBITO DEL PRESENTE ACUERDO
- PÁRRAFO 1 DEL ARTÍCULO XIX.

AUSTRIA

Österreichisches Bundesgesetzblatt
Amtsblatt zur Wiener Zeitung
Sammlung von Entscheidungen des Verfassungsgerichtshofes
Sammlung der Entscheidungen des Verwaltungsgerichtshofes -
administrativrechtlicher und
finanzrechtlicher Teil
Amtliche Sammlung der Entscheidungen des OGH in Zivilsachen

CANADÁ

Leyes y reglamentos

Statutes of Canada
Canada Gazette

Decisiones judiciales

Dominion Law Reports
Supreme Court Reports
Federal Court Reports
National Reporter

Resoluciones y procedimientos administrativos

Government Business Opportunities
 Canada Gazette
 Servicio de Contratación Pública, ISM Publishing

COMUNIDADES EUROPEAS

Bélgica-Leyes, disposiciones reales, disposiciones ministeriales, circulares administrativas - le
 Moniteur Belge

-*Jurisprudencia* - Pasicrisie

Dinamarca-Leyes y reglamentos - Lovtidende

-*Decisiones judiciales* - Ugeskrift for Retsvaesen

-*Resoluciones y procedimientos administrativos* - Ministerialtidende

-*Decisiones de la Junta de Apelación de la Contratación Pública* - Konkurrence raaded
 Dokumentation

Alemania, República - Leyes y reglamentos - Bundesanzeiger

Federal de - Herausgeber : der Bundesminister der Justiz

Verlag : Bundesanzeiger

Bundesanzeiger

Postfach 108006

5000 Köln

- *Decisiones Judiciales* : Entscheidungsammlungen des
 - Bundesverfassungsgerichts
 - Bundesgerichtshofs
 - Bundesverwaltungsgerichts
 - Bundesfinanzhofs sowie der
Oberlandesgerichte

España - Legislación - Boletín Oficial del Estado

- *Decisiones judiciales* - no existe publicación oficial

Francia-Legislación - Journal Officiel de la République française

-*Jurisprudencia* - Recueil des arrêts du Conseil d'Etat

- Revue des marchés publics

Grecia - Diario Oficial de Grecia - επισημη εφημεριδα
 ΕΥΡΩΠΑΙΚΩΝ

ΚΟΙΝΟΤΗΤΩΝ

Irlanda-Leyes y reglamentos - Iris Oifigiuil (Diario Oficial del Gobierno de Irlanda)

Italia - Legislación - Gazzetta Ufficiale

- *Jurisprudencia* - no existe publicación oficial

Luxemburgo - Legislación - Memorial

- Países Bajos - *Jurisprudencia* - Pasicrisie
- *Legislación* - Nederlandse Staatscourant y/o Staatsblad
- *Jurisprudencia* - no existe publicación oficial
- Portugal - *Legislación* - Diário da República Portuguesa, 1ª serie A y 2ª
- serie - *Publicaciones Judiciales:*
 - Boletim do Ministério da Justiça
 - Colectânea de Acordos do Supremo
- Tribunal - Administrativo
 - Colectânea de Jurisprudencia Das Relações
- Reino Unido - *Legislación* - HM Stationery Office
 - *Jurisprudencia* - Law Reports
 - "Organismos Públicos" - HM Stationery Office

FINLANDIA

Suomen Säädoskokoelma - Författningssamling de Finlandia
(Colección de leyes de Finlandia)

ISRAEL

The Jerusalem Post

JAPÓN

Anexo 1

Kanp_ y/o H_reizensho

Anexo 2

Kenp_, Shih_ o sus equivalentes, o Kanp_
y/o H_reizensho

Anexo 3

Kanp_ y/o H_reizensho

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

EL REINO DE LOS PAÍSES BAJOS RESPECTO DE ARUBA

La legislación de Aruba se publica en el Boletín de Aruba "Landscourant"

1 April 1997

NORUEGA

Norsk Lovtidend (Gaceta Oficial de Noruega)

SUECIA

Svensk Författningssamling (Colección Legislativa de Suecia)

SUIZA

Recueil des lois fédérales
Arrêts du Tribunal fédéral suisse
Jurisprudencia de las autoridades administrativas de la Confederación y de cada
cantón (26)
Colecciones legislativas cantonales (26)

ESTADOS UNIDOS

Las leyes, decisiones judiciales, resoluciones administrativas y procedimientos referentes a los contratos públicos de entidades incluidas en el Anexo 1 del Apéndice I se publican

en el Federal Acquisition Regulations (FAR), como parte del Code of Federal Regulations (CFR) de los Estados Unidos, título 48, capítulo 1

Las leyes, decisiones judiciales, resoluciones administrativas y procedimientos referentes

a los contratos públicos de entidades incluidas en los Anexos 2 y 3 del Apéndice I se pueden obtener o bien consultando las publicaciones estatales y locales pertinentes o bien solicitando la información directamente a las entidades incluidas en dichos Anexos

RESTRICTED

GPA/W/36
31 January 1997

WORLD TRADE
ORGANIZATION

(97-0257)

Committee on Government Procurement

INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

Requests for Observer Status in the Committee on Government Procurement

The following international intergovernmental organizations have requested observer status in the Committee on Government Procurement:

European Free Trade Association (EFTA)¹
Inter-American Development Bank (IADB)
International Monetary Fund (IMF)
Organisation for Economic Co-operation and Development (OECD)

For information, Parties may wish to be aware that the following international intergovernmental organizations were granted observer status in the Tokyo Round Committee on Government Procurement:

International Monetary Fund (IMF)
United Nations Conference on Trade and Development (UNCTAD)

¹GPA/W/29

**WORLD TRADE
ORGANIZATION**

RESTRICTED

GPA/W/12/Add.7

30 January 1997

(97-0328)

Original: English

Committee on Government ProcurementTHE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSEDIN NATIONAL CURRENCIES FOR 1996/1997Republic of Korea

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The information notified in response by the Republic of Korea is reproduced below.

1) Calculation of Threshold Figures in National Currency

Annex 1 Entities	Threshold value (SDR)	Threshold value in national currency (won)
1. Supplies and services	130,000	151,000,000
2. Construction services	5,000,000	5,830,000,000

Annex 2 Entities	Threshold value (SDR)	Threshold value in national currency (won)
-------------------------	------------------------------	---

<i>1. Supplies and services</i>	<i>200,000</i>	<i>233,000,000</i>
<i>2. Construction services</i>	<i>15,000,000</i>	<i>17,490,000,000</i>

<i>Annex 3 Entities</i>	<i>Threshold value (SDR)</i>	<i>Threshold value in national currency (won)</i>
<i>1. Supplies and services</i>	<i>450,000</i>	<i>524,000,000</i>
<i>2. Construction services</i>	<i>15,000,000</i>	<i>17,490,000,000</i>

2) Method of Calculation

It is the average of monthly rate of the national currency in terms of the SDR over the two-year period from November 1994 to October 1996. The conversion rates published by the IMF in its monthly •International Fiscal Statistics• was used for this calculation. The example of this calculation is attached.

3) Example of Calculation

<i>Period</i>	<i>Exchange rate (Unit: won/SDR)</i>	<i>Period</i>	<i>Exchange rate (Unit: won/SDR)</i>
<i>November 1994</i>	<i>1,157.1</i>	<i>November 1995</i>	<i>1,143.1</i>
<i>December 1994</i>	<i>1,151.4</i>	<i>December 1995</i>	<i>1,151.6</i>
<i>January 1995</i>	<i>1,161.7</i>	<i>January 1996</i>	<i>1,138.6</i>
<i>February 1995</i>	<i>1,174.6</i>	<i>February 1996</i>	<i>1,146.6</i>
<i>March 1995</i>	<i>1,203.9</i>	<i>March 1996</i>	<i>1,143.7</i>
<i>April 1995</i>	<i>1,198.3</i>	<i>April 1996</i>	<i>1,129.2</i>
<i>May 1995</i>	<i>1,197.8</i>	<i>May 1996</i>	<i>1,136.3</i>
<i>June 1995</i>	<i>1,189.3</i>	<i>June 1996</i>	<i>1,170.0</i>
<i>July 1995</i>	<i>1,179.8</i>	<i>July 1996</i>	<i>1,191.9</i>
<i>August 1995</i>	<i>1,150.9</i>	<i>August 1996</i>	<i>1,194.4</i>
<i>September 1995</i>	<i>1,157.5</i>	<i>September 1996</i>	<i>1,182.0</i>
<i>October 1995</i>	<i>1,144.1</i>	<i>October 1996</i>	<i>1,200.4</i>

-The exchange rates are quoted from the IFS. It is the rate at the end of each month.

-Example of calculation:

-The average exchange rate of won in terms of SDR

27,994.2 won/24 months • 1,166.425 won

*130,000 (SDR) * 1,166.425 won • 151,635,250 won*

-The final conversion rate: 151,000,000 won

*(*The figures under million won are deleted for simplicity of implementation.)*

RESTRICTED

GPA/W/37
27 January 1997

WORLD TRADE
ORGANIZATION

(97-0278)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Hong Kong

The following communication, dated 23 January 1997, has been received from the Permanent Representative of Hong Kong with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

With reference to the Decision of the Committee on Government Procurement on 27 February 1996, I have the honour to inform the Secretariat that Hong Kong is interested in participating as an observer in the Committee on Government Procurement.

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Doc#	Access	Symbol	Title - HTML format	Date	Original format		
96-5329 	D	GPA/W/32 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of the European Community and the United States - Communication from the European Community and the United States Preview (HTML)	17/12/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
96-5106 	D	GPA/W/31 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Japan - Communication from Japan Preview (HTML)	05/12/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
96-5087 	D	GPA/W/28/Corr.1 Catalogue record	Committee on Government Procurement - Application for Hong Kong's Accession to the Agreement on Government Procurement - Corrigendum Preview (HTML)	02/12/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	--
96-4833 	D	GPA/W/24/Add.3 Catalogue record	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by Korea Preview (HTML)	15/11/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
96-4862	D	GPA/W/30 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from Argentina	15/11/1996	E	F	S

				Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 22KB	1 p. 22KB	1 p. 22KB
96-4772	D	GPA/W/29 Catalogue record		Committee on Government Procurement - Request for Observer Status - Communication from the European Free Trade Association Preview (HTML)	11/11/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 24KB	1 p. 26KB	1 p. 26KB
96-4691	D	GPA/W/28 Catalogue record		Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement - Hong Kong Preview (HTML)	06/11/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16 p. 90KB	16 p. 59KB	16 p. 70KB
96-4567	D	GPA/W/24/Add.2 Catalogue record		Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by Canada Preview (HTML)	30/10/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5 p. 73KB	6 p. 38KB	6 p. 42KB
96-4046	D	GPA/W/27 Catalogue record		Committee on Government Procurement - Modifications to Appendix I of Japan - Communication from Japan Preview (HTML)	04/10/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 21KB	1 p. 25KB	2 p. 25KB
96-3854	D	GPA/W/12/Add.6 Catalogue record		Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 Preview (HTML)	26/09/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 40KB	2 p. 30KB	2 p. 30KB
96-3855	D	GPA/W/24/Add.1 Catalogue record		Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by Norway Preview (HTML)	26/09/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4 p. 68KB	4 p. 37KB	4 p. 35KB
96-3805	D	GPA/W/12/Add.4 Catalogue record		Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 Preview (HTML)	25/09/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 31KB	2 p. 27KB	2 p. 29KB
96-3806	D	GPA/W/12/Add.5 Catalogue record		Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 Preview (HTML)	25/09/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 25KB	1 p. 25KB	1 p. 25KB
96-3486	D	GPA/W/26 Catalogue record		Committee on Government Procurement - Accession of the Kingdom of the Netherlands with Respect to Aruba - Communication from the Kingdom of the Netherlands with Respect to Aruba Preview (HTML)	10/09/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 28KB	1 p. 23KB	1 p. 23KB
96-3288	D	GPA/W/24 Catalogue record		Committee on Government Procurement - Information Technology: Revised Questionnaire - Note from the Secretariat	22/08/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3 p.	4 p.	3 p.

96-3289	D	GPA/W/25 Catalogue record	Preview (HTML) Committee on Government Procurement - Provisions of the Agreement which might need to Re-examined in the Light of Information Technology - Note by the Secretariat Preview (HTML)	22/08/1996	67KB E <input checked="" type="checkbox"/>	32KB E <input type="checkbox"/>	31KB S <input type="checkbox"/>
96-3205	D	GPA/W/15/Corr.1 Catalogue record	Committee on Government Procurement - Information Technology: Compilation of issues - Note by the Secretariat - Corrigendum Preview (HTML)	14/08/1996	24 p. 142KB E <input checked="" type="checkbox"/>	24 p. 167KB E <input type="checkbox"/>	24 p. 147KB S <input type="checkbox"/>
96-2898	D	GPA/W/21/Add.1 Catalogue record	Committee on Government Procurement - Accession of Singapore - Note by the Secretariat - Addendum Preview (HTML)	23/07/1996	1 p. 60KB E <input checked="" type="checkbox"/>	1 p. 20KB E <input type="checkbox"/>	1 p. 23KB S <input type="checkbox"/>
96-2871	D	GPA/W/22 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of Norway - Communication from Norway Preview (HTML)	17/07/1996	2 p. 20KB E <input checked="" type="checkbox"/>	2 p. 24KB E <input type="checkbox"/>	2 p. 21KB S <input type="checkbox"/>
96-2879	D	GPA/W/23 Catalogue record	Committee on Government Procurement - Modifications to Appendix I of the United States - Communication from the United States Preview (HTML)	17/07/1996	2 p. 18KB E <input checked="" type="checkbox"/>	2 p. 24KB E <input type="checkbox"/>	2 p. 21KB S <input type="checkbox"/>
96-2362	D	GPA/W/12/Add.3 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 Preview (HTML)	21/06/1996	1 p. 25KB E <input checked="" type="checkbox"/>	1 p. 25KB E <input type="checkbox"/>	1 p. 24KB S <input type="checkbox"/>
96-2355	D	GPA/W/21 Catalogue record	Committee on Government Procurement - Accession of Singapore - Note by the Secretariat Preview (HTML)	20/06/1996	10 p. 41KB E <input checked="" type="checkbox"/>	10 p. 90KB E <input type="checkbox"/>	10 p. 52KB S <input type="checkbox"/>
96-2294	D	GPA/W/20 Catalogue record	Committee on Government Procurement - Request for Information Pursuant to Article XIX of the Agreement on Government Procurement - Communication from the United States Preview (HTML)	18/06/1996	2 p. 20KB E <input checked="" type="checkbox"/>	2 p. 23KB E <input type="checkbox"/>	2 p. 22KB S <input type="checkbox"/>
96-2271	D	GPA/W/19 Catalogue record	Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement of Singapore - Replies to the Questions on the Go[...]procurement Régime of Singapore Preview (HTML)	14/06/1996	4 p. 32KB E <input checked="" type="checkbox"/>	5 p. 45KB E <input type="checkbox"/>	5 p. 37KB S <input type="checkbox"/>
96-2093	D	GPA/W/12/Add.2 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996 / 1997 Preview (HTML)	04/06/1996	2 p. 28KB E <input checked="" type="checkbox"/>	2 p. 33KB E <input type="checkbox"/>	2 p. 35KB S <input type="checkbox"/>
96-2092	D	GPA/W/18	Committee on Government Procurement - Request for	04/06/1996	E	E	S

		Catalogue record	Observer Status - Communication from the Permanent Mission of Australia Preview (HTML)		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 17KB	1 p. 21KB	1 p. 22KB
96-2038 	D	GPA/W/12/Add.1 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 Preview (HTML)	30/05/1996	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 p. 42KB	2 p. 29KB	2 p. 30KB
96-1909 	D	GPA/W/17 Catalogue record	Committee on Government Procurement - Uniform Classification Systems - Note by the Chairman Preview (HTML)	15/05/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9 p. 122KB	9 p. 62KB	12 p. 140KB
96-1831 	D	GPA/W/15 Catalogue record	Committee on Government Procurement - Information Technology: Compilation of issues - Note by the Secretariat Preview (HTML)	10/05/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10 p. 98KB	12 p. 73KB	12 p. 71KB
96-1845 	D	GPA/W/16 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from the Permanent Mission of the Republic of Latvia Preview (HTML)	10/05/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 19KB	1 p. 22KB	1 p. 22KB
96-1797 	D	GPA/W/14 Catalogue record	Committee on Government Procurement - Information Technology - Communication from Norway Preview (HTML)	08/05/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 22KB	2 p. 28KB	2 p. 27KB
96-1811 	D	GPA/W/13 Catalogue record	Committee on Government Procurement - Information Technology: Consequences for the GPA of the Development of Information Technology in the Field of Public P[ro]vision from the European Community Preview (HTML)	07/05/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2 p. 30KB	3 p. 32KB	2 p. 29KB
96-1388 	D	GPA/W/12 Catalogue record	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997 Preview (HTML)	17/04/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 24KB	1 p. 25KB	1 p. 24KB
96-0938 	D	GPA/W/11 Catalogue record	Committee on Government Procurement - Request for Observer Status - Communication from the Permanent Mission of Turkey Preview (HTML)	15/03/1996	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1 p. 19KB	1 p. 22KB	1 p. 19KB

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96-0781 	D	GPA/W/10 Catalogue record	Committee on Government Procurement - Application for Accession by Singapore - Description of the Government Procurement Regime in Singapore Preview (HTML)	05/03/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
96-0719 	D	GPA/W/9 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from the Kingdom of the Netherlands with Respect to Aruba Preview (HTML)	27/02/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
96-0697 	D	GPA/W/8 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from Iceland Preview (HTML)	26/02/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
96-0629 	D	GPA/W/5 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from Colombia Preview (HTML)	21/02/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>
96-0630	D	GPA/W/7 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from	20/02/1996	E <input checked="" type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>

	96-0599	D	GPA/W/6 Catalogue record	Liechtenstein Preview (HTML)	19/02/1996	1 p. 27KB	1 p. 22KB	1 p. 29KB	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>
	96-0554	D	GPA/W/3 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - POSSIBLE LOOSE-LEAF SYSTEM FOR PERIODICALLY UPDATING THE APPENDICES - Note by the Secretariat Preview (HTML)	14/02/1996	1 p. 27KB	1 p. 23KB	1 p. 29KB	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>
	96-0551	D	GPA/W/4 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu Preview (HTML)	14/02/1996	3 p. 38KB	3 p. 36KB	3 p. 36KB	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>
	96-0324	D	GPA/W/1 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - MODIFICATIONS TO APPENDIX I OF JAPAN - Communication from Japan Preview (HTML)	26/01/1996	1 p. 28KB	1 p. 22KB	1 p. 28KB	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>
	96-0325	D	GPA/W/2 Catalogue record	COMMITTEE ON GOVERNMENT PROCUREMENT - MODIFICATIONS TO APPENDIX I OF THE UNITED STATES - Communication from the United States Preview (HTML)	26/01/1996	2 p. 20KB	2 p. 24KB	2 p. 24KB	E <input checked="" type="checkbox"/>	E <input type="checkbox"/>	S <input type="checkbox"/>

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1 186 KB	96-5329	GPA/W/32	Committee on Government Procurement - Modifications to Appendix I of the European Community and the United States - Communication from the European Community and the United States	17/12/1996	92	D	T/PLURI/GPA/W32.WPF
2 3 KB	96-5106	GPA/W/31	Committee on Government Procurement - Modifications to Appendix I of Japan - Communication from Japan	05/12/1996	1	D	T/PLURI/GPA/W31.WPF
3 2 KB	96-5087	GPA/W/28/Corr.1	Committee on Government Procurement - Application for Hong Kong's Accession to the Agreement on Government Procurement - Corrigendum	02/12/1996	1	D	T/PLURI/GPA/W28C1.WPF
4 9 KB	96-4833	GPA/W/24/Add.3	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by Korea	15/11/1996	4	D	T/PLURI/GPA/W24A3.WPF
5 2 KB	96-4862	GPA/W/30	Committee on Government Procurement - Request for Observer Status - Communication from Argentina	15/11/1996	1	D	T/PLURI/GPA/W30.WPF
6 4 KB	96-4772	GPA/W/29	Committee on Government Procurement - Request for Observer Status - Communication from the European Free Trade Association	11/11/1996	1	D	T/PLURI/GPA/W29.WPF
7 22 KB	96-4691	GPA/W/28	Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement - Hong Kong	06/11/1996	16	D	T/PLURI/GPA/W28.WPF
8 13 KB	96-4567	GPA/W/24/Add.2	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by Canada	30/10/1996	5	D	T/PLURI/GPA/W24A2.WPF
9 5 KB	96-4046	GPA/W/27	Committee on Government Procurement - Modifications to Appendix I of Japan - Communication from Japan	04/10/1996	2	D	T/PLURI/GPA/W27.WPF
10 6 KB	96-3854	GPA/W/12/Add.6	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997	26/09/1996	2	D	T/PLURI/GPA/W12A6.WPF
11 10 KB	96-3855	GPA/W/24/Add.1	Committee on Government Procurement - Questionnaire on Information Technology in Government Procurement - Response by Norway	26/09/1996	4	D	T/PLURI/GPA/W24A1.WPF
12 4 KB	96-3805	GPA/W/12/Add.4	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997	25/09/1996	2	D	T/PLURI/GPA/W12A4.WPF
13	96-3806	GPA/W/12/Add.5	Committee on Government Procurement -	25/09/1996	2	D	T/PLURI/GPA/W12A5.WPF

3 KB			The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997				
14 4 KB	96-3486	GPA/W/26	Committee on Government Procurement - Accession of the Kingdom of the Netherlands with Respect to Aruba - Communication from the Kingdom of the Netherlands with Respect to Aruba	10/09/1996	1	D	T/PLURI/GPA/W26.WPF
15 8 KB	96-3288	GPA/W/24	Committee on Government Procurement - Information Technology: Revised Questionnaire - Note from the Secretariat	22/08/1996	3	D	T/PLURI/GPA/W24.WPF
16 38 KB	96-3289	GPA/W/25	Committee on Government Procurement - Provisions of the Agreement which might need to Re-examined in the Light of Information Technology - Note by the Secretariat	22/08/1996	24	D	T/PLURI/GPA/W25.WPF
17 3 KB	96-3205	GPA/W/15/Corr.1	Committee on Government Procurement - Information Technology: Compilation of issues - Note by the Secretariat - Corrigendum	14/08/1996	1	D	T/PLURI/GPA/W15C1.WPF
18 3 KB	96-2898	GPA/W/21/Add.1	Committee on Government Procurement - Accession of Singapore - Note by the Secretariat - Addendum	23/07/1996	1	D	T/PLURI/GPA/W21A1.WPF
19 4 KB	96-2871	GPA/W/22	Committee on Government Procurement - Modifications to Appendix I of Norway - Communication from Norway	17/07/1996	2	D	T/PLURI/GPA/W22.WPF
20 4 KB	96-2879	GPA/W/23	Committee on Government Procurement - Modifications to Appendix I of the United States - Communication from the United States	17/07/1996	2	D	T/PLURI/GPA/W23.WPF
21 3 KB	96-2362	GPA/W/12/Add.3	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997	21/06/1996	1	D	T/PLURI/GPA/W12A3.WPF
22 16 KB	96-2355	GPA/W/21	Committee on Government Procurement - Accession of Singapore - Note by the Secretariat	20/06/1996	10	D	T/PLURI/GPA/W21.WPF
23 5 KB	96-2294	GPA/W/20	Committee on Government Procurement - Request for Information Pursuant to Article XIX of the Agreement on Government Procurement - Communication from the United States	18/06/1996	2	D	T/PLURI/GPA/W20.WPF
24 12 KB	96-2271	GPA/W/19	Committee on Government Procurement - Application for Accession to the Agreement on Government Procurement of Singapore - Replies to the Questions on the Government Procurement Régime of Singapore	14/06/1996	4	D	T/PLURI/GPA/W19.WPF
25 5 KB	96-2093	GPA/W/12/Add.2	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996 / 1997	04/06/1996	2	D	T/PLURI/GPA/W12A2.WPF

26 2 KB	96-2092	GPA/W/18	Committee on Government Procurement - Request for Observer Status - Communication from the Permanent Mission of Australia	04/06/1996	1	D	T/PLURI/GPA/W18.WPF
27 4 KB	96-2038	GPA/W/12/Add.1	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997	30/05/1996	2	D	T/PLURI/GPA/W12A1.WPF
28 24 KB	96-1909	GPA/W/17	Committee on Government Procurement - Uniform Classification Systems - Note by the Chairman	15/05/1996	9	D	T/PLURI/GPA/W17.WPF
29 35 KB	96-1831	GPA/W/15	Committee on Government Procurement - Information Technology: Compilation of issues - Note by the Secretariat	10/05/1996	10	D	T/PLURI/GPA/W15.WPF
30 2 KB	96-1845	GPA/W/16	Committee on Government Procurement - Request for Observer Status - Communication from the Permanent Mission of the Republic of Latvia	10/05/1996	1	D	T/PLURI/GPA/W16.WPF
31 5 KB	96-1797	GPA/W/14	Committee on Government Procurement - Information Technology - Communication from Norway	08/05/1996	2	D	T/PLURI/GPA/W14.WPF
32 10 KB	96-1811	GPA/W/13	Committee on Government Procurement - Information Technology: Consequences for the GPA of the Development of Information Technology in the Field of Public Procurement - Communication from the European Community	07/05/1996	2	D	T/PLURI/GPA/W13.WPF
33 3 KB	96-1388	GPA/W/12	Committee on Government Procurement - The Thresholds in Appendix I of the Agreement as Expressed in National Currencies for 1996/1997	17/04/1996	1	D	T/PLURI/GPA/W12.WPF
34 2 KB	96-0938	GPA/W/11	Committee on Government Procurement - Request for Observer Status - Communication from the Permanent Mission of Turkey	15/03/1996	1	D	T/PLURI/GPA/W11.WPF
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Search results							
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1 12 KB	96-0781	GPA/W/10	Committee on Government Procurement - Application for Accession by Singapore - Description of the Government Procurement Regime in Singapore	05/03/1996	5	D	T/PLURI/GPA/W10.WPF
2 3 KB	96-0719	GPA/W/9	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from the Kingdom of the Netherlands with Respect to Aruba	27/02/1996	1	D	T/PLURI/GPA/W9.WPF
3 2 KB	96-0697	GPA/W/8	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from Iceland	26/02/1996	1	D	T/PLURI/GPA/W8.WPF
4 2 KB	96-0629	GPA/W/5	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from Colombia	21/02/1996	1	D	T/PLURI/GPA/W5.WPF
5 2 KB	96-0630	GPA/W/7	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from Liechtenstein	20/02/1996	1	D	T/PLURI/GPA/W7.WPF
6 3 KB	96-0599	GPA/W/6	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from Singapore	19/02/1996	1	D	T/PLURI/GPA/W6.WPF
7 10 KB	96-0554	GPA/W/3	COMMITTEE ON GOVERNMENT PROCUREMENT - POSSIBLE LOOSE-LEAF SYSTEM FOR PERIODICALLY UPDATING THE APPENDICES - Note by the Secretariat	14/02/1996	3	D	T/PLURI/GPA/W3.WPF
8 3 KB	96-0551	GPA/W/4	COMMITTEE ON GOVERNMENT PROCUREMENT - REQUEST FOR OBSERVER STATUS - Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	14/02/1996	1	D	T/PLURI/GPA/W4.WPF
9 4 KB	96-0324	GPA/W/1	COMMITTEE ON GOVERNMENT PROCUREMENT - MODIFICATIONS TO APPENDIX I OF JAPAN - Communication from Japan	26/01/1996	2	D	T/PLURI/GPA/W1.WPF
10 4 KB	96-0325	GPA/W/2	COMMITTEE ON GOVERNMENT PROCUREMENT - MODIFICATIONS TO APPENDIX I OF THE UNITED STATES - Communication from the United States	26/01/1996	2	D	T/PLURI/GPA/W2.WPF
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GPA/W/32
17 December 1996

WORLD TRADE
ORGANIZATION

(96-5329)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF THE EUROPEAN COMMUNITY
AND THE UNITED STATES*

Communication from the European Community and the United States

The attached communication, dated 30 September 1996, has been received on 12 December 1996 from the Permanent Delegation of the Commission of the European Communities and Permanent Mission of the United States to the World Trade Organization. The modifications communicated below will become effective 30 days from the date of issue of this document provided there is no objection.

We are writing to you concerning the modifications to Appendices I through IV and General Notes to the Government Procurement Agreement, which follow on from the agreement reached between the European Communities and the United States following the enlargement of the European Communities on 1 January 1995 to include Austria, Finland and Sweden. Article XXIV of the Agreement contains the provisions on modifications to the Appendices and, in conformity with those provisions, I have the honour to send to you this communication.

This communication from the delegations of the European Communities and the United States contains (i) the General Notes contained in Appendix I of the European Communities plus the relevant Annexes, and (ii) the General Notes contained in Appendix I of the United States, as amended.

This communication is to be considered a formal notification under subparagraph (a) of paragraph 6 of Article XXIV of the Agreement.

* English only

The communication is the •second communication• referred to in our earlier letter of 22 December 1995 notifying the results of the EU-US bilateral agreement and subsequently circulated in the WTO under reference GPA/IC/10.

*AMENDMENT TO GENERAL NOTES OF APPENDIX I
OF THE UNITED STATES OF AMERICA*

Delete from Note 5: •Austria•, •Finland• and •Sweden•.

EC (cont•d)

EUROPEAN COMMUNITIES

ANNEX 1

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Services specified in Annex 4

Thresholds: SDR 130,000

Works specified in Annex 5

Threshold: SDR 5,000,000

List of Entities:

1. *European Communities entities:*
 - *The Council of the European Union;*
 - *The European Commission.*
2. *The following contracting authorities of the State:*

AUSTRIA

(Authentic in the English language only)

(A) Present coverage of entities:

1. *Federal Chancellery - Procurement Office*
2. *Federal Ministry for Foreign Affairs*
3. *Federal Ministry of Health, Sports and Consumer Protection*
4. *Federal Ministry of Finance*
 - (a) Procurement Office*
 - (b) Division VI/5 (EDP procurement of the Federal Ministry of Finance and of the Federal Office of Accounts)*

EC (cont•d)

(c) Division III/1 (procurement of technical appliances, equipments and goods for the customs guard)

5. *Federal Ministry for Youth and Family, Procurement Office*
6. *Federal Ministry for Economic Affairs*
7. *Federal Ministry of the Interior*
 - (a) *Division I/5 (Procurement Office)*
 - (b) *EDP-Centre (procurement of electronical data processing machines (hardware))*
 - (c) *Division II/3 (procurement of technical appliances and equipments for the Federal Police)*
 - (d) *Division I/6 [procurement of goods (other than those procured by Division II/3) for the Federal Police]*
 - (e) *Division IV/8 (procurement of aircraft)*
8. *Federal Ministry for Justice, Procurement Office*
9. *Federal Ministry of Defence (non-warlike materials) - contained in Annex I, Part II, Austria, of the Agreement on Government Procurement*
10. *Federal Ministry of Agriculture and Forestry*
11. *Federal Ministry of Labour and Social Affairs, Procurement Office*
12. *Federal Ministry of Education and Cultural Affairs*
13. *Federal Ministry for Public Economy and Transport*
14. *Federal Ministry of Science and Research and Fine Arts*
15. *Austrian Central Statistical Office*
16. *Austrian State Printing Office*
17. *Federal Office of Metrology and Surveying*
18. *Federal Institute for Testing and Research, Arsenal (BVFA)*
19. *Federal Workshops for Artificial Limbs*
20. *AUSTRO CONTROL Ges.m.b.H - Austrian Office for Civil Aviation*
21. *Federal Institute for Testing of Motor Vehicles*
22. *Headquarters of the Postal and Telegraph Administration (postal business only)*

EC (cont•d)

23. *Federal Ministry for Environment, Procurement Office*

(B) *All other central public authorities including their regional and local sub-divisions provided that they do not have an industrial or commercial character.*

BELGIQUE

(La version française fait foi)

A. - *L•Etat Fédéral:*

- *Services du Premier Ministre*
- *Ministère des Affaires économiques*
- *Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement*
- *Ministère de l•Agriculture*
- *Ministère des Classes moyennes*
- *Ministère des Communications et de l•Infrastructure*
- *Ministère de la Défense nationale¹*
- *Ministère de l•Emploi et du Travail*
- *Ministère des Finances*
- *Ministère de l•Intérieur et de la Fonction publique*
- *Ministère de la Justice*
- *Ministère de la Santé publique et de l•Environnement*
- *la Poste²;*
- *la Régie des Bâtiments;*
- *le Fonds des Routes;*

- B. - *L•Office national de Sécurité Sociale;*
- *L•Institut national d•Assurances sociales pour Travailleurs indépendants;*
- *L•Institut national d•Assurance Maladie-Invalidité;*
- *L•Office national des Pensions;*
- *La Caisse auxiliaire d•Assurance Maladie-Invalidité;*
- *Le Fonds des Maladies professionnelles;*
- *L•Office national de l•Emploi.*

¹*Matériel non militaire figurant dans la partie I (3) de la présente annexe*

²*Activités postales visées par la loi du 24 décembre 1993*

EC (cont•d)

DENMARK

(Authentic in the English language only)

- | | | | |
|-----|--|---|---|
| 1. | <i>Prime Minister's Office</i> | - | <i>two departments;</i> |
| 2. | <i>Ministry of Labour</i> | - | <i>five directorates and institutions;</i> |
| 3. | <i>Ministry of Foreign Affairs</i>
<i>(three departments);</i> | | |
| 4. | <i>Ministry of Housing</i> | - | <i>five directorates and institutions;</i> |
| 5. | <i>Ministry of Energy</i>
<i>Establishment</i> | - | <i>one directorate and Research</i>
<i>•Risoe•</i> |
| 6. | <i>Ministry of Finance</i>
<i>including</i>
<i>(two departments)</i> | - | <i>four directorates and institutions</i>

<i>the Directorate for Government</i>
<i>Procurement</i>

<i>five other institutions;</i> |
| 7. | <i>Ministry of Taxes and Duties</i>
<i>institutions;</i>
<i>(two departments)</i> | - | <i>five directorates and</i> |
| 8. | <i>Ministry of Fisheries</i> | - | <i>four institutions;</i> |
| 9. | <i>Ministry of Industry</i>
<i>(Full name: Ministry of Industry, Trade, Handicraft and Shipping);</i> | - | <i>nine directorates and institutions</i> |
| 10. | <i>Ministry of the Interior</i>
<i>Directorate</i> | - | <i>Danish National Civil Defence</i>

<i>one directorate;</i> |
| 11. | <i>Ministry of Justice</i> | - | <i>Office of the Chief of Danish Police</i>
<i>five other directorates and institutions;</i> |
| 12. | <i>Ministry of Ecclesiastical Affairs</i> | | |
| 13. | <i>Ministry of Agriculture</i> | - | <i>nineteen directorates and institutions;</i> |
| 14. | <i>Ministry of Environment</i> | - | <i>five directorates;</i> |
| 15. | <i>Ministry of Cultural Affairs</i>
<i>owned</i>
<i>institutions;</i> | - | <i>three directorates and several state-</i>
<i>museums and higher education</i> |
| 16. | <i>Ministry of Social Affairs</i> | - | <i>four directorates</i> |
| 17. | <i>Ministry of Education</i> | - | <i>six directorates</i>

<i>twelve universities and other higher</i>
<i>education institutions;</i> |
| 18. | <i>Ministry of Economic Affairs</i>
<i>(three departments);</i> | | |
| 19. | <i>Ministry of Defence³</i> | | |
| 20. | <i>Ministry of Health</i>
<i>Serum</i>
<i>Hospital of</i> | - | <i>several institutions including State</i>
<i>Institut and University</i>
<i>Copenhagen;</i> |

³Non-warlike materials contained in Part I (3) of this Annex

EC (cont•d)

21. Ministry for Research & Technology
22. Ministry of Transport - 25 directorates, departments
and Institutions;
23. Ministry for Communication⁴ and Tourism
24. Ministry for Business Policies Coordination
25. Folketinget (Parliament)

FEDERAL REPUBLIC OF GERMANY

(Authentic in the English language only)

List of central purchasing entities

1. Federal Foreign Office
2. Federal Ministry of Labour and Social Affairs
3. Federal Ministry of Education and Science
4. Federal Ministry for Food, Agriculture and Forestry
5. Federal Ministry of Finance
6. Federal Ministry for Research and Technology
7. Federal Ministry of the Interior (civil goods only)
8. Federal Ministry of Health
9. Federal Ministry for Women and Youth
10. Federal Ministry for Family Affairs and Senior Citizens
11. Federal Ministry of Justice
12. Federal Ministry for Regional Planning, Building and Urban Development
13. Federal Ministry of Post and Telecommunications⁵
14. Federal Ministry of Economic Affairs
15. Federal Ministry for Economic Co-operation
16. Federal Ministry of Defence⁶
17. Federal Ministry of Environment, Nature Conservation and Reactor Safety

Note

⁴With the exception of the Telecommunications services of the postal- and telegraphic service.

⁵Except telecommunication equipment

⁶Non-warlike materials contained in Part I (3) of this Annex

EC (cont'd)

According to existing national obligations, the entities contained in this list must, in conformity with special procedures, award contracts to certain groups in order to remove difficulties caused by the last war.

ESPAÑA

(Esta lista es auténtica en la versión española)

Lista de entidades

1. Ministerio de Asuntos Exteriores
2. Ministerio de Justicia
3. Ministerio de Defensa⁶
4. Ministerio de Economía y Hacienda
5. Ministerio del Interior
6. Ministerio de Obras Públicas, Transportes y Medio Ambiente
7. Ministerio de Educación y Ciencia
8. Ministerio de Trabajo y Seguridad Social
9. Ministerio de Industria y Energía
10. Ministerio de Agricultura, Pesca y Alimentación
11. Ministerio de la Presidencia
12. Ministerio para las Administraciones Públicas
13. Ministerio de Cultura
14. Ministerio de Comercio y Turismo
15. Ministerio de Sanidad y Consumo
16. Ministerio de Asuntos Sociales

FINLAND

(Authentic in the English language only)

The following contracting authorities of State:

OIKEUSKANSLERINVIRASTO

OFFICE OF THE CHANCELLOR OF
JUSTICE

KAUPPA- JA TEOLLISUUSMINISTERIÖ

MINISTRY OF TRADE AND
INDUSTRY

EC (cont'd)

Kuluttajavirasto Administration	National Consumer
Elintarvikevirasto	National Food Administration
Kilpailuvirasto	Office of Free Competition
Kilpailuneuvosto	Council of Free Competition
Kuluttaja-asiamiehen toimisto	Office of the Consumer
Ombudsman	
Kuluttajavalituslautakunta	Consumer Complaint Board
Patentti- ja rekisterihallitus	National Board of Patents and Registration

LIIKENNEMINISTERIÖMINISTRY OF TRANSPORT AND
COMMUNICATIONS

TelehallintokeskusTelecommunications Administration Centre

MAA- JA METSÄTALOUSMINISTERIÖMINISTRY OF AGRICULTURE AND
FORESTRY

MaanmittauslaitosNational Land Survey of Finland

OIKEUSMINISTERIÖMINISTRY OF JUSTICE

Tietosuojavaltuutetun toimisto	The Office of the Data Protection Ombudsman
Tuomioistuinlaitos	Courts of Law
- Korkein oikeus	
- Korkein hallinto-oikeus	
- Hovioikeudet	
- Käräjäoikeudet	
- Läänioikeudet	
- Markkinatuomioistuin	
- Työtuomioistuin	
- Vakuutus-oikeus	
- Vesioikeudet	
Vankeinhoitolaitos	Prison Administration

OPETUSMINISTERIÖMINISTRY OF EDUCATION

Opetushallitus	National Board of Education
Valtion elokuvatarkastamo	National Office of Film Censorship

EC (cont'd)

PUOLUSTUSMINISTERIÖ

MINISTRY OF DEFENCE

Puolustusvoimat

Defence Forces

SISÄASIAINMINISTERIÖ

MINISTRY OF THE INTERIOR

Väestörekisterikeskus

Population Register Centre

Keskusrikospoliisi

Central Criminal Police

Liikkuva poliisi

Mobile Police

Rajavartiolaitos

Frontier Guard

SOSIAALI- JA TERVEYSMINISTERIÖ MINISTRY OF SOCIAL AFFAIRS AND
HEALTH

Työttömyysturvalautakunta Unemployment Appeal Board

Tarkastuslautakunta Appeal Tribunal

Lääkelaitos National Agency for Medicines

Terveydenhuollon oikeusturvakeskus National Board of Medicolegal Affairs

Tapaturmavirasto State Accident Office

Säteilyturvakeskus Finnish Centre for Radiation and Nuclear Safety

Valtion turvapaikan hakijoiden vastaanotto-Reception Centres for Asylum Seekers
keskukset

TYÖMINISTERIÖ

MINISTRY OF LABOUR

Valtakunnansovittelijain toimisto National Conciliators' Office

Työneuvosto Labour Council

ULKOASIAINMINISTERIÖ
AFFAIRS

MINISTRY FOR FOREIGN

VALTIOVARAINMINISTERIÖ

MINISTRY OF FINANCE

Valtiontalouden tarkastusvirasto
Office

State Economy Controller's

Valtiokonttori

State Treasury Office

Valtion työmarkkinalaitos

EC (cont'd)

Verohallinto
Tullihallinto
Valtion vakuusrahassto

YMPÄRISTÖMINISTERIÖ MINISTRY OF ENVIRONMENT

Vesi- ja ympäristöhallitus National Board of Waters and
Environment

FRANCE

(La version française fait foi)

1. *Principales entités acheteuses*

A. *Budget général*

- Services du Premier Ministre
- Ministère des Affaires Sociales, de la Santé et de la Ville
- Ministère de l'Intérieur et de l'Aménagement du Territoire
- Ministère de la Justice
- Ministère de la Défense
- Ministère des Affaires Etrangères
- Ministère de l'Education Nationale
- Ministère de l'Economie
- Ministère de l'Industrie, des Postes et Télécommunications et du Commerce Extérieur
- Ministère de l'Equipement, des Transports et du Tourisme
- Ministère des Entreprises et du Développement Economique, chargé des Petites et Moyennes Entreprises et du Commerce et de l'Artisanat
- Ministère du Travail, de l'Emploi et de la Formation Professionnelle
- Ministère de la Culture et de la Francophonie
- Ministère du Budget
- Ministère de l'Agriculture et de la Pêche
- Ministère de l'Enseignement Supérieur et de la Recherche
- Ministère de l'Environnement
- Ministère de la Fonction Publique
- Ministère du Logement
- Ministère de la Coopération
- Ministère des Départements et Territoires d'Outre-Mer
- Ministère de la Jeunesse et des Sports

EC (cont'd)

- Ministère de la Communication
- Ministère des anciens Combattants et Victimes de Guerre

B. *Budget annexe*

On peut notamment signaler:

- Imprimerie Nationale;

C. *Comptes spéciaux du Trésor*

On peut notamment signaler:

- Fonds forestiers national;
- Soutien financier de l'industrie cinématographique et de l'industrie des programmes audio-visuels;
- Fonds national d'aménagement foncier et d'urbanisme;
- Caisse autonome de la reconstruction.

2. *Etablissements publics nationaux à caractère administratif*

- Académie de France à Rome;
- Académie de marine;
- Académie des sciences d'Outre-Mer;
- Agence centrale des organismes de sécurité sociale (A.C.O.S.S.);
- Agences financières de bassins;
- Agence nationale pour l'amélioration des conditions de travail (A.N.A.C.T.);
- Agence nationale pour l'amélioration de l'habitat (A.N.A.H.);
- Agence nationale pour l'emploi (A.N.P.E.);
- Agence nationale pour l'indemnisation des français d'Outre-Mer (A.N.I.F.O.M.);
- Assemblée permanente des chambres d'agriculture (A.P.C.A.);
- Bibliothèque nationale;
- Bibliothèque nationale et universitaire de Strasbourg;
- Bureau d'études des postes et télécommunications d'Outre-Mer (B.E.P.T.O.M.);
- Caisse des dépôts et consignations;
- Caisse nationale des allocations familiales (C.N.A.F.);
- Caisse nationale d'assurance maladie des travailleurs salariés (C.N.A.M.);
- Caisse nationale d'assurance-vieillesse des travailleurs salariés (C.N.A.V.T.S.);
- Caisse nationale des autoroutes (C.N.A.);
- Caisse nationale militaire de sécurité sociale (C.N.M.S.S.);
- Caisse nationale des monuments historiques et des sites;

EC (cont•d)

- Caisse nationale des télécommunications⁷;
- Caisse de garantie du logement social;
- Casa de Velasquez;
- Centre d'enseignement zootechnique de Rambouillet;
- Centre d'études du milieu et de pédagogie appliquée du Ministère de l'Agriculture;
- Centre d'études supérieures de sécurité sociale;
- Centres de formation professionnelle agricole;
- Centre national d'art et de culture Georges Pompidou;
- Centre national de la cinématographie française;
- Centre national d'études et de formation pour l'enfance inadaptée;
- Centre national d'études et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts;
- Centre national et de formation pour l'adaptation scolaire et l'éducation spécialisée (C.N.E.F.A.S.E.S.);
- Centre national de formation et de perfectionnement des professeurs d'enseignement ménager agricole;
- Centre national des lettres;
- Centre national de documentation pédagogique;
- Centre national des oeuvres universitaires et scolaires (C.N.O.U.S.);
- Centre national d'ophtalmologie des quinze-vingts;
- Centre national de préparation au professorat de travaux manuels éducatifs et d'enseignement ménager;
- Centre national de promotion rurale de Marmilhat;
- Centre national de la recherche scientifique (C.N.R.S.);
- Centre régional d'éducation populaire d'Ile de France;
- Centres d'éducation populaire et de sport (C.R.E.P.S.);
- Centres régionaux des oeuvres universitaires (C.R.O.U.S.);
- Centres régionaux de la propriété forestière;
- Centre de sécurité sociale des travailleurs migrants;
- Chancelleries des universités;
- Collège de France
- Commission des opérations de bourse;
- Conseil supérieur de la pêche;
- Conservatoire de l'espace littoral et des rivages lacustres;
- Conservatoire national des arts et métiers;
- Conservatoire national supérieur de musique;
- Conservatoire national supérieur d'art dramatique;
- Domaine de Pompadour;
- Ecole centrale - Lyon;
- Ecole centrale des arts et manufactures;
- Ecole française d'archéologie d'Athènes;

⁷Postes seulement

EC (cont'd)

- Ecole française d'Extrême-Orient;
- Ecole française de Rome;
- Ecole des hautes études en sciences sociales;
- Ecole nationale d'administration;
- Ecole nationale de l'aviation civile (E.N.A.C.);
- Ecole nationale des Chartes;
- Ecole nationale d'équitation;
- Ecole nationale du génie rural des eaux et des forêts (E.N.G.R.E.F.);
- Ecoles nationales d'ingénieurs;
- Ecole nationale d'ingénieurs des industries des techniques agricoles et alimentaires;
- Ecoles nationales d'ingénieurs des travaux agricoles;
- Ecole nationale des ingénieurs des travaux ruraux et des techniques sanitaires;
- Ecole nationale des ingénieurs des travaux des eaux et forêts (E.N.I.T.E.F.);
- Ecole nationale de la magistrature;
- Ecoles nationales de la marine marchande;
- Ecole nationale de la santé publique (E.N.S.P.);
- Ecole nationale de ski et d'alpinisme;
- Ecole nationale supérieure agronomique - Montpellier;
- Ecole nationale supérieure agronomique - Rennes;
- Ecole nationale supérieure des arts décoratifs;
- Ecole nationale supérieure des arts et industries - Strasbourg;
- Ecole nationale supérieure des arts et industries textiles - Roubaix;
- Ecoles nationales supérieures d'arts et métiers;
- Ecole nationale supérieure des beaux-arts;
- Ecole nationale supérieure des bibliothécaires;
- Ecole nationale supérieure de céramique industrielle;
- Ecole nationale supérieure de l'électronique et de ses applications (E.N.S.E.A.);
- Ecole nationale supérieure d'horticulture;
- Ecole nationale supérieure des industries agricoles alimentaires;
- Ecole nationale supérieure du paysage (rattachée à l'école nationale supérieure d'horticulture);
- Ecole nationale supérieure des sciences agronomiques appliquées (E.N.S.S.A.);
- Ecoles nationales vétérinaires;
- Ecole nationale de voile;
- Ecoles normales d'instituteurs et d'institutrices;
- Ecoles normales nationales d'apprentissage;
- Ecoles normales supérieures;
- Ecole polytechnique;
- Ecole technique professionnelle agricole et forestière de Meymac (Corrèze)
- Ecole de sylviculture - Croigny (Aube);
- Ecole de viticulture et d'oenologie de la Tour Blanche (Gironde);
- Ecole de viticulture - Avize (Marne);
- Etablissement national de convalescents de Saint-Maurice;

EC (cont'd)

- Etablissement national des invalides de la marine (E.N.I.M.);
- Etablissement national de bienfaisance Koenigs-Wazter;
- Fondation Carnegie;
- Fondation Singer-Polignac;
- Fonds d'action sociale pour les travailleurs immigrés et leurs familles;
- Hôpital-hospice national Dufresne-Sommeiller;
- Institut de l'élevage et de médecine vétérinaire des pays tropicaux (I.E.M.V.P.T.)
- Institut français d'archéologie orientale du Caire;
- Institut géographique national;
- Institut industriel du Nord;
- Institut international d'administration publique (I.I.A.P.);
- Institut national agronomique de Paris-Grignon;
- Institut national des appellations d'origine des vins et eux-de-vie (I.N.A.O.V.E.V.);
- Institut national d'astronomie et de géophysique (I.N.A.G.);
- Institut national de la consommation (I.N.C.);
- Institut national d'éducation populaire (I.N.E.P.);
- Institut national d'études démographiques (I.N.E.D.);
- Institut national des jeunes aveugles - Paris;
- Institut national des jeunes sourdes - Bordeaux;
- Institut national des jeunes sourds - Chambéry;
- Institut national des jeunes sourds - Metz;
- Institut national des jeunes sourds - Paris;
- Institut national de physique nucléaire et de physique des particules (I.N2.P3);
- Institut national de promotion supérieure agricole;
- Institut national de la propriété industrielle;
- Institut national de la recherche agronomique (I.N.R.A.);
- Institut national de recherche pédagogique (I.N.R.P.);
- Institut national de la santé et de la recherche médicale (I.N.S.E.R.M.);
- Institut national des sports;
- Instituts nationaux polytechniques;
- Instituts nationaux des sciences appliquées;
- Institut national supérieur de chimie industrielle de Rouen;
- Institut national de recherche en informatique et en automatique (I.N.R.I.A.);
- Institut national de recherche sur les transports et leur sécurité (I.N.R.E.T.S.);
- Instituts régionaux d'administration;
- Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen
- Musée de l'armée;
- Musée Gustave Moreau;
- Musée de la marine;
- Musée national J.J. Henner;
- Musée national de la Légion d'Honneur;
- Musée de la poste;
- Muséum national d'histoire naturelle;
- Musée Auguste Rodin;

EC (cont'd)

- Observatoire de Paris;
- Office de coopération et d'accueil universitaire;
- Office français de protection des réfugiés et apatrides;
- Office national des anciens combattants;
- Office national de la chasse;
- Office national d'information sur les enseignements et les professions (O.N.I.S.E.P.);
- Office national d'immigration (O.N.I.);
- O.R.S.T.O.M. - Institut français de recherche scientifique pour le développement en coopération;
- Office universitaire et culturel français pour l'Algérie;
- Palais de la découverte;
- Parcs nationaux;
- Réunion des musées nationaux;
- Syndicat des transports parisiens;
- Thermes nationaux - Aix-les-Bains;
- Universités.

3. Autre organisme public national

- Union des groupements d'achats publics (U.G.A.P.).

GREECE

(Authentic in the English language only)

List of entities

1. Ministry of National Economy
2. Ministry of Education and Religion
3. Ministry of Commerce
4. Ministry of Industry, Energy and Technology
5. Ministry of Merchant Marine
6. Ministry to the Prime Minister
7. Ministry of the Aegean
8. Ministry of Foreign Affairs
9. Ministry of Justice
10. Ministry of the Interior
11. Ministry of Labour
12. Ministry of Culture and Sciences

EC (cont'd)

13. Ministry of Environment, Planning and Public Works
14. Ministry of Finance
15. Ministry of Transport and Communications
16. Ministry of Health and Social Security
17. Ministry of Macedonia and Thrace
18. Army General Staff
19. Navy General Staff
20. Airforce General Staff
21. Ministry of Agriculture
22. General Secretariat for Press and Information
23. General Secretariat for Youth
24. General State Laboratory
25. General Secretariat for Further Education
26. General Secretariat of Equality
27. General Secretariat for Social Security
28. General Secretariat for Greeks Living Abroad
29. General Secretariat for Industry
30. General Secretariat for Research and Technology
31. General Secretariat for Sports
32. General Secretariat for Public Works
33. National Statistical Service
34. National Welfare Organisation
35. Workers' Housing Organisation
36. National Printing Office
37. Greek Atomic Energy Commission
38. Greek Highway Fund
39. University of Athens
40. University of the Aegean
41. University of Thessaloniki
42. University of Thrace
43. University of Ioannina
44. University of Patras
45. Polytechnic School of Crete
46. Sivitanidios Technical School
47. University of Macedonia
48. Eginitio Hospital
49. Areteio Hospital
50. National Centre of Public Administration
51. Hellenic Post (EL. TA.)
52. Public Material Management Organisation
53. Farmers' Insurance Organisation
54. School Building Organisation

EC (cont'd)

IRELAND

(Authentic in the English language only)

1. *Main purchasing entities*

Office of Public Works

2. *Other departments*

- President's Establishment;
- Houses of the Oireachtas (Parliament);
- Department of the Taoiseach (Prime Minister);
- Office of the Tanaiste (Deputy Prime Minister)
- Central Statistics Office;
- Department of Arts, Culture and the Gaeltacht
- National Gallery of Ireland;
- Department of Finance;
- State Laboratory;
- Office of the Comptroller and Auditor General;
- Office of the Attorney General;
- Office of the Director of Public Prosecutions;
- Valuation Office;
- Civil Service Commission;
- Office of the Ombudsman;
- Office of the Revenue Commissioners;
- Department of Justice;
- Commissioners of Charitable Donations and Bequests for Ireland;
- Department of the Environment;
- Department of Education;
- Department of the Marine;
- Department of Agriculture, Food and Forestry;
- Department of Enterprise and Employment
- Department of Trade and Tourism;
- Department of Defence⁸;
- Department of Foreign Affairs;
- Department of Social Welfare;
- Department of Health;
- Department of Transport, Energy and Communications.

⁸*Non-warlike materials contained in Part I (3) of this Annex*

EC (cont'd)

ITALY

(Authentic in the English language only)

Purchasing Entities

1. Ministry of the Treasury ⁹
2. Ministry of Finance ¹⁰
3. Ministry of Justice
4. Ministry of Foreign Affairs
5. Ministry of Education
6. Ministry of the Interior
7. Ministry of Public Works
8. Ministry for Co-ordination (International Relations and EC Agricultural Policies)
9. Ministry of Industry, Trade and Craft Trades
10. Ministry of Employment and Social Security
11. Ministry of Health
12. Ministry of Cultural Affairs and the Environment
13. Ministry of Defence¹¹
14. Budget and Economic Planning Ministry
15. Ministry of Foreign Trade
16. Ministry of Posts and Telecommunications¹²
17. Ministry of the Environment
18. Ministry of University and Scientific and Technological Research

LUXEMBOURG

(La version française fait foi)

1. Ministère d'Etat: Service central des imprimés et des fournitures de l'Etat;
2. Ministère de l'agriculture: Administration des Services techniques de l'Agriculture;
3. Ministère de l'éducation nationale: Lycées d'enseignement secondaire et d'enseignement secondaire technique;

⁹Acting as the central purchasing entity for most of the other Ministries or entities

¹⁰Not including purchases made by the tobacco and salt monopolies

¹¹Non-warlike materials contained in Part I (3) of this Annex

¹²Postal business only

EC (cont'd)

4. Ministère de la famille et de la solidarité sociale: Maisons de retraite;
5. Ministère de la force publique: Armée ¹³ - Gendarmerie - Police;
6. Ministère de la justice: Etablissements pénitentiaires;
7. Ministère de la santé publique: Hôpital neuropsychiatrique;
8. Ministère des travaux publics: Bâtiments publics - Ponts et Chaussées;
9. Ministère des Communications: Centre informatique de l'Etat
10. Ministère de l'environnement: Commissariat général à la Protection des Eaux.

THE NETHERLANDS

(Authentic in the English language only)

List of entities

Ministries and central governmental bodies

1. Ministry of General Affairs - Ministerie van Algemene Zaken
 - Advisory Council on Government Policy - Bureau van de Wetenschappelijke Raad voor het Regeringsbeleid
 - National Information Office - Rijksvoorlichtingsdienst
2. Ministry of the Interior - Ministerie van Binnenlandse Zaken
 - Government Personnel Information System Service - Dienst Informatievoorziening Overheidspersoneel
 - Redundancy Payment and Benefits Agency - Dienst Uitvoering Ontslaguitkeringsregelingen
 - Public Servants Medical Expenses Agency - Dienst Ziektekostenvoorziening Overheidspersoneel
 - RPD Advisory Service - RPD Advies
 - Central Archives and Interdepartmental Text Processing - CAS/ITW
3. Ministry of Foreign Affairs + Directorate-General for Development Cooperation of the Ministry of Foreign affairs - Ministerie van Buitenlandse Zaken + Ministerie voor Ontwikkelingssamenwerking
4. Ministry of Defence - Ministerie van Defensie¹⁴
 - Directorate of material Royal Netherlands Navy - Directie materieel Koninklijke Marine
 - Directorate of material Royal Netherlands Army - Directie materieel Koninklijke Landmacht
 - Directorate of material Royal Netherlands Airforce - Directie materieel Koninklijke Luchtmacht

¹³Matériel non-militaire figurant dans la partie I (3) de la présente annexe

¹⁴Non-warlike materials contained in Part I (3) of this Annex

EC (cont'd)

5. Ministry of Economic Affairs - Ministerie van Economische Zaken
 - Economic Investigation Agency - Economische Controledienst
 - Central Plan Bureau - Centraal Planbureau
 - Netherlands Central Bureau of Statistics - Centraal Bureau voor de Statistiek
 - Senter - Senter
 - Industrial Property Office - Bureau voor de Industriële Eigendom
 - Central Licensing Office for Import and Export - Centrale Dienst voor de In- en Uitvoer
 - State Supervision of Mines - Staatstoezicht op de Mijnen
 - Geological Survey of the Netherlands - Rijks Geologische Dienst
6. Ministry of Finance - Ministerie van Financiën
 - State Property Department - Dienst der Domeinen
 - Directorates of the State Tax Department - Directies der Rijksbelastingen
 - State Tax Department/Fiscal Intelligence and Information Department - Belastingdienst/FIOD
 - State Tax Department/Computer Centre - Belastingdienst/Automatiseringscentrum
 - State Tax Department/Training - Belastingdienst/Opleidingen
7. Ministry of Justice - Ministerie van Justitie
 - Education and Training Organization, Directorate General for the Protection of Young People and the care of Offenders - Opleidings- en vormingsorganisatie Directoraat-Generaal Jeugdbescherming en Delinquentenzorg
 - Child Care and Protection Board - Raden voor de Kinderbescherming in de provincies
 - State Institutions for Child care and Protection - Rijksinrichtingen voor de Kinderbescherming in de provincies
 - Prisons - Penitentiare inrichtingen in de provincie
 - State Institutions for Persons Placed under Hospital Order - Rijksinrichtingen voor T.B.S.- verpleging in de provincies
 - Internal Facilities Service of the Directorate for Young Offenders and Young Peoples Institute - Dienst Facilitaire Zaken van de Directie Delinquentenzorg en Jeugdinstellingen
 - Legal Aid Department - Dienst Gerechtelijke Ondersteuning in de arrondissementen
 - Central Collection Office for the Courts - Centraal Ontvangstkantoor der Gerechten
 - Central Debt Collection Agency of the Ministry of Justice - Centraal Justitie Incassobureau
 - National Criminal Investigation Department - Rijksrecherche
 - Forensic Laboratory - Gerechtelijk Laboratorium
 - National Police Services Force - Korps Landelijke Politiediensten
 - District offices of the Immigration and Naturalisation Service - Districtskantoren Immigratie- en Naturalisatiedienst

EC (cont'd)

8. Ministry of Agriculture, Nature Management and Fisheries - Ministerie van Landbouw, Natuurbeheer en Visserij
- National Forest Service - Staatsbosbeheer
 - Agricultural Research Service - Dienst Landbouwkundig Onderzoek
 - Agricultural Extension Service - Dienst Landbouwvoorlichting
 - Land Development Service - Landinrichtingsdienst
 - National Inspection Service for Animals and Animal Protection - Rijksdienst voor de Keuring van Vee en Vlees
 - Plant Protection Service - Plantenziektenkundige Dienst
 - General Inspection Service - Algemene Inspectiedienst
 - National Fisheries Research Institute - Rijksinstituut voor Visserijonderzoek
 - Government Institute for Quality Control of Agricultural Products - Rijkskwaliteit Instituut voor Land- en Tuinbouwprodukten
 - National Institute for Nature Management - Instituut voor Bos- en Natuuronderzoek
 - Game Fund - Jachtfonds
9. Ministry of Education and Science - Ministerie van Onderwijs en Wetenschappen
- Royal Library - Koninklijke Bibliotheek
 - Institute for Netherlands History - Instituut voor Nederlandse Geschiedenis
 - Netherlands State Institute for War Documentation - Rijksinstituut voor Oorlogsdocumentatie
 - Institute for Educational Research - Instituut voor Onderzoek van het Onderwijs
 - National Institute for Curriculum Development - Instituut voor de Leerplan Ontwikkeling
10. Ministry of Social Affairs and Employment - Ministerie van Sociale Zaken en Werkgelegenheid
- Wages Inspection Service - Loontechnische dienst
 - Inspectorate for Social Affairs and Employment - Inspectie en Informatie Sociale Zaken en Werkgelegenheid
 - National Social Assistance Consultancies Services - Rijksconsulentschappen Sociale Zekerheid
 - Steam Equipment Supervision Service - Dienst voor het Stoomwezen
 - Conscientious Objectors Employment Department - Tewerkstelling erkend gewetensbezwaarden militaire dienst
 - Directorate for Equal Opportunities - Directie Emancipatie
11. Ministry of Transport, Public Works and Water Management - Ministerie van Verkeer en Waterstaat
- Directorate-General for Transport - Directoraat-Generaal Vervoer
 - Directorate-General for Public Works and Water Management - Directoraat-Generaal Rijkswaterstaat
 - Directorate-General for Civil Aviation - Directoraat-Generaal Rijksluchtvaartdienst
 - Telecommunications and Post Department - Hoofddirectie Telecommunicatie en Post

EC (cont•d)

- Regional Offices of the Directorates-General and General Management, Inland Waterway Navigation Service - De regionale organisatie van de directoraten generaal en de hoofddirectie Vaarwegmarkeringsdienst
- 12. Ministry of Housing, Physical Planning and Environment - Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer
 - Directorate-General for Environment Management - Directoraat-Generaal Milieubeheer
 - Directorate-General for Public Housing - Directoraat-Generaal van de Volkshuisvesting
 - Government Buildings Agency - Rijksgebouwendienst
 - National Physical Planning Agency - Rijksplanologische Dienst
- 13. Ministry of Welfare, Health and Cultural Affairs - Ministerie van Welzijn, Volksgezondheid en Cultuur
 - Social and Cultural Planning Office - Sociaal en Cultureel Planbureau
 - Inspectorate for Child and Youth Care and Protection Services - Inspectie Jeugdhulpverlening en Jeugdbescherming
 - Medical Inspectorate of Health Care - Inspecties van het Staatstoezicht op de Volksgezondheid
 - Cultural Castle Council - Rijksdienst Kastelenbeheer
 - National Archives Department - Rijksarchiefdienst
 - Department for the Conservation of Historic Buildings and Sites - Rijksdienst voor de Monumentenzorg
 - National Institute of Public Health and Environmental Protection - Rijksinstituut voor Milieuhygiëne
 - National Archeological Field Survey Commission - Rijksdienst voor het Oudheidkundig Bodemonderzoek
 - Netherlands Office for Fine Arts - Rijksdienst Beeldende Kunst
- 14. Cabinet for Netherlands Antillean and Aruban Affairs - Kabinet voor Nederlands-Antilliaanse en Arubaanse zaken
- 15. Higher Colleges of State - Hogere Colleges van Staat
- 16. Council of State - Raad van State
- 17. Netherlands Court of Audit - Algemene Rekenkamer
- 18. National Ombudsman - Nationale Ombudsman

PORTUGAL

(Authentic in the English language only)

Prime Minister's Office

Legal Centre
Centre for Studies and Training (Local Government)

EC (cont•d)

Government Computer Network Management Centre
National Council for Civil Defence Planning
Permanent Council for Industrial Conciliation
Department for Vocational and Advanced Training
Ministerial Department with special responsibility for Macao
Ministerial Department responsible for Community Service by Conscientious Objectors
Institute for Youth
National Administration Institute
Secretariat-General, Prime Minister's Office
Secretariat for Administrative Modernization
Social Services, Prime Minister's Office

Ministry of Home Affairs

Directorate-General for Roads
Ministerial Department responsible for Studies and Planning
Civilian administrations
Customs Police
Republican National Guard
Police
Secretariat-General
Technical Secretariat for Electoral Matters
Customs and Immigration Department
Intelligence and Security Department
National Fire Service

Ministry of Agriculture

Control Agency for Community Aid to Olive Oil Production
Regional Directorate for Agriculture (Beira Interior)
Regional Directorate for Agriculture (Beira Litoral)
Regional Directorate for Agriculture (Entre Douro e Minho)
Regional Directorate for Agriculture (Trás-os-Montes)
Regional Directorate for Agriculture (Alentejo)
Regional Directorate for Agriculture (Algarve)
Regional Directorate for Agriculture (Ribatejo e Oeste)
General Inspectorate and Audit Office (Management Audits)
Viticulture Institute
National Agricultural Research Institute
Institute for the Regulation and Guidance of Agricultural Markets
Institute for Agricultural Structures and Rural Development
Institute for Protection of Agri-food Production
Institute for Forests

EC (cont•d)

Institute for Agricultural Markets and Agri-Foods Industry
Secretariat-General

IFADAP (Financial Institute for the Development of Agriculture and Fishing) ^(a)

INGA (*National Agricultural Intervention and Guarantee Institute*) ^(a)

^(a) Authority under joint Ministry of Finance and Ministry of Agriculture control

Ministry of the Environment and Natural Resources

Directorate-General for Environment

Institute for Environmental Promotion

Institute for the Consumer

Institute for Meteorology

Secretariat-General

Institute for Natural Conservancy

Ministerial Department for the Improvement of the Estoril Coast

Regional Directorates for Environment and Natural Resources

Water Institute

Ministry of Trade and Tourism

Commission responsible for the Application of Economic Penalties

Directorate-General for Competition and Prices

Directorate-General for Inspection (Economic Affairs)

Directorate-General for Tourism

Directorate-General for Trade

Tourism Fund

Ministerial Department responsible for Community Affairs

ICEP (Portuguese Foreign Trade Institute)

General Inspectorate for Gambling

National Institute for Training in Tourism

Regional Tourist Boards

Secretariat-General

ENATUR (National Tourism Enterprise) - Public enterprise ^(a)

^(a) Authority under joint Ministry of Trade and Tourism and Ministry of Finance control

*Ministry of Defence*¹⁵

National Security Authority

National Council for Emergency Civil Planning

Directorate-General for Armaments and Defence Equipments

¹⁵Non-warlike materials contained in Part I (3) of this Annex

EC (cont•d)

Directorate-General for Infrastructure
Directorate-General for Personnel
Directorate-General for National Defence Policy
Secretariat-General

Office of the Chief of Staff of the Armed Forces¹⁶

*Administrative Council of the Office of the Chief of Staff
of the Armed Forces*
Commission of Maintenance of NATO Infrastructure
Executive Commission of NATO Infrastructure
Social Works of the Armed Forces

Office of the Chief of Staff, Air Force¹⁶

Air Force Logistics and Administrative Commando
General Workshop for Aeronautical Equipment

Office of the Chief of Staff, Army¹⁶

Logistics Department
Directorate for Army Engineering
Directorate for Army Communications
Service Directorate for Fortifications and Army Works
Service Directorate for the Army Physical Education
Service Directorate Responsible for the Army Computer
Service Directorate for Intendancy
Service Directorate for Equipment
Service Directorate for Health
Directorate for Transports
Main Army Hospital
General Workshop of Uniforms and Equipment
General Workshop of Engineering Equipment
Bakery
Army Laboratory for Chemical and Pharmaceutical Products

Office of the Chief of Staff, Navy¹⁶

Directorate for Naval Facilities
Directorate-General for Naval Equipment
Directorate for Instruction and Training

¹⁶Non-warlike materials contained in Part I (3) of this Annex

EC (cont•d)

Directorate of the Service of Naval Health
The Navy Hospital
Directorate for Supplies
Directorate for Transport
Directorate of the Service of Maintenance
Armed Computer Service
Continent Naval Commando
Açores Naval Commando
Madeira Naval Commando
Commando of Lisbon Naval Station
Army Centre for Physical Education
Administrative Council of Central Navy Administration
Naval War Height Institute
Directorate-General for the Navy
Directorate-General for Lighthouses and School for Lighthouse Keepers
The Hydrographic Institute
Vasco da Gama Aquarium
The Alfeite Arsenal

Ministry of Education

Secretariat-General
Department for Planning and Financial Management
Department for Higher Education
Department for Secondary Education
Department for Basic Education
Department for Educational Resources Management
General Inspectorate of Education
Bureau for the Launching and Coordination of the School Year
Regional Directorate for Education (North)
Regional Directorate for Education (Centra)
Regional Directorate for Education (Lisbon)
Regional Directorate for Education (Alentejo)
Regional Directorate for Education (Algarve)
Camões Institute
Institute for Innovation in Education Antonio Aurélio da Costa Ferreira
Institute for Sports
Department of European Affairs
Ministry of Education Press

Ministry of Employment and Social Security

National Insurance and Occupational Health Fund
Institute for Development and Inspection of Labour Conditions
Social Welfare Funds

EC (cont•d)

Casa Pia de Lisboa (a)
National Centre for Pensions
Regional Social Security centres
Commission on Equal Opportunity and Rights for Women
Statistics Department
Studies and Planning Department
Department of International Relations and Social Security Agreements
European Social Fund Department
Department of European Affairs and External Relations
Directorate-General for Social Works
Directorate-General for the Family
Directorate-General for Technical Support to Management
Directorate-General for Employment and Vocational Training
Directorate-General for Social Security Schemes
Social Security Financial Stabilization Fund
General Inspectorate for Social Security
Social Security Financial Management Institute
Employment and Vocational Training Institute
National Institute for Workers• Leisure Time
Secretariat-General
National Secretariat for Rehabilitation
Social Services
Santa Casa de Misericordia de Lisboa (a)

(a) Authority under joint control of the Ministry of Employment and Social Security and the Ministry of Health Control

Ministry of Finance

ADSE (Directorate-General for the Protection of Civil Servants)
Legal Affairs Office
Directorate-General for Public Administration
Directorate-General for Public Accounts and General Budget Supervision
Directorate-General for the State Loans Board
Directorate-General for the Customs Service
Directorate-General for Taxation
Directorate-General for State Assets
Directorate-General for the Treasury
Ministerial Department responsible for Economic Studies
Ministerial Department responsible for European Affairs
GAFEPP (Ministerial Department responsible for Studies on the Funding of the State and Public Enterprises)
General Inspectorate for Finance
Institute for Information Technology
State Loans Board
Secretariat-General
SOFE (Social Services of the Ministry of Finance)

EC (cont•d)

Ministry of Industry and Energy

Regional Delegation for Industry and Energy (Lisbon and Tagus Valley)
Regional Delegation for Industry and Energy (Alentejo)
Regional Delegation for Industry and Energy (Algarve)
Regional Delegation for Industry and Energy (Centre)
Regional Delegation for Industry and Energy (North)
Directorate-General for Industry
Directorate-General for Energy
Geological and Mining Institute
Ministerial Department responsible for Studies and Planning
Ministerial Department responsible for Oil Exploration and Production
Ministerial Department responsible for Community Affairs
National Industrial Property Institute
Portuguese Institute for Quality
INETI (National Institute for Industrial Engineering and Technology)
Secretariat-General
PEDIP Manager•s Department
Legal Affairs Office
Commission for Emergency Industrial Planning
Commission for Emergency Energy Planning
IAPMEI (Institute for Support of Small and Medium-sized enterprises and Investments)

Ministry of Justice

Centre for Legal Studies
Social Action and Observation Centres
The High Council of the Judiciary (Conselho Superior de Magistratura)
Central Registry
Directorate-General for Registers and Other Official Documents
Directorate-General for Computerized Services
Directorate-General for Legal Services
Directorate-General for the Prison Service
Directorate-General for the Protection and Care of Minors Prison Establishments
Ministerial Department responsible for European Law
Ministerial Department responsible for Documentation and Comparative Law
Ministerial Department responsible for Studies and Planning
Ministerial Department responsible for Financial Management
Ministerial Department responsible for Planning and Coordinating Drug Control
São João Deus Prison Hospital
Corpus Christi Institute
Guarda Institute
Institute for the Rehabilitation of Offenders
São Domingos Benfica Institute

EC (cont•d)

National Police and Forensic Science Institute
Navarro Paiva Institute
Padre António Oliveira Institute
São Fiel Institute
São José Institute
Vila Fernando Institute
Criminology Institutes
Forensic Medicine Institutes
Criminal Investigation Department
Secretariat-General
Social Services

Ministry of Public Works, Transport and Communications

Council for Public and Private Works Markets
Directorate-General for Civil Aviation
Directorate-General for National Buildings and Monuments
Directorate-General for Road and Rail Transport
Ministerial Department responsible for River Crossings (Tagus)
Ministerial Department for Investment Coordination
Ministerial Department responsible for the Lisbon Railway Junction
Ministerial Department responsible for the Oporto Railway Junction
Ministerial Department responsible for Navigation on the Douro
Ministerial Department responsible for the European Communities
General Inspectorate for Public Works, Transport and Communications
Independent Executive for Roads
National Civil Engineering Laboratory
Social Works Department of the Ministry of Public Works, Transport and Communications
Secretariat-General
Institute for Management and Sales of State Housing
CTT - Post & Telecommunications of Portugal SA¹⁷

Ministry of Foreign Affairs

Directorate-General for Consular Affairs and for Financial Administration
Directorate-General for the European Communities
Directorate-General for Cooperation
Institute for Portuguese Emigrants and Portuguese Communities Abroad
Institute for Economic Cooperation
Secretariat-General

¹⁷Postal Business only

EC (cont•d)

Ministry of Territorial Planning and Management

Academy of Science
Legal Affairs Office
National Centre for Geographical Data
Regional Coordination Committee (Centre)
Regional Coordination Committee (Lisbon and Tagus Valley)
Regional Coordination Committee (Alentejo)
Regional Coordination Committee (Algarve)
Regional Coordination Committee (North)
Central Planning Department
Ministerial Department for European Issues and External Relations
Directorate-General for Local Government
Directorate-General for Regional Development
Directorate-General for Town and Country Planning
Ministerial Department responsible for Coordination of the Alqueva Project
General Inspectorate for Territorial Administration
National Statistical Institute
António Sergio Cooperative Institute
Institute for Scientific and Tropical Research
Geographical and Land Register Institute
National Scientific and Technological Research Board
Secretariat-General

Ministry of the Sea

Directorate General for Fishing
Directorate General for Ports, Navigation and Maritime Transport
Portuguese Institute for Maritime Exploration
Maritime Administration for North, Centre & South
National Institute for Port Pilotage
Institute for Port Labour
Port Administration of Douro and Leixões
Port Administration of Lisbon
Port Administration of Setúbal and Sesimbra
Port Administration of Sines
Independent Executive for Ports
Infante D Henrique Nautical School
Portugues Fishing School and School of Sailing and Marine Craft
Secretariat General

Ministry of Health

Regional Health Administrations

EC (cont•d)

Health Centres

Mental Health Centres

Histocompatibility Centres

Regional Alcoholism Centres

Department for Studies and Health Planning

Health Human Resource Department

Directorate-General for Health

Directorate-General for Health Installations & Equipment

National Institute for Chemistry and Medicament

Supporting Centers for Drug Addicts

Institute for Computer and Financial Management of Health Services

Infirmary Technical Schools

Health Service Technical Colleges

Central Hospitals

District Hospitals

General Inspectorate of Health

National Institute of Emergency Care

Dr Ricardo Jorge National Health Institute

Dr Jacinto De Magalhaes Institute of Genetic Medicine

Dr Gama Pinto Institute of Ophthalmology

Portuguese Blood institute

General Practitioners Institutes

Secretariat-General

Service for Prevention and Treatment of Drug Dependence

Social Services, Ministry of Health

SWEDEN

(Authentic in the English language only)

The following contracting authorities of the State:

A

Akademien för de fria konsterna

Royal Academy of Fine Arts

Allmänna advokatbyråerna (28)

Public Law-Service Offices (28)

Allmänna reklamationsnämnden

National Board for Consumer Complaints

Arbetskyddsstyrelsen *National Board of Occupational Safety and Health*

Arbetsdomstolen *Labour Court*

EC (cont'd)

Arbetsgivarverk, statens *National Agency for Government Employers*

Arbetslivscentrum *Centre for Working Life*

Arbetslivsfonden *Working Lives Fund*

Arbetsmarknadsstyrelsen *National Labour Market Board*

Arbetsmiljöfonden *Work Environment Fund*

Arbetsmiljöinstitutet *National Institute of Occupational Health*

Arbetsmiljönämnd, statens *Board of Occupational Safety and Health for
Government Employees*

Arkitekturmuseet *Museum of Architecture*

Arkivet för ljud och bild *National Archive of Recorded Sound and Moving
Images*

Arrendenämnder (12) *Regional Tenancies Tribunals (12)*

B

Barnmiljörådet *National Child Environment Council*

Beredning för utvärdering av *Swedish Council on Technology
Assessment medicinsk metodik, statens* *in Health Care*

Beredningen för internationellt *Agency for International Technical and
tekniskt-ekonomiskt samarbete* *Economic Co-operation*

Besvärsnämnden för rättshjälp *Legal Aid Appeals Commission*

Biblioteket, Kungl. *Royal Library*

Biografbyrå, statens *National Board of Film Censors*

Biografiskt lexikon, svenskt *Dictionary of Swedish Biography*

Bokföringsnämnden *Swedish Accounting Standards Board*

Bostadsdomstolen *Housing Appeal Court*

Bostadskreditnämnd, statens (BKN) *National Housing Credit Guarantee
Board*

Boverket *National Housing Board*

EC (cont'd)

Brottsförebyggande rådet National Council for Crime Prevention

Brottsskadenämnden Criminal Injuries Compensation Board

C

Centrala försöksdjursnämnden Central Committee for Laboratory Animals

Centrala studiestödsnämnden National Board of Student Aid

Centralnämnden för fastighetsdata Central Board for Real-Estate Data

D

Datainspektionen Data Inspection Board

Departementen Ministries (Government Departments)

Domstolsverket National Courts Administration

E

Elsäkerhetsverket National Electrical Safety Board

Expertgruppen för forskning om regional utveckling Expert Group on Regional Studies

Exportkreditnämnden Export Credits Guarantee Board

F

Fideikommissnämnden Entailed Estates Council

Finansinspektionen Financial Supervisory Authority

Fiskeriverket National Board of Fisheries

Flygtekniska försöksanstalten Aeronautical Research Institute

Folkhälsoinstitutet National Institute of Public Health

Forskningsrådsnämnden Council for Planning and Co-ordination of Research

Fortifikationsförvaltningen Fortifications Administration

Frivårdens behandlingscentral Probation Treatment Centre

EC (cont•d)

<i>Förlikningsmannarexpedition, statens</i>	<i>National Conciliators• Office</i>
<i>Försvarets civilförvaltning</i>	<i>Civil Administration of the Defence Forces</i>
<i>Försvarets datacenter</i>	<i>Defence Data-Processing Centre</i>
<i>Försvarets forskningsanstalt</i>	<i>National Defence Research Establishment</i>
<i>Försvarets förvaltningsskola</i>	<i>Defence Forces• Administration School</i>
<i>Försvarets materielverk</i>	<i>Defence Material Administration</i>
<i>Försvarets radioanstalt</i>	<i>National Defence Radio Institute</i>
<i>Försvarets sjukvårdsstyrelse</i>	<i>Medical Board of the Defence Forces</i>
<i>Försvärshistoriska museer, statens</i>	<i>Swedish Museums of Military History</i>
<i>Försvärshögskolan</i>	<i>National Defence College</i>
<i>Försäkringskassorna</i>	<i>Social Insurance Offices</i>
<i>Försäkringsdomstolarna</i>	<i>Social Insurance Courts</i>
<i>Försäkringsöverdomstolen</i>	<i>Supreme Social Insurance Court</i>

G

<i>Geologiska undersökning, Sveriges</i>	<i>Geological Survey of Sweden</i>
<i>Geotekniska institut, statens</i>	<i>Geotechnical Institute</i>
<i>Glesbygdsmyndigheten</i>	<i>National Rural Area Development Authority</i>
<i>Grafiska institutet och institutet för högre kommunikations-och reklamutbildning</i>	<i>Graphic Institute and the Graduate School of Communications</i>

H

<i>Handelsflottans kultur-och fritidsråd</i>	<i>Swedish Government Seamen•s Service</i>
<i>Handelsflottans pensionsanstalt</i>	<i>Merchant Pensions Institute</i>
<i>Handikappråd, statens</i>	<i>National Council for the Disabled</i>
<i>Haverikommission, statens</i>	<i>Board of Accident Investigation</i>
<i>Hovrätterna (6)</i>	<i>Courts of Appeal (6)</i>

EC (cont•d)

*Humanistisk-samhällsvetenskapliga Council for Research in the Humanities and Social
forskningsrådet Sciences*

Hyresnämnder (12) Regional Rent Tribunals (12)

Häktena (30) Remand Prisons (30)

Hälsa-och sjukvårdens ansvarsnämnd Committee on Medical Responsibility

Högsta domstolen Supreme Court

I

*Inskrivningsmyndigheten för Register Authority for Floating Charges
företagsinteckningar*

Institut för byggnadsforskning, statens Council for Building Research

*Institut för psykosocial National Institute for Psycho-Social Factors
miljömedicin, statens and Health*

Institutet för rymdfysik Swedish Institute of Space Physics

Invandrarverk, statens Swedish Immigration Board

J

Jordbruksverk, statens Swedish Board of Agriculture

Justitiekanslern Office of the Chancellor of Justice

*Jämställdhetsombudsmannen och Office of the Equal Opportunities
Ombudsman and jämställdhetsdelegationen the Equal Opportunities
Commission*

K

*Kabelnämnden/Närradionämnden Swedish Cable Authority/Swedish Community Radio
Authority*

Kammarkollegiet National Judicial Board of Public Lands and Funds

Kammarrätterna (4) Administrative Courts of Appeal (4)

Kemikalieinspektionen National Chemicals Inspectorate

Kommerskollegium National Board of Trade

EC (cont•d)

Koncessionsnämnden för miljö- skydd *National Franchise Board for Environment Protection*

Konjunkturinstitutet *National Institute of Economic Research*

Konkurrensverket *Swedish Competition Authority*

Konstfackskolan *College of Arts, Crafts and Design*

Konsthögskolan *College of Fine Arts*

Konstmuseer, statens *National Art Museums*

Konstnärsnämnden *Arts Grants Committee*

Konstråd, statens *National Art Council*

Konsumentverket *National Board for Consumer Policies*

Krigsarkivet *Armed Forces Archives*

Kriminaltekniska laboratorium, statens *National Laboratory of Forensic Science*

Kriminalvårdens regionkanslier (7) *Correctional Region Offices (7)*

Kriminalvårdsanstalterna (78) *National/Local Institutions (78)*

Kriminalvårdsnämnden *National Paroles Board*

Kriminalvårdsstyrelsen *National Prison and Probation Administration*

Kronofogdemyndigheterna (24) *Enforcement Services (24)*

Kulturråd, statens *National Council for Cultural Affairs*

Kustbevakningen *Swedish Coast Guard*

Kärnkraftinspektion, statens *Nuclear-Power Inspectorate*

L

Lantmäteriverk, statens *Central Office of the National Land Survey*

Livrustkammaren/Skoklosters slott/Hallwylska museet *Royal Armoury*

Livsmedelsverk, statens *National Food Administration*

EC (cont•d)

Lotterinämnden Gaming Board

Läkemedelsverket Medical Products Agency

*Läns- och distriktsåklagar- County Public Prosecution Authority and
myndigheterna District Prosecution Authority*

Länsarbetsnämnderna (24) County Labour Boards (24)

Länsrätterna (25) County Administrative Courts (25)

Länsstyrelserna (24) County Administrative Boards (24)

*Löne- och pensionsverk, statens National Government Employee Salaries and
Pensions Board*

M

Marknadsdomstolen Market Court

Maskinprovningar, statens National Machinery Testing Institute

Medicinska forskningsrådet Medical Research Council

*Meteorologiska och hydrologiska Swedish Meteorological and Hydrological
institut, Sveriges Institute*

Militärhögskolan Armed Forces Staff and War College

Musiksamlingar, statens Swedish National Collections of Music

N

Naturhistoriska riksmuseet Museum of Natural History

*Naturvetenskapliga forsknings- Natural Science Research Council
rådet*

Naturvårdsverk, statens National Environmental Protection Agency

Nordiska Afrikainstitutet Scandinavian Institute of African Studies

Nordiska hälsovårdshögskolan Nordic School of Public Health

*Nordiska institutet för sam- Nordic Institute for Studies in Urban and Regional
hållsplanering Planning*

Nordiska museet, stiftelsen Nordic Museum

EC (cont•d)

Nordiska rådets svenska delegation *Swedish Delegation of the Nordic Council*

Notarienämnden *Recorders Committee*

*Nämnden för internationella
adoptionsfrågor* *National Board for Intra Country Adoptions*

Nämnden för offentlig upphandling *National Board for Public Procurement*

Nämnden för statens gruvegendom *State Mining Property Commission*

*Nämnden för statliga förnyelse-
fonder* *National Fund for Administrative
Development fonder and Training for
Government Employees*

*Nämnden för utställning av
nutida svensk konst i utlandet* *Swedish National Committee for
Contemporary Art Exhibitions Abroad*

*Närings- och teknikutvecklings-
verket* *National Board for Industrial and Technical
Development*

Q

*Ombudsmannen mot etnisk diskriminering
och nämnden mot etnisk diskriminering* *Office of the Ethnic Discrimination
Ombudsman Advisory Committee on
Questions Concerning Ethnic Discrimination*

P

Patentbesvärsrätten *Court of Patent Appeals*

Patent- och registreringsverket *Patents and Registration Office*

Person- och adressregisternämnd, statens *Co-ordinated Population and Address
Register*

Polarforskningssekretariatet *Swedish Polar Research Secretariat*

Presstödsnämnden *Press Subsidies Council*

*Psykologisk-pedagogiska biblio-
tek, statens* *National Library for Psychology and Education*

R

Radionämnden *Broadcasting Commission*

EC (cont•d)

Regeringskansliets förvaltningskontor Central Services Office for the Ministries

Regeringsrätten Supreme Administrative Court

*Riksantikvarieämbetet och statens historiska Central Board of National Antiquities
and National Historical Museums
museer*

Riksarkivet National Archives

Riksbanken Bank of Sweden

*Riksdagens förvaltningskontor Administration Department of the Swedish
Parliament*

Riksdagens ombudsmän, JO The Parliamentary Ombudsmen

Riksdagens revisorer The Parliamentary Auditors

Riksförsäkringsverket National Social Insurance Board

Riksgäldskontoret National Debt Office

Rikspolisstyrelsen National Police Board

Riksrevisionsverket National Audit Bureau

Riksskatteverket National Tax Board

Riksutställningar, Stiftelsen Travelling Exhibitions Service

Riksåklagaren Office of the Prosecutor-General

Rymdstyrelsen National Space Board

Råd för byggnadsforskning, statens Council for Building Research

*Rådet för grundläggande högskoleutbildning Council for Renewal of
Undergraduate Education*

Räddningsverk, statens National Rescue Services Board

Rättshjälpsnämnden Regional Legal-aid Commission

Rättsmedicinalverket National Board of Forensic Medicine

S

EC (cont•d)

*Sameskolstyrelsen och sameskolor Sami (Lapp) School Board
Sami (Lapp) Schools*

Sjöfartsverket National Maritime Administration

Sjöhistoriska museer, statens National Maritime Museums

Skattemyndigheterna (24) Local Tax Offices (24)

*Skogs- och jordbrukets forskningsråd Swedish Council for Forestry and
Agricultural Research*

Skogsstyrelsen National Board of Forestry

Skolverk, statens National Agency for Education

Smittskyddsinstitutet Swedish Institute for Infectious Disease Control

Socialstyrelsen National Board of Health and Welfare

Socialvetenskapliga forskningsrådet Swedish Council for Social Research

Sprängämnesinspektionen National Inspectorate of Explosives and Flammables

Statistiska centralbyrån Statistics Sweden

Statskontoret Agency for Administrative Development

Stiftelsen WHO Collaborating Centre on International Drug Monitoring

Strålskyddsinstitut, statens National Institute of Radiation Protection

*Styrelsen för internationell utveckling, SIDA Swedish International Development
Authority*

*Styrelsen för Internationellt Swedish International Enterprise
Development Näringslivsbistånd, SWEDECORP*

Styrelsen för psykologiskt försvar National Board of Psychological Defence

Styrelsen för Sverigebilden Image Sweden

Styrelsen för teknisk ackreditering Swedish Board for Technical Accreditation

*Styrelsen för u-landsforskning, Swedish Agency for Research Cooperation with
SAREC Developing Countries*

Svenska institutet, stiftelsen Swedish Institute

EC (cont•d)

T

*Talboks- och punktskrifts- Library of Talking Books and Braille Publications
biblioteket*

*Teknikvetenskapliga forskningsrådet Swedish Research Council for Engineering
Sciences*

Tekniska museet, stiftelsen National Museum of Science and Technology

Tingsrätterna (97) District and City Courts (97)

*Tjänsteförslagsnämnden för domstolsväsendet Judges Nomination Proposal
Committee*

Transportforskningsberedningen Transport Research Board

Transportrådet Board of Transport

Tullverket Swedish Board of Customs

U

Ungdomsråd, statens State Youth Council

Universitet och högskolor Universities and University Colleges

Utlänningsnämnden Aliens Appeals Board

Utsädeskontroll, statens National Seed Testing and Certification Institute

V

Vatten- och avloppsnämnd, statens National Water Supply and Sewage Tribunal

Vattenöverdomstolen Water Rights Court of Appeal

Verket för högskoleservice (VHS) National Agency for Higher Education

Veterinärmedicinska anstalt, statens National Veterinary Institute

Väg- och trafikinstitut, statens Road and Traffic Research Institute

Värnpliktsverket Armed Forces• Enrolment Board

Växsortsnämnd, statens National Plant Variety Board

EC (cont'd)

Y

Yrkesinspektionen Labour Inspectorate

Å

Åklagarmyndigheterna Public Prosecution Authorities

Ö

Överbefälhavaren Supreme Commander of the Armed Forces

Överstyrelsen för civil beredskap National Board of Civil Emergency Preparedness

UNITED KINGDOM

(Authentic in the English language only)

Cabinet office

Chessington Computer Centre

Civil Service College

Recruitment and Assessment Service

Civil Service Occupational Health Service

Office of Public Services and Science

Parliamentary Counsel Office

The Government Centre on Information Systems (CCTA)

Central Office of Information

Charity Commission

Crown Prosecution Service

Crown Estate Commissioners (Vote Expenditure only)

Customs and Excise Department

Department for National Savings

Department for Education

Higher Education Funding Council for England

Department of Employment

Employment Appeal Tribunal

Industrial Tribunals

Office of Manpower Economics

Department of Health

Central Council for Education and Training in Social Work

Dental Practice Board

English National Board for Nursing, Midwifery and Health Visitors

National Health Service Authorities and Trusts

Prescription Pricing Authority

Public Health Laboratory Service Board

EC (cont•d)

U.K. Central Council for Nursing, Midwifery and Health Visiting
Department of National Heritage
British Library
British Museum
Historic Buildings and Monuments Commission for England (English Heritage)
Imperial War Museum
Museums and Galleries Commission
National Gallery
National Maritime Museum
National Portrait Gallery
Natural History Museum
Royal Commission on Historical Manuscripts
Royal Commission on Historical Monuments of England
Royal Fine Art Commission (England)
Science Museum
Tate Gallery
Victoria and Albert Museum
Wallace Collection
Department of Social Security
Medical Boards and Examining Medical Officers (War Pensions)
Regional Medical Service
Independent Tribunal Service
Disability Living Allowance Advisory Board
Occupational Pensions Board
Social Security Advisory Committee
Department of the Environment
Building Research Establishment Agency
Commons Commission
Countryside Commission
Valuation tribunal
Rent Assessment Panels
Royal Commission on Environmental Pollution
The Buying Agency
Department of the Procurator General and Treasury Solicitor
Legal Secretariat to the Law Officers
Department of Trade and Industry
Laboratory of the Government Chemist
National Engineering Laboratory
National Physical Laboratory
National Weights and Measures Laboratory
Domestic Coal Consumers• Council
Electricity Committees
Gas Consumers• Council
Central Transport Consultative Committees
Monopolies and Mergers Commission
Patent Office
Department of Transport
Coastguard Services

EC (cont•d)

Transport Research Laboratory
Export Credits Guarantee Department
Foreign and Commonwealth Office
Wilton Park Conference Centre
Government Actuary's Department
Government Communications Headquarters
Home Office
Boundary Commission for England
Gaming Board for Great Britain
Inspectors of Constabulary
Parole Board and Local Review Committees
House of Commons
House of Lords
Inland Revenue, Board of
Intervention Board for Agricultural Produce
Lord Chancellor's Department
Combined Tax Tribunal
Council on Tribunals
Immigration Appellate Authorities
Immigration Adjudicators
Immigration Appeal Tribunal
Lands Tribunal
Law Commission
Legal Aid Fund (England and Wales)
Pensions Appeal Tribunals
Public Trust Office
Office of the Social Security Commissioners
Supreme Court Group (England and Wales)
Court of Appeal - Criminal
Circuit Offices and Crown, County and Combined Courts (England & Wales)
Transport Tribunal
Ministry of Agriculture, Fisheries and Food
Agricultural Development and Advisory Service
Agricultural Dwelling House Advisory Committees
Agricultural Land Tribunals
Agricultural Wages Board and Committees
Cattle Breeding Centre
Plant Variety Rights Office
Royal Botanic Gardens, Kew
Ministry of Defence¹⁸
Meteorological Office
Procurement Executive
National Audit Office
National Investment and Loans Office
Northern Ireland Court Service

¹⁸Non-warlike materials contained in Part I (3) of this Annex

EC (cont•d)

Coroners Courts
County Courts
Court of Appeal and High Court of Justice in Northern Ireland
Crown Court
Enforcement of Judgements Office
Legal Aid Fund
Magistrates Court
Pensions Appeals Tribunals
Northern Ireland, Department of Agriculture
Northern Ireland, Department of Economic Development
Northern Ireland, Department of Education
Northern Ireland, Department of the Environment
Northern Ireland, Department of Finance and Personnel
Northern Ireland, Department of Health and Social Services
Northern Ireland Office
Crown Solicitors Office
Department of the Director of Public Prosecutions for Northern Ireland
Northern Ireland Forensic Science Laboratory
Office of Chief Electoral Officer for Northern Ireland
Police Authority for Northern Ireland
Probation Board for Northern Ireland
State Pathologist Service
Office of Fair Trading
Office of Population Censuses and Surveys
National Health Service Central Register
Office of the Parliamentary Commissioner for Administration and Health Service Commissioners
Ordnance Survey
Overseas Development Administration
Natural Resources Institute
Paymaster General's Office
Postal Business of the Post Office
Privy Council Office
Public Record Office
Registry of Friendly Societies
Royal Commission on Historical Manuscripts
Royal Hospital, Chelsea
Royal Mint
Scotland, Crown Office and Procurator Fiscal Service
Scotland, Registers of Scotland
Scotland, General Register Office
Scotland, Lord Advocate's Department
Scotland, Queen's and Lord Treasurer's Remembrancer
Scottish Courts Administration
Accountant of Courts Office
Court of Justiciary
Court of Session

EC (cont•d)

- Lands Tribunal for Scotland*
 - Pensions Appeal Tribunals*
 - Scottish Land Court*
 - Scottish Law Commission*
 - Sheriff Courts*
 - Social Security Commissioners• Office*
 - The Scottish Office Central Services*
 - The Scottish Office Agriculture and Fisheries Department:*
 - Crofters Commission*
 - Red Deer Commission*
 - Royal Botanic Garden, Edinburgh*
 - The Scottish Office Industry Department*
 - The Scottish Office Education Department*
 - National Galleries of Scotland*
 - National Library of Scotland*
 - National Museums of Scotland*
 - Scottish Higher Education Funding Council*
 - The Scottish Office Environment Department*
 - Rent Assesment Panel and Committees*
 - Royal Commission on the Ancient and Historical Monuments of Scotland*
 - Royal Fine Art Commission for Scotland*
 - The Scottish Office Home and Health Departments*
 - HM Inspectorate of Constabulary*
 - Local Health Councils*
 - National Board for Nursing, Midwifery and Health Visiting for Scotland*
 - Parole Board for Scotland and Local Review Committees*
 - Scottish Council for Postgraduate Medical Education*
 - Scottish Crime Squad*
 - Scottish Criminal Record Office*
 - Scottish Fire Service Training School*
 - Scottish National Health Service Authorities and Trusts*
 - Scottish Police College*
 - Scottish Record Office*
 - HM Stationery Office (HMSO)*
 - HM Treasury*
 - Forward*
 - Welsh Office*
 - Royal Commission of Ancient and Historical Monuments in Wales*
 - Welsh National Board for Nursing, Midwifery and Health Visiting*
 - Local Government Boundary Commission for Wales*
 - Valuation Tribunals (Wales)*
 - Welsh Higher Education Finding Council*
 - Welsh National Health Service Authorities and Trusts*
 - Welsh Rent Assessment Panels*
- 3.List of supplies and equipment purchased by Ministries of Defence in Belgium, Denmark, the Federal Republic of Germany, Spain, Finland, France, Greece,*

EC (cont•d)

Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom that are covered by the Agreement:

Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement.

Chapter 26: Metallic ores, slag and ash

Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

except:

ex 27.10: special engine fuels

Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare-earth metals, of radio-active elements and isotopes

except:

ex 28.09: explosives

ex 28.13: explosives

ex 28.14: tear gas

ex 28.28: explosives

ex 28.32: explosives

ex 28.39: explosives

ex 28.50: toxic products

ex 28.51: toxic products

ex 28.54: explosives

Chapter 29: Organic chemicals

except:

ex 29.03: explosives

ex 29.04: explosives

ex 29.07: explosives

ex 29.08: explosives

ex 29.11: explosives

ex 29.12: explosives

ex 29.13: toxic products

ex 29.14: toxic products

ex 29.15: toxic products

ex 29.21: toxic products

ex 29.22: toxic products

ex 29.23: toxic products

ex 29.26: explosives

ex 29.27: toxic products

ex 29.29: explosives

Chapter 30: Pharmaceutical products

EC (cont•d)

Chapter 31: Fertilizers

Chapter 32: Tanning and dyeing extracts; tannings and their derivatives; dyes, colours, paints and varnishes; putty, fillers and stoppings; inks

Chapter 33: Essential oils and resinoids; perfumery, cosmetic or toilet preparations

Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes polishing and scouring preparations, candles and similar articles, modelling pastes and dental waxes

Chapter 35: Albuminoidal substances; glues; enzymes

Chapter 37: Photographic and cinematographic goods

Chapter 38: Miscellaneous chemical products

except:

ex 38.19: toxic products

Chapter 39: Artificial resins and plastic materials, cellulose esters and ethers; articles thereof

except:

ex 39.03: explosives

Chapter 40: Rubber, synthetic rubber, factice, and articles thereof

except:

ex 40.11: bullet-proof tyres

Chapter 41: Raw hides and skins (other than furskins) and leather

Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)

Chapter 43: Furskins and artificial fur; manufactures thereof

Chapter 44: Wood and articles of wood; wood charcoal

Chapter 45: Cork and articles of cork

Chapter 46: Manufactures of straw of esparto and of other plaiting materials; basketware and wickerwork

EC (cont•d)

Chapter 47: Paper-making material

Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard

Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans

Chapter 65: Headgear and parts thereof

Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof

Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair

Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials

Chapter 69: Ceramic products

Chapter 70: Glass and glassware

Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery

Chapter 73: Iron and steel and articles thereof

Chapter 74: Copper and articles thereof

Chapter 75: Nickel and articles thereof

Chapter 76: Aluminium and articles thereof

Chapter 77: Magnesium and beryllium and articles thereof

Chapter 78: Lead and articles thereof

Chapter 79: Zinc and articles thereof

Chapter 80: Tin and articles thereof

Chapter 81: Other base metals employed in metallurgy and articles thereof

Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof

except:

EC (cont'd)

ex 82.05: tools

ex 82.07: tools, parts

Chapter 83: Miscellaneous articles of base metal

Chapter 84: Boilers, machinery and mechanical appliances; parts thereof

except:

ex 84.06: engines

ex 84.08: other engines

ex 84.45: machinery

ex 84.53: automatic data-processing machines

ex 84.55: parts of machines under heading No 84.53

ex 84.59: nuclear reactors

Chapter 85: Electrical machinery and equipment; parts thereof

except:

ex 85.13: telecommunication equipment

ex 85.15: transmission apparatus

Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway tracks fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)

except:

ex 86.02: armoured locomotives, electric

ex 86.03: other armoured locomotives

ex 86.05: armoured wagons

ex 86.06: repair wagons

ex 86.07: wagons

Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof

except:

87.08: tanks and other armoured vehicles

ex 87.01: tractors

ex 87.02: military vehicles

ex 87.03: breakdown lorries

ex 87.09: motorcycles

ex 87.14: trailers

Chapter 89: Ships, boats and floating structures

except:

89.01 A: warships

EC (cont•d)

Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof

except:

ex 90.05: binoculars

ex 90.13: miscellaneous instruments, lasers

ex 90.14: telemeters

ex 90.28: electrical and electronic measuring instruments

ex 90.11: microscopes

ex 90.17: medical instruments

ex 90.18: mechano-therapy appliances

ex 90.19: orthopaedic appliances

ex 90.20: X-ray apparatus

Chapter 91: Clocks and watches and parts thereof

Chapter 92: Musical instruments; sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles

Chapter 94: Furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings

except:

ex 94.01 A: aircraft seats

Chapter 95: Articles and manufactures of carving or moulding material

Chapter 96: Brooms, brushes, powder-puffs and sieves

Chapter 98: Miscellaneous manufactured articles

4. List of supplies and equipment purchased by defence agencies in Austria are those contained in Annex I, Part II, Austria of the Agreement on Government Procurement.

5. List of supplies and equipment purchased by defence agencies in Sweden:

CCCN Chapter

Except:

25-26

27

28

ex 27.10 special engine fuels

ex 28.09 explosives

ex 28.13 explosives

ex 28.14 tear gas

ex 28.28 explosives

ex 28.32 explosives

EC (cont•d)

91-92

94

95-98

ex 94.01 aerodynamic seats

EC (cont'd)

ANNEX 2

*Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Services specified in Annex 4

Thresholds: SDR 200,000

Works specified in Annex 5

Threshold: SDR 5,000,000

List of Entities:

1. *Contracting authorities of the regional or local public authorities*
2. *Bodies governed by public law as defined in Directive 93/37/EEC.
The following bodies fulfil these criteria:*

AUSTRIA

All regional and local public authorities and bodies governed by public law not having a commercial or industrial character established at the state, district and municipal level in the States of:

*Lower Austria,
Upper Austria,
Styria,
Salzburg,
the Burgenland,
the Tirol,
Vorarlberg,
Vienna,
Carinthia.*

BELGIQUE

(La version française fait foi)

Organismes

EC (cont•d)

- Archives générales du Royaume et Archives de l'État dans les Provinces - Algemeen Rijksarchief en Rijksarchief in de Provinciën.
- Conseil autonome de l'Enseignement communautaire - Autonome Raad van het Gemeenschapsonderwijs.
- Radio et Télévision belge, émissions néerlandaises - Belgische Radio en Televisie, Nederlandse uitzendingen.
- Belgisches Rundfunk-und Fernsehzentrum der Deutschsprachigen Gemeinschaft (Centre de Radio et Télévision belge de la Communauté de Langue allemande - Centrum voor Belgische Radio en Televisie voor de Duitstalige Gemeenschap).
- Bibliothèque royale Albert 1er - Koninklijke Bibliotheek Albert I.
- Bureau d'Intervention et de Restitution belge.
- Caisse auxiliaire de Paiement des Allocations de Chômage - Hulpkas voor Werkloosheidsuitkeringen.
- Caisse nationale des Pensions de Retraite et de Survie - Rijkskas voor Rust- en Overlevingspensioenen.
- Caisse de Secours et de Prévoyance en Faveur des Marins naviguant sous Pavillon belge -Hulp- en Voorzorgskas voor Zeevarenden onder Belgische Vlag.
- Caisse nationale des Calamités - Nationale Kas voor de Rampenschade.
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs de l'Industrie diamantaire - Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van de Arbeiders der Diamantnijverheid.
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs de l'Industrie du Bois - Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van Arbeiders in de Houtnijverheid.
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs occupés dans les Entreprises de Batellerie - Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van Arbeiders der Ondernemingen voor Binnenscheepvaart.
- Caisse spéciale de Compensation pour Allocations familiales en Faveur des Travailleurs occupés dans les Entreprises de Chargement, Déchargement et Manutention de Marchandises dans les Ports Débarcadères, Entrepôts et Stations (appelée habituellement •Caisse spéciale de Compensation pour Allocations familiales des Régions maritimes• -Bijzondere Verrekenkas voor Gezinsvergoedingen ten Bate van de Arbeiders gebezigd door Ladings- en Lossingsondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd: •Bijzondere Compensatiekas voor kindertoeslagen van de zeevaartgewesten•).
- Centre informatique pour la Région bruxelloise - Centrum voor Informatica voor het Brusselse Gewest.
- Commissariat général de la Communauté flamande pour la Coopération internationale Commissariaat-Generaal voor Internationale Samenwerking van de Vlaamse Gemeenschap.
- Commissariat général pour les Relations internationales de la Communauté française de Belgique Commissariaat-Generaal bij de Internationale Betrekkingen van de Franse Gemeenschap van België.

EC (cont•d)

- *Conseil central de l'Économie - Centrale Raad voor het Bedrijfsleven.*
- *Conseil économique et social de la Région Wallonne - Sociaal economische Raad van het Waals Gewest.*
- *Conseil national du Travail - Nationale Arbeidsraad.*
- *Conseil supérieur des Classes moyennes - Hoge Raad voor de Middenstand.*
- *Office pour les Travaux d'infrastructure de l'Enseignement subsidié - Dienst voor Infrastructuurwerken van het gesubsidieerd Onderwijs.*
- *Fondation royale - Koninklijke Schenking.*
- *Fonds d'aide médicale urgente - Fonds voor dringende geneeskundige Hulp.*
- *Fonds des Accidents du Travail - Fonds voor Arbeidsongevallen.*
- *Fonds d'Indemnisation des Travailleurs licenciés en Cas de fermeture d'Entreprises - Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen ontslagen Werknemers.*
- *Fonds national de Garantie pour la Réparation des Dégats houillers - Nationaal Waarborgfonds inzake Kolenmijnschade.*
- *Fonds national de Retraite des Ouvriers Mineurs - Nationaal Pensioenfonds voor Mijnwerkers.*
- *Fonds pour le Financement des Prêts à des États étrangers - Fonds voor Financiering van de Leningen aan vreemde Staten.*
- *Fonds pour la Rémunération des Mousses enrôlés à Bord des Bâtiments de Pêche - Fonds voor Scheepsjongens aan Boord van Vissersvaartuigen.*
- *Fonds wallon d'Avances pour la Réparation des Dommages provoqués par des Pompes et des Prises d'Eau souterraine - Waals Fonds van Voorschotten voor het Herstel van de Schade veroorzaakt door Grondwaterzuiveringen en Afpompingen.*
- *Institut d'Aéronomie spatiale - Instituut voor Ruimte-aëronomie*
- *Institut belge de normalisation - Belgisch Instituut voor Normalisatie.*
- *Institut bruxellois de l'Environnement - Brussels Instituut voor Milieubeheer.*
- *Institut d'Expertise vétérinaire - Instituut voor veterinaire Keuring.*
- *Institut économique et social des Classes moyennes - Economisch en sociaal Instituut voor de Middenstand.*
- *Institut d'Hygiène et d'Epidémiologie - Instituut voor Hygiëne en Epidemologie.* -
Institut francophone pour la Formation permanente des Classes moyennes
- Franstalig Instituut voor Permanente Vorming voor de Middenstand.
- *Institut géographique national - Nationaal Geografisch Instituut*
- *Institut géotechnique de l'État - Rijksinstituut voor Grondmechanica.*
- *Institut national des Industries extractives - Nationale Instituut voor de Extractiebedrijven.*
- *Institut national des Invalides de Guerre, anciens Combattants et Victimes de Guerre - Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers.*
- *Institut pour l'Amélioration des Conditions de Travail - Instituut voor verbetering van de Arbeidsvoorwaarden.*
- *Institut royal belge des Sciences naturelles - Koninklijk Belgisch Instituut voor Natuurwetenschappen.*
- *Institut royal belge du Patrimoine artistique - Koninklijk Instituut voor het Kunstpatrimonium.*

EC (cont•d)

- *Institut royal de Météorologie - Koninklijk meteorologisch Instituut.*
- *Enfance et Famille - Kind en Gezin.*
- *Mémorial national du Fort de Breendonck - Nationaal Gedenkteken van het Fort van Breendonck.*
- *Musée royal de l'Afrique centrale - Koninklijk Museum voor Midden-Afrika.*
- *Musées royaux d'Art et d'Histoire - Koninklijke Musea voor Kunst en Geschiedenis.*
- *Musées royaux des Beaux-Arts de Belgique - Koninklijke Musea voor Schone Kunsten van België.*
- *Observatoire royal de Belgique - Koninklijke Sterrenwacht van België.*
- *Office belge du Commerce extérieur - Belgische Dienst voor Buitenlandse Handel.*
- *Office central d'Action sociale et culturelle au Profit des Membres de la Communauté militaire Centrale Dienst voor sociale en culturele Actie ten behoeve van de Leden van de militaire Gemeenschap.*
- *Office de la Naissance et de l'Enfance - Dienst voor Borelingen en Kinderen.*
- *Office de la Navigation - Dienst voor de Scheepvaart.*
- *Office de Promotion du Tourisme de la Communauté française - Dienst voor de Promotie van het Toerisme van de Franse Gemeenschap.*
- *Office de Renseignements et d'Aide aux Familles des Militaires - Hulp- en Informatiebureau voor Gezinnen van Militairen.*
- *Office de Sécurité sociale d'Outre-Mer - Dienst voor overzeese sociale Zekerheid.*
- *Office national d'Allocations familiales pour Travailleurs salariés - Rijksdienst voor Kinderbijslag voor Werknemers.*
- *Office national de Sécurité sociale des Administrations provinciales et locales - Rijksdienst voor sociale Zekerheid van de provinciale en plaatselijke Overheidsdiensten.*
- *Office national des Vacances annuelles - Rijksdienst voor de jaarlijkse Vakantie.*
- *Office régional bruxellois de l'Emploi - Brusselse Gewestelijke Dienst voor Arbeidsbemiddeling.*
- *Office régional et communautaire de l'emploi et de la Formation - Gewestelijke en Gemeenschappelijke Dienst voor Arbeidsvoorziening en Vorming.*
- *Office régulateur de la Navigation intérieure - Dienst voor Regeling der Binnenvaart.*
- *Société publique des déchets pour la Région flamande - Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest.*
- *Orchestre national de Belgique - Nationaal Orkest van België.*
- *Organisme national des Déchets radioactifs et des Matières fissiles - Nationale Instelling voor radioactief afval en Spleijstoffen.*
- *Palais des Beaux-Arts - Paleis voor Schone Kunsten.*
- *Pool des Marins de la marine marchande - Pool van de Zeelieden ter Koopvaardij.*
- *Radio et Télévision belge de la Communauté française - Belgische Radio en Televisie van de Franse Gemeenschap.*
- *Conseil économique et social pour la Flandre - Sociaal economische Raad voor Vlaanderen.*
- *Société du Logement de la région bruxelloise et société agréées - Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen.*

EC (cont•d)

- *Théâtre royal de la Monnaie - De Koninklijke Muntchouwborg.*
- *Universités relevant de la Communauté flamande - Universiteiten afhankelijk van de Vlaamse Gemeenschap.*
- *Universités relevant de la Communauté française - Universiteiten afhankelijk van de Franse Gemeenschap.*
- *Office flamand de l'Emploi et de la Formation professionnelle - Vlaamse Dienst voor Arbeidsvoorziening en Beroepsopleiding.*
- *Fonds flamand de Construction d'Institutions hospitalières et médico-sociales - Vlaams Fonds voor de Bouw van Ziekenhuizen en medisch-sociale Instellingen.*
- *Société flamande du Logement et sociétés agréées - Vlaamse Huisvestingsmaatschappij en erkende maatschappijen.*
- *Société régionale wallonne du Logement et sociétés agréées - Waalse Gewestelijke Maatschappij voor de Huisvesting en erkende maatschappijen.*
- *Société flamande d'Épuration des eaux - Vlaamse Maatschappij voor Waterzuivering.*
- *Fonds flamand du Logement des Familles nombreuses - Vlaams Woningfonds van de grote Gezinnen.*
 - *Aquafin.*
 - *Berlaymont 2000.*
 - *Bruxelles-propreté.*
 - *Fonds Communautaire pour l'Intégration sociale et professionnelle des personnes handicapées.*
 - *Fonds de Construction des Institutions hospitalières et médico-sociales de la Communauté française*
 - *Fonds de Garantie des Bâtiments scolaires de la Communauté germanophone - Garantiefonds der Deutschsprachigen Gemeinschaft für Schulbauten.*
 - *Fonds des bâtiments scolaires de l'Enseignement officiel subventionné*
 - *Fonds flamand de Constructions hospitalières et médico-sociales - Vlaams Fond voor de Bouw van ziekenhuizen en medisch-sociale Inrichtingen.*
 - *Fonds national de Reclassement des Handicapés.*
 - *Institut belge des Services postaux et de Télécommunications.*
- *Institut flamand pour l'Entreprise indépendante - Vlaams Instituut voor het Zelfstandig ondernemen.*
 - *Institut national pour la Criminalistique*
 - *Institut pour la Formation permanente et continue des Classes moyennes et des petites et moyennes Entreprises - Institut für ständige Aus- und Weiterbildung Mittelstand sowie für die mittleren und kleinen Unternehmen.*
 - *Institut scientifique de Service public en Région wallone.*
 - *Office de Contrôle des Assurances.*
 - *Office de la Communauté germanophone pour les Personnes ayant un Handicap et pour l'Aide sociale spéciale - Dienststelle der Deutschsprachigen Gemeinschaft für Personen mit einer Behinderung sowie für die besondere soziale Fürsorge.*
- *Office flamand du Commerce extérieur - Vlaamse Dienst voor buitenlandse Handel.*
- *Office wallon de Développement rural.*
- *Société flamande pour l'Environnement - Vlaamse milieumaatschappij.*
- *Société flamande terrienne - Vlaamse Landmaatschappij*

EC (cont•d)

- Société publique des Déchets pour la Région flamande - Openbare Vlaamse Afvalstofmaatschappij.*
- Société wallone terrienne.*
- Sofribru.*
- Société publique d'Aide à la Qualité de l'Environnement.*

Catégories

- Les sociétés de développement régional*
- les centres publics d'aide sociale*

- les fabriques d'église et les organismes chargés de la gestion du temporel des cultes reconnus*
- les polders et wateringues*
- les comités de remembrement des biens ruraux*

DENMARK

(Authentic in the English language only)

Bodies

- *Danmarks Radio*
- *Det Landsdækkende Fjernsyn TV 2*
- *Danmarks Nationalbank*
- *Storebæltsforbindelsen A/S*
- *Byfornyelsesselskabet København*

Categories

- Andre Forvaltningssubjekter (other public administrative bodies)*

EC (cont•d)

GERMANY

(Authentic in the English language only)

Categories

1. Legal persons governed by public law

Authorities, establishments and foundations governed by public law and created by federal, State or local authorities in particular in the following sectors:

1.1 Authorities

- wissenschaftliche Hochschulen und verfaßte Studentenschaften (universities and established student bodies)*
 - berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) (professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists)*
- Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) (business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftsmen's guilds, tradesmen's associations)*
- Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) (social security institutions: health, accident and pension insurance funds)*
- kassenärztliche Vereinigungen (associations of panel doctors)*
- Genossenschaften und Verbände (cooperatives and other associations)*

1.2 Establishments and foundations

Non-industrial and non-commercial establishments subject to state control and operating in the general interest, particularly in the following fields:

- rechtsfähige Bundesanstalten (Federal institutions having legal capacity)*
- Versorgungsanstalten und Studentenwerke (pension organizations and students' unions)*
- Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations)*

2. Legal persons governed by private law

Non-industrial and non-commercial establishments subject to state control and operating in the general interest (including •kommunale Versorgungsunternehmen• - municipal utilities), particularly in the following fields:

- Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische Forschungseinrichtungen, Untersuchungs- und Tierkörperbeseitigungsanstalten) (health: hospitals, health resort*

EC (cont•d)

- establishments, medical research institutes, testing and carcassdisposal establishments)*
- Kultur (*öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und botanische Gärten*) (*culture: public theatres, orchestras, museums, libraries, archives, zoological and botanical gardens*)
 - Soziales (*Kindergärten, Kindertageshelme, Erholungseinrichtungen, Kinder- und Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser, Frauenhäuser, Altersheime, Obdachlosenunterkünfte*) (*social welfare: nursery schools, children's play schools, resthomes, children's homes, hostels for young people, leisure centres, community and civic centres, homes for battered wives, old people's homes, accommodation for the homeless*)
 - Sport (*Schwimmbäder, Sportanlagen und einrichtungen*) (*sport: swimming baths, sports facilities*)
 - Sicherheit (*Feuerwehren, Rettungsdienste*) (*safety: firebrigades, other emergency services*)
 - Bildung (*Umschulungs-, Aus-, Fort- und Weiterbildungs-einrichtungen, Volkhochschulen*) (*education: training, further training and retraining establishments, adult evening classes*)
 - Wissenschaft, *Forschung und Entwicklung* (*Großforschungseinrichtungen, wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung*) (*science, research and development: largescale research institutes, scientific societies and associations, bodies promoting science*)
 - Entsorgung (*Straßenreinigung, Abfall- und Abwasserbeseitigung*) (*refuse and garbage disposal services: street cleaning, waste and sewage disposal*)
 - Bauwesen und *Wohnungswirtschaft* (*Stadtplanung, Stadtentwicklung, Wohnungsunternehmen, Wohnraumvermittlung*) (*building, civil engineering and housing: town planning, urban development, housing enterprises, housing agency services*)
 - Wirtschaft (*Wirtschaftsförderungsgesellschaften*) (*economy: organizations promoting economic development*)
 - Friedhofs- und *Bestattungswesen* (*cemeteries and burial services*)
 - Zusammenarbeit mit den *Entwicklungsländern* (*Finanzierung, technische Zusammenarbeit, Entwicklungshilfe, Ausbildung*) (*cooperation with developing countries: financing, technical cooperation, development aid, training*).

EC (cont•d)

ESPAÑA

(Esta lista es auténtica en la versión española)

Categorías

- Entidades Gestoras y Servicios Comunes de la Seguridad Social
- Organismos Autonomos de la Administracion del Estado
- Organismos Autonomos de las Comunidades Autonomas
- Organismos Autonomos de las Entidades Locales
- Otras entidades sometidas a la legislacion de contratos del Estado español

FINLAND

1. *Contracting authorities of the regional and local public authorities, including all (455) municipalities and*

<i>Lääninhallitukset</i>	<i>Provincial Governments</i>
- Hämeen lääni	
- Keski-Suomen lääni	
- Kuopion lääni	
- Kymen lääni	
- Lapin lääni	
- Mikkelin lääni	
- Oulun lääni	
- Pohjois-Karjalan lääni	
- Turun ja Porin lääni	
- Uudenmaan lääni	
- Vaasan lääni	

2. *Bodies governed by public law, not having a commercial or industrial character, pursuant to Article 2 of •Laki julkisista hankinnoista (1505/92)• (Public Procurement Act), including:*

<i>Kuluttajatutkimuskeskus</i>	<i>National Consumer Research Centre</i>
<i>Matkailun edistämiskeskus</i>	<i>Finnish Tourist Board</i>
<i>Teknillinen tarkastuskeskus</i>	<i>Technical Inspection Centre</i>
<i>Mittatekniikan keskus</i>	<i>Centre for Metrology and</i>
<i>Accreditation</i>	
<i>Geologian tutkimuskeskus</i>	<i>Geological Survey of Finland</i>
<i>Valtion teknillinen tutkimuskeskus</i>	<i>Technical Research Centre of Finland</i>
<i>Teknologian kehittämiskeskus</i>	<i>Technology Development</i>
<i>Centre</i>	
<i>Valtiontakuu keskus</i>	<i>Finnish Guarantee Board</i>
<i>Tielaitos</i>	<i>Road Administration</i>

EC (cont•d)

<i>Merenkulkulaitos</i>	<i>Navigation Administration</i>
<i>Merentutkimuslaitos</i>	<i>Marine Research Institute</i>
<i>Ilmatieteen laitos</i>	<i>Meteorological Institute</i>
<i>Karttakeskus</i>	<i>Map Centre</i>
<i>Geodeettinen laitos</i>	<i>Finnish Geodetic Institute</i>
<i>Valtion viljavarasto</i>	<i>Finnish Grain Board</i>
<i>Maatalouden taloudellinen tutkimuslaitos</i>	<i>Agricultural Economics Research</i>
<i>Institute</i>	
<i>Maatalouden tutkimuskeskus</i>	<i>Agricultural Research Centre</i>
<i>Kasvintuotannon tarkastuskeskus</i>	<i>Plant Production Inspection Centre</i>
<i>Metsähallitus</i>	<i>Forest and Park Service</i>
<i>Metsäntutkimuslaitos</i>	<i>Forest Research Institute</i>
<i>Riista- ja kalatalouden tutkimuslaitos</i>	<i>Finnish Game and Fisheries</i>
<i>Research</i>	
<i>Institute</i>	
<i>Eläinlääkintä- ja elintarvikelaitos</i>	<i>National Veterinary and Food</i>
<i>Research</i>	
<i>Institute</i>	
<i>Oikeuspoliittinen tutkimuslaitos</i>	<i>National Research Institute of Legal</i>
<i>Policy</i>	
<i>Helsingin kriminaalipoliittinen instituutti</i>	<i>Helsinki Institute for Crime</i>
<i>Prevention</i>	
	<i>and Control</i>
<i>Valtion audiovisuaalinen keskus</i>	<i>State Audiovisual Centre</i>
<i>Ylioppilastutkintolautakunta</i>	<i>Matriculation Examination</i>
<i>Board</i>	
<i>Yliopistot, korkeakoulut ja kuvataideakatemia</i>	<i>Institutions of Higher</i>
<i>Education and the</i>	
	<i>Academy of Fine Arts</i>
<i>Suomen Akatemia</i>	<i>Academy of Finland</i>
<i>Rauhan- ja konfliktitutkimuslaitos</i>	<i>Peace Research Institute</i>
<i>Kotimaisten kielten tutkimuskeskus</i>	<i>Research Centre for Domestic</i>
<i>Languages</i>	
<i>Kansallisarkisto ja maakunta-arkistot</i>	<i>National Archives and</i>
<i>Provincial Archives</i>	
<i>Taiteen keskustoimikunta</i>	<i>Arts Council of Finland</i>
<i>Valtion taidetoimikunnat</i>	<i>National Art Committees</i>
<i>Läänien taidetoimikunnat</i>	<i>Regional Art Councils</i>
<i>Näkövammaisten kirjasto</i>	<i>Library of the Visually Handicapped</i>
<i>Museovirasto</i>	<i>National Board of Antiquities and</i>
	<i>Historical Monuments</i>
<i>- Rakennustaiteen museo</i>	<i>- Museum of Architecture</i>
<i>- Kansallismuseo</i>	<i>- National Museum</i>
<i>Valtion taidemuseo</i>	<i>National Gallery</i>
<i>Suomenlinnan hoitokunta</i>	<i>Administration of Suomenlinna</i>
<i>Suomen elokuva-arkisto</i>	<i>Finnish Film Archives</i>
<i>Valtion liikuntaneuvosto</i>	<i>National Sports Council</i>
<i>Valtion nuorisoneuvosto</i>	<i>National Youth Council</i>

EC (cont•d)

<i>Valtion opintotukikeskus</i>	<i>National Centre for Student Aid</i>
<i>Kansainvälisen henkilövaihdon keskus</i>	<i>Finnish Centre for International</i>
<i>Mobility</i>	
<i>(CIMO)</i>	<i>and Exchange Programmes (CIMO)</i>
<i>Poliisiopisto</i>	<i>Police Academy</i>
<i>Poliisikoulu</i>	<i>Police School</i>
<i>Poliisikoiralaivos</i>	<i>Police Dog Training Center</i>
<i>Poliisivarikko</i>	<i>Police Material Depot</i>
<i>Valtion pelastusopisto</i>	<i>State Rescue Institute</i>
<i>Valtion pelastuskoulu</i>	<i>State Rescue School</i>
<i>Sosiaali- ja terveysalan tutkimus- ja</i>	<i>National Research and</i>
<i>Development kehittämiskeskus</i>	<i>Centre for Welfare and</i>
<i>Health</i>	
<i>Kansanterveyslaitos</i>	<i>National Public Health Institute</i>
<i>Merimiespalvelutoimisto</i>	<i>Seamen's Service</i>
<i>Työvoimaopisto</i>	<i>Labour Institute</i>
<i>Valtion taloudellinen tutkimuskeskus</i>	<i>State's Economic Research Centre</i>
<i>SITRA</i>	
<i>Valtionhallinnon kehittämiskeskus</i>	
<i>Tilastokeskus</i>	<i>Central Statistical Office</i>
<i>Suomen pankki</i>	<i>Bank of Finland</i>
<i>Valtion hankintakeskus</i>	<i>Government Purchasing Centre</i>

FRANCE

(La version française fait foi)

Catégories

Les établissements publics régionaux, départementaux ou locaux à caractère administratif:

- collèges*
- lycées*
- établissements publics hospitaliers*
- offices publics d'habitation à loyer modéré (OPHLM)*

Les groupements de collectivités territoriales:

- syndicats de communes*
- districts*
- communautés urbaines*
- institutions interdépartementales et interregionales*
- les communautés de communes et les communautés de villes.*

EC (cont'd)

GREECE

(Authentic in the English language only)

Categories

Other legal persons governed by public law whose public contracts are subject to State control.

IRELAND

(Authentic in the English language only)

Bodies

- Local Government Computer Services Board*
- Local Government Staff Negotiations Board*
- An Bord Trachtála (Irish Export Board)*
- Forfas*
- Forbairt*
- I.D.A. (Ire) Ltd*
- Irish Goods Council (Promotion of Irish Goods)*
- Córas Beostoic agus Feola (CBF) (Irish Meat Board)*
- Bord Fáilte Éireann (Irish Tourism Board)*
- Údarás na Gaeltachta (Development Authority for Gaeltacht Regions)*
- An Bord Pleanála (Irish Planning Board)*

Categories

- Third Level Educational Bodies of a public character*
- National Training, Cultural or Research Agencies*

- Hospital Boards of a public character*
- National Health & Social Agencies of a public character*

- Central & Regional Fishery Boards.*

EC (cont•d)

ITALY

(Authentic in the English language only)

Categories

*-consorzi per le opere idrauliche
(consortia for water engineering works)*

*-le universita• statali, gli istituti universitari statali, i consorzi per i lavori
interessanti le universita•
(State universities, State university institutes, consortia for university development
work)*

*-gli istituti superiori scientifici e culturali, gli osservatori astronomici, astrofisici,
geofisici o vulcanologici
(higher scientific and cultural institutes, astronomical, astrophysical, geophysical or
vulcanological observatories)*

*-enti di ricerca e sperimentazione
(organizations conducting research and experimental work)*

*-le istituzioni pubbliche di assistenza e di beneficenza
(public welfare and benevolent institutions)*

*-enti che gestiscono forme obbligatorie di previdenza ed assistenza
(agencies administering compulsory social security and welfare schemes)*

*-consorzi di bonifica
(land reclamation consortia)*

*-enti di sviluppo o di irrigazione
(development or irrigation agencies)*

*-consorzi per le aree industriali
(associations for industrial areas)*

*-comunita• montane
(groupings of municipalities in mountain areas)*

*-enti preposti a servizi di pubblico interesse
(organizations providing services in the public interest)*

*-enti pubblici proposti ad attivita• di spettacolo, sportivo, turistiche e del tempo
libero
(public bodies engaged in entertainment, sport, tourism and leisure activities)*

*-enti culturali e di promozione artistica
(organizations promoting culture and artistic activities).*

EC (cont'd)

LUXEMBOURG

(La version française fait foi)

Organismes

-L'entreprise des Postes et Télécommunications¹⁹

Catégories

-Les établissements publics de l'Etat placés sous la surveillance d'un membre du Gouvernement

-Les établissements publics placés sous la surveillance des communes

-Les syndicats de communes créés en vertu de la loi du 14 février 1900 telle qu'elle a été modifiée à la suite.

THE NETHERLANDS

(Authentic in the English language only)

Bodies

-de Nederlandse Centrale Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek (TNO) en de daaronder ressorterende organisaties

Categories

-de waterschappen (administration of water engineering works)

-de instellingen van wetenschappelijk onderwijs vermeld in artikel 8 van de Wet op het Wetenschappelijk Onderwijs (1985), de academische ziekenhuizen institutions for scientific education, as listed in Article 8 of the Scientific Education Act (1985) (Wet op het Wetenschappelijk Onderwijs (1985)), teaching hospitals).

¹⁹Postal business only

EC (cont•d)

PORTUGAL

(Authentic in the English language only)

Categories

- Estabelecimentos Públicos de Ensino, Investigação Científica e Saúde (public establishments for education, scientific research and health)*
- Institutos Públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character)*
- Fundações Públicas (public foundations)*
- Administrações Gerais e Juntas Autónomas (general administration bodies and independent councils).*

SWEDEN

1. *Regional and local public authorities including all County Councils (23) and all Municipalities (286).*
2. *Procuring entities including companies, associations and foundations established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character and subject to certain other criteria²⁰ pursuant to the Public Procurement Act: •Lag om offentlig upphandling• (1992:1528).*

UNITED KINGDOM

(Authentic in the English language only)

Bodies

- *Central Blood Laboratory Authority*
- *Design Council*
- *Health and Safety Executive*
- *National Research Development Corporation*
- *Advisory, Conciliation and Arbitration Service*

²⁰ - *Financed for the most part by the State, a regional or a local authority, an ecclesiastical body; or*
- *Subject to supervision of the procurement by the State, a local authority; or*
- *Having a supervisory board whose members are appointed by the State, a regional or local authority or an ecclesiastical body; or*
- *Having a supervisory board, of which more than half of the members are appointed by the State, a regional or a local authority.*

EC (cont•d)

- *Commission for the New Towns*
 - *Development Board For Rural Wales*
- *English Industrial Estates Corporation*
- *National Rivers Authority*
 - *Nothern Ireland Housing Executive*
 - *Scottish Enterprises*
 - *Scottish Homes*
 - *Welsh Development Agency.*

Categories

- *Universities and polytechnics, maintained schools and colleges*
 - *Fire Authorities*
 - *Police Authorities*
 - *Other Non-Departmental Public Bodies*, including*
 - *Research Councils*
 - *New Town Corporations*
 - *Urban Development Corporation*
- falling within the definition at Article 1(b) of Directive 93/37/EEC*

**See •public Bodies• published annually by HM Stationery Office*

EC (cont•d)

ANNEX 3

*Other Entities that Procure in Accordance
With the Provisions of this Agreement*

Supplies

Services specified in Annex 4²¹

Thresholds: SDR 400,000

Works specified in Annex 5

Threshold: SDR 5,000,000

Entities in the water, electricity, urban transport, port and airport sectors:

1. List of Entities for Belgium, Denmark, the Federal Republic of Germany, Spain, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom:

The contracting entities within the meaning of Article 2 of Directive 93/38/EEC which are public authorities or public undertakings and which have as one of their activities any of those referred to below or any combination thereof:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such networks;*
- (b) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks;*
- (c) the provision of airport or other terminal facilities to carriers by air;*
- (d) the provision of maritime or inland port or other terminal facilities to carriers by sea or inland waterway;*
- (e) the operation of networks providing a service to the public in the field of transport by railway²², automated systems, tramway, trolley bus, bus or cable in accordance with Directive 93/38/EEC.*

²¹ Under the conditions provided for in Directive 93/38/EEC

²² Not including the entities listed in Annex VI of Directive 93/38/EEC (copy attached)

EC (cont•d)

The public authorities or public undertakings listed in Annex I (production, transport or distribution of drinking water), Annex II (production, transport or distribution of electricity), Annex VII (contracting entities in the field of urban railway, tramway, trolley bus or bus services), Annex VIII (contracting entities in the field of airport facilities) and Annex IX (contracting entities in the field of maritime or inland port or other terminal facilities) of Directive 93/38/EEC fulfil the criteria set out above (copies attached).

2. List of Entities for Austria:

2.1 Entities in the water and energy sector

The covered entities are those which exercise as a principal activity, the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport and distribution of drinking water, and electricity.

2.2 Entities in the transport sector

The covered entities are those which exercise as a principal activity:

- (i) the operation of networks providing a service to the public in the field of transport by trolley bus, bus or cable;*
- (ii) the exploitation of a geographical area for the purpose of the provision of inland port or other terminal facilities to carrier by inland waterway or the provision of airports or other terminal facilities by air.*

3. List of Entities for Finland:

Public entities and activities as specified in Article 2 of •Laki julkisista hankinnoista (1505/92)• (Public Procurement Act) and in Articles 1-4 of •Asetus Euroopan talousalueesta tehdyss ä sopimuksessa tarkoitetuista vesi- ja energiahuollon, liikenteen ja teletoiminnan alalla toimivien yksiköiden hankinnoista• (1351/93) (Decree concerning utilities) under the conditions provided for in Directive 90/531/EEC in the sectors of:

3.1 Urban transport:

The operation of networks providing a service to the public in the field of transport by tramway, metro or bus by public entities according to •Laki (343/91) luvanvaraisesta henkilöliikenteestä tiellä• and Helsingin kaupungin liikennelaitos (Helsinki Transport Board), which provides metro and tramway services to the public.

3.2 Airports:

EC (cont•d)

The provision of airport or other terminal facilities to carriers operated by •Ilmailulaitos• (National Aviation Agency) pursuant to •Ilmailulaki (595/64)•, inter alia

- *Helsinki-Vantaa Airport*
- *Ivalo Airport*
- *Joensuu Airport*
- *Jyväskylä Airport*
- *Kemi Airport*
- *Kittilä Airport*
- *Kuopio Airport*
- *Lappeenranta Airport*
- *Oulu Airport*
- *Rovaniemi Airport*
- *Vaasa Airport*

3.3 Ports:

The provision of maritime or inland ports or other terminal facilities to carriers by sea or inland waterways by municipal authorities pursuant to •Laki kunnallisista satamajärjestyksistä ja liikennemaksuista (955/76)•, inter alia

- *Port of Hamina*
- *Port of Hanko*
- *Port of Helsinki*
- *Port of Kotka*
- *Port of Naantali*
- *Port of Turku*
- *Port of Vaasa*

3.4 Water:

The provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water to such network by public entities pursuant to Article 1 of •Laki yleisistä vesi- ja viemärlaitoksista (982/77)• of December 1977, inter alia

- *Helsinki Water Board*
(Helsingin kaupungin vesilaitos)
- *Turku Water Board*
(Turun kaupungin vesilaitos)
- *Tampere Water Board*
(Tampereen kaupungin vesilaitos)

3.5 Electricity:

The provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks where municipal entities operate on the basis of a

EC (cont•d)

special or an exclusive right or on the basis of a concession pursuant to Article 27 of •Sähkölaki (319/79)• of 16 March 1979, inter alia

- *Helsinki Energy Board
(Helsingin kaupungin energialaitos)*
- *Tampere Energy Board
(Tampereen kaupungin sähkölaitos)*
- *Turku Energy Board
(Turun kaupungin sähkölaitos)*

4. *List of Entities for Sweden:*

4.1 *Electricity*

Entities which have as one of their activities the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport, distribution or the supply of electricity on the basis of a concession pursuant to •Lag (1902:71) innefattande vissa bestämmelser om elektriska anläggningar•, inter alia;

*Vattenfall AB
Stockholm Energi Produktion AB
Swedish International Grid
Sydkraft AB
Trollhätte kanalverk*

4.2 *Urban transport*

Entities which have as one of their activities the operation of networks providing a service to the public in the field of transport by automated systems, urban railway, tramway, trolley bus, bus or cable according to •Lag (1978:438) om huvudmannaskap för viss kollektiv persontrafik•, for urban railway or tramway services pursuant to •Lag (1990:1157) om järnvägssäkerhet• and for trolley bus or bus services in accordance with •Lag (1988:263) om yrkestrafik•, inter alia;

Storstockholms Lokaltrafik AB, SL

4.3 *Airports*

Entities which have as one of their activities the exploitation of a geographical area for the purpose of the provision of airport facilities e.g. publicly owned and operated airports in accordance with •Lag (1957:297) om luftfart• having as their result the reservation for one or more entities of the exploitation of the activities described, inter alia;

Civil Aviation Administration

4.4 *Ports*

EC (cont•d)

Entities which have as one of their activities the exploitation of a geographical area for the purpose of the provision of port facilities e.g. publicly owned and/or operated ports and terminal facilities according to •Lag (1988:293) om inrättande, utvidgning och avlysning av allmän farled och allmän hamn•, •Förordning (1983:744) om trafiken på Göta kanal•, inter alia;

Gävle port

Göteborg port

Luleå port

Stockholm port

Trelleborg port

Uddevalla port

4.5 Water

Local authorities and municipal companies which have as one of their activities the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or the supply of drinking water according to •Lag (1970:244) om allmänna vatten- och avloppsanläggningar•.

EC (cont'd)

ANNEX 4

Services

Of the Universal List of Services, as contained in document MTN.GNS/W/120, the following services are included:

<i>Subject</i>	<i>CPC Reference No</i>
<i>Maintenance and repair services</i>	6112, 6122, 633, 886
<i>Land transport services, including armoured car services, and 71235), 7512, 87304 courier services, except transport of mail</i>	712 (except
<i>Air transport services of passengers and freight, except transport of mail</i>	73 (except 7321)
<i>Transport of mail by land, except rail, and by air</i>	71235, 7321
<i>Telecommunications services 7524, 7525, 7526)</i>	752* (except
<i>Financial services</i>	ex 81
<i>(a) Insurance services</i>	812, 814
<i>(b) Banking and investments services**</i>	
<i>Computer and related services</i>	84
<i>Accounting, auditing and bookkeeping services</i>	862
<i>Market research and public opinion polling services</i>	864
<i>Management consulting services and related services</i>	865, 866***
<i>Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services</i>	867
<i>Advertising services</i>	871
<i>Building-cleaning services and property management services 82206</i>	874, 82201 -

EC (cont'd)

Publishing and printing services on a fee or contract basis 88442

Sewage and refuse disposal; sanitation and similar services 94

Notes to Annex 4

* *except voice telephony, telex, radiotelephony, paging and satellite services*

***except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. In Finland, payments from governmental entities (expenses) shall be transacted through a certain credit institution (Postipankki Ltd) or through the Finnish Postal Giro System. In Sweden, payments to and from governmental agencies shall be transacted through the Swedish Postal Giro System (Postgiro).*

*** *except arbitration and conciliation services*

EC (cont•d)

ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.

List of Division 51, CPC:

(annexed)

EC (cont'd)

<i>Group Class</i>	<i>Subclass</i>	<i>Title</i>	<i>Corresponding ISIC</i>
<i>SECTION 5</i>		<i>CONSTRUCTION WORK AND CONSTRUCTIONS: LAND</i>	
<i>DIVISION 51</i>		<i>CONSTRUCTION WORK</i>	
<i>511</i>		<i>Pre-erection work at construction sites</i>	
<i>5111</i>	<i>51110</i>	<i>Site investigation work</i>	<i>4510</i>
<i>5112</i>	<i>51120</i>	<i>Demolition work</i>	<i>4510</i>
<i>5113</i>	<i>51130</i>	<i>Site formation and clearance work</i>	<i>4510</i>
<i>5114</i>	<i>51140</i>	<i>Excavating and earthmoving work</i>	<i>4510</i>
<i>5115</i>	<i>51150</i>	<i>Site preparation work for mining</i>	<i>4510</i>
<i>5116</i>	<i>51160</i>	<i>Scaffolding work</i>	<i>4520</i>
<i>512</i>		<i>Construction work for buildings</i>	
<i>5121</i>	<i>51210</i>	<i>For one- and two-dwelling buildings</i>	<i>4520</i>
<i>5122</i>	<i>51220</i>	<i>For multi-dwelling buildings</i>	<i>4520</i>
<i>5123</i>	<i>51230</i>	<i>For warehouses and industrial buildings</i>	<i>4520</i>
<i>5124</i>	<i>51240</i>	<i>For commercial buildings</i>	<i>4520</i>
<i>5125</i>	<i>51250</i>	<i>For public entertainment buildings</i>	<i>4520</i>
<i>5126</i>	<i>51260</i>	<i>For hotel, restaurant and similar buildings</i>	<i>4520</i>
<i>5127</i>	<i>51270</i>	<i>For educational buildings</i>	<i>4520</i>
<i>5128</i>	<i>51280</i>	<i>For health buildings</i>	<i>4520</i>
<i>5129</i>	<i>51290</i>	<i>For other buildings</i>	<i>4520</i>
<i>513</i>		<i>Construction work for civil engineering</i>	
<i>5131</i>	<i>51310</i>	<i>For highways (except elevated highways), street, roads, railways and airfield runways</i>	<i>4520</i>
<i>5132</i>	<i>51320</i>	<i>For bridges, elevated highways, tunnels and subways</i>	<i>4520</i>
<i>5133</i>	<i>51330</i>	<i>For waterways, harbours, dams and other water works</i>	<i>4520</i>
<i>5134</i>	<i>51340</i>	<i>For long distance pipelines, communication and power lines (cables)</i>	<i>4520</i>
<i>5135</i>	<i>51350</i>	<i>For local pipelines and cables; ancillary works</i>	<i>4520</i>
<i>5136</i>	<i>51360</i>	<i>For constructions for mining and manufacturing</i>	<i>4520</i>
<i>5137</i>		<i>For constructions for sport and recreation</i>	
	<i>51371</i>	<i>For stadia and sports grounds</i>	<i>4520</i>

EC (cont•d)

<i>51372</i>	<i>For other sport and recreation installations (e.g. swimming pools, tennis courts, golf courses)</i>	<i>4520</i>
<i>5139 51390</i>	<i>For engineering works n.e.c.</i>	<i>4520</i>

EC (cont'd)

<i>Group Class</i>	<i>Subclass</i>	<i>Title</i>	<i>Corresponding ISIC</i>	
514	5140	51400	<i>Assembly and erection of prefabricated constructions</i>	4520
515			<i>Special trade construction work</i>	
	5151	51510	<i>Foundation work, including pile driving</i>	4520
	5152	51520	<i>Water well drilling</i>	4520
	5153	51530	<i>Roofing and water proofing</i>	4520
	5154	51540	<i>Concrete work</i>	4520
	5155	51550	<i>Steel bending and erection (including welding)</i>	4520
	5156	51560	<i>Masonry work</i>	4520
	5159	51590	<i>Other special trade construction work</i>	4520
516			<i>Installation work</i>	
	5161	51610	<i>Heating, ventilation and air conditioning work</i>	4530
	5162	51620	<i>Water plumbing and drain laying work</i>	4530
	5163	51630	<i>Gas fitting construction work</i>	4530
	5164		<i>Electrical work</i>	
		51641	<i>Electrical wiring and fitting work</i>	4530
		51642	<i>Fire alarm construction work</i>	4530
		51643	<i>Burglar alarm system construction work</i>	4530
		51644	<i>Residential antenna construction work</i>	4530
		51649	<i>Other electrical construction work</i>	4530
	5165	51650	<i>Insulation work (electrical wiring, water, heat, sound)</i>	4530
	5166	51660	<i>Fencing and railing construction work</i>	4530
	5169		<i>Other installation work</i>	
		51691	<i>Lift and escalator construction work</i>	4530
		51699	<i>Other installation work n.e.c.</i>	4530
517			<i>Building completion and finishing work</i>	
	5171	51710	<i>Glazing work and window glass installation work</i>	4540
	5172	51720	<i>Plastering work</i>	4540
	5173	51730	<i>Painting work</i>	4540
	5174	51740	<i>Floor and wall tiling work</i>	4540

EC (cont•d)

5175	51750	<i>Other floor laying, wall covering and wall papering work</i>	4540
5176	51760	<i>Wood and metal joinery and carpentry work</i>	4540
5177	51770	<i>Interior fitting decoration work</i>	4540
5178	51780	<i>Ornamentation fitting work</i>	4540

<i>Group Class</i>	<i>Subclass</i>	<i>Title</i>	<i>Corresponding ISIC</i>
5179	51790	<i>Other building completion and finishing work</i>	4540
518	5180 51800	<i>Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator</i>	4550

EC (cont•d)

ANNEX I

PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

BELGIUM

Entity set up pursuant to the décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau.

Entity set up pursuant to the arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau.

Entity set up pursuant to the arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau.

Entities producing or distributing water and set up pursuant to the loi relative aux intercommunales du 22 décembre 1986.

Entities producing or distributing water set up pursuant to the code communal, article 47 bis, ter et quater sur les régies communales.

DENMARK

Entities producing or distributing water referred to in Article 3, paragraph 3 of lovbekendtgørelse om vandforsyning m.v. af 4. juli 1985.

GERMANY

Entities producing or distributing water pursuant to the Eigenbetriebsverordnungen or Eigenbetriebsgesetze of the Länder (Kommunale Eigenbetriebe).

Entities producing or distributing water pursuant to the Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit of the Länder.

Entities producing water pursuant to the Gesetz über Wasser- und Bodenverbände vom 10. Februar 1937 and the erste Verordnung über Wasser- und Bodenverbände vom 3. September 1937.

(Regiebetriebe) producing or distributing water pursuant to the Kommunalgesetze and notably with the Gemeindeordnungen der Länder.

Entities set up pursuant to the Aktiengesetz vom 6. September 1965, zuletzt geändert am 19. Dezember 1985 or GmbH-Gesetz vom 20. Mai 1898, zuletzt geändert am 15. Mai 1986, or having the legal status of a Kommanditgesellschaft, producing or distributing water on the basis of a special contract with regional or local authorities.

EC (cont'd)

GREECE

The Water Company of Athens set up pursuant to Law 1068/80 of 23 August 1980.

The Water Company of Salonica operating pursuant to Presidential Decree 61/1988.

The Water Company of Voios operating pursuant to Law 890/1979.

Municipal companies producing or distributing water and set up pursuant to Law 1059/80 of 23 August 1980.

Associations of local authorities operating pursuant to the Code of local authorities implemented by Presidential Decree 76/1985.

SPAIN

-Entities producing or distributing water pursuant to Ley no 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local and to Decreto Real no 781/1986 Texto Refundido Régimen local.

-Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984.

-Mancomunidad de los Canales de Taibilla, Ley de 27 de abril de 1946.

FRANCE

Entities producing or distributing water pursuant to the:

dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies); or

code des communes L 323-8 R 323-4 [régies directes (ou de fait)]; or

décret-loi du 28 décembre 1926, règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière); or

code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or

code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or

jurisprudence administrative, circulaire intérieure du 13 décembre 1975 (gérance); or

code des communes R 324-6, circulaire intérieure du 13 décembre 1975 (régie intéressée); or

EC (cont•d)

circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or

décret du 20 mai 1955, loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or

code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermages).

IRELAND

Entities producing or distributing water pursuant to the Local Government (Sanitary Services) Act 1878 to 1964.

ITALY

Entities producing or distributing water pursuant to the Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578 and to Decreto del P.R. n. 902 del 4 ottobre 1986.

Ente Autonomo Acquedotto Pugliese set up pursuant to RDL 19 ottobre 1919, n. 2060.

Ente Acquedotti Siciliani set up pursuant to leggi regionali 4 settembre 1979, n. 2/2 e 9 agosto 1980, n. 81.

Ente Sardo Acquedotti e Fognature set up pursuant to legge 5 luglio 1963 n. 9.

LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la loi du 23 décembre 1958 et par la loi du 29 juillet 1981 and pursuant to the loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre.

NETHERLANDS

Entities producing or distributing water pursuant to the Waterleidingwet van 6 april 1957, amended by the wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986.

PORTUGAL

Empresa Pública das Águas Livres producing or distributing water pursuant to the Decreto-Lei n 190/81 de 4 de Julho de 1981.

EC (cont•d)

Local authorities producing or distributing water.

UNITED KINGDOM

Water companies producing or distributing water pursuant to the Water Acts 1945 and 1989.

The Central Scotland Water Development Board producing water and the water authorities producing or distributing water pursuant to the Water (Scotland) Act 1980.

The Department of the Environment for Northern Ireland responsible for producing and distributing water pursuant to the Water and Sewerage (Northern Ireland) Order 1973.

EC (cont•d)

ANNEX II

PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

BELGIUM

Entities producing, transporting or distributing electricity pursuant to article 5: Des régies communales et intercommunales of the loi du 10 mars 1925 sur les distributions d'énergie électrique.

Entities transporting or distributing electricity pursuant to the loi relative aux intercommunales du 22 décembre 1986.

EBES, Intercom, Unerg and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to article 8 - les concessions communales et intercommunales of the loi du 10 mars 1952 sur les distributions d'énergie électrique.

The Société publique de production d'électricité (SPÉ).

DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to • 3, stk. 1, of the lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde.

Entities distributing electricity as defined in • 3, stk. 2, of the lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde and on the basis of authorizations for expropriation pursuant to Articles 10 to 15 of the lov om elektriske stærkstrømsanlæg, jf. lovbekendtgørelse nr. 669 af 28. december 1977.

GERMANY

Entities producing, transporting or distributing electricity as defined in • 2 Absatz 2 of the Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) of 13 December 1935. Last modified by the Gesetz of 19 December 1977, and auto-production of electricity so far as this is covered by the field of application of the directive pursuant to Article 2, paragraph 5.

GREECE

(Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950 and operating pursuant to the law 57/85.

SPAIN

EC (cont•d)

Entities producing, transporting or distributing electricity pursuant to Article 1 of the Decreto de 12 de marzo de 1954, approving the Reglamento de verificaciones eléctricas y regularidad en el suministro de energía and pursuant to Decreto 2617/1966, de 20 de octubre, sobre autorización administrativa en materia de instalaciones eléctricas.

Red Eléctrica de España SA, set up pursuant to Real Decreto 91/1985 de 23 de enero.

FRANCE

Électricité de France, set up and operating pursuant to the loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.

Entities (sociétés d'économie mixte or régies) distributing electricity and referred to in article 23 of the loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.

Compagnie nationale du Rhône.

IRELAND

The Electricity Supply Board (ESB) set up and operating pursuant to the Electricity Supply Act 1927.

ITALY

Ente nazionale per l'energia elettrica set up pursuant to legge n. 1643, 6 dicembre 1962 approvato con Decreto n. 1720, 21 dicembre 1965.

Entities operating on the basis of a concession pursuant to article 4, n. 5 or 8 of legge 6 dicembre 1962, n. 1643 - Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche.

Entities operating on the basis of concession pursuant to article 20 of Decreto del Presidente della Repubblica 18 marzo 1965, n. 342 norme integrative della legge 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'energia elettrica.

LUXEMBOURG

Compagnie grand-ducale d'électricité de Luxembourg, producing or distributing electricity pursuant to the convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché de Luxembourg approuvée par la loi du 4 janvier 1928.

Société électrique de l'Our (SEO).

Syndicat de Communes SIDOR.

EC (cont•d)

NETHERLANDS

Elektriciteitsproductie Oost-Nederland.

Elektriciteitsbedrijf Utrecht-Noord-Holland-Amsterdam (UNA).

Elektriciteitsbedrijf Zuid-Holland (EZH)

Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ).

Provinciale Zeeuwse Energie Maatschappij (PZEM).

Samenwerkende Elektriciteitsbedrijven (SEP).

Entities distributing electricity on the basis of a licence (vergunning) granted by the provincial authorities pursuant to the Provinciewet.

PORTUGAL

Electricidade de Portugal (EDP) , set up pursuant to the Decreto-Lei n 502/76 de 30 de Junho de 1976.

*Entities distributing electricity pursuant to artigo 1 do Decreto-Lei n 344-B/82 de 1 de Setembro de 1982, amended by Decreto-Lei n 297/86 de 19 de Setembro de 1986.
Entities producing electricity pursuant to Decreto Lei n 189/88 de 27 de Maio de 1988.*

Independant producers of electricity pursuant to Decreto Lei n 189/88 de 27 de Maio de 1988.

Empresa de Electricidade dos Açores EDA, EP, created pursuant to the Decreto Regional n 16/80 de 21 de Agosto de 1980.

Empresa de Electricidade da Madeira, EP, created pursuant to the Decreto-Lei n 12/74 de 17 de Janeiro de 1974 and regionalized pursuant to the Decreto-Lei n 31/79 de 24 de Fevereiro de 1979, Decreto-Lei n 91/79 de 19 de Abril de 1979.

UNITED KINGDOM

Central Electricity Generating (CEGB), and the Areas Electricity Boards producing, transporting or distributing electricity pursuant to the Electricity Act 1947 and the Electricity Act 1957.

The North of Scotland Hydro-Electricity Board (NSHB), producing, transporting and distributing electricity pursuant to the Electricity (Scotland) Act 1979.

The South of Scotland Electricity Board (SSEB) producing, transporting and distributing electricity pursuant to the Electricity (Scotland) Act 1979.

EC (cont'd)

The Northern Ireland Electricity Service (NIES), set up pursuant to the Electricity Supply (Northern Ireland) Order 1972.

EC (cont'd)

ANNEX VI

CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

BELGIUM

Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.

DENMARK

Danske Statsbaner (DSB)

Entities operating set up pursuant to lov nr. 295 af 6. juni 1984 om privatbanerne, jf. lov nr. 245 af 6. august 1977.

GERMANY

Deutsche Bundesbahn

Other entities providing railway services to the public as defined in paragraph 2 Abs. 1 of Allgemeines Eisenbahngesetz of 29 March 1951.

GREECE

Organization of Railways in Greece (OSE).

SPAIN

Red Nacional de Los Ferrocarriles Españoles.

Ferrocarriles de Vía Estrecha (FEVE).

Ferrocarrils de la Generalitat de Catalunya (FGC).

Eusko Trenbideak (Bilbao).

Ferrocarriles de la Generalitat Valenciana (FGV).

FRANCE

Société nationale des chemins de fer français and other réseaux ferroviaires ouverts au public referred to in the loi d'orientation des transports intérieurs du 30 décembre 1982, titre II, chapitre 1er du transport ferroviaire.

IRELAND

EC (cont•d)

Iarnrod Éireann (Irish Rail).

ITALY

Ferrovie dello Stato

Entities providing railway services on the basis of a concession pursuant to Article 10 of Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'Industria privata, le tramvie a trazione meccanica e gli automobili.

Entities operating on the basis of a concession granted, pursuant to special laws, as referred to in Titolo XI, Capo II, Sezione Ia del Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.

Entities providing railway services on the basis of a concession pursuant to Article 4 of Legge 14 giugno 1949, n. 410 - Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.

Entities or local authorities providing railway services on the basis of a concession pursuant to Article 14 of Legge 2 agosto 1952, n. 1221 - Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.

LUXEMBOURG

Chemins de fer luxembourgeois (CFL).

NETHERLANDS

Nederlandse Spoorwegen NV.

PORTUGAL

Caminhos de Ferro Portugueses.

UNITED KINGDOM

British Railways Boards.

Northern Ireland Railways.

EC (cont'd)

ANNEX VII

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY,
TRAMWAY, TROLLEYBUS OR BUS SERVICES

BELGIUM

Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB)

Entities providing transport services to the public on the basis of a contract granted by SNCV pursuant to Articles 16 and 21 of the arrêté du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars.

Société des transports intercommunaux de Bruxelles (STIB),

Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA),

Maatschappij van het Intercommunaal Vervoer te Gent (MIVG),

Société des transports intercommunaux de Charleroi (STIC),

Société des transports intercommunaux de la région liégeoise (STIL),

Société des transports intercommunaux de l'agglomération verviétoise (STIAV), and other entities set up pursuant to the loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer of 22 February 1962.

Entities providing transport services to the public on the basis of a contract with STIB pursuant to Article 10 or with other transport entities pursuant to Article 11 of the arrêté royal 140 du 30 décembre 1982 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications.

DENMARK

Danske Statsbaner (DSB)

Entities providing bus services to the public (almindelig rutekørsel) on the basis of an authorization pursuant to lov nr. 115 af 29. marts 1978 om buskørsel.

GERMANY

Entities providing, on the basis of an authorization, short-distance transport services to the public (Öffentlichen Personennahverkehr) pursuant of the Personenbeförderungsgesetz vom 21. März 1961, as last amended on 25 July 1989.

EC (cont•d)

GREECE

(Electric Buses of the Athens - Piraeus Area) operating pursuant to decree 768/1970 and law 588/1977.

(Athens-Piraeus Electric Railways) operating pursuant to laws 352/1976 and 588/1977.

(Enterprise of Urban Transport) operating pursuant to law 588/1977.

(Joint receipts Fund of Buses) operating pursuant to decree 102/1973.

Roda: Municipal bus enterprise in Rhodes.

(Urban Transport Organization of Thessaloniki) operating pursuant to decree 3721/1957 and law 716/1980.

SPAIN

Entities providing transport services to the public pursuant to the Ley de Régimen local.

Corporación metropolitana de Madrid.

Corporación metropolitana de Barcelona.

Entities providing urban or inter-urban bus services to the public pursuant to Articles 113 to 118 of the Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987.

Entities providing bus services to the public, pursuant to Article 71 of the Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987.

FEVE, RENFE (or Empresa Nacional de Transportes de Viajeros por Carretera) providing bus services to the public pursuant to the Disposiciones adicionales. Primera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.

Entities providing bus services to the public pursuant to Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.

FRANCE

Entities providing transport services to the public pursuant to article 7-11 of the loi n° 82-1153 du 30 décembre 1982, transports intérieurs, orientation).

Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTR, and other entities providing transport services to the public on the basis of an authorization granted by the syndicat des transports parisiens pursuant to the ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne.

EC (cont•d)

IRELAND

Iarnrod Éireann (Irish Rail).

Bus Éireann (Irish Bus).

Bus Átha Cliath (Dublin Bus).

Entities providing transport services to the public pursuant to the amended Road Transport Act 1932.

ITALY

Entities providing transport services of a concession pursuant to Legge 28 settembre 1939, n. 1822 - Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) - Article 1 as modified by Article 45 of Decreto del Presidente della Repubblica 28 giugno 1955, n. 771.

Entities providing transport services to the public pursuant to Article 1, n. 4 or n. 15 of Regio Decreto 15 ottobre 1925, n. 2578 - Approvazione del Testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province.

Entities operating on the basis of a concession pursuant to Article 242 or 255 of Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.

Entities or local authorities operating on the basis of a concession pursuant to Article 4 of Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.

Entities operating on the basis of a concession pursuant to Article 14 of Legge 2 agosto 1952, n. 1221 - Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.

LUXEMBOURG

Chemins de fer du Luxembourg (CFL).

Service communal des autobus municipaux de la ville de Luxembourg.

Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).

Bus service undertakings operating pursuant to the règlement grand-ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées.

NETHERLANDS

EC (cont'd)

Entities providing transport services to the public pursuant to chapter II (Openbaar vervoer) of the Wet Personenvervoer van 12 maart 1987.

PORTUGAL

Rodoviaria Nacional, EP.

Companhia Carris de ferro de Lisboa.

Metropolitano de Lisboa, EP.

Serviços de Transportes Colectivos do Porto.

Serviços Municipalizados de Transporte do Barreiro.

Serviços Municipalizados de Transporte de Aveiro.

Serviços Municipalizados de Transporte de Braga.

Serviços Municipalizados de Transporte de Coimbra.

Serviços Municipalizados de Transporte de Portalegre.

UNITED KINGDOM

Entities providing bus services to the public pursuant to the London Regional Transport Act 1984.

Glasgow Underground.

Greater Manchester Rapid Transit Company.

Docklands Light Railway.

London Underground Ltd.

British Railways Board.

Tyne and Wear Metro.

EC (cont•d)

ANNEX VIII

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

BELGIUM

Régie des voies aériennes set up pursuant to the arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes amended by arrêté royal du 5 octobre 1970 portant refonte du statut de la régle des voies aériennes.

DENMARK

Airports operating on the basis of an authorization pursuant to • 55, stk. 1, lov om luftfart, jf. lovbekendtgørelse nr. 408 af 11. september 1985.

GERMANY

Airports as defined in Article 38 Absatz 2 no of the Luftverkehrszulassungsordnung vom 19. März 1979, amended last by the Verordnung vom 21. Juli 1986.

GREECE

Airports operating pursuant to law 517/1931 setting up the civil aviation service.

International airports operating pursuant to presidential decree 647/981.

SPAIN

Airports managed by Aeropuertos Nacionales operating pursuant to the Real Decreto 278/1982 de 15 de octubre de 1982.

FRANCE

Aéroports de Paris operating pursuant to titre V, articles L 251-1 à 252-1 du code de l•aviation civile.

Aéroport de Bâle - Mulhouse, set up pursuant to the convention franco-suisse du 4 juillet 1949.

Airports as defined in article L 270-1, code de l•aviation civile.

Airports operating pursuant to the cahier de charges type d•une concession d•aéroport, décret du 6 mai 1955.

Airports operating on the basis of a convention d•exploitation pursuant to article L/221, code de l•aviation civile.

EC (cont'd)

IRELAND

Airports of Dublin, Cork and Shannon managed by Aer Rianta - Irish Airports.

Airports operating on the basis of a Public use License granted, pursuant to the Air Navigation and Transport Act No 23 1936, the Transport Fuel and Power Transfer of Departmental, Administration and Ministerial Functions Order 1959 (SI No 125 of 1959) and the Air Navigation (Aerodromes and Visual Ground Aids) Order 1970 (SI No 291 of 1970).

ITALY

Civil Stat. airports (aerodromi civili istituiti dallo Stato referred to in Article 692 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.

Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.

LUXEMBOURG

Aéroport de Findel.

NETHERLANDS

Airports operating pursuant to articles 18 and following of the Luchtvaartwet of 15 January 1958, amended on 7 June 1978.

PORTUGAL

Airports managed by Aeroportos de Navegação Aérea (ANA), EP pursuant to Decreto-Lei n 246/79.

Aeroporto do Funchal and Aeroporto de Porto Santo, regionalized pursuant to the Decreto-Lei n 284/81.

UNITED KINGDOM

Airports managed by British Airports Authority plc.

Airports which are public limited companies (plc) pursuant to the Airports Act 1986.

EC (cont•d)

ANNEX IX

*CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT
OR OTHER TERMINAL FACILITIES*

BELGIUM

Société anonyme du canal et des installations maritimes de Bruxelles.

Port autonome de Liège.

Port autonome de Namur.

Port autonome de Charleroi.

Port de la ville de Gand.

La Compagnie des installations maritimes de Bruges - Maatschappij der Brugse haveninrichtingen.

Société intercommunale de la rive gauche de l'Escaut - Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).

Port de Nieuwport.

Port d'Ostende.

DENMARK

Ports as defined in Article 1, I to III of the bekendtgørelse nr. 604 af 16. december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12. maj 1976 om trafikhavne.

GERMANY

Seaports owned totally or partially by territorial authorities (Länder, Kreise, Gemeinden).

Inland ports subject to the Hafenordnung pursuant to the Wassergesetze der Länder.

GREECE

Piraeus port set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.

Thessaloniki port set up pursuant to decree N.A. 2251/1953.

EC (cont•d)

Other ports governed by presidential decree 649/1977 (NA. 649/1977) (supervision, organization of functioning and administrative control).

SPAIN

Puerto de Huelva set up pursuant to the Decreto de 2 de octubre de 1969, no 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.

Puerto de Barcelona set up pursuant to the Decreto de 25 de agosto de 1978, no 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.

Puerto de Bilbao set up pursuant to the Decreto de 25 de agosto de 1978, no 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.

Puerto de Valencia set up pursuant to the Decreto de 25 de agosto de 1978, no 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.

Juntas de Puertos operating pursuant to the Lei 27/68 de 20 de junio de 1968 ; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía and to the Decreto de 9 de abril de 1970, no 1350/70. Juntas de Puertos. Reglamento.

Ports managed by the Comisión Administrativa de Grupos de Puertos, operating pursuant to the Ley 27/68 de 20 de junio de 1968, Decreto 1958/78 de 23 de junio de 1978 and Decreto 571/81 de 6 de mayo de 1981.

Ports listed in the Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.

FRANCE

Port autonome de Paris set up pursuant to loi 68/917 du 24 octobre 1968 relative au port autonome de Paris.

Port autonome de Strasbourg set up pursuant to the convention du 20 mai 1923 entre l'État et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port, approved by the loi du 26 avril 1924.

Other inland waterway ports set up or managed pursuant to article 6 (navigation intérieure) of the décret 69-140 du 6 février 1969 relatif aux concessions d'outillage public dans les ports maritimes.

Ports autonomes operating pursuant to articles L 111-1 et suivants of the code des ports maritimes.

Ports non autonomes operating pursuant articles R 121-1 et suivants of the code des ports maritimes.

EC (cont•d)

Ports managed by regional authorities (départements) or operating pursuant to a concession granted by the regional authorities (départements) pursuant to article 6 of the loi 86-663 du 22 juillet 1983 complétant la loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, départements et l'État.

IRELAND

Ports operating pursuant to the Harbour Acts 1946 to 1976.

Port of Dun Laoghaire operating pursuant to the State Harbours Act 1924.

Port of Rosslare Harbour operating pursuant to the Finguard and Rosslare Railways and Harbours Act 1899.

ITALY

State ports and other ports managed by the Capitaneria di Porto pursuant to the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 32.

Autonomous ports (enti portuali) set up by special laws pursuant to Article 19 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.

LUXEMBOURG

Port de Mertert set up and operating pursuant to loi du 22 juillet 1963 relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle.

NETHERLANDS

Havenbedrijven, set up and operating pursuant to the Gemeentewet van 29 juni 1851.

Havenschap Vlissingen, set up by the wet van 10 september 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen.

Havenschap Terneuzen, set up by the wet van 8 april 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen.

Havenschap Delfzijl, set up by the wet van 31 juli 1957 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl.

Industrie- en havenschap Moerdijk, set up by gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk van 23 oktober 1970, approved by Koninklijke Besluit nr. 23 van 4 maart 1972.

PORTUGAL

Porto do Lisboa set up pursuant to Decreto Real do 18 de Fevereiro de 1907 and operating pursuant to Decreto-Lei n 36976 de 20 de Julho de 1948.

EC (cont'd)

Porto do Douro e Leixões set up pursuant to Decreto-Lei n 36977 de 20 de Julho de 1948.

Porto de Sines set up pursuant to Decreto-Lei n 508/77 de 14 de Dezembro de 1977.

Portos de Setúbal, Aveiro, Figueira de Foz, Viana do Castelo, Portimão e Faro operating pursuant to the Decreto-Lei n 37754 de 18 de Fevereiro de 1950.

UNITED KINGDOM

Harbour Authorities within the meaning of section 57 of the Harbours Act 1964 providing port facilities to carriers by sea or inland water way.

EC (cont•d)

*GENERAL NOTES AND DEROGATIONS FROM THE PROVISIONS OF
ARTICLE III*

1. The EC will not extend the benefits of this Agreement:

-as regards the award of contracts by entities listed in Annex 2 to the suppliers and service providers of Canada;

-as regards the award of contracts, other than for suppliers, listed in Annex 2 to the suppliers and service providers of the USA;

-as regards the award of contracts by entities listed in Annex 3 paragraph

(a)(water), to the suppliers and service providers of Canada and the USA;

(b)(electricity), to the suppliers and service providers of Canada, Hong Kong and Japan;

(c)(airports), to the suppliers and service providers of Canada, Korea and the USA;

(d) (ports), to the suppliers and service providers of Canada;

(e)(urban transport), to the suppliers and service providers of Canada, Israel, Japan, Korea and the USA

until such time as the EC has accepted that the Parties concerned give comparable and effective access for EC undertakings to the relevant markets;

-to service providers of Parties which do not include service contracts for the relevant entities in Annexes 1 to 3 and the relevant service category under Annexes 4 and 5 in their own coverage.

2. The provisions of Article XX shall not apply to suppliers and service providers of:

-Israel, Japan, Korea and Switzerland in contesting the award of contracts by entities listed under Annex 2 paragraph 2, until such time as the EC accepts that they have completed coverage of sub-central entities;

-Japan, Korea and the USA in contesting the award of contracts to a supplier or service provider of Parties other than those mentioned, which are small or medium sized enterprises under the relevant provisions of EC law, until such time as the EC accepts that they no longer operate discriminatory measures in favour of certain domestic small and minority businesses;

-Israel, Japan and Korea in contesting the award of contracts by EC entities, whose value is less than the threshold applied for the same category of contracts awarded by these Parties.

EC (cont•d)

3. *Until such time as the EC has accepted that the Parties concerned provide access for EC suppliers and service providers to their own markets the EC will not extend the benefits of this Agreement to suppliers and service providers of:*

- Canada, as regards procurement of FSC 36,70 and 74 (special industry machinery, general purpose automatic data processing equipment, software supplies and support equipment (except 7010 ADPE configurations), office machines, visible record equipment and ADP equipment);*
- Canada, as regards procurement of FSG 58 (communications, protection and coherent radiation equipment) and the USA as regards air traffic control equipment;*
- Korea and Israel as regards procurement by entities listed in Annex 3 paragraph (b), as regards procurement of HS Nos 8504, 8535, 8537 and 8544 (electrical transformers, plugs, switches and insulated cables); and for Israel, HS Nos 8501, 8536 and 902830;*
- the USA as regards procurement by entities listed in Annex 3 paragraph (d), as regards procurement of dredging services and procurement related to shipbuilding;*
- Canada and the USA as regards contracts for good or service components of contracts which, although awarded by an entity covered by this Agreement, are not themselves subject to this Agreement.*

4. *The Agreement shall not apply to contracts awarded under:*

- an international agreement and intended for the joint implementation or exploitation of a project by the signatory States;*
- an international agreement relating to the stationing of troops;*
- the particular procedure of an international organization.*

5. *The Agreement shall not apply to procurement of agricultural products made in futherance of agricultural support programmes and human feeding programmes.*

6. *Contracts awarded by entities in Annexes 1 and 2 in connection with activities in the fields of drinking water, energy, transport or telecommunications are not included.*

7. *This Agreement shall not apply to contracts awarded by entities in Annex 3:*

- for the purchase of water and for the supply of energy or of fuels for the production of energy;*
- for purposes other than the pursuit of their activities as described in this Annex or for the pursuit of such activities in a non-member country;*

EC (cont•d)

-for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

8.This Agreement shall not be applicable to contracts:

-for the acquisition or rental of land, existing buildings or other immovable property or concerning rights thereon;

-for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.

9.This Agreement shall not be applicable to the award of service contracts by Spanish entities listed in Annex 3 before 1 January 1997 or to the award of contracts by Greek or Portuguese entities listed in Annex 3 before 1 January 1998.

10.The provision of services, including construction services, in the context of procurement procedures according to this Agreement is subject to the conditions and qualifications for market access and national treatment as will be required by Austria in conformity with her commitments under the GATS.

11.This Agreement shall not apply to contracts awarded to an entity in Finland which itself is a contracting authority within the meaning of the Public Procurement Act: •Laki julkisista hankinnoista• (1505/92), or in Sweden within the meaning of the •Lag om offentlig upphandling• (1992:1528), on the basis of an exclusive right which it enjoys pursuant to a law, regulation or administrative provision or to contracts of employment in Finland and Sweden.

12.When a specific procurement may impair important national policy objectives, the Finnish or Swedish Governments may consider it necessary in singular procurement cases to deviate from the principle of national treatment in the Agreement. A decision to this effect will be taken at Cabinet level. Finland also reserves its position with regard to the application of this Agreement to the Åland Islands (Ahvenanmaa).

RESTRICTED

GPA/W/31

5 December 1996

WORLD TRADE
ORGANIZATION

(96-5106)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF JAPAN

Communication from Japan

The following communication, dated 3 December 1996, has been received from the Permanent Representative of Japan, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994). The modification communicated below will become effective 30 days from the date of issue of this document provided there is no objection.

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectifications of a purely formal nature relating to Annex 3 in Appendix I of the WTO Agreement on Government Procurement:

Delete •- Social Development Research Institute• from •List of Entities• regarding supplies and •List of Entities which procure the services, specified in Annex 4•, respectively.

This rectification is based on the fact that •Social Development Research Institute• was abolished as of 1 December 1996 and its function was transferred to the National Institute of Population and Social Security Research as an attached organization of the Ministry of Health and Welfare, which is already listed in Annex 1 in Appendix I of this Agreement. Therefore, such a rectification does not alter the coverage which has mutually been agreed upon.

RESTRICTED

GPA/W/28/Corr.1*
2 December 1996

*WORLD TRADE
ORGANIZATION*

(96-5087)

Original: English

Committee on Government Procurement

*APPLICATION FOR HONG KONG'S ACCESSION TO THE
AGREEMENT ON
GOVERNMENT PROCUREMENT*

Corrigendum

On page 6, Annex 4, paragraph 3, first item should read:

*Maintenance and repair of equipment (not including
633-8861-8866
maritime vessels, aircraft or other transport equipment)*

*English and French only

*WORLD TRADE
ORGANIZATION*

RESTRICTED

GPA/W/24/Add.3

15 November 1996

(96-4833)

Committee on Government Procurement

Original: English

*QUESTIONNAIRE ON INFORMATION TECHNOLOGY
IN GOVERNMENT PROCUREMENT*

Response by Korea

The attached communication contains the replies from the delegation of Korea to the questionnaire on Information Technology in Government Procurement contained in document GPA/W/24, dated 22 August 1996.

REPLIES BY KOREA TO THE QUESTIONNAIRE ON
INFORMATION TECHNOLOGY¹

1) *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government?*

With the expansion of the VAN project and its dissemination by the government, procurement information related to certain procurement agencies is provided through GINS (Goldstar Information Network Services).

-This does not include the contracts of all procurement agencies covered by the Agreement. It provides information on contracts of the Office of Supply, Military Procurement Headquarters of the Ministry of Defense, Korea Housing Corporation, Korea Subway Corporation, Land Development Corporation, Korea Telecom, KEPCO, and some local governments.

2) *What function(s) would information technology serve in such systems and who will be the users?*

The functions and users of information technology are as follows:

-Functions: notification of tender opportunities regarding product and facilities construction, notification of contract awards, tender-related legislation, yearly purchase plans.

-Users: procuring entities, suppliers.

3) *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

n.a.

4) *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?*

Interested suppliers are not affected by access limitations to the system when using PCs with modems. However, the PCs must have a registration number in the GINS, which uses a Korean-language software program.

5) *For those Parties who use databases which list government procurement opportunities:*

(i) What are the names of their databases?

¹Please take into consideration that not all the questions fall under the purview of the Office of Supply. Only those related to GINS, a value-added telecommunications network, are responded here.

GINS.

(ii) How long have the databases been operational and how many suppliers use the databases?

The database has been operational for seven years and is used by 1,400 suppliers.

(iii) Is a fee charged to suppliers using the system? If so, how much, and what is included in the fee?

A monthly fee of W 33,000 is charged, which includes value-added tax.

(iv) Can suppliers obtain tender documentation electronically? If so, how?

Not for the time being.

(v) How is information on the databases organized?

It is collected by a private company, LG Information Telecommunications.

(vi) Do the databases offer any other features?

The database also has an electronic mail (E-mail) function.

(vii) What is the approximate number of procurement opportunities listed on the databases annually?

The approximate number of procurement opportunities listed in the database annually is about 7,000. This figure only covers the notification of tender opportunities by the Office of Supply.

(viii) Are the systems managed by the government or a private company?

The system is managed by a private company, LG Information Telecommunications.

(ix) Can Parties' databases be interrogated using international standards, such as SQL - Standard Query Language?

n.a.

(x) Are all notices which are required to be published under Articles IX and XVIII:1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?

Not all notices required to be published under the Agreement are available on the database. Among the minimum information required to be published under Articles IX and XVIII, the database includes the following items on GINS:

(a) Notification of tender opportunities:

-the kind and number of products to be covered under procurement, and the name of the procuring entity;

-the procedure for participating in tender;

-the date of delivery;

-the period of registration for companies eligible to participate in tender;

-companies eligible to participate in tender;

-the telephone number of the procuring entity through which documents related to tender can be obtained.

(b) Notification of contract awards:

-the kind, number and name of products for which the contract is awarded;

-procuring entity;

-the date of the contract award;

-the name of the company which is awarded the contract;

-the amount of the contract award in dollar terms.

(xi) How are Agreement-covered notices identified?

At the moment, there is no particular code in the database to identify whether the notices are covered by the Agreement or not.

(xii) To what extent does each type of notice contained in databases conform to a standard structure?

n.a.

(xiii) Is any particular classification used in such notices to describe purchases and, if so, what classification?

n.a.

(xiv) Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?

Currently, GINS provides information only in Korean.

6) For those Parties who are involved in action in the area of electronic commerce:

(i) Please provide full information on projects and plans with regard to electronic commerce.

Korea has been conducting electronic commerce by utilizing EDI in the area of foreign trade. However, electronic commerce has not been utilized in the government procurement sector, and Korea does not yet have a plan to introduce electronic commerce in government procurement.

(ii) Could those Parties who have experience with electronic commerce provide information on such experiences?

n.a.

RESTRICTED

GPA/W/30
15 November 1996

*WORLD TRADE
ORGANIZATION*

(96-4862)

Original: Spanish

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Argentina

The following communication, dated 7 November 1996, has been received from the Permanent Mission of Argentina.

I have the pleasure to inform you that Argentina is interested in participating as an observer in the Committee on Government Procurement.

RESTRICTED

GPA/W/29

11 November 1996

WORLD TRADE
ORGANIZATION

(96-4772)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from the European Free Trade Association

The following communication, dated 30 October 1996, has been received from the Secretary-General of the European Free Trade Association.

I am writing to you to request that the European Free Trade Association (EFTA) be granted observer status in the Committee on Government Procurement of the World Trade Organization pursuant to the •Guidelines for Observer Status of International Intergovernmental Organizations in the WTO• adopted by the General Council on 18 July 1996. As you may be aware, EFTA enjoyed full observer status in the old GATT system. Observer status has been granted to EFTA on an ad hoc basis in several WTO bodies of particular interest since the establishment of the World Trade Organization. In the light of the above-mentioned Guidelines a more permanent arrangement is sought by EFTA.

The work done in the Committee on Government Procurement is of immediate relevance to EFTA, not only in terms of relations between its Member States (i.e. Iceland, Liechtenstein, Norway and Switzerland), but also as regards implementation of the Agreement establishing the European Economic Area and the Free-Trade Agreements concluded with 12 third-country partners. Provisions in the Stockholm Convention establishing EFTA and the above-mentioned Agreements relate directly to the work of WTO. It is vital for EFTA and its Secretariat to have the possibility to observe the development, implementation and interpretation of WTO rules and provisions. The immediate interest is to ensure the compatibility of EFTA activities with WTO provisions and that the two develop in harmony. In a wider context, EFTA believes that a complementary, mutually reinforcing relationship should exist between the multilateral trading system on the one hand and regional trade agreements on the other. I believe

EFTA has much to contribute towards that end and that its relations with the WTO will prove mutually beneficial.

RESTRICTED

GPA/W/28
6 November 1996

WORLD TRADE
ORGANIZATION

(96-4691)

Original: English

Committee on Government Procurement

APPLICATION FOR ACCESSION TO THE AGREEMENT ON
GOVERNMENT PROCUREMENT

Hong Kong

The following communication, dated 31 October 1996, has been received from the Permanent Representative of Hong Kong to the WTO with the request that it be circulated to the Signatories to the Agreement on Government Procurement (1994).

I have the honour to inform you that the Government of Hong Kong is interested in acceding to the Agreement on Government Procurement 1994 (the Agreement) and would be grateful if you could convey this communication to the Signatories of the Agreement.

A draft offer from the Government of Hong Kong is attached at Attachment 1. Lists of relevant publications corresponding to Appendices II, III and IV of the Agreement are attached at Attachments 2, 3 and 4 respectively.

The Government of Hong Kong wishes to draw to the attention of the Signatories of the Agreement the following points:

- (a) the draft offer at Attachment 1 is essentially the same as the final offer submitted by Hong Kong at the concluding stages of negotiations for the Agreement and which is appended to the legal text of the Agreement. There are only a few changes which are not of a substantive nature in Annex 1 and Annex 4 of the attached draft offer. They reflect organizational changes in the Hong Kong Government and updated nomenclature of a few types of services. An explanatory note on these changes is at Attachment 5; and*

(b) notwithstanding Hong Kong's intention to discharge fully its obligations under the Agreement upon accession, the Hong Kong Government would wish to seek a deferment by one year of the application of Article XX to Hong Kong to allow time for the setting up of a Bid Challenge System in the territory.

A final decision by the Hong Kong Government to accede to the Agreement on Government Procurement will also be dependent on all the sectoral non-application measures in the Agreement specifically aimed at Hong Kong being removed and the Signatories agreeing to launch an early review of the Agreement with a view in particular to removing all discriminatory measures and practices which distort open procurement.

The Government of Hong Kong stands ready to discuss with and respond to any questions from the Signatories of the Agreement on Government Procurement relating to our communication.

Attachment 1

DRAFT OFFER

*For inclusion in Appendix I of the Agreement on Government Procurement
(1994)*

ANNEX 1

*Central Government Entities which Procure in Accordance
With the Provisions of this Agreement*

Supplies

Threshold: 130,000 SDR for goods and services other than construction services

5,000,000 SDR for construction services

List of Entities:

- 1. Agriculture and Fisheries Department*
- 2. Architectural Services Department*
- 3. Audit Department*
- 4. Auxiliary Medical Services*
- 5. Buildings Department*
- 6. Census and Statistics Department*
- 7. Civil Aid Services*
- 8. Civil Aviation Department*
- 9. Civil Engineering Department*

10. *Civil Service Training and Development Institute*
11. *Companies Registry*
12. *Correctional Services Department*
13. *Customs and Excise Department*
14. *Department of Health*
15. *Drainage Services Department*
16. *Education Department*
17. *Electrical and Mechanical Services Department*
18. *Environmental Protection Department*
19. *Fire Services Department*
20. *Government Flying Service*
21. *Government Laboratory*
22. *Government Land Transport Agency*
23. *Government Property Agency*
24. *Government Secretariat*
25. *Government Supplies Department*
26. *Highways Department*
27. *Home Affairs Department*
28. *Hong Kong Monetary Authority*
29. *Hospital Services Department*
30. *Immigration Department*
31. *Independent Commission Against Corruption*
32. *Industry Department*
33. *Information Services Department*
34. *Information Technology Services Department*
35. *Inland Revenue Department*
36. *Intellectual Property Department*
37. *Judiciary*
38. *Labour Department*
39. *Lands Department*
40. *Land Registry*
41. *Legal Department*
42. *Legal Aid Department*
43. *Marine Department*
44. *Office of the Commissioner for Administrative Complaints*
45. *Office of the Telecommunications Authority*
46. *Official Receiver's Office*
47. *Planning Department*
48. *Post Office*
49. *Printing Department*
50. *Public Service Commission*
51. *Radio Television Hong Kong*
52. *Rating and Valuation Department*
53. *Royal Hong Kong Police Force (including Royal Hong Kong Auxiliary Police Force)*
54. *Royal Observatory*
55. *Social Welfare Department*
56. *Secretariat, Independent Police Complaints Council*

57. *Secretariat, Standing Commission on Civil Service Salaries and Conditions of Service*
58. *Secretariat, Standing Committee on Disciplined Services Salaries and Conditions of Service*
59. *Student Financial Assistance Agency*
60. *Technical Education and Industrial Training Department*
61. *Television and Entertainment Licensing Authority*
62. *Territory Development Department*
63. *Trade Department*
64. *Transport Department*
65. *Treasury*
66. *Secretariat, University Grants Committee*
67. *Water Supplies Department*
68. *Management Services Agency*
69. *Official Languages Agency*
70. *Registration and Electoral Office*

ANNEX 2

*Sub-Central Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 200,000 SDR for goods and services other than construction services

5,000,000 SDR for construction services

List of Entities:

- 1. Urban Council and Urban Services Department*
- 2. Regional Council and Regional Services Department*

ANNEX 3

*All Other Entities which Procure in Accordance
With the Provisions of this Agreement*

Threshold: 400,000 SDR for supplies and services other than construction services

5,000,000 SDR for construction services

List of Entities:

- 1. Housing Authority and Housing Department*
- 2. Hospital Authority*
- 3. Airport Authority*
- 4. Mass Transit Railway Corporation*
- 5. Kowloon-Canton Railway Corporation*

ANNEX 4

Services

The following services, classified according to the United Nations Central Product Classification (CPC) Code on Goods and Services, will be covered:

CPC

1. *Computer and Related Services*

<i>-Data base and processing services</i>	843•844
<i>-Maintenance and repair service of office machinery and equipment including computers</i>	845
<i>-Other Computer Services</i>	849

2. *Rental/Leasing Services Without Operators*

<i>-Relating to ships</i>	83103
<i>-Relating to aircraft</i>	83104
<i>-Relating to other transport equipment</i>	83101•83102•83105
<i>-Relating to other machinery and equipment</i>	83106•83109

3. *Other Business Services*

Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) 633•8861•8866

Market Research & Public Opinion Polling Services 864

Security Services 87304

Building-Cleaning Services 874

Advertising Services 871

4. *Courier Services*

5. *Telecommunications Services (Provisions of certain types of service may require licensing under the Telecommunication Ordinance)*

Value-added telecommunications services 7523, 843

Basic telecommunications services 7521, 7529

Telecommunications-related services 754

6. *Environmental Services*

- Sewage services 9401
- Refuse disposal services 9402

7. *Financial Services* *ex 81*

- All Insurance and Insurance-Related Services(exceptions are set out in paragraph 5 of General Conditions)

- Banking and other financial services

8. *Transport Services*

- Air transportation services 731, 732, 734
(excluding transportation of mail)
- Road transport services 712, 6112, 8867

ANNEX 5

Construction Services

Definition:

A construction services contract is a contract which has as its objective the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification (CPC).

List of Division 51 CPC

All services of Division 51 of the CPC

Threshold: 5,000,000 SDR

*GENERAL CONDITIONS APPLICABLE TO ENTITIES AND SERVICES
SPECIFIED IN ANNEXES 1 TO 5*

1. *Notwithstanding anything in the Annexes 1-5, the Agreement shall not apply to:*

-All consultancy and franchise arrangements

-Transportation of mail by air

-Statutory insurances including third party liability in respect of vehicles and vessels and employer's liability insurance in respect of employees

-Purchase of office or residential accommodation by the Government Property Agency.

2. *Hong Kong's commitments on telecommunications services are subject to the terms of the licence held by Hong Kong Telecommunications International Ltd. (HKTI) until 30 September 2006 for the exclusive provision of external telecommunications circuits and certain external telecommunications services. The exclusive services covered by the licence are listed below.*

(a)Circuits by radio for the provision of external public telecommunications services.

(b)The operation of circuits by submarine cable for the provision of external public telecommunications services.

(c)External and internal Public Telegram Service.

(d)External and internal Public Telex Service.

(e)External public telephone services to subscribers to the Public Switched Telephone Network by radio, submarine cable and such overland cables as are authorized.

(f)External dedicated and leased telephone circuit services by radio, submarine cable and such overland cables as are authorized.

(g)External dedicated and leased circuits for -

*telegraph
data
facsimile.*

(h)Hong Kong coast stations and coast earth stations of the Maritime Mobile service and Maritime Mobile - Satellite Service.

(i) Hong Kong Aeronautical Stations of the Aeronautical Mobile Service and Aeronautical Mobile - Satellite Service for radio communications services between aircraft operating agencies and their aircraft in flight.

(j) International telecommunications services routed in transit via Hong Kong.

(k) Except to the extent that the Governor-in-Council may from time to time otherwise in writing direct, external television and voice programme transmission services to and from Hong Kong.

3. Operators of telecommunications services may require licensing under the Telecommunication Ordinance. Operators applying for the licences are required to be established in Hong Kong under the Companies Ordinance.

4. Hong Kong Government shall not be obliged to permit the supply of such services cross-border, or through commercial presence or the presence of natural persons.

5. The following services are excluded from the Financial Services under Annex 4

1. CPC 81402

Insurance and pension consultancy services

2. CPC 81339

Money broking

3. CPC 8119•81323

Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services.

4. CPC 81339 or 81319

Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments.

5. CPC 8131 or 8133

Advisory and other auxiliary financial services on all the activities listed in subparagraphs 5(a)(v) to (xvi) in the Annex on Financial Services in the General Agreement on Trade in Services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

6. CPC 81339•81333•81321

Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- money market instruments (cheques, bills, certificate of deposits, etc.)*
- foreign exchange*
- derivative products including, but not limited to futures and options*
- exchange rate and interest rate instruments, including products such as swaps, forward rate agreement, etc.*
- transferable securities*
- other negotiable instruments and financial assets, including bullion.*

DRAFT OFFER

*For inclusion in Appendix II of the Agreement on Government Procurement
(1994)*

HONG KONG

Annex 1

*Hong Kong Government Gazette
Daily Press*

Annex 2

*Hong Kong Government Gazette
Daily Press*

Annex 3

<i>Hospital Authority Gazette</i>	-	<i>Hong Kong Government Daily Press</i>
<i>Housing Authority Gazette</i>	-	<i>Hong Kong Government Daily Press</i>
<i>Kowloon-Canton Railway Corporation</i>	-	<i>to be notified</i>
<i>Mass Transit Railway Corporation</i>	-	<i>Daily Press</i>
<i>Airport Authority</i>	-	<i>Daily Press</i>

DRAFT OFFER

*For inclusion in Appendix III of the Agreement on Government Procurement
(1994)*

HONG KONG

Annex 1

Hong Kong Government Gazette

Annex 2

*Hong Kong Government Gazette
Daily Press*

Annex 3

<i>Hospital Authority Gazette</i>	-	<i>Hong Kong Government</i>
<i>Housing Authority Gazette</i>	-	<i>Hong Kong Government</i>
<i>Kowloon-Canton Railway Corporation</i>	-	<i>to be notified</i>
<i>Mass Transit Railway Corporation</i>	-	<i>Not applicable</i>
<i>Airport Authority</i>	-	<i>Not applicable</i>

DRAFT OFFER

*For inclusion in Appendix IV of the Agreement on Government Procurement
(1994)*

HONG KONG

Annex 1

Hong Kong Government Gazette

Annex 2

Hong Kong Government Gazette

Annex 3

<i>Hospital Authority Gazette</i>	-	<i>Hong Kong Government Gazette</i>
<i>Housing Authority Gazette</i>	-	<i>Hong Kong Government Gazette</i>
<i>Kowloon-Canton Railway Corporation</i>	-	<i>to be notified</i>
<i>Mass Transit Railway Corporation</i>	-	<i>provided to potential suppliers upon issuance of invitations to participate</i>
<i>Airport Authority</i>	-	<i>provided to potential suppliers upon issuance of invitations to participate</i>

SUMMARY OF PRESENTATIONAL CHANGES TO HONG KONG'S
OFFER (1994 vs 1996)

Annex 1: *Central Government Entities which Procure in Accordance With the Provisions of this Agreement*

(a) *Item 7 in 1994 Offer: •City and New Territories Administration•*

Deleted. Its functions have been taken up by the •Government Secretariat• and the •Home Affairs Department•, which are included as Items 24 and 27 respectively in the 1996 Offer.

(b) *Item 11 in 1994 Offer: •Civil Service Training Centre•*

Renamed •Civil Service Training & Development Institute• and included as Item 10 in 1996 Offer.

(c) *Item 53 in 1994 Offer: •Registry of Trade Unions•*

Deleted. Functions of this registry have been taken up by the •Labour Department•, which is included as Item 38 in the 1996 Offer.

(d) *Item 56 in 1994 Offer: •Senior Staff Course Centre•*

Deleted. Functions of this centre have been taken up by the •Civil Service Training & Development Institute• which is included as Item 10 in 1996 Offer.

(e) *Item 68 in 1996 Offer •Management Services Agency•*

New addition to 1996 Offer arising from creation of this new agency.

(f) *Item 69 in 1996 Offer •Official Languages Agency•*

New addition to 1996 Offer arising from creation of this new agency. Previously existed as a unit under •Government Secretariat• (Item 24 in 1996 Offer).

(g) *Item 70 in 1996 Offer •Registration & Election Office•*

New addition to 1996 Offer arising from creation of this new office. Previously existed as a unit under •Government Secretariat• (Item 24 in the 1996 Offer).

(h) *Note to Annex 1 of 1994 Offer: Included in General Conditions of 1996 Offer.*

Annex 2: *Sub-Central Entities which Procure in Accordance With the Provisions of this Agreement*

No change.

Annex 3: *All Other Entities which Procure in Accordance With the Provisions of this Agreement*

Item 3 in 1994 Offer •Provisional Airport Authority (Airport Authority)• now renamed as •Airport Authority• and included as Item 3 in 1996 Offer.

Annex 4: *Services*

Item 5: •Telecommunication Services• in 1994 Offer

Details listed in the 1994 Offer were drawn up on the basis of the grouping of telecommunication services used in the Uruguay Round negotiations. Details for the same item in the 1996 Offer follow the latest grouping into value-added and basic telecommunication services. The substance of the Offer remains unchanged.

Annex 5: *Construction Services*

No change.

General Conditions applicable to entities and services specified in Annexes 1 to 5

(a) Last indent of paragraph 1 in 1996 Offer

Incorporated note to Annex 1 of 1994 Offer.

(b) Paragraph 4 in the 1996 Offer

Minor semantic changes.

(c) Paragraph 5 subparagraph 5 in 1996 Offer

Change made to refer to the •Annex on Financial Services• of the General Agreement on Services, instead of document MTN.TNC/W/50.

*WORLD TRADE
ORGANIZATION*

RESTRICTED

GPA/W/24/Add.2

30 October 1996

(96-4567)

Original: English

Committee on Government Procurement

*QUESTIONNAIRE ON INFORMATION TECHNOLOGY
IN GOVERNMENT PROCUREMENT*

Response by Canada

The attached communication contains the replies from the delegation of Canada to the questionnaire on Information Technology in Government Procurement contained in document GPA/W/24, dated 22 August 1996.

QUESTIONNAIRE ON INFORMATION TECHNOLOGY

1) *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government?*

The Canadian Government uses the Open Bidding Service (OBS), an internationally accessible electronic database. Most PWGSC bidding opportunities for goods and services valued at over \$25,000 are advertised on the OBS, as well as construction, maintenance, architecture, engineering and leasing opportunities over \$60,000, communications professional services valued at over \$50,000 and printing requirements valued at over \$10,000. All procurement covered by the WTO Agreement is advertised on the OBS (a code is used to indicate WTO coverage).

2) *What function(s) would information technology serve in such systems and who will be the users?*

The OBS has approximately 25,000 subscribers. On-line subscribers can order documents directly while linked to the database. Suppliers that do not use the on-line feature of the OBS, for example users of the Government Business Opportunities publication or subscribers to the OBS bid matching service, can call the Bid Request Line (phone or fax) to order bid documents. The OBS offers several options for the delivery of bid documents (fax, mail, courier, pick up or download via Internet for PWGSC opportunities).

Within the OBS matching service, suppliers provide to OBS a description of the goods and services they sell. Using this information, OBS scans its database and automatically faxes to subscribers those opportunities that match their profile. Suppliers can then order the bid documents from the Bid Request Line. The OBS also lists a number of international procurement opportunities from other countries which are open to Canadian suppliers. The OBS system also contains news, information and advice on doing business with the government, export information from Foreign Affairs and International Trade, and Public Works and Government Services Canada's Standard Acquisition Clauses and Conditions manual.

3) *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

The OBS is accessible by any microcomputer and modem. Communications software provided by the OBS is for IBMs or compatibles. The basic technical requirement for OBS communications can be met with a 286 computer and modem. Telecommunications software is included with the OBS on-line subscription. The service is available seven days a week, 24 hours a day. Easy-to-use menus and key word search capability are available in both French and English.

4) *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the*

access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?

Access to the database is open to both domestic and international suppliers. Using the on-line service, firms have immediate access to opportunity notices on the day they are published. Bid documents can be ordered and be on their way in as little as four hours. To subscribe to the OBS, call (613) 737-3374 or 1 (800) 361-4637. The OBS Web site address on the Internet is <http://www.obs.ism.ca>.

5) *For those Parties who use databases which list government procurement opportunities:*

(i) *What are the names of their databases?*

The database is called the Open Bidding Service (OBS).

(ii) *How long have the databases been operational and how many suppliers use the databases?*

The OBS was introduced in 1992 and has approximately 25,000 subscribers.

(iii) *Is a fee charged to suppliers using the system? If so, how much, and what is included in the fee?*

OBS subscriber costs are as follows:

- *On-line subscription* *\$130/year*
- or*
- *Bid Request Line* *\$37/year*
- or*
- *Bid Matching including On-line Subscription* *\$395/year*
- or*
- *Bid Matching including the Bid Request Line*
for Construction and Maintenance, Architectural
and Engineering Services *\$195/year*

An additional pre-payment deposit account of \$100 which is drawn down to cover the costs of on-line time (\$0.40/minute or \$24/hour) for subscribers accessing through datapac lines or \$12.00/month through the Internet, bid documents, bid updates and bid matching leads.

(iv) *Can suppliers obtain tender documentation electronically? If so, how?*

The OBS offers several options for the delivery of bid documents (fax, mail, courier, pick up or download via Internet for PWGSC opportunities).

(v) *How is information on the databases organized?*

Suppliers can browse through the listings or do a quick search using key words to find opportunities that are of interest.

(vi) *Do the databases offer any other features?*

The OBS offers a bid matching service. On-line suppliers can also find out which other companies have ordered bid documents. The OBS also lists a number of international procurement opportunities from other countries which are open to Canadian suppliers. The OBS system contains news, information and advice on doing business with the government, export information from Foreign Affairs and International Trade and on Public Works and Government Services Canada's Standard Acquisition Clauses and Conditions manual.

By accessing the database of former procurement opportunities, subscribers can find what the government has purchased in the past, from which companies and the total dollar value of the awarded contracts.

(vii) *What is the approximate number of procurement opportunities listed on the databases annually?*

In total there are approximately 23,000 bid opportunities listed annually.

(viii) *Are the systems managed by the government or a private company?*

The government contracts this service to a private firm, ISM Information Systems Management Corporation.

(ix) *Can Parties' databases be interrogated using international standards, such as SQL - Standard Query Language?*

The OBS offers user-friendly search features: menu driven, keyword, date, solicitation number, truncation, logical and proximity connectors.

(x) *Are all notices which are required to be published under Articles IX and XVIII:1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?*

Procurement notices that are required to be published under Articles IX and XVIII:1 for entities in Annex 1, Federal Government Entities, are published on the OBS.

The notices on the database contain all the information for which publication is required under Articles IX and XVIII:1, including the means of identifying the original tender notices to which the award notices relate.

(xi) *How are Agreement-covered notices identified?*

A code is used to identify that a procurement is covered by the WTO Agreement.

(xii) *To what extent does each type of notice contained in databases conform to a standard structure?*

Each type of notice is prepared using a standard •Procurement Notice• form.

(xiii) Is any particular classification used in such notices to describe purchases and, if so, what classification?

Purchases are identified summarily using the Federal Supply Classification for goods, and the NAFTA Common Classification System for services and construction. The Common Classification System for construction work is based on the United Nations Central Product Classification.

(xiv) Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?

Procurement opportunities appear in Canada's two official languages, French and English.

6) *For those Parties who are involved in action in the area of electronic commerce:*

(i) Please provide full information on projects and plans with regard to electronic commerce.

Since 1992, Canada has used an electronic tendering system called the Open Bidding Service (OBS), to advertise procurement opportunities, distribute the documents necessary for a supplier to submit a formal bid, and advertise contract award notices. All procurement covered by the WTO Agreement is advertised on the OBS. A large number of Government of Canada non-WTO-covered procurements, as well as opportunities from the Provinces of Alberta, Manitoba, Ontario, Quebec, New Brunswick and Saskatchewan are also advertised on the service.

The OBS, managed by a private company, currently has approximately 25,000 subscribers. Subscription options vary, from on-line access via the Internet, to bid requests via a toll-free telephone line, to •bid matching• where suppliers are automatically notified by the service provider of opportunities matching a profile provided by the supplier. Any individual or organization worldwide may subscribe. At any given time, there are more than 1,000 active opportunities posted on the OBS, with approximately 60 new notices posted each day.

The contract for the existing OBS expires in May 1997, and the procurement for a successor service is well under way. While the exact makeup of the new service is not known at this time, it is felt that the process of contracting for a new service provides the opportunity to continue those features considered to be of value to suppliers, while affording the flexibility to make improvements to the services in such areas as technology, ease of use, and price.

It is anticipated that the new service will be easily accessible to all suppliers worldwide, and will feature all WTO-covered procurement plus many non-WTO-covered opportunities. Suppliers will be able to choose from electronic and hard copy document delivery. Detailed information on the features available from the new service will be available in May 1997.

(ii) Could those Parties who have experience with electronic commerce provide information on such experiences?

n.a.

RESTRICTED

GPA/W/27
4 October 1996

WORLD TRADE
ORGANIZATION

(96-4046)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF JAPAN

Communication from Japan

The following communication, dated 3 October 1996, has been received from the Permanent Representative of Japan, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

Pursuant to Article XXIV, paragraph 6(a) of the WTO Agreement on Government Procurement, the Government of Japan wishes to notify the Committee on Government Procurement the following rectifications of a purely formal nature relating to Annex 3 in Appendix I of the WTO Agreement on Government Procurement. As is clear from the following explanation, none of these rectifications alters the coverage which has mutually been agreed upon.

1. *Delete •- Research Development Corporation of Japan• and •- Japan Information Center of Science and Technology• from •List of Entities• regarding supplies and •List of Entities which procure the services, specified in Annex 4•, respectively.*

Add •- Japan Science and Technology Corporation•, instead, to each of the lists mentioned above.

This rectification is based on the fact that •Research Development Corporation of Japan• and •Japan Information Center of Science and Technology• have been merged to form •Japan Science and Technology Corporation•.

2. *Delete •- Livestock Industry Promotion Corporation• and •- Japan Raw Silk and Sugar Price Stabilization Agency• from •List of Entities• regarding supplies and •List of Entities which procure the services, specified in Annex 4•, respectively.*

Add •- Agriculture and Livestock Industries Corporation•, instead, to each of the lists mentioned above.

This rectification is based on the fact that •Livestock Industry Promotion Corporation• and •Japan Raw Silk and Sugar Price Stabilization Agency• have been merged to form •Agriculture and Livestock Industries Corporation•.

3. *Delete •- Coal Mining Areas Restoration Agency• from •List of Entities• regarding supplies and •List of Entities which procure the services, specified in Annex 4•, respectively.*

This rectification is based on the fact that •Coal Mining Areas Restoration Agency• has been integrated to •New Energy and Industrial Technology Development Organization• listed respectively in the above-mentioned lists.

RESTRICTED

GPA/W/12/Add.6
26 September 1996

WORLD TRADE ORGANIZATION

(96-3854)

Original: English

Committee on Government Procurement

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSED IN NATIONAL CURRENCIES FOR 1996/1997

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The information notified in response by Norway is reproduced below.

NORWAY

Threshold calculations - for period 1996-1997.

The calculation of the thresholds of the WTO Agreement in Norwegian crowns (NOK) has been based on the average daily SDR to ECU and ECU to NOK exchange rates over 24 months from September 1993 through August 1995.

The Norwegian GPA threshold values are calculated in the following way; the SDR threshold values are multiplied with the exchange rate between ECU and SDR in the two-year period (1.2013) and then multiplied with 0.87 (1-13 per cent VAT) again multiplied with the exchange rate between Norwegian crowns and ECU (8.3075) in the same time period. The value of the thresholds is expressed net of value-added tax (VAT) because the threshold values are expressed net of VAT in Norway.

ANNEX 1

	SDR	NOK	Rounded Thresholds NOK
1. Supplies and services	130,000	1,128,715	1,100,000
2. Construction	5,000,000	43,412,129	41,500,000

ANNEX 2

	SDR	NOK	Rounded Thresholds NOK
1. Supplies and services	200,000	1,736,485	1,650,000
2. Construction	5,000,000	43,412,129	41,500,000

ANNEX 3

	SDR	NOK	Rounded Thresholds NOK
1. Supplies and services	400,000	3,472,970	3,300,000
2. Construction	5,000,000	43,412,129	41,500,000

Norway is bound, under the terms of the Agreement on the European Economic Area (EEA), by the thresholds for public procurement in this Agreement, which are expressed in ECU. The thresholds under the EEA Agreement are ECU 200,000, ECU 400,000 and ECU 5,000,000. The thresholds according to the EEA Agreement for the period 1996 and 1997 are as follows:

$$\text{ECU } 200,000 * 8.3075 = \text{NOK } 1,661,500$$

$$\text{ECU } 400,000 * 8.3075 = \text{NOK } 3,323,000$$

$$\text{ECU } 5,000,000 * 8.3075 = \text{NOK } 41,537,500$$

The value of the SDR has been higher than the value of the ECU in the 24-month calculation period, making the SDR thresholds higher than the ECU-based thresholds. In order to comply with both the WTO Government Procurement Agreement and the EEA Agreement, Norway has determined to set rounded thresholds based on the lowest values for Annex 2 and 3 entities and for the construction threshold. Hence the Norwegian threshold values for the period 1996 and 1997 are the following:

SDR	130,000	200,000	400,000	5,000,000
NOK	1,100,000	1,650,000	3,300,000	41,500,000

*WORLD TRADE
ORGANIZATION*

RESTRICTED

GPA/W/24/Add.1

26 September 1996

(96-3855)

Committee on Government Procurement

Original: English

*QUESTIONNAIRE ON INFORMATION TECHNOLOGY
IN GOVERNMENT PROCUREMENT*

Response by Norway

The attached communication contains the replies from the delegation of Norway to the questionnaire on Information Technology in Government Procurement contained in document GPA/W/24, dated 22 August 1996.

QUESTIONNAIRE ON INFORMATION TECHNOLOGY

1) *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government?*

Public entities can purchase programs for filling in tender notices electronically. Electronic transmission of notices to the Norwegian gazette and to the EC Publication Office in Luxembourg is being planned. Norway also participates in the SIMAP project under the European Communities.

All Norwegian Agreement-covered tender notices are available on the TED (Tenders Electronic Daily) database of the European Communities. The TED database is the electronic version of the Official Journal Supplement S of the European Communities. This database can be accessed by firms directly, or through specialized consultants who offer monitoring of TED for companies.

The Norwegian government gazette, Norsk lysingsblad, appears every Friday on the Internet. It is compulsory for state entities to publish in this gazette, and all these notices are found in the electronic version. Most of the municipalities and counties also publish their procurement above the WTO-GPA threshold values in this gazette. Short versions of all the notices in the European Communities TED database are also available through this Internet address.

An English-Norwegian CPV dictionary will be available on disk next year.

2) *What function(s) would information technology serve in such systems and who will be the users?*

The Internet version of the government gazette is meant for companies of any size. Electronic access to TED and the government gazette gives interested suppliers quicker and more easily available information than paper-based versions regarding notices for public contracts.

3) *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

The government gazette is available for everybody with an Internet connection. TED can be accessed by special programs designed for this purpose.

4) *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?*

The information in the government gazette is available for all suppliers with an Internet connection. The text in the government gazette is in Norwegian. Access to TED is more complicated and usually done by specialized firms.

5) *For those Parties who use databases which list government procurement opportunities:*

(i) *What are the names of their databases?*

The Internet address of the government gazette is: <http://norsk.lysingsblad.no/>

(ii) *How long have the databases been operational and how many suppliers use the databases?*

The government gazette on Internet started as a pilot project on 1 July 1996, ending 31 December this year. It is planned to become permanent in 1997. It is not known how many interested suppliers have accessed this database. Regarding the TED database, there are approximately 10 consultants that monitor the database on behalf of interested suppliers in Norway and Sweden.

(iii) *Is a fee charged to suppliers using the system?*

Not yet, but perhaps in 1997.

(iv) *Can suppliers obtain tender documentation electronically? If so, how?*

In some cases only, but it is becoming increasingly common. The Government Administration Services offer tender documentation electronically in connection with framework agreements. Very often documentation is sent by facsimile.

(v) *How is information on the databases organized?*

Weekly in the government gazette on Internet. In TED according to the type of tender notice (contract awards, services notices etc.).

(vi) *Do the databases offer any other features?*

The government gazette also contains articles related to public procurement of interest to suppliers.

(vii) *What is the approximate number of procurement opportunities listed on the databases annually?*

Approximately 2,500 Norwegian tender notices will be published in TED in 1996. In the government gazette there will be approximately 2,000 notices.

(viii) *Are the systems managed by the government or a private company?*

The government gazette on Internet is managed by the Government Administration Services. The TED database is managed by the Publication Office of the European Communities.

(ix) Can Parties' databases be interrogated using international standards, such as SQL - Standard Query Language?

No, not for the government gazette.

(x) Are all notices which are required to be published under Articles IX and XVIII:1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?

Yes, either in the government gazette or through TED or in both databases.

(xi) How are Agreement-covered notices identified?

Almost all the Norwegian notices that appear in TED will be covered by the GPA. Only in a few cases entities publish notices in TED for supplies, services or works that are below the GPA threshold values. In the government gazette, there will be notices for state procurement which are not covered by the GPA. Whether the notices in the government gazette are covered by the GPA or not, suppliers will have to estimate when they read the notices. Suppliers can also contact the entities to enquire whether a procurement is covered by the GPA or not.

(xii) To what extent does each type of notice contained in databases conform to a standard structure?

Both in TED and in the government gazette there is a standard layout for notices.

(xiii) Is any particular classification used in such notices to describe purchases and, if so, what classification?

All Agreement-covered notices are described by the CPV nomenclature.

(xiv) Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?

All Norwegian tender notices appear in TED in an EC language. Almost all of these notices appear in English.

6) For those Parties who are involved in action in the area of electronic commerce:

(i) Please provide full information on projects and plans with regard to electronic commerce.

EDIRAM is a pilot project on electronic exchange of information between public purchasers and suppliers in the process of putting framework agreements into operational work. The purchaser shall be able to order goods by electronic mail, and the suppliers to return invoices as well as other relevant information in demand to the purchasers (GPA/IC/W/7/Add.6/Suppl.1). This project is operational on a small scale and will be extended in 1997. The EDIRAM project will be succeeded by other projects on electronic commerce and payment. In these projects, Norway uses the EC's EDIFACT standard.

(ii) Could those Parties who have experience with electronic commerce provide information on such experiences?

n.a.

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*WORLD TRADE
ORGANIZATION*

GPA/W/12/Add.4

25 September 1996

(96-3805)

Original: English

Committee on Government Procurement

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED

IN NATIONAL CURRENCIES FOR 1996/1997

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The delegation of Switzerland has submitted its figures.

SWITZERLAND

Threshold calculations - for the period 1996-1997.

Thresholds for government procurement according to Appendix I of the Agreement

Annex 1

	SDR	Converted to SFr.¹
Goods	130,000	248,950
Services	130,000	248,950
Construction	5,000,000	9,575,000

¹SDR 1.0 • SFr. (Swiss Francs) 1.9150. The average monthly SDR to Swiss Francs for 24 months from October 1993 through September 1995 was SFr. 1.9150. This calculation is based on data published by the Swiss National Bank.

Annex 2

	<i>SDR</i>	<i>Converted to SFr.</i>
<i>Goods</i>	<i>200,000</i>	<i>383,000</i>
<i>Services</i>	<i>200,000</i>	<i>383,000</i>
<i>Construction</i>	<i>5,000,000</i>	<i>9,575,000</i>

./.

Annex 3

	<i>SDR</i>	<i>Converted to SFr.</i>
<i>Goods</i>	<i>400,000</i>	<i>766,000</i>
<i>Services</i>	<i>400,000</i>	<i>766,000</i>
<i>Construction</i>	<i>5,000,000</i>	<i>9,575,000</i>

RESTRICTED

GPA/W/12/Add.5

25 September 1996

**WORLD TRADE
ORGANIZATION**

(96-3806)

Original: English

Committee on Government Procurement

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED

IN NATIONAL CURRENCIES FOR 1996/1997

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The delegation of Israel has submitted its figures.

ISRAEL

Threshold calculations - for the period 1996-1997.

Thresholds for government procurement according to Appendix I of the Agreement

Annex 1

	SDR	Converted to US\$
Supplies	130,000	190,000
Services	130,000	190,000
Construction	8,500,000	12,430,000

Annex 2

	SDR	Converted to US\$
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Supplies	<i>250,000</i>	<i>366,000</i>
Services	<i>250,000</i>	<i>366,000</i>
Construction	<i>8,500,000</i>	<i>12,430,000</i>

./.

Annex 3

	<i>SDR</i>	<i>Converted to US\$</i>
<i>Supplies</i>	<i>355,000</i>	<i>519,000</i>
<i>Services</i>	<i>355,000</i>	<i>519,000</i>
<i>Construction</i>	<i>8,500,000</i>	<i>12,430,000</i>

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GPA/W/26
10 September 1996

WORLD TRADE
ORGANIZATION

(96-3486)

Original: English

Committee on Government Procurement

ACCESSION OF THE KINGDOM OF THE NETHERLANDS
WITH RESPECT TO ARUBA

Communication from the Kingdom of the Netherlands
with Respect to Aruba

The following communication, dated 23 August 1996, has been received from the Permanent Mission of the Kingdom of the Netherlands.

On 27 February 1996 the Committee on Government Procurement approved the application for accession to the GPA 1994 of the Kingdom of the Netherlands with respect to Aruba (Decision GPA/2). Furthermore it decided that said decision would expire six months after the date of its adoption, i.e. 27 August 1996, unless extended by mutual consent between the Committee and the Kingdom of the Netherlands with respect to Aruba (GPA/2, paragraph 3).

Aruba has already completed its domestic legislative process but due to unforeseen circumstances the Kingdom of the Netherlands with respect to Aruba will not be able to deposit the instrument of accession within said deadline, but soon thereafter, hopefully already before the next meeting of the Committee on Government Procurement 1994 on 20 September 1996.

In conformity with above-mentioned paragraph 3 of Decision GPA/2, I therefore kindly request a brief extension of the deadline for the depositing of the instrument of accession.

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GPA/W/24
22 August 1996

WORLD TRADE
ORGANIZATION

(96-3288)

Committee on Government Procurement

INFORMATION TECHNOLOGY: REVISED QUESTIONNAIRE

Note from the Secretariat

At the invitation of the Interim Committee, the Secretariat prepared, on 16 September 1994, a questionnaire on the use of information technology in government procurement in the various Signatories (GPA/IC/W/4/Rev.1). Replies were received from Sweden, Japan, Switzerland, Finland, the European Communities, the United States, Norway, Austria, Canada, Korea and Israel (GPA/IC/W/7 and Addenda 1, 2, 3, 4, 5, 6 and Suppl. 1, 7, 8, 9 and 10, respectively). At its meeting of 4 June 1996, the Committee on Government Procurement asked the Secretariat to revise the questionnaire in the way proposed in document GPA/W/15, Information Technology: Compilation of Issues (GPA/M/2, paragraphs 44 and 45).

The main differences between the attached revised questionnaire and the earlier questionnaire are the additional subpoints (ix) to (xiv) to Question 5 and Question 6 which focused on electronic procurement. The old Question 5 has been deleted because the normative aspects of the matter are under discussion in the Committee and the factual aspects are picked up in Question 6. Parties are invited to provide updated responses to the questionnaire as a whole, where possible before the Committee meeting of 20 September 1996 and, in any event, by 15 October 1996.

QUESTIONNAIRE ON INFORMATION TECHNOLOGY

1) *Could delegations give a brief description of any steps taken or planned to introduce information technology into public procurement? If so, does this cover contracts which are covered under the 1994 Agreement? At all levels of government? In the event that delegations are not considering introducing information technology into public procurement, could they explain the reasons?*

2) *What function(s) would information technology serve in such systems and who will be the users?*

Examples of functions: management of procedures, notification of tender opportunities, exchange of tender information, distribution of tender documentation, submission of tenders, notification of contract awards, payment, added value services, including technical assistance to users, surveillance.

Examples of users: contracting entities, suppliers (SMEs in particular), supervisory authorities.

3) *Could delegations describe the technical aspects of the systems in use or planned? In particular as regards infrastructure/hardware-software and its options/standards?*

4) *Could delegations describe any limitations affecting access to information available and use of systems? How wide is potential access to interested suppliers? What are the access possibilities for suppliers of other signatory countries? What possible obstacles to access might arise for suppliers in other signatory countries?*

For example, in the event that an electronic database is available, how can suppliers (both domestic and foreign) access the database?

5) *For those Parties who use databases which list government procurement opportunities:*

(i) What are the names of their databases?

(ii) How long have the databases been operational and how many suppliers use the databases?

(iii) Is a fee charged to suppliers using the systems? If so, how much, and what is included in the fee?

(iv) Can suppliers obtain tender documentation electronically? If so, how?

(v) How is information on the databases organized?

- (vi) *Do the databases offer any other features?*
- (vii) *What is the approximate number of procurement opportunities listed on the databases annually?*
- (viii) *Are the systems managed by the government or a private company?*
- (ix) *Can Parties' databases be interrogated using international standards, such as SQL - Standard Query Language?*
- (x) *Are all notices which are required to be published under Articles IX and XVIII:1 of the Agreement - for entities in Annexes 1, 2 and 3 - also available on databases? If so, do such notices contain at least the minimum information required to be published under Articles IX and XVIII:1?*
- (xi) *How are Agreement-covered notices identified?*
- (xii) *To what extent does each type of notice contained in databases conform to a standard structure?*
- (xiii) *Is any particular classification used in such notices to describe purchases and, if so, which classification?*
- (xiv) *Where databases exist in a non-WTO language, to what extent are notices and information summarized in a WTO language?*
- 6) *For those Parties who are involved in action in the area of electronic commerce:*
- (i) *Please provide full information on projects and plans with regard to electronic commerce.*
- (ii) *Could those Parties who have experience with electronic commerce provide information on such experiences?*

In responding to these questions, Parties are invited to:

- provide any additional information to respond to the points in Questions 4 and 5 as they relate to electronic procurement systems;*
- indicate the present and planned coverage of procurement operations by electronic systems and how this relates to GPA coverage;*
- indicate the extent to which electronic procurement is planned to co-exist with or replace hard-copy-based procedures;*
- indicate the standards used/planned for electronic communication under the systems and how these relate to the UN EDIFACT standard;*

- indicate any experience/plans in regard to deadlines for submission of tenders and other time-limits;*
- indicate any experience with the number of tenders received under electronic procurement systems compared to hard-copy-based systems;*
- provide information on techniques evolved for ensuring the confidentiality and security of information exchanged and payments made and the legal validity of documents submitted.*

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GPA/W/25
22 August 1996

WORLD TRADE
ORGANIZATION

(96-3289)

Committee on Government Procurement

PROVISIONS OF THE AGREEMENT WHICH MIGHT NEED TO BE RE-
EXAMINED
IN THE LIGHT OF INFORMATION TECHNOLOGY

Note by the Secretariat

1) *With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Article XXIV:8 of the Agreement calls on Parties to consult regularly in the Committee on developments in the use of information technology in government procurement and, if necessary, to negotiate modifications to the Agreement itself. This provision requires consultations to aim in particular at ensuring that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. The delegations of the United States, the European Communities and Norway have submitted communications identifying a number of areas that might require examination to accommodate developments in information technology (GPA/IC/W/36, GPA/W/13 and GPA/W/14). At its meeting on 4 June 1996, the Committee requested the Secretariat to prepare a factual note on the aspects of the Agreement that it had been suggested might need to be re-examined in the light of information technology, setting out the relevant provisions of the Agreement and drawing attention to any pertinent information on their negotiating history.*

2) *This note addresses, in turn, the provisions of the Agreement relating to the following issues that have been raised in the Committee's discussions on this matter: (a) publication requirements; (b) submissions of tenders and other communications between the tenderer and the procuring entity; (c) selective tendering; (d) deadlines; and (e) non-discriminatory treatment.*

3) *Paragraph 8 of Article XXIV was added in the last stages of the negotiation of the 1994 Agreement in recognition of the fact that the Agreement*

did not take account of the rapidly emerging use of information technology in government procurement. Indeed, as is demonstrated below, most of the procedural provisions in the Agreement stem from the text of the 1988 Agreement, which in turn follows closely the original Tokyo Round text. The main differences in the procedural rules (apart from challenge) concern adaptations to allow for the addition of Annex 2 and Annex 3 entities and a restructuring of the presentation in an attempt to make it more user-friendly.

(a) Publication requirements

4) *It has been said that the Agreement contains various provisions regarding publication that are ambiguous regarding use of electronic means and the suggestion has been made that these provisions should be reviewed and clarified.*

5) *The main publication requirement is contained in paragraph 1 of Article IX, which reads as follows:*

- 1. *In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II. •*

While this provision, which corresponds to Article V:4 of the 1988 Agreement, was no doubt originally drafted with hard-copy publication in mind, it does not explicitly prejudge the form of the publication except to the extent that this is determined by the specific publications listed in Appendix II. The publications listed or referred to there would appear to be essentially hard-copy publications, although some are also now available in electronic form. Exceptions are the Open Bidding Service (OBS) in Canada and the publications for certain States of the United States of America, in respect of which the additional information made available by the United States delegate at the Interim Committee's meeting of 7 December 1995 includes some electronic publications.¹ The text of Appendix II as it presently stands is contained in Attachment 1 to this note.

6) *Article IX requires publication in a number of its other provisions. Paragraph 9 of Article IX stipulates that entities maintaining permanent lists of qualified suppliers shall publish annually a notice in one of the publications listed in Appendix III. The Open Bidding Service in Canada would appear to be the only electronic publication in Appendix III. The present text of Appendix III can be found at Attachment 2 to this note. When such a notice is used as an invitation to participate, the notice shall, in addition, include other specified information. As such, this notice shall be published in a publication listed in Appendix II. Paragraph 8 of Article IX contains the obligation, in all cases of intended procurement, to publish a summary notice.*

¹ For instance Delaware Internet Home Page, Florida Administrative Weekly (also available soon on the Internet), Kansas Internet Home Page, Massachusetts Internet address.

7) *Article XVII:1(b) and Article XVIII:1 also contain publication provisions, which once more do not explicitly prejudge the nature of the publication, except to the extent that this is determined by the publications listed in Appendix II.*

8) *While these publication provisions do not explicitly prejudge the nature of the publication to be used, it would seem clear, given that for the most part they correspond to provisions in the 1988 and Tokyo Round Agreements, that the drafters had hard-copy rather than electronic publication in mind. This is also borne out by language of Article XI:1(b), concerning time-limits for tendering and delivery, which requires each party to ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender. The provisions of Article IX correspond to those in paragraphs 4, 5, 7(a) and 9 of Article V of the 1988 Agreement. Specific provisions have been added to Article IX to take account of entities in Annexes 2 and 3, in particular Article IX:3-5, Article IX:7 and the second part of Article IX:9. Article XVII:1 is new to the 1994 Agreement. With a change in the delay period from 60 to 72 days, Article XVIII:1 is based on the old Article VI:1, which was introduced in the 1988 Revision of the Tokyo Round Agreement.*

(b) Submissions of tenders and other communications between the tenderer and the procuring entity

9) *It has been stated that the various provisions of the Agreement relating to these matters are ambiguous regarding the use of electronic means and should be reviewed and clarified. It has also been suggested that special safeguard measures may be required where the electronic submission of tenders is allowed.*

10) *Article XIII:1(a) reads as follows (emphasis added):*

- 1. *The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:*

*(a) tenders shall normally be submitted **in writing directly or by mail**. If tenders by **telex, telegram or facsimile** are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly **by letter or by the despatch of a signed copy of the telex, telegram or facsimile**. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and•*

11) *Article X:4 reads as follows (emphasis added):*

- 4. *Requests to participate in selective tendering procedures may be submitted by **telex, telegram or facsimile.***
- 12) *Article XIV:4(b), which concerns negotiated procurement, reads as follows:*
- 4. *Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:*
 - (a) ...
 - (b) *all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;*
- 13) *Article XVIII:3 reads as follows:*
- 3. *Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.*
- 14) *Other provisions of Article X, XIII, XIV and XVIII also deal with aspects of communications between actual or potential tenderers and procurement authorities, as does also Article VIII on qualification of suppliers and Article XII on tender documentation. These provisions would appear to be silent on whether such communications need be in hard-copy form (although, no doubt, this was in the minds of the drafters).*
- 15) *Article XIII is entirely taken over from the 1988 Agreement, which in turn, for the most part, corresponded to the Tokyo Round Agreement. The new Article XIII:1 was the old Article V:15(a) and (b); the new Article XIII:2 was the old Article V:15(c); the new Article XIII:3 is inspired by the old Article V:15(d) but is a little less specific. In regard to the award of contracts, the new Article XIII:4(a) was the old Article V:15(e); the new Article XIII:4(b) was the old Article V:15(f); the new Article XIII:4(c) was the old Article V:15(j) which was added in the 1988 Revision of the Agreement; the new Article XIII:5 was the old Article V:15(i) which was also added in the 1988 Revision of the Agreement. Article X:4 on selective tendering was the old Article V:15(a), last sentence. Article XIV:4 on negotiation with participants originated in old Article V:15(g). Article XVIII:3 on decisions on contract awards was the old Article VI:4.*
- (c) *Selective tendering*
- 16) *It has been stated that, due to the fact that utilizing electronic commerce may result in a significantly greater volume of bids submitted, procurement authorities may rely more heavily on selective tendering procedures; and that it may therefore be necessary to re-examine the provisions of Article X with a view to considering ways to ensure that foreign suppliers can participate on an equal*

footing with domestic suppliers in selective tendering procedures that arise from the use of electronic commerce.

17) *Article X reads as follows:*

•Article X

Selection Procedures

1. *To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.*
2. *Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.*
3. *Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.*
4. *Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile. •*

18) *Also relevant to safeguards to ensure effectively non-discriminatory use of selective tendering procedures are the requirements of Article VIII concerning qualification of suppliers. In the discussion on the question of selective tendering and the use of information technology in procurement, reference has also been made to Article VI relating to technical specifications. It has been suggested that any threats to the efficient operation of procurement processes resulting from a proliferation of tenders might be responded to through a more careful formulation of contract specifications.*

19) *Article X has been taken over from the 1988 Agreement as it stands: the new Article X:1 was the old Article V:6; the new Article X:2 was the old Article V:7(b); the new Article X:3 was the old Article V:8; the new Article X:4 was the last part of the old Article V:15(a). The provisions were rearranged in this way to put everything pertaining to selective tendering together in one Article.*

(d)Deadlines

20) *It has been suggested that Article XI, on time-limits for tendering and delivery, should be reviewed in the light of the fact that electronic publication can reduce the lead time necessary for informing interested suppliers of potential procurement opportunities (through the notices of intended procurement in Article IX) and the electronic submission of tenders can decrease the time required by potential suppliers for submitting responsive tenders.*

21) *Paragraph 1 of Article XI contains general considerations that should govern the setting of time-limits for tendering and delivery, which make it clear that the time-limits in the Agreement were set with hard-copy publication and submission of tenders by mail in mind. Paragraph 1 of Article XI reads as follows:*

•1.(a)Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.

(b)Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender. •

22) *Paragraphs 2 and 3 of Article XI set out the minimum deadlines for receipt by entities of tenders submitted by interested suppliers, i.e. the time allowed to potential suppliers to prepare and submit tenders and, in the case of selective tendering, to submit an application to be invited to tender.*

23) *The new Article is largely taken over from the old Article V of the 1988 Agreement. Article XI:1(a) and (b) correspond to Article V:10(a) and Article V:11(f) respectively, of the 1988 Agreement. The old Article V:11(f) was introduced in the 1988 Revision of the Tokyo Round Agreement. Article XI:2(a) corresponds to the Article V:11(a) of the 1988 Agreement in which the period for receipt of tenders was extended to 40 days from 30 days in the Tokyo Round Agreement; Article XI:2(b) corresponds to the Article V:11(b) of the 1988 Agreement, in which the period for submitting an application to be invited to tender was reduced to 25 days from 30 days in the Tokyo Round Agreement, and the period for receipt of tenders was extended to 40 days from 30 days; Article XI:2(c) corresponds to the Article V:11(c) of the 1988 Agreement, in which the period for receipt of tenders was extended to 40 days from 30 days in the Tokyo Round Agreement. Article XI:3(a) is new and corresponds to what has been described as a •pre-qualification notice•; Article XI:3(b) corresponds to the old Article V:11(d) with the period for receipt of tenders of 25 days introduced in the 1988 Revision of the Tokyo Round Agreement and changed to 24 days in the 1994*

Agreement; Article XI:3(c) corresponds to the old Article V:11(e) which is added in the 1988 Revision of the Tokyo Round Agreement; Article XI:3(d) is new in the 1994 Agreement, since it deals with entities which were not covered by the 1988 and Tokyo Round Agreements. Article XI:4 corresponds to the old Article V:10 (b), which was redrafted in the 1988 Revision of the Tokyo Round Agreement.

(e) *Non-discriminatory treatment*

24) Concern has been expressed that, unless appropriate safeguards are established, the use of information technology in government procurement may lead to de facto discrimination against foreign suppliers, even where it is formally applied on a non-discriminatory basis. The main possible areas for cooperation to prevent any such outcome that have been referred to are the technical and content-related compatibility of different electronic systems and cost. The question has been raised of whether additional rules, or clarification of existing rules, should be built into the Agreement to ensure that procedures administered electronically give the same or better guarantees of non-discriminatory access.

25) The basic national treatment and non-discrimination rules are contained in Article III. These relate to •all laws, regulations, procedures and practices regarding government procurement covered by this Agreement•. Paragraph 1 of Article VII requires that •each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI•. Articles VII through XVI contain minimum standards that procurement procedures have to comply with, in addition to compliance with the basic national treatment and non-discrimination rules.

ATTACHMENT 1

APPENDIX II

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
OF NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH 1 OF ARTICLE XVIII*

APPENDICE II

*PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA
PUBLICATION
DES AVIS DE MARCHES ENVISAGES - PARAGRAPHE 1 DE
L•ARTICLE IX,
ET DES AVIS POSTERIEURS A L•ADJUDICATION DES
MARCHES - PARAGRAPHE 1 DE L•ARTICLE XVIII*

APÉNDICE II

*MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN DE
LOS
ANUNCIOS DE LOS CONTRATOS PREVISTOS - PÁRRAFO 1 DEL
ARTÍCULO IX - Y LOS ANUNCIOS DE LAS ADJUDICACIONES -
PÁRRAFO 1 DEL ARTÍCULO XVIII.*

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADA

*Government Business Opportunities (GBO)
Open Bidding Service, ISM Publishing*

EUROPEAN COMMUNITIES

- | | | |
|---|---|--|
| <i>Belgium</i> | - | <i>Official Journal of the European Communities</i> |
| | - | <i>Le Bulletin des Adjudications</i> |
| | - | <i>Other publications in the specialized press</i> |
| <i>Denmark</i> | - | <i>Official Journal of the European Communities</i> |
| <i>Germany, Federal
Republic of</i> | - | <i>Official Journal of the European Communities</i> |
| <i>Spain</i> | - | <i>Official Journal of the European Communities</i> |
| <i>France</i> | - | <i>Official Journal of the European Communities</i> |
| | - | <i>Bulletin officiel des annonces des marchés publics</i> |
| <i>Greece</i> | - | <i>Official Journal of the European Communities</i> |
| | - | <i>Publication in the daily, financial, regional and
specialized press</i> |
| <i>Ireland</i> | - | <i>Official Journal of the European Communities</i> |
| | - | <i>Daily Press: •Irish Independent•, •Irish Times•, •Irish
Press•, •Cork
Examiner•</i> |
| <i>Italy</i> | - | <i>Official Journal of the European Communities</i> |
| <i>Luxembourg</i> | - | <i>Official Journal of the European Communities</i> |
| | - | <i>Daily Press</i> |
| <i>Netherlands</i> | - | <i>Official Journal of the European Communities</i> |
| <i>Portugal</i> | - | <i>Official Journal of the European Communities</i> |
| <i>United Kingdom</i> | - | <i>Official Journal of the European Communities</i> |

FINLAND

*Julkiset hankinnat Suomessa ja ETA-alueella, Virallisen lehden liite
(Public Procurement in Finland and at the EEA-area,
Supplement to the Official Gazette of Finland)
Official Journal of the European Communities (as long as the cost
of the publication is free of charge)*

ISRAEL

The Jerusalem Post

JAPAN

Annex 1

Kanp_

Annex 2

Kenp_

Shih_

or their equivalents

Annex 3

Kanp_

THE REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)
The Seoul Shinmun

NORWAY

Official Journal of the European Communities

SWEDEN

*Europeiska Gemenskapernas Tidning (Official Journal
of the European Communities)*

SWITZERLAND

Annex 1

Swiss Official Trade Gazette

Annex 2

Official publications of every Swiss Canton (26)

Annex 3

Swiss Official Trade Gazette
Official publications of every Swiss Canton (26)

UNITED STATES

The Commerce Business Daily

*For entities listed in Annex 2 and relevant subcentral entities listed in Annex 3,
publications utilized by state governments, such as the New York Contract
Reporter*

AUTRICHE

Amtsblatt zur Wiener Zeitung

CANADA

Marchés publics (GBO)

Service des invitations ouvertes à soumissionner, ISM Publishing

COMMUNAUTÉS EUROPÉENNES

Belgique-Journal officiel des Communautés européennes

-Le Bulletin des Adjudications

-Autres publications de la presse spécialisée

Danemark-Journal officiel des Communautés européennes

France-Journal officiel des Communautés européennes

-Bulletin officiel des annonces des marchés publics

*Allemagne, République -Journal officiel des Communautés européennes
fédérale*

Grèce-Journal officiel des Communautés européennes

-Publication dans la presse quotidienne, financière, régionale et spécialisée

Irlande-Journal officiel des Communautés européennes

*-Presse quotidienne: •Irish Independent•, •Irish Times•, •Irish Press•, •Cork
Examiner•*

Italie-Journal officiel des Communautés européennes

Luxembourg-Journal officiel des Communautés européennes

-Presse quotidienne

Pays-Bas-Journal officiel des Communautés européennes

Portugal-Journal officiel des Communautés européennes

Espagne-Journal officiel des Communautés européennes

Royaume-Uni-Journal officiel des Communautés européennes

FINLANDE

*Julkiset hankinnat Suomessa ja ETA - alucella, Viralhisen lehden hite
(Marchés publics en Finlande et dans l'EEE, Supplément
au Journal officiel de la Finlande)*

*Journal officiel des Communautés européennes (tant que la publication
des avis est gratuite)*

ISRAEL

The Jerusalem Post

JAPON

Annexe 1

Kanp_

Annexe 2

Kenp_, Shih_
ou leurs équivalents

Annexe 3

Kanp_

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)
The Seoul Shinmun

NORVEGE

Journal officiel des Communautés européennes

SUEDE

Europeiska Gemenskapernas Tidning (Journal officiel des
Communautés européennes)

SUISSE

Annexe 1

Feuille officielle suisse du commerce

Annexe 2

Organe de publications officielles de chaque canton suisse (26)

Annexe 3

Feuille officielle suisse du commerce
Organe de publications officielles de chaque canton suisse (26)

ETATS-UNIS

The Commerce Business Daily

*Pour les entités énumérées à l'Annexe 2 et les entités des gouvernements
sous-centraux
pertinentes énumérées à l'Annexe 3, publications utilisées par les gouvernements
des Etats, comme le New York Contract Reporter*

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADÁ

*Government Business Opportunities (GBO)
Servicio de Licitaciones Públicas, ISM Publishing*

COMUNIDADES EUROPEAS

*Bélgica-Diario Oficial de las Comunidades Europeas
-Le Bulletin des Adjudications
-Otras publicaciones de la prensa especializada
Dinamarca-Diario Oficial de las Comunidades Europeas
Alemania, Rep.
Fed. de-Diario Oficial de las Comunidades Europeas
España - Diario Oficial de las Comunidades Europeas
Francia-Diario Oficial de las Comunidades Europeas
-Bulletin officiel des annonces des marchés publics
Grecia-Diario Oficial de las Comunidades Europeas
-Publicación en la prensa diaria, financiera, regional y especializada
Irlanda-Diario Oficial de las Comunidades Europeas
-Prensa diaria: •Irish Independent•, •Irish Times•, •Irish Press•, •Cork Examiner•
Italia - Diario Oficial de las Comunidades Europeas
Luxemburgo - Diario Oficial de las Comunidades Europeas
- Prensa diaria
Países Bajos - Diario Oficial de las Comunidades Europeas
Portugal - Diario Oficial de las Comunidades Europeas
Reino Unido - Diario Oficial de las Comunidades Europeas*

FINLANDIA

*Julkiset hankinnat Suomessa ja ETA - alucella, Viralhisen
lehden hite (Contratación pública en Finlandia y en
el EEE, Suplemento de la Gaceta Oficial de Finlandia)
Diario Oficial de las Comunidades Europeas (en la
medida en que la publicación sea gratuita)*

ISRAEL

The Jerusalem Post

JAPÓN

Anexo 1

Kanp_

Anexo 2

Kenp_, Shih_, o sus equivalentes

Anexo 3

Kanp_

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)
The Seoul Shinmun

NORUEGA

Diario Oficial de las Comunidades Europeas

SUECIA

*Europeiska Gemenskapernas Tidning (Diario Oficial de las
Comunidades Europeas)*

SUIZA

Anexo 1

Feuille officielle suisse du commerce

Anexo 2

Órganos oficiales de publicación de cada cantón suizo (26)

Anexo 3

Feuille officielle suisse du commerce
Órganos oficiales de publicación de cada cantón suizo (26)

ESTADOS UNIDOS

The Commerce Business Daily

Con respecto a las entidades indicadas en el Anexo 2 y a las entidades pertinentes a nivel subcentral enumeradas en el Anexo 3, las publicaciones utilizadas por los gobiernos de los Estados, tales como •New York Contract Reporter•

ATTACHMENT 2

APPENDIX III

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
ANNUALLY OF INFORMATION ON PERMANENT LISTS OF
QUALIFIED SUPPLIERS IN THE CASE OF SELECTIVE TENDERING
PROCEDURES - PARAGRAPH 9 OF ARTICLE IX*

APPENDICE III

*PUBLICATIONS UTILISEES PAR LES PARTIES EN VUE DE LA
PUBLICATION
ANNUELLE DE RENSEIGNEMENTS SUR LES LISTES PERMANENTES
DE
FOURNISSEURS QUALIFIES DANS LE CAS DES PROCEDURES
SELECTIVES - PARAGRAPHE 9 DE L'ARTICLE IX*

APÉNDICE III

*MEDIOS UTILIZADOS POR LAS PARTES PARA LA PUBLICACIÓN
ANUAL DE
INFORMACIÓN SOBRE LAS LISTAS PERMANENTES DE
PROVEEDORES
CALIFICADOS EN CASO DE LICITACIONES SELECTIVAS -
PÁRRAFO 9 DEL ARTÍCULO IX.*

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADA

*Government Business Opportunities (GBO)
Open Bidding Service, ISM Publishing*

EUROPEAN COMMUNITIES

Member States do not normally operate permanent lists of suppliers and service providers. In the few cases that such lists exist, this will be published in the Official Journal of the European Communities

FINLAND

*Official Journal of the European Communities
(currently no list exists)*

ISRAEL

The Jerusalem Post

JAPAN

Annex 1

Kanp_

Annex 2

Kenp_

Shih_

or their equivalents

Annex 3

Kanp_

REPUBLIC OF KOREA

Kwanbo (The Korean Government's Official Gazette)

NORWAY

Official Journal of the European Communities

SWEDEN

*Europeiska Gemenskapernas Tidning (Official Journal
of the European Communities)*

SWITZERLAND

Annex 1

Swiss Official Trade Gazette

Annex 2

Official publications of every Swiss Canton (26)

Annex 3

*Swiss Official Trade Gazette
Official publications of every Swiss Canton (26)*

UNITED STATES

*The Commerce Business Daily
Entities in Annexes 2 and 3 of Appendix I, as an alternative to publication in the
Commerce*

*Business Daily, may provide such information directly to interested suppliers
through
inquiries to contact points listed in notices regarding invitations to participate*

AUTRICHE

Amtsblatt zur Wiener Zeitung

CANADA

*Marchés publics (GBO)
Service des invitations ouvertes à soumissionner, ISM Publishing*

COMMUNAUTÉS EUROPÉENNES

Les États membres ne tiennent pas normalement de listes permanentes de fournisseurs de produits et de services. Dans les rares cas où de telles listes existent, elles sont publiées au Journal officiel des Communautés européennes

FINLANDE

*Journal officiel des Communautés européennes
(Il n'existe pas de liste actuellement)*

ISRAËL

The Jerusalem Post

JAPON

Annexe 1

Kanp_

Annexe 2

*Kenp_, Shih_
ou leurs équivalents*

Annexe 3

Kanp_

REPUBLIQUE DE COREE

Kwanbo (Journal officiel du gouvernement coréen)

NORVEGE

Journal officiel des Communautés européennes

SUEDE

Europeiska Gemenskapernas Tidning (Journal officiel des Communautés européennes)

SUISSE

Annexe 1

Feuille officielle suisse du commerce

Annexe 2

Organe de publications officielles de chaque canton suisse (26)

Annexe 3

Feuille officielle suisse du commerce
Organe de publications officielles de chaque canton suisse (26)

ETATS-UNIS

The Commerce Business Daily

Au lieu de les faire paraître dans le Commerce Business Daily, les entités énumérées

aux Annexes 2 et 3 de l'Appendice I peuvent communiquer directement ces renseignements

aux fournisseurs intéressés, sur demande adressée aux services chargés des contacts

désignés dans les avis utilisés pour les invitations à soumissionner

AUSTRIA

Amtsblatt zur Wiener Zeitung

CANADÁ

*Government Business Opportunities (GBO)
Servicio de Licitaciones Públicas, ISM Publishing*

COMUNIDADES EUROPEAS

*Los Estados miembros normalmente no establecen listas permanentes de
proveedores
de bienes y servicios. En los pocos casos en que existe tal lista, se publicará
en el Diario Oficial de las Comunidades Europeas*

FINLANDIA

*Diario Oficial de las Comunidades Europeas
(actualmente no existe lista)*

ISRAEL

The Jerusalem Post

JAPÓN

Anexo 1

Kanp_

Anexo 2

Kenp_, Shih_, o sus equivalentes

Anexo 3

Kanp_

REPÚBLICA DE COREA

Kwanbo (Diario Oficial del Gobierno de Corea)

NORUEGA

Diario Oficial de las Comunidades Europeas

SUECIA

Europeiska Gemenskapernas Tidning (Diario Oficial de las Comunidades Europeas)

SUIZA

Anexo 1

Feuille officielle suisse du commerce

Anexo 2

Órganos oficiales de publicación de cada cantón suizo (26)

Anexo 3

Feuille officielle suisse du commerce

Órganos oficiales de publicación de cada cantón suizo (26)

ESTADOS UNIDOS

The Commerce Business Daily

Las entidades incluidas en los Anexos 2 y 3 del Apéndice I, como alternativa a la publicación en el Commerce Business Daily, pueden facilitar esa información directamente a los proveedores interesados, quienes deberán dirigirse a los centros de información que se indican en los anuncios de invitaciones a participar

RESTRICTED

GPA/W/15/Corr.1
14 August 1996

WORLD TRADE ORGANIZATION

(96-3205)

Committee on Government Procurement

INFORMATION TECHNOLOGY: COMPILATION OF ISSUES

Note by the Secretariat

Corrigendum

Paragraph 34, Section IV of document GPA/W/15, should read as follows:

34. The discussions so far would seem to indicate widespread acceptance of two basic guidelines that should inform the future work of the Committee on information technology:

-that the work should be governed by the objectives of the Government Procurement Agreement and the specific provisions of Article XXIV:8;

-that work on aspects aimed at safeguarding and promoting open and non-discriminatory procurement should proceed in parallel with work on aspects aimed at promoting efficient procurement.

Paragraph 36, Section IV of document GPA/W/15, should read as follows:

36. In regard to the issues discussed in Section II, a number of quite technical matters have been raised and the question arises as to whether work on these matters would be facilitated by the establishment of a sub-group of experts and/or by the use of a consultant. However, it ~~w~~could be that a more in-depth and systematic examination of these issues in the Committee itself would be a necessary preliminary for the Committee to be able to determine ~~to~~the appropriateness of such steps and the mandate to be given to any sub-group and/or consultant. In doing so, members might also have regard to the issues earlier identified in document GPA/IC/W/18 (reproduced at Annex 1).

RESTRICTED

*WORLD TRADE
ORGANIZATION*

GPA/W/21/Add.1

23 July 1996

(96-2898)

Original: English

Committee on Government Procurement

ACCESSION OF SINGAPORE

Note by the Secretariat

Addendum

In accordance with the Committee decision of 4 June 1996 (GPA/M/2, paragraphs 21 and 22), the Secretariat drew up, and circulated on 20 June 1996, a draft Decision on Accession, to which were attached the terms of its accession submitted by Singapore to the Secretariat on 14 June 1996, for consideration and adoption by the Committee (GPA/W/21). This Decision would be considered adopted if no objections or requests for extension of the time-limit were received from Parties within 30 days of the date of the issue of the document, i.e. by 20 July 1996.

The Secretariat was informed by some Parties on 19 July 1996 that they would wish to have additional time for consideration of the Decision before its adoption.

It is the Secretariat's understanding that consultations between these Parties and Singapore are underway. Members of the Committee will be kept informed of developments.

RESTRICTED

GPA/W/22
17 July 1996

WORLD TRADE
ORGANIZATION

(96-2871)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF NORWAY

Communication from Norway

The following communication from the Permanent Representative of Norway has been received on 17 July 1996, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between Norway and the United States of America. Article XXIV of the Agreement contains the provisions on its entry into force and it is in conformity with paragraph 6(a) of Article XXIV that I hereby inform you of modifications to the Norwegian General Notes in Appendix I of the Agreement.

In accordance with our understanding with the Government of the United States of America, you should today receive a parallel communication from the Delegation of the United States of America.

The enclosed communication should be circulated to Members of the Committee on Government Procurement in a document dated 17 July 1996 so that the modification will become effective 30 days from that date provided there is no objection.

./.

ANNEX

MODIFICATIONS TO NORWAY'S GENERAL NOTES IN APPENDIX I

1) In General Note 1, delete •USA• from the first tic covering entities in Annex 2, and add a new tic reading:

•... as regards the award of contracts, other than for supplies, listed in Annex 2 to the suppliers and service providers of the USA. •

2) In General Note 1, delete •USA• from (1) and (4) under the second tic.

RESTRICTED

GPA/W/23
17 July 1996

WORLD TRADE
ORGANIZATION

(96-2879)

Committee on Government Procurement

Original: English

MODIFICATIONS TO APPENDIX I OF THE UNITED STATES

Communication from the United States

The following communication from the Permanent Representative to the WTO of the United States has been received on 17 July 1996, with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between the United States of America and Norway. Article XXIV of the Agreement contains the provisions on its entry into force and it is in conformity with paragraph 6(a) of Article XXIV that I hereby inform you of modifications to the United States General Notes in Appendix I of the Agreement.

In accordance with our understanding with the Government of Norway, you should today receive a parallel communication from the Norwegian Delegation.

The enclosed communication should be circulated to Members of the Committee on Government Procurement in a document dated 17 July 1996 so that the modification will become effective 30 days from that date provided there is no objection.

ANNEX

COMMUNICATION FROM THE UNITED STATES WITH RESPECT TO
MODIFICATIONS TO APPENDIX I OF THE AGREEMENT ON
GOVERNMENT PROCUREMENT

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of the United States of America submits to the Committee on Government Procurement the following modification of a minor nature to the United States• General Notes in Appendix I of the Agreement:

In General Note 5, delete •Norway•.

RESTRICTED

*WORLD TRADE
ORGANIZATION*

GPA/W/12/Add.3

21 June 1996

(96-2362)

Original: English

Committee on Government ProcurementTHE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSEDIN NATIONAL CURRENCIES FOR 1996/1997

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The information notified in response by the United States is reproduced below. Other submissions will be compiled in further addenda to this document.

UNITED STATES

Threshold calculations - for period 1996-1997.

ANNEX 1

	SDRs	US \$
<i>1. Supplies and services</i>	<i>130,000</i>	<i>190,000</i>
<i>2. Construction</i>	<i>5,000,000</i>	<i>7,311,000</i>

ANNEX 2

	SDRs	US \$
<i>1. Supplies and services</i>	<i>355,000</i>	<i>519,000</i>
<i>2. Construction</i>	<i>5,000,000</i>	<i>7,311,000</i>

ANNEX 3

	<i>SDRs</i>	<i>US \$</i>
<i>1. Supplies and services (except entities identified in Annex 3 to which threshold of \$250,000 applies)</i>	<i>400,000</i>	<i>585,000</i>
<i>2. Construction</i>	<i>5,000,000</i>	<i>7,311,000</i>

RESTRICTED

GPA/W/21
20 June 1996

WORLD TRADE
ORGANIZATION

(96-2355)

Committee on Government Procurement

ACCESSION OF SINGAPORE

Note by the Secretariat

At its meeting on 4 June 1996, the Committee on Government Procurement agreed that the Secretariat would draw up, and circulate, in the week of 17 June 1996, a draft Decision on Accession for consideration and adoption by the Committee. This Decision would be considered adopted if no objections or requests for extension of the time-limit for consideration were received from Parties within 30 days of the date of this document.

Attached is the draft Decision on the accession of Singapore, to which are attached the terms of its accession submitted by Singapore to the Secretariat in a communication dated 14 June 1996, for the Committee's action and approval. The attached terms of accession replace the offer which was tabled by Singapore at the Committee meeting on 4 June 1996 and subsequently circulated as document GPA/SPEC/2.

In accordance with the Committee decision of 4 June 1996, this Decision, including the terms of accession, shall be deemed to be approved by the Committee if no objections or requests for extension of the time-limit are received from Parties by 20 July 1996.

ACCESSION OF SINGAPORE

Draft Decision

The Committee,

Having regard to the application for accession to the Agreement on Government Procurement (1994) by Singapore, contained in document GPA/IC/W/33 of 15 November 1995, and the consultations held with the Parties to the Agreement on Government Procurement in pursuance thereof;

Decides as follows:

- 1. In accordance with the provisions of Article XXIV:2 of the Agreement on Government Procurement (1994), the Government of Singapore may accede to this Agreement on the terms attached.*
- 2. The Agreement on Government Procurement will enter into force for Singapore on the thirtieth day following the date of its accession, i.e. the date on which the instrument of accession reproducing the attached terms has been received by the Director-General.*
- 3. This Decision shall expire one year¹ after the date of its adoption by the Committee on Government Procurement unless it is extended by that Committee by mutual consent between the Committee and Singapore.*

¹*Upon request by the Singapore authorities. Because of an imminent dissolution of Parliament and elections, Singapore is at this time not sure when it can complete its internal domestic procedures.*

ATTACHMENT

SINGAPORE

Terms of Accession

APPENDIX I

ANNEXES 1-5 SET OUT THE SCOPE OF THE AGREEMENT

ANNEX 1

*Central Government Entities which Procure in Accordance with
the Provisions of this Agreement*

Goods	<i>Threshold: SDR 130,000</i>
Services (specified in Annex 4)	<i>Threshold: SDR 130,000</i>
Construction (specified in Annex 5)	<i>Threshold: SDR 5,000,000</i>

List of Entities:

*Auditor-General's Office
Attorney-General's Office
Cabinet Office
Istana
Judicature
Ministry of Communications
Ministry of Community Development
Ministry of Education
Ministry of Environment
Ministry of Finance
Ministry of Foreign Affairs
Ministry of Health
Ministry of Home Affairs
Ministry of Information and the Arts
Ministry of Labour
Ministry of Law*

Ministry of National Development²
Ministry of Trade and Industry
Parliament
Presidential Councils
Prime Minister's Office
Public Service Commission
Ministry of Defence

This Agreement will generally apply to purchases by the Singapore Ministry of Defence of the following FSC categories (others being excluded) subject to the Government of Singapore's determinations under the provision of Article XXIII, paragraph 1.

<i>FSC</i>	<i>Description</i>
<i>22</i>	<i>Railway Equipment</i>
<i>23</i>	<i>Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles</i>
<i>24</i>	<i>Tractors</i>
<i>25</i>	<i>Vehicular Equipment Components</i>
<i>26</i>	<i>Tires and Tubes</i>
<i>29</i>	<i>Engine Accessories</i>
<i>30</i>	<i>Mechanical Power Transmission Equipment</i>
<i>31</i>	<i>Bearings</i>
<i>32</i>	<i>Woodworking Machinery and Equipment</i>
<i>34</i>	<i>Metalworking Machinery</i>
<i>35</i>	<i>Service and Trade Equipment</i>
<i>36</i>	<i>Special Industry Machinery</i>
<i>37</i>	<i>Agricultural Machinery and Equipment</i>
<i>38</i>	<i>Construction, Mining, Excavating and Highway Maintenance Equipment</i>
<i>39</i>	<i>Materials Handling Equipment</i>
<i>40</i>	<i>Rope, Cable, Chain and Fittings</i>
<i>41</i>	<i>Refrigeration, Air Conditioning and Air Circulating Equipment</i>
<i>42</i>	<i>Fire Fighting, Rescue and Safety Equipment</i>
<i>43</i>	<i>Pumps and Compressors</i>
<i>44</i>	<i>Furnace, Steam Plant and Drying Equipment</i>
<i>45</i>	<i>Plumbing, Heating and Sanitation Equipment</i>
<i>46</i>	<i>Water Purification and Sewage Treatment Equipment</i>
<i>47</i>	<i>Pipe, Tubing, Hose and Fittings</i>
<i>48</i>	<i>Valves</i>
<i>51</i>	<i>Handtools</i>
<i>52</i>	<i>Measuring Tools</i>
<i>53</i>	<i>Hardware and Abrasives</i>
<i>54</i>	<i>Prefabricated Structures and Scaffolding</i>
<i>55</i>	<i>Lumber, Millwork, Plywood and Veneer</i>

²*Includes Public Works Department*

56	<i>Construction and Building Materials</i>
61	<i>Electric Wire, and Power and Distribution Equipment</i>
62	<i>Lighting, Fixtures and Lamps</i>
63	<i>Alarm, Signal and Security Detection Systems</i>
65	<i>Medical, Dental and Veterinary Equipment and Supplies</i>
67	<i>Photographic Equipment</i>
68	<i>Chemicals and Chemical Products</i>
69	<i>Training Aids and Devices</i>
70	<i>General Purpose Automatic Data Processing Equipment, Software, Supplies and Support Equipment</i>
71	<i>Furniture</i>
72	<i>Household and Commercial Furnishings and Appliances</i>
73	<i>Food Preparation and Serving Equipment</i>
74	<i>Office Machines, Text Processing Systems and Visible Record Equipment</i>
75	<i>Office Supplies and Devices</i>
76	<i>Books, Maps and other Publications</i>
77	<i>Musical Instruments, Phonographs and Home-Type Radios</i>
78	<i>Recreational and Athletic Equipment</i>
79	<i>Cleaning Equipment and Supplies</i>
80	<i>Brushes, Paints, Sealers and Adhesives</i>
81	<i>Containers, Packaging and Packing Supplies</i>
83	<i>Textiles, Leather, Furs, Apparel and Shoe Findings, Tents and Flags</i>
84	<i>Clothing, Individual Equipment, and Insignia</i>
85	<i>Toiletries</i>
87	<i>Agricultural Supplies</i>
88	<i>Live Animals</i>
89	<i>Subsistence</i>
91	<i>Fuels, Lubricants, Oils and Waxes</i>
93	<i>Non-metallic Fabricated Materials</i>
94	<i>Non-metallic Crude Materials</i>
95	<i>Metal Bars, Sheets and Shapes</i>
96	<i>Ores, Minerals, and their Primary Products</i>
99	<i>Miscellaneous</i>

Notes to Annex 1:

1. *The Agreement shall not apply to any procurement in respect of:*
 - (a) *construction contracts for chanceries abroad and headquarters buildings made by the Ministry of Foreign Affairs; and*
 - (b) *contracts awarded by the Internal Security Department, Criminal Investigation Department and Security Branch and Central Narcotics Bureau of the Ministry of Home Affairs as well as procurement that have security considerations made by the Ministry.*

2. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

ANNEX 2

*Sub-Central Entities which Procure in Accordance
with the Provisions of the Agreement*

Non-applicable for Singapore (Singapore does not have any Sub-central Governments).

ANNEX 3

*All other Entities which Procure in Accordance
with the Provisions of this Agreement*

Goods	Threshold: SDR 400,000
Services (specified in Annex 4)	Threshold: SDR 400,000
Construction (specified in Annex 5)	Threshold: SDR 5,000,000

List of Entities:

*Board of Architects
Civil Aviation Authority of Singapore
Construction Industry Development Board
Economic Development Board
Housing and Development Board
Inland Revenue Authority of Singapore
Land Transport Authority of Singapore
Jurong Town Corporation
Maritime and Port Authority of Singapore
Monetary Authority of Singapore
National Computer Board
National Science & Technology Board
Nanyang Technological University
National Parks Board
National University of Singapore
Preservation of Monuments Board
Professional Engineers Board
Public Transport Council
Sentosa Development Corporation
Singapore Broadcasting Authority
Singapore Productivity and Standards Board
Singapore Tourist Promotion Board
Telecommunication Authority of Singapore
Trade Development Board
Urban Redevelopment Authority*

Note the Annex 3:

1. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.

ANNEX 4

Services

The following services as contained in the document MTN.GNS/W/120 are offered (others being excluded):

Threshold: SDR 130,000 for entities as set out in Annex 1
SDR 400,000 for entities as set out in Annex 3

<i>CPC</i>	<i>Description</i>
862	<i>Accounting, Auditing and Book-keeping Services</i>
8671	<i>Architectural Services</i>
865	<i>Management Consulting Services</i>
874	<i>Building-Cleaning Services</i>
641-643	<i>Hotels and Restaurants (incl. catering)</i>
74710	<i>Travel Agencies and Tour Operators</i>
7472	<i>Tourist Guide Services</i>
843	<i>Data Processing Services</i>
844	<i>Database Services</i>
932	<i>Veterinary Services</i>
84100	<i>Consultancy Services Related to the Installation of Computer Hardware</i>
84210	<i>Systems and Software Consulting Services</i>
87905	<i>Translation and Interpretation Services</i>
7523	<i>Electronic Mail</i>
7523	<i>Voice Mail</i>
7523	<i>On-Line Information and Database Retrieval</i>
7523	<i>Electronic Data Interchange</i>
96112	<i>Motion Picture or Video Tape Production Services</i>
96113	<i>Motion Picture or Video Tape Distribution Services</i>
96121	<i>Motion Picture Projection Services</i>
96122	<i>Video Tape Projection Services</i>
96311	<i>Library Services</i>
8672	<i>Engineering Services</i>
7512	<i>Courier Services</i>
-	<i>Biotechnology Services</i>
-	<i>Exhibition Services</i>
-	<i>Commercial Market Research</i>
-	<i>Interior Design Services, Excluding Architecture</i>
-	<i>Professional, Advisory and Consulting Services Relating to Agriculture, Forestry, Fishing and Mining, Including Oilfield Services</i>

Notes to Annex 4:

1. The offer regarding services is subject to the limitations and conditions specified in the Government of Singapore's offer under the GATS negotiations.

2. *The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.*

ANNEX 5

Construction Services

The following construction services in the sense of Division 51 of the Central Product Classification as contained in the document MTN.GNS/W/120 are offered (others being excluded):

*Threshold: SDR 5,000,000 for entities as set out in Annex 1
SDR 5,000,000 for entities as set out in Annex 3*

List of construction services offered:

<i>CPC</i>	<i>Description</i>
<i>512</i>	<i>General construction work for buildings</i>
<i>513</i>	<i>General construction work for civil engineering</i>
<i>514, 516</i>	<i>Installation and assembly work</i>
<i>517</i>	<i>Building completion and finishing work</i>
<i>511, 515, 518</i>	<i>Others</i>

Notes to Annex 5:

1. *The offer regarding construction services is subject to the limitations and conditions specified in the Government of Singapore's offer under the GATS negotiations.*

2. *The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity.*

APPENDIX II

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF
NOTICES OF INTENDED PROCUREMENTS - PARAGRAPH 1
OF ARTICLE IX, AND OF POST-AWARD NOTICES -
PARAGRAPH I OF ARTICLE XVIII*

SINGAPORE

The Republic of Singapore Government Gazette

APPENDIX III

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION
ANNUALLY OF
INFORMATION ON PERMANENT LISTS OF QUALIFIED SUPPLIERS
IN THE CASE OF
SELECTIVE TENDERING PROCEDURES - PARAGRAPH 9 OF
ARTICLE IX*

SINGAPORE

The Republic of Singapore Government Gazette

ARTICLE IV

*PUBLICATIONS UTILIZED BY PARTIES FOR THE PUBLICATION OF
LAWS,
REGULATIONS, JUDICIAL DECISIONS, ADMINISTRATIVE RULINGS
OF GENERAL
APPLICATION AND ANY PROCEDURE REGARDING GOVERNMENT
PROCUREMENT
COVERED BY THIS AGREEMENT - PARAGRAPH 1 OF ARTICLE XIX*

SINGAPORE

The Republic of Singapore Government Gazette

RESTRICTED

GPA/W/20
18 June 1996

WORLD TRADE
ORGANIZATION

(96-2294)

Original: English

Committee on Government Procurement

REQUEST FOR INFORMATION PURSUANT TO ARTICLE XIX
OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

Communication from the United States

The following communication, dated 6 June 1996, has been received from the delegation of the United States with the request that it be distributed to the Members of the Committee on Government Procurement.

The United States hereby requests information from the Government of Japan under Article XIX:2 of the WTO Government Procurement Agreement (GPA) on the May 1996 procurement by the Tokyo Metropolitan Fire Defense Agency (TMFDA) of an AS 365 helicopter. This information is needed to determine that the contract award was made fairly and impartially and in accordance with the procedural requirements of the Government Procurement Agreement.

This procurement is subject to the GPA. The TMFDA is a sub-central government entity covered by Japan's Annex 2, and the value of the procurement exceeds the Annex 2 threshold of 200,000 SDRs.

The United States is particularly concerned about receiving information on the technical basis for each of the seven specifications listed in the bid documents. The United States would appreciate:

- (i) an explanation of the performance requirement for each specification - for instance, what is the technical performance reason that the rotor must rotate clockwise rather than counter-clockwise; and*
- (ii) technical information used in developing each of the specifications, such as experts' opinions and engineering studies.*

In addition, the United States would like a list and description of all contacts, as well as copies of all written communications, between the winning bidder and TMFDA, Ministry of Home Affairs officials and Ministry of Foreign Affairs officials.

In order to judge the fairness and impartiality of the contract award, the United States also requests copies of any communications between TMFDA and officials of the Ministries of Home Affairs and Foreign Affairs regarding TMFDA's implementation of the GPA. The United States would like to know if TMFDA's specifications differ from those of other sub-central procuring entities and, if so, how.

Finally, the United States would appreciate receiving copies of all the final tender document and a copy of TMFDA's bid protest procedures.

The United States undertakes to respect the confidentiality of any documents and information provided and to use such documents and information for the sole purpose of determining whether the contract award was fair and impartial. As provided for under Article XIX:2, if release of the documents and information would prejudice competition in future procurements, the United States will consult with the Government of Japan prior to release.

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RESTRICTED

GPA/W/19
14 June 1996

WORLD TRADE
ORGANIZATION

(96-2271)

Original: English

Committee on Government Procurement

APPLICATION FOR ACCESSION TO THE AGREEMENT
ON GOVERNMENT PROCUREMENT OF SINGAPORE

Replies to the Questions on the Government Procurement
Régime of Singapore

The following communication, dated 5 June 1996, has been received from the delegation of Singapore.

In response to the questions submitted to Singapore by the Committee on Government Procurement, and compiled in an Informal Note by the Secretariat dated 13 May 1996, we are pleased to provide the additional information on Singapore's government procurement régime in the attached document. Please circulate this as a GPA document to the Members of the Committee.

REPLIES TO THE QUESTIONS ON THE GOVERNMENT
PROCUREMENT

REGIME OF SINGAPORE

Singapore provided information on its government procurement régime in document GPA/W/10, dated 5 March 1996. The following additional information is given in response to questions, relating to paragraph 2.2 of that document on Outline of Procurement Policies and Practices, as compiled by the Secretariat in an Informal Note, dated 13 May 1996.

Paragraph 2.2(b)

1) Could the delegation of Singapore list the publication(s) which it will include under Appendix II of the Agreement?

Singapore will list in Appendix II of the GPA text the •Republic of Singapore Government Gazette•.

2) Will tender notices always appear in English?

In accordance with Article IX:8 of the GPA which stipulates that notices of intended procurement be published in one of the official languages of the WTO, Singapore will publish such notices in English.

3) Does the practice of restricting certain tenders to registered suppliers under specific Supply and/or Financial categories correspond to the use of qualification systems as described in Article VIII of the Agreement?

Registration status is accorded to suppliers based on objective criteria such as having sufficient resources, experience and technical expertise to undertake contracts of a nature and size as defined by the supply and financial categories allocated. The objectives of Singapore's supplier registration system are to:

- i) register qualified suppliers who wish to participate in government tenders, and exempt them from the need to pay tender deposits for participation in individual tenders;
- ii) provide a pool of dependable suppliers who can undertake public sector projects;
- iii) ensure that only suppliers who achieved the stipulated level/standard in the provision of stores, works or services for which they are registered, remain on the register.

Singapore's supplier registration system complies with the disciplines set out in Article VIII of the GPA.

Paragraph 2.2(e)

4) Could the delegation of Singapore describe how the registration system for local and foreign suppliers functions? Does the system apply to all types of procurement, including open tendering procedures? How high is the registration fee?

Generally, only companies or firms that are registered as government contractors, whether local or foreign, with the Construction Industry Development Board [CIDB], Pharmaceutical Department [PD] and Expenditure Policies Unit (of the Ministry of Finance, Budget Division) [EPU] under the appropriate supply and financial categories are allowed to participate in all tenders for GP. Such registered tenderers are issued with registration cards showing the categories of stores, works or services they are eligible to tender for and the financial limits within which they may tender. The registration fees for fresh applications are:

i) S\$200 to S\$600, depending on the financial category (CIDB);

ii) S\$50 per supply category subject to a maximum of S\$500 (EPU and PD).

All companies seeking registration as government suppliers must fulfill all of the following criteria:

i) be registered with Singapore's Registry of Companies & Businesses (RCB). Companies incorporated under foreign jurisdiction must furnish copies of Form 79 (Return by Foreign Company Giving Particulars of Directors and Changes of Particulars) and Form 83 (Certificate of Registration as a Foreign Company) issued by the RCB;

ii) subject to the value of contracts normally undertaken, it will be generally eligible for registration in a financial category not exceeding 20 times the value of its positive capital;

iii) subject to its financial standing, it will generally be eligible for registration in a financial category approximately 4 times the highest value of contracts undertaken (for EPU suppliers), or equal to the total value of projects undertaken for the last 3 years (for CIDB suppliers);

iv) for selected supply categories, applicants may have to fulfill additional eligibility criteria e.g., they must have personnel possessing prescribed technical qualifications, possession of specialized plant and equipment, etc.;

v) for applications seeking registration with PD, have proof of agencies for medical products they wish to apply.

The registration card entitles a registered tenderer to obtain from any Ministry and Statutory Board, an invitation to tender for those categories of stores, works or services within the financial limits of the registration.

Suppliers who have provided good service in contracts within their registered financial category would be considered for upgrading to a higher financial category, while those who fail to deliver to specified level/quality of stores, works or services could be debarred from participation in GP tenders.

Paragraph 2.2(g)

5) *In awarding the contract, is the only criterion used that of lowest bid meeting tender specifications in full, or is the criterion of most economic advantageous bid used as well?*

In our view, the lowest bid that meets specifications in full is the offer that is economically most advantageous. In line with its procurement policy of transparency, Singapore Government tender specifications are drawn up to correspond closely with the standard evaluation criteria comprising prices (whether capital cost or life-cycle cost depending on the item), delivery lead-time and performance testing results, if required. Any offer which is able to meet such specifications fully, thereby fulfilling the evaluation criteria, is the best offer. Singapore Government tenders are also designed to obtain for the Government only what it requires, as stipulated in the tender specifications.

Paragraph 2.2(j)

6) *Could the delegation of Singapore describe in what way local contractors with consistent good performance in government construction works are given preference? What is the view of the delegation of Singapore on the compatibility of this practice with provisions of the Agreement on Government Procurement, in particular Article III?*

Under Singapore's Preferential Margin Scheme for Construction Quality (PMS), any local contractor who meets the eligibility criteria of obtaining an Average CONQUAS (Construction Quality Assessment System) Score of 65 for his 3 most recently completed projects, will be given a preference of 0.2% for every point it scores above 65. A contractor's performance in the execution of the contract will be assessed by the procuring agency and the CIDB. The contractor will be awarded the contract if his tender price does not exceed the lowest tender by the computed preferential margin. The amount of premium is subject to a ceiling based on the total value of the scored projects that qualify the contractor for the premium, the maximum amount that a contractor can enjoy being 5% or S\$5 million, whichever is lower. If a firm is given preferential margin under Building works, it will not be able to use this tendering advantage for projects under Civil Engineering works and vice versa.

Singapore will make the necessary adjustments to the scheme to make it consistent with Article III of the GPA.

Paragraph 2.2(l)

7) Could the delegation of Singapore describe its views on the compatibility of the ASEAN Preferential Trading Agreement, in particular its provisions allowing for members to accord each other a preferential margin of 2.5 per cent up to a certain level, with the Agreement on Government Procurement, in particular Article III?

Article III 1(b) of the GPA states that "... each party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties treatment no less favourable than that accorded to products, services and suppliers of any other Party."

Singapore believes that this provision allows it to extend preferential treatment to the other ASEAN countries as none of them is a party to the GPA.

Paragraph 2.2(m)

8) Could the delegation of Singapore provide further details on its challenge procedures and their conformity with the provisions of Article XX of the Agreement on Government Procurement? In doing so, could details be provided about provision allowing for preliminary rulings be given, those on the review of procurement cases, on annulment of proceedings and decisions on indemnities? Given that the Ministry of Finance is at the same time the investigating body of complaints and appeals from suppliers, formulates the government procurement policies and is a listed entity in Singapore's offer, how are challenge procedures to be organized of a supplier wishing to initiate challenge procedures regarding procurements undertaken by the Ministry of Finance itself?

Ministry of Finance (Budget Division), with the assistance of relevant authorities, is in the process of setting out detailed guidelines and procedures to institute challenge procedures to be consistent with Article XX of the GPA.

RESTRICTED

**WORLD TRADE
ORGANIZATION**

GPA/W/12/Add.2

4 June 1996

(96-2093)

*Original: English***Committee on Government Procurement**THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSEDIN NATIONAL CURRENCIES FOR 1996/1997

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The information notified in response by the European Community is reproduced below. Other submissions will be compiled in further addenda to this document.

EUROPEAN COMMUNITY

Threshold¹ calculations - for period 1996-1997.

SDR	130.000	200.000	400.000	5.000.000
ECU	137.537	211.595	423.191	5.289.883
Franc Belge/				
Franc Luxembourgeois	5.431.710	8.356.477	16.712.955	208.911.935
Dansk Krone	1.031.998	1.587.689	3.175.378	39.692.229

¹ The calculation of the thresholds of the WTO Agreement, expressed in ecus and in national currencies, has been based on the average monthly SDR to ECU exchange rate over 24 months from September 1993 through August 1995 (1 ECU - 0.836461 SDR).

The value of the thresholds in ecus and in national currencies has been expressed without the value-added tax (VAT) because the Community excludes VAT when calculating the value of contracts.

<i>Deutsche Mark</i>	<i>262.118</i>	<i>403.259</i>	<i>806.518</i>	<i>10.081.479</i>
<i>Drachmi</i>	<i>39.896.348</i>	<i>61.378.996</i>	<i>122.757.993</i>	<i>1.534.474.906</i>
<i>Franc Français</i>	<i>905.295</i>	<i>1.392.762</i>	<i>2.785.524</i>	<i>34.819.045</i>
<i>Markka</i>	<i>841.359</i>	<i>1.294.398</i>	<i>2.588.796</i>	<i>32.359.951</i>
<i>Nederlandse gulden</i>	<i>293.888</i>	<i>452.135</i>	<i>904.271</i>	<i>11.303.384</i>
<i>Irish Pound</i>	<i>110.418</i>	<i>169.873</i>	<i>339.746</i>	<i>4.246.831</i>
<i>Lira Italiana</i>	<i>273.070.685</i>	<i>420.108.747</i>	<i>840.217.493</i>	<i>10.502.718.666</i>
<i>Öster. Schilling</i>	<i>1.843.988</i>	<i>2.836.904</i>	<i>5.673.809</i>	<i>70.922.606</i>
<i>Pound Sterling</i>	<i>108.667</i>	<i>167.180</i>	<i>334.359</i>	<i>4.179.490</i>
<i>Peseta</i>	<i>22.001.042</i>	<i>33.847.757</i>	<i>67.695.513</i>	<i>846.193.915</i>
<i>Escudo</i>	<i>27.024.493</i>	<i>41.576.143</i>	<i>83.152.287</i>	<i>1.039.403.582</i>
<i>Svensk Krona</i>	<i>1.282.640</i>	<i>1.973.292</i>	<i>3.946.584</i>	<i>49.332.297</i>

RESTRICTED

GPA/W/18
4 June 1996

WORLD TRADE
ORGANIZATION

(96-2092)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from the Permanent Mission of Australia

The following communication, dated 3 June 1996, has been received from the Permanent Mission of Australia.

The Government of Australia is requesting observer status in the Committee on Government Procurement. I would be grateful if such an arrangement could be facilitated in order to allow Australia to attend the meeting scheduled for 4 June 1996.

RESTRICTED

*WORLD TRADE
ORGANIZATION*

GPA/W/12/Add.1

30 May 1996

(96-2038)

Original: English

Committee on Government ProcurementTHE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS EXPRESSEDIN NATIONAL CURRENCIES FOR 1996/1997

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The information notified in response by Japan is reproduced below. Other submissions will be compiled in further addenda to this document.

JAPAN

Threshold calculations - for period 1 April 1996 through 31 March 1998.

[Annex 1]

	<i>SDR (thousand)</i>	<i>YEN (notes) (thousand)²</i>
<i>1. Supplies</i>	<i>130</i>	<i>18,000</i>
<i>2. Services other than 3. and 4.</i>	<i>130</i>	<i>18,000</i>
<i>3. Architectural, engineering and other technical services covered by the Agreement</i>	<i>450</i>	<i>65,000</i>

¹The conversion rate is the average monthly value of YEN per SDR for 24 months from January 1994 through December 1995, which is YEN 144.5075 (YEN 146.331 in 1994 and YEN 142.684 in 1995).

²All the converted figures are rounded down to ensure full implementation of the Agreement.

<i>4. Construction services</i>	<i>4,500</i>	<i>650,000</i>
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[Annex 2]

	<i>SDR (thousand)</i>	<i>YEN (notes) (thousand)</i>
<i>1. Supplies</i>	<i>200</i>	<i>28,000</i>
<i>2. Services other than 3. and 4.</i>	<i>200</i>	<i>28,000</i>
<i>3. Architectural, engineering and other technical services covered by the Agreement</i>	<i>1,500</i>	<i>210,000</i>
<i>4. Construction services</i>	<i>15,000</i>	<i>2,160,000</i>

[Annex 3]

	<i>SDR (thousand)</i>	<i>YEN (notes) (thousand)</i>
<i>1. Supplies</i>	<i>130</i>	<i>18,000</i>
<i>2. Services other than 3. and 4.</i>	<i>130</i>	<i>18,000</i>
<i>3. Architectural, engineering and other technical services covered by the Agreement</i>	<i>450</i>	<i>65,000</i>
<i>4. Construction services</i>	<i>15,000</i>	<i>2,160,000</i>

RESTRICTED

GPA/W/17
15 May 1996

WORLD TRADE
ORGANIZATION

(96-1909)

Original: English

Committee on Government Procurement

UNIFORM CLASSIFICATION SYSTEMS

Note by the Chairman

At the Committee's last meeting, the Chairman was requested to come forward with proposals for classification systems in the area of goods and services for the purposes of statistical reporting, on the basis of the work done in the Working Group on Statistical Reporting established under the Interim Committee on Government Procurement and submissions by delegations. This Note is intended to respond to this request.

I. GOODS

At its last meeting, the Committee endorsed the recommendation of the Working Group on Statistical Reporting that the system of 26 product categories be used as a basis for a classification system for products. With a view to identifying the precise level of detail desirable in the system of 26 product categories, delegations agreed to submit their ideas by 15 April 1996 on what categories of the 26 product categories could be usefully divided into sub-headings, and, where a further breakdown would be suggested, to identify the precise product coverage of the proposed new categories.

So far, two submissions have been received. One suggests dividing category 14, office machinery and automatic data processing equipment, into two sub-headings, and category 15, telecommunications and sound recording and reproducing apparatus and equipment, also into two sub-headings. According to the other submission, the existing 26 categories are appropriate in their present form without further sub-headings. At a meeting of the Working Group, one other delegation also suggested subdividing categories 14 and 15.

Based on these submissions, the product classification system at Annex 1 is suggested for consideration and action by the Committee. It maintains the system of 26 product categories as it is, except for a sub-division of categories 14 and 15.

II. SERVICES

It is recalled that, at its last meeting, the Committee endorsed the recommendation of the Working Group on Statistical Reporting that the UNCPC be used as the classification system for services. With a view to reaching some conclusions on the level of detail which would be desirable, delegations agreed to review the 30 UNCPC divisions with a view to advising which of these divisions should be combined and if any sub-divisions would be desirable and to submit their ideas to the Secretariat by 15 April.

Two submissions have been received. One submission suggests to keep in particular category 75, Post and Telecommunication Services, in its present form. According to this submission, the maximum convenience would be attained by maintaining the headings as they figure in Parties' respective Annexes. Another submission stresses the merit of using the UNCPC at its division level rather than at any more detailed level with a view to keeping the number of categories to be reported to a minimum. However, this submission states that some subdivisions are misleading, for instance printing and publishing services (88442) which is classified under Division 88, agriculture, mining and manufacturing services. Based on its own national coverage, this delegation suggests to combine a number of divisions, such as Divisions 82 and 87, (Division 82 contains real estate services involving own or leased property (821) and •on a fee or contract basis• (822), while Division 87 lists •other business services•), as well as to group together Division 71 (land transport) and Division 73 (air transport) into one category, called •transport•.

Based on these submissions, the product classification system at Annex 2 is suggested for consideration and action by the Committee. It maintains 28 UNCPC divisions as they are, except for a sub-division of Division 88 (Agricultural, mining and manufacturing services) into a sub-division 88(a) which would refer to all of Division 88 except printing and publishing, plus a sub-division 88(b) which would refer to subclass 88442: publishing and printing, on a fee or contract basis. Of UNCPC Section 5, •Construction work and construction•, only Division 51 is retained since this is the only division of that section which figures in the •Universal list of services• contained in document MTN/GNS/W/120 which negotiators agreed to use as the basis for listing their concessions in Annexes 4 and 5 of Appendix I. These changes bring the total number of categories retained to 29.

ANNEX 1

The System of 26 Product Categories - as Amended

Grouping No.	Classification ¹	Product description ²
1	<p>CCCN chapters 01-24. SITC 00-12; 22; 268.51; 29; 41-43; 512.16-18; 592.1; 941.</p>	<p>Products from agriculture and from agricultural and food processing industries</p> <p><u>including:</u> live animals; animal products; vegetable products; animal and vegetable fats and oils and their cleavage products; prepared edible fats; animal and vegetable waxes; prepared foodstuffs; beverages, spirit and vinegar; tobacco.</p>
2	<p>CCCN chapters 25-27. SITC 27 (exc. 271.1-2, 271.4; 277.1, 277.21); 28 (exc. 282, 287.12, 22 and 32, 288.2, 289.02); 32; 33 (exc. 334.52); 34-35; 661.1-2.</p>	<p>Mineral products</p> <p><u>including</u> salt; sulphur; stone; clay; lime; cement; metallic ores; coal; coke; mineral fuels; mineral oils.</p>
3	<p>CCCN chapter 28, headings 29.01-16, 29.19, 29.21-31, 29.33-37, 29.43, 29.45, chapters 31-36 and 38. SITC 271.1-2; 271.4; 287.32; 334.52; 51-53 (exc. 512.16- 18); 55-56; 572; 59 (exc. 592.1); 662.33; 895.91; 899.31-32 and 39.</p>	<p>Products of the chemical and allied industries</p> <p><u>including:</u> inorganic chemicals; organic chemicals; fertilizers; colours; paints; varnishes; waxes; essential oils; soap; washing, polishing and lubricating preparations; enzymes; albuminoidal substances; explosives; matches; disinfectants; insecticides.</p> <p><u>excluding:</u> medicinal and pharmaceutical products.</p>
4	<p>CCCN headings 29.38-39, 29.41-42, 29.44 and chapter 30. SITC 54.</p>	<p>Medicinal and pharmaceutical products</p> <p><u>including:</u> vitamins, antibiotics, vegetable alkaloids, hormones, medicaments and other pharmaceutical goods.</p>
5	<p>CCCN chapters 39-41, headings 42.01, 42.04-06, chapter 43. SITC 21; 23; 58; 61 (exc. 612.3); 62; 848.2-3; 893; 899.91.</p>	<p>Artificial resins and plastic materials, cellulose esters and ethers, and articles thereof; rubber, synthetic rubber, factice, and articles thereof; raw hides and skins; leather, furskins and articles thereof, other than articles of apparel and clothing accessories of leather; saddlery and harness; articles of animal gut.</p>
6	<p>CCCN chapters 44-49. SITC 24; 25; 63; 64; 659.11; 659.7; 892.1-8; 899.71.</p>	<p>Wood and articles of wood; wood charcoal; cork and articles of cork; paper making material; paper and paperboard and articles thereof; manufactures of straw, of esparto and of other plaiting materials; basketwork and wickerwork.</p>

Grouping No.	Classification ¹	Product description ²
7	<p>CCCN headings 42.02-03 and chapters 50-66. SITC 26 (exc. 268.51); 612.3; 65 (exc. 651.95, 654.6, 659.11, 659.7); 775.85; 83; 84 (exc. 848.2-3); 85; 899.4.</p>	<p>Textiles and textile articles; footwear; headgear; umbrellas; sunshades; walking sticks, whips, riding crops and parts thereof; travel goods; handbags and similar containers; articles of apparel and clothing accessories, of leather or composition leather</p> <p><u>including:</u> electric blankets.</p>
8	<p>CCCN chapter 68, headings 69.01-09, 69.11-14, 70.01, 70.03-13 and 70.15-21. SITC 651.95; 654.6; 66 (exc. 661.1-2, 662.33, 667).</p>	<p>Articles of stone, of plaster, of cement, of asbestos, of mica and similar materials; ceramic products, other than sanitary fixtures; glass and glassware, other than illuminating and signalling glassware and optical elements of glass, not optically worked nor of optical glass.</p>
9	<p>CCCN headings 73.01-27, 73.29-36, 73.38 and 73.40. SITC 282; 67; 691.1, 692.11; 692.41, 692.43, 693.11, 693.2, 693.51; 694.01-02; 697.31-33; 697.41; 697.51; 699.2; 699.31-32; 699.41; 699.7.</p>	<p>Iron and steel and articles thereof, other than boilers and radiators for central heating, air heaters and hot air distributors, not electronically heated</p> <p><u>including:</u> structures; containers; wire; cordage; reinforcing fabric; certain domestic-type, non-electric heating and cooking apparatus.</p>
10	<p>CCCN chapters 74-82, headings 83.01-06, 83.08-09, 83.11, 83.13-15. SITC 287.12 and 22; 288.2; 682-689; 691.2; 692.13; 692.42; 692.44; 693.12-13; 693.52; 694.03; 695-696; 697.34; 697.42-43; 697.52-53; 697.8, 699.33; 699.42; 699.6; 699.8-9; 895.1.</p>	<p>Non-ferrous metals and articles thereof, other than lamp and lighting fittings</p> <p><u>including:</u> containers; wire; cordage; reinforcing fabric; tools; cutlery; domestic-type, non-electrical heating and cooking apparatus; certain household appliances of base metal; office and stationary supplies of base metal.</p>
11	<p>CCCN headings 84.01-02, 84.04-08, ex 84.59[*], 85.01. SITC 71; 771.</p>	<p>Power generating machinery and equipment</p> <p><u>including:</u> nuclear reactors[§]; steam and vapour generating boilers; steam engines and vapour power units; internal combustion piston engines; rotating electrical plant; water turbines; various engines and motors; electric power machinery (transformers and others).</p>
12	<p>CCCN headings 84.09, 84.23-39, 84.41-48, 84.50, 84.56-57, ex 84.59[*], ex 87.01^{**}. SITC 72 (exc. 724.7); 73</p>	<p>Machinery specialized for particular industries</p> <p><u>including:</u> agricultural machinery, tractors, other than road tractors for semi-</p>

^{*}All machines and appliances with individual functions falling under CCCN 84.59 - except nuclear reactors - are placed in grouping 12 in this list. (Nuclear reactors fall in subgroup 718.7 of the SITC.)

^{**}Tractors falling under CCCN 87.01 are placed in this grouping. However, road tractors for semi-trailers (SITC 783.2) are placed in grouping 17 below.

Grouping No.	Classification ¹	Product description ²
	<i>(exc. 737.32).</i>	<p><i>trailers*</i>, <i>civil engineering and contractors</i>• <i>plant and equipment</i>; <i>textile and leather machinery</i>; <i>machinery for the manufacture of paper articles</i>; <i>printing and bookbinding machinery</i>; <i>food-processing machines</i>; <i>other machinery, equipment and parts specialized for particular industries</i>; <i>metalworking machinery</i>.</p> <p><u>excluding:</u> <i>nuclear reactors</i>; <i>electric or laser-operated welding, brazing, soldering or cutting machines</i>; <i>certain machinery for washing or cleaning textiles etc. (incl. laundry and dry-cleaning machinery)</i>.</p>
13	<p><i>CCCN headings 84.03, 84.10-14, 84.16-18, 84.20-22, 84.49, 84.58, 84.60-65, 85.11 and 87.07.</i></p> <p><i>SITC 697.35; 737.32; 74 (exc. 741.4 and 745.22-23).</i></p>	<p><i>General industrial machinery and equipment, and machine parts</i></p> <p><u>including:</u> <i>domestic instantaneous or storage water heaters, non-electric</i>; <i>electric welding, brazing, soldering machines and similar electric apparatus for cutting</i>; <i>heating and cooling equipment (e.g. gas generators, furnaces and ovens)</i>; <i>air-conditioning machines</i>; <i>laboratory equipment</i>; <i>pumps</i>; <i>compressors</i>; <i>centrifuges</i>; <i>filtering/purifying apparatus</i>; <i>fans and blowers</i>; <i>mechanical handling equipment (e.g. works trucks, lifting, handling, loading/unloading machinery, telfers and conveyors)</i>, <i>other non-electrical tools and machinery (e.g. weighing machinery, fire extinguishers, spray guns, jet projecting machines)</i>.</p>
14(a)	<p>CCCN headings 84.51, 84.52, 84.54, 84.55 (less ex 84.55.B), 90.10.A, 90.10.B.</p> <p>HS 8469, 8472, 8473 (less 8473.30), 9009.</p> <p>SITC 751, 759.1, 759.9 (less 759.97).</p>	Office machinery
14(b)	<p>CCCN headings 84.53, ex 84.55.B, 90.10.C.</p> <p>HS 8471, 8473.30, 9010, ex 8441.10, ex 8441.90.</p> <p>SITC 752, 759.97, 881.35, 881.36, ex 725.21, ex 725.99.</p>	Automatic data processing equipment
15(a)	<p>CCCN headings 85.13, 85.14, 85.15.</p> <p>HS 8517, 8518 (less ex 8518.30 and ex 8518.90), 8525, 8526 (less ex 8526.92), 8527, 8528 (less ex 8528.10 and ex 8528.20), 8529.</p> <p>SITC 761 (less ex 761.1 and ex 761.2), 762, 764.1, 764.2 (less ex 764.24), 764.3, 764.8 (less ex 764.83), 764.9 (less ex 764.92, less 764.99).</p>	Telecommunications apparatus and equipment
15(b)	<p>CCCN headings 92.11, 92.13.</p> <p>HS 8519 (less ex 8519.99), 8520</p>	Sound recording and reproducing apparatus

Grouping No.	Classification ¹	Product description ²
	(less ex 8520.90), 8521, 8522 (less 8522.90). SITC 763 (less ex 763.83 and ex 763.84), 764.99 (less ex 764.99).	
16	CCCN headings 84.15, 84.19, 84.40, 85.02-09, 85.12, 85.16-28, ex 90-20 ^{**} . SITC 724.7; 741.4; 745.22-23; 772-773; ex 774.2; 775 (exc. 775.85); 776; 778.	Electrical machinery, apparatus and appliances, and electrical parts thereof <u>excluding:</u> electric blankets; electro-medical apparatus; electric power machinery. <u>including:</u> refrigerators and refrigerating equipment; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles, cans, boxes or other containers; other packing or wrapping machinery; laundry or dry-cleaning machinery; switches, relays, switchboards (other than telephone); control panels; resistors; equipment for distributing electricity; machinery based on the use of X-rays, or of radiations from radioactive substances; X-ray generators, tubes; screens, etc., other than for medical purposes ^{***} ; household-type equipment; electro-thermic appliances; valves, tubes; transistors; microcircuits, batteries, accumulators; starting and ignition equipment; electrical traffic-control equipment; electric sound or visual signalling apparatus (e.g. bells, sirens, fire alarms), etc.
17	CCCN headings ex 87.01 ^{****} , 87.02-06, 87.09-12, 87.14. SITC 78 (exc. 786.13).	Road vehicles <u>including:</u> road tractors for semi-trailers ^{****} ; air-cushion vehicles
18	CCCN chapter 86. SITC 786.13; 791.	Railway vehicles and associated equipment <u>including:</u> railway and tramway locomotives; rolling-stock and parts thereof; railway and tramway track fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered); containers specially designed and equipped for carriage by one or more modes of transport.
19	CCCN chapter 88. SITC 792; 899.98.	Aircraft and associated equipment <u>including:</u> aircraft and parts thereof; parachutes; catapults and similar aircraft launching gear; ground flying trainers.

^{***} X-ray and radiological apparatus etc. of CCCN 90.20 for medical purposes (SITC ex 774.2) are placed in grouping 22.

^{****} See footnote ^{**} under grouping 12.

^{****} X-ray and radiological apparatus etc. of CCCN 90.20 for laboratory and industrial purposes (SITC ex 774.2) are placed in grouping 16.

Grouping No.	Classification ¹	Product description ²
20	CCCN chapter 89. SITC 793.	Ships, boats and floating structures.
21	CCCN headings 69.10, 70.14, 73.37, 83.07, 85.10. SITC 81.	Sanitary, plumbing, heating and lighting fixtures and fittings, n.e.s. <u>including:</u> boilers; radiators; air heaters and hot air distributors, not electrically heated; sinks; wash basins; lamps and lanterns; illuminating glassware, signalling glassware; lamps and light fittings of base metal.
22	CCCN headings 90.03-04, 90.17-18, ex 90.20****, 94.02. SITC 774.1; ex 774.2; 821.21; 872; 884.2.	Medical, dental, surgical and veterinary equipment <u>including:</u> electro-medical apparatus; apparatus based on the use of X-rays or of radiations from radio-active substances, X-ray generators, tubes, screens, control panels, examination tables etc. for medical purposes****; spectacles and spectacle frames, mountings and parts thereof; medical instruments and appliances; mechano-therapy appliances; respirators etc; medical, dental, surgical or veterinary furniture and parts thereof.
23	CCCN headings 94.01, 94.03-04. SITC 82 (exc. 821.21).	Furniture and parts thereof <u>including:</u> bedding, mattresses, mattress supports, cushions and similar stuffed furnishings. <u>excluding:</u> medical, dental, surgical and veterinary furniture.
24	CCCN headings 90.05-06, 90.11-16, 90.21-29. SITC 87.	Professional, scientific and controlling instruments and apparatus <u>including:</u> optical instruments and apparatus; meters and counters; precision, measuring, checking, analysing and controlling instruments.
25	CCCN chapter 37, headings 90.01-02, 90.07-09, Chapter 91. SITC 88 (exc. 881.39).	Photographic apparatus, equipment and supplies and optical goods; watches and clocks <u>including:</u> optical lenses, prisms, mirrors; photographic and cinematographic cameras, cinematographic projectors, sound recorders and sound reproducers and any combination of these articles; image projectors; photographic enlargers and reducers; photographic and cinematographic film, watches and clocks. <u>excluding:</u> apparatus and equipment of a kind used in photographic or cinematographic laboratories; spectacles and frames, mountings and

<i>Grouping No.</i>	<i>Classification¹</i>	<i>Product description²</i>
		<i>parts thereof.</i>
26	<i>CCCN chapters 67, 71, and 72, headings 87.08, 87.13, 90.19, 92.01-08, 92.10, 92.12, chapters 93 and 95-99. SITC 277.1; 277.21; 289.02; 667; 681; 894; 895 (exc. 895.1, 895.91); 896-898; 899 (exc. 899.31-32, 899.39, 899.4, 899.71, 899.91, 899.98); Section 9 (exc. 941).</i>	<i>Miscellaneous articles.</i>

¹The classification attempts to avoid subdividing CCCN 4-digit headings. However, products classified in headings 84.59, 87.01 and 90.20 clearly belong to different categories and are important enough to justify maintaining the subdivisions. These products have been defined in footnotes.

²Apart from product descriptions, this column also contains some examples of products.

ANNEX 2

*The System of 29 Service Categories, based on the
UN Central Product Classification, Divisions 51 - 99*

<i>Grouping No.</i>	<i>Division Code (UNCPC)</i>	<i>Services Description</i>
1	51	<i>Construction work</i>
2	61	<i>Sale, maintenance and repair services of motor vehicles and motorcycles</i>
3	62	<i>Commission agents and wholesale trade services, except of motor vehicles and motorcycles</i>
4	63	<i>Retail trade services; repair services of personal and household goods</i>
5	64	<i>Hotel and restaurant services</i>
6	71	<i>Land transport services</i>
7	72	<i>Water transport services</i>
8	73	<i>Air transport services</i>
9	74	<i>Supporting and auxiliary transport services</i>
10	75	<i>Post and telecommunications services</i>
11	81	<i>Financial intermediation services and auxiliary services therefor</i>
12	82	<i>Real estate services</i>
13	83	<i>Leasing or rental services without operator</i>
14	84	<i>Computer and related services</i>
15	85	<i>Research and development services</i>
16	86	<i>Legal, accounting, auditing and book-keeping services; taxation services; market research and public opinion polling services; management and consulting services; architectural, engineering and other technical services.</i>

17 87 *Business services n.e.c.*

Grouping No.	Division Code (UNCPC)	Services Description
18	88(a)	<i>Agricultural, mining and manufacturing services except printing and publishing</i>
19 (sub-class 88442)	88(b)	<i>Printing and publishing on a fee or a contract basis</i>
20	89	<i>Intangible assets</i>
21	91	<i>Public administration and other services to the community as a whole; compulsory social security services</i>
22	92	<i>Education services</i>
23	93	<i>Health and social services</i>
24	94	<i>Sewage and refuse disposal, sanitation and other environmental protection services</i>
25	95	<i>Services of membership organizations</i>
26	96	<i>Recreational, cultural and sporting services</i>
27	97	<i>Other services</i>
28	98	<i>Private households with employed persons</i>
29	99	<i>Services provided by extraterritorial organizations and bodies</i>

RESTRICTED

GPA/W/15
10 May 1996

WORLD TRADE ORGANIZATION

(96-1831)

Committee on Government Procurement

INFORMATION TECHNOLOGY: COMPILATION OF ISSUES

Note by the Secretariat

1) At its meeting on 27 February 1996, the Committee requested the Secretariat to prepare a compilation of issues and, in conjunction with the Chairman and based on inputs from delegations, identify options for carrying forward work in the area of information technology.

2) This Note is an attempt to respond to this request. It is based on the discussions in the meetings of the Interim Committee and the Committee on this topic, replies to the questionnaire drawn up by the Secretariat (GPA/IC/W/4/Rev.1; replies are contained in documents GPA/IC/W/7 plus Addenda), and other papers presented to the Committee (documents GPA/IC/W/18, GPA/IC/W/19, GPA/IC/W/36, GPA/W/13 and GPA/W/14).

3) Article XXIV:8 of the Agreement reads as follows:

With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement and shall, if necessary, negotiate modifications to the Agreement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.

4) In the discussions, two major concerns have emerged:

-that, where necessary, the Agreement should accommodate use of information technology, in order to enable its benefits to be harnessed and to ensure the continued relevance of the Agreement;

-but, in doing so, non-discriminatory access should be protected and, where possible, enhanced.

Based on these concerns, issues have arisen as to whether certain provisions of the Agreement should be reviewed and modified and whether other forms of cooperation between Parties might be warranted.

5) The discussions have related to two types of use of information technology:

-information on procurement opportunities on databases;

-electronic procurement or commerce (the situation where a significant part or all of the procurement process is conducted through electronic means, going beyond dissemination of information on opportunities to include such elements as demand and receipt of documentation and specifications, tender submissions and invoicing).

While initially discussions were mainly focused on issues relating to databases giving information on procurement opportunities, recently the emphasis in the discussions seems to have shifted towards issues of electronic commerce.

6) In the light of the above, the compilation of issues part of the paper is organized under these headings:

-summary of the factual information provided by Parties on the use of information technology in their procurement operations and of issues raised regarding the provision of such information;

-issues related to ensuring that access to procurement opportunities on a non-discriminatory basis is maintained and enhanced;

-issues related to ensuring that the Agreement does not stand in the way of greater efficiency in procurement processes through use of information technology.

The final section of the paper attempts to identify, for consideration by the Committee, options for carrying forward the work in the area of information technology.

I. INFORMATION ON THE USE OF INFORMATION TECHNOLOGY

(a) Summary of the information provided

7) The following information is based on delegations' responses to the Secretariat's questionnaire, contained in document GPA/IC/W/4/ Rev.1 and on the discussion in the Interim Committee and the new Committee on Government Procurement, including the practical demonstration which was organised in June of 1995. In view of the rapid technological progress in the area of information technology, some of the information described below may already have been overtaken by more recent developments.

(i) Systems in place/planned

8) In most Parties, internal developments seem, for the time being, focused on the establishment of databases which list government procurement opportunities, rather than on electronic commerce. In the European Communities, the central element of this is its database called Tenders Electronic Daily (TED). Under the project, entitled SIMAP (Système d'Information Marchés Publics), in which Norway and Switzerland also participate, a number of initiatives are either underway or soon to be undertaken at the European level to enhance the current TED system. The Canadian government has introduced the Open Bidding System (OBS), an internationally accessible electronic database on government procurement. In the United States, Electronic Commerce architecture provides for the VANs to receive calls for tender as they are issued; commercial VANs are used as the interface to the suppliers.

9) In some countries, like Canada, Korea and the United States, suppliers can order and in some cases, obtain tender documentation electronically.

10) The United States Government is in the process of moving from a paper-based system to an electronic process for conducting procurements (electronic commerce) which, for the time being operates in parallel with the system of the hard copy publications. For contracts of a value less than \$100,000, electronic publication is already replacing hard copy publication. The Government is planning to develop and implement, no later than 1 January 2000, a Federal Acquisition Computer Network architecture ("FACNET") that would be government-wide and provide interoperability among users. FACNET would be introduced gradually, with the initial focus on purchases below the simplified acquisition threshold.

11) In Finland, several public sector organizations are using EDI (Electronic Data Interchange) in procurement processes (i.e. municipalities, governmental organizations and companies owned by the government).

12) Israel is considering building a database that would include all public procurement of goods and services covered by the new Agreement. While, at the moment, in Korea procurement information at all levels of government can be obtained via the GINS (Goldstar Information Network Service), operated by a private firm, the Korean government intends to establish a computerized network on government procurement. Chinese Taipei's GPIS (Government Procurement Information System) provides a single source for disseminating tender information by government entities; Chinese Taipei is planning to carry out a feasibility study on electronic commerce.

13) Finland and Norway are involved in pilot projects concerning the use of information technology in public procurement, focusing both on databases containing information on procurement opportunities and on electronic commerce.

(ii) Coverage of the systems: what level of entities?

14) The databases of Chinese Taipei, the European Communities and Korea contain procurement opportunities of all levels of procurement under the new Agreement. The databases in Japan and the United States as well as the US electronic commerce initiative only cover central government entities. It is noted that in the United States, procurement opportunities in several of its States can be accessed through an Internet

Homepage. The Canadian Open Bidding System includes procurements for goods and service contracts valued at more than \$25,000,- and construction and maintenance opportunities valued at more than \$60,000,- and include those subject to the GATT Procurement Code.

(iii) Factors affecting access.

15) In the United States, commercial VAN's are used as the interface to the business community. Access to interested suppliers depends on the access capabilities provided by the VANs. The Electronic Commerce system under development is intended to operate through a wide range of VANs, allowing both foreign and domestic vendors the opportunity to access government-wide FACNET databases when they become available.

16) Access to the European TED database system is possible worldwide. Efficient use of the system is dependant upon familiarity with query commands and search strategies. Suppliers (or information brokers), both domestic and foreign, access it via the public switched network (X - 25) connecting to a Network User Address.

17) The databases of Canada, Japan and Chinese Taipei containing information on procurement opportunities are on-line and can be accessed through the Internet, allowing for world-wide access.

18) While in some Parties (Canada, countries providing information on the TED database, Korea, the United States) fees are charged to use their database(s), others are free of charge (Chinese Taipei, Japan).

19) In terms of language, some Parties indicate that their databases only list the contract opportunities in the national language, while others also provide summary information in English.

(iv) Standards used in the databases

20) In the United States, Electronic Commerce Hardware and telecommunications infrastructure consists of internal agency automated purchase systems that are interconnected to vendor-automated systems through a hub that, in turn, is interconnected to commercially available national and international Value Added Networks (VANs). In most cases, commercial off-the-shelf software is used to translate agency purchase data into standard electronic formats that are then broadcast to the VAN's to be accessed by vendors. The standard currently used in the United States by the contracting authorities for electronic commerce is the ANSI X-12 standard language which, according to the United States representative, can be immediately translated into the EDIFACT standard. However, the US representative stated in the Interim Committee in April of 1995 that it was his government's intention to move to the EDIFACT standard in a year or two.

21) The European TED database system is built on Siemens hardware using DIMDI as its database management system. In terms of the development of an electronic commerce system, the European Communities is using the EDIFACT and X-400 standards. The UN/EDIFACT message group MD 12 (or UN/ECE WP.4/MD12),

chaired by the European Commission, is developing EDI messages for public procurement. The aim is to draw up EDIFACT messages, on the one hand, between the awarding authorities and the suppliers and, on the other hand, between the awarding authorities and the Official Publications Office of the EC and the Commission of the EC.

22) Japan, Norway, Switzerland and Chinese Taipei are using or have announced their intention to use the EDIFACT standard in future.

(v) Who provides the database services: public or private?

23) The databases in the European Communities, Japan and Chinese Taipei are managed by a public authority, while in Canada the operation of the service has been contracted out to private firms. In Korea, the system is also operated by a private firm. The US "FACNET" is managed by the government but access to suppliers is provided by private VANs. In Finland, four private databases/services exist where a company can get information - stored on the EC's TED system - about public calls for tender.

(b) Issues raised regarding the provision of information

(i) Issues on databases containing procurement opportunities

24) It has been suggested that additional information needs to be collected on the following:

- whether all notices which are required to be published under Articles IX and XVIII:1 of the Agreement - for entities in Annexes 1, 2 and 3 - are also available on databases, and whether such notices contain at least the minimum information required to be published under Articles IX and XVIII:1;

-how Agreement-covered notices are identified;

-to what extent each type of notice contained on databases conforms to a standard structure;

-whether any particular classification is used in such notices to describe purchases, and if so, which classification;

-as regards the compatibility of databases containing procurement opportunities, whether Parties' databases can be interrogated using international standards, such as SQL - Standard Query Language.

-where databases exist in a non-WTO language, to what extent notices and information are summarized in a WTO language.

(ii) Electronic commerce

25) The point has been made that up till now, most of the information provided by Parties has concerned databases of procurement opportunities. However, Parties seem to be increasingly involved in action in the area of electronic commerce. The question has arisen as to whether Parties should be invited to give fuller and more information on

their projects and plans with regard to electronic commerce and in particular whether those Parties who have experience with electronic commerce could share more fully such experiences with the Committee.

II. ENSURING ACCESS TO PROCUREMENT OPPORTUNITIES ON A NON-DISCRIMINATORY BASIS

26) In the discussions, it has been widely recognised that information technology can provide a means for increased access to procurement opportunities, by making information about them more readily available and facilitating compliance with procurement procedures. At the same time, the concern has been raised that increased use of information technology, if not properly handled, could put foreign suppliers at a disadvantage, even where formally applied on a non-discriminatory basis. The following specific points of concern have been mentioned:

- Problems resulting from the existence of a multitude of information technology systems for accessing information and/or conducting electronic commerce. Typically a supplier will be more familiar with operating a national system. Having to come to grips with other ones will entail an additional input of time and energy which potential suppliers may not be willing to make.
- This will be particularly the case where different technical standards are used by information technology systems, whether for the structuring and presentation of information, search facilities or the computer languages used for electronic communication.
- The question of the cost of access to databases and electronic procurement systems has also been mentioned, as has been traditional problems of language.
 - The concern that procurement officials under an increasing pressure to procure more efficiently and quickly using information technology might, in some cases, resort to an increased use of exceptions under the Agreement.

27) In relation to the use of databases for information on procurement opportunities, a number of options for addressing these problems have been mentioned in the work on this matter:

- Ensuring effective non-discriminatory access to foreign databases and electronic tendering systems.** Whereas no evidence has been put forward suggesting that access to national systems is not formally available to suppliers of other GPA signatories on a non-discriminatory basis, the point has been made that there may nonetheless be *de facto* discriminatory effects, unless appropriate forms of international cooperation, aimed at ensuring that national systems are readily usable by foreign suppliers, are agreed. The possible areas for such cooperation that have been referred to are technical and content-related compatibility and cost. In this context, the issue of common guidelines

regarding format has come up, in particular the question to what extent such guidelines are required in order to assist foreign as well as domestic suppliers retrieve information and ensure that they can quickly and painlessly find the tenders relevant to their line of business. The point has been made that the use by Parties of a tool such as Graphical Users Interface (GUI) is important as would be the sharing of information on the Database Management Systems (DBMS) and the hardware upon which the databases are built.

-The incorporation into national databases of information on procurement opportunities contained in the databases of other GPA Members, for example through data swaps. Such cooperation would give rise to a number of practical issues in relation to technical and content-related compatibility, security, cost, copyright and licensing, especially where there are differences in the ownership/control arrangements of national databases. The issues in question are thus in some ways similar to those referred to in the first indent, with the difference that, in this case, the questions relate to the interface between national computerized databases and, in the case above, the question concerns the interface between individual national systems and individual foreign users. The point has been made that to the extent that progress is made on the issues referred to in the first indent, the issue of dataswaps becomes less important.

-The establishment of a single, or at least a coordinated, international system. The question has been raised as to whether in an ideal world it would not be optimal to have an integrated international database through which suppliers could obtain information about all Agreement-covered opportunities. Such a system could either co-exist with or be complementary to national systems. Two less ambitious possible forms of cooperation in the same direction have been mentioned: facilitating the generation of a private sector value-added network (VAN) providing for such a system; the establishment of a WTO procurement home page through which direct access could be gained by suppliers to national database systems on the Internet.

28) In relation to electronic commerce, the main emphasis in the discussions about non-discriminatory access has been the use of compatible standards for electronic communication. In particular stress has been placed on the desirability of general adoption of the EDIFACT standard. However, it has also been suggested that use of a common standard is not necessarily desirable as long as national standards are compatible with each other. The question has also been raised as to whether international systems providing for electronic commerce among Parties to the Agreement and their suppliers could be organized through one or more privately operated VANs.

29) In regard to questions of cost, the suggestion has been made that the scope for preferential tariffs to be applied on a non-discriminatory basis in favour of small and medium-sized enterprises might be explored.

30) In regard to problems of language, the suggestion has been made that electronic systems might themselves be able to incorporate tools to help alleviate such difficulties, and that the experience of the European Communities in this regard might be examined.

31) The point has been made that the Agreement on Government Procurement contains detailed rules on procurement procedures aimed at ensuring that such procedures provide effective non-discriminatory access to foreign suppliers. Such rules, however, were drawn up with the hard copy world in mind. The questions therefore arise as to:

- whether additional rules, or clarifications of the existing rules, should be built into the Agreement to ensure that procedures administered electronically give the same or better guarantees of non-discriminatory access;
- whether such safeguards ensuring effective non-discriminatory access are only needed in the event that the Agreement is modified to allow information technology to substitute, in some measure, for hard copy procedures, or whether such safeguards should also be considered in situations where information technology procedures co-exist with hard copy ones;
- whether other forms of cooperation of a more technical nature, without involving modifications to the Agreement itself, might be warranted.

III. ENABLING ADVANTAGE TO BE TAKEN OF INFORMATION TECHNOLOGY

32) It has been suggested that three aspects of the Agreement may need to be reexamined in order that the contribution that information technology can make to increasing the efficiency of procurement operations can be harnessed:

- (i) Allowing electronic means of publication or submission of bids. It has been said that the provisions of the Agreement are ambiguous as to whether its obligations can be satisfied through electronic means of publication or submission of bids and that the relevant provisions should be reviewed and clarified as to treatment of electronic transmission. The examples of Article IX, which does not explicitly refer to electronic publication, and Article XIII, which does not refer to new forms of electronic submission of tenders, have been cited.

A number of observations about this suggestion have been made:

- for the time being at least, electronic based systems should be a complement and not a substitute for hard copy notices and tendering;
- Parties should not be authorized to rely exclusively on information technology until such time as the suppliers of all other Parties were able to use such technology;

- account should also be taken of the possible disincentive effect of such a move on potential applicant WTO Members to the Agreement;
- in the event that requiring electronic rather than hard copy submission of tenders was allowed as meeting the obligations of the Agreement, special safeguards ensuring effective non-discriminatory access might be necessary;
- special account needs to be taken of the situation of small- and medium-sized enterprises which may be less well situated to cope with electronic systems;
- the dangers of reliance on electronic systems giving rise to unintended discrimination and obstacles may vary from sector to sector, according to the extent to which the industry in question has ingested information technology;

(ii) Reviewing deadlines. The point has been made that the minimum periods required by the Agreement for the different stages of the procurement process were drafted with hard copy transmissions in mind and therefore the need to allow for transmission by international mail. It has been suggested that the deadlines under Article XI should be reviewed in the light of the fact that electronic publication can reduce the lead time necessary for informing interested suppliers of potential procurement opportunities and electronic submission of tenders can decrease the time required by bidders for submitting responsive tenders.

In the discussion on this matter, the point has been made that, before amending deadlines, it will be necessary to ensure that all Parties to the GPA have in place the necessary electronic transmission systems and that account should be taken of the position of possible new Parties. In this regard the suggestion has been made that thought should be given to ways of ensuring that electronic systems with different degrees of sophistication can coexist.

(iii) Greater use of selective tendering procedures. The suggestion has been made that, because electronic commerce may result in a significantly greater volume of bids, procurement authorities may rely more heavily on selective tendering, and that it might therefore be necessary to consider ways to ensure that foreign suppliers can participate on an equal footing with domestic suppliers in selective tendering procedures under Article X arising from the use of electronic commerce.

In the discussion on this matter, the following points have been made:

- an increased volume of bids should not be considered a problem if it results in greater competition and therefore more cost-effective procurement;
- before recourse to selective tendering is facilitated under the GPA, it should be assessed whether technology can be used to alleviate the burden

on a purchasing entity from too many bids, while guaranteeing non-discrimination. Suitable tools for making a rapid selection of tenders on the basis of simple, effective and non-discriminatory criteria could perhaps be developed;

-the question has been raised as to whether electronic databases and commerce would necessarily be the real source of a problem of excessively numerous bids. It has been suggested that perhaps the solution lies more in greater precision in the specifications and qualification criteria to be built into the tender documentation.

33) The point has also been made that the Committee may want to exercise caution in taking any action which would require amendments to the Agreement in view of their implications for domestic legislative processes.

IV. OPTIONS FOR CARRYING THE WORK FORWARD

34) The discussions so far would seem to indicate widespread acceptance of two basic guidelines that should inform the future work of the Committee on information technology:

-that the work should be governed by the objectives of the Government Procurement Agreement and the specific provisions of Article XXIV:8;

-that work on aspects aimed at safeguarding and promoting open and discriminatory procurement should proceed in parallel with work on aspects aimed at promoting efficient procurement.

35) In regard to the factual information available to the Committee on practices and projects using information technology, the summary in Section I above indicates that much of the information provided could benefit from updating and completion, especially in regard to electronic commerce. The Committee may wish to consider asking the Secretariat to revise the questionnaire on information technology (document GPA/IC/W/4/Rev.1) to include the elements referred to in Section I(b)(paragraphs 24-25) above and agree that members would provide responses in time for the September meeting of the Committee.

36) In regard to the issues discussed in Section II, a number of quite technical matters have been raised and the question arises as to whether work on these matters would be facilitated by the establishment of a sub-group of experts and/or by the use of a consultant. However, it would be that a more in-depth and systematic examination of these issues in the Committee itself would be a necessary preliminary for the Committee to be able to determine to appropriateness of such steps and the mandate to be given to any sub-group and/or consultant. In doing so, members might also have regard to the issues earlier identified in document GPA/IC/W/18 (reproduced at Annex 1).

37) In regard to the issues set out in Section III, a more detailed examination of the three aspects of the Agreement that it has suggested may need to be re-examined in the

light of information technology would also seem warranted. To facilitate such consideration, the Committee might wish to request the Secretariat to prepare a factual note setting out the relevant provisions of the Agreement and drawing attention to any pertinent information on their negotiating history.

38) A further aspect to which the Committee might wish to give thought in deciding how to carry forward the work is the possibility of establishing a pilot project of some sort. Mention has been made of a pilot project being launched in the APEC framework, which consists of creating a home page on the World Wide Web of the Internet, which would enable individual national databases to be accessed by clicking on their icons. There may be other ideas for possible pilot projects, for example aimed at assessing the degree of compatibility of the various national systems.

ANNEX 1

Issues Identified in Document GPA/IC/W/18

1. Document GPA/IC/W/18 reproduces the list of possible issues for examination identified as a result of consultations with delegations that was submitted by the Chairman to the Interim Committee on Government Procurement at its meeting on 4 April 1995. This list was drawn up by the Chairman as agreed by the Interim Committee at its meeting of 15 November 1994.

Access to Procurement Opportunities

2. Compatibility of databases. To what extent do the existing and planned databases of signatories have, in common with each other, information they contain and the structure within which it is organized and what are the implications of this for the compatibilities of different systems?

3. What common guidelines regarding format are required in order to assist foreign, as well as domestic, suppliers retrieve information, encourage them to compete, and ensure that they can quickly and painlessly find the tenders relevant to their line of business?

4. How should access be set up and who should pay for it? Will suppliers have to subscribe to each system, or will it be set up on the Internet, free for anyone who has an Internet account?

5. Data swaps among Parties. Where databases are being developed or exist, should a possibility exist or be developed to swap data among Parties? Do delegations consider data swaps economically viable? What obstacles currently exist, such as licensing restrictions, etc.?

6. If so, would it be desirable to find ways and means to facilitate those swaps? It would appear that this would to some extent depend on the existence of a minimum amount of common, structured, information and the possibility to establish correspondences between classification systems used by signatories in their respective databases (any given object of procurement, e.g. a pen, should be identified by all signatories in a recognizable way in their databases).

Electronic Procurement

7. The question was raised whether, to the extent information technology had been, or was being brought into use in procurement systems, appropriate use would be made of the international standards to ensure that data interchange be carried out in a structured standardized manner, allowing for international use. The question was also raised whether, in the event that this was not the case, delegations could make a commitment to use these standards in future, with a precise time-table.

8. In the event VANs are being used and to the extent that international access to them is desirable, how can ways and means be defined to ensure such international access?

Concerning Both Categories

9. Compatibility of the provisions of the Agreement with the use of information technology in government procurement. To what extent are the provisions of the Agreement sufficiently flexible to allow for the use of information technology in government procurement? Should governments be allowed to require firms to tender exclusively by electronic means? If so, for what types and/or values of contracts?

RESTRICTED

GPA/W/16
10 May 1996

WORLD TRADE
ORGANIZATION

(96-1845)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from the Permanent Mission of the Republic of Latvia

The following communication, dated 29 April 1996, has been received from the Permanent Mission of the Republic of Latvia.

The Permanent Mission of the Republic of Latvia to the United Nations Office in Geneva presents its compliments to the good offices of the WTO Director-General and has the honour to request the observer status for the Republic of Latvia in the Committee on Government Procurement.

RESTRICTED

GPA/W/14
8 May 1996

WORLD TRADE
ORGANIZATION

(96-1797)

Original: English

Committee on Government Procurement

INFORMATION TECHNOLOGY

Communication from Norway

The following communication from the delegation of Norway, dated 22 April 1996, has been received with the request that it be distributed to the members of the Committee.

At present, information technology does not play a major role in public procurement in Norway, nor, as far as we know, in most other Parties. This will probably change in the course of some years.

In document GPA/IC/W/36, the United States mentions the following three points on which discussion concerning possible amendments of the Agreement could begin:

- 1. selective tendering procedures under Article X;*
 - 2. areas of ambiguity such as Article XIII and Article IX;*
 - 3. deadlines under Article IX.*
- 1) Selective tendering procedures under Article X*

It is assumed that information technology will enhance the number of bidders to such a large extent that entities will prefer to use selective tendering instead of open procedures. We believe this might be the case for some types of products, but not for all products. We do however, as already mentioned, not have the same experience with electronic commerce as for instance the United States. We agree with the United States that it will be necessary to find ways of ensuring foreign suppliers equal access to domestic markets in selective tendering procedures

in connection with electronic commerce. We would like to emphasize that we find a large number of tenders to be the best way of achieving real competition.

2) *Concerning areas of ambiguity such as Article XIII and Article IX*

Concerning these articles, they might have to be amended to facilitate electronic commerce.

3) *Deadlines under Article IX*

If the deadlines for responding to invitations to tender are shortened, it is important to ensure that the electronic tendering systems in use are transparent, compatible and readily accessible to suppliers of all Parties. Otherwise, one can experience a situation where domestic suppliers are favoured. In our opinion, it could hence be necessary to keep longer deadlines to ensure that contracts are effectively open to international competition.

Concerning compatibility, there are two different technical standards that are in use for electronic commerce in the United States and Europe at present. In addition, other systems may be in use in other Parties. In Europe we use EDIFACT and X.400 whereas the US contracting authorities use ANSI X 12. At present, these different systems are not compatible.

We would like to emphasize that all amendments that shall be made to the GPA to take account of technological progress must be based on a genuine principle of non-discrimination which goes beyond the concept of national treatment. We believe that it is important to make sure that any amendments to the Agreement aiming at taking information technology into account do not undermine the transparency and international opening-up of procurement in the Parties.

RESTRICTED

GPA/W/13
7 May 1996

WORLD TRADE
ORGANIZATION

(96-1811)

Original: English

Committee on Government Procurement

INFORMATION TECHNOLOGY: CONSEQUENCES FOR THE GPA
OF THE DEVELOPMENT OF INFORMATION TECHNOLOGY
IN THE FIELD OF PUBLIC PROCUREMENT

Communication from the European Community

The following communication from the delegation of the European Community, dated 25 April 1996, has been received with the request that it be distributed to the members of the Committee.

1) *Information technology will play a major role in public procurement. One of the ways of making public purchasing procedures more efficient is to promote maximum transparency; using new means of communication will enable this objective to be achieved more effectively. The question to be addressed is therefore not whether these technologies will have a role to play in practice in the public procurement field but what role they will play.*

2) *Although the GPA alludes to new technology, it was drawn up without the topic specifically in mind. Given the particularly rapid pace of change in this area, it will soon prove necessary to amend certain aspects of the Agreement. This was foreseen by the drafters of the Agreement, who considered that any such amendments should be aimed at •ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress• (Article XXIV(8)). The Community accordingly shares the opinion already expressed by the United States in document GPA/IC/W/36 of 21 December 1995, to the effect that the GPA should evolve in line with developments in the field if it is not to become too far removed from the realities of public procurement.*

3) *The United States mentions in that document three points on which discussions could begin, namely more extensive use of the restricted procedure, the possibility of publishing notices electronically, and shortening deadlines. The*

Community agrees that these are topics on which discussions will have to begin in the near future.

As far as the first point is concerned, excessive transparency could admittedly be difficult to cope with for certain types of product (especially basic products), as the purchasing entity could find itself swamped with tenders. This is not the case for all products, however. Furthermore, the aim of public procurement is to secure the best value for money by selecting the best offer. Increasing the number of tenders can help to achieve this. Too many tenders for products that are too simple can undeniably result in extra costs and delays. But before recourse to the restricted procedure is facilitated under the GPA, it should be seen whether technology cannot be used to alleviate the burden on the purchasing entity while guaranteeing non-discrimination. Suitable tools for making a rapid selection of tenders on the basis of simple, effective and non-discriminatory criteria could perhaps be developed.

The texts of the GPA will furthermore probably have to be amended in order to make it clear that electronic publication and electronic transmission are allowed.

Once more efficient means of communication have been set in place, consideration could be given to the possibility of shortening deadlines in order to speed up the selection process. It would have to be certain, however, that all signatories to the GPA had set up electronic transmission systems. We should not forget here that possible new parties to the Agreement may not have such systems. Thought will therefore have to be given to ways and means of ensuring that electronic systems with different degrees of sophistication can coexist.

4) *For the Community, however, the fundamental question to be addressed is the need to ensure that the development of new technologies does not have the effect in practice of hindering access to contracts in the countries of the other signatories. This issue is closely bound up with the question of how the national treatment clause is to be interpreted. The emergence of electronic tendering can paradoxically have the effect of blocking access to contracts in the countries of the other signatories. A few simple examples will suffice to explain why.*

If a signatory country were to develop an electronic system which is accessible to all suppliers, it would formally be complying with the principle of national treatment. But if that system was incompatible with those existing in the other signatory countries, the effect in practice could be to restrict access for suppliers from those other countries, who would be faced with an unfamiliar system. Electronic tendering can boost transparency, but the systems themselves must also be transparent, compatible and readily accessible to all suppliers.

This would apply all the more so if the deadlines for responding to invitations to tender were shortened. Even if there was no apparent difference in treatment between domestic suppliers and suppliers established in other signatory countries, the practical effect, if the deadlines were extremely short, would be to favour domestic suppliers since the others would first have to find the information in an electronic system which was not

their own. It should therefore always be borne in mind that, if it were decided to pursue this course, it could still prove necessary to keep longer deadlines in order to ensure that contracts are genuinely open to international competition.

Lastly, electronic tendering does nothing to reduce the language barrier. Experience in the Community shows that language can be a major barrier which is not overcome per se through the use of electronic transmission. It will therefore be necessary to develop tools that make it possible to achieve greater transparency in this connection despite language differences, which will remain. Electronic transmission can, however, facilitate such developments.

These different problems already exist at present, but the use of new technologies can, in particular by speeding up the purchasing process and making it less transparent, have paradoxical effects which will have to be monitored closely.

The Community therefore takes the view that all the changes that could be made to the GPA to take account of technological progress should be based on a genuine principle of non-discrimination which goes beyond the concept of national treatment. The US suggestions may be understood as aiming to make the procedural rules more flexible in the case of contracts awarded partly with the aid of information technology. While the introduction of information technology can indeed make for greater transparency and can justify more flexibility in certain specific cases, it should be backed up by reinforcement of some of the basic rules of the GPA so that the opening-up of procurement is not undermined.

RESTRICTED

GPA/W/12
17 April 1996

WORLD TRADE
ORGANIZATION

(96-1388)

Original: English

Committee on Government Procurement

THE THRESHOLDS IN APPENDIX I OF THE AGREEMENT AS
EXPRESSED
IN NATIONAL CURRENCIES FOR 1996/1997

In pursuance of the agreed procedures (GPA/1, Annex 3), delegations have been invited to notify their respective national thresholds for the period 1996-1997.

The delegation of Canada has submitted its figures. Other submissions will be compiled in addenda to this document.

CANADA

Threshold calculations - for period 1 January 1996 through 31 December 1997.

Annex 1 (Entities)

	SDR	Converted to \$CAN¹	Rounded \$CAN²
Goods	130,000	259,594	259,500
Services	130,000	259,594	259,500
Construction	5,000,000	9,984,369	9,900,000

¹SDR 1.0 • \$CAN 1.99687375. The average monthly SDR to Canadian dollars for 24 months from October 1993 through September 1995 was \$CAN 1.99687375. This calculation is based on data published by the Bank of Canada.

²Rounded down in all cases to ensure inclusion of all covered contracts.

RESTRICTED

GPA/W/11
15 March 1996

WORLD TRADE
ORGANIZATION

(96-0938)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from the Permanent Mission of Turkey

The following communication, dated 29 February 1996, has been received from the Permanent Mission of Turkey.

With reference to document GPA/IC/W/31, dated 21 November 1995, I have the honour to inform you that Turkey is very much interested in the activities of the WTO Committee on Government Procurement. Therefore, I would be grateful if all the necessary steps could be taken to allow Turkey to participate as an observer in the Committee's work.

RESTRICTED

GPA/W/10
5 March 1996

WORLD TRADE ORGANIZATION

(96-0781)

Committee on Government Procurement

Original: English

APPLICATION FOR ACCESSION BY SINGAPORE

Description of the Government Procurement Regime in Singapore¹

The following communication has been received from the delegation of Singapore with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

¹ *This note was earlier distributed as an informal document, dated 26 February 1996.*

BRIEF WRITE-UP ON THE GOVERNMENT PROCUREMENT REGIME IN SINGAPORE

1. Economy-wide Information

1.1 The government procurement activities in Singapore are undertaken by the Government Ministries and Departments, as well as Statutory Boards.

1.2 As a city state, Singapore does not have sub-central government entities.

1.3 With the closure of the Central Procurement Office from 1 May 1995, the centralized purchasing of a very limited number of products such as paper, rice is now under the responsibility of the Expenditure Policies Unit of the Ministry of Finance (Budget Division). As for the remaining items which constitute the bulk of government purchasing activities, they are decentralized to individual Ministries, Departments or Statutory Boards, who will make their own arrangements. There is no value limit for each purchase/contract. However, all the government procuring entities have to adhere to central policies and guidelines issued by the Ministry of Finance (Budget Division).

1.4 In general, no fixed procurement schedules are drawn up by the procuring entities; instead the procurement is performed as and when required.

1.5 As explained in paragraph 1.3 above, the bulk of government purchasing activities have been decentralized to individual Ministries, Departments or Statutory Boards. However, there are several central government procurement functions which are performed by the following entities:

(a) Ministry of Finance (Budget Division)

-Formulate the government procurement policies and guidelines which need to be complied with by all the Government Ministries and Departments as well as Statutory Boards.

(b) Expenditure Policies Unit of the Ministry of Finance (Budget Division)

-Perform centralized purchasing of a very limited number of products such as paper and rice for Ministries and Departments.

-Register the suppliers for government procurement in respect of general goods and services.

(c) Pharmaceutical Department of the Ministry of Health

-Perform centralized purchasing of pharmaceutical products for Ministries, Departments and Statutory Boards.

-Register the suppliers for government procurement in respect of pharmaceutical products.

(d) Construction Industry Development Board

-Register the suppliers for government procurement in respect of construction services.

2. General Procurement Policies and Practices

2.1 *Outline of economy-wide procurement policies*

- (a) The Singapore Government adopts the fundamental principles of fairness, openness and competitiveness for its government procurement policies.
- (b) All the government procuring entities of Singapore are required to follow the central policies and guidelines issued by the Ministry of Finance (Budget Division).
- (c) In general, Singapore has no special government procurement programmes to achieve specific social and economic objectives such as assistance to SMEs, disadvantaged regions, or to support specific industry sectors or infant industry.

2.2 *Outline of procurement policies and practices*

- (a) Government procurement procedures in Singapore are based on a tendering system. Tenders are invited by using the open, selective or limited tendering procedures.
- (b) Open procedures are used for all tenders exceeding S\$30,000. An open tender requires that the tender be given the widest possible circulation to attract the largest number of tenderers. This is done by advertising the tenders in the local or international press. Publishing in the Government Gazette may be done if it is advantageous to do so. These advertisements will provide the minimum information necessary for firms to know what is required, over what period, and whether the issue of tenders is restricted to registered suppliers under specific Supply and/or Financial categories. Advertisements will ask tenderers to apply to the procuring entities for tender forms. English is the preferred language in which the notices appear.

The following details are included in a typical tender notice: name of procuring entity, description of products/services/construction services to be procured, tender opening and closing dates, conditions of participation, instruction on payment and collection of tender documents.

Selective tendering is normally conducted for all tenders under S\$30,000. It is also used in exceptional cases where the project is confidential or sensitive. In such instances, invitations to tender are sent to selected firms.

Limited tendering is used in cases involving purchase of specialized systems and equipment from sole suppliers. It is also used in cases of emergency or when it is manifestly in the public interest. The circumstances and reasons for granting such waivers are endorsed by the Permanent Secretary and submitted for approval to the Tenders Board.

On the average, open competition accounts for about 85 per cent of the total number of tenders called or about 60 per cent of the value of tenders, when excluding defence procurement contracts.

- (c) When drawing out the tender specifications, the procuring entities are required to use functional specifications wherever possible without specifying brand names. They also need to ensure that no preference is given to any tenderer.

- (d) The minimum period of tender notice (i.e. the number of days from invitation to closing of tender) for contracts which are advertised locally is not less than 3 or 8 weeks for conventional and design-and-build projects respectively. And if the contracts are advertised both locally and overseas, then the minimum period is not less than 12 weeks.
- (e) All local and foreign suppliers interested in participating in Singapore's public sector tenders are required to register as government contractors under the appropriate Supply and Financial categories with the Expenditure Policies Unit, Pharmaceutical Department or Construction Industry Development Board.
- Companies or firms seeking registration will have their background, finances and ability to provide a satisfactory service checked by the registration authorities, and are required to pay a non-refundable registration fee. Non-registered firms could be allowed to participate only in tenders for non-recurring goods, services or works where local expertise is lacking, or in cases where the local contractors are unable to execute their contracts, or are unable to reach a certain high standard.
- (f) A rotating list of suppliers is generally not used except for professional services such as auditing and legal services.
- (g) Tenders are awarded to the lowest bid meeting tender specification in full. Successful tenders are notified upon approval by the Tenders Board.
- (h) A successful tenderer will be required to give a security deposit for supply of goods, services or works which are to be contracted for over a period. The security deposit can be paid in the form of a cheque, banker's guarantee, insurer's guarantee, or a guarantee from a finance company. The security deposit should be 5 per cent of the estimated value of the tendered goods, services or works. When the contract expires, the security deposit or any balance due to the contractor should be refunded in accordance with the terms of the contract.
- (i) Singapore does not give specific preferences to domestic suppliers in government procurement except for local contractors with consistent good performance in government construction works.
- (j) Singapore does not maintain any local-content schemes and there are no policies to encourage the use of domestic inputs, even in the context of government procurement.
- (k) There is no preference for small- and medium-size enterprises in government procurement of Singapore.
- (l) Within the framework of the ASEAN Preferential Trading Arrangements, ASEAN countries accord each other a preferential margin of 2.5 per cent, which should not exceed US\$40,000 worth of preferences per tender, in respect of international tenders for government procurement of goods and auxiliary services from untied loans. The preferential margin should be applied on the basis of the lowest evaluated and acceptable tender (Article 7 of the Agreement on ASEAN Preferential Trading Arrangements).

(m)The Ministry of Finance (Budget Division) investigates complaints/appeals from the suppliers and initiates any remedy action if this is deemed necessary.

3. Laws and Regulations Related to Government Procurement

Currently, there is only one law which is related to government procurement. It is the Government Contracts Act (Chapter 118) which provides a list of public officers who can execute and sign contracts on behalf of the Government.

There are no legislation or regulations that give exemption to the normal government procurement practices.

RESTRICTED

GPA/W/9
27 February 1996

WORLD TRADE
ORGANIZATION

(96-0719)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from the Kingdom of the Netherlands with Respect to Aruba

The following communication, dated 23 February 1996, has been received from the Permanent Mission of the Kingdom of the Netherlands.

In the light of its application for accession to the new Agreement on Government Procurement, the Kingdom of the Netherlands with respect to Aruba hereby kindly requests to obtain observer status in the Committee on Government Procurement (1994).

WORLD TRADE
ORGANIZATION

RESTRICTED

GPA/W/8
26 February 1996

(96-0697)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from Iceland

The following communication, dated 19 February 1996, has been received from the Permanent Mission of Iceland.

At its meeting of 7 December 1995, the Interim Committee on Government Procurement agreed to grant observer status to the Government of Iceland. As I understand that a new and separate request needs to be forwarded to the Committee on Government Procurement, scheduled to hold its first meeting on 27 February 1996, the Permanent Mission hereby kindly requests that the necessary steps be taken to allow Iceland to participate as an observer in the Committee's work.

RESTRICTED

GPA/W/5

21 February 1996

*WORLD TRADE
ORGANIZATION*

(96-0629)

Original: Spanish

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Colombia

The following communication, dated 6 February 1996, has been received from the Permanent Mission of Colombia.

As you know, Colombia took part as an observer in the Interim Committee of the Agreement on Government Procurement, which completed its work in December 1995.

I should hereby like to express Colombia's wish to continue as an observer in the Committee of the Agreement on Government Procurement.

RESTRICTED

GPA/W/7
20 February 1996

WORLD TRADE ORGANIZATION

(96-0630)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Liechtenstein

The following communication, dated 12 February 1996, has been received from the Government of the Principality of Liechtenstein.

In the light of Liechtenstein's application for accession to the new Agreement on Government Procurement (APG/1994) the Government of the Principality of Liechtenstein would like to ask the members of the Committee on Government Procurement to grant Liechtenstein observer status in the Committee.

RESTRICTED

GPA/W/6
19 February 1996

WORLD TRADE ORGANIZATION

(96-0599)

Original: English

Committee on Government Procurement

REQUEST FOR OBSERVER STATUS

Communication from Singapore

The following communication, dated 14 February 1996, has been received from the Permanent Representative of the Republic of Singapore.

On 9 November 1995, the Government of Singapore informed you of its interest in acceding to the Agreement on Government Procurement (1994). The Government of Singapore was granted observer status in the Interim Committee on Government Procurement. The Government of Singapore has submitted its offer of concessions during the meeting of the Interim Committee on Government Procurement held on 7 December 1995, for the purpose of accession to the said Agreement. The Interim Committee on Government Procurement has been replaced by the Committee on Government Procurement. In order to pursue our accession process, and especially in view of the negotiations to take place with the Signatories of the said Agreement, the Government of Singapore would like to ask members of the Committee on Government Procurement to grant Singapore observer status in the Committee.

I would appreciate it very much if you could kindly circulate this communication for the attention of the Signatories to the Agreement on Government Procurement (1994).

RESTRICTED

GPA/W/3

14 February 1996

WORLD TRADE
ORGANIZATION

(96-0554)

Committee on Government Procurement

POSSIBLE LOOSE-LEAF SYSTEM FOR
PERIODICALLY UPDATING THE APPENDICES

Note by the Secretariat

Introduction

1) *In the context of discussions held in the Interim Committee on Government Procurement on the desirability and modalities of establishing a practical guide under the new Agreement on Government Procurement, the view has been expressed that there might be merit in establishing a loose-leaf system for the periodic up-dating of the Appendices as a separate and distinct exercise from the publication of any practical guide. At its meeting on 7 December 1995, the Interim Committee on Government Procurement requested the Secretariat to prepare a brief note outlining how such a loose-leaf system might work, taking into consideration experience in other areas of the WTO such as tariff schedules. This note is an attempt to reply to this request.*

Past Experiences in GATT/WTO

- Tokyo Round Agreement on Government Procurement

2) *The Committee under the Tokyo Round Agreement on Government Procurement agreed at its first meeting that the Secretariat should introduce a loose-leaf system which would have no legal status in itself, but which would, on a continuous basis, contain the correct information relating to Annexes I-IV of the Agreement (GPR/M/1, paragraph 51). This system was later considered redundant by delegations once the Practical Guide came into being and was subsumed into the latter.*

- Tariff Schedules in GATT/WTO

3) *On 26 March 1980, the CONTRACTING PARTIES to the GATT adopted a proposal by the Director-General to create a loose-leaf system for the schedules of tariff concessions, which could continuously be kept up to date (document C/107/Rev.1, in BISD S27/22-24). This system, which is still being*

used under the WTO, has legal status; the loose-leaf system of tariff schedules is the legal expression of the rights and obligations of GATT contracting parties]WTO Members in the area of tariff concessions. Only those entries in the schedules which are indicated in the latest certified version of the loose-leaf system have legal value. To this end, after a particular change to the schedules has been agreed, the Director-General of the WTO certifies it and the Secretariat circulates certified true copies of the replacement pages under cover of a WT/Let/- document to all Members of the WTO. Discussions are currently under way in the Committee on Market Access with regard to the preparation of consolidated WTO schedules in loose-leaf format (document G/MA/TAR/W/4/Rev.2 refers).

Legal Status

4) *Delegations would have to consider whether loose-leaf schedules under the new Agreement on Government Procurement would have legal status; that is to say, whether the loose-leaf system of Appendices would be the legal record of the Parties• concessions. There seem to be two options:*

-One option would be for the Committee not to give legal status to the loose-leaf system. This would mean that the practice of having a system of certification of changes to the Appendices distributed through the WT/Let/- document series in the form in which the rectification or modification was notified and agreed according to the procedures of Article XXIV:6 would be continued and that a loose-leaf system of the Appendices, which would not have any legal status, would exist in parallel. Such was the formula adopted by the Committee under the Tokyo Round Agreement.

-Alternatively, the Committee could decide to give legal status to the loose-leaf system. Any changes to the Appendices would need to be made in the form of replacements]additions to the pages of the loose-leaf record of the Appendices and, once they would have been adopted according to the procedures of Article XXIV:6 and certified by the Secretariat, these pages would be circulated to the Parties under cover of a WT/Let/- document for insertion in the loose-leaf system. Only those entries in the Appendices which would be indicated in the latest version of the loose-leaf system would have legal value.

5) *If the decision were taken to give legal status to the loose-leaf system, it would be necessary to provide the starting point for the loose-leaf set in a way which incorporates the changes which will already have been made and agreed in accordance with the provisions of Article XXIV:6 or other relevant decisions by the Informal Working Group or Interim Committee on Government Procurement. This could be done by the Committee requesting the Secretariat to produce and distribute such an updated set of the Appendices. A period of, for example, sixty days would be foreseen from the date of its distribution for delegations to review whether the agreed changes had been correctly reflected in the loose-leaf system. This should not be a complicated or contentious operation because all changes to Appendices which have been notified so far clearly indicate new wording (for*

example documents GPA|IC|W|8 and 10 and GPA|W|1 and W|2) or include replacement pages (document GPA|IC|10).

Modalities

6) *In the event that the Committee decides to give legal status to the loose-leaf system, it would be desirable that it be agreed that notifications of changes pursuant to Article XXIV:6 by delegations take the form of relevant new or amended loose-leaf pages identifying the changed items. Once agreed and certified, these would be circulated under cover of the WT|Let|- document series.*

7) *A system should be designed to deal with a situation where a change in Appendices involves a change in the number of pages. One way of handling a situation in which the change results in additional pages would be to issue any page in addition to page x as page x.1, page x.2, page x.3 etc. In case the change would result in a lesser number of pages, a note would have to be inserted to this effect. For example, one could have one page with more than one page number, for example page 81|82|83.*

8) *The date on which the change became or becomes effective could be indicated at the bottom of each replacement page. At the outset, each page might carry the date of the first publication of the loose-leaf set.*

9) *As far as the language of the loose-leaf system is concerned, the Committee might want to consider publishing Appendix I only in its authentic languages. It is recalled that the IWG decided that the texts of the Annexes in Appendix I would be authentic only in the language(s) in which they were submitted. Since, by its nature, most of the material is readily understandable even to persons not fluent in the WTO language in question, this should not be a major problem. Appendices II, III and IV are of course in the three official WTO languages and this would be maintained.*

Distribution

- Distribution to Parties, Observers and other WTO Members

10) *This would be done by the Secretariat each time a change in the Appendices would have been agreed and certified. The Secretariat would distribute certified true copies of the relevant loose-leaf pages in the normal WT|Let|- series. The WT|Let|- series is currently being distributed to all WTO Members.¹ Delegations might want to consider adopting a procedure for the transmission of WT|Let documents regarding the Agreement on Government Procurement to observers to the Committee who are not Members of the WTO.*

¹The WT|Let series with relevant annexes are sent to the Ministries of Foreign Affairs of all WTO Members.

- *Distribution to the wider public*

11) *Assuming the desirability of a wide general distribution of the Agreement, including its coverage, the Committee might consider making the loose-leaf system available to the public, as a complement to any future practical guide. Consideration might be given to the possibility of doing this on the Internet. It might also be explored whether a hard copy version would be needed, but it would have to be assessed whether the market would be sufficient to enable this to be done on a cost-recovery basis.*

RESTRICTED

GPA/W/4

14 February 1996

WORLD TRADE
ORGANIZATION

(96-0551)

Committee on Government Procurement

Original: English

REQUEST FOR OBSERVER STATUS

Communication from the Separate Customs Territory of Taiwan,
Penghu, Kinmen and Matsu

The following communication, dated 6 February 1996, has been received from the Representation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to WTO.

I have the honour to inform you that my government wishes to participate in the work of the Committee on Government Procurement as an observer so as to acquaint itself with the activities and operations of the Committee. I would appreciate it very much if necessary measures could be taken at the first Committee meeting.

RESTRICTED

GPA/W/1
26 January 1996

WORLD TRADE
ORGANIZATION

(96-0324)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF JAPAN

Communication from Japan

The following communication from the Permanent Representative of Japan has been received with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between Japan and the United States of America. Article XXIV of the Agreement contains the provisions on its entry into force and, it is in conformity with paragraph 6(a) of Article XXIV, that I hereby inform you of modifications to Japan's General Notes in Appendix I of the Agreement.

In accordance with our understanding with the Government of the United States of America, you should today receive a parallel communication from the U.S. Delegation.

The enclosed communication should be circulated to Members of the Committee on Government Procurement in a document dated 26 January 1996 so that the modification will become effective 30 days from that date provided there is no objection.

./

ANNEX

Communication from Japan with respect to Modifications to Appendix I

Under Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of Japan submits to the Committee on Government Procurement the following modifications of a minor nature to Japan's General Notes in Appendix I of the Agreement.

Modifications to Japan's General Notes in Appendix I:

In paragraph 1, delete •and the United States. •

RESTRICTED

GPA/W/2

26 January 1996

WORLD TRADE
ORGANIZATION

(96-0325)

Original: English

Committee on Government Procurement

MODIFICATIONS TO APPENDIX I OF THE UNITED STATES

Communication from the United States

The following communication from the Permanent Representative to the WTO of the United States has been received with the request that it be circulated to the Parties to the Agreement on Government Procurement (1994).

I am writing to you concerning the modifications to Appendix I of the Government Procurement Agreement, which follow on from the agreement reached between the United States of America and Japan. Article XXIV of the Agreement contains the provisions on its entry into force and, it is in conformity with paragraph 6(a) of Article XXIV, that I hereby inform you of modifications to the U.S. General Notes in Appendix I of the Agreement.

In accordance with our understanding with the Government of Japan, you should today receive a parallel communication from the Japanese Delegation.

The enclosed communication should be circulated to Members of the Committee on Government Procurement in a document dated 26 January 1996 so that the modification will become effective 30 days from that date provided there is no objection.

./.

ANNEX

Communication from the United States with respect to Modifications
to Appendix I of the Agreement on Government Procurement

Pursuant to Article XXIV, paragraph 6(a) of the Agreement on Government Procurement, the Government of the United States of America submits to the Committee on Government Procurement the following modifications of a minor nature to the United States• General Notes in Appendix I of the Agreement.

1. *In paragraph 5, delete •Japan•.*

2. *Add a new paragraph:*

•The United States will not extend the benefits of this Agreement to Japan as regards the award of contracts by entities listed in Annex 3 that are responsible for the generation or distribution of electricity.•

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Offentlige indkøbsregler i

WTO

Delrapport 1: GPA-reglerne og danske virksomheders erfaringer og interesser i offentligt indkøb indenfor WTO

Forord

Den stigende globalisering afføder en stigende samhandel mellem landene og mellem kontinenterne. Dette gælder såvel den private handel samt den handel, der sker på det offentlige kontraktmarked. Indenfor WTO er det offentliges indkøb reguleret af Government Procurement Agreement, GPA-aftalen. Udover samtlige EU-lande har 10 andre lande underskrevet denne aftale, heraf de vigtigste af Danmarks oversøiske samhandelslande.

WTO planlægger i løbet af 1999 en generel revision af GPA-reglerne. Konkurrencestyrelsen, der er den ansvarlige danske myndighed indenfor dette område, har på denne baggrund taget initiativ til nærværende rapport.

Rapporten har to formål. For det første skal den skabe et markedskendskab for de danske virksomheder, der overvejer at påbegynde eksport til den offentlige sektor i GPA-landene, eller de virksomheder, der kun har begrænsede erfaringer på dette marked. Da der ofte er tale om markeder, der er meget forskellige – både kulturelt, økonomisk og politisk – fra danske forhold, vil en grundig forberedelse og gode kontakter på de pågældende markeder være en forudsætning for at få succès. For det andet skal rapporten skabe et overblik over danske virksomheders erfaringer på området med henblik på at tilvejebringe en dansk holdning til den kommende revision af GPA-reglerne. Dette er sigtet med delrapport 1, hvor resultaterne af en række interviews, der har været foretaget med brancheorganisationer og virksomheder, og resultaterne fra en telefoninterview undersøgelse med et større antal danske virksomheder, præsenteres. Interviewene har bidraget til at skabe et generelt billede af de danske virksomheders erfaringer med GPA-reglerne med henblik på at udforme anbefalinger til revisionen af reglerne. Delrapport 1 indeholder ligeledes nogle overordnede betragtninger om det offentlige indkøb marked samt en beskrivelse af WTO-reglerne om offentlige indkøb og EUs overvejelser vedrørende offentlige udbud i WTO.

Delrapport 2 har en kort oversigt over WTO-reglerne og indeholder tillige konkrete beskrivelser af de for Danmark 8 mest relevante lande udenfor EU, der er omfattet af GPA-reglerne. Det drejer sig om USA, Japan, Hong Kong, Singapore, Korea, Schweiz, Canada og Polen. For en nærmere beskrivelse af markedsmulighederne indenfor EU henvises til Konkurrencestyrelsens tre guider, Det offentlige udbudsmarked i EU, for henholdsvis tjenesteydelser, varer og bygge- og anlægsområdet.

Delrapport 1 er blevet til i samarbejde mellem Konkurrencestyrelsen og direktør, cand.scient. pol. Hans Martens, Martens International Consulting, S.L. Konkurrencestyrelsen takker Hans Martens for et godt samarbejde i denne anledning.

Konkurrencestyrelsen, juli 1999

Finn Lauritzen
Direktør

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English Summary

The market for public procurement is very substantial. In the European Union alone, the market is valued at a least 5.000 billion DKK per year, and the market under the WTO Agreement on Public Procurement is probably three times as large. The Public Procurement markets have, however, not yet become true transactional markets despite several attempts to open them for international competition. Amongst the most important such attempts have been made in the European Union through a number of Directives concerning Public Procurement, and in the WTO where the Government Procurement Agreement (GPA) establishes a similar attempt to open the procurement markets amongst some 25 of WTO's member countries.

The present report has been made on behalf of the Danish Competition Authority in order to establish part of the background for a Danish position in relation to the review of the GPA, which is expected to be carried out during 1999. The report describes the present regime, and on the basis of interviews with a number of Danish enterprises and organisations presents suggestions for a Danish viewpoint as the GPA is concerned.

The GATT Agreement (General Agreement on Tariffs and Trade) excluded Public Procurement, and therefore a number of GATT signatories decided to try to make an agreement concerning trans-border competition on bids for procurement from the public sector. This resulted in the first GPA, which was negotiated under the Tokyo-Round (1973-79). This agreement entered into force in 1981, but has since been revised under the Uruguay Round and the revised agreement has been in force since January 1 1996. This consequently led to a revision of the EU Directives on Public Procurement, including a revision of the thresholds.

The GPA is a *plurilateral* agreement as opposed to most WTO agreements, which are *multilateral*. The reason is that even as the GPA is open for all WTO Member States, it is only binding for those countries that have signed-up to the agreement. At present only a fraction of WTO members have signed the agreement, but economically the signatories are very important: Besides the EU, Japan and the United States are amongst the countries presently covered by the GPA.

Besides the GPA there are other initiatives in the WTO concerning Public Procurement. Negotiations about a multilateral agreement on *Transparency in Procurement* are ongoing. The end result is expected to stipulate obligations to make Public Procurement rules and procedures transparent, but not necessarily at the same time provide market access.

The multilateral agreement on international trade in services (GATS) has a reference to a possible inclusion of Public Procurement in services, and attempts are being made to establish a multilateral agreement on the inclusion of services in Public procurement.

Members of GPA

At present the GPA is therefore the only international agreement on Public Procurement in force, and it covers the EU and its 15 Member States (Austria,

Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Spain, Sweden, Portugal and the United Kingdom), Canada, China (Hong Kong), Korea, Israel, Japan, Liechtenstein, Norway, Singapore, Switzerland and the United States. A number of WTO Member States have an observer status vis a vis the GPA, namely Argentina, Australia, Bulgaria, Chile, Colombia, Iceland, Mongolia, Panama, Poland, Slovenia and Turkey. Four non-WTO members also have an observer status, namely China (Taipei), Estonia, Latvia and Lithuania. IMF and OECD are also enjoying an observer status.

GPA does not only cover central government but also subcentral governmental institutions. This could be for instance utility companies or it could be, as in the case of the United States, government institutions at state level (37 states). In any case institutions covered will be mentioned in annexes to the agreement.

Sectors covered

GPA covers all sectors of Public Procurement, including supplies, provision of services and construction. Precisely which items are covered can vary from country to country, as the GPA – or rather the GPA annexes – stipulates which items are covered between which countries. This pattern of mutual agreements on various forms of supplies, services and construction works makes it difficult to establish a precise view of the exact coverage of the GPA.

Thresholds

Also thresholds vary. The general threshold for supplies and services procurement by central government institutions is SDR 130,000 and for construction works SDR 5,000,000. For sub-central government institutions and other institutions covered by the agreement, the usual threshold for supplies and services is SDR 200,000. The United States and Canada use a threshold value of SDR 355,000.

Technical specifications

The GPA recommends the use of international specifications (for quality, performance, safety, dimensions, packaging, labelling, etc.) rather than national in Public Procurement. The use of standards should not prohibit equal treatment of bidders.

Equal treatment

The GPA does not allow discrimination between bidders based on nationality, and all bidders must be treated equal and therefore be given time and practical opportunities for participating in tenders. The GPA also specifies that only criteria relevant for the bid must be used to evaluate bidders.

Procuring authorities are not allowed to seek advice for the drafting of Terms of References from anybody who has an economic interest in the tender itself.

Tender procedures

Three forms of tenders can be applied:

- Open tenders, where all interested suppliers may submit a tender
- Selective tenders, where suppliers invited to participate may submit a tender
- Limited tendering procedures, where the public authority contacts suppliers individually. (This form can only be used under certain specific circumstances).

Invitation to participate in tenders

Intended procurement must be published in an appropriate publication (mentioned in an annex to the agreement), and the invitation must (at least) contain information about:

- Nature and quantity of items or work
- Tender procedure to be used
- Information on where to obtain specifications and other detailed information
- Timing
- Payment conditions.

There is no central source of information about forthcoming tenders. Some information and links to national publications can be obtained from the WTO home page (<http://www.org/wto/govt/govt.htm>).

Complaint Procedures

All parties to the GPA must establish 'non-discriminatory, timely, transparent and effective procedures' enabling suppliers to challenge alleged breaches of the GPA arising in the context of procurements in which they have, or have had, an interest.

For member states conflicts about the application of the GPA can be referred to Settlement of Disputes procedures in WTO.

There is no informal system for conflict resolution established under the GPA. It can therefore be difficult to maintain commercial opportunities for firms that have experienced problems in connection with bids.

Expected results of the 1999 review

It is not expected that there will be a large number of new signatories to the GPA. Most developing countries are hesitant to give access to their procurement markets. This is one of the reasons why the negotiations on a multilateral agreement on

transparency in government procurement may result only in increased transparency and not in market access.

At present some pressure is applied on new members of WTO to sign the GPA when they become members of WTO. Some of the smaller applicant countries have declared their readiness to do so. Whether this will also be the case for some of the larger applicant countries, including Russia and China, remains to be seen.

Attempts will no doubt be made to ‘clear-up’ the situation as the many bilateral exceptions in the annexes to the GPA is concerned. This could lead to a more transparent and efficient GPA in the future.

Electronic tendering is increasingly being discussed – also in relation to GPA. Presently the European Union is introducing electronic information and tendering systems, and in some other GPA member states electronic tendering is widely used. Increased use of electronic tendering under the GPA should therefore be expected in the future, and this could contribute to increased international competition on the Public procurement markets.

Model Agreements and Technical Assistance

Public Procurement rules are covering internationally and the core of the procurement rules are reflected in the UNCITRAL law models, which includes a model solution for Public Procurement.

The ITC (International Trade Centre) is providing technical assistance for the introduction of public procurement rules based on the UNCITRAL principles in a number of developing countries. This is happening partly to open the markets, and partly to contribute to the development of sound government procedures in general.

Practical experiences with GPA

Practical experience with GPA is limited in Danish enterprises. For this report surveys have been carried out amongst Danish companies that have export to GPA countries.

It should be noted that two thirds of all exports from Denmark is directed towards European Union member states, and if Norway is included (Norway is covered by the same Public Procurement rules as EU member states under the European Economic Area Agreement), the figure reaches nearly 72%.

If it is assumed that export to the public sector follows the same pattern more or less as export in general, it is obvious that EU rules for Public Procurement are more directly relevant than GPA rules. The survey have shown that many companies do in fact export to the public sector in GPA countries outside of the EU, but that most of them do so without being aware of the rights and obligations given by the GPA.

It is – seen from a market opening perspective – in a sense less important that GPA rules are known as long as market opportunities are provided. It is believed, however, that better knowledge of the GPA would contribute to create new market

opportunities and at the same time ensure a fair treatment in connection with bids to the public sector.

As regards the negotiations on a review of the GPA, points of view of a number of organisations and enterprises with experience in export to GPA countries and knowledge about the GPA itself, have been identified.

Common problems experienced in relation to procurement under the GPA are:

- The need for a clarification of GPA – in particular the bilateral agreements and exceptions
- Use of technical standards and specifications in a protectionist way
- Inefficient complaint procedures
- Insufficient overview of forthcoming tenders
- Lack of information about the GPA and the opportunities it provides.

The report identifies a number of issues that could be included in a Danish position for a review of the GPA:

- Simplification of the GPA, and in particular the annexes, leading to a more transparent agreement
- An improved system for information about planned tenders
- Increased use of electronic information and tendering
- Increasing the number of GPA countries
- Elimination of the use of technical specifications and standards in a protectionistic way
- The review of the GPA should not lead to complication of EU rules, and should in no way deteriorate existing Danish standards in the field of environment and safety and health regulations
- More efficient complaint procedures
- Transparent rules for the use of ‘green’ clauses in public tendering.

1. Det offentlige indkøbsmarked

Det offentlige indkøbsmarked er gigantisk. Det skønnes alene i EU-landene at udgøre omkring 5.000 milliarder kroner om året. Hvis man dertil lægger de lande, som er omfattet af WTO-aftalerne, og de udbud, der foregår gennem internationale organisationer som EU, Den Europæiske Bank for Genopbygning og Udvikling, Den Europæiske Investeringsbank, Den Nordiske Investeringsbank, Verdensbanken og de mange andre internationale udviklingsbanker og bistandsorganisationer, bliver tallet formentlig fordoblet.

For den enkelte virksomhed er markedet ofte ikke særlig forskelligt fra andre markeder. Mulighederne skal identificeres, kunderne skal plejes og der skal foregå et salgsarbejde, som hvis man solgte til den private sektor. Det er i øvrigt heller ikke ualmindeligt, at store, private virksomheder benytter sig af regler for deres indkøbsfunktioner, som ligner dem, der anvendes af offentlige myndigheder.

Det offentlige indkøbsmarked er dog forskelligt fra det private på nogle punkter. Først og fremmest er det politisk reguleret.

Det har således været god latin gennem de senere år at arbejde politisk for at sikre, at de offentlige indkøbsordrer bliver omfattet af konkurrence – i hvert fald hvis de har en vis størrelse og dermed betydning. Det er sket på EU-plan, hvor man måske har det mest omfattende og detaljerede system for regulering af offentlige indkøb, der findes på mellemstatsligt plan. EU-reglerne har gennem deres anvendelse på EØS-landene – og i et vist omfang på ansøgerlandene i Øst- og Centraleuropa – et omfang, der rækker ud over de 15 EU-lande.

De internationale organisationer, herunder udviklingsbankerne, har ligeledes udviklet detaljerede systemer til regulering af de offentlige indkøb, og i FN-regie har UNCITRAL (the UN Commission on International Trade Law) i 1993-94 vedtaget to modellove, henholdsvis the UNCITRAL Model Law on Procurement of Goods and Construction (1993) og the UNCITRAL Model Law on Procurement of Goods and Construction and services (1994).

På et bredere internationalt plan gøres der i WTO i øjeblikket forsøg på at udvikle et regelsæt for offentlige indkøb, der dækker alle organisationens medlemmer. Men der er allerede udviklet et sæt af regler, som dog kun anvendes af et fåtal af WTOs medlemmer. Målt i volumen er betydningen dog større, idet denne aftale – GPA eller Government Procurement Agreement – fortrinsvis omfatter rige lande, nemlig de 15 EU-lande og 10 andre lande, heriblandt USA og Japan. EU, USA og Japan står for et bruttonationalprodukt på tilsammen 18,414 milliarder euro (1998). Det svarer til ca. 145 trilliarder kroner.

Heraf udgør den offentlige sektor ca. 6,000 – 10,000 milliarder euro. En stor del af dette beløb er overførselsindkomster og løn til offentligt ansatte, men selv hvis man sætter de offentlige indkøb af varer, tjenester og byggerier til f.eks. 20 pct. af de samlede offentlige udgifter, bliver det alligevel et beløb på 2,000 milliarder euro, svarende til ca. 15.000 trilliarder danske kroner.

Ikke alle indkøb til den offentlige sektor er omfattet af indkøbsreglerne, men en række kilder anslår, at der under WTO-aftalen om offentlige indkøb er åbnet for konkurrence til en værdi af over 2,5 trilliarder kroner årligt.

De offentlige indkøb er også politiske på andre måder. Først og fremmest er der ofte stor politisk interesse for og prestige i en række af de projekter, der bliver udbudt fra den offentlige sektor. Det gælder naturligvis først og fremmest de store bygge- og anlægsarbejder, hvor der ofte er en interesse i at fastholde arbejdet på nationale hænder. Tendensen synes dog at være, at det i større og større omfang accepteres, at også den type opgaver skal udbydes i international konkurrence.

Der indgår ofte andre typer af politiske overvejelser i de offentlige indkøb. Der inddrages således ofte beskæftigelsespolitiske overvejelser i store udbudsforretninger, og der gøres i stigende omfang forsøg på at bruge offentlige indkøb til at fremme andre typer af politiske målsætninger, f.eks. om gennemførelse af tekniske standarder, kvalitetsstandarder og miljømålsætninger.

På globalt plan spiller en nationalistisk indkøbspolitik en stor rolle. Der er f.eks. i USA en stærk 'Buy American' bevægelse, og det er under alle omstændigheder givet, at et 'noget-for-noget' princip er gældende i de internationale relationer. Det vil i praksis sige, at man åbner for virksomheders adgang til at byde på de samme markeder, som man selv har adgang til i det pågældende land. Dette er særdeles fremtrædende i WTO-aftalerne.

Dilemmaet for den offentlige sektor og dens politiske ledere er, at konkurrence om de offentlige indkøb – nationalt og/eller internationalt – giver 'value for money'. Skatteyderne får som hovedregel mere for deres penge, når leverandører konkurrerer i stedet for at have et monopol på leverancer eller at kunne forhandle alene med den offentlige myndighed. Prisen for at opnå sådanne økonomiske fordele er, at den offentlige sektor til en vis grad mister kontrollen med sine leverandører og derved – igen til en vis grad – mister muligheder for at kunne anvende de offentlige indkøb til at fremme bestemte politikker – herunder en lokal beskæftigelsespolitik.

Det vil derfor altid være en politisk afgørelse, hvad man vælger, men for verdens industrilande synes der ikke at være nogen tvivl om, at den liberalistiske løsning er den, der vælges. Value for money står over andre hensyn.

Konkret betyder aftalerne i WTO ikke mange ændringer for den offentlige sektor i Danmark. Den sag er sådan set afgjort ved, at Danmark er med under EUs udbudsregime. Det fastlægger principperne om international konkurrence, og WTO-aftalerne øger i princippet kun antallet af potentielle leverandører – og det vil i praksis kun være af begrænset omfang. Der er gode chancer for, at reglerne i stedet kan blive til en samlet samfundsøkonomisk fordel, fordi WTO-reglerne formentlig øger danske virksomheders muligheder for at eksportere til den offentlige sektor i lande som USA og Japan i højere grad end den i praksis giver amerikanske og japanske virksomheder adgang til det danske offentlige indkøbmarked.

Endelig er offentlige indkøb en politisk sag i forhold til udviklingslandene. Det er karakteristisk, at ingen udviklingslande har tilsluttet sig internationale aftaler om offentlige indkøb. Argumentet er først og fremmest, at udviklingslandene ikke mener

at kunne få noget ud af at deltage i sådanne aftaler. Det kunne sandsynligvis give udviklingslandene billigere indkøb, hvis der var en sådan international konkurrence om dem, men dette argument vejer tilsyneladende ikke så tungt som dette, at udviklingslandene føler, at deltagelse i internationale aftaler om offentlige indkøb vil åbne deres markeder for industrilandenets virksomheder, uden at de selv vil være i stand til at levere noget særligt på industrilandenets markeder.

Der er til gengæld – ikke mindst i FN-kredse – en klar holdning til, at en sund offentlig indkøbspolitik er et godt middel til en sund offentlig administration generelt. Korrupsion og bestikkelse er ikke ukendte fænomener i offentlig indkøbspolitik på verdensplan. Der gøres i øjeblikket forsøg såvel på bilateralt som på multilateralt plan på at indarbejde regler for offentlige indkøb (primært baseret på UNCITRAL-modeller) i udviklingslande.

Opmærksomheden skal i øvrigt henledes på visse bilaterale aftaler, som EU har indgået, og som på nogle punkter giver videre markedsadgang end de resultater, der indtil videre har kunnet opnås inden for rammerne af GPA. Det drejer sig foreløbigt om aftaler med Israel, Korea og Schweiz. Ikke mindst sidstnævnte aftale, indeholder muligheder for adgang til et relativt nært marked, der ligger meget tæt op ad de muligheder i så henseende, som EU-reglerne indebærer.

Danske virksomheder og de internationale aftaler

Danske virksomheder udnytter formentlig ikke fuldt ud mulighederne i de internationale aftaler om offentlige indkøb. Der kan være mange grunde til dette.

Mange virksomheder lader sig måske skræmme af, at reglerne ofte er meget utilgængelige. Dette forhold har måske været afskrækkende for nogle virksomheder i EU-sammenhæng, men her findes der trods alt rimeligt tilgængelige oversigter over regelsæt, klageprocedurer, etc. Ikke mindst i Danmark, hvor konkurrencestyrelsen har gjort en helt speciel indsats for informere virksomhederne og gøre dem interesserede i at benytte sig af mulighederne i indkøbsreglerne.

Vender man sig til WTO-reglerne – mere konkret GPA – findes der ingen let tilgængelige regler, som kan bruges umiddelbart af den typiske virksomhed, og reglerne er i sig selv særdeles komplicerede og fyldt med undtagelser, særbestemmelser osv. Klagebestemmelserne er heller ikke let tilgængelige, og det er vanskeligt at finde en samlet oversigt over de udbud, der foretages under reglerne. Der er ikke, som i EU, et samlet sted, hvor alle udbud publiceres.

Spørgsmålet er så, om virksomhederne overhovedet behøver at kende reglerne.

Det er ikke nemt at give et helt entydigt svar på dette spørgsmål. På den ene side synes det klart, at mange danske virksomheder stort set er ligeglade med, hvad reglerne siger. Disse virksomheder byder på ordrer, de får kendskab til, og får de ordren, er det godt. Får de den ikke, er det ærgerligt, men ikke ærgerligt på anden måde, end det er at tabe en hvilken som helst anden ordremulighed. Mange af virksomhederne siger direkte, at de ikke kunne drømme om at hænge de offentlige organer op på reglerne, endsige gennemføre en klagesag.

På den anden side er det klart, at udbudsregler faktisk giver virksomhederne nogle rettigheder, som – hvis de anvendes rigtigt – kan bruges til at effektivisere arbejdet med at vinde offentlige indkøbsordrer. Det gælder procedureregler, regler der skal forhindre forskelsbehandling, og det gælder klageregler.

Der er virksomheder, som er bange for at blive udelukket fra fremtidige ordremuligheder, hvis de opfører sig for 'besværligt'. Denne frygt findes i et vist omfang på nationalt plan i Danmark. Den findes – mere udbredt – i EU-landene, og den synes endnu mere udbredt på bredere internationalt plan.

Det er som om frygten for at bruge reglerne, som de er tænkt, er mindst, jo bedre man som virksomhed kender det miljø, der arbejdes i. Jo mere transparent systemet er, jo bedre tør man klage over manglende overholdelse af reglerne. Erfaringen fra arbejdet med EU-reglerne har vist, at man kan indgyde virksomhederne mere tillid til at bruge reglerne, hvis der dels findes en ordentlig forklaring til virksomhederne, dels er en offentlig instans – i dette tilfælde Konkurrencestyrelsen – som kan og vil bakke virksomhederne op.

Et andet problem med klager over manglende overholdelse af reglerne er, at klagesystemerne ofte er for langsommelige til, at de kan medvirke til at fastholde kommercielle muligheder. For en virksomhed er det ikke særlig interessant at skulle ofre penge og andre ressourcer på f.eks. en retssag, som ikke kan sikre virksomheden en afgørelse i tide, eller endog sikre, at virksomheden, selv hvis den får ret, kan have nogen rimelig chance for at vinde den ordre, den oprindeligt bød på.

Derfor har det naturligvis stor betydning for danske virksomheder, at der nu findes et netværk mellem konkurrencemyndighederne i en række af de EU-lande, som er vigtigst for danske virksomheder, og som medvirker til konfliktløsninger på et uformelt plan og så betids, at virksomhederne får en chance for at fastholde de kommercielle muligheder.

Noget sådant findes ikke bare tilnærmelsesvist, når det gælder WTO-reglerne. Der findes ingen letfattede oversigter. Der findes intet centralt sted, hvor man kan hente oplysninger om udbud. Der findes intet netværk, som kan hjælpe virksomheder, der føler sig dårligt eller ukorrekt behandlet.

Revision af reglerne i 1999

Denne rapport behandler WTO-reglerne. Den forklarer reglerne, som de er i dag, forud for den revision, der skal ske af GPA. Den behandler ligeledes det, der bliver den sandsynlige holdning på EU-plan, idet EU er forhandlingspartner i forhold til WTO-aftaler. Den fremlægger ligeledes de synspunkter, som danske organisationer og virksomheder har tilkendegivet som deres ønsker for en revision af aftalen, og den giver – set med virksomhedernes øjne - endelig et bud på en dansk holdning i forhold til revisionen af aftalen. Det bemærkes i den forbindelse, at rapporten primært har en erhvervsmæssig indfaldsvinkel og derfor først og fremmest fokuserer på erhvervsmæssige interesser i modsætning til eksempelvis spørgsmål om varetagelsen af miljø-, arbejdsmiljø- og sociale hensyn i forbindelse med udbudsforretninger.

2. WTO-reglerne for offentlige indkøb

Baggrund for aftalerne

Ifølge økonomisk teori kan omkostningerne ved at 'købe nationalt', når der købes ind til det offentlige, blive høje, især hvis mange lande benytter diskriminatoriske indkøbspolitikker. Det sandsynlige resultat heraf på globalt plan vil – igen ifølge økonomisk teori – blive et velfærdstab i forhold til den situation, hvor der købes ind på den økonomisk mest effektive måde. Selv set i forhold til det enkelte land, kan en national indkøbspolitik give et resultat, der ikke er så økonomisk effektivt som det formentlig var forudsat, da beslutningen om at købe ind nationalt blev taget.

Disse ræsonnementer var hovedårsagen til, at en række regeringer allerede i 1960'erne inden for OECD begyndte at diskutere mulige internationale aftaler om offentlige indkøb. Resultatet heraf blev dog ikke en OECD-aftale, men en aftale i GATT-regie i slutningen af 1970'erne. Denne aftale – *The Agreement on Government Procurement* – blev forhandlet under Tokyo-runden (1973-79), og den placerede offentlige indkøb fra specificerede offentlige organer under international konkurrence.

Government Procurement Agreement (GPA) fra 1979 fandt kun anvendelse på de GATT-medlemmer, der underskrev aftalen, hvilket især var en afspejling af, at GATT-overenskomsten udtrykkeligt ekskluderer offentlige indkøb fra det generelle GATT-princip om ikke-diskrimination mellem leverandører efter nationalitet. Dette var gældende i den oprindelige GATT-overenskomst fra 1947 og i den genforhandlede aftale fra 1994. Undtagelsen for de offentlige indkøb findes i GATT-overenskomstens artikel III, stk. 8.

Denne undtagelse indebærer også, at GPA har en selvstændig karakter i forhold til de øvrige GATT/WTO-regler, og ikke i væsentligt omfang er direkte afledt af traktaten.

Det var et generelt princip i GATT-overenskomsten – og er det fortsat i WTO – at de handelsmæssige fordele, en underskriver af aftalen giver til ét land eller gruppe af lande, skal gives til alle andre parter, der er dækket af aftalen. Dette princip kaldes *Most Favoured Nation-princippet* (MFN).

Selv om GATT-overenskomsten specifikt fratager området offentlige indkøb fra princippet, er dette dog selvstændigt indeholdt i GPA i den forstand, at én underskriver af GPA skal give den behandling, man giver et andet GPA-land til alle GPA-lande. GPA er dog på den anden side også fundamentalt i strid med dette princip. Således har GPA-parterne i konkrete tilfælde fraveget princippet ud fra reciprocitetsbetragtninger; dvs. at parterne i GPA alene giver hinanden adgang til deres respektive offentlige indkøbsmarkeder i det omfang en sådan markedsadgang er gensidig. Omfanget af en sådan markedsadgang bestemmes ved bilaterale forhandlinger mellem parterne.

Man kan derfor beskrive GPA som en 'paraplyaftale', der lægger rammer for et sæt af bilaterale aftaler mellem aftalens parter.

Et andet fundamentalt GATT-princip er *princippet om national behandling*. Dvs. at man skal behandle udenlandske varer, tjenester og leverandører på en måde, som ikke er mindre favorabel, end den behandling man giver indenlandske varer, tjenester og leverandører. Det betyder, at alle parter under GPA skal give varer, tjenesteydelser og leverandører fra andre lande, der er part i aftalen, en behandling, der ikke er mindre gunstig end den, man giver indenlandske varer, tjenesteydelser og leverandører og man skal også give en sådan lige behandling for varer, tjenesteydelser og leverandører fra alle andre GPA-lande.

GPA er – på grund af det begrænsede antal medlemmer – en plurilateral aftale i modsætning til de fleste WTO-aftaler, som er multilaterale. Den er samtidig frivillig og binder kun de parter, der har underskrevet den. I den formelle WTO terminologi hører de plurilaterale aftaler under betegnelsen Annex IV-aftaler.

Aktuelle initiativer i WTO vedrørende offentlige indkøb

Der findes i dag ikke nogen global aftale eller aftale mellem alle WTOs medlemmer om offentlige indkøb. Men der arbejdes for tiden i WTO med offentlige indkøb på tre områder, nemlig:

Revisionen af den omtalte *plurilaterale* aftale, der er indgået mellem 25 lande, *Government Procurement Agreement* – GPA

Forhandlingerne om en *multilateral* aftale omfattende alle WTO-lande om *Transparency in Procurement* (som ikke i sig selv omfatter markedsadgang)

GATS – den *multilaterale* aftale om liberalisering af handel med tjenesteydelser, der også på sigt kan tænkes at indeholde aspekter af offentlige indkøb af tjenesteydelser, jfr. nedenfor.

Government Procurement Agreement

GPA blev forhandlet parallelt med Uruguay-runden. Aftalen blev underskrevet i Marrakesh i april 1994 og trådte i kraft 1. januar 1996. Den førte til en række ændringer af EU-direktiverne om offentlige udbud, som var nødvendige for, at EU-landene kunne overholde aftalen. En af ændringerne var justering af grænseværdierne for udbud, som på grund af GPAs fastsættelse af grænseværdierne i SDR (Special Drawing Rights) medførte de nuværende, 'skæve' grænseværdier i EU-direktiverne.

GPA dækker nu 25 af WTOs medlemmer, men aftalen er åben for andre medlemmer, der måtte ønske at tilslutte sig, og den indeholder særligt gunstige regler for udviklingslande, der måtte ønske at tilslutte sig.

Aftalen dækker i dag EU og de 15 medlemslande, og desuden Canada, Kina (Hong Kong), Israel, Japan, Korea, Liechtenstein, Norge, Singapore, Schweiz og USA. Desuden repræsenterer Holland Aruba. 10 WTO-medlemslande har observatørstatus, nemlig Argentina, Australien, Bulgarien, Chile, Colombia, Island, Mongoliet, Panama, Polen, Slovenien og Tyrkiet. Fire ikke-WTO medlemmer, Kina (Taipei), Estland, Letland og Litauen samt IMF og OECD har ligeledes observatørstatus.

(Status pr. 30. oktober 1998). Island, Panama og Kina (Taipei) har i juni 1998 anmodet om at kunne tiltræde aftalen. (Oplysningerne er de seneste fra WTOs Internetside 18.01.1999).

GPA dækker kun de administrative enheder, der er nævnt i annekser til aftalen for hvert enkelt deltagende land. Dækningen er dog blevet udvidet over tid gennem periodiske aftaler, som er forudset i aftalen.

GPA bygger som nævnt på fundamentale WTO-principper som national behandling og mestbegunstigelsesklausulen (MFN), men kun mellem de parter, som har underskrevet aftalen (se ovenfor).

Den er på den anden side også fundamentalt i strid med en række af principperne. Således er aftalen som nævnt fyldt med undtagelser på bilateralt plan, hvor lande gensidigt undtager sektorer eller områder fra den generelle aftale. Det skyldes primært, at parterne har fundet denne aftale meget følsom, idet den vedrører en direkte, konkret og omgående adgang til markederne i modsætning til en række andre WTO-aftaler, som er af mere principiel karakter og med knap så direkte virkninger.

Det skal også nævnes her, at der findes en række regionale aftaler mellem grupper af lande, som overlapper GPA-kredsen. Først og fremmest optræder de 15 EU-lande som én blok i forhold til GPA, men desuden er der i APEC og i NAFTA en vis koordination af og regler for offentlige udbud.

Revision af aftalen

Det er planen, at aftalen skal revideres frem mod den tredje WTO ministerkonference, der er planlagt afholdt i slutningen af 1999. Der forventes udarbejdet et forhandlingsgrundlag i løbet af sommeren 1999, og intensive forhandlinger mellem parterne skulle begynde i løbet af efteråret 1999.

På dagsordenen er først og fremmest en forbedring og forenkling af GPA, herunder at øge antallet af parter omfattet af aftalen, men parterne vil parallelt diskutere muligheden for at fjerne diskriminatoriske tiltag, som forhindrer en effektiv konkurrence om udbuddene, og desuden en udvidelse af aftalens dækningsområde (kontraktstyper og myndighedsniveau).

GPA's hovedelementer

Selve GPA er som sådan relativt kort og præcis, og den følger det mønster, der efterhånden er ved at blive 'international standard' for udbudsregler. Aftalen indeholder en række bestemmelser om udbud og udbudsprocedurer, som forklares nedenfor.

Derimod bliver billedet meget forvirrende, når man ser på dækningsområderne. GPA giver i sig selv ingen indikation af de dækkede områder. Der er derimod tale om et enstrengt system af regler, som skal gælde for alle typer af udbud i alle sektorer.

De dækkede sektorer fremgår i stedet af bilagene til GPA, og her findes der et utal af undtagelser, som gør en vurdering af anvendelsen uklar. Også dette forhold omtales

nærmere i det følgende. Når f.eks. telekommunikation ikke er dækket af GPA, skyldes det ikke nogen principiel undtagelse af denne sektor i selve aftalen, men at ingen af parterne har nævnt sektoren under de dækkede områder som beskrevet i annekserne. Det skal også tilføjes, at der er en vis fleksibilitet indbygget her. En regering kan således fjerne f.eks. en forsyningsvirksomhed fra annekserne, hvis den ikke længere har kontrollen med den pågældende virksomhed – f.eks. som følge af privatisering.

Dækkede områder:

GPA retter sig som udgangspunkt både mod de centrale myndigheder samt mod udbud på niveauer under det centrale regeringsniveau. Medlemmerne af GPA forpligter sig ved tiltrædelsen af aftalen på centralt niveau ved angivelsen af disse myndigheder i tillæg I, bilag 1 til aftalen, samt i bilag 2, hvilke myndigheder under det centrale administrative niveau, der ligeledes er omfattet. Endelig er det i bilag 3 angivet, hvilke offentlige forsyningsvirksomheder der er omfattet. For USAs vedkommende har den føderale regering således ikke kunnet forpligte alle delstater, og der er derfor - ud over det føderale niveau - kun 37 delstater med under aftalen.

Den nuværende GPA dækker både bygge- og anlægsvirksomhed samt indkøb af varer og tjenesteydelser. Hvilke tjenesteydelser, der er dækket, er dog i realiteten noget uklart, idet dette område på grund af uoverensstemmelser mellem deltagerne i aftalen er dækket af bilaterale aftaler. Udbud af tjenesteydelser vil derfor kun været dækket af GPA-procedurer, såfremt myndighederne hos såvel udbyderen som leverandøren er enige om, at den pågældende tjenesteydelse er dækket. Som eksempel kan nævnes, at EU, USA og EFTA-landene har indgået en aftale om, at finansielle tjenesteydelser skal være omfattet af aftalen, mens Japan ikke ønskede dette. Derfor er USA samt EU- og EFTA-landene ikke forpligtede til at tage japanske leverandører i betragtning ved udbud om leverance af finansielle tjenesteydelser.

I aftalens tillæg 1 findes der i bilag 4 en oversigt over de tjenesteydelser, som er omfattet af aftalen, mens bilag 5 specificerer de omfattede tjenester i forbindelse med bygge- og anlægsarbejder.

Som eksempel kan nævnes undtagelser, EU har indført i dækningen:

Drikkevandsforsyning, energi, visse transportydelser, telekommunikation, indkøb af vand og brændstof til energiforsyning, taletelefoni, telex, radiotelefoni, satellittjenester, visse finansielle tjenesteydelser, mæglingsydelser, landbrugsstøtteordninger, erhvervelse af land og ejendomme, beskæftigelsestjenester og programmaterialer til radio og tv.

Grænseværdier:

De fleste deltagere i aftalen anvender samme grænseværdier for udbud fra centrale myndigheder, nemlig SDR 130,000 for varer og tjenesteydelser og SDR 5.000.000 for bygge- og anlægsområdet. For myndigheder under det centrale niveau og for andre

dækkede myndigheder varierer billedet noget: For varer og tjenesteydelser SDR 200.000, undtagen for USA og Canada, som anvender en værdi på SDR 355.000. For bygge- og anlægsarbejder gælder den almindelige grænse på SDR 5.000.000. For en detaljeret oversigt over grænseværdierne, se denne rapport's bilagssider.

Grænseværdierne i EUs udbudsregler følger nu de samme grænseværdier, som gælder for EU-landene under GPA.

Tekniske specifikationer:

Det forudsættes som et generelt princip i GPA, at de tekniske specifikationer for produkter eller tjenester retter sig mod opnåelse af resultater snarere end mod design karakteristika. GPA anbefaler endvidere anvendelse af internationale standarder snarere end nationale i forbindelse med tilrettelæggelse af udbud (artikel VI). Endvidere må der som hovedregel ikke stilles krav om eller henvises til bestemte varemærker m.v.

Der gælder altså ikke, som i EU, et princip om gensidig anerkendelse af standarder, hvis der ikke findes internationalt gældende standarder, men der tilstræbes alligevel en ligestilling mellem tilbudsgivere.

Ligebehandling og habilitet:

Generelt siger GPA-reglerne klart, at der ikke må diskrimineres mellem tilbudsgivere på grund af nationalitet, ligesom der skal være ligebehandling i den forstand, at alle potentielle tilbudsgivere skal have tid og praktisk mulighed for at kunne deltage med et bud. Desuden siger aftalen, at der ikke må lægges andre kvalifikationskriterier ind for bedømmelse af tilbudsgivere end dem, der direkte siger noget om evnen til at kunne påtage sig den konkrete opgave.

Habilitetsspørgsmålet kommer også ind på en anden måde. I GPA (Art. VI.4) siges det, at en *ordregiver ikke på en måde, der kan have til følge at udelukke konkurrencen, må søge eller modtage rådgivning, der kan benyttes i forbindelse med udarbejdelsen af specifikationer til en bestemt udbudsforretning, fra virksomheder, som måtte have en forretningsmæssig interesse i den pågældende udbudsforretning.*

Dette spørgsmål vedrører især rådgiveres rolle i forhold til både at kunne vejlede udbudsgiver og at kunne deltage i selve udbudsforretningen. Hvor langt man kan gå i denne 'tekniske dialog' uden at komme i konflikt med de habilitetsregler, der er citeret oven for, er ikke klart, og der er ikke på nuværende tidspunkt en praksis, som kan vejlede på området. Det er formentlig også sikkert, at man vil forholde sig forskelligt til dette spørgsmål i GPA-landene, men GPA-reglerne er nu også indarbejdet i EU-direktiver, dog med en lille drejning. I EU-direktiverne har man nemlig formuleret sig på en mere positiv måde, end tilfældet er i GPA, idet EU-reglerne nu slår fast, at ordregivende myndigheder godt må modtage rådgivning vedrørende udbudspecifikationer, forudsat at der ikke derved sker en udelukkelse af konkurrencen.

Udbudsprocedurer:

Der kan anvendes tre former for udbud, nemlig:

- *Offentlige udbud*, hvor alle interesserede kan afgive bud (artikel VII:3a)
- *Begrænsede udbud*, hvor kun inviterede virksomheder kan byde (artikel VII:3b)
- *Udbud efter forhandling*, hvor en myndighed kontakter leverandører individuelt efter specielle regler (artikel VII:3c og artikel XV).

GPA fastslår, at man normalt skal anvende de to førstnævnte udbudsformer. Hvis begrænsede udbud anvendes, skal den udbydende myndighed 'sikre en effektiv international konkurrence og maksimere antallet af udenlandske leverandører, der inviteres til at afgive bud'.

Den sidstnævnte form (udbud efter forhandling) kan kun anvendes, hvis der ikke er modtaget bud efter et åbent eller et begrænset udbud, hvor der er kunstværker eller prototyper involveret i udbuddet, hvis der er tale om 'ekstremt hastede' udbudsforretninger, hvis der er tale om supplerende leverancer til et allerede foretaget udbud, eller hvis der ikke er risiko for at skade den internationale konkurrence (artikel XV).

De udbudsformer, der anvendes under GPA, er de samme, som er kendt dels fra 'standardregler' for offentlige udbud, dels fra EUs regler. I GPA er der, som i EUs regler, lagt op til, at man i princippet skal anvende de offentlige og de begrænsede udbud, mens udbud efter forhandling skal være undtagelsen, og – som i EU – skal anvendelse af hasteprocedurer, der kan tænkes at blive anvendt for at diskriminere mod udenlandske bydende, kun kunne anvendes i deciderede undtagelsestilfælde.

Meddelelse om udbud:

Der skal ske meddelelse om udbuddene i en officiel publikation, og meddelelser skal mindst indeholde oplysninger om følgende forhold:

Udbuddets karakter og omfang
Den udbudsform, der vil blive anvendt
Den kvalifikationsprocedure, som vil blive anvendt
Hvorfra man kan få specifikationer og anden detaildokumentation
Afleveringsfrister
Betalingsforhold og -frister.

I tillæg II , III og IV til aftalen findes opregnet de publikationer, der anvendes til forhåndsmeddelelser, meddelelser om leverandørlistor og til meddelelse om formelle regler vedrørende offentlige indkøb.

Der findes således ikke nogen central informationskilde for udbuddene i WTO-regie eller andetsteds, og der findes heller ikke (endnu) nogen form for centraliseret database, der samler oplysninger om alle udbud under reglerne.

Der findes en WTO-Internetside (<http://www.wto.org/wto/govt/govt.htm>). Den giver nogle links til nogle af de nationale publikationskilder, men denne oversigt synes at være noget tilfældig og usystematisk og kan derfor ikke bruges til systematisk informationsindhentning.

Nedenstående tabel viser, til hvilke kilder for lande der henvises på Internetsiden den 18. januar 1999:

Land	Kilde
Australien	Government Electronic Marketplace (GEMS)
Canada	MERX
EU	SIMAP
Finland	Information Technology Development Center, TIEKE
Kina (Hong Kong)	Supply Administration
Japan	Government Procurement Data Base System
Korea	Supply Administration
Mexico	COMPRANET
New Zealand	NBR Network
Polen	Public Procurement Bulletin
Singapore	The Government Internet Tendering Information System (GITIS)
Kina (Taipei)	Government Procurement Information System (GPIS)
USA	Commerce Business Daily

Information er naturligvis altid godt, men henvisningerne er som nævnt ret usystematiske. Der findes for EU således kun henvisningen til SIMAP, samtidig med, at et medlemsland – Finland – optræder særskilt. Endvidere er der observatørlande med, som ikke er omfattet af aftalen, mens en række lande, som er med i aftalen, ikke er nævnt. Man skal heller ikke regne med, at disse informationssider i alle tilfælde giver præcise oplysninger om kommende udbud. I nogle tilfælde er der mest tale om generelle oplysninger om udbudsorganisation og udbudsregler.

Problemets kerne er, at der ikke findes en central informationskilde til GPA-udbud, og WTO-sekretariatets forsøg på at etablere et overblik er nok al ære værd, men det er ikke effektivt set i forhold til virksomhedernes behov.

GPA fastslår i øvrigt, at andre typer virksomheder end de centrale regeringsinstitutioner kan anvende meddelelse om planlagte udbud eller en meddelelse om kvalifikationsrunder som en invitation til deltagelse i udbud.

Forud for selve udbuddet er udbudsgiver forpligtet til at udsende en forhåndsmeddelelse (tender notice) i en offentligt tilgængelig publikation (som er opregnet i tillæg II til aftalen).

Den manglende centrale database, hvorfra oplysningerne ville kunne hentes, vanskeliggør også til en vis grad overgangen til et elektronisk system for meddelelser om udbud under GPA (se også nedenfor).

Forhandlinger med tilbudsgiver:

Der kan forhandles med potentielle tilbudsgivere, hvis det er meddelt i udbudsannonceringen, eller hvis det ligger klart, at der ikke er ét tilbud, som klart er det bedste i forhold til de offentliggjorte kriterier. Reglerne siger, at forhandlinger skal bruges til at klarlægge styrke og svagheder hos tilbudsgiverne, og at forhandlingerne skal foregå fortroligt, og endelig at der ikke må diskrimineres mellem tilbudsgiverne (artikel XIV).

Forhandlinger med tilbudsgivere er et noget omdiskuteret emne i EU-sammenhæng, hvor spørgsmålet bl.a. er taget op i forbindelse med Grønbogen om udbudsreglerne og i efterfølgende meddelelser fra Europa-Kommissionen om teknisk dialog (se også ovenfor under 'habilitet'). Der er delte meninger om, hvor langt man skal gå med hensyn til forhandlinger eller dialog. Der er givetvis behov for en vis dialog mellem parterne i en udbudsforretning, men der er også altid en risiko for, at ligebehandlingsprincipper overtrædes – uden at det altid vil være klart for andre end de forhandlende parter, hvad der er foregået.

Tildelingskriterier:

Udbydere skal tildele kontrakter til den tilbudsgiver, som dels fuldt ud er i stand til at løse opgaven, dels er enten den billigste eller har givet det mest fordelagtige tilbud. Det sidste kan bedømmes i forhold til kriterier som kvalitet, teknisk kvalitet, leveringsomkostninger og pris. Vurderingen skal under alle omstændigheder foregå på basis af de kriterier og grundlæggende krav, der er specificeret i udbudsannonceringen. Der er her tale om en parallel til EU-reglerne, som også giver mulighed for at vælge mellem det billigste eller det økonomisk mest fordelagtige bud.

Myndighederne skal endvidere meddele, hvem der har vundet kontrakterne inden for 72 dage efter kontraktens tildeling. Man skal meddele:

- karakter og omfang af udbuddet,
- den vindende virksomheds navn og adresse,
- værdien af det vindende bud eller det dyreste og det billigste tilbud, der er taget i betragtning,
- hvilken type udbudsforretninger, der er anvendt, og
- hvis udbud efter forhandling er anvendt, da en begrundelse herfor.

Hvis en virksomhed beder om det, skal den kunne få detaljerede oplysninger om, hvorfor den pågældendes bud eventuelt ikke blev antaget, hvorfor virksomheden eventuelt ikke blev fundet kvalificeret, hvem der har vundet udbuddet og hvilke særlige forhold, udbyderen har lagt vægt på i valget af det vindende bud (artikel XVIII)

Klagemuligheder:

Alle parter, som er omfattet af GPA, skal etablere 'ikke-diskriminatoriske, hensigtsmæssige, gennemsigtige og effektive procedurer', som kan benyttes af utilfredse bydende til at klage over udbudsforretningen. Der skal i alle lande være adgang til at få en uafhængig vurdering af påståede uoverensstemmelser med reglerne. Det kan ske i form af en domstol eller et særligt organ, som skal være uafhængigt af resultatet af udbudsforretningen, uden konkret interesse i udbudsforretningen, og bestå af medlemmer, der er sikret mod indflydelse fra tredjeparter.

Hvis det organ, der vælges, ikke er en domstol, skal det sikres at:

- klagerne har mulighed for at blive hørt og at deltage i alle led af sagsbehandlingen. Klageren skal endvidere have ret til at føre vidner.
- forhandlingerne om sagen skal kunne foregå i offentlighed, og
- beslutninger skal meddeles sammen med beslutningsgrundlaget.

Hvis det findes, at der har været tale om et brud på aftalen, skal der være mulighed for at ændre på det skete, og/eller at give økonomisk kompensation for eventuelt tab. Det påhviler også ethvert land, som har underskrevet GPA, at sørge for, at der findes hurtige og effektive metoder til at rette op på fejltagelser i udbudsforløbet for dermed at fastholde de kommercielle muligheder i forbindelse med udbuddet.

Dette system, der minder om de konfliktløsningsmekanismer, som – gennem netværk mellem myndighederne i Danmark og en række EU-lande, og det påbegyndte pilotprojekt i EU – bruges af Konkurrencestyrelsen, findes imidlertid ikke i GPA-regie uden for EU-landenes kreds. Der findes tilsyneladende ikke nogen praksis for at benytte sådanne mekanismer, ligesom det ikke har været muligt at spore nogen form for uformelt netværkssamarbejde med det formål at løse konflikter om reglerne mellem parterne i GPA-regie.

Det skal endelig bemærkes, at GPA for medlemslandene – men ikke for den enkelte virksomhed direkte – åbner mulighed for løsning af konflikter i WTO gennem paneler, herunder de såkaldte 'Settlement of Disputes' regler (artikel XXII:1). Processen er realistisk set alene brugbar til store og/eller mere principielle sager, og spørgsmål garanterer ikke på nogen måde en hurtig problemløsning, der kan bevare det 'kommercielle potentiale'.

Kontrol med overholdelse af aftalen – statistik og information

WTO-sekretariatet har ikke som Europa-Kommissionen et mandat til at følge implementering af aftalen eller af dens praktiske anvendelse. WTOs karakter af en mellemstatslig organisation spiller klart ind her, da der ingen overnationale beføjelser

er. Derfor er det medlemmerne selv, der kontrollerer hinanden, bl.a. gennem 'Reviews' i GPA komiteen. Indtil nu har 6 'lande' (EU og fem andre) indsendt oplysninger om implementering af aftalen. I oktober 1998 er man startet med reviews af de enkelte landes implementering samt diskussion af eventuelle problemsager (challenge procedures).

Der har været meget få tilbagemeldinger om brugen af de nationale klagebehandlingssystemer, men WTO påpeger, at det ikke nødvendigvis betyder at reglerne ikke er effektive, da de givetvis har en afskrækkende effekt.

I denne forbindelse skal det også understreges, at WTO-sekretariatet er meget tyndt besat (kvantitativt) på udbudsområdet, hvor i realiteten kun én sagsbehandler er direkte involveret. Til gengæld synes denne sagsbehandler at besidde gode kvalifikationer og tilsyneladende også ambitioner, som kunne fremmes ved hjælp af støtte fra særligt interesserede medlemslande.

Det kræves i aftalens artikel XIX:5, at der på årlig basis skal udarbejdes statistikker over indkøb dækket af aftalen. De statistiske oplysninger, der findes i WTO-sekretariatet over brug af aftalen, er imidlertid af ret begrænset omfang, og der kan på basis af de få data, der findes, kun tegnes et utydeligt billede af situationen. Derfor kan man vanskeligt få et overblik over anvendelse af aftalen fra centralt hold.

Med hensyn til kontrolmulighederne mærkes der en markant forskel til EU, bl.a. fordi Europa-Kommissionen i rollen som 'traktatens vogter' kan starte retssager ved Europa-Domstolen mod lande, der ikke overholder reglerne. WTO-sekretariatet kan ikke – på grund af WTOs position som en mellemstatslig organisation og på grund af GPAs karakter af en plurilateral aftale – spille en rolle, der bare ligner den, Kommissionen har. I stedet er løsning af konflikter om aftalen overladt til medlemslandene – enten i WTO eller i nationale organer - og til de procedurer, der i den forbindelse er fastsat i GPA.

Forventninger til revisionen

Ud over arbejdet i WTO-regie spiller samarbejdet mellem EU og USA en meget stor rolle for, hvor langt samarbejdet vil kunne gå. De to blokke stiller i stigende grad WTO-dagsordenen og på en række områder er aftaler mellem EU og USA de facto også blevet WTO-aftaler i og med at andre dele af verden har sluttet sig til transatlantiske aftaler.

Af særlig betydning er her den såkaldte Trans-Atlantic Business Dialogue (TABD), som er drivkraften i det atlantiske handelssamarbejde. Det er her virksomhedsledere fra begge sider arbejder med praktiske problemer – især problemer som kan give handelshindringer – og bl.a. diskuterer 'Government Procurement' Vedrørende GPA forventes 'Review and Improvement of Text' forhandlingerne afsluttet ultimo 1999. Forhandlingerne om dækningsområderne vil givetvis tage længere tid.

Medlemskredsen

Selv om det strengt taget ikke er i overensstemmelse med WTO-reglerne, er det blevet praksis, at lande, som ønsker at tilslutte sig WTO, også 'opfordres indgående' til at

underskrive GPA i forbindelse med medlemskabet. Letland har f.eks. accepteret denne forpligtelse, og det samme forventes at ske med Estland, Litauen, Bulgarien og Mongoliet. Det vides endnu ikke, om de store lande, som Rusland og Kina, vil acceptere samme forpligtelse, men forsøget på at få dem ind under GPA fra starten af WTO-medlemskabet vil blive gjort.

Et tegn på mulig interesse fra kinesisk side for at tilslutte sig aftalen er dog, at den kinesiske regering i marts 1999 meddelte, at den agter at søge en ny lovgivning om offentlige indkøb gennemført. Ifølge kinesiske medier indebærer dette, at alle former for offentlige indkøb af varer, tjenester samt bygge- og anlægsarbejder skal følge udbudsregler og at kontrakttildelingerne skal ske på basis af egentlige udbud. Der foreligger endnu ikke oplysninger om detaljerne i dette initiativ, ligesom det i øvrigt endnu ikke vides, i hvilket omfang Kina vil blive tilknyttet WTO på det generelle plan. I givet fald kunne man - for så vidt angår offentlige udbud - tænke sig, at Kina ville indføre en lovgivning på grundlag af UNCITRALs lovmodel af 1993 og 1994 henholdsvis om offentlige indkøb af varer, byggeri og tjenesteydelser. En sådan regulering kunne i givet fald være med til at bane vejen for en senere tilslutning til f.eks. GPA.

Man kunne endvidere forestille sig, at EU ville lægge pres på ansøgerlandene fra Øst- og Centraleuropa for at tilslutte sig GPA, bl.a. som en forberedelse på dette punkt til EU-medlemskab, men her er vurderingen fra WTO-sekretariatet, at selv om denne interesse er til stede, så er den begrænset i og med at disse lande gradvist skal indføre EUs udbudsregler som led i Europa-aftalerne. WTO vurderer derfor, at EU har større interesse i at få eksempelvis Kina og Saudi Arabien med under GPA.

Ansøgerlandene fra Øst- og Centraleuropa har indgået associeringsaftaler med EU på vejen mod fuldt medlemskab. Disse såkaldte Europa-aftaler er asymmetriske i den forstand, at de giver østlandene mere favorable betingelser end EU-landene. Således har virksomheder fra ansøgerlandene i en række tilfælde allerede i dag - som følge af Europa-aftalerne - adgang til EUs offentlige indkøbsmarkeder, mens det omvendte ikke gælder. Det er imidlertid klart, at alle ansøgerlandene inden et medlemskab kan træde i kraft skal have tilpasset deres nationale lovgivning til EUs *acquis communautaire*, inkl. udbudsreglerne, og det er næppe et område, hvor ansøgerlandene vil blive indrømmet hverken overgangsregler eller undtagelser.

Det skal også nævnes, at elleve lande (heriblandt Polen) og internationale organisationer har en rolle som observatører i forhold til GPA. Dette indebærer kun adgang til møder og dokumenter, men ingen forpligtelser i forhold til aftalen.

I forhold til den nuværende medlemskreds vil en eventuel udvidelse heraf primært kunne bestå af Kina og Rusland samt en række (udviklings)lande i Asien, Afrika og Latinamerika. Her er holdningen, at det ville være ønskeligt, at sådanne lande deltog, først og fremmest for gennem udbudsreglerne at sikre, at de får en bedre og mere effektiv administration, idet gode udbudsregler ses som et værn imod korrupsion og uhæderlig administration. Til gengæld har de pågældende landes interesse i at tilslutte sig aftalen været beskeden, og arbejdet med at indføre udbudsregler af internationalt tilsnit ses derfor ofte mere som et led i den tekniske bistand end som en direkte forberedelse til tilslutning til GPA.

Udvidelse af dækningen

Der er i øjeblikket ikke de helt store forventninger til udvidelse af det sektorvise dækningsområde for GPA i forbindelse med den igangværende revision. Der forventes derimod en indsats for at få ryddet op i de mange bilaterale undtagelser, som er kritiseret af WTO-medlemmer uden for GPA, da det ud over at stride mod det fundamentale MFN-princip også gør aftalen uigennemsigtig og uoverskuelig.

Det forventes også, at der i fremtiden bliver en bedre koordination af oplysninger om de medier, hvor meddelelse om udbud findes, og at disse oplysninger i højere grad samles – f.eks. på WTOs Internetside.

For så vidt angår spørgsmålet om forenkling af GPA kan det nævnes, at det er EU-Kommissionens opfattelse, at revisionen af GPA bl.a. bør resultere i en mere enkel aftale med en klarere – dvs. gerne en kortere og mere overskuelig – tekst: Kommissionen har – efter drøftelse med EU-medlemslandene - løbende forelagt konkrete ideer hertil i WTO-regie, jf. nedenfor.

Elektronisk tilbudsgivning

GPA forudsætter kommunikation af data ved hjælp af telex, telegrammer og fax. Den har ikke umiddelbart taget højde for anvendelse af informationsteknologi i forbindelse med indkøb. Med henblik på at sikre, at aftalen ikke kommer til at udgøre en hindring for anvendelse af moderne teknologi, er det forudsat, at der skal holdes regelmæssige konsultationer i WTOs komite vedrørende offentlige indkøb om udvikling i informationsteknologien og dens mulige anvendelse.

For de fleste af de lande, som er med under aftalen, skulle der ikke være de store vanskeligheder ved at øge den elektroniske tilbudsgivning. I EU er man i gang med at indføre den elektroniske tilbudsgivning via SIMAP-projektet, og i lande som USA, Norge og Singapore er den elektroniske tilbudsgivning vidt udbredt. Man kunne argumentere for, at øget anvendelse af elektronisk tilbudsgivning kunne gøre det vanskeligere for andre lande at slutte sig til aftalen. Problemet synes især stort for udviklingslandene, som i mange tilfælde i dag ikke har den nødvendige infrastruktur eller systematik i udbuddene.

Det skal bemærkes, at International Trade Centre (ITC, der 'ejes' af WTO og UNCTAD i fællesskab), aktivt søger at promovere indførelse af elektronisk tilbudsgivning i de udviklingslande, hvor organisationen arbejder.

Modelaftaler, de internationale organisationer og udviklingslandene

I UNCITRALs modellove fra 1993 og 1994, henholdsvis om offentlige indkøb af varer og byggeri samt om offentlige indkøb af varer, byggeri og tjenesteydelser, foreligger et forslag til den samlede retlige regulering af regelsæt for offentlige udbud. Disse regler er i deres grundsubstans de samme som de regler, der er grundlaget i GPA, og som de regler, der følges af store internationale organisationer som Verdensbanken og andre udviklingsbanker.

Der gøres i øjeblikket en betydelig indsats af ITC for indførelse af udbudsregler, baseret på UNCITRALs modellove fra 1993 og 1994 i udviklingslande, dels for at åbne markederne, dels for at give et bidrag til udvikling af en hæderlig og korruptionsfri offentlig administration. Nogle lande, som f.eks. Schweiz, har valgt at støtte dette arbejde finansielt i lande, som har en særlig interesse for schweiziske virksomheders leverancer.

ITC har udarbejdet et betydeligt materiale om anvendelse af UNCITRAL-modellen i udviklingslande (se bilag for eksempler).

Udviklingslandenes generelt ringe interesse i at tilslutte sig GPA synes at indicere, at denne gruppe af lande ikke mener, at de økonomiske argumenter, der blev nævnt i indledningen, gælder for dem. Det kan skyldes, at de mener, at en åbning af udbudsmarkederne primært vil betyde, at industrilandene får adgang til deres markeder, mens udviklingslandene ikke har tilsvarende muligheder for at levere til industrilandenes markeder for offentlige indkøb. Det skal bemærkes, at en del leverancer til udviklingslandene alligevel er omfattet af udbudsregler, idet alle leverancer finansieret af internationale donorer vil være omfattet af udbudsregler (der ofte ligner GPA-reglerne), hvilket indebærer, at modtagerlandene ikke har hånds- og halsret over valget af leverandører.

Udsigterne for Transparency-aftalen

WTOs ministerkonference besluttede i december 1996 at nedsætte en Working Group on Transparency in Government Procurement (WGTGP). Formålet var 'at gennemføre en studie i gennemsigtigheden i offentlig indkøbspraksis og at identificere elementer, der ville kunne indgå i en passende aftale'. En sådan aftale ville fastsætte de første multilaterale regler – om end af begrænset rækkevidde – om offentlige indkøb.

Med transparens menes i denne sammenhæng kun, at information om offentlige indkøbsregler og -praksis gøres umiddelbart tilgængelig for alle, som er interesserede heri. Det gælder selvsagt primært potentielle leverandører. Øget transparens kan dog også medvirke til at opmuntre til et mere åbent og konkurrencebetonet indkøb marked, og dermed indirekte medvirke til at øge markedsadgang. Spørgsmålet om øget anvendelse af informationsteknologi diskuteres i arbejdsgruppen, og det er oplagt, at elektroniske informationssystemer og indkøbsprocedurer kan medvirke til at øge transparensen og tilgængeligheden af informationer.

Alle WTOs medlemmer deltager i dette arbejde, og det gør naturligvis landegruppen noget mere heterogen end den gruppe, der har etableret GPA. Derfor er arbejds måden og ambitionerne anderledes. Det kan ikke forventes, at de detaljerede og præskriptive regler i GPA umiddelbart kan overføres til den brede landekreds, der udgør WTOs medlemmer, og der er således et godt stykke vej til opstilling af grundlaget for en ny generel (multilateral) aftale om gennemsigtighed i indkøb. Der udtrykkes dog fra forskellig side optimisme med henblik på at kunne nå til enighed om en aftale inden for en overskuelig tid. Men det understreges, at en aftale om gennemsigtighed i offentlige indkøb ikke (nødvendigvis) vil rumme elementer af markedsadgang. Specielt fastholder mange udviklingslande, at arbejdet med definition og applikation af transparens ikke har og heller ikke bør have sammenhæng med spørgsmålet om markedsadgang. Disse lande mener heller ikke, at arbejdsgruppen (WGTGP) overhovedet har mandat til at diskutere dette spørgsmål.

Det skal tilføjes, at det er Europa-Kommissionens vurdering, at en gennemførelse af en Transparency-aftale ikke vil medføre ændringer i EUs udbudsregler. Samtidig er det EUs politik at sikre, at der vil være overensstemmelse mellem en eventuel Transparency-aftale og GPA – også i den form, GPA måtte have efter afslutningen af forhandlingerne om en revision af denne aftale.

Det skal dog nævnes her, at man fra EUs side – uden at man på nuværende tidspunkt har lagt sig fast på formen herfor – på længere og mere overordnet sigt ønsker en multilateral aftale, som sikrer en liberalisering af de offentlige indkøbsmarkeder, jf. nedenfor under afsnit 3.

Udsigterne for GATS

GATT-overenskomsten og senere WTO-overenskomster har traditionelt beskæftiget sig med varehandel, men med den stigende betydning af tjenesteydelser i det internationale handelsbillede er det blevet utilfredsstillende, at handelen med vigtige tjenesteydelser som f.eks. telekommunikation og finansvirksomhed ikke er reguleret i særligt omfang i de internationale aftaler.

Der opstod derfor et ønske om – i begyndelsen især fra amerikansk side – at få tjenesteydelser med under de generelle internationale handelsaftaler. Dette ønske er stødt på modstand fra bl.a. udviklingslandene, som med deres gennemgående svage tjenestesektor ikke har set nogen interesse i at liberalisere området, fordi det ville give de udviklede lande fri adgang til deres markeder, uden at de kunne tilbyde noget til gengæld på de udviklede landes markeder.

I forbindelse med afslutningen af Uruguay-runden lykkedes det imidlertid alligevel at opnå enighed om den multilaterale GATS-aftale, som er en rammeaftale, der rummer en række generelle forpligtelser om handel med tjenesteydelser, herunder krav om gennemsigtighed og MFN-behandling.

Ud over de mere generelle principper bygger GATS på en såkaldt 'bottom-up' metode. Den indebærer, at der ikke er nogen forpligtelse for et WTO-medlem til at give markedsadgang og ligebehandling, før der er anmeldt konkrete forpligtelser – 'commitments' – i forhold til aftalen.

Handel med tjenesteydelser er ikke helt så entydig at definere som handel med fysiske varer. Derfor definerer GATS heller ikke begrebet 'handel med tjenester' som sådan. I stedet anføres fire forskellige måder, tjenester kan leveres på, nemlig:

- Grænseoverskridende levering af tjenester
- Forbrug af tjenester i udlandet
- Kommerciel tilstedeværelse i landet med henblik på levering
- Tilstedeværelse af personer med henblik på levering.

Leverancer af tjenesteydelser kompliceres naturligvis yderligere med den udbredelse af elektronisk handel, der er sket, og som forventes at ville ske i den kommende tid.

GATS undtager specifikt love og andre regler, der vedrører offentlige indkøb, fra MFN, national behandling og markedsadgang. I den forbindelse defineres offentlige indkøb som: *tjenester der indkøbes til brug for myndigheder uden tanke på videresalg med et kommercielt perspektiv*. Undtagelsen gælder dog ikke andre vigtige forhold i forbindelse med offentlige indkøb, herunder gennemsigtighed. Det indebærer f.eks., at et WTO-medlem er forpligtet til at gøre de andre WTO-medlemmer bekendt med eventuelle nationale regler vedrørende offentlige indkøb af tjenesteydelser, men det kan næppe fortolkes så langt som til, at de enkelte indkøb skal publiceres – endsize at der skal ske en annoncering inden for WTO-kredsen vedrørende sådanne indkøb. Under alle omstændigheder sker dette ikke, og det synes uantastet og derfor generelt accepteret.

Der er en yderligere vinkel til udbudsreglerne i forhandlingerne om GATS. Der findes således i GATS en opfordring til multilaterale forhandlinger om offentlige udbud af tjenesteydelser inden to år fra WTO-aftalens ikrafttræden.

Forhandlingerne synes imidlertid ikke at gøre fremskridt. Fra den til formålet nedsatte arbejdsgruppes side har man også understreget nødvendigheden af at koordinere indsatsen med arbejdet i arbejdsgruppen om Transparency in Government Procurement. I praksis betyder dette for mange lande, at der ikke er villighed til at bringe GATS-forhandlingerne fremad, før der foreligger en afklaring af, hvad transparensdrøftelserne ender med.

3. EUs overvejelser vedr. offentlige udbud i WTO

Generelt

Som nævnt foregår der allerede på nuværende tidspunkt en revision af GPA med henblik på en forbedring og forenkling af aftalen samt med henblik på at øge antallet af parter omfattet af aftalen. Sideløbende hermed føres der forhandlinger om fjernelse af diskriminerende foranstaltninger samt udvidelse af GPAs dæknings-/anvendelsesområde.

På denne baggrund har man inden for rammerne af GPA – i medfør af den automatiske 3-årige revisionsbestemmelse om yderligere forhandlinger med henblik på at forbedre aftalen og opnå den størst mulige udvidelse af dens anvendelsesområde - iværksat et "early review" af aftalen med det sigte at udforme GPA således, at den kan tiltrække flere deltagere. Det har i denne forbindelse navnlig været på tale at arbejde hen imod en simplificering af GPAs relativt komplicerede og tekniske bestemmelser om procedurer ved offentlige indkøb, som vel nok må siges først og fremmest at være tilpasset forholdene i højt udviklede lande.

Samtidig er der som nævnt ovenfor igangsat et arbejde vedrørende offentlige indkøb på to andre fronter i en bredere WTO- (og ikke alene GPA-) sammenhæng. Dette foregår dels i den såkaldte transparensarbejdsgruppe nedsat under WTO-ministerkonferencen i Singapore i december 1996, dels inden for rammerne af den internationale aftale om handel med tjenesteydelser (General Agreement on Trade in Services, GATS). Det er her forudsat, at der skal indledes drøftelser om offentlige indkøb af tjenesteydelser, jf. også ovenfor. Men GPA-reglerne omfatter som bekendt både varer og tjenesteydelser samt bygge- og anlægsarbejder.

Ændringsdrøftelserne inden for rammerne af GPA foregår på basis af diskussionsoplæg vedrørende forskellige aspekter af aftalen fra de interesserede deltagerlande. EU har i denne forbindelse spillet et central rolle og har løbende fremlagt nogle overordnede ideer til en forenkling og forbedring af GPA. Drøftelserne herom i EU foregår dels i art. 113-komiteen, dels i Kommissionens Rådgivende Udvalg for Offentlige Aftaler. EU har ligeledes og på lignende vis spillet en aktiv rolle i forbindelse med arbejdet i transparensarbejdsgruppen.

Samtidig foregår der i EU drøftelser om en revision af de interne fællesskabsregler. Disse drøftelser har en væsentlig længere tidshorisont, idet der forventes at gå op imod 3 år før holdningen til udvalgte emner er færdigbehandlet. Dette forhold – at det endnu ikke vides, hvorledes de fremtidige EU-regler på udvalgte områder vil blive udformet – har indtil videre krævet, at man ved drøftelserne af ændringer i GPA samtidig er opmærksom på, at man ikke herved på uønsket vis normerer indholdet af den kommende regelændring internt i EU. I samme forbindelse drøftes også spørgsmålet om adgangen til efter de eksisterende EU-regler at stille miljø- og arbejdsmiljøkrav samt krav om klausuler med socialt indhold i forbindelse med udbudsforretninger. Omfanget af adgangen hertil ligger ikke fast på nuværende tidspunkt.

Kommissionens dokument 22/99 af 18. januar 1999 til 113-komiteén ("New Round Preparation – Public Procurement"):

Kommissionen har den 18. januar 1999 fremlagt et udkast til forberedelse af de kommende WTO-forhandlinger vedrørende offentligt udbud for 113-komiteén til orientering og diskussion. Udkastet indeholder en grundig analyse af status quo samt Kommissionens bud på, hvilke fremtidige mål der bør søges opnået inden for offentligt udbud i WTO-regie.

Dokumentet er inddelt i en række afsnit:

- A: Baggrund,
- B: EU mål,
- C: Delvise skridt, der på kort og mellem sigt kan tages mod det langsigtede mål,
- D: Væsentlige nøglespørgsmål/resultater,
- E: Nøglespørgsmål vedrørende forberedelsen af 1999-ministerkonferencen,
- F: Nøgleskridt ved forberedelsen af 1999-ministerkonferencen,
- G: Resultater i en ny runde.

Relevante punkter fra de enkelte afsnit vil blive gengivet i det følgende.

A:

Under pkt. A anfører Kommissionen bl.a., at der ikke eksisterer multilaterale regler, som dækker offentligt udbud, idet GATT-overenskomstens art. III.8 og GATS art. XIII.I undtager offentligt udbud fra de mest basale WTO-principper. Derfor bliver mange regeringer ved med at fastholde udbudspolitikker og -fremgangsmåder, som er handelsforvridende.

Den plurilaterale aftale - GPA - dækker til dels dette tomrum, idet den bl.a. opstiller et sæt regler, som styrer medlemslandenes udbudsaktiviteter samt foreskriver markedsadgangsmuligheder. En række ikke uvæsentlige mangler ved aftalen er dog bl.a., at deltagelsen vedbliver med at være meget begrænset selv blandt udviklede lande, uden tegn på ændringer vedrørende dette forhold. Dette skyldes ifølge Kommissionen til dels, at den nuværende aftale opfattes som bureaukratisk og ufleksibel. Selv visse deltagerlande i GPA opfatter reglerne som for detaljerede og restriktive samt betvivler, at reglerne er eller bliver korrekt implementeret og håndhævet af andre medlemmer, især på regionalt (sub-føderalt) niveau.

Markedsadgangen i GPA er endvidere snarere betinget af reciprocitet end af MFN-princippet, og GPA kan derfor ikke ses som mere end en paraply dækkende en række bilaterale aftaler blandt deltagerlandene. Resultatet af dette fortsat sorte hul i de multilaterale WTO-regler er, at EU-virksomheder reelt ikke har adgang til markedsmuligheder i milliard-klassen, hverken hvad angår varer, tjenesteydelser eller bygge- og anlægsarbejder, og heller ikke har nogen lovformelig garanti herfor. Den bedste måde at gribe dette an på vil derfor være en fuldstændig markedsåbning på multilateral basis.

B:

EU har en væsentlig interesse i, at offentligt udbud i stigende grad indføres i WTO-disciplinerne samt i at få elimineret de nuværende undtagelser fra princippet om national behandling i GATT- og GATS-overenskomsterne.

Derfor er målet på længere sigt at opnå et enkelt sæt multilaterale regler om offentligt udbud baseret på principperne om national behandling og MFN. Dette kan endeligt nås:

- a) ved etableringen af en multilateral aftale om offentligt udbud og/eller
- b) ved at reducere anvendelsesområdet for de nuværende undtagelser vedrørende offentligt udbud i de generelle WTO-regler.

Inden for en kortere periode er det væsentligt, at de to igangværende multilaterale processer i WTO (Transparency og GATS) er sammenhængende og i overensstemmelse med hinanden, så det vil være muligt at føre dem sammen på baggrund af en ny runde for at opnå nævnte mål. Den tredje streng af den indbyggede dagsorden – GPA-reviewet – er i stigende grad ved at blive et separat emne. GPA vil næppe blive en multilateral aftale, bl.a. fordi ikke-medlemmer, med eller uden grund, vedbliver at betragte denne aftale med stor mistro.

C:

Processen mod målet – at opnå multilaterale regler – vil blive langvarig og trinvis, men ikke desto mindre bør og skal en række skridt tages i forbindelse med forberedelsen af en ny runde.

- Transparency-arbejdet med mandat i Singapore-konferencen bør fuldføres i 1999. Dette kan evt. resultere i en formel aftale, hvis resultater bør kunne anvendes på såvel varer som tjenesteydelser, og
- GATS-arbejdet bør fortsættes og fremskridt bør søges opnået i 1999,
- GATS- og Transparency-arbejdet bør sammenlægges på et tidspunkt, så en enkelt gruppe beskæftiger sig med multilaterale udbudsretlige emner dækkende både varer- og tjenesteydelsesvinkler.

D:

Transparens-arbejdsgruppen er begyndt at gøre gode fremskridt, og visse nøglemedlemmer nævner muligheden for at færdiggøre en formel transparensaftale i 1999. Det er dog væsentligt at mærke sig, at hvad der opnås enighed om i transparensammenhæng vedrørende horisontale emner (definition, anvendelses- og dækningsområde), og anvendelse af WTOs tvistbilægningssystem, vil danne præcedens for det fremtidige arbejde, herunder i GATS-sammenhængen. Dette taler for at anvende den fornødne tid til at opnå det bedste mulige resultat i stedet for at

stræbe efter hurtige løsninger, herunder om emner af særskilt interesse for EU, i håbet om at man kan genoptage emnet på et senere tidspunkt.

Det er væsentligt at notere sig, at der kan gøres meget i WTO, hvad enten det er i GPA eller i fremtidige multilaterale forhandlinger, ved at arbejde hen imod en løsning baseret på principper i lighed med den måde, hvorpå andre WTO-aftaler er blevet udformet og uden at det vil være nødvendigt at ændre EU-reglerne på området. Kunststykket vil være at afbalancere opretholdelsen af klare regler i EU med behovet for fleksible men meningsfulde WTO-regler, som tager hensyn til forskelligheden af udbudssystemer verden over.

E:

Hvis der skal ske fremskridt inden for transparensarbejdet er det nødvendigt med omhyggelig/forsigtig håndtering og timing, idet et for "hårdt skub" for tidligt i en ny runde vil kunne forstærke den nervøsitet, der allerede nu spores hos flere udviklingslande ved udsigten til – formentlig – at blive tvunget til at åbne sine offentlige indkøbsmarkeder for udenlandske konkurrenter.

EU vil derfor blive nødt til at overbevise andre – især udviklingslandene – om, at offentligt udbud bør sættes på dagsordenen for den kommende runde. I denne sammenhæng er det vigtigt, at EU accepterer – og gør klart – at introduktionen af markedsadgangsforpligtelser vil skulle indføres gradvist over tid, som det traditionelt har været fremgangsmåden på andre WTO-områder.

F:

I 1999 bør transparensarbejdet søges fuldført efter det ovenfor nævnte "træk", ligesom fremskridt i GATS-arbejdet bør søges, for at der kan opretholdes en høj og sikker profil for offentligt udbud i optakten til ministerkonferencen.

Alle GPA-medlemmer går ind for, at der skal gælde multilaterale bestemmelser vedrørende offentligt udbud, men de enkelte medlemmers mål er ikke nødvendigvis de samme som EUs mål (USA og Canada har få om nogen ambitioner vedrørende offentligt udbud på sub-føderalt niveau, og USA vil sandsynligvis søge at opretholde sine begunstigelser og undtagelser). Nylige tegn fra flere kanter tyder på en formindsket interesse i USA for en ny runde vedrørende offentligt udbud. Tæt koordination med andre nøgle-partnere – især Schweiz, Norge, Hong Kong og Singapore – men også med ikke-GPA-medlemmer, der er kendt som positive over for sådant arbejde i en ny runde, så som Australien, bør holde det fortsatte arbejde på sporet.

G:

Mens den endelige "ramme" for et enkelt sæt multilaterale regler om offentligt udbud, som måtte fremkomme i forbindelse med en ny runde, ikke er afgørende på dette tidspunkt, er indholdet det derimod. I enhver endelig aftale må EU presse på for et højt niveau af gennemsigtighed i offentligt udbud (som bygger på resultaterne af transparensarbejdsgruppens arbejde) sammenkoblet med et program for markedsåbning. Markedsåbning kunne ske ved en forhandlet tidsplan om a) at fjerne

undtagelser fra principperne om ikke-diskrimination (national behandling og MFN) og b) at udvide dækningen, formentlig ved at begynde på centralt niveau (central government procurement). I tillæg er det afgørende, at dette er sammenkoblet med effektive regler for at sikre håndhævelse heraf.

EUs initiativer vedrørende GPA

Ændringsdrøftelserne inden for rammerne af GPA er som ovenfor nævnt foregået på basis af diskussionsoplæg vedrørende forskellige aspekter af aftalen fra de interesserede deltagerlande. EU har i denne forbindelse i WTO-regie fremlagt en række dokumenter med ideer til en forenkling og forbedring af GPA (bl.a. vedrørende håndhævelses- og overvågningsmekanismer og statistiske indberetninger). Fremlæggelsen er sket efter drøftelser i Kommissionens Rådgivende Udvalg for Offentlige Aftaler, ligesom Konkurrencestyrelsen fra dansk side har udtalt sig om en række initiativer fra Europa-Kommissionens side vedrørende ”procurement methods og -procedures”.

4. Danske virksomheders problemer og erfaringer med GPA

I forbindelse med en vurdering af betydningen af GPA for dansk eksport, kan det være værd at sætte eksporten til de enkelte GPA-lande i et statistisk perspektiv.

Det er ikke muligt statistisk at belyse, i hvor høj grad dansk eksport går til den offentlige sektor i de enkelte eksportlande, endsige at belyse, hvorvidt den danske eksport er blevet mulig, fordi de pågældende ordrer er omfattet af internationale aftaler om offentlige indkøb.

Hvis man imidlertid går ud fra, at forholdet mellem eksporten generelt og salget under indkøbsregler til den offentlige sektor ikke varierer for meget fra land til land, kan man gennem den almindelige eksportstatistik få et billede af betydningen af de forskellige dele af verden.

Det kan først og fremmest slås fast, at største delen af dansk eksport er afhængig af EU og dermed af EU regler for markedsadgang m.v. I 1996 gik 65,6 pct. af al dansk eksport til EU-lande. Lægges man dertil eksporten til Norge, som er dækket af EU-regler på lige fod med EU-landene på langt de fleste områder, kommer man op på 71,6 pct.

Derfor må man også gå ud fra, at størstedelen af den danske udbudseksport er dækket ind af EU-reglerne, og det kan måske forklare, hvorfor interessen for disse regler er så meget større end interessen for GPA-reglerne, som tilfældet er.

Den danske eksport fordelte sig således på GPA-landene i 1996:

Land	Pct. af samlet dansk eksport
EU-lande	65,5 pct.
Norge	6,1 pct.
EØS-lande i alt	71,6 pct.
USA	4,1 pct.
Canada	0,4 pct.
Hong Kong	0,6 pct.
Japan	3,2 pct.
Korea	1,0 pct.
Singapore	0,4 pct.
Schweiz og Liechtenstein	1,5 pct.
Israel	0,3 pct.
GPA-lande i alt	83,1 pct.

Kilde: Danmarks Statistik.

Den danske handelsstatistik fortæller naturligvis ikke hele historien. Der sælges også i en række lande via danske datterselskaber, men om man vil anse dette for at være en

egentlig dansk eksport, som nyder godt af GPA-reglerne, eller om man vil anse det for at være en lokal forretning, er lidt af en smagssag, men i denne rapportes sammenhæng er salg via lokale datterselskaber ikke at anse som dansk udbudseksport.

Der findes en statistik på baggrund af den 'gamle' GPA, som giver et bud på sammenhængen mellem BNP og værdien af de offentlige indkøb, der blev foretaget efter GPA-reglerne, og dermed over disses tærskelværdier. Tallene er fra 1992 og derfor desværre langt fra aktuelle, men de giver formentlig fortsat et rimeligt godt bud på denne sammenhæng.

Land	Udbudskontrakter i pct. af BNP
Østrig	0,23
Belgien	0,19
Canada	0,49
Danmark	1,33
Finland	0,89
Frankrig	0,25
Tyskland	0,11
Irland	0,48
Israel	0,10
Italien	0,16
Japan	0,26
Luxembourg	0,27
Holland	0,40
Norge	0,69
Singapore	0,07
Sverige	0,53
Schweiz	0,28
UK	0,64
USA	0,49

Kilde: Law and Policy in Public Purchasing, Ann Arbor 1997.

Som nævnt vedrører tallene et enkelt år (1992), og man skal derfor være forsigtig med at drage for vidtgående konklusioner af tallene. Et enkelte, eller nogle få store, udbud i dette år kan påvirke tallene, men det er nok alligevel værd at bemærke, at tallet for Danmark er markant større end for andre lande.

For at bedømme åbenheden i de forskellige land, kan man også se på en statistik (for årene 1990-92), som viser, hvor stor en del af samtlige udbud over GPA-tærskelværdierne, der gik til indenlandske firmaer. Det skal bemærkes, at man for de daværende 12 EU-lande opgør kontrakter til virksomheder inden for EU som indenlandske. Statistikkerne for EU-landene er opgjort på denne måde, og det er ikke muligt at se i hvilket omfang, der har været tale om nationale leverandører eller om leverandører fra andre EU-lande.

På denne baggrund er der derfor ikke underligt, at de fleste af de 12 daværende EU-lande har en meget høj andel af indenlandske leverandører, men der er alligevel nogle markante forskelle. Tre mindre EU-lande, nemlig Danmark, Holland og Irland, har

hentet mellem ca. 15 og 20 pct. af leverancerne uden for EU, mens øvrige EU-lande stort set kun har leverandører fra EU-lande – herunder formentlig i høj grad fra deres egne lande. Helt ekstrem er situationen i Belgien, hvor statistikkerne viser, at ikke en eneste ordre under GPA er gået til virksomheder uden for EU. Men de store EU-lande, Tyskland, Storbritannien, Frankrig og Italien ligger også tæt på 100 pct. EU-leverancer.

Land	Udbudskontrakter til indenlandske firmaer
Østrig	41,5
Belgien	100,0
Canada	81,0
Danmark	71,9
Finland	69,1
Frankrig	96,5
Tyskland	99,1
Irland	81,2
Israel	25,6
Italien	96,7
Japan	85,1
Luxembourg	96,6
Holland	79,6
Norge	28,8
Singapore	65,1
Sverige	41,3
Schweiz	45,5
UK	99,5
USA	91,7
Hong Kong	2,5

Kilde: Law and Policy in Public Purchasing, Ann Arbor 1997.

Der er ikke nogen helt fast tendens i disse tal. Dog synes der generelt at være tale om mere lukkede systemer i de større lande, og så er der lande, som er særdeles åbne: Uden for EU i udpræget grad Hong Kong, men også Israel og Norge har en meget lav egenandel i leverancerne.

Kontakt til virksomheder

For at belyse danske virksomheders kendskab til WTO-reglerne om offentlige indkøb og indhente eventuelle synspunkter på reglerne og deres måde at fungerer på, har der været foretaget dels en telefonisk undersøgelse af et større antal virksomheder og dels en række interviews med et antal danske erhvervsvirksomheder og organisationer. Formålet har været at tilvejebringe et input til en dansk holdning til revisionen af GPA-aftalen fra de virksomheder, som arbejder med denne i praksis.

Der er ligeledes rettet henvendelse til en række danske ambassader og generalkonsulater i GPA-lande med henblik på at få en vurdering af danske virksomheders aktiviteter på disse udbudsmarkeder.

Det kan konkluderes, at kun meget få danske virksomheder kender og bruger reglerne i GPA, men at et større antal danske virksomheder forventer at orientere sig mere mod eksport til den offentlige sektor indenfor GPA-landene. I dette lys er det vigtigste måske heller ikke i første omgang, at virksomhederne kender reglerne, men at aftalen findes, og at den kan medvirke til at åbne markederne.

Der ville alligevel være fordele ved, at virksomhederne kender deres rettigheder og muligheder – og at de kender udbudsgivernes forpligtigelser samt klagesystemerne. Dette vil kunne medvirke til at få danske virksomheder til at fokusere mere på mulighederne og medvirke til at få reglerne til at virke bedre.

På grund af virksomheders forholdsvis beskedne kendskab til reglerne, er de danske ønsker til en revision af aftalen endvidere blevet suppleret af de relevante organisationers ønsker, og de 'common sense' holdninger, som på virksomhedernes vegne kan formuleres vedrørende mere gennemskuelige regler og bedre information om reglerne og deres anvendelse i praksis.

Telefon-undersøgelse

I alt 2314 danske virksomheder har oplyst, at de har eksport (privat eller offentlig) til USA, Canada, Japan, Hong Kong, Singapore, Korea, eller Israel. Af disse er 1179 blevet udvalgt og interviewet. Dette betyder, at omkring halvdelen af alle danske virksomheder, som er aktive på disse eksportmarkeder har været kontaktet. Med en så stor stikprøve ud af den totale population bliver konklusionerne i denne undersøgelse forholdsvis valide.

Af de 1179 har eller overvejer 17% af virksomhederne, 202 virksomheder, salg til de offentlige myndigheder i de nævnte lande. Forsigtigt sat betyder dette, at omkring 400 danske virksomheder i alt (populationen er dobbelt så stor som stikprøven) er aktive eller forventer at være aktive med salg til den offentlige sektor i GPA-landene.

Af de 202 virksomheder stammer mere end halvdelen af virksomheder fra fire brancher: jern- og metalbranchen, møbelindustri, IT/elektronik og finansiering og forretningsservice.

Ser man på virksomhedsstørrelsen fremgår det af nedenstående, at 63% af de virksomheder, som er aktive med salg til den offentlige sektor i disse lande, har under 100 ansatte. Selvom den danske erhvervsstruktur er domineret af mange små og mellemstore virksomheder, er det alligevel overraskende, at disse virksomheder kan begå sig på dette specialiserede marked.

Virksomhedsstørrelse	Andel af stikprøven
0-19 ansatte	23%
20-49 ansatte	23%
50-99 ansatte	17%
100-199 ansatte	10%
200-499 ansatte	15%
500-+	10%

Antal virksomheder	202
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Med hensyn til disse virksomheders salgskanaler ved eksport til de nævnte lande, svarer 45% af virksomhederne, at de sælger gennem agenter, 33% sælger direkte til den offentlige sektor i det pågældende land, mens 24% sælger gennem datterselskab. Virksomhederne har typisk afgivet flere svar på dette spørgsmål. Kendskabet til udbudene stammer også typisk fra agenter (34%), henvendelse fra kunder (16%), fra forhandlere (10%) eller fra søster/datterselskaber (8%). Internet anvendes kun i begrænset omfang.

De 202 virksomheder har følgende kendskab til GPA-reglerne:

Kendskab til GPA-reglerne	Andel af stikprøven
Kender til GPA-reglerne	28%
Kender ikke GPA-reglerne	64%
Ved ikke	8%
Antal virksomheder	202

Af de 202 virksomheder har således 28%, i alt 57 virksomheder, kendskab til GPA-reglerne. Af disse 57 virksomheder har følgende rent faktisk afgivet tilbud under reglerne:

Tilbudsafgivelse under GPA	Andel af stikprøven
Afgivet tilbud under GPA	28%
Ikke afgivet tilbud under GPA	60%
Ved ikke	12%
Antal virksomheder	57

Der er således kun 28% af de 57 virksomheder, svarende til 16 virksomheder, der har afgivet tilbud under GPA-reglerne. Størstedelen af de resterende 202 virksomheder afgiver tilbud (eller overvejer at give tilbud) til den offentlige sektor i de pågældende lande udenom GPA-reglerne.

De 16 virksomheder, der har erfaringer med GPA-reglerne, har oplevet erfaringerne således:

Erfaringer med GPA	Andel af stikprøven
Positive erfaringer	19%
Reglerne er OK	13%
Neutrale	13%
Regler for omstændige	6%
Ingen erfaringer	56%
Antal virksomheder	16

På trods af det sparsomme antal virksomheder med erfaringer med GPA-reglerne, er danske virksomheders erfaringer med disse generelt gode. Sammenlignet med erfaringerne omkring EU-udbud tyder talmaterialet op, at der er betydeligt færre

barrierer ved GPA-udbud, hvilket antageligt hænger sammen med, at de virksomheder, der eksporterer til den offentlige sektor i GPA-landene, er relativt erfarne eksportører.

De virksomheder, der har deltaget eller overvejer eksport til den offentlige sektor i GPA-landene, er blevet spurgt, om de forventer at orientere sig mere mod dette marked fremover. Hele 43% af 202 virksomheder forventer at orientere sig mere mod eksport til den offentlige sektor i disse lande. Dette udtrykker, at selv om virksomhederne ikke deltager i denne type udbudsforretninger idag, er de øjensynlig opmærksomme på de forretningsmæssige muligheder, som salg til GPA-landene indebærer.

Kun 2 virksomheder, der deltager i offentlige udbud i GPA-landene, har erfaring med at klage over udbudene, hvilket ikke er et tilstrækkeligt grundlag til at drage konklusioner på.

De virksomheder, der deltager eller overvejer at deltage i offentlige udbud til GPA-landene, ser følgende barrierer:

Type barriere	Andel af stikprøven
Bureaukrati	12%
Manglende information/indsigt	9%
Økonomi/prisniveau	7%
Favorisering af lokale producenter	7%
Sproglige kulturelle	4%
Afstand/leveringstid	3%
Danske virksomhed for lille	3%
Andet	6%
Ingen	14%
Ved ikke	40%
Antal virksomheder	202

De samme virksomheder er blevet spurgt om, hvilke forhold, der kunne forbedre danske virksomheders muligheder for deltagelse i den nævnte type udbud:

Forhold, der kan styrke virksomhedernes deltagelse i GPA-udbud	Andel af stikprøven
Større klarhed i reglerne	15%
Anvendelse af elektroniske udbud	11%
Større anvendelse af grønne klausuler	9%
Mere information	8%
Flere lande omfattet af aftalen	5%
Udformning og anvendelse af klageregler	3%
Andet	7%
Ingen mening	7%
Ved ikke	58%

Antal virksomheder	202
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Interviewundersøgelse

For at supplere telefon-undersøgelsen med mere kvalitative vurderinger, er der rettet henvendelse til 46 danske virksomheder (for en nærmere oversigt over virksomhederne, se bilagene til rapporten). Størstedelen er blevet foreslået af Dansk Industri.

Af disse 46 virksomheder oplyste ti, at de ikke bød på de pågældende markeder (de bød primært i EU eller eksporterede slet ikke) og syv oplyste, at de aldrig bød på offentlige udbud, men var aktive på markederne. Eksempelvis oplyste én virksomhed, at den aldrig direkte havde budt på en offentlig kontrakt, men hyppigt var med som underleverandør på oversøiske markeder gennem et netværk af agenter.

14 virksomheder oplyste, at offentlige udbud blev varetaget af datterselskaber eller lokale agenter, hvorfor de kun havde perifert kendskab til området, da det danske moderselskab udelukkende ville blive involveret, såfremt det skulle sikre, at der er tilstrækkeligt lager/produktion til store leverancer. Datterselskaberne var i flere tilfælde så "lokale", at de udenlandske offentlige myndigheder næppe ville være opmærksomme på at et tilbud kom fra en danskejet virksomhed. Dette var typisk tilfældet såfremt datterselskabet var resultat af et køb af en eksisterende lokal virksomhed.

To af de virksomheder, der var med i undersøgelsen, sendte vores henvendelse videre til oversøiske datterselskaber, men der kom ikke respons.

Mindre virksomheder benytter sig typiske af agenter / importører, mens de større virksomheder har oprettet datterselskaber eller er del af et multinationalt selskab. Med mindre den danske afdeling var yderst specialiseret i forhold til de øvrige afdelinger i et multinationalt selskab, ville den danske afdeling ikke blive involveret i forbindelse med offentlige udbud.

En virksomhed, som desværre ikke ville interviewes nærmere, bød på og vandt kontrakter hos offentlige nødhjælpsorganisationer i enkelte af de relevante lande, hvor destinationen for leverancen var et tredje land (eks. hospitalsudstyr til Afrika leveret gennem amerikanske nødhjælpsorganisationer).

Tre virksomheder beklagede, at de p.t. ikke havde tid til et møde eller skriftligt besvare evt. spørgsmål. To virksomheder svarede trods vedvarende opfølgning ikke på om de bød på offentlige kontrakter i de på gældende lande.

Af de resterende ni virksomheder blev der foretaget længere interview per telefon af varierende varighed med tre virksomheder og aftalt møde med fem, hvoraf et møde blev aflyst af virksomheden, men virksomheden besvarede senere spørgsmålene skriftligt.

Udover virksomhederne har det været rettet henvendelse til flere erhvervsorganisationer.

Fra Dansk Industri er der udover bistand til at finde virksomheder, som kunne interviewes vedrørende GPA-reglerne, fremsat en række synspunkter på revisionen af aftalen. Der er således et ønske om en udvidelse af den kreds af lande, som er omfattet af aftalen, specielt med Kina, der ses som det store, nye marked – også for offentlige indkøb. Desuden ønsker DI mere vægt på elektroniske udbudsforretninger og – information i fremtiden, ligesom man gerne ser en mere entydig annoncering af udbuddene.

Det Danske Handelskammer oplyste, at eftersom det var vanskeligt at få virksomheder til at byde på kontrakter uden for Danmark, koncentrerer de sig om offentlige udbud i Sverige og ikke på oversøiske markeder.

Fra rådgiverorganisationer har Praktiserende Arkitekters Råd gjort opmærksom på, at det mest interessante udbudsområde er det danske, at EU-området har nogen interesse for de danske arkitekter, men at foreningen ikke havde nogen speciel interesse i eller synspunkter på GPA-landene uden for EU. Får danske arkitekter ordrer uden for EU, vil det tilsyneladende næsten altid være i forbindelse med internationale arkitektkonkurrencer, der under alle omstændigheder ville blive udbudt – GPA-regler eller ej.

Fra Foreningen af Rådgivende Ingeniører (FRI) blev det slået fast, at *internationale aftaler om udbud af offentlige indkøb blandt alle virksomheder i alle de lande, som er omfattet af aftalerne, har kun en begrænset direkte forretningsmæssig betydning for producenter af tjenesteydelser uden for udbudslandet*. Arkitektbyråder og rådgivende ingeniørtjenester leveres kun grænseoverskridende, når dette sker efter et udtrykkeligt ønske fra udbudsgiver om internationale konkurrence, siger FRI. Foreningen siger også, at hvis en dansk tjenesteyder er interesseret i et givet nationalt marked, vil det blive betjent via etableringer på dette marked.

FRI siger dog også, at de internationale aftaler har stor betydning for udbuddene, men især på grund af den betydning, de har på de nationale markeder. Da GPA for Danmarks vedkommende er implementeret via EU-reglerne, vil betydningen af de internationale aftaler på det danske marked i realiteten være bestemt af EU-reglerne og ikke af GPA.

Foreningen understreger, at den nuværende GPA medførte en række uønskede ændringer af EU-direktiverne om offentlige udbud. For det første gjorde GPA EUs grænseværdier komplicerede (fordi de er 'oversat' fra SDR til Euro), og samtidig gjorde begrænsningerne i GPAs dækning udbudsmarkedet mere uoverskueligt.

Desuden peger FRI på, at indførelsen af bestemmelser vedrørende 'teknisk dialog' (se oven for i rapporten) har været med til at give store problemer i EU-direktiverne og dermed i praksis.

FRI konkluderer derfor, at der i forbindelse med GPA bør holdes skarpt øje med konsekvenserne for EU-reglerne, og at ændringer i GPA ikke må føre til forringelser i EUs udbudsdirektiver. Endelig siger foreningen, at der for tjenesteydelser bør ske en opjustering af tærskelværdierne. Justeringen bør medføre en fordobling af tærskelværdierne for tjenesteydelser – til ca. Euro 400.000. Årsagen er, at

omkostningerne ved at udarbejde tilbud er så store, at det ved mindre udbud simpelthen ikke er realistisk at forvente, at nogen vil gøre sig ulejlighed med at byde i andre lande.

Resultater af interview-undersøgelsen

Overordnet bekræftede undersøgelsen, at kendskab til GPA er begrænset. Selv de virksomheder, som var aktive på oversøiske markeder i forbindelse med offentlige udbud eller, som i et tilfælde, hvor virksomheden tilmed udelukkende solgte til offentlige myndigheder, kendte ikke til aftalen.

Hvordan virksomhederne så mulighederne var delte. Blandt det flertal af virksomheder, som enten aldrig havde forsøgt at byde eller vundet et udbud, var der en klar skeptisk holdning. Det var "spild af tid" at forsøge og kontrakttildelingen "altid var givet på forhånd", eksempelvis gennem præcise specifikationer, der favoriserer bestemte leverandører (både nationale, men også udenlandske leverandører, jf. nedenfor vedrørende japanske virksomheders dominans). En virksomhed havde forsøgt at få Udenrigsministeriets assistance i forbindelse med udbud, hvilket "altid har vist sig at være forgæves". Vedkommende virksomhed havde desuden en enkelt gang bedt en eksportstipendiat i Canada om assistance til en tender, som "blev tabt, da stipendiaten ikke havde læst udbudsmaterialet ordentligt". Virksomheden havde ikke siden budt på offentlige kontrakter.

Kendetegnende for de virksomheder, som var aktive i forbindelse med offentlige udbud på oversøiske markeder, var en mere pragmatisk holdning – man kendte spillets uskrevne regler og spillede med. Dette ses eksempelvis ved spørgsmålet om hvordan man får succes på området: Man skal kende til kommende udbud og påvirke myndigheden inden udbudsmaterialet udarbejdes. En virksomhed, aktiv i USA, Canada, Schweiz, Polen og Kina, oplyste således at den forsøgte, ofte med held, at sørge for "at vinde inden leverancen kommer i udbud". Alle virksomheder understregede i den forbindelse betydningen af at have lokal tilstedeværelse, enten gennem datterselskab, agent eller konsulent, som sørger for kendskab til udbud inden de offentliggøres formelt.

Flere virksomheder peger på bureaukratiet, som en væsentlig barrierer. Ligesom EU-udbudsreglerne blandt mange danske virksomheder har fået et ry, som værende meget komplicerede, er dette også gældende for GPA-reglerne.

Mht. udbudsproceduren kendte kun få af virksomhederne til de forskellige former i GPA, men mange mente, at det normalt drejede sig om en måneds frist rent formelt. Dette var dog ret underordnet, da det ofte er for sent. Man skal kende til et udbud inden det finder sted, jf. ovenstående.

Tekniske standarder og specifikationer

Med hensyn til specifikationer i udbudsmaterialet så virksomhederne de største muligheder for diskrimination. Specifikationerne er ofte særdeles besynderlige. Eksempelvis i Fjernøsten var japanske virksomheder så veletablerede og havde opbygget et nært samarbejde med regionens myndigheder, at specifikationerne udelukkede alle andre virksomheder end de japanske.

De danske virksomheder understregede, at det var vigtigt at have al dokumentation og certifikater klar og sørge for løbende at opdatere oplysningerne skulle der ske den mindste ændring i produktet. Man må følge med i "hvad, der tales om i verden", så man er klar med de rette dokumentationer – man må eksempelvis ikke lade sig overraske over krav om miljøcertifikater og lignende. Denne ofte omfattende dokumentation skal foreligge på de lokale sprog.

Flere virksomheder peger på manglende information og manglende indsigt, som en væsentlige barriere for deltagelse i offentlige udbud i GPA-landene.

Mange markeder i Fjernøsten er åbne på papiret, men der er "formidable barrierer" i realiteten. Singapore er blevet nævnt som et godt eksempel herpå. Landet virker umiddelbart åbent, men lokale karteller – som de offentlige myndigheder kender til og ofte ønsker – er de eneste, der kan vinde offentlige kontrakter, hævdes det. Virksomhederne understreger derfor vigtigheden af at finde lokale partnere eller købe lokale virksomheder, men fastholde deres nationale identitet.

Klagesystemerne

Mht. at klage over en uretfærdig eller uklar behandling havde kun få virksomheder erfaringer med at klage. Flere virksomheder havde "været tæt på" at klage, men ingen ville "ødelægge et godt forhold til kunden, det er svært at anklage kunden". Det er den samme barriere, "black-listning", der ses som en begrundelse for ikke at klage i relation til EU-udbud.

Alle virksomheder mente, at *en mere uformel klageprocedure inden tildelingen af kontrakter givetvis ville være ønskværdig*. En virksomhed var eksempelvis blevet groft diskrimineret i Fjernøsten, men havde været i stand til at vinde alle efterfølgende udbud gennem et vedholdende pres på relevante ministerier og ved Udenrigsministeriets hjælp. Samme virksomhed understregede naturligt nok, at det kræver en "stor investering og tålmodighed", at etablere sig på denne måde. Kun én virksomhed forsøger regelmæssigt at få begrundelse for afslag, men "får det sjældent".

Mht. hjælp fra offentlige myndigheder var der nogen ros til Udenrigsministeriet, da det ofte var behjælpelig med certifikater og at finde rette dokumentation. De lokale danske ambassader var noget mere vanskelige at arbejde med, da de "skal finde en balance mellem at hjælpe den danske virksomhed og fastholde gode relationer til myndighederne i det land ambassaden befinder sig". Fra organisatorisk side nævner virksomhederne udelukkende DI's seminarer og klubber, hvor der er et stort erfaringsgrundlag, som kan og bliver benyttet.

Konklusion mht. interview af danske virksomheder.

Det kan være noget vanskeligt at konkludere ud fra de kvalitative svar, virksomhederne har givet, men det synes at være et gennemgående træk, at lokal tilstedeværelse, en pragmatisk holdning til udbudsprocedurerne og de offentlige myndigheder samt langsigtede investeringer og strategier er nødvendigt for at få succes på området. En opstramning af de formelle klageprocedurer synes ikke at være

særligt ønsket, men derimod synes etableringen af et uformelt klagesystem, der kan hjælpe virksomhederne med vanskeligheder samtidig med, at de kommercielle muligheder bevares, at være langt mere ønsket af virksomhederne.

5. Sammenfatning af erhvervsønsker i forbindelse med den kommende revision af GPA.

På baggrund af de input, der er givet til denne undersøgelse fra virksomheder, fra brancheorganisationer og fra Følgegruppen for EU-udbud, kan en række synspunkter identificeres som vigtige i forbindelse med en revision af GPA.

Der er først og fremmest brug for en forbedring og forenkling af GPA-reglerne, så de bliver mere overskuelige og anvendelige. Hertil kommer, at GPA bygger på en række grundlæggende principper om offentlige indkøb, herunder om ligebehandling, gennemsigtighed og ikke-diskrimination m.v. Disse principper er i sig selv klare nok, men bør udtrykkes i selve aftaleteksten.

Endvidere giver aftalen et forvirrende billede på grund af de mange bilaterale undtagelser vedrørende markedsadgang i GPA. De kan næppe helt fjernes, da undtagelserne typisk er udtryk for manglende gensidighed fra den anden parts side på bilateralt plan, men en kritisk gennemgang af undtagelserne, eventuelt inkl. deres økonomiske betydning, kan overvejes med henblik på at skabe forenklinger. Det vil være naturligt fra dansk side specielt at satse på en forenkling i forhold til de undtagelser, der vedrører Danmark (eller EU som blok) med henblik på at skabe større klarhed og – ikke mindst – større markedsadgang.

Der er ligeledes et meget stort behov for at få skabt en mere effektiv form for meddelelser om udbuddene, så de bliver overskuelige for virksomhederne. Det synes naturligt at bygge på de tanker om elektronisk meddelelse af udbud, der foregår i EU.

Der er fra erhvervsorganisationer udtrykt ønske om en øget anvendelse af elektroniske udbud og elektronisk tilbudsgivning. De nye elektroniske muligheder, og især Internettets store udbredelse, gør det naturligt at benytte sig af de muligheder, som ligger der. Disse muligheder var langt mindre kendte og fremtrædende, da den nugældende aftale blev forhandlet på plads. Samtidig kan det bemærkes, at med den medlemskreds der findes i GPA nu, og som kan forventes i tiden fremover, skulle det ikke være vanskeligt at benytte de elektroniske former i stort omfang, ligesom det næppe umiddelbart vil betyde nogen konkurrenceforvridning mellem landene.

Der er fra erhvervsside rejst ønske om en udvidelse af medlemskredsen. Dette punkt er ikke til forhandling i forbindelse med selve revisionen, men er dog et helt overordnet mål i sig selv. Det er som nævnt ovenfor gældende WTO-politik, at nye medlemslande automatisk opfordres til at tilslutte sig GPA. Denne fremgangsmåde – at betragte medlemskab af WTO og GPA i sammenhæng – bør fortsættes og har allerede i et vist omfang indebåret, at visse nye medlemmer i WTO har forpligtet sig til at tiltræde GPA. Om fremgangsmåden vil blive generelt anerkendt, kan kun fremtiden vise. Blandt de lande, der kunne komme på tale som nye WTO-medlemmer, er det især Kina og i mindre grad Rusland, der står på den danske ønskeliste, men disse lande har hidtil været afvisende over for at knytte udbudsretlige forpligtelser til et medlemskab af WTO. De østeuropæiske lande vil for de flestes vedkommende i løbet af kort tid komme under EUs regler, enten fordi de bliver medlemmer af EU, eller fordi de er forpligtet til at indføre reglerne i større eller mindre omfang under Europa-aftalerne.

Den ultimative løsning på dette problem samt det helt centrale ønske om øget markedsadgang inden for offentlige indkøb vil være at indgå en generel, multilateral aftale (dækkende alle WTO-medlemmerne), om offentlige indkøb – og især vedrørende markedsadgang i forbindelse med de offentlige indkøb. Det ser dog ikke på nuværende tidspunkt ud til at kunne lykkes før tidligst i forbindelse med en helt ny WTO-runde i det nye årtusinde. I mellemtiden vil det være vigtigt at sikre en konsistens mellem på den ene side revisionen af GPA (der i denne omgang således må forventes at forblive en plurilateral aftale) samt forhandlingerne om Transparency-aftalen og indkøb af services (GATS). Dette vil til sin tid kunne medvirke til mere klare og konsistente regler på alle områder – og medvirke til at øge mulighederne for i det hele taget – i en eller anden form - at få en fuldt dækkende, multilateral aftale om offentlige indkøb i WTO.

Også spørgsmålet om mulige ændringer, der kan føre til forringelser i EU-direktiverne er rejst som et problem. Derfor bør der holdes et skarpt øje til konsekvenserne for EU-direktiverne under forhandlingerne.

Spørgsmålet om anvendelse af tekniske standarder og specifikationer på en protektionistisk måde er nævnt fra virksomhedsside. Der bør derfor i højere grad fokuseres herpå, herunder at gældende forpligtelser efter GPA art. VI – hvorefter bl.a. internationale standarder så vidt muligt anvendes, hvor de findes – overholdes. Eventuelle reviderede regler herom må ikke føre til en forringelse af det nuværende danske beskyttelsesniveau på miljø- og arbejdsmiljøområdet.

Der er behov for mere enkle og effektive klagemuligheder. Det vil formentlig bedst kunne ske parallelt til de netværksløsninger, der nu opbygges i forbindelse med EU-udbud, da mulighederne for at ændre på de formelle klagemuligheder i GPA må vurderes at have lange udsigter.

Man kan i denne forbindelse også pege på det forslag, som EU har sendt til parterne i GPA om uafhængige nationale organer, der bl.a. skal fungere som hurtigtvirkende og uformelle kontaktpunkter i forbindelse med vanskeligheder ved udbudsprocedurer. Desuden skulle sådanne organer give bistand til kontraktparter, kunne intervenere og checke udbudspraksis samt behandle klager.

Spørgsmålet om 'grønne udbud' rejses oftere og oftere. Det er ikke et punkt, der i særligt omfang er rejst fra erhvervslivet i forbindelse med denne undersøgelse. Punktet skal alligevel nævnes her, fordi det har en politisk bevågenhed, og fordi man fra officiel dansk side formentlig vil have brug for en holdning til, hvordan miljøregler og miljøstandarder kan eller bør indgå i en revideret GPA.

Bilag.

1. Grænseværdier under GPA

Beløb i SDR.

Kilde: Internettet <http://www.wto.org/wto/govt/tresh.htm>

September 1998.

Anneks 1: Centrale regeringsmyndigheder

Land	Varer	Tjenester	Bygge- og anlæg
Canada	130,000	130,000	5,000,000
EU	130,000	130,000	5,000,000
Hong Kong, Kina	130,000	130,000	5,000,000
Israel	130,000	130,000	8,500,000
Japan	130,000	130,000	4,500,000*)
Korea	130,000	130,000	5,000,000
Liechtenstein	130,000	130,000	5,000,000
Aruba (Holland)	130,000	130,000	5,000,000
Norge	130,000	130,000	5,000,000
Singapore	130,000	130,000	5,000,000
Schweiz	130,000	130,000	5,000,000
USA	130,000	130,000	5,000,000

*) Arkitektydelser: 450,000

Anneks 2: Myndigheder under centralregeringsniveau

Land	Varer	Tjenester	Bygge- og anlæg
Canada	355,000	355,000	5,000,000
EU	200,000	200,000	5,000,000
Hong Kong, Kina	200,000	200,000	5,000,000
Israel	250,000	250,000	8,500,000
Japan	200,000	200,000	15,000,000*)
Korea	200,000	200,000	15,000,000
Liechtenstein	200,000	200,000	5,000,000
Aruba (Holland)	-	-	-
Norge	200,000	200,000	5,000,000
Singapore	200,000	200,000	5,000,000
Schweiz	200,000	200,000	5,000,000
USA	355,000	355,000	5,000,000

*) Arkitektydelser: 1,500,000

Anneks 3: Andre myndigheder, herunder især forsyningsvirksomheder

Land	Varer	Tjenester	Bygge- og anlæg
Canada	355,000	355,000	5,000,000
EU	400,000	400,000	5,000,000
Hong Kong, Kina	400,000	400,000	5,000,000
Israel	355,000	355,000	8,500,000
Japan	130,000	130,000	15,000,000*)
Korea	450,000	450,000	15,000,000
Liechtenstein	400,000	400,000	5,000,000
Aruba (Holland)	400,000	400,000	5,000,000
Norge	400,000	400,000	5,000,000
Singapore	400,000	400,000	5,000,000
Schweiz	400,000	400,000	5,000,000
USA	250,000 eller 400,000	250,000 eller 400,000	5,000,000

*) Arkitektydelser: 1,500,000

2. Delstater i USA der er omfattet af GPA

GPA omfatter som nævnt ikke alene det centrale regeringsniveau, men også niveauer herunder. I USA har den føderale regering ikke kunnet binde delstaterne på dette område, og derfor har kun en del af dem valgt at være med i aftalen. Det gælder i alt 37 delstater, som er nævnt nedenfor. Billedet kompliceres dog yderligere af, at det ikke er alle myndigheder i de pågældende delstater, som er omfattet af aftalen. Detaljerne herom fremgår af annekserne til GPA.

Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Idaho
Illinois
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi

Missouri
Montana
New York
Nebraska
New Hampshire
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Texas
Utah
Vermont
Washington
Wisconsin
Wyoming

3. Eksempler på ITC arbejde i udviklingslandene

International Trade Centre (ITC) arbejder som nævnt i rapporten bl.a. med udbredelse af gode udbudsregler i udviklingslandene.

I den strategi, der anvendes, indgår en analyse af de eksisterende udbudssystemer i det pågældende land. Denne analyse leder til en identifikation af problemer i det nationale udbudssystem. ITC tilbyder udviklingslandet en række diagnostiske værktøjer til undersøgelser af såvel processer som personale, og der anvendes et standard kompendium for udbudssystemer (se nedenfor).

Efter analysen starter man med målrettet teknisk bistand, som bl.a. sigter mod at reformere de eksisterende systemer, herunder de lovmæssige rammer, institutionelle og operationelle aspekter. Desuden arbejdes der med de menneskelige ressourcer i form af træning og karriereplanlægning.

ITC anvender i denne proces modelsystemer for udbud (UNCITRAL) og desuden nu i høj grad elektroniske handelssystemer. Til træningen har man et modulopbygget træningssystem.

ITCs modelkompendium har følgende indhold (her på engelsk):

1. Application and Scope of Procurement
2. Public Goals/Policies
3. Transparency
4. Accountability
5. Competitive Procedures
6. Qualifications
7. Non-discrimination
8. Value for Money
9. Preferences
10. Solicitations

11. Responsiveness/Evaluation
12. Award/Performance/Remedies
13. Tendering
14. Restricted Tendering
15. Requests for Proposal
16. Selective Two-Stage Tendering
17. Competitive Negotiations
18. Requests for Quotations
19. Single Source Procurement
20. Other Methods and Procedures
21. Legal Environment

ITCs træningsmoduler vedrører:

1. Determining Requirements
2. Analysing Supply Markets
3. Appraising Suppliers
4. Developing Supply Strategies
5. Preparing the Contract
6. Sourcing
7. Negotiating
8. Managing the Supply Contract
9. Managing International Logistics
10. Managing Inventory
11. Measuring Performance in Supply Management
12. Exploring the Corporate Environment
13. Understanding the National Environment

4. Personer, organisationer og virksomheder kontaktet i forbindelse med denne undersøgelse

Merete Rasmussen, KonkurrenceStyrelsen
 Vibeke Dumrath, KonkurrenceStyrelsen
 Henriette Søltøf, Dansk Industri
 Anita Wagner, Det Danske Handelskammer
 Peter Westerdorff, Håndværksrådet
 John Cederberg, Foreningen af Rådgivende Ingeniører
 Keld Møller, Praktiserende Arkitekters Råd

Vesile Kulacoglu, WTO, Genève
 Luis Ople, WTO, Genève
 Jany Barthel-Rosa, WTO, Genève
 Wayne Wittig, International Trade Centre, Genève
 Klaus Rostell, Den Danske Repræsentation, Genève

Jens Viberg, DG XV, Europa-Kommissionen
 Petra Smulders, Phare, Europa-Kommissionen

Danmarks Statistik
 Trade Directorate, OECD

Den Danske Ambassade i Washington, DC, USA
 Den Danske Ambassade i Ottawa, Canada
 Den Danske Ambassade i Warszawa, Polen
 Den Danske Ambassade i Tokyo, Japan
 Den Danske Ambassade i Seoul, Korea
 Det Danske Generalkonsulat i Los Angeles, USA
 Det Danske Generalkonsulat i New York, USA
 Det Danske Generalkonsulat i Hong Kong, Kina
 Det Danske Generalkonsulat i Zurich, Schweiz

Virksomheder:

ABB Energi og Industri A/S	Haldor Topsøe A/S
ADtranz Danmark A/S	HOH Vand & Miljø A/S
Ambu International A/S	ISS A/S
Ansaldo Vølund A/S	Kompan A/S
Artema S & W Medico Teknik A/S	Krüger A/S
B&K Medical A/S	Labofa
Coloplast A/S	Lundbeck A/S
Crisplant Ltd.	Løvens Kemiske Fabrik
Dameca A/S	MD Foods
Danfoss A/S	Modulohm
Danisco Foods	Novo
Danogips A/S	Phønix Contractors A/S
Dantec Medical A/S	Polystan A/S
Det Danske Stålvalseværk A/S	Roulunds Fabriker A/S
Fibertex A/S	Sahva A/S
FLS Miljø A/S	SEMCO A/S
Fredericia Stolefabrik A/S	SIS International A/S
Fritz Hansen A/S	Snedkermester Niels Roth
Gar-Tek	Superfos Construction
GN Danavox as	Tinby A/S
GN Netcom	Vestas Danish Wind Technology A/S
GN Nettetst as	Viking Life-saving Equipment A/S
Grundfos A/S	Aalborg Industries A/S

Offentlige indkøbsregler i WTO

**Delrapport 2: Danske virksomheders
muligheder ved offentlige indkøb i en
række WTO-lande**

Forord

Den stigende globalisering afføder en stigende samhandel mellem landene og mellem kontinenterne. Dette gælder såvel den private handel samt den handel, der sker på det offentlige kontraktmarked. Indenfor WTO er det offentlige indkøb reguleret af Government Procurement Agreement, GPA-aftalen. Udover samtlige EU-lande har 10 andre lande underskrevet denne aftale, heraf de vigtigste af Danmarks oversøiske samhandelslande.

WTO planlægger i løbet af 1999 en generel revision af GPA-reglerne. Konkurrencestyrelsen, der er den ansvarlige danske myndighed indenfor dette område, har på denne baggrund taget initiativ til nærværende rapport.

Rapporten har to formål. For det første skal den skabe et markedskendskab for de danske virksomheder, der overvejer at påbegynde eksport til den offentlige sektor i GPA-landene, eller de virksomheder, der kun har begrænsede erfaringer på dette marked. Da der ofte er tale om markeder, der er meget forskellige – både kulturelt, økonomisk og politisk – fra danske forhold, vil en grundig forberedelse og gode kontakter på de pågældende markeder være en forudsætning for at få succes. For det andet skal rapporten skabe et overblik over danske virksomheders erfaringer på området med henblik på at tilvejebringe en dansk holdning til den kommende revision af GPA-reglerne. Dette er sigtet med delrapport 1, hvor resultaterne af en række interviews, der har været foretaget med brancheorganisationer og virksomheder, og resultaterne fra en telefoninterview undersøgelse med et større antal danske virksomheder, præsenteres. Interviewene har bidraget til at skabe et generelt billede af de danske virksomheders erfaringer med GPA-reglerne med henblik på at udforme anbefalinger til revisionen af reglerne. Delrapport 1 indeholder ligeledes nogle overordnede betragtninger om det offentlige indkøbsmarked samt en beskrivelse af WTO-reglerne om offentlige indkøb og EUs overvejelser vedrørende offentlige udbud i WTO.

Delrapport 2 har en kort oversigt over WTO-reglerne og indeholder tillige konkrete beskrivelser af de for Danmark 8 mest relevante lande udenfor EU, der er omfattet af GPA-reglerne. Det drejer sig om USA, Japan, Hong Kong, Singapore, Korea, Schweiz, Canada og Polen. For en nærmere beskrivelse af markedsmulighederne indenfor EU henvises til Konkurrencestyrelsens tre guider, Det offentlige udbudsmarked i EU, for henholdsvis tjenesteydelser, varer og bygge- og anlægsområdet.

Delrapport 2 er udarbejdet for Konkurrencestyrelsen af direktør, cand.scient. pol. Hans Martens, Martens International Consulting, S.L. Konkurrencestyrelsen takker Hans Martens for et godt samarbejde i denne anledning.

Konkurrencestyrelsen, juli 1999

Finn Lauritzen
Direktør

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1. Offentlige indkøb i WTO-regié

1.1 Indledning

Det offentlige indkøbsmarked er enormt. Det skønnes alene i EU-landene at udgøre omkring 5.000 milliarder kroner om året. Hvis man dertil lægger de lande, som er omfattet af WTO-aftalerne og de udbud, der foregår gennem internationale organisationer som EU, Den Europæiske Bank for Genopbygning og Udvikling, Den Europæiske Investeringsbank, Den Nordiske Investeringsbank, Verdensbanken og de mange andre internationale udviklingsbanker og bistandsorganisationer bliver tallet formentlig fordoblet.

WTO-reglerne undtager generelt offentlige indkøb fra sit anvendelsesområde. Der er imidlertid vedtaget et regelsæt om offentlige indkøb, Government Procurement Agreement eller GPA. Ikke alle indkøb til den offentlige sektor er omfattet af indkøbsreglerne, men en række kilder anslår, at der under WTO-aftalen om offentlige indkøb er åbnet for konkurrence til en værdi af over 2,5 trilliarder kroner årligt.

Konkret betyder GPA ikke mange ændringer for den offentlige sektor i Danmark, der længe har været underlagt EUs udbudsregler. Principperne om/for international konkurrence er således allerede fastlagt, i hvilken forbindelse GPA alene øger antallet af potentielle leverandører. Derimod øger GPA danske virksomheders muligheder for at eksportere varer til den offentlige sektor i de lande, der er omfattet af aftalen.

Aftalen omfatter fortrinsvist rige lande, nemlig de 15 EU-lande og 10 andre lande, heriblandt USA og Japan. Ingen udviklingslande har på nuværende tidspunkt tilsluttet sig internationale aftaler om offentlige indkøb, jf. nedenfor.

1.2 Danske virksomheder og internationale aftaler

Udbudsreglernes sigte er især at stræbe efter integration mellem markederne for offentlige udbud i de enkelte lande og opnå effektiv konkurrence, herunder at den offentlige sektor i den forbindelse følger markedsøkonomiske principper i sin indkøbspolitik og ikke benytter politisk baserede kriterier for sine afgørelser. Formålet med konkurrencen er både at tilgodese og ligestille virksomhederne og at sikre, at offentlige indkøbere får så høj kvalitet for pengene som muligt. Integrationsformålet er udmøntet i regler, der sigter mod at hindre, at virksomheder fra andre lande end ordregiveren stilles ringere end nationale eller lokale virksomheder.

Udbudsreglerne fastsætter således spillereglerne for offentlige myndigheders udbud af større kontrakter og virksomhedernes deltagelse i konkurrencen om kontrakterne som – hvis de bruges rigtigt og er klare og overskuelige og ikke unødigt bureaukratiske – kan bruges til at effektivisere myndighedernes arbejde med at foretage udbud af ordrer og i den forbindelse opnå mest ”value for money”. Herved – via en sund offentlig indkøbspolitik – skabes samtidig en sund offentlig administration, der virker som et værn mod korruption og bestikkelse. Endvidere kan udbudsreglerne effektivisere private virksomheders indsats for at vinde offentlige indkøbsordrer. Det gælder procedureregler, regler der skal forhindre forskelsbehandling, og det gælder klageregler.

Danske virksomheder udnytter formentlig ikke fuldt ud mulighederne i de internationale aftaler om offentlige indkøb. Dette antages især at skyldes, at der ikke vedrørende GPA findes nogen let tilgængelige kilder, der kan bruges umiddelbart af den typiske virksomhed, ligesom reglerne i sig selv er særdeles komplicerede og fyldt med undtagelser, særbestemmelser osv. Klagebestemmelserne er heller ikke harmoniserede, og det er vedrørende klager over manglende overholdelse af reglerne anført, at klagesystemerne ofte er for langsommelige til, at de kan medvirke til at fastholde kommercielle muligheder. Endvidere er det vanskeligt at finde en samlet oversigt over de udbud, der foretages under reglerne. Der er således ikke, som i EU, et samlet sted, hvor alle udbud publiceres.

1.3 Aktuelle initiativer vedrørende offentlige indkøb i WTO

Der findes som nævnt i dag ikke nogen global aftale eller aftale mellem alle WTOs medlemmer om offentlige indkøb. På nuværende tidspunkt arbejdes der i WTO med offentlige indkøb på tre områder, nemlig:

- Revisionen af den omtalte *plurilaterale* aftale, der er indgået mellem 25 lande, *Government Procurement Agreement – GPA*
- Forhandlingerne om en *multilateral* aftale omfattende alle WTO-lande om *Transparency in Procurement* (som ikke i sig selv omfatter markedsadgang)
- GATS – den *multilaterale* aftale om liberalisering af handel med tjenesteydelser, der også på sigt kan tænkes at indeholde aspekter af offentlige indkøb af tjenesteydelser, jf. nedenfor.

1.4 Government Procurement Agreement

Den oprindelige GPA: Den første plurilaterale aftale om offentlige indkøb i multilateralt regie (GATT) blev indgået i 1979. Denne aftale (GPA) fastlagde alene forpligtelser med hensyn til deltagerlandenes indkøb af varer foretaget af centrale regeringsmyndigheder. Samtidig var den – som en række andre særlige regelsæt (aftaler/koder) - et "à la carte"-arrangement, dvs. at ikke alle GATT's Kontraherende Parter var forpligtet automatisk til at deltage heri.

Den nuværende GPA: Da den seneste multilaterale handelsforhandlingsrunde (Uruguay-Runden) blev lanceret i 1986, var der allerede igangsat en (mindre) revision af GPA 1979. Den nye GPA blev undertegnet i april 1994 samtidig med at Verdenshandelsorganisationen WTO blev etableret som erstatning for GATT.

De ændringer, der blev foretaget i GPA, bærer i høj grad et "EU-fingeraftryk". Den nuværende GPA dækker en meget stor del af det område, der er reguleret i den interne fællesskabsret, således både offentlige kontrakter om bygge- og anlægsarbejder, vareindkøb og tjenesteydelser samt visse kontrakter omfattet af EUs forsyningsvirksomhedsdirektiv. Samtidig omfatter GPA nu ikke blot centrale regeringsmyndigheders kontraktindgåelser, men også kontrakter, der indgås af regionale og lokale myndigheder samt private og offentlige forsyningsvirksomheder inden for visse sektorer. Endelig er der indføjet bestemmelser, der forpligter deltagerlandene til at etablere nationale klageprocedurer svarende til de forpligtelser, som påhviler EU-landene.

Det var et generelt princip i GATT-overenskomsten – og er det fortsat i WTO – at de handelsmæssige fordele, en underskriver af aftalen giver til ét land eller gruppe af lande, skal gives til alle andre parter, der er dækket af aftalen. Dette princip kaldes *Most-Favoured-Nation-princippet* (MFN). GATT-overenskomsten fratager specifikt området offentlige indkøb fra princippet, der dog er selvstændigt indeholdt i GPA i den forstand, at én underskriver af GPA skal give den behandling, man giver et andet GPA-land til alle andre GPA-lande. GPA er dog på den anden side også fundamentalt i strid med dette princip. Således har GPA-parterne i konkrete tilfælde fraveget princippet ud fra reciprocitetsbetragtninger; dvs. at parterne i GPA alene giver hinanden adgang til deres respektive offentlige indkøbsmarkeder i det omfang en sådan markedsadgang er gensidig. Omfanget af en sådan markedsadgang bestemmes ved bilaterale aftaler mellem parterne, hvor det således kan hænde, at lande gensidigt undtager sektorer eller områder fra den generelle aftale. Man kan derfor beskrive GPA som en 'paraplyaftale', der lægger rammer for et sæt af bilaterale aftaler mellem aftalens parter. Det kan tilføjes, at der er ingen tvivl om, at aftalen findes meget følsom, idet den konkret indebærer adgang til markederne i modsætning til en række andre WTO-aftaler, som er af mere principel karakter og med knap så direkte virkninger.

Et andet fundamentalt princip i GPA er *princippet om national behandling*. Dvs. at man skal behandle udenlandske varer, tjenester og leverandører på en måde, som ikke er mindre favorabel, end den behandling man giver indenlandske varer, tjenester og leverandører. Det betyder, at alle parter under GPA skal give varer, tjenesteydelser og leverandører fra andre lande, der er part i aftalen, en behandling, der ikke er mindre gunstig end den, man giver indenlandske varer, tjenesteydelser og leverandører og man skal også give en sådan lige behandling for varer, tjenesteydelser og leverandører fra alle andre GPA-lande.

Drøftelser om revision af GPA: GPA er en plurilateral aftale i modsætning til de fleste WTO-aftaler, som er multilaterale. Den er samtidig frivillig, og binder kun de parter, der har underskrevet den. På denne baggrund har man inden for rammerne af GPA iværksat et "early review" af aftalen med sigte på at udforme GPA således, at den kan tiltrække flere deltagere. Det har i denne forbindelse navnlig været på tale at arbejde hen imod en simplificering af GPA's relativt komplicerede og tekniske bestemmelser om procedurer ved offentlige indkøb, som vel nok må betegnes som tilpasset først og fremmest til forholdene i højt udviklede lande. Parterne diskuterer parallelt hermed muligheden for at fjerne diskriminatoriske tiltag (enkelte landes undtagelse af sektorer eller områder fra aftalen), som forhindrer en effektiv konkurrence om udbuddene, og

desuden en udvidelse af aftalens dækningsområde (kontraktstyper og myndighedsniveau).

Det er planen, at aftalen skal revideres frem mod den tredje WTO ministerkonference, der er planlagt afholdt i slutningen af 1999.

Ændringsdrøftelserne inden for rammerne af GPA foregår på basis af diskussionsoplæg vedrørende forskellige aspekter af aftalen fra de interesserede deltagerlande. EU har i denne forbindelse spillet et central rolle og har løbende fremlagt nogle overordnede ideer til en forenkling og forbedring af GPA. Drøftelserne herom i EU foregår dels i art. 113-komiteen, dels i Kommissionens Rådgivende Udvalg for Offentlige Aftaler.

Samtidig foregår der i EU drøftelser om en revision af de interne fællesskabsregler. Disse drøftelser har en væsentlig længere tidshorisont, idet der forventes at gå op imod 3 år før holdningen til udvalgte emner er færdigbehandlet. Dette forhold – at det endnu ikke vides, hvorledes de fremtidige EU-regler på udvalgte områder vil blive udformet – har indtil videre krævet, at man ved drøftelserne af ændringer i GPA samtidig er opmærksom på, at man ikke herved på uønsket vis normerer indholdet af den kommende regelændring internt i EU. I samme forbindelse drøftes også spørgsmålet om adgangen til efter de eksisterende EU-regler at stille miljø- og arbejdsmiljøkrav samt krav om klausuler med socialt indhold i forbindelse med udbudsforretninger. Omfanget af adgangen hertil ligger ikke fast på nuværende tidspunkt.

1.5 Oversigt over indholdet af GPA

Medlemmer: GPA har nu 25 af WTOs medlemmer, men aftalen er åben for andre medlemmer, der måtte ønske at tilslutte sig, og den indeholder i den forbindelse særligt gunstige regler for udviklingslande, der måtte ønske at tilslutte sig. Aftalen dækker i dag EU og de 15 medlemslande, og desuden Canada, Kina (Hong Kong), Israel, Japan, Korea, Liechtenstein, Norge, Singapore, Schweiz og USA. Desuden repræsenterer Holland Aruba. 11 WTO-medlemslande har observatørstatus, nemlig Argentina, Australien, Bulgarien, Chile, Colombia, Island, Mongoliet, Panama, Polen, Slovenien og Tyrkiet. Fire ikke-WTO medlemmer, Kina (Taipei), Estland, Letland og Litauen samt IMF og OECD har ligeledes observatørstatus. Island, Panama og Kina (Taipei) har i juni 1998 anmodet om at kunne tiltræde aftalen.

Dækkede områder og grænseværdier: Selve GPA er som sådan relativt kort og præcis, og den følger det mønster, der efterhånden er ved at blive 'international standard' for udbudsregler. Aftalen indholder en række bestemmelser om udbud og udbudsprocedurer. Derimod bliver billedet meget forvirrende, når man ser på dækningsområderne. GPA giver i sig selv ingen indikation af de dækkede områder. Der er derimod tale om et enstrengt system af regler, som skal gælde for alle typer af udbud i alle sektorer. De dækkede sektorer fremgår i stedet af bilagene til GPA, og her findes der et utal af undtagelser, som gør en vurdering af anvendelsen uklar.

GPA retter sig som udgangspunkt både mod de centrale myndigheder samt mod udbud på niveauer under det centrale regeringsniveau. Medlemmerne af GPA forpligter sig ved tiltrædelsen af aftalen på centralt niveau ved angivelsen af disse myndigheder i tillæg I, bilag 1 til aftalen. I bilag 2 angives de myndigheder under det centrale administrative niveau, der ligeledes er omfattet. Endelig angives i bilag 3 de forsyningsvirksomheder, der er omfattet.

Den nuværende GPA dækker såvel bygge- og anlægsvirksomhed som indkøb af varer og tjenesteydelser. Hvilke tjenesteydelser, der er dækket, er dog i realiteten noget uklart, idet dette område er dækket af bilaterale aftaler. Udbud af tjenesteydelser vil derfor kun været dækket af GPA-procedurer, såfremt myndighederne hos såvel udbyderen som leverandøren er enige om, at den pågældende tjenesteydelse er dækket. Som eksempel kan nævnes, at EU, USA og EFTA-landene har indgået en aftale om, at finansielle tjenesteydelser skal være omfattet af aftalen, mens Japan ikke ønskede dette. Derfor er USA samt EU- og EFTA-landene ikke forpligtigede til at tage japanske leverandører i betragtning ved udbud om levering af finansielle tjenesteydelser.

I aftalens tillæg 1 findes der i bilag 4 en oversigt over de tjenesteydelser, som er omfattet af aftalen, mens bilag 5 specificerer de omfattede tjenester i forbindelse med bygge- og anlægsarbejder.

Som eksempel på undtagelser, som EU har indført i dækningen, kan nævnes: *Drikkevandsforsyning, energi, visse transportydelser, telekommunikation, indkøb af vand og brændstof til energiforsyning, taletelefoni, telex, radiotelefoni, satellittjenester, visse finansielle tjenesteydelser, mæglingssydelser, landbrugsstøtteordninger, erhvervelse af land og ejendomme, beskæftigelsestjenester og programmaterialer til radio og tv.*

De fleste deltagere i aftalen anvender samme grænseværdier for udbud fra centrale myndigheder. For myndigheder under det centrale niveau og for

andre dækkede myndigheder varierer billedet derimod. For bygge- og anlægsarbejder gælder den almindelige grænse på SDR 5.000.000. Grænseværdierne i EUs udbudsregler følger nu de samme grænseværdier, som gælder for EU-landene under GPA. For en oversigt over grænseværdierne henvises til bilag 1 til denne rapport.

Ligebehandling og habilitet: Generelt siger GPA-reglerne, at der ikke må diskrimineres mellem tilbudsgivere på grund af nationalitet, ligesom der skal være ligebehandling i den forstand, at alle potentielle tilbudsgivere skal have tid og praktisk mulighed for at kunne deltage med et bud. Desuden siger aftalen, at der ikke må lægges andre kvalifikationskriterier ind for bedømmelse af tilbudsgivere end dem, der direkte siger noget om evnen til at kunne påtage sig den konkrete opgave.

Tekniske specifikationer: Det forudsættes som et generelt princip i GPA, at de tekniske specifikationer for produkter eller tjenester retter sig mod opnåelse af resultater snarere end mod design karakteristika. GPA anbefaler endvidere anvendelse af internationale standarder snarere end nationale i forbindelse med tilrettelæggelse af udbud. Endvidere må der som hovedregel ikke stilles krav om eller henvises til bestemte varemærker m.v.

Udbudsprocedurer og tildelingskriterier: Der kan anvendes tre former for udbud, nemlig offentlige udbud, hvor alle interesserede kan afgive bud, begrænsede udbud, hvor kun inviterede virksomheder kan byde og udbud efter forhandling, hvor en myndighed kontakter leverandører individuelt efter specielle regler. GPA fastslår, at man normalt skal anvende de to førstnævnte udbudsformer. Udbud efter forhandling kan ligesom EUs udbudsdirektiver foreskrives kun anvendes undtagelsesvist.

Udbydere skal tildele kontrakter til den tilbudsgiver, som dels fuldt ud er i stand til at løse opgaven, dels er enten den billigste eller har givet det mest fordelagtige tilbud. Vurderingen skal foregå på basis af de kriterier og grundlæggende krav, der er specificeret i udbudsannonceringen. Der er her tale om en parallel til EU-reglerne.

Meddelelse om udbud: Der skal ske meddelelse om udbuddene i en officiel publikation med en lang række pligtige oplysninger, herunder udbudets karakter og omfang, udbudsform, kvalifikationsprocedure, hvorfra man kan få specifikationer og anden detailedokumentation, afleveringsfrister og betalingsforhold og -frister.

Forud for selve udbudet skal udbudsgiver udsende en forhåndsmeddelelse (tender notice) i en offentligt tilgængelig publikation (som er opregnet i tillæg II til aftalen). Der skal ligeledes inden for 72 dage efter tildeling af en

kontrakt bekendtgøres en række oplysninger om art/mængde af produkter/tjenester i kontrakten, navn m.v. på den vindende tilbudsgiver og budets værdi eller det højeste og laveste bud taget i betragtning.

I tillæg II , III og IV til aftalen opregnes de publikationer, der anvendes til forhåndsmeddelelser, meddelelser om leverandørliste og meddelelse om formelle regler om offentlige indkøb. Der findes ikke nogen central informationskilde for udbud i WTO-regie eller andetsteds, eller nogen form for centraliseret database (endnu), der samler oplysninger om alle udbud under reglerne. Der findes en WTO-Internetside (<http://www.wto.org/wto/govt/govt.htm>), som giver nogle links til nogle af de nationale publikationskilder, men denne oversigt synes at være noget tilfældig og usystematisk, og kan derfor ikke bruges til systematisk informationsindhentning. Ligeledes vanskeliggør disse forhold til en vis grad overgangen til et elektronisk system for meddelelser om udbud under GPA (jf. nedenfor).

Klagemuligheder: Alle parter, som er omfattet af GPA, skal etablere 'ikke-diskriminatoriske, hensigtsmæssige, gennemsigtige og effektive procedurer', som kan benyttes af utilfredse bydende til at klage over udbudsforretningen. Der skal i alle lande oprettes en mulighed for at få en uafhængig vurdering af påståede uoverensstemmelser med reglerne. Det kan ske i form af en domstol eller et særligt organ, som skal være uafhængigt.

Det påhviler også ethvert land, som har underskrevet GPA, at sørge for, at der findes hurtige og effektive metoder til at rette op på fejltagelser i udbudsforløbet for dermed at fastholde de kommercielle muligheder i forbindelse med udbuddet. Der findes – uden for EU-landenes kreds - tilsyneladende ikke nogen praksis for at benytte sådanne mekanismer, ligesom det ikke har været muligt at spore nogen form for uformelt netværkssamarbejde med det formål at løse konflikter om reglerne mellem parterne i GPA-regie.

GPA åbner herudover for medlemslandene - men ikke for den enkelte virksomhed direkte - mulighed for løsning af konflikter i WTO gennem paneler - de såkaldte 'Settlement of Disputes' regler. Processen er realistisk set alene brugbar til store og/eller mere principielle sager og spørgsmål garanterer ikke på nogen måde en hurtig problemløsning, der kan bevare det 'kommercielle potentiale'.

Kontrol med overholdelse af aftalen – statistik og information: WTO-sekretariatet har ikke, som Europa-Kommissionen, et mandat til at følge implementering af aftalen eller af dens praktiske anvendelse. WTOs karakter af en mellemstatslig organisation spiller klart ind her, da der ingen overnationale beføjelser er. Derfor er det medlemmerne selv, der kontrollerer

hinanden, bl.a. gennem 'Reviews' i GPA komiteen. Indtil nu har 6 'lande' (EU og fem andre) indsendt oplysninger om implementering af aftalen. I oktober 1998 er man startet med reviews af de enkelte landes implementering samt diskussion af eventuelle problemsager (challenge procedures).

Der har været meget få tilbagemeldinger om brugen af de nationale klagebehandlingssystemer, men WTO påpeger, at det ikke nødvendigvis betyder at reglerne ikke er effektive, da de givetvis har en afskrækkende effekt.

De statistiske oplysninger, der findes i WTO-sekretariatet over brug af aftalen, er af ret begrænset omfang. Derfor kan man vanskeligt få et overblik over anvendelse af aftalen fra centralt hold.

Løsning af konflikter om aftalen er således overladt enten til medlemslandene i WTO eller til parterne i nationale organer efter til de procedurer, der i den forbindelse er fastsat i GPA.

Elektronisk tilbudsgivning: GPA forudsætter kommunikation af data ved hjælp af telex, telegrammer og fax. Den har ikke umiddelbart taget højde for anvendelse af informationsteknologi i forbindelse med indkøb. Med henblik på at sikre, at aftalen ikke kommer til at udgøre en hindring for anvendelse af moderne teknologi, er det forudsat, at der skal holdes regelmæssige konsultationer i WTOs komite vedrørende offentlige indkøb om udvikling i informationsteknologien og dens mulige anvendelse (artikel XXIV:8).

For de fleste af de lande, som er med under aftalen, skulle der ikke være de store vanskeligheder ved at øge den elektroniske tilbudsgivning. I EU er man i gang med at indføre den elektroniske tilbudsgivning via SIMAP-projektet, og i lande som USA, Norge og Singapore er den elektroniske tilbudsgivning vidt udbredt. Det skal bemærkes, at International Trade Centre (ITC, der 'ejes' af WTO og UNCTAD i fællesskab), aktivt søger at promovere indførelse af elektronisk tilbudsgivning i de udviklingslande, hvor organisationen arbejder.

2. Administration og markeder i udvalgte GPA-lande

Administrationen af GPA-reglerne skal i princippet være ensartet i alle landene, men der er alligevel forskelle. Dels dækker de omfattede lande mange forskelligartede politiske, økonomiske og administrative systemer, dels er der i aftalen – foruden de mange bilaterale undtagelser – plads for specielle nationale implementeringer, f.eks. af klagesystemerne.

Med henblik på at give en vurdering af GPAs implementering i praksis samt af de muligheder og barrierer, der vil være for danske virksomheder på de pågældende markeder, vil dette kapitel tegne et portræt af en række af de GPA-lande, som er vigtigst for danske virksomheder, nemlig USA, Japan, Korea, Singapore, Hong Kong, Canada og Schweiz, samt af et af observatørlandene, nemlig Polen, der i øvrigt som omfattet af en Europa-aftale med EU og et egentlig medlemskab af EU inden for en overskuelig tid, er på vej mod at indføre EUs regler på det offentlige indkøbsområde.

APEC

Det skal bemærkes, at der inden for rammerne af APEC (Asia-Pacific Economic Cooperation) er indledt et samarbejde om offentlige udbud. Dette samarbejde vedrører en række af de lande, som omtales nedenfor, nemlig USA, Canada, Japan, Hong Kong, Korea og Singapore.

APEC-samarbejdet startede i 1994, og allerede året efter blev det besluttet at inddrage offentlige udbud som en del af samarbejdet. Det er sket gennem en opfordring til medlemslandene om at:

- udvikle en fælles forståelse af offentlige indkøbspolitikker og -systemer samt af praksis på dette område
- skabe en liberalisering af de offentlige indkøbsmarkeder i Asien og i Stillehavsområdet og samtidig bidrage til udviklingen af arbejdet på dette område i andre multilaterale fora.

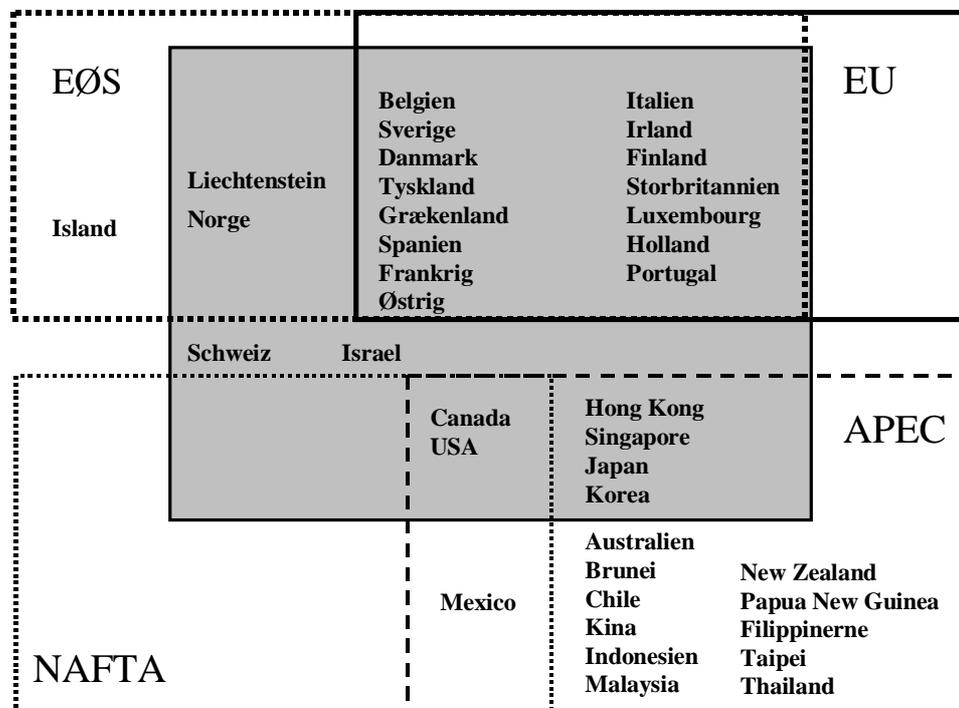
Der findes nu en 'Government Procurement Experts Group', som arbejder med og rapporterer om de offentlige udbud i medlemskredsen.

NAFTA

Også i NAFTA – det nordamerikanske frihandelsområde mellem Canada, USA og Mexico – findes der særlige aftaler om offentlige udbud. Artiklerne i NAFTA-overenskomsten specificerer og definerer de regler, som skal gælde på udbudsområdet, og opremser de institutioner i de tre lande, hvor udbudsreglerne gælder. De kan være på såvel føderalt som på delstats- og provinsniveau. Reglerne gælder for varer, tjenester samt bygge- og anlægsarbejder.

De særlige tærskelværdier i NAFTA-aftalen er:

- For centrale regeringsmyndigheder US\$ 50.000 for varer og tjenester og US\$ 6.5 millioner for bygge- og anlægsarbejder.
- For offentlige virksomheder er tærskelværdien US\$ 50.000 for varer og tjenester og US\$ 8 millioner for bygge- og anlægsarbejder
- For delstats- eller provinsmyndigheder er der defineret særlige og forskellige tærskelværdier i NAFTA-aftalens artikel 1024.



Denne figur søger at illustrere de overlappende medlemskaber af forskellige internationale systemer vedrørende offentlige udbud. GPA er markeret ved det grå område.

EU og GPA-markederne

Foruden at repræsentere EU-landene i WTO-sammenhæng, gøres der også et stort arbejde fra EUs side for at åbne handelen på verdensplan gennem bilaterale aftaler eller aftaler med grupper af lande som f.eks. ASEAN og MERCOSUR. Der findes endvidere en række services, som kan være til hjælp for eksportører – til de private markeder og til de offentlige indkøbsmarkeder.

Der er f.eks. et program, som kan hjælpe virksomheder, der ønsker at eksportere til det vanskelige japanske marked. Et program retter sig særligt mod små og mellemstore virksomheder. Det kan kontaktes på denne adresse:

EXPROM

Europa-Kommissionen, DGI/F/1
Rue de la Loi 200
B-1049 Bruxelles
Att. Richard Wright
Tlf.: +32 2 295 33 97
Fax: +32 2 299 05 99

Desuden findes der et program, som støtter praktikantophold i Japan:

Executive Training Programme in Japan
Europa-Kommissionen, DGI/F/1
Rue de la Loi 200
B-1049 Bruxelles
Att. Richard Wright
Tlf.: +32 2 295 33 97
Fax: +32 2 299 05 99

Kontakt i Danmark for dette program er:

SHL Danmark A/S
Gl. Lundtoftevej 1E
2800 Lyngby
Tlf.: 45 87 20 40
Fax: 45 87 20 38

Der er netop vedtaget et nyt EU-program, der tilbyder yngre europæiske erhvervsledere mulighed for at forberede sig til at arbejde på det koreanske marked. Deltagerne vil blive sat ind i de handelsmæssige forhold i Korea, inklusive den kommercielle kultur, og det etårige program tilbyder desuden sprogtræning og besøg i Koreanske virksomheder.

Der vil blive 16 deltagere på det første kursus, der administreres for Europa-Kommissionen af Barcelona and Seoul Chambers of Commerce. Der kan fås information på tlf. +34 93 41 69 389 eller på e-mail til etkorea@mail.cambrabcn.es

Ønskes information fra Korea kan man ringe på tlf. +83 2 22 53 56 31 eller bruge e-mail: etpkorea@eucck.org

Der planlægges tilsvarende programmer for andre lande i den kommende tid.

Desuden har Europa-Kommissionen opbygget en nyttig database for eksportører, kaldet *the Market Access Database*. Databasen er Internet-baseret og kan findes på adressen:

<http://mkaccdb.eu.int/>

Den rummer et væld af oplysninger om handelsbarrierer i forskellige lande, herunder de lande, som behandles nedenfor. Handelsrestriktionerne vil ofte have direkte betydning for bud i forbindelse med offentlige indkøbsordrer. Virksomheder opfordres til at holde sig i tæt kontakt med databasen og meddele om problemer, der måtte opstå på eksportmarkeder.

EU står også for klager på medlemslandenes vegne i forbindelse med overtrædelse af GPA. Siden den seneste aftales ikrafttræden i 1994 og til februar 1999 har der dog kun været rejst to sager, nemlig en mod Japan i forbindelse med et udbud af et satellit navigationssystem, og en klage over USA i forbindelse med delstaten Massachusetts' særlige lovgivning om virksomheder, der har forretningsforbindelse med Burma (Myanmar).

2.1 USA

2.1.1 Administrative karakteristika

USA er en forbundsstat med 50 delstater, som nyder et udbredt selvstyre på mange områder – herunder i høj grad på det udbudsmæssige område. Der bor næsten 270 millioner mennesker i landet. Det samlede BNP er på 50.000 mia. kroner, og BNP pr. indbygger er på ca. 160.000 kroner. Det føderale budget er på udgiftssiden på ca. 11.200 mia. kroner.

USA producerer stort set alle slags varer og tjenester og kunne være selvforsynende. Landet har dog alligevel en betydelig udenrigshandel, selv om den målt i forhold til landets størrelse er relativt beskedent.

BNP er sammensat af 2 pct. landbrug, 23 pct. industri og 75 pct. servicefag.

2.1.2 Implementering af GPA

USA har været med i GPA siden starten, men det er alligevel kun lykkedes at få 37 af de 50 delstater med under aftalen (hvilke er listet i bilag 2).

På centralt plan får de enkelte myndigheder hvert år fra Kongressen bevillinger, som er bestemmende for, hvilke programmer de kan bruge penge på – og hvor mange. Indkøb i den centrale regering foretages normalt gennem de enkelte myndigheder efter ensartede retningslinjer, som er fastsat efter 'the Federal Acquisition Regulations (FAR)'. FAR er gældende for alle føderale myndigheder, og det giver en vis ensartethed i den måde, hvorpå udbudsforretninger håndteres på tværs af den store administration.

I en række tilfælde skal de føderale myndigheder erhverve sig bestemte varer og tjenester fra centrale forsynings tjenester, som 'General Services Administration' eller 'Defence Logistic Agency'.

Den såkaldte 'Buy American Act' (se nedenfor) må principielt ikke bruges under GPA-udbud, men en anden lov – 'Small Business Act' – forlanger, at der i forbindelse med udbud af enhver størrelse skal ske en

favorisering af mindre virksomheders deltagelse, når der er en rimelig forventning til, at der vil komme bud fra mindst to mindre virksomheder, og at kontrakterne kan indgås til en fair pris set i forhold til markedet.

Et helt særligt problem er opstået, fordi Massachusetts sammen med mere end 20 byer og lokale myndigheder har besluttet at boykotte handel med virksomheder, der handler med Burma. Da dette også gælder for offentlige udbud, er der tale om et brud på GPA. Det hævdes i hvert fald af EU, der har søgt om konsultationer i WTO om denne sag. Der er også anlagt sag ved domstolene vedrørende denne lov (på foranledning af the National Foreign Trade Council) med krav om dens ophævelse, fordi den påstås at være grundlovsstridig. EU har ikke mindst klaget stærkt over denne lov, fordi den udbreder amerikansk lov – og her ligefrem en delstatslovgivning – ud over USAs territorium.

Der anvendes i reglen en af to former for udbud, alt efter kompleksiteten af udbudsforretningen.

For udbud med en forventet værdi på under USD 100.000 anvendes 'simplified acquisition procedures', og for udbud med en forventet kontraktværdi på over USD 100.000 anvendes 'sealed bid' eller forhandlede procedurer, der dog ikke må forveksles med udbudsformen udbud efter forhandling.

Der skal ske en forhåndsmeddelelse om et udbud 15 dage før det faktiske udbud annonceres, og loven kræver mindst 30 dage mellem den officielle meddelelse og deadline for indgivelse af bud. Kriterierne for tildeling af kontrakter skal fremgå af udbudsmeddelelsen, og sker der ændringer undervejs, skal alle bydende underrettes om det.

Bydende, der ikke vinder en kontrakt, kan forlange en skriftlig forklaring fra den ansvarlige for den pågældende myndighed. Hvis prisen alene har været kriterium for afgørelsen, vil de tabende under alle omstændigheder få besked om antallet af bud og hvad den totale kontraktpris for det vindende bud har været.

I USA kræver man aldrig garantistillelse for projekternes kvalitet og gennemførelse fra kontraktageren.

Det er kun sjældent, at man i USA benytter sig af udbudsformer, der ikke er fuldt ud åbne for konkurrence. Dette kan alene ske, hvis chefen for den pågældende myndighed giver lov til det og giver en skriftlig

forklaring på, hvorfor det har været nødvendigt eller praktisk at anvende denne metode.

Det kan kun ske, hvis en eller flere af følgende betingelser er opfyldt:

- Kun én leverandør kan leve op til kravene i udbuddet
- Der foreligger usædvanlige omstændigheder eller sagen er ekstremt hastende
- Der er tale om særlige ressourcer af teknisk eller forskningsmæssig karakter
- En international aftale gør brug af denne form nødvendig
- Brug af denne form nødvendiggøres af lovgivningen (f.eks. i forbindelse med handicappede, fængselsvæsenet o.a.)
- Der er særlige hensyn til den nationale sikkerhed
- Den offentlige interesse kræver det. Dette argument anvendes dog yderst sjældent, fordi dets anvendelse kræver Kongressens godkendelse.

Det skal tilføjes, at der er helt særlige procedurer for arkitekt- og ingeniørprojekter. Her vil et "evaluation board" gennemgå alle de virksomheder, der har svaret på en offentlig indkaldelse om kvalifikation. Dette board vurderer de potentielle bydende efter deres professionelle kapacitet, deres specialiserede kompetence og deres referencer med hensyn til kvalitet, omkostningskontrol og overholdelse af tidsterminer. Det pågældende evaluation board holder interviews med mindst tre af de mest kvalificerede virksomheder, og prioriterer dem på denne baggrund. En rapport om resultatet sendes til den ansvarlige for den endelige beslutning.

Hvis man bevæger sig ud på delstatsplan, bliver billedet af udbud meget uoverskueligt. Der er for det første mange niveauer for offentlig administration, idet de fleste stater er underopdelt i 'counties' og videre i 'cities and towns'. Nogle stater har endvidere særlige distrikter for skolesystemer og for vandforsyning. De relevante myndigheder har hals- og håndsret over deres budgetmidler, og den føderale regering har ikke udstukket retningslinjer for andre end den føderale forvaltning selv. De eneste retningslinjer er faktisk dem, som er nødvendiggjort af GPA for de stater, hvor GPA er gældende.

Der kan dog være tilfælde, hvor føderale midler skal anvendes i delstater, og hvor midlerne ledsages af retningslinjer for udbudsforretningerne fra den føderale donor. Det gælder f.eks. på miljøområdet og for konstruktion af motorveje.

Alle spørgsmål vedrørende implementeringen af GPA kan rettes til:

Office of WTO and Multilateral Affairs
Office of the United States Trade Representative
600 17th Street, N.W.
Washington D.C. 20508
Tlf.: +1 202 395 30 63

Det kan også stærkt anbefales at aflægge et besøg på Internetsiden:

<http://www.arnet.gov>

hvor der er henvisninger til lovgivningsimplementeringen og links til hele den føderale administration og dens udbudssystemer. Der er også her links til Internetsider vedrørende elektronisk handel og udbud. Fra 1999 skal alle føderale betalinger ske elektronisk, og der er udarbejdet en strategisk plan for udvikling af den elektroniske handel og elektroniske udbud. Se f.eks. på Internettet side:

<http://policyworks.gov/epic>

Udbud under grænseværdierne

Den såkaldte 'Buy American Act' fra 1993 giver problemer i forhold til udbudsområdet. Loven foreskriver bl.a., at man skal købe indenlandske varer til offentligt brug. Der findes desuden en såkaldt 'Executive Order', som bemyndiger føderale myndigheder til at beslutte med hvilken margin en pris tilbudt af en indenlandsk ordregiver må overskride et udenlandsk bud og alligevel stå lige i konkurrencen. Der anvendes normalt en margin på mellem 6 og 12 pct., men Buy American loven må ikke anvendes på udbud, der har en værdi over GPA-tærskelværdierne.

Loven gælder ikke på delstatsniveau eller på lokalt niveau, men ofte anvender delstaterne deres egne præferencesystemer for udbud. I de delstater, der ikke har tilsluttet sig GPA, kan man som udenlandsk leverandør ikke vide sig sikker på ikke at blive ramt af denne protektionisme.

Publikation af udbud

Det officielle meddelelsesorgan for udbud er 'the Commerce Business Daily' (se nedenfor under 2.1.6). Ud over dette medie – og dets Internetversion – benyttes også til tider mere specialiserede organer som aviser og faglige tidsskrifter.

Klageinstanser

Alle med en legitim interesse i det kan klage over:

- meddelelse om udbud fra en føderal myndighed om indkøb af varer eller tjenester
- aflysning af et udbud
- tildeling af en kontrakt eller forslag herom
- aflysning af en kontrakttildelelse.

Klager skal indleveres til 'General Accounting Office', der er en myndighed under Kongressen med generelt ansvar for tilsyn med føderale myndigheder. General Accounting Office meddeler sin anbefaling vedrørende klager inden 125 dage efter indleveringen af klagen, eller inden for 65 dage, hvis der er tale om en ekspresbehandling. For visse leverancer af computerudstyr kan der i stedet klages til 'General Services Board of Contract Appeals'.

Begge disse klageinstanser kan suspendere en udbudsproces, mens de undersøger sagen, for at sikre, at alle bydendes interesser tilgodeses.

Det skal endelig tilføjes, at en bydende også har mulighed for at klage direkte til den myndighed, der står for udbuddet, og eventuelt appellere klagen til 'Agency Board of Contract Appeals' eller sagsøge ved domstolene.

2.1.3 Markederne

Det giver næsten ingen mening at beskrive de amerikanske offentlige udbudsmarkeder, fordi deres størrelser er så helt utrolige. En måde at udtrykke dette på er, at 'hvert tyvende sekund på hver arbejdsdag underskriver den amerikanske regering en kontrakt efter et udbud til en gennemsnitlig værdi af 3,5 millioner kroner'.

En meget stor del af de offentlige budgetter (hvoraf det føderale budget er på over 1.000 milliarder kroner) går til ordrer efter udbud. Det er faktisk svært at finde præcise opgørelser over den samlede størrelse af markedet, men ud fra indirekte oplysninger kan det føderale indkøbsmarked anslås til ca. 1.700 mia. kroner om året, og markedet i den øvrige del af den offentlige sektor til ca. 900 mia. kr.

Danmark fik i 1997 ordrer for godt USD 51 millioner – ca. 350 millioner kroner. Det svarede dog kun til under 0,02 pct. af de samlede udenlandske ordrer. Nogenlunde det samme gjorde sig gældende i 1998, hvor beløbet dog var steget til godt 54 mio. USD. Blandt udenlandske virksomheder var de store vindere i de to år:

	1997 (mio. USD)	1998 (mio. USD)
Tyskland	671	775
Japan	509	339
Saudi Arabien	398	133
UK	290	279
Korea	247	350
Italien	226	156
Kuwait	156	-
Grækenland	146	13
Canada	131	210
Rusland	108	84

Blandt de succesfulde danske virksomheder var der repræsentanter fra den rådgivende branche (rådgivende ingeniører), vareleverancer (fødevarer og industriprodukter), men ingen bygge- og anlægsarbejder.

I denne sammenhæng er danske virksomheder at forstå som virksomheder med en adresse i Danmark. Der kan også have været leverancer fra et af de omkring 400 datterselskaber, som danske virksomheder har oprettet i USA, eller fra danske leverandører, der arbejder gennem agenter i andre lande, inkl. i USA.

Hvad angår forventningerne til markedet er der heller ikke grund til at sige andet, end at det fortsat vil være gigantisk og at der vil være et potentiale for danske virksomheder på stort set alle områder. Det er næppe realistisk at forvente, at virksomheder inden for bygge- og anlægsbranchen kan vinde kontrakter uden etablering i USA, men der ser ud til at være muligheder – og formentlig stigende muligheder – for vareleverancer hjemmefra, specielt fordi den elektroniske handel udvikler sig så stærkt som den gør i USA. Men også danske rådgivningsvirk-

somheder synes at have gode chancer i nicher på det amerikanske marked.

2.1.4 Barrierer for danske virksomheder

Der er ingen specielle barrierer for danske virksomheder, men en række tekniske og handelsmæssige barrierer findes generelt og specifikt for EU-virksomheder. Det er EU, som tager sig af de handelsmæssige relationer med USA, og bortset fra de jævnlige skærmydsler på konkrete områder mellem de to blokke, arbejdes der generelt for at lette den transatlantiske handel.

Det transatlantiske økonomiske samarbejde er med til at åbne også de handelsmæssige relationer. Der gøres især gennem TABD (Trans Atlantic Business Dialogue) et forsøg på at sætte fokus på virksomhedernes problemer, og under TABD arbejder en række virksomhedsledere fra de to sider sammen for at finde løsninger på praktiske spørgsmål. Det er bl.a. med udgangspunkt heri, at man fik etableret aftalerne om liberalisering på det informationsteknologiske område og på telekommunikationsområdet. De to aftaler har tilsammen liberaliseret handel til en værdi af 1.000 mia. euro. Senest er der indgået en tilsvarende aftale om liberalisering af handelen med finansielle tjenesteydelser. Disse transatlantiske aftaler danner ofte grundlaget for videre handelsliberalisering i WTO.

Det skal dog siges, at et af de mindst aktive områder i TABD har været offentlige indkøb. Til gengæld betyder det øvrige samarbejde ofte en harmonisering eller aftaler om gensidig anerkendelse af tekniske og andre standarder, som gør det lettere for danske virksomheder at afgive bud i USA.

Generelt set er det vanskeligt for udenlandske virksomheder at arbejde med DoD – forsvarsministeriet. Dette ministerium har gigantiske budgetter, men er også restriktiv i anvendelsen af eksterne leverandører. I større grad, naturligvis, jo tættere man kommer på de egentlige forsvaretsystemer. Danske virksomheder har f.eks. haft held til at levere fødevarer til forsvaret i USA.

Markedet består som nævnt af de føderale institutioner og de 37 delstater, der er med under GPA. I de øvrige delstater har man valgt en restriktiv politik med hensyn til international konkurrence om udbud, og praksis kan være ganske protektionistisk. Ved udbud under tærskelværdierne kan danske virksomheder risikere at løbe ind i problemer

med præferencereglerne under 'Buy American Act' og med præferencerne for små og mellemstore virksomheder.

Det skal også nævnes, at der findes en organisation, som repræsenterer større leverandører til den offentlige sektor i USA, 'the Coalition for Government Procurement'. Denne organisation hævder at repræsentere over 300 virksomheder, som sælger varer og tjenester til det offentlige, og disse virksomheder repræsenterer tilsammen halvdelen af alle indkøb fra de føderale myndigheder. Organisationen har til formål at 'beskytte medlemmernes fælles interesser, nemlig at opnå en fair og rimelig profit i forbindelse med salg til føderale og delstatsmyndigheder'.

Om dette så i realiteten er et forsøg på at danne en kartellignende organisation kan ikke bedømmes ud fra det foreliggende materiale, men på den skitserede baggrund ser organisationen ud til at være af stor betydning for tilrettelæggelse af udbudsregimet i USA.

Organisationen kan kontaktes på denne adresse:

The Coalition for Government Procurement
1990 M Street, NW Suite 400
Washington DC 20036
Tlf.: +1 202 331 0975
Fax: +1 202 822 9788
E-mail: coalgovpro@aol.com
Internet: <http://www.washmg.com/cgp/>

2.1.5 Nyttige adresser

'Commerce Business Daily' er det amerikanske handelsministeriums gratis elektroniske version af det officielle meddelelsesorgan med samme navn. Dog skal man være opmærksom på, at de udbudsmeddelelser, der står i den elektroniske udgave, ikke har retlig gyldighed, før de også foreligger i den trykte udgave. Man kan kontakte mediet på denne adresse:

GPO Access User Support Team
Tlf.: +1 202 512 1530
Fax: +1 202 512 1262
E-mail: cbd-support@gpo.gov
Internet: <http://cbdnet.access.gpo.gov/>

En anden officiel hjælpekilde er 'US Business Advisor – Doing Business with Government'. Der findes her links til stort set alle udbudsmyndigheder på føderalt og på delstatsplan. Se på Internettet på adressen:

<http://www.business.gov/DoingBusiness.html>

Man kan hente hjælp hos den elektroniske tjeneste GPAS, Inc. (Government Procurement Assistance Service), som har følgende Internetadresse:

<http://www.gpas.com/index.html>

En guide til Government Procurement findes på Internettet på siden:

<http://www.hardfordsmallbusiness.com/guide/default.htm>

At USA er en meget kommerciel økonomi, hvor reklamesproget kan være meget direkte, kan man få et indtryk af gennem en tekst, der skal reklamere for en udstilling vedrørende offentlige udbud fra forfatterne til den ovennævnte guide om offentlige indkøb:

You've drooled over the idea of juicy government contracts, right?

But you slammed against a titanium wall trying to figure out how to apply or get on the right lists.

Well, that's about to change – come to the money fair!

På Govcon's Internetside er der mange tips at hente, bl.a. om standarder, blanketter, der skal bruges, og meget mere. Man kan også der købe en 'Government Contractor Toolbox'. Adressen er: <http://www.govcon.com/>

Danske repræsentationer

Royal Danish Embassy
3200 Whitehaven Street, N.W.
Washington D.C. 20008-3683
Tlf.: +1 202 234 43 00
Fax: +1 202 328 14 70
E-mail: ambadane@gerols.com

Royal Danish Consulate General

10877 Wilshire Boulevard, Suite 1105
Los Angeles, CA 90025
Tlf.: +1 310 443 20 90
Fax: +1 310 443 20 99

Royal Danish Consulate General
John Hancock Centre, Suite 3430
875 N. Michigan Avenue
Chicago, Illinois 60611-1901
Tlf.: +1 312 787 87 80
Fax: +1 312 787 87 44
E-mail: info@consulatedk.org

Royal Danish Consulate General
One Dag Hammarskjold Plaza
885 Second Avenue, 18th floor
New York, N.Y. 10017-2201
Tlf.: +1 212 223 45 45
Fax: +1 212 754 19 04
E-mail: information@denmark.or

2.1.6 Konklusion

Implementering af GPA	GPA er implementeret for de fleste føderale institutioner og for 37 delstater.
Åbenhed og transparens	Det er nemt at få adgang til oplysninger om udbud fra mange officielle kilder og fra en række private tjenester og organisationer, som hjælper til øget transparens.
Klageorgan	Der er oprettet klageorganer i overensstemmelse med GPA.
Markedets størrelse	Gigantisk, ganske enkelt. Danske virksomheder koncentrerer sig formentlig mest om de føderale indkøb – og måske nogle enkelte større delstater.
Betydning for nabomarkeder	Man kan naturligvis arbejde ind i nabolandene fra USA, men markedet er i sig selv så betydningsfuldt, at denne mulighed forekommer af sekundær betydning.
Sproglige og kulturelle barrierer	Ingen særlige barrierer for danske virksomheder. Man skal dog nok vænne sig lidt til den høje grad af kommercialisering, der adskiller USA fra de europæiske lande.
Markedsforventninger	Markedet vil, uanset svingninger i den økonomiske politik og de offentlige budgetter, under alle omstændigheder være af enorm betydning.
Tradition for dansk eksport	Der er hos mange danske virksomheder en god tradition for handel med USA.
Konkurrencesituation	Det amerikanske marked er meget konkurrencepræget, og den omfattende brug af offentlige udbud øger konkurrencen. Andre europæiske lande – og de amerikanske virksomheder – er de stærkeste konkurrenter for danske virksomheder.

2.2 Japan

2.2.1 Administrative karakteristika

Japan er Danmarks største eksportmarked i Asien, og landet har med sin meget betydelige økonomi en meget stærk stilling generelt i verdensøkonomien. Japans 126 millioner indbyggere bor på 375.000 kvadratkilometer i et teknologisk og økonomisk højt udviklet land. Det samlede bruttonationalprodukt er i størrelsesordenen 25.000 milliarder kroner, og hver indbygger kan i gennemsnit disponere over ca. 190.000 kroner.

Japan er et konstitutionelt monarki, og regeringen udpeges af parlamentet – Diet. Landet er opdelt i 47 'præfekturer', nemlig Aichi, Akita, Aomori, Chiba, Ehime, Fukui, Fukuoka, Fukushima, Gifu, Gumma, Hiroshima, Hokkaido, Hyogo, Ibaraki, Ishikawa, Iwate, Kagawa, Kagoshima, Kanagawa, Kochi, Kumamoto, Kyoto, Mie, Miyagi, Miyazaki, Nagano, Nagasaki, Nara, Niigata, Oita, Okayama, Okinawa, Osaka, Saga, Saitama, Shiga, Shimane, Shizuoka, Tochigi, Tokushima, Tokyo, Tottori, Toyama, Wakayama, Yamagata, Yamaguchi og Yamaguchi.

Det skal også nævnes, at det japanske retssystem efter Anden Verdenskrig er opbygget over europæiske retssystemer, men med engelsk-amerikansk indflydelse.

Der er i Japan en stærk tradition for samarbejde mellem regering og industrien. Inden for industrien ser man ofte tætte net opbygget mellem fremstillingsvirksomheder, leverandører og distributører – de såkaldte 'keiretsu'. De mange store virksomheder i Japan er med til at skabe en stærk lønmodtagertradition – og ydermere har mange ansatte i de store virksomheder haft en tradition for garanti for livslang ansættelse. Dette princip er dog langsomt ved at forsvinde.

Japans økonomi er stærkt præget af industrien. Serviceindustrien udgør kun omkring 56 pct. af det samlede bruttonationalprodukt, mens industrien udgør godt 41 pct. Omkring 50 pct. af arbejdsstyrken er ansat i handel og service, mens en tredjedel er ansat i fremstillingserhvervene samt i bygge- og anlægssektoren. Landbruget spiller en beskedne rolle med en andel på 3 pct. af BNP og 6 pct. af beskæftigelsen.

Japan er, med sin stærke industri, blandt verdens førende på områder som stålprodukter, elektronisk udstyr, biler, elektronik og telekommunikationsudstyr, maskinværktøjer, automatiserede produktionsanlæg, tog, skibe, tekstiler og forarbejdede fødevarer. Til gengæld er Japan fuldstændig afhængig af import af en stor del af sine råvarer og energi.

Japan har oparbejdet et betydeligt underskud på de offentlige finanser gennem de senere år, bl.a. fordi regeringen har søgt at puste liv i økonomien op gennem halvfemserne ved hjælp af de offentlige finanser.

Landet har på grund af den stærke industrialisering og den store befolkningstæthed store miljøproblemer, bl.a. i form af luftforurening og deraf følgende syreregn, og i form af forsurening af søer og drikkevandsreservoirer. Samtidig har det store forbrug af fisk og af tømmer været med til at udtynde ressourcerne på disse områder – ikke alene i Japan, men i hele Sydøstasien.

2.2.2 Implementering af GPA

Offentlige udbud i Japan foregår i høj grad på et decentraliseret plan. Der er indbygget udbudsprocedurer i de forskellige dele af det formelle grundlag for de centrale regeringsafdelinger og i de retsregler, der danner grundlaget for de lokale og regionale administrationer. De centrale myndigheder fører også tilsyn med, at udbudsreglerne er korrekte og at de bl.a. opfylder kravene fra GPA. På det centrale plan er 30 ministerier og 84 offentlige og halvoffentlige institutioner omfattet af GPA.

I overensstemmelse med GPA gælder der ikke nogen særlige oprindelsesregler – hverken for leverandører eller for varer – og der anvendes ikke-diskriminatoriske principper for udbud. Dette gælder også siden 1996 for sub-centrale myndigheder. Det skal især bemærkes, at Japan på en række områder, bl.a. computerprodukter og relaterede tjenester, telekommunikationsprodukter og -tjenester, medicinske apparater samt bygge- og anlægsarbejder er gået videre i liberaliseringen end krævet af GPA.

Der anvendes i reglen en af følgende tre typer af udbudsprocedurer:

- Offentlige udbud, hvor den pågældende myndighed annoncerer efter bud, og her er princippet, at kontrakter går til det laveste bud. Man forsøger i Japan at anvende denne form for udbud i videst muligt omfang for alle kontrakter (dog undtagen bygge- og anlægskontrakter) til en værdi af over SDR 100.000.

- Begrænsede udbud anvendes også i nogle tilfælde. Som regel foretages der en meddelelse om udbuddet i de officielle medier, hvor også kvalifikationskriterierne oplyses. På basis af de indkomne forslag udvælges en række virksomheder, der får adgang til at afgive bud. Hovedprincippet for valg mellem buddene er den laveste pris under de givne betingelser og specifikationer.
- I enkelte undtagelsestilfælde kan myndigheder få lov til at tildele kontrakter uden konkurrence. Disse undtagelsestilfælde kan bl.a. være, hvis ingen potentiel leverandør har reageret på en meddelelse om et offentligt eller et begrænset udbud, eller hvis der er tale om specielle forhold, f.eks. patenter, der gør, at kun én virksomhed i realiteten kan levere det ønskede.

Der foreligger oplysninger om brug af de enkelte udbudsformer i Japan, og selv om tallene ikke er helt up to date, giver de en indikation af, hvilke procedurer der typisk anvendes. Tallene er i pct. af samtlige.

	1994	1995	1996	1997
Offentlige udbud (antal kontrakter)	79,8	84,9	82,2	81,2
Offentlige udbud (værdi)	70,2	76,1	71,0	69,7
Begrænsede udbud (antal kontrakter)	8,9	4,2	3,0	2,6
Begrænsede udbud (værdi)	11,6	4,2	3,5	3,6
Uden konkurrence (antal kontrakter)	11,3	10,9	14,8	16,2
Uden konkurrence (værdi)	18,2	19,7	25,5	26,7

Selv om de offentlige udbud klart vejer tungest til – såvel i antal kontrakter som i værdi – spiller de exceptionelle 'udbud uden konkurrence' alligevel en stor rolle, og de står for op mod en fjerdedel af den samlede værdi af offentlige udbud. Hvis man spørger de japanske udbudsgivere om, hvorfor de har brugt denne metode, svarer 22 pct. af dem, at der ikke var et tilfredsstillende svar på en forudgående meddelelse om et offentligt eller et begrænset udbud, 27 pct. siger, at det skyldes copyright eller lignende forhold, mens 45 pct. siger, at det skyldes, at et skift af leverandør ville medføre manglende kompatibilitet med allerede indkøbt og fungerende udstyr. Af andre – mindre betydningsfulde – svar kan nævnes, at der har været tale om udstyr eller lignende, som var udviklet specielt for den pågældende offentlige myndighed.

Det er i realiteten en forudsætning for at kunne deltage i såvel de offentlige som i de begrænsede udbud, at virksomhederne har fået en attest fra de relevante myndigheder på, at de er kvalificerede og at de er

optaget på listerne over kvalificerede tilbudsgivere. De oplysninger, der normalt kræves, vedrører:

- Virksomhedens historie
- Oplysninger om virksomhedens økonomiske situation, og
- Beviser for, at alle skatter m.m. er betalt.

Virksomhederne på listen inddeles normalt i tre kategorier, A, B og C. I hvilken gruppe, man kommer, fastsættes efter objektive kriterier, der primært angår virksomhedernes økonomiske kapacitet og hvor længe virksomheden har eksisteret. Det er da også sådan, at virksomhederne kommer i betragtning til udbud af givne størrelser efter i hvilken kategori, de er placeret.

Varigheden af kvalifikationerne er i reglen 1-2 år.

For udbud over GPA-tærskelværdierne sker meddelelserne om udbud mindst 40 dage før afleveringsfristen, og udbudsmeddelelserne giver de oplysninger, der skal til for at kunne afgive et bud. Der kan også være tale om informationsmøder, hvor yderligere detaljer om projekterne bliver givet.

Japan har tidligere praktiseret et system med *minimumspriser* i forbindelse med udbud – især i de regionale administrationer. Der blev her sat en minimumspris for bud – den lavest tilladelige pris – som blev fastsat på et niveau på 20 pct. under den af myndigheden estimerede pris. Derefter blev alle bud under denne grænse automatisk ekskluderet – alene af denne grund. Systemet er (i hvert fald officielt) opgivet efter indførelsen af GPA, der ikke giver mulighed for at praktisere et minimumsbuds princip.

Systemet blev praktiseret fordi man mente, at bud under 20 pct. af den skønnede værdi af kontrakten ofte ville kunne føre til, at den virksomhed, som vandt kontrakten, ikke ville kunne udføre arbejdet på et tilfredsstillende kvalitetsniveau til en så lav pris. Men systemet eliminerer samtidig i høj grad priskonkurrencen, og det i særlig høj grad i forbindelse med internationalisering af udbuddene. Den skønnede minimumspris var nemlig typisk baseret på japanske erfaringer og omkostningsniveau, og derfor kan systemet ofte medføre en udelukkelse af udenlandske bud, der er konkurrencedygtige, fordi de kommer fra et land, der på det pågældende område er mere konkurrencedygtig end Japan.

Udbud under grænseværdierne

På det seneste har Japan taget skridt til at åbne de offentlige indkøbsmarkeder ud over, hvad der er krævet i GPA-reglerne. Således er den normale tærskelværdi for varer og tjenester, der i GPA er fastsat til SDR 130.000, nu SDR 100.000.

Publikation af udbud

Det officielle organ for udbudsmeddelelser er *Kanpo* (og i visse tilfælde lignende lokale officielle meddelelsesorganer). *Kanpo* er Japans officielle regeringsorgan, og det udgives af 'the Printing Bureau of the Ministry of Finance'. Man kan abonnere på tidsskriftet ved henvendelse til det ovennævnte bureau på adressen:

Kasumigaseki 1-2-1
Chiyoda-ku
Tokyo
Tlf.: +813 3504 3885

I dag er den japanske eksport Handelsorganisations *Government Procurement Database System* (JETRO) dog nok det vigtigste medium for virksomheder, der er interesserede i at prøve kræfter med det japanske udbudsmarked. Man kan få adgang til databasen på adressen: <http://www.jetro.go.jp/cgi-bin/gov/givint.cgi/html>

Her kan man søge på udbud efter en række kriterier, f.eks. type af meddelelser, produkter, tidsperioder og meget mere.

Man kan også kontakte JETRO's 'Government Procurement Information Liaison' på:

Tlf.: +813 3582 5549
Fax: +813 3589 4179

Klageinstanser

'The Office of Government Procurement Review' (OGPR) i statsministerens kontor, er øverste ansvarlige myndighed for implementeringen af GPA i Japan. Dette kontor udarbejder også en årlig rapport om status for det offentlige udbudsmarked i Japan. Denne rapport er i øvrigt solid læsning om det japanske udbudsmarked (og giver en række oplysninger om delmarkeder, f.eks. om telekommunikationsudstyr, medi-

cinsk udstyr, computere m.m.), og den kan hentes på Internettet på adressen:

<http://www.sorifu.go.jp/whitepaper/gaisei/shotatsu/english/index.html>

Klager over udbudsforretninger under den centrale regering behandles normalt af Government Procurement Review Board, mens der er oprettet særlige procedurer for de enkelte sub-centrale myndigheder.

Kontakt detaljer for sekretariatet for Government Procurement Review Board findes nedenfor under 2.2.6.

Der kan findes en udmærket vejledning i klagesystemet og dets anvendelse på Internettet på adressen:

<http://www.epa.gp.ja/chousei/chans/chans-e-1.html>

På denne internetside kan man også finde oplysninger om, hvem der deltager i behandlingen af klagesager på de forskellige områder.

2.2.3 Markederne

Det samlede marked for offentlige udbud er efter de seneste officielle opgørelser (vedrørende 1997) på 964 mia. JPY, svarende til 50 mia. danske kroner. Det er en opbremsning i forhold til de senere års store vækst i udbudsmarkedet, hvis værdi kan opgøres således over de seneste år:

	1994	1995	1996	1997
Totalt antal kontrakter	10.613	11.700	14.293	16.293
Total værdi af markedet i mia. JPY	7,318	8,452	9,753	9,640

Man kan dog ikke sige, at udenlandske leverandører spiller nogen fremtrædende rolle på det japanske udbudsmarked.

På tjenesteydelsesområdet blev således kun 2,3 pct. af samtlige kontrakter (målt efter værdi) tildelt udenlandske leverandører, mens 97,7 pct. tilfaldt japanske virksomheder. Det var faktisk kun på nogle informationsteknologiske områder (on-line services og databaser) samt på computerområdet, at der overhovedet var nogen udenlandsk deltagelse.

På vareleveranceområdet er situationen lidt anderledes, idet omkring 14 pct. af samtlige ordrer i 1996 gik til udenlandske leverandører. På følgende områder var der en høj andel af udenlandske leverandører:

Varetype	Procent andel af udenlandske leverandører (efter værdi)
Kemiske produkter	89,1 pct.
Lægemidler	30,3 pct.
Jernbaneudstyr	57,7 pct.
Fly	73,9 pct.
Medicinsk udstyr	39,1 pct.
Videnskabelige apparater	25,1 pct.
Total	14,1 pct.

De japanske statistikker viser følgende fordeling på hovedregioner af de udenlandske leverandører for 1997 (i pct.):

	Værdi af kontrakter	Antal kontrakter
USA	56,0	53,6
EU	24,9	18,6
Andre	19,1	27,8
I alt	100,0	100,0

Danske virksomheder fik i dette år kontrakter under GPA-reglerne til en værdi af 206 millioner SDR, hvilket er en relativt høj andel, Danmarks størrelse taget i betragtning. Det var således ca. 20 pct. af Tysklands andel i markedet.

2.2.4 Forventninger på mellemlangt sigt

Den japanske regering venter selv, at der i løbet af 1999 sker en vending af økonomien, så den efter den økonomiske og finansielle krise igen kommer ind på et spor, der vil vise positiv økonomisk vækst. Det er i denne forbindelse vigtigt at notere sig, at der er iværksat en række offentlige foranstaltninger, som skal stimulere efterspørgselen i økonomien og støtte opsvinget i erhvervslivet.

Man har f.eks. øget de offentlige investeringer i anlægsarbejder med 10 pct., og det indbefatter vejforbedringer, forbedring af miljøet, kontrol med erosioner og oversvømmelser, lufthavnsbyggeri og havneforbedringer. Der er også iværksat et offentligt støttet boligbyggeri. Disse in-

vesteringer vil naturligvis have en effekt også i de kommende år, men det skal ikke ventes, at regeringen kan øge de offentlige investeringer tilsvarende i de kommende finansår. Det tillader problemerne med underskud på de offentlige finanser ikke.

Der er i dag 17 millioner japanere i aldersgruppen over 65 år. Det svarer til 13 pct. af befolkningen. I 2025 vil denne andel være nået op på mere end 25 pct. Der skal derfor ske en udvidelse og en forbedring af ældreforsorgen, ligesom der forventes en øget efterspørgsel efter handicap- og rehabiliteringsudstyr. Der er vedtaget en lov, som fra 2000 skal sikre, at alle ældre får deres behov for sygepleje opfyldt. På baggrund af den i forvejen ganske gode danske situation på dette område, skulle der være gode muligheder for en forøgelse af eksporten til denne del af udbudsmarkedet.

Japanske kilder skønner ligeledes, at der vil være en konstant vækst i efterspørgselen efter lægemidler på 4-5 pct. om året de kommende år. Også på det medico-tekniske område ventes der vækst. Japan indkøber for mere end 45 mia. kroner udstyr af denne type om året, og der ventes en vækst på 5 pct. om året de næste fem år. Det er samtidig værd at bemærke, at omkring 40 pct. af alt sådant udstyr i dag importeres, og at tendensen til import er stigende.

Der skønnes ligeledes på mellemlangt sigt at være gode og stigende muligheder for eksport af miljøudstyr og løsninger på miljøproblemer til Japan. Der er f.eks. interesse for vindenergi, og opbygningen af vindmølleparker er startet i Japan. De næste 10 år ventes andelen af elproduktionen fra denne energikilde at stige fra de nuværende 9 MW til 300 MW om året. Også bioenergi spås en stor fremtid. Affald producerede 890 MW i 1996, og målet er en energiproduktion fra denne kilde på 4.000 MW i 2010.

Som nævnt ovenfor har man i det seneste par år gjort en del for at åbne og liberalisere de offentlige indkøbsmarkeder i Japan. Det er bl.a. sket ved at sænke tærskelværdierne, ved større åbenhed og bedre annoncering af udbud og ved at afholde en række seminarer for potentielle leverandører, jf. afsnit 2. Dette kan også medvirke til at åbne markedet – og give nye muligheder – for udenlandske, herunder danske, leverandører. Der har da også vist sig stor interesse for deltagelse i disse seminarer, idet der frem til og med 1996 havde været i alt 149 udenlandske virksomheder som deltagere ud af i alt 752 deltagende. Til slut skal det i denne forbindelse nævnes, at Europa-Kommissionen for øjeblikket er ved at undersøge, om der gives fortrinsstilling til amerikanske leverandører i forbindelse med liberaliseringen af udbudsmarkedet. Denne

frygt eksisterer i EU, og det synes som om det hårde amerikanske pres mod Japan generelt for at åbne markederne har givet resultater, som er skæve til fordel for USA.

2.2.5 Barrierer og muligheder for danske virksomheder

Danske virksomheder, der ønsker at gå ind på det japanske marked, skal som alle andre først lade sig registrere og opnå et certifikat for at være en kvalificeret leverandør. Dette betyder også, at man bliver optaget på den pågældende institutions leverandørliste. Desværre skal dette ske i forbindelse med den konkrete myndighed, og ønsker man derfor f.eks. også at deltage i udbud på lokalt eller regionalt plan kan det være en barriere. Det er desuden ret forskelligt, hvor lang tid registreringer tager og hvilke procedurer, der anvendes, så der ligger i denne registrering forhold, som kan være en alvorlig barriere. Registreringen tager ofte længere tid end de 40 dage, der normalt går mellem publicering af udbud og afleveringsfristen.

Det skal dog tilføjes, at den japanske regering har henstillet til alle myndigheder, der er omfattet af GPA, at de bør indrette disse registreringssystemer på en mere ensartet og overskuelig måde, og at de skal gøre sig særlig umage for, at systemerne er brugervenlige for udenlandske virksomheder, så der kan måske være forbedringer på vej på dette område. Der er nemlig ingen tvivl om, at selv om japanske og udenlandske leverandører formelt skal gennem den samme proces, så er det langt vanskeligere og mere bureaukratisk for udenlandske firmaer at registrere sig, end det er for japanske.

Fra Europa-Kommissionens side siger man, at selv om GPA-reglerne på papiret er gennemført i Japan, så vil det være ønskeligt at få ændret mentaliteten hos mange indkøbere – især på et lavere, operationelt niveau. Det siges f.eks., at det er yderst sjældent, at udenlandske virksomheder inviteres til at deltage i begrænsede udbud. Det forhold, at man i reglen anvender laveste pris som kriterium for tildeling af kontrakter, kritiseres også af EU. Det tillader nemlig ikke anvendelsen af materialer af højere kvalitet, og dermed en højere økonomisk værdi totalt set, at konkurrere med billigere japanske varer af ringere kvalitet.

Det japanske udenrigsministerium advarer også i en publikation om offentlige udbud om, at man i hovedsagen taler japansk i Japan, og at de færreste myndigheder vil være i stand til at håndtere udbudsforretninger – eller selv forespørgsler om sådanne – på andre sprog end japansk.

Statistikkerne viser, at der på tjenesteydelsesområdet stort set ikke er udenlandske leverandører, som får ordrer. Det kunne indicere, at de sprogmæssige og kulturelle barrierer på serviceområdet simpelt hen er for store til at udenlandske virksomheder kan begå sig på markedet. I denne forbindelse kan i øvrigt henvises til det program, som Europa-Kommissionen sammen med de japanske myndigheder finansierer for europæiske forretningsfolk, som ønsker at lære at begå sig på det japanske marked generelt.

Danske virksomheder, der ønsker at gå ind på det japanske udbudsmarked, skal være opmærksom på, at der findes en række tekniske standarder – først og fremmest Japan Industrial Standard – som ganske vist ikke ifølge de officielle regler kan anvendes i forbindelse med udbud, men som i realiteten og i praksis er gældende. Det blev således sagt i forbindelse med interviews af danske virksomheder til denne rapport, at 'japanske virksomheder er så veletablerede og har opbygget et så nært samarbejde med myndighederne, at specifikationerne udelukkede alle andre virksomheder end de japanske.' Man skal også i denne forbindelse erindre sig den stærke japanske tradition for samarbejde mellem regering og industri, og virkningen af de ovenfor nævnte 'keiretsu'.

Der findes en række barrierer for udenlandske virksomheders deltagelse i bygge- og anlægsmarkedet i Japan, herunder ikke mindst en række licensarrangementer. Der gøres dog en del i Japan for at fjerne disse hindringer, f.eks. skal virksomheder ikke længere have en erfaring i Japan at henviser til. Nu accepterer myndighederne erfaringer fra andre lande, hvis de er veldokumenterede. Desuden arbejder man på at få de regionale myndigheder til at lade være med at forlange oplysninger om virksomheder og produkter, der ikke er krævet i lovgivningen (herunder den af GPA afledte lovgivning).

Der er dog fortsat problemer med høje omkostninger i forbindelse med at opnå licenser, og der lægges bl.a. fra Europa-Kommissionen et pres på Japan for at nedsætte disse priser, som ofte gør det vanskeligt eller umuligt for udenlandske virksomheder at opnå den registrering, der skal til for at kunne være med i udbud. EU har klaget til de japanske klageorganer over disse problemer og har i tillæg krævet, at en række europæiske arkitektuddannelser skal kunne ligestilles med japanske førsteklases arkitekter.

Et andet område, der ifølge Europa-Kommissionen ofte giver problemer, er 'bid-rigging' – eller 'mestergrise', som på japansk hedder

'dango'. Det er naturligvis imod GPA-reglerne at lave sådanne arrangementer, hvor en gruppe af leverandører på forhånd bestemmer, hvem der skal vinde kontrakten og indretter deres bud efter det. Det er forbudt i forhold til de japanske regler. Men de findes, og de findes især inden for byggeindustrien, hvor de bidrager til at højne prisniveauet, fordi konkurrencen bliver elimineret. Så på dette område er Japan måske ikke så forskellig fra mange andre lande – også i EU. Men det skal også nævnes, at et tæt forhold mellem embedsmænd og politikere og byggeindustrien i Japan har givet anledning til unfair konkurrence.

Også en garantibetaling på typisk 5 pct. af kontraktsummen i forbindelse med tildeling af kontrakter kan udgøre en barriere især for udenlandske virksomheder. I nogle tilfælde forlanger myndighederne, at der stilles en garanti efter arbejdets udførelse mod defekte produkter eller fejl ved bygge- og anlægsarbejder. Det kan være svært for især mindre virksomheder at skulle stille en sådan garanti for en længere periode.

Japan er dog på vej til at blive et mere konkurrencebetonet samfund end det har været tidligere, og det er ikke mindst på grund af liberaliseringerne og den deraf følgende udenlandske konkurrence på markedet. På udbudsmarkedene er de hårdeste konkurrenter nok de lokale leverandører, som f.eks. på tjenesteydelsesområdet er næsten enerådende. Adgang til markedene vil være lettest på områder, hvor japanerne selv er relativt svage, bl.a. på miljøområdet, på forsøgsområdet og på sundhedsområdet, men her skal der påregnes konkurrence fra bl.a. amerikanske, tyske og britiske virksomheder og fra andre asiatiske lande.

Samlet har den danske succes på det japanske udbudsmarked hidtil været ganske god. Statistikkerne tillader ikke en detaljeret underopdeling af, på hvilke områder ordrene er faldet, men det må antages, at de største danske succeser ligger på vareleveranceområdet. Er man først registreret som en kvalificeret leverandør, og er man rede til at tilpasse sig de japanske standarder, forekommer markedet – ud over at være stort – også at være relativt åbent. Det vil i stigende omfang være muligt for danske virksomheder at søge oplysninger om udbud via de elektroniske udbudstjenester, men en kommerciel kontakt eller ligefrem en etablering i landet vil aldrig være til skade – specielt ikke, når det gælder opfyldelse af krav til eftersalgsservice m.m. og de sproglige krav.

2.2.6 Nyttige adresser i Japan

Eventuelle henvendelser om klager skal rettes til sekretariatet for Government Procurement Review Board:

Kasumigaseki 3-1-1
Chiyoda-ku
Tokyo 100
Tlf.: +813-3581 9576
Fax: +813-3581 9897
E-mail: chans.b@epa.go.jp

Den danske ambassade i Japan:

Royal Danish Embassy
29-6 Sarugaku-cho
Shibuya-ku
Tokyo 150-0033
Japan
Tlf.: +813 34 96 30 01
Fax: +813 34 96 34 40
Internet: <http://www.debmark.or.jp>

2.2.7 Konklusion

Implementering af GPA	Implementeringen af GPA synes at være på plads for så vidt angår alle formalia. Ændringer på det seneste af udbudsforholdene i den lokale forvaltning har korrigeret problemer der.
Åbenhed og transparens	Bl.a. på grund af et generelt pres på Japan for åbning af eksportmarkederne fra EU og USA, gøres der fra centralt hold en stor indsats for at åbne udbudsmarkedet for international konkurrence. Informationsmaterialet er af høj kvalitet og nemt tilgængeligt.
Klageorgan	Klageorgan er oprettet som krævet i GPA. Organet synes at være tilgængeligt.
Markedets størrelse	Markedet er principielt gigantisk, og det ventes

	at vokse på områder af central interesse for danske virksomheder.
Betydning for nabomarkeder	Japan giver ingen direkte adgang til nabomarkeder, men markedet er i sig selv så stort, at dette har mindre betydning.
Sproglige og kulturelle barrierer	Informationsmateriale – inkl. Internettet – findes i reglen på engelsk, men deltagelse i seminarer og i udbud skal normalt foregå på japansk. Der er kulturelle traditioner, som gør det vanskeligt for udenlandske leverandører at komme ind på markedet. 'Mestergrise' er ikke ukendte især i byggebranchen.
Markedsforventninger	Der er forventninger til vækst i udbudsmarkedet, dels på grund af satsninger på områder som miljø, sundhed og ældreomsorg, dels på grund af øget liberalisering af udbudsmarkedet.
Tradition for dansk eksport	Der er en høj grad af dansk tradition for eksport til Japan. Landet er Danmarks næststørste oversøiske eksportmarked, og Danmark har – som et af få lande i verden – et handelsoverskud med Japan.
Konkurrencesituation	På nøgleområder er der hård konkurrence fra lokale virksomheder, men også fra USA, Tyskland og UK – samt fra asiatiske lande.

2.3 Hong Kong

2.3.1 Administrative karakteristika

Hong Kong har siden 1997 været en 'Special Administrative Region' i Kina, og ifølge aftalen herom med Storbritannien skal Hong Kong fortsat have udbredt autonomi undtagen i udenrigs- og forsvarspolitikken.

Hong Kong dækker kun godt 1000 kvadratkilometer, og på dette beskedne areal bor der 6,7 millioner mennesker. Langt de fleste af dem er kinesere, og de officielle sprog i Hong Kong er engelsk og kinesisk (kantonesisk).

Der findes ingen specielle administrative opdelinger i Hong Kong. Regeringsapparatet består af et statsoverhoved (som er den kinesiske præsident Jiang Zemin), samt en regeringschef (Chief Executive) og en regering bestående af 3 ex-officio medlemmer (med ansvar for bl.a. finanser og justitsvæsen) samt 10 udpegede medlemmer.

Hong Kongs økonomi er stærkt baseret på servicefag, især handel og finans. Der er ingen landbrug af betydning i regionen, og industrien bidrager kun med 16 pct. til bruttonationalproduktet. Næsten 84 pct. af Hong Kongs værdiskabelse sker i servicefag.

Det samlede bruttonationalprodukt er i størrelsesordenen 1.400 milliarder kroner, og det gennemsnitlige bruttonationalprodukt pr. indbygger er på ca. 225.000 kroner. Hong Kong hører til blandt de 'asiatiske tigre' og har gennem en årrække været vant til økonomiske vækstrater i tigerklassen. Men efter en vækst i BNP i 1997 på næsten 6 pct., var der et fald i BNP i 1998 (på 4 pct.), og Hong Kong ventes at komme ud af 1999 med noget, der ligner nulvækst.

Hong Kong er helt afhængig af handel, og da der stort set ikke findes råmaterialer eller landbrugsproduktion, er afhængigheden af import meget stor. Det er kun omkring 13 pct. af den samlede arbejdsstyrke, som er beskæftiget med produktionsindustri og med byggeri, så stort set alt andet end tjenesteydelser importeres udefra.

Der er usikkerhed om, i hvilket omfang Hong Kong vil fortsætte med at handle med de traditionelle handelspartnere, dels på grund af den økonomiske krise, dels på grund af indlemmelsen i Kina. Der var allerede inden 1997 et nært handels- og investeringsmæssigt samkvem med

Kina, og det må formodes, at der i de kommende år vil ske en forskydning af de økonomiske relationer videre i den retning. I 1996 solgte Hong Kong 34 pct. af sin samlede eksport til Kina, og 37 pct. af al import til Hong Kong kom fra Kina.

Hong Kongs infrastruktur er excellent og understøtter de vigtige serviceerhverv. Telekommunikationen er moderne, udbredt, diversificeret og fremragende (Hong Kong er det største telekommunikationscenter i Asien), lufthavnen er måske verdens mest moderne, havnen er betydningsfuld og der findes et udbredt metrosystem i Hong Kong. Men det hører også med i billedet, at den kraftige urbanisering af Hong Kong har medført store miljøproblemer – især med luft- og vandforurening.

2.3.2 Implementering af GPA

Hong Kong har underskrevet GPA, men først i maj 1997, og denne situation er der ikke ændret på som følge af Hong Kongs ændrede status.

GPA er egentlig ikke implementeret ved lovgivning i Hong Kong, men gennem de såkaldte 'Stores and Procurement Regulations', som suppleres med såkaldte 'Financial Circulars'. I disse regler er grundlaget for offentlige indkøb lagt, og de er – over tærskelværdierne – i overensstemmelse med forpligtelserne i GPA.

Hong Kong anvender de 'sædvanlige' grænseværdier for omfattede udbud, nemlig SDR 130.000 for varer og tjenester og SDR 5.000.000 for bygge- og anlægsarbejder, for alle udbud fra regeringen. For kontrakter under bystyret og regionale organisationer anvendes SDR 200.000 for varer og tjenester og SDR 5.000.000 for bygge- og anlægsarbejder. Endelig gælder for udbud fra instanser, der ikke direkte hører under regeringen, en tærskelværdi på SDR 400.000 for varer og tjenester, mens SDR 5.000.000 også her er tærskelværdien for bygge- og anlægsarbejder. Blandt sådanne instanser kan nævnes the Housing Authority, the Hospital Authority, the Airport Authority, the Mass Transit Railway Corporation og the Kowloon-Canton Railway Corporation.

Som følge af Hong Kongs begrænsede muligheder for egenproduktion er der skabt en tradition for at købe ind på globalt plan og at få så megen konkurrence som muligt om leverancerne. Der er ingen særlige præferencer for lokale leverandører eller for særlige sektorer, som f.eks. mindre virksomheder.

Hong Kong anvender to principielt forskellige former for udbud. For indkøb af varer og tjenester samt bygge- og anlægsarbejder anvendes egentlige udbudsprocedurer i de tilfælde, hvor det, som planlægges indkøbt, kan specificeres præcist. I andre tilfælde, f.eks. i forbindelse med konsulenttjenester til problemløsning, eller i tilfælde hvor man ikke præcist kan specificere eller definere de forhold, der bestemmer kvaliteten af ydelsen, anvendes en procedure, som kaldes 'consultants selection'. Der kræves normalt i forbindelse med begge procedurer en tre-ugers periode fra meddelelsen om udbudsforretningen til buddene skal afleveres for at give såvel lokale som udenlandske virksomheder mulighed for at byde. For de udbud, der ligger over GPA grænseværdierne, skal der dog være 40 dage mellem udbudsmeddelelsen og fristen for indlevering af bud.

Der anvendes offentlige udbud, hvor alle interesserede virksomheder kan afgive bud. Alle sådanne udbud meddeles gennem 'the Government of the Hong Kong Special Administrative Region Gazette' og i stigende omfang via Internettet.

I tilfælde, hvor der anvendes prækvalifikationer, meddeles dette også i den nævnte Gazette, eller der sendes en invitation til alle leverandører, som er optaget på de relevante leverandørlistor. Udvælgelsen af de virksomheder, som får adgang til at byde, sker normalt efter kvalifikationskriterier eller tekniske krav, som bliver meddelt på forhånd.

I enkelte tilfælde, hvor helt specielle forhold gør sig gældende, kan man anvende udbud, hvor en enkelt eller nogle få leverandører inviteres til at afgive bud. Denne form kan kun anvendes, hvis den er godkendt af finansministeren eller direktøren for offentlige forsyninger.

Der findes en række 'Tender Boards', som har kompetence til at tage beslutning vedrørende udbud:

- *Central Tender Board* har under forsæde af finansministeren ansvaret for de helt store udbudsforretninger, hvis samlede værdi ligger ud over, hvad andre Tender Boards kan tage sig af. Dette board behandler under alle omstændigheder udbud for varer og tjenester til en værdi af over HK\$6 millioner og bygge- og anlægsarbejder til en værdi af over HK\$15 millioner.
- *Government Supplies Department Tender Board* (vareindkøb til en værdi af maksimalt HK\$6 millioner)
- *Public Works Tender Board* (bygge- og anlægskontrakter under HK\$15 millioner).

- *Home Affairs Department Tender Board* (mindre udbud vedrørende offentlige arbejder og miljøarbejder – op til HK\$3 millioner)
- *Marine Department Tender Board* (maritime udbud til en værdi af op til HK\$3,5 millioner).
- *Printing Department Tender Board* (trykkearbejder til maksimalt HK\$2,5 millioner).

Udbud under grænseværdierne

Der anvendes også ofte formaliserede udbudsregler for indkøb under GPAs tærskelværdier. I sådanne tilfælde vil sagerne ofte blive afgjort af såkaldte 'tender boards', eller af en embedsmand, som bliver autoriseret hertil af finansministeren.

Indkøb af varer til en værdi af under 500.000 HK\$ (ca. 10.000 kroner) og tjenester til en værdi af under HK\$ 1 million (ca. 20.000 kroner) kan indkøbes direkte af det pågældende offentlige organ uden særlige procedurer, men normalt skal der alligevel indhentes mindst fem tilbud, og det laveste bud, som opfylder specifikationerne, skal tildeles kontrakten.

Publikation af udbud

Meddelelser om udbud af varer til en værdi af over HK\$500.000 og tjenester til en værdi af over HK\$1.000.000 publiceres ugentligt på engelsk og kinesisk i 'Government of the Hong Kong Special Administrative Region Gazette'. En række offentlige myndigheder bruger også i stigende omfang meddelelser via Internettet.

Udbudsmeddelelser indeholder informationer om, hvem der står for udbuddet, hvad der ønskes indkøbt, hvorfra yderligere materiale kan indhentes, hvor buddene skal afleveres, og hvornår det senest skal ske.

Der bringes meddelelse om, hvem der har vundet kontrakter gennem udbudsforretninger i den nævnte Gazette ved udløbet af måneden efter afgørelsen om kontrakterne. Der bruges her bl.a. oplysninger om den pågældende kontrakt, hvem der har fået den tildelt, og hvad kontraktsummen er.

Klageinstanser

Der er mange muligheder for at klage over udbudsforretninger i Hong Kong. Man kan klage til den udbydende myndighed, til det relevante 'tender board', til 'the Independent Commission Against Corruption'

eller til Hong Kongs ombudsmand. Hong Kong er i færd med at strømlinje klagesystemet – i hvert fald hvad angår udbud under GPA-reglerne – ved at skabe et 'Bid Challenge Review Body', som skal tage sig af eventuelle problemer med udbud, der følger GPA. Dette organ var ved redaktionens slutning endnu ikke etableret.

2.3.3 Markederne

I finansåret 1996/97 (det seneste der findes statistik for) var værdien af de samlede offentlige indkøbskontrakter på vareområdet på ca. 3,5 mia. kroner. I samme finansår blev der tildelt kontrakter på bygge- og anlægsområdet til en værdi af ca. 16 mia. kroner.

For vareindkøbsområderne bør man være opmærksom på, at regeringen har et centralt indkøbskontor, der køber varer af den type, som ofte anvendes i mange typer af regeringsinstanser, f.eks. elektriske apparater, kontormaterialer og lægemidler. Det centrale indkøbskontor ('the Government Supplies Department') har egne varelagre og køber ind på vegne af andre dele af den offentlige sektor gennem særlige bevillinger, som 'betales tilbage' af de forskellige dele af regeringen i takt med, at varerne leveres. Det kan tilføjes, at GSD også står for indkøb til en række non-governmentale organisationer. GSD har en leverandørliste med ca. 4.000 registrerede potentielle leverandører.

GSD ventes i de kommende år at foretage store indkøb af computersystemer, hospitalsudstyr, lægemidler, telekommunikationsudstyr og meget mere (se også nedenfor).

Når GSD køber ind, gælder i høj grad konkurrenceprincippet og 'Best value for money'. GSD lægger normalt vægt på stringent opfyldelse af udbudskriterierne, leveringsdygtighed og -sikkerhed samt konkurrenceedygtighed ikke alene på prisen, men også på eventuel installation og eftersalgsservice.

På bygge- og anlægsområdet, derimod, står de enkelte dele af regeringen for egne indkøb – dog under generel koordination og tilsyn af 'the Works Bureau'. Dette organ har også et register over byggefirmaer og har etableret et system for evaluering af disse firmaer. Works Bureau har en leverandørliste med 320 virksomheder, der er godkendt som potentielle leverandører.

Endelig indkøber den offentlige sektor en række tjenesteydelser decentralt. Det gælder især rengøring, drift af bygninger, drift af transportsystemer og affaldshåndtering.

I forbindelse med indkøb af varer er der i Hong Kong en tradition for at købe ind på globalt plan gennem offentlige udbud, hvor det er muligt. Der søges den højeste mulige værdi for skatteydernes penge i disse tilfælde, og der anvendes normalt kun udbudsformer benævnt ”restricted tenders” og ”single tenders” ved vareindkøb, i de tilfælde hvor det sker for at sikre kompatibilitet med eksisterende udstyr eller i forbindelse med patenterede produkter.

Også på tjenesteydelsesområdet søges der normalt maksimal konkurrence gennem offentlige udbud, mens bygge- og anlægsarbejder i reglen tildeles efter indbudte licitationer, hvor firmaer, der er opført på de relevante lister inviteres til at byde.

2.3.4 Forventninger på mellemlangt sigt

Økonomien har som nævnt været i en nedgangsfase, og der kan næppe ventes mere end nulvækst i 1999. Til gengæld regnes der med en lille stigning i såvel det offentlige forbrug som i investeringerne, hvilket kunne indicere en stigning i markedet for offentlige udbud.

De officielle prognoser peger på følgende udvikling i økonomien:

	1999-2000	2000-2001	2001-2002	2002-2003
BNP i pct.	-0,5	3,5	3,5-4,0	4,0
Offentlige udgifter (mia. HK\$)	241.6	250.6	266.0	283.2

Der gives via Internettet forhåndsmeddelelse om ventede større udbudsforretninger inden for de kommende 12 måneder på adressen:

<http://www.info.gov.hk/gsd/forecast.htm>

Her findes meget detaljerede beskrivelser af de forventede udbudsforretninger i en meget brugervenlig form (på engelsk). De forventede udbud er opdelt på en række undergrupper.

Interesserede virksomheder kan registrere sig på nedenstående adresse, hvor man også kan inspicere de lister over potentielle leverandører, der allerede er registreret. Denne metode kan f.eks. anvendes til at skaffe sig et overblik over potentielle konkurrenter:

Supplies Officer (Supplier Registration)
Government Supplies Department
9/F, North Point Government Offices,

333 Java Road,
North Point,
Hong Kong.
Tlf.: +852 2231 5289
Fax: +852 2807 2764
E-mail : hktender@gsd.gcn.gov.hk

Miljøproblemerne i Hong Kong er stigende, og det vil være nødvendigt med betydelige investeringer i denne sektor i de kommende år, hvis livsstilen skal kunne fastholdes.

En nedbringelse af affaldsmængderne har højeste prioritet. Kapaciteten for Hong Kongs lossepladser vil blive fuldt udnyttet om maksimalt 10 år, og da man i dag kun forbrænder 10 pct. af affaldet, er der brug for mere moderne affaldshåndteringsmetoder.

Overvejelserne går især på at bruge waste-to-energy teknikker, og der er allerede indledt feasibility studier for sådanne anlæg. Der vil, ifølge planerne, i første omfang blive opført et forbrændingsanlæg med en kapacitet på 1 million tons om året (ca. 1/8 af den totale affaldsmængde i øjeblikket), og dette projekt vil blive gennemført på *design, build and operate* vilkår.

Der vil også være muligheder i forbindelse med store kloakerings- og spildevandsprojekter, herunder et projekt kaldet *Strategic Sewage Disposal Scheme*, som er under udvikling.

Der vil generelt i de kommende år blive brug for moderne udstyr, teknologi og know how på miljøområder som spildevandsrensning, affaldsbehandling og luftrensning, ikke alene i Hong Kong, men i hele Perleflodsdeltaet – dvs. i høj grad også i Kina. Selv om man ikke kan påregne, at projekter i selve Kina vil følge kendte udbudsregler, kan succesfulde løsninger i Hong Kong, vundet gennem GPA-udbud, meget vel føre til nye ordrer i det kinesiske bagland for danske virksomheder.

Hong Kong importerer i stigende grad lægemidler, og danske eksportører bør være opmærksom på mulighederne i at sælge gennem det offentlige indkøbskontor *Government Supplies Department*. Her købes

normalt gennem virksomheder, der er registreret på en leverandørliste (se ovenfor).

En række hospitaler og klinikker gennemgår i denne tid moderniseringer, og der indkøbes en del udstyr og instrumenter til denne sektor, også gennem *Government Supplies Department*. Der ventes i de kommende år gode muligheder for afsætning af revaliderings- og handicapudstyr samt udstyr til ældresektoren. Omkring 10 pct. af Hong Kongs indbyggere er over 65 år gamle.

På anlægsområdet har især den nye lufthavn, Chek Lap Kok, påkaldt sig interesse, men selv om lufthavnen blev taget i brug i sommeren 1998, er investeringerne i tilknytning til dette vigtige infrastrukturprojekt ikke ovre. Dels vil man udvide lufthavnen frem mod 2040 i et hæsbælende tempo: Fra i dag at kunne håndtere 35 millioner passagerer og 3 millioner tons luftfragt om året, skal lufthavnen om 40 år kunne klare 87 millioner passagerer og 9 millioner tons fragt om året. Men der er også andre anlægsprojekter, knyttet til lufthavnen, som vil blive igangsat i de kommende år.

Også Hong Kongs vigtige havn står over for betydelige udbygninger, og det offentlige venter at opføre omkring 50.000 boliger om året de næste fem år. Det giver muligheder for salg ikke alene af entreprenørydelser, men også af møbler, køkkenelementer osv. samt byggematerialer, f.eks. døre, gulvbelægning, ventilations- og sanitetsartikler og meget mere. Langt de fleste af de offentlige boliger er små (op til 70 kv.m.) så praktiske, standardiserede løsninger vil være i fokus.

2.3.5 Barrierer og muligheder for danske virksomheder

Hong Kong er Danmarks næststørste eksportmarked i Asien og er for mange danske virksomheder den vigtigste vej ind til det kinesiske marked. Flere dansk-kinesiske joint ventures er etableret via holdingselskaber i Hong Kong, og danske industriprodukter og fødevarer har fået en god position i Hong Kong. Dermed er der en tradition for dansk erhvervsliv på stedet, og en række virksomheder er allerede så veletablerede – alene eller gennem agenter – at de også meget vel kan deltage i det åbne system for offentlige indkøb.

Det passer formentlig også danske virksomheder godt, at markedet er relativt 'rent'. Ifølge det internationalt anerkendte 'korrupsionsindeks' fra Transparency International har Hong Kong en pæn placering på li-

sten over verdens mest korrupte lande – som det 16. mindst korrupte ud af 85 lande.

Der er danske banker etableret i Hong Kong, og havnen er et meget vigtigt knudepunkt for Maersks verdensomspændende container- og linietrafik.

De statistikker, der findes over udbudsforretninger i Hong Kong siden underskrivelsen af GPA i 1997 viser, at der i mere end halvdelen af udbuddene blev valgt en udenlandsk leverandør. Det er dog også klart, at Hong Kongs økonomi og erhvervsfordeling simpelt hen ikke gør det muligt for lokale leverandører at vinde alle kontrakter.

I 1997 kom danske virksomheder på en 20. plads over tildelte kontrakter efter offentlige udbud. De samlede kontrakter havde en værdi af HK\$22 mill., og de udgjorde en halv pct. af samtlige offentlige kontrakter dette år. Fordelingen på de 10 største leverandører så således ud:

	Værdi i HK\$	Pct. andel
USA	1.099.002	25,7
Kina	665.054	15,3
UK	631.000	14,7
Tyskland	259.724	6,1
Japan	231.292	5,4
Australien	163.013	3,8
Schweiz	154.442	3,6
Canada	107,835	2,5
Sverige	102.718	2,4
Indonesien	75.964	1,8
Danmark	22.021	0,5

I 1998 var Danmark rykket op på en 17. plads, og i det år så fordelingen således ud:

	Værdi i HK\$	Pct. andel
USA	1.854.918	36,9

Kina	731.078	14,6
UK	416.569	8,3
Tyskland	333.681	6,6
Australien	278.051	5,5
Japan	248.147	4,9
Taiwan	147.238	2,9
Schweiz	134.464	2,7
Sverige	120.257	2,4
Holland	78.186	1,6
Danmark	31.957	0,6

Ifølge oplysninger fra Hong Kongs myndigheder er en række kontrakter blevet tildelt danske virksomheder, og i stort set alle tilfælde er den adresse, der er angivet, enten den pågældende virksomheds adresse i Hong Kong eller en agent i Hong Kong, men der er også (få) eksempler på direkte leverancer fra Danmark.

Hvis man påtænker at starte en eksport til udbudsmarkederne i Hong Kong skal man være opmærksom på, at landet er et af de mest konkurrenceprægede i verden. Man får konkurrence på alle fronter – fra Kina og fra store multinationale firmaer især fra USA, Storbritannien og Tyskland. Samtidig skal man være opmærksom på, at der ofte skal skabes tillid – ikke alene til den øjeblikkelige leverance, men også til eftersalgsservice og leveringsevne. Derfor vil en lokal etablering, eller eventuelt en lokal partner, ofte være en god idé for mange danske virksomheders aktiviteter på dette marked.

2.3.6. Nyttige adresser

En central reference i forbindelse med offentlige indkøb er:

Controller of Government Supplies
 Government Supplies Department
 9/F North Point Government Offices
 333 Japav Road
 North Point
 Hong Kong
 Tlf.: +852 2231 5226

Fax: +852 2897 2764
E-mail: hktender@gsd.gcn.gov.hk
Internet: <http://www.info.gov.hk/gsd/tender.htm>

Desuden kan henvises til:

Treasury Officer
Finance Bureau
Room 440, 4/F
Central Government Offices, East Wing
Lower Albert Road
Hong Kong
Tlf.: +852 2810 2497
Fax: +852 2869 4519
E-mail: tender@hk.super.net

Vedrørende procedurespørgsmål kan henvises til:

Secretary, Central Tender Board
Tlf.: +852 2810 2257
Fax: +852 2869 4519

Spørgsmål vedrørende registrering på leverandørlistor til tjenesteydelser kan rettes til:

For finansielle konsulenter:
Management Accounting Division, Finance Bureau
Tlf.: +852 2810 3757
Fax: +852 2869 4531

For generelle management konsulenter:
Management Services Agency
Tlf. +852 2810 2221
Fax: +852 2523 8680

For arkitekter:
Architectural Services Department
Tlf.: +852 2867 3618
Fax: +852 2877 0584

For rådgivende ingeniører:
Civil Engineering Department
Tlf.: +852 2762 5018
Fax: +852 2714 0064

Publicering af udbud:
 The Government of the Hong Kong Special Administrative Region
 Gazette
 Government Printing Department
 14/F Cornwall House, Taikoo Place
 979 King's Road
 Quarry Bay
 Hong Kong
 Tlf.: +852 2537 1910
 Fax: +852 2523 7195

Kongelig Dansk Generalkonsulat
 K240B, Great Eagle Centre
 23, Harbour Road
 Wanchai
 Hong Kong
 Tlf.: +852 2878 8101
 Fax: +852 2827 4555
 E-mail: dabconhk@netvigator.com

Følgende Internetside giver reference til flere nyttige oplysninger om offentlige udbud:
<http://www.info.gov.hk/fb/guide/english/usefu.htm>

2.3.7 Konklusion

Implementering af GPA	Hong Kong nåede at slutte sig til GPA lige før tilslutningen til Kina, og implementeringen synes forbilledlig.
Åbenhed og transparens	Hong Kong er afhængig af import på mange områder, og alene af den grund er landet åbent for udenlandske leverandører. Udbudsprocedurer og meddelelser om udbud er i høj grad transparente og let tilgængelige.
Klageorgan	Der er et virvar af klageinstanser i Hong Kong, men systemet er alligevel gennemskueligt og under revision og strømlining.
Markedets størrelse	Hong Kong er et lille 'land', men højt udviklet. Markedet må – set med danske briller – siges at være betydeligt.

Betydning for nabomarkeder	Hong Kong er i stigende omfang en port ind til Kina, og selv om Kina endnu ikke har tilsluttet sig GPA, kan gode referencer fra Hong Kong være af betydning for videre eksportarbejde i Kina.
Sproglige og kulturelle barrierer	Hong Kong er fortsat tosproget, og udbudsmeddelelser – og selve udbuddene – kan i reglen foretages på engelsk.
Markedsforventninger	Landet har klaret sig hæderligt gennem den asiatiske økonomiske krise, og der ventes en pæn udvikling af økonomien – og af udbudsmarkederne, især på miljø- og sundhedsområdet.
Tradition for dansk eksport	Hong Kong er traditionelt en stærk dansk handelspost i Sydøstasien, og mange danske virksomheder er etableret der eller har nær kontakt til lokale samarbejdspartnere.
Konkurrencesituation	Hong Kong er præget af meget hård konkurrence. På udbudsmarkedet skal der også ventes hård konkurrence fra bl.a. USA, UK, Tyskland og Kina.

2.4 Singapore

2.4.1 Administrative karakteristika

Republikken Singapore et lille land, der nærmest har karakter af en bystat, beliggende på en ø ved den sydlige del af fastlands-Malaysia. Landet dækker 640 kv.km. og har en befolkning på 3,5 millioner, som er altovervejende kinesisk.

Singapore løsrev sig fra Malaysia i 1965 og har siden været en republik inden for Commonwealth.

Singapores bruttonationalprodukt er kun på ca. 600 milliarder kroner, men til gengæld er BNP pr. indbygger højt, nemlig på ca. 25.000 USD svarende til omkring 175.000 danske kroner.

Der er ikke i denne bystat nogen regional administrativ opdeling. Singapore administreres fra den centrale administration, hvis enkelte dele varetager udbudsforretningerne i overensstemmelse med de centralt fastsatte regler. Finansministeriet er ressortministerium for offentlige indkøb i Singapore, men langt størstedelen af udbuddene varetages af ministerier, departementer og 'Statutory Boards', dvs. styrelser. Hvis der er tale om indkøb, som indbefatter varer eller tjenester, der bruges af alle eller mange dele af regeringsapparatet, varetages udbudsforretningerne af centrale indkøbsafdelinger, som f.eks. finansministeriets 'Expenditure and Procurements Policies Unit', forsvarsministeriet, 'the Pharmaceutical Department of the Ministry of Health', 'Construction Industry Development Board' eller 'the National Computer Board'.

Der gøres forsøg med indførelse af elektroniske udbud i Singapore. Forsvarsministeriet startede således i 1998 et nyt Internet Procurement System (MINDEF), som gør det muligt for forsvarrets indkøbsafdeling af indkalde forslag samt modtage bud og fakturaer elektronisk. Der kan allerede nu konstateres en effektivisering af indkøbsprocedurerne som følge af dette system. Firmaer, som ønsker at deltage i dette system, skal først have et Digitalt Certifikat, som sikrer korrekt identifikation og muliggør elektroniske underskrifter. Nærmere oplysninger kan fås via:

<http://www.sco.mindef.gov.sg> og
<http://www.mips.mindef.gov.sg>

Også mere generelt er Singapore avanceret med hensyn til elektroniske udbud, som det fremgår nedenfor.

2.4.2 Implementering af GPA

Singapore lever i høj grad af handel med varer og tjenesteydelser med store dele af verden. Derfor er landet helt afhængigt af en åben og fri verdenshandel, og Singapore er derfor også en stærk støtte for WTO og denne organisations bestræbelser på at åbne verdenshandelen.

Det er derfor også naturligt, at Singapore er medunderskriver af GPA, og implementeringen af GPA-reglerne ser ud til at være gennemført på en transparent måde, der følger aftalens ånd og bogstav.

Singapore har kun ét sæt af regler vedrørende offentlige udbud, nemlig 'the Government Procurement Act', og denne lov implementerer også GPA-reglerne.

Singapore har ikke særlige politikker i forbindelse med offentlige indkøb, der bruges til at fremme særlige sociale eller økonomiske mål, som f.eks. støtte til mindre virksomheder, særlige sektorer eller særlige regioner. Der er heller ingen særlige regler om lokalt indhold i offentlige indkøb.

For indkøb over GPAs tærskelværdier anvendes offentlige udbud, begrænsede udbud og – i undtagelsestilfælde – udbud efter forhandling. Det generelle princip er, at der skal anvendes offentlige udbud eller begrænset udbud, mens udbud efter forhandling kun kan anvendes, hvis særlige forhold taler for det. Anvendelse af begrænsede udbud skal altid godkendes af en overordnet embedsmand – for ministeriernes vedkommende en departementschef og for styrelser direktøren. Ifølge Singapores regler kan de begrænsede udbud anvendes i tilfælde, hvor der ikke er kommet svar på et tidligere offentligt udbud, hvis udbuddet drejer sig om national sikkerhed, eller hvis offentlige udbud er udelukkede eller upraktiske, f.eks. på grund af intellektuelle ophavsrettigheder, eller hvis der er tale om kunstneriske arbejder.

Tilbudsgiveres professionelle og finansielle kapacitet vurderes altid centralt, enten i finansministeriets udbudsafdeling for generelle udbud, eller for lægemidler i Sundhedsministeriet (Pharmaceutical Department) og for bygge- og anlægsarbejder i Byggestyrelsen (Construction Industry Development Board). (Se i øvrigt nedenfor om kontaktadresser og elektronisk registrering ved disse myndigheder).

Efter behandlingen i den relevante myndighed udstedes en attest, som leverandører kan anvende ved fremtidige bud i hele Singapore i stedet for igen at skulle fremlægge detaljeret information.

Hvis en virksomhed vinder en kontrakt, skal den være parat til at erlægge et depositum som sikkerhed for leverancerne. Det kan ske i form af en check eller i form af en garanti fra en anerkendt finansvirksomhed. Dette depositum vil normalt udgøre 5 pct. af kontraktværdien.

Udbud under tærskelværdierne:

Singapore anvender særlige udbudsformer for udbud under GPAs tærskelværdier. For de helt små indkøb – op til ca. 5.000 kroner – kan de enkelte administrative enheder købe 'hyldevarer' som de vil hos kendte leverandører. For indkøb på mellem S\$1.000 til S\$30.000 (fra ca. 5.000 kroner til ca. 150.000 kroner) indhentes tilbud hos potentielle leverandører. Der skal være mindst to embedsmænd involveret i proceduren, hvor den ene står for indkøbet, mens den anden godkender de valg, der er foretaget af indkøberen.

Publikation af udbud:

Alle meddelelser om nye udbud bringes på Internettet på 'Government Internet Tendering Information Service' (GITIS), der også indeholder information om terminer for behandling af modtagne bud og om tildeling af kontrakter.

På denne Internetside findes de informationer, der kræves i forhold til GPA, f.eks. om den udbydende myndighed, beskrivelse af de varer, tjenester eller bygge- og anlægsprojekter, der ønskes, tidsterminer for udbudsforretningerne samt hvor man skal henvende sig for at få udbudsmaterialet.

Internetsiden er særdeles tilgængelig, også for danske virksomheder, idet den er på engelsk. Den er samtidig meget informativ og meget overskuelig. Den findes på adressen:

<http://www.db1.gov.sg/gitis>

På den nævnte Internetside kan man også registrere sig som potentiel leverandør ved en række myndigheder, inkl. Finansministeriet (generelle leverancer), ved Sundhedsministeriets administration af lægemidler og ved 'Building and Construction Authority'. Man kan samtidig

se, hvem der allerede er registreret som leverandør ved myndighederne i Singapore og derved få et billede af konkurrencesituationen.

Der anvendes dog også mere traditionelle former for annoncering af udbud, nemlig den engelsksprogede avis 'The Strait Times' og den kinesisksprogede 'Lian He Zao Bao'.

Klageinstanser:

Singapore har etableret et 'Government Procurement Adjudication Tribunal' for at implementere GPAs krav om en klageinstans, og dette tribunal tager sig af klager over manglende overholdelse af GPA-reglerne.

Henvendelser vedrørende klagerne kan rettes til:

Ministry of Finance
100 High Street
Singapore 179434
Tlf.: +65 332 8658 eller +65 332 8508
Fax: +65 332 74 35.

2.4.3 Markederne

Singapores økonomi er primært baseret på tjenesteydelser. Der er stort set intet landbrug i landet, og industriens bidrag til BNP er på ca. 28 pct. Servicefagene står for 72 pct. af bruttonationalproduktet. Handel og finanssektoren hører til blandt de dominerende erhverv. På det industrielle område er olieindustrien, gummiindustrien og elektronikindustrien vigtige sektorer.

Krisen i Asien har også ramt Singapore og har medført en afdæmpning eller ligefrem reduktion af BNP. Krisen har dog ikke ramt Singapore helt i samme grad som en række nabolande, men det har medført en relativ revaluering af Singapore dollar i forhold til nabolandene, og dette – sammenholdt med stigende arbejdskraftomkostninger – har medført en forringelse af Singapores konkurrenceevne.

Regeringens modsvar har været at satse på højere produktivitet, på en forbedret infrastruktur og på at flytte mere og mere af økonomien over i højværdisektorer.

Den offentlige sektor ser det i høj grad som sin rolle at give et solidt grundlag for udvikling af servicefagene. Det indebærer en stærk og øget vægt på infrastruktur, men desuden lægges der i Singapore stor vægt på miljø – en nødvendighed som følge af det meget begrænsede areal og den høje befolkningstæthed.

Singapore har meget store miljøproblemer. Der er stærk forurening fra industri, der er begrænsede mængder af forsyning med frisk vand, og så rammes Singapore sæsonvis af røgen fra skovbrandene i Indonesien.

Som nævnt foregår alle offentlige indkøb via den centrale regering, og for at få et indtryk af markedets størrelse, kan man se på det totale offentlige budget.

De samlede offentlige udgifter ligger i størrelsesordenen 150 milliarder kroner, og for de områder, der traditionelt udmønter sig i offentlige udbud, er de totale årlige budgetter:

Sundhedssektor	4,5 mia. kr.
Miljø	1,2 mia. kr.
Offentlige boligbyggeri	0,6 mia. kr.
Kommunikation	1,3 mia. kr.

Tallene indicerer, at de samlede offentlige budgetter i Singapore er små, men de siger ikke noget præcist om, hvor store de samlede udbud er. I de driftsudgifter, der er nævnt ovenfor, er således i mange tilfælde lønudgifter den største del, men i den anden retning trækker, at der til særlige projekter kan anvendes lånefinansiering.

På byggeområdet står det offentlige for en lille del af det samlede antal færdiggjorte bygninger, men for en stor del af byggeriet, når det opgøres efter kvadratmeter. Når det offentlige bygger, er det med andre ord ofte stort byggeri, der er tale om. Dette gælder især inden for byggeri af boliger og – til en vis grad – inden for kommercielt byggeri, mens industribyggeri stort set er på private hænder.

I 1997, som er det seneste år, der findes officielle statistikker for, stod den offentlige sektor for opførelsen af følgende antal kvadratmeter byggeri:

	Areal	Antal
Boligbyggeri	4.484	56
Kommercielt byggeri	268	11
Industribyggeri	558	7

Andet	630	57
I alt	5.939	131

2.4.4 Forventninger på mellemlangt sigt

Singapores økonomi er som nævnt beskeden, og den ventes ikke at vokse markant de kommende år.

På den anden side har Singapore som nævnt reageret prompte på krisetegnene, og der satses hårdt på højværdisektorer. Ud over finanssektoren, der næppe vil vokse markant ud over dens nuværende solide position, satses der især på informationsteknologien. Singapore er allerede førende inden for en række områder, og der satses stærkt på udvikling af telekommunikationsindustrien, som jo dog i denne sammenhæng udmærker sig ved i høj grad at være undtaget fra GPA-reglerne. Det gælder dog ikke nødvendigvis relaterede informationstjenester.

En nyere studie peger på, at Singapore i de første år af det nye årtusinde kan komme til at indtage en andenplads (efter USA) i verden som dominerende økonomi inden for informationsteknologi. Singapore er således allerede i dag nr. 1 i verden hvad angår Internetanvendelse og nr. 3 hvad angår brug af computere. Den nævnte studie, der inkluderer data fra Unesco, ITU (Den Internationale Telekommunikationsunion) og Verdensbanken, placerer de fem mest betydningsfulde informationsøkonomier således:

1998

USA
Sverige
Finland
Singapore
Norge

2002

USA
Singapore
Sverige
Australien
Japan

2.4.5 Barrierer og muligheder for danske virksomheder

De officielle statistikker fra Singapores udbudsmyndigheder rummer desværre ikke information om leverandørers nationalitet, så det er ikke ad den vej muligt at få et overblik over danske virksomheders eventuelle kontrakter i landet.

Men danske virksomheder, der overvejer at satse på Singapore som marked, bør først og fremmest betænke den begrænsede størrelse af økonomien og af den offentlige sektor samt den store afstand mellem Danmark og Singapore. I forbindelse med større anlægsarbejder kan man måske forestille sig, at Singapores marked kunne opdyrkes i forbindelse med andre arbejder i nabolande som Malaysia og Indonesien, idet det så her igen skal betænkes, at disse lande indtil videre er noget lammede af den økonomiske og finansielle krise.

På de områder, hvor der ventes vækst i de kommende år i Singapore, vil danske virksomheder formentlig stå bedst på miljøområdet, hvor der ikke er megen lokal ekspertise, og hvor danske erfaringer vil kunne anvendes med held. Men der kan forventes konkurrence på dette område fra forskellig side, inkl. store amerikanske og tyske virksomheder, som allerede er veletablerede i området.

På det informationsteknologiske område er det formentlig begrænset, hvad danske virksomheder kan levere af speciel interesse for markedet i Singapore, bortset fra mulige nicheområder.

Af positive træk for danske virksomheder kan især nævnes åbenheden af Singapores økonomi og den begrænsede protektionisme, der kommer af den begrænsede kapacitet i det lokale erhvervsliv. Samtidig er der en tradition for gode kontakter mellem Danmark og Singapore, og for danske virksomheder kan det være en hjælp, at der ud over den danske ambassade i landet også findes danske banker etableret i Singapores finanskvarter.

Det er ligeledes en fordel for danske virksomheder, at der opereres på engelsk foruden kinesisk, og med den vidt fremskredne anvendelse af Internettet i forbindelse med udbud, bliver afstandene på en række områder i realiteten begrænsede. Der bør være muligheder for danske leverancer f.eks. på vareområdet via Internettet, og med de regler, der gælder i Singapore for finansiell sikkerhed, skulle det yderligere gøre det sandsynligt, at man kan få held med 'fjernleverancer'. Derimod er det givet, at er der tale om leverancer af tjenesteydelser og – måske især – større bygge- og anlægsarbejder, vil tilstedeværelse i Singapore – evt. i form af et partnerskab – være værdifuldt om ikke nødvendigt.

Det skal endelig nævnes, at Singapore ifølge *Transparency International* er verdens syvende mindst korrupte land og derfor passer godt til danske forretningstraditioner.

2.4.6 Nyttige adresser

Myndigheder

Generelt:

Ministry of Finance
100 High Street
Singapore 179434
Tlf.: +65 225 9911

Klager over offentlige udbud:

Ministry of Finance
100 High Street
Singapore 179434
Tlf.: +65 332 8658 eller +65 332 8508
Fax: +65 332 74 35
Mr. Koh Kok Kiang, Senior Assistant Director

Internetsider

<http://www.gov.sg/mof>
<http://wwwdb1.gov.sg/gitis>
<http://www.singstat.gov.sg>

Publikationer

The Strait Times
2 Jurong Port Road
Singapore 619088
Tlf. +65 749 2577
<http://straitstimes.asia1.com.sg/>

Lian He Zao Bao
82 Genting Lane
Singapore 349567
Tlf.: +65 749 25 77

Danske repræsentationer i Singapore

Dansk Ambassade
101 Thomson Road
#13-01/02 United Square
Singapore 307591

Tlf. +65 250 33 83
 Fax: +65 253 37 64
<http://www.denmark.com.sg/>

2.4.7 Konklusion

Implementering af GPA	Der er ikke konstateret særlige problemer ved implementeringen, som heller ikke er karakteriseret af undtagelser.
Åbenhed og transparens	Singapore er en åben økonomi, som har brug for samhandel. Der er en udstrakt åbenhed omkring udbudssystemerne, men danske virksomheder, som kender markedet, klager over mindre transparens i praksis.
Klageorgan	Der er etableret et enstrengt klagesystem, som overholder GPA-kravene.
Markedets størrelse	Singapore er et lille land med en beskeden økonomi. Til gengæld købes meget fra udlandet, og velstanden er høj.
Betydning for nabomarkeder	Singapore er ikke noget specielt godt udgangspunkt for arbejde i nabolandene. Dem er der nemlig ret begrænsede kontakter med, og de er i øvrigt plaget af den økonomiske krise.
Sproglige og kulturelle barrierer	Det engelske sprog er så udbredt, at der næppe her bliver problemer for danske forretningsfolk. Kulturen er en blanding af vestlig orientering med en kinesisk baggrund.
Markedsforventninger	Det beskedne udbudsmarked ventes ikke at vokse særligt i de kommende år, men der kan ske interessante udviklinger på nicheområder, herunder især informationsteknologi, ligesom nogle miljøinvesteringer igangsættes.
Tradition for dansk eksport	Der er gode handelsmæssige relationer mellem Danmark og Singapore.
Konkurrencesituation	Landet er konkurrencepræget, og der kan ventes konkurrence fra lokale og fra internationale virksomheder, inkl. kinesiske.

2.5 Korea

2.5.1 Administrative karakteristika

Republikken Korea (Sydkorea) er dobbelt så stor som Danmark – 98.000 kv. kilometer, men der bor ikke færre end 46 millioner mennesker i landet. Landet har som en af 'dragerne' i Sydøstasien haft en næsten utrolig økonomisk vækst gennem de senere år. Efter Anden Verdenskrig hørte landet til blandt de fattigste i verden. I dag er det tæt på de fattigste EU-lande økonomisk set. Korea har et bruttonationalprodukt på ca. 4.800 milliarder kroner, og pr. indbygger bliver det til ca. 105.000 kroner.

Korea er som Japan ret industritungt. Industrien bidrager med 45 pct. til bruttonationalproduktet, tjenesteydelser med 47 pct. og landbrug med 8 pct. Der er 52 pct. af arbejdsstyrken beskæftiget i service og handel, 27 pct. i fremstillingsindustri og 21 pct. i landbrug, fiskeri og skovdrift.

Industrien fremstiller især elektronik, biler, kemikalier, skibe, tekstiler, stål, fødtøj og fødevarer.

Korea har en række alvorlige miljøproblemer, inkl. luftforurening i store byer og vandforurening fra industrierne.

Landet har 9 provinser og seks byer med en særlig status og særligt selvstyre. Retssystemet er en blanding af kontinentaleuropæiske traditioner, angloamerikansk indflydelse og traditionel kinesisk inspireret tankegang.

2.5.2 Implementering af GPA

Korea kom med under GPA-reglerne i 1994, men fik en overgangsperiode frem til 1. januar 1997 til at forberede sig. Landet har gennemført ændringer i sit udbudssystem, så det i princippet lever op til kravene om åben konkurrence, om national behandling samt ikke-diskrimination. Det er sket i loven 'Act Relating to Contracts to which the State is a Party (ARCSP)' fra 1995. Først i 1997 kom dog de særlige regler, der for alvor satte den nævnte lov i kraft ('the Special Re-

gulations of the Enforcement Decree of the ARCSP for Specific Procurement’).

I denne regulation angives tre former for udbud:

- Offentlige udbud
- Begrænsede udbud
- Kontrakttildeling uden konkurrence.

Det normale er, at kontrakter tildeles den lavest bydende, som samtidig overholder alle udbudskriterier og som bedømmes kapabel til at gennemføre kontrakten.

Koreas implementering af GPA viser en blanding af centraliserede og decentraliserede træk. For større udbud anvendes der centrale procedurer, og for udbud af en mindre værdi anvendes decentraliserede procedurer, hvor de enkelte ministerier og styrelser m.m. er ansvarlige for gennemførelsen af udbuddene.

Når procedurerne er centraliserede står 'Supply Administration of the Republic of Korea (SAROK)' for udbuddene. Selv i disse tilfælde er der dog også to muligheder, afhængig af, hvem der står for udbuddene. Hvis der er tale om såkaldt 'obligatoriske' udbydere (f.eks. de organer i den centrale og decentrale administration, der er omfattet af GPA) står SAROK for udbuddene. Hvis der er tale om 'frivillige' udbud, dvs. fra udbydere, som er finansierede af regeringen eller på anden måde har en fri stilling, kan det pågældende organ selv vælge, om man selv vil foretage udbuddene eller om de skal foregå gennem SAROK.

Der anvendes følgende tærskelværdier:

- For centrale regeringsmyndigheders indkøb af varer og tjenester: Won 151 millioner (ca. 500.000 kroner).
- For centrale regeringsmyndigheders bygge- og anlægsarbejder: Won 5.830 millioner (ca. 20 millioner kroner).
- For sub-centrale myndigheders indkøb af varer og tjenester: Won 233 millioner (ca. 750.000 kroner)
- For sub-centrale myndigheders bygge- og anlægsarbejder: Won 17.490 millioner (ca. 60 millioner kroner)

- For andre myndigheders indkøb af varer og tjenester: Won 524 millioner (ca. 1,8 millioner kroner)
- For andre myndigheders bygge- og anlægsarbejder: Won 17.490 millioner (ca. 60 millioner kroner).

Det skal bemærkes, at Korea har mange undtagelser i dækningen af GPA. Det gælder store og betydningsfulde områder såvel inden for vareområdet som på tjenesteydelsesområdet. Samtidig giver Korea mulighed for præferencebehandling for lokale indre virksomheder, og det bruges ganske meget. Op til 40 pct. af det totale marked dækkes af kontrakter, der er givet under præferenceforhold, og det sker gennem mindre kontrakter, der alle ligger under GPAs tærskelværdier.

Blandt de udbud, der ligger over tærskelværdierne, skønner Europa-Kommissionen, at tæt på halvdelen af alle kontrakter tildeles efter udbud uden konkurrence – en udbudsform, der følge GPA kun kan anvendes i absolutte undtagelsestilfælde!

Publikation af udbud

Der udarbejdes hvert år et udbudsprogram for såvel leverancer af varer og tjenester som af bygge- og anlægsarbejder, som skal indkøbes gennem SAROK, og det offentliggøres i 'the Official Government Gazette'. I løbet af året bringes der dagligt udbudsmeddelelser om konkrete udbud, hvor oplysninger om typer af varer, tjenester eller byggearbejder, der skal udføres, samt om andre forhold af betydning for udbuddene, offentliggøres.

Oplysningerne kommer også på Internettet, nemlig på SAROK's hjemmeside på adressen:
<http://www.sarok.go.kr>

Her skal man dog være skrap til koreansk for at begå sig. Det eneste ord på engelsk på denne side er 'News', og prøver man denne vej, kommer der igen tekst på koreansk.

Der forekommer af og til meddelelser om større udbud i den engelsksprogede avis The Korea Times, men denne kilde kan ikke bruges til at følge markedet systematisk.

Klageinstanser

Hvis en virksomhed føler, at der har været et brud på GPA i forbindelse med en udbudsforretning, i forbindelse med kvalifikationsprocedurer, i forbindelse med tildeling af kontrakter o.l., bør den først klage til den myndighed, der har forestået udbudsforretningen. Derefter kan man klage til det særlige klageorgan, 'the International Contract Dispute Mediation Committee (ICDMC)'. En klage kan også evt. komme for retten.

2.5.3 Markederne

Den stærke økonomiske vækst er ikke mindst skabt gennem tætte bånd mellem regeringen og industrien. Der har været tale om dels importbegrænsninger for at fremme visse erhverv, dels om statsstøtte i stort omfang til enkelte industrier.

Ifølge Europa-Kommissionens markedsadgangs-database er Korea et af de vanskeligste lande i verden at arbejde i for fremmede virksomheder. Og det på trods af de senere års liberalisering. Det skyldes i høj grad en byrdefuld og uigennemsigtig administration og importbarrierer. Desuden er den koreanske økonomi i høj grad domineret af de store virksomhedskonglomerater (chaebol), især inden for nøgleområder som stål, biler, skibsbygning og elektronik.

Forsøgene fra regeringens side på gradvist at liberalisere økonomien og åbne den for international konkurrence har mødt hård modstand fra dele af de politiske partier og store dele af befolkningen, der har demonstreret voldsomt mod de nye tendenser. Dele af erhvervslivet har spillet med på denne bølge, som bl.a. har resulteret i de mange kampanjer mod f.eks. europæiske luksusprodukter.

Som følge af den økonomiske krise fik Korea sent i 1997 et Stand-By arrangement med Den Internationale Valutafond (IMF), og som betingelse for denne facilitet har IMF bl.a. forlangt, at der sker en forbedring af mulighederne for udenlandsk deltagelse i økonomien, at handelsbarrierer nedbrydes og at en række konkurrenceforstyrrende træk i økonomien fjernes. Så måske kan disse krav være med til at forbedre situationen i den kommende tid.

Koreas samlede offentlige budgetudgifter ligger i et niveau på ca. 900 mia. kroner

I 1997 blev der udbudt kontrakter gennem SAROK på i alt 15,267 mia. Won (ca. 53 mia. kroner). Heraf var ca. 9 mia. kroner bygge- og an-

lægskontrakter. Af det samlede beløb gik ca. 7 mia. Won til udenlandske leverandører. Der foreligger ingen opgørelser fra koreansk side om fordelingen af disse kontrakter, hverken på lande eller på grupper af varer, tjenester eller bygge- og anlægsarbejder.

Der er hård konkurrence fra hjemmemarkedet i Korea. Ifølge oplysninger om det koreanske marked fra Europa-Kommissionen går op mod 40 pct. af alle kontrakter til lokale mindre virksomheder, og der er udstrakt brug af kontrakttildelelse uden konkurrence.

Samtidig anvendes ofte den praksis, at myndighederne offentliggør tre-års prognoser for vigtige indkøbsområder – først og fremmest for at opfordre koreanske virksomheder til at udvikle det nødvendige potentiale og kompetence til at kunne tage ordrerne.

Europa-Kommissionen fastslår kort og godt, at det koreanske system klart diskriminerer til fordel for lokale virksomheder i alle tilfælde, hvor der findes koreanske leverandører. Dog kan udenlandsk ejede virksomheder, der er etableret i Korea, anses som lokale.

2.5.4 Forventninger på mellemlangt sigt

De fantastiske vækstrater, man har set i den koreanske økonomi op til for få år siden blev bremsede af den økonomiske krise i Asien. Der var en nedgang i bruttonationalproduktet på 7 pct. i 1998 mod de tidligere års vækst på mellem 5 og 10 pct. om året. Der har været masser af virksomhedskrak, og ledigheden er steget fra 2 pct. til 9 pct.

Der ventes en bedring i situationen i 1999 med en positiv vækst på omkring 2 pct. efterfulgt af en mere robust vækst i det nye årtusinde med 5-6 pct.s årlig økonomisk vækst de kommende år.

De offentlige budgetter er blevet anstrengt noget af et stigende underskud, primært som følge af stigningen i ledigheden. Der vil i de kommende år blive brugt mange midler på dette område, ligesom den offentlige sektor generelt vil forsøge at stimulere økonomien, men hensynet til de offentlige underskud vil begrænse aktiviteten, og derfor kan det offentlige udbudsmarkedet i sig selv ikke ventes at få nogen markant vækst.

2.5.5 Barrierer for danske virksomheder

Det er en meget lille del af den danske eksport generelt, der går til Korea, og landet hører vel ikke til blandt de nære handelspartnere for Danmark. Der er dog ca. 20 datterselskaber af danske virksomheder i Korea.

Fra den danske ambassade i Seoul beskrives markedet som præget af protektionisme fra koreansk side, og samtidig bekræftes derfra det indtryk, man kan få ved at studere de officielle kilder, nemlig at viljen til at meddele udbud på andre sprog end koreansk er beskednen.

De meget få informationer, der er tilgængelige, sammenholdt med det meget komplicerede regeringsmaskineri i Korea, efterlader det indtryk, at barriererne vil være store for danske virksomheder. Der gives ikke det indtryk fra Koreas side, som f.eks. fra Singapores eller fra Hong Kongs, at man gerne ser internationale bud på leverancer til den offentlige sektor, simpelt hen fordi man ikke har gjort det nemt at foretage sådanne bud.

Tekniske standarder kan være et særligt problem i Korea. Ifølge Det Europæiske Handelskammer er der f.eks. over 9000 industrielle standarder i kraft i Korea. Ud af dem er kun 500 de samme som internationale standarder, og samtidig har koreanerne for vane at meddele ændringer i standarder med meget kort varsel og på en ikke særlig transparent måde.

Derfor skal potentielle leverandører ikke regne med at kunne anvende internationale eller europæiske standarder i Korea, men skal indstille sig på at anvende de lokale, som ofte er helt unikke i forhold til andre dele af verden.

Derfor må barriererne for danske virksomheder konstateres at være så betydelige, at det formentlig kun vil være virksomheder, der har specialiseret sig i koreanske forhold, eller virksomheder, som har allieret sig med koreanske partnere – eller har etableret sig på stedet – der i realiteten kan forventes at få held med at identificere udbud og at vinde dem.

Det skal endelig nævnes, at Korea ikke ligger på en særlig flatterende plads i det internationale indeks for korruption (fra Transparency International), nemlig på en plads som nr. 43 ud af 85 lande.

2.5.6 Nyttige adresser

Ministry of Finance and Economy
The Government Complex
Joongang-dong 1
Kwachonsi
Tlf.: +822 503 92 89
Fax: +822 503 92 91

Supply Administration, the Republic of Korea
 520-3 Banpo-dong
 Seocho-ku
 Seoul
 Tlf.: +8242 481 1068
 Fax: +8242 472 2296

The Official Government Gazette:
 Ministry of Government Administration and Home Affairs
 Legal Affairs Division
 77-6 Sechong-ro
 Chongro-ku
 Seoul
 Tlf.: +822 3703 4331
 Fax: +822 3703 5507

Royal Danish Embassy
 5th Fl. Nam Song Bldg.
 260-199 Itaewon-Dong
 Yongsan-ku
 Seoul 140-200
 Seoul
 Tlf.: +822 795 41 87
 Fax: +822 796 09 86
 E-mail: rdkoreak@bora.dacom.co.kr

2.5.7 Konklusion

Implementering af GPA	Korea har implementeret GPA ret sent (1. Januar 1997), og har betydelige undtagelser i dækningen.
Åbenhed og transparens	Systemet giver ikke indtryk af noget videre ønske om hverken åbenhed eller transparens. Oplysninger på Internettet findes kun på koreansk.
Klageorgan	Der er operettet et klageorgan som krævet i GPA, men klager kan også ende ved domstolene.
Markedets størrelse	Det koreanske marked er mellemstort, men den økonomiske vækst er for tiden bremset op. Den forventes at tage til igen, om end næppe i det

	tidligere rekordtempo.
Betydning for nabomarkeder	Korea har ikke noget særlig position som udfaldsport til store nabomarkeder.
Sproglige og kulturelle barrierer	Både de sproglige og de kulturelle barrierer for danske virksomheder ser betydelige ud.
Markedsforventninger	Korea blev hårdt ramt af den økonomiske krise og genvinder kun langsomt robusthed i økonomien. Behovet for finansiering af en stor ledighed og for at nedbringe de offentlige underskud vil lægge en dæmper på udviklingen i udbudsmarkedet.
Tradition for dansk eksport	Korea spiller ikke nogen afgørende rolle i dansk eksportsammenhæng.
Konkurrencesituation	Konkurrence er især bestemt af de lokale virksomheder – ikke mindst de store konglomerater, som dominerer, men også mindre virksomheder, der får præferencestilling i forhold til udbud under tærskelværdierne.

2.6 Schweiz

2.6.1 Administrative karakteristika

Schweiz er på størrelse med Danmark, men der bor et par millioner mere i Schweiz end i Danmark (7,2 millioner).

Den schweiziske konføderation har et udbredt selvstyre, blandt andet på grund af landets fire sprog (tysk, fransk, italiensk og romansch) og dertil hørende kulturelle forskelle, i 26 kantoner, nemlig: Aargau, Auser-Rhoden, Basel-Landschaft, Basel-Stadt, Bern, Fribourg, Geneve, Glarus, Graubunden, Inner-Rhoden, Jura, Luzern, Neuchatel, Nidwalden, Obwalden, Sankt Gallen, Schaffhausen, Schwyz, Solothurn, Thurgau, Ticino, Uri, Valais, Vaud, Zug, Zürich.

Schweiz har traditionelt været forsigtig med deltagelse i forpligtende internationalt samarbejde, og landet er f.eks. fortsat kun observatør ved FN. På trods af dette ligger en del af FN-institutionerne i Schweiz, herunder WTO, som Schweiz er medlem af.

Det schweiziske bruttonationalprodukt ligger i størrelsesordenen 1.300 mia. kroner, og BNP pr. indbygger er meget højt, nemlig ca. 170.000 kroner.

Schweiz har dog gennem de senere år haft problemer med den økonomiske vækst, som har været lav eller ligefrem negativ. Schweizisk eksport har det ofte svært med en valuta, der er klart overvurderet som følge af den store kapitalindstrømning til de schweiziske bankers skatteparadis. På det seneste synes økonomien at være kommet ind i en stabiliseringsperiode, hvor bl.a. den svagere franc har givet mulighed for en øget eksport.

Det schweiziske statsbudget er ikke voldsomt stort – kun ca. 220 mia. kroner – ca. 17 pct. af BNP.

Sammensætningen af værdiskabelsen ligner det europæiske gennemsnit med 66 pct. fra servicefag, 31 pct. fra industri og resten fra landbrug.

Schweiz er meget afhængig af EU, idet over 70 pct. af al udenrigshandel foregår med EU-landene. Derfor har Schweiz nærmet sig EU på en del områder, og senest er der indgået en aftale mellem EU og Schweiz på syv nøgleområder (landevejstransport, luftfart, fri bevægelighed for personer, landbrugsvarer, forskning, offentlige indkøb og tekniske han-

delshindringer), som, når aftalerne træder i kraft i 2001, gør Schweiz til 'EU-medlem uden stemmeret' på betydelige områder.

Specielt for det offentlige udbudsområde vil de nye regler bringe Schweiz på linje med EUs udbudsmarked. Således vil EU få adgang til udbudsmarkedet for de schweiziske kommuner, der i dag er undtaget fra GPA. Desuden vil der blive øget adgang til de offentlige forsyningsvirksomheders indkøb – og til private, som driver forsyningsvirksomhed.

En komite med repræsentation fra såvel Schweiz som fra EU vil overse implementeringen af udbudsreglerne og foreslå eventuelle ændringer. Aftalen, der er udarbejdet i begyndelsen af 1999, vil efter implementeringen i første omgang være i kraft i syv år.

2.6.2 Implementering af GPA

Schweiz har gennemført GPA i den føderale lov om offentlige udbud af 1994, og i tilknyttede cirkulærer.

Reglerne gælder for de føderale institutioner og for nogle føderale offentlige virksomheder som postvæsenet og jernbanerne (hvor der dog gælder nogle begrænsninger).

Schweiz anvender disse fire former for udbud:

- Offentlige udbud, hvor udbuddene meddeles i det officielle meddelelsesorgan. Der gives 40 dage til indlevering af bud.
- Begrænsede udbud, hvor også invitationer meddeles i det officielle medie, men hvor myndighederne udvælger dem, der får adgang til at byde. Også her vil der være 40 dage til rådighed for at afgive bud.
- Inviterede udbud, hvor mindst tre virksomheder skal inviteres til at afgive et skriftligt tilbud uden offentlig meddelelse.
- Direkte kontrakttildeling.

Der er ikke egentlige præferencebestemmelser for Schweiz, men det forlanges, at man respekterer de schweiziske arbejderbeskyttelsesregler og andre arbejdsmarkedsforhold for kontrakter, der skal udføres i Schweiz. Man skal ligeledes overholde den nationale lovgivning om li-

ge løn for lige arbejde til mænd og kvinder. Det skal også nævnes, at såfremt man vinder kontrakter og overlader en del af arbejdet til en anden virksomhed, skal denne ligeledes forpligte sig til at overholde de schweiziske arbejdsmarkedsregler og ligestillingsregler.

Der anvendes følgende tærskelværdier i Schweiz:

Varer og tjenester:

Føderale myndigheder	CHF 248.950
Kantoner	CHF 383.000
Forsyningsvirksomheder	CHF 766.000

Bygge- og anlægsarbejder:

For alle områder CHF 9.575 millioner.

Man anvender i Schweiz ikke automatisk laveste bud som kriterium for tildeling af kontrakter. I stedet anvendes normalt en kombination af kriterier, der anføres i udbudsmaterialet. Det vil ofte være forhold som overholdelse af deadlines, kvalitet, driftsomkostninger, kundeservice og miljøforhold. Kun for egentlige 'hyldevarer' anvendes prisen som eneste kriterium.

Man anvender til tider i Schweiz forhandlinger om kontrakterne efter et offentligt udbud. Dette må kun ske, hvis det udtrykkeligt er nævnt i udbudsmeddelelsen og hvis intet bud umiddelbart ser ud til at være det bedste. Sådanne forhandlinger vil også kunne ske, hvis der har været tale om et begrænset udbud efter invitation. Man laver altid et skriftligt referat af forhandlingerne, som skal underskrives af alle tilstedeværende.

Der findes i Schweiz en 'Føderal Indkøbskommission', hvis hovedopgave det er at koordinere indkøbs- og udbudspolitikken for vare- og tjenestoområdet (bygge- og anlægsområdet er undtaget).

Indkøbskommissionen giver input til reglerne på udbudspolitikens område, den etablerer standardkontrakter, den er rådgivende i forhold til de offentlige indkøbsmyndigheder generelt, og den koordinerer arbejdet mellem de forskellige myndigheder, der er ansvarlige for udbud. Desuden forestår kommissionen træning af indkøbere i administrationen og varetager kontakt med potentielle leverandører og leverandørkredse. Derimod står kommissionen aldrig selv for udbudsforretninger, og den fungerer aldrig som mægler eller lignende i klagesager.

Kommissionen har repræsentanter fra den føderale administration, fra postvæsenet og fra jernbanerne. Desuden er der repræsentanter fra de føderale antitrustmyndigheder, økonomi- og arbejdsministeriet, den føderale personaleadministration, de schweiziske bistandsmyndigheder, samt ministerierne for informatik, miljø og den føderale revision.

Udbud under grænseværdierne

Hvis kontraktværdien er under CHF 50.000 kan myndighederne typisk købe ind direkte uden særlige udbudsprocedurer, men det skal dog være foreskrevet i den relevante lov. Dog skal myndighederne altid forsøge at skabe konkurrence, hvor det er muligt, og de kan altid anvende mere konkurrencebetonede udbudsformer, end foreskrevet, hvis de foretrækker. Ellers vil man normalt invitere mindst tre tilbudsgivere til udbud, der ikke er omfattet af GPA, men der er naturligvis ikke nogen forpligtelse til at invitere ikke-schweiziske virksomheder til at byde under disse omstændigheder.

Publikation af udbud

Det officielle meddelelsesorgan for udbud er Handelsblatt/Feuille Officielle Suisse du Commerce.

Det kan kontaktes på adressen:

Schweizerisches Handelsamtsblatt
Effingerstrasse 1
Postfach 8164
CH-3001 Bern
Tlf.: +41 31 324 09 92
Fax: +41 31 324 09 61
E-mail: shab@bawi.admin.ch

Man kan også se i dette blad på Internettet på adressen:
http://www.shab.admin.ch/infos_d.htm

Klageinstanser

Schweiz har som krævet i GPA indført et klageorgan. Det er 'the Appeals Commission of Public Procurement', der er beliggende i Lausanne (Avenue Tissot 8, CH-1006 Lausanne). Dette klageorgan kan kun anvendes i forbindelse med udbud, der falder under GPA-reglerne.

Man kan klage over:

- udbudsforretningen som sådan
- beslutninger vedrørende valg af bydende i begrænsede udbud
- aflysninger af udbudsforretninger
- eksklusion af visse bydende
- kontrakttildelingen.

Man skal indgive sin klage senest 20 dage efter modtagelsen af den beslutning, man vil klage over. Man vil ikke annullere allerede indgåede kontrakter, men udbudsmyndighederne kan gøres økonomisk ansvarlige for skader som følge af ulovligheder i forbindelse med udbud. Dette økonomiske ansvar er dog begrænset til de omkostninger, der måtte have været i forbindelse med budet og klagen.

2.6.3 Markederne

Det samlede indkøb til de myndigheder, der er omfattet af GPA, var i 1997 på ca. 32 mia. kroner. Heraf stod de føderale myndigheder for halvdelen, mens postvæsenet stod for 33 pct. og jernbanerne for de resterende 17 pct. I samme år blev der indgået servicekontrakter for ca. 6 mia. kroner samt bygge- og anlægsarbejder for ca. 13 mia. kroner.

Man søger i Schweiz at centralisere indkøb på en sådan måde, at (især) varer af samme type indkøbes at et enkelt indkøbskontor i administrationen. Undtaget herfra er dog postvæsenet og jernbanerne, som har deres egne indkøbsorganisationer.

Sådanne centrale indkøbskontorer, af hvilke der findes 23, har ansvaret for:

- udbudsforretningerne
- at følge udviklingen på markedet inden for det pågældende område og identificere innovationer og nye produkter
- at indkøbe standardiserede produkter, hvis det er muligt
- at der bliver fulgt sunde indkøbsprincipper, som sund økonomi og miljøansvarlighed.

Det er derimod meget mere typisk, at udbud af tjenesteydelser foregår decentralt, og at kontrakter tildeles af de enkelte enheder i den føderale administration.

Det schweiziske marked er stærkt ombejlet, fordi det har et så højt velstandsniveau. Nabolande som Frankrig, Italien, Tyskland og Østrig, der alle har sprogfællesskab med (dele af) Schweiz, står stærkt på markedet og vil altid udgøre en stærk konkurrencefaktor for danske virksomheder.

2.6.4 Forventninger på mellemlangt sigt

Den svage økonomiske udvikling i Schweiz giver ikke anledning til forventninger om et stærkt stigende forbrug – heller ikke i den offentlige sektor. Den samlede vækst i de offentlige udgifter i 1998 var på 0,2 pct., og i 1999 regnes der med en svag tilbagegang i udgifterne. I 1999 udløber et stort infrastrukturinvesteringsprogram, som ikke bliver forlænget, og samtidig regnes der med en nedgang i det offentlige byggeri.

Lyspunkter for udbudsmarkedernes udvikling er der dog. I 1998 gav den schweiziske befolkning nemlig ved en folkeafstemning grønt lys for starten af fire store jernbaneprojekter. Der skal investeres CHF 30 mia. (ca. 120 mia. kroner) over en årrække, og det forventes, at der vil komme en afsmittende virkning af denne investering på andre områder.

2.6.5 Barrierer for danske virksomheder

Der er ikke identificeret særlige barrierer for danske virksomheder. Schweiz er normalt ikke et af de mest åbne lande i verden for international konkurrence. Der gøres ikke nogen særlig indsats for at gøre udenlandske virksomheder opmærksomme på mulighederne i det schweiziske marked. Der findes en beskeden brochure på engelsk om 'Procurement of Goods and Services by the Swiss Federal Government', som er udgivet af den føderale indkøbskommission. Man skal lede langt på Internettet for at finde egentlige oplysninger om, hvordan man skal forholde sig, og de få oplysninger, der er, er næsten altid på tysk, fransk og italiensk. Schweiz glimrer da også ved sit fravær med henvisninger på WTOs hjemmeside om links til medlemslandenes informationer.

Det er måske betegnende, at der i flere kilder om det schweiziske udbudsmarked gøres meget mere ud af at diskutere, hvordan man kan sikre en åben adgang til udbud for de tre hovedsproggrupper i Schweiz. Det er som om denne diskussion ikke rigtig er kommet ind på en udvidelse af markederne internationalt.

Dette bliver der nu ændret på. Med den bilaterale aftale med EU tvinges Schweiz til at åbne en meget større del af udbudsmarkedet for EU-virksomheder, og samtidig kommer Schweiz meget tættere på Det Indre Marked i andre sammenhænge (f.eks. tekniske standarder og trans-

portpolitik), hvilket uden tvivl vil mindske barriererne for danske virksomheder i fremtiden.

2.6.6. Nyttige adresser

De schweiziske myndigheder er noget karrige med at give oplysninger om, hvorledes man kommer i kontakt med udbudsmarkedet. Beskrivelserne virker ofte noget antikverede, og der angives sjældent andet end en adresse, man kan skrive til, og i en række tilfælde også telefon og fax (Det er måske også symptomatisk, at der selv i den engelsksprogede brochure kun gives schweiziske telefonnumre – uden internationalt retningsnummer!). E-mail adresser og Internetsider findes der kun meget få af i forbindelse med udbud.

Nogle af de vigtigste føderale indkøbsmyndigheder kan træffes på følgende adresser:

Bundesamt für Bauten und Logistik
Beschaffung und grafische Betriebe
EDMZ
CH-3003 Bern
Tlf.: +41 31 325 50 41
Fax: +41 31 325 50 49

Bundesamt für Zivilschutz
Abteilung Material
CH-3003 Bern
Tlf.: +41 31 322 50 94
Fax: +41 31 322 52 98

UG Sanität
Armeeapotheke
Einkauf
Worbentalstrasse 36
CH-3036 Ittigen
Tlf.: +41 31 324 34 08
Fax: +41 31 324 34 64

Swiss Post
Equipment
Schwanengasse 12
CH-3030 Bern
Tlf. +41 31 338 31 97

Fax: +41 31 338 68 17

Swiss Federal Railways
 Direktion Materialwirtschaft und Einkauf
 Heuberg 7
 CH-4001 Basel
 Tlf.: +41 512 29 27 07
 Fax: +41 512 29 27 79

Ambassade Royale de Danemark
 Thunstrasse 95
 CH-3006 Bern
 Tlf.: +41 31 352 50 11
 Fax: +41 31 351 23 95
 E-mail: embassy@denmark.ch

Königlich Dänisches Generalkonsulat
 Bürglistrasse 8
 CH-8027 Zürich
 Tlf.: +41 1 289 30 60
 Fax: +41 1 289 30 70
 E-mail: konsulat@denmark.ch

2.6.7 Konklusion

Implementering af GPA	Schweiz har indført GPA med en del begrænsninger, men har også i 1999 indgået en aftale med EU om indførelse af størstedelen af EUs udbudsregler i landet i løbet af et par år.
Åbenhed og transparens	Det schweiziske udbudsregime virker lukket og ikke-transparent set fra udlandet.
Klageorgan	Schweiz har indført et enstrengt klagesystem efter WTO-reglerne.
Markedets størrelse	Det schweiziske udbudsmarked er lidt mindre end det danske, og de få tal og statistikker, der findes, peger i retning af et ganske beskedent marked.
Betydning for nabomarkeder	Som følge af, at Schweiz ikke er medlem af EU, vil landet ikke være nogen særlig solid bastion for arbejde i nabolande. Det vil snarere være relevant at arbejde fra Schweiz' nabolande ind i

	Schweiz eller i de sprogligt relevante dele af landet.
Sproglige og kulturelle barrierer	Der er sprog nok i Schweiz, og ingen af dem er vel danskere særligt fremmede, men til gengæld skal man være klar til at arbejde på de relevante sprog i de relevante dele af landet.
Markedsforventninger	Der ruttet ikke med de offentlige midler, og Schweiz' stræben efter at få økonomien bragt ind i en rolig gænge igen peger ikke i retning af en voldsom øgning. Dog vil gennemførelsen af aftalen om udbudsmarkederne med EU betyde en vis åbning af markedet.
Tradition for dansk eksport	Schweiz hører ikke til Danmarks største samhandelspartnere, men der har været en del danske etableringer i Schweiz, dels af kommercielle grunde, dels af skattemæssige grunde.
Konkurrencesituation	Der er hård konkurrence på det schweiziske marked, såvel fra lokale virksomheder som fra nabolandenes virksomheder. De nyder godt af den geografiske og sproglige nærhed.

2.7 Canada

2.7.1 Administrative karakteristika

Canada er en føderal stat, og den fungerer på to sprog – engelsk og fransk. Landet er større end USA i udstrækning, men der bor kun ca. 30 millioner mennesker.

Canada har 10 provinser og 2 såkaldte territorier, nemlig Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan og Yukon Territory. Det skal bemærkes, at Northwest Territories i 1999 er splittet op i to dele.

Den canadiske økonomi ligner på mange måder den amerikanske, som har en stærk indflydelse i Canada. Landet har et bruttonationalprodukt på ca. 5.000 mia. kroner og et bruttonationalprodukt pr indbygger på ca. 160.000 kroner. De offentlige udgifter på centralt niveau er i størrelsesordenen 1.000 milliarder kroner.

Canada har en veludviklet infrastruktur på stort set alle områder og har et erhvervsmæssigt mix af landbrug, råvare- og energiproduktion, industri og serviceerhverv, som gør landet selvforsynende på mange områder.

2.7.2 Implementering af GPA

Det er i Canada 'the Treasury Board of Canada', som er ansvarlig for den føderale regerings politik på udbudsområdet.

Canada har gennemført ændringer i sin politik på udbudsområdet for at tilpasse den til internationale aftaler, nemlig GPA og udbudsreglerne i NAFTA – det nordamerikanske frihandelsområde. Canada har taget et generelt forbehold i forhold til små og mellemstore virksomheder i de internationale aftaler. Det har i øjeblikket ikke den helt store betydning på føderalt plan, fordi det eneste program, som følger dette forbehold, er et program, der skal styrke små virksomheder, som drives af den oprindelige befolkning, i forbindelse med udbud. Situationen er anderledes på provinsplan (se nedenfor).

Udbud under grænseværdierne

For udbud til den føderale regering og styrelser under GPAs tærskelværdier gives der præference til canadiske virksomheder, men de skal så også konkurrere om ordrerne, undtagen i særtilfælde, som f.eks. hastesager, små indkøb (under Can\$25.000) og i tilfælde, hvor kun én leverandør kan klare opgaven.

Publikation af udbud

Canada anvender et elektronisk udbudssystem (MERX), som er tilgængeligt døgnet rundt. Her findes udbudsbekendtgørelser, meddelelser om tildelte kontrakter og en række meddelelser om påtænkte kommende udbud.

MERX kan findes på Internettet på adressen <http://www.merx.cebra.com>

Her kan vælges mellem en fransk og en engelsk version, og der kan foretages en egentlig tilmelding til systemet via e-mail. Der er en månedlig registreringsafgift på Can\$7.95, og der en afgift i forbindelse med oplysninger og søgninger.

På MERX er der nu oprettet en ny service – 'Opportunity Matching', hvor virksomhederne tilmelder sig med en profil og derefter får leveret oplysninger om udbud, der passer til denne profil. Oplysninger kan blive sendt via fax eller e-mail.

Via MERX kan der også fås en række andre vigtige oplysninger. Der findes f.eks. en række artikler og rapporter om udbudsforhold samt diskussionsfora om, hvordan man bedst vinder ordrer i forbindelse med offentlige udbud. Førende eksperter i udbudsforretninger giver også gode råd via MERX.

Man er begyndt at afholde seminarer om 'Developing Winning Proposals', hvor potentielle leverandører kan deltage. Foreløbig har der været afholdt ét seminar, nemlig i april 1999 i Ottawa, men der er planlagt flere, og interesserede kan følge med også på dette område via MERX-hjemmesiden.

Det skal også nævnes, at MERX foruden at være kilde til udbud fra den føderale regering også bringer meddelelse om alle udbud fra regeringerne i Ontario, Quebec, Alberta, New Brunswick, Prince Edward's Island, Manitoba og Saskatchewan.

For fuldstændighedens skyld skal det nævnes, at der tillige findes et trykt medie – 'Government Business Opportunities', som udkommer tre gange om ugen, og som på fransk og engelsk bringer oplysninger om udbud.

Klageinstanser

I Canada er det 'Canadian International Trade Tribunal', der er klageinstans for problemer under GPA-aftalen (og under NAFTA-aftalen). Dette tribunal har status som en domstol, og det kan gribe ind over for offentlige myndigheder, der har begået fejl i forbindelse med udbud – herunder idømme erstatning og tilbagebetaling af omkostninger. Tribunallet kan også udsætte eller ophæve en udbudsforretning, forlange en ny udbudsrunde og søge supplerende bud.

Virksomheder, der vil bruge klagesystemet, skal skynde sig, for man skal klage inden 10 dage fra det tidspunkt, hvor problemerne med rimelighed skulle være kendt af tilbudsgiveren. Derefter kan Tribunallet bruge op til 135 dage til at tage sin beslutning.

2.7.3 Markederne

Det samlede udbudsmarked i Canada skønnes at være på ca. 25 mia. kroner om året. Der bringes i gennemsnit 200 nye udbud på MERX om dagen, og fra denne elektroniske tender service anslås det, at der konstant er 1.500 muligheder for ordrer til den offentlige sektor åbne, hvoraf en stor del er åbne for GPA-lande.

Bl.a. som følge af den føderale og decentraliserede struktur foretages mange udbudsforretninger i ministerier og styrelser. Dog er mange vareindkøb centraliserede under 'the Department of Public Works and Government Services'.

Til gengæld er de sub-centrale myndigheder i Canada ikke dækket af GPA. Den dækker kun de føderale myndigheder. På grund af Canadas betydelige decentralisering på provinsplan, spiller de offentlige indkøb i provinserne måske en større rolle, end indkøb fra det føderale niveau. Der er som nævnt ovenfor en præference for små og mellemstore virksomheders deltagelse i udbud, og dette gør sig især gældende på provinsplan. Der kan være tale om prispræferencer, hvor mindre virksomheder kan blive tildelt kontrakter, selv om de har budt en højere pris end en stor virksomhed. Der findes desuden en del udbud, som simpelt hen er reserverede for de mindre virksomheder. Endelig er der tilfælde,

hvor der anvendes kvotaer, som sikrer de mindre virksomheder en fastsat del af samtlige offentlige udbud.

Blandt de vigtige diskriminatoriske tiltag, der er i brug for øjeblikket, kan nævnes følgende eksempler fra EUs Market Access Database:

Quebec: Der er præference for canadiske virksomheder, når der er to eller flere canadiske bydende.

Ontario: Der gives en 10 pct. præference for canadisk indhold af leverancerne. Der tillades endvidere præferencebehandling af canadiske leverandører, hvis der er økonomiske eller industrielle fordele ved det.

Saskatchewan: Der gives prioritet til virksomheder fra provinsen. I praksis foregår dette ved, at der gives en 10 pct. prispræference for lokale bydende.

Manitoba: Der gives prispræferencer for lokale produkter.

British Columbia: Der er diskrimination til fordel for canadiske produkter baseret på kriterier vedrørende beskæftigelse, investeringer og eksportpotentiale.

Canada stillede efter undertegnelsen af GPA i udsigt, at der ville ske ændringer, så sub-centrale offentlige myndigheder ville blive dækket af aftalen 18 måneder efter undertegnelsen. Det skete imidlertid ikke. Den canadiske regering kunne simpelt hen ikke få provinsmyndighederne med på ideen.

2.7.4 Forventninger på mellemlangt sigt

Canada har kæmpet hårdt mod underskud på de offentlige finanser, og regeringen satser nu på et balanceret offentligt budget for de kommende år. Da der samtidig loves skattelettelser, betyder det et mindre offentligt engagement i økonomien end tidligere.

Blandt de områder, som Canada virkelig satser på at støtte via de offentlige finanser, er især to af betydning i denne sammenhæng, nemlig store investeringer i sundhedsvæsenet og en styrkelse af konkurrenceevnen gennem en satsning på informationsteknologi og relaterede uddannelser.

Investeringerne i sundhedssektoren vil i høj grad foregå decentralt i og med at føderale budgetmidler overføres til de canadiske provinser og territorier. I de kommende fem år vil der blive tale om ekstrainvesteringer i sundhedssektoren på omkring 65 milliarder kroner.

På centralt plan vil Canada bl.a. opbygge et Sundhedsinformationssystem, satse yderligere på forskning og udvikling samt på en præventiv indsats i forhold til sygdomme.

Hvad angår udviklingen af 'det vidensbaserede samfund' vil Canada satse hårdt på forskning og dissemination af viden. I løbet af ganske få år skal Canada være et af de lande i verden, hvor telekommunikation og Internetforbindelser er mest udbredt. Der skal etableres pilotprojekter i form af 'Smart Communities' i hver af de canadiske provinser og territorier.

Det er oplagt, at der er muligheder for ordrer i disse sektorer, men konkurrencen vil blive hård. Dels ser man gerne i Canada, at så mange opgaver som muligt løses af lokale virksomheder, dels er nærheden til og den stærke afhængighed af USA en faktor, der i hvert fald på det informationsteknologiske områder er af stor betydning. Det kan dog også være en fordel for f.eks. potentielle danske leverandører, at canadierne til tider 'får nok' af amerikanske løsninger og foretrækker andre leverandører.

På sundhedsområdet har danske leverandører formentlig meget at byde på, og det vil nok være det område, der vil frembyde flest (nye) muligheder for danske virksomheder på det canadiske marked de kommende år.

2.7.5 Barrierer for danske virksomheder

Canada har verdens syvendestørste økonomi og har et betydeligt marked for offentlige indkøb. Men på trods af at Canada både gennem NAFTA og WTO er med i internationale aftaler om offentlige indkøb, synes landet ikke videre åbent for udenlandske bud. Der er i mange kredse i Canada en vis mistro til 'frihandel' og 'investeringsliberalisering', fordi det i mange tilfælde primært har ført til en friere adgang for amerikanske virksomheder og leverandører til det canadiske marked.

Der er ingen videre tradition for, at danske virksomheder har deltaget i det canadiske udbudsmarked, og den danske ambassade i Ottawa har da også i forbindelse med en forespørgsel om oplysninger til denne

rapport lakonisk meddelt, at der ingen er, og at man ikke der har kendskab til danske virksomheder, som har interesse i markedet.

For udbud over GPA-tærskelværdierne er der dog ingen egentlige barrierer for danske virksomheder på det føderale plan. Alle kontakter kan foretages på engelsk (og fransk, naturligvis), og danske virksomheder, som måske allerede arbejder på det amerikanske marked, kan måske med fordel forsøge sig også i Canada.

Derimod må markedet i Canadas provinser anses for generelt at være stærkt diskriminatorisk – og klart ikke venligt for udenlandske leverandører. Med mindre man har en helt særlig position i forhold til myndighederne, synes det ret uoverkommeligt for danske virksomheder at skulle begå sig i konkurrencen. Det er især et problem, fordi provinsmyndighederne i landet tilsammen råder over større budgetter end den føderale regering.

Det elektroniske tendersystem (MERX) er ganske nyt, og det giver i sig selv gode muligheder især for vareleverancer fra oversøiske leverandører. Da systemet er billigt at benytte, giver det også nye muligheder for danske virksomheder, især i forbindelse med leverance af varer.

Endelig skal den føderale regerings stærke satsning på sundhedssektoren og på 'det vidensbaserede samfund' nævnes igen. Disse satsninger vil i den kommende tid give sig udslag i konkrete udbudsforretninger, som kan identificeres via MERX.

Canada har siden 1992 diskuteret gensidige anerkendelser af standarder på en række områder, og i 1998 blev der principiel enighed om en sådan gensidig anerkendelse for informationsteknologisk udstyr, lægemidler, medicinsk udstyr og personlige værnemidler. I takt med at denne aftale materialiserer sig, vil den også gøre det lettere for EU-virksomheder at deltage i de offentlige udbudsforretninger.

2.7.6 Nyttige adresser

Public Works and Government Services Canada
Janet Thorsteinson, Director
Supply Policy Directorate
Place du Portage, Phase III, 14A1
11 Laurier Street
Hull
Quebec

Tlf.: +1 1 819 956 0917
Fax: +1 1 819 956 6416
E-mail: Thorstei@sos.pwgsc.gc.ca

Treasury Board Secretariat
R.J. Kelly, Group Chief, Contracting Management
10th floor, East Tower
140 O'Connor Street
Ottawa
Ontario
Canada K1A 0R5
Tlf.: +1 1 613 957 2526
Fax: +1 1 613 952 1381
E-mail: Robert.Kelly@tbs-cts.x400.gc.ca
Internet: <http://www.pwgsc.gc.ca>

På nedenstående Internetside kan man få detaljerede informationer om forhold og kontakter i den canadiske regering:

http://canada.gc.ca/main_e.html

Nedenstående Internetside giver adgang til et væld af oplysninger om Canada, landets økonomi og offentlige finanser:

<http://www.louisville.edu/library/ekstrom/govpubs/international/canada/canadaecon.html>

Royal Danish Embassy
47 Clarence Street, Suite 450
Ottawa
Ontario K1N 9K1
Tlf.: +1 613 562 18 11
Fax: +1 613 562 18 12
E-mail: danemb@cyberus.ca

Royal Danish Consulate General
Commercial Section
151 Bloor Street West, Suite 310
Toronto
Ontario M5S 1S4
Tlf.: +1 416 962 56 61
Fax: +1 416 962 36 68

E-mail: danish@tradecomm.com

2.7.7 Konklusion

Implementering af GPA	GPA-reglerne er indført på føderalt niveau, men provinserne er ikke omfattet.
Åbenhed og transparens	Brugen af elektroniske udbudsmeddelelser og seminarer for bydende peger i retning af åbenhed og gennemsigtighed, men der er samtidig en underliggende følelse af protektionisme, som især slår igennem på provinsplan, og som formentlig mest er rettet mod frygt for amerikansk dominans.
Klageorgan	Der er oprettet en enstreget klagestruktur, som opfylder GPA-reglerne.
Markedets størrelse	Canadas økonomi er verdens syvendestørste, men det store problem er, at GPA-reglerne kun gælder på føderalt niveau. Ønsket om balancerede offentlige budgetter og skattelettelser lægger en dæmper på udviklingen af offentlige indkøb.
Betydning for nabomarkeder	Det er nok de færreste, som vil placere sig i Canada for at arbejde på det amerikanske marked. Situationen vil nok snarere være omvendt, men der er naturligvis i vidt omfang adgang til USA fra Canada.
Sproglige og kulturelle barrierer	Der er ikke særlige sproglige barrierer, idet alle udbudsforretninger foretages på engelsk eller fransk. Den helt store barriere for udenlandske virksomheder er den i realiteten stærke protektionisme, der stikker sit hoved frem på føderalt plan og som er dominerende på provinsplan.
Markedsforventninger	Se under 'Markedets størrelse'
Tradition for dansk eksport	Der er begrænsede traditioner for dansk-canadisk samhandel.
Konkurrencesituation	Konkurrencen er stærk fra USA og i stigende omfang fra Mexico som følge af NAFTA-præferencer, men den største konkurrencefaktor er de lokale virksomheder, der ofte får præferencestilling.

2.8 Polen

2.8.1 Generelt om landene i Øst- og Centraleuropa

Ikke alene Polen, men alle de lande i Øst- og Centraleuropa, der er kandidater til medlemskab af EU engang i det nye årtusinde, har en række særlige problemer på udbudsområdet.

De skal, inden de bliver medlemmer af EU, have etableret et moderne og transparent udbudssystem, men det er ikke mange år siden, de havde kommandoøkonomier, hvor offentlige indkøb var en integreret del af det centralt styrede økonomiske system.

De hovedproblemer, østlandene nu står overfor, er ifølge OECD/EU-projektet SIGMA, som giver støtte til forbedret offentlig ledelse i Øst- og Centraleuropa, følgende:

- Skabelsen af et lovmæssigt og administrativt grundlag, som kan udrede det forvirrende billede af indkøbsenheder i et samlet og sammenhængende netværk med en høj grad af professionalisme.
- Sikring af, at de offentlige indkøbskontorer er bemandede med personale, der forstår moderne offentlige indkøbsprincipper, som de fungerer i en markedsøkonomi.
- Investering i systemer, som giver de data og den information, der skal til i moderne indkøbsfunktioner.
- Give tilbudsgivere adgang til træning og information, som kan fremme deres konkurrenceevne og dermed styrke landenes økonomier.
- Indføre systemer, der kan bekæmpe svindel, spild og korrupsion.

Det er oplagt, at moderne udbudsprincipper som fri og åben konkurrence kombineret med en høj grad af gennemsigtighed er en udfordring for en offentlig administration, som for få år siden fungerede under den centraldirigerede økonomis betingelser. Østlandene har for manges vedkommende fortsat en 'køb nationalt' politik, når det gælder offentlige udbud, og de har fået lov til at beholde disse principper i en årræk-

ke, selv under Europa-aftalerne med EU. Disse aftaler er nemlig skæve til fordel for Østlandene, der har fået adgang til EU-markederne, mens det omvendte endnu ikke er tilfældet. Men den lokale beskyttelse, der ligger i at købe nationalt, vil ikke være ved. Inden medlemskabet er på plads, skal den internationale konkurrence være indført.

UNCITRAL-modellerne for offentlige indkøb, der er omtalt i delrapport 2, har vist sig udmærkede i forbindelse med opbygning af systemer i Øst- og Centraleuropa, og i forbindelse med træning af personalet. Disse principper peger klart i den rigtige retning, nemlig mod indførelsen af EUs udbudsregler.

Det skal til slut bemærkes, at en stor del af de projekter, som bl.a. danske virksomheder interesserer sig for i Polen, er finansieret af forskellige donororganisationer, som f.eks. EBRD, Verdensbanken og EU. I disse tilfælde er det i reglen de pågældende organisationers udbudsregler, der er gældende.

2.8.2 Administrative karakteristika

Polen er det største af de 10 ansøgerlande til EU i Øst- og Centraleuropa. Der bor 38 millioner på de godt 312.000 kvadratkilometer. Polen er en republik med en centralregering og 49 provinser. Økonomien er en af de mest succesfulde blandt østlandene, og den udstrakte privatisering har skabt en betydningsfuld virksomhedssektor. Polen har som et klart mål at blive medlem af EU så hurtigt som muligt, og landet har derfor undgået at indføre protektionistiske foranstaltninger, f.eks. til at forsøge at bedre det store betalingsbalanceunderskud. Tværtimod har Polen bekendt sig til frihandel og til en åben økonomi.

Polen har nu et bruttonationalprodukt på ca. 2.000 mia. kroner, og det er i de senere år vokset med 5-8 pct. om året. BNP pr. indbygger er dog fortsat lavt, nemlig på godt 50.000 kroner. Det samlede statsbudget holdes i stramme tøjler, og det er på ca. 250 mia. kroner.

Den polske økonomi begynder i sin sammensætning at ligne en europæisk markedsøkonomi med godt 6 pct. af BNP fra landbrug, 35 pct. fra industri og 59 pct. fra servicefag.

Store dele af infrastrukturen trænger fortsat hårdt til en modernisering. Det gælder bl.a. telefonsystemerne, men også transportsystemer og andet. Desuden er der fortsat behov for en stor indsats på det miljømæssige område og på bygningsrenoveringsområdet.

2.8.3 Udbudssystemet

Polen har ikke underskrevet GPA, men landet har en observatørstatus i forhold til aftalen.

Det polske udbudssystem fungerer på basis af en Lov om Offentlige Udbud fra juni 1994. Denne lov ledsages af nogle cirkulærer, bl.a. om lokale præferencer i offentlige udbud og om tærskelværdier. Loven blev ændret i 1997, hvor man fastsatte en tærskelværdi på 30.000 euro (ca. 220.000 kroner) over hvilken der principielt skal anvendes offentlige udbud.

Når der foretages offentlige udbud, er det mest brugte kriterium for kontrakttildelingen den laveste pris. Ikke færre end 68 pct. af alle udbudsforretninger i 1997 blev afgjort på grundlag af laveste pris.

Den foretrukne metode for udbud er offentligt udbud. I 1997 var 26.000 af de knap 46.000 udbud offentlige udbud.

Det polske udbudskontor (på engelsk 'the Office of Public Procurement - PPO') blev oprettet i 1995, men det har allerede nu 60 medarbejdere. PPO er det organ, som udstikker grundlaget for politikken på det offentlige udbudsområde i Polen, og det har samtidig en koordinerende rolle for markedet. PPO er et uafhængigt organ i regeringen, som hører til under statsministerens direkte ansvar.

PPO foretager ikke andre udbud end dem, der hører til dets eget virke. I stedet er hovedopgaverne bl.a.:

- Udgivelse af det officielle meddelelsesorgan om udbud.
- Stillingtagen til ansøgninger om brug af andre former for udbud end offentlige udbud.
- Forberedelse og gennemførelse af træningsprogrammer.

Meddelelser om udbud:

Det generelle meddelelsesorgan for offentlige udbud er Public Procurement Bulletin. Man er også begyndt at bruge Internettet til meddelelse af udbud. Det foregår på adressen:

<http://www.uzp.gov.pl>

Denne server har nu 104.000 'hits' om måneden, eller i gennemsnit over 3.000 om dagen.

Den reviderede lov om offentlige udbud af 1997 fastslår følgende regler om meddelelse af udbud:

- Alle offentlige udbud over 30.000 euro skal annonceres i Public Procurement Bulletin (PPB)
- Alle invitationer til at indsende interessetilkendegivelser for begrænsede udbud over 30.000 euro skal meddeles i PPB
- Informationer om prækvalifikation skal meddeles i PPB
- Alle totrins udbud til en værdi af over 30.000 euro skal meddeles i PPB
- Resultater af udbud skal meddeles i PPB

Klageinstanser:

Klager skal rettes til the Office of Public Procurement.

Office of Public Procurement

Al. Szucha 2/4

00-582 Warszawa

Kontoret har en Internetside på adressen:

<http://www.uzp.gov.pl/general.html>

Der er stor interesse i at klage over udbud i Polen. I 1995 var der 348 klager, i 1996 837 og i 1997 1.005 klager.

2.8.3 Markederne

I 1998 – efter tre år med den polske lov om offentlige udbud, har der været næsten 26.000 udbud over den dagældende tærskelværdi på 20.000 euro. I 1997 var der offentlige udbud i Polen til en værdi af 13,6 mia. PLN (ca. 23 mia. kroner). Der har været en markant stigning i antallet af udbud gennem de senere år. I 1995 – det første år med den

nye lov – var der 11.958 udbud, i 1996 34.136 og i 1997 (det seneste år der foreligger statistik fra) var der 44.567 udbud.

Den lave tærskelværdi giver mange, mindre udbud i Polen. Blandt udbuddene over tærskelværdien var 50 pct. under 400.000 PLN (ca. 700.000 kroner), men der var også store kontrakter: næsten 15 pct. af alle havde en værdi på over 1 mio. PLN (ca. 1,7 mio. kroner).

Der kan konstateres stigende konkurrence om udbuddene. Der var i 1997 i gennemsnit 4,2, der bød på udbuddene. Det var en stigning fra 3,6 i 1996, og det indikerer en stigende interesse for at være med i udbuddene.

Det polske udbudsmarked adskiller sig fra mange andre, der er behandlet i denne rapport, ved en meget stor vægt på bygge- og anlægssektoren. Det er formentlig det store behov for nybygning og renovering samt for arbejde med infrastrukturen, der ligger bag disse tal.

Andel af samtlige offentlige udbud i de forskellige sektorer (centralforvaltning):			
	Bygge- og anlæg	Varer	Tjenester
1995	79,5	12	8,5
1996	70	17	13
1997	70	18	12

Dette billede bekræftes af, at man i 1997 anvendte 84 pct. af de offentlige indkøbsmidler til bygge- og anlægsarbejder, mens der gik 10 pct. til indkøb af varer og 6 pct. til indkøb af tjenester. Man kan også heraf se det ikke overraskende, at bygge- og anlægskontrakterne har en gennemsnitligt højere pris end vare- og tjenestekontrakterne.

Det er værd at lægge mærke til, at billedet ser anderledes ud, hvis man vender sig til de kommunale udbud. Her anvendtes i 1996 kun 23,4 pct. til bygge- og anlægsområdet, mens 76,6 pct. gik til varer og tjenester.

2.8.4 Forventninger på mellemlangt sigt

De polske statistikker viser desværre ikke noget om, i hvor høj grad udenlandske virksomheder vinder kontrakter hos de polske myndigheder. Men der er nok heller ingen tvivl om, at det ikke er normen. På den anden side må Polen gradvist til at vænne sig til international konkurrence på dette marked, og når Polen – formentlig omkring 2002-05 – bliver medlem af EU, bliver der fri adgang for danske virksomheder til det polske udbudsmarked.

Dette sammenholdt med den store økonomiske vækst i landet samt det fortsatte behov for renoveringer samt miljø- og infrastrukturforbedringer, peger i retning af Polen som et særdeles interessant marked for danske virksomheder på mellemlangt sigt.

Udbudsmarkedet er som nævnt ovenfor stærkt voksende, og der er hård konkurrence om de ofte ret små udbud. Danske virksomheder, der har etableret sig i Polen, eller som arbejder med en polsk partner, skulle derfor allerede i dag med succes kunne deltage i markedet.

2.8.5 Barrierer for danske virksomheder

Der er barrierer for danske virksomheder på det polske marked, for Europa-aftalen giver nok polske virksomheder adgang til EU-markederne for offentlige udbud på lige fod med EU-virksomheder, men den omvendte vej bliver der ikke lukket op før ved udgangen af overgangsperioden, og det vil i realiteten nok sige ved Polens medlemskab af EU.

Der er tilladelse til, at Polen kan foretrække polske virksomheder (eller udenlandske etableret i Polen) i udbudsforretninger. Derfor skal danske virksomheder ikke regne med at komme i betragtning, hvis de arbejder udelukkende fra Danmark, med mindre der er tale om donorfinansierede projekter eller hvis de besidder en særlig ekspertise, som de polske myndigheder har brug for.

Polen tilnærmer kontinuerligt sin lovgivning til EUs, og det gælder f.eks. også på standardiseringsområdet. Denne proces er med til at nedbryde skranker og barrierer for EU-virksomhederne på markedet.

Den danske ambassade i Polen kan kontaktes på denne adresse:

Ambasada Du'nska
Ul. Rakowiecka 19
02-517 Warszawa

Tlf.: +47 22 48 26 00

Fax: +48 22 48 75 80

2.8.7 Konklusion

Implementering af GPA	Polen er ikke medunderskriver af GPA, men er observatør.
Åbenhed og transparens	Systemet er i stigende grad åbent og gennem-sigtigt. Der anvendes som regel offentlige ud-bud, og tærskelværdien er lav.
Klageorgan	Der er oprettet et klageorgan, og det bruges flittigt.
Markedets størrelse	Markedet udvikler sig fra næsten ingen ting med en høj vækstrate.
Betydning for nabomarkeder	Polen kan tænkes at være et brohoved ind i na-bolande, men det polske marked kan vokse til at være interessant nok I sig selv.
Sproglige og kulturelle barrierer	Der er fortsat reminiscenser af det kommunisti-ske system, men Polen prøver af al kraft at nærmere sig Vesteuropa. Danske virksomheder har i andre sammenhænge vist, at de kan klare den sproglige udfordring, og at de kulturelle barrierer ikke er så store endda.
Markedsforventninger	Man kan vente sig en hel del af et voksende og i stigende omfang åbent polsk udbudsmarked.
Tradition for dansk eksport	Siden systemskiftet har danske virksomheder placeret sig som vigtige partnere for Polen.
Konkurrencesituation	Konkurrencen er i dag hårdest fra lokale virk-somheder. Derfor kan en lokal etablering eller et partnerskab være nødvendigt for at kunne være med på udbudsmarkedet.

Bilag 1. Grænseværdier under GPA

Beløb i SDR.

Kilde: Internettet <http://www.wto.org/wto/govt/tresh.htm>

September 1998.

Anneks 1: Centrale regeringsmyndigheder

Land	Varer	Tjenester	Bygge- og anlæg
Canada	130,000	130,000	5,000,000
EU	130,000	130,000	5,000,000
Hong Kong, Kina	130,000	130,000	5,000,000
Israel	130,000	130,000	8,500,000
Japan	130,000	130,000	4,500,000*)
Korea	130,000	130,000	5,000,000
Liechtenstein	130,000	130,000	5,000,000
Aruba (Holland)	130,000	130,000	5,000,000
Norge	130,000	130,000	5,000,000
Singapore	130,000	130,000	5,000,000
Schweiz	130,000	130,000	5,000,000
USA	130,000	130,000	5,000,000

*) Arkitektydelser: 450,000

Anneks 2: Myndigheder under centralregeringsniveau

Land	Varer	Tjenester	Bygge- og anlæg
Canada	355,000	355,000	5,000,000
EU	200,000	200,000	5,000,000
Hong Kong, Kina	200,000	200,000	5,000,000
Israel	250,000	250,000	8,500,000
Japan	200,000	200,000	15,000,000*)
Korea	200,000	200,000	15,000,000
Liechtenstein	200,000	200,000	5,000,000
Aruba (Holland)	-	-	-
Norge	200,000	200,000	5,000,000
Singapore	200,000	200,000	5,000,000
Schweiz	200,000	200,000	5,000,000
USA	355,000	355,000	5,000,000

*) Arkitektydeler: 1,500,000

Anneks 3: Andre myndigheder, herunder især forsyningsvirksomheder

Land	Varer	Tjenester	Bygge- og anlæg
Canada	355,000	355,000	5,000,000
EU	400,000	400,000	5,000,000
Hong Kong, Kina	400,000	400,000	5,000,000
Israel	355,000	355,000	8,500,000
Japan	130,000	130,000	15,000,000*)
Korea	450,000	450,000	15,000,000
Liechtenstein	400,000	400,000	5,000,000
Aruba (Holland)	400,000	400,000	5,000,000
Norge	400,000	400,000	5,000,000
Singapore	400,000	400,000	5,000,000
Schweiz	400,000	400,000	5,000,000
USA	250,000 eller 400,000	250,000 eller 400,000	5,000,000

*) Arkitektydelser: 1,500,000

Bilag 2. Delstater i USA der er omfattet af GPA

GPA omfatter som nævnt ikke alene det centrale regeringsniveau, men også niveauer herunder. I USA har den føderale regering ikke kunnet binde delstaterne på dette område, og derfor har kun en del af dem valgt at være med i aftalen. Det gælder i alt 37 delstater, som er nævnt nedenfor. Billedet kompliceres dog yderligere af, at det ikke er alle myndigheder i de pågældende delstater, som er omfattet af aftalen. Detaljerne herom fremgår af annekserne til GPA.

Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Idaho
Illinois
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
New York
Nebraska
New Hampshire
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Texas
Utah

Vermont
Washington
Wisconsin
Wyoming

Bilag 3. English Summary

Implementation of GPA in some member countries – and the markets

This report consist of an analysis of the way GPA is implemented in a number of the countries covered by the agreement – plus Poland, a nation which has not yet signed the GPA, but has an observer position. Furthermore there is an analysis of the markets for public procurement, and an identification of barriers for Danish enterprises.

The following tables summarise the conclusions on each country.

USA

Implementation of GPA	GPA is implemented for most federal institutions and for 37 states.
Openness and transparency	Information about tenders is easily accessible from many official sources and from a number of private services that contributes to transparency of the system.
Review Body	Review Body's exist in accordance with GPA.
Size of the market	The market is gigantic. Danish enterprises will probably need to focus on federal tenders, and/or selected states.
Importance for neighbouring markets	It is possible to work into neighbouring countries from the US (including NAFTA partners Canada and Mexico) but it is most likely that the US market is the main reason in itself for working there.
Language and culture barriers	There are no special barriers for Danish enterprises. The culture is, however, somewhat more commercial than in Europe.
Market expectations	The market will, despite any conjunctural changes, be of outmost importance.
Tradition for Danish export	Many Danish enterprises have long-established traditions for trading with the US.
The Competition	The American market is very competitive, and the high use of open tendering increases competition. Other European countries, Japan and US

	enterprises will be the strongest competitors
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Japan

Implementation of GPA	The implementation of GPA seems to be in place at least formally. Recent changes for tenders in local administration have corrected problems there.
Openness and transparency	A general pressure from EU and USA for opening of the Japanese market has had a positive effect on procurement markets. The information material is easily accessible and of high quality.
Review Body	A Review Body is set up as required. It seems quite accessible.
Size of the market	The market is very large indeed, and is expected to grow in areas of interest to Danish companies.
Importance for neighbouring markets	Japan does not give any access to neighbouring markets in principle, but the market in itself is so large that this is of minor importance.
Language and culture barriers	Information material – including the Internet – is often in English, but participation in seminars and in tenders will normally take place in Japanese. Some cultural traditions make the market difficult for foreigners and bid rigging is not unknown especially in construction.
Market expectations	There are large expectations to growth in the market, among other areas in environment, health and care for the elderly. Also increased liberalisation will provide new opportunities.
Tradition for Danish export	There is a high degree of tradition for Danish exports to Japan. Japan is the second largest Danish export market and Denmark has as one of the few countries in the world a trade surplus with Japan.
The competition	In key areas there are tough competition from local enterprises – and from Asia and firms from USA, Germany and UK.

Hong Kong

Implementation of GPA	Hong Kong managed to get membership of GPA in place just before accession to China, and the implementation seems to be perfect.
Openness and transparency	Hong Kong is dependent on import in many areas and is alone for that reason traditionally open for international relations. Tendering procedures seems transparent and open.
Review Body	There are many review bodies in Hong Kong, but the system is transparent and is under revision and streamlining.
Size of the market	Hong Kong is a small country but highly developed. The market is seen from a Danish perspective considerable.
Importance for neighbouring markets	Hong Kong is increasingly an important access point to China, and even if China has not (yet) been a part of GPA, references from Hong Kong could be of importance at the Chinese market.
Language and culture barriers	Hong Kong is bilingual and tenders are often performed in English.
Market expectations	Hong Kong has managed the Asian crisis reasonably well, and a reasonable good economic development is forecasted. This is also true for public procurement markets – in particular in the field of environment and health.
Tradition for Danish export	Hong Kong is traditionally a strong post for Denmark in Asia, and many Danish enterprises are established there or have close relations with partners
The competition	Hong Kong is a very competitive market. For procurements competition must be expected from USA, UK, Germany and China among others.

Singapore

Implementation of GPA	No particular problems in the implementation have been identified. Implementation is not characterised by exemptions.
Openness and transparency	Singapore is an open economy, which needs trade. There is openness concerning tenders, but Danish companies that know the market, complaints about less transparency and fairness in praxis.
Review Body	Singapore has a clearly structured review system, which complies with GPA.
Size of the market	Singapore is a small country with a modest economy. On the other hand much is procured abroad and the economic situation is very good in general
Importance for neighbouring markets	Singapore is not a particularly good point of departure for working in neighbouring states, with whom Singapore has limited connections. And the neighbours are hit hard by the economic crisis.
Language and culture barriers	The English language is so widely used that there should be no problems for Danish business people. The culture is a mix of Western orientation and Chinese tradition.
Market expectations	The modest procurement market is not expected to grow dramatically, but there may be interesting opportunities in niche markets such as information technology and environment.
Tradition for Danish export	Good trade relations exist between Singapore and Denmark..
The competition	Competition is generally high and should be expected from international and local firms, including Chinese.

Korea

Implementation of GPA	Korea has implemented GPA rather late (1. January 1997) and has numerous exemptions.
Openness and transparency	The systems do not leave an impression of a wish for openness and transparency for foreigners. Information is often only in Korean.
Review Body	There has been established a Review Body, but complaints can also go to court.
Size of the market	The Korean market is of medium size, but economic growth is moderate for the moment. It is expected to pick up again but not in the record pace previously seen.
Importance for neighbouring markets	Korea does not hold a very important position for neighbouring markets.
Language and culture barriers	Both types of barriers seems considerable for Danish companies
Market expectations	Korea was hit hard by the economic crisis and is only slowly gathering pace. The need for financing unemployment and to bring down a large government deficit puts a brake on the development of the procurement market.
Tradition for Danish export	Korea does not play a major role for Danish export.
The competition	Competition is largely determined by local companies – not least the huge conglomerates.

Switzerland

Implementation of GPA	Switzerland has implemented GPA with some reservations, but has in 1999 made an agreement with the EU on public procurement.
Openness and transparency	The Swiss procurement system looks closed and non-transparent seen from foreign countries.
Review Body	There is a clear system for complaints in place.
Size of the market	The Swiss procurement market is a bit smaller than the Danish, and the few statistics available indicates a modest market.
Importance for neighbouring markets	As Switzerland is not a member of the EU it does not seem to be a strong station for working in neighbouring countries. It will probably be more relevant to work in Switzerland from neighbouring countries.
Language and culture barriers	There are many languages in Switzerland, and none of them are normally a problem for Danes. Exporters should be prepared to work in the relevant languages in the different parts of the country.
Market expectations	The Swiss are no big spenders – for procurement either. Attempts to stabilise the economy do not indicate an increase in public spending. The agreement with EU will probably open the markets more in the future.
Tradition for Danish export	Switzerland is not one of the largest Danish trading partners, but some Danish companies are established in Switzerland for commercial and tax reasons.
The competition	There is tough competition on the Swiss market; in particular from the neighbours that enjoys the same languages.

Canada

Implementation of GPA	GPA is implemented on federal level, but not in provinces.
Openness and transparency	The use of electronic advertising of tenders and increasing use of seminars for bidders seems to indicate more openness, but there is also an underlying feeling of protectionism – mostly at the provincial level.
Review Body	The complaint structure is in accordance with GPA.
Size of the market	The Canadian economy is the seventh largest in the world. But the fact that GPA is only implemented on federal level limits the market.
Importance for neighbouring markets	Few would possibly locate in Canada to work in the US. The opposite is more likely to happen.
Language and culture barriers	There are not many formal barriers and the French and English language does not pose major problems. The underlying protectionism can be a more serious problem, in particular at province level
Market expectations	Problems with government finances tend to limit expectations.
Tradition for Danish export	There is relatively limited tradition for Canadian-Danish trade.
The competition	Competition is strong from the US and Mexico (NAFTA), but indeed also from local companies.

Poland

Implementation of GPA	Poland has not implemented GPA (yet), but is an observer.
Openness and transparency	The Polish system is increasingly open and transparent. Open tenders are widely used.
Review Body	A Review Body exists and it is widely used.
Size of the market	The market is developing at a high rate.
Importance for neighbouring markets	Poland could be an important post for trading into other Eastern countries, but seems to develop to become an interesting market in itself.
Language and culture barriers	Remains of the communist system are still around but Poland is pursuing transition very hard. Danish enterprises have shown that they can manage the Polish market.
Market expectations	The market is expected to grow and to develop to be an important market, increasingly open for EU companies.
Tradition for Danish export	Since the transition period started many Danish companies have successfully traded with Poland.
The competition	Competition is today strongest from local companies. Establishment in Poland or a Polish partner is probably the best way to success in the market.

WTO, GATS og bibliotekene

Av FRODE BAKKEN, hovedbibliotekar ved Høgskolen i Telemark

De færreste har gått glipp av at det pågår internasjonale forhandlinger om tjenester under WTO-paraplyen (World trade organization - <http://www.wto.org/>). Det er framforhandlet en egen rammeavtale for tjenester, «GATS - General agreement on trade in services», som også Norge har undertegnet <http://www.wto.org/wto/services/gatsintr.htm>.

Det Norske Utenriksdepartementet har en bred presentasjon av WTO og aktuelle spørsmål på: «Informasjon fra norsk UD»: <http://odin.dep.no/ud/norsk/handelspolitikk/032091-990314/index-dok000-b-n-a.html>.

Forhandlingene har skapt betydelig engasjement også på grasrotplan, og problemstillinger og aktivitet har bidratt til mer debatt og mer åpenhet om hele prosessen. Avtalene under WTO har som mål å fremme liberalisering av handel mellom landene og etablere mekanismer for løsning av tvister mellom parter. Avtalene dekker både varer, tjenester, investeringer og vern av åndsverk. For øyeblikket er WTO inne i en ny hektisk runde med forhandlinger om tjenester som skal gå fram til 2004.

WTO, GATS , bibliotek og bindingslister

WTO-systemet og også GATS bygger på at det enkelte medlemsland på fritt grunnlag beslutter om landet ønsker å forplikte seg til de enkelte mekanismene - såkalte bindingslister.

EU vedlikeholder en oversikt over disse bindingslistene ordnet etter tjenestesektorer <http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=fff> og etter land: <http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=eee>. Her kan en lett få oversikt over f.eks. Norges forpliktelser - eller bindingsliste: <http://gats-info.eu.int/gats-info/nwtosvc.pl?COUNTRY=Norway>.

WTO presiserer at det er opp til det enkelte land å forplikte seg - og dette er korrekt. Til nå har 13 land ført opp bl.a. bibliotek på sine bindingslister som del av hovedsektoren «Recreational, Cultural and Sporting Services» <http://gats-info.eu.int/gats-info/swtosvc.pl?&SECCODE=10.C>. Her finner man bl.a. Japan, Singapore og USA, men oppsiktsvekkende nok også Island. Hovedsektoren «Recreational, Cultural and Sporting Services» er imidlertid et for snevert perspektiv. Bibliotekdrift som sorterer under «Recreational, Cultural and Sporting Services» er bare en del av den samlede bibliotekdrift i et nasjonalt biblioteksystem («det sømløse bibliotek») og annen bibliotekdrift har en helt annen forankring i sektorsystemet innen GATS, hvor særlig utdanning vil spille en dominerende rolle. Videre vil det også eksistere bibliotek tjenester som ikke i utgangspunktet er sektor-spesifikke (eks. online-tjenester) men som har utgangspunkt i et bibliotek som kan plasseres inn i en GATS-sektor. Et åpenbart eksempel vil kunne være web-baserte referansetjenester som klart kan komme i konflikt med kommersielle «On-line Information and Data Base Retrieval»-aktører under sektoren «Communication Services» eller andre grenseområder.

Det er mange aspekter ved de mulige trusler for bibliotekene fra de nye handelspolitiske regimene som nå utvikles i stor fart - eller alt for sakte etter WTOs syn. I det øyeblikk et land har ført opp en sektor eller en delsektor på sin bindingsliste i WTO-systemet trer WTOs regelverk under GATS i verk. Det er ulike mekanismer som trår i kraft når det gjelder forpliktelser knyttet til «Limitations on Market Access», «Limitations on National Treatment» og «Additional Commitments». I tillegg kan det ha betydning om tjenesten distribueres som «Cross-border supply», «Consumption Abroad», «Commercial Presence» eller «Presence of Natural Persons». Graden av forpliktelser kan også virke inn. Dette er beskrevet enkelt her: <http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=hhh>

Det er også et eget unntaksregime som for Norges vedkommende kan sees her: <http://gats-info.eu.int/gats-info/nwtosvc.pl?COUNTRY=Norway&MFN=00>

I den kanadiske bibliotekforeningen - som reiste hele sakskomplekset i kanadisk og internasjonalt

bibliotekmiljø - er et (av flere mulige) scenarier beskrevet slik (opprinnelig formulert i forbindelse med MAI-avtalen - noe justert):

«Consider the following scenario: a foreign «information services» company enters (in this case) Canada and sets up its operation. The company defines its services as similar to those offered by libraries here in Canada. It then demands equal treatment with Canadian libraries under the articles of the GATS. Equal treatment would include government subsidies, and the government would then be faced with the following options in response to this demand:

- 1. subsidize the information services companies to the same degree as libraries*
- 2. -decrease subsidies to libraries, and then extend this decreased level of assistance to the foreign corporations as well*
- 3. -cut funding to libraries altogether and thereby avoid subsidizing every information services company that enters Canada.»*

Fra WTO bestrides ikke at slike mekanismer kan tre i kraft - men det presiseres at det er det enkelte medlemsland som selv tar beslutninger om hvilke forpliktelser og innen hvilke sektorer. Dette har særlig vært en problemstilling i tilknytning til offentlige utførte tjenester og dette er jevnlig presisert fra WTOs side http://www.wto.org/english/news_e/news01_e/observerlet_march01_e.htm og http://www.wto.org/english/tratop_e/serv_e/gats_factfiction_e.htm

Vi er kjent med at noen land inkludert USA - som spiller en avgjørende rolle i WTO-forhandlingene - har ført opp bibliotek på sine bindingslister «Recreational, Cultural and Sporting Services» Den viktigste GATS-arena for bibliotekene blir sannsynligvis bibliotek innen utdanningssektoren, og da særlig i UH-sektoren. Til nå er det helt marginale forpliktelser på utdanningsområdet (21 av totalt 140 medlemsland i høyere utdanning) men det er kjent fra mediene at USA og bl.a. Australia presser systematisk på i forhandlingene for å bringe høyere utdanning inn. Det belyses godt i et oppslag i Times Higher Education Supplement 12. juli 2002

<http://www.dcs.warwick.ac.uk/~skelk/GATS/THES16.html> hvor det heter:

«The European University Association discovered last week that the commission had formally asked the US to open its market to higher education bodies from Europe. The request matches commitments signed by the commission in 1994 to allow such institutions access to Europe.

...

If the eventual level of agreement fails to meet expectations, higher education could be part of a new round of global negotiations after the conclusion of Gats talks in January 2005. The commission's move brings closer the possibility of US-based for-profit organisations competing directly with European universities - and even demanding access to state funding and accreditation. Eric Froment, president of the EUA, warned: «Armed with a Gats agreement, private for-profit ventures might challenge the public funding of existing institutions as unfair competition or ask for public funding themselves.» The EUA is a driving force in the Bologna process of establishing a single European space for higher education and research and is committed to reducing barriers to international cooperation in higher education outside a trade policy regime. In a joint declaration with the American Council on Education and the Association of Canadian Colleges and Universities, the EUA said: «Globalisation and strong encouragement of market forces in higher education may lead to undue stress on competition among universities, thus undermining the Prague communique (of European higher education ministers), which stated that higher education should be considered a public good.»

Hva har så skjedd fra bibliotekenes side?

IFLA

Det var det kanadiske bibliotekmiljøet som reiste problemstillingene i 1997-1998 og siden dette har

saken vært på dagsorden også i IFLA som allerede i 1998 opprettet en arbeidsgruppe under sin «Copyright and other legal matters committee» <http://www.ifla.org/III/clm/wkg/wg-mai.htm>. Det er utarbeidet egne posisjonsdokumenter og WTO har vært tema på flere IFLA-konferanser <http://www.ifla.org/III/clm/copyr.htm#3>

NORGE

Norsk Bibliotekforening opprettet i 2000 en egen arbeidsgruppe som har arbeidet med WTO-spørsmål over noe tid. Arbeidsgruppen har hatt møte med Utenriksdepartementets handelsavdeling og også tatt opp spørsmålene om bibliotekenes rolle i en egen henvendelse til UD - se brev og svar: <http://www.nb.no/cgi-bin/wa?A2=ind0110&L=BIBLIOTEKNORGE&P=R15165> og <http://www.nb.no/cgi-bin/wa?A2=ind0111&L=BIBLIOTEKNORGE&P=R9556>. Det er også gjort henvendelser om saken til UD fra Nasjonalbiblioteket: <http://www.nb.no/cgi-bin/wa?A2=ind0110&L=BIBLIOTEKNORGE&P=R11016> og Norsk Kommuneforbund: <http://www.nb.no/cgi-bin/wa?A2=ind0110&L=BIBLIOTEKNORGE&P=R16816>.

I sitt svar til NBF sier Utenriksdepartementet:

«Utenriksdepartementet takker for brev av 17. oktober d.å. med vedlagt dokument fra den internasjonale bibliotekorganisasjonen IFLA.

Som opplyst på vårt møte 26. mars i år kan WTOs medlemmer selv bestemme hvilke forpliktelser de vil påta seg under forhandlingene, og disse forpliktelsene føres opp i spesielle bindingslister for hvert enkelt land.

Da Norge ble medlem av WTO i 1995 valgte Norge ikke å føre opp bibliotek tjenester i den norske bindingslisten. Bibliotek tjenester er heller ikke omtalt i det norske forhandlingsforslag som er fremmet under de pågående tjenesteforhandlinger.

Som Norsk bibliotekforening nevner hadde 13 land påtatt seg forpliktelser innenfor biblioteksektoren da GATS-forhandlingene ble innledet. Disse forpliktelsene har stått uendret siden GATS trådte i kraft i 1995. Ingen av de nevnte land har tatt opp nye forslag om handel med bibliotek tjenester i de pågående forhandlingene.

De forhandlingsforslag Norge fremlegger utformes etter omfattende konsultasjoner mellom myndighetene, næringslivet, interesseorganisasjoner og frivillige organisasjoner. Utenriksdepartementet ser frem til fortsatt nær kontakt med Norsk bibliotekforening i det videre arbeid med WTO-forhandlingene.»

Det er ikke kjent for meg om Kultur- og kirke departementet, Statens bibliotektilsyn eller Riksbibliotek tjenesten har gjort noen egne henvendelser om dette spørsmålet.

EBLIDA

EBLIDA har opprettet en WTO working group som nå arbeider systematisk med å følge tjenesteforhandlingene i WTO for å bidra til at EBLIDA gjør innspill til Europakommisjonen til fordel for generelle bibliotekbehov og synspunkter <http://www.eblida.org/topics/wto/wto.htm>. EBLIDA vil i disse dager sende en egen henvendelse til Europakommisjonen hvor spørsmålet om tjenesteforhandlingene og bibliotekene tas opp på bred basis. Handelspolitikk vil utvilsomt måtte bli et tema med øket oppmerksomhet i bibliotekmiljøene - i Norge og internasjonalt.

Mer lesning:

<http://www.libr.org/ISC/articles/14-Intro.html>

<http://libr.org/GATS/>

<http://www.cla.ca/top/whatsnew/wnnv18991.htm>

<http://www.ala.org/berry/acol.html#may>

<http://www.cla.ca/top/whatsnew/wnoc28991.htm>

http://www.btj.se/press/publikationer/ikoner/arkiv/2000/pdf/00_2.pdf

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